

**EXPLANATORY MEMORANDUM TO**  
**THE COMPETITION ACT 1998 (CONCURRENCY) REGULATIONS 2014**  
**2014 No. 536**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty

2. **Purpose of the instrument**

2.1 The Regulations make provision for the Competition and Markets Authority (“CMA”) and the regulators, who can exercise functions of the CMA under Part 1 of the Competition Act 1998 (“the 1998 Act”) concurrently with it, to co-ordinate the performance of those functions. The Regulations provide for greater co-operation and sharing of information between competition authorities; and give the CMA – in place of the Secretary of State, as at present – the leading role in determining arrangements where authorities have concurrent powers.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 Under section 54 of the the 1998 Act and under the relevant sector specific legislation, regulators for communications matters, gas, electricity, water and sewerage, railway, air traffic, airport and healthcare (in respect of England only) services are granted the power to exercise functions under Part 1 of the 1998 Act in relation to the application and enforcement of competition law, concurrently with the CMA.

4.2 Section 54 of the 1998 Act gives the Secretary of State power to make regulations governing the co-ordination of the performance of those concurrent functions. Section 51 of the Enterprise and Regulatory Reform Act 2013 amends section 54 amongst other things to allow regulations made by the Secretary of State to set out the circumstances in which the CMA may decide that it will undertake a case under the 1998 Act rather than the regulator with concurrent functions and to include requirements for information sharing arrangements to be put in place between the CMA and the various regulators.

4.3 The Regulations are the first exercise by the Secretary of State of these extended powers under section 54. The amendments to section 54 of the 1998 Act came into force on the passing of the Act under section 103(1)(i) of the Act so far as is necessary to allow the exercise of the power to make regulations under the amended provisions.

4.4. The Regulations revoke the Competition Act 1998 (Concurrency) Regulations 2004 (SI 2004/1077).

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The Regulations give effect to the Governments policy goal that the sectoral regulators and the CMA should in future take a more proactive and co-ordinated approach to promoting competition and tackling anti-competitive practices in the regulated sectors.

7.2 Cooperation between the CMA and the Regulators is central to the effective operation of the concurrency regime. The CMA's leadership role will facilitate the efficient allocation of resources, the appropriate sharing of information between the regulators and the CMA, and the development of high standards of excellence in the application and enforcement of domestic and European competition law.

7.3 The Regulations contain provisions for the co-ordination of the performance by the CMA and the regulators of their concurrent functions under the CA98. These provisions include:

- allowing for the exchange of information between the CMA and the regulators, both for the purpose of determining who has jurisdiction to exercise the concurrent functions in relation to a case under the 1998 Act and/or EU law (Regulation 3) and, generally, for the purpose of facilitating the performance by the CMA and the Regulators of their functions under the 1998 Act
- determining who should exercise concurrent functions in relation to a case (Regulation 4)
- resolving disputes as to who should exercise concurrent functions in relation to a case, including specifying the circumstances in which the CMA must decide which person is to exercise concurrent functions in relation to a case (Regulation 5)
- preventing the simultaneous exercise by more than one authority of concurrent functions in relation to a case (Regulation 6)
- transfer of a case from one authority to another (Regulation 7)
- providing the CMA with the power in certain circumstances to take over a case that has been allocated to a regulator - following consultation with the relevant regulator; and up until the point when a Statement of Objections has been issued (after which the agreement of the regulator must be obtained (Regulation 8)

- requiring the putting in place of information sharing arrangements between the CMA and the regulators to cover, amongst other things, informing other competition authorities with a potential interest of any concurrent case where there are reasonable grounds for suspecting an infringement; and for sharing information about ongoing concurrent cases.
- use of staff of the CMA or a regulator by the CMA or another regulator allowing for staff to be shared between the CMA and regulators, or between regulators (not involving the CMA) (regulation 10). Regulation 10 also clarifies that secondments can be for any of the purposes under Part 1 of the 1998 Act

7.4 The CMA is empowered to take over a case under Regulation 8 or allocate a case to itself under Regulation 5 only where it considers this would help to promote competition in the interests of consumers. The Regulation 5 and 8 powers will not apply to Monitor in respect of cases that are principally concerned with the provision of healthcare services by the NHS in England.

## **8. Consultation outcome**

8.1 BIS consulted on the proposals for the standard 12-week period as part of its consultation on a number of statutory instruments implementing elements of the new competition regime. Responses were received from around two dozen respondents to this consultation as a whole. The majority of these were law firms. Details of the responses to the consultation, and the Government Response, will be published at:  
<https://www.gov.uk/government/consultations/competition-regime-draft-secondary-legislation-part-2>

8.2 The consultation on the Regulations prompted some comments that formal time limits and obligations to inform materially affected parties should be built into the processes under Regulation 5 and at earlier stages under regulation 8.

8.3 These suggestions have not been taken up, as it would not be appropriate or practicable to introduce the type of constraints that apply to formal investigations to the preceding jurisdictional negotiations between regulators.

## **9. Guidance**

9.1 The CMA will publish guidance on its approach to working with the sector regulators on 11<sup>th</sup> March 2014 at:  
<https://www.gov.uk/government/publications?departments%5B%5D=competition-and-markets-authority>

## **10. Impact**

10.1 The impact assessment completed for Parts 3 and 4 of the Enterprise and Regulatory Reform Bill, introduced to Parliament on 23rd May 2012, contained an assessment of the effect that the reforms to the competition regime will have on the costs of business and the public and voluntary sector. It can be found at the website: <https://www.gov.uk/government/publications/strengthening-competition-and-creating-a-single-market-authority>

## **11. Regulating small business**

11.1 The legislation applies to small business – although the Regulations are focused on relations between regulators.

## **12. Monitoring & review**

12.1 Section 46 of the Enterprise and Regulatory Reform Act 2013 requires the Secretary of State to conduct a review within five years of the operation of the Competition provisions of the Competition Act 1998, which would encompass these Regulations.

12.2 The impact assessment for the Enterprise and Regulatory Reform Act 2013 competition provisions stated that there would be a review of the competition regime introduced by the Act in April 2018.

## **13. Contact**

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