

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 2 – Competition

Section 73 - Functions under Part 4 of the Enterprise Act 2002

713. This section gives Monitor concurrent functions with the OFT under Part 4 of the Enterprise Act 2002 ('the 2002 Act'), in respect of the provision of health care services in England. These powers enable Monitor to make market investigation references (see below) to the Competition Commission.
714. Monitor can make a market investigation reference to the Competition Commission if it has reasonable grounds for suspecting that any features of a market prevent, restrict or distort competition. For example, Monitor might refer a market to the Competition Commission if there are barriers to entry which require more detailed investigation.
715. After receiving a market investigation reference the Competition Commission must investigate and publish a report within two years. If it decides that there is an adverse effect on competition and resulting detrimental effects on consumers (i.e. patients), it also decides whether any action should be taken to remedy this.
716. *Subsection (4)* contains provision requiring Monitor and the OFT to consult each other before exercising their concurrent functions under the 2002 Act for the first time. *Subsection (5)* is designed to avoid duplication by prohibiting both Monitor and the OFT from exercising these functions if the other has already done so in relation to a particular matter.
717. This section also applies section 117 of the 2002 Act so that Monitor is included (insofar as this is relevant to its functions under this section), in the list of persons and bodies to whom it is an offence to knowingly or recklessly supply false or misleading information. Sanctions available to the courts in respect of this offence are set out in section 117 of that Act.
718. There are some functions under Part 4 of the 2002 Act which Monitor does not share. Specifically section 166, which requires the OFT to keep a register of undertakings, and section 171, which requires the OFT to publish guidance about market investigation references. This duty is to remain with the OFT so that guidance is consistent across different sectors.