

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: the Competition and Markets Authority and Part 4: Competition Reform

Part 3: the Competition and Markets Authority

Schedule 4: The Competition and Markets Authority

Part 2: The Competition and Market Authority Board

170. **Part 2** of the Schedule provides for the CMA Board. The Board, in line with general corporate governance standards, and the Treasury/Cabinet Office Guidance on Corporate Governance in Central Government Departments¹ in particular, will be responsible for the strategy and performance of the CMA and oversight of staff as well as being responsible for particular decisions (e.g. Phase 1 merger, Phase 1 markets and anti-trust cases). The Board will also be responsible for making rules of procedure and may issue guidance.
171. **Paragraph 27** provides that the CMA Board (as distinguished from the CMA, which also includes the panel) will consist of the chair, and the Board members, at least one of whom will also be a member of the panel. The chief executive may be a Board member, but is not required to be.
172. **Paragraph 28** provides that the functions of the CMA will be exercisable by the Board, except where expressly provided otherwise. The result of this approach is that, where an enactment confers functions on the CMA that are to be performed by a CMA group, the enactment in question specifically provides that those functions are to be exercised by a group.
173. **Paragraph 29** provides that the Board may delegate any of its functions to particular members of the Board, or to staff, or a committee. This power to delegate does not apply, however, to decisions at key steps of the market study and market investigation processes.
174. **Paragraph 30** provides that the Board's power to delegate in relation to certain anti-trust functions is subject to rules made under the CA 1998.
175. **Paragraph 31** provides that the CMA Board may make its own rules of procedure. These rules might for instance include rules about Board members deputising for the chair.
176. **Paragraph 32** provides that a defective appointment to the Board or a vacancy does not by itself make its actions or decisions invalid.

¹ Code of good practice, 2011 http://www.hm-treasury.gov.uk/d/corporate_governance_good_practice_guidance_july2011.pdf

177. [Paragraph 33](#) provides for a recusal mechanism for Board members where the Board has to consider whether a matter should be referred to the chair for the chair to constitute a group to investigate the matter. The object behind this is to ensure independence of Phase 1 and Phase 2 decision making. Before the Board considers whether to refer the matter, the chair must consider whether a member of the Board who is also a member of the panel might be a member of the group responsible for the investigation. If so, this person cannot take part in the Board's deliberations. This ensures that the same person cannot take part in a referral decision at Phase 1 and also decisions at Phase 2 in the same case.