



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 4

#### COMPETITION REFORM

### CHAPTER 5

#### MISCELLANEOUS

#### *Concurrency*

#### **51 Powers of sectoral regulators**

- (1) Section 54 of the 1998 Act (concurrent powers for regulators) is amended as follows.
- (2) In subsection (6)—
  - (a) after “may” insert “—
    - (a) prescribe circumstances in which the CMA may decide that, in a particular case, it is to exercise Part 1 functions in respect of the case rather than a regulator;
    - (b)”,
  - and
  - (b) after “Secretary of State” insert “, the CMA”.
- (3) After subsection (6) insert—

“(6A) Where the regulations make provision as mentioned in subsection (6)(a), they must—

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- (a) include provision requiring the CMA to consult the regulator concerned before making a decision that the CMA is to exercise Part 1 functions in respect of a particular case, and
  - (b) provide that, in a case where a regulator has given notice under section 31(1) that it proposes to make a decision (within the meaning given by section 31(2)), the CMA may only decide that it is to exercise Part 1 functions in respect of the case rather than the regulator if the regulator consents.”
- (4) After subsection (6A) insert—
- “(6B) The Secretary of State may by regulations make provision requiring arrangements to be made for the sharing of information between competent persons in connection with concurrent cases.
- (6C) For the purposes of subsection (6B), “a concurrent case” is a case in respect of which—
- (a) the CMA considers that Part 1 functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by both it and any regulator;
  - (b) any regulator considers that Part 1 functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by it.”
- (5) Schedule 14 (which makes provision governing the relationship between the powers of regulators under the 1998 Act and those under sector-specific legislation) has effect.

## **52 Power to remove concurrent competition functions of sectoral regulators**

- (1) The Secretary of State may make a sectoral regulator order if the Secretary of State considers that it is appropriate to do so for the purpose of promoting competition, within any market or markets in the United Kingdom, for the benefit of consumers.
- (2) A sectoral regulator order is an order that amends one or more enactments so as to remove from a sectoral regulator either or both of the following—
  - (a) all the functions of the regulator under Part 1 of the 1998 Act that are exercisable concurrently by the regulator and the Competition and Markets Authority (“the CMA”) or that would be so exercisable but for provision made by virtue of section 54(5)(e) of that Act;
  - (b) all the functions of the regulator under Part 4 of the 2002 Act that are exercisable concurrently by the regulator and the CMA.
- (3) A sectoral regulator order may make such other amendments of any enactment as the Secretary of State considers appropriate in consequence of the removal of the functions.
- (4) Each of the following is a sectoral regulator—
  - (a) the Office of Communications;
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Water Services Regulation Authority;
  - (d) the Office of Rail Regulation;
  - (e) the Northern Ireland Authority for Utility Regulation;
  - (f) the Civil Aviation Authority.

- (5) A sectoral regulator order may include transitional, transitory or saving provision.
- (6) A statutory instrument containing a sectoral regulator order is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section—
  - “amend” includes repeal or revoke;
  - “enactment” includes—
    - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
    - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
    - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
    - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (8) The references to the CMA in subsection (2) are to be read, in relation to any time before the commencement of section 25(3), as references to the Office of Fair Trading.

### **53 Orders under section 52: procedural requirements**

- (1) If the Secretary of State proposes to make a sectoral regulator order, the Secretary of State must carry out the first stage consultation.
- (2) The first stage consultation is consultation with—
  - (a) the regulator whose functions would be removed by the order,
  - (b) the Competition and Markets Authority,
  - (c) where the regulator is the Office of Rail Regulation, the Scottish Ministers,
  - (d) where the regulator is the Northern Ireland Authority for Utility Regulation, the Department of Enterprise, Trade and Investment in Northern Ireland and the Department for Regional Development in Northern Ireland, and
  - (e) where the regulator is the Water Services Regulation Authority, the Welsh Ministers.
- (3) If (following the first stage consultation) the Secretary of State still proposes to make a sectoral regulator order, the Secretary of State must carry out the second stage consultation.
- (4) The second stage consultation is consultation with—
  - (a) the persons consulted at the first stage,
  - (b) any bodies who appear to the Secretary of State to represent the interests of persons in respect of whom the functions that would be removed by the order are exercisable (“regulated providers”),
  - (c) any bodies who appear to the Secretary of State to represent the interests of persons who use the services supplied by regulated providers, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (5) The Secretary of State must give the following information to each of the persons consulted as part of the first stage or second stage consultation—

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- (a) an explanation as to whether the Secretary of State is proposing to remove the functions of the regulator mentioned in subsection (2)(a) of section 52, the functions of the regulator mentioned in subsection (2)(b) of that section or both sets of functions;
  - (b) the reasons why the Secretary of State considers it appropriate to make the order.
- (6) The reference to the Competition and Markets Authority in subsection (2) is to be read, in relation to any time before the commencement of section 25(3), as a reference to the Office of Fair Trading.
- (7) In this section, “sectoral regulator order” has the same meaning as in section 52.