

WATSON FARLEY & WILLIAMS

UK: COMPETITION BRIEFING

COMPETITION AND MARKETS AUTHORITY: SIX MORE COMPETITION ENFORCEMENT CASES ON THE WAY DECEMBER 2017

- SIGNIFICANT EXPANSION OF COMPETITION ENFORCEMENT.
- UP TO 6 ENFORCEMENT CASES AND 4 MARKET INVESTIGATIONS PLANNED.
- ANNUAL PLAN OUT FOR CONSULTATION UNTIL 14 JANUARY 2018.



The Competition and Markets Authority (“CMA”) will have a larger caseload in 2018, with six new competition investigations and up to four market investigations. Championing the role of competition in society, protecting vulnerable consumers, keeping up to speed with the challenges of the digital economy, and boosting the CMA’s international profile role following Brexit all feature prominently in the CMA’s 2018/2019 annual plan. The consultation on the plan, which closes on 14 January 2018, includes these main points below.

Enforcement

Effective enforcement is a priority. In particular, enforcement designed to protect the most vulnerable consumers from anti-competitive practices.

Equally important is supporting business growth and productivity. The CMA is looking for more cases against small and medium sized businesses and in smaller markets across the UK. Although the outcomes of smaller cases may be more modest, their effect is greater when promoted to other businesses in the sector.¹ Further, the CMA proposes to carry out new digital campaigns to raise awareness of competition and consumer rules for businesses.

“THE CMA IS LOOKING FOR MORE CASES AGAINST SMALL AND MEDIUM SIZED BUSINESSES AND IN SMALLER MARKETS ACROSS THE UK.”

¹ For example, in 2015 the CMA imposed fines of £735,000 on a number of estate agents which had entered into anticompetitive arrangements restricting the advertising of fees. See Press Release, “CMA completes probe into advertising of estate agents’ fees”. Available at: <https://www.gov.uk/government/news/cma-completes-probe-into-advertising-of-estate-agents-fees>. Following the investigation and a subsequent targeted communications campaign, the CMA launched another investigation in the estate agent sector. In September, it fined five estate agents in Burnham-on-sea for fixing minimum commission rates at 1.5%, thereby denying local homeowners the chance of getting a better deal when selling their homes. See Press Release, “CMA lifts the lid on estate agents cartel”. Available at: <https://www.gov.uk/government/news/cma-lifts-the-lid-on-estate-agents-cartel>.

“THE CMA PROMISES A MINIMUM OF SIX NEW ENFORCEMENT INVESTIGATIONS.”

The CMA will begin 2018 with an already heavy caseload. Currently, it is running 15 competition enforcement cases, seven consumer enforcements, 11 merger investigations and one market investigation. The caseload is set to grow in the New Year – the CMA promises a minimum of six new enforcement investigations.

Markets and Mergers

Increasing competition in specific markets is a priority. The CMA’s retail banking market investigation concluded in February, and in September it opened a probe into the investment consultancy sector.²

In merger control, the CMA proposes to maintain a targeted approach to investigating non-notified mergers. It encourages informal briefings from companies so it can advise whether a merger will come under further scrutiny. Merger control investigations help to protect consumers but are time consuming and expensive for companies involved, so the CMA will seek to reduce business disruption, for example, by appropriate use of fast-track Phase 2 investigations.³

Remedies

The CMA recognises that strong remedies form a vital part of an effective competition regime. The CMA will focus on developing a deeper understanding of the digital economy and how consumers and businesses interact within it. It will explore ways of simulating parts of the online market to provide better solutions for problems encountered when buying online.⁴

Closer relationships

The CMA seeks closer relationships with partners, both at home and abroad, to ensure competition law is applied effectively. This includes working with fellow regulators in regulated markets.⁵

The CMA will do more competition advocacy across the UK to explain the benefits of competition and to understand what concerns people and businesses have.

Brexit

The CMA’s Brexit preparations are limited by the uncertainty about the UK’s future relationship with the EU. Behavioural competition cases that were in the exclusive jurisdiction of the European Commission may also fall under the jurisdiction of the CMA. As a result, the CMA can expect a significantly increased workload as it takes on larger and more complex cases. To rise to this challenge the CMA emphasises the importance of continuing effective cross-border communication and will seek to maintain strong links with other EU competition regulators.⁶

“MERGER CONTROL CASES ARE ALSO LIKELY TO INCREASE.”

Merger control cases are also likely to increase. As for competition enforcement, transitional agreements on the allocation of existing and post-Brexit investigations and remedies must be clear.

To deal with the expected post-Brexit caseload, the CMA has been allocated £2.8m extra funding each year from 2018.

Consultation questions

You have until 14 January 2018 to respond.

² See Press Release, “CMA sets out the scope of investment consultancy market investigation”. Available at: <https://www.gov.uk/government/news/cma-sets-out-scope-of-investment-consultancy-market-investigation>.

³ The fast track procedure allows the CMA to accelerate the referral of merger cases to Phase 2 when requested by the merging companies and where the CMA has sufficient evidence that the test for Phase 2 reference is met.

⁴ On 6 December 2017, the head of the CMA, Andrea Coscelli, announced that the CMA would be appointing a chief data officer in an effort to strengthen enforcement of companies using digital tools to flout competition rules. See: Simon Zekaria “UK antitrust agency’s chief data officer will be the first in Europe, head says”. Available at: <https://www.mlex.com/GlobalAntitrust/DetailView.aspx?cid=943465&siteid=337>.

⁵ In the energy, rail, water, aviation and financial services markets, both the CMA and the relevant sector regulator may enforce competition law. See the CMA’s Annual report on concurrency. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/611593/annual-concurrency-report-2017-cma63.pdf.

⁶ The UK is considering adopting parts of incoming EU competition rules designed to empower competition authorities in an effort to reduce the future enforcement gap between the CMA and EU competition authorities. These rules are expected to be adopted by the EU in March 2019 shortly after the UK exits the bloc. See Simon Zekaria, “UK weighs up copying EU laws to empower competition authorities after Brexit”. Available at: <https://www.mlex.com/GlobalAntitrust/DetailView.aspx?cid=943318&siteid=337>.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors below or your regular contact at Watson Farley & Williams.



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