



CMA plans for 2015/16

On 24 March, the Competition and Markets Authority (“CMA”) published its Annual Plan of activities and priorities for 2015 to 2016, its second year of operation. This, along with its Strategic Assessment, highlights the areas it intends to focus on and so serves as a warning to companies in the relevant sectors that they should have their ‘house in order’ in competition law terms.

Background

Following a period of consultation, the CMA has now finalised its Annual Plan for 2015/16. This document, together with the Strategic Assessment published in December 2014, give an indication of where the CMA will be focusing its enforcement priorities over the coming year.

The CMA’s Strategic Assessment is a tool the CMA will use to identify markets or issues that may be of interest, either because they have features potentially leading to consumer harm, or are areas where competition could be promoted. In outline, the CMA will focus on six areas of strategic significance in its work:

- conduct that leads to consumer exploitation;
- online and digital economy;
- technology and emerging sectors;
- regulated sectors and infrastructure markets;
- public service markets; and
- sectors that are important to economic growth and recovery (for example the retail sector, construction and creative industries).

In its second year of operation, the CMA remains committed to its target of generating £10 of direct benefits to the consumer for every £1 it spends. The CMA has developed its own methodology for calculating these benefits. With its enhanced budget, the CMA will continue to put consumers at the heart of its work, assessing the impact on consumers by applying a “consumer lens” to all its work. The CMA also intends to invest



in the professional development of its employees, its project management and its digital engagement capabilities, in order to deliver timely and robust decisions.

Against this background, the Annual Plan sets out the CMA’s planned work for 2015/16:

Enforcement

Cartel enforcement will remain a priority for the CMA. The CMA expects to conduct more investigations more quickly using its new powers and enhanced resources. It has already used new compulsory interview powers and with new senior investigators, digital forensics and intelligence capabilities it says it will open as many criminal cartel investigations as possible with at least one leading to prosecution (the CMA’s first criminal cartel case will come to trial in June). It also says it will initiate at least four new Competition Act 1998 investigations and launch at least three consumer cases or projects.

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Markets

The energy and retail banking market investigations will continue to occupy the CMA, with conclusions by December 2015 and May 2016 respectively. However, it will look to launch at least two to four new market studies, calls for information or market investigations. The CMA anticipates that this work will be focused on issues relating to the digital economy.

Mergers

As notification of a merger to the CMA is voluntary, the CMA does not review all mergers. However, it will continue to monitor and investigate mergers that are not notified and it aims to start the statutory clock for a Phase I merger review within 20 working days of receiving a substantially complete draft Merger Notice (i.e. materially speed up the pre-notification process). It aims to clear at least 60% of less complex mergers within 35 working days. The CMA will also conduct an internal review of the use of the Merger Notice, Phase I remedies and the 'exceptions to the duty to refer' guidance.

Partnership and advocacy

More generally, the CMA is committed to working closely with the concurrent regulators (including the original concurrent regulators OFCOM, OFWAT, ORR OFGEM and NIAUR as well as the new ones – Monitor, the CAA, the Financial Conduct Authority and the Payment Systems Regulator), encouraging them to use their competition powers (or risk losing them) and to complete Competition Act investigations within three years. The CMA will also conduct two economic research projects and will publish a paper on vertical agreements in the online world.

What does this mean?

Clients in the sectors identified may be well advised to ensure that they have fully functional competition law compliance programs in place so as to minimise the risks that may come from an investigation or market study in their sector. This is especially the case given the CMA's current enthusiasm for market studies, which seem to have generated a relatively high proportion of competition investigations in recent years.

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