



Competition Law Association

British Group of the
Ligue Internationale du Droit de la Concurrence
(International League for Competition Law)

www.competitionlawassociation.org.uk
www.ligue.org

Competition and financial services: a regulator's perspective

Speaker: Sheldon Mills, Director of Competition, Financial Conduct Authority

Date: Tuesday 25 June 2019

Venue: Herbert Smith Freehills, London

In February 2019, the Financial Conduct Authority (FCA) concluded its first case under the Competition Act 1998, fining three asset management firms for sharing, on a bilateral basis, strategic information during an initial public offering and a placing. This represented a major milestone for the FCA, demonstrating that conduct issues under financial services regulation might also present competition issues. Competition law is an important tool for the FCA, which has now opened another case. Sheldon Mills gave an interesting talk on the importance of this aspect of the FCA toolkit and the opportunities posed by having a competition enforcer in the financial services sector.

Concurrency

The known principle on concurrency is 'which regulator is best placed?'. But, capacity is increasingly important as we move towards Brexit. Concurrency enables agencies to use capacity efficiently and support one another. There are lessons to be learned and best practice to be shared between regulators' competition teams, with support from the CMA as it strives for consistent application of competition tools.

The FCA requires firms to report to it pursuant to FCA Principles for Business. Under Principle 11, a firm must report as soon as it has information suggesting it has or may have significantly infringed competition law. Some have questioned how Principle 11 works with the concept of leniency. Sheldon Mills presented views on this suggested conflict, noting that firms can apply for leniency at the same time as making a Principle 11 notification. The FCA have not found this to be a challenge on a practical basis.

Markets

The FCA works to promote effective competition in financial services in many ways. Market studies and market reviews are among its main tools for doing this, and the FCA has considered a wider range of sectors and markets in its work. The question of whether the FCA will start to increase its use of its Enterprise Act powers was posed. This is interesting because under the Financial Services and Markets Act the FCA must act within the 'perimeter'; the FCA should only use its tools in relation to the activities of regulated firms. But, in competition law, the FCA can go outside this perimeter.

Fairness and Competition

The FCA has launched a discussion paper on Fair Pricing in financial services. The increasing focus on fairness in competition raises the question of how we ensure that competition law enforcement has an impact on individuals. Products from regulated sectors are often essential, such as insurance, energy, banking products and telecommunications, so there is a focus on not only the price but the way firms treat customers. One example is companies deep discounting. They need to recoup their losses, which can lead to a difference between the amount paid by new and existing customers. It is interesting to consider the boundary between competition law and issues of fairness.



Competition Law Association

British Group of the
Ligue Internationale du Droit de la Concurrence
(International League for Competition Law)

www.competitionlawassociation.org.uk
www.ligue.org

Data and Technology

Sheldon concluded with thought-provoking views on data and technology. The considerations are twofold:

- i. What is the role of the regulator in data and technology? Is it to encourage innovation and entry, or perhaps to set the boundaries?
- ii. Does this issue matter for competition regulators? The answer may be yes if there is lack of consumer engagement (e.g. consumers not seeking out the best deals) impacts the demand side. There are also interesting questions to be raised about the ever widening and changing use of data.

The FCA is engaging with data and its challenges, and recognises that technology also has the potential to revolutionise how we regulate data.