



Competition Law Association

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

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WEBINAR SUMMARY NOTE

Competition Policy Update: Competition and Consumer Policy Reforms

Date: 5 October 2021

Speakers: Sarah Aitchison, Assistant Director, Competition and Markets Authority
Steven Preece, Assistant Director, Competition and Markets Authority

Chair: James Flynn QC

Introduction

- The government published a consultation on proposed reforms to the competition and consumer policy regimes which ran from July to October 2021. This Webinar outlined the main points covered by the consultation and the CMA's response to the paper.
- The CMA broadly welcomes the proposals brought forward in the consultation in line with its own requests for reform. The government has indicated that it would be legislating changes to the regime as soon as 'parliamentarily' possible. Views on proposed reforms are welcomed by the CMA in the interim.

Cross cutting reforms

- The reforms reflect the government's envisaged competition strategy which will improve the CMA's administrative penalty powers, decision-making processes and enhanced international cooperation.
- The CMA cautions against strategic steers by government being revised too frequently. The CMA emphasises the importance of maintaining its independence and guarding against operational governmental intervention.
- The point on international cooperation connotes that the UK competition regime is well placed to facilitate cooperation with international regulatory counterparts, focusing on ways in which responsible information exchanges and flexible cooperation can be made ensured in cases which increasingly, have global dimensions.

Markets

- Government's aim is to enable a more flexible and swift regime with two options for reforming current market tools: (i) some remedy powers to be available at the end of a market study or (ii) a single-stage market inquiry process
- The CMA, on balance, favours retaining the current system of a market study and investigation over a single-stage market inquiry option, noting that some improvements could be made to the current regime. The CMA is concerned about the potentially slowed pace and less flexibility under a single market inquiry tool, given that the decision makers will only become involved in the case at a later stage.

- The CMA flagged the importance of adequate safeguards being put in place in the case of the proposal for a markets interim measures power. It noted that interim measures should only be imposed in urgent circumstances where there may be significant harm in the market. Safeguards could include ensuring that procedural rights are in place, that allow parties to engage, make representations and submit comments to be considered by decision makers before such an order is made. It was noted that any use of this power would likely be very limited.

Mergers

- Reforms include revised jurisdictional thresholds and procedures to improve the efficiency of the merger review process.

Antitrust

- The reforms envisage faster enforcement through procedural enhancements and stronger investigative and enforcement powers.
- The CMA requested more detail with regard to how the early resolution agreements in Chapter II cases would work in practice and how attractive they would be to the firms in the proceedings.

Consumer policy

- Although consumer policy was a large focus of the government consultation, it was not discussed during the Webinar, but the CMA welcomes an opportunity for discussion on the proposed consumer policy reforms at a future date.