

CMA and COVID-19

The Competition and Markets Authority (CMA) has responded rapidly in the face of the coronavirus pandemic. Concerns had been raised on a number of fronts that competition enforcement may be needed in the face of the crisis, for example in order to protect vulnerable customers at risk of exploitation or to ensure operators are able to respond (and possibly even coordinate) to meet urgent humanitarian needs such as ensuring the distribution of food or medical supplies.

Since the start of the pandemic, the CMA has issued a number of statements and guidelines. On 18 March (updated on 19 March), it described its efforts in ensuring the safety of its own workforce and set out a commitment to continuing to work through the crisis in order to continue to protect competition, along with some details around its expected ways of working through the period.¹

COVID Taskforce

On 20 March, it launched the CMA COVID taskforce with five clear roles, including to:

- *“Scrutinise market developments to identify harmful sales and pricing practices as they emerge.*
- *Warn firms suspected of exploiting these exceptional circumstances – and people’s vulnerability – through unjustifiable prices or misleading claims.*
- *Take enforcement action if there is evidence that firms may have breached competition or consumer protection law and fail to respond to warnings.*
- *Equip the CMA to advise government on emergency legislation if there are negative impacts for people which cannot be addressed through existing powers.*
- *Advise government on how to ensure competition law does not stand in the way of legitimate measures that protect public health and support the supply of essential goods and services. It will also advise on further policy and legislative measures to ensure markets function as well as possible in the coming months.”²*

Price Gouging

On 20 March, the CMA also released an open letter to pharmaceutical companies and to the food industry, in response to reports it had received that *“a minority of firms in your sector are seeking to capitalise on the current situation by charging unjustifiably high prices for essential goods or making misleading claims around their efficacy.”³* It noted the need for these

¹ See: <https://www.gov.uk/government/news/covid-19-cma-working-arrangements>

² See: <https://www.gov.uk/government/publications/covid-19-cma-taskforce/cma-covid-19-taskforce>

³ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874240/COVID_19_Open_letter_to_pharmaceutical_and_food_and_drink_industries2.pdf

“harmful practices to be... stamped out quickly so that consumers can rely on these vital markets when they need them most.”⁴

Business Cooperation

On 25 March, the CMA issued a set of guidelines on the approach it would expect to take in respect of business cooperation through the period. Within these guidelines the CMA noted that:

“Throughout the UK, businesses are assisting in national and local efforts to tackle the consequences of the COVID-19 pandemic, from providing essential goods and services to consumers, to ensuring key workers can carry out their important tasks in getting the country through this crisis.

The CMA understands that this may involve coordination between competing businesses. It wants to provide reassurance that, provided that any such coordination is undertaken solely to address concerns arising from the current crisis and does not go further or last longer than what is necessary, the CMA will not take action against it.”⁵

The CMA went on to note how it would expect to apply its procedures and manage the exceptions. It did also note, however, that:

“At the same time, the CMA will not tolerate conduct which opportunistically seeks to exploit the crisis. Therefore, this guidance also explains when the CMA will take enforcement action to prevent consumer detriment.”⁶

State Aid

On 26 March, the UK also notified to the European Commission a temporary framework for state aid, with an estimated budget of £50bn. The umbrella scheme included aid in the form of direct grants, state guarantees, subsidised public loans, support for coronavirus related R&D, support for construction and upscaling of testing facilities, and support for the production of products relevant to tackle the outbreak. On 6 April, the European Commission concluded that the measures were necessary, appropriate and proportionate, and that the Framework could remain in place until the end of December 2020.⁷

⁴ Ibid

⁵ See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875468/COVID-19_guidance_.pdf

⁶ Ibid.

⁷ See: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_603

Merger Assessments

On 22 April, the CMA issued guidance on merger assessments during the coronavirus pandemic.⁸ In these guidelines, the CMA sets out its overall approach to the assessment of mergers, including in relation to information gathering (where it notes it “*may ‘stop the clock’ where merging parties are unable to provide information by a specified deadline in a statutory information request*”), the timing of investigations, meetings and hearings (where it notes that all meetings are being conducted remotely via videoconferencing or telephone), interim measures (where it notes it has already received a high volume of requests from merging parties for changes to interim measures in completed mergers) and substantive assessment (where it notes that the pandemic has not brought about any relaxation of the standards by which mergers are assessed).

The crisis is developing daily, and it is possible that the CMA may issue further guidance in due course. It remains to be seen, however, how competition enforcement will play out in practice over the coming months.

Tasneem Azad – Guest contributor.

Tasneem is a Competition Economist. She is currently a Managing Director at Duff & Phelps, and Head of its EMEA Economic Disputes Consulting practice.

The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of Duff & Phelps.

⁸ See: <https://www.gov.uk/government/publications/merger-assessments-during-the-coronavirus-covid-19-pandemic/merger-assessments-during-the-coronavirus-covid-19-pandemic>