



Competition Law Update.

October 2013

Enterprise and Regulatory Reform Act 2013

On 1 October 2013, the Competition and Markets Authority (**CMA**) came into existence as a result of the Enterprise and Regulatory Reform Act 2013 (**ERRA**). From 1 April 2014, the CMA will replace the OFT and the Competition Commission as the new, single competition authority. The CMA will have the power to carry out all merger reviews and market investigations. It will also be the principal enforcement body of competition laws.

The CMA is currently consulting on its vision, values and strategy and is proposing 5 strategic goals: effective enforcement, extension of competition frontiers, re-focussed consumer protection, integrated performance and professional excellence. In the consultation, the CMA indicates that it will initially focus on regulated sectors, emerging sectors and business models, themes arising from economic circumstances and on markets in what have historically been public services. Comments are invited by 12 November 2013. It is expected that a number of guidance documents will be issued for consultation by the CMA over the coming months.

Mergers

Businesses need to be aware that the CMA will have increased powers to suspend and reverse integration of completed and anticipated mergers and to impose heavy penalties of up to 5% of world-wide turnover for any breach. This means that, while the merger control regime will remain voluntary, completing a merger without clearance from the CMA will be more risky than ever. However, merger reviews should be faster with the introduction of statutory deadlines and information gathering powers for the CMA.

Anti-competitive Agreements and Abuse of Dominance

The ERRA will give the CMA new powers to summon individuals for interviews during competition investigations and to impose civil fines for non-compliance with its investigations.

The prosecutorial burden in criminal cartel cases will be relaxed by removing the requirement to prove dishonesty. Going forward, it will be sufficient to show that an individual knowingly participated in a criminal cartel. This means that there will be an increased risk for individuals involved in price-fixing, market-sharing, output restrictions or bid-rigging arrangements. At the same time, ERRA introduces new defences available to individuals who can show that (i) they did not intend the nature of the arrangements to be concealed from customers or from the CMA or (ii) they took reasonable steps to ensure that the nature of the arrangement would be disclosed to legal advisers for the purpose of obtaining advice on it before it was entered into.

Market Investigations

The ERRA introduces shorter, statutory deadlines for market investigations - all market studies must be completed within 12 months. The CMA will be given the power to conduct investigations into practices across multiple markets and be given enhanced information gathering powers and powers to impose remedies. These changes may increase the number of market investigations going forward.

Sectoral Regulators

Finally, the Secretary of State has been given power to remove the competition enforcement powers of sectoral regulators such as Ofcom and the Northern Ireland Utility Regulator. This may prompt the sectoral regulators to make greater use of their competition powers.

Comment

The CMA will be a watchdog with sharp teeth to pursue civil and criminal cases and to impose hefty penalties on cartelists and merging parties in breach of the rules. Individuals should think twice before getting involved in cartel activities due to the increased risk of a successful prosecution. It will no longer be possible to take comfort in the lack of convictions to date.

Businesses need to be aware of the increased risk of completing a merger without clearance from the CMA and of the increased powers of the CMA during investigations and market studies. On the upside, having a single competition authority and shorter, binding deadlines should translate into faster and less costly merger reviews and market investigations.

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