

Unclassified

DAF/COMP/AR(2015)54

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

20-Oct-2015

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2015)54
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED KINGDOM

-- 2014 --

27-28 October 2015

This report is submitted by the United Kingdom to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

JT03384481

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
Delivering effective enforcement	3
Mergers	4
Making markets work well	4
Building and strengthening our partnerships	5
Building and strengthening our organisation	5
1. Changes to competition laws and policies, proposed or adopted	6
1.2 Summary of new legal provisions of competition law and related legislation	6
1.3 Other relevant measures, including new guidelines	6
1.4 Government proposals for new legislation	7
2. Enforcement of competition laws and policies	7
2.1 Civil action against anticompetitive practices, including agreements and abuses of dominant positions	7
2.2 Criminal action against anticompetitive practices	8
2.3 Mergers and acquisitions	9
2.4 Market investigations and market studies	10
2.5 Litigation	11
2.6 Description of significant cases, including those with international implications	13
<u>3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies</u>	13
4. Resources of competition authorities	14
4.1 Resources overall (current numbers and change over previous year):	14
4.2 Human resources (person-years) applied to:	14
4.3 Period covered by the above information:	14
5. Summaries of or references to new reports and studies on competition policy issues	14

EXECUTIVE SUMMARY

1. The Competition and Markets Authority (CMA) acquired its powers and responsibilities as the UK's lead competition and consumer agency on 1 April 2014, under the Enterprise and Regulatory Reform Act 2013 (the ERRA). The ERRA brought together two of the world's leading competition authorities, the Competition Commission (CC) and the Office of Fair Trading (OFT).

2. The establishment of the CMA was part of a major reform of the competition and consumer regime reflecting the UK Government's commitment to the proper functioning of markets and the wider economic growth agenda.

3. Our independence, rigour and objectivity are the foundations of our work. We also demonstrate independence in our practice; we act within the law and we follow the evidence, rather than trying to anticipate or satisfy calls from one part of the political spectrum or another. We have assurances for independence built into our legal and governance structures, and we have in our Board, in our Panel system and in our own senior staff an independent-minded group of leaders and decision makers.

4. A significant institutional merger can be disruptive, and the transition from the OFT and the CC to the CMA certainly required a lot of hard work and dedication. Developing a new strategy and structure, new processes and systems, and a new set of values was a challenge, as was bringing into our organisation the more than 400 staff inherited from our predecessors. But we have accomplished this transition alongside energetic, determined delivery of our core work programme of conducting enquiries and enforcing the law. We have built up our capacity over the course of the year, refreshing our portfolio, closing cases that we inherited, and opening others. We upped our engagement with emerging and developing markets like those for digital goods and services – an area we identified in our Strategic Assessment as a key priority for the coming years.

5. Another key priority for our first year has been our relationships with our partners. We know that the competition and consumer protection regimes are most effective when all those involved work together. In a global economy our work with international partners has been vital, and it is a real honour for the CMA to have been chosen for the Presidency of the International Consumer Protection Enforcement network (ICPEN) in 2015-16. Our work with domestic partners, including those who regulate and promote competition in specific sectors, is explored below.

Delivering effective enforcement

6. We are committed to firm enforcement of the law against businesses that do not comply with their responsibilities. Our investigations spanned a broad range of sectors, in different geographic areas, with an equally broad range of market valuations – from £12m to just under £1bn. We have built a balanced portfolio of cases, covering businesses both large and small, which reach into the lives of consumers across the UK.

7. Deterrence requires awareness of case outcomes and understanding of requirements of the law. Our end-to-end enforcement strategy combines enforcement and sanctions with awareness-raising and compliance activity, to help ensure that the impact of our work extends beyond individual cases.

8. We took on nine civil competition (CA98) cases, four enforcement cases and five ongoing criminal investigations from our predecessors. We concluded three CA98 cases and launched five new ones, exceeding the target we set in our 2014-15 Annual Plan. We also concluded five consumer enforcement cases and launched five more.

9. Pursuing and prosecuting those who engage in criminal activity is a vital part of our role. We concluded a three-year case against the promoters of a £20m pyramid-selling scheme that resulted in nine criminal convictions. We also secured one guilty plea in a criminal cartel case and we expect to make decisions on whether to prosecute or close other cases in the coming months.

10. We believe strongly in creating a culture of compliance and our new end-to-end approach to enforcement recognises that although it is important to deter anti-competitive behaviour through successful enforcement cases, deterrence also requires as many businesses as possible to hear about those cases, and to understand the requirements of the law. A good example of our end-to-end approach was following through the OFT's successful case on commercial vehicles with a compliance campaign. We spoke at trade conferences, ran a social media campaign and distributed an open letter through trade associations and trade publications; all of which we calculate reached more than 80% of the 200,000 people working in that industry.

Mergers

11. There was a significant increase in our mergers workload in the second half of the year. Having made 33 decisions on Phase 1 cases in the first half of the year, we considered 50 in the second half; and whilst there was only one reference to Phase 2 in the first half of the year (which the parties then abandoned), there were five in the second half. These numbers were driven by economic trends and the facts before us, rather than any variation in the underlying framework. Our cases ranged across the breadth of the economy, from leisure magazines to insurance software, with mergers in rail franchises and the healthcare sector.

12. We cleared 60 mergers at Phase 1 in 2014-15, compared to 53 and 45 in the previous two years. We have used our new powers to consider undertakings-in-lieu offered by parties after receipt of a reasoned Phase 1 decision, rather than prior, as under the old regime. This has proved very useful on four occasions already, saving money and time for firms and taxpayers by allowing our specific concerns to be addressed without the need for six months of Phase 2 scrutiny.

13. The ebb and flow of cases over the year emphasises the importance of flexibility in our approach to staffing for merger cases and the potential for non-discretionary work to affect our capacity to take on other issues at our own initiative. In all our cases we have met the timescales set down in statute and we continue to work towards further reductions in timescales.

14. We have new 'hold separate' interim order-making powers to help us apply efficient and effective merger control, which we are using judiciously to ensure that we do not unnecessarily block deals or disrupt markets. We aim to review ourselves with a critical eye, always seeking to improve what we do, and have committed to reviewing our use of the Merger Notice and Interim Orders in 2015-16, as well as commencing a systematic review of historic remedies that remain in operation.

Making markets work well

15. We published final reports into the markets for payday lending, private motor insurance and private healthcare. These are significant markets for consumers in which we proposed remedies to tackle competition problems that are creating consumer detriment of over £300m per year.

16. We began two of the largest market investigations ever undertaken – into the retail banking and energy markets, with combined annual turnovers of roughly £45bn. These are markets which matter not only to consumers, but to businesses and the wider UK economy. We also completed a market study into the provision of residential property management services in England and Wales, following which the Government has committed to taking forward many of our recommendations.

17. We are looking ahead to the challenges of an increasingly digital economy, which permeates most aspects of consumers' lives. This year, following our Strategic Assessment¹ published in November 2014, we committed to identifying online market developments and practices that might be causing consumer detriment. This led us to launch Calls for Information on two key aspects of digital markets – one on the commercial use of consumer data, and one on online reviews and endorsements – to understand more about how these elements of the digital economy are impacting markets and consumers.

Building and strengthening our partnerships

18. Much of what we can achieve is reliant on successful joint working with other regulatory colleagues, both in and outside the UK. We have focused on building and strengthening partnerships across the competition and consumer landscapes, domestically and overseas. Within the new consumer landscape, we are working closely with our partners in the Consumer Protection Partnership (CPP) to achieve our shared objectives. For example, we led a project on problem debt on behalf of our CPP partners, to identify whether there were any gaps in our collective action.

19. It is vital for the CMA to have a UK-wide presence and impact. We opened small offices in Northern Ireland and Wales to bolster the OFT's existing Edinburgh office; these are now well-established and our representatives have been developing a wide variety of productive relationships. We have embedded 'all-nations thinking' into our approach to our work, as well as raising awareness of the CMA, the law, and competition and consumer thinking amongst businesses and stakeholders in these nations.

20. We also assisting government and other regulators to extend competition frontiers, and to encourage stronger competition across the economy, we are seeking together with sectoral regulators to develop a more consistent and integrated use of competition law and policy in sectoral markets. We set up and now chair the UK Competition Network, bringing the regulators together to discuss key issues and share best practice, for example through regular roundtables between agency heads.

21. We published our first annual report on concurrent regulation² with sectoral bodies on 1st April 2015, which pointed to an increase in the use of competition powers amongst regulators – there were six CA98 cases opened last year, as against a previous annual average of less than three over the previous eight years. We have worked with regulatory partners to better co-ordinate case allocation and have advised them on the effective use of their CA98 powers.

Building and strengthening our organisation

22. As a new organisation, the key theme of our first year has been establishing firm foundations upon which we can build in the years to come. Balancing the resourcing required for discretionary work with the peaks and troughs of non-discretionary work is a distinctive challenge for the CMA. We focused this year on developing systems and processes to ensure that we use our resources to best effect. By balancing discretionary and non-discretionary activity, we are ensuring that our resources are allocated more efficiently and effectively. However we recognise that we must continue to invest in our people, processes and pipeline of work to ensure that the benefits of the capacity development we have undertaken in this first year continue in the years to come.

23. It is also still early to evaluate the effects of the changes now embedded in the UK's new regime. To date, the reform process has gone well, and seems to have avoided many of the problems that critics of

¹ www.gov.uk/government/publications/cma-strategic-assessment

² www.gov.uk/government/publications/competition-and-markets-authority-annual-concurrency-report-2015

reform highlighted. But the reforms have still fully to bed down and be tested. While we are confident about the robustness of the organisation and the quality of its staff and processes, a full judgement can only be made with the passage of time, when the CMA's decisions have been tested through the courts and in practice.

24. The UK, through the CMA, looks forward to sharing with the OECD its experience in the years that follow when it becomes clearer how the above changes to institutional design have, in practice, shaped the UK's approach to competition and consumer enforcement.

1. Changes to competition laws and policies, proposed or adopted

1.2 Summary of new legal provisions of competition law and related legislation

25. Under a new law, the Enterprise and Regulatory Reform Act (ERRA), we took over from our predecessor bodies on 1 April 2014. Besides the creation of the CMA, ERRA made changes to the law on antitrust, the criminal cartel offence, the merger and markets regime, and competition enforcement by sector regulators.

26. With regard to the enforcement of the law prohibiting anticompetitive practices and abuses of dominant positions, the CMA have new powers of investigation and face a lower threshold for taking interim measures. In the prosecution of individuals the requirement of dishonesty is no longer necessary to prove a criminal cartel offence.

27. The changes to the merger regime brought the 2 step UK merger control process under one roof, with both stages now conducted solely by the CMA. The notification of mergers and acquisitions remains voluntary, but the CMA may now take earlier action to reverse steps that have already been taken or to reverse the effects of such steps. The CMA also has new powers of investigation as well as obligations to progress cases to tighter time limits.

28. Unlike its predecessors, the CMA is responsible for both market studies and subsequent market investigations. The ERRA also allows the CMA to conduct cross-market investigations.

29. On 1 April 2014, the Competition Act 1998 (Concurrency) Regulations 2014 came into force. The Regulations make provision for the CMA and sectoral regulators who can exercise Competition Act functions concurrently with the CMA to co-ordinate the performance of those functions.

1.3 Other relevant measures, including new guidelines

30. In the second half of 2014, the CMA published a series of guidance documents for businesses aimed at raising compliance with competition law. These include:

- Competition and consumer law compliance: guidance for businesses;³
- Advice for company directors on avoiding cartel infringements;⁴
- Limiting risk in relation to competitors' information;⁵

³ <https://www.gov.uk/government/collections/competition-and-consumer-law-compliance-guidance-for-businesses>

⁴ <https://www.gov.uk/government/publications/advice-for-company-directors-on-avoiding-cartel-infringements>

- Competition law: dos and don'ts for trade associations;⁶
- Bid-rigging: advice for public sector procurers.⁷

The CMA also published the following guidance documents:

- Pyramid selling: advice for the public and communities;⁸
- CMA Guidance on the review of NHS mergers;⁹
- Higher education providers: short guide to consumer protection law;¹⁰
- Secondary ticket websites: advice for consumers.¹¹

1.4 Government proposals for new legislation

31. During 2014 the Government made a proposal to give the CMA additional powers to make and publish written recommendations to ministers on the impact of proposals for Westminster legislation on competition within any UK market(s) for goods or services. The existing powers of the CMA under section 7 of the Enterprise Act 2002 have subsequently been revised by section 37 of the Small Business, Enterprise and Employment Act 2015, and the CMA gained the additional powers on 26 May 2015.

32. Following its market study into property management services, the CMA made a series of recommendations which have been accepted by Government and the industry.

2. Enforcement of competition laws and policies

2.1 Civil action against anticompetitive practices, including agreements and abuses of dominant positions

33. In the period covering 1 April 2014-31 March 2015, the CMA concluded three competition enforcement cases inherited from the OFT, and ended the year with 11 live cases.

2.1.1 Summary of activities of competition authorities

2.1.1.1 Scottish island road fuels

34. In June 2014, the CMA published its decision to accept binding commitments from Certas Energy UK Limited and DCC plc following an investigation into a suspected abuse of a dominant position.

⁵ <https://www.gov.uk/government/publications/limiting-risk-in-relation-to-competitors-information>

⁶ <https://www.gov.uk/government/publications/competition-law-dos-and-donts-for-trade-associations>

⁷ <https://www.gov.uk/government/publications/bid-rigging-advice-for-public-sector-procurers>

⁸ <https://www.gov.uk/government/publications/pyramid-selling-advice-for-the-public-and-communities>

⁹ <https://www.gov.uk/government/news/cma-and-monitor-publish-guidance-on-the-competition-review-of-nhs-mergers>

¹⁰ <https://www.gov.uk/government/publications/higher-education-providers-short-guide-to-consumer-protection-law>

¹¹ <https://www.gov.uk/government/publications/secondary-ticket-websites-advice-for-consumers>

These commitments brought an end to contracts which required the majority of filling stations on the islands to buy fuels exclusively from Certas for five years.¹²

2.1.1.2 WorldPay/Visa

35. In spring 2015, the CMA published a summary of its decision rejecting an application for interim measures under section 35 of the Competition Act 1998 made by WorldPay in relation to the CMA's Visa interchange fees investigation. WorldPay, a provider of payment services to merchants such as retailers, submitted an application in September 2014 for the CMA to use its power to impose interim measures against Visa UK Limited. After careful consideration, the CMA concluded that it was unlikely that there would be significant damage to either WorldPay or merchants in the absence of urgent intervention. The CMA's published summary of the decision on this case provides guidance on how the CMA interpret the new threshold of 'significant damage', which should assist companies making an interim measures application.¹³

2.1.1.3 Property sales and lettings

36. In March 2015, the CMA announced after its investigation into alleged agreements to prevent estate agents from advertising their fees and discounts in local newspapers that the parties under investigation have admitted breaching competition law in relation to estate and lettings agency services in Hampshire. They agreed to pay individual fines which collectively amount to £735,000.¹⁴

2.1.1.4 Vehicles service, maintenance, and repair platforms

37. On 9 September 2014, the CMA published its decision to accept commitments from Epyx following an investigation into a suspected abuse of a dominant position in the supply of vehicle service, maintenance and repair platforms in the UK.¹⁵

2.1.1.5 Sports bras

38. In June 2014, the CMA made a no grounds for action decision following a formal investigation into suspected anti-competitive arrangements relating to sports bras resale price maintenance (RPM).¹⁶

2.2 *Criminal action against anticompetitive practices*

2.2.1 *Pyramid selling scheme*

39. In October 2014, the CMA concluded a criminal enforcement case against the promoters of a pyramid selling scheme in the south west of England. It was the CMA's first concluded criminal case and resulted in nine convictions.¹⁷

¹² <https://www.gov.uk/cma-cases/investigation-into-the-distribution-of-road-fuels-in-parts-of-scotland>

¹³ <https://www.gov.uk/cma-cases/investigation-into-interchange-fees-mastercard-visa-mifs>

¹⁴ <https://www.gov.uk/cma-cases/investigation-into-property-sales-and-lettings-and-their-advertising>

¹⁵ <https://www.gov.uk/cma-cases/investigation-into-the-supply-of-vehicle-service-maintenance-and-repair-platforms-in-the-uk>

¹⁶ <https://www.gov.uk/cma-cases/sports-bras-rpm-investigation>

¹⁷ <https://www.gov.uk/government/news/pyramid-scheme-organisers-ordered-to-pay-over-500000>

2.2.2 *Galvanised steel tanks*

40. In June 2014, the CMA charged two further individuals in the galvanised steel tanks case, a first having pleaded guilty earlier in 2014. At the trial in June 2015, the two individuals were acquitted as the jury were not convinced that they had acted dishonestly. Following a change in the law, for conduct after 1 April 2014, it is no longer necessary for the CMA to prove individuals acted dishonestly to commit the cartel offence.

2.3 *Mergers and acquisitions*

2.3.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

41. The CMA reviewed 83 mergers from industries and businesses across the UK, 10 of which created a realistic prospect of a significant lessening of competition (SLC). The CMA exercised its power to accept undertakings-in-lieu of a reference to a Phase 2 investigation in three of these cases, referred six to in-depth Phase 2 investigations, and on one occasion the merger was abandoned by the parties involved.

2.3.2 *Qualifying mergers which created a realistic prospect of a substantial lessening of competition*

2.3.2.1 *Pure Gym/The Gym*

42. In June 2014, the CMA referred the anticipated acquisition by Pure Gym Limited and The Gym Limited to Phase 2 for further investigation. The merger was abandoned shortly after and the CMA's reference to Phase 2 was cancelled.¹⁸

2.3.2.2 *Diageo/United Spirits*

43. The CMA accepted undertakings in lieu of a reference to Phase 2 from Diageo in order to remedy competition concerns arising from its shareholding in United Spirits, a company based in India.¹⁹

2.3.2.3 *Xchanging/Agencyport*

44. The CMA cleared the completed acquisition by Xchanging of certain companies comprising all of the European operations of Agencyport. The two parties supply specialist software to the insurance industry, in particular insurers and reinsurers operating in the London Company Market and Lloyd's of London registered managing agents.²⁰

2.3.2.3 *Pork Farms/Kerry Foods*

45. In December 2014, the CMA referred Pork Farms' completed acquisition of Kerry Foods' chilled savoury pastry business for Phase 2 investigation. Although the Phase 1 investigation found that the merger gave rise to a realistic prospect of a substantial lessening of competition, the independent and more in-depth Phase 2 investigation cleared the merger on the basis that it has not resulted, and may not be expected to result, in higher prices or lower quality for retailers or consumers of the products affected by the merger.

¹⁸ <https://www.gov.uk/cma-cases/pure-gym-the-gym>

¹⁹ <https://www.gov.uk/cma-cases/diageo-united-spirits>

²⁰ <https://www.gov.uk/cma-cases/xchanging-agencyport-software-europe>

2.3.2.4 Reckitt Benckiser/K-Y brand

46. The CMA announced that Reckitt Benckiser's anticipated acquisition of Johnson & Johnson's K-Y brand was referred for an in-depth Phase 2 investigation in January 2015. The CMA approved the merger in August 2015 on the basis of an agreed undertaking with Reckitt Benckiser to license the K-Y brand in the UK to a competitor for eight years, allowing time for it to develop a new brand to rival the Durex range that could gain access to supermarkets and national pharmacy chains.

2.3.2.5 Immediate Media/Future Publishing

47. The CMA found that the completed acquisition by Immediate Media Company Bristol Limited of a number of magazines from Future Publishing Limited could give rise to a substantial lessening of competition and subsequently accepted undertakings-in-lieu of a Phase 2 investigation.

2.3.2.6 Sonoco/Weidenhammer

48. The CMA referred Sonoco Products Company's completed acquisition of Weidenhammer Packaging Group GmbH to Phase 2 in January 2015 after considering Sonoco's offered undertakings. Following the in-depth and independent investigation, the merger was subsequently cleared.

2.3.2.7 Ashford St Peters NHS Trust/Royal Surrey County

49. In February 2015, the CMA referred the proposed merger of Ashford St Peter's NHS Foundation Trust and Royal Surrey County NHS Foundation Trust for Phase 2 investigation because of competition concerns regarding a number of inpatient and outpatient elective services. The provisional findings, published in August 2015, concluded that the merger would not result in a substantial lessening of competition.

2.3.2.8 Motor Fuel/Murco

50. In February 2015, the CMA accepted undertakings-in-lieu of a Phase 2 reference, following Motor Fuel's acquisition of 228 Murco-branded petrol stations and 226 fuel supply contracts for independent dealers from Murco Petroleum Limited.

2.3.2.9 Inter-City Railways/InterCity East Coast franchise

51. In February 2015, the CMA found that the award of the franchise to Inter City Railways Limited (a joint venture between Stagecoach Group plc (Stagecoach) and Virgin Group Holdings Limited) may raise competition concerns. The CMA accepted undertakings-in-lieu of a reference to Phase 2 investigation.

2.4 *Market investigations and market studies*

52. In 2014-2015, the CMA worked on a number of markets cases which it inherited from its predecessors, the CC and the OFT.

2.4.1 Payday lending

53. Following the conclusion of a 20-month investigation, the CMA in February 2015 published its final report on the payday lending market, including its decisions on measures to increase price competition between payday lenders and to help borrowers get a better deal. Online payday lenders will be ordered by the CMA to publish details of their products on at least one price comparison website (PCW)

which is authorised by the Financial Conduct Authority (FCA). Last December the CMA started consulting on amendments to two of the proposed remedies²¹.

2.4.2 *Private motor insurance*

54. In autumn 2014, the CMA published its final report on the private motor insurance market investigation stating that it would (1) ban agreements between price comparison websites (PCWs) and insurers which stop insurers from making their products available more cheaply on other online platforms, and (2) ensure there was better information for consumers on the costs and benefits of no-claims bonus protection. The CMA published a final order in March this year, which sets out how changes resulting from its investigation into private motor insurance will be introduced and monitored.²²

2.4.3 *Residential property management*

55. In December 2014, the CMA published its market study findings and recommendations for improvements into the residential property management sector. The CMA concluded that, while the market works well for many leaseholders, some experience significant problems. In light of the findings, the CMA made a number of recommendations aimed at improving the way the market works.²³

2.4.4 *Retail banking*

56. In November 2014, the CMA embarked on a consultation regarding its provisional decision to launch a market investigation. Most respondents agreed that there should be a market investigation. Having carefully considered the consultation responses, the CMA continued to have concerns about the effectiveness of competition in these sectors and launched a market investigation.²⁴

2.4.5 *Energy*

57. In June 2014, the CMA launched a market investigation following a reference from Ofgem. In October 2014, the CMA issued a short update and held holding formal hearings with a range of industry participants and interested parties including regulators, consumer groups, generators and suppliers.²⁵

2.5 *Litigation*

58. 6 out of 8 appeals in 2014-2015 related to decisions taken by the OFT and the CC. The CMA was successful in 5 cases:

2.5.1 *Antitrust decisions*

2.5.1.1 Tobacco

59. Following the OFT's final decision a number of parties to the Tobacco investigation – but not Gallaher and Somerfield – successfully challenged the OFT's decision. Since then Gallaher and Somerfield

²¹ <https://www.gov.uk/cma-cases/payday-lending-market-investigation>

²² <https://www.gov.uk/cma-cases/private-motor-insurance-market-investigation>

²³ <https://www.gov.uk/cma-cases/residential-property-management-services>

²⁴ <https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk>

²⁵ <https://www.gov.uk/cma-cases/joint-review-of-competition-in-the-energy-market>

have brought a series of unsuccessful proceedings against the OFT. Those proceedings have been continued against the CMA. In proceedings before the High Court Gallaher and Somerfield argued that they had been treated unfairly by comparison with another company that had entered into an early resolution agreement and should have their penalties repaid. The High Court rejected the claims. Gallaher and Somerfield have subsequently appealed to the Court of Appeal.²⁶

2.5.1.2 Construction

60. In May 2014 the High Court dismissed the claims by Lindum, Interserve and Willmott Dixon seeking repayment of the penalties imposed by the OFT following its investigation into the construction sector in 2009.²⁷

2.5.2 Merger decisions

2.5.2.1 Akzo Nobel/Metlac

61. In April 2014, the Court of Appeal dismissed Akzo Nobel's appeal against the CAT's ruling to uphold the CC's decision to prohibit Akzo Nobel from acquiring the remaining 51% of Metlac. Last December the Supreme Court refused Akzo Nobel permission to appeal.²⁸

2.5.2.1 Eurotunnel/SeaFrance

62. In June 2014, the CMA confirmed the decision made in 2013 by one of its predecessor agencies, the CC, that Eurotunnel should be barred from operating its My Ferry Link service further to its proposed merger with Sea Ferries. The decision was upheld on appeal to the High Court but subsequently overturned by the Court of Appeal. The CMA has been granted permission to appeal to the Supreme Court and the hearing is scheduled for October 2015.²⁹

2.5.2.2 Ryanair/Aer Lingus

63. In February 2015, the Court of Appeal dismissed a challenge by Ryanair against an earlier decision made by the CAT in March 2014 upholding the CC's decision to require Ryanair to sell its 29.8% stake in Aer Lingus down to 5%.³⁰

64. The other three appeals include:

2.5.3 AC Nielsen

65. The Competition Appeal Tribunal (CAT) made an order remitting the decision by the OFT to the CMA. The OFT had cleared the merger in December 2013. On 17 April 2014, AC Nielsen brought its application for judicial review seeking re-consideration of the OFT's decision not to refer the merger for a Phase 2 review by the CC. Although the CMA initially planned to defend the application, it became clear,

²⁶ <http://www.catribunal.org.uk/237-7762/1200-1-1-12--1-Gallaher-Group-Limited-2-Gallaher-Limited.html>

²⁷ <http://cases.iclr.co.uk/Subscr/search.aspx?path=WLR+Dailies%2FWLRD+2011%2Fwlrld2014-219>

²⁸ <https://www.gov.uk/cma-cases/akzo-nobel-n-v-metlac-holding-s-r-l-merger-inquiry>

²⁹ <https://www.gov.uk/cma-cases/eurotunnel-seafrance-merger-inquiry>

³⁰ <https://www.gov.uk/cma-cases/ryanair-aer-lingus-merger-inquiry>

following the intervention in the proceedings by IRI, that information not previously made available to the OFT might have a bearing on the OFT's clearance.³¹ The CMA therefore re-examined the merger.³²

2.5.4 *Skyscanner*

66. In September 2014, the CAT upheld Skyscanner's appeal against the OFT's decision of 31 January 2014 accepting commitments in the hotel online booking case. The commitments concerned aimed to encourage competition by enabling online travel agents and hotels to offer discounts on rates for hotel rooms. The CAT remitted the case to the CMA with a direction to reconsider the matter in accordance with the judgment.³³

2.5.5 *Private Healthcare market investigation*

67. Various aspects of the CMA's market investigation into the private healthcare sector have been appealed by HCA, AXA and FIPO. Last December, the CAT agreed to the CMA's request to quash part of the final report into the private healthcare market investigation and remit it back to the CMA to reconsider and reach a new decision. Separately, the CAT dismissed the appeal by AXA in March 2015.³⁴

2.6 *Description of significant cases, including those with international implications*

See above.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

68. This year the CMA advised government on approximately 20 competition and consumer issues including higher education (see below), further education, North Sea oil and gas, and in markets where the government is a significant purchaser. The CMA also conducted training sessions for government procurers on how to identify and mitigate incidences of bid-rigging, and for policy makers on how to assess the impacts of regulation on competition. The CMA conducted advocacy work in a variety of different ways, including briefing officials on the competition implications of policy proposals, and training government officials and staff sitting on cross-government steering committees.

69. Following the OFT's call for information on Higher Education in England, the CMA carried out a review of the regulatory framework for the higher education sector in England. In March 2015, the CMA published recommendations to Government and the sector which aim to ensure that the regulatory framework protects students and supports an increasingly diverse higher education sector. This took place in parallel with activities to produce and publish guidance for providers and advice for students.

³¹ www.catribunal.org.uk/files/1227_AC_Nielsen_%20Notice_240414.pdf

³² <https://www.gov.uk/cma-cases/information-resources-inc-aztec-group>

³³ <https://www.gov.uk/cma-cases/hotel-online-booking-sector-investigation>

³⁴ <https://www.gov.uk/cma-cases/private-healthcare-market-investigation>

4. Resources of competition authorities

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget (in your currency and USD):

70. In the Autumn Statement 2013 the Chancellor of the Exchequer announced that the CMA's Resource Departmental Expenditure Limit would be increased by £12m in 2014/15 to allow the authority to accelerate their work relating to cartels and regulated markets. The CMA's budget in 2014-2015 was £70.36m (USD 104.37m).

4.1.2 Number of employees (person-years):

71. At the end of December 2014, the CMA employed a total of 653 staff members. Approximately 246 of the total staff and 204 of the non-administrative staff worked on competition enforcement. Among the non-administrative competition staff there were 41 economists, 40 lawyers, and 123 other professionals.

4.2 Human resources (person-years) applied to:

72. Of the non-administrative staff 148 worked on anti-cartel and dominance-related issues and 54 worked in merger control. 14 non-administrative staff members worked on other issues, e.g. advocacy.

4.3 Period covered by the above information:

73. 1 April 2014 – 31 March 2015

5. Summaries of or references to new reports and studies on competition policy issues

74. The Government invited the Rt Hon Sir John Mummery to lead an independent review of the Competition Appeal Tribunal Rules 2003. The aim of the review was to deliver new improved Rules to strengthen the appeal process against a background of reforms to competition law, and to ensure the Rules cover a wide variety of functions exercised by the CAT. This will enable proceedings to be handled in a cost-effective way whilst ensuring the process is streamlined, speedy and efficient. The Government published its response to the recommendations on 8 September 2015, broadly accepting the review. In particular, the Government has decided to incorporate five principles from the Guide to Proceedings 2005 into the Rules as Governing Principles. The principles expressly provide for early disclosure in writing, active case management, strict timetables, effective fact-finding procedures, and short and structured oral hearings.³⁵

³⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401678/bis-15-75-competiiton-appeal-tribunal-cat-rules-of-procedure-consultation.pdf