June 2021

UK Competition Law Newsletter

Highlights

— CMA publishes consultation to replace the retained Vertical Agreements Block Exemption Regulation

— CMA launches Competition Act investigation into Facebook

— CMA launches market study into Apple and Google mobile ecosystems

CMA publishes consultation to replace the retained Vertical Agreements Block Exemption Regulation

On 17 June 2021, the CMA published a consultation document on its provisional recommendation to replace the retained EU Vertical Agreements Block Exemption Regulation (**VABER**) with a UK-specific Vertical Agreements Block Exemption Order (**VABEO**) (the **CMA Consultation)**. Currently, agreements benefit from automatic exemption from the UK Chapter 1 Prohibition[1] (the equivalent of Article 101 TFEU) if they meet the criteria set out in the VABER.

Under the proposals, the VABEO would largely replicate the provisions of the VABER subject to the following changes, which are similar to changes that the European Commission (**EC**) is proposing to make to the VABER:

— The CMA proposes extending the block exemption to cover dual distribution arrangements made by wholesalers and/or importers.

— Under the VABER, an agreement that restricts the territory into which a buyer can sell – or the customers to whom a buyer can sell – is considered a hardcore restriction.[2] This is subject to a number of exceptions, most of which allow restrictions on active sales in specified circumstances. The CMA proposes introducing three further exceptions that would permit additional restrictions on active sales.

[1] Section 2 of the Competition Act 1998 prohibits agreements, decisions and concerted practices between or among undertakings or associations of undertakings which have as their object or effect the restriction, distortion or prevention of competition within the UK and which affect trade within the UK.

[2] The Consultation does not explain whether this also covers import bans from the EU into the UK. The legal position is unclear. However, Draft Guidance from 2019 states that *'In certain circumstances, passive sales bans affecting sales to a UK market or UK customer are capable of falling within the scope of the Chapter I prohibition. They may not satisfy the requirements of the Retained Vertical Agreements Block Exemption Regulation and may be treated as hardcore restrictions of competition.'*

— Under the proposed VABEO, dual pricing and imposing different selective distribution criteria between online and brick-and-mortar sales would no longer be treated as hardcore restrictions.

— Under the proposed VABEO, "indirect" (or "wide") parity obligations would be treated as hardcore restrictions.

— The CMA would have the discretion to withdraw the benefit of the VABEO with respect to specific vertical agreements if it considered that an agreement should not benefit from exemption.

Context

Following the end of the Brexit Transition Period on 31 December 2020, the VABER[3] continued to apply in the UK as retained EU law, subject to only minor amendments. The VABER exempts vertical agreements from the Chapter 1 Prohibition where:

— Either the market share of each of the parties to a vertical agreement does not exceed 30%, or the agreement is between associations of retailers where no individual member's turnover exceeds £44 million;

— The vertical agreement is not an agreement between competitors (unless a relevant exception applies); and

— The vertical agreement does not contain any of the "hardcore restrictions" identified in the VABER.

The VABER will expire on 31 May 2022. Under Section 6(1) of the Competition Act 1998, the Secretary of State for Business, Energy and Industrial Strategy (the **Secretary of State**) may introduce a new block exemption following a recommendation from the CMA. The CMA has published its provisional views for consultation and will finalise its recommendation to the Secretary of State following this consultation.

The CMA also anticipates providing additional guidance to accompany the VABEO (the **VABEO Guidance**).

In parallel, the EC has launched a public consultation on a proposal to introduce a new VABER upon the expiry of the existing VABER next year (the **EC Consultation**). On 9 July 2021, the EC published a draft of the updated VABER (the **Updated EU VABER**), and accompanying draft guidance on vertical restraints.[4] The proposals are similar, but we highlight the main differences between the UK and EU proposals below.

CMA Recommendations

The CMA Consultation recognises the benefits of the VABER for businesses. In particular, the VABER provides businesses with legal certainty that their agreements are lawful, and minimises the burden placed on businesses in complying with the Chapter 1 Prohibition. A new VABEO would ensure these benefits are retained.

Under the CMA's proposals, there would be substantial continuity between the VABER and the VABEO, with the VABEO largely replicating the VABER's provisions. This is to minimize additional costs in complying with separate UK and EU regimes.[5] The CMA nevertheless believes that some aspects of the VABER should be updated to reflect current market conditions.

Scope of the VABEO

The CMA Consultation proposes to retain the market share ceiling of 30%. The CMA will also retain the VABER's turnover threshold for associations of retailers, but is consulting on whether this threshold should be revised to reflect market developments, growth, inflation and/or the size of the UK market. The EC Consultation also proposes retaining the market share and turnover thresholds in the Updated EU VABER.

[3] Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

[4] For further information, *see* the Cleary Gottlieb Alert Memorandum on the Updated EU VABER.

[5] *See* Paragraph 2.2 of the CMA Consultation.

Dual Distribution Arrangements

Under the VABER, vertical agreements between competitors do not benefit from block exemption unless the vertical agreement is a dual distribution arrangement. Dual distribution arrangements are non-reciprocal vertical agreements where a supplier not only provides goods or services to distributors, but also competes downstream with those distributors.

Both the CMA and the EC propose retaining the dual distribution exemption, but also to extend this exemption to cover dual distribution agreements made by wholesalers and/or importers. The EC Consultation recommends that dual distribution agreements where Parties have a market share between 10% and 30% would be exempt, except for provisions in these agreements relating to the exchange of information, which would fall to be assessed under the rules applicable to horizontal agreements. Dual distribution agreements between Parties that have an aggregate market share of less than 10% would be exempt, including provisions relating to information exchange. The EC also proposes that online intermediaries (*e.g.* price comparison sites) should not benefit from the dual distribution exemption if they perform a 'hybrid function' by competing with undertakings to which they also provide online intermediation services.

By contrast, the CMA's proposals would not exclude online intermediaries from the dual distribution agreement exception. Nor has the CMA followed the EC's proposal of a 10% market share threshold test for information exchange provisions in dual distribution agreements, stating instead that potential competition concerns arising from the exchange of commercially sensitive information can be addressed through the use of information barriers, which is currently a matter for self-assessment by businesses. The CMA is considering providing further guidance on information exchange in dual distribution agreements in the VABEO Guidance.

Hardcore Restrictions

Resale Price Maintenance

The CMA Consultation proposes that resale price maintenance (*i.e.* agreements which restrict a buyer's ability to determine a product's sale price) will remain a hardcore restriction under the VABEO.[6] Some have argued that resale price maintenance should be assessed by effect, but the CMA Consultation explains that the CMA has issued several decisions in recent years finding that resale price maintenance is an infringement of the Chapter 1 Prohibition by object and that, in the CMA's experience, these agreements do not give rise to efficiencies that would outweigh the possibility of their causing serious anticompetitive harm. The EC Consultation similarly proposes retaining resale price maintenance as a hardcore restriction.

Territorial and Customer Restrictions

Under the VABER, vertical agreements that restrict the territory into which a buyer can sell – or the customers to whom a buyer can sell – are generally considered hardcore restrictions. These hardcore restrictions are nevertheless subject to a number of exceptions, set out in Article 4(b) of the VABER.[7] In particular, Article 4(b)(i) permits agreements that include restrictions on buyers' active sales into an exclusively allocated or reserved territory or customer group. By contrast, restrictions on passive sales (i.e. sales made in response to unsolicited requests from customers) even within an exclusively allocated or reserved territory or customer group are hardcore restrictions.

In roundtable discussions with the CMA, a number of stakeholders suggested that the VABER's treatment of territorial and customer restrictions was intended to facilitate the creation of the EU single market which was no longer a relevant consideration to the UK post-Brexit. Whilst acknowledging this, the CMA nevertheless considers that territorial and customer restrictions should remain as hardcore restrictions because:

[6] Hardcore restrictions are restrictions by object. They do not benefit from block exemption and are presumed not to qualify for exemption (in the UK) or legal exception (in the EU) on an individual basis.

[7] *See* Article 4(b)(i) – 4(b)(iv) of EU Vertical Block Exemption Regulation.

— This approach supports consumer choice across the UK and promotes intra-brand competition;

— The full implications from the UK's withdrawal from the EU, including the Northern Ireland Protocol, are not yet clear. The CMA is unwilling to exempt territorial and customer restrictions in circumstances where this could "*inadvertently* [compromise] *the integrity of the UK internal market or* [harm] *consumers in the UK.*"[8]

— The exceptions provided for under the VABER – including in relation to active sales – already ensure that the block exemption is available for agreements in cases where territorial and customer restrictions are likely to bring about efficiencies that outweigh any reduction of intra-brand competition.

In addition to the exceptions already provided for in Article 4(b) of the VABER, the CMA proposes three additional exceptions under the VABEO, which would permit:

— The combination of exclusive and selective distribution in the same territory,[9] or in different territories;[10]

— Shared exclusivity in a territory or over a customer group by allowing the allocation of a territory to more than one exclusive distributor; and

— The provision of greater protection for members of selective distribution systems against sales from outside the territory to unauthorised distributors inside that territory.

The CMA would provide further detail on the scope of the new exceptions in the VABEO Guidance. The EC Consultation proposes introducing similar exceptions to Article 4 of the Updated EU VABER, permitting a supplier to appoint more than one exclusive distributor in a particular territory or for a particular customer group,[11] and granting selective distribution systems enhanced protection from sales by unauthorised distributors in the selective distribution territory.

The CMA Consultation also acknowledges concerns from stakeholders that the VABER's distinction between active and passive sales does not adequately reflect developments in e-commerce since the current VABER was introduced in 2010. The CMA states that the VABEO Guidance will provide updated definitions on active and passive sales and will also provide guidance on which online sales practices should be categorised as active or passive by the CMA.

Indirect measures restricting online sales

The current EC Guidelines on Vertical Restraints explain that a number of indirect measures restricting online sales are categorised as hardcore restrictions, including:

— Charging the same distributor a higher price for products intended to be resold online than for products intended to be sold offline (**dual pricing**); and

— Imposing criteria for online sales that are not overall equivalent to the criteria imposed in brick-and-mortar stores in the context of selective distribution.

The CMA Consultation suggests that treating dual pricing and the differences in online and offline selective distribution criteria as hardcore restrictions is no longer necessary, given the exponential growth of online sales, and the development of case law that provides safeguards against outright online sales bans.[12] Under the EC Consultation, dual pricing and overall

[8] *See* Paragraph 4.30(b) of the CMA Consultation.

[9] For example, combining an exclusive distribution model at the wholesale level with a selective distribution model at the retail level.

[10] Respondents to the CMA Consultation identified a lack of clarity as to whether, in the case of a supplier that uses selective distribution in some territories and exclusive distribution in others, exclusive distributors could be prohibited from making sales to unauthorised dealers in the territories where the supplier has a selective distribution system. The CMA notes that combining exclusive and selective distribution in this way appears to be permitted under the current rules, but proposes to address this issue further in the VABEO Guidance.

[11] The EC further recommends that a supplier may be permitted to oblige its buyers on pass on restrictions active sales to the buyer's customers. This issue is not addressed in the CMA Consultation.

[12] For example, *see* Ping Europe Limited v Competition and Markets Authority [2020] EWCA Civ 13 and Case C-439/09, Pierre Fabre Dermo Cosmétique v Président de l´Autorité de la Concurrence.

equivalence provisions between online and brick-and-mortar sales would similarly no longer be treated as hardcore restrictions. The EC Consultation also proposes that certain further online sales restrictions also benefit from the EU block exemption, provided that they do not have as their object to, directly or indirectly, prevent the effective use of the internet by the buyers or their customers for the purposes of selling their goods or services online, for instance because it is capable of significantly diminishing the overall amount of online sales in the market. Unlike the EC, the CMA does not provide guidance on these additional online sales restrictions.

Parity Obligations

Parity obligations require one party to an agreement to offer the other party goods or services on terms that are no worse than those offered to third parties. Although not addressed in the VABER, the CMA Consultation states that parity obligations have become increasingly common over the last decade, particularly in the context of vertical agreements involving online sales platforms. The CMA Consultation distinguishes between two types of parity obligations:

— **Indirect sales channel parity obligations** prevent a product or service from being offered on better terms on any other channels, whether the supplier's own platform or any intermediary's platform (also called "wide parity" or "wide MFN" provisions). The CMA proposes that indirect sales channel parity obligations – or any measure that would have the same effect – would be added to the list of hardcore restrictions under the VABEO.

— **Direct sales channel parity obligations** prevent a product or service from being offered on better terms on a party's own sales channel (*e.g.*, a supplier's own website), without stipulating conditions for sales via other channels (also called "narrow party" or "narrow MFN" provisions). The CMA proposes that direct sales channel parity obligations should not be treated as a hardcore restriction, but notes that these clauses may still be investigated by the CMA if they have the same effect as an indirect sales channel parity obligation in practice.

Like the CMA, the EC Consultation proposes that direct sales channel parity obligations should be exempt under the Updated EU VABER. But the EC's approach to wide parity obligations diverges from the CMA's. The EC Consultation proposes removing the benefit of the block exemption for wide parity obligations imposed by online intermediaries that prevent suppliers from offering better terms to other online intermediaries. Restrictions of this type would, however, be treated as an excluded restriction, not a hardcore restriction.

Excluded Restrictions

The CMA Consultation proposes maintaining all the excluded restrictions in Article 5 of VABER, including non-compete clauses.[13] But the CMA states that it is open to the possibility of amending some of these excluded restrictions to reflect market developments, such as the increasing trend towards online sales.

Cancellation in Individual Cases

The CMA recommends that the VABEO should contain a provision allowing the CMA to withdraw the block exemption in relation to specific vertical agreements if it considers that the agreement should not qualify for exemption from the Chapter 1 Prohibition. The CMA envisages that this power would be used only in *"exceptional circumstances"*[14] and that withdrawal of the benefit of the block exception could occur only following written notice by the CMA and consideration of any representations made to it by the parties to the agreement. The CMA Consultation further proposes that the CMA should be permitted to withdraw the benefit of the block exemption if parties to an agreement fail to provide information requested by the CMA in relation to the agreement. The Updated EU VABER contains a similar

[13] Excluded restrictions do not benefit from block exemption, but do not create presumptions as to the lawfulness of the restriction or agreement as a whole.

[14] *See* Paragraph 8.5 of the CMA Consultation.

provision, permitting the EC to withdraw the block exemption from a specific agreement if its effects are incompatible with Article 101 TFEU.[15]

Implications and Next Steps

Subject to the outcome of its consultation, the CMA will finalise and submit its recommendation to the Secretary of State. If the CMA's proposals are accepted, the VABEO will likely come into force following the VABER's expiry on 31 May 2022. The CMA Consultation proposes a transitional period following the VABEO's adoption, whereby agreements that are exempt under the VABER but not under the new VABEO regime would continue to benefit from automatic exemption from the Chapter 1 Prohibition for one year.

Because of the substantial continuity between the VABER and the proposed VABEO, most businesses that rely on the VABER are likely to be able to continue to benefit from exemption under the VABEO. Businesses may also benefit from automatic exemption for additional categories of agreement (*e.g.*, dual distribution agreements for wholesalers and importers).

As the CMA acknowledges, there is a risk that divergence between the UK and EU block vertical agreements regimes may create additional compliance costs for businesses, and add increased complexity when entering into vertical agreements that apply to both UK and EU markets. And although the proposed VABEO largely mirrors the Updated EU VABER, there is scope for more pronounced divergence in the future.

First, although the proposed changes to the Updated EU VABER and the VABEO are broadly similar, there is some divergence between the EC's and CMA's recommendations. These include differences relating to online intermediaries, wide parity obligations, and dual-distribution agreements. In particular the Updated EU VABER may provide substantially less protection to online intermediaries than under the proposed VABEO.

Second, the CMA has indicated that the VABEO Guidance will consider a number of issues not covered by the current EU Guidelines on Vertical Restraints, including:

— Guidelines on information exchange in dual-distribution agreements;

— Additional detail on the CMA's proposal to add three further exceptions to the hardcore restriction on territorial and customer restrictions;

— Updated definitions of active and passive sales, and additional guidance on which online sales practices will be categorised as active or passive sales;

— Additional guidance on when agency agreements benefit from block exemption, particularly in relation to (i) online platforms; (ii) fulfilment contracts; and (iii) dual role agents,[16] although the Consultation does not indicate what the Guidance will say; and

— Guidance on the relevance of environmental sustainability to an assessment of vertical agreements, in particular in relation to selective distribution systems.[17]

Third, the CMA proposes that the VABEO should expire after six years, whereas the Updated EU VABER expected to be introduced in 2022 is likely to last 12 years. The CMA has recommended this relatively short time period so that the VABEO can be updated to reflect ongoing market developments, such as the growth in online sales, the UK's withdrawal from the EU, and the COVID-19 pandemic. This suggests there may be potential for the UK and EU regimes to diverge further in the medium term.

[15] National Competition Authorities may also withdraw the block exemption for specific agreements where the conditions outlined in Article 29(2) of Regulation (EC) No 1/2003 are fulfilled. For further information, *see* Recitals 16 – 18 of the Updated EU VABER (and recitals 13-14 of the current EU VRBER)

[16] The CMA does not propose to make any amendments in respect of agency issues in the UK VABEO itself.

[17] The CMA does not propose to make any amendments in respect of environmental sustainability issues in the UK VABEO itself.

Judgments, Decisions, and Other News

Court Decisions

Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd. On 4 June 2021 the CAT published an application to commence collective proceedings under section 47B of the Competition Act 1998 against Apple Inc. and Apple Distribution International Ltd (**Apple**). The application alleges that Apple has abused a dominant position in breach of Article 102 of the TFEU and the Chapter II prohibition of the Competition Act. The application states that: (i) Apple's proprietary mobile operating system, iOS, is the only operating system permitted for use on iOS devices; (ii) iOS apps developed by third-party developers can only be downloaded from Apple's proprietary app store (the **App Store**); and (iii) purchases of an iOS App in the App Store or in-app purchases in an iOS App can only be made using Apple's Payment Processing System, for which Apple charges a commission. The Applicant alleges that these practices are abusive in that they (i) impose restrictive terms which require iOS App developers to distribute iOS Apps exclusively via the App Store and require that all purchases are made using Apple's payment system; and (ii) charge excessive and unfair prices in the form of commission on payments.

Westover Ltd v Mastercard Inc. On 7 June 2021, the CAT ruled on the preliminary issue of whether English or Italian law governs claims made by claimant companies incorporated in Italy (the **Italian Claimants**). The broader claim relates to an Article 101 TFEU infringement decision concerning default multilateral interchange fees (**MIFs**) set by Mastercard and Visa. On the preliminary issue, the CAT ruled that that claims made by the Italian Claimants relating to Italian domestic MIFs are governed by Italian law, pursuant to Article 6(3)(a) of Rome II. However, the claims made by the Italian Claimants in respect of EEA MIFs and Inter-regional MIFs fall within Article 6(3)(b) of Rome II, meaning that those claims can be governed by English law.

Antitrust/Market Studies

CMA Launches Competition Act Investigation into Facebook. On 4 June 2021, the CMA launched an investigation into whether Facebook is abusing a dominant position in the digital advertising or social media markets. The investigation will focus on Facebook's practice of collecting data from its digital advertising services and from its single sign-on option, Facebook Login. The CMA is considering whether Facebook has unfairly used the data gained from these features to benefit its own services, including Facebook Marketplace and Facebook Dating. The CMA stated that it will work closely with the European Commission, which launched its own investigation into Facebook's use of data on the same day.[18]

CMA consults on commitments offered by Google in relation to its Privacy Sandbox Proposals. On 11 June 2021, the CMA published a notice of its intention to accept commitments offered by Google to address abuse of dominance concerns arising from Google's 'Privacy Sandbox' project.[19] Google has offered wide-ranging commitments to the CMA, including substantial limits on how Google will use and combine individual user data for the purposes of digital advertising after the removal of third-party cookies. The CMA's provisional view is that, taken together, the proposed commitments would address the competition concerns raised in relation to the 'Privacy Sandbox' proposals.

CMA launches market study into Apple and Google mobile ecosystems. On 15 June 2021, the CMA launched a market study into UK mobile ecosystems. The CMA will appraise Apple's and Google's role in the supply of mobile operating systems (iOS and Android), internet browsers (Safari and Chrome) and app stores (App Store and Play Store). The CMA states that consumers are currently faced with a choice between these two mobile ecosystems, which act as gateways through which users can access a variety of content, services

[18] For further information, *see* the Cleary Gottlieb EU Competition Law Newsletter for June 2021.

[19] For further information, *see* the Cleary Gottlieb UK Competition Law Newsletter for January 2021.

and products such as shopping, banking, music, and TV. The CMA is concerned that the two firms' control over mobile ecosystems is allowing them to stifle competition across digital markets by constraining innovation, imposing higher prices and reducing consumer ability to access higher quality products and services. The study will also focus on any effects of the firms' market power over other businesses, such as app developers, which rely on Apple or Google to market their products to customers via their phones.

CMA confirms final remedies package in Funeral Markets Investigation. On 16 June 2021, the CMA published the Funeral Markets Investigation Order 2021 (**the Order**). The Order implements a package of remedies designed to address the adverse effects on competition identified in the final report of the CMA's funerals and crematoria services market investigation. The Order requires funeral directors to display a standardised price list at their premises and on their websites, including the headline price of a funeral, prices of individual items comprising the funeral, and prices of additional products and services. The Order also prohibits funeral directors from: (i) making payments to incentivise hospitals, palliative care services, hospices, care homes or similar institutions to refer customers to them, and (ii) soliciting for business through coroner and police contracts.

CMA warns banks over banking transaction history breaches. On 22 June 2021, the CMA published letters sent to NatWest Group, Virgin Money UK plc, Bank of Ireland UK plc and Monzo Bank Limited regarding breaches of Article 20 of the CMA's Retail Banking Market Investigation Order 2017 (**the Order**). The Order implements remedies arising from the CMA's retail banking market investigation. When a bank account is closed, Article 20 of the Order requires banks to provide one copy of the corresponding payment transaction history free of charge to personal and business current account customers closing their accounts. These requirements, in combination with other reforms, were designed to make switching between current accounts easier for consumers, allowing customers to port banking history data, which is essential for accessing credit services. In total, nearly 150,000 customers were denied their transaction history data in the relevant timeframe. The four banks all notified the CMA of their relevant breaches of the Order as part of their ongoing compliance efforts and proactively took rectifying actions. As a consequence, the CMA did not consider it appropriate to take further formal enforcement action in relation to these breaches, subject to the banks' future conduct.

Merger Developments

PHASE 2 INVESTIGATIONS

FNZ/GBST merger inquiry. On 4 June 2021, the CMA published its final report on its Phase 2 investigation into the completed acquisition by FNZ of GBST. The final report contains a reassessment of the deal, following the CMA's request to the CAT for a remittal of its original Phase 2 decision to prohibit the transaction, which was subject to an appeal by FNZ. The CMA again concluded that the transaction has resulted, or may be expected to result, in a Substantial Lessening of Competition (**SLC**) due to the horizontal unilateral effects in the market for the supply of retail investment platform solutions in the UK. The CMA concluded that an effective remedy was the full divestiture of GBST, but with a right for FNZ to buy back certain assets of GBST's Capital Markets business. This buy-back right is subject to safeguards built into the design of the remedy and sales process.

UNDERTAKINGS IN LIEU OF PHASE 2 INVESTIGATIONS

Adevinta/eBay. On 2 June 2021, the CMA published its decision of acceptance of the undertakings offered by Adevinta ASA and eBay Inc. The undertakings involved the divestiture of the parties' online classified advertising platforms in the UK (Adevinta's Shpock and eBay's UK Gumtree business). The CMA considered that the undertakings in lieu are as comprehensive a solution as is reasonable and practicable, and that they remedy, mitigate or prevent the SLC identified and any adverse effects resulting from it.

Bellis Acquisition Company 3 Limited/Asda Group Limited. On 16 June 2021, the CMA published its decision that it had accepted undertakings in lieu of a reference to Phase 2 for the completed acquisition of Asda Group Limited by Bellis Acquisition Company 3 Limited. The CMA found that the merger could give rise to a realistic prospect of an SLC in the supply of road fuel in 36 areas across the UK and the supply of auto-LPG fuel in one other area. The parties offered undertakings to divest specified retail fuel sites to address effectively the potential SLC.

PHASE 1 CLEARANCE DECISIONS

SK hynix Inc./Intel's NAND and SSD business. On 28 June 2021, the CMA announced that it had cleared the anticipated acquisition by SK Hynix Inc. of Intel Corporation's NAND and SSD business.

Advanced Micro Devices Inc./Xilinx Inc. On 29 June 2021, the CMA announced that it had cleared the anticipated acquisition by Advanced Micro Services Inc. of Xilinx, Inc.

ONGOING PHASE 1 INVESTIGATIONS

Parties	Decision Due Date
NCR/Cardtronics	10 August 2021
Baker Hughes/Akastoer	13 August 2021
TravelSupermarket/Icelolly	20 August 2021
Hempel/FBA	6 September 2021
Sony Music Entertainment/ Kobalt Music Group	7 September 2021
National Grid /PPL WPD Investments	8 September 2021
Glennon Brothers/Balcas	16 September 2021
Veolia/Suez	TBC
S&P Global/HIS Markit	TBC
Pennon Group/Bristol Water	TBC
CHC/Babcock	TBC

Other Developments

CMA publishes responses to consultation on algorithms, competition, and consumer harm. The CMA has published a summary of responses to its consultation on algorithms, competition and consumer harm,[20] published in January this year. The principal concerns of the respondents relate to (i) designers and deployers of recommender systems having substantial influence over consumers, particularly where the recommender systems involve dominant firms; (ii) the use of ranking algorithms by large platforms restricting access to customers; (iii) the effect on consumers of personalised pricing; (iv) algorithmic pricing in general insurance markets; and (v) the specific conduct of large companies such as YouTube and Amazon.

[20] For further information, *see* Cleary Gottlieb, UK Competition Law Newsletter, January 2021.

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