March 2021

UK Competition Law Newsletter

Highlights

— CMA publishes new Merger Assessment Guidelines.

— CMA launches investigation into Apple AppStore.

— CMA publishes update on electric vehicle charging market study.

CMA publishes new Merger Assessment Guidelines.

On 18 March, the CMA published new Merger Assessment Guidelines (the **New Guidelines**). Under the New Guidelines, the CMA will adopt a more flexible approach to the substantive assessment of mergers, particularly in digital markets. The New Guidelines also suggest the CMA will look to intervene in mergers where market shares are low or where the evidence of anticompetitive effects is slim.

The New Guidelines closely reflect the draft Guidelines published for consultation in November 2020 (the **Draft Guidelines**), but with some notable differences reflecting comments received in the public consultation. The CMA has also published a summary of responses to its consultation (**Summary of Responses**) alongside the New Guidelines.

The New Guidelines differ from the CMA's previous Merger Assessment Guidelines, published in 2010 (the **2010 Guidelines**), in the following important respects.[1]

— **Substantial lessening of competition.** The substantive test under UK merger control is whether a transaction would result in a substantial lessening of competition (**SLC**). Reflecting more recent case-law, the New Guidelines explain that "*substantial*" in this context does not necessarily mean "*large*", "*considerable*" or "*weighty*" and can "*encompass a range of meanings and will depend on the facts of the case*".[2] The New Guidelines provide a list of scenarios that are likely to give rise to an SLC, and explain that the size of the market concerned and its importance to UK consumers is relevant to determining whether the lessening of competition is "*substantial*".[3]

[1] See also the UK Competition Newsletter, November 2020.

[2] New Guidelines, ¶2.9.

[3] New Guidelines, ¶2.9.

— **No market-share thresholds or safe-harbours.** The New Guidelines stress that the CMA "*does not apply any threshold to market share, number of remaining competitors or any other measure to determine whether a loss of competition is substantial*."[4] This represents a significant departure from the 2010 Guidelines, which – while noting that they would not be applied "*mechanistically*" – included concentration thresholds based on market shares, number of firms, and Herfindahl-Hirschman Index levels for where the CMA would not "*often*" identify competition concerns. Despite the shift in the CMA's approach, concentration levels can still provide a useful starting point for the competitive assessment of a merger. The New Guidelines make clear in several places that shares of supply "*can be useful evidence when assessing closeness of competition*,"[5] and they include references to concentration levels in other contexts.

— **SLCs in minority acquisitions.** The New Guidelines include specific guidance on how the CMA will assess acquisitions of minority shareholdings. The New Guidelines state that the relevant theories of harm may "*depend on the level of control that one merger firm is acquiring over the other.*"[6] Citing the *Amazon/ Deliveroo* case, the New Guidelines emphasise that theories of harm that may apply following an acquisition of material influence are likely to be different from those that arise following an acquisition of full legal control.

— **Less emphasis on market definition.** The New Guidelines state that, while market definition can be an important part of the merger assessment process, "*the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, captures the competitive dynamics more fully than formal market definition*".[7] Instead, the CMA will consider whether different products pose 'strong' or 'weak' competitive constraints. Similarly, the New Guidelines state that "*not every 'firm' in a market will be equal*", and the constraint posed by firms outside the market will also be considered as part of the competitive assessment.[8]

— **Assessment of potential and dynamic competition.** The New Guidelines provide more detail on how the CMA will consider whether mergers are expected to result in a lessening of potential or dynamic competition. Under the New Guidelines, the CMA will consider whether a merger results in a loss of potential competition in two ways:

- First, a merger "*may imply a loss of the future competition between the merger firms after the potential entrant would have entered or expanded*".[9] A merger involving a potential entrant may lead to a loss of future competition if: (i) absent the merger, either of the merging parties would have entered or expanded; and (ii) the loss of future competition brought about by the merger would give rise to an SLC, taking into account other constraints and potential entrants. In assessing (i), the CMA considers that entry is more likely where the firm has the incentive and ability to enter; it has well-developed plans or has already taken significant steps towards entry; where incumbent firms are taking action in anticipation of its entry; or where it has a past history of entry into related markets. In assessing (ii), the CMA will consider the remaining competitive constraints on the merged entity; whether the other merger firm already has market power absent the merger; entry or expansion by non-merging rivals over a similar time horizon as the merger firms' entry or expansion; or whether new technologies or services that may supersede the merged entity or render its

[4] New Guidelines, ¶2.8.

[5] New Guidelines, ¶4.14.

[6] New Guidelines, ¶2.13.

[7] New Guidelines, ¶9.2.

[8] New Guidelines, ¶9.4.

[9] New Guidelines, ¶5.2.

services obsolete. In these cases, the CMA's assessment may focus on the parties' internal documents, business forecasts, and valuation models, and the likely characteristics of the potential entrant's future product or service.

- Second, the merger may reduce "*dynamic*" competition between incumbents and potential competitors. This theory is centred around competition in innovation. As the CMA describes in the New Guidelines, potential entrants or expanding firms have an incentive to invest in improving their offering in order to win sales and profits from incumbents. For their part, incumbents are investing to improve their own offerings in the knowledge that their sales and profits could otherwise be lost to potential entrants or expanding firms.[10] The CMA considers that loss of dynamic competition is more relevant where investments are an important part of the competitive process, where entry takes place over a long period and involves costs or risks, and where significant aspects of firms' offering are set during the investment phase. The New Guidelines state that the CMA may assess dynamic competition by focusing on entry and expansion in relation to specific products, or, if it cannot identify specific overlaps between the parties in the present, may "*consider a broader pattern of dynamic competition*".[11] The CMA notes it may consider "*any direct response of an incumbent merger firm to the threat of entry or expansion by the other merger firm or may consider evidence on the incumbent's incentive to respond to any such threat*".[12]

— **Greater flexibility in assessing the counterfactual.** When assessing mergers, the CMA seeks to determine whether a transaction would result in an SLC compared with the competitive situation that would otherwise exist (the counterfactual). Under the New Guidelines, the CMA expects to adopt a more flexible approach to determining the counterfactual against which a merger will be compared.

- The New Guidelines give greater guidance on the assessment of the loss of potential entry as part of a counterfactual analysis. When assessing the likelihood of entry or expansion by one of the merger firms, the CMA will consider "*direct evidence of their intentions to enter or expand", as well as "any history of entry into closely related markets*".[13] Where its competitive assessment considers a loss of dynamic competition, the CMA may consider whether the merger firms would have continued making efforts towards new entry or expansion absent the merger (rather than limiting the assessment to whether entry or expansion would have ultimately occurred).[14]

- The New Guidelines explain that the CMA will vary the time horizon over which it makes its counterfactual assessment depending on the context. This includes consideration of the market in question: relevant developments can take longer in some markets than in others. It also depends on the process in question: successful entry can take more than two years, whilst exiting a market can take place over a much shorter time period.[15]

— **Assessment of two-sided platforms.** The New Guidelines contain far more detail than the 2010 Guidelines on the assessment of two-sided platforms. Two-sided platforms intermediate between two distinct customer groups. Examples include credit card schemes (cardholders and merchants) and social media networks (users and advertisers). The New Guidelines note that the CMA may (i) consider each side of the platform separately, or (ii) analyse the overall competition between the platforms in an incorporated assessment of

[10] New Guidelines, ¶5.3.

[11] New Guidelines, ¶5.21.

[12] New Guidelines, ¶5.22.

[13] New Guidelines, ¶3.18.

[14] New Guidelines, ¶3.20.

[15] New Guidelines, ¶3.15.

both sides. Its approach in any given case will depend on how competition works in practice (whether competition primarily focuses on one side or both), the competitive conditions in the market (including the number and strength of alternatives available), and the strength of network effects. The New Guidelines also state that, where network effects are present, "*mergers are more likely to induce a tipping effect*" and "*barriers to entry are likely to be high*" (though this can be mitigated slightly by the presence of multi-homing).[16]

— **Use of evidence.** The CMA will rely on a broad range of evidence in its assessment and in support of the new theories of harm anticipated. In particular, the New Guidelines note that the CMA is increasingly scrutinising merger firms' internal documents and evidence on deal valuation.[17] The New Guidelines state that the CMA has a "*wide margin of appreciation*" in its use of evidence, and may apply different approaches depending on the context. The CMA will also interpret evidence differently depending on the context in which that evidence was generated. For example, "*[a]n absence of internal documents pointing to, for example, competitive interactions between the merger firms may not be probative if the merger firms do not normally generate documents in the ordinary course of business or where merger firms have document retention policies whereby documents are regularly deleted*."[18]

— **Standard of proof.** The New Guidelines make a number of statements about the CMA's approach to uncertainty.

- They explain that uncertainty over the likely impact of a merger will not preclude the CMA from finding competition concerns, but "*the degree of uncertainty will be appropriately weighted in the CMA's assessment of whether the standard of proof is met*".[19]

- Similarly, in the context of the CMA's assessment of the counterfactual, the New Guidelines explain that uncertainty about the future "*will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual*".[20]

- Finally, the New Guidelines state that, when considering a possible loss of dynamic competition, uncertainty about the outcome of investments and innovation efforts absent the merger will not prevent the CMA from assessing the impact of the merger on that dynamic competitive process.[21] The New Guidelines note that there can be a higher degree of uncertainty in some markets, "*such as those characterised by potentially significant changes in competitive conditions*".[22]

Summary of consultation responses and changes to the Draft Guidelines

Several of the changes summarised above are controversial and were opposed by respondents to the CMA's consultation. In particular, respondents raised concerns that the CMA was seeking to lower the legal threshold for intervention, while removing important safe-harbours that provide valuable guidance to parties considering transactions.

The CMA has largely rejected this criticism, arguing that the New Guidelines better reflect "*the CMA's approach to reviewing mergers, which has evolved over the last 10 years*", relevant case law, and "*the ways in which the economy has evolved*" since the 2010 Guidelines. It also stresses that there "*has been no change to the legal thresholds*

[16] New Guidelines, ¶4.25.

[17] New Guidelines, ¶2.24.

[18] New Guidelines, ¶2.29.

[19] New Guidelines, ¶2.10.

[20] New Guidelines, ¶3.14.

[21] New Guidelines, ¶5.20.

[22] New Guidelines, ¶2.10.

that need to be met in order for the CMA to find that there has been an SLC".[23]

In particular, the CMA rejected criticism of the proposed changes relating to the following points:

— **No thresholds or safe-harbours.** The CMA rejected calls that the New Guidelines should contain specific thresholds below which the CMA would not find an SLC.[24] It stated that "*the Revised Guidelines make it clear that each case will be assessed on its merits and the CMA does not apply market share, fascia count or other 'thresholds' to determine whether it is likely that an SLC will be found, nor does the CMA consider that this reflects economic reality*".[25]

— **No evidentiary thresholds or measures for dynamic competition.** The CMA rejected calls for more guidance on how the CMA would measure innovation. It stated that "*there is no standard measure of innovation that the CMA thinks would be appropriate to codify*" in the New Guidelines.[26] The CMA also refused to indicate what evidence would be needed to demonstrate that a merger would result in a reduction in dynamic competition, stating that "*the CMA would not consider it appropriate to establish a specific evidentiary threshold that requires evidence of the merger firms' perceptions, when a firm's documents may not contain evidence of those perceptions even when they exist*."[27]

— **No statement that non-horizontal mergers are "benign".** The 2010 Guidelines contained the statement: "*it is a well-established principle that most [non-horizontal mergers] are benign and do not raise competition concerns*".[28] The CMA rejected the suggestion that the New Guidelines should include a similar statement.[29] It argued that "*a number of commentators continue to warn of the substantial risks of under-enforcement*", and that this reflects the CMA's view that "*non-horizontal mergers remain an important focus of its work*".[30]

— **Less reliance on market definition.** Some respondents expressed concerns about the CMA's intention to place les weight on market definition in its assessment, highlighting that the CMA has a statutory obligation to determine whether there would be an SLC in a relevant market.[31] The CMA argues that a more flexible approach is appropriate in some cases and that its statutory obligation do not require the CMA to define a market in any particular way.

Conclusion

The CMA is keen to emphasise that the New Guidelines reflect changes to the assessment of mergers that have evolved over the last 10 years as well as more recent case law. They are nevertheless a statement of the CMA's intentions and priorities for the coming years. The CMA has made it clear that the New Guidelines are targeted particularly toward intervening in transactions in digital markets: "*Digital technologies have changed, and will continue to change, the way goods and services are sold, delivered and used by customers. [...] The CMA needs to be prepared for these challenges to be able to take effective decisions for the benefit of consumers.*".[32]

The changes will nevertheless have wider impact on merger control and are likely to result in more flexible approach to merger assessment, greater reliance on novel theories of harm, more creative

[23] Summary of Responses, ¶2.10.

[24] Summary of Responses, ¶¶2.17 and 2.22.

[25] Summary of Responses, ¶2.22.

[26] Summary of Responses, ¶2.61.

[27] Summary of Responses, ¶2.61.

[28] 2010 Guidelines, ¶5.6.1.

[29] Summary of Responses, ¶2.74.

[30] Summary of Responses, ¶2.74.

[31] Summary of Responses, ¶2.91.

[32] CMA press release, 'Updated CMA Merger Assessment Guidelines published', 18 March 2021.

assessment of evidence, and less predictability for companies. Together with the CMA's recently published new Guidance on the CMA's Jurisdiction and Procedure, and the ongoing updates to the CMA's Guidance on Interim Measures, the New Merger Assessment Guidelines can been seen as part of the CMA's wider ambitions to take on "*a more active role in global cases*" following Brexit.[33]

Judgments, Decisions, and Other News

Court Judgments

Paccar Inc. and others v Road Haulage Association and others. On 5 March 2021, the Court of Appeal rejected an appeal by truck manufacturers in *Paccar Inc. and others v Road Haulage Association and others* against the Competition Appeal Tribunal (**CAT**)'s preliminary ruling of 18 October 2019. The preliminary ruling concerned the funding arrangements of two related applications by UK Trucks Claim Ltd and the Road Haulage Association for collective proceeding orders on behalf of trucks purchasers. The proceedings relate to follow-on damages claims stemming from the European Commission's 2016 infringement decision against European truck manufacturers for price fixing and other cartel activities during the period 1997 to 2011. The CAT ruled that agreements with third-party litigation funders were not damages-based agreements (**DBAs**) and therefore not unenforceable or unlawful. The Court of Appeal upheld the CAT's decision that agreements with third-party funders were not DBAs within the meaning of the statutory scheme, and found that agreements with third party litigation funders did not form "*any part of the explicit mischief that* [the statutory provisions] *sought to remedy.*"

Consumers' Association v Qualcomm Incorporated. On 18 March 2020, the CAT published an application by the UK Consumers' Association (**Which?**) to commence collective proceedings against Qualcomm Incorporated (**Qualcomm**). The claim seeks damages caused from Qualcomm relating to an alleged abuse of dominance in the LTE chipsets market by imposing supra-competitive royalties and refusing to licence its patents to rival chipset manufacturers. The proposed class includes all consumers who purchased LTE-enabled Apple or Samsung smartphones (excluding 5G/5G NR-enabled models) since 1 October 2015.

Antitrust/Market Studies

CMA Publishes Progress Update On Market Study Into Electric Vehicle Charging. On 1 March 2021, the CMA published a progress update on its market study into electric vehicle charging, launched in December 2020. The progress update provides initial feedback on the two themes identified for the study: (1) how to develop a competitive sector while also attracting private investment to help the sector grow; and (2) how to ensure people using electric vehicle charge-points have confidence that they can get the best out of the service. Since launching the market study, the CMA has gathered information and discussed issues with a range of stakeholders, including chargepoint operators and manufacturers. In its progress update, the CMA sets out a summary of the views and issues raised by stakeholders so far. The CMA also highlights challenges raised by respondents in relation to the two themes.

CMA Launches Investigation Into Apple's AppStore. On 4 March 2021, the CMA launched an investigation into Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular the terms and conditions governing app developers' access to Apple's App Store. The probe was prompted by the CMA's work in the digital sector as well as complaints by developers in relation to Apple's terms and conditions. The investigation will consider whether Apple has a dominant position in connection with the distribution of apps on Apple devices in the UK and, if so, whether Apple imposes unfair or anti-competitive terms on

[33] CMA press release, 'The UK's Withdrawal from the EU – The CMA's role post-Brexit', 28 January 2020.

developers using the App Store, resulting in users having less choice or paying higher prices for apps and add-ons.

Roofing Materials Infringement Decision Published and CMA Announces Disqualification Of Directors. On 4 March 2021, the CMA published a non-confidential version of its infringement decision in its investigation into suspected anti-competitive arrangements by firms supplying rolled lead for construction. The CMA found that two rolled lead roofing materials companies, Associated Lead Mills and BLM British Lead, breached the Chapter 1 prohibition of the Competition Act 1998 and Article 101 of TFEU by market sharing, colluding on prices, exchanging competitively sensitive information and refusing to supply a new competitor.

On 10 March 2021, the CMA also announced that it had secured competition disqualification undertakings from three directors of companies involved in the roofing materials cartel. Mr Graham Hudson and Mr Maurice Sherling of Associated Lead Mills gave disqualification undertakings not to be involved in the management of a company for four years and three years respectively from 30 May 2021. Mr Jocelyn Campbell of BLM British Lead gave a disqualification undertaking not to be involved in the management of a company for six and a half years from 18 March 2021. The CMA has disqualified 20 directors of companies that breached competition law in the last two years.

CMA Launches Consultation On The Future Governance Of Open Banking. On 5 March 2021, the CMA launched a consultation on the future governance of Open Banking, an initiative launched by the CMA in 2017 following its Retail Banking Market Investigation. The consultation ran until 29 March 2021. Open Banking allows consumers and SMEs to share bank account information with securely trusted intermediaries who can use the information to help them find better products to suit their needs. The CMA consulted on what arrangements should be put in place for future oversight of the initiative.

CMA Launches Market Study Into The Children's Social Care Provision Sector. On 12 March 2021, the CMA launched a market study into the provision of children's social care. The market study will examine the lack of availability and increasing costs in children's social care provision, including children's homes and fostering.

Director Disqualification In Pre-Cast Drainage Products Cartel. On 18 March 2021, the CMA announced that it had secured legally binding disqualification undertakings from Mr Eoin McCann and Mr Francis McCann, former directors of FP McCann Ltd. This follows the CAT's order confirming that FP McCann Limited had infringed the Chapter 1 Prohibition by engaging in a price-fixing and market sharing cartel (see *UK Competition Newsletter, January 2021*).

CMA Writes To Danske Bank In Relation To Breach Of The SME Banking Undertakings. On 30 March 2021, the CMA issued a letter to Danske Bank in relation to a breach of undertakings not to require, threaten to require or agree that customers open or maintain a Business Current Account (**BCA**) with Danske Bank as a condition of receiving, servicing or maintaining a loan. The CMA found that Danske Bank required 305 of its SME customers to open a BCA in order to progress their application for a loan under the Bounce Back Loan Scheme. Danske Bank subsequently apologised to the affected SME customers, offered a 60 days fee-free period, and refunded all BCA charges and transactional fees incurred. The CMA noted in its letter that it would not take formal enforcement action at this time, given the positive engagement of Danske Bank and the nature and scale of the remedial actions Danske Bank had proposed and taken.

PSR Provisionally Finds Five Companies Engaged In Cartel Behaviour In The Pre-Paid Cards Market. On 31 March 2021, the Payment Systems Regulator (**PSR**) issued a Statement of Objections alleging that Mastercard, allpay, APS, PFS and Sulion engaged in anti-competitive behaviour by agreeing not to compete or poach one another's clients. The case relates to pre-paid

cards that are used by local authorities to distribute welfare payments to vulnerable members of society. In February 2021, Mastercard, allpay and PFS agreed to settle with the PSR and admitted that they that they took part in the alleged anticompetitive arrangement(s). The companies have agreed to pay maximum fines totalling more than £32 million.

Merger Developments

PHASE 2 INVESTIGATIONS

JD Sports Fashion plc/Footasylum plc. On 4 March 2021, the Court of Appeal refused the CMA's permission to appeal the CAT's ruling of 13 November 2020. The CAT had found that the merger should be remitted to the CMA for further investigation because the CMA had failed to take adequate steps to take into account the impact of COVID-19 in its assessment. The CMA appointed a Remittal Group on 26 March 2021. On 31 March 2021, the CMA published a document setting out the proposed conduct of the remitted investigation, which anticipates the CMA publishing a Final Report around September 2021.

viagogo/StubHub. On 22 March 2021, the CMA published a notice of its proposal to accept final undertakings. The proposed undertakings follow the CMA's finding that viagogo's completed acquisition of StubHub would result in a substantial lessening of competition (**SLC**) in the supply of uncapped secondary ticketing exchange platform services for live events in the UK (see *UK Competition Newsletter, February 2021*). Under the proposed undertakings, viagogo would be required to divest StubHub's entire business outside North America.

Facebook, Inc/GIPHY, Inc. On 25 March 2021, the CMA announced that it would refer the acquisition of GIPHY, Inc. (**GIPHY**) by Facebook, Inc. (**Facebook**) to a Phase 2 investigation, unless Facebook offered acceptable undertakings to address the competition concerns. Facebook informed the CMA on the same day that it would not be offering any such undertakings. The CMA has therefore referred the completed acquisition for an in-depth investigation.

Crowdcube/Seedrs. On 25 March 2021, the CMA cancelled its Phase 2 investigation into the anticipated merger of Crowdcube and Seedrs (see *UK Competition Newsletter, November 2020*) following written assurances from the parties that the proposed acquisition had been abandoned. The CMA had provisionally found on 24 March 2021 that the merger would result in a SLC in the supply of equity crowdfunding platforms to SMEs and investors in the UK.

TVS Europe Distribution Limited/3G Truck & Trailer Parts. On 30 March 2021, the CMA published a notice that it had accepted final undertakings from the parties, following its final report that the merger would result in an SLC in the wholesale supply of commercial vehicle and trailer parts in the UK (see *UK Competition Newsletter, January 2021*). The CMA decided that only the full divestment of 3G Truck & Trailer Parts Limited would be an effective and comprehensive remedy to the SLC.

UNDERTAKINGS IN LIEU OF PHASE 2 INVESTIGATIONS

Adevinta/eBay. On 2 March 2021, the CMA announced that Adevinta ASA and eBay Inc. had offered undertakings involving divesting the parties' online classified advertising platforms in the UK (Adevinta's Shpock and eBay's UK Gumtree business). The CMA considers that there are reasonable grounds for believing that the undertakings offered by Adevinta and eBay, or a modified version of them, might be accepted by the CMA. This follows the CMA's decision on 16 February 2021 to refer the transaction for a Phase 2 Investigation unless the parties offered acceptable undertakings.

PHASE 1 CLEARANCE DECISIONS

SDE Group/Innserve Limited. On 3 March 2021, the CMA announced that it had cleared the anticipated acquisition of Innserve Limited by SDE Group, which is jointly controlled by Heineken UK Limited and Carlsberg UK Limited. Innserve Limited supplies beer and soft drinks dispense systems.

Uber Technologies, Inc/GPC Software Limited (Autocab). On 29 March 2021, the CMA announced its decision to clear the anticipated acquisition by Uber International B.V., a wholly owned subsidiary of Uber Technologies, Inc., of GPC Computer Software Limited and its subsidiaries (Autocab).

ONGOING PHASE 1 INVESTIGATIONS

Parties	Decision Due Date
Hoyer Petrolog/DHL Supply Chain	25 May 2021
Penguin Random House/ Simon & Schuster	19 May 2021
NVIDIA/Arm	TBC
Veolia/Suez	TBC

Other Developments

BEIS Publishes Revised Definitions Of Sectors Falling Within Scope Of Mandatory Notification Regime Under The National Security And Investment Bill. On 2 March 2021, the Department for Business, Energy and Industrial Strategy (**BEIS**) published the revised definitions of 17 sectors in the scope of the mandatory notification regime to ensure they are as targeted and proportionate as possible. The revised definitions are set out in the Government Response to the consultation on mandatory notification in specific sectors under the National Security and Investment Bill, which closed on 6 January 2021. The original consultation, launched in November 2020, sought views on which sectors should be included within the scope of the proposed new mandatory regime.

BEIS Publishes Policy Statements On Statutory Instruments Required For Commencement Of The National Security And Investment Bill. On 2 March 2021, BEIS published the policy statements for each of the statutory instruments that would be introduced under the National Security and Investment Bill (**NSI Bill**). The document is intended to complement the Delegated Powers and Regulatory Reform memorandum published on the introduction of the NSI Bill and provides further information on the government's intended use of the delegated powers in the NSI Bill. For example, the statement includes a description of how the Secretary of State expects to use the call-in power under Clause 3 of the NSI Bill. Clause 3 requires the Secretary of State to have regard to a statement of intent when exercising the power to call in completed or anticipated trigger events for a formal national security investment. The statement is intended to make the Secretary of State's expected use of the call-in power predictable and transparent, as well as assisting parties deciding whether to submit a voluntary notification.

Digital Regulation Cooperation Forum Publishes First Workplan For 2021/2022. On 10 March 2021, the Digital Regulation Cooperation Forum (**DRCF**) published its workplan for 2021/2022. The DRCF was formed by the CMA, ICO and Ofcom in July 2020, to ensure a greater level of cooperation in the face of challenges posed by regulation of online platforms. The 2021/2022 workplan sets out three priority areas for the coming year: (1) responding strategically to industry and technological developments; (2) developing joined-up regulatory approaches; and (3) building shared skills and capabilities.

CMA Joins Working Group To Consider Approach To Pharmaceutical Mergers. On 16 March 2021, the CMA announced its intention to join a working group comprising the U.S. Federal Trade Commission, the Canadian Competition Bureau, the European Commission, the U.S. Department of Justice and the Offices of State Attorneys General. The goal of the working group will be to identify concrete steps to review and update the analysis of pharmaceutical mergers, drawing on the expertise of competition authorities and others with relevant experience to ensure effective enforcement. The working group will explore issues including theories of harm, the impact of pharmaceutical mergers on innovation and the types of remedies needed to address any competition concerns.

BEIS Calls For Evidence In Its Post-Implementation Review Of The CAT Rules 2015. On 16 March 2021, BEIS published a call for evidence to inform the post-implementation review of the CAT Rules 2015, covering the period from 1 October 2015 to 30 September 2020. The new rules replaced the CAT Rules 2003 (SI 2003/1372), with the following objectives: (1) to minimise unnecessary costs and delays while balancing proper accountability for decisions; (2) to ensure effective case management; and (3) to provide a framework for the CAT's extended jurisdiction in private actions related to infringements of competition law, as set out in the Consumer Rights Act 2015. The information provided in response to the call for evidence will help BEIS comply with the requirement under the CAT Rules 2015 to assess the extent to which the objectives have been fulfilled, if the objectives remain appropriate, and if the objectives could be achieved by a system that imposes less regulation. The Secretary of State is expected to publish the conclusions of the review in Spring 2021.

CMA Appoints Senior Director For New Office For The Internal Market. On 22 March 2021, the CMA announced the appointment of Rachel Merelie as Senior Director for the new Office for the Internal Market (**OIM**). The independent OIM, established by the UK Internal Market Act 2020 to sit within the CMA, will carry out a set of advisory, monitoring and reporting functions to support the development and effective operation of the internal market.

CMA Publishes Annual Plan 2021 To 2022. On 23 March 2021, the CMA published its Annual Plan for 2021 to 2022. The CMA will focus on the following themes:

— Protecting consumers and driving recovery during and after the COVID-19 pandemic;

— Taking its place as a global competition and consumer protection authority;

— Fostering effective competition in digital markets; and

— Supporting the transition to a low carbon economy.

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