

February 2019

UK Competition Law Newsletter

Highlights

- CMA fines Electro Rent (again) for gun-jumping after CAT upholds the CMA's first gun-jumping fine.
- Court of Appeal upholds the CMA's decision to fine Balmoral Tanks for a one-off exchange of pricing information with its competitors.
- CAT rejects Mastercard's attempts to exclude historic losses in Dixons and Europcar follow-on damages claims.

UK Clamps Down On Gun-Jumping

On 12 February 2019, the UK Competition and Markets Authority (**CMA**) imposed a fine of £200,000 on Electro Rent for gun-jumping.¹ This is the third occasion on which the CMA has penalised a company for breaching “standstill” or “hold-separate” obligations under the UK merger rules, and comes only one day after the Competition Appeal Tribunal (**CAT**) upheld the CMA's first gun-jumping fine (imposed on Electro Rent in June 2018 for a separate infringement).² The CMA has shown increased readiness to penalise companies for breaching procedural rules, in particular in relation to merger proceedings, consistent with recent action by the European Commission (**EC**) and national agencies in the EU. The CAT's judgment strongly endorses the CMA's approach: “[i]t is a matter of public importance that the merger control process, and the duties it creates, are strictly and conscientiously, observed.”³

Gun-Jumping Under Mandatory vs. Voluntary Merger Control Regimes

Gun-jumping refers to the situation where merging parties close, or take preparatory steps to close, a transaction prior to having secured clearance from the relevant competition authorities (the type of conduct that would be caught varies by jurisdiction). Mandatory merger control regimes impose this so-called “standstill” obligation automatically (*e.g.*, Article 7(1) of the EU Merger Regulation). Under voluntary merger regimes, as in the UK, parties are allowed to close a transaction without receiving clearance unless the authority imposes an order preventing completion. In addition, under some regimes, including the UK, the authority retains the right to “call in” non-notified transactions for review, even after closing, and may prevent the parties from taking further steps to integrate the businesses (*i.e.*, hold them separate) pending the completion of its investigation. In exceptional circumstances, an authority

¹ Penalty notice available [here](#).

² *Electro Rent Corporation v CMA* [2019] CAT 4, available [here](#). Electro Rent was on that occasion fined £100,000. Penalty notice available [here](#).

³ *Electro Rent Corporation v CMA*, para. 206.

may even require the parties to unwind a transaction in whole or in part: the CMA recently did so in its review of the completed acquisition by Tobii of Smartbox (discussed in “*Merger Developments*” below).

Breaching a standstill or hold-separate obligation can lead to separate infringement proceedings and significant fines. Under the EU Merger Regulation, for example, the maximum fine is 10% of the aggregate turnover of the undertaking concerned.⁴ Fines are typically significantly lower in practice, though the most recent enforcement action in this area indicates an increased willingness to pursue such infringements and impose significant penalties. For example, in April 2018, the EC fined Altice €124.5 million for implementing its acquisition of PT Portugal before notification or approval.⁵ The EC is currently investigating Canon for implementing its acquisition of Toshiba Medical Systems before notification or approval through the use of a two-stage “warehousing” transaction structure.⁶

CMA Practice on Imposing Standstill Obligations

In the UK, the CMA has the power to prevent merging parties from taking any action that might prejudice the outcome of its merger investigation or its ability to impose remedies. This can include steps taken to integrate the relevant businesses and the exchange of commercially sensitive information. The CMA generally exercises this power by imposing an initial enforcement order (IEO) on parties to completed mergers, which will remain in force until the merger is cleared or remedial action is taken (unless varied, revoked, or replaced). If the transaction is referred for an in-depth Phase 2 review, the CMA may replace the IEO with an interim order. If the CMA considers that a party has not complied with an order without reasonable excuse, it may impose a fine of up to 5% of that party’s worldwide turnover.

The CMA has explained that it would “*normally expect*” to impose IEOs in relation to completed mergers, but would “*only exceptionally*” do so in relation to anticipated mergers, where the risk of pre-emptive action is much lower.⁷ This has been borne out by CMA practice to date: as illustrated in the table below, the CMA has imposed IEOs in relation to anticipated mergers on only three occasions since 2015.

	2015/2016	2016/2017	2017/2018
Phase 1 Decisions	62	57	62
IEOs in completed mergers	20	18	17
IEOs in anticipated mergers	1	0	2

Enforcement of the UK Gun-Jumping Prohibition

The CMA imposed its first gun-jumping penalty on 11 June 2018, fining Electro Rent £100,000 for failing to comply with an interim order by issuing notice to exercise a break option terminating the lease for its premises in the UK. The CAT upheld this fine on 11 February 2019, in a judgment which strongly endorsed strict enforcement of the CMA’s procedural rules. The following day, the CMA fined Electro Rent £200,000 for a separate breach of the same interim order.

The CMA imposed the interim order in the context of its Phase 2 review of Electro Rent’s January 2017 acquisition of Microlease (**Transaction**), which had not been notified proactively to the CMA. Among other things, the interim order prevented Electro Rent from taking any action that might lead to the integration of the businesses, transfer ownership or control of the businesses, or impair the ability of either of the businesses to compete independently in the affected markets.

On 5 February 2018, the CMA provisionally found that the Transaction had resulted, or may be expected to result, in a substantial lessening of competition in the market for the supply of testing

⁴ Article 14(2)(a) EU Merger Regulation.

⁵ Commission Press Release IP/18/3522, available [here](#). The French Competition Authority fined Altice €80 million in November 2016 for similar conduct: see Decision no 16-D-24 of 8 November 2016, available [here](#).

⁶ EC press release available [here](#).

⁷ Guidance on IEOs and derogations in merger investigations, paragraphs 2.3 and 2.6, available [here](#).

and measurement equipment for electronic devices in the UK. On the same day, the CMA issued a Notice of Possible Remedies which included as a potential remedy the divestment of Electro Rent's UK branch, including the "*freehold site, or (if leasehold) rights to the lease.*" Subsequent Electro Rent submissions and CMA working papers continued to envisage "*the transfer of Electro Rent's lease over its registered place of business in the UK*" as an important part of the remedy package. Following this, and before the conclusion of the CMA's review, Electro Rent served notice to terminate the lease of its UK premises, without notifying or seeking prior consent from the CMA. The CMA concluded that this was a breach of the interim order as it potentially impeded Electro Rent's ability to compete independently by depriving it of premises from which to operate in the UK.

Electro Rent appealed to the CAT, claiming that it had a reasonable excuse for breaching the interim order because it had consulted with the monitoring trustee before terminating the lease. The CAT rejected this, noting that "*[i]n view of the importance of adherence to the Interim Order,*" no reasonable person would have terminated the lease without first having consulted the CMA. The CAT also rejected Electro Rent's argument that terminating the lease promoted the commercial interests of the UK business and therefore might have facilitated divestment, on the basis that this was not Electro Rent's decision to make. In doing so, the CAT emphasised that "*[i]t is a matter of public importance that the merger control process, and the duties that it creates, are strictly, and conscientiously, observed.*"

Perhaps empowered by the CAT's judgment, on the following day, the CMA fined Electro Rent £200,000 for a separate breach of the same interim order, based on the fact that Electro Rent had failed to seek the CMA's consent before appointing the CFO of Electro Rent as a director of Microlease. The CMA concluded that this appointment "*carried a material risk for potential integration and exchange of confidential information*" and "*it was therefore*

foreseeable that the consent of the CMA would be required" before such a step were taken. This time, Electro Rent did not argue that it had a reasonable excuse for doing so.⁸

The CMA has imposed one other gun-jumping fine in 2019: on 10 January, Ausurus was fined £300,000 for breaching an IEO by failing "*to take adequate steps to procure that the [target's] business was carried on separately.*"⁹ Among other things, Ausurus received payments from the target's customers and made payments to the target's suppliers, which according to the CMA "*clearly constituted a step towards integration*" and "*prejudiced the ability of the [target] business to compete independently.*"

These fines are consistent with the stricter approach the CMA has recently taken to enforcing its procedural rules in both merger and antitrust cases. For example, on 28 February 2019, the CMA issued its first unwinding order, requiring the parties to a completed merger—Tobii and Smartbox—to unwind agreements they had entered on completion for Smartbox to sell Tobii products in the UK, and to discontinue certain of its own products. In the last three years, the CMA has also issued two fines for failure to provide information. First, the CMA fined Pfizer £10,000 in April 2016 for failing to provide evidence to support statements it had made at oral hearing during the CMA's investigation into excessive pricing of anti-epilepsy drugs.¹⁰ The CMA then fined Hungryhouse £20,000 in November 2017 for failing to provide internal emails and strategic documents in response to a request from the CMA during the investigation of Just Eat's acquisition of Hungryhouse.¹¹

Implications for Future UK Mergers

The CMA's decisions serve as an important reminder that the standstill obligation can apply to mergers over which the CMA has jurisdiction, despite the voluntary and non-suspensory nature of the UK regime. The CMA will continue to

⁸ Penalty notice available [here](#).

⁹ Penalty notice available [here](#).

¹⁰ Penalty notice available [here](#).

¹¹ Penalty notice available [here](#).

closely scrutinize compliance with its procedural rules, given the “*public importance of a clear and enforced merger control process*.”¹² The decisions also suggest that the threshold for breach in the UK may be lower than in the EU. In May 2018, the European Court of Justice held that steps taken by merging parties to implement or close a transaction prior to receiving clearance will only amount to gun-jumping under the EU Merger Regulation if they can be viewed as “*contributing to a lasting change of control of the target*

undertaking.”¹³ Neither the termination of Electro Rent’s lease, nor the appointment of Electro Rent’s CFO as a director of Microlease, would appear to meet this standard. In addition, the willingness of the CMA and the CAT to penalise Electro Rent for steps taken in relation to its own business rather than the target’s suggests that the scope of the standstill obligation in the UK is wider than in the EU, where it only applies to the target’s activities.

Judgments, Decisions, and News

Court Judgments

Balmoral Tanks Limited v CMA. On 15 February 2019, the Court of Appeal dismissed Balmoral Tanks’ (**Balmoral**) appeal against the October 2017 CAT judgment upholding the CMA’s decision to fine Balmoral £130,000 for exchanging pricing information with three other suppliers of galvanised steel tanks at a single meeting in July 2012. Although Balmoral refused to join the cartel operated by the three other suppliers, its CEO nonetheless remained at the meeting and shared information about Balmoral’s current and future pricing intentions.

Balmoral appealed to the CAT, arguing that the purpose of the July 2012 meeting was not anti-competitive. Rather, Balmoral’s intention had been to stop unwelcome contacts from the cartel members. The CAT held that the relevant purpose of the meeting was not what a participant hoped to achieve, but what had been arrived at by the end of the meeting. Balmoral attended the meeting knowing or suspecting that the discussion was very likely to touch on problematic areas, which it in fact did. The CAT also found that in circumstances in which all suppliers other than Balmoral were accustomed to fixing prices and sharing pricing information regularly, an exchange of pricing intentions at a single meeting had the potential to affect future prices and therefore constituted an object infringement.

Balmoral appealed to the Court of Appeal on four grounds: (i) the CAT failed to recognise the inconsistency raised by the CMA’s finding that, on the one hand, Balmoral was not part of the main cartel but, on the other, it had unlawfully exchanged information with the members of that very same cartel; (ii) the CAT adopted too strict an approach to the test for object infringements in the context of information exchanges; (iii) the CAT did not properly analyse whether the information exchange at issue had reduced uncertainty; and (iv) the CAT was wrong to conclude that the CMA was entitled to fine Balmoral alone for the information exchange.

The Court of Appeal rejected all four arguments. First, despite having “*elements in common*”, the main cartel and the information exchange were separate infringements: that they both related to pricing did not make the information exchange a sub-set of the main cartel. Second, the CAT had properly applied the correct legal test for when an information exchange would constitute an object infringement and had explained why this applied to a one-off exchange of pricing information in these circumstances. Third, the CAT was not required to analyse participants’ states of mind before and after an information exchange to conclude on whether the exchange had reduced uncertainty between participants. Finally, the CMA was entitled to fine Balmoral for the information exchange, without fining the other

¹² *Electro Rent v CMA* [2019] CAT 4, para. 200.

¹³ Judgment of 21 May 2018, *Ernst & Young*, C-633/16, ECLI:EU:C:2018:371, para. 49.

participants, who had been sufficiently penalised for their role in the main cartel.

DSG Retail Ltd, Dixons Carphone Plc, and Europcar UK Limited v Mastercard Inc. On 14 February 2019, the CAT rejected Mastercard's attempts to use the evolution of the limitation period for damages claims in the CAT to exclude historic losses. The relevant claims were brought by Dixons and Europcar in reliance on the EC's December 2007 decision against Mastercard.¹⁴ The EC found that Mastercard had infringed Article 101 TFEU between 22 May 1992 and 19 December 2007 through its use of multi-lateral interchange fees for cross-border transactions made using Mastercard credit and debit cards. This was upheld by the European Court of Justice on 11 September 2014.¹⁵ Dixons commenced follow-on proceedings in the CAT on 11 February 2015. Europcar followed suit on 9 September 2016. Both parties claimed damages from 22 May 1992 up to 21 June 2008.

The Consumer Rights Act 2015 empowered the CAT to hear both stand-alone and follow-on competition damages actions and brought the limitation period for all such claims into line with the equivalent rules in the High Court (*i.e.*, six years from when the cause of action arose). The revised limitation period only applies to claims "arising" after 1 October 2015. The accompanying transitional provisions explain that the previous rules on limitation would apply to any claims brought before 1 October 2015. These provide for a limitation period of two years from when an infringement decision is made final (taking into account any appeal), and prevent the bringing of any claim that would have been time barred in the High Court before the commencement of section 47A Competition Act 1998 (**CA 1998**) (the statutory provision entitling claimants to bring follow-on claims before the CAT), namely six years before 20 June 2003. Mastercard argued that these rules should be interpreted to apply to Dixons because its claim was brought before 1 October 2015, and also to Europcar because

the cause of action arose before 1 October 2015, even though proceedings were commenced subsequently. Therefore, any losses incurred by Dixons or Europcar before 20 June 2007 were time-barred.

The CAT disagreed. In relation to the Europcar proceedings, the CAT pointed to the clear exclusion of the application of the six year limitation period to claims brought after 1 October 2015 in the relevant rules. In relation to the Dixons proceedings, the CAT noted that Mastercard's arguments would result in a perverse situation in which claimants who had started proceedings later would be free of a potential limitation defence that applied to claimants who had started proceedings several months earlier, contrary to the policy behind limitation periods. The CAT therefore focused on when the relevant infringement came to an end: if this was less than six years before section 47A CA 1998 came into force, the claim was not time-barred and damages could be sought in respect of the whole period. The CAT considered this justifiable for continuing infringements.

Mr David Henry v Office of Communications.

On 6 February 2019, the CAT ruled that it had no jurisdiction to review Ofcom's decision to approve the BBC's launch of a new TV channel in Scotland. In declining jurisdiction, the CAT emphasised that it has no inherent jurisdiction to review Ofcom's decisions and can only do so if it is granted jurisdiction through an express statutory provision. Ofcom had taken the contested decision in pursuit of its ability to regulate the BBC under Communications Act 2003. Mr Henry had relied on rights of appeal that did not apply to that function. Moreover, the CAT rejected Mr Henry's argument that a separate right of appeal to the CAT arose in relation to Ofcom's alleged breach of its duty to ensure media plurality. Mr Henry could, however, have applied for judicial review of Ofcom's decision in the High Court.

¹⁴ Decision of 19 December 2007, *Case COMP/34.579 – MasterCard*, *Case COMP/36.518 – EuroCommerce*, *Case COMP/38.580 – Commercial Cards*, available [here](#).

¹⁵ Judgment of 11 September 2014, *MasterCard and others v Commission*, C-382/12P, ECLI:EU:C:2014:2201.

Antitrust/market studies

CMA Sends Statement Of Objections To Auden Mckenzie And Waymade In Relation To Pay-For-Delay Arrangements In Supply Of Hydrocortisone Tablets. On 28 February 2019, the CMA [announced](#) its provisional finding that from July 2011 to April 2015, the sole supplier of hydrocortisone tablets in the UK, Auden Mckenzie, and its competitor, Waymade, had entered into anti-competitive agreements to delay the entry of Waymade as a competitor in the market. Auden Mckenzie may also have abused its dominant position by making monthly payments to Waymade not to enter the market. The CMA noted that as a result of this alleged anti-competitive behaviour, it believes that the NHS was denied a choice of suppliers and incurred additional costs of c. £2 million.

FCA Response To CMA Report On Investment Consultancy Market Investigation. On 21 February 2019, the Financial Conduct Authority (FCA) [published](#) its response to the CMA's final report in its market investigation into the supply and acquisition of investment consultancy and fiduciary management services. Once certain CMA remedies are in place, the FCA will consult on new rules for firms offering fiduciary management services. These will require (i) separation of the marketing of fiduciary management services from the provision of investment consultancy advice, (ii) disaggregation of fees for current customers by fiduciary management providers, and (iii) fiduciary management providers to offer more information about their fees to prospective customers. Certain aspects of these rules will sit alongside and build on existing obligations under Market in Financial Instruments Directive II. The FCA will work with HM Treasury and the CMA to extend its regulatory perimeter to capture the full scope of investment consultancy services, including asset allocation advice.

FCA Issues First Penalties For Competition Infringements. On 21 February 2019, the FCA [announced](#) that it had issued its first competition enforcement decision against three asset management firms. The FCA found that the firms

had exchanged competitively sensitive information on a bilateral basis by disclosing the price they intended to pay, or the volume of shares they intended to acquire, in relation to an initial public offering and a placing, shortly before share prices were set. The FCA imposed a fine of £306,300 on Hargreave Hale and £108,600 on River and Mercantile Asset Management. Newton Investment Management was granted immunity. This is the FCA's first competition enforcement decision since it gained competition law enforcement powers on 1 April 2015. For further details, please see our [Alert Memorandum](#).

FCA Final Report In Wholesale Insurance Brokers Market Study. On 20 February 2019, the FCA [published](#) the final report in its wholesale insurance brokers market study, which was launched in November 2017. The FCA has not found evidence of significant levels of harm that merit the introduction of intrusive remedies, but it has identified some areas of concern including (i) firms' management of conflicts of interest, (ii) the information firms disclose to clients, and (iii) contractual agreements between brokers and insurers which, in a small number of cases, have the potential to limit competition. The FCA will work with firms to address these concerns and will continue to monitor the market as part of its normal supervisory functions.

CMA Consults On Draft Investment Consultancy And Fiduciary Management Market Investigation Order 2019. On 11 February 2019, the CMA [published](#) for consultation a draft Order arising from its investment consultancy and fiduciary management market investigation. The Order contains measures aimed at addressing the competition concerns the CMA has identified in its investigation to date, including the mandatory competitive tendering of fiduciary management services and a requirement for integrated firms to clearly separate all marketing material they provide from advice they give. All marketing materials must contain mandatory specified wording explaining that it is marketing material and include a reminder of the requirement to conduct a competitive tender process in certain cases. The draft Order also

includes various measures aimed at providing pension scheme trustees with more information on fees and on the performance of fiduciary managers and investment consultants.

Merger Developments

PHASE 2 INVESTIGATIONS

Experian Limited/Credit Laser Holdings (Clearscore). On 27 February 2019, the CMA announced that it had closed its Phase 2 investigation into Experian's proposed acquisition of Clearscore following the parties' decision to abandon the transaction. In November 2018, the CMA provisionally concluded that the merger may be expected to result in a substantial lessening of competition in the supply of credit comparison platforms for loans and credit cards and the supply of credit checking tools as the parties are the two largest credit-score checking firms in the UK. The CMA considered that the only effective remedy was prohibition.

J Sainsbury/Asda Group Ltd. On 20 February 2019, the CMA announced that the proposed merger between Sainsbury's and Asda would adversely affect competition for in-store and online grocery shopping on both a national and local level, and in relation to the supply of petrol. The CMA set out a number of potential options for addressing its provisional concerns, including blocking the deal or requiring the merging parties to sell off a significant number of stores and other assets (potentially including one of the Sainsbury's or Asda brands). The CMA's final report will be issued by 30 April 2019.

Tobii AB/Smartbox Assistive Technology Limited and Sensory Software International Ltd. On 8 February 2019, the CMA announced that it had referred the completed acquisition by Tobii of Smartbox to an in-depth Phase 2 investigation. Tobii and Smartbox design and supply technology that enables people with complex speech and language needs to communicate. According to the CMA, the parties are the leading suppliers of such technology and

each other's main competitors. Tobii offered undertakings in lieu at Phase 1, but these were considered insufficient to resolve the CMA's concerns. On 21 February, the CMA published an interim order to prevent pre-emptive action and issued directions for the appointment of a monitoring trustee. On 28 February, the CMA published an unwinding order, stating that it had reasonable grounds to suspect that action taken prior to the interim order might prejudice the CMA's investigation or impede the taking of remedial action by the CMA. The unwinding order required the parties to unwind certain agreements they had entered into under which Smartbox had agreed to sell Tobii products in the UK, and to discontinue certain of its own products. This is the first time the CMA has used these powers to require parties to unwind integration steps already lawfully taken by the parties.

PHASE 1 CLEARANCE DECISIONS

Ensco plc/Rowan Companies plc. On 15 February 2019, the CMA cleared the anticipated acquisition by Ensco Plc of Rowan plc. Both companies provide offshore drilling services to the petroleum industry.

eBay Inc/Motors.co.uk Limited. On 12 February 2019, the CMA cleared the anticipated acquisition by eBay Inc of Motors.co.uk Limited. eBay is a general online marketplace, while Motors.co.uk is an online marketplace and price comparison site for cars.

Headlam Group plc/Ashmount Flooring Supplies Ltd. On 11 February 2019, the CMA cleared the completed acquisition by Headlam Group plc of Ashmount Flooring Supplies. The CMA did not believe that it is or may be the case that a relevant merger situation has been created.

CareTech Holdings/Cambian Group. On 8 February 2019, the CMA cleared the completed acquisition by CareTech Holdings of Cambian Group. Cambian Group provides education and behavioural health services for children. CareTech offers social care services.

ONGOING PHASE 1 INVESTIGATIONS

Parties	Decision Due Date
Lakeland Dairies (N.I.) Limited/LacPatrick Dairies Co-Operative Society Limited	13 March 2019
Headlam Group/Rackhams	28 March 2019
Headlam Group/Garrod Bros Business	5 April 2019
Ecolab Inc/The Holchem Group Limited	10 April 2019
AL-KO Kober Holdings Limited/Bankside Patterson Limited	10 April 2019
Rentokil Initial plc/MPCL Limited (formerly Mitie Pest Control Limited)	12 April 2019
Global Radio Services Limited/Semper Veritas Holdings	16 April 2019
OSRAM Licht Group/RGI Light (Holdings) Limited and Ring Automotive Limited	17 April 2019
RWE AG/E.ON SE	24 April 2019
Core Assets Group Limited/Partnership in Children's Services Limited	TBC
Non-Standard Finance plc/Provident Financial plc	TBC

Other Developments

Lord Tyrie Letter To BEIS Outlining

Proposals For Reform Of Competition And

Consumer Protection. On 25 February 2019, the CMA [published](#) a letter from Lord Tyrie, Chair of the CMA, to the Secretary of State for Business, Energy and Industrial Strategy. Lord Tyrie states that the “*central challenge [for the CMA] is that, despite relatively recent legislative changes, the UK has an analogue system of competition and consumer law in a digital age*”, and identifies two alternative routes for reform: (i) attempt a fundamental rewrite of the statute book, or (ii) amend and improve the current rules. Given the disturbance and uncertainty associated with the former, particularly in the context of Brexit, Lord Tyrie sets out an “*attempt*” at the latter, consisting of eight proposals: (i) a new statutory duty on the CMA and the courts to treat the interests of consumers, and their protection from detriment, as paramount, (ii) new functions and powers to enable quick intervention and to stop market-wide consumer detriment, (iii) strengthen consumer law enforcement to make it responsive to address fast-moving markets, (iv) measures to improve individual responsibility for competition and consumer law compliance, (v) bolster protection of and compensation for whistle-blowers, (vi) broaden the CMA’s information-gathering powers, (vii) simplify and expedite court scrutiny of CMA decisions, and (viii) introduce mandatory merger notifications for large mergers post-Brexit.

CMA Called On To Investigate Facebook.

On 18 February 2019, in its final report on “*Disinformation and ‘fake news’*”, the House of Commons Digital, Culture, Media and Sport Committee [called on](#) the CMA to investigate whether Facebook has been involved in anti-competitive practices, and to conduct a review of the online advertising market. The Committee referred to allegations that “*Facebook intentionally and knowingly violated both data privacy and anti-competition laws*” and recommended that the CMA conduct a review of Facebook’s business practices towards other developers to decide whether Facebook is “*unfairly using its dominant position in social media to decide which businesses should succeed or fail.*” The Report concludes that Big Tech firms must not be allowed to expand exponentially, without constraint or proper regulatory oversight.

CMA Annual Plan. On 14 February 2019, the CMA [published](#) its Annual Plan for 2019/20. The Plan explains at the outset that the CMA will take on a bigger role post-Brexit and, as a result, might have reduced capacity to conduct market investigations and competition law enforcement. Given uncertainty over Brexit, the CMA has decided to publish high level goals rather than more specific objectives. The Plan sets out the CMA’s four main priorities, and explains the work that

is already underway in relation to each of these, namely: (i) protecting vulnerable consumers, (ii) improving trust in markets, (iii) promoting better competition in online markets, and (iv) supporting economic growth and productivity. A large part of the report is dedicated to explaining the CMA's preparations for a no-deal Brexit.

CMA's Response To Request For Information On The Rewards Paid For Information In Relation To Potential Cartels And Cases Of Market Abuse. On 13 February 2019, the CMA declined to disclose information in respect of the rewards it pays to whistle-blowers. The CMA confirmed that it offers rewards of up to £100,000 for information that assists in the detection and investigation of cartels, and that it holds information falling within the scope of the freedom of information request. However, the CMA refused to disclose the information on two grounds: (i) it was obtained from confidential sources, and (ii) disclosure would likely prejudice the exercise of its functions. The CMA emphasised that the guarantee of anonymity is paramount to the individuals providing such information and the public interest militates against disclosure.

Guidance For Competition Director

Disqualification Orders. On 6 February 2019, the CMA published revised guidance on director disqualification orders in competition cases. The guidance adopts a more "holistic" approach to assessing director disqualification, but requires consideration of the same factors: (i) the nature and seriousness of the competition law infringement, (ii) the duration, (iii) the impact on consumers, (iv) the evidence, and (v) the public interest in director disqualification. The guidance introduces mitigating factors which can reduce the period of disqualification, including a director's co-operation with an investigation and his/her conduct during the CMA's investigation. The guidance also notes that while the CMA would normally consider a reduction in the disqualification period where a director offers an acceptable competition disqualification undertaking, it will consider the stage at which this is offered in deciding whether to grant a reduction.

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