

October 2021

# UK Competition Law Newsletter

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## Highlights

- CMA announces intention to launch music streaming market study
- CMA fines Facebook for breach of IEO in *Facebook/Giphy*
- CAT grants CPO in *Justin Gutmann v London & South Eastern Railway, South Western Trains, Stagecoach South Western Trains*

## CMA Ramps up Use of Market Study Powers to Tackle Emerging Competition Issues

The UK competition authorities, and the Competition and Markets Authority in particular, have broad powers to investigate markets as a whole and impose remedies without any finding of unlawful conduct. The use of these powers has fluctuated over time but is again increasing. Over the last year, the CMA has opened three market studies, investigating the markets for *Music Streaming*, *Children's Social Care*, and *Mobile Ecosystems*. This compares with just one market study opened in 2020 (*Electric Vehicles*) and one in 2019 (*Online Platforms Digital Advertising*). Over this same period, the CMA has also begun two market investigations (*Mobile Radio Network Services* and *Funerals*). This article provides an overview of these market studies and investigations and the themes emerging from them. It also provides thoughts on the future of the UK markets regime.

### **The CMA's market study and investigation powers**

The CMA is one of only a small number of competition agencies worldwide that has powers to review markets and impose remedies in the absence of antitrust violations. It has two main tools at its disposal: (1) market studies and (2) market investigations. These tools allow the CMA (and, in the case of market studies, sectoral regulators) to investigate markets as whole and introduce measures to address structural or behavioural concerns without any finding of unlawful conduct.

**Market studies** are shorter inquiries, generally lasting no more than one year. They can result in a range of different outcomes, including recommendations to industry participants or government, opening separate enforcement proceedings, and referring a market for a more in-depth market investigation. The CMA cannot

impose legally binding remedies as part of a market study, but can accept binding undertakings in lieu of a market investigation reference.

**Market investigations** are longer, more detailed investigations carried out by an Inquiry Group of CMA Panel Members. A market investigation typically lasts 18 months and can take up to two years. A market can be referred for a market investigation by the CMA, the concurrent sectoral regulators or the Secretary of State where there are reasonable grounds to suspect that a feature, or combination of features, of a market prevents, restricts or distorts competition. Market investigations often follow a market study, but a market study is not a pre-requisite, provided the decision to open a market investigation has been subject to consultation. The CMA has broad powers to impose remedies at the end of a market investigation to address features of the market having an adverse effect on competition.

### The CMA's recent market studies and investigations

The CMA has launched three market studies and opened one market investigation this year:

- **Children's Social Care.** In March, the CMA launched a study into the availability and cost of children's social care, responding to concerns about private-sector providers making high profit margins. The CMA issued its interim report in October, which found that there was a shortage of appropriate places for local authorities seeking to place children, resulting in higher prices. As a result, large private sector providers of children's homes and foster services in England and Wales appeared to be making higher profits than the CMA would expect in a well-functioning market. The CMA will now test these initial findings, look more closely at profits in the market, and explore possible solutions before publishing its final report in March 2022.
- **Mobile Ecosystems.** In June, the CMA launched a market study to examine whether features or practices associated with Apple and Google's mobile ecosystems (comprising operating systems, app stores and web browsers) harm consumers or other businesses, such as app developers. The CMA intends to use the results of the market study to: (a) inform the design and implementation of the new Digital Markets Unit ("**DMU**"); (b) inform the decision on which firms should be designated as having strategic market status ("**SMS**"); (c) support the DMU's development of codes of conduct for firms with SMS; and (d) identify specific areas where the CMA could make "procompetitive interventions" under these powers. Such actions could in practice involve (i) interventions that limit a platform's ability to exercise market power; (ii) interventions that promote interoperability and common standards; (iii) consumer-choice remedies; and (iv) separation remedies. The CMA is also considering other possible outcomes, including making a market investigation reference.
- **Mobile Radio Network Services.** In October, the CMA launched a market investigation into Motorola's Airwave network, which is the mobile radio network used by British emergency services to communicate securely while working in the field. The investigation follows concerns expressed by Government and other stakeholders, in particular the National Audit Office and the Public Accounts Committee, regarding Motorola's market position. The CMA has concerns that Motorola is "cashing in" on its position and earning excess profits, leaving taxpayers to foot the bill. Motorola has a dual role as the owner of the current network and as a supplier in the roll-out of the new and cheaper Emergency Services Network ("**ESN**"). The CMA is therefore investigating whether Motorola "*has an incentive to delay or shape the roll-out of the ESN to its advantage, given the significant profits it currently receives from operating the Airwave network.*"
- **Music Streaming.** In October, the CMA announced its intention to launch a market study into music streaming. The announcement follows requests from two different Government departments (the Department for Business,

Energy and Industrial Strategy (“**BEIS**”) and the Department for Digital, Culture, Media and Sport (“**DCMS**”) and in the [DCMS Select Committee’s Report on the Economics of Music Streaming](#). The CMA has not yet determined the scope of the market study but, given the topics covered in the DCMS Select Committee’s Report, the CMA is likely to examine (at least) the market position of the major record labels and the role of innovation in the sector.

The CMA also concluded its *Electric Vehicle Charging* market study and *Funerals* market investigation this year. These were launched in 2020 and 2019, respectively:

— **Electric Vehicle Charging.** In December 2020, the CMA launched a study into the electric vehicle charging market in an effort to “get ahead” of any competition concerns in this nascent but fast-growing market. The CMA considered the different ways that competition could develop and the issues that might arise. In July, it recommended a significant package of remedies intended to address challenges facing the sector. In particular, the CMA raised concerns that the rollout of charging points had been slow and disjointed, and warned that more needed to be done in the sector ahead of the Government’s planned ban on sales of new petrol and diesel cars by 2030. These include measures to (i) kick-start investment and boost roll-out of charge points along motorways, in remote locations, and on-street; (ii) speed up electricity grid connections and lower connection costs; (iii) set open data and software standards for home charge points, so that drivers can benefit from smart charging and flexible energy systems; and (iv) establish a public body to monitor the electric vehicle sector to ensure charging is as simple as filling up at a petrol station.

As a result of the information it received during the market study, the CMA also opened a Competition Act investigation into exclusivity agreements between Electric Highway (which operates around 80% of the electric vehicle charging points on UK motorways) and service

station operators Roadchef, Extra and MOTO, citing concerns that these long-term exclusivity arrangements prevented rivals from setting up charging points.

— **Funerals.** The CMA’s probe into the funerals sector began as a market study that was launched in mid-2018. The market study found that the average price charged by funeral directors had increased almost 70% over the previous decade and that cremation prices had risen by almost 85%. The CMA also found that funeral directors and crematorium operators often did not provide sufficient or clear information on pricing to consumers. Following its market study, the CMA opened an in-depth market investigation in 2019.

In June 2021, following the conclusion of its market investigation, the CMA ordered a package of “sunlight remedies” requiring funeral directors and crematorium operators to clarify their prices upfront and display them prominently on their websites and premises, to allow customers to compare prices and choose the right services. The CMA also recommended that the Government establish an inspection and registration regime to monitor funeral director services.

## Themes emerging from recent market studies and investigations

The following themes are emerging from the CMA’s recent practice.

— **Quicker investigations.** The Government and CMA have both called for market interventions to happen more quickly, particularly where they focus fast-moving digital and technology markets. The trade-off for the CMA is that it does not have the power to impose legally binding remedies unless it carries out a full market investigation. The CMA has therefore become increasingly creative in finding ways to introduce remedies after a market study. In *Mobile Ecosystems* and *Online Advertising*, for example, the CMA envisages that remedial steps would be formally introduced by the DMU, based on the CMA’s recommendations.

- **Digital markets.** Unsurprisingly, the CMA is increasingly using its market powers to investigate digital markets, such as *Music Streaming* and *Mobile Ecosystems*. This reflects not only shifts in the wider economy but also the challenges that competition agencies have had in applying more traditional antitrust tools in fast-moving digital markets. The focus on gathering information and understanding digital markets in detail is likely to continue as the CMA prepares for the DMU to acquire formal legal powers and as it drafts codes of conduct that will apply to firms designated to have strategic market status.
- **Focus on new and nascent technologies.** The CMA has shown a willingness to investigate new and nascent technologies. This represents a shift away from the CMA's traditional use of its market probing powers, which it tended to use to investigate mature markets with established incumbents. The *Electric Vehicle Charging* market study provides a good example of the way that the CMA can use its powers in emerging markets which are growing at pace. This study was initiated by the CMA as a proactive step to investigate the market in its infancy and identify areas of potential concern before they became entrenched. The CMA's investigation into *Music Streaming* arguably falls into the same category, with the CMA considering whether action is needed to support changes in market dynamics in response to new technologies.
- The *Electric Vehicle Charging* study also shows the CMA using its markets powers explicitly to support the UK's transition to a **sustainable economy**. This is consistent with the CMA's stated policy objective set out in its draft 2022/23 Annual Plan to make greater use its powers and support the UK's Net Zero and sustainability goals.
- More generally, recent market studies and investigations have been carefully **focused and scoped**. The CMA has concentrated on addressing specific market features or segments, particular technologies, specific companies and targeted theories of harm. For example, the *Electric Vehicle Charging* and *Mobile Radio Network Services* market studies are focused on one particular technology, and the *Mobile Ecosystems* study is targeted at Apple and Google's products only. In these cases, the CMA appeared to have a clear view of the broad outcomes it wanted to achieve from the beginning of the study.
- This contrasts with the way market studies and investigations were scoped and conducted just a few years ago. For example, the CMA's investigations into *Retail Banking* and *Energy* markets were broad in scope and tried to consider a wide range of potential concerns across those markets. The same is true of earlier market investigations, such as *Aggregates Cement and Ready-Mix Concrete*, and *Private Healthcare*, in which the CMA was asked to consider the markets as a whole. While a broad study or investigation allows the CMA greater flexibility to gather evidence and target its interventions as it gathers a better understanding of the market, they are difficult to manage, consume considerable resources and take longer to complete. The CMA now routinely carries out a careful scoping exercise before launching any new market study.
- Some market studies have been overtly **politically motivated**, starting out as concerns expressed by Government to the CMA over particular markets or companies. By way of example, the *Music Streaming* study was the outcome of a letter from DCMS to the CMA noting that “[t]he Government's view is that transparency and fairness in the global streaming environment are key... However, this is a complex area, so it is vitally important that any action by the Government be led by robust evidence.” The investigation into *Mobile Radio Network Services* was also inspired by concerns expressed by Government, as were the CMA's market studies into *Online Advertising* (2020) and the “Big Four” *Statutory Audit* firms (2019).
- Finally, **consumer protection** continues to be as much a priority for the CMA as

competition law, as evidenced by the *Funerals* market investigation and *Children's Social Care* market study undertaken this year.

## The future of the CMA's markets regime

The UK Government [recently consulted](#) on proposed reforms to competition and consumer policy, which include reforms to bolster the CMA's market study and investigation powers. There are two broad options currently under consideration:

- Maintaining separate market studies and market investigations, while allowing the CMA to impose legally binding remedies in both; and
- Abolishing both the market study and market investigation procedures altogether and replacing them with a new single-stage market inquiry tool. The new market inquiry would carry a statutory timeframe of two years by default, but the CMA would be expected to conclude investigations more quickly where it could.

Regardless of the option pursued, BEIS has also proposed granting the CMA extended and more flexible remedial powers. Under these proposals, the CMA would acquire: (i) powers to impose interim measures in market investigations, in the same way that it can in Competition Act investigations; (ii) powers to require businesses to participate in implementation trials to test how best to implement remedies; and (c) power to review and, if necessary, vary the remedies it imposes.

BEIS considers that these reforms are needed to improve the speed and effectiveness of the CMA's markets regime, and that they would be particularly beneficial when examining fast-paced, developing markets such as those related to environmental sustainability, where competition and consumer issues are likely to continue to evolve after the CMA's work has concluded.

The CMA has largely welcomed the proposals, though in its [Response](#) noted that it sees merit in retaining the current two-stage market inquiry regime:

*“The CMA supports the government’s aim to increase the pace of markets work. However, it is concerned that each of the proposals for structural reforms could put at risk some of the advantages ... of the current market study and market investigation tools. In particular, the single-stage market inquiry option could risk losing the pace and flexibility advantages of the market study process. As a consequence, it could risk increasing the average duration of markets cases, contrary to its intended aim of speed and efficiency. The decision makers will by definition need to familiarise themselves with the detail of the case and reach a view on the adverse effects that have been identified, something that will inevitably take some time if they only become involved part way through the process. In practice, this may well mean that all cases default to a more onerous market investigation framework, meaning that the flexibility of the current market study process risks being lost.”*

The Government is considering this and other feedback and will then announce how it intends to proceed, possibly in the form of draft legislation.

## Conclusions

By their nature, market studies and investigations allow the CMA considerable scope to gather information and intervene in a wide range of issues and markets. They allow the CMA to tackle perceived market failings where there is no evidence of unlawful conduct. The CMA's recent practice suggests that it is becoming more willing to turn to these market tools and apply them in creative ways to achieve quicker outcomes and address issues before they become entrenched. This is particularly true of fast moving digital markets and other new technologies.

Proposed reforms to the regime are consistent with this trend and suggest the CMA will become even more willing to turn to these market tools in future. The CMA is likely to be given even more powers to intervene in markets, greater powers to impose remedies, and the ability to impose interim measures. Even though the CMA cannot impose punitive measures under the markets

regime, its power to intervene in markets can have significant implications for companies in circumstances where those companies have very

few rights of defence and no right to appeal on the merits. Under the latest Government proposals, these powers only look set to increase.

## Judgements, Decisions and Other News

### Court Decisions/Judgments

#### ***Withdrawal of Action Against Premier***

***League.*** On 8 October 2021, the CAT made an [order](#) permitting St James Holdings Limited (**St James Holdings**) to withdraw its action against The Football Association Premier League Limited (**FAPL**). St James Holdings is the owner of Newcastle United Football Company Limited (**NUFC**) and had originally claimed that FAPL had breached competition law by blocking a proposed takeover of NUFC. The withdrawal of action follows St James Holdings and FAPL reaching a settlement, pursuant to which FAPL received legally binding assurances that the Kingdom of Saudi Arabia will not control NUFC.

#### ***Withdrawal of Action Against Datasite.***

On 19 October 2021, the CAT made an [order](#) permitting Regus Group Services Ltd and IWC plc to withdraw their damages action against Datasite UK Ltd for alleged abuse of dominance. The action was abandoned because the parties reached a settlement.

#### ***CAT Publishes CPO in Justin Gutmann v***

***London & South Eastern Railway, South Western Trains, Stagecoach South Western Trains.*** On 19 October 2021, the CAT [published](#) its judgment on the strike-out and collective proceedings order (**CPO**) applications in the claims brought by Mr. Justin Gutmann alleging abuse of dominance by London & South Eastern Railway Limited, First MTR South Western Trains Limited, and Stagecoach South Western Trains Limited. The claims relate to “boundary fares,” which are a type of extension or add-on fare sold for use in conjunction with a Transport for London Travelcard. Mr. Gutmann alleges that

the train companies failed to make boundary fares sufficiently available and/or failed to use their best endeavours to ensure awareness of boundary fares among consumers so they could avoid being double-charged for part of their journey. The strike-out application was dismissed and the CAT granted the applicants a CPO on the basis that the claims raised common issues (of dominance and abuse) that were suitable to be brought in collective proceedings. This is the first collective proceedings action to be brought on a standalone basis under s.47B of the Competition Act 1998.

#### ***CAT Publishes CPO in Justin Le Patourel v***

***BT Group PLC.*** On 19 October 2021, the CAT [published](#) its judgment on the strike-out and CPO applications in the claim brought by Justin Le Patourel on behalf of over 2 million BT customers who bought “Standalone Fixed Voice services”, which are a type of landline telephone services. Mr Le Patourel alleges that BT abused a dominant position by engaging in excessive pricing of Standalone Fixed Voice services. BT’s strike-out application was dismissed and the CAT granted the applicants a CPO.

#### ***CAT Publishes Five Notices of Appeal Challenging CMA’s Hydrocortisone Tables Infringement Decision.***

On 27 October 2021, the CAT published five summaries of Notices of Appeal brought by [Allergan](#), [Advanz Pharma](#), [Cinven](#), [Auden Mckenzie](#) and [Intas Pharmaceuticals](#), all challenging the CMA’s findings that the pharma companies infringed the Chapter 1 and Chapter 2 Prohibitions under the Competition Act 1998 in their supply of hydrocortisone tablets (*see* [UK Competition July-August Newsletter](#)). The CMA is expected to file a consolidated defence by 1 December 2021.

## Antitrust/Market Studies

**Closure of Chapter 1 Investigation into Supply of Nitrofurantoin Capsules.** On 8 October 2021, the CMA [announced](#) the closure of its investigation into suspected breaches of competition law in the supply of nitrofurantoin 50mg and 100mg capsules on the grounds of administrative priorities.

**Lloyds Breaches Retail Banking Market Investigation Order 2017.** On 13 October 2021, the CMA [published](#) a letter it had sent to Lloyds Banking Group (**Lloyds**) in relation to a breach of the Retail Banking Market Investigation Order 2017. Lloyds failed to publish certain information about its unsecured loans to SMEs on one of its website pages and notified the CMA of the breach as part of its annual compliance report. The CMA will not pursue any further enforcement action in relation to this breach as Lloyds has remedied it by publishing the correct content on its website, conducting an in-depth review of its compliance framework for digital and marketing content, and carrying out staff training.

**CMA Announces Intention to Launch Music Streaming Market Study.** On 19 October 2021, the CMA [announced](#) that it is finalising the scope for a market study into the music streaming market, with a formal launch soon to follow. *See above* for further details.

**Interim Report on Market Study Pertaining to Children's Social Care.** On 22 October 2021, the CMA [published](#) its interim report on its market study into the supply of children's social care. *See above* for further details.

**Market Investigation into Mobile Radio Network Services.** On 25 October 2021, the CMA [launched](#) a market investigation into Motorola's Airwave network. *See above* for further details.

**NewDay Breaches Payment Protection Insurance Market Investigation Order 2011.** On 29 October 2021, the CMA [published](#) a letter it had sent to NewDay Ltd (**NewDay**), outlining five breaches of the Payment Protection Insurance Market Investigation Order 2011. The breaches were identified following an independent audit of NewDay's compliance systems and stemmed from NewDay's failure to provide its customers with Annual Reviews, or correct Annual Reviews, of their Payment Protection Insurance (**PPI**) policies. NewDay has since volunteered to send apology letters and offer refunds to the 27,000 customers potentially affected, and also intends to withdraw from the provision of PPI services. Consequently, the CMA decided not to pursue enforcement action.

## Merger Developments

### PHASE 2 INVESTIGATIONS

**Sony Music Entertainment/AWAL and Kobalt Neighbouring Rights.** On 11 October 2021, the CMA [published](#) an Issues Statement as part of its Phase 2 investigation into the completed merger. The statement indicates that the CMA will explore a single theory of harm: whether the merger will result in a loss of potential competition in digital music distribution in the UK.

**CMA Fines Facebook for Deliberate Breach of Initial Enforcement Order in Facebook/Giphy.** On 20 October 2021, the CMA [announced](#) its decision to penalise Facebook's failure to comply with the Initial Enforcement Order (**IEO**) imposed as part of the CMA's investigation into the Facebook/Giphy merger. Facebook was fined £50 million for failing to provide all the information required in its regular IEO compliance statements, the highest penalty imposed for a breach of an IEO. Separately, the CMA fined Facebook an additional £500,000 for changing its Chief Compliance Officer twice without the CMA's approval. The CMA's full text penalty decision was [published](#) on 28 October 2021.

UNDERTAKINGS IN LIEU OF PHASE 2  
INVESTIGATIONS

**S&P Global/IHS Markit.** On 26 October 2021, the CMA [published](#) its decision that undertakings offered by S&P Global and IHS Markit might be accepted in lieu of a reference to Phase 2. S&P Global and IHS Markit both provide a range of financial services, including market analysis. The undertakings involve the divestment of IHS Markit's Coal, Metals and Mining division, Oil Price Information Service business, and Base Chemicals business to address the possibility of an SLC in the market for biofuel, coal and oil prices assessments. The CMA has until 30 December 2021 to decide whether to accept the undertakings. If no undertakings are accepted, the CMA will refer the merger to Phase 2.

**Circle Health/BMI Healthcare.** On 20 October 2021, CMA [published](#) its decision to conduct a review of the undertakings accepted in the Circle Health/BMI Healthcare merger. In June 2020, the CMA accepted undertakings to address potential competition concerns in the supply of private hospital medical services in Bath and Birmingham. The undertakings involved the divestment of the Circle Bath and Circle Birmingham hospitals. In June 2021, Circle Health requested that the CMA vary the undertakings on the basis that: (i) the divestment of the Birmingham hospital could not be achieved; (ii) the Birmingham hospital is likely to constitute a less effective competitive constraint than suggested by the information available to the CMA at the time of the Phase 1 decision; and (iii) a new hospital is now likely to enter the market and provide a sufficient competitive constraint to prevent any SLC from arising in the area.

**Admiral Taverns/Hampden Pub Estate.** On 27 October 2021, the CMA [announced](#) that it would refer the completed acquisition of Hawthorn Leisure Topco Limited's pubs by Admiral Taverns to a Phase 2 investigation, unless the parties offered suitable undertakings to remedy the competition concerns raised. The decision was reached in accordance with the CMA's fast track procedure under which the

parties had agreed that the transaction met the test for a Phase 2 reference. Admiral offered to divest seven pubs to resolve concerns in local catchment areas. On 9 November 2021, the CMA [published](#) its decision that the undertakings offered by Admiral might be accepted by the CMA.

## PHASE 1 DECISIONS

**Central England Co-operative/The Midcounties Co-operative.** On 4 October 2021, the CMA [cleared](#) the anticipated acquisition of part of the funerals business of the Midcounties Co-operative Limited by Central England Co-operative Limited. The full text decision was [published](#) on 11 November.

**Graphic Packaging/AR Packaging.** On 6 October 2021, the CMA [cleared](#) the anticipated acquisition of AR Packaging Group AB by Graphic Packaging Holding Company. The full text decision was [published](#) on 27 October.

**Glennon Bros/Balcas.** On 7 October 2021, the CMA [published](#) its full text decision to clear the anticipated acquisition of Balcas Limited by Glennon Bros UK Holdings Limited.

**EssilorLuxottica./Lenstec Optical Group.** On 12 October 2021, the CMA [cleared](#) the anticipated acquisition of Lenstec Optical Group Limited by EssilorLuxottica S.A. The full text decision was [published](#) on 12 November.

**National Grid/PPL WPD Investments.** On 13 October 2021, the CMA [published](#) its full-text decision to clear the completed acquisition of PPL WPD Investments Limited by National Grid Holdings One plc.

**Parker-Hannifin/Meggitt.** On 18 October 2021, the Secretary of State for the Department for Business, Energy and Industrial Strategy (**BEIS**) [issued](#) a Public Interest Intervention Notice on national security grounds in relation to the anticipated acquisition of Meggitt Plc by Parker-Hannifin Corporation.

## ONGOING PHASE 1 INVESTIGATIONS

Parties	Decision Due Date
<a href="#">Cobham Ultra Acquisitions Limited/ Ultra Electronics Holdings Plc</a> (public interest intervention)	18 January 2022
<a href="#">Taurus International and Others/Perpetuus</a> (public interest intervention)	7 February 2022
<a href="#">CVS Group/Quality Pet Care</a>	18 February 2022
<a href="#">Parker-Hannifin Corporation/ Meggitt Plc</a> (public interest intervention)	18 March 2022
<a href="#">Nijjar Group Holdings (Acton) Limited/ Medina Holdings</a>	TBC
<a href="#">Clayton, Dubilier &amp; Rice Holdings/WM Morrison Supermarkets</a>	TBC

## Other Developments

### ***CMA Responds to Government Consultations on Competition and Consumer Policy and Competition Regime for Digital Markets.***

On 4 October 2021, the CMA [responded](#) to two Government consultations: “Reforming competition and consumer policy” (see [UK Competition July-August Newsletter](#) and our [Alert Memorandum](#) on this topic) and “A new pro-competition regime for digital markets” (see [UK Competition July-August Newsletter](#)). On the whole, the CMA welcomed the proposed reforms, which included strengthening the CMA’s investigation and enforcement powers in both competition and consumer law investigations, enhancing consumer rights, changing the merger control jurisdictional threshold, and establishing a separate regime for regulating digital markets and firms with “strategic market status.”

### ***CMA Responds to BEIS Consultation on Reforming the Framework for Better Regulation.***

On 8 October 2021, the CMA [responded](#) to a BEIS consultation which sought feedback on ways to improve the UK regulatory framework post-Brexit.

***Public Bill Committee Invites Evidence on the Subsidy Control Bill.*** On 13 October 2021, the House of Commons Public Bill Committee [invited](#) written evidence on the Subsidy Control Bill. The bill outlines a legal framework within which public authorities can provide subsidies to businesses. More specifically, it proposes the creation of a Subsidy Advice Unit within the CMA to monitor the granting of subsidies and to provide pre- and post-grant advice. In accordance with the Bill, public authorities would continue to self-assess their subsidy decisions, which could then be challenged by interested parties through the CAT.

### ***Government Order Excludes Premier League Broadcasting Rights from Competition Act 1998.***

On 14 October 2021, the Government [enacted](#) The Competition Act 1998 (Football Broadcasting Rights) (Public Policy Exclusion) Order 2021. The order protects the Premier League from any claims under Chapter 1 or Chapter 2 of the Competition Act 1998. This enactment follows the Premier League’s request for an exclusion order allowing it to renew its current broadcast rights package on the same terms for another three years.

### ***Government Order Excludes CF Fertilisers’ Distribution Agreements from Competition Act 1998.***

On 22 October 2021, the Government [enacted](#) the Competition Act 1998 (Carbon Dioxide) (Public Policy Exclusion) Order 2021 (SI 2021/1169), which was [published](#) with an explanatory memorandum. Under the order, CF Fertilisers Limited (**CF Fertilisers**), the UK’s principal supplier of commercial carbon dioxide, is allowed to share information on price, quantity and terms with its distributors. This order has retrospective effect and was prompted by the increase in fuel prices, which forced CF Fertilisers to temporarily abandon production. The Government hopes that the new legislation will prevent future disruptions of CO<sub>2</sub> supply, with the gas being essential for animal welfare, food processing, nuclear and healthcare industries.

***CMA's Chief Executive Discusses DMU and the Regulatory Future of Digital Markets.*** On 28 October 2021, the CMA published a lecture given by its Chief Executive, Dr Andrea Coscelli, on the initial months of DMU's operations and the expected regulatory developments in the digital sector. Dr. Coscelli gave an overview of his reasons for believing that digital markets are not functioning as well as they should, outlined the UK's response to those problems (in particular, the DMU), and explained the DMU's priorities as it prepares to take on its role overseeing the new UK pro-competition regime for digital markets.

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