

February – March 2020

# UK Competition Law Newsletter

## Highlights

- CMA, FCA and PSR publish statements in response to COVID-19 pandemic
- UK Government suspends elements of competition law in healthcare and groceries sectors
- CMA sets up COVID-19 taskforce and publishes guidance on its approach to business co-operation in response to COVID-19
- CMA targets excessive pricing of essential products
- European Commission approves two UK State aid schemes to support SMEs that may be significantly impacted by the economic effects of the COVID-19 pandemic
- Court of Appeal hands down judgment in CMA appeal against the CAT's dismissal of Pfizer/Flynn Pharma unfair pricing decision

The UK Government, the Competition and Markets Authority (**CMA**) and sectoral regulators are taking measures to respond to COVID-19, including suspending certain elements of competition law to allow competing suppliers of essential products and services to work together, while monitoring business conduct to prevent collusion and consumer exploitation.

The COVID-19 pandemic is unprecedented. Among other things, it has had significant and immediate economic effects, causing substantial changes in pre-existing patterns of demand and placing considerable pressure on suppliers of essential products and services, including, in particular, groceries and health services. The most immediate difficulty facing these firms is securing access to sufficient supplies, facilities, and staff to meet huge spikes in demand and fluctuating costs.

The UK Government, together with the CMA and sectoral regulators, have responded by making changes to UK competition law and refocusing enforcement priorities to help suppliers meet these challenges and protect consumers from unscrupulous business practices, with similar efforts being taken by other national agencies and the European Commission. These measures include:

- allowing cooperation between grocery suppliers;
- allowing cooperation between health service providers;
- issuing new guidance on the criteria for exemptions to the prohibition on restrictive agreements;
- prioritising enforcement to focus on pricing collusion and exploitative abuses;
- creating a CMA COVID-19 Taskforce; and
- adopting a consistent approach to business cooperation across competition regulators.

## Allowing grocery suppliers and logistic service providers to work together

On 19 March 2020, the UK Government [announced](#) that it would temporarily relax elements of competition law as part of a package of measures designed to allow supermarkets to work together “*to feed the nation.*”

Following that announcement, the CMA issued a [statement](#) reassuring businesses that, even where agreements are not covered by the UK Government’s exclusions, it has “*no intention of taking competition law enforcement action against cooperation between businesses or rationing of products to the extent that this is necessary to protect consumers – for example, by ensuring security of supplies.*” It added, though, that it would “*not tolerate unscrupulous businesses exploiting the crisis as a ‘cover’ for non-essential collusion.*”

On 27 March 2020, the UK Government gave legal effect to its announcement by introducing a [Groceries Public Policy Exclusion Order](#)<sup>1</sup> enabling grocery suppliers<sup>2</sup> to:

- coordinate on (i) limiting purchases of particular groceries, (ii) setting the range of groceries to be supplied, (iii) assisting particular groups of customers (*e.g.*, critical workers and vulnerable groups), (iv) setting store closure and opening hours, and (v) supplying areas of the country vulnerable to shortages;
- share labour and/or facilities; and
- exchange information on day-to-day stock positions and services provided by logistic service providers.

The order also allows logistic service providers (any person carrying on a business providing a service to grocery suppliers in relation to delivery, storage, or maintenance) to share labour and facilities, and to exchange information on labour availability, storage and vehicle capacity, and storage or warehouse services.

## Allowing cooperation between health service providers

Health services across the UK are facing shortages of facilities, staff, and equipment as the number of people affected by COVID-19 continues to grow.

On 27 March 2020, the UK Government introduced the [Health Services for Patients in England Public Policy Exclusion Order](#), which allows NHS bodies and independent health care providers to:

- exchange information on capacity (including staff and facilities);
- coordinate the deployment of staff;
- share facilities;
- engage in joint purchasing; and
- coordinate on the treatments offered by different providers.

## Issuing new guidance on the criteria for exemptions to the prohibition on restrictive agreements

Under section 9 of the Competition Act, an agreement that restricts competition is not prohibited if it meets four cumulative criteria: (i) contributing to improving production or distribution, or promoting technical or economic progress, (ii) allowing consumers a fair share of the resulting benefit, (iii) not imposing restrictions that are not indispensable for the attainment of those objectives, and (iv) not creating the possibility of eliminating competition in a substantial part of the product or services in question.

On 25 March 2020, the CMA issued [new guidance](#) on its approach to applying these legal criteria in the exceptional circumstances of the COVID-19 pandemic. It explained that the criteria will likely be met by any coordinated actions that do not go further than necessary and are designed to:

<sup>1</sup> [Schedule 3 of the Competition Act 1998](#) (the **Competition Act**) provides the Secretary of State with the power to suspend provisions of the Chapter 1 Prohibition on anticompetitive agreements where there are exceptional and compelling public policy reasons for doing so.

<sup>2</sup> The order applies to grocery retailers and wholesalers.

- avoid a shortage, or ensure security of, supply;
- ensure a fair distribution of scarce products;
- continue essential services; or
- provide new services such as food delivery to vulnerable consumers.

### **Prioritising collusion and exploitative abuses**

In its [Annual Plan for 2020/21](#), the CMA said that it intended to “*sharpen [its] focus on what matters to consumers*” so that its interventions deliver impact where it is most needed. It also said it would seek to “*improve how [it] choose[s] which problems to take on,*” with “*protecting consumers, including in particular those in vulnerable circumstances*” a key strategic objective for the organisation.

Applying these principles to the circumstances created by COVID-19, the CMA has [indicated](#) that the relaxation of competition laws “*does not give a ‘free pass’ to businesses to engage in conduct that could lead to harm to consumers in other ways,*” and that it will not tolerate unscrupulous businesses exploiting the crisis. It will therefore focus its efforts on investigating:

- exchanges between competitors of commercially sensitive information on future pricing or business strategies;
- exclusion of rivals from any efforts to cooperate in order to achieve security of supply, or denying rivals access to supplies or services;
- excessive prices or “price gouging”;
- collusion between businesses that seeks to mitigate the commercial consequences of a fall in demand by keeping prices high to the detriment of consumers; and
- coordination between businesses in relation to goods or services not affected by COVID-19.

The CMA has already started sending warning letters to companies in certain sectors. On 20 March 2020, the CMA sent an [open letter](#) to the pharmaceutical, food and drink sectors warning firms that they should not capitalise on the current situation by charging unjustifiably high prices for essential goods or making misleading claims around their efficacy.

The CMA is committed to ensuring that the prices of products deemed “*essential*” to protect consumers’ health are “*not artificially inflated by unscrupulous businesses seeking to take advantage of the current situation.*” Relatedly, the Prime Minister announced on 25 March 2020 that “*profiteering*” during the crisis may be addressed via legislation, and the CMA has made clear that it will “*advise the Government on emergency legislation if there are negative impacts for people which cannot be addressed through existing powers.*”

### **Creating a COVID-19 Taskforce**

On 20 March 2020, the CMA [announced](#) the creation of a COVID-19 taskforce to tackle the harmful effects of anti-competitive practices on consumers and the market.

The taskforce has a broad remit, including issuing warnings and taking enforcement action against companies exploiting these exceptional circumstances through unjustifiable prices or misleading claims, advising the government on emergency legislation if there are negative impacts for people which cannot be addressed through existing powers, and advising government on how to ensure competition law does not stand in the way of legitimate measures to protect public health and support the supply of essential goods and services.

The CMA’s Chief Executive, Andrea Coscelli, [has stated that](#) “*... our taskforce is monitoring market developments to enable us to intervene as quickly as possible. We have a range of options at our disposal, from warnings to enforcement action to seeking emergency powers. We hope that such action will not be necessary, but we will do whatever is required to stop a small minority of businesses that may seek to exploit the present situation.*”

## Adopting a consistent approach to business cooperation across competition regulators

The UK has nine sectoral regulations with concurrent competition powers in the sectors for which they are responsible.<sup>3</sup> Several of them have issued statements concerning COVID-19. The FCA and PSR announced that they support the CMA's guidance on its approach to business cooperation under competition law and will take a consistent approach to their competition law enforcement activity in the financial services sector. This means that these regulators will not enforce competition law in a way that impedes financial services providers from working together to provide essential services to consumers.

## Delays to timetables

### — *Funerals Market Investigation*

The CMA has decided to extend the deadline for the funerals market investigation by six months and will publish an updated administrative timetable in due course. The deadline for responding to its working papers has been suspended until further notice.

### — *State of Competition Report*

The CMA has announced that its report on the state of competition in the UK will be postponed, as the CMA will be focusing on more 'critical' issues during this unprecedented time.

### — *Digital Markets*

The CMA has postponed a public consultation into the creation of a digital markets task force. It announced that it will not publish a formal consultation seeking views and evidence on different aspects of its work, or proceed with plans for extensive stakeholder engagement at this time. The CMA said the exercise remains a key one for the regulator and it will address the matter in the future.

### — *Court delays/video hearings*

On 25 March 2020, Civil Procedure Rule Practice Direction 51Y (**PD51Y**) came into force, to facilitate video and audio hearings for the duration of the pandemic. We have included more information on this initiative below under the heading **COVID-19 and Civil Procedure Rule Updates**.

## UK State Aid Schemes Receive EC Approval

On 19 March 2020, the European Commission adopted the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, which sets out the options available to Member States to introduce support measures permitted under existing EU State aid rules. These include five types of aid: (i) direct grants, selective tax advantages and advance payments, (ii) state guarantees for loans taken by companies from banks, (iii) subsidized public loans to companies, (iv) safeguards for banks that channel State aid to the real economy, and (v) short-term export credit insurance.

On 25 March 2020, the European Commission approved two UK State aid schemes under this framework:

— **First support scheme:** guarantees that cover 80% of loan facilities for SMEs with a turnover of up to £45 million (approximately €49 million) to cover their working and investment capital needs. This scheme will be implemented through the British Business Bank, a national promotional bank.

— **Second support scheme:** direct grants to support SMEs affected by the coronavirus outbreak. The overall budget for this scheme is £600 million (approximately €654 million).

The beneficiaries of the schemes are SMEs active in market sectors experiencing temporary financial difficulties as result of COVID-19. The schemes

<sup>3</sup> Civil Aviation Authority (CAA), Office of Communications (Ofcom), Gas and Electricity Markets Authority (Ofgem), Financial Conduct Authority (FCA), Payment Systems Regulator (PSR), NHS Improvement (NHSI), Office of Rail and Road (ORR), Water Services Regulation Authority (Ofwat), Northern Ireland Authority for Utility Regulation (NIAUR).

are set to run until 30 September 2020, with the possibility to extend the scheme deadlines until 31 December 2020.

## Conclusion

The UK Government, the CMA, and sectoral regulators have responded to COVID-19 by refocusing their enforcement priorities and relaxing competition law in relation to essential products and services.<sup>4</sup> It is, though, important to remain aware of the following:

- The UK Government’s recent Public Policy Exclusion Orders do not cover exchanges of commercially sensitive information relating to costs or pricing. These exchanges are still prohibited.
- Agreements covered by Public Policy Exclusion Orders are not automatically excluded from the Chapter 1 prohibition. They must be notified to the Secretary of State within 14 days of being made.
- Public Policy Exclusion Orders will cease to have effect when they are brought to an end by the Secretary of State.

- Changes to UK competition law do not bind the European Commission, which will continue to enforce EU competition rules. The European Competition Network has,<sup>5</sup> however, indicated that it will not actively intervene against necessary and temporary measures put in place in order to avoid supply shortages. The European Commission has also offered to provide guidance on specific initiatives.
- The CMA’s new enforcement priorities do not offer protection against private litigation brought by third-party litigants for perceived breaches of competition law. Businesses may wish to seek legal advice on their potential exposure before entering into agreements with competitors.

In exempting cooperation among competitors to minimise disruptions in the supply of essential products and services, the CMA’s reaction to the immediate implications of COVID-19 has been swift, targeted, and effective. Companies should not, however, expect a “free pass” from the application of competition rules during the crisis and the CMA will remain vigilant to instances of unlawful collusion or exploitative practices.

<sup>4</sup> The UK Government has also issued the Solent Maritime Crossings Public Policy Exclusion Order, which suspends certain elements of competition law for Isle of Wight ferry routes and allows ferry operators to share labour and facilities, and to coordinate routes and timetables.

<sup>5</sup> The European Competition Network includes the European Commission, the EFTA Surveillance Authority, and EU Member State competition authorities.

# Judgments, Decisions, and Other News

## Judicial Procedure Updates (COVID-19)

### **COVID-19 and Civil Procedure Rule Updates.**

On 25 March 2020, Civil Procedure Rule Practice Direction 51Y (**PD51Y**) [came](#) into force, to facilitate video and audio hearings for the duration of the pandemic. PD51Y gives the Court authority to direct that a hearing must take place in private where it is necessary for the proper administration of justice. It ceases to have effect in accordance with the Coronavirus Act 2020. The Courts and Tribunals Judiciary (**CTJ**) has also [published](#) a Protocol Regarding Remote Hearings, which sets out guidance for the conduct of remote hearings, including considerations in advance of a hearing and practical advice as to the approach to video or audio hearings.

### **Judiciary Publishes COVID-19 Contingency Plan.**

On 27 March 2020, the CTJ [published](#) High Court Business: Contingency plan for Maintaining Urgent Court Hearings. The guidance distinguishes ‘urgent business’ from ‘business as usual’. While business as usual will continue to be dealt with during the pandemic to the extent possible, urgent business will be given priority. The guidance defines urgent business broadly as any business that would warrant an out of hours application in the Queen’s Bench Division, the Administrative Court, and the Business and Property Courts of England and Wales, among others.

## Statements by Concurrent Sectoral Regulators

### **Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR)**

The FCA and PSR [announced](#) that they support the CMA’s guidance on its approach to business cooperation in response to COVID-19 under competition law and will take a consistent approach to their competition law enforcement activity in the financial services sector. This means that these regulators will not enforce competition law in a way that impedes financial

services providers from working together to provide essential services to consumers during the COVID-19 pandemic.

The PSR’s deadline for responding to the call for [Input on competition issues that could arise in the UK’s New Payments Architecture](#) was originally set for 24 March. The PSR has [announced](#) that it will be reviewing the impacts of COVID-19 on submission and may consider setting a revised submission deadline in the coming weeks.

## Court Judgments

### **Europcar UK Limited and Others v**

**Mastercard Inc and Others.** On 31 January 2020, the Competition Appeal Tribunal (**CAT**) [stayed](#) a claim for damages brought by Europcar against Mastercard following the execution of a confidential agreement between the parties dated 21 January 2020.

### **Tobii AV v Competition and Markets Authority.**

On 17 February 2020, the CAT [refused](#) Tobii’s application to appeal the CAT’s judgment of 10 January 2020, which upheld the CMA’s decision and order requiring the full divestiture of Smartbox (see [UK Competition Newsletter, January 2020](#)).

### **Granville Technology Group Limited and Others v Infineon Technologies AG and Others (DRAM cartel).**

On 25 February 2020, the High Court [handed](#) down its judgment in a preliminary issue relating to limitation in a claim arising from the price-fixing of memory chips from 1998 to 2002. The defendants argued that the claims, brought in May 2016, were time-barred. The claimants argued that the limitation period began only once they became aware of the conduct (*i.e.*, when the European Commission published its decision in 2010). The Court found that, had they exercised reasonable due diligence, two of the claimants (Granville and VMT) could have discovered and were in fact on notice prior to the European Commission decision and were therefore time-barred, but that a third defendant (OTC),



which had gone into liquidation in 2002, did not have the requisite knowledge and was therefore within the limitation period.

***SP Power Systems and Others v Prysmian SpA and Others, National Grid Electricity Transmission plc v ABB Ltd and Others (Power Cables Cartel)***. On 28 February 2020, the High Court handed down an order transferring two damages claims for breaches of Article 101 TFEU to the CAT. Both claims arise from the European Commission's decision in the power cables cartel, in which producers of high voltage, underwater power cables were involved in a price-fixing cartel.

***Iiyama (UK) Limited and Others v Samsung Electronics Co. Limited and Others (LCD Cartel)***. On 4 March 2020, the CAT ordered that the damages claim brought by Iiyama against Samsung in relation to the LCD price-fixing cartel be withdrawn, by consent of the parties.

***Network Rail Infrastructure Limited v Achilles Information Limited***. On 5 March 2020, the Court of Appeal dismissed Network Rail's application to appeal a CAT decision which found that Network Rail had committed an abuse of a dominant position by requiring suppliers to be vetted by the Rail Industry Supplier Qualification Scheme.

***Higgins v Barclays, Evans v Barclays (FX Cartel)***. On 6 March 2020, the CAT handed down its judgment in an application for a preliminary hearing on a timing of carriage dispute. The question before the CAT was whether to hold a preliminary hearing to determine if the identity and/or funding of the applicant could preclude it from acting as a class representative. The CAT decided that it was not a sufficiently discrete issue to be heard as a preliminary issue. The CAT recognised that such a hearing might be available in different circumstances (*e.g.*, where the collective proceedings order application is defective or was brought late and without justification).

***Flynn Pharma Limited and Others v Competition Markets Authority***. On 10 March 2020, the Court of Appeal handed down its judgment in an appeal brought by the CMA against

a judgment of the CAT to dismiss a decision that would have imposed a total fine of £90 million on Pfizer and Flynn Pharma. The appeal concerned a CMA decision of 7 December 2016, relating to the pricing of particular pharmaceutical products. The CMA found that arrangements between Pfizer and Flynn Pharma amounted to excessive and unfair pricing and constituted an abuse of a dominant position. The Court allowed the appeal in part and remitted the case back to the CMA. The Court disagreed with the CAT's finding that the CMA had to establish a benchmark price or range of prices beyond a cost plus calculation, holding that the CMA was free to use any appropriate benchmark. The Court upheld the CAT's conclusion that the CMA had failed to give sufficient weight to the economic value of the products in its analysis.

***Infederation Limited v Google LLC***. On 18 March 2020, the High Court handed down its judgment on an application brought by Foundem seeking an order to introduce an independent expert into two 'legal eyes only' confidentiality rings to review evidence in a pending strike-out application made by Google. Foundem sought an order from the Court to allow an independent expert to be admitted to the confidentiality ring in order to assess the relevant evidence. The Court found in favour of Foundem, and held that such confidentiality arrangements should be exceptional, limited to the narrowest extent possible, and require careful scrutiny by the Court to avoid unfairness. In this instance, the threshold was not met and the interests of open justice took precedence.

***Royal Mail Group Limited v DAF Trucks Limited and Others (Trucks Cartel)***. On 26 March 2020, the CAT granted permission for the defendants to appeal a CAT judgment on a preliminary issue, published on 4 March 2020. The issue before the Tribunal was to what extent the recitals in the European Commission's decision were binding as a matter of EU law. At first instance, the CAT held that (i) certain of the recitals were binding in the circumstances and (ii) it would be an abuse of process for the defendants not to admit those facts. The defendants have appealed only the second point.

## Antitrust/market studies

**CMA Infringement Decisions in Nortriptyline Investigation.** On 4 March 2020, the CMA [published](#) two infringement decisions in relation to the supply of antidepressant nortriptyline. In one decision, the CMA found that pharmaceutical companies King Pharmaceuticals and Auden Mckenzie shared the supply of nortriptyline tablets between them between September 2014 and May 2015, and colluded to fix quantities and prices. In a separate decision, the CMA found that King Pharmaceuticals and two other pharmaceutical companies, Lexon and Alissa, had infringed competition law by illegally sharing commercially sensitive information in order to maintain high nortriptyline prices. The CMA levied total fines of £3.4 million across the four suppliers, and ordered a further payment of £1 million directly to the NHS from Auden Mckenzie and Accord-UK (the economic successor of Auden Mckenzie's nortriptyline business). The CMA [announced](#) its provisional findings from its investigation into the supply of nortriptyline tablets on 18 June 2019. On 20 December 2019, the CMA [secured](#) the disqualification of a director of King Pharmaceuticals for his role in the conduct and is considering the possible disqualification of other directors.

**CMA issues statements of objection to suppliers of music equipment.** On 24 March 2020, the CMA [issued](#) a Statement of Objection to each of Roland (U.K.) Limited and Korg UK Limited, suppliers of electronic drum kits and other music equipment to UK retailers. The CMA has provisionally concluded that Roland and Korg engaged in resale price maintenance in an effort to prevent retailers from offering lower prices. The CMA will consider representations from both companies before reaching a final decision.

**CMA suspended deadline in funeral directors market investigation.** On 25 March 2020, in light of the COVID-19 outbreak, the CMA [suspended](#) the deadline for responding to working papers in its market investigation into the supply of services by funeral directors. As mentioned above, the CMA has also suspended the statutory timetable for its investigation by six months, to the maximum permitted.

**Estate agencies director disqualification.** The CMA [announced](#) on 31 March 2020 that it was seeking the disqualification of two directors of estate agencies in the Berkshire area who had entered into an anti-competitive agreement to fix a minimum level of commission fees for residential sales services. This follows the CMA's [infringement decision](#) of 17 December 2019 relating to cartel behaviour by estate agents in the Berkshire area (see [UK Competition Newsletter, November-December 2019](#)).

## Merger Developments

### PHASE 2 INVESTIGATIONS

**Amazon/Deliveroo.** On 28 January 2020, the CMA [published](#) its Issues Statement in the Phase 2 investigation of the anticipated acquisition by Amazon of certain rights and a minority shareholding in Deliveroo. The CMA's Phase 1 decision found that the acquisition might result in the elimination of a potential competitor. Specifically, the CMA considered there was a realistic prospect that Amazon might re-enter the UK online restaurant platforms business (having exited in 2018) absent the transaction, and this would significantly increase competition in this highly concentrated market (for more detail see [UK Competition Newsletter, November-December 2019](#)). The statutory deadline for the investigation is 11 June 2020.

**Prosafe SE/Floatel International Limited.** On 13 February 2020, the CMA [announced](#) the cancellation of its Phase 2 merger investigation into the anticipated takeover of Floatel by Prosafe, after the parties abandoned the transaction. The parties decided not to proceed with the transaction in light of the CMA's provisional findings, [published](#) on 30 January 2020. The CMA [found](#) that the parties were each other's closest competitor in the market for the supply of semi-submersible accommodation support vessels (used to provide accommodation for employees working on offshore oil and gas rigs), winning the vast majority of tenders and together representing a share of supply in excess of 80%. It found that the merger could be expected to lead to higher prices for oil and gas companies tendering for staff accommodation or lower quality offerings. The



CMA's initial view was that blocking the merger would be the only way to address these concerns.

***Sabre Holdings Corporation/Farelogix Inc.***

On 7 February 2020, the CMA [issued](#) its provisional findings in the proposed \$360 million purchase of Farelogix by Sabre Corporation. The companies supply software to help airlines sell flights via travel agents and connect passengers via travel agents. In particular, the CMA [found](#) that if Sabre Corporation bought Farelogix, it might lose the incentive to invest in developing a certain technology that currently only Farelogix possesses. Currently, the only remedy that the CMA has [identified](#) as likely to be effective in addressing these concerns is the prohibition of the merger.

***JD Sports Fashion plc/Footasylum plc.***

On 11 February 2020, the CMA [issued](#) its provisional findings in the Phase 2 investigation of the completed acquisition of Footasylum by JD Sports in 2019. Both companies sell sports-inspired casual clothing and footwear in stores in the UK and online, with JD Sports being the leading UK retailer of sports fashion footwear and clothing. The CMA provisionally [found](#) that the parties had similar offerings, closely monitored and responded to each other, and were viewed by customers and other retailers as close competitors. The CMA further found that the merger could lead to fewer discounts and less choice in stores and online, which could particularly affect young customers and students. The CMA has also [published](#) a notice of potential remedies, in which it states that a full divestiture of Footasylum would be an effective and proportionate remedy.

***Bottomline/Experian.*** On 17 March 2020, the CMA cleared Bottomline's purchase of Experian after an in-depth Phase 2 investigation. Both parties provide payments software for businesses. Bottomline, a NASDAQ-listed company, acquired Experian's Experian Payments Gateway (EPG) business and related assets by way of an asset purchase in 2019. Following its Phase 2 investigation, the CMA [found](#) that EPG was a weak competitive force in the market. Experian had not invested in its EPG business in recent years, and the evidence showed that, absent the acquisition by Bottomline,

EPG would likely have been acquired by a particular alternative purchaser whose competitive strategy with regard to EPG would have been largely similar to that which existed pre-merger.

***McGraw-Hill Education, Inc./Cengage***

***Learning Holdings II, Inc.*** On 24 March 2020, the CMA [referred](#) the anticipated acquisition by McGraw-Hill Education of Cengage Learning Holdings II for an in-depth Phase 2 investigation. The parties are publishers of textbooks and associated materials for higher education students, both headquartered in the US. During its Phase 1 investigation, the CMA [identified](#) 379 courses where both companies offered textbooks, and found that the merger would give rise to a realistic prospect of substantially lessening competition in relation to 51 of these courses due to high combined shares of supply, a lack of alternative titles and a lack of entry or expansion of existing firms. The parties had offered remedies in lieu of a reference, which would have involved divesting a range of titles within various courses, both globally and within regional limits. The CMA rejected these undertakings, concluding that there was a significant risk the proposed divestitures would not restore competition to the level that would have prevailed absent the merger.

***Future Plc/TI Media Limited.*** On 16 March 2020, the CMA [announced](#) it would refer the merger for a Phase 2 investigation unless the parties offered acceptable undertakings in lieu. The CMA is concerned about a reduction in competition from the transaction as the parties compete closely in photography and football magazines and technology websites. Future owns titles such as FourFourTwo and the technology website Techradar.com. TI Media owns titles such as Ideal Home, Marie Claire and the website Trustedreviews.com. On 26 March 2020, the CMA [announced](#) it would be minded to accept the undertakings offered by the parties, or a modified version of them. The parties offered to divest one of TI Media's magazines in each of the football and photography categories and one technology website: *World Soccer*, *Amateur Photographer* and *Trustedreviews.com*. The CMA has until 29 May 2020 to decide whether to accept the undertakings.

**FNZ (Australia) Bidco Pty Ltd/GBST Holdings Limited.** On 30 March 2020, the CMA announced that it would refer the completed acquisition of GBST by FNZ for a Phase 2 investigation unless the parties offered suitable undertakings in lieu of a reference. The parties are two of the leading suppliers of specialist technology for UK financial advisor platforms. The CMA's Phase 1 investigation found that FNZ and GBST compete closely in a concentrated market with few other significant suppliers, and that the lack of credible alternative supply options and the high barriers to switching increased likelihood of horizontal unilateral effects as a result of the merger.

**Hunter Douglas N.V./247 Home Furnishings Ltd.** On 1 April 2020, the CMA announced it was referring the acquisition of 247 Home Furnishings by Hunter for an in-depth Phase 2 merger investigation. The CMA's investigation relates to two acquisitions: the acquisition of notes and certain rights in 247 Home Furnishings by Hunter in 2013 and the acquisition of a controlling interest in 247 Home Furnishings by Hunter in 2019. The parties are active in the online retail supply of blinds, shutters and curtains in the UK. The CMA considers that the statutory four-month time period for making a phase 2 reference in relation to the 2013 acquisition did not begin to run until it became aware of that transaction as part of its review of the 2019 acquisition. The CMA found in its Phase 1 investigation that the parties have a very high combined share of supply in the online retail supply of made-to-measure blinds in the UK, being the largest and third largest suppliers in the market. It found that multi-channel retails of made-to-measure blinds such as John Lewis and online marketplace platforms such as Amazon exert a very limited constraint on the parties.

#### PHASE 1 CLEARANCE DECISIONS

**World Fuel Services Inc/UVair European Fuelling Services Limited.** On 12 February 2020, the CMA cleared the anticipated acquisition of UVair European Fuelling Services by World Fuel Services. World Fuel Services is part of the New York Stock Exchange-listed World Fuel Services Corporation, a US company. UVair is

a wholly owned subsidiary of Universal Weather and Aviation, Inc., incorporated in the Republic of Ireland and headquartered in the US. Both parties are active in the supply of aviation fuel at airports in the UK.

**Google LLC/Looker Data Sciences, Inc.** On 13 February 2020, the CMA cleared the completed acquisition of Looker Data Sciences by Google. Looker Data Sciences is a US-based provider of business intelligence (BI) tools, used to analyse and interpret business data. The CMA found that Google and Looker had a relatively low combined share of supply of BI tools worldwide and in the UK, and it was unlikely that the acquisition would lead to increased prices or reductions in quality. The CMA also analysed the vertical relationships between the parties and concluded that the transaction would not lead to the foreclosure of other BI providers. .

**Jacobs U.K. Limited/Wood Nuclear Limited.** On 4 March 2020, the CMA cleared the anticipated acquisition by Jacobs U.K. of Wood Nuclear. Wood Nuclear Limited is an Aberdeen-based energy services firm, while Jacobs is a US engineering firm. In August 2019, Wood Nuclear Limited announced that it was selling its nuclear business to Jacobs U.K. Limited.

**RHI Magnesita N.V./Kümaş Manyezit Sanayi A.Ş.** On 20 March 2020, the CMA cleared the anticipated acquisition by RHI Magnesita of Kümaş Manyezit Sanayi. RHI Magnesita, listed on the London Stock Exchange, is a global supplier of refractory products, systems and services. Kümaş Manyezit Sanayi is a Turkish publicly held company which produces and supplies materials derived from magnesite ore.

**PepsiCo, Inc./Pioneer Food Group Limited.** On 18 March 2020, the CMA announced its decision to clear the anticipated acquisition by PepsiCo of Pioneer Food Group. PepsiCo is an American multinational food and beverage corporation and Pioneer Food Group is a South African company specialising in the production, distribution and marketing of food and beverage products.

**DMG Media Limited/JPIMedia Publications**

**Limited.** On 27 March 2020, the CMA [cleared](#) the completed acquisition of JPIMedia by DMG Media. This followed the announcement by the Secretary of State for Digital, Culture, Media and Sport that she would not refer the merger for a Phase 2 investigation. The Secretary of State had issued a Public Interest Intervention Notice (**PIIN**) on media plurality grounds (see [UK Competition Newsletter, January 2020](#)). Ofcom and the CMA [submitted](#) reports on these matters on 13 March 2020. DMG Media owns newspapers such as the *Daily Mail* and *Metro*, and the acquisition involves JPIMedia's national newspaper.

**Flutter Entertainment plc/The Stars**

**Group Inc.** On 31 March 2020, the CMA [cleared](#) the merger between betting firms Flutter and Stars. Flutter owns Paddy Power and Betfair, and Stars owns SkyBet. The CMA found that there was strong competition for customers among online betting firms, and that customers frequently opened accounts with other providers.

**Brexit news**

[The House of Lords' report](#) and the [The House of Commons briefing paper](#) sets out new guidance on post-Brexit EU-UK dealings, covering a range of topics including the compatibility of two competition law systems.

While the House of Lords found that the state aid positions of the EU and UK were incompatible, the European Commission published a [draft EU-UK partnership](#), which, if agreed, would require the UK to enact new laws governing trade-related matters between the EU and the UK. This agreement also envisages competition enforcement and regulation on matters impacting EU and UK trade.

## ONGOING PHASE 1 INVESTIGATIONS

| <b>Parties</b>  | <b>Decision Due Date</b> |
|---|--------------------------|
| <a href="#">Circle Health/BMI Healthcare</a>  | 8 April 2020             |
| <a href="#">Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust/Poole Hospital NHS Foundation Trust</a> | 27 April 2020            |
| <a href="#">Takeaway.com N.V./Just Eat plc</a>  | 19 May 2020              |
| <a href="#">TVS Europe Distribution Limited/3G Truck &amp; Trailer Parts</a>  | 2 June 2020              |
| <a href="#">Viagogo/StubHub</a>   | TBC                      |
| <a href="#">Breedon Group plc/Cemex Investments Limited</a>   | TBC                      |
| <a href="#">Aragorn (KKR &amp; Co Inc)/OverDrive Holdings Inc</a>   | TBC                      |
| <a href="#">Dechra Pharmaceuticals PLC/Osurnia business of Elanco Animal Health Incorporated</a>                      | TBC                      |
| <a href="#">Yorkshire Purchasing/Findel Education</a>   | TBC                      |

## LONDON TEAM

**London Office**  
2 London Wall Place  
London EC2Y 5AU



**Maurits Dolmans**  
+44 20 7614 2343  
[mdolmans@cgsh.com](mailto:mdolmans@cgsh.com)



**Romi Lepetska**  
+44 20 7614 2292  
[rlepetska@cgsh.com](mailto:rlepetska@cgsh.com)



**Nicholas Levy**  
+44 20 7614 2243  
[nlevy@cgsh.com](mailto:nlevy@cgsh.com)



**Alexander Waksman**  
+44 20 7614 2333  
[awaksman@cgsh.com](mailto:awaksman@cgsh.com)



**Romano Subiotto QC**  
+32 2 287 2092  
[rsubiotto@cgsh.com](mailto:rsubiotto@cgsh.com)



**Wanjie Lin**  
+32 2 87 2076  
[wlin@cgsh.com](mailto:wlin@cgsh.com)



**Paul Gilbert**  
+44 20 7614 2335  
[pgilbert@cgsh.com](mailto:pgilbert@cgsh.com)



**Alexandra Hackney**  
+44 20 7614 2371  
[ahackney@cgsh.com](mailto:ahackney@cgsh.com)



**Richard Pepper**  
+32 2 287 2181  
[rpepper@cgsh.com](mailto:rpepper@cgsh.com)



**Lanto Sheridan**  
+44 20 7614 2308  
[lsheridan@cgsh.com](mailto:lsheridan@cgsh.com)



**Paul Stuart**  
+44 20 7614 2207  
[pstuart@cgsh.com](mailto:pstuart@cgsh.com)



**Courtenay Stock**  
+44 20 7614 2375  
[cstock@cgsh.com](mailto:cstock@cgsh.com)



**John Messent**  
+44 20 7614 2377  
[jmessent@cgsh.com](mailto:jmessent@cgsh.com)



**Fay Davies**  
+44 20 7614 2276  
[fdavies@cgsh.com](mailto:fdavies@cgsh.com)



**Ricardo Zimbron**  
+44 20 7614 2307  
[rzimbron@cgsh.com](mailto:rzimbron@cgsh.com)



**Georgina Rawson**  
+44 20 7614 2214  
[grawson@cgsh.com](mailto:grawson@cgsh.com)



**Esther Kelly**  
+32 2 287 2054  
[ekelly@cgsh.com](mailto:ekelly@cgsh.com)



**Laura Hellwig**  
+44 20 7614 2238  
[lhellwig@cgsh.com](mailto:lhellwig@cgsh.com)



**Henry Mostyn**  
+44 20 7614 2241  
[hmostyn@cgsh.com](mailto:hmostyn@cgsh.com)



**Ern Huei Lim**  
+44 20 7614 2201  
[elim@cgsh.com](mailto:elim@cgsh.com)

