

November/December 2019

UK Competition Law Newsletter

Highlights:

- High Court grants first application for permission for a company director to act following a Competition Disqualification Order
- CMA publishes interim report in its online platforms and digital advertising market study
- CMA refers Amazon/Deliveroo minority shareholding acquisition to Phase 2

CMA's Increasing Enforcement Of Document Requests In Merger Review

There is a global trend of increasingly burdensome demands by competition authorities conducting merger review for the submission of merging parties' internal documents, and the CMA is no exception. In recent months the CMA has also taken greater steps to enforce such requests, in particular by fining companies for failing to comply with formal requests for documents under Section 109 of the Enterprise Act 2002 ("Section 109 Notices").

The CMA's Approach To Section 109 Notices

When reviewing mergers, the CMA can request information (including internal documents) either informally or by issuing a mandatory Section 109 Notice. Section 110(1) allows the CMA to impose an administrative penalty where it considers that a Section 109 Notice has not been complied with in the absence of a reasonable excuse. In complex cases, the CMA may engage with the parties on draft forms of Section 109 Notices, although the guidance published by the CMA in January 2019 makes clear that it is ultimately for the parties to ensure that they produce all relevant materials responsive to the request. The CMA will not be able to give pre-emptive assurances that engaging with a Section 109 notice in a particular way will not lead to a breach in the event that further responsive documents come to light at a later date.

The Sabre/Farelogix Penalty

On 27 September 2019, the CMA fined Sabre £20,000 for failing to comply with two Section 109 Notices requesting internal documents in connection with the CMA's review of its anticipated acquisition of FLX, a rival supplier of IT systems that enable airlines to sell tickets and related add-ons. The breaches related to Sabre's approach to documents treated as legally privileged in the U.S.

In March 2019, after Sabre submitted a draft merger notice together with 22 internal documents, the CMA issued a first Section 109 Notice requiring Sabre to explain the methodology used to identify such documents and provide all additional documents responsive to Questions 8-10 of the CMA's Draft Merger Notice. In response, Sabre explained that it had searched within a pool of documents limited to those *"previously produced to the [DOJ] on the basis of the review process already carried out by Sabre in connection with the investigation by the [DOJ]."* It noted that around 10,000 documents responsive to the DOJ's request had been withheld from the DOJ on grounds of legal privilege. Sabre submitted 1,117 documents in respect to the March Section 109 Notice (some of which were partially redacted on grounds of legal privilege).

In April 2019, the CMA made a further request for documents, on which it consulted in advance with the parties and the DOJ.¹ Sabre provided a further 5,000 documents, some of which were partially redacted, having again stated that it would limit its search to the documents produced to the DOJ. Sabre submitted the final version of the Merger Notice on 19 June 2019.

On 29 June 2019, Sabre informed the CMA that Sabre's U.S. counsel had disclosed an additional 6,740 documents to the DOJ on 3-5 June 2019 after discussions with the DOJ regarding the scope of privilege. After reviewing the additional documents submitted to the DOJ, Sabre submitted 444 further documents to the CMA.

The CMA sent Sabre a provisional penalty decision on 13 September 2019 for failure to comply with the Notices. Sabre argued that it had fully complied with the Notices because the search parameters had been "agreed" with the CMA. It also submitted that it had a reasonable excuse for any failure to comply, because the CMA had not objected to the proposed methodology, and that a fine was not appropriate because there had been no adverse impact on the CMA's inquiry and no need to deter the conduct at issue.

The CMA found, however, that the Notice required Sabre to provide documents responsive to the questions in the Notice, not only documents responsive to a particular methodology. The CMA found that the *"over-designation"* of documents as privileged was *"in effect, the misapplication of a methodology that, on its face, raised no objections."* Relying on external US counsel to conduct a privilege review was not accepted as a *"reasonable excuse."* Finally, the CMA referred to its Guidance that *"it is ultimately the parties' responsibility to ensure that relevant material is produced."*

The AL-KO/Bankside Patterson Penalty

On 21 May 2019, the CMA imposed a £15,000 fine on AL-KO for failing to comply with two separate Section 109 Notices – one dated 29 October 2018 and one dated 27 February 2019. AL-KO was found to have infringed Section 109 by failing to produce certain documents responsive to the notices in its initial production. The CMA found that there was a pattern of errors in AL-KO's compliance with the CMA's processes, which was an aggravating factor in the CMA's decision to issue a penalty. The CMA's decision identified the following errors.

- The omission of two search terms from the search coding developed by AL-KO in its methodology for complying with the Section 109 Notice. Properly applying the two omitted search terms led to the production of an additional 258 documents.

¹ In paragraph 4.3 of Administrative Penalties: Statement of Policy on the CMA's approach (CMA4), the CMA notes that it may be more likely to impose a penalty for failure to comply with investigatory requirements where the CMA has provided a draft request.

- Searching a specific project file rather than a relevant custodian's entire inbox. A proper search of the entire inbox led to the production of a further 388 documents.
- An assertion that there were no internal documents discussing a particular counterfactual scenario, which turned out to be incorrect when AL-KO produced four documents responsive to a further s.109 notice covering that specific issue.
- Failing to produce 517 documents responsive to the first Section 109 Notice, which AL-KO identified in the course of responding to the second notice. AL-KO suggested that the error had arisen because of limitations in the search functionality of Outlook when searching the emails of the CEO.

AL-KO submitted that these were innocent and non-deliberate human errors, which occurred while AL-KO was genuinely trying to achieve compliance. This was not considered to be a reasonable excuse by the CMA, which found that adopting an inadequate search approach was an error that could and should have been foreseen by AL-KO. These errors were the focus of the CMA's penalty decision.

As with *Sabre/Farelogix*, AL-KO was initially provided with a draft form of the Section 109 Notice, and engaged with the CMA on its scope, suitable search terms, and methodology. The CMA acknowledged, however, that the errors in this instance were not as a result of the search methodology adopted being inadequate, and that the methodology was "*sensible and practical*" in the circumstances.

Conclusion

Section 109 Notices are likely to be increasingly common in the coming years, particularly in light of the greater role the CMA will take in merger review post-Brexit.

The penalties imposed on Sabre and AL-KO confirm the CMA's strict application of the applicable rules and underline its view that companies must take responsibility for compliance, even where they have discussed their proposed methodology with the CMA in advance of providing a response. The AL-KO fine shows the importance of executing the proposed methodology with precision, while the Sabre decision demonstrates the risks of limiting the search for documents by any parameter that is not in the Section 109 Notice. Although there are often efficiencies to be gained from consistency in document production for multiple reviews, it is important that counsel in various jurisdictions are closely aligned on procedure as well as substance.

Judgments, Decisions, and News

Court Judgments

R (on behalf of British Gas Trading Limited) v The Gas and Electricity Markets Authority.

On 13 November 2019, the High Court upheld a judicial review challenge to Ofgem's decision on the implementation of a tariff cap and the calculation of the wholesale energy cost allowance for the first period of the price cap (Q1 2019). The CMA investigated the energy supply market in June 2016 and concluded that there was ineffective competition in the energy supply market, which had resulted in higher default tariffs being charged to customers. In order to remedy this, Ofgem was required to impose a cap on standard variable and default energy tariffs (*i.e.*, the tariffs charged to customers when the customer had not chosen any other tariff). Ofgem published its decision setting the price cap, which included an assessment on the wholesale energy cost allowance for Q1 2019, in November 2018. British Gas argued that (i) Ofgem's price cap was based on an incorrect assumption about the behaviour of "typical" suppliers, and (ii) that Ofgem did not properly consult energy suppliers when making that assumption. The High Court found that Ofgem had made its decision on the basis of a factually incorrect assumption, and furthermore, it had failed to communicate the basis of its assumption to the energy suppliers. Ofgem had, therefore, failed to conduct a fair consultation process, as it did not afford a fair opportunity for those to whom the consultation was directed adequately to address the issue in question. British Gas was awarded the declaratory relief it sought and Ofgem was required to reconsider its price cap allowance for Q1 2019.

First Application For Permission To Act Following Competition Disqualification Order (Re Fourfront Group Ltd and others). On 5 December 2019, the High Court gave permission for two individuals disqualified from acting as company directors as a result of breaching competition law to resume practicing as such for certain companies within the Fourfront Group. In

reaching this decision, the Court found that applications for permission in relation to competition disqualifications differ from applications involving more general disqualifications. This was because competition disqualifications "*involve dishonest behaviour that is almost certain to result in real financial damage to others,*" which requires the court to pay particular attention to the wider public protection and deterrence considerations relevant to the competition disqualification regime. The Court concluded that the need of the companies concerned to have these individuals act as directors (rather than the need of the individuals themselves) outweighed any public protection concerns. This finding was based on the roles of the disqualified individuals within the group, as well as affidavit evidence as to their strategic importance for the companies concerned and the likely difficulties in finding replacements. The finding was reinforced by the fact that the companies were bearing the costs of the claimants' applications, which showed that they are "*serious about their need for the claimants' continued involvement.*"

Antitrust/Market Studies

Ofcom Infringement Decision In Parcel Delivery Services Investigation. On 14 November 2019, Ofcom announced that it had issued an infringement decision to the Royal Mail Group and The SaleGroup ("TSG") for entering into and carrying out an anti-competitive agreement not to offer or supply parcel delivery services to each other's customers. Ofcom concluded that the agreement breached competition law because its object was to restrict competition through the sharing of customers and it led to some customers paying higher prices. Both parties proactively implemented, monitored and enforced their agreement between at least August 2013 and May 2018. TSG was fined £40,000 following its agreement to settle the case. Royal Mail was granted immunity under the CMA's leniency policy after reporting the agreement to the CMA and, in light of its cooperation during Ofcom's investigation, it was not fined.

NATS En-route Limited (NERL) Price

Determination. On 20 November 2019, the Civil Aviation Authority (“CAA”) referred disputed licence conditions to the CMA under section 12 of the Transport Act 2000. The dispute arises in connection with NERL, which is the monopoly provider of en route and certain approach air traffic services in the UK. On 29 August 2019, the CAA published proposed modifications to NERL’s air traffic services licence. On 10 September 2019, NERL rejected these proposed modifications. The CAA has referred the dispute to the CMA which is required to investigate and report on whether or not a failure to set price controls and impose appropriate modifications to the disputed licence would operate against the public interest. The CMA must conclude the determination within six months of the reference, unless the CAA agrees to an extension of up to a further six months.

Ofcom Opens Competition Investigation

Into Parcel Delivery And Pick-Up Sector. On 22 November 2019, Ofcom announced that it has opened an investigation into agreements between providers of parcel-delivery and pick-up services that it suspects of establishing minimum prices and imposing online sale restrictions. Ofcom notes that the investigation is at an early stage and it has not reached a view on whether there has been a breach of competition law. As is usual at such an early stage of an investigation, the suspected participants have not been named.

CMA Closes Investigation Into Pharmaceutical Sector On Administrative Grounds.

On 26 November 2019, the CMA announced that it had decided to close an investigation into suspected anti-competitive agreements and conduct in relation to a generic drug. The CMA has decided to close the investigation on administrative priority grounds having considered the CMA’s prioritisation principles and the information available at the time. The CMA opened the investigation in October 2017 citing the possibility of anti-competitive agreements and/or concerted practices and suspected abuse of dominance.

CMA Found HSBC And Santander In Breach Of The Retail Banking Market Investigation Order 2017.

The CMA has published directions in relation to breaches of Part 6 of the Retail Banking Investigation Order 2017 (the “Order”) by HSBC Bank UK plc and Santander UK plc. Part 6 of the Order requires banks to use reasonable endeavours to ensure customers receive text alerts before banks charge them for going into an unarranged overdraft. The CMA found that HSBC was in contravention of this rule twice, when (i) it’s ‘unsociable hours’ policy meant it did not contact customers during certain hours (even though HSBC continued to charge the customers), and (ii) it stored customer’s mobile phone numbers in a format that was incompatible with their text alert system. The CMA found Santander in contravention of the Order on six occasions. Amongst other breaches, Santander had (i) failed to alert customers until later in the day due to high volumes of payment processing, (ii) failed to enrol customers’ mobile numbers into its system, and (iii) stored customers’ mobile numbers in the wrong data fields, so customers were not enrolled for mobile alerts. The CMA directed HSBC and Santander to refund customers and to undertake independent checks of their compliance.

CMA Investigation Into Suspected Anti-Competitive Arrangements In The Residential Estate Agency Sector.

On 17 December 2019, the CMA issued an infringement decision finding that four estate agents operating in the Berkshire area had participated in a price-fixing cartel. The infringement constituted an agreement between the estate agents to fix and maintain a minimum level of commission fees to be charged for the provision of traditional residential estate agency services for a period of almost seven years (from at least 1 September 2008 to 19 May 2015). Fines totalling £605,519 have been imposed on three of the four estate agents.

CMA Market Study Into Online Platforms and Digital Advertising. On 18 December 2019, the CMA published an interim report in relation to its online platforms and digital advertising market study. The report sets out the CMA's initial findings, including the concerns it has identified and the potential interventions it is considering. The CMA is not currently minded to make a market investigation reference, although it describes this decision as a finely balanced issue. The CMA has requested comments on its interim findings and is due to publish its final report by 2 July 2020.

Merger Developments

PHASE 2 INVESTIGATIONS

Danspin A/S/Lawton Yarns Limited. On 5 November 2019, the CMA announced that it would refer Danspin's completed acquisition of Lawton Yarns for an in-depth Phase 2 investigation unless the parties offered suitable undertakings in lieu of a reference. Both parties supply woollen yarn to carpet manufacturers in the UK. The CMA's Phase 1 investigation found that the transaction involved the two largest suppliers of woollen yarn in the UK and that the other competitors in the market had a limited UK presence and consequently would impose a weak constraint on the merged entity.

On 19 November 2019, the CMA issued a decision that it was minded to accept the undertakings offered by Danspin to divest Lawton Yarns Limited and P41 Limited. The CMA has until 17 January 2020 to decide whether to accept the undertakings.

Gardner Aerospace Holdings Limited/Impcross Limited. On 5 December 2019, the Secretary of State for Business, Energy & Industrial Strategy issued a public interest intervention notice on the public interest ground of national security in relation to the anticipated acquisition by Gardner Aerospace of Impcross. Gardner Aerospace manufactures and supplies aerospace parts and is owned by the Chinese group Ligeance Aerospace Technologies Co Ltd. Impcross is a UK company that manufactures and supplies aerospace parts

to both the civilian and defence sectors. The Secretary of State has asked the CMA to report to her by 2 March 2020 on whether it believes that the transaction would result in a substantial lessening of competition within any market in the UK. The report will also summarise any representations the CMA receives on the national security public interest consideration. The Secretary of State will then decide on whether the transaction may be expected to operate against the public interest and should be referred for an in-depth Phase 2 review.

Bauer Media Group/Celador Entertainment Limited. On 5 December 2019, the CMA issued its provisional findings in Bauer Media's completed acquisition of certain radio businesses of Celador Entertainment Limited, Lincs FM Group Limited and The Wireless Group Limited along with the entire business of UKRD Group Limited. Bauer owns and operates a portfolio of commercial radio stations that broadcast locally and nationally. The businesses that Bauer has acquired include radio stations, local FM radio licenses, and a 50% interest in First Radio Sales Limited which provides independent local radio stations with sales representation to national advertisers. The CMA provisionally found that the four acquisitions have resulted, or may be expected to result, in a substantial lessening of competition in the market for the supply of representation for national advertising to independent radio stations in the UK. This is due to Bauer's ability to exercise material influence over First Radio Sales and its acquisition of a large proportion of First Radio Sales' customers. The CMA found that if First Radio Sales shut down, local radio stations would be able to seek sales representation only from two other suppliers, one being Bauer. In addition, the CMA found that the acquisition of Wireless has resulted, or may be expected to result, in a substantial lessening of competition in the supply of local radio advertising in the Wolverhampton area. The CMA has also issued a notice of possible remedies which includes the unwinding of the deal. The statutory deadline is 17 March 2020.

First Rail Holdings & Trenitalia UK/West Coast Partnership Rail Franchise. On 6 December 2019, the CMA announced that it would accept undertakings in lieu of an in-depth Phase 2 investigation. This follows the CMA's announcement on 7 November 2019 that the award of West Coast Rail to a joint venture between FirstGroup and Trenitalia might raise competition concerns. The CMA's concerns stemmed from the overlap between this joint venture and TransPennine Express, another train operating company solely controlled by FirstGroup. The CMA's Phase 1 investigation found that these parties would overlap on 17 routes between Preston and Scotland (terminating at Glasgow or Edinburgh) and four routes between Oxenholme and Carlisle. On 17 of these routes, the parties would be the only providers of rail transport and on the other four there would only be one other competitor. As part of the undertakings, both West Coast Rail and TransPennine Express will introduce fare caps on unregulated fares and maintain the same availability of cheaper advance tickets for all routes that raise competition concerns.

Stonegate Pub Company/Ei Group plc. On 6 December 2019, the CMA announced that it would refer Stonegate's anticipated acquisition of Ei for an in-depth Phase 2 investigation unless the parties offer suitable undertakings in lieu of a reference. Both parties own and operate pubs across the UK, including chains such as the Slug and Lettuce and Yates. After completing its initial Phase 1 investigation, the CMA found that there may be competition concerns in 51 local areas where the merged entity would face limited competition.

On 20 December 2019, the CMA issued a decision that it was minded to accept undertakings offered by Stonegate to make divestments in 51 local areas. The CMA has until 19 February 2020 to decide whether to accept the undertakings.

Tobii AB/Smartbox Assistive Technology Limited. On 19 December 2019, the CMA issued an Order in relation to Tobii's completed acquisition of Smartbox requiring Tobii to divest Smartbox. In its Final Report, the CMA found that the merger may be expected to result in a substantial lessening of competition in the market for the supply of dedicated augmentative and assistive communication solutions in the UK and that a full divestiture of Smartbox would be the only effective remedy. The Order recognises that, on 13 September 2019, Tobii made an application to the Competition Appeal Tribunal for a review of the CMA's decision in the Final Report. The CAT's judgment is pending, however the CMA has a statutory duty to accept Final Undertakings or make a Final Order by 19 December 2019. The CMA therefore made this Order with the proviso that it will take such further action as appropriate to reflect the CAT's judgment once it is handed down.

LN-Gaiety Holdings/MCD Productions. On 19 December 2019, the CMA announced that it had cleared LN-Gaiety's anticipated acquisition of MCD. LN-Gaiety is a joint venture between Live Nation and Gaiety. Both parties own and operate live music venues and festivals in the UK and Ireland and also provide ticketing services. MCD primarily promotes music events in Ireland. The CMA's investigation considered the vertical effects in the promotion of live music events above a capacity of 1,000 people through the foreclosure of MCD's rivals from ticketing services. The CMA concluded that the merged entity would not have sufficient incentive to foreclose rivals because these rivals could switch their business to an alternate provider of ticketing services. This in turn may enable a competitor of Live Nation to enter or expand their presence in the Irish ticketing services market.

Aerostar/Mettis. On 20 December 2019, the Secretary of State for Business, Energy & Industrial Strategy issued a public interest intervention notice on the public interest ground of national security in relation to the anticipated acquisition by Aerostar of Mettis. Aerostar is a

fund established in China and proposes to acquire Mettis either directly or through Ligeance Aerospace Technology Co Ltd, a company owned by Aerostar. Mettis is a UK company that manufactures aircraft parts and supplies both civilian and defence customers. The Secretary of State has asked the CMA to report to her by 17 March 2020 on whether it believes that the transaction would result in a substantial lessening of competition within any market in the UK. The report will also summarise any representations the CMA receives on the national security public interest consideration. The Secretary of State will then decide whether the transaction may be expected to operate against the public interest and should be referred for an in-depth Phase 2 review.

Ecolab/The Holchem Group. On 23 December 2019, the CMA [announced](#) that it had accepted Final Undertakings in relation to Ecolab's completed acquisition of Holchem. In its Final Report, the CMA [found](#) that the merger may be expected to result in a substantial lessening of competition in the market for the supply of formulated cleaning chemicals to food and beverage customers in the UK. The CMA found that an effective and proportionate remedy would be the divestment of Holchem Laboratories Limited. The Final Undertakings reflect these findings.

On 1 November 2019, Ecolab made an application to the Competition Appeal Tribunal for a review of the CMA's Final Report. This application is ongoing.

Amazon/Deliveroo. On 27 December 2019, the CMA [announced](#) that it had referred Amazon's anticipated acquisition of a minority shareholding and certain rights in Deliveroo for an in-depth Phase 2 investigation. Amazon is an online retailer and marketplace and offers delivery of groceries through Amazon Fresh and Whole Foods Market. Deliveroo is a UK-based online food delivery company.

The CMA's Phase 1 investigation [found](#) that the anticipated acquisition might give rise to a realistic prospect of a substantial lessening of competition

in the supply of online food platforms in the UK. This finding is based on Amazon's internal documents which show that it has a strong interest in this sector and that there is a material likelihood of Amazon entering the market absent the transaction. There are only a limited number of existing platforms and the entry of Amazon would significantly increase competition in the UK. This incentive would be diminished by the anticipated acquisition. In addition, the CMA found that the anticipated acquisition may give rise to a realistic prospect of a substantial lessening of competition in the supply of online convenience groceries in the UK. This service involves the "ultrafast" delivery of groceries within a few hours of ordering. Amazon and Deliveroo are two of only a small number of suppliers capable of supplying this "ultrafast" delivery due to their UK-wide delivery networks. The CMA found that competition between them could grow as this market develops.

PHASE 1 CLEARANCE DECISIONS

Unite Group plc/Liberty Group plc. On 6 November 2019, the CMA [cleared](#) the anticipated acquisition by Unite Group plc of Liberty Living Group plc. Unite is a manager and developer of purpose-built student accommodation in the UK and Liberty Living invests in and operates student accommodation.

Salesforce.com, Inc./Tableau Software Inc. On 22 November 2019, the CMA [cleared](#) the anticipated acquisition by Salesforce.com, Inc. of Tableau Software Inc. Salesforce.com is a leading provider of customer relationship management cloud-based software solutions headquartered in San Francisco, California and Tableau Software is a provider of business analytics software headquartered in Seattle, Washington.

Cartamundi NV/Naipes Heraclio Fournier S.A./United States Playing Cards Company. On 6 December 2019, the CMA [cleared](#) the acquisition by Cartamundi NC of Naipes Heraclio Fournier S.A. and the United States Playing Card Company, applying the 'de minimis' exception. Cartamundi is a global manufacturer and

distributor of playing cards and board games, Naipes Heraclio Fournier is a playing card manufacturing company based in Spain, and the United States Playing Card Company is a designer and manufacturer of playing cards based in Kentucky.

USCO SpA/Knockturn Limited. On 6 December 2019, the CMA cleared the anticipated acquisition by USCO SpA of Knockturn Limited (trading as Strickland Tracks Limited). USCO is an international manufacturer and distributor of spare and repair parts for earth-moving and agricultural machinery and Knockturn is a manufacturer and global distributor of crawler track systems.

OVO Group Ltd/SSE Energy Services Group Ltd. On 10 December 2019, the CMA cleared the anticipated acquisition by OVO Group Ltd of SSE Energy Services Group Ltd. OVO is a UK energy supplier and SSE Energy Services is a supplier of energy and telecommunications services.

National Fostering Agency/Outcomes First Group. On 11 December 2019, the CMA cleared the completed acquisition by SSCP Spring Bidco Limited (trading as National Fostering Agency) of Boston Holdco A Limited (trading as Outcomes First Group). The National Fostering Agency is a provider of agency services for foster care in the UK and Outcomes First Group is a provider of care, education and therapeutic services for vulnerable children, young people and adults in the UK.

Roche Holdings, Inc./Spark Therapeutics, Inc. On 16 December 2019, the CMA cleared the anticipated acquisition by Roche Holdings, Inc. of Spark Therapeutics, Inc. Roche Holdings is a provider of pharmaceutical and diagnostic solutions and Spark Therapeutics is a developer of gene therapies.

ONGOING PHASE 1 INVESTIGATIONS

Parties	Decision Due Date
<u>Platinum Equity LLC/Wesco Aircraft Holdings Inc.</u>	9 January 2020
<u>Hasbro Inc./Entertainment One Ltd.</u>	21 January 2020
<u>Google LLC/Looker Data Sciences, Inc</u>	13 February 2020
<u>World Fuel Services Inc/UVair European Fuelling Services Limited</u>	20 February 2020
<u>Aerostar/Mettis</u>	TBC
<u>DMG Media Limited/JPI Media Publications Limited</u>	TBC
<u>FNZ (Australia) Bidco Pty Ltd./GBST Holdings Limited</u>	TBC
<u>Gardner Aerospace Holdings Limited/Impcross Limited</u>	TBC
<u>Hunter Douglas N.V./247 Home Furnishings Ltd.</u>	TBC
<u>McGraw-Hill Education, Inc./Cengage Learning Holdings II, Inc.</u>	TBC
<u>viagogo/StubHub</u>	TBC

Other Developments

Ofcom Appoints Interim Chief Executive. On 6 November 2019, Ofcom announced that it had appointed Jonathan Oxley as its interim Chief Executive. Mr Oxley took office when Sharon White stepped down at the end of November. Mr Oxley was previously Group Director for Competition and board member at Ofcom.

Secretary Of State Intervenes In Gardner Aerospace/Impcross Merger And Issues A Public Interest Intervention Notice (PIIN).

On 5 December 2019, the Secretary of State issued a Public Interest Intervention Notice (PIIN) on the grounds of national security in relation to the proposed merger of Impcross Ltd and Gardner Aerospace Holdings. In addition, the Public Interest Merger Reference (Gardner Aerospace Holdings Ltd. and Impcross Ltd.) (Pre-emptive Action) Order 2019 was published. This is the first time such an order has been made in exercise of the Secretary of State's powers. The Order prevents the completion of the anticipated merger by prohibiting any step taken to integrate Impcross' business with Gardner's business. The Order was made to prevent actions by the parties that might impede the Secretary of State's ability to protect national security.

The CAT Announces The Nomination Of Two New CAT Chairmen. On 9 December 2019, the Competition Appeal Tribunal (CAT) announced that the Hon. Mr Justice Hildyard and the Hon. Mr Justice Saini (judges of the High Court of England and Wales) have been nominated by the Lord Chief Justice to sit as Chairmen of the CAT.

Queen's Speech December 2019: Competition Law Implications. On 19 December 2019, the Queen's Speech announced the legislative agenda of the government for the next parliamentary session. The Background Briefing Notes referred to legislation designed to upgrade and strengthen the government's existing powers to scrutinise and intervene in business transactions (including takeovers and mergers) to protect national security. The Queen's Speech in October referred to similar legislation, and mentioned that these new powers would be economy-wide and apply to businesses of any size. This wording has been removed from the December speech. Neither the Queen's Speech nor the Background Briefing Notes mention plans to revise the competition regime, modernise consumer markets, or reform digital markets to work better for consumers, despite the government's April 2018 Green Paper, and the Furman Review on competition in the digital economy.

LONDON TEAM

London Office
2 London Wall Place
London EC2Y 5AU



Maurits Dolmans
+44 20 7614 2343
mdolmans@cgsh.com



Romi Lepetska
+44 20 7614 2292
rlepetska@cgsh.com



Nicholas Levy
+44 20 7614 2243
nlevy@cgsh.com



Alexander Waksman
+44 20 7614 2333
awaksman@cgsh.com



Romano Subiotto QC
+32 22872092
rsubiotto@cgsh.com



Wanjie Lin
+32 2872076
wlin@cgsh.com



Paul Gilbert
+44 20 7614 2335
pgilbert@cgsh.com



Alexandra Hackney
+44 20 7614 2371
ahackney@cgsh.com



Richard Pepper
+32 22872181
rpepper@cgsh.com



Lanto Sheridan
+44 20 7614 2308
ls Sheridan@cgsh.com



Paul Stuart
+44 20 7614 2207
pstuart@cgsh.com



Andrew Boyce
+44 20 7614 2217
aboyce@cgsh.com



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



Bianca Buzatu
+44 20 7614 2234
bbuzatu@cgsh.com



Ricardo Zimbron
+44 20 7614 2307
rzimbron@cgsh.com



Kathryn Collar
+44 20 7614 2208
kcollar@cgsh.com



Esther Kelly
+32 22872054
ekelly@cgsh.com



Jo Fernandes
+44 20 7614 2277
jfernandes@cgsh.com



Henry Mostyn
+44 20 7614 2241
hmostyn@cgsh.com



Rohan Mandumula
+44 20 7614 2270
rmandumula@cgsh.com