
14 November 2017**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in United Kingdom****-- 2016 --****5-6 December 2017**

This report is submitted by the United Kingdom to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

JT03422876

Table of contents

1. Executive Summary	4
1.1. Effective enforcement of competition and consumer law.....	4
1.2. Delivering the results of key market-wide investigations.....	5
1.3. The mergers regime	5
1.4. Remedies that get the right result.....	6
1.5. A trusted adviser	6
1.6. Strengthening the CMA, strengthening its partnerships	6
1.7. Key risks and challenges.....	7
2. Changes to competition laws and policies, proposed or adopted	8
2.1. Summary of new legal provisions of competition law and related legislation	8
2.2. Other relevant measures, including new guidelines.....	9
2.3. Government proposals for new legislation	9
3. Enforcement of competition laws and policies.....	10
3.1. Civil action against anticompetitive practices, including agreements and abuses of dominant positions.....	10
3.1.1. Summary of activities of competition authorities	10
3.1.2. Description of significant cases, including those with international implications	12
3.2. Criminal action against anticompetitive practices	12
3.2.1. Pre-cast concrete drainage.....	12
3.3. Mergers and acquisitions	13
3.3.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws	13
3.3.2. Qualifying mergers which created a realistic prospect of an SLC	13
3.4. Market investigations and market studies	16
3.4.1. Energy market	17
3.4.2. Retail banking	17
3.4.3. Legal services.....	17
3.4.4. Digital Comparison Tools (DCTs).....	18
3.4.5. Care homes.....	18
3.5. Litigation.....	18
3.5.1. Tobacco.....	18
3.5.2. Pay for Delay.....	18
3.5.3. Intercontinental Exchange (ICE) / Trayport merger	19
3.5.4. Phenytoin.....	19
3.5.5. BT / TalkTalk.....	19
3.5.6. Lundbeck intervention.....	19
3.5.7. O2 / Three intervention	19
3.5.8. Balmoral Tanks Ltd.....	20
4. The role of competition authorities in the formulation and implementation of other policies.	20
5. Resources of competition authorities.....	21
5.1. Resources overall (current numbers and change over previous year).....	21
5.1.1. Annual budget (in your currency and USD):	21

5.1.2. Number of employees (person-years):	21
5.2. Human resources (person-years) applied to:.....	21
5.3. Period covered by the above information:	21
6. Summary of or references to new reports and studies on competition policy issues.....	21

1. Executive Summary

1. In 2016/17, the CMA carried out a wide range of work to make markets work better for consumers, businesses and the economy. The CMA also reached an important milestone – its first three years as the UK’s primary competition and consumer agency.
2. This submission focuses on the CMA’s work during the financial year 2016-17, much of which remains ongoing or has subsequently been completed.

1.1. Effective enforcement of competition and consumer law

3. It is now clear that the investments the CMA made over its first two years are paying off through enforcement of greater scale, at greater pace and with greater impact.
4. The CMA launched 10 new civil competition enforcement investigations – more than double its target for 2016/17, exceeding its target for launching new cases for the third year running. The CMA issued nine infringement decisions, compared to two in 2015/16, and imposed £100 million in fines, compared with £46 million in 2015/16 and £0.7 million in 2014/15. The CMA made good progress in other cases in 2016/17, issuing Statements of Objections in five investigations.
5. Alongside penalties for companies, the CMA has worked to underline individual responsibility for illegal anti-competitive practices. By securing the UK competition regime’s first company director disqualification for a competition law breach the CMA sent a powerful signal that such behaviour will not be tolerated.
6. Company fines and personal sanctions are, however, a means to an end. The CMA’s ultimate aim is to protect consumers and other businesses by ensuring that companies understand and comply with the law. The CMA therefore complements its enforcement with innovative communications activity to raise awareness of the rules, for example running a ‘Stop Cartels’ social media campaign.
7. The CMA has made real efforts to streamline its processes and make them more efficient – always without compromising on fairness and rigour – successfully decreasing the average time to carry out competition enforcement investigations against a rolling three-year average. With greater enforcement comes a higher risk of litigation, and currently three of the CMA’s decisions are facing challenge in the Competition Appeal Tribunal. The UK competition system has one of the toughest judicial regimes in the world, providing as it does for full-merits review by a specialised competition appeal court – which requires that the CMA’s legal analysis and its procedural approach must meet the highest standards.
8. Although not the focus of this report, the CMA has continued to take action under its consumer protection law enforcement powers. The CMA continues to examine issues relating to unfair and misleading practices in the online and digital economy. Following a CMA review, major global companies including Apple, Google and Amazon committed to improve their practices and ensure that they provide their customers with fair terms and conditions for cloud storage services. In relation to online reviews and endorsements, the CMA built on its work in 2015/16 to secure commitments from several websites to not suppress unfavourable reviews, and from a UK-based marketing firm to not arrange undisclosed paid-for advertising from widely-followed social media personalities. But the CMA also looks at concerns in more traditional markets: in 2016/17 it secured

commitments from a major supermarket chain, Asda, to improve its promotional practices around ‘was/now’ and multi-buy deals, and strengthen its compliance controls.

1.2. Delivering the results of key market-wide investigations

9. The CMA’s mission is to make markets work well for consumers, businesses and the UK economy, using all the tools at its disposal, including enforcement, advocacy and whole-market reviews. In 2016/17 the CMA set out to ‘finish what we started’, principally by bringing its market investigations into energy and retail banking to successful conclusion. The CMA implemented innovative remedies which should, over time, significantly improve these markets of vital importance to millions of households and businesses, as well as to the UK economy. Alongside measures to drive forward competition and innovation, the CMA showed itself willing where necessary to step in more directly to protect consumers, imposing a price cap for the four million pre-payment customers in the energy market.

10. Market investigations are complex projects which demand significant resources. The CMA’s agility and flexibility allowed it to swiftly transfer highly-skilled staff who had previously worked on these investigations to new enforcement, markets and mergers projects.

11. During the year, the CMA concluded its market study into legal services, another sector which really matters at key points in many people’s lives, but which the CMA found is not working well for either individual customers or small businesses. The CMA set out remedies which challenge legal services providers and regulators to do more to help customers navigate the market and get value for money.

12. The CMA also published the interim report in its Digital Comparison Tools market study, finding that they generally work well for consumers, who really value the service they provide, but that improvements may be necessary to help more people get even better information and find the best deals. This includes looking more closely at whether these tools give enough information explaining what they do, whether competition between them is as strong as it could be, and whether the way that comparison tools are regulated works in the best way for consumers.¹

13. The CMA launched another market study, into care homes for the elderly in England and Wales, in December 2016.²

1.3. The mergers regime

14. Reviewing mergers is another way the CMA protects consumers, to ensure that any harmful effects, which can include higher prices, lower quality or reduced innovation, are prevented. The CMA is continuing to find ways to improve the efficiency of its merger control, and minimise burdens on businesses. Having embedded an efficient, effective and targeted process, the CMA has sought to make further improvements throughout the year.

15. The CMA’s more targeted approach means that, despite considering over 600 transactions a year, it formally investigates only around 60, versus the 100–120 that were

¹ The final report was published in September 2017.

² The interim report was published in June 2017, and the final report is due in December 2017.

typically reviewed annually by the CMA's predecessors, the Office of Fair Trading and the Competition Commission. The CMA is also continuing to make good use of its powers to accept undertakings in lieu of a Phase 2 reference, to minimise both the burden on business and the cost to the taxpayer of these in-depth reviews. At Phase 2 the CMA cleared one out of eight cases without requiring remedies, compared to eight out of 12 in 2015/16. The CMA prohibited one merger (ICE's completed acquisition of Trayport), requiring the CMA's first full divestment – a decision the CMA successfully defended in court. The CMA continues to review cases across all sectors of the economy, intervening where necessary to protect UK consumers and publishing well-reasoned and consistent decisions to give as much predictability to firms and their advisers as possible.

1.4. Remedies that get the right result

16. The creation of the CMA, as a unitary competition and consumer agency, presented clear opportunities to improve how markets and mergers remedies are designed, tested, implemented, monitored and enforced. The CMA has sought to take advantage of these by making practical enhancements to the remedies process, learning from past experience of putting its decisions into practice. These steps are already delivering benefits.

17. In 2016/17 the CMA implemented all its remedies without extensions to the statutory timescales, and it has worked with sector regulators to increase its collective understanding of consumer behaviour to improve the effectiveness of future interventions. The CMA has continued to make good progress with its reviews of existing remedies, lightening the administrative load on affected businesses and allowing it to make best use of taxpayers' money, by focussing its monitoring and enforcement on those remedies of greatest value to consumers and markets.

1.5. A trusted adviser

18. The CMA has remained a strong voice for competition across the UK and overseas, advising and challenging policy-makers domestically and supporting the development of the competition and consumer regimes internationally. The CMA's advocacy team worked on a wide range of issues, engaging with national, devolved and local government officials and lawmakers both publicly and privately to encourage pro-competitive policy-making in the interests of consumers. In 2016/17, the CMA successfully influenced UK government policy, including through formal recommendations on the draft Higher Education and Bus Services Bills. The CMA also contacted several local authorities in the UK to highlight the effect that proposed or existing regulations could have on taxi and minicab passengers, and has worked with devolved governments on a variety of issues. The CMA's role as a trusted adviser will become increasingly important as the government prepares for the UK's exit from the European Union.

1.6. Strengthening the CMA, strengthening its partnerships

19. The CMA has continued to refine how it works, and to invest in new technology, in its processes and in its people, to meet its ambition to become a world-leading competition and consumer agency.

20. Since its creation, the CMA has sought to make ongoing improvements to how it conducts its cases and projects. There remains always more that can be done to improve, drawing on accumulated practical experience. This is why, for example, it proposed changes (which are now being applied in practice) to improve further how it carries out market investigations, which are arguably the most complex projects that the CMA undertakes.

21. The CMA's effectiveness, now and in the future, relies on working well with others, and it has sought to strengthen its partnerships across the competition and consumer landscapes. This includes working closely with sector regulators and the UK Competition Network to ensure that the concurrency arrangements continue to work well, with progress being made across the sectors during the year. The CMA is also active in its international engagement, bilaterally with national competition authorities, and multilaterally with organisations and networks such as the OECD, the International Competition Network, the European Competition Network, and the UN Conference on Trade and Development (UNCTAD).

1.7. Key risks and challenges

22. Developments such as the UK's exit from the EU and new government economic strategies will have a bearing on the CMA and its work in the coming years. While the implications of 'Brexit' for the UK competition and consumer protection regimes, and for the CMA and its work, will depend on the outcome of the exit negotiations and the terms of the future relationship with the EU, exit from the EU may bring with it the opportunity for the CMA to have increased involvement in international cases, and further develop our position as an active global competition authority.

23. The question of whether markets are currently functioning in consumers' best interests is an area of increasing focus in political and public debate. The CMA's role of protecting consumers based on strong evidence and careful analysis is all the more important in this climate. The CMA will remain a strong voice for competition and for consumers, including in its statutory role as an adviser within government, to make sure it has appropriate prominence in public policy debates. Where necessary the CMA will argue, both behind the scenes and through its powers to comment publicly, including on draft legislation, against short term interventions which risk sustained improvements in consumer outcomes over the long term.

24. The CMA continues to face the challenge of a rapidly evolving economy, in which online and digital transactions play a large and growing part as well as underpinning most other commercial activities. Alongside bringing opportunities for consumers, technological development presents some risks and raises some important questions of policy and law. 'Challenger' businesses, innovative business models and new technologies have the potential to disrupt markets, both online and offline, often (but not always) to the benefit of consumers. The CMA will remain active in the digital sphere and in emerging sectors. The CMA will invest further in its in-house expertise, to ensure it understands new markets and practices and keeps up to date with their rapid evolution.³

³ A technicality arising from an ongoing litigation case has led to the CMA accounts being qualified in 2016/17. The Comptroller & Auditor General has given assurance that this does not represent a failing of financial management and that the CMA acted appropriately in its financial treatment of the case

2. Changes to competition laws and policies, proposed or adopted

2.1. Summary of new legal provisions of competition law and related legislation

25. On 29 November 2016, the Investigatory Powers Act 2016 preserved the CMA's ability to use certain covert investigation powers, including the ability to obtain communications data and to exercise certain equipment interference powers.

26. The implementation of the EU Damages Directive led to the amendment of the UK Competition Act 1998 and led to consequential changes to the Competition Appeal Tribunal (CAT) and High Court rules, including:

- SI 2017/385, which relates to Claims in respect of Loss or Damage arising from Competition Infringements.⁴
- The rules of the CAT changed relating to disclosure and inspection of evidence in claims made pursuant to Parts 4 and 5 of the CAT Rules 2015.⁵
- The new Rule 31C in the Consumer Protection from Unfair Trading Regulations (CPRs) relating to disclosure and inspection of evidence in competition claims.⁶

27. The Directive is intended to create a minimum framework for damages across the EU to facilitate redress for those who have suffered harm from competition breaches while minimising any adverse impacts on public enforcement. While many of the Directive's provisions were already met by UK law, a number of key new measures changed the UK framework, in particular:

- Ensuring that private actions and public enforcement are complementary (provisions around leniency and interaction between private actions and competition authorities' cases);
- Establishing beyond doubt the availability of both indirect and direct purchasers to claim;
- Creating a rebuttable presumption of loss in cartel cases.

28. The Digital Economy Act 2017 amended some Communications Act 2003 provisions dealing with regulatory appeals in the telecommunications sector. As a result, certain appeals – including those in which price control references are made to the CMA – will no longer be subject to a 'full merits' review, but will instead be assessed according to the standard applicable in judicial review.

29. The CMA gained a new regulatory appeals function in the water sector in April 2017, under which parties may appeal to the CMA against certain decisions of the CMA as to whether to approve modifications to the codes applicable to participants in the non-household retail water market, a market which has been opened up to full competition.

⁴ http://www.legislation.gov.uk/ukxi/2017/385/pdfs/ukxi_20170385_en.pdf

⁵ <http://www.catribunal.org.uk/files/Practice%20Direction%20Disclosure.pdf>

⁶ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/practice-direction-31c-disclosure-and-inspection-in-relation-to-competition-claims>

2.2. Other relevant measures, including new guidelines

30. The CMA undertook a statutory review of the public transport ticketing schemes block exemption which expired on 29 February 2016. The CMA issued updated guidance on the issue in September 2016.⁷

31. The CMA also published the following guidance, focusing on producing short, easily understandable guidance in user friendly formats:

- Competition law risk: a short guide⁸
- Avoiding disqualification: advice for company directors⁹
- Price fixing: guidance for online sellers¹⁰
- Resale price maintenance: advice for retailers¹¹

32. The CMA also produced the following two short videos to promote competition compliance:

- How you can help fight cartels¹²
- Information you shouldn't share with other businesses¹³

2.3. Government proposals for new legislation

33. Separate to the changes in legislation that were implemented in 2016/17 (see 2.1), there were no proposals for new legislation affecting the competition regime brought forward by the government in the reporting year.

34. Looking forwards, the government will be making necessary changes regarding European Union withdrawal through the European Union (Withdrawal) Bill 2017-19.¹⁴

35. In June 2017, the government outlined its legislative proposal for the upcoming year in the Queen's Speech.¹⁵

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553470/cma53-public-transport-ticketing-schemes-block-exemption-guidance.pdf

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/587464/cma-risk-guide-2016-revised.pdf

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584393/60ss-advice-for-company-directors.pdf

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565424/60ss-price-fixing-guidance-for-online-sellers.pdf

¹¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/529969/RPM_60SS.pdf

¹² <https://www.youtube.com/watch?v=c5-QxpiHfNc>

¹³ <https://www.youtube.com/watch?v=mvB1wQQjnGk>

¹⁴ <https://services.parliament.uk/bills/2017-19/europeanunionwithdrawal/documents.html>

¹⁵ <https://www.gov.uk/government/speeches/queens-speech-2017>

3. Enforcement of competition laws and policies

3.1. Civil action against anticompetitive practices, including agreements and abuses of dominant positions

36. In the period covering 1 April 2016 to 31 March 2017, the CMA concluded nine competition enforcement cases under the Competition Act 1998 (CA98). The CMA exceeded its target for launching new cases for the third year running, launching 10 new cases – more than double its target for 2016/17. In the five years April 2010 to March 2015 the CMA (and its predecessor organisation, the OFT) opened an average of 6.8 cases per year.

3.1.1. Summary of activities of competition authorities

Commercial catering equipment: investigation into anti-competitive practices

37. In May 2016, the CMA issued a decision finding that ITW Limited infringed competition law and imposed a fine of £2,298,820. ITW Limited admitted engaging in online resale price maintenance in relation to the supply of commercial catering equipment in the UK. To reflect the fact that ITW set up a comprehensive programme to train its staff in compliance with competition law, a 10% reduction was applied. ITW also admitted an infringement and co-operated with the CMA under a settlement agreement, resulting in a further 20% reduction due to reflect savings in CMA resources.

Bathroom fittings sector: investigation into anti-competitive practices

38. In May 2016, the CMA issued an infringement decision finding that Ultra Finishing Limited infringed competition law and imposed a fine. Ultra Finishing Limited admitted engaging in online resale price maintenance in relation to the supply of bathroom fittings in the UK. The undertaking agreed to adopt a comprehensive compliance programme, for which a 5% discount was applied from the original fine, which would have been £1,032,502. The CMA applied a discount for this programme and then a discount for settlement, resulting in the ultimate fine of £786,668.

Online sales of posters and frames

39. In August 2016, the CMA issued a decision finding that Trod Limited and GB eye Limited (trading as GB Posters), two competing online sellers on Amazon's UK website, infringed competition law by agreeing, from 24 March 2011 (at the latest) to 1 July 2015 (at the earliest), that the two sellers would not, in certain specified circumstances, undercut each other's prices for posters and frames sold on Amazon UK's website.

40. The CMA also imposed a fine on Trod of £163,371. Trod admitted the infringement and co-operated with the CMA's investigation, thereby resulting in a 20% discount on the fine to reflect the resource savings to the CMA. GB eye reported the cartel to the CMA under the CMA's leniency policy and was not fined.

Conduct in the modelling sector

41. In December 2016, the CMA published its decision finding that five model agencies and their trade association breached Chapter I of the Competition Act 1998 (CA98) and Article 101 of the Treaty of the Functioning of the European Union (TFEU),

and imposed penalties totalling £1,533,500. The CMA found that the Parties infringed the Chapter I prohibition and/or Article 101 TFEU by participating in a single and continuous agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of modelling services in the UK.

Phenytoin sodium capsules: suspected unfair pricing

42. In December 2016, the CMA issued an infringement decision to Pfizer Limited and Pfizer Inc (collectively, Pfizer) and Flynn Pharma Limited and Flynn Pharma (Holdings) Limited (collectively, 'Flynn'). The CMA found that Pfizer and Flynn each abused their respective dominant positions by imposing unfair prices for phenytoin sodium capsules in the UK thereby infringing the Chapter II prohibition of the Competition Act 1998 (CA98) and Article 102 of the Treaty on the Functioning of the European Union (TFEU). The CMA imposed a record financial penalty of £84.2 million on Pfizer and £5.2 million on Flynn and directed both companies to reduce their prices.

Supply of galvanised steel tanks for water storage: civil investigation – Main Cartel Decision

43. In December 2016, the CMA issued two decisions finding that suppliers of galvanised steel tanks had infringed UK and EU competition law in relation to the supply of galvanised steel tanks for water storage.

44. In the Main Cartel Decision, the CMA found that four suppliers of galvanised steel tanks infringed competition law between 2005 and 2012 by engaging in price-fixing, bid-rigging and market sharing by way of customer allocation (the Main Cartel). The CMA imposed penalties totalling £2.5 million.

Supply of galvanised steel tanks for water storage: civil investigation – Information Exchange Decision

45. In December 2016, the CMA issued two decisions finding that suppliers of galvanised steel tanks had infringed UK and EU competition law in relation to the supply of galvanised steel tanks for water storage.

46. In the Information Exchange Decision, the CMA found that three of the parties to the Main Cartel (see 3.1.1.6) and another tank supplier, which was required to pay a penalty of £130,000, infringed competition law by exchanging commercially sensitive information regarding their current pricing and future pricing intentions at a single meeting in July 2012.

Supply of products to the furniture industry: anti-competitive arrangements – drawer wraps decision

47. In March 2017, the CMA issued two decisions finding that three suppliers of furniture parts had infringed UK and EU competition law.

48. In the drawer wraps decision, the CMA found that two suppliers of drawer wraps, BHK (UK) Ltd and Thomas Armstrong (Timber) Ltd infringed competition law between 2006 and 2008 by engaging in an illegal cartel agreement to share the market and co-ordinate commercial behaviour (in particular pricing practices), through bid-rigging and the exchange of confidential competitively sensitive information, in respect of the supply of chipboard and MDF based drawer wraps to the UK bedding, office and domestic

furniture industry. BHK confessed its involvement in cartel activity shortly after the start of the investigation, and was not fined as it was the first to come forward under the CMA's leniency policy. Thomas Armstrong (Timber) Ltd and its parent company, Thomas Armstrong (Holdings) Ltd, agreed to pay a maximum penalty of £1,509,000 in relation to the drawer wraps cartel. This penalty figure included a 20% reduction for settlement.

Supply of products to the furniture industry: anti-competitive arrangements – drawer fronts decision

49. In March 2017, the CMA issued two decisions finding that three suppliers of furniture parts had infringed UK and EU competition law.

50. In the drawer fronts decision, the CMA found that between 2006 and 2008, and between at least September and October 2011, Thomas Armstrong (Timber) Ltd and Hoffman Thornwood Ltd took part in an illegal cartel in relation to the supply of chipboard- and MDF-based drawer fronts to the UK bedding industry. Thomas Armstrong (Timber) Ltd and its parent company, Thomas Armstrong (Holdings) Ltd, agreed to pay a maximum penalty of £684,000 in relation to the drawer fronts cartel. This penalty figure included a 20% reduction for settlement. Hoffman Thornwood Ltd and its parent company, Consolidated Timber Holdings Ltd, agreed to pay a maximum penalty of £688,000 in relation to the drawer fronts cartel, which included a 20% reduction for settlement.

Ongoing investigations

51. At the end of the reporting year, alongside the cases concluded in 2016/17, the CMA had issued Statements of Objections in five investigations in markets ranging from laundry services to light fittings to further cases in the pharmaceutical sector.

3.1.2. Description of significant cases, including those with international implications

52. See above.

3.2. Criminal action against anticompetitive practices

3.2.1. Pre-cast concrete drainage

53. Shortly before the start of the financial year 2016/17, criminal proceedings were instigated against one individual in respect of the supply in the UK of pre-cast concrete drainage products. The defendant pleaded guilty to one offence under section 188 of the Enterprise Act 2002, the criminal cartel offence, and in June 2017 was given a suspended two-year prison sentence, made the subject of a curfew order and disqualified from being a company director for seven years. During the period between his guilty plea and the imposition of this sentence the CMA also decided not to instigate criminal proceedings against any other suspects in respect of this investigation.

3.3. Mergers and acquisitions

3.3.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

54. The CMA reviewed 57 mergers from industries and businesses across the UK, 18 of which created a realistic prospect of a substantial lessening of competition (SLC). The CMA exercised its power to accept Undertakings in Lieu of a reference (UILs) to a Phase 2 investigation in 13 of these cases, and referred five to in-depth Phase 2 investigations. Of these five cases, the CMA found an SLC in three cases, all of which were resolved with remedial undertakings, one case was cleared and one case was abandoned.

3.3.2. Qualifying mergers which created a realistic prospect of an SLC

Phase 1 investigations

Breedon / Hope Construction Materials

55. In July 2016, the CMA accepted Breedon's UILs to remedy competition concerns identified as a result of its acquisition of Hope Construction Materials. Breedon offered to sell 14 ready-mix concrete sites to Tarmac Trading and the Concrete Company (Thornley) as upfront buyers, both of which were approved by the CMA.

GTCR / PR Newswire Europe

56. In July 2016, the CMA accepted UILs to resolve competition concerns arising from the acquisition by GTCR Canyon Holdings (Gorkana) of the PR Newswire business. GTCR offered to divest the Agility business to Innodata, a global digital services and solutions company active in content services, data analytics and media intelligence. The CMA co-operated closely during the investigation with the US Department of Justice (DoJ). The DoJ also found competition concerns and the divestment of Agility to Innodata formed part of a proposed settlement to resolve the DoJ's concerns.

Hain Frozen Foods UK / Orchard House Foods

57. In September 2016, the CMA accepted UILs to resolve competition concerns arising from the acquisition by Hain Frozen Foods UK Limited of Orchard House Foods Limited. The companies offered to sell Hain's own-label freshly squeezed fruit juice business to Multiple Marketing Limited. During the consultation, it was brought to the CMA's attention that the owner of Multiple Marketing was also a shareholder of another supplier of own-label fruit juice, Fruitapeel (Juice) Limited. The CMA investigated whether this might affect its provisional decision to approve Multiple Marketing, and concluded that it did not.

Tullett Prebon / ICAP

58. In September 2016, the CMA accepted UILs to resolve competition concerns arising from the anticipated acquisition by Tullett of ICAP's voice and hybrid broking and information business. The companies agreed to sell ICAP's London-based oil desks responsible for providing broking services to customers in Europe, the Middle East and Africa to an up-front buyer, INTL FCStone Limited.

Acadia Healthcare Company / Priory Group

59. In November 2016, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by Acadia Healthcare Company, Inc., through its subsidiary Whitewell UK Investments 1 Limited, of Priory Group No. 1 Limited. The CMA identified 21 local areas across five mental healthcare services where the merger could substantially reduce the range of available healthcare providers. Through the sale of hospitals to BC Partners, the CMA prevented a loss of choice that could have been damaging for the NHS and patients in many parts of the UK.

Future / Miura (Holdings)

60. In November 2016, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by Future of the entire share capital of Miura. As publishers of specialist magazines, the titles of Future and Imagine, owned by Miura, overlapped in computing, website design and 3D modelling, gadgets, gaming, sci-fi, and photography. In its initial investigation, the CMA found that, while most of the companies' titles would have been sufficiently constrained by competing magazines or similar online content, the merger may have resulted in an SLC in relation to the supply of sci-fi titles to consumers in the UK. Future proposed to sell the business of the title SciFiNow, satisfying the CMA's concerns.

Dover Corporation / Wayne Fueling Systems

61. In December 2016, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by Dover Corporation of Wayne Fueling Systems Limited. Without maintaining choice and competition in the sector, the CMA expected that the cost of purchasing and maintaining fuel pumps at petrol stations in the UK would have increased, or service quality would have fallen, resulting in higher road fuel costs to UK motorists. Dover agreed to sell Wayne's UK distribution to Petrotec S.G.P.S.S.A, which the CMA considered to be a suitable purchaser.

Co-operative Foodstores / ML Convenience and MLCG

62. In January 2017, the CMA accepted UILs for the completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited. The CMA was satisfied that the Co-operative's undertakings to sell two convenience stores in Widnes – CGL Hough Green and CGL Farnworth – resolved its competition concerns.

Novomatic UK / Talarius

63. In January 2017, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by Novo Invest GmbH, acting through its subsidiary Novomatic UK, of Talarius Limited. Novomatic offered to divest businesses in five local areas (Chesterfield, Clapham, Dartford, Darlington and Grimsby) where the CMA found the merger gave rise to a realistic prospect of an SLC in the supply of gaming products through adult gaming centres. The CMA accepted Novomatic's undertakings as a reasonable and practicable remedy, which fully resolved its competition concerns.

AMC (UK) Acquisition / Odeon and UCI Cinemas Holdings

64. In April 2017, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by AMC (UK) Acquisition Limited of Odeon and UCI Cinemas Holdings Limited. Prior to the merger, AMC operated a 16-screen multiplex in Manchester (the AMC Great Northern) and Odeon operated several cinemas in the Manchester area including the Odeon Printworks, a 20-screen multiplex. AMC offered to sell the Odeon Printworks to Vue Entertainment Limited, which was sufficient to address the CMA's concerns.

Menzies Aviation / ASIG Holdings

65. In April 2017, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by Menzies Aviation plc and Menzies Aviation Inc. of ASIG Holdings Limited and ASIG Holdings Corp. The CMA accepted Menzies' offer to sell the ground handling business of ASIG at Aberdeen Airport to Dalcross Handling in order to address its competition concerns.

MasterCard / VocaLink

66. In April 2017, the CMA accepted UILs to resolve competition concerns arising from the anticipated acquisition by MasterCard UK Holdco Limited, an affiliate of MasterCard International Incorporated (Mastercard), of VocaLink Holdings Limited (VocaLink). The package of measures offered by MasterCard and VocaLink consisted of VocaLink making its existing network connectivity available to any future new supplier of infrastructure services to LINK. This was intended to allow a competitor to use VocaLink's connectivity to the LINK ATM network, rather than having to build their own. VocaLink also offered to transfer to LINK the intellectual property rights relating to the LINK LIS5 messaging standard, which members of the network use to communicate when customers use cash machines. MasterCard also agreed to contribute to the connectivity costs which may be incurred by LINK members changing to a new supplier of infrastructure services.

National Fostering Agency / Acorn Care 1

67. In June 2017, the CMA accepted UILs to resolve competition concerns arising from the completed acquisition by SSCP Spring Topco Limited, providing fostering services in the UK through its affiliated entity the National Fostering Agency Limited (NFA), of Acorn Care 1 Limited. NFA proposed to sell the Acorn business in the three areas in the UK in which the companies overlapped (Wales, Norfolk and Luton) to another provider, BSN Social Care. This included transferring all relevant carers and associated staff to enable BSN Social Care to replicate the competitive constraint provided by Acorn prior to its purchase by NFA.

Phase 2 investigations

Safetykleen UK / Pure Solve UK

68. In May 2016, the CMA announced an investigation into the anticipated acquisition of Pure Solve UK Limited by Safetykleen UK Limited. Both companies supply parts washing machines and associated services in Great Britain. The CMA found that the anticipated acquisition would be referred for an in-depth investigation unless

suitable undertakings were offered to remedy the competition concerns identified, as the evidence gathered by the CMA suggested that the companies were each other's closest competitors and that there might be insufficient rivalry from other suppliers or new entrants to offset the loss of competition. Safetykleen and Pure Solve decided to abandon the transaction days after the announcement of the CMA's referral to phase 2.

Intercontinental Exchange (ICE) / Trayport

69. In May 2016, the CMA referred the completed acquisition by ICE of Trayport to an in-depth phase 2 investigation.

70. In October 2016, the CMA found that ICE's completed acquisition of Trayport could lead to an SLC and that ICE would have to sell Trayport to a new owner, to be approved by the CMA, in order to preserve competition. This is the first full divestment ordered by the CMA following a merger review. In March 2017, the Competition Appeal Tribunal (CAT) upheld the CMA's findings that the merger resulted in a loss of competition and that to resolve this, ICE must sell the Trayport business.

Arriva Rail North / Northern rail franchise

71. In December 2016, the CMA found that the award of the Northern rail franchise to Arriva may result in higher fares on some local routes. However, the CMA accepted undertakings from Arriva plc, ARN and Arriva UK Trains Limited to remedy the SLC identified. These undertakings had the effect of capping unregulated rail fares for passengers travelling on three routes (Leeds to Sheffield, Wakefield to Sheffield and Chester to Manchester).

VTech Holdings / LeapFrog Enterprises

72. In January 2017, the CMA cleared the merger of children's toymakers VTech Holdings Limited and LeapFrog Enterprises Inc. The CMA found that, while the companies are close competitors in the supply of learning toys for 0 to 5 year olds, there are numerous other credible suppliers in the sector, and VTech and LeapFrog were not each other's closest competitors.

Diebold / Wincor Nixdorf

73. Both Diebold and Wincor Nixdorf supply automated teller machines (ATMs), as well as financial self-service software and services, in the UK.

74. In March 2017, the CMA found that the merger between Diebold and Wincor Nixdorf would result in an SLC, leading to higher prices or loss of quality for the companies' customers. In order to prevent this, the CMA decided that Diebold Nixdorf (the new company) must sell either Diebold's or Wincor's UK customer-operated ATM business to a new owner, to be approved by the CMA. The purchase by Cennox (a UK-based specialist ATM services group) was approved by the CMA in June 2017.

3.4. Market investigations and market studies

75. In 2016-2017, the CMA continued its work on a number of significant markets cases.

3.4.1. Energy market¹⁶

76. In June 2016, the CMA concluded its energy market investigation setting out a wide range of reforms to modernise the market for the benefit of customers. In the report, the CMA found that 70% of domestic customers could save as much as £300 a year by switching to cheaper deals. In order to help people who have been on a default tariff for more than three years, suppliers will be required to provide Ofgem with relevant information to help these customers (both households and microbusinesses) switch to a better deal.

77. The CMA also found that microbusinesses had been paying around £180 million a year more than they would in a more competitive market – with around 45% stuck on expensive ‘default’ tariffs. The CMA ordered that suppliers must stop using high exit fees that lock microbusinesses into more expensive ‘rollover’ contracts. Suppliers will also have to publish their prices so that microbusiness customers can get a better idea of what they should be paying for their energy – and what alternatives they have.

3.4.2. Retail banking¹⁷

78. In August 2016, the CMA published its final report in its market investigation into retail banking, in which it concluded that older and larger banks do not have to compete hard enough for customers’ business, and smaller and newer banks find it difficult to grow. This means that many people are paying more than they should and are not benefiting from new services. To tackle these problems, the CMA is implementing a wide-reaching package of reforms.

79. The CMA accepted undertakings from Bacs to make switching easier. Bacs committed to improve the Current Account Switch Service within a year by extending the time the automatic redirect service is available when customers switch banks. The CMA will implement measures that will increase the transparency of cost and eligibility of Small and Medium Enterprise (SME) lending. The Financial Conduct Authority will take action in response to the CMA recommendations which will include supporting the work on open banking.

3.4.3. Legal services¹⁸

80. In December 2016, the CMA concluded its year-long study into the supply of legal services in England and Wales. The CMA concluded that competition in legal services for individual consumers and small businesses is not working as well as it might. In particular, there is not enough information available on price, quality, and service to help those who need legal support choose the best option.

81. The CMA set out a package of measures which challenged providers and regulators to help customers better navigate the market and get value for money. The changes include: a requirement on providers to display information on price, service, redress and regulatory status to help potential customers; a recommendation that the Ministry of Justice looks at whether to extend protection from existing redress schemes to

¹⁶ <https://www.gov.uk/cma-cases/energy-market-investigation>

¹⁷ <https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk>

¹⁸ <https://www.gov.uk/cma-cases/legal-services-market-study>

customers using ‘unauthorised’ providers; to revamp and promote the existing Legal Choices website to be a starting point for customers needing help on how to navigate the market; to facilitate the development of comparison sites and other intermediaries to allow customers to compare providers in one place by making data already collected by regulators available.

82. In addition, the CMA considered the impact of legal services regulation on competition. The CMA found that whilst the current system is not a major barrier, it may not be sustainable in the long term. In particular, the framework is not sufficiently flexible to apply proportionate risk-based regulation which reflects differences across legal services which could harm competition. The CMA is therefore also recommending that the Ministry of Justice reviews the current framework to make it more flexible and targeted at protecting consumers in areas where it is most needed.

3.4.4. Digital Comparison Tools (DCTs)¹⁹

83. In September 2016, the CMA launched its work on a market study into digital comparison tools (DCTs) to see how they were working for consumers, businesses and the economy.²⁰

3.4.5. Care homes²¹

84. In December 2016, the CMA initiated a market study into care homes for the elderly, to review how well the market works and if people are treated fairly.²²

3.5. Litigation

3.5.1. Tobacco

85. The Office of Fair Trading’s decision not to repay Gallaher and Somerfield a sum equal to their fine plus interest was subject to judicial review proceedings. In January 2015, the High Court dismissed their claims however, in June 2016, the Court of Appeal allowed their appeal. The CMA has since been granted permission to appeal that decision at the Supreme Court, with an oral hearing due in March 2018.

3.5.2. Pay for Delay

86. The CMA issued its decision in the paroxetine case in February 2016, which fined a number of parties for engaging in conduct which was intended to prevent lower priced generic paroxetine entering the market. This decision was appealed by all parties in April 2016. A four-week hearing was held in February/March 2017. The CMA is currently awaiting judgment from the Competition Appeal Tribunal (CAT).

¹⁹ <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>

²⁰ For completeness, note that since the end of the reporting period, the CMA published its final report into Digital Comparison Tools in September 2017.

²¹ <https://www.gov.uk/cma-cases/care-homes-market-study>

²² The statutory deadline for the resolution of the market study into care homes is 1 December 2017.

3.5.3. Intercontinental Exchange (ICE) / Trayport merger

87. ICE appealed a decision by the CMA to prohibit its proposed merger with Trayport. The CMA had also prevented the two firms from pushing on with a ‘new working agreement’ which had been implemented between them. A hearing was held in January 2017. In March 2017, the CAT ruled that the decision on the ‘new working agreement’ should be remitted back to the CMA, and dismissed all other elements of the appeal. On 15 May 2017, the Court of Appeal issued an order dismissing ICE’s permission to appeal application.

3.5.4. Phenytoin

88. In December 2016, the CMA issued a decision against Pfizer and Flynn Pharmaceuticals, fining both companies for their roles in illegal activities in the sale of phenytoin. An application for interim relief (suspending a CMA order lowering prices) was made by Flynn, and a hearing was held on 17 January 2017. The application was unsuccessful. Both parties have appealed the substantive December 2016 decision and a hearing is due in October or November 2017.

3.5.5. BT / TalkTalk

89. BT appealed the CMA’s costs order made in relation to the recent VULA telecoms appeals, where the Competition Appeal Tribunal (CAT) referred price control matters in two telecoms appeals to the CMA over restrictions to the charges BT is permitted to make for use of its superfast broadband network. The matter was dealt with on the papers, with the CAT fundamentally dismissing the appeal save for a small amount of Counsel’s fees in relation to advice received regarding VAT.

3.5.6. Lundbeck intervention

90. The CMA is leading on a UK intervention in support of the European Commission. Lundbeck, a pharmaceutical company, was fined by the Commission for engaging in conduct which was intended to keep generic pharmaceuticals out of the market. The Commission’s decision was appealed to the General Court. The appeal was unsuccessful and the General Courts’ judgement was then appealed to the Court of Justice. The UK is intervening in this appeal as its subject matter is very closely connected to the issues raised in the domestic Pay for Delay litigation, in which a CMA decision is currently under appeal. The outcome of this litigation may also affect future ‘pay-for-delay’-type cases.

3.5.7. O2 / Three intervention

91. The CMA is also leading on another UK intervention, in support of the European Commission, in CK Telecoms UK’s (Three) appeal against the Commission’s decision to prohibit its acquisition of Telefonica UK (O2). The CMA and the telecoms regulator Ofcom were closely involved at the administrative stage and the Commission’s original prohibition decision was supported by the UK; a successful challenge to the Commission’s decision would adversely affect the market for mobile networks in the entire UK and ultimately UK consumers.

3.5.8. *Balmoral Tanks Ltd*

92. In December 2016, the CMA issued a decision fining Balmoral Tanks Ltd for sharing commercially sensitive information regarding their current and future pricing intentions with competitors. Balmoral appealed this decision on 24 February 2017 and a hearing was held in July 2017.

4. The role of competition authorities in the formulation and implementation of other policies

93. The CMA worked on a wide range of issues, engaging with national, devolved and local government officials and lawmakers both publicly and privately to encourage pro-competitive policy-making in the interests of consumers.

94. The CMA wrote an open letter to the minister for Higher Education, Jo Johnson, with recommendations on the Higher Education and Research Bill. Subsequently, changes were made to the Bill (now Act) which will make it easier for providers to introduce innovative ‘accelerated degrees’.

95. The CMA wrote to ministers on the Bus Services Bill, and its recommendations were accepted in full. The recommendations included making the CMA a statutory consultee on the introduction of franchising schemes. The Bill has now passed into law.

96. The CMA responded to the government’s consultation on the future of HM Land Registry, highlighting lessons learned from its past work on public sector information and expressing concern over the structure of the proposed privatisation. The government subsequently decided not to proceed with the privatisation.

97. The CMA wrote an open letter to Sheffield City Council on its proposed changes to licensing for minicabs (pre-booked taxis). The Council adopted the CMA’s main recommended changes. In its evaluation of entry and expansion in CMA merger cases, KPMG noted that if the new regulations had come into force, the anticipated entry and expansion, which were the basis of the CMA’s clearance of a merger between minicab operators in Sheffield, would probably not have been realised.

98. The CMA also engaged with the devolved administrations on a variety of policy areas, including legal services regulation, district heating regulation, funeral director licensing and bus policy.

99. The CMA also responded to the National Infrastructure Commission’s (NIC) call for evidence on the National Infrastructure Assessment and has offered further assistance to the NIC in its work.

100. The CMA recently finished the development of a software tool that tests procurement data for signs of potential cartel and bid rigging activity. The tool has now been successfully tested on over 100 central and local government tender exercises and is available on request from the CMA website.

5. Resources of competition authorities

5.1. Resources overall (current numbers and change over previous year)

5.1.1. Annual budget (in your currency and USD):

101. The CMA's budget in 2016-17 for its regular activities was £74.13m

5.1.2. Number of employees (person-years):

102. The CMA employed a total of 580 staff members. Approximately 259 of the total staff and 241 of the non-administrative staff worked on competition enforcement, approximately 46 of which were economists, 87 were lawyers and 111 were other professionals.

5.2. Human resources (person-years) applied to:

103. The CMA estimates that approximately 161 members of staff worked in enforcement against anticompetitive practices and approximately 80 members of staff worked in mergers. The CMA operates a matrix working system where staff are deployed on different kinds of casework, including consumer protection and working on regulatory appeals related to price controls and licensing. Staff may also be involved in advocacy; policy; supporting intelligence-gathering; working with sectoral regulators; and developing remedies.

5.3. Period covered by the above information:

104. 1 April 2016 – 31 March 2017

6. Summary of or references to new reports and studies on competition policy issues

105. See above.