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Annual Report on Competition Policy Developments in the United Kingdom

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This report is submitted by the United Kingdom to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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1. Executive Summary

1. In 2017/18, the CMA built on its past progress and, capitalising on the investments it made in its early years as the UK's primary competition and consumer agency, has carried out important work in markets that really matter to millions of households and businesses across the UK.
2. This submission focuses on the CMA's work during the financial year 2017-18, much of which remains ongoing or has subsequently been completed.

1.1. Protecting consumers through effective enforcement

3. The CMA sustained its increased level of competition enforcement in 2017/18, opening 10 new investigations into anti-competitive agreements and abuses of dominance; 60% higher than its annual average between 2010 and 2015. This includes four new investigations into potentially anti-competitive pricing practices in pharmaceutical supplies to the National Health Service.
4. Whilst 2017/18 has seen a range of important enforcement outcomes across a range of sectors, including online auction platforms, residential estate agency services, fairgrounds and supplies of household fuels, it has also been about making good progress in the high number of cases launched both this year and last year. The CMA has worked efficiently and innovatively, without compromising fairness and rigour, successfully decreasing the average time to carry out competition enforcement investigations against a rolling three-year average.
5. The CMA used its full range of powers to halt practices which were harming consumers, including, where appropriate, settlements (in two investigations) and binding commitments (in two further investigations). To provide transparency and clarity for businesses and professional advisers, the CMA has not shied away from publicly issuing a reasoned 'no grounds for action' decision, rather than privately de-prioritising an investigation.
6. The CMA is also using advanced digital marketing techniques to raise awareness of the law and drive new leads to the cartels hotline, launching a 'Stop cartels' campaign that reached over 21 million people, led to around 45,000 visits to the campaign webpage and a 41% rise in contacts to the cartels hotline in this period. The CMA's free digital Screening for Cartels tool helps public procurers identify potential bid-rigging, which can cost taxpayers millions of pounds, and was shortlisted for a public finance innovation award.
7. Bolder enforcement brings with it a higher risk of litigation. Having achieved hard-hitting enforcement outcomes in 2016/17, the CMA vigorously defended three of its competition enforcement decisions at the Competition Appeal Tribunal (the CAT).
8. The CAT upheld a CMA decision and fine in an investigation into the sharing of pricing information amongst water tanks suppliers – reinforcing that any exchange of commercial information with competitors risks a fine, even when a business refrains from participating in price-fixing or market sharing. Following the appeal against the CMA decision in the pay-for-delay investigation, in which the CMA fined a number of pharmaceutical companies £45 million, the CAT dismissed several grounds of the appeal and referred others to the Court of Justice of the European Union.

1.1.1. The mergers regime

9. Reviewing mergers is another way the CMA protects consumers; preventing any harmful effects such as higher prices, lower quality or reduced innovation.

10. The CMA continued to build on previous years' improvements to the efficiency of its merger control, minimising burdens on business and costs to the UK taxpayer. The CMA is targeting its resources at those mergers it really needs to look at: 60-70 per year out of the more than 500 brought to the CMA's attention annually – significantly fewer than during the years of the CMA's predecessors, the Office of Fair Trading and the Competition Commission.

11. Where possible and appropriate, the CMA uses its powers to accept undertakings in lieu of a phase 2 reference, ensuring its concerns are addressed with minimal cost to business and the taxpayer (12 in 2017/18, the highest annual total since the passing of the Enterprise Act 2002).

12. The CMA carried out several high-profile merger investigations of great significance to the UK economy, including Fox/Sky, Tesco/Booker and Wood/Amec.

13. To further assure an efficient end-to-end process, the CMA fast-tracked appropriate mergers to phase 2, including Tesco/Booker; a pragmatic approach which helps the CMA to achieve a timely outcome whilst retaining high procedural standards.

14. In the Just Eat/Hungryhouse investigation, the CMA issued its first procedural penalty in a merger case for not complying with a formal information request. The CMA hopes that demonstrating its intent to penalise procedural infringements will act as a deterrent to companies and their law firms in future.

1.1.2. Making markets work better

15. This year the CMA's in-depth reviews focused on markets which have long been central to people's lives (care homes) alongside rapidly evolving areas of the economy (digital comparison tools). The CMA has also launched a market study into heat networks, which are a key part of the government's decarbonisation strategy, and the CMA is undertaking an in-depth review of the investment consultancy sector following a reference to the CMA by the Financial Conduct Authority, the UK's regulatory body for financial services.

16. In both the care homes and comparison tools studies, the CMA set out far-reaching and challenging remedies to ensure these markets work in people's favour. The CMA also joined up its markets and enforcement toolkits, by launching enforcement following each of these market studies: a competition investigation into the use of certain 'most favoured nation' clauses by a price comparison site in relation to home insurance products, a consumer protection investigation into online hotel booking, and a consumer protection investigation into a number of care home providers.

17. Millions of households and businesses are seeing the benefits from the CMA's market-wide reviews of energy, retail banking and legal services in England and Wales, with a range of innovative and important remedies coming into effect during 2017/18. Alongside protecting vulnerable consumers, these in-depth whole-market reviews have laid the foundations for a transformative change to competition in these sectors.

18. Four million energy customers on pre-payment meters are paying lower bills thanks to a price cap and smaller businesses are no longer trapped into expensive auto-rollover contracts.

19. The CMA's banking orders have now come into force, requiring banks to work harder for their customers and helping people take control of their banking using innovative new services. Banks must support the tech-enabled Open Banking revolution; it is easier for customers to switch banks; banks must warn personal account customers if they are about to slip into an unarranged overdraft, and must publicly announce the maximum monthly charges for doing so. Smaller businesses can more easily understand the costs of taking out a loan and find the best deal for them.

20. Following the CMA's legal services market study, eight regulators in England and Wales published their plans for implementing the CMA's recommendations to make the market more competitive and to make sure consumers can be confident about the price and service they can expect when they hire a lawyer.

21. In 2017/18, the CMA implemented all its remedies without the need for recourse to extensions to the statutory timescales, exceeding its Annual Plan commitment. The CMA has continued to actively manage its stock of existing (markets and merger) remedies, ensuring they have the desired effects and removing them where they have become redundant.

1.2. A strong voice for competition

22. The CMA remains a strong voice for competition across the UK and overseas, advising and challenging policy-makers domestically to use pro-competitive measures to achieve policy objectives where possible. The CMA has also supported the development of the competition and consumer regimes internationally.

23. The CMA's influence with government departments remains high, and over the year we have privately guided early-stage policy development. This includes making a series of informal recommendations and publicly responding to UK government consultations on the Green Paper on Industrial Strategy and on proposals to extend the scope of the national security public interest test.

24. More widely, there is active political and public debate over the role of markets and when governments should step in to fix problems. In this context, the CMA's work is given added relevance. It is the CMA's task to intervene robustly in markets, where necessary, to make sure they work in people's favour. By doing its job well the CMA can help build trust that markets benefit wider society. Consistent with the statutory role as an adviser within government, where appropriate the CMA will also argue, both behind the scenes and through its powers to comment publicly, against short-termist interventions that could put at risk long-term consumer benefits, particularly where this concerns vulnerable consumers.

1.2.1. Strong partnerships at home and overseas

25. The CMA's partnerships, at home and overseas, remain strong. The CMA's latest Annual Concurrency Report shows that the concurrency arrangements, whereby the CMA and sector regulators work more effectively together to improve competition and competition law enforcement, have been working well. Almost all the regulators with concurrent powers have opened a competition enforcement investigation since the start of

the new concurrency regime in 2014, and four new investigations in the regulated sectors have been launched in 2017/18, compared with two in each of the previous two years.

26. There has been a step-change in the level of cooperation between the CMA and concurrent regulators. The CMA has carried out or is carrying out significant markets work alongside its regulatory partners, including the market studies on digital comparison tools (Ofcom, the Financial Conduct Authority (FCA) and Ofgem (the UK's regulatory bodies responsible for telecommunications, financial services, and energy respectively)) and on heat networks (Ofgem), and the in-depth market investigation into the investment consultancy services and fiduciary management services markets following referral by the FCA.

27. The CMA continued to work closely with other competition authorities in competition networks across the world, including the European Competition Network, the International Competition Network, and the OECD.

1.2.2. Preparing for the UK's exit from the European Union (Exit)

28. Exit from the EU presents opportunities for the CMA as it expects to take on a bigger role on the world stage. Planning for the new arrangements will continue to be an important priority for the CMA, working closely with the government.

29. Over the past two years the CMA has stepped up its antitrust enforcement activity, and streamlined and clarified aspects of its mergers and markets work, meaning the UK regime is in good shape to meet the challenges and make the most of the opportunities which Exit will bring.

30. The CMA is fully focused on ensuring operational readiness for its post-Exit role, predicated on an assumption that it will take a significantly increased merger and antitrust review role, as well as the enforcement of State aid rules. If the CMA is to deliver the additional cases and meet these further responsibilities efficiently whilst maintaining a healthy portfolio of other enforcement and markets work (including more local cases), it needs more resources to do so.

31. At this point the exact characteristics of the UK's future relationship with the EU are not known, and although it is the stated aim of the UK government and the European Union that there be an implementation period, the CMA does not know exactly when it will take on new casework. From the CMA's perspective, it is keen to ensure a smooth transition as and when jurisdictional changes take effect, both to avoid unnecessary duplication and also to minimise the risk of enforcement gaps and ensure UK consumers are properly protected.

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

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

32. In the reporting period, there have been no changes to the legal provisions of competition law and related legislation.

33. The UK government did, in the reporting period, commence work on the statutorily mandated review of the changes to the competition regime introduced by the Enterprise and Regulatory Reform Act 2013 (ERRA), which must report by 31 March 2019.

2.2. Other relevant measures, including new guidelines

2.2.1. Leniency applications in regulated sectors

34. The CMA published an *Information Note on Arrangements for the Handling of Leniency Applications in the Regulated Sectors*, which provides businesses with information on the arrangements for the handling of leniency applications amongst the full members of the UK Competition Network (UKCN). The note makes it clear that the CMA and sector regulators operate a ‘single queue system’ for the handling of leniency applications within the regulated sectors. It also makes it clear that all businesses should in the first instance approach the CMA by calling the CMA’s leniency number in order to secure their place in the leniency queue. The other full members of the UKCN are sectoral regulators who have the concurrent power with the CMA to apply the competition law prohibitions, and to grant leniency, in their respective sectors.

2.2.2. Mergers

35. The CMA published a number of guidance documents concerning mergers, including the following:

- updated guidance designed to further improve the merger process for businesses, including guidance in relation to the CMA’s use of Initial Enforcement Orders in mergers, an updated merger notice form and revised guidance on the CMA’s mergers intelligence function
- updated guidance on how the CMA applies exceptions to the duty to refer qualifying mergers for Phase 2 assessment and undertakings in lieu of reference in operating the merger control regime
- commentary on some of the most frequently asked questions from retailers and their advisers in retail mergers, and
- two documents that aim to give guidance to bidders for rail franchises – such transactions are an acquisition of control of an enterprise under the merger control provisions of the Enterprise Act 2002.

2.2.3. Market investigations guidance

36. The CMA published updated guidance on its approach to market investigation under the Enterprise Act 2002. This included updated provisions to streamline the market investigation process by considering remedies earlier as well as to increase efficiencies between market studies and investigations while maintaining independent decision-making.

2.2.4. Compliance activities

37. The CMA has produced a wide range of materials to promote competition compliance. It also wrote an open letter for businesses and individuals who work in the creative industries. The letter highlights why the sector needs to take competition law seriously by drawing attention to a case where the CMA fined 5 businesses and a trade association over £1.5 million for breaking competition law, and steps businesses can take to help ensure they comply with competition law.

2.3. Government proposals for new legislation

2.3.1. *EU withdrawal*

38. On 26 June 2018, the European Union (Withdrawal) Act 2018 (*EU(W)A*) became law in the UK following its passage through the parliamentary process, with it due to have effect from 11pm on 29 March 2019. Using powers granted to it under the *EU(W)A*, the UK government intends to introduce secondary legislation which will amend the UK competition regime to fix deficiencies which arise by virtue of the UK no longer being an EU Member State and European competition law ceasing to apply in the UK. This secondary legislation was expected in Autumn 2018.

39. In the event of an agreement between the UK and the EU on the terms of the UK's withdrawal, including the proposed transition or implementation period which would run until 31 December 2020, the UK government is expected to introduce further primary legislation to give effect in domestic law to the terms of any ratified Withdrawal Agreement. Such primary legislation is expected to be introduced to the UK parliamentary process in draft form towards the end of 2018 or early 2019.

2.3.2. *State aid*

40. In March 2018 the UK government announced that as part of the UK's EU exit arrangements, the CMA will take on responsibility for State aid regulation within the UK. Legislation for this purpose will be introduced into the UK Parliament in due course.

2.3.3. *New rules for government to scrutinise mergers that may raise national security concerns*

41. In June 2018¹, the UK government made changes to the UK's merger regime to recognise the growing importance of small British businesses in developing cutting edge technology products with national security applications. In order to address changes in the market, the government amended the threshold tests applicable to public interest interventions for businesses in the military, dual-use, computing hardware and quantum technology sectors that are most likely to have implications for the UK's security.

42. The changes allow UK ministers to intervene on certain grounds in mergers and in these sectors when the target business's UK turnover is more than £1 million, down from £70 million under the previous rules. The rules also remove the requirement that a merger or takeover in these sectors lead to an increase in the parties' combined share of supply of relevant goods or services before the government is able to intervene.

43. In July 2018, the government also set out its plans to upgrade its powers to scrutinise investments and address the risks that can arise from hostile parties acquiring ownership of, or control over, business or other entities and assets that have national security implications. If such plans are implemented, they would overwrite the changes that came into law in June 2018 as set out at paragraphs 41 and 42.

44. Under the proposals, the government would encourage businesses and investors to notify it ahead of transactions that might give rise to national security risks. The majority

¹ Whilst the changes at paragraphs 41 and 42 fall outside of the scope of this report, they have been noted here as they may be overwritten by the changes proposed at paragraphs 43-45.

of transactions raise no national security concerns and the government expects to quickly rule out national security risks in most cases, allowing parties to proceed with certainty.

45. The White Paper proposes how the government would be able to “call in” transactions that may give rise to national security risks to assess them more fully and take any necessary remedial actions. This “call-in” power would be economy-wide, reflecting the need for flexibility to address national security risks wherever they arise.

3. Enforcement of competition laws and policies

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

46. In the period covering 1 April 2017 to 31 March 2018, the CMA concluded eight competition enforcement cases under the Competition Act 1998 (CA98), issuing five infringement decision, two commitments decisions and one no grounds for action decision. The CMA exceeded its target for launching new cases for the fourth year running, launching 10 new cases. 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

Light fittings sector: anti-competitive practices

47. In May 2017, the CMA issued a decision finding that the National Lighting Company Limited (NLC) infringed competition law and imposed a fine of £2.7 million. The CMA found that NLC engaged in resale price maintenance in relation to the supply of light fittings in the UK. The fine covered violations in relation to NLC’s Endon and Saxby brands and included an extra penalty because the company ignored a warning letter from the CMA. However, NLC also benefitted from a 30% reduction of the fine because it applied for and was granted leniency. An additional 20% reduction was applied because NLC voluntarily entered into settlement with the CMA. The fine also included a small reduction as a result of NLC agreeing to implement a comprehensive compliance programme.

Residential estate agency services in the Burnham-on-Sea area

48. In May 2017, the CMA issued a decision finding that six estate agents infringed competition law. The CMA imposed fines totalling £370,084 on Abbot and Frost Estate Agents Limited, Gary Berryman Estate Agents Ltd (and its ultimate parent company Warne Investments Limited), Greenslade Taylor Hunt, Saxons PS Limited and West Coast Property Services (UK) Limited.

49. The sixth party, Annagram Estates Limited (trading as CJ Hole), was not fined as it was the first undertaking to confess its participation in the arrangement under the CMA’s leniency policy and cooperated with the CMA’s investigation.

50. Fines for Abbot and Frost, Gary Berryman, Greenslade Taylor Hunt and West Coast included a discount to reflect savings due to their admissions and cooperation with the CMA under settlement agreements. Fines for West Coast and GTH also included reductions for leniency under the CMA’s leniency policy.

Auction services: anti-competitive practices

51. In June 2017, the CMA published its decision to accept binding commitments from ATG Media in relation to suspected exclusionary and restrictive pricing practices, including most favoured nation provisions in respect of online sales.

52. Formal acceptance of commitments by the CMA resulted in the termination of the investigation, with no decision made as to whether or not the Competition Act 1998 or the Treaty on the Functioning of the European Union were infringed.

Single-wrapped impulse ice cream: suspected anti-competitive conduct

53. In August 2017, the CMA closed its investigation into a suspected abuse of a dominant position by Unilever plc in the supply of single-wrapped impulse ice cream in the UK, on the basis that there were no grounds for action. The CMA was considering whether Unilever had abused a dominant position by offering deals or prices for impulse ice cream to retailers in the UK which were likely to have an exclusionary effect, restricting competition in the supply of those products.

Sports equipment sector: anti-competitive practices

54. In August 2017, the CMA issued a decision finding that Ping Europe Limited (Ping) infringed competition law and imposed a fine of £1.45 million. The CMA found that Ping operated an online sales ban, which was not objectively justified, and directed that it bring the online sales ban to an end, and that it must not impose the same or equivalent terms on other retailers.

Showmen's Guild: suspected anti-competitive practices

55. In October 2017, the CMA published its decision to accept binding commitments from the Showmen's Guild of Great Britain to change certain of its rules in order to address the competition concerns identified by the CMA in the course of its investigation.

56. Formal acceptance of commitments by the CMA resulted in the termination of the investigation, with no decision made as to whether or not the Competition Act 1998 was infringed.

Cleanroom laundry services and products: anti-competitive arrangements

57. In December 2017, the CMA issued a decision finding that two suppliers of 'cleanroom' laundry services infringed competition law, by agreeing not to compete for each other's allocated territories and customers, and imposed fines totalling £1.71 million.

58. The CMA took enforcement action against the companies known at the time of the decision as Micronclean Limited and Berendsen Cleanroom Services Limited. Both businesses had been trading under the 'Micronclean' brand since the 1980s in a longstanding joint venture agreement.

59. The CMA imposed a financial penalty of £510,118 on Fenland, and of £1,197,956 on Berendsen Newbury. As the parent company of Berendsen Newbury for the latter part of the relevant period, Berendsen plc was jointly and severally liable for £1,028,671 of Berendsen Newbury's fine.

Supply of solid fuel products

60. In March 2018, the CMA issued a decision finding that two of the main suppliers of bagged household fuels in the UK had infringed UK and EU competition law. The CMA imposed fines totalling £3,444,381 on CPL Distribution Limited and CPL Industries Holdings Limited (together ‘CPL’) and Fuel Express Limited, Fuel Express (Bagnalls) Limited (previously known as Bagnalls Haulage Limited), Carbo (UK) Limited and G.N. Grosvenor Limited (together ‘Fuel Express’).

61. Fines for CPL and Fuel Express included a discount to reflect savings due to their admissions and co-operation with the CMA under settlement agreements.

Ongoing investigations

62. At the end of the reporting year, alongside the cases concluded in 2016/17, the CMA continued to make good progress in the high number of cases it had launched. The CMA has worked efficiently and innovatively, without compromising fairness and rigour, to successfully decrease the average time to carry out competition enforcement investigations against a rolling three-year average.

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

63. See above.

3.1.3. Criminal action against anticompetitive practices

Pre-cast concrete drainage

64. 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.

65. At the end of 2017/18 the CMA had no continuing criminal investigations under the cartel offence in the Enterprise Act 2002. The CMA will open further criminal cartel investigations as appropriate.

3.2. Mergers and acquisitions

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

66. The CMA completed 62 Phase 1 mergers reviews in 2017/18. 41 of these were cleared, of which 37 were cleared unconditionally and 4 satisfied the CMA’s de minimis criteria. The CMA found the test for reference was met in 21 mergers, accepting undertakings in lieu (UILs) in 12 mergers and referring 9 to phase 2. At phase 2, 4 were cleared unconditionally and 2 were cleared with remedies.

3.2.2. Qualifying mergers which created a realistic prospect of a substantial lessening of competition (SLC)

Phase 1 Undertakings in Lieu of Reference (UILs)

Capita / Vodafone

67. In May 2017, the CMA announced that Capita's anticipated acquisition of Vodafone's one-way wider-area-paging business would be referred for an in-depth investigation unless suitable undertakings were offered to remedy the competition concerns identified.

68. Capita and Vodafone later abandoned the transaction and, on that basis, the CMA decided not to make a reference in this case.

David Lloyd Clubs / Virgin Active Gyms

69. In June 2017, the CMA accepted UILs for the acquisition by David Lloyd Clubs Limited of 16 Virgin Active Limited gyms. The CMA found competition concerns in two locations (Brighton and Brentwood), and David Lloyd entered into an undertaking not to purchase those two gyms without the prior consent of the CMA. The CMA formally consulted on the proposals, and found no competition concerns in the other areas affected.

Heineken / Punch Taverns

70. In August 2017, the CMA accepted UILs for the acquisition by Heineken UK Limited of Punch Taverns Holdco (A) Limited. Heineken offered to sell pubs in each of 33 local areas across Great Britain where the CMA found the proposed purchase could reduce competition. The CMA was satisfied that its concerns were addressed and therefore decided that the merger would not be referred to an in-depth phase 2 investigation.

First Group / South Western rail franchise

71. In August 2017, the CMA accepted UILs for the acquisition of the South Western rail franchise by FirstGroup plc and MTR Corporation. The two companies offered to introduce a price cap on unregulated fares between London and Exeter on both South Western and Great Western Railway services. The companies also offered to maintain the availability of cheaper advance fares on both services. The CMA accepted both proposals following public consultation, and First Group and MTR are required to submit regular reports to the CMA to show they are complying with the agreement.

Solera / Autodata

72. In September 2017, the CMA accepted UILs for the acquisition by Solera Holdings, Inc. Limited of Emperor 1 Limited. Solera offered to sell its vehicle repair and maintenance information platforms to HaynesPro, a buyer approved in advance by the CMA. It also offered to provide transitional support to the buyer. Following a public consultation, and after the CMA approved the sale agreement between Solera and HaynesPro, the CMA accepted Solera's remedies proposal.

John Wood Group / Amec Foster Wheeler

73. In September 2017, the CMA accepted UILs for the acquisition by John Wood Group plc of Amec Foster Wheeler plc. After the CMA found that competition concerns could arise in the supply of engineering and construction services and operation and maintenance services, the companies offered to sell Amec Foster Wheeler's businesses in these areas to address the CMA's concerns.

74. The CMA was satisfied, following public consultation, that the issues it identified would be fully addressed by the remedy offered.

Origin UK / Bunn Fertiliser

75. In October 2017, the CMA accepted UILs for the acquisition by Origin UK Operations Limited of assets comprising the business of Bunn Fertiliser Limited. Origin offered to sell Bunn's Montrose business to prevent any negative impact on competition from the merger. The CMA was satisfied that the proposal addressed the issues it identified. The Montrose business was sold to Glasson Grain Limited.

Vision Express / Tesco Opticians

76. In November 2017, the CMA accepted UILs for the anticipated acquisition by Vision Express (UK) Limited of Tesco Opticians. The CMA found competition concerns in three locations (Barrow-in-Furness, Helston and Ryde), with Vision Express offering to divest the stores in each of the affected areas. Following public consultation, the CMA found no competition concerns in the other areas affected.

Refresco / Cott

77. In March 2018, the CMA accepted UILs for the acquisition by Refresco Group NV of the traditional beverages business of Cott Corporation Inc. Both companies supply juice drinks using a particular aseptic production process, which allows them to be sold preservative-free and without refrigeration. Only one other competitor in the UK supplied third parties with juice drinks using this production method, and the CMA was concerned that the combined business might have increased prices or lowered quality standards. Refresco offered to address the CMA's competition concerns by selling the only UK-based Cott facility to use this production process. Following public consultation, the CMA accepted Refresco's undertakings.

*Phase 2 investigations**Cardtronics / DirectCash Payments*

78. In September 2017, the CMA cleared the acquisition by Cardtronics of rival ATM provider DirectCash Payments. The CMA found that the presence of free-to-use ATMs, and the availability of alternative non-cash payment methods, were likely to constrain surcharges at pay-to-use machines.

Cygnnet / Cambian

79. In October 2017, the CMA found that the acquisition of Universal Health Services, Inc. - through its subsidiary Cygnnet Health Care Limited (Cygnnet) - of Cambian Adult Services, may result in a substantial lessening of competition (SLC) within the market for the provision of certain hospital-based inpatient rehabilitation services for

male patients in the East Midlands. The CMA required that the companies sell one of their hospitals in the area to a buyer approved by the CMA. The CMA cleared the merger in all other regions originally identified, including the West Midlands, where it had identified possible concerns about mental health services to female patients in its provisional decision published in August.

Euro Car Parts / Andrew Page

80. In October 2017, the CMA found that the purchase of Andrew Page by Euro Car Parts could have led to higher prices or a lower quality of service in nine areas of the UK (Blackpool, Brighton, Gloucester, Liphook, Scunthorpe, Sunderland, Wakefield, Worthing and York). The CMA decided that Euro Car Parts must sell a depot in each of these areas to a purchaser approved by it so that consumers did not lose out.

Just Eat / Hungryhouse

81. In November 2017, the CMA cleared Just Eat's acquisition of Hungryhouse. The CMA found that Hungryhouse provided limited competition to Just Eat because it was much smaller in size and offered too few unique restaurants. The CMA also found that this was a rapidly evolving industry following the entry of platforms such as Deliveroo, UberEATS and Amazon, which also manage or facilitate delivery services on behalf of restaurants. The inquiry also resulted in a penalty imposed on Hungryhouse under section 110 of the Enterprise Act 2002. The CMA imposed the penalty for a failure to comply, without reasonable excuse, with a requirement imposed on Hungryhouse under section 109 of the Enterprise Act 2002.

Tesco / Booker

82. In December 2017, the CMA concluded that Tesco's purchase of Booker did not raise competition concerns. While Tesco, as a retailer, and Booker, as a wholesaler, did not compete head to head in most of their activities, the merger raised potential vertical concerns as Booker supplied convenience stores that competed with Tesco stores in a large number of local areas. The CMA considered a number of potential vertical competition concerns, as well as buyer power issues, and found that, upon further analysis, sufficient competition would remain such as to not give rise to concerns.

21st Century Fox / Sky

83. In January 2018, the CMA found that Fox's anticipated acquisition of the shares in Sky it did not already own would not be in the public interest, on the grounds of media plurality but not because of a lack of a genuine commitment to meeting broadcasting standards in the UK. In May 2018, the CMA sent its final report to the Secretary of State for Digital, Culture, Media and Sport (DCMS), who in June 2018 accepted the CMA's recommendation that the anticipated acquisition would not be in the public interest and that the most effective and proportionate remedy was for Sky News to be divested to a suitable third party.

Mole Valley Farmers / Countrywide Farmers

84. In March 2018, the CMA announced an investigation into the anticipated acquisition by Mole Valley Farmers Limited of the retail business of Countrywide Farmers plc, and referred the merger for an in-depth phase 2 investigation.

85. In April 2018, the parties decided to abandon the transaction.

Electro Rent / Microlease

86. In May 2018, the CMA decided that Electro Rent must sell its UK division to preserve competition following its merger with Microlease. The purchase was deemed likely to lead to a worse deal for renters of testing and measurement equipment used in industries such as telecommunications, defence, utilities and information technology. The CMA must approve the new owner of Electro Rent UK.

87. The CMA also imposed on Electro Rent a penalty of £100,000, under section 94A of the Enterprise Act 2002 (EA02), for Electro Rent's failure to comply with interim measures issued by the CMA under section 81 of the EA02.

European Metal Recycling / Metal & Waste Recycling

88. In August 2018, the CMA found that European Metal Recycling (EMR) must sell five of the sites it bought from Metal & Waste Recycling (MWR) due to competition concerns that prices might worsen for suppliers and customers. The CMA considered that the merger was likely to lead to a worse deal for customers in the UK that buy a certain type of scrap metal known as new production steel. In other areas of the business, including the buying (not via a tendered contract) and selling of general scrap metal, the CMA did not find the merger would substantially weaken competition.

3.3. Market investigations and market studies

89. In 2017-18, the CMA commenced, completed or continued its work on a number of significant markets cases.

3.3.1. Digital Comparison Tools (DCTs)²

90. In September 2017, the CMA published its final report following a market study into the use of price comparison sites and other apps. The year-long examination found that price comparison sites offer a range of benefits, including helping consumers shop around by making it easier to compare prices and forcing businesses to up their game.

91. Where sites are not working in consumers' best interests, the CMA took action. This included opening a competition law investigation³ into how one site set up its contracts with insurers, because it suspects this may result in higher home insurance prices. The CMA also laid down clear ground rules for all sites on issues such as communicating how they plan to use consumers' personal data and to clearly display important information such as price and product description.

92. The main recommendations from the CMA's final report included: all sites should follow CMA ground rules – they should be Clear, Accurate, Responsible and Easy to use (CARE); all sites should be clear about how they make money, how many deals they're displaying and how they are ordering the results; sites should be clear on how they protect personal information and how people can control its use; it should be made as easy as

² <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>

³ Please note that at time of publication this investigation was still ongoing and does not therefore appear in this report

possible for people to make effective comparisons or use different sites, for example through better information about products; all regulators with a stake in this area should work together to ensure people are well protected.

3.3.2. Care homes⁴

93. In November 2017, the CMA published its final findings following an extensive review of whether the residential care homes sector was working well for older people and their families.

94. The year-long market study found that the system for providing care is not sustainable without additional funding. The CMA's financial analysis of the sector identified a funding shortfall of £1 billion a year across the UK because councils are paying fee rates for the residents they fund which are below the costs care homes incur.

95. As a result of the market study, the CMA took direct action under consumer protection law,⁵ and also made a range of recommendations to government and others. These included: taking enforcement action and raising concerns with some care homes; consulting on new guidance on fees charged after death, along with separate wider guidance for care homes on the standards of behaviour that they should be meeting to comply with consumer law; better long-term planning and oversight i.e. for sufficient new care homes to be built, planning and commissioning by councils must improve to give investors greater confidence in the funding environment; better support families and prospective residents; more effective consumer protections for residents and easier complaints processes.

3.3.3. Investment consultants⁶

96. In September 2017, the CMA initiated a market study into investment consultants and fiduciary management services, following a reference from the Financial Conduct Authority, to determine whether there are any adverse effects on competition in the sector.

3.3.4. Heat networks⁷

97. In December 2017, the CMA initiated a market study into heat networks. Heat networks involve the generation and distribution of heat to buildings and consist of district heating and communal heating, and the CMA will examine the sector to ensure it is working well for consumers.

3.3.5. Funerals⁸

98. In June 2018, the CMA launched a review of the £2 billion funerals market to ensure that consumers are not getting a bad deal.⁹

⁴ <https://www.gov.uk/cma-cases/care-homes-market-study>

⁵ Please note that at time of publication this investigation was still ongoing and is, in any event, a consumer protection investigation so falls outside of the scope of this report

⁶ <https://www.gov.uk/cma-cases/investment-consultants-market-investigation>

⁷ <https://www.gov.uk/cma-cases/heat-networks-market-study>

⁸ <https://www.gov.uk/cma-cases/funerals-market-study>

3.4. Litigation

3.4.1. Tobacco

99. The Office of Fair Trading's decision¹⁰ 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 the appeal, and the CMA was subsequently granted permission to appeal to the Supreme Court. In March 2018, a hearing was held at the Supreme Court and in a judgment given on 16 May 2018 the Court allowed the CMA's appeal.

3.4.2. Pay for Delay

100. The CMA issued its decision in the Paroxetine case¹¹ in February 2016, which fined six firms for engaging in conduct which was intended to keep generic pharmaceuticals out of the market. This decision was appealed by all addressees in April 2016. In March 2018, the Competition Appeal Tribunal ('CAT') referred elements of the case to the Court of Justice of the European Union for a preliminary reference, and dismissed all other elements of the parties' appeals.

3.4.3. Phenytoin

101. 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 the anti-seizure medication 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 appealed the substantive decision and a hearing was held in November 2017. As of April 2018, the CMA was awaiting judgment from the CAT.

3.4.4. Balmoral Tanks Ltd

102. 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. The CAT handed down its judgment on 6 October 2017 which dismissed Balmoral's appeal. Balmoral has received permission to appeal from the Court of Appeal and a hearing will be held in 2019.

3.4.5. Ping Europe Limited (Ping)

103. In August 2017, the CMA issued a decision fining Ping Europe Ltd for a ban on its approved retailers selling its products over the internet. Ping appealed this decision on 25 October 2017 and a hearing was held in May 2018. As of April 2018, the CMA was awaiting judgment.

⁹ The launch of this market study falls outside of the scope of this report but, due to the scale of the work involved, is noted here for completeness

¹⁰ <http://www.catribunal.org.uk/237-7760/1197-1-1-12--1-Somerfield-Stores-Limited-2-Co-operative-Group-Food-Limited.html>

¹¹ <https://www.gov.uk/cma-cases/investigation-into-agreements-in-the-pharmaceutical-sector>

3.4.6. *Concordia*

104. Concordia International (Rx) UK Limited applied to vary or discharge a search warrant obtained by the CMA on 5 October 2017. At the High Court the challenge succeeded, in a judgment given on 16 November 2017, as the judge was unwilling to confirm a warrant obtained with information protected by Public Protection Immunity which was unable to be disclosed to the subject of the warrant. The Court of Appeal gave permission for the CMA to appeal in January 2018, with timing dependent on the date of promulgation of a judgment of the Supreme Court in the *Haralambous* case, which was concerned with a fundamentally similar point. The Supreme Court gave judgement in *Haralambous* on 24 January 2018, and a hearing at the Court of Appeal was listed for 17 May 2018. As of April 2018, the CMA was awaiting judgment.

3.4.7. *Lundbeck intervention*

105. The CMA is leading on a UK intervention in support of the European Commission ('Commission'). Lundbeck, a Danish 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 Court's judgement was then appealed to the Court of Justice of the European Union. The UK is intervening in this appeal as its subject matter is very closely connected to the issues raised in the domestic Pay for Delay¹² litigation, in which a CMA decision is currently under appeal. The outcome of this litigation may also affect future 'pay-for-delay'-type cases. The UK submitted its Statement in Intervention on 2 October 2017.

3.4.8. *O2 / Three intervention*

106. The CMA is also leading on another UK intervention, in support of the Commission, in CK Telecoms UK's ('3') 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. The UK submitted its Statement in Intervention on 31 August 2017.

4. The role of competition authorities in the formulation and implementation of other policies e.g. regulatory reform, trade and industrial policies

107. 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. Examples include the following:

- The competition landscape in the United Kingdom
 - The CMA published a report on local authorities and competition, which draws together case studies from CMA work, offering insight into how local

¹² <https://www.gov.uk/cma-cases/investigation-into-agreements-in-the-pharmaceutical-sector>

authorities can identify and address competition risks, and secure the benefits of competition for local consumers and taxpayers. The CMA also wrote an open letter to local authorities providing an overview of the report.

- The CMA published its Annual Concurrency Report 2018, which assesses the operation of the concurrency arrangements, as required by the Enterprise and Regulatory Reform Act 2013, during the preceding year. This is the fourth annual report produced by the CMA since the relevant requirements of the ERRA took effect on 1 April 2014.
- The CMA took part in workshops with policy officials in Scottish, Welsh and Northern Irish governments, to promote the use of the CMA's Competition Impact Assessment guidance.
- Transport
 - The CMA worked with Transport Scotland on the development of their policy proposals for bus services in Scotland, where the effect on competition is a key aspect of the consideration of different models which include franchising and local authority-owned bus companies. The CMA will be a statutory consultee on the introduction of franchising schemes. Similar discussions have been had and are ongoing with Transport for Wales.
 - The CMA responded to Transport for West Midlands' consultation on Advanced Quality Partnership.
 - The CMA responded to a Welsh government consultation on changes to the taxi and private hire licensing laws and gave advice to the Scottish government on guidance to assist licensing authorities to consider the competition impact of limiting the overprovision of taxis and private hire cars.
- Cartels screening tool
 - The CMA published its innovative software tool that tests procurement data for signs of potential cartel and bid rigging activity. The tool has now been requested over 200 times and is available on request from the CMA website.
 - The CMA helped provide training to staff from the Northern Ireland Central Procurement Directorate (CPD) on the CMA's screening for cartels tool to build the ability of CPD staff to avoid becoming victims of bid-rigging.
- The Digital Economy
 - The CMA gave evidence to the Scottish government's Expert Advisory Panel on the Collaborative Economy to assist the panel consider how the sharing economy can deliver benefits to consumers, while ensuring effective consumer protection is in place.
 - The CMA made recommendations to the UK government to support data portability and address regulation of digital comparison tools for regulated products and provide enforcers of consumer law with fining powers. This included tailored recommendations to statutory sector regulators.
- Care homes
 - The CMA made recommendations to the UK and Welsh governments and the Northern Irish Executive on how to improve the care home market.

- Legal services
 - The CMA engaged with the Independent Review of Legal Services in Scotland, providing information and advice on how the regulatory framework can be reformed to best serve the consumer of legal services.

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):

108. The CMA's budget in 2017-18 for its competition-related activities was approximately GBP 30 million, a comparable figure to 2016-17.

5.1.2. Number of employees (person-years):

109. The CMA employed a total of 640 staff members. Approximately 277 of the total staff and 247 of the non-administrative staff worked on competition enforcement, approximately 81 of which were economists, 73 were lawyers and 93 were other professionals.

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

110. The CMA estimates that approximately 160 members of staff worked in enforcement against anticompetitive practices and approximately 87 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:

111. 1 April 2017 – 31 March 2018

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

112. See above.