



Competition and Markets Authority

The Cabot
25 Cabot Square
London
E14 4QZ
United Kingdom

By email

28 January 2021

CMA Annual Plan Consultation 2021/22 – Hausfeld & Co. LLP Response

Hausfeld & Co. LLP welcomes the opportunity to provide our views and comments on the CMA's proposed Annual Plan for 2021/22.

About Hausfeld

Hausfeld & Co. LLP is the leading competition litigation firm in Europe for claimants. We are a disputes-only practice with 12 offices worldwide: 7 across Europe (Amsterdam, Berlin, Brussels, Düsseldorf, London, Paris, Stockholm) and 5 throughout the US. Since the launch of Hausfeld's European presence over a decade ago, Hausfeld has pioneered redress for breaches of competition law in Europe and has managed some of the region's most high-profile and complex disputes.

Our London team comprises 18 partners and some 40 legal staff, including dual-qualified lawyers admitted to the bar in Canada, France, Greece, Germany and New York. We currently have the largest dedicated competition damages actions team in Europe.

Consultation responses

1. Do you agree with the overall direction and themes of focus for the CMA set out in the 2021/22 draft Annual Plan?

- 1.1 The CMA, like the country's economy, faces clear challenges in the year ahead in dealing with both the implications of Brexit and the fall-out from the Covid-19 pandemic. These challenges only increase the importance of the CMA's crucial role in promoting fair competition in all sectors of the economy and protecting consumers.

- 1.2 The draft Annual Plan takes account of the changed landscape in which the CMA finds itself operating and acknowledges further challenges too, including the accelerating digitalisation of the economy, which – as the CMA made clear in its online platforms and digital advertising market study – is an area in need of far-reaching pro-competitive reform.
- 1.3 With this in mind, we broadly agree with the overall direction and themes of focus for the CMA as set out in the draft Annual Plan. We note below some further observations as to the main themes set out in the Plan.

2. Are there any changes that you think we should make to our main themes for 2021/22?

CMA fining powers for consumer law breaches

- 2.1 We welcome the CMA's reference to the introduction of fining powers for breaches of consumer law (paragraph 2.18), which we note has been in contemplation for some time (we note in particular the Government's Green Paper of April 2018 - *Modernising Consumer Markets: Consumer Green Paper* – and the CMA's response). We take the view that affording the CMA fining powers in relation to consumer law breaches would help to deter such breaches, which can of course cause serious and widespread harm to consumers. There does not appear to be any good reason why consumer law infringements are not treated like breaches of competition law in this respect.
- 2.2 Clearly it is of paramount importance that consumers are protected from unscrupulous practices during and as we recover from the Covid-19 pandemic in particular, and we would hope that the CMA is granted fining powers for consumer law breaches in the near future.

Cooperation with the EC and concurrent regulators in the UK

- 2.3 We are pleased to see that the CMA plans to continue to engage and cooperate closely with other competition and consumer authorities in the EU and globally (paragraph 2.39). However, we note that cooperation with the European Commission is not specifically addressed in the CMA's draft Annual Plan and it might be expected that the degree and nature of cooperation between the CMA and the Commission will be of considerable importance to the CMA in the years ahead.
- 2.4 It would be interesting to understand the CMA's views as to whether: (i) it expects that its increased responsibilities following the end of the Brexit transition period will impact on its relations with concurrent regulators in the UK, and if so, how; and (ii) more generally, what additional resources/responsibilities will be taken on by the concurrent regulators following the end of the Brexit transition period.

Division of competencies between agencies set up to regulate digital markets

- 2.5 We welcome the CMA's focus on the regulation of digital markets, the structure and practices associated with which are the source of considerable consumer detriment.
- 2.6 With specific regard to the Digital Markets Taskforce, we are interested to understand more about how the CMA plans to divide responsibilities between the different bodies being set up to help advise on

and implement the budding regulatory regime. To that end, we would welcome an indication in the CMA's workplan as to: (i) the anticipated role, if any, of the Digital Markets Taskforce following its report to Government of December 2020; (ii) whether it intends to assist the Government in the legislative process geared towards establishing the Digital Markets Unit; and (iii) the division of the respective competencies between the Digital Markets Taskforce and the Digital Markets Unit and the extent of any overlap between the two.

Use of CMA resources

- 2.7 We recognise that the CMA is in the process of taking on a gamut of new and important responsibilities as it takes its place as a global competition and consumer protection authority outside of the European Union. Evidently, the CMA will need to adapt to its significantly expanded role following the end of the Brexit transition period, pursuant to which it will take on an increased caseload, in relation to both enforcement and merger control. In addition, the CMA is soon to house the new Digital Markets Unit, and will require resources to respond to the ongoing Covid-19 pandemic.
- 2.8 It will be vital that the CMA has sufficient resource to perform its expanded duties effectively. The Charts on page 16 of the draft Annual Plan suggest that between October 2019 and September 2020, the 'Covid-19 taskforce' was resourced using funds that the previous year had been dedicated to 'Enforcement activity' and 'Other'. By contrast, 'Mergers' and 'Markets and Reg Appeals' stayed fairly stable. Whilst clearly the Covid-19 pandemic has required an urgent response, the CMA will want to protect against the prospect that time-sensitive matters (such as merger reviews) may come at the expense of less time-sensitive but nevertheless vitally important matters (such as enforcement activities) going forward.
- 2.9 In this context, we urge the CMA to consider the potential for increased enforcement activity, of both competition law and consumer law, in its overall strategy for the coming year. It is noted in the draft Annual Plan that the CMA has ten competition cases and ten consumer law cases on its books at the time of publication. Given the central role that enforcement has to play in ensuring open, competitive markets, coupled with the evidence of the harms to consumers stemming from the poorly-functioning digital markets which the CMA itself has uncovered, it is clear that there is the opportunity to take on further enforcement cases in the course of 2021 and 2022, if the CMA has the ambition to do so.

Hausfeld & Co. LLP
28 January 2021