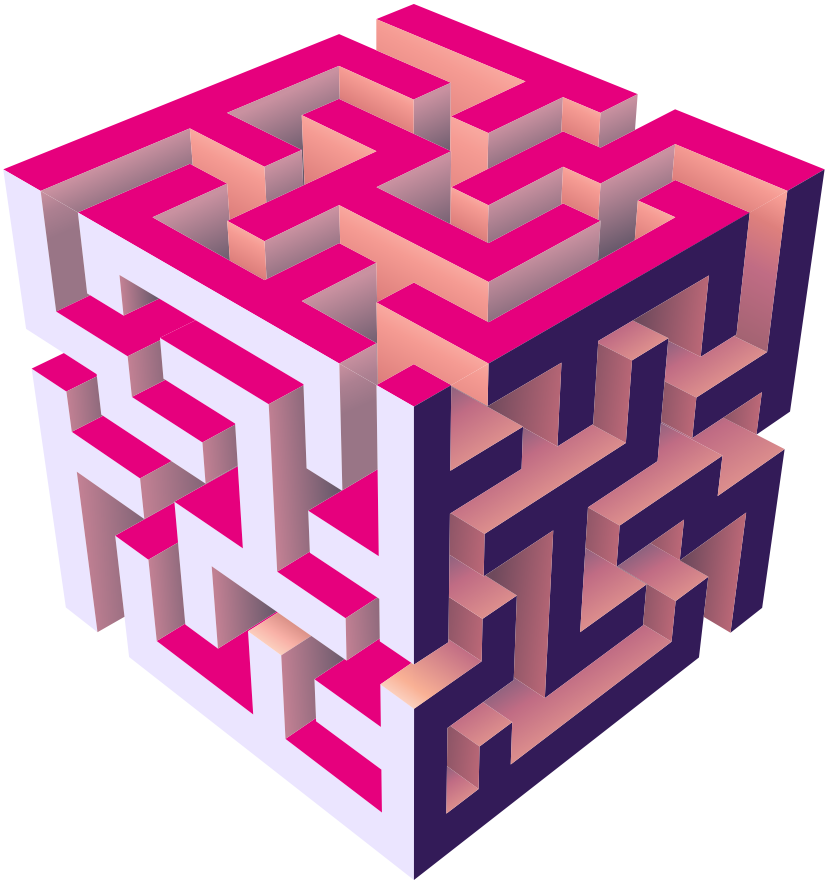
Regulatory update

July 2022



Welcome to the latest edition of the Regulatory update, which pulls together recent developments from across the UK's regulatory – to help you navigate the regulatory maze.

In this edition we take a look at regulation after EU exit, updates to the UK sanctions regime, FCA's review into challenger banks, IR35 and employment status, DEFRA PRN and PERN consultation reforms, FSA CBD food applications update, ASA's new pilot regime for online transparency, reforms to the Solvency II regime, SLAPP suits could include new legal regulations, plans for regulating stable coins and so much more!

Please do not hesitate to contact me, or your normal RPC contact, if you would like to discuss any of the topics highlighted or have any suggestions for areas you would like to see in future updates.

Gavin Reese
Partner, Head of Regulatory

White collar crime	Tax	Health, safety and environmental
Product regulation	Data and privacy	Advertising
Competition	Insurance and financial services	Professional services

REGULATING AFTER EU EXIT

Gavin Reese CONTACT

Regulating after EU Exit

As a European Union (EU) member state, the UK operated within an EU regulatory framework, with many regulations harmonised to facilitate the European single market. Following EU Exit, many UK regulators have taken on functions previously carried out by the EU. This report assesses how regulators have managed the transition and are responding to the opportunities and challenges of EU Exit

This report considers three regulators whose work has been significantly affected by EU Exit. The report seeks to draw out common issues to help inform regulators and policy departments as they develop regulation after EU Exit, both in the three areas covered and more broadly across government.

National Audit Office have examined:

- the Health and Safety Executive's (HSE's) role in chemicals regulation, in particular the Chemicals Regulation Division
- the Food Standards Agency's (FSA's) role in regulating food safety and standards and
- the Competition and Markets Authority's (CMA's) roles in enforcing competition and consumer protection law; operating the Office for the Internal Market; and preparing to provide subsidy advice within the UK subsidy control regime.

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WHITE COLLAR CRIME

Sam Tate CONTACT

FCA's review into challenger banks uncovers deficiencies in financial crime controls

The Financial Conduct Authority (FCA) recently published its findings on a review of the financial crime controls implemented by a sample of challenger banks.

The financial services industry in recent years has seen a significant increase in the popularity of challenger banks in the UK. Digitally and technologically focused onboarding processes are some of the features which attract new customers who seek to manage their finances with convenience.

The FCA's most recent view has identified that there is still room for improvement in complying with anti-money laundering and sanction obligations.

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UK sanctions

Recent important changes have been made to the UK sanctions regime on 15 March 2022. The changes were introduced sooner due to the ongoing conflict in Ukraine. The primary objective of these changes is to reduce challenges when attempting to trace wealth in money laundering and economic crimes.

The Act makes several changes to the Sanctions and Anti-Money Laundering Act 2018 which are intended to facilitate working in conjunction with UK sanctions along with those imposed by international partners, and greater flexibility when implementing sanctions.

The changes enable monetary penalties for financial sanctions breaches to be imposed.

The Act also contains amendments to the 'unexplained wealth order' regime.

Click here to read more.

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TAX

Adam Craggs CONTACT

IR35 and employment status – two decisions from the Court of Appeal

On 26 April 2022, the Court of Appeal handed down two judgments on the application of the employment status test in the context of IR35 in cases involving radio presenters providing services via personal services companies (PSCs) to broadcasters. The judgments will be disappointing for the taxpayers concerned.

These decisions emphasise that even if the "mutuality of obligation" and "sufficient degree of control" tests are met, this does not itself create an irrebuttable presumption that there is an employment relationship. It is still necessary for the Court or Tribunal to make an overall qualitative assessment of the relationship, which is multi-factorial. The Court held that the key question was whether, judged objectively, the parties intended to create a relationship of employment. That intention, it said, is to be judged by the contract itself and the circumstances in which it was made.

In *HMRC v Atholl House Productions Ltd*, the taxpayer was the personal services company of the journalist and broadcaster Kaye Adams. HMRC enquired into the contracts the PSC had with BBC Radio Scotland in the 2015/16 and 2016/17 tax years. The terms of the contracts:

- stated a minimum commitment of 160 programmes a year
- did not require that Ms Adams worked exclusively for the BBC
- but:
  - gave the BBC a right of first call on Ms Adams' services, and
  - gave the BBC a right to consent before Ms Adams could appear in other broadcast media intended for a UK or Irish audience

The Upper Tribunal had found in favour of the taxpayer, finding that despite the terms of the written agreements it was likely that the BBC would have been flexible if Ms Adams had wanted to pursue other commitments. The Upper Tribunal also decided it would be possible for Ms Adams to carry on business on her own account even if the BBC was her material income source, as otherwise many independent contractors would be considered employees. Ms Adams' economic dependence had to be considered in the context of her career overall and not restricted to the tax years under enquiry.

The Court allowed HMRC's appeal, accepting that the reasoning leading to the Upper Tribunal's decision had been flawed. The Tribunal, in the Court's view, had incorrectly focussed on the activities undertaken by Mr Adams in her different roles rather than the capacity in which they were performed. The case has been remitted to the Upper Tribunal.

In *Kickabout Productions Ltd v HMRC*, the facts of the case concerned Paul Hawksbee, a radio presenter on Talksport radio, who had presented a radio show on Talksport, with a co-presenter, for eighteen years. For the three years under appeal (2012/13 to 2014/15), 90% of Mr Hawksbee's total income derived from this work carried out through Kickabout Productions Ltd (KPL), a personal service company established by Mr Hawksbee to provide his services. Payments were made by Talksport to KPL for the provision of Mr Hawksbee's services. This was the only radio presenting work Mr Hawksbee had been involved in during this period. He and his co-presenter were free to decide on the format and content of the show, subject to constraints largely dictated by OFCOM's regulatory requirements.

There were two contracts in place between KPL and Talksport for the relevant period. Under each, KPL was required to make Mr Hawksbee available to present at least 222 shows each year.

The Court of Appeal upheld the Upper Tribunal decision that the relationship under the hypothetical contracts between Talksport and Mr Hawksbee was one of employment.

The decisions can be viewed here and here.

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Insurance-linked securities – stamp duties exemption

On 25 April 2022, the Securitisation Companies and Qualifying Transformer Vehicles (Exemptions from Stamp Duties) Regulations 2022 (SI 2022/464) were made. The Regulations introduce bespoke stamp duty and SDRT exemptions for insurance-linked securities (ILS), with effect (broadly) from 17 May 2022.

The new statutory exemption should remove any uncertainty as to whether the stamp duty "loan capital" exemption should apply to ILS, at least for ILS that take the form of bonds. Relying on that exemption, before the introduction of the new ILS-specific exemption, could be in doubt in cases where ILS carry a right to interest that is (i) dependent on the results of a business or (ii) in excess of a "reasonable return" on the nominal amount of the capital.

However the Regulations:

- do not cover situations where ILS carry rights of conversion into, or acquisition of, other securities (other than, in either case, ILS issued by the same insurance SPV that would themselves be exempt from stamp duties)
- do not apply to insurance SPVs that fail to be eligible for the UK corporation tax exemption under the bespoke tax rules for ILS issuers
- do not provide any stamp duties exemptions for ILS that take the form of shares

The Regulations can be viewed here.

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OECD 'Pillar 1' consultations

Two consultations were launched by the Organisation for Economic Co-operation and Development (OECD) in April. Each forms part of the 'pillar 1' aspect of the proposals for global tax reform, first announced in Summer 2021 and subsequently agreed by 137 members of the OECD, designed to address challenges arising from the digitalisation of the economy. The current tax rules have been dismissed as no longer being fit for purpose, in particular in a world where business is increasingly digitalised such that it is no longer necessary for multinationals to have a physical presence in the jurisdictions in which they do business.

By way of recap, pilar 1 concerns the reform of the international tax regime so that certain multinational companies will be required to pay tax where they do business3.

Pillar 1 'scope' consultation

The first consultation, launched on 4 April 2022, seeks views on draft rules that specify the groups and entities within the scope of the new jurisdictional taxing right that lies at the heart of the pillar 1 proposals. Broadly, the draft rules are aimed at capturing only the largest and most profitable businesses. Under the proposals, global firms with at least:

- a 10% profit margin, and
- total revenues above EUR20bn

would have 20% of any profit above the 10% margin reallocated and subjected to tax in the countries in which they operate.

The draft rules provide that the 10% profit threshold would need to be met (i) in the period of assessment, (ii) in 2 of the 4 previous periods, and (iii) on average across all 5 periods.

Whether the EUR20bn test should also be subject to equivalent past period and average tests (rather than just for the period of assessment) remains an open issue – views are specifically sought on this. Also an open item is whether these tests should be a permanent feature of the scope rules or, in the alternative, as an entry test (so that once a group first becomes subject to the new rules it remains so as long as the profit margin and revenue thresholds are met in respect of the period of assessment only).

The draft rules also include an anti-abuse provision to deter the artificial fragmentation of groups with a view to falling outside the new rules.

The consultation can be viewed here.

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Extractive activity exclusion consultation

A second consultation was launched on 14 April 2022. This consultation looks at the exclusion, from amounts to be subject to the new pillar 1 taxing right, of profits from so-called "Extractive Activities".

To fall within this exclusion, groups must meet both (i) a product test (in that they must derive revenue from the sale of certain 'extractive' products) and (ii) an activities test (the group must carry out defined exploration, development or extractive activities).

The consultation states that the intent of the exclusion is to achieve the policy goal of excluding the economic rents generated from location-specific extractive resources, that should be taxed only in the source jurisdiction.

Extractive products, as defined in the draft rules, would very broadly include any solid, liquid or gas extracted from the earth's crust (including minerals and hydrocarbons). There are also detailed proposed definitions as to what should constitute exploration, development, and extraction.

The consultation can be viewed here.

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Corporate re-domiciliation consultation – responses published

On 12 April 2022, a summary of responses to the government's consultation on a proposed UK corporate re-domiciliation regime was published. Under the proposals, a foreign-incorporated company would be able to change their place of incorporation to the UK, whilst maintaining their corporate legal identity.

On the tax side responses covered a number of areas, including:

- whether companies re-domiciling into the UK, and companies re-domiciling out from the UK (on the assumption that the regime would be a 2-way one), should be treated as automatically UK tax resident (for companies moving to the UK) and automatically ceasing to be UK tax resident (for companies moving out of the UK)
- whether existing UK tax rules would be sufficient to prevent, in certain circumstances, companies moving to the UK under any new regime only in order to be able to set foreign losses against UK profits
- whether re-basing of assets of companies redomiciling into the UK would be required for chargeable gains purposes
- the personal tax treatment of shareholders and directors in companies moving to the UK under any new regime (with a particular focus on inheritance tax treatment and tax treatment of 'non-doms')
- Stamp taxes and VAT treatment.

The summary of responses can be viewed here.

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HEALTH, SAFETY & ENVIRONMENTAL

Gavin Reese CONTACT

Environmental Agency fines

More than 30 companies have been fined by the Environment Agency. This was due to the breaches of EU Emissions Trading System, Climate Change Agreements scheme and the Energy Saving Opportunity Scheme.

Fines were issued to companies running power plants and energy companies which either under-reported or failed to report their emissions. Brewing and automotive companies were fined after failing to sufficiently reduce their energy use and carbon dioxide emissions.

Insurance and manufacturing firms were fined for failing to complete audits and for failing to identify cost-effective energy saving measures.

Liz Parkes, Deputy Director for Climate Change at the Environment Agency said "The fines published today should serve as an important reminder for all organisations to ensure that they are compliant with these schemes and are playing their part in tackling climate change."

Click here to read more.

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Building Safety Bill: Bill receives Royal Assent to become the Building Safety Act

The Building Safety Bill is designed to give residents more power to hold builders and developers to account and toughen sanctions against those who threaten their safety, while a Building Safety Regulator will oversee the new regime and be responsible for ensuring that any building safety risks in new and existing high rise residential buildings.

The Health and Safety Executive (HSE) has stated that the registration of high-rise buildings will be starting from April 2023, with the new safety management regime requirements applying from October 2023. Further dates for other changes will soon be released in due course.

Click here to read more.

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PRODUCT REGULATION

Gavin Reese CONTACT

FSA publishes a list of CBD products linked to novel food applications

The Food Standard's Agency (FSA) has published a list of CBD food products on sale in England and Wales which have a credible application for authorisation with FSA. The FSA is now advising that products not on the list should be removed from sale.

The list of CBD (cannabidiol) products have been authorised by the regulator on 31 March 2022. The FSA has published an updated list of products and is now calling on local authorities and industry to help bring the CBD market into compliance by prioritising the removal of products.

Click here to read more.

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Government introduces plans to ease UKCA marking transition

We previously wrote that the deadline for products being placed on the UK market to be UKCA marked (alongside or instead of EU CE marking) had been extended until 1 January 2023. In light of this approaching deadline, the Government has introduced a range of measures to ease the transition:

Legislation to allow manufacturers to apply the UKCA mark to products that have been conformity assessed by EU bodies prior to the end of 2022, with a separate UK test not being required until the product's certificate expires or 31 December 2027 (whichever is sooner);

- Some CE-marked products imported into the UK before the end of 2022 will not require retesting or recertification for UKCA requirements;
- Spare parts will be accepted onto the GB market where they adhere to the requirements that were in place at the time the original product entered the market;
- Existing labelling easements will be extended until 31 December 2025 to continue to allow UKCA markings (and any other relevant information) to be added by sticky labels and/or accompanying documentation; and
- Manufacturers of certain construction products that have been tested by an EU notified body before 1 January 2023 will be able to obtain a UKCA mark without the need for retesting.

The full guidance is published here.

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DATA & PRIVACY

Jon Bartley CONTACT

NOYB greets proposals for new EU-US data transfer framework with threat of "Schrems III"

Since July 2020, organisations exporting personal data from the EEA (and the UK, following Brexit) to the United States have faced challenges created by the ruling of the Court of Justice of the European Union (CJEU) in "Schrems II".

In response to actions brought by lead litigant Max Schrems, the CJEU ruled the previous EU-US Privacy Shield cross-border transfer mechanism to be invalid and mandated further scrutiny over exports of personal data from the EEA more generally. The CJEU's concerns principally related to the potential access of personal data subject to the GDPR by authorities in the United States. Organisations that relied on the Privacy Shield have generally adapted to the ruling by introducing alternative cross-border transfer mechanisms, such as standard contractual clauses, and completing data transfer impact assessments.

In March 2022, the European Commission and authorities in the United States announced an agreement in principle for a new Transatlantic Data Privacy Framework (the Framework). While the Framework remains a political agreement, it is intended to permit the free flow of personal data from the EEA to the United States without further safeguards where certain conditions are met.

The principles for the Framework include a new set of rules around limiting US authority access to personal data and a revised redress system to investigate data subject complaints.

The proposal for the Framework has been met with a mixed response from authorities and privacy campaigners. The European Data Protection Board has announced an intention to scrutinise any development of a legal framework based on the political agreement.

As may be expected, None of Your Business (NOYB), the campaigning organisation run by Max Schrems, published an open letter on 23 May 2022 setting out a number of concerns with the proposed Framework. These include the need for a correct proportionality test under the US law and a reliance on re-adopting Privacy Shield principles (which have already been held not to comply with the GDPR). NOYB threatens litigation through the CJEU if these concerns are not remedied, opening the door for a possible "Schrems III" legal action.

More information about the Framework can be found here.

NOYB's letter can be found here.

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UK Data Protection Reform

The 2022 Queen's Speech, presented in the UK Parliament on 10 May 2022, highlighted reform to the UK's data protection regime as a key 2022 priority. A consultation closed in November 2021 which outlined key areas for reform, including;

- reducing or removing governance requirements for businesses, such as the need to appoint a data protection officer; and
- measures to increase the list of countries that are designated by the UK as offering adequate data protection through a programme of risk-based adequacy assessments

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ADVERTISING

Oliver Bray CONTACT

ASA announces a new pilot programme to improve online transparency

Under the title of 'Intermediary and Platform Principles', the new Advertising Standards Authority (ASA) pilot will explore formalising and bringing more accountability and transparency to the role that companies play in helping to uphold the UK's world-leading system of advertising regulation.

The initiative is the result of collaboration between the ASA and members of IAB UK (a member of the Committee of Advertising Practice). It will pilot a set of principles covering how participating companies raise advertisers' awareness of the rules that apply to their ads online and help them to secure compliance in cases when an advertiser appears unwilling or is unable to comply with the rules.

The pilot will run for one year from June 2022.

Click here to read more.

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Tough new rules to curb broad appeal of gambling ads and better protect under-18s

Committee for Advertising Practice (CAP) has announced the introduction of tough new rules for gambling ads as part of their commitment to safeguarding young people and vulnerable audiences.

These rules will significantly impact gambling advertisers looking to promote their brands using prominent sportspeople and celebrities as well as individuals like social media influencers, who are of strong appeal to those under-18.

Advertisers have until 1 October 2022, when the rules will come into effect.

Click here to read more.

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COMPETITION

Lambros Kilaniotis CONTACT

Parallel CMA and European Commission Merger Investigation and Diverging Outcomes

The proposed merger between the two Finnish companies, Cargotec and Konecranes, which offer container handling equipment and services to port terminals and industrial customers around the globe, has been a reminder of the potential for divergence in the outcome of parallel UK and EU merger investigations. In this post-Brexit era whereby the EU's one-stop shop merger regime no longer applies to the UK, it is always important to consider whether a transaction notifiable to the European Commission should be voluntarily notified in the UK as well.

The European Commission approved the merger on the basis of the parties' proposed remedies package. However, the UK's Competition and Markets Authority (the CMA) ultimately blocked the merger. The parties had offered to carve out certain assets from each of their respective existing container handling equipment businesses and to divest this newly combined business (rather than divest one or other's existing business). The CMA concluded that this remedies package offered was complex and risky and would not provide a purchaser with important capabilities, thereby potentially impairing significantly its ability to compete with the merged parties. The parties decided to abandon the proposed merger which also faced concerns from the US Department of Justice (the DoJ).

Whilst each regulator carried out its own independent review, the European Commission, the CMA and the DoJ had each subsequently highlighted the close engagement or collaboration between them (and other regulators) during their investigations.

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Illegal Resale Price Maintenance in the Spotlight and the Consequences of Ignoring Warning Letters

The CMA has announced a £1.5 million fine for Dar Lighting, a supplier of domestic lighting products, and its parent company for illegal RPM. Dar Lighting had restricted its authorised retailers' ability to set their own online prices and had required them to sell at or above a minimum retail price, thereby depriving customers of the possibility of better deals.

The CMA noted that selective distribution agreements (SDAs) are a legitimate way for suppliers to choose the retailers to stock their products, but that they can make it easier for suppliers to control resale prices. Dar Lighting had given *"retailers the impression that the terms of its SDAs prevented them from offering online discounts"*. Suppliers do have to take particular care to ensure that their SDAs are not used or implemented in a way which infringes competition law.

The CMA also highlighted the fact that Dar Lighting had previously been issued with two warning letters about restricting retailers' ability to discount their prices and RPM and had then failed to take adequate steps to comply with these warnings. This was an aggravating factor for fine calculation purposes and led to a 35% increase in the fine (the company received a 20% discount under the settlement procedure).

The CMA issues warning and advisory to businesses where there are concerns that they may be infringing competition law, but where the suspected conduct is not a current priority for investigation by the CMA. These letters set out the CMA's concerns, recommend that the business concerned conduct a competition law review of its business practices and indicate a deadline for a response. In relation to a warning letter, the recipient company is asked to inform the CMA in writing as to what it has done/intends to do to ensure competition law compliance or why it considers that it is not in breach, whereas in respect of an advisory letter, the recipient is asked to acknowledge receipt. Most of the CMA's 28 warning letters issued last year related to suspected RPM conduct.

This enforcement tool is also used by concurrent competition regulators. Fourteen 'on notice' letters were issued by the FCA and one advisory letter by the ORR during the year covered by the CMA's recently published 2022 Concurrency Report.

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The Season for Regulators' Annual Plans and other Reports

Concurrency Report

The 2022 Concurrency Report published by the CMA (covering 1 April 2021 to 31 March 2022) estimates that 25% of GDP is accounted for by the services provided by the regulated sectors. The regulators with concurrent competition powers are the Civil Aviation Authority, Ofcom, Ofgem, the FCA, the PSR, NHS Improvement, ORR, Ofwat and Northern Ireland Authority for Utility Regulation.

In relation to Competition Act investigations, the Report highlighted that:

- there were 8 open cases at the commencement of the reporting period (6 of which were investigated by 4 different regulators)
- 5 cases were closed (these were the PSR's first infringement decision, three commitments decisions by each of the CMA, Ofgem and Ofwat, and a case closed by the FCA on priority grounds) (with an ORR commitments decision following shortly afterwards)
- 4 new investigations were formally launched
- information gathering and dawn raid powers were used in 5 cases and
- a record number of 25 new complaints were received

The State of UK Competition Report

The CMA has also published its second State of UK Competition Report, noting that:

"The Covid-19 pandemic, the UK's changing trade relationship with the EU, disruption to supply chains and shipping, and rising energy costs have all brought significant change and upheaval to the UK economy over the past few years. In such circumstances it is more important than ever that competitive intensity across the economy is monitored and supported."

Key findings of the Report include:

- markets remain more concentrated than prior to the 2008 financial crisis
- lower income households are more likely to consume goods and services in more concentrated markets (a higher proportion of their income is spent on essential services)
- average markups to the cost price of goods have increased since 2008 from just over 20% to c.35% (with higher markup increases for the 10% most profitable companies)
- evidence suggests that the largest and most profitable firms are able to sustain their strong position for longer than in the past; and
- digital markets have an important role to play in the post-pandemic recovery and have a huge potential "to improve our lives and living standards". However, they need to stay competitive otherwise there is a risk of reduced innovation and choice and people giving up more personal data than they would like

Annual Plans

A number of the regulators, including the FCA, the PSR and Ofcom, have published their annual plans and competition is an important consideration for them. The CMA has also published its Annual Plan in which it confirms that it will focus on the following themes:

- protecting consumers from unfair behaviour by businesses, during and beyond the COVID pandemic
- fostering competition to promote innovation, productivity and long-term growth "right across the UK"
- promoting effective competition in digital markets
- supporting the transition to low carbon growth; and
- delivering its new responsibilities and strengthening its position as "a global competition and consumer protection authority"

In terms of the CMA's new responsibilities, the Report highlights its expanding work on digital markets ahead of the launch of the Digital Markets Unit (which remains in 'shadow' form until the requisite legislation is in place), launching the Office for the Internal Market (to support the effective operation of the UK internal markers post Brexit) and preparing for the establishment of the Subsidy Advice Unit (whose role will be to monitor and report on the functioning of the new subsidy control regime once the Subsidy Control Bill is enacted). The Report also highlights that *"the volume of complex, multinational and antitrust cases, often with a digital focus, continues to grow"* and its intention to *"continue to grow the CMA's presence across the nations and regions of the UK"*.

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Competition Policy Reform

BEIS has recently published the Government's response to the 2021 consultation on reforming competition and consumer policy. At this stage, it is not clear of the timing of the requisite legislation to bring about the reforms set out.

The Government intends to introduce a statutory duty of 'expedition' for the CMA in relation to both its competition and consumer law functions, including those relating to the new digital competition regime.

In relation to competition law, there are changes ahead for mergers, market investigations and more generally. In relation to the UK's merger regime which will retain its voluntary notification and non-suspensory elements, the main changes relate to:

- an increase in the turnover threshold from £70 million to £100 million (the £70 million threshold will remain for the purposes of intervention in media mergers on public interest grounds)
- an additional alternative threshold to the turnover and share of supply thresholds to assist the CMA to have jurisdiction to review 'killer acquisitions', where the acquiror has an existing share of supply of goods or services of 33% in the UK (or a substantial part of it) and an annual turnover of £350 million
- a small companies safe harbour whereby the CMA would not have jurisdiction if each of the parties had UK turnover of less than £10 million; and
- measures to make investigations more effective an deficient, including streamlining the Phase II 'fast track' procedure and a more flexible approach to binding commitments earlier in Phase II

In relation to market inquiries, the current structural framework is being retained. However, procedural reforms include:

- greater flexibility for the CMA to accept binding commitments at any stage in market studies and investigations
- greater flexibility for the CMA to define the scope of market investigations
- removal of the requirement for the CMA to consult on a market investigation reference during the first six months of a market study
- enabling the CMA to require businesses to trial remedies; and
- enhancing the CMA's ability to amend remedies in the ten years following a finding of an 'adverse effect on competition'

In addition, there are a number of other reforms to the UK competition regime, including expanding the CMA's jurisdiction and strengthening its enforcement powers. These changes include:

- extending the jurisdictional reach of the Chapter I prohibition on anti-competitive agreements to apply to those implemented outside of the UK, but with an effect in the UK
- reducing the turnover threshold for immunity from fines for a company infringing Chapter II (the prohibition on an abuse of dominance) from £50 million to £20 million
- appeals against interim measures decisions by the CMA being on judicial review grounds rather than the merits and changes to the access to the CMA's case file when taking interim measures decisions
- strengthening and expanding the CMA's investigatory powers in Competition Act investigations (broadening the powers to interview individuals, introducing a duty to preserve evidence and giving the CMA 'seize and sift powers' in domestic premises inspections (under warrant))
- increasing the penalties for failing to comply with an investigative measure (such as an information request, destroying evidence or providing false/misleading evidence) to a fixed penalty of up to 1% of annual worldwide turnover (plus a daily penalty) (with potential penalties for a natural person)
- introducing fines of up to 5% of annual turnover (plus a daily penalty) for breaching commitments or undertakings given or CMA directions or orders
- introducing a new statutory framework for confidentiality rings in Competition Act cases, including penalties for breaches of their terms, in order to increase their efficiency as part of the access to file procedures
- permitting the UK's competition and consumer protection authorities to use their compulsory information gathering powers to obtain information on behalf of overseas authorities and ensuring more flexible sharing of information with overseas regulators, subject to ensuring confidentiality protection; and
- extending the Competition Appeal Tribunal's (the "CAT") jurisdiction to grant declaratory relief and granting the CAT and the High Court the discretion to award exemplary damages in competition law cases (but not collective proceedings)

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INSURANCE AND FINANCIAL SERVICES

Jonathon Cary, Matthew Griffith, Robert Morris and Graham Reid CONTACT

The UK Government's outline of its plans for regulating stablecoins

The Government published a response to its consultation on the regulatory approach to cryptoassets and stablecoins and the use of distributed ledger technology in financial markets. It has announced moves that will see stablecoins recognised as a valid form of payment as part of wider plans to make Britain a global hub for cryptoasset technology and investment.

Click here to read more.

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FCA announces new three-year plan

The Financial Conduct Authority (FCA) has launched its new three-year strategy, with the stated aim of improving outcomes for consumers across all markets throughout the UK.

The strategy document set out three areas of focus for the FCA as strategic priorities until 2025. These include:

- reducing and preventing serious harm
- setting and testing higher standards and
- promoting competition and positive change

As part of these areas of focus, the FCA has confirmed it will be quicker to remove firms which are not meeting the FCA's minimum standards. The FCA has also pledged as part of its ongoing consultations and collaboration with the Treasury, to improve its supervision and oversight of Appointed Representatives.

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Pension regulator to issue fresh dashboards guidance in May

The Pensions Regulatory (TPR) is planning to publish guidance on pensions dashboards to support trustees and scheme managers in early May.

The guidance will be updated in November once the Department for Work & Pensions (DWP) consultation response to regulations for the initiative has been published in early summer with legislation to follow.

The Pensions Dashboard Programme is developing standards and guidance that participants will implement, concerning data, reporting, design, and technical aspects of the initiative.

Click here to read more.

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HM Treasury and PRA begin the consultation process on the reforms to the Solvency II regime

The UK Government has launched a consultation on radically changing the rules governing insurance companies, intending to allow them to invest tens of billions of pounds more in infrastructure – including green energy.

HM Treasury is proposing changes to the Solvency II regime which governs the prudential regulation of insurance firms in the UK which include:

- easing solvency requirements – Reduction in risk margin for long-term life insurers by releasing capital on insurers' balance sheets. Firms will have more flexibility to invest in long-term illiquid assets such as green infrastructure including offshore wind farms
- matching adjustment – Enables insurers to issue long term life insurance products by matching them against assets with similar characteristics
- cut reporting and administration for firms

The consultation, which will run for 12 weeks and will close on 21 July 2022. The Government has announced The Prudential Regulation Authority will publish its own technical consultation later in the year.

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PROFESSIONAL SERVICES

Jonathon Cary and Rob Morris CONTACT

Crackdown on SLAPP suits could include new legal regulations

A report on strategic lawsuits against public participation (SLAPPs) by the Foreign Policy Centre examines the issue of legal intimidation and legal actions initiated in the UK against journalists and media outlets with the purpose, or effect, of stifling scrutiny and debate on matters of public interest.

Concern has been growing globally regarding this phenomenon. However, it is the UK, and more specifically London, that has been identified as a leading jurisdiction for domestic and trans-national SLAPP cases against media.

The Government seeks to set out measures including a possible cap on recoverable costs amid mounting concern about the apparent use of defamation and privacy laws by wealthy individuals and businesses hinting at measures to bolster the Solicitors Regulation Authority (SRA) and look again at the regulation of lawyers working in this field.

Click here to read more.

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The SRA is now a core participant in the Post Office Horizon IT inquiry

In-house lawyers at the Post Office and those on its external panels who advised on prosecution of dozens of sub-postmasters are under further scrutiny as Solicitors Regulation Authority (SRA) recently won access to all documents.

The additional disclosure is unlikely to speed up the disciplinary process as the inquiry will need to draw to a close, ensuring full investigations of the Post Office's team of in-house lawyers and external advisors prior to any action being taken on prosecution for wrongdoing.

Click here to read more.

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New law in place to strengthen UK professions

A new approach to recognising professional qualifications gained overseas has now received Royal Assent the Government announced on 28 April 2022.

The Professional Qualifications Act revokes the previous EU system for how certain professional qualifications gained overseas are recognised in the UK.

The freedom of UK regulators of professions to decide who is fit to practise is now enshrined in UK law for the first time. This ensures UK regulators can make decisions in the best interests of their profession – upholding the UK's high professional standards.

The Act will also help UK professionals to be recognised abroad by ensuring UK regulators can strike recognition deals with overseas counterparts.

The Government will consult and work in partnership with regulators to uphold their autonomy and UK standards on the new approach.

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Consultation on proposed changes to ICAEW's disciplinary framework

The Institute of Chartered Accountants in England and Wales (ICAEW) Regulatory Board (IRB) consulted on proposed changes to ICAEW's disciplinary framework.

The Regulatory Board recently consulted on proposed changes to the ICAEW disciplinary framework with the intention to launch a new set of "Core Disciplinary Bye-Laws" and a new "Regulations Handbook" this summer. The changes proposed include:

- proposed structural and terminology changes
- a new duty to report misconduct
- a new test for initial determination
- an expansion of interim and final orders

This consultation closed on 29 March 2022 and the results will be published shortly.

Click here to read more.

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FRC regulator to reclaim powers to strike off accounting firms

The Financial Reporting Council (FRC) has announced its plan to reclaim control of PIE auditor registrations in a consultation, the new measures would reclaim responsibility for the approval and registration of audit firms conducting PIE audits from the Recognised Supervisory Bodies. As registration powers already exist, they can be reclaimed by the FRC without the need for a new law. The new system could be in place by the middle of this year, affecting about 30 accounting firms that sign off the books of roughly 2,000 PIEs.

This consultation ran from 14 April 2022 to 26 May 2022. The FRC will carefully consider all submissions received in response to this consultation before finalising the PIE Regulations (including Appeal Rules), Guidance, and Eligibility Criteria.

The FRC expects to roll out the new PIE registration from September 2022.

Click here to read more,

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NAVIGATING THE MAZE

From the world's largest financial, corporate and professional services firms, to highly successful entrepreneurs and individuals, many turn to our specialist Regulatory team to navigate the maze. They do this because they know we don't sit on the fence, we work with our clients to ask the tough questions and challenge conventions; ensuring they continue to thrive in a rapidly evolving regulatory world.

From helping to implement robust compliance strategies to conducting investigations and defending against enforcement proceedings, our multidisciplinary team can be relied on to add value, provide ideas and deliver a complete regulatory service whatever challenges you face, now and in the future.

- **White collar crime and investigations**: The burden of facing a regulatory or criminal investigation can be significant. We defend clients under investigation for regulatory breaches, corruption including; breaches of financial sanctions, false accounting, insider dealing and market misconduct.
- **Anti-bribery and corruption:** Our team works closely with clients to implement robust, cost effective anti-bribery programmes in line with international standards, and to manage risks and responses when things go wrong.
- **Anti-money laundering**: AML continues to be one of the most significant regulatory risks to firms. We help clients from implementing effective AML processes and controls to defending clients under investigation of breaches.
- **Data protection**: Protecting the data you hold has never before been so essential to your business. We regularly advise on data regulations, including GDPR, relating to subject access requests, data handling, sharing and processing, breaches, and training strategies.
- **Product liability and compliance**: Our Products team have the expertise you needed if you are faced with product recall or class actions.
- **Health, safety and environmental**: our expert team can support you whether you are shoring up your health, safety and environmental protocols, or facing an investigation in respect of an incident.
- **Tax investigations and dispute resolution**: Our dedicated tax dispute lawyers provide a comprehensive service covering pre-emptive advice on a wide range of risk issues, tax investigations and litigation before the tax tribunals and higher courts.
- **Insurance and financial services**: Our specialist lawyers advise on regulation, business and financial crime and compliance, including both contentious and non-contentious matters to ensure our clients avoid the pitfalls.
- **Competition and anti-trust**: No business can afford to ignore competition law. We help clients through all issues including; compliance, investigations, merger control, cartels and litigation.
- **Dawn raids**: A dawn raid situation can be extremely stressful – and if you get it wrong, the repercussions can be severe. Our experienced team can provide an immediate response to help you on the ground, as well as in the all-important preparation for the possibility of a dawn raid.
- **Professional practices**: Our team combines sector knowledge with regulatory expertise to provide comprehensive support and advice for professional services firms, covering all aspects of their regulated business.
- **Advertising and marketing**: Some of the world's largest corporates rely on us to keep their brand communications above board, from advertising standards to consumer regulation we help clients to simplify the complex.

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