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QUICK LINKS

CMA issues first labour markets antitrust infringement decision in sports broadcasting sector

On 21 March 2025, the UK's Competition and Markets Authority (CMA) issued its first antitrust infringement decision in relation to labour market practices – concerning bilateral exchanges of competitively sensitive information about freelance workers' fees between sports broadcast and production companies in the UK. On the same day, the CMA closed its investigation into non-sports broadcast and production companies.

Background

Against the backdrop of an increased focus by competition authorities on labour market practices, in July 2022 the CMA opened an investigation into suspected breaches of UK competition law in relation to the purchase of freelance services by sports broadcast and production companies in the UK. Sky had alerted the CMA to the conduct in question under the CMA's leniency programme. The CMA had expanded the investigation in February 2023 to include suspected breaches relating to the employment of staff, but later dropped that aspect of the investigation.

In October 2023, the CMA launched a separate investigation into suspected breaches of UK competition law in relation to the purchase of freelance services and the employment of staff by companies involved in the production, creation and broadcast of non-sports television content in the UK.

Investigation relating to non-sport television production and broadcasting

On 21 March 2025, the CMA closed its investigation into non-sports broadcast and production companies on grounds of administrative priority, citing amongst other things "*changes in industry practices implemented since the launch of the investigation*". It therefore did not reach a decision on whether any competition law infringement had occurred in this sector. It instead considered that a more proportionate way of resolving the matter would be to make known its concerns to the companies in question – as well as the possible consequences if they fail to comply with UK competition law in the future – and to publish further guidance to employers on how to avoid anti-competitive conduct in labour markets.

Investigation relating to sports television production and broadcasting

On the same day, however, the CMA issued an infringement decision to five sports broadcast and production companies in relation to their purchase of freelance services, imposing fines totalling over £4 million. The CMA found fifteen instances on dates between March 2014 and October 2021 where a pair of companies had bilaterally exchanged

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competitively sensitive information relating to pay for freelance workers who support the production and broadcasting of sporting events in the UK.

The BBC, BT, IMG and ITV each received discounted fines for their involvement, having admitted to the conduct and settled the case. BT, IMG and ITV also received a further discount under the CMA's leniency programme: IMG received a leniency discount of 40 per cent, together with a settlement discount of 20 per cent; BT secured a 15 per cent leniency discount and 20 per cent settlement discount and ITV received a 42.5 per cent leniency discount and a 20 per cent settlement discount. The BBC received a settlement discount of 20 per cent. As a result, both IMG and BT are required to pay fines of c. £1.7 million, whilst the BBC and ITV will pay c. £424,000 and c. £340,000 respectively.

Sky, which was found to have been involved in the highest number of infringements, benefitted from full immunity under the CMA's leniency programme, having proactively reported its involvement before the investigation commenced.

Analysis

This decision is the CMA's first infringement finding in respect of labour markets, following heightened scrutiny of such practices from competition authorities around the world in recent years. While the decision concerns sports broadcast and production companies, it is a clear signal that the CMA will not hesitate to investigate – and fine, should concerns be found – anti-competitive labour market practices.

In the context of the CMA's infringement decision, Executive Director for Competition Enforcement, Juliette Enser, noted "*Labour markets are important for economic growth as a whole. Good recruitment and employment practices help people access the right jobs where they're paid appropriately and make it easier for businesses to expand and find the workers they need*".

OTHER DEVELOPMENTS

MERGER CONTROL

First appeal of SAMR merger decision dismissed by Chinese Court in Tobishi/Simcere

On 19 March 2025, the Beijing Intellectual Property Court published its decision dismissing a review lodged by Beijing Tobishi Pharmaceutical – as the target of the transaction in question – against the decision of the State Administration for Market Regulation (SAMR) conditionally approving the acquisition of Tobishi by Simcere Pharmaceutical in September 2023 (for further details see a previous edition of this newsletter here). Tobishi first applied to the SAMR for an administrative reconsideration pursuant to Article 65 of the Anti-monopoly Law (AML), but SAMR upheld its initial decision in February 2024, which led Tobishi to file an administrative lawsuit with the Court in March 2024. This is the first administrative review and judicial challenge of a merger decision since the implementation of the AML in 2008.

In upholding the SAMR's merger decision, the Court's judgment also included various useful statements in respect of the SAMR's role in reviewing mergers, including that:

1. The outright prohibition of a merger should not be seen as a compulsory or preferred approach. Instead, any prohibition decision by the SAMR should be considered an "*exceptional intervention*";
2. The SAMR has the power to conditionally approve mergers and is responsible for evaluating the effectiveness of the proposed remedies to ensure that they adequately address any potential anti-competitive effects the transaction may have on competition;
3. The Court affirmed the SAMR's authority to review and impose remedies in voluntary filings of transactions that fall below the jurisdictional thresholds under the AML;

4. In this particular transaction, considering the effectiveness, feasibility, and timeliness of the proposed conditions, the SAMR had the authority to accept the proposal as commitments to reduce the adverse impact of the concentration; and

5. The SAMR is not obliged to conduct a substantive assessment of the validity of the merger agreement. In rejecting Tobishi's argument that the merger agreement is the direct cause of the alleged abuse of market dominance, the Court clarified that the review is not concerned with whether the transaction is actually implemented but to address any potential competition issues arising from the proposed merger transaction. Any dispute relating to the validity of the merger agreement should be resolved through arbitration or litigation.

SAMR introduces benchmarks on administrative penalties for the illegal implementation of concentrations

On 19 February 2025, the SAMR issued trial guidelines on Benchmarks for Discretion of Administrative Penalties for Illegal Implementation of Concentrations. Whilst Article 58 of the AML stipulates that the fine for gun-jumping for concentrations without anti-competitive effects is up to RMB 5 million (c. £532,000), the guidelines provide further guidance by identifying the starting point for fines in different circumstances. A summary of the starting levels for fines are as follows:

1. Cases where an investigation has revealed no anti-competitive effects - RMB 2.5 million (c. £266,000);

2. Cases with aggravating factors (e.g. obstructing or not cooperating with enforcement, re-offending within a year, concealing or transferring evidence) - RMB 4 million (c. £426,000);

3. Cases with mitigating factors (e.g. taking proactive steps to eliminate or mitigate consequences from the illegal concentration, proactively reporting its illegal concentration before the SAMR obtains evidence) - RMB 1 million (c. £106,000).

Once the starting level has been determined, the SAMR will then further assess various factors specific to the case to adjust the fine accordingly.

Other specified circumstances (e.g. the entity actively rectifying the illegal concentration and developing a valid management system, first-time offender, actively cooperating with SAMR and providing important evidence to SAMR) may each trigger a 10 per cent reduction in the fine imposed, although the final penalty cannot be less than 40 per cent of the initial starting level.

The guidelines also refer to two situations where the SAMR may not impose administrative penalties, namely:

1. A first-time offender who proactively reports the breach to the SAMR and takes action to restore to pre-concentration status (which could potentially be interpreted as unwinding the transaction); and

2. Where the breach was caused by an unforeseeable, unavoidable and insurmountable situation despite the parties' exercise of due diligence.

ANTITRUST

Banks lose appeal to overturn European Commission bond cartel fines

On 26 March 2025, the European General Court (GC) largely upheld the European Commission's 2021 decision which found that seven investment banks had breached Article 101 TFEU by participating in a European Government Bond (EGB) cartel.

In its decision, the Commission imposed fines of c. €371 million in total on investment banks UBS, Nomura, and UniCredit.

The Commission found that traders from seven banks, (UBS, UniCredit, Nomura, Bank of America, Natixis, WestLB (now Portigon), and Royal Bank of Scotland (now NatWest)), had used Bloomberg terminal chat rooms to exchange commercially sensitive information during the financial crisis, more specifically between 2007 and 2011. The Commission found that the information exchanged included the prices and volumes offered in the run up to EGB auctions and updates on the bidding strategy to be employed at auctions. The seven banks also gave each other updates on the trading parameters on the secondary market, including the price shown to customers and the market in general. RBS (now NatWest) received full immunity from fines as it disclosed the existence of the cartel to the Commission under the leniency programme; Bank of America and Natixis were not fined, as the Commission was time-barred from imposing a fine; and WestLB (now Portigon) received a zero fine as it did not generate any net turnover in the last business year. (For further details on the Commission decision, see a previous edition of this newsletter).

UBS, Natixis, UniCredit, Nomura, Bank of America and Portigon brought actions to challenge the Commission decision. In its judgment, the GC agreed with the Commission that the behaviour constituted a single and continuous infringement of Article 101 TFEU and rejected the banks' argument that the conduct at issue was insufficiently harmful to competition. Additionally, the GC reiterated that the banks are liable for the conduct of their traders. As regards Bank of America and Natixis, the Court confirmed that their identification in the decision was capable of contributing to establishing the infringement or to explaining the scope of the traders' unlawful conduct. The GC moderately reduced the fines for Nomura and UniCredit from €129,573,00 to €125,646,000, and from €69,442,000 to €65,000,000, respectively, finding that in the case of Nomura the Commission had made an error in how the fine was calculated and as regards UniCredit, the Commission had incorrectly determined the date at which the bank became part of the cartel.

GENERAL COMPETITION

CMA writes to Ticketmaster setting out concerns over Oasis ticket prices

On 25 March 2025, the CMA provided an update on its investigation into Ticketmaster following widespread complaints over its handling of Oasis concert ticket sales last year. The CMA said that Ticketmaster "*may have breached consumer protection law*" in the way that it provided pricing information and how it labelled tickets during the sale.

In September 2024, the CMA opened its investigation into Ticketmaster's compliance with consumer protection law, particularly the Consumer Protection from Unfair Trading Regulations 2008, in relation to the sale of Oasis concert tickets. Among other things, the CMA set out to consider whether people were given clear information about any algorithmic 'dynamic pricing' which would mean prices changed on demand, and whether people were put under pressure to buy tickets within a short period of time at higher prices than they had understood they would have to pay.

In its recent update, the CMA set out that it has not found evidence of ticket prices being adjusted by an algorithm in real time according to demand. It did find, however, that Ticketmaster had released a number of standing tickets at a lower price and, once these had sold out, then released the remaining standing tickets at a much higher price. The CMA noted its concern that consumers were not given clear and timely information about how this would work which led to many being forced to decide whether to pay a higher price than they expected in a short amount of time.

The CMA has provided Ticketmaster with details of further steps to take to address its concerns and is now consulting on those changes with Ticketmaster.

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