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QUICK LINKS

CMA consults on proposed changes to its guidance on leniency and no-action in cartel cases

On 29 April 2025, the Competition and Markets Authority (CMA) initiated a public consultation on proposed updates to its guidance on leniency and no-action in cartel cases. This marks the first comprehensive review of the CMA's leniency guidance in over ten years.

Background

The CMA's leniency policy plays an important role in its strategy to deter anti-competitive conduct by facilitating the effective detection of cartels and supporting enforcement. In summary, self-reporting of cartel activity and cooperation with the CMA's investigation is incentivised through three leniency tiers:

- Where there is no pre-existing investigation, the first undertaking to apply for leniency can obtain so-called 'Type A immunity'. Benefits include full corporate immunity from financial penalties and immunity from criminal prosecution for all current and former employees and directors that cooperate with the CMA, as well as protection from director disqualification for individuals.

- Where there is a pre-existing CMA investigation, 'Type B' immunity/leniency (where there is no prior leniency applicant) and 'Type C' leniency (for subsequent applicants) may be available. Depending on the added value brought by the applicant to the investigation, this may include discretionary fine reductions as well as individual protection for cooperating employees and directors in certain cases.

Since the current guidance's adoption in 2013, the CMA has seen significant developments in the cartel enforcement landscape. In addition to legislative reforms, this has included an increase in the number of cartel investigations conducted in parallel with overseas agencies, as well as a marked uptick in the CMA's application of the competition director disqualification regime. While the leniency guidance has been supplemented by targeted addendums in 2017 and 2020, this current review marks the CMA's first comprehensive assessment of its leniency guidance since 2013.

Key points of interest

The CMA is proposing amendments to its guidance to ensure that the new version (Revised Guidance) reflects changes in relevant legislation, as well as developments in the CMA's policy, experience and processes. In particular, the CMA is seeking feedback from stakeholders on the following changes:

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1. **Updates to definition of cartel activity:** the Revised Guidance retains the existing core definition of cartel activity, but proposes to add further examples of cartel conduct not expressly listed in the current guidance, to align the Revised Guidance with recent case law, CMA enforcement practice and updated guidance (such as the CMA's Green Agreements Guidance and revised Horizontal Agreements Guidance. These additions include: competitor agreements to fix purchase or supply prices; information exchange of future pricing intentions whether directly, through third-party platforms or through public announcements; 'no-poach' agreements between firms; pay-for-delay agreements; and collusion to stifle innovation aimed at achieving sustainability objectives.
2. **Changes to admission requirements:** under the Revised Guidance, the CMA proposes that an admission of participation in cartel activity will only be required from an applicant once the leniency agreement is signed, though applicants must still maintain co-operation consistent with such an admission during the investigation. By removing the need for applicants to confirm a "genuine intention to confess" at the point a leniency marker is sought, the CMA seeks to address concerns that requiring an early admission may deter leniency applications, particularly for Type A immunity, as the precise scope of conduct under investigation may be unclear initially.
3. **Revised protections for Type B/C applicants:** the Revised Guidance proposes various changes to protection levels for corporate Type B and Type C applicants to reflect the CMA's current practice, including: (i) removing the availability of upfront immunity from financial penalties for Type B applicants; (ii) clarifying that while Type B applicants may theoretically receive up to a 100% discount, practical discounts are unlikely to exceed 75% and could be significantly lower; and (iii) stating that Type C applicants may receive discounts substantially below the 50% maximum.
4. **Director disqualification immunity:** the CMA has gained significant experience with the competition director disqualification regime in recent years, with the number of director disqualifications increasing tenfold since 2017. The Revised Guidance proposes to clarify the CMA's position on disqualification order immunity. For both corporate and individual leniency applicants, automatic immunity from director disqualification will remain for relevant directors under 'Type A' protections but discretion will apply for Type B/C leniency applicants.
5. **Provision of immunity from criminal prosecution:** the Revised Guidance will now explicitly state that immunity for individuals from criminal prosecution will rarely apply to Type B/C applications, including individual Type B requests, as the CMA considers that the prosecutorial public interest typically outweighs the cooperation value in these cases.
6. **Provision for the use of an online process for oral leniency applications:** the CMA proposes to use its SharePoint tool as the default method for receiving applications where applicants do not wish to make a written application. This digital process will allow temporary, restricted access for applicants to transcribe statements into secure documents, with immediate access revocation upon submission.
7. **Implementation of other updates:** the proposed reforms also reflect various other legislative changes, such as the new public procurement debarment regime for cartel participants under the Procurement Act 2023 (effective since February 2025), as well as various updates related to the Digital Markets, Competition and Consumers Act 2024.

Conclusion

With its Revised Guidance, the CMA has considered how changes to its leniency policy could "*best ensure that the incentives offered by the CMA's leniency regime are in the right place to support the CMA's enforcement objectives*". In recent years, the European Commission (Commission) has undertaken similar efforts to update its leniency programme. These efforts appear to have been successful in the EU, where leniency applications are understood to be on the rise for the fourth consecutive year.

As competition authorities globally intensify investments in AI-driven detection of cartel activity, the CMA's updates signal its intention to reinforce incentives for self-reporting while complementing these evolving investigative capabilities.

The CMA is inviting comments on the Revised Guidance until 9 June 2025.

OTHER DEVELOPMENTS

MERGER CONTROL

European Commission opens consultation on its review of the EU merger guidelines

On 8 May 2025, the Commission launched a general consultation to seek feedback on its ongoing review of the EU Merger Guidelines. The review will cover both sets of guidelines for the assessment of mergers between actual or potential competitors on the same relevant market (i.e., the horizontal mergers guidelines of 2004) as well as those for the assessment of mergers between companies operating at different levels of the supply chain or in neighbouring markets (i.e., the non-horizontal merger guidelines of 2008). The aim is for the revised guidelines to provide a "*comprehensive, predictable and lasting framework*" for all types of mergers that is fit for purpose. The Commission recognises there have been numerous transformational changes in the economy since the introduction of both sets of guidelines, ranging from digitalisation and globalisation to decarbonisation, which can impact competitive dynamics in many markets. The current review therefore seeks to update the assessment framework for mergers in light of these fundamental market changes.

Indeed, the consultation seeks views on the effectiveness, efficiency, relevance and coherence of the current guidelines and focuses on how these should be updated for the Commission's merger assessment to give adequate weight to innovation, efficiency, resilience, sustainability, the time horizons and investment intensity of competition in certain strategic sectors, the changed defence and security environment and "*other acute transformational needs of our times*".

In parallel to the general consultation, the Commission issued a targeted in-depth consultation which seeks more detailed and technical input elaborating on seven issues raised in the general consultation. To this end the Commission published seven focused papers on a wide range of current challenges and the legal and economic parameters used in its merger control assessment. These papers – which will form the base for continued stakeholder engagement, including through dedicated workshops – relate specifically to competitiveness and resilience, market power, innovation and other dynamic elements in merger control, sustainability and clean technologies, digitalisation, efficiencies, public policy, security and labour market considerations.

The Commission welcomes input on the general public consultation questionnaire and the in-depth consultation questionnaires until 3 September 2025. The adoption of the revised merger guidelines is planned for the fourth quarter of 2027.

ANTITRUST

General Court dismisses Symrise's appeal of Commission inspection decision

On 30 April 2025, the European General Court (GC) dismissed Symrise AG's action seeking the annulment of a European Commission decision that ordered an unannounced inspection at its premises. In essence, two pleas were put to the GC. First, the applicant alleged that the Commission had infringed the right of inviolability of private premises and privacy; second, it alleged the Commission had breached Article 20(4) of EU Regulation 1/2003 and the obligation to state reasons for an unannounced inspection. In particular, it was alleged that the Commission failed to specify clearly and precisely the subject matter of the inspection, which had led to Symrise not being able to exercise its rights of defence. The GC dismissed Symrise's appeal in its entirety, concluding that the inspection decision was neither arbitrary nor disproportionate.

On the first ground of appeal, the GC rejected Symrise's argument that the decision ordering the inspection was disproportionate and violated its right to privacy, nor was it found to be arbitrary. The GC concluded the scope

and duration of the inspection were appropriate and did not exceed what was necessary. It also held that reviewing the data at the premises of the Commission and the applicant's lawyer did not constitute a disproportionate interference with the right to privacy. Further, the GC recalled that the various indicia which make suspecting an infringement possible must "*not be assessed separately but as a whole, and can be mutually supportive*". It further concluded that the Commission had in its possession "*sufficiently specific and clear indicia for it to suspect*" that the company was engaged in potentially anti-competitive behaviour.

On the second ground of Symrise's appeal, the GC concluded *inter alia* that the contested decision did not lack precision as to the subject matter, the purpose and the scope of the inspection, including the relevant market at issue and the nature of the suspected restrictions on competition. Whilst the contested inspection decision did not expressly specify the potential degree of Symrise's involvement, the GC found that the reference in the contested decision to Symrise's activities in the EEA and globally, as well as the reference to the membership of a particular trade association, was sufficient for Symrise to be in a position to understand the reasons for which it was suspected of involvement in the potential infringement.

Chinese API drugmakers and a facilitator fined over RMB 350 million (approximately £37 million) for price fixing

Four Chinese pharmaceutical manufacturers, namely Zhejiang Xianju Pharmaceutical (Xianju), Tianjin Tianyao Pharmaceutical (Tianyao), Xi'an Guokang Ruijin Pharmaceutical (Guokang Ruijin) and Jiangsu Lianhuan Pharmaceutical (Lianhuan), were penalised by the Tianjin Market Supervision and Administration Commission on 30 April 2025 for violating the Chinese Anti-Monopoly Law (AML) by fixing the price of an active pharmaceutical ingredient (API), dexamethasone sodium phosphate. The total fines imposed to date (including confiscation of illegal gains) were over RMB 350 million (approximately £37 million).

Tianyao and Lianhuan each received a substantial leniency reduction in their fines. Compared to Xianju's fine of RMB 172 million (approximately £18 million), Tianyao received an 80 per cent reduction and was fined RMB 26.4 million (approximately £2.8 million), and Lianhuan received a 30 per cent reduction and was fined RMB 43.1 million (approximately £4.5 million, but Lianhuan has challenged the decision). Guokang Ruijin did not receive any leniency reduction and was fined RMB 4 million (approximately £420,000).

Notably, this is the first penalty in China imposed against an individual for facilitating a cartel. An individual (Guo Xiangguo), who was not an employee of any of the pharmaceutical manufacturers, was fined the maximum penalty of RMB 5 million (approximately £524,000) for his role as a coordinator in bridging connections and putting together the price-fixing agreement between the various companies in the API market. Under the AML, facilitators are subject to the same maximum penalty as the participants of a cartel (i.e. up to 10 per cent of turnover in the preceding year, or RMB 5 million in the absence of turnover).

In addition, the general managers of Tianyao and Guokang Ruijin, and the legal representative and chairman of Xianju were each fined RMB 600,000 (approximately £63,000) for their personal liability in the company's failure to comply with the AML. This represents China's second penalty against executives (the first personal penalty was imposed in March 2025), since the AML introduced personal liability for executives of up to RMB 1 million in 2022.

This case highlights the benefits of the leniency system, as well as the importance for business executives to play an active role in ensuring their companies' compliance with the AML, in order to avoid personal liability for anti-competitive business practices. It also confirms that individuals who facilitate cartels can be held personally liable.

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