

COMPETITION AND CONSUMER LAW ENFORCEMENT



CRISIS MANAGEMENT
Part of the Horizon Scanning series

Recent years have seen an uptick in competition and consumer law enforcement. As authorities grapple with major economic developments like digitalisation, sustainability, and the cost-of-living crisis, their interventionism has increased. This trend will continue in 2024.



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DIGITAL ENFORCEMENT AND REGULATION

Many competition authorities worldwide have focused their recent attention on the digital sector given its importance to the economy and society at large. In addition to the numerous competition probes into digital markets around the world, several jurisdictions have introduced ex ante regulation to address potential competition concerns in this space. In the EU, the six 'gatekeepers' designated under the **Digital Markets Act** have until March 2024 to ensure full compliance with their new obligations. In the UK, the **Digital Markets, Competition and Consumers Bill** (DMCC Bill) is expected to become law in 2024. The Bill will introduce a new regulatory regime for undertakings designated as having strategic market status in respect of a digital activity.

This focus on the digital sector is likely to continue for the foreseeable future. In November 2023, the G7 competition authorities issued a **communiqué** noting that they will continue to act in this area by enforcing competition laws, improving the existing regulatory toolboxes, and developing new regulatory frameworks.

CARTELS AND LENIENCY

Antitrust enforcement across the wider economy also remains at the top of the agenda for competition authorities.

Cartels are a particular focus area. Several competition authorities developed new procedures and technologies in response to a decline in parties seeking leniency for participation in cartel conduct. The UK's Competition and Markets Authority (CMA) and the French competition authority, for example, have noted that around half of their cartel investigations are now based on alternative sources such as individual whistle-blowers. Similarly, the Spanish competition authority uses AI tools to assess the competitiveness of public tenders.

These developments have helped reverse the decline in voluntary applications. The head of the European Commission (EC) cartel directorate recently noted that the agency had received a double-digit spike in immunity/leniency applications in 2023, following a twofold increase in 2022 of the applications received in 2021.

There has also been a strong resurgence of dawn raids across various sectors, particularly following the COVID-19 pandemic. Authorities are increasingly focussed on accessing and seizing electronic data, including server-based data that is located outside of the premises being raided. These factors, combined with the rise of home or remote working and the use of personal devices for work, create new challenges for companies subject to dawn raids. In this environment, competition compliance and dawn raid preparedness should remain high on a company's legal agenda for 2024.

NOVEL AREAS OF INVESTIGATION

In addition to traditional concerns around prices and market allocation, competition authorities are probing novel areas of conduct as part of their enforcement efforts. A particularly hot topic at the moment is **labour** markets. The CMA, for example, highlighted this as an area for enforcement action in its **Annual Plan for 2023-2024**. They issued guidance noting that anti-competitive collusion between employers is illegal and can lead to "significant financial and personal consequences".

European competition authorities are also prioritising this area. Recent examples include investigations into no poach agreements (Portugal); wage fixing agreements (Poland) and information exchange (Lithuania). The EC has also given a clear **indication** that it is looking to investigate anti-competitive conduct in labour markets, as well as potential cartels in respect of other non-traditional areas such as purchasing or technical innovation.

These more novel areas of investigation should serve as a prompt for companies to take a fresh look at their compliance policies and consider whether training should be rolled out to additional parts of the business such as the HR, purchasing and R&D teams.

SUSTAINABILITY

Many businesses around the world are taking unilateral action to address sustainability challenges. However, it is recognised that cooperation is, and will be, necessary to deliver paradigm shifts in some areas. This need for multilateral action has seen several competition authorities issue guidance in relation to sustainability cooperation.

However, the law is still developing and there are diverging approaches between authorities. For example, both the **CMA** and the **EC** issued the final version of their guidance in this area in 2023. A key point of divergence is the extent to which, when assessing whether an exemption may apply for potentially anti-competitive agreements, consumers of the relevant products or services must be fully compensated for any competition harm or whether the sustainability benefits accruing to different consumer groups can be considered. In a break from the EC, the CMA is willing to consider wider benefits to the society for agreements which contribute to combating climate change.

These divergences mean that businesses considering sustainability initiatives which may restrict competition should ensure that they meet the conditions for exemption in all relevant competition regimes.

COST-OF-LIVING AND CONSUMER PROTECTION

Competition authorities are also focussed on the effects of the cost-of-living crisis. The CMA, for example, has carried out recent studies in several consumer facing areas, including groceries, housebuilding, rented accommodation, road fuel and vets. There have also been calls for investigations in response to the cost-of-living crisis in several other European countries, including Belgium, Norway and Spain. The EC has noted that the cost-of-living crisis is an enforcement priority with cases in the pharma, basic industries and consumer goods sectors.

In addition to competition law enforcement, we can expect to see greater consumer protection enforcement activity in the future. In the UK, for example, the CMA has been increasingly active in the consumer protection space in recent years. The DMCC Bill will give the CMA significant **new consumer protection enforcement powers**. Central to this is the introduction of an 'administrative enforcement model', whereby the CMA will have the power to issue infringement decisions for consumer law breaches. Most importantly it will enable the CMA to directly impose fines of up to 10% of an undertaking's global turnover. This legislation firmly establishes consumer law as a key enforcement priority for the CMA. Companies should expect to see the authority using its new arsenal of investigative and enforcement tools soon.

At the EU level, the Consumer Protection Cooperation (CPC) network process is a cross-jurisdiction mechanism aimed at streamlining consumer enforcement via coordinated action. The 'external alert' tool allows designated entities to submit complaints to the CPC network and the EC about business practices that may infringe consumer protection law. The recent use of the tool in respect of alleged 'greenwashing' claims may be a sign of more action to come in this area.

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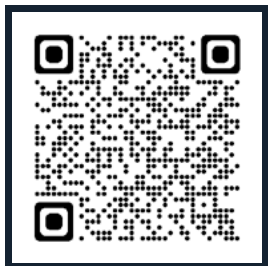
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