UK Financial Conduct Authority Acquires Competition Powers

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On April 1, 2015, the UK's Financial Conduct Authority ("FCA") will acquire competition law powers in relation to the provision of financial services. It will exercise these concurrently with the Competition and Markets Authority ("CMA"), which—along with the European Commission—is the primary body responsible for enforcing competition law in the UK.

From April 1, 2015, the FCA will be empowered:

- under the Competition Act 1998, to enforce against and fine businesses for breaches of domestic and EU competition law prohibitions on anticompetitive agreements (for example, cartels) and abuses of a dominant position; and
- under the Enterprise Act 2002, to carry out market studies and refer markets to an independent panel of the CMA for detailed investigation.

The new powers bring the FCA in line with other sector regulators, notably Ofcom and Ofgem (the UK's communications and energy regulators) which have had equivalent powers for many years. The FCA will be able to exercise its new functions not only in relation to the activities it regulates and the firms it authorizes, but also in relation to the provision of financial services generally. Its enforcement powers will be restricted to civil infringements of competition laws by businesses—it has not acquired the power to prosecute individuals criminally under the Enterprise Act 2002.

The Memorandum of Understanding that currently exists between the FCA and the CMA is expected to be updated in due course. Whilst it is too early to say how the division of competition work between the two agencies will work in practice, it is understood that the ultimate decision as to which agency takes the lead on a particular case will rest with the CMA. Factors relevant to the assessment will include the sector knowledge of the regulator, whether the issue is unique to the financial services markets or affects more than one sector, and whether either of the agencies has previous experience of the parties or issues.[1]

These changes are largely institutional and do not affect the substance of competition law in the UK, but that is not to say that they are not significant. Unlike its predecessor, the FCA has as one of its objectives the promotion of effective competition in the interests of consumers. Its new competition department has been busy over the past year conducting studies across a number of markets and

preparing for the exercise of its new powers. Its existing regulatory and supervision functions will no doubt ensure that it is well placed to detect anti-competitive behavior.

The FCA's new powers suggest that cartel enforcement work in the UK is enjoying a renewed focus. The CMA, which itself has seen a steady string of senior recruitments into its Cartels and Criminal Group over the past year, has publicly stated that it is looking to take an increasingly proactive approach to cartel detection and to reduce its reliance on the leniency program by investing in more sophisticated digital forensics and intelligence capabilities. With the FCA now a concurrent competition authority, we should expect the financial services sector to come increasingly under the spotlight with regards to compliance in this area.

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[1] Speech given by Deborah Jones, the FCA's Director of Competition, on November 21, 2014.

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