

**Meeting of the City of London Law Society Competition Law Committee  
held at 12:30 on 17 July 2025 via videoconference**

**Minutes**

**Attending:**

Nicole Kar <b>(NK)</b>	Chair, Paul, Weiss, Rifkind, Wharton & Garrison LLP
Ali Wathan <b>(AW)</b>	Co-Secretary, Paul, Weiss, Rifkind, Wharton & Garrison LLP
Mark Daniels <b>(MD)</b>	Co-Secretary, Norton Rose Fulbright LLP
Antonio Bavasso <b>(AB)</b>	Simpson Thacher & Bartlett LLP
Helen Fairhead <b>(HF)</b>	Norton Rose Fulbright LLP
Jonny Ford <b>(JF)</b>	Linklaters LLP
Julia Hemmings <b>(JHE)</b>	Baker McKenzie
Lucy Hirst <b>(LH)</b>	Baker McKenzie
Jenine Hulsmann <b>(JH)</b>	Weil Gotshal & Manges LLP
Mark Jones <b>(MJ)</b>	Jones Day
Becket McGrath <b>(BM)</b>	Euclid Law Ltd
Samantha Mobley <b>(SM)</b>	Baker McKenzie
Jonathan Parker <b>(JP)</b>	Latham & Watkins LLP
Nigel Parr <b>(NP)</b>	Ashurst LLP
Alex Potter <b>(AP)</b>	Freshfields LLP
Daniel Quirk <b>(DQ)</b>	Baker McKenzie
Matthew Sinclair-Thomson <b>(MS)</b>	Kirkland & Ellis LLP
Isabel Taylor <b>(IT)</b>	Slaughter and May
Alice Wallace-Wright <b>(AW)</b>	Hogan Lovells LLP
Kevin Hart <b>(KH)</b>	CLLS
Emma Cochrane <b>(EC)</b>	CMA
Jason Freeman <b>(JF)</b>	CMA

## **1 Introduction**

- 1.1 The meeting began with introductions. EC (Acting Executive Director, Consumer Protection) and JF (Director, Consumer Law) were the guest speakers from the CMA.
- 1.2 EC began by providing an overview of steps the CMA took prior to the consumer law reforms coming into force on 6 April and further work since then. Work has included finalising various new or updated CMA guidance and publishing its “approach” document.
- 1.3 EC explained that the approach document covers the next 12 months. A key aspect is supporting businesses to comply with consumer law – recognising that, while much of the substantive law is unchanged, there has been a significant shift in risk profile, many businesses may not previously have given the same attention to consumer law as competition law, and there is less case-law. The CMA is keen to hear about areas where consumer law is not clear and it could do more to provide clarity and comfort, or to flag that conduct is not acceptable.
- 1.4 Regarding guidance, EC explained that the CMA’s current consultation on draft price transparency guidance came about because feedback on CMA’s original draft guidance identified concerns. The final guidance is expected to be published this autumn. The CMA has undertaken a major review of all its consumer law guidance to identify what remained relevant/needed updating or was no longer needed. There may be further guidance to come. EC added that the CMA recognises its consumer law guidance needs to be accessible to business, including SMEs.
- 1.5 EC said the government expects to see the CMA using its new consumer law enforcement powers, and the CMA also has a statutory duty to protect consumers. New consumer law investigations are likely to be launched this autumn. The CMA’s consumer team has begun preparing by issuing information notices and undertaking web sweeps at scale to identify problematic conduct (working with digital and tech colleagues to use the latest technology). The reforms have already had a positive impact – the CMA has identified a significant shift in

behaviour regarding drip pricing and fake reviews (e.g. businesses publishing policies on how they identify fake reviews). However, the CMA has also identified firms that have not adapted or not gone far enough.

- 1.6 JF said the focus is making markets work well – targeting things that are clearly illegal or smaller things where the CMA can make a big difference. There is not a radical change in this regard, but the dynamic has changed in terms of how to drive competitive markets using the new powers.
- 1.7 JF highlighted that most consumer law is principles-based and therefore often challenging to apply in practice. The CMA aims to provide clarity in its guidance, but not overstate the position given there may be multiple ways to comply. Also, doing X may not avoid a problem in all cases.
- 1.8 In terms of specific areas of focus, online choice architecture has been a big interest, plus fake reviews and drip pricing/price transparency. There is a tension between what is best for business and what is best for consumers, and the CMA needs to ensure the line is in the right place.
- 1.9 Regarding case outcomes, JF commented that undertakings are a more credible outcome than before as the CMA can now directly enforce undertakings. This is also in the context of the CMA's new fining powers. As mentioned in the new guidance, the CMA may not necessarily accept undertakings where it would have done in the past. The precision of undertakings is also more important now (so wording accepted in the past may no longer be acceptable) – content/requirements must be clear given the new penalties for breaching undertakings.
- 1.10 EC commented that, for consumer law, there is a real tension between predictability and pace regarding the 4Ps, given fewer precedents than for competition law. JF added that if there is a need for a precedent or deterrence, settlement may be more appropriate than undertakings. JF also flagged that for parties to obtain the maximum settlement discount they must settle early.

## **2 Discussion**

- 2.1 In the next part of the meeting, EC and JF responded to questions. NK began by asking about the types of law firms that the CMA engage with on consumer law cases and noted a lack of specialist consumer law barristers. JF said the CMA has historically seen a “mixed bag” of different types of advisers. The reforms mean more firms now want to advise on consumer law.
- 2.2 NK queried whether there might be further guidance around the concepts of “average consumer” and “transactional decision”. JF suggested not – as they are not new concepts. These concepts are also used in, e.g. the UCPD (Unfair Commercial Practices Directive), and considered in passing off and trademark case-law. Applying these concepts involves judicial assessment, and judges have routinely rejected survey evidence created for the litigation. EC added that pre-existing survey evidence would be more interesting, noting business decisions would be based on such evidence. BM commented that all business practices are designed to affect consumer decisions – key is whether the practice is misleading etc.
- 2.3 NP asked whether the CMA would provide informal advice on consumer law issues. EC had no specific update other than that the CMA is thinking about how to do this. There is no timescale for a decision. EC added that all the queries the CMA received through the DRCF AI and Digital Hub (a 12-month pilot whereby innovators could obtain free and informal advice on cross-regulatory queries from the CMA, Ofcom, ICO and FCA) were consumer related.
- 2.4 NP noted the CMA's recent Annual Report referred to the CMA's use of advisory and warning letters regarding suspected consumer law infringements. NP raised that it may be useful for the CMA to publish those letters, even in redacted form, as a type of further useful guidance/advice. EC responded that these letters are an important tool where there is widespread non-compliance. They can help to shift behaviour – with an investigation and fines the ultimate back-up. The CMA will not send letters in every case, so businesses should not think they are safe absent a letter. JF added that if enforcement is needed, the fine is higher where a letter has been ignored. The letters are not an empty threat, but CMA resource may prevent enforcement against everyone.

- 2.5 NK asked about the extent of international cooperation between consumer law authorities in different jurisdictions. EC confirmed there is cooperation – e.g. the ICPEN (International Consumer Protection and Enforcement Network) is the consumer law equivalent of the ICN. The CMA has started to be invited back to the EU version and engages bilaterally with various national consumer enforcers (e.g. the ACCC, the Dutch, the Swiss etc). The CMA also works closely with the other UK consumer enforcers and has access to Citizens Advice’s complaints database.
- 2.6 BM and JHE brought up the possible need for further guidance regarding dark patterns (i.e. sludge) and online choice architecture. BM noted differences between EU Member States. JHE thought there should be CMA guidance on any areas covered in European Commission guidance, after JF posed the question.
- 2.7 Discussing the right amount of guidance, JH said guidance is helpful to support conservative advice, while guidance stating the obvious can help to counter arguments from business that “everyone does this”. IT added businesses like black and white rules, and regarding uncertain or subjective areas not to later be told “obviously you should have known this was unlawful”. NP flagged that the reforms may lead to less price competition if there is insufficient clarity.
- 2.8 SM queried how the government’s growth agenda is impacting the CMA’s consumer law work. EC said there is a need for people to spend so consumers must feel protected. Businesses also need to be clear about what they must do, and non-compliant businesses may get a competitive benefit. It is important the CMA tackles the most egregious harms and, at least in the short-term, is cautious around grey areas. The CMA has shifted towards a traffic light system – i.e. these things you cannot do, here’s a clear way to comply and uncertainty in the middle. Businesses with a higher risk appetite can operate in the middle space, but they may face enforcement.
- 2.9 JH noted the need for balance and the sense in targeting “low-hanging fruit”. JH added there is a cost to compliance – each additional layer adds more cost. JF flagged that practices evolve as business push boundaries. Regulators are always behind the curve and may need to change guidance to address new conduct, which they did not need to address before because it did not exist. NP mentioned that competition lawyers occasionally get called the “sales prevention officer”, but compliance is ultimately a risk assessment. Focusing on egregious behaviour is better for the 4Ps, especially predictability and proportionality.
- 2.10 JF gave platforms as an example of businesses where practices have evolved – platforms used to view themselves as mere hosts. IT commented that platforms have changed as well as the regulation. There will always be grey areas. If the CMA makes known it is thinking about a new practice or area, e.g. by doing a study, it is then not a surprise to see enforcement in that area. It is different if everybody is doing something, it seemed fine but there is then enforcement.
- 2.11 JF queried whether there is a preference for guidance over enforcement. JH said there are lots of ways to communicate – Sarah Cardell has been effective speaking at conferences etc. Businesses prefer to hear about concerns first, and there is greater awareness once the CMA undertakes a study in a particular area. AP added that it is helpful to be able to tell a client this is what the regulator thinks the law means, even if a court might subsequently overturn that view.
- 2.12 EC thought the CMA’s signalling was reasonably clear. There are 32 banned practices, which are illegal and businesses need to stop doing them. Priorities include practices targeted at children, fake reviews, price transparency, online choice architecture.
- 2.13 BM commented that some things are clear – e.g. a business cannot have a closing down sale unless closing down. There are other areas that are less clear, and businesses have been used to “a bit of a free-for-all”. A lot of the risk is in sales teams, who everyday are coming up with new ways to encourage people to click.
- 2.14 Regarding further engagement with stakeholders, JF said the CMA would like to hear if there are specific things for which there is demand to address genuine uncertainty (e.g. sector specific engagement or working groups). After the final price transparency guidance has published there may be a post-guidance event, but this has not been agreed yet. The CMA is planning to do something around influencer marketing/guidance.

- 2.15 JH queried further steps regarding the AI Hub. EC replied that the pilot has now ended and something will be published on next steps. Also expect something on agentic AI.
- 2.16 NK thanked EC and JF for their time and confirmed the Committee would be happy to provide ideas for further engagement if helpful. EC and JF left the meeting.

### **3 CLLS business**

- 3.1 KH talked about a joint CLLS and City of London Solicitors' Company "celebration of impact" dinner on 7 October at Founders' Hall. There is a 40-minute slot for up to seven committees to showcase recent achievements. If anyone would like to attend and talk about the Committee's achievements they should let NK know (NK and Ian Giles (**IG**) cannot attend on 7 October).
- 3.2 NK and IG have various emails about several other CLLS initiatives. NK will collect together the most relevant and circulate. This includes a contribution for a paper coordinated by Clifford Chance regarding English law and the English legal profession.

### **4 Consultation responses**

- 4.1 NK circulated a list of open European Commission and CMA consultations prior to the meeting.
- 4.2 JH is leading the response to the Commission's consultation on its merger guidelines, which covers a huge amount. Four people (including JH) have volunteered to work on this but would welcome more volunteers. NK suggested it may be helpful for an economist to contribute to the response. Key issues include approach to innovation, strengthening of a dominant position without input foreclosure (*Booking/eTravel*) and efficiencies (including out of market efficiencies). The deadline for submissions is 3 September.
- 4.3 NK will contact Alex Williams at the Department for Business and Trade for an update on the expected consultation on Enterprise Act reforms. Given this consultation has not been published yet, it seems likely to be after the summer now.
- 4.4 NK noted the Committee has submitted responses to a significant number of consultations of late. NK thinks it is fine not to do a Committee response to the CMA's current merger consultation (1 August is the deadline) on the basis most members will be submitting responses for their firms.
- 4.5 Committee members should let NK know if there are any consultations to which they think the Committee should respond. JH raised the DMA consultation. NK noted there are differing views between members, which may be a good thing for a consultation response.
- 4.6 Related to the CMA merger reforms, AP and IT discussed recent experience of the CMA now requiring a complete draft Merger Notice before commencing pre-notification discussions (as set out in the CMA's revised draft jurisdictional guidance currently subject to consultation). This includes providing all third-party contact details. The relevant draft AP and IT were working on included responses to all sections, although some were not detailed responses.

### **5 Next meeting**

- 5.1 The next meeting is on 18 September at A&O Shearman. Kelyn Bacon will be the guest speaker.
- 5.2 The final meeting of the year is on 20 November.