

UK competition authorities step up their enforcement activity against cartels and other anti-competitive agreements

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In his most recent article, specialist competition law barrister Matthew O'Regan reviews the CMA's recent civil and criminal investigations into cartels and other anti-competitive agreements, as well as the first Competition Act investigation by the Civil Aviation Authority.



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The Competition Act 1988 ("**CA 1998**") prohibits, through the 'Chapter I prohibition (which is set out in s.2), anti-competitive agreements and concerted practices. As well as cartels, price-fixing and bid-rigging, the Chapter I prohibition covers market-sharing arrangements, the sharing of competitively sensitive commercial information and resale price maintenance. In addition, under s.188 of the Enterprise Act 2002 ("**EA 2002**"), it is a criminal offence (punishable by up to five years' imprisonment) for individuals to enter into 'hard-core' cartels, i.e. price-fixing, market-sharing, output restricting and bid-rigging agreements.

In its recent draft annual plan,¹ the Competition and Markets Authority ("**CMA**") committed itself "to further step up the pace, scale and impact of our enforcement against anticompetitive or unfair practices."²

¹ Competition and Markets Authority annual plan 2017 to 2018 (9 December 2016), available at <https://www.gov.uk/government/consultations/competition-and-markets-authority-annual-plan-2017-to-2018>. The CMA is presently considering comments received and will publish its final plan in due course.

It therefore intends to increase, to at least six, the number of new civil investigations it undertakes under the CA 1998 and to do so more efficiently and quickly, without compromising either fairness or rigour.³ These cases will cover suspected infringements of both national and local scope and significance, and from a range of sectors.⁴ The CMA intends to use its powers to disqualify directors of companies found to have infringed UK or EU competition law.⁵ Through its on-going cartel intelligence activities, the CMA will also launch criminal investigations where it is appropriate to do so.⁶

The CMA's objectives build upon commitments made by senior officials in the autumn of 2016 and follow a report by the National Audit Office ("**NAO**"), which identified a low level of enforcement decisions and fines.⁷ In December 2016, the CMA's Chair, David Currie, observed that the CMA had already stepped up its competition law enforcement.⁸ This was preceded a speech given by Michael Grenfell, the CMA's Executive Director for Enforcement, in which he examined the CMA's enforcement record (which had improved since the NAO report, in terms of the number and speed of civil cases, encouraging compliance and converting leniency applications into enforcement action) and foresaw further significant changes ahead.⁹ Both the CMA's acting chief executive, Andrea Coscelli,¹⁰ and Mr Grenfell¹¹ have recently made public statements confirming the CMA's commitment to continued robust enforcement of the CA 1998.

² *Ibid.*, page 1.

³ *Ibid.*, paras 3.4 – 3.7.

⁴ *Ibid.*, para 3.8.

⁵ *Ibid.*, para. 3.9.

⁶ *Ibid.*, para. 3.10.

⁷ National Audit Office, *The UK competition regime* (HC 737; February 2016) available at <https://www.nao.org.uk/wp-content/uploads/2016/02/The-UK-Competition-regime.pdf>. For commentary, see Whish, *The National Audit Office's Report on the UK Competition Regime: how well is the regime performing?* [2016] 15 Comp Law Rev 197.

⁸ Currie, *Making markets work well for consumers, businesses and the UK economy* (16 December 2016), available at <https://www.gov.uk/government/speeches/david-currie-on-the-cmas-progress-towards-its-ambition>.

⁹ Grenfell, *UK competition enforcement – progress and prospects* (9 November 2016), available at <https://www.gov.uk/government/speeches/michael-grenfell-on-the-cmas-progress-in-enforcing-competition-law>.

¹⁰ Coscelli, *The CMA and its place in a changing world* (4 February 2017), available at <https://www.gov.uk/government/speeches/andrea-coscelli-on-the-cmas-role-as-the-uk-exits-the-european-union>.

¹¹ 'UK Enforcement Chief Warns Antitrust Probes Won't Slow', *Law 360* (3 February 2017), available at <https://www.law360.com/articles/887622/uk-enforcement-chief-warns-antitrust-probes-won-t-slow>.

In view of the CMA's plans for increasing the level of its enforcement of both civil and criminal competition law, now is an opportune moment to consider the CMA's enforcement record in 2016 and the first month of 2017, as well as that of sector regulators, in particular the Civil Aviation Authority ("**CMA**"), which recently concluded its first investigation under the Chapter I prohibition.

Civil enforcement: recently concluded cartel cases

The CMA concluded three civil cartel investigations in 2016 and a further one in January 2017.

In *Galvanised steel tanks*, fines of over £2.7 million were imposed on a number of suppliers of steel water tanks for two separate infringements, a cartel (which involved bid-rigging, price-fixing and sharing of customers) and, at a single meeting, an exchange of current pricing information and future pricing intentions.¹² At this meeting, a company which was not involved in the cartel was invited to join it, but refused to do so; it did, however, illegally exchange commercially sensitive information and discussed target prices, for which it was fined £130,000. It is notable that this meeting was secretly recorded by the CMA,¹³ which has powers under the Regulation of Investigatory Powers Act 2000 to undertake covert surveillance of suspected cartels.¹⁴

In *Online sales of posters and frames*, two companies, Trod and GB eye, were found to have colluded over prices that they charged for a wide range of posters and other licensed merchandise featuring sport and entertainment stars sold via the Amazon Marketplace website in the UK. As well as being competitors at the retail level, GB eye manufactured posters and other merchandise and supplied them to retailers, including Trod, on a wholesale basis. Once GB eye expanded its retail business to Amazon Marketplace, it received complaints from its wholesale customers, including Trod, that they were being undercut by GB eye. GB eye subsequently agreed not to undercut Trod, which agreed to reciprocate, with both also raising their prices to 25p below the price of the cheapest competitor.

¹² See CMA press release, 'CMA fines water tank firms over £2.7 million' (19 December 2016). The CMA's civil decision followed separate criminal prosecutions under s.188 of the EA 2002, as a result of which one individual pleaded guilty and was sentenced to six months' imprisonment, suspended for 12 months and 120 hours community service (*R v Snee*: see CMA press release, 'Director sentenced to 6 months for criminal cartel' (14 September 2015)) and two individuals were acquitted after trial at Southwark Crown Court, having run a defence on the basis that, although they had entered into the agreements in question, they had not done so dishonestly (*R v Dean and George*: see CMA press release, 'CMA statement following completion of criminal cartel prosecution' (24 June 2015)).

¹³ See CMA press release, 'CMA fines water tank firms over £2.7 million' (n.12). The circumstances which enabled the CMA to record this meeting are not presently clear.

¹⁴ See generally, Home Office, *Covert Surveillance and Property Interference: Code of Practice* (December 2014).

This agreement was implemented by each party using automated repricing software, given the large number of individual products involved. Trod (which was by now in administration) admitted the infringement was fined £163,371, which included reductions for cooperating during the CMA's investigation and for entering into a settlement agreement with the CMA. GB eye, which had informed the CMA of the illegal agreement, was granted immunity from fines.¹⁵

In *Modelling agencies*, fines of £1.5 million were imposed on five agencies and a trade association, the Association for Model Agents. The CMA found that the agencies had exchanged and discussed prices; they also agreed to fix minimum prices and to take a common approach to pricing during negotiations of contracts with customers, which ranged in value from a few hundred pounds to over £10,000. The AMA also circulated 'alerts' to its membership (which was wider than the five agencies fined by the CMA), which were intended to incite them to resist prices offered by customers (such as fashion retailers and brand owners) on the basis that they were too low.¹⁶

In *Furniture*, two suppliers of drawer components used in the furniture industry recently admitted that they had infringed the Chapter I prohibition by agreeing not to compete with each other on price and engaging in bid-rigging. This was implemented by price coordination, allocating customers and exchanging commercially sensitive information. Under the CMA's settlement procedure, they have agreed to pay fines totalling £2.8 million, which include a 20% discount for their admissions of infringement. A third company, which reported the illegal conduct, has conditional immunity from fines.¹⁷ The CMA has also sent statements of objections to at least two other companies, which have chosen not to settle with the CMA.¹⁸

Civil enforcement: recently concluded non-cartel cases

The CMA has also taken enforcement action in respect of a number of other infringements of the Chapter I prohibition, in particular resale price maintenance, which is also regarded as a serious, 'hard core' infringement.

In February 2016, the CMA fined GlaxoSmithKline and two generic pharmaceutical manufacturers, Generics UK and Alphapharm, for 'pay for delay'

¹⁵ Case 50223, 'Online sales of posters and frames' (12 August 2016).

¹⁶ See CMA press release, 'Model agencies fined £1.5 million for price collusion' (16 December 2016). Several agencies have said that they intend to appeal (see e.g. *The Guardian*, 'UK model agencies found guilty of price-fixing' (16 December 2016)), although none have yet done so.

¹⁷ See CMA press release, '£2.8 million fine for furniture parts cartel' (19 January 2017).

¹⁸ See <https://www.gov.uk/cma-cases/supply-of-products-to-the-furniture-industry-suspected-anti-competitive-arrangements>: the statements of objections were sent on 25 January 2017.

agreements in connection with an anti-depressant drug, paroxetine. GSK, which held patents for paroxetine and sold it under the 'Seroxat' brand name, brought infringement proceedings against the generics manufacturers; these proceedings were settled and under the settlements GSK made substantial payments to the generics manufacturers, which agreed not to sell paroxetine in the UK. The CMA found that these agreements infringed the Chapter I prohibition and that GSK had abused a dominant position, contrary to Chapter II of the CA 1998. GSK was fined £37.6 million and the generics manufacturers a total of £7.4 million.¹⁹ The CMA's decision has been appealed and trial has been listed for 27 February to 30 March 2017.²⁰

In *Commercial catering equipment*, the CMA imposed a fine of £2.3 million on ITW for prohibiting its resellers from advertising prices below a specified minimum price and for taking steps (including reducing wholesale terms and temporarily or permanently ceasing supply) against resellers that did not comply and advertised prices below this minimum.²¹ The fine was reduced significantly, as ITW had set up a comprehensive training programme to ensure that its staff complied with competition law (10% reduction) and it also admitted its infringement and cooperated with the CMA under a settlement agreement (20% reduction).

In *Bathroom fittings*, the CMA fined Ultra Finishing £0.79 million for a similar infringement.²² Ultra had 'recommended' that its resellers and retail distributors should not advertise online certain of its products below a maximum discount of 20% (and later 25%) off RRP. Ultra did so in response to complaints by retailers concerning low prices offered by online resellers. It enforced the recommendation by ceasing to supply non-compliant resellers and by withdrawing their right to use Ultra's images for online sales. As in *Commercial catering equipment*, Ultra's fine was reduced (from just over £1 million) to reflect Ultra's adoption of a compliance programme and for agreeing to settle the CMA's investigation.

¹⁹ Case CE/9531/11 *Paroxetine* (12 February 2016). The CMA decided that there were no grounds for action in relation to a further agreement between GSK and another generics manufacturer, IVAX: Case closure summary (10 August 2016).

²⁰ Cases 1251 - 1255/1/12/16 *Generics (UK), GlaxoSmithKline, Xellia Pharmaceuticals, Actavis UK and Merck v Competition and Markets Authority*.

²¹ Case CE/9856/14 *Online resale price maintenance in the commercial refrigeration sector* (24 May 2016).

²² Case CE/9857/14 *Online resale price maintenance in the bathroom fittings sector* (10 May 2016).

In both the *Commercial catering equipment* and *Bathroom fittings* cases, the CMA also sent 'warning letters' to many other suppliers and dealers which it suspected had engaged in similar restrictions on internet sales or restrictions on advertising prices.²³

The CMA has also secured, without opening proceedings, changes to a company's commercial agreements that may have been anti-competitive. It recently announced that it would not investigate a complaint that BMW UK had illegally prevented its dealers from advertising on new car price comparison websites, after BMW changed its policy.²⁴ Finally, in October 2016, it closed, on grounds of administrative priority, an investigation into suspected restrictions on paid online search advertising on energy price comparison websites; this investigation has been transferred to the CMA by OFGEM, the energy regulator. The CMA and OFGEM will continue to review price comparison websites using other enforcement tools.²⁵

Civil enforcement: CMA secures director disqualification for first time

On 1 December 2016, Daniel Aston, the former managing director of Trod, gave a disqualification undertaking not to act as a director of any UK company for five years.²⁶ Mr Aston had been personally involved in the infringement between Trod and GB eye in *Online sales of posters and frames* considered above. This is the first time that the CMA has used this power²⁷ to disqualify directors of companies involved in cartels and other breaches of UK and/or EU competition law. The period of disqualification was reduced from that which the CMA would have sought had it had to commence court proceedings, to reflect that Mr Aston agreed voluntarily to be disqualified.²⁸ It should be noted that Mr Aston has also been indicted by the U.S. Department of Justice in connection with an alleged

²³ See <https://www.gov.uk/cma-cases/commercial-catering-sector-investigation-into-anti-competitive-practices>.

²⁴ See CMA press release, 'BMW changes policy on car comparison sites following CMA action' (24 January 2016).

²⁵ Case 50332, *Suspected restrictions in relation to paid online search advertising* (case closure decision summary, October 2016).

²⁶ See CMA press release, 'CMA secures director disqualification for competition law breach' (1 December 2016).

²⁷ Contained in the Company Directors Disqualification Act 1986 ss.9A to 9E. The maximum period of disqualification is 15 years. Competition Company Director Disqualification Orders have previously been made by the courts following convictions under s.188 of the EA 2002, notably in *Marine Hoses (R v Whittle, Brammar and Allison*, Southwark Crown Court (2008) and, on appeal, [2008] EWCA Crim 2560, in which the periods of disqualification of seven, seven and five years respectively were not subject to appeal).

²⁸ See CMA press release (n.26).

cartel concerning online sales of wall décor (posters) in the United States, also through Amazon Marketplace and also using algorithm-based pricing software.²⁹

Civil enforcement: CAA adopts first infringement decision in civil aviation sector

The CAA is the economic regulator for the civil aviation sector and has concurrent powers, with the CMA, to enforce the provisions of the CA 1998 (but not the criminal cartel offence) in that sector.

In December 2016, the CAA found that the terms of concession and lease agreements (which were renewed on a regular basis between 2007 and 2012) between East Midlands International Airport (“EMIA”) and Prestige Parking, under which Prestige was permitted to operate a car park at the airport infringed the Chapter I prohibition.³⁰ Under the agreements, Prestige was prohibited from selling its car parking below the price charged by EMIA for its own car parks. Prestige’s compliance was ensured by regular exchanges of pricing information and by EMIA monitoring Prestige’s prices. It would appear that both EMIA and Prestige were aware that their agreement infringed the Chapter I prohibition, but failed to regularise the position.

The CAA concluded that the agreement constituted illegal price-fixing between competitors. As EMIA had voluntarily informed the CMA (under its leniency programme) of the agreement, before either the CMA or the CAA had commenced an investigation, it (and its parent, Manchester Airport Group), avoided a fine of £12.5 million. Both companies also agreed to implement compliance programmes and to review EMIA’s other concession agreements to ensure that they comply with competition law. The fine reflected two aggravating factors on EMIA’s part: it had ignored internal legal advice that the agreements may have been anti-competitive and it had been prepared to grant a concession to Prestige only if it was subject to a minimum pricing obligation. The CAA would have fined Prestige nearly £1 million, but for it being in liquidation.

Criminal enforcement by the CMA

The CMA has had difficulty in prosecuting individuals under the criminal cartel offence where the conduct took place before 1 April 2014; in such cases, it must prove that an individual acted ‘dishonestly’ when entering into a cartel

²⁹ See U.S. Department of Justice press release, ‘E-Commerce Exec and Online Retailer Charged with Price Fixing Wall Posters’ (4 December 2015). Trod was also indicted and has pleaded guilty under a plea agreement: see <https://www.justice.gov/atr/327965>.

³⁰ CAA, Case CA98-001, *Access to car parking facilities at East Midlands International Airport* (20 December 2016), See also CAA press release, ‘CAA competition investigation: East Midlands International Airport and Prestige Parking Limited admit to price fixing’ (20 December 2016).

agreement.³¹ However, in March 2016, an individual pleaded guilty to participating between 2006 and 2013 in an illegal cartel concerning the supply of pre-cast concrete drainage products.³² He has not yet been sentenced, as the CMA's investigation is on-going. The CMA also has a number of other on-going criminal cartel investigations, details of which are not in the public domain.³³

Civil enforcement: open cases

The CMA has a number of on-going civil investigations. Some are at an advanced stage, whilst investigations in other cases have only recently been opened.

As well as the *Furniture* case referred to above, the CMA has sent statements of objections in the following cases:

- *Funfairs*: it is alleged that the rules of the Showmen's Guild of Great Britain prevent members from organising or attending non-Guild fairs and from establishing new fairs, so preventing competition with fairs established by the Guild.³⁴
- *Cleanroom laundry services*: it is alleged that joint venture and trade mark licensing agreements between two suppliers, under which they both used the brand 'Micronclean', constituted a market sharing agreement by geographical area and/or customer type.³⁵
- *Ping*: it is alleged that Ping, a manufacturer of golf clubs, has breached UK and EU competition law by prohibiting retailers from selling its products online.³⁶
- *Lighting fittings*: it is alleged that Poole Lighting (a supplier of table lamps, lamp shades and wall lights) has prevented retailers from setting their own prices when selling online and has required them to observe a minimum price. The CMA considers this to be a form of resale price

³¹ See Grenfell (n.9): following the *Galvanised Steel Tanks* trial (*R v Dean and others*, in which two defendants were acquitted after running defences that they had not acted dishonestly: see n.13), the CMA decided to close two of its then three open criminal investigations, both of which involved pre-April 2014 conduct.

³² *R v Cooper*. See <https://www.gov.uk/cma-cases/criminal-investigation-into-the-supply-of-products-to-the-construction-industry>.

³³ Grenfell (n.9).

³⁴ See CMA press release, 'Funfair body alleged to have broken competition law' (21 December 2016).

³⁵ See CMA press release, 'Cleanroom laundry businesses alleged to have broken competition law' (20 January 2017).

³⁶ See CMA press release, 'CMA alleges breach of competition law by Ping' (9 June 2016).

maintenance.³⁷ Although parties to the allegedly illegal agreements, the CMA has not sent a statement of objections to any retailer.³⁸

The CMA also has open investigations into suspected anti-competitive behaviour in relation to residential estate agency services,³⁹ light fittings,⁴⁰ auction services,⁴¹ solid fuel and charcoal products,⁴² pre-cast drainage products⁴³ and pharmaceuticals.⁴⁴ In addition, OFGEM has an on-going investigation into suspected anti-competitive practices involving a small number of parties.⁴⁵

Analysis

The CMA has, in the last 12 months, concluded a number of investigations into suspected cartels and other anti-competitive agreements. It also has a number of on-going investigations, both civil and criminal. A concurrent sector regulator, the CAA, has concluded its first investigation under the CA 1998, in a case transferred to it from the CMA, and would have imposed significant fines, had not EMIA benefitted from immunity (under the CMA's leniency programme⁴⁶) and Prestige become insolvent and ceased trading.

³⁷ See CMA press release, 'CMA challenges lighting company's pricing restrictions' (9 February 2017).

³⁸ *Ibid.*

³⁹ See <https://www.gov.uk/cma-cases/residential-estate-agency-services-suspected-anti-competitive-arrangement-s> (investigation opened 10 December 2015).

⁴⁰ See <https://www.gov.uk/cma-cases/light-fittings-sector-anti-competitive-practices> (investigation opened 16 August 2016).

⁴¹ See <https://www.gov.uk/cma-cases/auction-services-anti-competitive-practices>. (investigation opened 22 November 2016). The investigation is under Chapters I and II of the CA 1998 and Articles 101 and 102 TFEU.

⁴² See <https://www.gov.uk/cma-cases/supply-of-solid-fuel-products> (investigation opened November 2016)

⁴³ See <https://www.gov.uk/cma-cases/supply-of-precast-concrete-drainage-products-civil-investigation>. This investigation is being conducted in parallel to an on-going criminal investigation, referred to in n.32 above.

⁴⁴ See <https://www.gov.uk/cma-cases/pharmaceutical-sector-anti-competitive-agreements> (investigation opened 12 April 2016).

⁴⁵ See <https://www.ofgem.gov.uk/publications-and-updates/investigation-under-chapter-i-competition-act-1998>.

⁴⁶ Which also applies to investigations brought by sector regulators with concurrent powers under the CA 1998. Ordinarily (as in the *East Midlands International Airport* case), a leniency application would be made to the CMA, as it alone can grant individuals 'no action' letters against prosecution under the criminal cartel offence. In such cases, there may thereafter be a reallocation of the case to the relevant sector regulator, in accordance with the CMA's guidance in *Regulated Industries: Guidance on concurrent application of competition law to regulated industries* (CMA10, March 2014). On leniency in CA 1998 investigations conducted by a sector regulator, see e.g. Civil Aviation Authority, *Guidance on the Application of the CAA's Competition Powers* (CAP 1235, May 2015), paras 5.40 – 5.45 and Financial Conduct Authority, *The FCA's concurrent competition enforcement powers for the provision of financial services* (FG15, 8 July 2015).

Whilst the fines imposed by the CMA (other than in *Paroxetine*) have been modest in absolute terms, they were no doubt significant for the companies concerned. In most cases, the CMA has reduced the level of fines, because companies have cooperated with it and admitted that they have infringed competition law (so benefitting from a 20% reduction under the CMA's settlement procedure). Settlement enables the CMA to adopt a 'streamlined procedure' and complete its investigation more quickly.⁴⁷ For example, in *Online sales of posters and frames*, the entire investigation lasted 10 months, whilst those in *Commercial catering equipment* and *Bathroom fittings* both lasted 21 months. Although *Modelling agencies* did not involve a settlement, the investigation was concluded in 20 months. In the on-going *Lighting Fittings* investigation a statement of objections was issued within six months of the investigation commencing.

The CMA is clearly investigating more cases than it did in the past, even though the number still remains low compared to its peer agencies in other jurisdictions. It has investigated a wide range of cartel behaviour, including price-fixing, market-sharing and exchanges of commercially sensitive information, and often in small or obscure sectors. It has also focused on the activities of trade associations. Cartels, restrictions on sales and price advertising and other anti-competitive agreements have been investigated in several online markets; this will remain an important focus for the CMA's enforcement activities.⁴⁸

It is also interesting to consider the genesis of individual investigations. Some (such as *Furniture*, *Galvanized steel tanks*, *Online sales of posters and frames* and *East Midlands International Airport*) are the result of leniency applications.⁴⁹ In others, the CMA has received a complaint (such as in *Commercial catering*

⁴⁷ On the CMA's settlement procedure, see CMA, *Guidance on the CMA's investigation procedures in Competition Act 1998 cases* (CMA8, March 2014), chapter 14.

⁴⁸ See Coscelli, *Staying ahead in a digital marketplace* (9 September 2016), available at <https://www.gov.uk/government/speeches/andrea-coscelli-staying-ahead-in-a-digital-marketplace> and Grenfell, *Antitrust in the digital age* (15 November 2015), available at <https://www.gov.uk/government/speeches/michael-grenfell-on-antitrust-in-the-digital-age>.

⁴⁹ According to Grenfell (n.9), in 2015/2016 the CMA received 22 leniency applications. From these, the CMA opened two investigations and the CAA opened a third. A further five applications concerned other regulated industries. 11 of the applications concerned conduct for which an application was also submitted in parallel to the European Commission, which led to it opening four investigations and other national competition authorities a further two. In one case, the CMA sent a warning letter to the parties. The CMA did not open investigations in the other cases, either due to a lack of evidence or for prioritisation reasons. On the CMA's leniency regime, see OFT, *Applications for leniency and no-action in cartel cases* (OFT1495, July 2013). The regime covers both, for companies, immunity from (or a reduction in) fines for infringing the Chapter I prohibition, and, for individuals suspected of committing the criminal cartel offence, 'no action' letters, provided that they provide the CMA with all information concerning a cartel and cooperate fully with it throughout its investigation.

equipment, Bathroom fittings and *BMW UK*). Perhaps unusually, its investigation in *Cleanroom laundry services* started as the result of information received by the CMA when reviewing mergers involving the parties now under investigation and the information necessary to commence that in *Residential estate agency services* was obtained as a result of earlier enforcement activity in the sector. Other investigations may be the result of the CMA's own intelligence activities.

Conclusions

In its draft Annual Plan for 2017/2018, the CMA is committed to undertaking more investigations and concluding them more quickly, both civil and criminal. It is also committed to using its powers to disqualify directors of companies involved in anti-competitive behaviour. The CMA is clearly well on its way to doing so. It is also seeking to encourage compliance by sending 'warning letters' to companies that it expects have infringed the CA 1998,⁵⁰ publishing guidance for business⁵¹ and reaching out to the legal⁵² and accountancy⁵³ professions.

So, what should companies do? They should not be complacent and think that a CMA investigation will not happen to them: investigations can start in many different ways, against companies large or small, in any sector and in any part of the United Kingdom. They should:

- ensure that their commercial agreements and practices are compliant with UK and EU competition law. This includes past agreements and practices, which the CMA can also investigate;
- if there is any doubt as to compliance, legal advice should be taken;
- if it is suspected that cartel activity is taking place, or has taken place, consideration should be given to making a leniency application to the CMA;
- if one is not in place already, a competition law compliance programme should be developed and staff should regularly be provided with competition law training; and

⁵⁰ As the CMA has done in the *Bathroom fittings* and *Commercial catering equipment* cases. A 'warning letter' may be sent to companies that the CMA suspects of infringing competition, inviting them to assess their practices and to make any changes necessary to bring them into compliance, and requiring them to inform the CMA of steps taken to do so. See CMA, *Warning and advisory letters: essential information for businesses* (14 January 2016).

⁵¹ See e.g. CMA press releases, 'CMA updates competition law risk short guide' (24 January 2017) and 'CMA warns online sellers about price-fixing' (7 November 2016) and CMA Guidance, 'Advice for company directors on avoiding disqualification' (25 January 2017).

⁵² See e.g. CMA press releases, 'Welsh lawyers asked to help competition law awareness' (10 October 2016) and 'South West lawyers asked to help competition law awareness' (28 September 2016).

⁵³ See CMA press release, '**Accountants advised on helping clients to keep it legal**' (2 September 2015).

- if it is suspected that a competitor, supplier or customer has behaved in an anti-competitive manner, so as to cause damage to the company's business, consideration should be given to making a complaint to the CMA.

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