

Dame Meg Hillier MP
Chair
Public Accounts Committee
House of Commons
London
SW1A 0AA

From: Sarah Cardell
Chief Executive

Direct line: 020 3738 6138

Our ref:

Your ref:

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By e-mail

Dear Dame Meg,

Regulating After EU Exit – CMA update

Following the evidence session at the Public Accounts Committee on 13 June (attended by Michael Grenfell, CMA Executive Director of Enforcement), and publication of the Committee's final report on 12 October 2022, I am writing to provide an update on behalf of the CMA in relation to the following of the Committee's recommendations: 1, 2a, 4 and 6.

PAC recommendation 1: The regulators should write to the Committee in six months setting out progress in developing long-term strategies with relevant policy departments (including which reforms would require primary legislation and estimated timescales for implementation).

On 23 March the CMA published its [2023/24 Annual Plan](#). In a change from previous years, we have set out the 2023/24 Annual Plan against two-time horizons: our ambition and medium-term priorities for the next 3 years, and the key areas on which we intend to focus in the next 12 months. In the past our Annual Plan focussed primarily on our priorities for the coming year.

The Annual Plan first sets out our purpose – to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour – and how this purpose shapes our ambition. Second, the Annual Plan explains our ambition in terms of the outcomes we want to help deliver over the medium and long-term:

- people can be confident they are getting great choices and fair deals;
- competitive, fair-dealing businesses can innovate and thrive; and
- the whole UK economy can grow productively and sustainably.

Third, the Annual Plan sets out our medium-term priorities for the next three years and our specific areas of focus for 2023/24. The CMA's priorities for the next three years are directly linked to each of the strategic outcomes set out in our ambition. These cover a 3-year horizon and, in turn, will inform the specific areas on which we will focus during the coming year.

The CMA has also been working to identify strategically important areas where it can differentiate itself internationally post-Brexit, and provide UK stakeholders with clarity about our future direction. For example, this is evident in the [Draft Guidance on Environmental Sustainability Agreements](#) which we published for consultation at the end of February. In recognition of the sheer magnitude of the threat posed by climate change, the CMA proposes to take a more permissive approach than its international counterparts when assessing agreements that tackle climate change, taking account of the benefits to all UK consumers when balancing the harm to competition against the benefits that result from the agreement. This is also in line with our commitment in the 2023/24 Annual Plan to help ensure that the whole UK economy can grow productively and sustainably, including by acting in existing and emergent markets for sustainable products and services.

In developing the more strategic approach to our 2023/24 Annual Plan, we have been mindful of the wider economic and policy environment, including the work of the Government. For example, our work is influenced (among other things) by the [Strategic Steer](#) provided periodically by Government. The Steer, which is usually issued once in each Parliament, sets out the Government's expectations for how the CMA should approach its work and focus its resources. The last edition of the Steer was published in 2019, and it is currently in the process of being revised for the current Parliament.

More generally, the Government has highlighted the importance of competition and the CMA's work for growth and productivity, and it has committed to bring forward the Digital Markets, Competition and Consumer Bill in the third parliamentary session. The Bill will significantly enhance the CMA's ability to act quickly and flexibly to achieve the outcomes envisaged in its strategy, and the CMA has strongly welcomed the Government's commitment to bring forward the legislation.

The Government's proposals are expected to bring in new powers for us to tackle harms in all markets (including digital ones). For example, they will give us even more effective powers to tackle online fake reviews and subscription traps; allow us to trial and iterate novel remedies in markets; and will equip us to more quickly challenge law-breaking and respond with direct enforcement and penalties where necessary.

They are also expected to give the CMA's Digital Markets Unit (DMU) powers to oversee a new regulatory regime for the most powerful digital firms – those that have significant and entrenched market power, giving them Strategic Market Status (SMS). The new SMS regime will establish an ex-ante approach to regulating the largest firms in digital markets, allowing us to shape behaviour as markets evolve, and quickly bring anti-competitive conduct to an end. The new Digital Markets regime will also allow the CMA to work in collaboration with firms to tackle any problems far earlier in a faster, clearer and more proportionate way. We believe this approach can help to create the circumstances that give every participant in the market the opportunity to innovate and grow.

We are supporting the Government by providing up-to-date evidence and advice on the final shape of the legislation, to play our part in informing Government and Parliament about these issues.

The CMA is also supporting Government in its work in other areas relevant to our functions, for example in understanding the impact of the Retained EU Law (Revocation and Reform) Bill for competition and consumer law. The CMA has indicated its concern about the potential loss of key cross-cutting consumer legislation (e.g. Consumer Protection from Unfair Trading Regulations), and is seeking to work with the Government to ensure that essential consumer protections are not lost, whilst also supporting the Government's wider objectives with respect to retained EU law.

PAC recommendation 2a: The regulators should work together to identify common skills shortages, and develop long-term strategies for recruiting, retaining, and training staff to ensure they have the skills they need in the future.

Our strategy for recruitment and retention post EU-exit has been focussed on ensuring we are an employer of choice. As of 28 February 2023, the number of staff in post at the CMA was 875. Our projected strength for 31 July 2023 is 909. To continue to maintain our staffing levels and indeed grow them where and when needed we are conscious of the need to strengthen our employee value proposition and diversify in our recruitment approach and focus.

We have developed an internal review of our employee value proposition, to understand what existing colleagues value about their work and employee experience at the CMA. This will allow us to articulate even more clearly all that the CMA has to offer to current and prospective staff, which is vitally important when we are unable to compete on salaries with the external market for the skills that are needed in the organisation.

We continue to deliver our Equality, Diversity and Inclusion (ED&I) strategy. Implementing the ED&I strategy has been key to our continued recruitment and retention success. We are focussed on ensuring our recruitment practices do not place barriers in the way for any applicants, irrespective of their personal characteristics.

In addition to our continued search for our core professional skill sets (such as legal and economic skills) we are targeting our recruitment across new locations and are continuing to build our expertise to find all the skills we need to deliver our wider range of post-Exit functions, allowing us to offer a broader range of exciting opportunities to prospective applicants. We are increasing our staff strength in CMA offices in Belfast, Edinburgh, Cardiff, Manchester and Darlington, working closely and collaboratively with other regulators, local businesses and stakeholders in those locations to deliver our outreach strategy. This has been critical in establishing both the Office of the Internal Market and the Subsidy Advice Unit across the United Kingdom. We are also expecting our office in Manchester to become a digital hub. We continue to work towards our Places for Growth target of 368 staff based outside of London by March 2025.

We have particularly increased our outreach in the digital space, ensuring that we are well represented at digital events across the Devolved Nations and regions. Additionally, we are using digital attraction platforms to increase awareness and engagement in preparation for the digital markets regime. Preparations have been made so that there is no delay in advertising vacancies when the legislation to establish the new digital markets regime is presented to Parliament.

In developing our recruitment and retention strategies, we have worked with a number of partners. For example, the CMA has been a key contributor to the Digital Regulation Cooperation Forum (DRCF), and we have worked in close collaboration with the DRCF partners to drive common recruitment across the regulators. There is a particular focus on working cross-organisationally on recruitment of digital skills, which are in scarce supply but high demand. Elements of our strategy have included digital tech events and a shared graduate scheme, as well as secondment opportunities across the regulators. We have also engaged with the other regulators addressed in the PAC's report to explore common challenges, particularly in relation to ED&I and identifying new strategies to hunt for the right skills.

PAC recommendation 4: The regulators should work together to share good practice on mitigations to address the loss of regulatory cooperation arrangements with the EU and write to the Committee in six months setting out progress in taking forward the cooperation arrangements set out in the Trade and Cooperation Agreement.

And

PAC recommendation 6: The regulators should write to the Committee in six months setting out their plans for further international engagement including their objectives and timescales for action.

As outlined in the evidence which Michael Grenfell gave the Committee, mitigating the loss of EU cooperation arrangements is a major concern for the CMA, and we have been working hard to further build our international profile with this in mind. Post-Exit, the CMA is dealing with more big international mergers, cartels and anticompetitive agreements, that touch a number of jurisdictions, making international engagement more critical. Previously such cases were reserved to the European Commission.

The UK-EU Trade and Cooperation Agreement makes provision for a competition cooperation agreement between EU enforcers and the CMA. The CMA stands ready to begin negotiations on such an agreement as soon as our EU and Government counterparts are in a position to do so. However, these have not yet been prioritised. We are hopeful that progress on other priorities, such as the Windsor Framework, will open up the opportunity to begin negotiations on cooperation in the coming months. This is all the more important for the CMA following a judgement by the Competition Appeal Tribunal in February in a case concerning BMW and Volkswagen. This judgement appears to limit the CMA's ability to obtain evidence for cartel investigations held outside of the UK. The CMA is appealing to the Court of Appeal in relation to this judgement, but the negotiation of a cooperation agreement with the EU could greatly help to mitigate this challenge, if necessary alongside legislation to clarify the position on our extraterritorial powers.

We know that other UK regulators, including those other regulators addressed in the PAC's report, face similar challenges, and have discussed with them the ways in which we have sought to mitigate the absence of formal cooperation arrangements. We in the CMA have been focussed on seeking to maintain as positive and constructive a relationship with our European Commission counterparts as possible, within the context of the wider UK-EU relationship. For example, we have previously flagged the high-profile parallel case launches which we coordinated with the European Commission, and we continue to work alongside the European Commission on a range of parallel cases, for example investigating mergers between Cargotec/Konecranes; Veolia/Suez; and S&P/IHS Markit. Most recently, we

launched an investigation at the beginning of March into suspected [anticompetitive behaviour amongst suppliers of fragrances and fragrance ingredients](#) for use in the manufacture of consumer products (such as household and personal care products). The case has been launched in consultation with the Antitrust Division of the US Department of Justice, the European Commission, and the Swiss Competition Commission.

More generally, the CMA considers that international cooperation is of growing importance and urgency. We have previously flagged the Multilateral Mutual Assistance and Cooperation (MMAC) Framework which we signed with our counterparts in Australia, Canada, New Zealand and the US. This envisages deepening cooperation between the signatories on big international cases. We are encouraged by the fact that the Government's Digital Markets, Competition and Consumer Bill is expected to include reforms that will assist deeper cooperation, and for the CMA to move closer to the vision set out in the MMAC framework. This includes provisions to facilitate information sharing, and to allow the CMA to provide investigative assistance to trusted partners in certain circumstances.

The CMA hopes that these reforms will pave the way for more comprehensive cooperation agreements with a range of partners, including the other MMAC authorities, once the legislation is in force. However, we are fortunate that our legislative framework allows for a good degree of cooperation without the need for an agreement to be in place, and indeed that much can be achieved through more informal collaboration. We remain an active participant in the key international networks such as the OECD, UNCTAD, the International Competition Network (ICN) and the International Consumer Protection and Enforcement Network (ICPEN), which provide excellent opportunities to bring many competition and consumer protection authorities together to share approaches, knowledge and learning. Indeed, it has been confirmed that the CMA will host the ICN Annual Conference in 2025, the ICN's flagship event. The current work being undertaken in both the ICN and OECD to strengthen and find new ways for competition authorities to cooperate with one another, especially with a view to overcoming the obstacles to effective enforcement cooperation, is particularly timely and important.

Digital markets are an especially fruitful focus for international cooperation, and this is an area in relation to which the CMA has been particularly active. Last year we hosted a Data Conference to consider new and evolving challenges in the tech industry and digital markets, and how competition authorities are developing technical capabilities and expertise to tackle these challenges. As part of the UK's G7 Presidency, the CMA with G7 colleagues and guests published a Compendium of approaches to improving competition in digital markets. This provides an overview of how different authorities are working to promote competition in digital markets. This was intended to be an informative and useful tool for national governments, policy makers, and industry participants, as well as counterpart competition

authorities and regulators grappling with similar issues. We have also published a joint statement with the US Department of Justice and US Federal Trade Commission following the G7 Competition Enforcers Summit under the Digital and Technology track of the UK's G7 Presidency, underscoring the close relationship between the agencies and affirming our respective intention to strengthen collaboration and coordination with one another.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Sarah', written in a cursive style.

Sarah Cardell
Chief Executive
Sarah.Cardell@cma.gov.uk