

Competition & Regulatory Newsletter

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Merger control

CMA accepts final undertakings to address concerns in Rentokil / MPCL merger

On 22 August 2019 the UK's Competition and Markets Authority (CMA) **announced** that, following its Phase 1 investigation, it has accepted final undertakings from Rentokil Initial plc, to address the competition concerns identified in its inquiry into the completed acquisition by Rentokil of MPCL Ltd (formerly Mitie Pest Control Limited).

Rentokil and MPCL are two of the four major suppliers of pest control services to commercial customers in the UK, with a combined market share of 60-70 per cent. The CMA investigation found that the acquisition could lead to a substantial reduction in competition in the market for pest control services to commercial customers. This could lead to higher prices or reduced quality for customers across the whole or a large part of the UK.

Rentokil agreed to divest a number of contracts to provide pest control services to customers of MPCL located in eight or more regions of the UK and to divest such assets as a purchaser reasonably deems necessary to become an effective competitor. The CMA approved Rentokil entering into an agreement to sell the divestment business to ServiceMaster as a suitable buyer for the divestment. In addition, Rentokil agreed to amend a preferred services agreement between Rentokil and MPCL to make it a non-exclusive agreement. The CMA considered that the undertakings were appropriate to address any adverse effect on competition which may have resulted from the acquisition, and closed its investigation. Earlier on 14 August the CMA **announced** a fine of £ 27,000 on Rentokil for its failure to comply with information requests issued by the CMA.

Antitrust

China's Chongqing agency imposes RMB 1.9m fine on brick manufacturers for monopoly agreement

The Chongqing Administration for Market Regulation (Chongqing AMR, part of China's State Administration for Market Regulation) fined six brick manufacturers and three individuals a total of RMB 1.94 million (approximately £ 220,000), for entering into and implementing a monopoly agreement in the local market for baked bricks. In its penalty decision, **published** on 21 August 2019 Chongqing AMR found the manufacturers breached Article 13 of the Anti-monopoly Law. Article 13 prohibits monopoly agreements between competitors to fix commodity prices or limit commodity production or sales.

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Chongqing AMR's investigation resulted from complaints launched in 2015 by a local building association, which alleged that the baked brick manufacturers were engaged in monopolistic conduct, leading to supply shortages and high prices in the local market. Chongqing AMR found the conduct had started in March 2014 and lasted for over four years. It found that the manufacturers met and agreed orally to put in place a uniform arrangement on production and sales activities, pricing, and distribution of profit between the parties. The agreement was then implemented through price fixing (with members being required to observe a joint minimum price) and production restrictions (with some members being asked to halt production to reduce supply and they would be compensated by the other members for doing so).

Chongqing AMR found that the agreement between the parties showed a subjective intention to avoid price competition. The agreement not only excluded competition between the parties, but also restricted competition from non-members, with the effect of seriously restricting competition on the local baked brick market. Chongqing AMR ordered the parties to end this conduct and imposed fines on each company amounting to 5 per cent of its sales in the previous year.

Commissioner Vestager discusses the impact of digitisation on European markets

On 27 August 2019 Competition Commissioner Margrethe Vestager gave a [speech](#) about digital platforms and their effect on competition at the Business Forum of the German Ambassadors' Conference in Berlin. The Commissioner emphasised the importance of platforms to the digital economy and noted the Commission has been looking very closely at digital platforms in recent years. In her speech, Vestager considered two "fundamental issues" of the digital economy: self-preferencing; and data collection and use.

Vestager stated that platforms face a potential conflict of interest "as both player and referee" - providing the platform and competing with other companies that rely on that platform. Vestager argued this may lead to a temptation for platform providers to adjust the way the platform works, to favour their own services over others.

Vestager also stated in her view, that the way online platforms collect and use data can undermine competition. She noted that platforms collect a large amount of data, both from their own services and from other sources, and said the data collected "can be a vital way for these companies to outdo their rivals".

Vestager suggested that these issues may need to be addressed through a combination of competition policy and regulation, to protect consumers. She advocated international cooperation, to ensure digitisation meets the needs of Europe's economy and society.

State aid

European Commission publishes study on the practical impact of RDI State aid rules

On 9 August 2019 the European Commission [published](#) a study on the practical impact of State-aid rules for research, development and innovation (RDI). The study aimed to collect and assess factual evidence on the potential detrimental effect of the 2014 RDI State aid rules on RDI activity.

In 2014 the Commission introduced two new State aid rules governing RDI activities: the General Block Exemption Regulation (GBER) and the Framework for State aid for RDI (RDI Framework). The GBER sets out the conditions under which certain types of State aid can be exempted from prior notification to the Commission. The RDI Framework sets out the conditions that Member States are required to adhere to when granting aid to promote RDI.

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In 2018 the Commission ordered a study to examine the practical impact of the GBER and RDI Framework because of suggestions that the rules had negatively impacted RDI activity. Respondents to the study were asked six questions to assess whether individual provisions of the GBER or RDI Framework presented an obstacle to achieving their overall purpose and whether individual provisions were unduly burdensome.

The study made the following findings:

The study did not identify specific stakeholder opinions as to whether individual provisions of the GBER or RDI Framework presented obstacles to Member States. The study also noted that there were insufficient responses to provide a clear answer. However, the study did show that 77 per cent of respondents answered positively when asked whether, taking into account prior experience, they would again consider applying for RDI State aid funding in the future.

Approximately a quarter of respondents (i.e. 255 respondents) who applied for RDI State aid funding between 2015 and 2017 had to make modifications to their original State aid applications. Of those respondents, 11 per cent reported that these modifications had no effect on their planned projects while 14 per cent indicated the change had impacted on their planned projects.

The study was unable to find concrete results in respect of the underlying reasons for modifications, nor did respondents provide sufficient responses to whether there were any specific provisions of the State aid rules which were most commonly concerned. The study noted, however, questions from applicants primarily concerned practical aspects of the RDI State aid rules rather than directly referring to the rules themselves.

As a result of the lack of factual evidence, the study was unable to identify patterns indicating that individual provisions of the current RDI State aid rules are either unduly burdensome or present obstacles.

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