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FCA Imposes Fines on 3 Asset Management Firms in Its First Competition Law Decision

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Given the new financial year, asset management firms may want to review their internal compliance procedures to ensure they do not fall foul of UK and international competition laws.

On 21 February 2019, the United Kingdom's Financial Conduct Authority ("FCA") issued its first formal decision under its competition enforcement powers contained in the UK's Competition Act 1998 (the "Act"), finding that three asset management firms breached competition law. In the UK, the Act prohibits agreements, practices and conduct that have the object or effect of restricting competition in any market in the UK, and under the Act the FCA has the power to take action against anti-competitive behaviour in relation to financial services. Whilst the FCA has announced its decision, it has not yet published the exact nature of the competition law issues. This information will be contained in the non-confidential version of the decision, which will be made publicly available.

Background

In November 2017, the FCA sent a statement of objections to four asset management firms: Artemis Investment Management LLP (“Artemis”), Newton Investment Management Limited (“Newton”), Hargreave Hale Ltd, and River and Mercantile Asset Management LLP (RAMAM) alleging breaches of competition law. In its announcement of the decision, the FCA stated that Newton, RAMAM and Hargreave Hale were found to have infringed competition law by sharing strategic information during an IPO and a placing as prices were being set. In particular, the FCA found these firms accepted or disclosed otherwise confidential bidding intentions in relation to prices and volumes they were willing to pay, allowing one firm to know another's plans when they should have been competing. However, the FCA found that there were no grounds for action in respect of conduct between Artemis and Newton that took place between April and May 2014 in relation to an IPO.

The FCA stated that asset managers sharing detailed, confidential information about bids can undermine the price setting process, reducing the pressure to make bids to reflect the asset manager's actual views of the true value of the company. According to the FCA, sharing this information could reduce the value of a share price on IPO or raise the cost of raising equity for companies. The FCA also acknowledged that such anticompetitive practices illegal could increase the cost of investments to companies or even make them unviable. In its announcement, the FCA affirmed its commitment to taking enforcement action against infringing firms to protect competition, making clear to the asset management industry that any attempts to undermine the proper process for setting the prices of shares in IPOs and placings will be investigated.

Whilst a non-confidential version of the FCA’s decision will be published in due course, the FCA noted that RAMAM was fined £108,600 and Hargreave Hale was fined £306,300. The FCA did not impose a fine on Newton as it was granted immunity under the FCA's competition leniency policy in return for reporting cartel activity and assisting the FCA with its investigation. It is hoped that the non-confidential decision, when published, will provide firms with some guidance on the scope of the leniency policy. An appeal of the decision can be made to the Competition Appeal Tribunal.

Fine on Former Portfolio Fund Manager for Attempting to Influence Competition

Separately, on 4 February 2019, the FCA issued a fining notice to a former portfolio fund manager at Newton, Paul Stephany for £32,000. According to the FCA, on two separate occasions, Mr. Stephany submitted orders as part of a book build for shares that were to be quoted on public exchanges. Prior to the order books for the new shares closing, Mr. Stephany contacted other fund managers at competitor firms and attempted to influence them to cap their orders at the same price limit as his own orders. Whilst the FCA did not review Mr. Stephany's conduct under competition law rules, the FCA found that Mr. Stephany had breached Statements of Principle 2 and 3 of the Statements of Principle and Code of Practice for Approved Persons. He was also found to have acted without due skill, care and diligence by failing to give proper consideration to the risks of engaging in the communications. In its final notice to Mr. Stephany, the FCA explained that the case against him did not require an analysis of competition law because behaviour that seeks to influence persons so that they submit bids at a certain price, using their collective power, undermines the proper price formation process and is behaviour that is below proper standards of market conduct.

Conclusions

Both the case against the four asset management firms and the case against Mr. Stephany are strong reminders to all individuals active in the market to flag competition law and conduct concerns where appropriate as early as possible given the very serious consequences for failing to do so. The cases also make clear that the FCA will investigate behaviour it considers has a detrimental impact on competition in the market. Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, made clear: "*This matter underscores the importance of fund managers taking care to avoid undermining the proper price formation process in both IPOs and placings. These markets play a vital role in helping companies raise capital in the UK's financial markets and when they are put at risk the FCA will take action*". It is expected that the FCA will continue to review and monitor behaviour especially between competing firms in the market.