

United Kingdom's CMA Issues Guidance to Businesses on Co-Operation During the Crisis

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[As we reported here](#), the UK government announced that, as part of a package of measures to allow UK grocery supermarkets to work together to feed the nation during the COVID-19 crisis, certain provisions of UK competition law will be relaxed temporarily for the domestic food sector. The CMA has now [published a document](#) setting out its approach to business co-operation more generally in response to COVID-19.

Summary of CMA Guidance

The CMA guidance makes clear that its primary focus in the next few months will be to protect UK consumers to the greatest extent possible from the adverse consequences of the COVID-19 crisis. Recognizing that co-ordination between competing businesses may be necessary to ensure adequate availability of essential supplies and services, the CMA has, through this guidance, provided business with reassurance that it will not take an enforcement action against, otherwise anticompetitive activity, so long as it is:

- Appropriate and necessary or otherwise ensures security of supply of necessary goods and services;
- Clearly in the public interest;
- Contributes to the benefit or wellbeing of consumers;
- Deals specifically with critical issues arising out of the crisis;
- Lasts no longer than is necessary to deal with critical issues.

However, the CMA also cautioned that it will not tolerate opportunistic businesses exploiting the crisis as a front for non-essential collusion, by, for example:

- Competitors exchanging commercially sensitive information on future pricing or business strategies, where this is not necessary to meet the specific needs of the crisis; or

- A business abusing its dominant position in a market (which might be a dominant position conferred by the particular circumstances of this crisis) to raise prices significantly above normal competitive levels.

The CMA also cautioned business against engaging in price gouging, stating that prices of products or services considered to be essential to protect consumers' health during the crisis (for example, face masks and hand sanitizers) should not be inflated artificially by businesses seeking to take advantage of the crisis. The CMA also noted that manufacturers can take steps themselves to help combat price gouging by setting maximum prices for the retail of their products.

Proskauer Comment

Whilst the CMA's guidance addresses the UK's approach, international businesses with international operations should seek specific guidance about whether relevant proposals will be treated similarly by the relevant competition authorities given that the UK's guidance is not binding on the European Commission or any other competition authority from the application of applicable international competition rules.

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