Financial Conduct Authority





Competition Concurrency Consultation Breakfast Forum

Friday, 6 March 2015

Chaired by Deb Jones, Director of Competition, FCA







Welcome and Introductions

Speakers:

Mark Bethell, Manager, Competition Department, FCA Ingrid Cameron, Senior Associate, Competition Department, FCA Nancy Johnson, Manager, Legal and Regulatory, PSR

Commentators:

Jackie Holland, Special Advisor, Competition, Slaughter and May Rod Carlton, Partner, Freshfields George Peretz QC, Monckton Chambers Suzanne Rab, Serle Court







- FCA Handbook amendments
- FCA and PSR Competition Act 1998 (CA98) guidance
- FCA and PSR Market study/review and market investigation references guidance
- PSR-specific points
- Additional comments from the floor and closing remarks





FCA Handbook amendments (1)

Draft legal instrument to make amendments to the Supervision Manual:

- Amendment to SUP 15.3.15 R (notification of investigations, sanctions etc)
- New SUP 15.3.32 R and SUP 15.3.33 G (notification of competition law infringements)

Makes explicit existing disclosure obligations on firms under Principle 11





FCA Handbook amendments (2)

Q – Do you have any comments on the draft legal instrument set out in Appendix3, including the scope of the disclosure obligation?

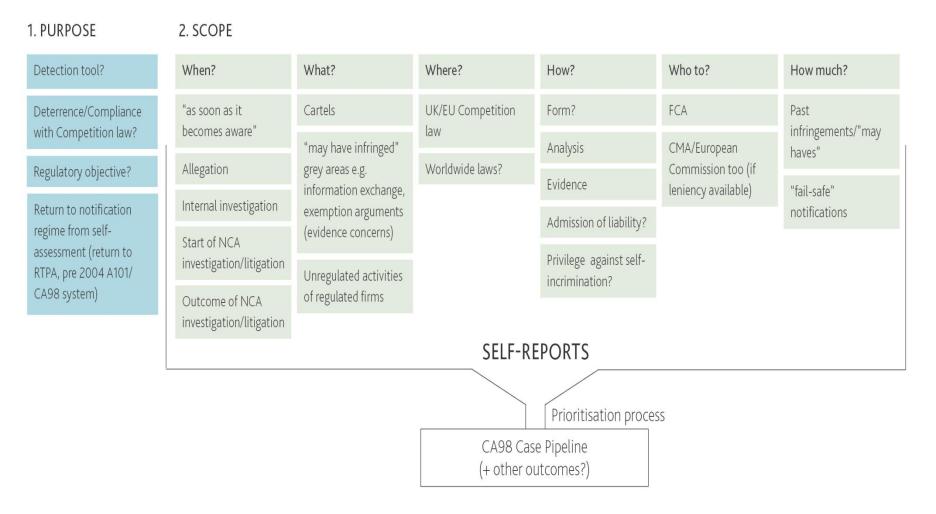




Slide submitted by Jackie Holland, Slaughter and May

PROPOSED HANDBOOK AMENDMENTS:

A NEW DUTY TO SELF-REPORT INFRINGEMENTS OF COMPETITION LAW?



SLAUGHTER AND MAY

FCA and PSR CA98 Guidance (1)

Focuses on the procedural aspects of the FCA's / PSR's CA98 enforcement powers, including:

- how we will identify potential infringements
- how we decide whether to open a formal investigation
- who will take key decisions (e.g. opening case, issuing a Statement of Objections, final decision)

Takes into account the statutory framework, Competition and Markets Authority (CMA) practice, and our enforcement practice under other legislation





FCA and PSR CA98 Guidance (2)

Q – Do you agree with our proposals on how we will carry out CA98 investigations as set out in Appendix 1?

Q – Do you have any comments on the scope or content of the draft guidance provided in Appendix 1?





Comments on FCA and PSR CA98 Guidance

Potential tension with leniency

- Reasonable suspicion vs. genuine intention to confess
- Where first?
- To what extent can you investigate?

Comments on FCA and PSR CA98 Guidance

CA98, FSMA or Neither?

- Prioritisation?
- Which authority? Which powers?
- Does it matter?
 - Differences in procedure?
 - Timing implications?
 - Fining practices

(R) Freshfields Bruckhaus Deringer

FCA and PSR Market Study/Review and Market Investigation References Guidance (1)

Provides an overview of:

- how we will use our new powers under Enterprise Act 2002 to carry out market studies and make market investigation references
- how we use our powers under Financial Services and Markets Act (FSMA) 2000 /Financial Services (Banking Reform) Act (FSBRA) 2013 to carry out market studies/market reviews
- our information-gathering powers

New FCA guidance will replace "*How we carry out market studies"*





FCA and PSR Market Study/Review and Market Investigation References Guidance (2)

Q – Do you agree with our proposals on how we will carry out (*PSR:* market reviews and) market studies as set out in Appendix 2?

Q – Do you have any comments on the scope or content of the draft guidance provided in Appendix 2?





PSR-specific points

- The PSR's proposed CA98 and market study/review and market investigation reference procedures mirror those of the FCA (given overlaps in our regulated populations)
- Differences from the FCA's draft guidance reflect PSR's specific regulatory functions, objectives, duties and powers under FSBRA
- The PSR's competition powers extend beyond our regulated population, as they cover all payment systems, not just those payment systems designated by HM Treasury.





Comments or questions?





Responding to the consultations

- Consultation closes 13 March 2015 (FCA) and 20 March 2015 (PSR)
- Comments can be:
 - submitted electronic through the online forms
 - emailed to <u>cp15-01@fca.org.uk</u> and <u>PSRconsultations@psr.org.uk</u>, or
 - sent via post to:

Mark Bethell Competition Department Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS Payment Systems Regulator Concurrency consultation response team 25 The North Colonnade Canary Wharf London E14 5HS

