

# 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

# Agenda

- 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 Appendix 3, including the scope of the disclosure obligation?

# PROPOSED HANDBOOK AMENDMENTS: A NEW DUTY TO SELF-REPORT INFRINGEMENTS OF COMPETITION LAW?

## 1. PURPOSE

- Detection tool?
- Deterrence/Compliance with Competition law?
- Regulatory objective?
- Return to notification regime from self-assessment (return to RTPA, pre 2004 A101/CA98 system)

## 2. SCOPE

When?	What?	Where?	How?	Who to?	How much?
"as soon as it becomes aware"	Cartels	UK/EU Competition law	Form?	FCA	Past infringements/"may have"
Allegation	"may have infringed" grey areas e.g. information exchange, exemption arguments (evidence concerns)	Worldwide laws?	Analysis	CMA/European Commission too (if leniency available)	"fail-safe" notifications
Internal investigation			Evidence		
Start of NCA investigation/litigation	Unregulated activities of regulated firms		Admission of liability?		
Outcome of NCA investigation/litigation			Privilege against self-incrimination?		

### SELF-REPORTS

Prioritisation process

CA98 Case Pipeline  
(+ other outcomes?)

# 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

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## 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

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## CA98, FSMA or Neither?

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

# 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 [cp15-01@fca.org.uk](mailto:cp15-01@fca.org.uk) and [PSRconsultations@psr.org.uk](mailto:PSRconsultations@psr.org.uk), or
  - sent via post to:

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