

COMPETITION AND MARKETS AUTHORITY
Minutes of the Board
22 May 2014

Present:

David Currie (Chairman)
Alex Chisholm (CEO)
Sonya Branch
Andrea Coscelli
Carolyn Fairbairn
Alan Giles
Roland Green
Philip Lowe
Jill May
Mike Walker
Erik Wilson
Roger Witcomb

Apologies:

Bill Kovacic
Annetje Ottow

CMA staff:

Paul Latham (items 4-10 only)

Executive Office:

Sean Cornall
Tim Jarvis
Rebecca Lyon (Minutes)

Introduction

1 Introduction

The Chairman welcomed members to the meeting. A useful pre-Board seminar on criminal cartel and criminal consumer cases had been held.

Declaration of conflicts / Recusals

It was noted that Sonya Branch was recused on Tobacco and would leave the meeting for that agenda item. Carolyn Fairbairn was conflicted on banking and would leave the meeting for that agenda item. Jill May would also leave the meeting for the banking item in fitting with the agreed practice that panel members who are CMA Board members may not take part in decisions to make market investigation references for any investigation on which it was anticipated they might sit on the Panel.

2 Review and approval of draft public and private minutes of the April Board meeting

The Board approved both sets of minutes with small drafting changes.

3 Oral updates

The Chief Executive updated the Board on key developments and highlights from the past month:

- **Retail banking:** considerable work was ongoing on the retail banking workstream (this would be covered in detail later in the agenda).

- **Litigation:** key developments had been made in relation to Tobacco and a judgment had been received on Construction Restitution.
- **Communications:** there had been an increased range of external engagement via speeches and attendance at events, including the Chairman giving the Currie lecture on the role of independent regulation.

The Chief Executive also updated the Board on key developments in individual directorates.

The Chair of the Audit and Risk Assurance Committee updated the Board on the meeting held on 21 May, which had focussed on four key issues: 2013/14 accounts, ICT, Finance and Internal Audit.

Core updates

Office of the Chief Economic Advisor

4 Pipeline and Intelligence

(Mike Walker, John Kirkpatrick, Nicky Brown, Andrew Hobbs)

The team introduced the paper, summarising its proposed approach to the CMA's pipeline and use of intelligence. It noted its ambition for the CMA to be intelligence-led, drawing on a range of intelligence sources and using this intelligence for a variety of purposes, including research, advocacy, enforcement and markets work. It highlighted the need to ensure join-up with colleagues in the Enforcement and Markets and Mergers directorates as the pipeline was developed.

The Board agreed that the proposed approach to the CMA's pipeline and use of intelligence was suitable. It had a broad-ranging discussion, noting the following:

- **Portfolio priorities:** PRC would take a leading role in determining the balance of the CMA's portfolio, including by industry sector and tool, based on the CMA's prioritisation principles (impact, strategic significance, risks, resources).
- **Leniency applications:** leniency applications were dealt with by CCG and arrangements were being established to ensure information and intelligence was shared between CCG and RIA as appropriate.
- **Whistleblowers:** the CMA had a tightly managed informant reward regime in place to protect informants.
- **Consumer complaints:** the CMA had direct access to Citizens' Advice complaints data and was therefore able to undertake its own analysis of such information. Engagement was ongoing to better join up analysis and use of consumer complaints data between the various organisations in the consumer landscape.
- **Monitoring software:** the Board suggested that further consideration should be given to how the CMA can capture intelligence from social media, noting that companies are increasingly using sentiment monitoring software for such purposes. The Board noted the intention to link up with the Cabinet Office's Open Data team in such considerations, as well as drawing on learning from other agencies.

The Board noted that a strategic overview of the CMA's pipeline and portfolio would be provided on a bi-annual basis.

Enforcement

5 Sports bras RPM investigation

(Sonya Branch, April Carr, Tony Donaldson, Gaucho Rasmussen)

The Board was updated on this case.

Markets and Mergers

6 Retail banking¹

(Andrea Coscelli, George Brenton, Kate Collyer, Daniel Gordon, Michael Grenfell, Cristina Luna-Esteban, Sophie Mitchell, Natalie Timan)

The team introduced the paper, providing an overview of its analysis and initial views on potential market study outcomes for SME banking and PCA banking. The team highlighted the public timetable to publish the findings of these two market studies, together with a provisional decision on whether to make a market investigation reference, by the summer.

The Board discussed the team's analysis, noting the long history of reviews of the banking market and the need for well evidenced conclusions in order for the CMA to add value. It had a broad ranging discussion on the issues identified, potential remedies and possible outcomes of this work. The Board asked for the benefits and counter arguments of different approaches to be set out for the June meeting when it would consider advice on what further action to take in this sector. In relation to stakeholders, the Board emphasised the importance of coordination between the CMA and other regulators, including the FCA and new Payment Systems Regulator (to be fully operational from April 2015).

Organisational management and Thematic reviews

Finance

7 Risk management

(Erik Wilson, Rebecca Lawrence, Shagufta Hassan)

The team introduced the paper, updating the Board on progress in developing a risk management framework for the CMA, including a draft risk management policy, a summary corporate risk register and security risk register and an analytical framework to consider the Board's risk appetite. The Board considered each aspect:

- Risk management policy: the team agreed to further consider the wording of the policy to ensure a consistent interpretation of risk, notably the potential downside of an action (taken with a view to achieving a positive outcome).
- Risk registers: the Board was content with the top corporate risks and security risks identified by the Executive. The detail of the corporate risk register would be populated in line with the Board's risk appetite once determined.
- Risk appetite: the Board considered its risk appetite in relation to a range of categories with a view to developing an agreed risk appetite and narrative for staff. There was a clear distinction between some of the categories in terms of the Board's willingness to accept risk. The Board noted that its risk appetite was likely to shift over time to allow for evolution and continuous improvement. The Board emphasised the importance of getting the language right when describing its risk appetite given the potential for different interpretations and misunderstandings. It was agreed that the team would develop the overarching narrative for consideration at the July Board meeting, taking account of the Board's initial discussion.

¹ Carolyn Fairbairn and Jill May recused themselves from this discussion.

HR

8 Professionalism and Parity project

(Erik Wilson, Carmel Flatley, Vicki Badham (Qi Consulting), Sophie Vallance (Qi Consulting))

The Board was updated on the findings and proposed mechanisms for addressing the identified issues in the professionalism and parity project, following the conclusion of the research phase of the project.

The proposed mechanisms would be worked up for consideration by the Remuneration Committee in late-May and the Board in June.

Office of the General Counsel

9 Tobacco²

(Roland Green, Chantal Encavey, Simon Jones)

The team introduced the paper, updating the Board on recent developments in and relating to the Tobacco litigation.

10 Policy: role and work plan 2014/15

(Roland Green, Gordon Ashworth, Simon Constantine)

The team introduced the paper, providing an overview of the role and responsibilities and proposed workplans of the central Policy unit for 2014/15. It highlighted that its role had three core strands: case support (including ensuring consistency in the CMA's use of case tools); own-initiative projects (including coordinating consideration and development of policy by others at 'local' level) and influencing the regime and legislation.

The Board discussed the proposed Policy role, noting the need to ensure join-up across the office in determining priorities and focus as it would not be possible for Policy to be involved in all aspects of the CMA's work. To enable both internal and external understanding of the teams' role, the Board highlighted the importance of the team being clear on its audience/client for any particular piece of work, as well as the differentiation between its 'service' functions and those where it was 'sovereign' and so had greater control over initiation and outcomes. To this end, the Board also emphasised the need to strike the right balance between proactive and reactive projects, noting that urgent or unforeseen matters would arise so resource contingency would be required.

11 Minutes of Committees

The Board noted the minutes of the Executive Committee (23 April, 7 May) and Case and Policy Committee (7 May).

12 AOB

2015 meeting dates

It was noted that Carolyn Fairbairn had clashes with four of the 2015 CMA Board meeting dates; these would be revisited to consider rescheduling.

Action:

- Executive Office to consider options for rescheduling the affected 2015 meeting dates.

Reading room papers

The Board noted the Reading room papers provided for this meeting.

² Sonya Branch recused herself from this item.