

RESPONSE TO CMA CONSULTATION: LENIENCY APPLICATIONS IN THE REGULATED SECTORS

Baker & McKenzie LLP welcomes the opportunity to comment on the CMA Consultation: Leniency applications in the regulated sectors ("the Draft Guidance"). Our comments are based on the experience of lawyers in our EU Competition and Trade Law practice group of advising on UK and EU competition law.

RESPONSE TO SPECIFIC QUESTIONS RAISED BY THE CONSULTATION

1. Do you agree with the proposal that the CMA should act as a single port of call for all leniency applications in the regulated sectors?

1.1 We agree with the proposal that the CMA should act as a single port of call for all leniency applications in the regulated sectors. For the reasons set out in the Consultation, we believe that this makes sense both from a policy and from a business perspective.

2. Please also provide any additional comments you may have on the draft information note.

Confirmation of availability of marker

2.1 The draft information note ("the Draft Note") stipulates that the CMA will be responsible, in consultation with all other relevant sectoral regulators, for checking the availability of leniency and the grant of any provisional marker. Whilst we agree that this approach is sensible and brings certainty to the process, we are hopeful that the CMA and the sectoral regulators will take steps to minimise any delays in confirming the availability of the provisional marker that may result from such internal coordination. The CMA and the sectoral regulators should ensure that efficient communication channels are in place so that the aforementioned risk does not materialise. The CMA in its guidance on *Applications for leniency and no-action in cartel cases* ("the Leniency Guidance") has committed that in the great majority of cases it '*...will revert to the named contact to confirm whether or not Type A immunity is in principle available... within one to two working days*'. We believe that this should continue to be the goal.

2.2 Given the potential for delay (and in our experience the delays may occur whether concurrent regulators are involved or not), the CMA's Leniency Guidance should be updated to ensure that a marker (if available) is granted as of the day and time when the first call inquiring about the availability of Type A immunity has been placed with the CMA. This will bring even more certainty to the process and would minimise the risk of disputes as to the order in the leniency queue should several parties place a call with the CMA whilst the CMA is coordinating internally with the other sectoral regulators.

Subsequent approaches to the sectoral regulators

2.3 We understand that once a case has been allocated under the Concurrency Regulations all initial leniency enquiries should still be made to the CMA. We welcome this approach for the reasons set out in the Consultation.

- 2.4 However, our view is that, for the avoidance of any doubt, the Draft Note should make it clear that when the case has been allocated (and provided that a party has initially approached the CMA) all subsequent contacts in relation to the party's leniency application should be with the authority that is in charge of the investigation. For example, if a party wants to supplement its original leniency application, the party will need to provide the relevant information to the authority conducting the investigation rather than the CMA (assuming they are different).

BAKER & McKENZIE LLP

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