

## RESPONSE TO CMA CONSULTATION: MARKET STUDIES AND MARKET INVESTIGATIONS: SUPPLEMENTAL GUIDANCE ON THE CMA'S APPROACH

*Baker & McKenzie LLP welcomes the opportunity to comment on the CMA Consultation: Transparency and Disclosure: Statement of the CMA's Policy and Approach ("the Draft Statement"). Our comments are based on the experience of lawyers in our EU Competition and Trade Law practice group of advising on competition law.*

- 1. Do you consider that the Draft Guidance covers the main changes that are introduced by the ERR13 to the CMA's conduct of market studies and market investigations? If not, what aspects do you think are missing?**
  - 1.1 We believe that the Draft Guidance covers the main changes that are introduced by the ERR13.
- 2. Do you consider that the Draft Guidance will facilitate your understanding of the markets regime when read in conjunction with the existing guidance documents?**
  - 2.1 See below our comments under question 4.
- 3. Do you agree with the list in annexe B of the Draft Guidance of existing markets-related OFT and CC guidance documents proposed to be put to the cma board for adoption by the CMA?**
  - 3.1 We agree with the list in annexe B.
- 4. Do you consider that the Draft Guidance is user friendly in terms of its content and language?**
  - 4.1 We understand why the CMA has produced this Draft Guidance as a supplement to existing guidance documents, in order to permit those familiar with the existing process to focus on changes to it. However, the resulting complex thicket of guidance documents as a whole is not at all user-friendly (as is immediately apparent from the explanation and disclaimer in Annex A) and we would urge the CMA as a priority to create and publish consolidated guidance.
- 5. Do you have any other comments on the Draft Guidance?**
  - 5.1 Preliminary work leading to a market study. Paragraph 1.11. We understand that some preliminary work is necessary to identify whether a particular market study under consideration is appropriate and to define and limit its scope. However, we are concerned that the first 2 steps listed in paragraph 1.11, namely developing possible theories of harm and making an impact estimation plan are premature. Pre-study work should be focused on planning the study, not pre-judging its outcomes.
  - 5.2 We are also, as a general matter concerned that the CMA's pre-study work, and the time it takes, should not expand unduly, thereby undermining the objectives of the introduction of the statutory time frame for market studies. A market study should be formally initiated as soon as it is clear that a study will be appropriate.

**BAKER & McKENZIE**

**13 September 2013**