

PROCEDURAL OFFICER DECISION

2015/1

APPLICATION BY FLYNN IN RELATION TO THE CMA INVESTIGATION UNDER THE COMPETITION ACT 1998 INTO THE SUPPLY OF PHENYTOIN SODIUM CAPSULES

Summary of Application

1. Flynn Pharma Limited (Flynn)¹ has requested a review of the CMA's decision not to grant it an extension of time for submitting written representations on the Statement of Objections (the Statement) addressed to Flynn in the CMA's Competition Act investigation into the supply of phenytoin sodium capsules (the Investigation). Flynn requested that it be given an extension of three weeks from the current deadline of 20 November 2015 by which to provide its written representations on the Statement or such other period considered to be appropriate (the Application). The Statement was issued by the CMA on 6 August 2015 alleging that Flynn and one other party, Pfizer², have infringed the Chapter II prohibition contained in the Competition Act and/or Article 102 of the Treaty on the Functioning of the European Union.
2. Flynn has also raised concerns about matters relating to access to file and the proposed timing of the oral hearing in the Investigation. No application has been made in relation to these matters themselves. They have been considered below to the extent that they are relevant to the issues raised by the Application.

The SRO's Decision

3. The Senior Responsible Officer (SRO) for the CMA Investigation sent a letter to Flynn's legal advisers, King & Wood Mallesons, on 4 November 2015 refusing Flynn's request for a three week extension of time to the deadline of 20 November 2015 for submitting its written representations on the Statement (the SRO's Decision).
4. The key issues which Flynn raised in seeking the extension of time and in making the Application, and which were addressed in reasons given in the SRO's Decision, are set out below.

¹ The Application was submitted on behalf of Flynn Pharma Limited. The CMA's Statement of Objections was addressed to Flynn Pharma Limited and Flynn Pharma (Holdings) Limited, collectively referred to as Flynn in the Statement of Objections.

² The CMA's Statement of Objections was addressed to Pfizer Limited and Pfizer Inc., collectively referred to as Pfizer in the Statement of Objections and in this decision.

The Procedural Officer's Process

5. The Application was received on 9 November 2015 by a letter sent to me as the CMA Procedural Officer. I held meetings on 11 November, first with the CMA case team and then with Flynn's legal advisers, King & Wood Mallesons. I have considered the representations and information provided in those meetings, together with the information set out in the Application which included the correspondence provided by Flynn and the case team relating to the procedural issues raised by the Application. I have also taken account of the reasons set out in the SRO's Decision.

Scope for the Procedural Officer to consider the Application

6. The Application relates to the deadline for Flynn to submit written representations on the Statement issued in the CMA's Investigation. I consider it falls within the scope of the procedural complaints that can be considered by the Procedural Officer on the request of a party to an investigation³. This was not disputed by the case team.

Issues raised by the Application

7. Flynn raised five broad grounds in the Application. It set out its view on the following issues that it considered to have an impact on the time needed to prepare its written representations:

- i) The point at which Flynn was in a position to understand the exact nature of the case made by the CMA
- ii) The serious nature of the allegations which raise complex legal, regulatory and economic issues
- iii) Delays in the access to file procedure and the handling of confidentiality resulting in late disclosure
- iv) Flynn is a small business with limited internal resources
- v) The matters which have an impact on timing which Flynn has raised are not of Flynn's making.

The points made which are relevant to my consideration in relation to each of these five issues are set out in more detail below (paragraphs 9-24). I have then set out my observations on these points (paragraphs 25-40). Some of these points overlap and I have considered them both individually and in the round. The issues raised by Flynn were presented in the Application in a slightly different way from in the request for an extension of time which was made to the SRO and therefore in the consideration of that request in the SRO's Decision. I do not consider that any differences in that presentation of the issues are material and these have not affected the way in which I have assessed the information which was provided to me, including the information presented in the meetings which I held with the case team and with Flynn's legal advisers.

³ The CMA's Guidance on the CMA's investigation procedures in Competition Act 1998 cases (CMA8) expressly lists as within the scope of the Procedural Officer remit: "procedural complaints that relate to ... deadlines for parties to respond to information requests, submit non-confidential versions of documents or to submit written representations on the Statement of Objections or Supplementary Statement of Objections", paragraph 15.4.

Chronology

8. The procedural chronology following the issue of the Statement is important to consideration of the Application. Key points in the procedural chronology following the issue of the Statement are set out below. I have identified these from the Application together with the correspondence provided to me by Flynn and the case team, and from the meetings I have held with them.

2015

6 August: The Statement was issued to Flynn alleging Flynn has abused its dominant position by charging its customers unfairly high selling prices in breach of the Chapter II prohibition and/or Article 102 of the Treaty on the Functioning of the European Union. The CMA set a deadline of 30 October for Flynn to make written representations. This equated to a period of just over 12 weeks.

20 August: Flynn requested an extension of time to submit its response by a minimum of four weeks.

24 August: The CMA provided Flynn with a spreadsheet with calculations underlying the cost analysis.

11 September: Flynn was informed by the CMA that errors had been found in the excessive pricing section of the Statement.

14 September: The CMA provided Flynn with confirmation of an extension to the deadline of three weeks until 20 November.

15 September: The CMA provided Flynn with more details of the errors found in the Statement. Flynn expressed concerns about the CMA approach to timing and noted it was likely to require an extension of time as time should not be treated as running until a correct Statement had been issued.

17 September: The CMA provided Flynn with the corrected Statement.

2 October: The CMA provided Flynn with a revised spreadsheet setting out calculations underlying the cost analysis.

9 October: The CMA provided Flynn with a final set of documents to complete the access to file process.

16 October: Flynn requested disclosure of Pfizer's cost and pricing information which was redacted in the Statement.

30 October: Flynn requested a three week extension until 11 December to respond to the Statement.

3 November: The CMA agreed to provide access to most of the materials requested by Flynn subject to a confidentiality ring.

4 November: The SRO informed Flynn of her decision rejecting Flynn's request of 30 October for an extension and maintaining the deadline of 20 November.

6 November. The CMA provided Flynn's advisers with the documents requested on 16 October, as agreed by the CMA on 3 November.

The issues raised by Flynn

i) The point at which Flynn was in a position to understand the exact nature of the case made by the CMA

9. The Application stated "The mistakes in the original SO go to the very substance of the allegations made against Flynn". It explained that Flynn was only "in a position to fully understand the exact nature of the case against it, including the quantum of the alleged excessiveness and the way in which that excess had been calculated" once Flynn received the corrected Statement on 17 September and the revised spreadsheet setting out the CMA's workings for its cost analysis underlying the allegations on 2 October. The Application stated that "It is therefore only since receipt of the Corrected SO and this spreadsheet that Flynn is able to exercise its rights of defence effectively".

10. In my meeting with Flynn's legal advisers, they explained that the mistakes in the original Statement had created difficulty in enabling Flynn to understand the basis for the CMA's calculations and that this had had an impact on the analysis of the case as a whole. Flynn therefore considered that the appropriate date from which the period for submitting representations should run was 17 September. In the meeting, Flynn's legal advisers highlighted to me the importance of the alleged price excess to the case as a whole as they perceived it.

11. The SRO's Decision noted that the changes in the CMA's calculations in the corrected Statement did not mean that the time which had already been spent by Flynn in considering the CMA's approach would have been wasted. This point was explained in my meeting with the case team in which they disagreed with the significance which Flynn attributed to the mistakes in the cost analysis and the impact on Flynn's understanding of the allegations. In the case team's view, this was a simple arithmetical error. They argued that it was an issue which could have been addressed in written representations. As regards the provision to Flynn of the corrected Statement with consequential amendments, and the later provision of the revised spreadsheet of underlying calculations, the case team explained that Flynn had had access to all of the underlying information which was relevant to the calculations and was therefore in a position to make its own calculations and assessments. Furthermore, the case team did not consider that the spreadsheet was information that Flynn reasonably needed in order to respond to the Statement.

ii) The serious nature of the allegations which raise complex legal, regulatory and economic issues

12. The Application stated that the allegations made in the Statement "are of a very serious nature and raise complex legal, regulatory and economic issues". This required Flynn to engage, in addition to its existing economic expert, an external expert adviser from a pool of experts which, in light of the nature of the areas of expertise on which advice was required, was limited in number and with limited availability. The Application stated that the experts were not "in a position to fully

understand the exact nature of the excessive pricing case” until the corrected Statement was received.

13. In their meeting with me, Flynn’s legal advisers explained that they considered that the unexpected approach in the Statement of using pricing under the pharmaceutical price regulation scheme (PPRS) to compare with Flynn’s prices, for the purposes of assessing their fairness, necessitated Flynn engaging an external [X]. Flynn’s legal advisers also explained that in light of the nature of the different expertise engaged, it was necessary for the financial and economic experts to provide their advice sequentially, noting also that this added to the time required to respond to the Statement. They expressed concern that there would not be sufficient time within the current timetable for the report from the expert on the PPRS adequately to be taken into account in preparing Flynn’s written representations.

14. The SRO’s Decision stated that the 15 weeks which Flynn had had to provide its written representations should have allowed sufficient time to identify and instruct an expert and to consider and obtain advice from that expert. The SRO’s Decision also noted a four week delay by Flynn in instructing an expert following receipt of the Statement and the choice of an individual with limited availability. In addition, it noted that there was limited reliance on the PPRS in the Statement. In my meeting with the case team, they disagreed with Flynn’s view that there was a limited pool of experts. They also pointed out that there had been engagement with Flynn and its advisers as part of the investigation and Flynn would therefore be aware of the nature of the case which was being built.

iii) Delays in the access to file procedure and the handling of confidentiality resulting in late disclosure

15. The Application referred to “important delays in the access to file procedure” including delays caused by the late agreement of certain confidentiality redactions. The Application also raised concerns about the time taken for disclosure of certain material and the need for an appropriate time for Flynn’s advisers to consider this material. In the meeting, Flynn’s legal advisers drew my attention to ongoing discussions with the case team about the possibility of additional time to consider certain documents which were in the confidentiality ring and the case team’s suggestion that they would consider allowing a short period of additional time for Flynn to make representations about any issues related to these documents separately and after the written representations on the Statement had been submitted. Flynn’s legal advisers expressed concerns in the meeting that they should be able to be in a position to consider all the aspects that would be relevant to their client’s defence before making any representations.

16. The SRO’s Decision addressed a number of other issues about the access to file process which had been raised by Flynn in its request to the SRO. These included issues about identification and labelling of documents and the ability to search the index which were not raised explicitly in the Application. In their meeting with me, Flynn’s legal advisers explained that these issues had complicated and delayed the access to file process.

17. The SRO's Decision noted that the majority of the documents on the CMA file (assessed by the CMA as approximately 98 per cent) were provided promptly and that the small number of documents which were provided later were principally about logistics and administrative issues, historic information or related to products unrelated to the matters contained in the Statement. It was also noted that the majority of the documents which were disclosed on 9 October had originated with Flynn.

18. The SRO's Decision explained how the CMA had discharged its legal obligation to give a party to an investigation a reasonable opportunity to inspect the documents in the case file and how the case team had gone beyond this to the extent possible in order to address the issues which had been raised. In my meeting with the case team, the continuous engagement with the parties throughout the access to file process was pointed out. This is also clear from the correspondence I have seen as part of the Application. The case team also explained that they considered that the information Flynn had requested on 16 October which related to Pfizer's business was not of particular relevance to the overall case and that it was a discrete issue that could be addressed separately from Flynn's submission of its written representations on the Statement. Since the information had originally been redacted in the Statement in light of commercial sensitivity and a confidentiality ring had been put in place, the case team noted that it would be an area that could appropriately be dealt with separately. In the meeting the case team also explained that the confidentiality issues in the access to file process arose in part because of the issue of a single Statement covering the alleged infringements by both Flynn and Pfizer, a matter that had been discussed with the parties before the Statement was issued.

iv) Flynn is a small business with limited internal resources

19. The Application stated "Flynn is a small business with limited internal resources. Flynn's senior management must be fully involved in the preparation of Flynn's written representations given the seriousness of the allegations made in the SO". The correspondence which was provided with the Application stated that Flynn is privately run. During our meeting, Flynn's legal advisers provided some detail about Flynn's management, [✂]. It was noted that limited availability had been a particularly significant issue during the summer period.

20. The SRO's Decision and comments from the case team in my meeting with them noted that it is not unusual for a Statement of Objections to be issued to a small company and that Flynn's size and resources had been taken into account in setting the original timetable. The SRO's Decision also noted that Flynn had instructed well-resourced and experienced legal and economic advisers and an expert on the PPRS and that account had been taken of the fact that the Statement was issued in the summer holiday period when the original timetable was set such that the case team had set a longer time period than they would otherwise have done.

v) The matters which have an impact on timing which Flynn has raised are not of Flynn's making

21. The Application stated that “the errors in the SO, the underlying document supporting the CMA’s analysis and the issues with the access to file were not of Flynn’s making”.

22. In our meeting, Flynn’s legal advisers pointed out to me that correspondence from the CMA itself had acknowledged that the Statement of Objections process had not been ideal. Flynn’s legal advisers noted the expectations that had been created in the correspondence by the suggestion from the CMA that if Flynn considered it needed more time to submit its response once it had had an opportunity to consider the corrections further and had been provided with the final documents on the CMA’s file, it should return and explain to the CMA why it might need an extension. This correspondence was provided with the Application. In particular, on 14 September, the CMA wrote to Flynn:

“We propose that if, when Flynn receives the small number of outstanding documents on the CMA’s file and has reviewed the CMA’s updated calculations, it believes it will need further time to prepare its written representations then it would be appropriate to discuss this at that time”.

On 17 September, the CMA wrote to Flynn:

“We are happy to discuss the question of deadlines further – however we believe it would be more productive for any such discussions to take place after Flynn and its advisers have had an opportunity to consider these amendments and once all the documents on the CMA file have been disclosed.”

23. The SRO’s Decision noted the time which Flynn will have had to submit its written representations: over nine weeks if the date of receipt of the corrected Statement was taken as the starting point and 15 weeks from the date of the original Statement.

24. In my meeting with the case team, they explained that although Flynn had been invited to return with detailed reasons about why an extension was required once Flynn had considered the details of the revised Statement, this had been no more than an indication that the case team would be open to considering any reasons in support of a request for more time at that stage.

Observations on issues raised by the Application

25. In light of the nature of the Application which relates to the time period for responding to a Statement of Objections I have considered in particular the rights of defence. I consider that this covers issues in relation to the right of the party under investigation by the CMA to be heard encompassing:

- i) notice of the alleged infringement and the evidence relied on in support of this before any adverse decision is taken, with the opportunity to respond (the Statement of Objections)
- ii) a reasonable opportunity to inspect the documents in the CMA’s file that relate to the matters referred to in the Statement of Objections (access to the file)

- iii) opportunity for the business to make known its views on the truth and relevance of the facts and circumstances of the alleged infringement and the documents relied on (the representations)⁴.

It is clear that in order to exercise its right to respond to a Statement of Objections effectively, a party under investigation needs to be given the information necessary to understand the case together with a reasonable time to prepare its response to that case⁵.

26. I have carefully considered the issues raised by Flynn in the Application and the SRO's Decision as further developed in the meetings I had with Flynn's legal advisers and with the CMA case team. I make the following observations in relation to the points that have been raised by Flynn.

27. The key issue in this Application is whether the revised deadline of 20 November for submitting written representations is (or remains) an appropriate one for Flynn to submit its written representations on the Statement. In particular I have considered whether any developments occurring since the original deadline was set, and/or since it was later extended, may have given cause to change the assessment of the appropriate period made at those times.

28. The CMA has published guidance which explains that the timetable for a party under investigation to submit written representations on a Statement of Objections will be specified in that document and states:

"Usually the deadline for an Addressee to submit written representations will be at least 40 working days, and no more than 12 weeks, from the issue of the Statement of Objections."⁶

This published guidance is important to my consideration of the Application in a number of ways including its relevance to the date from which time should run and the appropriate length of time in light of the nature of this particular case. It is also important to recognise that the guidance states that this will "usually" be the timeframe. I also note the more general statement in this published guidance:

"The CMA will apply this guidance flexibly. This means that the CMA will have regard to the guidance when dealing with suspected competition law infringements but that, when the facts of an individual case reasonably justify it, the CMA may adopt a different approach"⁷

29. The guidance therefore anticipates that there may be circumstances where the given timeframe is not appropriate. By definition, such circumstances will however be unusual. They will be likely to relate to the particular position of an

⁴ These issues are covered in Rule 6 of the CMA Rules which deals with notices, access to file and representations: The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014, SI 2014 No. 458.

⁵ The CMA's published "Transparency and disclosure: Statement of the CMA's policy and approach (CMA6) states that the CMA "must in some cases, take certain steps to share its provisional thinking or proposed decisions" and provides as an example "in CA98 investigations, if it proposes to make a decision, the CMA must issue a Statement of Objections (SO) to any party suspected of a breach of the CA98", paragraph 3.12.

⁶ CMA8, see footnote 3 above, paragraph 12.3.

⁷ CMA8, see footnote 3 above, paragraph 1.8.

individual party and must be considered within that context. Relevant to my assessment of whether the circumstances are unusual will be their implications for and effect on the rights of defence of the party concerned.

30. I recognise the importance for the efficiency and effectiveness of the Competition Act regime that timeframes are clear, understood and adhered to. This is of benefit to parties as well as to the CMA. It underpins the right to have a decision taken and for proceedings to be resolved within a reasonable time.

31. I note the differing views about the weight that should be attached to the nature of the Statement and therefore the appropriate period of time within which to provide written representations in accordance with the timeframe set out in the guidance and whether or not the time period which was set was sufficient in this case. The case team have explained that this was not a case which the CMA considered to require a period at the upper end of the timeframe set out in the guidance and that the period had been set at this level as a consequence of other factors being taken into account by the CMA. I also note the fact that if the time period is measured from the date of the issue of the original Statement in August, by the revised deadline of 20 November, Flynn would have had more than the maximum timeframe in which to submit its written representations, and if taken from the date of the issue of the corrected Statement in September, Flynn would have had just over nine weeks in which to do so. The case team argued that this meant that under either measure, Flynn would already have had more time than might generally be allowed by the CMA in an investigation of this nature in accordance with the timeframe in the guidance. Flynn has argued that on the contrary the significance of the case and the complex legal, regulatory and economic issues it raises required the period to be at the upper end of the guidance timeframe in principle.

32. In addition to the different views on the question where this case might in principle sit within the timeframe set out in the guidance, the Application raises issues about how the period for responding to written representations might apply in practice. I note that from the outset Flynn had expressed concerns about whether the time period which had been set was appropriate. For example, in its request for a four week extension to the original deadline which was made on 20 August, Flynn pointed out the fact that the Statement was issued during August, a month when it said that key staff were away on holiday. Flynn had therefore requested additional time to deal with the consequences of absences in this holiday period. I note moreover that subsequently, when Flynn was informed of the existence of errors in the Statement and raised concerns about the sufficiency of the timeframe, the correspondence from the CMA provided reassurance that the time period remained open to consideration.

33. As set out above, I have considered if developments since the original time period was set mean that any change needs to be made to the assessment of the appropriate time within which Flynn should submit its written representations. As part of this consideration, I note that in September Flynn was granted an extension of three weeks to the original timeframe with a revised deadline set of 20 November. This would bring the overall time period to 15 weeks. In considering whether this

overall period was a reasonable one by which Flynn should submit its written representations, the developments during this time and since the original time period was set which are referred to by Flynn are key. The fact of the issue of the corrected Statement and its impact on Flynn is central to its Application. I note that concerns were also raised about delays in the access to file and disclosure process. All these issues are relevant to arguments made by Flynn about the appropriate date from which the period for submitting written representations should run. This has an impact in determining the date from which time should run and what the appropriate period should be. This issue is addressed further below.

34. Although the timeframe set out in the guidance may therefore provide a benchmark, in light of the particular circumstances of this case as it applies to Flynn, I do not consider that at this stage the timeframe is an appropriate limitation for considering Flynn's request for an extension.

35. It is clearly important that the time period set in any case takes account of the individual circumstances of each party where appropriate and provides a reasonable opportunity in the circumstances concerned for that party to put its case in its written representations. This issue is fundamental to the underlying purpose of both a Statement of Objections and the submission of written representations. It underpins the rights of defence.

36. The issue of a Statement of Objections in an investigation satisfies the CMA's obligation under the CMA Rules to provide a notice which sets out:

“the facts on which the CMA relies, the objections raised by the CMA, the action the CMA proposes and its reasons for the proposed action.”⁸

It is a key point in any Competition Act investigation. It is only when a Statement of Objections is issued that the case which is being alleged by the CMA against any party is presented clearly and fully to each party concerned. It is therefore an essential procedural safeguard that ensures that a party's right to be heard is respected. As noted above, part of the rights of defence is for a party not only to be provided with such a document but also that the document is fit to enable the party to make its representations. The time period which is allowed for providing written representations should take this into account. It is therefore important to consider the significance of the changes the CMA later made to the Statement that resulted in a corrected Statement being issued on 17 September and the particular impact on Flynn.

37. In our meeting, Flynn's legal advisers expressed concerns on behalf of Flynn about their difficulty in understanding the allegations being made by the CMA in relation to the calculation and assessment of costs both in the original Statement and also once the corrected Statement had been received. I understand that the corrected Statement addressed errors related to the calculation and allocation of Flynn's common costs within the cost analysis forming the basis of the excessive pricing allegations. Although the case team explained their view that the changes required were simple arithmetical calculations, I think it is important that from Flynn's

⁸ Rule 6(1)(c), CMA Rules, see footnote 4 above.

perspective the position was less straightforward. More generally, I understand that Flynn considered that its difficulty in understanding the allegations was exacerbated by having to understand a second, corrected Statement. I note that, as set out above, there had been engagement with Flynn and its advisers as part of the investigation. [✂] The fact of that engagement does not however alter the importance of the Statement itself in crystallising and detailing the CMA's case.

38. I note also the points raised by Flynn and which are clear from the correspondence about the impact of late disclosure of certain documents within the access to file process. Flynn argued that the delay in seeing the relevant evidence and the time spent on dealing with those matters had affected Flynn's ability to understand the CMA's case. I note in particular the points made by Flynn's legal advisers in our meeting about the need for disclosure of redacted parts of the Statement and the underlying documents in order to understand different costings and also the comparisons that related to Pfizer's prices. Flynn's legal advisers explained that they needed to be able to see and be in a position to make a proper assessment of this information and how it relates to the case which is made against Flynn. I understand that this information formed a late part of the disclosure, subject to a confidentiality ring. Although the case team indicated that separate arrangements could be put in place to enable any points on this information to be submitted on behalf of Flynn outside the timetable for submitting written representations, I consider that in light of the particular circumstances in this case, it is important that Flynn and its advisers are able to have time to consider, understand and address this information within the timetable for submitting written representations.

39. I have carefully considered the points made by Flynn's legal advisers about the nature of the Flynn business and the limitations on the internal management resources available to deal with the written representations. I note the points made by the case team that the CMA deals with investigations involving small companies, taking account of their circumstances, and that Flynn's size and resources had been taken into account. I do not accept that there is a particular concern about the size of the Flynn business which of itself would affect my consideration of Flynn's Application. I note moreover that Flynn has instructed experienced and expert external advisers who have been engaged during the investigation process. It is for parties, whatever their size, to ensure that they are in a position to enable them to deal with the full range of matters that may arise as part of their conduct of business, handling appropriate regulatory processes, including the consequences of investigations in relation to their compliance with the Competition Act.

40. There are nevertheless particular factors in relation to the position of Flynn in the circumstances of this case that I have taken into account. I note the points that Flynn's legal advisers have made about ensuring that the work of the expert on the PPRS can inform Flynn's written representations. In addition, the extent of the need for the involvement of management in handling an investigation will depend on the nature of each individual business concerned and the facts that are relevant to its particular circumstances. In this case I acknowledge that, as I have been told, Flynn considered it necessary for its senior management to be engaged in preparing its

case [X]. This is not changed in this case by the fact that Flynn has engaged experienced advisers and experts considered above. I note also that although, as explained by the case team, the time period for submitting written representations was set taking into account the number of procedural issues which needed to be considered during this period, the nature of these issues (including access to file and confidentiality) were ones in which the Flynn management has been engaged and which might reasonably require management attention.

Conclusion

41. I have carefully considered the issues which have been raised in relation to the factors relevant to the assessment of an appropriate timeframe for Flynn to provide its written representations in this investigation. I have considered this in the context of Flynn's individual circumstances including matters which are relevant to the position and procedure as it applies to Flynn. I have considered the issues and the arguments which have been raised by Flynn in the Application both individually and in the round. These factors, taken together, are important both in order to ensure that Flynn can understand the case which is being alleged by the CMA and that it has a reasonable time to make written representations setting out its response to that case.

42. In light of my observations set out above, and after considering the issues set out in the Application and the information I have been provided in the meetings I have held with Flynn's legal advisers and with the CMA case team, I consider that in order to ensure Flynn is able to exercise its rights of defence and respond to the Statement, a short extension should be granted to the current timeframe for Flynn to submit its written representations. I consider that it is appropriate for the CMA case team to determine the length of any such extension, after discussion with Flynn's legal advisers.

Decision

44. After careful consideration, in light of the reasons set out above, on 17 November I decided to allow the Application and communicated my decision to Flynn and the CMA case team.

FRANCES BARR

PROCEDURAL OFFICER

27 NOVEMBER 2015

[X] indicates confidential information that the CMA has redacted from the published version of this decision.