

## Leniency Applications in the Regulated Sectors

1. We welcome the opportunity to comment on the CMA's consultation relating to leniency applications in the regulated sectors, published on 30 June 2017. The comments in this submission represent the views of White & Case LLP. Whilst we expect that most, if not all, of our clients would agree with these comments, this submission should not be taken as representing the views of any of our clients.
2. We strongly support the proposals from the CMA (and sectoral regulators) for the handling of leniency applications in regulated sectors by members of the UK Competition Network ("UKCN"), including the proposal to publish an information note so that businesses are clearly aware of the procedures that will be followed in the relevant circumstances.
3. In particular, we endorse the proposal that the CMA should act as a 'single port of call' for all leniency applications in the regulated sector concerning possible infringements of the Competition Act 1998 ("CA98") and the Enterprise Act 2002 ("EA02"). This is for two reasons:
  - 3.1 First, a single point of contact will reduce the burden on business of making (or considering whether to make) more than one application in respect of any particular conduct. The certainty and predictability of knowing only one application need be made to the CMA rather than to the CMA and/or another member of the UKCN is to be welcomed; and
  - 3.2 Secondly, as the consultation document notes, only the CMA is able to grant immunity for conduct that constitutes criminal cartel behaviour under EA02. As such, we believe that the CMA is the appropriate body to which a single leniency application should be made because any such applications will, where relevant, cover both potential criminal liability under EA02 as well as civil liability under CA98. As the sectoral regulators only have concurrent powers in respect of civil liability under CA98, in our view, it therefore clearly makes sense that the CMA should be the authority tasked with operating the 'single port of call' system.
4. The draft information note states that "In the event that any initial leniency enquiries or leniency applications are made to a sectoral regulator, the sectoral regulator will immediately direct the person making the leniency enquiry or application to the CMA"<sup>1</sup>. In order to avoid any possible confusion or dispute over a situation in which Applicant A first contacts a sectoral regulator and Applicant B subsequently contacts the CMA, but before Applicant A is able to do so (having been "immediately" directed by the sectoral regulator), we consider it would be helpful to add a few words to paragraph 16 of the information note so that it reads: "This approach ensures that the applicant's place in the leniency queue is determined by the order in which any business applied to the CMA for leniency..." (added words emphasised) .
5. Subject to the point above, we have no particular comments on the proposed information note describing the handling of leniency applications in regulated sectors by members of the UKCN. The draft information note will provide clarity for applicants as to the processes that should be followed, and is therefore to be welcomed.

White & Case LLP  
25 July 2017

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<sup>1</sup> Paragraph 5. (We note that the same text is repeated at paragraph 19 (without the last reference to the word "leniency") and suggest the wording be the same in both paragraphs.)