



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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BUSINESS APPOINTMENT APPLICATION: Andrea Gomes da Silva, former Executive Director, Markets and Mergers, Competition and Markets Authority. Appointment with Brunswick Group.

1. Ms Gomes da Silva sought advice from the Advisory Committee on Business Appointments (the Committee) under the government's Business Appointments Rules for former Crown servants (the Rules) on an appointment she wished to take up with Brunswick Group (Brunswick) as a Consultant. The material information taken into consideration by the Committee is set out in the annex.
2. The purpose of the Rules is to protect the integrity of the government. Under the Rules, the Committee's remit is to consider the risks associated with the actions and decisions Ms Gomes da Silva made during her time in government service, alongside the information and influence she may offer Brunswick.
3. As Executive Director of Markets and Mergers at the Competition and Markets Authority (CMA), Ms Gomes da Silva was responsible for delivering mergers and markets cases and setting policy in these areas. She now wishes to advise Brunswick and its clients on national and international regulatory and public interest issues, which has the potential to overlap with her responsibilities in office.
4. The Committee considered whether this appointment was unsuitable given Ms Gomes da Silva's former role at the CMA. The Committee also considered the information provided by the department about her specific dealings with this employer and the sector, including her previous experience in the sector before joining government. The Committee has advised that a number of conditions be imposed to mitigate the potential risks to the government associated with this appointment under the Rules; this does not imply the Committee has taken a view on the appropriateness of this appointment in any other respect.

5. The Rules set out that Crown servants must abide by the Committee's advice¹. It is an applicant's personal responsibility to manage the propriety of any appointment. Former Crown servants are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.

The Committee's consideration of the risks presented

6. Brunswick is a public relations, crisis management and related advisory firm. The website states it is a critical issues firm and advises '*...the world's leading companies on how to navigate the critical issues they face and engage with their critical stakeholders.*' Ms Gomes da Silva did not meet with Brunswick in her role as Executive Director of Markets and Mergers. The CMA also confirmed Ms Gomes da Silva made no decisions that were specific to Brunswick. Whilst there are risks associated with her joining Brunswick, there is no evidence she made decisions or took actions in office in expectation of this role.
7. Ms Gomes da Silva was responsible for the delivery of mergers and markets cases and setting policy in these areas - therefore had significant knowledge of privileged material around these areas. The Committee² noted she seeks to advise Brunswick and its clients in the same general area - regulatory and public interest issues. In this regard, there is a risk her access to privileged information while in government could offer an unfair advantage to Brunswick and its clients. This risk is difficult to mitigate where the specific clients and projects are unknown.
8. The Committee considered several mitigating factors raised by Ms Gomes da Silva and the CMA, which reduce the scope of the above mentioned risks:
 - She is prevented from using sensitive information by a number of formal restraints which apply to registered solicitors with the Solicitors Regulation Authority; provisions in the Enterprise Act 2002; and the Rules and principles which apply to all former Crown servants. As such Ms Gomes da Silva has a professional and legal obligation not to work on matters where a conflict is present and which includes confidentiality conflicts as well as conflicts of interest.
 - Ms Gomes da Silva left her role in May 2021 and 10 months have passed since she had last had access to this information.
 - As a legal professional working for Freshfields she was seconded to government to help set up what was at the time the 'new CMA' taking over from the previous Office of Fair Trading. This is therefore a continuation of her professional expertise- built prior to joining government.

¹ Which apply by virtue of the Civil Service Management Code, The Code of Conduct for Special Advisers, The Queen's Regulations and the Diplomatic Service Code

²This application for advice was considered by Jonathan Baume; Andrew Cumptsy; Isabel Doverty; Sarah de Gay; Dr Susan Liautaud; The Rt Hon Lord Pickles; Richard Thomas; Mike Weir; Lord Larry Whitty

- The CMA considered the risks attached to her access to information can be mitigated through conditions which ring fence her role with Brunswick to avoid areas of conflict.
9. Whilst Ms Gomes da Silva is continuing in her career, she held a senior role in regulatory matters within the CMA. She is now moving to a company where she will advise on regulatory and public interest issues. The Committee's view is that whilst there are mitigating factors, there remains a risk she has privileged insight and influence that could be seen as offering an unfair advantage. The Committee considered the potential risks associated with her privileged access to information were most significant on matters still in development and not yet made public. On the basis of the information provided by her and the CMA, this relates to:
- reforms to competition regulation
 - regulation of the digital sector
 - current or known pipeline merger cases
 - current or known pipeline of markets cases
10. While Ms Gomes da Silva confirmed her role will not include contact with the CMA or the government more widely, the risks associated with her network and influence within government must be mitigated. It would not be appropriate for the former Executive Director at the regulatory body the CMA to have any direct contact with the CMA in her role with Brunswick during the 2 years after leaving office.

The Committee's advice

11. Given this role could involve matters directly related to her time in office, the Committee considered if it would be inappropriate for Ms Gomes da Silva to advise on anything that might have fallen to her as Executive Director of Markets and Mergers. This includes the CMA's recommendation to stipulate that she must not work on some specific matters, where the CMA identified there are risks associated with her access to information. In accordance with the advice from the CMA about matters ongoing and not yet in the public domain, the Committee advises she must not work on the following matters:
- reforms to competition regulation
 - regulation of the digital sector
 - current or known pipeline merger cases
 - current or known pipeline of markets cases
12. Ms Gomes da Silva confirmed there will be no lobbying of government in this role, in line with the expectations set out in the Rules. The Committee wishes to make it explicit that it would be inappropriate for Ms Gomes da Silva to use contacts gained in office (directly or indirectly) to the advantage of Brunswick or its clients; and she must not engage with the UK government on behalf of Brunswick. The Committee's advice is therefore that she should have no direct engagement with the CMA on behalf of Brunswick or its clients. This helps to mitigate the risk she may be seen to offer Brunswick and its clients any unfair access and influence on regulatory matters.

13. The Committee also determined it was necessary to put a significant gap between Ms Gomes da Silva's decision making and access to information at the CMA and her joining Brunswick. However, the Committee considered the 10 months that have already passed since she was at the CMA are sufficient. This takes into consideration the addition of the conditions below and together this appropriately mitigates the risks under the Rules in relation to insight derived from any information she had access to as Executive Director of Markets and Mergers.

14. Taking into account these factors, in accordance with the government's Business Appointment Rules, the Committee's advice is this appointment with **Brunswick Global** be subject to the following conditions:

- she should not draw on (disclose or use for the benefit of herself or the organisations to which this advice refers) any privileged information available to her from her time in Crown service;
- for two years³ from her last day in Crown service, Ms Gomes da Silva's should not provide advice to Brunswick or any of its clients on any matter which was under consideration by the CMA during her time as Executive Director, Markets and Mergers. Without limiting the generality of this restriction, this includes in particular:
 - matters that concern the proposed new regime for the regulation of the digital sector or the application of any new merger control rules to any company with strategic market status in the digital sector; and
 - matters that concern the proposed reforms to competition law in the UK which were in existence, or in the process of being formulated by the CMA, prior to her leaving the CMA (27th May 2021)
 - any matter directly associated with the CMA's current or pipeline of markets cases as at her last day in office (27 May 2021), including:
 - Children's social care study
 - Mobile ecosystems market study
 - Electric vehicle charging study

- any of the following current or known pipeline merger cases set out below:

- i. [REDACTED]

³ Unless the policy is made public within those 24 months

- for two years from her last day in Crown service, she should not become personally involved in lobbying the UK government or any of its Arm's Length Bodies on behalf of Brunswick or its clients (including parent companies, subsidiaries, partners and clients); nor should she make use, directly or indirectly, of her contacts in the government and/or Crown service contacts to influence policy, secure business/funding or otherwise unfairly advantage those she advises under her independent consultancy (including parent companies, subsidiaries, partners and clients); and
 - for two years from her last day in Crown service, she should not provide advice to Brunswick or its clients (including parent companies, subsidiaries, partners and clients) on the terms of, or with regard to the subject matter of, a bid with, or contract relating directly to the work of the UK government or any of its Arm's Length Bodies.
15. The advice and the conditions under the government's Business Appointment Rules relate to Ms Gomes da Silva's previous role in government only; they are separate to rules administered by other bodies such as the Office of the Registrar of Consultant Lobbyists or the Parliamentary Commissioner for Standards. It is an applicant's personal responsibility to understand any other rules and regulations they may be subject to in parallel with this Committee's advice.
16. By 'privileged information' we mean official information to which a Minister or Crown servant has had access as a consequence of his or her office or employment and which has not been made publicly available. Applicants are also reminded that they may be subject to other duties of confidentiality, whether under the Official Secrets Act, the Ministerial Code or otherwise.
17. The Business Appointment Rules explain that the restriction on lobbying means that the former Crown servant/Minister "should not engage in communication with government (Ministers, civil servants, including special advisers, and other relevant officials/public office holders) – wherever it takes place - with a view to influencing a Government decision, policy or contract award/grant in relation to their own interests or the interests of the organisation by which they are employed, or to whom they are contracted or with which they hold office." This Rule is separate and not a replacement for the Rules in the house.
18. Ms Gomes da Silva must inform us as soon as she takes up employment with this organisation(s), or if it is announced that she will do so. We shall otherwise not be able to deal with any enquiries, since we do not release information about appointments that have not been taken up or announced. This could lead to a false assumption being made about whether she has complied with the Rules.
19. Please also inform us if Ms Gomes da Silva proposes to extend or otherwise change the nature of her role as, depending on the circumstances, it may be necessary for her to make a fresh application.

20. Once the appointment(s) has been publicly announced or taken up, we will publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

Yours Sincerely,

Isabella Wynn
Committee Secretariat

Annex - Material information

The role

1. Ms Gomes da Silva said Brunswick is a public relations, crisis management and related consultancy advice. The website states it is a critical issues firm. It states it advises '*...the world's leading companies on how to navigate the critical issues they face and engage with their critical stakeholders.*' It offers support in financial, social and regulatory & political areas.
2. Ms Gomes da Silva seeks to join Brunswick in a part-time, paid role as a Consultant. She said she will work with Brunswick providing strategic advice to clients as part of a broader team on national and international regulatory and public interest issues. Ms Gomes da Silva confirmed her role will not involve contact with the government.
3. Prior to joining government in 2015, Ms Gomes da Silva was a Partner at Freshfields Bruckhaus Deringer (an international law firm). She worked with the law firm on Portuguese matters. She joined the firm in 2001. During her time at Freshfields she was seconded to the Office of Fair Trading as part of the CMA Transition Team, setting up what was at the time the new UK competition and consumer authority - the CMA. She was Director of the team responsible for creating new guidance of business and its advisers on the CMA's application of its new legal powers.

Dealings in office

4. Ms Gomes da Silva did not meet with Brunswick and confirmed she made no decisions specifically affecting Brunswick.
5. Ms Gomes da Silva informed the Committee she was involved in advising on the development of reforms to competition law and regulation of the digital sector and in particular potential changes to the merger control regime for the digital sector. This has not directly affected Brunswick but she did note the policy work she was involved in could affect some of the clients of this firm.
6. Ms Gomes da Silva said in her roles at the CMA, she had dealings with a large number of law firms and corporates in their proceedings before the CMA, including for example acting as decision maker on a number of Phase 1 merger cases⁴. She states none of these could be described as an actual or prospective competitor of the firm with which she has been offered a consultancy position.

Department Assessment

7. The CMA confirmed the details provided by Ms Gomes da Silva and confirmed she did not meet with Brunswick; nor make any decisions specifically impacting Brunswick. It said Brunswick provides strategic support to corporate clients,

⁴ At Phase 1, the CMA determines whether it believes that the merger results in a realistic prospect of a substantial lessening of competition (SLC). If so, the CMA has a duty to launch an in-depth assessment (Phase 2)

including on regulatory matters that are in front of the CMA. This can include advice on mergers, market studies and more generally on the regulation of competition and markets

8. The CMA stated Ms Gomes da Silva was involved in the work undertaken by the CMA to advise government officials on policy related to competition legislation reform. The CMA's view was this work could potentially give Brunswick and their clients an insight into thinking in this area by government and the CMA's position on reforms. It noted there are limited risks to public trust in the Civil Service as a result of formal restraints of the Civil Service Code, the Official Secrets Act 1989, the terms of her appointment with the CMA and Part 9 of the Enterprise Act 2002.
9. The CMA identified the following areas of risk: confidential information Ms Gomes da Silva had access to whilst at the CMA about: merger cases; market studies and reforms to competition regulation and regulation of the digital sector. The CMA noted this led to risks with Ms Gomes da Silva working on: merger related inquiries and market studies which fell within her overall responsibility as Executive Director at the time AGS worked for the CMA and which are currently still active; and matters that concern the government's proposals for reforming competition regulation or regulation of the digital sector.
10. The CMA noted there are some risks attached with the appointment, in particular due to the perception of a former senior CMA official joining a consultancy to advise them on regulation, including competition regulation and mergers. The CMA said it was content for Ms Gomes da Silva to take up the post, but subject to several restrictions. It considered the risks can be addressed through appropriate conditions to ring fence Ms Gomes da Silva's role and prevent her from certain work. The CMA recommended Ms Gomes da Silva should not work on or advise Brunswick or its clients on a number of areas which are summarised below:
 - cases in which she was personally involved at the CMA or those where information obtained in her role as Executive Director at the CMA
 - reforms to competition law and regulation
 - regulation of the digital sector or the application of any new merger control rules
 - current or known pipeline merger cases and listed the following:

- [REDACTED]

- current or known pipeline of markets cases and listed the following:
 - Children's social care study
 - Mobile ecosystems market study
 - Electric vehicle charging study
 - [REDACTED]

11. The CMA confirmed these bans would cease to apply on the 27th May 2023 - two years after she left government) or the date the government publishes these pieces of work.

12. The CMA wished to remind Ms Gomes da Silva she must continue to comply with the duty of confidentiality and other obligations as provided for in the Civil Service Code, the Official Secrets Act 1989, under the terms of her appointment with the CMA and Part 9 of the Enterprise Act 2002.