

# Memorandum of Understanding between Intellectual Property Office and Competition and Markets Authority

## Introduction

1. This Memorandum of Understanding (MoU) establishes a framework of co-operation and constructive communication between the Intellectual Property Office ("**the IPO**") and the Competition and Markets Authority ("**the CMA**"), collectively referred to as "**the parties**". It is not intended that this MoU be legally binding. This MoU replaces the July 2012 MoU between the Office of Fair Trading (OFT) and the IPO, which was carried over to the CMA in 2014.
2. The parties have entered into this MoU as they recognise that properly functioning, competitive markets have a vital role to play in stimulating growth and in encouraging innovation in goods and services. In fulfilling this objective, intellectual property (IP) and competition law have complementary roles. The parties also recognise that there are a number of areas where IP and competition policy interact and where issues may arise from time to time. For example, the growing importance of technology and of digital markets to the UK economy helps to illustrate the vital and increasing potential overlap between IP and competition policy issues.

## Guiding purpose and principles

3. The parties are committed to fostering effective working relations, principally by promoting a culture of cooperation and collaboration between the two organisations. The parties recognise the benefit of setting out in this MoU a shared vision for this ongoing relationship.
4. Any cooperation and engagement between the parties will be subject to the priorities and available resources of each of the parties, and will be consistent with all applicable legal requirements, including in respect of the sharing of information.

## The role of the CMA

5. The CMA is a non-ministerial department, and it is the independent regulator for competition and consumer matters in the UK. Established under the Enterprise and Regulatory Reform Act 2013, the CMA's purpose is to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.
6. To carry out its duty the CMA is equipped with a broad range of statutory roles and functions. These include (but are not limited to):<sup>1</sup>

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<sup>1</sup> The Government have also announced proposals to give the CMA's Digital Markets Unit new powers to oversee a new pro-competition regime for digital markets. More information is available here: [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets).

- Investigating mergers that may have the potential to result in a substantial lessening of competition under the Enterprise Act 2002.
- Investigating agreements between undertakings that prevent, restrict or distort competition, or any abuse by an undertaking of its dominant position contrary to the prohibitions set out in Chapter I and Chapter II of the Competition Act 1998. Investigating and/or prosecuting individuals in respect of the criminal cartel offence under section 188 of the Enterprise Act 2002.
- Investigating a range of consumer protection concerns as an enforcer of UK consumer protection law
- Undertaking market studies or more in-depth market investigations into single or multiple markets for goods or services in the UK under the Enterprise Act 2002.
- Providing information or advice in respect of matters relating to any of the CMA's functions to the public, to Ministers or to other public authorities.
- Providing technical advice, reporting and monitoring in relation to the effective operation of the UK internal market.
- Providing reports in relation to specific subsidies, and monitoring and advising on the effective operation of the domestic subsidy regime, and its impact on competition and investment.
- Conducting regulatory appeals and references in relation to price controls, terms of licences or other regulatory arrangements under sector-specific legislation.

### **The role of the IPO**

7. The IPO is an Executive Agency of the Department for Business, Energy and Industrial Strategy, and the official UK government body responsible for IP rights including patents, designs, trade marks and copyright. The IPO is responsible for:

- IP policy;
- Educating businesses and consumers about IP rights and responsibilities;
- Supporting IP enforcement;
- Granting UK patents, trade marks and design rights; and
- Ensuring the UK keeps pace with changes to the global IP system

### **Co-operation**

8. For the purpose of helping each other carry out their respective roles, the parties may provide each other with technical assistance. Technical assistance for these purposes includes the sharing of subject-area knowledge and expertise as well as best practice. The parties may also consider secondment of staff.
9. The parties will share with each other information on workstreams, specific issues of concern, policy proposals or policy developments that appear directly relevant to the other's role.
10. The parties may agree to carry out joint projects in areas of mutual interest. Such joint projects will be subject to project-specific terms of reference agreed between the parties.

### **Information sharing – legal requirements**

11. All information sharing requests will be considered on an individual basis and each party must comply with all relevant information law requirements. For example, any disclosure of personal data pursuant to these arrangements must comply with the UK General Data Protection Regulation and Data Protection Act 2018.
12. Part 9 of the Enterprise Act 2002 prohibits public authorities, such as the CMA and the IPO, from disclosing 'specified information' which relates to the business of an existing undertaking or the affairs of a living individual unless a gateway or exception applies. For example, the CMA or the IPO may disclose such information for the purpose of facilitating the exercise by it of any of its statutory functions. Restrictions on further use and/or onward disclosure of such information may apply.
13. Where a request for information is received by either party under data protection laws or the Freedom of Information Act 2000, the recipient of the request will seek the views and fully consider such representations of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request.

### **Regular engagement**

14. Officials of the CMA and the IPO will regularly meet and communicate, at appropriate levels of seniority, to discuss matters of mutual interest.

### **Review of the MoU**

15. This MoU will be reviewed at least every 3 years from the point it came into force. Any changes will be subject to the agreement of both parties.

Signed by

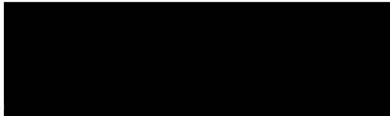


Date 30/03/2023

Adam Williams

Chief Executive Officer and Comptroller General, IPO

Signed by



Date 30/03/2023

Sarah Cardell

Chief Executive, Competition and Markets Authority