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# CMA launches market investigation into investment consultancy and fiduciary management services

On 14 September 2017, the UK Competition and Markets Authority ("**CMA**") launched a market investigation into investment consultancy and fiduciary management services provided to institutional investors. The investigation was launched pursuant to concerns expressed by the Financial Conduct Authority ("**FCA**") about the competitive functioning of the asset management industry, which it examined in a market study between November 2015 and October 2016.

A senior competition enforcement official at the FCA said, "*It is a significant step for us to make this recommendation. We have serious concerns about this market and believe that the CMA is best placed to undertake this work*". The FCA's concerns relate in particular to:

- The existence of a "weak demand-side". It considers that:
  - pension fund trustees often have limited or variable experience and limited resources, resulting in high levels of dependency on investment consultants;
  - trustees find it difficult to assess the quality of advice provided by investment consultants and the services of fiduciary managers; and
  - switching rates are low;
- Relatively high levels of concentration and stable market shares, with the three largest firms together holding market shares of between 50-80%;
- Barriers to expansion restricting smaller, newer consultants from developing their businesses; and
- Vertically integrated business models creating conflicts of interest.

The CMA will, over the next 18 months, use its broad investigatory powers to conduct an in-depth assessment of competition in the sector. Depending on the findings of its investigation, it may impose remedies to address any adverse effect on competition ("**AEC**") identified. The CMA's investigatory powers include requiring the attendance of parties to give evidence, and the provision of information and documents. Failure to answer questions or produce documents required by the CMA may result in the imposition of penalties (including criminal penalties for the provision of false or misleading information).

Shortly after announcement of the investigation, the CMA will send initial information requests to "main parties" to the investigation; all providers of services in the markets concerned are potentially main parties. Other parties that may be materially affected by the investigation (for example pension funds) may also be contacted. The CMA's requests are likely to focus, in particular, on the characteristics of the market and the parties' activities, as well as seeking detailed financial and commercial information. The CMA will also publish a draft administrative timetable for the investigation.

Following an initial round of information gathering, the CMA will publish an Issues Statement identifying the theories of harm that frame the CMA's analysis. Following changes to the CMA's procedures introduced in 2017, the Issues Statement may seek views on potential remedies on a hypothetical basis, and CMA is likely to hold hearings earlier in the process than has previously been the case. The CMA may hold multiparty hearings and roundtables, and will publish working papers.

An important milestone is the publication of the CMA's Provisional Decision Report ("**PRD**"), which must be published within 12 months of the commencement of the market investigation. The PRD will set out whether the CMA considers that there is an AEC and, where applicable, will identify provisional remedies. Submissions will be invited in response to the provisional findings and on any proposed remedies, and additional hearings may take place, before the CMA publishes its final report; this must occur within a statutory time limit of 18 months (which can be extended once by up to six months for special reasons).

If the CMA's final report identifies an AEC, it will take steps to implement remedies. The CMA has considerable discretion as to the type of remedies that may be adopted. These include:

- Structural remedies, such as divestment of a business or assets, or which in some way lower the barriers to entry or switching costs;
- Behavioural remedies, such as the introduction of industry-wide standards, or increasing the transparency of prices and other terms and conditions of business;
- Monitoring remedies, such as reporting obligations; and
- Recommending governmental or regulatory action.

This is the first Market Investigation Reference to have been made by the FCA since it acquired the power to make such references in April 2015. Other recent market investigations to have been conducted by the CMA have related to the retail banking and energy sectors.

If you have any questions or comments in relation to this Update, please contact the authors or your usual Mayer Brown contact.

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