CMA's Leniency Guide May Change Self-Report Calculus

By **Anna Caro and Mark Simpson** (December 3, 2025)

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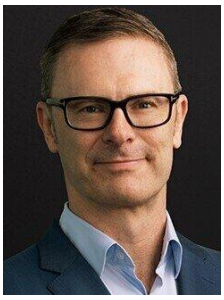

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On Oct. 28, the Competition and Markets Authority published its updated leniency guidance, incorporating refinements to reflect more than a decade of the agency's cartel enforcement experience.[1]

The updated guidance includes important changes to the existing so-called queue system and recalibrates incentives for different types of applicants. The CMA is hoping that these changes will increase incentives for companies to self-report antitrust compliance issues.

For businesses, the changes add further complexity to the calculus that applies when assessing a potential compliance breach and the options available to minimize adverse consequences, which include the risks of private damages claims as much as fines, but may not shift the dial as much as the CMA hopes.

The Benefit of Being First

Leniency refers to the benefits of bringing unlawful conduct to the attention of a competition agency in return for a discount on, or even complete immunity from administrative fines.

In return, an applicant will generally need to admit that the conduct was a competition law infringement and cooperate with the agency in its investigation.

The greatest reward is typically available to the first company to report, and the extent of relative reward can depend on a company's place in a leniency queue and various other factors.

In the U.K., leniency is available to businesses and individuals that have participated in cartel activity in breach of U.K. competition law. While fine reductions can be available to all businesses that report cartel behavior to the CMA, the updated guidance reinforces the incentives for businesses to be first in line to self-report conduct.

In particular, the guidance clarifies that only the first business that discloses the existence of a cartel to the CMA, where the CMA was not already investigating the behavior, will receive full immunity, i.e., Type A immunity.

This means guaranteed immunity from fines, director disqualification orders, criminal prosecution for all cooperating current and former employees and directors, as well as immunity from public contract exclusion and debarment.

First leniency applications that the CMA receives in circumstances where it had already started an investigation as well as all applications after the first one — Type B and Type C immunity applications, respectively — will only be eligible for discretionary reductions in fines, and immunity from director disqualifications and criminal prosecution.

The new guidance also provides that, in practice, Type B and Type C discounts are unlikely to be above 75% and 50%, respectively, and may be significantly lower.

Deferred Admissions Now Possible

One of the most significant downsides of applying for leniency is the time pressure in the race for leniency to admit the conduct in question at a time when internal investigations may be ongoing, and when legal consequences are still under consideration.

The updated guidance attempts to address this by removing the requirement for Type A applicants to admit to the cartel behavior at the point when the conduct is first disclosed to the CMA. The CMA acknowledges that this had disincentivized businesses from making leniency applications in the past.

Going forward, Type A applicants will only have to admit to having participated in the reported cartel at the point when the leniency agreement with the CMA is signed, which is much later and typically shortly before the CMA issues its statement of objections, i.e., draft infringement findings.

The CMA is hoping that this will encourage businesses to approach it earlier, including in situations where they may not be certain whether the reported behavior amounts to a cartel, and/or where the extent of the unlawful conduct is not yet known.

Taking Away With the Other Hand

The updated guidance includes changes in other areas that may make it less attractive for businesses to come forward in situations where an investigation has already commenced.

In the past, Type B and Type C leniency applicants could get so-called leniency plus, i.e., a further fine reduction, in relation to a particular cartel — the first cartel — by becoming a Type A or Type B leniency applicant in relation to a second cartel that had not been the subject of an early leniency application.

The new guidance narrows the availability for leniency plus only to those applicants that become Type A applicants in a second market, i.e., where the CMA had not taken any investigatory steps.

The CMA states that this change reflects that the additional fine reduction is meant to incentivize applicants to make the CMA aware of conduct that it would not otherwise have known about, which Type B applications do not.

Further Changes to the Regime on the Horizon?

While the guidance updates are meant to encourage businesses to proactively disclose cartel behavior to the CMA, the agency has separately acknowledged that exposure to private damages actions, including class actions, can be a deterrent for prospective leniency applicants. This is because the costs of precipitating and assisting follow-on damages claims, including class actions, outweigh the benefits from a successful leniency application.

In its response to the U.K. government's consultation on the operation of the U.K.'s opt-out class action regime for competition law claims, the agency says that this exposure "can create a tension between public and private forms of enforcement."[2]

The CMA believes that because secret cartel conduct is rarely detected without a CMA investigation, the existence of private rights to obtain redress for cartel conduct has the

potential to frustrate the public enforcement process — leniency — that identifies secret cartel conduct in the first place.

In its response to the government's consultation, the CMA therefore calls on the U.K. government to legislate so as to fully protect successful Type A immunity applicants from private follow-on damages claims.

Currently, Type A immunity applicants can only benefit from protection from joint and several liability for losses caused by other participants in the unlawful conduct, which means that they will still be liable for claims from their own customers and indirect purchasers.

In the same submission, the CMA asks the government to consider enhancing the agency's powers so that it can order those found to have infringed U.K. competition law to pay redress to persons harmed by the infringement, in addition to its existing fining powers.

The CMA already has equivalent powers when enforcing against consumer law breaches and as part of its digital markets functions, but under the current law, it can only accept redress in competition cases if it is offered as part of voluntary commitments.

The CMA notes that, to date, the voluntary redress regime has not been utilized, which suggests the incentives to use it are limited.

In its response, the CMA sets out that a discretionary power to issue directions for redress, i.e., damages awards, could be effective in certain cases to deliver quicker and more efficient outcomes, reducing the need for potentially duplicative follow-on damages claims and class actions.

This is a laudable aspiration, but the CMA's submission appears to ignore the complexity — and contentious nature — of questions of causation, and approaches to quantifying potential damages that the courts must deal with in private litigation.

The efficiency for parties who would then have to consider appealing damages calculations, and for the Competition Appeal Tribunal, is also questionable. The CMA's suggestion that a redress power would be discretionary might be a nod to this, but there is also the complexity of how such a power would oust, complement or confuse existing rights to bring private damages actions.

Conclusion

The CMA's update to its leniency guidance is timely, and aspects of it will be welcomed by businesses that have to consider using the procedure going forward. The deferral of needing to admit to cartel behavior until later in the process should by itself achieve the CMA's aim of encouraging more leniency applications.

This will allow businesses under investigation more time to consider their options, and will incentivize submitting applications while they consider their position on the legal characterization of the conduct and facts.

However, this tweak alone may not change the overall calculus for businesses in a fundamental sense. This follows from the fact that businesses under investigation need to consider more than just the potential for customers to claim redress by threatening litigation.

They now must also consider the weighty specter of potential class actions that would claim considerable additional sums, with the result that the cost of the follow-on litigation could greatly outweigh the discount on administrative fines that might be achieved on an award of leniency or even full immunity.

A decision to fight and try to defeat or restrict the scope of an infringement decision, rather than seeking leniency or settlement and conceding liability, might be justified when looking at all of the litigation risks.

The CMA's proposal to the government that immunity applicants might achieve full protection from fines and follow-on damages has more promise for changing the calculus. The government's response is awaited.

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[1] Applications for leniency and no-action in cartel cases CMA210: https://assets.publishing.service.gov.uk/media/68ffa89b394b8c2a6ddf5dce/___Applications_for_leniency_and_no-action_in_cartel_cases___.pdf.

[2] https://assets.publishing.service.gov.uk/media/68f638be06e6515f7914c818/CMA_response.pdf.