

First Mover Advantage: The UK CMA's Updated Cartel Leniency Guidance

November 13, 2025

On 28 October 2025, the UK Competition and Markets Authority (CMA) published its updated leniency guidance, incorporating refinements to reflect more than a decade of the agency's cartel enforcement experience. The updated guidance includes important changes to the existing "queue system" and recalibrates incentives for different types of applicants. The CMA is hoping 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 minimise adverse consequences, which include the risks of private damages claims as much as fines.

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 UK, leniency is available to businesses and individuals that have participated in cartel activity in breach of UK competition law. While fine reductions can be available to all businesses that report cartel behaviour 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 behaviour) will receive full immunity (i.e. Type A immunity). This means guaranteed immunity from fines, director disqualification orders and criminal prosecution for all cooperating current and former employees and directors, as well as immunity from public contract exclusion and debarment. Leniency applications where the CMA already commenced an investigation (Type B immunity) along with all applications after the first (Type C immunity) 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 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 behaviour at the point when the conduct is first disclosed to the CMA. The CMA acknowledges that this had in the past disincentivised businesses from making leniency applications. 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). This CMA is hoping that this will encourage businesses to approach it earlier, including in situations where they may not be certain whether the reported behaviour 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 which 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 “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 which 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 stated that this change reflects that the additional fine reduction is meant to incentivise 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 relating to damages claims?

While the guidance updates are meant to encourage businesses to proactively disclose cartel behaviour 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 – i.e. that 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 UK government’s consultation](#) on the operation of the UK’s opt-out class action regime for competition law claims, the agency said that this exposure, “**can create a tension between public and private forms of enforcement**”. 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 called on the UK 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 they will still be liable for claims from their own customers and indirect purchasers.

In the same submission, the CMA asked the government to consider enhancing the agency’s powers so that it can order those found to have infringed UK competition law to pay redress to persons harmed by the infringement (in addition to its existing fining powers). The CMA has equivalent powers already 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 utilised, which suggests the incentives to use it are limited.

In its response, the CMA set 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 behaviour 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 incentivise submitting applications while they consider their position on the legal characterisation 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 spectre of potential class actions which 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 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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