

UK Government Relaxes Application of Competition Law to Ease Grocery Supplies

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The COVID-19 outbreak is placing significant demands on the UK grocery sector. In particular, panic buying by consumers has led to empty shelves and increased pressure on the supply chain to replenish high demand items. This situation is being exacerbated by staff shortages, as employees self-isolate or fall sick, which are set to increase in severity.

While some issues could be alleviated by supermarkets working together, competition law limits certain forms of collaboration between competitors, including the exchange of commercially sensitive information and joint selling. Competition law does have built in safeguards to allow for collaboration where it is necessary and provides benefits for consumers, but these can be hard to apply in practice. This uncertainty, combined with the high penalties for competition law infringements, appear to be deterring retailers from cooperating.

The British Government has now responded to these concerns by announcing a range of measures to allow supermarkets to work together without infringing competition law. Specifically, on March 19, the Environment and Business Secretaries announced that the government would be introducing legislation that will temporarily relax the 'Chapter I prohibition' of anticompetitive agreements set out in the Competition Act 1998 (**CA98**) for the food sector. This will presumably be under the mechanism already provided for in Schedule 3 of the CA98, under which a Secretary of State can make an order to exclude any agreement or category of agreement from the Chapter I prohibition if there are "exceptional and compelling reasons of public policy" to do so.

According to the government's announcement, the new order will enable supermarkets to share data with each other regarding stock levels and cooperate to keep shops open, including by sharing distribution depots and delivery vans and by pooling staff. The announcement stressed that this was "a specific, temporary relaxation to enable retailers to work together for the sole purpose of feeding the nation during these unprecedented circumstances [and] will not allow any activity that does not meet this requirement".

The UK Competition and Markets Authority reinforced this message in an announcement on the same day. As well as welcoming the government's announcement on the grocery sector, it provided a wider reassurance that it "has no intention of taking competition law enforcement action against cooperation between businesses or rationing of products to the extent that this is necessary to protect consumers". Notwithstanding this reassurance, the CMA went on to stress that it will "not tolerate unscrupulous businesses exploiting the crisis as a 'cover' for non-essential collusion", including "exchanging information on longer-term pricing or business strategies". It has promised to provide more guidance in due course.

The following day, the CMA announced the creation of a COVID-19 taskforce to scrutinise market developments to identify harmful sales and pricing practices and take action against firms that are exploiting consumers by charging "unjustifiable" prices or making misleading claims about their products. This follows a statement earlier in the outbreak reminding traders not to make misleading claims, for example about the efficacy of protective equipment, or to charge vastly inflated prices for high demand items such as hand sanitiser. The CMA taskforce will also "advise the government on how to ensure competition law does not stand in the way of legitimate measures that protect public health and support the supply of essential goods and services." The CMA has also stressed that, while all of its staff are now working remotely, it is reallocating staff to ensure that statutory deadlines are met and that its core enforcement activities will continue.

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