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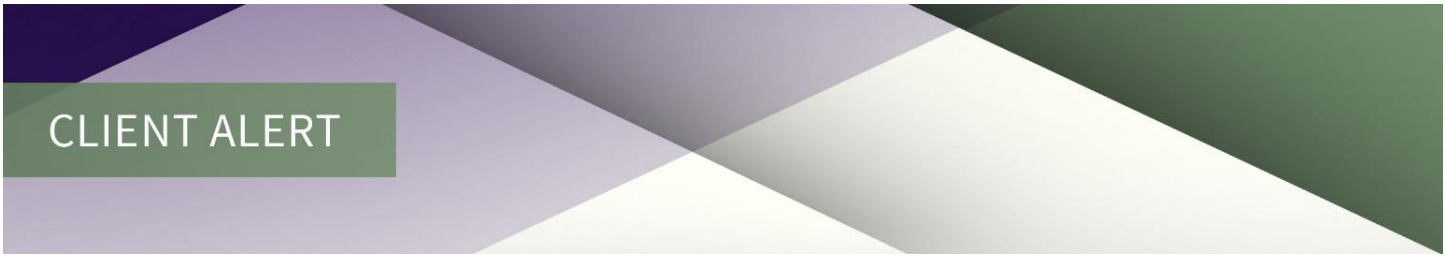

The UK's Financial Conduct Authority Issues Its First Ever Competition Law Enforcement Decision

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On 21 February 2019, the Financial Conduct Authority (**FCA**) issued its first ever decision under its concurrent competition law enforcement powers, which it has held since 2015. The decision imposes fines on two asset management firms for participating in an anti-competitive information exchange in the context of one IPO and one placing, during the book-building process before the share prices were set. A third firm was granted immunity for having "blown the whistle" and having cooperated with the FCA's investigation.

The decision marks an important milestone in UK antitrust enforcement and serves as a reminder of the regulator's increased focus on anti-competitive information exchanges between financial institutions, including intermediaries. The case also demonstrates the FCA's willingness to use its competition law and financial regulation powers in parallel in a single case to achieve its enforcement objectives.

In November 2017, the FCA issued a "Statement of Objections" against four firms, alleging that:

- Newton Investment Management Limited (**Newton**), Hargreave Hale Ltd (**Hargreave**) and River and Mercantile Asset Management LLP (**RAMAM**) disclosed and/or accepted information regarding the price they intended to pay for shares in relation to one IPO and one placing; and
- Artemis Investment Management (**Artemis**) and Newton shared information about the price they intended or were willing to pay for the shares in relation to another IPO.

In its final decision, the FCA found that Hargreave, Newton and RAMAM breached competition law by sharing strategic information before share prices were set.

Hargreave and RAMAM were fined £306,300 and £108,600, respectively. As the whistleblower, Newton was granted full immunity from fines under the UK's leniency regime.

The decision follows the FCA's 15 February 2019 decision to separately fine Newton's former fund manager Paul Stephany £32,200 for his role in the infringements (using the FCA's powers under the Financial Services and Markets Act 2000).

The FCA's press release indicates that it found that the competing firms had shared strategic information, on a bilateral basis, during one IPO (the FCA's notice against Paul Stephany indicates that this related to On The Beach Group plc) and one placing (the FCA's notice against Paul Stephany indicates that this related to Market Tech Holdings Limited), shortly before share prices were set, i.e. during the book-building process.

The FCA notes that the firms "*disclosed and/or accepted otherwise confidential bidding intentions, in the form of the price they were willing to pay, and sometimes the volume they wished to acquire*". As a result, one firm had visibility over the other's plans or placing processes, which they should not otherwise have had. The FCA considers that the sharing of confidential information about bids during the book-building process undermined the price setting process, could raise the cost of equity capital and ultimately increases "*the cost of related investments or even make them unviable"*.

In the case of the fine that was imposed on Newton's fund manager, the FCA notes that he disclosed specific information regarding the bid he had submitted and an indication of volume purchased. In addition, he invited others to cap their orders at the same price limit as he had.

The fact that the FCA's first competition law decision relates not to a price-fixing conspiracy, but instead to an infringement involving anti-competitive bilateral information exchanges, is a clear signal of the FCA's intent to position itself as a strong competition law enforcement agency, and one that is willing to investigate and sanction a wide array of infringing conduct (beyond the parameters of classic hard-core cartel conduct).

The decision is a timely reminder for financial institutions to review their compliance policies, in particular in relation to bilateral or multilateral information exchanges, and ensure that they are "fit for purpose" and address the practical "real life" compliance risks of the firm.

This may become particularly relevant post-Brexit, where firms could in due course be investigated by the European Commission for the EU-wide effects and by UK regulators, such as the Competition & Markets Authority and the FCA, for the UK effects of the same conduct.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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