

COLLUSION AND COMPETITION LAW

5 Jan 2018 Nicola Sharp, Syedur Rahman.

The Financial Conduct Authority (FCA) has warned four asset management companies that they may have broken competition law by colluding on prices they agreed to pay for shares.

In what is being seen as a flexing of its legal muscle, the FCA has issued a “statement of objections” to Artemis Investment Management, Hargreave Hale, Newton Investment Management and River and Mercantile Asset Management.

The statement of objections is a document that sets out why and how the FCA thinks the relevant firms have infringed applicable competition law. It outlines the facts on which the FCA relies, the objections it raises, the action it proposes and its reasons for its proposed action.

In this case, the objections relate to initial public offerings – where shares are, in theory, on sale to the general public - and share placements; where shares are sold to a select group of institutional investors.

Significant

The event is a significant one as it is the first case the FCA has brought using competition enforcement powers granted to it in 2015. It is believed to relate to IPO's that took place in 2014 and 2015.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500

Fax +44 (0)1422 430 526
DX16001 HX1

Under the concurrency provisions in the Financial Services and Markets Act 2000 (FSMA), the FCA has competition law powers, including powers under the Competition Act 1998, in relation to agreements and conduct relating to the provision of financial services. Financial services includes banking, credit, insurance, personal pensions and investments.

The FCA is alleging that the four asset management companies shared information by “disclosing the price they intended to pay, or accepting such information, or both, in relation to one or more of two initial public offerings”.

It has stated that: “The sharing generally occurred on a bilateral basis and allowed firms to know the other’s plans during the IPO or placing process when they should have been competing for shares.”

The businesses involved could be fined up to 10 per cent of their annual worldwide group turnover, if found to have infringed competition rules.

Competition

The FCA has focused heavily on competition in the asset management industry during the past 18 months. Earlier this year, it called for a radical shake-up of the £7 trillion sector, following its far-reaching study into the industry. In September, it referred investment consultants - who are a main participant in the asset management industry - for a full-blown competition probe.

Announcing its statement of objections, the FCA said that Newton, Hargreave Hale and River and Mercantile disclosed or accepted information on prices relating to one IPO and a placing. It said that Artemis and Newton shared information on prices they were willing to pay in relation to another offering.

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Its findings are provisional and might not necessarily lead to an infringement decision. The statement of objections gives the companies notice that the regulator thinks that they have infringed competition law, and the opportunity to respond by making written and oral representations. The FCA then decides if the law has been broken.

Concerns

In order to address some of its concerns, the FCA has proposed ways of making competition better in the market. These involve establishing a higher responsibility on fund managers to act in the best interests of the investors and increasing accountability through the senior managers and certification regime.

The FCA believes there should be greater clarity for investors when they are making enquiries about what they are considering buying. There should be an emphasis, according to the FCA, on making sure would-be investors know everything about their proposed investments and what they are paying for financial services.

As it stands, firms do already face legal obligations when it comes to declaring concerns about the industry and the products it offers. Regulated firms should bring their own actual and possible significant contraventions of competition law to the FCA's attention: they are obliged to do this under Principle 11 of the FCA's Principles for Businesses.

We may be living in an era in which the FCA is beginning to flex its muscle. But firms should not have been waiting for this and hoping to escape punishment. Ideally, they should have been seeking legal advice on how to ensure they are legally compliant.

Any firm still not sure if they are abiding by the rules and regulations should seek immediate advice so as not to be the next subject of a statement of objections.

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HX1 5BE
+44 (0)1422 346 666

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0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1



Nicola Sharp
Legal Director
nicola.sharp@rahmanravelli.co.uk
+44 (0)203 910 4567

Nicola Sharp is a Legal Director at Rahman Ravelli whose expertise in international fraud, civil recovery and business crime has seen her highly rated in international legal guides. Her experience of leading the most involved and sizeable commercial and financial disputes has led to her being in demand from corporates and large organisations.



Syedur Rahman
Legal Director
syedur.rahman@rahmanravelli.co.uk
+44 (0)203 910 4566

Syedur Rahman is a Legal Director at Rahman Ravelli with a great depth of experience in top-level global investigations and corporate crime. Legal guides have highlighted his achievements in the fields of worldwide asset tracing and recovery, high-stakes commercial and financial disputes and cross-border investigations.

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