

Competition & Regulatory Newsletter

Quick links

Main article

Other developments

Antitrust

Consumer protection

Regulatory

For further information on any EU or UK Competition related matter, please contact the Competition Group or your usual Slaughter and May contact.

Square de Meeûs 40
1000 Brussels
Belgium
T: +32 (0)2 737 94 00

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

Another instalment in the saga surrounding excessive pricing of drugs: Court of Appeal allows appeals in long-running ‘Phenytoin’ litigation

On 19 June 2026, the Court of Appeal (CoA) [ruled](#) that the Competition Appeal Tribunal (CAT) was wrong to set aside the decision of the Competition and Markets Authority (CMA) in relation to its long-running investigation into the pricing of phenytoin (an anti-epilepsy drug). Following appeals to the Court from both Pfizer Incorporated and Flynn Pharma Limited, and the CMA’s own appeal, the Court rejected the CAT’s approach in its entirety. The CoA will consider further submissions from the parties before deciding whether to reinstate the CMA’s decision.

The CMA’s original infringement decision and related appeals

In December 2016, the CMA originally [found](#) that Pfizer had abused its dominant position in the market for the manufacture of phenytoin capsules and Flynn in the market for the distribution of phenytoin sodium capsules, by imposing unfair prices for these capsules in the UK. The CMA imposed fines of £84.2 million and £5.2 million on Pfizer and Flynn respectively.

Pfizer and Flynn both appealed the CMA decision to the CAT and, in June 2018, the CAT set aside the decision. The CAT [found](#) that the CMA had incorrectly applied the legal test for unfair pricing. It concluded that parts of the CMA’s analysis of whether pricing can be set at cost-plus (which involves considering cost of production together with a reasonable rate of return to determine what a fair price is) were flawed. Specifically, the CAT took issue with the CMA’s lack of detailed engagement with comparator products when applying the cost-plus test, as well as its lack of consideration of whether the medical benefit of phenytoin meant that the price set by Pfizer/Flynn could be higher than cost-plus.

The CMA appealed the CAT’s ruling to the CoA, who upheld the CAT’s main findings that the CMA had failed to properly examine evidence relating to

Main article**Other developments**[Antitrust](#)[Consumer protection](#)[Regulatory](#)

comparators and medical benefits. While the CoA accepted that the CMA was not obliged to go beyond a cost-plus calculation in every excessive pricing case, the CMA should have done so in this case. The companies had presented evidence that the price was fair by reference to comparator products and the CMA should not have ignored prima facie valid arguments, according to the CoA (as reported in a [previous briefing](#)). The CoA remitted the case back to the CMA.

The CMA's second infringement decision and CAT appeals

In July 2022, after additional evidence gathering and analysis, the CMA's remitted investigation reached the same [conclusion](#) as its original investigation in 2016, namely that Pfizer and Flynn had abused their dominant positions in their respective markets by charging unfairly high prices for phenytoin capsules. This time the CMA imposed total fines of £70 million against the companies (c. £63.3 million for Pfizer and c. £6.7 million for Flynn) (as reported in a [previous newsletter](#)).

Pfizer and Flynn appealed the CMA's second decision, and, in November 2024, the CAT again set aside the CMA's decision. [It found](#) that the CMA had made sufficiently material errors that its decision could not stand based on its stated reasoning, including in relation to how the CMA calculated a "reasonable rate of return in its cost-plus approach".

The CAT, rather than remitting to the CMA, decided to exercise its jurisdiction to remake the CMA's decision itself. It concluded that, despite its findings of flaws in the CMA's decision, all four infringement findings against Flynn were made out and three of the four infringement findings against Pfizer were also made out. The CAT therefore confirmed the fine against Flynn (c. £6.7 million) and made a slight reduction to the fine against Pfizer (from c. £63.3 million to c. £62.3 million). The CAT concluded that Pfizer and Flynn's infringements were "intentional", which "harmed the health care system" in the UK and which extracted "monopoly rents" from a limited budget. Pfizer, Flynn and the CMA all appealed against the decision to the CoA (as reported in a [previous newsletter](#)).

The second appeal to the CoA

Pfizer and Flynn appealed to the CoA on the grounds that the CAT's retaken decision was flawed and procedurally unfair and should be set aside, while the CMA appealed arguing that the CAT had wrongly rejected its second decision on several grounds. In its June 2026 ruling, the CoA upheld the CMA's appeal against the CAT's decision on all grounds stating that the "CAT found errors... which, on a fair reading, the CMA did not make" and that "the CAT failed to engage with, or mischaracterised, the CMA's decision on critical issues". The CoA also allowed both Pfizer and Flynn's appeals on procedural fairness grounds.

The CoA's ruling did not change the basic legal framework for assessing excessive and unfair pricing, but it did clarify a few points. For example, the CoA reiterates that "a price above Cost Plus can be lawful" and confirms that in examining pricing the CMA does not need to "identify a line above Cost Plus which marks the boundary between fair and unfair".

Another point of interest from the judgment is the CoA's confirmation that the subjective intention of an undertaking is admissible. The CAT had ruled that the CMA's examination of the intention of the

Main article**Other developments**[Antitrust](#)[Consumer protection](#)[Regulatory](#)

undertakings in setting prices was improper because it was an immaterial consideration. The CoA overturned this on the basis that whilst a dominant firm's subjective intention "does not make otherwise acceptable conduct abusive, evidence of intention and object can still be admissible as part of the matrix of inculpatory factual evidence which goes to abuse".

What happens next

This is not the end of the Pfizer/Flynn excessive pricing saga, with the CoA set to rule on whether the CMA's decision should be reinstated following separate submissions from the parties, including on what this means for any fines.

Other developments

Antitrust**Hong Kong Competition Commission takes government technology subsidies cartel case to the Competition Tribunal**

On 25 June 2026, the Hong Kong Competition Commission (HKCC) [commenced proceedings](#) in the Competition Tribunal, seeking fines against three undertakings and director disqualification orders against two individuals. The HKCC claims that the parties engaged in price fixing, market sharing, bid rigging and information exchange in bids for a government technology subsidy scheme.

The HKCC alleges that the conduct occurred in bids for IT solutions under the Technology Voucher Programme (TVP). The TVP, launched under the Hong Kong Government's Innovation and Technology Fund, aimed to subsidise local businesses' efforts to enhance productivity by adopting new technology. The HKCC alleges that the conduct affected around HK\$60 million (approximately £5.74 million) of funding across 380 TVP applications.

The case relates to a tier of the TVP that required applicants to obtain quotes from at least three suppliers and select the lowest conforming quotation. The HKCC claims the parties worked together to rig these bids through a system of cover bids and information exchange between July 2019 and July 2024. It alleges that IT solutions provider Hazedawn (an undertaking that at the time included the now-dissolved Awehaze Limited) entered into separate arrangements with two of its competitors, Jedar and Fovea Studio, each of which was owned by a co-founder of Hazedawn. The HKCC has brought the action against these three undertakings and the sole directors and shareholders of each of Hazedawn, whom it claims co-ordinated the bids, and Fovea Studio. Jedar agreed to admit liability and entered into a cooperation agreement with the HKCC.

The case involves two alleged contraventions, under which the parties agreed to submit cover bids alongside Hazedawn's quotes to satisfy the three-quotation requirement and make it more likely that Hazedawn would win:

Main article**Other developments**[Antitrust](#)[Consumer protection](#)[Regulatory](#)

1. An agreement between Hazedawn and Jedar – out of 255 applications with Jedar quotations, Jedar never won against Hazedawn and Hazedawn was almost always selected as the ultimate winner.
2. An agreement between Hazedawn and Fovea Studio – out of 191 applications with Fovea quotations, Hazedawn won 176 (92%) and Fovea's few wins were all during a two-week period, which the HKCC claims may have been before the arrangement had become "fully operative and systematic".

Jedar and Fovea Studio allegedly provided company credentials to Hazedawn, including quotation templates, electronic signatures, company chops and email access, to facilitate the preparation of quotations, and allowed Hazedawn to control the final pricing of their bids. The HKCC alleges this enabled Hazedawn to ensure that the cover bids would typically be set at levels to enhance its chance of winning.

The case was referred to the HKCC by the Innovation and Technology Commission. Suspicion arose from quotations submitted for the same applications being dated on the same day, containing identical product specifications (including the same typos and formatting), and revealing pricing patterns inconsistent with genuine competition. The HKCC said these features suggested the bids had not been prepared independently, and that it had found evidence of forgery during the investigation, which has been referred to the police.

This is the HKCC's 17th set of enforcement proceedings since the Competition Ordinance came into force, and its second case in 2026 (the [first case](#) also concerns an alleged bid-rigging syndicate, as reported in a [previous edition](#) of our newsletter).

Consumer protection

CMA further clamps down on alleged illegal online pricing

The CMA has issued the latest fine in its ongoing clampdown on companies allegedly employing illegal online pricing practices. The CMA [announced](#) this clampdown in November 2025, issuing advisory letters to 100 firms, and opening investigations into eight businesses. Under its new consumer protection powers within the Digital Markets, Competition and Consumers Act 2024 (DMCCA), the CMA is able to directly enforce consumer law, fine companies up to 10% of global turnover and order redress measures including compensation to be paid to consumers.

StubHub UK, a platform on which customers can buy and sell tickets for concerts and sports events, is the latest business to be subjected to fines and be ordered to refund customers for illegal pricing practices. According to the [CMA press release](#), StubHub admitted to a practice of 'drip-pricing' whereby the business did not show consumers the total upfront price of the ticket at the outset of the transaction and instead included a mandatory fee later in the purchase process. StubHub received a 40% reduction to its penalty after admitting the infringement, promptly ending the practice, and agreeing to settle the case early. Overall, StubHub must now refund approximately £590,000 to over 50,000 customers and pay a penalty close to £900,000.

Main article**Other developments**[Antitrust](#)[Consumer protection](#)[Regulatory](#)

This enforcement action comes on the heels of a [fine issued](#) by the CMA to Marks Electrical, an appliance retailer, on 18 June 2026. Marks Electrical admitted to pre-selecting and charging customers for services without their express agreement. The CMA fined the company £720,000 and ordered it to refund around £600,000 in total. For further details, see our previous blog posts [here](#) and [here](#).

In April 2026, AA and BSM driving schools were the first businesses subject to this clampdown to be fined under the CMA's new direct enforcement powers within the DMCCA (as discussed in our [previous blog post](#)). To date, the CMA has secured refunds worth £1.95 million and issued fines exceeding £5.7 million. These latest actions are a continuation of a clear message that the CMA intends to take an assertive approach to consumer protection law. Attention will now turn to the outcomes of the CMA's ongoing investigations into Gold's Gym, viagogo, Wayfair and Appliances Direct.

Regulatory**European Commission reaches preliminary position that Amazon and Microsoft should be designated as gatekeepers for their cloud computing services**

Following two market investigations launched in November 2025 under the Digital Markets Act 2022 (DMA), the European Commission has [announced](#) its preliminary position that Amazon and Microsoft should be designated as gatekeepers under the DMA for their cloud computing services, AWS and Azure, respectively. This preliminary position has been reached despite neither product meeting the quantitative thresholds as set out in the legislation. The Commission's preliminary position is that AWS and Azure, the largest and second largest cloud computing services in the EU respectively, act as gateways between businesses and their EU customers. The Commission considers that both have achieved significant turnover, have entrenched user bases, and appear to benefit from lock-in effects and high switching costs. Further, the Commission points to their portfolio of AI tools and partnerships which have become a decisive factor in cloud procurement.

As a next step, Amazon and Microsoft have the opportunity to examine the documents in the investigation file and reply in writing. Written rebuttals in response to Commission investigations have previously [prevented](#) Microsoft from being designated a gatekeeper, including in relation to Bing, Edge and Microsoft Advertising, despite these platforms meeting the quantitative threshold.

Should the Commission eventually confirm its preliminary findings, Amazon and Microsoft will be subject to resulting obligations under the DMA with respect to their cloud services, which will include complying with a list of [do's and don'ts](#), and submitting a detailed report outlining how they are complying within 6 months of designation. The Commission previously [designated](#) Amazon's advertising business and Marketplace, as well as Microsoft's LinkedIn and Windows PC OS, in September 2023.

[Main article](#)

[Other developments](#)

[Antitrust](#)

[Consumer protection](#)

[Regulatory](#)

London

T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels

T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong

T +852 2521 0551
F +852 2845 2125

Beijing

T +86 10 5965 0600
F +86 10 5965 0650

Published to provide general information and not as legal advice. © Slaughter and May, 2026.
For further information, please speak to your usual Slaughter and May contact.

www.slaughterandmay.com