

Beware of the watchdog: Tyrie & Co spook the City

An aggressive competition authority scares investors

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There is a feeling in the City that the Competition & Markets Authority has been emboldened by Brexit

Shocking. That was the verdict of Alex Captain, founder of hedge fund Cat Rock Capital Management, after discovering that Takeaway.com's £6bn plan to gobble up Just Eat was being investigated by the competition authorities.

The merger — the culmination of a year-long battle instigated by Captain — had been approved by shareholders before the unexpected intervention of the Competition & Markets Authority (CMA), which last week ordered the two companies not to blend their operations.

"Takeaway.com has no UK operations, it exited its minor business there over three years ago and has stated that it had no intention to enter the UK market before the Just Eat merger," said Connecticut-based Captain.

The Harvard-educated hedgie summed up the City's concerns about the CMA. "Certainty and predictability are important. Investors need a clear set of rules and a fair application of those rules," he told The Sunday Times.

Amazon's investment in Deliveroo is also being investigated, prompting fury from one of the food delivery service's early investors, Index Ventures. Neil Rimer of Index vented his frustration in the Financial Times. "If the CMA process is riddled with uncertainty, and its duration is a source of competitive harm, this will affect the incentive to start and invest in companies in the UK altogether," he wrote.

There is a feeling in the City that the CMA is taking a tougher approach to regulation, emboldened by Brexit and latest chairman Lord (Andrew) Tyrie, the former Tory MP who was the Treasury committee's chief interrogator.

"In the past 12 months, the CMA has been the most aggressive [regulator] on merger reviews globally," said one market practitioner.



Lord Tyrie led the charge against auditors

greater scrutiny. Tyrie has alarmed accountants with his proposals for joint audits and has called for reform of competition and consumer law, including extra powers to impose fines.

Analysis by Fingleton, a consultancy set up by former Office of Fair Trading boss John Fingleton, shows that six deals fell apart after CMA intervention last year, compared with a maximum of two a year from 2015 to 2018. The highest-profile casualty was the £12bn tie-up of Sainsbury's and Asda.

Andrea Coscelli, chief executive of the CMA, rejected suggestions that Tyrie was behind the takeover purge and said the commercial benefits of deals could give the parties involved a "skewed view" of the wider pros and cons.

"It's important to bear in mind that consumers don't really have much of a voice unless we defend them, while commercial interests spend a lot of money on lawyers and economists to defend their interests," he said.

For 30 years or so, competition authorities focused on the risks posed by big companies being smashed together with other big companies. Now, they have to consider the impact of big

players buying smaller ones, with Facebook's takeover of Instagram in 2012 and WhatsApp in 2014 creating the backdrop for the latest thinking.

“Our current level of scepticism about another Facebook-type platform buying a nascent competitor is higher than it was five or ten years ago,” said Coscelli. He has invited leading players from the tech and business worlds to a conference next month to discuss investment in the digital industry.

Brexit will bring more change. The CMA had 620 staff — lawyers, economists and the like — before the referendum. That figure has risen to 850 and will reach 1,000 as the watchdog takes a lead role in judging deals that might have been the preserve of the EU.

The public, though, tends not to get exercised by big takeovers. It is day-to-day gripes that catch their eye. “Consumers are upset about their energy bills or train ticket prices or fairness of conditions they get when they shop,” said Fingleton. “It would be wrong to lose sight of important role the CMA has in doing all that.”

Last week, the CMA ordered Nationwide to refund £900,000 to customers it failed to warn about overdraft fees. The watchdog has cracked down on ticketing sites and is investigating the funeral market.

This is where Tyrie's political antennae come to the fore. Not only has he led a charge against the auditing profession, he has asked former business secretary Greg Clark for extra powers. He presented a long list — on which there has been little movement.

However, the CMA has managed to secure a key role in the running of the economy: last week, the chancellor and Andrea Leadsom, Clark's successor, asked it to provide a “state of competition” assessment, possibly every year.

“We don't know what the terms of a trade deal will be. The economy is clearly moving in a particular direction post-Brexit — it's very important to track what is happening and track where the action is needed,” said Coscelli.

The move signals a new high-profile role for the CMA, perhaps giving it comparable responsibility for microeconomic issues to the Bank of England's role in macroeconomic ones. After Brexit, it is not just deal-makers who should be on their guard.