

United Kingdom: New digital competition regime and changes to UK competition regime now in force

In brief

Following the enactment of the Digital Markets, Competition & Consumer Act (DMCCA) in May 2024 (see our previous detailed [briefing](#)), the new UK digital markets competition regime and changes to the UK competition regime entered into force on 1 January 2025. This landmark legislation brings about significant changes to the UK antitrust regime including giving the Competition & Markets Authority (CMA) the ability to regulate the technology sector, increased jurisdiction to review mergers, and stronger antitrust investigation powers. We set out below a summary of the key provisions.

Digital markets competition regime

Strategic Market Status

- The CMA now has significant powers to regulate firms enjoying Strategic Market Status (SMS) in respect of a digital activity. These are firms that are deemed to have both "substantial and entrenched market power" and "a position of strategic significance" — whether by virtue of their relative size, their role in the day-to-day business or critical operations of other undertakings, their influence over how other firms operate or their ability to leverage into other activities; and a UK turnover of more than GBP 1 billion or global turnover of more than GBP 25 billion. These thresholds are designed to ensure that the regime applies to only the very largest tech firms.

Conduct requirements and pro-competition interventions

- If the CMA designates a firm with SMS, it has two key tools to address problematic conduct or market structures: conduct requirements and pro-competition interventions (PCIs). Non-compliance can lead to penalties of up to 10% of worldwide turnover.
- Conduct requirements will be tailored to individual SMS firms and will require them to take certain action or to stop a specific activity. The DMCCA sets out permitted categories of requirements, which are very broad (e.g., trading on fair and reasonable terms), and they must relate to one of three objectives (fair dealing, open choices, or trust and transparency). Conduct requirements can be imposed on any part of the SMS firm's business, and not just the relevant digital activity.
- PCIs can be used by the CMA to remedy or mitigate 'adverse effects on competition' — including detrimental effects on UK users or customers — that might stem from factors other than a firm's conduct, e.g., perceived harms flowing from its enjoyment of network effects. PCI orders could range from general behavioural obligations — e.g., to facilitate interoperability, data mobility or consumer choice, to structural changes e.g., divestments.

Merger reporting requirements for SMS firms

- SMS firms have a mandatory obligation to report to the CMA any transactions that involve a target with a UK nexus (or a joint venture expected to have links with the UK) where: (i) the SMS firm acquires 15%, 25% and 50% of equity or voting rights in

In this issue

Digital Markets Competition Regime

- Strategic Market Status
- Conduct requirements and pro-competition interventions
- Merger reporting requirements for SMS firms

Changes to the UK Merger Control Regime

- Revised jurisdictional thresholds
- Fast track to Phase 2

Changes to Antitrust Investigations

Changes to the Markets Regime

Increased Civil Penalties

What This Means For Your Business

entities linked to the UK and (ii) the total consideration is at least GBP 25 million. A failure to report a transaction can lead to a penalty of up to 10% of worldwide turnover.

- Notifying firms are obliged to wait for the CMA to confirm with five working days that the information reported is 'sufficient', in addition to waiting an additional five working days, before proceeding with the transaction.

Changes to the UK merger control regime

Revised jurisdictional thresholds

- New UK merger jurisdictional thresholds are now in force. A merger is now notifiable (still on a voluntary basis) to the CMA where:
 - a. The UK turnover of the target exceeds GBP 100 million (**previously GBP 70 million**); or
 - b. at least one of the parties has a UK turnover exceeding GBP 10 million (**new safe harbour**), and post-transaction the parties will together supply or acquire at least 25% of goods or services of any description in the UK or in a substantial part of the UK. The merger must also result in an increment to the share of supply; or
 - c. one party supplies or acquires at least 33% of goods or services of any description in the UK (or a substantial part of the UK) and has a UK turnover exceeding GBP 350 million; and any other party to the transaction has a UK nexus (**new threshold ("hybrid threshold")**).
- The introduction of a new safe harbour means that any merger involving only parties with a respective UK turnover of less than GBP 10 million is exempt from UK merger review on competition grounds.
- The new hybrid threshold does not require any overlaps between the parties and is intended to capture vertical mergers and deals whereby a large player acquires a relatively small nascent or innovative competitor to eliminate the future competitive threat posed by the competitor. There is no requirement that the target has any UK turnover — provided the target has a UK nexus, the threshold will be met. The UK nexus criterion is an extremely broad one and is met where at least part of the activities of the party are carried out in the UK, or the party supplies goods or services in the UK. The CMA says in its mergers guidance that there is no need for the target to be supplying any goods or services in the UK at the time of the merger. Any preparatory step that has been taken in the UK towards supplying goods or services in the UK will satisfy the test e.g., having intellectual property rights in the UK or having a licence or regulatory approval to supply the UK.
- The new threshold adds an extra layer of complexity and regulatory burden on merger parties while increasing the ability of the CMA to intervene in transactions. The CMA recognises that there is a perception in the market that it has an interventionist approach to merger control, and that this can have a chilling effect, and says that it is "working hard to address that perception".¹ Doug Gurr, interim Chair of the CMA, has stated that the CMA must make its "investigations and processes as simple and rapid as possible" and that its "north star" is "a regulatory environment that encourages business investment subject to respecting the absolute importance of healthy competition and strong consumer protection".² This may indicate the start of a less interventionist stance by the CMA.

Fast track to Phase 2

- Parties to a transaction can request a fast track to a Phase 2 investigation at any time. Where it accepts such a request, the CMA will be able to extend the Phase 2 timetable by an additional three weeks. In addition, the CMA and merging parties can agree to extend the Phase 2 investigation without limit, which gives more flexibility to the process.

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https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=UMQlpmJf4rwJy0gEleu3h%2BgWUbzWPUxZJJeJbBOCa3tGCVtjJbcuZDXrGBMWISdSuOdpL6pnLev6VNqH98DDRTd%2FIno8Irl%3D&nav=9fO5ugM%2FVKOuTUMwX%2FGNqVKMopBuaJGJxbIkKY0XQ6JHWIrN1gLu2cBYGeGn%2B6%2ByK%2FCzWLLp4%3D&attdocparam=tQRFw66FnLdH9LTg9TfKwEoCigPv0GzNOck2bnXbBLbBPMym2dMTJM7lccdwE5X%2FOWIxV%2BwILyUHmQ%3D%3D&fromContentView=1

² Article by Doug Gurr, interim Chair of the CMA, in the Financial Times, 28 January 2025; <https://www.ft.com/content/0ce8ae22-33d5-4bf3-b776-ea670127d97b>

Changes to antitrust investigations

- The DMCCA introduces an important substantive change by removing the requirement for anti-competitive agreements to be implemented in the UK. Agreements that have (or are likely to have) a direct, substantial and foreseeable effect on trade within the UK are now also within the scope of the UK prohibition on anti-competitive agreements even when these agreements are not implemented in the UK.
- There is a new duty to preserve evidence in all antitrust investigations where a person knows or suspects that an investigation is, or is likely to be, carried out by the CMA. In practice, the duty would arise where a business receives a case initiation letter from the CMA and would therefore be aware that its conduct is under investigation.
- The CMA can use its dawn raid powers to search all documents accessible from the premises when searching under warrant, even those stored offsite (including by using equipment found at the searched premises). It also has a new power to "seize and sift" documents, including information stored electronically, obtained under a warrant during a dawn raid at domestic premises (previously this power was limited to business premises).
- The interview powers of the CMA are expanded to require any individual to attend an interview and answer questions for any matter relevant to an investigation. This potentially exposes employees of third parties (e.g., customers or suppliers of the business under investigation) and interviewees may be required to answer questions remotely.
- The CMA can serve information requests to a person outside of the UK if the person's activities are being investigated as part of a UK enforcement investigation or they have a "UK connection". A "UK connection" is defined as where a person is a UK national; is an individual who is habitually resident in the UK; is a body incorporated under the law of any part of the UK; or is a person (company or individual) that carries on business in the UK. This power strengthens the CMA's ability to conduct global antitrust investigations.

Changes to the markets regime

- The DMCCA removes the restriction on the time period during which the CMA, after the commencement of a market study, is required to decide whether or not to make a reference for an in-depth market investigation, giving it more flexibility.
- The CMA can make a reference for an in-depth market investigation even if it has previously decided not to do so following a market study in situations where: (i) two or more years have passed since the publication of the market study notice; or (ii) there has been a material change in circumstances.
- The CMA now has the power to accept binding commitments at any stage of a market study or market investigation.
- The CMA can conduct trials of remedies before settling a final remedy package, and vary remedies accepted or imposed following a market investigation which are subsequently found to have been ineffective. The latter arises in relation to remedies accepted or imposed within the preceding 10 years from the CMA's finding of an adverse effect on competition. This power is not available where the CMA market investigation took place less than two years ago. This provides a "cooling-off" period after undertakings are accepted or orders imposed, and a "long stop" of 10 years on the exercise of the power.

Increased civil penalties

- The CMA can now issue civil penalties where previously only criminal penalties existed (e.g., penalties for destroying, falsifying or concealing documents; providing false or misleading information), and there are increased penalties for failure to comply with investigative measures and information requirements in antitrust investigations, merger investigations, and market studies and investigations.
- The CMA will be able to impose civil penalties on companies of up to 1% of annual worldwide turnover and additional daily fines of up to 5% of daily worldwide turnover for ongoing non-compliance (previously civil penalties were capped at GBP 30,000). Individuals can be fined up to GBP 30,000 fixed and/or GBP 15,000 daily penalties.
- There are also new powers for the CMA to issue civil penalties of up to 5% of annual worldwide turnover and/or daily fines of up to 5% daily worldwide turnover for breaches of remedies and commitments in antitrust investigations, merger

investigations, market studies and market investigations. Individuals can be fined up to GBP 30,000 fixed and/or GBP 15,000 daily penalties.

These new penalties do not apply retrospectively and will only apply to infringements that occur after 1 January 2025.

What this means for your business

- **Transaction strategy and planning:** make sure you understand if your deal falls within the revised jurisdictional thresholds (particularly for vertical transactions and transactions involving potential competition or dynamic competition) and build that into your deal strategy. SMS firms will need to factor in the new mandatory merger reporting requirements.
- **Implications for SMS-designated firms:** large tech firms that are likely to be designated as SMS firms should consider how to prepare for compliance with potential conduct requirements and PCIs. Other firms should consider how their activities might be impacted by firms that are SMS-designated.
- **Antitrust investigations and compliance:** global businesses need to be aware of the UK's broader extraterritorial antitrust enforcement reach which will likely increase enforcement of UK competition law. To facilitate this further, the CMA will be looking to use its enhanced interview powers and new extraterritorial information gathering powers, and to require companies to comply with broader data preservation requirements (non-compliance being sanctionable with significantly higher penalties). These additional powers will also be supplemented by a new UK debarment regime whereby companies can be banned for bidding for public contracts if they violate competition law.

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