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## UK Expands its Merger Control Regime and the CMA's Powers with the Digital Markets, Competition & Consumers Act

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After years of planning and debate, the UK's Digital Markets, Competition, and Consumers Act will come into force on 1 January 2025. This landmark legislation provides expanded powers to the CMA in respect of merger control, digital markets, competition and consumer protection.

### The DMCC

The [Digital Markets, Competition and Consumers Act](#) (DMCC) is the final legislative step implementing a significantly bolstered competition and consumer regime in the UK, as well as a new digital regime. The DMCC brings more transactions in scope for merger control review by introducing a new alternative merger threshold. It aims to level the playing field within digital markets by, for example, imposing stringent new notification requirements on firms with 'Strategic Market Status', but also significantly bolsters the Competition and Markets Authority's (CMA) enforcement powers more broadly.

### Merger Control

The DMCC introduces new thresholds and procedures aimed at expanding the CMA's ability to review M&A transactions, particularly those involving nascent competitors (often referred to as "killer acquisitions").

The new thresholds apply to transactions that have not closed, or for which the CMA has not opened an investigation by 31 December 2024.

- **New Filing Thresholds:** The DMCC expands the jurisdiction of the CMA by introducing a new, alternative threshold for merger review, which will give the CMA the ability to review M&A transactions with a UK nexus where:
  - one party has both (i) an existing 33% (or more) share of supply of goods or services in the UK or in a substantial part of the UK and (ii) UK turnover exceeding £350 million; and
  - another party has a "UK nexus", meaning it is registered in the UK, carries on activities in the UK, or supplies goods or services to UK customers.

This new threshold removes the existing requirement that both the buyer and the target must have overlapping UK activities or that the target must have substantial UK operations. This expands the CMA's jurisdiction to intervene in acquisitions involving targets with little or no turnover in the UK and to review vertical and conglomerate mergers. Importantly, however, if this threshold is met, filing is not mandatory – but just enables the CMA to review a deal. In practice, this may lead to voluntary filings if this threshold is met, as many buyers will want certainty as to whether a deal will be subject to review by the CMA.

- **Higher Jurisdictional Thresholds:** The threshold for a target's UK turnover for CMA review is raised from £70 million to £100 million, reflecting adjustments for inflation since the current regime was introduced. Additionally, a safe harbour exempts mergers between small businesses, where each party has a UK turnover of £10 million or less, from review. This safe harbour does not apply to media cases aimed at preserving plurality, where the threshold will remain at £70 million.
- **Fast Track and Extended Reviews:** The DMCC allows merging parties to request a “fast track” reference to Phase 2 at any stage, aimed at saving time and effort when it is clear that an in-depth investigation or remedies will be required. Additionally, the CMA and merging parties can agree to extend the Phase 2 review without limit, adding flexibility to the process.
- **Increased Penalties:** The DMCC significantly increases fines for failing to respond to information requests or providing misleading information. The maximum fine will increase to 1% of annual worldwide turnover, with additional daily penalties of up to 5% of daily worldwide turnover. This is a substantial increase from the previous maximum of £30,000.

### Digital Companies with Strategic Market Status

The DMCC empowers the CMA's Digital Markets Unit (DMU) to regulate the conduct of major businesses active in digital markets. Once designated with “Strategic Market Status” (SMS), they will face specific obligations and requirements under the DMCC. The CMA has indicated that it will focus its initial investigations on three to four companies. Sarah Cardell, the chief executive of the CMA, has emphasised that these investigations will be “*evidence-based, targeted and proportionate*”.

- The DMU will be able to designate firms as having SMS if they have “*substantial and entrenched market power*” and “*a position of strategic significance*” in relation to digital activities linked to the UK. Whilst the drafting of the legal test is broad, in practice the SMS regime is only expected to apply to a handful of the largest tech companies. The designation brings a host of new responsibilities and regulatory obligations. One of the main obligations for SMS firms is to adhere to tailored, conduct requirements (CRs) to regulate each SMS firm's behaviour in relation to the activities for which they have been designated. Given that CRs are firm-specific, they are likely to vary substantially – unlike the more prescriptive ‘dos and ‘don'ts’ under the European Union's Digital Markets Act (DMA). SMS firms are expected to enhance transparency in their dealings, particularly regarding terms of service and any changes to algorithms or policies that affect market access or consumer choice. Furthermore, these companies may be required to provide access to certain data to promote competition and innovation, ensuring that smaller firms and new entrants can compete on a more level playing field.
- The DMCC also empowers the CMA to impose pro-competitive interventions (PCIs) on SMS

firms. These interventions could include requiring interoperability or mandating changes to business practices that stifle competition. If behavioural changes are insufficient to restore competition, structural remedies, such as divestitures, may be considered. To enforce these provisions, the CMA has been granted robust powers, including the ability to impose significant fines for non-compliance. Penalties can reach up to 10% of a company's global turnover, underscoring the importance of compliance for SMS firms.

- There will be enhanced scrutiny of M&A transactions involving SMS firms to prevent further entrenchment of market power. In a big shift from the UK's (technically) voluntary/non-suspensory merger control regime, SMS firms will be obliged to report M&A transactions prior to closing when (i) they acquire shares/voting rights exceeding thresholds of 15%, 25%, or 50% in a target with a UK nexus; and (ii) the deal value exceeds £25m. This reporting obligation is potentially much broader than its DMA equivalent, since it relates to *anymergers* meeting the relevant thresholds, regardless of whether the target is active in digital services or the collection of data.

### Snapshot overview

#### **CMA can review transactions when any of the following thresholds are met**

- Target has annual UK turnover of £100 million (**Increased from £70 million**)
- The parties, after the transaction, have a share of supply of goods or services of 25% in the UK, or a substantial part of the UK (**No change**)
- One party to the transaction supplies at least 33 % of relevant goods or services in the UK or in a substantial part of the UK, and has an annual turnover of £350 million or more in the UK, provided that the other party has a UK nexus (**New**)
- Transaction involves firm with "Strategic Market Status", and this firm acquires shares/voting rights exceeding thresholds of 15%, 25%, or 50% in a target with a UK nexus; and the deal value exceeds £25m (**New**)
- Safe harbour (not reviewable): mergers between small businesses, where each party has a UK turnover of £10 million or less. This safe harbour does not apply to media cases aimed at preserving plurality, where the threshold remains at £70 million (**New**)

### **Competition Law Investigations**

The DMCC enhances the CMA's powers to investigate and enforce competition rules.

- **Extraterritorial Reach:** The Chapter I prohibition under the Competition Act 1998 (CA98) (which covers anti-competitive agreements) has been amended to apply to agreements implemented outside of the UK, where there is (or is likely to be) direct, substantial, and foreseeable effects within the UK. The CMA can also issue information requests to entities outside the UK, bolstering its ability to investigate global cartels. This follows a challenge to the CMA's approach in an investigation concerning the recycling of end-of-life vehicles, which the CMA ultimately won.
- **Revised Appeals Process:** Appeals against interim measures, such as temporary remedies during ongoing investigations, will now be assessed under the judicial review standard. This makes it

more challenging to overturn CMA decisions. Additionally, the DMCC restricts access to the CMA's case files during investigations, aiming to protect the integrity of the process.

- **Enhanced Evidence Gathering:** The CMA gains new investigative powers in CA98 investigations, including powers to “seize and sift” evidence when conducting unannounced inspections of domestic premises (which is seen as increasingly important in a remote-working environment), interview witnesses remotely, and impose fines for breaches of document preservation duties.

## Consumer Protection

The DMCC aligns the CMA's consumer protection enforcement powers with its competition enforcement powers.

- **Direct Enforcement and Fines:** The CMA can now directly impose fines of up to 10% of global turnover for breaches of consumer protection laws, bypassing the need to initiate court proceedings. It can also award compensation directly to consumers, providing more immediate remedies for consumer harm.
- **New Consumer Laws:** The Act introduces provisions to tackle fake reviews and “subscription traps” and mandates protections for consumer prepayment schemes. These measures aim to ensure that consumer payments are fully protected and that consumers are not misled by deceptive business practices.

All businesses that are consumer facing will need to consider the impact of the DMCC. The advent of direct enforcement and fining powers, coupled with the CMA's focus on protecting consumers amid the cost of living crisis, means consumer protection compliance policies (relating to both existing and new rules) should be reviewed.

## Implications for Business

Businesses operating in the UK need to prepare for the new regulatory landscape introduced by the DMCC to adapt to the changes and mitigate potential risks.

- **Review carefully call-in risk for transactions: Assess whether the new expanded merger control thresholds will catch planned M&A transactions, in particular transactions with no horizontal overlap but which may raise antitrust innovation concerns.**
- **Assess SMS Risk:** Companies likely to be designated with SMS should start preparing for compliance with the new conduct requirements and potential pro-competition interventions. Other firms may need to assess how the new rules governing major tech platforms may impact their sector and business activities.
- **Update Compliance Programs:** Companies should update their compliance protocols to align with the new conduct requirements, consumer protection laws, and the increased penalties for non-compliance. Special attention should be paid to document retention and responsiveness to CMA information requests.
- **Monitor CMA Guidance:** It is crucial to stay informed about forthcoming CMA guidance on the new regime to ensure timely compliance and avoid potential penalties.

*\*Shruthi Madhusudan (White & Case, Trainee, London) contributed to the development of this publication.*

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The image is a promotional graphic for a survey report. It features a dark background with a circular inset showing a gavel resting on a glowing digital circuit board. The text is white and blue. A blue button with white text is present. Logos for Wolters Kluwer and Future Ready Lawyer are included.

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