

Kluwer Competition Law Blog

Navigating the New UK Antitrust Landscape

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The UK's Competition and Markets Authority (CMA) has published a suite of guidance documents that set out how it intends to exercise its powers under the Digital Markets, Competition, and Consumers Act (Act). The Act, which entered into force on 1 January 2025, grants the CMA significant new powers and procedural flexibility. The CMA guidance offers important insight into how the CMA will apply its strengthened powers and flexible procedures, and will inform the CMA's work on identifying "strategic market status" which it will commence immediately.

The Act and the CMA's new guidance

The Act introduces substantial changes across merger control, digital markets, competition, and consumer protection. Key changes relating to antitrust include:

- New merger control thresholds (known as the "hybrid test") to capture acquisitions involving targets with little or no turnover in the UK (addressing "killer acquisitions"), as well as vertical and conglomerate mergers;
- Enhanced CMA investigatory and enforcement powers; and
- A new regime for regulating large digital firms designated with "strategic market status" (SMS).

The CMA has now published a suite of guidance to accompany the Act, as follows:

#	Date published	Name of guidance
1.	19 December 2024	Digital markets competition guidance (CMA194) ^[1]
2.	19 December 2024	Guidance on the merger reporting requirements for SMS firms (CMA195) and the SMS merger reporting notice
3.	19 December 2024	Guidance on administrative penalties: statement of policy on the CMA's approach (CMA4)
4.	20 December 2024	Updated mergers guidance on the CMA's jurisdiction and procedure (CMA2)
5.	20 December 2024	An updated quick guide to UK merger assessment (CMA18)
6.	20 December 2024	Updated guidance on mergers exceptions to the duty to refer and undertakings in lieu (CMA64)
7.	20 December 2024	Updated guidance on interim measures in merger investigations (CMA108)

#	Date published	Name of guidance
8.	20 December 2024	Updated guidance on rules of procedure for merger, market and special reference groups (CMA17)
9.	20 December 2024	Updated guidance on energy network mergers (CMA 190)

The digital markets competition regime guidance – A snapshot overview

Set out below is a snapshot overview of the key content of the 220-page digital markets competition regime guidance (and the accompanying merger reporting guidance relevant for firms designated with SMS).

The EU's Digital Markets Act (DMA) entered into force in November 2022, and has similar provisions to the Act. Whereas the DMA's designation of large digital actors (known as "gatekeepers") relies on rebuttable presumptions based on quantitative criteria, the CMA adopts a qualitative assessment for SMS designation.^[2] While the gatekeeper obligations are prescribed in the DMA itself, the CMA will be able to impose tailored CRs under the Act. The CMA considers various forms of evidence without prioritising a single type or establishing a hierarchy on the type of evidence. While this flexibility gives the CMA wide discretion in applying the Act, it has raised concerns about potential unpredictability and the risk of arbitrary decisions. A broader question remains as to whether this qualitative assessment will lead to uncertainty (and potentially have a chilling effect on M&A activity).

On 7 January 2025, the CMA published [a statement on its initial plans](#) under the new digital competition regime, stating that it plans to launch SMS designation investigations in relation to three areas of digital activity over the first six months.

The revised mergers guidance documents

The CMA has updated several key mergers guidance documents^[3] to reflect the jurisdictional and procedural changes introduced by the Act.

The snapshot overview below summarises the key changes introduced.

#	Key changes	Updated guidance
1.	Increased Turnover Thresholds: The increased £100m turnover threshold and a new £10m turnover "safe harbour" threshold (with examples of how the thresholds work in practice).	CMA2 and CMA18 and CMA190 (in the context of energy network mergers meeting the £100m threshold).
2.	"Killer Acquisition" Threshold: Detail on the new £350m threshold (with examples), including on how the share of supply and turnover test is "acquirer focused" and guidance on the intricacies of the "UK nexus test".	CMA2 and CMA18
3.	Statutory Phase 2 Fast-Track Process: Detail on the new expedited Phase 2 Review process ^[4] and new powers for the CMA to provide parties with more flexibility in the Phase 2 process.	CMA2 and CMA18

#	Key changes	Updated guidance
4.	Extended Information Request Powers: Detail on the CMA’s power to formally request documents and information held by parties outside of the UK (as well as documents and information located outside of the UK), subject to certain conditions.[5]	CMA2
5.	Procedural Changes in Phase 2: Clarification that appointed groups no longer need to consider a need for public hearings at the Phase 2 stage; removal of the opportunities for parties interested in the relevant reference to cross-examine witnesses, and clarification that the CMA’s discretion not to refer a Phase 2 investigation is different from the £10m “safe harbour” threshold.	CMA17 and CMA64
6.	Interim Measures: Changes to imposition of interim measures (including new procedural steps and the entities who may be subject to interim measures) and guidance on the likely availability of derogations from an interim measure.	CMA108
7.	Monitoring Trustees: Clarification on the CMA’s requirements for appointing monitoring trustees (at either the Phase 1 or Phase 2 stage) to ensure compliance with an interim measure, distinguishing their role from that of hold separate managers.	CMA108

Considerations for businesses

The new and updated guidance documents clarify the scope and processes under the new digital markets regime, covering both mergers and wider enforcement activity. The headlines typically refer to the new rules for SMS firms. However, it is critical for non-SMS businesses to carefully assess planned M&A transactions against the new thresholds to manage the risk that the CMA may wish to investigate a deal. Non-SMS firms should also review and revise compliance policies to ensure that they are adapted to the CMA’s enhanced investigatory and enforcement powers. The few firms likely to be designated as having SMS should start preparing for a potential SMS investigation and the additional obligations that designation entails, including compliance requirements and potential CRs and PCIs.

**Shruthi Madhusudan (White & Case, Trainee, London) contributed to the development of this publication. This post was last updated on 7 January 2025.*

[1] The [draft version](#) of the digital markets competition guidance document was published for consultation in May 2024. In the large, the final version tracks the draft consultation version. The main additions consist of further guidance on the calculation of turnover for jurisdictional purposes and penalties, clarification on what is meant by “substantial market power” for the purposes of (SMS) designation, and detail on when and how stakeholders can engage in the CMA’s processes.

[2] Guidance, pg. 24, para 2.70 and para 2.72, where the CMA confirms that the most appropriate metric for assessing a potential SMS firm’s size and scale is likely to “*depend on the specific context*”.

[3] This followed a six-week consultation between August to September 2024.

[4] Note, the ability for parties to refer a merger to Phase 2 (and bypass statutory requirements in relation to a “substantial lessening of competition” finding) is not available for mergers of water enterprises or mergers of energy networks (as further clarified in CMA190).

[5] The condition required to be met by a person holding the relevant document or information outside the UK is either (1) a merger parties' connection condition, or (2) a UK connection condition. In the case of the merger parties' connection condition, the CMA includes as examples a non-UK parent or TopCo, the seller of the target business, minority shareholders, financial advisers or management consultants, and lenders/debt financiers involved in the transaction.

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This entry was posted on Thursday, January 16th, 2025 at 10:00 am and is filed under [Competition policy](#), [Digital economy](#), [Digital markets](#), [Guidance](#), [Source: OECD](#)

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