

# The Digital Markets, Competition and Consumers Act

## Competition law reforms

The long-awaited Digital Markets, Competition and Consumers (DMCC) Act received Royal Assent on 24 May. It is the most significant overhaul in years of the UK's competition and consumer law regimes.

In this guide, we cover the **competition** reforms, and what actions businesses should take before many of the key provisions come into force in late 2024.

### Changes to competition law under the DMCC Act

The Act reforms the general competition law framework with amended merger control thresholds and broader powers for the CMA to enforce against anti-competitive conduct.

### Amendments to the Chapter I prohibition

The Chapter I prohibition in the Competition Act 1998 will be amended to state as follows:

*"agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the UK and which:*

*(a) in the case of agreements, decisions or practices implemented, or intended to be implemented in the United Kingdom, may affect trade in the UK, or*

*(b) in any other case, are likely to have an immediate, substantial and foreseeable effect on trade within the UK;*

*are prohibited unless they are exempt."*

This new wording is intended to ensure that UK trade, and businesses and consumers based in the UK, are protected from the detrimental effects of anti-competitive conduct, regardless of where that conduct takes place, even when an agreement is implemented in another jurisdiction.

### Merger control reforms

At present, the CMA has jurisdiction to review mergers where the target company's annual UK turnover exceeds £70 million, or where the merging parties together supply at least 25% of the same goods or services in the UK or a substantial part of it (and where the merger results in an increment to that share of supply). While, in recent years, the CMA has pushed the boundaries of these thresholds, in practical terms, the target needs to have a substantial presence in the UK, or the merging parties need to have a competitive overlap in the products or services they offer.

The Act:

- introduces a new **acquirer-focused** threshold for the CMA to intervene in deals. Broadly speaking, this new threshold will come into play if: (i) one party has an existing share of supply of 33% in the UK and UK turnover of at least £350 million; and (ii) the other party has a UK nexus;

- increases the level of the existing target turnover test from £70 million UK turnover to £100 million UK turnover (adjusting the existing thresholds to account for inflation); and
- adds a condition into the existing share of supply test that requires the target or any other merging enterprise concerned to have UK turnover of more than £10 million (this is hoped to assist with alleviating the regulatory burden on smaller businesses that merge).



*"The new, acquirer-focused merger thresholds will allow the CMA to establish jurisdiction in deals where there may not be any clear competitive overlap between the parties, capturing various kinds of mergers and acquisitions, including vertical and conglomerate mergers, and so-called "killer acquisitions" where large firms, particularly in the digital and pharmaceutical spaces, acquire smaller, innovative start-ups to preempt the emergence of future competition."*

**Miguel Vaz, Partner**

*"For businesses, this expansion of the CMA's jurisdictional remit has significant implications, as it provides the CMA with an additional basis for intervening in deals, particularly those involving parties with no horizontal overlap, and cases that could potentially lead to competition concerns related to innovative theories of harm. This new threshold will also obviate the need for the CMA to resort to expansive and creative interpretations of the share of supply test in order to exercise jurisdiction in such deals, a practice that has faced criticism (and litigation) in recent years."*

**Asfand Gulzar, Senior Associate**

## Expanding the CMA's investigation powers

Greater investigative flexibility for the CMA in the age of remote working is another theme in the Act. Central to these greater powers is the CMA's ability to "seize-and-sift" documents when inspecting under a warrant on domestic premises and to interview any person relevant to the investigation. The Act also strengthens the CMA's powers to obtain electronic information stored remotely when exercising a warrant (e.g. in the cloud), given the increasing trend for businesses of all sizes to store documents and other information remotely.

The Act empowers the CMA to serve notices on, and require documents from, those that are outside the UK, if they are party to a merger or competition investigation and they have a UK nexus. This means that the CMA will consider itself empowered to compel production of information and documents from companies and people outside the UK in the course of UK competition law investigations.

There are also amendments to the scope and procedure for market investigations. For instance, the CMA will no longer be required to consult on a market investigation reference within the first six months of a market study.

Finally, the CMA will be able to require businesses to trial proposed remedies before setting a final remedy package. Whilst providing flexibility to the CMA, this approach means that firms may have to invest time and resources in a proposed remedy, before potentially having to unwind any changes and adhere to an alternative finalised remedy package. The CMA will also be able to amend any remedies within ten years of an adverse effect on competition finding in a market investigation.

## How to prepare for the Act coming into force

The competition law reforms, expected to come into force in Autumn 2024, will in practice affect businesses considering a merger or joint venture, or which face investigation by the CMA and need to understand the CMA's jurisdiction.

The CMA will consult on aspects of its powers under the Act, which will help to shape its approach to enforcement.

# Contacts



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