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Shifting Sands – Recent Developments in UK Merger Control

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The UK's Competition and Markets Authority (CMA) is taking significant steps to update its approach to merger control following both the coming into force of the Digital Markets, Competition and Consumers (DMCC) Act on 1 January 2025 and the most recent strategic steer from the UK government. While the DMCC Act expanded the CMA's merger control jurisdiction (as covered in **our June 2024 update**), this shift came amid increasing government pressure on UK regulators to adopt a more pro-growth and business-friendly environment.

The CMA has certainly felt the impact of this pressure and outlined a series of changes aimed at making merger reviews faster, more predictable and more proportionate.

This update explores these recent developments and what they mean for dealmakers navigating the evolving regulatory landscape in the UK.

More flexible merger thresholds

The DMCC Act updated the two existing UK merger thresholds and introduced a new 'no increment' test, providing the CMA with more flexibility to review nonhorizontal mergers. In particular:

- **Higher turnover threshold:** The target's UK turnover threshold was increased from 70 million pounds sterling to 100 million pounds sterling.
- **Safe harbour for share of supply test:** Retaining the existing share of supply test, which allows the CMA to review a merger that leads to an increment on a combined share of supply of 25% or more in the UK, the DMCC Act carves out mergers where each party's UK turnover is less than 10 million pounds sterling and exempts these from review.
- **New hybrid test:** The DMCC Act introduces a new 'hybrid' share of supply test, allowing the CMA to review mergers where one party has an existing share of supply of 33% or more in the UK and UK turnover exceeding 350 million pounds sterling, provided that the other party has a 'UK nexus'.

Guidance issued by the CMA sets out that a party will have a 'UK nexus' where it has a legal presence, carries out at least part of its activities, or supplies goods or services in the UK. Importantly, the guidance provides that a party may have a UK nexus where any 'preparatory step' towards supplying goods or services has been taken in the UK. The guidance further provides that having an office, branch, facility or intellectual property rights in the UK, as well as having obtained a licence or regulatory approval to supply goods or services in the UK, will be sufficient to satisfy the 'UK nexus' test.

The UK government's pro-growth agenda

The UK Labour government came to power in July 2024 following 14 years of conservative-led rule. A key strategic focus of this new government is economic growth and investment. This also is reflected in the **government's most recent draft strategic steer** to the CMA which signals a clear expectation that the regulator should take a more pro-business approach, focusing in particular on:

- **Proportionality:** Ensuring the CMA focuses on markets that particularly impact UK businesses and consumers in a way which keeps growth and investment in mind. In particular, the CMA should prioritise pro-growth and pro-investment interventions, especially in eight key sectors identified in the government's **industrial strategy green paper** (advanced manufacturing, clean energy industries, creative industries, defence, digital and technologies, life sciences, financial services, and professional and business services), and focus on markets and harms that impact UK-based consumers.
- **Avoiding duplication:** Ensuring that, where other jurisdictions are taking action already, any parallel investigation is 'timely, coherent and avoids duplication', where the parallel action can effectively address any UK-specific issues.
- **Certainty:** Encouraging proactive, transparent, timely, predictable and responsive engagement with businesses to ensure that they receive a 'best in class experience'. By way of example, the draft steer provides that the CMA should review its procedural guidance.

The strategic steer is notable as it provides a departure from the previous government's expectation of an independent regulator, encouraging the CMA to act as a 'thought leader at home and abroad' and to be a 'strong independent voice'. It marks a clear change in direction in the CMA's priorities, further cemented by the government's decision to replace CMA chair Marcus Bokkerink with business leader Doug Gurr at the end of January 2025.

The CMA's response

The **CMA announced a set of procedural reforms** aimed at implementing the draft strategic steer in its merger review processes. These are built on four pillars (or the '4 Ps'), namely:

1. **Pace:** By June 2025, the CMA will aim to cut prenotification periods from an average of 65 working days to 40 working days, and to reduce the phase 1 review period for straightforward cases to 25 working days (compared to the current 35 working days).
2. **Predictability:** The CMA will launch a consultation on how it applies its jurisdictional tests (in particular 'share of supply' and 'material influence') to strengthen business certainty.
3. **Proportionality:** The CMA launched a **review of its approach to merger remedies** to allow for as many potentially problematic deals to be resolved through remedies rather than being blocked. This signals a greater openness to behavioural remedies, innovation and efficiency arguments and an overall more pragmatic approach by the regulator. The call for evidence will remain open until 12 May 2025.
4. **Process:** The CMA launched a **mergers charter** to set expectations for engagement among businesses, investors and the CMA, including earlier and more meaningful engagement throughout the merger review process.

These four pillars, along with the CMA's commitment to the government's growth and innovation mission, also are reflected in the regulator's **Annual Plan 2025 to 2026**, which aims for the 'competition and consumer protections regime [to] play a central role in supporting economic growth and long-term prosperity in the UK'. The CMA has further signalled increased efforts to reach out to the UK startup community, with **CEO Sarah Cardell saying in a recent speech** that the CMA 'fully appreciates the importance of viable exit routes for startups', and adding that 'every deal that is capable of being cleared either unconditionally, or with effective remedies, should be'.

Impact on dealmakers

Businesses with deals subject to CMA review can likely expect the following changes:

- An accelerated review timetable, particularly in nonproblematic deals.

- Early and frequent engagement with CMA case teams.
- Renewed focus on more 'mainstream' theories of harm and a lower appetite for the CMA to review more marginal jurisdictional cases.
- Greater openness to innovation defences, as well as increased recognition of efficiencies, particularly where these can be shown to contribute to growth and investment in the UK.
- Greater willingness to consider nonstructural remedies to address identified competition concerns, including at phase 1.
- Less divergence between international regulators and alignment on outcomes and remedies across jurisdictions.

However, the CMA has emphasised that this new approach does not mean that it is 'open season for bad deals', and that it will continue to monitor merger activity more broadly. With the consultation on merger remedies underway and a consultation on the CMA's jurisdictional and procedural guidance expected in the summer, further changes to the UK merger control landscape can be expected in the coming months. Time will tell what impact these changes will have on the global stage.

If you would like assistance in assessing the impact of these developments on your business, please contact a member of the Cooley team below.

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