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Insights

NEW YEAR, NEW UK MERGER CONTROL THRESHOLDS – KEY ASPECTS OF THE DMCC GO LIVE

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SUMMARY

Key competition law and digital markets aspects of the UK Digital Markets, Competition and Consumers Act 2024 ("DMCC"), enforced by the UK Competition and Markets Authority ("CMA"), came into force on 1 January 2025. For more information, see our in-depth analyses of the DMCC.

We take note below of the UK's new merger review thresholds, which **apply to all deals completing after 1 January 2025** (other than those anticipated deals in respect of which the CMA already had a formal Phase One investigation open in 2024).

NEW JURISDICTIONAL THRESHOLDS FOR MERGER CONTROL

The UK's merger control regime is voluntary, so there is no obligation for acquirers to notify a transaction to the CMA. However, the DMCC has amended the thresholds that give the CMA jurisdiction to review a transaction (including on its own initiative) on the below alternative bases:

- Target turnover test - ***threshold increased***: the target UK turnover threshold has increased from £70 million to £100 million (for the last completed financial year).
- Share of supply test – ***NEW small parties exemption***: the existing threshold of a combined share of supply of 25% or more remains in place – but with a new safe harbour that removes the CMA's jurisdiction where the UK turnover of each party does not exceed £10 million.
- ***NEW large acquirer test*** - the CMA now has a third method of asserting jurisdiction, aimed at large acquirers taking over emerging targets (to address the so-called "killer acquisition" gap). The CMA can now review transactions where an acquirer has a UK share of supply of at least 33% in the UK *and* UK turnover exceeding £350 million (in the last financial year), provided that the target's activities have some UK nexus. This threshold does not require any overlap between the parties' activities, nor necessarily any target UK turnover or physical presence.

The CMA expects the above changes to have relatively limited impact on the number of mergers it takes to formal review – and indeed the leadership at the CMA is at pains to make known that it is a pro-growth agency with a resting policy position that "*every deal that is capable of being cleared either unconditionally or with effective remedies should be*".

Nevertheless, given the wide discretion the CMA has to interpret the categories of goods and services that underlie the share of supply tests, its review jurisdiction is broad. The CMA also has specific additional jurisdiction and obligations in a number of sectors: energy networks; newspapers; and water. More generally, the CMA's keen focus on the impact of transactions on future and dynamic competition (compared to the counterfactual) can also add an element of unpredictability compared to more formalistic regimes. The pay-offs and risks associated with whether, how and when to approach the CMA, and the transaction conditionality options associated with the voluntary nature of the regime (including how the CMA regime sits alongside mandatory regulatory conditions in the UK and globally) raise nuanced, strategic questions, which we would be very happy to discuss.

In addition to the amended thresholds, a number of the DMCC's procedural amendments relating to merger control are now in force. These include an ability for parties to request a "fast track" reference to an in-depth Phase Two review, the possibility for parties and the CMA to agree to extend Phase Two reviews, and dramatically increased penalties for providing false or misleading information to the CMA.

The UK is not alone in reforming – or working to reform – its merger control thresholds. The new European Commission is weighing up options for expanding its jurisdictional competence, as are a number of other competition agencies. Read our recent analysis of the European Commission's new competition direction. The US HSR thresholds will be subject to customary annual review and inflation-tracked uplift in the coming weeks. The new HSR filing requirements are expected to take effect in February (subject to any intervention by the new administration), increasing the administrative filing burden on both acquirers and acquired parties before both the FTC and DOJ, but will also likely herald the lifting of the temporary suspension of the "early termination" application process. See our US team's analysis of the new merger filing regime, as well as their more general thoughts on the likely impact of the incoming administration and agency leads at the DOJ's Antitrust Division and FTC.

THE DIGITAL MARKETS REGIME

The UK's new digital markets regime empowers the CMA's Digital Markets Unit to designate companies as having strategic market status ("SMS") and impose bespoke conduct requirements on them. A business could be designated if it has: (1) substantial and entrenched market power; and (2) either annual UK turnover in excess of £1 billion *or* global turnover exceeding £25 billion.

Further supplementing the new acquirer test described above, amongst the requirements imposed on designated businesses is an obligation to report their M&A transactions prior to completion where they acquire shares/voting rights exceeding thresholds of 15%, 25%, or 50% in a target (or 15% in a JV) with a UK nexus, provided that the consideration value is at least £25 million.

The CMA expects to investigate a small handful of firms during H1 2025, with a view to the first designations being in place in the second half of the year.

ENHANCED COMPETITION LAW INVESTIGATIVE AND ENFORCEMENT POWERS

The CMA can now take enforcement action against anti-competitive agreements and concerted practices that take place outside the UK, provided that they affect trade within the UK. This will help the CMA to investigate alleged conduct by multinational businesses. In connection with this, the CMA can require the provision of documents and information held outside the UK.

The CMA's new evidence gathering powers include the right to seize evidence from domestic premises, require the production of information stored remotely (e.g. on the cloud) and compel individuals to be interviewed regardless of whether they are linked to a business under investigation.

The CMA has a new duty of expediency in the investigations it undertakes. Businesses will now face higher penalties for failing to comply with the CMA's Competition Act investigations (e.g. by not responding to an information request). Businesses can be fined up to 1% of annual global turnover, with daily penalties of 5% of daily global turnover, for such infractions – and for breaches of orders, directions, undertakings or commitments the annual global turnover penalty can increase to 5%. Individuals may be subject to fines of up to £30,000 and daily penalties of £15,000.

Businesses will recognise both pros and cons from the UK's new competition and digital regulatory landscape. The key consumer protection aspects of the DMCC will take effect later in 2025, and we will provide updates then. If you would like to discuss how the DMCC could affect your business, please contact the authors or your usual BCLP Antitrust and Competition contact.

This article was prepared with assistance from BCLP trainee solicitor Sanjay Lohano.

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