

# CMA's role after Brexit

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Leaving the European Union (EU) is likely to result in a bigger role for the CMA in safeguarding competition on behalf of UK consumers. We expect to investigate larger and more complex merger cases as well as carry out a greater number of complex antitrust cases, often in parallel with other jurisdictions including the EU. The government has also set out its intention that we should be responsible for monitoring and enforcing state aid rules for the whole of the UK.

To do this new work and ensure UK consumers continue to be protected, we will build on our existing legislative framework and skills and are in close contact with government on secondary legislation to underpin the transition. We are increasing our headcount and are actively planning for how we will manage these additional responsibilities, while ensuring that we continue to balance our portfolio of work and deliver for UK consumers. We are currently working with government and engaging with key stakeholders to listen to their views. The government is confident about achieving a deal with the EU. Once the UK agrees a deal with the EU we intend to consult on our proposed approach to mergers and antitrust activities during the implementation period. Our consultations will elaborate on our approach to the competition regime after leaving the EU and will offer stakeholders further opportunity to comment.

## The 'no deal' scenario

We are preparing for all scenarios, including a 'no deal' before March 2019. As preparation for this eventuality, the government has developed a 'no deal' competition Statutory Instrument (SI) and laid it before Parliament on 29 October 2018. The [Competition SI](#) is accompanied by an [explanatory memorandum](#). To assist businesses in their forward planning for a no deal scenario, we have published information on how we intend to proceed for [mergers](#) and [antitrust](#) cases currently involving the European Commission (EC) that would have fallen to it had the UK not exited the EU. We will review and update our website as required.

## State aid

We also expect the government to pass secondary legislation which will transpose the EU state aid rules into UK law and provide for the CMA to take on its new state aid role, following which we will publish further details on how we will operate the function.

# CMA's role in antitrust if there's no Brexit deal

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## Changes to current CMA enforcement cases in the event of a 'no deal' exit

Under the [Competition SI](#), after the UK's exit from the EU, the CMA will no longer have jurisdiction to apply Article 101 TFEU on anti-competitive agreements (including cartels) and Article 102 TFEU on abuse of dominance. However, the CMA's jurisdiction to apply the equivalent UK national prohibitions in the Competition Act 1998 (respectively the Chapter I prohibition and the Chapter II prohibition) will be unchanged. The CMA will inform all affected parties if the scope of an investigation involving them is affected by this.

Under the Competition SI, section 60 of the Competition Act 1998, under which the CMA, sector regulators and the UK courts must interpret the UK competition prohibitions in a way that is consistent with the decisions and principles laid down by the Court of Justice of the European Union, will no longer apply including to cases already opened on or before 29 March 2019. Instead a new provision, section 60A, will apply to such cases.

[Section 60A](#) provides that competition regulators and UK courts continue to be bound by an obligation to ensure no inconsistency with the pre-exit EU competition case law when interpreting UK competition law, but that they may also depart from such pre-exit EU case law where it is considered appropriate in the light of particular circumstances.

## CMA role where the European Commission has opened an investigation in relation to Article 101 or 102 TFEU but not published a decision before the UK exits the EU

The Competition SI prevents the CMA from opening investigations into infringements of UK competition law after exit where, before exit, the European Commission relieved the CMA of competence and has reached an infringement decision (and which was not subsequently annulled). On exit, the CMA may conduct investigations into breaches of the domestic prohibitions occurring before or after exit day, including in cases where the CMA was relieved of its competence by the European Commission but where the European Commission did not make a decision before exit.

In deciding whether or not to open such a case, the CMA will have regard to its [prioritisation principles](#) taking into account the circumstances of the UK's exit from the EU.

## Block exemption regulations

7 EU block exemption regulations will be retained in UK law and amended to correct deficiencies resulting from the UK ceasing to be a Member State of the EU. The current expiry dates will be preserved. In practice this means that agreements that met the criteria of these EU block exemption regulations remain exempt from the UK competition prohibitions.

The relevant block exemption regulations are:

- [liner shipping regulation](#) expiring on 30 April 2020
- [transport regulation](#)
- [vertical agreements regulation](#) expiring on 31 May 2022
- [motor vehicle distribution regulation](#) expiring on 31 May 2023
- [research and development regulation](#) expiring on 31 December 2022
- [specialisation agreement regulation](#) expiring on 31 December 2022
- [technology transfer regulation](#) for example, intellectual property licences, expiring on 30 April 2026

The Competition SI transfers the power to amend or revoke these to the Secretary of State, acting in consultation with the CMA. The CMA expects to consult on the block exemptions as they expire in order to provide advice to the Secretary of State.

**CMA role where the European Commission has granted a marker and/or accepted applications for leniency in accordance with its leniency policy before the UK exits the EU, but not yet formally opened an investigation.**

The CMA operates a leniency programme which covers cartel activity prohibited under the Chapter I prohibition and which also covers cartel behaviour prohibited by the criminal cartel offence under the Enterprise Act 2002. This programme operates independently of the European Commission's own leniency programme.

There is no "one-stop shop" principle which applies to leniency applications in the EU. Companies involved in cross-border cartels should therefore apply for leniency to all competition authorities that could pursue a case against them in order to benefit from full leniency protection. Therefore, after the UK's exit from the EU, any existing or potential applicant for leniency under the European Commission's leniency programme in respect of conduct which is also covered by the CMA's leniency policy should make a separate application for leniency to the CMA (as would have been the case pre-exit).

Details of the [CMA's leniency programme](#) and instructions for businesses or individuals who are considering making an application for leniency.

# CMA's role in mergers if there's no Brexit deal

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## **CMA role where the European Commission has reviewed a merger and published a decision before the UK exits the EU**

If the European Commission has issued a decision on or before 29 March 2019 then, unless the decision is annulled, in full or in part, following an appeal, the UK has no jurisdiction over that same concentration, or in UK terminology, relevant merger situation.

## **CMA role where the European Commission is reviewing a merger when the UK exits the EU**

If the European Commission has not issued a decision on or before 29 March 2019 then the CMA is no longer excluded by the EU Merger Regulation from taking jurisdiction over the UK aspects of the merger and the provisions of the Enterprise Act 2002 apply. This means that the UK has jurisdiction to review the merger subject to the merger control thresholds being met (see section 4 in the [CMA's guidance on jurisdiction and procedure \(CMA2\)](#) and the [CMA's guidance on changes to jurisdictional thresholds for UK merger control](#)). Where merging parties anticipate that such a scenario is possible, they are advised to engage with the CMA at an early stage (for example, around announcement), particularly where the transaction may raise potential competition concerns in the UK. The CMA may suggest to the merging parties that they begin pre-notification discussions with the CMA (which would be expected to largely follow the procedure set out in Chapter 6 of CMA2).

The CMA will continue to monitor non-notified merger cases, including cases falling under the jurisdiction of the European Commission over which the UK may obtain jurisdiction over the UK aspects of the merger after 29 March 2019.

## **CMA processes where a merger was referred from the European Commission to the CMA before 29 March 2019**

The CMA will continue to apply its usual processes in Phase 1 and 2. The timetable for Phase 1 will remain at 45 working days.

## **Fees if cases notified to the EU are independently investigated by the CMA after exit day**

The existing rules for the payment of merger fees will also apply to mergers notified to the EU into which the CMA opens an investigation post-Exit.

See [Enterprise Act 2002](#) (Merger Fees and Determination of Turnover) Order 2003 SI 2003/1370, chapter 20 of [CMA2](#) and [merger fees payment information](#) (January 2016) for further information.