
BREXIT: COMPETITION LAW IMPLICATIONS

The United Kingdom's exit from the European Union is effective in the UK from 11:00 p.m. GMT of 31 January 2020.

A key feature of the Withdrawal Agreement (available [here](#))¹ is that the UK will enter a transition period from 31 January 2020 (the **Exit Day**) until 31 December 2020 (the **Transition Period**).

During the Transition Period, EU law applies in the UK (except for certain specified provisions).² EU law must also be interpreted and applied in the UK in accordance with the same methods and general principles as those applicable in the EU.³ Therefore, provisions of the EU Treaties, EU Regulations and other legislation which deal with European competition law continue to apply in and to the UK during the Transition Period.⁴

Furthermore, during the Transition Period, the European Commission (the **Commission**) and the Court of Justice of the European Union (the **CJEU**) **shall also continue to have the powers conferred upon them by EU law in relation to the UK and natural and legal person residing or established in the UK**. Accordingly, their jurisdiction during the Transition Period remain the same as it was before Exit Day.⁵

As a result, **the practical consequences of the UK leaving the EU do not occur on Exit Day, but rather at the end of the Transition Period**. After the Transition Period, EU law will cease to apply in the UK, subject to any arrangements that the UK and the EU may agree upon in the deal on their future relationship.

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1. Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 October 2019 (the **Withdrawal Agreement**).
 2. Articles 127(1) and (3) of the Withdrawal Agreement.
 3. Article 127(3) of the Withdrawal Agreement.
 4. Including, but not limited to, Articles 101, 102 and 106 of the TFEU, the EU Merger Regulation, Council Regulation (EC) No 1/2003 and Regulation (EC) No 2006/2004 on Consumer Protection Cooperation Regulation.
 5. Article 131 of the Withdrawal Agreement.

The Competition and Markets Authority (the **CMA**) has recently published a Guidance (available [here](#))⁶ explaining how the UK's exit from the EU affects its powers and processes for merger control and antitrust enforcement during the Transition Period, towards the end of that period, and after it ends.

Mergers

The UK merger control regime, administered by the CMA, differs from the EU regime, administered by the European Commission. The UK merger control regime is voluntary. There is no obligation to notify a merger.⁷ On the contrary, the EU regime is mandatory. The EU regime is based on the **“one-stop shop” principle**. This means that the Commission has exclusive jurisdiction to review transactions meeting the EU thresholds. When such thresholds are met, EU Member States may not apply their national merger control laws (with some exceptions).

During the Transition Period, the one-stop shop principle continues to apply.⁸

Therefore, if the parties to a transaction meeting the EU jurisdictional thresholds have formally notified the transaction to the European Commission before the end of the Transition Period, **the CMA is precluded from investigating the transaction in parallel**.

Furthermore, until the end of the Transition Period, **the UK turnover generated by merging parties will still need to be taken into account when establishing whether a merger satisfies the EU jurisdictional thresholds.**⁹

Finally, **the CJEU retains full jurisdiction to review merger decisions of the European Commission** that were either adopted before the end of the Transition Period or for mergers in which the administrative procedure has been initiated before the end of the

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6. UK exit from the EU, Guidance on the functions of the CMA under the Withdrawal Agreement, 28 January 2020 (the **CMA Guidance**).
 7. The CMA will only open an investigation on its own initiative where there is a reasonable chance that the transactions may give rise to a relevant merger situation and to a realistic prospect of a substantial lessening of competition (Mergers: Guidance on the CMA's jurisdiction and procedure, January 2014 (CMA2), para 4.3).
 8. CMA Guidance, para 3.1.
 9. CMA Guidance, para 3.2.

Transition Period.¹⁰

At the end of the Transition Period, **mergers will no longer be subject to the EU one-stop shop principle in relation to the UK**. Therefore (with the exception of mergers over which the European Commission retains jurisdiction as noted above), the European Commission will no longer have jurisdiction to investigate the effects of any mergers within the UK. As a consequence, where a merger satisfies the jurisdictional thresholds of the EUMR and the UK Enterprise Act 2002, **the CMA and the Commission may conduct parallel assessments of the same merger in their respective jurisdictions**.¹¹

Antitrust enforcement

As regards antitrust enforcement, **the effect of the Transition Period is to extend the application of EU competition law in the UK beyond Exit Day**. Article 101 TFEU (the EU law prohibition of anti-competitive agreements) and Article 102 TFEU (the EU law prohibition of abuse of a dominant position) will have full force and effect in the UK during the Transition Period. Likewise, Regulation 1/2003¹² and the EU block exemption regulations and EU Guidance¹³ will also continue to apply.¹⁴

This means that **the European Commission will continue to have the power to enforce Articles 101 and 102 TFEU in relation to UK businesses in the same way as it did before Exit Day**. Appeals related to a decision of the European Commission addressed to UK entities will continue to be heard exclusively by the EU courts.¹⁵

Where the Commission has initiated an investigation into a suspected breach of either Article 101 or Article 102 TFEU, the CMA will be relieved of its competence to launch or

10. Articles 95 and 131 of the Withdrawal Agreement; CMA Guidance, para 3.7.

11. CMA Guidance, para 3.30.

12. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

13. For a list of the EU block exemptions in force under EU law and the relevant guidance documents see Annex A of the CMA Guidance.

14. CMA Guidance, para 4.1.

15. Article 95(3) of the Withdrawal Agreement; CMA Guidance, para 4.2.

continue its own parallel investigation into the same UK conduct.¹⁶ However, where this conduct continues after the end of the Transition Period, the position is less clear and it is possible the CMA could assume jurisdiction over this post-Transition Period portion of the conduct, regardless of whether there is an ongoing parallel investigation by the Commission. The precise scope of the jurisdiction of the CMA with respect to such future cases may be the subject of future legislation.¹⁷

Likewise, the CMA's power to investigate conduct prohibited by EU law, as well as UK law, continues throughout the Transition Period, and expires at the end of the Transition Period. **After the end of the Transition Period, the CMA will only investigate suspected infringements of UK domestic competition law** (*i.e.* the Chapter I and Chapter II prohibitions of the Competition Act 1996). The CMA will then be free to diverge from EU decisions and judicial precedent in interpreting domestic UK provisions that largely mirror similar provisions in EU law.¹⁸

Finally, the Withdrawal Act preserves the EU block exemption regulations in the UK as "**retained exemptions**".¹⁹ This means that, after the Transition Period, the retained exemptions will operate as exemptions from domestic prohibitions until and unless they are amended or revoked under UK law.

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16. Article 11(6), Council Regulation (EC) No 1/2003; CMA Guidance, para 4.3.

17. CMA Guidance, para 4.19.

18. CMA Guidance, para 4.21.

19. CMA Guidance, para 4.26.