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NEWSLETTER

14 - 28 JANUARY 2026

ISSUE 2

COMPETITION & REGULATORY NEWSLETTER

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UK government consults on overhaul of mergers and markets regimes

The UK government has launched a consultation proposing significant changes to the UK's competition regime.

Background

The consultation has long been expected. Over the last 15 months the UK government has put pressure on UK regulators, including the Competition and Markets Authority (CMA), to put economic growth at the centre of their regulatory missions (see here). It first previewed plans to revamp the UK merger control regime last March (see our briefing), and published its growth-focused Strategic Steer to the CMA in May (see here).

Since the government's call to arms, the CMA has been working to embed its new '4Ps' framework across its work to improve pace, predictability, proportionality and process. Amongst other things, this has seen the CMA update its merger remedies guidance (for further detail see here and here) and clarify its approach to the 'share of supply' and 'material influence' aspects of the UK's merger thresholds.

"Refining our competition regime"

The government's consultation acknowledges the "*substantial actions*" the CMA has taken, noting that the 4Ps have led to "*operational transformation across all areas of the CMA's work*". The consultation is intended to "*support and empower*" the CMA in realising the full potential of the 4Ps framework and delivering against the Strategic Steer.

Removal of independent panel for in-depth merger reviews and market investigations

Central to the proposals is the removal of the independent panel system, under which an independent inquiry group is currently convened to oversee and decide Phase 2 merger investigations and market investigations. The proposed changes would bring decision-making in such investigations in-house, with decisions being taken either by the CMA Board or (more likely) a committee of the Board or a sub-committee (following the model for the digital markets regime). A pool of non-CMA staff experts would provide diversity and experience across decision-making in any sub-committees (to maintain the diverse and expert views currently provided by the panel).

Despite the government's claim that these changes will "*enhance the Board's involvement and accountability while safeguarding CMA independence from government*", many are concerned that the proposed changes will remove an important "check and balance" on the CMA's decision-making powers, leading to calls for the government to consider introducing a full merits review of CMA decisions by the Competition Appeal Tribunal, rather than maintaining the current judicial review standard.

Streamlining the markets regime

The proposals also include replacing market studies and market investigations with a single-phase market review tool, to reduce the length of time markets are under review

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(which can currently be over three years in some cases). The statutory time period would be 24 months (extendable by six months in certain circumstances), although the government expects reviews to conclude more quickly in some cases.

Further proposed reforms to the markets regime include requiring the CMA to consider sunset clauses when designing remedies and reviewing market remedies at least once every ten years, as well as granting the CMA discretion to decide whether to take forward market reviews when markets are referred for investigation by the concurrent sector regulators (while allowing concurrent regulators to take on the monitoring and enforcing of market remedies imposed or accepted by the CMA in their sectors).

Clarification of jurisdictional tests for mergers and more time for Phase 1 remedies

The government regards the voluntary merger control process as a "*positive feature*" of the UK's competition regime. Nevertheless, it considers that the current jurisdictional tests – specifically the share of supply and material influence tests – are too broad.

As a result, the government has proposed limiting the factors the CMA can consider when applying the tests. In respect of the share of supply test, under the proposals the CMA would be confined to considering the established metrics (value, cost, price, quantity, capacity, workers employed), removing the open-ended "*or some other criterion*" basis that has previously created so much unpredictability. In respect of the material influence test, the government proposes that the CMA be limited to considering certain factors (which essentially put the CMA's current practice on a statutory footing) – namely, shareholding or voting rights thresholds, board representation or appointment rights, special voting rights or veto rights over strategic decisions, access to confidential strategic information, and commercial, financial or consultancy arrangements.

The government is also proposing to extend the time period in which remedies to address competition concerns can be agreed following a Phase 1 investigation (with the aim of avoiding a more intensive Phase 2 investigation). Whilst the parties would still need to submit a remedy proposal within five working days of the Phase 1 decision, the CMA would have discretion to extend this by five working days, and will have up to 20 working days to make its decision (as opposed to the current 10 working days).

Cross-cutting measures

The government is additionally consulting on a number of cross-cutting measures. These include giving the CMA stronger powers to investigate algorithms across competition and consumer protection cases, including, for example, powers to require businesses to produce simulated outputs, and perform specified demonstrations or tests to allow CMA experts to observe how an algorithm operates under certain conditions.

Next steps

The consultation is open until 31 March 2026. The government recognises that the "*prolonged uncertainty of potential legislative change does not bring the predictability that these changes look to deliver*" – it will therefore look to bring forward legislation which takes into account the consultation responses "*as soon as Parliamentary time allows*".

OTHER DEVELOPMENTS

MERGER CONTROL

CMA launches call for evidence on approach to merger efficiencies

On 15 January 2026, the CMA launched a call for evidence to inform a review of its approach to merger efficiencies, focusing primarily on its approach to assessing rivalry-enhancing efficiencies in mergers. The review forms part of the CMA's broader reform programme designed to embed the '4Ps' framework across the merger control regime, and follows the recent publication of its revised merger remedies guidance (see previous editions of our newsletter here and here).

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Rivalry-enhancing efficiencies are merger-specific benefits that strengthen the merged firm's ability and incentive to compete. In some cases, the efficiencies may offset the potential competition concerns by enabling firms to offer better quality, lower costs or increase their ability and incentive to innovate, ultimately benefitting the consumers. The CMA's Merger Assessment Guidelines (MAGS) recognise the potential for such efficiencies but have set high thresholds which the CMA acknowledges has resulted in efficiency claims rarely being accepted, as supporting evidence can be difficult to verify. The MAGS require rivalry-enhancing efficiencies to enhance rivalry in the supply of products where an SLC may arise, be timely, likely and sufficient to prevent an SLC, as well as be merger-specific and benefit customers in the UK. While rare, the CMA recognised certain efficiencies in some cases, including *Vodafone/Three* and *Microsoft/Activision* and cites these cases as one rationale for starting the present review. The CMA also highlights its evolving thinking on the dynamic effects of mergers, and stakeholder feedback in response to its merger remedies review, where respondents indicated the need for clarity on evidence requirements and how the CMA could improve engagement around efficiencies claims.

In this call for evidence, the CMA is seeking views and evidence on two principal themes:

1. **The CMA's analytical approach to rivalry-enhancing efficiencies**. The CMA asks whether the current framework is the appropriate approach and seeks views on how it could be improved. Some questions relate to whether its approach to evidence should differ across efficiency types, for example efficiencies related to cost (such as economies of scale or consolidating assets) as compared to those related to revenues (such as having a broader range of products or services), and/or efficiencies related to innovation and investment.

2. **The CMA's process for assessing such efficiencies**. The CMA seeks views on the effectiveness of engagement with the CMA at both Phase 1 and Phase 2, the barriers parties face in making efficiency claims, and whether any learnings can be drawn from approaches in other jurisdictions or by other regulatory bodies.

The CMA's call for evidence on merger remedies will remain open until 26 February 2026. The CMA will hold further engagement sessions and develop specific proposals for public consultation in the spring, with the aim of implementing changes by summer 2026.

GENERAL COMPETITION

European Commission publishes FSR guidelines

On 9 January 2026, the European Commission announced that it has published Guidelines on the application of the Foreign Subsidies Regulation (FSR), providing greater clarity, predictability and transparency for companies. The FSR, which started to apply from 12 July 2023, empowers the Commission to address distortions caused by foreign subsidies in the internal market and to ensure a level playing field for all companies. The FSR regime introduced a new mandatory and suspensory regime for M&A transactions and public tenders above certain financial thresholds. It also includes a 'general market investigation tool', allowing the Commission to investigate lower-value concentrations, public procurement procedures, and other market situations where a distortive foreign subsidy may be involved. For further background on the FSR, see our previous client briefings here, here, and here, as well as our Top 10 Tips for M&A Transactions here.

The Commission held several consultations prior to adopting the Guidelines, launching a call for evidence in March 2025 and a public consultation with Member States and stakeholders on the draft Guidelines between July and September 2025.

The Guidelines provide clarifications in the following key areas:

1. **The assessment of distortions**. When the Commission has found that a company has benefited from a foreign subsidy, it will assess whether the foreign subsidy (i) is liable to improve the company's competitive position in the EU; and (ii) actually or potentially negatively affects competition in the EU internal market. The Guidelines provide additional clarity on this assessment and include a non-exhaustive list of subsidies that may be considered distortive. In public procurement procedures, the Commission will examine whether

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the bid submitted by the company was unduly advantageous and the extent to which the advantage can be attributed to the foreign subsidy.

2. **The balancing test under Article 6.** The Guidelines expand on the balancing test, under which the Commission will weigh the negative impacts of the foreign subsidies with any positive effects, taking into account the specific circumstances of the case. Positive effects - already referenced in Recital 21 of the FSR, may include contributions to broader Union policy objectives such as a high level of environmental protection and the promotion of R&D. In a public procurement procedure, an important consideration is the availability of alternative sources of supply. The Guidelines make clear that the Commission will not object if the positive effects outweigh the negative ones. However, for categories of foreign subsidies considered most likely to distort the internal market, positive effects are less likely to outweigh negative effects. If the negative effects prevail, the balancing test can help to determine the appropriate nature and level of commitments to accept or impose redressive measures.

3. **The Commission's call in mechanism for concentrations and public procurement procedures.** The Commission may 'call in' non-notifiable concentrations and public procurement tenders if certain conditions are met and where it believes these may impact the EU internal market. Elements taken into account by the Commission in its evaluation to start an *ex ante* review include the importance of the target's economic activity; the strategic or important character of the undertakings concerned (and in particular the target), notably when they own strategic assets such as critical infrastructure or innovative technologies, or where the procurement relates to strategically important goods or services; and patterns of presence or influence in the sector. The Guidelines also confirm the safe harbours for low-value public procurement procedures and subsidies that fall below the threshold of € 4 million over three years. They additionally provide guidance on evidentiary requirements and procedural steps following a request for prior notification.

By 13 July 2026, the Commission must present a report to the European Parliament and the Council, setting out the review of implementation and enforcement of the FSR.

Korea Fair Trade Commission publishes policy report on data-related competition concerns

On 30 December 2025, the Korea Fair Trade Commission (KFTC) published a report on data and competition that signalled, amongst other things, how it intends to address data-related competition issues in the digital economy. Although the report is not a binding guideline, it provides insights into the risk areas, the KFTC's enforcement priorities, and expected standards of compliance for digital platforms and data-driven businesses.

A few key highlights from the report include:

1. **Anti-competitive conduct relating to data access or use**

   The KFTC cautions against conduct that could potentially block a rival's ability to collect or use data such as:

   - Refusing access to data that is essential for competition;
   - Demanding exclusivity from data suppliers;
   - Using a platform's position to coerce partners to provide data;
   - Designing terms or technical conditions that undermine a competitor's ability to acquire data.

   The report also highlights data-handling practices that undermine competition by distorting user choice or entrenching market power, examples of which include:

   - Forcing bundled consent to sharing data across multiple services;
   - Designing non-neutral consent flow to favour a platform's own services.

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2. **Mergers involving the combination of datasets**

   The KFTC notes that in assessing whether such a merger is likely to give rise to competition concerns, it will examine factors including:

   - Whether a merger allows one party to accumulate unique or non-replicable data;
   - Whether data integration may create lock-in effects or raise entry barriers;
   - Whether combining datasets could reduce privacy or alter the quality of the services provided.

3. **Heightened global regulatory scrutiny of data-related policies**

   The KFTC observes that regulatory authorities are paying increasing attention to data-related policies, referencing recent domestic and international cases including the French Competition Authority's (FCA) review of Apple's App Tracking Transparency framework and the CMA's investigation into Google's Privacy Sandbox browser (see here).

Looking ahead, the KFTC has signalled that broader reform may be required to address these data-related concerns, including the potential to introduce *ex ante* legislation similar to the EU's Digital Markets Act or Japan's Smartphone Act (see here).

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