

# EVERSHEDS SUTHERLAND

## A new dawn for UK competition law

### Less than 3 months to go before new competition powers come into force

31 October 2024

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**Changes to UK competition law and a new digital markets competition law regime are expected to come into force by the end of this year/start of 2025.**

These significant changes to the UK competition law regime will come into force earlier than other material changes to consumer law enforcement, expected to take effect from April 2025 with a new legal framework applying to subscription contracts expected to apply from Spring 2026 (see [A new dawn for UK consumer law: Six months to go before the UK's CMA is able to issue fines of up to 10% of global turnover in connection with consumer law breaches](#)).

A timetable for implementation of the new Digital Markets, Competition and Consumers Act 2024 (“**DMCC**”) was set out in a statement released by the UK Government in September 2024, providing that the key competition provisions, including greater investigative and enforcement powers, will take effect in less than three months. Businesses need to take action now to ensure they use this short window of time to be prepared.

The DMCC will also bring in a new competition law regime for digital markets, under which the UK Competition and Markets Authority (“**CMA**”) will have nine months to determine which businesses will be designated as having “significant market status” (“**SMS**”) and subject to the new regime. Once in force, the new regime will have a significant impact on digital markets.

You are very welcome to join us for our Webinar, Legal Update on the DMCC, between 14:00pm and 14:40pm on Tuesday, 3<sup>rd</sup> of December 2024. We will provide a comprehensive Legal Update on the DMCC and the changes made to both Competition law and Consumer law. To register to join this Webinar, please use this [link](#). A recording will be available following the 3<sup>rd</sup> of December.

### Key changes to UK competition law

Once implemented, the DMCC will strengthen the UK competition authorities’ investigatory and enforcement powers by:

- enabling them to enforce against anti-competitive conduct which takes place outside the UK, but which impacts the UK economy;
- providing them with stronger evidence-gathering powers by introducing, amongst others, a new duty to preserve documents, the ability to use its “seize and sift” powers when it inspects domestic premises under a warrant, and the power to interview any individual including those not connected with the business under investigation;

- enabling them to issue information requests to businesses located outside the UK to require the production of information held outside the UK provided either:
  - their activities or agreements are being investigated for potentially being anticompetitive; or
  - they have a UK connection. This would be satisfied if, for example, they are a UK national, they are habitually resident in the UK, they are incorporated in the UK or carry on business in the UK; and
- enabling them to issue civil penalties on businesses and individuals which fail to comply with investigative measures such as information requests. For a business, the fine can be up to 1% of its annual global turnover or up to 5% of its daily global turnover; and for an individual, it can be up to £30,000 or up to £15,000 per day.

The DMCC will also amend the UK merger control regime by:

- increasing the UK merger control turnover threshold from £70m to £100m;
- introducing a “small merger safe harbour test” requiring the UK turnover of the target or any other enterprise concerned to exceed £10m for there to be a relevant merger situation;
- introducing a new acquirer-focused threshold to catch “killer acquisitions” and other deals not involving direct competitors. This requires at least one merging party to have:
  - an existing share of supply of at least 33% in the UK;
  - UK turnover of at least £350m; and

another party to be either a UK business/body, conduct at least part of its activities in the UK, or supply goods or services in the UK.

## Be prepared

With liability for individuals already a focus for the CMA, including through it pursuing director disqualifications, businesses should ensure that their internal policies and procedures are updated to reflect the new CMA powers of investigation and enforcement, not least with dawn raids under warrant expected to take place at people’s homes.

While the increase to the UK merger control threshold and the small merger safe harbour are helpful, in practice, the major change is the new acquirer-focused threshold which potentially materially expands the CMA’s powers to investigate M&A deals. Those involved in M&A activity also need to make sure they are familiar with the revised thresholds so that any risk assessment is carried out on the right basis.

## New competition law regime for digital markets

The digital markets competition law regime is targeted at a small number of firms with significant digital activity in the UK. The new regime will:

- require firms with SMS to follow specific conduct requirements relating to a digital activity to prevent them from unfairly treating users, limiting their choices, and restricting necessary information to make informed choices. Examples include trading on fair and reasonable terms, and providing clear and accurate information;
- enable the CMA to conduct pro-competition interventions on SMS firms, potentially mandating structural or behavioural changes, such as improving interoperability or data access;
- require SMS firms to report M&A deals above a certain threshold to the CMA, which it may then investigate using its existing merger powers, and
- equip the CMA with strong enforcement powers to address non-compliance with the new regime, including fines up to 10% of global turnover, director disqualification, and a “final

offer mechanism" to resolve complex payment term breaches.

## Preparing for implementation

On 2 August 2024, the CMA published draft guidance on the changes to UK competition law and on 24 May 2024, it published draft guidance on the new digital markets regime under the DMCC for consultation. While final guidance is still expected, the draft guidance provides some clarity on how the CMA expects to use its new powers and how the new digital regime is expected to operate.

## Next steps

Before the DMCC can be fully implemented, Parliament must approve secondary legislation including a commencement order, which must be issued at least 28 days before the changes will come into force. The CMA is also required to publish guidance on how it will execute its new functions and use its powers, drafts versions of which have already been consulted on. The Secretary of State for Business and Trade must then approve the guidance before the relevant changes to competition law can come into force.

## Further reading

- [UK's Digital Markets and Consumers Act podcast series](#)
- [The UK's CMA consults on its draft direct enforcement guidance and rules](#)
- [UK Digital Markets, Competition and Consumers Bill moves one step forward to being adopted](#)
- [A new dawn for UK competition law: significant reforms on the horizon](#)
- [The impact of the Digital Markets Competition and Consumer Bill on enforcement](#)