

# *The CMA goes live*

## *What you need to know*



April 2014

On 1 April 2014, the Competition and Markets Authority (CMA) took over the functions of the Office of Fair Trading (OFT) and the Competition Commission as the UK's merger control authority and lead regulator for competition law. At the same time various other changes to the UK's merger control and competition law regimes came into force.

### **How significant is this change?**

Despite the new authority, the most important takeaway for business is that there will be no radical change to the UK merger control or competition law regimes; in most important respects, it will largely be "business as usual" under the new authority. That said, new blood has been brought in at senior management level and the government has clearly set out its expectations of a reinvigorated approach from the CMA, particularly as regards enforcement action against cartels and other antitrust infringements. We would also highlight the following changes as worthy of note.

### **Merger control**

The UK will remain a voluntary filing regime. Parties will not be required to notify the CMA in advance of closing (but may still choose to do so). However, where the CMA investigates a completed merger, it will be likely to impose "hold separate" orders, suspending (and, in limited cases, unwinding) integration of the merging parties until the end of its investigation (this builds on the approach increasingly adopted by the OFT in recent years, but the CMA now has stronger powers in this area). In limited cases, the CMA may even impose hold separate orders for anticipated mergers. In some instances, the likelihood of such measures, and the difficulties they can cause for integration of an acquired business, may tip the balance in favour of voluntary notification between signing and completion, or alternatively notification immediately post completion.

The former administrative timetable for a Phase 1 merger investigation of 40 working days has now been made a formal statutory limit. A knock-on effect is that merging parties may face a longer pre-notification period and less flexibility as to the information that must be provided in the new notification form, prior to the CMA starting the clock on the 40 working day period. The CMA has also been granted powers to require information to be provided during Phase 1 as well as in Phase 2.

### **Antitrust investigations**

The government wants the CMA to undertake more investigations into alleged cartels and other antitrust infringements on both a civil and criminal basis. It also wants these investigations to be completed more quickly. It has tried to make it easier for the CMA to prosecute individuals for the criminal cartel offence by removing the requirement to establish "dishonesty" (although at the same time certain exclusions and defences have been introduced). The CMA will also have more extensive powers to compel any person connected with a business under investigation to answer questions (subject to the privilege against self-incrimination). In addition, the threshold for the CMA to take interim measures in antitrust investigations is being lowered.

*The government expects a reinvigorated approach from the CMA, particularly against cartels and other antitrust infringements.*

**Market investigations**

In an extension of the existing market investigation regime, the CMA will have a new power to launch wide-ranging inquiries into practices which are prevalent across numerous different markets. It remains to be seen how often the CMA will make use of this new power.

**Other changes**

In addition to the merger control and competition law changes, there have also been changes to the CMA's consumer protection role, as compared with the role formerly played by the OFT. In particular, whilst the CMA will continue to take the lead on sector-wide consumer protection investigations, overall, it will have a lesser role, with local Trading Standards officers expected to take the lead more often.

Finally, the changes coming into force are not the end of the story on reform of the UK competition law and consumer protection regimes. The Consumer Rights Bill, which is currently before Parliament, will introduce significant changes in the area of private damages actions for breach of competition law, together with new enforcement powers for breach of consumer protection law. Further changes are also likely to be necessary in future to implement in the UK the currently proposed EU directive on private damages actions for breach of competition law.

**How we can help**

If you would like to discuss any of these changes further, please speak to Nigel Seay or your usual contact at the firm.

*Merging parties may face a long pre-notification period and less flexibility as to the information that must be provided.*

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