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## Changes to UK Merger Control Regime

The UK government passed the **Digital Markets, Competition & Consumers (DMCC) Act** in May 2024 and it is expected to come into force in Autumn 2024. Alongside establishing a regulatory regime for big tech, the DMCC Act reforms aspects of the UK's merger control regime, enhancing the CMA's already wide-reaching powers of review.

The digital markets competition regime will only apply to firms designated by the CMA as having Strategic Market Status (SMS) in relation to one or more digital activities; so for non-SMS firms the UK merger regime remains voluntary (but the CMA has an active market intelligence function and reviews a large number of non-notified deals each year).

### NEW UK MERGER THRESHOLDS



**CMA can review deals meeting any of the following thresholds**

**ADJUSTED**

Target's UK turnover is £100m (increased from £70m) or acquirer and target together supply at least 25% share of supply

**NEW**

Transaction involves a firm with Strategic Market Status (mandatory notification and standstill)

Designated strategic market status firm



Acquiring 15%+ equity/voting share



Value of holding ≥£25m



Meets UK nexus test

**NEW**

Transaction may be considered a "killer acquisition"

Any party (e.g. acquirer) has UK share of supply of 33%



That party (e.g. acquirer) has UK turnover of ≥£350m



Other party (e.g. target) meets UK nexus test



**However, small deals benefit from a safe harbour (not reviewable)**

Target UK turnover <£10m



Acquirer(s) UK turnover <£10m

\* UK nexus test is satisfied where a party: is incorporated; carries on activities; and/or supplies goods or service in the UK.



#### Procedural changes

- CMA's information gathering powers confirmed by courts to have extra-territorial effect.
- Businesses can be fined up to 1% of global turnover or 5% of global daily turnover for non-compliance with statutory information requests. Breaches of final orders/undertakings and UIs can attract fines of up to 5% of global turnover.
- CMA can assist overseas regulators, including through issuing formal information requests.
- Merging parties can request a fast track to Phase 2 without conceding competition concerns. And fast-tracked Phase 2 reviews can be extended by up to 11 weeks.



#### Practical consequences

- Big tech deals very likely within CMA's (already expansive) jurisdiction (because of SMS + killer acquisition thresholds).
- CMA now has clear ability to call in purely vertical deals (previously share of supply thresholds required horizontal overlap).
- Fines are now pegged to worldwide turnover and are a real deterrent, with the potential to run into the millions.
- Reforms may make fast tracks to Phase 2 (which have been rare) more appealing, with potential to reduce overall investigation time for deals raising complex substantive concerns.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:



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