

UK Exit from the EU:

Guidance on the functions of the CMA under
the Withdrawal Agreement

Explanatory note

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About the guidance

- 1.1 The Competition and Markets Authority (CMA) has published a guidance document to explain how the UK's exit from the European Union (EU Exit) affects its powers and processes for competition law enforcement ('antitrust', including cartels), merger control and consumer protection law enforcement during, towards the end of and after the transition period provided for in the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the Withdrawal Agreement).¹ The transition period runs from 11 p.m. on 31 January 2020 (Exit Day) until 11 p.m. on the 31 December 2020 (the Transition Period).² The guidance also explains the treatment of 'live' mergers and 'live' competition law ('antitrust', including cartels) cases, which are those cases that are being reviewed by the European Commission or the CMA during and at the end of the Transition Period.
- 1.2 The guidance takes into account the principles in the Withdrawal Agreement, as endorsed by leaders at a special meeting of the European Council on 13 December 2019, and the two key pieces of primary legislation which give legal effect in UK law to EU Exit and to Withdrawal Agreement:
- the European Union (Withdrawal) Act 2018 (Withdrawal Act); and
 - the European Union (Withdrawal Agreement) Act 2020 (Withdrawal Agreement Act).
- 1.3 The guidance is intended for businesses and their legal advisers but may also be of interest to other enforcers. For more general information on the competition law enforcement ('antitrust', including cartels), merger control and consumer protection law enforcement regimes, see:
- Guidance on the CMA's investigation procedures in Competition Act 1998 cases (CMA8)³
 - Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)⁴

¹ Available [here](#).

² Article 132 of the Withdrawal Agreement provides for the possibility to extend the Transition Period by up to one or two years subject to such an extension being agreed by the 'Joint Committee' before 1 July 2020. However, under UK law, section 15A of the European Union (Withdrawal Act) 2018 (as introduced by section 33 of the European Union (Withdrawal Agreement) Act 2020) prevents ministers from agreeing an extension. Any reference to the Transition Period in this document includes any extension.

³ [Guidance on the CMA's investigations procedures in Competition Act 1998 cases: CMA8](#)

⁴ [Mergers: Guidance on the CMA's jurisdiction and procedure: CMA2](#)

- Consumer protection enforcement guidance (CMA58)⁵

1.4 The guidance applies to the CMA's ongoing and future:

- merger cases under the Enterprise Act 2002 (EA02);
- antitrust cases, including cartels, under the Competition Act 1998 (CA98) - i.e. relating to the competition law prohibitions on anti-competitive agreements and on abuse of a dominant position; and
- enforcement of consumer legislation, in particular under Part 8 of the EA02.

1.5 Some of CMA's functions which are less materially affected by EU Exit are not specifically covered by the guidance, including regulatory appeals, market studies, market investigations and the cartel offence. The CMA's existing guidance on these functions may, however, refer to concepts under EU law. These references will continue to have effect in the UK as long as EU law has legal effect in the UK.

1.6 The guidance offers an explanation of the legal changes expected to result from EU Exit, but it is not a definitive statement of, or a substitute for, the law itself. The guidance cross-refers to, and should be read alongside, the CMA's existing guidance, which continues to apply. In case of conflict between this guidance and any other CMA guidance document, the most recent guidance should prevail.⁶

1.7 In order to have guidance in place ahead of EU Exit, the CMA has chosen to publish this guidance in a 'live' document which may be subject to change, particularly in the light of further political and legal developments. Accordingly, the CMA may amend elements of the guidance or issue further guidance in due course to clarify and explain any differences to the UK regime which will take effect at the end of the Transition Period, taking into account the UK's future relationship with the EU. The CMA welcomes any views stakeholders may wish to raise in relation to the guidance which will be considered in the context of any future guidance the CMA might issue. Stakeholders are invited to send any such comments by post or email to:

⁵ Consumer protection enforcement guidance: CMA58

⁶ All CMA guidance documents are available at: www.gov.uk/cma

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