

Foreign Direct Investments

Draft guidance on the CMA's powers and procedures

Consultation document

September 2020

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1. About the consultation

Introduction

- 1.1 [Regulation \(EU\) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union](#) (the FDI Regulation) becomes applicable on 11 October 2020 and will be in force in the UK until the end of the Transition Period. The FDI Regulation creates a cooperation mechanism within the European Union for the exchange of information and raising concerns in relation to foreign direct investment that might affect security or public order of EU Member States.
- 1.2 To ensure that the FDI Regulation can operate effectively in the UK, [the Enterprise Act 2002 \(EU Foreign Direct Investments\) \(Modifications\) Regulations \(2020\) Statutory Instrument](#) (the FDI SI) comes into force simultaneously with the application of the FDI Regulation, on 11 October 2020. The FDI Instrument enables the CMA to use its powers in the Enterprise Act 2002 to gather information from businesses in response to a request made under the FDI Regulation and share certain information with EU Member States and the European Commission.
- 1.3 The CMA has published draft guidance to explain its information gathering powers as extended by the FDI SI and how the CMA will apply these powers if a request under the FDI Regulation is received from EU Member States and/or the European Commission via the Department for Business, Energy and Industry Strategy. The draft guidance also provides clarification on the CMA's powers and procedures that will apply to imposing penalties for failure to comply with an information request issued by the CMA under its powers granted by the FDI SI. Finally, the draft guidance explains the information gateways for sharing information in relation to the FDI Regulation.
- 1.4 The draft guidance cross-refers to, and should be read alongside, existing CMA guidance which are listed below and remain in force:
 - [Administrative penalties: Statement of Policy on the CMA's approach \(CMA4\)](#)
 - [Transparency and disclosure: Statement of the CMA policy and approach \(CMA6\)](#)
 - [CMA's mergers intelligence function \(CMA56\)](#)

Scope of the Consultation

- 1.5 This consultation seeks the views of interested parties on the CMA's information gathering powers as extended by the FDI SI and the enforcement of section 109 notices issued under the FDI SI powers as required by section 116 of the Enterprise Act 2002. The CMA also invites comments in relation to disclosure of information to EU Member States and the European Commission via the Department for Business, Energy and Industrial Strategy for the purposes of the FDI Regulation.
- 1.6 The geographical scope of this consultation is the UK.

Question for consideration

- 1.7 Do you have any comments on the draft guidance?

2. Consultation process

- 2.1 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. In particular, the CMA wants to ensure that the guidance is clear and contains sufficient information for businesses and their advisers on the CMA's powers as extended by the FDI SI and how these powers will be applied for the purposes of the UK complying with the FDI Regulation.

How to respond

- 2.2 We encourage you to respond to the consultation in writing by email using the contact details provided in paragraph 1.13 below.
- 2.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 2.4 In pursuance of our policy of openness and transparency, we will publish non-confidential version of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive at the same time.

Duration

- 2.5 The consultation will run from 7 September 2020 to 18 September 2020.

Contact details

- 2.6 Responses should be submitted by email no later than 5pm on 18 September 2020 and should be sent to: FDIGuidance@cma.gov.uk

Compliance with government consultation principles

- 2.7 In consulting, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

- 2.8 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018. ‘Personal data’ is information which relates to a living individual who may be identifiable from it.
- 2.9 We are processing this personal data for the purposes of our work. This work relates to the issuance of guidance on the CMA’s powers as extended by the FDI SI and how these powers will be applied for the purposes of the UK complying with the FDI Regulation, on which guidance we are consulting. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.
- 2.10 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA’s Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).
- 2.11 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual’s interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as ‘confidential’ and explain why you consider that it is confidential.
- 2.12 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.

- 2.13 When you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

After the consultation

- 2.14 After the consultation, we will publish a final version of the guidance. As noted above, we propose to publish non-confidential versions of the responses received. These documents will be available on our webpages and respondents will be notified when they are available.

