

Guidance on the functions of the CMA after the end of the Transition Period

Consultation document

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This publication is also available at www.gov.uk/cma.

Contents

	<i>Page</i>
1. About the consultation	4
2. Consultation process	7
3. Questions for consideration	10

1. About the consultation

Introduction

- 1.1. The United Kingdom's exit from the European Union took place at 11 p.m. on 31 January 2020. Article 126 of the Agreement on 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 provides for a 'transition period' which will end at 11:00pm on 31 December 2020 (the **Transition Period**).²
- 1.2. The Competition and Markets Authority (**CMA**) has published a draft guidance document to explain how the Transition Period ending will affect its powers and processes for antitrust and cartel enforcement, merger control and consumer law enforcement after the end of the Transition Period. The draft guidance also explains the treatment of 'live' cases, which are those cases that are being reviewed by the European Commission or the CMA on 31 December 2020.
- 1.3. The draft guidance is intended for businesses and their legal advisers but may also be of interest to other enforcers. For more general information on the antitrust and cartel enforcement, merger control and consumer law enforcement regime, 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
 - Consumer protection enforcement guidance (CMA58)⁵
- 1.4. The draft guidance applies to the CMA's ongoing and future:
 - merger cases under the Enterprise Act 2002 (EA02);

¹ [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 13 December 2019.](#)

² In the remainder of this document, we refer to the end of the Transition Period and 31 December 2020 interchangeably. References to 31 December 2020 should be taken to mean **11:00pm** on 31 December 2020, when the Transition Period ends under the terms of the Withdrawal Agreement.

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

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

⁵ [Consumer protection enforcement guidance: CMA58](#)

- ‘antitrust’ cases, including cartels, under the Competition Act 1998 (CA98); and
 - enforcement of consumer protection legislation, in particular under Part 8 of the EA02.
- 1.5. Some of the CMA’s functions which are less materially affected by the ending of the Transition Period are not specifically covered by the draft guidance, including regulatory appeals, market studies, market investigations and the criminal cartel offence. The CMA guidance on these functions may, however, refer to concepts under EU law and such references will continue to have effect in the UK for as long as, and in so far as, EU law has legal effect in the UK.
- 1.6. The draft guidance explains the legal changes expected to result from the end of the Transition Period, but it is not a definitive statement of, or a substitute for, the law itself. The draft guidance cross-refers to, and should be read alongside, existing CMA guidance and in case of conflict between an existing guidance document and the draft guidance under consultation, the most recent guidance should prevail.⁶ The CMA may issue further guidance in due course to clarify or amend elements of the draft guidance and explain any future cooperation arrangements agreed with the European Commission after the end of the Transition Period.
- 1.7. The draft guidance takes into account the European Union (Withdrawal) Act 2018; the European Union (Withdrawal Agreement) Act 2020; and related secondary legislation introduced by the Government, including the [Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019](#); the [Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020](#); and the [Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) relating to enforcement of consumer legislation.

Scope of this consultation

- 1.8. This consultation seeks the respondents’ views on the content of the draft guidance and, in particular, the questions raised in Section 3 of this document. We want to ensure that the guidance is clear, comprehensive and useful for its intended readers.
- 1.9. We are seeking the views of interested parties, including but not limited to parties to ongoing procedures before the European Commission, their legal or other advisers who have been involved in antitrust, cartels, merger notification

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

processes, and businesses, legal or other advisors who may be affected by the exercise of the CMA's functions, including in relation to the CMA's consumer enforcement powers.

- 1.10. 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, we want to ensure that it provides clarity for businesses and their advisers and contains sufficient information on how the CMA's powers and processes will be affected by the Transition Period ending on 31 December 2020.

2. Consultation process

How to respond

- 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. We encourage you to respond to the consultation in writing (by email) using the contact details provided in paragraph 2.5 below. Please provide supporting evidence for your views where appropriate.
- 2.2 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.
- 2.3 In pursuance of our policy of openness and transparency, we will publish non-confidential versions 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 (see further paragraphs 2.7 to 2.12 below).

Duration

- 2.4 The consultation will run for four weeks, from 2 October 2020 to 30 October 2020.

Contact Details

- 2.5 Responses should be submitted by email by no later than midnight on 30 October 2020 and should be sent to:

EUExitGuidance@cma.gov.uk

Compliance with government consultation principles

- 2.6 In preparing this consultation, 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

- 2.7 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.
- 2.8 We are processing this personal data for the purposes of our work. 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 and to ensure that we properly consult on the guidance on the functions of the CMA after the end of the Transition Period, before it is finalised and issued.
- 2.9 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](#).
- 2.10 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.
- 2.11 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 any 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 Part 9 of the Enterprise Act 2002.
- 2.12 Considering that 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

- 2.13 After the consultation, we will publish a final version of the guidance and a summary of the responses received during the consultation. As noted above, we propose to publish non-confidential versions of the responses received. These documents will be available on our webpages at www.gov.uk/cma and respondents will be notified when they are available.

3. Questions for consideration

- 3.1 Is the content, format and presentation of the draft guidance sufficiently clear? If there are specific parts of the draft guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- 3.2 We are particularly interested in your views on the following areas:
- (a) Does the draft guidance generally provide sufficient information and clarity in relation to the jurisdiction of merger cases which are being reviewed at the end of the Transition Period (i.e. 'live' cases)? Does the draft guidance generally provide sufficient information and clarity in relation to the treatment of merger cases opened after the end of the Transition Period? If not, please indicate if there are any aspects of the merger control rules and procedures on which further information would be useful.
 - (b) Does the draft guidance generally provide sufficient information and clarity in relation to the legal framework that will govern antitrust and cartel cases opened prior to the end of the Transition Period (i.e. 'live' investigations)? Is there enough clarity provided in relation to the treatment of antitrust and cartel investigations after the end of the Transition Period? If not, please indicate if there are any aspects of the antitrust and cartel enforcement procedures on which further information would be useful.
 - (c) Does the draft guidance generally provide sufficient information and clarity in relation to the CMA's understanding of the legal framework that will govern the consumer protection regime after the end of the Transition Period and its approach to the exercise of its functions?
- 3.3 The CMA would also welcome the views of stakeholders on any other aspects of the draft guidance.