

# Guidance on the functions of the CMA after a 'no deal' exit from the EU

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# 1. Preface

- 1.1 The United Kingdom's exit from the European Union (EU Exit) is effective in the UK from 11 p.m. on the date specified in Section 20 of the European Union (Withdrawal) Act 2018 (Exit Day).
- 1.2 This guidance is designed to explain how EU Exit will affect the powers and processes of the CMA for antitrust and cartel enforcement, merger control and consumer protection law enforcement after Exit Day.<sup>1</sup> The guidance also explains the treatment of 'live' cases in a no deal scenario, which are those cases that are being reviewed by the European Commission or the CMA on Exit Day.
- 1.3 This guidance will come into effect on Exit Day only in the event that the UK leaves the EU in a no deal scenario and the [Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (the Competition SI) come into effect. The CMA shall in no way be bound by this guidance unless and until such events occur. If the UK does not leave the EU in a no deal scenario, this guidance will be withdrawn.
- 1.4 This 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 protection legislation, in particular under Part 8 of the EA02.
- 1.5 This guidance cross-refers to, and should be read alongside, existing CMA guidance and in case of conflict between an existing guidance document and the present guidance, the most recent guidance should prevail.<sup>2</sup> The CMA may issue further guidance in due course to clarify or amend elements of this guidance and explain any future cooperation arrangements agreed with the European Commission after EU Exit. The CMA expects to re-issue guidance to remove references to EU legislation and processes over time.

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<sup>1</sup> So far as they relate to competition law under the Competition Act 1998 and Enterprise Act 2002, as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA13), and the CMA's enforcement powers under consumer protection legislation, in particular Part 8 of the Enterprise Act 2002.

<sup>2</sup> All available at: [www.gov.uk/cma](http://www.gov.uk/cma).

- 1.6 The UK Government has introduced primary legislation which gives legal effect in UK law to EU Exit, namely the European Union (Withdrawal) Act 2018 (the Withdrawal Act). The Withdrawal Act essentially repeals the European Communities Act 1972 with effect from Exit Day and brings across certain EU legislation to form part of the UK's domestic law.
- 1.7 The Government has also made secondary legislation designed to apply from Exit Day and give effect to EU Exit. These include the Competition SI and a number of statutory instruments in the field of consumer protection, in particular the [Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (the Consumer Enforcement SI (together with the Competition SI, the Withdrawal Act SIs), relating to enforcement of consumer legislation.

### ***What is not covered by this guidance?***

- 1.8 The exercise of the CMA's State aid powers is not covered by this guidance.
- 1.9 In addition, some of the CMA's functions which are less materially affected by EU Exit are not specifically covered by this guidance, including regulatory appeals, market studies, market investigations<sup>3</sup> and the criminal cartel offence. The CMA guidance on these functions may, however, refer to concepts under EU law and such references must now be read with the relevant changes in UK law resulting from EU Exit in mind.<sup>4</sup> For example, the cartel offence regime is governed exclusively by domestic law and will therefore not be directly affected by EU Exit, but the [Cartel Offence Prosecution Guidance \(CMA9\)](#) refers to exclusions from the cartel offence which are based on EU law. The Competition SI has removed reference to EU law from the relevant provisions of the CA98, and the Cartel Offence Prosecution Guidance (CMA9) should be read in line with this.
- 1.10 The CMA's prioritisation principles<sup>5</sup> are also not materially affected by this guidance.<sup>6</sup> More generally, unless otherwise stated in this guidance, the CMA's existing guidance will continue to apply to the exercise of each of its functions.

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<sup>3</sup> The references to the modernisation regulation at paragraphs 2.9 to 2.18 of OFT511 should be read in light of Section 4 of this Guidance.

<sup>4</sup> See the following existing guidance in respect of these areas: [Regulatory appeals and references](#), [Market studies and investigations: CMA3](#); [Guidelines for market investigations: CC3](#); and [Cartel offence prosecutions: CMA9](#).

<sup>5</sup> [Prioritisation principles for CMA: CMA16, April 2014](#).

<sup>6</sup> See paragraph 4.6 below for further details.

1.11 This guidance offers an explanation of the legal changes expected to result from EU Exit, but it is not a definitive statement of, nor a substitute for, the law itself. The legal tests which the CMA applies in carrying out its functions are not addressed in this guidance. A range of publications on how the CMA carries out this substantive assessment is available at [www.gov.uk/cma](http://www.gov.uk/cma). The CMA recommends that any person who considers that they or their business may be affected by an investigation into suspected anti-competitive practices or a breach of consumer law or may have an interest in it,<sup>7</sup> or who are involved in a transaction which may trigger the UK merger control thresholds in the EA02, may wish to seek independent legal advice.

### **Guidance structure**

1.12 The remainder of this guidance is split into four further sections:

- **Section 2: Legal framework** – this section presents and explains the impact of the Withdrawal Act and consequential domestic legislation on the UK legal framework in relation to merger control, competition and consumer protection;
- **Section 3: Merger control** – this section explains how the rules and procedures will apply to merger control for mergers with an EU element after EU Exit;
- **Section 4: Competition law enforcement (antitrust, including cartels)** – this section focuses on the rules and procedures that will apply to cases with an EU cross-border element under the competition law prohibitions on anti-competitive agreements and on abuse of a dominant position after EU Exit;
- **Section 5: Consumer protection law enforcement** – this section focuses on the rules and procedures that will apply to consumer cases with an EU element after EU Exit;
- **Annex A:** this annex sets out a list of CMA guidance which is not impacted by EU Exit;
- **Annex B:** this annex provides a table listing the EU block exemptions in force at as Exit Day under EU law and being retained under national law.

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<sup>7</sup> For example, complainants or customers.

## 2. The legal framework

### *Part 1: The Withdrawal Act*

- 2.1 On 26 June 2018, the Withdrawal Act received Royal Assent. The Withdrawal Act states that the European Communities Act 1972 is repealed on Exit Day. The European Communities Act 1972 was the principal piece of legislation passed by the UK Parliament that gave effect to EU law in the UK.
- 2.2 Pursuant to section 3 of the Withdrawal Act (though subject to the exception contained in section 5 of the Withdrawal Act) directly effective EU legislation, including EU regulations, decisions and EU Treaty articles, so far as operative immediately before EU Exit, are brought across and form part of the UK's domestic law on and after EU Exit.
- 2.3 Furthermore, under section 2 of the Withdrawal Act, EU-derived domestic legislation – including that enacted under section 2(2) of the European Communities Act in order to implement an EU directive – also continues to have effect in UK domestic law on and after Exit Day.
- 2.4 Following EU Exit, anything which continues to be, or forms part of, UK domestic legislation by virtue of section 2 or 3 of the Withdrawal Act constitutes 'retained EU law'. For further information on the concept of 'retained EU law' under the Withdrawal Act, please refer to the following public papers:
- House of Commons Library – [The European Union \(Withdrawal\) Bill: Retained EU law](#); and
  - House of Commons Library – [The status of 'retained EU Law'](#).
- 2.5 Under section 8 of the Withdrawal Act, Ministers have the power to make statutory instruments to amend or 'modify' this body of retained EU law with a view to preventing, remedying or mitigating (a) any failure of retained EU law to operate effectively, or (b) any other deficiency in retained EU law.<sup>8</sup> As mentioned in the preface (at paragraph 1.7), the Government used this power when it made the Withdrawal Act SIs, which are designed to apply from Exit Day in the event a Withdrawal Agreement is not concluded.

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<sup>8</sup> Section 8(1), Withdrawal Act.

2.6 Under the Withdrawal Act, any question as to the validity, meaning or effect of **unmodified** retained EU law is to be decided, so far as they are relevant to it, in accordance with any case law or general principles of the Court of Justice of the European Union (CJEU) laid down up until Exit Day.<sup>9</sup> Lastly, under the Withdrawal Act, the UK Supreme Court and the High Court of Justiciary<sup>10</sup> are not bound by any retained EU case law.<sup>11</sup> This means that, after Exit Day, CJEU case law relating to unmodified retained EU law will have the same status in domestic courts and tribunals as existing decisions of the UK Supreme Court or High Court of Justiciary.

## ***Part 2: The UK domestic legislation giving effect to EU Exit***

### *The Competition (Amendment etc.) (EU Exit) Regulations 2019*

2.7 The Competition SI separates the UK and EU antitrust enforcement and merger control systems and makes provision for transition to a standalone UK competition regime after EU Exit. In particular, the Competition SI revokes EU competition regulations, certain European Commission decisions made under EU regulations and treaty rights that will be incorporated into UK law on Exit Day. It also amends the CA98, EA02, European Block Exemption Regulations and other legislation containing competition provisions, as appropriate. Further explanation of the Competition SI can be found in the [Explanatory Memorandum](#).

### *The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018*

2.8 The Consumer Enforcement SI amends the enforcement provisions in Part 8 of the EA02 (Part 8), and the investigatory powers in Schedule 5 to the Consumer Rights Act 2015 (CRA), to make them appropriate for a purely domestic consumer protection enforcement regime. In particular it revokes the Consumer Protection Co-operation (CPC) Regulation<sup>12</sup> and removes related powers in Part 8 and the CRA, to reflect the end of the UK's formal role in the EU consumer enforcement co-operation regime.

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<sup>9</sup> Pursuant to section 6 of the Withdrawal Act, this applies so far as retained EU law remains “unmodified”. Where retained EU law has been modified on or after Exit Day it can be interpreted in accordance with CJEU case law and the general principles of EU law where that accords with the intention of the amendments (s.6(6) Withdrawal Act).

<sup>10</sup> The highest criminal court in Scotland.

<sup>11</sup> Section 6(4) of the Withdrawal Act and Withdrawal Act, Explanatory Notes, Section 6: Interpretation of retained EU law.

<sup>12</sup> The CPC Regulation having been converted to UK law under the Withdrawal Act.



2.9 Further detail on what this means in practice for merger control, competition and consumer law enforcement in the UK following EU Exit is set out in this guidance.

### 3. Merger control

- 3.1 Prior to EU Exit, where a merger had a Community dimension, the European Commission had exclusive competence to review that merger within the EU, including with respect to its effects on any UK market or markets.<sup>13</sup> In such a situation, the CMA did not undertake its own competition assessment, except where all or part of the case was transferred under the referral provisions of the EU Merger Regulation (EUMR).
- 3.2 After EU Exit, the European Commission's review of a merger will no longer cover the UK and mergers may be subject to review by both the CMA and the European Commission.
- 3.3 This section of the guidance explains how parties can expect merger control cases which are 'live' at Exit Day to be treated and how existing CMA guidance should be read in light of EU Exit.

#### ***Part 1: Cases opened prior to Exit Day***

##### *Cases being reviewed by the European Commission prior to Exit Day*

- 3.4 If the European Commission has issued a decision<sup>14</sup> before Exit Day on a specific merger then the CMA has no jurisdiction over that same merger unless the decision is annulled, in full or in part, following an appeal. Where a decision is annulled, the CMA could assert jurisdiction from the date of the European Court decision if the UK jurisdictional requirements are met.<sup>15</sup>
- 3.5 If the European Commission has not issued a decision before Exit Day, then the CMA is no longer prohibited by the EUMR from taking jurisdiction over the merger and UK national merger control law will apply. This means that the CMA has jurisdiction to review the merger, and its effects within the UK, if the UK jurisdictional requirements are met (see section 4 in the [CMA's guidance on jurisdiction and procedure \(CMA2\)](#) and the [CMA's guidance on changes to jurisdictional thresholds for UK merger control \(CMA90\)](#)). This would apply whether or not the merger had been referred to the European

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<sup>13</sup> Article 21(3) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, (EUMR) p. 1-22.

<sup>14</sup> Under Articles 6(1)(b) or 8(1), 8(2) or (3) EUMR or the concentration is deemed to have been declared compatible with the internal market under Article 10(6) EUMR.

<sup>15</sup> Paragraph 19 of Schedule 4 of the Competition SI.

Commission using an Article 4(5) or Article 22 referral request prior to Exit Day.

- 3.6 After Exit Day, the CMA may formally investigate mergers notified by the parties or identified by its mergers intelligence function,<sup>16</sup> in which the European Commission has not taken a decision before Exit Day. The CMA's standard approach to calling in cases as described in the Guidance on the CMA's mergers intelligence function (CMA56) will apply to such cases.
- 3.7 While the UK merger control regime is voluntary (and therefore there is no obligation to notify), merging parties are encouraged to engage with the CMA at an early stage, particularly where the transaction may raise potential competition concerns in the UK.<sup>17</sup> In addition, not notifying a merger to the CMA raises certain risks for merging parties (as described in more detail in paragraphs 6.20 and 6.21 of CMA2). These risks will apply equally to cases which had not been decided by the European Commission before Exit Day, including mergers cleared by the European Commission after Exit Day and subsequently completed. In particular, as noted below at paragraph 3.10, the CMA may issue initial enforcement orders in relation to completed mergers (including completed mergers which have been cleared by the European Commission after Exit Day). The CMA will continue to do so in line with its standard practice as set out in the Guidance on initial enforcement orders and derogations in merger investigations (CMA60).
- 3.8 In particular, if merging parties decide to complete such mergers without notifying the CMA, there is a risk that the CMA could subsequently investigate and ultimately prohibit the merger or require other remedies to resolve competition concerns that could arise.
- 3.9 In all completed mergers, the initial period for the CMA's Phase 1 investigation is subject to a four-month statutory deadline for a reference to Phase 2.<sup>18</sup> For mergers completed pre-Exit, but for which the European Commission has not yet issued a decision (which are likely to be very rare in practice), as the CMA will only obtain jurisdiction over mergers that would otherwise fall under the jurisdiction of the European Commission after Exit

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<sup>16</sup> The CMA may start an own-initiative investigation where there is a reasonable prospect that its duty to refer may be met and the "enquiry letter" process set out in paragraphs 6.15 to 6.18 CMA2 would apply to such cases.

<sup>17</sup> The CMA case team will be able to advise, among other matters, on steps that could potentially be taken to expedite the preparation of a draft Merger Notice in anticipation of the CMA gaining jurisdiction after Exit Day. This may include discussion and review of the Form CO or other submissions made to the European Commission, for which purpose the parties may wish to share such information with the CMA and consent to its use by the CMA in the event of the CMA opening an investigation after Exit Day.

<sup>18</sup> See paragraphs 4.42 to 4.46 of CMA2.

Day, the statutory four-month period will apply from EU Exit or from the point at which the CMA is considered to have been provided with notice of the material facts about the merger (whichever is later).<sup>19</sup> For mergers completed post-Exit, the statutory four-month period will apply from the point at which the CMA is considered to have been provided with notice of material facts about the merger.

- 3.10 Moreover, the CMA may make an interim order which is binding on the parties and which is intended to prevent any action which might prejudice the CMA's inquiry or impede the taking of any remedial action by the CMA. If the CMA has reasonable grounds for suspecting that the parties to a completed merger may already have started integration of the merging businesses, the CMA may also require the parties to unwind any integration that has already occurred.<sup>20</sup> Parties remain able to seek derogations from the CMA: for example, to enable the fulfilment of regulatory obligations (including those relating to merger control proceedings in other jurisdictions) or to facilitate the integration of the non-UK aspects of the merging parties' business. The CMA will consider such requests on a case by case basis, in line with its existing guidance as set out in CMA60.
- 3.11 Where a request for a referral to the CMA (under Article 9 or Article 4(4) EUMR) is accepted by the European Commission prior to Exit Day, the CMA will gain jurisdiction to review the merger under the same terms as before Exit Day. If a request for a referral to the CMA is not accepted by the European Commission, then the European Commission will retain jurisdiction to review the case. However, if the European Commission has not reached a decision before Exit Day, the CMA can assert jurisdiction over the merger and review its effects within the UK after Exit Day if the UK jurisdictional requirements are met.
- 3.12 The existing rules for the payment of merger fees will also apply to mergers notified to the European Commission into which the CMA opens an investigation post-Exit Day.<sup>21</sup>

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<sup>19</sup> Such material facts would include information on the identity of the parties and whether the transaction remains anticipated or has completed. See section 122(3) to (5) EA02 which is preserved by paragraph 34 of Schedule 4 to the Competition SI.

<sup>20</sup> See paragraph 6.21 of CMA2, as well as paragraphs 2.6 to 2.12 of CMA60 (Guidance on initial enforcement orders and derogations in merger investigations).

<sup>21</sup> See [Enterprise Act 2002](#) (Merger Fees and Determination of Turnover) Order 2003 SI 2003/1370, chapter 20 of CMA2 and [merger fees payment information](#) (January 2016) for further information.

### *Cases being reviewed by the CMA on Exit Day*

3.13 The CMA's powers to review a merger under Part 3 of the EA02 are independent to those of the European Commission under the EUMR, and therefore the CMA does not envisage that there will be any change in the procedure followed for cases that fall under UK jurisdiction in which investigations are opened prior to Exit Day. In particular, if a merger was referred to the CMA by the European Commission under the EUMR before Exit Day, it will progress according to a 45 EU working day timetable.<sup>22</sup>

#### *'Public interest' cases*

3.14 As explained in paragraphs 16.15 to 16.22 of CMA2, the Secretary of State may also intervene on certain 'legitimate interests' grounds in cases falling under the EUMR through Article 21(4) EUMR. If the Secretary of State has issued a European Intervention Notice before Exit Day and neither the Secretary of State nor the European Commission have issued a decision before Exit Day, the European Intervention Notice would take effect as if it were a public intervention notice under section 42(2) of the EA02 and the relevant provisions of the EA02 will continue to apply such that the Secretary of State and the CMA will review the merger accordingly.<sup>23</sup> The Secretary of State may still issue a European Intervention Notice to the CMA after Exit Day if the UK jurisdictional requirements are met, where the European Commission has reached a decision on the merger prior to Exit Day.<sup>24</sup>

### ***Part 2: Cases opened after EU Exit***

3.15 The CMA will cease to be a competent authority of a Member State for the purposes of the EUMR and will therefore no longer be prohibited from investigating under the provisions of the EA02 a merger which does have a Community dimension under the EUMR.

3.16 As noted above, mergers may be subject to review by both the CMA and the European Commission after Exit Day. In addition, the European Commission, the CMA, or the merging parties will no longer be able to make new referrals under Articles 4(4) and 9 EUMR (i.e. referrals from the European

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<sup>22</sup> The CMA has, under section 34A of the Enterprise Act 2002, a maximum of 45 working days beginning on the working day after receipt of the European Commission's referral decision to inform the merger parties of the result of its preliminary competition assessment.

<sup>23</sup> See paragraph 28 of Schedule 4 to the Competition SI.

<sup>24</sup> See paragraph 25 of Schedule 4 to the Competition SI and sections 67 and 68 EA02.

Commission to the CMA), and Articles 4(5) and 22 EUMR (i.e. referrals from the CMA to the European Commission).

- 3.17 The CMA and the European Commission (and/or any Member State(s) which may have jurisdiction where a merger does not trigger the jurisdictional thresholds under the EUMR) may therefore conduct parallel reviews of the same merger in their respective jurisdictions.
- 3.18 The CMA considers that where mergers are subject to investigation in more than one country, there can be substantial benefits to the parties and to the competition authorities in those jurisdictions from encouraging communication and cooperation between the competition authorities. This will be particularly important after Exit Day, as a significant proportion of mergers that will fall under UK jurisdiction will be investigated in parallel by the European Commission and other jurisdictions. Where possible and appropriate, the CMA will endeavour to coordinate merger reviews relating to the same or related cases with the European Commission as with other competition authorities.<sup>25</sup> Where national legislation prevents the exchange of confidential information, the CMA and other competition authorities may seek permission from the parties to exchange confidential information.<sup>26</sup>

### ***Part 3: CMA merger control guidance after Exit Day***

- 3.19 A number of CMA merger guidance documents do not contain any references to EU law or bodies and will thus be largely or wholly unaffected by EU Exit. Such guidance documents are listed at Annex A to this guidance. In relation to CMA merger guidance, published before this guidance, which is impacted by EU Exit, this guidance should prevail in relation to the specific references to EU law or bodies. By way of illustration, the following general clarifications should be considered when reading such guidance (until such time that it is updated):<sup>27</sup>
- References to referral mechanisms no longer apply (see e.g. 6.45 and 6.64 of CMA2 and 2.2 in a [Quick guide to UK merger assessment: CMA18](#)).
  - References to the public interest intervention in cases under the EUMR should be read with this guidance in mind (see e.g. 16.16 to

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<sup>25</sup> See paragraph 3.56 of the CMA Merger remedies guidance.

<sup>26</sup> See CMA2 paragraph 19.5.

<sup>27</sup> Note that these are examples of general principles to assist with reading CMA guidance considering the UK's Exit from the EU and may not apply in all instances. This list is not exhaustive and must be read considering this guidance in its entirety and any updates made to CMA guidance.

16.22 of CMA2 and the section in [Merger assessment guidelines: CC2/OFT1254](#)).

- Descriptions of the EUMR process should be read with this Guidance in mind (see e.g. 2.12 to 2.15 and Chapter 18 of CMA2 and references in [Water and sewerage mergers: CMA49](#)).

## 4. Enforcement of the competition law prohibitions (antitrust, including cartels)

- 4.1 Prior to EU Exit, the CMA (and sectoral regulators with concurrent powers, ‘concurrent regulators’<sup>28</sup>) have the power<sup>29</sup> and are obliged<sup>30</sup> to apply Article 101 (the EU law prohibition on anti-competitive agreements) and Article 102 (the EU law prohibition on abuse of dominance) of the Treaty on the Functioning of the European Union (TFEU) alongside the equivalent national provisions (the CA98 Chapter I and Chapter II prohibitions, respectively). Where the European Commission initiates formal proceedings to investigate such a suspected infringement of antitrust laws, this automatically relieves the CMA and concurrent regulators of competence to launch or continue their own parallel investigations into the same conduct.<sup>31</sup>
- 4.2 After EU Exit, Articles 101 and 102 TFEU will no longer be applied in the UK, and the CMA and concurrent regulators will no longer be subject to Regulation 1/2003. Therefore, anti-competitive behaviour may be subject to separate investigations by the CMA (or a concurrent regulator) and the European Commission where it may affect both trade within the UK and trade between EU Member States, respectively. It is expected that, where the European Commission is investigating conduct based on corresponding facts insofar as they concern effects in the 27 EU Member States, any investigation which might be undertaken post-EU Exit by the CMA or a concurrent regulator into related facts concerning effects in the UK would take place in parallel to that of the European Commission.<sup>32</sup>

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<sup>28</sup> Namely, the Civil Aviation Authority (air traffic control and airport operations), the Financial Conduct Authority (provision of financial services), NHS Improvement (health care England), Ofcom (telecoms, broadcasting, post and spectrum), Office of Rail and Road (rail), Ofgem (gas and electricity), Ofwat (water and sewerage), Payment Systems Regulator (participation in payment systems) and the Northern Ireland Authority for Utility Regulation (gas, electricity, water in Northern Ireland). However, NHS Improvement is not a designated competition authority for the purposes of Regulation 1/2003. For further information, please refer to [Regulated Industries: Guidance on concurrent application of competition law to regulated industries: CMA10](#).

<sup>29</sup> Article 5, Council Regulation (EC) No 1/2003.

<sup>30</sup> Article 3(1), Council Regulation (EC) No 1/2003, in circumstances where any suspected anti-competitive behaviour may have affected trade between EU Member States and trade within the UK. Where any suspected anti-competitive behaviour did not potentially affect trade between EU Member States but only that within the UK, the CMA (or concurrent regulator) would apply the CA98 Chapter I and Chapter II prohibitions (as appropriate) alone.

<sup>31</sup> Article 11(6), Council Regulation (EC) No 1/2003.

<sup>32</sup> The conduct of UK businesses could still be caught by Articles 101 and 102 TFEU post-EU Exit and investigated by the European Commission where it has effects in the EU. Under the qualified effects doctrine, conduct occurring outside of the EU falls within the European Commission’s jurisdiction when it has economic effects within the EU and such effects are immediate, substantial and foreseeable (*Intel Corporation Inc. v European Commission*, C-413/14 P EU:C:2017:632, judgment of the Grand Chamber of the CJEU, 6 September 2017, paragraphs 40-65).



- 4.3 As explained below, the CMA, concurrent regulators and the UK courts will still be required to ensure consistency between the interpretation of the UK competition prohibitions and pre-EU Exit CJEU case law, but they may depart from such case law where appropriate in certain specified circumstances.
- 4.4 This section of the guidance explains how parties can expect antitrust investigations which are ‘live’ at Exit Day to be treated and what can be expected from cases opened after Exit Day, including how CMA guidance should be read in light of EU Exit.

### ***Part 1: Investigations opened prior to Exit Day i.e. ‘live’ investigations***

#### *Investigations being conducted by the European Commission prior to Exit Day*

- 4.5 The Competition SI will prevent the CMA and concurrent regulators from opening investigations into infringements of UK competition law after EU Exit where, immediately before EU Exit, the European Commission relieved them of competence and has reached an infringement decision (which has not been subsequently annulled).<sup>33</sup>
- 4.6 If the European Commission’s infringement decision is annulled in full or in part by the European Courts after Exit Day, or if the European Commission has not issued a decision prior to EU Exit, the CMA and concurrent regulators will no longer be prevented from conducting their own investigations into breaches of the domestic prohibitions occurring before or after Exit Day. In deciding whether or not to open or continue with such a case, the CMA will have regard to its published prioritisation principles, taking into account the circumstances of EU Exit. As part of this assessment, in the context of assessing whether the CMA was best placed to act, the CMA would expect to consider, so far as possible, the likely direct and indirect effect on UK markets and UK consumer welfare, and any expected impact on efficiency, productivity and the wider economy in the UK that may flow from the European Commission’s actions. The CMA would also typically expect to liaise with the European Commission.

#### *Investigations being conducted by the CMA prior to Exit Day*

- 4.7 Where the CMA or concurrent regulators are conducting an investigation with an EU element before Exit Day but have not issued a decision by Exit Day, they may not continue any EU elements of the investigation on or after Exit

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<sup>33</sup> Paragraph 8 of Schedule 4 of the Competition SI.

Day.<sup>34</sup> Such ongoing investigations will be continued on the basis of the CA98 Chapter I and/or Chapter II prohibitions only.

- 4.8 However, all actions taken before Exit Day in connection with the EU elements of the investigation – such as information gathering through notices, interviews or inspections – are to be treated, on and after Exit Day, as having been done for the purposes of the domestic elements of the investigation.<sup>35</sup> Such actions therefore remain valid for such purposes.

### **Part 2: Enforcement after Exit Day**

- 4.9 As set out at paragraphs 4.1 and 4.2 above, for investigations opened after Exit Day, the CMA and concurrent regulators will apply and enforce the domestic prohibitions under the CA98 in relation to both pre- and post-EU Exit UK conduct and will no longer enforce Articles 101 or 102 TFEU.
- 4.10 The rest of this section considers how specific aspects of the CMA's and, where relevant, concurrent regulators' enforcement powers and procedures will function post-EU Exit.

#### *Section 60A CA98*

- 4.11 Prior to EU Exit, section 60 of the CA98 provides that, insofar as possible, the CMA, concurrent regulators and the UK courts are to interpret the CA98 Chapter I and II prohibitions in a manner that is consistent with the principles of the TFEU and the decisions and principles laid down by the CJEU in relation to Articles 101 and 102 TFEU. Regard is also to be had to any “*relevant decision or statement*” of the European Commission.
- 4.12 The Competition SI will repeal section 60 CA98 and replace it with a new provision, section 60A.
- 4.13 Under section 60A, the default position will remain that the CMA, concurrent regulators and the UK courts must act with a view to securing that there is no inconsistency between:
- i. the principles that they apply, and the decisions they reach, in determining a question arising under Part 1 of CA98 in relation to competition within the UK: and

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<sup>34</sup> Paragraph 5 of Schedule 4 of the Competition SI.

<sup>35</sup> Paragraph 6(2) of Schedule 4 of the Competition SI.

- ii. the principles laid down by the TFEU and the CJEU before Exit Day, and any relevant decision made by that Court before Exit Day, so far as applicable immediately before Exit Day in determining any corresponding question arising in EU law.<sup>36</sup>
- 4.14 In determining any such question, they must also have regard to any relevant decision or statement of the European Commission made *before* Exit Day and not withdrawn.
- 4.15 However, section 60A will allow the CMA, concurrent regulators and the UK courts to depart from the principles of the TFEU and pre-EU Exit CJEU case law where they consider it “appropriate” to do so, in light of one of the following prescribed factors:
- i. differences between the provisions of Part I of the CA98 (including Chapter I and II) and the corresponding provisions of EU law as those provisions of EU law had effect immediately before EU Exit;
  - ii. differences between markets in the United Kingdom and markets in the European Union;
  - iii. developments in forms of economic activity since the time the principle or decision was laid down or made;
  - iv. generally accepted principles of competition analysis or a generally accepted application of such principles;
  - v. a principle laid down or a decision made by the CJEU on or after Exit Day; and
  - vi. the particular circumstances under consideration.
- 4.16 The CMA, concurrent regulators and the UK courts will also not be required to act with a view to securing that there is no inconsistency between the principles they apply or decisions they reach with pre-Exit TFEU or CJEU principles or decisions where they are bound by a principle or decision of a court or tribunal in England and Wales, Scotland or Northern Ireland that requires them to act otherwise.<sup>37</sup>

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<sup>36</sup> Section 60A(8) makes clear this means principles as they have effect in EU law immediately before Exit Day, disregarding the effect of principles laid down, and decisions made, by the CJEU on or after Exit Day.

<sup>37</sup> Section 60A(6) CA98.

- 4.17 Section 60A will apply to all cases from the point of EU Exit, i.e. it will apply to any CMA or concurrent regulator investigations or UK court cases which are “live” at the point of EU Exit and in relation to pre-EU Exit facts.<sup>38</sup>

#### *Application of EU block exemption regulations*

- 4.18 Under EU law, there is a suite of regulations setting out criteria which, if satisfied, exempt certain types of agreements from the Article 101 TFEU prohibition (Block Exemption Regulations). Prior to EU Exit, section 10 of the CA98 exempts agreements from the Chapter I prohibition where these would be exempt under the EU Block Exemption Regulations. The Withdrawal Act and the Competition SI will preserve the Block Exemption Regulations (with their current expiry dates) in the UK as “retained exemptions” (Retained Block Exemption Regulations) meaning that, after EU Exit, the Retained Block Exemption Regulations will continue to operate as exemptions from domestic prohibitions.
- 4.19 Beneficiaries of the Block Exemption Regulations prior to EU Exit and from the ‘parallel exemption’ will continue to benefit from the Retained Block Exemption Regulations after EU Exit (and so long as they continue to satisfy the conditions of the Retained Block Exemption Regulations). In addition, going forward, companies entering into new agreements will be able to benefit from the Retained Block Exemption Regulations provided they meet the relevant criteria.
- 4.20 There are seven Block Exemption Regulations which will become Retained Block Exemption Regulations at the time of EU Exit. These relate to vertical agreements, motor vehicles, research and development, technology transfers, specialisation, liner shipping consortia, and road, rail and inland waterway transport. Details of these Retained Block Exemption Regulations can be found at Annex B to this guidance. The Competition SI will however make various amendments to the Retained Block Exemption Regulations to correct deficiencies resulting from the UK ceasing to be a Member State of the EU. For example, references to EU Treaties and institutions will be changed to references to domestic legislation and references to Euros will be changed to Pounds Sterling. References to the internal market will also be changed to references to the UK, which will impact the geographic scope of these Regulations, e.g. the liner shipping Retained Block Exemption

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<sup>38</sup> Paragraph 7 of Schedule 4 of the Competition SI.

Regulation will apply to consortia only in so far as they provide international liner shipping services from or to one or more ports *in the UK*.<sup>39</sup>

- 4.21 Geographic scope is also relevant to the Vertical Block Exemption Regulation (VABER)<sup>40</sup> and the concept of “passive sales”. For example, under the VABER, vertical agreements which have as their object the restriction of passive sales into an exclusive territory or customer group reserved to the supplier or allocated to another buyer are regarded as hardcore restrictions and are likely to infringe Article 101(1) (and the Chapter I prohibition) since such restrictions confer ‘absolute territorial protection’.<sup>41</sup> In certain circumstances, passive sales bans affecting sales to a UK market or UK customer are capable of falling within the scope of the Chapter I prohibition. They may not satisfy the requirements of the Retained Vertical Agreements Block Exemption Regulation and may be treated as hardcore restrictions of competition.
- 4.22 The guidance issued by the European Commission in relation to the Block Exemption Regulations which will become Retained Block Exemption Regulations will be relevant to interpreting the latter. Details of this guidance can be found at Annex B. Such guidance constitutes relevant statements of the European Commission to which the CMA, concurrent regulators and UK courts must have regard post-EU Exit.<sup>42</sup> However, the guidance should be read with EU Exit and the amendments made by the Competition SI in mind.
- 4.23 On their expiry, the power to vary (including to extend) or revoke the application of the Retained Block Exemption Regulations to the domestic prohibitions will lie with the Secretary of State, acting in consultation with the CMA.<sup>43</sup>

#### *Company director disqualification orders in competition cases*

- 4.24 The disqualification of directors for infringements of competition law is set out under domestic legislation – namely, under section 9A of the Company Directors Disqualification Act 1986 (CDDA) – and for the most part will not be affected by EU Exit. The main change to the provisions dealing with director

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<sup>39</sup> Article 1 of Commission Regulation (EC) 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), as amended by the Competition SI.

<sup>40</sup> Commission Regulation 330/2010 of 20 April 2010 on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices.

<sup>41</sup> See further Articles 4(b) and 4(c).

<sup>42</sup> Under section 60A CA98, to the extent such pre-EU Exit decisions or statements are made and not withdrawn.

<sup>43</sup> Section 10A of the CA98.

disqualification for competition law infringements post-EU Exit is that references to breaches of Article 101 and Article 102 TFEU are removed from the meaning of a breach of competition law for which a director can be disqualified.<sup>44</sup> The CMA's guidance on director disqualification ([Guidance on Competition Disqualification Orders \(CMA102\)](#)) also contain references to EU law which will no longer be relevant for behaviour post-EU Exit.

- 4.25 The CMA and concurrent regulators will continue to be able to rely on conduct found to have infringed Article 101 or Article 102 TFEU (in addition to the CA98 Chapter I and Chapter II prohibitions) before EU Exit for the purposes of making an application for a director disqualification order under section 9A of the CDDA.<sup>45</sup>
- 4.26 For conduct which occurs after EU Exit, the CMA and concurrent regulators can continue to make applications for director disqualification orders under section 9A of the CDDA. However, they will be able to do so on the basis of an infringement of the CA98 Chapter I and/or Chapter II prohibitions only.

#### *CMA leniency regime in cartel cases*

- 4.27 The leniency regimes of the European Commission, the CMA and the national competition authorities of the Member States will remain separate and each jurisdiction should be considered individually. The fact that a party has made a leniency application to the European Commission whether before or after EU Exit will not provide it with any protection from fines with respect to any UK investigation under the CA98. Nor will such an application provide its employees or directors with any protection from prosecution for the criminal cartel offence in relation to that cartel activity in the UK. As was the case prior to EU Exit, when considering whether to make a leniency application to the European Commission, parties are encouraged to consider whether it would also be appropriate to make such an application to the CMA<sup>46</sup> and *vice versa*. Post-EU Exit, this will be even more important than before given the possibility of parallel investigations by the European Commission and the CMA or a concurrent regulator.
- 4.28 Prior to EU Exit, and as set out in the CMA's [Applications for leniency and no action in cartel cases guidance \(OFT1495\)](#), it has been possible for parties applying for leniency to the European Commission to obtain a marker from

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<sup>44</sup> Section 9A Company Directors Disqualification Act 1986, as amended by the Competition SI.

<sup>45</sup> Paragraph 36 of Schedule 4 of the Competition SI.

<sup>46</sup> The CMA receives leniency applications, including in relation to regulated sectors. See [Information Note – Arrangements for the handling of leniency applications in the regulated sectors](#).

the CMA on a 'no names' basis pending confirmation from the European Commission as to the availability of immunity under the European Commission's leniency policy.<sup>47</sup> However, post-EU Exit, this system will no longer be applicable and no names markers will only be available where there are strong justifications.

- 4.29 As the CMA will no longer be a member of the European Competition Network (ECN), the ECN Model Leniency Programme will no longer apply and thus summary applications to the CMA in 'European Commission immunity application' cases will also no longer be available.<sup>48</sup> Similarly, it will no longer be the case post-EU Exit that the CMA can be expected "normally" to grant no action letters to the implicated employees and directors of an undertaking that has qualified for immunity under the European Commission Leniency Notice but has not also qualified for Type A immunity in the UK, for example because another undertaking has already qualified for Type A leniency in the UK.<sup>49</sup> In addition, references in the CMA's Applications for leniency and no action in cartel cases guidance (OFT1495) to the European Commission Notice on cooperation within the Network of Competition Authorities will no longer be relevant.

#### *Application of other CMA guidance relevant to antitrust (including cartel) cases*

- 4.30 A large body of CMA antitrust guidance documents do not contain any references to EU law or bodies and will thus be largely or wholly unaffected by EU Exit. Such guidance documents are listed at Annex A to this guidance. In relation to CMA antitrust guidance published before this guidance which is impacted by EU Exit, this guidance should prevail in relation to the specific references to EU law or bodies. By way of illustration, the following general clarifications should be considered when reading such guidance post-EU Exit (until such time that it is updated):<sup>50</sup>
- As a result of EU Exit, certain changes will be needed to the CMA's [guidance as to the appropriate amount of a penalty \(CMA73\)](#). Amendments to this guidance will be consulted upon and, once finalised, will be published subject to Secretary of State approval.

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<sup>47</sup> Paragraphs 4.36-4.39 of OFT1495.

<sup>48</sup> Paragraphs 4.41-4.42 of OFT1495 should be read accordingly.

<sup>49</sup> Paragraph 8.4 of OFT1495 should be read accordingly.

<sup>50</sup> Note that these are examples of general principles to assist with reading CMA guidance considering EU Exit and may not apply in all instances. This list is not exhaustive.

- References to Article 101 and Article 102 TFEU throughout the CMA’s antitrust guidance will no longer be relevant to the UK’s competition enforcement regime post-EU Exit. Where CMA guidance refers to both Article 101 and Chapter I, and/or Article 102 and Chapter II, it should be read as only referring to the Chapter I or Chapter II prohibitions respectively post-EU Exit.<sup>51</sup> Similarly, references to Article 101(3) should be read as references to section 9(1) of the CA98 (or ignored where they are duplicative of references to section 9(1) CA98).
- References to the Block Exemption Regulations should be read as references to the relevant Retained Block Exemption Regulations, as amended by the Competition SI and any future amendments.
- References to section 60 CA98 and to the primacy of EU law should be read with the new section 60A CA98 in mind.
- Sections in CMA antitrust guidance on the CMA’s relationship and/or co-operation with the European Commission and other NCAs, such as those in OFT401 Part 4, OFT402 Part 3 and OFT442, among others, will generally no longer be relevant. Similarly, references to the Modernisation Regime, throughout the CMA’s antitrust guidance and in particular in OFT442, will generally no longer be relevant, given the CMA (and concurrent regulators) will no longer be enforcing Articles 101 or 102 TFEU. However, this is not to say such guidance ought to be ignored in its entirety; for example, discussion of the exemption regime may still be informative in relation to the UK exemption regime under section 9(1) CA98.
- References to the ability to bring standalone actions and actions for damages, such as in OFT401 Part 7, OFT402 Part 2, OFT408 Part 8 and others, and in particular in CMA55, will no longer be entirely accurate. Decisions by the European Commission reached before Exit Day can still form the basis of follow-on damages claims, including cases that have not exhausted the appeals process. However, if an infringement decision under EU law is reached by the European Commission after EU Exit, even if it relates to pre-EU Exit facts which have effect in the UK, claimants who wish to pursue follow-on damages claims in UK courts will no longer be able to rely on that decision as a binding finding of an infringement under the CA98.<sup>52</sup> Claimants will continue to be able to rely on infringement decisions of the

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<sup>51</sup> Unless the context clearly requires otherwise, such as where reference is made to CJEU case law.

<sup>52</sup> UK courts will also no longer be required to treat infringement decisions of an EU Member State national competition authority as ‘prima facie’ evidence of an infringement.



CMA and concurrent regulators in pursuing follow-on damages claims in the UK. In relation to standalone actions, these can still be brought post-EU Exit in relation to infringements of Article 101 and/or Article 102 (either on their own or in parallel with the CA98 Chapter I and/or Chapter II prohibitions) where these infringements occurred pre-EU Exit.<sup>53</sup> The ability to bring standalone actions in relation to infringements of the Chapter I and/or Chapter II prohibitions will remain unchanged.

- As set out above, the CMA is required (subject to specified exceptions) to interpret questions under Part 1 of the CA98 in a manner which is consistent with the principles laid down by the TFEU and the CJEU before EU Exit and any relevant decision made by the CJEU before EU Exit, so far as applicable immediately before Exit Day in determining any corresponding question arising in EU law. Therefore, references to EU case law in CMA guidance will continue to be relevant to the interpretation of the CA98 Chapter I and Chapter II prohibitions and other questions under Part 1 of the CA98 (as may be applicable) unless and until such case law is departed from under section 60A CA98 (as explained at paragraphs 4.11 – 4.16 above). For example, several CMA guidance documents refer to the definition of “undertaking” as set out in EU law, which will remain relevant to the interpretation of this concept under domestic law unless and until it is departed from.
- Section 60A CA98 will require regard to be had to any relevant decision or statement of the European Commission made before Exit Day and not withdrawn. However, differences between the EU and domestic competition enforcement regimes post-EU Exit must be borne in mind, and European Commission decisions and guidance may contain concepts and references which are no longer relevant to the UK competition enforcement regime. An example of this is the European Commission’s Block Exemption Regulation guidance, as cited in Annex B, which has interpretative value for the Retained Block Exemption Regulation, but which refers to concepts which are not relevant for the UK regime, such as the objective of achieving an integrated internal market in the EU.

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<sup>53</sup> Paragraph 14 of Schedule 4 of the Competition SI.

## 5. Consumer protection law enforcement

### Part 1: Impact of UK's EU Exit legislation

- 5.1 As explained in section 2 of this guidance, the effect of the Withdrawal Act is that, from Exit Day, EU law will be converted to UK law and EU-derived UK law will be maintained. This covers both directly effective EU legislation such as Regulations, and EU directives that have been implemented into UK domestic legislation.
- 5.2 A number of consumer protection statutory instruments were made to implement some amendments to the UK's consumer protection legislation deemed necessary for it to operate effectively after the UK's Exit from the EU. These largely leave transactions between UK businesses and UK consumers unaffected but make some changes to the law applying to UK/EU cross-border trading.
- 5.3 In the area of consumer protection the broad effect of the EU Exit legislation is that, immediately after Exit Day UK businesses dealing with UK consumers will be largely subject to the same consumer protection law requirements as applied beforehand. Similarly, UK consumers buying from UK businesses will benefit from the same rights, and the CMA will have the same consumer enforcement powers regarding these domestic transactions.
- 5.4 The position will change in some respects for UK businesses selling to EU consumers, and for UK consumers buying from EU traders. For detailed explanation of these changes, see the consumer protection statutory instruments made under section 8 of the Withdrawal Act including their Explanatory Notes.<sup>54</sup>

#### *Consumer protection law after Exit Day*

- 5.5 Consumer protection law is, to a great extent, harmonised within the EU. It therefore follows that much of the UK's existing consumer protection law reflects EU consumer law. As the effect of the EU Exit legislation is to confirm that law's status in UK law, from Exit Day, businesses trading with UK consumers must continue to comply with these EU-derived consumer

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<sup>54</sup> The following SIs can be found on [www.legislation.gov.uk](http://www.legislation.gov.uk): the Consumer Enforcement SI, Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018, Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018 and Timeshare, Holiday Products, Resale and Exchange Contracts (Amendment etc.) (EU Exit) Regulations 2018.

protection laws<sup>55</sup> unless and until they are repealed or amended by the UK Parliament.

- 5.6 To a large extent the Withdrawal Act maintains the status in UK law of CJEU judgments made up to Exit Day. Most UK courts and authorities applying UK consumer protection law which derives from EU law will continue to be bound by pre-Exit judgments of the CJEU on the meaning and interpretation of the underlying EU consumer directives and regulations.<sup>56</sup> However, the UK Supreme Court and the High Court of Justiciary<sup>57</sup> may depart from existing CJEU judgments having applied the same respective tests as they would when considering whether to depart from their own previous decisions.
- 5.7 UK traders directing their business activities to consumers in the EU must continue to comply with those consumers' local national consumer law which will largely reflect EU law.<sup>58</sup>

#### *Consumer protection law enforcement after Exit Day*

- 5.8 Part 8 sets out the principal UK regime for the civil enforcement of a wide range of consumer protection law by the CMA<sup>59</sup> and by other UK enforcers.<sup>60</sup> Under Part 8, before Exit Day, the CMA could take action against infringements of a wide range of UK consumer protection law implementing European laws – known as Community infringements<sup>61</sup> - as well as taking action against infringements of purely domestic laws (known as domestic infringements). As well as covering purely domestic cases, it also allowed EU enforcers to bring proceedings against UK businesses in the UK courts to

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<sup>55</sup> This includes both consumer protection laws that implement EU directives (e.g. Part 2 of the CRA implementing Council Directive 93/13/EEC on unfair terms in consumer contracts), and any EU consumer laws that are embodied in EU regulations, which were directly applicable to EU-based traders, and which will be converted to UK legislation (e.g. Council Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights).

<sup>56</sup> They will not have to follow post-Exit CJEU judgments but may have regard to them where relevant.

<sup>57</sup> In cases before it where there is no further right of appeal to the Supreme Court.

<sup>58</sup> EU consumers' local law will follow EU law. Differences between EU Member States' domestic consumer protection laws and the UK's consumer protection laws will open up from the date of Exit and may increase over time.

<sup>59</sup> The CMA has additional enforcement powers under some specific consumer protection legislation, in particular the power to bring criminal enforcement proceedings under the Consumer Protection from Unfair Trading Regulations 2008. (Trading Standards Services and the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI) have the primary duty to enforce these Regulations).

<sup>60</sup> Other UK enforcers include Trading Standards Services and DETINI, the Advertising Standards Authority and sectoral regulators such as the Financial Conduct Authority and the Civil Aviation Authority.

<sup>61</sup> Community infringements will be called Schedule 13 infringements after Exit under the Consumer Enforcement SI.

protect consumers in their jurisdiction, and UK enforcers to take proceedings against EU businesses in their local courts.<sup>62</sup>

- 5.9 By virtue of the changes to Part 8 and Schedule 5 to the CRA made by the Consumer Enforcement SI, these cross-border proceedings will no longer be provided for in Part 8, and the related investigatory powers will be removed.
- 5.10 However, the CMA and other UK enforcers may still be able to bring Part 8 proceedings in the UK against EU businesses that are directing their trading activities towards UK consumers and breaching UK consumer protection law.<sup>63</sup> Similarly, UK businesses directing trade activities to EU consumers and breaching EU or local national consumer law, may still find themselves subject to enforcement action by national enforcers in the courts of that Member State.

#### *Consumer enforcement co-operation with EU enforcers after Exit Day*

- 5.11 Before Exit Day, the UK was covered by the CPC Regulation.<sup>64</sup> The CPC Regulation establishes a regime for EU cross-border consumer enforcement co-operation and assistance, by prescribing reciprocal powers and duties for Member States' Competent Authorities to request and provide each other with assistance. Under the CPC Regulation, Competent Authorities can ask a cross-border authority for information on a business based in the requested authority's jurisdiction and can require it to take enforcement action against that local business to stop it committing infringements which are harming consumers in the other Member State.
- 5.12 In addition, the CPC Regulation provides for Member States' Competent Authorities to co-ordinate common consumer enforcement activities to tackle businesses or infringements that span multiple Member States.
- 5.13 Before Exit Day, the CMA was a UK Competent Authority under the CPC Regulation and the UK's Single Liaison Office responsible for co-ordinating requests coming to, and from, the UK. It had also been involved in a number of CPC common activities.<sup>65</sup>

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<sup>62</sup> Former section 215(4) of the EA02 giving effect to Directive (98/27/EC) on injunctions for the protection of consumers' interests (Injunctions Directive).

<sup>63</sup> While Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia Regulation) will no longer apply to the UK, the UK courts may accept jurisdiction to hear such enforcement proceedings having applied existing UK common law and statutory rules in this area.

<sup>64</sup> Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws.

<sup>65</sup> For example, common activities on children's online games and on car hire.

- 5.14 After Exit Day, the CPC Regulation will no longer apply to the UK and the CMA's formal role under it will cease. As noted above, its related powers under Part 8 and Schedule 5 to the CRA to assist EU enforcers with investigations of UK businesses harming EU consumers, will also no longer apply.
- 5.15 However, the CMA has taken an active role in co-ordinated enforcement projects and knowhow-sharing within the CPC network, and a leading role in the development of wider partnership working in international fora. Following the UK's Exit from the EU the CMA will seek to continue to work with EU enforcers as far as possible, while developing relationships and working with all our other international counterparts, including, for example, through ICPEN.

#### *CMA consumer protection law enforcement guidance*

- 5.16 Information on the CMA's consumer enforcement powers and approach is set out in CMA58<sup>66</sup> which includes a section on cases involving businesses or consumers in other Member States.<sup>67</sup> After Exit Day, CMA58 will continue to apply with the exception of those parts of the guidance dealing with the CPC Regulation and the CMA's role under it.<sup>68</sup>

#### *Cross-border enforcement cases in progress at Exit Day*

- 5.17 The [Consumer Enforcement SI](#) provides that, in general, the changes to Part 8 and to Schedule 5 to the CRA do not apply in the case of Community infringements of consumer protection law occurring before Exit Day. Therefore, any Part 8 cases started by the CMA before Exit Day, and which relate to one or more Community infringements, will continue to be covered by this legislation as it was before it was amended. This is equally true for any Part 8 cases which the CMA may open after Exit Day but which relate to Community infringements occurring before Exit Day.<sup>69</sup>

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<sup>66</sup> [Consumer protection: Enforcement Guidance](#)

<sup>67</sup> See paragraph 2.7, the last entry in the table under Annex A (Consumer legislation under which the CMA has enforcement powers) and Annex C (Wider international working) of CMA58.

<sup>68</sup> These parts include, in particular, the first two bullets in paragraph 2.7, the last entry in the table under Annex A (Consumer legislation under which the CMA has enforcement powers) and the paragraphs 1 to 6 of Annex C (Wider international working).

<sup>69</sup> The SI makes provision for proceedings brought in the UK under Part 8 by an EU enforcer before Exit Day. However, no such proceedings had been brought as at the date of this guidance.

## ANNEXES

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## A. CMA guidance

CMA guidance unaffected by EU Exit:

### ***Mergers guidance unaffected by EU Exit:***

- [Mergers exceptions to the duty to refer and undertakings in lieu \(CMA64\)](#)
- [Disclosure of information in CMA work \(CC7\)](#)
- [Review of NHS mergers \(CMA29\)](#)
- [Good practice in the design and presentation of consumer survey evidence in merger cases \(CMA78\)](#)
- [Retail mergers commentary \(CMA62\)](#)
- [Guidance on the CMA's mergers intelligence function \(CMA56\)](#)
- [Suggested best practice for submissions of technical economic analysis from parties to the Competition Commission \(CC2com3\)](#)
- [Guidance on requests for internal documents in merger investigations \(CMA100\)](#)

### ***Antitrust (including cartels) guidance unaffected by EU Exit:***

- [The OFT and the bus industry \(OFT397\)](#)
- [Street furniture advertising: Recommendations to local authorities \(OFT1415\)](#)
- [Competition impact assessment: Part 1: overview \(CMA50\)](#)
- [Competing fairly: short guide to competition law](#)
- [Leniency: information for businesses and individuals](#)
- [Competition law: advice for company secretaries](#)
- [Competition law: information for accountants in practice<sup>70</sup>](#)

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<sup>70</sup> Also available [here](#).

- [Competition law: advice for internal auditors](#)<sup>71</sup>
- [Avoiding disqualification: advice for company directors](#)<sup>72</sup>
- [Price-fixing: guidance for online sellers](#)<sup>73</sup>
- [Resale price maintenance: advice for retailers](#)<sup>74</sup>
- [High-strength alcohol schemes: competition law issues for retailers](#)
- [Local authority initiatives: advice on competition law](#)
- [Private medical practitioners: information on competition law](#)<sup>75</sup>
- [Private medical practitioners: information about fees](#)
- [Competition law for private medical practitioners: cans, can'ts and maybes](#)
- [Competition law: dos and dont's for trade associations](#)
- [Four-step process to competition law compliance](#)
- [SME compliance checklist](#)

***Consumer protection guidance unaffected by EU Exit:***

- [Secondary ticket websites: information for consumers](#)
- [Unit pricing: information for consumers](#)<sup>76</sup>
- [Children's app and online games: advice for parents and carers](#)
- [Higher education: short guide for providers](#)
- [Undergraduate Students: Your Consumer Rights](#)
- [Reporting possible non-compliance with consumer law](#)

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<sup>71</sup> Also available [here](#).

<sup>72</sup> Also available [here](#).

<sup>73</sup> Also available [here](#).

<sup>74</sup> Also available [here](#).

<sup>75</sup> Also available [here](#).

<sup>76</sup> Also available [here](#).



- Online reviews: letting your customers see the true picture<sup>77</sup>
- Giving a balanced picture: do's and don'ts for online review sites<sup>78</sup>
- Online endorsements: being open and honest with your audience<sup>79</sup>
- Pyramid selling: advice for the public and communities
- Higher education: Undergraduate students: Your rights under consumer law (CMA33(a))
- Principle on food pricing display and promotional practices (OFT1527)

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<sup>77</sup> Also available [here](#).

<sup>78</sup> Also available [here](#).

<sup>79</sup> Also available [here](#).

## B. EU block exemptions in force under EU Law, becoming retained block exemption regulations<sup>80</sup>

Regulation	Expiry date	Guidance <sup>81</sup>	Date
Commission Regulation 316/2014 of 21 March 2014 on the application of Article 101(3) of the TFEU to categories of technology transfer agreements.	30/04/2026	<a href="#">Guidelines on the application of Article 101 of the TFEU to technology transfer agreements 2014/C 89/03</a>	28/03/2014
Commission Regulation 330/2010 of 20 April 2010 on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices	31/05/2022	<a href="#">Guidelines on Vertical Restraints 2010/C 130/01</a>  See also <a href="#">CMA Antitrust Vertical agreements: Understanding competition law (OFT419) (Dec 2004)</a>	19/05/2010
Commission Regulation 461/2010 on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices in the motor vehicle sector	31/05/2023	<a href="#">Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles 2010/C 138/05</a>	28/05/2010
Commission Regulation No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the TFEU to categories of research and development agreements	31/12/2022	<a href="#">Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements Text 2011/C 11/01</a>	14/01/2011
Commission Regulation No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the TFEU to categories of specialisation agreements	31/12/2022	NOTE: <a href="#">Corrigendum to Communication from the Commission, Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements 2011/C 33/08 (2/2/2011)</a>	
Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the TFEU to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).	25/04/2020	N/A	

<sup>80</sup> Under Section 10 CA98.

<sup>81</sup> These guidelines remain relevant in interpreting the relevant Retained Block Exemption Regulations.

Regulation	Expiry date	Guidance <sup>81</sup>	Date
<p>This has been extended in force until 25 April 2020 by Commission Regulation (EU) No 697/2014 of 24 June 2014 amending Regulation (EC) No 906/2009 as regards its period of application.</p>			
<p>Council Regulation (EC) No 169/2009 of 26 February 2009 applying rules of competition to transport by rail, road and inland waterway (Codified version).</p> <p>There are no Commission Regulations granting block exemption under Regulation 169/2009.</p>	N/A	N/A	