

GROWTH WILL TEAR US APART? COMPETITION LAW AND THE UK GOVERNMENT'S GROWTH AGENDA

Following Marcus Bokkerink's decision to stand down as Chair of the Competition and Markets Authority ("CMA"), the UK government has highlighted the central role which it sees competition policy playing in achieving its pro-growth agenda. In [announcing](#) the change, the Secretary of State for Business and Trade emphasised that "we want to see regulators including the CMA supercharging the economy with pro-business decisions that will drive prosperity and growth, putting more money in people's pockets". Bokkerink has been replaced by Doug Gurr, formerly Amazon's country manager for the UK, as interim Chair of the CMA.

This focus on the role of the CMA is no surprise. The CMA is more powerful than at any point in its history, with sweeping powers to review mergers, to enforce competition and consumer laws, to regulate technology companies, to decide regulatory appeals and to monitor the subsidy control regime. Importantly, these powers give the CMA a broad margin of discretion, subject only to review by the courts, which have historically shown the CMA a high degree of deference. While the CMA rivals the UK Treasury in its ability to touch all parts of the economy, the CMA is independent and the CEO, Sarah Cardell, has been at pains to emphasise that its decision-making is free from political interference. As no other country in the Western world has entrusted an independent body with such power to take policy and enforcement decisions, the CMA plays a uniquely central role in the UK economy.

The role of the CMA is now coming into sharp relief as the Chancellor Rachel Reeves seeks to deliver on her mission to be the most pro-growth administration in the UK's history. While the Treasury has traditionally focussed on broader macroeconomic themes, many of the policies intended to unleash economic growth are more microeconomic in nature, including the creation of GB Energy, as well as planning reform, full gigabit and national 5G coverage by 2030 and a new innovation policy. For these manifesto pledges to be achieved, an all of government approach will be needed, as policy success will likely depend on all arms of government pulling in the same direction. The Chancellor and Business Secretary have therefore [asked the country's leading regulators](#), including the CMA, to "tear down the barriers hindering business and refocus their efforts on promoting growth".

Companies will be watching closely to see how the new Chair may impact the CMA's approach. So what are the areas where the CMA will have an out-sized impact on the success of the government's pro-growth policy? These are likely to include merger policy, technology regulation, excessive pricing cases, consumer protection enforcement and subsidy control.

RISK OF TENSION BETWEEN MERGER CONTROL AND GROWTH

The CMA is one of the highest profile competition agencies globally and its merger decisions are discussed in the boardrooms of the world's leading companies. The UK merger control regime catches more mergers than comparable international regimes and the CMA has taken an expansive interpretation of its rules. The international reputation of the regime is, therefore, important to the UK's attractiveness as an investment destination. A lack of confidence in the UK merger regime would drive investors towards businesses with no connection to the UK. As a country which relies heavily on inward investment, there are clear benefits for the UK if its merger control regime is seen as transparent, predictable and in line with peer regimes. Investors have welcomed the [Phase 2 reforms](#) announced by the CMA in April and are following their implementation carefully.

The CMA CEO has argued forcefully that there is [no tension between merger control and growth](#), as open, competitive markets provide the foundation for a vibrant, innovative economy and are critical to attract investment and drive economic growth. This was also a central theme of the [CMA's draft annual plan for 2025/2026](#), published a week before Bokkerink's departure. However, there are calls from a number of quarters for a more nuanced discussion of the relationship between mergers and economic growth.

These developments come on the heels of the CMA's approval of the [Vodafone / Three](#) merger in December. The mobile operators made the case that in capital intensive industries, such as telecoms, greater scale is required to unlock investment and that without a merger to create a third scale player, the UK would continue to lag behind other European countries in 5G network quality and fall short of the government's 5G ambitions. Their counter-

argument to the CMA was that investment decisions are driven by expected returns, rather than competition alone.

With demand for data increasing exponentially, Vodafone and Three submitted that 5G networks require significantly larger investments compared to earlier technologies, which they were unable to fund on a standalone basis, and put forward evidence that the merger would increase 5G network investments by the merged entity. This was supported by a divestment of spectrum and long-term network sharing arrangement with Virgin Media O2. To provide the CMA with comfort that the efficiencies claimed are sufficiently certain, the merging parties gave commitments that guarantee their future investment plans, alongside time-limited protections for retail and wholesale customers. This innovative combination of a fix-it-first remedy and investment commitments supported by the sectoral regulator, Ofcom, breaks new ground in merger control.

With a cross-government focus on investment and growth, could this be an area which is explored in future as a way to ensure that consumers receive the promised benefits of mergers? Given the challenges facing the economy, there may be powerful benefits if the CMA can continue to find new ways of working with business.

THE CMA'S SWEEPING POWERS TO REGULATE TECHNOLOGY COMPANIES

The Labour government will oversee the significant reforms to the UK competition regime that are contained within the [Digital Markets, Competition and Consumers Act 2024](#) ("DMCC"). The DMCC, which came into force in January, introduces a new regulatory regime for digital markets and gives the CMA (through the Digital Markets Unit) sweeping powers to designate and regulate digital players with "Strategic Market Status" ("SMS"). These new powers include tailored conduct requirements, pro-competitive interventions designed to remedy adverse effects on competition and increased oversight over mergers involving SMS firms.

At the time of the introduction of the DMCC Bill, the [policy paper](#) referred to the proposed regime as having "the potential to transform the UK's digital economy", unlocking growth. Whether the regime leads to such transformation will largely depend on how the regime is implemented, with the CMA having exceptionally wide powers under the Act to impose conduct requirements that it considers appropriate to meet the broadly defined objectives of "fair dealing", "open choices" and "trust and transparency". The CMA published [guidance](#) as to how it will approach implementation of its new functions in December 2024.

The guidance was seen by many firms, on both sides of the debate, as a missed opportunity for the CMA to provide clarity on its areas of focus, the types of measures it may take or the processes it will follow. Instead, the guidance largely constitutes a summary of the law and the CMA's broad discretion, leaving considerable ambiguity for businesses which will now have to wait to see how the CMA implements the SMS regime in practice.

Gurr's appointment as interim Chair comes as the regulator is set to initiate a series of investigations into technology companies under the new regime. The CMA's first [SMS investigation](#) into Google's general search and search advertising services was announced on 14 January, with further investigations into [Apple](#) and [Google's](#) mobile ecosystems announced on 23 January and a third area expected to be targeted later in 2025. The CMA CEO has [emphasized](#) that the CMA is committed to implementing the regime in a way that is predictable and proportionate. Nevertheless, concerns are likely to remain that the uncertainty generated by this case-by-case approach under the DMCC, combined with the CMA's findings in other ongoing investigations in the digital markets space, could chill investment and growth in digital infrastructure and services, contrary to, for example, the [Labour government's AI Opportunities Action Plan](#). It remains to be seen if the CMA's new leadership team will take further steps to allay these concerns.

THE CMA'S GROUND-BREAKING EXCESSIVE PRICING CASES

The CMA has doggedly pursued pharmaceutical companies for excessive pricing, taking a series of decisions in the Phenytoin, Hydrocortisone and Liothyronine cases and defending these decisions before the courts. The CMA has taken the position that in deciding whether price increases are excessive it can look at a single product cost-plus benchmark, even where price increases have resulted in market entry over time or where the cost-plus price is so low that no-one would enter. This approach is tougher than that generally taken by other competition and regulatory authorities, even in cases where prices charged by dominant companies are regulated.

While appeals are ongoing, the implications of the approach are starting to be felt across the economy. The UK is increasingly facing drug shortages that are reported to be in part due to low prices. There is, however, significant uncertainty as to whether companies can raise prices to attract new entry, even with the agreement of the NHS. This makes it harder to ensure security of supply and creates a tension with the "securonomics" approach [advocated by the Chancellor](#).

Moreover, as the decisions apply generally across the economy, there is an increasing number of collective proceedings before the Competition Appeal Tribunal (“CAT”) which include excessive pricing claims. As the UK is taking a tougher approach than the EU or US on excessive pricing, the outcome of these cases may colour investor perceptions of the UK. The claim brought by Justin Le Patourel against BT Group for historic excessive pricing of telecom landline services – the first opt-out collective claim to go to trial in the UK – was unanimously **dismissed by the CAT** on the basis that the charges were excessive, but not unfair. While the claim may have failed, it did so on highly fact specific grounds which are unlikely to give businesses confidence that further claims of this nature will be deterred. With the judgment under appeal and several other excessive pricing collective actions pending before the CAT, including the *Rachel Kent v Apple* claim, the outcome of these cases will be closely watched.

CONSUMER PROTECTION ENFORCEMENT

The DMCC grants new protections for consumers designed to ensure they are making informed and reasoned decisions, coupled with direct enforcement powers for the CMA on a par with its competition arsenal, expected to come into force in April 2025. The CMA will for the first time be empowered to decide, without court proceedings, whether a consumer law has been broken and to issue fines of up to 10% of global turnover.

The CMA has **outlined** its belief that consumer protection drives widespread benefits for growth, innovation, investment, and productivity, fuelling demand by encouraging consumer spending. However, the government has indicated that it is unlikely to support enforcement action that could have a deterrent effect on businesses investing in the UK. For example, in January 2025 Treasury sought to intervene in a long-running legal case, set to be heard by the Supreme Court in April, to prevent car loan firms from facing potential multi-billion pound compensation payments over concerns they could have a significant and potentially damaging impact on the motor finance market, **highlighting** that the case might “adversely affect the UK’s reputation as a place to do business”.

The CMA’s **draft annual plan** highlights that this year represents “a watershed moment” for the authority’s ability to tackle misleading sales practices and unfair terms. Will the government’s push for a more business friendly approach lead to more flexibility in the CMA’s implementation of its new powers? For example, the CMA could look to reach (formal or informal) settlements with businesses alleged to have breached consumer laws, rather than jumping straight to its new fining toolbox.

SUBSIDY REGULATION AND GOVERNMENT INVESTMENT PLANS

The post-Brexit UK **subsidy control regime** has two main purposes: to implement the UK’s international trade obligations, and to protect UK businesses from unfair competition from subsidized rivals in order to “support business growth and innovation”.

The regime is designed to give public authorities more flexibility than its EU counterpart by relying on a principles-based self-assessment framework, with only the most significant cases requiring consultation with the CMA’s Subsidy Advice Unit (“SAU”). Nonetheless, the SAU has an important role because, whilst it cannot veto subsidy awards, critical SAU assessments can increase the risks of legal challenges and public scrutiny. Should the Labour government decide to pursue closer EU/UK ties, and at a time when the EU and other key trading partners are reflecting on their own industrial policy, the regime may (again) become politically and diplomatically charged.

Against this backdrop, the regime extends the CMA’s remit to appraising subsidy decisions taken by public bodies in all areas of the UK economy. One area where we may see its influence grow is regarding the government’s plans for the publicly-owned GB Energy – a long-time cornerstone of its energy and climate policy. GB Energy will be **capitalized with £8.3 billion** in part to co-invest in new technologies and energy projects, including local clean energy projects, to “make Britain a clean energy superpower”. However, how subsidy rules are applied may impact how much funding GB Energy can actually provide, on what terms, and to whom – thereby potentially limiting what it can deliver in practice.

WHAT’S NEXT?

While the Labour government has clearly signalled it wants the CMA to adjust course, the impact on the CMA’s decisional practice remains to be seen. The government is due to issue a “strategic steer” to the CMA in the coming weeks, which may provide further clarity. With the spotlight firmly on the CMA, its upcoming decisions under the revamped Phase 2 merger process and its first SMS investigations under the new digital markets regime will be scrutinised for indications as to how the CMA will balance its statutory duty to promote competition for the benefit of consumers with the need to support business confidence in the UK.

FOR MORE INFORMATION

Our Antitrust team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below:



JENINE HULSMANN
+44 20 7903 1767
jenine.hulsmann@weil.com



LUCY CHAMBERS
+44 20 7903 1577
lucy.chambers@weil.com



CHRIS CHAPMAN
+44 20 7903 1630
chris.chapman@weil.com

FURTHER MEMBERS OF THE EUROPEAN ANTITRUST TEAM

MEHJABIN AHMED
mehjabin.ahmed@weil.com

HANNAH BANNISTER
hannah.berry@weil.com

NICHOLAS BARNABO
nicholas.barnabo@weil.com

EVA BARTHELMANN
eva.barthelmann@weil.com

NUNA VAN BELLE
nuna.vanbelle@weil.com

ÁLVARO SALGADO CARRANZA
alvaro.salgadocarranza@weil.com

GABRIEL CHARKI
gabriel.charki@weil.com

CLÉMENCE COPPIN
clemence.coppin@weil.com

JAKOB DEWISPELAERE
jakob.dewispelaere@weil.com

MARTIN ELLIE
martin.ellie@weil.com

ROBERT EYRES
robert.eyres@weil.com

ROMAIN FERLA
romain.ferla@weil.com

ESTEBAN FREDEZ
esteban.fredez@weil.com

JAKE GILBEY
jake.gilbey@weil.com

STEFFEN FLORIAN GIOLDA
steffen.giolda@weil.com

MEGAN GRANGER
megan.granger@weil.com

JAYATI HANDA
jayati.handa@weil.com

GENEVA TORSILIERI HARDESTY
geneva.hardesty@weil.com

VENETIA HUDD
venetia.hudd@weil.com

PATRICK MAY
patrick.may@weil.com

NIKLAS MAYDELL
niklas.maydell@weil.com

MARIJA MOMIC
marija.momic@weil.com

LUCA MONTANI
luca.montani@weil.com

ORLA MURNAGHAN
orla.murnaghan@weil.com

VIVEKA PATEL
viveka.patel@weil.com

JENNY PATROCLOU
jenny.patrocloeu@weil.com

LUCY PECKHAM
lucy.peckham@weil.com

ORNELLA POLITO
ornella.polito@weil.com

NEIL RIGBY
neil.rigby@weil.com

NAFEES SAEED
nafees.saeed@weil.com

CHRIS THOMAS
chris.thomas@weil.com

ANNAGIULIA ZANAZZO
annagiulia.zanazzo@weil.com

ALEXANDRA ZAYTSEVA
alexandra.zaytseva@weil.com

WEIL.COM

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