



The UNITED KINGDOM

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1. Relevant legislation

Enterprise Act 2002 (as amended pursuant to the Enterprise and Regulatory Reform Act 2013) and related subordinate statutory instruments (“EA”).

2. Authority

Competition and Markets Authority (“CMA”), The Cabot, 25 Cabot Square, London, E14 4QZ, United Kingdom (<https://www.gov.uk/government/organisations/competition-and-markets-authority>)

3. Types of transactions caught

Any transaction resulting in “two enterprises ceasing to be distinct”, whereby they come under common ownership or “control” – the latter concept entails (i) a controlling interest (de jure or legal control); (ii) de facto control (control of commercial policy); and (iii) material influence (ability materially to influence commercial policy, irrespective of shareholding).

Control can be acquired in stages (with each stage being caught) and joint ventures can be caught where more than one shareholder acquires “control” within the meaning of the regime.

4. Thresholds

There are two alternative thresholds:

- **Turnover test:** The target’s UK turnover **exceeds GBP 70 million**;
- **Share of supply test:** The transaction results in the **creation of, or increase in, a 25% or more combined share** of sales or purchases in (or in a substantial part of) the UK of goods or services of a particular description.

5. Exceptions

Note that the regime in the UK is voluntary, so there is never a formal requirement to notify. The risk of not notifying is that the CMA may investigate on its own initiative.

6. Notifying party(-ies)

Either party can notify, although it is normally the acquirer that does so.

7. Submission deadline

Notification can be made at any time. It is not mandatory but in order to achieve certainty that a transaction will not be held up or unwound after completion, an acquirer may wish to make a notification in advance of completion and make completion conditional upon clearance.

8. Filing fee

The fee depends on the size of the target's UK turnover:

- GBP 40,000 where turnover is below GBP 20 million;
- GBP 80,000 where turnover is GBP 20 to GBP 70 million;
- GBP 120,000 where turnover is GBP 70 to GBP 120 million;
- GBP 160,000 where turnover exceeds GBP 120 million.

There are limited exemptions from the filing fee, notably for small and medium-sized enterprises. The fees are payable in all cases when the CMA publishes either a reference decision or any decision not to refer.

9. Proceedings timetable

UK merger control procedure comprises of two main Phases, commenced by either notification or by the CMA deciding to investigate on its own initiative:

1) Phase I: Initial investigation - 40 business days, as follows:

Day 1: Process begins on the first business day after the CMA confirms it has received a complete Merger Notice or that it has sufficient information (for an own-initiative investigation).

The CMA then commences its information gathering activities and invites views from interested third parties (it may also contact third parties directly).

Days 15 to 20: The CMA holds "state of play" discussions with the parties (usually over the phone).

Days 25 to 35: An issues meeting is held in more complex cases or ones more likely to present issues. The CMA sends an issues letter in advance of the meeting.

At the end of Phase I the CMA will either clear the merger or refer it for an in-depth Phase II investigation. Alternatively, it may agree to clear the transaction subject to commitments from the parties in the form of 'undertakings in lieu of reference' approved by the CMA.

Undertakings in Lieu: Upon receiving proposed undertakings in lieu of a reference, a subsidiary timetable commences (suspending the Phase I 'clock'), outlined in the CMA's table at the Annex to this form.

2) Phase II: full investigation by the CMA – 24 weeks

The CMA has a statutory period of 24 weeks to conduct its full Phase II investigation and publish a report. This period can be extended by up to eight weeks at the CMA's discretion.

The investigation includes both:

- Written submissions from the parties to the transaction and interested third parties;
- Oral hearings with the parties to the transaction and very significant third parties.

At the conclusion of Phase II, the CMA will decide whether to (i) clear the transaction unconditionally, (ii) clear with conditions or (iii) prohibit the transaction outright.

3) Remedies Implementation

If the CMA decides clearance can only be granted upon conditions (e.g. divestment of part of the merged business, or behavioural commitments such as price controls) it will have a further period of **up to 12 weeks** to finalise and implement these (i.e. to identify and conclude a sale to an 'up front' divestment buyer and/or appoint a "monitoring trustee" to oversee compliance with behavioural conditions).

4) Appeal

The merging parties may appeal the decision of the CMA to the Competition Appeal Tribunal (CAT). Appeal must be lodged within four weeks of the appellant being notified of the decision or of its publication (whichever is earlier). In determining an appeal of a merger decision by the CMA, the CAT must apply the same principles a court applies for judicial review (public law) applications. Third parties with an interest in the merger may also file an appeal against the decision.

10. Availability of pre-notification/informal consultation

Pre-notification discussions are possible and would typically take place around two weeks before notification. Should the parties wish to voluntarily notify their transaction, they can seek pre-notification discussions with the CMA (who will allocate suitable staff and/or even go on to appoint a case team, if initial contact leads to submission of a case team allocation form). Discussions will focus on the information that will need to be provided in a notification. Case teams may also be open to initial discussions around the likelihood of a reference to Phase II and the need for (and likely nature and extent of) remedial undertakings that might be proposed to address the CMA's potential concerns.

11. Test for clearance/prohibition

The CMA must refer a transaction for a Phase II investigation if it considers that it may result in a substantial lessening of competition ("SLC") on the market or markets concerned. The CMA must refer the transaction when it believes the transaction will more likely than not give rise to an SLC. If the CMA believes the likelihood of an SLC is significant, but below 50%, it has a wide margin of appreciation in exercising its judgment. In such cases, it has a duty to refer when it believes there is a realistic prospect that the merger will result in an SLC. If a reference is made, the CMA must decide whether the transaction has resulted, or may be expected to result, in an SLC.

12. Conditional clearance - remedies

See above – the parties can agree undertakings in lieu of reference at the conclusion of Phase I or, alternatively, the CMA can impose divestment or behavioural conditions on clearance at the conclusion of Phase II.

13. Stand-still obligation

There is no obligation on the parties to suspend a transaction and no outright prohibition on completing a transaction without clearance from the CMA.

However, the CMA may:

- make an interim order to prevent or unwind pre-emptive integration by the merging parties and to 'hold the parties separate' unless and until the merger is cleared or cleared with conditions;
- issue a notice requiring a person to provide information or documents, or to give evidence as a witness (section 109 of the EA) and extend its statutory timetable to investigate for as long as the information remains outstanding (including, where relevant, the four month statutory deadline for completed mergers).

In addition, at Phase II, the buyer must not acquire any more shares in the target without first obtaining the CMA's consent (section 78 of the EA). With completed mergers, the merged entity must obtain consent from the CMA before further integrating the constituent businesses (section 77, Enterprise Act).

For mergers between companies quoted on the London Stock Exchange, which are thus subject to the City Code on Takeovers and Mergers, a Phase II investigation by the CMA automatically causes the offer to lapse if it starts before the first closing date, or the date when the offer is declared or becomes unconditional (whichever is the later).

14. Failure to notify/obtain clearance

Notification is voluntary and there is no penalty for completing a transaction without clearance prior to a Phase II investigation. However, the CMA can impose fines for:

- failing to comply with interim measures (up to 5% of worldwide group turnover);
- either intentionally or without reasonable excuse, failing to comply with investigatory requirements, including to attend interviews or meetings with the CMA or to produce documents and other evidence (in the form of a fixed amount of up to GBP 30,000, by reference to a daily rate of up to GBP 15,000, or a combination of the two).

The CMA can also enforce any non-observance of clearance conditions or interim measures before the UK Courts (e.g. by way of injunction proceedings).

In addition, parties and their officers should be aware that it is a criminal offence to:

- Intentionally alter, suppress or destroy any information that the CMA has required to be produced under an information request notice; or
- Knowingly or recklessly supply false or misleading information to the CMA, the Office of Communications (Ofcom), Monitor or the Secretary of State in connection with their merger control functions.