Who's afraid of the UK Competition & Markets Authority?

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THE LAST FEW YEARS HAVE SEEN THE Competition and Markets Authority (CMA), and the UK's merger regime, become a top concern for businesses engaging in M&A. In particular, since the UK's exit from the European Union, the CMA has had parallel jurisdiction alongside the European Commission (EC) and the U.S. authorities, at times with differing outcomes.

The CMA's review of Microsoft/Activision Blizzard, in which the CMA first prohibited the deal before approving a restructured deal a few months later, stands out and has highlighted what many practitioners regard as an increasingly aggressive stance by the CMA. The number of cases referred to lengthy and burdensome Phase 2 investigation has been steadily increasing over the years, reaching a high of 33% in 2022-2023. In 2021-22 and 2022-23, over 40% of cases that proceeded to Phase 2 were prohibited or abandoned by the parties, although this figure has dropped in 2023-2024.[1]

While the CMA's Microsoft/Activision Blizzard decision mainly highlighted differences with the EC in the approach to remedies, other recent cases highlight differences in their substantive approach. Other cases demonstrate the CMA's increasingly expansive approach to its own jurisdiction and therefore what deals can be caught by its review. Indeed, its flexible jurisdictional thresholds have helped the CMA to assert itself as a key authority when considering digital mergers. Recent changes to its governing legislation will also extend this reach further, in particular for digital mergers.

The CMA's expanding jurisdiction

The CMA has jurisdiction to review M&A transactions where:

- Two or more enterprises (or businesses) **cease to be distinct**;
- The transaction meets either:
  - **the turnover test**, i.e., target UK turnover of over £70 million *or*
  - **the share of supply test**, i.e., the parties will together supply or acquire at least 25% of a particular category or type of goods or services in the UK, or in a substantial part of the UK, and the transaction will result in an increment to the parties' share of supply.

The UK merger control regime is, however, voluntary and non-suspensory, so parties are not required to submit notifications even if a transaction meets one of these jurisdictional thresholds. In practice, this means that transactions with no competition law concerns are usually not notified to the CMA. In contrast, where transactions potentially raise competition concerns, parties will need to consider whether to bring them to the CMA's attention in order to avoid further delay down the line or even the subsequent unravelling of the deal.

The recently passed Digital Markets, Competition and Consumers (DMCC) Act[2] makes a number of changes to these thresholds (expected to come into force in the autumn). In particular:

- the turnover test will increase from £70m to 100m; and
- a new jurisdictional threshold will be introduced: a hybrid **market share/turnover test**, i.e., where at least one of the merging businesses has: (a) an existing share of supply of goods or services of 33% in the UK or a substantial part of it and (b) a UK turnover of £350m or more, and the other business has a UK nexus.

The DMCC Act also introduces a safe harbor for small mergers, removing mergers from the CMA's jurisdiction where each party's UK turnover is less than £10 million, to reduce the burden on small and micro enterprises.

Enterprises ceasing to be distinct. Businesses[3] cease to be distinct if they are brought under common ownership or control. This includes "material influence," a lower level of control than in most merger control jurisdictions, and lower than the EC's "decisive influence" test. The CMA will typically look at the level of shareholding, board representation, and other factors such as agreements between the acquirer

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and the target or financial arrangements that may result in one company being dependent on the other.

While a shareholding of more than 25% is likely to be viewed as giving rise to material influence, the CMA's guidance states that shareholdings of less than 25% are less likely to do so.[4] Even significantly smaller shareholdings (e.g., less than 15%) might attract scrutiny where there are other factors relevant to the assessment of influence over the target's policy (such as special voting or veto rights, board representation, agreements or financial arrangements which result in one party being dependent on the other). This can create uncertainty and is one of the areas in which the CMA has been expanding its jurisdictional reach.

For example, in *Amazon/Deliveroo,*[5] Amazon had a 16% minority interest plus board representation together with an Amazon Web Services agreement (which predated the transaction). These, when considered together with the influence that Amazon was likely to have both on the Board and as a strategic, commercial partner with "*significant direct operational expertise,*" were seen as sufficient for Amazon to have material influence over Deliveroo.

In *Farfetch/YOOX Net-A-Porter Group/Richemont,*[6] the CMA concluded that Richemont had material influence over Farfetch despite having a shareholding of only 10-20% and voting rights of less than 10% with no veto rights or board members. The CMA took the broader context of partnership agreements entered into between the parties, as well as a voting commitment deed, Richemont's status and expertise in the industry, and its relationship as important supplier and customer of Farfetch to conclude that it had material influence.

Finally, in April 2024, the CMA opened investigations into arrangements between Microsoft and Inflection AI (in relation to hiring certain employees and a non-exclusive licensing deal), Microsoft and Mistral AI (in relation to an investment, supercomputing supply agreement, and partnership regarding Mistral AI's models), and a partnership between Amazon and Anthropic (including supply of cloud services by Amazon and use of Anthropic models on Amazon Bedrock).[7] These are believed to involve investments of considerably less than 15%. In the case of Inflection AI, Microsoft has not acquired a stake in Inflection AI (it had already invested in 2023), but it has hired Inflection AI's key staff and reached a non-exclusive agreement to license Inflection's AI software; it is the hiring and associated arrangements that the CMA is investigating. Although the CMA has since found that Microsoft's arrangements with Mistral AI do not qualify as a merger, as of this writing, CMA continues to consider the other investments.

In contrast, the EC decided that it did not have jurisdiction to investigate similar arrangements between Microsoft and OpenAI because the arrangements fell short of an acquisition of control under EU law.[8]

In practice, the CMA's actions mean that investments at or even below the 15% mark, when taken together with a board seat or if taken by a large and influential player in the market, can be considered enough for the CMA to claim jurisdiction.

Turnover or share of supply test. In addition, to trigger the CMA's jurisdiction, the transaction must meet either the turnover or the share of supply test. The turnover test is uncontroversial and applies when the target's UK turnover exceeds £70 million (soon to be £100 million).

The share of supply test is more difficult to apply predictably. As noted above, for the CMA to have jurisdiction, the enterprises ceasing to be distinct must "*supply or acquire at least 25% of all particular goods or services of that kind supplied in the UK or in a substantial part of it.*" There must also be "*an increment to the share of supply or acquisition.*"[9] Although this appears to require both a horizontal overlap and a UK nexus, the CMA's cases have pushed this understanding to extremes.

In *Facebook/Giphy,* the CMA asserted jurisdiction over the transaction despite Giphy not generating any turnover in the UK, with the CMA finding overlaps in the supply of apps and/or websites that allow UK users to search for and share GIFs, even though Giphy's products were vertically integrated into, rather than competing against, Facebook's services. In *Roche Holdings Inc/Spark Therapeutics* (a case related to pharmaceutical products), the target did not yet have any sales in the relevant market and the CMA measured share of supply by reference to their share of the number of employees engaged in the clinical development of the relevant product in the UK. Finally, in *Sabre/Farelogix* (providers of IT solutions to airlines), the CMA attributed a UK share of supply to the target, despite the target having no direct UK customers and no UK turnover, because of an arrangement with American Airlines which could be used by British Airways by virtue of an interlining arrangement. The CMA's approach in *Sabre/Farelogix* was confirmed by the Competition Appeal Tribunal ("CAT").[10]

The CMA's expansive approach means that the CMA is likely to assert jurisdiction wherever they believe there is a genuine UK competition concern, and the Court's endorsement means it is likely to be difficult to challenge.

Recent Legislative Expansion of CMA's jurisdiction. As noted above, the CMA is raising the level of its turnover test but also introducing a new jurisdictional test. Given the expansive approach to the share of supply test, the increase to the turnover threshold is unlikely to exclude mergers which raise competition issues. The adoption of the merger threshold where it is not necessary to have a competitive (horizontal) overlap is likely to provide further leeway for the CMA to address purely vertical mergers, as well as "killer acquisitions," *i.e.*, acquisitions of innovative companies (with potentially limited or no current turnover or supply

in the UK) in order to eliminate them as a potential source of future competition. The inclusion of a small-mergers safe harbor, however, should at least provide some comfort for small transactions.

The DMCC Act also introduces mandatory pre-completion reporting obligations for acquisitions by digital businesses designated with "Strategic Market Status" (SMS) where: (i) an SMS firm acquires a stake that crosses certain shareholding thresholds (15, 25, or 50%); (ii) the transaction value is at least £25m; and (iii) the target has a UK nexus. This is a significant shift in the CMA's previously voluntary regime and is aimed at tackling perceived underenforcement in the digital sector.

An Intensive Process With Significant Hold-Separate Powers

How does the CMA find out about the transactions? Transactions with significant competition law concerns may be notified to the CMA and go through the Phase 1 and 2 review process described below, but the CMA is also able to "call in" transactions that have not been notified, with over 25% of total cases reviewed at Phase 1 in the last two years having being called in. Call-in powers are to be expected from a voluntary regime, and the CMA has a Mergers Intelligence function that scours sources for intelligence on merger activity and then reaches out to parties where a particular transaction may give rise to concerns. The Mergers Intelligence Committee has reviewed between 700 and 800 transactions per year over the last three years.

Given the increasing outreach of the Mergers Intelligence function, and the intensive nature of the Phase 1 process, a practice has been growing for parties to submit a briefing paper to the CMA for those transactions that are not obvious candidates for a full Phase 1 review. The briefing paper is a short submission, no more than five pages long, that sets out details about the merger and why it does not raise competition law concerns and/or does not meet the CMA's jurisdictional criteria. The briefing paper process is confidential, and there is no outreach to third parties at this stage. The CMA engages with the parties through one or two rounds of questions and then will either call in the transaction for Phase 1 review or inform the parties that it has no further questions. In 2017-2018, just 39 briefing papers were submitted; this has now quadrupled to 156 in 2023-2024.

CMA review process: once the CMA learns of a transaction (through a voluntary notification or otherwise), the CMA follows a two-stage review process. The two formal stages (discussed below) are typically preceded by an intense period of pre-notification discussions with the parties, with average pre-notification lasting two to three months.

At Phase 1, the CMA case team has 40 working days to decide whether the transaction raises competition law concerns. If the transaction raises such concerns, the CMA will refer the deal for a Phase 2 review, unless the parties provide remedies ("undertakings in lieu" or "UILs") to address the concerns.

During Phase 2, an Inquiry Group of at least three members is appointed to offer a "fresh pair of eyes" independent from the Phase 1 case team—and to be the ultimate decision-makers. Once Phase 2 begins, the CMA has 24 weeks to reach a decision.

The Phase 2 process has faced a number of sharp criticisms. These include: lack of access to the decision-makers in the Inquiry Group outside the formal hearing, including lack of access to discuss remedies; the limited opportunity to challenge and reverse the Provisional Findings (once issued, these are more or less a draft decision); lack of access to the underlying evidence on which the Provisional Findings rely ("access to file"); and the extremely burdensome nature of the process for the parties. The CMA has recently introduced reforms seeking to address the first two concerns, but the last two remain unaddressed.[11] The CMA has increased the opportunities for engagement with the Inquiry Group, including at an early stage of the process, as well as changing the nature of the hearing from a fact-finding one to a hearing on the merits of the case, and bringing forward the Provisional Findings (now called an Interim Report) prior to the main hearing. The revised process also encourages earlier engagement with the CMA on remedies. The DMCC Act also introduces several changes, including (i) a fast-track Phase 2 reference without needing to concede competition law issues, and (ii) additional possibilities for the parties and the CMA to agree to "stop the clock."

Preventing integration of parties. Given the voluntary nature of the UK's merger control regime, parties can complete transactions without seeking clearance, and the CMA often reviews completed transactions. To enable the CMA to prevent integration and preserve the pre-merger competitive structure, the CMA routinely imposes interim enforcement orders ("IEOs"), if the transaction has been completed or there is a risk that it will be completed during the review. The CMA can also prevent completion from taking place altogether, but it does so only in exceptional cases.

A standard form IEO will typically be imposed on the target, the acquirer, and their ultimate parent company, even if they are non-UK companies. In practice, this means that the acquiring and target businesses need to be carried on separately and at arm's length and that any action that may lead to integration, transfer control, or impair the parties' ability to compete independently will require CMA consent. Where the obligations imposed (for example, on non-UK businesses) are disproportionate and could create significant compliance burdens, the CMA may grant derogations to carve out certain business activities. The parties must report regularly to the CMA and the CMA will

typically require the appointment of a monitoring trustee to monitor compliance.

The CMA has frequently imposed fines for breaches of IEOs. The highest fine was a £50 million fine against Facebook for intentionally carving out parts of its business, activities, and staff from the scope of the compliance activities after requesting derogations that were not granted.[12] The CMA's approach has been endorsed by the Courts.[13]

Substantive Test Unchanged, but Practical Impediments Expanded

The CMA investigates whether the merger has resulted, or may be expected to result in a substantial lessening of competition ("SLC")[14]. The most common theory of harm that gives rise to competition concerns remains horizontal unilateral effects, i.e., mergers between competing firms that may allow the merged entity to raise prices profitably or degrade non-price aspects, such as quality, range of service, and innovation, regardless of the behavior of competing firms,[15] with these cases accounting for a large proportion of mergers in the last two years (well over 50%). For example, horizontal unilateral effects have been featured in local mergers in the last couple of years related to veterinary services, dental services, road fuel, and convenience stores, many of which were cleared subject to divestitures. However, CMA is increasingly focusing on other theories of harm, including future and potential competition, vertical and conglomerate theories of harm, and the new so-called ecosystems theories of harm.

Turning first to potential and dynamic competition, the CMA's guidelines state that to determine loss of potential competition, the CMA will assess whether either merging firm would have entered the market or expanded absent the merger, and if so, whether the loss of future competition would bring about an SLC. This assessment will reflect the competitive conditions expected to prevail in the future following market entry, even though this may include uncertainty and assumptions. It is therefore a more speculative and forward-looking assessment and, importantly, it is sufficient that the process of dynamic competition is constraining the parties and there does not need to be evidence that the innovation would succeed. Dynamic competition was considered in both *Facebook/Giphy* and *Adobe/Figma* (both blocked /abandoned). In *Facebook/Giphy,*the CMA found that Giphy's nascent paid alignment advertising service would become a close competitor of Facebook's advertising business. The CMA's dynamic theory of harm was upheld on appeal by the CAT.[16] In *Adobe/Figma*, the CMA provisionally found that Figma could become a close competitor to Adobe in the future in the image-editing market despite limited third-party support for this view and Figma's own views, but based largely on Adobe's internal documents that (CMA argued) identified Figma as a potential threat.[17]

The CMA will also consider non-horizontal theories of harm, *i.e.*, between firms that do not compete but that instead operate in related markets. Here, the CMA will typically consider whether the merged entity will be able to use its position in one market to harm the competitiveness of its rivals in the other.

Although non-horizontal mergers used to be considered as more benign than mergers between competitors, a significant proportion of Phase 2 transactions now involve primarily non-horizontal theories of harm. Three of the ten Phase 2 reviews conducted in 2023 included mergers where the concerns predominantly related to non-horizontal theories of harm, with only one of these being blocked (Microsoft/Activision Blizzard, which was subsequently cleared in a restructured form at Phase 1).[18]

Novel theories of harm, such as "ecosystem" theories of harm may apply, particularly in digital markets, where businesses have a number of products and services, potentially across different markets, which are connected, typically formed around a core product such as a smartphone. In Microsoft/Activision Blizzard, the CMA's ecosystem concerns in cloud gaming ultimately led to a prohibition of the initial transaction. However, the CMA has not adopted these theories in other recent transactions where the EC has, such as Booking/eTraveli, which was blocked by the EC but cleared by the CMA.

CMA's approach to remedies. If the CMA concludes that the merger raises concerns, it must consider whether any action can be taken to remedy, mitigate, or prevent the SLC or any resulting adverse effects.

The CMA prefers structural remedies (typically divestitures) over behavioral remedies, which attempt to mitigate anticompetitive effects by restricting the conduct of the parties.[19] At Phase 1, UILs must be "clear cut" and "comprehensive," so more complex remedies are unlikely to be accepted, and it is typical for these to be limited to fairly simple divestiture packages.

At Phase 2, the Inquiry Group can consider more complex remedies, but it has rarely accepted them. This can present issues for mergers where divestiture is not an option. In particular, the CMA has voiced clear policy concerns with attempting to address issues in vertical or conglomerate mergers with behavioral remedies—typically access remedies providing non-discriminatory access to an essential input for competitors. CMA has pointed to circumvention and monitoring risks, as well as the difficulty of agreeing to enduring remedies in dynamic markets subject to innovation and change. While the EC has also expressed skepticism as to the effectiveness of behavioral remedies for similar reasons, in practice it has shown much greater flexibility in accepting such remedies. Thus, in *Microsoft/Activision Blizzard*, while the Commission accepted a behavioral remedy providing rivals with a license to cloud stream Activision games, the CMA rejected the same remedy, leading the CMA initially to prohibit the transaction altogether.

Is the CMA getting tougher on mergers? There have been many claims that the CMA is getting tougher on mergers.

The CMA's review of *Microsoft/Activision Blizzard* is often cited as the exemplar of the CMA's more aggressive stance, especially compared to the EC and the U.S. authorities. So before considering the statistics, it is worth discussing this case in a little more detail.

The CMA considered two main theories of harm at Phase 2. The first was a concern that Activision's Call of Duty would be made exclusive to Microsoft's Xbox, denying access to Sony's PlayStation, therefore reducing competition in console gaming services. Although this first theory of harm was included in the provisional findings, it was ultimately removed based on evidence that the loss of Sony licensing revenues would outweigh the benefit of exclusivity to Xbox. The EC similarly investigated but ultimately dismissed this same concern. Second, the CMA found that in the developing market of cloud gaming, Microsoft (with its multi-product ecosystem) could withhold Activision's games from rival cloud gaming service providers, which would then reduce competition in this developing market. The EC and indeed the U.S. Federal Trade Commission identified an identical concern. Although a court denied the FTC's request for an injunction, it is difficult to argue that the CMA's finding of a concern in this developing market singles it out as tougher than its fellow regulators. In reality, the case demonstrates that the CMA is not out of step with other key competition authorities.

As discussed above, the divergence, with the EC at least, arises with remedies. Although the Inquiry Group was free to adopt appropriate remedies, it concluded—in line with clear CMA policy—that the proposed behavioral remedies posed too great a risk. In contrast, the EC was able to clear the transaction on the basis of the same behavioral remedies that had been proposed to the CMA. It is worth noting, however, that the FTC, in seeking an injunction from the court, had similarly rejected behavioral remedies and very much shared the CMA's scepticism (although this skepticism was not ultimately shared by the court).

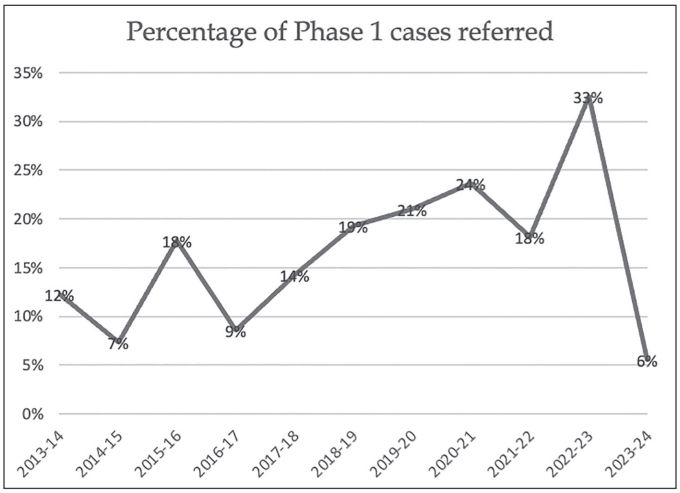
What ensued was unprecedented. Facing an appeal before the CAT and significant adverse comments from business leaders (not least the Activision CEO announcing that "*the UK is closed for business*" and the UK Chancellor of the Exchequer warning the CMA to be mindful of its "*wider responsibilities for economic growth*"), the CMA exceptionally agreed to Microsoft's re-notifying a restructured transaction consisting of the purchase of Activision, excluding Activision's non-EEA cloud streaming rights (as the EEA cloud streaming rights were already the subject of the EC's remedies), which were divested to gaming rival, Ubisoft. The CMA approved this "new" transaction in Phase 1 subject to ancillary behavioral commitments for 15 years aimed at ensuring the effectiveness of the divestiture of the non-EEA cloud streaming rights. Arguably therefore, if one believes that the CMA's divestiture solution is more effective, EEA consumers have less protection than those in the UK and the rest of the world (as the divestiture was global excluding the EEA).

While the precedent setting value of *Microsoft/Activision Blizzard* is unclear (and the CMA has been at pains to emphasize that *Microsoft/Activision Blizzard* does not represent a significant change in the CMA's approach),[20] questions for future deals remain. Did the CMA bend to political pressure, and what role does lobbying have in CMA cases? By allowing re-notification of the deal subject to a divestiture immediately after its prohibition, has the CMA inadvertently introduced an effective "Phase 3," giving the merging parties a second bite at the apple?

While the CMA's stated aversion to behavioral remedies in vertical mergers produced a "tougher" outcome in *Microsoft/Activision Blizzard*, this is not always the case. In a number of cases where the EC has accepted complex behavioral remedies to address the vertical concerns it has identified, the CMA has cleared the same case unconditionally (i.e., without the need for remedies), sometimes even in Phase 1. Arguably, CMA's tougher stance on behavioral remedies means that it is less likely to find a substantive concern in vertical cases, knowing that any concern is likely to lead to prohibition. In contrast, the EC's more flexible approach to behavioral remedies makes it more "relaxed" about finding a substantive concern in the first place because it knows it is likely to be able to fix that concern through behavioral remedies. Perhaps the best example is *Meta/Kustomer*, cleared unconditionally in Phase 1 by the CMA, but only subject to remedies in Phase 2 by the EC.[21]

More recently, the EC has prohibited Booking.com's acquisition of Etraveli, deploying a controversial "ecosystem" theory of harm, rejecting the parties' proposed remedies.[22] If the CMA was "getting tougher on mergers," one might have expected them to reach the same conclusion, yet the CMA cleared the case again unconditionally in Phase 1.[23] A similar story is true of *Amazon/iRobot,* which was abandoned after the parties were unable to address the EC's concerns in Phase 2.[24] There is a tendency to focus on those cases with divergent outcomes, ignoring the vast majority of cases—including complex global mergers—where outcomes converge. So it is dangerous to cite *Microsoft/Activision Blizzard* in isolation to support a thesis that the CMA is getting tougher on mergers.

That said, the statistics lend some support, although it is not unequivocal, for the view that the CMA is hardening its approach to mergers. First, there has been a steady increase in the percentage of Phase 1 cases that have been referred to Phase 2 (with the notable exception of 2023-24). This can partly be explained by the increasing practice in the last five or more years to submit a briefing paper on mergers that raise fewer competition law concerns (and thereby avoid a Phase 1 review altogether). However, the number of cases reviewed year-on-year has not dropped significantly over the time period, suggesting that there is nevertheless a toughening approach to referral.



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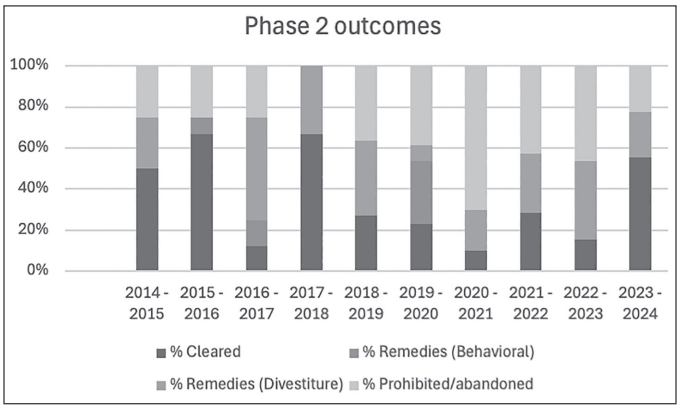

Drawing conclusions at Phase 2 is more complex, partly because of the small number of cases referred (fewer than 15 per year). The picture is therefore more mixed. It is clear, however, that between 2018 and 2023, fewer than 30% of cases were cleared unconditionally. It is also apparent that no behavioral remedy has been accepted at Phase 2 since 2019-2020.

Before the combined CMA was established in 2014, two separate agencies made the Phase 1 and 2 decisions,[25] and the unconditional clearance percentage was around 40%. Again, with 2023-2024 as an exception, since 2018-19, the percentage of unconditional clearances has fallen significantly below this benchmark. While the CMA's Phase 2 decision-makers are intended to be independent of the CMA, they are briefed on CMA policy, and it is easy to see how a toughening at Phase 1 may also lead to a toughening of approach at Phase 2. It is difficult to say whether the "weaker" enforcement in 2023-24 is a rebalancing post-*Microsoft/Activision Blizzard* or simply due to the nature of the cases before the CMA that year.

One could therefore reasonably conclude that the CMA has become a more stringent enforcer. This is, however, as noted above, not out of line with other competition enforcers. The percentage of cases that have either been prohibited by the EC or withdrawn in Phase 2 from 2014-18 to 2019-23 increased from 22% to 44%, with a corresponding halving of the unconditional clearance rate (from 17% to just 8%), while the percentage of cases cleared with remedies remained relatively static.

Conclusion

Although the UK merger control regime is considered voluntary, this is somewhat misleading given the severe consequences that can arise if parties choose not to notify their transaction to the CMA and the case is subsequently called in for investigation. As highlighted above, this is likely to include the imposition of obligations to hold the businesses separate and may ultimately result in a costly unwinding of the transaction.

The CMA is undoubtedly taking a more expansive approach to jurisdiction, especially in dynamic markets where it has identified a competition concern. While it has adopted a tough stance on vertical and conglomerate mergers in dynamic sectors, especially in light of its skepticism towards behavioral remedies, this is not out of line with other competition authorities around the world. Arguably, while its initial prohibition of Microsoft/Activision Blizzard caught the world's attention, its hostility to behavioral remedies (also shared by the U.S. authorities) has led to less aggressive intervention than the EC in other cases.

For practitioners and merging parties considering transactions that may impact the UK, this is a reminder to ignore the CMA at your own peril! ■

[1] The UK is of course not alone in toughening its stance on mergers. Similar patterns are evident both in Europe and the U.S.

[2] The Digital Markets, Consumer and Competition Act received Royal Assent on May 24, 2024.

[3] The definition also extends to parts of a business (including assets or employees) used for gain.

[4] Competition & Mkts. Auth. (CMA), CMA2, Mergers: Guidance on the CMA's Jurisdiction and Procedure 4.22; 4.23, https://assets.publishing.service.gov.uk/media/66292ad8b0ace32985a7e7cc/__Mergers_guidance_on_the_CMA_s_jurisdiction_and_procedure__2024_-_revised_guidance__.pdf (Apr. 25, 2024).

[5] CMA, Anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo, Final Report 4.9, https://assets.publishing.service.gov.uk/media/5f297aa18fa8f57ac287c118/Final_report_pdf_a_version_—.pdf (Aug. 4, 2020).

[6] Acquisition by Farfetch of interest in, and certain governance rights over, YOOX Net-a-Porter Group from Richemont, in consideration for the acquisition of a minority shareholding by Richemont in Farfetch, ME/7015/22 (Competition & Mkts. Auth. Mar. 29, 2023).

[7] Press Release, Competition & Mkts. Auth., CMA seeks views on AI partnerships and other arrangements (Apr. 24, 2024), https://www.gov.uk/government/news/cma-seeks-views-on-ai-partnerships-and-other-arrangements.

[8] Eur. Comm'n Press Release IP/14/650, Commission launches calls for contributions on competition in virtual worlds and generative AI (Jan. 9, 2024); *see also* EVP Margrethe Vestager, Speech at the European

Commission Workshop on "Competition in Virtual Worlds and Generative AI" (Jun. 28, 2024) (SPEECH/24/3550).

[9] CMA, CMA2, Mergers: Guidance on the CMA's Jurisdiction and Procedure 4.3, (Apr. 25, 2024) (basing itself on Enterprise Act 2002, Section 23).

[10] CMA, Completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc., Final Report (Nov. 30, 2021), https://assets.publishing.service.gov.uk/media/61a64a618fa8f5037d67b7b5/Facebook__Meta__GIPHY_-_Final_Report_1221_.pdf; Anticipated acquisition by Roche Holdings, Inc. of Spark Therapeutics, Inc., ME/6831/19 (Competition & Mkts. Auth. Dec. 16, 2019); *see also* Anticipated acquisition by Sabre Corporation of Farelogix Inc., ME/6806/19 (Competition & Mkts. Auth. Aug. 16, 2019); *see also* Sabre Corporation v. Competition and Markets Authority, Case No. 1345/4/12/20 (Competition Appeals Tribunal 2021).

[11] Press Release, Competition & Mkts. Auth., New Phase 2 investigation process adopted by CMA (Apr. 25, 2024), https://www.gov.uk/government/news/new-phase-2-investigation-process-adopted-by-cma#:~:text=New%20Phase%201%20cases%20opened,for%20a%20Phase%202%20investigation. CMA, CMA2, Mergers: Guidance on the CMA's jurisdiction and procedure 4.3, (April 25, 2024) (basing itself on Enterprise Act 2002).

[12] CMA, Decision to impose a penalty on Meta Platforms, Inc., Tabby Acquisition Sub Inc., and Facebook UK Limited under section 94A of the Enterprise Act 2002 (Oct. 20, 2021), https://assets.publishing.service.gov.uk/media/617a664f8fa8f52981d40e7e/Facebook_giphy_Final_Penalty_Decision_291021_PKG.pdf. Facebook was also fined £500,00 for changing its Chief Compliance Officer without seeking consent and £1.5m in February 2022 for making changes to key staff without CMA consent.

[13] Facebook, Inc. and Facebook UK Limited v. Competition and Markets Authority [2021] EWCA (Civ) 701 (Eng.).

[14] At phase 1, the CMA will refer the transaction to phase 2 if there is a realistic prospect that the merger has resulted or may be expected to result in an SLC. At phase 2, the CMA's inquiry group will consider if it is more likely than not (i.e. more than 50% chance) that the merger has resulted or may be expected in an SLC.

[15] CMA, CMA129, Merger Assessment Guidelines 4.3 (Mar. 18, 2021), https://assets.publishing.service.gov.uk/media/61f952dd8fa8f5388690df76/MAGs_for_publication_2021_-_.pdf.

[16] Meta Platforms, Inc. v. Competition and Markets Authority and Application Developers Alliance, The Computer & Communications Industry Association and Privacy International, Case No. 1429/4/12/21 (Competition Appeals Tribunal 2022).

[17] CMA, ME/7021/22, Anticipated acquisition by Adobe Inc. of Figma, Inc. (Jun. 30, 2023).

[18] *UnitedHealth Group/EMIS* (both providers of healthcare software), *Broadcom/VMWare* (providers of hardware and software) and *Microsoft/Activision Blizzard* (gaming services).

[19] Sarah Cardell, Speech on UK Merger Control in 2023 (Feb. 27, 2023), https://www.gov.uk/government/speeches/uk-merger-control-in-2023.

[20] Sarah Cardell, Speech on the Future of UK Merger Control (Nov. 20, 2023), https://www.gov.uk/government/speeches/sarah-cardell-the-future-of-uk-merger-control.

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