

COMPETITION & REGULATORY NEWSLETTER

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CMA hosts digital summit with G7 competition authorities

On 29 and 30 November 2021 the Competition and Markets Authority (CMA) [hosted a summit](#) with the heads of the G7 competition authorities and four guest authorities (Australia, India, South Africa and South Korea) to discuss long term coordination and cooperation to promote competition in digital markets. The G7 Digital Competition Enforcers Summit aimed to find coherent and complementary ways to encourage competition and support innovation in the digital space, while also strengthening relationships between the competition authorities and increasing collaboration on issues related to competition in digital markets.

In particular, the summit focused on emerging issues including those in respect of large digital platforms, app stores, online marketplaces, digital advertising, mobile ecosystems, cloud computing and algorithms. The CMA emphasised that never before have so many competition authorities focused on the examination and investigation of the same markets and the same and similar conduct.

COMPENDIUM

As part of the summit, the G7 and guest competition authorities published a [compendium](#) of their approaches to improving competition in digital markets. The compendium provides an overview of how the different authorities have approached competition issues in digital markets, and highlights a number of similarities and common themes in the approaches taken.

KEY ISSUES IN DIGITAL MARKETS

The report highlights the main issues that the authorities have been tackling in digital markets in recent years, noting that they have been particularly active in investigating digital advertising, as well as conduct in relation to online marketplaces and app stores. According to the report, the G7 and guest authorities are also working to better understand the mechanics of algorithms and their potential adverse effects on competition.

In terms of merger control, the report notes the authorities' widely held concerns that there has been historic under-enforcement against digital mergers, and lists a number of mergers in digital markets which have been challenged by authorities in recent years. According to the report, the key issues the authorities have tackled in their merger enforcement are the acquisition of nascent or potential competitors (the report cites for example the CMA's review of PayPal/iZettle and Experian/ClearScore), data aggregation (for example, the European Commission's review of Microsoft/LinkedIn and Google/Fitbit) and vertical or horizontal mergers involving software (for example, the CMA's review of Sabre/Farelogix).

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As for how the authorities are improving their ability to understand digital markets and investigate and remedy anticompetitive behaviour, the report indicates that many competition authorities have taken steps to increase their capacity and ability to analyse the complex data and information which plays a fundamental role in digital firms' business models. A number have also established dedicated units, employed technical specialists and invested in upskilling staff in this area.

According to the report, competition authorities are also building institutional knowledge through market studies and fact finding surveys, with such market studies often also leading to concrete recommendations as to how to better regulate these markets.

REFORMS TO EXISTING POWERS AND APPROACHES

The report notes the growing consensus amongst competition authorities that existing powers may need to be reformed for the authorities to "*address the full scope of anticompetitive concerns in digital markets*", with reforms enacted or underway in nearly all the jurisdictions covered by the report. According to the report, while the precise proposals vary between jurisdictions, "*most facilitate easier or faster agency intervention or contemplate new regulatory regimes*".

In respect of antitrust, nearly all contributions indicated that "*timely intervention and the ability to address harm in its incipiency*" is key to making markets more competitive and driving innovation. The report notes the *ex ante* regimes under both the Commission's proposed Digital Markets Act and the UK's "strategic market status" (SMS) proposals as amongst the reforms attempting to bring about such changes.

The report also recognises that many jurisdictions have proposed or introduced reforms to enhance jurisdiction over mergers in digital markets, including amongst others the introduction of transaction value thresholds in Germany and the Commission's recent change to its policy under Article 22 EUMR. The proposals in some of the countries go beyond issues of jurisdiction over digital mergers, with the UK considering a bespoke merger regime for SMS deals and a US House Judicial Committee bill, the Platform Competition and Opportunity Act of 2021, proposing a high hurdle for acquisitions by certain platforms.

THE IMPORTANCE OF REGULATORY COOPERATION

The report recognises that many of the issues highlighted are "*inextricably linked with other policy areas*", in particular data privacy and protection, consumer protection and media sustainability. According to the report a number of agencies have taken an in-depth look at the synergies and tensions that arise when competition intersects with these areas - for example the joint report by the CMA and the Information Commissioner's Office - and engage regularly with other domestic regulators to address issues in a holistic way.

It also notes that "*[a]s well as the increasing collaboration domestically, international collaboration between competition authorities is now more important than ever*", given they are dealing with "*global digital firms*" and "*borderless markets*". In this respect, the G7 and guest authorities work together directly - sharing information, case theories, best practice and in some cases joint outputs - and also through existing international competition and consumer networks such as the Organisation for Economic Cooperation and Development, the International Competition Network and the International Consumer Protection Enforcement Network.

CONCLUSION

The report confirms that competition authorities are dedicating a huge amount of time and resource to digital markets, and that many are considering or have already implemented reform in this area. With significant reforms proposed in Europe with the Digital Markets Act and in the UK with the government's proposed SMS regime, it will be interesting to see what 2022 holds in store.

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On 30 November 2021 the CMA issued its final report in its Phase 2 investigation into the completed acquisition by Meta (formerly Facebook) of Giphy, [ordering](#) Meta to sell the GIF-sharing search engine. In line with its Phase 2 provisional findings issued in August 2021, the CMA concluded that Meta's ownership of Giphy has resulted or may be expected to result in a substantial lessening of competition in (i) the supply of display advertising in the UK, and (ii) the supply of social media platforms worldwide (including in the UK).

With regards to the supply of social media services worldwide (including in the UK), the CMA concluded that Meta would be able to increase its market position by denying or limiting other platforms' access to Giphy GIFs, driving more traffic to Meta-owned sites, including Facebook, WhatsApp and Instagram.

With regards to the supply of advertising services, the CMA found that Giphy's advertising services had the potential to compete with Meta's own advertising services.

After consulting on potential remedies, the CMA concluded that only the sale of Giphy by Meta to an approved buyer could address its concerns.

GENERAL COMPETITION**CHINA CREATES NEW ANTI-MONOPOLY ADMINISTRATION**

On 18 November 2021 the PRC State Administration for Market Regulation (SAMR) [announced](#) the establishment of a new National Anti-Monopoly Bureau (NAMB). SAMR also published information on the duties of its three new independent antitrust enforcement departments.

It announced that the [First Division](#) will be responsible for antitrust enforcement, such as alleged monopoly agreements and abuse of dominance cases, while the [Second Division](#) will be responsible for conducting reviews on concentrations of undertakings and the digital economy. The [Competition Policy Coordination Division](#) will be responsible for the overall coordination of antitrust policy and its implementation across China. SAMR's deputy chief, Gan Lin, will [serve as](#) head of the National Anti-Monopoly Administration and will lead the three new divisions.

Although NAMB is still structurally affiliated with the SAMR, it now enjoys an elevated status in the government hierarchy, and is expected to have more autonomy and decision-making power in administering and enforcing China's competition law. China's state media outlet Xinhua has reported that the establishment of NAMB will enhance the antitrust enforcement framework, strengthen antitrust regulatory capabilities, and effectively regulate competitive conduct. This is consistent with China's policy goal of strengthening antitrust enforcement, as manifested in the significantly increased enforcement actions focused on China's tech sector (including Alibaba, Tencent and Meituan) since late 2020.

EC COMMUNICATION - COMPETITION POLICY FIT FOR NEW CHALLENGES

On 18 November 2021 the European Commission [announced](#) its Communication on a competition policy fit for new challenges. The [Communication](#) sets out the EU competition policy initiatives and their impact on the Commission's digital markets and sustainability priorities, highlighting the in-built ability of competition policy to adapt to new market circumstances. Executive Vice-President Margrethe Vestager said that "*effective competition policy is needed now, to give the European economy the agility and drive to overcome the challenges it faces*".

The Communication also provides an overview of new instruments being adopted by the Commission in order to tackle emerging challenges in the Single Market. Examples include the adoption of a [sixth amendment](#) to the State aid Temporary Framework to contribute to Europe's response to the coronavirus crisis and support the European recovery. This amendment

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prolongs the application of the Framework to 30 June 2022, as well as setting out the path for a progressive phase-out of crisis measures. The amendment also introduces new tools to kick-start and crowd-in private investment for a faster, greener and more digital recovery.

To contribute to the green transition, the Commission is, amongst other initiatives, currently revising its Climate, Environmental Protection and Energy Aid [Guidelines](#), foreseen to apply from 2022. These Guidelines are designed to support industry's efforts towards decarbonisation, circularity and biodiversity, as well as clean or zero-emission mobility and the energy efficiency of buildings. Also, in the context of furthering the European Green Deal Objectives, the Commission intends to provide guidance and legal certainty, including where companies contemplate agreements to pursue sustainability objectives. The Commission is also consulting on the conditions in which cooperation between competitors can contribute to more sustainable products or production processes in the ongoing review of the Horizontal Block Exemption Regulations and Guidelines.

With regards to the digital transition, the Commission is revising the Broadband State aid [Guidelines](#) with the aim of fostering digital infrastructure development by facilitating the deployment and take-up of broadband networks. The Communication also refers to, *inter alia*, the Commission strengthening control of potentially problematic acquisitions in the digital sector through its new guidance on the application of Article 22 EUMR.

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