Brexit: Implications for the competition and consumer regimes

*Brexit and the Future of Competition Policy; Key Issues and Challenges.* Centre for Competition and Regulatory Policy, City University of London
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19th January 2017
Role of the CMA

- For Government to assess which Exit model is most likely or appropriate

CMA’s role is three-fold:

- **Authority**: Keeping markets competitive and supporting economic growth;
- **Advisor**: Acting as an informed, expert, and constructive advisor to Government; and
- **Contributor**: Continuing role as a member of the global competition enforcement community
Tool-specific implications (1)

- Impact depends on the extent to which the tool is entwined with EU law.
- One end of the scale is consumer protection: EU regimes highly integrated; impact on cross-border enforcement capability.
- Other end of spectrum is the criminal cartel regime: UK-specific; not directly affected.
- Along this spectrum is antitrust and merger regimes: codified in UK statutes but heavily aligned and influenced by EU law.
Tool-specific implications (2)

**Antitrust**
- EU/UK parallel investigations? removal of block exemption regime?

**Mergers**
- loss of one-stop-shop and freedom to exert jurisdiction?

➢ Potential in both tools for greater flexibility to determine enforcement priorities

**In addition:**
- Markets: potential for increased flexibility and expansion of tools? broader range of remedies?
- Regulatory appeals: currently dependant on EU legislation
Cross-cutting implications (1)

Irrespective of post-Brexit relationship, a number of aspects are critical to successful functioning of competition and consumer regimes

- CMA ability to share information with other EU authorities, use it as evidence and cooperate on enforcement

- Current ability to share information (including confidential) has played significant part in facilitating effective enforcement in the UK and Europe

Information sharing and cooperation

- Potential loss of one-stop-shop: parallel merger reviews could cause an increase of at least 40%-50% of current merger workload

- If no longer a prohibition on parallel European Commission / CMA investigations: Potential for simultaneous UK and EU enforcement action

Practical resource and prioritisation consequences for CMA
Cross-cutting implications (2)

Applicability of EU law and other transitional provisions

- Need to ensure effectiveness and allocation of existing, in-flight and post-Exit investigations, processes and remedies
- Need for both legal and process certainty for both business and enforcement agencies

UK Influence on EU law and practice

- ECN/CPC and the courts
- UK specificity vs. benefits of maintaining appropriate consistency with international best practice
Transitional considerations

- Importance of minimising disruption for enforcement and for business
- Arrangements for existing, in-flight and post-Exit investigations, processes, remedies and commitments
- Appropriate maintenance of rights (intervention, appeal, enforcement etc.) and processes; referral and case allocation etc.; jurisdictional “cut-off” points
- Minimise risks of enforcement gaps / opportunities to game the system
- Timing: some considerations will need to be addressed or agreed in advance of withdrawal i.e. in a transitional arrangement