

HERBERT SMITH FREEHILLS RESPONDS TO COMPETITION AND MARKETS AUTHORITY PROPOSALS ON COMPETITION IN DIGITAL MARKETS

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Firm news

Responding to news that the Digital Markets Taskforce of the Competition and Markets Authority has published its [advice to government](#) on the potential design and implementation of pro-competitive measures for unlocking competition in digital markets, Mark Jephcott, a partner in Herbert Smith Freehills' competition practice, has said that “seems to be yet another tug on the already very tight straightjacket imposed on doing business in the UK”.

A core element of the proposal related to merger control. Key aspects included:

- a reporting requirement for all acquisitions by companies with Strategic Market Status (SMS) – this is regardless of the size of shareholding or interest
- a mandatory and suspensory notification for acquisitions by SMS above a certain transaction value yet to be determined. This is in line with other jurisdictions, most notably Germany
- a “call-in” power to review acquisitions that fall below the transaction value threshold.

Responding to the taskforce's advice, Mark Jephcott says:

"The writing has been on the wall for increased intervention by the CMA in relation to digital mergers for some time so there is no real surprise of a further attempted jurisdiction-grab and reduced standard of proof requirement by the CMA.

"The need for the additional jurisdiction is, however, unconvincing as the CMA already has one of the widest discretions to assert jurisdiction in the world. The purported concern that targets in digital mergers often have limited UK turnover and thus necessitating an additional limb is spurious – the CMA has recently, and unapologetically, asserted jurisdiction over mergers where the Target achieved zero UK turnover (e.g. Roche/Spark and Sabre/Farelogix – the latter currently on appeal).

"It seems to be yet another tug on the already very tight straightjacket imposed on doing business in the UK – so on top of proposed mandatory and suspensory filing requirements under the NSI Bill for sector-specific deals regardless of transaction value or UK turnover, SMS companies will now have a further reporting requirement for any acquisition of interest (however small) and likely a mandatory and suspensory filing obligation for many others."

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