

Major events and policy issues
in competition law in the past
12 months

Advanced International Competition
Law 2021 conference

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Brexit and related issues



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31 December 2020 – end of transition/implementation period

Commission jurisdiction – Withdrawal Agreement, arts 92 – 95

Trade and Cooperation Agreement – “level playing field”

- Competition policy – arts 358 - 362

- Subsidy control – arts 363 – 375

- European Union (Future Relationship) Act 2020, s.29

Changes to UK competition law

- Existing rights, obligations etc. under arts 101/102 TFEU continue to have effect

- CMA can no longer apply arts 101/102

- Retained block exemption regulations – CA 1998 s.10

- Interpretation of CA 1998 – s.60A

Anti-competitive agreements (1)



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Object and effect of restricting competition

Lundbeck (C-591/16P) EU:C:2021:243

Ranbaxy (C-586/16P) EU:C:2021:241

Generics v CMA [2021] CAT 9

International Skating Union (T-93/18) EU:T:2020:610 (appeal C-124/21P)

Lexon v CMA [2021] CAT 5

BGL ("Compare the Market") (19 November 2020, appeal pending)

Valve and others (Video Games) (20 January 2021)

Parental liability

Goldman Sachs v Commission (C-595/18P) EU:C:2021:73

Deutsche Telekom v Commission (C-152/19) EU:C:2021:238

Anti-competitive agreements (2)



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Covid-19

Commission guidance

Commission 'comfort letters'

CMA guidance

Director disqualification

CMA v Martin [2020] EWHC 1751 (Ch)

Fines

F.P. McCann v CMA [2020] CAT 28

Roland v CMA [2021] CAT 8

Yamaha/GAK (musical instruments, online RPM) (17 July 2020)

Abuse of a dominant position



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'Pay for delay' agreements

Lundbeck v Commission (C-591/16P) EU:C:2021:243

Generics v CMA [2021] CAT 9

Exclusionary abuses

Deutsche Telekom (C-152/19P), *Slovak Telekom* (C-165/19P) EU:C:2021:238, 239

Lietuvos geležinkeliai (Lithuanian Railways) (T-814/17) EU:T:2020:545 (appeal pending C-42/21P)

Royal Mail v OFCOM [2021] EWCA Civ 669

Exploitative abuses

Aspen Pharma (commitments given to EC, 10 February 2021)

Essential Pharma (commitments given to CMA, 18 December 2020)

Allocation of jurisdiction between Commission and NCAs under Reg. 1/2003, art 11(6) and *ne bis in idem*

Slovak Telekom (C-857/19) EU:C:2021:139

Commission information requests

Qualcomm v Commission (C-466/19P) EU:C:2021:76

Private enforcement in UK



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Brexit: UK courts can continue to hear damages claims for pre-31 December 2020 infringements

Binding nature of Commission decisions/EU court judgments

Sainsbury's Supermarkets v Visa, Mastercard [2020] UKSC 24

Secretary of State for Health v Servier [2020] UKSC 44

Collective actions

Merricks v Mastercard [2020] UKSC 51

Merger control



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International collaboration

Multilateral working group for pharmaceutical mergers

CMA, BKartA, ACCC *Joint statement on merger control enforcement* (20 April 2021)

Article 22 EUMR referrals by NCAs to Commission

Court judgments

Heidelberg Cement v Commission (T-380/17) EU:T:2020:471

CK Telecom v Commission (T-399/16) EU:T:2020:17 (appeal pending: C-376/20P)

JD Sports v CMA [2020] CAT 24

Facebook v CMA [2021] EWCA Civ 701 – CMA interim enforcement powers

Commission cases

Air Canada/Transat (abandoned 2 April 2021)

Fincantieri/Chantiers de l'Atlantique (abandoned 2 February 2021)

London Stock Exchange/Refinitiv (clearance with remedies, 13 January 2021)

Google/Fitbit (clearance with remedies, 17 December 2020)

CMA continues robust enforcement

Viagogo/StubHub (Phase II clearance with partial divestment, 9 April 2021)

Crowdcube/Seedrs (abandoned in Phase II, 25 March 2021)

Hunter Douglas/247 Home Furnishings (prohibition with partial divestment, 14 September 2020)

Foreign investment controls



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EU: Foreign Direct Investment Regulation (2019/452)

Direct effect in Member States from 11 October 2020

Framework for screening non-EU FDI on security/public order grounds

Coordination of national screening reviews

Commission may issue opinions, including where FDI may affect projects/programmes of EU interest for security/public order grounds

UK: National Security and Investment Act 2021

Royal Assent 29 April 2021, entry into force later in 2021

Retrospective effect from 11 November 2020

BEIS – new 'Investment Security Unit' to screen transactions

applies to "trigger events" - 25%, 50%, 75% thresholds; material influence

17 "high risk" sectors – mandatory pre-completion filing/approval – sanctions for non-compliance

other sectors – voluntary notification, but BEIS may "call in" transactions

can apply to acquisitions by UK persons and of non-UK entities/assets

remedies can include unwinding

State aid/subsidy control (1)



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Trade and Cooperation Agreement, arts 363 – 375

Post-Brexit enforcement of EU state aid rules in the UK

Withdrawal Agreement

Pre-2021 aid – arts 92 – 95 – Commission investigations

Structural programmes (ERDF, ESF) – art 138

Ireland/Northern Ireland Protocol, art 10

Pre-2021 aid - domestic court challenges

UK subsidy control post-2020

TCA has effect in national law – EU (FR)A 2020 s.29

BEIS guidance

Public consultation and Subsidy Control Bill

State aid/subsidy control (2)



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Covid-19

Temporary Framework
Commission decisions

Key court decisions

Commission v Poland (C-562/19P) *v Hungary* (C-596/19P) EU:C:2021:201, 202

INAIL (C-608/19) EU:C:2020:865

NMI Tecnnologietransfer (C-516/19) EU:C:2020:754

Austria v Commission (Hinkley Point) (C-594/18P) EU:C:2020:567

Tax subsidies – *Amazon, Engie*

Control of subsidies by non-EU states: draft Regulation on foreign subsidies distorting the internal market (5 May 2021)

Mandatory notification to Commission if parties receive foreign financial aid

M&A transactions (EU target over €500m turnover and support over €50m over 3 years)

public procurement bids (over €250m)

Own initiative investigations into smaller transactions and procurements

Competition law and climate change

Commission “Green Deal”

National guidance

Netherlands ACM

Competition and Markets Authority

Revisions to Commission Horizontal Cooperation Guidance



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Digital markets



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EU: Digital Markets Act

"gatekeeper platforms": strong, entrenched and durable market position and impact on internal market

"do's"

- ensuring interoperability of services

- access to data

- Verification of adverts hosted on the gatekeeper's platform

"don'ts"

- no 'self-preferencing' of own services

- cannot prevent consumers linking to businesses outside platform

- cannot prohibit uninstallation of pre-installed software/apps

'Commission market investigations' to ensure compliance and penalties and behavioural/structural remedies for infringements

UK: Digital Markets Unit (within CMA)

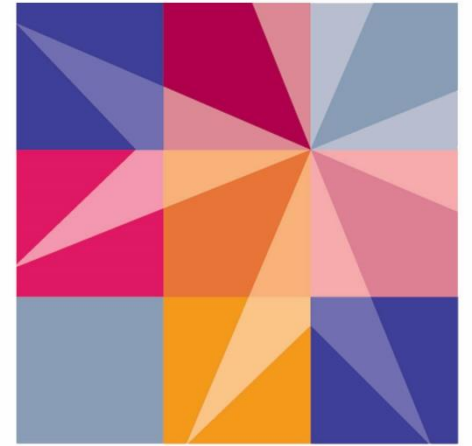
currently on non-statutory basis, pending legislation to establish statutory regime

objectives: consumer control of data, promoting competition and choice, control anti-competitive conduct

use of codes of conduct for platforms across digital markets

DMU's early focus on platforms' relationships with content providers and digital advertisers

Any questions ?



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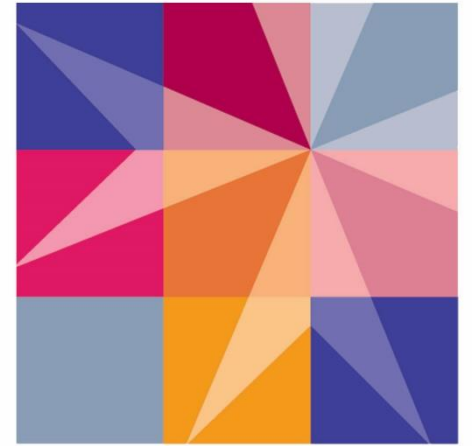
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