

On 20 May, the European Commission announced that it had adopted proposals to sign and conclude the EU-UK Competition Cooperation Agreement.

This announcement followed the conclusion of negotiations in October last year, with the intention that the draft agreement will function as a “supplementing agreement” to the EU-UK Trade and Cooperation Agreement (TCA) signed in December 2020 by implementing the objectives of the cooperation and coordination envisaged under Article 361(4) of the TCA.

What Does the Draft EU-UK Competition Cooperation Agreement Mean for Cooperation?

Although not yet in force, the agreement marks a significant development in post-Brexit relations. It will deliver a framework for cooperation on competition matters between the UK’s principal competition regulator, the Competition and Markets Authority (CMA), and the European Commission, along with the national competition authorities (NCAs) of EU Member States. The agreement aims to streamline the enforcement of competition law across both EU and UK jurisdictions by facilitating enhanced oversight.

The draft EU-UK Competition Cooperation Agreement deals with the following matters in respect of both antitrust and merger investigations:

- **Mutual notification of enforcement activities (Article 3)** – If a competition authority considers that any one of its enforcement activities is likely to affect the important interests of the other party, it is required to notify the other competition authorities concerned of that enforcement activity.
- **Coordination of enforcement activities (Article 4)** – Coordination of enforcement activities will be possible if competition authorities pursue or intend to pursue the same or related enforcement activities.
- **Negative comity (Article 5)** – If it appears that a competition authority’s enforcement activities may adversely affect the important interests of any of the other competition authorities, the competition authorities concerned are required to make all reasonable efforts to arrive at an appropriate accommodation of each other’s important interests.
- **Sharing of information (Articles 6 and 7)** – The sharing and use of information between competition authorities is possibly subject to written consent from the undertaking concerned via a waiver; however, no competition authority is obliged to share information, and each competition authority retains discretion in selecting any information to be shared.

What Will this Closer Regulatory Alignment Mean for Businesses?

Given that the draft cooperation agreement requires mutual notifications of enforcement activities and provides for possible coordination of enforcement activities and the sharing and use of information, we anticipate that parallel antitrust investigations are likely to increase.

Notwithstanding the prospect of increased cooperation between the CMA and EU competition authorities, we anticipate that merger clearances may still continue to be subject to greater complexity, particularly if the CMA and EU competition authorities have divergent views in respect of their competitive assessments of acquisitions and in their assessments of remedies proposed to mitigate competition concerns.

Next Steps

The agreement will enter into force after both the EU and the UK have finalised their ratification procedures. As a next step, the commission will prepare proposals for council’s decisions to sign and conclude the agreement. The consent of the European Parliament will also be required.

Contacts



Francesco Liberatore

Partner, London
T +44 20 7655 1505
E francesco.liberatore@squirepb.com



Diarmuid Ryan

Partner, London
T +44 20 7655 1310
E diarmuid.ryan@squirepb.com



Tatiana Siakka

Partner, London
T +44 20 7655 1692
E tatiana.siakka@squirepb.com



Oliver Geiss

Partner, Brussels
T +32 2 627 1112
E oliver.geiss@squirepb.com



Will Sparks

Partner, Brussels
T +322 627 76 10
E william.sparks@squirepb.com