



## Key UK Competition Reforms Passed into Law

On 25 April 2013, the UK's Enterprise and Regulatory Reform Bill passed into law, becoming the Enterprise and Regulatory Reform Act 2013 ("Act"). As noted in our Sidley Update of 20 March 2012 ([click here](#)), the Act will introduce an array of significant changes to the UK's competition regime, including: (i) merging the two main competition authorities; (ii) lowering the threshold for breach of the criminal Cartel Offence; and (iii) introducing a new statutory timeline for merger reviews. The changes (which are forecast to come into effect in the next 12 months or so) represent the first of two major legislative initiatives by which the UK Government's Department for Business, Innovation & Skills ("BIS") is aiming to increase the effectiveness of UK competition law enforcement. The second initiative – introducing a controversial "opt-out" collective action procedure and expanding the jurisdiction of the UK's specialist Competition Appeal Tribunal – is expected to hit the statute books as early as 2014 (see our Sidley Update of 27 February 2013 ([click here](#))).

### *Institutional Reform - The Competition and Markets Authority*

The Act provides for the establishment of the Competition and Markets Authority ("CMA"), a new entity, which will assume all the functions of the Competition Commission and the competition functions of the Office of Fair Trading. The CMA is scheduled to come into existence on 1 October 2013, and will become fully operational on 1 April 2014. In its 25 April 2013 press release announcing the passing of the Act, BIS stated that the CMA will adopt: "*a faster, clearer and more effective approach to help make markets work well for consumers*". However, a number of questions remain about the way in which the CMA will be organized internally and the extent to which it will manage to preserve the popular fresh pair of eyes function currently fulfilled (in merger reviews and market investigations) by the Competition Commission.

### *Cartel Offence*

One of the more controversial changes to be included in the Act relates to the UK's criminal Cartel Offence. Under the changes introduced by the Act, it will no longer be necessary to prove that an individual was acting "dishonestly" when seeking to prove that a Cartel Offence was committed. BIS believed that the removal of the dishonesty component of the Cartel Offence would improve enforceability, increase deterrence, and bring levels of prosecution closer to what had been intended when the offence was first created. However, amendments made to BIS' initial proposals have provided for a number of exemptions and defences to be available to individuals charged with committing the Cartel Offence. The exemptions and defences include: (i) that the individual did not intend to conceal the agreements from customers; and (ii) that the individual took steps to obtain legal advice before implementing the agreements. The inclusion in the Act of these exemptions and defences would appear to dilute the impact of the controversial removal of the dishonesty requirement. Nonetheless, it is widely anticipated that the CMA will look to bring criminal prosecutions as soon as possible after it becomes operational on 1 April 2014. Indeed, as the CEO-designate of the CMA, Alex Chisholm, noted in a speech on 24 April 2013: "*[t]he law takes a strong view of the harm done by cartels [...] providing for both heavy fines and, in the criminal cases, for incarceration, and as the enforcer of these laws, so too will the [CMA]*".

## Merger Control

Merger control in the UK will remain a two phase process and will still be based on a voluntary notification system. Although different groups within the CMA will have responsibility for a case where it proceeds to an in-depth second phase investigation, there remain important questions regarding the organizational steps to be taken in order to avoid confirmation bias in decision making. The Act also: (i) introduces a new statutory timeline (40 working days) for first phase merger reviews; (ii) gives the CMA extended investigatory powers; and (iii) allows the CMA to impose significant financial penalties (up to 5% of parties' group-wide, worldwide annual revenues) where merging parties breach orders requiring them to hold businesses separate pending completion of the CMA's review.

## Other Changes

The Act makes a variety of other amendments to the UK competition law regime including extending the powers of the Competition Appeal Tribunal by allowing it to issue warrants, introducing wider powers in relation to sector-wide market investigations and giving the CMA the power to require individuals to answer questions as part of competition investigations. The Act also changes the threshold for the granting of interim relief to complainants suffering ongoing harm as a result of alleged anti-competitive conduct, lowering the statutory requirement from "serious, irreparable damage" to "significant damage". This lowering of the threshold for harm suffered by a complainant may well lead to the more frequent granting of interim measures in cases involving allegations of abuse of dominance.

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