Competition timeline
2024-2026

The competition law landscape in the UK and EU is undergoing profound change. Below, we highlight some of the more noteworthy developments coming down the road in 2024 as well as what can be expected in 2025 and 2026.

Two key factors driving the current upheaval of competition law are digitalisation and the ongoing consequences of Brexit (on the latter, we are already seeing divergent rules and enforcement in the UK and EU). Given the serious penalties for breaches of competition law, staying on top of this shifting legal landscape is fundamental to risk management and compliance.

A core part of our practice is helping clients navigate this changing competition law landscape by:

– ensuring contractual arrangements and collaborations are competition law compliant;

– providing bespoke compliance training for executives and customer-facing teams;

– helping clients engage effectively with regulators and government on legislative proposals and market interventions;

– guiding companies through the complexities of UK and international merger control, subsidy regulation and foreign investment regimes; and

– defending clients facing competition or regulatory investigations.

Key milestones

Q4 2024
Commission adoption of the updated Technology Transfer Block Exemption Regulation.

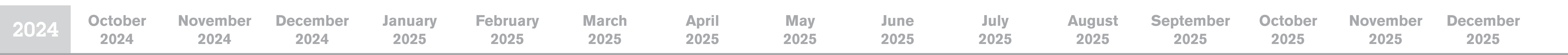
Q1 2025
Commission intends to hold a stakeholder workshop on the Guidelines on Exclusionary Abuses.

During 2025
The Commission aims to adopt Guidelines on Exclusionary Abuses.

During 2025
The full impact of the DMCCA is expected to be felt, particularly following the anticipated publication of codes of conduct for firms designated with strategic market status.

December 2024/January 2025
Digital Markets, Competition and Consumers Act due to come into force, with accompanying guidance due to be published.

Summer 2025
Civil Justice Council report on third-party civil litigation funding anticipated.



2025

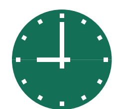
31 October 2024
Deadline to comment on the draft Guidelines on Exclusionary Abuses.

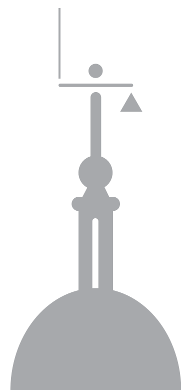
December 2024
The CMA intends to consult on its proposed recommendation to government regarding the Assimilated Technology Transfer Block Exemption Regulation.

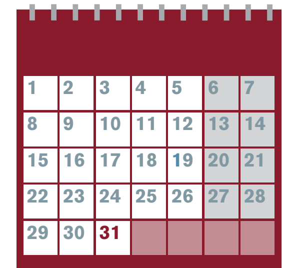
24 February 2025
Procurement Act 2023 takes effect.

2026

2026
The 2014 Technology Transfer Block Exemption Regulation expires on 30 April 2026.







Digital Markets, Competition and Consumers Act

A timeline for the implementation of the Digital Markets, Competition and Consumers Act (DMCCA) has been published in a written ministerial statement. The government aims to commence the digital markets and competition aspects of the DMCCA in December 2024 or January 2025. These require secondary legislation in order to be brought into effect.

Importantly, the competition and consumer aspects of the DMCCA apply to all companies (while the digital markets aspects will regulate only the largest tech players). For in-house legal and compliance teams, there are some key changes that may prompt a refresh of your training and policies. More broadly, as the CMA gears up to regulating large tech companies, businesses across multiple markets may start to receive requests for information to inform the new regime. For an in-depth discussion, please see our **recent webinar**.

Key recent developments

In July 2024, the CMA finished a consultation on guidance to accompany the new digital regime. It is anticipated that the final version of this guidance will be published in the autumn. Alongside this the CMA has consulted on its updated mergers guidance. Additionally the Government has issued consultations on three draft regulations that set out, for the purposes in the DMCCA, how turnover should be calculated and when a person should be treated as having control over an enterprise.

On 3rd September the House of Lords Communications and Digital Committee held its **first public session** of the new Parliament to discuss the implementation of the DMCCA. Witnesses from key tech and policy organisations, including Epic Games, Kelkoo Group, Centre for Policy Studies, and the legal sector, provided insights on the priorities and challenges for the Competition and Markets Authority (CMA) in enforcing the new legislation. This session is likely to inform the CMA's final guidance on this as well as secondary legislation needed to bring the Act into force. The final guidance must be approved by the Secretary of State for Business and Trade before it comes into force.

On 9th September the CMA held a webinar on the direct consumer enforcement powers under this regime. In this webinar the CMA highlighted how many aspects of the new consumer law regime are likely to mirror those already seen under the competition regime. This includes early resolution, settlements, penalties and appeals.

Regulation of large tech companies

The DMCCA allows the Digital Markets Unit (DMU) to designate powerful digital firms with "strategic market status" (SMS) where the company has "substantial and entrenched market power"; holds a position of strategic significance in respect of a digital activity; has a global turnover of over £25bn or a UK turnover of over £1bn; and where their relevant digital activity has a UK nexus. This power is likely to be targeted at a small number of major digital platforms who enjoy substantial and entrenched market power in one or more designated activities. The DMU will impose bespoke and precise "conduct requirements" (CRs) on firms designated with SMS and these will be tailored to the particular harms associated with their specific activities. If CRs do not go far enough to remedy the competition issues the DMU also has the power to impose "pro-competitive interventions" (PCIs). The DMU will be able to enforce CRs and PCIs by imposing penalties on businesses, including fines of up to 10% of the company's global turnover.

Firms designated with SMS (under the DMCCA) or as gatekeepers (under the EU Digital Markets Act regime) will be required to undertake significant work to ensure compliance with the new rules. It will also be necessary for those firms that interact with powerful digital firms to understand the rules and what changes are coming.

The CMA is already conducting a number of studies into various digital technologies and has stated that these studies will feed into the enforcement priorities under this new legislation.

Digital Markets, Competition and Consumers Act

The CMA has indicated that it expects to begin three to four SMS designations as soon as it receives its formal powers. It has closed an investigation into app stores without remedies, stating that it intends to use its new digital powers to address the concerns it and app developers hold indicating that this may be an early area of regulation.

Similarly, there has been significant focus on the prospect that the DMCCA could be used to regulate AI and the use of algorithmic pricing. As part of its investigatory tools for the digital markets regime, the Act enables the CMA to observe, and where appropriate, conduct tests on designated firms' systems. The CMA has indicated that it will take account of developments in foundation model markets when considering its enforcement priorities under the DMCCA and so we can expect ongoing scrutiny in this area.

Competition changes

Importantly, the DMCCA does not just regulate the largest tech companies, but introduces wider changes to the central competition and merger control regime. For example, the DMCCA targets "killer acquisitions" (often where a large company acquires a smaller, innovative player) by creating an additional merger control test applicable where an acquirer has:

– an existing share of supply of goods or services of 33% in the UK or a substantial part of the UK; and

– a UK turnover of £350 million.

For all mergers, the DMCCA updates the merger control threshold to £100m UK turnover in the target company from £70m, in line with inflation.

The DMCCA extends the territorial reach of the CMA. This is by confirming its power to issue requests for information to companies based outside of the UK and amending the prohibition on agreements which restrict competition to include agreements which have an effect in the UK but aren't implemented there.

Enhanced penalties and personal liabilities

A further point to note is the increased administrative penalties and personal liability the DMCCA creates. Fixed penalties of up to 1% of a business' annual turnover will be available for failure to comply with investigative measures, as well as additional daily penalties of up to 5% of daily turnover while non-compliance continues. For the first time, individuals (e.g. company directors) will be able to be fined for failure to comply with the CMA's investigative measures (e.g. compulsory requests for information): fixed penalties of up to £30,000 are available, as well as additional daily penalties of up to £15,000.
Given the ever-increasing digitalisation of the economy, this legislation is relevant to a number of businesses – particularly those with substantial digital activities. More broadly, the strengthening of the CMA's broader competition powers and the changes to merger control will affect all businesses and are developments to watch.

Please contact Katherine Kirrage for more details and questions about how the DMCCA, DMU or digitalisation more widely may affect your business.

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Procurement Act

The Procurement Act is due to come into force on 24 February 2025, a four-month delay from the original date. The government's written statement explains that this delay will allow them to rewrite the National Procurement Policy Statement which they believe "does not meet the challenge of applying the full potential of public procurement to deliver value for money, economic growth, and social value". As well as making substantial changes to the overall landscape for public procurement the Act will make a number of alterations to the interaction between competition law and public procurement procedures.

Significantly the Act expands the mandatory and discretionary exclusion grounds in relation to breaches of competition law.

A contracting authority must exclude a company where it or an associated party has been found guilty of previous cartel behaviour such as price fixing, bid rigging or market sharing, amongst others. This is unless they were granted full immunity from prosecution under the CMA's leniency scheme. A contracting authority has discretion to exclude a company if it believes the company has entered into any such offence or has abused a dominant position. This also applies to similar offences under the law of other jurisdictions outside of the United Kingdom. As a result companies bidding in public procurement must now disclose even potential or suspected breaches of competition law.

To prepare, potential suppliers should seek to identify reasons why they may be considered excludable or eligible for debarment. When investigating, it is important to consider the organisation as well as any 'connected persons'. If any reasons can be identified, suppliers may choose to begin the 'self-cleaning' process. For some suppliers, it may also prove useful to watch for competitor infractions. These may be used as evidence when challenging future awards.

Self-cleaning requires that suppliers must be given a reasonable opportunity to make representations and provide evidence as to the likelihood of the ground for exclusion continuing or reoccurring.

In relation to competition law, this includes ensuring compliance training and policies are up-to-date – demonstrating a "positive culture of compliance". Training and policies should be targeted at those individuals and teams connected with the breach. This will help ensure that the contracting authority has confidence that the issue won't be repeated.

Please see our dedicated **procurement pages** for more information.

Please contact Marc Shrimpling for further details of the Procurement Act and how it may affect your business.

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Guidelines on exclusionary abuses of dominance

On 1 August 2024, the European Commission published a consultation on a draft of new guidelines on the application of Article 102 of the TFEU to exclusionary abuses of dominance with the aim of adopting them in 2025.The Commission intends to hold a stakeholder workshop on the Guidelines in Q1 2025. Upon the adoption of the guidelines, the Commission will withdraw the 2008 Guidance on enforcement priorities, as amended on 27 March 2023.

The new guidelines set out how the Commission will view questionable conduct by dominant companies. It explains what behaviour is likely to raise red flags and how certain corporate strategies will be assessed. This will enable investigators to rely on "presumptions" of illegality and steer clear of burdensome tests, making it easier to convict companies for such conduct and harder for it to be justified. According to the Commission the guidelines should provide guidance on the "purpose of competition law enforcement and the concept of consumer welfare" as well as on concepts like "competition on the merits" and "exclusionary effects."

The draft guidelines explain how to analyse certain types of illegal conduct, those which have seen specific legal tests developed in court judgments, such as exclusive dealing, tying, below-cost (predatory) pricing and squeezing the margins of customer-rivals. It also sets out the analytical framework for other types of exclusionary conduct, such as conditional rebates, multi-product rebates, self-preferencing and access restrictions. In its codification of the cases, the Commission suggests a limited role for an economic approach that measures the impact of the suspect behaviour on equally efficient rivals (the "as efficient competitor" test). The Commission's 2008 guidance paper noted that investigators should move away from rigid rules and look more at economic impact. The idea it sought to capture was that something that might look harmful might not be so in reality, if you looked closely at the market effects. Over time, that became unwelcome handcuffs for the Commission, which saw the EU courts dent some of its high-profile dominance abuse cases: most notably a bruising defeat with Intel over chip rebates.

However the 55-page overview of dominance law will be contentious among large companies, which have pushed the EU regulator to prove, and not just presume, their behaviour hurts competition. The onus will now be on the companies in certain cases to show their conduct doesn't hurt rivals.

Please contact Simon Neill for more details and to discuss the relevance of this guidance to your business.

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EU Foreign Subsidies Regulation

The EU Foreign Subsidies Regulation (FSR) aims to tackle subsidies by non-EU countries which distort competition within the EU internal market. The FSR was implemented on 12 July 2023 and the notification obligation contained within applied from 12 October 2023. By the end of 2023, the Commission had entered into 38 pre-notification discussions, received eight notifications and approved four deals – substantially exceeding the Commission's expectations.

Although in theory a territorially agnostic regulation, its operation to date has had significant focus on shielding green technologies and other strategic EU industries from what some see as unfair Chinese competition. Since then an in-depth probe has also been launched into a telecoms acquisition by a state-controlled operator backed by the United Arab Emirates.

Foreign subsidies are distortive where they improve the competitive position of the recipient(s), negatively affecting competition on the EU internal market. The FSR defines foreign subsidies very broadly. Foreign subsidies include both direct and indirect financial contributions by a non-EU country which confer a benefit on an undertaking active in the internal market. The definition of subsidy is widely drawn, and includes the following forms of financial assistance, amongst others:

- interest-free loans;
- unlimited guarantees;
- capital injections;
- preferential tax treatment;
- tax credits; and
- grants.

Under the FSR, the Commission has the power to investigate financial contributions granted by non-EU governments to companies active in the EU. If the Commission finds that such financial contributions constitute distortive subsidies, it can impose measures to redress their distortive effects.

The FSR introduces three tools:

- A notification-based tool enabling the Commission to investigate concentrations involving a financial contribution by a non-EU government, where the acquired company, one of the merging parties or the joint venture generates an EU turnover of at least €500 million and the transaction involves a foreign financial contribution of more than €50 million.
- A notification-based tool to investigate bids in public procurements involving a financial contribution by a non-EU government, where the estimated contract value is at least €250 million and the bid involves a foreign financial contribution of at least €4 million per third country.
- A general tool to investigate all other market situations, where the Commission can start a review on its own initiative (ex-officio) or request an ad-hoc notification for smaller concentrations and public procurement procedures.

With respect to the two notification-based tools, the parties have to notify the financial contributions received from non-EU public authorities prior to concluding a concentration or a public procurement procedure above the relevant thresholds. Pending the Commission's review, the concentration in question cannot be completed and the investigated bidder cannot be awarded the contract.

The general investigation tool allows the Commission to start investigations on its own initiative. This would cover other types of market situations, such as greenfield investments or concentrations and public procurements below the thresholds.

If the Commission establishes that a foreign subsidy exists and that it is distortive, it will balance the distortive effects of the subsidy with its positive effects. This balancing test will be used to determine the appropriate redressive measures or how commitments should be structured. Any interested parties are able to give information to the Commission to inform this balancing test. This presents an opportunity for companies to present their own side of the story and explain any potential benefits the subsidy may have.

EU Foreign Subsidies Regulation

With respect to the redressive measures and commitments, the FSR includes a range of structural and behavioural remedies, such as requiring the divestment of certain assets or providing access to infrastructure, amongst others.

Strong sanctions

A failure to notify a notifiable M&A transaction or public tender can result in fines of up to 10% of aggregate worldwide turnover of the parties concerned. Additionally, the provision of incorrect or misleading information can result in a fine of 1% of aggregate worldwide turnover. Lastly, the Commission may impose fines of up to 10% of aggregate worldwide turnover for breaches of commitments or redressive measures. Alternatively, the Commission may impose periodic penalty payments not exceeding 5% of the average daily turnover of the undertaking concerned.

In case of notified transactions, the Commission can also prohibit the subsidised concentration or the award of the public procurement contract to the subsidised bidder.

The Commission's time limits for reviewing a notification are similar to those under the EU merger regime, although this does not mean that the review periods will run concurrently. Further complications in relation to deal planning will arise when the merger and FDI notifications are also reviewed by various EU national authorities, while the FSR notification is reviewed separately by the Commission.

Given the serious consequences for breaches of the FSR, businesses must take steps to ensure compliance with the rules. This includes:

- identifying financial contributions provided by non-EU countries from 12 July 2018 (including monetary transfer and other trades e.g. granting of special/exclusive rights);
- determining whether these financial contributions constitute "foreign subsidies" (i.e. do they confer a benefit to a company active in the internal market);
- conducting a preliminary assessment of whether any foreign subsidies could be considered "distortive" (Commission will make the final decision; however, companies should consider the purpose of the contribution(s), the relevant product/market, the nature and amount of the subsidy and the overall market position and evolution of the company); and
- reviewing the possible effects of these subsidies (e.g. high level of environmental protection and social standards, the promotion of research and development).

Please contact Simon Neill to discuss the Foreign Subsidies Regulations in greater detail and explore its application to your business.

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Litigation Funding

The UK Supreme Court's ruling in PACCAR on July 26, 2023, had significant implications for litigation funding agreements (LFAs). The court decided that LFAs which entitle funders to a percentage of the damages recovered are considered Damages-Based Agreements (DBAs). As a result, these LFAs are unenforceable unless they comply with the regulatory requirements for DBAs.

The Litigation Funding Agreements (Enforceability) Bill (the "Bill") was introduced to Parliament to limit the consequences of this judgement. However this Bill did not make it through the pre-election wash-up and as a result litigation funding is waiting on similar legislation to be introduced by the current Labour government. If passed, the Bill would have reversed the impact of the ruling in PACCAR, where the Supreme Court held that LFAs which provide that, if the claim is successful, the funder is entitled to a percentage of any damages recovered, are DBAs. Such LFAs must therefore comply with the relevant regulatory regime, otherwise they will be unenforceable. It is thought that many pre-existing LFAs were rendered unenforceable as a result of this decision. The Bill provided, with retrospective effect, that LFAs were not DBAs and thus they did not have to comply with the DBA Regulations 2013. This was achieved primarily by amending the statutory definition of a DBA to provide that an agreement, to the extent that it is an LFA, is not a DBA.

Since PACCAR, appeals have been granted against several Competition Appeal Tribunal decisions in this, with the result that LFAs were judged not to be DBAs where the funder's fee was based on a multiple of the funding provided, rather than a percentage of the damages recovered. They were therefore held to be enforceable. With the fall of the Litigation Funding Agreements (Enforceability) Bill, these appeals now take on a renewed importance, especially for funders and claimants who have entered into LFAs.

The Ministry of Justice has confirmed that the government "will take a more comprehensive view of any legislation to address issues in the round" once the Civil Justice Council (CJC) concludes its report on third party civil litigation funding (anticipated in summer 2025).

Although this delay creates uncertainty for litigation funders as well as current and future claims funded by them there is an opportunity to engage formally with the CJC on its review by providing comments on its interim report, as indicated on the **CJC website**. In the meantime those seeking to make a group claim before the Competition Appeal Tribunal need to take note of recent cases on litigation funding, discussed above. For more information on this development please see our **Insight**.

Please contact Simon Neill or Andrew Bartlett to discuss the business impact from this development in greater detail.

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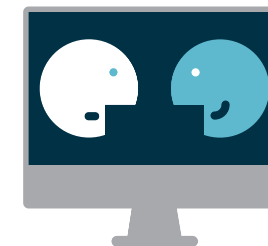

Technology Transfer Block Exemption Regulation

The Technology Transfer Block Exemption Regulation (TTBER), which exempts certain agreements and practices from the EU's general competition rules, will expire on 30 April 2026. This regulation currently applies to the UK as it is assimilated law.

An EU public consultation took place until July last year. The Commission plans to adopt a regulation to update the TTBER in the third quarter of 2024. Also of note is whether the CMA decides to enact a UK Technology Transfer Block Exemption Order (TTBEO) or to let the assimilated EU regulation lapse without a UK replacement. It seems likely that the CMA will suggest a TTBEO which largely matches the 2014 TTBER with some amendments to make it UK specific. The CMA's call for inputs on the Assimilated TTBER closed on 6 September 2024 and it has committed to consulting on its proposed recommendation to government in December 2024. It is hoped that these changes would include the introduction of a number of regulations and guidance specific to the life sciences and healthcare sector. The existing regulation is focused heavily on technology licensing – it is important that the new regulation is updated to cover issues often seen in the LS&H sector.

Considering changes that may be indicated by responses to the Commission consultation, 75% of respondents to the Commission consultation felt that the TTBER only exempted technology transfer agreements where it can be assumed with sufficient certainty that they either do not harm competition or any competitive harm is outweighed by consumer benefits.

This indicates a general appetite in favour of renewing this block exemption. Also a majority of respondents indicated that the TTBER and Guidelines are effective in providing legal certainty. However, responses to the consultation also contained a number of calls to return to the previous system of exemption.

The consultation responses also contained significant debate around the interaction of the TTBER and the **Commission's draft regulation on standard essential patents**. A majority of the consultees said that the TTBER and Guidelines are not coherent with the Commissions recently adopted proposal for a Regulation on SEPs, with the remainder indicating that they do not know. Technology licenses often include both the UK and EU so the development of regulation in this area is likely to have a significant impact on both patent holders and licensees. The CMA has indicated that it is well aware of the risks of divergences for the UK economy. The CMA has specifically noted the additional compliance burden if UK competition regulation were not to match the Commission's in this area. However the CMA has also stated that it is not afraid to diverge from the EU where UK specific conditions make it appropriate to do so.

Please contact Simon Neill to discuss the business impact of the TTBER and potential TTBEO in more detail, especially as the CMA develops its proposals for replacing this EU legislation.

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