

# MMD

## MONDAY MORNING DISPATCH

BY Chadwick Lawrence

**[Register here](#)** for our event this week '**Conducting a Disciplinary on Harassment**', Thursday 27th March, where we'll guide you through the disciplinary process step by step. Sam & Nils are back with the podcast, discussing music licenses and amendments to the Employment Rights Bill. Daniel's video focuses on how a business might be able to act on a contractual obligation which requires an employee to confirm their new employer at the point of resignation. Jamie, from our Litigation team, has prepared an article on UK merger controls.



THE LEGAL ALTERNATIVE



THE MEDIA HUB



WHAT'S GOING ON



UPCOMING EVENTS

## THE LEGAL ALTERNATIVE PODCAST

### Episode 1 – Music Rights and Employment Rights

**Sam & Nils are back with the podcast relaunch – now with a fresh format and video!**

Do you listen to the radio at work? You might need a music license – Nils explains why and what businesses should know. Furthermore, Sam shares his views on the latest amendments to the Employment Rights Bill. In our new interactive Q&A section, we answer a question responding to getting employees back to the office.

Got a question for Sam & Nils? Please email [boxhr@chadlaw.co.uk](mailto:boxhr@chadlaw.co.uk).



➔ [Listen here](#)



➤ *Watch here*

## THE MEDIA HUB

### On the road to go-where?

This video focuses on how a business might be able to act on a contractual obligation which requires an employee to confirm their new employer at the point of resignation. We discuss practical difficulties around taking action and how this may differ in the case of a senior employee owing fiduciary duties to the business.

## WHAT'S GOING ON

### Understanding UK Merger Controls – The Enterprise Act 2002

#### Introduction

In our previous article relating to competition law, we covered the Chapter 2 prohibition in the Competition Act 1998. As part of this week's edition of the Monday Morning Dispatch, we thought we would cover the basics of the merger controls established in the Enterprise Act 2002. We will also cover the new provisions set out in the Digital Markets, Competition and Consumer Act 2024, and who to contact at Chadwick Lawrence in the event you require any further advice or assistance in that regard.



#### Mergers in the United Kingdom

Pre-Brexit, the EU Merger Regulation used to apply to the exclusion of any national competition law rules. Now, post-Brexit, the UK's Competition and Markets Authority ('CMA') is no longer precluded from taking jurisdiction over UK qualifying mergers which also meet the EU Merger Regulation's thresholds.

This means that UK based solicitors now need to consider whether both sets of rules apply to a given transaction. In this article, however, we will only consider the rules set out in the Enterprise Act 2002 and the newly introduced Digital Markets, Competition and Consumer Act 2024 ('DMCCA').

## The Enterprise Act 2002

The Enterprise Act 2002 ('EA 2002') is the legislation that governs merger control in the UK. A merger will be referable to the CMA where there is a "relevant merger situation" ('RMS') as defined by s23 EA 2002. A relevant merger situation arises where:

- 1) There are two or more enterprises
- 2) Which "Cease to be distinct"
- 3) Either:
  - The "share of supply test" is fulfilled;
  - The "turnover test" is fulfilled; or
  - The "hybrid test" is fulfilled.
- 4) The time limit for a reference to the CMA has not expired.

As per s129 EA 2002, an enterprise is *"the activities, or part of the activities of a business", and a business "includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge"*. This is a broad definition; however, the acquisition must be for more than a mere collection of assets – this is usually the case where there is a transfer of know-how and goodwill along with any physical assets.

Regarding point (2), enterprises will "cease to be distinct" if they are either:

- *"Brought under common ownership or control"*; or
- One of the enterprises ceases to be carried on at all, pursuant to some arrangement entered into to prevent competition between the enterprises.

This is a broad test and will apply to most typical share sales and most asset sale arrangements.

For enterprises to be brought under "common ownership or control", one of the following events must take place:

- The buyer acquires a controlling interest: (e.g., 50% or more shares) in the company;
- The buyer acquires the ability to control the merged entity: for example, through exercising blocking rights; or
- The buyer can exercise "material influence" over the merged entity: for example, where the buyer will acquire more than 25% of shares in the merged entity – giving them the ability to block special resolutions – or where they will have the right to appoint influential board members.

Onto point (3) and starting with the share of supply test – prior to the introduction of the DMCCA, the test was satisfied if the merger resulted in at least 25% of all goods or services of a particular description, which are supplied in the UK (or a substantial part of it), being supplied by or to the merged entity. If this was already the case before the

merger, the test is that after the merger the merged entity acquires a greater share of supply. The DMCCA has – as of 1 January 2025 – introduced a de minimis threshold which will exempt any transaction where each party generates less than £10 million turnover in the UK.

Moving onto the turnover test – under the Enterprise Act 2002, for this test to be satisfied, the most recent annual turnover of the target entity needed to be more than £70 million; now, under DMCCA, the target entity must have a turnover of over £100 million. This threshold has been raised to reflect inflation.

Lastly, we have the hybrid test – this is a test that was inaugurated by the DMCCA; one of the reasons for which being the prevention of “killer acquisitions” (a large entity taking over a small entity to prevent competition in the future). To satisfy this test, one party must have a share of supply or purchase of 33% or more in the UK (or a substantial part of it) and £350 million or more in UK turnover, and the other party must be a UK business or body, or have at least part of its activities in the UK, or supply goods or services in the UK.

Finally, regarding point (4), the time limit for the CMA to investigate the merger must not have expired; the time limit for which is found in s24 EA 2002. This states that the CMA may only refer a completed merger for investigation for 4 months from the later of:

- The date the merger completed; or
- Material facts about the merger are “made public”.

## **Notification to the CMA**

There is no obligation under the EA 2002 for entities to report mergers to the CMA, even if the merger meets the thresholds mentioned hereinbefore. Because of this, debate can ensue amongst entities as to whether they should report the merger or wait until the prescribed time limit for the CMA to investigate has expired.

Companies should be aware that waiting for the time limit to expire can carry risks that may prove detrimental to the transaction; these may include, inter alia, the CMA independently finding out about the merger regardless – through a third-party competitor informing them – and investigating, or the CMA making an Interim Enforcement Order requiring the transaction to halt whilst investigations are carried out. More information on the potential risks of not reporting mergers to the CMA is available upon request.

As of 1 January 2025, under the new DMCCA, firms with Strategic Market Status (‘SMS’) will have a mandatory obligation to report mergers where the consideration provided for shares/voting rights are valued at £25 million or more, and which see the firm crossing certain thresholds in target shares or votes (from less than 15% to more than 15%; from less than 25% to more than 25%; or from less than 50% to more than 50%).

That concludes this basic overview of the merger controls contained in the Enterprise Act 2002 and Digital Markets, Competition and Consumer Act 2024.

If you require any advice in relation to the process that applies if the CMA do investigate a merger, whether the rules apply to joint ventures, whether a potential merger would satisfy the tests above, or any general help in ascertaining more details in relation to competition law in the UK, please do not hesitate to contact Peter Harling and/or Jamie Howard whose contact details are set out below:

**Peter Harling**  
**Partner**

Email: [PeterHarling@chadlaw.co.uk](mailto:PeterHarling@chadlaw.co.uk)

**Jamie Howard**  
**Paralegal**

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## UPCOMING EVENTS

### Seminars & Events

We're excited to share our 2025 seminar and events line-up! Our **free events** are tailored to offer something for everyone – take a look below to see what we have to offer:

➤ [Register here](#)

UPCOMING  
EVENTS



**27 Mar, 8:30 AM – 10:30 AM |**  
**Chadwick Lawrence**  
**Wakefield Office**

*Conducting a Disciplinary  
on Harassment*



**2 Apr, 10:00 AM – 12:00 PM |**  
**Chadwick Lawrence**  
**Huddersfield Office**

*Federation of Small  
Businesses Network Event*



**8 May, 8:15 AM – 11:15 AM |**  
**Headingley Stadium Leeds**

*Health & Safety Mock Trial  
with Lighthouse*



**15 May, 8:30 AM – 10:00 AM |**  
**Headingley Stadium Leeds**

*Creating a Culture of  
Equality, Diversity & Inclusion*

### Mental Health Awareness Sessions

We're partnering with **Tailored Learning Solutions** to offer accredited Mental Health First Aid courses at our **Wakefield office**:

23–24 April | 25–26 June | 24–25 September

Details & booking: [Tailored Learning Solutions](#)  
For more information, email: [carolgledhill@chadlaw.co.uk](mailto:carolgledhill@chadlaw.co.uk)





## CONTACT US



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