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Pre-Brexit antitrust cases in the EU

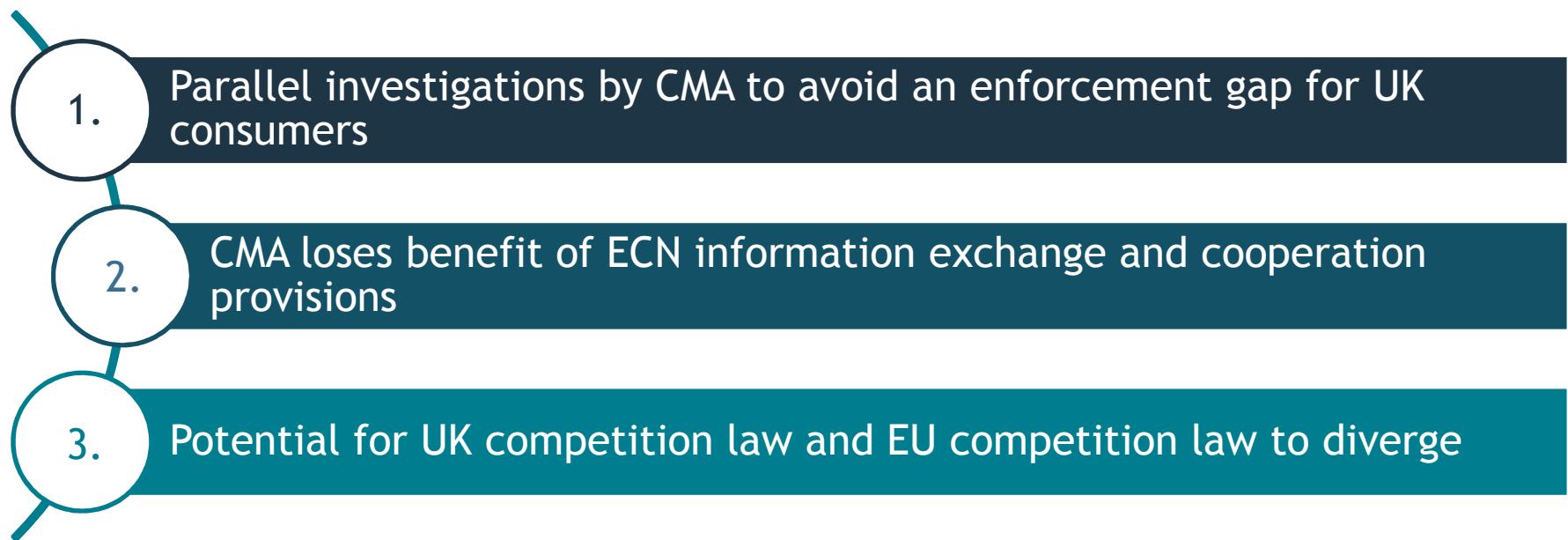
NCAs obliged to apply EU competition law when there is an effect on trade between Member States

Case allocation system - NCAs cannot investigate in parallel with the EC

Powers to exchange confidential information within ECN

UK competition law required to be applied consistently with EU competition law (Section 60, CA98)

Post-Brexit antitrust cases - gaps and issues assuming a 'hard Brexit'



1. Parallel investigations by CMA to avoid an enforcement gap for UK consumers
2. CMA loses benefit of ECN information exchange and cooperation provisions
3. Potential for UK competition law and EU competition law to diverge

Parallel investigations

Domestic cases with only UK impact - CMA to investigate as usual

Pan-European cases with UK impact where EC remedy would also address UK impact - CMA may choose not to prioritise (quasi 'one-stop shop') e.g. Intel

Pan-European cases with UK impact where EC remedy would not address UK impact - CMA likely to prioritise e.g. Apple/ebooks

Divergence - risk or opportunity?

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UK Government likely to repeal Section 60 in a hard Brexit

Divergence creates business uncertainty and additional compliance costs

A CMA official has recently noted the benefits of divergence - could lead to 'better' outcomes for businesses?

Significant uncertainty on the scope of application of the EU Withdrawal Bill - could 'ossify' pre-Brexit EU case law and limit the ability to overturn possibly unhelpful decisions

Yet at the margins, there are issues on where there are legitimate differences - loyalty rebates, for instance, which have been the subject of intense economic and legal debate, or online sales restrictions, or price discrimination... It makes sense for the UK authorities to be able to diverge from EU precedent if they think that that is the right course of action, consistent with a better reading of the law and economic analysis.

Michael Grenfell
Executive Director of Enforcement, CMA

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