

# UK CMA Review of Competition and Consumer Protection Considerations in Artificial Intelligence Foundation Models

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On Thursday, 4 May, the UK Competition and Markets Authority (CMA) **announced** the launch of its initial review focusing on competition and consumer protection considerations in the development and use of artificial intelligence (AI) foundation models. This review is being conducted within the wider context of the UK government’s proposal for a new regulatory framework for AI whereby it is proposing a “common-sense, outcomes-oriented approach” balancing the aim of making the UK an AI superpower by 2030 against “proportionately regulating” serious risks posed by AI (see our previous alert focusing on the wider [UK Government Proposes New AI Regulatory Regime](#)).

The CMA considers that foundation models—defined as a type of AI technology that are trained on vast amounts of data that can be adapted to a wide range of tasks and operations, including large language models and generative AI—may have the potential to substantially affect much of what and how people and businesses do. The CMA is therefore focusing its review on the following three areas:

- (i) Reviewing how the competitive markets for foundation models and their use could evolve.
- (ii) Exploring what opportunities and risks these scenarios could bring for competition and consumer protection.
- (iii) Producing guiding principles to support competition and protect consumers as AI foundation models develop.

This is a general review being undertaken under section 5 of the Enterprise Act and is not a formal market study. That said, if the CMA receives information indicating that this nascent sector may not show signs of functioning in a competitive manner, the CMA may launch a more formal market study, which in turn could give rise to a formal market investigation pursuant to which the CMA could order remedies, such as behavioural commitments, transparency obligations, licensing and even divestment. As such, and unless the CMA were to issue a formal market study notice, when undertaking this initial review the CMA is not bound by statutory time limits, nor does it have its core compulsory information gathering powers. However, even absent a formal market study, this initial review could see the CMA issue “best practice” guidance to market participants.

The [launch document](#) provides further details on the three key areas of focus for the CMA, which include the following (refining the CMA’s understanding of how the area currently works and the ways in which the market may develop in the coming years):

- (i) **Competition and barriers to entry in the development of foundation models** - The CMA seeks to investigate potential barriers to entry such as issues relating to accessing the requisite data, computational resources, talent, funding and ways in which foundation models could disrupt or reinforce the position of the largest firms and the distribution of value in these systems.
- (ii) **The impact foundation models may have on competition in other markets** - Foundation models are bound to become an essential input to other product markets, such as search and productivity software,

and the CMA wants to understand to what extent the market could potentially develop in ways which may give rise to competition concerns.

(iii) **Consumer protection** - This part of the review will focus on risks to consumers arising from the use of foundation models in products and services, including from false and/or misleading information.

Notably, the CMA is not at this stage focused on issues such as online safety, security, copyright, privacy, data protection and human rights, as it considers these issues to be more appropriately dealt with by the UK government and other regulators. Nevertheless, during its initial review, the CMA will still work closely with the Office for AI and the other members of the Digital Regulation Cooperation Forum (i.e. the Information Commissioner's Office, the Office of Communications and the Financial Conduct Authority). The CMA will also share its findings with the UK government to help inform the UK's AI strategy.

As the launch document notes, **the CMA is welcoming views and evidence from stakeholders on the key issues by 2 June 2023**. The CMA will be reaching out to key stakeholders with specific information requests and/or meeting requests. The key stakeholders will include academic and industry labs developing foundation models, developers, researchers and academics, suppliers of inputs like compute and data (including leading technology firms), customers, investors and other industry participants and commentators. The CMA will then publish a report setting out its findings in September 2023. **Akin lawyers would be delighted to assist with any submissions you may consider making.**

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*If you have questions about this client alert, please contact any Akin lawyer or advisor below:*

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