Building Competition

A New Lens for Digital Competition Policy in the UK

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COADEC

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With special thanks as ever to our friends at Beauhurst for their hugely valuable data.

About Coadec

The Coalition for a Digital Economy (Coadec) is an independent advocacy group that serves as the policy voice for Britain's technology-led startups and scaleups.

Coadec was founded in 2010 by Mike Butcher, Editor-at-Large of technology news publisher TechCrunch, and Jeff Lynn, Chairman and Co-Founder of online investment platform Seedrs.

Coadec works across a broad range of policy areas that matter the most to startups and scaleups: Access to Talent, Access to Finance & Regulation. We represent the startup community on the Government's Digital Economy Council, and the UK on the international organisation Allied for Startups Board.

Foreword
by Jeff Lynn, Chair of Coadec

When the Government published the Digital Markets, Competition and Consumer Bill in April, I was encouraged. As the Chair of Coadec - an organisation I helped found over a decade ago – I could see that a competition regime that focused more closely on the dynamics of technology-driven businesses could hugely benefit the UK startup ecosystem.

Indeed, as our Executive Director Dom Hallas said at the time, too many startups are "grappling with bed-blocking incumbents in broken markets."

But at the same time, I have first-hand experience of the Competition and Markets Authority (CMA) getting it wrong in this space. As the now exited founder of Seedrs, the equity crowdfunding platform I helped build over the past decade, I was at the coalface in 2021 when the CMA blocked what I (and many others in the startup ecosystem) believed would have been a highly pro-competitive merger between my company and another British firm.

The CMA's decision, in my view, came down to their essentially 20th century view of how markets work and, as a result, their profound misunderstanding of the competitive dynamics in the market in which we were operating.

Entrenchment and expansion of those kind of misunderstandings, if that's what the CMA's proposed new powers lead to, would not be good for anyone.

It's worth starting with the basics. The facts are clear – startups thrive in competitive markets.

In recent years we've seen a meteoric rise in Britain's homegrown tech sector. All this has made us a global powerhouse for tech. Startups have done this by beating incumbents at their own game. In financial services, health, retail and beyond — traditional firms are being upturned as customers find a better service from British startup competitors.

At the same time, there's no denying that some competition issues in the tech sector have festered for too long. When Coadec surveyed UK tech investors in 2021, 80 per cent said they were concerned about incumbent firms making it harder for start-ups to break into markets.

The Digital Markets Unit (DMU) is set to add critical expertise to the CMA at a time when tech is becoming one of the most fundamental sectors to the success of the UK's economy.

But there is also a lot of trust for regulators to repair: 60 percent of investors told us they felt regulators had only a "basic understanding" of tech startups, a further 22 percent thought regulators had none at all.

As someone who has experienced that lack of understanding first hand, it's not hard to see why.

So regulators must learn the lessons from the journey that I and others have already been on – and need to be aware of a few key facts about the startup ecosystem that will create the challengers to today's tech giants.

Startups want a pro-competitive regime that proactively supports innovation rather than one that ends up lazily regulating big tech like lumbering utilities. The former path challenges incumbents; the latter tends to cement the status quo in place.

That means competition authorities being more taking a more expansive view of M&A among challengers who are building competitors to large incumbents in huge markets. It means also creating a pragmatic and innovative regulatory environment that recognises that competition among technology-led businesses often plays out in different, and more complex, ways than it does in the "traditional" economy.

This paper hopes to provide some thoughts on how best to do this, both for the Government through the DMCC Bill and for the CMA themselves in administering the system on the ground. For the sake of the startups that will follow me in engaging with the regulator in the coming years – whether they are acquirers or acquirees – I really hope they listen.

Jeff Lynn
Chairman, Coadec
Chairman, Seedrs

Context & Background

When Coadec was founded in 2010, it was to support a growing ecosystem of businesses and innovators popping up around a small roundabout in Shoreditch, East London. Since that time, the tech startup community – not just in a small pocket of London but the entire country – has exploded.

The UK is now home to one of the most exciting and successful startup economies in the world. Investment into UK startups reached a record £13.5bn in the first half of 2021, trebling the amount raised in the same period in 2020. In 2021, London was the second-ranked ecosystem globally for startup funding, with an ecosystem valued at $142bn. Startups employ people across the United Kingdom, are hotbeds for ideas and products that delight customers, and give life to ideas that will transform the economy.

This tremendous success cannot be taken for granted.

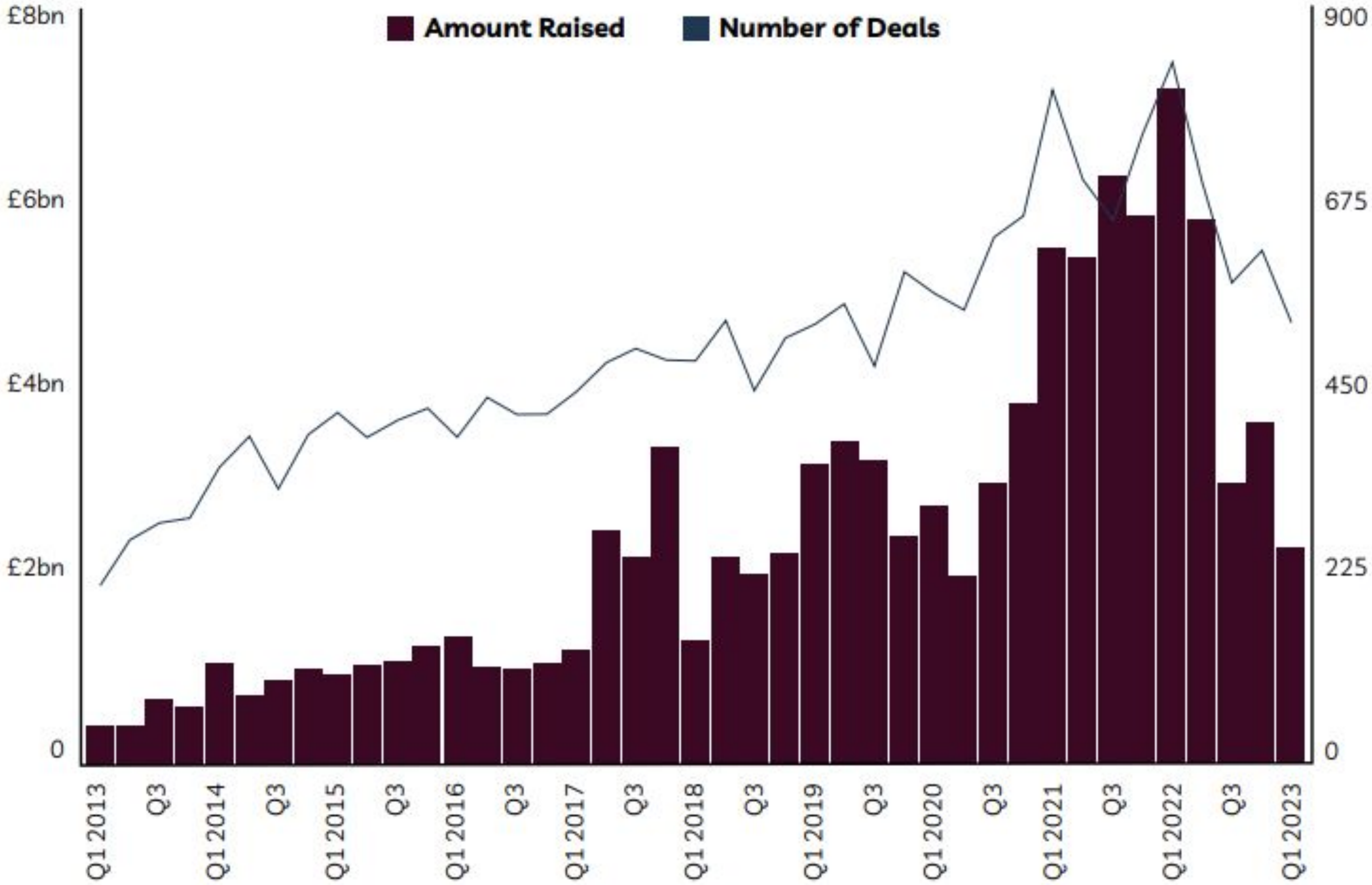
For parts of the thirteen years that Coadec has been working on startup policy, the success of the UK's startups has felt almost inevitable.

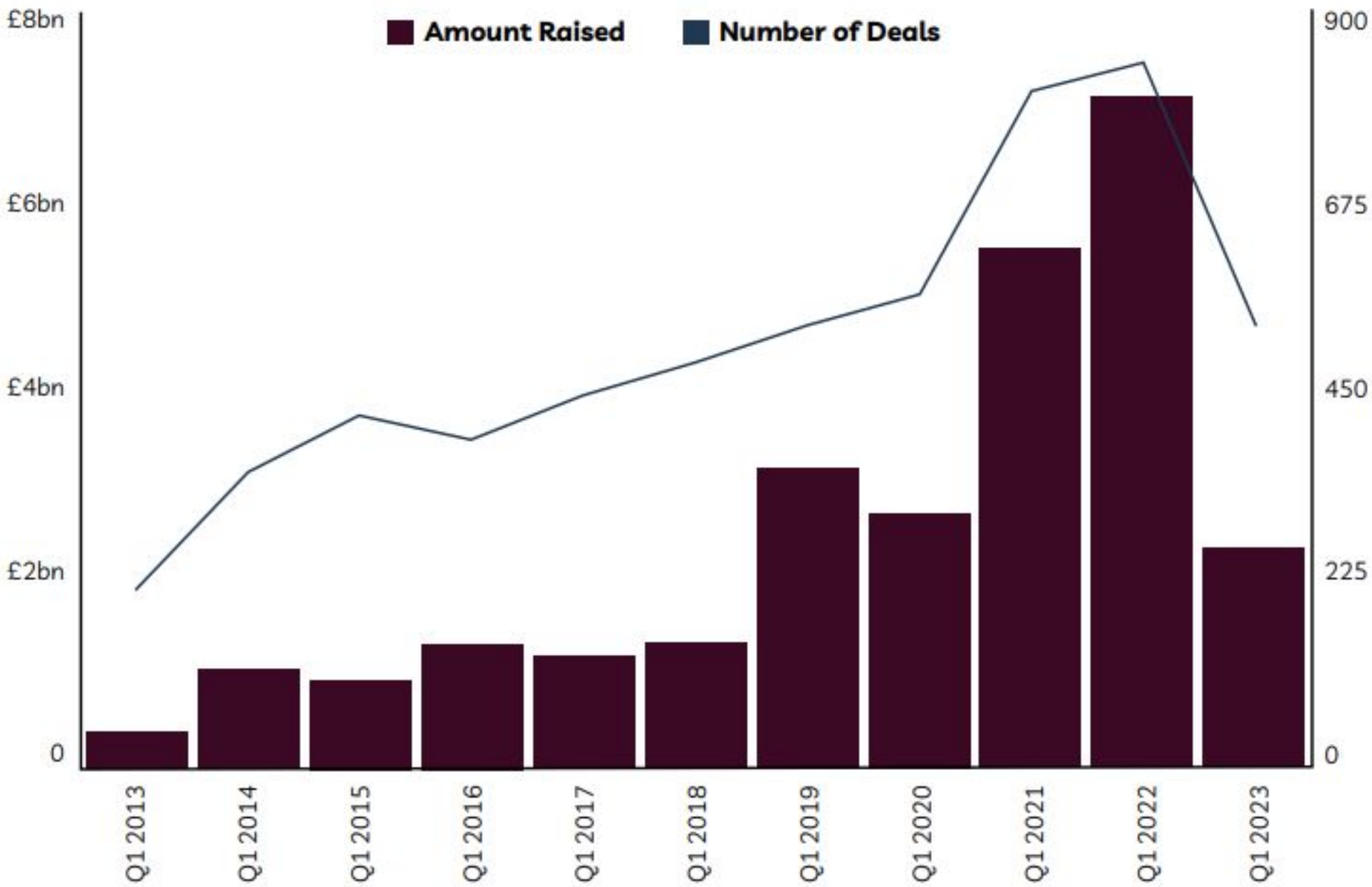
But now, with the macroeconomic environment for tech firms changing rapidly and the markets more hostile than they have ever been, there's a cold wind blowing through the sector.

Other changes are occurring too. During this time, tech giants like Google, Apple and Amazon have moved from being heroes of politicians seeking to learn from their allure, to villains for their perceived impact on markets and society.

In response, regulation has moved from a permissive green field to a far more restrictive approach. While the focus of Government in the 2010s was mostly on supporting tech's growth, the 2020s risks having its focus set to be dominated by an unrelenting focus on 'taming' a small set of global technology firms.

We're optimistic that this won't be the case – not least because the huge wave of innovation in new sectors like AI and advanced computing means that there are new arenas in which to compete. And because more than ever we see talented, thoughtful and innovative entrepreneurs seeking to build new, exciting and groundbreaking technology businesses here in the UK.





Data from Beauhurst

Nevertheless, this changing environment creates risks for Britain's startup ecosystem. A focus on potential damage from the sector, real or perceived, threatens to leave startups and scaleups, the true bedrock of the UK's tech success, as at best an afterthought and at worst collateral damage.

Startups are the cradle of innovation – by supporting them through Government-backed initiatives and the right regulatory environment, you breed competition and innovation all the way up the chain.

Regardless of the other actions of Government, competition policy is, very clearly, one of those initiatives. It is an obvious tool in the toolbox of the UK Government in creating the best environment possible for tech companies being built in the UK. Put simply, startups thrive in competitive markets. And effective regulation is necessary to ensure that our markets remain competitive.

At the same time, there has always been significant scepticism of the role the UK's competition regulator has played. In our previous paper from 2021, 'The Digital Markets Unit: On the Side of Startups?' Coadec's research found that 60 percent of investors felt regulators had only a "basic understanding" of tech start-ups, a further 22 percent thought regulators had none at all. That's not exactly a vote of confidence.

Since we published that paper in 2021, things have not improved. If anything, in the public discourse there's been an increase in mistrust of the regulator - despite the progress that has been made in legislative terms from Furman Review to DMCC Bill.

This paper will take a look at the progress of digital competition policy in the UK, what it means for startups, and will provide a new way to think about market definition in the context of the new system, as we see regulators taking on an enhanced role.

Done badly, regulation can negatively disrupt a marketplace, pick winners and losers, waste limited resources and cause unintended harms – dampening or killing off innovation across a sector or specific technologies.

Done well, it can bolster innovation and unlock growth. This report makes recommendations about how to do it well, how the DMCC Bill and the Digital Markets Unit can be shaped to deliver on its admirable objectives – and how regulators can deliver more competitive markets for tech in the UK.

Digital Competition in the UK: A Background

The decision to establish a DMU within the CMA, tasked with creating and enforcing a new competition regime for digital markets, is a significant milestone in the UK's journey to reform competition policy.

It is a journey that can be traced back to 2018, when the then Chancellor appointed Harvard Professor and former Obama adviser Jason Furman and a panel of experts to explore how the UK's competition framework needed to adapt to keep pace with a fast-moving digital market. The report, which has provided the blueprint for successive governments, recommended the establishment of a DMU to support greater competition and consumer choice in digital markets.

The panel advised that the Unit be tasked with the following three functions:

1. Develop a code of competitive conduct for those companies deemed to have 'Strategic Market Status';
2. Enable greater personal data mobility and systems, with open standards as a mechanism for increasing competition and consumer choice; and,
3. Advance data openness to lower the barrier to entry in a digital market while protecting privacy.

The Government accepted all of Furman's recommendations and established a Digital Markets Taskforce to advise on how to practically implement them. The Taskforce brought together officials from the CMA, the Office for Communications (Ofcom) and the Information Commissioner's Office (ICO), signalling a growing recognition of the need for cross-regulatory collaboration to offer a more streamlined and coherent approach to "digital issues".

The Taskforce produced its advice to Government in December 2020, and in April 2021, the Johnson Government announced the launch of a new regulator, the DMU, to sit inside the CMA and to be responsible for operationalising the regime. However, the DMU was not placed on a statutory footing and was left without enforcement powers or authority.

Despite commitments under the Johnson administration to put the DMU on statutory footing through the draft Digital Markets, Competition and Consumer Bill, the publication of the Bill was continually delayed.

Timeline

2018:

Establishment of the Digital Competition Expert Panel by the UK government to examine challenges and opportunities in digital markets.

The panel, chaired by Jason Furman, begins its analysis and research.

2019:

Publication of the Furman Review, a comprehensive assessment of the digital economy, providing recommendations for competition policy reform.

Recommendations include the need for a pro-competition regulatory regime, enhanced scrutiny of mergers and acquisitions in the digital sector, and promoting data portability and open standards.

2020:

The UK government announces the establishment of the Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA).

The DMU is tasked with designing and implementing a new regulatory framework for digital markets, with a focus on promoting competition and protecting consumers.

2022:

The DMU begins its work on developing the new regulatory framework for digital markets, focusing on platforms with significant market power.

Ongoing engagement with stakeholders and industry experts to gather input and refine the regulatory approach.

2023:

The DMU finalises the new regulatory framework for digital markets –, the Digital Markets, Competition and Consumer Bill (DMCCB) – outlining specific obligations for platforms with significant market power.

Implementation of the new regulatory framework, including the enforcement of codes of conduct, market investigations, and potential fines for non-compliance.

The Digital Markets, Competition & Consumer Bill

In April 2023, the Government published the Digital Markets, Competition and Consumer Bill (DMCC Bill).

First announced in the March 2022 Queen's speech, the long-awaited legislation will, once it has passed, provide the DMU with the statutory powers and authority to enforce a new digital competition regime.

Following consultation, an overall approach was agreed to designate firms with "strategic market status" (SMS), establish mandatory codes of conduct for SMS firms and implement pro-competitive interventions (PCIs) and remedies to support non-SMS firms.

After numerous delays, the Chancellor Jeremy Hunt's reaffirmation of the importance of the Digital Markets, Competition and Consumer Bill at the Autumn Statement in 2022 marked an important shift in urgency by the Sunak administration. This shift has led to the Bill being laid in Parliament, where it will now begin the usual legislative process.

A new digital markets regime

The DMCC Bill will translate the Government's pro-competition approach into legislation by establishing the DMU on statutory footing in order to enforce the regime for digital markets and competition.

The regime will be targeted at a small number of firms with SMS, which is defined as having "substantial and entrenched market power giving rise to a strategic position in respect of at least one digital activity." The CMA will undertake an 'SMS test' to support the DMU to designate firms. Firms will only be designated if they meet very high revenue thresholds (**£25bn global revenue or £1bn UK revenue**) and the CMA will also have to establish if the firm has **a sufficient connection to the UK**.

If a firm is designated to have SMS, they will be required to follow conduct requirements written and enforced by the DMU. The Bill sets out "specific categories of requirements" for the codes, although ultimately the DMU will be responsible for determining precise conduct requirements for SMS firms.

Conduct requirements may be set to ensure the firm trades fairly (e.g. does not unduly discriminate against certain groups or businesses); allows users to choose freely (e.g. does not unduly prevent data portability); is transparent in dealing with users of its service; does not make unfair use of data. These are intended to support best practice and prevent abuses of power and monopolistic behaviour.

An example of the types of conduct requirements that **could** be imposed include:

- Requiring SMS companies not to apply discriminatory terms, conditions or policies;
- Preventing bundling or tying services;
- Providing clear, relevant, accurate and accessible information to users; and
- Preventing a company from leveraging other parts of the business to further entrench its power in a designated activity.

The conduct requirements will be focused on the activity in which the firms have SMS designation (i.e. the activity where there is a competition concern), and affect other activities only if they are used to further dampen competition in the designated activity. In limited 'last resort' circumstances, the CMA may require the firm (and firms with whom they are in dispute) to submit to a 'Final Offer Mechanism' process to resolve price related disputes.

In addition, the DMU will be given powers to make PCIs to support the majority of firms in the market that will not be designated as SMS firms. PCIs will consist of remedies such as requiring SMS firms to open up data to competitors and ensuring interoperability of services. The implementation of PCIs will be left to the discretion of the DMU and they can only be imposed where an "adverse effect on competition can be demonstrated".

For failure to comply with the conduct requirements, the DMU will be given powers to impose financial penalties of up to 10% of a firm's global turnover. There will also be an option for the DMU to impose civil penalties on named senior managers.

The new merger control regime for SMS firms

SMS firms will also be required to comply with an updated mergers and acquisitions regime, and will be obligated to report to the DMU on mergers that impact UK markets on deals when:

a) The target has a **connection to the UK**;
b) Following the merger, the SMS firm would hold **at least 15% of shares or voting rights** (with thresholds of over 25% and 50% triggering further reports)**;** and
c) The SMS firm will also hold **at least £25m in value of the target**.

Although the Government has not progressed previous proposals to lower the standard of proof at Phase 2, this new merger control regime significantly increases the likelihood of the regulator intervening in more M&A and corporate investment deals in the tech sector.

The CMA has already become far more active in M&A deals taking place in the tech sector, as evidenced by the recent decision to block Microsoft's acquisition of Activision this year, as well as Facebook's acquisition of Giphy in 2021.

It is also worth noting that the 15% threshold is significantly lower than the National Security and Investment Act's 25% threshold for reviewing deals.

Other updates to the wider competition regime

- The Bill aims to make the CMA's market-inquiry based remedy powers faster and more flexible. While the use of such powers are often intended to address structural concerns in a market and therefore can involve companies being required to make substantial changes to their business models and practices. The Bill proposes to give the CMA greater flexibility to define the scope of its market investigations and more opportunities to accept binding commitments at earlier stages of the process. This is likely to see an uptick in CMA activity as it assumes a more advisory role to Government.
- The Bill provides the CMA with enhanced information gathering and enforcement powers which are intended to enable investigations and remedies to be conducted more swiftly. The Bill proposes to empower the CMA to impose significant fixed penalties of up to 1% of a business' annual turnover for failing to comply with an information request or other investigative notice, for concealing, destroying, or falsifying evidence; or for providing false or misleading information to the CMA, as well as the power to impose a daily penalty of up to 5% of daily turnover while any such non-compliance continues.
- The Bill introduces a new "acquirer-focused" threshold for non-SMS related merger review which would allow the CMA to intervene in deals where: (a) one party has a significant market presence in the UK, i.e. a share of supply over 33% and turnover more than £350m; and (b) the other party has a UK nexus, i.e. it is a UK business or body, at least part of its activities are carried on in the UK or it supplies goods or services in the UK.

Next steps

The new measures are set to come into effect as soon as possible following parliamentary approval, subject to secondary legislation and the publication of guidance.

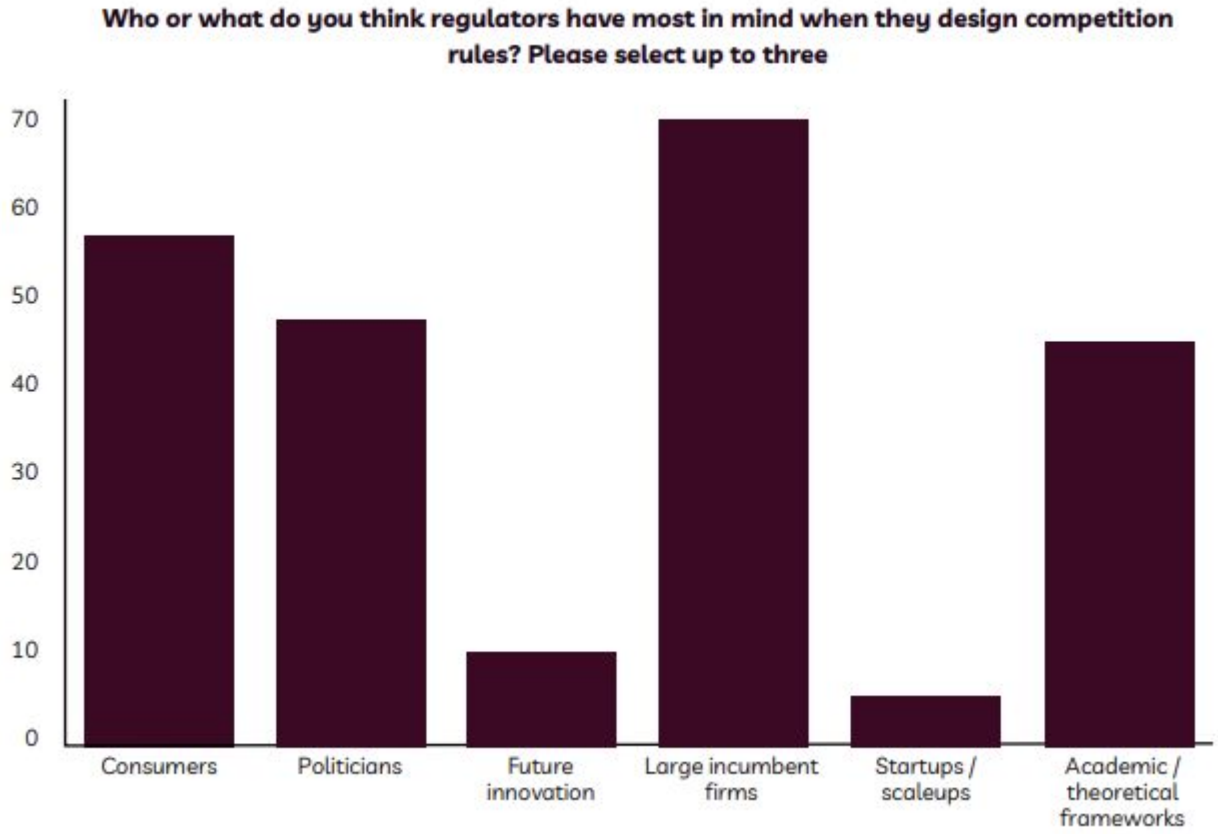
However, given the crowded legislative agenda for the current session (which is due to end in Autumn 2023), as well as the potential challenges that could arise from backbenchers seeking to use the Bill as a vehicle to address numerous other issues, it may take some time for it to pass through the parliamentary process.

What the Startup Ecosystem Wants...

Why Exits Matter to Startup Success - and how they are being influenced by policy...

In 2021, Coadec surveyed VC investors in the UK on their thoughts on the competition regulation process and in particular how they considered the impact of exits on their investments.

Here is a key selection of that data.

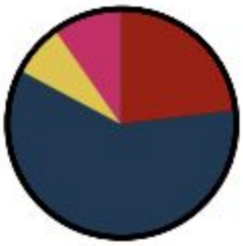


From the perspective of the businesses you work with, do you think the current rules for competition policy generally are supportive or unsupportive of the startup ecosystem?

- Somewhat supportive - 25%
- Neither supportive or unsupportive - 33%
- Somewhat unsupportive - 17%
- Very unsupportive - 8%
- Don't know - 17%

How good an understanding do you think regulators have of the overall startup market?

- They don't understand at all - 23%
- They have a basic understanding- 60%
- They have a good level of understanding -7%
- Don't know -10%



How important or unimportant, in your view, is the ability of startups to be acquired to the success of the overally tech startup ecosystem?

- Very Important - 90%
- Somewhat Important - 10%

What impact, do you think, would a significant restriction on the ability to exit have on your future investment decisions with regards to investing in UK startups??

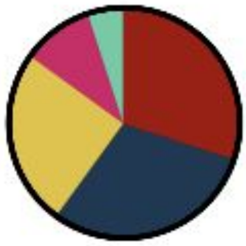
- I would stop investing- 23%
- I would significantly reduce the amount I invest - 50%
- I would moderately reduce the amount I invest -19%
- It wouldn't make a difference- 3%
- Don't know -5

How satisfied are you with the speed at which UK regulators currently take decisions related to tech startups?

- Somewhat satisfied - 13%
- Neither satisfied or unsatisfied - 15%
- Somewhat dissatisfied - 27%
- Very dissatisfied - 25%
- Don't know - 20%

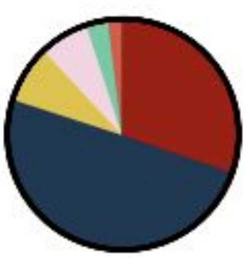
Does the speed of regulatory decisions have a significant impact on your business, or the startups that you invest in?

- Yes - a large impact - 30%
- Yes - a moderate impact - 30%
- Yes - a small impact -25%
- No significant impact- 10%
- Don't know -5%



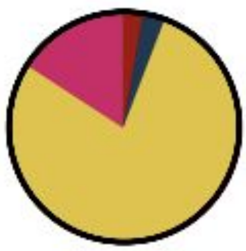
How concerned or unconcerned are you about incumbent companies making it harder for new entrants to break into markets?

- Very concerned - 30%
- Somewhat concerned - 50%
- Neither concerned or unconcerned - 8%
- Somewhat unconcerned - 7%
- Very unconcerned - 3%
- Don't know - 2%



From the following, what do you think the startups in your portfolio would be most positively impacted by changes to the power of?

- App stores - 3%
- Marketplaces - 4%
- Incumbent players protecting their positions through restrictive business practices -77%
- Don't know -16%

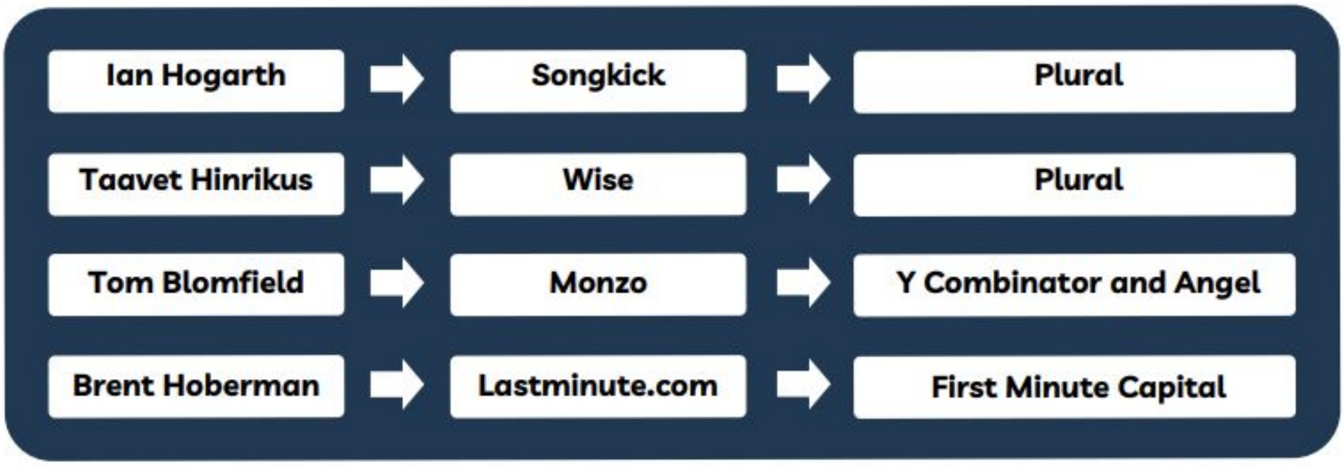


What goes in, must come out...

Our data (along with a various academic sources) is clear. If venture funding can't find its way out of companies at the end of their journey, the continued commitment of venture investors to deploying capital will be put at risk.

But why is this the case? And why do exits matter to the success of startup ecosystems?

Most importantly exits provide a crucial financial return to startup founders, investors, and employees who have poured their time, effort, and capital into building a company from nothing. Successful exits can generate substantial wealth for founders, enabling them to fund new ventures and invest in other startups themselves either by creating funds or as angels.



The Journey from Exited Founder to Investor - a few examples

This process of cyclical capital is crucial for the development of an ecosystem. It takes time to develop, but in the UK it is now very much in action - helping to grow our startup ecosystem into the phenomenal success it is today.

Exits also act as a magnet for talent and capital, both locally and globally. As successful startups exit, they create a positive reputation and attract the attention of ambitious potential entrepreneurs to the ecosystem. People are drawn to vibrant startup ecosystems where they can work on cutting-edge technologies, contribute to or invest in high-growth companies, and potentially benefit from future exits. The availability of skilled talent further fuels innovation and entrepreneurship, as new startups can tap into a pool of experienced individuals, fostering a virtuous cycle of success.

Exit via the Gift Shop

There are fundamentally only a few paths to exit for tech startups. The three most common - and effective - are public listing, merger or acquisition by either another company or a larger investor, for example - private equity.

In the UK these main routes for exit are increasingly being squeezed. For too many startups, the UK's Public markets remain hostile to high-growth companies. When it comes to listing on the LSE, the - very public - bad experiences of scaling companies such as Deliveroo, Wise and THG - have scarred a generation of entrepreneurs and set them against listing in the UK.

The UK's equity market investors remain too conservative for these investments. Startups used to turn to the NASDAQ - but with more challenging market conditions as a result of the global tech downturn listing here is no longer the simple answer it once was.

Regardless, the most typical form of exit is via acquisition. The number of acquisitions in the UK dwarf the number of IPOs. According to Beauhurst figures, between 2012 and 2022 a total of 1,866 high-growth UK tech companies exited via acquisition. 89% of which were to corporates.

There are now issues with the sources of capital for acquisition.

The deepest pools of capital and the strongest interest from buyers often comes from Middle Eastern and Asian investors. However, at the same time as they are looking at competition reform, the UK Government has sought - for sensible national security reasons - to limit the sources of foreign capital allowed to invest in tech businesses.

The National Security and Investment Act, brought into force in 2021, reviews deals in 17 qualifying sectors (including key technologies). The full impact is yet to be understood – but the trend is clear: more restrictive practices when it comes to foreign buyers and foreign funding for innovative technologies.

And now - the actions of the CMA will likely limit the potential tech company buyers.

It's simple. If all the doors are closed, exits will inevitably be hit. And if exits are hit, so too will new starts, innovation and growth....

A New Theory for Building Competition

Startups want effective competition regulation in markets because they believe when it's a fair fight they will win. The data we gathered when we surveyed investors in 2021 showed this very clearly. 80% of investors surveyed were either concerned or very concerned about incumbent companies making it harder for new entrants to break into markets.

It's in this context that startups are considering what is best for them from regulators - and regulators are considering what is best for the ecosystem.

It's worth noting that the vast majority of the work conducted in this space has been welcome and supported by startups.

As our own Executive Director said on publication of the DMCC Bill:

"Startups thrive in competitive markets but currently too many are grappling with bed-blocking incumbents in broken markets. The Digital Markets Unit can become a powerful tool to help innovative companies break through."

More research, more detailed market investigation, and more engagement with the whole sector via the DMU can only be a good thing. In addition to this increased focus - there's also been a (clearly) revised policy approach in the form of legislation.

We will touch on the good in this as a part of this outline - and there is plenty of good - but the concerns from the ecosystem are narrower and clearer. Chief among them is the concern from startups that more deals are being blocked.

In the past ten years global competition policy has shifted from laissez-faire to more restrictive. This isn't simply a UK question, the actions of the CMA reflect a broader trend towards blocking more deals.

In the case of digital competition, for all the reasons mentioned, there is a clear focus on the need to address the perceived challenges created by a cohort of very large tech companies. This is notable and understandable.

However, there will remain a deep unease in the startup ecosystem if the outcomes of this shift are not better, more competitive markets - but simply more deals blocked. That is not a measure of success for competition policy in the eyes of a startup ecosystem. Indeed, it would be a mark of failure.

With this in mind - the below outlines a new model. This includes both formal policy recommendations as a part of the forthcoming DMCC Bill process - and the suggestion of a model and framing through which to see transactions that build competition as opposed to simply restricting deal flow.

Addressing Challenges in the Forthcoming DMCC Bill

Much of what has emerged in the Government's planned bill is welcome and will have a positive impact on the startup community in the UK. Whilst the proof is in the delivery - we have been strongly encouraged by the effective establishment of the DMU within the ecosystem, the depth and breadth of their willingness to engage and their consideration of the role of smaller companies in the competitive framework being built.

The Government has done the same. And the Bill reflects an intention to support these companies in their fights against larger players.

In addition to the shift in approach and acknowledgement of the ecosystem - of particular value is the willingness to consider the role of data portability, so effectively leveraged in the Fintech space as a builder of competition - as an impactful tool for policymakers elsewhere in our digital markets.

However, the starting point for effective delivery of these competition reforms should be that intervention should not make things worse. And there are also concerns:

1. SMS firms holding at least 15% of shares or voting rights (with thresholds of over 25% and 50% triggering further reports) would have to report to the DMU.

At present, the planned bar for reporting is set at 15% of shares of voting rights in a business. Based on the direction of travel in policy terms - as well as the concerns the CMA expressed with the Deliveroo-Amazon investment in 2020 - this has alarmed the startup ecosystem.

There's a major concern that venture rounds may get caught up in the threshold in question - this would mean that deals that are truly 'investment' as opposed to 'M&A' may be at risk.

It is also worth noting that the 15% threshold is significantly lower than the National Security and Investment Act's 25% threshold for reviewing deals - as well as similar criteria in the Companies Act.

Recommendation: We would ask that this threshold for notification be lifted to 25%

2. Amendment of the thresholds for merger review

Whilst we welcome the intention to uplift existing thresholds for merger review in order to reduce the regulatory burden on businesses that are least likely to cause competitive damage – we remain concerned that the proposed thresholds will not have this intended effect.

Of particular concern is the powers the CMA will be given to define the relevant market in order to exercise jurisdiction - effectively giving the CMA the power to define market share however narrowly it chooses..

In order to protect startups - and the original intention of the thresholds - we ask that the revenues threshold (the firmest protection) is further increased. Though the DMCC Bill does already raise the revenues thresholds - a welcome action which, we note, would have altered the decision in the Seedrs-Crowdcube deal - explored in more detail in a case study below - the >£10 million in revenues figure remains very low relative to international markets. This should be increased to provide further protection for mergers between startups and bring the UK more in line with competitor markets around the world.

Recommendation: Increase the revenue threshold for intervention to £25 million

A New Approach to Deals

Even with these adjustments, changes to mergers policy will only make so much difference. The key is in how that policy is applied to the practical examples in the market.

At present - there is a major concern within the startup ecosystem that when it comes to tech, regulators are too frequently narrowing the lens too much on market definition. We believe they will have to be more flexible about allowing M&A by companies outside the dominant players in the major markets in order to effectively 'build' competitors to the very biggest companies.

We want to set out why this is a concern and how we can create space for a more nuanced vision of competition enforcement on tech mergers in the DMU era.

Digital Competition is a dynamic field. The changing nature of what it means to compete in the space is reflected in the changing nature of regulatory approaches.

For many years, there's been a significant slew of acquisitions from the very biggest tech companies up and down the value chain.

Whether or not regulators could have acted differently on the evidence they had - there's now an implicit understanding that this has dampened competition. This will, necessarily, lead to the more restrictive approach we now have.

But just like those mergers and acquisitions that deepened market power lessened competition. So too can similar deals create more competition.

How?

Major technology markets - and the positions companies can straddle within them - are often highly interconnected. Like Russian dolls - companies creating strong market positions in one vertical are, in many ways, necessary to their subsequent success competing across others.

This isn't a new observation but the distinction now is the enhanced role regulators will have in trying to address the competitive risks posed by a small number of strong players in major markets.

In order to create businesses capable of challenging the very biggest firms - the small number of other large technology firms likely designated as SMS companies or other dominant businesses in technology verticals - it may be necessary for regulators to embrace M&A in order to allow firms to build effective competitors.

Without this effective use of M&A we could likely find firms are stuck one rung below dominant players. If this were the case - restricting wider deals in markets while implementing SMS status would only serve to constrain the power of the current dominant tech companies and effectively preserve the status quo.

There are also cases where larger tech firms themselves could - via acquisitions of startups - potentially bring more competition to markets with dominant players where the large firms are otherwise an insignificant player. This may necessitate a more flexible and nuanced approach to market definition by regulators.

Below are case studies highlighting examples of how this analysis works in practice - and what an approach that 'builds competition' could look like.

Case Study One: Getir-Gorillas

Getir is a rapidly growing grocery delivery company that was founded in Turkey in 2015. The company's primary goal is to provide fast and convenient delivery of everyday essentials to customers. Since its inception, Getir has revolutionized the concept of on-demand delivery by introducing a "10 minutes" delivery promise, which has garnered significant attention and popularity.

The company was founded by Nazım Salur, an entrepreneur with a background in technology and e-commerce. Salur recognized the potential of the on-demand delivery market and saw an opportunity to disrupt the traditional grocery shopping experience. He aimed to leverage technology and logistics to offer an efficient and seamless delivery service.

Getir's business model relies on a network of micro-fulfillment centres strategically located in urban areas. These centres stock a wide range of products, including groceries, snacks, beverages, and household items. Customers can browse through the Getir mobile app, select their desired products, and place an order.

The popularity of Getir soared in Turkey, with consumers appreciating the convenience and speed of the service. Capitalizing on this success, Getir expanded its operations to other Turkish cities and later expanded internationally, launching in cities like London, Paris, and Amsterdam. The company received significant investment, allowing it to expand its operations and accelerate its growth.

This model has been replicated by many others in the industry. The ‘10 minute grocery delivery’ market exploded during the Pandemic and saw significant growth and investment. One such competitor is Gorillas.

The concept of Gorillas was developed by Kağan Sümer and Jörg Kattner, who recognized the growing demand for quick and efficient grocery delivery services. They saw an opportunity to leverage technology and logistics to offer a hyper-local delivery model that would cater to customers' immediate needs.

Gorillas also gained attention from investors, raising substantial funding to support its expansion. The company's success has led to its valuation reaching billions of dollars, indicating strong investor confidence in its business model and potential.

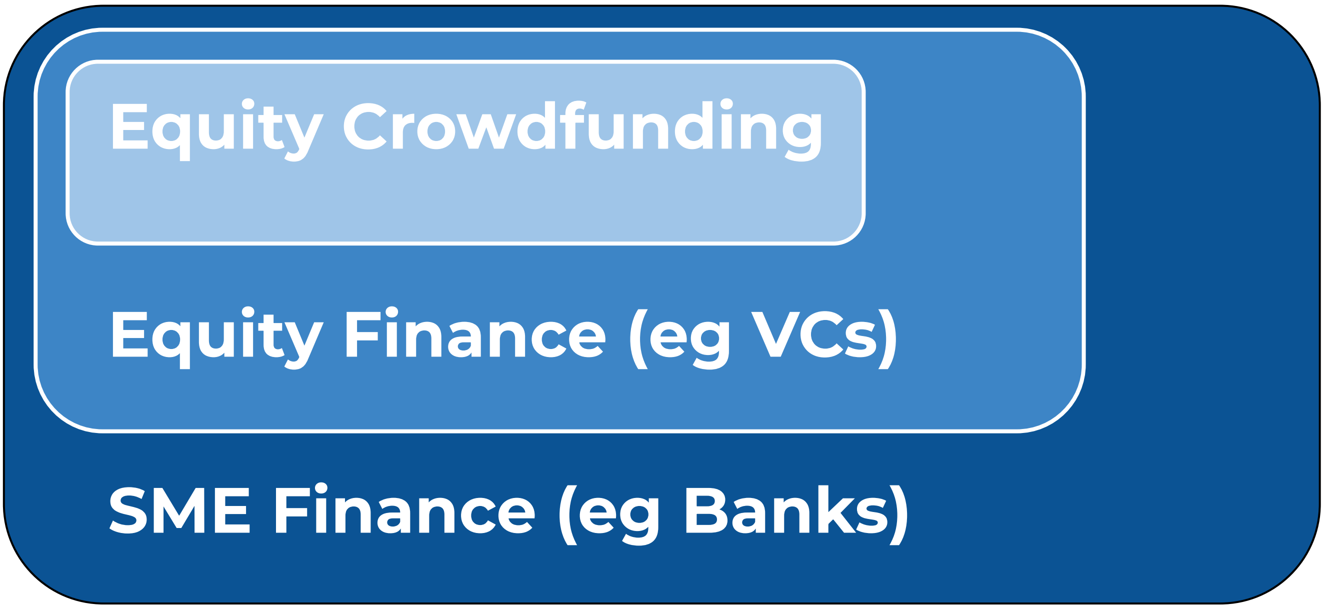
However, like many others in the market post-pandemic (and broader associated tech boom) - Gorillas has had a choppier ride in recent months. And in December 2022, Getir announced a $1.2bn deal to acquire the company.

Given the geographic focus of the market - and the rapid scale and then retrenchment of the market in quick order - it's clear that Getir is emerging as the market 'winner'. In addition to the deal for Gorillas - they may well end up acquiring more failed competitors as the market adjusts to the new reality and (frankly) their fallen rivals run out of venture capital.

So how should regulators view these deals?

It's clear that the Getir position isn't just about 10 minute groceries (where they may well end up with a strong market position - in particular in certain geographical areas including in the UK). That means that to place the market definition there would be too narrow - and understanding a wider lens will allow Getir to deliver on a wider competitive benefit - competing with other food delivery and ultimately eCommerce operations in the wider markets with vast reach such as Amazon.

Case Study Two: Seedrs-Crowdcube



In October 2020, Seedrs and Crowdcube, two prominent equity crowdfunding platforms based in the United Kingdom, announced their intention to merge and create a unified platform for startup fundraising. The proposed merger aimed to combine the strengths of both platforms and provide a more comprehensive and efficient crowdfunding experience for entrepreneurs and investors alike.

Seedrs, founded in 2009, and Crowdcube, founded in 2010, had each established themselves as leading platforms in the equity crowdfunding space. They offered startups the opportunity to raise capital by selling shares to a wide range of investors.

The merger between Seedrs and Crowdcube sought to leverage their complementary strengths. Seedrs had a strong presence in Europe and an extensive network of investors, while Crowdcube had a significant market share in the UK and had successfully facilitated numerous high-profile crowdfunding campaigns. They, by their own description, wanted to use the combination to compete more effectively with a wider range of business finance options offered by much larger companies.

However, in February 2021, the CMA announced that it had concerns regarding the merger's potential impact on competition. As a result, the CMA referred the case for an in-depth investigation to assess the potential effects of the merger on the crowdfunding market.

As it became clear that the CMA would not provide approval for the deal to progress - in March 2021, Seedrs and Crowdcube decided to abandon the merger plans after mutual agreement, after the regulator found against the merger plan in the initial review period of Phase 2 (following a fast-tracked initial approach).

Leaving aside the limited revenues of the two companies involved - the nature of the challenge on the deal was one of market definition.

The concerns of the CMA stemmed from the dominant position the merged firm would have in equity crowdfunding (a space pioneered by the two companies in question). This raises two relevant questions for competition policy moving forward.

First, there’s no doubt that were one of the firms to have constructed this same position in the course of business as opposed to through a deal - no regulator would choose to intervene. This creates a (common but ironic) incentive in the case of transactions to be significantly more cautious than when you have naturally strong positions built in narrow markets.

Second and more importantly - it suggests that the construction of a strong position in a narrow vertical via M&A, with a view to expanding horizontally should not be allowed. This is at the crux of our ongoing concern around competition policy and practice in the UK.

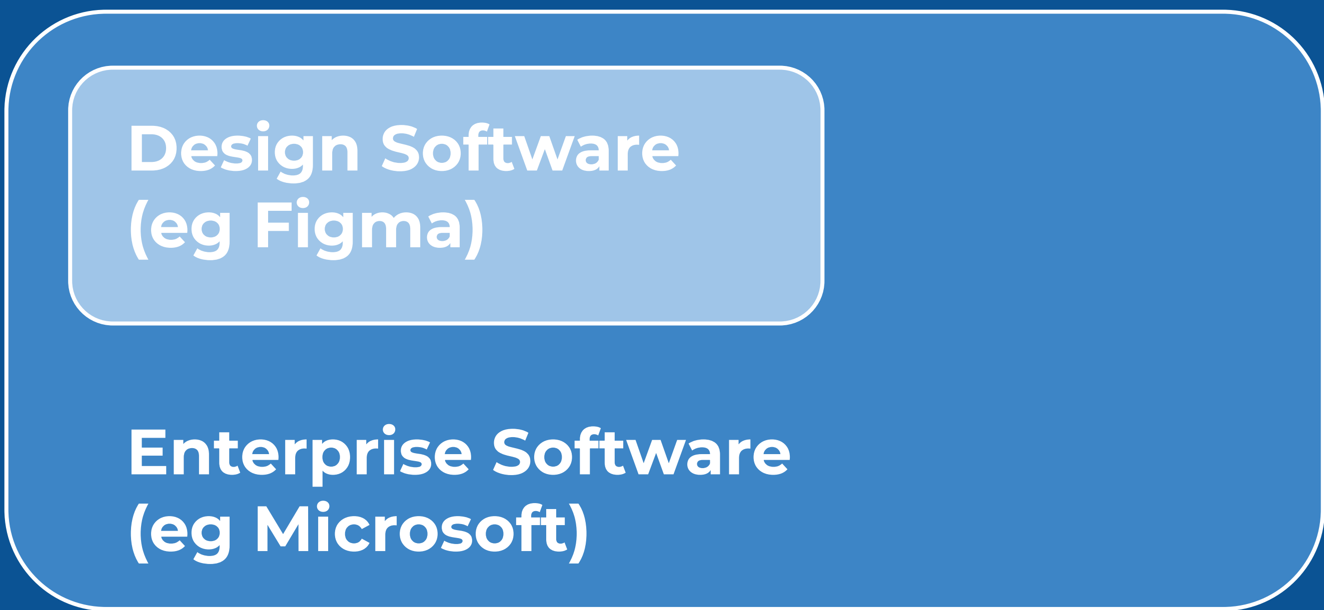
Seedrs and Crowdcube were (and are) undoubtedly a core part of the equity crowdfunding market and together would have a market share of 90% percent. Of course they would, because between them they essentially invented it. But to see such a narrow market - as opposed to allowing combinations that could create competition in wider or adjacent markets creates a perverse incentive for the CMA to block narrow deals from potential competitors - and also block adjacent deals from incumbents.

In the end, the deal was abandoned before it was formally rejected in March 2021. Crowdcube raised additional investment, and Seedrs exited to US firm Republic for $100m.

In the tech startup community which Coadec represents, the deal has been read as a nadir of UK Competition policy. A lesson in overreach for a regulator more willing to stop than anything else. Indeed, the DMCC Bill will create a carve-out in legislation that would have allowed this deal to proceed after its passage by creating more space for firms with small revenues to merge.

But this is a loophole not an acknowledgement of the underlying challenge we believe continues to exist in allowing more competition in larger markets to be created via deals.

Case Study Three: Adobe-Figma



Figma is an American software company that was founded in 2012 by Dylan Field and Evan Wallace. The company is known for its collaborative design platform, which allows teams to create, share, and collaborate on digital designs in real-time.

The idea for Figma emerged from the founders' frustration with the limitations of existing design tools that hindered seamless collaboration. They envisioned a design tool that would empower teams to work together efficiently, regardless of their location or operating system.

Figma's cloud-based design platform was launched in 2016, providing a web-based interface that allowed designers and stakeholders to collaborate in real-time, with a simple hand-off to developers. The platform gained attention for its ability to eliminate the need for cumbersome file sharing and version control, as all design work was stored in the cloud, accessible to team members at any time.

The company's platform quickly gained popularity among designers and design teams, offering a range of features such as vector editing, prototyping, and design libraries. Figma's emphasis on collaboration and its user-friendly interface made it a preferred choice for many organizations seeking efficient and streamlined design workflows.

Figma's success led to significant investments and funding rounds, including support from prominent venture capital firms such as Index Ventures, Kleiner Perkins and Sequoia Capital. Like with all venture backed startups - the funding enabled Figma to further develop its platform, expand its team, and invest in research and development.

It’s this success that attracted the attention of Adobe. Figma was providing a first-class solution to a genuine customer need and building a credible reputation amongst its customers. Adobe, the enterprise software company with a suite of creative products - thinks that Figma would be a value-add addition to their stable, providing customers with the joint benefits of both product-sets.

Stating the obvious, with a market cap of over $150bn: Adobe is a large company.

But the question in a building competition approach would be: how can we create a market environment that not only protects competition in limited verticals as effectively as possible - but allows for the combination of two complementary product-sets, allowing each to be improved for customers and strengthening a business to compete in even larger markets including (in this case) the wider enterprise software market currently being contested by Microsoft and Google.

Case Study Four: Bolt-Tier

Bolt is an Estonian mobility company that was founded in 2013 under the name Taxify. Originally, Bolt started as a ride-hailing platform with a focus on providing convenient and affordable transportation options to customers - replicating and competing with the likes of Uber in addition to existing taxis.

The company was founded by Markus Villig when he was just 19 years old, making him one of the youngest tech entrepreneurs in Europe at the time. Initially launched in Tallinn, Estonia, Bolt quickly expanded its services to other cities in the Baltic region and gained popularity for its competitive pricing and reliable service. The company's success in Estonia allowed it to secure funding and expand its operations internationally.

In 2014, Bolt expanded its ride-hailing services to several cities in neighbouring countries, including Latvia, Lithuania, and Finland. Over the following years, Bolt continued to expand its presence globally, entering markets in Africa, Europe, Asia, and the Middle East.

In addition to ride-hailing, Bolt diversified its services to include other mobility solutions. It introduced Bolt Food, a food delivery service, allowing users to order meals from restaurants and have them delivered to their doorstep. Bolt also ventured into the electric scooter and electric bike-sharing market, providing sustainable transportation options in select cities.

Bolt's growth and success attracted significant investments from various venture capital firms and investors. The company secured funding from notable investors, including Daimler AG, the parent company of Mercedes-Benz, and Tencent Holdings, a Chinese multinational conglomerate. These investments allowed Bolt to further expand its operations, enhance its technology infrastructure, and enter new markets.

It was at this time in 2018 that Tier was founded. Tier is a scooter-sharing company that was established in Berlin, Germany. The company has played a significant role in the micro-mobility industry, providing electric scooters as a convenient and eco-friendly transportation solution.

It rode the wave of significant expansion, with Tier scooters popping up in 19 cities across Europe in under 2 years. In addition to scooter-sharing, Tier diversified its offerings to include electric bikes and mopeds, broadening its range of micro-mobility solutions. The company also collaborated with public transportation providers to integrate its services into multimodal transportation systems, aiming to provide users with seamless and efficient mobility options.

But as the markets turned, the micromobility sector has faced significant headwinds and consolidation is happening. In August 2022, Bolt’s main global rival Uber bought up Jump - a bike rental company.

And in May 2023, Sifted reported that Bolt was in the process of finalising a deal to acquire Tier.

So how should we view these transactions? Like in the Getir-Gorillas example above they may leave examples of significant geographic concentration in services. But do they lessen competition? In fact, the Tier deal will serve a wider purpose in competitive terms - to deepen the competition between Bolt and their major rival Uber globally in the broader mobility market - and potentially create a more competitive offer to other mobility options too.

Appendix: UK Tech Investments and Acquisitions by the Largest 20 Tech Companies by Market Cap

Data from Beauhurst

Rank	Company	Fund	Investments
1	**Apple**	N/A	None
2	**Microsoft**	M12 (formerly Microsoft Ventures)	• Kano • Onfido • SuperAwesome • Beamery • Graphcore • MemGraph • Hazy • Wayve • Definely • Deployed • Webiny • iLoF • Builder.ai • Vertical Aerospace
3	**Alphabet**	GV (Google Ventures)	• Ubiquisys • Secret Escapes • GoCardless • Currencycloud • Biomodal • Bitstamp • Wonderbly • Blockchain.com • Weave • Yieldify • Gravity Sketch • Evox Therapeutics • Vaccitech • OMass • Snyk • SpyBiotech • Ultromics • Cerevance • Blue Vision Labs • Synthesia • Multiverse • nPlan • Genesis • Afrocenchix • Rooser • smol • AudioMob • Bonnet • Nothing • Mestag Therapeutics • SideQuest • Lapse • Push Security • Cur8

Rank	Company	Fund	Investments
4	**Amazon**	Amazon	• Deliveroo
5	**Nvidia**	Nvidia	• Charm Therapeutics
6	**Meta**	N/A	None
7	**Tesla**	N/A	None
8	**TCMC**	N/A	None
9	**Tencent**	Tencent	• First Light Fusion • Brainomix • Ultraleap • Congenica • CMR Surgical • Monzo • Oxa • Everledger • Sensewhere • Antstream • Vaccitech • Whipper • Previse • Secondmind • Hadean • Microbiotica • TrueLayer • Patsnap • Lockwood Publishing • SenSat • Milky Tea Studios • Qumata • bit.bio • PetMedix • Playtonic Games • Omnipresent • Payload Studios • Quell • Broken String Biosciences
10	**Samsung**	Samsung Venture Investment Corporation	• Cambridge Broadband Networks • Carbon Clean • EVRYTHNG
11	**Broadcom**	N/A	None
12	**ASML**	N/A	None

Rank	Company	Fund	Investments
13	**Oracle**	N/A	None
14	**Salesforce**	Salesforce Ventures	• NewVoiceMedia • GoCardless • Onfido • Privitar • DigitalGenius • Snyk • Gospel Technology • Multiverse • Genesis • Snoop • Hopin • Qatalog • Circulor • Sylvera • Aforza • Sequence
15	**Cisco**	Cisco	• ip.access • EVRYTHNG • Adbrain • Panaseer
16	**AMD**	N/A	None
17	**Alibaba**	N/A	None
18	**Adobe**	Adobe Ventures	• PlayJam • zeroheight
19	**Netflix**	N/A	None
20	**Texas Instruments**	N/A	None

Rank	Company	Aquisitions
1	**Apple**	• Credit Kudos • AI Music • Spectral Edge • IKINEMA • Stamplay • DataTiger • Platoon • Shazam • VocalIQ
2	**Microsoft**	• Lumenisity • Softomotive • jClarity • Playground Games • Ninja Theory • Swiftkey • Sunrise • Semetric • Novauris
3	**Alphabet**	• Dataform • GraphicsFuzz • Redux • RangeSpan • DeepMind
4	**Amazon**	• Veeqo • Evi Technologies
5	**Nvidia**	None
6	**Meta**	• Audio Analytic • Unit 2 Games • Scape • Atlas ML • Bloomsbury AI • Two Big Ears
7	**Tesla**	None
8	**TSMC**	None
9	**Tencent**	None
10	**Samsung**	None
11	**Broadcom**	• Pyreos • Argon Design
12	**ASML**	None
13	**Oracle**	• Sauce • Grapeshot
14	**Salesforce**	None
15	**Cisco**	• Duo Security • Ubiquisys

Rank	Company	Aquisitions
16	**AMD**	None
17	**Alibaba**	None
18	**Adobe**	• ContentCal
19	**Netflix**	None
20	**Texas Instruments**	None