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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|--|---------------------------------------|--|
| Title: Reforms to merger control IA No: BEIS028(C)-21-CCP RPC Reference No: n/a Lead department or agency: Department for Business, Energy, and Industrial Strategy Other departments or agencies: Competition and Markets Authority | Impact Assessment (IA) | | | |
| | Date: 15/07/2021 | | | |
| | Stage: Development/Options | | | |
| | Source of intervention: Domestic | | | |
| | Type of measure: Primary legislation | | | |
| Contact for enquiries: alex.shirvani@beis.gov.uk | | | | |
| Summary: Intervention and Options | | | RPC Opinion: Awaiting Scrutiny | |

| Cost of Preferred (or more likely) Option (in 2019 prices) | | | |
|------------------------------------------------------------|----------------------------|-------------------------------|-------------------------------------------------------|
| Total Net Present Social Value | Business Net Present Value | Net cost to business per year | Business Impact Target Status Qualifying provision |
| £23.8m | -£3.7m | £0.4m | |

What is the problem under consideration? Why is government action or intervention necessary?

- Government believes there is scope to update the UK's merger control thresholds and processes to enable the CMA better to scrutinise potentially harmful mergers whilst reducing costs to business in other cases.

What are the policy objectives of the action or intervention and the intended effects?


- Reduce the burden of merger review for proposals less likely to harm competition;
- Increase the speed, efficiency and predictability of decision-making in merger reviews;
- Deliver pro-competitive benefits, leading to lower prices and greater choice for consumers, increased competitive incentives on businesses to invest, innovate and increase productivity;
- Allow the CMA to investigate a wider range of potential harms to competition.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- The foundation of the UK's current merger regime is based on underlying legislation in the Enterprise Act 2002. While other options for intervention have been explored (e.g. updated merger guidelines and resourcing) neither of these options would sufficiently be able to address the concerns that have been identified in the merger process which would require legislative change. As a result, the Government is consulting on a wide range of proposals which are covered in the consultation of July 2021: "Reforming Consumer and Competition Policy".

| | | | | |
|---------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------|-----------------------|---------------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: To be confirmed | | | | |
| Is this measure likely to impact on international trade and investment? | | | Yes | |
| Are any of these organisations in scope? | Micro Yes | Small Yes | Medium Yes | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: N/A | Non-traded: N/A |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Paul Scully  Date: 12 July 2021

Summary: Analysis & Evidence

Policy Option 1

Description: Baseline – do nothing option

FULL ECONOMIC ASSESSMENT

| Price Base Year 2019 | PV Base Year 2020 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---------------------------------------------------------------------------|----------------------|--------------------------------------------|-------------------------------------------------------|----------------------------------|------------------|
| | | | Low: 0 | High: 0 | Best Estimate: 0 |
| COSTS (£m) | | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) | |
| Low | | 0 | 0 | 0 | |
| High | | 0 | 0 | 0 | |
| Best Estimate | | 0 | 0 | 0 | |
| Description and scale of key monetised costs by 'main affected groups' | | | | | |
| N/A | | | | | |
| Other key non-monetised costs by 'main affected groups' | | | | | |
| N/A | | | | | |
| BENEFITS (£m) | | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) | |
| Low | | 0 | 0 | 0 | |
| High | | 0 | 0 | 0 | |
| Best Estimate | | 0 | 0 | 0 | |
| Description and scale of key monetised benefits by 'main affected groups' | | | | | |
| N/A | | | | | |
| Other key non-monetised benefits by 'main affected groups' | | | | | |
| N/A | | | | | |
| Key assumptions/sensitivities/risks | | | | Discount rate | 3.5 |

BUSINESS ASSESSMENT (Option 1)

| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: |
|---------------------------------------------------|-------------|--------|-------------------------------------------------------------------|
| Costs: 0 | Benefits: 0 | Net: 0 | 0 |

Summary: Analysis & Evidence

Policy Option 2

Description: Package of merger reforms

FULL ECONOMIC ASSESSMENT

| Price Base Year 2019 | PV Base Year 2020 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|-------------|---------------------|
| | | | Low: -193.7 | High: 241.4 | Best Estimate: 23.8 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant) | Total Cost (Present Value) |
|---------------|--------------------------------------------|-------------------------------------------------|-------------------------------|
| Low | 0 | 9.3 | 79.9 |
| High | 0 | 36.7 | 316.3 |
| Best Estimate | 0 | 23.0 | 198.1 |

Description and scale of key monetised costs by 'main affected groups'

- Consumers' losses from reduced scope of the turnover threshold for merger review and safe harbours (£7.6m to £32.4m p.a.)
- Cost to the exchequer through additional share of supply cases (£0.3m to £0.9m p.a.)
- Cost to businesses through increased number of self-assessments and additional merger reviews, from the share of supply reforms (£1.4m to £3.4m p.a.)

Other key non-monetised costs by 'main affected groups'

- There will be associated costs to the justice system from appeals.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant) | Total Benefit (Present Value) |
|---------------|--------------------------------------------|-------------------------------------------------|----------------------------------|
| Low | 0 | 14.2 | 122.6 |
| High | 0 | 37.3 | 321.4 |
| Best Estimate | 0 | 25.8 | 222.0 |

Description and scale of key monetised benefits by 'main affected groups'

- Consumer benefits from more harmful mergers being prevented through the share of supply reforms (£13.2m to £33.0m p.a.)
- Reduced costs to the exchequer through reduced number of merger reviews, from the turnover changes and safe harbours (0.3m to £1.2m p.a.)
- Reduced costs to businesses through reduced merger investigations from the turnover changes and safe harbours (£0.8m to £3.2m p.a.)

Other key non-monetised benefits by 'main affected groups'

| Key assumptions/sensitivities/risks | Discount rate | 3.5 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-----|
| <ul style="list-style-type: none"> • At consultation stage this assessment is largely based on assumptions that will be tested with stakeholders as part of the consultation process. • Estimates of costs are highly sensitive to estimated legal cost to business of merger review. • Estimates of consumer impacts are highly sensitive to estimated consumer saving per merger intervention. | | |

BUSINESS ASSESSMENT (Option 2)

| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: |
|---------------------------------------------------|---------------|----------|-------------------------------------------------------------------|
| Costs: 2.4 | Benefits: 2.0 | Net: 0.4 | 2.2 |

1. Background and introduction

Structure and purpose of the Impact Assessment

1. This Impact Assessment accompanies the programme of reforms to merger control included in the Government's consultation *Reforming Consumer and Competition Policy*.
2. This is a consultation-stage Impact Assessment which provides indicative quantification of impacts of the proposals for which impacts are quantifiable and expected to be significant, and a descriptive summary of proposals for which the expected impacts are low. All other measures have a low impact and have therefore not been included.
3. If legislative proposals are taken forward following the consultation, the impact of the proposals will be considered in more detail in a final Impact Assessment which will be submitted to the Regulatory Policy Committee ahead of presentation to Parliament. Estimates in this consultation-stage Impact Assessment are subject to revision in a Final Impact Assessment.

The economic impact of competition

4. Competition is a process of rivalry between suppliers who compete for customers by offering products or services that have lower prices, better quality, or are more innovative or in some way unique compared to those of their competitors.
5. When competition works well, firms that outcompete their rivals win a greater market share, raising the average quality and firm productivity in a market, and providing incentives for rivals to improve to take market share of their own.
6. These effects lead to a number of desirable impacts on economic welfare. At the firm level, competition drives productivity by encouraging firms to be more efficient, increasing the market share of more productive firms at the expense of less productive firms and incentivising innovation.^{1,2}
7. Consumers benefit from these improvements in productivity, typically in the form of lower prices, improved quality and greater choice. In general, the greater the level of competition, the more reductions in production costs are passed on to consumers. A competitive environment forces firms to pass through cost savings in the form of lower prices.³ Better competition can also reduce social inequality by eroding the capacity for owners of firms with market power⁴ to exploit their position by extracting rents from consumers.

Competition policy and UK institutions

8. In order to promote effective competition, the government maintains a regulatory framework and institutions that prevent harmful effects on competition from developing within markets. In common with most jurisdictions around the world, this involves a system of enforcement against anti-competitive behaviour and the provision to review mergers that could lead to a

¹ CMA (2015). Productivity and competition: a summary of evidence. p 13–18.

² The innovation effect is more nuanced: see Aghion et al (2005) Competition and innovation: An inverted-U relationship.

³ Nordhaus (2004) estimated that 98 per cent of the social value of innovation in the post-war US economy passed through to users of new technology, with only 2 per cent retained by producers: Nordhaus (2004) Schumpeterian Profits in the American Economy: Theory and Measurement, NBER Working Paper, No 10433.

⁴ Market power describes a situation where market participants can exercise influence on the terms of trade with adverse effects to others, relative to the situation that would prevail in a competitive market. A seller with market power can increase profits through raising prices above the level of the marginal cost of production (the price in a competitive market) as the revenue lost through making fewer sales at a higher price is lower than the additional revenue gained on each unit sold.

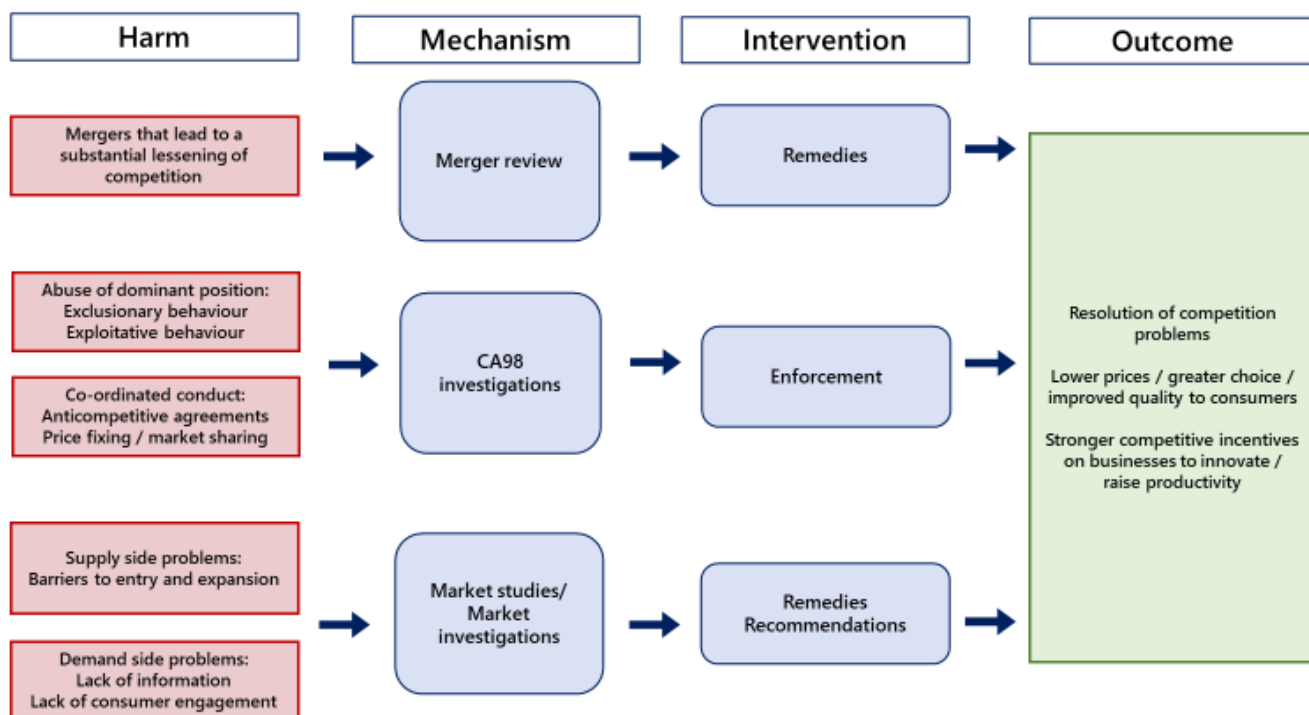
substantial lessening of competition. In addition, the UK competition system provides for the ability to conduct reviews of markets as a whole and remedy features that harm competition.

9. The national competition authority is the Competition and Markets Authority (CMA)⁵, which carries out the following regulatory functions to tackle competition problems:

- **Competition enforcement** under the Competition Act 1998 (CA98) against anti-competitive behaviour, such as the abuse of a dominant market position⁶ or co-ordinated conduct between firms;⁷
- **Review of mergers** to ensure proposed transactions do not lead to a substantial lessening of competition in a UK market, and remedying or prohibiting those that do; and
- **Market studies and market investigations** to investigate and remedy features of markets that are harmful to competition.⁸

Chart 1.1: Logic model of the competition authority’s role in addressing harm

Addressing harm: Interventions from Competition Authority



⁵ A number of sectoral regulators also hold powers concurrently with the CMA to carry out competition enforcement in the sectors for which they are responsible. Decisions made by the CMA are subject to review on appeal to the Competition Appeal Tribunal (CAT).

⁶ This can include exclusionary behaviour designed to prevent or limit the ability of a rival to enter or compete in a market, or exploitative behaviour such as setting excessively high prices.

⁷ Co-ordinated conduct can include price-fixing, market sharing or other anticompetitive agreements between firms.

⁸ These can include supply side features such as barriers to entry and expansion, or demand side features such as lack of information to consumers or lack of consumer engagement in comparing or switching between offers.

Rationale for intervention

Decline in the health of competition

10. A number of academic studies published in recent years have found evidence of a potential decline in the health of competition in UK markets, either by measuring market concentration⁹ or firm-level 'mark ups'¹⁰ (summarised in Table 1.1). On both measures there is evidence to broadly suggest that the level of competition in UK markets has declined in recent decades, particularly following the financial crisis in 2008, and that this has been accompanied by an increase in market power.
11. These UK-focused studies sit within a body of evidence of declining competition and increasing market power in the US (Council of Economic Advisers 2016¹¹, Grullon et al. 2019¹², De Loecker, Eeckhout & Unger 2020¹³), and other countries (De Loecker & Eeckhout 2018, Diez et al. 2019¹⁴).
12. Increases in market power have a number of negative implications for the wider economy:
 - **Higher prices for consumers**¹⁵: the estimates of higher mark-ups in De Loecker and Eeckhout (2018) implied an annual impact on price inflation of 1.6 percentage points¹⁶;
 - **Reduction in productivity**: recent academic evidence suggests that rising market power has been associated with reductions in business investment, with implications for reduced productivity (Furman 2016¹⁷, De Loecker and Eeckhout 2017¹⁸);
 - **Reduction in wages**: the increase in market power has also been suggested as a factor driving the fall in the share of income going to workers and thus potentially leading to stagnant wage growth (Autor et al 2019¹⁹, Barkai 2020²⁰); and
 - **Poor consumer satisfaction**: firms that are not exposed to strong competitive pressure from rivals lack incentives to improve product or service quality, and survey evidence shows poor consumer satisfaction in a number of UK markets.²¹

⁹ Market concentration broadly assess how much market share is accounted for by the largest players in that market.

¹⁰ A mark-up is the ratio of a firm's selling price to its marginal cost of production..

¹¹ Council of Economic Advisers (2016) Benefits of Competition and Indicators of Market Power Issue brief, April 2016.

¹² Grullon, G., Larkin, Y., & Michaely, R. (2019). Are US industries becoming more concentrated?. *Review of Finance*, 23(4), 697-743.

¹³ De Loecker, J., Eeckhout, J., & Unger, G. (2020). The rise of market power and the macroeconomic implications. *The Quarterly Journal of Economics*, 135(2), 561-644.

¹⁴ Diez, F. et al. (2019) Global declining competition IMF Working Paper WP/19/82.

¹⁵ Relative to a competitive situation, market power allows firms to raise prices and decrease output.

¹⁶ Bank of England calculations in Aquilante et al (2019).

¹⁷ Furman, J. (2016) Beyond Antitrust: The Role of Competition Policy in Promoting Inclusive Growth speech to Searle Center Conference on Antitrust Economics and Competition Policy.

¹⁸ De Loecker, J., & Eeckhout, J. (2017). The rise of market power and the macroeconomic implications. (No. w23687). National Bureau of Economic Research.

¹⁹ Autor, D., Dorn, D., Katz, L. F., Patterson, C., & Van Reenen, J. CEP Discussion Paper No 1482 Revised May 2019 (Replaces May 2017 version) The Fall of the Labor Share and the Rise of Superstar Firms.

²⁰ Barkai, S. (2020). Declining labor and capital shares. *The Journal of Finance*, 75(5), 2421-2463.

²¹ Particularly telecommunications, transport and utilities.

Case for reforming the competition system

13. Much of the early academic work on declines in competition started from the US. As analysis has been applied to the UK, we have seen some similar trends to those of the US. Underenforcement has been suggested as an explanation for the decline in competition in the US, either by insufficiently tackling and deterring anticompetitive behaviour or preventing anticompetitive mergers (Döttling et al 2017²², Baker 2018²³, Grullon et al 2019²⁴).
14. With this in mind, it is relevant to consider the efficiency of the UK competition system as a factor in trying to address the decline in competition in UK markets. Even if the core principles underpinning the UK competition system stay relatively constant, markets and business models move over time and technological change alters the fundamental nature of many markets. As a result, failure to update the underlying regulations, or the powers and procedures of the CMA, risks parts of the system becoming obsolete over time, and less effective at addressing competition harm in markets, or unnecessarily burdensome on parties involved in competition cases.
15. The proposals in the consultation seek to improve the efficiency of the competition system, by widening the scope of the CMA to intervene in areas where there may be harm to competition (such as through bringing more 'killer acquisitions' in scope of review²⁵), and by facilitating faster and more effective decision-making in cases, addressing harms to competition and providing certainty in markets more quickly.

²² Döttling, R., Gutierrez Gallardo, G., & Philippon, T. (2017). Is there an investment gap in advanced economies? If so, why?. If so, why?

²³ Baker, J.B. (2018) evidence to FTC Hearing #1: The Current Landscape of Competition and Privacy Law and Policy. Hearings on Competition and Consumer Protection in the 21st Century.

²⁴ Grullon, G., Larkin, Y., & Michaely, R. (2019). Are US industries becoming more concentrated?. *Review of Finance*, 23(4), 697-743.

²⁵ Discussed in more detail in the section considering the proposal to reform the share of supply test.

Table 1.1: Summary of recent evidence on competition in UK markets

| Authors | Findings |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Literature on concentration | |
| Corfe & Gicheva (2017) ²⁶ | High or moderate ²⁷ levels of market concentration among certain important consumer-facing markets in the UK: fixed-line and mobile phone contracts, broadband, gas, groceries, personal current accounts, electricity and credit cards |
| Bell & Tomlinson (2018) ²⁸ | Broad increases in concentration across sectors of the UK economy between 2003 and 2016, particularly in the years immediately following the financial crisis, partly due to relative growth of high-concentration sectors compared to others. |
| Aguda et al (2019) ²⁹ | Broad increases in concentration in UK between 1998 and 2006 in a restricted sample of sectors, although aggregate concentration across the UK economy was flat when the sample was expanded to include sectors for which data measurement was less reliable. |
| BEIS data analysis ³⁰ | Increase in industry concentration between 2006 and 2010 before declining between 2010 and 2018; concentration higher in 2018 than 2006. |
| CMA data analysis for the State of Competition report ³¹ | Increase in industry concentration following financial crisis of 2008, before declining between 2010 and 2018; concentration higher in 2018 than 2008. |
| Literature on mark ups | |
| De Loecker and Eeckhout (2018) ³² | Average mark-ups in the UK rose from 0.94 in 1980 to 1.68 in 2016. |
| Aquilante et al (2019) ³³ | Average mark-ups rose from 1.23 in 1987 to 1.55 in 2017. Increase driven by firms whose mark-ups were in the upper quartile, and more pronounced amongst firms that sold predominantly into foreign markets than those that sold predominantly into the UK. |
| CMA data analysis ³⁴ | Average mark-ups rose 8 per cent in past 20 years. Most of the rise in past 10 years and pronounced among firms whose mark-ups were already relatively high; a material number of the same firms have the highest mark-ups year after year. |

²⁶ Corfe, S., & Gicheva, N. (2017). Concentration not competition: the state of UK consumer markets. *The Social Market Foundation*.

²⁷ Defined through the Herfindhal-Hirschmann index (calculated by summing the squared market shares of the relevant group of firms): a score of between 1,000 and 2,000 being 'moderately concentrated' and a score in excess of 2,000 being 'highly concentrated'.

²⁸ Bell, T., & Tomlinson, D. (2018). Is everybody concentrating? Recent trends in product and labour market concentration in the UK. *Briefing, Resolution Foundation*.

²⁹ Aguda, O., Hwang, K.I., & Savagar, A. (2019), Product Market Concentration and Productivity in the UK. *Productivity Insights Network*.

³⁰ Department for Business, Energy and Industrial Strategy (2020b) Annex 2 – Existing competition indicators. *State of Competition: letter from the Chancellor of the Exchequer and the Secretary of State for Business, Energy and Industrial Strategy to Andrea Coscelli, CMA*.

³¹ CMA (2020) The State of UK Competition.

³² De Loecker, J., & Eeckhout, J. (2018). Global market power (No. w24768). National Bureau of Economic Research.

³³ Aquilante, T. et al. (2019), Market Power and Monetary Policy. Bank of England Staff Working Paper No. 798.

³⁴ CMA (2020) The State of UK Competition.

2. Merger reforms

16. The merger of two or more firms may deliver a number of efficiency benefits for the parties involved, such as cost savings or increased network size.³⁵ These efficiency gains may lead to benefits for consumers if they lead to lower prices or new innovative products or services becoming available that would not have been feasible before the merger.
17. However, a merger may make a market less competitive if it reduces the level of rivalry in a market. This could be because the merging firms previously competed with each other and the merger removes rivalry between them, or because the merger makes it easier for firms to collude. Alternatively, the merger may involve firms at different levels of a supply chain or in related markets and may create or strengthen the ability of the merged firm to exploit its market power in at least one market. A merger that reduces the level of rivalry in the market may lead to benefits to the merged firm but overall result in a net loss of welfare to society due to the lessening of competition, for instance through increased consumer detriment or loss of incentives for firms to pursue innovation or productivity gains.

Merger review by the CMA

18. The system for merger control in the UK is established under Part 3 of the Enterprise Act 2002 (EA02).³⁶
19. Merger notification in the UK is voluntary and parties are not obliged to notify the CMA of their proposal. However, the CMA can assess any relevant merger situation on its own initiative, and the CMA's Merger Intelligence Committee monitors markets and can 'call in' for review any case which has not been notified but meets the statutory thresholds for being a 'relevant merger situation'. The parties involved in a merger incur costs due to the combination of assets, technologies, and reorganisation of staff and management processes, and the process is not easy to undo once significant steps have been taken towards consolidation. As a result, many parties seeking to merge will notify the CMA about the prospective merger in advance in order to obtain legal certainty by securing clearance before they incur irreversible costs associated with merging.
20. If a merger has been notified to the CMA, or it decides to investigate on its own initiative, it carries out an initial Phase 1 assessment which (subject to the merger being found to qualify for review) will either clear the merger, refer to a more detailed (Phase 2) assessment, or clear on the basis of accepting undertakings in lieu (UIL) of a Phase 2 assessment from the merging parties.
21. The CMA has a duty to refer a merger to Phase 2 if it believes there is a realistic prospect that the merger has created or will result in the creation of a substantial lessening of competition (SLC) within any markets for goods or services within the UK. It can decide not to refer to Phase 2 if it believes the markets concerned are not of sufficient importance to justify the making of a reference, or if the customer benefits resulting from the merger outweigh any negative effects of the SLC.
22. Where a merger goes to Phase 2, the CMA appoints an Inquiry Group made up of members from an independent CMA Panel which must decide whether, on the balance of probabilities, there is likely to be an SLC, and if so, what action needs to be taken to remedy, mitigate or prevent it (e.g. requiring the divestiture of part of the merged entity).
23. The two-phase merger control system means that relatively straightforward cases are resolved at Phase 1 and only cases raising substantial competition issues are referred to

³⁵ See OFT&CC (2010) Merger Assessment Guidelines: CC2 (revised) p 55 – 58 for a fuller description of firm efficiencies.

³⁶ <https://www.legislation.gov.uk/ukpga/2002/40/contents>

Phase 2. This avoids parties and the CMA incurring unnecessary additional costs where a case can be resolved more quickly.

Objectives for reform

24. The Government seeks to have a merger control system that imposes proportionate requirements on benign or low risk mergers while ensuring robust scrutiny of mergers that raise potential concerns. The objectives of the reforms proposed are to help the UK merger control system operate more effectively, particularly by being:
- simpler and more streamlined, focused on mergers most likely to be harmful to competition and consumers, without unduly hindering benign investment, reducing costs and burdens to businesses,
 - quicker to reach decisions, to create market certainty more quickly following a merger proposal; whilst
 - ensuring that these proposals do not reduce the quality of decisions or undermine the ability to remedy mergers that would cause harm to competition in UK markets, with the associated potential to harm UK consumers,

Approach to assessment

25. The proposals outlined in the consultation include reforms to the jurisdictional thresholds for reviewing mergers, and reforms to merger investigation procedures. The proposals with the highest impact are those reforming the jurisdictional thresholds for review, because merger review involves significant cost to businesses and to the Exchequer (through the cost of review by the CMA), whilst remedies resulting from merger review can deliver significant benefits to consumers in terms of lower prices. Therefore, any measures that change the number of mergers that come within scope of review have the potential to lead to large impacts.
26. These impacts are quantified below, including estimating the cost and benefits of merger review. The model has used assumptions that have been 'sense checked' with the CMA. We are seeking stakeholder's views of our assumptions as part of the consultation process, and we will update our analysis in a revised impact assessment if any or all of these proposals are brought forward in legislation. At this stage, the impacts should be seen as provisional. Details on how to respond to the questions for stakeholders are included at the end of this Impact Assessment.
27. Section 3 sets out the baseline costs and benefits from merger review as these are needed to inform the assessment of the proposals, and the impacts of the proposals are considered in Section 4.

3. Cost and benefits of merger review

28. Merger review involves costs of assessment for the CMA, resulting in a cost to the Exchequer as the CMA is funded by public money. Businesses face an administrative burden of complying with requirements imposed on them during the review process, and typically require legal advice given the legal complexity of merger procedures. Merger reviews lead to benefits to the wider economy which are most easily measured through consumer savings resulting from CMA interventions to remedy transactions that would have led to negative impacts on consumers through substantial lessening of competition in a market.

Cost of assessment by the CMA

29. The cost of merger assessment depends on whether the merger review is resolved in the relatively light-touch Phase 1 assessment or referred to a much more costly Phase 2 investigation.
30. The average cost to the Exchequer of Phase 1 assessment was estimated by the National Audit Office as being £33,500 in 2014/15.³⁷ After uprating this estimate to 2019/20 prices using HMT GDP deflators³⁸, the **base assumption for cost of Phase 1 assessment is £37,000.**
31. The CMA guidance on exceptions to the duty to refer notes that where the annual value of the market(s) concerned is between £5m and £15m, the CMA will consider whether the expected customer harm resulting from a merger is materially greater than the **average public cost of a Phase 2 reference, estimated to be currently around £400,000.**³⁹ This has been taken as the base assumption for cost of Phase 2 assessment.

Cost recovery from merger fees

32. The Government recovers some of the cost of maintaining a merger control regime through levying fees on merging parties. Voluntary notification of a merger results in a fee being levied by the CMA, which will offset some or all of the above costs. The merger fee is due whether or not the merger is referred to Phase 2. These represent a transfer from business to the Exchequer.
33. Merger fees will typically more than recover the cost of assessment where it is not referred to Phase 2 but will not fully cover costs of Phase 2 assessment, so cases that are referred to Phase 2, or are not subject to a fee, are cross-subsidised by those that are not.
34. Not all mergers are liable for a merger fee. This includes if the merger involves acquiring an interest that is less than a controlling interest and the CMA investigated the acquisition on its own initiative. It also includes if the acquirer meets the criteria for a small or medium-sized enterprise as defined by reference to certain provisions in the Companies Act 2006⁴⁰.
35. There are 4 fee bands, depending on the value of UK turnover of enterprises being acquired.⁴¹

³⁷ National Audit Office (2016) The UK Competition Regime

³⁸ HMT GDP deflators at market prices, and money GDP December 2020 (Quarterly National Accounts)

³⁹ CMA (2018) *Mergers: Exceptions to the duty to refer*, CMA64

⁴⁰ For further information see CMA (2016) Merger Fees Information (January 2016) <https://www.gov.uk/government/publications/merger-fees-payment-information/merger-fees-payment-information>

⁴¹ Merger fee levels were set in The Enterprise Act 2002 (Merger Fees) (Amendment and Revocation) Order 2012: <http://www.legislation.gov.uk/ukxi/2012/1878/contents/made>

Table 3.1 Merger fee bands⁴²

| Value of UK turnover of enterprises being acquired | Fee |
|-----------------------------------------------------------|------------|
| £20m or less | £40,000 |
| Over £20m but not over £70m | £80,000 |
| Over £70m but not over £120m | £120,000 |
| Over £120m | £160,000 |

Costs to business

36. Businesses incur a number of costs when subject to merger review:
- costs of familiarisation with the merger rules and processes for review (estimated using the opportunity cost of employees' time - does not include legal fees).
 - administrative costs of co-operating with the CMA in the review process
 - costs of legal and economic advice which may well be hired externally to the firm.
37. In this assessment, costs are considered at the unit of the 'merged entity' of the proposed merger, and include aggregate costs to all businesses involved in the merger.

Familiarisation costs

38. Mergers are not part of normal business activity and take place only when the parties involved actively wish to seek a merger. Therefore it is unlikely that the general business population would engage in activity to familiarise with rules around mergers. Instead, familiarisation would likely take place at the point at which a merger was considered.
39. If some or all the proposals considered in this consultation are subsequently introduced in legislation, there may be a small additional cost of familiarisation to firms that subsequently consider a merger, over and above the cost that would be already incurred by familiarising with the existing merger rules. This would be best considered as an aggregate cost of familiarisation with the new procedural guidance, rather than as a separate familiarisation cost for each measure. At consultation stage, this has not been quantified, however it is likely to represent a relatively small cost, which falls on a small number of businesses per year.⁴³

Self-assessment costs

40. Notification in the UK is voluntary, but the CMA can subsequently intervene and impose remedies or reverse the merger. When considering a merger proposal, businesses are likely to undertake a form of self-assessment as to whether their proposal would fall within the jurisdiction of the CMA to review the merger, and whether it would be likely to lead to a competition concern. This will allow an informed decision to be made around whether to a) seek certainty through notifying the merger to the CMA or by submitting a briefing to the CMA's Mergers Intelligence Committee (MIC) before incurring costs of consolidation, or b) proceed with consolidation without notification.⁴⁴

⁴² CMA (2016) Merger Fees Information (January 2016)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492426/Merger_fees_information_January_2016.pdf

⁴³ Around 60 mergers per year are assessed at Phase 1; we do not observe the underlying number of businesses that consider a merger and familiarise with procedures but do not subsequently proceed to merger review. If, for instance, only 50% of the total number of businesses that familiarise with merger procedures are subsequently involved with a Phase 1 review, this familiarisation cost would be incurred by 120 businesses per year.

⁴⁴ Businesses can submit a briefing to the MIC explaining why they do not think their merger warrants an investigation.

41. In some cases this self-assessment may be relatively easy, for instance if the proposal clearly meets the turnover threshold and the transaction is relatively high profile and involves companies who are seen as competing against each other in the market.
42. Businesses are likely to need specialist legal advice in order to assist with this assessment, and these costs are assumed to be included within the costs of external legal advice (see tables 3.2 and 3.3 below).
43. For the purposes of this assessment, costs of self-assessment are considered only where a proposal would lead to costs of self-assessment additional to that which would be already occur under the existing merger framework.

Administrative costs

44. Merger review involves businesses providing information to the CMA, in the initial submission of a Merger Notice and in responding to requests for information (RFI) from case teams. This will involve an administrative burden to a business involved in information retrieval, auditing records, producing and submitting official reports to the CMA, quality assurance (such as proof-checking reports before submission) and producing official correspondence. Businesses will also spend time preparing for attending meetings with the CMA.
45. Businesses will incur an opportunity cost of the time diverted away from business as usual activity. In this assessment, the opportunity cost is valued at the cost of labour incurred for the staff time used on activities related to the CMA's review.⁴⁵ The cost of labour is estimated using wage data from the Annual Survey of Hours and Earnings⁴⁶, uprated by a factor of 22 per cent to account for non-wage labour costs⁴⁷, according to estimates⁴⁸ from Eurostat.⁴⁹
46. The total administrative costs will vary considerably from case to case, depending on the size of the transaction, the complexity of the market(s) involved and the extent to which the merger presents a potential threat to competition and whether it is resolved at Phase 1.

Pre-notification and Phase 1 review

47. In order to apply for clearance by the CMA, parties must complete a Merger Notice.⁵⁰ The Merger Notice requires the provision of certain information such as:
 - details of any notifications to listing authorities
 - copies of transaction documents
 - annual reports
 - accounts of the parties
 - copies of reports, presentations or recent studies that detail competitive conditions, market conditions, market shares, competitors or areas where merger parties overlap, as well as details of main customers and competitors in each 'candidate market'.⁵¹

⁴⁵ Based on the assumption that the value of the employee's time to the employer is at least equivalent to the amount the firm is willing to pay to employ them. This approach is based generally on that used in Cabinet Office Better Regulation Executive (2005) *Measuring Administrative Costs: UK Standard Cost Model Manual*

⁴⁶ Annual Survey of Hours and Earnings: 2020 provisional results. Table 14.6a Hourly pay - Excluding overtime (£) - For all employee jobs: United Kingdom, 2020.

⁴⁷ Eg National Insurance, pension contributions, payment in lieu of holiday, sickness, parental leave or other benefits.

⁴⁸ https://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs#Non-wage_costs_highest_in_France_and_Sweden

⁴⁹ Eurostat estimates that in 2019 18 per cent of total labour cost in the UK was made up of non-wage labour costs, meaning 82 per cent of total labour cost came from wages. Total labour cost therefore represents $1/0.82 = 1.22$ of wages and salaries.

⁵⁰ Merger Notice template: <https://www.gov.uk/government/publications/mergers-forms-and-fee-information>. Under the current voluntary notification system, where parties have not notified and the CMA has investigated the merger of its own initiative, the CMA will request information similar to that in the Merger Notice.

⁵¹ A 'candidate market' is the narrowest candidate product/service and geographic market(s) where the merger parties overlap, see CMA Merger Notice Template.

48. Parties often engage in pre-notification discussions with the CMA which can clarify the type of information that will be needed for the purposes of the Merger Notice, or for informal discussion around particular competition concerns relevant to the proposal. The CMA will typically send RFI relevant to the Phase 1 assessment during pre-notification stage, as the more comprehensive the information provided to the CMA at the commencement of the formal assessment stage, the more quickly the assessment can proceed.
49. Submission of the Merger Notice starts the 40-day statutory period to complete the Phase 1 review. In practice, a lot of information may be gathered by the business during the preparation of the Merger Notice, so the administrative burden of this stage can be relatively light on the parties, unless the parties are called to an Issues Meeting (IM) to discuss the state of the case.
50. Set out below are our current estimates of the administrative burden of pre-notification and Phase 1 review, for the following activities on average per case:
- **Preparing a Merger Notice** (50 hours);
 - **Responding to 2.5 RFI⁵²** (10 hours);
 - **An issues meeting (in 45 per cent of cases⁵³)** (50 hours including preparation time).
51. The distribution of hours by different levels of staff⁵⁴ in the organisation (e.g. hours involved with responding to a single RFI) are set out in Table 3.2. The distribution of total hours involved in the pre-notification and Phase 1 stage are set out in Table 3.3.
52. These indicative distributions are based on assumptions that we would value stakeholder views on during the consultation process. Under these assumptions, the total internal administrative cost to a business involved in the pre-notification and Phase 1 stage of merger review is **£2,500**.

Table 3.2: Pre-notification and Phase 1: Internal costs of each activity

| Occupation | Hourly cost of labour (£) | Preparing Merger Notice | | Responding to Phase 1 RFI | | Issues Meeting | |
|-------------------------------------------------------------|---------------------------|-------------------------|-----------------------|---------------------------|-----------------------|----------------|-----------------------|
| | | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) |
| Corporate managers and directors | 34.88 | 5 | 174 | 2 | 70 | 5 | 174 |
| Internal Legal professional | 39.26 | 15 | 589 | 2 | 79 | 15 | 589 |
| Administrative occupations: office managers and supervisors | 20.43 | 10 | 204 | 2 | 41 | 10 | 204 |
| Administrative occupations: records | 15.28 | 20 | 306 | 4 | 61 | 20 | 306 |
| Total (cost rounded to nearest hundred) | | 50 | 1,300 | 10 | 300 | 50 | 1,300 |

⁵² Estimate based on 2020/21: 96 RFI from 38 Phase 1 reviews (2.5 RFI per Phase 1 review).

⁵³ Between 2016/17 and 2020/21 there were 125 Issues Meetings in 278 Phase 1 reviews (45 per cent).

⁵⁴ In order to provide a representation of the cost burden on businesses of carrying out various types of administrative activity, this assessment has considered employees at four levels of seniority, based on Standard Occupational Classifications.

Table 3.3: Pre-notification and Phase 1: total expected costs

| | | Preparing Merger Notice | | Responding to Phase 1 RFI | | Issues Meeting | | Total activity | |
|-------------------------------------------------------------|---------------------------|-------------------------|-----------------------|---------------------------|-----------------------|----------------|-----------------------|----------------|-----------------------|
| Occupation | Hourly cost of labour (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) |
| Corporate managers and directors | 34.88 | 5 | 174 | 5 | 174 | 2.25 | 78 | 12 | 427 |
| Internal Legal professional | 39.26 | 15 | 589 | 5 | 196 | 6.75 | 265 | 27 | 1050 |
| Administrative occupations: office managers and supervisors | 20.43 | 10 | 204 | 5 | 102 | 4.5 | 92 | 20 | 398 |
| Administrative occupations: records | 15.28 | 20 | 306 | 10 | 153 | 9 | 138 | 39 | 596 |
| Total (cost rounded to nearest hundred) | | 50 | 1,300 | 25 | 600 | 22.5 | 600 | 97.5 | 2,500 |

Phase 2 review

53. Over the six years from 2014-15 to 2019-20, there were 384 Phase 1 decisions of which 55 involved a referral to Phase 2, so **14 per cent of Phase 1 cases are assumed to be referred to Phase 2.**⁵⁵
54. In the case of a merger being referred to a Phase 2 investigation, there will be a considerably larger administrative burden on the parties concerned. Phase 2 review begins with an initial data request, which will build on the information provided in pre-notification for Phase 1. Parties will be invited to a 'case management' meeting and a data meeting.
55. The CMA will then investigate the information required to test against the 'theories of harm' developed to assess whether the case would lead to a substantial lessening of competition both with the main parties and with third parties, via questionnaires, submissions, hearings, surveys and site visits. This will normally include a data request involving sales figures, pricing information and cost data; and a financial questionnaire focusing on financial performance and projections, including margin calculations. Generally main parties are given two to three weeks to provide the information requested.
56. The CMA may submit feedback to the main parties on the progress of the case, through means of an 'issues statement', or sharing working papers or technical analysis with the main parties. The parties may need to spend time considering these and responding to the CMA.
57. Towards the close of the assessment phase, the CMA will hold a formal hearing with the main parties, and is likely to require attendance from senior management in the merging parties. There may also be case team meetings between the case team and employees of the merging parties.
58. Following the publication of provisional findings, there will be further response hearings with the main parties, which will again be likely to require attendance from senior management. There will be consultation with the main parties around any potential remedies advocated by the CMA and potentially further discussions around the implementation of remedies following the publication of the final report.
59. An estimate of the administrative burden of Phase 2 reviews involves the following activities on average per case:
- **1 site visit** (one working day on site and 50 hours preparation time);
 - **1 hearing** (one working day and 50 hours preparation time);
 - **1 response to the issues statement** (50 hours);
 - **1 response to provisional findings** (50 hours);
 - **8 RFI**⁵⁶ (20 hours each⁵⁷).
60. The distribution of hours by different levels of staff in the organisation for one merger (e.g. hours involved with responding to a single RFI) are set out in Table 3.4.
61. The distribution of total hours involved in the Phase 2 stage are set out in Table 3.5. Under these assumptions, the total administrative cost to a business involved in the Phase 2 stage of merger review is **£9,700**.

⁵⁵ 55 / 384 = 0.143

⁵⁶ The CMA sent 92 RFI in Phase 2 in 2020/21, and completed 12 Phase 2 assessments. 92 / 12 = 7.67.

⁵⁷ RFI at Phase 2 are assumed to have a burden double the size of a RFI at Phase 1.

Table 3.4: Phase 2 review: costs of each activity

| | | Responding to Phase 2 RFI | | Site Visit | | Hearing | | Response to issues statement | | Response to provisional findings | |
|-------------------------------------------------------------|---------------------------|---------------------------|-----------------------|---------------|-----------------------|---------------|-----------------------|------------------------------|-----------------------|----------------------------------|-----------------------|
| Occupation | Hourly cost of labour (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) |
| Corporate managers and directors | 34.88 | 4 | 140 | 9 | 314 | 9 | 314 | 5 | 174 | 5 | 174 |
| Internal Legal professional | 39.26 | 4 | 157 | 9 | 353 | 9 | 353 | 15 | 589 | 15 | 589 |
| Administrative occupations: office managers and supervisors | 20.43 | 4 | 82 | 21 | 429 | 21 | 429 | 10 | 204 | 10 | 204 |
| Administrative occupations: records | 15.28 | 8 | 122 | 31 | 474 | 31 | 474 | 20 | 306 | 20 | 306 |
| Total (cost rounded to nearest hundred) | | 20 | 500 | 70 | 1,600 | 70 | 1,600 | 50 | 1,300 | 50 | 1,300 |

Table 3.5: Phase 2 review: total expected review

| Occupation | Hourly cost of labour (£) | Responding to Phase 2 RFI | | Site Visit | | Hearing | | Response to issues statement | | Response to provisional findings | | Total activity | |
|-------------------------------------------------------------|---------------------------|---------------------------|-----------------------|---------------|-----------------------|---------------|-----------------------|------------------------------|-----------------------|----------------------------------|-----------------------|----------------|-----------------------|
| | | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) | Hours of time | Total labour cost (£) |
| Corporate managers and directors | 34.88 | 32 | 1116 | 9 | 314 | 9 | 314 | 5 | 174 | 5 | 174 | 60 | 2093 |
| Internal Legal professional | 39.26 | 32 | 1256 | 9 | 353 | 9 | 353 | 15 | 589 | 15 | 589 | 80 | 3140 |
| Administrative occupations: office managers and supervisors | 20.43 | 32 | 654 | 21 | 429 | 21 | 429 | 10 | 204 | 10 | 204 | 94 | 1920 |
| Administrative occupations: records | 15.28 | 64 | 978 | 31 | 474 | 31 | 474 | 20 | 306 | 20 | 306 | 166 | 2537 |
| Total (cost rounded to nearest hundred) | | 160 | 4,000 | 70 | 1,600 | 70 | 1,600 | 50 | 1,300 | 50 | 1,300 | 400 | 9,700 |

Costs of external legal advice

62. Given the highly specialised nature of competition law and economics, **the costs of hiring external advice will be considerably higher than the internal opportunity costs of time devoted to the merger processes**. These costs will vary depending on the expected value of the proposed transaction and the resources of the merging parties – where the potential transaction value is high, parties may be willing to spend more resources on external advice.
63. Based on reports to BEIS, the baseline **assumptions for external legal costs are £300,000 for a case resolved at Phase 1** (including advice during preparation of the Merger Notice pre-notification), and an **additional £2 million⁵⁸ for a case proceeding to Phase 2**, leading to aggregate costs of £2.3 million for cases that proceed to Phase 2.
64. In the case of mergers involving smaller transactions, where the world turnover of each party is less than £10 million, logically the legal costs are likely to be much lower due to the lower expected value of the transaction and lower capacity for smaller businesses to pay for legal advice. In these cases, the baseline assumptions are that the external legal costs will be one-tenth of the average, ie **£30,000** for a case resolved at Phase 1, and an additional **£200,000** for a case proceeding to Phase 2.

Merger fees

65. As described in Table 3.1, businesses that meet the criteria for paying a fee will be required to pay a **fee of between £40,000 and £160,000** depending on the value of the transaction.

Summary of total costs to business

66. Under the assumptions in this Impact Assessment, the average cumulative cost to business of each additional merger is **£302,500 for a case resolved at Phase 1** and **£2.31 million for a case which involves referral to Phase 2** (Table 3.6). This excludes the merger fee which will vary depending on the value of enterprises being acquired. In the case of a small transaction, the cumulative costs to business are £11,500 for a case resolved at Phase 1 and £241,500 for a case resolved at Phase 2 respectively (Table 3.7)

Table 3.6: Summary of average total costs to business (excluding merger fees)

| | Admin cost (£) | External cost (£) | Total cost (£) |
|----------------------------------------|----------------|-------------------|------------------|
| Total cost of case resolved at Phase 1 | 2,500 | 300,000 | 302,500 |
| Additional cost at Phase 2 | 9,700 | 2,000,000 | 2,009,700 |
| Total cost of case resolved at Phase 2 | 12,200 | 2,300,000 | 2,312,200 |

Table 3.7: Summary of total costs to business (excluding merger fees) small transaction

| | Admin cost (£) | External cost (£) | Total cost (£) |
|----------------------------------------|----------------|-------------------|----------------|
| Total cost of case resolved at Phase 1 | 2,500 | 30,000 | 32,500 |
| Additional cost at Phase 2 | 9,700 | 200,000 | 209,700 |
| Total cost of case resolved at Phase 2 | 12,200 | 230,000 | 242,200 |

⁵⁸ Estimates of £15m to £30m were reported for some of the largest merger cases.

Question to Stakeholders: Are the assumptions for the costs of a small and large merger appropriate and how could they be improved?

Benefits associated with merger review

67. The economic benefit of merger control comes through the prohibition or remedying of mergers that would have otherwise led to a lessening of competition.
68. As part of its annual impact assessments, the CMA estimates impact through savings to consumers caused due to merger interventions that prevent or remedy a SLC.^{59 60} Over the three financial years from 2017/18 to 2019/20, the CMA's estimated direct impact of merger interventions was £1,160.5m.⁶¹ This excludes impacts from harmful mergers that were deterred entirely and therefore not reviewed by the CMA. Although the impact of deterrence could be large⁶², the difficulty of estimating this and the wide variety of estimates in the literature around deterrence ratio means it is not included in the CMA's impact assessments and so is not included here.
69. The impact of an intervention will vary considerably depending on the market concerned, the size of the merging parties and the scale of remedies applied. As a result, ex ante estimates of the benefit of mergers interventions that could happen in the future are hard to estimate, and the estimates described below are intended as indicative.
70. The Impact Assessment for the March 2011 "A competition regime for growth" consultation estimated potential benefits from individual interventions by dividing the aggregate three-year estimate of consumer benefit from merger interventions by the total number of interventions made over those three years. Interventions were defined as: mergers cleared with UILs at Phase 1, or amended, blocked or abandoned at Phase 2.⁶³
71. The CMA made 44 interventions in total using this definition over the period from 2017 to 2020 during which £1,160.5m of consumer benefits were estimated (see Table 3.8), whilst 135 merger outcomes involved no intervention. Dividing the aggregate benefit by the number of interventions gives an average of **£26.375m per intervention**. This can be used as an illustrative assumption for the potential benefit to the economy of an 'average' merger intervention. Interventions are assumed to take place in **25 per cent of all completed merger cases**.⁶⁴
72. The size of benefit from intervention will depend on the size of the market concerned. The proposal in this Impact Assessment for excluding mergers from review where the world turnover of each party was below £10m would involve mergers in much smaller markets. In the case of the expected benefit foregone from potential interventions foregone by excluding these smaller mergers from review are assumed to be only **£4m per intervention**, based on advice from the CMA.

⁵⁹ SLC = Substantial lessening of competition.

⁶⁰ These impact assessments involve different 'SLC rates' whereby the impact of mergers assessed in initial Phase 1 review is scaled down by a rate reflecting the fact that not all cases where merger parties remedy the CMA's concern, through undertakings in lieu of a reference or abandoning the merger, would have resulted in a SLC at Phase 2. See CMA Impact Assessment 2016/17 and CMA Impact Assessment 2016/17 2019/20 for further details.

⁶¹ CMA Impact Assessment 2019/20

⁶² CMA (2017). The deterrent effect of competition authorities' work: Literature review.

⁶³ BIS (2011 IA) A competition regime for growth: A consultation on options for reform Impact Assessment) p 44 - 45

⁶⁴ 44 interventions and 135 outcomes with no intervention in a total of 179 total outcomes. $44 / 179 = 0.25$.

Table 3.8: Merger interventions 2017 to 2020

| Merger interventions | 2017/18 | 2018/19 | 2019/20 | Total |
|--------------------------------------|----------------|----------------|----------------|--------------|
| Phase 1 Clearance subject to UIL | 12 | 2 | 6 | 20 |
| Phase 1 abandoned | 1 | 1 | 2 | 4 |
| Phase 2 prohibited | 0 | 1 | 2 | 3 |
| Phase 2 behavioural remedy | 0 | 0 | 4 | 4 |
| Phase 2 divestiture remedy | 2 | 4 | 1 | 7 |
| Phase 2 cancelled / abandoned | 0 | 3 | 3 | 6 |
| Total remedies | 15 | 11 | 18 | 44 |
| | | | | |
| Mergers with no interventions | | | | |
| Phase 1 unconditional clearance | 37 | 41 | 38 | 116 |
| Phase 1 'De Minimis' clearance | 4 | 0 | 1 | 5 |
| Phase 1 found not to qualify | 0 | 2 | 2 | 4 |
| Phase 2 clearance | 4 | 3 | 3 | 10 |
| Total outcomes with no remedy | 45 | 46 | 44 | 135 |

Questions to Stakeholders: Are estimates for the benefit of CMA merger interventions appropriate and how could they be improved?

How could we estimate the impact of harmful mergers that were deterred by the CMA entirely, and therefore not reviewed?

4. Proposals for reform

73. While other options for intervention have been explored (e.g. updated merger guidelines and resourcing) neither of these options would sufficiently be able to address the concerns that have been identified with mergers.

Jurisdictional thresholds

74. Apart from (broadly speaking) mergers with national security considerations or other narrowly defined public interest dimensions, the current jurisdictional thresholds for a merger to be subject to review are that:
- It must be the case or be anticipated that two business enterprises will cease to be distinct (typically, this is because one business acquires another) and, either:
 - the business that is being acquired must have a **UK turnover of more than £70 million** (the “turnover test”); or
 - the merger would result in the creation or enhancement of at least a **25 per cent share of the supply of particular goods or services in the UK**, or a substantial part of the UK (the “share of supply test”).

Raising the UK turnover threshold for the target of a merger from £70m to £100m

75. The existing threshold for UK turnover of £70m was introduced when EA02 came into force in 2003. Since then it has not been updated for inflation, although the overall price level rose around 47 per cent between 2003 and 2020.⁶⁵ This means that more mergers qualify for review on the grounds of being a relevant merger situation than would have been intended. This increases both the regulatory burden to businesses and the cost to the CMA of carrying out additional mergers. We are proposing to update the threshold to £100m, bringing the threshold back roughly in line with its original intervention level in 2003.⁶⁶

Change in number of merger reviews

76. In the 2020/21 financial year, 2 of the CMA’s 38 completed Phase 1 reviews fell between the UK target turnover threshold of £70m and £100m, of which 1 also qualified for review on share of supply, so only 1 would have been out of scope for review on the proposed £100m threshold.
77. In previous years, the CMA has completed between 57 and 63 Phase 1 reviews per year. Using the ratio of cases in the £70m-£100m threshold in 2020/21 as a guide (2/38), and allowing some additional headroom due to uncertainty, we have assumed there will be a **reduction of between 1 and 4 merger reviews per year** under this proposal.
78. Each one of the reviews that are taken out of scope is assumed to have been liable for a £120,000 merger fee⁶⁷, which represents revenue which will no longer be transferred from business to the Exchequer.

Additional costs per merger review

79. The basic cost structure of a merger review is assumed to be as set out in Table 3.6. However, there may be some additional costs of self-assessment where the UK turnover of the target falls between the £70m and £100m threshold and there was a possibility that the transaction may raise competition concerns, as these mergers could still be called in by the CMA on the basis of the share of supply test.

⁶⁵ Treasury GDP deflators at market prices, and money GDP March 2021 (Budget). Deflation factor 100 for 2020, 67.86 for 2003.

⁶⁶ £100m in 2020 prices is roughly equivalent to £68m in 2003 prices.

⁶⁷ Merger fees of £120,000 are due for mergers where the UK turnover of the target is over £70m but below £120m.

80. The internal cost of this additional self-assessment is assumed to involve 20 hours of staff time, distributed as shown in Table 4.1, leading to a cost of **£400**.

Table 4.1: Internal cost of self-assessment as to whether merger would qualify for review on share of supply test

| Occupation | Hourly cost of labour (£) | Hours of time | Total labour cost (£) |
|-------------------------------------------------------------|---------------------------|---------------|-----------------------|
| Corporate managers and directors | 34.88 | 2 | 70 |
| Legal professional | 39.26 | 2 | 79 |
| Administrative occupations: office managers and supervisors | 20.43 | 6 | 123 |
| Administrative occupations: records | 15.28 | 10 | 153 |
| Total (cost rounded to nearest hundred) | | 20 | 400 |

81. In addition, self-assessment is assumed to increase the cost of external legal advice by an additional 10 per cent relative to the overall cost of external advice for pre-notification and Phase 1 review, leading to an additional cost of **£5,000**. This means the **assumption on the total cost (per merger proposal considered) of self-assessment is £5,400**.

82. Some businesses will consider a merger proposal and undergo self-assessment and subsequently decide not to pursue the merger. Others may pursue the merger without notification and not be called in by the CMA. These will sink the costs of self-assessment but not the costs of merger review. **Between 2 and 8 businesses** are assumed to undertake self-assessment as a result of this proposal.⁶⁸

Overall impact of proposal

83. Under the assumptions set out in this Impact Assessment, the estimated annual impact of this proposal would be as follows (see Table 4.2):

- **Net cost to the Exchequer of £26,000 to £103,000**, largely due to a loss in revenue from merger fees. This loss of revenue is offset by changes in the administrative burden to the CMA which would be reduced by between £94,000 and £377,000;
- **Net benefit to business of £700,000 to £2.80m**, largely due to reductions in external legal fees and merger fees;
- **Illustrative net loss to consumers of £6.48m to £25.93m**, due to the potential for some mergers that are taken out of scope of review ultimately leading to a competition problem.

⁶⁸ This comes from doubling the number of mergers per year that are expected to be out of scope of review due to changing the turnover test (1 to 4).

Table 4.2: Summary of impacts from raising current turnover-based threshold for target of merger from £70m to £100m

| Annual change | Low | High |
|------------------------------------------------------------------|---------------|----------------|
| Cases needing additional self-assessment | 2 | 8 |
| Phase 1 cases | -1 | -4 |
| Phase 2 cases | -0.1 | -0.57 |
| Interventions | -0.2 | -0.98 |
| Exchequer impact: CMA burden (£k) | 94 | 377 |
| Exchequer impact: Merger fees (£k) | -120 | -480 |
| Exchequer impact: Total (£k) | -26 | -103 |
| Business impact: admin burden internal self assessment (£k) | -1 | -3 |
| Business impact: admin burden of review (£k) | 4 | 16 |
| Business impact: Merger fees (£k) | 120 | 480 |
| Business impact: external legal self assessment (£k) | -10 | -40 |
| Business impact: external legal pre-notification and review (£k) | 586 | 2,346 |
| Business impact: Total (£k) | 700 | 2,798 |
| Consumer impact: interventions (£k) | -6,483 | -25,933 |
| Overall net impact: Total (£k) | -5,809 | -23,238 |

Question to Stakeholders: Are the estimates and assumptions for the impact of changing the merger threshold to £100m appropriate and how could they be improved?

Excluding mergers from scope of review where the world turnover of each merging party is less than £10m

84. This proposal would create a ‘safe harbour’ from review for mergers involving parties that each have a world turnover less than £10m. These mergers will be out of scope for review regardless of share of supply. Again, this will reduce the number of mergers that qualify as a relevant merger situation and so reduce the number of mergers that the CMA reviews and is able to remedy.

Change in number of merger reviews

85. The CMA does not currently record data on world turnover of cases that it has reviewed. In 2020/21, there were 10 cases in which the UK turnover of the target was less than £10m. Of these, in 4 cases it would seem highly unlikely that the world turnover of each party was less than £10m due to the acquirer being a large, well established firm, leaving up to 6 acquisitions that could be in scope. As a result, our baseline assumption is that this proposal could **exclude between 1 and 6 small mergers from review per year**.

86. In this case only small merger proposals would come outside the CMA’s jurisdiction so these mergers would likely not have qualified for paying a fee.⁶⁹

Overall impact of proposal

87. There will be no additional need for self-assessment, as transactions in this ‘safe harbour’ cannot be called in by the CMA on the share of supply.

⁶⁹ Businesses are exempt from paying a fee if they satisfy the criteria for small or medium sized enterprises with reference to certain provisions in the Companies Act 2006, see <https://www.gov.uk/government/publications/merger-fees-payment-information/merger-fees-payment-information#fnref:4>

88. The potential consumer benefit from CMA intervention on harmful mergers of this small size is likely to be much smaller than from an average intervention, so an estimate **of £4m consumer benefit per intervention** is used rather than £26.375m. This is based on discussions with the CMA.
89. Under these assumptions, the estimated annual impact of this proposal would be:
- **Net benefit to the Exchequer of £94,000 to £566,000**, due to a reduction in administrative burden to the CMA, with no associated loss of merger fee revenue;
 - **Net benefit to (small) business of £63,000 to £375,000**, largely due to reductions in external legal fees;
 - **Illustrative net loss to consumers of £983,000, to £5.90m**, due to the potential for some mergers that are taken out of scope of review ultimately leading to a competition problem.

Table 4.3: Summary of impacts from creating a ‘safe harbour’ for small business mergers

| Annual change | Low | High |
|---------------------------------------|-------------|---------------|
| Phase 1 cases | -1 | -6 |
| Phase 2 cases | -0.14 | -0.86 |
| Interventions | -0.25 | -1.47 |
| Exchequer impact: CMA burden (£k) | 94 | 566 |
| Exchequer impact: Merger fees (£k) | 0 | 0 |
| Exchequer impact: Total (£k) | 94 | 566 |
| Business impact: admin burden (£k) | 4 | 23 |
| Business impact: Merger fees (£k) | 0 | 0 |
| Business impact: external legal (£k) | 59 | 352 |
| Business impact: Total (£k) | 63 | 375 |
| Consumer impact: interventions (£k) | -983 | -5,899 |
| Overall net impact: Total (£k) | -826 | -4,958 |

Question to Stakeholders: Are the estimates and assumptions for the impact of excluding mergers from scope of review where each party has world turnover less than £10m appropriate and how could they be improved?

Reforming the share of supply test

90. The share of supply test is intended to complement the turnover test, allowing the CMA to review acquisitions of businesses with smaller turnover that could still lead to a strengthening of an already strong market position. The existing share of supply test requires that the merging parties have overlapping shares of supply in a particular market or sector of the economy, allowing the CMA to intervene where a merger harms competition due to the removal of a competitor from a market.
91. The current focus of the UK's share of supply test on mergers between current, direct competitors may now be outdated. The CMA's recently updated merger assessment guidelines note that traditional theories of harm may not properly reflect the potential risks to competition posed by some mergers.⁷⁰
92. Mergers between businesses other than direct competitors may still harm competition if:
- **The merger removes potential competition from a market.** This might be where a company is developing a new product or service and is the business is bought out before it can develop to become a competitor or in some case even bring the product to market. These acquisitions have become known as 'killer acquisitions.' In these situations the new product may be discontinued or used by the acquirer to further strengthen their own market power. Killer acquisitions have been recognised as a problem in digital markets in particular, but they can also occur in other markets.
 - **The merger facilitates the leveraging of market power across different products or services.** Sometimes products may exist in different markets or at different levels of a supply chain, but companies can strengthen their market position by combining them or by foreclosing current or potential rivals. In some instances, a merger like this may have detrimental effect on competition by cementing the market power of an established company, leading to reduced innovation, higher prices and lower quality.

Proposal for reform

93. Under the proposed reform to the share of supply test, the **CMA will be able to review a merger if any business which is a party to the merger has both:**
- a share of supply of at least 25% of a particular category of goods or services supplied or acquired in the UK or a substantial part of the UK; and
 - a UK turnover of more than £100 million.
94. This would allow the CMA to call in mergers which involve large companies acquiring new start-ups or potential new entrants to a market even if the target does not yet have a qualifying share of supply in a UK market itself. It would also allow the CMA to more easily investigate potentially harmful vertical mergers or mergers that might facilitate the leveraging of market power across different products or services.

Change in number of merger reviews

95. The CMA's Merger Intelligence Committee (MIC) considers cases that are not notified to the CMA but which may fall within the CMA's jurisdiction, including on the grounds of share of supply. The CMA would not call in all mergers that may appear to qualify, as they may not raise competition concerns.
96. Following consultation with the CMA, a general estimate has been made that there may be an additional 2-5 cases called in by the CMA through reform of the share of supply test.

⁷⁰ The CMA's merger assessment guidelines: <https://www.gov.uk/government/news/updated-cma-merger-assessment-guidelines-published>.

97. Given the design and policy intention of this new threshold, these additional mergers may be more likely to involve larger acquirers taking over smaller targets. **75 per cent of the additional mergers are therefore assumed to qualify for a merger fee of £40,000, and the remaining 25 per cent qualify for a merger fee of £80,000.**⁷¹

Additional costs per merger review

98. This proposal would also be likely to lead to costs of self-assessment by parties that have a UK turnover exceeding £100m and are considering a merger that may be caught by the scope of the new share of supply test. This could involve both internal assessment and some additional external legal or economic assessment.

99. In practice, the cost of self-assessment under the new proposal may be simpler than the existing system. Previously, parties had to consider whether there was any market in which all merging parties could be considered to be active, and where their share of supply together might exceed 25 per cent. Under this proposal they need only consider whether one party has a share exceeding 25 per cent in any market. Businesses will, however, still need to consider the likelihood that the CMA will pursue an investigation into their merger on the grounds of there being competition concerns.

100. For the purposes of this assessment, the same cost structure assumption has been used as in analysis of businesses affected by the increase in target UK turnover threshold from £70m to £100m, which is described above. Internal assessment is assumed to take **20 hours of staff time**, leading to a cost of internal assessment of **£400 per proposal**, with **cost of additional external assessment assumed to be £5,000**. This means the **assumption on the total cost (per merger proposal considered) of self-assessment is £5,400**.

101. The number of merger proposals that are considered where the new share of supply test may be relevant is difficult to estimate. Some merger proposals may be considered and then abandoned without notifying or taking steps to integrate. Following consultation with the CMA, an assumption has been made that **between 20 and 40 additional merger proposals per year will undertake self-assessment** and incur the relevant costs, although not all of these will necessarily proceed with the transaction.

Overall impact of proposal

102. Under these assumptions, the estimated annual impact of this proposal would be as follows:

- **Net cost to the Exchequer of £89,000 to £221,000**, due to an increase in administrative burden to the CMA of between £189,000 and £471,000, which is not fully offset by the corresponding increase in merger fees;
- **Net cost to business of £1.39m to £3.42m**, largely due to increased legal costs due to increased volume of merger reviews;
- **Illustrative net benefit to consumers of £12.97m, to £32.42m**, due to the potential to remedy mergers that lead to SLCs but are not currently in scope of review or intervention.

⁷¹ A £40,000 fee applies where the value of UK turnover of enterprises being acquired is £20m or less, and a £80,000 fee applies where the value of UK turnover of enterprises being acquired is over £20m but not over £70m.

Table 4.4: Summary of impacts from changing the share of supply test

| Annual change | Low | High |
|------------------------------------------------------------------|---------------|---------------|
| Proposals self assessing whether in scope | 20 | 40 |
| Phase 1 cases | 2 | 5 |
| Phase 2 cases | 0.29 | 0.72 |
| Interventions | 0.49 | 1.23 |
| Exchequer impact: CMA burden (£k) | -189 | -471 |
| Exchequer impact: Merger fees (£k) | 100 | 250 |
| Exchequer impact: Total (£k) | -89 | -221 |
| Business impact: admin burden internal self assessment (£k) | -8 | -16 |
| Business impact: admin burden of review (£k) | -8 | -19 |
| Business impact: Merger fees (£k) | -100 | -250 |
| Business impact: external legal self assessment (£k) | -100 | -200 |
| Business impact: external legal pre-notification and review (£k) | -1,173 | -2,932 |
| Business impact: Total (£k) | -1,389 | -3,418 |
| Consumer impact: interventions (£k) | 12,966 | 32,416 |
| Overall net impact: Total (£k) | 11,489 | 28,777 |

Question to Stakeholders: Are the assumptions and estimates for the costs of reform to the share of supply test appropriate and how could they be improved?

Other proposals to reform merger review

103. The consultation also proposes a number of other reforms to merger procedures and processes, and a summary of impacts is set out in table 4.5:

- Allowing the CMA to agree binding commitments earlier during Phase 2 cases. Currently the CMA can agree commitments either at the end of a Phase 1 investigation, in lieu of Phase 2, or following the end of a Phase 2 investigation.
- Restricting the CMA to refer to a Phase 2 investigation only the issues identified at Phase 1 as competition concerns, to limit the scope of a Phase 2 case.
- Modifying rules around extensions to the Phase 2 statutory timetable⁷² with additional conditions to the powers to extend, or through giving greater flexibility to extend in certain circumstances.
- Allowing merging companies to request automatic referral to Phase 2. This would avoid the CMA needing to do a substantial competition analysis at Phase 1.

104. It is not expected that these proposals will have significant impacts to businesses or the exchequer. Analysis of these proposals will be included within the final Impact Assessment.

⁷² These can currently be extended once for up to eight weeks.

Table 4.5 Summary of additional proposals to reform merger procedures

| Proposal | Impact on businesses | Wider economic impact |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Allow the CMA to agree binding commitments earlier during Phase 2 investigation. | No obligation on businesses to offer commitments so no cost. Potential benefit if businesses can close case more quickly through offering commitments, avoid further costs of review and obtain certainty of outcome more quickly. Faster resolution of merger cases allows transactions to complete sooner and start trading as merged entity more quickly. | Potential for reduced Exchequer cost from closing review more quickly. |
| Restrict the CMA to referring only issues that are identified in Phase 1 review as competition concerns to streamline analysis at Phase 2. | Limits the range of issues under consideration at Phase 2 which may reduce the administrative burden when responding to RFIs. Potential for faster resolution of cases which would allow transactions to complete sooner. | Potential for reduced Exchequer cost from closing review more quickly. Some risk that competition concerns that could lead to an SLC may have not been identified at Phase 1 and will no longer be subject to remedy. |
| Modify rules around extensions to the Phase 2 statutory timetable with additional conditions to the powers to extend, or give greater flexibility to extend in certain circumstances. | Potential for greater certainty over timescales in Phase 2 cases. | |
| Right to request an automatic fast track to phase 2 review | This should lessen some of the procedural burden for parties, leading to a reduction in administrative costs where the fast track is used. The proposal would result in some reduction for administration and legal fees to parties. | There would be less of a procedural burden on the CMA and therefore lower costs to the Exchequer. It should not affect the final decision as the competition concerns would be addressed in Phase 2 |

5. Additional assessments

Small and Medium-sized Business Assessment

105. Small and medium-sized businesses are less likely to be subject to merger review under the existing regulatory framework as they are less likely to be involved in mergers that satisfy the jurisdictional thresholds for review, and are less likely to have sufficient market power for a transaction to raise competition concerns.
106. Small and medium-sized businesses would be affected by two of the proposals:
- Excluding mergers from the scope of review where the world turnover of each party is less than £10m would bring transactions where all parties involved are small businesses out of regulatory scope of review altogether, leading to estimated savings to small businesses of £0.06m to £0.38m per year; and
 - Reforming the share of supply test in the form described in this assessment would bring some transactions within scope of review where they are not currently in scope, where a small business is taken over by a larger business with UK turnover in excess of £100m and which has a 25 per cent share of supply in a UK market. This is estimated to lead to estimated costs of £1.39m to £3.42m per year, but these reflect costs to all merging parties concerned including the acquirer, and in practice the majority of these costs would be likely to be borne by the large acquiring firm.

Public Sector Equality Duty

107. The Department is required to comply with the public-sector equality duty (PSED) set out in the Equality Act 2010 (“the Act”). The PSED requires the Minister to have due regard to the need to advance equality of opportunity, hinder discrimination and foster good relations between those with and without certain protected characteristics. This due regard is taken to eliminate unlawful discrimination and to tackle prejudice and promote understanding. The characteristics that are protected by the Act are: age, disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual orientation.⁷³
108. The merger reforms proposed would apply to businesses directly rather than consumers. There will be no impact to consumers directly as a result of these reforms. However, consumers are envisaged to benefit indirectly from the enforcement activity that is undertaken for mergers. While the likely recipients of the benefits will vary on a case-by-case basis, there may be a disproportionate impact on particular consumer groups due to the nature of the transaction. This impact is considered through the merger review process and CMA’s annual Impact Assessment.
109. The matters considered in this Impact Assessment do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the policy does not discriminate or unjustly favour any person or group of people based on their protected characteristics.

Justice impacts

110. Within the analysis we assume that there is full compliance with the merger requirements. Regarding appeals, merging parties are able to appeal a merger decision by the CMA at the Competition Appeals Tribunal, following from this the case may be taken to the court of

⁷³ <https://www.gov.uk/discrimination-your-rights>

appeals and then the supreme court. There will be business and exchequer costs involved with these proceedings.

111. We will consider any costs associated with legal proceeding through policy development. Analysis to this effect will be presented in the Final Impact Assessment.

Potential trade and investment implications

112. With any change to the merger rules businesses are likely to incorporate these into their investment planning. While the proposals may lead to additional businesses needing to self-assess whether they would fall under the CMA's revised jurisdiction the reforms themselves are not expected to increase the overall level of intervention in merger. It is estimated that these reforms will lead to a reduction in the number of merger assessments in the UK and the business costs of complying with the merger process are expected to be reduced.
113. Government is aware of the concerns around changing the established merger process for investors in the UK and abroad. The merger regime proposals are not estimated to lead to significant overall additional burdens to business or hold up productive, competition enhancing investments. We will continue to develop the trade and investment analysis, particularly to identify any unintended consequences that there might be from these reforms. Updated analysis will be presented in the final Impact Assessment.

Question to Stakeholders: What are the benefits and risks to investment and trade as a result of these reforms? Could you provide any evidence to support your positions?

Monitoring and Evaluation

114. The CMA would be responsible for monitoring and enforcing compliance with the new proposed merger reforms. The CMA already undertakes annual assessments of the impacts of their activities including merger control and produce annual Impact Assessment. The CMA would estimate the resulting impacts of the merger proposals included within this assessment through this process, including the scale of the estimated benefits to consumers.
115. In line with standard parliamentary process, the government will also propose a post-implementation review a set number of years after the legislation comes into force. This review will provide government with the opportunity to examine the impacts of the merger proposals and highlight any unintended consequences. Through this assessment, business compliance costs and analysis of any unintended consequences to investment would be of particular interest.

6. Responding to questions included in this Impact Assessment

116. We will be grateful for all feedback on the content of this Impact Assessment, especially with respect to the assumptions made in the assessment and the specific questions included in the document.
117. Feedback and responses to questions should be emailed to the email address below, either as part of a wider response to the Government's consultation or as a separate response: **RCCPconsultation@beis.gov.uk**.
118. Questions with respect to this Impact Assessment can be directed to Alex Shirvani: **alex.shirvani@beis.gov.uk**.