

# Guidance on changes to the jurisdictional thresholds for UK merger control

Consultation document

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# 1. About the consultation

## Introduction

- 1.1 The Government is proposing to amend the jurisdictional thresholds set out in section 23 of the Enterprise Act 2002 for changes in control over enterprises that are active in three defined sectors: (1) the development or production of items for military or military and civilian use, (2) quantum technology, and (3) computing hardware (***Relevant Enterprises***).
- 1.2 Specifically:
- (a) the turnover threshold applicable to such mergers will be reduced from £70 million to £1 million, and
  - (b) the share of supply test will be met where a merger involves a target Relevant Enterprise with 25% or more share of supply of the relevant goods and services in the UK, as well as where the merger leads to an increase in the share of supply to, or above, this 25% threshold, which is the current requirement.<sup>1</sup>
- 1.3 The purpose of these changes is to ensure that the Secretary of State is able to intervene to address any national security-related issues raised by such transactions.
- 1.4 The amended thresholds will also apply to the CMA's assessment of whether it has jurisdiction to review transactions in the three defined sectors on competition grounds. As a result, a greater number of transactions in those sectors will come within the jurisdiction of the CMA. However, the CMA does not consider that the three defined sectors should be treated differently from other sectors for competition reasons, and the draft guidance reflects this approach. As such, the draft guidance makes clear that:
- (a) when self-assessing whether to submit a voluntary notification on competition grounds, merger parties should take the same approach to a merger that qualifies for review under the amended thresholds as they would to any other relevant merger situation; and

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<sup>1</sup> Secondary legislation to give effect to the change to the share of supply test was laid before Parliament on [15 March 2018] (The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018). Subject to Parliamentary approval being obtained for that instrument, a second statutory instrument will be laid to make the proposed amendments to the turnover test.

(b) in line with its wider approach to mergers, the CMA would not anticipate opening own-initiative competition investigations on the basis of horizontal concerns into transactions over which it has jurisdiction only on the basis of the amended thresholds. Nor does the CMA expect any material change to its general approach to opening own-initiative competition investigations on the basis of non-horizontal concerns.

For completeness, the CMA notes that the Government's proposed changes do not affect the thresholds applicable to, or the CMA's assessment of, mergers which do not involve acquisitions of Relevant Enterprises.

- 1.5 The CMA has sought to provide sufficient guidance to ensure that mergers that do not give rise to either competition or national security concerns are not subject to unnecessary regulatory review. In parallel with this consultation, the Government has published guidance<sup>2</sup> to assist merger parties in assessing whether a target enterprise is active within one of the defined sectors, and whether the merger may give rise to national security concerns.

## Scope of this consultation

- 1.6 The CMA is consulting on its draft guidance on the changes to the jurisdictional thresholds for UK merger control, in line with section 106(8) of the Act. It is intended to assist merging parties in assessing whether to notify transactions in the three defined sectors to the CMA for a competition assessment.
- 1.7 This draft guidance should be read in conjunction with the BEIS Guidance and the Statutory Instrument: The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 and its Explanatory Memorandum.<sup>3</sup> For more general information on the merger control regime see [Mergers: Guidance on the CMA's Jurisdiction and Procedure \(CMA2\)](#).
- 1.8 The specific questions on which we are seeking respondents' views are provided in section 2.
- 1.9 We are seeking the views of interested parties, particularly merging parties and their legal or other advisers who have been involved in merger notification processes.

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<sup>2</sup> Enterprise Act 2002: Changes to the turnover and share of supply tests for Mergers (the BEIS Guidance).

<sup>3</sup> The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018

## **Consultation process**

- 1.10 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. We would welcome your comments on the draft guidance. In particular, we want to ensure that it is clear and contains sufficient information for merging parties and their advisers.

### ***How to respond***

- 1.11 We encourage you to respond to the consultation in writing (by email or alternatively in writing by letter) using the contact details provided in paragraph 1.14 below.
- 1.12 When responding to this consultation please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 1.13 In pursuance of our policy of openness and transparency, we will publish non-confidential version of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive at the same time.

### ***Duration***

- 1.14 The consultation will run for 4 weeks, from 15 March 2018 to 12 April 2018. Responses should be submitted by post or email and should be sent to:

Policy & International Group (Merger Threshold Guidance Consultation)  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London WC1B 4AD

Email: [mergerthresholdconsultation@cma.gsi.gov.uk](mailto:mergerthresholdconsultation@cma.gsi.gov.uk)

### ***Compliance with government consultation principles***

- 1.15 In consulting, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government

departments and other public bodies should adopt when consulting with stakeholders.

### ***Data use statement for responses***

- 1.16 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 1.17 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information, we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.
- 1.18 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

### ***After the consultation***

- 1.19 After the consultation, we will publish a final version of the guidance and a summary of the responses received that fall within the scope of the consultation. As noted above, we propose to publish non-confidential versions of the responses received. These documents will be available on our webpages and respondents will be notified when they are available.

## **2. Questions for consideration**

- Q1. Is the content, format and presentation of the draft guidance sufficiently clear? If there are particular parts of the guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q2. Is the draft guidance sufficiently comprehensive? Does it have any significant omissions? Do you have any suggestions for additional or revised content that you would find helpful?
- Q3. Do you have any other comments on the draft guidance?