

Mergers: Exceptions to the duty to refer

Consultation document

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1. About the consultation

Introduction

- 1.1 The CMA has published new draft guidance on the exceptions to the duty to refer mergers for in-depth Phase 2 investigations to reflect its current (and intended future) practice. This guidance is intended for merger parties and their legal advisers.
- 1.2 This guidance should be read alongside [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#).
- 1.3 This guidance updates and replaces [Mergers: Exception to the duty to refer in markets of insufficient importance \(CMA64\)](#), and Chapters 1, 3 and 4 of [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance \(OFT1122\)](#).

Scope of this consultation

- 1.4 In accordance with section 106 of the Enterprise Act 2002 (the **Act**) we are seeking the views of interested parties, particularly merging parties and legal or other advisers who have been involved in merger notification processes. In particular, the CMA wants to ensure that the guidance is clear and contains sufficient information for merging parties and their advisers.
- 1.5 The specific questions on which the CMA is seeking respondents' views are provided in Section 2.

Consultation process

- 1.6 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments.

How to respond

- 1.7 We encourage you to respond to the consultation in writing (by email or letter) using the contact details provided in paragraph 1.10 below.
- 1.8 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.

- 1.9 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

- 1.10 The consultation will run for six weeks, from 11 June 2018 to 20 July 2018. Responses should be submitted by post or email and should be sent to:

Dipesh Shah
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: dipesh.shah@cma.gov.uk

Compliance with government consultation principles

- 1.11 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.

Statement about how we use information and personal data that is supplied in consultation responses

- 1.12 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 1.13 We are processing this personal data for the purposes of our work. This work relates to the issuance of guidance on exceptions to the duty to refer in merger investigations, for which we are consulting, and which forms part of the advice and information published by the CMA for exceptions to the duty to refer under section 106 of the Enterprise Act 2002. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.

- 1.14 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).
- 1.15 Our use of all information and personal data that we receive is also 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.
- 1.16 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.
- 1.17 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

After the consultation

- 1.18 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

- 2.1 Is the content, format and presentation of the draft guidance sufficiently clear? In particular, does the draft guidance clearly explain the relationship between RCBs and remedies? 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.
- 2.2 Is the draft guidance sufficiently comprehensive? In particular, does the it provide enough examples of the type of evidence that the CMA requires in its assessment of RCBs? Does it have any significant omissions? Do you have any suggestions for additional or revised content that you would find helpful?
- 2.3 Do you have any other comments on the draft guidance?