

# Merger remedies

Consultation document

© Crown copyright 2017

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

## Contents

	<i>Page</i>
1. About the consultation .....	2
2. Questions for consideration .....	6

# 1. About the consultation

## Introduction

- 1.1 The CMA has published new draft guidance to explain its approach and requirements in the selection, design and implementation of remedies in Phase 1 and Phase 2 merger investigations.
- 1.2 The guidance seeks to provide a single source of guidance on remedies for merger investigations. It therefore supersedes the Competition Commission (CC) guidelines on merger remedies,<sup>1</sup> Chapter 5 of the Office of Fair Trading (OFT) guidelines on undertakings in lieu of reference (UILs)<sup>2</sup> and Chapters 8 and 14 of the CMA's guidelines on merger jurisdiction and procedure.<sup>3</sup>
- 1.3 The approach outlined in the guidance is consistent with these previous documents, but has been updated and extended to take account of the CMA's experience of merger investigations in recent years, judgments of the Competition Appeal Tribunal (CAT) and the CMA's research into the outcomes of remedies.<sup>4</sup> This guidance also takes into account the principles outlined by the International Competition Network, the work carried out by the Organisation for Economic Co-operation and Development and the European Competition Network and recent merger remedies guidance published by other international competition regulators.

## Scope of this consultation

- 1.4 The CMA is consulting on its draft guidance on merger remedies in line with section 106 of the Act. This guidance is intended for merger parties and their legal advisers. For more general information on the merger control regime see [Mergers: Guidance on the CMA's Jurisdiction and Procedure \(CMA2\)](#).

---

<sup>1</sup> [Merger Remedies: Competition Commission Guidelines \(CC8\)](#) was originally published by the CC and has been adopted by the CMA.

<sup>2</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance \(OFT1122\)](#) was originally published by the OFT and was adopted by the CMA. However, it has since been updated and is now: [Mergers: Exception to the duty to refer \(CMA64\)](#). Guidance on UILs (previously in Chapter 5 of [OFT1122](#)) is now included in this guidance on merger remedies and no longer in [CMA64](#). Guidance on UILs (previously in Chapter 5 of [OFT1122](#)) is now included in this guidance on merger remedies and no longer in [CMA64](#). The CMA is consulting on new draft guidance on exceptions to the duty to refer to replace [CMA64](#).

<sup>3</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#) was published by the CMA in January 2014. This guidance on merger remedies replaces Chapter 8, Phase 1 remedies – undertakings in lieu of reference, and Chapter 14, Implementation of remedies, but the remainder of [CMA2](#) remains applicable.

<sup>4</sup> See [Understanding past merger remedies. Report on case study research](#), 6 April 2017.

- 1.5 The specific questions on which we are seeking respondents' views are provided in Section 2.
- 1.6 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.

## **Consultation process**

- 1.7 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***

- 1.8 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 1.11 below.
- 1.9 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.
- 1.10 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***

- 1.11 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

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

- 1.12 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***

- 1.13 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.
- 1.14 We are processing this personal data for the purposes of our work. This work relates to the issuance of guidance on merger remedies, for which we are consulting, and which forms part of the advice and information published by the CMA for merger remedies 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.
- 1.15 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](#).
- 1.16 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.
- 1.17 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.

- 1.18 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***

- 1.19 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

- 2.1 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.

We are particularly interested in your views on the following areas:

- (a) Clear cut standard for UILs (paragraph 3.28)
  - (b) International constraints (paragraphs 3.55 to 3.56)
  - (c) Early consideration of remedies (paragraphs 4.5 to 4.7 and 4.54)
  - (d) Multiple UIL offers (paragraph 4.10)
  - (e) Use of an upfront buyer (paragraph 5.29)
- 2.2 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?
- 2.3 Do you have any other comments on the draft guidance?