

Draft revised Merger Assessment Guidelines

Consultation document

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1. About the consultation

Introduction

- 1.1 The Competition and Markets Authority (CMA)¹ has set out in published guidance general information for the business and legal communities and other interested parties, on its practices and processes in connection with the its powers under the Enterprise Act 2002 (the Act) to investigate mergers.
- 1.2 One such guidance publication, the *Merger Assessment Guidelines* explains the substantive approach of the CMA to its analysis when investigating mergers. It is applicable to the CMA's Phase 1 investigations, when the CMA considers whether to refer a merger for further in-depth investigation, and its Phase 2 inquiries by independent groups of CMA panel members. It forms part of the advice and information published by the CMA under section 106 of the Act.
- 1.3 The original Merger Assessment Guidelines were published jointly by the Office of Fair Trading (OFT) and the Competition Commission (CC) in September 2010 ([CC2 \(Revised\) / OFT 1254](#)) and were adopted by the CMA board in 2014 (the Current Guidelines). The CMA is now consulting on a revised draft of its Merger Assessment Guidelines.
- 1.4 Since the Current Guidelines were published, there have been a number of developments to the CMA's approach to merger control. For example, digital technologies have changed, and will continue to change, the way goods and services are delivered to consumers and the way that businesses compete. These changes have not introduced new theories of harm or economic principles in the field of merger control, but nevertheless require the CMA to consider carefully its approach to assessment of mergers in such digital markets,² to ensure that it is delivering on its duties to promote competition for the benefit of consumers.³

¹ The CMA is the UK's economy-wide competition and consumer authority, and works to promote competition for the benefit of consumers, both within and outside the UK. Its aim is to make markets work well for consumers, businesses and the economy as a whole.

² Digital markets can be difficult to define, particularly given their fast-moving nature, however, as in the report on [Unlocking digital competition, Report of the Digital Competition Expert Panel, March 2019](#), the CMA will consider a digital market to be one in which intensive use of digital technology is central to the business models of the firms that operate primarily within them and where this raises challenges for competition, for example online platform markets.

³ Paragraph 1.3 of the [Draft Revised Guidelines](#).

- 1.5 To help it improve its decision making, the CMA continues to learn from various studies into its previous merger reviews.⁴ The Merger Assessment Guidelines also reflect the CMA’s merger control casework as well as the work undertaken by other teams within the CMA, such as the CMA’s Market Studies and Market Investigations regime. The courts of England and Wales have also clarified the meaning of some aspects of the applicable legislation over the past ten years.
- 1.6 In addition to the learnings from recent CMA cases and case law, as described above, the CMA has also benefited from the experience of other competition authorities around the world, as well as a large number of expert reports and academic literature that has been produced in recent years, including Unlocking digital competition, the Report of the Digital Competition Expert Panel, March 2019 (the **Furman report**);⁵ and the Ex-post Assessment of Merger Control Decisions in Digital Markets, Final Report, May 2019 (the **Lear report**).⁶ The findings as set out in these reports have been carefully considered (and largely adopted) in the updates to these Guidelines.
- 1.7 Informed by these developments, and its experience of investigating mergers since September 2010, the CMA has reviewed the Current Guidelines with a view to whether changes are required in order to address the points raised above, and to ensure that the Current Guidelines are up-to-date with current best practice. Having done so, the CMA proposes to make the changes to the Current Guidelines discussed in this consultation. We consider that the amendments to the Current Guidelines will provide greater clarity and guidance in our merger work in future.
- 1.8 The draft revised text of the Merger Assessment Guidelines as issued alongside this consultation paper is referred to as the Draft Revised Guidelines. This consultation paper explains in detail the nature of and the reasons for the amendments to the Current Guidelines that are proposed in the Draft Revised Guidelines.

⁴ For example, Lear, [Ex-post Assessment of Merger Control Decisions in Digital Markets](#), May 2019; and KPMG, [Entry and expansion in UK merger cases](#), April 2017.

⁵ [Unlocking Digital Competition: Report of the Digital Competition Expert Panel](#), March 2019. In particular, this report recommended that: “*The CMA’s Merger Assessment Guidelines should be updated to reflect the features and dynamics of modern digital markets, to improve effectiveness and address underenforcement in the sector*”.

⁶ [Ex-post Assessment of Merger Control Decisions in Digital Markets, Final Report, May 2019](#).

Scope of this consultation

- 1.9 This consultation seeks the views of interested parties on the CMA's proposed revisions to the Current Guidance.
- 1.10 In accordance with section 106 of the Act we are seeking the views of interested parties, including firms, legal, economic and other advisers, consumer groups, competition policy experts, and economic and law academics. In particular, the CMA wants to ensure that the guidelines are clear and contain sufficient information for merger firms and their advisers.
- 1.11 The specific questions on which the CMA is seeking respondents' views are set out in Section 3 of this consultation document.

Background

Context

- 1.12 The CMA is a non-ministerial department formed on 1 April 2014. It is the UK's primary competition and consumer authority which took over a number of functions formerly performed by the OFT and those of the CC. The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy.
- 1.13 The CMA has responsibility for review of mergers under the Act. As noted above, the Merger Assessment Guidelines explain the substantive approach of the CMA to its analysis when investigating mergers.

The Draft Revised Guidelines

- 1.14 The CMA is proposing to introduce revised Merger Assessment Guidelines to update and supersede the original guidelines published under CC2 (Revised) / OFT 1254.
- 1.15 The Draft Revised Guidelines are primarily intended for merger firms and the legal and economic advisers advising on a transaction that may be subject to merger investigation by the CMA. The Draft Revised Guidelines may also be of use by third parties that may be involved in the CMA's merger review process.

Rationale for the amendments to the Current Guidelines proposed in the Draft Revised Guidelines

- 1.16 As noted above in paragraph 1.7, the CMA has reviewed the Current Guidelines with a view to identifying whether further changes are necessary, given the developments set out above, as well as to ensure that the guidelines appropriately reflect current best practice. Having reviewed the Current Guidelines, the CMA proposes to make the changes set out in the text of the Draft Revised Guidelines, which forms part of this consultation. The changes that are proposed to the Current Guidelines reflect the existing legal framework and therefore do not require new legislation.
- 1.17 Some of the key changes to the Current Guidelines are summarised below, namely:
- (a) the inclusion of a list of examples of scenarios which may be considered an SLC;
 - (b) additional detail on the role of price and non-price competition;
 - (c) additional clarity on how the CMA assesses evidence;
 - (d) greater flexibility in the Counterfactual time horizon and removal of limb 3 of the exiting firm scenario;
 - (e) additional detail on the CMA's assessment of two-sided platforms;
 - (f) additional detail on the CMA's assessment of potential competition and innovation;
 - (g) re-framing of the focus of the CMA's assessment of a merger firm's ability to foreclose;
 - (h) removal of a separate section on buyer power as a countervailing factor; and
 - (i) additional clarity regarding the CMA's approach to market definition as an analytical tool.

- 1.18 In addition to the above changes, the Draft Revised Guidelines have been streamlined, with chapters and paragraphs removed where there is duplication with the CMA's other published guidance.⁷
- 1.19 The Draft Revised Guidelines have also focused primarily on analytical frameworks rather than evidence-gathering tools. This is to reflect the flexibility of merger assessment to use the analytical techniques and gather the evidence that is most appropriate to the case and circumstances in question. This approach has also been chosen in the hope that the Draft Revised Guidelines will remain relevant and up-to-date for the foreseeable future. While the available evidence may change, the frameworks in which that evidence sits, and economic theory behind the techniques used, is more enduring.
- 1.20 Some of the main changes that the CMA proposes have been discussed in detail in reports focused on the UK mergers regime or on competition in the UK economy. In particular, the Lear report,⁸ the KPMG report on entry and expansion in UK merger cases⁹ and the Furman report.¹⁰ These reports sit within a broader context of reports in other jurisdictions considering the growing importance of the digital economy and expressing concern about growing concentration of some markets.¹¹

When is a loss of competition substantial?

- 1.21 The CMA has noted over recent years that there have been a number of horizontal mergers in markets that are already very concentrated (including in markets where there is some evidence of poor market outcomes).
- 1.22 In the interests of clarity, the CMA considers it useful to highlight the types of mergers that are liable to raise competition concerns. The Draft Revised Guidelines therefore contain a non-exhaustive list of examples of types of

⁷ Chapters of the Current Guidelines which have been removed from the Draft Revised Guidelines due to duplication with other published guidance include: Relevant merger situation (Part 3), Public interest cases (Part 6); and Publications relevant to the regime (part 7).

⁸ [Ex-post Assessment of Merger Control Decisions in Digital Markets, Final Report, May 2019](#).

⁹ [Entry and Expansion in UK merger cases, an ex post evaluation, April 2017](#).

¹⁰ [Unlocking digital competition, Report of the Digital Competition Expert Panel, March 2019](#).

¹¹ For example, Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, [Competition Policy for the Digital Era](#) (a report for the European Commission); Chicago Booth Stigler Center for the Study of the Economy and State, [Stigler Committee on Digital Platforms](#); and the work of the OECD on [Digital Economy, Innovation and Competition](#).

scenarios which are capable of constituting an SLC (in the *Examples of when a merger can result in an SLC* section of the Draft Revised Guidelines).

- 1.23 The Draft Revised Guidelines also provide further guidance on what might be considered ‘substantial’, with references to the case law and Competition Appeal Tribunal (CAT) judgments that post-date the Current Guidelines.¹²

Non-price competition

- 1.24 Investment in innovation and product development is an increasingly important competitive parameter, both in digital and pharmaceuticals markets, but also in more traditional markets. The CMA has investigated a number of mergers in recent years where the potential harm to consumers would not come from the raising of prices, but from the reduction in innovation, or resulting reduction in quality or range of products. In particular, over the past decade, the CMA has seen a substantial increase in the number of merger investigations relating to online platforms which offer services for zero monetary price to customers on at least one side of the platform.
- 1.25 This has also been noted in recent expert reports, for example the Furman report, which recommended: ‘*Discussing the nature of competition in platform markets with zero monetary price to consumers, including how consumers may pay for products or services through non-monetary means; and how a zero monetary price may potentially be above the competitive market price*’.¹³
- 1.26 As a result, the Draft Revised Guidelines contain new language in the section of the Guidelines called *What is an SLC?* which provides additional detail on how the CMA will take the relevant parameters of competition into account in its assessment of a merger, and how this may influence the theories of harm considered. The Draft Revised Guidelines also explicitly mention the importance of non-price aspects of competition (in the section on ‘*Horizontal unilateral effects*’), and note that the fact that customers do not pay a monetary price for a good or service does not preclude competitive effects from arising.¹⁴

How the CMA assesses evidence

- 1.27 The CMA’s review of mergers takes into account existing competitive conditions, which will often be evolving over time in ways that are difficult to

¹² For example, [Tobii AB v Competition and Markets Authority \[2020\] CAT 1](#) and [Intercontinental Exchange, Inc. v CMA and Nasdaq Stockholm AB \[2017\] CAT 6](#).

¹³ Box 3.A at paragraph 3.74 of the [Furman report](#).

¹⁴ Paragraph 2.4 of the [Draft Revised Guidelines](#).

predict – especially in dynamic markets. The evolving nature of dynamic markets and the need to conduct a forward-looking assessment necessarily requires the CMA to deal with a greater degree of uncertainty than would be expected in more static markets.

- 1.28 The Lear report also recommends that authorities ‘*need to be willing to accept more uncertainty in their counterfactual. Even after reinforcing the tools available, there will always be a certain degree of uncertainty as to the counterfactual chosen for the assessment of a merger. Future plans, no matter how carefully set out, are always subject to being unmade by unforeseen market events*’.¹⁵
- 1.29 The CMA applies a ‘realistic prospect’ standard of proof in its phase 1 investigations and a ‘balance of probabilities’ standard of proof in its phase 2 investigations. Recent experience in the CMA’s merger case work has demonstrated that there may be some confusion about how these standards of proof are applied in markets, that are characterised by a greater degree of uncertainty (eg dynamic markets), as compared to more mature markets. Whilst the standard of proof remains unchanged, the Draft Revised Guidelines endeavour to provide some clarity on this point.
- 1.30 The inherent uncertainty in the prospective nature of merger assessments is discussed in a number of sections of the Draft Revised Guidelines.¹⁶ In particular, the Draft Revised Guidelines contain a new section on *How the CMA assesses evidence*, which provides clarity on the weight that the CMA will ascribe to certain evidence, and how the interpretation of evidence may be affected by the context in which it was generated. The CMA is clear that ‘*uncertainty will not in itself lead the CMA to conclude that competition concerns are unlikely to arise*’.¹⁷

Counterfactual

- 1.31 Applying the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether the merger gives rise to an SLC.
- 1.32 How important this analytical tool is will vary across the specific facts of different cases. The CMA will likely focus on those aspects of the

¹⁵ Page xiv of the [Lear report](#).

¹⁶ Eg *the Counterfactual*, and *Loss of dynamic competition*.

¹⁷ Paragraph 2.26 of the [Draft Revised Guidelines](#).

counterfactual that make a material difference to the substantial lessening of competition analysis. In many instances this will be when one of the merger firms is likely to enter or expand in a market absent the merger or, conversely, exit from a market absent the merger.

- 1.33 The Draft Revised Guidelines makes some changes to how the CMA will assess the relevant counterfactual.
- 1.34 First, in response to the Lear report, the Draft Revised Guidelines makes clear that complexity and uncertainty will not mean in themselves that the CMA will assume the pre-merger situation to be the appropriate counterfactual.¹⁸
- 1.35 Second, also in response to the Lear report, the Draft Revised Guidelines acknowledge that the time horizon that the CMA considers when describing the counterfactual will depend on the context. In some markets, relevant developments may not take place for some years while in others the relevant time horizon for the counterfactual will be shorter.¹⁹
- 1.36 Third, the Draft Revised Guidelines also remove the third limb of the test on the application of the exiting firm scenario. The Current Guidelines require that the CMA consider '*what would have happened to the sales of the firm in the event of its exit*'.²⁰ In particular, whether sales would have been redistributed among the firms remaining in the market and, if so, how and what impact this would have had on competition.
- 1.37 The CMA considers that the amendment to remove this third limb of the test gives the exiting firm framework greater analytical coherence, in part because in practice, the CMA has applied this test less mechanistically than is suggested in the wording of the Current Guidelines (given the undue emphasis that this wording places on the redistribution of sales for the purposes of competitive assessment).²¹ The CMA will still consider the following in determining whether an exiting firm argument will be accepted: (i) whether the firm in question would have exited (through failure or otherwise); and, if so (ii) whether there would have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.²²

¹⁸ The [Lear report](#) said (at page xiv) that CMA would need to '*be willing to accept more uncertainty in their counterfactual*' as '*[f]uture plans, no matter how carefully set out, are always subject to being unmade by unforeseen market events*'

¹⁹ Paragraph 3.15 of the [Draft Revised Guidelines](#).

²⁰ Paragraph 4.3.8 of the Current Guidelines.

²¹ [Annex A: Summary of CMA's position on mergers involving 'failing firms'](#).

²² Paragraph 3.22 of the [Draft Revised Guidelines](#).

1.38 This amendment to remove this final limb to the exiting firm test also brings the Draft Revised Guidelines more in line with that of other leading competition agencies around the world.²³

Two-sided platforms

1.39 The increased prevalence of digital technologies, and online platforms in particular, in recent years, has led to an increasing number of merger assessments conducted by the CMA in industries which might be said to be ‘two-sided’ or, sometimes, ‘multi-sided’.

1.40 Therefore, it is appropriate to expand on the Current Guidelines’ discussion of two-sided markets. A number of recent expert reports have recommended an increased focus on two-sided platform markets, for example:

(a) The Furman report recommended: ‘*Enhanced treatment of multisided platform markets, including the relevance for competition of interoperability between systems and the ability and willingness of users to switch or multi-home*’;²⁴ and

(b) The Lear report also recommended further clarity: ‘*The Authorities have not always consistently framed the competition issues they were looking at in a two-sided setting, focusing their attention on the users’ side of the market, somewhat overshadowing other sides of the market. The sides of a market need to be looked at jointly, as choices made by the platform on the various sides are interdependent*’.²⁵

1.41 The Draft Revised Guidelines include a new section on *Two-sided platforms*, which outlines factors the CMA may take into account when reviewing mergers involving two-sided platforms and how network effects and the risk of tipping may influence the CMA’s competitive assessment of two-sided platforms.²⁶

Potential competition and innovation

1.42 The CMA is reviewing an increasing number of mergers involving dynamic markets. In the CMA’s recent experience of merger control casework, such

²³ See for example, the U.S. Department of Justice and the Federal Trade Commission’s [Horizontal Merger Guidelines](#) and the European Commission’s [Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings](#).

²⁴ Box 3.A at paragraph 3.74 of the [Furman report](#).

²⁵ Section II.6 of the [Lear report](#).

²⁶ Paragraph 4.20 onwards of the [Draft Revised Guidelines](#).

mergers have been more likely to raise concerns about a loss of potential competition, arising out of the acquisition of a target company which may be a new entrant, or which may be active in an adjacent market, and which may either provide an important competitive constraint in the future, or which may result in the acquirer terminating its own entry or expansion strategy following the merger.

- 1.43 Potential competition has also been noted as an important area in recent expert reports, the Furman report states that “[t]he key concern here is that the removal of an important future competitor could harm innovation – if the acquired company is not developed to its full potential and if the acquiring company is not incentivised to innovate”.²⁷
- 1.44 The Current Guidelines contain relatively limited discussion of potential competition, and frame that discussion using the two categories of ‘actual potential competition’ and ‘perceived potential competition’. In the experience of the CMA, this framework has caused confusion with merger firms and their advisors. The Furman report has also recommended “[p]lacing greater emphasis on the loss of future potential competition between merging firms not currently operating as direct rivals, with a fuller explanation of how this can be assessed”.²⁸
- 1.45 The Draft Revised Guidelines therefore aim to provide clarity on the CMA’s assessment of potential competition. In particular, the Draft Revised Guidelines describe the two ways in which the elimination of potential competition can manifest: (a) where a merger involves a potential entrant and there is therefore a loss of the future competition between the merger firms after the potential entrant would have entered or expanded; and (b) where existing and potential competitors interact in an ongoing dynamic competitive process (perhaps via investments in innovation that may then lead to entry or expansion, or which might mitigate the loss of future profits to potential entrants) and a merger could lead to a loss of this dynamic competition.
- 1.46 These changes bring the Draft Revised Guidelines up to date with the CMA’s recent merger control casework experience, with cases such as Illumina/PacBio (which was abandoned before the CMA issued a final decision) and PayPal/iZettle demonstrating the CMA’s assessment of a loss of dynamic competition.

²⁷ Paragraph 3.81 of the [Furman report](#).

²⁸ Box 3.A at paragraph 3.74 of the [Furman report](#).

Vertical mergers

- 1.47 The Draft Revised Guidelines set out the CMA's framework for examining input foreclosure and customer foreclosure theories of harm. The CMA's broad framework remains the same as the Current Guidelines; ie, would the merged entity have the ability and incentive to foreclose rivals and would the foreclosure of these rivals substantially lessen competition overall?
- 1.48 Regarding an input foreclosure theory of harm, the Current Guidelines separate the assessment of a merged entity's ability to foreclose into three factors: (i) the cost of the input relative to the final product; (ii) the extent to which rival manufacturers can avoid a price increase by switching away from this input, (iii) the pass-through of any cost increases to customers of the final product.²⁹
- 1.49 In the Draft Revised Guidelines, the CMA has reframed the consideration of three factors, setting them within two broader factors that the CMA considers more fully capture the ability to foreclose, namely: (a) a merged entity's market power upstream, and (b) the importance of the input in framing downstream competition.

Countervailing measures

- 1.50 The CMA has set out its approach to considering entry and expansion and efficiencies as countervailing factors that prevent or mitigate any substantial lessening of competition from arising from a merger. The Draft Revised Guidelines does not contain a separate section on countervailing buyer power, with the approach to this factor being included instead in the chapter on *Horizontal Unilateral Effects*.³⁰
- 1.51 The Draft Revised Guidelines note that the CMA's experience has been that it is rare for countervailing measures – whether entry or expansion by a rival, or the expected realisation of a merger efficiency – to be the primary reason why a merger is cleared.

²⁹ Paragraph 5.6.10 of the Current Guidelines.

³⁰ Paragraphs 4.18 and 4.19 of the [Draft Revised Guidelines](#).

Market definition

- 1.52 Where the CMA makes an SLC finding, it is required to identify the market or markets within which an SLC exists.³¹ Over the past decade, our experience is that the competitive assessment, where the CMA looks at all of the potentially significant constraints on the Parties' behaviour, often captures competitive dynamics sufficiently, without the need to undertake a formal 'market definition' exercise.³² Our experience also indicates that there is a significant degree of overlap in practice between market definition and competitive assessment, with the evidence gathered and assessed during the competitive assessment typically also informing the CMA's assessment of market definition. In many cases, the evidence assessed in the CMA's competitive assessment that leads the CMA to make an SLC finding could have been interpreted in the same way without having defined the market, and so the incremental value to the assessment of a formal market definition exercise can be limited.
- 1.53 As noted in the Draft Revised Guidelines, while market definition can sometimes be helpful in developing certain types of evidence that may be relevant for the competitive assessment, it is not an end in itself.³³ The Draft Revised Guidelines therefore make clear that there is no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market definition, and that the CMA may take a more simple approach to defining the market.

³¹ [Sections 22 and 35](#) of the Act for completed mergers and [sections 33 and 36](#) of the Act for anticipated mergers.

³² For example, Competition policy for the digital era, a report by Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer (2019).

³³ Paragraph 9.4 of the [Draft Revised Guidelines](#).

2. Consultation process

- 2.1 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

- 2.2 We encourage you to respond to the consultation in writing (by email) using the contact details provided in paragraph 2.6 below.
- 2.3 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.
- 2.4 In pursuance of our policy of openness and transparency, we will publish nonconfidential 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 and contact details

- 2.5 The consultation will run for over seven weeks, from **17 November 2020 to 8 January 2021**.
- 2.6 Responses should be submitted by email no later than **23:59 on 8 January 2020** and should be sent to: MAGConsultation@cma.gov.uk

Compliance with government consultation principles

- 2.7 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

- 2.8 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.

- 2.9 We are processing this personal data for the purposes of our work. This work relates to the issuance of guidance on interim measures in merger investigations, for which we are consulting, and which forms part of the advice and information published by the CMA for interim measures under section 6 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.
- 2.10 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](#).
- 2.11 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.
- 2.12 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.
- 2.13 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

- 2.14 After the consultation, we will decide whether to make the changes proposed in the Draft Revised Guidelines and whether any further changes are necessary.

2.15 We will publish a final version of the Draft Revised Guidelines and a summary of the responses received that fall within the scope of the consultation on our webpages. 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.

3. Questions for consideration

- 3.1 Is the content, format and presentation of the Draft Revised Guidelines sufficiently clear? If there are particular parts of the Draft Revised Guidelines where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- 3.2 Are the Draft Revised Guidelines sufficiently comprehensive? Do they have any significant omissions?
- 3.3 Do you have any suggestions for additional or revised content that you would find helpful?
- 3.4 Do you agree with the approaches set out in the Draft Revised Guidelines?
- 3.5 Do you have any other comments on the Draft Revised Guidelines?