

Interim measures in merger investigations

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, *Interim measures in merger investigations* (CMA108) information for the business and legal communities and other interested parties on its practices and processes in connection with its powers under the Enterprise Act 2002 (as amended) (the Act) to impose interim measures in merger investigations.² It took effect from June 2019 and superseded the previous guidance issued by the CMA.
- 1.2 The CMA has also published a template Initial Enforcement Order (IEO), which is a form of interim measures imposed at phase 1, to be used in completed cases.
- 1.3 In this consultation document CMA108 is referred to as ‘the Current Guidance’ and the template IEO is referred to as the ‘Current Template IEO.’
- 1.4 The CMA is now proposing targeted amendments to the Current Guidance and the Current Template IEO. The draft revised texts of the Current Guidance and the Current Template IEO issued alongside this consultation document are referred to as ‘the Draft Revised Guidance’ and the ‘Draft Revised Template IEO’, respectively.
- 1.5 The Draft Revised Guidance, which reflects experience gained since 2019, is primarily intended to provide further clarification in relation to whom interim measures will typically apply, and the CMA’s expectations as to the steps that merging parties should take to ensure compliance with interim measures.
- 1.6 The CMA consulted on CMA108 in 2019. However, the CMA has become increasingly aware that merging parties are taking insufficient steps to ensure compliance with interim measures which is undermining the effectiveness of the UK’s voluntary, non- suspensory merger regime and has taken enforcement action where appropriate. It has re-drafted CMA108 and the template IEO to reflect this. The new versions put merging parties and their advisors on notice as to the stronger requirements relating to compliance

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 This guidance forms part of the advice and information published by the CMA under section 106 of the Act.

processes that will apply and that the CMA will impose penalties where appropriate.

- 1.7 As explained further below (see paragraph 1.24), after the consultation, we will decide whether to make the changes proposed in the Draft Revised Guidance and Draft Revised Template IEO and whether any further changes are necessary.
- 1.8 The amendments to the Current Guidance and the Current Template IEO which are the subject of this consultation are shown in underline and ~~strikethrough~~ text in the Draft Revised Guidance and Draft Revised Template IEO, respectively.

Scope of this consultation

- 1.9 This consultation seeks the views of interested parties on the CMA's proposed revisions to the Current Guidance and Current Template IEO in accordance with section 106 of the Act.
- 1.10 The specific questions on which the CMA is seeking respondents' views are set out in Section 2.
- 1.11 This consultation is aimed at those who have an interest in the CMA's merger investigations under the Act. In particular, it may be of interest to businesses and their legal and other advisers.

Consultation process

How to respond

- 1.12 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. We welcome your comments on the changes to the Current Guidance and Current Template IEO that are proposed in the Draft Revised Guidance and Draft Revised Template IEO, respectively.
- 1.13 Please provide supporting evidence for your views where appropriate. We encourage you to respond to the consultation in writing (by email) using the contact details provided in paragraph 1.16 below.
- 1.14 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.

- 1.15 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 (see further paragraphs 1.18 to 1.23 below).

Duration

- 1.16 The consultation will run for four weeks, from 7 April 2021 to 5 May 2021. Responses should be submitted by email by 17:00pm and should be sent to: interimmeasuresconsultation@cma.gov.uk

Compliance with government consultation principles

- 1.17 In preparing this consultation, 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

- 1.18 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.
- 1.19 We are processing this personal data for the purposes of our work. 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 and to ensure that we properly consult on the Draft Revised Guidance and Draft Revised Template IEO, before it is finalised and issued.
- 1.20 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](#).
- 1.21 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.

- 1.22 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 Part 9 of the Enterprise Act 2002.
- 1.23 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

- 1.24 After the consultation, we will decide whether to make the changes proposed in the Draft Revised Guidance and Draft Revised Template IEO and whether any further changes are necessary.
- 1.25 We will publish the final version of the Draft Revised Guidance and Draft Revised Template IEO on our webpages at <http://www.gov.uk/cma>. We will also publish a summary of the responses received during the consultation. 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 and draft template initial enforcement order sufficiently clear? If there are particular parts of the guidance or template initial enforcement order 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? Does it have any significant omissions?
- 2.3 Do you have any suggestions for additional or revised content that you would find helpful?
- 2.4 Do you agree with the policies set out in the guidance? In particular, we invite comments on the following points:
 - (a) To whom do the Interim Measures apply (paragraph 2.10); and
 - (b) Ensuring a smooth process (paragraphs 2.11-2.17).
- 2.5 Do you have any other comments on the draft guidance or draft template initial enforcement order?