

Decision to launch reviews of three merger remedies dating from before 1 January 2006

Introduction

1. In its [2015/16 Annual Plan](#), the Competition and Markets Authority (CMA) committed to commence a programme of work to review its existing remedies systematically and to remove measures that are no longer necessary. As part of this, in April 2015, the CMA launched reviews of 71 structural merger remedies that had been put in place before 2005. These reviews resulted in 51 obsolete remedies being removed from the CMA's register.
2. In its [2016/17 Annual Plan](#), the CMA committed to build on this work, launching further reviews of old merger or market remedies. This included consideration of a further tranche of 38 merger remedies that are more than 10 years old. The CMA [sought views from stakeholders from 22 April to 20 May 2016](#) on which of these remedies it should review as part of this exercise. On 14 June 2016, the CMA launched [reviews of 12 of the 38 merger remedies](#), and separately, today, it is [consulting on provisional decisions and provisional advice to remove 11 of these remedies](#), while it continues to analyse the one outstanding remedy.
3. The CMA has now decided to launch reviews of a further three merger remedies and to assess the evidence for changes of circumstances in each case. The CMA will continue to assess the remaining 23 merger remedies, and will consider the case for prioritising further reviews later this year.

Jurisdiction

4. The CMA has a statutory duty to keep under review undertakings made under the Fair Trading Act 1973 as well as those under the Enterprise Act 2002. For Fair Trading Act 1973 undertakings, the CMA will advise the Secretary of State for Business, Innovation and Skills regarding retaining, varying or releasing undertakings, while for Enterprise Act 2002 undertakings, the CMA can reach the decisions itself.¹

¹ The three remedies selected to be reviewed are Enterprise Act 2002 cases.

Invitation to comment

5. The CMA launched an invitation to comment on the 38 merger remedies under consideration on 22 April 2016. This closed on 20 May 2016. The CMA received responses from 5 individuals/organisations. Of the responses, 4 respondents provided comments on the suitability of individual remedies under consideration, while one additional respondent provided details of research materials.

Remedies and likely changes of circumstances

6. The CMA has identified the following merger remedies as being appropriate for review with the likely changes of circumstances highlighted in each case:
 - (a) Coloplast A/S, Coloplast Ltd/4C Health Ltd (2001): concerns continence care products. The CMA considers that the requirements in the undertakings have been met and the undertakings are now time-expired.
 - (b) Dräger and Dräger Medical UK Ltd/Air Shields business of Hill-Rom (2003): concerns closed incubators, open warming beds and transport incubators. The CMA notes that the undertakings included explicit time-limiting provisions and that these undertakings are now time-expired.
 - (c) Ivax International GmbH/3M Company's distribution business for certain asthma products (2003): concerns salbutamol asthma inhalers. CMA research has shown that there are a number of different suppliers of salbutamol inhalers on the market, and the CMA will investigate whether the condition in the undertakings concerning additional suppliers is met. Consequently, the CMA considers that there is a possibility that the undertakings may no longer be appropriate.

Prioritisation principles

7. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes to undertake across its areas of responsibility. The CMA has assessed all the information available in relation to the remaining 26 merger remedies that it did not choose to review on 14 June 2016 and selected a further three remedies for review at this time in the light of its published [prioritisation principles](#) as described below. These principles are impact, strategic significance, risk and resources. We consider each of these in turn.
 - (a) Concerning the impact of reviewing these merger remedies, the CMA expects to deliver reductions in regulatory burdens generating indirect

benefits for consumer welfare from the release of remedies that are no longer necessary. The CMA considers this to be likely in a number of cases given the behavioural restraint imposed on firms by these remedies as well as their age. Moreover, the removal of remedies that are no longer appropriate allows the CMA to focus its resources on monitoring remedies that continue to generate benefit for consumers and the UK economy.

- (b) The CMA considers these reviews to represent a strategic priority, as this work not only reflects the CMA's statutory duty to keep under review orders and undertakings, but also the CMA's published priorities in the current financial year.
- (c) In relation to risk, the CMA notes that all remedies being considered are over 10 years old. Given the age of these remedies, it is likely that a significant proportion of them may no longer be appropriate given market and other developments likely to have taken place. Consequently, the CMA considers there to be a realistic prospect of finding a relevant change of circumstances in each of the three reviews selected.
- (d) Regarding the resources involved in these reviews, the CMA considers that conducting a further three reviews of merger remedies, following the 12 reviews of merger remedies that it announced on 14 June 2016, to involve a modest commitment of resource, with synergies in the analysis and advice sought across these three reviews.

Decision to launch reviews

- 8. The CMA has reached a decision to launch reviews of the remedies arising from the three merger transactions listed above. In reaching this decision, the CMA has obtained sufficient evidence, through its own research and from responses to its consultation, to have established a realistic prospect of finding a change of circumstances in each of the three cases to be reviewed. Moreover, the CMA has assessed the reviews of these three remedies against its published prioritisation criteria and found the launch of these reviews to be consistent with the criteria.

Stakeholder views

- 9. The CMA is seeking views from interested parties as to whether or not there is a case for removing or varying any of these undertakings.
- 10. Those responding should provide their views, supported with relevant evidence where possible, in writing to the CMA either by email or by post as set out below:

Peter Hill
Competition and Markets Authority
7th Floor North
Victoria House
37 Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gsi.gov.uk

11. Responses should be received by the CMA by 5pm on **17 November 2016**.