Hogan Lovells

COMPETITION AND MARKETS AUTHORITY

CONSULTATION DOCUMENTS – PART 1

RESPONSE OF HOGAN LOVELLS INTERNATIONAL LLP

6 SEPTEMBER 2013

Hogan Lovells International LLP
Atlantic House
Holborn Viaduct
London
EC1A 2FG
www.hoganlovells.com

A. INTRODUCTION

1. This document contains the response of Hogan Lovells to the following consultation documents of July 2013:

   (a) Towards the CMA: CMA Guidance (the "CMA Consultation Document");

   (b) Mergers: Guidance on the CMA's jurisdiction and procedure (the "Mergers Consultation Document");

   (c) Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (the "Markets Consultation Document");

   (d) Administrative Penalties: Statement of Policy on the CMA's approach (the "Administrative Penalties Consultation Document"); and

   (e) Transparency and disclosure: Statement of the CMA's policy and approach (the "Transparency Consultation Document").

2. We welcome the opportunity to comment on the various consultation documents, and the fact that the CMA Transition Team is conducting such a comprehensive consultation exercise. As stated in the Foreword to the CMA Consultation Document, the "*creation of the [CMA] is an important development in strengthening the UK competition and consumer enforcement regime*"[1], and it is essential that the opportunity to remedy flaws in the current regime is not wasted. We therefore welcome the objectives and strategy set out in the CMA Consultation Document.

3. Although we have not sought to address every question raised by the consultation documents, we have instead focussed our comments on a small number of substantive issues that are, in our view, of key importance and where we believe further reflection or changes are necessary.

4. However, if there are any issues that we have not commented upon but in relation to which you would like our views, or if there is anything you would like us to elaborate on, please contact Karman Gordon or Christopher Hutton in the first instance.

B. MERGERS CONSULTATION DOCUMENT

5. We are broadly supportive of the proposed guidance set out in the Mergers Consultation Document, which in many respects helpfully updates current guidance. However, we do have a number of observations, which are set out below.

Preliminary comment

6. One of the current strengths of the UK merger control regime is its flexibility compared with other comparable merger control regimes. OFT and CC case teams are generally pragmatic in their approach and seek to minimise any unnecessary administrative burden on merger parties. There are comparatively few formal requirements, which allows the OFT, CC and the merger parties to spend their time on the important issues to be decided, rather than on the procedural requirements.

7. However, we are concerned that the new regime will risk reducing this strength by adding new and unnecessary layers of bureaucracy to the process that are not mandated by the

[1] CMA Consultation Document, paragraph 2.1.

Enterprise and Regulatory Reform Act 2013 ("ERRA 2013"). As a result, the new regime may gradually erode the pragmatic culture that currently exists within the OFT and CC.

8. For example, in a number of key respects the new regime seems to copy the European Commission's merger control processes, and in doing so introduces unnecessary bureaucracy:

   (a) It requires a case team allocation form to be submitted.[2] This is a new requirement, which is additional to the pre-notification discussions. We have not yet seen a draft form, but it is not clear why this process needs to be formalised and why the CMA believes the current process is not working efficiently.

   (b) Case teams will be allocated on a weekly basis.[3] It is not obvious why case teams cannot be allocated as and when parties request them, as is the current practice, rather than delaying this simple step by up to a week.

   (c) The Merger Notice will have to be signed by an authorised signatory of the notifying party (see the declaration at the end of the draft Merger Notice at Annexe E). This is a new administrative requirement with no obvious benefit – certainly the Merger Consultation Document does not set out why this step is considered to be necessary. Our experience of other merger control regimes is that it can sometimes be difficult to arrange the physical signature of senior management, who may be based abroad or who travel frequently on business.

9. The Merger Consultation Document does not make it clear why it is considered desirable to replicate some of the European Commission's processes, rather than continue the current flexibility and efficiency of the OFT and CC processes. We believe that the examples listed above contribute no obvious benefits to the functioning of the UK merger control regime, and it should be remembered that every minor administrative requirement imposes additional costs on merger parties.

Undertakings in Lieu

10. We generally support the new process for offering and accepting undertakings in lieu of a Phase II investigation, although we consider that the CMA should build into the new process more opportunities for the parties to engage with the CMA than is presently envisaged.

11. However, it should be recognised that the draft Remedies Form represents a significant increase in the information required compared with the current process. The amount of work (and the related cost and administrative burden) required to fill in this form should not be underestimated, and we invite the CMA to consider to what extent the Remedies Form might be simplified.

12. In its current form, the parties will need to start work on the Remedies Form well in advance of the CMA's Phase I decision, at a time when they are still working on the substantive competition issues with the CMA, and before the CMA's concerns have been made known. In some cases, the Remedies Form may require as much work as the Merger Notice itself. This is contrary to the intention of the changes to the undertakings in lieu process under ERRA 2013, which was to allow parties to focus on remedies once

---

2 Mergers Consultation Document, paragraph 6.47.

3 *Ibid*.

they have actually seen the CMA's reasoning on the substantive competition issues, and are therefore in a position to more sensibly address the CMA's concerns.

13. It is not clear why this level of detail is required for the CMA to reach a view as to whether a remedy is acceptable in theory in order to avoid a Phase II investigation. For example:

    (a) It is difficult to think of a situation where the amount of working capital (Question 6(vi) of the Remedies Form) or the need for some transitional service arrangements (Question 11 of the Remedies Form) would be central to the CMA's high level assessment of whether the remedy potentially solves the identified competition concerns.

    (b) At the end of the Phase I investigation, the case team will have a good idea of the probable saleability of the business and, if it has doubts, then an upfront buyer may be appropriate. In some cases, this level of detail may be useful at an early stage of the subsequent 50 working day period, but is unnecessary for the initial decision of whether to consider Undertakings in Lieu.

14. As a general point, we request that the CMA recognises that divestment buyers are in a much better position to assess any risks involved in the divestment business, rather than the Phase I case team who have only a short time to assess the proposed remedy.

Draft Merger Notice

15. The draft Merger Notice (the "Notice") lists the types of information that parties would generally expect to provide. It therefore formalises current practice and is potentially useful to parties with little experience of the UK merger control regime. It also introduces some sensible efficiencies, such as asking for an upfront waiver to allow the CMA to discuss the case with other competition authorities.

16. However, the Notice seems to have been drafted in order to cater for the most complex cases that the CMA will review, of which there will only a handful each year. It represents a significant increase in the amount of information required. It is overly burdensome for most cases, especially considering the Notice is for use at Phase I. For example:

    (a) A typical merger case would not require the disclosure of the "*latest monthly management accounts*" (Question 9 of the Notice) or "*marketing and advertising strategy documents*" (Question 14 of the Notice) or "*the annual value and volume of purchases*" from each supplier (Question 28 of the Notice). These types of information could be requested by the case team in those rare cases where it is appropriate rather than in all cases (subject to possible information waiver).

    (b) The Notice combines some of the detailed document gathering required by the US merger control regime (see supporting documents required by Questions 7 to 14 of the Notice) with the detailed economic analysis required under the EU merger control regime (see Questions 15 to 37 of the Notice), producing a more burdensome merger notification than any comparable merger control regime. This could act as a disincentive for parties (especially small and medium-sized companies) to notify the CMA under the UK's voluntary regime, particularly as the documents required in Questions 11 (rationale for the merger) and 12 (internal/external documents prepared for the purpose of assessing or analysing

the transaction) of the Notice are amongst the most sensitive documents held by companies.[4]

17. We are also concerned that the supporting documents required by Questions 7 to 14 of the Notice will place a heavy burden on parties. In particular, the drafting in Question 12 of the Notice is overly broad and will in many cases involve a large quantity of documents:

    (a) We suggest that an explicit materiality threshold is included to avoid a large number of unresponsive / unnecessary documents being disclosed (which the small Phase I case team will have to spend time reviewing).

    (b) It is not clear why the CMA wishes to see documents prepared at a junior level in the business ("*documents prepared by or for personnel working on the transaction*") that were not shown to the decision-makers in the business. This could include documents that are misleading because the views expressed are incorrect, or because they are not agreed by senior management with a better overall knowledge of the business. The CMA could not place weight on views expressed in this type of document with confidence.

18. We are concerned that, in contrast with the Form CO used in the EU merger control regime, the Notice does not include any materiality threshold for the sections on market definition (Questions 16 to 17 of the Notice), horizontal effects (Questions 18 to 20 of the Notice), and vertical effects (Questions 30 to 31 of the Notice). We assume that, in practice, the CMA will not wish to see extensive economic analysis in markets where the parties have negligible market shares, so it is vital for the Notice to make this clear in the guidance notes. For example, we suggest that any market in which the parties' combined share of supply is less than 20% should be exempted from analysis in the first instance, with the CMA obviously having the ability to request information for those markets in the rare situation of it being needed.

19. The significant burden of the Notice means that the information waiver process will be very important to maintaining the proportionality of the merger control regime. We have three main concerns in this regard:

    (a) The UK merger control regime is a voluntary regime, yet the Notice effectively reverses the burden from the current position where the OFT requests the information it requires, to a position where extensive information must be provided unless the parties can convince the CMA that it is unnecessary. The justification for such a reversal of the burden is not clearly set out, and it is not clear that the current system is failing and needs to be strengthened.

    (b) In addition, we do not yet know how readily information waivers will be granted, especially by Phase I case teams unaccustomed to operating within a statutory deadline. For example, we are concerned that case teams will refuse waiver requests where the information gathering will impose a large burden on the notifying parties but where the information could potentially (albeit with a very low likelihood) be useful to the CMA later in its investigation.

---

[4] Further, we note that the legislation does not guarantee the documents will not be used for other purposes by the CMA and it does not even provide an absolute guarantee against disclosure to third parties. Documents disclosed to the CMA as part of the merger control process can (for example) be used by the CMA in subsequent market or cartel investigations. See section 241 of the Enterprise Act 2012.

(c) There is a potential for inconsistency because these decisions will be taken at the case team level. We request that the CMA takes steps internally to ensure case teams are adopting a consistent approach.

20. Overall, while we support the formalisation of the merger notification into a Notice, we believe that the current drafting is disproportionately wide for most cases. A better balance could be achieved by reducing the scope of the Notice, while recognising that the CMA is able to request further information in more complex cases.

21. As it currently stands, the introduction of the Notice will materially lengthen the timetable for many (if not most) merger cases. It will increase the costs on the parties and on the CMA in producing and reviewing irrelevant information in almost every case. The Notice requires a large amount of upfront information that would currently be requested by the OFT at a later stage of its investigation and only if significant competition concerns were found.

The start of the 40 working day timetable

22. In paragraph 14(b) of the preamble to the Notice, it states that the CMA "*will seek to inform the notifying parties as to whether or not the Notice is a satisfactory notification in writing within five to ten working days of its submission to the CMA. Where merger parties have engaged in pre-notification discussions, it may be possible for the CMA to confirm that a Notice is a satisfactory notification more quickly*". This paragraph is of great importance to the parties because it indicates how much time will elapse between the formal notification being submitted and the 40 working day statutory timetable being started.

23. Accordingly, the paragraph would benefit from further clarification in the following ways:

(a) We assume that the 5-10 working days would only be necessary where the notifying parties have engaged in no pre-notification discussions with the CMA. This should be made clear.

(b) There ought to be an indication of the likely timing where the parties have engaged in pre-notification discussions, particularly as this will be the case in the majority of cases. As the case team will already be up to speed with the details of the transaction in these cases, we assume that 1-2 working days would be sufficient in all but the most unusual cases to confirm that the Notice includes the information previously discussed between the CMA and the notifying parties. This would also provide the parties with the incentive to engage in pre-notification discussions.

24. We therefore suggest the following wording for paragraph 14(b):

> "*Where merger parties have not engaged in pre-notification discussions (or have engaged only to a limited extent), the CMA will seek to inform the notifying parties as to whether or not the Notice is a satisfactory notification in writing within five to ten working days of its submission to the CMA. Where merger parties have engaged in full pre-notification discussions such that the CMA is already aware of the main aspects of the case, the CMA will seek to inform the notifying parties as to whether or not the Notice is a satisfactory notification in writing within one to two working days of its submission to the CMA.*"

25. For ease of reference, and to reflect the importance of this paragraph, we suggest that similar wording is also included in the main body of the final guidance.

C. MARKETS CONSULTATION DOCUMENT

26. We are broadly supportive of the proposed guidance set out in the Markets Consultation Document, which provides a useful addition to current guidance. However, we do have a number of observations, which are set out below.

Format of the draft Supplemental Guidance

27. As a preliminary point, we would like to note that we consider that the draft Supplemental Guidance will facilitate an understanding of the markets regime when read in conjunction with the existing guidance documents. We believe that providing supplemental guidance to explain the changes introduced by ERRA 2013 is the most appropriate approach, rather than (for example) producing consolidated guidance to replace (*inter alia*) *Market studies: guidance on the OFT approach* (OFT519), *Market investigation references* (OFT511), and *Guidelines for market investigations* (CC3 (revised)).

28. In our view, an attempt to produce consolidated guidance would necessarily entail duplication and standalone additional sections over and above the content of the existing guidance. The approach taken is effective in facilitating an understanding of the changes to the market studies and market investigations regime when read alongside the existing guidance.

Market studies

29. We outlined in our response to the 2011 BIS Consultation Paper "*A competition regime for growth: a consultation on options for reform*" (the "2011 Consultation Paper") that:

> "*The OFT's use of market studies has been subject to a considerable amount of criticism, which is in no small part due to the "nebulous", ill-defined nature of the tool*."[5]

30. We therefore welcome the increased certainty on the timeline and scope of market studies introduced by ERRA 2013 and outlined in the draft Supplemental Guidance. We believe that certainty will be enhanced by the formal commencement of a market study by the publication of a market study notice (containing information on the scope of the study, the period during which representations can be made and the timescales for the study) and the statutory "upper time limits" for publication of the notice of proposed decision, consultation, market study report and reference (as applicable).

31. We note that the CMA will be able to exercise statutory information gathering powers at the market study stage to assist it in meeting the statutory time limits. However, we have a residual concern arising from the CMA's ability to call for information and carry out other "preliminary work", which the Draft Supplemental Guidance expressly states falls outside the scope of the statutory time limits.[6] We would welcome clarification on the type of information which could be requested as part of this preparatory work and, in particular, confirmation that this informal information gathering stage will not be used to effectively sidestep the statutory time limits and create a "two track" first stage of review.

---

5 Hogan Lovells' Response to the 2011 Consultation Paper, paragraph 5.11.

6 Draft Supplemental Guidance, paragraph 1.12.

Public Interest Expert

32. The draft Supplemental Guidance envisages that the Secretary of State may be expected to intervene in markets cases with a public interest element "*only on extremely rare occasions*".[7] We note also that national security is currently the only specified public interest consideration in relation to which the Secretary of State may intervene in markets cases.[8]

33. Nevertheless, further guidance would be appreciated in due course on the following aspect of the new public interest regime. The ERRA 2013 and the draft Supplemental Guidance contemplate the appointment of "*one or more persons with relevant expertise in relation to the public interest issue*" (the "Expert") in the new full public interest references.[9] Further guidance would be appreciated on the specifics of the appointment of and advice given by the Expert, including (*inter alia*):

    (a) the identity of the Expert and their qualification for this role (including how it would be decided that more than one Expert would be required);

    (b) the mechanics of the Expert's appointment;

    (c) whether there will be any right to challenge the Expert's appointment;

    (d) the specific aspects on which the Expert will advise; and

    (e) the extent to which the CMA must have regard to the Expert's advice.

Cross Market References

34. We highlighted in our response to the 2011 Consultation Paper that:

> "*In circumstances where there is a specific, discrete practice that is harmful for consumers across several markets, and that is not already covered by the competition law rules, this ability might avoid the need to initiate several market investigations at once. However, it should be borne in mind that the companies affected by the investigation would be likely to argue that the specific practice needs to be viewed in its full context in each market. As a consequence, the CMA could find itself in practical difficulties in terms of keeping the scope of the investigation manageable. It could also be at risk of judicial review if the scope is not clearly framed in each case. Moreover, if the scope of the investigation is not carefully and robustly framed, the CMA might effectively be pushed into conducting several parallel market investigations at once. This could potentially render the new power useless in practice*"[10] (emphasis added).

35. We note that the draft Supplemental Guidance envisages that the power to make a cross-market reference will be "*targeted*" and used "*only where* [it is] *needed*".[11] However, although we appreciate that unique practical difficulties will arise in each case, we would welcome further guidance on the practicalities of the operation of a cross-market investigation covering, for example:

---

7 Draft Supplemental Guidance, paragraph 2.17.
8 Draft Supplemental Guidance, paragraph 2.20.
9 Draft Supplemental Guidance, paragraph 2.26 and Enterprise Act 2002, sections 140A(8) and 141B.
10 Hogan Lovells' Response to the 2011 Consultation Paper, paragraph 5.5.
11 Draft Supplemental Guidance, paragraph 2.36.

(a) how the administrative aspects of the multiplicity of parties to such an investigation would be handled, including involvement in hearings, responses to working papers and other CMA papers; and

(b) how the remedies process would work for cross-market investigations, including the possibility that different remedies may be appropriate in each market referred to take account of the different features of each market.

D. ADMINISTRATIVE PENALTIES CONSULTATION DOCUMENT

36. The ability to impose administrative penalties for the failure to comply with certain "Investigatory Requirements" (as defined in the Administrative Penalties Consultation Document) represents a significant development. Moreover, although the CC has the ability to impose administrative penalties in certain circumstances, we are not aware of the CC having done so to date. As a result, and given the significant financial penalties that could be imposed going forward, it is disappointing that the draft Statement of Policy (the "Penalties Statement"):

(a) provides only general guidance, and does not provide more substantive guidance on key issues; and

(b) adopts a one-size fits all approach, despite the fact that the CMA's powers will arise in different contexts (for example, the approach to be adopted in a merger case with tight timetables should not be the same approach to be adopted in a long-running (and evolving) investigation under the Competition Act 1998 ("CA98")).

37. In addition to those general comments, we make the following specific comments:

(a) The reasonableness of the positions taken by the CMA in the Penalties Statement will depend to a large extent on the reasonableness of the CMA's conduct in making information requests…etc. We recognise that the CMA intends to enhance the current practices of the OFT and CC to ensure that information requests are understood by (and discussed with) parties, and that representations from parties as to what information is available and within what time frame are taken on board. It should be made clear in the Penalties Statement that the CMA will only seek to use its powers to impose administrative penalties in cases where the CMA considers that it has acted in accordance with best practice in this regard. It would be unreasonable, for example, for the CMA to impose a penalty for non-compliance with an Investigatory Requirement within a specific timeframe if it had been made clear to the CMA that compliance within that timeframe would be impossible.

(b) The Penalties Statement provides only high-level guidance as to what the CMA will regard as being a "reasonable excuse" for a failure to comply with an Investigatory Requirement:

(i) The concept of "reasonable excuse" appears to be unreasonably narrowly drawn – ie, "*a significant and genuinely unforeseeable or unusual event*".

(ii) The Penalties Statement appears to suggest that "reasonable excuse" applies to the timing of a response to an Investigatory Requirement, but not (for example) whether a party has a "reasonable excuse" for not

understanding that certain information fell within the scope of the Investigatory Requirement. This approach is unduly narrow.

(iii) To illustrate the point, in the context of any investigation (but particularly long-running investigations) the understanding of parties and regulators as to what information is relevant may change. A party under investigation should not be exposed to administrative penalties because – on a reasonable interpretation – it did not understand certain information to be within the scope of an early information request, or because the CMA subsequently decides that certain information (based on the CMA's later / more developed understanding of the issues) would be responsive to that earlier request.

(c) At paragraph 4.10, the Penalties Statement should more explicitly reflect the wording of paragraph 4.13 of the Administrative Penalties Consultation Document (ie, by stating that a history of compliance will be taken into account when setting the level of a penalty, as will the fact that a failure to comply is minor or accidental and promptly corrected).

(d) One of the factors stated to be relevant to whether penalties should be imposed and the level of that penalty is whether an investigation has been delayed / has had to be extended. Whilst we recognise that this is a relevant factor that the CMA should take into account, we would emphasise that the CMA should take a dispassionate view of its own failings in this context when makings its assessment. For example:

(i) A delay in complying with an information request issued two days before a statutory or self-imposed deadline for the CMA to take action should not give rise to a penalty, especially if the CMA could and should have requested that information at an earlier stage.

(ii) Equally, a penalty should not be imposed where a delay to the investigation is in fact caused by a delay in the CMA identifying a failure to comply (or a delay in notifying a party that it considers that an earlier information request has not been complied with).

(e) In relation to the ability of the CMA to impose financial penalties for failing to comply with Interim Measures in merger cases, the proposed definition of 'control' in Article 2(1) of the draft order (The Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014) could result in penalties being imposed on companies who are not at fault. The definition of 'control' for these purposes is aligned with the definition of control for the purposes of a 'relevant merger situation' and therefore includes situations of material influence where the links between the relevant companies can be quite weak. There are two main situations where unfairness could therefore result:

(i) Where an entity (X) holds material influence, but it does not know about the failure to comply. For example, it is possible to attain material influence for the purposes of the UK merger control regime without (for example) a seat on the Board of a company and without access to detailed information about the company's day-to-day activities, in which

case X would not know about a failure to comply with Interim Measures and could not have prevented it.

(ii) Where X holds material influence, and knows about a failure to comply, but does not have the ability to prevent it. By definition, if X merely holds material influence over a company, X is not able to direct its commercial policy. In this situation, there should be an exemption from financial penalties if X can show that it used its influence to advise against the infringing conduct even if its advice was ultimately ineffective.

In both of these situations, it would be undesirable for any exemption from a financial penalty to rely on the discretion of the CMA in individual cases. Any such exemption, to the extent that it is not made explicit in the final order, should be made clear in the CMA's guidance.

(f) At paragraph 5.6 of the Penalties Statement, it is stated that the CMA "*will generally*" (but not always) invite a party to "*specify in writing the reasons*" for a failure to comply before the CMA issues a provisional decision. However, the CMA does not appear to envisage that the party in question will be able to make representations as to whether it has in fact failed to comply with an Investigatory Requirement at this stage – the Penalties Statement should be revised to acknowledge that parties will always be given an opportunity to make representations on this subject before and after the issue of a provisional decision.

(g) As to the identity of decision makers (see paragraph 5.10 of the Penalties Statement), it should be made clear that the decision will not be undertaken by an individual within the relevant case team. If an individual close to the investigation were to be the decision maker, there would be a risk that failings on the part of the case team would be ignored, or that other issues relating the wider relationship between the case team and the party concerned would unduly influence a decision whether or not to impose a penalty, or the level of that penalty.

E. TRANSPARENCY CONSULTATION DOCUMENT

38. We are supportive of the CMA's commitment to transparency and welcome the publication of guidance relating to disclosure. However, we do have a small number of observations on the Transparency Consultation Document, which are set out below.

Transparency

39. Openness and transparency are obviously to be welcomed from the CMA, to the extent possible having regard to sensitivities relating to the protection of confidential information and respect for parties' rights of defence. We are, therefore, supportive of the CMA's commitment to ensure its procedures are transparent. However, it is not altogether clear to us what purpose the guidance set out in the draft Statement of Policy (the "Transparency Statement") contained in the Transparency Consultation Document fulfils or when it would be referred to in practice.

40. The Transparency Statement attempts to provide guidance covering the range of regulatory tools at the CMA's disposal, leading to many of the general points made about procedures aimed at enhancing transparency being subject to caveats. The obvious differences and approaches taken by the CMA in relation to, for example, a CA98 case and a market study, require the reader still to refer to relevant specific guidance to identify

the CMA's approach in relation to the regulatory tool of particular interest. Accordingly, we anticipate it is unlikely businesses or their advisers will refer to the Transparency Statement for guidance about transparency during the course of a CMA investigation; they will instead turn directly to the relevant specific procedural guidance to find the information required.

41. The 2010 OFT publication, "*Transparency: A Statement on the OFT's approach*" (OFT1234), was welcome because it filled a void resulting from the lack of guidance in place at that time, particularly in relation to transparency regarding CA98 cases. However, since the OFT's subsequent publication of the "*Guide to the OFT's Investigation Procedures in Competition Cases*" (OFT1263rev) in 2012, many of the commitments made in the 2010 transparency statement are largely redundant, at least in a CA98 investigation context. Against the background of detailed procedural guidance being adopted by the CMA, subject to current or future consultation, it is not clear what "added value" the Transparency Statement provides.

42. Finally, a crucial, practical means of improving the CMA's transparency is to ensure its website is clear and easy to use. In its present state, the OFT's website is cluttered and confusing, meaning it can be difficult to locate relevant information and publications. The CC's website is much clearer and far more user friendly. We therefore recommend the CMA uses the CC's website as a template for the development of its own website, rather than the OFT's.

Disclosure

43. The overview provided about how the CMA anticipates it will handle the disclosure of information it obtains during the course of its work is welcome, but the general and high level nature of the explanations in the Transparency Statement mean it is of limited practical use. Indeed, a reader looking for information about disclosure in the context of, for example, a CA98 investigation or merger inquiry is more likely to turn immediately to the relevant procedural guidance, rather than the Transparency Statement.

44. Furthermore, the information relating to disclosure in the Transparency Statement appears to us to be duplicative of material elsewhere and is too high level to be of any real practical benefit. For example, while we appreciate the CMA wishes to adopt a "case-by-case" approach to the use of confidentiality rings or data rooms, it would be useful for more details to be included about the precise circumstances in which the CMA is likely to agree to their use. It would also be beneficial for the CMA to publish specimen confidentiality undertakings and data room rules as an annex to the Transparency Statement (or other procedural guidance, as relevant) -- albeit we appreciate these would, in practice, need to be tailored according to the relevant context before being agreed.