

Minor amendments to Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders (CMA11)

1. Under the Enterprise Act 2002 (EA02) (as amended by the Enterprise and Regulatory Reform Act 2013), all CMA functions are to be carried out by the CMA Board (delegating as appropriate) unless the function is listed as one that is to be carried out by Groups of independent panel members constituted for that purpose by the CMA Chair under Schedule 4 to the EA02.
2. Where the function is so listed, broadly speaking, it can generally only be performed by a Group. That includes the function of releasing, varying or superseding undertakings originally taken, or orders made, under the Fair Trading Act 1973.
3. However, in the case of the function of releasing, varying or superseding undertakings originally taken, or orders made, under Parts 3 or 4 of the EA02, provision is made permitting the function to be carried out by the CMA Board where the original Group has ceased to exist.
4. Accordingly, as long as the original Group that made the decision to put in place the undertakings or order still exists, that same Group (potentially with new members) has the power to vary the undertakings or order. However, once that Group has ceased to exist (for example where some years have passed since that original decision) the CMA believes that the position under the EA02 is that the decision to vary the undertakings or order is for the CMA Board.
5. The CMA Board has therefore adopted an approach in relation to such decisions whereby, where no Group is constituted under schedule 4 to the EA02 to take the decision, the CMA's Case and Policy Committee will either:
 - (a) authorise the appointment of a sub-committee known as a 'Remedy Group' to take the decision; or
 - (b) advise senior officials on taking the decision, as appropriate.
6. A Remedy Group will comprise at least three independent panel members including a Chair. It will have the same powers as Groups to conduct its

investigations. As this is a technical change driven by provisions of the new legislation, the position for interested parties will not be substantively different.

7. Paragraph 3.12 of the relevant guidance document on reviews of remedies has been amended accordingly (see Annex).
8. Since the guidance was written, the structure of the CMA Board's committees has been updated. The Case and Policy Committee has taken over the responsibilities of the Remedies Undertakings and Commitments Committee. Accordingly, a minor amendment has also been made to paragraph 3.9 of that document (See Annex).

Mark-up of the amendments made to paragraphs 3.9 and 3.12 of CMA11

Paragraph 3.9

The CMA will assess the request for a review and the responses to any consultation on the request, or the responses to a consultation on whether the CMA should conduct an own-initiative review. The CMA will then decide whether a review should take place at a particular point in time. This decision will be taken by a senior member of CMA staff, supported and challenged by a further two individuals with the appropriate level of skill and expertise. The decision-maker may also consult the CMA's ~~Remedies, Undertakings and Commitments Case and Policy~~ Committee (RUGC) to seek views on any policy issues arising out of the proposed decision on whether or not to conduct a review.

Paragraph 3.12

If, on the other hand, the CMA decides to undertake a review, it will generally appoint a group of CMA panel members to conduct the review.¹ In cases dealing with undertakings given or an order made under EA02, where the original group has ceased to exist, a group will generally be formed as a Remedy Group (RG).² In cases dealing with undertakings given or orders made under the FTA, a~~Each~~ group will be appointed by the Chair of the CMA.³ ~~to be responsible for the conduct of a particular case.~~⁴ ~~A group may consist of members of the RUGC and/or other CMA panel members, as the case requires.~~ Each group will be advised by a case team of CMA staff.

¹ ~~The appropriate approach may vary from case to case. For example, minor issues may be dealt with by CMA staff without the need to appoint a group of panel members. The appointment of panel members to form groups will be conducted in a manner consistent with the Rules of Procedure for CMA Groups.~~

² ~~The RG will be a sub-committee of the Case and Policy Committee, accountable to the CMA Board. The RG will follow broadly the same approach to its decision making as other groups of panel members.~~

³ Under the ERRA13, the Chair of the CMA is responsible for identifying and appointing the group of members that will conduct a particular inquiry and for selecting one of them to act as chair of the group. In practice, the Chair of the CMA will delegate these responsibilities to the CMA Panel- Chair (or one of the CMA ~~Deputy Inquiry Panel~~ Chairs). The CMA Panel Chair is a member of the CMA Board.

⁴ ~~The appointment of members to form groups will be conducted in a manner consistent with the Rules of Procedure for CMA Groups.~~