

Mergers: Revised merger notice

Consultation document

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1. About the consultation

Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on a draft revised merger notice template (revised merger notice).
- 1.2 The changes proposed in the revised merger notice reflect the experience gained since the current merger notice template was introduced in April 2014. The proposed changes to the merger notice are intended to streamline the pre-notification process by providing additional guidance in relation to the information that is likely to be required by the CMA in the circumstances of a given case.

Scope of the consultation

- 1.3 The scope of this consultation covers the revised merger notice set out in Appendix 1.
- 1.4 The revised merger notice should be read in conjunction with the *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), in particular Annex A, and the *Merger assessment guidelines* (OFT1254/CC). Together with these documents, the revised merger notice is intended to provide merger parties with guidance in relation to the types of information likely to be required when notifying a merger to the CMA.¹

Background

Context

- 1.5 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 Office of Fair Trading and those of the Competition Commission. 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.
- 1.6 As part of the Enterprise and Regulatory Reform Act 2013 (ERRA13) reforms, section 96 of the Enterprise Act 2002 was amended to require that a 'merger notice' (ie a notice to the CMA of proposed arrangements which might result

¹ See section 96(2) of the Enterprise Act 2002.

in the creation of a relevant merger situation) should be made in a ‘prescribed form’.

- 1.7 The merger notice sets out a series of questions specifying the information that should be provided to meet these requirements. The merger notice also contains guidance notes intended to explain how merger parties should respond to these questions in the circumstances of a given case (depending on, for example, on the activities of the merger parties or the extent of overlap in their activities). In particular, to ensure that information can be provided in an efficient and proportionate manner, the merger notice also explains that merger parties may not need to provide certain information requested in the merger notice where this is unnecessary for the assessment of a given case (provided that the merging parties explain why this is the case).
- 1.8 In practice, the merger parties and the CMA will also discuss the information required for a satisfactory notification during pre-notification. The CMA considers, however, that it may be useful for merger parties to have a more complete understanding of the information likely to be required prior to beginning pre-notification discussions and that clearer guidance notes should generally help to streamline the pre-notification process.
- 1.9 The CMA has previously conducted a review of the effectiveness of the merger notice.² That review found that the merger notice was broadly fit for purpose and functioning well, but that certain aspects of the merger notice could be improved.

The revised merger notice

- 1.10 The revised merger notice is intended to address the areas for improvement identified in the CMA’s review. The changes proposed are primarily intended to clarify the interpretation of certain existing questions and guidance notes and to ensure that the information provided is adequate and proportionate to the circumstances of the case (in particular by making clear where certain of the information requested in the notice may not be necessary). For the most part, the proposed changes reflect the CMA’s existing practice.
- 1.11 More specifically, the most notable proposed changes to the merger notice include:

² See the CMA’s report on the [Review of the use of the merger notice and initial enforcement orders](#).

- (a) additional guidance to make clear that 'bespoke' submissions (ie not following the merger notice template form) are also welcomed by the CMA;
- (b) additional guidance to make clear that merging parties may not be required to provide all of the information requested in the notice in all circumstances (and that this can be discussed with the CMA in pre-notification);
- (c) minor changes to the scope of internal documents requested (with more extensive guidance provided in relation to the types of documents that the CMA would expect to be responsive to these questions and a clearer explanation of the circumstances in which the CMA would not expect documents to be provided);
- (d) a new question that specifies the share of supply data that the CMA will typically expect to be provided;
- (e) additional guidance to clarify the circumstances in which other types of granular data (eg in relation to capacity, switching data and variable profit margins) may be required;
- (f) additional guidance to clarify the circumstances in which bidding data may be required;
- (g) revised questions and guidance in relation to non-horizontal effects, intended to reduce the scope of the information required in cases where significant analysis of non-horizontal theories of harm is not likely to be necessary;
- (h) removal of the question relating to coordinated effects, with additional guidance to explain that analysis of potential coordinated effects need only be provided where requested by the CMA;
- (i) additional guidance to clarify that responses to certain questions (eg in relation to entry and expansion, countervailing buyer power, efficiencies, and customer benefits) need only be provided where the notifying parties would like these factors to be taken into account by the CMA;
- (j) a new question intended to consolidate all of the third party contact details likely to be required; and
- (k) a revised declaration, intended to provide merging parties with a more comprehensive explanation of their obligations in signing the merger notice and of the way the CMA may use the information provided.

Consultation process

- 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 would welcome your comments on the changes proposed in revised merger notice and, in particular, to the questions raised in Chapter 2 of this document. We want to ensure that the revised merger notice is clear, not unduly onerous and sufficiently flexible to be used in a more proportionate way.

How to respond

- 1.13 We are seeking the views of interested parties, particularly merging parties and legal advisers that have been involved in merger notification processes. Please respond to as many of the questions as you are able to and, where relevant, please support your answers with any evidence or examples you may have. We encourage you to respond to the consultation in writing (by email or alternatively by letter) 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 versions 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

- 1.16 The consultation will run for three weeks, from 22 March 2017 to 12 April 2017. Responses should be submitted by post or email, and should be sent to:

Khadija Nizam
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: khadija.nizam@cma.gsi.gov.uk

Data use statement for responses

- 1.17 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of information received (including personal data) is 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.
- 1.18 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.
- 1.19 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

After the consultation

- 1.20 After the consultation, we will publish a final version of the revised merger notice and a summary of the responses received that fall within the scope of the consultation. 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.

2. Questions for consideration

- 2.1 As noted in paragraph 1.10 above, the changes proposed in the revised merger are intended to clarify the interpretation of certain existing questions and guidance notes and to ensure that the information provided is adequate and proportionate to the circumstances of the case.
- 2.2 To that end, the CMA would encourage stakeholders to particularly consider the following questions:
- (a) Is the revised merger notice fit for the purpose of setting out the categories of information that are necessary to enable the CMA to assess a merger?
 - (b) Do you agree with the proposed changes?
 - (c) Do you disagree with any of the proposed changes? If so, why?
 - (d) Are there any other aspects of the revised merger notice that are not sufficiently clear at present?
 - (e) Are there any other changes to the current revised merger notice that the CMA should consider? In particular, are there any questions in the revised merger notice that could be removed?
- 2.3 The CMA would also welcome the views of stakeholders on any other aspects of the revised merger notice.

Appendix 1: Revised merger notice

COMPETITION AND MARKETS AUTHORITY

MERGER NOTICE UNDER SECTION 96 OF THE ENTERPRISE ACT 2002: TEMPLATE FOR COMPLETION

Preamble

Purpose of the Notice

1. This merger notice (Notice) is for the purpose of notifying an anticipated or completed merger to the Competition and Markets Authority (CMA) pursuant to section 96 of the Enterprise Act 2002 (as amended) (the Act).

Parties giving the Notice

2. A Notice may be submitted by any person carrying on an enterprise to which the notified arrangements relate.¹ Merger parties may submit a Notice jointly. This may in particular be appropriate in anticipated mergers where the acquirer may not have access to the target's internal information or documents, and will not therefore be able to verify the accuracy or completeness of the information provided, or – for similar reasons – in joint ventures.
3. The person(s) submitting the Notice (referred to below as notifying parties) take(s) responsibility for the accuracy and completeness of the information. Where merger parties are submitting a Notice jointly, each notifying party must sign the declaration below and each party is responsible for the accuracy and completeness of the information it has submitted in, or with, the Notice.

The UK merger control regime

4. The UK merger control regime is set out in the Act. Guidance on the procedures followed by the CMA in reviewing mergers is provided in *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)* (the Guidance).

¹ See the Enterprise Act 2002 (Merger Prenotification) Regulations 2003 (SI 2003/1369) (as amended) and Guidance Note to the Declaration in Part III.

The text of the Act together with the Guidance and other relevant documents can be found on the CMA's webpages (www.gov.uk/cma).

5. The Act sets statutory time limits for the merger review process. The CMA has an initial period of 40 working days, subject to an extension in certain circumstances (the Phase 1 investigation) to decide whether its duty to make a reference for an in-depth Phase 2 investigation applies.² Where notifying parties voluntarily notify a merger to the CMA by submitting a Notice, the period of 40 working days begins on the first working day after the day on which the CMA gives notice to notifying parties that it is satisfied that the Notice is in the prescribed form, contains the prescribed information and states that the existence of a proposed merger has been made public (a Satisfactory Notification).³

Information required by the Notice

6. This Notice sets out the categories of information to be provided by merger parties when notifying a merger to the CMA to enable it to assess the notified merger.⁴
7. The 'prescribed information' necessary for the purposes of a Satisfactory Notification is information responsive to the questions in this Notice, insofar as is relevant to the notified merger. The specific nature and extent of information required in response to each of these questions will vary from case to case, and will depend, for example, on the activities of the merger parties or the extent of overlap in their activities.
8. In order to advance pre-notification discussions, notifying parties are requested to submit a draft Notice with the information they consider necessary for the CMA's Phase 1 investigation (along with brief explanations setting out why any information requested in the Notice that has not been provided is not relevant in the circumstances of the case).
9. The Guidance provides further information for notifying parties on pre-notification contacts and the preparation of the draft Notice. Merger parties that are unsure about the extent of information required are encouraged to discuss this with the CMA's case team as early in the process as possible in order to avoid any unnecessary delay to the assessment of the notified merger.

² See section 34ZA of the Act.

³ See sections 34ZA(3) and 96(2A) of the Act.

⁴ See section 96(2) of the Act.

The Guidance Notes

10. The CMA has published Guidance Notes to assist notifying parties in assessing the nature and extent of information that, in their individual case, they should provide in response to a particular question for the purposes of a Satisfactory Notification. To that end, the Guidance Notes provide examples of the type of information that may ordinarily be responsive. The questions in this Notice should therefore be read in the light of those Guidance Notes, and notifying parties should review the Guidance Notes in full before answering the questions.
11. However, the Guidance Notes cannot and do not list exhaustively all information that the CMA may, in a given case, consider should be provided in response to a particular question for the purposes of a Satisfactory Notification. The CMA may request additional information responsive to a question, beyond that indicated in the Guidance Notes, where it considers that, in the specific circumstances of the case, such additional information is required for the purposes of its Phase 1 investigation.⁵ Where notifying parties have engaged in pre-notification discussions with the CMA and/or submitted draft(s) of the notification to the CMA (as to which, please see below and Chapter 6 of the Guidance), the CMA will make clear to notifying parties as part of such engagement what information it expects to be necessary for a Satisfactory Notification in the case at hand.

Other published sources of guidance or information

12. In addition to the Guidance and Guidance Notes, notifying parties are encouraged to refer to other sources of guidance on the information and evidence that the CMA will likely require parties to provide in support of their notification in a particular case, including:
 - *Merger Assessment Guidelines* (OFT1254/CC2)
 - *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122)
 - *Commentary on retail mergers* (OFT1305/CC2com2), and

⁵ That is, its investigation under sections 22 or 33 of the Act as to whether it has a duty to refer that merger to Phase 2.

- *Good practice in the design and presentation of consumer survey evidence in merger inquiries* (OFT1230/CC2com1).⁶

These documents also explain certain terminology used in this Notice and in the Guidance Notes,⁷ and/or how the CMA is likely to approach its substantive assessment of notified mergers.

13. In addition, notifying parties may wish to refer to previous merger decisions published by the CMA (and its predecessors, the Office of Fair Trading (OFT) and the Competition Commission (CC) if relevant) on mergers in the relevant sector (available on or through the CMA's webpages), which may provide useful guidance on the issues that the CMA is likely to consider as part of its assessment of mergers in that sector and thus the nature of the information that notifying parties are likely to have to provide.

Pre-notification

14. The CMA strongly encourages notifying parties to engage in early pre-notification discussions with the CMA, in particular where they require further clarification as to the specific nature or extent of information that should be provided in the case at hand. These pre-notification contacts are extremely valuable both to notifying parties and to the CMA to determine precisely the information that will be required for a Satisfactory Notification, and provide the most efficient means of resolving any uncertainties notifying parties may have in this regard. Such early engagement is therefore likely to generate efficiencies in terms of timing and information gathering and may result in a reduction in the information notifying parties are required to provide.
15. If, during pre-notification and having reviewed the notifying parties' draft Notice, the CMA considers that additional information responsive to the questions in the Notice is required for the purposes of a Satisfactory Notification, beyond that already provided by notifying parties in their draft notification, the CMA will indicate this to notifying parties.
16. Merger parties should also note that, during the course of a Phase 1 investigation (that is, following the submission of a Satisfactory Notification and the commencement of the 40 working day period), the CMA may subsequently require further information from the merger parties for the purposes of its investigation, including information that the CMA did not

⁶ The documents listed here were originally published by the CMA's predecessors, the OFT and/or CC, and have been adopted by the CMA. They are available on the CMA's webpages.

⁷ Merger parties are referred in particular to *Merger Assessment Guidelines*, which includes descriptions of terms (relating to, for example, competitive conditions) that are used throughout this Notice. The Notice and Guidance Notes include cross-references to relevant parts of that document where appropriate.

require prior to giving notice to notifying parties that the Notice was satisfactory.

17. Merger parties are also advised to discuss with the CMA any additional information that they may wish to provide with their notification to aid the CMA's investigation. It is particularly important to discuss with the CMA any evidence supporting their notification (for example, econometric analysis or customer surveys) that merger parties intend to produce specifically for the purposes of the CMA's merger control investigation. Such discussions should occur in advance of notification and prior to commencing production of that evidence (see further paragraph 6.41 of the Guidance). This will help to minimise risks of the parties undertaking wasted or unnecessary work.

Completing the Notice

18. The CMA wishes to obtain the information necessary to carry out its responsibilities under the Act without placing undue burdens on the parties. Notifying parties can choose to supply the requisite information either in the format of this Notice template or in a written format of their choosing (that is signed and indicates clearly where the information responsive to each question in the Notice can be found in the submission). Irrespective of the format chosen, all of the information requested in the Notice should be provided (unless that information is not necessary in the circumstances of the case, for the reasons explained elsewhere in this Notice) and the notifying parties should provide the signed declaration set out in Part VI of this Notice.⁸
19. When completing this Notice, evidence (including contemporaneous documents) cited in support of statements made by notifying parties should be provided to the CMA, where reasonably practicable. The CMA is likely to attach more weight to supported statements and therefore encourages notifying parties to provide evidence in support of their statements wherever reasonably practicable.
20. In order to help the CMA's investigation proceed efficiently, any data or documents requested in the Notice should be submitted in their original electronic format (rather than scanned or converted into pdf). The contact details of the merger parties' customers, competitors and suppliers should be provided using the template in Annex 1.

⁸ As noted in paragraph 8, where information requested in the Notice is not provided, a brief explanation should be provided setting out why this information is not relevant in the circumstances of the case.

21. Notifying parties may consider that it should not be necessary to provide certain information requested in the Notice. This may be the case, for example, where:
- The question is not applicable as a factual matter (eg where there are no vertical relationships between the merging parties, it is not necessary to provide a response to Question 18 in relation to the potential vertical effects of the merger);
 - The information requested should not be relevant for the CMA's assessment (eg in cases in which there is little or no overlap between the merging parties, it may not be necessary to provide responses to Question 23 on Countervailing buyer power or Question 24 on Efficiencies and customer benefits); and
 - The information requested is not available to the notifying party (eg where the merger is a 'hostile' transaction).⁹
22. In this circumstance, notifying parties should respond to the question by providing a brief explanation setting out why the information requested in the Notice that has not been provided. The CMA will consider, at its discretion, whether the information provided by the notifying parties is sufficient for a Satisfactory Notification. While no formal process exists through which the CMA will grant "waivers" from the requirement to provide certain information, notifying parties are encouraged to discuss any information that they consider should not be necessary in pre-notification discussions.
23. In assessing if the information provided by the notifying parties is sufficient for a Satisfactory Notification, the CMA will consider whether it would be necessary and proportionate to request additional information in view of the complexity of the merger and the potential competition concerns on which the CMA is likely to focus its investigation.
24. For the avoidance of doubt, where the CMA has accepted that certain information requested in the Notice is not necessary for a Satisfactory Notification, this does not preclude the CMA from subsequently requesting this information at any other time during the merger review process (whether by way of a voluntary request for information or pursuant to section 109 of the Act).

⁹For most acquisitions, the CMA would expect that an acquiring party should be able to access all relevant information relating to the target's activities through cooperation obligations between the transaction parties. Where notifying parties consider that they are unable to provide the information requested, they may be required to detail any steps taken by notifying parties to obtain that information.

25. As stated above, the initial period of 40 working days will not begin until the first working day after the CMA has confirmed to the notifying parties that it has received a Satisfactory Notification. As noted above, the nature and extent of information required for these purposes may vary from case to case and further information may be requested from the merger parties at a later stage, following commencement of that 40 working day period.
26. The CMA will endeavour to inform notifying parties in writing whether or not a submitted Notice amounts to a Satisfactory Notification as promptly as is practicable in the circumstances.¹⁰ This will typically be within five (and no more than ten) working days of receipt of that Notice, and is likely to depend on, for example, the volume and length of submissions, the extent to which the CMA has previously considered earlier drafts of the same submissions, and the available CMA resource. In general, the CMA is likely to be able to provide such confirmation more promptly in those cases in which parties have engaged in pre-notification.
27. If any information contained in the Notice is found to be, in any material respect, false or misleading, the CMA may reject the Notice (including in instances where the CMA has previously confirmed that it considers the Notice to be a Satisfactory Notification).¹¹
28. It is an offence punishable by a fine and/or imprisonment to intentionally or recklessly give the CMA information that is false or misleading in a material respect.¹²

Submission of the Notice

29. If, after submitting the Notice and during the course of the investigation, there are any changes in the circumstances of the merger or the merger parties which are relevant to the information provided in the Notice or other information the merger parties have provided to the CMA, they must inform the CMA immediately.
30. Information on how to submit a Notice to the CMA is available on the CMA's webpages.

¹⁰ As explained in paragraph 5 above, the period of 40 working days begins on the first working day after the day on which the CMA gives notice to notifying parties that it is satisfied that the Notice is in the prescribed form, contains the prescribed information and states that the existence of a proposed merger has been made public.

¹¹ Section 99(5)(a) of the Act. Where appropriate, such situations could include where during market testing the CMA finds that notifying parties, when providing contact details, did not provide working email addresses and the false/incorrect information is material in any respect.

¹² Section 117 of the Act.

PART I – General information

1. Provide the name and contact details of:
 - (a) an individual within each of the merger parties
 - (b) any authorised representatives of each of the merger parties
 - (c) if not already provided in response to (a) and (b), the person(s) submitting the Notice¹³
 - (d) the person to whom the CMA should address any correspondence.

Guidance Note to question 1

Notifying parties can authorise a representative, for example, a firm of solicitors, to complete the Notice on their behalf and to act for them in further correspondence with the CMA.¹⁴ If notifying parties do authorise someone to act in this way they must sign the authorisation at Part III of the Notice.

If an authorised representative ceases to act for notifying parties, the CMA must be advised of this immediately.

Notifying parties must give the name and address of a person who is authorised to accept all correspondence and accept service or take receipt on behalf of notifying parties. This may be a person within the company or notifying parties' authorised representative.

'Contact details' include full name, telephone number, UK address and email address where the CMA can make contact between 9.00am and 5.00pm on working days. If any such details change, notifying parties should notify the CMA immediately in writing.

¹³ That is, the notifying party or parties, as described in paragraph 2 of the Preamble above.

¹⁴ Note, however, that the Notice must be signed by a person or persons with authority to bind each notifying party (see Part VI of this Notice and the associated Guidance Notes).

PART II – Merger details

The merger situation

See chapter 4 of the Guidance and part 3 of *Merger Assessment Guidelines*.

2. Describe the arrangements by which the enterprises will cease/have ceased to be distinct (the merger), including:
 - (a) the parties to the merger (the merger parties)
 - (b) the type of transaction
 - (c) the consideration
 - (d) the key terms
 - (e) the timing
 - (f) the strategic and economic rationale for the transaction
 - (g) whether it is being notified in any other jurisdictions and, if so, whether the merger parties are willing to offer a waiver to support coordination between the CMA and the competition authorities in those jurisdictions, and
 - (h) the ownership structure pre and post-merger, including any pre-merger links between the merger parties.

Guidance Note to question 2

See chapter 4 of the Guidance and part 3 of *Merger Assessment Guidelines* text

Note to 2.a – When describing the merger parties, provide their full legal names and explain how this entity fits within a wider group structure if relevant, specifying the ultimate ownership. Identify any legal or natural person which, directly or indirectly, owns, controls, or has material influence over (together, referred to hereafter as ‘controls’)¹⁵ any one of the merger parties and is active in any of the Candidate Markets identified in response to question 13 below, and any legal or natural person that any one of the merger parties controls and which is active in any of the Candidate Markets. If the acquiring party or group (where relevant) qualifies as ‘small’ or ‘medium-sized’ under the Companies Act 2006 (sections 382 and 465) please specify. Information responsive to question 2(a) may be given by way of a diagram.

¹⁵ Within the meaning of section 26 of the Act. See chapter 4 of the Guidance for further information on the meaning of ownership, control and material influence.

Note to 2.b – When describing the type of transaction, indicate, for example, whether it is (a) a full merger, an agreed bid, or a full takeover, (b) the acquisition of assets, (c) the acquisition of a minority shareholding giving material influence, (d) a change of directorship giving material influence, or (e) the formation of or change of control in a joint venture.

Where the transaction gives rise to material influence, please describe in detail the aspects of the transaction that enable material influence to be exerted, including shareholding, voting patterns, board representation and other relevant factors.¹⁶

Note that where notifying parties submit that a minority shareholding does not give rise to material influence, where the CMA considers that the circumstances of the case are such that the determination of a lack of material influence is not clear cut, the CMA may nonetheless require information on the minority shareholder to be provided for the purposes of a Satisfactory Notification, and will inform notifying parties of this.

Where notifying parties are unsure as to whether or not information related to material influence is required for a Satisfactory Notification, they are encouraged to contact the CMA in pre-notification to discuss.

Note to 2.c – When describing the consideration, indicate its value as well as the form it will take.

Note to 2.d – The description of the key terms of the merger should include but should not necessarily be limited to any factors upon which completion of the merger is conditional together with the status of these factors.

Note to 2.e – On timing, for completed mergers, specify when the enterprises ceased to be distinct (within the meaning of sections 26 and 27 of the Act). For anticipated mergers, specify the expected time scale for exchange of contracts and completion of the merger as well as any other dates that notifying parties wish the CMA to be aware of.

¹⁶ For the avoidance of doubt, the use of the term merger parties throughout the Notice should be construed as including any party which exercises material influence over the acquirer or the target enterprise.

Note to 2.g – The CMA considers that where mergers are subject to investigation in more than one jurisdiction, there can be substantial benefits to the merger parties and to the competition authorities in those jurisdictions from communication and cooperation between the competition authorities. If the merger has been or is being notified in other jurisdictions, please indicate whether notifying parties would be willing to provide the CMA with a confidentiality waiver allowing it to exchange confidential information with the relevant competition agencies in other jurisdictions in respect of the notified merger. A Satisfactory Notification will not be conditional on notifying parties' providing such a waiver. In any event, merger parties should be aware that there are circumstances where the Act permits the CMA to share information with other overseas agencies and sectoral regulators without prior consent (see *Transparency and Disclosure: statement of the CMA's policy and approach* (CMA6) and chapter 19 of the Guidance).

Note to 2.h – If the structure of the proposed arrangements is complex, provide a diagram. Where appropriate, details of the ownership structure should include the identity and shareholdings, pre- and post-merger, of any persons holding 10% or more of the voting rights, issued share capital or other securities in the business that has been or will be acquired.

Include a description of any other links between the merger parties (either formal or informal). This should also include (but should not necessarily be limited to) any associated persons.

3. Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).

Guidance Note to question 3

When describing the business or businesses over which control is being or has been acquired, if assets are being acquired, set out which assets – both tangible and intangible – form part of the acquisition and include a brief description of the main products and services supplied by the acquired business or businesses.

In the case of an acquisition, a brief description of the acquirer group's business should include a brief description of the main products and services provided, together with a corporate structure chart and an organisation chart (showing the names, job titles and areas of responsibility of the senior executives of the merger parties).¹⁷

Where the transaction involves a full merger or a joint venture, specify for each merger party the information identified in the preceding paragraph.

¹⁷ If the acquirer is a conglomerate or multinational undertaking, notifying parties will not generally be expected to provide such details of senior executives with responsibility only for areas of the business that do not fall within any of the Candidate Markets identified in response to Question 13 below.

4. Provide brief details of any other transactions (merger, acquisition, disposal, joint venture) undertaken by:
 - (a) either of the merger parties in the last two years which involve the products or services in any Candidate Market identified in response to question 13,¹⁸ and
 - (b) both or all merger parties in the last two years (that is, where the merger parties were party to the same transaction).

Jurisdiction

See chapter 4 of the Guidance and paragraphs 3.1.3 to 3.3.10 of *Merger Assessment Guidelines*.

5. Explain why:
 - (a) a relevant merger situation (as per section 23 of the Act) has been created, or
 - (b) arrangements are in progress or contemplation which will result in the creation of a relevant merger situation.

Guidance Note to question 5

See chapter 4 of the Guidance and paragraphs 3.1.3 to 3.3.10 of *Merger Assessment Guidelines*

Notifying parties should explain the reasons why they consider that:

- (a) two or more enterprises have ceased to be distinct or arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct (see chapter 4 of the Guidance), and
- (b) the turnover or share of supply tests are met, including where relevant:
 - (i) the UK turnover associated with the enterprise being acquired (see section 28 of the Act and chapter 4 of the Guidance). If relevant, explain the methodology adopted to estimate such turnover, and/or

¹⁸ Where this involves a large number of transactions, notifying parties are encouraged to contact the CMA to discuss.

- (ii) an estimate of the share of supply for any product or service of any description where the merging/merged businesses¹⁹ combined have a share of supply in the UK, or in a substantial part of the UK, of 25% or more and where the merger causes an increment in such share (see section 23 of the Act and chapter 4 of the Guidance). Explain the methodology adopted to estimate such shares.

In particular, if a relevant merger situation has been created due to the acquisition of the ability to exercise material influence, the explanation should refer to the factors identified in paragraphs 4.14 to 4.27 of the Guidance and paragraphs 3.1.3 to 3.3.10 of *Merger Assessment Guidelines*, as well as any other factors notifying parties consider relevant to that assessment.

- 6. Indicate the annual UK, EEA, and worldwide turnover in the last financial year associated with each of:
 - (a) the acquirer (including group companies where relevant – see Annexe B of the Guidance), and
 - (b) the target (if not already provided under question 5).

Guidance Note to question 6

For turnover, provide details of sales exclusive of VAT and duty.

- 7. Explain why the transaction is not subject to the European Union Merger Regulation (EU Merger Regulation),²⁰ (highlighting whether it is notifiable in the UK by virtue of the 'two-thirds' rule in article 1(2) or 1(3) of that Regulation).

¹⁹ That is, the enterprises that will cease, or have ceased, to be distinct.

²⁰ Council Regulation (EC) No 139/2004 of 20 January 2004.

PART III – Supporting documents

8. Provide:

- (a) a press release or report and details of all notifications to listing authorities (for example, for admission to the UK Listing Authority Official List and for admission to trading on the London Stock Exchange) or other documentation evidencing that the merger (or merger proposal) has been made public, and
- (b) a copy of the documents bringing about the merger situation, including heads of terms, memorandum of understanding, sale and purchase agreement, business purchase agreement or equivalent. Where these are not in final form, please provide the latest draft and keep the CMA informed of subsequent changes to the document, if any.
- (c) If the offer is subject to the City Code, copies of the Offer Document and Listing Particulars. If these are not yet available, provide copies of the latest drafts and supply the final versions as soon as they are issued.

Guidance Note to question 8c

For mergers governed by the City Code, the CMA does not envisage that the pre-notification timetable will raise significant difficulties in relation to the timing of public offers. Merger parties should however bear in mind the need to reconcile timing of submission of the Notice with the requirements of the City Code. If merger parties are seeking a decision by the first closing date of an offer (as defined in the City Code), the CMA will need to receive the Notice (following pre-notification) before the posting of the Offer Document. This will increase the likelihood of obtaining a Phase 1 decision by the first closing date. The CMA will take account of timing constraints relating to the City Code, or merger control regulation in other jurisdictions, when conducting its investigation and may, where the demands of the particular case and its existing caseload allow, seek to make its decision more quickly than the standard statutory timetable. The CMA cannot be bound by the first closing date however, and where it is not in a position to reach a decision by the first closing date, the consideration period under the City Code will need to be extended.

- (d) for each of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger), the most recent annual report and accounts and last set of monthly management accounts.

Guidance Note to question 8d

The CMA will usually need only the most recent annual report and accounts of the main parties to the merger. However, where the acquiring company is part of a larger group, the CMA will normally also need the most recent group annual report and accounts. It will not need group accounts for the target's parent company where the target is a subsidiary or associate company and separate accounts are prepared for that company. Where documents are submitted in electronic format, annual reports and accounts can be provided by way of a hyperlink.

It is important that the target's UK turnover for the preceding business year is provided. If no annual report or accounts are available, provide separate figures (audited if reasonably practicable) on annual turnover (including UK turnover), profits and assets. For turnover, provide details of sales exclusive of VAT and duty. For profit, provide the profit and loss accounts.

- (e) copies of the most recent business plan of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger). Where a horizontal overlap or vertical relationship involves, for example, a specific division or brand of one or both of the merger parties, the most recent business plan for the relevant division or brand should be provided as well.
9. Provide copies of any documents in either of the merger parties' possession which:
- (a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or shareholders of either merger party (whether prepared internally or by external consultants), and
 - (b) either:
 - (i) set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for, the acquisition, and any analysis of the merger in relation to potential alternative acquisitions), or
 - (ii) assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid. This should include but not necessarily be limited to post-merger business plans or strategy (including integration plans and financial forecasts) and Information Memoranda prepared by or for the merger parties that specifically

relate to the sale of the target. If no such Information Memoranda exist, explain what information or document(s) given to any of the merger parties is meant to serve the function of an Information Memorandum.

Indicate (if not contained in the document itself) the date of preparation and the identity and role of the author(s) within the merger parties or external consultants.

Guidance Note to question 9

The consideration of internal documents is an important element of the CMA's investigation and therefore a complete response to this question is necessary for a Satisfactory Notification.

The CMA encourages notifying parties to discuss the process for gathering these documents with the CMA in pre-notification discussions, particularly if notifying parties are unsure what documents may be responsive or if, in their case, the question may result in a large number of responsive documents.

The CMA expects that documents responsive to this question will typically include minutes of meetings, studies, reports, presentations, surveys, analyses or recommendations. In most cases, the CMA would not expect to receive documents such as emails, handwritten notes, or instant messages in response to this question.

If notifying parties consider that they have no or limited documents responsive to this question (or if the documents provided contain limited information of substance), the CMA may request a list of the key members of each merger party involved in the merger and decision-making process. It may then ask for documents prepared for or by them, including substantive emails that may contain the information it would expect to appear in the supporting documents described in this question.

Further, where no Information Memorandum exists, the CMA may then use the explanation of information or documents given to the acquirer or other merger party in place of an Information Memorandum to identify and specify any documents that it wishes notifying parties to provide

10. Provide: copies of documents (including, but not necessarily limited to, reports, presentations, studies, internal analyses, industry/market reports or analysis, including customer research and pricing studies) in either merger parties' possession and prepared or published in the last two years which:
 - (a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or shareholders of

either merger party (whether prepared internally or by external consultants), and

(b) either:

- (i) set out the competitive conditions, market conditions, market shares, or competitors in relation to the product(s) or service(s) where the merger parties have a horizontal overlap as identified in response to question 13 below; or
- (ii) set out the commercial strategy (including, but not limited to, pricing, target customers (or customer groups), possible changes to product or service composition or quality, and the potential for sales growth or expansion) of either of the merger parties in relation to the product(s) or service(s) where the merger parties have a horizontal overlap as identified in response to question 12 below.

Guidance Note to question 10

As noted above, the consideration of internal documents is an important element of the CMA's investigation and therefore a complete response to this question is necessary for a Satisfactory Notification.

The CMA encourages notifying parties to discuss the process for gathering these documents with the CMA in pre-notification, particularly if notifying parties are unsure what may be responsive to this question or if, in their case, the question results in a large number of responsive documents (for example, because of a large number of overlaps).

As noted above, the CMA expects that the documents responsive to this question will typically include reports, presentations, studies, internal analyses, industry/market reports or analyses, including customer research and pricing studies. In most cases, the CMA would not expect to receive documents such as emails, handwritten notes, or instant messages in response to this question.

Where notifying parties consider that they have no or limited documents (or if the documents provided contain limited information of substance), the CMA may request other documents that may contain the information it would expect to appear in the supporting documents described in this question, for example, substantive emails to or from certain key individuals.

The CMA will typically not require documents responsive to this question to be provided for product(s) or (services), as identified in response to question 13, in which the merger parties' combined share of supply does not exceed 15%.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – require a broader set of documents to be produced in response to this question. This might include, for example, documents that have been prepared by or for, or received by, a broader set of custodians (other than the board of directors, senior management, or shareholders). Similarly, in some circumstances, the CMA may require the production of documents relating to product(s) or service(s) in which the merger parties' combined share of supply does not exceed 15%, or where there is a vertical relationship between the merger parties' activities. This should be discussed with the CMA in pre-notification.

PART IV – Competition assessment

Counterfactual

11. If the notifying parties consider that the CMA should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the notifying parties consider it should be used for that assessment.

Guidance Note to question 11

See paragraphs 4.3.1 to 4.3.29 of *Merger Assessment Guidelines*

Notifying parties may wish to submit an alternative counterfactual from the current or pre-existing competitive situation to the merger. Where notifying parties wish to do so, given the statutory time constraints on the CMA's Phase 1 investigation, the CMA requires this to be done at the time of filing in order for the Notice to be a Satisfactory Notification. Indeed, notifying parties are encouraged to discuss such alternatives with the case team at the earliest opportunity as part of pre-notification discussions. For the avoidance of doubt, in the event notifying parties do not put forward such arguments for the purposes of the CMA's Phase 1 investigation, they will not be prevented from doing so in the event of a reference for a Phase 2 investigation.

Where the notifying parties contend that the acquired firm and/or the acquirer would have exited or would exit the market absent the merger, they should submit detailed evidence (including internal documents) as to why such exit by the firm would be, or would have been, inevitable. These could include, but are not limited to:

- (a) board documents (including those discussing what would happen absent the merger as well as alternative options to the merger and why these were discounted)
- (b) statutory accounts for the last three years and monthly management accounts for the last 18 months
- (c) cash flow forecasts (including underlying assumptions)
- (d) balance sheet projections
- (e) documents showing that underlying assumptions of these cash flow forecasts or balance sheet projections hold absent the merger
- (f) details of current financial arrangements and any additional finance that would be required
- (g) documents that show all avenues of operational and financial restructuring have been exhausted, and
- (h) documents showing that the firm has sought additional finance and been rejected.

Notifying parties should also explain whether there would have been an alternative purchaser for the firm or its assets including, for example, (i) how, if at all, the exiting business was marketed to potential purchasers, (ii) to whom it was marketed, (iii) if any expressed an interest, and (iv) what bids were offered, and provide any internal documents assessing the bids.

Where notifying parties submit that the acquired firm and/or the acquirer would have exited or would inevitably exit the market absent the merger, they should provide the name and contact details (including address, email address and telephone number) for all relevant insolvency practitioners or company voluntary arrangement (CVA) practitioners working with the companies and for lenders (secured or unsecured) that have provided the exiting firm with financing.

Market definition

See section 5.2 of *Merger Assessment Guidelines*.

12. Describe the product(s) or service(s) and geographic area(s) where the merger parties overlap, where they have a vertical relationship, or where they supply related products/services.

Guidance Note to question 12

Horizontal overlaps include any business activity in which both merger parties are active. Standard Industrial Classification (SIC) codes should be provided for all overlapping products/services. For the latest version of the SIC codes, please consult the CMA's webpages.

Vertical relationships include any product/service or product/service types which one of the merger parties supplies, and which another merger party purchases (or could purchase as a substitute for other products), within the same geographic area. For the purposes of this Notice, it is not necessary for there to be a direct supply or purchase arrangement between the merger parties in order to constitute a vertical relationship (that is, the term vertical relationship also includes diagonal mergers).

Related products/services are those which do not lie within the same market, but which are nonetheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

Notifying parties should provide an overview and explanation of the product/services and geographic areas the merger parties supply (where they overlap, or have a vertical relationship, or where the products/services are related). Where notifying parties consider it might be helpful for the CMA in understanding the products/services, provide any documents (for example, sales documentation) describing the products/services. It is not expected that this response will discuss market definition, which should be covered in question 13 below.

13. Identify (and explain the rationale for identifying):

- (a) the narrowest candidate product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services)²¹ the narrowest candidate product/service and geographic market(s) at each level of the vertical supply chain and for each related product/service (the Narrowest Candidate Market(s)).
- (b) any other plausible candidate product/service and geographic market(s)²² where the merger parties overlap, have a vertical relationship, or supply related products/services (together with the Narrowest Candidate Market(s), the Candidate Market(s)).

Guidance Note to question 13

Notifying parties should explain (by reference, for example, to the market definition principles explained in section 5.2 of *Merger Assessment Guidelines*) why they consider that each Candidate Market would or would not be an appropriate market definition for the purposes of the CMA's assessment of the competitive effects of the merger, and provide supporting evidence where reasonably practicable. Notifying parties should refer, in particular, to demand-side and (if relevant) supply-side substitution considerations.

Notifying parties are encouraged also to refer to previous merger decisions published by the CMA and its predecessors.

²¹ These are products or services which do not lie within the same market, but which are nevertheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

²² This may include, for example, the products/services and geographic area(s) in the Narrowest Candidate Market(s) together with other products/services and geographic areas that might be considered substitutes with such products/services and geographic area(s).

Where relevant, the response should include a description of the catchment area (see *Merger Assessment Guidelines*, paragraph 5.2.25) or flows (where this is the basis on which the CMA or its predecessors have previously assessed mergers in the relevant sector) for the geographic area(s).²³

Shares of supply

14. Provide the shares of supply (by value and, where appropriate, volume) for the merger parties and each of their principal competitors for:
- (a) Each Candidate Market in which the merger parties overlap; and
 - (b) Candidate Markets between which there is a vertical relationship between the merger parties.

Guidance Note to question 14

See sections 5.4 to 5.5 of *Merger Assessment Guidelines*

The notifying parties should provide the share of supply of the merger parties and their principal competitors (typically competitors with a share of supply of 5% or more) for the plausible Candidate Markets in which they operate.

A Satisfactory Notification is likely to require shares of supply to be provided for the narrowest plausible Candidate Market (eg even if the plausible Candidate Market is broader than the UK, the notifying parties should provide data for a Candidate Market based on shares of supply within the UK). In particular, the CMA is likely to request the notifying parties to provide an estimate of each of the merger parties' share of supply in the Candidate Market(s) in which they have a significant combined share of supply (eg more than 25%).

For the purposes of calculating shares of supply, notifying parties should use the merger parties' internal data and refer to third party data sources where available. Notifying parties should use the most recent figures available and specify the period that they cover (in most cases, annual data for the most recent complete year should be provided).

The notifying parties should identify the sources for their estimates and explain the methodology used to calculate shares of supply (ie how these have been derived and any underlying assumptions). Notifying parties should also provide a copy of any underlying third party data used in its original format and any working files used to produce the market share calculations.

²³ Where local markets exist, the CMA strongly encourages notifying parties to discuss in pre-notification the method for identifying geographic area(s) of overlap and the data they use for the same.

In most cases, a Satisfactory Notification will require annual data for the most recent complete year. Where shares of supply may vary significantly from year to year, it may be required to provide share data for several years (typically three to five years).

Depending on the nature of the sector in which the merger parties operate, it may be necessary to supply figures only by value (ie share of total value of sales in the Candidate Market(s)) or volume (ie share of total units sold in the Candidate Market(s)). Notifying parties are encouraged to discuss this with the CMA during pre-notification if they think only one or the other will provide meaningful figures in their sector.

Where notifying parties are unsure about the data that should be provided in response to this question, this should be discussed with the CMA.

Horizontal effects

15. Provide a description of how competition works in each Candidate Market where the merger parties overlap. The description of such competitive dynamics in the Candidate Market should include (but not necessarily be limited to):
 - (a) information on the competitive constraint posed by each of the merger parties on each other and on the competitive constraint posed by the other principal suppliers in the Candidate Market(s);
 - (b) an explanation of what drives customer choice for the overlap product/services. Where relevant, the response should include the identification of separate customer groups, if any, and an explanation of how the competitive dynamics differ across these customer groups (see 5.2.28 to 5.2.31 of *Merger Assessment Guidelines*);
 - (c) a description of the parameters of competition (for example, price, quality, service, innovation) and their importance relative to one another;
 - (d) an explanation of the role and significance of product/service differentiation (including an explanation of the extent to which the merger parties' products/services are differentiated);
 - (e) an explanation of how pricing is determined (for example, whether set by suppliers, negotiated between suppliers and customers, or the result of a bidding process organised by customers), including, in appropriate cases (as explained below), supporting documentation; and

- (f) an explanation of the supply chain (including distribution channels) for the product(s)/services(s), and of any differences between separate geographic areas, where the merger parties overlap, in relation to the supply of the same products/services.

Guidance Note to question 15

See sections 5.4 to 5.5 of *Merger Assessment Guidelines*

The extent and detail of information that the merger parties need to provide in response to this section for Satisfactory Notification will depend on the complexity of the merger and on the potential competition concerns on which the CMA is likely focus its investigation, which will typically differ between cases and sectors.

For an indication of what this might include, notifying parties are encouraged to refer to previous merger decisions published by the CMA and its predecessors, as well as *Merger Assessment Guidelines*. If the notifying parties are unsure as to what information may be responsive to this question in their case, the CMA encourages notifying parties to contact the CMA to discuss this in pre-notification.

Where the merger parties' activities overlap within many local geographic areas and they propose to undertake filtering analysis to identify specific areas for which to provide detailed competitive assessment, merger parties are encouraged to engage with the CMA in relation to the approach to filtering before providing those individual assessments.

In most cases, the CMA's assessment is likely to focus on potential horizontal unilateral effects (ie the post-transaction ability of the merged entity to raise prices on its own without needing to coordinate with its rivals). If the CMA considers that the merger could give rise to coordinated effects, the notifying parties may be required to provide additional information in relation to that potential theory of harm.

Supporting documentation on determination of pricing

Where the merger parties' combined share of supply in a Candidate Market does not exceed 15%, notifying parties will not typically have to provide supporting documentation in relation to how pricing is determined in that Candidate Market in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties' combined share of supply in a Candidate Market exceeds 15%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which any such supporting documentation is necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that certain supporting documentation in relation to a Candidate Market is required in response to this question before it can confirm that a notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 15%.

Any supporting documentation provided should include, where relevant, documentation outlining the merger parties' price setting process and any analysis used to set prices.

Capacity, switching data and variable profit margins

Where the merger parties' combined share in a Candidate Market does not exceed 15%, notifying parties will not typically have to provide information on capacity, switching data and variable profit margins in relation to that Candidate Market in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties' combined share of supply in a Candidate Market exceeds 15%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent of any information on capacity, switching data and variable profit margins in relation to that Candidate Market necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand²⁴ – consider that, in relation to a Candidate Market, certain further information on substitutability, such as information on capacity, switching data and/or profit margins, is required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 15%.

Any information on capacity, switching data and/or profit margins provided should include:

- (a) an estimate of total capacity in each Candidate Market, the proportion of total capacity accounted for by each of the merger parties (including a description of the location and capacity of the manufacturing facilities of each of the merger parties) and their principal competitors, the respective rates of capacity utilisation for each of the merger parties and their principal competitors;
- (b) if available, any data of customers switching between suppliers in the past three to five years or, more generally, information that points to the degree of competitive interaction between suppliers,²⁵ and
- (c) variable profit margins (sales revenue minus direct cost of sales) for each of the products/services where the merger parties overlap. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded) or variable costs

²⁴ For example, whether the parties' products are differentiated, whether the transaction would affect different customers in different ways, whether shares could have been calculated on a narrower basis, whether the merger involves a business with a promising pipeline product or whether shares are not an accurate reflection of market presence or power.

²⁵ This information can take various different forms and may involve pricing and volume information over time and/or in different geographic areas or competitive contexts. Notifying parties may also be required to identify any relevant events (such as significant price changes) that can be illustrative, through the analysis of customers' behaviours in response to them, of customers' preferences for different suppliers. The CMA encourages notifying parties to engage with the case team in pre-notification to establish the information available that may allow for an assessment of the closeness of substitution between products/services.

16. For Candidate Markets characterised by bidding processes and/or where customers typically issue requests for quotations, provide bidding data setting out any bids made by each of the merger parties to win business in the overlapping markets.

Guidance Note to question 16

Bidding data

Bidding data need only be provided for Candidate Markets characterised by bidding processes and/or where customers typically issue requests for quotations. In such cases, provide details of any bids made by each of the merger parties in the last one to five years to win business in the overlapping markets, indicating for each bid (to the extent available):

- (a) whether the bid was won or lost;
- (b) if known, the reason why the bid was won or lost;
- (c) the suppliers that participated in the bid;
- (d) the winner and the ranking of the other bidders;
- (e) the date of the bid;
- (f) the value of the bid, and
- (g) the date and duration of the final contract.

The period for which bidding data are likely to be provided will vary on the circumstances on the case (but is, in practice, likely to vary between one and five years). For example, for markets in which bids are submitted relatively infrequently, the period for which bidding information should be provided is likely to be longer in order to provide a sufficiently representative sample size. Notifying parties are encouraged to use pre-notification discussions with the CMA to discuss the appropriate scope of bidding information in their case.

Increase in the merger parties' buyer power

See section 5.4.19 to 5.4.21 of *Merger Assessment Guidelines*.

17. If applicable, for any product(s) (including raw materials) or service(s) which the merger parties both purchase, provide details of the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of this merger and the effects, if any, of such increased ability on competition at any levels of the supply chain.

Guidance Note to question 17

See section 5.4.19 to 5.4.21 of *Merger Assessment Guidelines*.

Where the merger parties' combined share of procurement of the products/services they both purchase on a Candidate Market does not exceed 25%, notifying parties will not typically have to provide any details, in relation to that Candidate Market, on the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of the merger in order for the CMA to be able to confirm that the notification is satisfactory. In such cases, notifying parties should indicate that the merger parties' combined share of procurement is less than 25%.

Where the merger parties' combined shares of procurement on a Candidate Market exceed 25%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which, in relation to that Candidate Market, any information on the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of the merger is necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that, in relation to a Candidate Market, certain information relating to merger parties' buyer power is required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 25%.

In relevant cases, responses should include (but not necessarily be limited to):

- (a) the merger parties' combined share of procurement from the market upstream to the product(s) or service(s) that they supply (that is, the procurement of product(s) or service(s) which are used as input to a product or to provide a service, or that are sold on as bought)
- (b) an explanation of whether, in notifying parties' view, any such ability could result in the suppliers being forced or induced to offer less favourable conditions to the merger parties' competitors. For example, where the supplier incurs fixed costs, it may recover such costs by charging a larger proportion of them to the merger parties' competitors than to the merger parties, as a result of the merger parties' increased buyer power (known as the 'waterbed effect'), and
- (c) details of the merger parties' ability and incentive to reduce demand in order to reduce the purchase price (known as 'demand withholding'), as a result of the merger parties' increased buyer power.

Loss of potential competition

18. Describe whether any merger party has plans or have attempted in the last three years to start supplying product(s)/service(s)/geographic area(s) which it

does not currently supply but which the other merger party is already supplying (or expected to supply). If so:

- (a) Provide any internal documents setting out plans of any merger party to expand in the overlapping product(s), service(s) and/or geographic area(s) or to enter a market where another merger party is operating.
- (b) Explain what barriers to entry or expansion exist for each merger party to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply).

Vertical effects

See section 5.6 of *Merger Assessment Guidelines*.

19. If the merger parties operate at different levels of the supply chain (that is, a merger party is engaged in activities upstream or downstream of the activities in which the other merger party is engaged), describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of inputs or access to customers.

Guidance Note to question 19

Where the merger parties' individual and (where relevant) combined shares of supply do not exceed 30% in either of a pair of upstream and downstream Candidate Markets where they have a vertical relationship, responses to this question can typically be limited to:

- (a) a description of the vertical supply chain (including each of the merger parties' and their key competitors' roles at each stage and the extent of pre and post-merger vertical integration); and
- (b) for input foreclosure, a description of the general importance of relevant inputs to the downstream product or service; and/or
- (c) for customer foreclosure, a description of the importance of the merged entity as a customer for the upstream product or service.

Where the merger parties' individual or combined shares of supply exceed 30% on either (or both) of a pair of upstream and downstream Candidate Markets where they have a vertical relationship, a more comprehensive response to this question is likely to be required.

In this case, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which, in relation to that pair of Candidate Markets, any of the information indicated below or any other information may also be necessary for a Satisfactory Notification:

- (d) a description of the pricing mechanism at any stage of the vertical supply chain where any of the merger parties operates (as well as in each other relevant stage);
- (e) variable profit margins (sales revenue minus direct cost of sales) for each of the products/services supplied by each party in the vertical supply chain. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded from the calculation of variable profit margin) or variable costs
- (f) the ratio between average upstream and average downstream price for each of the products/services supplied by each merger party in each level of the vertical chain
- (g) the degree of economies of scale or scope in the input product or service in vertical supply arrangements, if any, and the extent to which demand is characterised by network effects (that is, when the value of a product increases when the number of customers using the product increases)
- (h) if available, an estimate of cost-pass through
- (i) a list of exclusivity agreements (to which one or other of the merger parties is a party) relating to the upstream or downstream product(s) or service(s) in the vertical supply chain and internal documents discussing plans to put in place an exclusivity agreement regarding the same in the future, and
- (j) supporting documents (as described in question 10) in relation to the products/services where the merger parties have a vertical relationship.²⁶

Conglomerate effects

See section 5.6 of *Merger Assessment Guidelines*.

20. If the merger parties are active in “related” markets (eg products that are complementary or that belong to a range of products generally purchased by the same set of customers) and their individual share in any such related

²⁶ If notifying parties are unsure what may be responsive, or if, in their case, the question results in a large number of responsive documents, the CMA recommends that notifying parties discuss the process for gathering these documents with the CMA in pre-notification. Where notifying parties provide no or limited documents (or if the documents provided contain limited information of substance), the CMA may request other documents that may contain the information it would expect to appear in the supporting documents described in question 10, for example, substantive emails to or from certain key individuals.

Candidate Market exceeds 30%, describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of inputs or access to customers.

Guidance Note to question 20

Where the merger parties are not active in related Candidate Markets, or their individual shares in any such markets are less than 30%, it will typically not be necessary to provide a response to this question.

Where the merger parties have common customers in related Candidate Markets and their individual share in any such related Candidate Market exceeds 30%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which information on potential conglomerate effects is necessary for a Satisfactory Notification.

Where information on conglomerate effects is required, this is likely to include:

- (a) each of the merger parties' share of supply in each of the related product(s) or service(s) and geographic area (to the extent not already provided in response to Question 14);
- (b) the merger parties' variable profit margins (sales revenue minus direct cost of sales) for each of the products/services supplied by each merger party in each of the related product categories. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded) or variable;
- (c) the extent to which customers purchase the products/services together as a bundle or from the same supplier;
- (d) customer preferences for variety/range and one-stop shopping, and
- (e) the costs to rivals of providing variety/range and one-stop shopping at a scale to enable them to compete effectively with the merged firm.

Entry or expansion

See section 5.8 of *Merger Assessment Guidelines*.

21. Provide a description of the barriers to entry and expansion with respect to the Candidate Market(s).

Guidance Note to question 21

See section 5.8 of *Merger Assessment Guidelines*.

Where notifying parties may wish the CMA to consider potential entry or expansion, notifying parties should provide the following information for the purposes of a Satisfactory Notification:

- (a) how easy it is to start supplying the products/services in the appropriate geographical areas
- (b) how easy it is for customers to switch between competitors' products or services, with an estimate of any switching costs
- (c) an estimate of the capital expenditure and time required to enter the market on a scale necessary to gain a 5% share of supply, both as a new entrant, and as a company which already has the necessary technology and expertise (for example, a company located overseas)
- (d) an estimate of the scale of annual expenditure on advertising/promotion required to achieve a 5% share of supply
- (e) details of any other factors affecting entry, for example, planning restraints, technology or research and development requirements, availability of raw materials, length of contracts including, where possible, actual or estimated time and cost necessary to overcome these factors
- (f) an assessment of the ease of exit from the market (including an estimate of to what extent costs are recoverable), and
- (g) an explanation as to whether entry would be timely, likely and sufficient.

22. If the notifying parties wish the CMA to consider potential entry or expansion in its competitive assessment, notifying parties should provide:

- (a) details of any expansion, entry or exit in any of the Candidate Markets over the past five years, and
- (b) details of any companies that the notifying parties consider are likely, post-merger, to enter or expand into any of the Candidate Markets in a sufficiently timely manner so as to adequately constrain the merged entity,

including, in either case, any available evidence for that submission and contact details for any companies named.

Guidance Note to question 22

Merger parties may wish to submit that one or more third parties, in particular, are likely to start supplying or expand their supply of products or services in competition with the merger parties in the near future to such an extent that any competition concern regarding the merger is mitigated or neutralised.

Where notifying parties wish the CMA to consider such potential entry or expansion, notifying parties should, for the purposes of a Satisfactory Notification:

- (a) identify such entrant(s);
- (b) explain whether such entrant(s) would have started supplying the products/services in the absence of the merger and the extent to which such entry would lead to greater competition
- (c) provide evidence of any firms which do not currently supply the product(s) or service(s) but which, nevertheless, could readily enter
- (d) provide evidence of any existing smaller suppliers that could readily expand, and
- (e) explain whether any such entry would be timely, likely and sufficient.

Countervailing buyer power

23. Where notifying parties would like the CMA to consider whether or not the merged entity will be subject to this countervailing buyer power, explain, with evidence where available, whether the merged entity will be subject to this constraint.

Guidance Note to question 23

See section 5.9 of *Merger Assessment Guidelines*.

The type of information that the notifying parties should provide if they would like the CMA to consider whether or not the merged entity will be subject to countervailing buyer power, they should, for the purposes of a Satisfactory Notification, include (but not necessarily be limited to) the following:

- (a) whether there are single customers or groups of customers holding particular negotiating strength with the merger parties in any of the Candidate Markets (for example, where the customer(s) can easily switch its/their demand away from the supplier, can sponsor entry or supply the product(s) itself/themselves)

- (b) whether and, if so, how customers outside such groups would be able to benefit from the negotiating strength of the customers within the group. For example, explain whether contracts are negotiated individually with single customers and the extent to which it is possible for the supplier to price discriminate across customers of varying negotiating strength, and
- (c) how (and the extent to which) the merger will affect customers' negotiating strength.

Efficiencies and customer benefits

24. Where notifying parties would like the CMA specifically to consider at phase 1 any efficiencies or relevant customer benefits that the notifying parties believe will arise from the merger, describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies or relevant customer benefits.

Guidance Note to question 24

See section 5.7 of *Merger Assessment Guidelines* and paragraphs 4.1 to 4.13 of *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*.

Where notifying parties would like the CMA to consider whether or not the merger gives rise to efficiencies, any description should include (but not necessarily be limited to) the following:

- (a) a detailed explanation of how the merger would generate such efficiencies
- (b) if reasonably practicable, a quantification of any such efficiencies, specifying the timeframe required to achieve them
- (c) an explanation of the extent to which the efficiencies would be sufficient to prevent a substantial lessening of competition
- (d) an explanation of the reasons why such efficiencies could not be achieved in the absence of this merger, and
- (e) any documents prepared internally or by external consultants discussing the expected efficiencies.

Where notifying parties wish to submit that the merger gives rise to relevant customer benefits, any description should include (but not necessarily be limited to) the following:²⁷

- (a) a detailed explanation of how the merger would generate such relevant customer benefits
- (b) if reasonably practicable, a quantification of any relevant customer benefits, specifying the timeframe required to achieve them
- (c) an explanation of the extent to which the benefits generated by the merger are likely to be passed on to UK customers and UK final consumers
- (d) an explanation of the reasons why such relevant customer benefits could not be achieved in the absence of this merger or a similar lessening of competition, and
- (e) any documents prepared internally or by external consultants discussing the expected relevant customer benefits.

Guidance Note to questions 21 to 24

If notifying parties submit information responsive to questions 21 to 24 after the CMA has given notice of a Satisfactory Notification, the CMA considers that it is unlikely to have time to fully verify the claims made by notifying parties within the 40 working day statutory timeframe. Accordingly, where notifying parties wish to put forward such arguments, the CMA requires these to be made and evidenced at the time of the filing for the Notice to be a Satisfactory Notification and encourages advanced pre-notification discussion with the case team. However, for the avoidance of doubt, in the event notifying parties do not put forward such arguments for the purposes of the CMA's Phase 1 investigation, they will not be prevented from doing so in the event of a reference for a Phase 2 investigation.

Other information

25. Provide any other information that the notifying parties consider may be relevant to the CMA's Phase 1 investigation.

²⁷ For example, in mergers involving NHS Foundation Trusts the CMA will liaise closely with Monitor as to whether the information received with respect to relevant customer benefits will allow Monitor to start its assessment of the same (see paragraph 6.43 of the Guidance). The CMA reserves the right to consider the Notice incomplete if this is not the case. See *CMA Guidance on the Review of NHS Mergers (CMA29)* for more information.

Guidance Note to question 25

Notifying parties may, of course, provide any other information they consider relevant. For example, references to earlier decisional practice within the same markets, contacts with other government departments or regulators about the merger, either because they have responsibilities in the relevant areas or because they are customers, and any contacts with overseas competition authorities. This could also include, for example, submissions on the relevance of the 'de minimis' exception (see *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122)).

Notifying parties are also welcome to give their own views on the competition implications or any other effects of the merger.

PART V – Third party contact details

26. Provide contact details for the relevant competitors and customers of the merger parties for (where applicable):
- (a) each of the Candidate Markets in which they overlap;
 - (b) each of the Candidate Markets in which the merger parties have a vertical relationship (providing contact details for the relevant competitors and customers of the merger parties on the upstream and downstream markets on which each merger party is active); and
 - (c) each of the Candidate Markets in which each of the merger parties provides related products/services.
27. To the extent applicable, provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.
28. To the extent applicable, provide contact details for each of the companies that the notifying parties consider are likely to enter and expand into any of the Candidates Markets.
29. Provide the name and contact details, including address, and email address and telephone number, of:
- (a) any relevant regulatory authorities covering the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).
 - (b) any trade associations which cover the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

Guidance Note to questions 26 and 29

Third party contact details to be provided

Contact details are used by the CMA principally for the purposes of, early in its investigation, testing the competitive effects of the merger with third parties in the sector.

Notifying parties are required to make their best efforts to provide those contacts and should be aware that providing incomplete or erroneous contact details may delay the CMA's investigation of the merger. In all cases:

- (a) A specific contact person for each third party contact should be provided, along with the full contact details for that person;
- (b) Such contact details must, in particular, include a specific and direct email address and telephone number for the named contact identified (eg john.smith@xyz.com and not info@xyz.com); and
- (c) All contract details must be provided using the Excel template provided in Annex 1 to this Notice.

Notifying parties are encouraged to discuss with the CMA in pre-notification the number of contact details required for each category in their case for a Satisfactory Notification. The guidance provided below sets out the information that is likely to be required by the CMA in the majority of cases.

Customer and competitor contact details

Candidate Markets in which there is horizontal overlap between the merging parties' activities

The notifying parties are requested to provide named contact details for customers and competitors of each merger party in each Candidate Market where the merger parties overlap.

By way of guidance, in the majority of cases, this should include, for each party:²⁸

- (a) contact details for at least the top ten competitors (by volume or value) (including overseas companies/importers) for each Candidate Market;
- (b) contact details and estimated share of the merger party's business of at least the top ten customers (by volume or value) of each of the merger parties for each Candidate Market (including overseas customers if appropriate);
- (c) to the extent that a Candidate Market is characterised by bidding processes (see question 16), the contact details for the entity or entities running each bidding process in which either of the merger parties have participated, or of which notifying parties are aware, in relation to that Candidate Market. If this means a larger number of responsive contact details (that is, more than ten such entities for each Candidate Market), notifying parties are encouraged to contact the CMA to discuss in pre-notification.

²⁸ For the avoidance of doubt, where one or both of the merger parties have less than the 10 competitors or customers, the CMA will only require contact details for the amount of competitors and customers that they actually have.

Where there are marked differences in the size or other features of the merger parties' customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for at least five representative customers (by value or volume) for each group of customers identified (for example, five large, five medium and five small customers). Where this may be relevant, notifying parties are encouraged to contact the CMA to discuss in pre-notification how to delineate each customer group.

The CMA may – having regard to the specific circumstances of the case at hand (in particular, the extent to which contacts for ten competitors and/or customers would allow for adequate market testing) – consider that full contact details for further competitors or customers are required in response to this question before it can give notice that it has a Satisfactory Notification. The number of customers and competitors whose contact details are required will vary from case to case, depending on the total number of customers/competitors the merger parties have, how representative of the parties' overall customer/competitor set a given sample of such customer/competitors would be, and the extent to which the contact details would permit the CMA to carry out an adequate market test having regard to the specific circumstances in the case at hand.

Candidate Markets in which there is vertical relationship between the merging parties' activities

Where the merger parties do not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 30% in any of the related Candidate Markets, notifying parties will not typically have to provide contact details of their customers and competitors in each upstream or downstream Candidate Market where they have a vertical relationship.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that contact details are required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties do not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 30% in any of the related Candidate Markets.

Where the merger parties have common customers in related Candidate Markets and their individual share in any such related Candidate Market exceeds 30%, the notifying parties need to provide contact details of their customers and competitors in each upstream or downstream Candidate Market where they have a vertical relationship for a Satisfactory Notification.

By way of guidance, in the majority of cases, notifying parties should provide:²⁹

²⁹ For the avoidance of doubt, where one or both of the merger parties have less than the five competitors or customers, the CMA will only require contact details for the amount of competitors and customers they actually have.

- (a) at least the top five competitors (by value or volume) of the merger parties in each upstream and downstream Candidate Market (to the extent they have not been provided as competitor operating in the same Candidate Market of the merger parties), and
- (b) at least the top five customers (by value or volume) of the merger parties in each upstream and downstream Candidate Market. Where there are marked differences in the size or other features of the customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for five representative customers for each customer group identified (to the extent they have not been provided as competitor operating in the same Candidate Market of the merger parties). Where this may be relevant, notifying parties are encouraged to contact the CMA to discuss in pre-notification how to delineate each customer group.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand³⁰ – consider that, in relation to an upstream or downstream Candidate Market, full contact details for more than five competitors or customers are required in response to this question before it can give notice that it has a Satisfactory Notification.

Candidate Markets in which conglomerate effects could arise

Where the merger parties do not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 30% in any of the related Candidate Markets, notifying parties will not typically have to provide contact details in response to this question in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties have common customers in related Candidate Markets and their individual share in any such related Candidate Market exceeds 30%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which these contact details are necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that contact details are required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties do not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 30% in any of the related Candidate Markets.

By way of guidance, in the majority of cases, merger parties should provide:³¹

³⁰ Including, for example, if five competitor or customer contact details would not allow for an adequate market test.

³¹ For the avoidance of doubt, where one or both of the merger parties have less than the five competitors or customers, the CMA will only require contact details for the amount of competitors and customers they actually have.

- (a) at least the top five competitors (by volume or value) of the merger parties in each related Candidate Market (to the extent they have not been provided as competitor operating in the same Candidate Market of the merger parties), and
- (b) at least the top five customers (by value or volume) of the merger parties in each related Candidate Market (to the extent they have not been provided as competitor operating in the same Candidate Market of the merger parties). Where there are marked differences in the size or other features of the customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for five customers for each group of customers identified (to the extent not already provided in response to question 16). Where this may be relevant, notifying parties are encouraged to contact the CMA to discuss in pre-notification how to delineate each customer group.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand³² – consider that full contact details for further customers or competitors are required in response to this question before it can provide confirmation that it has a Satisfactory Notification

Supplier contact details

Circumstances in which supplier contact details may not be required

Where the merger parties' combined share of procurement of the products/services they both purchase on a Candidate Market does not exceed 25%, notifying parties will not typically have to provide, in relation to that Candidate Market, contact details of relevant suppliers in response to question 18 in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties' combined share of procurement on a Candidate Market exceeds 25%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which, in relation to that Candidate Market, contact details of relevant suppliers are necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that certain contact details in relation to a Candidate Market are required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share of procurement in relation to that Candidate Market does not exceed 25%.

Relevant suppliers

³² Including, for example, if five competitor or customer contact details would not allow for an adequate market test.

Relevant suppliers are generally those that supply the input for the overlap product or service (or of a product bought if sold on in the same state). However, they may include contact details for upstream suppliers other than the merger parties' suppliers (where this would be necessary in order for the CMA to carry out an adequate market test).

Number of supplier's contact details

Notifying parties are encouraged to contact the CMA to discuss in pre-notification what number of supplier contact details is appropriate in their case. However, by way of guidance, in the majority of cases, the response should include contact details for at least the top five (by value or volume) of each of the merger parties' suppliers.

However in some limited cases, the CMA may – having regard to the specific circumstances of the case at hand³³ – consider that full contact details for more than five suppliers are required in response to this question before it can provide confirmation that it has received a Satisfactory Notification.

New entrants

The merger parties should provide contact details for each company identified in response to question 22.

³³ For example, if the contact details of five supplier would not allow for an adequate market test. This could be the case where the top five suppliers account for a very small proportion of suppliers.

PART VI – Declaration

Declaration

This Declaration must be signed by a duly authorised person or on behalf of each of the notifying parties:

I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.

I understand that:

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. This includes supplying such information to another person knowing that the information is to be used for the purpose of supplying information to the CMA;

The CMA may reject any Notice if it is suspected that it contains information which is false or misleading in any material respect;

The CMA conducts both Phase 1 and Phase 2 investigations. In the event that the merger is referred for a Phase 2 investigation, information provided to the CMA during the course of the Phase 1 investigation will also be used for the Phase 2 investigation; and

The CMA will bring the merger described in this Notice, and the fact that the Notice has been given, to the attention of interested parties.

Signed:

Name: (block letters)

Position: (block letters)

Date:

This Declaration should be signed if the merger parties are appointing legal representatives:

I confirm that the representative(s) (if any) named in reply to question 1(b) is/are authorised for the purposes of proceedings related to the arrangements described under question 2 to act (including to accept service or take receipt in accordance

with section 126(4) of the Enterprise Act 2002) on behalf of the merger parties respectively specified in response to question 1(b) of this Notice.

Signed:

Name: (block letters)

Position: (block letters)

Date:

Guidance Note to Part VI

As noted above, see the CMA's webpages for information on how to submit a Notice. The information required in this Notice must be complete and correct, to the best of the merger parties knowledge and belief, as confirmed in the declaration to be signed by the notifying parties at the end of the Notice.

The CMA will not accept a Notice unless the section 117 Declaration has been signed by a duly authorised person, by the notifying party or by each of the notifying parties in anticipated mergers. The authorised person is defined as any person carrying on an enterprise to which the notified arrangements relate. The Declaration must be signed by a person or persons with authority to bind each notifying party. An authorised person may use an electronic signature to sign the Declaration. Where a Notice is submitted jointly, each notifying party must sign the Declaration that the notice is true, correct and complete in all material respects.

The authorised persons may, appoint representatives (such as a firm of solicitors) to complete the Merger Notice on their behalf and to act for them in further correspondence with the CMA. If they wish to appoint such a representative, the authorised persons should also sign the confirmation of authorisation, ensuring that they comply with the requirements of section 126 of the Act when doing so. For the avoidance of doubt, where a notice is submitted jointly (anticipated merger) each notifying party may wish to sign the confirmation appointing a representative for the purpose of receiving service.

The Declaration draws notifying parties' attention to two important provisions of the Act.

- The first relates to the provision of false or misleading information. Under section 117 of the Act, it is an offence:
 - knowingly or recklessly to give to the CMA information that is false or misleading in a material respect, either in the Notice, or in reply to any additional questions raised by the CMA during the consideration period, or

- knowingly or recklessly to supply information to a third party that is false or misleading in a material respect, for example an authorised representative or legal adviser, in the knowledge that they will then supply it to the CMA.

The penalties for breach of this provision may include an unlimited fine or a maximum of two years' imprisonment, or both.

The CMA also has powers to reject the Notice, at any time before the period for consideration expires, where it suspects that any information given in the Notice, or in response to further enquiries, is false or misleading.³⁴ The effect of rejection is that the proposal which is notified will remain liable for reference for a period of four months after the date of its completion (subject to any extension in some circumstances).³⁵

- Secondly, the Declaration reminds notifying parties that the CMA will publicise the existence of the merger as notified in both completed and anticipated cases. The CMA will also draw the merger to the attention of third parties in order to seek their views. The CMA will have regard to the provisions of Part 9 of the Act in relation to disclosure of information in determining how much information should be disclosed. Its aim in publicising the merger is solely to ensure that those with an interest in the merger are given an opportunity to comment. The CMA is very aware of the need to protect commercially sensitive information it receives from parties. Whenever the CMA considers whether or not to disclose specified information it must have regard, amongst other considerations, to (a) the need to exclude from disclosure (so far as practicable) commercial information whose disclosure the CMA thinks might significantly harm the legitimate business interests of the to which it relates and (b) the extent to which the disclosure of the information is necessary for the purpose for which the CMA is permitted to make disclosure. The CMA's published reports commonly excise commercially sensitive information. Further information about the CMA's procedures and powers to disclose information is contained in the Chairman's Guidance on Disclosure of Information (CC7 Revised) and Transparency and disclosure: Statement of the CMA's policy and approach (CMA6).

The Declaration also confirms the authorisation of any representative named in the Notice to act on behalf of a notifying party and accept service in accordance with section 126 of the Act.

³⁴ Section 99(5)(a) of the Act.

³⁵ Section 100 of the Act.