

COMPETITION AND MARKETS AUTHORITY

REMEDIES FORM FOR OFFERS OF UNDERTAKINGS IN LIEU OF REFERENCE

This form (the Remedies Form) specifies the information and documents to be submitted by the merger parties for the purpose of offering undertakings in lieu of reference (UILs) pursuant to section 73 of the Enterprise Act 2002 (as amended) (the Act).

The information requested allows the Competition and Markets Authority (CMA) to examine whether the proposed UILs offered by the merger parties (or a modified version of them) might be acceptable to remedy, mitigate or prevent in a clear cut manner the substantial lessening of competition (SLC) identified by the CMA in its decision pursuant to section 22 or 33 of the Act.

Guidance on the process for assessing UILs and on how the CMA assesses remedies is set out in chapter 8 of *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2) and in *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122), both of which are available on the CMA's webpages.¹

The level of information required by the CMA will vary according to the type and structure of remedy proposed. This Remedies Form refers to a 'business' to be divested. This is because the CMA generally prefers divestiture of an existing business that can compete effectively on a stand-alone basis independently of the merger parties over divestiture of part of a business or a collection of assets. Nevertheless, the Remedies Form can be used when the proposed divestiture comprises part of a business. Similarly, the Remedies Form can be used where the UILs offered involve divestment of multiple businesses: a single Remedies Form should be submitted for the full UIL offer, but distinctions between the individual divestment packages making up that offer should be highlighted where relevant. In

¹ www.gov.uk/cma

such circumstances, parties are encouraged to discuss with the CMA case team the likely information requirements of the CMA.

Parties are not obliged to complete all aspects of this Remedies Form but doing so as far as possible and relevant will enhance the CMA's ability to assess effectively the UILs offered. Failure to complete all aspects of this Remedies Form by the end of the five working day period for offering UILs will not automatically invalidate the UIL offer. If parties consider that any particular information requested by this Remedies Form may not be necessary or relevant for the CMA's assessment, they are asked to provide adequate reasons for this. Again, parties are encouraged to discuss such omissions with the case team in advance of making their submission.

The CMA does not automatically refuse behavioural remedies as UILs. However, in general, it is highly unlikely that behavioural remedies will be sufficiently clear cut to address identified competition concerns and therefore to be suitable for the purposes of UILs. This form therefore focuses on structural remedies. Nevertheless, if the merger parties wish to offer a behavioural remedy as a UIL they should provide answers to questions 1 to 3 of the Remedies Form as well as an indication of the timetable for implementation of the proposed remedy and any potential barriers to such implementation.

Description of the UIL and how it will address the SLC

1. Provide:
 - (i) a general description of the UILs offered
 - (ii) any conditions for their implementation, and
 - (iii) the proposed text of the UILs offered (as a separate document), noting where relevant how this differs from the template UILs available on the CMA's webpages.
2. Describe how the UILs offered will remedy, mitigate or prevent in a clear cut manner the SLC identified by the CMA or any adverse effect which has or may have resulted from it or may be expected to result from it.
3. Provide a **non-confidential summary** of the nature and scope of the UILs offered and how, in your view, they will remedy, mitigate or prevent in a clear cut manner the SLC identified by the CMA or any adverse effect which has or may have resulted from it or may be expected to result from it. The CMA may use this summary in order to test the UILs offered with third parties (including potential purchasers).

Information on the business to be divested

This section sets out information that should be provided in relation to the current operation of the business to be divested. For divestments that are currently divisions but not separate entities, the information provided should be at the divisional level, but parties are encouraged to discuss with the CMA how best to do this in order to ensure the right balance of information between questions 4 to 8 and questions 9 to 15.

4. Describe the business to be divested generally, including:
 - (i) the entity(ies) belonging to it (and which form a part of the divestment)
 - (ii) its registered place of business and head office
 - (iii) its other locations for production or provisions of services

- (iv) how, in broad terms, it operates and is managed
 - (v) an overview of its organisational structure, and
 - (vi) whether a disposal of shares or assets is proposed.
5. List and describe the products or services supplied by the business to be divested and any new products or services planned.
6. Provide details² of the key assets and liabilities of the business to be divested including:
- (i) staff, including those employees at managerial level who are critical for the operation of the business to be divested, describing their functions
 - (ii) production facilities
 - (iii) key intellectual property rights and licences
 - (iv) key intangible assets, including brands
 - (v) leases and freehold property
 - (vi) working capital and other such assets or liabilities
 - (vii) cash
 - (viii) debt and other financial liabilities
 - (ix) any debt or leasing obligations that will pass with the business to be divested, and
 - (x) other liabilities not covered above (for example, pensions).
-

² In some instances the information in this question can be submitted via an annual report or management report provided that the current position has not materially changed from that stated in the report. If so, please provide cross-references indicating where in the report(s) the information responsive to this question can be found.

Highlight if any of the above assets come from more than one party to the merger (that is, whether a 'mix and match' divestiture is proposed).

7. Provide a customer list for the business to be divested with revenue (in GBP) generated in the most recent financial year and list and describe key supplier contracts, including setting out when any key customer or supplier contracts are due for renewal.
8. Provide summary financial statements for the business to be divested at profit and loss level for each of the two most recent financial years, the current financial year and a forecast period of two financial years. The table below provides a guide to how you may wish to present the information. For the current financial year, you should, as necessary, split the information between actual and forecast information. Where the SLC relates to more than one product type or market, you should also provide a breakdown by product type/market.

Business to be divested	Historical FY-2	Historical FY-1	Current FY	Forecast FY 1	Forecast FY 2
Revenue (GBP)					
Cost of sales (GBP)					
Gross profit (GBP)					
EBITDA (GBP)					
Depreciation (GBP)					
EBIT(GBP)					
Source of data:					

Assets excluded from the business to be divested and continuing links to the merger parties

This section sets out information that should be provided in relation to the existing parts of the business to be divested that will not form part of the proposed divestiture package.

9. Where relevant, describe any of the operational or management functions which will not form a part of the business to be divested but which are currently necessary for the functioning of the business. This description should include such functions as:
- (i) research and development
 - (ii) production
 - (iii) marketing and sales
 - (iv) logistics
 - (v) relations with customers
 - (vi) relations with suppliers, and
 - (vii) the maintenance and provision of IT systems and various support functions (for example, payroll, general finance, accounting and regulatory compliance).

Please note any material changes in such arrangements in the last two years.

10. Set out what transitional service arrangements you would include as part of the divestment with regard to the functions referred to in Question 9 in the event they are required by the purchaser. Please specify your proposed key terms and duration of any such arrangements.
11. Where relevant, describe in detail (including terms and duration) any continuing links between the business to be divested and other businesses controlled by the merger parties, such as:
- (i) supply, production, distribution, service or other contracts

- (ii) shared tangible or intangible assets
 - (iii) shared or seconded personnel
 - (iv) shared IT systems or other systems
 - (v) shared customers, and
 - (vi) administrative and other support functions.
12. For each of the links referred to in Question 11 describe any changes envisaged and the expected timing of these changes.
13. Describe the customers or groups of customers which will not form a part of the proposed business to be divested but which are currently customers of the business to be divested. Provide the total turnover generated by these customers (in GBP and as a percentage of the total turnover of the business to be divested).
14. Describe any other areas where the business to be divested differs from the nature and scope of the business as currently operated.
15. Where carve-out arrangements are likely to impact on the operation of the business to be divested, describe any arrangements envisaged for carving out or reconfiguring the business to be divested from its existing form.

Remedy implementation process

The purpose of this section is to allow you to explain to the CMA how the business will be divested to a suitable purchaser in an acceptable timeframe. The more information that you are able to provide when completing this part of the Remedies Form, the more the CMA is likely to be able to have confidence that a suitable purchaser will be found.

16. Provide a proposed timetable for divestment setting out key milestones including preparation of documentation and filtering of potential purchasers.

Please note that the CMA has 50 working days beginning on the day after the CMA gives the notice required pursuant to section 34ZA(1)(b) or section 34A(2)(b) of the Act to accept UILs.³

17. State whether there are likely to be significant due diligence, statutory or regulatory issues that may delay the divestment process. These may include any third party rights, obligations, consents (including the transfer of leases), licences and regulatory approvals. Set out the expected timeframes for resolving each of these.
18. Suitable purchasers. Please answer either part (i) or (ii):
 - (i) If you have already identified a potential purchaser, explain why you consider this buyer would meet the CMA's purchaser suitability criteria.⁴
 - (ii) If you have not yet identified a potential purchaser, explain the reasons why, in your view, the business will be acquired by a suitable purchaser in the timeframe proposed in Question 16. List likely purchasers for the business to be divested highlighting those potential purchasers whom you have already approached with a view to a sale and summarising the strength of their interest and their capability to complete a transaction within the timescale proposed. Where you have already approached potential purchasers, submit any expressions of interest, informal or formal offers or any draft heads of terms.
19. If you do not consider that divestment to an upfront buyer is required in this case, please provide reasons for this.⁵

³ Subject to a possible extension of up to 40 working days if the CMA considers that there are special reasons for doing so: see paragraphs 8.23 to 8.24 of *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2).

⁴ See *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122).

⁵ An 'upfront buyer' means having a buyer in place with a signed sale and purchase agreement (generally conditional from the buyer's perspective only on CMA acceptance of the UILs and

20. In instances of multiple businesses to be divested, state whether and why these are intended to be sold to several buyers or to one. If to several, explain whether you intend to 'package' some of the businesses to be divested together in order to achieve a sale.
21. Set out whether you consider the appointment of a monitoring trustee would be appropriate in this case. If you do not consider that a monitoring trustee is required in this case, please provide reasons for this.

completion of the main transaction if it remains anticipated) **before** the CMA accepts the UILs (see paragraphs 8.33 to 8.34 of *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2)). The upfront buyer would need to meet the CMA's purchaser suitability criteria set out in *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122).