

Merger and Market remedies – guidance on reporting, investigation and enforcement of potential breaches

Consultation document

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1. Introduction

- 1.1 The CMA is proposing to introduce new guidance to cover its activities in monitoring and enforcing compliance with final merger and market undertakings and orders.
- 1.2 The proposed guidance does not represent a change in policy or approach, but codifies the CMA's existing practice in this area, providing greater transparency for those within the scope of final merger and market undertakings and orders and their advisers and representatives.
- 1.3 The CMA expects the introduction of this guidance to help businesses within the scope of these undertakings and orders to understand what represents a breach of their obligations, how the CMA will consider any such breaches, the enforcement action that may follow, and how that is determined.

Scope of this consultation

- 1.4 The CMA is consulting on its proposed new guidance and is seeking views from interested parties.
- 1.5 The specific questions on which we are seeking respondents' views are provided in Section 3.

Consultation process

- 1.6 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 appropriateness of the proposed new guidance.

How to respond

- 1.7 We encourage you to respond to the consultation in writing, preferably by email using the contact details provided below.
- 1.8 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.
- 1.9 In pursuance of our policy of openness and transparency, we will publish non-confidential version 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

1.10 The consultation will run from 30 September 2020 to 30 October 2020.
Responses should be sent to:

Email: RemediesMonitoringTeam@cma.gov.uk

1.11 Due to the ongoing Covid-19 situation, we are not able to accept delivery of any documents or correspondence by post or courier to any of our offices.

2. Legal framework

- 2.1 The proposed guidance covers the Competition and Markets Authority's (CMA's) approach to actual or potential breaches of final undertakings and orders put in place to address concerns identified in merger, monopoly and market investigations, either under the Enterprise Act 2002 (EA02)¹ or under the previous legislation, the Fair Trading Act 1973.
- 2.2 The proposed guidance does not cover Interim Measures in relation to mergers, which are dealt with in other guidance.² Accordingly, unless otherwise specified, the terms undertaking or order in the proposed guidance should be read as referring to final undertakings and orders imposed at the end of CMA investigations as well as undertakings in lieu of reference.

¹ As amended by the Enterprise and Regulatory Reform Act 2013 (ERRA13).

² See the [CMA's guidance on Interim measures and Derogations](#).

3. Consultation questions

3.1 In this consultation, the CMA is keen to seek the views of interested parties on the appropriateness of the proposed guidance generally, and particularly on whether the proposed guidance provides sufficient clarity on the following matters:

- (a) what the CMA considers to be breaches of its undertakings and orders;
- (b) how the CMA investigates potential breaches of its undertakings and orders; and
- (c) the circumstances in which the CMA will use the informal and formal enforcement tools available to it in response to breaches of its undertakings and orders.

Compliance with government consultation principles

3.2 In consulting, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

3.3 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018. Personal data is information which relates to a living individual who may be identifiable from it.

3.4 We are processing this personal data for the purposes of our work. This work relates to the revised procedures guidance, for which we are consulting. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.

3.5 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our Privacy Notice.

3.6 Our use of all information and personal data that we receive is also 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. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.

- 3.7 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.
- 3.8 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

After the consultation

- 3.9 After the consultation, we will publish a final version of the guidance 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.