

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

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1. Introduction

- 1.1 This 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.
- 1.2 This guidance does not cover initial and interim undertakings or orders in relation to mergers.² Accordingly, unless otherwise specified, the terms undertaking or order in this 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.
- 1.3 Taking action to address breaches of undertakings and orders is important for the CMA to deliver the outcomes of its markets and mergers work. Breaches of undertakings and orders can mean that benefits for customers from the CMA's work are not being realised, rivalry is reduced and that markets are not working as well as they otherwise would.
- 1.4 The CMA will apply this guidance flexibly, which means that the CMA will have regard to the guidance when it deals with potential and actual breaches of final undertakings and orders, but that, when the facts of an individual case reasonably justify it, the CMA may take a different approach.
- 1.5 This document is not a definitive statement of, or a substitute for, the law itself and should not be relied upon as an alternative to seeking appropriate legal advice.
- 1.6 This guidance sets out the CMA's practice as at 29 January 2021. The CMA consulted on a draft version of this guidance during October 2020 and took account of all comments received in finalising this guidance. Please refer to www.gov.uk/cma to ensure you have the latest version of this guidance as it may be revised from time to time to reflect changes in practices or the law and the CMA's developing experience.
- 1.7 You may find it useful to read this guidance alongside other documents published by the CMA, including:

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

² such as undertakings under section 80 (covering interim undertakings) or orders under section 72 (initial enforcement orders) or section 81 (interim orders).

- *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders, CMA11;*
- *Market studies and investigations - guidance on the CMA's approach: CMA3;* and
- several guidance documents relating to the assessment of merger cases by the CMA.

2. The CMA's approach to breaches of undertakings and orders

The CMA's statutory role

- 2.1 Undertakings and orders are the primary means by which remedies are implemented following the final determination of merger and market investigation references under the EA02, as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA13). Under the EA02, undertakings are accepted, or orders imposed by the CMA,³ except in certain public interest cases where the Secretary of State is responsible for accepting undertakings or imposing orders.^{4,5}
- 2.2 The CMA has a statutory duty to keep under review undertakings and orders made under the EA02.⁶ Sections 92 and 162 of the EA02 provide that the CMA shall, in particular, from time to time, consider whether an enforcement undertaking or order has been or is being complied with.⁷ In addition, and as part of the same statutory duty, the CMA considers whether undertakings and orders remain appropriate, and whether they should be varied or released/revoked. The CMA's reviews of its orders and undertakings are covered in separate guidance, [Variation of undertakings and orders: CMA11](#).
- 2.3 The CMA allocates resources in this area by reference to its [prioritisation principles](#).

Compliance with remedies

- 2.4 The CMA's undertakings and orders are designed during the course of an investigation to remedy identified competition problems, by placing effective and proportionate obligations on specific firms, within an appropriate timeframe. They are subject to extensive consultation prior to introduction. As a consequence, the CMA expects all firms that have agreed undertakings or

³ Under the EA02, the CMA may accept undertakings or impose orders (sections 82 and 84 of the EA02 (mergers) and sections 159 and 161 of the EA02 (markets)), and, where the conditions for a reference are met, the CMA may accept binding undertakings (UJL) as an alternative to making a reference (section 73 of the EA02 (mergers) and section 154 of the EA02 (markets)).

⁴ See sections 55 and 66 and Schedule 7 of the EA02 (mergers) and sections 147, 147A, 159 and 161 of the EA02 (markets).

⁵ The CMA has obtained the option of seeking agreement with the European Commission for the CMA to monitor and enforce certain EU merger and anti-trust remedies in future within the UK. The CMA has issued [separate guidance on this matter](#).

⁶ The CMA has a corresponding duty under the previous legislation, the Fair Trading Act 1973.

⁷ Specifically sections 92(2)(a) and 162(2)(a) of the EA02. and Schedule 24 of the EA02

that are within the scope of its orders to be compliant with these at all times from their introduction and throughout the time they remain in force.

2.5 Where firms breach the CMA's undertakings and orders, this can be the result of, for example:

(a) conduct whereby a firm did not directly intend to breach undertakings or an order, but:

(i) did not properly implement a remedy when it first came into force and so has never achieved compliance; or

(ii) although it implemented the remedy initially, the existing practices of the firm are not sufficiently robust or it has failed to dedicate sufficient resource and expertise to ensure it can provide ongoing compliance with the undertakings or order (either in isolation or as part of its wider regulatory obligations);

(b) the firm being unaware of the legal obligations on it; or

(c) the firm deliberately choosing not to comply with its legal obligations.

2.6 As noted above, taking action to address breaches of undertakings and orders is an important way in which the CMA delivers the outcomes of its markets and mergers work. Breaches of undertakings and orders can mean that benefits for customers from the CMA's work are not being realised, rivalry is reduced and that markets are not working as well they otherwise would.

What constitutes a breach?

2.7 The CMA considers a breach of an undertaking or an order to be any instance in which a firm fails to comply with any obligation which is required in an undertaking or order, regardless of any effect on competition or customers. The CMA considers such failures to represent breaches irrespective of how they occurred, including whether deliberate, accidental or through ignorance of the obligations. Section 4 of this guidance addresses the CMA's response to specific breaches, including how the CMA considers a range of factors in determining on a case by case basis whether, and if so, what enforcement action to take in response to a specific breach.

3. Monitoring, reporting, investigation and transparency of breaches

Monitoring compliance

- 3.1 The CMA has a team responsible for monitoring and enforcing compliance with its orders and undertakings. In some instances, the CMA also has monitoring trustees or other appointed bodies that have specific responsibilities in relation to specific orders and undertakings, while overall responsibility for compliance remains with the CMA. Such trustees and organisations are normally put in place for more complex behavioural orders and undertakings. Some orders and undertakings impose compliance reporting requirements on parties, while in other cases the CMA proactively seeks information and monitors compliance.

Reporting breaches of remedies to the CMA

- 3.2 To date, the CMA has found out about breaches of its undertakings and orders through a variety of routes, including:
- (a) its proactive monitoring of individual firms and markets;
 - (b) the investigations of firms carried out by the CMA under a variety of tools;⁸
 - (c) liaison with sector regulators and industry or other representative bodies;
 - (d) third parties, including individual consumers and firms or whistle-blowers, assessing and reporting on the compliance of others;
 - (e) compliance reports submitted to the CMA by firms; and
 - (f) self-assessments of compliance carried out at other times by firms.
- 3.3 It is important for the CMA to find out about all breaches of its undertakings and orders as soon as reasonably possible, irrespective of whether such breaches are considered material. This is because such early notification allows for the CMA to work with the firm concerned on actions to end the breach quickly and effectively and to understand whether specific

⁸ Including, Competition Act 1998 investigations, merger investigations, market studies, market investigations and investigations of previous breaches of orders and undertakings under the Enterprise Act 2002, and consumer protection investigations under Part 8 of the Enterprise Act 2002.

enforcement action is necessary to end the breach. This facilitates the efficient use of investigative resource both in the CMA and the firm concerned.

- 3.4 The CMA is aware that its portfolio of market and merger undertakings and orders have varying types of legal obligation in relation to reporting breaches, with some imposing specific deadlines on firms for reporting breaches, while others require firms to report on an annual basis about breaches.
- 3.5 These legal obligations will remain in place and take precedence over this guidance document. However, in this guidance, the CMA encourages all firms to report to the CMA all breaches of its undertakings and orders as soon as these are discovered, even where a full account of the details is not yet available. As described above, this will allow the CMA and the firm concerned to work together, in a timely and efficient manner to assess the scale of the breach, and what action necessary in response, including potential enforcement action.
- 3.6 If a firm is aware of a breach and takes action to remedy the breach without informing the CMA at the time, there is a risk that the CMA may not be content with the action taken, leading to costly changes in approach and an increased likelihood of formal enforcement action to address the breach.
- 3.7 Where a firm becomes aware that it will breach a set of undertakings or an order in the near future, the CMA would also encourage the firm to contact the CMA as soon as it is aware of this possibility, to explain the circumstances surrounding this and to explore with the CMA what actions the firm can take to mitigate the duration and the effects of the breach.
- 3.8 All contact in relation to breaches of the CMA's orders and undertakings should be with the CMA's monitoring and enforcement team (remediesmonitoringteam@cma.gov.uk).
- 3.9 While the exact details the CMA will need to know about a breach will depend on the individual circumstances of a particular breach, the CMA would expect to receive the following information with all reports of breaches, while recognising that all aspects of this list may not be available at the point at which a breach is first identified and notified to the CMA:
 - (a) a description of the relevant provision(s) of the order or undertakings to which the breach relates;
 - (b) a full description of the breach itself, including whether, and if so how, it might have an impact on relevant third parties, and consumers;

- (c) how the breach occurred and how and when it was discovered;
- (d) the duration of the breach and whether it is ongoing;
- (e) the size and significance of the breach and harm caused, both for the firm and for third parties and consumers;
- (f) details of whether any third parties are involved, including suppliers, systems providers and other contracted parties; and
- (g) whether any relevant regulators have been informed (for breaches in regulated sectors).

Investigations of breaches

- 3.10 The CMA's approach to an investigation into breaches of its undertakings and orders will depend on the nature and severity of the breach. The CMA may use information-gathering powers contained in particular clauses of undertakings and orders, or broader information-gathering powers, such as section 109 EA02 notices for mergers, section 174 EA02 notices for markets, or use of the CMA's general function in section 5 EA02 to obtain, compile and keep under review information about matters relating to the carrying out of its functions.
- 3.11 Certain breaches of the CMA's undertakings and orders could also represent a breach of the CMA's broader jurisdictions, including competition and consumer protection legislation. Where the CMA considers this to be the case, the CMA will select the most appropriate legal tool or tools under which to conduct its investigation, based on the circumstances of the breach concerned, including, where appropriate, the enforcement mechanisms available to deliver redress to consumers.
- 3.12 The CMA notes that firms providing information to it have an obligation to provide truthful, complete and accurate information. It is an offence under section 117 of the Enterprise Act 2002 to knowingly or recklessly provide information to the CMA that is false or misleading in a material respect. The CMA also notes that failure to comply with a requirement of a notice issued under s109 or s174 EA02 without reasonable excuse can lead to the imposition of a penalty.⁹

⁹ As set out in Section 111 or Section 174D of the Enterprise Act 2002.

Public register of breaches of undertakings and orders

- 3.13 The CMA has several public registers displayed on its website and generally seeks to promote transparency in relation to identified breaches of undertakings and orders, and the action the CMA is taking.
- 3.14 The CMA provides information on current markets and mergers orders and undertakings on its [register of orders and undertakings](#). It has recently introduced a [register of time-expired merger remedies](#) (i.e. those where the remedy itself included an automatic end-date for the obligations, or has otherwise expired).
- 3.15 On 1 April 2020, the CMA announced that it would begin publication of information about all material breaches of its undertakings and orders. The register of breaches will be updated quarterly. The objective in publishing this register is to provide transparency about the firms that breach the CMA's undertakings and orders and the frequency and nature of such breaches. It will also provide a description of any enforcement work carried out in respect of the breach.
- 3.16 Each potential breach the CMA becomes aware of will be investigated and the CMA will reach a decision on the basis of the information available to it on whether a particular issue represents a breach and, if so, whether it should appear on the register.

Material breaches

- 3.17 In considering whether a breach should appear on the register, the CMA will form a view as to whether the breach in question is material on a case by case basis. Breaches which are less likely to be found to be material are those which the CMA determines as having had no substantive effect on customers, consumers or competition (and which did not have the potential to have such an effect), and which were also of a very short duration with clear confirmation that they have ceased and will not recur. For example, some orders and undertakings impose information requirements on all customers, and while a failure to meet such obligations would generally be material, this might not be the case where a breach occurred for a very small group of customers (for example fewer than 50 customers of a mass market product or service), and specifically in a situation where the information had already been superseded (due to actions they had taken such as cancelling a policy etc). Another example could be the slightly late delivery of a reporting obligation to the CMA. Where only a few days late, such a delay may have limited impact on compliance and the work of the CMA. The intention of this definition is to ensure that those bound by orders and undertakings are not

devoting resource unnecessarily to exploring very small breaches with no substantive impact on customers, and for the CMA to ensure it focuses its monitoring and enforcement resources on material breaches.

- 3.18 As noted in paragraph 3.3 above, all breaches and potential breaches should be reported to the CMA, and it is for the CMA to determine whether an issue represents a breach and whether it considers that to be material.
- 3.19 The CMA will record the following information about material breaches in its public register once a decision has been reached on whether an issue represents a material breach:
- (a) the order or undertakings breached;
 - (b) the firm that breached the remedy;
 - (c) a short description of the breach including whether it is a breach of administrative, reporting or substantive obligations;
 - (d) the duration of the breach;
 - (e) when the breach was notified to the CMA;
 - (f) any action taken by the firm to address the breach and to put things right for consumers (such as through providing refunds to compensate for any loss or damage); and
 - (g) action taken by the CMA in response, whether formal or informal.
- 3.20 Prior to publishing details of a breach on the register of breaches, the CMA will notify the relevant firm of its decision to make an entry on the register and provide such of its reasoning as the CMA considers appropriate in the circumstances. Where the CMA has decided that enforcement action is appropriate in relation to such a breach, the CMA would normally expect the register of breaches to be updated when details of the enforcement action are published or, if sooner, when any enforcement action has been completed.

4. Enforcement against breaches of remedies

- 4.1 In relation to some identified breaches, the CMA may decide, as part of its statutory duty explained in paragraphs 2.1 to 2.3 above, that it is appropriate to take enforcement action. For example, this may occur where a breach is ongoing or where although a breach has been remedied, existing processes and procedures are inadequate to ensure ongoing compliance.
- 4.2 Before proposing any enforcement action in relation to a breach, the CMA will ensure that the firm involved is aware of the breach and has had an opportunity to liaise with the CMA over this.
- 4.3 In assessing the nature of a breach, and considering the possible enforcement action, the CMA will take a case-by-case approach, taking into account all relevant circumstances. This may include:
- (a) **significance** – including the magnitude of the breach in terms of cost or value, the harm caused, and the number of suppliers, customers or consumers affected, as well as the duration of the breach;
 - (b) **the actions taken by the firm in reporting to the CMA and addressing the breach** including whether the firm has reported the breach to the CMA in a timely and complete manner. Other relevant factors here include whether it has decided itself to take proactive steps to stop the breach (in advance of any indication that the CMA intends to take specific action), and the extent to which a firm has taken appropriate steps to remedy any detriment suffered by customers, and improve its procedures sufficiently to prevent further breaches;
 - (c) **recidivism and previous conduct** – including an assessment of the nature of any previous breaches, and whether a business is already subject to a heightened compliance regime resulting from previous breaches;
 - (d) **the need for the CMA to take action to address the breach** – including whether a breach is ongoing, and what, if any, action the CMA needs to take to bring the breach to an end, or to put in place improved and more substantial controls on a firm to seek to prevent further breaches; and
 - (e) **contextual factors, such as the status and age of the undertaking or order** – where an order or undertakings are new and in the process of being implemented and where firms have some legitimate uncertainty over their exact obligations, this might lead to different action being taken compared to when an order or undertakings have been in force continuously for a number of months or years and firms will be expected

to be more familiar with the obligations. For older cases, we will give consideration to whether, and if so how, the relevant market has evolved since the undertakings or order were put in place, to ensure that our proposed enforcement remains proportionate.

- 4.4 The CMA's action typically falls into one of the two categories considered below.

Informal actions

- 4.5 Informal action describes a response to a breach where the CMA is not engaging its formal enforcement powers (such as issuing directions – see paragraph 4.8 onwards). This can include the CMA agreeing actions with firms to end a breach and to improve practices and processes in the future. In these cases, the CMA may decide to publish a letter to businesses on its website which provides detail on the nature of the breach and acknowledges any action taken by a business to put things right. This is so that customers and any interested stakeholders are made aware of the action taken. Irrespective of whether or not the CMA decides to publish a letter, any material breaches will be recorded in the register of breaches as set out in paragraphs 3.13 to 3.20 above.
- 4.6 While the CMA will take a case-by-case approach, taking into account all relevant circumstances, informal action is more likely for breaches where the following are true:
- (a) this is the first occasion that the firm has breached the remedy concerned;
 - (b) the breach is of limited scale and scope;
 - (c) the breach has limited practical impact on suppliers, customers and consumers;
 - (d) details of the breach were passed in full to the CMA as soon as was practical in the circumstances;
 - (e) the breach has been brought to an end by the firm concerned taking steps on a voluntary basis, considered as sufficient by the CMA, to resolve the root cause of the breach; and
 - (f) the firm has committed, on a voluntary basis, to take all steps, considered as sufficient and appropriate by the CMA, to prevent future breaches.

The process for informal enforcement

- 4.7 The process for issuing public letters involves the CMA engaging with the firm concerned as follows:
- (a) Having understood the nature and extent of the breach, if the CMA reaches a provisional view that certain informal action would be appropriate, the CMA will write to the firm concerned to explain this provisional view and the reasons for it. The CMA shall explain the action it proposes to take and attach any draft public letter where appropriate. The firm will then have typically two weeks (and possibly more in complex cases) to provide any representations it wishes to provide to the CMA on both the principle and the substance of the action the CMA is proposing.
 - (b) The CMA will consider the representations received on both the principle and the substance before reaching a final view on the appropriate action. The CMA will then communicate this to the firm concerned, and will continue to liaise with the firm over the timing of any public announcements where relevant.

Formal enforcement action

- 4.8 To ensure compliance with its undertakings and orders, the CMA has formal enforcement tools available to ensure firms take all actions the CMA considers necessary for the firms to become compliant. These tools are used for more significant breaches, such as those:
- (a) which may have a significant impact in terms of scale, harm caused, scope or the number of customers affected;
 - (b) which may have a significant impact on individual customers or consumers;
 - (c) which are ongoing, including those still being explored by the firm concerned, or where the necessary steps to remedy the breach and prevent future breaches were not identified, volunteered, agreed or taken by the firm responsible;
 - (d) which raise issues of recidivism and ongoing compliance problems; or
 - (e) where the CMA has concerns that a firm is not capable of, or willing to, take all the necessary steps voluntarily to prevent further breaches.
- 4.9 The use of the CMA's formal enforcement tools can result in the CMA seeking an order from the court requiring a firm to remedy a breach. A failure to

comply with such an order may lead to contempt of court proceedings. Consequently, firms which persistently fail to comply with the relevant undertakings or order could face a fine, or imprisonment of individuals for up to two years (or both).

- 4.10 For breaches where formal enforcement powers are considered necessary (as described in paragraph 4.8), the CMA can either:
- (a) Apply to a court to seek compliance with the original enforcement order or undertakings; or
 - (b) Issue directions to the firm concerned.
- 4.11 The CMA will determine which form of formal action to take based on the individual circumstances of the case, including the nature of the breach as further described in paragraph 4.3. Both seeking compliance directly through court or issuing directions can lead ultimately to contempt of court proceedings.

Issuing directions

- 4.12 In its directions, the CMA can require a firm to take specific steps to bring to an end a breach of an order or undertakings, as well as to improve its practices and procedures to prevent similar problems arising in the future. The CMA can also impose additional, generally more onerous, compliance and reporting obligations to allow for more detailed monitoring activities.¹⁰

Potential content of directions

- 4.13 The directions that the CMA issues to a firm will be specific to the firm and the particular breach. However, there are a number of types of directions which are commonly used, sometimes individually and at other times in combination with each other and with other relevant obligations. The list of types of directions below is not exhaustive and does not constrain the CMA from considering different directions where they are considered appropriate to a particular breach by a particular business. The main categories of directions include:
- (a) **ending a breach** – where a breach is ongoing, the CMA may find it necessary to direct the firm concerned to take specific steps to end the breach within a certain timeframe;

¹⁰ See section 87 of the EA02.

- (b) **changes to policies, processes and procedures to prevent further breaches** – depending on the cause of a breach, the CMA may consider it necessary to direct a firm to make specific changes to its policies, processes and procedures (including staff training where appropriate) to avoid further breaches in the future;
- (c) **auditing internal processes and procedures** – where a number of policies, processes and procedures may have contributed to a breach, or for example where these are complex, the CMA may consider it necessary for the firm to procure a business independent of the firm to carry out either a one-off or a regular audit of all its processes and procedures relevant to achieving compliance with an order or undertaking;
- (d) **enhanced compliance measures or new/additional reporting requirements** – in response to a firm breaching a remedy, the CMA may consider it appropriate to introduce compliance monitoring if this were not provided before the breach to understand the specific actions taken by firms to ensure and/or maintain compliance. Alternatively, where compliance monitoring was already required by the remedy concerned, the CMA may introduce new reporting obligations or increase the frequency of any existing compliance reporting. This can provide the CMA with valuable visibility of actions taken within the firm and the likelihood of further breaches; and
- (e) **requiring a firm to inform affected customers about a breach** – where a breach affects a firm’s customers, the CMA may direct that firm to provide certain information to its customers that were affected including informing them of their rights to refunds and / or redress from the firm.

CMA process for issuing directions

- 4.14 When the CMA believes it has all the information required to make a provisional decision, the CMA expects to follow these steps:
- (a) the CMA will write to the party concerned, noting that it is minded to issue directions, on the basis of the information available from its investigation into the breach;
 - (b) where draft directions are available, these will be provided to the party at the same time as communicating its provisional decision to issue directions. The CMA may also seek a proposed action plan detailing the timescales within which the tasks directed will be undertaken;
 - (c) the CMA will allow the party concerned a reasonable period of time to provide representations that cover the decision that it is minded to issue

directions and the specific requirements in the draft directions. The party may also put forward any new information which is relevant to whether or not directions are appropriate. The appropriate time period for representations will be determined by the CMA with regard to the nature and complexities of the issues concerned. Other than in exceptional cases where the CMA considers there to be substantial additional risks from failing to act quickly, the party concerned will have a minimum of two weeks to provide representations;

- (d) where directions are provided to a party subsequently to the communication that the CMA is minded to issue directions, a further reasonable period of time will be allowed for the party to provide representations on the draft directions;
- (e) the CMA will consider all representations and will reach a final decision and, where appropriate, will determine the exact directions to be issued; and
- (f) the CMA will issue directions to the firm concerned, publishing the action plan and recording this information on its public register of directions, the register of breaches, and relevant webpage for the order or undertakings concerned.

4.15 At the time the CMA issues directions to parties, it is normal practice for the CMA to take a number of steps to highlight the breach and any enforcement action publicly. This helps to inform affected customers and potential customers of a business of the breach and the action taken. While the CMA will inform parties of its intended actions in publicising breaches and enforcement action, the choice of materials, the approach, and their content is not part of the consultation described above.

Enforcing directions through the courts

4.16 If firms fail to comply with the CMA's directions, the CMA can enforce these directly through the courts. If a firm were to ignore a court order the CMA could pursue contempt of court proceedings. Contempt of court is an offence which includes disobeying or ignoring a court order, and can result in a fine, or imprisonment of up to two years (or both).

Duration of directions

4.17 The directions issued by the CMA will be considered on a case by case basis, and in some instances these directions may place an ongoing restriction on businesses for the duration of the order or undertakings to which they refer.

This means that such directions will be expected to remain in place until such time as the parties are released from their commitments by the variation or revocation/release of the underlying undertakings or order.

- 4.18 In other cases, the directions given by the CMA may be to carry out a one-off, time-limited or event-limited activity and once this has been completed the directions may have no ongoing obligation or value.
- 4.19 For both ongoing and time/event limited directions, it is open to the parties bound by these to apply to the CMA for the directions to be varied or terminated (in whole or in part). Any submission making such a request should set out clearly and with supporting evidence matters such as:
- (a) why it is appropriate to vary or terminate the directions in the way suggested. For time-limited and event-limited instances, this will normally involve demonstrating that the obligations have been completed;
 - (b) the possible consequences for consumers and businesses impacted by the remedy;
 - (c) why a review of the order and undertakings meets the CMA's published prioritisation; and
 - (d) whether the request is being raised in order to avoid a breach of the undertakings or order.
- 4.20 It is open to parties to approach the CMA prior to submitting a request in order to discuss what sort of evidence would be expected to be included in any request.

The role of third parties in breaches

- 4.21 In relation to some breaches, the firm responsible for compliance may rely, in part, on one or more third parties to deliver certain actions to ensure it remains compliant. The CMA's role in enforcing compliance with its undertakings and orders involves the CMA taking specific action against the firm that either gave undertakings or is within the scope of specific order. The CMA will expect the firm concerned to liaise with any third parties involved during the decision-making process for both informal and formal action, so that the views of these third parties can be understood by the CMA before a final decision is reached. The CMA will also expect the firm to ensure that such third parties take the necessary steps to ensure the relevant firm complies with either informal or formal enforcement action taken by the CMA.

Challenging the CMA's approach

4.22 While the CMA is able to determine the enforcement action it considers to be necessary and proportionate to end a breach and prevent similar problems arising in the future, firms that wish to challenge the CMA's approach can do so:

- (a) by making representations during the opportunities provided for in the process described above for informal or formal enforcement. This is the most efficient way in which firms can ensure their representations are considered by the CMA;
- (b) by seeking a judicial review of a relevant decision by the CMA; or
- (c) in a case where the CMA is seeking to enforce an undertaking, order or directions in the courts, the relevant firm would be a party to those proceedings and able to make appropriate representations in court.

Breaches of other legislation and alternative routes of enforcement

4.23 The CMA has a number of investigative and legislative tools and powers at its disposal, and in a limited number of cases, a breach of an undertaking or an order may also breach other legislation enforced by the CMA, and such powers could be applicable to addressing breaches of our orders or undertakings. For each breach, the CMA will determine which powers are most appropriate to be used to achieve the desired outcomes.