

## **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.<sup>1</sup> 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**). 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](http://www.gov.uk/cma)).

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

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.<sup>2</sup> 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).<sup>3</sup>

### *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.<sup>4</sup>
7. The 'prescribed information' necessary for the purposes of a Satisfactory Notification is information responsive to the questions in this Notice, insofar as it 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.

### *The Guidance Notes*

10. In the Notice below, the CMA has published guidance notes, set out alongside each question, to assist notifying parties in assessing the nature and extent of

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<sup>2</sup> See section 34ZA of the Act.

<sup>3</sup> See sections 34ZA(3) and 96(2A) of the Act.

<sup>4</sup> See section 96(2) of the Act.

information that, in their individual case, they should provide in response to a particular question for the purposes of a Satisfactory Notification (the Guidance Notes). 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.<sup>5</sup> 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:<sup>6</sup>
  - *Merger Assessment Guidelines (CMA129) (Merger Assessment Guidelines);*
  - *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2);*
  - *Water and sewerage mergers: Guidance on the CMA's procedure and assessment (CMA49);*
  - *Retail mergers commentary (CMA62);*
  - *Rail franchise mergers: Review of methodologies and guidance (CMA74);*

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<sup>5</sup> 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.

<sup>6</sup> Further CMA mergers guidance can be accessed on the CMA's website: <https://www.gov.uk/government/collections/cma-mergers-guidance>.

- *Good practice in the design and presentation of customer survey evidence in merger cases (CMA78)*;
- *Guidance on requests for internal documents in merger investigations (CMA100)*;
- *Merger Assessment Guidelines (CMA129)*; and
- *Mergers: Exceptions to the duty to refer (CMA64)*.

These documents also explain certain terminology used in this Notice and in the Guidance Notes,<sup>7</sup> 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),<sup>8</sup> 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.

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<sup>7</sup> 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.

<sup>8</sup> Available on the CMA's website: [www.gov.uk/cma](http://www.gov.uk/cma).

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 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 6.18 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.<sup>9</sup>
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 a readable and

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<sup>9</sup> 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.

searchable format and classified and indexed using the template in Annex 2. Annex 2 should be updated if additional data or documents are submitted in response to follow-up questions from the CMA. The contact details of the merger parties' customers and competitors should be provided using the template in Annex 1.

21. Notifying parties may consider that it is not 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 17 in relation to the potential vertical effects of the merger);
  - The information requested is not relevant for the CMA's assessment (eg in cases in which the notifying parties do not wish the CMA to consider any efficiencies or relevant customer benefits that the notifying parties believe will arise from the merger at phase 1, it is not necessary to answer question 21 on efficiencies and customer benefits); and
  - The information requested is not available to the notifying party (eg where the merger is a 'hostile' transaction).<sup>10</sup>
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 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

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<sup>10</sup> For non-hostile 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.

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).

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.<sup>11</sup> 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).<sup>12</sup>
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.<sup>13</sup>

### *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.

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<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> Section 117 of the Act.

30. Information on how to submit a Notice to the CMA is available on the CMA's webpages.



## **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 Notice<sup>14</sup>
  - (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.<sup>15</sup> If notifying parties do authorise someone to act in this way, they must sign the authorisation at Part VI of the Notice.

If an authorised representative ceases to act for the 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.

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<sup>14</sup> A Notice may be submitted by any person carrying on an enterprise to which the notified arrangements relate. 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.

<sup>15</sup> 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.

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.

**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’)<sup>16</sup> any one of the merger parties and is active in any of the Relevant Markets identified in response to question 11 below, and any legal or natural person that any one of the merger parties controls and which is active in any of the Relevant 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.

**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.<sup>17</sup>

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.<sup>18</sup>

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.

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<sup>16</sup> 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.

<sup>17</sup> As set out at paragraph 4.35 of the Guidance, the CMA may also consider whether any other factors, such as agreements with the target company, might enable the acquirer materially to influence policy. See chapter 4 of the Guidance for further information.

<sup>18</sup> 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.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.

**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.<sup>19</sup> 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 16 of the Guidance). Merger parties are encouraged to discuss the process and timing of the review of a multi-jurisdictional merger with the CMA early in the investigation. This may, in some cases, include discussing with the CMA the timing of the commencement of formal proceedings before the CMA and/or other competition authorities to ensure, where appropriate, the alignment of the respective timetables (16.6 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.

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<sup>19</sup> The CMA will typically ask for waivers following the CMA template waiver, available on its website at: <https://www.gov.uk/government/publications/confidentiality-waiver-template>. In the interests of supporting the efficient conduct of merger proceedings, the CMA is unlikely to accept changes to the standard template waiver.

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).<sup>20</sup>

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

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 Relevant Market identified in response to question 11;<sup>21</sup> 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.

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

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

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<sup>20</sup> 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 Relevant Markets identified in response to question 11 below.

<sup>21</sup> Where this involves a large number of transactions, notifying parties are encouraged to contact the CMA to discuss.

- (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
  - (ii) an estimate of the share of supply for any product or service of any description where the merging/merged businesses<sup>22</sup> 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 (including, in particular, paragraphs 4.64 to 4.66) 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 4.21 to 4.32 of the Guidance, as well as any other factors notifying parties consider relevant to that assessment.

6. Indicate the annual UK and worldwide turnover<sup>23</sup> in the last financial year associated with each of:
- (a) the acquirer (including group companies where relevant – see Appendix A 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.

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<sup>22</sup> That is, the enterprises that will cease, or have ceased, to be distinct.

<sup>23</sup> For this question, and any others requesting financial information, responses must be provided in GBP (£) and, where applicable, set out alongside the conversion exchange rate used to calculate the figure.

## **PART III – Supporting documents**

7. 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. If the offer is subject to the City Code, copies of the Offer Document and Listing Particulars should be provided. Where any of the documents responsive to this question are not in final form, the latest draft should be provided and the CMA should be kept informed of subsequent changes to the document, if any.
- (c) 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 7c**

Any documents responsive to this question should be included within Annex 2 to this Notice.

- (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.

### **Guidance Note to question 7d**

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 financial year is provided. Revenue should be stated exclusive of VAT and duty. Provide details of the currency if it is not GBP. Audited financial statements for the preceding financial year should be provided. If these are not available, the most recent management accounts produced for the board or senior management should be provided. The financial statements or management accounts should include the profit and loss account, balance sheet and, if available, cash flow statement for the target and, if applicable, the consolidated group. If the preceding financial year was shorter or longer than twelve months, please state the period in months.

Any documents responsive to this question should be included within Annex 2 to this Notice.

- (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.
8. 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 the shareholders' meeting 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);
    - (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 and/or market shares. 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; or



- (iii) assess or analyse the valuation of the target business for the purposes of the merger.

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.

The response to this question should be accompanied by a description of the methodology adopted to identify responsive documents.

### **Guidance Note to question 8**

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

Any documents responsive to this question should be included within Annex 2 to this Notice.

The description of the methodology adopted to identify documents responsive to this question should follow the principles set out in paragraphs 29 to 34 of *Guidance on requests for internal documents in merger investigations (CMA100)*.

9. 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 of the 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 of either merger party (whether prepared internally or by external consultants), and
  - (b) set out the competitive conditions, market conditions, market shares, competitors, or the merging parties' business plans in relation to the product(s) or service(s) where the merger parties have a horizontal overlap as identified in response to question 11 below.

The response to this question should be accompanied by a description of the methodology adopted to identify responsive documents.

#### **Guidance Note to question 9**

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 service(s), 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 or senior management). 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.

Any documents responsive to this question should be included within Annex 2 to this Notice. The description of the methodology adopted to identify documents responsive to this question should follow the principles set out in paragraphs 29 to 34 of *Guidance on requests for internal documents in merger investigations (CMA100)*.

## **PART IV – Competition assessment**

### ***Counterfactual***

10. If applicable, provide details of:
- (a) for the target firm, any discussions during the previous 12 months (formal or otherwise) which concern the sale of (all or part of) the target firm to any other potential acquirer(s) or a significant change in the corporate organisation of the target firm (eg the consideration of an Initial Public Offering (IPO));
  - (b) any plans within the last 12 months (by either merger party) to expand or to enter (either organically or through acquisition) into a market that is (or would be following the entry of that merger party) a Relevant Market(s) (as described in response to question 11 below)
  - (c) any planned (or otherwise expected) exit (by either merger party) of the Relevant Market(s) (as described in response to question 11 below); and
  - (d) any other reason(s) for the CMA to assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation (in this circumstance, the notifying parties should describe that counterfactual and explain why they consider that it should provide the basis for the assessment of the merger).

#### **Guidance Note to question 10**

See chapter 3 of the *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. To this end, 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 in the Merger Notice, 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, balance sheet, and profitability forecasts produced for the firm's board or senior management (including underlying assumptions);
- (d) details of actions the firm has taken to effectively utilise its working capital;
- (e) for the forecasts in c), documents showing that details of the main assumptions and explanations for all material changes;
- (f) details of current financial arrangements and any additional finance that would be required, include copy of communications with the firm's existing shareholders, lenders and other stakeholders regarding any refinancing and/or restructuring plans';
- (a) documents that show all avenues of operational and financial restructuring have been exhausted; and
- (b) 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.

Where notifying parties consider that a counterfactual other than the current or pre-existing competitive situation, this should also be reflected in responses to the questions in this Notice intended to inform the CMA's competitive assessment (ie 13 to 19).

### **Relevant Market(s)**

See chapter 9 of the *Merger Assessment Guidelines*.

11. 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 adjacent products/services.

#### Guidance Note to question 11

The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise. However, while market definition can sometimes be a useful tool, it is not an end in itself.

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. The latest version of the SIC codes can be found on the relevant pages at [www.gov.uk](http://www.gov.uk). If uncertain, all plausible SIC codes which may apply should be provided, with an explanation of why such SIC codes could be relevant in this case.

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).

Adjacent products/services are those which do not lie within the same market or within the same supply chain, but which are nonetheless related in some way; for example, because their products or services target similar customers or may be purchased alongside each other. 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 12 below.

12. Identify (and explain the rationale for identifying):
- (a) the narrowest relevant product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services)<sup>24</sup> the narrowest relevant product/service and geographic market(s) at each level of the vertical

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<sup>24</sup> 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). See Guidance Note to question 11.

supply chain and for each related product/service (the Narrowest Relevant Market(s)).

- (b) any other plausible relevant product/service and geographic market(s)<sup>25</sup> where the merger parties overlap, have a vertical relationship, or supply related products/services (together with the Narrowest Relevant Market(s), the Relevant Market(s)).

### Guidance Note to question 12

Notifying parties should explain (by reference, for example, to the market definition principles explained in chapter 9 of the *Merger Assessment Guidelines*) why they consider that each Relevant 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.

Where important parameters of competition vary locally, notifying parties should have regard to paragraphs 4.26 to 4.34 of the *Merger Assessment Guidelines*.<sup>26</sup> Where a merger involves a large number of local geographic markets, the Notifying parties should provide a description of the geographic catchment area within which the great majority of a store's custom is located (paragraph 9.15 of the *Merger Assessment Guidelines*).

### **Shares of supply**

13. Provide the shares of supply (by value and, where appropriate, volume) for the merger parties and each of their principal competitors for the Relevant Markets (see question 11).

### Guidance Note to question 13

See chapter 4 of the *Merger Assessment Guidelines*

<sup>25</sup> This may include, for example, the products/services and geographic area(s) in the Narrowest Relevant Market(s) together with other products/services and geographic areas that might be considered substitutes with such products/services and geographic area(s).

<sup>26</sup> 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.

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 Narrowest Relevant Market(s).

The CMA will also typically request the notifying parties to provide an estimate of each of the merger parties' share of supply in any other Relevant Market(s) in which they have a significant combined share of supply (eg more than 25%).

If the Narrowest Relevant Market is broader than the UK, the notifying parties should provide data based on shares of supply within the UK.

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).

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.

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 Relevant Market(s)) or volume (ie share of total units sold in the Relevant 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***

14. Provide a description of how competition works in each Relevant Market where the merger parties overlap. The description of such competitive dynamics in the Relevant 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;



- (b) information on the competitive constraint posed on the merger parties by the other principal suppliers in the Relevant Market(s);
- (c) an explanation of what drives customer choice for the overlap product/services. Where relevant, the response should include the identification of any separate customer groups, and an explanation of how the competitive dynamics differ across these customer groups, including, for example, when the merger parties are active in two-sided (or multi-sided) platforms (see chapter 4 of the *Merger Assessment Guidelines*);
- (d) a description of the parameters of competition (for example, price, quality, service, innovation) and their importance relative to one another;
- (e) 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);
- (f) 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
- (g) 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 14**

See chapter 4 of the *Merger Assessment Guidelines*

The extent and detail of information that the merger parties need to provide in response to this question for Satisfactory Notification will depend on the complexity of the merger and on the potential competition concerns on which the CMA is likely to 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 the *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.

When providing a description of the parameters of competition, terms such as 'quality' should be interpreted broadly. The *Merger Assessment Guidelines* provide examples of what might be considered to fall within the definition of 'quality' for these purposes (see paragraph 2.5 of the *Merger Assessment Guidelines*).

### **Supporting documentation on determination of pricing**

Where the merger parties' combined share of supply in a Relevant Market does not exceed 15%, notifying parties will not typically have to provide supporting documentation in relation to how pricing is determined in that Relevant 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 Relevant 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 Relevant 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 Relevant 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 Relevant 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 Relevant 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 Relevant 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 Relevant Market necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand<sup>27</sup> – consider that, in relation to a Relevant 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 Relevant 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 Relevant 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,<sup>28</sup> 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

15. For Relevant 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.

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<sup>27</sup> 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.

<sup>28</sup> 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.

## Guidance Note to question 15

### 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 depend on the circumstances of 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.

### ***Potential and dynamic competition***

16. In relation to the Relevant Market(s) in which one or both of the merger parties has given material consideration to entry or expansion in the last three years (as set out in response to question 10(b) above), describe:
- (a) the importance of innovation efforts and the intensity of investment in research and development (**R&D**);
  - (b) any trends in innovation/R&D and product/service development in the Relevant Market(s) in the recent past and foreseeable future;
  - (c) the principal innovation/R&D or product/service development projects of each of the merger parties in the last two years and the principal innovation/R&D or product/service development projects planned or otherwise expected over the next three years; and

- (d) whether the commercial strategy being pursued by the one of the merger parties was a material consideration in any strategic or investment decision taken by any other merger party in relation to innovation/R&D or product/service development in the last two years.
17. If applicable, provide internal documents setting out the planned investments on R&D, innovation, or product/service development undertaken by the merger party planning to expand and/or enter within the Relevant Market(s) covered by question 16 and/or what motivated these investment decisions.

## Guidance Note to questions 16 to 17

As set out at chapter 5 of the *Merger Assessment Guidelines*, potential competition is relevant where, absent the merger, entry or expansion by either or both merger parties may have resulted in new or increased competition between the merging parties.

Innovation can be an important non-price parameter of competition that the CMA will consider in its competitive assessment. Innovation will play a key role in some merger investigations (see paragraph 2.5 of the *Merger Assessment Guidelines*).

As set out at chapter 5 of the *Merger Assessment Guidelines*, in some sectors, an important aspect of how firms compete involves efforts or investments aimed at protecting or expanding profits in the future, including efforts that may give firms the ability to compete in entirely new areas (ie to enter), or the ability to compete more effectively in areas where they are already active (ie to expand).

Examples of such investments/innovations include developing new products or improving existing ones; introducing more efficient or disruptive business models; introducing new features that benefit customers but also increase customer stickiness; or sacrificing short-run margins (or even operating at a loss) in order to attract users to their platform and benefit from network efficiencies, to achieve a minimum efficient scale, to scale up a distribution network, or to establish a reputation.

Losses of dynamic competition are more relevant when the investment involved in entering or expanding in a Relevant Markets represent an important part of the competitive process, and this can be particularly impactful in industries where the process of entering markets takes place over a long period of time and involves significant costs or risks, or where key aspects of the competitive offering are set during the investment phase rather than flexed on an ongoing basis.

For Relevant Markets in which both merger parties already have a material presence, information relating to R&D, innovation, or product/service development may be responsive to question 14.

### **Vertical effects**

See chapter 7 of the *Merger Assessment Guidelines*.

18. 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 input or customer foreclosure) post-transaction, either by limiting the supply of key inputs or access to customers.

## Guidance Note to question 18

*Merger assessment guidelines, paragraphs 7.1-7.29*

As set out in the *Merger Assessment Guidelines*, when assessing the impact of vertical relationships, the CMA will consider whether three cumulative conditions are satisfied.

- (a) Would the merged entity have the ability to foreclose its rivals?
- (b) Would it have the incentive to actually do so, ie would it be profitable?
- (c) Would the foreclosure of these rivals substantially lessen overall competition?

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 Relevant 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 Relevant 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 Relevant Markets, any of the information indicated below or any other information may also be necessary for a Satisfactory Notification:

- (a) each of the merger parties' share of supply in each of the vertically related product(s) or service(s) (to the extent not already provided in response to question 13);
- (b) in circumstances where the CMA may wish to consider the possibility of input foreclosure, the proportion of rivals' costs that the input accounts for and a description of the importance of the input to the quality of the product/service;
- (c) in circumstances where the CMA may wish to consider the possibility of customer foreclosure, a description of alternative sales opportunities that rivals have other than the foreclosed customer(s);

- (d) 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;
- (e) 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;
- (f) 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);
- (g) if available, an estimate of cost-pass through;
- (h) 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
- (i) supporting documents of the information provided in response to the question above in relation to the products/services where the merger parties have a vertical relationship and the merger parties' business strategy post-Merger in relation to these products/services (if not already provided in question 9).<sup>29</sup>

### ***Conglomerate effects***

See chapter 7 of the *Merger Assessment Guidelines*.

19. If the merged entity would operate in 'focal' and 'adjacent' markets (that is, they supply products that are not substitutable but are, for example, complementary or usually purchased together) 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-merger, including through linking the sales of the two products in some way, thereby encouraging customers who want its product in the adjacent market to also purchase its product in the focal market, at the expense of rivals.

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<sup>29</sup> 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 9, for example, substantive emails to or from certain key individuals.



## Guidance Note to question 19

*Merger assessment guidelines, paragraphs 7.30-7.37*

As set out in the *Merger Assessment Guidelines* (paragraphs 7.32), when assessing the impact of conglomerate effects, the CMA will consider whether three cumulative conditions are satisfied.

- (a) Would the merged entity have the ability to foreclose its rivals?
- (b) Would it have the incentive to actually do so, ie would it be profitable?
- (c) Would the foreclosure of these rivals substantially lessen overall competition?

Where the merger parties are active in 'focal' and 'adjacent' Relevant Markets but their individual share does not exceed 30% in any of those markets, responses to this question can typically be limited to a description of any commercial and/or technical links between the two products or services.

Where the merger parties are active in 'focal' and 'adjacent' Relevant Markets and their individual share in any of those markets 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 13);
- (b) evidence on the feasibility of a combined offer, including the extent to which customers purchase the products/services together and/or from the same supplier;
- (c) evidence on the relevance of economies of scale, direct or indirect network effects, access to data, incentives to innovate in the focal market;
- (d) customer preferences for variety/range and one-stop shopping;
- (e) what rivals are also present in the focal and adjacent market and 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.
- (f) 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 the focal and adjacent markets. 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; and

(g) supporting documents of the information provided in response to the question above in relation to the products/services where the merger parties have a conglomerate relationship and the merger parties' business strategy post-Merger in relation to these products/services (if not already provided in question 9).<sup>30</sup>

### **Entry or expansion**

20. Entry and expansion that would have occurred irrespective of the merger should be considered as a constraint on the merged entity as part of the CMA's competitive assessment (See paragraph 4.16(a) of the *Merger Assessment Guidelines*). Any additional information (to the response to question 14(b)) that notifying parties wish to provide on entry or expansion that would have occurred irrespective of the merger can be provided in response to this question.
21. Entry and expansion triggered by the merger should be considered as a countervailing factor (See paragraph 4.16(b) of the *Merger Assessment Guidelines*) and the CMA will assess whether such entry and expansion would replace the constraint eliminated by the merger (See paragraphs 8.28 to 8.46 of the *Merger Assessment Guidelines*). If notifying parties wish the CMA to consider entry and expansion as a countervailing factor, they should provide information to support that entry and expansion would be likely, timely and sufficient.
22. In considering whether any potential rivals will enter will expand, either irrespective or in response to the merger, the CMA will consider the scale of any barriers to entry and/or expansion (paragraph 4.17 and 8.35 of the *Merger Assessment Guidelines*). If notifying parties wish entry and expansion to be considered in the competitive assessment or as a countervailing factor, they should provide information about the scale of barriers to entry and expansion.

### **Guidance Note to questions 20 to 22**

*Merger assessment guidelines, paragraphs 4.16 and 8.28-8.46*

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<sup>30</sup> 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 9, for example, substantive emails to or from certain key individuals.

In relation to question 20, information that notifying parties may wish to provide to substantiate the competitive constraint provided by firms that would enter or expand within the Relevant Market(s) irrespective of the merger includes:

- (a) details of the companies that the notifying parties believe are likely to entry or expand in the Relevant Markets irrespective of the merger;
- (b) an explanation of why such companies 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) evidence of any existing smaller suppliers that could readily expand; and
- (d) an explanation of why any such entry would be timely, likely and (together with other competitive constraints) sufficient to constrain the merged entity.

In relation to question 21, information that notifying parties may wish to provide if they wish the CMA to consider entry and expansion as a countervailing factor includes:

- (a) details of any companies that notifying parties believe are likely, post-merger, to enter or expand into any of the Relevant Markets in a sufficiently timely manner in response to the merger; and
- (b) why these companies could readily enter and expand in response to the merger and how such entry and expansion would sufficiently and timely mitigate or neutralise any competition lost as a result of the merger.

In relation to question 22, information that notifying parties may wish to provide in relation to the scale of barriers to entry and expansion includes:

- (a) how easy it is for customers to switch between competitors' products or services, with an estimate of any switching costs;
- (b) 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);
- (c) details of any other factors affecting entry, for example, planning restraints, technology or R&D requirements, availability of raw materials, length of contracts including, where possible, actual or estimated time and cost necessary to overcome these factors;

- (d) an assessment of the ease of exit from the market (including an estimate of to what extent costs are recoverable); and
- (e) details of any expansion, entry or exit in any of the Relevant Markets over the past five years.

### **Efficiencies and customer benefits**

23. 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 23**

See paragraphs 8.2 to 8.27 of the *Merger Assessment Guidelines* and paragraphs 4.1 to 4.14 of *Mergers: Exceptions to the duty to refer guidance (CMA64)*.

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 a detailed explanation of how the merger would generate such relevant customer benefits, including where possible (but not necessarily be limited to):

- (a) a quantification of any relevant customer benefits, specifying the timeframe required to achieve them;

- (b) an explanation of the extent to which the benefits generated by the merger are likely to be passed on to customers and final consumers;
- (c) 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
- (d) any documents prepared internally or by external consultants discussing the expected relevant customer benefits.

### Guidance Note to questions 20 to 23

Notifying parties who intend to submit information responsive to questions 23 to 26 are advised to do so during pre-notification in order to ensure that the CMA is able to fully verify the submissions made by the notifying parties within the 40 working-day statutory timeframe. Where the notifying parties submit information after the CMA has given notice of a Satisfactory Notification, the CMA may not be able to fully verify these claims during its Phase 1 investigation (and therefore may only be able to place limited weight on these submissions). 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

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

### Guidance Note to question 24

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 guidance* (CMA64)).

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**

25. Provide contact details for the relevant competitors and customers of the merger parties for (where applicable):
- (a) each of the Relevant Markets in which they overlap;
  - (b) each of the Relevant 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 Relevant Markets in which each of the merger parties provides related products/services.
26. 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 Relevant Markets.
27. 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 25 to 27**

#### **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 contact 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**

#### *Relevant Market(s) 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 Relevant Market where the merger parties overlap.

By way of guidance, in the majority of cases, this should include, for each party:<sup>31</sup>

- (a) contact details for at least the top five competitors (by volume or value) (including overseas companies/importers) for each Relevant 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 Relevant Market (including overseas customers if appropriate);
- (c) to the extent that a Relevant Market is characterised by bidding processes (see question 15), 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 Relevant Market. If this means a larger number of responsive contact details (that is, more than ten such entities for each Relevant Market), notifying parties are encouraged to contact the CMA to discuss in pre-notification.

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.

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<sup>31</sup> 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.

The CMA may – having regard to the specific circumstances of the case at hand (in particular, the extent to which contacts for five competitors and/or ten 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 customers/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.

*Relevant Market(s) in which there is a vertical relationship between the merging parties' activities*

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

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

By way of guidance, in the majority of cases, notifying parties should provide:<sup>32</sup>

- (a) at least the top five competitors (by value or volume) of the merger parties in each upstream and downstream Relevant Market (to the extent they have not been provided as competitor operating in the same Relevant Market of the merger parties); and

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<sup>32</sup> 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.



- (b) at least the top five customers (by value or volume) of the merger parties in each upstream and downstream Relevant 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 a competitor operating in the same Relevant 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 hand<sup>33</sup> – consider that, in relation to an upstream or downstream Relevant 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.

*Relevant Market(s) in which conglomerate effects could arise*

Where the merger parties do not have common customers in related Relevant Market(s) or where their individual shares of supply do not exceed 30% in any of the related Relevant 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 Relevant Market(s) and their individual share in any such related Relevant Markets 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 Relevant Markets or where their individual shares of supply do not exceed 30% in any of the related Relevant Markets.

By way of guidance, in the majority of cases, merger parties should provide:<sup>34</sup>

- (a) at least the top five competitors (by volume or value) of the merger parties in each related Relevant Market (to the extent they have not been provided as a competitor operating in the same Relevant Market of the merger parties), and

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<sup>33</sup> Including, for example, if five competitor or customer contact details would not allow for an adequate market test.

<sup>34</sup> 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.

(b) at least the top five customers (by value or volume) of the merger parties in each related Relevant Market (to the extent they have not been provided as a competitor operating in the same Relevant 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. 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 hand<sup>35</sup> – 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

### **New entrants**

The merger parties should provide contact details for each company identified in response to question 21.

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<sup>35</sup> Including, for example, if five competitor or customer contact details would not allow for an adequate market test.

## **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:*

In addition to the above Declaration, the Declaration below should also be signed by a duly authorised person or on behalf of each of the notifying parties 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 on behalf of the merger parties respectively specified in response to question 1(b) of this Notice. I hereby specify the address of the representatives named in reply to question 1(b) as an address at which [name of notifying party] will accept service or take receipt of documents in accordance with section 126(4) of the Enterprise Act 2002.*

*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.<sup>36</sup> 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).<sup>37</sup>

- 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 undertaking 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.

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<sup>36</sup> Section 99(5)(a) of the Act.

<sup>37</sup> Section 100 of the Act.