

COMPETITION AND MARKETS AUTHORITY

PHASE 2 REMEDIES FORM FOR MERGER PARTIES' REMEDY PROPOSAL

Notes

Guidance on the remedies process during the Competition and Markets Authority's (CMA) Phase 2 investigation is set out in 'Mergers: Guidance on the CMA's jurisdiction and procedure' (CMA2); and guidance on how the CMA assesses and determines remedies in a Phase 2 investigation in 'Merger remedies' (CMA87). Both guidance documents are available on the [CMA website](#).

This form (the **Phase 2 Remedies Form**) specifies the information and documents to be submitted by the merger parties for the purpose of proposing remedies to remedy, mitigate or prevent any substantial lessening of competition (SLC) should the CMA decide that the merger may be expected to result in an SLC (or SLCs) within any market or markets in the United Kingdom for goods or services.

Where the CMA Inquiry Group has provisionally identified an SLC or SLCs in its interim report, merger parties should submit a completed Phase 2 Remedies Form within 14 calendar days following the publication of the interim report. If the merger parties wish to engage with the CMA on possible remedies prior to the interim report, which the CMA encourages them to do, they can submit a draft version of the Phase 2 Remedies Form to the CMA.¹

The information requested in the Phase 2 Remedies Form allows the CMA to assess whether the remedy (or remedies) proposed by the merger parties (the **Remedy Proposal**) (or a modified version of it) provides a comprehensive solution to the provisional SLC (or SLCs). A non-confidential summary of the Remedy Proposal will be published as part of the CMA's Invitation to Comment on Remedies to enable the CMA to consult publicly on the Remedy Proposal.

While the CMA is not limited in its consideration of the appropriate remedy to the merger parties' proposals, in anticipated mergers the CMA will not typically give detailed consideration to any remedies that the merger parties have indicated that they are not willing to implement (eg where the merger parties intend to abandon the merger in the event that their remedy proposal is not accepted and the merger is not

¹ See also Chapter 11 of CMA2, paragraph 11.24.

cleared unconditionally). Merger parties are free to submit more than one remedy proposal, for example by submitting more than one Phase 2 Remedies Form.

Where merger parties do not submit a Phase 2 Remedies Form, the CMA will issue an Invitation to Comment on Remedies based on the information available to the CMA at that time. Given the specification of remedies other than prohibition or divestiture of a standalone business often requires detailed knowledge of the operation of the relevant business, it is unlikely that the CMA could identify and develop such a remedy without significant input from the merger parties. Therefore, where the merger parties have not made a remedy proposal, the CMA's assessment is most likely, in practice, to focus on the prohibition of the merger and/or divestiture of a standalone business.

This Phase 2 Remedies Form focuses on structural remedies. If the merger parties wish to offer a behavioural remedy, they should provide answers to questions 1 to 3, as well as any other questions that are relevant, of this Phase 2 Remedies Form. Merger parties should also provide a proposed timetable for implementation of the remedy and any potential barriers to such implementation.

The level of information required by the CMA will vary according to the type and structure of remedy (or remedies) proposed. This Phase 2 Remedies Form refers to a 'business' to be divested. This is because the CMA generally prefers divestiture of an existing business that can compete effectively on a standalone basis independently of the merger parties over divestiture of part of a business or a collection of assets. Nevertheless, the Phase 2 Remedies Form can be used when the proposed divestiture comprises part of a business. Similarly, the Phase 2 Remedies Form can be used where the Remedy Proposal involves divestment of multiple businesses: a single Remedies Form should be submitted for the entire Remedy Proposal, but distinctions between the individual divestment packages making up the Remedy Proposal should be highlighted where relevant. In such circumstances, merger parties are encouraged to discuss with the CMA case team the likely information requirements of the CMA in relation to each divestment package and any inter-dependencies between them.

Merger parties are not obliged to complete all aspects of this Phase 2 Remedies Form but doing so as far as possible and relevant will enhance the CMA's ability to assess, and consult on, effectively the Remedy Proposal. If merger parties consider that any particular information requested by this Phase 2 Remedies Form may not be necessary or relevant for the CMA's assessment, they should explain why this is the case.

For any business or business unit you propose to divest, merger parties should include the following information under the following sections:

1. **Section A:** Description of the Remedy Proposal and how it will address the provisional SLC (or SLCs)
2. **Section B:** Information on the business to be divested
3. **Section C:** Assets excluded from the business to be divested and continuing links to the merger parties
4. **Section D:** Divestiture process and purchasers
5. **Section E:** Relevant Customer Benefits

Section A: Description of the Remedy Proposal and how it will address the provisional SLC (or SLCs)

1. Provide:
 - a. a general description of the Remedy Proposal; and
 - b. the details of any conditions for the implementation of the Remedy Proposal.²
2. Describe how the Remedy Proposal provides a comprehensive solution to the provisional SLC(s) identified by the CMA or any adverse effect which has resulted, or may be expected to result, from it. Provide your response with reference to the following dimensions of a remedy's effectiveness as set out in the CMA's guidance on merger remedies:³
 - a. impact on the SLC(s) and resulting adverse effects, bearing in mind the CMA's duty to 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it',⁴
 - b. appropriate duration and timing;
 - c. practicality in terms of its effective implementation, monitoring and enforcement; and
 - d. acceptable risk profile.
3. Provide a **non-confidential summary** of the nature and scope of the Remedy Proposal. This non-confidential summary should summarise the information set out in sections B to E below. The CMA will use this non-confidential summary in order to consult on the Remedy Proposal with third parties (including if necessary, potential purchasers).

Section B: Information on the business to be divested

This section sets out information that should be provided in relation to the current operation of the business to be divested. For divestments that are currently divisions but not separate entities, the information provided should be at the divisional level,

² For example, details of any regulatory approvals or third-party consents, which should be conditions precedent to completion of the divestiture transaction.

³ CMA87, paragraph 3.5.

⁴ Sections 35(4) and 36(3) of the Enterprise Act 2002

but merger parties are encouraged to discuss with the CMA how best to do this in order to ensure the right balance of information between questions 4 to 11 and questions 12 to 18.

4. Describe the business to be divested generally, including:
 - a. the entity(ies) belonging to it (and which form a part of the divestment);
 - b. its registered place of business and head office;
 - c. its other locations for production or provisions of services;
 - d. how, in broad terms, it operates and is managed;
 - e. an overview of its organisational structure; and
 - f. the revenues of the business being divested compared to the consolidated revenues of the divesting merger party.
5. List and describe the products or services supplied by the business to be divested and any new products or services planned.
6. Describe the proposed transaction structure, including whether a disposal of shares or assets is proposed. If applicable, describe whether assets will need to be carved out from an existing business (or businesses).
7. Provide details⁵ of the key assets and liabilities of the business to be divested including:
 - a. staff, including those employees who are critical for the operation of the business to be divested, describing their functions;⁶
 - b. key sites and facilities, including, if applicable, headquarters, production facilities, research and development and/or product development or testing facilities;
 - c. key intellectual property rights and licences, including third-party software licences;

⁵ In some instances the information in this question can be submitted via an annual report or management report provided that the current position has not materially changed from that stated in the report. If so, please provide cross-references indicating where in the report(s) the information responsive to this question can be found.

⁶ Submit an organisational chart identifying the number of personnel currently working in each of the functions of the business to be divested and a list of those employees who are indispensable for the operation of the business to be divested, describing their functions.

- d. key intangible assets, including brands;
- e. leases and freehold property (for leasehold properties, provide the annual leasing costs, the term remaining on the lease and the details of any change of ownership clauses);
- f. proprietary IT software and systems;
- g. working capital and other such assets or liabilities;
- h. cash;
- i. debt and other financial liabilities;
- j. any debt or leasing obligations that will pass with the business to be divested; and
- k. other liabilities not covered above (for example, pensions, environmental liabilities).

Highlight if any of the above assets come from more than one merger party (that is, whether a 'mix-and-match' divestiture is proposed).⁷

8. Provide a customer list for the business to be divested with revenue (in GBP) generated in the most recent financial year, and describe when any key customer contracts are due for renewal.
9. List and describe key supplier contracts, including setting out when they are due for renewal.
10. Describe what third-party consents or approvals will be required (eg from customers, suppliers, landlords, regulators).
11. Provide summary (and if necessary, pro forma) financial statements for the business to be divested at profit and loss level for each of the two most recent financial years, the current financial year and a forecast period of two financial years. The table below provides a guide to how you may wish to present the information. For the current financial year, you should, as necessary, split the information between actual and forecast information. Where the provisional SLC (or SLCs) relates to more than one product type or market, you should also provide a breakdown by product type/market.

GBP	Historical	Historical	Current	Forecast	Forecast
-----	------------	------------	---------	----------	----------

⁷ See also CMA87, paragraph 5.16.

	FY-2	FY-1	FY	FY+1	FY+2
Revenue					
Gross Profit					
EBITDA					
EBIT					
Source of data:					

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

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

12. Where relevant, describe any of the operational or management functions which are not proposed to form part of the business to be divested but which are currently necessary for the functioning of the business. This description should include such functions as:

- a. research and development;
- b. production;
- c. marketing and sales;
- d. logistics;
- e. after-sales activities;
- f. relations with customers;
- g. relations with suppliers; and
- h. the maintenance and provision of IT systems and various support functions (for example, payroll, general finance, accounting and regulatory compliance).

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

13. Set out what transitional service arrangements (and if applicable, reverse transitional service arrangements)⁸ you would include as part of the divestment with regard to the functions referred to in Question 12 in the event they are required by the purchaser. Please specify your proposed key terms and duration of any such arrangements.
14. Where relevant, describe in detail (including terms and duration) any continuing links between the business to be divested and other businesses controlled by the merger parties, such as:
- a. supply, production, distribution, service or other contracts;
 - b. shared tangible or intangible assets;
 - c. shared or seconded personnel;
 - d. shared IT systems or other systems;
 - e. shared customers;
 - f. shared suppliers; and
 - g. administrative and other support functions.
15. For each of the links referred to in Question 14 describe any changes envisaged under the Remedy Proposal and the expected timing of these changes.
16. Describe the customers or groups of customers which will not form a part of the proposed business to be divested but which are currently customers of the business to be divested. Provide the total turnover generated by these customers (in GBP and as a percentage of the total turnover of the business to be divested).
17. Describe any other areas where the business to be divested differs from the nature and scope of the business as currently operated.
18. Where carve-out arrangements are likely to impact on the operation of the business to be divested, describe any arrangements envisaged for carving out or reconfiguring the business to be divested from its existing form.

⁸ Transitional service arrangements can refer to the supply of goods and/or services from the seller (ie the merger party) to the divestment business following completion of the sale. Reverse transitional service arrangements can refer to the supply of goods and/or services from the divestment business to the seller (ie the merger party).

Section D: Divestiture process and purchasers

The purpose of this section is to allow you to explain to the CMA how the business will be divested to a suitable purchaser in an acceptable timeframe. The more information that you are able to provide when completing this part of the Phase 2 Remedies Form, the more the CMA is likely to be able to have confidence that a suitable purchaser will be found.

19. Provide a proposed timetable for divestment setting out key milestones until legal completion of the transaction envisaged under the Remedy Proposal, including preparation and implementation of any separation process; preparation of documentation; and filtering of potential purchasers.⁹
20. State whether there are likely to be significant due diligence, statutory or regulatory issues that may delay the divestment process. Set out the expected timeframes for resolving each of the following (to the extent applicable): any third-party rights, obligations, consents (including the transfer of leases), licences and regulatory approvals.
21. Set out whether you consider the appointment of a monitoring trustee would be appropriate in this case. If you do not consider that a monitoring trustee is required in this case, please provide reasons for this.
22. Provide details of the measures which will be put in place to preserve the viability and competitive capabilities of the business being divested for the duration of the divestiture process, eg proposals for the retention of key staff.
23. Suitable purchasers. Please answer either part (a) or (b):
 - a. If you have already identified a potential purchaser, explain why you consider this buyer would meet the CMA's purchaser suitability criteria.¹⁰
 - b. If you have not yet identified a potential purchaser:
 - i. Explain the reasons why, in your view, the business will be acquired by a suitable purchaser in the timeframe proposed in Question 19.
 - ii. Provide a list of likely purchasers for the business to be divested highlighting those potential purchasers whom you have already approached with a view to a sale and summarising the strength

⁹ See also CMA87, paragraphs 5.40-5.42.

¹⁰ See also CMA87, paragraphs 5.20-5.27.

of their interest and their capability to complete a transaction within the timescale proposed.

- iii. Where you have already approached potential purchasers, submit any expressions of interest, informal or formal offers or any draft heads of terms.

24. When considering the suitability of potential purchasers, are there any other criteria which the CMA should have regard to in addition to the CMA's normal purchaser suitability criteria set out in CMA87?¹¹

25. In instances of multiple businesses to be divested, state whether and why these are intended to be sold to several buyers or to one. If to several, explain whether you intend to 'package' some of the businesses to be divested together in order to achieve a sale.

Section E: Relevant Customer Benefits

26. Describe any relevant customer benefits (**RCBs**), within the meaning of the Enterprise Act 2002,¹² which you consider will be preserved by the Remedy Proposal.¹³

27. If you consider that the RCBs would not be preserved by an alternative remedy, please explain why.

28. The costs of a remedy may arise in various forms (see CMA87, paragraph 3.10). Are there any relevant costs the CMA should have regard to in considering possible remedies?

¹¹ See also CMA87, paragraphs 5.20-5.27.

¹² Sections 35(5) and 36(4) of the Enterprise Act 2002.

¹³ See CMA87, paragraphs 3.14-3.24.