

# Draft revised CMA rules of procedure for merger, market and special reference groups (CMA17)

Consultation document

21 March 2024

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# 1. Introduction

- 1.1 Where merger and market investigation references are made to the chair of the Competition and Markets Authority (**CMA**)<sup>1</sup> or references or appeals are made to the CMA under various regulatory statutes, the chair of the CMA must constitute a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the **ERRA**).<sup>2</sup>
- 1.2 The CMA Board is required to make rules of procedure for merger reference groups, market reference groups and special reference groups under Schedule 4 to the ERRA.<sup>3</sup>
- 1.3 As set out more fully below, the purpose of this document is to consult on changes the CMA proposes to make to the existing [CMA rules of procedure for merger, market and special reference groups \(CMA17\)](#) (the **Current Rules**).
- 1.4 The draft revised text of the Current Rules issued alongside this consultation document is referred to as the '**Draft Revised Rules**'.
- 1.5 The amendments discussed in this consultation document will not require any new or amended legislation. The amendments reflect proposed updates to the phase 2 merger process, and other general amendments as highlighted in this consultation document.

## Background and rationale

- 1.6 The CMA has set out in published guidance general information for the business and legal communities and other interested parties on its practices and processes in connection with its powers under the Enterprise Act 2002 (the **Act**) to investigate mergers.<sup>4</sup> The CMA guidance document 'Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2revised)' (the **Current Guidance**) sets out the CMA's procedures in operating the merger control regime set out in the Act.<sup>5</sup>
- 1.7 On 29 June 2023, the CMA issued a call for information inviting interested parties to provide their views on whether there are aspects of the phase 2

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<sup>1</sup> The CMA is the UK's economy-wide competition and consumer authority and works to promote competition for the benefit of consumers, both within and outside the UK. Its aim is to make markets work well for consumers, businesses and the economy as a whole.

<sup>2</sup> [ERRA](#), Schedule 4, paragraph 36.

<sup>3</sup> [ERRA](#), Schedule 4, paragraph 51.

<sup>4</sup> This guidance forms part of the advice and information published by the CMA under section 106 of the Act.

<sup>5</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised) (as amended on 4 January 2022).

merger process that could work better for all parties who may be interested in, or affected by, the merger – including consumers and small businesses.<sup>6</sup>

- 1.8 Following an extensive consultation exercise, the CMA identified a number of ways in which the quality of engagement between the CMA and the businesses involved in phase 2 merger investigations, including merger parties, third parties and customers, could be enhanced. The nature of, and the reasons for, these proposed amendments were set out in a consultation document on 20 November 2023, and included updates to the phase 2 merger process and other general amendments.<sup>7</sup> A draft revised text of the Current Guidance was issued alongside the consultation document and is referred to as the '**Draft Revised Guidance**'.
- 1.9 The consultation closed on 8 January 2024, and the CMA is currently deciding whether to make the changes proposed in the Draft Revised Guidance (and the Draft Revised Merger Notice and Draft Revised Template Waiver) and whether any further changes are necessary.
- 1.10 The changes the CMA proposes to make to the Current Rules are not substantive, but instead are consequential updates and amendments in light of the CMA's proposed changes to the Current Guidance. The updates proposed to the Current Rules do not capture any changes that will be required in the event that proposed legislation passes into law.<sup>8</sup>

## **Scope of the consultation**

- 1.11 This consultation seeks the views of interested parties on the proposed amendments contained in the Draft Revised Rules.
- 1.12 This consultation is aimed at those who have an interest in the CMA's merger processes. In particular, it may be of interest to businesses and their legal and other advisers.

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<sup>6</sup> See: [Phase 2 merger investigations: call for information and updates to guidance \(CMA2\) - GOV.UK \(www.gov.uk\)](#).

<sup>7</sup> For further information see: [Changes to CMA mergers guidance \(CMA2\) - GOV.UK \(www.gov.uk\)](#).

<sup>8</sup> The [Digital Markets, Competition and Consumers Bill \(the DMCC Bill\)](#). Subject to the DMCC Bill receiving Royal Assent, the CMA will consequently update (and consult on the updates) to both the Draft Revised Rules and Draft Revised Guidance.

## 2. Proposed changes to the Current Rules

- 2.1 The section includes a high-level outline of the CMA's proposed changes to the Current Rules.

### Amendments further to the consultation on the Current Guidance

- 2.2 To streamline the starting point for the phase 2 merger investigation, the CMA is proposing to abolish the issues statement and instead use the phase 1 decision as the starting point to identify the key issues that the phase 2 inquiry will consider. **Paragraph 7.2(e) and accompanying footnote, and paragraph 7.2(f) of the Draft Revised Rules reflects the CMA's proposed change.**
- 2.3 The CMA is proposing to publish an interim report – generally, at an earlier stage in the phase 2 merger inquiry than the provisional findings are currently typically published. The interim report will provide a clear and detailed articulation of the Inquiry Group's provisional assessment on first, whether or not a relevant merger situation has been (or will be) created and second, if so, whether or not the relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition (an **SLC**), and a description of the evidence upon which the CMA's position is based. As is currently the case with the provisional findings, the provisional assessment set out in the interim report will be sufficiently developed to satisfy the CMA's statutory duty to consult on its proposed decision.<sup>9</sup> **Footnote to paragraph 7.2(g) of the Draft Revised Rules reflects the CMA's proposed change.**
- 2.4 The CMA is proposing to revise its phase 2 process to encourage earlier *without prejudice* remedy discussions between the CMA and merger parties and, wherever practicable, base those discussions on detailed remedy proposals. Under the existing phase 2 mergers process, where the Inquiry Group reaches a provisional finding of an SLC, at the same time as publishing its provisional findings, the CMA publishes its notice of possible remedies which offers a starting point for discussion with the merger parties and other parties on possible remedies to address the SLC. As part of the proposed revised phase 2 process on remedies, where the Inquiry Group provisionally identifies an SLC in the interim report, in order to propose possible remedies for the Inquiry Group's consideration, merger parties should submit a Phase 2 Remedies Form as soon as practicable but usually no more than 14 calendar days from the publication of the interim report. Following submission by the

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<sup>9</sup> Section 104 of the Act.

merger parties of the Phase 2 Remedies Form, the CMA will publish an 'Invitation to Comment on Remedies' in order to consult on possible remedies to remedy the SLC (or SLCs) that the CMA has provisionally identified.

**Footnote to paragraph 12.3 of the Draft Revised Rules reflects the CMA's proposed change.**

- 2.5 For more details, the CMA's proposed changes are set out in chapters 10 to 12 of the Draft Revised Guidance.<sup>10</sup>

## **Other amendments**

- 2.6 The Appendix to the Current Rules will be updated so that the list of legislation under which a 'special reference group' is constituted and the list of procedural rules for other CMA groups is up to date. **Paragraphs 2 and 4 of the Appendix to the Draft Revised Rules reflects the CMA's proposed changes.**

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<sup>10</sup> See: [Changes to CMA mergers guidance \(CMA2\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/changes-to-cma-mergers-guidance-cma2).

### **3. Questions for consideration**

In responding to these questions, please give your reasons and any relevant supporting information or evidence.

#### **Draft Revised Rules**

- 3.1 Overall, are the Draft Revised Rules sufficiently clear and helpful?
- 3.2 What, if any, aspects of the Draft Revised Rules do you consider need further clarification or explanation, and why? In responding, please specify which rule (and, where appropriate, the issue) each of your comments relate to.
- 3.3 Are there any other amendments which you consider ought to be made to the Current Rules?



## 4. Consultation process

### How to respond

- 4.1 The CMA encourages parties to respond to the consultation in writing (by email or letter) using the contact details provided in paragraph 4.5 below.
- 4.2 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 4.3 In pursuance of our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our webpages which omits that material and explain why you regard it as sensitive at the same time (see further paragraphs 4.7 to 4.13 below).

### Duration

- 4.4 The consultation will run from 21 March 2024 to 11 April 2024.

### Contact details

- 4.5 Responses should be submitted (by email or letter) by no later than **17:00 on Thursday 11 April 2024** and should be sent to:  
[mergers.consultation.mar24@cma.gov.uk](mailto:mergers.consultation.mar24@cma.gov.uk).

### Compliance with government consultation principles

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

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

- 4.7 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation.

This legislation is the UK General Data Protection Regulation (GDPR)<sup>11</sup> and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.

- 4.8 We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account and to ensure that we properly consult on the Draft Revised Rules, before it is finalised and issued.
- 4.9 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).
- 4.10 Our use of all information and personal data that we receive is also subject to Part 9 of the Act. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 4.11 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration any representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Act.
- 4.12 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

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<sup>11</sup> The UK GDPR refers to the EU GDPR ((EU) 2016/679, which has been adopted into UK law by the EU Withdrawal Act 2018, as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

4.13 Further details of the CMA's approach can be found in the Transparency and Disclosure: Statement of the CMA's Policy and Approach (CMA6).<sup>12</sup>

### **After the consultation**

4.14 After the consultation, the CMA will decide whether to make the changes proposed in the Draft Revised Rules, and whether any further changes are necessary.

4.15 The CMA will publish the final version of the Draft Revised Rules on its webpages at <http://www.gov.uk/cma>. The CMA will also publish a summary of the responses received during the consultation. These documents will be available on CMA webpages.

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<sup>12</sup> See: [Transparency and disclosure - statement of CMA's policy and approach: CMA6](#).