

Transparency and Disclosure:

Statement of the CMA's Policy
and Approach

Consultation document

CMA6con

24 May 2024



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1. Introduction and Background

- 1.1 The CMA is committed to being open and transparent about the work it does and how it engages with those directly involved in or affected by its work, while seeking to give appropriate protection to the confidentiality of information it obtains in the exercise of its functions.
- 1.2 The guidance document CMA6 *Transparency and disclosure: Statement of the CMA's Policy and Approach* ('the Current CMA6') sets out the CMA's policy and approach to transparency and information disclosure across its tools. It was published in 2014, when the CMA's powers vested. The Current CMA6 is supplemented by more detailed guidance on transparency and disclosure in tool specific guidance.¹
- 1.3 The CMA has reviewed whether the Current CMA6 should be updated both in view of the Digital Markets, Competition and Consumers Act 2024 (DMCC24) and changes in other legislation and CMA practice since 2014.
- 1.4 The CMA has concluded that the general approach to transparency and disclosure in the Current CMA6 remains fit for purpose.
- 1.5 However, parts of the Current CMA6 require updating to reflect developments in CMA practice, as well as legislative developments since 2014, and in particular the DMCC24.
- 1.6 The CMA has therefore prepared the draft *CMA6 Transparency and Disclosure: Statement of the CMA's Policy and Approach* (the Draft CMA6), which is the subject of this consultation.

The Draft CMA6

- 1.7 New text in the Draft CMA6 (in comparison to the Current CMA6) largely relates to CMA functions introduced by the DMCC24, such as the new consumer direct enforcement powers,² as well as the new motor-fuels information gathering function.³ The Draft CMA6 also contains changes made to reflect current CMA practice as well as to take account of information law

¹ For example, CMA8 *Guidance on the CMA's Investigation Procedures in Competition Act 1998 Cases* discusses transparency and disclosure in CA98 case in more detail: see, for example paragraph 11.21 of CMA8.

² See Chapter 4 of Part 3 of the DMCC24.

³ See sections 310 to 317 of the DMCC24.

developments (for example, the Current CMA6 refers to now repealed data protection legislation).

- 1.8 As with the Current CMA6, the Draft CMA6 is supplemented by more detailed guidance on transparency and disclosure in tool-specific guidance.⁴ The Draft CMA6 in some places refers to guidance which the CMA is aiming to publish in the near future and on which the CMA expects to consult (for example, guidance on the new CMA direct enforcement model for consumer law that will be created by the DMCC24, and updated guidance on the CMA's markets functions).
- 1.9 The draft guidance *Digital Markets Competition Regime: Guidance on the CMA's Approach* ('the DMU Guidance') which is also the subject of consultation, contains specific wording on the CMA's approach to transparency and disclosure in respect of the CMA's digital markets competition regime functions under Part 1 of the DMCC24. The DMU Guidance also refers to the Draft CMA6.

Investigative Assistance Guidance

- 1.10 The main new addition in the Draft CMA6 (in comparison to the Current CMA6) is the Investigative Assistance Guidance ('IA Guidance') at para. 7.29 – 7.57. The DMCC24 gives the CMA the power for the first time to conduct investigative steps on behalf of other international authorities (referred to as 'investigative assistance').⁵ This power will apply across the CMA's competition, consumer protection and digital markets competition regime functions.
- 1.11 The CMA is required under the DMCC24 to prepare and publish guidance on how it will exercise these new powers.⁶ The IA Guidance needs Secretary of

⁴ See paragraph 1 above.

⁵ Those enforcers who have investigatory powers for consumer protection purposes under Schedule 5 of the Consumer Rights Act 2015 (CRA15) may also provide investigative assistance to overseas enforcers by using those powers in connection with infringements of overseas laws which correspond to or are similar to domestic consumer protections laws. The IA Guidance is applicable to those enforcers to the extent they provide investigative assistance. For simplicity, references to the CMA in the IA Guidance should be taken to include those enforcers who have investigatory powers for consumer protection purposes under Schedule 5 of the CRA15, unless the context requires otherwise. Any statements in the IA Guidance that relate purely to the CMA's own policy, practice, or experience will not apply to other enforcers. See paragraph 7.32 of the Draft CMA6 as well as section 318(2) DMCC24 and Schedule 5 of the Consumer Rights Act 2015 for more information about which UK enforcers can provide overseas investigative assistance under the DMCC24.

⁶ Section 323(1) of the DMCC24.

State approval in order to be published.⁷ In contrast, the remainder of CMA6 does not require Secretary of State approval.

- 1.12 The CMA must have regard to the Investigative Assistance Guidance when exercising its overseas investigative assistance functions under Part 5 of the DMCC24.⁸

Track changes text

- 1.13 For ease of reference, the CMA has also provided a track-changes version of the Draft CMA6 showing the changes made in comparison to the Current CMA6.

⁷ Section 323(3) of the DMCC24.

⁸ See section 323(5) of the DMCC24. That subsection also requires UK enforcers other than the CMA providing investigative assistance to overseas public authorities under those functions to have regard to the IA Guidance. And see also footnote 3 above.

2. Scope of the consultation

- 2.1 This consultation seeks the views of interested parties on the Draft CMA6, including the Draft IA Guidance, which is published separately on the consultation page. As noted above at paragraph 1.13 above, it is accompanied by a track changes version of the Draft CMA6 showing the changes made in comparison to the Current CMA6.
- 2.2 After the consultation initiated by this consultation document, the CMA will prepare the final version of the IA Guidance for submission to the Secretary of State, taking into account the feedback received as part of this consultation.
- 2.3 The final version of CMA6, including the IA Guidance approved by the Secretary of State, will take effect from the date of its publication.

3. Consultation process

How to respond

- 3.1 The CMA is publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments on the Draft CMA6.
- 3.2 The CMA encourages you to respond to the consultation in writing (by email) using the contact details provided in paragraph 3.5 below. Please provide supporting evidence or examples for your views where possible.
- 3.3 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.
- 3.4 In accordance with the CMA's policy of openness and transparency, the CMA will publish non-confidential versions of responses on its webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on the CMA's webpages which omits that material and which explains why you regard it as sensitive.

Duration

- 3.5 The consultation will run from four weeks. Responses should be submitted by email by 5pm on 24 June 2024 and should be sent to: cma6draft@cma.gov.uk

Compliance with government consultation principles

- 3.6 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 the CMA will use information and personal data that is supplied in consultation responses

- 3.7 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 General Data Protection Regulation 2016 (GDPR) and

10 the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.

- 3.8 The CMA is processing this personal data for the purposes of its work. This processing is necessary for the performance of its functions and is carried out in the public interest, in order to take consultation responses into account.
- 3.9 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 the CMA retains personal data, see the CMA's Privacy Notice.
- 3.10 The CMA's use of all information and personal data that it receives is also subject to Part 9 of the Enterprise Act 2002 (EA02). The CMA may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, the CMA 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 the CMA's opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 3.11 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, if you have made any representations about the confidentiality of any information contained in your response, the CMA will take such representations into consideration. The CMA will also be mindful of its responsibilities under the data protection legislation referred to above and under Part 9 of the EA02.
- 3.12 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

Next steps

- 3.13 After the consultation and consideration of the responses received, the CMA will prepare a final version of IA Guidance for submission to the Secretary of State.
- 3.14 The CMA will publish the final CMA6, including the version of IA Guidance approved by the Secretary of State, on its webpages at

<http://www.gov.uk/cma>. The CMA will also publish non-confidential versions of the responses received during the consultation. These documents will be available on the CMA's webpages and respondents will be notified when they are available.