

[Draft] Markets Guidance

[Draft] Markets Procedural Guidance

5 November 2024

© Crown copyright 2024

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Contents

1. Preface	4
2. Introduction	6
Scope of this guidance	6
Who does what?	6
The CMA	6
The Secretary of State	6
Sectoral regulators	7
Decision-making by the CMA in markets cases	7
3. Market studies	10
Overview	10
Market study notice and launch	10
Procedure for a market study	11
Investigatory powers for market studies	13
Time limits for market study report	14
Market study outcomes	15
No material competition or consumer concerns	15
Action taken for the benefit of consumers	16
Recommendations to business	16
Recommendations to government	17
Action to investigate and enforce consumer or competition law	18
Market investigation reference	18
4. Market investigation references	19
The CMA's power to make references	19
Types of market investigation reference	20
Cross market references	20
Cases raising public interest considerations	21
Limitations on the CMA's power to make references	24
Ability to make a reference after a previous decision not to do so	24
Further considerations when making references	24
Undertakings in lieu of a reference	25
Procedure for making market investigation references	26
Terms of Reference	27
CMA Board steer	28
5. Market investigations	29
Overview	29
Conduct of a market investigation	29
Appointment of inquiry groups	30
The AEC test	31
Statutory obligations and rules for inquiry groups	31
Undertakings in lieu of a report	32

Timescales.....	33
Processes and procedures during a market investigation.....	35
The main stages of an investigation	35
6. Market reviews.....	40
7. Markets remedies	42
Time limits and procedure.....	43
Implementation trials.....	45
Scope of the CMA's order-making powers.....	45
Interim measures	45
Sunset clauses and reviews of remedies	46

1. Preface

- 1.1 The Competition and Markets Authority (the CMA) helps people, businesses, and the UK economy by promoting competitive markets and tackling unfair behaviour. As part of this, the CMA has powers to undertake market studies and investigations which are commonly referred to as its “markets function” or the “markets regime”.^{1 2} Through this regime, the CMA monitors and may investigate markets within the United Kingdom with a view to meeting its duty to promote competition for the benefit of consumers.³
- 1.2 The protection and promotion of consumers’ interests is central to the CMA’s work, including in performing its markets functions. When markets are working well, firms compete to win business through offering better value for money for their products and services, and by developing new products and services in response to customer demand. The process of competition encourages innovation and this ensures a greater range of choice. Innovation can often be an important parameter of competition impacting the development and growth of markets over the longer-term. Markets that work well should drive better outcomes for customers, and ultimately consumers. The way the CMA exercises its market function and seeks to protect and promote consumers’ interests is described in further detail in paragraphs 2.1 to 2.34 of the Markets Substantive Assessment Guidance (see also immediately below).
- 1.3 This guidance (Markets Procedural Guidance) sets out the procedures that the CMA follows in carrying out its markets function, in order to fulfil its duty in an efficient manner⁴, while ensuring that the rights of market participants are fully respected. The CMA has also prepared guidance covering how it will (1) approach making substantive assessments (see Markets Substantive Assessment Guidance); and (2) exercise its powers to intervene in markets by accepting or imposing remedies (see Markets Remedies Guidance). The Markets Procedural Guidance should be read

¹ References in this guidance are to the Enterprise Act 2002 (EA02) as amended by the Enterprise Regulatory Reform Act 2013 and the Digital Markets, Competition and Consumers Act 2024.

² The CMA also has the function under section 5 of the EA02 of conducting market reviews. These reviews sit outside the framework in Part 4 of that Act which applies to market studies and market investigations. They are covered in Chapter 6 of this document.

³ In *CMA v Apple* [2023] EWCA Civ 1445, at paragraph 49, the Court of Appeal has also confirmed that, “*When applying a purposive construction to the EA 2002, whilst protection of investigated undertakings from undue investigatory burdens is a relevant consideration, the principal purpose of the Act is to promote competition and protect consumers.*”

⁴ Section 327 DMCCA24 also introduces a duty of expedition in relation to the functions of the CMA under Part 4 of the EA02 covering market studies and market investigations.

alongside the Markets Substantive Assessment Guidance and Markets Remedies Guidance.

- 1.4 This guidance is designed to provide general information and advice to a wide range of groups including governments, regulators, consumer groups, companies and their advisers on the procedures used by the CMA in operating the markets regime set out in the Enterprise Act 2002 (EA02), the Enterprise and Regulatory Reform Act (ERRA13) and the Digital Markets, Competition and Consumers Act 2024 (DMCCA24). It explains the respective roles of the CMA, the Secretary of State, and relevant sectoral regulators in the UK. This guidance should also be read in conjunction with other relevant guidance.⁵
- 1.5 This guidance reflects the CMA's experience gained since EA02 entered into force in 2003, as amended by ERRA13, and the changes introduced to the markets regime by DMCCA24.
- 1.6 The CMA will have regard to this guidance when exercising its powers under the markets regime but it will apply this guidance flexibly, and it may depart from the approach described in this guidance where there is an appropriate and reasonable justification for doing so.
- 1.7 This guidance reflects the position of the CMA as at [date] and may be revised from time to time to reflect changes in best practice and/or legislation.⁶

⁵Other guidance documents also contain information relevant to markets cases, including: [Super-complaints: guidance for designated consumer bodies \(OFT514\)](#) and [CMA6 Transparency and disclosure: Statement of the CMA's policy and approach \(publishing.service.gov.uk\)](#).

⁶ Taken together with the Markets Substantive Assessment Guidance and Markets Remedies Guidance, this guidance supersedes OFT 511, OFT 519, CC3 and CMA3.

2. Introduction

Scope of this guidance

- 2.1 This guidance is structured as follows: Chapter 3 covers market studies; Chapter 4 covers the market investigation reference process; and Chapter 5 covers market investigations. Chapter 6 covers market reviews and Chapter 7 covers procedures in relation to remedies.

Who does what?

- 2.2 There are distinct roles for the CMA, the Secretary of State and the sectoral regulators in relation to the markets regime. These roles are summarised in the following paragraphs.

The CMA

- 2.3 The CMA is responsible for conducting market studies, market investigations and market reviews. It also produces advice and information that it publishes under section 171 of the EA02. This guidance forms part of that advice and information.

The Secretary of State

- 2.4 The Secretary of State has the power to intervene in certain markets cases which raise defined public interest issues (see Chapter 4 below). The Secretary of State is also able to modify by order certain provisions of the EA02, for example, the time limits that apply to market studies, market investigations and the remedies implementation period.⁷
- 2.5 Ministers also have a reserve power to make ordinary and cross-market references.⁸ In addition to applying the same criteria set out in the EA02 as the CMA for the making of a reference, a minister must be 'not satisfied' either with a CMA decision not to make a reference or, having brought information to the attention of the CMA, that the CMA will decide whether to make a reference in such period that the minister considers is reasonable.

⁷ Section 137 of the EA02.

⁸ Under section 132 of the EA02. In addition, under Part 5 Section 63 of the Scotland Act 2016, the Scottish Ministers also have the power to make such references acting jointly with the Secretary of State, or the Secretary of State and one or more than one other Minister of the Crown.

Sectoral regulators

2.6 The CMA and the sector regulators⁹ may, in the respective sectors for which they have responsibility, undertake market studies, and make market investigation references.¹⁰

Decision-making by the CMA in markets cases

2.7 The CMA is responsible for the conduct of CMA initiated market reviews and market studies¹¹; and it is responsible for all market investigations.¹² The governance and decision-making processes of the CMA ensure that key decisions in market studies and subsequent market investigations are made in line with the provisions of ERRA13 and CMA guidance.

Market studies and market investigation references

2.8 The CMA Board is responsible for key decisions relating to market studies and the making of market investigation references. These decisions cannot be delegated. They include decisions as to:¹³

- (a) whether the duty to publish a market study notice applies;¹⁴
- (b) whether to propose to make, or to make, a market investigation reference;
- (c) the CMA's obligation to consult relevant persons in specified circumstances on such a proposal,¹⁵ and
- (d) whether to accept undertakings in lieu¹⁶ of a reference, or whether to vary, supersede or release any undertakings that have been given.

⁹ These are the Civil Aviation Authority (CAA), the Financial Conduct Authority (FCA), NHS Improvement (NHSI), Northern Ireland Authority for Utility Regulation (NIAUR), the Office of Communications (Ofcom), the Office of Rail and Road (ORR), the Gas and Electricity Markets Authority (Ofgem), the Water Services Regulation Authority (Ofwat), and the Payment Systems Regulator (PSR).

¹⁰ Under Part 4 of the EA02. (Further information on the concurrency regime is contained in [Regulated Industries: Guidance on concurrent application of competition law to regulated industries \(CMA10\)](#).)

¹¹ Sectoral regulators may also conduct market studies. See, for example, Ofcom's market study in to Cloud services ([Statement: Cloud services market study \(final report\) - Ofcom](#)).

¹² ERRA13 makes provision for the appropriate governance and decision-making structure of the CMA.

¹³ Paragraph 29 of Schedule 4 to the ERRA13.

¹⁴ The CMA must publish a market study notice when it proposes to carry out its functions under section 5 of the EA02 for certain specified purposes. This is explained further in paragraph 3.3.

¹⁵ For further information see paragraphs 29(2)(c) and (f) of Schedule 4 to the ERRA13.

¹⁶ Section 137 and Schedule 8 to DMCCA24 amends Part 4 of the EA02, through the introduction of a new section 154A of the EA02, which allows the CMA to accept undertakings at any stage of a market review or market study either partially or fully in lieu of a reference. As covered in Chapter 5 below, inquiry groups may

Market investigations

- 2.9 If the CMA Board decides that a market investigation reference is to be made, it refers the matter to the CMA Chair, who is responsible for constituting a group of panel members (inquiry group) that will undertake the market investigation.¹⁷
- 2.10 In practice, the CMA Chair delegates these responsibilities to the CMA Panel Chair (or appropriately designated Panel Members).¹⁸ The CMA Panel Chair must ensure that any Board member who might reasonably be expected to be a member of the inquiry group does not participate in the Board's consideration of whether to refer the matter.¹⁹

Market reviews

- 2.11 Market reviews are carried out by the CMA under its general review function in section 5 of the EA02. Commencement of a market review is not subject to the provisions of ERRA13. The CMA will take a decision to commence a market review through its usual administrative process for the acquisition of information under section 5 of the EA02.

Standard of proof

- 2.12 The CMA will come to a rounded judgement on what may be causing any competitive harm.
- 2.13 In the case of a market review or a market study, the CMA is carrying out its functions under section 5 of the EA02. Accordingly, its functions are to obtain, compile and keep under review information about matters relating to its functions which includes (i) considering the extent to which there may be matters which have effects adverse to the interests of consumers; and (ii) assessing the extent to which steps should be taken to address these effects.²⁰
- 2.14 In a market investigation, the CMA is required to reach a finding on whether there is a feature, or combination of features, of a relevant market that

also accept partial or full undertakings in lieu at any stage of a market investigation in lieu of a report. For convenience, the term "undertakings in lieu" is therefore intended to cover both partial and full undertakings throughout this document.

¹⁷ Under the ERRA13.

¹⁸ The CMA Panel Chair is a member of the CMA Board. See also [Authorisation of staff of the CMA, the CMA Panel Chair and designated CMA Panel Members – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/authorisation-of-staff-of-the-cma-the-cma-panel-chair-and-designated-cma-panel-members)

¹⁹ Paragraph 33 of Schedule 4 to the ERRA13.

²⁰ Section 130A of the EA02.

prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or part of the UK. If so, it will find that there is an adverse effect on competition (AEC). In forming its judgement, the CMA will apply a 'balance of probabilities' threshold to its analysis. This means that it addresses the question: is it more likely than not that features or a combination of features lead to an AEC?

3. Market studies

Overview

- 3.1 As we note at the beginning of this document, the CMA helps people, businesses, and the UK economy by promoting competitive markets and tackling unfair behaviour. Market studies are examinations into the causes of why particular markets may not be working well. Depending on the circumstances, they will take account of a wide range of factors that may be present in the market, such as consumer behaviour²¹, the regulatory or legal framework²², and government policy²³. The CMA will also consider relevant economic drivers and business behaviour.
- 3.2 Market studies are also the tool that link the CMA's competition and consumer protection responsibilities. Market studies consider the relationship between consumer behaviour in a market, the behaviour of firms in that market, and the market's structure. By looking at these relationships, the CMA can determine whether to take action to protect consumers where they are being treated unfairly or to address the challenges consumers face in making choices if there is evidence of a market problem.

Market study notice and launch

- 3.3 A market study formally begins with publication of a market study notice by the CMA. The CMA Board is responsible for deciding whether the duty to publish a market study notice applies and so will decide whether to launch a market study in a particular case.
- 3.4 A market study notice must be published where the CMA is proposing to carry out its functions under section 5 of EA02 for the following purposes:
- (a) to consider the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the UK has or may have effects adverse to the interests of consumers, and

²¹ See the Funerals market study: [Funerals market study \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

²² See the Housebuilding market study: [Housebuilding market study - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

²³ See the Electric Vehicle Charging market study: [Electric vehicle charging market study: final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

(b) to assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.²⁴

3.5 A market study notice must contain the following information:

- (i) the scope of the market study
- (ii) the period during which representations may be made to the CMA in relation to the study, and
- (iii) the timescales within which the study will be completed.²⁵

Procedure for a market study

3.6 A market study will gather information from a wide range of sources, including evidence from the participants in the market, evidence from customers, potentially by means of primary market research and evidence from consumer groups, regulators or key government bodies that affect how the market works. As part of its evidence gathering, the CMA will meet with many participants in the market and other relevant bodies.

3.7 The table below provides an overview of the process and key stages of a CMA market study.

Indicative time frames	Phase	Main activities
Before publication of market study notice	Scoping and decision to launch a market study	Desk research, information gathering using informal powers Scoping discussions CMA Board decision to publish market study notice
Commencement	Market study notice published	Formal launch of market study
Months 1 – 6	Statement of Scope / Invitation to comment	Evidence gathering, including information requests to market participants and others, commissioning

²⁴ Section 130A of the EA02.

²⁵ Section 130A(3) of the EA02.

Indicative time frames	Phase	Main activities
	<p>published setting out proposed scope.</p> <p>Main evidence gathering phase</p>	<p>any primary research, stakeholder meetings, etc</p> <p>Analysis of information.</p> <p>Commence early thinking on potential remedies</p>
Months 6-12	<p>Interim or update report may be published</p> <p>Working papers may be published</p> <p>Working towards final report</p>	<p>CMA emerging thinking may be published for consultation</p> <p>The CMA will consult if it provisionally considers a market investigation reference is appropriate although there is no time limit on this provisional view²⁶</p> <p>Informal consultation on potential remedies²⁷</p> <p>Finalising evidence gathering and analysis to inform findings and possible remedies.</p> <p>Work towards final report</p>
Up to 12 months from commencement	Statutory deadline for publishing market study report setting out findings and action (if any) the CMA proposes to take.	
Month 12+	Outcomes of market study (see paragraph 3.16 below)	

²⁶ The time limits that were in section 131B of the EA02 are repealed by section 134 DMCCA24.

²⁷ A market study could lead to a range of outcomes as discussed below at paragraph 3.16.

- 3.8 Market studies vary in their approach, but many will publish an interim or update report at a mid-way point in the study. This is likely to set out evidence gathered and any emerging findings and may set out emerging thinking on any potential remedies, so that interested parties can make representations on these or provide further relevant evidence.
- 3.9 Market studies may also publish working papers on particular topics, again with the main purpose of disclosing the CMA's work to date and eliciting responses to this prior to any final decisions being taken in the study.
- 3.10 The duration of a market study depends on many factors including the scale and complexity of the market. The statutory deadline for the publication of the report is 12 months after issue of the market study notice²⁸, however some studies are completed in a shorter timeframe.²⁹
- 3.11 The final report of the market study will set out the CMA's findings on the market, and what (if any) remedial action it considers necessary.

Investigatory powers for market studies

- 3.12 Publication of a market study notice triggers the CMA's ability to exercise its statutory information gathering powers to assist it in carrying out its functions under section 5 of the EA02.
- 3.13 These powers are:
- (a) to give notice requiring any person to attend a specified place to give evidence to the CMA or a person nominated for the purpose;³⁰
 - (b) to give notice requiring any person to produce specified documents or categories of documents that are in that person's custody or under his control;³¹ and
 - (c) to give notice requiring any person carrying on business to supply specified forecasts, estimates, returns or other information in a specified form and manner.³²

²⁸ Section 131B of the EA02.

²⁹ [Electric vehicle charging market study, 2020](#).

³⁰ Section 174(3) of the EA02.

³¹ Section 174(4) of the EA02.

³² Section 174(5) of the EA02.

3.14 Where a person fails to comply with these statutory information requirements without a reasonable excuse, the CMA has the power to impose penalties. Further detail in relation to penalties is provided in CMA4.

Time limits for market study report

- 3.15 Publication of a market study notice triggers the following statutory requirements and time limits:³³
- (a) The CMA must, within 12 months of publication of a market study notice, publish a market study report setting out its findings and the action (if any) it proposes to take.³⁴
 - (b) It must consult on any market investigation reference it proposes to make.³⁵
 - (c) The CMA must also publish its decision on whether it plans to make a market investigation reference.³⁶ Likewise, any decision to accept undertakings in lieu of a reference. The market study report must in particular contain the decision, the reasons for the decision and such information the CMA considers appropriate for facilitating a proper understanding of its reasons for the decision.³⁷
 - (d) If the CMA decides to accept undertakings in lieu of a reference, this prevents the CMA from opening a market investigation relating to the same market features and the same goods or services for a period of 12 months.³⁸
 - (e) Where the CMA has (a) published a market study notice, and (b) has decided not to make a reference under section 131 of the EA02 in relation to a matter specified in the notice, the CMA may subsequently make a

³³ The procedures and time limits differ in a case where a public interest intervention notice has been issued by the Secretary of State in connection with a market investigation: see Chapters 4 and 5. The statutory time periods are upper time limits and may be adjusted downwards by order. If the Secretary of State proposes to make an order adjusting these periods, he/she must consult the CMA and other relevant persons before doing so.

³⁴ Section 131B(4) of the EA02.

³⁵ Section 131A of the EA02.

³⁶ This is expressly required in cases to which section 131A of the EA02 applies. That is, where the CMA has proposed to make a reference under section 131 in relation to the matter specified in the market study notice, or a representation has been made to the CMA that a reference should be made but the CMA proposed not to do so.

³⁷ Section 131B(5) of the EA02.

³⁸ Section 156 of the EA02.

reference under section 131 in relation to the matter (without first publishing a market study notice in relation to the matter) only where:

- (i) the reference under section 131 is made two years or more after publication of the market study report in relation to the market study notice; or
- (ii) there has been a material change of circumstances since the preparation of the report.³⁹

Market study outcomes

3.16 There are a number of potential outcomes to a Market Study.⁴⁰ The principal outcomes are one or more of the following:

- (b) no material competition or consumer concerns;
- (c) action for the benefit of consumers;
- (d) recommendations to business;
- (e) recommendations to government;
- (f) action to investigate and enforce consumer or competition law;
- (g) acceptance of undertakings in lieu of a reference⁴¹; and
- (h) a market investigation reference.

3.17 Except in the event of a finding that there are no material competition or consumer concerns, the outcomes of market studies generally require follow-up work, either to implement actions which are for the CMA to pursue, or to monitor the implementation of recommendations addressed to others, such as business or government.

No material competition or consumer concerns

3.18 A market study may conclude that, on balance, at the time of the report, the market, or aspects of the way it functions, gives rise to no material competition or consumer concerns.

³⁹ Section 135(1) to (4) of the DMCCA24.

⁴⁰ See also the Markets Remedies Guidance.

⁴¹ Section 137 and Schedule 8 of DMCCA24 makes provision allowing the CMA to accept undertakings under Part 4 of EA02 at any stage during a market review, market study or market investigation.

- 3.19 This means that some or all of the potential consumer detriment identified by the CMA when commencing the market study, which is usually set out in the statement of scope, is not substantiated by the information obtained, or that intervention would not be proportionate to the detriment.
- 3.20 A 'no competition or consumer concerns' outcome can address public interest or concerns about a market. It does not preclude the CMA from revisiting the market at a later date should new information, or a change in market circumstances, suggest that there are concerns about the functioning of the market, and the CMA's prioritisation principles are met.⁴²

Action taken for the benefit of consumers

- 3.21 Action taken for the benefit of consumers may take the form of a CMA-led information campaign, providing guidance or working in partnership with organisations that assist consumers and other Government bodies.⁴³
- 3.22 The objective of these actions is to raise consumer awareness or tackle the concerns identified in other appropriate ways so that consumers are able to make better purchasing decisions.

Recommendations to business

- 3.23 Where market problems can be addressed through changes to business behaviour, the CMA may make recommendations to business.
- 3.24 Recommendations may address a range of issues. Examples include raising awareness amongst firms with respect to their legal obligations vis-à-vis their customers and encouraging firms to provide better information, e.g. on pricing or services. In other cases, there may be a need to improve how, when and what information on after-sales services is made available to consumers. Recommendations may also, for example, concern changes to the standard terms and conditions of consumer contracts, and/or improvements to avenues for consumer redress in the event of problems or disputes.
- 3.25 The CMA can also recommend that businesses in the market develop a code of conduct or improve an existing one. Codes of conduct may be appropriate if the market study finds a significant number of consumer complaints where customers also face challenges having those complaints resolved. As codes

⁴² In connection with this, please also refer to paragraph 3.15(e) above.

⁴³ If the market involves a particular group of consumers, the CMA may work with the most appropriate organisation to help ensure that the campaign is successful.

are voluntary, the CMA will be more likely to recommend a code if there is evidence that the code will be complied with and is likely to be widely adopted by firms operating in the market.

- 3.26 The CMA will actively engage with business and may follow up recommendations on codes of conduct by providing support to trade bodies to ensure their codes address the issues identified in the market study report.

Recommendations to government

- 3.27 When the CMA concludes that changes in the law, government policy, and/or regulatory practice are necessary to remedy any problems which may be identified in the market, it will make recommendations to the UK or devolved governments and/or other public agencies or regulators and will actively engage with them.
- 3.28 Recommendations to government(s) may be an outcome of market studies that examine the effect of regulations in a market. Recommendations to government(s) may also be considered when a market study concludes that consumers will benefit from additional protection, especially in markets where the risks of consumer harm are significant.
- 3.29 To promote its recommendations to government(s), the CMA will actively engage with relevant departments to explain its recommendations.
- 3.30 The UK government has committed to responding publicly to the CMA's recommendations within 90 days of the market study report being published, clearly indicating the steps it will take in response to each recommendation or the reasons that it is unable to take a recommendation forward.⁴⁴
- 3.31 The Department for Business and Trade (DBT) is responsible for coordinating the UK government's responses where market studies make regulatory recommendations. The CMA liaises closely with DBT and, where appropriate, other interested UK government departments, to monitor how actions on recommendations are progressing.⁴⁵

⁴⁴ As first set out in The Enterprise White Paper, *A World Class Competition Regime*, Department of Trade and Industry, July 2001 Cm 5233, p12, and more recently in the [Government's strategic steer to the Competition and Markets Authority](#) (November 2023).

⁴⁵ Where recommendations are to the devolved administrations, the CMA works with the relevant bodies to promote the recommendations and monitor how they are acted upon.

Action to investigate and enforce consumer or competition law

- 3.32 The CMA will also consider whether to employ its other tools to tackle the issues identified.⁴⁶ In these situations, the CMA has discretion over which tool to use and will use the most suitable tool for each case.
- 3.33 If evidence obtained through the market study indicates that there may have been breaches of competition law or consumer protection legislation, the market study may conclude that enforcement action is necessary to address the potential breaches identified. The findings of the study will inform that action.⁴⁷

Acceptance of undertakings in lieu of a reference

- 3.34 The CMA can accept undertakings in lieu of a reference at any stage of a market study.⁴⁸ See Chapter 4 below for more information on undertakings in lieu of a reference.⁴⁹

Market investigation reference

- 3.35 When the findings of a market study by the CMA give rise to reasonable grounds to suspect that a feature or combination of features of a market in the UK prevents, restricts or distorts competition, and a market investigation reference appears to be an appropriate and proportionate response, the CMA is able to make such a reference.⁵⁰

⁴⁶ As an example of the way the CMA may conduct this exercise, see the CMA's consultation in relation to a proposal to make a market reference into the mobile radio network for the police and emergency services: [Proposal to make a market investigation reference](#).

⁴⁷ See for example, a CA98 investigation opened following the conclusion of the Housebuilding market study: [CMA finds fundamental concerns in housebuilding market - GOV.UK \(www.gov.uk\)](#)

⁴⁸ Section 137 and Schedule 8 to DMCCA24 amends Part 4 of the EA02 allowing the CMA to accept UILs at any stage of a market review, market study or market investigation.

⁴⁹ See paragraph 4.24 below.

⁵⁰ See Chapters 4 and 5 of this guidance.

4. Market investigation references

The CMA's power to make references

- 4.1 The CMA may make a market investigation reference where it has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts, or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.⁵¹ A feature for these purposes should be construed as a reference to:
- (a) the structure of the market concerned or any aspect of that structure;
 - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
 - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.⁵²
- 4.2 Such a reference may be the outcome of a market study; however, a market study is not a prerequisite for a reference. The CMA has a standalone power to make a reference which requires only that it has “...reasonable grounds for suspecting...”.⁵³ A market investigation may therefore also be made on a stand-alone basis or following a market review.⁵⁴
- 4.3 If the CMA intends to make a reference, it must consult any person whose interest is likely to be substantially affected by the proposed reference.⁵⁵ In addition, when the CMA consults, it must also, so far as practicable, give reasons for its proposed decision.⁵⁶

⁵¹ Under section 131 of the EA02. The Competition Appeal Tribunal has considered the ambit of the CMA's power to make a reference in *Airwave Solution Limited v CMA* [2022] CAT 4, paragraphs 8 to 12.

⁵² Section 131(2) of the EA02. In the case of an 'ordinary reference' (see paragraph 4.5 below) the features for the purposes of the reference may relate to the market structure or conduct. In a 'cross-market reference' (see paragraphs 4.5 – 4.7 below), however, only features that relate to conduct can be the subject of the reference (see sections 131(1) and 131(2A) of the EA02).

⁵³ Under section 131 of the EA02.

⁵⁴ See Chapter 6 below.

⁵⁵ See sections 169(1) and (2) of the EA02.

⁵⁶ See section 169(3) of the EA02.

- 4.4 As noted in Chapter 2, certain sector regulators may also make market investigation references to the CMA at the end of a market study.⁵⁷

Types of market investigation reference

- 4.5 The following types of market investigation reference may be made by the CMA:
- (a) ordinary references (these are references which are not cross-market references and do not raise public interest issues),⁵⁸ and
 - (b) cross-market references (these are references in respect of specific features or combinations of features that exist in more than one market).⁵⁹

Cross market references

- 4.6 The types of issue for which cross-market references are likely to be most useful include:
- (a) Features that do not fit neatly within one market (for example, the collective licensing of public performance and broadcasting rights); and
 - (b) recurring sources of consumer complaint or identified detriment which could affect competition adversely across multiple, distinct markets (for example, the sale of secondary products at particular points of sale or the practice of “loyalty penalties”).⁶⁰
- 4.7 Where appropriate, the CMA will seek to ensure a targeted use of the cross-market reference power with a clear delineation of scope in each case. It would do so in order that its interventions across markets are made only where they are needed, and to avoid imposing unnecessary burdens on businesses involved while wishing to ensure that the ability to take effective and appropriate action is not restricted by the scope of the reference.

⁵⁷ As occurred in October 2023 following Ofcom’s market study into the [Cloud services market](#). Further information on the concurrency regime is contained in [Regulated Industries: Guidance on concurrent application of competition law to regulated industries \(CMA10\)](#).

⁵⁸ And in which the relevant features of the market may relate to the market structure or conduct – see sections 131(1), 131(2A) and 131(6) of the EA02. (.

⁵⁹ And in which only features that relate to conduct can be the subject of the reference. Cross-market references are considered further in Chapter 4.

⁶⁰ See [Tackling the loyalty penalty \(publishing.service.gov.uk\)](#)

Cases raising public interest considerations

- 4.8 The Secretary of State may intervene in markets studies that raise one or more specified public interest considerations. In these cases, where the CMA decides that a reference (ordinary or cross- market) should be made on competition grounds, the Secretary of State shall decide whether one or more than one specified public interest consideration is relevant to the case and, if so, the type of public interest reference that should be made.⁶¹
- 4.9 There are two types of public interest reference that could be made by the Secretary of State giving a public interest intervention notice to the CMA before a reference is made:
- (a) a full public interest reference, where the Secretary of State requests the CMA to investigate the defined public interest issues alongside the competition issues, and
 - (b) a restricted public interest reference, where the Secretary of State retains the ability to consider the defined public interest issues themselves whilst requesting the CMA to investigate the competition issues.⁶²
- 4.10 The interest of national security is currently the only specified public interest consideration in relation to the markets regime. The Secretary of State may by order introduce new public interest considerations.⁶³

Issuing intervention notices

- 4.11 The Secretary of State may give an intervention notice to the CMA if they believe that it is, or may be, the case that one or more than one specified public interest consideration is relevant to the matter being investigated by the CMA.⁶⁴ The CMA has a corresponding duty to bring to the attention of the Secretary of State any case that it believes raises a specified public interest consideration.⁶⁵
- 4.12 The intervention notice must be issued:
- (a) when a market study notice has been published, within the period commencing on publication by the CMA of a market study notice⁶⁶ and

⁶¹ See section 139 of the EA02.

⁶² See sections 139 to 141A of the EA02.

⁶³ Section 153 of the EA02.

⁶⁴ Section 139(1) of the EA02.

⁶⁵ Section 152(1) of the EA02

⁶⁶ Section 139(1A) of the EA02.

ending once a reference has been made, undertakings in lieu of a reference accepted, the CMA's decision not to make a reference has been published or on the expiry of the time limit for publishing a market study report if the CMA has not published such a report,⁶⁷

- (b) if no market study notice has been published, within the period commencing with the CMA's consultation under section 169(6)(a)(i) of the EA02 on whether to make a market investigation reference and ending once a reference has been made, undertakings in lieu of a reference accepted or where the CMA's decision not to make a reference has been published.⁶⁸

4.13 Intervention notices cannot be issued after these periods.

4.14 Intervention notices must contain certain information:

4.15 if a market study notice has been published, this includes:⁶⁹

- (i) the subject matter of the market study notice
- (ii) the date of publication of the market study notice, and
- (iii) the public interest consideration(s) that are, or may be, relevant to the case,

(b) if a market study notice has not been published, this includes:⁷⁰

- (i) the subject matter of the consultation under section 169 of the EA02
- (ii) the date on which the process of consultation began, and
- (iii) the public interest consideration(s) that are, or may be, relevant to the case.

4.16 Intervention notices must be published by the Secretary of State.⁷¹

4.17 Where an intervention notice is in force and the CMA proposes to make a market investigation reference, the CMA cannot itself make the reference or

⁶⁷ Section 139(1A) of the EA02.

⁶⁸ Section 139(1B) of the EA02.

⁶⁹ Section 140(1) of the EA02.

⁷⁰ Section 140(1) of the EA02.

⁷¹ Section 172(3)(c) of the EA02.

publish its market study report.⁷² In such cases, if it has published a market study notice, the CMA is instead required to provide its market study report to the Secretary of State within 12 months from the date of publication of the market study notice. In a case where no market study notice has been issued, the CMA must instead provide to the Secretary of State a document containing the CMA's decision and the reasons for its decision and such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision.⁷³ In such cases, the 12-month time limit does not apply.

- 4.18 The Secretary of State decides whether the public interest consideration stated in the intervention notice is relevant to the matter and, if so, whether to make a restricted public interest reference or a full public interest reference.⁷⁴ If the Secretary of State decides to make a full public interest reference, they must also decide whether to appoint one or more persons with relevant expertise in relation to the public interest issue in question (public interest expert(s)) to advise the CMA during the market investigation stage.⁷⁵
- 4.19 If the Secretary of State decides that the public interest consideration stated in the intervention notice is not relevant to the matter, they will make a market investigation reference which will follow the normal procedure. In this case, the CMA will conduct its investigation into the competition issues with no further involvement of the Secretary of State.⁷⁶
- 4.20 The reference made by the Secretary of State must be published, together with the market study report of the CMA or, in a case where no market study notice has been issued, the document which contains the CMA's reasons for its decision.⁷⁷

⁷² Section 140A(3) of the EA02. Where an intervention notice has been issued but the CMA proposes not to make a market investigation reference, the intervention notice ceases to be in force when the matter is finally determined as defined in section 140(5) of the EA02. This is when the CMA either accepts undertakings, publishes notice that it has otherwise decided not to make a market investigation reference or the period for making the market study report has expired and the CMA has not prepared a report or taken action.

⁷³ Section 140A(3) of the EA02.

⁷⁴ Under section 140B of the EA02, the Secretary of State can (having consulted with the CMA if applicable) vary a restricted public interest reference or a full public interest reference.

⁷⁵ Sections 140A(4) to (12) of the EA02.

⁷⁶ Section 140A(5) of the EA02.

⁷⁷ Sections 140A(10), 140A(11) and 172(3)(da) of the EA02.

Limitations on the CMA's power to make references

Ability to make a reference after a previous decision not to do so

- 4.21 There are two limits to the CMA's power to make a reference where the CMA has previously published a market study notice but decided not to make a reference in relation to the matter specified in the notice. These are that the CMA may only subsequently make a reference in relation to the same matter where:
- (a) it is made two or more years after the publication of the market study report in relation to the aforementioned market study notice; or
 - (b) there has been a 'material change of circumstances' since the market study report was published.⁷⁸
- 4.22 There are also limitations on the CMA's ability to make a reference where it has previously accepted an undertakings in lieu of a reference (see paragraph 4.30 below).

Further considerations when making references

- 4.23 The CMA has a discretion rather than a duty to make a market investigation reference where the statutory criteria appear to be met and it will consider whether a market investigation reference would be the most appropriate way of proceeding.
- 4.24 The CMA will only make references when the reference test set out in section 131 EA02 and, in its view, each of the following criteria have been met:
- (a) it would not be more appropriate to deal with the issues identified by using other powers available to the CMA or, where appropriate, to sectoral regulators⁷⁹;
 - (b) it would not be more appropriate to address the problem identified by means of undertakings in lieu of a reference⁸⁰;

⁷⁸ See section 131B(8) and (9) of the EA02, as amended by section 135 DMCCA24.

⁷⁹ See paragraph 3.32 above.

⁸⁰ See paragraph 4.24 below.

- (c) the scale of the suspected problem, in terms of its AEC, is such that a reference would be an appropriate response to it;⁸¹ and
- (d) there is a reasonable chance that appropriate remedies will be available.⁸²

Undertakings in lieu of a reference

- 4.25 The CMA has the power to accept undertakings instead of making a reference.⁸³ The CMA can accept undertakings in lieu of a reference at any stage of a market study or a market review.⁸⁴
- 4.26 In exercising this power the CMA must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to any AECs identified in the market study final report (and any adverse effects on customers so far as they result or may be expected to result from such adverse effects).⁸⁵ It may also have regard, as appropriate, to the effect of

⁸¹ The CMA will consider whether these suspected adverse effects are likely to have a significant detrimental effect on customers through higher prices, lower quality, less choice or less innovation. Where it seems likely that this effect is not significant the CMA will normally take the view that the burden on business is likely to be disproportionate in relation to any benefits from remedying the adverse effects. It is not possible to make a definitive statement about the circumstances in which adverse effects on competition, or the customer detriments arising from them, will be regarded as not significant. However, the size of the market may be relevant. Generally speaking, the cost of a market investigation into a very small market would not be justified. However, problems in some relatively small specialised or local markets could have a significant detrimental impact on customers affected by them, in which case a reference may be justified. In addition, if the feature concerned seems likely to be short lived (for example, because of an expected change in regulations) or clearly relates to a one-off incident, and there are no other market features giving cause for concern, then a reference is not likely to be justified.

⁸² The CMA will also take into account the likely availability of appropriate remedies in the event that the suspected adverse effects on competition were identified. Where the CMA has not investigated a market in sufficient depth to be confident that it is in a position to identify the possible remedies it will not give this factor much weight. However, where the CMA has a reasonably good understanding of a market, perhaps because it has already performed a market study, or because a reference is being considered following an investigation under CA98, it may decide not to make a reference when it believes that no appropriate remedies by means of direct action through a market investigation are likely to be available. The CMA will have regard, however, to situations in which an investigation and report with recommendations for action (including recommendations for action by government) is likely to make a useful contribution to better outcomes for customers and consumers in a market. Similarly, where the CMA is satisfied that adverse effects on competition arise primarily from laws, regulations, or government policies it will have regard to the fact that a market investigation will not be able directly to remedy such adverse effects. In such circumstances, the CMA itself may submit a report to the government as an outcome of a market study or it may make a reference when it considers a market investigation and report would be more appropriate.

⁸³ Sections 154 and 154A of the EA02

⁸⁴ Section 137 and Schedule 8 to DMCCA24 amends Part 4 of the EA02, through the introduction of a new section 154A of the EA02, allowing the CMA to accept undertakings at any stage of a market review or market study. Undertakings may be accepted either partially or fully in lieu of a reference. Where undertakings in lieu have been accepted, the CMA will publish a notice of its decision, and this may form part of its final report. See also Chapter 5 below in relation to the acceptance of undertakings in lieu of a report during a market investigation.

⁸⁵ Section 154(3) of the EA02.

the possible undertakings in lieu on any relevant customer benefits⁸⁶ arising from a feature or features of the markets concerned.

- 4.27 Undertakings in lieu of a reference are unlikely to be common. In many cases the CMA will not have done a sufficiently detailed investigation of a competition problem, prior to making a reference, to be able to judge with any certainty whether the undertakings in lieu will achieve as comprehensive a solution as is reasonable and practicable.
- 4.28 This is particularly likely to be the case when the AEC arises from market features involving several firms or industry-wide practices.
- 4.29 Moreover, trying to negotiate undertakings in lieu of a reference with several parties, in circumstances in which possible AECs have not been comprehensively analysed, is likely to pose serious practical difficulties.
- 4.30 By contrast, where an AEC arises from the conduct of very few firms there may be more scope for accepting undertakings in lieu of a reference, provided that the CMA is confident that they will achieve a comprehensive solution.
- 4.31 Where the CMA accepts undertakings in lieu of a reference in a case instead of making a reference, no ordinary or cross-market reference can be made for a period of 12 months that relates to or includes the same feature(s) in relation to the same market(s) as those covered by the undertakings in lieu.⁸⁷

Procedure for making market investigation references

- 4.32 In general, the procedures described below apply to both ordinary and cross-market references: for example, the time limits and the CMA's investigatory and enforcement powers are the same.⁸⁸

⁸⁶ In assessing customer benefits the CMA will take into account the same factors as it would consider during a market investigation. Such benefits comprise lower prices, higher quality or greater choice of goods or services in any UK market, or greater innovation in relation to such goods or services.

⁸⁷ Section 156 of the EA02. The prohibition on reference does not apply where there has been a breach of undertakings in lieu of a reference, or where false or misleading information has been supplied by the person giving the undertakings in lieu of a reference.

⁸⁸ Public interest interventions may also be made in relation both to cross-market references and to ordinary references. However, only features that relate to conduct can be the subject of a cross-market reference. (See sections 131(1) and 131(2A) of the EA02.)

Terms of Reference

4.33 The Terms of Reference (ToR) for a market investigation must specify:

- (a) the enactment under which it is made;
- (b) the date on which it is made;
- (c) in the case of an ordinary reference, the description of goods or services to which the feature or combination of features concerned relates; and ⁸⁹
- (d) in the case of a cross-market reference, the feature or features concerned and the descriptions of goods or services to which it or they relate.⁹⁰

4.34 The reference may also limit the scope of the market investigation, for instance, to either the supply or the acquisition of the goods or services, in particular by reference to the place where the goods and services are supplied or acquired or the persons by or to whom they are supplied or acquired or by or from whom they are acquired.⁹¹

4.35 The 'relevant market' is defined in the EA02 to mean the market for the goods or services described in the terms of reference (ToR) given to the CMA for investigation.⁹² The market definition(s) used by the CMA in the market investigation (see the Markets Substantive Assessment Guidance) need not always correspond with the 'relevant market(s)' used in the ToR.⁹³

4.36 The ToR may be varied, either at the instigation of the referring body, after consultation with the CMA, or at the request of a CMA Inquiry Group. In principle this could be to widen or narrow the scope of the investigation while it is in progress,⁹⁴ although it would be likely to raise procedural and timing issues. A variation would not affect the statutory timetable for the market investigation.

⁸⁹ Section 133(1)(c) of the EA02.

⁹⁰ Section 133(1)(d) of the EA02.

⁹¹ Under the DMCCA24, the scope of a market investigation may also be limited to the effects of particular features of such markets. See section 133(1A) of the EA02 as amended by section 136 DMCCA24.

⁹² Section 134(3) of the EA02. An alternative description could be 'reference market'.

⁹³ In these Guidelines, 'relevant market' is used in two contexts: first, when referring to the statutory test, it has the meaning as defined in section 134(3) (in other words, the reference market); secondly, when referring to market definition, the relevant market is the market defined by the CMA (an alternative description of which could be 'economic market').

⁹⁴ The ToR in the Payday lending market investigation (2013) was first published in June 2013 and then varied in June 2014.

- 4.37 Where another regulator is contemplating a market study, the CMA's preparatory market investigation team will engage with the regulator to obtain information ahead of any anticipated reference.

CMA Board steer

- 4.38 Where the CMA Board is making the reference, in addition to issuing the formal terms of reference for the market investigation, it may append an advisory steer to the reference decision, setting out its expectations regarding the scope of the market investigation and the issues that could be the focus of the investigation.
- 4.39 The inquiry group would be expected to take this into account. However, the inquiry group will continue, as required by the legislation, to make its statutory decisions independently of the CMA Board.

5. Market investigations

Overview

- 5.1 As set out in paragraph 4.1 above, the CMA may make a market investigation reference if the test in section 131 of the EA02 is met and it considers that a market investigation is warranted by reference to the further considerations set out in paragraphs 4.22 and 4.23. Once commenced, a market investigation is an in-depth examination into whether there are any AEC(s) in the market(s) for the goods or services referred. If so, the CMA must decide what remedial action, if any, is appropriate.⁹⁵

Conduct of a market investigation

- 5.2 The procedures the CMA follows in market investigations have been developed to fulfil and balance different demands. It is imperative that investigations are concluded within the statutory time limit, and the time and resources of both the CMA and the parties must consequently be used efficiently. At the same time, the CMA recognises that market investigations can result in significant interventions in markets and that its investigations must not only be thorough and disciplined but also be conducted in a fair manner. The requirement for fairness includes giving the parties opportunities to understand the CMA's analysis affecting them; the CMA accordingly aims to be open and transparent in its work.
- 5.3 The following sections:
- (a) explain how inquiry groups are appointed;
 - (b) outline the statutory obligations and rules with which inquiry groups must comply;
 - (c) discuss some of the overarching procedural issues in conducting a market investigation; and
 - (d) provide a guide to the main stages and procedures in a typical investigation.

⁹⁵ Section 131 of the EA02 sets out the power of the CMA to make references.

Appointment of inquiry groups

- 5.4 As soon as practical after receiving the reference, the CMA Panel Chair identifies and appoints an inquiry group to lead the market investigation. The appointment of the inquiry group is made for the duration of the investigation, up to the point at which the reference is ‘finally determined’.⁹⁶
- 5.5 The inquiry group provides the strategic direction, weighs the evidence and considers the arguments from parties, both received in writing and given orally, and directs and assesses the analysis produced by the staff team. It makes the final decisions on the statutory decisions for the investigation.
- 5.6 The inquiry group is made up of (usually four) independent CMA Panel members.⁹⁷
- 5.7 The composition of the inquiry group and details of its members are sent to the main parties to the investigation⁹⁸ and published on the CMA’s inquiry webpage.
- 5.8 Before appointing a member to an inquiry group, the CMA will assess (by reference to the CMA’s conflicts of interest policy⁹⁹) whether the proposed member has any outside interests that could give rise to a conflict of interest which would affect, or be seen to affect, the Inquiry Group’s impartiality (a potential conflict of interest). The CMA’s practice is not to appoint a member to an Inquiry Group where a conflict of interest is likely to arise. In limited cases, the CMA may contact the main parties to the investigation to disclose an outside interest ahead of appointing a member even though the CMA believes that the potential conflict of interest would not affect, nor be seen to affect, the Inquiry Group’s impartiality. Where appropriate, particular interests may also be disclosed on the relevant case page.

⁹⁶ Generally a reference is finally determined, as defined in section 183(3)-(6) of the EA02, when the final report is published or, if remedial action is to be taken by the CMA, when the remedies are implemented (ie either by the making of an Order or acceptance of Final Undertakings). Paragraph 43 of Schedule 4 to ERRA13 provides that the CMA Chair may appoint replacements to the inquiry group if necessary. Members may be reappointed to deal with matters arising from the reference following final determination, for example to consider any ongoing remedy implementation or post-litigation issues.

⁹⁷ A pool of members—currently around 29—is appointed by the Department for Business and Trade (DBT) for eight years, following open competition. Members are selected for their experience, ability and diversity of skills in economics, law, finance and industry.

⁹⁸ See paragraph 5.24 below.

⁹⁹ Please see: [Conflicts of interest policy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/conflicts-of-interest-policy)

The AEC test

- 5.9 The inquiry group is required to decide whether there is an AEC in the market(s) referred and, if so, whether and what remedial action is appropriate.¹⁰⁰
- 5.10 In an ordinary reference, the inquiry group is required to decide ‘whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the United Kingdom or a part of the United Kingdom’.¹⁰¹ If that proves to be the case, this constitutes an AEC.¹⁰²
- 5.11 The CMA interprets the phrase ‘prevents, restricts or distorts’ in EA02 broadly to cover any AEC, whether actual or potential. It will therefore consider features that affect competition in a market (for example, by preventing entry and expansion) as well as those that affect the existing market situation.
- 5.12 In a cross-market reference, the statutory questions to be decided by the CMA differ. The CMA must decide in relation to each feature and each combination of the features specified in the reference whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.

Statutory obligations and rules for inquiry groups

- 5.13 The inquiry group has a statutory duty to consult on its proposed decisions on the AEC test and the remedy questions, when it considers a decision likely to have a substantial impact on any parties’ interests.¹⁰³
- 5.14 Inquiry groups are also required by the CMA’s Rules of Procedure for market reference inquiry groups (the Rules)¹⁰⁴ to do the following:

¹⁰⁰ Please see the Markets Substantive Assessment Guidance for more detail in relation to how the CMA finds whether or not there is an AEC. In order to make a valid finding of an AEC that can be subject to remedial action, a decision must be taken by at least a two-thirds majority of the Group: see paragraphs 55–58 of Schedule 4 to the ERRA13

¹⁰¹ Section 134(1) of the EA02.

¹⁰² Section 134(2) of the EA02.

¹⁰³ See Section 169 of the EA02.

¹⁰⁴ See CMA17 for the CMA’s rules of procedure for merger, market and special reference groups.

- (a) draw up and notify the parties of the administrative timetable for each investigation (and to prepare a revised timetable if required);
- (b) decide the forms of hearings (public or private, joint or individual) and who should attend them;
- (c) notify the main parties of their provisional findings on the statutory questions (on the AEC issue) and allow them at least 21 days to comment on the provisional findings; and
- (d) notify main parties of actions which may be taken to remedy the AEC and give the parties the chance to make representations about the Group's proposed actions.

5.15 Subject to complying with their statutory duties, the Rules and having regard to any guidance issued by the CMA Board, inquiry groups are free to decide how they conduct a market investigation.¹⁰⁵

Undertakings in lieu of a report

5.16 Amendments to EA02 brought about by DMCCA24 provide for the ability of the CMA to accept undertakings in lieu of a report at any time once a reference has been made.¹⁰⁶ The undertakings in lieu may be fully or partially in lieu.¹⁰⁷

5.17 Where the CMA is considering accepting undertakings fully in lieu of a report, it must, in particular, have regard to the need "to achieve as comprehensive a solution as is reasonable and practicable" to:

- (a) the AEC concerned, and
- (b) any detrimental effects on customers so far as resulting from the adverse effect on competition.¹⁰⁸

¹⁰⁵ See ERR13, Schedule 4, paragraph 31.

¹⁰⁶ See DMCCA24, Schedule 8, which introduces a new section 154A of the EA02.

¹⁰⁷ By way of example, which is given for illustrative purposes only, partial UILs may come about in a scenario where the CMA has identified several potential AECs during a market investigation. One of these AECs may relate to a lack of transparency of key information to consumers across the relevant market. In this case, it may be possible and desirable for the firms in the market to address this potential AEC as comprehensively as is reasonable and practicable by agreeing through UILs to publish the key information in question. However, the other potential AECs may not be addressed by this measure. In this scenario, there may be scope for firms to offer partial UILs in lieu of a report.

¹⁰⁸ See section 154A (5) EA02, as introduced by DMCCA24, Schedule 8. The way in which the CMA expects to meet the requirements of section 154A (5) EA02 is set out in greater detail in the Markets Remedies Guidance.

5.18 If the CMA has decided to accept undertakings fully in lieu of a report it is no longer required to produce a report.¹⁰⁹

5.19 Instead, in such cases, the CMA must prepare and publish a report containing:

- (a) its decision to accept the undertaking,
- (b) the reasons for the decision, and
- (c) such information as it considers appropriate for facilitating a proper understanding of the decision and its reasons for the decision.¹¹⁰

5.20. Where the CMA has accepted undertakings partially in lieu of a report, it shall produce a report on the remaining aspects of the reference under section 136 EA02¹¹¹.

Timescales

5.20 The CMA must publish its report on a market investigation within 18 months of the reference.¹¹² This period may be extended once, by no more than six-months, where the CMA has special reasons.¹¹³

5.21 To provide an overview of the process the CMA will normally expect to follow, the table below sets out the usual key stages of a market investigation.

Indicative time frames	Phase	Main activities
Before start of market investigation	Pre-reference discussions	Where relevant, pre-reference sharing of appropriate information with the CMA staff team who will work on the investigation by any prior market review

¹⁰⁹ Section 156 of the EA02 as amended by DMCCA24, Schedule 8, clause 10(6).

¹¹⁰ Section 154A of the EA02, inserted by Schedule 8 DMCCA24.

¹¹¹ See sections 136 and 154A of the EA02, as amended by DMCCA24, Schedule 8, at clause 4.

¹¹² The appointment of the inquiry group is made for the duration of the investigation, up to the point at which the reference is 'finally determined.

¹¹³ This time period may be extended by the CMA where it has "special reasons": see section 144(1B) of the EA02. In *C r lia v CMA* [2023] CAT 54, the CAT considered what may amount to "special reasons" for the purposes of section 39 of the EA02 in merger cases. It held that special reasons constitute good, case-specific reasons which justify an extension of the normal time limit for the management and conclusion of phase merger 2 cases. The CAT's judgment was upheld by the Court of Appeal (see *C r lia v CMA* [2024] EWCA Civ 352) and the CMA considers it relevant to the powers to extend the time limits in market investigations.

Indicative time frames	Phase	Main activities
		or study team or the referring body (sectoral regulator)
Months 1 – 3	Launch and initial evidence gathering phase	Evidence gathering begins, including any primary research to be commissioned. Issues statement published, setting out scope, theories of harm and potential remedies. Responses received. Site visits may take place.
Months 4 - 10	Further evidence gathering and assessment phase	Publication of relevant working papers and/or annotated issues statement. Main party hearings.
Months 10 - 12	Provisional decision report	Publication of provisional decision on the AEC and on any remedies.
Months 12 to 18 (extendable once, by no more than 6 months)	To final report	Consideration of responses to the PDR. Response hearings. Publication of the final report.
Months 18-24 (extendable once, by no more than 4 months)	Implementation of remedies order(s)	This is the period in which the CMA will seek to ensure that the requirements of the order(s) are being delivered.

5.22 The timetable above illustrates the usual stages of an 18-month investigation. However, the timing of the different stages is not exactly prescribed and, in practice, some may overlap and on occasion developments in the investigation will require adjustments to the timings and procedures.

Processes and procedures during a market investigation

- 5.23 Businesses providing goods or services in a market under investigation may be parties to an investigation. However, the degree of a party's engagement with the CMA will vary, particularly where there are substantial numbers of providers in the market and the CMA may need more information and evidence from some than from others. In this context, the CMA may choose to engage with some parties more closely – those it sees as the main parties to the investigation.
- 5.24 In addition, there will be parties which are not providers of the goods or services in the market, but which may be materially affected by the investigation (including customers and consumer groups, upstream suppliers, and trade and professional bodies). Levels of engagement with these parties will also vary. For example, the CMA may seek information from some of them, while others may volunteer information and views to the CMA.
- 5.25 The CMA makes extensive use of a case page on its website in market investigations, in order to communicate or to make disclosures, enabling any number of parties to follow the progress of an investigation. The CMA generally alerts parties when relevant material is posted on the website.
- 5.26 While the detail of its processes might vary, the CMA will ensure that its procedures are fair and give parties the opportunity to participate appropriately in an investigation.

The main stages of an investigation

- 5.27 We set out below the main stages of a market investigation and outline the key interactions which the CMA has with parties and their advisers in the course of a typical investigation. However, market investigations vary significantly and the CMA may adapt its procedures to take account of the particular circumstances of an investigation.

Information-gathering

- 5.28 Once the market investigation reference has been made, the CMA formally launches its investigation by communicating with the main parties to the investigation via a 'first day letter' setting out administrative and procedural information. The communication may also begin the information-gathering process by requesting specified information from each party.

- 5.29 At an early stage, informal meetings are held between the staff team and selected main parties (and, where relevant, with other parties). These meetings can cover the procedures to be adopted for the conduct of the investigation and seek information and views on the market. In addition, the CMA is likely to hold early stage ‘data meetings’ with appropriate main parties to discuss the organisation and availability of technical data. There may be subsequent informal, staff-led meetings as the investigation progresses.
- 5.30 The CMA begins its detailed information gathering, via requests for information, which may include using its formal powers under section 174 of the EA02, to market participants and a range of other methods.¹¹⁴ Where practicable, the CMA will usually¹¹⁵ share in draft the questions it intends to send to market participants under section 174 of the EA02 for their comments on feasibility and timing. This is to ensure compliance is possible and to facilitate efficient collection of useful and consistent information, whilst as far as possible minimising the burden to business.
- 5.31 The information-gathering will be informed by the developing ‘theories of harm’
- 5.32 The CMA may also decide to commission primary research as part of the information-gathering process.¹¹⁶ If the primary research takes the form of a survey, the CMA may consult relevant parties on the draft survey design and content. It will not do this for qualitative research.¹¹⁷ In some cases, in order to construct the sample for primary research, parties may be required to provide contact details for some or all of their customers or suppliers.
- 5.33 The inquiry group and staff team may arrange site visits to several parties. This offers a chance for inquiry group members and staff to gain a greater understanding of the party’s business by visiting relevant facilities and to meet key staff.

¹¹⁴ These may include voluntary telephone calls, stakeholder ‘roundtable’ events and surveys.

¹¹⁵ Though not necessarily in all cases, if there are good reasons not to do so: see paragraph 4.5 of [CMA6 Transparency and disclosure: Statement of the CMA’s policy and approach](#).

¹¹⁶ See also CMA procedures as set out in: [Good practice in the design and presentation of customer survey evidence in merger cases - GOV.UK \(www.gov.uk\)](#)

¹¹⁷ In *Tobii AB (PUBL) v CMA* [2020] CAT 1, at paragraphs 291 and 220, the CAT found that the CMA’s “Good practice in the design and presentation of consumer survey evidence in merger cases (CMA78)”, which refers to consulting parties, is targeted at commissioned statistical sample research surveys rather than qualitative research methods.

Issues statement

- 5.34 An issues statement is published by the CMA at an early stage in the investigation process. This sets out the theories of harm framing the analysis the CMA intends to pursue, as well as setting out potential remedies.
- 5.35 Parties are invited to provide submissions commenting on the issues and possible remedies set out in the statement.

Hearings

- 5.36 The inquiry group holds hearings with parties, either individually or in groups if appropriate.
- 5.37 The primary purpose of these hearings is to enable the CMA to understand the market, discuss the parties' submissions, and discuss the issues and possible remedies with parties. Hearings also provide an opportunity for parties to explain their views on the CMA's emerging findings in person directly to the decision-makers as their thinking is developing.
- 5.38 The CMA aims to ensure that hearings are held with a range of parties. However, decisions on which main and third parties to invite to hearings, and the format and sequencing of any hearings, rest with the CMA. Some may be more formal and in-person while others may be virtual meetings. Where the CMA considers it appropriate and practicable to do so, it may also prepare and share a summary of the key points raised at a formal hearing.

CMA assessment of competition and potential remedies

- 5.39 The inquiry group progresses its substantive competitive assessment using the information gathered and the theories of harm being investigated.
- 5.40 It will also consider possible remedies at the same time as assessing the potential problems. In practice, this means the CMA will consider and discuss potential remedies alongside working on understanding what features of the market may give rise to adverse effects. The consideration of possible remedies is always contingent on an AEC finding having been reached.
- 5.41 The inquiry group may disclose key elements of its analysis before publication of its provisional decision through, for example, the use of confidentiality rings where appropriate or disclosure rooms, and/or it may

disclose some of the working papers, or parts of working papers and/or an annotated issues statement.¹¹⁸

- 5.42 The CMA will enable parties to the investigation to check its use of their evidence in terms of accuracy and confidentiality prior to its publication or disclosure. This is known as putback and is separate from disclosure of the CMA's developing thinking.

Provisional decision report

- 5.43 When the inquiry group has provisionally formed a view on whether or not there are features of the market(s) that give rise to an AEC, its provisional findings will be published in a provisional decision report, and a public consultation on them will be held.
- 5.44 If an AEC has provisionally been found, the provisional decision report will usually also contain the CMA's provisional decision on remedies. In such cases, the report will contain details of remedies that the CMA has provisionally identified as addressing the AEC or its detrimental effects on customers effectively, and may also outline details of remedies the CMA considers unlikely to be effective and the reasons why it has reached this provisional decision.
- 5.45 As set out in the Rules, the time allowed for the consultation on the CMA's provisional decisions will be no less than 21 days and the CMA applies some flexibility in setting reasonable deadlines case by case in light of the relevant circumstances.

Response hearings

- 5.46 Once the CMA has published its provisional decision, response hearings (individually or multi-party where appropriate) will take place with main parties and any key third parties.
- 5.47 At a response hearing, parties will be given the opportunity to comment on the provisional decision(s) on the AEC(s) and any remedies, and the CMA may seek clarification of particular points made in written submissions or at the hearing.
- 5.48 Having considered the responses from parties, the CMA may undertake additional consultations with parties as required. If further consultation is

¹¹⁸ See [CMA6 Transparency and disclosure: Statement of the CMA's policy and approach \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

not needed, the CMA will proceed to publishing its final decision on the AEC and remedies in its final report.

Final report

- 5.49 The CMA will publish its final decision on the AEC question and (if necessary) remedies together with supporting reasons and information in a final report.¹¹⁹
- 5.50 The report will, if it confirms the finding of an AEC, contain an explanation of the AEC finding and sufficient detail on the nature and scope of remedies to provide a firm basis for subsequent implementation of remedies by the CMA.

Appeals on CMA market investigation decisions

- 5.51 Any person aggrieved by a CMA market investigation decision may, during the two months following the notification of the final report, apply to the CAT for a review of that decision.¹²⁰
- 5.52 In determining such an application, the CAT will apply judicial review principles.¹²¹ If a judgment of the CAT upholds an aspect of an application, this could lead to the investigation or a part of it being remitted to the CMA for reconsideration.
- 5.53 Appeals against CAT judgments can, if allowed, go forward to the Court of Appeal or, in Scotland, the Court of Session and, ultimately, to the Supreme Court.

¹¹⁹ See section 136 of the EA02.

¹²⁰ See section 179 of the EA02.

¹²¹ See section 179(4) of the EA02.

6. Market reviews

- 6.1 The CMA may carry out a range of other markets work under its general review function in section 5 of the EA02. This includes market reviews.
- 6.2 These reviews will vary in form, from desktop research only through to engagement with market participants and other interested stakeholders including the public in some cases.
- 6.3 The CMA will usually produce a written report at the end of a market review. A market review may, but need not, be a pre-cursor to a market study or a market investigation.¹²² If the review is part of preparation work in advance of a possible market study, the timetable will cover the period up to the decision being taken on whether to launch a market study.
- 6.4 Market reviews enable the CMA to decide whether or not further consideration of an issue or market is appropriate and so facilitates the efficient and effective use of the resources of the CMA and others. For example, where the CMA decides to undertake a market study in relation to a matter that it has previously considered under its general review functions in section 5 of the EA02, this may enable it to focus the scope of the market study more tightly.
- 6.5 When conducting a market review, the CMA is not bound by statutory time limits, nor does it have any of the compulsory information gathering powers under section 174 of the EA02. Therefore, with a view to avoiding subjecting markets to prolonged scrutiny, the CMA relies on market participants supporting its review by, for example, promptly responding to requests for information. In addition, in a market review, the CMA has no power to impose remedies although it may make recommendations to government(s) or others, produce business or consumer guidance, or decide to launch an investigation under other tools. It may also accept undertakings in lieu of a reference where the CMA considers that it has the power to make a market investigation reference under section 131A and intends to make such a reference.¹²³

¹²² Examples of a recent market reviews include those in relation to [Vets, March 2024](#) (see: [Veterinary services for household pets - GOV.UK \(www.gov.uk\)](#)); Groceries, November 2023 (see: [Price inflation and competition in food and grocery manufacturing and supply - GOV.UK \(www.gov.uk\)](#)); and [Road fuels, June 2022](#) (see: [Road fuel market study - GOV.UK \(www.gov.uk\)](#)).

¹²³ See section 154 of the EA02 and, when it is substituted for section 154 (by virtue of DMCCA24, Schedule 8), section 154A of that Act.

6.6 If the CMA engages with external parties as part of a market review, for example, by seeking their views and requesting information, the CMA will inform them of the scope and purpose of the work on which it engages with them. It may provide them with an indicative timetable of next steps in the work.

7. Markets remedies

- 7.1 This chapter should be read in conjunction with the Markets Remedies Guidance. This chapter sets out an overview of the remedies process. Aspects of that process are covered in more detail in the Markets Remedies Guidance.
- 7.2 If, following a market study, the CMA finds that there are matters in relation to the acquisition or supply of goods or services that have or may have effects adverse to the interests of consumers, and that steps can and should be taken to remedy, mitigate or prevent those effects, it will identify those steps. Those may include taking further action itself and making recommendations to government and regulators.
- 7.3 Where, in a market investigation, the CMA finds an AEC, it is required to consider whether remedies are appropriate. In ordinary and cross-market references it must decide the following questions:
- (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AEC concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the AEC;
 - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AEC concerned or any detrimental effect on consumers so far as it has resulted from, or may be expected to result from, the AEC; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented;¹²⁴
- 7.4 In deciding the questions mentioned above, the CMA must also have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.¹²⁵

¹²⁴ Section 134(4) of the EA02. In full public interest references, the CMA is additionally required to decide whether (and, if so, what) action should be taken by the Secretary of State to remedy, mitigate or prevent any adverse public interest effects that have been identified. In cases where the Secretary of State makes an adverse public interest finding, he/she may take action to remedy, mitigate or prevent any of the adverse effects identified.

¹²⁵ Section 134(6) of the EA02

- 7.5 If the CMA has decided to take action itself to remedy, mitigate or prevent an AEC, it has the choice of accepting undertakings from the relevant parties and/or making an order.
- 7.6 The period following publication of the final report during which the CMA puts in place its remedies is known as the remedies implementation stage.
- 7.7 This chapter describes at a high-level key elements of the procedure that the CMA follows during the remedies implementation stage. These are:
- (a) the statutory time limits within which remedies must be implemented by the CMA;
 - (b) powers to trial remedies;
 - (c) the availability of mandatory investigatory powers for the CMA during the remedies implementation and subsequent monitoring periods;
 - (d) the powers available to the CMA to impose remedies by order; and
 - (e) the powers available to the CMA following a report to reverse pre-emptive action that has been taken.
- 7.8 Each of these is explained below.

Time limits and procedure

- 7.9 The CMA publishes an administrative timetable for the implementation of those remedies where it has decided to take action itself. There are statutory time limits for the implementation of remedies by the CMA to address findings from a market investigation. The CMA must accept final undertakings or make a final order within six months of the date of publication of the market investigation report.¹²⁶ This six-month period includes a period of formal public consultation.
- 7.10 The CMA may extend the six-month period by up to a further four months if it considers that there are special reasons why final undertakings cannot be accepted or a final order made within the statutory deadline. Only one

¹²⁶ Section 138A of the EA02. These time limits do not apply to any further implementation required after final undertakings have been accepted or a final order made. They also do not apply in the same way where the CMA undertakes trials of certain remedies (see paragraph 7.16 below and section 5 of the Markets Remedies Guidance).

extension is possible.¹²⁷ A decision to extend the timetable must be published.¹²⁸

- 7.11 The power to extend the timetable is most likely to be used where the remedies themselves are more complex, for example where consumer testing of the detailed implementation of remedies is necessary, where proposed remedies give rise to complex practical issues, or where an additional consultation is required to address material changes arising from comments made in earlier consultations.
- 7.12 During the period covered by the statutory timetable for remedies implementation, the CMA has investigatory powers.¹²⁹
- 7.13 In addition to the ability to impose penalties in some circumstances¹³⁰, the CMA has the ability to ‘stop the clock’ if it considers that any person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice issued by the CMA using its statutory investigatory powers (for example, a notice requiring the production of specified documents).¹³¹ In this case, the time limits set out above are extended. In effect, the timetable is suspended either until the documents or information requested is provided to the satisfaction of the CMA, or until the CMA publishes a notice to cancel the extension. The extension periods described in this paragraph and in paragraph 7.10 can be used together if necessary, in which case the extension periods are added together.¹³²
- 7.14 The decisions contained in the CMA’s final report may be challenged by way of an application to the CAT during the remedies implementation stage. The process to be followed in the event of an application to the CAT will depend upon the circumstances and will therefore be considered on a case-by-case basis.
- 7.15 Subject to any directions made by the CAT, the CMA will, when considering the process to be followed, consider the prevailing circumstances. It will

¹²⁷ The six-month and additional four-month periods set out above are upper time limits and may be adjusted downwards by order. If the Secretary of State proposes to make an order adjusting those periods, they must consult the CMA and other relevant persons before doing so. See section 138B (6)-(8) of the EA02.

¹²⁸ Section 172(2)(zb) of the EA02. The CMA is required also to publish the reasons for any such extension (section 172(5) of the EA02).

¹²⁹ Section 174(1)(b) of the EA02.

¹³⁰ Please refer to CMA4 in relation to CMA’s guidance on administrative penalties.

¹³¹ Sections 138A(3) to (5) of the EA02.

¹³² Section 138B of the EA02.

also have regard to the statutory time limits that applied to its inquiry to which the challenged CMA decision related.

Implementation trials

7.16 In the period between the CMA publishing its final report of the market investigation and the reference being finally determined (by final undertakings being accepted or a final order made), the CMA may choose to trial certain remedies¹³³. It may do so where it accepts an undertaking or makes an order relating to the implementation trial. Prior to doing so, the CMA must publish a notice which sets out and consults on the details of the measure it is minded to accept or impose. If, following the consultation, the CMA considers it appropriate to begin an implementation trial, it will publish a final notice and commence a trial period to test the effectiveness of the relevant remedy or remedies. Such trials and the trialling process are described in more detail in the Markets Remedies Guidance.

Scope of the CMA's order-making powers

7.17 The CMA's decision as to whether to implement remedies by means of accepting undertakings or making an order is determined on a case-by-case basis. It is informed both by the scope of the CMA's order-making powers¹³⁴ and by practical issues such as the number of parties concerned and their willingness to negotiate and agree undertakings.

Interim measures

7.18 After the CMA has published its final report but before the reference has been finally determined (by final undertakings being accepted or a final order made), the CMA has the power to prevent pre-emptive action that might impede the taking of final action in relation to the investigation.¹³⁵ It may do so by accepting from the parties concerned interim undertakings to take such action as the CMA thinks is appropriate or by making an interim order.¹³⁶

¹³³ These are limited to information remedies or other remedies specified by Order by the Secretary of State. See section 138 and Schedule 9 DMCCA24, amending or inserting sections 133A, 138A, 161B, 161C, 161D, 161E, 162B, 165, 167, 167A, 167B, 169 and 172 of the EA02.

¹³⁴ Schedule 8, EA02

¹³⁵ In the case of a restricted public interest reference or a full public interest reference, this power is exercisable by the Secretary of State (section 157(6) of the EA02).

¹³⁶ Sections 157 and 158 of the EA02.

7.19 The CMA can take steps to require parties to reverse any action that has already occurred before any interim measures have been put in place.¹³⁷ This enables the CMA, once a report has been published, to prevent the effectiveness of any ultimate remedy being jeopardised through pre-emptive action by the parties as set out in more detail in the Markets Remedies Guidance.

Sunset clauses and reviews of remedies

7.20 The CMA will consider the use of sunset clauses and review the ongoing need for remedies, with a view to ensuring that remedies do not remain in force where they are no longer necessary to achieve the purposes for which they were imposed. Further information on this is set out in the Markets Remedies Guidance.

¹³⁷ Sections 157(2B) and 158(2B) of the EA02.