

**[Director, manager, secretary or other similar officer of company] [Legal name of Acquirer / Legal name of Target]**

Company position

Company name

Building name/number

Street name

Town

County/Country

Postcode

From: [Name]

*[Assistant Director]*

Direct line: 020 3738 [●]

Our ref: ME/\*\*\*\*/\*\*

[As authorised representative of [Legal name of Acquirer / Legal name of Target]]

By email to [●]

[Date]

## **[COMPLETED/ANTICIPATED] ACQUISITION BY [●] OF [●]:**

### **SECTION 109 NOTICE**

Dear [Recipient],

**[Completed transactions language:** The Competition and Markets Authority (**CMA**) understands that on [day, month and year], [legal name of Acquirer] **[(define Acquirer)]**,<sup>1</sup> either itself or through an affiliated entity, acquired **[[legal name of Target (define Target)]/[description of business acquired] [(define business acquired)]**],<sup>2</sup> (the **Merger**).

**[Anticipated transactions language:** The Competition and Markets Authority (**CMA**) understands that on [day, month and year], [legal name of Acquirer] **[(define Acquirer)]**,<sup>3</sup>

---

<sup>1</sup> Including, for the avoidance of doubt, all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002 but excluding [legal name of Target].

<sup>2</sup> Including, for the avoidance of doubt all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

<sup>3</sup> Including, for the avoidance of doubt, all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

either itself or through an affiliated entity agreed to acquire [[legal name of Target (**define Target**) / [description of business acquired] [(**define business acquired**)]],<sup>4</sup> (the **Merger**).

[For both]

[We acknowledge the information which [entity name] has already provided about the Merger to my colleague [MIC officer] on [date(s)].

Under [section 5](#) of the Enterprise Act 2002 (the **Act**), the CMA has a function to obtain, compile and keep under review information about matters relating to the carrying out of its other functions, including the competition assessment of mergers and acquisitions. This is done with a view to (among other things) ensuring that the CMA has sufficient information to take informed decisions and to carry out its other functions effectively. If a transaction qualifies for review by the CMA, [[section 22](#) / [section 33](#)] of the Act imposes a duty on the CMA to refer this transaction to an in-depth phase 2 assessment where it believes that it is or may be the case that the transaction has resulted, or may be expected to result, in a substantial lessening of competition in one or more markets in the UK. A short video explaining our functions can be viewed here.<sup>5</sup>

The CMA is now assessing whether the Merger gives rise to a relevant merger situation for the purposes of Part 3 of the Act and, if so, whether its statutory duty to refer the Merger to an in-depth phase 2 assessment set out in [[section 22/section 33](#)] of the Act is triggered.

For the purposes of this assessment, I am now serving [Acquirer / Target] with the attached notice (the **Notice**) made by the CMA in exercise of its powers under [section 109](#) of the Act.

The Notice requires [Acquirer / Target] to [produce the documents [and] supply the information] specified or described in **questions 1 to [XX]** of Annex 1 to the Notice by **16:30 UK time on [deadline one]** and in **all remaining questions** in Annex 1 to the Notice by **16:30 UK time on [deadline two]**. [Any documents should be provided in accordance with the Guidance on requests for internal documents in merger investigations (CMA100) published on 15 January 2019<sup>6</sup> [and instructions set out in [•]].] The requested information should be provided to the CMA by email to me at [AD email] and to my colleague [name PCO] at [PCO email].

**[Completed transactions language:** If [Acquirer/Target] does not provide the documents and information specified or described in Annex 1 to the Notice by the above deadlines (with or without reasonable excuse), the CMA may, in accordance with [section 25\(2\)](#) of the Act, extend its four month statutory deadline for reviewing the Merger [, and in accordance

---

<sup>4</sup> Including, for the avoidance of doubt, all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

<sup>5</sup> See the CMA's publication '[Mergers: what they are and why are investigating them](#)', 7 February 2018.

<sup>6</sup> Guidance on requests for internal documents in merger investigations ([CMA100](#)), 15 January 2019.

with [section 34ZB\(1\)](#) of the Act, extend the initial period mentioned in [section 34ZA\(1\)](#) of the Act] by the additional number of days that it takes [Acquirer/Target] to provide the [documents [and] information] and for the CMA to assess whether the [documents [and] information] form[s] a satisfactory response.]

**[Anticipated transactions language:** If the Merger completes and [Acquirer/Target] does not provide the documents and information specified or described in Annex 1 to the Notice by the above deadlines (with or without reasonable excuse), the CMA may [,in accordance with [section 25\(2\)](#) of the Act, extend its four month statutory deadline for reviewing the Merger,] [and, in accordance with [section 34ZB\(1\)](#) of the Act, extend the initial period mentioned in [section 34ZA\(1\)](#) of the Act] the additional number of days that it takes [Acquirer / Target] to provide the [documents [and] information] and for the CMA to assess whether the [documents [and] information] form[s] a satisfactory response.]

In addition, if [Acquirer/Target] fails to comply with the requirements of the Notice without reasonable excuse, the CMA may impose a financial penalty on [Acquirer/Target] under the CMA's powers in [section 110](#) of the Act. The financial penalty may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of the two. Further information can be found in the CMA's Administrative penalties: Statement of policy on the CMA's approach (CMA4), 19 December 2024.<sup>7</sup>

It is a criminal offence under [section 117](#) of the Act for a person to supply the CMA with information which is false or misleading in a material respect. Under [section 110\(1A\)](#) of the Act the CMA may impose a penalty where a person has, without reasonable excuse, supplied information to the CMA that is false or misleading in a material respect. Under [section 110\(1C\)](#) of the Act, the CMA may not impose such a penalty in relation to an act or omission which constitutes an offence under [section 117](#) of the Act if the person has, by reason of the act or omission, been found guilty of that offence.

If [Acquirer/Target] believes that it is not in a position to provide the documents and information specified or described in Annex 1 to this Notice, please let us know as soon as possible. In that case, please also let us know which entity (if any) [Acquirer/Target] believes would be better placed.

In addition to the specific documents and information requested in Annex 1 to the Notice, I encourage [Acquirer/Target] to provide any additional data and documentary evidence that it considers may be useful for the CMA's assessment of the Merger's impact on competition.

[Acquirer/Target] may also find it useful to read the CMA publication Quick Guide to UK Merger Assessment (CMA18), published on 2 January 2025.<sup>8</sup> [Acquirer/Target] can find more detailed information about the CMA's processes in Mergers: Guidance on the CMA's

---

<sup>7</sup> Administrative penalties: Statement of Policy on the CMA's approach ([CMA4](#)), 19 December 2024.

<sup>8</sup> Quick Guide to UK Merger Assessment ([CMA18](#)), 2 January 2025.

jurisdiction and procedure (CMA2), published on 2 January 2025,<sup>9</sup> and about the CMA's assessment of the impact of a merger on competition in Merger Assessment Guidelines (CMA129), published on 18 March 2021.<sup>10</sup> It may also be useful to review the guidance notes to the Merger Notice under section 96 of the Act that the CMA has published to assist notifying merger parties to understand the nature and extent of information that notifying parties should provide to the CMA to enable it to assess a notified merger.<sup>11</sup>

If [Acquirer/Target] has any questions, please contact me on the above number or my colleague [name PCO] on [PCO phone number]. We would be very happy to discuss this request for [documents [and] information], as well as the CMA's processes more generally.

[I am copying this letter to [name of main contact at company/organisation].]

Yours sincerely

[add electronic signature]

[AD]

Assistant Director, Mergers

[•]@cma.gov.uk]

---

<sup>9</sup> Mergers: Guidance on the CMA's jurisdiction and procedure ([CMA2](#)), 2 January 2025.

<sup>10</sup> Merger Assessment Guidelines ([CMA129](#)), 18 March 2021.

<sup>11</sup> Available at [Merger notice forms](#): forms for businesses to use to notify the CMA of an anticipated or completed merger.

# [COMPLETED/ANTICIPATED] ACQUISITION BY [●] OF [●]

## Notice under section 109 of the Enterprise Act 2002

### 1. NOTICE

1. Acting under [section 109](#) of the Enterprise Act 2002 (the **Act**) and for the purpose of an investigation into the above [acquisition] (the **Merger**), a permitted purpose under [section 109\(A1\)](#) of the Act, the Competition and Markets Authority (**CMA**) hereby gives notice to [legal name of Acquirer] (**define Acquirer**),<sup>12</sup> / [legal name of Target] (**define Target**),<sup>13</sup> at [Acquirer / Target registered address] that it is required to [produce the documents [and] supply the information] specified or described in the attached Annex 1 to this Notice.
2. [Acquirer / Target] is required to [produce the documents [and] supply the information] specified or described in **questions 1 to [XX]** of the attached Annex 1 on or before **[●] UK time on [●] [deadline one]** and in **all remaining questions** in the attached Annex 1 on or before **[●] UK time on [●] [deadline two]**. [Any documents should be provided in accordance with the Guidance on requests for internal documents in merger investigations (CMA100) published on 15 January 2019<sup>14</sup> [and the instructions set out in [●]]. The requested information should be provided to the CMA by email to [name AD] at [AD email] and [name PCO] at [PCO email].
3. [Acquirer/Target] is not required to [produce any documents [or] supply any information] which it would not be compelled to [produce [or] supply] in civil proceedings before the High Court in England and Wales or Northern Ireland or before the Court of Session in Scotland
4. [Any reference in this Notice to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.]

---

<sup>12</sup> Including, for the avoidance of doubt, all entities under its ownership or control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Act, but excluding [legal name of Target].

<sup>13</sup> Including, for the avoidance of doubt, all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

<sup>14</sup> [CMA100](#).

5. [Acquirer/Target] is also required to provide the compliance statement in the format attached at Annex 3 to confirm [Entity name]'s compliance with this Notice].

## **2. CONSEQUENCES OF NOT COMPLYING WITH THIS NOTICE**

### **2.1 Non-compliance with this Notice**

6. Under [section 110\(1\)\(a\)](#) of the Act where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of this Notice it may impose a penalty of such amount as it considers appropriate. The amount of such penalty may be a fixed amount or an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.
7. Such a penalty, imposed on a person who does not own or control an enterprise, is subject to the following limits:
  - (a) In the case of a fixed amount, such amount shall not exceed £30,000.
  - (b) In the case of an amount calculated by reference to a daily rate, such amount per day shall not exceed £15,000.
  - (c) In the case of a fixed amount and an amount calculated by reference to a daily rate, the fixed amount shall not exceed £30,000 and the amount calculated by reference to a daily rate shall not exceed £15,000 per day.
8. Such a penalty, imposed on any other person, is subject to the following limits:
  - (a) In the case of a fixed amount, such amount shall not exceed 1% of the total value of the turnover (both in and outside the UK) of the enterprises owned or controlled by the person.
  - (b) In the case of an amount calculated by reference to a daily rate, such amount per day shall not exceed 5% of the total value of the daily turnover (both in and outside the UK) of the enterprises owned or controlled by the person.
  - (c) In the case of a fixed amount and an amount calculated by reference to a daily rate, such amount shall not exceed such fixed amount and such amount per day.
9. Any penalty imposed by reference to a daily rate shall not take account of any days prior to the service of the notice of the penalty and the amount of the penalty payable shall cease to accumulate at the beginning of:
  - (a) the day on which the requirement of this Notice is satisfied; or

- (b) if earlier, the relevant day as defined in [section 110A](#) of the Act, namely the day when the CMA finally decides on whether the Merger is referred for an in-depth phase 2 assessment under [[section 22/section 33](#)] of the Act.

## **2.2 Intentional obstruction or delay**

10. Under section [110\(1\)\(b\)](#) of the Act, where the CMA considers that a person, without reasonable excuse, has obstructed or delayed another person in the exercise of his powers under section 109(6) of the Act, it may impose a fixed amount penalty.
11. Such penalty, imposed on a person who does not own or control an enterprise, shall not exceed £30,000.
12. Such penalty, imposed on any other person, shall not exceed 1% of the total value of the turnover (both in and outside the UK) of the enterprises owned or controlled by the person.
13. No penalty shall be imposed by virtue of sections [110\(1\)\(a\) or 110\(1\)\(b\)](#) of the Act where more than ten weeks have passed since the relevant day as defined in [section 110A](#) of the Act (see paragraph 9(b) above). This provision does not apply in relation to any variation or substitution of a penalty which is permitted by the Act.

## **2.3 Alteration, suppression or destruction of documents**

14. It is a criminal offence under section 116A of the Act for a person to intentionally alter, suppress or destroy any document a person has been required to produce under section 109 of the Act. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both.
15. Under [section 110\(1\)\(c\)](#) of the Act, where a person has, without reasonable excuse, altered, suppressed or destroyed any document which the person has been required to produce by a notice under section 109, the CMA may impose a fixed amount penalty.
16. Such penalty, imposed on a person who does not own or control an enterprise, shall not exceed £30,000.
17. Such penalty, imposed on any other person, shall not exceed 1% of the total value of the turnover (both in and outside the UK) of the enterprises owned or controlled by the person.
18. Under section 110(1C) of the Act, the CMA may not impose such a penalty in relation to an act or omission which constitutes an offence under section 116A of

the Act if the person has, by reason of the act or omission, been found guilty of that offence.

### 3. FALSE OR MISLEADING INFORMATION

19. It is a criminal offence under [section 117](#) of the Act for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both.
20. Under [section 110\(1A\)](#) of the Act, where a person has, without reasonable excuse, supplied information to the CMA that is false or misleading in a material respect, the CMA may impose a fixed amount penalty.
21. Such penalty, imposed on a person who does not own or control an enterprise, shall not exceed £30,000.
22. Such penalty, imposed on any other person, shall not exceed 1% of the total value of the turnover (both in and outside the UK) of the enterprises owned or controlled by the person.
23. Both [section 117](#) and [section 110\(1A\)](#) of the Act also apply in respect of supply of false or misleading information to another person knowing that the information is to be provided to the CMA. Under section 110(1C) of the Act, the CMA may not impose such a penalty in relation to an act or omission which constitutes an offence under section 117 of the Act if the person has, by reason of the act or omission, been found guilty of that offence.

#### 3.1 Statement of Policy on Penalties

24. The CMA shall have regard to its Administrative penalties: Statement of policy on the CMA's approach (CMA4), published 19 December 2024.<sup>15</sup>

Assistant Director, Mergers

[●]@cma.gov.uk]

[Date]

---

<sup>15</sup> [CMA4](#).



## ANNEX 1 TO SECTION 109 NOTICE

[Acquirer / Target] is required to [produce the documents [and] supply the information] specified or described in **questions 1 to [XX]** of this Annex 1 on or before **[•] UK time on [•] [deadline one]** and in **all remaining questions** in this Annex 1 on or before **[•] UK time on [•] [deadline two]**.<sup>16</sup>

**[Completed transactions language]** The Competition and Markets Authority (**CMA**) understands that in [month and year], [legal name of Acquirer], either itself or through an affiliated entity, [acquired] [[legal name of Target] (**[define Target]**)/ [description of business acquired] (**[define business acquired]**)], (this acquisition is referred to as the **Merger**).

**[Anticipated transactions language]** The Competition and Markets Authority (**CMA**) understands that on [day, month and year], [legal name of Acquirer] (**[define Acquirer]**),<sup>17</sup> either itself or through an affiliated entity agreed to acquire [[legal name of Target (**define Target**) / [description of business acquired] (**[define business acquired]**)],<sup>18</sup> (this acquisition is referred to as the **Merger**).

**[Acquirer enquiry letter language]:** In this Annex we refer to [Acquirer full legal name] when we refer to that specific legal entity. [Acquirer full legal name] and all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002 (the **Act**), [but excluding [Target],] are collectively referred to as **[Acquirer]**.

**[Target enquiry letter language]:** In this Annex we refer to [Target full legal name] when we refer to that specific legal entity. [Target full legal name] and all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002, are collectively referred to as **[Target]**.

---

<sup>16</sup> [The CMA notes the information which [entity name] has already provided about the Merger on [date(s)]. To the extent relevant, please feel free to cross-refer to that information, or expand on it, in your response to the questions in this Annex 1.] Further information on the CMA's merger process can be found on the CMA's website: [Merger notice forms](#): forms for businesses to use to notify the CMA of an anticipated or completed merger. This includes links to further guidance listed under the heading 'Detailed information' on this webpage, as set out in the cover letter to this section 109 Notice.

<sup>17</sup> Including, for the avoidance of doubt, all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

<sup>18</sup> Including, for the avoidance of doubt, all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

**[Language when requested documents]** This notice should be accompanied by an index of documents produced to the CMA in response to this Notice by reference to the CMA's template. This index should identify the question(s) to which each document is responsive, as well as the document title, the purpose for which the document was created, the date produced, the names and roles of the authors, and the names and roles of the recipients of the document.<sup>19</sup>

## 1. QUESTIONS

### 1.1 REPRESENTATIVES

1. For each of the following entities, provide the name, position and contact details (including direct telephone number, direct email address and full postal address in the UK) of the person with whom the CMA should communicate in relation to the Merger. This can be a person within the entity or an external authorised representative (for example, an external solicitor) acting on behalf of the entity (an **Authorised Representative**).
  - (a) [Acquirer top Co, if applicable];
  - (b) [Acquirer full legal name]
  - (c) [Acquirer] (if different to the entity provided in response to part (b) of this question).
  - (d) [Target top Co, if applicable].
  - (e) [Target full legal name]
  - (f) [Target] (if different to the entity provided in response to part (e) of this question).
2. For any Authorised Representative(s) identified in response to Question 1 of this Annex 1:
  - (a) Confirm that the Authorised Representative is duly authorised to receive communications and service of documents from the CMA on behalf of [Each entity identified above].
  - (b) Have [each entity identified above] provide an e-mail directly to the case team from [each entity identified above] granting the authorisation (the

---

<sup>19</sup> See Annex 2 available at the CMA's page on [Forms for businesses to use to notify the CMA of an anticipated or completed merger](#).

**Proof of Authorisation**). If the Authorised Representative is a solicitor, provide the Proof of Authorisation in form set out in Annex 2 to this Notice.

## 1.2 Merger details

3. Provide a copy of the contractual agreements or other documents forming and implementing the Merger.
4. State whether the Merger has completed and, if so state on which date this completion took place. If the Merger has not completed, please state on which date completion is expected to take place.
5. Provide a diagram showing the pre- and post-Merger ownership structure of [Acquirer], including [Target], showing all [Acquirer] entities which are active in the same economic sector as [Target].
6. Provide a copy of any press release and public report (such as a newspaper article) evidencing when and how [Acquirer]'s intention to engage in the Merger [and the completion of the Merger were made public for the first time].
7. List all other jurisdictions in which the Merger has been or will be notified to competition authorities, and the status of any notification or review process.
8. List all other mergers, acquisitions, disposals and/or joint ventures undertaken by the following entities in the 24 months prior to the date of this Notice:
  - (a) [[Acquirer] where such merger, acquisition, disposal and/or joint venture involves [Acquirer]'s operations in the UK];
  - (b) [to the extent not included in the response to part (a) above, [Acquirer top Co], where such merger, acquisition, disposal and/or joint venture involves [Acquirer top Co]'s operations in the UK]; and
  - (c) [to the extent available to [Acquirer], [Target]].

## 1.3 Jurisdiction

9. To determine whether the 'jurisdictional tests in the Act are met':<sup>20</sup>
  - (a) provide the turnover (in GBP) in the UK of [Acquirer] and [Target] in the last financial year.
  - (b) Provide [Acquirer/Target]'s best estimate of the share of supply for any products or service of any description in relation to which [Acquirer] and

---

<sup>20</sup> Information about the jurisdictional tests can be found in Mergers: Mergers: Guidance on the CMA's jurisdiction and procedure (**CMA2**), 2 January 2025, section 4.

[Target] have a combined share of supply in the UK, or in a substantial part of the UK, of 25% or more and where the Merger causes an increment in such share, or

- (c) in relation to which [Acquirer] individually has a share of supply in the UK, or in a substantial part of the UK, of 33% or more.
- (d) In addition to any other relevant products or services, please consider in any case [specific area of overlap MIC is aware of].
- (e) Please describe in relation the [Target] which of the following conditions apply:<sup>21</sup>
  - (i) it is carried on by a body of persons corporate or unincorporate formed or recognised under the law of any part of the UK;
  - (ii) its activities, or part of its activities, are carried on in the UK;<sup>22</sup> and/or
  - (iii) it supplies (directly or indirectly) goods or services to a person or persons in the UK.<sup>23</sup>
- (f) State the methodology and data sources [Acquirer/Target] have used to produce the estimate(s) provided in response to parts (b) and (c) of this question.

## 1.4 Business activities

10. Explain the pre-Merger business activities of [Acquirer] [and [Target]] in the UK, including a description of the goods and services:

- (a) [[where completed] where the businesses of [Acquirer] and [Target] overlapped before the Merger, ie where there was a horizontal relationship between these businesses (the **Overlap Products**)/ [where anticipated] where the businesses of [Acquirer] and [Target] overlap, ie where there is a horizontal relationship between these businesses (the **Overlap Products**);<sup>24</sup> and

---

<sup>21</sup> Information about the UK nexus condition can be found in Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), 2 January 2025, paragraphs 4.81–4.91.

<sup>22</sup> An enterprise may carry on at least part of its activities in the UK if, for example, it has an office, branch or any kind of facility in the UK; has intellectual property rights in the UK; has obtained a licence or regulatory approval to enable it to supply goods or services (whether directly or indirectly) in the UK; or consumers in the UK have access to the goods or services of the enterprise.

<sup>23</sup> The supply of goods or services includes (amongst others): the supply of digital content; the supply of digital services by means of the internet; rendering services to order; the provision of services by making them available to potential users; and making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

<sup>24</sup> Horizontal relationships relate to business activities in the same economic sector and at the same level of the supply chain, ie between competing (or potentially competing) businesses.

- (b) [[where completed] where before the Merger the businesses of [Acquirer] and [Target] operated at different levels of the supply chain, ie where there was a vertical relationship between these businesses (the **Vertically Related Products**)/ [where anticipated] where the businesses of [Acquirer] and [Target] operate at different levels of the supply chain, ie where there is a vertical relationship between these businesses (the **Vertically Related Products**)].<sup>25</sup>
11. Provide a list of all entities that form part of [Acquirer [and Target]] and are active in the supply or purchase of the Overlap Products or the Vertically Related Products in the UK.
  12. Provide a copy of the annual accounts and reports for the two most recent accounting periods for:
    - (a) [Acquirer full legal name];
    - (b) [Acquirer] in consolidated form; and
    - (c) to the extent accessible to [Acquirer], [Target].
  13. Provide a copy of the management accounts of [Acquirer] for the 12 months prior to the Merger.
  14. If [Acquirer] has management accounts relating specifically to the Overlap Products or Vertically Related Products, provide those management accounts for the 12 months prior to the Merger.
  15. To the extent accessible to [Acquirer], provide copies of the management accounts of [Target] for the 12 months prior to the Merger.
  16. To the extent accessible to [Acquirer], provide copies of the management accounts of [Target] relating specifically to the Overlap Products or Vertically Related Products for the 12 months prior to the Merger.

## **1.5 Geographic area(s) of activities**

17. State the extent of the geographic area (or areas, if local or regional markets are relevant) in the UK in which, before the Merger, (a) [Acquirer] and (b) [Target] supplied the Overlap Products and the Vertically Related Products. Explain how

---

<sup>25</sup> Vertical relationships relate to business activities at different levels of the supply chain. These can be, for example, the link between an upstream supplier (or potential supplier) and a downstream customer (or potential customer), either as an input into its own production or for resale.

[Acquirer/Target] have arrived at the response, including how [Acquirer/Target] have assessed where most customers are located.<sup>26</sup>

## **1.6 Counterfactual<sup>27</sup>**

18. State [Acquirer]'s forecast for the short-term future of [Target] if the Merger [had not taken place/ does not take place]. If [Acquirer]'s forecast is that [Target]'s position in this short-term future [would have been/is] materially different from its position before the Merger, and as such considers that the CMA should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the [Acquirer] considers it should be used for that assessment.

## **2. INTERNAL DOCUMENTS**

### **2.1 Business plans and financial forecasts**

19. Provide copies of the business plans and financial forecasts of [Acquirer] from the 24 months prior to the Merger.
20. If available, provide copies of the business plans and financial forecasts of [Acquirer] related specifically to one or more of the Overlap Products [and the Vertically Related Products] from the 24 months prior to the Merger.

### **2.2 The Merger, its business rationale, and investment case**

21. Provide copies of all documents (including but not limited to minutes of meetings, studies, reports, presentations, surveys, analyses, or recommendations) in the possession of [Acquirer] which:
  - (a) in the 24 months prior to the Merger have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or shareholders of any [Acquirer] entity (whether prepared internally or by external consultants); and
  - (b) set out the reasons for undertaking the Merger, such as its investment case and/or the benefits for [Acquirer] of undertaking the Merger.
22. To the extent accessible to [Acquirer], provide any Information Memorandum or Sale Information Brochure or similar document circulated by the seller of [Target]

---

<sup>26</sup> Further information about the geographic market is at [Merger Assessment Guidelines \(CMA129\), 18 March 2021](#), from paragraph 9.13.

<sup>27</sup> The 'counterfactual' is the situation that would exist without the Merger. See [CMA129](#), Chapter 3.

or its representatives when seeking expressions of interest for [Target] or during any 'due diligence' undertaken by or on behalf of [Acquirer].

## **2.3 Market studies and analysis**

23. Provide copies of all documents (including but not necessarily limited to reports, presentations, studies, analysis, or industry market reports such as customer research and pricing studies) in the possession of [Acquirer] and either prepared by or for [Acquirer] or published in the 24 months prior to the Merger, which set out the competitive conditions, market conditions, estimated market shares and/or competitors in relation to the Overlap Products [or the Vertically Related Products].

## **2.4 Advertising and marketing**

24. Provide copies of all internally or externally produced marketing and advertising strategy documents generated by, or on behalf of, [Acquirer] in the 12 months prior to the Merger and which relate to the Overlap Products [or the Vertically Related Products].

## **2.5 Prices**

25. As regards price lists of [Acquirer] for each of the Overlap Products:
- (a) Provide copies of these price lists, if available.
  - (b) If [Acquirer] applies different price lists and/or discounts and/or rebates depending on the identity of the customer, the geographic area or any other factors, then provide each such list.
  - (c) If there is more than one price list for the same Overlap Product, list any factors contributing to any differences in the price lists so that the CMA can identify the reasons for any differences.
  - (d) If [Acquirer] does not have price lists for each Overlap Product, describe how [Acquirer] determines the prices it charges for those Overlap Products for which it does not have price lists.

## **2.6 Documents prepared by or for [Target]**

26. To the extent accessible to [Acquirer], provide copies of the documents requested in Questions 19 to 25 that were prepared by or on behalf of [Target].

## 2.7 Contractual arrangements with customers

27. List in an Excel spreadsheet the following details for the five largest customers of each of (a) [Acquirer]; and (b) [Target] for each of the Overlap Products in each geographic area where [Acquirer] and [Target] overlap (as set out in the response to Question 17 above):
- (a) customer name;
  - (b) nature of the arrangement (for example, whether the contract was awarded by open tender, tender by invitation or bilateral negotiations);
  - (c) length of the arrangement;
  - (d) whether the arrangement has been rolled over or automatically renewed without further tender or negotiations, and, if so, how often;
  - (e) previous supplier (if known);
  - (f) total value of contract (annual);
  - (g) product or service supplied;
  - (h) value per unit of product or service (if known);
  - (i) competitors for the provision of this contract (if known);
  - (j) proportion of the revenues generated from this customer relative to [Acquirer]'s total revenue from each of the relevant product or service.

## 3. HORIZONTAL ISSUES

28. In relation to each Overlap Product:
- (a) State how each of (a) [Acquirer]; and (b) [Target] market these products or services. For example, whether the focus is on the price or quality of these products or services and whether they have specific characteristics that make them suitable for only specific customer groups.
  - (b) [State whether each of (a) [Acquirer]; and (b) [Target] sets the key competitive variables for these products and services at a local, regional or national level.]
29. State the revenues earned in the most recent financial year by each of [Acquirer], and, if known, [Target] for each of the products and services referred to in Question 28 above.



30. Provide best estimates of the shares of supply held by each of [Acquirer], [Target] and their competitors based on volumes and revenues in each of the Overlap Products in each geographic area in which they are supplied by both [Acquirer] and [Target], as indicated in the response to Question 17 above. State the methodology and data sources for the estimates provided.

#### 4. VERTICAL ISSUES

31. For each Vertically Related Product, provide [Acquirer]'s best estimates of the shares of supply held by [Acquirer] and [Target] based on volumes and revenues in each geographic area indicated in the response to Question 17 above.

#### 5. ENTRY OR EXPANSION

32. List the main factors affecting entry or expansion for each of the Overlap Products.
33. Provide details of all entry, exit or significant expansion over the past five years of which [Acquirer] is aware in relation to the Overlap Products, stating in each case (a) the product or service for which such entry/exit/expansion took place; (b) the relevant firm(s); and (c) if known, the scope and size of such entry/exit/expansion (in volume or revenues terms).

#### 6. EFFICIENCIES AND CUSTOMER BENEFITS

34. List the main efficiencies and customer benefits that the Merger will give rise to, if any.

#### 7. CONTACT DETAILS

35. Provide the contact details of:
- (a) **ten** customers of each of [Acquirer], and [Target] for each of the Overlap Products in each geographic area where [Acquirer], and [Target] currently overlap/ overlapped prior to the Merger, as indicated in the response to Question 17 above, which should constitute a representative selection of their customers (for example, a sample of large, medium-sized and small customers); please also explain the basis on which these customers have been selected. If there are fewer than ten customers in any category, then provide details in relation to all customers in that category;
  - (b) **ten** main competitors that [Acquirer] consider to be credible alternatives to [Acquirer] and [Target] for each of the Overlap Products in each geographic area where [Acquirer] and [Target] currently overlap/ overlapped prior to the Merger, as indicated in the response to Question 17 above;

- (c) **five** main competitors [Acquirer] considers to be credible alternatives to [Acquirer] or [Target] for each product or service in each geographic area where there is/was a vertical relationship between [Acquirer] and [Target] prior to the Merger, as indicated in the response to Questions 10(b) and 17 above;
- (d) **five** main suppliers of each of [Acquirer] and [Target] for each product or service in each geographic area where [Acquirer] and [Target] overlap, as indicated in the response to Questions 10(a) and 17 above;
- (e) any sectoral trade associations of which [Acquirer] is aware in respect of the Overlap Products;
- (f) any government **departments or regulatory authority** holding relevant information on this economic sector or from which the CMA could seek information or data on competition in any of the markets identified in this response.

36. All contact details provided in response to Question 35 above should be provided by reference to the CMA template for providing third party contact details<sup>28</sup> - ie should include, where available: (a) the name of the organisation; (b) the name, and role/position of a contact person; (c) the contact person's direct telephone number; (d) the contact person's direct email address; and (e) the contact person's postal address. If [Acquirer] does not hold the relevant data, please provide the contact details of the Company Secretary or Chief Executive Officer of the relevant company.

---

<sup>28</sup> See Annex 1 available at the CMA's page on [Forms for businesses to use to notify the CMA of an anticipated or completed merger](#).

## **ANNEX 2 TO SECTION 109 NOTICE**

1. I confirm that [Law firm name], including [individual lawyers], are appointed to represent [company] in connection with the CMA's review of the [acquisition by [company A] of [company B]] (**the Merger**).
2. I hereby specify [individual lawyers] and any other partner at [Law firm], [Law firm address in the UK] as an address at which [company] will accept service or take receipt of all documents from the CMA in connection with the Merger. I further confirm that notice may be served on such lawyers and any other partner by means of an electronic communications network in accordance with section 126(2)(d) of the Enterprise Act 2002.

## ANNEX 3 TO SECTION 109 NOTICE

[Entity Name] (including, for the avoidance of doubt, all entities under common ownership or control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002) has taken the steps outlined in this statement to comply with the document requirements in the notice made by the Competition and Markets Authority (**CMA**) under section 109 of the Enterprise Act 2002 (the **Act**) dated [●] (the **Notice**), and to the best of my knowledge and belief based on these steps, the information and documents produced are true, correct and complete in all material respects.

### STEPS TAKEN TO COMPLY WITH THE DOCUMENT REQUESTS IN THE NOTICE:

1. [Provide a full description of the methodology used to identify the documents provided in the response to the Notice. This should include some, or all, of the following (as appropriate):
  - (a) The identity of relevant custodians whose documents have been reviewed along with the role/job title of those custodians (taking into account changes in custodians' roles within the time period specified in the question) and the basis on which these custodians were selected (for example, in terms of relevant organisation structure and decision-making processes of the business, which explains why a custodian would be likely to have access to responsive documents).
  - (b) The manner in which instructions were conveyed to each custodian (ie by phone, or in writing) and the content of such instructions.
  - (c) For each custodian:
    - (i) The parts of the custodian's IT environment which were searched (for example, email, local folders, shared folders, cloud services, external media etc) and why.
    - (ii) The approach taken to retrieving the data in the custodian's IT environment.
    - (iii) The time parameters used for the review of potentially responsive documents.

- (iv) The search terms used to identify responsive documents (including any Boolean search terms used), including:
  - (1) How these search terms were determined and by whom.
  - (2) Whether these search terms were used alone or in combination.
  - (3) Whether search terms were case sensitive.
- (d) How many documents were returned through the electronic searches (broken down by search term).
- (e) Details of any manual review process, including:
  - (i) Who conducted the manual review of documents?
  - (ii) How many documents per custodian were selected as relevant?
  - (iii) The basis for this 'relevance' review (for example, was there a materiality threshold?).
- (f) Any measures taken to ensure that potentially responsive documents have not been altered, suppressed or destroyed.
- (g) The approach adopted (if applicable) to documents that are not text searchable.
- (h) The approach adopted (if applicable) to family items (for example attachments) in responsive emails.
- (i) The approach adopted (if applicable) to remove duplicate or draft files.
- (j) The approach adopted (if applicable) to redact or remove any documents (or sections of documents) that [Entity Name] considers contain material that is protected by legal professional privilege in England and Wales, together with a log identifying each redaction and explaining the basis on which that material has been identified as being subject to legal professional privilege.]

## **COMPLIANCE STATEMENT:**

I declare that, to the best of my knowledge and belief, the information and documents produced in response to the questions in the Notice are true, correct and complete in all material aspects.

I understand that:

2. Under section 110(1)(a) of the Enterprise Act 2002 (the **Act**) where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109 of the Act it may impose a penalty of such amount as it considers appropriate subject to the applicable statutory limits.
3. Under section 110(1)(b) of the Act, where the CMA considers that a person, without reasonable excuse, has obstructed or delayed another person in the exercise of his powers under section 109(6) of the Act, it may impose a fixed amount penalty subject to the applicable statutory limits.
4. Under section 110(1)(c) of the Act, where a person has, without reasonable excuse, altered, suppressed or destroyed any document which the person has been required to produce by a notice under section 109, the CMA may impose a fixed amount penalty subject to the applicable statutory limits.
5. Under section 110(1A) of the Act, where a person has, without reasonable excuse, supplied information to the CMA that is false or misleading in a material respect, the CMA may impose a fixed amount penalty subject to the applicable statutory limits.
6. In addition to the above civil penalty provisions:
  - (a) It is a criminal offence under section 117 of the Act for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. This includes supplying such information to another person knowing that the information is to be used for the purpose of supplying information to the CMA.
  - (b) It is a criminal offence under section 116A of the Act for a person to intentionally alter, suppress or destroy any document a person has been required to produce under section 109 of the Act.

Signed: [●]

Full name: [●]

Position: [●]

Date: [●]