



CMA: Review of merger remedies approach

IBM strongly supports the CMA's objective to ensure that its approach to merger remedies, where appropriate, embodies the 4Ps. In the context of the CMA's call for evidence, IBM welcomes the opportunity to participate and submits the following general observations. IBM stands ready to engage further as the process advances.

Early and active remedies discussions

As one of the 4Ps, "Process" is focused on driving deep and constructive engagement with relevant stakeholders. With this in mind IBM suggests that, where appropriate to the case, any remedies dialogue should be initiated by the CMA at the earliest opportunity, in Phase 1, using a "negotiation-like" approach. There should be intensive and flexible discussions between the CMA and the parties to provide, as early as possible, a clear indication of the type and scope of remedies that the CMA could deem acceptable. This process should include the early involvement of the decision maker, which is currently only foreseen in exceptional circumstances.

General difficulties and negative effects for undertakings related to carve-out divestment remedies

Noting "Proportionality" as one of the 4Ps, IBM strongly believes that the CMA should generally first explore and discuss with the parties to what extent competition concerns may be addressed through behavioural remedies.

Structural remedies, particularly those which involve the geographic carve-out of a business, often pose significant challenges and may have significant adverse impacts on business. Such carve-outs require extensive internal and external resource. The concerns are multiplied where it is a question of carving out a business in a certain geography from an entire group, e.g., a business division in the UK. This can have major disruptive effects on a business's wider operations, especially where the geographic scope of a market is wider than an individual country. A group's internal business organization will often follow a wider geographic scope, and/or similar business divisions responsible for different geographies are very often closely interwoven. As such, structural remedies may require the recreation of an entire organizational structure within the business being separated. This burden is best avoided wherever possible.

The need for monitoring should not deter the use of behavioural remedies

While it is true that behavioural remedies may require ongoing monitoring efforts, in IBM's view this element should not be overstated. Behavioural remedies have the advantage that they can be tailored to address the specific competitive concerns identified; and adapted over time to respond to changes in market conditions/structure. IBM suggests that appropriate monitoring mechanisms, e.g. monitoring trustees, may usefully unburden the authority, and effectively manage the oversight of behavioural remedies. And it remains true that third party stakeholders will be alert to developments and adept in drawing the CMA's attention to any concerns arising.

Determination of geographic scope and international coordination

An early and active engagement of the CMA in the remedies process should always address the geographic scope of possible remedies and timely coordination with other jurisdictions. Upon identifying that a multi-jurisdictional merger may require remedies, the CMA should seek waivers to be able to share information and enter into discussions with other competition authorities as to what coordinated remedies may serve to address mutual concerns.

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While understanding that the observations above will not be pertinent in all cases, they may be considered in appropriate cases to expedite the remedies process and resolve competitive concerns through tailored solutions. IBM would again like to thank the CMA for the opportunity to participate in this call for evidence and would be happy to engage further should there be follow-up questions or an interest in additional views from IBM.