JOINT COMMENTS OF THE AMERICAN BAR ASSOCIATION ANTITRUST LAW SECTION AND INTERNATIONAL LAW SECTION ON REVIEW OF MERGER REMEDIES APPROACH

May 2, 2025

The views expressed herein are being presented on behalf of the Sections of Antitrust Law and International Law. They have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

The Antitrust Law and International Law Sections of the American Bar Association (the "Sections") welcome the opportunity to comment on the Competition and Market Authority's ("CMA") review of merger remedies approach.[1]

The Antitrust Law Section ("ALS") is the world's largest professional organization for antitrust and competition law, trade regulation, consumer protection and data privacy as well as related aspects of economics. Section members, numbering over 11,000, come from all over the world and include attorneys and non-lawyers from private law firms, in-house counsel, non-profit organizations, consulting firms, federal and state government agencies, as well as judges, professors, and law students. The Section provides a broad variety of programs and publications concerning all facets of antitrust and the other listed fields. Numerous ALS members have extensive experience and expertise regarding similar laws of non-U.S. jurisdictions. For more than thirty years, ALS has been privileged to provide input to enforcement agencies around the world conducting consultations on topics within the ALS' scope of expertise.[2]

The International Law Section ("ILS") is the American Bar Association section that focuses on international legal issues, the promotion of the rule of law, and the provision of legal education, policy, publishing and practical assistance related to cross-border activity. Its members total over 11,000, including private practitioners, in-house counsel, attorneys in governmental and inter-government entities, and legal academics, and represent over 100 countries. The ILS's more than 50 substantive committees cover competition law, trade law, and data privacy and data security law worldwide as well as areas of law, which often intersect with these areas, such as mergers and acquisitions and joint ventures. Throughout its century of existence, the ILS has provided input in

[1] Competition and Markets Authority, Review of merger remedies approach: https://connect.cma.gov.uk/review-of-merger-remedies-approach

[2] Past comments can be accessed on the ALS website at: https://www.americanbar.org/groups/antitrust_law.sso/.

debates relating to international legal policy.[3] With respect to competition law and policy specifically, the ILS has provided input for decades to authorities around the world.[4]

The comments reflect the expertise and experience of the Sections' members with antitrust laws and enforcement practices around the world. The Sections are available to provide additional comments, or otherwise to assist the CMA as it may deem appropriate.

EXECUTIVE SUMMARY

The CMA is to be commended for launching a review of its approach to merger remedies. Merger remedies enable conditional clearance of mergers that, absent a remedy, would be prohibited. As a larger proportion of economic activity has shifted towards service-based industries, in particular "digital" industries, the role of remedies has come under the spotlight because traditional structural remedies have not always provided an obvious solution. In this context, both the process for agreeing on remedies and remedy design itself merit review. A modernized remedies regime can pay regulatory dividends by enabling growth-enhancing mergers, provided that it guards against the risks of consumer harm.

The revised process for Phase 2 investigations launched by the CMA in April 2024 has been widely welcomed by parties and their advisers over the past year. The revised process has allowed for earlier focus on case merits and engagement with decision makers. In the case of remedies, while the CMA has historically favored sequencing remedies discussions to follow the analysis of a merger on the merits, early engagement on remedies without prejudice to positions the merging parties and the enforcer are taking in the investigation is likely to encourage an innovative approach to remedy design and allow time for any concerns about the efficacy of a remedy to be addressed.

With regard to remedy design, it is important to be open to a range of effective remedies, be those structural or behavioral (with appropriate safeguards), to remedy, mitigate or prevent a substantial lessening of competition ("SLC"). Rigorous, well-designed behavioral remedies may be the optimum solution to mitigate competition concerns at lowest cost. The recently announced *Vodafone/Three* remedies represent a more innovative approach to remedy design, one which if successful would support growth and innovation. Within structural remedies, there may also be scope for the CMA to approve a greater range of structural remedies, including carve-out and mix-and-match remedies, by working with parties (including potential buyers) to mitigate composition risk concerns. Again, these are fact-intensive inquiries, and safeguards and appropriate design require appropriate assurances.

Analysis of merger-related efficiencies and customer benefits should be encouraged. Merging parties and their advisers have often felt it was not a good use of resources to try and

[3] American Bar Association, International Law Section Policy, https://www.americanbar.org/groups/international_law/policy/about/.

[4] Past submissions may be accessed at: https://www.americanbar.org/groups/international_law/policy/blanket_authorities_initiatives/.

discuss the efficiencies and customer benefits aspects of a deal in-depth with the CMA, because it was not felt that the topics were a priority for analysis. This potentially risks the CMA not identifying or undervaluing these aspects of a merger. To better take these into account and allow for a more rounded analysis, the CMA could try consulting on potential efficiencies and benefits earlier in Phase 1 and Phase 2, while noting that information asymmetries counsel appropriate scrutiny of efficiency claims.

Coordination between competition enforcers is of crucial importance to merging parties in international deals. In some cases, the CMA will need to coordinate with multiple agencies, for example with the FTC or DOJ in the United States and the European Commission in the EU. While alignment in such circumstances may require considerable work between the different agencies, the likelihood of successful coordination should be higher when the scope of potential remedies being considered is widest. When only a narrow menu of options is given consideration, this reduces the likelihood of finding common ground on which to remedy a proposed merger rather than prohibit it. Greater openness to a range of remedies should enable the CMA to align its resolution with remedies adopted by enforcers outside of the UK.

Good remedy design may also mitigate the monitoring burden, including where behavioral remedies are applied, by providing the right incentives to the parties to adhere to the commitments and avoid the conduct which leads to anticompetitive concerns. Monitoring Trustees can bring specialized expertise, and lessen the burden on the CMA's resources, for monitoring and implementation purposes. Moreover, once a remedy is implemented, in certain sectors the CMA can make use of sector regulators to aid in ongoing monitoring of commitments.

INTRODUCTION

Merger remedies enable mergers to proceed that, absent a remedy, would be challenged or prohibited.

As a larger proportion of economic activity has shifted towards service-based industries, in particular "digital" industries, the role of remedies has come under the spotlight because traditional structural baseline remedies have not always provided an obvious solution. There may be circumstances in which there is no obvious physical asset that can be easily packaged as a divestiture remedy, and the nature of delivery and service provision platforms in the digital space can add substantial costs to any structural solution. In the right circumstances, quasi-structural and behavioral remedies may still allow for effective resolution of competition concerns.

In this context, the process should ensure the competition agency retains an open mind as to remedy design, including the options of quasi-structural or behavioral remedies alongside traditional baseline structural remedies. Because non-structural remedies may, at least on the surface, involve more complexity and ongoing supervision, a process that encourages open discussion of the design and modalities of the remedy and allows enough time for consultations

involving the regulator, merging parties and third parties will maximize the authority's ability to consider all options in evaluating an appropriate remedy. Because behavioral remedies can present complexities and enforcement difficulties, it is important to consider the use of a monitor to ensure the goals of those remedies are best achieved.

The CMA is to be commended for launching a review of its approach to merger remedies in this context. The Sections note that the review is taking place in parallel with the introduction of the CMA's Mergers Charter, which aims to deliver the right decisions promptly and proportionately, applying the CMA's principles of pace, predictability, proportionality and process. The Mergers Charter is welcome as an embodiment of the CMA's commitment to reaching the optimum regulatory outcomes, including as to remedies.

TIMING OF REMEDIES DISCUSSIONS

The Sections note the importance of timing of remedies discussions in terms of working through the substantive analysis of theories of harm in relation to a merger and commencing remedies discussions without prejudice to the regulatory review on the merits. In the United States, and also, we understand, in the United Kingdom, the regulatory framework has generally tended to favor sequencing the analysis. The Sections note that bringing forward discussions to allow for a parallel discussion of remedies without prejudice to positions the merging parties and the enforcer are taking in the investigation and subsequent litigation is likely to encourage an innovative approach to remedy design and allow time for any concerns about the efficacy of a remedy to be addressed.

Encouraging parties to engage in an earlier, parallel discussion will avoid the abrupt change in advocacy that occurs when (as is typically the case) remedies discussions first take place either following a Phase 1 issues meeting, when parties turn their attention to the possibility of offering undertakings in lieu, or even later in Phase 2. The CMA should explore ways to encourage parties to initiate discussions on remedies at an earlier stage, by addressing any fear that to do so signals a substantive competition concern and potentially prejudices the CMA's review. For example, the CMA could consider making a "remedies RFI" a standard part of prenotification or stage 1 of Phase 2. This would remove any sense that either the parties or the CMA are "jumping the gun" by initiating thinking about remedies at an early stage. It would also give both the merging parties and the CMA the space to think creatively about the potential remedies that could be applicable if a remedy were found to be necessary. This is a two-way street. The CMA will expect full candor from the merging parties and a willingness to propose remedies that are effective in addressing concerns. This is critical to ensuring that productive early discussions take place.

The International Competition Network has noted the potential use of a "term sheet" to help bring focus to proposals and that a competition authority's preliminary assessment of remedy proposals may help the merging parties to improve their proposals.[5]

The revised process for Phase 2 investigations launched in April 2024 has been widely welcomed by parties and their advisers over the past year. By introducing the Phase 2 interim report and repurposing the main parties hearing as a merits-oriented hearing, the revised process has allowed for earlier focus on case merits and engagement with decision-makers. These changes should facilitate encouraging parties to offer undertakings in lieu or, if they progress to Phase 2, advance remedies discussions and the potential for finding a solution at an earlier stage of the Phase 2 process.

The Sections note that, in the ongoing CMA Phase 2 review of *GXO/Wincanton*,[6] the CMA began seeking views in early March on certain remedies proposed by the parties, which included a behavioral commitment to create a financial fund that would sponsor the entry/expansion of a new competing third-party logistics provider (alongside certain contractual guarantees to the merging parties' existing grocery customers).[7] This suggests that the revised process for Phase 2 investigations may already have served to open up constructive remedies discussion.

STRUCTURAL VERSUS BEHAVIORAL REMEDIES

The CMA's general preference for structural remedies is a feature of many merger control regimes, for reasons which are well understood.[8] The Sections respectfully suggest that proper remedy design is a fact-specific inquiry. In some cases where structural remedies are offered, partial divestments or "carve-outs" will carry too high a composition risk, such as the volume of business being carved out being insufficient to ensure robust competition, or the divested asset being hindered by other factors such that it cannot be fully deployed to ensure new competitive entry that would reasonably restore ancillary competition.[9] However, ruling out non-structural remedies, even as a component to structural remedies, without due consideration may result in a missed opportunity to identify other potentially effective remedies.

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[5] Para. 3.1 of the ICN Merger Remedies Guide (2016) at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_RemediesGuide.pdf

[6] https://www.gov.uk/cma-cases/gxo-slash-wincanton-merger-inquiry

[7] While we understand that CMA may view the financial commitments as a significant achievement, the Sections caution that use of financial commitments needs to consider a host of factors such as making those commitments enforceable and ensuring that other competitive concerns are not overlooked as a result.

[8] Paras 3.5, 3.10 and 3.46 of the CMA Merger Remedies Guidance explains the CMA's concerns in relation to how comprehensive behavioral remedies can be when compared to structural remedies, the potential for distortions in the marketplace, and ongoing monitoring and compliance costs.

[9] Para. 5.3(a) of the CMA Merger Remedies Guidance: composition risks are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market.

Rigorous, well-designed behavioral remedies, especially when paired with a monitor,[10] may be, for certain transactions, the most effective and proportionate solution. For example, the Brazilian Antitrust Authority (CADE), in its Antitrust Remedies Guide, pledges to avoid the adoption of remedies that exceed what is necessary to restore market competition, and this means considering behavioral remedies whenever the "structural remedy is ineffective or disproportionate".[11]

Within structural remedies, the CMA has been cautious to accept remedies that require less than the divestiture of an existing business, as it may increase complexity and render the remedy inadequate in scope to address the SLC identified. There may be room for the CMA to approve a greater range of structural remedies by working with parties to mitigate such composition risk concerns. In particular, when there are willing purchasers of a proposed divestment package, concerns about the viability of the divestment business should be weighed against the due diligence that purchasers typically undertake as part of their valuation exercise. The CMA could require that due diligence specifically cover areas of concern (for example, where there is likely to be a need for additional support services or transitional services agreements).[12] The CMA could also place greater onus on the remedy buyer to demonstrate that it can compete effectively in the relevant market with only the divested assets.[13] There is also scope for greater consistency of approach as the CMA has shown mixed enthusiasm for carve-out remedies in past decisions, even though a carve-out may attract willing buyers.[14]

Openness to mix-and-match remedies is appropriate where the facts show this is merited. For example, where there is a willing buyer, a mix-and-match remedy presents a solution that mimics what happens in markets the world over on a daily basis: by definition, M&A combines assets in the hope of realizing deal synergies and delivering better outcomes through the integration of two formerly separate businesses. In *Konecranes/Cargotec* the CMA adopted a conservative approach (as did the Department of Justice in the United States) in relation to mix-and-match remedies. The European Commission felt able to clear the merger on the basis of such a remedy,

[10] Sections 35, 36 and 73(2) Enterprise Act

[11] Para. 1.4 of the Guide – Antitrust Remedies issued by CADE at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-cade/Guide-Antitrust-Remedies.pdf

[12] In Bayer/Monsanto, the DOJ required that the divestment package provided BASF a one-year window after closing to identify any assets, in addition to those already included in the package, that were reasonably necessary to ensure the continued competitiveness of the divested businesses. https://www.justice.gov/atr/case/us-v-bayer-ag-and-monsanto-company

[13] In Canada, amendments to the Competition Act in June 2024, aiming to strengthen remedies to preserve or restore the level of competition that would have existed absent the merger, have had this effect.

[14] A reluctance to accept remedies, in particular where parties have sought to carve out a package from their wider offering, was clear in the CMA's initial review (before remittal) of *FNZ/GBST*. The CMA then went on to approve a proposal requiring FNZ to sell GBST to an independent third party approved by the CMA, with a right to subsequently buy back a limited set of assets relating to the capital markets business. In *Broadway/ION*, the CMA approved a reverse carve-out, amounting to the sale of the entire share capital of Broadway.

having received market feedback that the combination of assets proposed as a divestiture was viable.[15] The CMA reached a different conclusion on the same remedy package.[16]

The recent *Vodafone/Three* remedies represent a more innovative approach to remedy design.[17] The *Vodafone/Three* behavioral remedy was designed, if successfully implemented, to capture clear benefits subject to appropriate safeguards, including the network investment program of GBP 11 billion over eight years, enforceable through agreed investment milestones to be met and a focus on monitoring the efforts of the parties (measurable on the basis of number of sites and spectrum deployed) as well as divestiture of spectrum to VMO2. The sector regulator, Ofcom, will take on the primary role for monitoring and enforcement, though CMA will have responsibility as to the Time-.Limited Protections (i.e., wholesale access and retail customer protections), with the Monitoring Trustee supporting both Ofcom and CMA.[18] In appropriate cases, it thus is conceivable that a sector regulator might take primary responsibility for enforcement as part of a behavioral remedy, while a monitoring trustee may fill a similar role with the assistance of clearly defined milestones and reporting obligations on the parties.

Greater engagement with potential remedy options to address an SLC and resulting adverse effects, spanning the range between structural and behavioral remedies, will assist with the CMA's efforts to be reasonable and proportionate and select the least costly remedy, or package of remedies, of those remedy options that the CMA considers will be effective.[19]

ANALYSIS OF PRO-COMPETITIVE BENEFITS

The regulatory approach to date has prioritized analysis of potential harm over engagement with merger-related efficiencies and customer benefits. As a result, merging parties and their

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[15] European Commission, Case M.10078 *Cargotec / Konecranes*, Decision text para. 2811: "Regarding the structure of the Commitments, the Commission notes that no respondents to the market test express any concerns regarding the structure of the Commitments in two distinct remedy packages. Furthermore, the fact that one package originates from Cargotec and one from Konecranes did not trigger any uncertainties among respondents regarding possible lost synergies between both business lines if they come from different Merging Parties. This is consistent with the analysis of the Commission, which has not identified major synergies within Cargotec and Konecranes between both business lines. In relation to the KAS Commitments, the prior agreement of the Commission on the Stargard MEQ assets to be retained by Cargotec guarantees that the Divestment Business will not be deprived of relevant assets because of the reverse carve-out."

[16] CMA, press release of March 29, 2022 https://www.gov.uk/government/news/cma-blocks-planned-cargotec-konecranes-merger: "Having tested the proposed remedies thoroughly, the CMA found that these asset packages lacked important capabilities, so would not enable whoever bought them to compete as strongly as the merging businesses do at present. The process of carving out these assets from the merging businesses' existing operations, and knitting them together into a new combined business, would be complex and risky, so could significantly impair how effectively the purchaser of that business would be able to compete".

[17] https://www.gov.uk/government/speeches/driving-growth-how-the-cma-is-rising-to-the-challenge

[18] Paras. 16,718-721, 16.727 of the Final Report https://assets.publishing.service.gov.uk/media/6756f990f96f5424a4b877b7/Final_report_9_December_2024.pdf

[19] Para. 3.2 of the Merger Remedies Guidance at: https://assets.publishing.service.gov.uk/media/5c12349c40f0b60bbee0d7be/Merger_remedies_guidance.pdf

advisers have often felt it was not a good use of resources to try and discuss the efficiencies and customer benefits aspects of a deal in depth with the regulator, because it was not felt that the topics would be taken seriously.

The information asymmetries, and consequent evidentiary burden, involved in proving merger specific benefits are well-known to merger control, as well as the temptation for merging parties to offer *post hoc* rationalizations for the deal. But again, this is a question of fact rather than one that should be foreclosed from any consideration. Otherwise, there is a risk of not identifying or undervaluing relevant customer benefits ("RCBs") arising from a merger, with mergers that could be welfare enhancing for consumers being sacrificed as a result.[20] The Sections note that the CMA's regulatory framework encompasses a broader definition of potential RCBs. They can capture benefits that can arise in or outside the market in which the SLC arises,[21] and "relevant customers" are direct and indirect customers (including future customers) of the merging parties at any point in the chain of production and distribution – not just final consumers.[22] Within the CMA's regulation framework, RCBs, as buttressed by appropriate commitments of significant duration and enforceability, represent a potentially large number of welfare enhancing benefits within this paradigm, though the Sections take no position as to whether that paradigm is generally desirable among merger-control regimes.[23]

In addition, an important feature of the UK regulatory framework is that RCBs have the potential to play a role in resolving cases at Phase 1,[24] avoiding the expense and time of a Phase 2 process and the need for a remedy discussion at all. Therefore, greater engagement with RCBs brings the prospect of considerable benefits from a process and efficiency of regulatory review perspective – consistent with the CMA's Merger Charter commitment to the "4Ps", in particular the pace, proportionality and process elements.

At Phase 2, the CMA will generally only use behavioral measures as the primary source of remedial action where they will "preserve substantial RCBs that would be largely removed by structural measures".[25] Thus, there is a strong motivation under this specific regime for deepening engagement with RCBs as a corollary to making greater use of, and being more open to, behavioral remedies.

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[20] Under identifying or undervaluing RCBs has the unfortunate consequence that prohibition may be seen as the more appropriate remedy to an SLC than a behavioral or structural remedy, since the cost of prohibiting a merger (in terms of RCBs foregone) is underestimated.

[21] Section 30(1)(a)(i) Enterprise Act.

[22] Section 30(4) Enterprise Act and para. 3.18 of CMA87.

[23] For example, in *Vodafone/Three*, the RCBs included productivity benefits from the creation of a smart grid; applications to rail and road transport; applications in healthcare; productivity and costs savings to farmers from unmanned aerial vehicles; tourists' use of augmented reality applications; and cost savings from smart street lighting. Remedies Working Paper para. 1.550 at: https://assets.publishing.service.gov.uk/media/672a2caa541e1dfbf71e8bc1/Remedies_working_paper_1.pdf

[24] Sections 22(2)(b) and 33(2)(c) of the Enterprise Act and para. 3.14 of CMA87

[25] Merger Remedies Guidance para. 7.2(c) at: https://assets.publishing.service.gov.uk/media/5c12349c40f0b60bbee0d7be/Merger_remedies_guidance.pdf

To better account for RCBs and allow for a more rounded analysis, particularly in mergers where there is no sectoral regulator,[26] the CMA could try consulting on potential RCBs earlier in Phase 1 and Phase 2 without denigrating the need to carefully review mergers for anticompetitive effects. The current process, whereby RCBs are typically consulted on as part of the Remedies Notice, has the effect of relegating meaningful discussion of the benefits of a merger to the later stages of the process, which makes it harder for the CMA to identify and evaluate the positive implications of a merger and weigh these against any SLC.

COORDINATION WITH OTHER ENFORCERS

Many deals in which a remedy is considered involve global markets. It is therefore essential that enforcers coordinate in order to avoid that the merging parties face conflicting demands that may be impossible to effectively implement and that sap efficiencies and customer benefits. Openness to a range of remedies, and early engagement, can only help ease coordination.

In some cases, the CMA will need to coordinate with multiple agencies, for example with the FTC or DOJ in the United States and the European Commission in the European Union. While alignment in such circumstances may require considerable work between the different agencies, the likelihood of successful coordination should be higher when the scope of potential remedies being considered is widest. When only a narrow menu of options is given consideration, this reduces the likelihood of finding common ground on which to remedy a proposed merger rather than prohibit it. Hence in both *Cargotec/Konecranes* and *Microsoft/Activision*, the scope for coordination between the agencies leading to a common remedy was potentially limited by differing views of the CMA, DOJ/FTC and the EC at the outset as to the acceptability of, respectively, a mix-and-match remedy and a licensing (quasi-behavioral) remedy.

Coordination is likely to benefit from early engagement on remedies for the reasons explained above: early engagement is expected to encourage the greatest degree of creative thinking about the range of potential remedies and allow time for information gathering and evaluation of these possibilities. Earlier engagement by the CMA is likely to place the CMA in a stronger position to coordinate successfully with other enforcers, as its thinking will be developed and it will have a chance to lead coordination efforts.

The CMA's aim to take a proportionate approach to global deals, exploring how far existing law allows it to clearly distinguish deals with distinct and direct implications for the UK versus those where it "may be more appropriate to watch closely whether action by other authorities could

[26] The cases in which RCBs have played the most definitive role in the CMA's decisional practice are the three hospital cases (*Central Manchester University Hospitals NHS Foundation Trust/South Manchester NHS Foundation Trust*, *University Hospitals Birmingham NHS Foundation Trust/Heart of England NHS Foundation Trust*; *Derby Teaching Hospitals/Burton Hospitals*). It is understood that the assistance of regulatory bodies such as NHS England helped the CMA to identify and quantify the RCBs arising in those cases.

resolve UK concerns",[27] has implications for remedy coordination and recognition of comity principles. Greater openness to a range of remedies should enable the CMA to accept a resolution by virtue of remedies adopted by enforcers outside of the UK – the CMA need not take action when it is satisfied with the remedies entered in another jurisdiction.

In other cases where it is felt that the CMA must still take action but the deal under review is subject to remedies in multiple jurisdictions, coordination with other enforcers to evaluate, decide upon, and implement any remedy will be important. Timing and alignment between enforcers is of particular importance, as the International Competition Network has recognized.[28] If divestiture of assets in a non-UK jurisdiction would resolve competition concerns in the UK, it may be more effective for the non-UK jurisdiction to take responsibility for implementation and enforcement of the remedy where the CMA is reasonably convinced that the interests of competitive UK markets will be fairly protected albeit indirectly.

IMPORTANCE OF ALLOWING MORE COMPLEX REMEDIES AT PHASE 1

A Phase 2 review is a very resource-intensive proceeding for both the parties involved and the CMA. There is therefore considerable merit in seeking to allow for more complex remedies, including behavioral remedies, at Phase 1, so long as any SLC is not overlooked. This will create opportunity for faster clearance of welfare enhancing mergers and free regulatory resources.

In order to optimize the remedies assessment and secure the possibility of entertaining more complex remedies at Phase 1, it would likely be necessary to begin work on potential remedy design during pre-notification as long as the parties are candid about SLC concerns. There is a good chance that merger parties would see the merits in engaging in remedy discussions at this stage if they have confidence that the CMA will be open to a remedy at Phase 1 that would be proportionate to any SLC identified.

LEVERAGING SECTOR REGULATORS AND MONITORING TRUSTEES

As the *Vodafone/Three* decision shows, in certain sectors and as to certain remedies, the CMA can make use of sector regulators, as long as CMA does not abdicate its own role and responsibilities to enforce ongoing monitoring of commitments.

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[27] https://competitionandmarkets.blog.gov.uk/2025/02/13/new-cma-proposals-to-drive-growth-investment-and-business-confidence/

[28] "If competition authorities decide to engage in extensive cooperation, including on remedies, they, together with merging parties, should strive to align the timing of respective remedy procedures. When the timing of remedy discussions is not aligned, the remedies imposed have a greater risk of divergence and incompatibility". Para. 2.7 at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_RemediesGuide.pdf

As the International Competition Network has noted, Monitoring Trustees bring specialized expertise and lessen the burden on the authority's resources affected by the merger, and in relation to multijurisdictional mergers, cooperating competition authorities may wish to discuss the use and reporting obligations of common monitoring trustees and hold separate managers.[29]

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The Sections appreciate the opportunity to comment and remain available to respond to any questions regarding these comments or to provide additional assistance to the CMA as it may deem appropriate and helpful.

[29] Para. 4.4.2 of the ICN Remedies Guide (2016) at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_RemediesGuide.pdf