Response to the Competition and Markets Authority's call for evidence - Merger Remedies Review

Eversheds Sutherland (International) LLP

12 May 2025

1. Introduction

1.1 Eversheds Sutherland (International) LLP welcomes the opportunity to respond to the Competition and Markets Authority's (**CMA**) call for evidence: Merger Remedies Review, as published on 12 March 2025 (**Remedies Review**). We support the CMA's review of its merger remedies framework and its commitment to ensuring that its approach to merger control embodies the principles of pace, predictability, proportionality and process, *i.e.,* the "4Ps". As indicated by the article cited by the CMA in the Call for Evidence authored by the Head of our US antitrust practice,[1] allowing transactions to proceed subject to proportionate and effective remedies plays a vital role in maintaining competition while also facilitating the realisation of legitimate economic benefits, investment, innovation and growth.

1.2 Our response to the Remedies Review reflects our experience in advising merging parties, as well as third parties, on CMA Phase 1 and Phase 2 merger investigations, including the negotiation and implementation of remedies. Our response also draws on our global Competition, Trade & Foreign Investment team's experience in advising clients on remedy processes before the European Commission and Member State authorities and other competition regulators worldwide, including in the USA and Asia as well as our experience with other similar regimes (such as national security and foreign investment screening regimes).

1.3 The comments and observations set out in this response are ours alone and should not be attributed to any of our clients. We confirm this response does not contain any confidential information and we are happy for it to be published on the CMA's website to the extent necessary.

2. Response to CMA questions

Approach to Phase 1 remedies

Q A.1: Should the CMA's current guidance approach of requiring Phase 1 remedies to be 'clear-cut' and 'capable of ready implementation' be revisited, within the confines of the applicable legislative framework and timing constraints inherent in the Phase 1 UILs process? If so, what standard should the CMA apply?

Q A.2: Is there more the CMA can do within its current legal framework to create opportunities for more complex remedies in Phase 1?

Effectiveness and Proportionality

Q B.1: Should the CMA's current approach to assessing the effectiveness and proportionality of remedies be revisited within the confines of the legislative framework? If so, what factors should the CMA consider?

Q B.2: Has the CMA's approach to effectiveness precluded potentially effective remedies being considered as part of its proportionality assessment?

2.1 As stated in the Remedies Review, the CMA currently requires remedies at Phase 1 to be 'clear-cut' and 'capable of ready implementation'. The current CMA87 (**Merger Remedies Guidance**) notes that "*This means that the CMA may accept a more extensive remedy offer at Phase 1 through UILs than might be needed if the merger were to receive a detailed Phase 2 investigation*"[2].

2.2 "Clear cut" means that there must be no material doubts about the overall effectiveness of the remedy. The CMA87 also notes that "*The more extensive the competition concerns, in terms of magnitude of potential customer harm, the more significant the error costs of an ineffective remedy, and hence the greater the belief must be that the UILs will*

[1] See Footnote 35 of the CMA's Call for Evidence.

[2] Par. 3.7 of the Merger Remedies Guidance.

comprehensively resolve those concerns"[3]. CMA87 contains no guidance on what "capable of ready implementation" means.

2.3 The adoption of the "clear cut" standard seems to be the result of the following factors:

2.3.1 section 74(1) of the Enterprise Act 2002 (**Act**) precluding a reference to Phase 2 once UILs are accepted, meaning that the CMA must be confident that all of the potential competition concerns that have been identified at Phase 1 can be resolved by means of the Undertakings in Lieu of Reference (**UILs**) without the need for further investigation, and

2.3.2 timing constraints, as agreeing and testing complex UILs may not be feasible within the short Phase 1 timetable.

2.4 We would support revisiting the clear-cut standard for the following reasons:

2.4.1 **The Act supports a lower standard for remedies to be accepted at Phase 1**. Section 73 of the Act only requires the CMA to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the substantial lessening of competition (**SLC**) identified and any adverse effects resulting from it. It does not require the CMA to apply a significantly higher standard, and doing so is arguably disproportionate to what the Act requires;

2.4.2 **The application of the "clear-cut" standard creates a disparity between the finding of a SLC and the remedies required to address it.** At Phase 1, the CMA is required to determine whether the merger results in a realistic prospect of an SLC. If such a prospect is found, the Merger Remedies Guidance mandates that the "clear-cut" standard be applied to any remedy where the test for reference has been met, meaning that all of the potential competition concerns that have been identified at Phase 1 would be resolved. Our view is that this arguably sets a higher standard than the SLC test itself. Applying a similar standard to remedies could allow for a more proportionate approach.

2.4.3 **Some jurisdictions that adopt a two-phase approach and face similar constraints apply differing thresholds for accepting remedies at Phase 1 which might be more facilitative**. While some jurisdictions largely apply the same standard as the UK (*e.g.,* the European Union), differing standards are applied in other jurisdictions which also use the two-phase approach to merger review. Moving away from the "clear-cut" standard would not put the CMA at odds with the approaches taken by other competition authorities, particularly if the CMA is seeking to be more facilitative of remedies at Phase 1. For example, in France, Phase 1 remedies are intended to "dispel doubts" and must be sufficient (*i.e.,* remedy the risk of harm to competition) and appear operationally feasible. Similarly, in Bulgaria, remedies may be accepted at Phase 1 where competition concerns are unambiguous (*i.e.,* clearly identifiable with further investigation), and the proposed remedies are sufficiently detailed and well-defined to eliminate the identified concerns and restore effective competition.

Questions on the CMA's approach to behavioural remedies

Q C.1: Is the current distinction that the CMA draws in its Merger Remedies Guidance between behavioural and structural remedies helpful and meaningful? If not, how should the CMA classify different types of remedies?

Q C.2: In what circumstances are behavioural remedies likely to be most appropriate?

Q C.3 How should the CMA assess the likely effectiveness of behavioural remedies? What types of evidence should the CMA obtain to assess this (and from whom)?

[3] Par. 3.28 of the Merger Remedies Guidance.

Q C.4: To what extent could the CMA's new enforcement powers under the DMCC Act 2024 to fine merger parties for breaches of their remedy obligations under remedy undertakings and orders influence the types of remedies the CMA accepts at Phase 1 or imposes at Phase 2?

Q C.5: Should the CMA take a different approach to behavioural remedies at Phase 1 and Phase 2?

Q C.6: What lessons can be drawn from evidence in other jurisdictions, and behavioural remedies which do not relate to mergers, but which could be seen as comparable (for example, markets or sector regulation)?

2.5 In our view, there is scope for the Merger Remedies Guidance to more clearly indicate that behavioural remedies will be considered and, in appropriate cases, will be acceptable (including at Phase 1) if designed and implemented correctly.

2.6 This is not reflected in the current Merger Remedies Guidance which can act as a barrier both for parties in offering behavioural remedies and we assume for the CMA in accepting these. For example, the Merger Remedies Guidance states that the CMA "*will only use behavioural remedies as the primary source of remedial action where: (i) structural remedies are not feasible; (ii) the SLC is expected to have a short duration, or (iii) at Phase 2, behavioural measures will preserve substantial Relevant Customer Benefits (**RCBs**) that would be largely removed by structural measures*"[4].

2.7 This shift in the Merger Remedies Guidance would be workable for at least the following reasons:

2.7.1 **Being more open to behavioural remedies would align more closely with other jurisdictions**. According to Eversheds Sutherland's most recent Global M&A Report (2024)[5], which includes an in-depth review of remedy outcomes globally, 33% of conditional clearances in the European Union were behavioural remedies only, compared to just 4% by the CMA. Indeed, in other jurisdictions such as the Middle East, Asia and Latin America, over 50% of conditional clearances are behavioural remedies only.

Antitrust remedies decisions 2023: Selling off a business vs conduct commitments

Region	Behavioural only	Structural only	Combination
UK	4%	96%	-
Asia	57%	29%	14%
EU	33%	56%	11%
Middle East	67%	33%	-
Latin America	57%	-	43%
Global	33%	48%	19%

Source: Eversheds Sutherland Global M&A Report 2024

2.7.2 **Competition authorities, including the CMA, have significant experience in formulating and agreeing behavioural remedies**. These remedies are commonplace in addressing antitrust concerns and is standard practice for the CMA, more recently in the CMA's investigation into Google's 'Privacy Sandbox' and Meta's use of data. Behavioural remedies should not be seen as a less equivalent means to remedying merger competition concerns.

2.7.3 **Being more open to behavioural remedies would align with other M&A regulation**. National security / foreign direct investment remedies, including

4 Par 7.2 of the Merger Remedies Guidance.

5 https://ezine.eversheds-sutherland.com/ma-report-2024/.

those under the UK's National Security and Investment Act 2021, have typically been behavioural rather than structural. The CMA should consider the broader M&A landscape to ensure that it aligns with other regulators on approach to M&A, to ensure that its 4Ps also align with other regulators involved in M&A processes. This alignment could help streamline processes and foster a more consistent approach to remedies.

2.7.4 **The powers under The Digital Markets, Competition and Consumers Act 2024 (the DMCCA) provides the CMA with tools to ensure effectiveness.** As noted by the CMA in the Remedies Review, the DMCCA introduced new enforcement powers which allow the CMA to fine merging parties for failing to comply with their legal remedy obligations. This significantly enhances the CMA's ability to consider whether imposing behavioural remedies would be appropriate and indeed, effective.

2.7.5 **The CMA is able to rely on monitoring trustees and experts as well as sectoral regulators to ensure effectiveness of behavioural remedies.** We have discussed this further below.

2.8 It is not possible to list all instances where behavioural remedies would be appropriate. However, as mentioned above, behavioural remedies can be appropriate in conglomerate, vertical and horizontal mergers. It would, however, be:

2.8.1 helpful for the CMA to: expand on the factors it would consider and the circumstances in which it would be likely to accept behavioural remedies and provide guidance as to what behavioural remedies should look like, to assist merging parties to consider whether behavioural remedies are indeed appropriate. By doing so, the likelihood of the CMA accepting behavioural remedies would become more predictable;

2.8.2 appropriate for the CMA to amend its remedies form for offers of UILs[6], which currently focuses on structural UILs.

2.9 In each case, the CMA should consider proportionality, and whether structural remedies would undermine the economic benefits of the proposed transaction.

2.10 Lastly, while we touch on the Phase 1 process below, we consider that the Merger Remedies Guidance should acknowledge that behavioural remedies can take longer to finalise, and so early engagement by the merging parties is advisable to increase the chances of behavioural remedies being accepted as a UIL.

Questions on the CMA's approach to carve-out divestment remedies

Q D.1: In what circumstances are carve-out divestiture remedies likely to be most appropriate?

Q D.2: Are there specific circumstances (eg certain industries) where the risks associated with carve-out divestitures are generally more or less likely to manifest themselves?

Q D.3: Are there any additional ways in which the risks relating to carve-out divestitures can be mitigated?

Q D.4: Purchasers may face challenges in conducting robust due diligence on divestment packages in carve-out divestiture remedies. This may limit the usefulness of such due diligence to the CMA as a safeguard against composition risks. Are there any steps that could be taken to mitigate these risks?

6 https://assets.publishing.service.gov.uk/media/5f632ecbe90e0759f55755d3/Mergers_Remedies_Form_-_.pdf.

Q D.5: What lessons can be drawn from evidence in other jurisdictions, and from complex structural remedies which do not relate to mergers, but which could be seen as comparable (for example, markets or sector regulation)?

2.11 We agree that carve-out divestiture remedies should be considered a viable option to remedy concerns. Our experience, including on a tech-related transaction that was cleared at Phase 2 (*NEC Software Solutions UK/Capita Secure Solutions and Services*), demonstrates that appropriate and effective carve-out divestiture remedies can be successfully agreed with the CMA and implemented. This approach was also adopted in the CMA's more recent investigation into *Schlumberger/ChampionX*, which we support.

2.12 Rather than being considered more appropriate in certain sectors, carve-out divestiture remedies should be assessed on a case-by-case basis. A viable carve-out remedy depends on a number of factors, including the assets which can be carved out and the functions, ability and capacity of the purchaser which together can then create a viable standalone business.

2.13 Carve-out transactions are common in M&A. Whilst there can, in some cases, be challenges with carve out processes these are regularly overcome in an M&A context and so should, in principle, not be seen as an immediate barrier to the CMA accepting carve-out remedies, but rather a factor to be managed. As discussed below, timing will be important and it may be that more flexibility is needed during the UIL process (*i.e.,* a move away from the strict 10 working day period to agree UILs in principle). A short extension where needed may be beneficial to the parties and the CMA in the long run if it means that a Phase 2 review can be avoided.

Questions on assessing, monitoring and enforcing remedies

Q E.1: Are there circumstances in which the CMA could make greater use of Monitoring Trustees when monitoring and enforcing remedies? What would be the costs and benefits of this?

Q E.2: Are there any circumstances in which the CMA could take on a greater role in the monitoring and enforcement of remedies? What would be the costs and benefits of this?

Q E.3: How can the CMA ensure it has access to the right expertise to assess complex remedies given the breadth of industries we cover?

Q E.4: Are there ways in which the CMA can practically monitor complex and behavioural remedies without materially increasing its own resourcing costs or giving rise to conflict-of-interest issues?

2.14 The Merger Remedies Guidance recognises "*the CMA currently primarily uses Monitoring Trustees to monitor the merger parties' compliance with the CMA's interim measures (and in some cases with their remedy undertakings and orders), other competition authorities make more extensive use of monitoring trustees"*[7]. This may be attributed to the CMA's focus on horizontal mergers and preference for structural remedies.

2.15 We consider that **for appropriate cases there is greater scope for the CMA to use monitoring trustees, including in behavioural remedies cases**, for at least the following reasons.

2.15.1 **This would bring the CMA in line with the approaches taken by other competition authorities**. In the **European Union** for example, the Remedies Notice[8] states that "*as the Commission cannot, on a daily basis, be directly involved in overseeing the implementation of the commitments, the parties have to propose the appointment of a trustee to oversee the parties' compliance with the commitments".* The Remedies Notice contemplates that the monitoring

7 Par 7.2 of the Merger Remedies Guidance.

8 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2008_267_R_0001_01.

trustee is provided with significant oversight over the merging parties' compliance with the commitments.

2.15.2 In other jurisdictions, a similar approach is taken:

2.15.2.1 In **Belgium**, the use of a monitoring trustee is common in conditional merger clearances. For instance, in the *Media/Rossel/RTL* decision, the Belgian competition authority emphasised the necessity of effective monitoring mechanisms for behavioural remedies to ensure their impact would not be diminished or negated by the parties and a monitoring trustee was appointed to oversee the implementation of commitments made to the Belgian competition authority;

2.15.2.2 In **Finland**, effective monitoring of commitments necessitates the appointment of an independent expert due to the authority's limited resources and the need for specialised expertise;

2.15.2.3 In **Germany**, monitoring trustees or divestiture trustees are commonly appointed to supervise the implementation of remedies;

2.15.2.4 In **Italy**, while the competition authority generally prefers direct monitoring of commitments, monitoring trustees are frequently appointed to ensure effective implementation of remedies.

2.15.3 **Monitoring trustees have extensive expertise and experience in remedies cases**. We consider that it would be prudent for the CMA to leverage this expertise and experience to ensure that remedies are effective and properly monitored.

2.16 The CMA has extensive experience in designing and monitoring remedies in both mergers and antitrust cases. With the implementation of the DMCCA, the CMA will gain further experience in monitoring and enforcing behavioural remedies, including testing and varying remedies to ensure effectiveness. Consequently, the CMA may play a greater role in monitoring and enforcing remedies in merger cases. However, given the associated costs and resources, it may be prudent for the CMA to focus on monitoring and enforcing remedies where (i) the required expertise cannot be secured, and/or (ii) a potential breach has been flagged by the Monitoring Trustee.

Questions on the CMA's current approach to rivalry enhancing efficiencies

Q F.1: What evidence should the CMA look for to support the materiality and likelihood of claimed rivalry enhancing efficiencies?

Q F.2: Does the CMA's current approach to remedies effectively capture potential rivalry enhancing efficiencies? If not, how can the current approach be improved?

Q F.3: What are the circumstances in which it would be possible to design effective remedies that can lock-in genuine Rivalry Enhancing Efficiencies?

Q F.4: What more can the CMA do to ensure that its approach to merger remedies encourages pro-competitive investment?

Questions on the CMA's current approach to RCBs

Q G.1: Does the CMA's current approach to remedies in Phase 1 effectively capture RCBs? If not, how can the current approach be improved?

Q G.2: Does the CMA's current approach to remedies in Phase 2 effectively capture RCBs? If not, how can the current approach be improved?

Q G.3: Should the CMA's current approach to the types of evidence for substantiating RCBs be revisited, within the confines of the legislative framework? If so, what types of evidence should the CMA accept in substantiating RCB claims?

Q G.4: How can the CMA best quantify and balance RCBs on the one hand with the SLC's adverse effects on the other?

Q G.5: Are there any barriers to merger parties engaging on RCBs with the CMA throughout the different stages of a case (either at Phase 1 or Phase 2)

2.17 We have the following high-level comments on efficiencies and RCBs:

2.17.1 As noted above, during Phase 1, the CMA must determine whether the merger presents a realistic prospect of an SLC. Our experience indicates that arguments regarding efficiencies and/or RCBs need to meet a higher standard to be accepted. The CMA should consider applying a similar standard to that used for identifying a realistic prospect of an SLC, *e.g.*, there should be a reasonable prospect that the efficiencies and/or RCBs will result from the transaction.

2.17.2 To date, the CMA has generally fully considered efficiency arguments only in larger deals (*e.g., Vodafone/Three, Sainsbury's/ASDA*). We understand the CMA may be more likely to accept efficiency arguments where supported by detailed analyses and internal documents. In smaller deals, it is common for merging parties not to have formally captured detailed efficiency arguments in deal rationale documents. However, our view is that it is still appropriate for the CMA to be open to receiving efficiency arguments in smaller deals, even when documents and evidence created prior to the CMA's investigation are not readily available.

2.17.3 It would be helpful for the CMA to provide updated guidance on how it will consider efficiencies and RCBs. This guidance should clarify what merging parties need to demonstrate, whether through qualitative or quantitative assessments, for efficiencies and/or RCBs to be recognised. Additionally, clear and detailed guidance on how the CMA will evaluate established efficiencies and/or RCBs against a finding of a realistic prospect of an SLC, including the magnitude of that SLC, would be beneficial. Incorporating worked examples from previous CMA decisions (*e.g., Vodafone/Three, Sainsbury's/ASDA*) and decisions from the European Commission (*e.g.,* UPS/TNT) would provide merging parties with confidence that efficiencies can lead to clearance. Indeed, this approach might also make the parties prepared to invest more resources into running efficiencies arguments at earlier stages of transactions alongside the resources being allocated to other elements of the CMA's analysis (mainly whether the transaction gives rise to a realistic possibility of an SLC).

2.17.4 We support the CMA's approach in the *Vodafone/Three*, where remedies were used to secure the established efficiencies. This approach is particularly useful when the efficiencies claimed and established by the merging parties are unlikely to be immediate. This approach allows for pro-competitive deals from a long-term perspective to proceed, ultimately aiding the growth of the UK economy.

2.17.5 That being said, we would caution against a standard approach of requiring remedies to secure efficiencies for each deal that is cleared on this basis, as this would require additional resources from both the CMA and the merging parties and potentially impact the realisation of the efficiencies. This should therefore be considered on a case-by-case basis.

Phase 1 remedies process

Q H.1: What process barriers are there currently to reaching a Phase 1 remedies outcome?

Q H.2: How can the CMA amend its Phase 1 process to allow more complex remedies to be assessed within a Phase 1 timeframe?

Q H.3: If the nature and/or scope of potential competition concerns are unclear, what steps can the CMA case team and merger parties take to ensure that they are best placed to engage effectively on remedies at the earliest possible stage in Phase 1?

2.18 The Merger Remedies Guidance provides guidance on the procedure for submission of UILs in advance of the SLC decision and following the SLC decision[9]. We have outlined our comments on each phase below. While we suggest additional engagement, which requires more time, it is important to balance this with the need for predictability, proportionality and a more efficient process.

(a) Procedure for submission of UILs in advance of the SLC decision

2.19 The Merger Remedies Guidance includes short guidance on the procedure for submission of UILs in advance of the SLC decision[10]. This includes that "*Merger parties can put forward possible UILs to the CMA case team at any stage during the Phase 1 investigation or during pre-notification",* that "*In advance of the SLC decision, the CMA case team will assist merger parties in understanding the function of UILs. They will also, where possible, provide guidance to parties on which of the possible remedies being considered by the parties might be suitable"* and that "*Any discussion of UILs prior to the SLC decision will not prejudice that decision".*

2.20 We support the aim of the Merger Remedies Guidance in this regard, *i.e.,* to ensure that the merging parties and the CMA have an open line of communication to be able to agree UILs in light of the Phase 1 time constraints within the Act. We would however suggest expanding on certain aspects of the Merger Remedies Guidance to allow case teams to more openly approach remedy discussion:

2.20.1 The CMA could build-in the "without prejudice" discussions referred to in the guidance more formally into the CMA's timeline so that merging parties are able to approach the CMA to discuss the CMA's emerging thinking and consider any potential remedies at more points in the Phase 1 process than is currently the case on a "without prejudice" basis.

2.20.2 As part of this, one option to enable greater discussions on remedies post-Issues Meeting would be for the CMA official, who acts as the devil's advocate, to have a role in working with the parties, the CMA case team / remedies team to discuss in detail, on a without prejudice basis, potential UILs. This would enable greater efficiency and allow for more discussion on a greater range of remedies.

(b) Procedure for submission of UILs following the SLC decision

2.21 The Merger Remedies Guidance includes short guidance on the procedure for submission following the SLC decision[11]. This includes that ""*Under the Act, notifying parties have up to five working days after receiving the CMA's reasons for its SLC decision to offer UILs formally in writing (the UILs offer). During this period of time, the CMA case team will be available to discuss possible UILs with the parties"* and that "*Given that the period for making a UILs offer is short, merger parties should not expect to engage in iterative discussions or negotiations with the CMA Parties may formally submit two or three versions of their offer, if necessary, which the CMA will consider at the same time to select the least intrusive effective clear-cut remedy".*

2.22 In our experience, the CMA's engagement with the merging parties at the time that UILs are offered after a Phase 1 decision has been helpful, however, this remains a particularly challenging period in which further engagement would be welcomed. The CMA should consider including in the Merger Remedies Guidance more collaboration with the merging parties during this period (*i.e.,* set calls with the CMA case team to discuss potential remedies) so the CMA is able to (i) provide guidance to the merging parties about whether

9 See par. 4.3 onwards of the Merger Remedies Guidance.

10 See from par. 4.3 of the Merger Remedies Guidance.

11 See from par. 4.7 of the Merger Remedies Guidance.

its concerns are likely to be remedied and (ii) understand the proposed remedy / remedies in more detail.

2.23 Further, we consider that there should be a degree of flexibility in the time periods involved, particularly where *e.g.,* behavioural remedies or complex carve-out remedies are proposed. Extending the initial 10 working day period to obtain the CMA's acceptance in principle of a remedy may allow the parties and the CMA to avoid a Phase 2 review due to overly condensed deadlines. We consider this to be a more proportionate approach.

(c) Other mechanisms to explore

2.24 In addition to building in a more formal process to discuss remedies at Phase 1, we note that certain jurisdictions have implemented mechanisms to prevent running out of time to agree on remedies. For example, in various jurisdictions around the world merging parties are able to withdraw and refile their notification, providing in some cases additional time to agree on remedies. The CMA could explore similar innovative mechanisms to ensure progress aligns with its 4Ps objectives.

Phase 2 remedies process

Q I.1: What barriers are there currently to reaching a Phase 2 remedies outcome?

Q I.2: Does the current Phase 2 process adequately facilitate early remedy engagement?

If not, how can it be improved?

2.25 We note that the CMA's "Mergers: Guidance on the CMA's jurisdiction and procedure"[12] was only published on 2 January 2025 and we believe it will need time to establish whether the Phase 2 remedies process contained in this guidance presents any barriers to a Phase 2 remedies outcome.

Questions on working with other regulators

Q J.1: How can the CMA ensure its remedies process at Phase 1 and Phase 2 sufficiently takes account of parallel actions by other competition agencies?

Q J.2: How can the CMA ensure it utilises the expertise of other UK government departments or sector regulators to increase the chance of a successful remedy outcome?

Q J.3: On the question of whether the CMA or others should take remedial action to address an SLC, should the CMA make more use of making recommendations to others to take action to remedy competition concerns arising from a merger and if so, what are the circumstances where it may be appropriate to do so?

2.26 Sectoral regulators possess specialised knowledge and insights that are invaluable for ensuring that remedies are effectively implemented. Their established presence within specific sectors allows them to monitor compliance and enforce remedies with a high degree of accuracy and efficiency.

2.27 Given their expertise, sectoral regulators can provide ongoing oversight that complements the CMA's review process. By coordinating with sectoral regulators and merging parties, the CMA can leverage this expertise to enhance the effectiveness of its monitoring and enforcement activities. Furthermore, sectoral regulators can offer practical insights into industry-specific challenges and opportunities, which can inform the design and implementation of remedies. Their involvement can help anticipate and address potential issues before they arise, thereby facilitating smoother transitions and more sustainable outcomes.

---

12 https://assets.publishing.service.gov.uk/media/67d41b981b26cbdf9b851d9b/CMA2_Mergers_-_guidance_on_the_CMA_s_jurisdiction_and_procedure.pdf.

2.28 The timing for involving a sectoral regulator can vary. However, the CMA should consider whether a more formalised process for remedies in Phase 1 (as mentioned above in respect of remedies in Phase 1) could include potential engagement with sectoral regulators after the issues letter has been issued. This approach ensures that regulators are involved at a stage where their input can be most effective. Indeed, this is in line with the CMA's recent decision in *Vodafone/Three*. In non-regulated industries, we are of the view that the CMA, or the appointed monitoring trustee, could engage with experts to obtain input and support.

Question on any other processual changes

Q K.1: Are there any other ways, not covered by the specific questions above, in which the CMA could improve its remedy processes, at either Phase 1 or Phase 2?

2.29 We do not have any additional comments on other procedural changes.

External support

Q L.1: How should the CMA access external expertise, for example using Monitoring Trustees and/or industry experts in its remedy assessment and implementation, including oversight of divestment sales processes, divestment purchaser suitability assessments, or monitoring of remedy implementation and/or compliance?

2.30 See response to Q. E 1 – 4 above.

Eversheds Sutherland (International) LLP
12 May 2025