Response to CMA Call for Evidence on CMA Merger Remedies Review

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This note responds particularly to the CMA's call for evidence from other regulatory regimes, markets or sectors which may inform their practices (e.g. Q.C.6 and Q.D.5); and to the statement that the CMA is: 'open to any evidenced submissions which further CMA's understanding of the circumstances where there is a greater likelihood that the CMA will be able to design and implement effective behavioural remedies' (para. 40).

The CMA's call for evidence is in the context of the Chancellor of the Exchequer's aim to relax the restrictions on corporate merger. The Financial Times has reported that 'Reeves wanted to "tighten" and "limit" the circumstances in which deals come under CMA scrutiny' (Pickard, Ring and Arnold 2025). The CMA's call for evidence notes 'the Government's strategic steer' that 'we are discharging our function in a way that supports growth and investment' (para. 55).

The CMA's paper invites evidence on potential ways of justifying mergers which entail a material reduction in competition. It focuses particularly on identifying benefits such as economies of scale which outweigh the loss of competition, or instituting behavioural remedies to limit the exercise of market power, or relying on industry regulators to prevent abuse. This note offers evidence that greater reliance on such justifications or safeguards to achieve a more permissive CMA regime would be counter-productive – not consistent with the Chancellor's ambition to promote innovation and growth.

The note draws on statistical and case evidence on M&A to argue that:

A.The projections of compensating benefits provided by promoters of M&A typically suffer from unconscious and conscious upward bias

B.Relying on behavioural remedies is fraught with difficulties over monitoring and compliance

C.Past experience is not favourable to relaxing merger control in the case of regulated industries

D.There is a risk that the government's strategy is distorted by a fallacy of composition – identifying the growth of the economy with the growth by merger of a firm

[1] This note was prepared in some haste to meet the CMA deadline for submissions. If you see any errors, please notify g.meeks@jbs.cam.ac.uk.

E.Arrangements in the UK offer very powerful incentives to the key players in merger to undertake acquisitions even when they are against the public interest, and at odds with the innovation and growth agenda

F.The UK has hardly been starved of merger activity relative to economies which have secured faster growth of GDP; and in recent years only a tiny proportion of bids has been resisted by the CMA

G.Rather than inhibiting mergers which are in the public interest (in terms of innovation and GDP growth), the CMA 'net' lets through deals which can be damaging to innovation, growth of the economy,, and allocative efficiency – such as 'killer' and' roll-up'. Acquisitions.

A.The projections of compensating benefits provided by promoters of M&A typically suffer from unconscious and conscious upward bias

The doyen of company acquirers, Warren Buffett, wrote in a letter to shareholders of his Berkshire Hathaway business: 'While deals often fail in practice, they never fail in projections'. This is consistent with recent research by the Federal Reserve Bank of New York (Acharya et al. 2022), which concludes that 'M&A announcements are usually accompanied by rosy forecasts about synergies and growth, and, more importantly, a promise to reduce the debt taken on to finance the acquisition. Data indicate that most of these projections were, ex post, not realised'. A similar conclusion is reached by Amel-Zadeh and Meeks (2020a) who compared the earnings per share achieved after merger with the forecasts the bidders had made ahead: in the majority of cases the executives got it systematically wrong and over-estimated future earnings following the merger[2].

It is not just that performance has fallen short of ambitious forecasts. It is hard to find systematic evidence of any improvement at all in post-merger performance on average. Meeks and Meeks (2022) reviewed 55 peer-reviewed articles and books on this question. Unsurprisingly, there is considerable variety of coverage and approach among them. They adopt different methodologies and rely on different data—some on accounting profits, some on (post-interest and tax) earnings, others on share prices and dividends. They try different ways of

[2] Annex 1 provides a brief case study of a business where the CEO achieved both exceptional success and disastrous failure in projecting and delivering gains from merger.

controlling for other influences on performance. They relate to 10 different countries (though the US dominates, with the UK a strong runner-up). And they cover many different time periods over the last half-century. Only a fifth of the studies report that, in the mergers they investigated, the average deal - or a majority of deals - produced higher operating profits for the combined firms, or increased the wealth of the acquirers' shareholders. The one reliably bright spot is that, in general, target shareholders gain from a premium price paid by the acquirer, but often this is outweighed by the losses to the acquirers' shareholders (see Moeller et al (2005, discussed below)): it is a 'negative-sum' outcome even if we don't count the adverse effect on interest groups other than shareholders—the frequent losses to customers, suppliers, employees, lenders, pensioners and taxpayers that are documented in Meeks and Meeks' (2022).

These studies are mostly based on listed companies. Much of recent merger activity has been carried out by private equity. But the independent studies of performance outcomes for this part of the merger market do not suggest improvements in average returns for external investors (Phalippou 2020, Bain) or in operating profit (Guest, Mingzhu Wang, and Welte 2025).

One of the most ambitious studies of financial accounts relating to M&A in the US (Ravenscraft and Scherer 1987) had special access to internal data, allowing the authors to follow the accounts of targets within the new combinations. They concluded (p. 193ff.) that 'one third of all acquisitions were subsequently sold off[...]On average merged lines later sold off had a negative operating income during the last year before they were resold. Among the survivors, profitability also tended to decline...'; and, surprisingly, their results were often confirmed by the executives who had initiated the deals when they were interviewed by the economists.

A subsequent major US study of the effect of acquisition announcements on the share prices of US acquirers in the course of a four-year merger wave (Moeller et al. 2005). was entitled 'Wealth Destruction on a Massive Scale[...]'. It found a loss of 12 cents per dollar spent on M&A—a total loss of $240 bn. Target firm shareholders gained—the bidder usually has to offer a premium to gain control—but bidders' losses exceeded targets' gains by $134 bn.). In a recent study we charted the total shareholder return[3] of larger US acquirers in the two years following all 4,450 significant acquisitions with a deal value exceeding $100 million completed in the

[3] Dividends plus share price appreciation relative to equity.

period 2002-17. Relative to matched non-acquirers, they suffered a loss—of 5.3% on average over the period as a whole[4] (Amel-Zadeh and Meeks 2020b).

Much of this evidence relates to acquisitions by listed companies, and an increasing share of buyouts is undertaken by private equity. But here too the average gains to external shareholders relative to benchmarks have not been noticeable (Phalippou 2020, Bain), nor have post-acquisition operating gains in the targets (Guest, Mingzhu Wang, and Welte 2025).

Another source of evidence is the consultancy organisations. McKinsey have concluded bluntly: 'Anyone who has researched merger success rates knows that roughly 70% fail.' (McKinsey 2010).

These are just averages, of course. Behind them is a range of outcomes. In theory, operating profit should more often than not improve because of scale economies and other cost savings post-merger (e.g. RBS/NatWest in Annex 1 below), or because of higher margins thanks to increased market power (e.g. vets in section G below). But even if there are no operating gains, earnings (post-interest and -tax) can be enhanced by financial engineering linked to M&A: funding a deal with morally hazardous debt levels (e.g. Carillion, Thames Water (section C below)) and/or exploiting tax avoidance opportunities afforded by merger (e.g. Spire/BUPA in section E below).

Yet the averages suggest that such gains are outweighed by negative outcomes.

One important strand of writing offers a partial explanation of the failure to realise improved operating profit, or earnings, or share price. This emphasises diseconomies of scale, and the difficulties facing executives when expanding rapidly through merger (annex 2 below).

Another reason for so many zero- or negative-sum deals is that the contracts of the prime-movers in M&A (CEOs, financial advisers, general partners of the 'billionaire factory'[5] (private equity)) often reward deals which fail to boost operating profit, or earnings, or share price (section E below).

The CMA is, then, well justified in having 'concerns about the extent to which claimed efficiencies are likely to be realised' (para 53), and in being cautious about accepting projections by merger promoters of their expected RCBs[6] as justification for materially

[4] This is despite the increased opportunities in recent years to gain from debt-financed acquisitions as a result of the monetary authorities manipulating the debt market and the tax authorities continuing to privilege debt finance (see section E below).

[5] The term used by Professor Phalippou (2020), the Oxford economist who has successfully challenged the performance measures employed by private equity.

[6] Relevant Customer Benefits

diminishing competition (Question Q G 3). The evidence is in favour of giving the go-ahead on such grounds only very sparingly.

B.Relying on behavioural remedies is fraught with difficulties over monitoring and compliance

The CMA endorse the European Commission's concern that some behavioural remedies can 'require medium or long-term monitoring measures'.(par. 33). Such measures can require intensive, highly skilled, and costly scrutiny. For example, monitoring prices for evidence of abuse of market power is difficult when the specification of products or services is changing, when input costs are changing, when complex systems of discounts are employed,...

Faced with bewildering masses of data relevant to cost and price movements, the monitors within the CMA might look to the acquirers' financial accounts for prima facie evidence of monopoly profit. But M&A offers particularly rich opportunities for accounting manipulation (Meeks and Meeks, 2022, appendix 2) which even the expert regulators in that field have found challenging (Tweedie at al 2024).

These opportunities for thwarting monitoring have been enhanced in recent years by private equity constructing clusters of companies to replace the target – for example, an operating company, a company leasing properties to the operating company, a company supplying debt finance to the operating company (see, for example, below on tax avoidance, Brooks (2013)).

The CMA invites evidence from other regulatory regimes, and one such relates to the CMA's discussion (para 35) whether they can be more relaxed about behavioural remedies if the merger participants are in a regulated industry. The English water/sewage industry (section C below) illustrates the difficulties in both monitoring and in controlling behaviour with behavioural remedies. It also relates to the CMA's question whether they can be more relaxed about behavioural remedies if the merger participants are in a regulated industry: it illustrates the limitations in relying on industry regulators' ability to constrain anti-social behaviour by monopolistic companies.

C.Past experience is not favourable to relaxing merger control in the case of regulated industries

In its present form, the water/sewage industry originated in acquisitions by private sector companies from government of regional monopolies. And in the subsequent three decades some of the water companies have been sold on to other businesses several times – e.g. Thames and Southern. The for-profit companies have been regulated by an industry regulator, OFWAT, and fall within the remit of the Environment Agency.

The FT's Lex column (2023) described Thames Water, the large English water company, as 'a case study in some of the worst aspects of private equity-style financial engineering'. And the English water and sewage industry as a whole provides a case study of market failure on a grand scale.

The regional monopolies which make up the industry have been allowed by the regulator to charge inflated prices - resulting at times in returns on equity twice the appropriate rate expected for a utility (Ford 2017). Externalities are notorious - the widespread release, far beyond prescribed limits, of raw sewage into rivers and onto beaches (Hodgson 2023); and corrective action over these externalities has been impeded by asymmetric information – polluters have been left to self-report pollution events and have grossly under-reported them (Plimmer and Hollowood 2023). Moral hazard has jeopardized the companies' balance sheets: rapid expansion of tax-avoiding borrowing linked to massive extraction of cash by the equity-holders. This strategy has left Thames Water, for example, 'on the brink' of failure (Lex 2023), which could seriously harm stakeholders ranging from employees to creditors to customers. But the strategy has released huge sums for owners: since the 1990s the 10 biggest water and sewage monopolies 'borrowed £53bn …Much of that has been used not for new investment but to [help] pay £72bn in dividends', and their total capital expenditure had 'declined by 15 per cent since the 1990s' (Plimmer and Hollowood 2021). The squeeze on investment in the system is associated not just with damaging pollution levels but also with leakage rates from the pipes delivering clean water standing at four times those in Germany (Cavendish 2022).

Latterly some fines have been imposed on those pumping raw sewage into rivers and lakes and onto beaches. But it may well be that the polluters find it more profitable to pay the fines than to treat the sewage before discharging it.

Blatant disregard of commitments made to the regulators was seen in another area of regulation: by the UK Takeover Panel. US food conglomerate Kraft has been criticised by the Panel - the body that polices City takeovers - for breaking the promise it made during the five-month battle to buy Cadbury to keep its Somerdale factory in Somerset open. Jeanor (2010) reported Kraft's '…promise in official stock market announcements that the UK would be a "net beneficiary in terms of jobs" and its statement that, if it took over Cadbury, it would be "in a position to continue to operate the Somerdale factory … and invest in Bournville".

The bid succeeded on 2 February but Kraft subsequently said a week later that it could not keep Somerdale open because Cadbury had already spent more than £100m in transferring production from it to Poland. MPs on Parliament's Business Select Committee 'later lamented what they called the "woeful handling" of the closure of the Somerdale plant and said that the company had acted both "irresponsibly and unwisely"'.

Of course, it is not easy to determine how many resources to devote to regulating a particular business activity, and how much abuse of regulations to tolerate. Gillian Tett (2019) drew a distinction between the approaches to regulation across jurisdictions, outlining:

'…three different regulatory systems in the world, at least when it came to finance.

In some countries. most notably the US, everything that was not explicitly banned by specific laws was permitted. In others, such as Japan, everything that was not explicitly permitted was banned. Then there was a third category of countries (including the UK) that had 'principles'-based systems: instead of relying on the letter of the law, these regimes preferred to outline general principles and apply them using precedent.'

Around 1990, the British government had to choose between these approaches when regulating accounting standards for companies. The existing self-regulation regime was acknowledged to be inadequate. Merchant banks, lawyers and accountants could readily circumvent the rules, exacerbating the information asymmetry between companies and investors (Tweedie, Cook and Whittington 2024).

The (London) Times wrote that by 1990: "[UK] Company accounts were a laughingstock and the profession was at bay." Famous analyst and whistleblower Terry Smith (1992, 1996) argued: "…much of the apparent growth in profits which had occurred in the 1980s was the result of accounting sleight of hand rather than genuine economic growth…".

There was pressure to shift to the much more prescriptive (and costly) approach of the US, with its many thousand pages of regulations, which are costly to develop, update, and enforce. Leading US and UK M&A lawyers are paid up to $20million p.a. to devise arrangements which protect acquirers from challenges from regulators or tax authorities [Houlder 2024}.

The UK's new ASB regime had an unusual regulatory innovation – alongside the Board, which set out the principles behind accounting standards, was the Review Panel – comprising highly respected experts who investigated behaviour which contravened the *spirit* of the standards even if it complied with the *letter* of the law (Tweedie, Cook and Whittington 2024). The Panel could demand changes. Regulatees could challenge the Panel's findings in court, but actually never dared. In some cases, business leaders lost their jobs following adverse Panel findings.

Of course, there is a perennial problem when involving industry experts in regulation - of avoiding regulatory capture. It is desirable that regulators be independent and be seen to be independent of interested parties. There have been concerns about the effect on regulation of the UK water industry's revolving door between the head of a regulated business and the head of the regulatory authority[7]; about President Trump's determination to fire FTC Commissioners Rebecca Kelly Slaughter and Alvaro Bedoya[8], or the summary replacement by UK Government ministers of a highly regarded chair of the CMA with an employee of one of the world's most aggressive monopolistic acquirers[9].

Perhaps the expert and economical ASB Board and Panel model would not easily translate to other regulated sectors?

D.Is there a risk that the government's strategy is distorted by a fallacy of composition – identifying the growth of the economy with the growth (by merger) of a firm?

Executives and commentators sometimes speak of growth of the firm as if it equates with growth of the economy, and brings corresponding social benefits, such as more innovation, higher output, more capital assets, or a greater range of products and services. But there is a fallacy of composition here[10]: the growth of a firm by M&A can mean just a reallocation of share ownership, with no change to the size of the economy. Promoters of M&A are, of course, only too pleased to conflate the two—expansion of the economy on the one hand and reallocation of ownership of a part of the economy on the other[11]. And they don't mention the resources that are consumed just to achieve a reallocation of share ownership: the substantial transaction costs of a merger deal, which we illustrate in Section E.

Is the Chancellor at risk of conflating the two?

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[7] Meeks 2023.
[8] Slaughter and Bedoya 2025
[9] Jack and Edwards 2025
[10] The error of assuming that what is true for the member of the group (the firm) is true for the group as a whole (the economy).
[11] There is, of course, a related issue, that the growth metric being targeted by the Chancellor – GDP expansion – is a deeply flawed proxy for economic well-being (Stiglitz, Sen and Fitoussi (2009).

E.Arrangements in the UK offer very powerful incentives to the key players in merger to undertake acquisitions even when they are against the public interest, and at odds with the innovation and growth agenda[12]

We have argued (Meeks and Meeks 2022b) that it is to be expected that the M&A market's many talented, hard-working, highly skilled, law-abiding, income-maximising participants will continue to promote destructive mergers. It would be surprising if they did not. There are three interwoven strands in this argument. First, contracts (explicit and implicit) often reward key players in the M&A market — executives and advisers — for deals that result in zero or negative operating gains. Second, legal and taxation arrangements often enable acquirer executives, as well as shareholders in these cases, to extract economic rent from other stakeholders in deals that yield no operating gains. Third, accounting rules and practice often offer rich opportunities for acquirers to mislead the market about the prospective operating gains from merger, and to manage performance measures following merger.

Contracts and incentives

"Show me the incentive and I will show you the outcome", said Berkshire Hathaway vice-chair Charlie Munger.

Incentives for bidder CEOs were analysed by Harford and Kai Li (2007), who concluded that "even in mergers where bidding shareholders are worse off, bidding CEOs are better off three-quarters of the time." One factor in this is the strong link between CEO salary and firm size. Acquisition of another company is one of the easiest ways to grow. For example, the $27bn purchase of Refinitiv by London Stock Exchange Group in 2021 immediately tripled the acquirer's revenue. LSE boss David Schwimmer was "rewarded with a 25 per cent increase in base salary . . . to reflect the LSE's increased size following the Refinitiv purchase". Yet in the same month, LSE shares fell 25 per cent on concerns about its ability to extract synergies from the acquisition[13].

In an attempt to align the interests of executives with shareholders, the last three decades have of course seen increasing use of bonuses linked to measures of performance such as earnings per share. But there are particularly rich opportunities afforded by mergers to game performance-related pay, through morally hazardous borrowing and by tax avoidance and

[12] This section is based on Meeks and Meeks (2022a), summarised in Meeks and Meeks (2022b).
[13] Stafford (2021, Elder (2021)

creative accounting, procedures that deliver improved pay and perks for no genuine improvement in the underlying (operating) performance of the wider economy.

Rewards to the CEO for increasing firm size are sometimes defended on the general grounds that a bigger organisation is harder to manage. But growing by the particular means of acquiring rivals can often bring the CEO a quieter life (see section G below).

A large merger usually requires a team of investment bankers, lawyers, accountants and consultants hired by the acquirer. In practice it is not reasonable to expect professional advisers to caution against a deal they doubt will enhance operating profits, when the executives who hire them (and may hire them again) express no such doubts and are backing it to the hilt. The advisers' impressive fees are related to closing the deal, not to post-merger operating gains — fees of around $1.5bn in the case of AB InBev's merger with SABMiller, one which was followed by unimpressive financial performance[14].

In the case of the private equity industry, which evolved out of investment banking, the incentive structure richly rewards the general (internal, managing) partners for risky mergers. On top of substantial management fees they typically receive 20% of earnings (above a threshold) for providing 3% of the equity: very high returns for a very small share of the risk.

Extracting rents

In some cases, mergers that lead to operating losses can still advantage the acquirer's shareholders. Here, it is other stakeholders who bear the cost, thanks to legal, taxation and central banking arrangements favouring shareholders and executives at the expense of many others: the taxpaying public, unsecured creditors, pensioners . . .

Debt-financed acquisitions can magnify the equity-holders' earnings even where operating profits fall. Of course, more debt means a higher risk of failure. But due to limited liability provisions much of the downside risk associated with slender equity cushions is borne by others — moral hazard in action. An illustration is provided by Carillion, the former UK construction company. It had been built via a string of acquisitions and relied heavily on debt finance. When it failed, it owed around £2bn to 30,000 suppliers, who would receive little from the liquidators, and some of whom were themselves bankrupted as a result. Fellow casualties included members of Carillion's systematically underfunded pension fund.

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[14] Massoudi (2016), Massoudi and Abboud (2019)

The incentive to make acquisitions unwarranted by operating gains is reinforced by the tax system. In most jurisdictions, corporation taxes are not levied on the portion of profits paid as interest to lenders. This privileged treatment makes it even easier to transform poor operating profits into enhanced surpluses for investors via a debt-financed merger. And the benefit can be particularly valuable in cross-border transactions. Former tax inspector Richard Brooks wrote (2013) that "a cross-border takeover is to Britain's tax lawyers and accountants what a well-fed wildebeest with a limp is to a pride of lions." His examples include Spire Healthcare, acquirer of Bupa hospitals, "wiping out its taxable profits by paying interest offshore at 10 per cent."

And in the case of Thames Water, acquired (with a roundabout structure) by Macquarie, he links 'tax-deductible interest costs, most of it on debt owed to the offshore investors' to the result that 'in the two years to March 2011, from a £1.2bn operating profit the group that own Thames Water paid UK corporation tax of 19m pounds' (p. 211)

Sandbu (2019) reports on evidence that more than a third of foreign investment is multinationals dodging tax.

The incentives for unprofitable mergers offered by morally hazardous borrowing and tax subsidies were yet further reinforced in recent years by the central banks' manipulation of the debt market, forcing down interest rates. Cheap debt has been described by McKinsey partner Bryce Klempner as the "lifeblood of private equity". And private equity had of course in recent years been a major force in the M&A market with its business model of buying firms, loading them with debt, and selling them a few years later. The model has then benefitted not only from imposing downside risk on other stakeholders, but also both from the generous tax treatment of debt finance, and from interest rates being held down by central banks.

To complete the package of benefits, the heads of these private equity firms have in the US and UK enjoyed privileged rates of tax on their personal profits from M&A, known as "carry". In the words of an FT leader: "The result has been to foster a generation of buyout billionaires who have paid lower tax rates than their cleaners."

Accounting tricks

Acquiring firms enjoy rich (but perfectly legal) opportunities to deploy creative accounting around mergers — flattering and smoothing reported and forecast profit, securing funding on unduly favourable terms, and masking subsequent declines in underlying performance. A famous illustration is provided by GE's spending spree — some 1700 acquisitions between 1980 and 2017 — followed by its decline and dismemberment. Critics have recounted creative accounting devices GE employed such as tweaking the expected future costs of multi-period contracts, fudging the value of inventory, writing down the 'fair value' of acquired assets and channel stuffing (bringing forward sales) (Gryta and Mann 2020)

F.The UK has hardly been starved of merger activity relative to economies which have secured faster growth of GDP; and in recent years only a tiny proportion of bids has been resisted by the CMA

Seventy years ago, growth by M&A was a relatively insignificant aspect of strategy, and presumably consumed little of the time and energy of senior executives and their boards. Spending by listed firms on M&A in 1950s UK was equal to only around 15% of spending on new fixed assets (Meeks 1977). Two Credit Suisse studies (Mauboussin and Callahan 2014, 2015) compare aggregate M&A spending with CAPEX (capital expenditure devoted to buying, maintaining, or improving fixed assets such as land, buildings or machines) from 1980 to 2013 for the US, Europe and Asia Pacific. In the West (US and Europe), M&A caught up with CAPEX and then overtook it, reaching two- or three-times CAPEX in cyclical peaks.[15] In the East, apart from Japan, the trends were in the same direction but the levels generally (especially in Japan) much lower.

An increasing share of M&A in recent years has been carried out by private equity, and the UK is the second largest market in the world for private equity (Guest, Mingzhu Wang, and Welte 2025), but, of course, ranks much lower for its innovation activity and growth of output.

Of course, it cannot just be inferred that lower CAPEX, growth and innovation in the UK has been the direct result of the higher M&A activity: there are so many influences on CAPEX. But it would not be surprising if top executives in the UK devoted more of their time and energy to M&A, as potential bidder or target[16], and less on innovation and CAPEX than their counterparts

[15] CAPEX has, of course, been growing relatively slowly in recent decades as new industries have invested more heavily in intangible assets.

[16] Executives have been focusing not just on the prospect of making acquisitions, but also on the possibility of themselves becoming takeover targets. M&A has become by far the most common cause of corporate 'death'. Of the population of larger companies listed on UK stock exchanges in 1948, 83% had been taken over by 2018 (Meeks and Whittington 2021). In the US, the number of businesses listed on the Stock Exchange has roughly halved since 1996 (Tepper and Hearn 2019), mostly as a result of merger. Sometimes businesses have merged or made acquisitions in order to 'stay alive' themselves—avoiding becoming a target. For example, Kynaston (2001, p. 387) describes the bosses of two major retail banks in the UK,

in faster growing economies. Section G below gives examples of the role of some M&A in actually ‘killing’ or stifling innovation and growth.
The impression given by the Chancellor’s comments - of an oppressive regime operated by the CMA, shackling the M&A process, is hard to reconcile with the numbers of restrictions the regulator imposed. If I understand the statistics properly, in only 40 of the more than 3,000 deals examined since 2021 have remedies been applied, while just 7 have been prohibited and 5 were abandoned.

G.Rather than inhibiting mergers which are in the public interest (in terms of innovation and GDP growth), the CMA ‘net’ lets through deals which can be damaging to allocative efficiency, innovation and growth – such as ‘killer’ and’ roll-up. acquisitions

It is arguable that rather than shifting to a more permissive regime of merger control, the Chancellor’s objective of innovation and growth would better be served by finding ways of restricting certain types of merger which currently escape scrutiny.

Killer

Serial merger has also been held to stifle innovation, favouring incumbents over superior, innovative challengers. Wu (2018) describes the use by Facebook (now Meta) of serial M&A to stifle competitive threats, protect its dominant position and maintain the extraordinary profits which fuelled further acquisitions. Instagram ‘gained 30 million users in just eighteen months of existence[…] was poised to become a leading challenger to Facebook based on its strength on mobile platforms, where Facebook was weak[…]Facebook realized it could just buy out the new [competitor]. For just $1billion, Facebook eliminated its existential problem…’ (p. 122). And then ‘Facebook was able to swallow its next greatest challenger, WhatsApp, which offered a more privacy-protective and messaging-centered competitive threat in a $19billion buyout…’ (p. 123). ‘In total, Facebook managed to string together 67 unchallenged acquisitions’, consolidating its monopoly power. By 2016 Facebook accounted for 78% of US social advertising expenditure (Tepper and Hearn, p.124).

The FTC has alleged that Meta (Facebook) ‘sought to stymie [Instagram’s] growth to avoid Facebook’s “network collapse”. And Instagram’s co-founder has contended in court that ‘Meta

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National Provincial and Westminster, agreeing to merge to create ‘a bank that would be too big to be taken over by anyone else’.

failed to provide sufficient resources to realise Instagram's growth potential after acquiring it in 2012' (Palma and Murphy 2025).

Then Cunningham, C., Ederer, F., and Song Ma (2018) report on predatory acquisitions in the pharmaceutical industry, where incumbents have been found to pre-empt future competition by acquiring a firm which is developing a product that would rival its own, and then shelving the innovative competitor. The authors describe this as a 'killer acquisition', where a promising new drug is less likely to be developed when it would compete with products being developed or sold by the acquirer.

The New York Times (2015) criticised another socially-damaging merger strategy in the pharmaceutical industry: 'Valeant is known for buying companies and laying off their employees to achieve savings, while accumulating a debt of about $30 billion. It spends an amount equivalent to only 3% of its sales on research and development, which it views as risky and inefficient compared with buying existing drugs. Traditional big drug companies spend 15 to 20% of sales on research and development.'

Roll-up

Evans and Wiggins (2021) described a striking serial acquisition model which raised concentration in the European veterinary care industry. The Swedish private equity group, EQT, bought the vet care company IVC in 2016, which embarked on 'a debt-fuelled…clinic-buying spree, snapping up independent practices and small chains and rolling them into what is now Europe's largest vetcare practice with 1,500 sites.' IVC had bought up series of practices in individual local markets, until they controlled a majority share of those markets. One acquired practice subsequently raised the price of medications – in one case by 28%, in another by 39% and in a third by 78%. In addition, there was evidence of some services being withdrawn, leaving farmers 'without access to veterinary services'. Of course, recent CMA research has found disturbing evidence of inflated prices after acquisition (CMA 2025); and costly behavioural remedies may be adopted which would not have been needed if the merger activity had been limited.

Undermining the Stock Exchange

One part of the UK corporate finance industry makes its living from M&A (the M&A advisers and private equity general partners). Another part of the industry has its living undermined by M&A. Of the population of larger companies listed on UK stock exchanges in 1948, 83% had been taken over by 2018 (Meeks and Whittington 2021). In the US, the number of businesses listed on the Stock Exchange has roughly halved since 1996 (Tepper and Hearn 2019), mostly as a result of merger.

The shrinkage of the population of companies on the Exchange is often seen as unhelpful to firms seeking risk finance for innovation and growth. It reduces investors' choice of shares. It stifles the services and expertise surrounding the Exchange. UK firms seeking new equity increasingly look to New York.

A puzzle

Large UK (and US) mergers have often failed to deliver the operating gains forecast by their promoters. But, of those promoters, the CEOs and PE general partners have commonly gained, and the financial advisers have almost always been winners. Losers have sometimes included customers and suppliers as competition has been stifled. Exchequer revenue has sometimes been a casualty when merger has created opportunities for tax avoidance. The precarity of employees and unsecured creditors has sometimes increased. Investment and innovation have sometimes been cut back. The vigour of stock markets has been diminished.

Is it not puzzling then that in the midst of one of the most serious economic crises of recent decades the top UK economics ministers are devoting their precious energy to reducing yet further the already tiny proportion of proposed mergers scrutinised or blocked by the CMA?

Annex 1

An exception to these average results on poor assessment of merger in advance and weak performance afterwards was a deal by Fred Goodwin as head of Royal Bank of Scotland. He secured massive gains for the shareholders by firing 18,000 employees after he acquired NatWest Bank, earning the nickname 'Fred the Shred'. The acquisition was meticulously planned and ruthlessly delivered. Staff held to be under-performing were removed and backroom functions combined, yielding within two years an increase of over 70% in earnings per share and over 100% in the RBS share price. But later, in his eagerness to build by M&A the largest bank in the world, he followed a more typical process, summarised by a member of the Parliamentary Committee which reviewed his subsequent acquisition (ABN/AMRO):

'Jesse Norman: So the punch line is that the transaction of €27 billion was made by the board without independent financial advice on the back of thoroughly inadequate due diligence by

Merrill Lynch for which they, and other advisers, would have been paid well north of €100 million or €200 million. That is the punch line of what you are saying?' (HoC 2012)
Of course, this deal was followed soon after by the failure of RBS and a £46billion bailout.

Annex 2

There is a long-established literature on the diseconomies of scale in business. One strand focuses on the growing distance between the CEO and the 'front line' of production and marketing as businesses expand and reporting lines multiply (Robinson 1931). A related strand focuses on the difficulty of coordinating the different parts of a large organisation. Scherer and Ross (1990) write that 'Hordes of middle managers, coordinators, and expediters proliferate' (p. 104), helpfully adding an explanatory footnote: 'For readers untutored in the ways of bureaucracy, an expediter is a person whose desk is between the desks of two coordinators'. Compelling accounts of the challenges executives might encounter in the acquisition process are provided in, for example, the early theoretical work of Penrose (1959) and Marris (1963), and the empirical studies of Ravenscraft and Scherer (1987) and Fernandes (2019), and the analyses of Boyd (2024). Penrose emphasised the difficulties of assimilating large additions to the management team. Other challenges include evaluating the gains to be secured from an acquisition, identifying obstacles to achieving those gains, and devising plans to overcome those obstacles. Managing the assimilation process is especially difficult where the cultures and control systems of the merging firms are very different (studies by McKinsey and Bain offer useful examples).

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