Google

12 May 2025

Google Response to the CMA Mergers' Remedies Consultation

Google is grateful for the opportunity to comment on the CMA's call for evidence in its mergers' remedies review.

On **Theme 1** (the CMA's approach to remedies), Google supports the proposal to take a more flexible approach to remedies, with greater openness to remedies that seek to *mitigate* (rather than fully remedy or prevent) a substantial lessening of competition (**SLC**) and to *behavioural* remedies, in particular at Phase I.

We believe that the CMA's recent view – that remedies should comprehensively address an SLC and that behavioural remedies can only solve competition problems in very limited scenarios – is too narrow, is generally not fit for digital markets, and risks disrupting innovation and efficiency benefits of many transactions. This means that the CMA risks "boxing itself in" to clear unconditionally deals requiring unnecessarily intrusive remedies or to blocking outright deals that should have been cleared with suitably targeted remedies.

On **Theme 2** (the CMA's approach to merger efficiencies), we welcome the CMA's willingness to re-consider this area.

The CMA's Merger Assessment Guidelines (**MAGs**) were updated in 2021. Amongst other things, these signalled a greater readiness to intervene in digital mergers. In effect, the changes to the MAGs were considered to have shifted the burden of proof on to parties to demonstrate that a digital merger will not be anti-competitive: a point that many believe was borne out by certain CMA decisions around the same time.

This has led to the CMA's current approach to assessing merger benefits being at times unbalanced, taking a far more sceptical stance to claims that a merger will generate efficiencies and enhance innovation and investment than to claims it will reduce competition, in particular at Phase I. As a result, the CMA risks taking an over-interventionist stance to merger enforcement with the effect of reducing innovation, beneficial integration, and investment in critical growth markets.

The CMA's current approach, therefore, could risk undermining its pro-growth goal. Digital markets are characterised by dynamic competition; dynamic competition is about innovation and investment; and innovation and investment promote growth. Moreover, there is an increasing body of work showing that productivity growth is driven by large firms in certain sectors, in particular the tech sector, and productivity growth is a major driver of economic growth.[1]

One move that could go towards addressing this would be to revise the CMA's current approach to assessing merger efficiencies – both Relevant Customer Benefits (RCBs) and rivalry enhancing efficiencies. The current approach, which essentially requires efficiencies to be clearly specified in advance with a reasonably high level of confidence, is not well

[1] *See*, for example, McKinsey, The power of one: how standout firms grow national productivity, May 6, 2025.

suited to innovation- and investment-driven markets. While this approach may suit markets characterised by static competition – i.e., traditional bricks and mortar markets – applying the same approach to innovation- and investment-driven markets, can lead to anomalous decisions and over-intervention. Unlike many other types of other efficiencies, the outcomes of innovation are necessarily uncertain. Requiring a high standard of certainty for merger efficiencies will therefore imply that many genuine innovation-enhancing mergers will find themselves being blocked.

At a minimum, therefore, in examining mergers in innovation- and investment-driven markets, we would welcome the CMA moving away from current requirements of requiring parties to demonstrate efficiencies to a high level of certainty. That is not a realistic bar that can be met.

Instead, we would encourage the CMA to adopt a more balanced and pragmatic approach that takes into account a broader range of evidence (e.g., expert reports, product roadmaps and integration plans) and recognises that a transaction may produce efficiencies even if not all are precisely quantifiable.[2] In many cases, it will be obvious that rivalry-enhancing and RCBs will outweigh the limited competition issues, in particular if the anticipated price effect or loss of choice is small and the potential for innovation and investment is substantial. Investment remedies (such as the ones accepted in *Vodafone/Three*) can be used to lock in these benefits and mitigate any uncertainties.

While a more open-minded approach to remedies and efficiencies would be a step in the right direction to deliver a growth-friendly merger regime, it will not on its own be enough to provide confidence that innovation- and investment-enhancing mergers will not unnecessarily be blocked or remedied. To achieve that, the CMA would need to extend the scope of its review and reassess the approach it takes to the SLC test in dynamic markets.

Innovation-driven markets are fundamentally different from traditional bricks and mortar markets, but the CMA's approach to assessing mergers remains largely predicated on a traditional static form of competition, centring on factors such as concentration levels, price and quality. This approach is fundamentally unsuited to dynamic markets.

To assess the impact on competition of a merger in innovation markets, we would encourage the CMA to develop frameworks to understand the impact of the merger on the *incentives* and *abilities* of innovating firms. The CMA's current MAGs emphasise the concern that a merger between two innovating firms will reduce the overall amount of innovation, but for many tech firms, including Google, the incentive to drive innovation is at the heart of everything they do. In this environment, mergers are most often driven by a desire to enhance the ability to innovate by merging with firms that offer complementarities or synergies with existing innovation activities.

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[2] For instance, the CMA has introduced a pragmatic approach to efficiencies in relation to sustainability agreements. See Green Agreements Guidance: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements (CMA185), paragraph 5.24.

Without such a framework in place, the CMA will continue to risk over-weighting the potential of competitive harms and under-weighting the pro-innovation impacts of the merger. This in turn will risk over-intervening and blocking mergers that would have been innovation-enhancing.

Developing this framework will take time. Pending that, we would encourage the CMA to take a risk-based approach to merger policy, recognising the risk that over-intervention will stymie innovation, and therefore growth.

We look forward to further engaging with the CMA on these issues.