Mergers

Draft revised merger remedies guidance

Consultation document

16 October 2025

Competition & Markets Authority

Contents

1. Introduction

1.1 The Competition and Markets Authority (**CMA**)[1] has set out in published guidance general information for the business and legal communities and other interested parties on its practices and processes in connection with its powers under the Enterprise Act 2002 (as amended) (the **Act**) to investigate mergers.[2]

1.2 Mergers Remedies (CMA87) (the **Current Guidance**) sets out the CMA's approach to the selection, design and implementation of remedies in merger cases. It originally took effect on 13 December 2018 and sought to provide a single source of guidance on remedies for phase 1 and phase 2 merger investigations. It therefore superseded the Competition Commission (**CC**) guidelines on merger remedies and Chapter 5 of the Office of Fair Trading (**OFT**) guidelines on undertakings in lieu of a reference (**UILs**).[3]

1.3 As set out more fully below, the CMA is now proposing a number of changes to the Current Guidance. The proposed changes are designed to embed the CMA's new '4Ps' framework into our merger remedies processes (discussed at paragraph 2.2 below), as announced in February 2025. The draft revised text of the Current Guidance issued alongside this consultation document is referred to as the **Draft Revised Guidance**.

1.4 The changes proposed in this consultation document will not require any new or amended legislation. They cover: i) the CMA's approach to merger remedies; ii) how merger remedies can ensure that pro-competitive merger efficiencies and merger benefits are preserved; and iii) updates to the CMA's merger remedies process to ensure it remains as efficient as possible.

1.5 This consultation document is structured as follows:

(a) Section 2 sets out the background and context for the proposed changes;

(b) Section 3 sets out the proposed changes relating to the CMA's approach to merger remedies;

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[1] The CMA is the UK's economy-wide competition and consumer authority. The CMA is a non-ministerial department. For more information see: Competition and Markets Authority - GOV.UK

[2] This guidance forms part of the advice and information published by the CMA under section 106 of the Act.

[3] Some aspects of the CMA's remedies process are also covered in Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2). The interaction between CMA 87 and CMA 2 is discussed in more detail in Section 5 of this document.

(c) Section 4 sets out the proposed changes relating to ensuring that the CMA's approach to merger remedies preserves pro-competitive merger efficiencies and merger benefits;

(d) Section 5 sets out the proposed changes relating to the CMA's merger remedies process;

(e) Sections 6 and 7 set out the specific questions on which the CMA is seeking respondents' views in this consultation and the consultation process.

1.6 This consultation is aimed at those who have an interest in the CMA's merger remedy approach. In particular, it may be of interest to businesses and their legal and other advisors.

2. Background to proposed updates to the Draft Revised Guidance

2.1 The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.[4] Our ambition is to promote an environment where people can be confident they are getting great choices and fair deals, competitive, fair-dealing businesses can innovate and thrive and the whole UK economy can grow productively and sustainably. The CMA's merger control function is part of its general duty to seek to promote competition for the benefit of consumers.[5]

2.2 Following extensive engagement with businesses and investors, both domestic and international, and in line with the Government's Strategic Steer,[6] the CMA has introduced a new '4Ps' framework to deliver meaningful changes to how the CMA goes about key aspects of our work. These 4Ps – *pace*, *predictability*, *proportionality*, and *process* – are designed to support growth, investment and business confidence in the UK's competition and consumer regimes.

2.3 The vast majority of mergers will not raise any competition concerns and are not even formally reviewed by the CMA. For those mergers that are reviewed, the majority end in clearance, either unconditional or with remedies. We have heard and are responding to feedback from stakeholders that will help us improve the way UK merger control operates – improving pace, predictability, proportionality and process (the way we engage with businesses) in our approach to merger remedies.

2.4 In cases where potential competition concerns are identified, we want to work constructively with businesses to identify as quickly as possible whether there is an effective and proportionate remedy that would resolve our concerns and enable them to get on with implementing their deal and running their business. We have already taken some steps to do this with our phase 2 reforms,[7] but are determined to go further.

2.5 To ensure our approach to merger remedies embodies the 4Ps, earlier this year we launched a formal review of our approach, seeking input from all interested parties (the **Merger Remedies Review**).[8] The Merger Remedies

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[4] Competition and Markets Authority - GOV.UK
[5] Section 25(3) of the Enterprise and Regulatory Reform Act 2013 (the ERRA13).
[6] Strategic steer to the Competition and Markets Authority - GOV.UK
[7] New Phase 2 investigation process adopted by CMA - GOV.UK
[8] Review of merger remedies approach | CMA Connect

Review involved an extensive evidence gathering exercise including a public call for evidence the **Call for Evidence**) from March until May 2025, a literature review, and direct third-party engagement, including with a number of international competition authorities, UK sectoral regulators, businesses and industry associations. The CMA has carefully worked through all the evidence received to ensure we are in the best possible position to improve our approach.

2.6 The CMA sought evidence in relation to three key themes, which, as outlined above, are reflected in the sections of this document:

(a) Theme 1: the CMA's approach to remedies (Section 3);

(b) Theme 2: preserving pro-competitive merger efficiencies and merger benefits (Section 4); and

(c) Theme 3: running an efficient process (Section 5).

2.7 We have developed the Draft Revised Guidance based on:

(a) 37 written responses to the Call for Evidence, including a number that aggregated the views of multiple stakeholders;

(b) Stakeholder engagement – 4 roundtables and 21 calls (including with a number of international competition authorities, UK sectoral regulators, businesses, and monitoring trustees); and

(c) Our internal research – including a literature review (details of the materials included in this are set out in the bibliography) and case studies of past merger remedies cases considered by the CMA.

2.8 As with previous versions of the guidance, the Draft Revised Guidance also takes into account the CMA's experience of merger investigations and relevant court judgments in the intervening years.

2.9 We set out a summary of the key proposed updates in the Draft Revised Guidance under each of these three themes in the following sections.

3. Updates relating to the CMA's approach to merger remedies

Introduction

3.1 This section outlines the proposed key changes in relation to Theme 1, the CMA's approach to Merger Remedies. The Draft Revised Guidance has five proposed key changes, in relation to:

(a) Our approach to analysing the effectiveness and proportionality of remedies;

(b) Our approach to behavioural and structural remedies;

(c) Our approach to complex divestiture remedies;

(d) Our approach to remedies at phase 1; and

(e) Our approach to the use of trustees and independent experts to assess remedies.

3.2 We cover each of these in further detail below including: (i) a high-level outline of the CMA's current practice; (ii) what we learnt from our review; and (iii) the CMA's proposed changes to the Current Guidance and rationale for these.

Our approach to effectiveness and proportionality

3.3 At both phase 1 and phase 2, the Act requires that the CMA, when considering merger remedies, has regard to the need to achieve as comprehensive a solution as is reasonable and practicable, for the purpose of remedying, preventing or mitigating the substantial lessening of competition (SLC) and any adverse effects resulting from it.[9] This requirement has informed the CMA's current focus on ensuring that it only allows remedies with a high degree of certainty of being effective,[10] to ensure consumers and other businesses in the markets affected are not left unfairly worse off.

3.4 In line with this approach, under the Current Guidance, there are common principles that apply to the assessment of remedies at phase 1 and phase 2,

[9] The Act, Sections 35, 36 & 73
[10] Current Guidance, at paragraph 3.5(d)

and in particular a two-stage assessment of remedies which can be summarised as follows:[11]

(a) *Assessment of a remedy's effectiveness*: first, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects; and

(b) *Assessment of a remedy's proportionality*: the CMA will then select the least costly and intrusive remedy that it considers to be effective and will seek to ensure that no remedy (even if the least costly but effective option) is disproportionate in relation to the SLC and its adverse effects.

3.5 Again, in light of our commitment to the 4P objectives, we sought evidence as to whether our current approach to assessing remedies can be improved, within the current legislative framework. In particular, we were interested in views on how the CMA can best reflect the need for proportionality in its consideration of remedies, and the factors that could be relevant to this assessment.

What we learnt from our review

3.6 Some stakeholders said the CMA should assess the effectiveness and proportionality of remedies in parallel, with others telling us that the CMA should give more prominence to its proportionality assessment, which they submitted has become secondary to effectiveness in the CMA's current approach.

3.7 Some stakeholders said the CMA's focus on remedies having a "high degree of certainty" and fully solving the SLC risks ruling out effective remedies – for example: dynamic remedies in digital sectors; remedies securing certain legislatively defined Relevant Customer Benefits (**RCBs**); carve-out remedies; and partial divestments to address local SLCs.

3.8 Some stakeholders said that the CMA should be more open to accepting behavioural and carve-out remedies as effective in phase 1 and phase 2 and that the CMA had (or would have) rejected behavioural remedies at phase 2 that were acceptable to other regulators (for example, remedies accepted by the European Commission in Google/Fitbit[12] and Microsoft/Activision[13]).

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[11] Current Guidance, at paragraphs 3.4 – 3.13.

[12] https://competition-cases.ec.europa.eu/cases/M.9660. The CMA did not have jurisdiction to review this transaction, but public comments from then CMA CEO Andrea Coscelli indicated that the CMA would have been unlikely to accept the type of behavioural remedy that was accepted by the EC.

[13] At phase 2 before the transaction was substantially restructured.

3.9 Some stakeholders said that the CMA should give mitigations (ie a remedy that is not a comprehensive solution to the SLC and its adverse effects or, in other words, a remedy that is 'partially effective') equal weight to measures that more fully remedy the SLC. Some stakeholders said, relatedly, that the CMA's current approach to mitigation has placed an unnecessary 'gloss' on the legislation's plain wording and in particular underplays the significance of the legislative statement that the CMA (only) seek 'as comprehensive a solution as is reasonable and practicable'.

CMA's proposed changes

3.10 We propose to keep the current analytical framework that sequentially considers the effectiveness and then proportionality of merger remedies in the Draft Revised Guidance. We consider this approach remains appropriate and ensures that the remedies assessment has due regard to effectiveness, proportionality, and mitigations.

3.11 We consider that the current analytical framework is legally robust as it is consistent with the legal framework set out in the Act and the public law proportionality principles recognised by the case law (those principles were first established in *Fedesa*[14] and subsequently applied in *Tesco v Competition Commission*[15] and other judgments). Moreover, the current approach is clear and easy to explain and understand.

3.12 However, we also consider that the current analytical framework allows for greater flexibility in the effectiveness assessment than is set out in the Current Guidance, and that there is scope to consider a wider range of possible remedies to be effective. This is in line with other changes that we propose to make to the Current Guidance and that are summarised in the remainder of this document.

3.13 We consider that the Current Guidance should be updated to explain more directly how the CMA assesses the various parameters of effectiveness (the **Effectiveness Criteria**),[16] with reference to particular types of remedy. We therefore propose to explain in the Draft Revised Guidance how particular categories of risk that the CMA assesses with reference to each of structural and behavioural remedies link to the Effectiveness Criteria.

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[14] *C-331/88 R v Ministry of Agriculture, Fisheries and Food, ex p. Fedesa, ECLI:EU:C:1990:391, paragraph 13.*
[15] *Tesco v Competition Commission* [2009] CAT 6, paragraphs 135-137.
[16] Current Guidance, paragraph 3.5

3.14 We propose to update the Current Guidance to clarify our approach to proportionality. We propose to clarify each step of the proportionality assessment applying the principles articulated in *Tesco PLC v Competition Commission.*[17] In particular, the Draft Revised Guidance makes it clear that:

(a) The proportionality assessment will involve identifying any relevant costs associated with each effective remedy. The relevant costs of a remedy may arise in various forms, and may include distortions in market outcomes, ongoing monitoring and compliance costs including to the CMA, sectoral regulators and third parties, and the loss of RCBs. As the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute considerably less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA and other monitoring agencies.

(b) The CMA will then ensure that the remedy is no more onerous than it needs to be to resolve the SLC and its adverse effects. The requirements of a remedy should only be those necessary to resolve the SLC and its adverse effects. The CMA will engage with the merger parties and third parties to ensure that a remedy is no more onerous than it needs to be.

(c) The CMA will then choose the least onerous remedy, where the CMA has identified more than one effective remedy. We propose removing the references in the Current Guidance to the CMA choosing between two 'equally effective' remedies in its proportionality assessment, which may suggest the CMA will only consider the proportionality of remedies that are effective to the exact same degree. The Draft Revised Guidance explains the circumstances in which effective behavioural remedies may be less costly than effective structural remedies and recognises that behavioural remedies will often be less intrusive from the merger parties' perspective than structural remedies.

(d) Finally, the CMA will consider whether the chosen remedy is proportionate in relation to the SLC and its adverse effects. This involves weighing the relevant costs of the remedy against the SLC and its adverse effects. In exceptional circumstances, even the least onerous but effective remedy might be expected to incur relevant costs that are disproportionate to the scale of the SLC and its adverse effects. In those exceptional circumstances, the CMA will not pursue the remedy in

[17] *Tesco v Competition Commission* [2009] CAT 6, paragraphs 135-137.

question and may consider remedies which will only be partially effective in resolving the SLC.

3.15 We also propose clarifying the concept of mitigations. We do not propose to give more prominence to mitigations in the Draft Revised Guidance. This reflects the requirement in the Act for the CMA to 'have regard to *the need* to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it' (emphasis added) and also relevant case law.

3.16 In *Ecolab*, the CAT said that '*the duty on the CMA was to find 'as comprehensive a solution as was reasonable and practicable' for the purpose of remedying, preventing or mitigating' the SLCs'*, and that this duty was '*encapsulated in the concept of an 'effective remedy' discussed in CMA87*.' The CAT emphasised, citing Ryanair (COA), that '*this is a high duty*'. The CAT in Ecolab also held that it was reasonable for the CMA to not favour a remedy for which it could not feel a '*high degree of confidence of success'*.[18]

3.17 We also consider that this strict approach to mitigations is supported by important policy considerations. At the end of a phase 2 investigation where remedies are involved, the CMA will have both decided that a market is of a certain level of importance for the UK (or the case would have been de minimised in phase 1)[19] and that substantial competitive harm is likely to result from the merger. In those circumstances, unless the overall effect of the merger (or the merger with the weaker remedy) on consumer welfare in the UK is positive notwithstanding the SLC (eg because of RCBs) we should therefore be requiring that harm to be addressed in full as far as possible.

3.18 Finally, we are concerned that considering mitigations from the outset would not incentivise parties to focus on effective solutions to the competition concerns identified, and instead potentially increase the likelihood of remedies proposals that create a resource burden for the CMA but are unlikely to be credible.

3.19 However, we propose to clarify the rare instances when mitigations may be relevant – ie cases where there is no effective and proportionate remedy. This may arise, for example: where the RCBs outweigh the SLC and there are no effective remedies which preserve the RCBs, and in cases where all feasible remedies will only be partially effective in resolving an SLC. In such cases, the

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[18] *Ecolab v CMA* [2020] CAT 12 ('*Ecolab*'), paragraphs 58-59, 73-74 and 76.

[19] When the markets concerned are not of sufficient importance to justify a reference, the CMA has a discretion not to make a reference despite the fact that there is a realistic prospect that the merger will lead to an SLC (Sections 22(2)(a) and 33(2)(b) of the Act).

CMA will select the most effective remedy that is available, provided that the relevant costs of this remedy are not disproportionate (as described above) in relation to the SLC and its adverse effects.

Our approach to behavioural and structural remedies

3.20 There are various ways to classify remedies in merger control, one of them based on the distinction between structural and behavioural remedies.[20] In our Call for Evidence, we invited views and evidence on a wide range of questions in relation to the classification and assessment of different types of remedies.[21]

3.21 These included:

(a) whether the distinction that the CMA draws in its Current Guidance between behavioural and structural remedies is helpful and meaningful, and if not, how the CMA should classify different types of remedies;

(b) the circumstances in which behavioural remedies are likely to be appropriate;

(c) factors which may impact the likely effectiveness of, and the risks associated with, behavioural remedies;

(d) how the CMA should test the effectiveness of behavioural remedies, and the sources of evidence which are likely to be most relevant; and

(e) the approach at both phase 1 and phase 2 and whether, and if so under what circumstances, there should be differences in our approach to UILs and phase 2 remedies.

What we learnt from our review

Stakeholder submissions

3.22 Whilst some stakeholders submitted that the distinction between structural and behavioural remedies was useful, others suggested that there was not always a clear distinction between types of remedies and that the CMA should

[20] Ariel Ezrachi, *Behavioural Remedies in EC Merger Control – Scope and Limitations* (2006) 29(1) World Competition.
[21] Call for Evidence, Section 3

assess remedies on a case-by-case basis rather than by reference to a rigid structural / behavioural classification.

3.23 Stakeholders also identified circumstances in which they submitted that behavioural remedies were more likely to be appropriate (and which were not reflected in the Current Guidance), including:

(a) In vertical and conglomerate mergers – as these mergers often create merger-specific benefits which can be threatened by a structural remedy and can be easier to monitor by downstream competitors;

(b) In digital mergers – the reasons given included that: in these markets the CMA benefits from the Digital Markets Unit's (DMU's) expertise; the challenges of specifying divestment commitments and the importance of the flexibility afforded by behavioural remedies in these markets;

(c) In markets where customers are sophisticated and/or there is a high degree of market transparency, as in these cases, third parties and the CMA can readily observe when remedies are breached and take appropriate enforcement action, creating an incentive for the merger parties to comply;

(d) Where the behavioural remedy resembles existing market practices (eg licensing or access remedies), as in these cases there is an increased chance that the remedy would be understood and able to be readily monitored and enforced;

(e) In regulated markets - as sectoral regulators are well-positioned to monitor remedies and since merger parties already have robust compliance procedures and controls in place, they are more likely to effectively self-monitor and comply with the requirements of a remedy.

3.24 Stakeholders also said that the CMA should undertake market testing and consider learnings from comparable remedies in other jurisdictions and / or comparable commercial agreements.

Other research

3.25 We found a considerable amount of academic and other literature relevant to our Call for Evidence questions on behavioural and structural remedies, which we carefully reviewed and drew from in reaching our current conclusions. The details of the full set of this material are set out in the bibliography. We also observed the most recent practices of other comparable competition regulators internationally, which draws from their own practical experience.

3.26 In summary, we consider that the evidence from academics and competition authorities shows that structural remedies offer several advantages over behavioural remedies, including being more likely to directly address the competitive concern, being easier to effectively monitor, and requiring fewer resources from competition authorities.[22]

3.27 There is some academic evidence that behavioural remedies may be more appropriate in certain cases involving vertical and/or conglomerate, rather than horizontal, theories of harm. This is particularly the case when the vertical and/or conglomerate merger in question involves significant customer benefits and/or efficiencies (which have been verified), and it is possible to design an effective remedy that preserves these whilst also addressing the competition concern.[23] This is in line with the stakeholder submissions we received. There is some evidence of other competition authorities using

[22] See for, example: Ariel Ezrachi, *Behavioural Remedies in EC Merger Control – Scope and Limitations* (2006) 29(1) World Competition 25, which states that structural remedies are superior to behavioural remedies as they address the competitive detriment directly, require relatively limited monitoring post-transaction and are generally cost-efficient; John E Kwoka and Diana L Moss, *Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement* (American Antitrust Institute 2011) similarly note that behavioural remedies are often difficult to fully specify, leading to subsequent enforcement issues. The ICN's Merger Remedies Guide (2016) states that competition authorities generally prefer structural remedies in the form of a divestiture as they tend to directly address the cause of competitive harm, result in low ongoing monitoring costs and can be simple, certain and be accomplished in a short period of time. In the antitrust context, see also European Commission: Directorate-General for Competition, Grimaldi Alliance, NERA, Sciaudone, F., Neri, A. et al., *Ex post evaluation of the implementation and effectiveness of EU antitrust remedies – Final report*, Publications Office of the European Union, 2025, which notes that purely behavioural remedies were the least likely of the remedies considered to be fully implemented and fully effective, pointing to remedy design issues, the inability of purely behavioural remedies to alter the concerned undertaking's incentives to 'misbehave', as well as difficulties in monitoring implementation.

[23] For example, Ariel Ezrachi, *Behavioural Remedies in EC Merger Control – Scope and Limitations* (2006) 29(1) World Competition 25, states that behavioural remedies may better address foreclosure concerns in vertical mergers than structural remedies as they could address the competitive detriment whilst preserving the efficiencies associated with the transaction. John E Kwoka and Diana L Moss, *Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement* (2012) 57(4) Antitrust Bulletin 979, similarly state that behavioural remedies may be acceptable in certain circumstances, including vertical mergers where efficiencies are large and can clearly be separated from anticompetitive actions by such remedies.

behavioural remedies more widely in vertical and/or conglomerate mergers,[24] although there is mixed evidence on their success.[25]

3.28 Academic research also identifies risks around the use of behavioural antitrust remedies in industries involving fast-moving markets, where the remedies can quickly become obsolete.[26] This aligns with the CMA's experience. For example, the 2023 ex-post study summarised in the CMA report on case study research (**CMA 186**) noted evidence from the case study research that behavioural measures have a greater chance of being effective if the pace of change in the industry is slow and predictable.[27]

CMA's proposed changes

3.29 Overall, we currently consider that the distinction between types of remedies is not always clear cut and that some remedies fall within a spectrum of the two classifications, with varying degrees of structural and behavioural characteristics. However, we continue to consider that the classification of merger remedies as behavioural and structural can be helpful as different considerations apply when assessing the effectiveness of these different classes of remedies. We therefore propose to update the Current Guidance to reflect this, and to clarify that the CMA assesses every remedy on a case-by-case basis with reference to the Effectiveness Criteria.

3.30 We currently consider that, since structural remedies are typically designed to address the SLC at source in order to restore the rivalry lost as a result of the

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[24] For example, the ICN's Merger Remedies Guide (2016) states that non-structural remedies can be effective in some cases, particularly in vertical mergers. According to statistics published by the French competition authority, out of the 22 mergers relating to non-horizontal effects which were cleared with commitments between 2 March 2009 and 31 December 2018, 18 involved behavioural remedies. In the United States, see, for example, the Federal Trade Commission's consent order in Amgen, Inc. and Horizon Therapeutics plc, In the Matter of | Federal Trade Commission which involved the use of a commitment not to bundle in order to resolve a conglomerate theory of harm. In the European Union, see, for example: M.9660, *Google / Fitbit* where the European Commission accepted various data ring-fencing, access and interoperability remedies in order to resolve foreclosure and other competition concerns; and M.10646, *Microsoft / Activision Blizzard* where the European Commission accepted a licencing remedy to resolve competition concerns in relation to the distribution of games via cloud game streaming.

[25] For example, whilst a 2017 FTC ex-post study found that the 4 cases involving behavioural remedies in vertical cases were all successful, a DG competition study in 2005 looking at access remedies in 10 cases found that they only worked in a limited number of instances.

[26] For example, Friso Bostoen and David van Wamel, *Antitrust Remedies: From Caution to Creativity* (2023) state that a practical difficulty with behavioural antitrust remedies in digital markets is that the fast pace of change means that a detailed remedy is likely to lose its effectiveness more quickly. John E Kwoka and Diana L Moss, *Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement* (American Antitrust Institute 2011) similarly note that effective behavioural remedies must anticipate future market conditions, firm operations and parameters and the regulatory system, which is more challenging in nascent or dynamic markets.

[27] CMA report on case study research: CMA 186 at paragraph 5.32(a).

merger, and most behavioural remedies do not do so, a structural remedy is more likely to be effective in resolving the SLC and its adverse effects than a behavioural remedy. However, we also currently consider that behavioural remedies can be effective in some cases. We recognise that whilst behavioural remedies are subject to a variety of risks which might limit their effectiveness, they encompass a wide range of measures with different risk profiles.

3.31 We propose to update the Current Guidance to reflect this, and to move away from the position that the CMA will generally only use behavioural remedies as the primary source of remedial action in three specific cases (namely where there is a time-limited SLC, substantial RCBs or structural remedies are not feasible). Instead, we propose to expressly recognise that, while we currently consider that the taxonomy of risks associated with behavioural remedies in the Current Guidance remains conceptually sound, there are a number of factors that may help to reduce the risks associated with behavioural remedies. These are that:

(a) The remedy has a limited duration, as this reduces monitoring costs and reduces the risk that the remedy becomes ineffective or distorts market outcomes;

(b) There is an industry regulator with appropriate expertise, powers and resources, as this increases the likelihood of effective monitoring and enforcement;

(c) Industry characteristics, such as a high degree of market transparency, make it more likely that stakeholders – such as customers, competitors and suppliers of the merged entity are in a strong position to identify and report to the CMA on instances of non-compliance;

(d) The remedy aligns with existing commercial practices and norms in the relevant industry. This can: (i) increase the feasibility of specifying the required conduct with sufficient clarity to enable effective monitoring and ensure that stakeholders clearly understand what constitutes compliance; and (ii) reduce the risk of market distortions;

(e) The industry is sufficiently mature and stable such that there is a low risk that the market or competitive conditions change in ways which mean that the remedy becomes ineffective or starts to distort market outcomes. However, the CMA also notes that in highly mature and stable industries, behavioural remedies may need to be long-term in nature. This, in turn, increases the risks associated with monitoring, market distortion, and specification.

(f) The merger parties appoint and remunerate a monitoring trustee to assist the CMA in fulfilling its monitoring responsibilities effectively, and / or an independent adjudicator to resolve any disputes between the merged entity and customers whose terms of supply are governed by the remedy.

3.32 We currently consider that we should continue to distinguish within behavioural remedies between 'enabling remedies', which seek to address competition concerns by removing obstacles to competition or stimulating the process of competition, such as requiring the newly merged entity to grant access to its competitors to a key input; and 'controlling remedies', which focus on limiting the adverse effects expected from a merger by regulating or controlling market outcomes, such as through a cap on prices, rather than addressing the source of the SLC.

3.33 In particular, we propose to update the Current Guidance to recognise that enabling remedies which 'work with the grain of competition', seek to address the causes of an SLC, and in certain cases, may directly stimulate competition in a long-lasting way. By contrast, controlling remedies seek to limit only some of the adverse effects of an SLC rather than address its causes. Therefore, we propose that they are unlikely to be appropriate other than for a limited duration, or unless there is no effective or practical alternative remedy.

3.34 We propose to update the Current Guidance to recognise that some enabling remedies, such as a remedy involving the licensing of intellectual property (IP) (eg patents, copyright and trademarks) could potentially stimulate competitive rivalry and/or enable market entry and therefore may have a similar effect to a structural remedy. These remedies initially seek to regulate or constrain the ongoing behaviour of merger parties. However, once implemented, they can stimulate competitive rivalry such that they continue having an impact in a long-lasting way even after the remedy is no longer in effect.

3.35 As with structural remedies, this means that market outcomes can be determined by the competitive process without the need for ongoing intervention. However, there are risks that an enabling remedy will not achieve its intended effect of stimulating competitive rivalry and/or enabling market entry, eg where the effects of the enabling remedy and its timing are uncertain and/or manifest only in the long term.

3.36 We also propose to update the Current Guidance to recognise that some enabling remedies may be used to secure merger-specific rivalry-enhancing

efficiencies. This was the case in Vodafone/Three,[28] where the CMA considered that while some efficiencies were likely, the merger parties were not likely to deliver the full extent of the efficiencies they had claimed. A remedy was therefore used to secure the merger parties' efficiency commitments.

3.37 The CMA currently considers that such enabling remedies are likely to be appropriate where:

(a) There is strong evidence that the efficiencies satisfy all other limbs of the CMA's rivalry enhancing efficiencies test (ie they enhance rivalry, are sufficient to prevent an SLC, are merger-specific, and benefit customers in the UK);[29]

(b) The remedy changes incentives in a way which is difficult to reverse; and

(c) It is possible to design a remedy that would ensure the timeliness and/or likelihood of the efficiencies which can be clearly specified, appropriately monitored and enforced and not easily circumventable.

3.38 As discussed further below, the existence of the clear-cut standard in phase 1 means that, in practice, the timing and extent of engagement with the CMA will also be relevant as to whether the CMA accepts a behavioural remedy in phase 1.

Our approach to complex divestiture remedies including 'carve-outs'

3.39 Structural remedies can vary considerably in scope and risk profile. For example, where a remedy comprises something less than the divestiture of an existing 'standalone' business and instead comprises the divestiture of part of a business or a collection of assets (ie 'carve-out' divestiture remedies), this will increase the complexity of the remedy and present additional issues for the CMA to consider.

3.40 We note that our Current Guidance does not provide any specific guidance on the circumstances in which carve-out remedies may be effective. However, in practice, carve-out remedies are commonly considered by the CMA, as a result of the commercial incentive of merger parties to offer smaller asset

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[28] See the CMA's investigation into the anticipated joint venture between Vodafone Group Plc and CK Hutchison Holdings Limited concerning Vodafone Limited and Hutchison 3G UK Limited (2024).
[29] CMA 129, Chapter 8.

packages than a standalone business where possible, or the absence of an available standalone business to divest.

3.41 Another example of a complex divestiture remedy is an IP divestiture, which might comprise, for example, an amendment to an IP licence to grant a licensee a perpetual and royalty-free licence. As with carve-out remedies, IP divestitures typically involve greater risk than prohibition or divestments of a standalone business.

What we learnt from our review

3.42 Stakeholders told us carve-out remedies are appropriate in a range of circumstances including when the divestment business can be clearly delineated and when it is not possible to divest a standalone entity. Some said the CMA had overstated the risks with carve-out remedies.

3.43 However, we continue to consider that there are considerable risks associated with carve-out remedies. This view is supported by the 2023 ex-post study on carve-out remedies commissioned by the CMA, which is one of the studies summarised in CMA 186.[30] The ex-post study noted that carve-out remedies carried greater composition and purchaser risk than divestiture of a standalone business, which increase the risk that the remedy will not be effective.

3.44 CMA186 observed that the composition risks associated with carve-out remedies can increase where:

(a) The carve-out unwinds or undermines economies of scale, density or scope. Such unwinding or undermining can significantly increase the risk that the remedy will be ineffective;[31]

(b) Merger parties have more influence over the content of the package (eg where the CMA specifies a framework or minimum package and allows the merger parties to negotiate the details);[32] and

(c) The transfer of customers to a new supplier depends on customer consent. This risk may vary according to the importance placed on the

[30] CMA report on case study research: CMA 186.
[31] CMA186, paragraph 4.26(a).
[32] CMA186, paragraph 4.26(b) and FN21.

supplier's products or services by the customer. In some cases, the risk can be mitigated by designing the remedy as a reverse carve-out.[33]

3.45 In addition, we consider that there are likely to be information asymmetries between the merger parties and the CMA / purchaser of the divestiture remedy regarding what assets, staff, business units and support functions are necessary in order to compete effectively in the relevant market, and the incentives of the merger parties and the CMA may not be aligned in making this delineation. As noted in CMA186, the ex-post review of carve-out remedies commissioned by the CMA found that purchasers face challenges in conducting robust due diligence on divestiture packages in carve-out remedies, which limits the usefulness of such diligence against composition risk.[34]

3.46 Although we have received a number of submissions, particularly from monitoring trustees, outlining practical steps that can be undertaken to reduce the risks associated with carve-out remedies (which are discussed in more detail below), we have not identified academic literature or received submissions that describe specific circumstances (for example theories of harm or industries) in which carve-out remedies would be more appropriate as a remedy choice.

CMA's proposed changes

3.47 We propose to continue stating a preference for the divestment of an existing business over a carve-out remedy, while updating the Current Guidance to provide more clarity on our approach to assessing the effectiveness of carve-out remedies and other complex divestiture remedies in practice, including by incorporating learnings from the case study research summarised in CMA186.

3.48 This includes updating the Current Guidance to include examples of the sort of evidence the CMA may have regard to when assessing carve out remedies. This includes:

(a) any data on, and analysis of, the performance of previous comparable divestitures (within, or outside of merger control);

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[33] CMA108 noted that reverse carve-outs may assist where customer consent challenges are administrative or process-related in nature, but are unlikely to be effective where customer concerns about a transfer are more fundamental. CMA186, paragraph 4.26(c).
[34] CMA186, paragraph 4.26(d).

(b) any data the merger parties have available regarding the performance of the relevant assets / business units (or of comparable assets / business units);

(c) feedback from employees who are familiar with the relevant assets or who lead the relevant business units; and

(d) evidence from independent experts, for instance on economies of scale, density or scope, as well as on the value of certain assets and the operational support they are likely to need.

3.49 We also propose to update the Current Guidance to outline some of the ways in which the risks of complex divestitures may be mitigated, therefore increasing the prospect that they will be found to be effective. These are:

(a) The merging parties engaging with the CMA sufficiently early on in the process, including on a without prejudice basis, to ensure that the CMA has sufficient time and information to fully assess the remedy and engage with customers and other stakeholders that will be affected by it;

(b) requiring an upfront buyer to mitigate increased purchaser and composition risk;

(c) requiring the use of a divestiture trustee if the merger parties cannot divest to a suitable purchaser within a specified time period;

(d) the merger parties offering to appoint a monitoring trustee and/or independent expert to support the CMA's assessment of the composition risk of a remedy and purchaser suitability; and

(e) requiring a 'fall-back remedy', with a more extensive and/or more marketable divestiture package.

Our approach to remedies at phase 1

3.50 Under the Act, the CMA may, instead of making a reference to phase 2, and for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has or may have resulted from it, accept UILs as it considers appropriate.

3.51 Under the CMA's Current Guidance, the CMA considers that UILs are only appropriate where the remedies proposed to address any competition concerns raised by the merger are 'clear cut' and 'capable of ready implementation'. This approach is based on the fact that once UILs have been accepted, section 74(1) of the Act precludes a reference to phase 2, so the

CMA must be confident that all of the potential competition concerns that have been identified at phase 1 would be resolved by means of the UILs without the need for further investigation. In addition, the clear-cut standard also reflects practical considerations, because UILs of such complexity that their implementation is not feasible within the constraints of the short phase 1 timetable are unlikely to be accepted.

3.52 In light of the CMA's commitment to the 4Ps, we wanted to understand if the current approach to phase 1 remedies best embodies these objectives. For example, there will be clear benefits to both pace and proportionality from achieving a phase 1 remedy outcome and avoiding the time and cost of a phase 2 reference where that can be done within the existing legislative framework.

What we learnt from our review

3.53 Stakeholders wanted the CMA to be open to accepting behavioural and complex structural remedies (eg carve-outs) at phase 1. Some suggested the Current Guidance should be amended so the CMA could apply the 'clear cut' and 'capable of ready implementation' standards more flexibly.

3.54 Others told us that the CMA should indicate that it could accept behavioural remedies at phase 1 where the parties have engaged early.

3.55 Some stakeholders said that in phase 1 local market mergers, the CMA should make it clear that parties need only divest assets sufficient to bring them below the threshold at which the CMA identifies a concern rather than being required to divest the entire local overlap.

CMA's proposed changes

3.56 We continue to consider that the phase 1 remedies standard exists for sound policy reasons given the statutory time limits of phase 1 and as the competition concerns have not been subject to a detailed investigation. This is also consistent with the approach of other authorities (including the European Commission),[35] and in line with a number of stakeholder submissions which accepted the need for a different remedies standard at phase 1 and phase 2.

3.57 However, we propose to update the Current Guidance to:

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[35] Commission Notice on Remedies Acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, EUR-Lex - 52008XC1022(01) - EN - EUR-Lex, at paragraph 18.

(a) remove the presumption against behavioural remedies being accepted at phase 1,[36] in line with the generally revised approach to behavioural remedies outlined above. Instead, the CMA will be clear that while at phase 1 it is more likely to consider that structural remedies, compared to behavioural remedies are sufficiently clear-cut to resolve the identified competition concerns, the CMA will nevertheless consider behavioural remedy proposals put forward by merger parties in phase 1 with reference to the general approach outlined above. The CMA will be clear that these proposals must fully substantiate, with appropriate evidence, the proposed remedy's effectiveness to the clear-cut standard.

(b) In addition, the CMA will explicitly state that the earlier parties start engaging with the CMA on remedies, the more likely it is a remedy will meet the 'clear-cut' standard (one dimension of which is that there must not be material doubts about the overall effectiveness of the remedy), as it gives the CMA time to fully assess the risks and consider appropriate safeguards. Recent changes to the phase 1 process, discussed in more detail in Section 5, to provide regular updates to parties (including in pre-notification) should enable parties to better understand the scope of potential concerns and facilitate earlier and more effective engagement on remedies.

3.58 We also propose to revisit the position that only a restoration of the pre-merger market structure will be an effective remedy in phase 1 cases involving local markets. This is because this has not been consistently applied in practice and creates an inconsistency between transactions in which merger parties divest enough of the overlap prior to the investigation to prevent concerns arising and UILs after the CMA has identified a concern. However, we propose to make it clear that:

(a) This is only for cases where we have relied on a filter or decision-rule. This approach is sometimes used for local area analysis, where the competition assessment considers competition around specific sites. This is because in these cases we have set a threshold for when a realistic prospect of an SLC arises, so divestments of sites that bring the merged entity below that threshold would address that prospect even if they do not eliminate the entire overlap; and

(b) Merger parties will need to provide robust evidence to demonstrate that divestiture remedies which do not remove the entire increment are nevertheless effective and will enable the purchaser to compete

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[36] CMA87 at para 4.13(b); CMA 87 at footnote 78; CMA87 (2018), paras 3.32

effectively having regard, for example, to the materiality of any economies of scale from operating multiple local sites.

Our approach to the use of trustees and independent experts to assess remedies

3.59 As part of the review, we considered how the CMA could most effectively design, monitor and enforce remedies, particularly those which are more complex. We wanted to explore whether there are ways for the CMA to effectively access the expertise it requires to assess remedies. In particular, we explored whether there are lessons which the CMA could learn from how other competition authorities use independent third-party firms, eg monitoring trustees, divestiture trustees, adjudicators and independent experts, during the phase 1 and phase 2 remedies process.

3.60 While the CMA currently primarily uses monitoring trustees to monitor the merger parties' compliance with the CMA's interim measures and remedy implementation obligations, other competition authorities make more extensive use of monitoring trustees.

What we learnt from our review

3.61 Stakeholders told us that the CMA should use monitoring trustees more – both to inform its assessment of potential remedies and assist with ongoing monitoring. Stakeholders told us that it would be helpful for the CMA to have third-party monitoring trustees to provide independent and objective information on the assessment of remedies, which they said would allow the CMA to focus on the key issues and raise questions from a more 'remote' perspective before reaching a conclusion.

3.62 Stakeholders also told us that in complex cases where a thorough assessment of the remedy is required for the CMA to decide if it is possible to approve the transaction, the CMA could also consider the appointment of an independent expert. An independent expert could support the assessment of the remedy to ensure its effectiveness. This would allow for an unbiased assessment wherein remedy proposals could be independently reviewed and provide support to the CMA in reaching its conclusions.

3.63 Finally, stakeholders told us that the CMA should make use of independent adjudicators and fast-track adjudication processes to strengthen remedy effectiveness.

CMA's proposed changes

3.64 We consider that in some cases, the CMA's assessment of the merger parties' remedy proposal(s) may benefit from the early appointment of a monitoring trustee and/or industry expert, to assist the CMA's assessment of the merger parties' remedy proposal(s) prior to the CMA reaching its final decision on remedies. We currently consider, and propose to amend the Current Guidance to recognise, that this may particularly be the case where the merger parties' remedy proposal may be complex, or highly technical in nature, or require the input of an industry sector expert (eg in the remedy's specification, design or evaluating the remedy's likely effects on the market).

3.65 Unlike the appointment of such independent third-party firms under UILs, Final Undertakings or a phase 2 Final Order, the CMA cannot require merger parties to appoint a monitoring trustee or an independent expert for the purpose of assessing remedies.[37] However, merger parties proposing a complex remedy may find it useful to appoint an independent expert to perform this role, or extend the role of a monitoring trustee to perform this role. This could include providing views on the scope of the proposed divestiture package; verifying the merger parties' remedy proposal submissions; and undertaking site visits to inspect the relevant assets proposed for disposal.[38]

3.66 The appointment of a trustee or independent expert may provide additional comfort to the CMA that a remedy proposal will be effective, and enable the CMA to reach a decision on remedies within shorter timescales than would otherwise be the case.

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[37] For the avoidance of doubt, this is separate from the CMA's powers to require the appointment of a monitoring trustee under the CMA's Interim Measures for the purpose of monitoring the merger parties' compliance with the CMA's Interim Measures.

[38] In the anticipated acquisition by Schlumberger of ChampionX, a monitoring trustee was appointed by the merger parties during the UILs process and prior to the CMA's final acceptance of UILs to assist the CMA in the assessment of a potential upfront remedy taker's scale and capabilities and to provide independent advice on its overall suitability as a remedy taker (see also paragraphs 23 and 34 of the UILs acceptance decision).

4. Updates to ensure the CMA's approach to merger remedies preserves pro-competitive merger efficiencies and merger benefits

Introduction

4.1 Mergers and acquisitions can help deliver benefits to UK customers. For example, the newly merged entity may benefit from greater economies of scale, which can lead to an increase in its efficiency and productivity and deliver benefits to UK customers in the form of lower prices.

4.2 With greater financial resources and a pooling of the merger parties' respective knowhow, mergers may also enable the merged entity to invest more into research and development (R&D) activity and do so more efficiently, helping to deliver more innovation and the development of new or higher quality products or services. One recent example of a merger remedy where the CMA considered the potential for a deal to deliver pro-competitive investment benefits for UK consumers was in Vodafone/Three.[39]

4.3 Remedy Theme 2 focused on how remedies can be used to preserve two types of potential benefits from mergers: locking in pro-competitive (rivalry enhancing) efficiencies in the markets where the competition concern arises; and RCBs, which can arise in or outside the market in which the competition concern arises.

Rivalry Enhancing Efficiencies

4.4 In some cases, efficiencies arising from a merger can change the incentives of the merger parties and induce them to act as stronger competitors. For example, efficiencies could reduce the marginal costs of the merger parties, which may give them the incentive to provide lower prices or a better quality, range or service. This can in turn stimulate a competitive response from other parties in the market.

4.5 The CMA will always consider the extent to which merger-specific efficiencies which enhance competitive rivalry arise as part of its competitive assessment (Rivalry Enhancing Efficiencies). In order for the CMA to take Rivalry Enhancing Efficiencies into account (at this pre-remedy stage), the current Merger Assessment Guidelines provide that efficiencies must enhance rivalry

[39] See the CMA's investigation into the anticipated joint venture between Vodafone Group Plc and CK Hutchison Holdings Limited concerning Vodafone Limited and Hutchison 3G UK Limited (2024).

in the market(s) where the merger raises competition concerns; be timely, likely and sufficient to prevent an SLC from arising; be merger-specific; and benefit customers in the UK.

4.6 Where efficiencies satisfy these conditions and are sufficient to offset the SLC, no remedy will be required. However, the CMA may see the potential for efficiencies arising from the merger but have concerns about the extent to which they are likely to be realised. In these cases, the CMA may consider whether a remedy could ensure that these efficiencies will be realised.

What we learnt from our review

4.7 Stakeholders said that the CMA should update its Current Guidance to include remedies which can preserve pro-competitive efficiencies.

4.8 Some stakeholders said that the evidential standard for the Vodafone/Three remedy should not be the standard which future remedies that lock in Rivalry Enhancing Efficiencies should have to meet, as this would raise the bar too high – in particular because the case had limited application to non-regulated sectors, and because it was not typical for merging parties to have such detailed post-merger plans (which were the basis for the Investment Commitment remedy in that case).

4.9 Some stakeholders expressed views on topics which relate to the CMA's approach to assessing efficiencies in its competitive assessment rather than remedies.

4.10 It was suggested that there is a 'chicken and egg' problem, in that parties do not submit efficiency claims as they think the CMA will take a highly restrictive approach to assessing them. Stakeholders suggested that:

(a) the CMA should consider a range of evidence on efficiencies, and efficiencies should not have to be quantified;

(b) the evidentiary standard is too high (with some noting this was particularly true for innovation efficiencies); and

(c) the CMA should engage with parties earlier in relation to Rivalry Enhancing Efficiencies.

CMA's proposed changes

4.11 As noted already, we propose to update the Current Guidance to acknowledge that in some cases – such as Vodafone/Three – remedies can address concerns which the CMA may have about the likelihood or timeliness

of merger-specific efficiencies which, if realised, would enhance rivalry, benefit UK customers and be sufficient to prevent an SLC.

4.12 As noted earlier, we consider that some of the feedback relates to topics which are beyond the scope of the Merger Remedies Review and instead relates to how the CMA assesses efficiencies within its competitive assessment. We will be exploring further our approach to the substantive assessment of efficiencies and will say more on this in due course.

Relevant Customer Benefits

4.13 RCBs are certain legislatively defined benefits resulting from a merger that, in contrast to Rivalry Enhancing Efficiencies, need not be achieved through increased competition in the market related to the SLC finding.[40]

4.14 Under the Act, RCBs can take the form of lower prices, higher quality or greater choice of goods or services in any UK market. They can also take the form of greater innovation in relation to such goods or services — eg, from the combination of unique assets of the merger firms applying to products other than those where the firms compete. These benefits will fall within the legislative definition if they accrue to either direct or indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution – ie they are not limited to final consumers.

4.15 In addition, for a benefit to constitute an RCB under the Act, the CMA must believe that:[41]

(a) the benefit may be expected to accrue within a reasonable period as a result of the merger; and

(b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.

4.16 As set out in the Explanatory Notes to the Act, RCBs may be relevant to decisions of the CMA in two main situations. At phase 1, the CMA has a discretion not to refer a merger to phase 2 if it believes that any RCBs outweigh the SLC concerned and any adverse effects of that SLC. The CMA may also have regard to the effect on RCBs when considering Phase 1 UILs. At phase 2, in deciding the question of remedies, the CMA is permitted to

[40] Section 30 of the Act.
[41] Section 30(2) & (3) of the Act

have ‘regard to the effects of any action on any RCBs in relation to the creation of the relevant merger situation concerned’.

What we learnt from our review

4.17 Stakeholders told us that, going forward, the CMA should give more prominence to RCBs. Stakeholders said that, to date, the CMA has applied a highly restrictive approach to RCBs and that this has deterred parties from putting forward and evidencing RCBs.

4.18 Stakeholders told us that the CMA should provide more clarity on how RCBs can influence remedies and be more open to considering and accepting RCBs and ‘less effective’ remedies which preserve RCBs.

4.19 Stakeholders suggested the CMA should engage with parties on RCBs earlier in the merger review process and said doing this as part of the formal remedies market testing and public consultation (in either phase 1 or phase 2) was too late.

4.20 Some stakeholders said that the current evidentiary threshold is too high, and the CMA should take a more pragmatic approach. They suggested that the CMA should also give more guidance on how it will assess RCBs, the evidence it expects and how it weighs up RCBs against SLCs.

4.21 Stakeholders said the CMA should take a more proactive, constructive and interactive approach on RCBs rather than placing the burden on parties.

CMA’s proposed changes

4.22 At phase 1 and phase 2, we propose to encourage earlier engagement on RCBs to enable us to engage third parties earlier in the process, have a more constructive and interactive approach with parties and help us frontload the assessment of whether RCB claims satisfy the statutory definition. We propose to do this by signalling our openness to early without-prejudice discussions during phase 1 (including in pre-notification) or at the early stages of phase 2.

4.23 We propose to clarify in the Draft Revised Guidance the mechanisms identified to preserve RCBs (ie remedies selection and remedies modification). This will include signalling that mitigations may be appropriate in situations such as where the RCBs lost as a result of the only effective remedy are greater than the harm from the SLC.

4.24 We also propose to provide examples of past cases where RCBs have influenced remedy selection, and further general guidance on how certain types of possible RCBs will be considered by the CMA.

4.25 However, we do not propose to change the current high evidentiary bar for RCBs. The Explanatory Notes to the Act support a high evidentiary threshold as they state that RCBs 'are not expected to arise very often'[42] and we consider that lowering the threshold risks opening the floodgates to spurious RCB claims. As noted above, the CMA intends to conduct separate work exploring further the substantive assessment of efficiencies. We will consider whether there is a need to revise our approach to RCBs in light of this separate work in due course.

[42] Explanatory notes to Section 30, the Act.

5. Updates relating to the CMA's merger remedies process

5.1 The current process for assessing remedies is set out in Chapter 4 of the Current Guidance, with additional guidance on the phase 2 process in Chapter 12 of the CMA's Guidance on Jurisdiction and Procedure (**CMA 2**). CMA 2 provides guidance for businesses and advisers on the CMA's procedures for operating the merger control regime under the Enterprise Act 2002.

5.2 At phase 1, merger remedies take the form of UILs, which may be offered by the merger parties and, if accepted by the CMA, mean that the merger will not be referred to phase 2. In light of the CMA's 4Ps commitments, we wanted to understand if the current phase 1 remedies process best embodies these objectives. For example, there may be clear benefits to both pace and proportionality from achieving a phase 1 remedy outcome and avoiding the time and cost of a phase 2 reference where that can be done within the existing legislative framework. We therefore considered how the phase 1 remedies process can be improved to give the greatest possibility of avoiding the time and cost of a phase 2 investigation.

5.3 We also invited views and evidence on how the new phase 2 process that we introduced in April 2024 and recent legislative amendments can be used to reach well-reasoned and evidence-based decisions on remedies, at pace, and whether any further refinements to this revised process are necessary or appropriate as practical experience of it develops.

What we learnt from our review

5.4 Stakeholders told us that the key barriers to engaging with the CMA at phase 1 include not having early sight of the CMA's competition concerns and concerns that early engagement on remedies is not genuinely without prejudice to the CMA's substantive assessment of the competition issues.

5.5 Stakeholders told us that – although it is early days – the new phase 2 process appears to be working well and achieving its objective of facilitating successful remedy outcomes in applicable cases.

CMA's proposed changes

5.6 Since the Call for Evidence closed, the CMA has conducted a consultation on proposed changes to CMA 2 and to the mergers notice template.[43] These proposed changes involve, amongst other things, enhancing engagement with the merger parties and third parties throughout the merger investigation process and in phase 1 in particular, with more points of direct engagement between merger parties and the CMA (including senior staff), so our investigations are more transparent.[44]

5.7 In particular, the draft revised CMA 2 introduces an expectation that this engagement will typically include:

(a) an invitation for merger parties to provide a teach-in session for the case team and senior staff in the early stages of pre-notification, in which appropriate business personnel provide relevant background on the merger parties and industries; and

(b) an informal update call after the commencement of pre-notification and another which may be after or before the CMA commences its formal investigation. The purpose of these calls is to provide the case team's current thinking and typically an overview of the initial feedback received from third parties, so that merger parties can provide relevant submissions/evidence and consider potentially appropriate remedy proposals.

5.8 In addition, the draft revised CMA 2 also outlines that, when necessary, throughout the CMA's investigation, the CMA can invite the merger parties to additional update calls on any material development in the investigation, and in particular in order to facilitate relevant submissions and assist the merger parties in preparing any remedy proposals.

5.9 We consider that these changes address many of the key barriers outlined by stakeholders to early and productive engagement with the CMA in relation to remedies in phase 1 and increase the likelihood of a successful phase 1 remedies outcome in cases where competition concerns are identified.

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[43] https://connect.cma.gov.uk/changes-to-the-cma-s-mergers-guidance-cma2-and-merger-notice-template
[44] https://www.gov.uk/government/consultations/4ps-updates-to-the-cmas-mergers-guidance-cma2-and-mergers-notice-template

5.10 However, we also consider that additional changes can be made to further improve our merger remedies process at phase 1. In particular, we also propose to update the Current Guidance to:

(a) provide additional guidance on how merger parties can most effectively engage with the CMA on remedies throughout the process and to provide specific guidance on merger parties' engagement with the CMA both before and after an issues letter in phase 1;

(b) further signal the CMA's willingness to engage with parties on remedies early in the process on a without prejudice basis — including, if they wish, with the involvement of the phase 1 decision-maker;

(c) offer merger parties a separate meeting to discuss remedies in the days following submission of their response to the issues letter rather than including remedies discussions at the end of an issues meeting, as is current practice; and

(d) provide specific guidance on the relevant considerations applicable to cases involving a fast track to UILs, including so called 'fix-it-first' remedies.

5.11 We currently consider that these changes should be made through a further update to CMA 2, rather than by including content on the CMA's remedies process in CMA 87, as is the case with the Current Guidance. This would mean that all content in relation to CMA process, including as it pertains to remedies, would be included in a single guidance document.

5.12 The above amendments are therefore included as Appendix A to the Draft Revised Guidance, but any process related changes that are implemented following the current consultation would be implemented in an amended version of CMA 2 rather than an updated version of CMA 87.[45]

5.13 We do not currently consider that any further changes are required to the CMA's remedies process at phase 2 in light of the relatively recent amendments made to this process, the limited number of cases undertaken under this new process to date, and the positive feedback received on the new process from relevant stakeholders to date.

[45] These amendments to CMA 2 would be done in parallel to the publishing of the final revised version of CMA 87, rather than as part of the changes proposed to CMA 2 following the separate consultation earlier in 2025.

6. Questions for consideration

6.1 In responding to these questions, please give your reasons and any relevant supporting information or evidence.

Draft Revised Guidance

6.2 Overall, are the changes introduced by the Draft Revised Guidance sufficiently clear and useful?

6.3 What, if any, aspects of the Draft Revised Guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section (and, where appropriate, the issue) each of your comments relate to.

6.4 Are the changes to the Draft Revised Guidance consistent with the CMA's '4Ps framework' and likely to promote pace, predictability, proportionality and engagement in relation to merger remedies? Are there any additional changes that may further contribute to these priorities?

6.5 Do you have any other suggestions for additional or revised content of the Draft Revised Guidance?

7. Consultation process

7.1 The CMA is publishing this consultation on the CMA website and sharing it with a range of interested parties to seek views on the Draft Revised Guidance and questions raised in this document.

How to respond

7.2 The CMA encourages parties to respond to the consultation in writing (by email or letter) using the contact details provided in paragraph 7.7 below.

7.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.

7.4 In pursuance of our policy of openness and transparency, the CMA will publish non-confidential versions of responses on our webpages or a non-confidential summary of these responses. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our webpages which omits that material and explain why you regard it as sensitive at the same time.

Duration

7.5 The consultation will run from Thursday 16 October to Thursday 13 November.

7.6 Extensions to the deadline for submissions will not be granted and the CMA may not be able to take late submissions into account.

Contact details

7.7 Responses should be submitted (by email or letter) by no later than **5:00pm** on Thursday 13 November and should be sent to: mergerremediesreview@cma.gov.uk

Compliance with government consultation principles

7.8 This consultation is compliant with the latest Cabinet Office Consultation Principles, which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders. The

Cabinet Office Consultation Principles can be found at Consultation principles: guidance - GOV.UK.

Statement about how the CMA uses information and personal data that is supplied in consultation responses

7.9 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the UK General Data Protection Regulation (GDPR)[46] and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.

7.10 The CMA is processing this personal data for the purposes of its work. This processing is necessary for the performance of its functions and is carried out in the public interest, in order to take consultation responses into account and to ensure that the CMA properly consults on the Draft Revised Guidance, before it is finalised and issued.

7.11 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long the CMA retains personal data, see the CMA's Privacy Notice.

7.12 The CMA's use of all information and personal data that it receives is also subject to Part 9 of the Act. The CMA may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, the CMA will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in the CMA's opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.

7.13 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, if you have made any representations about the confidentiality of any information

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[46] The UK GDPR refers to the EU GDPR ((EU) 2016/679, which has been adopted into UK law by the EU Withdrawal Act 2018, as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

contained in your response, the CMA will take such representations into consideration. The CMA will also be mindful of its responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.

7.14 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

7.15 Further details of the CMA's approach can be found in the Transparency and Disclosure: Statement of the CMA's Policy and Approach (CMA6).[47]

After the consultation

7.16 After the consultation, the CMA will collate and analyse the responses to the consultation and make the proposed amendments to the Draft Revised Guidance and any further changes as appropriate.

7.17 The CMA will publish the final version of the Draft Revised Guidance on Merger remedies. The CMA will also publish a summary of the responses received during the consultation.

[47] https://www.gov.uk/government/publications/transparency-and-disclosure-statement-of-the-cmas-policy-andapproach

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