

Mergers

Draft revised guidance on the CMA's jurisdiction and procedure and draft revised merger notice

Summary of responses to the consultation

28 October 2025



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1. Introduction

Background

- 1.1 The Competition and Markets Authority (**CMA**) has responsibility for the review of mergers under the Enterprise Act 2002 (the **Act**). It has previously published *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), which sets out the CMA's procedures in operating the merger control regime set out in the Act. The current version of this guidance document was last updated on 2 January 2025 (the **Current Guidance**).
- 1.2 The CMA provides a number of template documents which it encourages parties to use in the course of merger processes, including the merger notice which is used by merger parties to provide the CMA with necessary information prior to launching a formal investigation (the **Merger Notice**). Collectively, the Current Guidance and Merger Notice template are referred to as the **Current Documents**.
- 1.3 On 20 June 2025, the CMA published draft revised versions of the Current Guidance¹ and Merger Notice² for consultation with interested parties (referred to as the **Draft Revised Guidance** and **Draft Revised Merger Notice**, and together the **Draft Revised Documents**). The purpose of the revisions is to embed the CMA's [new '4Ps' framework](#) into the CMA's mergers processes. The Draft Revised Documents were published along with a consultation document which explained the proposed amendments.³
- 1.4 In its consultation, the CMA sought views on:
 - (a) clarifications to the CMA's approach to jurisdiction, in particular the application of the:
 - (i) material influence; and
 - (ii) share of supply tests;
 - (b) clarifications to the CMA's approach to global mergers;
 - (c) updates to the pre-notification and phase 1 merger process; and
 - (d) proposed amendments to the Merger Notice template.

¹ [Draft CMA2 for consultation](#)

² [Draft merger notice template](#)

³ [Consultation document](#)

- 1.5 The consultation on the Draft Revised Documents ran between 20 June 2025 and 1 August 2025. The CMA received 24 responses to the consultation from those in the competition adviser community (legal advisers, associations of legal advisors, economic consultants), trade associations and companies that have been involved with the CMA's merger processes.⁴ A full list of respondents is set out in Section 6.
- 1.6 The CMA has reviewed the consultation responses and had regard to its experience following the implementation of the updated phase 1 merger process from 21 June to reflect on what, if any, further revisions are required to the Current Documents. The further revisions that the CMA has made, including to address the comments received in response to the Consultation, are explained below. Section 2 relates to the application of the CMA's jurisdiction tests, section 3 to global mergers, section 4 to procedural changes in pre-notification and phase 1 and section 5 to the Merger Notice template.
- 1.7 The CMA is now publishing updated versions of these documents (the **Final Revised Guidance** and **Final Revised Merger Notice**) which will take effect from the date of publication to (i) mergers where the formal phase 1 investigation commences on or after 28 October 2025 and (ii) mergers referred to phase 2 on or after 28 October 2025. The CMA has started applying the procedural changes described in the Final Revised Guidance to cases in which the initial draft Merger Notice was submitted after 20 June 2025.
- 1.8 The CMA would like to thank all those who responded to the consultation. The overall engagement on the proposed revisions has been invaluable. Even where the CMA has not adopted particular suggestions, it has nevertheless generated conversations and an increased understanding of the interests of those engaging with the CMA's mergers process.

Purpose of this document

- 1.9 The consultation document that accompanied the Draft Revised Documents set out a series of topics on which respondents' views were sought. This document summarises the key issues raised by the responses, the CMA's views on these issues and the changes the CMA has made to the Draft Revised Documents as a result.

⁴ The CMA received 17 responses from the competition adviser community, four from trade associations and three from companies.

- 1.10 This consultation document is not intended to be a comprehensive record of all views expressed, nor to be a comprehensive response to all individual views. However it sets out the general views received and those issues that the CMA considers are useful to address directly. Non-confidential versions of all responses to the consultation are available on the [consultation webpage](#).
- 1.11 This document should be read in conjunction with the Consultation Document, which contains further background on the intentions behind the CMA's updates to the Current Documents. It should also be read in conjunction with Final Revised Guidance and Final Revised Merger Notice.

2. Issues raised regarding the application of the CMA's jurisdiction tests

- 2.1 Overall, respondents welcomed the CMA's proposed clarifications to the material influence and share of supply tests to provide greater predictability for businesses over which transactions fall within the CMA's jurisdiction. Respondents noted that the current legislative framework for these tests grants the CMA broad discretion in assessing jurisdiction across various indicators and that clarity on which indicators that CMA is more likely to focus on is welcome. Suggestions to update the Current Guidance with more definitive tests for jurisdiction, such as thresholds are discussed below.
- 2.2 Further detail on the respondents' views is set out below.

Application of the material influence test

Shareholdings

Summary of responses

- 2.3 In general, respondents welcomed the clarifications on the CMA's approach to material influence, including confirmation that shareholdings below 25% are unlikely to confer MI absent other factors; and shareholdings below 15% will only confer MI in certain limited circumstances where significant other factors are present.
- 2.4 In relation to shareholdings below 15%, some respondents suggested:
- (a) The introduction of clearer safe-harbour thresholds through confirmation that shareholdings below 10%, or shareholdings below 15% without additional rights, do not confer material influence; and
 - (b) Clarification of 'significant other factors', including the concept of 'significant'.
- 2.5 A few respondents suggested greater clarity in relation to the CMA's approach to minority investment protection rights. They noted that material influence will virtually never arise in situations where only normal minority protections are held, and suggested the inclusion of a non-exhaustive list of protections that do not confer material influence. In their view, the only example given in the Draft Revised Guidance does not sufficiently illustrate where the boundary between minority investment protection rights and material influence lies.

- 2.6 Some respondents suggested additional clarifications on other points relevant to shareholdings. They suggested clarifying the situations in which an acquirer may be able to block special resolutions as a practical matter. They suggested including examples of the types of commercial policy or strategic matters relevant to assessing whether special voting or veto rights may be sufficient to confer material influence in situations where an acquirer's shareholding is insufficient in itself to defeat a special resolution.

The CMA's views

- 2.7 We do not propose to introduce safe-harbour shareholding thresholds to exclude a material influence finding when the acquirer's shareholding falls under the thresholds. Safe-harbour thresholds would be inconsistent with the discretion afforded to the CMA by the legislation. The Final Revised Guidance already provides sufficient clarity on the CMA's approach regarding minority shareholdings as it makes it clear that shareholdings below 15% will only confer material influence in certain limited circumstances where significant other factors are present.
- 2.8 We have clarified that the significant other factors which can be taken into account alongside a 15% shareholding, and can contribute to a material influence finding, are those mentioned in footnote 52 of the Final Revised Guidance. We do not think it is necessary to explain the concept of 'significant' as it is implicit that any other factors present will need to provide a sufficient basis for a material influence finding.
- 2.9 We do not propose to make any changes to rule out a material influence finding in situations when the acquirer's rights in the target entity are limited to minority investment protection rights. Certain minority protections (eg rights preventing third party investment) may confer material influence and we consider it appropriate to retain our discretion to assess minority investment protection rights on a case-by-case basis. However, the Final Revised Guidance (footnote 47) includes two additional examples of minority investment protections which may not confer material influence (ie rights to access certain information of the target entity and exit rights).
- 2.10 We do not propose to include additional factors relevant to the CMA's assessment of whether special resolutions may be blocked in practice. The Final Revised Guidance (paragraph 4.25) already identifies two relevant factors (ie distribution and holders of the remaining shares and patterns of attendance and voting at recent shareholders' meetings). Therefore, we consider that the Final Revised Guidance provides sufficient clarity on this point.

- 2.11 Finally, the Final Revised Guidance (footnote 55) provides some examples of the types of ‘commercial policy or strategic matters’ relevant to assessing whether special voting or veto rights may be sufficient to confer material influence (ie special voting rights or veto rights over certain business plans or investments) to provide greater clarity on this point.

Board representation

Summary of responses

- 2.12 Some respondents sought clarification on the following points:
- (a) The weight given to board representation (including board observers) and how board representation (including observer rights) will be assessed; and
 - (b) The role of board observers in the CMA’s material influence assessment, given that observers have no voting rights and that their role is typically a legitimate means of investment protection.
- 2.13 One respondent suggested specifying in guidance that the CMA’s material influence assessment will consider the identity, size, and expertise of any board members appointed by other shareholders, in addition to those appointed by the acquirer.

The CMA’s views

- 2.14 The Final Revised Guidance (paragraph 4.30) provides some additional clarity on the CMA’s approach to representation (including board observers). In particular, the Final Revised Guidance notes that voting rights can be a strong indicator of material influence, and the ability to appoint a single board observer is unlikely to confer material influence.
- 2.15 The Final Revised Guidance (paragraph 4.31) also provides some greater clarity on the weight given to board members appointed by other shareholders. It explains that, when assessing material influence, the CMA will consider the corporate/industry expertise of other shareholders with board representation (in addition to the corporate/industry expertise of the acquirer) as the presence of board members appointed by other shareholders with similar industry expertise will be a relevant factor to assess material influence based on board representation.

Financial/commercial arrangements

Summary of responses

- 2.16 Several respondents cautioned against an overly broad approach to financial dependency and commercial agreements as a potential source of material influence, warning that ordinary commercial relationships, such as standard loan conditions, supply agreements, or arm's-length contracts, could be inadvertently caught.
- 2.17 Several respondents sought clarification on financial and/or commercial 'dependency' and situations where economic and commercial arrangements can give rise to material influence, including practical examples and detail on the factors the CMA has assessed in recent cases, such as supply, distribution, licensing, and collaboration agreements.
- 2.18 Some respondents criticised certain footnotes of the Draft Revised Guidance as being circular. In their view, those footnotes merely restated that economic dependence, exclusivity, or close relations amount to material influence when they confer the ability materially to influence strategic commercial decisions (which is essentially the definition of material influence) and offered little practical guidance.

The CMA's views

- 2.19 The Draft Revised Guidance (paragraphs 4.34 and 4.35) explained possible situations where financial and commercial arrangements/dependency may result in/contribute to material influence. Therefore, we do not propose to make any changes to provide further clarity on this point. However, the Final Revised Guidance (paragraph 4.35) clarifies that a commercial arrangement requiring the target to source from the acquirer all (or a large proportion) of an important input, may result in/contribute to material influence if the acquirer could threaten to withdraw the input if a particular commercial policy is not pursued.
- 2.20 We do not propose to give further detail on the specific terms included in the arrangements considered in recent cases as the relevant arrangements in those cases were very specific to the industry in question. The relevant agreements and arrangements considered in those cases are summarised in the relevant decisions available at the CMA's website.

Other factors considered in material influence

Summary of responses

- 2.21 Some respondents suggested a clearer hierarchy or greater clarity on the CMA's approach to weighting the relevant material influence factors (ie shareholdings, board representation, and financial/commercial arrangements). Those respondents suggested clarification on the following main points:
- (a) Whether individual factors could be a free-standing basis for material influence by, eg, adding examples of when each factor would (or would not) be determinative on its own;
 - (b) How board representation and financial/commercial arrangements would be weighed against the size of a shareholding; and
 - (c) When board representation and financial/commercial arrangements would only confer material influence in combination with other factors.
- 2.22 A few respondents requested examples of when the CMA would 'exceptionally' consider factors other than the main factors, and sought a commitment from the CMA to apply the material influence test in a narrow evidence-based manner consistent with its statutory purpose.
- 2.23 One respondent suggested narrowing the references to 'commercial policy' to 'strategic commercial policy', noting that 'commercial policy' is too broad and material influence would only arise in the context of strategic commercial policy.

The CMA's views

- 2.24 We consider that the Draft Revised Guidance was sufficiently clear on the CMA's approach to weighting the relevant material influence factors:
- (a) It explained that the relevant factors (ie shareholdings, board representation, and financial/commercial arrangements) can confer material influence in isolation or in combination (paragraph 4.20).
 - (b) It clarified that a material influence finding will generally result from a combination of factors (footnote 47).
 - (c) It clarified situations where the relevant factors in isolation are unlikely to confer material influence (eg shareholdings below 15% and rights to appoint a single board member/board observer).

- 2.25 In light of the above, we do not consider it appropriate to provide a hierarchy or further guidance on the CMA's approach to weighting of these factors. This is because material influence may in principle result from any one of the three factors referred to above (eg a commercial arrangement conferring rights to veto strategic commercial decisions may, by itself, confer material influence).
- 2.26 We do not propose to clarify (or give examples of) when the CMA would 'exceptionally' consider factors beyond the main list. The legislation provides the CMA with discretion to rely on other factors where appropriate to cater for a broad range of transaction structures and does not therefore support a narrow approach. In addition, any additional relevant factors will be case specific.
- 2.27 Finally, we do not consider it necessary to narrow the references to 'commercial policy' to 'strategic commercial policy' as this would unduly narrow the interpretation of policy that has been accepted by the Courts in past cases,⁵ and would create uncertainty about what is strategic commercial policy as distinct from merely commercial policy.

Application of the share of supply test

Factors used to calculate share of supply

Summary of responses

- 2.28 In general respondents supported a more predictable and narrow approach to the factors identified in section 23(5) of the Enterprise Act 2002 (**the Act**) to calculate the share of supply (ie value, cost, price, quantity, capacity, and number of workers employed).
- 2.29 Some respondents suggested that the Guidance should:
- (a) Confine the CMA to the factors listed in the statute, and clarify how and when each factor is applied;
 - (b) Confirm the exceptional application of certain factors (namely, 'number of workers employed' or criteria beyond value and quantity); and

⁵ *British Sky Broadcasting Group plc and Virgin Media Inc vs Competition Commission and the Secretary of State for Business Enterprise and Regulatory Reform* [2008] CAT 25 (paragraphs 128-130) and Court of Appeal [2010] EWCA Civ 2 (paragraph 45).

- (c) Provide a clearer explanation of when criteria other than value and quantity will be used, with examples by sector (eg bidders in tender markets, patents in R&D-heavy sectors).

2.30 Some respondents suggested clarifying the meaning of the ‘other criterion, or combination of criteria’ in section 23(5) of the Act and reflected in paragraph 4.72 of the Draft Revised Guidance, and providing as exhaustive a list as possible of what these might include.

The CMA’s views

2.31 Section 23(5) of the Act confers on the CMA discretion to rely on factors other than those listed in that provision to calculate the share of supply of the merger parties. We therefore consider that amending the guidance to confine the CMA to the factors listed in the statute (or confirm the exceptional application of some factors) would improperly conflict with parliamentary intent.

2.32 However, the Final Guidance clarifies the CMA’s approach to using the criteria set out in the legislation. The Final Revised Guidance (paragraph 4.75) details that the CMA will use criteria based on the information that is available from the parties and other industry participants on a consistent basis to enable it to quantify the size of the UK supply of the relevant goods or services, and to take account of factors that are relevant to the applicable goods or services. In addition, the Final Revised Guidance notes that the CMA will typically rely on criteria such as value and/or volume of goods sold but there may be circumstance when the CMA relies on other criteria and includes some examples of that approach.

2.33 We do not propose to clarify the meaning of the ‘other criterion, or combination of criteria’ (or provide as exhaustive of what these might include) to retain our discretion to rely on other factors if appropriate.

Other issues in the application of the share of supply test

Summary of responses

2.34 In relation to the CMA’s approach to identify the relevant description of goods or services for the purposes of the share of supply test, some respondents suggested:

- (a) Limiting the description of goods or services to overlaps where there is a sufficient prospect of a competition concern;

- (b) Confirmation that the CMA will not rely on a description of goods or services which is narrower than that used in the competitive assessment, or that it will only do so in limited circumstances; and
 - (c) Aligning the reasonable description of goods or services with industry understanding or with a categorisation that the relevant industry would recognise as commercially sensible.
- 2.35 A few respondents suggested clarifying how the CMA will calculate UK turnover for the £10 million 'safe harbour' limb of the share of supply test.
- 2.36 One respondent suggested introducing a materiality requirement when assessing increments that cross the 25% threshold.
- 2.37 One respondent noted that reliance on market share and share of supply tests could be argued to be inconsistent with the International Competition Network (ICN) Recommended Practices for Merger Notifications as international best practices, and market share-based tests may be used in voluntary jurisdictions to guide parties on whether notification may be advisable, but they should not be used as the basis for determining jurisdiction.
- 2.38 A few respondents submitted proposals for legislative reform, or clarification on other jurisdictional aspects (eg the concept of an enterprise or the hybrid test).

The CMA's views

- 2.39 On the CMA's approach to identify the relevant description of goods or services:
- (a) The Draft Revised Guidance (paragraph 4.66) already explained (by reference to the *Sabre* judgment) that, in determining the description of goods or services, the CMA will consider those which are relevant to any potential competition concerns arising from the merger. Therefore, we do not propose to make any changes to further clarify the link between the description of goods or services used for the share of supply test and the potential competition concerns being investigated.

However, the Final Revised Guidance (footnote 107) clarifies that the description of goods or services chosen to determine whether the 25% threshold is satisfied can be considered relevant to any potential competition concerns even if that description of goods or services differs from the economic market in which a competition concern may arise and identifies some recent past cases illustrating this. A similar clarification

has been made in relation to the share of supply element of the hybrid test (footnote 136).

- (b) We do not propose to re-instate the link between the description of goods or services and industry standards.
- 2.40 We do not propose to provide further detailed guidance on the £10 million 'safe harbour' limb of the share of supply test at this stage given the CMA's limited experience of considering this provision. We will consider providing further guidance in due course.
- 2.41 We do not propose to introduce a materiality requirement to find an increment for the purposes of the share of supply test as such a requirement is not supported by the legislation (as confirmed by the Courts in the *Sabre* judgment) and would conflict with parliamentary intent.
- 2.42 We do not propose to make any changes to address the points raised regarding consistency with ICN recommendations. The CMA does not consider that the application of the share of supply test is inconsistent with the ICN recommendations. The share of supply test is in the legislation and so outside the scope of this review. In any event, we do not consider that the share of supply test is inconsistent with the ICN recommendations because the ICN commentary is principally aimed at regimes using a market share test which is different from the share of supply jurisdictional test.
- 2.43 We do not propose to make any changes to address the points raised in relation to other jurisdictional aspects (eg concept of an enterprise or the hybrid test) at this stage as those aspects are out of scope in the current review process. However, for consistency with the change explained in paragraph 2.39(a) above, the Final Revised Guidance clarifies (footnote 136) that the description of goods or services chosen to determine whether the 33% threshold is satisfied can be considered relevant to any potential competition concerns even if that description of goods or services differs from the economic market in which a competition concern may arise, and provides examples of situations where this may be the case.
- 2.44 We will liaise with Government in relation to any legislative changes.

3. Issues raised regarding the CMA's approach to global mergers

- 3.1 Respondents generally welcomed the CMA's proposed amendments noting it would be a positive development and reduce duplication, be more proportionate, reduce the risk of divergent outcomes, and (provided there is sufficient clarity around the process) encourage investment in the UK.⁶ Several respondents requested additional clarity on various aspects of the CMA's approach to global mergers and how this will be implemented in practice.

Application of the 'wait and see' approach

Summary of responses

- 3.2 A number of respondents asked for the CMA to provide further clarity on when the CMA would be more inclined to intervene and when it would be more likely to defer to other regulators, in order to improve legal certainty. In particular, respondents requested further guidance on:
- (a) What a "UK specific impact" is, and whether the CMA could provide case examples, quantitative thresholds (eg low UK turnover), qualitative factors or other criteria that would affect the CMA's decision to investigate.
 - (b) Whether there are other criteria for a deal to be considered a "global merger" (eg a significant transaction value), and confirmation that the CMA would be willing to 'wait and see' for cases which relate predominantly, but not exclusively, to global markets.
 - (c) How the CMA would identify whether markets are global without a formal investigation.
 - (d) How the CMA would scope its review in a case with national and global market ie would the CMA investigate only national markets, and how the CMA would address situations with statutory differences (eg approach to minority shareholdings).

⁶ One respondent disagreed with the overall approach as being in tension with the CMA's duties under the Enterprise Act 2002, and suggested that instead of considering the geographic scope of markets when determining whether a 'wait and see' approach is appropriate, the CMA should consider whether the deal involves at least one UK party, regardless of whether another regulator is investigating. The CMA considers that its proposed approach to 'wait and see' is in line with its duties under the Enterprise Act 2002, and that this type of approach would increase the burden on UK companies and could discourage investment in the UK.

The CMA's views

- 3.3 The application of 'wait and see' will depend on case-specific factors, and we expect the approach to be refined through practice. We have added clarification that the consideration of whether to take a 'wait and see' approach will be taken by the mergers intelligence function and will only be considered in cases where the mergers intelligence committee considers there is a reasonable chance of a reference to a phase 2 investigation. A "UK-specific impact" will likely arise in cases where the CMA considers there is a reasonable chance for reference and the markets are local or national in scope.⁷
- 3.4 We have added an explanation of our intended approach to assessing geographic market scope.
- 3.5 When considering whether to take a 'wait and see' approach, the CMA will assess on a case-by-case basis the likelihood of proceedings in other jurisdictions resolving UK concerns and will expect that any remedies agreed will eliminate any competition concerns relating to the UK. The CMA will continue to assess the appropriateness of taking a 'wait and see' approach in respect to a merger throughout the proceedings in other jurisdictions (see process below).
- 3.6 We have clarified that adopting a 'wait and see' approach applies to the merger as a whole, and where the CMA initiates a formal investigation for a 'wait and see' merger, it will investigate all relevant theories of harm (ie both those relating to national and broader than national markets).

Timing of CMA intervention

Summary of responses

- 3.7 A number of respondents raised concerns around the possibility of late intervention from the CMA where remedies agreed in other jurisdictions do not address UK concerns or where the CMA may disagree with the outcome reached by another authority. A number of respondents also raised concerns around third parties submitting complaints at a late stage causing disruption. In particular, respondents noted:

⁷ Corresponding, where there is a reasonable chance of a reference to a phase 2 investigation solely in relation to global (or broader than national) markets, and any local or national markets affected by the merger do not give rise to a reasonable chance of a reference, the CMA will consider whether it is appropriate to adopt a 'wait and see' approach.

- (a) The CMA should provide certainty that it would not intervene if other regulators have found no concerns.
- (b) The CMA should state that late intervention will only occur in exceptional circumstances, with more detail on what those circumstances might be.⁸
- (c) The CMA should commit to not intervene or open an investigation solely to enforce itself a remedy accepted in another jurisdiction and should be open to submissions on this point.

The CMA's views

- 3.8 We understand that uncertainty and late intervention by the CMA is an undesirable outcome for the merging parties. We have clarified that the 'wait and see' approach is to be considered by the mergers intelligence function as part of its usual assessment of mergers ie the CMA intends to make this decision early in the process after engagement with the merging parties.
- 3.9 We have clarified that the CMA would generally not expect to initiate an investigation into a merger where other jurisdictions have unconditionally cleared the merger, except in circumstances where during the course of those investigations information comes to light that changes the appropriateness of the 'wait and see' approach (eg there is information that markets are not expected to be global (or broader than national) and there is a UK-specific impact). Similarly, the CMA would not intervene solely to enforce a remedy agreed in another jurisdiction unless the scope of that remedy was such that it would not resolve UK concerns (eg because the UK has been carved out of the remedy, or another jurisdiction is unable to monitor and enforce the remedy in the UK).
- 3.10 We do not consider it appropriate to set a cut-off for calling in a merger, as the CMA's assessment can change depending on new information coming to light, or, for example, as a result of changes in the scope of a remedy being offered in other jurisdictions. We do, however, expect this to be relatively rare based on our experience of operating the mergers intelligence function. We also clarify that we anticipate that merger parties can minimise the risk of late and unexpected intervention by keeping the CMA updated on significant

⁸ Similarly, other respondents comment that the CMA should set an appropriate cut-off point for calling in a merger for investigation or waive its rights to investigate at an early stage, that the CMA should make its decision to investigate a 'wait and see' merger early after announcement, and that the CMA should make clear the duration of the 'wait and see' period.

developments in other jurisdictions, and in particular any developments that might affect the suitability of the CMA's 'wait and see' approach.

- 3.11 We acknowledge the concern on third-party submissions but consider that the CMA has experience of dealing with this type of risk (eg where a third party raises concerns late in the stages of an investigation or after the Mergers Intelligence Committee has decided not to call in a merger for investigation) and that co-operation with other authorities should also mitigate the risk of disruption.

Clarity of the 'wait and see' process

Summary of responses

- 3.12 A number of respondents requested further clarity over the 'wait and see' process, including the availability of an informal process, an indicative timeframe for decision-making, clear parameters for third-party engagement, and transparency around the CMA's decision to adopt a 'wait and see' approach. In particular:
- (a) It was suggested that merger parties have a designated point of contact to allow for regular engagement with the CMA, and that the CMA provides further clarity on expected level of engagement with merger parties during the waiting period.
 - (b) It was suggested that the CMA should keep merger parties updated about any concerns, to allow them to be addressed through engagement with other authorities.
 - (c) Respondents requested further clarity around the operation of 'wait and see' and the mergers intelligence function.
 - (d) Respondents requested further clarity on the process if the CMA did decide to call in a 'wait and see' merger for investigation.

The CMA's views

- 3.13 We have added detail on how we expect the process to work, including clarifying that it would be the mergers intelligence function that would be in contact with merger parties, that it will inform them when the CMA intends to take a 'wait and see' approach, that it will request waivers to discuss the merger with other authorities, and that it will also request updates from the merger parties. We have also clarified that the CMA will only consider the

‘wait and see’ approach for mergers where it identifies that there is a reasonable chance of a reference to a phase 2 investigation.

- 3.14 If the CMA were to call in a case for investigation where it had taken a ‘wait and see’ approach, this would be subject to the CMA’s usual merger control process, including the option to fast-track to UILs or phase 2 if requested by the merger parties.

Interaction with other competition authorities

Summary of responses

- 3.15 A number of respondents asked for further clarity on how the CMA would interact with other competition authorities, including whether the CMA would request waivers and any other expectations on the merger parties, such as holding update calls and providing copies of filings in other jurisdictions. A few respondents also questioned what sufficient action by other authorities may mean, including whether it depends on which jurisdictions are undertaking the review, and/or the type of remedy being agreed (eg structural vs behavioural).

The CMA’s views

- 3.16 We have clarified in the guidance how the CMA would interact with other competition authorities, including requesting waivers and updates on other proceedings from the merger parties.
- 3.17 As set out in the guidance, the CMA may open a formal investigation where remedies agreed in other jurisdictions do not fully eliminate UK competition concerns, which may be more likely where the UK is carved out from global (or broader than national) remedies or where the monitoring and enforcement of a remedy does not include the UK.

4. Issues raised regarding procedural changes to pre-notification and phase 1

- 4.1 There was broad support for the CMA's proposed updates to improve the pace at which the CMA investigates and reaches its decisions at phase 1, however respondents also expressed concerns that the requirements to initiate pre-notification may actually extend the overall process (including the requirements under the Draft Revised Merger Notice discussed in section 5).

Initiating pre-notification

- 4.2 In the Draft Revised Guidance, the CMA set out what it expects to be included in the initial draft Merger Notice for it to be considered sufficient to initiate pre-notification, ie:
- (a) an initial response to each applicable question in the template Merger Notice or to all questions of the enquiry letter, including identifying all horizontal overlaps and vertical links;
 - (b) all supporting documents requested in the template Merger Notice or enquiry letter;
 - (c) all relevant categories of third-party contacts, with the requested details; and
 - (d) typically, consent for the CMA to publish a case webpage announcing that it is starting pre-notification, and to contact relevant third parties. Merger parties can provide reasoned submissions as to why, exceptionally, the CMA should not make public that the merger is in pre-notification.^{9 10}

Summary of responses

- 4.3 Some respondents noted that pre-notification has traditionally been an informal, iterative process and that the creation of a formal start to pre-notification may introduce a 'phase zero' or 'pre-prenotification' period and risked extending the duration of the overall pre-notification phase, contrary to the intention of the amendments.
- 4.4 Several respondents cautioned that the requirement for all supporting documents and/or all relevant third-party contact details with the initial draft

⁹ Draft Revised Guidance, paragraph 6.27.

¹⁰ Issues around the requirement for consent to publish a case page where the transaction is not confidential are addressed from paragraph 4.31 below.

Merger Notice in order to initiate pre-notification creates a disproportionate burden on merger parties. The comments about the risk of extending the overall pre-notification period was made mainly in relation to this requirement and in the context of the expanded scope of internal documents required under the Draft Revised Merger Notice template – the CMA’s assessment of these comments is set out in section 5

- 4.5 Some respondents suggested that the compilation of contact details for the merger parties’ customers and competitors can be a particularly onerous workstream and that the CMA should (i) accept receiving these details throughout, rather than at the outset of, pre-notification; (ii) require fewer contacts; or (iii) accept generic contact details.
- 4.6 Many respondents urged the CMA to ensure that it takes a pragmatic approach to assessing the sufficiency of initial draft Merger Notices to initiate pre-notification. A few respondents suggested that this be included in the Revised Guidance, along with a commitment for case teams to assess the sufficiency of the initial draft Merger Notice within a specified period.

The CMA’s views

- 4.7 The requirements for the initial draft Merger Notice set out in paragraph 6.27 of the Draft Revised Guidance reflect the CMA’s experience of the minimum information that enables case teams to productively and efficiently begin pre-notification. Importantly, this also means having the information that case teams need to make prioritisation decisions and ensure that further evidence gathering throughout pre-notification and phase 1 are targeted to the key issues.
- 4.8 In past cases where the submission of internal documents and/or contact details has been staggered throughout pre-notification, this has often caused delays to commencement of the CMA’s formal investigation. For example, late submission of internal documents can raise additional theories of harm or issues that then require further information requests and third-party evidence, and can divert case team resources that would otherwise be required to prepare for the formal investigation. This has arisen even in instances where merger parties provide assurances that the internal documents and/or contact details would be provided imminently. In such cases, it may not be feasible for the CMA to complete pre-notification within 40 working days (nor is it consistent with the principles of how merger parties are expected to engage with the CMA’s investigation as set out in the Mergers Charter).
- 4.9 As noted in paragraph 6.19 of the Draft Revised Guidance, the CMA remains available to discuss the requirements of the initial draft Merger Notice with

merger parties ahead of submission.¹¹ However, the CMA considers that having predictable, objective criteria for an initial draft Merger Notice enables merger parties to prepare for submission with certainty. Preventing the submission of key information in a staggered way is likely to make the pre-notification phase more efficient overall as (i) case teams will have the information required to identify and prioritise areas for further investigation as early as possible (and similarly, to deprioritise others) and (ii) the chance of a new theories of harm emerging at a later stage of pre-notification is reduced.

- 4.10 With respect to the submission of customer and competitor contact details with the initial draft Merger Notice, the CMA reiterates the importance of being able to speak to third parties early in its investigation to understand the market(s) and identify and prioritise areas for further investigation. It is often through calls with third parties that the CMA is able to deprioritise areas, which means merger parties will not then receive additional information or document requests in those areas. In addition, given the timeframes of standard pre-notification, it is imperative that third party engagement can be scheduled as early as possible. It is not an appropriate use of CMA resources to identify and source contact details for relevant third parties to enable third party evidence gathering.
- 4.11 Since the introduction of these processes on 20 June 2025, the CMA has found that case teams are generally able to readily provide feedback on the sufficiency of initial draft Merger Notices, and early feedback has been that case teams have taken a pragmatic approach to this assessment. The CMA does not consider it necessary to formalise this process in the Final Revised Guidance, and will in any event continue to assess the initial draft Merger Notice expediently and pragmatically, in line with its objective of conducting the investigation in a streamlined way and at pace.

Operation of the KPIs

- Pre-notification KPI

Summary of responses

- 4.12 Many respondents welcomed the improved structure and predictability of the pre-notification KPI. Subject to the concerns discussed above relating to the requirements of the initial draft Merger Notice for starting pre-notification – and the pre-notification KPI – there was recognition from respondents that the pre-notification KPI can promote the streamlining of the CMA’s merger

¹¹ See also Merger Notice Template, [xx]

investigations. One respondent urged the CMA to not let the underlying objective of the KPI become secondary to the incentive to meet the KPI.

- 4.13 There was also general agreement about the circumstances in which the KPI will not apply: (i) where merger parties 'opt-out'; and (ii) where the CMA determines that the KPI doesn't apply. Some respondents sought further assurance that a request by merger parties for the KPI to not apply will be kept confidential. Others urged the CMA to avoid manufacturing reasons to disapply the KPI, for example, by issuing a s109 notice with unreasonable deadlines.
- 4.14 One respondent requested that the CMA acknowledge that there will be some cases where, despite all parties' best efforts to achieve pre-notification within 40 working days, the KPI cannot be met.

The CMA's views

- 4.15 The pre-notification KPI has been introduced to ensure that merger investigations progress at pace and to set clear expectations for all parties. The KPI has been introduced alongside a renewed focus for case teams to streamline pre-notification to ensure that the CMA is able to reach robust decisions as quickly as possible. As set out in paragraphs 6.32 and 6.34 of the Draft Revised Guidance, there will be some cases for which the pre-notification KPI will not apply (for various reasons), but in all cases, whether the KPI applies or not, the CMA will conduct its investigation in line with its duty of expedition.
- 4.16 The CMA's primary objective will always be to ensure that it reaches robust decisions in line with its statutory duties. This means that the CMA will continue to commence its formal investigations when it considers that it has sufficient information to do so (irrespective of whether the KPI applies or not). It also means that the CMA will not manufacture circumstances to meet the KPI (noting that it is required to ensure that the deadlines for requests issued under s109 are reasonable). The CMA is committed to conducting its merger investigations at pace, by focussing on identifying and prioritising areas for further investigation as soon as possible.
- 4.17 The Final Revised Guidance clarifies that where merger parties consider that there are likely to be complex issues that require more extensive engagement in pre-notification which will not be feasible within 40 working days (see paragraph 6.32(b) of the Final Revised Guidance), they are encouraged to discuss this with the CMA at the earliest opportunity. Requests to opt-out of the KPI at a late stage of pre-notification are unlikely to be accepted by the

CMA. Once the CMA considers that it has sufficient information to start its formal investigation, it will do so.

- 4.18 The Final Revised Guidance in paragraph 6.36 also sets out that the CMA will not make public whether merger parties request to opt-out of the KPI or whether the CMA decided that the KPI no longer applies during the investigation (see paragraph 6.34 of the Final Revised Guidance) except where it considers it necessary (in which case it will discuss with the merger parties prior to any such disclosure). Once the phase 1 decision is announced, the CMA will disclose information about the circumstances and timing of cases where the KPI has not applied.

Straightforward clearance decision KPI

Summary of responses

- 4.19 Several respondents expressed support for the introduction of a KPI to publish straightforward clearance decisions within 25 working days of the formal investigation. Some respondents queried which cases would be considered ‘straightforward’ clearances and whether the rate at which the KPI has been met would be reported.
- 4.20 While some respondents also supported the CMA’s move toward significantly shorter decisions in straightforward clearances as a corollary of the accelerated timeline, they also noted that it was important that these decisions still contain sufficient reasoning on key issues, including for the benefit of parties contemplating mergers in similar markets or raising similar issues.

The CMA’s views

- 4.21 The CMA considers that all cases that do not warrant proceeding to CRM, ie those that do not involve an issues letter/issues meeting are ‘straightforward’ clearance cases.¹² Prior to the introduction of the KPI, the CMA sought to announce these decisions by working day 35 of its formal investigation.
- 4.22 The CMA is cognisant of its duty to publish a reasoned decision.¹³ In general, these clearance decisions will provide more detail on the CMA’s reasoning on those issues that were most pertinent to the investigation – whether that be jurisdiction, the counterfactual, market definition or the competitive assessment. This assessment will be made on a case-by-case basis. In doing

¹² During FY24/25, over half of the CMA’s phase 1 decisions did not proceed to CRM.

¹³ See s107(4) of the Act.

so, the CMA will balance the interest in reducing the end-to-end length of its merger investigations with the wider value of publishing its reasoning.

Engagement with merger parties and third parties in phase 1

Engagement with merger parties

Summary of responses

- 4.23 There was widespread support from respondents for increased engagement between the CMA and merger parties throughout pre-notification and the formal phase 1 investigation.
- 4.24 With regard to the teach-in that merger parties will now generally be invited to provide to case teams, several respondents proposed greater flexibility for the timing of these sessions, including suggestions such as having the teach-in before submission of the initial draft Merger Notice to provide additional context or provision for a second session if necessary. Some respondents noted that the teach-in may not be necessary on all cases and that holding a teach-in should not extend the pre-notification period.
- 4.25 Similarly, respondents welcomed flexibility in scheduling informal update calls, with some suggesting that in additional update calls may be helpful on an ad hoc basis and/or during the formal investigation before the State of Play call. Respondents urged the CMA to ensure that the update calls are informal and a genuine two-way discussion of the pertinent issues (rather than fully scripted updates), including ensuring that there are sufficiently senior members of the case team in attendance to respond to the merger parties' questions and comments.
- 4.26 Respondents noted that the involvement of senior CMA staff in early engagement can be helpful in the identification and prioritisation of issues, particularly at the teach-in stage. Some respondents queried the level of ongoing involvement of senior CMA staff throughout the case, including whether the same individual will be the decision maker and/or attend the informal update calls. One respondent cautioned that close involvement from senior decision makers may disincentivise merger parties from early, without prejudice, engagement on remedies.

The CMA's views

- 4.27 The Final Revised Guidance has been updated to clarify that the teach-in will not take place before pre-notification starts (see paragraph 6.38). This is because the CMA considers that teach-in sessions are most productive when

the case team has had the opportunity to read the initial draft Merger Notice and identify points requiring clarification. In addition, the CMA considers that substantive engagement prior to submission of the initial draft Merger Notice (ie engagement on issues other than what information is required in the initial draft Merger Notice) should only take place after pre-notification starts.

- 4.28 As noted in paragraph 6.38 of the Draft Revised Guidance, the CMA expects that teach-in sessions will generally be most useful when conducted early in pre-notification and focused on factual information (rather than advocacy). As such, additional teach-in sessions later in pre-notification are generally not envisaged. Merger parties are encouraged to engage with the CMA as early as possible where they do not consider that a teach-in will be necessary or if they require additional flexibility around the scheduling of the session(s).
- 4.29 With regard to informal update calls, the CMA considers that there is already sufficient flexibility within the Draft Revised Guidance to accommodate informal update calls at any appropriate stage. The Final Revised Guidance clarifies that the update call around the end of pre-notification may be scheduled before or after commencement of the formal investigation – ie the CMA will not delay starting the clock to accommodate an update call (see paragraph 6.40). The CMA will continue to provide frank engagement on its developing thinking, including where there are issues that require additional consideration.
- 4.30 The CMA will seek to involve senior CMA staff in teach-in sessions where practicable. This individual will not necessarily be the decision maker should the case proceed to a case review meeting such that a senior decision maker is required. Pre-notification will continue to be run by the case team, who is well placed to discuss the progress and priorities of its investigation with merger parties at informal update calls based on their engagement with the developing evidence base during pre-notification.

Engagement with third parties

Summary of responses

- 4.31 Some respondents raised concerns about the requirement that merger parties' consent to the CMA publishing a case page and contacting third parties as a pre-condition of starting pre-notification where deals are confidential. There were suggestions that this requirement would disincentivise merger parties from engaging with the CMA. One respondent requested that the Final Revised Guidance include criteria or examples where the CMA will start pre-notification without being able to engage with third parties.

- 4.32 One respondent questioned whether it was appropriate or necessary for the CMA to engage with third parties generally ahead of its formal investigation, while others welcomed efforts to increase the effectiveness of early third-party engagement, noting that this can provide greater clarity for merger parties at an earlier stage and ensures that the CMA can promptly deprioritise areas that are unlikely to raise competition concerns.

The CMA's views

- 4.33 As noted in paragraph 4.10, the CMA considers that engagement with third parties is an essential part of pre-notification. This engagement not only enables the CMA to assess whether it has sufficient information to start its formal investigation but also enables it to make prioritisation decisions which can ultimately lead to more targeted information and document requests for the merger parties.
- 4.34 As noted in paragraph 6.27 (iv) of the Draft Revised Guidance, the CMA explicitly recognises that there will be some cases where there are reasons for the merger to remain confidential during pre-notification. Merger parties are encouraged to discuss these circumstances with the CMA as early as possible. In the CMA's experience, such transactions only account for a small minority of mergers that the CMA investigates. As such, the CMA continues to consider that it will be exceptional that it initiates pre-notification without also being able to commence third-party engagement.
- 4.35 Merger parties can make a reasoned submission to the CMA as to why third-party engagement at the outset of pre-notification is not appropriate, for example, because the transaction has not yet been made public / would be prejudicial to their legitimate business interests. The CMA expects that merger parties provide an indicative timeline of when the transaction will be made public and third-party engagement can commence. The CMA would expect merger parties to consider to opt-out of the KPI in these situations, given the importance of third-party evidence to progressing pre-notification.

5. Issues raised regarding the draft revised Merger Notice

Summary of responses

- 5.1 A number of respondents commented generally on the existing (and proposed) administrative burden on merger parties in preparing a draft merger notice, with some noting it may be excessive or disproportionate to the CMA's need to obtain relevant information in certain cases. Suggestions from respondents to decrease the burden included that the CMA should remove the requirement to provide internal documents as a condition for engagement, that the CMA should waive completion of questions that are not relevant to avoid delaying the start of pre-notification,¹⁴ and that the CMA should introduce share of supply thresholds to questions that do not already include one, and should apply an increased threshold of 20 or 25% to all questions.

Internal documents

- 5.2 A couple of respondents broadly welcomed the incorporation of sub-questions to 8 and 9 (which are typically asked in the first request for information) as improving efficiency.
- 5.3 A couple of respondents commented that a share of supply threshold should be introduced for the proposed document request in Question 8(b)(ii) to align with Question 9 and reduce the administrative burden on merging parties.
- 5.4 Many respondents expressed concerns about expanding the request for internal documents to all relevant overlaps and reducing the share of supply threshold for requiring production of documents from 15% to 10%. Respondents consider the expansion of the request and reduction of the threshold would:
- (a) increase administrative burden on the merger parties unnecessarily, including increasing the number of stakeholders needing to be engaged with across the businesses,
 - (b) lead to the inclusion of a large number of documents in markets that are not relevant for any SLC assessment,

¹⁴ We note that the Draft Merger Template already allows for merger parties to explain why a question is not relevant.

(c) not be consistent with the continued use of a 15% threshold for the provision of switching data.

5.5 Respondents have variously recommended (a) leaving the threshold at 15%, or (b) increasing the threshold to 20%, 25% or 30%.¹⁵

5.6 A few respondents commented that requesting documents relating to all material overlaps would not be relevant in the vast majority of cases, and suggested the CMA instead request these documents (ie relating to vertical or conglomerate issues) on a case-by-case basis after consulting with the merger parties.

Switching and bidding data

5.7 A few respondents commented on the CMA's proposed revisions to Question 15 on bidding data, including a couple that had a positive view of the proposals in terms of reducing the upfront burden. Others suggested that a combined share of supply threshold should be introduced to ensure the CMA only receives this information in relation to markets where it is likely to be relevant, thus reducing unnecessary burden on the merging parties. One suggested a threshold of 20%.

5.8 A couple of respondents commented on Question 14, including that the proposed updated draft template appeared to request switching data upfront in all cases, that the share of supply threshold contained in the Guidance Notes should be increased to 20%, and that requests for switching data should be limited to that produced in the ordinary course of business.

Contact details

5.9 A number of respondents commented on the increased burden from the changes to Questions 25 to 27 on contact details. Suggestions included that;

(a) The CMA should accept the provision of generic email addresses for competitors, in light of the difficulty of obtaining these;

¹⁵ Individual respondents raised a number of other comments on the internal document questions, including that the request should be restricted to documents created by or for directors and officers of a company, that 'senior management' is already a broad term, without the need to consider additional custodians as prompted in questions 8 and 9, and that the request should align more closely to that used by the European Commission Section 5(4) of the Form CO.

- (b) The CMA should retain a share of supply threshold, such that contact details are only required for areas where the merger parties have a combined share of supply over 20%;
- (c) The CMA should, by default, accept a set of five competitor contact details as a representative overview of the competitive landscape and should maintain the current approach; and
- (d) The list of customer contact details should be prioritised, as the provision of competitor contact details, particularly those overseas, may be difficult to satisfy at an early stage of the process.

The CMA's views

5.10 We propose making the following changes to the proposed updated merger notice template:

- (a) Share of supply thresholds: We propose to more clearly and consistently apply share of supply thresholds for the provision of information. For questions that involve the provision of more detailed or burdensome information (such as Question 9 internal documents, bidding data or contact details) we propose:
 - (i) 15% combined share of supply threshold for horizontal overlaps; and
 - (ii) 30% share of supply threshold for vertical or conglomerate links.
- (b) We have clarified Question 14 on switching data, where we intended only to reword and clarify the request, without an intention to require additional information compared to the existing approach.

5.11 We continue to reiterate the text contained in the preamble and template guidance that merging parties are welcome to engage with the CMA prior to submission of a draft merger notice and to consider whether a question is relevant or not in their specific circumstances.

5.12 We consider the above changes, in particular the clear and consistent use of share of supply thresholds (above the level originally proposed) should address and reduce the concerns raised during the consultation on increased administrative burden.

6. List of respondents

- ACT | The App Association
- Amazon UK
- Arnold & Porter LLP
- Ashurst LLP
- Baker MacKenzie LLP
- BVCA | British Private Equity and Venture Capital Association
- Cleary Gottlieb LLP
- Clifford Chance LLP
- CCIA | Computer & Communications Industry Association
- Covington & Burling LLP
- Euclid Law LLP
- Eversheds LLP
- Freshfields Bruckhaus Deringer LLP
- Frontier Economics
- Herbert Smith Freehills Kramer LLP
- IBM UK
- In-house Competition Lawyers' Association UK
- Joint Working Party of the Bars and Law Societies of the UK on Competition Law
- Linklaters LLP
- Mills & Reeve LLP
- Slaughter and May
- SIIA | Software & Information Industry Association
- VodafoneThree
- Weil Gotshal & Manges LLP