CONSULTATION RESPONSE

CMA's Mergers Guidance (CMA2) and Mergers Notice Template

Context

The Computer & Communications Industry Association (CCIA)[1] welcomes the opportunity to submit comments in response to the Competition and Markets Authority's (CMA) public consultation regarding the '4Ps' changes to the CMA's mergers guidance (CMA2) and mergers notice template opened on June 20th, 2025.[2]

CCIA believes that revisions could bring welcome changes to the CMA's merger guidance by making the regime more proportionate and predictable. Effectiveness, efficiency, transparency, and predictability are key objectives that sound merger control regimes should follow at all stages of the merger review process.[3] Additional clarity regarding key standards of review utilised by the CMA can help merging parties of all sizes.

While the intention to increase regulatory predictability and business certainty is the right direction, CCIA believes that additional clarifying revisions are needed to ensure the draft CMA2 delivers on this objective. Clear and predictable mergers guidance paves the way for businesses of all sizes to engage in more procompetitive merger activity, which helps stimulate innovation and economic growth. The increased documentation expected risks meaning that these changes are instead counterproductive.

Jurisdictional Assessment

The CMA has broadened its jurisdictional reach through the application of the material influence and share of supply tests, leading to investigations of mergers that might not have otherwise fallen under UK merger control.[4] When combined with the CMA's call-in powers for below-threshold mergers, this creates significant uncertainty among merging parties, making it difficult to determine whether a transaction should be notified or may be subject to investigation by the CMA.

CCIA appreciates the CMA's proposed clearer thresholds for application of the "material influence" and "share of supply" tests, limiting merger reviews in cases where

[1] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.
[2] Competition and Markets Authority, "Mergers Draft revised guidance on the CMA's jurisdiction and procedure and draft revised merger notice, Consultation Document"" (Jun. 20, 2025), https://connect.cma.gov.uk/42628/widgets/126951/documents/86344.
[3] ICN Merger Working Group, "Revised Recommended Practices for Merger Notification Procedures" (2017), at 18, https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf.
[4] For example, the *Facebook/GIPHY*, *Sabre/Farelogix*, and *Microsoft/Inflection* matters.

shareholdings conferring voting rights of less than 25 per cent will be unlikely to confer material influence in the absence of other factors, and that only in certain limited circumstances, shareholdings of less than 15 per cent could provide material influence where there are significant other factors impacting the broader merger ecosystem in the UK. However, a potential future revision of the material influence test to align more closely with the European Union Merger Regulation's concept of "decisive influence" would result in greater predictability for cross-jurisdictional mergers. As the Digital Markets, Competition and Consumers Act (DMCCA) expands the CMA's authority to conduct merger investigations by applying a new "hybrid" test, combining both share of supply and nexus tests, an expansive application of the "share of supply" test is no longer appropriate or necessary in such circumstances.

International Merger Reviews

CCIA welcomes the CMA's continuing cooperative efforts between national competition authorities (NCAs) and participation in international competition forums such as the International Competition Network (ICN) and the Competition Committee of the Organisation for Economic Co-operation and Development (OECD). CCIA supports increased engagement and dialogue with merging parties, and believes that open communication between NCAs and merging parties enhances predictability and business certainty. Moreover, as the CMA notes in the draft CMA2, multi-jurisdictional deals also bring the possibility for similar competitive analyses to be conducted by several NCAs.[5]

CCIA supports the CMA's retooled approach to global merger investigations that prioritises mergers with a UK-specific impact, and deprioritises investigations of mergers that concern exclusively global markets, particularly when other jurisdictions' remedies can address UK competition concerns.[6] This provides for a more efficient and predictable merger control regime, ultimately benefitting merging parties and optimizing use of the CMA's limited resources. However, CCIA is concerned by the lack of clarity regarding the CMA's "wait-and-see" approach, where it may defer investigations for global deals being scrutinised by other NCAs.[7] To increase predictability and certainty, the CMA should provide additional specific guidance explaining key aspects of the wait-and-see approach, including but not limited to practical application of this approach and the factors used; outline how the CMA will engage with merging parties; and explain the CMA's coordination with other NCAs during ongoing investigations. The CMA could address this, in part, by creating an informal process whereby firms can notify the CMA of action taken in other jurisdictions that might address any concerns.

SMS Firm Reporting

CCIA appreciates the CMA's proportional approach to global merger review and its renewed focus on mergers with UK-specific impacts. However, CCIA believes that additional clarity is needed regarding the application of these tests in the context of mergers involving firms with strategic market status (SMS). Under the DMCCA, SMS-designated firms are required

[5] Competition and Markets Authority "Mergers: Guidance on the CMA's jurisdiction and procedure Draft CMA2 for consultation" (Jun. 20, 2025) at 153, https://connect.cma.gov.uk/42628/widgets/126951/documents/86345.
[6] *Supra* n. 2 at 11 (Para. 4.2).
[7] *Supra* n. 2, at 5 (Para. 2.8).

to report proposed mergers meeting certain thresholds. Specifically, SMS-designated firms must report (i) acquisitions of 15 per cent or greater voting shares, (ii) which are valued at £25 million or more, and (iii) have nexus to the UK.[8]

While CMA2 distinguishes between mergers with "UK-specific impact" and those that primarily affect global markets,[9] the statutory reporting requirement under the DMCCA uses a broader "UK nexus" threshold.[10] CCIA is concerned by the potential divergence in language and scope between CMA2 and the DMCCA's reporting thresholds. A transaction may meet the mandatory reporting threshold under the DMCCA, but not meet the proposed threshold under CMA2, particularly if the transaction's effects are primarily global, and any potential harm is likely to be remedied through action in other reviewing jurisdictions.

This inconsistency can result in heightened uncertainty regarding reporting requirements and the potential for a merger review investigation by the CMA. A firm might be required to report a transaction even when it does not materially affect UK markets. While the CMA may ultimately choose not to investigate the proposed transaction, the reporting burdens for SMS-designated firms and any firms seeking to transact with them, including potential legal and reputational risks, remain.

CCIA urges the CMA to provide additional clarity on how the "UK nexus" test for mandatory notification under the DMCCA relates to the CMA enforcement priority for "UK-specific impact" transactions. The CMA's existing guidance for SMS firms[11] references CMA2 as the relevant guidance for both what would suggest that the target carries on activities in the UK,[12] and the concept of supplying goods or services to a person or persons in the UK.[13] The changes proposed to the CMA2 should therefore explicitly be carried over to include assessments for SMS-designated firms by updating this guidance to reflect the CMA's prioritisation of UK-specific impacts. Additional clarity would help to better align expectations for SMS-designated firms, increasing predictability and regulatory certainty in the UK's digital merger control regime.

Pre-notification Period

Studies have shown that the vast majority of mergers are beneficial to competition, as they allow companies to better serve consumers and increase efficiencies.[14] Moreover, most

[8] Digital Markets, Competition and Consumers Act 2024, Chapter 5, Section 57, available at https://www.legislation.gov.uk/ukpga/2024/13/contents.
[9] *Supra* n.2, at 13 (para. 4.2).
[10] *Supra* n. 5.
[11] Competition and Markets Authority, "Guidance on the mergers reporting requirements for SMS firms," CMA195, (Dec. 19, 2024), https://assets.publishing.service.gov.uk/media/6762f6074e2d5e9c0bde9b43/Guidance_on_the_mergers_reporting_requirements_for_SMS_firms.pdf
[12] *Id.* at 7 (Para. 3.15).
[13] *Id.* at 8 (Para 3.17).
[14] *See e.g.* David L. Meyer, "Merger Enforcement is Alive and Well at the Department of Justice," U.S. Dep't of Just. (Nov. 15, 2007), https://www.justice.gov/atr/file/519351/download; "The Case for M&A: Evidence of Efficiencies in Consummated Mergers" (Aug. 29, 2023), at 1, https://content.pymnts.com/wp-content/uploads/2023/08/8-THECASE-FOR-M-A-EVIDENCE-OF-EFFICIENCIES-IN-CONSUMMATED-MERGERS-Maureen-K-OhlhausenTaylor-M-Owings-1.pdf; Mark J. Niefer, "Donald F. Turner at the Antitrust Division: A Reconsideration of Merger Policy in the 1960s," 29 Antitrust 53 (Summer 2015) at 57, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2622795.

transactions do not raise competitive concerns.[15] As such, consumers, merging parties, and the CMA, all benefit from faster merger reviews in those cases where there are no competition concerns with the transaction. Additionally, a clear understanding of for all interested parties of the documents and information required by the CMA is of paramount importance. Particularly, since the agency notes how the pre-notification clock does not start until it has received all the required information,[16] which could delay the process if there are miscommunications between merging parties and the CMA regarding what information is required by the agency to review the deal. The CMA's commitment to limit the pre-notification period to no more than 40 working days[17] is a good step towards more efficient merger review that provides greater business certainty and predictability.

Moreover, the CMA's recognition of the need for a transparent and constant engagement between the agency and the merging parties during the pre-notification stage[18] also provides for a more efficient and well-rounded process. Both the teach-in session and the update calls provide a key opportunity for the parties to help the CMA understand their businesses and the products or services that they offer. This would, in turn, be of great use for the CMA to determine the competitive dynamics of the market and the competitive concerns, if any, that the merger presents during the phase 2 inquiry.[19]

"Relevant Overlaps" Document Production

CCIA is concerned that the CMA's proposed revisions to the Merger Notice template may disproportionately increase the administrative burdens on merging parties. Under current guidance, document production is limited to transactions where the merging parties' share of supply does not exceed 15 per cent.[20] However, the significant expansion to the scope of requested internal documents related to "relevant overlaps,"[21] coupled with the lowered materiality threshold to 10 per cent,[22] risks creating a disproportionate administrative burden on merging parties.

Merging parties would be required to produce documents across numerous markets, many of which may not raise competitive concerns, at an early stage of the review process. "Forward-looking assessments," "pipeline products," and internal strategy documents are all particularly challenging for startups and international companies (that will find it hard to distinguish between UK-specific and more general information). This approach appears to be inconsistent with the CMA's stated "4P" policy goals.

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[15] Christine S. Wilson, Commissioner, U.S. Federal Trade Commission, "An Update on FTC Merger Enforcement," Remarks at International Bar Association's 19th Annual International Mergers and Acquisitions Conference (Jun. 15, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/CWilsonUpdateMergerEnforcement.pdf.
[16] *Supra* n. 2 at 12.
[17] *Id.*
[18] *Id.* at 15.
[19] *Supra* n. 5, at 115.
[20] Competition and Markets Authority, "Merger Notice Under Section 96 Of The Enterprise Act 2002: Template For Completion," at https://assets.publishing.service.gov.uk/media/67852190f0528401055d2337/20250109__v._2025_FINAL__WEBSITE_Merger_Notice_Template.docx.
[21] *Supra* n. 2, at 18 (Para. 6.3(a)(ii)).
[22] Competition and Markets Authority, "Draft mergers notice template," at 11 https://connect.cma.gov.uk/42628/widgets/126951/documents/86346.

Given the increased administrative burden that a lower materiality threshold will have on merging parties, the CMA should provide a basis for the reduction to 10 per cent before making such a change. A 20 per cent share of supply threshold would be more proportionate.

The CMA should additionally amend the guidance notes to the Merger Notice template to clarify that it will engage with merging parties before requesting internal documents, and seek only those related to potential overlaps in markets likely to raise competitive issues. Pre-notification should remain an informal process, documentation (particularly the onerous requirements envisaged in the current proposals) should not be a pre-condition for engagement where that might imperil fast-moving international transactions.

CCIA is pleased to provide these comments and looks forward to continuing to engage with the CMA on these important issues.