

Submitted by: In-house Competition Lawyers' Association UK (ICLA UK), 1 August 2025

1. Introduction

The In-House Competition Lawyers' Association UK ("ICLA UK") is an informal association of in-house competition lawyers with interest in the UK competition regime, comprising over 100 members. ICLA UK meets regularly to discuss matters of common interest, as well as to share competition law best practice and experience. ICLA UK does not represent companies but rather is made up of individuals who are experts in competition law. As such this paper represents the views of the ICLA UK members and not the companies who employ them, and it does not necessarily represent the views of all its members.

ICLA UK is part of the wider In-house Competition Lawyers' Association of In-house competition lawyers across Europe and in South East Asia which currently numbers more than 450 members based in different countries around the globe.

Because of their role, in-house competition lawyers have a clear interest in a predictable and straightforward competition law regime that prioritises legal certainty, minimises costs, and does not represent a disproportionate demand on businesses' time and resources.

ICLA UK welcomes the Competition and Markets Authority's (CMA) initiative to revise its mergers guidance (CMA2) and the opportunity to contribute to this consultation. The proposed reforms, centred on pace, predictability, process, and proportionality, are timely and constructive.

We support the CMA's ambition to streamline merger review and enhance transparency, particularly in relation to pre-notification and procedural expectations. However, we believe the draft guidance would benefit from further clarification in several areas, as set out below. We would encourage the CMA to align, where possible, with international best practice to improve the efficiency and predictability of the UK merger control regime, particularly for global mergers where Parties are engaged with multiple jurisdictions and processes.

2. Minority Interests: A Need for Greater Clarity and Proportionality

The CMA's current approach to material influence is highly discretionary and lacks sufficient transparency. The draft guidance does not provide clear criteria for when a minority shareholding, particularly one below 25%, will be deemed to confer material influence.

The current ambiguity around minority interests may create a chilling effect on legitimate investment activity to the detriment of growth. Businesses are left uncertain as to whether a

minority stake, particularly in the context of a broader commercial relationship, might trigger a CMA review.

We recommend that the CMA:

- Introduce a safe harbour that shareholdings below 15% without additional rights (e.g. board representation, vetoes) do not confer material influence.
- Provide illustrative examples of both positive and negative findings of material influence. Whilst the current guidance references jurisprudence, it does not identify exact facts and examples which would be helpful. It would also be helpful to reflect useful findings from the CMA's mergers intelligence unit decisions.
- Clarify how the CMA assesses the cumulative effect of minority shareholdings and other contractual or commercial relationships. If the parties are negotiating at arm's length, pursuing their own commercial strategies where they both believe it makes sense to have such a commercial relationship, the additional presence of a financial minority interest by one in the other ought not to be viewed as resulting in material influence. This should be a rebuttable presumption in respect of which other factors would be required to prove influence.
- Clarify the extent to which minority investors may add protections to avoid a third competitor later investing and free-riding on investment previously made by the first minority shareholder. ICLA UK submits such protections in of themselves ought to fall within the category of investment protection, rather than conferring any influence over the commercial strategy of the enterprise being invested in.

3. Pre-notification process

We tentatively support the introduction of KPIs for pre-notification and Phase 1 review and welcome the CMA's efforts to clarify and streamline the merger notification process. However, we caution against rigid timelines that could delay straightforward cases and note the practical implications for timing, efficiency, and resourcing.

- The proposed pre-notification KPI could improve structure and predictability in early engagement. Yet, its effectiveness may be limited if it only begins after substantial information is provided and the CMA is satisfied, by which point parties may have already invested significant time and resources, particularly when information requests are extensive or iterative.
- While intended to enhance efficiency, the KPI may inadvertently extend timelines. Without a fixed start date, early discussions and information gathering could become protracted, delaying the CMA's determination that sufficient information has been provided to begin the 40-day KPI. The CMA's discretion over when the KPI starts adds uncertainty, such that further clarity is needed on how this stage will streamline the process.

- A key concern is the potential for increased front-loading of effort. Parties may be expected to submit near-complete notification materials, potentially months before Phase 1 begins. This could disproportionately burden merger parties in the early stages of negotiation, particularly in simple cases or for smaller businesses, without necessarily delivering commensurate benefits in terms of speed or certainty of clearance.
- This earlier and heavier information provision burden may also affect transaction timing. In cases where there is no signed SPA at the time of initial engagement with the CMA, parties will need to coordinate extensively in advance to prepare the required documentation. The impact of this on transaction timing cannot be understated, especially as long-stop dates may need to be extended significantly to accommodate the additional information gathering phase, the pre-notification KPI period, and the formal Phase 1.
- The CMA's proposal to publish a case page and seek third-party comments at the start of the KPI period introduces concerns about public disclosure. Clarification is needed on whether the CMA would insist on publishing a case page even if the transaction hasn't been publicly announced. If so this will affect how and when transactions are communicated internally and externally, and may remove the control of such timing from the parties, to their detriment.
- Much of the proposed KPI activity: calls, third-party issue discussions, and substantive updates, resembles current Phase 1 tasks. This could effectively extend Phase 1 to around 80 working days. While front-loading may help resolve issues earlier, if the KPI results in a de facto 80 day Phase 1 it risks misalignment with other jurisdictions, where review periods are shorter and more clearly defined. As the UK process already differs from international norms in its pre-notification period and uncertainty around the start of the review "clock." Adding another discretionary information-gathering step without clear time limits may increase divergence.
- The increased burden and potential delays may discourage voluntary notifications. This could lead to more briefing papers or parties proceeding without notifying, due to timing pressures or a desire to keep control of the communications timetable. Such consequences could undermine the efficiency gains of the proposal and compromise the CMA's ability to intervene in non-notified mergers due to the tighter post-completion timeframes.

In summary, we support the CMA's 4Ps framework of pace, predictability, proportionality and process and, to reflect that framework, believe further assessment and amendments are needed to ensure the proposals meet those aims and do not have unintended consequences of increased complexity, cost, and uncertainty. We recommend that the CMA maintains the flexibility to accelerate reviews where appropriate and ensures that the

merger notice template is sufficiently adaptable to different transaction types and levels of complexity, so that discussions prior to the merger notice being submitted can happen at pace.

We would welcome the opportunity to engage further with the CMA on these issues and to support the development of a more predictable merger control regime.