15 August 2025

CMA Consultation: '4Ps' Changes to the CMA's Mergers Guidance (CMA2) and Mergers Notice Template

Response of the Joint Working Party

A. Introduction

1. The Joint Working Party ("**JWP**") welcomes the opportunity to respond to the Competition and Markets Authority's consultation dated 20 June 2025 regarding proposed changes to its Mergers Guidance on Jurisdiction and Procedure (CMA2) (the "**Draft Guidance**"), and its mergers notice template.

2. The JWP represents a diverse group of antitrust barristers and solicitors[1] and the views expressed in this response are based on our experience advising clients in relation to merger control in the UK and the EU as well as in various EU Member States, and on feedback received from clients that have participated in Phase 1 and Phase 2 CMA investigations.

3. Our response seeks to address the questions set out at paragraphs 7.2 – 7.4 of the Consultation Document, namely:

> *7.2 Overall, are the changes introduced by the Draft Revised Guidance sufficiently clear and useful?*
>
> *7.3 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.*
>
> *7.4 Are the changes Draft Revised Guidance consistent with the CMA's '4Ps framework' and likely to promote the pace, predictability, proportionality and engagement in the CMA's merger investigation process? Are there any additional changes that may further contribute to these priorities?*

4. In this response we consider the changes proposed by the CMA and discuss whether these are (i) "*sufficiently clear and useful*"; and (ii) likely "*to promote the pace, predictability, proportionality and engagement in the CMA's merger investigation process*". We also deal with changes which have not been proposed by the CMA in the consultation process but which would make an important contribution to the improvement of the process in line with the '4Ps framework'.

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[1] The members of the Joint Working Party of the Bars and Law Societies of the United Kingdom on Competition Law comprise barristers, advocates and solicitors from all three UK jurisdictions; the membership includes both those in private practice and in-house. The JWP is co-chaired by George Peretz KC of Monckton Chambers (GPeretz@Mockton.com; tel 020 7405 7211) and Brian Sher, partner, CMS Cameron McKenna Nabarro Olswang LLP (brian.sher@cmscmno.com; tel 020 7524 6453).

B. Jurisdiction

5. The JWP welcomes the proposal to clarify the CMA's approach to the material influence and share of supply ("**SoS**") tests and to reduce legal uncertainty and increase predictability in relation to those tests (Consultation Document, para. 2.7) to the extent possible.[2] The JWP makes the following points from a "4P" perspective.

1. Missing elements of the jurisdictional toolkit

6. First, if the goal is to improve predictability and reduce legal uncertainty in the assertion of CMA jurisdiction, the material influence and SoS tests are only a subset of the CMA's broad discretion based on non-bright-line concepts. For example, missing from the consultation are (1) the concept of an "enterprise" (see e.g. *Microsoft/Inflection* and *Eurotunnel*); (2) the unpredictable "made known" standard that applies to determine when the 4-month statutory deadline for the CMA to refer a merger to Phase 2 begins to run, which is so broad and discretionary as interpreted by the CMA as to correspond in practice to "when the CMA says so" (see e.g. *Bottomline/Experian*) and (3) the new hybrid test. These tests have greater relevance (to all cases of control) than material influence which has generated two remedial interventions and one further Phase 2 in 22 years of the Enterprise Act 2002 ("**EA02**" or the "**Act**").[3]

- **Concept of an "enterprise".** Keeping the guidance on an "enterprise" in its current form means, for example, that even hiring employees (which will include "*their know-how*"), without more, can be a "merger" (cf. CMA2, para. 4.9) even though in both *Eurotunnel* and *Inflection* there was much more in the perimeter of the enterprise in question than individuals' change of employment: ships and goodwill in Eurotunnel, and an IP license in Inflection. CMA2 therefore continues to cast a broader net on hiring of individuals than the broadest assertions of what has ever constituted an enterprise in any decisional practice.

- **4-month clock.** Leaving the current guidance unchanged means that there is very limited finality in UK merger control that the risk of (highly disruptive global) Initial Enforcement Orders (IEOs) has fully dissipated in a completed deal. It means that *de facto* the UK operates a compulsory Briefing Paper regime (including arguably having to inform the CMA once the deal has closed) if an acquirer wants reasonable certainty before completing a deal (as it is not obvious that the 4-month clock will have run its course and as therefore there can be no comfort that a merger inquiry will be precluded at some point after deal closing).

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[2] The JWP recognizes the limitations of such an exercise: both are inherently flexible tests with deliberately blurry boundaries - particularly the express language of s23(4) EA02 on SoS discretion. It is for Parliament to make any more radical changes to legal certainty by revising these tests, and the CMA cannot create absolute exemptions (or "safe harbours") from its own jurisdiction, hence the qualifiers "typically" and "normally". That said, the CMA could and should go further than it has, as set out below.

[3] *BSkyB/ITV* (referred in 2007, order to divest from 17.9% to <7.5%), *Ryanair/Aer Lingus* (2012, order to divest from 29.8% to 5%), and *Amazon/Deliveroo* (2020, clearance).

- **Hybrid test.** Providing no further clarity on the hybrid test means that for any acquirer with UK turnover of over £350M (i.e., a large number of multinational corporations) and a 33% SoS in any service, unrelated to the target, jurisdiction is established and hence the changes to traditional increment-based application of the SoS may be cosmetic in impact. It would be helpful for the guidance to clarify that, as a matter of practice, the CMA will consider cases where the acquirer's 33% share should be in a market that is vertically or adjacently linked to the target's activities.

JWP Comment: the CMA should consult on increasing predictability on "enterprise", the "4-month clock" and the "UK nexus" limb of the hybrid test.

2. Approach to and timing of Phase 1 jurisdictional decision

7. Second, the CMA's practice in recent years of deciding jurisdiction not as a threshold issue (in contested or non-obvious cases) but in parallel with a full investigation on substance, is at cross-purposes with the 4Ps. Between 1 April 2024 and 31 March 2025, four out of 43 of the CMA's Phase 1 decisions were 'found not to qualify' for investigation under the EA02 (*Microsoft/Mistral, Amazon/Anthropic, Google/Anthropic* and *Microsoft/OpenAI*).

8. The Government's intention when introducing the EA02 was that "*the thresholds have to be simple and easy to determine quickly*" to ensure "*a clear, consistent and predictable merger-control regime*".[4] In contested cases, the CMA - as a matter of policy and practice - decides whether it has the power to investigate a merger slowly: it issues s.109 notices and the affected parties incur the cost of e-discovery of internal emails, etc. in parallel with the full exercise of that presumptive power. If the decision at the end were no jurisdiction, the entire exercise and related costs would have been *ultra vires*.

9. If the decision all along is that the CMA will find a way to assert jurisdiction, then it should do so, assert it, and communicate it to interested parties. The CMA has previously declined to reveal its thinking on jurisdiction until the very end of the Phase 1 period (which - including pre-notification - can be six months or more) – e.g., *Roche/Spark*, with the IEO issued on 6 June 2019 and Phase 1 clearance on 16 December 2019 and *Sabre/Farelogix* where the CMA changed its mind on jurisdictional basis multiple times. While the EA02 provides that Phase 2 is the ultimate arbiter of jurisdiction in a referred case, this is irrelevant to protracted Phase 1 cases and the EA02 does not require the CMA to wait until the end of Phase 1 to decide whether there should have been a Phase 1 in the first place. The practice of the OFT in non-obvious or contested cases was to decide on the threshold issue of jurisdiction *before* running a full investigation on the SLC question (see public announcement of OFT on material influence in *BSkyB/ITV* before review of the SLC question). While the CMA retains a degree of flexibility given the Phase 1 'is or may be the case' standard, it should not need to rely on this flexibility when it is engaging with cooperative parties and has access to sufficient information to reach a decision. The current policy is flatly at odds with the 4Ps

[4] Hansard Record: Commons Standing Committee B, 30 April 2002. Emphasis added.

commitment: jurisdiction should be a threshold question and prioritised as such, without compromising the 4Ps, including pace.

JWP Comment: the CMA should disclose to the Parties its Phase 1 decision on jurisdiction in difficult cases – as a threshold matter – before subjecting them to lengthy investigations when the legal basis for doing so is not disclosed.

3. Share of supply-based assertion of jurisdiction over foreign-to-foreign M&A.

10. Third, as to the SoS and material influence tests themselves, these have been the same broad tests since the inception of the EA02 (and, previously, under the Fair Trading Act 1973) but - despite various reforms - were never called into question. Material influence was once even heralded as a possible guide for the EU regime.[5] The issue instead has been controversy in recent years on application and the CMA in the 4P spirit should acknowledge the controversies (without having to agree with criticism). This would provide the CMA an opportunity to explain how the proposed change addresses the controversy, including if in future the intention is that the same fact pattern would be decided differently or not.[6] Indeed, controversial merger cases appear in large part to be a driver of the entire 4P reform programme so it is apposite to consider these cases as concrete illustrative examples.

11. The SoS test has been the mainstay of the UK merger regime and the basis of the CMA's jurisdictional claim in the majority of cases investigated since the EA02 came into force (used far more often relative to the UK target turnover test (£70m until 1.2025). Looking specifically at the case population most ripe for controversy, namely foreign-to-foreign mergers ("**F2F mergers**")[7] that resulted in EA02 intervention (Phase 1 or 2 remedies, prohibition, unwinding or abandonment) or ultimate clearance only after prolonged iterative inquiry[8] the picture based on preliminary review is as follows:

[5] The only Phase 2 interventions based on material influence, *Ryanair/Aer Lingus* (divest from 29.8% to 5%) and *BskyB/ITV* (divest from 17.9% to less than 7.5%) were upheld by the CAT and generally regarded as good examples of UK intervention – to the point where both were studied in detail in EUMR reform debates about extending EC jurisdiction to cover non-controlling stakes.

[6] For example, it is widely known that the DMCC reforms on £10M turnover of both parties arose from dissatisfaction with the provisional prohibition and abandonment of *Crowdcube/Seeders*, a 2:1 merger of equity crowdfunding platforms where both parties were below that threshold but the CMA's SLC analysis was an orthodox one.

[7] "Foreign to foreign" or "F2F" defined as (1) the target is a foreign and not UK entity, or does not consist of UK-only assets and (2) the acquirer group ultimate parent company (or "topco") at the strategic/industrial level (i.e., excluding private equity or holdcos) is also a foreign corporate entity and (3) excluding UK-centric joint ventures by foreign parents.

[8] Primarily UK Phase 2 clearance but also including a handful of EUMR Phase 1 or Phase 2 clearances after a referral by the UK under Article 22 EUMR pre-Brexit (6.2003-12.2020).

Jurisdictional claims over F2F subject to intervention or prolonged review

Time Period	F2F Total	SoS		TO	
		#	SoS%	#	TO%
Era 1 (June 2006 - Dec 2017)	**24**	21	87.5%	3	12.5%
Era 2 (Jan 2018 - Dec 2020)	**15**	13	86.6%	2	13.3%
Era 3 (Jan 2021 - June 2025)	**25**	15	60%	10	40 %
Jan 2018 - June 2025	40	28	70%	12	30%
EA02 pre-Brexit (June 2003 - Dec 2020)	39	34	87.2%	5	12.8%
All EA02	64	49	76.6%	15	23.4%

12. What changed in the period 1.2018-6.2025 is a step change increase in the number of F2F deals subject to intervention or prolonged review by the CMA per annum rather than the relative usage of SoS over the TO test as the jurisdictional basis.

13. Increased F2F review volumes aside, perceptions of the regime – like the perceived safety of air travel – are inevitably shaped by a handful of controversial cases. In this respect, the JWP notes that four of the most notable F2F cases which pushed the boundaries of SoS jurisdiction[9] were as follows:[10]

Case	Jurisdictional claim	UK outcome	Outcome in most proximate jurisdiction
Sabre/Farelogix (US/US)	SoS claim related to SLC theory (per CAT)	Global prohibition	DOJ lost in US court
Meta/Giphy (US/US)	SoS claim related to SLC theory based on "average monthly searches on apps and/or platforms that allow UK users to search for and share GIFs"	Global unwind	No formal/ public review in US; Austrian Cartel Court conditionally clears
Roche/Spark (US/US)	SoS claim related to SLC theory based on number of staff related to relevant R&D (workers) and numbers of patents	Phase 1 clearance	FTC clearance after Second Request
Mastercard/Nets (US/European)	SoS claim related to SLC theory based on subset of number of bidders, with certain experience, for a tender	Article 22 referral	EC Phase 1 IP license remedy

14. The proposition of considering the description of goods or services "*relevant to the potential competition concern investigated*" (Consultation Document, para. 3.15) does not on its face clearly suggest any difference in approach with respect to these four cases. Equally, the proposition of "*typically focus[ing] only … value, cost, price, quantity, capacity and number of workers employed*" (i.e., the metrics listed in the EA02, although notably a non-exhaustive list in the statute) would also on its face not unambiguously suggest a difference in approach either. This is presumptively true of

[9] Leaving aside controversial turnover test cases such as *Microsoft/Activision* and *Cargotec/Konecranes*.

[10] The point of citing these cases is not to criticise the approach but simply to note that they constituted new outer boundaries in the assertion of SoS jurisdiction to test whether the proposed changes appear to make any difference, using these cases as illustrative.

Roche/Spark (number of workers); it is debatable whether the CMA means this to suggest it would decline to assert jurisdiction based on the creative interpretation of the Farelogix increment in *Sabre/Farelogix*, and/or that of *Mastercard/Nets* but this is far from clear. To the extent the CMA does not intend that these changes affect cases such as those above, CMA2 edits are an exercise in codification of decisional practice with which the antitrust bar is familiar but are not particularly clarifying and, absent further clarification, do not meaningfully circumscribe jurisdiction. If the CMA's point is that CMA2 should not narrow jurisdictional assertion meaningfully at all, and that this is for Parliament, then this should be made clear.

15. It is not clear whether the CMA means a different approach taken with respect to the provision of free services to consumers in a two-sided market or not: would a new *Meta/Giphy* be caught by "quantity" (or other metric) or not with respect to the increment, and would this apply to the 33% limb of the no-increment hybrid test? Given the mandatory reporting requirement for SMS-firm acquisitions and the DMU regime as a whole, it is important to clarify the CMA's approach to SoS when the services are provided free of charge to consumers.

16. The Consultation Document also does not address the intentionally open-ended "or some other criterion of whatever nature" limb of the relevant EA02 provision. Whilst this open-ended wording remains in the key primary legislation, any guidance by the CMA amounts to an indication of promised self-restraint, but does not ultimately remove the CMA's largely unfettered ability to decide what metric could be used when deciding whether the SoS test has been met.

JWP Comment: the CMA should clarify its approach with respect to SoS in connection with provision of digital and other services free of charge.

4. Material influence

17. In the case of material influence, the proposed changes summarised in the Consultation Document (paras. 3.7-11) do not appear to imply a change in the approach taken in the most consequential cases: the three Phase 2 cases under the EA02 based on material influence all involved stakes in excess of 15% and a board seat (except in *Ryanair* where the stake was almost 30%). While Phase 1 investigations based on material influence impose cost, these can be addressed by Briefing Papers and/or other elements of 4P reform; clarifying marginal points on material influence interpretation would not appear to bring about meaningful change even though the proposed edits to CMA2 are sensible in and of themselves.

C. Global and transnational mergers

18. The JWP considers that the lesson of the controversies in UK merger control that materially drove 4P reform derive principally (albeit not exclusively) from CMA process and outcomes in relation to F2F mergers where (1) the concerns were on global/transnational markets and (2) the CMA imposed an outcome-determinative prohibition (or caused abandonment after provisional prohibition) either

ahead of – or in direct conflict with – jurisdictions with greater nexus based on being the "home" jurisdiction of one or both parties, largest share of the parties' global sales, etc.

19. The Government's Strategic Steer provides that the "*CMA should consider the actions being taken by competition and/or consumer protection agencies in other jurisdictions internationally, and, where appropriate, seek to ensure parallel regulatory action is timely, coherent and avoids duplication where these parallel actions effectively address issues arising in markets in the UK*"[11] but this does not equate to "wait and see" in transnational cases involving other agencies as far as investigation is concerned; it relates to "*actions*" that "*effectively address issues*" – in other words, the end-game of **remedial action.** This means that the CMA should not get ahead of other agencies in F2F cases with global/transnational markets but not that it does nothing until, potentially, the last-minute.

1. Call-in of foreign-to-foreign mergers has created proportionality concerns that UK party deals do not – regardless of geographic market scope

20. The concerns from international business can be summarised as concerns that the CMA taking what was regarded as a disproportionately outcome-determinative remedial role in F2F deals such as *Sabre/Farelogix* and *Meta/Giphy* where the target had no UK sales, assets, or employees, or blocking *Cargotec/Konecranes* in opposition to the EC approach. While these examples all involved transnational markets, market definition does not get to the nub of what generates the controversy.

21. To illustrate: it is difficult to argue with the legitimacy of the CMA taking a formal and (co-)lead investigative role in examining cross-border acquisitions of UK targets including where the relevant markets are global (cf. *NVIDIA/ARM* – US acquirer/UK target, purely global markets) or transnational (cf. *ICE/Trayport* – US acquirer/UK target, European-wide i.e., EEA+UK markets; *Viasat/Inmarsat* – US acquirer/UK target, European and global markets). The same would apply for example if a foreign acquirer were to acquire an important UK-based AI or pharma company today (UK targets, global or transnational markets); the same UK nexus principle may be said to apply if the acquirer is UK-based, or a JV is UK-centric.

22. In addition, as set out in the CMA's own Merger Assessment Guidelines, market definition is a means not an end and merging parties can be closer competitors in competing for UK customers than globally, or regionally within Europe, or more distant competitors, and that distinction may be relevant to the value-add of CMA intervention; geographic market definition may indeed be a contested point and produce very different market share estimates. It is therefore an uncertain means on which to centre policy when SoS is advertised as having the benefit of *not being* a market share test (and, therefore, allegedly, quicker and easier to establish – but see above).

23. The important and more easily verifiable discriminating factor early on is **foreign-to-foreign** deals reviewed by peer agencies as distinct from deals involving at least **one UK party**, regardless of

11 See https://www.gov.uk/government/publications/strategic-steer-to-the-competition-and-markets-authority/strategic-steer-to-the-competition-and-markets-authority (15 May 2025).

whether other agencies are reviewing the deal or not. In a foreign-to-foreign merger, any remedy is likely to be extra-territorial where the markets are wider than national and would be applied to foreign corporations. That in turn is what raises the comity concerns in respect of other jurisdictions and their agencies.

2. 'Wait and see' is in tension with 3Ps and, more importantly, EA02 duties

24. 'Wait and see' is supposed to be more 1xP (Proportionate) – but is by definition slow, uncertain and unpredictable – and thus very hard to reconcile with 3xP (Pace, Predictability, Process). The focus should be on intervention outcomes. It is certain that the CMA remedies decisions have created the controversies, not the fact of investigation *per se*. The issues that have arisen regarding the proportionality of such controversial intervention outcomes can be addressed with greater emphasis on coordination and comity as to the timing, scope and nature of the imposition of remedial solutions, including the use of the new stop-the-clock powers as a result of the DMCC Act. It is open for the CMA to conclude that any remedy would be disproportionate, to take into account comity, and to weigh proportionality in ways it has declined to use in recent years. But these remedial considerations do not warrant a broad "wait and see" approach to investigation in the first place under 4P principles, provided there is a justified UK nexus for investigating in the first place. If any such UK nexus is negligible, then the CMA should not proactively investigate formally – but "wait and see" is not aimed at deals with a negligible UK nexus that can be addressed by no action or verified by use of inquiry letters or Briefing Papers.

25. For deals with sufficient UK nexus, more important still than the 4P principles are of course the statutory duties that the CMA cannot opt out of: the Consultation Document explains how "wait and see" is compatible with the combination of the CMA's s5 EA02 function, the duty of expedition and the duty to refer.

26. Merging parties can - up to a point - solve the uncertainty problem of potentially late-stage CMA intervention by formally notifying a transaction and weigh the administrative burden of CMA review against the certainty benefits that the formal procedure affords as to timing. However, they are not the only interested parties in a merger inquiry and the CMA has always treated merger inquiries as a public process in which other interests are weighed, not a private service to the merging parties.

27. Third parties may raise good faith concerns, most typically in relation to non-horizontal cases. Should third parties lodge a credible complaint, they do not have the option of making a formal filing but instead would be subject to the vagaries of "wait and see".

28. Overall, while the JWP is sympathetic to the laudable aim of not repeating some of the controversies of the past, the "wait and see" policy does not appear to be a robust or desirable solution in light of the statutory duties on the CMA and the tensions the policy generates within the 4Ps themselves.

29. The JWP would welcome the opportunity to discuss these issues further as there is no simple answer that can be incorporated into a few paragraphs of this written response.

JWP Comment: the CMA should refine its guiding principles on geographic market for foreign-to-foreign deals involving transnational markets but in any event must grapple and explain further how the proposed "wait and see" approach reconciles with the EA02 duties and 3 of the 4Ps.

D. Process

1. Pre-notification

30. The JWP welcomes the aim of the CMA to improve the pace of pre-notification and the opportunity for early engagement with senior leadership.

31. However, we are concerned that the proposals may not achieve the desired results and furthermore, may result in unintended negative consequences, in particular, reduced flexibility in the process, which is a key strength of the CMA pre-notification process.

32. A speedy pre-notification process will be in the interest of many merging parties, but this will require (among other things) early transparency and engagement with third parties. These requirements may not be appropriate for some transactions and, in those cases, the merging parties may be willing to adopt a slower pre-notification timetable. In anticipated deals, it should be primarily for the merging parties to decide which pre-notification route (fast with early transparency or slower with later transparency) they want to pursue. A system which is automatically geared towards fast pre-notification maybe too rigid for the needs of its users. Indeed, in multi-jurisdictional deals where aligning parallel reviews may be key, retaining some flexibility regarding the pace of pre-notification is of great benefit to merging parties.

33. While an indicative timeline of 40 WDs may be appropriate for a 'fast track' pre-notification process, turning such a timeline into KPIs bears a significant risk of unintended consequences:

- As with all KPIs, there is the risk of creating a 'pre-pre-notification' system to ensure artificial compliance with the 40 WD KPIs (much as the current pre-notification is the result of the strict timetable of Phase I investigation).

- Related to this point is the question of when a Draft Merger Notice is complete. While it will be sensible to make the 40 WD timetable dependent on the requirement of a complete submission, it heightens the risk of creating a pre-pre-notification phase. It is also not clear at this stage whether the parties must conduct eDiscovery prior to the start of the 40WD KPI. Again, if this is the case and given the burdensome nature of such eDiscovery exercises, the practical result will likely be a protracted pre-pre-notification process.

- The KPIs may create incentives to issue burdensome information requests with harsher deadlines to ensure that KPIs are met when resources at the CMA are tight.

34. The threat of fining powers to deal with delayed responses to information requests is disproportionate in pre-notification for anticipated deals (given there are no concerns around the CMA's 4-month

statutory clock nor around integration by the merging parties that may subsequently be difficult to unwind). The CMA should simply pause the KPI clock or indeed move the case out of the 'fast track' pre-notification process. There is no need for the threat of sanctions in the absence of false or misleading information, not least in an anticipated deal, where there can be no prospect of competitive harm pre-closing.

2. Clearance decisions

35. The JWP welcomes the CMA's new target of issuing clearance decisions in straightforward cases in 25 WDs.

36. We note the CMA's statement in paragraph 5.26 of the Consultation Document that one way of achieving this will be to make those decisions significantly shorter, and more akin to the current summaries of decisions. Whilst we agree that there is room to shorten some of the current decisions and there are good reasons to do so in the name of pace and efficiency, this must be carefully balanced with the CMA's duty to provide reasons for its decisions and the precedential value of the CMA's decisions, which can increase business certainty.

E. Phase 1 Initial Enforcement Order template

37. Perhaps the most pressing omission of all in the Consultation Document, in connection with the 4Ps, relates to a repeated practical concern of international business, namely the CMA's approach to the global IEO template.

38. The IEO template is inherently disproportionate as a starting point from which derogations must be painfully negotiated and saps time and cost from both the CMA and the parties alike. It is vastly more invasive than mandatory regimes' gun-jumping rules, or international practice in relation to holding a divestment business separate, because it does not discriminate in any way between (1) target activities (which should be preserved for prophylactic remedial purposes) and acquirer ones and (2) UK activities and extraterritorial ones. The *Meta/Giphy* litigation validated the CMA approach in that case but the fact that the CMA's approach was lawful in a pre-4P era is not the point. Of particular concern to international business is the template's application to the acquirer's foreign HR decisions with respect to "senior management", acquirer decisions to sell or close foreign businesses, and (on the interpretation of the CMA in the *Giphy* case) acquirer decisions to launch new products. Coupled with the uncertainty as to the 4-month deadline, this imposes a substantial cost in international deal planning because, even if the risk of a CMA investigation post-closing is deemed low, the disproportionate disruptive cost of a post-closing global IEO is extraordinarily high. This in turn incentivises use of the Briefing Paper regime to excessive degree to manage this small risk of a "nuclear" outcome based on precautionary principles. In practice, acquirers are often so concerned by the potential impact that a broad IEO could have that, as noted above, the UK *de facto* operates a compulsory Briefing Paper regime if an acquirer wants reasonable certainty before completing a deal – including in relation to IEOs.

39. The proportionate approach is that the IEO template applies to the target in full, globally, and either not to the acquirer at all, or in any event not beyond any relevant UK business of the acquirer. In exceptional circumstances, the CMA could then with justification extend the IEO to the acquirer's foreign activities where these are connected to and necessary for the conduct of its business in the UK, but not as the starting point.

JWP Comment: the CMA should replace its inherently disproportionate global IEO template with a proportionate starting point as described above.

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Joint Working Party - 15 August 2025