



31 July 2025

VIA EMAIL

Competition and Markets Authority
25 Cabot Square
London, E14 4QZ
United Kingdom
mergersguidance2025@cma.gov.uk

Re: Consultation on Draft Revised Guidance on CMA's Jurisdiction and Procedure & Merger Notice

Dear Competition and Markets Authority:

The Software & Information Industry Association ("SIIA") appreciates the invitation to provide these comments on the draft revised guidance ("Draft Revised Guidance") on the CMA's jurisdiction and procedure and draft revised merger notice issued by the Competition and Markets Authority ("CMA") on 20 June 2025.

SIIA is the principal trade association for the software and digital information industries worldwide. Among our nearly 350 members are cloud service providers, developers of software (including AI applications), and platforms, as well as digital content providers and users in academic publishing, education technology, and financial services. SIIA is dedicated to fostering a healthy environment for the creation, dissemination, and productive use of information, and we believe in a competition policy that is focused on promoting innovation, protecting the competitive process, and providing consumers with superior products and services at competitive prices.

Introduction

In February, the UK Business Secretary, Jonathan Reynolds, called on the CMA to be "more agile" and "to be more focused on growth and supporting UK investment, and to minimize uncertainty for business."¹ This was followed by an announcement by the CMA that its new mission would be to drive growth and investment, as well as boost business confidence.² As part of this rejiggered mission, the CMA introduced the new "4Ps" framework to guide its work to make the UK a great place to do business. The 4Ps serves as a short-hand for pace, predictability, proportionality, and process. At

¹ Ring, Suzi and Pickard, Jim, *UK May Need Fewer Regulators, Business Secretary Suggests*, Financial Times, Published Feb. 12, 2025 | Updated Feb. 13, 2025 (internal quotation marks omitted). Available at <https://www.ft.com/content/7d202dfe-a90c-4789-b68d-24569d7da65f>

² Cardell, Sarah, *New CMA Proposal to Drive Growth, Investment and Business Confidence*, CMA Blog, 13 February 2025. Available at <https://competitionandmarkets.blog.gov.uk/2025/02/13/new-cma-proposals-to-drive-growth-investment-and-business-confidence/>

around the same time, the CMA also published a *Mergers Charter*, which it billed as a “statement of intent.”³ This Charter too is built on the 4Ps framework and aims to “ensure [that the CMA] reach the right decisions as quickly as possible, while minimizing the burden on businesses.”⁴ The Draft Revised Guidance now seeks to operationalize the 4Ps in the context of the CMA’s merger review process.

The proposed changes primarily fall into four buckets. First, updates to the pre-notification and phase 1 merger process. Second, clarifications to the CMA’s jurisdiction, particularly as it relates to the application of the “material influence” test and the “share of supply” test. Third, changes to the CMA’s approach to global mergers. And, finally, refinements to the Merger Notice template.⁵

In the following, we will make brief general comments about the CMA’s proposed changes to the merger guidance. After that, we will provide some more specific input on the proposed changes in the four buckets listed in the preceding paragraph.

General Comments

Conducting periodic reviews of public-facing guidance documents is an exercise in prudence and responsible governance. In light of recent comments by the UK government on the need for the CMA to be more flexible and pragmatic in its merger review and enforcement approach, the CMA’s efforts to update the existing merger guidance is commendable.

As a general matter, we are also supportive of the proposed streamlining of the merger review process and the introduction of the 4Ps framework. If properly implemented, we agree with the CMA that these initiatives would be a net positive for both businesses and consumers. But, as is often the case, the devil will be in the details, and we are concerned that some of proposed changes, particularly as they relate to document and information production, are disproportionate and will place a significant and unnecessary burden on businesses, *infra*.

While we recognize that the proposed guidance, even in final form, is not legally binding on the CMA, we also would like to reiterate, as we have done in other contexts⁶, that it remains imperative for the CMA to provide as clear operational guidance as possible to businesses about how the 4Ps will be implemented in practice. And although the CMA likely is on firm legal ground when it says that “it will apply this guidance flexibly and may depart from the approach described in the guidance where there is

³ See Mergers Charter Guidance, CMA, 12 March 2025. Available at <https://www.gov.uk/government/publications/mergers-charter-how-to-work-with-the-cma-on-a-merger-investigation/mergers-charter>

⁴ *Id.*

⁵ Mergers – Draft Revised Guidance on the CMA’s Jurisdiction and Procedure and Draft Revised Merger Notice, CMA, Consultation Document, 20 June 2025, at 1.4. Available at <https://connect.cma.gov.uk/changes-to-the-cma-s-mergers-guidance-cma2-and-merger-notice-template>

⁶ SIIA Comments to the CMA on its draft digital markets competition guidance, 12 July 2024. Available at <https://www.siia.net/siia-submission-to-the-cma-on-dmcc-consultation/>

an appropriate and reasonable justification for doing so,”⁷ we urge the CMA to keep any such deviations to an absolute minimum, and to clearly state that intent in the final version of the guidance.

Comments to Specific Proposed Amendments

1) Proposed Changes to the Pre-Notification and Phase 1 Merger Process

The Draft Revised Guidance proposes a number of procedural changes in order to “streamline” the pre-notification process, which is the time that runs between the submission of a Draft Merger Notice and the beginning of the formal phase 1 investigation process.⁸ Among the proposed changes are capping the pre-notification period at 40 working days⁹; new rules about the CMA’s engagement with the merging parties during pre-notification, including the option for a “teach-in” session, as well as two informal calls with the CMA case team to discuss the case¹⁰; and a target of announcing straightforward clearance decision within 25 working days¹¹.

With the following provisos, we believe the proposed changes are positive. First, as for the 40-day KPI, it will be important for the CMA to adopt a pragmatic approach in determining when the parties have complied with the initial Merger Notice, and that this process remain an informal one (see also *infra* on the proposed changes to the Merger Notice template). Second, while teach-ins can be valuable, it is equally important that they do not lead to an unnecessary extension of the pre-notification process. Along those same lines, it will also be important that the two informal calls provide an opportunity for a candid exchange. In other words, that the case team provide the parties with pertinent insights about their view of the case, and that the parties are given adequate opportunity to respond.

2) Proposed Changes to the Application of the CMA’s Jurisdictional Tests

In recent years, the CMA has adopted an increasingly expansive view of its own jurisdiction under the “material influence” test and the “share of supply” test. This has resulted in the CMA investigating mergers that arguably could and should have remained outside its purview (*e.g.*, *Facebook/GIPHY* and *Microsoft/Inflection*). This moving of the goalposts makes it difficult for merging companies to properly assess their own exposure, and it stands in stark contrast to other jurisdictions that have adopted more bright line jurisdictional rules.

It is our understanding that the CMA intends in the near term to launch a consultation on possible changes to the aforementioned tests, and we will have more to say then. In this comment, we will limit our response to the following.

⁷ See Mergers: Guidance on the DMA’s jurisdiction and procedure, Draft CMA2 for consultation, 20 June 2025, at 1.6. Available at <https://connect.cma.gov.uk/changes-to-the-cma-s-mergers-guidance-cma2-and-merger-notice-template>

⁸ *Supra* note 5 at 5.1. and 5.3.

⁹ *Id.* at 5.5.

¹⁰ *Id.* at 5.17. – 5.20.

¹¹ *Id.* at 5.26.

Under the UK Enterprise Act 2002 (as amended), the ability to exercise *material influence* over another entity is the lowest level of control that may precipitate a merger investigation.¹² Among factors that the CMA considers are: the level of shares held in the target company; the right to appoint members to the target company's board; and financial, commercial, or consultancy agreements.¹³ The Draft Revised Guidance further explains that shareholdings that confer voting rights of less than 25 percent, absent "other factors," are unlikely to result in material influence, and that only in "certain limited circumstances," and in combination with "significant other factors," will a shareholding of less than 15 percent suffice to prove material influence.¹⁴

While the Draft Revised Guidance purports to provide "greater clarity" on the types of agreements that can confer material influence¹⁵, it still leaves a lot to be desired. For example, it does not explain the highly unusual circumstances ("certain limited circumstances" and "significant other factors") that would need to be present for a finding of material influence. Add to this that the UK test differs quite substantially from the "decisive influence" test used, for example, by the EU competition authority under its merger rules, which underscores the need for much clearer guidance from the CMA.

The *share of supply* test is met if at least one of the merging parties has UK revenues of more than £10 million and if, after the merger, it has at least a 25 percent market share of relevant goods or services in the UK or in a substantial part of it.¹⁶

The Draft Revised Guidance further states that the CMA "typically" only will focus on a set number of factors when determining whether the 25 percent threshold has been met. Those factors include value, cost, price, quantity, capacity, and number of workers employed.¹⁷ It is our understanding, however, that it is misleading to claim that the CMA "typically" considers the number of workers employed when making these types of decisions, and that that metric, moreover, is impractical as it is almost impossible to determine that number with any level of precision. We, therefore, urge the CMA to revise the proposal accordingly.

3) *Changes to the CMA's Approach to Global Mergers*

Under the Enterprise Act 2002 (as amended) and the current merger guidance, the CMA enjoys a fair margin of appreciation when deciding which mergers to "call in" for an investigation.¹⁸ The Draft Revised Guidance aims to provide greater clarity about how this discretion is used, and draws a distinction between two types of mergers. Transactions involving global firms that have a UK-specific impact, and those that concern global (or broader than national) markets.¹⁹ For transactions in the

¹² *Supra* note 5 at 3.3.

¹³ *Id.* at 3.5.

¹⁴ *Id.* at 3.6.

¹⁵ *Id.* at 3.11.

¹⁶ *Id.* at 3.12.

¹⁷ *Id.* at 3.15.

¹⁸ *Id.* at 4.1.

¹⁹ *Id.* 4.2.

latter category, the CMA proposes to use its call-in authority more sparingly, provided any remedies obtained abroad address concerns similar to those that would or could arise in the UK.

While this appears to be a step in the right direction, more guidance will be needed about how this change in policy will be implemented in practice. Based on the brief description of the CMA's intentions in the Draft Revised Guidance alone, the proposed policy change could easily lead to added uncertainty for businesses, which would be at odds with the 4Ps.

4) Changes to the Merger Notice Template

The Draft Revised Guidance also includes proposed changes to the current Merger Notice template, including an expanded obligation on the merging parties to produce documents early in the process. According to the CMA, there is a need for this additional information for it to be able to perform its pre-notification activities in a prompt fashion and to better prioritize areas for further inquiry.²⁰ Among other things, the scope of requested information would be expanded to "include documents relating to all material relevant overlaps (ie horizontal, vertical and/or conglomerate)."²¹

While there may be narrow circumstances where it would be relevant for the CMA to access these types of documents during the pre-notification period, in the vast majority of cases it almost certainly would not. The potential benefits of the proposed expansion, therefore, need to be weighed against the substantial burden it would impose on the merging parties.

Because of this, we urge the CMA to amend the Draft Revised Guidance so that instead of issuing a blanket obligation, these types of documents will be requested on a case-by-case basis and only after consultation with the merging parties.

SIIA thanks the CMA for considering our views. We look forward to continuing our engagement with the Authority on this important issue, and we would welcome the opportunity to answer any additional questions that you may have.

Respectfully submitted,

Morten C. Skroejer
Senior Director, Technology Competition Policy

²⁰ *Id.* at 6.2.

²¹ *Id.* at 6.3.