

**RESPONSE TO THE CMA'S CONSULTATION ON PROPOSED
CHANGES TO THE MERGERS GUIDANCE (CMA2) AND
MERGERS NOTICE TEMPLATE**

RESPONSE BY VODAFONETHREE

1 August 2025

A. Introduction

1. VodafoneThree welcomes the opportunity to respond to the Competition and Markets Authority (**CMA**)'s consultation on the proposed changes to the mergers guidance on jurisdiction and procedure (CMA2) and the mergers notice template.
2. This response is informed by our recent experience in the CMA's investigation into the joint venture between Vodafone Group Plc and CK Hutchison Holdings Limited concerning Vodafone Limited and Hutchison 3G UK Limited.
3. We have confined our comments to the proposed changes which we consider are most significant. This response is submitted on behalf of VodafoneThree Holdings Limited.

B. General observations

4. The Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2revised) sets out the CMA's merger control procedures under the Enterprise Act 2002 (the **Current Guidance**).¹ The proposed changes are intended to give effect to the new '4Ps' framework² in the context of the CMA's merger control function. They also reflect the CMA's commitment to operate a best-in-class merger regime for UK businesses and consumers.
5. We broadly welcome the changes set out in the **Draft Revised Guidance** relating to accelerating pace, improving predictability, increasing proportionality and enhancing engagement with the merger parties throughout the merger investigation process. We are supportive of the CMA's commitment to faster, more predictable reviews.
6. However, we consider that some of the proposed changes to the jurisdictional tests and KPIs for pre-notification could go further to improve predictability of the CMA's approach.

C. Clarifications to relevant jurisdictional tests ('material influence' and 'share of supply')

7. We consider that additional clarification of the CMA's approach to jurisdiction under the current framework is useful in terms of providing legal certainty for businesses and to ensure a consistent approach going forward.
8. However, we are of the view that the proposed changes do not go sufficiently far to remove legal uncertainty for businesses determining whether a transaction meets the legal criteria for an investigation. When deciding the extent to which guidance is required, the CMA should take into account the fact that the UK merger regime is voluntary and the CMA has discretion to decide which transactions it wishes to investigate. The absence of bright lines in terms of determining

¹ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\) \(as amended on 2 January 2025\)](#).

² <https://competitionandmarkets.blog.gov.uk/2025/02/13/new-cma-proposals-to-drive-growth-investment-and-business-confidence/>

which deals the CMA will investigate reinforces the need to ensure that the CMA's approach to the jurisdictional legal tests in statute is sufficiently clear and comprehensive, or otherwise a degree of legal uncertainty will remain. Providing further guidance would allow the CMA to meet the predictability objective as well as the reduction of uncertainty objective in the government's policy on supporting growth³ to a fuller extent. We set out below the main areas which would benefit from being further clarified.

9. The Draft Revised Guidance contains additional clarification of the CMA's approach to assessment of the material influence test in relation to shareholdings of 15% and more. What has given rise to substantial uncertainty in practice is the issue whether and in what circumstances shareholdings below 15% can meet the test. We note that this has not been further clarified, despite the prevalence of transactions involving acquisitions of such minority shareholdings. This is regrettable considering that there are interesting cases that could be referred to.
10. The proposed changes relating to the share of supply test are confined to several minor points only. While we appreciate that the CMA would like to retain some discretion as to the assessment of mergers, it appears that additional guidance could prove beneficial. This applies, in particular, to the criteria the CMA takes into account when determining whether the 25% threshold under sections 23(3) and 23(4) and the 33% threshold under section 25(4D) of the Enterprise Act 2002 is met. A closed-ended list or at least some additional criteria to look out for would provide more certainty. The same goes for the notion of substantial part of the UK. Any additional insight into how the CMA is minded to delineate the substantial part would help merger parties assess their mergers with more certainty.

D. Approach to global mergers

11. The proposed clarification and enhancement of the CMA's 'wait and see' approach to global mergers that concern exclusively global (or broader than national) markets is broadly positive.
12. We support the view that the CMA should focus and prioritise transactions that have a material impact on the UK. This principle is sound in that it enables the CMA to allocate its resources more efficiently targeting transactions which have the potential to cause detriment to the competitive process in the UK. Above all, it may reduce the regulatory burden of businesses carrying out multi-jurisdictional filings.
13. The CMA has acknowledged that the merger parties run the risk that, if remedies in other jurisdictions would not fully eliminate any competition concerns relating to the UK, the CMA may open a formal investigation at a later stage. Although this scenario is unlikely to materialise often, its consequences for the merger parties could be severe. The CMA could consider adding assurance to the Draft Revised Guidance to the effect that, to the extent possible, it would endeavour to abstain from taking such steps.

³ [New approach to ensure regulators and regulation support growth \(HTML\) - GOV.UK](#)

E. New KPIs for pre-notification and Phase 1 decisions

14. We support the introduction of a 40 working-day KPI for pre-notification. We consider that this could not only accelerate the pace but also improve predictability of merger investigations. Although the 40 working-day KPI is subject to some exceptions, the introduction of this measure and tracking the CMA's performance against it are steps in the right direction.
15. We consider that the CMA's proposal to report on the length of pre-notification and monitor the causes for any delays to the expected length is positive. We would encourage the CMA to be as transparent as possible in this regard and to notify merger parties in a timely manner where they expect there to be delays to pre-notification (where relevant).
16. What would merit further clarification is the requirements for pre-notification to come to an end and for phase 1 of an investigation to commence. This issue proved particularly relevant during our pre-notification discussions with the CMA preceding the launch of the CMA's investigation into the joint venture between Vodafone Group Plc and CK Hutchison Holdings Limited, where the pre-notification period lasted 7 months.
17. We note that the Draft Revised Guidance generally states that the Merger Notice needs to be completed to the satisfaction of the CMA (which also requires the merger to be public knowledge).⁴ We would welcome some additional guidance on this, especially in the circumstances where the CMA is proposing to expand the scope of the Merger Notice by adding more questions to the template.
18. We also support the introduction of a 25-working day KPI to announce straightforward clearance decisions and believe that it can bring about positive effects in the same way as the 40 working-day KPI for pre-notification. We consider it would be helpful to have reporting mechanisms in place for the 25-working day KPI for straightforward clearance decisions similar to those for the 40 working-day KPI.

F. Enhanced early engagement

19. We welcome the introduction of additional points of direct engagement between merger parties and the CMA (including senior staff).
20. We consider that this change should be implemented in the spirit of improving the quality of decision-making by enabling merger parties to convey key information at an early stage. In particular, 'teach-in' sessions could help senior decision-makers become familiar with the specifics of the relevant markets from the early stages of the process.
21. Informal update calls with merger parties would also be welcome to keep them abreast of progress and next steps in the investigation. In our view, this is critical to ensure merger parties are able to manage their resources appropriately throughout the investigation and can readily assist the CMA at key stages of the investigation.

⁴ Paragraphs 6.42 and 6.44.

22. We also agree with the proposal to give third parties the opportunity to express their views on the merger early in pre-notification by setting up a case website and publishing information on there that the CMA is investigating the merger at the outset of pre-notification. We consider that this could foster transparency and help the CMA focus on key matters from an early stage, as any third party concerns would be identified earlier in the merger process.

G. Changes to the Merger Notice template

23. The proposed refinements to the Merger Notice template are intended to ensure that the CMA receives the information relevant for assessment of a merger as early as possible. We acknowledge that the CMA needs to hold the right level of information to reach a well-evidenced and reasoned decision and that a degree of front loading of the information gathering might help the CMA get up to speed more quickly on the dynamics of a particular sector or market.
24. It appears that the scope of the Merger Notice template should be proportionate to the need for the CMA to obtain sufficient information to form an informed view about a transaction without placing excessive burden on the merger parties. It remains to be seen what effect the additional questions may have on how long it takes merger parties to populate a Merger Notice template to the standard satisfactory to the CMA.

VodafoneThree

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