

Merger Remedies Review – response to the CMA’s consultation on draft revised guidance

A submission by Frontier Economics

13 November 2025

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1. Frontier Economics is an economic consultancy that regularly advises clients on both national and European merger investigations, including a significant number of cases before the UK Competition and Markets Authority (**CMA**).
 2. We welcome the opportunity to comment on the CMA’s proposed Merger Remedies Guidance (**Revised Guidance**).¹ We commend the CMA for engaging openly on its approach to remedies and for carefully considering the feedback received.² We believe that reforming the CMA’s remedies framework – including through several of the measures set out in the current consultation – could lead to more effective and proportionate outcomes and deliver significant benefits for UK consumers and businesses alike.
 3. Our response below focuses on:
 - a. behavioural remedies, where we consider the Revised Guidance proposes meaningful improvements; and
 - b. the assessment of effectiveness and proportionality, where we believe the CMA could further strengthen the positive changes outlined in the Revised Guidance.

Progress on behavioural remedies

4. We welcome the changes that the CMA has proposed in relation to its approach to behavioural remedies and believe these could lead to tangible benefits for the UK economy.
5. We particularly welcome the CMA’s recognition that behavioural remedies that act as “enabling remedies” and “work with the grain of competition” – such as access commitments, licensing agreements and commitments to invest in service improvements – can, in some cases, achieve effects comparable to structural remedies by stimulating

¹ Draft version of the CMA’s Merger Remedies Guidance (16 October 2025) is available [here](#).

² Responses to the CMA’s call for evidence on the remedies consultation can be found [here](#).

rivalry or facilitating market entry. This recognition and clarity could unlock an important shift in the approach to remedies especially in non-horizontal cases.

6. This aligns with the recommendations we made in our response to the CMA's initial call for evidence in March 2025, where we suggested that the CMA could usefully distinguish between *structural remedies* and *structural outcomes* – the latter being achievable, in some cases, just as effectively through flexible and market-driven behavioural remedies.³
7. We also welcome the CMA's proposed approach to efficiencies, reflecting in particular the recognition in the *Vodafone/Three* case that enabling remedies designed to lock in investment efficiencies – and which work with the grain of the merging parties' incentives – can help ensure that merger-specific efficiencies are realised in practice.
8. We note that the CMA considers a full review of its approach to the assessment of rivalry-enhancing efficiencies (REEs) and relevant customer benefits (RCBs) to be beyond the scope of its current remedies review. We welcome the CMA's commitment to revisit these issues and look forward to contributing to that process.

Balancing effectiveness and proportionality

9. The Revised Guidance represents a meaningful step forward in recognising the role of proportionality. We believe, however, that the CMA could go further in clarifying that proportionality should form a core component of the remedies assessment, considered alongside – and given equal weight to – a remedy's effectiveness. Doing so would help the CMA to embed the *4Ps* framework more fully in its work and unlock at greater scale the benefits that the remedies reforms are capable of delivering.
10. We recognise the positive refinements to the proportionality assessment already reflected in the Revised Guidance. For instance:
 - a. We welcome the move away from a rigid application of the effectiveness criteria – which previously left limited scope for a proportionality assessment – towards an approach that creates greater room for proportionality. The previous guidance set a high bar for effectiveness (requiring a “high degree of certainty”) and left little room for proportionality to be meaningfully considered (e.g. where the CMA is choosing between two “equally effective” remedies, its strict effectiveness criteria may often in practice result in only one remedy meeting the threshold). The Revised Guidance adopts a more measured tone for both the effectiveness and proportionality

³ Frontier's response to the CMA's initial call for evidence on remedies is available [here](#).

assessments,⁴ which may help expand the set of remedies that meet the effectiveness criteria and can subsequently be assessed for proportionality.

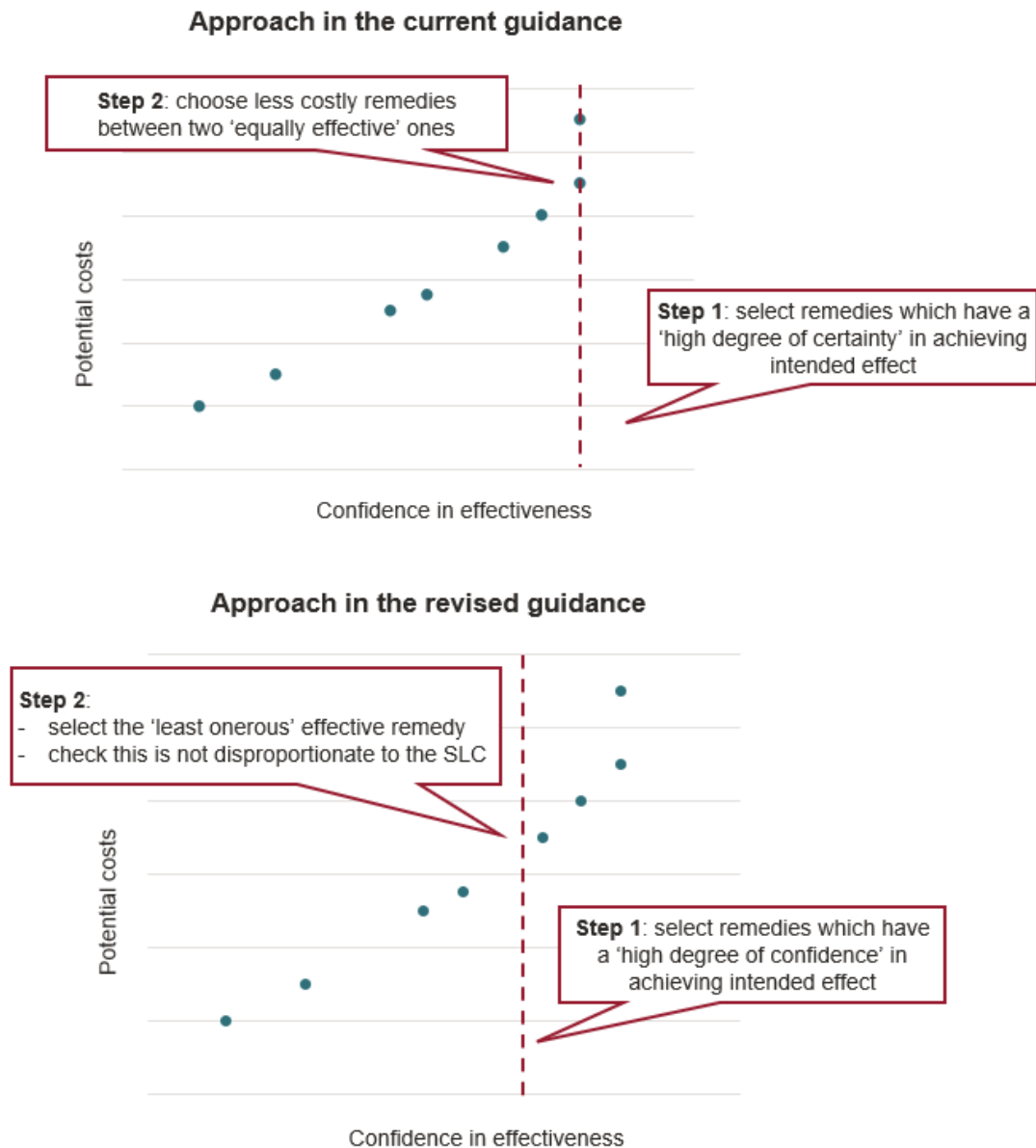
- b. We also value the continued recognition that the proportionality assessment should weigh up the costs of remedies against any substantial lessening of competition (SLC) and its adverse effects. The additional wording included in the Revised Guidance – that the CMA would assess the SLC versus the costs of its chosen remedy “*in the round, rather than seeking to quantify factors precisely*” – demonstrates a clear recognition of the importance of this balance and, at the same time, the challenges in conducting a robust cost-benefit analysis.⁵
11. We believe, however, that retaining the existing framework that sequentially considers effectiveness and then proportionality may limit the CMA’s ability to fully embed proportionality in its remedies considerations. As illustrated in Figure 1 below, this sequential approach can constrain the range of remedies assessed for proportionality by filtering them out at an earlier stage.
12. We believe that the CMA should adopt an integrated approach which fully reflects the interplay between effectiveness and proportionality and applies a consistent evidentiary standard, aligned with that used in the SLC assessment. This would mean that:
 - a. In a Phase 1 assessment, the CMA should assess whether the undertakings offered remove any *realistic prospect* of an SLC.
 - b. In a Phase 2 assessment, the guiding principle should be whether the remedies make it unlikely, on the *balance of probabilities*, that the merger would result in an SLC.
13. As illustrated by Figure 2 below, this approach would also help the CMA calibrate its effectiveness requirements to match the strength and severity of the underlying SLC finding, creating space for more proportionate and flexible outcomes than under the current sequential framework. Where the SLC is clear-cut and acute, it would remain appropriate to require a high degree of certainty in the remedy’s effectiveness. However, where the SLC is less certain or more marginal, an integrated approach would allow the CMA to apply a proportionate effectiveness threshold – for example, sufficient to reduce the likelihood of an SLC below 50% in a Phase 2 investigation – thereby creating scope for more flexible proportionate remedies where appropriate.⁶

⁴ For instance, the effectiveness criteria in the Revised Guidance requires the CMA to consider remedies in which it could have a “high degree of confidence” (rather than a “high degree of certainty”). Similarly, the proportionality criteria in the Revised Guidance removes references to the CMA choosing between two “equally effective” remedies.

⁵ Revised Guidance, paragraph 3.22.

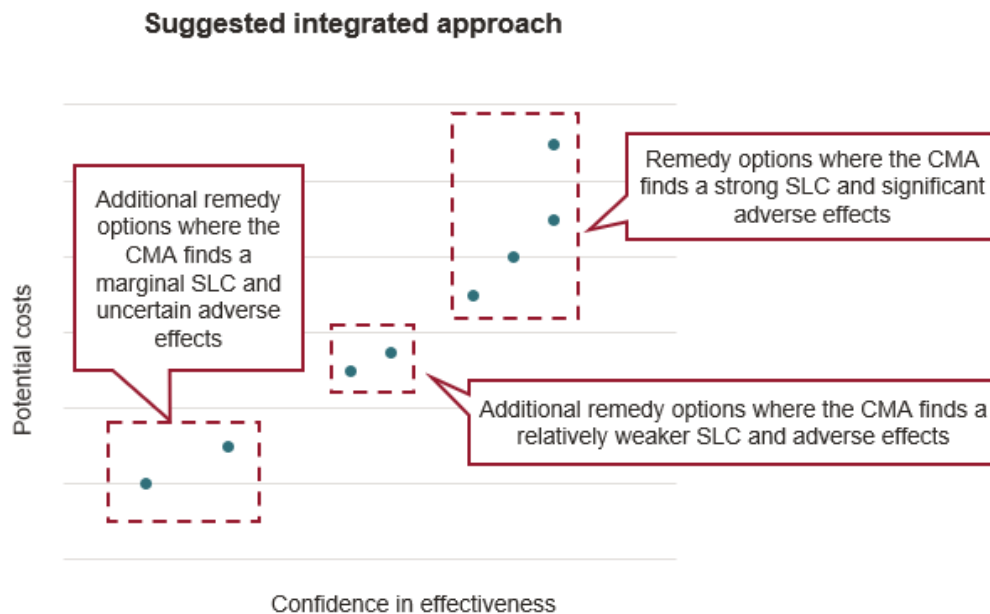
⁶ In this respect, we welcome the changes suggested by the CMA in the Revised Guidance in relation to local market mergers where the CMA has now proposed (in line with our response to the CMA’s consultation) to accept divestments

Figure 1: Illustration of sequential approach to assessing effectiveness and proportionality under the current guidance and the Revised Guidance



that reduce the merged entity's position below the SLC threshold rather than requiring divestiture requiring a full removal of any increment.

Figure 2: Illustration of integrated approach to assessing effectiveness and proportionality



14. At the same time, we recognise that this framework needs to reflect the CMA's legal obligation *"to achieve as comprehensive a solution to the SLC and its adverse effects as is reasonable and practical"*.⁷ Within this context, we believe that the CMA could consider the following amendments, which would allow for a more integrated approach to effectiveness and proportionality *within* the current framework:
- a. The CMA could adopt a more dynamic approach when forming a view on an "acceptable risk profile" for an effective remedy by seeking to update this view more frequently to reflect the latest evidence available. As more evidence on the SLC and its adverse effects becomes available, this would allow for a more up-to-date view on remedies considered to be effective and therefore within the scope of a proportionality assessment.
 - b. The Revised Guidance helpfully recognises that an effective remedy may nevertheless incur costs that are disproportionate to the scale of the SLC and its adverse effects and, in such cases, the CMA may need to consider remedies that are only partially effective at resolving the SLC. However, the Revised Guidance notes that this would only be considered in *"exceptional circumstances"*,⁸ which may unduly restrict the CMA's ability more broadly to find a remedy that strikes an appropriate balance between effectiveness and proportionality. Therefore, the circumstances under which the CMA considers partially effective remedies could be broadened. The

⁷ Revised Guidance, paragraph 7.40.

⁸ Revised Guidance, paragraph 3.23.

CMA could do this either by removing the restriction that allows partially effective remedies to be considered only in exceptional circumstances, or by clarifying that a remedy which removes any realistic prospect of an SLC at Phase 1, or eliminates an SLC on the balance of probabilities at Phase 2, is regarded as fully effective.