



Revised Merger Remedies Guidance (CMA 87) – Consultation Response

Executive Summary

Liberty Global is a world leader in converged broadband, video and mobile communication services through gigabit networks and an active investor in cutting-edge infrastructure, content and technology ventures. We are long-term investors in the UK, through our joint ventures Virgin Media O2 and nexfibre, as well as the Formula E electric vehicle racing series, the data centre provider Atlas Edge and the renewable energy companies Egg and Believ.

Liberty Global welcomes the opportunity to comment on the CMA's Draft Revised Merger Remedies Guidance. We strongly support the CMA's continued focus on ensuring remedies are effective, proportionate, and promote competition while recognising the dynamic and sector-specific nature of modern markets. Further, we welcome the CMA's commitment to adopting a more flexible approach to remedies, which is essential for addressing complex market realities in a targeted and forward-looking manner.

In particular, we:

- Support the CMA's openness to behavioural remedies, noting that the Vodafone/Three decision demonstrates that well-designed behavioural commitments can effectively address competition concerns without undermining innovation, investment, or sectoral efficiency. In this context, the CMA's new powers under the Digital Markets, Competition and Consumers Act to impose fines for breaches of remedy commitments improve the enforceability of behavioural remedies and may help mitigate historic concerns around compliance and monitoring.
- Emphasise the importance of predictability, one of the CMA's "4Ps", in remedy design to support long-term investment and planning in capital-intensive sectors such as telecommunications. To that end, it would be useful for the CMA to provide examples of the type of remedies that will be acceptable to ameliorate competition concerns, which investors can consult as they contemplate future transactions.
- Advocate that remedies should reflect a holistic, forward-looking assessment, recognising not only price effects but also non-price benefits including innovation, service quality, resilience, and long-term consumer welfare.
- Stress that scale and consolidation are essential for investment in UK infrastructure, particularly for gigabit networks, and that remedies should not inadvertently undermine operators' ability to achieve sufficient scale to deliver future network rollout efficiently.

- Highlight that a predictable and supportive regulatory framework is critical to incentivise capital expenditure, enable innovation, and allow operators to contribute to broader UK industrial growth objectives.

Response to Consultation Questions

6.2 Overall clarity and usefulness of the draft Guidance

We consider the draft Guidance to be a clear and useful step forward. The articulation of the CMA's approach to remedy design, including the emphasis on proportionality, engagement, and relevant customer benefits, provides valuable transparency and certainty. We welcome clarifications in a number of areas, including the "Effectiveness Criteria" and proportionality assessments, as well as added clarity on more complex structural remedies, such as carve-outs.

In particular, the Guidance acknowledges the potential for behavioural remedies to resolve competition concerns, including at Phase 1, which we view as a constructive evolution from the CMA's previous practice. We welcome the acknowledgement of the lessons learned from the Vodafone/Three merger, for instance in relation to the treatment of efficiencies. It is helpful that the draft Guidelines recognise that efficiencies should be considered not only as part of the competitive assessment, but also in the formulation and implementation of remedies. Integrating efficiency considerations into remedy design can lead to more proportionate, targeted, and effective outcomes – benefiting both consumers and markets.

6.3 Areas requiring further clarification

We suggest the CMA could provide additional clarity in the following areas of the draft Guidance:

1. Behavioural remedies (Chapter 4):

- While the Guidance expresses increased openness to behavioural remedies, greater detail on the conditions under which they will be accepted would enhance predictability. This should include further details on the acceptability of behavioural remedies during Phase 1 investigations.
- Explicit examples of acceptable behavioural remedies in capital-intensive sectors (such as the investment commitment in Vodafone/Three), including safeguards to ensure they promote innovation and investment, would be beneficial.

2. Assessment of efficiencies and non-price benefits (Chapter 3, section 3.4):

- The Guidance could clarify how the CMA will weigh long-term and non-price efficiencies, particularly in sectors with high fixed costs, such as telecoms, where scale enables investment in networks and technology. In this context, we welcome the CMA's indication that it intends to further explore its approach to the substantive assessment of efficiencies, including the treatment of RCBs. A consistent approach is necessary across both the competitive assessment and remedy design stages.
- It would be helpful to provide guidance on the evidentiary standard required for demonstrating merger-specific efficiencies and relevant customer benefits, to ensure proportionate treatment of forward-looking benefits. Examples of non-price benefits that should be considered in the context of our sector, the telecommunications sector,

include network speed, latency improvements, capacity expansion, deployment of 5G/FTTH.

3. Sectoral and investment context:

- Remedies should be designed to avoid undermining scale and investment incentives, which are essential for operators to deploy gigabit networks efficiently and at pace.
- Clarification on how remedies will account for broader UK industrial policy objectives, such as innovation, digital infrastructure growth, and sustainability, would be welcome.
- Drawing on our UK operations, we note that consolidation and cooperation among operators is critical in order to enable network rollout, investment in next-generation technologies, and long-term competitiveness.

6.4 Alignment with the CMA's "4Ps" and suggested enhancements

- **Pace:** Early engagement with merging parties regarding remedy design is welcome and should be maintained. We encourage the CMA to be more open and flexible in relation to remedies proposed at Phase 1, as this would help incentivise parties to engage in early remedies discussions.
- **Predictability:** We encourage the CMA to provide illustrative examples and clearer criteria that may be considered in assessing the acceptability of behavioural remedies. This will enhance certainty for parties in capital-intensive sectors, whilst still maintaining the CMA's flexibility. We have previously stressed in our response to the DSIT Consultation on the Statement of Strategic Priorities that a sound and predictable regulatory environment is key to fostering competition in Gigabit infrastructure, and that this is key for competition policy as well.
- **Proportionality:** We support the CMA's principle of tailoring remedies to the scale and risk of competition concerns. In network industries, remedies should avoid unnecessary fragmentation or divestitures that could impair investment incentives. In this context, the CMA's increased openness to accepting behavioural remedies at Phase 1 is a welcome development. We encourage the CMA to readily adopt this approach, as behavioural remedies can offer proportionate and effective solutions that safeguard competition while minimising unnecessary disruption.
- **Process/Engagement:** Ongoing dialogue with merging parties during remedy design should continue to be emphasised.

Additional enhancements:

- Include sector-specific guidance for industries where scale, long-term investment, and innovation are critical, to prevent remedies from inadvertently undermining competitiveness and infrastructure rollout.

- Emphasise the importance of technology neutrality and mixed technology deployment in remedy design, ensuring remedies do not restrict operators' ability to adopt efficient and innovative solutions.

6.5 Other suggestions for additional or revised content

- Incorporate discussion of long-term market resilience and industrial policy alignment as a factor in remedy design, particularly in sectors such as telecoms with high investment needs and long-term market dynamics
- Include further guidance on monitoring and review of behavioural remedies to ensure compliance without imposing undue burden on parties; highlight the role a sectoral regulator, where available, can play in monitoring such remedies
- Highlight the CMA's intention to balance competition protection with support for innovation, investment, and technological leadership, reflecting both consumer welfare and wider UK policy objectives.
- We recognise the potential benefits of appointing Monitoring Trustees or industry experts to support the implementation and oversight of remedies, including early appointments to assist with the assessment of remedy proposals. Section 8.4 of the draft Guidance states that such early appointments may provide the CMA with additional assurance and enable it to reach decisions in shorter timescales. However, it is important to ensure that parties are not unfairly disadvantaged by the absence of such appointments - particularly in cases where the complexity of the proposed remedy does not justify them.

Liberty Global strongly supports the CMA's initiative to modernise the Merger Remedies Guidance. We welcome the increased openness to behavioural remedies, the inclusion of efficiencies and non-price effects in assessment, and the emphasis on proportionality, engagement, and predictability. Clarification in the areas outlined above, and attention to scale, investment incentives, and broader industrial growth objectives, would further enhance the Guidance's usefulness and ensure it promotes sustainable, innovation-friendly competition and growth in the UK.