Response to CMA consultation on draft revised merger remedies guidance

November 2025

Quantification of innovation and investment benefits in merger control

This paper responds to Section 4 of the CMA's consultation on its draft revised merger remedies guidance of 16 October 2025. We welcome the CMA's proposed changes around early engagement, frontloading the assessment of relevant customer benefits (RCBs), and including mechanisms identified to preserve RCBs. While we understand the need to maintain the high evidentiary bar for RCBs as explained in para 4.25 of the consultation, we would like to highlight the practical challenges related to gathering such evidence within the timeframe of the CMA process. We do so by explaining the types of deals and the implication on merger benefits, the deals process and the timing of documentation at each stage.

The note covers the following topics:

- how investment and innovation benefits may be characterised alongside other types of merger benefits
- the deals process and the documentation prepared to support it from a corporate perspective, and what evidence could be made available to the CMA to support any analysis of merger benefits
- the inherent difficulties in collating certain evidence due to the timing of the deals process and the statutory time pressures of the CMA process itself

We hope that this provides useful additional insights for the CMA as it considers these matters going forward and would be happy to elaborate if helpful.

Merger benefits may be realised over a period of time, and some may be less certain than others

Some merger benefits are more likely to be realised in the near-term as a direct consequence of a merger, and some may arise over a longer time-period, and may be conditional on the achievement of near-term benefits. In this note, we use the terms ‘near-term’ and ‘longer-term’ to refer to the order in which benefits occur in time. Near-term synergies might include: cost efficiencies arising from de-duplication or assets or staff, or increased purchasing power, or revenue synergies arising from the ability to cross-sell products to the respective customer bases. Such cost and revenue-related benefits often feature in merger rationales and are often quantified and assessed by deals practitioners as part of the due-diligence process (pre-merger). Indeed, such ‘synergy’ benefits may play an important role in the price that the acquiror is prepared to pay for the target.

Innovation and investment benefits are likely to take longer to unfold into tangible EBITDA uplifts. They may include synergies in R&D, for example where firms combine innovation capital (human or financial) to produce enhanced results. Some be conditional on the achievement of near-term cost/revenue synergies. For example, where near-term synergy benefits increase profitability (e.g. EBITDA/customer increases) this may provide stronger incentives and payoffs to innovation. Investment and innovation synergies may be more uncertain, occur further into the future, and are often harder to evidence, but may nevertheless be important.

The CMA is primarily interested in benefits that may be likely to be passed on to customers.

Empirical research has shown that certain types of merger synergies are more likely to be passed on to customers than others. For example:

- savings from variable costs may be more likely to be passed to customers while savings from fixed costs are likely to be retained by firms as profits;
- savings from the removal of double marginalisation in vertical integration may be more likely to be passed to customers in the form of reduced mark-ups (CMA merger guidelines para 8.2);
- innovation and investment synergies can lead to higher quality, more choices and faster roll-out of new products and are likely to result in customer benefits

Understanding the deals process

Understanding the deals process is an important step in understanding the challenges merging parties may face in producing evidence on merger benefits in a timely manner in the course of a merger investigation. A deal cycle typically involves three stages:

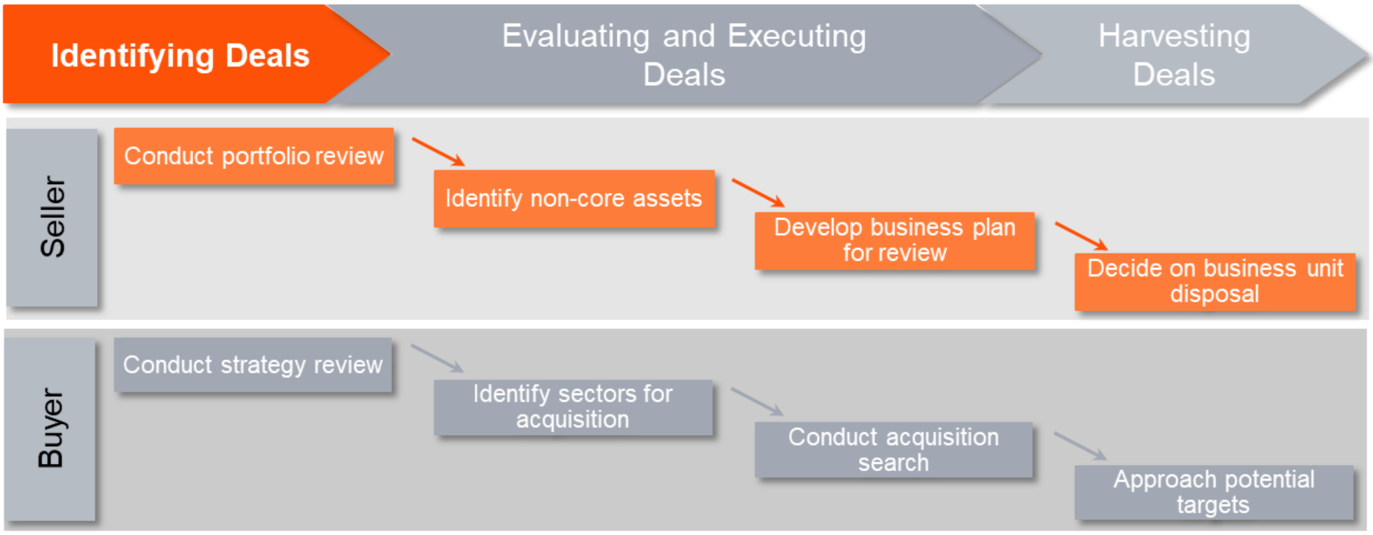
1. Identifying deals: this includes identification of the relevant asset for sale, and interested buyers and sellers.

2. Evaluating and executing deals: this includes the due diligence process which enables the selection of buyer and ultimately the agreement to proceed. More obvious merger benefits will be evaluated as part of the due-diligence process.

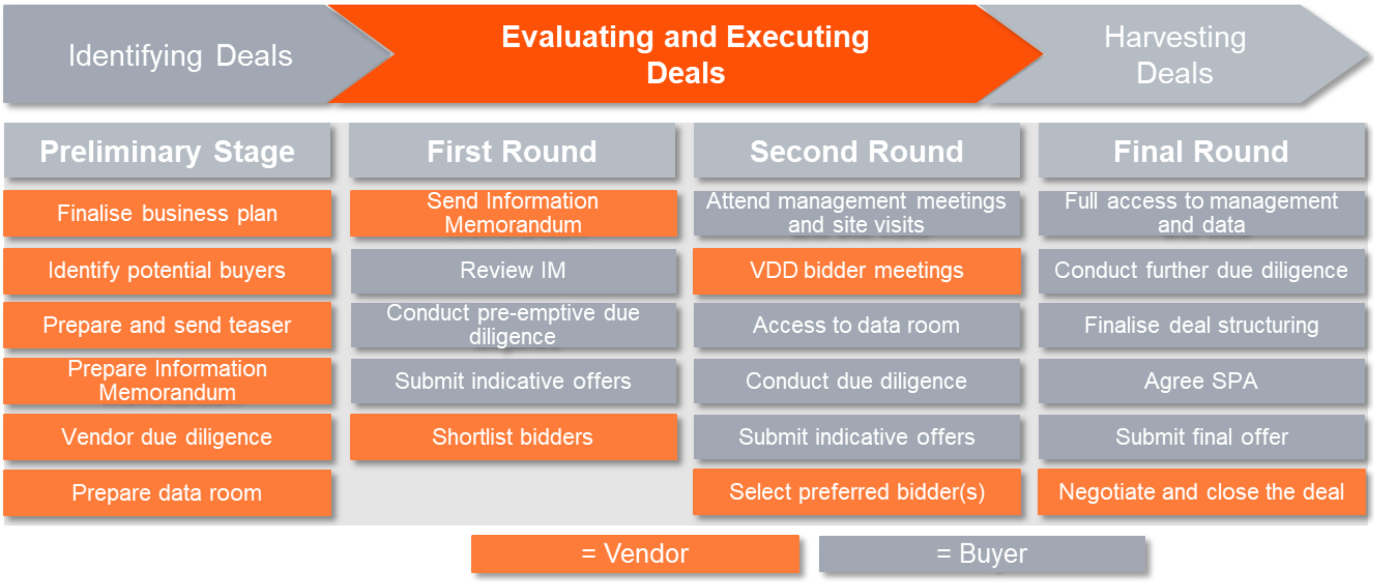
3. Harvesting deals: post-execution, this includes more detailed synergy planning, execution of integration plans, investment and growth, and – potentially for some assets - eventually preparing for exit, which starts another deal cycle.

The details involved in each stage is summarised in the three diagrams below.

Stage 1: identifying deals



Stage 2: evaluating and executing deals



Stage 3: harvesting deals post-execution

1) The analysis typically conducted in pre-execution due-diligence currently focuses on first-order synergies

The types of evidence gathering and analysis conducted during the pre-execution phase of the deals process may include:

- Market sizing, competitive analysis and benchmarking, scenario planning and forecasting, customer referencing, business plans;
- Expert interviews, management questionnaires;

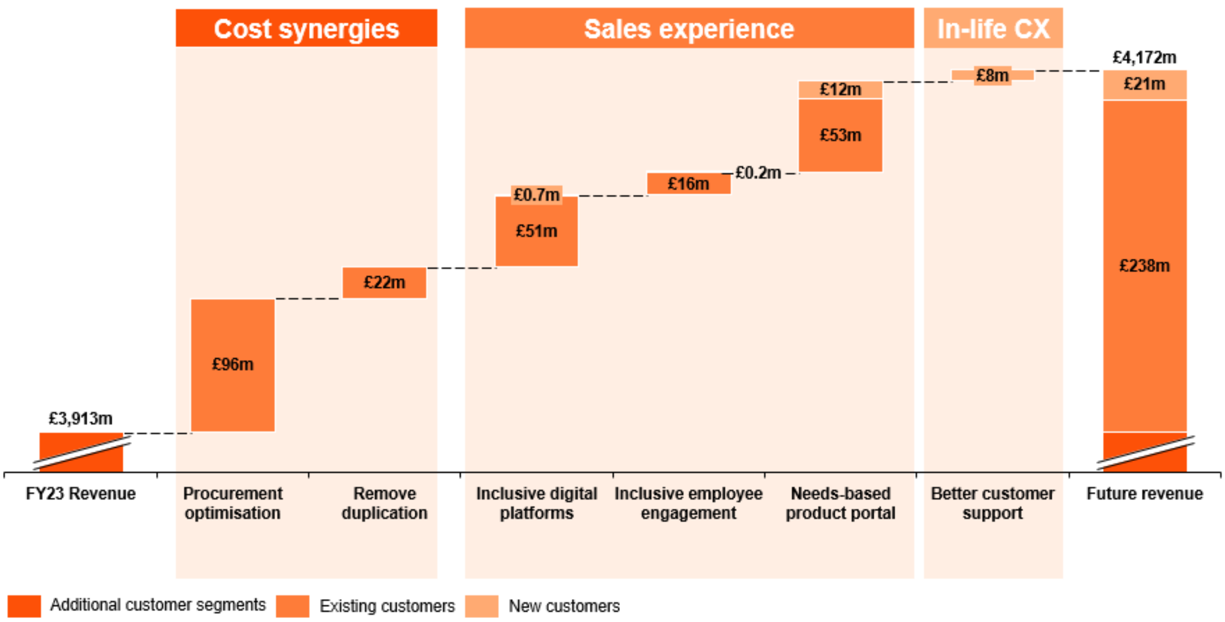
- More detailed and holistic analysis on the aspects that the merging parties are more interested in. This could include R&D and investment pipelines;
- Strategic recommendations on areas that can deliver further deal value.

Depending on the size and purpose of the deal, there may be more analysis on certain aspects of the deal than others. For example, in financial services, merger rationales often focus on balance sheet strength, diversification benefits, regulatory capital optimisation and cross-selling opportunities. Cost synergies are more prevalent in retail, manufacturing and telecoms sectors.

Where synergies are a key driver, the due diligence may include a detailed assessment of how each synergy will be achieved, estimated revenue impacts, implementation complexity, and timelines. M&A operations specialists are often engaged to provide a more accurate view of what is achievable in practice.

The aim of such assessments is typically to quantify and evidence likely near-term EBITDA uplifts resulting from synergies as these have a direct impact on the valuation of the deal. As a result, they are often referred to as 'value levers'. They include cost synergies related to the removal of duplication (e.g. support functions, IT) and to economies of scale (e.g. procurement optimisation); and revenue synergies related to the ability to cross-sell, up-sell and leverage shared sales platforms. The due diligence process quantifies each of these value levers and carefully analyses the assumptions behind each lever. Below is an example.

Revenue uplift illustration – illustrative for validation during programme



The focus of the analysis is typically on the identification and validation of credible near-term value levers that are sufficiently certain to be included in forecast EBITDA or revenue numbers, as this is what drives the price to be paid, Benefits that may take longer to materialise, may be less tangible in nature, and which may be contingent on earlier benefits being achieved, are less likely to be assessed in detail pre-merger, given the board and shareholders have to decide, often under time pressure and with limited information, whether to acquire a company at what price.

This means that there is a gap between the information that is typically available to firms as part of a deals process and the CMA's expectation of documentary evidence showing the longer-term benefits of the deal for customers, for example in terms of the firms' ability to invest in innovation.

How innovation benefits could be evidenced as part of due-diligence

As discussed above, parties and their advisors typically focus on revenue improvements or cost reductions that result in near-term EBITDA improvements as part of pre-merger due diligence. We consider the possibilities to expand the analysis to longer-term merger benefits such as those concerned with increasing the ability and incentive of the merged firm to invest and innovate.

Types of innovation benefit

Academic literature has identified a number of ways through which a merger may increase the incentives to invest and innovate and thereby deliver benefits to consumers. Professor Gonenc Gurkaynak in his book, the Innovation Paradox in Merger Control, lists the following mechanisms:

- Higher returns to R&D investment when firms compete in R&D: a reduction in the number of independent competitors in R&D may increase the return to R&D efforts and thereby increase competition.

- Reduced uncertainty in R&D competition: the possible reduction of uncertainty in R&D competition as a result of the merger can also stimulate innovation.

- Reduction of imitation: a merger may increase the return to innovation by allowing the merged entity to attain higher sales and hence, enable it to appropriate more of the value of innovation if this is proportional to sales.

- Higher scale: a merger may increase the return to innovation by allowing the merged entity to attain higher sales and hence, enable it to appropriate more of the value of innovation if this is proportional to sales.

- Product complementarities: a merger may allow a firm to capture a greater value of its innovation by combining it with complementary products offered by the other merging party (and vice versa), in ways that had not been feasible prior to the merger.

- Cost synergies: a merger may reduce the cost of R&D activities via merger specific synergies and therefore stimulate innovation

These types of innovation benefits are less straightforward than the types of near-term cost and revenue synergies set out above, and are often not explicitly considered as part of due diligence, perhaps due to the longer time period for realisation and thus less material impact on the valuation We see two opportunities for enhanced analysis of these types of benefits.

1. **Evidencing investment benefits through 'value lever' analysis**

Translating these types of synergies into 'value levers' could help to provide evidence for CMA to consider as part of the merger process, recognising that many innovation benefits may be harder to quantify with certainty and/or may be contingent on earlier EBITDA uplifts being achieved.

For example, where a merger results in a larger combined customer base and resulting revenue synergies from being able to cross-sell products or benefit from shared sales platforms, it could be possible to apply similar logic to assessing the revenue synergies arising from R&D, even where that R&D is in the future. The larger combined customer base implies greater sales potential, greater EBITDA per customer, and therefore greater returns on investment, and this should be capable of demonstration and inspection through discounted cash flow analysis.

This is similar to analysing the EBITDA or revenue synergy that is obtained through combining customer bases and leveraging shared investments, such as customer platforms or portals, and could be assimilated into the revenue synergies analysis conducted as part of due diligence. It may be necessary to distinguish between synergies from existing investments, and those arising from planned investments, to ensure appropriate assumptions are made about the degree of uncertainty associated with those synergies.

In valuation models, uncertainty associated with cash flows is reflected in the discount rate applied to future cash flows, and so a reduction in uncertainty implies higher returns to investment. This can be translated into an EBITDA uplift arising from leveraging shared investments, in a similar way to that described above.

A further source of evidence could include separate discounted-cash-flow analysis comparing the NPV of the proposed future investment under pre-merger and post-merger conditions. This could be used to demonstrate that the investment would not be sufficiently profitable absent the additional EBITDA uplift, reduction in uncertainty, or customer base that would be achieved with the merger.

2. **Evidencing investment benefits through impact analysis**

A qualitative framework for how the merger will unlock the ability to invest could support any quantitative analysis of benefits. The causal chain could be clearly articulated in terms of how the merger will enable investment. For example, how will the merger create cost and revenue synergies that will lead to improve per-customer profitability and thus enable greater returns to future investments in innovation, Importantly, how will this innovation benefit customers and any wider spill-over benefits for the economy (these may be easier to articulate for infrastructure type investments such as telecoms, payments services etc).

Impact analysis is often conducted by government departments when considering the potential consequences of a policy reform. It is a specific tool that economists can use to map out the causal channels (also called impact pathways) through which a policy change (or investment) may generate impacts for the economy, for society, or for the environment. Economists try to evaluate evidence to demonstrate that the theoretical impact pathways will in fact materialise, although the reliability of this type of analysis depends on data availability. Impact analysis could be repurposed in a merger context, although it can be onerous to produce. It may therefore not be proportionate for smaller deals. That said, for larger deals, impact assessments could provide more direct evidence on the benefits that can be expected to be passed on to customers.

If firms consider customer impact as part of their normal decision-making process, internal governance documents could be reviewed by the CMA to evidence customer pass-through. For example, in the financial services sector, having regards to customer outcomes is one of the requirements under the FCA's consumer duty. As a result, firms may have more evidence that can be used to demonstrate customer benefits in the financial services industry.

Timing and availability of information with which to assess merger benefits

The CMA typically reviews mergers that have not yet been completed. This timing has implications for firms' ability to produce detailed information with which to quantify or evidence synergies. Firms may have completed high-level due diligence but lack full visibility needed for detailed analysis, particularly where the target is cautious about sharing confidential information prior to completion (as is often the case). The CMA tends to place greater weight on materials produced before notification, on the assumption that post-notification documents may be drafted to support clearance. However, the CMA should recognise that gaps may reflect genuine data unavailability rather than strategic positioning.

Detailed post-merger integration and synergy planning is unlikely to be available prior to completion. This means that the acquiror's analysis of synergies may have to be based on best estimates and educated guesses rather than detailed analysis of the target's business.

For completed mergers, it may be expected that the Parties have made more progress in terms of synergy planning. However, where hold-separate provisions have been imposed detailed post-merger integration and synergy planning may not yet be available.

Implications

The CMA should consider the practicalities that firms face in producing evidence around RCBs and with this in mind, should consider lowering the evidential bar for RCBs.

The full spectrum of potential merger benefits should be considered, from near-term, tangible, high-probability benefits to the longer-term, less certain, and more intangible investment and innovation benefits of the type described in this note. Where firms and advisors have been able to incorporate and evidence such longer-term benefits into traditional value-levers analysis such as is typically performed in due-diligence, or employ the tools of impact analysis, to better evidence potential merger benefits, the CMA should be open to considering them.

CMA's expectations on quality of evidence in relation to dynamic innovation and investment benefits should recognise that firms may have limited ability perform detailed synergy analysis pre-integration due to lack of information. This applies to all types of merger benefits – both near-term and longer-term.

Disclaimer: