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Competition and Markets
Authority

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Dear Sir,

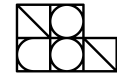
CMA Consultation on Draft Revised Merger Remedies Guidance

Thank you for the opportunity to comment on the Consultation Document of the Competition and Markets Authority (**CMA**): Merger Remedies – CMA87.

We consider the proposed adjustments to the merger remedy guidance to be helpful improvements and thoughtfully explained. We congratulate the CMA on its significant work to date and we offer below a few suggestions that we believe may help clarify specific areas of the guidance concerning the use of monitoring trustees. Our comments are based on our experience of acting as monitoring trustee (**MT**) and remedy adviser in merger investigations across various jurisdictions.

NOCON was founded as a specialist MT service provider in 2016 and we have experience acting in a range of different jurisdictions and accommodating different regulatory approaches. NOCON team members have acted as MT for the CMA, the European Commission, the US Federal Trade Commission, the German Federal Cartel Office and the Austrian Federal Competition Authority. We have provided advice on the design or the evaluation of remedies to the CMA, the European Commission, the German Federal Cartel Office and the Hong Kong Competition Commission.

This response is not confidential and may be published.



MT appointment procedure

Paragraph 8.6 of the draft explains the appointment process for a MT or independent expert in advance of any UILs, Final Undertakings or a Final Order. These requirements and procedural steps are very similar to those for appointing a MT or independent expert for remedy implementation, but this similarity is not explained in the document and may cause uncertainty, i.e. paragraphs 8.10 to 8.13 do not contain the details of the appointment procedure outlined at paragraph 8.6.

We suggest creating a separate section in the guidance that describes an overview of the appointment process and requirements. This approach could accommodate the possibility of identifying any differences in the procedure between appointments intended to assess remedy proposals or remedy implementation.

Conflict of interest

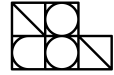
We suggest that the guidance offers some examples of what might be considered a possible conflict of interest for a MT, divestiture trustee, adjudicator, or independent expert. For example, the European Commission's Remedies Notice refers to a conflict arising if a proposed MT is also an auditor or an investment advisor of the merger parties.

We also note that the European Commission requires MTs to obtain the European Commission's approval for any new business relationship with the monitored party. This obligation applies during the term of the mandate and for a period of one or more years afterwards, as set out in the European Commission's template trustee mandate. As the CMA does not offer a trustee mandate template, it would be helpful to include any limitations in the guidance that apply after an appointment, as well as other safeguards for independence.

Different independent roles supporting a remedy

In paragraph 8.12 (a) - (d), the CMA outlines a few different roles that might support a remedy: a MT, a divestiture trustee, an adjudicator, and an independent expert.

We suggest clarifying that these roles are not mutually exclusive but can sometimes be performed by a single person or organisation. Our trustee teams often include an industry expert; we frequently act as mediators between stakeholders, sometimes within a formal dispute resolution framework specified in the commitment decision; and, in exceptional cases, NOCON team members have also assumed the role of divestiture trustee (in addition to being the monitoring



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trustee). We note that paragraph 6.69 clarifies, by way of example, that the roles of MT and divestiture trustee can be performed by the same person. We suggest that a similar clarification would also be useful in paragraph 8.12.

Role of MTs supporting the CMA

In summary, we support the CMA's proposed changes to expand the role of MTs and believe that the proposed guidance is likely to usefully lever the experience that our profession offers. Specifically, MTs work closely with business stakeholders to implement and apply remedy solutions, often over long periods of time and beyond the involvement of a regulatory case team. We believe this gives us a valuable perspective that can be applied to remedy design, purchaser assessment, and stakeholder disputes.

We also agree that it is appropriate to appoint MTs as standard practice in the case of divestiture commitments (see paragraph 8.12 (a)). We consider that such an approach is likely to supplement the CMA's own in-house expertise and align with the practices of other major competition authorities.

We remain available to discuss any of the suggestions we have offered in this submission and look forward to the progression of this consultation.

Yours faithfully

NOCON