

Notice of intention to release remedies

Consultation Description

1. Undertakings and orders are the primary means by which the Competition and Markets Authority (**CMA**) implements remedies to resolve any competition concerns it finds following a merger investigation under the Enterprise Act 2002 (the **Act**). Remedies can take different forms such as the prohibition of a merger, the divestiture of a business or behavioural commitments to do or refrain from doing certain things.
2. The CMA has a statutory duty under section 92 of the Act to keep undertakings and orders under review.¹ From time to time, the CMA must consider whether, by reason of any change of circumstances:²
 - (a) undertakings are no longer appropriate and need to be varied, superseded or one or more parties released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.
3. We are conducting a CMA-initiated strategic review of a number of merger remedies in our portfolio. A strategic review enables the CMA to review and vary, release or revoke remedies efficiently, thereby reducing the regulatory burden on businesses subject to those remedies, and enabling the CMA to focus on monitoring and enforcing those remedies for which there is still a need.
4. The remedies in this strategic review include:

¹ In addition, Schedule 24 of the Act makes provision in cases where undertakings were originally accepted under the Fair Trading Act 1973.

² [Section 92](#) of the Act.

- (a) two remedies relating to the award of rail franchises which have been brought back into public ownership; and
- (b) 35 divestiture remedies which are over 10 years old and where the only material ongoing obligations are continued separation obligations.

CONTINUED SEPARATION OBLIGATIONS

- 5. Divestiture remedies typically contain continued separation obligations, which prohibit the merged entity from subsequently purchasing assets or shareholdings sold as part of a divestiture package or acquiring material influence over them, except with the prior written consent of the CMA. This ensures that the structural changes resulting from the divestiture are not reversed through subsequent transactions, undermining the effectiveness of the remedy.
- 6. The most common form of separation obligation is a non-reacquisition clause which prevents the merged entity from directly or indirectly acquiring any interest in the divestment business.
- 7. Where, in order to implement a divestiture remedy, the merger parties assign a lease or grant a sub-lease of property to the purchaser of the divestment business, the merged entity may also be subject to occupation interest obligations. Occupation interest obligations are designed to prevent the merged entity from exercising a right or duty to occupy a property that forms part of the divestment package which would be equivalent in effect to re-acquiring the property, undermining the effectiveness of the remedy.
- 8. Occupation interest obligations require the merged entity to:
 - (a) inform the CMA within a specified period of it becoming aware that it benefits from an occupation interest; and
 - (b) use best endeavours and act in good faith to comply with such written directions as the CMA may give to the merged entity to effect a new divestiture of the occupation interest (to a purchaser approved by the CMA).
- 9. Of the 35 divestiture remedies included in this review, 10 include occupation interest obligations. We reached out to the merged entity in all 10 cases and based on the responses we are not aware of any that have an occupation

interest that triggers occupation interest obligations under the relevant undertakings.³

10. Current CMA practice is to ‘sunset’ continued separation obligations in undertakings or orders after a period of 10 years because our experience is that market conditions have generally changed by the expiry of the 10-year period, such that the appropriate way to deal with any subsequent reacquisitions is through the merger control regime.⁴
11. In this strategic review we have placed weight on the CMA’s current practice, informed by its regulatory experience, that continued separation obligations of more than 10 years are not generally appropriate. In light of that experience and practice, and the passage of time since each of the remedies in the strategic review was put in place (which exceeds 10 years),⁵ we consider that these undertakings and orders are no longer appropriate and should be released or revoked.
12. If transactions currently prohibited by the remedies were to be proposed in the future, they would fall to be assessed under the merger provisions of the Act and not under the continued separation obligations. In reaching the decision to revoke or release these undertakings and orders, the CMA makes no inference regarding the outcome of any potential future merger assessment under the Act.

REMEDIES RELATING TO THE AWARD OF RAIL FRANCHISES

13. Two of the remedies included in the strategic review relate to the award of rail franchises, both of which are less than 10 years old. However, the railway franchises in both instances have been brought under public ownership and therefore the provisions of the undertakings no longer apply.

³ The reason that no such interest exists is either due to the form of the original divestment, because the purchaser sold their interest or because the successor to the divestment site is no longer active in the relevant market, this case being the anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited [ME/4551/10] (**Asda/Netto**).

⁴ The CMA assesses how mergers could affect competition in the UK. We do not investigate all mergers – but only those that meet certain legal criteria. Under the Act, the CMA has a duty to refer certain mergers raising competition concerns in the UK for an in-depth ‘phase 2’ investigation. See [Mergers: Guidance on the CMA’s jurisdiction and procedure \(CMA2\)](#), 28 October 2025, which describes the procedures used by the CMA in operating the merger control regime set out in the Act.

⁵ Excluding the two railway franchise remedies, which we propose to release for different reasons (see paragraphs 13 and 14 below).

14. As such we propose to release these undertakings as part of the strategic review.

NOTICE

15. Therefore, the CMA is discharging its duty under Schedule 10 of the Act by publishing a Notice of intention to release (the **Notice**) such remedies and to consult on that notice for a minimum of 15 days (in the case of the undertakings) or 30 days (in the case of the one order included within the strategic review).
16. The CMA is giving Notice to release the specific remedies indicated on the case page.