

Mergers

Draft revised merger remedies guidance

Summary of responses to the consultation

19 December 2025

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1. Introduction

Background

- 1.1 The Competition and Markets Authority (**CMA**)¹ has set out in published guidance general information for the business and legal communities and other interested parties on its practices and processes in connection with its powers under the Enterprise Act 2002 (as amended) (the **Act**) to investigate mergers.²
- 1.2 Mergers Remedies (CMA87) (the **Current Guidance**) sets out the CMA's approach to the selection, design and implementation of remedies in merger cases. It originally took effect on 13 December 2018 and sought to provide a single source of guidance on remedies for phase 1 and phase 2 merger investigations. It therefore superseded the Competition Commission (**CC**) guidelines on merger remedies and Chapter 5 of the Office of Fair Trading (**OFT**) guidelines on undertakings in lieu of a reference (**UILs**).
- 1.3 Earlier this year the CMA launched a formal review of our approach to merger remedies, seeking input from all interested parties (the **Merger Remedies Review**). The Merger Remedies Review involved an extensive evidence gathering exercise including a public call for evidence (the **Call for Evidence**) from March until May 2025, a literature review, and direct third-party engagement, including with a number of international competition authorities, UK sectoral regulators, businesses and industry associations. The CMA has carefully worked through all the evidence received to ensure we are in the best possible position to improve our approach to merger remedies.
- 1.4 On 16 October 2025, the CMA published a draft revised version of the Current Guidance³ for consultation with interested parties (the **Draft Revised Guidance**). The purpose of the revisions in the Draft Revised Guidance is to embed the CMA's [new '4Ps' framework](#), as announced in February 2025, into the CMA's approach to merger remedies and processes. The Draft Revised Guidance was published along with a consultation document (the **Consultation Document**) which explained the proposed amendments.⁴ The Draft Revised Guidance also contained an appendix of merger remedies process amendments, which the CMA proposed would be implemented

¹ The CMA is the UK's economy-wide competition and consumer authority. The CMA is a non-ministerial department. For more information see: [Competition and Markets Authority - GOV.UK](#)

² This guidance forms part of the advice and information published by the CMA under section 106 of the Act.

³ See the [Draft Revised Guidance](#).

⁴ See the [Consultation Document](#).

through a further revision of the CMA's Guidance on Jurisdiction and Procedure (**CMA2**).⁵

- 1.5 In its consultation on the Draft Revised Guidance, the CMA sought views on a number of issues falling within three themes: i) the CMA's approach to merger remedies; ii) how merger remedies can ensure that pro-competitive merger efficiencies and merger benefits are preserved; and iii) how the CMA can ensure its merger remedies process remains as efficient as possible.
- 1.6 The consultation on the Draft Revised Guidance ran between 16 October 2025 and 13 November 2025. The CMA received 17 responses to the consultation from those in the competition adviser community (legal advisers, associations of legal advisors, economic consultants), trade associations and companies that have been involved with the CMA's merger processes.⁶ A full list of respondents is set out in Section 5.
- 1.7 The CMA has reviewed the consultation responses to reflect on what, if any, further revisions are required to the Draft Revised Guidance and CMA2. The key revisions that the CMA has made to the Draft Revised Guidance and CMA2, including to address the comments received in response to the Consultation, are explained below. Section 2 relates to Issues raised relating to the CMA's approach to merger remedies, Section 3 to Issues raised relating to merger efficiencies and merger benefits, Section 4 to Issues raised relating to the CMA's merger remedies process and Section 5 provides the List of respondents.
- 1.8 The CMA is now publishing an updated version of the Current Guidance (the **Final Revised Guidance**) and a revised version of CMA2 (**Final Revised CMA2**) to embed the CMA's changes to its remedies approach and processes. Both the Final Revised Guidance and the Final Revised CMA2 will take effect on 19 December 2025 and will apply to cases where the formal phase 1 investigation commences on or after 19 December 2025.
- 1.9 The CMA would like to thank all those who responded to the consultation. The overall engagement on the proposed revisions has been invaluable. Even where the CMA has not adopted particular suggestions, it has nevertheless generated conversations and an increased understanding of the interests of those engaging with the CMA's mergers process.

⁵ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#).

⁶ The CMA received 12 responses from the competition adviser community, 3 from trade associations and 2 from companies.

Purpose of this document

- 1.10 This consultation document is not intended to be a comprehensive record of all views expressed, nor to be a comprehensive response to all individual views. However, it sets out the general views received and those issues that the CMA considers are useful to address directly. Non-confidential versions of all responses to the consultation are available on the consultation webpage.⁷
- 1.11 This document should be read in conjunction with the Consultation Document, which contains further background on the reasoning for the CMA's updates to the Final Revised Guidance and Final Revised CMA2. It should also be read in conjunction with these documents.

⁷ See the [Revised Merger Remedies Guidance webpage](#).

2. Issues raised relating to the CMA's approach to merger remedies

- 2.1 The Draft Revised Guidance proposed changes in five key areas:
- (a) Our approach to analysing the effectiveness and proportionality of remedies;
 - (b) Our approach to behavioural and structural remedies;
 - (c) Our approach to complex structural remedies;
 - (d) Our approach to remedies at phase 1; and
 - (e) Our approach to the use of trustees and independent experts to assess, monitor and enforce remedies.
- 2.2 Overall, many respondents welcomed the CMA's proposed changes within these areas, saying they added clarity to the CMA's proposed approach to merger remedies and were consistent with embedding the 4Ps. This document therefore focuses on those areas where respondents submitted that further changes or clarifications to the CMA's proposed approach were required. Further detail on the respondents' views is set out below.
- 2.3 In several areas, respondents submitted that the CMA should provide further or more specific detail about the approach it would apply in individual cases. As outlined in both the Current Guidance and the Draft Revised Guidance, while the CMA will have regard to its guidance in considering remedial action in merger investigations, in each investigation, the appropriate remedy will be determined by having regard to the particular circumstances of the case, and the CMA has discretion in how it applies this framework in individual cases. Where not expressly stated, the CMA therefore does not consider that such additional detail is necessary.

Approach to effectiveness and proportionality

Sequential consideration

Summary of responses

- 2.4 A number of respondents stated that the approach in the Draft Revised Guidance of considering first effectiveness and then proportionality in sequence was not necessary or desirable and a more integrated or holistic

approach to assessing effectiveness and proportionality should be adopted. Some also said that the approach was not consistent with the CMA's 4Ps.

2.5 In particular, respondents stated that the sequential approach:

- (a) is not demanded by the starting point set out in s73(3) of the Act, ie 'the need to achieve as comprehensive a solution as is reasonable and practicable'.
- (b) places excessive weight on finding a 'comprehensive' solution at the outset, to the detriment of being 'reasonable and practical' (ie proportionate). One respondent said that delaying consideration of credible remedies which the CMA does not view as 'comprehensive' but would nevertheless be largely effective and proportionate until after a sequential two-step assessment risks inefficiencies and is at odds with the CMA's pace and process objectives under the 4Ps.
- (c) creates a heightened evidentiary burden, requiring merger parties to prove with high certainty that their proposed remedies will effectively address the substantial lessening of competition (**SLC**). By balancing consideration of remedy effectiveness and proportionality, the CMA would better align itself with its strategic steer, providing greater predictability and ensuring competition regulation that minimises the risk of overregulating dynamic and innovative markets.
- (d) might risk disincentivising innovation and contestability in highly dynamic and investment-driven sectors, such as digital markets. By prioritising effectiveness over the proportionality of remedies, the CMA could miss pro-competitive remedies that address an SLC while being minimally intrusive.

2.6 One respondent stated that if the CMA elects not to move to a holistic assessment, it should develop a working practice which effectively operationalises the CMA's new approach of considering multiple (not necessarily 'equally') effective remedies and routinely progressing largely (or even partially) effective remedies to its proportionality assessment, rather than discarding them at the effectiveness stage. They said this approach would ensure that the CMA considers a full range of remedy proposals at each stage of its assessment, rather than immediately focusing on remedies with 'high effectiveness scores' that may prove disproportionate or costly to implement.

The CMA's views

- 2.7 The CMA remains of the view outlined in the Consultation Document that an analytical framework that sequentially considers the effectiveness and then proportionality of merger remedies remains appropriate.
- 2.8 This is because the sequential approach has due regard to both effectiveness and proportionality. The first step (effectiveness) ensures that the CMA does not end up accepting ineffective remedies that do not resolve the SLC - leaving consumers and businesses worse off. The second step ensures that remedies are proportionate and that the least intrusive remedy that is effective is selected. If, exceptionally, the only effective remedy involves disproportionate costs, the CMA will go on to consider mitigations.
- 2.9 As outlined in the Consultation Document, the CMA considers that this analytical framework is legally robust as it is consistent with the legal framework set out in the Act and the public law proportionality principles recognised by the case law. Moreover, this approach is clear and easy to explain and understand.

Approach to mitigation

Summary of responses

- 2.10 A large number of respondents welcomed the express acknowledgement in the Draft Revised Guidance that mitigations (ie remedies which will only be partially effective in resolving the SLC) may be relevant in the exceptional circumstances where there is no remedy which is both effective and proportionate.⁸
- 2.11 However, a number of respondents also suggested that the Final Revised Guidance should adopt a broader approach to mitigations. In particular, respondents stated that:
- (a) s41(2) and 73(1) of the Act specifically and explicitly provides for orders and undertakings for the purpose of 'mitigating' – as an alternative to 'remedying' or 'preventing' – an SLC and are an integral part of the architecture of the merger control system, expressly envisaged in the legislation. Moreover, proportionality (as a public law obligation on the CMA, as well as a current policy priority) requires that mitigating remedies be accepted where appropriate. Consequently, the CMA should not

⁸ [Draft Revised Guidance](#), paragraph 3.23.

interpret the requirement for remedies to be ‘comprehensive’ as an absolute bar to mitigation where such measures are proportionate and practical to address any finding of an SLC.

- (b) The statement that the CMA will only consider mitigations in exceptional circumstances may unduly restrict the CMA’s ability more broadly to find a remedy that strikes an appropriate balance between effectiveness and proportionality considerations. The circumstances under which the CMA will consider partially effective remedies should be broadened by either removing the restriction that partially effective remedies will only be considered in exceptional circumstances, or by clarifying that a remedy that fully 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.
- (c) Given the fact-specific nature of remedy design, full consideration of mitigation remedies at earlier stages of review could enable the CMA to more appropriately tailor merger remedies to address an SLC without risking harm to innovation or chilling investment.

The CMA’s views

- 2.12 The CMA does not consider that it should adopt a broader approach to mitigating remedies relative to the position outlined in the Draft Revised Guidance for the reasons outlined in the Consultation Document.
- 2.13 As with the sequential approach to effectiveness and proportionality, the CMA’s approach to mitigation remedies reflects the requirement in the Act for the CMA to ‘have regard to *the need* to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it’ (emphasis added) and also relevant case law.
- 2.14 In *Ecolab*,⁹ the Competition Appeals Tribunal (the **CAT**) said that ‘the duty on the CMA was to find ‘as comprehensive a solution as was reasonable and practicable’ for the purpose of remedying, preventing or mitigating’ the SLCs’, and that this duty was ‘encapsulated in the concept of an ‘effective remedy’ discussed in CMA87.’ The CAT emphasised, citing the Court of Appeal judgement in *Ryanair*,¹⁰ that ‘this is a high duty’. The CAT also held that it was

⁹ *Ecolab v CMA* [2020] CAT 12 (*‘Ecolab’*), paragraphs 58-59, 73-74 and 76.

¹⁰ *Ryanair Holdings PLC v CMA* [2015] EWCA Civ 83 (*‘Ryanair’*), paragraph 57.

reasonable for the CMA to not favour a remedy for which it could not feel a 'high degree of confidence of success'.

- 2.15 The CMA also considers that this approach to mitigation is supported by important policy considerations. At the end of a phase 2 investigation where remedies are involved, the CMA will have both decided that a market is of a certain level of importance for the UK (or the case would have been de minimised in phase 1) and that substantial competitive harm is likely to result from the merger. In those circumstances, unless the overall effect of the merger (or the merger with the weaker remedy) on consumer welfare in the UK is positive notwithstanding the SLC (eg because of relevant customer benefits (**RCBs**)) the CMA should therefore be requiring that harm to be addressed in full as far as possible.
- 2.16 Finally, the CMA is concerned that considering mitigations from the outset would not incentivise parties to focus on effective solutions to the competition concerns identified, and instead potentially increase the likelihood of remedies proposals that are unlikely to be credible.

Approach to proportionality

Summary of responses

- 2.17 Many respondents stated that they supported the CMA expressly recognising in the Draft Revised Guidance that it will weigh 'relevant costs' when choosing the least onerous (ie most proportionate) effective remedy, and the additional guidance provided as to what these 'relevant costs' will include.¹¹
- 2.18 However, a large number of respondents also criticised the proposed clarification that the CMA would generally attribute 'considerably' less significance to the costs of a remedy that will be incurred by the merger parties.¹²
- 2.19 One respondent also stated that it would be helpful if the Final Revised Guidance included some additional examples of circumstances where behavioural remedies may be less costly than structural remedies, to ensure that this is not in practice limited to circumstances where RCBs would otherwise be lost.

¹¹ [Draft Revised Guidance](#), paragraph 3.14-3.15.

¹² [Draft Revised Guidance](#), paragraph 3.16.

The CMA's views

- 2.20 The CMA remains of the view that the approach outlined in the Draft Revised Guidance of attributing considerably less significance to the costs of a remedy that will be incurred by the merger parties compared to the costs that will be imposed by a remedy on third parties, the CMA and other monitoring agencies remains appropriate. This is because, as outlined in the Draft Revised Guidance, the merger parties have the choice of whether or not to proceed with the merger, and upon what terms.
- 2.21 The CMA also does not consider it is necessary or desirable to provide further examples of circumstances where behavioural remedies may be less costly than structural remedies beyond circumstances where RCBs would otherwise be lost. This is because the Draft Revised Guidance already recognises that behavioural remedies will often be less intrusive from the merger parties' perspective than structural remedies,¹³ so that it is already clear that where effective, a behavioural remedy will be preferred by the CMA on proportionality grounds.

Approach to behavioural and structural remedies

Approach to behavioural remedies

Summary of responses

- 2.22 Many respondents welcomed the CMA's proposed revisions to its approach to behavioural remedies, and in particular the recognition that they can be effective in some cases.¹⁴ Many respondents also stated that the CMA's proposed changes added significant clarity on the CMA's position on behavioural remedies relative to the Current Guidance.
- 2.23 However, a large number of respondents also said the CMA's approach to behavioural remedies remained overly strict and that the CMA should have gone further to signal its willingness to accept behavioural remedies. In particular, respondents stated that:
- (a) the CMA should consider behavioural remedies on an equal footing to structural remedies and remove presumptions against behavioural

¹³ [Draft Revised Guidance](#), paragraph 3.20.

¹⁴ [Draft Revised Guidance](#), paragraph 7.2.

remedies that remain in the Draft Revised Guidance, to ensure that the guidance reflects a neutral position overall.

- (b) the CMA should expressly state that there is no presumption against the acceptance of behavioural remedies at phase 1 and make clearer that behavioural remedies are not reserved for vertical cases (or horizontal cases only where needed to secure rivalry-enhancing efficiencies).
- (c) similar considerations support the use of behavioural remedies in respect of conglomerate mergers as for vertical mergers, but the Draft Revised Guidance does not discuss this point in any detail. The guidance should be revised to make clear that behavioural remedies may similarly be appropriate in conglomerate (as well as vertical) cases in line with the academic evidence cited in the Draft Revised Guidance.
- (d) the CMA remains cautious to apply behavioural remedies to horizontal mergers and further explanation or guidance should be provided as to the circumstances in which the CMA may be prepared to accept behavioural remedies in horizontal mergers (particularly given the detailed guidance relating to behavioural remedies in vertical mergers).
- (e) behavioural remedies can also be appropriate in dynamic, innovation-driven markets. Such markets are more likely to change materially, making permanent structural remedies less appropriate, effective or necessary. In technology-driven sectors, access to data, applications, platforms, or intellectual property is often more critical to preserving competition than maintaining market structure through asset transfers. As such, the CMA should adopt an open, fact-specific approach in innovative and dynamic markets and carefully assess whether behavioural remedies are viable.
- (f) The CMA should recognise that controlling remedies can be highly effective in certain cases - for example price caps in pharmaceutical markets, where structural remedies risk undermining innovation and patient access and the CMA should recognise these as viable options, when properly specified and monitored.
- (g) Overall, the application of behavioural remedies remains heavily caveated and the burden on the parties to meet the CMA's threshold to consider behavioural remedies remains very high.

The CMA's views

- 2.24 The CMA does not consider that further changes to signal an increased willingness to considering behavioural remedies relative to the position in the Draft Revised Guidance are necessary or desirable.
- 2.25 In particular, the CMA considers that it should continue to prefer structural remedies over behavioural remedies. This is because structural remedies typically address the SLC at source by restoring the rivalry lost as a result of the merger, and most behavioural remedies do not do so. A structural remedy is therefore generally more likely to be effective in resolving the SLC and its adverse effects than a behavioural remedy.¹⁵ However, the Draft Revised Guidance also recognises that behavioural remedies can be effective in certain circumstances at both phase 1 and phase 2 and sets out factors that may help reduce the risks associated with their use. The CMA considers that this strikes an appropriate balance between structural and behavioural remedies.

Approach to structural remedies

Summary of responses

- 2.26 Aside from in relation to the sub-section of the Draft Revised Guidance which focuses on complex divestiture remedies such as carve-outs (which is considered under a separate heading below) the CMA received few comments in relation to the approach to structural remedies as set out in Chapter 6 of the Draft Revised Guidance.
- 2.27 One respondent said that the CMA had not given reasons for an apparent change of position on 'virtual divestitures' (eg, divestment of production capacity). They noted that the Current Guidance contemplates this as a remedy that the CMA may accept where there is good reason to do so and the risks can be contained. In contrast, the Draft Revised Guidance seems to take a more restrictive position, stating that the CMA will not typically consider such arrangements as a 'primary remedy'.
- 2.28 One respondent noted that the Draft Revised Guidance, in discussing the appointment of divestiture trustees, no longer adopts the position in the Current Guidance that such an appointment may only take place at the outset of the divestiture process in 'unusual cases'. The respondent submitted that given the highly intrusive nature of such a measure, only in exceptional cases

¹⁵ [Draft Revised Guidance](#), paragraphs 3.8(a), 4.8 and 7.2.

will it be appropriate to appoint a divestiture trustee at the outset of the process and this wording should therefore be reinstated.

The CMA's views

- 2.29 The CMA does not agree that additional detail should be provided as to the reasons for its stricter position towards so called 'virtual divestitures' in the Draft Revised Guidance. The CMA considers that the footnote is sufficiently clear already, and in particular notes that the reason for this position is that such remedies may have higher risks and costs than a conventional divestiture of a standalone business and may require ongoing monitoring and compliance activity.¹⁶ The CMA notes in this respect that the 2023 ex-post study on carve-out remedies commissioned by the CMA, which is one of the studies summarised in the CMA's Merger remedy evaluations (CMA186), found that a remedy of this nature had not been effective.¹⁷
- 2.30 The CMA also does not consider that the wording used in the Current Guidance, that a divestiture trustee will only be appointed at the outset of a divestiture process 'in unusual cases' should be reinstated in the Final Revised Guidance. While the CMA agrees that it will typically be unusual for this step to be taken, the ability to appoint a divestiture trustee at this stage of the process is an important safeguard which the CMA considers should be retained with maximum flexibility as to its potential use.

Approach to complex structural remedies

'Carve out' remedies

Summary of responses

- 2.31 Several responses stated that the CMA had overstated the risks of carve-out remedies. In particular:
- (a) One respondent said that the CMA should have more faith in the merger and acquisition process and give due credit to a business' ability to assess for itself whether a due diligence process is sufficiently robust. They said that the Draft Revised Guidance's insistence that there are significant information asymmetries between the seller and purchaser/the CMA around what is needed for the divestment business to compete

¹⁶ [Draft Revised Guidance](#), footnote 75.

¹⁷ [CMA Merger remedy evaluations \(CMA186\)](#), 24 October 2023, paragraph 1.7.

effectively limits the usefulness of a buyer's due diligence and suggests both undue scepticism towards businesses as well as misplaced protectionism, which they said is fundamentally contrary to the Mergers Charter and the quest for growth.

(b) Another respondent urged the CMA to reconsider this position, particularly in circumstances where a carve-out could deliver a viable and effective solution without undermining the integrity of the divested business or creating disproportionate implementation challenges.

2.32 One respondent said the CMA should provide further guidance on the circumstances where it may be amenable to arguments that a divestment purchaser could compensate for the deficiencies of a divestiture package (which it noted the Draft Revised Guidance states the CMA 'will not typically accept').

The CMA's views

2.33 The CMA disagrees that the Draft Revised Guidance overstates the risks associated with carve-out remedies, and that the merger and acquisition process provides sufficient assurance as to the absence of material risks in relation to the asset, composition and purchaser risks involved in such remedies.

2.34 In particular, the CMA's position on these risks, which is reflected in the Draft Revised Guidance, is derived from both its practical experience of these remedies and the studies summarised in CMA186. The ex-post study summarised in CMA186 noted that carve-out remedies carried greater composition and purchaser risk than divestiture of a standalone business, which increase the risk that the remedy will not be effective.

2.35 In particular, the CMA considers that there are likely to be information asymmetries between the merger parties and the CMA / purchaser of the divestiture remedy regarding what assets, staff, business units and support functions are necessary in order to compete effectively in the relevant market, and the incentives of the merger parties and the CMA may not be aligned in making this delineation. As noted in CMA186, the ex-post review of carve-out remedies commissioned by the CMA found that purchasers face challenges in conducting robust due diligence on divestiture packages in carve-out remedies, which limits the usefulness of such diligence against composition risk. In addition, the CMA notes that purchasers may account for potential deficiencies in the package, including those which they are unable to identify in due diligence, in the purchase price.

- 2.36 The same principles will apply in relation to the approach the CMA uses to determine the circumstances in which a divestment purchaser could compensate for the deficiencies of a divestiture package. On this basis, the CMA again considers that no further guidance is necessary or desirable.

'Mix and match' remedies

Summary of responses

- 2.37 Two respondents noted that the Draft Revised Guidance no longer refers to the CMA's approach in relation to 'mix-and-match' remedies or expresses a preference for avoiding such remedies, in contrast to the Current Guidance. They noted that the removal of this section of the guidance is not explained in the consultation document and sought clarification on the CMA's approach, which they said should be made explicit.
- 2.38 Both of these respondents submitted that the CMA's position should be that mix and match remedies should be accepted in certain circumstances. One of these two respondents submitted that in line with the Draft Revised Guidance's focus on assessing each remedy on its merits, the CMA should state that a mix and match remedy may be accepted, provided any incremental composition risks are adequately addressed.
- 2.39 The second of these two respondents submitted that the CMA's approach should be that 'mix-and match' divestitures are not less preferable than divestitures emanating entirely from one of the merger parties and that this point should be explicitly stated in the Final Revised Guidance. They submitted that this approach would be in line with the 4Ps framework, the Mergers Charter and recent CMA decisions (such as the recent Schlumberger / ChampionX¹⁸ and Topps Tiles / CTD Tiles¹⁹ merger inquiries), as there may be instances where a mix-and-match remedy would be the most proportionate option available to remove the SLC.

The CMA's views

- 2.40 The CMA agrees that it would be useful to provide further guidance on its position in relation to mix-and-match remedies, and that such remedies should be accepted in certain circumstances. The Final Revised Guidance outlines that while it will generally be preferable for a divestiture package to come from only one of the merger parties, a mix and match package

¹⁸ See the [Schlumberger/ChampionX case page](#).

¹⁹ See the [Topps Tiles/CTD Tiles case page](#).

comprising assets from more than one merger party will be acceptable where it can be shown to be effective, in line with the CMA's usual criteria, and in particular where the additional composition risks associated with this approach have been appropriately mitigated.

Approach to remedies at phase 1

Validity of the 'clear-cut' standard

Summary of responses

- 2.41 Some respondents questioned the validity of the approach in the Draft Revised Guidance of requiring that remedies in phase 1 are 'clear-cut' and 'capable of ready implementation,'²⁰ or suggested that the CMA's proposed approach to applying this standard should be relaxed.
- 2.42 Several respondents stated that the CMA should provide greater clarity over when behavioural remedies will be sufficient at phase 1 through examples of possible behavioural remedies that meet the 'clear cut' standard. They stated that without additional clarity there remains uncertainty as to whether behavioural remedies will ever be sufficient to avoid a referral to phase 2.
- 2.43 Many respondents welcomed the additional guidance as to the relevance of early engagement to the ability to meet the clear-cut standard. However, one respondent stated that the Draft Revised Guidance should state expressly that the earlier parties start engaging with the CMA on remedies, the more likely it is a remedy will meet the 'clear-cut' standard. They noted that the current text implies this but falls short of explicitly stating it, as contemplated by paragraph 3.57(b) of the Consultation Document.
- 2.44 Another respondent stated that the new guidance that earlier engagement on remedies increases the parties' chances of meeting the clear-cut standard essentially serves to prejudice those parties who choose to follow the traditional sequential process of discussing remedies only after it is clear these will be required. They stated that whilst opening up this additional route of early engagement is positive for those parties who wish to twin-track these discussions, the Final Revised Guidance should be explicit that securing a remedy at phase 1 will still be possible for parties who do not wish to engage with the CMA early but instead wish to follow the sequential route.

²⁰ [Draft Revised Guidance](#), paragraph 4.3.

The CMA's views

- 2.45 As outlined in the Consultation Document, the approach to phase 1 remedies outlined in the Draft Revised Guidance is based on the fact that once UILs have been accepted, s74(1) of the Act precludes a reference to phase 2, so the CMA must be confident that all of the potential competition concerns that have been identified at phase 1 would be resolved by means of the UILs without the need for further investigation. In addition, the clear-cut standard also reflects practical considerations, because UILs of such complexity that their implementation is not feasible within the constraints of the short phase 1 remedies timetable are unlikely to be accepted.
- 2.46 The CMA continues to consider that this standard exists for sound policy reasons given the statutory time limits of phase 1 and as the competition concerns have not been subject to the more detailed investigation that the CMA carries out in phase 2. As noted previously, this approach is also consistent with the approach of other authorities (including the European Commission), and in line with a number of stakeholder submissions in response to our Call for Evidence which accepted the need for a different standard for the CMA to accept remedies at phase 1 compared to phase 2.²¹
- 2.47 The CMA also does not consider that further clarifications are required in relation to its approach to behavioural remedies in phase 1 cases. The CMA has provided, in sections 4 and 7 of the Draft Revised Guidance in particular, a detailed articulation of the principles that the CMA will use in assessing the effectiveness of a remedy proposal made in phase 1, including a proposal of a behavioural remedy. More broadly, the CMA's overall approach in relation to behavioural remedies, and its views in relation to other submissions received on this issue in response to the Draft Revised Guidance were addressed in the sections above.
- 2.48 As outlined in both the Current Guidance and the Draft Revised Guidance, while the CMA will have regard to its guidance in considering remedial action in merger investigations, in each investigation, the appropriate remedy will be determined by having regard to the particular circumstances of the case. For this reason, the CMA considers that it is neither necessary nor desirable to add further specific examples as to when behavioural remedies will be acceptable in a phase 1 context.

²¹ The responses to our Call for Evidence are available at '[review of merger remedies approach](#)'. Review of merger remedies approach - GOV.UK.

- 2.49 Finally, the CMA notes the points made in relation to the relevance of early engagement to the ability to meet the clear-cut standard. The CMA has expressly confirmed in the Final Revised Guidance that early constructive engagement on potential remedies can maximise the chance that a more complex remedy proposal will meet the clear-cut standard, as it gives the CMA time to fully assess the risks and consider appropriate safeguards. However, the CMA does not consider that any clarification is necessary to state that lack of such early engagement does not preclude a phase 1 remedy outcome where the remedy involved is more straightforward to assess.

Other points

Summary of responses

- 2.50 One respondent stated that the CMA's preference for an upfront buyer in phase 1²² imposes a significant procedural hurdle on merger parties, which can frustrate the adoption of effective remedy packages. They stated that it is often difficult for merger parties to market and agree divestiture packages within the 90-day timeframe following an SLC finding. They also considered that many of the risks associated with not having an upfront buyer can be addressed through the CMA's existing powers, including the ability to refer a transaction to phase 2 if the initial sale is unsuccessful. The respondent recommended that the CMA moves away from a presumption requiring an upfront buyer at phase 1 and instead clarifies that such a requirement is more likely at phase 1 than at phase 2.
- 2.51 Another respondent noted that, in the context of mergers involving local markets considered at phase 1, the Draft Revised Guidance has clarified that the CMA may accept divestiture remedies that do not remove the entire increment caused by the merger in the market or markets in which the potential SLC has been identified based on a filter or decision rule. They welcomed this change but stated that the CMA should consider expanding this approach beyond local market cases. They stated that there is no reason why the divestiture of assets that reduce the merged entity's position below the level at which there is a realistic prospect of an SLC could not fully resolve competition concerns in mergers where the geographic market is national (or wider), and even in mergers involving local markets where a filter or decision rule has not been applied.

²² [Draft Revised Guidance](#), paragraph 6.63.

The CMA's views

- 2.52 The CMA notes the challenges outlined in relation to merger parties marketing and agreeing divestiture packages within the 90-day timeframe following an SLC finding. However, the CMA considers that these challenges can be significantly mitigated through early engagement with the CMA on a without-prejudice basis.²³
- 2.53 The CMA also does not agree that the risks associated with not having an upfront buyer can be addressed through the CMA's existing powers, including the ability to refer a transaction to phase 2 if the initial sale is unsuccessful. In particular, where the CMA does not impose an upfront buyer requirement and the initial sale is unsuccessful, the CMA will have lost its ability to refer the transaction to phase 2 and be forced to rely on the existing mechanisms for resolving the competition concerns outlined in the UILs.²⁴ While, at phase 1 or phase 2, undertakings given to the CMA without an upfront buyer will typically provide for the appointment of a divestiture trustee to sell the divestiture business (or greater if necessary) at no minimum price in the event that the merger parties do not achieve a sale within the stated divestiture period, this is of limited benefit if there are no interested suitable purchasers.
- 2.54 The CMA also does not consider that it is appropriate to alter the position outlined in the Draft Revised Guidance that it will generally require the divestiture of the entire overlap giving rise to an SLC, except in phase 1 mergers involving local markets where the CMA has applied a filter or decision-rule. As outlined in the Consultation Document,²⁵ the reasons for this specific exception is that in these cases the CMA has set a threshold for when a realistic prospect of an SLC arises, so divestments of sites that bring the merged entity below that threshold would address that prospect even if they do not eliminate the entire overlap, and to ensure there is no inconsistency between transactions in which merger parties divest enough of the overlap prior to the investigation (ie a fix-it-first remedy) to prevent concerns arising and UILs after the CMA has identified a concern. The CMA does not consider that this rationale applies more widely, and in particular in cases where the potential for competition concerns have not been analysed through the use of a filter or decision rule.

²³ [CMA2](#), 19 December 2025, paragraph 10.9.

²⁴ [Draft Revised Guidance](#), paragraph 6.63.

²⁵ [Consultation Document](#), paragraph 3.58.

Approach to the use of trustees and independent experts to assess, monitor and enforce remedies

Summary of responses

- 2.55 In general, respondents strongly supported the increased use of monitoring trustees and independent experts to assess, monitor and enforce remedies.
- 2.56 Two respondents stated that the Final Revised Guidance should clarify whether the CMA would have any concerns about the same monitoring trustee carrying out these different roles (or, conversely, would typically welcome or even expect this).
- 2.57 One respondent noted that the Draft Revised Guidance outlines several different roles that might support a remedy: ie a monitoring trustee, divestiture trustee, adjudicator, and an independent expert. They suggested clarifying that these roles are not mutually exclusive but can sometimes be performed by a single person or organisation.
- 2.58 One respondent noted that the Draft Revised Guidance does not capture trustee responsibilities, independence, and reporting obligations. They submitted that adding this content would improve transparency and manage the expectations of businesses, so they understand how all parties (monitoring trustees, the CMA and the merger parties) are expected to interact.
- 2.59 One respondent said that the Final Revised Guidance should provide examples of what might be considered a possible conflict of interest for a monitoring trustee, divestiture trustee, adjudicator, or independent expert. They noted that 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.
- 2.60 One respondent noted that Chapter 4 of CMA136,²⁶ which sets out the CMA's approach to enforcement in respect of breaches of merger remedies, including when it will consider informal action, as well as other types of formal enforcement, including directions, was not replicated in the Draft Revised Guidance. It submitted that the CMA should therefore reinstate some of its current practice and procedure into the Final Revised Guidance, as well as

²⁶ [Markets and Merger remedies: Guidance on reporting, investigation, and enforcement of potential breaches \(CMA136\)](#), 11 May 2023.

adding more information on the process it will follow in cases where it is minded to pursue civil penalties.

The CMA's views

- 2.61 The CMA agrees that it would be helpful for the Final Revised Guidance to clarify that the same firm can perform the different roles for monitoring trustees envisaged in the Draft Revised Guidance.
- 2.62 The CMA also agrees that it would be helpful for the Final Revised Guidance to clarify that the roles of monitoring trustee, divestiture trustee, adjudicator, and an independent expert are not mutually exclusive but can sometimes be performed by the same firm or individual.
- 2.63 The CMA recognises that the Draft Revised Guidance does not capture trustee responsibilities and reporting obligations and that adding this content to the Final Revised Guidance would improve transparency and manage the expectations of businesses, so they understand how all parties (monitoring trustees, the CMA and the merger parties) are expected to interact. However, the CMA also notes that such responsibilities and reporting obligations will vary from case to case and so considers it is not possible to fully capture this in the Final Revised Guidance. With regard to trustee independence, the CMA notes that this is covered in paragraph 8.6 of the Draft Revised Guidance, such that no further changes are necessary.
- 2.64 The CMA disagrees that the Final Revised Guidance should provide examples of what might be considered a possible conflict of interest for a monitoring trustee, divestiture trustee, adjudicator, or independent expert. The CMA considers that this is likely to be context specific and that it is difficult to provide guidance in the abstract. However, the CMA will consider, as a separate workstream to the publication of the Final Revised Guidance, the possible development of a trustee mandate template, to bring the CMA's practice into line with that of the European Commission.
- 2.65 Finally, the CMA notes that the CMA's approach to the use of administrative penalties, including in the merger remedies context, is set out in Chapter 3 of CMA4, which was updated in December 2024.²⁷

²⁷ [Administrative penalties: Statement of Policy on the CMA's Approach \(CMA4\)](#), 19 December 2024.

3. Issues raised relating to merger efficiencies and merger benefits

- 3.1 Remedy Theme 2 focused on how remedies can be used to preserve two types of potential benefits from mergers: locking in pro-competitive (ie rivalry enhancing) efficiencies in the markets where the competition concern arises; and RCBs, which can arise in or outside the market in which the competition concern arises

CMA's approach to Rivalry Enhancing Efficiencies

Summary of responses

- 3.2 A large number of respondents welcomed the express recognition in the Draft Revised Guidance that the CMA will consider enabling remedies that secure merger-specific efficiencies as potentially capable of resolving the CMA's competition concerns. Similarly, a large number of respondents welcomed the announcement that the CMA will be further exploring its approach to the substantive assessment of efficiencies in due course.
- 3.3 Some stakeholders expressed views on points which relate to the CMA's approach to assessing efficiencies as part of its competitive assessment rather than remedies.

The CMA's views

- 3.4 The CMA will take into account the points raised relating to the CMA's approach to assessing efficiencies as part of its future work on efficiencies. The CMA will consider whether there is a need to further revise its approach to rivalry-enhancing efficiencies in the remedies context in light of this separate work in due course.

CMA's approach to Relevant Customer Benefits

Summary of responses

- 3.5 A number of respondents focused on the position outlined in the Draft Revised Guidance that the CMA proposed to retain the high evidentiary bar for RCBs. Several respondents recognised the need to adopt this position in light of the relevant explanatory notes to the Act,²⁸ although one noted the

²⁸ Explanatory notes to Section 30 of the Act.

practical challenges of gathering such evidence within the timeframe of a CMA remedies process. One respondent welcomed the clarification that the CMA will make this assessment in the round, rather than seeking to quantify precisely the extent of any SLC and any claimed RCB.

- 3.6 However, a number of respondents considered that the CMA should lessen this high evidentiary bar and adopt a ‘more pragmatic approach’, which they said was needed to ensure that parties were not deterred from making RCB claims. This would, they claimed, in turn run the risk of limiting the influence of RCBs on remedy design, even where these benefits could deliver significant consumer welfare gains.
- 3.7 One respondent said that requiring parties to prove RCBs with a high degree of certainty places an undue burden on merger parties, particularly those operating in highly dynamic markets. They said that by adopting a more flexible evidentiary approach, the CMA can incentivise parties to submit credible RCB submissions and support proportionate remedies that prioritise innovation and consumer benefits.
- 3.8 A number of respondents also said that the CMA should provide further detail and guidance on its approach to RCB claims, and in particular provide worked examples of how such claims would be assessed, to clarify how parties can credibly substantiate such benefits, including the types of evidence the CMA considers persuasive.
- 3.9 One respondent said that as part of the CMA’s alignment with its pro-growth strategic steer, the CMA should explicitly consider, as part of its merger remedy process, the effects of a proposed remedy on the incentives and abilities of merger parties and their rivals to innovate. They submitted that the CMA could do this by explicitly prioritising engagement with merger parties on remedies that preserve or strengthen incentives to innovate. They said that early, without-prejudice discussions in both phases 1 and 2 would encourage firms to propose innovation-enhancing rivalry-enhancing efficiencies (**REEs**), and to demonstrate RCBs stemming from increased innovation, productivity, and market dynamism.
- 3.10 One respondent noted that the call for evidence referred to the CMA’s ability to consider sectoral regulators’ views in assessing RCBs, but the draft Guidance does not include any express reference to this. It suggested that the CMA should consult with sectoral regulators and other experts, where relevant, to enhance its evaluation of RCBs.

The CMA's views

- 3.11 The CMA remains of the view set out in the Consultation Document that adopting a high evidentiary bar for RCB claims remains an appropriate approach in light of the legislative framework and policy considerations and notes that a number of submissions accepted this position. The Final Revised Guidance therefore continues to adopt this approach.
- 3.12 The CMA notes that a large number of submissions suggested that the CMA should provide further detail and guidance about its approach to assessing RCBs, and some identified scenarios which they suggested the CMA should recognise as being more likely to give rise to RCBs. As with other areas of the Draft Revised Guidance, the CMA notes that the application of the RCBs framework will be acutely fact-specific, and the CMA has discretion in how it applies this framework in individual cases.
- 3.13 Given this, the CMA does not consider it would be appropriate to provide further detail about how the RCBs framework will be applied in the Final Revised Guidance, which may risk undermining the CMA's ability to exercise its discretion in individual cases. Moreover, through the increased focus on early engagement on RCBs, merger parties will be able to obtain direct feedback and input in individual cases as to how the CMA will apply the RCB's framework in that particular case, ensuring increased predictability for merger parties.
- 3.14 The CMA's forthcoming review of its approach to the substantive assessment of efficiencies may also have implications for its approach to RCBs. As noted in the Consultation Document, the CMA will consider whether there is a need to further revise its approach to RCBs in light of this separate work in due course.
- 3.15 Finally, the CMA agrees that the CMA should have regard to the opinions of sectoral regulators or independent experts in assessing RCBs, and that it would be useful for the Final Revised Guidance to clarify this.

4. Issues raised relating to the CMA's merger remedies process

- 4.1 Remedy Theme 3 considered two primary issues. The first was how the phase 1 remedies process can be improved to ensure it best embodies the 4Ps. In particular, the Call for Evidence and Consultation Document both note that there may be clear benefits to both pace and in terms of proportionality from achieving a phase 1 remedy outcome and avoiding the time and cost of a phase 2 reference where that can be done within the existing legislative framework.
- 4.2 The CMA also invited views and evidence on how the new phase 2 process that the CMA introduced in April 2024 and recent legislative amendments can be used to reach well-reasoned and evidence-based decisions on remedies, at pace. The CMA also sought views on whether any further refinements to this revised process are necessary or appropriate as practical experience of it develops.
- 4.3 The CMA received very few comments in relation to how the phase 2 remedies process could be improved. However, a number of respondents made suggestions on how the phase 1 remedies process could be improved to better embody the 4Ps, and to a lesser extent, other broader remedies process improvements that the CMA should consider. A summary of these responses is set out below.

Phase 1 remedies process

Summary of responses

- 4.4 A large number of respondents stated that the wider phase 1 process reforms that the CMA has implemented in 2025 had significantly enhanced engagement between the CMA and the merger parties and third parties. Many noted that this had had a positive impact on the ability to consider remedies at an early stage and in turn the likelihood of successfully achieving a phase 1 remedies outcome, avoiding the time and cost of a phase 2 reference.
- 4.5 Respondents otherwise made a range of different points related to the proposed amendments to the phase 1 remedies process.
- 4.6 One respondent said that protecting the without prejudice nature of remedies discussions, particularly early on in the process, is of paramount importance. They said that perception and practice are equally important in this regard, to encourage merger parties to come forward for early engagement without fear

of unintended consequences. They also said that reassuring merger parties as to the without prejudice nature of early remedy discussions and, where appropriate, “handing back” remedies proposals where the phase 1 investigation reveals these are not required would be critical to building trust in the reforms.

- 4.7 Another respondent made a number of points in relation to the potential for the phase 1 decision maker to be involved in early remedy discussions. It suggested that the Final Revised Guidance should:
- (a) provide a fuller explanation of when and why it would be helpful for the merger parties to involve the phase 1 decision maker at an earlier stage, including during pre-notification.
 - (b) clarify whether the ‘exceptional circumstances’ contemplated in which the phase 1 decision maker would choose to become involved in remedy discussions prior to the SLC decision would only be where the parties have consented for the phase 1 decision maker to be told about the remedy proposal.
 - (c) clarify whether it will be up to the Parties to decide whether the phase 1 decision maker attends the separate meeting on remedies, held after the issues meeting.
- 4.8 One respondent welcomed the proposed introduction of a separate meeting to discuss remedies to be scheduled after the merger parties’ response to the issues letter. They submitted that this meeting should be repositioned as a touchpoint at which the phase 1 decision maker should provide feedback post-issues meeting (in relation to the substantive competition concerns), and where the parties could, if they wish, discuss remedies. They said these changes would significantly increase its usefulness and uptake, as would allowing for some more flexibility as to the timing of this meeting.
- 4.9 One respondent submitted that in addition to the option for early phase 1 decision maker involvement in remedies discussions, given the intended without prejudice nature of these discussions, there would be added value in merger parties being able to request changes to proposed CMA attendees more broadly. For example, they said there may be circumstances where it is preferable to hold remedies discussions without all or most of the CMA case team, or only with a subset of the remedies team (akin to a commercial ‘clean team’ style arrangement).
- 4.10 One respondent said that the revised CMA2 should also go further to ensure sufficient flexibility in the phase 1 remedies timeline after the ‘acceptance in principle’ decision in upfront buyer cases, and in particular should recognise

that the parties in practice require (and the CMA has given) more time than the Current Guidance contemplates²⁹ to identify a suitable buyer to present to the CMA for approval.

The CMA's views

- 4.11 The CMA agrees that protecting the without prejudice nature of the remedies discussions is of paramount importance, and notes that this is reflected in the various options the Final Revised CMA2 provides for such discussions, at various stages of the phase 1 process and both with and without the phase 1 decision maker, as the parties prefer. On this basis, the CMA does not consider any further revisions are required on this point.
- 4.12 The CMA agrees that it would be useful for the Final Revised CMA2 to provide a fuller explanation of when and why it would be helpful for the merger parties to involve the phase 1 decision maker at an earlier stage, including during pre-notification. This explanation will outline that while the case team can provide general advice and guidance to the parties, they cannot accept or reject the remedy. Therefore, early engagement with the phase 1 decision maker may be helpful to provide guidance on potential modifications that might be needed or areas of risk where more info might be needed.
- 4.13 The CMA agrees that it would be useful for the Final Revised CMA2 to confirm that the 'exceptional circumstances' contemplated for which the phase 1 decision maker would choose to become involved in remedy discussions prior to the SLC decision would only be where the parties have consented for the phase 1 decision maker to be told about the remedy proposal.
- 4.14 The CMA agrees that it would be useful for the Final Revised CMA2 to confirm that it will be up to the Parties to decide whether the phase 1 decision maker attends the separate meeting on remedies held after the issues meeting. However, the CMA does not agree that this meeting should be expanded to act as a wider 'touchpoint' for feedback post issues meeting (in relation to the substantive competition concerns) where the parties could only 'if they wish' discuss remedies. The CMA notes that the issues meeting itself provides the opportunity for the parties to directly respond to potential competition concerns with the phase 1 decision maker present, and the purpose for the additional meeting is solely to consider potential remedies.
- 4.15 The CMA also disagrees that merger parties should be able to request changes to proposed CMA attendees to meetings with the parties more

²⁹ A 'relatively short period' after the 'acceptance in principle' decision, 'not typically [...] longer than a few days.'

broadly and have the option to exclude the case team (or certain members of the case team). This is because the case team will have a detailed understanding of the relevant competition concerns, which will be important in assessing the effectiveness of any proposed remedy in addressing those concerns.

- 4.16 Finally, the CMA agrees the revised CMA2 should also go further to ensure sufficient flexibility in the phase 1 remedies timeline in upfront buyer cases after the 'acceptance in principle' decision in upfront buyer cases and that this should be recognised in a CMA discretion to dispense with the timing requirements outlined. However, the CMA considers that in light of the very tight timings involved in an upfront buyer case, the wording in the Draft Revised Guidance outlining the expectations as to the timing at which the buyer will be presented to the CMA should be retained.

Other processual issues

Summary of responses

- 4.17 A small number of respondents made other, more general points about the CMA's remedies process.
- 4.18 One respondent said that CMA had not acknowledged the risk of undue influence from customers and competitors in the review process - particularly those who stand to benefit from structural remedies. They said that greater transparency and trustee/expert input are needed to mitigate the risk and impact of bias in the process.
- 4.19 The same respondent also said that additional process refinements remain essential to deliver the CMA's 4Ps:
- (a) Earlier sharing of third-party feedback: non-confidential summaries of remedy-related feedback should be provided to merger parties sooner. This would allow parties to refine proposals efficiently and mitigate the risk of biased submissions - particularly from customers or competitors who may benefit from structural remedies.
 - (b) Summary notes after remedy meetings: short written summaries confirming points of consensus and outstanding questions would improve transparency and predictability, reducing the risk of misunderstanding and delays.
- 4.20 One respondent said that the Final Revised Guidance should expand upon the section of the Guidance covering the purchaser approval process to

include additional explanation of how the CMA will run the approval process in practice.

- 4.21 Finally, one respondent said that CMA87 should be subject to review again in around two years to assess the impact of the proposed changes, and make further revisions, if necessary, to continue to embed the 4Ps framework.

The CMA's views

- 4.22 The CMA does not consider that the Final Revised Guidance needs to do more to acknowledge the risk of undue influence from customers and competitors in the review process - particularly those who stand to benefit from structural remedies. The CMA will always consider the incentives of those who submit evidence and the context in which that evidence was produced in deciding what weight to attribute to it, including for example the motivations of potential remedy takers.
- 4.23 The CMA also does not consider that it is necessary to make any further process amendments to either provide early views of third-party feedback on remedies or provide summary notes after remedy meetings. This is firstly due to the very short timeframes involved in the phase 1 remedies process, and secondly, because the longer phase 2 process already provides significant opportunities for feedback on remedies proposals through the remedies call with the inquiry group held after the invitation to comment on remedies is issued and the interim report on remedies.
- 4.24 The CMA agrees that it would be useful to provide additional detail in relation to the purchaser approval process in the Final Revised Guidance and has provided this additional detail.
- 4.25 Finally, the CMA does not consider it is necessary to commit in advance to a further review of its remedies framework in two years' time. As the Draft Revised Guidance notes, the guidance may be revised from time to time to reflect changes in best practice, legislation, court judgments, research and experience. However, the CMA considers that it is appropriate to retain flexibility over the appropriate time at which to do so.

5. List of respondents

Law Firms:

- A&O Sherman;
- Ashurst LLP;
- Baker & McKenzie;
- Clifford Chance;
- Eversheds Sutherland;
- Herbert Smith Freehills;
- Linklaters;
- Mills & Reeve; and
- Slaughter and May.

Consultancies:

- Frontier Economics; and
- PwC.

Monitoring Trustees:

- Nocon Partners.

Businesses:

- Liberty Global; and
- Vodafone.

Trade Bodies:

- British Venture Capital Association (BVCA);
- Computer & Communications Industry Association (CCIA); and
- UK Finance.