Competition and Markets Authority

Consultation on Markets Regime Guidance

Response from Barclays Bank UK plc

01 October 2025

Executive summary

We are grateful for the opportunity to comment on the CMA's updated draft markets regime guidance (the "**Markets Guidance**"). We have focussed our comments on the sections relating to market investigations and in particular the remedies that result from them, given our significant experience in this area.

Barclays provided feedback on the CMA's previous iteration of the draft Markets Guidance in late 2024. It is positive to see the CMA reviewing its Markets Guidance explicitly through the lens of economic growth, including the 4Ps, and we note that a number of our suggestions have been reflected in the update.

However, there is an opportunity for both the CMA's guidance and practice to fully support the growth agenda and ensure the markets regime balances the desire to foster increased competition in specific markets against the burden for business and consequent impact on growth of interventions in this space. In particular, the CMA can support growth and investment by ensuring transparency and predictability in the Markets Guidance, picking the right cases for intervention in the future and removing historic and outdated remedies.

It is paramount that the boundaries of the markets regime are clear and fair, and for this reason we consider that the CMA's approach to the regime and in particular the imposition and operation of remedies – which has been subject to considerable criticism in recent years – must be demarcated effectively in the underlying legislation. We hope the CMA will further reflect on the points below, and also consider alongside Government the benefits that changes to the underlying legislation (for example in relation to fines, sunset clauses and the change of circumstances test) could bring to ensure that the markets regime is fit for purpose and can support rather than hinder growth.

Overall aim and functioning of markets regime

While it is positive that the CMA has consolidated the various historic documents which set out its guidance on the markets regime and sought to bring it in line with the 4Ps, the regime would benefit from the CMA and Government taking a step back and considering at a high level how they intend the markets regime overall to contribute to the growth agenda, and then ensuring that the Markets Guidance and CMA's practice supports the aims of the regime.

In our view, some changes to the legislation underpinning the markets regime will be required in order for it to function effectively, although we welcome in the meantime the CMA's endeavours to move away from some of its previous practices and to engage business more regularly. We read with interest the CMA's acknowledgement that "*the way we operate the markets regime can have negative impacts on productivity and growth, thereby offsetting some of the benefit we are seeking to realise through our work*";[1] this is a message we have been seeking to convey in recent years and we hope that the CMA will continue to take on board the further comments received from those stakeholders with most experience of the markets regime in order to improve it further. In particular, it is crucial for the CMA's guidance and practice in this space to reflect the fact that there is no wrongdoing or anti-competitive conduct underlying the interventions imposed by the CMA.

CMA's approach to the Markets Guidance

We are pleased to see the CMA building on our previous feedback, for example in the proposal to adopt sunset clauses in remedies packages as a default position.[2] However, we consider that the proposals still leave significant scope for the CMA to adopt a wide range of possible decisions in relation to market investigations and related remedies, to the extent that a number of opportunities are potentially being missed to reinforce certainty and consistency for stakeholders. In addition, we remain concerned that the CMA has not fully clarified how it has taken into account all relevant cases and lessons learned to date (including those outlined in the Alison White and Kirstin Baker reports).[3]

In our response to the previous consultation, we had asked the CMA to consider combining all the guidance relating to the markets regime, rather than continuing to split it across multiple different documents. While combining most of the guidance into a single document is therefore helpful in terms of aiding transparency for stakeholders, the Markets Guidance should also incorporate the relevant elements of the CMA's guidance on administrative penalties,[4] which are critical to parties' understanding of the CMA's overall enforcement and monitoring of remedies under the markets regime. In any event, the principles of CMA4 should be revisited to ensure they align with the 4Ps, particularly in relation to proportionality.

[1] The CMA's approach to markets work (Link), paragraph 4.2
[2] Draft Markets Guidance (Link), paragraph 8.72.
[3] Open Banking lessons learned report: Report by Kirstin Baker; Competition and Markets Authority; 27 May 2022; (Link); Open Banking Limited independent investigation report: An independent report by Alison White, 1 October 2021 (Link)
[4] Administrative Penalties: Statement of Policy on the CMA's Approach, CMA4, 19 December 2024 (Link)

Market investigations – general

We welcome the CMA's recognition that "perfect" competition is an unrealistic theoretical standard for judging whether or not a market is "well-functioning".[5] As well as taking this into account during the course of a market investigation, the CMA must bear this in mind in its approach to any remedies, with a particular focus on proportionality and duration.

We note that the CMA specifies the ability for customers to be willing and able to access, assess and act in relation to information about the market to be 'necessary conditions' for effective competition.[6] While we agree that these are important considerations, we consider that the current drafting over-emphasises a requirement that customers must demonstrably act (i.e. switch) on this for effective competition to be demonstrated. This strict requirement is inconsistent with some findings in other contexts – for instance in the CMA's Provisional Decision following its review of the SME Banking Undertakings, where it observed that low switching rates can indicate customers being content with the existing providers.[7] This suggests that while the *availability* of these 'levers' to customers is important, the extent to which customers actively utilise these levers is a separate issue and not necessarily determinative in showing whether effective competition exists, particularly in sectors such as retail financial services where multi-banking is now the norm.

We support the CMA's commitment to ensuring that its procedures are fair.[8] We note that the CMA has sought to interpret the "Process" element of its 4Ps as improving how it engages with stakeholders throughout its work,[9] but of course it remains crucial that (in addition to providing additional opportunities for stakeholder engagement) the CMA guarantees that the processes it follows in relation to its markets work are fair and proportionate and that parties are able to exercise their rights of defence appropriately. In our experience there has historically been more rigour in the CMA's process during the course of the market investigation itself, but less once the investigation has concluded and the matter enters the long remedies phase, so we would recommend that the latter stage is where the CMA focuses its attention in this regard.

Market investigations as run by the CMA and its predecessors are indeed very long and resource intensive cases, and we welcome the acknowledgement of this by the CMA and its desire to make such investigations more efficient.[10] However, it is important that any streamlining of the current process does not jeopardise the fairness of the investigation. For example:

- The CMA's commitment to sharing drafts of its formal information requests[11] is helpful, but the CMA should also reflect on the considerable burden that such requests place on the affected parties, and only ask for the information that is truly needed, listening to difficulties encountered by the parties. For example, the "first day letter" or "off the shelf" request and the market and financial questionnaires require substantial effort from the parties and have historically been associated with very challenging deadlines. It would be

[5] Markets Guidance, paragraph 4.17
[6] Markets Guidance, paragraph 4.27
[7] Review of the SME Banking (Behavioural) Undertakings 2002; Provisional Decision; CMA; 13 August 2025; Section 2.52; (Link).
[8] Markets Guidance, paragraph 6.8
[9] "*We are doing this through a framework based on feedback from stakeholders around '4Ps': driving greater pace, predictability, proportionality and better process (which is really about a step change in our approach to engagement with stakeholders).*" The CMA's approach to markets work, 24 July 2025 (Link), paragraph 1.5
[10] Markets Guidance, paragraph 8.22
[11] Markets Guidance, paragraph 8.31

unfortunate if the CMA sought to reduce the duration of market investigations without also considering the volume of information requested.[12]

- The Markets Guidance seems to suggest fewer potential opportunities for the parties to put forward their views in future market investigations, and in particular in relation to those sectors the CMA feels are familiar. We have historically found the site visits and hearings during a market investigation to be important opportunities for an exchange of views at senior level, irrespective of any previous knowledge of the sector, and we are concerned at the suggestion[13] that these may not be available to the parties in the future. Given the expanded penalties for breaches of market investigation remedies, it will remain crucial that the CMA provides the opportunity for affected firms to be heard.
- While we understand the CMA's desire to run a market investigation more swiftly if it has already carried out a market review or study in the sector,[14] and we welcome any efficiencies to be gained in ensuring that factual information is transferred between relevant teams (and/or from sector regulators), it will be important that the CMA does not pre-judge the different set of issues relevant to a market investigation.
- The CMA's abandoning of its working papers process in favour of potentially multiple interim reports[15] should also be reconsidered. It remains important that parties can understand and feed into the CMA's thinking throughout the course of a market investigation, and not once the CMA's mind has been made up.
- We agree with the CMA that the final report following a market investigation must set out in detail an explanation of the AEC "*and sufficient detail on the nature and scope of remedies to provide a firm basis for subsequent implementation of remedies*".[16] Setting out sufficiently the CMA's conclusions and how they link to the remedies, as well as being crystal clear on what the precise remedy obligations entail, will be crucial for future cases and this principle should be clearly set out in the Markets Guidance. Failure to do this in the past – particularly in relation to Open Banking – has created significant inefficiencies and wasted considerable resource for both firms and the CMA.
- We remain concerned that the CMA has not explicitly committed that it will always send relevant correspondence to each potentially affected firm, noting that it has not always done so in practice. This requirement is particularly important if the correspondence is from a senior CMA executive, alleges a breach of a remedy and/or could be market sensitive. We would expect to see a firm commitment in this regard in the final guidance.

[12] In one market investigation, Barclays had to respond to 200 information requests, for example.
[13] Markets Guidance, paragraph 8.30, 8.38
[14] Markets Guidance, paragraph 8.50
[15] Markets Guidance consultation document, 20 August 2025 (Link), paragraph 2.12, 2.13
[16] Markets Guidance, paragraph 8.50

Imposition of market investigation remedies

The CMA's approach to market investigation remedies should take into account the broader aims of the markets regime, which are not to pursue an idealised or perfect vision of competition in a particular sector, and the context that market investigations and AEC findings do not involve any wrongdoing or anti-competitive conduct. A change to the underlying legislation in relation to duration and expiration of remedies would help here, to ensure that the CMA's action in the future is more targeted and proportionate than in previous investigations, and that interventions do not become an anchor on growth.

We support the CMA's intention to consider the potential detrimental effects of any remedies, including potential distortions in the market caused as a result of the remedies themselves.[17] We consider this step to be important not only at the outset of any remedies, but also throughout their implementation, where such distortions may not be immediately apparent and could be exacerbated over time. Accordingly, this obligation should be better reflected within the Markets Guidance, and examined periodically throughout the life of the remedies.

We support the explicit commitment for the CMA to consider the proportionality of remedies, and the recognition of potential unnecessary burdens on business,[18] which can arise in relation to implementation, compliance and monitoring of remedies. We would note that in our experience, particularly in relation to Open Banking, such costs have turned out to be substantial and very far removed from the costs estimated to be anticipated from the outset.[19] We strongly disagree with any insinuation that there is an incentive for market participants to overstate the potential costs of remedies,[20] particularly where participants seek to develop best estimates in accordance with (sometimes) vague plans which can change substantially over time, including through alterations by the CMA, and the Markets Guidance should be more balanced in this regard. Again, we would urge the CMA to take into account in its future guidance and practice the problems that have been encountered in relation to previous interventions.

The CMA will, for new remedies, have fining powers introduced by the Digital Markets, Competition and Consumer Act 2024. We have been clear since these fining powers were first mooted by the CMA's Chair in 2019 that they were neither necessary nor proportionate in relation to market investigation remedies, and in our view the 4Ps and growth agenda necessitate further review of the position. In the meantime, the existence of such fining powers means it is even more important for any market investigation remedies imposed to be proportionate and precise, and not to be expanded over time.

We agree that the CMA should only consider the appointment of a trustee or other organisation for the implementation of more complex behavioural remedies and structural changes.[21] However, this section of the Markets Guidance still needs to adequately specify the wider considerations that the CMA must take into account when contemplating whether to appoint such a trustee or organisation, including the significant costs and complexities these arrangements introduce and the lessons to be learned from the Open Banking experience.[22] Accordingly, we would strongly encourage the CMA to establish a principle that appointment of a

[17] Markets Guidance, paragraph 8.78
[18] Markets Guidance, paragraph 8.87
[19] As detailed in our previous submissions
[20] Markets Guidance, paragraph 8.89
[21] Markets Guidance, paragraph 9.13
[22] See the Alison White and Kirstin Baker reports.

trustee or third party organisation would only be considered in exceptionally rare circumstances, and that the CMA would carry out a comprehensive assessment of the costs and complexities involved in the appointment and ongoing operation of such arrangements. If the CMA does proceed with a trustee, the precise division of responsibility between it and that trustee need to be set out and clear to all parties, noting that only the CMA should be able to opine on whether there has been a breach of the market investigation remedy and the associated consequences.

Compliance, monitoring and enforcement

Following several years of discussions with the CMA about its practice in relation to monitoring and enforcement of remedies, we are glad that the CMA states it is "*committed to the effective and proportionate monitoring of compliance with its remedies*" and stresses the importance of ensuring "*a remedy achieves its intended objective without placing unnecessary burden on the parties subject to the remedy*".[23] Indeed, we have seen some elements of this more nuanced practice more recently from the CMA in relation to the RBMI Order,[24] and we think this change (for example in relation to materiality) should be more accurately reflected in the general principles contained in the Markets Guidance. However, we note that these changes come after many years of the CMA taking a strict view of even the smallest and inadvertent breaches of such remedies, and a disproportionate approach to enforcement and publicity, and we hope that the CMA has indeed reflected on the burden this can place on parties and the consequent impact on growth and competition.

Our view continues to be that it is crucial for information on the full consequences of breaches of market investigation remedies, including the new fining powers, and the CMA's approach to these, to be contained in the Markets Guidance. This is currently a significant omission, which undermines the CMA's attempts at clarity, certainty and transparency. Further, the CMA's 2024 guidance on such penalties for market investigation remedies also requires review and refinement to bring them into line with both the 4Ps and the amendments to the materiality and reporting requirements that the CMA has made in specific cases. It is abundantly clear that fines approaching anywhere near 5% of worldwide turnover cannot possibly be proportionate for market investigation remedy breaches, noting once again the lack of any anti-competitive behaviour underlying the initial case for the remedies.

In addition, that the Markets Guidance should contain clarification on the following points in relation to monitoring and enforcement:

- Requiring parties to report potential issues to the CMA before they have established whether in fact there is a breach – this is inefficient for both parties and the CMA.
- The more recent practice of the CMA adding references to private breach letters to its breach register – this is neither proportionate nor fair, particularly when the CMA has indicated it will pay more attention to the impact of publication of breaches where these are of a more minor nature.

[23] Markets Guidance, paragraph 9.7

[24] While we welcome in particular the CMA's revised approach to materiality, which we had been requesting for a number of years, including in response to CMA consultations, we remain of the view that the RBMI Order should be revoked as soon as possible.

- Using the threat of a breach finding to "persuade" parties to change legitimate commercial practices – the Markets Guidance should confirm this will not happen in the future.
- Consideration of all relevant circumstances before taking enforcement action - the CMA should consider whether its requirements were in fact unclear. In particular, multiple apparent breaches by different parties could indicate that there is a problem with the remedy itself rather than with the parties' compliance.
- Senior oversight/check and challenge in relation to remedies enforcement – given the lack of transparency on this front previously, the Markets Guidance should contain further detail on the decision making process in relation to breaches.

We hope that as well as focussing on engagement with stakeholders in relation to future markets work the CMA will listen to and reflect on the experience of stakeholders with extensive experience of how the markets regime and CMA's approach to remedies has been operating in practice.

Expiration and review of remedies

We acknowledge that the CMA's change in position in relation to the expiration of future remedies, through the commitment that the default to such remedies will be for them to have a sunset clause,[25] takes on board the suggestion we have made to both the CMA and Government. This is a welcome change and would undoubtedly bring considerable efficiencies as well as much needed proportionality into the markets regime. We address below the ways in which we consider expiration and review of remedies could be further aligned to the 4Ps.

While further changes to and clarity in the Markets Guidance may go some way to improving the regime, ultimately we consider that further clarification of the underlying legislation should be undertaken, to ensure that the position is clear and unambiguous for all stakeholders and that the potential benefits of the markets regime are fully realised. We are mindful that a decade ago the CMA stated that it was "*seeking to commit more clearly to considering the use of sunset clauses and reviewing the ongoing need for remedies, with a view to ensuring that remedies do not remain in force where they are no longer necessary to achieve the purposes for which they were imposed*",[26] however the market investigation remedies imposed by the CMA during the period since that statement have been the most resource intensive, disproportionate and uncertain to date.

As well as the changes in the regime that would bring the approach to *future* market investigation remedies more in line with the 4Ps, it remains crucial that *existing* market investigation remedies are treated appropriately. We welcome the CMA's provisional decision to release the SME Undertakings, and we trust that the CMA will follow up on its commitment that it will "*take a more focused and proactive approach to remedies that are no longer required*".[27] We note that unjustified delays to review and revocation of remedies can also have an impact on competitive dynamics in the relevant sector, which is not currently being assessed by the CMA.

[25] Markets Guidance, paragraph 8.72
[26] Updated guidance on 'sunset clauses' in market investigation remedies, Consultation document 27 May 2015 (Link), paragraph 1.9
[27] CMA's approach to markets, page 11

Sunset clauses

We are strong advocates for the idea that sunset clauses should be used in relation to market investigation remedies as a 'default' position, whereby the remedy expires at the specified time with no need for the CMA to review and revoke or release it. We believe this should be the unambiguous position for the CMA when establishing remedies in future market investigations. This approach would reinforce certainty and business confidence in the scope and nature of market investigation remedies and provide a mechanism for remedies to expire without the additional complications and burdens for both CMA and firms linked to applying various legal tests applicable to revocation, in particular the difficulties that arise from the application of the change of circumstances test (section 162 of the Enterprise Act 2002). A commitment to always use a sunset clause, but with the option of the CMA being able to review and revoke remedies on the basis of a change in circumstances in advance of their expiration, could provide further certainty and efficiency.

However, to the Markets Guidance as currently drafted would add significant uncertainty back into the concept of a sunset clause, so that such a remedy would "*cease to have effect on the specific date or defined event and will not be enforceable or reviewable beyond that specific date or defined event*",[28] but it is proposed that this expiration can be overridden by the CMA: "*unless it judges that there is a good reason for the remedy to remain in place (which it would explain in the particular case)*".[29] Irrespective of the fact that the CMA has not provided any clarity in the Markets Guidance as to what it judges to be a "good reason" for a remedy to remain in place, if the CMA considers itself able to extend the life of a remedy for which it has already specified a sunset clause this would of course completely undermine any certainty for the parties, not to mention cut across their legitimate expectations as well as the CMA's own proportionality assessment, which must be undertaken on the basis of weighing up the expected benefits of the remedy for its intended duration against the estimated costs for affected businesses. It is paramount that the boundaries of the markets regime are clear and fair, and for this reason we consider that the CMA's operation of the regime and in particular the imposition and operation of remedies – which has been subject to considerable criticism in recent years – must be demarcated effectively in the underlying legislation.

Further, in order to ensure the requisite clarity and proportionality the CMA and/or the legislation must set out upfront a maximum duration of market investigation remedies, for example five years. To the extent that such a maximum duration is not specified in advance, the Markets Guidance should provide a clear indication of the factors the CMA will consider when setting the duration of the remedy, rather than this decision being left to the CMA's discretion in individual cases.

Change of circumstances test and effectiveness reviews

The CMA should clarify that the current change of circumstances test and new effectiveness review will only come into play in circumstances in which a review of remedies is needed before

[28] Markets Guidance, paragraph 8.73

[29] Markets Guidance, paragraph 8.72; See also the consultation document which contains additional wording at paragraph 2.17 "*In cases where the CMA imposes orders, the CMA proposes to include 'sunset' clauses as a default, meaning that the orders will fall away after a set period, unless the CMA judges that there is good reason for them to remain in place.*"

the date of the sunset clause has been reached. This would ensure that the current inefficient and uncertain regime, whereby remedies can endure for decades despite changing market conditions and under which revocation or release requires significant numbers of submissions and discussions, would be replaced by a system that is more proportionate, speedy and efficient, and which would reflect the growth ambitions of both the CMA and Government, while still enabling the CMA to intervene in appropriate situations.

To the extent that the change of circumstances test continues to be used to determine when a remedy is released, the Markets Guidance must set out in far greater detail how exactly it will operate, to ensure that a proper analysis of the ongoing AEC, costs and benefits of the remedies is undertaken on an ongoing basis. It cannot merely be assumed that an AEC of the magnitude originally found endures and/or is material many years or decades later.[30]

We believe the application of the change of circumstances test by the CMA has in recent years become increasingly restrictive. If the test continues to play a role in the markets regime, the CMA should take a much more objective look at its current and recent practice and see which lessons can be learned and incorporated into the Markets Guidance to make it more proportionate and efficient. The topics we would expect to be taken into account include: partial review; resourcing issues; reasonable prospects approach; and requirement for duplication elsewhere. Of course, if the CMA adopts a pragmatic approach to historic remedies and uses sunset clause in the strict sense, these issues would fall away and considerable resource on the part of both the CMA and affected stakeholders would be freed up.

Historic remedies

As we have noted previously, in our experience remedy reviews and discussions involve significant business and legal resource – sometimes for many years – which could be better spent elsewhere. In contrast to the position for future remedies, the CMA's proposed treatment of historic market investigation remedies remains unclear and uncertain. We would encourage the CMA to ensure that the Markets Guidance sets out more clearly which of the provisions will apply to historic remedies (noting that these are not subject to fining powers or effectiveness reviews) and to ensure that historic remedies, particularly those in financial services (which have remained in force despite significant changes to the competitive and regulatory landscape as well as customer behaviour) are withdrawn efficiently, to enable the CMA to play its part in reducing burden and promoting growth in this key sector of the economy.

We welcome the commitments to efficient and timely reviews, and to reduce the burden on parties subject to remedies that are no longer appropriate. These need to be translated into practical action by the CMA.

To the extent that the new "strategic review"[31] in the Markets Guidance is intended to enable the CMA to revoke historic remedies which have clearly served their purpose in an efficient and pragmatic way, we are supportive of this development.

[30] Neither the Markets Guidance nor the consultation document set out in sufficient detail how this assessment would be undertaken.
[31] Markets Guidance, paragraph 9.33

Role of sector regulators

In Barclays' feedback across a number of consultations and bilateral engagements with the CMA, we have consistently emphasised the importance of the CMA engaging proactively with sectoral regulators across its activities, including on its approach to markets activity. This is important at the stage where the CMA is considering whether to launch a market review, study or investigation in the first place, as well as in relation to remedies.

Accordingly, where an established regulatory framework exists, particularly with a strong independent regulatory body, the CMA should only consider undertaking its own markets work in that sector in extremely rare circumstances – and instead should leverage the existing framework through reforms wherever possible. This should be reinforced much more strongly in the draft Markets Guidance.

We also welcome the CMA's commitment to seek to avoid inconsistency with, or duplication of, an existing regulatory regime, where another regulator or regulations are present.