

CLLS response to the CMA's consultation on markets regime guidance

1 Introduction

- (1) The City of London Law Society Competition Law Committee (the “**Committee**”) welcomes the opportunity to respond to the CMA's consultation on the draft Markets Regime Guidance (the “**Draft Guidance**”).
- (2) The CLLS represents approximately 17,000 City solicitors through individual and corporate membership, including some of the largest international law firms in the world. The Competition Law Committee comprises leading solicitors specialising in UK and EU competition law in a number of law firms based in the City of London, who act for UK and international businesses, financial institutions, and regulatory and government bodies in relation to competition law matters. Members of the Committee represent both complainants and those companies under investigation by regulators.
- (3) The Committee members and individuals responsible for the preparation of this response are:
 - Nicole Kar and Alexandra Hackney (Paul, Weiss, Rifkind, Wharton & Garrison LLP);
 - Jonathan Ford and Jennifer Willis (Linklaters LLP);
 - Angus Coulter (Hogan Lovells International LLP);
 - Alex Potter (Freshfields Bruckhaus Deringer LLP); and
 - Mark Jones (Jones Day LLP).
- (4) The Committee generally welcomes the changes proposed to the Draft Guidance as set out in the CMA's consultation document. We also support the proposal to update and consolidate the relevant guidance into one document which should provide an easier and more accessible reference document than the fragmented body of current guidance, thus providing additional clarity for businesses and practitioners.
- (5) As set out in our submission to the CMA on 6 June 2025 containing our reflections on the efficiency and effectiveness of the UK markets regime (the “**CLLS June Submission**”), market investigations impose a significant cost on businesses, often being lengthy, resource intensive processes which can lead to potentially drastic remedies being imposed on businesses (without the need for there to be any finding or allegation of fault) and which can cause significant uncertainty for the affected industry and have chilling effects on business. We therefore appreciate the CMA's efforts to reflect the 4Ps framework in the Draft Guidance and we consider that the proposals should deliver improvements in transparency and proportionality, in particular through the increased stakeholder engagement and reducing the overall end-to-end length of markets cases. We nevertheless encourage the CMA to ensure that it keeps in mind the nature of markets work, as distinct from mergers and investigations, in terms of the broader impact and affected parties and factors this into the design and scoping of its markets projects. It should assess the appropriate balance of enhanced engagement against the impact and burden on the different parties involved in the process.
- (6) Generally, we consider the changes are sufficiently clear and useful. However, there are some areas where we consider that more explanation or detail should be included. This submission focuses on the proposals and changes that we consider require additional

clarification or explanation as well as some other areas where we think the CMA could go further to make improvements as part of this update.

- (7) Our comments are informed by our experience and lessons from past market studies and investigations, and in consideration of the practical impact of the proposed changes for businesses, market participants, and overall market functioning in the UK.

2 Project Roadmaps

- (8) The Committee supports the proposal for a Project Roadmap to be published at the launch of each market review, study or investigation and agrees that it should be appropriately tailored to the individual case to reflect the anticipated scale and complexity of the case. The inclusion of bespoke KPI timeframes for each stage and indication of the touchpoints for engagement with the decision maker(s) are especially welcome, providing more predictability for the businesses involved and allowing them to plan resources in advance.
- (9) To ensure that these Roadmaps are as useful as possible we would suggest that key interested parties are provided with an opportunity to comment on the Project Roadmap and suggest changes at an early stage. This would help to ensure that it is practical and helpful for the key stakeholders who are most impacted in the process. In addition, while we appreciate the need to maintain some flexibility in these Roadmaps to allow for changes as the case develops, it would be helpful for the CMA to include in the Draft Guidance a commitment to follow Roadmaps (unless there are good reasons to deviate from it) and to ensure that the Roadmap is updated as the case evolves, in consultation with the main affected parties where appropriate.

3 Internal ‘State of play’ meetings

- (10) The proposal to introduce internal ‘state of play’ meetings, similar to those in mergers and investigations cases, is generally a welcome addition to the process. This would introduce a valuable opportunity for the CMA to critically assess the appropriate scope of the case, in light of the evidence and issues, and to consider which lines of inquiry could and should be de-prioritised where appropriate, in light of its commitment to proportionality and in the interests of reducing the overall burden of the markets case. For these to be most useful, we trust that these will involve a meaningful substantive dialogue on the key issues, and not simply an administrative update.
- (11) We welcome the CMA’s commitment to providing an update after an internal state of play meeting, via email, progress report or external state of play meeting, so long as the update is meaningful and useful to the parties. We suggest that wherever possible, such updates should be as detailed as possible to enable the parties to properly understand the CMA’s lines of inquiry as early on as possible and to be informed where any issues have been de-prioritised, in order to streamline the process and focus their efforts and resources on the most important areas.

4 Enhanced and Earlier Engagement with Parties

- (12) We broadly support the other proposals aimed at enhanced engagement between the CMA and affected parties (such as the launch webinars, ‘teach-in’ sessions and more regular updates through informal calls or short progress reports) and recognise that these should increase the transparency over the CMA’s emerging thinking and next steps, facilitate more targeted focus on issues and drive a faster pace overall.

- (13) However, we also recognise that a potential downside of increasing the required level of engagement from parties throughout the process is that this ends up imposing additional, disproportionate burdens on some parties, such as smaller or less key parties who would now be required to engage more fully on a more regular basis. We suggest that the CMA keeps this potential impact in mind and ensures that it takes into account the differing positions of affected parties when designing the roadmap for engagement and tailors the plan accordingly.

5 Removal of Working Papers

- (14) A key concern for the Committee is the proposal to effectively remove the working papers and only publish them on an “exceptions-only” basis, depending on a case-by-case assessment of whether they may be beneficial in the round. While we appreciate new measures for earlier and enhanced engagement we query whether these would no longer “serve a meaningful purpose” in all circumstances.
- (15) While the additional engagement touchpoints and updates should serve a useful purpose to keep parties informed about the issues on the table and emerging thinking in the case, it is not clear to us that they are an adequate replacement for published working papers. The level of detail on the CMA’s analysis on a specific issue (and evidence underpinning it) that is typically included in a published working paper is a valuable opportunity for parties to engage in detail on the key data and evidence in a focused manner. We are concerned that the proposed engagement measures (e.g. state of play updates, informal calls and short progress reports) may not offer the same depth of analysis or allow parties to fully understand the detail of the CMA’s concerns; parties may therefore lose this opportunity to engage in a meaningful way in detail on the evidence and therefore lose some insight into the provisional conclusions reached by the CMA in the interim report. In addition, the lack of working papers or annotated issues statement before the hearings stage may impact on the effectiveness of the hearing, as the parties would not have the benefit of working papers to inform the issues under discussion at the hearing.
- (16) We therefore suggest that the CMA reconsiders its proposed approach to working papers, and, at the least, updates the Draft Guidance to expressly clarify when and how working papers may be used, defining what constitutes an exceptional basis for their publication. This could be added in at paragraph 8.36 of the Draft Guidance where it is stated that the CMA may ‘*disclose key elements of its analysis before publication of its interim report*’.

6 Interim report and supplementary interim reports

- (17) The Committee commends the CMA’s commitment to improving pace throughout its markets work, including by proposing to publish an interim report at an earlier stage in the process than the current provisional decision report. That said, we have some reservations about focusing too much on pace should this undermine the standard and thoroughness of the interim report. We are concerned there could be a risk the CMA feels forced to make up its mind earlier on in the process, without having the time to fully examine all the issues and produce a sufficiently detailed interim report as may be the case under the current approach. The CMA should therefore keep in mind the appropriate balance between having sufficient time to adequately assess issues before committing these to public scrutiny and keeping parties and stakeholders appropriately informed of the CMA’s potential concerns, before having to discuss them with the CMA.

- (18) The increased chance of new evidence or submissions provided after the interim report leading to changes in the 'direction of travel' and, in turn, more frequent supplementary interim reports does raise some concerns that this could undermine certainty and predictability within the process (for main parties and broader stakeholders). It is not clear whether the suggested commitments for earlier engagement outweigh this risk; we encourage the CMA to consider in the round whether there are additional steps that could be taken to minimise the potential downside of u-turns from an interim report (such as an obligation to provide sufficient advance notice of changes and disclosing key evidence to parties promptly).
- (19) If the CMA proceeds with the current Proposal, it will be all the more important for response hearings to provide an adequate opportunity for parties to engage with the panel on the CMA's thinking (both in terms of when they take place, but also the duration).
- (20) Finally, we consider that the Draft Guidance should be updated to explain the possibility of supplementary interim reports being issued.

7 Remedies

- (21) The Committee generally considers the changes in respect of remedies to be positive changes and the Draft Guidance is already useful on these points.
- (22) In particular, we welcome the increased openness to (and clarity about when) undertakings in lieu of a market investigation reference will be accepted as well as the proposal to engage earlier with parties on this. Used appropriately, these could help facilitate shorter overall timelines and achieve greater proportionality in the outcome and process of a market study, in line with the 4Ps framework and to the benefit of the affected businesses and industry.
- (23) The provisions on remedies trials in the Draft Guidance also appear to generally be useful in explaining clearly when and how these may be used. We would hope to see early discussion around the potential use of UILs, with a view to making sure issues can be resolved as soon as possible.
- (24) However, given that the remedies trialling proposals introduce a whole new stage into the adoption of information remedies (which could run for 6 – 12 months), we consider it crucially important to keep under review the net benefit of any trials and whether any remedies imposed are indeed achieving their proposed purpose. We have some concern that the 'default' approach of running concurrent trials where there is more than one variant being tested has the potential to impose considerable burdens on the affected parties. In addition, we suggest the Draft Guidance should include more clarity about what happens if the trial concludes that the remedy is not effective or possible. It mentions the CMA's power to conduct another trial within six months if the first one concludes the remedy trialled is ineffective, however it is not clear what the next step would be if a subsequent trial is also deemed ineffective. Remedies should not persist if they are not achieving their objective, consistent with the broader drive to minimise unnecessary burdens on business.
- (25) More generally, and as previously suggested in our CLLS June Submission, to reduce uncertainty about outcomes of market studies / investigations and promote confidence in the industry while the review is ongoing, we remain of the view it would be beneficial to publicly take certain remedies (e.g. the most interventionist ones) off the table as early as possible in the process when it becomes clear to the CMA that such intervention would not be required or appropriate for the issues under consideration. Linked to this, in the interests of transparency and greater certainty, we think it would be useful if the Draft Guidance (or other

policy statement) provides some indication of what type of remedy are generally preferred by the CMA in terms of outcomes e.g. acknowledgement that behavioural remedies are most likely to be appropriate in particular in the context of a no-fault regime such as the MIR regime.