

# **Market Reviews, Studies, Investigations and the monitoring and review of market remedies**

**Updated guidance on the CMA's  
approach: consultation outcome**

**3 February 2026**

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## 1. Introduction

- 1.1 The Competition and Markets Authority (CMA) issued a consultation relating to the markets regime guidance documents in 2024, proposing updates to reflect changes resulting from the Digital Markets, Competition and Consumers Act 2024 (DMCCA) and changes in other legislation since the Enterprise and Regulatory Reform Act 2013, to reflect developments in CMA practice over time, and to simplify the suite of markets regime guidance documents.
- 1.2 On 20 August 2025, the CMA opened a consultation which ran until 1 October 2025 proposing further amendments to the Markets Regime Guidance. The proposed amendments build on and incorporate [feedback received in our 2024 consultation](#) and also apply the ‘4Ps’<sup>1</sup> framework to the markets regime, as outlined in the CMA’s [markets approach document](#). The ‘Markets Regime Guidance’ consolidates into a single document the previous guidance documents consulted on in the 2024 Consultation.
- 1.3 We asked the following questions:
  - (a) Overall, are the changes proposed in the draft Markets Regime Guidance sufficiently clear and useful?
  - (b) What, if any, aspects of the draft Markets Regime Guidance do you consider need further clarification or explanation, and why?
  - (c) Do you agree with the proposal to update and consolidate the relevant guidance?
- 1.4 The CMA received 14 responses to the consultation. The CMA thanks all those who submitted a response.
- 1.5 The CMA has carefully considered all the responses. This document summarises the main comments received, and the CMA’s views on these. All responses to the consultation are available on the consultation webpage.
- 1.6 The CMA has published its final Markets Regime Guidance alongside this document. That Guidance will apply to market reviews, market studies and market investigations commenced after the date of publication.<sup>2</sup> It also applies

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<sup>1</sup> The 4Ps are pace, predictability, proportionality and process.

<sup>2</sup> In the consultation (paragraphs [2.35]), we proposed a slightly different position that depended on whether existing markets regime projects had reached a provisional view or decision stage. Since all such projects have now passed that stage, we adopt a different and simpler position in the final guidance (that is nonetheless

to the monitoring and review of markets remedies as at the date of its publication.

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consistent with what we proposed). The existing projects will continue to be subject to the CMA's previous, and otherwise superceded, guidance.

## 2. Issues raised by respondents and our response

**Overall, are the changes proposed in the draft Markets Regime Guidance sufficiently clear and useful?**

2.1 The CMA proposed a series of interconnected changes to deliver improvements to the pace, predictability, proportionality and process of its markets work, as set out in the [Markets Approach Document](#). Through the Markets Regime Guidance, the CMA is seeking to provide greater clarity, where possible, on the CMA's likely approaches, and to remove equivocal statements, where it is appropriate to do so. The proposed changes are intended to enhance the predictability of the CMA's markets work.

### **Summary of responses**

2.2 The majority of respondents noted that they welcomed or supported our proposals. Comments included that the changes introduced by the draft Markets Regime Guidance are useful and provide clarity surrounding the CMA's intentions and process in relation to the markets regime, which are set out in a more clear and comprehensive way. The CMA's proposed changes were described as reflecting pragmatic, long-term thinking and a readiness to adapt its processes where necessary.

2.3 Respondents also suggested there are some areas which could benefit from more explanation and/or detail. Specific examples were generally provided and are considered in more detail under the relevant heading(s) in the second consultation question.

2.4 One respondent also said that in many areas, businesses continue to face considerable uncertainty over the process and standards to be used. They suggested the CMA should prioritise:

- (a) Proportionate action which reflects the Government's priority on promoting investment and economic growth.
- (b) Avoiding open-ended or vague powers where stakeholders cannot respond to a clear framework for implementation.
- (c) Procedural clarity and protecting rights of defence.

2.5 One respondent suggested that the CMA's Markets Regime Guidance should recognise and support compliance with broader legal obligations under the Equality Act 2010.

## The CMA's views

2.6 We have taken into account that the majority of respondents agreed with our proposals and believed that they would enhance the predictability of the CMA's markets work. Where respondents suggested there are some specific areas of the Markets Regime Guidance which could benefit from more explanation and/or detail, these are considered below (to avoid repetition).

2.7 As a more general observation, a number of the responses could be seen as encouraging the CMA to be more prescriptive about the approaches that it will take in applying the markets regime. We have considered carefully where opportunities exist to make the Markets Regime Guidance even clearer and more helpful, applying the 4Ps framework, and have adopted these where we consider it appropriate to do so.

2.8 As part of that consideration, we have taken into account that:

- (a) The CMA's 4Ps framework (pace, predictability, proportionality, and process) is designed to support growth, investment and business confidence in the UK's competition and consumer regimes. The Markets Regime Guidance is a vehicle that helps deliver on this commitment by providing greater certainty for businesses; ensuring that the burdens our work and our processes place on businesses are proportionate; and facilitating completion of our markets work as quickly as possible.
- (b) The Markets Regime Guidance sets out how the CMA will consider the exercise of powers Parliament has provided. Those powers can be applied in a wide range of markets and circumstances. The CMA cannot fetter the discretion that Parliament decided it should have (nor can the CMA add to or extend its powers). Unduly narrow and prescribed approaches could, in any event, risk being unhelpful. An approach that is likely to apply in some, or even most, cases, may not be proportionate in every case, for example. Suggesting otherwise could itself generate uncertainty.

2.9 We therefore use the final version of the Markets Regime Guidance, in the interests of predictability and the other 4Ps principles, to indicate approaches the CMA is likely or more likely to take in using those powers. We have identified opportunities to provide greater clarity in a way that is consistent with the considerations described in the preceding sub-paragraphs.

2.10 As to the interaction between the markets regime and the Equality Act 2010, like other public bodies the CMA has obligations to work in a way that advances equality, both in its day-to-day operations and in exercising its functions. The Markets Regime Guidance makes clear where, as part of its

markets work, the CMA will consider the positions of vulnerable customers and groups (for example, in considering whether features of a market that affect competition also result in relevant customer benefits). In applying the approaches described in the Markets Regime Guidance, the CMA will have due regard to the advancement of equality and to disabled persons' impairments in its approach to making decisions.

***What, if any, aspects of the draft Markets Regime Guidance do you consider need further clarification or explanation, and why?***

2.11 The CMA set out a range of proposals in a number of areas. We have set these out under specific sub-headings and consider these below.

***Project roadmap***

2.12 The CMA proposed to issue a 'Project Roadmap' at the outset of each market review, market study or market investigation. The purpose of the Project Roadmap is to provide a more predictable and open approach to how we intend to run each markets project in a manner that is accessible to business. The Project Roadmap would set out (in more detail than the administrative timetable) the proposed tailored approach to the relevant markets project. The CMA signalled its intention for the Project Roadmap to contain, amongst other things:

- (a) Bespoke KPI timeframes for each stage of the markets work;
- (b) Points at which the parties can expect to engage with the decision maker(s);
- (c) Any proposed progress reports and the stage at which 'state of play' meetings can be expected;
- (d) Public consultation points; and
- (e) The CMA's intended approach with regard to appointing experts.

***Summary of responses***

2.13 There were no dissenting comments from respondents regarding Project Roadmaps. Feedback generally endorsed their introduction, welcoming tailored Project Roadmaps at the outset of markets projects. It was noted that KPIs and milestones are viewed as helpful for the purposes of planning, resource allocation and improving predictability of CMA processes.

2.14 Feedback was provided that parties should be allowed to input/comment on Roadmaps early in the process and the CMA must commit to ensuring Roadmaps are adhered to unless exceptional circumstances occur that justify deviation. It was suggested the CMA should include a clearer commitment to updating the Roadmaps as cases evolve and they should also include other information similar to that provided in a market study Notice (ie on scope and areas of focus). It was also noted that any updates should be substantive and reflect evolving scope and priorities.

### **The CMA's views**

2.15 We welcome the endorsement that respondents gave to our proposal to introduce Project Roadmaps. We are not making any substantive changes to the Markets Regime Guidance put forward in the consultation.

2.16 As to the detail to be included in the Project Roadmaps, the aim is for them to be a business friendly and accessible document that identifies the key staging points for that particular project. They will also identify the points at which parties can expect to receive substantive updates and engagement with the decision maker(s). The CMA expects to follow the Roadmaps unless the circumstances in any particular project change. The target audience is businesses who do not usually engage with the CMA, rather than experienced business and legal advisers who are more familiar with CMA processes.

2.17 However, depending on the case, Project Roadmaps may be more detailed (for example, setting out if and when a working paper may be issued), and may be updated from time-to-time, so we have revisited the wording in the Markets Regime Guidance to be more explicit on this point.

2.18 The CMA will not invite written feedback on Project Roadmaps, as they are primarily aimed at setting out the key stages in one accessible document. However, if stakeholders have concerns, the CMA may consider representations made.

### ***Sector expertise and experience***

2.19 The CMA proposed to bring in external sector expertise when carrying out a markets project, including through the use of expert panels.<sup>3</sup> The purpose would be to help the CMA develop its understanding of the market at pace,

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<sup>3</sup> Please note, references to an expert panel refer to an external panel of experts (and other forms of expert input) appointed to advise the CMA on a specific set of issues. This is separate and distinct from the CMA's panel of independent decision makers.

allowing us to move more quickly to assessing and addressing concerns in the market. This in turn will allow us to minimise the length of time that businesses in the market have burdens and uncertainty imposed on them by our work, to reach the right conclusions about any concerns in the market and, where necessary, to identify effective and proportionate remedies to such concerns.

### **Summary of responses**

- 2.20 The use of sector expertise was widely supported by respondents. It was noted as a way for the CMA to quickly familiarise itself with the key issues and fully understand market dynamics. Respondents said that the use of sector expertise could help to produce more targeted and proportionate requests for information, helping to increase pace, and remedy design in particular.
- 2.21 However, respondents also said that the CMA should clarify how expert panel members are selected and consulted. In addition, the CMA should be clearer on the role and responsibilities of expert panels to ensure transparency and avoid conflicts of interest, as well as the weight which views of expert panel members will be given. It was also suggested that main parties should be provided the opportunity to make representations about the potential appointment as well as challenge or contribute to the expert panel's input (ie to mitigate the potential risks of bias or conflicts of interest).

### **The CMA's views**

- 2.22 The CMA recognises the concerns expressed by respondents that the Markets Regime Guidance could provide more detail on how an expert panel would be appointed. The CMA has therefore introduced a new section on 'sector engagement' in the Markets Regime Guidance that sets out the role of an expert panel, and/or other experts, how an expert panel, and/or other experts, will be appointed and how they will be used that also reflects our recent experience in using expert panels in our Vets Market Investigation and Civil Engineering Market Study.
- 2.23 An expert panel's, and/or other experts, role is to provide sector knowledge and/or expertise during a markets project, to enable the CMA to conduct its analysis efficiently and to make informed and proportionate decisions with enhanced pace. Any views provided by an expert panel, and/or other experts, would be considered by the CMA's decision makers, alongside the full body of evidence the CMA gathers in the course of its markets inquiry.

### ***'State of play' meetings***

- 2.24 The CMA proposed to introduce internal 'state of play' meetings, drawing on its experience of these meetings in the mergers and competition enforcement contexts, where it is appropriate and feasible to do so.
- 2.25 The proposal aims to formalise the existing practice of assessing and re-assessing the scope of the CMA's substantive and/or remedies analysis in light of the evidence gathered and to take a decision whether to continue with, or de-prioritise, certain lines of inquiry further to the CMA's prioritisation principles.<sup>4</sup>
- 2.26 Internal state of play meetings will take place with the SRO and/or decision maker. The CMA commits to providing an update after an internal state play meeting. The update could be in the form of a written email update, progress report and/or an external state of play meeting.

### **Summary of responses**

- 2.27 The majority of respondents agreed with our proposal, welcoming formalising internal state of play meetings and providing updates. Teach-ins and webinars were seen as valuable additions to the process.
- 2.28 Feedback included that, wherever possible, the updates should be as detailed and meaningful as possible to enable parties to be able to understand CMA's lines of inquiries as soon as possible. Four respondents said they would welcome external state of play meetings for parties who are most likely to be impacted by any potential outcomes. Two respondents said that they would also prefer these updates to be provided at an early stage to allow parties to understand the CMA's thinking on theories of harm, the evidence it has and any remedies under consideration. A respondent further noted that the state of play meetings should be held sufficiently in advance of any publications to give parties the opportunity to engage with CMA's emerging thinking before this is published. One specified that the role of these meetings in shaping outcomes is currently unclear.
- 2.29 It was put to us that the Markets Regime Guidance should specify what details will be considered in state of play meetings, and include a commitment that the CMA will narrow its concerns over the course of a case and only focus on the most material harm to consumers and businesses. Respondents told us they would also welcome guidance on the frequency and structure of

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<sup>4</sup> [Prioritisation Principles](#).

these meetings, as currently the Markets Regime Guidance does not provide significant clarity on their nature or frequency. It was suggested that this information should either be included in the Markets Regime Guidance or provided on a case-by-case basis at the outset of formal markets work.

### **The CMA's views**

- 2.30 Reflecting that the majority of respondents agreed with our original proposal and our view that, considered as part of the CMA's overall approach, it allows for an appropriate balance of fair process, robust and informed analysis and proportionate burdens on businesses, we will proceed as we proposed with regard to state of play meetings.
- 2.31 We note that state of play meetings are check-in points in the progress of our markets work. They are not intended to be a substantive point of engagement. The whole process the CMA adopts, end-to-end, will give affected parties the opportunity to comment before decisions are made, in line with legal requirements and consistent with the 4Ps. We explain how we will achieve this elsewhere in this statement and in the final Markets Regime Guidance.

### ***Enhanced and earlier engagement with parties***

- 2.32 The CMA proposed to facilitate enhanced engagement between the CMA and affected parties, in particular any main parties. The purpose is to support a participative approach to our markets work, provide parties with greater predictability on next steps and greater visibility on possible concerns at an earlier stage of markets work. In turn, the CMA expects this to help improve the pace of its markets work while ensuring we maintain processes that are fair and enable the CMA to make informed decisions.
- 2.33 The proposals included: holding one or more launch webinars at the outset of a new market study or market investigation with the SRO; formalising the process of holding a 'teach-in' session (which may include a site visit, where appropriate) at the outset of a market study and/or market investigation; post internal state of play meeting update to parties; and providing more regular updates, either by way of informal calls and/or progress reports.
- 2.34 As a result of these changes, the CMA proposed to move away from its current approach of routinely producing working papers and annotated issues statements. We proposed that working papers would be prepared and published on an exceptions-only basis in market studies and market investigations (in a market investigation, we proposed publishing an interim report(s), which would set out the provisional decisions on AEC and remedies at an earlier stage than is currently done in relation to the provisional decision

report); and the removal of the ‘annotated issues statement’ in a market investigation.

### **Summary of responses**

- 2.35 There was broad support for the proposals aimed at enhanced engagement between the CMA and affected parties. Respondents generally recognised this 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. Webinars, teach-ins, updates following internal state of play meetings, and more regular updates through informal calls and/or progress reports were noted by respondents as constructive steps towards improving transparency and encouraging earlier engagement.
- 2.36 One area where there was a fairly even split of agreement and disagreement between respondents concerned the proposal to issue working papers by exception rather than by default.
- 2.37 Some respondents - a mix of parties to existing or previous cases and legal advisers - believed the move away from the routine production of working papers and annotated issues statements to be a sensible step that should reduce unnecessary burdens. They noted that the changes have the potential to improve transparency and streamline engagement, provided the CMA ensures that parties continue to receive sufficient visibility into its thinking, and are given appropriate opportunities to actively engage and comment. For example, this might be through interim reports containing a well-developed provisional assessment.
- 2.38 Other respondents - also a mix of parties to existing or previous cases and advisers - opposed the removal of working papers by default. They contended that working papers provide critical insight into the CMA’s emerging thinking and that the removal of the annotated issues statement (alongside working papers) would result in parties having little to no visibility of how the CMA’s thinking has developed as a project progresses. They noted that the enhanced engagement (including state of play updates) would be unlikely to provide parties with adequate detail to allow thorough analysis and adequate opportunity to challenge the evidence base before the CMA commits to its emerging thinking in its Interim Report.
- 2.39 The same respondents further noted the risk that a lack of working papers and an annotated issues statement could undermine the effectiveness of hearings, as parties would lack clarity on the CMA’s concerns. They said that removing working papers shifts the balance of power towards the CMA, reducing opportunities for scrutiny and challenge.

2.40 While some respondents accepted the CMA’s desire to streamline processes, others proposed alternatives to preserve transparency which included:

- (a) Streamlined Working Papers: Rather than removing them entirely, the CMA could publish fewer, more focused papers (and in a more accessible format) to reduce burden while retaining their benefits.
- (b) Confidential Disclosure: the CMA could share key analysis with main parties via confidentiality rings or disclosure rooms, even if not published publicly.
- (c) Enhanced Interim Reports: If working papers are removed, interim reports must be published earlier and contain detailed provisional analysis.
- (d) Clear Criteria for Exceptions: the CMA should define what constitutes an “exceptional” case for publishing working papers and commit to advance notice when they are used.
- (e) Maintain Early-Stage Hearings: Maintain early-stage hearings and adopt a Phase 2 merger-style response process.

### **The CMA’s views**

2.41 The CMA acknowledges the broad support for the proposal to enhance engagement, albeit respondents had differing views surrounding producing working papers by exception rather than by default. The CMA is committed to choosing the best and most effective tool to engage fairly and meaningfully with parties, including with the publication of an earlier interim report and enhanced informal engagement. Interim reports will only typically address points that are both material and relevant to the analysis. They will not, therefore, address each and every argument put forward by parties which they claim is relevant but which does not materially impact the assessment.

2.42 To that end, the Markets Regime Guidance does not provide for the removal of working papers in their totality. Their use, or the use of other opportunities for parties to comment, such as progress reports, will be considered on a case-by-case basis. That consideration will take into account whether the production of one or more documents is necessary for informed decision-making, following a fair and proportionate process.

2.43 We have included in the Markets Regime Guidance examples of where a working paper or progress report is more likely to be appropriate (for example, if there is detailed and complex technical analysis or the CMA’s provisional views of the evidence or there is a fundamental change to the proposed decision in relation to the relevant statutory question). The Markets Regime

Guidance also makes clear that, in such cases, the Project Roadmap will be updated to give parties advance notice of any consultation timeframe.

2.44 In addition, we recognise the benefits of publishing any interim report as early as reasonably possible to enable parties to have fair and meaningful engagement with the CMA's views before any decisions are made. Reflecting on the varied nature of cases that the CMA investigates, there are a number of factors which the CMA expects will affect the timeframe in which it is able to publish the interim report. Those include the complexity of the market study or investigation and the evidence base. We would not, as a result, expect that interim reports will be published at the same point in the timetable in all cases, but we are committed to publication at pace. When deciding precisely when to publish in each case, the CMA will take into account these factors, as well as how the timing would affect the rest of the market study or investigation.

### ***End-to-end timeline efficiencies***

2.45 The CMA proposed a range of measures aimed at reducing the overall end to-end length of markets work:

- (a) Setting bespoke timings for each project, providing more detail than statutory timescales where appropriate, as well as ensuring that informal reviews have a clear timeframe and all projects have timeframes for key stages.
- (b) A more streamlined approach to 'putback' (the need for which will also be reduced by decreasing the number of the documents we publish) so as to minimise the burden to businesses, and the timescales, of our investigative processes.
- (c) Where a market review or market study may precede a market investigation, using that time efficiently to narrow the issues that need to be considered in the market investigation. This would make it more likely that the scope of any such market investigation could be more tightly focussed, for example, on a narrower set of concerns and/or potential remedies.

### **Summary of responses**

2.46 The majority of respondents welcomed our proposal.

2.47 Project Roadmaps and KPIs were widely supported as tools to improve transparency, predictability, and planning. Respondents appreciated the inclusion of bespoke and tailored timelines and milestones. Streamlining

evidence gathering was endorsed by many, as was the CMA's proposal to issue RFIs earlier and more efficiently, especially when transitioning from market reviews or studies to investigations.

2.48 There was consensus that lengthy investigations can chill investment, create uncertainty, and impose disproportionate burdens - especially on smaller firms. Efficiency gains were seen as essential to mitigate these effects. Respondents supported the idea that earlier phase market reviews and studies should be used to refine the scope of subsequent investigations, helping focus CMA resources and reduce unnecessary inquiry.

2.49 Several respondents cautioned that a focus on pace must not compromise the quality of analysis or stakeholders' ability to engage with the CMA, or risk that the CMA is forced to 'make up its mind' prematurely. Efficiency should not mean rushed RFIs, compressed consultation periods, or reduced opportunities to challenge CMA thinking, so pace needed to be balanced with due process.

2.50 Some respondents feared that removing working papers could reduce transparency and limit early engagement with CMA's emerging views - potentially undermining the robustness of interim reports (see above approach to working papers).

2.51 While streamlining the putback process was welcomed, the CMA was urged to avoid duplicative confidentiality reviews and ensure adequate time for parties to respond (with some citing previous accidental disclosures). They also noted the Markets Regime Guidance is silent on the detail around the putback process.

### **The CMA's views**

2.52 Reflecting that the majority of respondents agreed with our original proposals, the CMA has decided that no substantive changes will be made to the proposed Markets Regime Guidance. The CMA's overall approach, such as prioritising and re-prioritising theories of harm at internal state of play meetings, should help to focus the information requested (while allowing adequate time for parties to respond). The CMA notes in this context that the Markets Regime Guidance envisages a swifter 'putback' process pre-publication of any Interim or Final Report, as a result of seeking confidentiality representations on documents at the time of submission.

### ***Remedy trials***

2.53 The CMA proposed to provide more clarity about when and how the new remedy trials power may be exercised. The use of this power should benefit businesses and consumers by enabling the CMA to test the way information remedies are implemented, thereby increasing the overall speed with which the CMA puts in place effective and proportionate information remedies. The CMA proposed guidance about the steps it will take to deliver that benefit, including as to the circumstances in which it considers the use of the power to be more likely, and the parameters that should apply to such use and expected timeframes.

### **Summary of responses**

2.54 In general, the majority of respondents agreed with our proposals. Trials were generally seen as useful for testing the effectiveness of the way information remedies are implemented.

2.55 There were some concerns and suggestions raised by respondents that remedy trials should be limited, proportionate and subject to consultation, with a clear long-stop date and clarity over timelines, and that the evaluation of a trial should be objective and measurable, with additional guidance provided on the evaluation criteria. Some respondents raised a concern about a default approach of running concurrent trials. Some said we should keep the net benefit of any trials under review, and include more detail on both: (a) the 'complex' and 'non-complex' cases in which different trial timetables might apply; and (b) the process if the initially-trialled remedy is not effective. Another response said that interim remedies should only be used, while implementation trials are conducted, in exceptional cases. There was also a suggestion to consider legislative amendment to EA02 to introduce a statutory power for the CMA to vary or revoke a remedy.

### **The CMA's views**

2.56 We note that the majority of respondents agreed with our proposed Markets Regime Guidance on remedy trials. To the extent they did not:

(a) The draft Markets Regime Guidance set out that each trial would be time limited and subject to evaluation criteria and consultation as required by the EA02 (which the CMA must follow).

(b) It also set out where the CMA would be more likely to use trials, and the principles we intend to apply with a view to ensuring trials are effective

and proportionate, including that they are kept under review and ended if they are ineffective.

- (c) As part of that approach to proportionality (and pace) in particular, we continue to see the use of concurrent trials as an appropriate way of testing more than one way of implementing a remedy, as quickly as possible, where more than one reasonable possibility exists. That, in our judgement, is likely often to be preferable to adopting an approach that makes the running of successive trials more likely (likely adding time and uncertainty to the process).
- (d) The possibility of legislative change is outside the scope of the Markets Regime Guidance.
- (e) We have made additions to the Markets Regime Guidance relating to:
  - (i) Examples of the ‘complex’ and ‘non-complex’ cases in which different trial timetables might apply;
  - (ii) the process the CMA would most likely follow where an initially-trialled remedy is ineffective; and
  - (iii) the circumstances in which the CMA may implement interim remedies pending completion of the trial of the implementation of other remedies.

2.57 Given the above, we have decided to adopt the proposed Markets Regime Guidance on remedy trials, with the additions referred to in sub-paragraph (e) immediately above.

### ***Remedies***

2.58 The draft Markets Regime Guidance made a number of proposals about the CMA’s approaches to remedies, including the way in which potential remedies would be considered and assessed. In addition, the proposed Markets Regime Guidance:

- (a) explained when undertakings could more likely be accepted (fully or partially) in lieu of a market investigation, with a view to reducing the end-to-end timeframe of markets work; and
- (b) indicated that, in cases where the CMA imposes orders, it would include ‘sunset’ clauses as a default, unless it judged that there is a good reason for the remedies to remain in place.

## Summary of responses

2.59 In general, the majority of respondents agreed with our proposals. There was general support for increased openness to undertakings in lieu. The proposal for default sunset clauses was widely supported.

2.60 Some respondents made some comments and suggestions on the CMA's proposed approach to assessing the proportionality of potential remedies in market investigations in particular:

- (a) The Markets Regime Guidance does not clarify how proportionality will be measured or what evidence thresholds will justify intervention.
- (b) It would be beneficial to take certain remedies off the table (eg the most interventionist ones) as early as possible when it becomes clear to the CMA that such remedy would not be appropriate or proportionate.
- (c) The Markets Regime Guidance could better reflect the CMA's intention to consider potential detrimental effects of remedies (including potential distortions in the market caused by the remedies themselves).
- (d) There was some disagreement with any suggestion of an incentive for market participants to overstate the potential costs of remedies, 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.

2.61 Two respondents made suggestions on the main types of remedies the CMA should consider in a market investigation:

- (a) The Markets Regime Guidance could include a clear remedies hierarchy, with market-based solutions prioritised and strong evidentiary thresholds before intervention.
- (b) The Markets Regime Guidance could provide some indication of what type of remedy is preferred by the CMA in terms of outcomes (for instance, acknowledgement that behavioural remedies are most likely to be appropriate in the context of, for example, the market investigation regime).

2.62 Two respondents made suggestions on undertakings in lieu:

- (a) The Markets Regime Guidance could provide further clarity on how partial undertakings in lieu would operate in practice, including the level of certainty they offer to affected parties once accepted by the CMA. In particular, it would be helpful to understand the incentives for affected

parties to give partial UILs and how they would function in market reviews involving multiple stakeholders.

- (b) The Markets Regime Guidance could be clearer about how the CMA will weigh the significant public and private cost of a market investigation reference and consider the prospect of whether a putatively “better” remedy outcome is sufficiently better to justify such a process.

### **The CMA’s views**

- 2.63 The majority of respondents agreed with our original proposal, which we believe provides an appropriate framework for robust analysis, whilst avoiding any unnecessary burden on business. As such, we will proceed as per our proposal.
- 2.64 In response to the comments made on proportionality:
  - (a) The Markets Regime Guidance explains the CMA’s proportionality assessment and the key steps involved in that assessment. It also explains that, to avoid imposing unnecessary burdens on business, the CMA will seek to ensure that its remedies are no more onerous, and impose no more cost to businesses, than is necessary to remedy the problems it has identified. Our judgement is that the Markets Regime Guidance is consistent with the relevant legal principles and is clear on the CMA’s approach. It would not be appropriate to seek to prescribe a single proportionality measure or evidential threshold for all remedies.
  - (b) The Markets Regime Guidance clarifies that in situations where the CMA concludes that one or more potentially effective remedies would not be proportionate, the CMA will remove those from consideration.
  - (c) The Markets Regime Guidance explains that, when assessing the onerousness of a remedy, the CMA will take into account potential unintended distortions to market outcomes.
  - (d) The Markets Regime Guidance explains that in evaluating information from parties about the potential costs of implementing or complying with remedies and about their effects on those parties, the CMA will bear in mind that there might be incentives for parties to overstate those costs or effects for remedies that they do not support. The Markets Regime Guidance does not suggest that those incentives will always exist.
- 2.65 In response to the comments on the choice of remedies, we take into account that the CMA’s legal duties in a market investigation include:

- (a) to decide whether action should be taken by it, or recommended to others, to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, that adverse effect;
- (b) if it decides that action should be taken or recommended, what that action should be;
- (c) to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the relevant adverse effect on competition and any resulting detrimental effects on customers; and
- (d) that any remedies must be effective and proportionate.

2.66 The relevant duties require that the choice of remedies reflects the particular circumstances of each market investigation. The Markets Regime Guidance is consistent with this requirement. In the interests of predictability and proportionality, it sets out, in considerable detail, considerations that are likely in different cases to influence the choice and shape of any remedies. It would not be appropriate for the Markets Regime Guidance to prescribe a hierarchy of remedies that would apply across its markets work generally or in market investigations specifically. This would risk unduly fettering the CMA's exercise of the powers given to it by Parliament.

2.67 In response to the comments made on the CMA's approach to undertakings in lieu:

- (a) The Markets Regime Guidance explains where the CMA may accept undertakings fully or partially in lieu of making a market investigation reference and the effects of those undertakings. We have amended the Markets Regime Guidance to make those points clearer and included an example of where and how undertakings partially in lieu may be relevant.
- (b) The Markets Regime Guidance also explains the considerations relevant to the CMA's exercise of its discretion to make a market investigation reference where the statutory criteria are met. One of the considerations is that there is a reasonable chance that appropriate and proportionate remedies will be available.

### ***Monitoring remedy compliance***

2.68 In the draft Markets Regime Guidance, the CMA set out how it proposed to monitor compliance with, and investigate breaches of, remedies in an effective and proportionate manner. The CMA described how it will seek to

ensure that a remedy achieves its intended objective without placing unnecessary burden on the parties subject to the remedy.

2.69 The draft Markets Regime Guidance explained how the CMA's approach to monitoring compliance with a remedy may change over time as it seeks to recalibrate its approach to reflect, for example, whether the remedy has been implemented, the levels of compliance with the remedy and the effectiveness of the parties subject to the remedy in identifying and addressing breaches of the remedy.

### **Summary of responses**

2.70 The majority of respondents agreed with our proposals. Comments included particularly consistent support for the proposal to ensure that remedies achieve the intended objectives in an effective and proportionate manner.

2.71 Some respondents suggested that the Markets Regime Guidance would benefit from more information, in particular with regard to:

- (a) Information on the full consequences of breaches of market investigation remedies, including the new fining powers and the CMA's approach to these.
- (b) Clarification on encouraging parties to report potential issues to the CMA before breaches are established.
- (c) Including further detail on the CMA's decision-making process in relation to breaches.
- (d) Clarification on the interplay between the CMA and sectoral regulators. In the relevant respondent's view, the default position should be that all remedy oversight should pass to sectoral regulators and only remain with the CMA on an exceptional basis.
- (e) Clarification around the extent to which the 'well-established' nature of remedy requirements is relevant in assessing the materiality of breaches.

2.72 There was also a suggestion that the CMA's 2024 guidance on penalties be reviewed and updated to bring these in line with 4Ps.

2.73 One respondent stated that the CMA adding references to private breach letters to its breach register is neither proportionate or fair, and that the Markets Regime Guidance should note that using the threat of a breach finding to persuade parties to change legitimate commercial practices will not happen in future cases.

2.74 Another respondent stated that consideration needs to be given to the clarity of a remedy's requirements. It noted that multiple apparent breaches by different parties could indicate a problem with the remedy rather than with parties' compliance.

### **The CMA's views**

2.75 Reflecting that the majority of respondents agreed with our original proposals and our view that they provide an appropriate indication of the CMA's approach, taking account of its statutory powers and duties and the principles and aims of the 4Ps, we have decided to proceed as proposed in the final Markets Regime Guidance.

2.76 In response to those respondents who said that the Markets Regime Guidance should include more information or clarification, we note that:

- (a) Information on the full consequences of breaches of market investigation remedies, including the CMA's new fining powers and the approach to these, is provided in [Administrative Penalties: Statement of Policy on the CMA's Approach \(CMA4\)](#).
- (b) Reporting potential issues to the CMA before breaches are established benefits both the CMA and the party concerned, as it enables a timely and efficient assessment of the scale of the potential breach, and of what action may be necessary in response, including potential enforcement action. It also facilitates the efficient use of investigative resource both in the CMA and the party concerned.
- (c) The Markets Regime Guidance clarifies that the decision about the action to be taken in response to a breach will be taken by a senior CMA member of staff.
- (d) The CMA is responsible for the monitoring and enforcement of markets remedies. Where another regulator or regulations are present in a sector, the CMA will engage closely with them to avoid inconsistency with, or duplication of, the existing regulatory regime.
- (e) To determine whether a breach is material and should be included on the register of material breaches, the CMA will consider the extent, if any, of any exacerbating factors, such as the extent of previous non-compliance by the party concerned or the extent to which a remedy and its requirements are well-established. These factors will be considered on a case-by-case basis.

- (f) The CMA does not, however, have any current plans to revise CMA4, which was approved by the Secretary of State on 17 December 2024 and published on 19 December 2024.
- (g) The CMA will consider carefully whether a breach is material and should be included on the register of material breaches. The CMA will not use the threat of a breach finding to persuade parties to change legitimate commercial practices.
- (h) Where multiple apparent breaches of a remedy by different parties could indicate a problem with the remedy rather than with compliance, the CMA will work closely with the parties concerned to understand the issue and resolve it as efficiently as possible.

### ***Remedy reviews***

2.77 The CMA's proposals in the draft Markets Regime Guidance set out how it will amend or remove remedies under statutory powers where a change of circumstances is identified or a remedy is fully or partially ineffective.

### **Summary of responses**

2.78 The majority of respondents supported our proposals and considered the Markets Regime Guidance to be clear and useful. Additional comments included that:

- (a) The CMA should consider a cost/benefit analysis and consider the proportionality of continuing the remedy in light of the original AEC, and this should be included in the Markets Regime Guidance.
- (b) The CMA should consider adopting an evidence-based, targeted and proportionate approach, as a detailed investigation may impose significant additional costs on affected parties.
- (c) The Markets Regime Guidance should include more clarity over the criteria as to when remedies may require a review, as the examples in the draft Markets Regime Guidance reflect factors that will be present in most remedies.
- (d) The Markets Regime Guidance should clarify that the change of circumstances test and the new effectiveness review will only come into play in circumstances in which a review of remedies is needed before the date of the sunset clause has been reached. The Markets Regime Guidance must set out in greater detail how exactly it will operate to

ensure that a proper analysis of the ongoing AEC and costs and benefits of the benefits is undertaken.

- (e) The scope and triggers for strategic reviews require further clarification, including how they differ from substantive reviews and how they interact with sunset clauses. Clear criteria for initiating strategic reviews would improve predictability and stakeholder engagement. Committing to clear timelines and transparency over substantive reviews would ensure that they are run efficiently and without unnecessary burden for businesses.
- (f) The CMA should consider accelerating reviews of outdated remedies and, in order to support transparency and predictability, consider setting out in advance which remedies will be reviewed.
- (g) More clarity is needed on the prioritisation of remedy reviews - these should be prioritised by considering less intrusive, consumer friendly reviews first.
- (h) The Markets Regime Guidance currently does not set out that the CMA will inform relevant parties prior to launching a review, which is an important part of ensuring procedural fairness.

### **The CMA's views**

2.79 Reflecting that the majority of respondents agreed with our original proposal and considered the Markets Regime Guidance to be clear and useful, we will proceed as we proposed in the final Markets Regime Guidance.

2.80 In response to those respondents who provided additional comments:

- (a) In determining whether a remedy remains appropriate, the CMA will consider whether the remedy is addressing the competition problem it was introduced to address and the ongoing costs to parties of complying with the remedy.
- (b) When reviewing a remedy, the CMA will adopt an evidence-based, targeted and proportionate approach. In cases where the possible changes of circumstance/ineffectiveness are complex or uncertain, a detailed investigation may be required. However, the CMA will ensure that those investigations are undertaken as efficiently as possible.
- (c) The Markets Regime Guidance sets out the criteria that the CMA will consider to determine whether a remedy requires a review. This is based on the CMA's past experience of conducting such reviews.

(d) The CMA will seek to conduct a review in a timely manner, whether this is due to the remedy no longer being appropriate due to a change of circumstances or ineffectiveness, or in anticipation of a sunset clause being reached.

2.81 The use of the strategic review approach will enable the CMA to accelerate reviews of remedies that may no longer be appropriate. The CMA will undertake a strategic review where the changes of circumstances are clear and straightforward, and the action necessary is clear and straightforward to determine. The CMA will review and, where appropriate, amend or remove multiple remedies efficiently, thereby reducing the regulatory burden on businesses subject to those remedies.

2.82 To support transparency and predictability, the CMA will engage closely with the businesses, and other relevant stakeholders, subject to the remedy and other interested parties prior to launching a remedy review, to ensure that it is run efficiently and without unnecessary burden for those businesses.

(a) The CMA's prioritisation of remedy reviews will take into account a number of factors, including available resources and the strength of the case for review.

(b) The Markets Regime Guidance clarifies that, consistent with CMA's existing guidance in CMA6, the CMA will inform relevant parties prior to launching a review.

### ***Greater clarity in our Markets Regime Guidance***

2.83 The CMA sought in the draft Markets Regime Guidance to provide greater direction on the CMA's likely approaches, and to provide greater clarity, where possible. The proposed changes are intended to enhance the predictability of the CMA's markets work.

### **Summary of responses**

2.84 The respondents who answered this question provided a mixed response. The majority supported consolidating guidance into a single document which was seen as an easier and more accessible reference point than the fragmented nature of current guidance. Some who responded requested more detail on various sections, including:

(a) Implementation of remedy trials – responses said that trials should be subject to a time limit, should include consultation with market participants when weighing up the benefits of a trial against the costs involved, and

should include a clear process for periodic touchpoints between the CMA and market participants.

- (b) Costs – the CMA should explicitly include in the Markets Regime Guidance reference to the way it will consider additional costs to businesses, such as regularly considering the costs of engaging in investigations, the chilling effect of investigations on investment and business growth and the costs of implementing and monitoring remedies.
- (c) Case selection and prioritisation should be included in the draft Markets Regime Guidance.
- (d) When assessing potential net benefits before launching a project, the CMA should adopt a broader consideration of costs to businesses (such as regulatory compliance costs and forgone investment).
- (e) Concern about the exclusion of countervailing buyer power from the analytical framework and a contention that the position is inconsistent with CMA's competitive assessment. The respondent suggested that the draft Markets Regime Guidance be amended on this point.

### **The CMA's views**

2.85 As described in paragraphs 2.7 and 2.8 above, we have considered carefully where opportunities exist to make the Markets Regime Guidance even clearer and more helpful, applying the 4Ps framework. Where we have identified such opportunities, we have taken them.

### ***Implementation and commencement***

2.86 In the consultation document, the CMA noted that some of the proposed 4Ps enhancements to the draft Markets Regime Guidance reflected current practices that have been applied in recent markets work. The proposed amendments to the Markets Regime Guidance were intended to formalise these.

### **Summary of responses**

2.87 Respondents generally agreed that it is important for the CMA to carefully consider the appropriate market tools. They noted in particular that it is important, when the CMA's work progresses from a lighter-touch tool (such as a market review) to a more intensive one (such as a market investigation), that the latter should focus on the core issues identified in the earlier work.

2.88 One response suggested that the rationale for applying remedy trial powers to ongoing cases required fuller explanation in order for businesses and consumers to have certainty that rules will not shift mid-process.

### **The CMA's views**

2.89 The CMA notes the limited nature of the responses. It agrees with the point raised above regarding latter work focussing on core issues identified in the earlier work, which the final Markets Regime Guidance reflects. Regarding fuller explanation of how the CMA will use remedy trial powers, we do not think we could do this without fettering the powers given to the CMA by Parliament; we explained why we would not be able to do this in our consultation document.

## **Proposal to update and consolidate the relevant guidance**

### **Summary of responses**

2.90 The majority of respondents agreed with our proposal. Comments included that it would help with providing additional clarity for businesses, reducing the time needed to find relevant information. One respondent noted that the consolidated Markets Regime Guidance should also include the relevant elements of CMA's guidance on administrative penalties and that the principles of CMA4 should be revisited to ensure they align with the 4Ps.

2.91 One concern was raised that the new Markets Regime Guidance expands the CMA's discretion, including in respect of its new powers under the DMCCA, and that the consolidation of the guidance should not be used to create vague or discretionary enforcement powers.

### **The CMA's views**

2.92 The majority of respondents supported our proposal to consolidate the guidance. We have decided to proceed with doing so. The final Markets Regime Guidance sets out approaches the CMA is likely or more likely to take in its markets work. It cannot and does not expand, or fetter, the powers and discretion Parliament gave the CMA. We have included cross-references to our administrative penalties guidance in CMA4. The CMA does not, however, have any current plans to revise CMA4, which was approved by the Secretary of State on 17 December 2024 and published on 19 December 2024.

## **Appendix A: List of respondents**

Ashurst LLP

Barclays Bank UK plc

British Private Equity and Venture Capital Association (BVCA)

City of London Law Society – Competition Section (CLLS)

Computer & Communications Industry Association (CCIA)

Consumer Choice Center (CCC)

Freshfields LLP

Frontier Economics

Google

Herbert Smith Freehills Kramer LLP

IVC Evidensia

Linklaters LLP

Natwest Group

Respondent A