

## Refining our Competition Regime Consultation

### Response from the Competition and Markets Authority

#### Summary

1. The Competition and Markets Authority (CMA) is the UK's principal competition and consumer authority. It is an independent non-ministerial Government department, and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.
2. The CMA welcomes the Government's consultation 'Refining our Competition Regime – Driving Growth and Enhancing Competition for Businesses and Consumers' (the Consultation) and supports the vast majority of the proposed package of reforms.
3. The CMA's purpose, as laid out in our recently published [3-year strategy](#), is to promote competition and protect consumers with a clear end goal in sight: to drive economic growth and improve household prosperity. A core pillar of that Strategy is 'Fostering a UK regulatory landscape that attracts investment and instils business confidence'.
4. To support this objective, the CMA has been undertaking a comprehensive programme of work to transform four key aspects of how we operate: Pace, Predictability, Proportionality and Process. The CMA remains committed to embedding 'the 4Ps' across our operations, helping to ensure that the competition and consumer protection regimes contribute to the UK's reputation as a great place to do business and invest. Our [draft Annual Plan](#) sets out how we will build on the steps taken to date, as well as how we will maximise agility and productivity more generally across our operations.
5. Against that backdrop, and with consistent feedback from businesses that the 4Ps are building confidence and reinforcing the UK's global reputation, the CMA agrees with the Government that the legislative framework applying across our tools should also be refined and improved. The CMA's view is that the proposals are closely aligned with, and will further facilitate, this ongoing operational transformation. The CMA also welcomes that these changes are proposed as specific refinements to, rather than fundamental reforms of, the UK competition regime. In the CMA's view, more sweeping or fundamental changes are

unnecessary and could create uncertainty and risk disrupting the CMA's ability to deliver outcomes supporting economic growth and long-term prosperity for the UK.

6. This response addresses each of the areas of proposed reform set out in the Government's Consultation.

### **Enhancing accountability for CMA decision making in mergers and markets**

**Q1. What impact do you think the proposed reform would have on the consistency and predictability of decision making in merger and markets cases? Please explain your views.**

**Q2. Would the proposed reform for greater accountability for the CMA board for merger and markets decision making be something you would welcome? [Yes / No / Not sure] Please explain your views.**

**Q3 Do you support the proposed membership requirements for the mergers and markets sub-committees/committees? [Yes / No / Not sure] Please explain your views.**

7. The CMA welcomes and strongly supports the proposed model for decisions to be taken by Board committees or sub-committees that combine CMA executive and senior staff with at least 50% non-executive members drawn from the non-executive directors of the CMA's Board or from a pool of expert decision-makers (akin to the current panel member system).
8. This would address a long-standing, unusual feature of the UK regime where, by law, the Board (including CEO and Chair) have been prevented from having any involvement in these cases, yet where direct accountability to the public, Parliament, and wider stakeholders has understandably been expected in respect of them.
9. Importantly, the proposed reforms would ensure this accountability, whilst preserving the essential building blocks needed to maintain highly regarded, robust and rigorous UK merger control and markets regimes – namely, with individual cases determined on the basis of consistent, predictable and evidence-based decision-making that is independent of Government. Indeed, such increased accountability would, in the CMA's view, further enhance consistency and predictability. For example, the CMA Board sets policy, taking into account factors such as the government's strategic steer to the CMA, and

the CMA's overall strategy (including its work to deliver the 4Ps).<sup>1</sup> Such increased accountability means that the CMA Board can ensure markets and mergers decision-makers have regard to such CMA policy positions (though outcomes in individual cases will depend upon their own facts), thereby increasing consistency and predictability of CMA casework in these areas. The CMA also agrees with the importance and value placed in the Consultation on the new decision-making model drawing on a pool of expert decision-makers, and the continued influence, expertise, and external perspective they would bring to bear, together with CMA non-executive directors, on some of the CMA's most important and high-profile decisions.

10. The proposed legislative requirements provide robust checks and balances in relation to the roles of the CMA executive and staff in decision-making – through the requirement for at least 50% non-executive membership of committees and sub-committees, and the continued need for a 2/3 majority for any positive finding that a merger or market feature is likely to lead to adverse outcomes, as well as the close legal oversight applied through judicial review by the Competition Appeal Tribunal (as an expert tribunal). Furthermore, as noted above, such non-executive members would be drawn not just from the non-executive directors of the CMA's Board, but also from a pool of expert decision-makers (akin to the current panel member system). This ensures that the CMA can continue to bring experts with the appropriate skills, experience and influence into markets and Phase 2 mergers decision-making.
  
11. The proposals also leave appropriate flexibility for further detail on how any new decision-making model would operate in practice (and which would be inappropriate to confine through primary legislation). The CMA would expect, through rules, guidance and/or terms of reference, to provide further details on the governance and procedural safeguards which would be put in place to ensure our processes remain robust, transparent, and would operate without giving rise to risks such as confirmation bias. We would also expect them to set out how parties can move even more swiftly through the system and engage more directly with decision-makers and committee/sub-committee chairs.

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<sup>1</sup> These policy positions are publicly reflected in CMA guidance, its published Strategy and other documents.

## Chapter 2. Markets Work and Market Remedies

### *i. Enhancing the CMA's markets work*

**Q4. Do you agree the existing market study and market investigation model should be replaced with a new single-phase market review tool? [Yes / No / Not sure] Please explain why.**

12. The CMA welcomes and strongly agrees with the proposal.
13. As with the legislative proposals on decision-making, the new single-phase market review proposal would positively reform a long-standing feature of the markets regime, deriving from institutional separation that predates the creation of the CMA as a single competition authority from the combination of the Office of Fair Trading (OFT), and the Competition Commission (CC).
14. The long-standing separation between market studies and market investigations gives rise to what can be seen as a 'path dependency' problem, which can inhibit the CMA's legal and practical ability fully to tailor and adapt its markets work to the particular aims and circumstances of each case. The proposed reforms represent an important opportunity to address this.
15. The current regime, in which the CMA has distinct market study and market investigation powers requires the CMA, at an early stage, to choose which of those tools to use. At that prioritisation stage, and in line with public law principles and statutory requirements to follow fair and consultative processes before making any decisions, the CMA will usually only have conducted preliminary assessments of a market. As a result, the CMA can often spend some time evaluating which tool to use as it will usually (quite properly) not be wholly apparent what the full extent of the issues are, and what likely solutions may be needed. This can lead to slower and unnecessarily burdensome processes if the CMA needs to move from one markets tool to another in response to the emerging analysis.
16. The ability to adjust flexibly as the CMA's understanding of the market develops, would be fully engaged by the more agile new single-phase market review proposal. Under the current framework, the timeframe in which whole markets can be under scrutiny is substantial – up to three years under the current statutory time-limits. This could be materially reduced under the proposed new process, improving the pace and proportionality of the CMA's markets work.

17. In particular, a single-phase market review, applying a single legal test, would provide the flexibility to adapt to the particular circumstances and the nature of the market issues under consideration. The CMA would be able to tailor its approach to the nature and extent of the issues it finds: with shorter, more targeted processes and outcomes where the CMA's assessment shows that those are appropriate, and more intensive analysis and intervention where necessary and proportionate. A single-phase review would be expected to quicken the process end-to-end.

18. Through publication of clear, and updated, roadmaps across the course of the review, the CMA would also be able to mitigate uncertainties for businesses – who would be able to observe the CMA's clear and foreseeable progress through earlier diagnosis to consideration of possible remedies.

**Q5. Do you agree the statutory time-limit for market reviews should be 24 months, with a possibility to extend by a maximum of 6 months? [Yes / No / Not sure] Please explain why.**

19. The CMA agrees with the proposed 24-month time-limit for the single-phase market review process, with the scope to extend the review by six months. The CMA considers that this long-stop 24-month timeframe is manageable and appropriate, given the need to allow sufficient time – in likely infrequent but appropriate cases – for consideration and development of intrusive remedies such as price controls and divestment. For less complex and/or less intrusive remedies – which are expected to be more typical – the CMA is confident that it would generally be able to issue an interim report within 12 months, and a final report within 6 months of the interim report.

20. The CMA's duty of expedition would also apply to this single-phase market review process. This would mean that the CMA would need to have regard to the need to reach outcomes under this process as soon as reasonably practicable.

**Q6. Do you agree there should be a single legal test for single markets reviews and if so, should this be the adverse effect on consumers test? [Yes / No / Not sure] Please explain why.**

21. The CMA agrees that there should be a single legal test for single-phase market reviews and that this should be the adverse effect on consumers test.

22. Having a single test would help deliver the advantages of a tailored and flexible process in the ways described in response to question 4 above.
23. As to the nature of that single test, the statutory regime is and will continue to be concerned with making markets work well on the supply and demand sides. The CMA's general duty means its focus will continue to be on ensuring effective competition between businesses and for the benefit of businesses and consumers.
24. A market is also not working well if competition functions effectively but outcomes for consumers are poor. A single adverse effect on consumers test – as currently applied when the CMA and concurrent regulators carry out market studies under the Enterprise Act (EA02) – is therefore consistent with the purpose of the statutory regime.
25. We consider it critical to maintain that consumer lens, alongside maintaining the existing competition lens, under the single-phase market review proposal. Adopting the single adverse effect on consumers test would not – and need not – represent a significant departure from the status quo. It would enable the CMA to act even more swiftly and effectively where it identifies market-wide harmful practices (for example, where it identifies distributional effects such as personalised or discriminatory pricing in 'loyalty penalties', or where only particular groups of consumers are affected, as in the sale of in-app purchases to children, and in other cases such as loan roll-overs in the payday lending market).
26. The single adverse effect on consumers test would also be consistent with the CMA's strategy of driving growth and improving household prosperity in accordance with the CMA's 3-year Strategy and draft Annual Plan.
27. The CMA envisages that such a single test would continue to be subject to the existing guard-rails under public law that ensure that its application, and the decisions about remedies that might follow, are appropriate and proportionate. The application of these public law principles would ensure no remedy is more interventionist than necessary, but could for the avoidance of doubt be accompanied by an explicit legislative requirement that any remedy must be proportionate to the purpose of remedying the adverse effect on consumers

identified.<sup>2</sup> The standards of proof and evidential thresholds would remain the same as under the current legislative framework.

*ii. CMA Market Remedies*

**Q7. Do you agree the CMA should consider sunset clauses when designing remedies? [ Yes / no / not sure] Please explain why.**

**Q8. Do you agree the CMA should review market remedies at least once every 10 years? [ Yes / no / not sure] Please explain why.**

28. The CMA agrees with each of these proposals, which are consistent with the CMA's existing practice under the 4Ps principles.

**Q9. Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so? [ Yes / no / not sure] Please explain why.**

29. The CMA agrees with this proposal. It is important to ensure flexibility in respect of the timing of such reviews, especially when dealing with long-term active remedies.

*iii. Concurrency*

**Q10. Should sector regulators be able to oversee market remedies imposed or accepted by the CMA? [Yes / no / not sure] Please explain why.**

30. Yes. The CMA considers that this proposal would reduce the duplication and overlap that can arise where the CMA monitors and enforces market remedies in sectors with dedicated regulators which possess competition powers and expertise, including sector knowledge.

31. The reduction in duplication and overlap would give rise to efficiencies. In particular, sector regulators bring established sector-specific expertise that would enable informed and proportionate oversight, and it would give them the legislative and practical foundations needed to assume sole responsibility for oversight in the future if deemed necessary without disruption or inefficiency. Open banking is an example of a CMA market remedy where transition to a long-term regulatory framework has taken time as it has required legislative reform and ongoing engagement with industry, sector regulators and the CMA to determine the most appropriate future state for open banking in the UK.

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<sup>2</sup> See, for example, the proportionality requirements for Conduct Requirements and Pro-Competition Interventions under the Digital Markets Competition Regime (respectively sections 19(5) and 46(1) of the Digital Markets, Competition and Consumers Act 2025).

32. This proposal means that whichever of the CMA or the relevant concurrent regulator is better placed to deal with the remedy can do so.

33. The Vodafone/Three Phase 2 mergers case is a recent example of the CMA's constructive experience of shared responsibility with a concurrent regulator in the implementation of a remedy.<sup>3</sup>

**Q11. Do you support the proposed consultative approach, where the CMA must consider undertaking a single-phase review following a request from sector regulators? [Yes / no / not sure] Please explain why.**

34. Yes. As a consequence of the changes around decision-making and the introduction of a single-phase market review tool, it is necessary to reconsider the way in which the regulators' concurrent markets powers operate. This also provides an opportunity further to enhance accountability and address inefficiencies in the overall markets regime.

35. Currently, decisions by the CMA to launch a market study or to make a market investigation reference are reserved by statute to the CMA Board, and are taken following rigorous prioritisation in line with the CMA's strategy, annual plan, and having regard to the government's strategic steer. However, the Board currently exercises no control over market investigations referred by sector regulators.

36. The proposed consultative approach would allow the CMA to manage its markets portfolio effectively and ensure it is aligned with its broader strategy. A concurrent regulator's recommendation that the CMA carry out a market review would nonetheless be an important consideration, and given due weight by the CMA Board. The CMA therefore agrees with the proposals that it be required to consider the recommendation and respond to it within a set time frame, including with details of any actions it intends to take (for example, within 90 days from the date of any recommendation). It would however be important to ensure that the regulator be required to provide a reasoned recommendation supported by relevant evidence and information to enable the CMA to give it appropriate consideration and to streamline any subsequent review that the CMA would launch as a result.

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<sup>3</sup> [CMA clears Vodafone / Three merger, subject to legally binding commitments - GOV.UK](#)

**Q12. We welcome any other views or evidence on improving the concurrency framework.**

37. The CMA in December 2024 published its [10 year review of the competition concurrency arrangements](#). The CMA found that the current arrangements have some key advantages and that competition in the regulated sectors is being promoted more effectively than it would be under an alternative model. The CMA nevertheless found that there was room for improvement, including in relation to increased co-operation between sector regulators and the CMA in relation to markets work. The CMA considers that the consultative model for market reviews proposed in the Consultation will help deliver increased markets co-operation between the sector regulators and CMA.

**Mergers**

*i. Increasing predictability in merger control*

**Q13. Should share of supply be revised to a closed list of criteria, for both the share of supply and hybrid jurisdictional tests? [ Yes / no / not sure] Please explain why.**

**Q14. Do you support the proposed criteria for inclusion? [ Yes / no / not sure] Please explain why.**

**Q15. Are there any additional criteria that should be included? Please explain why.**

**Q16. Would this improve predictability for businesses? [ Yes / no / not sure] Please explain why.**

38. The CMA supports these proposals, which are aligned with the aims of the CMA's current practice as set out in CMA2 [Mergers: Guidance on the CMA's jurisdiction and procedure](#), and will further enhance certainty for merging businesses in assessing whether their transactions fall within the jurisdictional provisions of the EA02.

39. The CMA does not consider that any additional criteria should be included in the share of supply factors.

**Q17. Should the material influence and de-facto control tests be revised to a closed list of statutory factors? [ Yes / no / not sure] Please explain why.**

**Q18. Do you support the factors proposed for inclusion? [ Yes / no / not sure] Please explain why.**

**Q19. Are there any additional factors that should be included? Please explain why.**

**Q20. Would this improve predictability for businesses? [ Yes / no / not sure] Please explain why.**

40. The CMA supports these proposals, which are also aligned with the aims of the CMA's current practice as set out in CMA2,<sup>4</sup> and will further enhance certainty for merging businesses in assessing whether their transactions fall within the jurisdictional provisions of the EA02.

41. The CMA does not consider that any additional criteria should be included for these purposes.

*ii. Providing more time to agree remedies at Phase 1*

**Q21. Should the timeframe for submitting and considering Phase 1 remedies be extended from ten to twenty working days? [Yes/No/Not sure] Please explain why.**

42. In the CMA's view, the additional time to agree Phase 1 remedies would likely affect only a small number of cases in practice. These are the cases that would be thought of as a 'near miss', where additional time could develop the undertakings further. For cases falling into this category, the CMA considers that the proposal could reduce the burden, for both the CMA and parties, by increasing the prospect that a Phase 2 investigation could be avoided where an appropriate remedy was available.

#### **Chapter 4. Further cross cutting changes**

*i. Stronger investigative powers for algorithms*

**Q22. Should the CMA be granted enhanced powers to investigate algorithms in its competition and consumer protection functions? [Yes / no / not sure] Please explain your reasoning.**

43. Yes. The CMA considers that these changes would represent important practical improvements to the CMA's investigatory toolkit, reflecting the growing importance of algorithms in price setting and other business practices.

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<sup>4</sup> See paragraph 4.20 of [CMA2](#).

44. The CMA notes for completeness that its digital markets powers to require the generation of information, conduct tests, etc. under the Digital Markets, Competition and Consumers Act 2024 (DMCCA24) are not limited to algorithms.<sup>5</sup> The CMA considers that any extension of these powers across its competition and consumer functions should also not be limited to algorithms.

*ii. The Secretary of State's role in CMA guidance*

**Q23. Should the Secretary of State have a formal role in a wider range of key guidance documents? [Yes/No/Not sure] Which ones, and please explain why.**

45. The CMA has some concerns with this proposal, both in terms of its potential breadth, its operational impact in practice, and its consistency with the CMA's statutory role as an independent competition authority.

46. The CMA's guidance is capable of creating legitimate expectations on the part of businesses as to how the CMA will approach its work. Guidance is regularly updated to reflect the latest process developments, changes in decisional practice and case law (e.g. CMA2 has been updated twice since January 2025) – this ensures it remains accurate and helpful for businesses and their advisers. The timing of any guidance updates is typically carefully chosen so as to minimise any risks – for the CMA and businesses – and any impact on existing cases. An additional requirement for consultation or approval by the Secretary of State could materially increase such risks and reduce certainty for businesses, cutting across the 4Ps.

47. For these reasons, the CMA has concerns about introducing a formal role for the Secretary of State in relation to any guidance documents where one does not already exist.

48. In the event that such a proposal is taken forward, it will be critical to have careful regard to designing the proposal so that it minimises any adverse impact on independent decision-making and the operation of the relevant regimes. The extent of any impact would depend on the breadth of coverage (in terms of which guidance would be captured), and the nature of the Secretary of State's role (e.g. whether prior approval or consultation was required).

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<sup>5</sup> The DMCCA24 sets out the CMA's powers to require information for the purposes of exercising its digital functions. These are general investigative powers that do not refer specifically to the CMA having the power to investigate algorithms, but do include, among other investigative powers, the power to require a person to generate information (see section 69(4)(b)) and the power to require a person to perform a specified demonstration or test (see section 69(5)(b)).

*iii. Excluding the Christmas period from statutory time limits*

**Q24. Do you agree a longer Christmas period should be excluded from merger and markets statutory time-limits? [Yes / no / not sure] Please explain why.**

49. Yes. The CMA agrees that the need to continue to progress cases over this period – and to meet any statutory deadlines falling within this period – can result in the CMA needing to impose unwelcome burdens on businesses when they are closed or staff are on leave and can risk undermining positive relationships. The CMA is also aware that businesses may seek to delay starting the formal clock on an investigation to avoid key parts of the process occurring during the Christmas holiday period. The CMA considers that a pause in the statutory time-limit could facilitate more efficient processes by removing this obstacle.

50. The proposed changes would align the CMA's approach during this period with the approach of the European Commission.

**Q25. If so what length should the pause be?**

51. The CMA considers that the pause period should begin on 24 December and end on the first working day following 1 January.