

Merger Remedies Review – Call for Evidence document

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1. INTRODUCTION

1. As the United Kingdom's competition and consumer protection authority, the Competition and Markets Authority (**CMA**) helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹ Ensuring effective competition will drive greater innovation, investment and growth, which in turn, will deliver sustained and long-term benefits across the UK economy. The CMA's merger control function is part of its general duty to seek to promote competition for the benefit of consumers.²
2. The vast majority of mergers will not raise any competition concerns and are not even formally reviewed by the CMA. For those mergers that are reviewed, the majority end in clearance, either unconditional or with remedies. We have heard and are responding to feedback from stakeholders that will help us improve the way UK merger control operates - improving pace, predictability, proportionality and process (the way we engage with businesses), ie the '**4Ps**'.³
3. When it comes to merger remedies in cases where potential competition concerns are identified, we want to work constructively with businesses to identify as quickly as possible whether there is an effective and proportionate remedy that will resolve our concerns and enable them to get on with implementing their deal and running their business. We have already taken some steps to do this with our phase 2 reforms,⁴ but are determined to go further.
4. We want to ensure our approach to merger remedies embodies the 4Ps and that's why we are launching a formal review of our approach, seeking input from all interested parties (the **Merger Remedies Review**).⁵ This public consultation (the **Call for Evidence**) is designed to help us gather as much input as possible from interested stakeholders, so we are in the best possible position to improve our approach. The Call for Evidence will run from March until May 2025, alongside various outreach and roundtable sessions to gather further input.
5. We will then review that input and develop specific proposals for consultation in the early autumn, with a view to implementing changes by the end of 2025. In the meantime, we will continue to apply the 4Ps to the way we work on individual cases.
6. The CMA's core purpose of promoting competitive markets and tackling unfair behaviour will not change, and this review does not consider any change in the CMA's existing legal framework. In addition, this review will focus on merger

¹ <https://www.gov.uk/government/organisations/competition-and-markets-authority>

² Section 25(3) of the Enterprise and Regulatory Reform Act 2013 (the ERR13).

³ [New CMA proposals to drive growth, investment and business confidence – Competition and Markets Authority](#)

⁴ <https://www.gov.uk/government/news/new-phase-2-investigation-process-adopted-by-cma>

⁵ [Driving growth: how the CMA is rising to the challenge - GOV.UK.](#)

remedies, not questions about how the CMA carries out its competitive assessment (ie as to whether there is a competition concern for which remedies may be required).

7. The CMA is seeking evidence on three broad remedy themes (**Remedy Themes**):
 - (a) Remedy Theme 1: the CMA's approach to remedies (see Section 3)
 - (b) Remedy Theme 2: preserving pro-competitive merger efficiencies and merger benefits (see Section 4)
 - (c) Remedy Theme 3: running an efficient process (see Section 5)
8. This document provides an overview of each of the Remedy Themes and sets out the key questions and areas where the CMA is seeking evidence through this Call for Evidence.

2. LEGISLATIVE FRAMEWORK AND CURRENT GUIDANCE

Introduction

9. This section provides brief background information on the legislative framework in relation to merger remedies and how the CMA's current published guidance describes how the CMA currently approaches remedies.

Legislative background and our current guidance approach

10. Under the Enterprise Act 2002 (the **Act**), the CMA obtains and reviews information relating to mergers. Following a 'phase 1' investigation (**phase 1**), where the CMA believes that it is or may be the case that a relevant merger situation has been created and that the merger may be expected to result in a 'substantial lessening of competition' (an **SLC**) in a UK market, it has a duty to 'refer' the merger for an in-depth 'phase 2' investigation (**phase 2**).⁶
11. At phase 1, instead of the merger being referred to a phase 2 investigation, the Act gives the merger parties the option to offer merger remedies to the CMA in the form of 'undertakings' (ie legally binding commitments) to address the SLC. These undertakings are referred to as 'undertakings in lieu' of a phase 2 reference (or **UILs**).⁷ If UILs are either not offered or do not address the CMA's competition concerns, the Act provides that the merger is referred to phase 2.
12. At phase 2, the Act provides that an independent panel is appointed to investigate the merger (the **Inquiry Group**) who will act on behalf of the CMA. If the Inquiry Group decides that a merger gives rise to an SLC, the Act requires that it must then decide whether action should be taken by it, or by others, to remedy, mitigate or prevent the SLC or any adverse effect which has resulted from, or may be expected to result from it.⁸ At phase 2, the possible merger remedies available to the CMA are not limited to those offered by the merger parties.
13. Since 1 January 2021, when, the CMA formally took on merger enforcement powers previously held by the European Commission, the CMA has examined, formally or informally, well over 3,000 mergers, and formally opened 171 phase 1 investigations. Of these, remedies were accepted in 31 cases at phase 1, and 33 were referred to phase 2. Of those phase 2 referrals, 18 were cleared (9 unconditionally and 9 with remedies), 7 were prohibited, 5 were abandoned and 3 are ongoing.⁹

⁶ CMA2 at para 2.6

⁷ The Act, Section 73.

⁸ The Act, Sections 35 and 36.

⁹ As at 3 March 2025.

14. In addition to direct legislative provisions about the potential need for, and our approach to, merger remedies, the CMA is also required by the Act to publish general advice and information about how the CMA exercises its statutory functions, including in relation to merger remedies. The CMA does this by publishing a wide range of guidance, including CMA 87 (the **CMA Merger Remedies Guidance**).
15. The CMA Merger Remedies Guidance sets out how the CMA interprets the legislative provisions under the Act in relation to merger remedies and explains the criteria the CMA generally applies in determining the choice, design, implementation, monitoring and enforcement of its remedies in merger investigations. It reflects the views of the CMA at the time of publication and may be revised from time to time to reflect changes in best practice, legislation and the results of experience, legal judgments and research¹⁰ (eg the CMA's research into the outcomes of remedies through its rolling remedy evaluation programmes). We expect to revise and update the CMA's Merger Remedies Guidance following the current Merger Remedies Review.
16. Because the CMA's merger (or merger remedy) decisions do not constitute binding precedents for the future, the Competition Appeal Tribunal has been clear that consistency is achieved by the CMA applying this (and other) published guidance across merger cases.¹¹

Recent developments

17. The primary purpose of the Merger Remedies Review is to ensure that the CMA's merger remedies process reflect the core 4P principles of pace, process, predictability and proportionality. Since the CMA published a revised version of its current CMA Merger Remedies Guidance in December 2018 there have been several notable developments which reinforce this need for a reconsideration of the current guidance approach in line with these guiding principles.
18. First, following the UK's exit from the European Union in 2020, there has been a proliferation of complex, multi-jurisdictional merger cases, where the CMA has investigated mergers in parallel with competition authorities in other jurisdictions (including on remedies).¹² Secondly, there have been cases where the CMA prohibited a merger in the UK but where remedies were accepted by the European Commission.¹³ Thirdly, from 1 January 2025, the Digital Markets, Competition and Consumers Act (**DMCC Act 2024**) introduced, among other things, greater procedural flexibility for the CMA's phase 2 remedies process (see Section 5) and

¹⁰ CMA87, paragraph 1.5.

¹¹ Ecolab at para 93, [2020] CAT 12.

¹² For example, Hitachi / Thales (2023); Sika / MBCC (2022); and Veolia / Suez (2022).

¹³ In [Cargotec Corporation/Konecranes Plc](#) and [Microsoft/Activision](#) (at phase 2 before the transaction was substantially restructured).

new enforcement powers to fine merger parties for failure to comply with their legal remedy obligations.¹⁴

19. Since the CMA Merger Remedies Guidance was last updated in December 2018, the CMA has also continued with its rolling merger remedy evaluations programme,¹⁵ which aims to help decision makers at the CMA understand which remedies have worked well and which ones have been less successful. The CMA published its latest findings in 2023.¹⁶
20. In addition to the 4P principles, the Merger Remedies Review will seek to ensure that the CMA's current merger remedies process reflects these recent developments.

¹⁴ Sections 94AA and 94AB of the Act introduced by the DMCC Act 2024.

¹⁵ This evaluation programme provides the basis for continuous improvement and can drive legislative reform and policy development, as well as informing future interventions.

¹⁶ [CMA report on case study research](#). The 2023 report was based on research commissioned from Aldwych Partners and NOCON.

3. REMEDY THEME 1: CMA'S APPROACH TO REMEDIES

Introduction

21. Theme 1 considers broad principles that the CMA currently adopts in its consideration of remedies, and in particular their composition and assessment. As noted above, we want to ensure our approach to merger remedies embodies the 4P principles of pace, predictability, proportionality and process, and Theme 1 therefore considers a number of specific aspects of the CMA's approach to remedies below from this lens.

Approach to phase 1 remedies

22. Under the Act, the CMA, may, instead of making a reference to phase 2, and for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has or may have resulted from it, accept UILs as it considers appropriate.¹⁷
23. Under the CMA's Merger Remedies Guidance, the CMA currently considers that UILs are only appropriate where the remedies proposed to address any competition concerns raised by the merger are 'clear cut' and 'capable of ready implementation'.¹⁸ This approach is based on the fact that once UILs have been accepted, section 74(1) of the Act precludes a reference to phase 2, so the CMA must be confident that all of the potential competition concerns that have been identified at phase 1 would be resolved by means of the UILs without the need for further investigation.¹⁹ In addition, the clear-cut standard also reflects practical considerations, because UILs of such complexity that their implementation is not feasible within the constraints of the short phase 1 timetable are unlikely to be accepted.²⁰
24. In light of the CMA's commitment to the 4Ps, we want to understand if the current guidance approach to phase 1 remedies best embodies these objectives. For example, there will be clear benefits to both pace and proportionality from achieving a phase 1 remedy outcome and avoiding the time and cost of a phase 2 reference where that can be done within the existing legislative framework.

Effectiveness and proportionality

25. At both phase 1 and phase 2, the Act requires that the CMA, when considering merger remedies, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable, for the purpose of remedying, preventing or

¹⁷ The Act, Section 73(2)

¹⁸ CMA 87 at paragraph 3.27

¹⁹ CMA 87 at paragraph 3.27

²⁰ CMA 87 at paragraph 3.28

mitigating the SLC and any adverse effects resulting from it.²¹ This provision has informed the CMA's current focus on ensuring that it only allows remedies with a high degree of certainty of being effective, to ensure consumers and other businesses in the markets affected are not left unfairly worse off.²²

26. In line with this approach, under the current CMA Merger Remedies Guidance, there are common principles that apply to the assessment of remedies at phase 1 and phase 2, and in particular a two-stage assessment of remedies:²³
- (a) **Assessment of a remedy's effectiveness:** first, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects (to a high degree of certainty); and
 - (b) **Assessment of a remedy's proportionality:** the CMA will then select the least costly and intrusive remedy that it considers to be effective and will seek to ensure that no remedy (even if the least costly but effective option) is disproportionate in relation to the SLC and its adverse effects.
27. The Act recognises that mitigation of any SLC may be sufficient, and that the CMA need only 'have regard' to achieving as comprehensive a solution to the SLC and any adverse effects arising as is 'reasonable and practicable'.
28. Again, in light of our commitment to the 4P objectives, we are seeking evidence as to whether our current approach to assessing remedies can be improved, within the current legislative framework. In particular, we are interested in views on how the CMA can best reflect the need for proportionality in its consideration of remedies, and the factors that could be relevant to this assessment.

²¹ The Act, Sections 35, 36 & 73

²² CMA 87 at paragraph 3.5(d)

²³ CMA 87 at paragraph 3.4 – 3.6.

Figure 1

Questions on the CMA's current guidance approach

Approach to phase 1 remedies

Q A.1: Should the CMA's current guidance approach of requiring phase 1 remedies to be 'clear-cut' and 'capable of ready implementation' be revisited, within the confines of the applicable legislative framework and timing constraints inherent in the phase 1 UILs process? If so, what standard should the CMA apply?

Q A.2: Is there more the CMA can do within its current legal framework to create opportunities for more complex remedies in phase 1?

Effectiveness and Proportionality

Q B.1: Should the CMA's current approach to assessing the effectiveness and proportionality of remedies be revisited within the confines of the legislative framework? If so, what factors should the CMA consider?

Q B.2: Has the CMA's approach to effectiveness precluded potentially effective remedies being considered as part of its proportionality assessment?

Structural and Behavioural Remedies

29. There are various ways to classify remedies in merger control, one of them based on the distinction between structural and behavioural remedies.²⁴
30. Our current CMA Merger Remedies Guidance notes the distinction between structural and behavioural remedies, which it defines as follows:²⁵
- (a) **Structural remedies:** these are one-off remedies which typically aim to reverse the changes to the structure of the market brought about by the merger under investigation, with the aim of re-establishing or maintaining the process of competitive rivalry which would be expected in the absence of the merger under investigation. This may involve merging firms divesting a business (known also as a divestiture remedy) or prohibiting the merging firms from merging (also known as merger prohibition). In addition, the CMA recognises the concept of 'quasi-structural' remedies other than divestiture, for example, an amendment to IP licences to grant a divestment purchaser a perpetual and royalty-free licence.²⁶
- (b) **Behavioural remedies:** these are remedies which are typically targeted at controlling the conduct or behaviour of the newly merged entity, and/or controlling market outcomes, such as prices, to prevent or mitigate the adverse

²⁴ Behavioural Remedies in EC Merger Control, Scope and Limitations, Ariel Ezrahi, World Competition 29(3): 459-479, 2006.

²⁵ CMA 87 at para 3.34

²⁶ CMA 87 at para 5.11

effects of the structural change to the market brought about by the merger. Behavioural remedies can take many forms, and our current CMA Merger Remedies Guidance distinguishes between:²⁷

- (i) ‘Enabling measures’, which address competition concerns by seeking to remove obstacles to competition or stimulating competition, such as requiring the newly merged entity to grant access to its competitors to a key input, or investment commitments from the merged entity that stimulate competition in a way that achieves long-lasting market change; and
- (ii) ‘Controlling measures’, which restrict the adverse effects by controlling market outcomes, rather than addressing the competition concern itself, such as through a cap on prices.

31. The range of remedies which may be included within the behavioural category therefore spans from general commitments to behave or not to behave in a certain manner, to obligations to licence key technology, provide access to infrastructure or key assets.²⁸ This wide classification gives rise to a diverse group of remedies with varied characteristics, spanning from ‘pure’ behavioural remedies to ‘quasi-behavioural’ remedies. In some cases, for example, an access remedy may share similarities with a one-off structural remedy. In others it may require ongoing implementation and monitoring, subsequently resembling a more typical behavioural remedy.²⁹ This leads to difficulties in classification and a potential overlap between the two groups. Moreover, the structural / behavioural division is by no means the only way to classify remedies, as indicated by the views of various other merger control authorities.³⁰
32. The CMA has historically preferred structural remedies in merger cases, and this is broadly in line with past merger remedy decisions in other major jurisdictions, such as the United States and the European Union.³¹ Among challenged mergers in the United States with publicly disclosed remedies, 13% of such mergers involved purely behavioural remedies between 1999 and 2003, and this share was 6% between 2017 and 2021.³²
33. The European Commission’s Notice on Acceptable Remedies notes that, ‘commitments that are structural in nature... are, as a general rule, preferable from the point of view of the Merger Regulation’s objective, inasmuch as such

²⁷ CMA 87 at para 7.12

²⁸ Behavioural Remedies in EC Merger Control, Scope and Limitations, Ariel Ezrachi, World Competition 29(3): 459-479, 2006.

²⁹ Behavioural Remedies in EC Merger Control, Scope and Limitations, Ariel Ezrachi, World Competition 29(3): 459-479, 2006 at 460

³⁰ Behavioural Remedies in EC Merger Control, Scope and Limitations, Ariel Ezrachi, World Competition 29(3): 459-479, 2006 at 460

³¹ Antitrust Division Policy Merger Remedies Manual of the US Department of Justice, September 2020 at p.8

³² Internal database maintained by Analysis Group, Inc. Time periods are based on fiscal years. Accessed on 12 February 2025 at Global Competition Review, Economic Analysis of Merger Remedies, web article, [here](#).

commitments prevent, durably, the competition concerns which would be raised by the merger as notified, and do not require medium or long-term monitoring measures'.³³ However, whilst being the preferred remedy and 'the benchmark for other remedies in terms of effectiveness and efficiency', the European Commission considers that divestitures or the removal of links with competitors are not the only remedy possible to eliminate certain competition concerns. In particular, the Commission may accept other types of commitments, but only in circumstances where the other remedy proposed is at least equivalent in its effects to a divestiture.³⁴ This is reflected in the decisional practice of the European Commission, with behavioural remedies accepted in a number of cases.³⁵

34. The current CMA Mergers Remedies Guidance states that the CMA 'prefers' structural remedies, such as divestiture, over behavioural remedies, for the following reasons:³⁶

- (a) structural remedies are more likely to deal with the change in market structure brought about by the merger directly and comprehensively at source by restoring rivalry (eg through the divestment of the business concerned into new ownership);
- (b) structural remedies, because they involve a largely 'one-off' intervention, rarely require monitoring and enforcement once implemented; and
- (c) behavioural remedies, which do not restore an equivalent pre-merger market structure and seek to change aspects of business conduct from what may be expected based on businesses' incentives and resources, are less likely to effectively remedy the competition concerns and their adverse effects and are more likely to create significant costly distortions in market outcomes.

35. However, our current CMA Merger Remedies Guidance also notes that the choice of remedies will reflect the particular circumstances of each investigation,³⁷ and is clear that behavioural remedies can operate satisfactorily in some, limited circumstances, such as:

- (a) where the merger parties operate in a regulated environment and where there are expert monitors;

³³ European Commission notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004, Paragraph 15.

³⁴ European Commission notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004, Paragraph 61

³⁵ Joshua Shapiro, *The End of Remedies?*, 11 *Emory Corp. Governance & Accountability Rev.* 163 (2024) at p.171-172. Available at: <https://scholarlycommons.law.emory.edu/ecgar/vol11/iss2/4>

³⁶ CMA 87 at para 3.46

³⁷ CMA 87 at para 3.45

- (b) where the competition concerns are expected to have a relatively short duration (eg due to the expiry of a patent or exclusive contract); or
- (c) where the benefits to customers of the merger (as defined by the Act – see Section 4 below) substantially outweigh the harms arising from the merger, and where these benefits would be largely preserved by behavioural remedies.³⁸

36. Our current guidance also notes that in appropriate cases, the CMA will consider ‘quasi-structural’ remedies other than divestments, which might comprise, for example, an amendment to IP licences to grant a divestment purchaser a perpetual and royalty-free licence.³⁹ In *Microsoft / Activision*, for example, the CMA accepted a phase 1 remedies offer whereby the cloud gaming rights in question were divested to an independent third party.⁴⁰ Similarly, in *Korean Air / Asiana Airlines*, the CMA accepted a phase 1 remedies offer whereby Korean Air agreed to make available landing slots at London Heathrow Airport and Incheon International Airport to allow another airline to operate a daily air passenger service between these airports.⁴¹
37. Finally, our current guidance notes that the CMA may also use behavioural measures as an adjunct to structural measures,⁴² to reinforce the overall effectiveness of the remedy package.
38. *Vodafone / Three* is a recent example of where the CMA used a package of different behavioural remedies, comprising enabling measures (a long-term commitment to invest) supported by controlling measures (capping certain retail prices and wholesale access terms), to remedy competition concerns.⁴³

Questions and areas where we are seeking evidence

The CMA’s approach to behavioural remedies

39. With respect to behavioural remedies, we will be exploring the available evidence on the circumstances in which behavioural remedies are likely to be appropriate. We will consider factors which may impact the likely effectiveness of, and the risks associated with, behavioural remedies including:

³⁸ CMA 87 at para 3.48

³⁹ CMA 87 at para 5.11, and see, for example the OFT’s investigations into the anticipated acquisition by Tetra Laval Group of part of Carlisle Process Systems (2006), where the OFT accepted UILs focused on an irrevocable, perpetual and exclusive licence of certain IP rights, and the completed acquisition by Unilever of Alberto Culver Company (2011), where the OFT accepted UILs from Unilever to divest the bar soap business of Alberto Culver, including the divestment of the Simple brand, which was effected by a perpetual and royalty-free licence covering UK, Ireland and the Channel Islands.

⁴⁰ <https://www.gov.uk/government/news/microsoft-concession-a-gamechanger-that-will-promote-competition>

⁴¹ <https://www.gov.uk/cma-cases/korean-air-slash-asiana-airlines-merger-inquiry>

⁴² CMA 87 at para 7.3

⁴³ *Vodafone / Three*, Final Report, Chapter 16

- (a) the type and nature of the SLC (eg whether it is vertical or horizontal, or the expected duration of the SLC);
- (b) the presence of a sector regulator and the regulatory framework within which the merger parties operate;
- (c) the need for ongoing monitoring and the merged entity's incentives absent the monitoring;
- (d) the characteristics of the industry in question (eg whether it is fast-changing);
and
- (e) the type of behavioural remedy (eg whether it is an enabling or controlling measure).

40. The above list of factors is not designed to be exhaustive. We are open to any evidenced submissions which further the CMA's understanding of the circumstances where there is a greater or lesser likelihood that the CMA will be able to design and implement effective behavioural remedies.
41. We will also be exploring how the CMA should test the effectiveness of behavioural remedies, and the sources of evidence which are likely to be most relevant. We will consider the approach at both phase 1 and phase 2 and whether, and if so under what circumstances, there should be differences in our approach to UILs (phase 1 remedies) and phase 2 remedies. These questions interlink with our consideration, under Remedy Theme 3, of how the CMA can run an efficient remedies process in phase 1 and 2.

Figure 2

Questions on the CMA's approach to behavioural remedies⁴⁴

Q C.1: Is the current distinction that the CMA draws in its Merger Remedies Guidance between behavioural and structural remedies helpful and meaningful? If not, how should the CMA classify different types of remedies?

Q C.2: In what circumstances are behavioural remedies likely to be most appropriate?

Q C.3 How should the CMA assess the likely effectiveness of behavioural remedies? What types of evidence should the CMA obtain to assess this (and from whom)?

Q C.4: To what extent could the CMA's new enforcement powers under the DMCC Act 2024 to fine merger parties for breaches of their remedy obligations under remedy undertakings and orders influence the types of remedies the CMA accepts at phase 1 or imposes at phase 2?

Q C.5: Should the CMA take a different approach to behavioural remedies at phase 1 and phase 2?

Q C.6: What lessons can be drawn from evidence in other jurisdictions, and behavioural remedies which do not relate to mergers, but which could be seen as comparable (for example, markets or sector regulation)?

The CMA's approach to 'carve out' divestment remedies

42. Structural divestment packages may vary greatly in their composition. Where a remedy comprises something less than the divestiture of an existing 'standalone' business and instead comprises the divestiture of part of a business or a collection of assets (ie 'carve-out' divestiture remedies), this will increase the complexity of the remedy and present additional issues for the CMA to consider.
43. For example, we will be considering the extent to which:
 - (a) the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market, for example because it does not include relevant employees, intellectual property, production assets or branding – these types of risk are known as 'composition risk'; and
 - (b) such a remedy may be more dependent on an appropriate match with the capabilities of the purchaser, and a suitable purchaser is not available or there

⁴⁴ For the purposes of these questions, the term 'behavioural remedies' is intended to be interpreted widely, for example, to include so called 'quasi-structural' remedies such as access, licencing or investment commitments.

is a risk that the merger parties will dispose to a weak or otherwise inappropriate purchaser who is unable to run the 'carved-out' business effectively – these types of risk are known as 'purchaser risk'.

44. We will be exploring whether, and if so how, these risks associated with such remedies can be mitigated.
45. We are interested in, for instance, whether there are ways to make it easier for remedy takers (ie potential purchasers) to conduct due diligence on the remedy package or transaction structures that reduce buyer risk, as well as in the extent to which earlier engagement with the CMA can also mitigate these risk factors.

Figure 3

Questions on the CMA's approach to carve-out divestment remedies

Q D.1: In what circumstances are carve-out divestiture remedies likely to be most appropriate?

Q D.2: Are there specific circumstances (eg certain industries) where the risks associated with carve-out divestitures are generally more or less likely to manifest themselves?

Q D.3: Are there any additional ways in which the risks relating to carve-out divestitures can be mitigated?

Q D.4: Purchasers may face challenges in conducting robust due diligence on divestment packages in carve-out divestiture remedies. This may limit the usefulness of such due diligence to the CMA as a safeguard against composition risks. Are there any steps that could be taken to mitigate these risks?

Q D.5: What lessons can be drawn from evidence in other jurisdictions, and from complex structural remedies which do not relate to mergers, but which could be seen as comparable (for example, markets or sector regulation)?

Assessing, monitoring and enforcing remedies

46. We will also be considering how the CMA can most effectively design, monitor and enforce remedies, particularly those which are more complex. We will be exploring whether there are ways for the CMA to effectively access the expertise it requires to assess remedies, including from sectoral regulators or other independent experts.
47. We will also explore whether there are lessons which the CMA could learn from how other competition authorities use independent monitoring trustee firms (**Monitoring Trustees**). While the CMA currently primarily uses Monitoring Trustees to monitor the merger parties' compliance with the CMA's interim

measures⁴⁵ (and in some cases with their remedy undertakings and orders), other competition authorities make more extensive use of monitoring trustees.

Figure 4

Questions on assessing, monitoring and enforcing remedies

Q E.1: Are there circumstances in which the CMA could make greater use of Monitoring Trustees when monitoring and enforcing remedies? What would be the costs and benefits of this?

Q E.2: Are there any circumstances in which the CMA could take on a greater role in the monitoring and enforcement of remedies? What would be the costs and benefits of this?

Q E.3: How can the CMA ensure it has access to the right expertise to assess complex remedies given the breadth of industries we cover?

Q E.4: Are there ways in which the CMA can practically monitor complex and behavioural remedies without materially increasing its own resourcing costs or giving rise to conflict-of-interest issues?

⁴⁵ The emphasis of the CMA's interim measures is on preserving the viability and competitive capability of the acquired business during the CMA's merger investigations at phase 1 and/or phase 2. For further information, see the CMA's published guidance 'Interim measures in merger investigations', CMA108 (2 January 2025).

4. REMEDY THEME 2: PRESERVING PRO-COMPETITIVE MERGER EFFICIENCIES AND MERGER BENEFITS

Introduction

48. Mergers and acquisitions can help deliver benefits to UK customers. For example, the newly merged entity may benefit from greater economies of scale, which can lead to an increase in its efficiency and productivity and deliver benefits to UK customers in the form of lower prices.
49. With greater financial resources and a pooling of the merger parties' respective knowhow, mergers may also enable the merged entity to invest more into research and development (R&D) activity and do so more efficiently, helping to deliver more innovation and the development of new or higher quality products or services. One recent example of a merger remedy where the CMA considered the potential for a deal to deliver pro-competitive investment benefits for UK consumers was in Vodafone/Three.⁴⁶
50. Remedy Theme 2 focuses on how remedies can be used to preserve two types of potential benefits from mergers: locking in pro-competitive efficiencies in the markets where the competition concern arises; and what the Act describes as 'Relevant Customer Benefits' (**RCBs**), which can arise in or outside the market in which the competition concern arises.

Rivalry Enhancing Efficiencies

51. In some cases, efficiencies arising from a merger can change the incentives of the merger parties and induce them to act as stronger competitors. For example, efficiencies could reduce the marginal costs of the merger parties, which may give them the incentive to provide lower prices or a better quality, range or service.⁴⁷ This can in turn stimulate a competitive response from other parties in the market.
52. The CMA will always consider the extent to which merger-specific efficiencies which enhance competitive rivalry arise as part of its competitive assessment⁴⁸ (**Rivalry Enhancing Efficiencies**).⁴⁹ In order for the CMA to take Rivalry Enhancing Efficiencies into account (at this pre-remedy stage), the current Merger Assessment Guidelines provide that to be accepted by the CMA, Rivalry Enhancing Efficiencies must enhance rivalry in the market(s) where the merger raises competition

⁴⁶ <https://www.gov.uk/cma-cases/vodafone-slash-ck-hutchison-iv-merger-inquiry>

⁴⁷ CMA Merger Assessment Guidelines, at paragraph 8.3(a)

⁴⁸ The CMA's competitive assessment is the CMA's assessment of whether the merger gives rise to competition concerns (ie an SLC), including any factors which may 'countervail' any provisional competition concerns.

⁴⁹ CMA 129 at 8.3(a)

concerns; be timely, likely and sufficient to prevent an SLC from arising; be merger-specific; and benefit customers in the UK.⁵⁰

53. Where satisfied, the CMA will find that no remedy is required as a result of these Rivalry Enhancing Efficiencies being a 'countervailing factor' to the SLC. The CMA may also, for example, see the potential for efficiencies from the merger but have concerns about the extent to which claimed efficiencies are likely to be realised.⁵¹ In these cases, the CMA will consider a remedy to deliver greater certainty that these efficiencies will be realised.
54. The recent Vodafone/Three merger decision has shown that, in some circumstances, it may be possible for a remedy to address concerns with regards to the timeliness, likelihood and/or sufficiency of Rivalry Enhancing Efficiencies. In that case, the CMA considered that while some efficiencies were likely, the Parties were not likely to deliver the full extent of the efficiencies they had claimed.⁵² A remedy was therefore used to 'lock in' the Parties' efficiency commitments.⁵³
55. The CMA is therefore seeking evidence on the types of cases in which it can use remedies in this way, to ensure that potential pro-competitive efficiencies from mergers can be maximised and that, in line with the Government's strategic steer, we are discharging our functions in a way that supports growth and investment.

Figure 5

Questions on the CMA's current approach to rivalry enhancing efficiencies

Q F.1: What evidence should the CMA look for to support the materiality and likelihood of claimed rivalry enhancing efficiencies?

Q F.2: Does the CMA's current approach to remedies effectively capture potential rivalry-enhancing efficiencies? If not, how can the current approach be improved?

Q F.3: What are the circumstances in which it would be possible to design effective remedies that can lock-in genuine Rivalry Enhancing Efficiencies?

Q F.4: What more can the CMA do to ensure that its approach to merger remedies encourages pro-competitive investment?

⁵⁰ MAGS, paragraphs 8.8

⁵¹ See for example, Vodafone / Three, CMA Final Report at paragraph 14.244.

⁵² Final Report at para 14.232

⁵³ Final Report, Chapter 16.573

Relevant Customer Benefits (RCBs)

56. RCBs are certain legislatively defined benefits resulting from a merger that, in contrast to Rivalry Enhancing Efficiencies, need not be achieved through increased competition in the market related to the SLC finding.
57. Under the Act, RCBs can take the form of lower prices, higher quality, greater choice of goods or services in any UK market.⁵⁴ They can also take the form of greater innovation in relation to such goods or services⁵⁵ — eg, from the combination of unique assets of the merger firms applying to products other than those where the firms compete. These benefits will fall within the legislative definition if they accrue to either direct or indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution – i.e. they are not limited to final consumers.⁵⁶
58. In addition, for a benefit to constitute an RCB under the Act, the CMA must believe that:⁵⁷
- (a) the benefit may be expected to accrue within a reasonable period as a result of the merger; and
 - (b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.
59. As set out in the explanatory notes to the Act, RCBs may be relevant to decisions of the CMA in two main situations.⁵⁸ At phase 1, the CMA has a discretion not to refer a merger to phase 2 if it believes that any RCBs outweigh the SLC concerned and any adverse effects of that SLC.⁵⁹ The CMA may also have regard to the effect on RCBs when considering Phase 1 UILs.⁶⁰ At phase 2, in deciding the question of remedies, the CMA is permitted to have ‘regard to the effects of any action on any RCBs in relation to the creation of the relevant merger situation concerned’.⁶¹
60. The explanatory notes clarify that in this circumstance, ‘the [CMA in phase 2] will have scope to apply lesser competition remedies than would otherwise be the case. This scope would extend, at one extreme, to clearing a merger without any conditions if the customer benefits are of sufficient importance and nothing can be done about the competition problems without eliminating the relevant customer

⁵⁴ Section 30 of the Act.

⁵⁵ Section 30 of the Act.

⁵⁶ [Section 30\(4\)](#) of the Act and [CMA87](#), paragraph 3.18.

⁵⁷ Section 30(2) & (3) of the Act.

⁵⁸ Explanatory Note to section 30 of the Act

⁵⁹ Sections 22(2)(b) and 33(2)(c) of the Act.

⁶⁰ Section 73(4) of the Act

⁶¹ Sections 35(5) and 36(6) of the Act.

benefit that the [CMA] wishes to recognise.⁶² However, the explanatory notes also state that ‘Relevant customer benefits are narrowly defined. They are not expected to arise very often. They must be in the form of lower prices, greater innovation, greater choice or higher quality in a UK market. This definition is related to the competition test because the benefits are ones that would normally be expected to arise in a fully competitive market.’⁶³

61. As noted above, in considering RCBs, the CMA has regard to the likelihood, timeliness and merger specificity of proposed RCBs.⁶⁴ The current CMA Merger Remedies Guidance states that merger parties are generally expected to produce detailed and verifiable evidence that anticipated RCBs will in fact emerge,⁶⁵ and to provide convincing evidence regarding the nature and scale of the potential RCBs.⁶⁶ Where relevant, the CMA may consider the views of a sector regulator.⁶⁷ Although it is not uncommon for the CMA to accept the existence of RCBs, in past merger cases, the CMA has rarely exercised its discretion to apply RCBs as an exception to the duty to refer at phase 1,⁶⁸ or to clear mergers at phase 2⁶⁹ (ie they are typically not sufficient to alter the CMA’s view on the choice and design of remedies).
62. The CMA is seeking evidence on its approach to RCBs to ensure that merger benefits can be preserved wherever possible, including where, as the Act contemplates, they do not directly address the competition concerns identified.

⁶² Explanatory Note to section 30 of the Act

⁶³ Explanatory Note to section 30 of the Act

⁶⁴ Section 30 of the Act.

⁶⁵ CMA64, paragraph 4.11.

⁶⁶ CMA87, paragraph 3.20.

⁶⁷ Mergers: Exceptions to the duty to refer, 25 April 2024, CMA64 at paragraph 4.11.

⁶⁸ To date, the CMA has only exercised this discretion in relation to the [University Hospitals Birmingham NHS Foundation Trust/Heart of England NHS Foundation Trust](#) (UHB/HEFT) and the [Derby Teaching Hospitals NHS Foundation Trust/Burton Hospitals NHS Foundation Trust](#) (DTHFT/BHFT).

⁶⁹ See [Central Manchester University Hospitals / University Hospital of South Manchester](#) merger inquiry, where the CMA found that the merger would result in reductions in patient mortality and clinical complications, and improved patient experience and access to services in certain specialties.

Figure 6

Questions on the CMA's current approach to RCBs

Q G.1: Does the CMA's current approach to remedies in phase 1 effectively capture RCBs? If not, how can the current approach be improved?

Q G.2: Does the CMA's current approach to remedies in phase 2 effectively capture RCBs? If not, how can the current approach be improved?

Q G.3: Should the CMA's current approach to the types of evidence for substantiating RCBs be revisited, within the confines of the legislative framework? If so, what types of evidence should the CMA accept in substantiating RCB claims?

Q G.4: How can the CMA best quantify and balance RCBs on the one hand with the SLC's adverse effects on the other?

Q G.5: Are there any barriers to merger parties engaging on RCBs with the CMA throughout the different stages of a case (either at phase 1 or phase 2)?

5. REMEDY THEME 3: RUNNING AN EFFICIENT PROCESS

Introduction

63. In line with the CMA's ongoing commitment to the continuous improvement of our processes, our recently announced 4Ps proposals, and following on from the phase 2 reform process in 2023-2024, Theme 3 focuses on how the CMA's remedies processes can be further improved.
64. The current process for assessing remedies is set out in Chapter 4 of the CMA Merger Remedies Guidance, with additional guidance on the phase 2 process in Chapter 12 of the CMA's Guidance on Jurisdiction and Procedure.⁷⁰
65. At phase 1, remedies take the form of UILs, which may be offered by the merger parties and, if accepted by the CMA, mean that the merger will not be referred to phase 2. As noted above, under the CMA's current CMA Merger Remedies Guidance, at phase 1, the CMA will consider if the UILs are: (a) clear-cut in their effectiveness to address the competition concerns and (b) able to be readily implemented.⁷¹ However, in light of the CMA's 4Ps commitments, we want to understand if the current phase 1 remedies process best embodies these objectives. As noted above, there may be clear benefits to both pace and proportionality from achieving a phase 1 remedy outcome and avoiding the time and cost of a phase 2 reference where that can be done within the existing legislative framework.
66. At phase 2, recent process and legislative changes are aimed at increasing the likelihood of a successful remedy outcome. In April 2024, the CMA introduced a new process for its phase 2 merger investigations following the 'Phase 2 Mergers Stocktake' process, aimed at increasing transparency and engagement with merger parties and lowering barriers to early engagement on complex remedies.⁷²
67. In particular, the CMA has updated its Guidance on Jurisdiction and Procedure to expressly make clear the CMA's willingness to discuss remedies with merger parties from the outset of a phase 2 inquiry (on a without prejudice basis to the competitive assessment). The new phase 2 process also requires, as a minimum, the merger parties to submit a phase 2 Remedies Form following an Interim Report if that Interim Report outlines provisional competition concerns.
68. As mentioned above, from 1 January 2025, the DMCC Act 2024 introduced greater procedural flexibility at phase 2 in several respects. First, it allows the phase 2 timetable to be extended by agreement between the CMA and the merger parties,⁷³

⁷⁰ [Mergers: Guidance on the CMA's jurisdiction and procedure.](#)

⁷¹ CMA 87 at para 3.27

⁷² <https://www.gov.uk/government/news/new-phase-2-investigation-process-adopted-by-cma>

⁷³ The Act, s39(2A)

which can be used to provide additional time to consider the merger parties' remedy proposals.⁷⁴ Second, it provides the new ability for merger parties to opt to 'fast track' to phase 2 without merger parties having to concede the existence of an SLC, or the CMA give written reasons as to why, the phase 1 test for reference is met.⁷⁵

69. The CMA's merger remedy evaluation programme has also highlighted the benefits of utilising Monitoring Trustees in the implementation of remedies. This research has noted that increasing the role and involvement of Monitoring Trustees, in particular in relation to carve-out divestiture and complex remedies, could have provided additional benefits.⁷⁶

Questions and areas where we are seeking evidence

70. Under Remedy Theme 3, we will explore our remedies process at phase 1. Under Theme 1, we considered whether the requirement that UILs be 'clear-cut' remains appropriate in light of the CMA's 4Ps commitments, and under this Theme, we will consider the related question of how the phase 1 remedies process can be improved to give the greatest possibility of avoiding the time and cost of a phase 2 investigation.
71. We will also invite views and evidence on how the new phase 2 process and recent legislative amendments can be used to reach well-reasoned and evidence-based decisions on remedies, and at pace, and whether any further refinements to this revised process are necessary or appropriate as practical experience of it develops.
72. In light of the CMA's 4Ps commitment to increased proportionality, we will consider how the CMA's remedies process can effectively take account of the parallel actions of other competition authorities. Finally, we will consider any procedural improvements that can be made to the remedies implementation phase.

⁷⁴ CMA 2 at para 11.70

⁷⁵ CMA 2 at para 7.13 and 7.24

⁷⁶ Merger remedy evaluations 24 October 2023, CMA186, at para 4.52(d)

Figure 6

Phase 1 remedies process

Q H.1: What process barriers are there currently to reaching a phase 1 remedies outcome?

Q H.2: How can the CMA amend its phase 1 process to allow more complex remedies to be assessed within a phase 1 timeframe?

Q H.3: If the nature and/or scope of potential competition concerns are unclear, what steps can the CMA case team and merger parties take to ensure that they are best placed to engage effectively on remedies at the earliest possible stage in phase 1?

Phase 2 remedies process

Q I.1: What barriers are there currently to reaching a phase 2 remedies outcome?

Q I.2: Does the current phase 2 process adequately facilitate early remedy engagement? If not, how can it be improved?

Questions on working with other regulators

Q J.1: How can the CMA ensure its remedies process at phase 1 and phase 2 sufficiently takes account of parallel actions by other competition agencies?

Q J.2: How can the CMA ensure it utilises the expertise of other UK government departments or sector regulators to increase the chance of a successful remedy outcome?

Q J.3: On the question of whether the CMA or others should take remedial action to address an SLC, should the CMA make more use of making recommendations to others to take action to remedy competition concerns arising from a merger and if so, what are the circumstances where it may be appropriate to do so?

Question on any other processual changes

Q K.1: Are there any other ways, not covered by the specific questions above, in which the CMA could improve its remedy processes, at either phase 1 or phase 2?

External support

Q L.1: How should the CMA access external expertise, for example using Monitoring Trustees and/or industry experts in its remedy assessment and implementation, including oversight of divestment sales processes, divestment purchaser suitability assessments, or monitoring of remedy implementation and/or compliance?

6. RESPONDING TO THIS CALL FOR EVIDENCE

73. We are seeking views from all interested parties.
74. The Call for Evidence opens on 12 March 2025 and closes at 5pm on 12 May 2025.
75. To respond to this Call for Evidence, please send your written submission on the three Remedy Themes, in particular on the questions and areas set out above in Figures 1 to 6 by email to mergerremediesreview@cma.gov.uk or submit them via the online portal.
76. If possible, responders are encouraged to evidence their views with reference to their experience from prior CMA cases. We also welcome evidence from experience of merger remedies regimes in other jurisdictions.
77. In addition to the general Call for Evidence, the CMA will be directly reaching out to particularly interested parties, such as business and industry groups (including those with direct experience of our remedies process), other competition regulators, and advisor firms.
78. As outlined above, the Merger Remedies Review is not seeking evidence on possible reforms to the legal framework governing the CMA's remedies approach, or evidence on possible changes to the CMA's approach to the competitive assessment of whether a merger gives rise to competition concerns.
79. In accordance with our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive. When submitting your response please also let us know if you wish to remain anonymous.
80. The disclosure of information which relates to the affairs of an individual or any business of an undertaking, and which comes to the CMA in the course of this Call for Evidence, is governed by the statutory gateways in Part 9 of the Act and such information can only be released in particular circumstances set out in that Act.