



Balanced Economy Project submission to the CMA's call for evidence: Merger efficiencies review

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1. Introduction

- 1.1. The Balanced Economy Project welcomes the opportunity to submit a response to the CMA's call for evidence on its approach to the assessment of rivalry-enhancing efficiencies.
- 1.2. Efficiencies can matter in merger control. They can also be a convenient way for merging firms to weaken scrutiny. Parties have clear incentives to re-label ordinary internal changes, speculative product plans or bargaining outcomes as "efficiencies" and ask the competition authority to accept a loss of rivalry now in return for promised benefits that are hard to verify within the statutory timetable. In those cases, the reduction in competition tends to be enduring, while many claimed efficiencies fail to materialise.
- 1.3. The CMA's existing framework is broadly correct and should not be relaxed. The tests and standards should remain stringent. What is missing is consistency in how the tests are applied and greater clarity about what evidence will be persuasive especially in concentrated markets where pass through is weak. There is also a need for a process that filters out modest or weakly supported claims early, so that scarce authority resources are focused on the small subset that could plausibly affect the outcome.
- 1.4. Our submission therefore makes three points:
 - I. **Maintain a high bar:** keep the current tests that efficiencies should carry material weight only where they are rivalry-enhancing, timely, likely and sufficient, merger-specific and benefit UK customers.
 - II. **Discount efficiency claims where competition is already weak:** efficiencies should be treated as materially less relevant in highly concentrated markets and where evidence indicates weak pass-through.
 - III. **Triage early:** introduce an early, structured way of presenting and screening efficiencies so that only credible, material claims receive resource-intensive assessment.

2. Theme 1(a): The CMA's framework of assessment

- 2.1. The CMA's existing tests are the right structure, but they need to be applied in a way that is harder to game. Rivalry-enhancing" needs to be a real filter. If a claim is

effectively generic references to “synergies”, “scale” or “strategic fit”, it should carry little or no weight unless the parties can explain, with evidence, the competitive mechanism by which the merger enables stronger rivalry than would occur absent the merger (on price, quality, service, range or innovation) and why those benefits reach UK customers.

- 2.2. The same applies to timeliness and likelihood. The CMA should be explicit that the evidential burden rises where claims are long-dated, depend on complex integration, organisational change or rely on future product delivery. In those instances, the claim should be accompanied by a concrete delivery mechanism, which includes a timeframe of when benefits arise, what has to happen to unlock them, what resources are committed, and what execution risks exist. Without that, the claim should not be relied on to offset a loss of competition.
- 2.3. Where efficiencies are relied on to offset a Substantial Lessening of Competition (SLC), the CMA’s reasoning should be explicit when harms and benefits do not match. That includes cases where harms are immediate, but the claimed benefits are long-term; where harms concern price or choice, but benefits are framed as innovation (or vice-versa); or where harms and benefits fall on different customer groups. This is not a call for mechanistic quantification in every case, but for a clear explanation of why the offset is credible in the competitive conditions of the market.
- 2.4. Merger specificity should also be tested as an evidence question. In many cases, the claimed “efficiency” is really a claim about speed or capability. Often these goals can be pursued through less anti-competitive routes such as organic investment, licensing, interoperability arrangements, supply contracts, partnerships, or minority investments. The CMA’s assessment should be based in ordinary-course material showing what the parties actually considered instead of the merger (build/buy/partner analysis, internal investment cases, and commercial evaluations) rather than post-deal advocacy.
- 2.5. Pass-through should not be assumed. Private cost savings are not automatically customer benefits. Whether customers see lower prices, better quality, or more innovation depends on rivalry, switching costs, entry conditions, and the scope for price discrimination or lock-in. Where competition is already weak, it is less plausible that efficiencies will be competed away to customers, and the CMA should treat pass-through claims with corresponding caution. In highly concentrated markets and in markets with significant barriers to entry or expansion, efficiency claims should generally be discounted unless supported by unusually strong evidence and a clear rivalry mechanism.

3. Theme 1(b): The evidence base

- 3.1. The most useful improvement the CMA can make is to be clearer about what it will treat as persuasive. Efficiency claims should be treated as credible only where supported by ordinary-course documents created before the deal was agreed or announced. That includes board and committee papers and investment cases; integration plans with milestones, budgets and staffing; product and R&D roadmaps and governance; and internal build/buy/partner analysis.
- 3.2. The CMA should state clearly that it will give limited weight to studies commissioned close to the transaction primarily to support a prospective efficiency narrative, unless those studies are clearly anchored in the parties’ existing plans and records.

- 3.3. The CMA should lean more on third-party evidence to test pass-through and deliverability where efficiencies are potentially outcome-determinative. Those customers, suppliers and other market participants are often best placed to assess whether a claimed benefits will translate into outcomes in practice. The CMA should not be reliant on party submissions alone when the question is whether benefits are likely to reach UK customers.

4. Theme 1(c): Dynamic efficiencies and innovation

- 4.1. Dynamic efficiencies can be real, but they are readily overstated. Innovation claims should only carry material weight where parties can evidence the mechanism (what changes post-merger that cannot be achieved absent the merger) the incentives, meaning why the merged firm would innovate more than under the counterfactual, and how delivery will happen, including resourcing, governance, milestones and execution risks. Scale or “acceleration” narratives are not enough without contemporaneous roadmaps and committed resources, particularly where the merger removes a competitive constraint that would otherwise drive innovation.
- 4.2. Where the claim is that a merger will foster innovation across a market, it should be treated with caution unless the parties can point to a clear competitive mechanism, such as enabling entry or expansion that strengthens rivalry and forces rivals to respond. Otherwise, these claims are usually too indirect to carry much weight in the competitive assessment.

5. Theme 2: The CMA’s efficiencies process

- 5.1. The CMA does not need a new substantive test. It needs a practical method to prevent modest or weakly supported claims consuming disproportionate resources and influencing outcomes through complexity. Where parties rely on efficiencies, they should be required to present them early in a standard format that sets out the rivalry mechanism and customer benefit channel, timing and dependencies, merger-specificity basis (including alternatives considered), pass-through logic, and the ordinary-course documents supporting the claim.
- 5.2. The CMA should then be willing to triage. Claims that are modest relative to the potential SLC, lack a clear rivalry channel, or are not supported by ordinary-course evidence should not move to resource-intensive assessment. That is not about refusing to consider efficiencies; it is about focusing detailed work on the small number of claims that could realistically affect the conclusion. This would improve consistency and reduce the risk that weak claims gain traction simply because they create uncertainty within the timetable.

6. Conclusion

- 6.1. The CMA’s existing framework is broadly sound and should not be relaxed. The priority should be disciplined application. This means explicit discounting of efficiency claims in highly concentrated markets and where pass-through is weak. The CMA should set clear expectations that ordinary-course evidence will carry most weight. There should be careful treatment of long-dated and innovation-based claims. And there should be early structured triage so the CMA’s limited resources are focused on the small subset of efficiency claims that are both material and verifiable.