

Merger efficiencies review

Response to CMA call for evidence

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1 Introduction

This note responds to the CMA's call for evidence on the assessment of rivalry-enhancing efficiencies.^{1,2} In particular, we address the first of the questions posed in the CMA's call for evidence, which concerns why and how the CMA's framework for assessing efficiencies should change in order to achieve the CMA's aims of the '4Ps': pace, predictability, proportionality and process.

The CMA's decision to engage with stakeholders on its approach to assessing rivalry-enhancing efficiencies is timely. Both researchers and practitioners have recently contributed to the debate over how merger control can evolve to accommodate the benefits of scale, innovation, capital allocation, exit coordination and resilience, all while continuing to be vigilant against concentration of market power.³

Policy institutions have been increasingly concerned with questions of dynamic efficiencies. The Draghi report addressed the importance of dynamic effects of consolidation, commenting in particular on the link between merger control and the pan-European impacts on productivity, investment and innovation.⁴ The importance of dynamic efficiencies has also been noted in the OECD's recent examination of efficiencies in merger control.⁵

The CMA is no doubt aware of this context, and the CMA's own merger control practice provides us with an illustration of such dynamic efficiency considerations in the form of the significant investment-related commitments in *Vodafone/Three*.⁶ However, such behavioural remedies do not necessarily provide a useful template for merger control as a whole; rather, *Vodafone/Three* is more accurately viewed as an opportune case where the involvement of the sector regulator and the

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² This response draws on a recent discussion paper by Jorge Padilla on frameworks for assessing merger efficiencies. See Padilla, Jorge, (2026), *When and How To Rescue Efficiencies From Oblivion in Horizontal Merger Control?* available at: <https://ssrn.com/abstract=6217838>

³ Padilla (2026), Section IV presents a review of recent developments.

⁴ European Commission, (2024), *The Future of European Competitiveness: Report by Mario Draghi*, available at: https://commission.europa.eu/topics/competitiveness/draghi-report_en

⁵ OECD, (2025), *Efficiencies in Merger Control*, DAF/COMP/WP3.

⁶ Competition and Markets Authority, (2025), *Vodafone / CK Hutchison JV merger inquiry*, available at: <https://www.gov.uk/cma-cases/vodafone-slash-ck-hutchison-jv-merger-inquiry>

defined and measurable nature of the merging parties' claimed efficiencies combined for a viable remedy not subject to the many practical difficulties of behavioural remedies that often arise.

While *Vodafone/Three* may be rare in terms of the viability of the behavioural remedies, it represents one of a multitude of transactions that the CMA has been and will be required to assess in the context of dynamic efficiency considerations. In the absence of a focussed analytical framework that puts dynamic efficiency concerns at the heart of merger control, there is a risk that the CMA would be increasingly required to either drift towards a role of an ex-ante sector regulator relying on commitments to secure dynamic efficiencies, or an industrial policy-maker relaxing the usual merger control frameworks on an *ad hoc* basis to steer the UK economy in one direction or another. Neither of these directions aligns with the CMA's vision for UK merger control centred on the '4Ps' of pace, predictability, proportionality and process.

For this reason, the CMA's current programme of engagement and consultation represents an invaluable opportunity for a renewal of its analytical approach to merger efficiencies. A more holistic approach to assessing the dynamic benefits of mergers combined with vigilance against entrenched market power represents the best framework for achieving the CMA's aims of the '4Ps'. As we will explain in further detail in the following sections, our view is that the best framework for achieving this is to define a set of *separating conditions* specific to the relevant type of efficiencies and grounded in economics to identify the mergers that exhibit significant dynamic efficiencies.

2 The CMA's current approach to merger efficiencies

The CMA's Merger Assessment Guidelines ('MAGs') already recognise the significance of rivalry-enhancing merger efficiencies, including the potential for such efficiencies to offset significant lessening of competition ('SLC') arising from a concentration. The MAGs set out the CMA's framework for assessing rivalry-enhancing efficiencies, explaining that in order to offset an SLC, efficiencies must:

- enhance rivalry in the supply of those products where an SLC may otherwise arise;
- be timely, likely and sufficient to prevent an SLC from arising;
- be merger-specific; and
- benefit customers in the UK.⁷

The MAGs confirm that efficiencies can arise from increased ability of firms to profitably innovate or invest in entry and expansion, therefore leaving the door open for finding dynamic efficiencies which offset an SLC.⁸ However, the emphasis is explicitly placed on efficiencies in the form of reductions to marginal or variable costs, specifically those that are realised in the same timeframe as the CMA's assessment of the SLC.⁹ The discussion of dynamic efficiencies is brief compared to the much more detailed discussion of the potential harms arising from mergers through the loss of potential and dynamic competition.¹⁰

This asymmetric approach to assessing potential pro-competitive and anti-competitive effects is understandable, given the practical difficulties that the CMA faces in evaluating claims of efficiencies. The CMA MAGs themselves note that the CMA may not accept efficiency claims by

⁷ Competition and Markets Authority, (2021), *Merger Assessment Guidelines*, paragraph 8.8.

⁸ CMA MAGs, paragraphs 8.10-8.11.

⁹ CMA MAGs, paragraphs 8.10 and 8.12.

¹⁰ CMA MAGs, Section 5.

merging parties because the claims are difficult to verify and substantiate, and that in reality expected merger efficiencies may not materialise or be passed onto customers.¹¹

Aside from the practical aspects of assessing efficiency claims, however, the sceptical approach of the CMA is also partly informed by the economic models that underpin the CMA's merger assessment framework, which mostly emphasise static competition based on short-run decisions over prices and quantities. These short-run models of competition do usefully capture the main competitive dynamics in many markets and indeed are widely relied on by competition authorities around the world as part of merger assessments. However, one thing that they do not provide is a methodology for examining the dynamic effects of mergers on innovation, investment, entry and exit.

This absence of a suitable framework is striking because, as explained above, the CMA MAGs themselves note the potential dynamic effects of the merger, both pro-competitive (via efficiencies) and anti-competitive. In the absence of a suitable framework, the risk is that any assessment of dynamic effects can only ever amount to a peripheral analysis, compared to the 'main' assessment of the merger effects focussing on the static view.

We propose that a better approach would be for the CMA to implement a framework that explicitly considers potential sources of dynamic efficiencies. Such a framework would not involve wholly accepting all claims of efficiencies by merging parties. Rather, a well-designed framework would identify the set of suitable *separating conditions* that allow the CMA to differentiate significant, credible dynamic efficiencies and compare these against any SLC arising from the merger.

In the remainder of this note, we discuss several different types of potential sources of dynamic efficiency and examine the potential separating conditions that could apply for each. We then conclude with some suggestions on how a framework based on such separating conditions might operate in practice.¹²

3 Innovation efficiencies

The empirical literature on market structure and innovation suggests that the impact of mergers on innovation is heterogeneous.¹³ This does not imply that the CMA should be sceptical of all claims regarding innovation efficiencies; rather, the positive takeaway should be that there are potential benefits for UK markets and consumers to be gained from accurately identifying the mergers that are likely to yield innovation benefits.

The literature on innovation provides several suggestions for separating conditions to identify mergers likely to yield innovation efficiencies.

- **Condition 1: Are the merging parties close competitors in the innovation space?** In other words, are the merging parties engaged in innovation efforts which would most likely result in benefits for the successful innovator in the form of stealing business from the other merging party? Such business stealing incentives would be internalised after the merger, reducing innovation incentives.

¹¹ CMA MAGs, paragraphs 8.6-8.7.

¹² The separating conditions and the suggested framework both draw on Padilla (2026) and the supporting discussion therein. In this note, we present only a brief overview of each condition.

¹³ Padilla (2026), Section V.B presents a review of this literature.

- Condition 2: Are outsiders able to replace the innovation rivalry lost through the merger? If rivals are not able to react to any loss in innovation rivalry by increasing their own efforts, the merger is more likely to cause harm to overall innovation efforts in the market.
- Condition 3: Are there potential R&D efficiencies or an “innovation sharing” defence? If the merger increases the payoffs to innovation by enabling its application across a broader asset base, or otherwise increases the value of the innovation through complementary assets, the overall impact on innovation may be positive.
- Condition 4: Are there potential efficiencies from redirection of duplicated innovation efforts? Some innovation efforts across the parties pre-merger may be wasted due to duplication, and potential benefits of combining and coordinating efforts should be assessed.
- Condition 5: Does the merger raise ‘killer acquisition’ or ‘reverse killer acquisition’ concerns? Potential risks of large established firms using acquisitions to head off disruptive entrants should be investigated.¹⁴
- Condition 6: Does any structural remedy preserve innovation? Any structural remedy imposed on the merger should be carefully designed such that it does not destroy the capacity and incentives for innovation that the remedy is intending to protect.

4 Mergers as an exit mechanism

Static models of competition tend to view all forms of market exits including mergers as solely anti-competitive. However, not all market exits are alike. Market exits in declining, overcapacity sectors or market exits of underperforming firms can lead to efficient reallocation of capital. Furthermore, a market exit via a merger can represent a more orderly form of market exit that preserves the assets in the market compared to a firm failure or a long-term decline.

The CMA MAGs already recognise this potential in the form of the failing firm defence.¹⁵ However, the circumstances in which the failing firm defence would apply is a very specific and high bar, consisting of a complete and inevitable exit of the firm and its assets. There are many other circumstances in which exit via mergers can form part of a well-functioning and dynamic competitive process, and therefore more potential gains for UK markets and consumers from accurately identifying such mergers.

Some potential separating conditions to identify mergers likely to constitute efficient exits are as follows.

- Condition 1: What is the true economic viability of the target in the counterfactual? While the current failing firm defence sets a high bar of complete exit from the market, there is a spectrum of financial and operational difficulties that may leave a firm unable to exercise effective competitive constraint on rivals.
- Condition 2: What is the realistic counterfactual buyer? In cases where an alternative buyer is used as the relevant counterfactual, it should be based on a feasible and likely buyer within the relevant time horizon.
- Condition 3: Could counterfactual redeployment of assets recreate comparable rivalry in time? In cases where a redeployment of assets is used as the relevant counterfactual, the standard

¹⁴ These ‘killer acquisition’ concerns are discussed further in Section 5 below.

¹⁵ CMA MAGs, paragraphs 3.21-3.32.

for assessment against the merger should be the recreation of a comparable level of rivalry rather than pure preservation of assets.

- Condition 4: Are there risks of long-run harm in the counterfactual? In cases where continued independent operation is used as the relevant counterfactual, this should not automatically be presumed to equate to continued effective competition. In some circumstances there may be risks of long-run harm to the competitive process from prolonging the operation of the target firm, for example through damage to the target firm's brand or asset base.

5 Mergers in the context of innovation ecosystems

Acquisitions of smaller, younger firms by larger, established players have gained attention from competition authorities. This has especially affected the assessments of acquisition of start-ups in the pharmaceutical and technology sectors, with competition authorities especially wary of potential 'killer acquisitions'.

Such concerns may be justified for some transactions, but this is only one aspect of a broader issue that requires a fuller assessment, namely: acquisitions by more established firms can be the expected exit route for start-up investments in venture-driven sectors. Changes to the assessments of such transactions can affect the ex-ante incentives for investments into start-ups, for better or worse.

Some potential separating conditions to identify acquisitions that would preserve ex-ante incentives for investment while also preserving ex-post competition would be as follows.

- Condition 1: Is the start-up a credible future competitive constraint? This condition seeks to avoid mistaken enforcement of 'killer acquisition' theories of harm when the start-up would not be a future competitive constraint to the purchaser.
- Condition 2: Does the acquisition plausibly accelerate innovation deployment? This condition captures the potential for innovation synergies from applying the innovation of a smaller target firm to the wider installed base of the acquiring firm.
- Condition 3: What is the likely post-acquisition strategy? The competitive harm from 'killer acquisitions' arises in cases where the relevant innovation would be discontinued as a result of the acquisition.
- Condition 4: Who are the alternative buyers? A large number of credible buyers implies that the acquisition represents a competition to acquire innovation for deployment, rather than an entrenched monopolist protecting its own position by killing off a disruptive innovator.
- Condition 5: What does the transaction imply for incentives in the overall innovation ecosystem, including in particular entry? Dynamic competition may be best served through a merger framework that provides a valuable and predictable exit path for start-up investments.

6 Mergers among laggards

Some markets are characterised by a strong structural asymmetry; there may be a set of large, entrenched leader firms and another set of smaller, weaker challenger firms. In such cases, a merger between the 'laggard' firms can be pro-competitive if it allows the merged entity to work towards being one of the leader firms, thereby replacing two sets of ineffective competitive constraints into a single, effective competitive constraint in the long run.

Some potential separating conditions to identify such mergers among laggards that would increase competition in the long run are as follows.

- Condition 1: Are the merging parties truly laggards? In circumstances where the merging parties are currently not exercising significant competitive constraints on each other, there may be more to be gained by strengthening their competitive constraints on the remainder of the market.
- Condition 2: Is there evidence of the constraint that would be overcome by the merger? In order to form the justification for the merger, the merging parties would need to define the constraint that identify them as laggards as well as demonstrating that this constraint would be overcome by the merger.
- Condition 3: Is the leader-laggard differentiation condition plausible? The laggards in the market must be distant competitors to the leaders if the gain in competition arising from the merger is to balance out the market concentration between the laggards.
- Condition 4: Does the merger create rivalry-enhancing efficiencies that are timely, likely and merger-specific? The CMA's current criteria for assessing efficiencies would continue to be relevant here, applied specifically to the ability of the merged entity to compete against the leaders in the market.

7 Resilience efficiencies

The UK merger control regime already accounts for certain forms of resilience separately from competition issues, in particular any potential impact of transactions on matters of public interest and national security. A recent discussion paper by the CMA has also commented on market resilience including the potential for mergers to yield resilience benefits, although the majority of the discussion was towards potential harm to market resilience from market concentration.¹⁶

Some mergers may well negatively affect the ability of the market to absorb demand and supply shocks and continue to operate without excessive volatility in prices, quality and continuity of supply. In this sense, potential harm to long-run consumer welfare arising from resilience issues is not dissimilar to other merger theories of harm that the CMA would investigate. However, in cases where a merger raises potential *benefits* in the form of *increased* market resilience, this should also figure into the CMA's assessment of dynamic efficiencies. This may occur, for example, in mature and declining industries where a merger may allow for a more orderly restructuring of assets compared to a sudden failure in response to a supply/demand or financial shock.

Some potential separating conditions to assess the impact of mergers on market resilience would be as follows.

- Condition 1: Is there a resilience dimension that captures benefits to consumers? The assessment of resilience should be carried out with respect to a specific dimension of consumer welfare. For example, a merger may safeguard a baseline quantity of supply in times of shock, continuity of supply over time, or ensure a lower level of price volatility. This ensures that assessment of any efficiency ties back to the consumer welfare standard.

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Competition and Markets Authority, (2023), *Market resilience: Discussion paper*, available at: <https://www.gov.uk/government/publications/market-resilience-discussion-paper>

- Condition 2: Is there a suitable counterfactual by which to stress-test resilience benefits? Rather than abstract standards for resilience, assessments of resilience benefits should be based on specific shock scenarios and counterfactuals.
- Condition 3: Are there merger-specific mechanisms and evidence for resilience benefits? As with other types of efficiencies, resilience benefits should be assessed based on a merger-specific standard and evidence base.

8 Practical steps for application of the separating conditions

The Sections 3 to 7 above set out our proposed separating conditions that form a potential framework for assessing dynamic efficiencies arising from a given merger. Applying these separating conditions as part of a merger control framework could take on the following form.

- Step 1. Identify the dominant merger “type” and the relevant efficiency. The several potential sources of dynamic efficiencies discussed above clearly do not apply to every merger, and indeed there will still be many mergers where no dynamic efficiencies arise. The CMA should identify at the outset the mergers where a strictly static assessment suffices and mergers where specific dynamic efficiency issues arise.
- Step 2. Define an explicit, realistic and dynamic counterfactual. A common theme of the dynamic efficiencies assessments discussed in previous sections is that the counterfactual for the merger needs to be well-considered to capture the specific efficiency of concern. A tendency towards treating the current market structure as the counterfactual may be suitable and pragmatic in static assessments, but risks missing out the entire rationale for mergers with dynamic efficiencies.
- Step 3. For each candidate efficiency channel, require a “mechanism plus evidence” package. Any efficiency claims by the merging parties must be accompanied by (i) explanation of the mechanisms by which the merger changes the parties’ ability or incentives to bring about the efficiencies, and (ii) specific evidence supporting the mechanism.
- Step 4. Separate “standards of proof” by efficiency type, while keeping a high bar. The current standards applied by the CMA may be better suited to assessments of static efficiencies revolving around marginal cost reductions but less suitable for assessing dynamic efficiencies. Opening the door for dynamic efficiencies may involve accepting different types of evidence to demonstrate the credible mechanism for efficiency, the merging parties’ intent, and post-merger plan for implementation. This will inevitably involve accepting a broader range of evidence types, compared to the static approach concentrating on short-run marginal cost reductions and pass-through. The CMA should continue to require an appropriately high standard of proof from the merging parties; it is only the focus of the assessment that changes from marginal costs and pass-through to the separating conditions discussed in this note.
- Step 5. Implement behavioural remedies to secure dynamic efficiencies in exceptional circumstances. Behavioural remedies may be a solution in cases where the industry context and the nature of the dynamic efficiencies are both suitable. However, these should be treated as exceptional cases where behavioural remedies help to secure expected dynamic efficiency benefits, not a replacement for a holistic assessment of the merging parties’ ability and incentives to bring about such efficiencies.