

CMA Merger Efficiencies Review – Call for Evidence

Response from Dr. Gönenç Gürkaynak, Esq.¹

1. Introduction

- 1.1. This response is provided in relation to the Competition and Markets Authority’s (“**CMA**”) review of its approach to rivalry-enhancing efficiencies, as set out in *Merger efficiencies review: Call for Evidence* (“**Call for Evidence**”).² In particular, it addresses CMA’s request for views on:
- a. the CMA’s analytical approach to rivalry-enhancing efficiencies, including the types of evidence and how CMA assesses dynamic efficiencies, and
 - b. the CMA’s process for assessing rivalry-enhancing efficiencies, including how CMA engages with merging parties on efficiency claims.

2. The CMA’s Analytical Approach to Rivalry-enhancing Efficiencies

2.1. Theme 1(a): The CMA’s Framework for Assessing Rivalry-Enhancing Efficiencies

- 2.1.1. A key issue in assessing the CMA’s approach to efficiencies revolves around the fact that innovation-related efficiencies are often uncertain, non-linear, and realised over prolonged periods of time, making them difficult to assess using evidentiary tools tailored to static determinants. In this sense, applying the current regulatory framework primarily through static, price and structure focused analytical tools risks systematically under-recognising efficiencies that enhance rivalry through dynamic and innovation-driven mechanisms.³
- 2.1.2. Dynamic efficiencies arise over longer periods and operate through changes in firms’ incentives to innovate, including the diffusion of know-how, more efficient use of intellectual property, and increased research and development (“**R&D**”) activity.⁴
- 2.1.3. Innovation related gains are typical examples of dynamic efficiencies, and they are inherently different from static cost efficiencies. This is mainly because innovation is non-linear and innovation competition dynamics change rapidly.⁵ Innovation processes involve experimentation, cumulative learning, feedback effects, and failed attempts, with outcomes that may materialise unevenly and over longer time periods. When static analytical tools, designed primarily to assess short-run price and output effects, are applied to such dynamic processes, they will inevitably struggle to capture how rivalry is enhanced through

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² “Merger efficiencies review: Call for evidence” published on the CMA’s official web-site on January 15, 2026, available at: <https://connect.cma.gov.uk/call-for-evidence-merger-efficiencies-review>.

³ Gönenç Gürkaynak & David J. Teece, “Integrating Innovation Concepts into the Merger Control Context”, *Journal of European Competition Law & Practice*, Volume 16, Issue 6, September 2025, pages 343–346.

⁴ Dr. Gönenç Gürkaynak, *Innovation Paradox in Merger Control*, page 105, para 4.

⁵ Gönenç Gürkaynak & David J. Teece, “Integrating Innovation Concepts into the Merger Control Context”, *Journal of European Competition Law & Practice*, Volume 16, Issue 6, September 2025, page 345.

innovation.⁶ Therefore, applying the same regulatory framework towards innovation related efficiencies as if they were static efficiencies risks failing to capture how they enhance rivalry through dynamic competitive processes in the long run.⁷ Accordingly, while the current regulatory framework is capable of capturing efficiencies in general terms, the CMA's Merger Assessment Guidelines ("**MAGs**") could be further tailored to specifically capture dynamic efficiencies in more definitive terms.

Timeliness and Sufficiency Factors

- 2.1.4. The MAGs state that efficiencies should be realised within the same timeframe as the CMA's competitive analysis, while stating that longer time periods increase doubts that efficiencies may not be realised at all.⁸ However, it may not be fully accurate to require the efficiencies to be realized within a certain timeframe that is used to assess the competitive effects of the merger, especially for transactions that have the potential to lead to disruptive innovation, and increased investment incentives. The timeliness of efficiencies should be assessed depending on the specifics of each case, in light of both the short-term efficiency gains and the long-term expected impact of innovation.
- 2.1.5. In terms of assessing the sufficiency of efficiencies, balancing competitive benefits and harms could be quite challenging since efficiencies and harms may arise over different time periods or across different parameters of competition, especially with regard to dynamic efficiencies such as innovation. Innovation can generate benefits that may not be sufficiently measured by conventional means that capture static efficiencies, such as higher product quality, greater variety of products, and technological advancement directly affecting customer behaviour. Accordingly, relying on static, price-focused methods to weigh the sufficiency of efficiencies can underestimate the expected positive effects in the long-run. For this reason, sufficiency assessments should consider the dynamic and non-price aspects of competition.

Merger-specificity and Pass-through Factors

- 2.1.6. The assessment of merger-specificity requires particular importance especially in innovation-driven markets. Fierce innovation competition takes place in specific sectors including digital products/services, through the integration of disruptive technologies, assets (including intellectual property), and other capabilities such as R&D. The realization of innovative efficiencies in such markets usually require a closer coordination between two or more firms, especially in terms of know-how integration and alignment of other operational and infrastructural capabilities. Therefore, assessing merger-specificity solely by reference to whether similar outcomes could theoretically be achieved through alternative means would risk overlooking innovation-related efficiencies in certain sectors that are predominantly dependent on integration.⁹

⁶ Gönenç Gürkaynak & David J. Teece, "Integrating Innovation Concepts into the Merger Control Context", *Journal of European Competition Law & Practice*, Volume 16, Issue 6, September 2025, pages 345 and 348-349.

⁷ Dr. Gönenç Gürkaynak, *Innovation Paradox in Merger Control*, p. 105, para 4 and p. 107 para 2.

⁸ CMA's Merger Assessment Guidelines (CMA129) published on March 18, 2021, para.8.12

⁹ Gönenç Gürkaynak & David J. Teece, "Integrating Innovation Concepts into the Merger Control Context", *Journal of European Competition Law & Practice*, Volume 16, Issue 6, September 2025, pages 345-346 and 349-351.

- 2.1.7. Unlike static efficiencies, in dynamic contexts, price-related considerations (such as reduction in prices) should not be considered as the sole determinant of customer benefit and pass-through. Efficiencies arising from innovation may also benefit customers through other means, such as improved quality, new or differentiated products, enhanced performance, and sustained competitive pressure over time.¹⁰ These benefits often materialise in the medium-to-long term and through non-price dimensions of competition. In this sense, a regulatory framework that prioritizes price effects may understate the contribution of such efficiencies to consumer pass-through, and the assessment of pass-through effects should also capture other means to measure the impact of innovation in the long-run.

Whether There Are Types of Transactions More Likely to Generate Efficiencies

- 2.1.8. Horizontal transactions and vertical integration may potentially lead to efficiencies depending on the level of synergies brought together either by direct competitors, or players operating in downstream or upstream markets. Rather, efficiencies are more plausible in markets where competition is predominantly driven by dynamic innovation. Innovation-driven markets are often characterised by “competition for the market,” rather than competition within the market.¹¹ Therefore, efficiencies may arise irrespective of the type of the transaction, and the market in which the transaction is being realized has a more essential role in the likelihood of efficiencies being generated.

Circumstances in which Efficiencies May or May Not Raise Competition Concerns

- 2.1.9. Efficiencies could, in principle, give rise to competition concerns in exceptional circumstances, particularly where they are closely linked to exclusionary effects such as competitor foreclosure or raising the costs of competitors. However, innovation-related efficiencies and efficiency-driven restructuring, such as the consolidation of R&D activities, should not be treated as inherently suspicious. In innovation-driven markets, the assessment of efficiencies should be conducted on a case-by-case basis, taking into account the specific market context and the nature of the competitive dynamics. Synergies arising from the consolidation of certain capabilities to make innovative processes more efficient can be mischaracterized as harmful to competition when evaluated using a static analysis. This creates a risk of over-deterrence and may discourage transactions that would otherwise strengthen dynamic competition and promote long-term innovation.

2.2. Theme 1(b): The Evidence Base

Types and Extent of Evidence Used for Assessing Efficiencies

- 2.2.1. For dynamic efficiencies, a more probabilistic and forward-looking analytical approach should be adopted in terms of the evidence used. This would better reflect the inherently non-linear and unpredictable nature of innovation and bypass the limits of one-size-fits-all assessments. For this aim, qualitative and capability-based evidence could be used, such as internal R&D strategies, technology roadmaps, scenario analyses, evidence of

¹⁰ Dr. Gönenç Gürkaynak, Innovation Paradox in Merger Control, page 49; OECD, Efficiencies in Merger Review, Comments by the Business at OECD (BIAC) Competition Committee to the OECD Competition Committee Working Party No.3, June 17, 2025, page 4.

¹¹ Michael L. Katz, Big- Tech Mergers: Innovation, Competition for the Market, and the Acquisition of Emerging Competitors, July 21, 2020, page 1 and 2.

complementary know-how and organisational capabilities showing how integration affects knowledge diffusion, coordination of R&D investments, and incentives to innovate. In addition, contextual indicators of innovation rivalry, such as technological overlap, patenting patterns, spillovers or participation in shared innovation spaces can corroborate plausibility where short-term quantification is not feasible.¹² All in all, an evidence base of this kind and a holistic approach on the widespread use of such evidence could reduce the risk of systematically under-recognising the possible positive effects of dynamic efficiencies.

- 2.2.2. Strictly quantitative analyses may not be adequate where competitive harms and efficiencies arise over varying time periods or affect different parameters of competition. Statistics-based measures such as short-term price effects cannot be meaningfully compared with long-term, and rather uncertain innovation benefits. Therefore, a balance should be maintained between the use of quantitative and qualitative assessment, based on the expected realization timing of efficiencies, the uncertainty of innovation outcomes, and the availability of verifiable data. With specific regard to dynamic efficiencies, the CMA could place greater importance on qualitative, forward-looking evidence of firms' capabilities, complementarities, and innovation incentives, including internal R&D strategies and technology roadmaps demonstrating how the merger would combine unique and non-substitutable assets. This is also consistent with the CMA's approach in its recent *Vodafone/Three* decision,¹³ where long-term efficiencies were assessed on qualitative grounds and secured through commitments.
- 2.2.3. Typically, the type of evidence used by merging parties to substantiate efficiency gains are internal evidence relating to R&D activities, innovation incentives and the coordination of research efforts, including information relevant to knowledge diffusion, complementarities and capabilities. Such materials may be probative of how the merger is expected to affect the parties' ability and incentives to innovative. However, innovation outcomes are usually ambiguous, heterogeneous and difficult to predict, and innovation does not lend itself to a single general economic theory or to reliable *ex ante* quantification.¹⁴ As a result, merging parties may be unable to provide quantitative estimates of long-term innovation benefits or to clearly separate merger-specific innovation effects from broader technological or industry developments. Accordingly, the CMA could also supply the evidence used by the merging parties with other external and contextual sources of proof. These may include industry and sector inquiries, academic records, empirical studies,¹⁵ patent and citations,¹⁶ feedback from customers, competitors and suppliers, and CMA's own evidence gathered through investigations. In this sense, a holistic approach including both internal party evidence and independent external sources as such would be more inclusive to capture the dynamic effects of mergers on innovation and long-term competition.

¹² Gönenç Gürkaynak & David J. Teece, "Integrating Innovation Concepts into the Merger Control Context", *Journal of European Competition Law & Practice*, Volume 16, Issue 6, September 2025, page 349.

¹³ *Vodafone/CK Hutchinson*, Case ME/7064/23, December 5, 2024.

¹⁴ Majure, Hipsman & Liu, *Evaluating Innovation Theories of Harm in Merger Review: Economic Frameworks and Difficulties*, Cornerstone Research, page 1.

¹⁵ OECD, *Dynamic Efficiencies in Merger Analysis*, Series Roundtables on Competition Policy, DAF/COMP(2007)41, 15 May 2008, page 11.

¹⁶ Majure, Hipsman & Liu, *Evaluating Innovation Theories of Harm in Merger Review: Economic Frameworks and Difficulties*, Cornerstone Research, page 2.

2.3. Theme 1(c): Dynamic Efficiencies and Innovation

Circumstances Where Mergers Enhance R&D and Innovation

- 2.3.1 Mergers may positively impact firms' capacity and motivation to pursue R&D and innovation when the integration delivers efficiencies that static assessments fail to reflect. Especially in digital markets where innovation is a key competitive force, the possible results of R&D and innovation related efficiencies are influenced by a wide range of factors. In this sense, mergers may support innovation where they facilitate knowledge diffusion and spillovers, enable improved coordination of R&D investments, support sequential innovation, or enhance legal certainty in relation to intellectual property.¹⁷ Dynamic efficiencies are often challenging to assess and may not be readily quantifiable, due to the uncertainty of innovative activity, including its costs, timing and prospects of success, as well as the practical difficulties in measuring innovation and linking it to outcomes for consumers and overall welfare.
- 2.3.2 The outcomes derived from innovation depend not only on firms' incentives, but also on their organisational structures and technological capabilities. When a merger brings together significant complementary strengths, it can improve the combined entity's capacity to innovate, even if this benefit cannot be precisely measured at the outset. The impact of a merger on innovation is case-specific and may be positive where innovation-related integration gains are present. Accordingly, innovation effects should be assessed on a neutral, fact-intensive, and case-by-case basis.

Evidence Relevant to Assessing Innovation-Enhancing Effect

- 2.3.3 As detailed under the responses to Theme 1(b), analysis for the likely effects of innovation-enhancing efficiencies necessitates a qualitative, capability-based framework that evaluates internal R&D strategies, technology roadmaps, and scenario analyses. Such evidence may demonstrate how the integration of complementary expertise and organizational assets facilitates knowledge diffusion, streamlines R&D coordination, and strengthens long-term innovation incentives. It may therefore include materials showing how the merger removes existing R&D blockages (for example, IP related issues), enables knowledge-sharing, or brings together complementary assets, skills, and technological capabilities. Taken together, these qualitative insights help to demonstrate how integration can strengthen the merged entity's ability to innovate in ways that are not readily captured through quantitative analysis.

Market or Sector-wide Innovation Effects

- 2.3.4 In certain circumstances, mergers can indeed foster innovation beyond the merged entity and more broadly across a market or sector. In particular, innovation effects may extend beyond firm-specific outcomes where post-merger innovation generates positive technological/knowledge spillovers or uninternalized positive externalities that impact current competitors or market entrants, for example by expanding demand for competing

¹⁷ Gönenç Gürkaynak & David J. Teece, "Integrating Innovation Concepts into the Merger Control Context", *Journal of European Competition Law & Practice*, Volume 16, Issue 6, September 2025, page 349; Dr. Gönenç Gürkaynak, *Innovation Paradox in Merger Control*, page 105.

products or diffusing knowledge across the market.¹⁸ Such effects are particularly possible in innovation-driven sectors characterised by ecosystem dynamics, including digital markets and R&D intensive industries (e.g., pharmaceuticals), where innovation is better produced and commercialised through the interaction of multiple market participants. These effects remain context-specific, and market-wide benefits are more likely when the potential effects of cannibalisation (i.e., a decrease in a preceding product's price due to strong substitution relationship between the innovative product and the previously launched product of the same undertaking) are carefully managed.¹⁹

Differentiating the Assessment of Static and Dynamic Efficiencies

- 2.3.5 The approach to assess dynamic efficiencies should differ in terms of application when compared to assessing static efficiencies. The existing regulatory framework (i.e., likelihood, timeliness, sufficiency, merger-specificity, and customer benefit) should be applied in a more probabilistic and forward-looking manner for dynamic efficiencies. This is mainly due to the fact that innovation is non-linear and involves experimentation, cumulative learning, feedback effects and failed attempts processes, with outcomes that may materialise unevenly and over longer time periods.²⁰ While statistics-based quantification and close-term price advantage pass-through models are relevant to measure static efficiencies, applying such static determinants to dynamic gains risks systematic error.
- 2.3.6 In this regard, when assessing dynamic efficiencies, the key question is whether the expected benefits are realistic and supported by the merged entity's incentives, rather than whether they can be predicted with absolute certainty. The timeline for these efficiencies should reflect the relevant industry's historical innovation cycles, technical realities and typical R&D lead times, and not just consider the short-term price-related effects. Also, because innovation benefits and any potential harms may emerge at various different stages or parts of the market, a more qualitative approach is required to assess whether the efficiencies are meaningful. This does not necessarily mean that the standard of proof for substantiating efficiencies will be lowered; rather, it simply ensures that efficiencies are evaluated in the same forward-looking way as potential competitive harms, which would help to maintain the balance between the benefits to be generated by the efficiencies and the potential anticompetitive results that the merger may lead to.

Challenges in Assessing Dynamic Efficiencies and Practical Ways to Address Them

- 2.3.7 Unlike static efficiencies, dynamic efficiencies materialise gradually through innovation, learning, and integration processes, which makes *ex ante* regulation quite challenging. A further difficulty comes from the imbalance in how harms and efficiencies are assessed. Authorities often use forward-looking, probability-based reasoning to identify potential innovation harms, yet require a much higher level of certainty and quantification when

¹⁸ Dr. Gönenç Gürkaynak, Innovation Paradox in Merger Control, page 117; Ioannis Kokkoris & Tommaso Valletti, Innovation Considerations in Horizontal Merger Control, 16 J. Competition L. & Econ. 220 (2020), page 6.

¹⁹ Dr. Gönenç Gürkaynak, Innovation Paradox in Merger Control, page 117.

²⁰ OECD, Dynamic Efficiencies in Merger Analysis, Series Roundtables on Competition Policy, DAF/COMP(2007)41, 15 May 2008.

merging parties present efficiency gains.²¹ This creates an asymmetry that can undervalue genuine innovation benefits simply because they are harder to measure.

- 2.3.8 This issue of asymmetry can be resolved not by lowering the standard of proof, but by adjusting how efficiencies are evaluated. In innovation-driven mergers, a realistic assessment would involve allowing for a more qualitative and probabilistic evidence where precise measurement is not possible and focusing on incentives, capabilities, and the expected direction of innovation rather than relying solely on short-term price effects. In practical terms, this means examining internal R&D plans, technology roadmaps, investment committee materials, capability assessments, evidence of complementary skills, and documentation showing how integration could accelerate development or increase the likelihood of success. The CMA could also consider past experience with similar projects, the removal of technological and IP-related blockages, improved coordination between teams, and how the combination of assets or expertise enhances the parties' ability to innovate over time.

3. Theme 2: The CMA's Process for Assessing Rivalry-Enhancing Efficiencies

3.1. Engagement with Merging Parties on Rivalry-Enhancing Efficiency Claims

- 3.1.1. The scope of expected efficiencies could be communicated earlier with the merging parties. As also stated in the Call for Evidence, in practice, efficiency discussions tend to intensify after a provisional view on the substantial lessening of competition and the relevant theory of harm has already been formed, which leads to efficiencies not being utilized as an integral part of the competitive assessment.²² This may especially become problematic in the review of mergers in innovation-driven markets, where rivalry is shaped by future incentives, capabilities and innovation trajectories rather than immediate price effects. Therefore, innovation-related efficiencies may require an earlier and more structured engagement. This could also allow time for merging parties to populate further qualitative evidence that may substantiate long-term innovation-related benefits and thus bypass the risk of overdeterrence towards a potentially rivalry-enhancing transaction.
- 3.1.2. Engaging earlier with the merging parties (including at Phase I) on the nature of claimed dynamic efficiencies, the theory of rivalry enhancement, and the types of evidence likely to be relevant, would ultimately improve the CMA's decision-making, reduce late-stage disputes, and allow efficiencies to be assessed in parallel with the relevant theories of harm.

3.2. Barriers to Substantiating Rivalry-Enhancing Efficiency Claims and How They Could be Reduced

- 3.2.1. The main obstacles behind demonstrating rivalry-enhancing efficiencies can be both procedural and informational. Although merging parties formally bear the burden of proof, innovation-related efficiencies are often dismissed as too uncertain or difficult to verify. This has the potential to create a double standard in which uncertainty is accepted on the harm side but used to reject efficiency claims, producing a structural bias against dynamic efficiencies driven primarily by process design and sequencing rather than substantive competition law.

²¹ Dr. Gönenç Gürkaynak, Innovation Paradox in Merger Control, page 80, 205.

²² "Merger efficiencies review: Call for evidence" published on the CMA's official web-site on January 15, 2026, available at: <https://connect.cma.gov.uk/call-for-evidence-merger-efficiencies-review>, para. 27.

3.2.2. In terms of how to address these challenges, the evidentiary standards could be tailored in order to better adapt the process of reviewing the sufficiency of efficiencies with the competition law concern in question. This would involve placing greater emphasis on the plausibility of efficiencies, the underlying mechanisms to achieve full results from the expected efficiencies, and clear implementation pathways. This would also allow the CMA to make fuller use of its own information-gathering tools when the relevant evidence concerns ecosystem dynamics or competitor behaviour, rather than placing the entire burden on the merging parties. Finally, providing further regulatory clarity on when and how efficiency evidence will be assessed would enable a more consistent evaluation of rivalry-enhancing efficiencies in analysing mergers in innovation-driven markets.

3.3. **Learnings from Other Jurisdictions and Regulatory Bodies**

3.3.1. Based on comparative practices in the EU and the US, a primary takeaway is that the assessment of innovation-related efficiencies is often constrained by evidentiary frameworks that prioritise merger-specific, quantifiable and readily verifiable outcomes, despite the inherently uncertain, dynamic, and long-term nature of innovation competition.²³ Due to their ambiguous nature, dynamic efficiencies carry the potential to be recognized as speculative, particularly because they materialise over longer time periods. As a result, efficiency claims tend to lose practical relevance once a *prima facie* harm is established.²⁴

3.3.2. Against this background, the CMA could take inspiration from the EU practice by accepting innovation-related efficiencies supported by probabilistic evidence, scenario planning, and technology roadmaps. This could also ensure that these efficiencies remain an active part of the assessment throughout the review, rather than being set aside at an earlier stage. In addition, where key information lies outside the merging parties' control, the CMA could play a more proactive role in testing and verifying efficiencies itself, by also obtaining insights from other players and market participants.

3.3.3. In particular, examples such as the European Commission's *Dow/DuPont* decision²⁵ demonstrate that competition authorities have been willing to rely on forward-looking and inherently uncertain evidence, including internal documents, pipeline overlaps and assessments of future innovation incentives, to establish potential harm to innovation, even when outcomes could not be predicted with precision. Indeed, in the decision, the European Commission also considered the parties' internal documents and determined that the merger would likely reduce innovation. Ultimately, the European Commission designed a remedy which aimed at preserving the innovation at pre-merger levels in light of those findings.

3.4. **Possible Improvements to the CMA's Approach in line with its 4Ps Framework**

3.4.1. The CMA's treatment of rivalry-enhancing efficiencies would benefit from an approach that better reflects the fast-moving **pace** and uncertain nature of innovation. One improvement would be to open structured discussions on efficiency claims earlier in the

²³ Dr. Gönenç Gürkaynak, *Innovation Paradox in Merger Control*, page 107.

²⁴ Dr. Gönenç Gürkaynak, *Innovation Paradox in Merger Control*, page 107.

²⁵ European Commission's *Dow/DuPont* decision of March 27, 2017, Case COMP/M.7932.

review process, so that genuinely innovation-enhancing arguments can be identified and explored upfront. Another improvement would be to give clearer guidance on what kinds of forward-looking materials can credibly support dynamic efficiency claims, e.g., internal R&D planning documents, technology roadmaps, or analyses of how incentives will change post-merger, which would make the process more **predictable** for undertaking operating in innovation-led markets. The CMA could also improve **proportionality** by ensuring that the evidentiary expectations for dynamic efficiencies reflect the inherent uncertainty of innovation, rather than applying standards designed for short-term, easily measurable efficiencies. Finally, the **process** could be strengthened by adopting a more interactive assessment both during the review of the merger and the post-merger process, which may include actively testing whether the efficiencies yield the expected benefits by stipulating periodical reporting obligations on the acquiring parties.

4. Conclusion

- 4.1. As innovation-driven efficiencies are inherently uncertain, non-linear, and often realised over longer time periods and through non-price dimensions of competition, they are difficult to assess using evidentiary and process assumptions developed for static cost efficiencies.
- 4.2. In this context, the CMA's approach would benefit from a more forward-looking, context-sensitive and process-aware application of its existing framework. This includes adopting a holistic approach on the use of both qualitative and probabilistic evidence where appropriate, a balanced use of internal and external sources, and an earlier and more structured engagement on innovation-related efficiencies. These refinements would improve pace, predictability, proportionality, and process, while also ensuring that rivalry-enhancing efficiencies related to innovation are assessed consistently with the CMA's analysis of competitive harm for each particular case.