

Merger efficiencies review – response to the CMA’s call for evidence

A submission by Frontier Economics

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- 1 Frontier Economics is an economic consultancy that regularly advises clients on both national and European merger investigations, including a significant number of cases before the UK Competition and Markets Authority (**CMA**).
- 2 We welcome the CMA’s consultation on efficiencies in merger assessments. Efficiencies are the key channel through which mergers generate benefits for UK consumers and the wider economy. However, we believe the current frameworks do not always enable a sufficiently rigorous and balanced assessment of efficiencies that reflects their full importance. As a result, some merger assessments may give insufficient weight to efficiency gains, even where those efficiencies are capable of materially offsetting potential harms.
- 3 We consider these challenges can be addressed through targeted revisions to the Merger Assessment Guidelines (**MAGs**). In particular, we propose three changes:
 - (a) Adopting a broader and more economically grounded approach to the identification of efficiencies.
 - (b) Applying a more even-handed standard when evaluating potential efficiencies relative to potential harms.
 - (c) Making a more structured use of Joint Business Plans to improve the organisation and sequencing of the assessment process.

1 Take a broader view of efficiencies

- 4 The CMA’s standard competitive assessment focuses primarily on rivalry-enhancing efficiencies (**REEs**), meaning efficiencies arising from strengthening competition

within the relevant market.¹ The scope of the CMA's current consultation is similarly confined to REEs.²

5 Although the CMA's existing framework seeks to capture other merger benefits under the heading of relevant customer benefits (**RCBs**),³ this distinction between REEs and RCBs can in practice cause confusion and hinder a comprehensive assessment of efficiencies. In our experience:

- (a) The distinction between REEs and RCBs is not always clear to merging parties and significant case time is often spent debating classification rather than substance.
- (b) The analytical frameworks and legal tests applied to evaluating REEs and RCBs differ.⁴ The CMA's current MAGs place greater emphasis on the assessment of REEs,⁵ which can result in benefits classified as RCBs receiving less attention.
- (c) In some cases, the definitions of REEs and RCBs overlap,⁶ creating further uncertainty and adding to the complexity faced by merging parties.

6 The CMA's review of merger efficiencies presents an opportunity to reconsider the current framework and address two central questions:

- (a) What types of efficiencies should merger assessments take into account?
- (b) What is the most effective way to evaluate those efficiencies?

7 In the paragraphs below, we set out our views on these questions. In summary, we recommend that:

- (a) All efficiencies that generate benefits for consumers should be considered; and

¹ [CMA's MAGs](#), paragraph 8.3(a).

² [CMA's review of merger efficiencies: call for evidence](#), paragraph 10.

³ The CMA's MAGs define RCBs as "*Benefits to UK customers resulting from a merger, other than through improved competition in the market related to the SLC finding*".

⁴ REEs are part of the competitive assessment and are aimed at understanding whether there is an SLC in the relevant market. On the other hand, RCBs do not prevent an SLC but may outweigh the adverse effects of an SLC. The CMA therefore takes RCBs into account at the point of a Phase 2 referral of when deciding on remedy options (see the CMA's MAGs, paragraph 8.4 and 8.5).

⁵ The CMA's MAGs set out a four-point set of criteria for evaluating evidence in relation to REEs (see paragraph 8.8), the MAGs do not set out how the CMA would evaluate evidence in relation to RCBs.

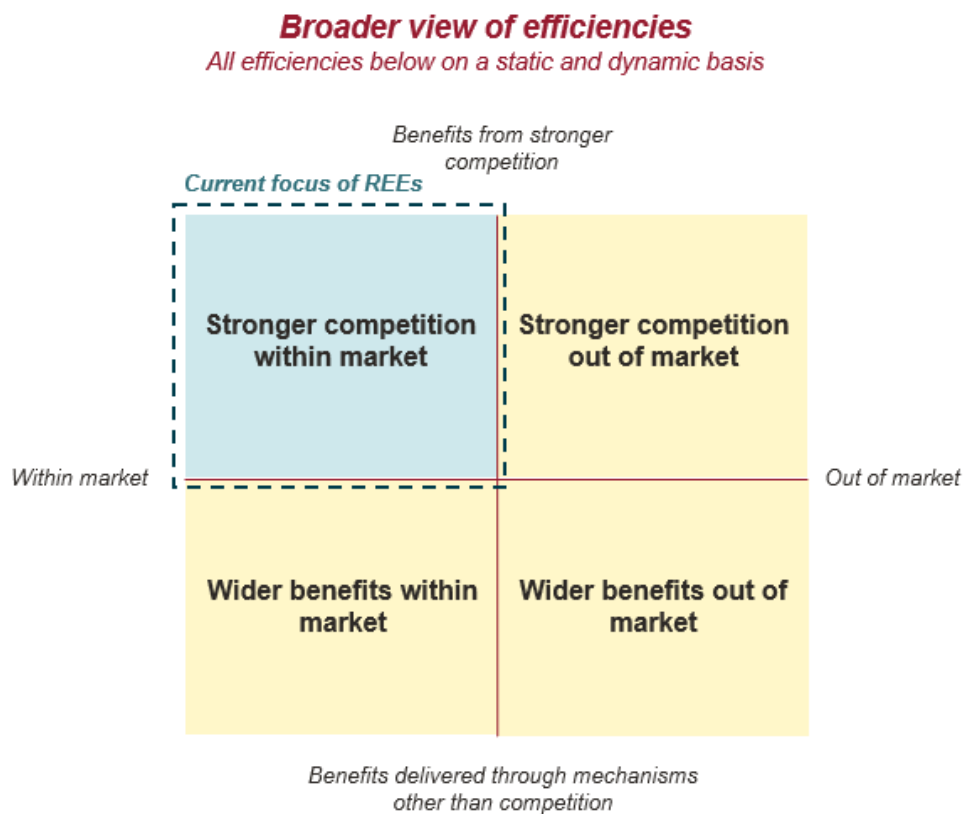
⁶ For example, while REEs and RCBs appear mutually exclusive, these can overlap in cases where the CMA is considering a divestiture remedy and considers REEs as RCBs which would be lost in a divestiture scenario.

- (b) A broader and more integrated analytical framework would allow efficiencies to be evaluated more effectively.

1.1 All efficiencies that benefit consumers are relevant for merger analysis

- 8 All efficiencies that generate benefits for UK consumers should be taken into account in the competitive assessment. The current framework in practice concentrates on efficiencies that affect price or quality in the relevant market through enhancing competition (i.e. REEs) and does not explicitly address dynamic efficiencies. Doing this risks overlooking wider benefits to UK consumers and benefits that arise over a longer time horizon, as illustrated in Figure 1 below.

Figure 1: Illustration of the different types of merger benefits



- 9 Benefits from mergers take many forms and are not limited to improvements in competitive parameters in the affected markets. In some cases, efficiencies may accrue more broadly across UK consumers through other channels, for example by reducing negative environmental externalities associated with production.
- 10 Mergers that generate such benefits can improve allocative efficiency, i.e. allocating resources in a way that increases societal welfare. For instance, markets characterised by environmental externalities may not be allocatively efficient. A

transaction that moves prices closer to the fully costed marginal cost of production can therefore improve allocative efficiency. Mergers may contribute to this by improving production processes to reduce the environmental costs of production.

11 In our view, it is important for the CMA to explicitly recognise (at least) the following categories of efficiency benefits in its updated guidance:

(a) **Investment and innovation benefits:** A merger may reduce the number of competitors in a given market, creating a risk of higher prices or reduced quality. At the same time, it may generate efficiencies, for example through economies of scale or scope, that support materially higher investment and innovation. These innovation benefits may not only mitigate potential competition concerns in the affected market, but also deliver wider gains if the resulting technologies, processes or capabilities can be deployed more broadly. This may arise where the products share production technologies or distribution networks. Mergers involving general purpose technologies are particularly likely to create positive spillovers of this kind across multiple product markets. The *Vodafone/Three* investigation sets a helpful precedent for the assessment of investment and innovation benefits from efficiencies (see Annex A for more details on this).

(b) **Sustainability benefits:** A merger can generate environmental and sustainability benefits in several ways. Consolidation can reduce duplicated capacity and lower overall emissions. Some mergers may also improve the ability and/or incentive of the merging firms to invest in green technologies, enhance purchasing power in the supply chain for green inputs, and pool expertise and capabilities, thereby accelerating the transition to more sustainable production methods.⁷

(c) **Resilience benefits:** A merger can enhance a firm's ability to anticipate, absorb, adapt to and recover from shocks. For example, economies of scale may support supplier diversification, infrastructure upgrades, or stronger bargaining positions in global markets, enabling continued operation during periods of stress, such as during geopolitical shocks, supply chain disruptions, or cyberattacks. More resilient supply chains in markets supplying essential goods or services can represent a significant benefit for consumers and should be considered in the merger assessment.⁸

12 The scope of efficiencies depends on the time horizon and the degree of certainty with which they can be assessed. It is important to consider efficiencies from both a

⁷ More details on the assessment of environmental benefits from mergers are set out in our article: "*Green efficiencies in merger assessment: what's in it for consumers?*" (see [here](#)).

⁸ More details will be set out in a forthcoming paper by Frontier's Iain Boa and Will Carpenter titled "*Supply chain resilience in merger assessments*" in the *Journal of European Competition Law and Practice*.

static and a dynamic perspective. In innovation-driven markets, efficiencies may take time to materialise and may be subject to uncertainty at the time of the merger. Nonetheless, such efficiencies should be taken into account. We set out a suggested approach for addressing these issues in Section 1.2.2 below.

1.2 Proposed refinements to the CMA’s framework for evaluating efficiencies

13 The CMA currently assesses efficiencies by reference to whether they are timely, likely, sufficient and merger-specific. Whilst these criteria capture the key analytical considerations, in our experience this framework presents two practical challenges:

- (a) Assessing each criterion in isolation – in particular the “timely” and “likely” criteria – can result in an unduly exacting evidential standard for efficiency claims, as discussed further in Section 2.2 below.
- (b) Dynamic efficiencies, which are often inherently uncertain and more difficult to quantify, may not be adequately accommodated within the existing criteria.

14 We therefore propose two refinements to the existing framework:

- (a) An overarching “**ability and incentive**” framework that integrates the existing criteria and focuses attention on the central economic questions.
- (b) A **capabilities approach** to assess dynamic efficiencies in a structured and transparent way.

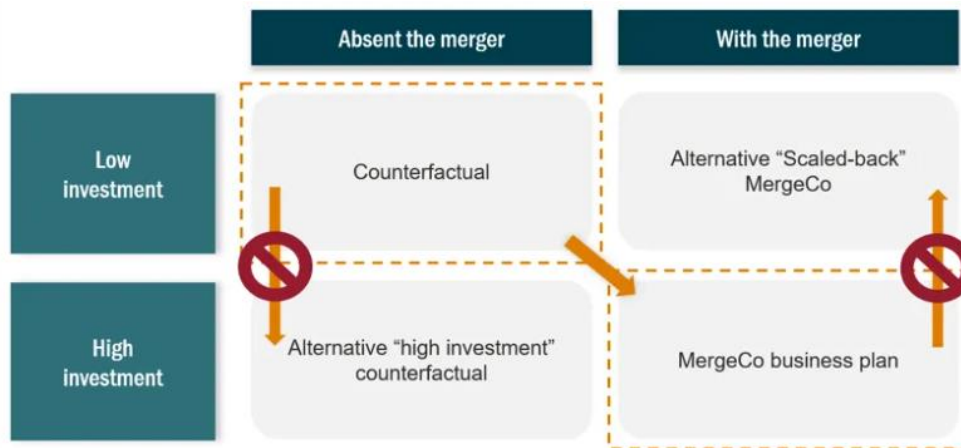
1.2.1 An “ability and incentive” framework to focus on the key questions

15 We propose that efficiencies be assessed through an overarching “ability and incentive” framework. This would provide a structure for presenting and evaluating efficiency claims by concentrating on the core economic issues and the most relevant supporting evidence. Importantly, this framework aligns directly with the CMA’s existing criteria of timely, likely, sufficient and merger-specific, while enabling these considerations to be assessed in a more integrated and economically grounded manner.

- (a) **Ability** concerns whether the merger enables the parties to undertake pro-competitive actions that would not otherwise be feasible, including whether the claimed efficiencies can in fact be realised. For example, a merger may unlock financial, technical or organisational capabilities that make certain investments viable, generating benefits such lower prices, higher quality or greater product variety.

- (b) **Incentive** considers whether the merged entity would have a commercial rationale to undertake such investments and deliver the efficiencies. The merging parties should demonstrate that they would not have the ability and incentive to make equivalent investments absent the transaction. In economic terms, this means showing that pursuing these efficiencies becomes the most profitable (and hence economically rational) strategy only as a result of the merger.
- 16 Figure 2 below illustrates **Error! Reference source not found.**our proposed framework for assessing incentives (which was successfully used by the parties in the *Vodafone/Three* merger). Given efficiencies often rest on the merged firm making certain investments, we consider a scenario that looks at different investment options, with and without the merger. For simplicity, we characterise this as a choice between a “low investment” and “high investment” strategy, though in practice there could be a large number of alternative strategies that vary in terms of both the level and nature of the investment.
- 17 As illustrated by the vertical arrows on the left and right in Figure 2, two conditions must hold for the efficiencies to be incentive-compatible:
- (a) **With the merger:** the “high investment” (efficiencies-generating) strategy must be more profitable than alternative (“low investment”) strategies. Therefore, it would be unprofitable (and not economically rational) for the merged entity to scale back investment post-merger.
- (b) **Absent the merger:** it must be unprofitable for the standalone businesses to replicate the “high investment” (efficiencies-generating) strategy. In other words, the “low investment” strategy that the standalone businesses would expect to pursue absent the merger must be more profitable than the “high investment” strategy.
- 18 Parties can demonstrate the relative profitability of these scenarios using financial modelling, such as comparing the discounted free cash flows, internal rates of return (IRRs) and/or net present values (NPVs) of each scenario.

Figure 2: Framework for assessing incentives



Source: Frontier Economics

19 This framework allows efficiencies to be assessed against the CMA’s four existing criteria in a fully integrated and economically-grounded manner:

- (a) **Timely:** Financial modelling makes explicit the timing and profile of expected efficiencies, enabling future efficiencies to be quantified at an appropriate discount rate. This contrasts with practice under the CMA’s existing framework, which in our experience unduly downplays any merger efficiencies that do not arise within a two-year window.
- (b) **Likely:** The incentive analysis identifies which strategy is profit maximising and therefore most likely to be pursued.
- (c) **Merger-specific:** The comparison between with-merger and without-merger scenarios directly addresses whether the efficiencies depend on the transaction (discussed further in Section 3).
- (d) **Sufficient:** This framework facilitates a systematic assessment of the quantitative evidence on the size of the efficiencies. Efficiencies can be quantified under a range of plausible scenarios, and the CMA can weigh these up against any substantial lessening of competition (**SLC**) concerns to determine whether the efficiencies are sufficient (discussed further in Section 2).

20 An approach of this kind was applied in the *Vodafone/Three* merger investigation, where the parties provided detailed evidence on the profitability of their post-merger investment strategy and the scale of the resulting efficiency benefits. This analysis informed the CMA’s assessment and supported the design of a remedy package that included investment commitments designed to align incentives with the delivery of these efficiencies. Further details of this case study can be found in **Annex A**.

1.2.2 A “capabilities” approach to assess dynamic efficiencies

- 21 As noted above, dynamic markets are inherently characterised by uncertainty. In these markets, innovation is often a key parameter of competition and the efficiencies generated by a merger may take several years to materialise. This can make it more difficult to quantify both the competitive concerns associated with a merger and the countervailing efficiency benefits it may generate. Care is therefore required when assessing both the costs and the benefits of such mergers. However, while the CMA’s current guidance addresses dynamic theories of harm in detail, it offers limited direction on how dynamic efficiencies should be assessed.
- 22 We propose applying the ability-and-incentive approach set out to address this. However, instead of focusing on *ability* alone, the CMA’s focus should be expanded to also consider *capability*. In our view:
- (a) An assessment of *ability* focuses on answering the question of what the merging firms are able to do at the time of the merger. This can be measured through metrics such as value and volume of sales and is well suited for a static analysis.
 - (b) An assessment of *capability* focuses on the question of how the merging firms deliver products or services in the markets in which they are active. This may not only inform what the merging firms are able to do now, but also what they may be capable of doing in the future. To measure the merging parties’ respective capabilities, the CMA could consider factors such as technological assets, data, talent, intellectual property and organisational know how, and form a view on the ability of merging parties to generate future products and innovations.
- 23 As part of this capabilities assessment,⁹ the CMA could:
- (a) Identify what the firms’ respective capabilities are.
 - (b) Determine the extent to which these capabilities overlap. In particular:
 - (i) Where the merging firms’ capabilities are complementary, the merger may be more likely to facilitate innovation and other dynamic efficiencies.
 - (ii) Where the merging firms’ capabilities are overlapping, the merging parties’ case for generating dynamic efficiencies may be relatively weaker. However, even in this scenario, merger-specific efficiencies may arise if, for example, there are scale benefits to capabilities.

⁹ Note this is similar to the approach set out by Boa, Elliot, Foster in [“A Capability Approach to Merger Review”](#) (2023)

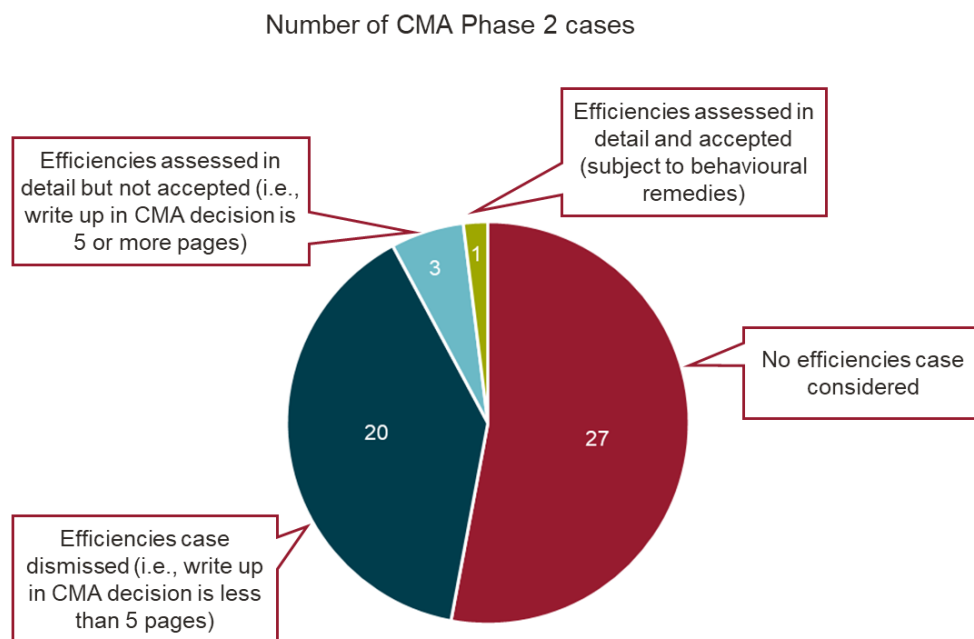
- (c) Where the firms possess a favourable combination of capabilities, evaluate the strength of the merged firm’s incentives to invest in realising any efficiencies. In principle, the firm’s post-merger investment decisions can be modelled, even if the precise outcomes of those investments are uncertain.
- 24 The key insight of the capability approach set out above is that overlaps in the merging parties’ current activities do not necessarily imply overlap in their underlying capabilities. Two firms may appear similar today because they serve the same customer need, yet they may bring distinct and complimentary capabilities (for example, assets, data, engineering expertise, IP, or routes to market) that can be combined to generate dynamic efficiencies over time.
- 25 By way of illustration, consider two firms active in the supply of smart energy meters. One firm differentiates itself through its expertise in designing and manufacturing high quality hardware, whilst the other is recognised by customers for its advanced software for meter reading and analytics. Although the firms overlap in their current ability to supply smart meters, their underlying manufacturing and technological capabilities are complementary. Bringing these capabilities together may do more than simply combine existing products. It may, for example, enable the integration of hardware and software design at an earlier stage of development, support joint problem solving across engineering teams, and accelerate the refinement of new functionalities. The pooling of knowhow, data, and R&D expertise could facilitate innovation that neither firm would be likely to achieve on a standalone basis, or at least not within the same timeframe. In this way, the merger may enhance both the pace and direction of innovation, generating dynamic efficiencies that depend on the close coordination of complementary skills and assets.
- 26 Whilst some of the considerations underpinning capabilities-based assessments of this nature may already be reflected in the CMA’s practice, formalising this in the MAGs would provide greater clarity to merging parties and promote consistency across cases, in line with the CMA’s “4Ps” framework.
- 27 We recognise that not all mergers will readily lend themselves to a formal ability-and-incentive analysis or a capabilities-based approach. In such cases, qualitative judgement will inevitably remain necessary. However, even where a full application of these frameworks is not feasible, anchoring the assessment in the principles set out above would support more rigorous, transparent and systematic merger analysis.

2 Move towards a balanced standard for assessing competitive effects and efficiencies

28 The CMA has rarely accepted arguments on efficiencies in past cases. This has created a perception that investing in a detailed efficiencies case carries significant uncertainty, with a material risk that such arguments will be rejected.

29 Of the 51 Phase 2 cases that the CMA has reviewed since 2020, efficiencies have been substantively recognised and accepted only in *Vodafone / Three*. In the vast majority of remaining cases, the CMA has either not set out any assessment of efficiencies in its decision or has dismissed efficiency arguments without a detailed assessment (see Figure 3 below).

Figure 3: Outcomes of efficiencies assessments in CMA Phase 2 merger investigations since 2020



Source: Frontier Economics analysis

30 We believe this pattern reflects an imbalance in the standard applied for assessing efficiencies relative to that for assessing an SLC. In particular, the current framework applies a balance of probabilities standard (“more likely than not”) for assessing an SLC in Phase 2 merger investigations, but in practice has a significantly higher evidential standard – through the “timely” and “likely” criteria – for establishing an efficiencies case.

- 31 To promote a more even-handed approach, we recommend:
- (a) Where appropriate, embedding the assessment of efficiencies within SLC analysis; and
 - (b) Applying greater flexibility in the interpretation of the “timely” and “likely” criteria.

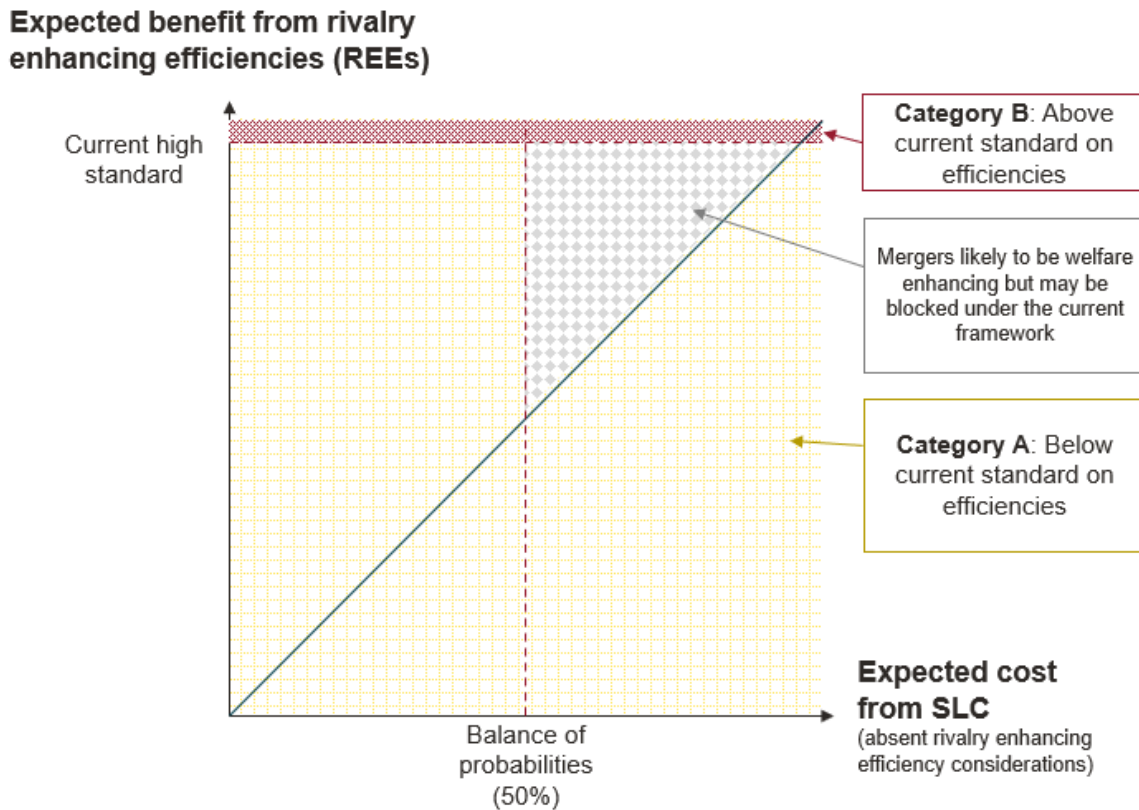
2.1 An embedded approach to weighing an SLC against efficiencies

- 32 We recognise that weighing merger efficiency benefits against potential harms from an SLC is not straightforward. Identifying and quantifying both sides of the equation can be analytically demanding, particularly in dynamic markets characterised by uncertainty.
- 33 However, the current framework appears to concentrate analytical effort predominantly on establishing an SLC. As illustrated in Figure 4 below,¹⁰ in practice this tends to produce two broad categories of cases:
- (a) **Cases falling below the threshold for accepting efficiencies.** In the majority of investigations, the analytical work is primarily focused on the SLC. Efficiencies are not examined in depth or are treated as insufficiently substantiated to influence the outcome.
 - (b) **Cases exceeding the threshold for accepting on efficiencies.** In a small minority of cases, the CMA engages in a detailed substantive comparison between the strength of the SLC case and the claimed efficiencies to determine whether the latter offset the former.
- 34 In principle, where confidence in the efficiencies case exceeds confidence in the SLC case – i.e., cases which lie above the blue line in Figure 4 – the transaction should be cleared. While it will rarely be feasible to calibrate assessments with mathematical precision, the current framework appears to err in the opposite direction, such that efficiencies are rarely given decisive weight.
- 35 This approach risks being overly cautious, potentially discounting material efficiency benefits in cases where the evidence supporting efficiencies is at least as compelling as the that supporting an SLC. Over time, such an approach may deprive UK

¹⁰ Figure 4 illustrates how expected benefits from efficiencies compare with the expected costs from an SLC under the CMA’s current framework. In particular, it highlights the imbalance that currently exists between: (a) the standard for considering an SLC, which is set at 50% likelihood as per the “balance of probabilities” standard (illustrated by the dotted vertical line), and (b) the standard for considering efficiencies, which is currently set at a significantly higher level (illustrated by the dotted horizontal line). This imbalance in standards results in some mergers being blocked despite having a high likelihood of delivering substantive efficiencies (illustrated by the grey triangle in Figure 4).

consumers and businesses of meaningful gains in productivity, innovation and resilience.

Figure 4: Stylised illustration of merger investigation outcomes under the CMA’s current framework for assessing efficiencies



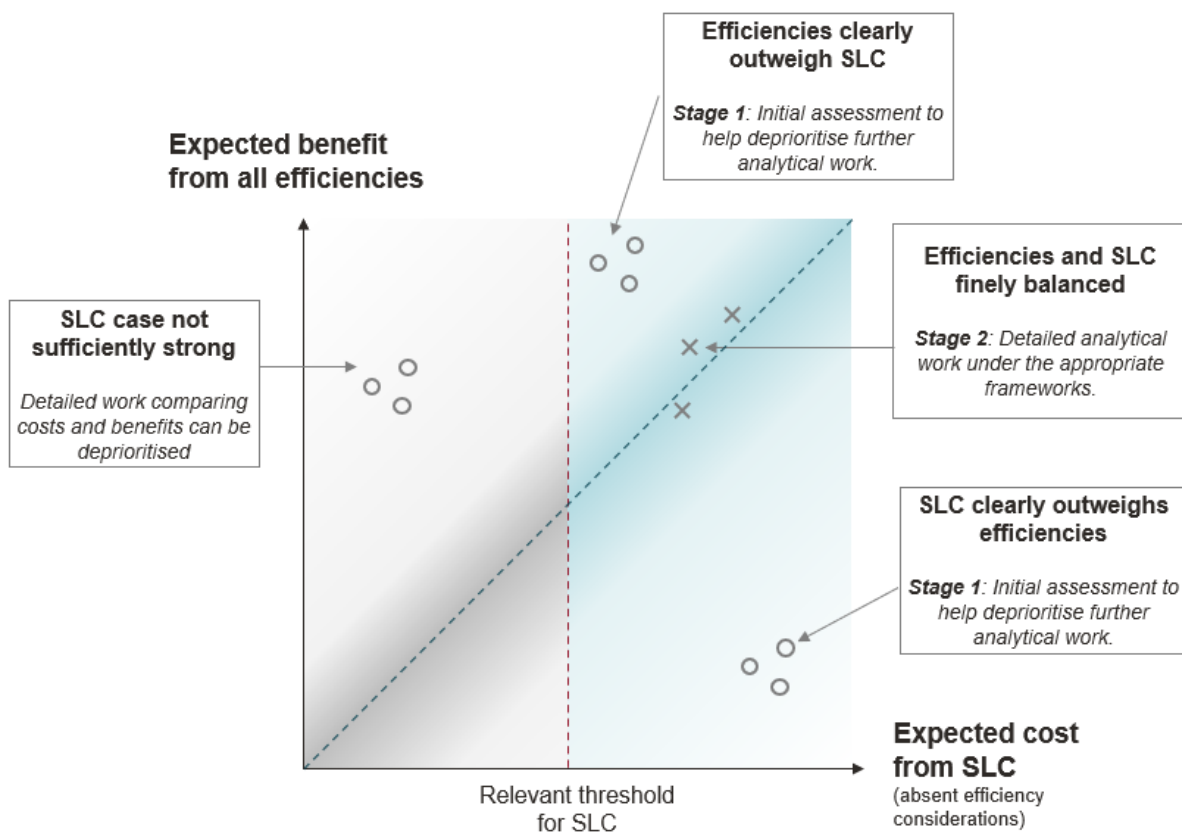
36 We believe that the CMA should align the standard applied to efficiencies more closely with that applied to the SLC. As discussed below, this could be achieved, in part, through greater flexibility in applying the “timely” and “likely” criteria, thereby reducing asymmetry between the treatment of harms and benefits.

37 As detailed in Section 1 above, we believe that a revised framework should consider all efficiencies that benefit customers, rather than adopting a narrow focus on REEs. The revised framework would weigh up expected benefits from all efficiencies against costs from an SLC,¹¹ while ensuring that the analytical work remains well targeted (see more on this below).

¹¹ We also note that, under the CMA’s current approach, its assessment weighs the scale of potential harm from a reduction in competition against the potential benefits from REEs in order to determine whether a merger is more likely than not to result in an SLC. Under a revised framework, the test would instead weigh the potential harms from a reduction in competition against the full range of efficiencies that may enhance consumer welfare. In that context, the decision rule may need to be reframed, for example by asking whether a merger is more likely than not to reduce overall consumer welfare, rather than focusing solely on whether it results in an SLC.

- 38 The CMA should also embed the assessment of efficiencies into the assessment of the SLC throughout the investigation process. An embedded approach would allow for greater consideration of efficiencies in merger assessments while reserving detailed and resource-intensive analysis for cases where efficiencies and harms are plausibly of a similar order of magnitude.
- 39 As illustrated in Figure 5 below, the **embedded approach** could proceed in two stages:
- (a) **Stage 1 would involve an initial appraisal** aimed at identifying the principal harms and benefits and forming a high-level view on their likely magnitude. This stage would filter out cases where efficiencies clearly dominate or are clearly insufficient.
 - (b) **Stage 2 would involve a more detailed and structured comparison** of efficiencies and harms in cases where they appear potentially comparable. This stage could draw on the ability-and-incentive framework outlined above (and/or the capabilities approach in dynamic markets characterised by uncertainty).

Figure 5: Stylised illustration of merger investigation outcomes under an embedded approach to assessing efficiencies



40 The revised framework also would also provide the CMA flexibility to apply the relevant threshold for SLC at different stages in its investigation. In our view, the two stages in the revised framework need not align directly with the Phase 1 and Phase 2 process. In light of the CMA’s recent process improvements under its “4Ps” framework, including earlier and more frequent engagement with merging parties, it should be feasible to undertake a substantive efficiencies assessment at Phase 1 where the evidence permits.

2.2 Greater flexibility in the “timely” and “likely” criteria

41 In our view, the high evidential threshold applied to efficiencies stems largely from the interpretation of the “timely” and “likely” criteria in the current framework. The existing wording of the MAGs can translate, in practice, into highly demanding evidential requirements. In particular:

- (a) For the “timely” criteria, the current guidance states that *“the longer the time period necessary for efficiencies to be realised, the greater will be the level doubt that efficiencies will be realised at all”*.¹² In practice, this has often led to an expectation that efficiencies should be delivered within a relatively short timeframe, often around two years after the merger.
- (b) For the “likely” criteria, the current guidance requires that efficiencies be supported by “verifiable” evidence.¹³ While it is appropriate that efficiency claims are substantiated, our experience suggests that the degree of certainty expected in the verification exercise can sometimes be unrealistically high, particularly in dynamic or investment contexts.¹⁴

42 These demanding evidential standards may limit the CMA’s ability to give due weight to efficiencies that could generate significant benefits for UK consumers and businesses. For example:

- (a) Efficiencies arising from major capital expenditure, network upgrades or innovation programmes may only begin to materialise beyond a two-year horizon.
- (b) Dynamic efficiencies – especially those relating to unlocking potential for innovation – are inherently uncertain, and merging parties may not be able to

¹² [CMA’s MAGs](#), paragraph 8.12.

¹³ [CMA’s MAGs](#), paragraph 8.13.

¹⁴ For instance, in the only recent case where the CMA accepted an efficiencies case, it was able to draw on the expertise of the relevant sector regulator (Ofcom) to help examine and verify the efficiencies case advanced by the merging parties. However, this ability to draw on sector-specific regulatory expertise may not be available in all cases that the CMA investigates. See more on this in Section 3.

specify their precise scale or timing at the point of merger, even where the economic logic for their realisation is strong.

43 We therefore recommend introducing greater flexibility in the application of the “timely” and “likely” criteria. This could be achieved by:

- (a) Considering these criteria within the broader ability-and-incentive framework described above, thereby focusing on whether the merger makes the efficiencies feasible and profit maximising, rather than on short-term precision.
- (b) Updating the guidance on evidential requirements to reflect the importance of longer-term and dynamic efficiencies, including recognition that uncertainty is an inherent feature of innovation-driven markets.

3 Use Joint Business Plans to reorganise the process

44 We believe that the CMA’s existing procedures – including the improvements it has made under its “4Ps” framework – provide a strong foundation for a more developed assessment of efficiencies. That said, our experience of casework points to two practical challenges:

- (a) **Over-reliance on deal documents.** Merging parties typically prepare an internal business case for the merger that includes modelling of synergies or efficiencies. While this provides a helpful starting point, it is not designed to meet the specific evidential standards of a competition assessment and may not map onto the CMA’s analytical framework directly.
- (b) **A deterrent effect from past practice.** The limited number of cases in which efficiency arguments have been accepted has contributed to a perception that an efficiencies case may not be worth pursuing as it carries a high risk of rejection. Parties may be concerned that the evidence will not meet the CMA’s current standard, or that advancing efficiency arguments could be interpreted as implicitly acknowledging that the merger will create or strengthen market power. As a result, substantive engagement on efficiencies often occurs late in the process, usually once the SLC assessment is well advanced, leaving limited time for full consideration.

45 We believe that three process refinements would materially improve the assessment of efficiencies:

- (a) Introducing a Joint Business Plan to crystallise and structure the relevant evidence.

- (b) Improving decision makers' access to independent experts to help interrogate highly technical evidence.
- (c) Measures to promote early engagement on efficiencies, including on a without prejudice basis, to facilitate open and constructive dialogue.

3.1 Joint Business Plans to crystallise the evidence

46 The CMA's draft Merger Notice template already signals the types of evidence that may be relevant to the assessment of efficiencies and provides a helpful starting point.¹⁵ Building on this, we propose that merging parties be invited to submit a Joint Business Plan (**JBP**) as a structured document within the existing framework. A JBP would:

- (a) Set out clearly the intended scope of integration, the post-merger investment strategy, and the anticipated synergies.
- (a) Organise the supporting evidence in line with the relevant analytical framework for evaluating efficiencies, such as the ability-and-incentive framework and/or the capabilities approach discussed above.
- (b) Identify key uncertainties and assumptions, particularly in dynamic or innovation-driven markets.

47 The JBP would present a coherent view of the expected market outcomes under the merger scenario and could form a central input into the CMA's analysis. In particular:

- (a) **It would bridge the gap between internal deal documents and the CMA's evidential requirements** by supplementing commercial material with targeted analysis – for example merger simulation modelling to understand the impact on prices, quality and other market outcomes.
- (b) **It would assist in assessing merger specificity** by enabling structured comparison between the merger scenario and credible standalone plans, and by clarifying whether alternative arrangements such as partnerships or licensing would deliver equivalent outcomes.

48 We recognise that documents prepared specifically for a transaction are often treated as less probative than materials produced in the ordinary course of business. However, a JBP is necessarily prepared in contemplation of the merger and should not be discounted for that reason alone. Where efficiencies are central to the transaction rationale, they should be capable of being evidenced in a clear and

¹⁵ [CMA's draft merger notice template](#), question 23.

testable way. The JBP provides a practical vehicle for setting out this evidence, particularly where it is anchored in contemporaneous plans, internal documentation, and verifiable assumptions.

- 49 A structured approach of this kind proved effective in *Vodafone/Three*, where the merging parties presented detailed evidence under an ability-and-incentive framework. This assisted the CMA in testing the claimed efficiencies in a systematic and transparent manner.

3.2 Improve decision makers' access to independent experts

- 50 It is important that the CMA is able to scrutinise and robustly test the evidence set out in a JBP. In some cases, the CMA will be well placed to do so using its internal expertise. However, where efficiencies claims depend on highly technical evidence – for example engineering assessments of assets, complex operational specifications, or sector-specific technological developments – effective scrutiny may require input from specialist experts outside the CMA's core merger case teams.

- 51 In *Vodafone/Three*, network engineers from Ofcom were able to interrogate the JBP and assess whether the claimed efficiencies were technically feasible and deliverable. Not all sectors have an expert regulator with comparable technical capability. In such cases, it is important that the CMA has access to independent experts on whom it can draw – either through standing arrangements (as the CMA previously did to inform its digital casework)¹⁶ or on a case-by-case basis – to test key assumptions underpinning the JBP in a timely and proportionate manner. Doing this will help ensure that decision makers are equipped to evaluate technical efficiencies evidence on a consistent basis across cases.

3.3 Without prejudice discussions and routine early engagement

- 52 Preparing a robust efficiencies case may require substantial analytical work. Early and parallel engagement on efficiencies, alongside the competitive assessment, would therefore improve the quality of the evidence and the efficiency of the process.

- 53 The proposals are consistent with recent procedural improvements. For instance:

- (a) At the point when a complete Merger Notice is submitted and the statutory timetable begins, the CMA could invite submission of a draft JBP where the parties intend to advance an efficiencies case.

¹⁶ See details of the CMA's panel of digital experts [here](#).

(b) Informal update calls during pre-notification and opportunities to engage with senior decision makers could provide useful feedback on the scope and structure of draft JBP.

54 Normalising the submission of a JBP as part of the standard process would, in itself, help remove any perceived stigma associated with advancing an efficiencies case at an early stage. If the preparation of a JBP were seen as a routine element of engagement, rather than an exceptional step, parties may feel more comfortable setting out their evidence on efficiencies in parallel with the competitive assessment.

55 In addition, providing an option to engage on efficiencies on a without prejudice basis would offer further reassurance parties that wish to explore or refine their arguments without concern that doing so could be interpreted as conceding market power or weakening their primary case. While not every aspect of the CMA's process may be suitable for such treatment, the CMA's standard approach to without prejudice discussions in the context of remedies offers a practical model that could be adapted for efficiencies.

Annex A : Analysis of efficiencies in *Vodafone/Three*

- A.1 At the time of the transaction, Vodafone and Three were the third- and fourth-largest operators in the supply of retail mobile services in the UK, measured by both revenue and subscribers. The Parties were also two of only four providers active in the supply of wholesale telecommunications services.
- A.2 The CMA's inquiry found that the Parties were close competitors in both retail and wholesale, giving rise to concerns about a potential SLC. At the same time, the merger was expected to generate material efficiency benefits, primarily by expanding scale and enabling the merged entity to invest more effectively in network quality.
- A.3 The Parties submitted a JBP, which was the central document for the efficiencies case. The JBP set out, in a single coherent framework, the intended integration and investment programme for the merged entity ("**MergeCo**") over a ten-year period following completion.¹⁷
- A.4 The JBP enabled the CMA to assess the efficiencies case against a clear and consistent business plan for the Parties post-merger, and to compare that plan against each Party's standalone business plan on a like-for-like basis. In particular, it facilitated a structured assessment of merger specificity, by distinguishing efficiency gains that depended on the transaction from those that could credibly be delivered by each Party independently.
- A.5 A central efficiency mechanism in the merger arose from combining the Parties' mobile network assets – most notably mobile sites and spectrum holdings. The combination of these assets generates a multiplicative uplift in network quality, because access to additional spectrum and a larger, denser site grid can jointly improve network performance in a way that is not achievable through incremental investment by either Party alone.
- A.6 By combining the Parties' mobile network assets, the merged entity could:
- (a) deliver higher network quality outcomes; and
 - (b) do so more efficiently, including by expanding capacity at lower long-run marginal cost than the standalone firms.
- A.7 The Parties' analysis – facilitated by the JBP – assessed network quality outcomes on the MergeCo network relative to the standalone operators across the principal dimensions of performance. These included improvements in:

¹⁷ A similar approach also analysed the timeframe over which efficiencies would be realised.

- (a) **Coverage** – the extent and reliability of geographic and in-building service availability;
 - (b) **Capacity** – the ability to support higher traffic volumes and user density without congestion; and
 - (c) **Capability** – the quality-of-service experience and technological performance (including speed and latency) driven by spectrum mix, deployment configuration and network architecture.
- A.8 The Parties’ analysis and the JBP were able to draw on models developed and used in the normal course of network planning for the standalone businesses to evidence these effects. In particular, the Parties used these tools to quantify changes in key network performance indicators (**KPIs**) under the merger scenario. The estimated scale of KPI improvements post-transaction played a central role in providing evidence on whether the size of efficiencies will be sufficiently material and, where appropriate, capable of offsetting the identified SLC.
- A.9 To demonstrate that the efficiencies were rivalry-enhancing and substantial enough to counteract the SLC, the Parties presented two complementary merger simulation approaches:
- (a) **Capacity-based approach.** One simulation focused on the implications of MergeCo’s (i) one-off uplift in capacity from combining assets and (ii) ongoing ability to expand capacity at lower cost. This analysis was used to show that, post-merger, MergeCo would have an incentive to invest in a larger and better-quality network than in the standalone counterfactual, and that this would translate into improved competitive outcomes.
 - (b) **Quality-adjusted price approach.** A second simulation incorporated improvements in network quality directly into the competitive equilibrium analysis, with the aim of demonstrating that the post-merger equilibrium would deliver lower quality-adjusted prices (i.e. that, once quality improvements were accounted for, consumers would be better off than under the standalone counterfactual). This provided a structured framework for translating operational improvements in network KPIs into customer welfare impacts.
- A.10 To support the “likely” criterion, the Parties set out evidence on the merged entity’s incentive to deliver the full investment programme described in the JBP. This included analysis comparing
- (a) the forecast revenue and commercial benefits associated with delivering the JBP investment strategy; with
 - (b) the incremental costs of that strategy relative to a scaled-back alternative plan.

- A.11 The analysis above aimed to demonstrate that the investment programme was incentive-compatible over the long term – i.e. that it would remain profit-maximising for MergeCo to pursue the full plan rather than to under-deliver on the commitments underpinning the efficiencies case.
- A.12 The Parties' efficiencies case was presented from the outset of the inquiry, supported by the inclusion and description of the JBP in the Final Merger Notice. Engagement continued throughout the process, with a sequence of submissions and interactions designed to ensure that the CMA and relevant stakeholders (including sector experts such as network engineers from Ofcom) could understand, scrutinise and test the efficiencies.
- A.13 Key milestones on efficiencies included:
- (a) **Phase 1 submission.** Alongside the Final Merger Notice and the JBP, early engagement began with a Phase 1 efficiencies submission setting out the key network KPI improvements, the ability-and-incentive logic underpinning the investment programme, and the expected dynamic impacts on competition.
 - (b) **Phase 2 follow-up.** A subsequent efficiencies paper in Phase 2 focused on responding to the CMA's principal questions and concerns, refining the framing and evidential basis of the efficiencies case where needed.
 - (c) **Technical teach-ins.** A series of teach-ins with the CMA and Ofcom – supported by the key evidence consolidated in the JBP – provided opportunities to explain the technical network modelling, the mapping from KPIs to customer outcomes, and the logic of the incentive analysis.
- A.14 In our view, four key learnings from *Vodafone / Three* are particularly relevant for future guidance and process:
- (a) The **ability-and-incentive framework** provides a practical and economically coherent way to assess whether claimed efficiencies are likely to materialise post-merger.
 - (b) A **JBP** enables a clearer and more consistent assessment of efficiencies. By acting as a central organising document for the efficiencies case, it helps with the testing of efficiencies on a standalone basis and in comparison to potential harms from an SLC.
 - (c) **The ability of decision makers to access the relevant expertise** allows them to better adjudicate on complex decisions. In *Vodafone/Three*, engagement with technical experts at Ofcom allowed the CMA to robustly test the evidence it collected over the course of its investigation.

- (d) **Early and continuous engagement on efficiencies** – supported by clear documentation and opportunities for scrutiny – can materially improve the quality of the substantive analysis and the efficiency of the investigation.