

## Consultation Response

# CMA's Merger Efficiencies Review

## Context

The Computer & Communications Industry Association (CCIA)<sup>1</sup> welcomes the opportunity to submit comments in response to the Competition and Markets Authority's (CMA) public consultation on merger efficiencies, released on January 15, 2026.<sup>2</sup>

CCIA appreciates the CMA's continuing efforts<sup>3</sup> to update its merger review processes to better reflect its '4Ps' strategic steer as part of the agency's ongoing commitment to support growth, investment, and business confidence across the UK economy.<sup>4</sup> Reviewing its merger efficiencies framework makes the CMA's merger regime more transparent, proportionate, and predictable. Effectiveness, efficiency, transparency, and predictability are key objectives for merger control regimes at all stages of the merger review process.<sup>5</sup> Additional clarity on how the CMA evaluates efficiencies promotes regulatory predictability and increases business certainty for all merging firms.

Most merger transactions are beneficial to competition.<sup>6</sup> Mergers can generate procompetitive efficiencies such as developing economies of scale, integrating complementary functions, and increasing innovation through pooled resources and management improvements.<sup>7</sup> These efficiencies enhance business performance and benefit the economy as a whole, ultimately improving consumer welfare.<sup>8</sup> The CMA's

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<sup>1</sup> CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit [www.ccianet.org](http://www.ccianet.org).

<sup>2</sup> Competition and Markets Authority, *Reviewing our approach to assessing merger efficiencies* (Jan. 15, 2026), <https://connect.cma.gov.uk/call-for-evidence-merger-efficiencies-review>.

<sup>3</sup> See Competition and Markets Authority, *Updating our approach to merger remedies* (Oct. 16, 2025), <https://connect.cma.gov.uk/revised-merger-remedies-guidance>; Competition and Markets Authority, *Review of merger remedies approach* (Mar. 12, 2025), <https://www.gov.uk/government/calls-for-evidence/review-of-merger-remedies-approach>.

<sup>4</sup> Sarah Cardell, Competition and Markets Authority, *New CMA proposals to drive growth, investment and business confidence* (Feb. 13, 2025), <https://competitionandmarkets.blog.gov.uk/2025/02/13/new-cma-proposals-to-drive-growth-investment-and-business-confidence/>.

<sup>5</sup> ICN Merger Working Group, *Revised Recommended Practices for Merger Notification Procedures* (2017), at 18, [https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG\\_NPRecPractices2018.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf).

<sup>6</sup> David L. Meyer, *Merger Enforcement is Alive and Well at the Department of Justice*, U.S. Dep't of Just. (Nov. 15, 2007), <https://www.justice.gov/atr/file/519351/download>; Maureen K. Ohlhausen & Taylor M. Owings, *The Case for M&A: Evidence of Efficiencies in Consummated Mergers*, (Aug. 29, 2023), at 1, <https://content.pymnts.com/wp-content/uploads/2023/08/8-THE-CASE-FOR-M-A-EVIDENCE-OF-EFFICIENCIES-IN-CONSUMMATED-MERGERS-Maureen-K-Ohlhausen-Taylor-M-Owings-1.pdf>; Mark J. Niefer, *Donald F. Turner at the Antitrust Division: A Reconsideration of Merger Policy in the 1960s*, 29 *Antitrust* 53 (2015) at 57, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2622795](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2622795).

<sup>7</sup> Maureen K. Ohlhausen & Taylor M. Owings, *The Case for M&A: Evidence of Efficiencies in Consummated Mergers*, (Aug. 29, 2023), at 3, <https://content.pymnts.com/wp-content/uploads/2023/08/8-THE-CASE-FOR-M-A-EVIDENCE-OF-EFFICIENCIES-IN-CONSUMMATED-MERGERS-Maureen-K-Ohlhausen-Taylor-M-Owings-1.pdf>.

<sup>8</sup> OECD, Directorate For Financial And Enterprise Affairs Competition Committee, Working Party No. 3 on Co-operation and Enforcement, *Efficiencies in Merger Control – Note by BIAC*, (Jun. 17, 2025), at 2, <https://one.oecd.org/document/DAF/COMP/WP3/WD%282025%2920/en/pdf>.

current analytical framework would benefit from additional revisions that would further support the CMA's pro-growth strategic steer, and reduce uncertainty and error costs in assessing efficiencies. As a recent study in the United States found, merger over-enforcement can excessively deter transactions and hinder innovation.<sup>9</sup> Adopting a regulatory framework focused on competitiveness and innovation,<sup>10</sup> with clear and predictable rules for reviewing merger efficiencies, supports firms seeking to engage in procompetitive mergers that stimulate innovation and economic growth in the UK.<sup>11</sup>

## Theme 1(a): The CMA's Framework for Assessing Rivalry-Enhancing Efficiencies

The CMA should adopt a clear "net effects" approach that weighs competitive risks and efficiencies together in all cases, applying the balance of probabilities' evidentiary standard equally to both efficiencies and theories of harm.<sup>12</sup> The agency's current approach emphasizes the proposed merger's near-term price harm over longer-term benefits, such as quality improvements and efficiency gains from innovation. A pragmatic and flexible approach to evaluating efficiency claims integrates rivalry-enhancing efficiencies (REEs) into the assessment of competitive effects and aligns the time horizons of competitive risks and efficiencies. By applying a consistent degree of uncertainty to both theories of harm and REEs, the CMA can fully assess any efficiency benefits arising from economies of scale and scope, thereby promoting regulatory predictability and leading to more proportionate outcomes.

To align the assessment framework with the '4Ps,' efficiency assessments should utilise an industry-neutral approach that focuses on universal principles of performance and innovation. Industry neutrality fosters trust and predictability, as firms achieve efficiencies in diverse ways that are often not sector specific. Furthermore, eliminating size-based presumptions ensures these assessments remain flexible and proportionate, enabling innovative business models to be recognised across the economy. This neutral approach avoids disadvantaging specific industries and incentivises firms of all sizes to pursue procompetitive, rivalry-enhancing efficiencies.

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<sup>9</sup> See Susan Woodward, *Antitrust Enforcement Over-deters Acquisitions, Squeezing Smaller Startups and Venture Capital Investors* (Jan. 24, 2025), CCIA Research Center, <https://ccianet.org/research/reports/antitrust-enforcement-over-deters-acquisitions-squeezing-smaller-startups-and-venture-capital-investors/#main-content>.

<sup>10</sup> Aurelien Portuese, *Why Merger Guidelines Must Do More to Support Productivity, Innovation, and Global Competitiveness*, Information Technology & Innovation Foundation (May 3, 2023), <https://itif.org/publications/2023/05/03/merger-guidelines-must-do-more-to-support-productivity-innovation-global-competitiveness/>.

<sup>11</sup> ICN, *Recommended Practices for Merger Notification and Review Procedures*, RP VI.A. Comment 1 (Apr. 2004), at 18, <https://www.ftc.gov/system/files/attachments/merger-workshop-competition-authorities-caribbean/rec-practices-merger-notification.pdf> ("Effectiveness, efficiency, transparency and predictability are fundamental attributes of a sound merger control regime").

<sup>12</sup> *Supra* n. 2, at 10. (While the CMA acknowledges that it may consider efficiencies and evidence of a substantial lessening of competition together, it maintains the assessment of REEs separate and secondary to the determination of an SLC.).

Mergers and acquisitions may help spur innovation and competition incentives across related and unrelated markets<sup>13</sup> by providing greater structural benefits over other kinds of collaborative business arrangements.<sup>14</sup> To ensure the CMA considers the full range of procompetitive and innovation-fostering benefits of mergers, the agency should broaden its analytical framework to evaluate the procompetitive effects of REEs in adjacent and unrelated markets. This would align with the agency’s current approach of assessing relevant consumer benefits (RCBs) by considering a merger’s impact on consumers outside the relevant market.

Expanding the scope of the CMA’s analytical framework to consider evidence of non-merger specific REEs ensures the agency can fully assess the wider societal benefits of a merger. In innovation-driven digital markets, where competitive impacts often arise beyond single market boundaries, efficiencies frequently manifest through improved quality, faster product development, and enhanced security rather than short-term price reductions.<sup>15</sup> Dynamic competition fosters rivalry and incentivises firms to reduce costs, create new products, and improve existing offerings for the benefit of consumers.<sup>16</sup> As acquisitions can reduce transaction costs between complementary products,<sup>17</sup> firms holding high shares in one product generation often face strong competitive pressures from rivals in adjacent or emerging markets engaging in recurring innovation cycles.<sup>18</sup>

The CMA should recognize that merger efficiencies are presumptively procompetitive and should not be regarded as a competitive risk in themselves. If a competitive concern arises regarding a proposed transaction in which efficiencies are also claimed, the competitive analysis should focus on the specific theory of harm alleged (under foreclosure or barriers to entry) rather than considering efficiency claims as competitive harms. Treating procompetitive efficiencies as “efficiency offences” risks over-enforcement and may actually discourage procompetitive mergers. As the consultation acknowledges, merging parties may be reluctant to propose realistic REEs for fear these gains might be misconstrued as grounds for intervention.<sup>19</sup> Treating efficiency as a theory of harm contradicts the fundamental goals of competition enforcement, economic growth, and consumer welfare.

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<sup>13</sup> See e.g. International Competition Network, “*ICN Recommended Practices for Merger Analysis*” (2018), at 1, Comment 2, [https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG\\_RPsforMergerAnalysis.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_RPsforMergerAnalysis.pdf); Maureen K. Ohlhausen and Taylor M. Owings, CPI Antitrust Chronicle, *The Case for M&A: Evidence of Efficiencies in Consummated Mergers* (Aug. 29, 2023), at 4, <https://www.pymnts.com/wp-content/uploads/2023/08/8-THE-CASE-FOR-M-A-EVIDENCE-OF-EFFICIENCIES-IN-CONSUMMATED-MERGERS-Maureen-K-Ohlhausen-Taylor-M-Owings-1.pdf>.

<sup>14</sup> Sanford Grossman and Oliver Hart, *The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration*, *Journal of Political Economy* vol. 94, no. 4 (1986), <https://doi.org/10.1086/261404>.

<sup>15</sup> Jonathan B. Baker, *Beyond Schumpeter vs. Arrow*, 74 *Antitrust L.J.* 575 (2007).

<sup>16</sup> Nicolas Petit and David J Teece, *Innovating Big Tech firms and competition policy: favouring dynamic over static competition*, *Industrial and Corporate Change*, Volume 30, Issue 5, (Oct. 2021), Pages 1168–1198, <https://doi.org/10.1093/icc/dtab049> (“The digital economy shows unprecedented productivity growth, rapid innovation, and new firm entry. In consumer digital goods and services in telecommunications and broadcasting, output has risen, quality has increased, and prices have declined”).

<sup>17</sup> Sam Bowman & Sam Dumitriu, ICLE, *Better Together: The Procompetitive Effects of Mergers in Tech* (Oct. 2021), at 2 <https://laweconcenter.org/wp-content/uploads/2021/10/BetterTogether.pdf>.

<sup>18</sup> Fay Kartner, *Merger remedies: fostering innovation?*, *European Competition Journal*, 12(2–3), 298–319. <https://doi.org/10.1080/17441056.2016.1266831> (“if there is much product innovation in a given market, then even a company with a high market share in the current generation of products may not be considered dominant.”).

<sup>19</sup> *Supra* n. 2, at 6.

## Theme 1(b): The Evidence Base

CCIA appreciates the CMA’s review of its analytical approach in REE assessments. Providing clarity on evidentiary standards in the Merger Assessment Guidelines (MAGs) fosters transparency and regulatory predictability. Firms benefit from clear guidance on how the agency evaluates dynamic efficiencies, the legal standards for proof, and the types of evidence required to prove that alleged efficiencies are verifiable and likely to benefit consumers. The MAGs should include illustrative examples of successful efficiency claims, including the types of data and analyses likely to be persuasive. For example, guidance providing a template or clear benchmarks of accepted efficiency mechanisms would significantly improve the transparency and predictability that businesses require. Clear guidance reduces uncertainty for merging parties and incentivizes more targeted submissions.

When assessing efficiencies in markets characterized by high levels of innovation and dynamism, the CMA should consider different types of evidence to determine the potential benefits of the claimed efficiencies. Innovation is dynamic and constantly evolving, and no single proxy provides a full picture of obtainable efficiencies; R&D expenditure, patenting activity, and product outputs may evolve differently and support distinct efficiency indicators.<sup>20</sup> Recent case law<sup>21</sup> shows that, in practice, the burden of proof is higher for efficiency considerations than for alleged harms, particularly in highly dynamic and innovation-driven markets where efficiencies may have longer realization timelines.<sup>22</sup>

CCIA recommends the MAGs avoid applying a higher degree of doubt to long-term efficiencies than to predicted competitive harms. Innovation-related efficiencies are inherently forward-looking and difficult to quantify *ex-ante*; consequently, an overly narrow analytical framework risks overlooking potential procompetitive benefits.<sup>23</sup> As some efficiencies, such as innovation and production capacity gains, may materialize over longer timeframes, the CMA should ensure that its framework considers evidence of efficiencies under similar evidentiary standards as long-term theories of harm.<sup>24</sup> A protracted realisation period does not justify increased scepticism toward an efficiency’s probability relative to potential anticompetitive harms.

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<sup>20</sup> Anna Rita Bennato, Stephen Davies, Franco Mariuzzo, and Peter Ormosi, *Mergers and innovation: Evidence from the hard disk drive market*, International Journal of Industrial Organization, 2021, 77, 102755.

<sup>21</sup> See, e.g., Competition and Markets Authority, *CHC / Babcock merger inquiry* (June 11, 2021) (final report and closure summary) <https://www.gov.uk/cma-cases/chc-slash-babcock-merger-inquiry>; Competition and Markets Authority, *TVS Europe Distribution Limited / 3G Truck & Trailer Parts merger inquiry* (Feb. 12, 2020) (Phase 2 prohibition and final undertakings), <https://www.gov.uk/cma-cases/universal-components-3g-truck-trailer-parts-merger-inquiry>; Competition and Markets Authority, *T&L Sugars/Tereos merger inquiry* (Jan. 12, 2024) (final report and Phase 2 clearance) <https://www.gov.uk/cma-cases/t-and-l-sugars-slash-tereos-merger-inquiry>; Competition and Markets Authority, *FNZ / GBST merger inquiry* (Nov. 18, 2019) (Phase 2 clearance with remedies), <https://www.gov.uk/cma-cases/fnz-gbst-merger-inquiry>.

<sup>22</sup> See, Competition and Markets Authority, *Illumina, Inc. / Pacific Biosciences of California, Inc. merger inquiry* (Jan. 3, 2020) (merger abandoned after in-depth probe), <https://www.gov.uk/cma-cases/illumina-inc-pacific-biosciences-of-california-inc-merger-inquiry> (where dynamic efficiency claims were discounted for lack of “compelling” evidence about incentives, timing, and pass-through to consumers.).

<sup>23</sup> Mert Demirer & Omer Karaduman, *Do Mergers and Acquisitions Improve Efficiency: Evidence from Power Plants* (2022), at 2, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/demirerkaraduman.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/demirerkaraduman.pdf) (“A major challenge in analysing the efficiency effects of mergers is distinguishing true efficiency gains from other factors, such as changes in market power, buyer power, and product quality.”).

<sup>24</sup> *Supra* n. 2, at 6 (“However, the MAGs also note that the longer the time period necessary for efficiencies to be realised, the greater will be the level of doubt that efficiencies will be realised at all.”).

Furthermore, CCIA recommends the CMA commit to an impartial, on-the-merits evaluation of efficiency claims, ensuring a neutral assessment of a merger’s competitive impact. Merging parties often face a high burden of proof and must produce comprehensive internal data and proprietary analyses under tight deadlines. Currently, the CMA’s assessment framework focuses narrowly on variable cost savings derived from static economic theory, which can neglect significant benefits arising from economies of scale and scope. By failing to properly account for fixed cost savings and broader synergies, the evidentiary framework risks underestimating the procompetitive impact of a transaction and imposing an undue burden that discourages firms from presenting valid procompetitive justifications.

## Theme 1(c): Dynamic Efficiencies and Innovation

CCIA supports the CMA’s consideration of the effects of dynamic efficiencies and innovation.<sup>25</sup> As part of its pro-growth strategic steer, the CMA should explicitly consider the effects of REEs on the incentives and abilities of merging parties and rivals to innovate. By incorporating “innovation rivalry enhancements” into its analytical framework, the CMA can properly consider dynamic efficiencies,<sup>26</sup> improving remedy precision, and avoiding the risks of overregulation stemming from an overreliance on static effect analysis.<sup>27</sup>

Mergers can increase the merging parties’ ability to innovate by allowing them to combine resources and eliminate redundant R&D efforts, leading to the elimination of double marginalization and economies of scale that incentivize long-term investment in research.<sup>28</sup> The CMA’s framework should accommodate and promote these dynamic efficiencies. While mergers can have procompetitive effects in the form of dynamic efficiencies, the lack of a suitable framework to analyse these claims risks that any assessment of dynamic effects can only ever amount to a secondary analysis.

The current requirement under the MAGs that claimed efficiencies must be realized within the same timeframe as other competitive effects<sup>29</sup> may create an unfair presumption against dynamic efficiencies. Unlike static efficiencies, which occur only once or a set number of times, dynamic efficiencies realise procompetitive benefits over time<sup>30</sup> by creating ongoing synergies that enhance a firm’s ability to innovate and develop new

<sup>25</sup> Competition and Markets Authority, *Merger efficiencies review: call for evidence* (Jan. 15, 2026), at 8-9, <https://connect.cma.gov.uk/47063/widgets/142381/documents/99517> (“We will also be considering whether there are ways in which mergers can, more generally, foster innovation across a market or sector.”).

<sup>26</sup> *Id.*

<sup>27</sup> OECD, *Merger Control in Dynamic Markets* (Mar. 2020), at 8 [https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/03/merger-control-in-dynamic-markets\\_a8bf4a0a/d3752037-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/03/merger-control-in-dynamic-markets_a8bf4a0a/d3752037-en.pdf).

<sup>28</sup> See Competition and Markets Authority, *Vodafone / CK Hutchison JV merger inquiry* (opened Oct. 11, 2023; closed June 2, 2025) (final undertakings accepted), <https://www.gov.uk/cma-cases/vodafone-slash-ck-hutchison-jv-merger-inquiry> (The *Vodafone/CK Hutchison* case shows how a scale-and-spectrum combination can enable higher quality, which, in turn, feeds back into innovation incentives in retail and wholesale markets.); Competition and Markets Authority, *Microsoft / Activision Blizzard merger inquiry* (opened July 6, 2022; closed Nov. 20, 2023 with prohibition), <https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-merger-inquiry> (*Microsoft/Activision* is an example of how integration can expand day-and-date availability in subscription models and support cloud-gaming access through licensing, thereby catalysing content and service innovation.).

<sup>29</sup> *Supra* n. 2, at 6.

<sup>30</sup> OECD, *Efficiencies in Merger Control*, OECD Roundtables on Competition Policy Papers, No. 321 (May 2025), at 10 [https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/05/efficiencies-in-merger-control\\_35afdef5/f4ce548f-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/05/efficiencies-in-merger-control_35afdef5/f4ce548f-en.pdf).

products.<sup>31</sup> As the OECD notes, a dynamic perspective is essential to evaluating the impact of innovation on competition.<sup>32</sup> Adopting a flexible analytical scope, recognizing that distinct procompetitive mechanisms, including dynamic efficiencies, operate over disparate time horizons, would better align the CMA with its pro-growth strategic steer.<sup>33</sup>

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

CCIA appreciates the CMA's examination of its process for assessing REEs. Proactively engaging with parties' evidence earlier in the merger review process, specifically during Phase 1, encourages greater stakeholder participation and ensures full consideration of pro-consumer benefits. Early engagement can prevent unnecessary and costly Phase 2 referrals for clearly procompetitive transactions.

In practice, the CMA's current framework discourages merging parties from submitting REEs in both Phases 1 and 2. Asymmetrical scepticism, a higher evidentiary burden for efficiency considerations, and increased uncertainty regarding which efficiencies may be accepted by the agency create significant barriers for merging parties seeking to make REE claims. The CMA could reduce this uncertainty by noting that evidence of efficiencies does not imply liability and implementing remedies that achieve efficiencies in cases where timeliness or likelihood is the only question at issue. A transparent and predictable review process incentivises parties to engage at earlier stages and offer robust efficiencies.

## Conclusion

CCIA is pleased to provide these comments and looks forward to continuing engagement with the CMA on these important issues.

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<sup>31</sup> Daniel Spulber, *Antitrust and Innovation Competition*, Journal of Antitrust Enforcement, Vol. 11, Iss. 1, (Mar. 2023), at 46 <https://doi.org/10.1093/jaenfo/jnac013>.

<sup>32</sup> OECD, *Competition and Innovation: A Theoretical Perspective*, OECD Competition Policy Roundtable Background Note (May 5, 2023), at 16, [www.oecd.org/daf/competition/competition-and-innovation-a-theoretical-perspective-2023.pdf](http://www.oecd.org/daf/competition/competition-and-innovation-a-theoretical-perspective-2023.pdf).

<sup>33</sup> *Supra* n. 4.