Consultation on updates to the CMA's general guidance on transparency and disclosure

RESPONSE BY FRESHFIELDS

May 2026

Freshfields response to the CMA's consultation on updates to the CMA's general guidance on transparency and disclosure (CMA6)

1. Introduction

1.1 Freshfields welcomes the opportunity to comment on the Competition and Markets Authority (***CMA***)'s proposed updates to its transparency and disclosure guidance (***Guidance or CMA6***). We note that the new Guidance largely consolidates existing guidance and therefore we have focussed our comments primarily on "new" points of substance in the updated draft Guidance.

1.2 The updated draft Guidance generally consolidates the broadly positive direction of travel set by the Government's Strategic Steer and the CMA's adoption of the so-called "4Ps" framework (Pace, Predictability, Proportionality, Process). However, there are certain points in the draft Guidance which, in the Firm's view, warrant expansion, clarification, or revision, as set out below. Our comments focus on three areas: (i) the CMA's commitment to efficient and proportionate information gathering; (ii) the role of the Procedural Officer; and (iii) the CMA's approach to disclosure.

2. Areas where further guidance is needed or changes should be made

Efficient, targeted, and proportionate information gathering

2.1 The updated draft Guidance now includes an express commitment to conducting its information gathering in a "*targeted, efficient and proportionate manner*" and to "*avoid imposing unnecessary burdens*" on business[1].

2.2 It is, of course, the case that these helpful principles are only useful where tangibly (and consistently) applied in practice. In our experience, the practice of case teams in relation to the formulation of requests for information (***RFIs***), the willingness to discuss draft requests before they are formally issued, and the approach to extension requests can vary significantly, resulting in approaches that are not always "proportionate" and "targeted". For example, in one recent case (a Phase 1 merger case in pre-notification), additional key words that the case team insisted be added to proposed searches resulted in around 50,000 documents having to be reviewed to comply with a statutory information request.

2.3 We would encourage the CMA to treat the updated language as a genuine standard against which the conduct of its case teams can and should be measured, and not simply as an expression of general intent. The CMA therefore may wish to consider practical mechanisms to ensure that this standard is consistently applied in practice.

2.4 We are also concerned that, as currently drafted, the draft Guidance's treatment of extension requests sits in tension with the CMA's new and welcome commitment to proportionality in information gathering. The draft

[1] Paragraph 2.6 draft CMA6.

Guidance retains the position that the CMA is "*only likely to agree*" to deadline extensions "*where the party provides very good reasons*" for the request[2]. In our view, this places the burden of justification entirely on the party, without any corresponding obligation on the CMA to satisfy itself that the original deadline was itself proportionate. We would encourage the CMA to revisit this in light of the proportionality language it has now introduced: if the CMA is committed to setting reasonable and proportionate deadlines, it should follow that a request for more time is assessed in that context, and not solely by reference to whether the party can demonstrate sufficiently compelling personal reasons for the extension.

The Procedural Officer

2.5 The updated draft Guidance clarifies the respective remits of the Procedural Officer (***PO***), the Procedural Complaints Adjudicator (***PCA***), and the General Counsel (***GC***), and signposts the process for requesting a review. We welcome this clarification, which appears to respond to queries raised in recent cases. Ultimately, however, clarifying the existing remit does not address the underlying problem: that the scope of the PO's role remains too narrow, and leaves parties without any proportionate procedural safeguard in a number of important situations. We recognise that the purpose of the presentation consultation is not to revisit these issues (and therefore we do not repeat our concerns here – but refer to previous submissions[3]).

Duty of expedition

2.6 We note that the draft Guidance references the CMA's duty of expedition alongside its "4Ps" commitments. In our view, it remains important that the guidance make clear on its face that the duty of expedition does not override the CMA's administrative law duties, its duty to act reasonably and fairly, or parties' rights of due process. In our experience, the duty can be — and in some cases has been — invoked by case teams in a manner that is inconsistent with those obligations: for example, as a basis for refusing reasonable requests for extensions of time, or for declining to share draft information requests with parties. We would encourage the CMA to include an explicit statement to this effect in the guidance, together with a clearer articulation of how it expects to balance the duty with its other obligations in practice.

3. Disclosure

Disclosure to third party consultants: the 'blanket notice' problem

3.1 The most significant amount of "new" content in the updated draft Guidance relates to the CMA's practice in relation to the disclosure of specified information.

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[2] Paragraph 4.6 draft Guidance.

[3] See our submission dated 24 June 2024 in response to the CMA's consultation on updated CMA transparency and disclosure statement (CMA6), as well as our submission to the Department of Business and Trade's consultation on "Refining our Competition regime", dated 31 March 2026.

3.2 We welcome the expanded provisions in paragraph 4.30 of the updated draft Guidance on the form and way the CMA will make disclosure, including the express reference to factors such as fairness, the nature and sensitivity of the information, and the desirability of avoiding unnecessary burdens on business.

3.3 We are concerned, however, that the draft Guidance does not address a practice that has emerged in recent cases and which, in the Firm's view, sits uneasily with those stated factors – the disclosure of information to third party consultants.

3.4 [Confidential]

3.5 [Confidential]

3.6 We would encourage the CMA to clarify in the final guidance — whether in paragraph 4.30 or elsewhere — that notices of intended disclosure to third party consultants should include details on the specific information to be disclosed and the purpose of the disclosure, with sufficient particularity to allow the party to engage meaningfully with the proposal. In our view, this would be consistent with — and indeed required by — the factors the CMA has itself identified in paragraph 4.30, in particular, the express references to fairness and the nature and sensitivity of the information to be disclosed. The use of 'blanket' notices should also be exceptional (rather than the standard course of action), given the inability for parties to make meaningful representations on the proposed disclosures in these circumstances. The CMA's final guidance should clarify in which circumstances such approach may be warranted.

Level of detail in disclosure

3.7 A related concern — which we raise in the context of the CMA's transparency aims and its 4Ps commitment to proportionality — is the level of detail provided in disclosure at key stages of a case. The draft Guidance does not address the minimum level of detail parties can expect to receive in correspondence setting out the CMA's concerns — such as issues letters in Phase 1 merger investigations. In our experience, the level of detail provided in such correspondence can vary considerably and, in some cases, has not provided parties with a sufficient basis on which to respond meaningfully to the concerns raised. This is of particular concern in Phase 1, where the statutory timetable is compressed and parties have limited opportunity to engage.

3.8 We would encourage the CMA to articulate in the draft Guidance a clearer expectation of the minimum level of detail that parties can expect to receive at key stages of a case, particularly in Phase 1 issues letters. In our experience, cases where the CMA has provided more detailed information — including, for example, more granular disclosure of the analysis underlying its concerns — have generally resulted in more effective engagement and better outcomes for the process as a whole.

4. Conclusion

4.1 We welcome the updated draft Guidance and the policy direction it reflects. In our view, however, the changes proposed do not fully realise the potential that the 4Ps framework and the Government's Strategic Steer offer to improve the experience of parties engaging with the CMA. The specific points above — in particular in relation to the Procedural Officer's remit, the approach to disclosure notices and the treatment of extension requests — represent, in the Firm's view, concrete steps the CMA could take to close the gap between the principles it has committed to and the experience of parties in practice.

4.2 We would be willing to discuss any of our comments in more detail if that would be helpful to the CMA.

May 2026

Freshfields