AlixPartners

To: Competition and Markets Authority

From: AlixPartners

Date: 1 July 2026

Re: Consultation on draft revised merger efficiencies guidance

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1 Introduction and summary

1.1 Following the Competition and Markets Authority's ("**CMA**") merger efficiencies review call for evidence,[1] on 3 June 2026 the CMA published a consultation on its draft revised guidance on assessing merger efficiencies ("**Draft Revised Guidance**")[2]. AlixPartners welcomes the opportunity to respond to the CMA's consultation. We advise clients on a range of competition economics matters, including in the context of merger investigations in the European Union, the UK, and globally.

1.2 The Draft Revised Guidance comes at an important moment. The UK Government's growth agenda has placed renewed emphasis on the role of competition policy in fostering productive investment and innovation.[3] The CMA's own 4Ps framework – pace, predictability, proportionality and engagement – reflects this broader ambition.[4] Against that backdrop, a credible and effective framework for assessing merger efficiencies is not a peripheral concern; it is central to ensuring that merger control does not inadvertently deter pro-competitive and pro-consumer transactions. The CMA's review of its approach to efficiencies also takes place in parallel with the European Commission's ("**Commission**") revision of its merger assessment guidelines. In the draft guidelines that the Commission published on 30 April 2025, the Commission introduced a 'theory of benefit' framework, which explains on how the Commission will assess merger efficiency claims during merger review.[5] The fact that how efficiencies are treated is being considered simultaneously across jurisdictions underlines the importance of this aspect of merger control assessments.

1.3 Overall, the Draft Revised Guidance represents a meaningful and welcome improvement to the CMA's framework for assessing merger efficiencies. The changes are, in our assessment, broadly consistent with the 4Ps framework. They improve predictability by clarifying the evidentiary standard and the procedural implications of advancing an efficiencies case; they improve proportionality by acknowledging that alternative means of achieving efficiencies must be feasible and commercially rational; they support engagement by removing deterrents to advancing efficiencies claims; and, to the extent that they encourage earlier and more structured engagement, they should also support pace.

1.4 To date, the CMA has rarely accepted efficiency claims in merger control, and this has, in our experience, deterred parties from advancing efficiencies claims, and in some cases from pursuing pro-competitive mergers altogether. In this regard, we note in particular three welcome

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1 See AlixPartners response to the call for evidence here: AlixPartners response to CMA merger efficiencies review: Call for evidence | AlixPartners

2 Draft revised guidance on our approach to assessing merger efficiencies - GOV.UK

3 See, UK Government, 'Invest 2035: The UK's Modern Industrial Strategy', October 2024.

4 CMA, 'New CMA Proposals to drive growth, investment and business confidence', 13 February 2025.

5 46dde10f-85c1-4590-a3f4-2b71f85685ef_en, Section II.C.

clarifications in the Draft Revised Guidance that should encourage pro-consumer and pro-competitive mergers:

(a) First, the statement that circumstances in which an 'efficiency offence' might arise are "likely to be rare in practice".[6] An efficiency offence occurs when efficiencies (typically in the short term) benefit consumers, but in turn create a competitive advantage for the merged entity that cannot be readily replicated by competitors, leading to competitive harm (typically in the medium to longer term). That said, guidance on how the CMA might consider the balance between short-term benefits and longer-term harms would be helpful, especially for mergers where concurrent review by the Commission may indicate an entrenchment theory of harm.[7] Even if these cases are 'rare', they may still come up,[8] and it would be good to understand how the CMA would approach them.

(b) Second, the indication that remedies may be appropriate to lock in efficiencies, in particular when considering the likelihood of efficiencies and the time period over which they may arise.[9] This helpful addition sets out the approach to transitional remedies in order to enable mergers that are pro-consumer to be cleared, for example as seen in the CMA's Vodafone/Three clearance decision.[10] We note that this is in line with the recent changes to the CMA's approach to remedies which sets out that enabling remedies may be implemented to secure merger-specific rivalry-enhancing efficiencies.[11]

(c) Third, the explicit statement that submitting evidence of efficiencies does not imply that the merging firms accept the existence of a substantial lessening of competition ("**SLC**").[12]

1.5 In the remainder of this response, we set out our comments and suggestions for the CMA, focussing on the approach to evidence submitted in support of efficiencies (Section 2) and the conditions that need to be met for merger efficiency claims to be accepted (Section 3).

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6 Draft Revised Guidance, ¶19.

7 The Commission's draft guidelines include an entrenchment theory of harm where complementary assets (that operate on different but related markets) are brought together through a merger in a way that bolsters or 'entrenches' a firm that was already dominant in a market. One of the ways in which entrenchment may occur is where there are benefits to customers from the merger which attract customers to the merged entity, but this in turn creates barriers to entry or expansion for competitors that find it more difficult to replicate the merged firm's offering. See 46dde10f-85c1-4590-a3f4-2b71f85685ef_en, Section II.B.7.

8 One case where a theory of harm which could be seen as an efficiency offence led to intervention was a 2022 proposed infrastructure sharing deal between two mobile network operators in Australia (Telstra/TPG). This deal was blocked by the Australian Competition and Consumer Commission ("**ACCC**") due to concerns around lower incentives that a competitor, Optus, would have to invest in roll-out of 5G infrastructure if the deal was allowed to go forward. Specifically, the ACCC's concern was that the deal would lead to mobile subscribers leaving Optus for Telstra/TPG. This would make investment in 5G infrastructure less profitable for Optus (as it would have fewer subscribers from which it could recoup its investment costs from) and therefore decrease the incentive for Optus to invest. The decreased incentive for Optus to invest would in turn lead to lower competitive pressure on Telstra to invest in its network in the future. See, for example: ACCC blocks Telstra/TPG infrastructure agreement - Global Competition Review

9 Draft Revised Guidance, ¶¶26 and 30.

10 As discussed in AlixPartners response to CMA merger efficiencies review: Call for evidence | AlixPartners, Sections 4-5.

11 Merger remedies (CMA87), ¶¶ 7.15 – 7.18.

12 Draft Revised Guidance, ¶42.

2 Approach to evidence

2.1 The express statements that "[t]*he CMA adopts a consistent approach in assessing evidence that supports the finding of competitive harms and evidence that supports claimed benefits of a merger*"[13] and "*rivalry-enhancing efficiencies form part of the CMA's overall assessment of the competitive impact of a merger*"[14] are welcome. This symmetry of evidentiary treatment is an important signal to merging parties and their advisors. It should allow for greater predictability and help to mitigate the deterrent effect on pro-competitive mergers that has, to date, been driven by the very limited number of efficiencies claims accepted by the CMA in practice.

2.2 The Draft Revised Guidelines enumerate a number of potential sources of evidence,[15] which is helpful detail for merging parties and their advisors. In particular:

(a) The CMA recognises that internal documents may not address all aspects of the efficiencies framework and that there may therefore be scope for merging firms to supplement their evidence with bespoke analysis.[16] In our experience, evidence on firms' incentives to realise and pass through efficiencies - particularly in the context of innovation or dynamic efficiencies - will often require additional economic analysis that goes beyond what ordinary-course documents can provide. Explicitly acknowledging bespoke analysis as legitimate evidence is therefore a meaningful and practical improvement.

(b) As concerns documents created by merging parties, we agree with the CMA that such documents may carry significant evidentiary weight. However, commercially sensitive information relating to innovation and R&D processes is often kept highly confidential even within a merging firm's own decision-making structures, and even more so from the other merging party. This practical constraint means that in instances where the merging parties' proposed efficiencies relate to innovation, there may not be the same level of documentation as is available for other evidence (e.g. pricing efficiencies). It would be helpful for the CMA to acknowledge this more explicitly, and set out what types of evidence might be relevant for innovation-related or dynamic efficiency claims.

(c) The Draft Revised Guidance states that efficiency claims will be taken into account only when they are supported by "verifiable evidence".[17] However, the CMA should explain further what would, or would not, meet this standard, especially in light of the CMA's own statement that there may be scope for bespoke analysis to support efficiency claims. For example, consider evidence regarding the ability and incentive for efficiencies post-merger: ability and incentive evidence differ in analytical character. Ability evidence concerns resources, capabilities, and complementary assets that the merged entity will hold post-transaction. This can be demonstrated through balance sheet evidence, capability inventories, historical investment patterns, and commercial integration plans. Incentive evidence, however, concerns whether the merged entity will choose to invest, which depends on profitability given future market structure, demand evolution, and competitive responses. Incentive evidence is therefore by its very nature more uncertain (and arguably, less "verifiable"). Requiring proof of future investment decisions at the same evidentiary standard as current capabilities is operationally demanding, unrealistic for many cases, and

13 Draft Revised Guidance, ¶12.
14 Draft Revised Guidance, ¶4(a).
15 Draft Revised Guidance, ¶¶7–9.
16 Draft Revised Guidance, ¶8.
17 Draft Revised Guidance, ¶11.

may put pro-consumer mergers at risk. A credible commercial rationale for investment should satisfy the incentive requirement, without requiring contemporaneous documentary proof of future investment decisions that merging parties cannot credibly produce ex ante.

3 Framework for assessing efficiency claims

3.1 As regards the CMA's framework for assessing rivalry-enhancing efficiencies, the Draft Revised Guidance retains the four-part framework for the acceptance of efficiency claims, requiring that efficiencies:

(a) enhance rivalry;

(b) are timely, likely and sufficient to prevent an SLC;

(c) are merger-specific; and

(d) benefit customers in the UK.[18]

3.2 Of these four conditions we note in particular the changes the CMA has proposed to merger-specificity and assessing whether efficiencies benefit customers in the UK.

Merger-specificity

3.3 We welcome the more practicable and realistic approach to merger-specificity set out in the Draft Revised Guidelines.[19] Statements that the CMA will consider the feasibility of alternative means to achieve the efficiencies, whether it would be commercially rational to pursue them, and the extent to which they would deliver the same scale of benefits support a proportionate approach to merger-specificity that reflects commercial realities of businesses. In the real world, contractual or other non-merger alternatives are not always commercially viable substitutes for the efficiencies a merger can achieve - a recognition that has not always been sufficiently prominent in the CMA's practice.

3.4 One further point that the CMA could explicitly include to give guidance on where merger-specificity will be accepted is a comparison against the counterfactual to the merger. If an efficiency is not likely enough to happen without the merger to form part of the CMA's counterfactual, or if it would be materially delayed in the counterfactual, then that should indicate that it is likely to be merger specific.

Benefit to customers in the UK

3.5 One aspect of the Draft Revised Guidelines where the CMA could elaborate concerns how the CMA will assess whether efficiencies are likely to be passed through to customers, including whether the lessening of competition affects the incentive to pass-on benefits.[20]

3.6 The competitive assessment of the merger overall may indicate the likely impact on UK consumers. However, the assessment may still need incremental analysis to show pass-on from the dimension of competition that the efficiencies claim to improve, and so material work may be

18 Draft Revised Guidance, ¶13.
19 Draft Revised Guidance, ¶¶31–33.
20 Draft Revised Guidance, ¶27.

required in order to "*consider the strength of competition that is likely to exist after the merger when valuating this incentive* [to pass-on efficiency benefits]".[21] This may be particularly complex where the loss of competition due to the merger may reduce the incentive to pass-on benefits.

3.7 Therefore, examples of evidence the CMA would consider in its assessment of whether a merging party would pass any benefits through to customers would be helpful. The Draft Revised Guidance also acknowledges that quantification is often "*not likely to be possible*", so examples should also cover the types of qualitative evidence regarding the factors that influence the likely degree of pass-on that the CMA will consider.

3.8 Further consideration would be particularly relevant for non-price benefits, as pass-on of quality, range, or innovation improvements may not be as easily measurable as pass-on via price. For example, it is not clear how the CMA would assess whether R&D efficiencies generated globally will reach the UK as better products, and what qualitative information may help the CMA make that determination. It would also be helpful for the CMA to clarify how it might consider any increases in price which come alongside non-price improvements, as quality or innovation improvements may also increase costs, though proportionately less than the increases in non-price benefits.

21 Draft Revised Guidance, ¶34.