1 July 2026

Mergers Efficiencies Review Team
Competition and Markets Authority
The Cabot, 25 Cabot Square
London E14 4QZ

RE: Response of the Association for Competitive Technology (ACT), *Consultation on draft revised guidance on the CMA's approach to assessing merger efficiencies*

The Association for Competitive Technology (ACT) welcomes the opportunity to respond to the Competition and Markets Authority's consultation on draft revised guidance covering its approach to assessing rivalry-enhancing efficiencies in mergers. This response sets out background on ACT and our interest in the consultation, our general views on merger control as it affects the small business technology developer community, and our answers to the specific questions posed in Section 5 of the consultation document.

I. About ACT and our interest in this consultation

The Association for Competitive Technology (ACT) is a global trade association representing the global small business technology developer community. Our members build software and connected products across consumer and enterprise markets, ranging from independent developers and early-stage startups to established small and medium-sized technology firms. They compete on innovation, quality and trust, and they depend on markets that remain competitive, contestable and open to new entry in order to grow.

ACT engages regularly with competition and digital-market authorities in the United Kingdom and internationally on behalf of smaller developers. Our work spans competition and antitrust policy, digital markets regulation, standard-essential patent licensing, data protection and the governance of artificial intelligence. We bring the perspective of firms that are often too small to be heard individually in competition policy debates but that are collectively central to innovation and growth in the digital economy.

The CMA's approach to assessing merger efficiencies is directly relevant to our members in two related ways. First, it shapes the acquisition and exit pathways that finance early-stage innovation. The prospect of a future combination is an important part of how startups and small developers attract investment and bring products to market. Second, it shapes the competitive conditions of the platform and technology markets in which our members operate, where the entrenchment of a dominant position or a reduction in contestability tends to fall hardest on smaller firms. ACT therefore has a direct interest in guidance that is clear, predictable and proportionate, that properly credits genuine efficiencies including dynamic and innovation efficiencies, and that supports the investment and acquisition pathways on which continued innovation in our community depends.

II. ACT's general views on merger control

ACT supports effective, evidence-based merger control as a foundation of competitive and innovative markets. We also consider that the recognition of dynamic and innovation efficiencies belongs at the centre of that framework. In technology markets, competition turns on the pace of innovation, on the quality and security of products, and the ability to combine complementary capabilities. Mergers can bring together data, talent, engineering capacity and distribution in ways that accelerate research and development and bring better products to customers sooner. ACT welcomes guidance that gives these dynamic and non-price efficiencies genuine and structured consideration, and we encourage the CMA to ensure that well-evidenced efficiency benefits carry real weight in its overall assessment, so long as the analysis remains rigorous and grounded in evidence.

The dynamic character of technology markets also informs how ACT views theories of competitive harm. Acquisitions are a normal and generally procompetitive feature of these markets, and they are frequently the means by which promising technologies obtain the scale, capital and distribution needed to reach customers. Where the CMA examines the longer-term competitive effects of a transaction, ACT encourages it to ground that analysis in specific and probative evidence and to give demonstrated efficiencies their proper weight, so that speculative or open-ended predictions about how a market might develop do not deter combinations that are beneficial to innovation and to consumers. A framework that is careful and evidence-based in this respect gives businesses of every size the confidence to pursue the transactions on which continued investment depends.

Predictability and proportionality are of particular importance to the businesses ACT represents, which have limited resources and limited tolerance for cost and delay. A regime that is predictable in its analysis and proportionate in its evidential demands reduces the friction of legitimate transactions and is consistent with the CMA's stated priorities of pace, predictability, proportionality and engagement. ACT's interest here is in scrutiny that is well-targeted, evidence-based and clearly explained, so that firms can plan with confidence and legitimate transactions proceed without avoidable uncertainty.

International coherence is likewise important to the many ACT members that operate across borders and face parallel review in several jurisdictions, where they cannot easily absorb the cost of inconsistent regimes. ACT engages on merger and digital-market policy in the European Union, the United States and other markets, and we encourage approaches that, consistent with UK law and the CMA's own priorities, reduce unnecessary divergence and duplication in analytical approach.

Against this background, ACT welcomes the overall direction of the Draft Revised Guidance and offers the following answers to the specific questions for consideration.

III. Responses to the consultation questions

Question 1. Overall, are the changes introduced by the Draft Revised Guidance sufficiently clear and useful?

ACT considers that the Draft Revised Guidance is a clear improvement on the current text in paragraphs 8.2 to 8.27 of the Merger Assessment Guidelines, and that its added structure will be genuinely useful to smaller merger parties and their advisers. The dedicated sections explaining when efficiencies can arise, the types of evidence the CMA will consider, and how and when merger firms should engage are welcome. Smaller technology developers rarely have in-house competition teams and they benefit disproportionately from guidance that is explicit about what is expected and when.

ACT particularly welcomes three features. First, the clarification that the CMA will apply a consistent evidentiary approach to evidence of competitive harm and evidence of claimed benefits. A perception that the bar for efficiency claims sits higher than the bar for theories of harm has discouraged parties from advancing well-founded claims. Second, the express recognition that rivalry-enhancing efficiencies can arise through non-price parameters and through dynamic efficiencies that increase the ability or incentive to innovate, invest or undertake research and development. This reflects how value is actually created in technology markets. Third, the clarification that the circumstances in which short-term efficiencies would give rise to a longer-term theory of harm are likely to be rare in practice, which reduces a source of uncertainty that has deterred parties from engaging.

While the direction is right, some areas would benefit from further clarification so that the guidance delivers its intended predictability. We set these out in response to Question 2.

Question 2. What, if any, aspects of the Draft Revised Guidance do you consider need further clarification or explanation, and why?

ACT suggests further clarification in the following areas.

- Evidentiary expectations at each phase. The commitment to a consistent approach is welcome, but the guidance would be more useful if it illustrated, with technology-relevant examples, the type and level of evidence likely to be sufficient at Phase 1 as compared with Phase 2. Small firms make resourcing decisions early, and clearer signposting of what is needed at pre-notification and Phase 1 would reduce the risk that meritorious efficiency claims are never advanced because parties assume the evidential burden is unattainable.
- Weight given to ordinary-course and party-generated materials. ACT supports the proposal to place greater weight on materials generated in the ordinary course of business. The guidance should confirm that internal documents examining merger rationale, including synergy and integration estimates prepared for boards or investors, will be assessed even-handedly against internal documents relied upon to support a theory of harm. It should also confirm that parties may supplement these with bespoke analysis without that analysis being discounted simply because it was prepared for the review.
- Timeliness and discounting of dynamic efficiencies. ACT welcomes the recognition that different efficiencies materialise over different timeframes and that the CMA will have regard to investment and innovation cycles. The guidance should explain how discounting will be applied to uncertain future innovation gains so that the mechanism does not systematically undervalue the long-horizon research and development benefits that are characteristic of software and connected-technology markets. Where a merger strengthens the process of dynamic competition, that has present economic value even where specific outcomes are uncertain, and the guidance should make clear how this is weighed.
- Merger specificity and the commercial counterfactual. The proposed focus on whether alternatives are feasible and commercially rational is sound. The guidance should be explicit that the counterfactual must reflect the commercial reality facing resource-constrained developers. For many small firms, organic scaling or standalone financing is not a realistic route to delivering a claimed benefit, so a combination may be genuinely merger-specific even where an alternative is theoretically conceivable.

- Efficiency offences and market tipping. ACT welcomes the recognition that concerns of this kind will be rare, and we encourage the CMA to confirm that they will be pursued only on strong and specific evidence in genuinely exceptional circumstances. Clear analytical criteria for when such a concern could arise would give parties confidence that demonstrated efficiencies will remain central to the assessment and will not be displaced by speculative predictions about how a market might develop. A narrow and well-defined approach here supports the predictability that firms of every size value.
- Relevant customer benefits. The guidance would benefit from a worked explanation of how and when parties should raise relevant customer benefits, and of the evidence expected, so that this route is genuinely usable in practice.

Question 3. Are the changes consistent with the CMA's 4Ps framework and likely to promote pace, predictability, proportionality and engagement in relation to merger efficiencies? Are there any additional changes that may further contribute to these priorities?

ACT considers the changes to be broadly consistent with the 4Ps framework and supportive of pace, predictability, proportionality and engagement. Earlier engagement on efficiencies, a standardised information request, and clearer guidance on relevant evidence should all reduce friction and improve the quality of submissions. The confirmation that submitting efficiency evidence does not imply acceptance of a substantial lessening of competition removes a real deterrent to engagement, and ACT strongly supports retaining and reinforcing that statement.
ACT offers the following additional suggestions to further these priorities.

- Proportionate information requests. Any standardised efficiencies information request should be calibrated so that it does not impose a disproportionate burden on smaller merger parties. A tiered or scalable template, with expectations that reflect the size and complexity of the transaction, would better serve proportionality.
- Illustrative case studies from technology and digital markets. Predictability would be improved by illustrative examples drawn from software, digital and connected-technology sectors, including examples of combinations of complementary assets and of research and development efficiencies. Worked examples help smaller parties self-assess before incurring adviser costs.
- Transparency of reasoning. Publishing fuller reasoning on how the efficiencies framework has been applied in decided cases would strengthen predictability and help parties and advisers benchmark their own claims.
- Timing certainty on engagement. Confirming indicative timeframes for early efficiency engagement, including in pre-notification, would support pace and help small firms plan their resourcing.

Question 4. Do you have any other suggestions regarding the content of the Draft Revised Guidance?

ACT offers the following further suggestions.

- Recognise the role of acquisitions in the innovation lifecycle. For the small business technology developer community, the ability to combine complementary assets and, where appropriate, to be acquired is an important part of how early-stage innovation is financed and brought to market. The guidance should ensure that the efficiencies analysis fully credits the procompetitive benefits of such combinations, which are for many of our members the practical route by which their work reaches customers at scale.

- Give explicit treatment to non-price parameters relevant to software. Beyond price, the guidance could note quality, security, interoperability and reliability as parameters on which merger-specific efficiencies may arise. These are central to how technology products compete and to the benefits customers actually experience.
- Support international coherence. Many of ACT's members operate across borders and face parallel review in multiple jurisdictions. To the extent consistent with UK law and the CMA's priorities, alignment in analytical approach with other leading authorities reduces cost and duplication, which is of particular value to smaller firms.
- Keep the guidance under review. Given the pace of change in technology and digital markets, ACT encourages the CMA to treat the guidance as a living document and to revisit it periodically in light of decided cases and emerging evidence on how efficiencies, including dynamic efficiencies, are realised in practice.

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ACT would welcome the opportunity to engage further with the CMA on any of the points raised in this response. Please do not hesitate to contact us using the details below.

Sincerely,

[redacted]

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Association For Competitive Technology (ACT)