

## Consultation Response

# CMA's Merger Remedies Guidance Update

## 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 regarding the update to the merger remedies guidance opened on October 16, 2025,<sup>2</sup> which incorporates some of the recommendations from feedback collected in the original call for evidence.<sup>3</sup>

CCIA commends the CMA's continuing efforts to update its merger review processes and guidance to align with the CMA's '4Ps' strategic steer.<sup>4</sup> The updates to the CMA's merger remedies guidance help make the regime more transparent, proportionate, and predictable. Effectiveness, efficiency, transparency, and predictability are key objectives that sound merger control regimes should follow at all stages of the merger review process.<sup>5</sup> Additional clarity regarding the CMA's consideration of merger remedies can help merging parties of all sizes.

While the intention to increase regulatory predictability and business certainty is the right direction, CCIA believes that additional clarifying revisions can be helpful to ensure the draft guidance delivers on this objective. Clear and predictable merger remedies guidance allows for businesses of all sizes to engage in more procompetitive merger activity, which helps stimulate innovation and economic growth.<sup>6</sup> As a recent study found in the United States, overenforcement of mergers can deter these transactions and harm innovation.<sup>7</sup>

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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, *Updating our approach to merger remedies* (Oct. 16, 2025), <https://connect.cma.gov.uk/revised-merger-remedies-guidance>.

<sup>3</sup> 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> 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>7</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>.

## Balancing Effectiveness and Proportionality

CCIA welcomes the CMA's proposed changes to clarify its approach to assessing the effectiveness of merger remedies (Theme 1). This clarification creates more transparency and predictability for merging parties, while giving the CMA greater flexibility to adopt narrowly tailored, minimally intrusive remedies to address the substantial lessening of competition (SLC) resulting from a proposed merger, if and when it occurs.

CCIA supports the CMA's proposed clarifications of its consideration of mitigations that only partially resolve competition issues. By identifying instances in which mitigations may be considered, the CMA provides increased clarity and transparency for merging parties, and encourages firms to pursue more procompetitive mergers and acquisitions. As digital markets are investment- and innovation-driven, they continue to evolve dynamically, with new forms of competition emerging, and new competitors entering markets regularly. Firms are continually incentivised to reduce costs, create new products, and improve existing ones for the benefit of businesses and consumers alike.<sup>8</sup> To this end, CCIA encourages the CMA to further broaden its "strict approach" toward mitigation remedies while balancing consideration of remedy proposals resulting in agency resource burdens. Given the fact-specific nature of remedy design, full consideration of mitigation remedies at earlier stages of review could enable the CMA to more appropriately tailor merger remedies to address an SLC without risking harm to innovation or chilling investment.

CCIA likewise appreciates the CMA's proposed changes to the Effectiveness Criteria, clarifying the types of risk assessments considered when crafting merger remedies to be fit for purpose. However, CCIA is concerned that the CMA's multi-step approach to assessing merger remedies might risk disincentivising innovation and contestability in highly dynamic and investment-driven sectors, such as digital markets. By prioritising effectiveness over the proportionality of remedies, the CMA could miss procompetitive remedies that address an SLC while being minimally intrusive. This approach also creates a heightened evidentiary burden, requiring merging parties to prove with high certainty that their proposed remedies will effectively address the SLC. By balancing consideration of remedy effectiveness and proportionality, the CMA would better align itself with its strategic steer, providing greater predictability and ensuring competition regulation that minimises the risk of overregulating dynamic and innovative markets.<sup>9</sup>

## Behavioural and Structural Remedies

CCIA applauds the CMA's proposal to remove the presumption against considering behavioural remedies in Phase I investigations. This updated approach helps better align the CMA with its strategic steer, enabling consideration of a greater range of innovative and nuanced remedies that combine both structural and behavioural aspects. This is particularly relevant in highly dynamic markets, allowing the agency to tailor remedies proportionally to address an alleged SLC while balancing considerations of the particular facts of the merger and market dynamics. The CCIA would welcome the CMA to provide

<sup>8</sup> Nicolas Petit and David J Teece, *Innovating Big Tech firms and competition policy: favoring 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>9</sup> *Supra* n. 7, at 14.

greater clarity over when behavioural remedies will be sufficient at Phase 1 through examples of possible behavioural remedies that meet the "clear cut" standard. Without additional clarity there remains uncertainty as to whether behavioural remedies will ever be sufficient to avoid a referral to Phase 2.

CCIA welcomes the CMA's proposal to distinguish between enabling and controlling behavioural remedies. This critical distinction helps ensure that remedies are more appropriately tailored to address the SLC, allowing consideration of remedies that "work with the grain of competition"<sup>10</sup> and reduce the risk of requiring unnecessary divestitures.<sup>11</sup> As the CMA notes in its consultation document, merger remedies often include a mix-and-match approach, combining both behavioural and structural remedies to address the SLC.<sup>12</sup> To better align the agency's practices and goals, CCIA encourages the CMA to explicitly adopt a "hybrid" approach for assessing merger remedies on a spectrum of structural and behavioural remedies. A unified analysis framework would allow the CMA to better assess and tailor remedies to a broader range of market structures, including highly dynamic digital markets. By continuing to apply different frameworks of analysis under the updated guidance, the CMA risks applying an inconsistent approach to merger remedies, thereby increasing business uncertainty and risking imposing remedies that are not fit for purpose.<sup>13</sup>

## Consideration of Procompetitive Efficiencies

CCIA supports the CMA's revised approach to preserving procompetitive merger efficiencies and merger benefits (Theme 2), and the agency's willingness to engage with merging parties earlier in the remedy process. By taking a more proactive and constructive approach to assessing relevant consumer benefits (RCBs), the CMA ensures that greater consideration is given to the pro-consumer benefits and increases in consumer welfare realised outside the market related to the SLC finding.

However, the CMA should take a more pragmatic approach to avoid imposing an unduly high evidentiary threshold for RCBs. Requiring parties to prove the RCBs with a high degree of certainty places an undue burden on merging parties, particularly those operating in highly dynamic markets. By adopting a more flexible evidentiary approach, the CMA can incentivise parties to submit credible RCB submissions and support proportionate remedies that prioritise innovation and consumer benefits.

The CMA's proposal to expand consideration of the procompetitive effects of rivalry enhancing efficiencies (REEs) in merger remedies<sup>14</sup> represents a crucial shift in the agency's approach to merger reviews. In markets characterised by rapid product innovation, competitive impacts often arise beyond the boundaries of a single market. As acquisitions

<sup>10</sup> Competition and Markets Authority, *Draft CMA87* (Oct. 16, 2025), at 55 <https://connect.cma.gov.uk/45313/widgets/136546/documents/93489>.

<sup>11</sup> Yann Delaprez, University of Chicago, *Can Merger Remedies Cause More Harm than Good?* (Jul. 8, 2025), at 38 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5343608](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5343608).

<sup>12</sup> Competition and Markets Authority, *Draft revised merger remedies guidance* (Oct. 16, 2025), at 15 <https://connect.cma.gov.uk/45313/widgets/136546/documents/93490> ("Overall, we currently consider the distinction between types of remedies is not always clear cut and that some remedies fall within a spectrum of the two classifications, with varying degrees of structural and behavioural characteristics.").

<sup>13</sup> *Supra* n. 11.

<sup>14</sup> *Supra* n. 10 (7.16).

can reduce transaction costs between complementary products,<sup>15</sup> a firm holding a high share in one product generation may nonetheless face strong rivalry from innovation in adjacent or emerging markets.<sup>16</sup> CCIA encourages the CMA to take the additional step of considering the procompetitive effects of REEs in adjacent markets, in conjunction with the agency's revised approach to consideration of RCBs at earlier stages of the remedy process. This would ensure that the agency gives full consideration to the procompetitive benefits of mergers in fostering innovation and competition.

## Incentives for Innovation

As part of the CMA's alignment with its pro-growth strategic steer, CCIA encourages the agency to explicitly consider, as part of its merger remedy process, the effects of a proposed remedy on the incentives and abilities of merging parties and their rivals to innovate. By incorporating "innovation rivalry enhancements" as part of the remedy effectiveness test, the CMA can give proper consideration to important dynamic efficiencies,<sup>17</sup> thereby improving remedy precision and avoiding the risks of overregulation stemming from an overreliance on static effect analysis.<sup>18</sup> Unlike static efficiencies, which only occur once or a set amount of times, dynamic efficiencies arise over time on a continuous basis.<sup>19</sup>

To this end, the CMA should explicitly prioritise engagement with merging parties on remedies that preserve or strengthen incentives to innovate. Early, without-prejudice discussions in both Phases 1 and 2 would encourage firms to propose innovation-enhancing REEs, and to demonstrate RCBs stemming from increased innovation, productivity, and market dynamism. A regulatory framework focusing on competitiveness and innovation<sup>20</sup> helps align the CMA with its pro-growth strategic steer.<sup>21</sup>

## Conclusion

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

<sup>15</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>16</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>17</sup> *Supra* n. 8.

<sup>18</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-market\\_s\\_a8bf4a0a/d3752037-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/03/merger-control-in-dynamic-market_s_a8bf4a0a/d3752037-en.pdf).

<sup>19</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).

<sup>20</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>21</sup> *Supra* n. 4.