

CONSULTATION RESPONSE

Refining the UK's competition regime

Enhancing accountability for CMA decision-making in mergers and markets

What impact do you think the proposed reform would have on the consistency and predictability of decision-making in merger and markets cases? Please explain your views.

The proposal would concentrate decision-making in the CMA, by replacing independent panels with a CMA Board that both includes CMA staff and can be expected to have a longer-running working relationship with them. While this could improve accountability by ensuring that the CMA leadership takes responsibility for final decisions, it could lead to a reduction in business expertise and increased confirmation bias as power is concentrated in the CMA. Too much power would be concentrated in the CMA if this proposal goes ahead without wider checks.

Would the proposed reform for greater accountability for the CMA Board for merger and markets decision-making be something you would welcome? [Yes / No / Not sure] Please explain your views.

Not sure.

If this goes ahead, it would only be welcome if there were greater external checks and balances, with final decisions that reassure companies investing in the UK that they have options in the event of surprising decisions that might reflect confirmation bias or other inevitable biases in the CMA's decision-making. The best way to do this would be to introduce a merits-based appeal standard for merger decisions. To ensure the resulting process proceeds smoothly, parties should have access to file review rights to review evidence before adverse decisions are made.

A clear division of responsibilities between a CMA that makes decisions and external parties that review them would be welcome. Simply concentrating power in the CMA and relying on the impractical tool of judicial review to remedy any mistakes would worsen decision-making over time.

Do you support the proposed membership requirements for the mergers and markets sub-committees/committees? [Yes / No / Not sure] Please explain your views.

Not sure.

The CMA should be required to ensure balance in representation between external business experts and CMA staff. That balance is not clear in the current recommendations.

Chapter 2. Markets Work and Market Remedies

i. Enhancing the CMA's markets work

Do you agree the existing market study and market investigation model should be replaced with a new single-phase market review tool? [Yes / No / Not sure] Please explain why.

Not sure.

If this goes ahead with the policy choices described, it would be worse for business than the current regime. However a single-phase itself is not the main issue, versus the tests applied.

Do you agree the statutory time-limit for market reviews should be 24 months, with a possibility to extend by a maximum of 6 months? [Yes / No / Not sure] Please explain why.

No.

There are many more market studies than market investigations. It is not clear how it fits with a CMA commitment to improving the pace of this single process, thereby resulting in a longer period of uncertainty for affected companies, in most cases, by aligning with the market investigation timeline.

If this is not deliverable in the current statutory framework, it is not clear that this package of changes overall is helpful from a business perspective or compatible with the CMA's 4P commitments.

It is also not clear why a combined 30 months is a fair comparator to a single stage process, given that the CMA is no longer being required to undertake both stages. It seems fairer to characterise this proposal as standardising the time limit on the longer market investigation timeline, which is a clear worsening in the standards for affected businesses which the 4Ps would suggest should be improving.

Do you agree there should be a single legal test for single-phase market reviews? [Yes / No / Not sure] Please explain why.

Not sure.

The requirement to establish an adverse effect on competition in order to wield the more intrusive powers associated with a market investigation is a critical check on the CMA exercising its extensive market powers in a quasi-legislative fashion. Business will face greater uncertainty as there is a greater scope for the CMA to respond to all kinds of interest group demands.

This will inevitably politicise the CMA as it shifts disputes over its decisions from a technical question around the impact of corporate behaviour on competition to an inevitably political question of what is overall beneficial to consumers.

This is particularly problematic because the CMA has recently been interpreting consumer impact extremely broadly. For example, in several of its consultations on proposed conduct requirements for Google Search it simply asserts that purported benefits to business will lead to benefits for consumers without meaningful analysis of whether those benefits are likely to be passed-through or meaningful from a consumer perspective.¹

Unless the same broad level of protection for competitive businesses is maintained, the change to a single test is not welcome.

If so, should this be the adverse effect on consumers test? [Yes / No / Not sure] Please explain why.

No.

If there is to be a single test for consistency, it should reflect both conditions, i.e., an adverse impact on competition that leads to an adverse impact on consumers. Otherwise the Government is simply watering down the conditions for the use of intrusive powers.

ii. CMA Market Remedies

Do you agree the CMA should consider sunset clauses when designing remedies? [Yes / No / Not sure] Please explain why

Yes.

The Government should go further in this area and require that the CMA define a sunset period for where it will at least consider revoking remedies in every remedy, with their absence being exceptional.

¹ Discussed in more detail in our responses to the relevant consultations, e.g. the consultation response on publisher conduct here:

<https://ccianet.org/wp-content/uploads/2026/02/Publisher-Conduct-CR-Google-Search-CCIA-Response-to-Consultation.pdf>

Do you agree the CMA should review market remedies at least once every 10 years? [Yes / No / Not sure] Please explain why.

Not sure.

10 years may work better as a minimum for existing market remedies, which do not have sunset periods attached, but the CMA should be required to define a sunset window for new market remedies and be expected to generally suggest much shorter time periods, particularly in dynamic markets where there can be material technological changes within 2-3 years.

Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so? [Yes / No / Not sure] Please explain why

Not sure.

There could be legitimate exceptions, but there should be a clear expectation that this reflects market conditions, particularly:

- Reliance interests in a remedy - the case for an exception should start from a material risk to business stability or customer welfare if a remedy were withdrawn (not more ephemeral concerns such as commercial uncertainty).
- Technological stability - even if CMA does not see a particular technological change affecting its remedies, if the sector is one in which innovation is frequent, changes it does not anticipate are likely.
- Market stability - in cases where, for example, a natural monopoly means conditions are unlikely to change, but factors such as network effects which are more conditional on consumer behaviour should not justify a delayed review.

There should not be an open-ended ability of the CMA to delay these reviews, or there is a risk that the reviews most likely to create change, and therefore most contentious, are delayed.

iii. Concurrency

Should sector regulators be able to oversee market remedies imposed or accepted by the CMA? [Yes / No / Not sure] Please explain why.

Yes.

This is a reasonable change, and may allow greater sector expertise to be brought to bear on a problem. However, it should be clear that those regulators are subject to the same

standards as the CMA in doing so (including, for example, a requirement to review remedies and meet the same evidentiary requirements).

Do you support the proposed consultative approach, where the CMA must consider undertaking a single-phase review following a request from sector regulators? [Yes / No / Not sure] Please explain why.

Not sure.

If other changes proposed in this consultation take place, this would raise a concerning risk that sector regulators, unable to justify changes based on their own statutory powers, request a broader and more contentious range of changes to the CMA. In many cases, these sector regulators have been given powers to protect consumer interests but are bound by specific evidentiary requirements, limitations on how those powers are used or other means to ensure that the process is practical for businesses. The CMA might become a generalist regulator, where improvements within the scope of a sector regulator would better balance diverse interests and be more efficient.

We welcome any other views or evidence on improving the concurrency framework.

No response.

Chapter 3. Mergers

i. Increasing predictability in merger control

Should share of supply be revised to a closed list of criteria, for both the share of supply and hybrid jurisdictional tests? [Yes / No / Not sure] Please explain why.

Yes.

Moving to a closed list of criteria would be welcome, however that list needs to be appropriately constrained.

Do you support the proposed criteria for inclusion? [Yes / No / Not sure] Please explain why.

No.

The current criteria will not meaningfully improve the predictability of the regime, which generally relates to:

- The CMA's ability, which would not change under this proposal, to choose from a very broad range of measures within the listed categories.
- Ambiguity in the material influence test, which would be worsened under this proposal with factors more expansive than the CMA's recent Merger Guidelines and ambiguous concepts such as "commercial, financial or consultancy arrangements."

This would risk legitimising past over-reach that saw the CMA investigating minority investments and partnerships, creating considerable cost and uncertainty before ultimately approving the deal.²

Are there any additional criteria that should be included? [Yes / No / Not sure] Please explain why.

Not sure.

Would the proposed reform for the share of supply test improve predictability for businesses? [Yes / No / Not sure] Please explain why.

Not sure.

The CMA would still have the ability to choose from a very broad range of measures within the listed categories. This would mean the process continues to be unpredictable for business. Although it may be an improvement at the margin, it might also codify or otherwise legitimise past over-reach.

Should the material influence and de-facto control tests be revised to a closed list of statutory factors? [Yes / No / Not sure] Please explain why.

Yes.

These questions are currently highly unpredictable and deals have been reviewed with negligible links to the UK.³ A closed list of factors would make it easier for business to understand which mergers might or might not be subject to investigation.

Do you support the factors proposed for inclusion? [Yes / No / Not sure] Please explain why.

Yes.

² An example is discussed here:

<https://ccianet.org/articles/amazons-partnership-with-anthropic-should-not-trigger-uk-merger-scrutiny/>

³ Ibid.

**Are there any additional factors that should be included?
[Yes / No / Not sure] Please explain why.**

No.

**Would the proposed reform for the material influence test
improve predictability for businesses? [Yes / No / Not sure]
Please explain why.**

No.

The priority should be narrowing the test and clarifying ambiguous concepts such as “commercial, financial or consultancy arrangements.” The goal should be a clear set of factors that makes decisions predictable for business.

ii. Providing more time to agree remedies at Phase 1

**Should the timeframe for submitting and considering
Phase 1 remedies be extended from up to ten to up to
twenty working days? [Yes / No / Not sure] Please explain
why.**

Not sure.

Any increase in the timeline should be agreed with the businesses where the remedies are being proposed, such that it is used where both sides of the discussion feel more time is needed to agree remedies, rather than purely being a delay to decision-making.

Chapter 4. Further cross-cutting changes

i. Stronger investigative powers for algorithms

**Should the CMA be granted enhanced powers to
investigate algorithms in its competition and consumer
protection functions? [Yes / No / Not sure] Please explain
your reasoning.**

No.

This represents a significant extension of intrusive powers. The CMA already has extensive powers to scrutinise algorithms, compel disclosure of source code and review testing for companies subject to Strategic Market Status. These were contentious during the passage of DMCCA and extending them to services where capacity is likely to be more limited threatens commercial confidentiality, imposing a heavy burden on scarce technical resources and over-reach that will test the CMA’s technical capabilities. These powers are globally unprecedented and their potential impacts should be considered in much greater detail.

Algorithms provide many procompetitive benefits. As the CMA recognises, algorithms have been widely adopted across the economy, serving as foundational tools in business, technology, and daily routines. Expanding the scope of the CMA's information gathering powers significantly risks increasing legal uncertainty, particularly for small and medium enterprises that may lack the resources to substantively comply with the CMA's investigative requests. Such a change would undermine the CMA's commitment to the 4Ps, identified in its Strategic Steer.

ii. The Secretary of State's role in CMA guidance

**Should the Secretary of State have a formal role in a wider range of key guidance documents? [Yes / No / Not sure]
Which ones, and please explain why.**

Not sure.

iii. Excluding the Christmas period from statutory time limits

Do you agree a longer Christmas period should be excluded from merger and markets statutory time-limits? [Yes / No / Not sure] Please explain why.

Not sure.

This should be based on an agreement between the CMA and the merger and markets parties. Otherwise, there is a risk that it simply represents a rationale for delay. While in some cases it could lower the pressure on merging parties, in other cases it might heighten the costs of delays. Generally speaking, unreasonable deadlines from the CMA are an issue outside the Christmas period and the CMA should commit to avoiding unnecessarily demanding timelines, which will lower the quality of business input.⁴

If so, what length should the pause be?

No response.

⁴ For example, an invitation to comment on a consumer survey as part of the mobile ecosystems SMS investigations had a turnaround of around four working days.