

CLIENT ALERT

CMA Consultation on New Merger Remedies Guidance: Key Proposals and Implications for Deal Makers

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Summary

On 16 October 2025, the UK Competition and Markets Authority (the **CMA**) published for consultation a draft of its proposed new merger remedies guidance (the **Draft Guidance**).¹ This is the next step in its review of the approach to merger remedies under the “4Ps” (pace, predictability, proportionality and process) initiative, following a public call for evidence in March 2025.²

The draft marks a material recalibration of the UK authority's approach to designing, assessing and monitoring remedies, especially with regard to behavioural remedies, while keeping the main objective of ensuring that any

¹ The consultation can be found on the CMA website: <https://connect.cma.gov.uk/revised-merger-remedies-guidance>.

² The public call for evidence has now been closed. See the consultation page: <https://www.gov.uk/government/calls-for-evidence/review-of-merger-remedies-approach>.

remedies accepted could effectively resolve or mitigate the potential harms that might arise as a result of the notified transaction.

The main changes proposed by the CMA include:

1. **A step-by-step assessment framework:** The CMA reorganises and clarifies its existing analytical framework for remedy proposals with step-by-step guidance. The “Effectiveness Criteria” and proportionality tests build upon the foundation of the existing guidance, while introducing more structure and clarity to the CMA’s approach.
2. **Clearer guidance for assessing complex structural remedies:** The Draft Guidance indicates the CMA’s willingness to consider complex structural remedy design, with detailed considerations for proposals involving multiple assets and packages, carve-outs, and IP divestitures.
3. **Greater acceptance of behavioural remedies:** In a break from past practice, the CMA now recognises that behavioural commitments can be effective in remedying competition concerns. However, the CMA cautions that behavioural remedies are likely to be suitable for only certain situations, and that it would be difficult to devise a “workable” set of behavioural commitments for a Phase 1 review process.
4. **A more structured approach to monitoring and review of merger remedies:** The CMA provides more explicit guidance on the metrics and processes of governing, monitoring and reviewing merger remedies in the Draft Guidance. In particular, it encourages the early appointment of monitoring trustees and/or industry experts to assist with monitoring complex remedy packages.

The newly proposed Draft Guidance clearly signals the CMA’s openness to considering more novel, outcome-oriented and potentially complex solutions in remedy design. However, it does not guarantee the CMA’s acceptance of such solutions. Indeed, there are many considerations that deal parties will need to keep in mind when submitting such remedy proposals to the CMA to avoid unduly lengthy negotiation and potential rejection.

The CMA emphasises throughout the Draft Guidance that early engagement between the merging parties and the CMA regarding potential remedies (which does not involve something other than divestiture of a standalone business), on a without prejudice basis, would be beneficial. The CMA also requests merging parties to facilitate early engagement between the CMA and third parties who would be affected by the proposed remedies, where possible.

We set out in more detail the key proposed changes to the CMA’s approach to merger remedies in this client briefing.

Background of the proposal and objectives

The current CMA Merger Remedies guidance was published in December 2018.³ Since then, 40 transactions were cleared with undertakings in lieu (*UILs*) in Phase 1 and 13 transactions cleared with remedies in Phase 2. The CMA has therefore accumulated a wealth of experience dealing with the process of designing, assessing and monitoring compliance with merger remedies.

The Draft Guidance sits within the CMA's broader "4Ps" programme (pace, predictability, proportionality and process) and complements recent updates to the CMA's jurisdiction and procedure guidance for merger control.⁴ It follows the CMA's call for evidence from March until May 2025, as well as a literature review and direct third-party engagement; including with a number of international competition authorities, UK sectoral regulators, businesses, and industry associations.

A clearer step-by-step assessment framework

Compared to the existing guidance, the Draft Guidance clearly sets out a four-step approach in designing and assessing suitable remedies to resolve any substantial lessening in competition identified:

1. **Step 1: Effectiveness:** The CMA will identify a remedy (or a package of remedies) that is effective in resolving the SLC identified and its adverse effects on competition. It will do so by applying the newly coined "Effective Criteria":
 - a. Impact on the SLC and its adverse effects: The CMA expresses preference for remedies "*which fully restore competitive rivalry in a lasting way*", commenting that these remedies "*directly address an SLC at source*".
 - b. Acceptable risk profile: The CMA will find remedies "*for which it has a high degree of confidence that they will achieve their intended effect*", and that it "*will assess the risks involved in a merger remedy holistically*".
 - c. Practicality: An acceptable remedy should be practical to implement – this criteria has not changed substantially from the existing guidance. However, the CMA emphasises that the divestment of assets comprising of less than a full standalone business may entail "*material separation risks*" and therefore is likely to be deemed less practical.
 - d. Appropriate duration and timing: Effective remedies should retain their effectiveness throughout their expected duration. Remedies that resolve the SLC quickly are preferable.⁵

³ CMA87, Merger Remedies, 13 December 2018 (link [here](#)).

⁴ For further information about the CMA's 4Ps initiative and its impact on the UK merger control processes, see our prior client alert [here](#).

⁵ Draft Guidance, paragraph 3.8.

2. **Step 2: Proportionality:** The CMA will assess whether the effective remedy or package of remedies identified is proportionate. According to the principles set out in *Tesco PLC v Competition Commission*,⁶ a proportionate remedy is one that is (i) effective in achieving a legitimate aim; (ii) no more onerous than it needs to be; (iii) the least onerous amongst all equally effective options; and (iv) not disproportionate to the SLC and its adverse effects:
 - a. Whether the remedy is onerous: In deciding whether a remedy is onerous, the CMA will consider any market distortions (e.g. longer-term inefficiencies or dampened innovation), monitoring and compliance costs (to the CMA, other regulators, and third parties), and the loss of any relevant customer benefits (**RCBs**). The CMA explicitly notes that costs to the merging parties generally carry less weight in its analysis, and in completed mergers, the CMA will normally not count the costs or losses incurred by the merger parties because of divestiture remedies.
 - b. Ensuring the remedy is no more onerous than necessary: Requirements of the remedy should go no further than needed to address the SLC and its adverse effects. If multiple effective options exist, the CMA will select the least costly/intrusive option.
 - c. Weighing proportionality overall: The CMA weighs remedy costs (including lost RCBs) against the SLC and its adverse effects, making a judgment “in the round” rather than by precise quantification. In exceptional cases, however, even the least onerous effective remedy may be disproportionate; the CMA may then turn to partially effective measures or, rarely, decide that no remedy is appropriate. The CMA will not benchmark proportionality against the merging parties’ overall revenues in the SLC market(s) or the relative size of the SLC market(s) compared to the size of the other market(s) related to the transaction as a whole.⁷
3. **Step 3: Mitigation:** If the CMA concludes that there are no effective remedies, or that all effective remedies are disproportionate, it may consider remedies that mitigate the SLC and its adverse effects (rather than fully resolving the SLC).
4. **Step 4: Relevant customer benefits:**⁸ The CMA makes it clear that it “*expects to have regard to*” the effect of any remedies on any RCBs arising from the merger in both Phase 1 and Phase 2 review. This is a stronger commitment than in the existing guidance, which presents RCBs as an optional consideration the CMA may take into account. To qualify as an RCB, a benefit must be merger-specific and expected to accrue within a reasonable time period.

⁶ Tesco v Competition Commission [2009] CAT 6, paragraphs 135–137.

⁷ Draft Guidance, paragraphs 3.11–3.26.

⁸ RCBs are benefits to any direct, indirect and future customer(s) (and need not be the final consumer(s)) anywhere in the UK in the form of lower prices, higher quality, greater choice, or greater innovation. Rival-enhancing efficiencies are explicitly stated to have the potential to give rise to RCBs.

Structural Remedies: Openness to considering complex solutions

Under the current guidance, divestment of a standalone business is the CMA's preferred solution where competition concerns are identified. The draft guidance retains that preference but builds in some flexibility and clarity regarding when the CMA will accept complex structural remedies that fall short of a full standalone business divestment.

First, the CMA may accept divestitures that “*do not remove the entire increment*” (that is, the increase in market share) in the SLC market in cases involving local overlaps. In such cases, the CMA may accept divestiture of local sites that reduce the combined entity's market share below a certain threshold after applying relevant decision rules.⁹

Second, the CMA also says it will be more likely to accept multiple divestiture packages where the individual packages can operate on a “*largely standalone basis*” (e.g. local shops). However, it will require the divestment of multiple assets to be done in the least number of packages possible (and mostly limited to two or three packages, based on the CMA's past experience).¹⁰

Third, the CMA may accept a carve-out remedy where it can be adequately specified and where it does not present material risks relating to losses of economies of scale, density or scope, or relating to the transfer of customers to the divestment business. The Draft Guidance sets out clearly the type of evidence it expects to receive from the parties for such carve-out remedy proposals, including: data and analysis on performance of past comparable divestitures, performance of the carve-out business assets/units, feedback from employees who are familiar with or lead the carve-out business, economies of scale, density or scope and value of the assets, as well as the operational support they would need for successful functioning.¹¹

Nevertheless, the Draft Guidance includes a higher standard for the effectiveness assessment in some circumstances. For example, it makes clear that, in completed transactions, the CMA may require a divestment package that exceeds the original purchase, so as to fully restore the competitive potential of the target business.¹² It also specifies strict requirements where remedies involving the divestment or grant of access to intellectual property (e.g. patents, copyrights, and trademarks) are offered.¹³ Furthermore, the CMA notes that it will refer a transaction to Phase 2 review if a suitable upfront purchaser cannot be identified at Phase 1 where the CMA considers it necessary.¹⁴ The Draft Guidance includes a new section on the parties' hold-separate and asset maintenance obligations, emphasising the need to ensure that the merging businesses operate independently

⁹ Draft Guidance, paragraph 6.16.

¹⁰ Draft Guidance, paragraph 6.19.

¹¹ Draft Guidance, paragraphs 6.25–6.27.

¹² Draft Guidance, paragraph 6.17.

¹³ Draft Guidance, paragraphs 6.51–6.56.

¹⁴ Draft Guidance, paragraph 6.63.

throughout the CMA review.¹⁵ For complex divestiture proposals, the CMA will require parties to provide robust evidence to demonstrate the effectiveness of the proposed remedy package(s).

Behavioural Remedies: From Exceptional to Credible in Defined Circumstances

The current merger remedies guidance regards behavioural remedies as an exception rather than the norm, noting that behavioural remedies are “*unlikely to deal with an SLC and its adverse effects as comprehensively as structural remedies and may result in distortions when compared with a competitive market less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes*”.¹⁶ The Draft Guidance moves away from that position stating that behavioural remedies may be “*less costly*” and “*less intrusive*” than structural remedies.¹⁷ The CMA acknowledges that there is a spectrum of possible behavioural commitments that can be effective in remedying the SLCs identified in its substantive review. The Draft Guidance indicates that the monitoring of behavioural commitments may be more practicable where: (i) there is an industry regulator with appropriate expertise, power and resources, (ii) there are alignments with existing commercial practices and norms, and (iii) stakeholders have pre-existing enforcement mechanisms other than reporting to the CMA, or are otherwise in a strong position to identify and report to the CMA breaches of the remedy undertakings. The Draft Guidance also calls out cases involving vertical and/or conglomerate theories of harms as the more likely suitable candidates for behavioural remedies.

This shift in perspective is expected from the CMA, given its recent willingness to accept behavioural remedies (or a mixture of structural and behavioural remedies) in complex merger cases.¹⁸

Nevertheless, the CMA still expresses its preference for clear-cut structural remedies as these are “*typically designed to address the SLC at source in order to restore the rivalry lost as a result of the merger, and most behavioural remedies do not do so*”. The CMA also explicitly states that it would be difficult to devise a “*workable and effective set of behavioural commitments*” in a short Phase 1 timetable.¹⁹

To mitigate the inherent risks of behavioural remedies, the Draft Guidance sets out the following protective measures:

1. **Limited duration:** Behavioural remedies with limited duration may reduce monitoring costs and risks of the remedies becoming ineffective, or worse, distorting market outcomes in the future.
2. **Industry characteristics:** Industries with a high degree of market transparency make it more likely that customers, competitors and suppliers of the merged entity could monitor and report to the CMA any

¹⁵ Draft Guidance, paragraphs 6.45–6.47.

¹⁶ CMA87 Merger Remedies guidance (2018), paragraph 3.5(a).

¹⁷ Draft Guidance, paragraph 3.20.

¹⁸ For example, *Vodafone/CK Hutchison JV*, *Barratt/Redrow*, and *Bouygues S.A./Equans S.A.S.*

¹⁹ Draft Guidance, paragraph 4.8.

breaches of remedies. Industries that are sufficiently mature and stable are also more conducive to behavioural remedies, as they have lower risks of being adversely affected by behavioural remedies (although, in some cases, this means that behavioural remedies in such an industry will need to be longer-term to achieve the intended effect).

3. **Monitoring trustee:** The existence of a monitoring trustee will help the CMA to monitor the commitments more effectively.²⁰

The Draft Guidance therefore expands the practical space for behavioural remedies, while retaining the high evidentiary and monitoring burden on the merger parties. The CMA emphasises that such commitments must be designed to be self-executing and capable of third-party verification, limiting the need for ongoing micro-regulation.

Monitoring, Trustees and Enforcement: Sharper Tools, Calibrated Burden

The Draft Guidance emphasises the role of monitoring trustees and independent experts in the remedy design, assessment, and monitoring processes. In particular:

1. **For structural remedies:** The Draft Guidance highlights a number of important functions of monitoring trustees and independent experts in reducing the risks of complex structural remedies, such as: providing the CMA with an independent assessment of the scope and risks of the proposed remedies, undertaking site visits to inspect the relevant assets proposed for disposal, assessing purchaser suitability, reviewing the divestment transactional agreements, and overseeing the divestiture implementation.²¹
2. **For behavioural remedies:** Considering the limited resources of the CMA, it is likely to require the merger parties to appoint and remunerate a monitoring trustee to assist the CMA in monitoring the commitments.

The Draft Guidance dedicates an entirely new Chapter 9 to the monitoring and review of merger remedies. This chapter captures the CMA's existing remedies monitoring and review processes which have not been set out in the existing guidance:

1. **Monitoring and reporting compliance:** Parties will be required to report compliance with the remedies imposed to the CMA at the frequency and detail as set out in the remedy decision.
2. **Breaches register:** The CMA may discover breaches by various proactive means, and will publish all breaches of UILs, final undertakings and final orders on its website.²² Prior to publishing details of a breach, the CMA will notify the relevant merger party.

²⁰ Draft Guidance, paragraph 7.38.

²¹ Draft Guidance, paragraphs 6.71–6.76 and 8.2–8.9.

²² The CMA's Breaches Register, listed on its website (link [here](#)).

3. **Review and termination of agreed remedies:** Remedies are not indefinite, and the CMA will review to determine whether they are no longer appropriate, need to be amended or removed. For any of these outcomes to be agreed, a change of circumstances of sufficient magnitude, relevance and importance is required. A review may be initiated by the CMA of its own accord, or at the request of the parties subject to the remedies, or of an interested third party. The CMA will publish its decision to launch a review on its website, including a brief description of the case, an indicative timetable and details of how to respond to consultation. Any review will include public invitation to comment, as well as substantive CMA internal assessment. The CMA will publish a provisional decision before a final decision is made, upon which it will seek public consultation. A final decision will be published publicly. Time-expired, lapsed or superseded remedies require no further investigation or consultation, and the CMA will simply remove any listing on its register of imposed remedies, notify the merger parties and publish a notice that it has been removed.²³

What Has Not Changed and Next Steps

The CMA's core objective for merger remedies remains the full and effective restoration of competition. The authority will not accept remedies that leave material risks unresolved, nor will it trade remedy effectiveness for speed. Up-front buyer and trustee-led processes remain central tools, and the CMA retains broad discretion on buyer approval,²⁴ perimeter sufficiency and enforcement. The CMA's approach to merger remedies in completed mergers, multi-jurisdictional mergers and the implementation of remedies during litigation also remains largely unchanged.²⁵

One theme that flows throughout the Draft Guidance: merging parties are encouraged to engage with the CMA (and facilitate the dialogue between the CMA and third parties who may be affected by the remedy proposals) at an early stage to discuss (on a no prejudice basis) potential remedies. Such engagement may take place, according to the Draft Guidance, from as early as during the pre-notification period (potentially via informal update calls), following receipt of the issues letter in Phase 1, or following the SLC decision.²⁶ In practice, how early this discussion should take place would be a case-by-case analysis, taking into account the substantive analysis of the transaction, the complexity of the potential remedies and the strategy of the merging parties. The CMA highlights the need for early engagement where remedies involve significant RCBs,²⁷ complex divestitures,²⁸ and behavioural remedies.²⁹

The CMA's consultation on the Draft Guidance will run until 13 November 2025. Please do get in touch if you would like to comment.

²³ The CMA orders and undertakings register, listed on its website (link [here](#)).

²⁴ The buyer suitability criteria remain largely unchanged, with the four criteria (independence, capability, commitment and no further competitive issues) continuing to be relevant.

²⁵ Draft Guidance, Appendix A, paragraphs 26–33.

²⁶ Draft Guidance, Appendix A, paragraph 7.

²⁷ Draft Guidance, paragraph 3.36.

²⁸ Draft Guidance, paragraphs 4.4 and 6.60–6.61.

²⁹ Draft Guidance, paragraph 4.9.

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