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CLIENT ALERT

Government Proposes Reset of the UK's Competition Regime

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Introduction

The Government has announced a consultation on a series of legislative changes to overhaul the UK's merger control and market investigations regimes.

Merger control enforcement by the Competition and Markets Authority ("**CMA**") has become increasingly politically charged in recent months, with the CMA's historic track record seemingly at odds with the Government's pro-investment and pro-growth agenda. To address this issue, the CMA had announced its own steps to provide businesses with more certainty last year, but these efforts were limited to interpretation of the existing legislation.

The Government consultation now proposes to update the merger control and markets regimes, with key changes in three areas:

1. overhauling merger control Phase 2 decision-making by replacing independent panels as decision makers with sub-committees of the CMA Board;

2. curbing the CMA's existing discretion around the jurisdictional thresholds for merger reviews, and extending the time available at the end of Phase 1 investigations to agree remedies; and

3. simplifying the unwieldy market investigations regime by introducing a single-stage review capped at 24 months, regular remedy reviews at least every ten years, and greater use of "sunset clauses".

The consultation is now live and closes on 31 March 2026.[1] We outline the key proposals and assess the practical implications for UK competition enforcement in the months ahead.

How did we get here?

The Government's proposals build on a number of recent developments at the CMA. These include the CMA's 2024 procedural overhaul of its Phase 2 merger reviews; the replacement of CMA Chair Marcus Bokkerink with former Amazon country head Doug Gurr in January 2025; the Government's Strategic Steer to the CMA the following month; the launch of the CMA's Mergers Charter in March 2025; a revised jurisdiction and procedure guidance in October 2025; an updated merger remedies guidance in December 2025; and, most recently, a call for evidence on the CMA's approach to remedies (January 2026).

These developments reflect a step change in the CMA's guiding principles, both on substance and process. At the strategic level, the Government has been abundantly clear as to how it wishes the CMA to approach its work. From a practical perspective, the CMA has made a significant effort to streamline case handling and provide clearer guardrails for businesses within the parameters of the existing legislation.

Changes to the decision-making model for in-depth Phase 2 merger reviews

To date, Phase 2 merger investigations have been decided upon by an independent panel, drawn from a standing CMA roster of industry experts. These new decision makers at Phase 2 serve as a "fresh pair of eyes" to take over from the Phase 1 case team. In practice, practitioners observe that complex cases can present a challenge for panel members who need to get up to speed sufficiently within the time constraints of the review process.

The proposed reforms would replace the independent panel model with "sub-committees" of the CMA Board, aligning the merger review process more closely with the nascent digital markets regime. These sub-committees would comprise senior CMA executives, non-executive directors, and external experts appointed by the Government. The consultation highlights benefits such as enhancing CMA leadership accountability and improving predictability and consistency of outcomes.

The central concern is whether these claimed benefits come at the expense of decision-making independence. The emphasis on political accountability in the consultation creates a risk that the CMA Board may become more

[1] The detailed proposals can be found here: https://assets.publishing.service.gov.uk/media/696e4aa4bbcea094189e23b7/refining-our-competition-regime.pdf.

susceptible to broader Government objectives in its merger decisions and that transactions may be assessed on policy as well as legal grounds going forward.

The consultation also does not address a frequent criticism of the current regime: appeals remain confined to judicial review, offering limited prospects of practical relief. Removing the (albeit imperfect) checks and balances provided by an independent panel without strengthening appellate oversight would arguably make the UK an outlier among major regimes. By comparison, decisions of the European Commission face more substantive merits scrutiny, and the US agencies must persuade a court to block a deal in the first instance. The UK regime would also remain relatively light on procedural safeguards that are common elsewhere, such as robust access to file.

Narrowing two key jurisdictional thresholds for merger reviews: share of supply and material influence

Businesses often face uncertainty under the current law about when the CMA will have jurisdiction to review a merger.

While larger transactions may be caught by relatively clear turnover thresholds, the CMA can also assert jurisdiction under a more permissive "share of supply" test. This is not an assessment of market shares in a defined economic market; rather, it allows the CMA to claim jurisdiction where the parties together account for at least 25% of the supply (or acquisition) of goods or services of "any reasonable description".

The CMA has historically interpreted this test broadly (and at times inconsistently), including in transactions where the target had only a peripheral nexus to the UK (e.g. *Sabre/Farelogix*). This rather amorphous threshold is also used very frequently, having been the jurisdictional trigger for more than three quarters of Phase 1 cases in recent years.

The UK concept of a "merger" is also broader than businesses might expect. It requires only that a buyer acquires the ability to exercise "material influence" over a target. This generally captures any acquisition of 25% or more, and can also capture lower interests when combined with factors such as a board seat. This again contrasts with many other merger regimes which require an acquirer to obtain the higher threshold of "decisive influence" over a target.

In practice, it is therefore often difficult to be certain that the CMA could *not* assert jurisdiction over a given transaction, including minority investments that a buyer may not view as conferring meaningful influence over management.

The Government consultation now proposes to introduce a closed list of criteria for each of the share of supply and material influence tests, as follows:

- **Share of supply:** The share of supply test would be assessed against a closed list of six criteria: (i) value, (ii) cost, (iii) price, (iv) quantity, (v) capacity and (vi) number of workers.
- **Material influence:** Similarly, the Government proposes to tie the application of the material influence test to a set list of five factors: (i) shareholding or voting rights (e.g. at least 15%, or any shareholding or voting

rights in combination with other factors); (ii) board representation or appointment rights; (iii) special voting/veto rights over strategic decisions; (iv) access to confidential strategic information, and (v) commercial/financial/consultancy arrangements, with a reserve power for the Government to amend the list as new competition challenges emerge.

From a practical perspective, any attempt to limit the share of supply test is welcome. However, the number of metrics to assess, and the likelihood that the parties may not have clear data to assess their share on all of them, means it is unclear whether the proposals will actually narrow the CMA's jurisdiction in any meaningful way. The inclusion of factors such as "number of workers" and, more generally, the fact that the Government chose to stick to the "share of supply" test instead of moving to much more common "market share"-based thresholds (i.e. a test based on an economic market) indicates a clear intention to continue to allow the CMA broader jurisdiction than most authorities.

As regards the proposals around the "material influence" threshold, the long list of factors once more leaves the CMA with significant interpretative freedom and jurisdiction to review relatively minor investments. It remains to be seen whether the CMA itself chooses to provide more restrictive guidance on the boundaries of both the share of supply and the material influence tests.

More time for remedy discussions in Phase 1

The Government proposes to extend the window to agree Phase 1 remedies to 20 working days – double the current period. The objective is to reduce unnecessary Phase 2 referrals where proportionate fixes could be agreed at Phase 1 with limited additional time.

The practical impact of this proposal will turn on the CMA's willingness to accept suitable remedies. Nonetheless, a longer period at Phase 1 could facilitate slightly more complex remedies, particularly when read alongside the CMA's evolving approach to the remedies it may be willing to accept.

Simplification of the market study and market investigation regimes

The Government proposes to reshape the cumbersome market investigation process by combining market studies with market investigations. This would replace the current two-stage process with a single-phase process to be completed within 24 months, and potentially less – 6-12 months for the investigation and then a further 6-12 months for the implementation of remedies (extendable by a maximum of six months, in certain circumstances).

Under the current framework, formal investigations can take considerably longer, so once again this change is welcome in principle. Market investigations will remain a costly exercise for the CMA and market participants alike, and this tool is therefore likely to continue to be used relatively infrequently.

While any push for efficiency and expediency is helpful, it is notable that market investigation remedies can be more complex than in other forms of intervention. The benefit of speed therefore comes with a degree of caution as to whether the CMA will be able to deliver effective remedies within the more compressed timeframe.

The sun is setting on historical remedies

The Government consultation proposes that the CMA use "sunset clauses" by default when designing remedies; these are provisions under which remedy obligations will expire automatically after a certain period of time unless renewed. The CMA will also need to review market remedies at least every ten years to ensure the remedies are still relevant and remain effective, taking into consideration whether market conditions or technology have materially evolved.

Consistent with this proposal, on 19 January 2026 the CMA opened a consultation on the potential removal of 33 existing market investigation remedies (being around 60% of all such orders and/or undertakings to date) to test whether they should be removed or amended. The consultation closes on 2 March 2026.

Other notable reforms

The consultation package includes a number of additional changes, notably:

- codifying the CMA's ability to demand access to algorithms (e.g. pricing or ranking algorithms) operated by a company and information on algorithmic behaviour as part of its information-gathering powers for competition and consumer investigations (mirroring its powers under the Digital Markets Act);
- giving the Government a veto right over a "wide range" of key CMA guidance documents. Presently, the Government only has a say over CMA guidance assumed to be novel or of increased sensitivity (specifically, the digital markets regime, civil penalties and international co-operation). Given the volume of refreshed guidance recently published by the CMA, the practical effect of this change may take some time to be felt (but the CMA's open consultation on merger efficiencies could be a good test); and
- a proposal to pause merger and markets statutory deadlines over Christmas, in line with some other international merger regimes (e.g. the European Commission, which typically takes off 24 December to 1 January).

Conclusion

The Government has indicated that most major changes are unlikely to take effect before the end of 2026, but the proposals nonetheless set a clear direction of travel. They sit alongside the CMA's continuing work to refine the UK's competition regime in ways intended to enhance predictability for businesses and, ultimately, support economic growth. That ambition is welcome.

However, the current suite of proposals may amplify concerns about the limited checks and balances on CMA decision-making. The core features of the UK regime remain – a voluntary system coupled with broad jurisdiction for the CMA to review transactions – and it is uncertain how far the proposals will improve certainty for businesses in practice.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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