

October 16, 2025

UK CMA Consults on More Flexible Approach to Merger Remedies

Revised guidance from the Competition and Markets Authority aims to provide greater certainty about acceptable remedy design, to clear more deals

The CMA's proposed revised approach

On 16 October 2025, the UK Competition and Markets Authority ("CMA") [launched a consultation](#) on its draft revised Guidance on Merger Remedies (the "Draft Revised Guidance"). This follows the CMA's call for evidence launched in March 2025, which sought feedback from stakeholders on improvements to the UK merger control regime in line with the CMA's "4Ps" (pace, predictability, proportionality and process) to support growth, investment and consumer confidence in the UK competition regime. The CMA's revised approach to mergers is driven by the UK government's focus on reducing regulatory barriers to economic growth. The key changes in the Draft Revised Guidance include:

- A clear softening on behavioural remedies, with the CMA signalling more openness to behavioural remedies, even at Phase 1, where appropriate. This codifies a trend that we are already seeing in the CMA's recent decisions.
- Encouragement to engage with the CMA on remedies at an earlier stage. This is a marked change from our past experience where the CMA has often been reluctant to engage substantively on remedies until proceedings are advanced (often too advanced).
- Lighter revisions (despite the landmark decision accepting investment commitments in *Vodafone / Three*) in relation to customer benefits and efficiencies that could operate as counterweights to findings of post-merger harm – but with an indication of more work to come on this.
- Helpful language about a more cooperative remedies procedure, although the true impact of this will have to be judged in practice.

We consider the proposed changes to be overall a helpful development for deal-doers, formalising a shift in the CMA's position that we have already seen in practice in recent months. In the past, the high cost and limited range of viable CMA Phase 1 remedies – and the desire to avoid the burden and delay of Phase 2 – has cast a chill over some potential transactions. The available set of viable CMA remedies at Phase 1 is now clearly wider, and deals can be made with more assurance of an outcome in the UK that is proportionate to competition concerns and commercially reasonable.

The [CMA's consultation](#) runs to 13 November 2025.

Evolution or revolution?

The Draft Revised Guidance comes at a critical juncture for UK merger control. Under pressure from the Government and industry to support growth and be more business-friendly, the CMA has proposed changes that would have been unthinkable several short years ago, when the CMA was one of the most interventionist regulators with a notoriously rigid approach to

remedies. Since then, we have started to see a softening of the CMA's approach to merger remedies, even before the announcement of the "4Ps", with the CMA:

- accepting an unprecedented Phase 2 investment commitment over eight years, customer protections over three years and pre-set wholesale prices and contract terms for mobile virtual network operators over three years (*Vodafone / Three*); and
- accepting Phase 1 behavioural remedies, including appointing a third-party agent to manage sales and ensuring unfinished houses were constructed to one of the parties' pre-merger standards (*Barratt / Redrow*).

More recently, the CMA's approach has been shifting in more typical deals. For example, the CMA:

- accepted a hybrid structural and behavioural remedy at Phase 1, including granting IP and know-how licenses to a CMA-approved alternative developer of quartz sensors/transducers to support the competitor's growth, as well as a broader open offer to supply certain technologies to rivals on standard terms (*Schlumberger / ChampionX*); and
- market-tested, but ultimately rejected, a novel Phase 2 behavioural remedy to set up a financial fund to support the entry or expansion of competitors (*GXO / Wincanton*).

So while the revolution has been building momentum in recent years, the codification of the CMA's approach in the Draft Revised Guidance is a strong signal and a positive development for merger parties. We expect the CMA to be more willing to engage with parties on creative remedies and efficiencies, and ultimately to clear more deals. The consultation is open until 13 November 2025, with the CMA aiming to finalise the new guidance by the end of 2025.

Scope of review

The proposed changes to the CMA's Guidance on Merger Remedies (the "Current Guidance") are designed to embed the CMA's new "4Ps" framework into its merger remedies processes, and encompass feedback from and extensive engagement with stakeholders. The Revised Guidance and accompanying consultation document focus on the same three broad themes, outlined below.

Theme 1: the CMA's approach to remedies

The CMA has proposed significant changes to its approach to merger remedies, which would allow greater flexibility, particularly in relation to behavioural remedies, and bring it more in line with peer regulators such as the European Commission. This should reduce some of the friction that has occurred on global deals such as *Microsoft/Activision* in recent years, where the Commission accepted a behavioural remedy but the CMA declined to do so and prohibited the transaction (until restructured).

- **Analysing the effectiveness and proportionality of remedies:** The CMA proposes to keep the current analytical framework that sequentially considers the effectiveness and then proportionality of merger remedies in the Draft Revised Guidance, while acknowledging that this framework allows for (i) more flexibility in the assessment of effectiveness than is set out in the Current Guidance (for both structural and behavioural remedies); and (ii) greater clarity on each step the CMA applies in its proportionality assessment.
- **Behavioural and structural remedies:** In a marked change from its previous position under the Current Guidance, the CMA now considers that behavioural remedies can be effective in "some cases". While we have already seen a softening of the CMA's approach in recent cases (see further below), this is a significant and welcome development for parties to deals where structural remedies are not suitable (e.g. vertical mergers such as *Microsoft/Activision*). The Draft Revised Guidance sets out a number of factors that may help reduce the risks associated with behavioural remedies, and will form the basis for the CMA's assessment.
- **Complex divestiture remedies:** The CMA will retain its preference for the divestment of an existing business over a carve-out remedy, but acknowledges that carve-out remedies are commonly considered by the CMA in practice and therefore provides more clarity on the approach it will adopt in assessing the effectiveness of carve-out remedies.
- **Remedies at Phase 1:** The CMA proposes to update the Current Guidance to (i) remove the presumption against behavioural remedies being accepted at Phase 1 (in line with the revised approach to behavioural remedies in general) but keep its 'clear-cut' Phase 1 standard; and (ii) explicitly state that the earlier parties start engaging with the CMA on remedies, the more likely it is a remedy will meet the 'clear-cut' standard. And importantly for cases involving local markets, the CMA proposes to revisit the position that only a restoration of the premerger market structure will be an effective Phase 1 remedy, but only for cases where the CMA has relied on a filter or decision-rule. This is likely to be useful in retail markets where there are a number of fascia in the same local catchment area.

- **The use of trustees and independent experts to assess remedies:** The CMA proposes to make greater and earlier use of monitoring trustees and independent experts, on a voluntary basis, particularly where the remedy proposal is complex or highly technical in nature. This could assist the merger parties in satisfying the CMA that remedy will be effective.

Theme 2: preserving pro-competitive merger efficiencies and merger benefits

Updates under theme 2 are less extensive than under theme 1, and certainly do not go as far as many stakeholders suggested in response to the call for evidence. The CMA flags that some of the feedback it received related instead to its competitive assessment of efficiencies (which is beyond the scope of the merger remedies review) – but signals that there is more to come in due course on its substantive assessment of efficiencies, which will also include whether to revise the approach to relevant customer benefits (“RCBs”).

- **Rivalry-enhancing efficiencies:** Much of the CMA’s feedback here appears to have related to the *Vodafone / Three* decision, with respondents keen to ensure that these efficiencies are not only available in regulated markets, and where very detailed post-merger plans can form the basis of an efficiency enhancing remedy. While giving guidance how to secure merger-specific rivalry-enhancing efficiencies, the Draft Revised Guidance does not address these specific concerns, opting instead to directly reference the *Vodafone / Three* remedies, and specify criteria for acceptance – including that the remedy can be “*clearly specified, appropriately monitored and enforced, and not easily circumvented.*”
- **RCBs:** There are no changes to the high evidentiary bar for RCBs, which the CMA flags are “*not expected to arise very often*” (as per the Explanatory Notes to the Enterprise Act 2002). The changes instead focus on providing more guidance on what RCBs are and when they are relevant, indicative examples of how the CMA will approach their assessment as part of its remedies analysis, and encouraging early consideration of RCBs (which the CMA expressly acknowledged will not imply that the parties accept there may be an SLC). While merger parties will be expected to produce “verifiable evidence” regarding the nature and scale of RCBs, the CMA will “*make its assessment in the round, rather than seeking to quantify precisely the extent of any SLC and any claimed RCBs.*”

Theme 3: running an efficient process

Given the recent changes to the CMA’s Phase 1 and Phase 2 procedures, the consultation proposes more modest changes here, and through further updates to the CMA’s Guidance on Jurisdiction and Procedure. The main concerns from the evidence gathering stage were (i) not having sufficient insight at an early stage on the CMA’s concerns (which the CMA considers has been resolved through changes to the Phase 1 process, including express provisions for teach-ins and update calls with the case team); and (ii) early engagement on remedies being genuinely without prejudice to the finding of an SLC at Phase 1.

To address (ii), the CMA will include some clarifications in its Guidance on Jurisdiction and Procedure, covering (i) more guidance on remedies engagement, (ii) separate engagement on remedies outside of the Issues Meetings, (iii) guidance on “fix-it-first” remedies, and (iv) further express references to remedies discussions being “without prejudice” to the substantive assessment. The updates also make clear that engagement on complex remedies should start as early as possible, including during pre-notification.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Ross Ferguson

+44-20-7601-8646

rferguson@paulweiss.com

Annie Herdman

+44-20-7601-8602

aherdman@paulweiss.com

Nicole Kar

+44-20-7601-8657

nkar@paulweiss.com

Henrik Morch

+32-2-884-0802

hmorch@paulweiss.com

Rich Pepper

+44-20-7601-8660

rpepper@paulweiss.com

Alexandra Hackney

+44-20-7601-8680

ahackney@paulweiss.com

Lauren O'Brien

+44-20-7601-8648

lobrien@paulweiss.com

Associate William Feerick and Senior Knowledge & Innovation Lawyer Catherine Hammon contributed to this Client Memorandum.