Department for Business and Trade
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By email: competitionpolicy@businessandtrade.gov.uk

31 March 2026

Re: Refining our competition regime

UK Private Capital is the association of the UK private capital industry. We represent 600 firms including the wider ecosystem of professional advisers and investors. Private capital consists of private equity and venture capital which make long-term investments to grow British businesses and build a better economy. Private credit and venture debt provide active and engaged debt finance to businesses.

The private capital industry backs 13,000 UK businesses, nine in 10 of which are small or medium-sized enterprises. Businesses backed by the industry employ 2.5 million people across the UK and contribute 7% to GDP. In 2024, £29.4bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. This increased investment has fuelled the growth of businesses across the UK, with six in ten (58%) of the businesses backed in 2024, located outside of the capital. These investments are long term, with an average investment period of six years, in contrast to less than a year in public markets.

UK-based private capital specialists have raised £190bn of funds, known as dry powder, which is expected to be invested over the next three to five years. The industry invests for a better future by backing some of the UK's best loved businesses, developing the companies of the future and delivering solutions to global problems.

We welcome these reforms which give a statutory footing to changes already made within the CMA over the last year and import aspects of the digital markets processes into the CMA's mainstream work. The package reflects the output of important consultation that has already occurred with the private capital industry.

Below we emphasise the key considerations we urge the CMA to take into account when taking forward this package of reforms. More detailed responses are covered further down.

- Abolishing the CMA's independent panel system – we think that this reform may create a more streamlined decision-making process, while handing procedural decisions to case teams is a welcome development as it may ease some of the frictions that can occur at Phase II processes.

  However, overall, abolishing the panel system has been divisive and therefore the impact should be monitored once implemented. When consulting with members, this reform raised questions about the independence of the regime and the implications of the consolidation of power. It will also be important to manage the bandwidth of key senior CMA executives.

The consultation also does not address a frequent criticism that appeals remain confined to judicial review, which offer limited prospects of practical relief. On this, we think the Government should go further, by pairing the proposed change to the decision-making system proposed with a change to the standard on appeal for mergers and opening of 'access to file' in respect of in-depth mergers.

- Narrowing the CMA's merger jurisdiction – the CMA has one of the broadest merger jurisdictions of any authority globally, therefore these proposals are welcome and were anticipated by the industry. However, the CMA would retain the "material influence" and "share of supply" tests, on the basis of which the CMA has jurisdiction to review minority interest acquisitions and mergers in relatively small markets where there is a concentration of market share. It is not clear to us that introducing exhaustive criteria instead of illustrative criteria for each of the share of supply and material influence tests is the best way to reform jurisdiction.

  These proposals, consistent with the direction of travel over the last 18 months and the recently amended guidance on jurisdiction and procedure mentioned above, are overall much more modest notification regimes when compared with other jurisdictions:
  - Share of supply – while we note our comments on criteria, the list set out is an improvement on the current ability to consider "some other criterion, of whatever nature". We think that the Government should go further and consider a "market share" based test as in other jurisdictions.
  - Material influence – similarly to share of supply, the list is an improvement on the current arrangement. However, we think that "decisive influence" should be considered, as in other jurisdictions.

  The changes should mean that our members and their advisors have somewhat greater clarity on whether transactions fall within the CMA's jurisdiction. However, the proposed 'closed lists' remain broad and the CMA retains significant discretion. As a result, it may be difficult for merging parties to gather the relevant data for a specific category. We anticipate these reforms will have limited impact in practice given the continued breadth of the proposed definitions, difficulties with data and due to changes already made by the CMA to its guidance.

  Overall, we think the Government needs to go further in order for these reforms to have a significant positive effect.

- Simplification of the markets regime – this represents a significant change to what has historically been a lengthy process and is welcome. UK Private Capital previously advocated for these types of change. We therefore applaud the Government in bringing them forward.

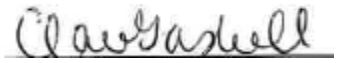
- Welcome changes to timelines:
  - Extending the time available at the end of Phase 1 investigations to agree remedies – the practical impact of this proposal will depend on the CMA's willingness to accept suitable remedies. However, a longer period at Phase 1 may

facilitate slightly more complex remedies, particularly when read alongside the CMA's evolving approach to the remedies it may be willing to accept.

- Statutory deadlines will be paused over Christmas – we think this is a positive step that will be welcomed by our members.

We have responded to the questions most applicable to our membership in the next section. Please do not hesitate to get in touch if you have any questions on any of the areas covered, or if you would like to discuss it in more detail (please contact Ciaran Harris charris@ukprivatecapital.co.uk / Tom Taylor ttaylor@ukprivatecapital.co.uk).

Yours sincerely,



Clare Gaskell

Chair, UK Private Capital Legal Committee

Consultation Questions

Chapter 1. Enhancing accountability for CMA decision-making in mergers and markets

Q1. 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 current panel system was introduced when the Government decided to merge the Office of Fair Trading, in charge of Phase 1 reviews, and the Competition Commission, in charge of Phase 2 reviews, into a new single competition authority, the Competition and Markets Authority. The aim of the panel system was to maintain the 'fresh pair of eyes' which resulted from transactions previously being reviewed by two separate bodies at Phase 1 and Phase 2.

Our members' view is that the panel system in general has worked well but that the system also has its shortcomings. We commend the Government for reviewing the Phase 2 decision making process in mergers and markets, in particular with the aim of achieving greater speed, predictability and consistency.

The key priorities of our members are for the merger and markets regimes decision-making process to be independent of Government, predictable and not overly time-consuming.

Our members would expect merger and markets decisions to be more predictable and consistent if the views and experience of members of the CMA Board are fed into those outcomes through the proposed new structure while also retaining the expertise of individuals with external experience.

One of the main concerns around the current panel system is the lack of policy consistency. Decisions by the panel will depend on the individual panel chair and panel members, and it is difficult to achieve a predictable regime when each independent group of panel members is free to make its own decisions without central oversight.

We hope that replacing the panel with a CMA Board-led decision-making approach will not only ensure greater accountability for the CMA in Phase 2 decisions but will also improve consistency and predictability.

However, overall, abolishing the panel system has been divisive and therefore the impact should be monitored once implemented. When consulting with members, this reform raised questions about the independence of the regime and the implications of the consolidation of power. It will also be important to manage the bandwidth of key senior CMA executives.

Q2. 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.

Yes, on the whole our members welcome the proposed reform on the basis that it is looking to achieve a more streamlined and efficient decision-making process. There are however some caveats, in particular around the independence of the Phase 2 decision-making process and the consolidation of power in the CMA executive, which will need to be addressed with appropriate checks and balances.

The two main options in this regard, which are not included in the consultation, are in our view first of all a change to the standard of review from judicial review to a full merits review, and

secondly granting the parties access to the file in phase 2 merger investigations, as is the case with phase II merger investigations by the EU Commission.

Q3. Do you support the proposed membership requirements for the mergers and markets sub-committees/committees? [Yes / No / Not sure] Please explain your views.

We support the proposed membership requirements for the mergers and markets sub-committees. Including at least 50% of non-executive members drawn from the non-executive directors of the Board or from a pool of expert decision makers will ensure that the CMA continues to benefit from a range of experts with the necessary skills and experience to contribute to the Phase 2 decision-making.

Chapter 2. Markets Work and Market Remedies

i. Enhancing the CMA's markets work

Q4. 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.

Our members welcome the Government's initiative to improve the pace, predictability, proportionality and flexibility for the CMA's markets work and the recognition that the current regime has been burdensome and expensive for businesses involved.

Replacing the existing market study and market investigation system with a new single-phase market review tool should considerably reduce the end-to-end duration of the market review process compared to the timings under the current regime. It will also reduce uncertainty, burden on businesses and costs, as it will allow the CMA to be more agile and adapt more flexibly to the issues under consideration as and when its understanding of the market evolves.

It will be important to ensure that the revised legislation contains the necessary procedural safeguards to ensure there are both satisfactory consultation points (on theories of harm, as well as potential remedies) as well as decision points, that can be reviewed by the CAT if necessary (e.g. on finding adverse effects or on remedies). These features must be protected to preserve the rights of defence while delivering pace and predictability.

Q5. 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.

Yes, our members support a 24-month cap with a maximum six-month extension only in exceptional circumstances. The legislation should ensure that the circumstances in which the timeline can be extended by six months, as well as the process to be followed by the CMA to implement the extension, are clear.

In our view, the 24-month period should only apply in appropriate cases where complex remedies are required.In the majority of cases, the aim should be to achieve shorter standard timeframes, typically within 18 months. In line with its duty of expedition, the CMA should aim to complete its investigations under the single tool as soon as is reasonably practicable.

The legislative changes should ensure that the CMA is accountable and transparent on published timelines/roadmaps and information requests and this should also be reflected in the CMA's guidance on the new single phase markets tool in due course.

Q6. Do you agree there should be a single legal test for single-phase market reviews? [Yes / No / Not sure] Please explain why.

Yes, we agree that a single tool requires a single test, in order to remove any duplication and to preserve the flexibility and other benefits of the single tool. However, in our view this test should be anchored in competition law to ensure the focus remains on features that restrict, distort or harm competition.

Q7. If so, should this be the adverse effect on consumers test? [Yes / No / Not sure] Please explain why.

No, on the nature of the single legal test, we are not convinced that the case has been sufficiently made for a move to a single adverse effect on consumers test. This would be an important shift, and the pros and cons should be further considered and consulted on before being implemented into the legislation. It should also be placed in the context of the new enhanced consumer protection regime under which the CMA now has stronger powers to bring enforcement cases against those engaging in conduct that harms consumers.

The UK's market investigation regime is recognised globally for allowing flexible remedies and intervening before consumer harm materialises. The adverse effect on competition test assesses whether market features harm competition and not only whether consumers are immediately harmed. Moving to an adverse effect on consumers test may ignore harms to the competitive process that do not produce immediate or easily measurable consumer detriment and could fail to address issues that undermine long-term market health and long-term consumer detriment.

ii. CMA Market Remedies

Q8. Do you agree the CMA should consider sunset clauses when designing remedies? [Yes / No / Not sure] Please explain why.

Yes, we agree that the CMA's commitment to impose sunset clauses by default should be included in the legislation, with the CMA required to make a reasoned case for not doing so in exceptional cases.

Where a sunset clause is included, the CMA should consider reviewing the remedy around the half-way point to ensure only effective and necessary remedies are maintained.

Q9. Do you agree the CMA should review market remedies at least once every 10 years? [Yes / No / Not sure] Please explain why.

Yes, we agree that the CMA should be required to review market remedies at least once every 10 years. However this should be the baseline, and the CMA should be required to consider earlier reviews where warranted, particularly for high-burden remedies or remedies in developing or fast-moving markets.

It is not clear how this 10-year review period relates to the sunset clauses, but we assume that it will apply to instances where no sunset clauses are imposed, or where these are of a longer duration.

Q10. 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.

Yes, a limited flexibility for the CMA to delay the review of remedies beyond the 10-year period may be acceptable provided that (i) "exceptional circumstances" is defined as truly exceptional, (ii) the CMA is required to publish its reasoning, including a revised review date, and (iii) there is an opportunity for the decision to be overseen by the CAT.

iii. Concurrency

Q11. Should sector regulators be able to oversee market remedies imposed or accepted by the CMA? [Yes / No / Not sure] Please explain why.

Yes, we consider that this would reduce duplication and overlap where market remedies are enforced and monitored in sectors where there are dedicated regulators which have competition powers and the necessary sector expertise to do so. Our members are also of the view that requiring the CMA to consult with sector regulators on the design of remedies would ensure that sector expertise and the nuances of sector regulation are fully considered at remedy design stage.

The CMA already works closely with the various sector regulators such as Ofcom, Ofwat, Ofgem on Competition Act 1998 cases and market studies, and there are an existing concurrency framework and internal procedures in place for the CMA to work with sector regulators.

Enabling sector regulators to oversee market remedies imposed or accepted by the CMA is a natural extension of this ongoing working relationship, and we note there is already precedent for this, for example in Vodafone/Three, where the CMA accepted remedies from the merging parties which relied on monitoring by Ofcom.

Q12. 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.

Yes, our members support the proposals for a single-phase market review tool. We also support the proposal for a more consultative approach, where the CMA must consider undertaking a single-phase review following a request from sector regulators and respond to it within a set timeframe, including with details of actions it intends to take. We expect this would allow for a more flexible market review framework and allow the CMA more control over its resourcing.

Q13. We welcome any other views or evidence on improving the concurrency framework.

N/A

Chapter 3. Mergers

i. Increasing predictability in merger control

Q14. 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, our members support the Government's stated aim of increasing predictability in merger control, in particular by bringing greater clarity around the jurisdictional tests of 'share of supply' and 'material influence', which are very broad and allow the CMA to take jurisdiction over a very broad range of transactions.

However, the proposed change to the share of supply test by moving to a closed rather than illustrative list of criteria in order to decide whether the 25% or 33% thresholds are met, while being a positive development, is in our view unlikely to deliver meaningful change.

The principal source of unpredictability in the share of supply test, which is the CMA's broad discretion in determining the relevant category of goods or services and the geographic frame of reference for the purpose of the test, remains unchanged.

This broad discretion is exercised before the share of supply is calculated, and neither revising nor limiting the criteria to be used in that calculation can plausibly improve predictability as is suggested.

Q15. Do you support the proposed criteria for inclusion? [Yes / No / Not sure] Please explain why.

The proposed criteria reflect existing statute and CMA practice. While codification increases legal certainty, it does not make any material changes. The CMA will continue to choose whichever metric best fits its case theory, and outcomes will still depend on market definition choices. As such, the practical value of this reform is limited.

Q16. Are there any additional criteria that should be included? [Yes / No / Not sure] Please explain why.

Yes, we believe that the existing criteria are unlikely to be sufficient in today's increasingly dynamic and tech-focused economy. The current statutory list reflects a legacy, industrial era understanding of 'supply', i.e. one in which goods and services are sold at a price, production involves capacity and workers, and competitive significance correlates with revenue, units sold, or cost. Many leading digital platforms and services are available for free (at least for basic packages) and are monetised through indirect means such as advertising. In such markets, the criteria that are proposed bear little relationship to (for example) usage, user dependence, or quantities of user data acquired.

Q17. Would the proposed reform for the share of supply test improve predictability for businesses? [Yes / No / Not sure] Please explain why.

No. In our view, the proposed reform to the share of supply test will have minimal impact on predictability. The CMA will retain broad discretion in defining the relevant product market and geographic frame of reference, as well as in selecting from or combining the listed metrics. Businesses will therefore continue to require professional guidance to confirm jurisdiction, and the proposal is unlikely to reduce uncertainty in transaction planning.

As we note in our introductory remarks, we think that the Government should consider a "market share" based test to replace the share of supply test. This would be a positive step and have a real impact on increasing predictability in merger control.

Q18. 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. Statutory clarity for the factors the CMA can take into account in applying the material influence test is a welcome development and should mean that businesses will have greater clarity on whether their transactions fall within the CMA's jurisdiction. However, the proposed list largely codifies existing CMA practice as set out in its revised guidance on jurisdiction and procedure, and the practical impact of this change is therefore likely to be limited.

Q19. Do you support the factors proposed for inclusion? [Yes / No / Not sure] Please explain why.

The factors listed (shareholdings, voting rights, board rights, vetoes, information access, commercial ties) reflect the CMA's current practice but do not, in our view, add any meaningful clarity to the test. To support predictability, these should be supplemented with rebuttable presumptions regarding shareholding thresholds and clearly defined safe harbours for ordinary minority investor protections such as basic information rights and anti-dilution provisions.

Q20. Are there any additional factors that should be included? [Yes / No / Not sure] Please explain why.

No. We are not in favour of adding additional factors on the basis that it risks reducing legal certainty. It could encourage overly cautious notifications and undermine the reform's aim of reducing the burden on business.

Q21. Would the proposed reform for the material influence test improve predictability for businesses? [Yes / No / Not sure] Please explain why.

No. In our view, the proposed reform for the material influence test does not represent a material change. It simply codifies existing CMA guidance and caselaw and fails to add meaningful clarity to the test. In that regard the consultation is in our view a missed opportunity when it comes to improving predictability for business.

As we note in our introductory remarks, we think that the Government should consider "decisive influence" in place of material influence. This would be a positive step and have a real impact on increasing predictability in merger control.

ii. Providing more time to agree remedies at Phase 1

Q22. 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.

Yes. Our members welcome the proposed extension of time to agree remedies at Phase 1 to allow more time for 'near misses' to be worked through and facilitate more complex remedies.

However, the main constraint at this point of the merger timeline is not the length of the post-SLC window but the lack of early visibility over the CMA's emerging remedy expectations. Without earlier signalling, an additional 10 working days is unlikely to materially increase the number of cases resolved at Phase 1, particularly where remedies require divestiture, purchaser testing or third-party engagement.

Also, the proposed addition still requires merging parties to submit a proposal by working day 5. In our view the additional time proposed should be shared equally between the CMA and the merging parties.

Chapter 4. Further cross-cutting changes

i. Stronger investigative powers for algorithms

Q23. 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.

Some of the proposed requirements in relation to algorithms are far-reaching. Requiring businesses to produce simulated outputs will not always be possible. Requiring businesses to vary their usual conduct, such as changing how services or digital content are presented to users, to better understand algorithmic behaviour, may be appropriate in the context of the CMA's digital market investigations regime but careful thought should be given to the implications of extending this to the wider competition and consumer regimes.

In our view, before extending these powers more widely, there should be a more detailed consultation that clarifies these powers in greater detail and considers how far businesses will be expected to go to comply and how they can protect their fundamental rights.

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

Q24. 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.

No, we do not think the Secretary of State should have a formal role. Expanding the formal role for the Secretary of State in a wide range of key guidance documents is in our view not necessary. It may be appropriate for certain key guidance, such as on international cooperation or on penalties, but what precisely qualifies as key guidance should be clearly specified.

iii. Excluding the Christmas period from statutory time limits

Q25. Do you agree a longer Christmas period should be excluded from merger and markets statutory time-limits? [Yes / No / Not sure] Please explain why.

Yes. Our members agree that this would be a positive development and aligns with the practice of other leading international competition authorities such as the EU Commission which in 2025 closed its office from Wednesday 24 December 2025 until Monday 5 January 2026.

Q26. If so, what length should the pause be?

The pause should be of sufficient duration to allow a meaningful break (for example, between two and three weeks) for those required to respond to the requests for information or consultations that are subject to statutory time limits.