

CMA merger control – A more investment friendly regime?

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In response to pressure from the UK government, the CMA continues to implement changes to UK merger control to showcase its commitment to the '4Ps' (pace, predictability, proportionality and process) announced earlier in 2025.

The CMA has published updated guidance on its merger intelligence function ([CMA56](#)) and jurisdictional rules and review process ([CMA2](#)), as well as an updated [Merger Notice template](#). The updated guidance took effect on 28 October and applies to mergers where the formal Phase 1 investigation commences on or after that date. The procedural changes are already being applied to cases where the initial draft merger notice was submitted after 20 June. These updates should allow for more constructive and efficient engagement with the CMA. However, despite these improvements, deal teams should be mindful that the CMA's merger function remains very active. Assessing CMA risk early on and designing engagement strategies to mitigate adverse timing and other execution risks should remain a priority for cross-border deals with UK nexus.

Engagement with the CMA Merger Intelligence Committee (MIC)

The MIC considers 1,000+ transactions per year, frequently raising queries where no proactive outreach is received. This high level of scrutiny is expected to continue for a broad range of deals.

- The updated jurisdictional guidance seeks to improve predictability by further clarifying the CMA's approach to jurisdiction in respect of the '**material influence**' and '**share of supply**' tests (see paras 4.17 to 4.35 and 4.66 to 4.75 of CMA2 for more details). While this is helpful, in practice both tests remain broad and uncertain relative to thresholds in other jurisdictions, allowing the CMA considerable discretion to scrutinize deals of interest.
- **Briefing papers** submitted to the MIC will continue to play an important role, allowing dealmakers to explain why a deal should not be reviewed, and seek clarity from the CMA early post-signing whether a formal review is warranted. Briefing papers are also increasingly used to explain why deals involving global markets do not require formal CMA review, in line with the updated guidance confirming prioritization of deals with distinct UK effects, allowing other agencies to lead on those affecting global markets.
- Despite changes to guidance designed to provide additional legal certainty, the MIC is actively considering whether deals meet the new '**hybrid**' jurisdictional test, which is the case if one party has a UK share of supply of at least 33% and a UK turnover exceeding £350 million, and the other party has a UK nexus. This threshold can be satisfied even if there is no competitive overlap. Although the intent behind this threshold was to analyse acquisitions of nascent competitors by well-established players, it is currently applied more broadly.
- However, a '**safe harbour**' **exception** is available for deals where each party has an annual turnover of less than £10 million in the UK, meaning neither a briefing paper or a notification is required.

Changes to the review process

For the smaller number of deals subject to formal review, the CMA has also implemented various changes to improve efficiency.

- **Pace:** KPIs were introduced to reduce the pre-notification period from ~70 to 40 working days; and review of straightforward Phase 1 cases from ~35 to 25 days. While these KPIs are confirmed in the updated guidance, they are not binding, and reviews are still moving relatively slowly.
- **More extensive upfront disclosure:** To help the CMA meet its KPIs, the Merger Notice template has been updated to request additional information upfront (including additional documents, bidding data, and customer and competitor contact details). In practice this means additional upfront burden on merger parties, which will need longer to prepare draft notifications.
- **Remedies:** The CMA is currently consulting on its revised remedies guidance. This guidance represents a marked shift, particularly around openness to behavioural remedies (including removing the presumption against behavioural remedies at Phase 1). The revised guidance also pushes for earlier engagement on potential remedies, increasing the likelihood of conditional clearance being possible at Phase 1. This builds on existing procedural enhancements introduced at the beginning of 2025, which allow parties to request fast-track of mergers to an in-depth Phase 2 review (without needing to concede that there are competition issues). This option has not yet been used but is likely to be useful for suitably complex mergers.
- **De minimis exception:** The CMA is increasingly using the 'de minimis' exception (applied 5 times since 2024), which allows clearance at Phase 1 even where potential competition concerns are identified, but where the market(s) concerned are not of sufficient importance to justify the costs of a Phase 2 reference. Dealmakers should consider early on whether the markets relevant to their transaction allow them to argue for the application of this exception.

The 4Ps implementation has resulted in various (aspirational) improvements to the review process once an investigation is launched. Dealmakers should make the best possible use of these and hold the CMA to its commitments, but should not expect an easy path to clearance for complicated transactions.

Changes to the Phase 2 decision-making process under consideration

The Department for Business and Trade will also consult on whether to replace the independent panel of experts that currently acts as the Phase 2 decision-making body with a board committee model. This would effectively bring decision making in-house and end a system meant to ensure that Phase 2 decisions are structurally independent from and not invested in the decision made by CMA staff at Phase 1. There is some scepticism regarding what this would mean for independence of CMA decision making from ministers, as well as the loss of expertise it would entail. The consultation may also lead to consideration of whether CMA decisions should be subject to a 'full merits' court review, rather than the much more limited judicial review standard currently in place.

Key takeaways

- Despite changes to the UK merger process designed to make processes more efficient and improve engagement, CMA merger control remains a key consideration for global deals.
- While fewer deals are being referred for in-depth probes, the CMA is still calling in deals that may pose competition concerns. The MIC will continue to look at 1,000+ deals a year. While in 2024 the CMA investigated 38 mergers at Phase 1, in 2025 year to date the CMA has already launched 32 investigations.
- Dealmakers should assess call-in risk early on, and ensure contractual provisions address the peculiarities of the UK voluntary regime (e.g., with the use of 'springing conditions').
- CMA strategy (e.g., timing of a briefing paper) should be coordinated with reviews in other jurisdictions, such as the EU (where the authority is also currently subject to political pressure) and Australia (which has a new mandatory regime and close links with the CMA).
- The CMA's updated policies and procedures, however, do mean that more substantively complex deals face better prospects of timely clearance and, where issues are identified, there is a greater openness to accepting behavioural commitments.

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