

Major changes to UK merger control proposed – What you need to know

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The UK government has proposed major changes to the UK merger control decision-making procedures and jurisdictional tests as part of a broader initiative to encourage investment and promote economic growth. Whilst proposed changes are unlikely to reduce the number of deals subject to CMA scrutiny, they are likely to make CMA decision-making more susceptible to political interference.

A more business-friendly CMA?

Since the Labour Party's 2024 general election win, the UK government has been taking measures to make its merger control regime more business friendly. As part of this initiative, the UK government launched a consultation on 20 January 2026 on its proposals for major changes to UK merger control decision-making procedures, jurisdictional tests and related Competition and Markets Authority (CMA) powers.

The proposals form part of the Government's broader drive to encourage investment and demonstrate that the UK takes a business-friendly, proportionate approach to merger control enforcement. Whilst they rightly seek to clarify the scope of the CMA's various discretionary powers, current plans (if legislated) are unlikely to reduce the total number of deals subject to CMA scrutiny. Importantly, the Government is also proposing far-reaching changes to CMA decision-making in Phase 2 investigations that risk making outcomes more susceptible to government interference.

Changes to Phase 2 decision-making

The Government is proposing replacing the independent Panel-led Inquiry Groups of academics and business experts, who currently decide on Phase 2 merger investigations, with a Mergers Board Committee appointed by the CMA Board.

The Government hopes to thereby increase the speed and predictability of Phase 2 reviews. However, the proposal could increase political interference, as members of the CMA Board are more directly accountable to the UK Parliament. The proposed changes certainly increase the opportunity for lobbyists and other government-relations personnel to influence decision-makers directly. A more politicized CMA may counteract the aim of these changes, which is predictability.

To offset the decrease of checks and balances from removing independent, non-Government appointed experts, it is possible that responses to the consultation will call for CMA decisions to be subjected to a "merits"-based review. Currently, it is only possible for transacting parties to challenge a CMA decision on the more limited procedural "judicial review" grounds of illegality, irrationality and unfairness.

Changes to remedy discussions after Phase 1 investigation

The Government has also suggested giving merging parties longer to agree on remedies at the end of a Phase 1 review. Currently, parties have up to 5 working days to submit remedy proposals following a Phase 1 decision and the CMA has

10 working days to decide whether to accept these. The Government proposes to extend this from 10 to 20 working days as well as to give the CMA discretion to grant parties a 5 working day extension to submit their remedy proposals. This change could help avoid a lengthy (up to 24 weeks) Phase 2 investigation by giving parties more time to agree workable remedies at the end of a Phase 1 investigation.

Changes to the jurisdictional rules

In an attempt to create increased legal certainty as to which deals are notifiable, the proposal also seeks to clarify the jurisdictional tests:

- **Material influence test.** Proposal to make an exhaustive list of factors – but not change the factors themselves – that the CMA will consider when determining whether a deal amounts to an acquisition of material influence or *de facto* control. The aim is to increase predictability in the application of the test. However, the test will still provide the CMA with wide discretion to capture most deals as the factors remain broad in scope (e.g., whether the parties have existing “consultancy arrangements”).
- **Share of supply test.** Proposal to delimit the share of supply test by reference to already-existing criteria, scrapping the catch-all criterion of “some other criterion, of whatever nature”. While the proposal provides increased certainty, the criteria for the share of supply test cast a far wider net than market share tests in other jurisdictions, even without the open-endedness.

Notably, the consultation is silent on the vague concept of “UK nexus”. The “UK nexus” test forms part of the recently introduced hybrid test, which captures deals where one party has >£350 million UK turnover and >33% UK share of supply provided the other party has a “UK nexus”.

Other proposed changes

- Imposing default sunset clauses that cause remedies to fall away after a certain period of time
- Extending the CMA’s powers to investigate and address harmful practices caused by algorithms
- Introducing a requirement to consult, or seek approval from, the Secretary of State before publication of key guidance documents
- Replacing the 3+ years market studies/investigations with a shorter (1-1.5 years) market review tool
- Giving the CMA discretion to decide whether to advance market studies on referral from sector regulators and to allow such regulators to monitor and enforce remedies after they have been imposed by the CMA

Looking ahead

While the sentiment behind the changes – speed, predictability and certainty – are welcome, it remains to be seen whether they will have the intended effect, if adopted. At this stage, the changes are only proposals subject to consultation which would ultimately need to be passed into legislation. Merging parties should therefore not change their current approach to CMA risk assessment for any one deal, nor their approach to risk allocation in deal documents. They should, however, keep close to the proposed reforms and be ready to adapt their approach, as required, if legislative changes are made.

Corporates have an opportunity to comment on the consultation until March 31, 2026.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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