

# Kluwer Competition Law Blog

## The CMA's "revised" approach to UK merger control and impact on M&A

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The UK's Competition & Markets Authority (CMA) is taking significant steps to evolve its approach to merger control, introducing a new Mergers Charter and launching a review of its merger remedies framework. These initiatives mark a notable shift towards a more flexible and business-friendly regulatory environment, reflecting the government's broader economic growth agenda. By streamlining merger reviews, offering greater clarity on jurisdictional thresholds, and exploring more flexibility with respect to remedies, the CMA aims to reduce uncertainty for businesses engaging in M&A. However, this evolving approach—shaped by increasing political influence—raises important considerations for dealmakers navigating the UK's competition landscape.

### The UK Government's Strategic Steer: A New Pro-Growth Focus

In February 2025, the UK government published for consultation a [draft strategic steer](#),<sup>[1]</sup> which aimed to align its regulatory activities with the "overriding national priority" of economic growth.

On 12 March 2025 the UK's Competition & Markets Authority (CMA) announced the next stage in its evolving approach to merger investigations, unveiling a "[Mergers Charter](#)" for businesses and launching a "[call for evidence](#)" to review its approach to merger remedies.<sup>[2]</sup>

The CMA has faced increasing criticism about its approach to merger reviews and remedies. The latest announcements signal a notable shift towards a more proportionate and flexible framework and supposedly more business-friendly regulatory environment in the UK. For businesses engaging in M&A activity in the UK, these changes could have significant implications, requiring careful strategic planning at an early stage.

### Streamlining Merger Reviews and Implications for M&A

Whilst the CMA retains its statutory independence, the government's steer indicates that:

- There will likely be a **lower appetite for reviewing marginal cases** that stretch jurisdictional

boundaries or rely on more speculative theories of harm.

- The CMA may adopt a **more pragmatic approach** to remedies, potentially showing greater flexibility in accepting behavioural remedies rather than outright prohibitions or strict structural remedies, including in Phase 1.
- The CMA is expected to prioritise **pro-growth and pro-investment interventions**, ensuring its regulatory actions support the UK's attractiveness as a preferred destination for investment.
- The CMA intends to focus on **UK-based consumers and businesses**, with particular attention to the eight key sectors identified in the UK government's industrial strategy<sup>[3]</sup> (advanced manufacturing, clean energy industries, creative industries, defence, digital and technologies, financial services, life sciences and professional and business services).
- Enhanced **international coordination** is expected to ensure that UK merger control actions align with other major competition authorities to avoid duplication and unnecessary regulatory burden on businesses.
- The UK government is **not actively seeking fundamental legislative changes** to overhaul the competition regime, but incremental adjustments may be pursued depending on how the envisaged policy shifts play out in practice.

Anticipating these changes, the CMA has announced several key reforms designed to improve the efficiency and predictability of its merger control reviews:

- **Enhanced jurisdictional clarity:** The UK voluntary filing regime provides the CMA with significant jurisdictional flexibility, in particular, in assessing whether the transaction gives rise to "material influence" and in determining whether the "share of supply" test has been met. This flexibility has given the CMA considerable discretion in deciding whether to intervene in mergers, which, alongside its approach to remedies, has led to much of the recent debate over the CMA's interventionist approach. The CMA plans to clarify the scope and application of the "material influence" and "share of supply" tests. The Government [announced](#) on 17 March 2025 that it will be consulting on legislative reform proposals with the aim of "*addressing uncertainty with the existing Share of Supply and material influence tests*".
- **Greater reliance on international outcomes:** The CMA is considering a "wait-and-see" approach for global transactions, potentially deferring investigations when other regulators are already scrutinising the deal. It is reported that at a recent conference, Sarah Cardell, the CEO of the CMA, stated that the CMA does not "need to have a seat at a table for every single deal that might have a trickle-down effect in the UK".
- **Accelerated pre-notification process:** The CMA aims to complete pre-notification within **40 working days** (down from the current average of 65+ days).
- **Expedited Phase 1 reviews:** Straightforward cases should be cleared within **25 working days**, compared to the current 35-day target.
- **More flexible merger remedies:** The CMA's "call for evidence" to review its approach to merger remedies will explore alternative remedies, including behavioural solutions and mechanisms to "lock in" pro-competitive efficiencies.

These changes are designed to **reduce regulatory uncertainty and ease the burden on merging parties**, particularly for deals with strong pro-investment and pro-growth rationales.

## The Mergers Charter: A Commitment to Efficiency, Predictability and Engagement

The [Mergers Charter](#) aims to set clear expectations for businesses and investors regarding their engagement with the CMA during merger control reviews. Whilst not legally binding, the document entrenches the CMA’s “4Ps” framework in its approach to mergers:

- **Pace (Reaching sound decisions as quickly as possible):** The CMA will ensure that merger reviews are conducted efficiently and in a targeted and streamlined manner, aiming to focus rapidly on key potential competition concerns whilst dropping lines of inquiry where there are no clear concerns.
- **Predictability (Boosting investor and business confidence):** The CMA will aim to provide more clarity on which transactions it is likely to review and offer more transparency through regular updates to businesses on the review’s status and issues under investigation.
- **Proportionality (Minimising burden on businesses whilst reaching robust and quick outcomes):** The CMA will adopt a balanced approach to reduce the burden on businesses that may come under review, including carefully selecting which deals it calls in, prioritisation of the concerns for investigation, the scope of information requests, and design of appropriate remedies.
- **Process (Engaging directly and constructively with businesses):** The CMA intends to ensure earlier and more meaningful interactions and constructive engagement between businesses and the CMA throughout the review process.

The Charter will be supported by additional guidance which the CMA will publish at a later date.

### **Merger Remedies Review: A Shift in the CMA’s Approach**

The CMA’s **call for evidence** signals its willingness to reconsider its approach to remedies, potentially introducing more pragmatic solutions. This marks a drastic shift from the CMA’s historically stringent stance on merger remedies, which has often been criticised for being overly rigid with scepticism about behavioural remedies and discouraging transactions that could otherwise be beneficial to consumers and the economy.

Key areas under review include:

- **Lowering the Bar for Phase 1 Remedies:** Currently, the CMA requires that Phase 1 remedies be “clear-cut” and “capable of ready implementation”. This strict requirement often forces companies into costly and time-consuming Phase 2 reviews. The CMA is now considering whether this standard should be relaxed, potentially opening the door for more complex remedies to be accepted at Phase 1. If implemented, this could significantly reduce the number of cases progressing to Phase 2, which is a welcome change for businesses seeking faster approvals for their transactions. However, the practical implications will depend on how the CMA defines and evaluates more complex remedies in practice.
- **Potential Relaxation of the Legal Standard:** The CMA has traditionally required that remedies must “fully” eliminate or prevent competition concerns and their adverse effects. However, it now appears to be signalling a potential shift toward a more flexible approach. The call for evidence highlights that the underlying legislation only requires the “mitigation” of competition concerns and that the CMA must merely “have regard” to finding as comprehensive a solution as is “reasonable and practicable”. Whilst it remains uncertain whether the CMA will ultimately adopt this more relaxed stance—especially given that the underlying law remains unchanged and past UK court rulings have supported the stricter interpretation—such a shift would represent a

significant change. It could pave the way for a broader range of remedies, particularly behavioural remedies.

- **Increased Openness to Behavioural Remedies:** The CMA has traditionally been hesitant to accept behavioural remedies, favouring structural solutions like divestitures. However, recent cases—most notably the Vodafone/Three merger in the mobile telecoms sector—have demonstrated that behavioural commitments can be an effective way to address competition concerns. The call for evidence invites businesses to provide input on when and how behavioural remedies should be used. This suggests that the CMA is open to considering a wider array of solutions, provided they can be effectively monitored and enforced.
- **Recognition of Efficiency Gains:** The call for evidence underscores the role that pro-competitive efficiencies can play in advancing the government’s objective of supporting growth and investment. The CMA acknowledges that efficiencies can help mitigate competition concerns but also recognises past shortcomings in how antitrust agencies have evaluated efficiency defences in merger reviews. The CMA is seeking input on how to better measure and substantiate efficiency claims. Additionally, the CMA appears keen to build on the approach used in the Vodafone/Three case by exploring ways to “lock in” merger efficiencies, addressing the long-standing concern that merging parties may lack the incentive to pass those benefits on to consumers post-merger. In practice, this suggests that careful preparation of efficiency arguments and supporting evidence will become an increasingly critical factor in the successful execution of consolidation transactions.
- **Better Alignment with Other Competition Authorities:** Another notable shift in the CMA’s stance is its newfound acknowledgment that divergence from other major competition authorities, such as the European Commission, could be problematic. In the past, the CMA maintained that each authority operates independently within its own legal framework. However, the CMA is now considering closer alignment with international regulators, particularly the European Commission, to ensure more consistent decision-making. This change comes after instances where the European Commission accepted remedies in cases that the CMA blocked, such as Cargotec/Konecranes and (initially) Microsoft/Activision. The CMA’s willingness to reassess its approach suggests that companies involved in global transactions have improved chances of securing approvals across multiple jurisdictions.

## Potential Implications

If the CMA follows through on these proposals, businesses could benefit from:

- **Increased flexibility in structuring remedies**, particularly for transactions that generate clear pro-competitive efficiencies.
- **A higher likelihood of behavioural remedies being accepted**, reducing the risk of outright prohibitions.
- **More predictable and efficient merger reviews**, ensuring that deals can proceed with greater certainty.

The CMA has committed to completing this review by the end of 2025, with updated guidance expected to be issued for consultation by mid-year.

## Strategic Considerations for Businesses Engaging in UK M&A

Given these evolving regulatory dynamics, businesses should consider the following when planning transactions involving UK markets:

- **Early engagement with advisers:** Given the CMA's shift in approach, understanding how to approach the CMA and focus on those issues that are likely to be relevant to the CMA's assessment will be important.
- **Robust economic analysis of efficiencies:** Companies should be prepared to substantiate efficiency claims with detailed economic evidence to support a pro-competitive rationale for their deals.
- **Consideration of international alignment:** Businesses engaging in cross-border mergers should assess how their UK merger strategy aligns with regulatory outcomes in other key jurisdictions.
- **Proactive remedy design:** Given the potential shift towards more flexible remedies, businesses should explore a range of possible commitments early in the process to maximise deal certainty.

## Outlook

The CMA has for some time been under considerable pressure to align with the government's growth agenda, which in part envisions reducing regulatory burdens on businesses to spur economic growth. The Mergers Charter and the merger control remedies consultation can be read as a statement of ambition in that regard and a clear shift towards a **more pragmatic, pro-investment regulatory environment**. Whilst it will take time for the CMA's fuller policy changes to become clear, these steps are a significant early indication of the agency's response and direction of travel.

It is important to note that the CMA has to act within its statutory duties which require it to intervene in mergers that may harm competition in the UK. However, in some areas the CMA has discretion as to how to apply its powers and, even without legislative change, these are the areas in which the proposed changes will be felt.

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[1] The UK government is expected to publish a final strategic steer in the coming weeks.

[2] The call for evidence on merger remedies remains open until 12 May 2025. The CMA is expected to publish proposals for consultation in the early Autumn and the final guidance by the end of 2025.

[3] The UK government's industrial strategy was published in October 2024 in its Green Paper – Invest 2035: the UK's modern industrial strategy.

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