

Competition and Markets Authority
The Cabot
25 Cabot Square
London, E14 4QZ

By email: mergersguidance2025@cma.gov.uk

1 August 2025

Dear Competition and Markets Authority,

Re: BVCA response to CMA consultation on mergers guidance on jurisdiction and procedure (CMA2) and the mergers notice template

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private capital industry in the UK. With a membership of over 600 firms, we represent UK-based venture capital, private equity and private credit firms, as well as their professional advisers and investors. 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 10 (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.

In May 2025, the BVCA welcomed the opportunity to respond to the Merger Remedies Review Call for Evidence and continues to appreciate the CMA's willingness to engage with the private capital industry. There has been ongoing engagement between the BVCA, member firms and CMA, which has fostered positive conversations and a constructive relationship between the regulator and industry. We encourage the CMA to continue this engagement and are confident that future collaboration will help create stronger foundations for UK growth and investment, particularly considering future consultations and developments in this area that are likely to occur through the Government's review of the UK merger control regime.

The BVCA supports the direction of travel for the CMA as set out in this consultation on the draft guidance and template. We are supportive of the CMA's stated commitment to ensure that proposed changes embed the '4Ps' framework and help to improve the CMA's merger investigation process. Our assessment is that the Draft Revised Guidance and updated notice will support businesses as they interact with the CMA and will lead to increased efficiency in the way the CMA conducts its duties.

In responding to this consultation, the BVCA thinks that, subject to some additional proposed amendments, the changes to the guidance are largely consistent with the '4Ps' framework. There is recognition that the changes encourage early engagement with merger parties and provide opportunities for increased information gathering – recommendations that were previously advocated for by the BVCA and help to achieve the CMA's pace and process objectives. We strongly agree with the updates to general practice including "teach-ins", earlier contact with senior CMA officials during the pre-notification process and providing the opportunity to third parties to express their views early.

The updates to the guidance present an opportunity to provide legal certainty and greater transparency for businesses, allowing the CMA to conduct its merger investigation process effectively. The BVCA is aware that the CMA often works with limited resourcing and can face considerable pressure to complete its investigations within the statutory framework. We think that transaction parties are prepared to take some of this burden away from the CMA and assist wherever possible in order to solve some of these issues and achieve a more progressive and streamlined approach, where that may be an option. This will require collaboration between the CMA and transaction parties to promote efficiency in review, but we think would be in keeping with the 4Ps framework.

We have responded to the consultation questions in the next section.

The BVCA looks forward to further engagement with the CMA on this and other competition related matter. If you have any questions, please contact Ciaran Harris (charris@bvca.co.uk) and Tom Taylor (ttaylor@bvca.co.uk).

Yours faithfully,



Clare Gaskell

Chair, BVCA Legal Committee

Draft revised guidance

Q1. Overall, are the changes introduced by the Draft Revised Guidance sufficiently clear and useful?

The BVCA thinks that the changes introduced by the Draft Revised Guidance are useful and provide clarity surrounding the CMA's intentions and priorities relating to the merger control process. The CMA's proposed changes reflect pragmatic, long-term thinking and a readiness to adapt processes where necessary. Additional clarity is welcomed in a number of areas, detailed below. But, overall, the BVCA thinks the Draft Revised Guidance is a positive step towards a more streamlined regime.¹

Merger Control Process

The BVCA welcomes the CMA's proposed changes relating to process and anticipates that they will significantly advance its goals of pace, predictability, proportionality, and efficiency. In particular, the below changes are sufficiently clear and useful:

- *Paragraph 6.30:* We support the CMA's commitment to complete pre-notification within 40 working days. It is important, in practice, that the CMA meets this commitment regularly and that it does not exceed this timeframe.
- *Paragraph 6.30:* We welcome the CMA's commitment to conduct "*targeted, efficient and proportionate information gathering*". Requests for Information should be specific and relevant to potential areas of concern only.

¹ For ease, the BVCA has grouped its comments by topic under questions 1 and 2.

- *Paragraph 6.31:* We welcome the CMA's proposal to publish data on the length of pre-notification in its annual merger investigation outcomes. It would be helpful if the CMA could also publish key themes regarding if and why the 40-working day Key Performance Indicator (KPI) was not met to promote the principle of predictability.
- *Paragraphs 6.36-6.38:* We welcome the proposed increased use of "teach-ins" during pre-notification and earlier engagement with the case team / senior CMA staff at Phase 1. "Teach-ins" are useful in Phase 2 cases and will promote clarity and well-informed discussions between the CMA and merger parties in Phase 1. Paragraph 6.38 notes that a Senior Director of Mergers or another senior member of CMA will attend "teach-in" meetings. Greater clarity as to the rationale underpinning this would be helpful. For example whether it is the case that the Senior Director or other senior member who is present would then go-on to act as the decision-maker if the case progresses.
- *Paragraph 9.14:* We welcome the commitment to engage with third parties in the early stages of pre-notification.
- *Paragraphs 9.46-9.48:* We support the CMA inviting merger parties for additional calls during Phase 1. This will promote dialogue between parties and ensure that communication with the CMA flows both-ways. We also welcome the addition of paragraphs 9.47 and 9.48, the CMA's interest in engaging with business personnel and to "*focus [these discussions] on the process – rather than the outcome*". This signifies a willingness to engage fully with the merger parties to grasp the nature of the proposed transaction in its entirety. Furthermore, we welcome the addition of a feedback session. It is important that both merger parties and the CMA reflect on feedback provided (acting on the same if necessary) to ensure continual improvement to the merger control process.

Jurisdiction

The proposed amendments in the Draft Revised Guidance relating to jurisdictional topics are not extensive, they are of a clarificatory nature only. This reflects the Government's announcement in its June 2025 Industrial Strategy that it plans to bring forward and engage in a consultation

on legislative changes to the UK merger control regime. This will focus on clarity surrounding the jurisdictional thresholds of material influence and share of supply test.

Pending any suggested legislative changes by the Government, we acknowledge that the CMA is constrained in its ability to introduce significant amends on jurisdictional matters. We recognise that the CMA is limited by the remit set by Government and look forward to engaging with the Government consultation, which we hope will increase predictability for merger parties. The CMA continues to retain a high degree of flexibility in determining whether jurisdictional thresholds are met and predictability for merger parties remains limited. We welcome further debate on these topics as part of the Government's upcoming consultation.

Despite this, there are some helpful, albeit limited, clarifications present:

- *Paragraphs 4.18 & 4.20:* We welcome this useful clarification regarding the meaning of material influence. We further welcome the CMA's confirmation of the "*main factors*" that it considers likely to confer material influence on an acquirer. The Draft Revised Guidance will assist merger parties in clarifying that material influence is unlikely to be found where: (a) there is the ability to appoint a single board member but not a material shareholding or the existence of one or more other key factors; and (b) an acquirer has a shareholding of less than 15%, unless there are "*significant*" other factors.
- *Paragraph 4.28:* Regarding board representation, we welcome another helpful clarification surrounding instances where the CMA will consider whether an acquirer can materially influence the commercial policy of a target.
- *Paragraph 4.64:* We welcome that, for the purposes of determining the description of goods as part of the share of supply test, the CMA will consider "*those which are relevant to any potential competition concerns arising from the merger*", thus crystallising the position from the CAT's judgment in *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11.

- *Paragraph 4.72:* We also welcome that the CMA has noted it will "*typically only focus on [...] value, cost, price, quantity, capacity and number of workers employed*" for the purposes of determining whether the 25% share of supply threshold is met. While improvements can and should be made to the current share of supply test, this proposed amendment is a helpful clarification and a step towards increased transparency surrounding CMA decision making.

Global Mergers

Ensuring that the CMA remains focused on deals that will impact the UK is crucial. As foreshadowed in Sarah Cardell's announcement on 13 February 2025, launching the CMA's new 4Ps framework, the CMA is committed to taking a more proportionate approach to its assessment of global mergers and to prioritise transactions with a material nexus with the UK that impact UK consumers and businesses.

The BVCA welcomes the proposed changes, which reflect this approach:

- The Draft Revised Guidance distinguishes between mergers that have a UK-specific impact and those that tend to involve local or national markets, which the CMA is more likely to prioritise for investigation.
- The CMA is less likely to prioritise mergers relating to exclusively global or broader than national markets and where the remedies agreed or imposed in other jurisdictions would be likely to address any competition concerns that could arise in the UK.

However, some uncertainties remain regarding how this approach will be carried out in practice. This issue is addressed in question 2 below.

Q.2 What, if any, aspects of the Draft Revised Guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section (and, where appropriate, the issue) each of your comments relate to.

The BVCA recommends the below further changes and additions which we think will strengthen the CMA's guidance and promote its 4Ps framework:

Merger Control Process

- Paragraph 6.8, footnote 150:* Given the volume of information required to complete a merger notice, it is suggested that allowing only 10 working days for submission is insufficient. We do not think there is a need for the CMA to issue requests for a draft merger notice on a timeline as short as this. Especially for anticipated mergers where the CMA is not at risk of losing jurisdiction. We suggest the CMA should not prescribe a time period and instead, should discuss with the merger parties what timeline would be appropriate regarding the specifics of a case. This would promote a more appropriate pace for parties surrounding how this process is conducted.
- Paragraph 6.14:* We would welcome additional clarity on the process following submission of a Case Team Allocation Form (CTAF). In particular, it would be helpful if the CMA would: (i) set a timeline for allocating a case team following the merger parties submitting a CTAF (e.g. within one week); and (ii) set out its expectations on when merger parties should submit their first draft merger notice following the allocation of a case team (e.g., within two weeks). As currently proposed, this paragraph does not promote predictability and efficiency in process.
- Paragraphs 6.26 & 9.76:* We are concerned that the Draft Revised Guidance, as currently drafted, will discourage early engagement from merger parties on remedies, as the proposed changes indicate greater somewhat disproportionate involvement from the decision-maker in remedy discussions. We recommend revising the Draft Revised Guidance so that the CMA will take the lead from the merger parties, unless there are exceptional reasons to involve the decision maker against the merger parties' wishes.
- Paragraph 6.27:* We would welcome the CMA setting a KPI for the issuing of its first RFI following submission of the merger notice (e.g., one week).
- Paragraph 17.2:* Under the former guidance, the CMA's Procedural Officer (PO) was empowered to make a decision in Phase 1. This was useful as the PO was not involved in the day-to-day running of a case. It is unclear why the Draft Revised Guidance now sees

the PO only advising the Phase 1 decision-maker. This risks making the PO process less robust and we would recommend that this change is reversed.

Jurisdiction

As mentioned above, the BVCA recognises that the CMA operates within the legislative framework of the merger control regime and is therefore limited as to the number of changes it is able to make to the jurisdictional thresholds in the Draft Revised Guidance. While the CMA is restricted in proposing more substantive amendments, in the interests of clarity and legal certainty we would still invite the CMA at this stage to:

- Take a clearer stance and be more prescriptive on the factors it will take into account in determining material influence. We appreciate that there may be a trade-off between legal certainty on the one hand and flexibility on the other. However, given the choice, legal certainty is more important for businesses even if that means that some borderline transactions are therefore more likely to be caught.
- Provide further guidance as to when it considers a 'dependency' on an acquirer will arise, which is a concept referred to on a few occasions in the Draft Revised Guidance (e.g. at paragraph 4.20(c)).
- *Paragraph 4.20:* Consider whether the addition of the following is superfluous: "*To the extent that they provide a mechanism via which influence over commercial strategy can be exerted...*". It is unclear how the items listed in this paragraph could not provide a mechanism via which influence can be exerted, removal of this language if the CMA deems it unnecessary would be useful.
- *Paragraph 4.20(a):* Clarify what is meant by the ability of an acquirer to block special resolutions "*as a practical matter*".
- *Paragraph 4.22:* Expand the non-exhaustive list of circumstances where the ability to pass or block a special resolution would be likely to be seen as conferring material influence.

Global Mergers

Whereas the BVCA welcomes the CMA's proposed approach to global mergers, there is uncertainty around the CMA's "wait and see" approach for mergers relating to exclusively global or broader markets, in cases where remedies in other jurisdictions do not address the CMA's concerns for the UK. Businesses run the risk that the CMA could commence a formal investigation at a later stage, up to the expiry of the four-month statutory period and delay or potentially cause the deal to collapse. There is also an additional risk that certain third parties could try to use this uncertainty to their advantage and exploit it by making complaints to the CMA and encourage it to launch an investigation.

The aim of the proposed changes in the CMA's approach to global mergers is to reduce the burden of duplicate investigations and increase business confidence to invest in the UK. To achieve these outcomes, the CMA will need to consider how it can reduce this risk of uncertainty and expand its guidance setting out how this it intends to address these concerns in practice. When it comes to jurisdiction, legal certainty is key. Whereas we appreciate that the CMA may not be able to provide precise parameters for the types of global transactions in which it will not intervene, we welcome the CMA to provide some illustrative examples in the Draft Revised Guidance of cases where the CMA will defer to other jurisdictions, in the spirit of predictability and certainty.

Q.3 Are the changes in the Draft Revised Guidance consistent with the CMA's '4Ps framework' and likely to promote the pace, predictability, proportionality and engagement in the CMA's merger investigation process? Are there any additional changes that may further contribute to these priorities?

Apart from the above proposed additional amendments and clarifications, the BVCA welcomes the Draft Revised Guidance and thinks it is largely consistent with the CMA's '4Ps framework'. This is particularly the case for the CMA's willingness to engage with merger parties, not only earlier but in a more thorough manner.

The CMA's introduction of a commitment that pre-notification will typically be no longer than 40 working days is also a welcome proposal. In practice, this should provide investors with certainty, and if required or desired at an earlier stage, an opportunity for remedy discussions to take place.

The BVCA has previously flagged that time constraints present issues for engaging in remedy discussions and suggested increasing engagement in these discussions at the pre-notification stage, on a without prejudice basis. The proposed changes reflect this as the CMA would continue to be available for without prejudice discussions with merger parties in relation to potential remedies throughout pre-notification. The BVCA agrees that this approach will "provide certainty at pace for interested parties and enable the CMA to target its resources proportionately" – both of which achieve the CMA's objectives to embed adequate pace and efficient process into its merger investigations.

In a recent response to the Merger Remedies Review, the BVCA emphasised the importance of early engagement as the most effective way to assess behavioural remedies and in general, supported a more focused and efficient approach to engagement should there be any meaningful dialogue on remedy proposals. This has been reflected in the updated changes and the BVCA welcomes the CMA's changing and developing stance on remedies.

In our response to the Merger Remedies Review, we also suggested that the CMA consider the nature of the information and level of detail provided when consulting on remedies with third parties.

The BVCA is pleased that proposed amendments in the Draft Revised Guidance include additional update calls on material developments in the investigation. This will assist the merger parties in preparing remedy proposals and will increase transparency and predictability.

The BVCA thinks that the addition of the above additional proposed amendments would serve to strengthen the alignment between the Draft Revised Guidance and the 4Ps. It is not a case that the proposed amends do not reflect the 4Ps, rather in certain areas, should further clarity be provided – the 4Ps would be better reflected.

Draft revised merger notice template

Q4 Are the proposed amendments to the current Merger Notice template sufficiently clear and useful?

We suggest that the CMA might benefit from a complete review of the merger notice template and consider whether – in line with pace and proportionality – the amount of information required from merger parties could be reduced.

The current process for the provision of a draft Merger Notice is a significant exercise. The BVCA thinks that the merger notification process would be further streamlined if the CMA were to pare back the volume of information required (in appropriate cases). For example, a reduction in information requested regarding ancillary markets where it is clear from the outset that no conceivable competition issues persist.

As noted above, the BVCA thinks transaction parties are likely to be willing to assist in streamlining the review process – not only to ensure that an effective pace of review is maintained but also to assist the CMA as it navigates resourcing constraints. In our view, a streamlined merger notice template that is more targeted from the outset will facilitate such engagement early on in the process and avoid the CMA spending time and resource on irrelevant material.

Q5. Are the proposed amendments to the current Merger Notice template appropriate in order to provide the CMA with the necessary information to conduct an efficient pre-notification process?

In line with the above response to question 4, we suggest that the merger notice, while comprehensive, requires an abundance of information that may not be essential to conduct an efficient pre-notification process.

Q6. Are the proposed amendments in the current Merger Notice template in line with the '4Ps' framework?

To embody the spirit of the 4Ps, particularly pace and proportionality, the merger notice template could be simplified to reduce any unnecessary information requested from merger parties at an earlier stage.

Q7. Do you have any other suggestions for additional or revised content of the current Merger Notice template?

Not at this time.