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

By email: mergerremediesreview@cma.gov.uk

13 November 2025

Dear Competition and Markets Authority,

Re: BVCA response to CMA consultation on revised merger remedies guidance

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 around 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.

The BVCA welcomes the opportunity to respond to this consultation and appreciates the CMA's recent openness and willingness to engage with the private capital industry. There is ongoing engagement between the BVCA, our member firms and the 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. We are supportive of the CMA's stated commitment to its '4Ps' framework to encourage investment in the UK and allow businesses to thrive and innovate, and for the UK economy to grow productively and sustainably. Achieving these will require competition regulation that takes a common-sense approach, is applied consistently and effectively balances the need for growth with upholding world-class standards.

The merger remedies framework and guidance are a core part of this and must be flexible, proportionate and clear enough to allow capital to flow efficiently and predictably. We think it is also vital that the CMA acknowledges and considers, when it is conducting its work, the wider positive impact that private capital investment can have on UK businesses as it scales and grows them.

As detailed below, we are pleased to see that some of the recommendations from our submission to the call for evidence have been considered and reflected in the revised guidance, particularly

around proportionality, behavioural remedies, Phase 1 flexibility, trustee/independent expert involvement, preserving efficiencies and Relevant Customer Benefits (RCBs). In particular:

- **Proportionality clarified**: The CMA now commits to selecting the least onerous effective remedy and recognises that behavioural remedies can often be less intrusive than structural measures.
- **Phase 1 flexibility**: the presumption against behavioural UILs has been removed particularly with respect to pro-competitive "enabling" behavioural remedies, and the CMA emphasises early, without-prejudice engagement to meet the "clear-cut" standard.
- **Trustee and expert involvement**: the CMA endorses early appointment of monitoring trustees and industry experts to assist with assessment and monitoring, which will improve predictability and pace.
- **Recognition of efficiencies and RCBs**: we welcome the CMA's acknowledgment that mitigations may be appropriate in circumstances where RCBs outweigh the substantial lessening of competition (SLC) and no effective remedy exists to preserve those benefits, as well as in cases where all feasible remedies would only partially address the SLC (§§4.22–4.24). This reflects the BVCA's earlier recommendation that, in some situations, mitigating an SLC - rather than fully eliminating it - can deliver a more proportionate and outcome-focused solution.
- **Expanded carve-out guidance**: the CMA provides more detail on evidence and mitigants for complex divestitures, including upfront buyers and fall-back packages.

These proposals directly respond to the key themes in our May 2025 submission (flexibility, outcome-focus, early engagement, trustees, and preserving efficiencies/benefits) and represent meaningful progress in alignment with the CMA's 4Ps framework. However, several important BVCA recommendations were only partially addressed or remain absent and we cover these below.

Behavioural remedies

As above, we welcome the CMA's proposed changes to its approach to behavioural remedies, particularly following the CMA's removal of the presumption against behavioural remedies at phase 1, and the broadening of the circumstances under which behavioural remedies may be accepted. This marks a significant shift towards greater flexibility and a willingness to consider behavioural remedies earlier in the process. This change in approach is a positive step towards a more balanced assessment of potential remedies by recognising that behavioural remedies can be effective in certain cases, with their suitability assessed on a case-by-case basis.

However, the CMA still maintains the position that structural remedies are typically more effective. We continue to maintain that the CMA should consider behavioural remedies on an equal footing to structural remedies, as we set out in our call for evidence response. Furthermore, the CMA remains hawkish in relation to controlling behavioural remedies compared with enabling behavioural remedies. Yet these controlling remedies can be highly effective in certain cases - for example price caps in pharmaceutical markets, where structural remedies risk undermining innovation and patient access. We urge the CMA to recognise these as viable options, when properly specified and monitored.

Carve-outs

Whilst we think that divestiture remedies are appropriate where behavioural remedies are not feasible, the CMA has maintained its position that there are considerable risks associated with carve-out remedies. We urge the CMA to reconsider this position, particularly in circumstances where a carve-out could deliver a viable and effective solution without undermining the integrity of the divested business or creating disproportionate implementation challenges.

We do note and welcome, however, the positive changes introduced in the draft guidance in relation to carve-outs, including the additional examples of the types of evidence that the CMA may have regard to when assessing carve-out remedies (subject to our more detailed comments below), and the detail on how the risks of a complex divestiture remedy may be mitigated, which we think provides greater clarity and increases the likelihood that the CMA will consider a relevant remedy to be effective.

Process and early engagement

We continue to welcome changes that aim to encourage and facilitate early discussion of remedies and view as positive the CMA's explicit acknowledgement that the earlier parties start engaging with the CMA on remedies the more likely it is that the Phase 1 standard for acceptance of remedies will be met. However, the CMA has not addressed the BVCA's recommendation to extend Phase 1 timelines for complex remedies or to allow remedy discussions earlier in Phase 2 (rather than waiting until weeks 16–18 for the remedies meeting). Nor has the CMA acknowledged the risk of undue influence from customers and competitors in the review process - particularly those who stand to benefit from structural remedies. Greater transparency and trustee/expert input are needed to mitigate the risk and impact of bias in the process.

As noted above we are pleased that the CMA encourages merging parties to consider appointing a monitoring trustee or industry expert to support with remedy discussions. We believe that increased use of monitoring trustees would be beneficial for the purposes of monitoring and enforcing remedies, and would help to increase the CMA's willingness to engage with more complex remedies requiring ongoing oversight.

Conclusion

In summary, the proposed changes indicate a move towards a more open approach to the remedies process and the CMA's appetite to enable quicker and more effective decisions. In responding to this consultation, the BVCA reiterates that the guidance is an opportunity to redress the balance between structural and behavioural remedies in favour of an outcome-focused approach. Changes to the guidance present an opportunity to build in flexibility in terms of how remedies are monitored (using trustees, self-reporting compliance statements, dispute resolution etc).

The BVCA looks forward to continued engagement with the CMA during the course of this review. If you have any questions or would like to discuss any of the above in more detail, please do not hesitate to contact Ciaran Harris, charris@bvca.co.uk and Tom Taylor, ttaylor@bvca.co.uk.

Yours faithfully,

Clare Gaskell

Chair, BVCA Legal Committee

BVCA response to consultation questions

We have set out below our views in response to the CMA's consultation questions. Our response combines Questions 1 and 2 to outline clearly the BVCA's position, highlight positive changes and identify areas requiring clarification or improvement.

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

Q2. 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 CMA's approach to effectiveness and proportionality

We support the CMA expressly weighing relevant costs (including monitoring/compliance burdens on the CMA/regulators/third parties and RCB losses) when choosing the least onerous effective remedy. We also welcome the articulation that mitigations may be accepted on an exceptional basis where all effective remedies would be disproportionate (§3.14(d)). It would be particularly helpful to illustrate this with hypothetical examples demonstrating:

- the balancing exercise between SLC magnitude and remedy burdens,
- when behavioural is chosen over structural as least onerous, and
- when partial mitigation is justified (in conjunction with RCB analysis, §§4.22–4.25).

The CMA's approach to behavioural and structural remedies

The CMA at §3.31 outlines factors that may reduce risks for behavioural remedies (limited duration; sector regulator involvement; market transparency; alignment with industry norms; stability/maturity; monitoring trustee/adjudicator). We acknowledge these as useful indicators, but emphasise they should not be treated as necessary or sufficient conditions for effectiveness or proportionality:

- **Limited duration**: enabling remedies sometimes require a longer term to permit entry/expansion to become self-sustaining. Duration should be tailored to the relevant market's entry dynamics, with review points and sunset provisions.
- **Regulator involvement**: effectiveness should not be confined to regulated sectors. Monitoring trustees can supply the requisite oversight in unregulated markets (§§3.64–3.66).
- **Transparency/third party reporting**: reliance on third parties can introduce bias; trustee administered objective KPIs and audit rights may reduce this risk.
- **Alignment with commercial norms & market stability**: helpful where present, but absence should not automatically disqualify otherwise clear-cut enabling designs.
- **Market stability/maturity**: many dynamic markets (such as tech, digital, life sciences) are by nature characterised as fast-moving, and behavioural remedies (rather than structural remedies which can be blunt and damage innovation) are often best suited to these.

- **Trustee/adjudicator:** we agree these materially reduce specification/monitoring risk and make Phase 1 behavioural remedies more viable.

As noted above, we continue to believe that the CMA should assess behavioural remedies on an equal footing with structural remedies, rather than presuming that structural remedies are inherently more effective (§3.30). In addition, the CMA's approach remains overly restrictive towards controlling behavioural remedies compared to enabling remedies (§3.33). Yet, controlling remedies can deliver significant benefits in certain contexts – for example, price caps in pharmaceutical markets, where structural remedies risk undermining innovation and limiting patient access. We therefore urge the CMA to recognise these measures as credible and effective options when they are properly designed, specified, and subject to robust monitoring.

Carve-outs

Similarly, whilst we welcome the CMA expanding further on its assessment of carve-outs, it must ensure that its considerations at §3.48 are not treated as necessary or sufficient for acceptance. Specifically:

- **Any data on and analysis of the performance of previous comparable divestitures (within or outside merger control) (§3.48(a)):** past experience can be informative but cases must be assessed on their facts. Comparators should be truly comparable in scope, market dynamics, and composition risk, and the CMA should discuss its comparator selection with the parties.
- **Any data the merger parties have regarding the performance of the assets/business units (§3.48(b)):** the CMA should clarify what "performance" evidence is sought (e.g., operational KPIs, customer churn, profitability drivers).
- **Feedback from employees familiar with relevant assets / unit leads (§3.48(c)):** the CMA must ensure due process and non-bias - particularly where employees may be transitioning with the divested package. Parties should see summaries of feedback used for decision-making and have an opportunity to respond.
- **Evidence from independent experts (§3.48(d)):** The CMA should ensure objectivity and transparency, disclose expert instructions at a high level, and provide the parties with an opportunity to comment on draft conclusions.

More generally, we urge the CMA to reconsider its position that there are considerable risks associated with carve-out remedies. Carve-outs can often deliver a viable and effective solution to eliminate competition concerns without undermining the integrity of the divested business or creating disproportionate implementation challenges.

Approach to Remedies at Phase 1

As noted, we positively welcome the removal of the presumption against behavioural remedies being accepted at Phase 1 and the encouragement for earlier engagement on remedies to meet the clear-cut standard (§§3.56–3.58). We also welcome the CMA revisiting the rule for local markets, acknowledging that divestment below the trigger threshold may suffice where decisions rely on filters/decision-rules and the evidence shows the purchaser can compete effectively (§3.58).

Trustees and independent experts

We positively welcome the CMA's proposals to encourage early appointment of monitoring trustees and industry experts to assist assessment of remedy proposals and that this may offer additional comfort to the CMA and can enable earlier decisions (§§3.64–3.66).

Efficiencies and RCBs

The BVCA welcomes the CMA's recognition that remedies can play a role in preserving merger-specific efficiencies and RCBs. We strongly support the CMA's openness to without-prejudice discussions at both Phase 1 and Phase 2 and its acknowledgment that mitigations may be appropriate where RCBs lost under the only effective remedy exceed harm from the SLC (§§4.22–4.24). This reflects a key BVCA recommendation and is a positive step toward a more outcome-focused approach.

However, **the high evidentiary bar** for RCBs has been retained (§4.25), and the CMA has not adopted the BVCA's proposal to provide further guidance or examples for evidencing RCBs - particularly innovation-driven benefits. Without clearer guidance, parties may be deterred from advancing RCB claims, even where these benefits could deliver significant consumer welfare gains.

Our recommendations:

- Publish **templates and worked examples** for RCBs and rivalry-enhancing efficiencies (REEs), including innovation-based benefits.
- Confirm that **objective, verifiable evidence** - such as milestone-based R&D plans, independent expert attestations, and customer letters of intent - will meet the CMA's evidentiary threshold where quantification is impractical.
- Provide further **illustrative case studies** (e.g., Vodafone/Three) showing how remedies can lock in efficiencies without undermining competition.

These steps would improve predictability, reduce unnecessary Phase 2 escalation, and ensure the CMA's approach supports innovation and investment while safeguarding competition.

Process

The BVCA supports the CMA's proposed updates to improve the merger remedies process at Phase 1 (§§5.6–5.10). The introduction of teach-ins, regular update calls, and a separate remedies meeting after the issues letter will increase transparency and help parties surface workable remedy options earlier. These changes reflect progress on BVCA's recommendations for greater engagement and predictability.

However, two critical BVCA proposals were not addressed and we urge the CMA to reconsider its position on both:

- **Phase 1 timelines:** The CMA has not adopted BVCA's recommendation to extend Phase 1 timelines for complex remedies. This reform, alongside the proposed engagement measures, would materially increase the likelihood of Phase 1 clearances and enable parties to design clear-cut remedies without defaulting to Phase 2.

- **Phase 2 remedy discussions**: The CMA has not reflected BVCA's recommendation to allow formal remedy discussions earlier in Phase 2 - for example, during the main issues hearing rather than waiting until weeks 16 - 18 for the remedies meeting. Earlier engagement would allow complex remedy packages to be negotiated and refined well before statutory deadlines, improving both pace and quality of outcomes.

Additional process refinements remain essential to deliver the CMA's 4Ps objectives:

- **Earlier sharing of third-party feedback**: non-confidential summaries of remedy-related feedback should be provided to merging parties sooner. This would allow parties to refine proposals efficiently and mitigate the risk of biased submissions - particularly from customers or competitors who may benefit from structural remedies. More broadly the CMA should acknowledge the risk of undue influence from customers and competitors in the review process, particularly those who stand to benefit from structural remedies.
- **Summary notes after remedy meetings**: short written summaries confirming points of consensus and outstanding questions would improve transparency and predictability, reducing the risk of misunderstanding and delays.

These refinements, combined with the CMA's proposed measures, would ensure a remedies process that is genuinely open, proportionate, and aligned with the CMA's commitment to pace and predictability.

Q3. Are the changes to the Draft Revised Guidance consistent with the CMA's '4Ps framework' and likely to promote pace, predictability, proportionality and engagement in relation to merger remedies? Are there any additional changes that may further contribute to these priorities?

Please see our opening remarks and responses above for a response to this question.

Q4. Do you have any other suggestions for additional or revised content of the Draft Revised Guidance?

Beyond the targeted improvements and drafting suggestions above, no further suggestions.