

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

By email: markets.guidance2025@cma.gov.uk

1 October 2025

Dear Competition and Markets Authority,

Re: BVCA response to CMA consultation on Markets Regime 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.

In August 2025, the BVCA welcomed the opportunity to respond to the consultation on mergers guidance on jurisdiction and procedure (CMA2) and the mergers notice template. We continue to appreciate the CMA's willingness to engage with the private capital industry and reform its practices and tools. There has been ongoing engagement between the BVCA, member firms and CMA, which has fostered constructive conversations 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The BVCA supports the direction of travel for the CMA as set out in this consultation on the draft guidance. 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 approach to market studies, reviews and investigations. Our assessment is that the draft guidance will support businesses as they interact with the CMA and will lead to increased efficiency in the way the CMA conducts its duties.

CMA markets work

While we support the direction of travel as noted above, we continue to advocate that the CMA should take great care when deciding whether to conduct a market study or investigation. We have in recent years seen more market studies and investigations, for example, in social care, energy and food, which can negatively highlight perceived issues with competition in the UK and drive policy uncertainty. This can lead to market instability and regulatory risk, potentially

British Private Equity & Venture Capital Association

+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk

detering investment and long-term planning by both businesses and investors. There are two negative effects of market studies and investigations.

The first is the burden on the businesses that operate in the sector being investigated or studied. Market investigations, in particular, require a significant level of input from relevant businesses, in terms of market and financial data, and other analysis. Significant management and other resources normally need to be deployed to respond to the CMA's questions and information requests. Given the potentially far-reaching consequences of such investigations, companies devote sufficient internal resources to ensure that the legal team is appropriately supported, both in terms of gathering the necessary information and formulating the company's position on the issues being considered. The result is increased cost for the company and the diverting of resources away from the normal activity of the business, which can therefore impact the ability of the business to grow.

A second adverse impact falls on the investors in these companies (such as private capital funds). This can have a direct impact on investment and therefore growth, with some BVCA members reconsidering investment in a sector once an investigation has started, due to the uncertainty around the actions the CMA will take.

Whilst we of course recognise the value of market investigations, particularly in ensuring a robust wider framework that supports competition and well-functioning markets, we believe that the investigations themselves should not have adverse impacts that risk undermining investor confidence in those markets. Private capital firms and their portfolio companies are willing to participate in market investigations where the scope is clear and the process is proportionate. However, the benefits of these market tools should not be outweighed by their unintended consequences.

Feedback on guidance

The BVCA notes that the changes to the guidance are largely consistent with the '4Ps' framework. There is recognition that the guidance encourages early engagement with affected parties, outlines how it aims to ensure that a remedy achieves its intended objective, and sets out how compliance with remedies will be monitored in an effective and proportionate manner. This is positive.

We would emphasise that the guidance presents an opportunity to provide legal certainty and greater transparency for businesses, allowing the CMA to conduct its market 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 the proposed changes will help improve efficiency to achieve a more progressive and streamlined approach. This will require collaboration between the CMA and affected parties to promote efficiency, and we think would be in keeping with the 4Ps framework.

The BVCA considers the draft guidance a positive step in the right direction. It sets out a number of sensible and positive proposals that will enhance the effectiveness and transparency of the CMA's approach to market investigations. We particularly support the CMA's efforts to provide greater clarity around the scope and timing of investigations, which will help parties better understand the issues under review and prepare accordingly.

The proposed changes – in particular, narrowing the breadth of investigations, providing greater clarity on timelines, introducing external sector expertise and hosting public webinars at the outset – are constructive steps towards improving transparency and encouraging earlier engagement. We also welcome the CMA’s recognition that its sector specific expertise may be limited in certain areas, and its approach to engaging with external stakeholders and drawing from industry insight.

These changes are important because greater predictability and proportionality in market investigations will support investor confidence and ensure that regulatory processes do not deter investment and growth. They will also help ensure that investigations are more streamlined, efficient and transparent for parties involved, reducing uncertainty and enabling more engagement.

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 related matters. If you have any questions, please contact Ciaran Harris (charris@bvca.co.uk) and Tom Taylor (ttaylor@bvca.co.uk).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Clare Gaskell', is positioned above a horizontal line.

Clare Gaskell

Chair, BVCA Legal Committee

Draft revised guidance consultation questions

Q1. Overall, are the changes proposed in the draft Markets Regime Guidance sufficiently clear and useful?

The BVCA thinks that the changes introduced by the draft Markets Regime Guidance are useful and provide clarity surrounding the CMA's intentions and process in relation to the markets regime, which this consolidated guidance sets out in a more clear and comprehensive way. The CMA's proposed changes reflect pragmatic, long-term thinking and a readiness to adapt its processes where necessary. Additional clarity is welcomed in a number of areas, detailed below. But, overall, the BVCA welcomes the draft Markets Regime Guidance as a positive step towards a more streamlined regime.¹

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 efficient process. In particular, the below changes are clear and useful:

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

Market reviews

- *Paragraph 3.2, Table 1 and Section 5:* We welcome the CMA's efforts to provide an overview and clearly set out the three available tools – Market reviews, Market studies and Market investigations – in the markets regime (together, "Markets tools"). Even though Market review as a tool was not singled out as a change in the 'Overview of proposed changes' of the Consultation document or described in the previous guidance as a separate tool (irrespective of its informal nature), we welcome the clarity provided, including the overview in Table 1 that provides a simplified distinction between the different Markets tools. Establishing and using Market reviews as a less intrusive tool should help the CMA to enhance the effectiveness of the markets regime, allowing it to use informal information gathering powers to identify possible competition and/or consumer concerns in a way which is less disruptive to businesses. Despite their informal nature, we encourage the CMA to use Market reviews in a targeted way only where that is necessary, and provide regular public updates on its Market reviews findings, in line with its commitment to transparency, proportionality and predictability.

Project Roadmap

- *Paragraphs 5.5, 6.11 and 8.25:* We support the CMA's commitment to publish a Project Roadmap at the outset of launching each of its Markets tools. It is important, in practice, that any published Project Roadmap is clear, easy to understand, and that the proposed timelines and milestones are adhered to by the CMA as much as possible. Additionally, affected parties should have an opportunity to provide input into feasibility and proposed approaches in a meaningful way, where that is necessary and appropriate. We hope that this change will significantly enhance both the pace and predictability of CMA processes.

Sector Expertise

- *Paragraphs 5.5, 6.11, 6.15 and 8.25:* We support the CMA's intention to draw on external sector expertise when that is appropriate. We consider that industry expertise may be particularly important for complex and fast-evolving sectors. We have set out below our additional considerations on this point (Q2).

State of Play Meetings

- *Paragraphs 6.16-6.19 and 8.33-8.37:* We welcome a formalised approach to holding internal 'state of play' meetings which should help the CMA to focus on more focused lines of inquiry, and consequently lead to a more efficient engagement with affected parties. We consider that a lack of updates and opportunity for affected parties to actively engage with the CMA during Market studies and Market investigations was one of the main sources of frustration for our members, based on feedback received. That was especially the case where the CMA's inquiry was resource-intensive and prolonged, requiring significant staff input and financial cost. Where appropriate, we encourage the CMA to involve affected parties in external state of play meetings, even before scoping decisions are made, which would allow them to engage meaningfully and share their

views on certain lines of inquiry, rather than receive a progress report where the CMA presents its decisions.

Enhanced and Earlier Engagement with Parties

- *Paragraphs 6.11, 6.14, 8.25, 8.30:* As indicated above, webinars, teach-ins, updates following internal state of play meetings, and more regular updates through informal calls and/or progress reports are all constructive steps towards improving transparency and encouraging earlier engagement, that we welcome. Equally, issuing 'Working papers' only on an exceptional basis and the removal of 'Annotated issues statement' is a positive move towards a more streamlined process, which may also result in optimising the resources the affected parties need to invest in engagement with the CMA.

End-to-End Timeline Efficiencies

- *Paragraphs 5.5-5.9, 6.6-6.22 and 8.20-8.53:* We support the CMA's efforts to set out a bespoke timeline and clear timing for any informal reviews at all key stages of its investigations. In particular, we welcome the CMA's intention to use Market reviews and Market studies to narrow down the lines of inquiry in its Market investigations.

Remedies

Undertakings in lieu

- *Paragraphs 5.22-5.23 and 7.12-7.20:* We welcome the CMA's new framework that sets out when undertakings could be accepted in lieu of a market investigation (or market investigation report). We note that the CMA's proposed approach, which puts a much greater emphasis on recognising the potential benefits of undertakings in lieu ('UILs') and introduces undertakings 'partially' in lieu, represents a significant shift in tone compared to the previous guidance, where the CMA stated, for example, that '[u]ndertakings in lieu of reference are unlikely to be common' (Paragraph 2.21, OFT511). We particularly welcome the CMA's commitment to 'engage with parties early in any markets work on the possibility of undertakings in lieu of a reference' as well as seeking to conduct Market studies 'with a view to considering potential remedies to an Adverse Effect on Competition (AEC) in order to more readily move towards accepting undertakings in lieu of a reference', which we consider should lead to more streamlined markets work.
- *Paragraphs 8.14-8.19:* We also support the way in which the CMA has set out the new provisions relating to 'Undertakings in lieu of a report', which appear to follow the same considerations detailed above in relation to UILs, allowing for greater certainty and predictability.

Sunset clause

- *Paragraph 8.72:* We support the CMA in 'adopting a default position that, where it imposes a remedy using a CMA order, it will include a long-stop date via a 'sunset clause' unless it judges that there is a good reason for the remedy to remain in place (which it

would explain in the particular case). We agree that a shift from including a sunset clause to remedies based on the circumstances of the case (as stated in paragraph 4.21 of the CMA3(Revised)) to adopting it as a default position will improve predictability as well as minimise the costs or burden of remedies or remedies packages in many instances.

Trials

- *Appendix 6:* We consider that the CMA's approach to trialling remedies is well balanced and proportionate, considering it is limited to 'information remedies'. We encourage the CMA to use its new power in a tailored and effective way and harness the benefits of the flexibility this mechanism gives it in imposing remedies, while avoiding unnecessary burdens on businesses, leading to increased costs and resource required. This new power should allow the affected parties genuinely to engage and assist the CMA in imposing the effective remedy.

Monitoring remedy compliance

- *Paragraphs 9.8 and 9.10:* We support the CMA's commitment to effective and proportionate monitoring of remedy compliance and, in particular, by ensuring remedies achieve their intended objectives without placing undue burden on affected parties, by seeking to avoid inconsistency or duplication of other regulatory regimes or regulations, and by working closely with the affected parties to ensure understanding and compliance.
- *Paragraph 9.15:* We welcome the CMA's commitment to ensuring that the legal obligations in relation to reporting breaches do not place unnecessary burdens on the parties. To avoid unnecessary costs and use of resources, we consider it is crucial to carefully balance the legal obligations imposed with the gravity of the remedy imposed.

Remedy Reviews

Effectiveness

- *Paragraphs 9.34-9.39:* We consider that the provisions of the CMA's guidance relating to amending and removing ineffective remedies are sufficiently clear and useful. We welcome the examples of ineffective remedies the CMA provided as they provide a useful illustration for affected parties. However, where a 'detailed further investigation' may be required in order to evaluate whether an order or undertaking has been ineffective and whether any alternatives may be imposed, we urge the CMA to adopt an evidence-based, targeted and proportionate approach, as a detailed investigation may impose significant additional costs and resource demands on affected parties.

Strategic review

- *Paragraphs 9.33 and 9.76:* We welcome the CMA's introduction of a 'strategic review' of a number of remedies and orders together, both in the change of circumstances and conclusion of a review contexts, as a way to achieve efficiency and streamline its processes further.

British Private Equity & Venture Capital Association

+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk

Q2. What, if any, aspects of the draft Markets Regime 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 believe will strengthen the CMA's guidance and promote its 4P's framework:

Market reviews prioritisation

- *Paragraph 5.5:* In addition to publication of a Project Roadmap on the launch of a Market review, in order to provide greater clarity and predictability, it would be helpful if the CMA could also indicate on which basis will it prioritise the future Market reviews. For example, the CMA could indicate which sectors it plans to look into in the specified future period, appreciating that some of the Market reviews may be a result of intelligence gathered, evidence received and other factors that cannot be foreseen at that stage.

Sector Expertise

- *Paragraphs 5.5, 6.11 and 8.25:* It would be helpful to understand better how the CMA proposes to identify and appoint sector experts, as well as what weight will be given to sector experts' views at different stages of the investigation. Whereas we appreciate the discretion the CMA has in relation to evidence gathering strategies, we consider it is important that affected parties have an opportunity to provide inputs into the CMA's proposed approach in relation to sector experts in a meaningful way, in order to avoid potential biases, conflicts of interest, or other risks which may arise if certain individuals or organisations are appointed as sector experts by the CMA without consultation.

Q3. Do you agree with the proposal to update and consolidate the relevant guidance?

The BVCA agrees with the proposal to update and consolidate the relevant guidance.

From a user perspective, consolidating older documents into a single, master guidance document is a welcome and practical improvement. It simplifies navigation and reduces the time and effort required to locate relevant information, particularly for legal and compliance teams who need to interpret and apply the guidance accurately and efficiently. A unified document also helps ensure consistency in interpretation, reducing the risk of conflicting or outdated references across multiple sources.

For the private capital industry, where regulatory clarity is essential to support investment decisions, consolidation enhances legal certainty. It allows firms to understand better the CMA's expectations and processes, especially in complex areas like market investigations. This streamlined approach aligns with the CMA's commitment to transparency and proportionality under the '4Ps' framework, and will ultimately support more confident engagement between businesses and the regulator.