Ashurst

Department for Business and Trade

Refining our Competition Regime: Response of Ashurst LLP

31 March 2026

Executive summary

1. Ashurst LLP welcomes the opportunity to respond to the Government's consultation of 20 January 2026, "*Refining our Competition Regime: Driving growth and enhancing competition for businesses and consumers*" (the **Consultation**). We advise a broad range of UK and international businesses on competition law matters, including mergers, market investigations and antitrust / consumer law enforcement, appeals and litigation. This response contains our own views, based on our experience advising and representing clients, and is not made on behalf of any of our clients.

2. We support the Government's stated objectives of promoting growth, investment and effective competition, and we support the CMA's focus on the "4Ps" (pace, predictability, proportionality and process). Several of the proposed reforms move in that direction. However, certain proposals would materially reduce legal certainty and weaken important safeguards within the UK regime.

3. Our principal views are as follows:

3.1 First, we do not support the proposed replacement of the CMA's independent panel system with Board committees and sub-committees unless materially stronger safeguards are introduced. The current panel model provides significant structural protection against confirmation bias and political influence in Phase 2 mergers and market investigations. If the Government proceeds with the proposed reform, it should, at a minimum: (i) impose clear and robust statutory rules on sub-committee composition and separation from Phase 1; (ii) strengthen the appeal standard; and (iii) introduce proper access to the file, together with effective procedural oversight by an independent hearing officer.

3.2 Secondly, we support replacement of the current two-stage markets regime with a single-phase market review tool, provided that its design promotes speed without sacrificing legal certainty. We do not support replacing the established adverse effect on competition test with an adverse effect on consumers test. The former is the appropriate competition law threshold, is the subject of an established body of case law and gives businesses and advisers a more predictable legal framework.

3.3 Thirdly, in relation to merger control, the main problem in practice remains jurisdictional uncertainty. The proposed reforms to the share of supply test and material influence do not go far enough and will not increase predictability for businesses. We support a closed list approach only if it is accompanied by materially narrower and more objective criteria. In particular, as regards the share of supply test, the "*number of workers employed*" criterion should be removed, as should the share of consumption limb. The overall share of supply-based test should be tied more closely to economically meaningful metrics, which we would suggest should be the value or volume of goods or services supplied in the UK. We would also suggest that the material influence test should either be recast more fundamentally than is suggested or constrained by a clear safe harbour.

3.4 Fourthly, we do not support extending algorithmic information-gathering powers of the kind used in the digital markets regime to the CMA's general competition and consumer functions at this stage. If the Government proceeds with this proposed reform, clear safeguards will be required.

3.5 Finally, we do not support a general ministerial approval role for CMA guidance. While consultation rights may be appropriate for certain high-level documents, a broad approval power would undermine perceptions of the CMA's independence and potentially delay guidance being updated.

4. Please refer to Annex 1 for our responses to the multiple-choice questions.

Section 1. Enhancing accountability for CMA decision-making in mergers and markets

5. **Q1: What impact do you think the proposed reform would have on the consistency and predictability of decision-making in merger and markets cases? Please explain your views.**

5.1 The proposal to replace the CMA's independent panel system with Board committees and sub-committees would, in our view, risk reducing rather than improving predictability and confidence in decision-making.

5.2 The panel system is a longstanding feature of the UK mergers and markets regimes. Its central value is structural: it provides a fresh decision-making body at the point where the CMA takes some of its most intrusive decisions, such as decisions to prohibit a merger, require divestments and impose wide-ranging market remedies at the end of a market investigation, including divestments and the breaking up of businesses. The separation of decision-makers for Phase 1 and Phase 2 (merger and market) investigations reduces the risk of confirmation bias and reinforces confidence that Phase 2 decisions are reached independently and based on the evidence.

5.3 It is important to recognise that confirmation bias is widely regarded as being a genuine and significant problem in administrative investigations, and constitutes a systemic issue rather than a random error. Confirmation bias is an unintentional, automatic cognitive process where the brain favours, searches for, and recalls information that confirms pre-existing beliefs, rather than a deliberate failing. Structural safeguards against confirmation bias, as are currently in place as a consequence of the panel system, are inherently more robust and effective than the "*rules, guidance and/or terms of reference…, which would be put in place to ensure our processes remain robust, transparent, and would operate without giving rise to risks such as confirmation bias*" referred to in the CMA's response to the Consultation.[1]

5.4 The proposed model would consolidate investigative and decision-making functions more closely within the CMA's own executive and Board structures. As a result, an important check within the current regime would be weakened without, as presently proposed, introducing equivalent alternative safeguards. This is particularly significant in a system where parties do not enjoy general access to the file and appeals remain limited to standard judicial review.

5.5 Moreover, we do not consider that the proposal has been shown to be necessary in order to improve pace or consistency. Recent procedural developments within the CMA, including changes to its Phase 2 merger process, have already improved engagement and transparency. The case for removing the panel system has therefore not been made.

5.6 If the Government nevertheless decides to proceed, additional safeguards will be required. In particular: (i) sub-committee composition should be tightly prescribed by statute; (ii) the appeal standard should be strengthened; (iii) individuals involved at Phase 1 should be barred from Phase 2 decision-making in the same case; and (iv) parties should have full access to the CMA's case file during Phase 2 merger investigations and throughout market reviews, with supervision by an independent hearing officer. These themes are developed below.

6. **Q2: Would the proposed reform for greater accountability for the CMA Board for merger and markets decision-making be something you would welcome? Please explain your views.**

6.1 The CMA Board is already accountable for the institution's performance and decision-making. Direct involvement of Board members in Phase 2 decisions would not, in our view, produce a meaningful gain in accountability.

[1] Published on 10 March 2026, available at: https://assets.publishing.service.gov.uk/media/69b020f2cdd628b29e3495b4/CMA_response_to_consultation_on_refining_the_UK_s_competition_regime.pdf, para 11.

6.2 The principal effect would instead be to change the institutional balance of the regime by concentrating decision-making within the CMA's own management hierarchy which raises two key concerns. First, it increases the risk, or at least the perception, that decisions may be shaped by institutional or policy considerations rather than by case-specific evidential assessment, with a material increase in the risk of confirmation bias. Secondly, it places significant weight on a relatively small number of senior individuals who already have substantial management responsibilities across the CMA.

6.3 For those reasons, in its current form, we do not support the proposal.

7. **Q3: Do you support the proposed membership requirements for the mergers and markets sub-committees/committees? Please explain your views.**

7.1 The proposed membership requirements do not provide a sufficiently robust alternative for the existing panel structure. Currently, there is insufficient detail on how the proposed sub-committee system would work in practice, including how the independent experts and the members of the sub-committee for each case would be selected, and how sub-committee decisions would be taken.

7.2 If the Government proceeds with this reform, the legislation should include the following minimum safeguards:

(a) First, any sub-committee taking a substantive Phase 2 or market review decision should consist of at least five members.

(b) Secondly, independent experts should form at least half of the members of each sub-committee: a sub-committee should not be capable of being dominated by CMA executives / non-executives.

(c) Thirdly, a maximum of two CMA Board members should sit on any sub-committee (this could comprise two executive Board members, two non-executive Board members or one of each); there should always be at least three independent experts on each sub-committee.

(d) Fourthly, no member involved in a Phase 1 decision in a given case should be permitted to participate in the Phase 2 decision in that case.

(e) Fifthly, members of the new expert pool should have statutory protection against removal except in limited specified circumstances, mirroring the protection currently afforded to panel members.

7.3 These safeguards are necessary if the Government wishes to preserve confidence in the independence and rigour of Phase 2 decision-making and within the revised markets regime.

Additional point: appeal standard and procedural safeguards

7.4 If the panel system is abolished, the case for strengthening the appeal standard becomes overwhelming. Recent case law, such as the Court of Appeal's judgment in *Cérélia / Jus-Rol*, has already acknowledged that the specialist nature of the CAT requires a more intensive and less deferential review than might be applied by a non-specialist court. [2]

7.5 The most effective solution would be a merits appeal to the CAT. If the Government does not adopt that approach, it should at a minimum legislate for a more intensive statutory review standard which enables the CAT to scrutinise factual error, legal error, unreasonable / disproportionate remedies, and decisions that are otherwise unreasonable or wrong. This would correspond to the consumer protection appeal standards set out in section 202 of the DMCCA 2024, which applies this heightened standard to directions (which are in effect equivalent to remedies in mergers and markets cases, albeit they are less onerous as they do not extend to divestment orders). Notably, as it extends to directions, this higher standard is not reserved for the review of penalty decisions in the consumer protection context (see section 202(3) DMCCA 2024). Such an approach would bring the UK into line with peer regimes like the EU. It would also provide a more robust check against factual errors and confirmation bias in the absence of an independent panel and materially improve confidence in the proposed new regime by ensuring meaningful scrutiny of the evidence.

Access to file

7.6 The Government should also introduce full access to the file in Phase 2 mergers and the new market review tool, which should include both inculpatory and exculpatory material. Access to file is fundamental to ensuring procedural fairness and an essential element of due process: it allows parties to properly understand the CMA's concerns, test the reliability and relevance of evidence relied upon and to proactively address factual, methodological or analytical errors before a final decision is taken. In addition, access to file would render judicial review more effective by enabling parties to refer to potential exculpatory evidence that is not included in the CMA's report and to show that the CMA failed to take relevant factors into account.

7.7 Under the current framework governing Phase 2 merger and market investigations, the parties' access to the case file remains far more limited than the approach adopted in other comparable jurisdictions. The CMA does not provide a formal "access to file" regime of the kind maintained by the European Commission in its merger proceedings. As explained in the CMA's guidance: "[*t]here is therefore no general right of 'access to file' within CMA merger control*

[2] [2024] EWCA Civ 352, paras 37 to 41.

proceedings, and the CMA is not, as a general principle, obliged to disclose all inculpatory or exculpatory material".[3] A similar approach is taken by the CMA in relation to market investigations. In practice, this means that parties do not have sight of the entirety of the evidential material upon which the CMA relies (as well as that which may be exculpatory) in reaching its decision, and access to underlying third-party submissions and internal CMA analysis is typically limited to non-confidential summaries or extracts. In connection with the proposed reforms, full access to the file would materially improve procedural fairness and the quality of decisions.

Hearing officer

7.8 In addition, a fully independent hearing officer sitting outside the CMA, potentially within the Government Legal Department, should be introduced. In EU merger (and antitrust) cases, the hearing officer acts as an independent monitor of the parties' procedural rights. The hearing officer sits outside DG Competition, reporting directly to the Competition Commissioner. It is important that the hearing officer sits outside the CMA in order to ensure that their career prospects are not determined by the body whose procedural decisions the hearing officer may be overruling.

7.9 In the EU, the hearing officer resolves disputes between merging parties and DG Competition in relation to procedural issues (such as contested requests for access to specific documents and confidentiality requests) and ensures that the parties' right to be heard is respected. The hearing officer contributes to maintaining the transparency and legitimacy of the administrative process. By providing a check on the European Commission's investigative powers, they help to ensure that the final decision is well-balanced and based on a complete assessment of all relevant facts.

Section 2. Markets Work and Market Remedies

i. Enhancing the CMA's markets work

8. **Q4: Do you agree the existing market study and market investigation model should be replaced with a new single-phase market review tool? Please explain why.**

8.1 We support the move to a single-phase market review tool, provided it is efficient and is designed to preserve procedural safeguards. The existing combined market study and market investigation model can be lengthy and duplicative, creating prolonged uncertainty for businesses and delaying any resulting benefits. A single-phase tool has the potential to improve pace and proportionality if designed

[3] CMA2, Mergers: Guidance on the CMA's jurisdiction and procedure (19 December 2025), para 18.17.

well. However, the benefits of streamlining will only be realised if the new process is accompanied by clear procedural discipline.

8.2 There is a risk that a single-phase tool would reduce the CMA's operational flexibility and result in longer investigations than under the existing system. The Consultation states that *"[t]he end-to-end process should in most cases take between 18 – 24 months instead of over 30, and in some cases considerably less than 18 months*".[4] While this reduces the duration of the process where the CMA proceeds from a market study to a market investigation, the current time limit for a market study is 12 months which is considerably shorter than the Government's expectation for "*most cases*" under a single-phase tool. We note that of the 14 CMA market studies concluded since January 2016, only two have resulted in a market investigation reference.[5] The CMA should therefore be aiming to resolve most market reviews within 12 months in line with current practice.

8.3 We also note that the CMA currently does not need to conduct a market study before launching a market investigation. A consolidated tool, without careful design, may create pressure to escalate every review to its maximum intensity, resulting in longer and more onerous processes for businesses which would, at present, only be subject to a market study.

8.4 In addition, a single-phase tool may dilute the rigour applied to cases that genuinely warrant the depth of scrutiny currently required by a "phase 2" market investigation. In particular, where the CMA is considering intrusive remedies, the process should require those remedies to be signalled early and clearly. This will, however, require the CMA to have a clear understanding of the market, the competition issues and possible remedies at a much earlier stage in the process (to enable it to publish its provisional report, including a view on remedies, at the 6 to 12 month mark). Guidance should confirm that where intrusive remedies are not identified within the relevant consultation window, they will not later be introduced without exceptional justification.

8.5 Finally, combining the two phases into a single-phase review tool will remove an important set of checks and balances. As highlighted above in response to the questions in section 1, removing a "*fresh pair of eyes*" increases the risk of confirmation bias. The Government will therefore need to consider what safeguards should be included to ensure that decisions are, and are perceived to be, subject to appropriate scrutiny (noting that the remedies imposed at the end of a market investigation can be highly intrusive, including divestments, as well as

[4] Para 49.

[5] See Annex 2. For completeness, we note that two sectoral regulators' (Ofcom and the FCA) market studies have led to market investigation references in this period.

requiring significant investment by businesses, as occurred in relation to Open Banking). See paragraphs 7.4 to 7.9 above.

9. **Q5: Do you agree the statutory time-limit for market reviews should be 24 months, with a possibility to extend by a maximum of 6 months? Please explain why.**

9.1 We agree that a 24-month limit, with a tightly constrained extension of up to six months, is appropriate for a single-phase market review process. However, as noted in response to question 4 above, the CMA should aim to complete its review as efficiently as practicable (in line with its duty of expedition). 12 of the 14 market studies concluded by the CMA in the last ten years have not resulted in a market investigation reference and have therefore been concluded in 12 months (or less).[6]

10. **Q6: Do you agree there should be a single legal test for single-phase market reviews? Please explain why.**

10.1 If the regime moves to a single process, a single legal test is the logical corollary.

11. **Q7: If so, should this be the adverse effect on consumers test? Please explain why**

11.1 No; the test should remain whether there is an adverse effect on competition.

11.2 The CMA's markets function is a competition tool. The adverse effect on competition test is well-established, judicially considered, and gives businesses and advisers a more predictable framework for assessing risk and likely outcomes. It also ensures that any remedies proposed by the CMA are designed to address the underlying cause rather than merely identifying consumer harm without determining and addressing the source of the concern.

11.3 In contrast, an adverse effect on consumers test would broaden the basis on which significant remedies might be imposed, whilst reducing legal certainty. The consultation materials do not, in our view, identify a clear enforcement gap that requires this shift. In the last 20 years, in every market investigation (apart from PayTV, where Netflix was recognised as a game-changing new entrant), an adverse effect on competition has been found and remedies have been recommended or adopted.[7]

11.4 Moreover, the CMA now has broader direct consumer enforcement powers under the DMCCA 2024, which reduce the force of any argument that consumer harm falling outside a competition analysis would otherwise go unaddressed. It can

[6] Ibid.

[7] See Annex 3.

impose significant fines for breaches of consumer protection law which will have general as well as individual deterrence effects.

11.5 In addition, focusing on the impact on consumers alone could impact whether the CMA is able to effectively assess B2B markets. The CMA's current CEO, Sarah Cardell, recently noted that the ongoing civil engineering market study falls outside the CMA's consumer focus and would not have been picked "*absent the growth focus*". [8]

ii. CMA Market Remedies

12. **Q8: Do you agree the CMA should consider sunset clauses when designing remedies? Please explain why.**

12.1 We support placing the obligation to consider sunset clauses on a statutory footing. Remedies should not continue indefinitely without positive justification.

13. **Q9: Do you agree the CMA should review market remedies at least once every 10 years? Please explain why.**

13.1 Periodic review is appropriate to ensure that remedies remain proportionate and effective and do not impose unnecessary burdens over time. The actions that the CMA can take when reviewing market remedies should be carefully considered. In our view, it should be limited to withdrawing remedies which are no longer required or effective. Consideration should also be given as to how the CMA will engage with stakeholders when assessing whether remedies remain proportionate and effective.

14. **Q10: Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so? Please explain why.**

14.1 Yes, but only in limited and transparent circumstances. If such a power is included, the threshold for exceptional circumstances should be narrow and the CMA should be required to publish its reasons.

iii. Concurrency

15. **Q11: Should sector regulators be able to oversee market remedies imposed or accepted by the CMA? Please explain why.**

15.1 Where a sector regulator has the relevant expertise and existing supervisory relationship with the market, it may be more efficient for that regulator to oversee

[8] Sarah Cardell, Industry and Regulators Committee, Uncorrected Oral Evidence: Regulators and Growth (27 January 2026).

remedies in practice. The regime should, however, preserve flexibility for oversight to revert to the CMA where appropriate.

16. **Q12: Do you support the proposed consultative approach, where the CMA must consider undertaking a single-phase review following a request from sector regulators? Please explain why.**

16.1 The CMA should retain control over its own prioritisation and resources. At the same time, a reasoned request from a sector regulator should carry real weight. The CMA should be transparent when declining such a request and should explain its reasoning.

17. **Q13: We welcome any other views or evidence on improving the concurrency framework.**

17.1 If the single-phase model is adopted, the legislation should avoid creating a confused interface between sectoral market study powers and the CMA's new review tool. In particular, the Government should clarify the continued position of undertakings in lieu and consider whether a more streamlined joint process between sector regulators and the CMA is needed to avoid duplicative proceedings.

Section 3. Mergers

i. Increasing predictability in merger control

18. **Q14: Should share of supply be revised to a closed list of criteria, for both the share of supply and hybrid jurisdictional tests? Please explain why.**

18.1 We support the objective of placing clearer statutory limits around the share of supply test. However, the proposal in its current form will not materially improve predictability.

18.2 The problem is not merely that the list is open-ended: it is that several of the listed criteria remain too broad and uncertain to perform a useful limiting function. As drafted, the CMA retains substantial flexibility to construct jurisdiction in contested cases.

19. **Q15: Do you support the proposed criteria for inclusion? Please explain why.**

19.1 At a minimum, the criterion of "*number of workers employed*" should be removed. The CMA has only applied this criterion in a very small number of cases (e.g. *BlackRock / Preqin*, *CVS / Quality Pet Care* and *Roche / Spark*). Employee headcount is not a reliable proxy for market presence or competitive strength and may create unnecessary uncertainty, particularly for innovative or labour-intensive businesses with a UK operational presence but modest UK revenue. Unlike more

clearly defined metrics (such as turnover), the concept of "*workers*" can be broad and is capable of multiple interpretations which reduces predictability for merging parties. For example, it could apply to contractors or global freelancers contracted to a UK employer or to only UK-based employees.

19.2 In addition, it may risk creating unintended disincentives for investment in the UK and therefore run contrary to the CMA's economic growth agenda. For example, its inclusion as a criterion for assessing a business' share of supply means that businesses may face a merger review where their UK commercial activity is limited or their UK revenue is small, but they maintain research, data or operational staff in the UK. Businesses may be more cautious about expanding UK teams or locating specialised staff in the UK if doing so increases the likelihood that future transactions will trigger merger scrutiny, even when the UK represents only a small share of their global business.

19.3 We also consider that "*cost*" and "*price*" are inherently uncertain metrics for jurisdictional purposes and are unlikely to provide meaningful ex ante predictability for parties.

19.4 The share of consumption limb should also be removed. Even if rarely used, it adds to the sense that jurisdiction can always be found if the authority wishes to find it.

20. **Q16: Are there any additional criteria that should be included? Please explain why.**

20.1 If the Government retains a share of supply-based test, it should be tied more closely to economically meaningful metrics, in particular the value or volume of goods or services supplied in the UK. It is important to bear in mind that the recently adopted "hybrid test" has substantially increased the jurisdictional reach of the CMA such that any acquisition by a company with a material presence in the UK in which the target has a UK nexus is now reviewable.

21. **Q17: Would the proposed reform for the share of supply test improve predictability for businesses? Please explain why.**

21.1 In its current proposed form, the reform would narrow the test only marginally. It would not address the core concern, namely the continued breadth of the criteria available to the CMA and the resulting difficulty for parties in predicting whether UK jurisdiction will be asserted.

22. **Q18: Should the material influence and de-facto control tests be revised to a closed list of statutory factors? Please explain why.**

22.1 A closed list may improve transparency, but only if the statutory factors are drafted narrowly and accompanied by clear guidance on how they are to be applied.

23. **Q19: Do you support the factors proposed for inclusion? Please explain why.**

23.1 The factors relating to access to confidential strategic information and commercial, financial or consultancy arrangements are too broad. If enacted in loose form, they risk bringing ordinary minority investment protections and routine commercial relationships within scope.

23.2 There is also a wider problem: putting these factors into statute as alternatives may inadvertently increase uncertainty by suggesting that any one factor can suffice on a standalone basis. This is difficult to reconcile with current practice and would create a more expansive jurisdictional test in substance, not a narrower one.

24. **Q20: Are there any additional factors that should be included? Please explain why.**

24.1 The better course is not to add more factors, but to narrow and clarify the existing ones.

25. **Q21: Would the proposed reform for the material influence test improve predictability for businesses? Please explain why.**

25.1 The central difficulty with material influence is conceptual. Codifying factors does not solve that problem unless the concept itself is recast or materially constrained. We therefore favour one of two approaches.

25.2 The preferable approach would be to remove material influence as a separate jurisdictional threshold and to rely on control concepts such as levels of shareholdings and the decisive influence test that applies under the EU merger regulation.

25.3 If the Government does not take that step, there should at least be a clear safe harbour. In particular, material influence should not arise below a 15% shareholding save where objectively defined governance rights confer something equivalent to decisive influence. This would be the most practical way to improve predictability in this area.

ii. Providing more time to agree remedies at Phase 1

26. **Q22: Should the timeframe for submitting and considering Phase 1 remedies be extended from up to ten to up to twenty working days? Please explain why.**

26.1 A longer period to submit and consider remedies may improve the quality of remedy discussions at Phase 1, reduce pressure on parties and the CMA, and lower the risk of unnecessary referrals to Phase 2. The CMA should, however,

provide clarity on the procedural expectations surrounding any extension so that the change improves predictability rather than simply extending uncertainty.

Section 4. Further cross-cutting changes

i. Stronger investigative powers for algorithms

27. **Q23: Should the CMA be granted enhanced powers to investigate algorithms in its competition and consumer protection functions? Please explain your reasoning.**

27.1 We understand why the Government wishes to ensure that the CMA's information-gathering powers remain effective in digital settings. However, the proposed power appears to go significantly beyond requiring production of existing information and may compel businesses to generate new material, simulations or outputs at considerable cost and operational burden.

27.2 This would be particularly inappropriate in market investigations (or the new single-phase market review), for example, where there is no allegation of wrongdoing by the parties. In addition, it is not yet clear that powers designed for the digital markets regime are suitable for the CMA's general competition and consumer functions across the economy. The digital markets model remains relatively new, and the case for this broader extension has not yet been made out.

27.3 If the Government nevertheless proceeds, the legislation should include clear safeguards on proportionality, technical feasibility, confidentiality, privilege, timescales and independent oversight.

ii. The Secretary of State's role in CMA guidance

28. **Q24: Should the Secretary of State have a formal role in a wider range of key guidance documents? Which ones, and please explain why.**

28.1 We do not object in principle to the Secretary of State being consulted on certain higher-level guidance documents, provided that this occurs in parallel with wider stakeholder consultation and does not create a second political approval stage.

28.2 We do not support a general approval power over CMA guidance which is often highly technical. A broad ministerial approval role would risk delay, dilute perceived independence and add little of substantive value. If the Government wishes to include some additional documents within a ministerial consultation or approval framework, that should be done selectively and on a case-by-case basis.

iii. Excluding the Christmas period from statutory time limits

29. **Q25: Do you agree a longer Christmas period should be excluded from merger and markets statutory time-limits? Please explain why.**

29.1 We support excluding a limited Christmas period from statutory timetables. However, the reform should be accompanied by a practical protocol dealing with the handling of RFIs and deadlines around that period, otherwise the benefit will be limited in practice.

30. **Q26: If so, what length should the pause be?**

30.1 The pause should be limited to a fixed period from 24 December to the first working day of January. A materially longer pause would risk unnecessary delay.

Conclusion

31. The consultation contains several welcome proposals. In particular, we support efforts to streamline the CMA's markets work, improve pace and allow more time for Phase 1 remedy discussions. However, the proposed removal of the panel system, the proposed consumer-based legal test for market reviews, and the insufficiently narrowed merger jurisdiction proposals all raise significant concerns.

32. The common theme is legal certainty. A competition regime that is faster but materially less predictable will not serve the Government's growth objective. If the Government proceeds with the more far-reaching institutional reforms, it should do so only with materially stronger safeguards, in particular a strengthened appeal framework, tighter statutory requirements for sub-committee composition and separation, meaningful access to file, and more independent procedural oversight.

Contacts

33. We would be happy to be contacted in relation to our response. The key contacts are: Nigel Parr (nigel.parr@ashurst.com), Fiona Garside (fiona.garside@ashurst.com) and Olivia Spong (olivia.spong@ashurst.com).

Ashurst LLP

31 March 2026

Annex 1

Consultation questions: Multiple choice responses

Please see below our responses to the multiple-choice questions.

Chapter 1. Enhancing accountability for CMA decision-making in mergers and markets

Q2. Would the proposed reform for greater accountability for the CMA Board for merger and markets decision-making be something you would welcome? [Yes / No / Not sure] Please explain your views. **No.**

Q3. Do you support the proposed membership requirements for the mergers and markets sub-committees/committees? [Yes / No / Not sure] Please explain your views. **No.**

Chapter 2. Markets Work and Market Remedies

i. Enhancing the CMA's markets work

Q4. Do you agree the existing market study and market investigation model should be replaced with a new single-phase market review tool? [Yes / No / Not sure] Please explain why. **Yes.**

Q5. Do you agree the statutory time-limit for market reviews should be 24 months, with a possibility to extend by a maximum of 6 months? [Yes / No / Not sure] Please explain why. **Yes.**

Q6. Do you agree there should be a single legal test for single-phase market reviews? [Yes / No / Not sure] Please explain why. **Yes.**

Q7. If so, should this be the adverse effect on consumers test? [Yes / No / Not sure] Please explain why. **No.**

ii. CMA Market Remedies

Q8. Do you agree the CMA should consider sunset clauses when designing remedies? [Yes / No / Not sure] Please explain why. **Yes.**

Q9. Do you agree the CMA should review market remedies at least once every 10 years? [Yes / No / Not sure] Please explain why. **Yes.**

Q10. Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so? [Yes / No / Not sure] Please explain why. **Yes.**

iii. Concurrency

Q11. Should sector regulators be able to oversee market remedies imposed or accepted by the CMA? [Yes / No / Not sure] Please explain why. **Yes.**

Q12. Do you support the proposed consultative approach, where the CMA must consider undertaking a single-phase review following a request from sector regulators? [Yes / No / Not sure] Please explain why. **Yes.**

Chapter 3. Mergers

i. Increasing predictability in merger control

Q14. Should share of supply be revised to a closed list of criteria, for both the share of supply and hybrid jurisdictional tests? [Yes / No / Not sure] Please explain why. **Yes.**

Q15. Do you support the proposed criteria for inclusion? [Yes / No / Not sure] Please explain why. **No.**

Q16. Are there any additional criteria that should be included? [Yes / No / Not sure] Please explain why. **Yes.**

Q17. Would the proposed reform for the share of supply test improve predictability for businesses? [Yes / No / Not sure] Please explain why. **No.**

Q18. Should the material influence and de-facto control tests be revised to a closed list of statutory factors? [Yes / No / Not sure] Please explain why. **Yes.**

Q19. Do you support the factors proposed for inclusion? [Yes / No / Not sure] Please explain why. **No.**

Q20. Are there any additional factors that should be included? [Yes / No / Not sure] Please explain why. **No.**

Q21. Would the proposed reform for the material influence test improve predictability for businesses? [Yes / No / Not sure] Please explain why. **No.**

ii. Providing more time to agree remedies at Phase 1

Q22. Should the timeframe for submitting and considering Phase 1 remedies be extended from up to ten to up to twenty working days? [Yes / No / Not sure] Please explain why. **Yes.**

Chapter 4. Further cross-cutting changes

i. Stronger investigative powers for algorithms

Q23. Should the CMA be granted enhanced powers to investigate algorithms in its competition and consumer protection functions? [Yes / No / Not sure] Please explain your reasoning. **No.**

ii. The Secretary of State's role in CMA guidance

Q24. Should the Secretary of State have a formal role in a wider range of key guidance documents? [Yes / No / Not sure] Which ones, and please explain why. **No.**

iii. Excluding the Christmas period from statutory time limits

Q25. Do you agree a longer Christmas period should be excluded from merger and markets statutory time-limits? [Yes / No / Not sure] Please explain why. **Yes.**

Annex 2

Market studies and market investigation references (2016 – 2026)

Sector	CMA market review?	Market study?	Market investigation?	Outcome
Heating oil for domestic use	No	Yes (launched March 2026)		Ongoing.
Private dental services	No	Yes (launched March 2026)		Ongoing.
Civil engineering (road and rail infrastructure)	No	Yes (launched June 2025)		Ongoing.
Vets	Yes (September 2023 – May 2024)	No	Yes (May 2024 – March 2026)	The CMA intends to make a remedies order and to accept undertakings in September 2026. Proposal for CMA Order and recommendations to Government.
Cloud services	No	Yes (Ofcom market study) (October 2022 – October 2023)	Yes (October 2023 – July 2025)	Recommendation to the CMA Board to use its powers under the DMCCA 2024 to prioritise commencing a significant market status investigation to consider designating Microsoft and AWS.

Sector	CMA market review?	Market study?	Market investigation?	Outcome
UK mobile ecosystems	No	Yes (June 2021 – June 2022)	Yes (mobile browsers and cloud gaming) (November 2022 – March 2025)[9]	Recommendation to the CMA Board to use its powers under the DMCCA 2024 to prioritise commencing a significant market status investigation to consider designating Apple and/or Google.
Groceries	Yes (ongoing programme of work)	Yes, in respect of infant formula (February 2024 – February 2025)	No	Market study led to recommendations to Government. Consumer protection investigations.
Housebuilding	No	Yes (February 2023 – February 2024)	No	Recommendations to Government. Competition Act investigation.
Road fuel	Yes (June 2022 – July 2022)	Yes (July 2022 – July 2023)	No	Recommendations to Government.
Land mobile radio network services for public safety	No	No	Yes	CMA Order. Recommendation to Government.

[9] Note, the market investigation reference was subject to appeal which accounts for the longer duration of the market investigation.

Sector	CMA market review?	Market study?	Market investigation?	Outcome
			(October 2021 – April 2023)	
Music and streaming services	No	Yes (January 2022 – November 2022)	No	The CMA concluded that on balance the market is delivering good outcomes for consumers.
Children's social care provision	No	Yes (March 2021 – March 2022)	No	Recommendations to Government.
Electric vehicle charging	No	Yes (December 2020 – July 2021)	No	Recommendations to Government.
Funerals	No	Yes (June 2018 – March 2019)	Yes (March 2019 – December 2020)	CMA Order.
Online platforms and digital advertising	No	Yes (July 2019 – July 2020)	No	Recommendations to Government.
Statutory audit market	No	Yes	No	Recommendations to Government.

Sector	CMA market review?	Market study?	Market investigation?	Outcome
		(October 2018 – April 2019)		
Investment consultancy and fiduciary management services	No	Yes (FCA market study) (November 2015 – September 2017)	Yes (September 2017 – December 2018)	CMA Order.
Heat networks	No	Yes (December 2017 – July 2018)	No	Recommendations to Government.
Care homes for the elderly	No	Yes (December 2016 – November 2017)	No	Recommendations to Government. Consumer protection investigations.
Supply of digital comparison tool services	No	Yes (September 2016 – September 2017)	No	Competition law investigation. Recommendations to sectoral regulators.
Supply of legal services in England and Wales	No	Yes (January 2016 – December 2016)	No	Recommendations to industry regulators and Government. Review of progress in September to December 2020.

Annex 3

Table of adverse findings and remedies following CMA market investigations (2006-2026)

Market investigations (date of Final Report)	Information remedies	Promoting switching	Lowering barriers to entry	Recommend Govt. / regulator action	Pricing remedy	Divestment
Store cards (2006)	✓	✓				
Domestic bulk LPG (2006)	✓	✓				
Home credit (2006)	✓	✓	✓	✓		
Classified Directory Advertising Services (2006)					✓	
NI personal banking (2008)	✓	✓				
Groceries (2008)			✓	✓		
PPI (2009)	✓	✓		✓		
BAA airports (2009)			✓	✓		✓
Rolling Stock (2009)	✓	✓	✓	✓		
Buses (2011)			✓	✓		

Market investigations (date of Final Report)	Information remedies	Promoting switching	Lowering barriers to entry	Recommend Govt. / regulator action	Pricing remedy	Divestment
Pay TV (2012)			*No remedies due to launch of Netflix*			
Audit (2013)		✓	✓	✓		
Aggregates (2014)	✓					✓
Healthcare (2014)	✓	✓				**[✓]**
Payday Lending (2015)	✓		✓	✓		
Energy (2016)	✓	✓	✓	✓	✓	
Retail Banking (2017)	✓	✓	✓	✓		
Investment Consultancy & Fiduciary Management Services (2018)	✓	✓	✓	✓		
Funerals (2020)	✓	✓		✓		
Mobile Radio Network Services (2023)					✓	

Market investigations (date of Final Report)	Information remedies	Promoting switching	Lowering barriers to entry	Recommend Govt. / regulator action	Pricing remedy	Divestment
Mobile Browsers and Gaming (2025)				✓		
Cloud Services (2025)				✓		
Vets (2026)	✓	✓	✓	✓	✓	