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THE GOVERNMENT'S SHAKE-UP OF THE CMA: A YEAR IN REVIEW

On 20 January the UK government launched a consultation on its long-awaited proposals to shake up the UK competition regime, marking the latest offensive in its *"primary mission … to deliver economic growth"*.

Announced exactly a year after the government's unprecedented ousting of former CMA Chair Marcus Bokkerink in favour of ex-Amazon exec Doug Gurr, this latest announcement marks an attempt to affect long-lasting, structural change to *"support the CMA […] to complement the CMA's operational transformation"*. The proposed changes to the CMA's decision-making structures do indeed represent a significant shift. However, with the more substantive proposals centred on reforms to the merger control and markets regimes, areas which the CMA has already taken steps to reform, in this briefing we consider how far the CMA has already come and the extent to which the government's proposals will deliver further meaningful change.

The CMA's tempered approach to merger control

In the year since Bokkerink's ousting and the government's draft strategic steer mandating the CMA to focus on promoting growth as the *"overriding national priority of this government"*, the CMA has been busy. As the consultation itself recognises, the CMA has *"emphatically answered the government's call"* by undertaking *"a comprehensive programme of work to focus its work on growth and investment while protecting consumers and businesses"*, consulting on a host of proposals aimed at embedding its new growth-focused "4Ps" framework across the full gamut of its activities.

In particular in the merger control arena, the CMA has made changes both to its remedies guidance – softening its approach to behavioural remedies and offering more extensive engagement early on in the process – and to its guidance on jurisdiction and procedure – introducing KPIs to shorten lengthy processes, increasing engagement with merger parties via teach-ins and update calls, tweaking the guidance in respect of the "share of supply" and "material influence" jurisdictional tests, and formalising a seemingly less interventionist approach to global deals (see here and here). Although broadly positive for dealmakers, many of the changes to the guidance documents have felt more like tweaks around the edges rather than wholesale change, with the CMA maintaining the position that their approach to the substantive assessment of mergers remains the same.

Beyond these public announcements, though, the CMA's merger control statistics tell a different story. The half-year statistics show that in the six months from April to October 2025, only four Phase 1 cases progressed to a Case Review Meeting (CRM) – the internal CMA meeting reserved for discussion of those mergers which have been tested at an Issues Meeting (for mergers considered by the case team to raise potentially material competition issues). This contrasts with significantly higher numbers in the preceding full years, despite the overall number of cases under review at Phase 1 remaining fairly consistent:

Year (FY)	Total P1 decisions	CRM	% P1 cases proceeding to CRM
April – Oct 2025 (half-year)	20	4	20%
2024-2025	41	20	49%
2023-2024	54	32	59%
2022-2023	43	31	72%
2021-2022	55	21	38%
2020-2021	38	19	50%

The final column above strikingly evidences the significantly lower likelihood of a case proceeding to an

intensive Issues Meeting today as compared with any other year in the CMA's recent history (even allowing for timing discrepancies where, for example, the Phase 1 decision is taken in the year following the CRM). The most recent statistics from the last few months follow the same trend.

Equally telling are the statistics on the number of cases where the CMA found a substantial lessening of competition (SLC). As the table below shows, while the CMA appears to be finding SLCs in fewer cases today (penultimate column), an unconditional clearance at Phase 1 following an Issues Meeting now appears relatively less likely than in previous years.

Year (FY)	Total P1 decisions	CRM	SLC[1]	% P1 cases where SLC found	% P1 cases with CRM but no SLC
April - Oct 2025 (half-year)	20	4	5	25%	0%[2]
2024-2025	41	20	12	29%	20%
2023-2024	54	32	29	54%	6%
2022-2023	43	31	27	63%	9%
2021-2022	55	21	16	29%	9%
2020-2021	38	19	15	39%	11%

While the CMA might argue that this simply reflects the shifting diet of cases landing on its desk, the fact that the regime is voluntary – meaning that the CMA (unlike other global competition authorities) has much greater freedom to select which transactions it chooses to review - suggests that governmental pressure has already significantly impacted the CMA's substantive decision making.

That the CMA's post-Brexit enthusiasm - culminating in the highwater mark of 2022-2023 – to prove itself on the global stage has already been somewhat curbed, may explain the limited nature of some of the government's proposals in respect of merger control. In particular, businesses may be disappointed that the long-mooted proposals to alter the jurisdictional tests to improve predictability do not go further than removing the CMA's discretion to consider additional criteria when applying the "share of supply" and "material influence" tests – in practice doing little more than placing on a statutory footing the amendments the CMA has already made in its recently updated jurisdictional guidance. Indeed, the significant discretion retained by the CMA under the proposals mean it would still have the ability to review the most controversial recent cases of perceived jurisdictional overreach, such as *Roche/Spark* and *Sabre/Farelogix* - so failing to bring the bright-line legal certainty that many businesses have called for.

The proposed extension of the Phase 1 remedies timeline will likely be welcomed more enthusiastically, although the government should go further by extending the extremely short statutory period for the parties to submit remedies to ten working days in all cases, rather than leaving this to the CMA's discretion. This would assuage concerns that the focus in the revised remedies guidance on the benefits of early engagement essentially prejudices those parties who still prefer to follow the traditional sequential route of discussing remedies only after it is clear that they will be required. The proposed extension at the CMA's discretion is however a step in the right direction, and would enable the CMA to remove the unhelpful guidance, which is inconsistent with the "4Ps", that parties "*should not expect to engage in iterative discussions or negotiations with the CMA during this period*".

Reform to the markets regime

The proposal to streamline the markets regime into a single-phase review takes seriously the government's commitment to driving growth, and will be welcomed particularly by those businesses with bitter experience of the uncertainty that a prolonged market investigation can bring. It is encouraging that the proposal includes an exit route allowing the CMA to conclude a review six to twelve months after its launch, but to ensure that this is taken up in practice – and that the streamlined process does not have the

[1] Cases where UILs were accepted, plus cases referred to Phase 2.

[2] We note the discrepancy of 4 CRMs and 5 SLCs in the period April – October 2025, presumably caused by a CRM in the previous financial year, leading to an SLC finding in this period.

adverse effect of prolonging what could otherwise have been a short review – it should be accompanied by guidance or KPIs incentivising the CMA to deliver its conclusions at pace. Similarly, while the proposal to give the CMA discretion on whether to proceed with a market review referred by a concurrent regulator seems sensible, where the CMA does proceed, stricter time limits should be imposed, to ensure that the whole timeframe for the sector study and single-phase market review is not inadvertently longer than under the current regime.

Also positive is the proposal to clarify the ability of concurrent regulators to take responsibility for monitoring and enforcing remedies accepted by the CMA – the hope being that this might encourage the acceptance of more behavioural remedies, with burdensome monitoring requirements being offloaded to sector regulators à la *Vodafone/Three*.

As the consultation itself recognises, the other proposals for the markets regime – to require the CMA to consider sunset clauses, and to review market remedies every ten years – do little more than put the CMA's own commitments on a statutory footing.

The dissolution of the Panel

Many of the detailed proposals, then, seem aimed primarily at embedding the work the CMA has already done to further the government's mission. The main exception to this is the disbanding of the panels of independent experts responsible for deciding Phase 2 merger and market investigations (the 'Panel'). Although positioned in the consultation as a "*refinement*" to these decision-making structures, intended to remove a relic of the old UK regime which "*is challenging to explain to international businesses and, indeed, the wider UK public*", this is in reality a seismic shift.

The Panel structure has been retained throughout the various incarnations of the UK regulator up to the present day precisely to avoid confirmation bias, by providing a "fresh pair of eyes" on a case following a reference to Phase 2. Designed to be independent from and not answerable to the CMA Board, it is intended to function as a safeguard against influence both from CMA leadership and from the government. The key issue of "institutional accountability" that the government identifies with this model, whereby "*those ultimately accountable to Parliament*" are not "*directly involved in the most significant mergers and markets decisions*", would be addressed by the proposed CMA Board sub-committee structure. Whether in practice the proposal would also enhance "*consistency across CMA regimes and the predictability of decision-making across the CMA's functions*" remains to be seen. Justifying the proposal on the basis that it would "*improve the pace of decisions*" is challenging, given how capacity-constrained members of the Board sub-committees are likely to be (and that day-to-day decisions could equally be delegated to the case team via less comprehensive reforms to the current structure). While the proposed sub-committees are to include "*non-CMA staff experts*" to provide "*diversity and experience*", it is unclear to what extent and how this would replicate the current diversity of experience of the Panel.

More fundamentally, though, while the government maintains that the proposed structure would enhance "*the Board's involvement and accountability while safeguarding CMA independence from government*", it remains unclear what these safeguards might be. Without counterbalancing the removal of the Panel with a corresponding check such as a levelling up of the appeals process to a full merits review, or introducing a robust access to file process, the repeated insistence on safeguarding the CMA's independence rings rather hollow. Instead, there is likely to be increased scope for lobbying and a greater risk of (at least the perception of) political interference. All this serves to put to the test the ongoing plausibility of CMA CEO Sarah Cardell's recent declaration "*with absolute conviction – that there has been no reduction in the operational independence of the CMA*". Only time will tell.

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