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COMMENTS OF ITIF

to the

Department for Business and Trade

United Kingdom

In the Matter of Refining the UK's Competition Regime	)	Public Comment

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1. INTRODUCTION AND SUMMARY

On January 20, 2026, the UK's Department for Business & Trade (Government) issued its consultation "Refining Our Competition Regime" (Consultation), which sets out a number of proposals to reform the UK's Competition and Markets Authority (CMA) and overall competition regime.[1] The Consultation follows the Government's March Regulation Action Plan and Industrial Strategy initiatives, as well as the "CMA's 4Ps framework to improve pace, predictability, proportionality, and process."[2]

The Consultation contemplates a number of potential reforms, including measures that "provide greater certainty on which transactions will be subject to UK merger control," "how market remedies should be reviewed," as well as significant "refinements to how decisions are made in merger and market investigations."[3] These proposals align with the 4Ps model to "deliver pace through more efficient running of investigations; predictability through greater consistency of decision-making and direct accountability to the CMA Board; proportionality by empowering the CMA to operate in a targeted and flexible way, and an improved process for stakeholders, while safeguarding the vital independence of CMA decision-making."[4]

The Information and Technology and Innovation Foundation's (ITIF) Schumpeter Project on Competition Policy appreciates the opportunity to comment on the Consultation, as it has on other areas related to UK competition policy.[5] While ITIF commends the Government for its aim to "unlock the full potential of competition to increase market dynamism and growth," in several respects the Consultation could be improved to ensure that the UK's competition regime is optimally designed to drive innovation through sound antitrust rules and procedures.[6] Specifically, ITIF is concerned that some proposals would give too much power and discretion to the CMA, create unnecessary costs, potentially chill procompetitive behavior and investment, increase unpredictability in the UK's merger control regime, and needlessly expand the CMA's powers to investigate algorithmic behavior in ways that could harm UK consumers.

The structure of this comment mirrors the structure of the Consultation. First, ITIF provides responses to the questions in the Consultation that concern how to enhance accountability for CMA decision-making in mergers and markets. Second, ITIF comments on the proposals involving markets work and markets remedies. Third, ITIF analyzes the Consultation's questions in the critical area of mergers and acquisitions. Fourth, ITIF reflects on the further cross-cutting changes included in the Consultation, and in particular the proposal of giving the CMA greater investigative powers to police anticompetitive behavior involving algorithms. Recommendations and a brief conclusion follow.

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[1] UK Department for Business & Trade, Refining Our Competition Regime, Driving growth and enhancing competition for businesses and consumers (Jan. 20, 2026) [hereinafter Consultation].

[2] *Id.* at Foreword.

[3] *Id.*

[4] *Id.*

[5] *See, e.g.*, Comments of ITIF Before the Competition and Markets Authority, In the Matter of Discussion paper exploring role of competition policy in supporting UK scale-ups, ITIF(Nov. 21, 2025), https://www2.itif.org/2025-cma-supporting-uk-scale-ups.pdf.

[6] Consultation at Foreword.

2. ENHANCING ACCOUNTABILITY FOR CMA DECISION-MAKING IN MERGERS AND MARKETS

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.

As the Consultation notes, the proposed reform would "replace Panel-led Inquiry Groups with decision-making involving sub-committees of the Board."[7] Specifically, the "Government is proposing to closely align decision-making in mergers and markets with the approach in digital markets, delivering greater accountability, pace and predictability, along with operational consistency."[8] But conforming the CMA's longstanding and generally applicable processes with those of a new, untested, and niche regulation like the Digital Markets, Competition and Consumers Act 2024 (DMCCA24) will unnecessarily create new uncertainties within the CMA's competition regime. Indeed, as the Consultation highlights, "[t]he CMA's '4Ps' framework to improve pace, predictability, proportionality, and process is already having tangible results in improving the experience of businesses while it fulfils its important role of promoting competition and tackling unfair behaviour."[9] Given this progress, there is little basis for radically reforming the CMA based on the model provided by the DMCCA24, the efficacy of which remains unproven.

Q2. Would the proposed reform for greater accountability for the CMA Board for merger and markets decision-making be something you would welcome?

No.

Please explain your views.

The Consultation's proposed reform is said to "ensure that those ultimately accountable to Parliament are directly involved in the most significant mergers and markets decisions, involving predictability and consistency, as well as reinforcing institutional accountability."[10] However, the proposal principally increases accountability for the CMA by virtue of giving it more unchecked power, primarily through the elimination of the Panel system and its assumption of ultimate decision-making authority in areas such as determining when to bring a Phase 2 merger decision depending on whether a substantial lessening of competition is likely. Indeed, given that the Competition Appeal Tribunal (CAT) is focused on matters of "rationality and/or procedural fairness," ending the Panel system unfortunately appears to remove the key substantive check on the CMA's enforcement power. What's more, this concern is exacerbated by the difficulties that investigated parties already face with the CMA in receiving adequate information about the evidence being marshalled against them—an area where the CMA is an outlier relative to other comparable jurisdictions.

[7] *Id.* ¶ 6.

[8] *Id.* ¶ 25.

[9] *Id.* at Foreword.

[10] *Id.*

Q3. Do you support the proposed membership requirements for the mergers and markets sub-committees/committees?
No.

Please explain your views.
The Consultation makes clear that "at least half of the members of the committee or sub-committee appointed to take the delegated statutory decisions would have to be either non-executive members of the Board or drawn from the pool of non-CMA staff experts."[11] The Consultation also confirms that the "Government is not proposing to require mergers and markets committees or sub-committees to include at least two non-executive directors of the Board…so as to enable the CMA to draw more flexibly on the pool of non-CMA staff experts."[12] However, while ITIF supports the Government's instincts to include more non-CMA staff experts to facilitate expert and independent decision-making, it is highly unlikely that these membership requirements will provide anywhere near the degree of independent oversight of the CMA that is presently achieved through the Panel system.

3. MARKETS WORK AND MARKET REMEDIES

3.1 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?
No.

Please explain why.
Under current practice, "[t]he CMA Board oversees market studies, whereas market investigations are led by an independent Inquiry Group of CMA Panel members, who have not been involved in the preceding market study."[13] Specifically, "[i]f the CMA Board decides that an [Market Investigation Reference] is to be made, an Inquiry Group undertakes the market investigation and is required to decide whether there is an [adverse effect on competition] in the market(s) referred and, if so, whether and what remedial action is appropriate."[14] By creating a new single-phase market review tool administered solely by the CMA and designated committees, subcommittees, and/or other decision groups, the proposals give the CMA too much power not just to study anticompetitive behavior, but also to impose remedies, with essentially no oversight or independent checks.

[11] *Id.* ¶ 36.

[12] *Id.*

[13] *Id.* ¶ 45.

[14] *Id.* ¶ 17.

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.

Please explain why.
ITIF agrees with the need to put limits on the length of market reviews, which have taken "over 3 years in some cases" and result in heavy burdens on both private parties and the CMA, such as with the CMA's cloud market investigation and the related Ofcom market study.[15] As the Consultation explains, as a result "affected firms incur costs and experience uncertainty, which can reduce investment and innovation."[16]

Q6. Do you agree there should be a single legal test for single-phase market reviews?
No.

Please explain why.
There is no one test (inclusive of the evidentiary standard) that is appropriate for the various decision points in the "Process Map" included in the Consultation for the single-phase market review.[17] Put simply, the CMA should face a much higher bar for imposing remedies to address anticompetitive behavior than for merely launching a single-phase review.

Q7. If so, should this be the adverse effect on consumers test?
No.

Please explain why.
If the CMA is to apply a single test for its single-phase market reviews, it should be the adverse effect on competition test. As the Consultation intimates, unlike the adverse effect on consumers test, the adverse effect on competition test requires demonstration of a "causal link between the consumer harm and the harm to competition."[18] Requiring this showing is appropriate in a single-phase market review geared toward remedial measures, ensuring that any relief will be tailored to address conduct that is actually anticompetitive, rather than merely harmful to consumers.

3.2 CMA Markets Remedies

Q8. Do you agree the CMA should consider sunset clauses when designing remedies?
Yes.

Please explain why.

ITIF agrees that the CMA should consider sunset clauses when designing remedies, both to lessen its own administrative burden and to prevent chilling behavior that, due to changing market conditions, no longer

[15] *Id.* ¶ 43.

[16] *Id.*

[17] *Id.* ¶ 48.

[18] *Id.* ¶ 51.

presents any anticompetitive concerns and may even be procompetitive. This is especially true for markets that exhibit dynamism, which increasingly characterizes more and more aspects of the modern economy.

Q9. Do you agree the CMA should review market remedies at least once every 10 years?
No.

Please explain why.
The CMA should be under no requirement to review market remedies at least once every 10 years, as doing so arbitrarily increases the CMA's administrative burden in ways that are likely to outweigh any enforcement benefits. Rather, the CMA should review market remedies only when it has reason to believe they are ineffective, or alternatively for broader retrospectives to study the effectiveness of its remedies.

Q10. Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so?
Yes.

Please explain why.
The CMA should have the flexibility to delay these reviews of market remedies beyond 10 years, especially if there are no concerns that the remedy is failing to accomplish its intended goals or that there is market failure.

3.3 Concurrency

Q11. Should sector regulators be able to oversee market remedies imposed or accepted by the CMA?
Yes.

Please explain why.
Given their industry-specific expertise, sector regulators are often better positioned to administer remedies than the CMA, whose focus should be on general competition law enforcement throughout the UK economy—provided that sector regulators do not impose stricter requirements or more exacting legal standards than the CMA would in administering the remedy.

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.

Please explain why.
ITIF agrees with the Consultation's proposal to "give the CMA discretion in determining whether to take forward market reviews under the new model when markets are referred for investigation by the concurrent sector regulators."[19] This helps keep the CMA's administrative burden manageable and focused on matters targeted at policing anticompetitive conduct, rather than broader regulatory concerns.

Q13. We welcome any other views or evidence on improving the concurrency framework.
ITIF does not have any other views it wishes to share at this time.

[19] *Id.* at Executive Summary.

4. MERGERS

4.1 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.

Please explain why.

ITIF agrees with the Consultation that the "open-ended formulation" of the catch-all "or some other criterion, of whatever nature" does "contribute to uncertainty" in applying the share of supply and hybrid jurisdictional tests.[20] Specifically, given the uncertainty that already surrounds having to define a relevant market *ex ante*, the catch-all criteria make it highly difficult to understand when the CMA has jurisdiction in a way that has little to no offsetting benefits in terms of preventing false positives, given the comprehensive nature of the criteria that are already expressly listed (value, cost, price, quantity, capacity, and number of workers employed).

Q15. Do you support the proposed criteria for inclusion?

No.

Please explain why.

Even when removing the catch-all "or some other criterion, of whatever nature," the proposed remaining criteria—value, cost, price, quantity, capacity, and number of workers employed—still create too much unpredictability in determining whether the share of supply or hybrid test will be satisfied. For example, in Facebook/GIPHY, the CMA claimed jurisdiction using the share of supply test despite the fact that GIPHY did not have any revenue in the UK and Facebook did not have its own GIF database. Indeed, the CMA's own concerns were primarily focused on a loss of potential competition and vertical foreclosure, which is distinct from the horizontal analysis raised by the share of supply test. The uncertainty created by this broad, overexpansive interpretation of the share of supply test not only risks continuing to deter "increased investment, productivity, innovation and, ultimately, growth" achievable through mergers and acquisitions, but is also unaddressed by any of the proposals in the Consultation.[21]

Q16. Are there any additional criteria that should be included?

Yes.

Please explain why.

As the Consultation notes, in addition to requiring that "after the merger, the parties together supply or acquire at least 25% of goods or services in the UK (or a substantial part of it)," the share of supply test also requires a showing that "the merger leads to an increase in that share."[22] However, although transactions which result in only a *de minimis* and non-material increase in market share are unlikely to result in a substantial lessening of competition, the Consultation includes no proposals for including any sort of

[20] *Id.* ¶ 83.

[21] *Id.* at Foreword,

[22] *Id.* ¶ 81.

materiality requirement to ensure that the share of supply test does not capture transactions that have no prospect of substantially lessening competition.

Q17. Would the proposed reform for the share of supply test improve predictability for businesses?
Yes.

Please explain why.
By virtue of their respective market share criteria, both the share of supply and hybrid tests create significant uncertainty for firms seeking to determine whether their transaction will be subject to the CMA's jurisdiction. By eliminating the catch-all criterion, the Consultation takes a positive but incomplete step towards fostering a merger control regime that provides sufficient predictability to the business community.

Q18. Should the material influence and de-facto control tests be revised to a closed list of statutory factors?
Yes.

Please explain why.
ITIF agrees with the Consultation that the material influence test "lacks a statutory list of factors that can be considered by the CMA when determining whether the material influence test is met," which can "make it difficult for businesses to assess whether a transaction will fall within the scope of CMA scrutiny."[23] Indeed, ITIF has on multiple occasions filed comments to the CMA about why certain partnerships should not be considered a "relevant merger situation" under the Enterprise Act.[24] Critically, an overbroad application of the material influence test can chill investment that the UK needs to support innovation and growth.

Q19. Do you support the factors proposed for inclusion?
No.

Please explain why.
While ITIF understands that partial ownership acquisitions can, under some circumstances, result in a substantial lessening of competition, it is critical that the CMA provide a structural safe harbor to give businesses enough certainty as to when their transactions will not be subject to the CMA's jurisdiction. In particular, while the Consultation suggests that the CMA will consider "[s]hareholding or voting rights thresholds (for example, at least 15%), or any shareholding or voting rights in combination with other factors," it should go further and articulate an express safe harbor that transactions which result in shares of less than 15 percent will not constitute material influence and thus not constitute a relevant merger situation, except perhaps in extremely exceptional and expressly defined circumstances.[25]

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[23] *Id.* ¶ 86.

[24] *See* Daniel Castro, Comments to the UK Competition and Markets Authority Regarding the Amazon-Anthropic Partnership, ITIF (May 9, 2024), https://itif.org/publications/2024/05/09/comments-competition-markets-authority-regarding-amazon-anthropic-partnership/; Daniel Castro and Aswin Prabhakar, Comments to the UK's Competition and Markets Authority on Microsoft's Partnership with OpenAI, ITIF (Dec. 14, 2023), https://itif.org/publications/2023/12/14/comments-to-uks-competition-markets-authority-on-microsofts-partnership-with-openai/.

[25] Consultation ¶ 86.

Q20. Are there any additional factors that should be included?
No.

Please explain why.
Rather than include additional factors to guide its determination of whether material influence exists, the Consultation's proposed list is arguably already too long. Specifically, the inclusion of the "Commercial, financial, or consultancy arrangements" factor is very broad and unlikely to provide administrability benefits that outweigh the risks of false positives—all agreements between firms can create some degree of mutual influence or strategic coordination without rising to the level of a material loss of independence that occurs in any sort of legitimate relevant merger situation.

Q21. Would the proposed reform for the material influence test improve predictability for businesses?
Yes.

Please explain why.
By virtue of the material influence test for control representing the "lowest threshold, which refers to the ability to directly or indirectly, materially to influence the policy of the target enterprise," it creates significant uncertainty for parties determining whether their transaction will or will not constitute a relevant merger situation under the Enterprise Act. By setting forward a closed list of factors that the CMA will consider in determining whether material influence exists, the Consultation takes a positive, albeit incomplete, step towards making sure that its merger control regime provides sufficient predictability to the business community.

4.2 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.

Please explain why.
ITIF supports the Consultation's proposal for "extending the statutory period for the CMA to consider Phase 1 remedies following an SLC decision from up to 10 working days to up to 20 working days from the SLC decision" as a means to "help avoid a more intensive Phase 2 investigation, saving both businesses and the CMA the costs and burden of up to 24 weeks of further investigation."[26] Upfront remedies are an excellent way to protect consumers in an efficient manner, and an additional 10 days—along with the possible 5-working-day extension—to consider remedies during Phase 1 may be a small allowance relative to the considerable amount of time and resources the CMA is likely in certain cases to save by being able to avoid a lengthy Phase 2 investigation.

[26] *Id.* ¶ 91.

5. FURTHER CROSS-CUTTING CHANGES

5.1 Stronger Investigative Powers for Algorithms

Q23. Should the CMA be granted enhanced powers to investigate algorithms in its competition and consumer protection functions?

No.

Please explain your reasoning.

In order to address concerns about how "algorithms can be misused in ways the breach competition law," the Consultation proposes to "extend the powers available to the CMA under its digital markets function"—namely, the CMA's powers under the DMCCA24—by giving the CMA the general ability to, first, "require persons to obtain or generate information on algorithms, including requiring businesses to produce simulated outputs or data not already held;" second, "require persons to vary their usual conduct, for example, altering how services or digital content are presented to users, to better understand algorithmic behavior;" and third, require persons to perform a specified demonstration or test, allowing CMA experts to observe how an algorithm operates under specified conditions."[27]

The CMA should not extend powers applicable to its *ex ante* regulation under the DMCCA24 to the domain of its general *ex post* competition enforcement, through which it already has more than sufficient ability to investigate and police anticompetitive algorithmic behavior. Giving the CMA the power to effectively meddle with any company's algorithmic practices outside of the context of *ex ante* regulation is likely to result in heavy costs for firms as well as UK consumers who will be forced to bear the costs of the CMA's tinkering—all despite the fact that, unlike as presumed in a regulatory context, any sort of market failure may be unclear if not non-existent. To be sure, while it is true that the CMA's current processes may involve "[m]ultiple rounds of requests" that result in "prolonging investigations and creating burdens for both businesses and the CMA," these existing burdens and harms would likely be dwarfed by those created by deploying the DMCCA24's algorithmic investigatory powers across the whole of the CMA's *ex post* law enforcement.

5.2 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?

No.

Which ones, and please explain why.

Giving the Secretary of State a formal role in a wider range of key guidance documents risks turning the CMA into a more political body rather than an independent governmental organization focused on impartial law enforcement. While it is important for the CMA to be held politically accountable, there are already numerous mechanisms that exist for doing so without having to risk compromising the objectivity of the CMA's key guidance documents, which lay out its substantive enforcement standards.

[27] *Id.* ¶¶ 93, 95.

5.3 Increasing Predictability in Merger Control

Q25. Do you agree a longer Christmas period should be excluded from merger and markets statutory time-limits?
Yes.

Please explain why.
ITIF does not believe that effective merger control should come at the expense of widely celebrated holidays.

Q26. If so, what length should the pause be?
ITIF does not have a specific length in mind.

RECOMMENDATIONS

For these reasons, ITIF has concerns with the Consultation and respectfully offers the following recommendations for the CMA to consider:

- **Ending the Panel system is dangerous:** The Panel system is a key substantive check on the CMA. Should it proceed with undoing the Panel system, ITIF recommends that the Government consider additional safeguards to ensure accountability for the CMA.
- **The CMA must focus on harm to competition**: Although ITIF does not object in principle to a single-phase market review, the CMA's focus throughout should be on showing the appropriate indicia of harm to competition, as opposed to simply harm to consumers (or competitors).
- **The Government could do more to enhance the UK's merger control regime:** While the Consultation's proposals will help to reduce longstanding uncertainty surrounding the application of the share of supply, hybrid, and material influence tests, the Consultation could go further and include additional criteria and safe harbors that help guarantee that only transactions that have a risk of substantially lessening competition are targeted.
- **Expanding the DMCCA24's *ex ante* powers is unnecessary**: The CMA already has sufficient powers to police anticompetitive behavior involving algorithms, and utilizing the DMCCA24's *ex ante* toolkit could impose heavy burdens on firms and UK consumers.

CONCLUSION

ITIF applauds the Government's recognition of the "importance of competition and market dynamism in driving growth and the importance of an independent competition regime in promoting competition and ensuring investor confidence."[28] While, as discussed above, the Consultation puts forward several commendable proposals, in other respects its suggestions do not go far enough to achieve, or are indeed counterproductive toward realizing, the goals of greater competition and innovation in the UK. In an increasingly fraught world where Western techno-economic global leadership is being challenged, the special relationship between the UK and the United States is well served through properly calibrated competition policies in both countries that facilitate investment and drive innovation.

Very truly yours,

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[28] *Id.* at Foreword.