

Department for Business and Trade consultation on Refining Our Competition Regime

Submission by Silos Economics

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Introduction

Silos Economics provides economic analysis, expert testimony and strategic advice in the areas of competition and regulation. We want to help markets work better and deliver key benefits for society. This mission drives our intellectual endeavours and the work that we do, and shapes any shared initiatives that we may undertake with others.

We welcome the Department for Business and Trade's review of the UK competition regime and the opportunity to contribute to this consultation. The views expressed here are those of Silos Economics alone, and do not necessarily represent the views of any of Silos Economics' clients.

Our submission focuses on three key proposals in the consultation. First, the new decision-making model for the mergers and markets regimes. Second, the formal role granted to the Secretary of State in a wider range of key guidance documents published by the Competition and Markets Authority. Third, changes to the concurrency framework.

The rest of the submission is structured in three sections that set out our views and recommendations on the proposals above. Conclusions and references are provided at the end.

A new decision-making model for the mergers and markets regimes

The consultation proposes a new decision-making model in Phase 2 mergers and market investigations (Phase 2 decisions). Currently, these decisions are reserved for the Competition and Markets Authority (CMA) Panel, which consists of appointed members who are not CMA staff. The Panel is independent from both the CMA Board and the government.

Under the proposals, Phase 2 decisions "would be taken by either the CMA Board, new committees of the Board – a Merger Board Committee and Markets Board Committee – or by decision-making groups (sub-committees) appointed by the Mergers Board Committee or Markets Board Committee" (DBT, 2026, para. 25).

Committees or sub-committees would comprise CMA executive and senior staff members, along with non-executive members of the CMA Board. At

least half of their members would be non-executive, drawn either from the CMA Board's non-executive directors or from a pool of experts. The new decision-making model in Phase 2 would closely follow the approach used in the digital markets regime, which was commenced in 2025.

According to the Department for Business and Trade (DBT), the current system legally prevents senior CMA leaders from engaging in two of its most significant decision-making functions, despite being accountable to Parliament. DBT argues that the proposed reform "would ensure that those ultimately accountable to Parliament are directly involved in the most significant mergers and markets decisions, improving predictability and consistency, as well as reinforcing institutional accountability" (DBT, 2026, para. 6). DBT further argues that the reform aims "to improve the pace of decisions" (DBT, 2026, para. 7), since transitions between investigation phases can slow the decision-making process.

We believe that the new decision-making regime in Phase 2 raises concerns and risks undermining the effectiveness of the UK competition regime. We set out our reasoning below.

First, it would weaken CMA independence, contrary to what the consultation claims (DBT, 2026, para. 5). Ensuring agency independence from government is a cornerstone of any effective competition policy regime. Independence enables a competition authority to make decisions on the basis of impartial legal and economic analysis, rather than on political considerations. Independence also helps address the 'commitment problem', which stems from time-inconsistent policy preferences. As a result, it induces credibility and predictability, and reduces policy uncertainty. The empirical literature finds that independent competition authorities are more effective in promoting competition (Ma, 2010; Dutz and Vagliasindi, 2000).

The UK experience also demonstrates the relevance of agency independence in achieving an effective competition regime. Before 1997, competition decisions in the UK were taken largely by Ministers (DTI, 2001). After 1997, reforms introduced by the Competition Act 1998 and the Enterprise Act 2002 shifted decisions to independent competition authorities, except in narrowly defined circumstances. The move from ministerial decisions to independent technical decisions improved the reputation of the UK competition regime (NAO, 2010; Freeman, 2016).

DBT's proposed reform would weaken CMA independence for several reasons. Panel members are arguably more independent than CMA Board members. The latter interact more frequently and closely with government and are accountable to Ministers. These factors may make CMA Board members more vulnerable to political pressure. The new system would also make regulatory capture easier, not only from government, but also from

firms. Capturing the Panel, which has around thirty members that work in small groups across cases in a decentralised fashion, is arguably more costly and challenging than capturing the CMA Board.

A less independent CMA would be less effective in promoting competition. Phase 2 decisions are likely to become increasingly shaped by political considerations and rent-seeking, rather than guided by technical analysis. Greater political interference is likely to make the CMA less credible and less predictable, thereby increasing policy uncertainty and regulatory risk, and adversely impacting investment (Cambini and Rondi, 2016).

Second, DBT's proposed reform would reduce the level of independent scrutiny of CMA decisions. The Panel currently provides a 'fresh pair of eyes' on Phase 1 decisions taken by the CMA Board. This is essential to mitigate confirmation bias and reduce the risk of errors. The possibility of a Phase 2 independent review also introduces intellectual discipline and rigour for Phase 1 teams, contributing to higher-quality assessments. We note that over the past decades the CMA has stood out internationally for its high-quality enforcement and use of economic analysis (Bageri and Katsoulacos, 2025).

The new regime would blur the separation between decision-makers across phases and erode checks and balances, likely increasing confirmation bias and reducing the quality of CMA's decisions. The fact that the CMA Board or its committees/sub-committees may have less time to devote to cases risks aggravating these problems. While Phase 2 decisions could still involve experts from a pool of non-CMA members, this would not guarantee an independent check, since those decisions would be taken by the CMA Board itself.

Further, the UK system lacks a full merits appeal of Phase 2 decisions. Historically, the Panel's independent scrutiny has been deemed sufficient to ensure checks and balances in the system. By abolishing the Panel without proposing an alternative independent check mechanism, the proposed reform would leave the UK out of step with peer jurisdictions, such as the United States or the European Union, in terms of independent appraisal of agency decisions.

The consultation does not sufficiently identify the potential problems arising from the Panel system that would justify the proposed reform. It also lacks an evaluation of the alternative policy options that could help address these problems, as well as an explanation of why the proposed solution is preferable to other options, including the status quo. We believe that this assessment falls short of what would typically be expected of a regulatory impact assessment in the UK. This concern also applies to other proposals in the consultation.

The DBT provides a range of reasons motivating this reform. However, as we explain below, we do not find these reasons sufficiently compelling.

First, the DBT seeks to ensure that those ultimately accountable to Parliament are directly involved in Phase 2 decisions. However, Boards in competition authorities are generally accountable for overall organisational performance, not individual decisions. It is unclear why the CMA Board would need to be directly involved in Phase 2 decisions to fulfil its accountability requirements. Moreover, accountability to Parliament for specific decisions, rather than overall agency performance, would increase political pressure on CMA decision-making. Decision-makers are likely to become less willing to deviate from political expectations in a case, even if the legal and economic analysis indicates otherwise. Political accountability on specific cases risks informally recreating the kind of ministerial decision-making that characterised UK competition policy 30 years ago.

Second, the DBT argues that its proposal would improve predictability and consistency. However, the consultation provides no explanation for how this would occur. Moreover, a less independent CMA would be more vulnerable to political influence and rent-seeking, and hence less credible and less predictable, undermining the consultation's aims.

Finally, the DBT aims to improve the speed of decisions. While transitions between phases can slow decision-making, they seem unavoidable when an independent appraisal of a prior decision is required. Abolishing the Panel could potentially make the process faster, yet it would also remove a critical independent check essential to ensure impartial, high-quality decisions. The consultation does not assess the trade-off between pace and effectiveness. We believe that the benefits of making the right decisions through effective independent scrutiny substantially outweigh the potential short-run costs of transitions between phases. Bad decisions can have lasting effects on consumers and the UK economy.

In sum, the new decision-making model would reduce CMA independence and erode checks and balances. Phase 2 decisions are likely to become less guided by high-quality, impartial technical analysis and more driven by political interference and rent-seeking. The CMA is likely to become less credible and less predictable, which would in turn increase policy uncertainty and regulatory risk, and adversely impact investment. Overall, the CMA is likely to become less effective in promoting competition and supporting economic growth, contrary to the consultation's stated objectives.

We recommend retaining the current Panel system and oppose the DBT's proposal to abolish it. We also recommend that the DBT consider ways to

improve how the Panel system works to make it more effective in delivering good outcomes for consumers.

The Secretary of State's role in CMA guidance

Currently, the Secretary of State (SoS) holds a formal approval role in a limited number of key guidance documents: those concerning the digital markets regime, civil penalties and international cooperation. The DBT proposes to extend the SoS's role to a "wider range of key CMA guidance documents" (DBT, 2026, para. 98), such as the CMA's Merger Assessment Guidelines. We note that the precise scope of this "wider range" is not specified in the consultation.

We believe that this proposal raises concerns. First, it risks weakening CMA independence by enabling greater political interference in CMA decision-making. As we argue above, weakening CMA independence risks reducing CMA credibility, predictability and effectiveness. Second, the proposal could undermine the quality of CMA guidance. The SoS and its staff are unlikely to possess the CMA's level of expertise in competition policy.

The consultation provides no clear rationale for this proposal. The DBT essentially argues that the proposal "would align with the approach for other key CMA guidance such as in digital markets, ensuring guidance is fit for purpose and delivers increased predictability for businesses, while respecting the independence of the CMA" (DBT, 2026, para. 98).

We do not find the above reasoning sufficiently compelling. First, it is unclear why the approach taken in the digital markets regime would justify expanding the SoS's role to other CMA guidance. It is possible that reasons specific to digital markets alone justify requiring SoS's approval, or that SoS's approval is not warranted even in that regime. Second, the consultation does not explain how the SoS's involvement would improve CMA guidance, nor why the current approach has resulted in guidance being unfit for purpose. Third, the proposal is unlikely to improve predictability as it will make it more vulnerable to political interference.

We therefore recommend against expanding the SoS's formal approval role to a wider range of CMA key guidance documents.

Concurrency

The consultation includes two key proposals on concurrency. First, permitting sector regulators to oversee market remedies in their sectors. Second, a more consultative approach to market references. Below we provide a separate assessment for each proposal.

Market remedies

The DBT proposes permitting regulators to assume responsibility for market remedies after they have been imposed or accepted by the CMA following a market investigation. The CMA and sector regulators would decide which of them is best placed to oversee remedies on a case-by-case basis. The CMA would consult sector regulators on the design of remedies.

The main motivation for this proposal is to ensure the CMA can focus its resources on where it can best support growth and investment and enable the CMA to adopt a “more flexible and tailored approach” (DBT, 2026, para. 69). As in other areas, the consultation would have benefited from setting out a clear rationale for this proposal and from assessing alternative options.

We agree that this proposal would give the CMA a more flexible and tailored approach. However, we believe it raises some risks that have not been considered in the consultation.

Decoupling remedy design from remedy oversight may trigger an ‘agency problem’ that risks weakening remedy effectiveness. Regulators tasked with overseeing remedies which they have not designed may be less willing to enforce those remedies. This may limit remedy effectiveness in driving competition in regulated sectors.

The consultation proposes making these arrangements voluntary and requiring the CMA to consult regulators on the design of remedies. While this could mitigate the concern raised above, it would raise additional concerns. In a setting where the CMA and the regulator negotiate over remedies, and the regulator is responsible for implementation, there is a risk that remedies are effectively designed or critically influenced by the regulator instead of the CMA, contrary to what is expected within the concurrency framework.

While we can see some benefits from this proposal, overall, we believe it risks making remedies less effective and thus weakening competition in regulated sectors. We therefore recommend against permitting regulators to oversee remedies imposed or accepted by the CMA following market investigations.

Market references

The DBT seeks views on recasting the ability of sector regulators to make a market investigation reference following a market study. Currently, regulators can make market investigation references to the CMA where the threshold for making such a reference is met. The CMA must undertake a market investigation following such a reference and adhere to the statutory time requirements. Under DBT’s proposals, the process would become more consultative. Regulators would only be able to recommend that the CMA

launches a market review. The CMA would be required to consider the request and respond to it within a set time frame.

The main motivation for this proposal is to enable the CMA to have “greater control over its resource and for it to be able to effectively prioritise which market reviews will have the biggest impact across the economy, considering its own prioritisation principles and government’s Strategic Steer” (DBT, 2026, para. 72). We again note that the consultation would have benefited from setting out a clear rationale for this proposal and from assessing alternative options.

We think there is merit in enabling the CMA more independent control and flexibility in prioritising its markets work. However, we also think that a more consultative approach to market references raises some concerns that could undermine the promotion of competition in regulated sectors.

A benefit from the current framework is that it provides regulators with leverage when promoting competition. Regulators can use the market investigation reference as a ‘stick’ to incentivise regulated firms to collaborate over the course of a market study, engage with the market study’s recommendations or, when applicable, offer undertakings *in lieu*. A more consultative approach giving the CMA more discretion when considering a market investigation reference could make the ‘stick’ less effective (e.g. the ‘threat’ less credible) and thus weaken regulators’ leverage and ability to promote competition. Further, the reform risks reducing a regulator’s perceived ‘payoff’ from market studies, which may dampen its incentives to undertake this work as well as its ambition in pursuing its competition agenda.

While we can see some merit in this proposal, we believe it risks weakening regulators’ effectiveness in promoting competition. We therefore recommend against the proposed amendments to make the market investigation references regime more consultative.

Conclusions

Our submission focuses on three key proposals in the consultation. First, replacing the CMA Panel with the CMA Board for Phase 2 decisions. Second, expanding the SoS’s formal approval role to a wider range of CMA guidance documents. Third, changing the concurrency framework to permit regulators to oversee CMA-imposed remedies and adopt a more consultative approach to market investigation references.

We note that the DBT does not sufficiently identify the potential problems that would justify the proposed reforms. It also lacks an evaluation of alternative policy options as well as an explanation of why the proposed solution is preferable to other options, including the status quo. We believe

that the consultation falls short of what would typically be expected of a regulatory impact assessment in the UK.

We believe the proposals raise significant concerns. Replacing the CMA Panel with the CMA Board would weaken CMA independence and erode checks and balances. Phase 2 decisions are likely to become less guided by impartial technical analysis and more driven by political interference and rent-seeking. This would reduce CMA credibility and predictability, thereby increasing policy uncertainty and regulatory risk. Expanding the SoS's approval role to a wider range of CMA guidance would aggravate risks to independence and the quality of decisions. In short, the CMA risks becoming a less effective regulator in making markets work well for consumers. Finally, changes to the concurrency framework risk undermining the promotion of competition in regulated sectors.

Overall, the proposed reforms would make the UK competition regime less effective in promoting competition to support economic growth and deliver benefits for consumers and businesses. They would undermine, rather than help advance, the primary mission of the current UK government. We therefore recommend not adopting the above proposals.

References

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