DBT's Refining Our Competition Regime Driving growth and enhancing competition for businesses and consumers

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Consultation response from the

Centre for Competition Policy

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Written evidence from the Centre for Competition Policy (CCP)

Refining Our Competition Regime
Driving growth and enhancing competition for businesses and consumers

by Minh Dang, Franco Mariuzzo, Robert Sugden, and Junjun Zhang

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Summary

This submission responds to a selected subset of questions in Chapters 1-4 of the Department for Business & Trade call for evidence (https://www.gov.uk/government/consultations/refining-our-competition-regime). The Consultation sits within a wider UK competition policy shift that places greater weight on growth, investment, and the regulatory burden on businesses, reflecting both policy concerns and a growing literature on the trade-off between enforcement intensity and innovation. This submission focuses on responses to questions Q1-Q3, Q8-Q10, Q22 and Q23.

1. **Chapter 1, Q1-Q3.** In principle we support the proposed membership requirements for CMA mergers and markets sub-committees, viewing them as part of a broader UK competition policy shift that prioritises economic growth and investment over traditional consumer welfare focus, potentially enhancing decision-making speed, consistency, and Board accountability through alignment with the Digital Markets Board Committee (DMBC) model (at least half non-executives/external experts). However, replacing independent Inquiry Groups risks losing the 'fresh pair of eyes' that mitigate confirmation bias in Phase 2 reviews, while raising longer-term concerns about

politicisation, enforcement dilution, and unclear checks-and-balances, necessitating careful study of the untested digital regime's impact and robust internal accountability mechanisms to preserve CMA independence and stability.

2. **Chapter 2. Q8-Q10** We support the CMA adopting sunset clauses as default practice in remedies design, formalising time-limited expiry under the Enterprise Act 2002, alongside mandatory 10-year reviews (with justified delays in exceptional cases), to ensure remedies remain proportionate, transparent, and effective while avoiding over-regulation. This would enhance predictability and accountability, signal openness to constructive engagement on undertakings in lieu of reference (UILs), and promote earlier, better-tailored solutions that balance pace with competition concerns.

3. **Chapter 3. Q23** We support extending the Phase 1 remedies timeframe from 10 to 20 working days to enable more constructive engagement between parties and the CMA, particularly in innovative markets hosting digital platforms where non-price effects (innovation, product quality, visibility, governance) complicate rapid remedy design. This modest change maintains review discipline while reducing time-pressure rejections of workable solutions, improving process efficiency and outcomes without lowering acceptance standards.

4. **Chapter 4. Q24** We support granting the CMA enhanced powers to investigate algorithms in competition and consumer protection functions, given their critical role in digital markets' non-price dynamics (ranking, recommendations, visibility, governance) and the opacity of AI-driven 'black box' systems that hinder detection of anticompetitive effects. These powers would reduce information asymmetries, enable effective assessment of harms and remedies, particularly for personalised pricing via 'mystery shopper' testing, and ensure proportionate enforcement with safeguards, while advocating a clear regulatory principle prohibiting search-conditional personalised pricing to preserve consumer search opportunities and market competition.

Recommendations at a Glance

We propose targeted refinements to CMA governance, remedies, process timing, and investigatory powers that strengthen accountability, proportionality, and adaptability to digital markets while preserving institutional independence and effective enforcement. These recommendations advance the 4P principles of *pace, predictability, proportionality, and process*, particularly addressing dynamic competition on non-price dimensions and algorithmic opacity.

1. Require explicit CMA Board protocols defining non-executive/external expert appointment criteria, conflict safeguards, and structured dissent mechanisms to preserve

Phase 2 independence while enhancing leadership accountability.

2. Formalise sunset clause consideration in all remedies design, with mandatory 10-year reviews (justified exceptions published), supported by published guidance on appropriateness criteria.

3. Extend Phase 1 remedies consideration from 10 to 20 working days, maintaining acceptance standards while enabling constructive engagement on complex non-price remedies.

4. Grant CMA enhanced algorithmic access powers with clear permissibility principles, prioritising prohibition of search-conditional personalised pricing to protect consumer search and competition.

5. Establish mandatory pre-implementation study of DMBC model impacts before CMA-wide adoption, with published lessons on accountability trade-offs.

Scope note. These recommendations respond to Consultation questions Q1–Q3 (CMA decision-making governance), Q8–Q10 (market remedies), Q22 (Phase 1 timing), and Q23 (algorithmic powers).

Table 1: Mapping of recommendations to CMA questions and 4P principles.

Recommendation	**Primary CMA Questions**	**4P(s)**	**Practical Effect**
R1. Sub-committee Safeguards	Q1–Q3	Process, Predictability	Preserves independence while clarifying Board accountability.
R2. Sunset Clauses Default	Q8–Q10	Proportionality, Predictability	Ensures remedies remain time-relevant with transparent exceptions.
R3. Phase 1 Extension	Q22	Pace, Process	Enables practical non-price remedy development without lowering standards.
R4. Algorithm Powers	Q23	Process, Proportionality	Reduces opacity while defining clear permissibility boundaries.
R5. Cross-Regime Learning	Q1–Q3	Predictability, Process	Tests DMBC lessons before CMA-wide governance changes.

Detailed Responses

Chapter 1. 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.

We address this in our answer to Q3 below.

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.

We address this in our answer to Q3 below.

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

Yes. The Consultation is situated within a broader trajectory of UK competition policy reform, characterised by an increasing emphasis on the relationship between regulatory design and macroeconomic performance, especially on growth and investment. In particular, it follows a series of Government-led initiatives motivated by concerns that the cumulative burden of regulation may dampen business dynamism, deter investment, and ultimately constrain productivity growth. This policy orientation is consistent with a growing body of empirical and theoretical literature in industrial organisation, which highlights the trade-off between regulatory intensity and innovation incentives, particularly in innovative markets (Nicoletti and Scarpetta, 2003; Aghion et al., 2005; Deller et al., 2021; Petit and Teece, 2021; Bourreau et al., 2024; Lefouili and Madio, 2026).

Within this context, the issuance of a revised Strategic Steer to the Competition and Markets Authority (CMA), foregrounding economic growth as an 'overriding priority', represents a notable recalibration of institutional expectations. While competition authorities have traditionally pursued consumer welfare and market efficiency as their primary objectives, recent scholarship has explored the extent to which broader public policy goals, such as investment promotion and industrial strategy, may legitimately inform enforcement priorities (Ormosi et al., 2017; CMA Microeconomics Unit, 2023; Martyniszyn, 2025). However, this shift also raises important questions regarding the risk of politicisation and the potential dilution of enforcement rigor, leading to greater uncertainty and unpredictability, particularly in merger control, where predictive judgments and counterfactual analysis are inherently sensitive to policy framing (Lyons et al., 2017; Ennis and Fletcher, 2020).

Currently, Phase 2 merger investigations and market studies are managed and decided by an Inquiry Group drawn from this Panel, rather than by CMA staff or leadership. Under the proposed framework, these decisions would be made by the CMA Board, or, more likely, by a dedicated Mergers or Markets Committee (or sub-committees thereof) appointed by the Board, comprising at least half non-executive directors or external experts, with senior CMA officials retaining a formal role. This reform, aligning the CMA's governance more closely with the Digital Markets Board Committee (DMBC), is designed to ensure that accountability for the Authority's most significant decisions rests squarely with its leadership (Consultation, paragraph 25). Moreover, this shift to a sub-committee model is intended to accelerate decision-making, addressing concerns that

the transitions between Phase 1 and Phase 2 investigations may be disjointed and slow (Consultation, paragraph 7). However, it should be noted that the newly introduced digital markets regime is itself still largely untested. The impact should be carefully studied before implementing such alignment, especially on the accountability and operational consistency within the CMA.

The most direct effect of this shift would be the loss of a 'fresh pair of eyes' from the independent Inquiry Group on phase 2, which is required by law to act independently of the CMA Board, in relation to the CMA's Phase 1 investigation, in which a senior member of CMA staff decides whether the test for reference is met, an element that was an important factor in the success of the UK competition regime (Competition and Markets Authority, 2025b). This concentration of decision-making risks entrenching the perspectives of the initial investigators due to 'confirmation biases', rather than challenging them. Though the new model shift may bring a pool of expert decision-makers that varies the insights and analytical expertises to investigate dynamic markets, it is unclear how the refined'checks and balances' would be implemented to ensure accountability. The shift addresses the direct accountability issue of the Board to the Parliament, however, such increased accountability may have unintended consequences for the accountability of decision-makers to the CMA Board when CMA policy positions change, as it has been evidenced through policy debates and legislative reforms during the last decades. The proposed shift has the potential to enhance the consistency and predictability of decision-making in merger and market cases in the short term. However, over the longer term, there is a concern that decision-making could become more exposed to governmental influence, assuming that the government's role is strictly limited to policy rather than extending to individual case decisions. This could undermine the very stability and coherence of CMA outcomes that the reform seeks to strengthen. To safeguard these objectives, the reform must establish clear lines of accountability within the CMA.

Chapter 2. Markets Work and Market Remedies

ii. CMA Market Remedies

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

We address in our answer to Q10 below.

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

We address in our answer to Q10 below.

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. The CMA should, as a matter of default practice, consider the incorporation of sunset clauses when designing remedies. Under the current framework of the Enterprise Act 2002, the CMA is not subject to a formal obligation to review remedies within a prescribed timeframe. The inclusion of a sunset clause would, in effect, introduce a defined expiry date for imposed remedies (Competition and Markets Authority, 2025a), paragraph 9.72(a).

This approach aligns with the CMA's stated objective of avoiding the retention of remedies beyond the point at which they remain necessary or proportionate. While the CMA's existing practice, typically reviewing remedies within a ten-year horizon in the absence of a sunset clause, demonstrates an awareness of this concern, such practice lacks formalisation and transparency. In this regard, the underlying principle is not novel. However, there is a compelling case for more explicit guidance setting out the CMA's reasoning in circumstances where sunset clauses are deemed inappropriate, particularly in exceptional cases. Greater clarity would enhance predictability, accountability, and the overall coherence of the remedies regime.

Therefore, we welcome the approach of the CMA in making a clearer commitment to considering the use of such time-limited remedies in future investigations, as well as the proposal to make such good practice on a statutory footing (Consultation, paragraph 62). From a policy perspective, this development may also serve an important signalling function. In particular, it indicates a greater institutional openness on the part of the CMA to engage constructively with parties to discuss undertakings in lieu-of reference (UILs), rather than a take-it-or-leave-it approach. Such a shift is likely to incentivise more meaningful and timely engagement by merging parties, facilitating the development of remedies that are better tailored to the specific competitive concerns at issue. In turn, earlier and more effective dialogue should improve both the pace and proportionality of the remedies process, thereby reducing the risk of over-fixing the competition problem, especially for the delay-averse parties (Ormosi, 2009).

A commitment to a standard practice of considering sunset clauses, coupled with periodic review of remedies once every 10 years, and the provision of clear, reasoned justifications in exceptional cases where departure from this approach is warranted, would help ensure that remedies design remains robust, proportionate, transparent, and effective. In turn, this would advance the objective of promoting 'pace, predictability, proportionality and process' across the CMA's portfolio of work.

Chapter 3. Mergers

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. Extending the timeframe for submitting and considering Phase 1 remedies from up to ten to up to twenty working days would be a sensible and proportionate reform.

In some cases, the main issue is not whether a remedy could work in principle, but whether there is enough time for the parties and the CMA to develop a remedy that is practical, targeted, and capable of being implemented effectively. A somewhat longer Phase 1 window would create more room for constructive engagement and reduce the risk that potentially workable remedies are ruled out mainly because of time pressure.

This is particularly relevant in markets where competition concerns are not limited to short-run price effects. Recent work on merger control increasingly emphasises that merger effects may also arise through innovation, product quality, and other non-price dimensions of competition, and that these issues are often harder to assess than standard price effects (Haucap and Stiebale, 2023; OECD, 2025). In parallel, recent research on merger remedies argues for greater flexibility in dynamic market environments, where remedies designed ex ante may become less effective as market conditions evolve after the merger (Bougette et al., 2025).

This point is especially relevant in digital and platform settings. In such markets, the mechanism at issue may involve product design, visibility, portfolio choices, or platform governance rather than a simple static price overlap. Our own work in digital markets similarly suggests that merger effects can operate through non-price and platform-mediated channels, which may make it harder to formulate an effective remedy very quickly (Kummer et al., 2026; Mariuzzo and Zhang, 2026).

The proposed extension is also relatively modest. It does not remove the discipline of Phase 1 review, nor does it lower the standard for accepting remedies. Rather, it gives the CMA and the parties a better opportunity to identify realistic and effective solutions at an earlier stage. On balance, that is likely to improve both process and outcomes.

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.

Yes. The CMA should be granted enhanced powers to investigate algorithms in its competition and consumer protection functions.

In many digital markets, algorithms play an important role in shaping market outcomes. Ranking systems, recommendation tools, and other automated decision mechanisms can influence product visibility, consumer choice, and the allocation of demand across firms. As a result, competitive outcomes may be affected not only through prices but also through algorithmic design and platform governance.

Recent research highlights that AI-driven systems may implement strategic behaviour in ways that are difficult to observe directly. Because many AI models operate as complex or 'black-box' systems, it can be challenging for competition authorities to determine how particular outcomes are generated or whether conduct may have anticompetitive effects (Hagiu and Wright, 2025). This opacity can make it difficult to assess competitive dynamics using traditional investigative tools alone.

These challenges are particularly relevant in platform markets, where non-price mechanisms such as product visibility, governance rules, and innovation activity can shape competition between firms. Empirical evidence from digital markets suggests that competitive outcomes often depend on these kinds of mechanisms rather than purely on price adjustments (Mariuzzo and Zhang, 2026; Kummer et al., 2026). In such settings, the ability to request relevant information, examine how algorithmic systems operate in practice, and test their effects could help authorities better understand both potential harms and possible remedies.

Enhanced investigatory powers could therefore reduce information asymmetries between firms and the authority, allowing the CMA to assess market conduct more effectively in environments where automated decision systems play an important role. At the same time, such powers should be applied proportionately and with appropriate safeguards regarding confidentiality, legal certainty, and administrative burden.

Overall, granting the CMA enhanced powers to investigate algorithms would help ensure that competition enforcement remains effective as markets increasingly rely on automated and AI-driven systems.

Powers to investigate algorithms are important for the effective regulation of digital

business-to-consumer trading practices, particularly in relation to the growing use of personalised pricing. If pricing algorithms have been trained by AI with the legitimate objective of maximising profit, even the firms that operate them may not know the principles that determine their prices. The 'mystery shopper' methodology (i.e. making simulated customer enquiries to digital interfaces) has been used productively by academic researchers to investigate digital price and search discrimination (e.g.Mikians et al. (2012)). The proposed enhanced powers would allow the CMA to use this methodology in a more open and systematic way.

For these powers to be useful in the regulatory process:

- there would need to be clear principles defining permissible and impermissible trading practices; and
- those principles would need to be specified so that firms could ensure that their trading practices satisfied them, even if the practices were the product of AI-trained algorithms.

Given these two conditions, the enhanced powers and the mystery shopper methodology would allow the CMA to test firms' trading practices for compliance with the principles of permissibility.

However, the Consultation may be understating the value of these powers in relation to the regulation of personalised pricing. The only forms of undesirable price personalisation mentioned in the Consultation are cases of price discrimination 'based on protected characteristics and/or vulnerabilities, in violation of consumer protection law' (Consultation, paragraph 93). There is no reference to more general mechanisms by which algorithmic personalised pricing might have anti-competitive effects or might inhibit consumers from benefiting from markets. If personalised pricing has such effects, the CMA's statutory duty 'to promote competition, both within and outside the UK, for the benefit of consumers' (Consultation, Executive Summary) might require it to intervene. The significance of such effects has not been sufficiently recognised, either by regulators or by academic economists.

Guidelines for fair commercial practices have recently been issued by the Financial Conduct Authority (2022) and Competition and Markets Authority (2025c). These guidelines proscribe misleading actions, misleading omissions and the exploitation of consumers' lack of information, behavioural biases and vulnerabilities. However, personalised pricing is not intrinsically unfair in these senses. Lyons and Sugden (2023) have proposed three principles of transactional fairness in business-to-consumer trading, 'No deception', 'No exploitation of the observably vulnerable', and 'No hindrance'. The first two principles parallel the FCA and CMA guidelines; the third requires that consumers are not hindered from terminating a relationship

with a firm or from transacting with another firm. Lyons and Sugden acknowledge that personalised pricing can create barriers to search that might justify regulatory interventions, but do not treat non-deceptive personalised pricing as unfair at the level of individual transactions.

In theoretical analyses of personalised pricing, it is standard to use discrete choice models in which competing firms sell horizontally differentiated products. Each consumer is assumed to know their own willingness to pay for each product and to know the price they would have to pay to buy it from each firm. Under uniform pricing, each firm sets a single price for all consumers; under personalised pricing, each firm sets a price separately for each consumer, knowing each consumer's willingness to pay. In both regimes, there is price competition between firms. Depending on the detailed specification of the model, personalisation may increase or decrease consumer welfare; depending on the 'location' of a consumer's preferences relative to the firms' products, personalisation may benefit some consumers and harm others (e.g. Chen et al. (2020); Anderson et al. (2023);Lu and Matsushima (2024); Rhodes and Zhou (2024)). The overall message of this literature is that personalised pricing is not intrinsically anti-competitive or contrary to consumers' interests.

However, as argued by Sugden (2025), this literature ignores the role of consumer search in the workings of competitive markets. It assumes that consumers' knowledge about the offers made to them by firms, and firms' knowledge about the preferences of individual consumers, exist independently of consumers' activities in the market. But in reality, consumers construct their preferences, in particular, their willingness to pay for any specific product, in the process of browsing among available offers and forming judgements about them. Some personalised pricing algorithms make inferences about a consumer's preferences from observations of their browsing behaviour. For example:

- In markets with product differentiation, the set of options that are actually available is typically a tiny subset of the domain of possible options (e.g. a product may be sold in several discrete colours, but these correspond only to a few points on a continuous colour spectrum). Thus, consumers can economise on cognitive effort by forming preferences only in the process of learning what options are available.
- If firms advertise their prices publicly in easily visible forms (e.g. by price tags in supermarkets, or in roadside displays at filling stations), consumers can form beliefs about the distribution of prices in a market in a relatively casual way. Using these price expectations as reference points, consumers can make 'fast and frugal' judgements about whether a particular offer is a good or bad deal without consciously comparing it with other offers (Isoni et al. (2016)).

- If goods are substitutes or complements, a consumer's willingness to pay for one good can depend on the properties of other firms' offers (e.g. willingness to pay for a flight to a holiday destination may depend on the prices of hotels at the destination). Thus, a search process may involve more than one visit to the same site.
- The mental process by which a consumer chooses from a set of offers may involve multiple stages, e.g. using coarse criteria to form a shortlist and then applying more refined criteria (Manzini and Mariotti (2007)), or making successive pairwise comparisons with progressive elimination of less desirable options (Sugden and Zheng (2018)). Again, a search process may involve more than one visit to the same site.

Consumers' opportunities to browse among offers are crucial both in driving competition between firms and in creating benefits for consumers. The findings of the CMA's Road Fuel Market Study (Competition and Markets Authority (2023)), to which the Consultation refers (paragraph 39), provide a good illustration of how impediments to search can restrict competition without being unfair or unlawful. Except on motorways, outlets selling petrol and diesel set uniform prices that are prominently displayed at the roadside, and buyers are able to drive between sellers to compare prices. The products sold at different outlets are perfect substitutes for one another. The CMA study concluded that, even under these highly favourable conditions, 'the lack of real-time, comprehensive and easily-accessible pricing data means that consumers do not have access to the tools they need to drive competition as effectively as possible, by seeking out and buying from the cheapest possible retailer within those areas where it would make economic sense for them to buy fuel' (Competition and Markets Authority (2023), paragraph 83). Accordingly, the study proposed a government-mandated open data scheme by which the current prices set by all outlets in a geographical neighbourhood would be accessible to all potential buyers at a single internet site.

In comparison with the straightforwardness of the search task faced by drivers in the road fuel case, personalised pricing can make search much more difficult for consumers. The most serious difficulties arise when (as is becoming increasingly feasible for algorithmic pricing) the price quoted to a consumer by a firm at one point in time depends on that particular consumer's previous searches of offers made by that firm or by its competitors. This form of personalisation fundamentally changes the nature of search: the individual's actions in trying to discover a firm's offers affect the offers that can be discovered. If (as argued by Sugden (2018)) the ultimate value of competitive markets is their capacity to provide consumers with a rich array of opportunities from which to choose, that value is compromised if

opportunities do not remain constant as individuals inspect them. Notice that this effect of personalised pricing cannot be mitigated by combining it with an open data scheme of the type recommended by the CMA Road Fuel Market Study. The essential feature of that recommendation is a requirement that retailers 'share their prices on an open, real-time basis' (Competition and Markets Authority (2023), paragraph 7), and that consumers' access to the scheme can itself serve as the search process. This amounts to requiring that prices are not personalised on the basis of consumers' search behaviour. (The open data principle does not rule out other forms of price discrimination or dynamic pricing. For example, a firm might share the information that it offers a discounted price to people below a certain age.)

We suggest that there is a strong case for the regulatory principle that search-conditional personalised pricing is impermissible. That principle would impose a well-defined constraint on the information base that pricing algorithms could legitimately use. The proposed enhanced powers would allow the CMA to monitor firms' compliance with the principle.

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