

**RESPONSE TO THE CMA'S CONSULTATION ON ITS DRAFT
REVISED MERGER REMEDIES GUIDANCE DATED 16 OCTOBER
2025**

RESPONSE BY VODAFONETHREE

13 November 2025

Following the Merger Remedies Review, which commenced in March 2025, the CMA has produced a revised text of Merger Remedies (CMA87)- the 'Draft Revised Guidance'. The CMA is now seeking feedback on its proposed changes to CMA87, specifically in relation to three key areas: i) the CMA's approach to merger remedies; ii) how merger remedies can ensure that pro-competitive merger efficiencies and merger benefits are preserved; and iii) updates to the CMA's merger remedies process to ensure efficiency.

A. Introduction

1. VodafoneThree welcomes the opportunity to respond to the Competition and Markets Authority (CMA)'s consultation on its draft revised merger remedies guidance.
2. This response is in part informed by our recent experience in the CMA's investigation into the joint venture between Vodafone Group Plc and CK Hutchison Holdings Limited concerning Vodafone Limited and Hutchison 3G UK Limited.
3. We have confined our comments to the proposed changes which we consider are most significant.

B. General observations

4. We welcome the CMA's efforts to embed the principles of pace, predictability, proportionality, and process (the "4Ps") into its merger control regime. The proposed changes represent a positive step toward a more business-friendly, growth-oriented framework that better aligns with the UK Government's strategic steer to support investment and innovation.
5. In particular, we welcome the recognition that behavioural remedies can be effective in some cases, both at Phase 1 and 2 and the additional clarity on the circumstances in which these remedies are likely to be accepted by the CMA. Further, we see the explicit recognition that some remedies can be used to lock in pro-competitive rivalry enhancing efficiencies as a positive development.

C. Draft Revised Guidance - Questions

Overall, are the changes introduced by the Draft Revised Guidance sufficiently clear and useful?

6. We broadly consider the changes set out in the Draft Revised Guidance to be significantly clearer and more practically useful than CMA87. The Draft Revised Guidance adopts a progressive and collaborative approach to remedy design and offers additional detail to aid merger parties and practitioners in navigating the process more effectively. However, we note that some statutory and evidentiary restraints remain, which may restrict flexibility. We address these points in further detail below.

What, if any, aspects of the Draft Revised Guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section (and, where appropriate, the issue) each of your comments relate to.

Chapter 3: Effectiveness and Proportionality (Chapter 3, Sections 3.8–3.24)

7. The Draft Revised Guidance retains the "high degree of confidence" threshold and prioritises

“comprehensive solutions” but allows for partially effective remedies only in exceptional circumstances. While VodafoneThree welcomes the CMA’s intention to create flexibility in its remedies assessment framework, it suggests clarification on the following:

- a. What constitutes “exceptional circumstances” for accepting partially effective remedies?
 - b. Can the guidance provide concrete examples of when mitigations (rather than fully effective solutions) may be considered?
 - c. In instances where the remedy does not fully address the SLC and its adverse effects, how will proportionality be balanced against effectiveness? Could this balancing exercise be facilitated by a parallel and holistic assessment of effectiveness and proportionality (rather than a sequential assessment as set out in the Draft Revised Guidance)?
 - d. How will the CMA assess innovative or partial remedies in practice?
8. Additionally, we encourage the CMA to further clarify how RCBs will be weighed against potential competition concerns, especially in dynamic or innovation-driven markets. We note that no change is proposed to the existing high evidentiary threshold for RCBs, in an attempt to prevent unfounded claims. It is worth reiterating that maintaining this threshold runs the risk of limiting the influence of RCBs on remedy design. Therefore, VodafoneThree encourages a more pragmatic approach to assessing RCBs, in particular in relation to out of market customer benefits, which the CMA is able to take account of under existing legislation (Chapter 3, Sections 3.27 - 3.36).

Chapter 4 - Assessment of remedies offered at phase 1 (UILs)

9. The requirement that Phase 1 remedies be “clear-cut” and “capable of ready implementation” may prove itself too rigid in certain circumstances, potentially excluding viable but more complex remedies, including viable behavioural remedies. This may counter the purported policy objective of recognising behavioural remedies as a useful tool to address competition concerns.
10. We would recommend that the CMA makes clear that each proposed remedy will be assessed on its own merits, irrespective of its formal categorisation as “structural” or “behavioural”, which can seem unhelpful or confusing where remedies do not neatly fall into either category.

Chapters 8 and 9 – Monitoring Trustees and Industry Experts

11. Although the Draft Revised Guidance encourages the early appointment of independent experts, which we welcome, and provides an overview of the nature/ scope of their role and factors to consider for selection, a gap remains apparent. The Draft Revised Guidance does not capture trustee responsibilities, independence, and reporting obligations. This would improve transparency and manage the expectations of businesses, so they understand how all parties (Monitoring Trustees, CMA and the merger parties) are expected to interact.

Are the changes to the Draft Revised Guidance consistent with the CMA’s ‘4Ps framework’ and likely to promote pace, predictability, proportionality and engagement in relation to merger remedies? Are there any additional changes that may further contribute to these priorities?

12. Holding discussions in relation to potential remedies at a late stage in the merger process may lead to a reduction in the scope for negotiations. We therefore welcome the CMA's proposals regarding the possibility of early engagement on remedies discussions. Further, we consider that the confirmation that these discussions can take place on a 'without prejudice' basis is helpful in order to promote robust outcomes. The success of such early engagement is contingent on the CMA's ability and willingness to share competition concerns from an early stage, and we take the view that the Draft Revised Guidance should explicitly recognise this. Otherwise, there is a risk that any possible early engagement would be solely based on parties' ability to speculate and second guess what the CMA's concerns might look like, and which remedies might address those hypothetical concerns. That said, early engagement on remedies should remain at the discretion of the parties and no adverse inferences or consequences should be drawn where the parties' preference is to engage in such discussions at a later stage.

VodafoneThree

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