



WeldingWorld

Changes to reduce the number of mergers investigated in small markets

The CMA has confirmed changes to reduce the number of mergers it investigates in smaller markets. In January, the Competition and Markets Authority (CMA) consulted on raising the threshold for markets where mergers might not warrant investigation.

The CMA has a duty to refer mergers for an in-depth, phase 2 investigation if they could lead to a substantial lessening of competition (SLC). However, in certain circumstances it may not refer a merger, such as if it believes the relevant market is of insufficient importance.

The exception to the duty to refer is designed to avoid investigations where the costs involved would be disproportionate to the size of the market concerned. It enables the CMA to reduce the burden on companies and better target its resources for protecting consumers and businesses. The CMA can choose not to apply this exception (see notes).

After receiving support for its proposed changes, the CMA will now raise the figure for markets generally considered as sufficiently important to warrant a merger reference from above £10 million to above £15 million. It will also change the figure for markets generally considered not sufficiently important to warrant a merger reference from below £3 million to below £5 million.

Where the size of the market is between these figures, the CMA will continue to assess whether the expected harm resulting from the merger would be materially greater than the cost of an investigation.

It is expected that the changes will reduce the number of mergers that are subject to investigations – including those subject to initial phase 1 examination.

Further details including the new guidance and a summary of the responses received are available on the consultation page.

Notes

- The CMA is the UK's primary competition and consumer authority. It is an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law.
- The current guidance was issued by the Office of Fair Trading (OFT) in 2010 and adopted by the CMA in 2015.
- The exception is not available in relation to any market or markets if the CMA believes that merging parties could in principle offer a solution to the CMA's concerns via undertakings in lieu of a reference. The CMA will also take account of the wider implications of its decisions in this area, and will be less likely to exercise its discretion, and therefore more likely to refer, where the merger is potentially replicable across a number of similar markets in a particular sector.