

Response to the Consultation Paper: “Refining Our Competition Regime”

Euclid Law

Introduction

Euclid Law, as a specialist competition law firm, welcomes the opportunity to respond to this consultation. Our objective in doing so is to contribute to the continued effectiveness, legitimacy, and international credibility of the UK competition regime.

The UK system is widely regarded as one of the most sophisticated and balanced competition law frameworks globally. That reputation rests not only on substantive legal standards, but critically on institutional design, in particular, the separation between investigation and adjudication in Phase II merger and markets cases.

The UK regime is structurally coherent because limited judicial scrutiny (Judicial Review) is balanced by strong internal separation between investigation and adjudication. Any proposal that weakens that separation necessarily raises the question of whether additional external safeguards are required.

The proposed abolition of Inquiry Panels raises fundamental questions about that institutional design. Consistent with many other commentators, Euclid Law believes these proposals risk undermining core features of the current system without a sufficiently compelling evidential base for change.

Q1 - Impact on consistency and predictability of decision-making

The consultation suggests that the proposed reforms may improve consistency and predictability. Euclid Law does not share that view. The UK regime has experienced some evolution in decisional practice in recent years. However, this has occurred despite, not because of, the Panel system. The existence of independent Panels has acted as a moderating and stabilising force, operating as an important safeguard against confirmation bias.

Q2 - CMA Board accountability for merger and markets decisions

Euclid Law does not support the proposal to increase direct decision-making responsibility of the CMA Board for Phase II cases. At a fundamental level, the proposal compromises the separation between investigation and adjudication, which is a cornerstone of the current UK regime. While Euclid Law understands the aim of the reform proposal, i.e. to ensure that CMA executives have greater accountability for decision-making, we do not believe that this aim justifies compromising the independence of adjudication.

Under the existing model, Phase I decisions are taken by the CMA executive, while Phase II decisions are taken by an independent Inquiry Panel. This ensures that evidence in cases subject to lengthy and expensive investigation is rigorously tested by decision-makers who are not CMA staff and therefore are not institutionally aligned with the investigative process.

The proposed model would erode both the substance and the perception of that independence. Sub-committees would include senior CMA executives who are already involved in earlier stages

of the case and who are institutionally embedded within the organisation and its investigative processes.

If this separation is weakened, the case for limiting appeals to Judicial Review also weakens. It is very hard to justify removing the independence of the Panel without some compensating safeguard, as a system that combines investigation and adjudication would ordinarily require more intensive judicial scrutiny.

Therefore, while the existing system may not be perfect, in our view it remains more coherent and proportionate to preserve the current separation. The proposed abolition of the Inquiry Panel is therefore disproportionate to the harm identified.

Q3 – Membership and operation of sub-committees

Euclid Law does not support the proposed membership model. The inclusion of senior CMA executives in decision-making sub-committees raises questions about independence and incentives. If the proposal were to be adopted, external (non-CMA) members may be reliant on the CMA executive for analysis and support, reducing their ability to act as an effective, independent counterbalance.

We understand that at least half the members of the sub-committee would be drawn from either non-Executive Directors of the CMA Board and a pool of non-CMA staff experts. Non-executive participation, while valuable, does not replicate the independence of a separate decision-making body. While non-Executive Directors provide independent challenge and scrutiny to Executives at Board level, their position on the Board means that they are more closely aligned to the strategy and objectives of the CMA, with the result that they do not share the independence and objectivity of panel Members. Nor does judicial review provide substantive scrutiny of economic judgments. These safeguards are therefore not equivalent substitutes for the current Panel system.

Inquiry Panels devote substantial time and attention to Phase II merger cases, including hearings, detailed evidence review, and collective deliberation. This sustained engagement is critical to testing the evidence rigorously and ensuring robust, well-reasoned outcomes, particularly in complex and high-stakes transactions.

It is difficult to see how either the Executives or the Non-Executive Directors on a Board sub-committee, operating alongside broader governance and organisational responsibilities, could replicate this level of sustained scrutiny. There is a risk that reduced depth of engagement may limit the extent to which evidence is fully tested, increasing the potential for error or unchallenged assumptions in complex cases.

Even if each individual sub-committee member acts with integrity, the perception of independence is critical. The proposed model risks undermining confidence among stakeholders.

We also consider the mixture of external and CMA executives to be challenging to explain to business leaders. The proposal sits uncomfortably between two models, an independent adjudicative body and an integrated executive decision-maker, without clearly achieving the advantages of either.

In practice, we believe that the role of the sub-committee Chair is likely to be critical. In the event that the Department nevertheless decides to proceed with the proposed reform, we would

recommend that the role of the Chair of the sub-committee is clearly defined, and that this role is always filled by a Non-Executive Director or pool expert.

Qs 4/5 (and also 6 below) - Market Study/ Investigation model & statutory time limits for review

Increased flexibility in markets tools reinforces the need for clear legal thresholds and robust safeguards, particularly given the breadth of discretion involved.

Broadly speaking, the proposal to streamline the CMA's current market regime by merging the two-stage process review to a single-phase market review is a sensible reform, particularly given the frequent criticism that the existing framework is unwieldy, burdensome and takes too long. This change is likely to introduce greater flexibility, while also enabling faster and more proportionate outcomes, without compromising the ability to accommodate more complex cases or implement robust remedies. Similarly, the proposed time limits appear both practical and appropriate. On this basis, Euclid Law supports these proposals.

However, while the proposal streamlines the CMA's internal markets machinery, it does not fully streamline concurrency. The continued ability of sector regulators to conduct market studies, before inviting the CMA to launch a market review, risks preserving a functional two-step process across institutions, even if the CMA's own statutory tool becomes single-phase. This therefore appears somewhat at odds with the stated intention of the consultation to streamline process and efficiencies.

Qs 6/7 - Legal test for market reviews

If a single legal test is to be adopted, it should remain grounded in competition principles rather than a broader and less precise consumer test. The consumer test (currently used in market studies) is deliberately flexible and a lower threshold. It enables the CMA to deploy "soft power" tools such as suggesting government intervention, encouraging voluntary industry changes or promoting the adoption of common industry codes of conducts.

By contrast the competition test (applied in market investigations) sets a much higher bar. It requires clear evidence of harm to competition before the CMA can impose binding remedies. This functions as an important safeguard because it limits when the CMA can step in and ensures that any remedies are closely tied to those specific harms. Given the far-reaching powers of the CMA to intervene in markets following a market review, we believe that this higher bar is justified.

The adoption of a single legal consumer-focused test therefore risks introducing greater discretion and reducing analytical discipline, potentially leading to more interventionist outcomes without clear limiting principles or predictable thresholds for intervention. In effect, this would provide the CMA with overly broad discretion to intervene in markets, even where competition is working well. This would be undesirable from both a legal certainty and economic policy perspective and would reduce predictability for business.

Qs 8/9/10 - CMA market remedies

We agree with these proposals, as they appear to uphold the 4Ps principles while also ensuring greater flexibility in the review process and its timing. This contributes to a more effective and adaptable framework overall.

Q11/12/13- Concurrency framework & Sector regulators

Allowing sector regulators to oversee market remedies is likely to reduce duplication and overlapping responsibilities, thereby removing unnecessary administrative burdens and improving overall efficiency. Given that these regulators already possess certain competition law powers, as well as deep industry knowledge and technical expertise, they are well placed to implement and monitor such remedies effectively.

We also have no particular concerns with the adoption of a formal process whereby sector regulators can recommend the launch of CMA market reviews, provided that such recommendations are required to be made on a reasonable and proportionate basis.

Qs 14/15/16/17 – Share of Supply test and Qs 18/19/20/21 – Material Influence test

The consultation proposes relatively modest constraints on the CMA’s discretion, including a ‘closed list’ of factors that the CMA may use to assess whether the 25% Share of Supply threshold is met, and implementing a new statutory list of factors relevant to the assessment of material influence. While these changes, and the concept of a closed list is broadly helpful, the terms set out in the Enterprise Act (value, cost, price, quantity, capacity etc.) remain inherently vague.

It is therefore not clear if this proposal actually solves the unpredictability problem within the regime, or whether it simply codifies the CMA’s existing broad discretion. While Euclid Law supports any measures that bring enhanced predictability and transparency for merging parties, we feel the current proposals represent somewhat of a missed opportunity to bring clarity to the CMA’s merger control regime.

Q22 – Extending the timeframe for Phase I remedies

Allowing an extension to the Phase I process from ten to twenty working days to agree remedies has clear benefits. The proposed change would improve efficiencies by giving the parties and the CMA more time to resolve “near-miss” mergers through undertakings at an earlier stage. This may reduce the need for costly and time-consuming Phase II investigations, leading to faster overall outcomes. Euclid Law therefore supports this proposal.

Q23- CMA & Algorithmic Powers

Granting the CMA powers to investigate algorithms reflects the growing role of AI in markets and business practices, as well as its deep and increasing integration into everyday life. It also represents a practical and timely enhancement of the CMA’s investigatory toolkit, enabling it to address modern competition concerns more effectively.

However, such a power should not be a carte blanche exercise and when issuing an information notice, the CMA should explain clearly how it expects a business to prepare for and conduct any demonstrations or tests.

Q24 – Role of the Secretary of State in guidance

Euclid Law does not support a formal role for the Secretary of State in key guidance documents. Such documents articulate how an independent competition authority interprets and applies the law. Formal ministerial involvement in their development would be inconsistent with that independence and risks undermining confidence in the neutrality of the regime. No coherent justification has been provided for the change, which therefore gives the perception of political

interference. This is particularly unfortunate given the more far-reaching institutional changes that are proposed.

Qs 25/26 - Christmas period

We agree with this proposal as it seeks to make the regulatory process more reasonable and efficient. It is likely to improve the quality of submissions while also reducing pressure on resources for the CMA, and the businesses with which they are engaging.

Additional Observations

The concerns described above are further amplified in the context of the UK's markets regime and the Digital Markets, Competition and Consumers Act, where the CMA exercises wide discretionary powers that can shape entire market structures and are subject only to Judicial Review. In such a framework, the case for maintaining strong internal safeguards, including independent and deeply engaged decision-making, is even more compelling.

Conclusion

The proposed abolition of Inquiry Panels would weaken the separation between investigation and adjudication, reduce decision-making robustness, and undermine predictability. If separation were compromised, a move to merits review would logically follow, but this would represent a fundamentally different model. While framed as enhancing accountability, the proposal risks replacing clear, individual responsibility with more intangible and diffuse collective decision-making. For these reasons, Euclid Law does not support this proposed reform.

The more coherent approach is therefore to retain the Panel-led system and pursue targeted, evidence-based improvements, rather than structural change that risks undermining the balance on which the regime depends.

However, as noted above, we agree with several of the other proposals, which appear both effective and sensible, and are likely to support economic growth while enhancing competition by reinforcing the CMA's core principles.

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