

# Response to the Government's consultation on refining the UK competition regime

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*The views and opinions expressed in this response are those of the authors and do not necessarily reflect the views of Econic Partners or its clients*

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## 1. Introduction and summary

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- 1.1 We welcome the opportunity to comment on the Government's consultation on proposals to embed the '4Ps' framework in the Competition and Markets Authority ('**CMA**')s regime.<sup>1</sup> Among the suggested proposals, the Government is seeking views on changes to enhance the accountability of the CMA's merger and markets regimes (the **Proposal**).<sup>2,3</sup>
- 1.2 The Proposal explains that the role of independent panel members ('the **Panel**') as decision makers represents a unique feature of the UK competition regime, which "*can create confusion*" regarding the accountability of certain CMA's decisions.<sup>4</sup>
- 1.3 The Proposal therefore includes replacing the Panel with new sub-committees of the CMA's Board ('**Sub-committees**') which will be responsible for decisions in Phase 2 merger investigations and the new single-phase market review tool (which will replace the existing market study and market investigation system).
- 1.4 The Proposal states that these proposed changes will ensure: (i) greater accountability, given that those ultimately accountable to Parliament would be directly involved in the most significant mergers and markets decisions; (ii) greater predictability and consistency; and (iii) a faster pace of decision-making.<sup>5</sup>
- 1.5 We agree with a number of the objectives set out in the Proposal. In particular, we support the focus on improving the predictability and efficiency of the CMA's processes, as well as its emphasis on ensuring accountability of the exercise of CMA's powers.
- 1.6 However, the Proposal does not adequately explain how the Panel adversely affects the CMA's accountability, predictability and decision-making speed under the current regime. Nor does it examine how the proposed regime is likely to deliver materially better outcomes. Instead, the Proposal largely sets out the intended changes – namely, transferring greater decision-making authority to senior CMA staff – without explaining the rationale for doing so or engaging with the trade-offs such a shift would entail.
- 1.7 In our view, the Proposal, in its current formulation, is unlikely to deliver the intended outcomes. It is likely to negatively affect the CMA's independence, with potential harm to the long-term reputation of the UK competition regime.

## 2. The Proposal is unlikely to deliver the intended outcomes

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- 2.1 We consider that the Proposal is unlikely to deliver the intended outcomes of enhancing the CMA's accountability, predictability and consistency, or to improve the pace of decisions. In particular, the Proposal may reduce the CMA's accountability whilst producing little (or no) effect on predictability and pace of decision-making.

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<sup>1</sup> "Refining Our Competition Regime", Department for Business and Trade, 20 January 2026. Available at: <https://assets.publishing.service.gov.uk/media/696e4aa4bbcea094189e23b7/refining-our-competition-regime.pdf>

<sup>2</sup> "Refining Our Competition Regime", Department for Business and Trade, 20 January 2026, Section 1.

<sup>3</sup> This response does not seek to address all aspects of the consultation. It focuses on the proposed changes to decision-making structures in Phase 2 mergers and the new single-phase market review tool, which we consider the most consequential for the UK competition regime. The absence of comments on other elements of the consultation should not be interpreted necessarily as an endorsement of those proposals.

<sup>4</sup> "Refining Our Competition Regime", Department for Business and Trade, 20 January 2026, page 9.

<sup>5</sup> "Refining Our Competition Regime", Department for Business and Trade, 20 January 2026, paragraphs 6 and 7.

## No clear improvement in accountability

- 2.2 The Proposal suggests that the CMA's current regime “*can create confusion regarding accountability for those affected by decisions*”.<sup>6</sup> This concern stems from the fact that Phase 2 mergers and market investigations are led by the Panel, while the CMA's senior staff – who are ultimately accountable for the CMA's decisions – are not responsible for the most relevant decisions concerning these cases.
- 2.3 To address this issue, the Proposal envisages replacing the Panel with Sub-committees, with each Sub-committee comprising: (i) senior CMA staff and (ii) non-executive members of the CMA's Board and/or non-CMA staff experts, accounting for at least 50% of the Sub-committee.<sup>7</sup>
- 2.4 The importance of accountability of independent government agencies is well documented in the economic literature. Accountability can be described as the set of internal and external checks and balances that constrain the decision-making process of independent government agencies.<sup>8</sup> Accountability is often seen as the other side of the coin of independence, as it legitimises the independence of a competition authority, and it is crucial for the authority's reputation in the long run.<sup>9</sup> The importance of accountability has also been acknowledged by a House of Lords' Industry and Regulators Committee report, which concluded that “*while it is right that regulators can exercise power independently, it is vital for democratic legitimacy that they are held to account for this*”.<sup>10</sup>
- 2.5 Given the quasi-judicial functions attributed to the CMA, the Panel represents an important safeguard against the concentration of investigative, prosecutorial, and adjudicative roles within the same institution, and thus helps to ensure the CMA's accountability. This is particularly the case given that CMA decisions are subject to judicial review and not a full merits appeal, which would be a more stringent way of holding the CMA to account.
- 2.6 The removal of the Panel in favour of Sub-committees would indeed result in the concentration of these powers within the CMA, with very little oversight. For instance, key issues such as proportionality or economic assessment in Phase 2 mergers and the new single-phase market review tool would be in large part determined by senior CMA staff (via Sub-committees), with no appeal on the merits available. This would likely reduce the CMA's accountability, instead of increasing it.
- 2.7 The Proposal does not seem to specifically address these concerns. Rather, it focuses on a narrow definition of accountability, where accountability is solely determined by the identity of the decision-maker (i.e. Panel vs. Sub-committee), as opposed to considering the wider constraints that independent agencies as a whole should be subject to.
- 2.8 More generally, it is unclear from the Proposal why replacing Panels with Sub-committees would make the CMA significantly more accountable for its own decisions:
- Under the current regime, the decision-maker of Phase 2 mergers and market investigations is the Panel – composed of non-CMA staff experts – which is appointed by the CMA's Board, albeit indirectly via the Panel Chair.
  - Under the Proposal, the decision-maker would instead be a Sub-committee composed of a mix of senior CMA staff, non-executive members of the CMA's Board, and external experts. These Sub-committees would also be appointed by the CMA's Board, through either the Mergers Board Committee or the Markets Board Committee.
- 2.9 Even accepting the Proposal's narrow definition of accountability, it is unclear why decisions taken by Sub-committees (which could include non-CMA staff experts up to 50%) appointed by the CMA's Board would be materially more accountable than decisions taken by an Inquiry Group whose members are likewise appointed by the CMA's Board. Similarly, the Panel members are selected by

<sup>6</sup> “Refining Our Competition Regime”, Department for Business and Trade, 20 January 2026, page 9.

<sup>7</sup> “Refining Our Competition Regime”, Department for Business and Trade, 20 January 2026, paragraph 36.

<sup>8</sup> “Why should national competition authorities be independent and how should they be accountable?”, Abel Mateus, European Competition Journal, June 2007, page 17.

<sup>9</sup> “Independence of Competition Authorities – from Designs to Practices”, OECD Roundtables on Competition Policy Papers 195, paragraph 66.

<sup>10</sup> “Who watches the watchdogs? Improving the performance, independence and accountability of UK regulators”, House of Lords Industry and Regulators Committee report, February 2024, page 4.

the Secretary of State for Business and Trade, as are the Chair and CEO (as well as members of “the pool” under the Proposal).

- 2.10 Moreover, we note the Proposal does not clarify either the exact composition of each Sub-committee or the voting threshold for decisions (qualified majority or simple majority). As such, it is unclear at this stage who exactly will be responsible for decisions – i.e. senior CMA staff, non-executive members of the CMA’s Board or non-CMA staff experts.

## Risks to the CMA’s predictability and consistency

- 2.11 The CMA previously identified “predictability” as a key outcome for promoting growth, innovation and business confidence. In this context, predictability refers to providing businesses with greater certainty as to which transactions are likely to attract CMA scrutiny.<sup>11</sup> Closely related to this is consistency, which can be understood as the delivery of comparable outcomes in merger and market investigations with similar factual and economic characteristics.
- 2.12 The Proposal seeks to enhance predictability and consistency by increasing the involvement of senior CMA staff in the decision-making of Phase 2 mergers and the new single-phase market review tool, with the aim of ensuring a more uniform application of the CMA’s guidelines:
- a. Under the current system, the Inquiry Chair appoints an Inquiry Group (typically composed of three or four Panel members) from a wider pool of independent, non-CMA staff experts for each Phase 2 merger and market investigation.
  - b. Under the Proposal, Sub-committees would still include non-CMA staff experts, but senior CMA staff would be involved in the decision-making.
- 2.13 In other words, the Proposal seeks to improve predictability and consistency by increasing the influence of CMA staff relative to that of Panel members. We acknowledge that the Proposal may in theory result in a more consistent application of the CMA’s guidelines and objectives, as it replaces a system where the decision-making is delegated to Panels, whose composition and leadership differ across cases.
- 2.14 However, such change also carries risks that could ultimately reduce, rather than enhance, the predictability and consistency of decision-making for the following reasons.
- a. **Risk of confirmation bias:** Under the current regime, Inquiry Groups provide a fresh and unbiased assessment of cases at Phase 2 (or market investigation phase). The presence of several Panel members with diverse backgrounds and perspectives encourages rigorous scrutiny of the case and promotes balanced outcomes aligned with the CMA’s guidelines. The value of external perspectives and diversity of thought is also recognised in the Proposal itself.<sup>12</sup> Increasing the influence of senior CMA staff may create a greater risk that Sub-committees would simply endorse conclusions reached earlier in the process. This could weaken the function of Phase 2 as an independent review stage, which is a central feature of the UK merger control framework. The impact is less clear on the markets regime, given that the CMA proposes to replace the current market study and market investigation system with a new single-phase market review tool.
  - b. **Risk of political capture:** The current system of appointing ad hoc Inquiry Groups from a diverse pool of Panel members also acts as a safeguard against political capture. By diffusing the decision-making across independent experts with heterogeneous views, which change on a case-by-case basis, the system reduces the risk that outcomes are influenced by factors external to the CMA’s statutory objectives and guidelines. Increasing the relative influence of CMA staff could weaken this safeguard and expose the decision-making process to a greater risk of political influence.

<sup>11</sup> “New CMA proposals to drive growth, investment and business confidence”, Competition and Markets Authority, 13 February 2025. Available at: <https://competitionandmarkets.blog.gov.uk/2025/02/13/new-cma-proposals-to-drive-growth-investment-and-business-confidence/>

<sup>12</sup> “Refining Our Competition Regime”, Department for Business and Trade, 20 January 2026, paragraph 9.

- 2.15 The above suggests that increasing the influence of senior CMA staff relative to that of Panel members could weaken particularly the role of Phase 2 as a distinct and rigorous stage of review, potentially leading to outcomes that are less robust and less predictable for businesses.

## Limited scope for improving the pace of decisions

- 2.16 The Proposal also seeks to improve the speed of decision-making. The Government notes that “*transitions between investigation phases can feel disjointed, leading to slower decision-making*”,<sup>13</sup> which it believes could be improved under a Sub-committee model. Although not explicitly mentioned, the Proposal refers to the handover process that typically takes place between Phase 1 and Phase 2 in merger inquiries and between market studies and market investigations, where there is a change in decision maker, which may slow the overall review process.
- 2.17 While we acknowledge that this handover can reduce the pace of decisions, especially at the beginning of the new phase of the investigation, the Proposal is unlikely to result in pace improvement of the overall review process of Phase 2 merger inquiries, for the following reasons:<sup>14</sup>
- a. The Proposal clarifies that Sub-committees would include “*different, senior [CMA] staff*” [emphasis added].<sup>15</sup> This means that Sub-committees would include senior CMA staff which were not involved in the Phase 1 investigation. As a result, senior CMA staff would still need to familiarise themselves with the background of the case and the evidence gathered during the Phase 1 investigation at the beginning of Phase 2, with no actual improvement in pace. In addition, it is unclear how this provision, which intends to preserve a “fresh pair of eyes” approach between Phase 1 and Phase 2, can be reconciled with the Proposal’s aim to significantly improve the CMA’s predictability and consistency, given it also involves different senior CMA staff across Phase 2 merger investigations.
  - b. Even if senior CMA staff in Sub-committees would not necessitate a hand-over process (or a shorter hand-over compared to Panel members), other members of the Sub-committee, including non-executive members of the CMA’s Board and non CMA staff experts, would still need to familiarise themselves with the background material and evidence gathered during the Phase 1 investigation, with little improvement in the pace of decisions.
  - c. Phase 2 mergers are bound by statutory timelines, which the Proposal does not seem to change. As such, the Proposal is unlikely to produce any material gain in pace. Moreover, we note that statutory timelines in Phase 2 merger investigations are mostly driven by additional evidence gathering and economic analysis, where the hand-over process constitutes a relatively small part. As such, any tinkering with the decision-making process is unlikely to substantially change pace.
- 2.18 More generally, whilst we generally welcome the Government’s intent to speed up the pace of decision-making, this should not come at the expense of a robust and sound review by the CMA. Phase 2 mergers are complex by nature and require an in-depth engagement by the decision-maker. Outcomes that are less grounded in the evidence are more likely to result in appeals, remittals, or re-notification of similar transactions, which would ultimately slow the overall process rather than accelerate it.
- 2.19 Under the current regime, this is achieved by the Panel, where each dedicated Inquiry Group devotes a significant amount of time in stress-testing the evidence and challenging the assumptions and conclusions reached in Phase 1. It is not clear how senior CMA staff within Sub-committees, who will necessarily have several responsibilities, would be able to match this level of scrutiny or time commitment (which may then negatively impact the robustness of the review, and/or the pace of the review, if senior CMA staff are unable to devote the necessary time).

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<sup>13</sup> “Refining Our Competition Regime”, Department for Business and Trade, 20 January 2026, paragraph 7.

<sup>14</sup> The impact on the market regimes is less clear, given that the Proposal includes the creation of a new single-phase market review tool.

<sup>15</sup> “Refining Our Competition Regime”, Department for Business and Trade, 20 January 2026, paragraph 28.

### 3. The Proposal is likely to negatively impact the CMA's independence

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- 3.1 We explained that the Proposal exposes the CMA to a greater risk of political capture, which could negatively impact the CMA's independence.
- 3.2 The importance of political independence for regulatory agencies, such as the CMA, is well established. Independence is crucial for maintaining credibility, as it enables regulatory agencies to pursue their policy objectives effectively while providing certainty and predictability for the business community.<sup>16</sup> This is also stressed by the House of Lords' Industry and Regulators Committee report,<sup>17</sup> as well as the Proposal itself.<sup>18</sup> In this context, independence should be understood not only as freedom from political influence, but also as protection from lobbying by various interest groups.
- 3.3 The independence of the UK competition regime has, to date, largely been safeguarded by the role of the Panel. In particular, while Phase 1 decisions are made by CMA staff (typically either the Senior Director of Mergers or another senior member of CMA staff),<sup>19</sup> Phase 2 mergers and market investigations use independent decision-makers (who are separate from those responsible for Phase 1 decisions and market studies). This has been a central feature of the regime and an important mechanism for protecting the CMA's independence.
- 3.4 Nonetheless, following the removal of the CMA's previous Chair in January 2025,<sup>20</sup> there have been recent claims that the pro-growth government agenda may have influenced the CMA's decision making, under the existing regime.<sup>21</sup> We tested this claim using data on CMA's Phase 1 and Phase 2 merger decisions for cases opened (and have subsequently closed)<sup>22</sup> since the CMA's launch on 1 April 2014.
- 3.5 **Figure 1** below compares the actual Phase 2 interventions for each CMA CEO and year (bars) with the *expected* interventions (circles). Interventions are defined as either prohibitions or cancellations at Phase 2. Expected interventions are determined by the relative proportions of Phase 2 prohibitions or cancellations (over clearance decisions) observed between 2014 and 2025.<sup>23</sup> The closer the bar is to the relative circle (for a given year and CEO), the more consistent that year is with decisional practice over the full period (noting that variation may have several possible causes, such as different case mix and complexity).
- 3.6 It shows that:
- There were relatively fewer 'interventions' (defined here as prohibitions or cancellations) than expected in 2024 and 2025 (and consequently more clearance decisions),<sup>24</sup> albeit there were a relatively low number of Phase 2 merger decisions during this period.

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<sup>16</sup> "Independence of Competition Authorities – from Designs to Practices", OECD Roundtables on Competition Policy Papers 195; "Why should national competition authorities be independent and how should they be accountable?", Abel Mateus, European Competition Journal, June 2007; "Being an Independent Regulator", OECD, 2016; "Theory and Practice of Delegation to Non-Majoritarian Institutions", Mark Thatcher and Alec Stone Sweet, West European Politics, 2002; "Socially responsible agencies", Jean Tirole, Competition Law & Policy Debate, 2023.

<sup>17</sup> "Who watches the watchdogs? Improving the performance, independence and accountability of UK regulators", House of Lords Industry and Regulators Committee report, February 2024, paragraph 48-52.

<sup>18</sup> "Refining Our Competition Regime", Department for Business and Trade, 20 January 2026, paragraph 5.

<sup>19</sup> "Mergers: Guidance on the CMA's jurisdiction and procedure", Competition and Markets Authority, January 2025, paragraph 9.61. Available at: [https://assets.publishing.service.gov.uk/media/67d41b981b26cbdf9b851d9b/CMA2\\_Mergers\\_-\\_guidance\\_on\\_the\\_CMA\\_s\\_jurisdiction\\_and\\_procedure.pdf](https://assets.publishing.service.gov.uk/media/67d41b981b26cbdf9b851d9b/CMA2_Mergers_-_guidance_on_the_CMA_s_jurisdiction_and_procedure.pdf)

<sup>20</sup> "Government ousts UK competition watchdog chair", BBC, 21 January 2025. Available at: <https://www.bbc.co.uk/news/articles/c2d3e6zklxgo>

<sup>21</sup> "UK competition watchdog cleared every merger in 2025 after government pressure", Financial Times, 12 January 2026. Available at: <https://www.ft.com/content/e8cd577b-aa1d-4d30-8709-273310a24ea5?syn-25a6b1a6=1>

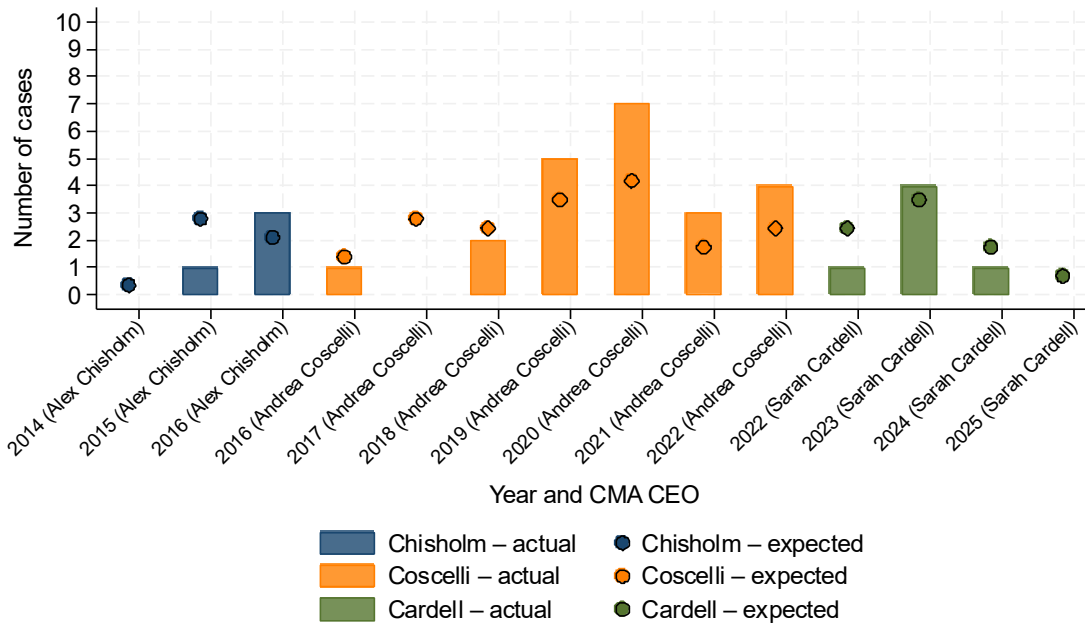
<sup>22</sup> We exclude cases that are indicated as "ongoing" on the CMA's website.

<sup>23</sup> There are 91 Phase 2 decisions in the sample. 65% (=59/91) of these were clearances with or without remedies. 35% (=32/91) of these were prohibitions or cancellations. In 2024, during which Sarah Cardell was the CMA's CEO, there were 5 Phase 2 mergers. Therefore, the expected number of prohibitions or cancellations is 1.8 (=35%\*5).

<sup>24</sup> This analysis excludes Spreadex /Sporting Index's merger inquiry, as the case is currently under remittal, but the original Phase 2 final report was published on 22 November 2024.

- b. Within a CEO’s tenure, there is variation between years in the gap between actual and expected outcomes in Phase 2 merger investigations. For example, during Andrea Coscelli’s tenure, Phase 2 interventions were lower than expected during the period 2016-2018, but higher than expected during the period 2019-2022.

**Figure 1: Phase 2 merger prohibitions or cancellations by year and CMA CEO (actual vs. expected)**



Notes: The sample consists of 92 Phase 2 cases opened since the CMA began on 1 April 2014 (and the CMA has subsequently closed with a final decision). Therefore, 2014 is not a full year. The year is based on the date the Phase 2 final report was published. The CEO is the individual named in the Phase 2 final report. For cancelled mergers where there was no Phase 2 final report, it is the CEO on the date the merger was cancelled. We aggregate merger outcomes into two categories: (1) clearances with and without remedies; and (2) prohibitions or cancellations. We calculate the expected value based on the proportion of each outcome in the full sample.

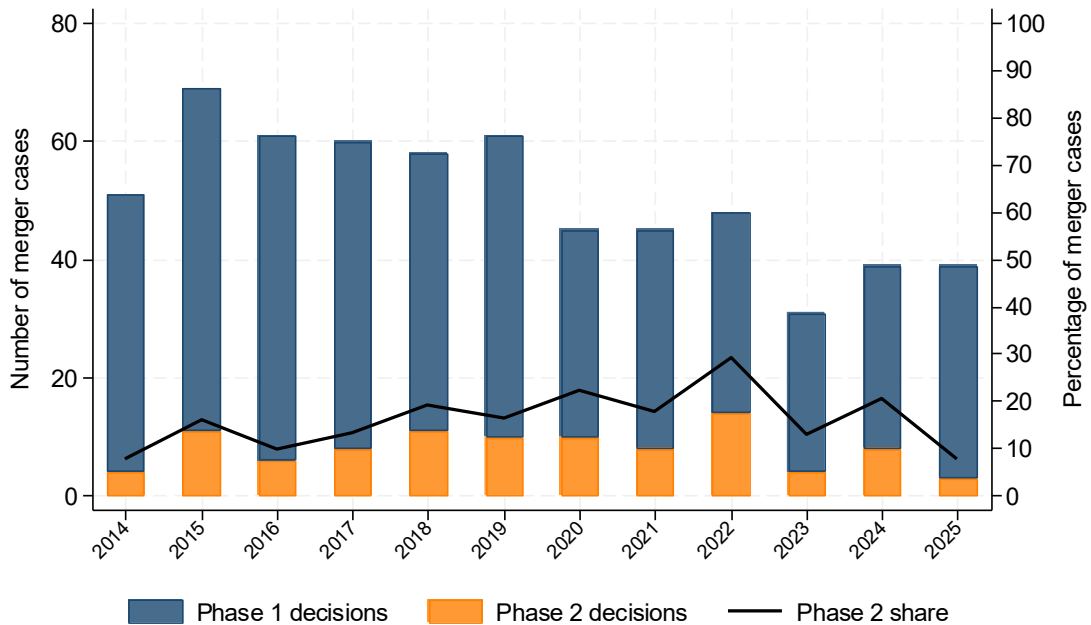
Source: Eonic Partners analysis of the CMA’s Phase 2 merger decisions.

3.7 This suggests that even under the current regime, where the Panel should safeguard the independence of the CMA’s decision-making in Phase 2 merger investigations, the regime may not be fully immune to the political environment.

3.8 **Figure 2** below provides the number of mergers resolved at Phase 1 or referred to Phase 2 in a given year. It shows that there was a general drop in Phase 2 references in 2023-2025, compared to a peak of 29% of mergers in 2022,<sup>25</sup> with only 8% of mergers referred to Phase 2 in 2025 (which was the lowest annual number and percentage since the CMA was established).<sup>26</sup> This reduction in the share of mergers being referred to Phase 2 is in spite of the increasing use of briefing papers (which may have reduced the number of mergers being considered at Phase 1 compared to previous years).<sup>27</sup>

<sup>25</sup> There were 14 mergers referred to Phase 2 in 2022 (out of 48 merger decisions at the end of Phase 1).  
<sup>26</sup> There were 3 mergers referred to Phase 2 in 2025 (out of 39 merger decisions at the end of Phase 1). Most of these referrals came later in the year: Aramark/Entier Phase 1 decision announced on 22 July 2025, Constellation Developments Limited / ABVR Holdings Limited Phase 1 decision announced on 29 September 2025, and Getty Images / Shutterstock Phase 1 decision announced on 20 October 2025. We also note that ABF / Hovis was referred to Phase 2 on 8 January 2026.  
<sup>27</sup> “Q4 2025 Update – UK Merger Control and National Security/Investment Screening”, Akin, October 2025. Available at: [https://www.akingump.com/en/insights/alerts/q4-2025-update-uk-merger-control-and-national-securityinvestment-screening#\\_edhref1](https://www.akingump.com/en/insights/alerts/q4-2025-update-uk-merger-control-and-national-securityinvestment-screening#_edhref1)

**Figure 2: Phase 1 and Phase 2 mergers by year (of Phase 1 decision)**



Notes: The sample consists of 607 mergers that were opened since 1 April 2014 (and were either closed at Phase 1 or referred to Phase 2). Therefore, 2014 is not a full year. The year is based on the date the Phase 1 merger decision was made (i.e., whether to clear or refer to Phase 2). We excluded mergers that were referred to the European Commission or a “review of undertakings”.

Source: Econic Partners analysis of the CMA’s merger decisions.

- 3.9 The findings in **Figure 2** are particularly important given that, unlike Phase 2 merger investigations, the outcome of Phase 1 mergers is decided by a senior member of CMA staff. The recent decline in Phase 2 referrals may suggest that such decisions are, at least to some extent, responsive to the Government’s pro-growth agenda. Against this background, the removal of the Panel in favour of Sub-committees – where senior CMA staff would have a more direct and material influence on Phase 2 decisions (as well as under the proposed single-phase market review tool) – could increase the risk that similar external influences affect Phase 2 outcomes, thereby exposing the CMA to greater risks of political influence.
- 3.10 These changes will make the Government and senior decision-makers significantly more susceptible to lobbying. Historically, lobbying has not been a prominent feature of the UK competition regime, in part because it has been viewed as ineffective or even potentially counterproductive. This may result in a structural change in the CMA’s decision-making, able to undermine its independence in the long run.
- 3.11 Although the CMA’s current leadership may use these powers responsibly, it is important that institutional frameworks are designed to remain effective even under less favourable conditions and when governments change. A governance model that relies heavily on the discretion of individual office-holders, rather than on stable and independent decision-making structures, such as the Panel, is unlikely to provide the consistency and predictability that businesses and wider stakeholders require.

## 4. Conclusions

- 4.1 Overall, while we support the Government’s objectives of enhancing accountability, predictability and efficiency within the UK competition regime, we do not consider that the Proposal, as currently formulated, is likely to achieve these goals. The Proposal does not clearly demonstrate that the existing role of the Panel materially undermines accountability or decision-making speed, nor does it

adequately explain how transferring greater decision-making authority to senior CMA staff would lead to better outcomes. On the contrary, the Proposal risks weakening key institutional safeguards that have underpinned the robustness and credibility of the UK regime.

- 4.2 In particular, replacing the Panel with Sub-committees is likely to reduce the effective separation between investigation and decision-making, increase the risk of confirmation bias and political influence, and ultimately undermine the CMA's independence. These risks may outweigh any limited gains in consistency or pace.
- 4.3 We therefore encourage the Government to reconsider the proposed reforms and to explore alternative ways of improving efficiency and predictability that preserve the independence, accountability and long-term reputation of the UK competition regime.

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