

# Refining the UK Merger Regime: The impact on the CMA's independence

**Fabrizio Vasselli and Daniel Westrik**

Will the Government's proposed reform of the Competition and Markets Authority ('CMA')s governance achieve its stated objectives – greater accountability, predictability and speed of decision making – if the CMA's independence is compromised?

The Government is consulting to change the CMA's governance structure by replacing independent panel members ('Panel') as decision makers in Phase 2 merger investigations and the new single-phase market review tool with sub-committees of the CMA's Board, composed of (i) senior CMA staff (such as the CEO or Chair), 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.

According to the consultation, the reform would have three objectives: (i) **greater accountability**, given that senior CMA staff (who are ultimately accountable to Parliament) are directly involved in the most significant mergers and markets decisions; (ii) **greater predictability** and consistency; and (iii) a **faster** decision-making.

But what about **independence**?

Independence does not explicitly feature among the stated objectives of the Government's reform of the CMA's Mergers and Markets regimes, nor are the effects of the reform on the CMA's independence discussed in the consultation. Yet independence is crucial for the credibility of any authority such as the CMA.

Compromising independence would not only be undesirable, but also likely to undermine the very objectives the reform seeks to achieve. When decisions are more easily influenced by political interests or lobbying, (i) the CMA becomes less accountable for its own decisions, as politics and/or lobbying play a part in the decision making, (ii) outcomes might differ across factually similar cases (i.e., less predictability); and (iii) appeals and remittals might increase if the courts remain independent (i.e., lower speed).

The central question is, therefore: **does the reform strengthen or weaken the CMA's independence?**

## The importance of independence for the UK competition regime

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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. The House of Lords' Industry and Regulators Committee report, as well as the proposed reform itself, stress this point. In this context, independence should be understood not only as freedom from political influence, but also as protection from lobbying by various interest groups.

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, 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, particularly given that CMA decisions are subject to judicial review rather than a full merits appeal.

## Evidence from the CMA’s outcomes

Nonetheless, following the election of the current UK government in July 2024 and removal of the CMA’s previous Chair in January 2025, there have been recent claims that the pro-growth government agenda may have influenced the CMA’s decision making, under the existing regime.

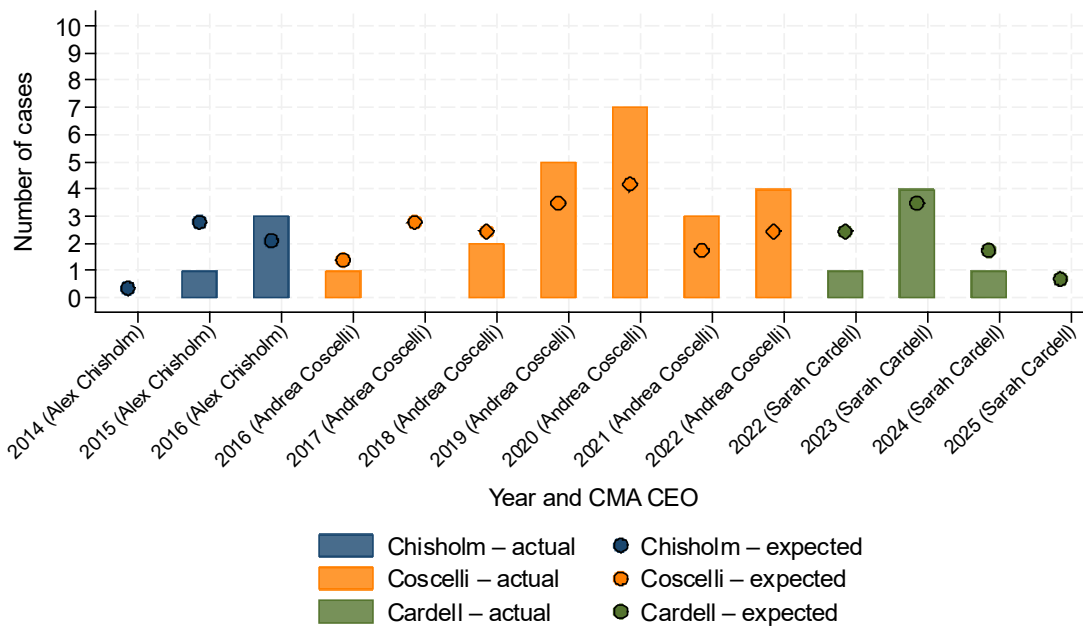
To explore this claim, we analysed data on CMA’s Phase 1 and Phase 2 merger decisions for cases opened (and have subsequently closed) since the CMA’s launch on 1 April 2014.

**Figure 1** 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 in each year. Expected interventions in each year are determined based on the relative proportion of prohibitions or cancellations (over clearance decisions) observed over the period 2014–2025.

Two patterns stand out:

- First, Phase 2 interventions were lower than expected in 2024 and 2025, albeit in years with relatively few Phase 2 decisions overall.
- Second, within individual CEO tenures, there is meaningful variation across years in the gap between actual and expected outcomes. 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)**

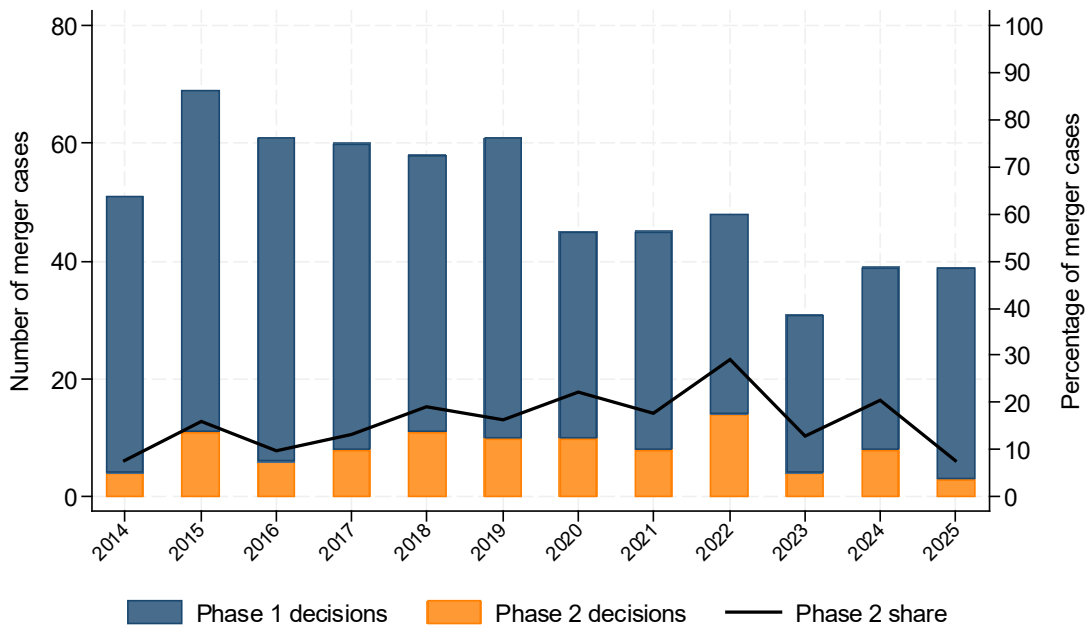


Source: Eonic Partners analysis of the CMA’s Phase 2 merger decisions.

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.

**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, with only 8% Phase 2 referrals in 2025 (which was the lowest annual number and percentage since the CMA’s existence).

**Figure 2: Phase 1 and Phase 2 mergers by year (of P1 decision)**



Source: Eonic Partners analysis of the CMA's merger decisions.

The findings in **Figure 2** are notable because Phase 1 referral decisions are taken by senior CMA staff rather than independent decision-makers. While multiple factors may explain the particularly steep decline in 2025, it raises the possibility that such decisions are responsive to the Government's pro-growth agenda (and may be more so than decisions by the Panel).

## Implications of the proposed reform

Against this background, the proposed removal of the Panel warrants careful scrutiny.

Concentrating both Phase 1 and Phase 2 decision-making more directly within the CMA's leadership risks increasing the exposure of merger outcomes to political and lobbying pressures. Even if current office-holders exercise these powers responsibly, governance structures should be robust to changes in personnel and political priorities.

Historically, lobbying has played a limited role in UK merger control, in part because it has been perceived as ineffective. A governance model that places greater discretion in the hands of senior decision-makers could alter these incentives and, over time, weaken the perceived independence of the regime, and potentially undermine the very objectives that this reform hoped to achieve.