

COMPETITION AND MARKETS AUTHORITY

**MERGER NOTICE UNDER SECTION 96 OF
THE ENTERPRISE ACT 2002: TEMPLATE FOR COMPLETION**

PREAMBLE

Purpose of the Notice

1. This merger notice (Notice) is for the purpose of notifying an anticipated or completed merger to the Competition and Markets Authority (CMA) pursuant to section 96 of the Enterprise Act 2002 (as amended) (the Act).

Parties giving the Notice

2. A Notice may be submitted by any person carrying on an enterprise to which the notified arrangements relate.¹ Merger parties may submit a Notice jointly. This may in particular be appropriate in anticipated mergers where the acquirer may not have access to the target's internal information or documents, and will not therefore be able to verify the accuracy or completeness of the information provided, or – for similar reasons – in joint ventures.
3. The person(s) submitting the Notice (referred to below as notifying parties) take(s) responsibility for the accuracy and completeness of the information. Where merger parties are submitting a Notice jointly, each notifying party must sign the declaration below and each party is responsible for the accuracy and completeness of the information it has submitted in, or with, the Notice.

The UK merger control regime

4. The UK merger control regime is set out in the Act. Guidance on the procedures followed by the CMA in reviewing mergers is provided in *Mergers*:

¹ See the Enterprise Act 2002 (Merger Prenotification) Regulations 2003 (SI 2003/1369) (as amended) and Guidance Note to the Declaration in Part III.

Guidance on the CMA's jurisdiction and procedure (CMA2) (the Guidance). The text of the Act together with the Guidance and other relevant documents can be found on the CMA's webpages (www.gov.uk/cma).

5. The Act sets statutory time limits for the merger review process. The CMA has an initial period of 40 working days, subject to extension in certain circumstances (the Phase 1 investigation) to decide whether its duty to make a reference for an in-depth Phase 2 investigation applies.² Where notifying parties voluntarily notify a merger to the CMA by submitting a Notice, the period of 40 working days begins on the first working day after the day on which the CMA gives notice to notifying parties that it is satisfied that the Notice is in the prescribed form, contains the prescribed information and states that the existence of a proposed merger has been made public (a Satisfactory Notification).³

Information required by the Notice

6. This Notice sets out the categories of information to be provided by merger parties when notifying a merger to the CMA to enable it to assess the notified merger.⁴
7. The 'prescribed information' necessary for the purposes of a Satisfactory Notification is information responsive to the questions in this Notice, insofar as is relevant to the notified merger. The specific nature and extent of information required in response to each of these questions will vary from case to case, and will depend, for example, on the activities of the merger parties or the extent of overlap in their activities.

² See section 34ZA of the Act.

³ See sections 34ZA(3) and 96(2A) of the Act.

⁴ See section 96(2) of the Act.

The Guidance Notes

8. The CMA has published Guidance Notes to assist notifying parties in assessing the nature and extent of information that, in their individual case, they should provide in response to a particular question for the purposes of a Satisfactory Notification. To that end, the Guidance Notes provide examples of the type of information that may ordinarily be responsive. The questions in this Notice should therefore be read in the light of those Guidance Notes, and notifying parties should review the Guidance Notes in full before answering the questions.
9. However, the Guidance Notes cannot and do not list exhaustively all information that the CMA may, in a given case, consider should be provided in response to a particular question for the purposes of a Satisfactory Notification. The CMA may request additional information responsive to a question, beyond that indicated in the Guidance Notes, where it considers that, in the specific circumstances of the case, such additional information is required for the purposes of its Phase 1 investigation.⁵ Where notifying parties have engaged in pre-notification discussions with the CMA and/or submitted draft(s) of the notification to the CMA (as to which, please see below and Chapter 6 of the Guidance), the CMA will make clear to notifying parties as part of such engagement what information it expects to be necessary for a Satisfactory Notification in the case at hand.
10. In some cases, the information requested by a question will not be relevant to the notified merger, in which case notifying parties should respond to the question by noting that it is not relevant and explaining briefly why this is the case.⁶ Even where the question is relevant to the notified merger, in appropriate circumstances, the CMA may, at its discretion, consider that less information than indicated in the Guidance Notes will be sufficient for a

⁵ That is, its investigation under sections 22 or 33 of the Act as to whether it has a duty to refer that merger to Phase 2.

⁶ For example, where there are no vertical relationships between the merger parties, notifying parties should simply respond to question 22 by noting this.

Satisfactory Notification.⁷ The Guidance Notes indicate circumstances where this is likely to be the case. If merger parties consider that any particular information requested in this Notice may not be necessary for the CMA's assessment of the case (or, for example, that it is not available),⁸ they are encouraged to discuss this with the CMA in advance of submitting the Notice.⁹

Other published sources of guidance or information

11. In addition to the Guidance and Guidance Notes, notifying parties are encouraged to refer to other sources of guidance on the information and evidence that the CMA will likely require parties to provide in support of their notification in a particular case, including:

- *Merger Assessment Guidelines* (OFT1254/CC2)
- *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122)
- *Commentary on retail mergers* (OFT1305/CC2com2), and

⁷ This would typically include, for example, mergers under the City Code on Takeovers and Mergers (the City Code) that give rise to no or a limited overlap.

⁸ The extent of information in the Guidance Notes assumes that, even where the Notice is submitted by one notifying party, the other party (or parties) to the merger will reasonably cooperate with the notifying party in providing the necessary information. The CMA acknowledges, however, that in some circumstances (for example, a 'hostile' takeover) this may not be the case and therefore some information requested may not be available to notifying parties. In such circumstances, notifying parties should identify which information is not available and explain the reasons for this (including detailing any steps taken by notifying parties to obtain that information). Parties are strongly encouraged also to discuss any such issue with the CMA through pre-notification discussions.

⁹ To form the basis of pre-notification discussions, notifying parties are requested to submit a draft notification with the information they consider necessary for the CMA's Phase 1 investigation (noting the information which has not been provided with a brief explanation of why). The Guidance provides further information for notifying parties on pre-notification contacts and the preparation of submissions.

- *Good practice in the design and presentation of consumer survey evidence in merger inquiries (OFT1230/CC2com1).*¹⁰

These documents also explain certain terminology used in this Notice and in the Guidance Notes,¹¹ and/or how the CMA is likely to approach its substantive assessment of notified mergers.

12. In addition, parties may wish to refer to previous merger decisions published by the CMA (and its predecessors, the Office of Fair Trading (OFT) and the Competition Commission (CC) if relevant) on mergers in the relevant sector (available on or through the CMA's webpages), which may provide useful guidance on the issues that the CMA is likely to consider as part of its assessment of mergers in that sector and thus the nature of the information that notifying parties are likely to have to provide.

Pre-notification

13. The CMA strongly encourages notifying parties to engage in early pre-notification discussions with the CMA, in particular where they require further clarification as to the specific nature or extent of information that should be provided in the case at hand. These pre-notification contacts are extremely valuable both to notifying parties and to the CMA to determine precisely the information that will be required for a Satisfactory Notification, and provide the most efficient means of resolving any uncertainties notifying parties may have in this regard. Such early engagement is therefore likely to generate efficiencies in terms of timing and information gathering and may result in a reduction in the information notifying parties are required to provide.

¹⁰ The documents listed here were originally published by the CMA's predecessors, the OFT and/or CC, and have been adopted by the CMA. They are available on the CMA's webpages.

¹¹ Merger parties are referred in particular to *Merger Assessment Guidelines*, which includes descriptions of terms (relating to, for example, competitive conditions) that are used throughout this Notice. The Notice and Guidance Notes include cross-references to relevant parts of that document where appropriate.

14. If, during pre-notification and having reviewed notifying parties' draft submission, the CMA considers that additional information responsive to the questions in the Notice, beyond that already provided by notifying parties in their draft submission, is required for the purposes of a Satisfactory Notification, the CMA will indicate this to notifying parties.
15. Merger parties should also note that, during the course of a Phase 1 investigation (that is, following the submission of a Satisfactory Notification and the commencement of the 40 working day period), the CMA may subsequently require further information from the merger parties for the purposes of its investigation, including information that the CMA did not require prior to giving notice to notifying parties that the Notice was satisfactory.
16. Merger parties are also advised to discuss with the CMA any additional information that they may wish to provide with their notification to aid the CMA's investigation. It is particularly important to discuss with the CMA any evidence supporting their notification (for example, econometric analysis or customer surveys) that merger parties intend to produce specifically for the purposes of the CMA's merger control investigation. Such discussions should occur in advance of notification and prior to commencing production of that evidence (see further paragraph 6.41 of the Guidance). This will help to minimise risks of the parties undertaking wasted or unnecessary work.

Completing the Notice

17. The CMA wishes to obtain the information necessary to carry out its responsibilities under the Act without placing undue burdens on the parties. Notifying parties are free to supply the requisite information in the format of this Notice template or to provide a submission in a written format of their choosing, accompanied by a signed and annotated version of the Notice template completed to indicate clearly where in that bespoke submission the information responsive to each question in the Notice can be found.
18. When completing this Notice, evidence (including contemporaneous documents) cited in support of statements made by notifying parties should be provided to the CMA, where reasonably practicable. The CMA is likely to attach more weight to supported statements and therefore encourages notifying

parties to provide evidence in support of their statements wherever reasonably practicable.

19. All information required in this Notice must be complete and correct. In particular, notifying parties should note that:
- (a) As stated above, the initial period of 40 working days will not begin until the first working day after the CMA has confirmed to notifying parties that it has received a Satisfactory Notification. As noted above, the nature and extent of information required for these purposes may vary from case to case and further information may be requested from the merger parties at a later stage, following commencement of that 40 working day period.
 - (b) The CMA will endeavour to inform notifying parties in writing whether or not a submitted Notice amounts to a Satisfactory Notification as promptly as is practicable in the circumstances.¹² This will typically be within five (and no more than ten) working days of receipt of that Notice, and is likely to depend on, for example, the volume and length of submissions, the extent to which the CMA has previously considered earlier drafts of the same submissions, and the available CMA resource. In general, the CMA is likely to be able to provide such confirmation more promptly in those cases in which parties have engaged in pre-notification.
 - (c) If any information contained in the Notice is found to be, in any material respect, false or misleading, the CMA may reject the Notice (including in instances where the CMA has previously confirmed that it considers the Notice to be a Satisfactory Notification).¹³

¹² As explained in paragraph 5 above, the period of 40 working days begins on the first working day after the day on which the CMA gives notice to notifying parties that it is satisfied that the Notice is in the prescribed form, contains the prescribed information and states that the existence of a proposed merger has been made public.

¹³ Section 99(5)(a) of the Act. Where appropriate, such situations could include where during market testing the CMA finds that notifying parties, when providing contact details, did not provide working email addresses and the false/incorrect information is material in any respect.

- (d) It is an offence punishable by a fine and/or imprisonment to intentionally or recklessly give the CMA information that is false or misleading in a material respect.¹⁴

Submission of the Notice

20. If, after submitting the Notice and during the course of the investigation, there are any changes in the circumstances of the merger or the merger parties which are relevant to the information provided in the Notice or other information the merger parties have provided to the CMA, they must inform the CMA immediately.
21. Information on how to submit a Notice to the CMA is available on the CMA's webpages.

¹⁴ Section 117 of the Act.

PART I - GENERAL INFORMATION

1. Provide the name and contact details of:
 - a. an individual within each of the merger parties
 - b. any authorised representatives of each of the merger parties
 - c. if not already provided in response to (a) and (b), the person(s) submitting the Notice¹⁵
 - d. the person to whom the CMA should address any correspondence.

Guidance Note to question 1

Notifying parties can authorise a representative, for example, a firm of solicitors, to complete the Notice on their behalf and to act for them in further correspondence with the CMA.¹⁶ If notifying parties do authorise someone to act in this way they must sign the authorisation at Part III of the Notice.

If an authorised representative ceases to act for notifying parties, the CMA must be advised of this immediately.

Notifying parties must give the name and address of a person who is authorised to accept all correspondence and accept service or take receipt on behalf of notifying parties. This may be a person within the company or notifying parties' authorised representative.

'Contact details' include full name, telephone number, UK address and email address where the CMA can make contact between 9.00am and 5.00pm on working days. If any such details change, notifying parties should notify the CMA immediately in writing.

¹⁵ That is, the notifying party or parties, as described in paragraph 2 of the Preamble above.

¹⁶ Note, however, that the Notice must be signed by a person or persons with authority to bind each notifying party (see Part III of this Notice and the associated Guidance Notes).

PART II – MERGER DETAILS

The merger situation

See chapter 4 of the Guidance and part 3 of *Merger Assessment Guidelines*

2. Describe the arrangements by which the enterprises will cease/have ceased to be distinct (the merger), including:
 - a. the parties to the merger (the merger parties)
 - b. the type of transaction
 - c. the consideration
 - d. the key terms
 - e. the timing
 - f. the strategic and economic rationale for the transaction
 - g. whether it is being notified in any other jurisdictions and, if so, whether the merger parties are willing to offer a waiver to support coordination between the CMA and the competition authorities in those jurisdictions, and
 - h. the ownership structure pre and post-merger, including any pre-merger links between the merger parties.

Guidance Note to question 2

See chapter 4 of the Guidance and part 3 of *Merger Assessment Guidelines*

Note to 2.a - When describing the merger parties, provide their full legal names and explain how this entity fits within a wider group structure if relevant, specifying the ultimate ownership. Identify any legal or natural person which, directly or indirectly, owns, controls,

or has material influence over (together, referred to hereafter as ‘controls’)¹⁷ any one of the merger parties and is active in any of the Candidate Markets identified in response to question 13 below, and any legal or natural person which any one of the merger parties controls and is active in any of the Candidate Markets. If the acquiring party or group (where relevant) qualifies as ‘small’ or ‘medium-sized’ under the Companies Act 2006 (sections 382 and 465) please specify. Information responsive to question 2(a) may be given by way of a diagram.

Note to 2.b – When describing the type of transaction, indicate, for example, whether it is (a) a full merger, an agreed bid, or a full takeover, (b) the acquisition of assets, (c) the acquisition of a minority shareholding giving material influence, (d) a change of directorship giving material influence, or (e) the formation of or change of control in a joint venture.

Where the transaction gives rise to material influence, please describe in detail the aspects of the transaction that enable material influence to be exerted, including shareholding, voting patterns, board representation and other relevant factors.¹⁸

Note that where notifying parties submit that a minority shareholding does not give rise to material influence, where the CMA considers that the circumstances of the case are such that the determination of a lack of material influence is not clear cut, the CMA may nonetheless require information on the minority shareholder to be provided for the purposes of a Satisfactory Notification, and will inform notifying parties of this.

Where notifying parties are unsure as to whether or not information related to material influence is required for a Satisfactory Notification, they are encouraged to contact the CMA in pre-notification to discuss.

Note to 2.c – When describing the consideration, indicate its value as well as the form it will take.

¹⁷ Within the meaning of section 26 of the Act. See chapter 4 of the Guidance for further information on the meaning of ownership, control and material influence.

¹⁸ For the avoidance of doubt, the use of the term merger parties throughout the Notice should be construed as including any party which exercises material influence over the target enterprise.

Note to 2.d – The description of the key terms of the merger should include but should not necessarily be limited to any factors upon which completion of the merger is conditional together with the status of these factors.

Note to 2.e – On timing, for completed mergers, specify when the enterprises ceased to be distinct (within the meaning of sections 26 and 27 of the Act). For anticipated mergers, specify the expected time scale for exchange of contracts and completion of the merger as well as any other dates of which notifying parties wish the CMA to be aware.

Note to 2.g – The CMA considers that where mergers are subject to investigation in more than one jurisdiction, there can be substantial benefits to the merger parties and to the competition authorities in those jurisdictions from communication and cooperation between the competition authorities. If the merger has been or is being notified in other jurisdictions, please indicate whether notifying parties would be willing to provide the CMA with a confidentiality waiver allowing it to exchange confidential information with the relevant competition agencies in other jurisdictions in respect of the notified merger. A Satisfactory Notification will not be conditional on notifying parties' providing such a waiver. In any event, merger parties should be aware that there are circumstances where the Act permits the CMA to share information with other overseas agencies and sectoral regulators without prior consent (see *Transparency and Disclosure: statement of the CMA's policy and approach* (CMA6) and chapter 19 of the Guidance).

Note to 2.h – If the structure of the proposed arrangements is complex, provide a diagram. Where appropriate, details of the ownership structure should include the identity and shareholdings, pre- and post-merger, of any persons holding 10% or more of the voting rights, issued share capital or other securities in the business that has been or will be acquired.

Include a description of any other links between the merger parties (either formal or informal). This should also include (but should not necessarily be limited to) any associated persons.

3. Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).

Guidance Note to question 3

When describing the business or businesses over which control is being or has been acquired, if assets are being acquired, set out which assets – both tangible and intangible

–form part of the acquisition and include a brief description of the main products and services supplied by the acquired business or businesses.

In the case of an acquisition, a brief description of the acquirer group’s business should include a brief description of the main products and services provided, together with a corporate structure chart and organisation chart (showing the names, job titles and areas of responsibility of the senior executives of the merger parties).¹⁹

Where the transaction involves a full merger or a joint venture, specify for each merger party the information identified in the preceding paragraph.

4. Provide brief details of any other transactions (merger, acquisition, disposal, joint venture) undertaken by:
 - a. either of the merger parties in the last two years which involve the products or services in any Candidate Market identified in response to question 13,²⁰ and
 - b. both or all merger parties in the last two years (that is, where the merger parties were party to the same transaction).

Jurisdiction

See chapter 4 of the Guidance and paragraphs 3.1.3 to 3.3.10 of Merger Assessment Guidelines

5. Explain why:

¹⁹ If the acquirer is a conglomerate or multinational undertaking, notifying parties will not generally be expected to provide such details of senior executives with responsibility only for areas of the business that do not fall within any of the Candidate Markets identified in response to Question 13 below.

²⁰ Where this involves a large number of transactions, notifying parties are encouraged to contact the CMA to discuss.

- a. a relevant merger situation (as per section 23 of the Act) has been created, or
- b. arrangements are in progress or contemplation which will result in the creation of a relevant merger situation.

Guidance Note to question 5

See chapter 4 of the Guidance and paragraphs 3.1.3 to 3.3.10 of *Merger Assessment Guidelines*

Notifying parties should explain the reasons why they consider that:

1. two or more enterprises have ceased to be distinct or arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct (see chapter 4 of the Guidance), and
2. the turnover or share of supply tests are met, including where relevant:
 - (i) the UK turnover associated with the enterprise being acquired (see section 28 of the Act and chapter 4 of the Guidance). If relevant, explain the methodology adopted to estimate such turnover, and/or
 - (ii) an estimate of the share of supply for any product or service of any description where the merging/merged businesses²¹ combined have a share of supply in the UK, or in a substantial part of the UK, of 25% or more and where the merger causes an increment in such share (see section 23 of the Act and chapter 4 of the Guidance). Explain the methodology adopted to estimate such shares.

In particular, if a relevant merger situation has been created due to the acquisition of the ability to exercise material influence, the explanation should refer to the factors identified in paragraphs 4.14 to 4.27 of the Guidance and paragraphs 3.1.3 to 3.3.10 of *Merger Assessment Guidelines*, as well as any other factors notifying parties consider relevant to that assessment.

²¹ That is, the enterprises that will cease, or have ceased, to be distinct.

6. Indicate the annual UK, EEA, and worldwide turnover in the last financial year associated with each of:
- the acquirer (including group companies where relevant – see Annex B of the Guidance), and
 - the target (if not already provided under question 5).

Guidance Note to question 6

For turnover, provide details of sales exclusive of VAT and duty.

7. Explain why the transaction is not subject to the European Union Merger Regulation (EU Merger Regulation),²² (highlighting whether it is notifiable in the UK by virtue of the 'two-thirds' rule in article 1(2) or 1(3) of that Regulation).

Supporting documents

8. Provide:
- a press release or report and details of any notifications to listing authorities (for example, for admission to the UK Listing Authority Official List and for admission to trading on the London Stock Exchange) or other documentation evidencing that the merger (or merger proposal) has been made public, and
 - a copy of the documents bringing about the merger situation, including any heads of terms, memorandum of understanding, sale and purchase agreement, business purchase agreement or equivalent. Where these are not in final form, please provide the latest draft and keep the CMA informed of any subsequent changes to the document.

²² Council Regulation (EC) No 139/2004 of 20 January 2004.

- c. If the offer is subject to the City Code, copies of the Offer Document and Listing Particulars. If these are not yet available, provide copies of the latest drafts and supply the final versions as soon as they are issued.

Guidance Note to question 8c

For mergers governed by the City Code, the CMA does not envisage that the pre-notification timetable will raise significant difficulties in relation to the timing of public offers. Merger parties should however bear in mind the need to reconcile timing of submission of the Notice with the requirements of the City Code. If merger parties are seeking a decision by the first closing date of an offer (as defined in the City Code), the CMA will need to receive the Notice (following pre-notification) before the posting of the Offer Document. This will increase the likelihood of obtaining a Phase 1 decision by the first closing date. The CMA will take account of timing constraints relating to the City Code, or merger control regulation in other jurisdictions, when conducting its investigation and may, where the demands of the particular case and its existing caseload allow, seek to make its decision more quickly than the standard statutory timetable. The CMA cannot be bound by the first closing date however, and where it is not in a position to reach a decision by the first closing date, the consideration period under the City Code will need to be extended.

- d. for each of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger), the most recent annual report and accounts and last set of monthly management accounts.

Guidance Note to question 8d

The CMA will usually need only the most recent annual report and accounts of the main parties to the merger. However, where the acquiring company is part of a larger group, the CMA will normally also need the most recent group annual report and accounts. It will not need group accounts for the target's parent company where the target is a subsidiary or associate company and separate accounts are prepared for that company. Where documents are submitted in electronic format, annual reports and accounts can be provided by way of a hyperlink.

It is important that the target's UK turnover for the preceding business year is provided. If no annual report or accounts are available, provide separate figures (audited if reasonably practicable) on annual turnover (including UK turnover), profits and assets. For turnover,

provide details of sales exclusive of VAT and duty. For profit, provide the profit and loss accounts.

- e. copies of the most recent business plan of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger). Where any horizontal overlap or vertical relationship involves, for example, a specific division or brand of one or both of the merger parties, a business plan for the relevant division or brand should be provided as well.
9. Provide copies of any documents (including but not limited to minutes of meetings, studies, reports, presentations, surveys, analyses or recommendations) in either of the merger parties' possession which:
- a. have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or shareholders of either merger party (whether prepared internally or by external consultants), and
 - b. either:
 - i) set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for, the acquisition), or
 - ii) assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid. This should include but not necessarily be limited to post-merger business plans or strategy (including integration plans and financial forecasts) and Information Memoranda prepared by or for the merger parties and in either of their possession that specifically relate to the sale of the target. If no such Information Memoranda exist, explain what information or document(s) given to any of the merger parties is meant to serve the function of an Information Memorandum.

Indicate (if not contained in the document itself) the date of preparation and the identity and role of the author(s) within the merger parties or external consultants.

Guidance Note to question 9

If notifying parties are unsure what documents may be responsive or if, in their case, the question results in a large number of responsive documents, the CMA encourages notifying parties to discuss the process for gathering these documents with the CMA in pre-notification discussions.

If, in response to this question, notifying parties provide no or limited documents (or if the documents provided contain limited information of substance), the CMA may request a list of the key members of each merger party involved in the merger and decision making process. It may then ask for documents prepared for or by them, including substantive emails that may contain the information it would expect to appear in the supporting documents described in this question.

Further, where no Information Memorandum exists, the CMA may then use the explanation of information or documents given to the acquirer or other merger party in place of an Information Memorandum to identify and specify any documents that it wishes notifying parties to provide.

10. Provide:

- a. copies of documents (including but not necessarily limited to reports, presentations, studies, analysis, industry/market reports or analysis – including customer research and pricing studies) in either merger parties' possession and prepared or published in the last two years which set out the competitive conditions, market conditions, market shares, or competitors in the industry or business areas where the merger parties have a horizontal overlap as identified in response to question 12 below.
- b. any marketing and advertising strategy documents generated by, or on behalf of, either of the merger parties in the last year and which relate to the product(s) or service(s) where the merger parties have a horizontal overlap as identified in response to question 12 below.

Guidance Note to question 10

Where the merger parties' combined share of supply on an overlap Candidate Market identified in response to question 13 does not exceed 15%, the information necessary in order for the CMA to be able to confirm that the notification is satisfactory may not include all marketing and advertising strategy documents concerning that Candidate Market. In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand²³ – consider that some or all of such marketing and advertising strategy documents in relation to a Candidate Market are required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 15%

If notifying parties are unsure what may be responsive to this question or if, in their case, the question results in a large number of responsive documents (for example, because of a large number of overlaps), the CMA encourages notifying parties to discuss the process for gathering these documents with the CMA in pre-notification.

Where notifying parties provide no or limited documents (or if the documents provided contain limited information of substance), the CMA may request other documents that may contain the information it would expect to appear in the supporting documents described in this question, for example, substantive emails to or from certain key individuals.

Counterfactual

11. If the notifying parties consider that the CMA should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the notifying parties consider it should be used for that assessment.

²³ This will depend on the sector in which the merger parties operate and the submissions put forward by notifying parties – for example, the CMA is more likely to require such documents if advertising or marketing is an important feature of the market or if notifying parties submit they are not close competitors because they have differentiated products and/or supply or market to different types of customers.

Guidance Note to question 11

See paragraphs 4.3.1 to 4.3.29 of Merger Assessment Guidelines

Notifying parties may wish to submit an alternative counterfactual from the current or pre-existing competitive situation to the merger. Where notifying parties wish to do so, given the statutory time constraints on the CMA's Phase 1 investigation, the CMA requires this to be done at the time of filing in order for the Notice to be a Satisfactory Notification. Indeed, notifying parties are encouraged to discuss such alternatives with the case team at the earliest opportunity as part of pre-notification discussions. For the avoidance of doubt, in the event notifying parties do not put forward such arguments for the purposes of the CMA's Phase 1 investigation, they will not be prevented from doing so in the event of a reference for a Phase 2 investigation.

Where the notifying parties contend that the acquired firm and/or the acquirer would have exited or would exit the market absent the merger, they should submit detailed evidence (including internal documents) as to why such exit by the firm would be, or would have been, inevitable. These could include, but are not limited to:

- a. board documents (including those discussing what would happen absent the merger as well as alternative options to the merger and why these were discounted)
- b. statutory accounts for the last three years and monthly management accounts for the last 18 months
- c. cash flow forecasts (including underlying assumptions)
- d. balance sheet projections
- e. documents showing that underlying assumptions of these cash flow forecasts or balance sheet projections hold absent the merger
- f. details of current financial arrangements and any additional finance that would be required
- g. documents that show all avenues of operational and financial restructuring have been exhausted, and
- h. documents showing that the firm has sought additional finance and been rejected.

Notifying parties should also explain whether there would have been an alternative purchaser for the firm or its assets including, for example, (i) how, if at all, the exiting business was marketed to potential purchasers, (ii) to whom it was marketed, (iii) if any expressed an interest, and (iv) what bids were offered, and provide any internal documents assessing the bids.

Where notifying parties submit that the acquired firm and/or the acquirer would have exited or would inevitably exit the market absent the merger, they should provide the

name and contact details (including address, email address and telephone number) for any relevant insolvency practitioners or company voluntary arrangement (CVA) practitioners working with the companies and for lenders (secured or unsecured) that have provided the exiting firm with financing.

Market definition

See section 5.2 of *Merger Assessment Guidelines*

12. Describe the product(s) or service(s) and geographic area(s) where the merger parties overlap, where they have a vertical relationship, or where they supply related products/services.

Guidance Note to question 12

Horizontal overlaps include any business activity in which both merger parties are active. Standard Industrial Classification (SIC) codes should be provided for all overlapping products/services. For the latest version of the SIC codes, please consult the CMA's webpages.

Vertical relationships include any product/service or product/service types which one of the merger parties supplies, and which another merger party purchases (or could purchase as a substitute for other products), within the same geographic area. For the purposes of this Notice, it is not necessary for there to be a direct supply or purchase arrangement between the merger parties in order to constitute a vertical relationship (that is, the term vertical relationship also includes diagonal mergers).

Related products/services are those which do not lie within the same market, but which are nonetheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

Notifying parties should provide an overview and explanation of the product/services and geographic areas the merger parties supply (where they overlap, or have a vertical relationship, or where the products/services are related). Where notifying parties consider it might be helpful for the CMA in understanding the products/services, provide any documents (for example, sales documentation) describing the products/services. It is not

expected that this response will discuss market definition, which should be covered in question 13 below.

13. Identify (and explain the rationale for identifying):
- a. the narrowest candidate product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services)²⁴ the narrowest candidate product/service and geographic market(s) at each level of the vertical supply chain and for each related product/service (the Narrowest Candidate Market(s)).
 - b. any other plausible candidate product/service and geographic market(s)²⁵ where the merger parties overlap, have a vertical relationship, or supply related products/services (together with the Narrowest Candidate Market(s), the Candidate Market(s)).

Guidance Note to question 13

Notifying parties should explain (by reference, for example, to the market definition principles explained in section 5.2 of *Merger Assessment Guidelines*) why they consider that each Candidate Market would or would not be an appropriate market definition for the purposes of the CMA's assessment of the competitive effects of the merger, and provide supporting evidence where reasonably practicable. Notifying parties should refer, in particular, to demand-side and (if relevant) supply-side substitution considerations.

Notifying parties are encouraged also to refer to previous merger decisions published by the CMA and its predecessors.

²⁴ These are products or services which do not lie within the same market, but which are nevertheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

²⁵ This may include, for example, the products/services and geographic area(s) in the Narrowest Candidate Market(s) together with other products/services and geographic areas that might be considered substitutes with such products/services and geographic area(s).

Where relevant, the response should include a description of the catchment area (see *Merger Assessment Guidelines*, paragraph 5.2.25) or flows (where this is the basis on which the CMA or its predecessors have previously assessed mergers in the relevant sector) for the geographic area(s).²⁶

Horizontal effects

See sections 5.4 to 5.5 of *Merger Assessment Guidelines*

14. Provide a description of how competition works in each Candidate Market where the merger parties overlap.

Guidance Note to question 14

See sections 5.4 to 5.5 of *Merger Assessment Guidelines*

The description of such competitive dynamics in the Candidate Market should include (but not necessarily be limited to):

- a. an explanation of what drives customer choice for the overlap product/services. Where relevant, the response should include the identification of any separate customer groups and an explanation of how the competitive dynamics differ across these customer groups (see 5.2.28 to 5.2.31 of *Merger Assessment Guidelines*).
- b. A description of the parameters of competition (for example, price, quality, service, innovation) and their importance relative to one another
- c. an explanation of the role and significance of product/service differentiation. Indicate the extent to which the merger parties' products/services are differentiated
- d. an explanation of how pricing is determined (for example, whether set by suppliers, negotiated between suppliers and customers, or the result of a bidding process)

²⁶ Where local markets exist, the CMA strongly encourages notifying parties to discuss in pre-notification the method for identifying geographic area(s) of overlap and the data they use for the same.

organised by customers), including, in appropriate cases (as explained below), any supporting documentation

Supporting documentation on determination of pricing

- (i) Where the merger parties' combined share of supply on a Candidate Market does not exceed 15%, notifying parties will not typically have to provide supporting documentation in relation to how pricing is determined in that Candidate Market in order for the CMA to be able to confirm that the notification is satisfactory.
 - (ii) Where the merger parties' combined share of supply on a Candidate Market exceeds 15%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which any such supporting documentation is necessary for a Satisfactory Notification.
 - (iii) In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that certain supporting documentation in relation to a Candidate Market is required in response to this question before it can confirm that a notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 15%.
 - (iv) Any supporting documentation provided should include, where relevant, documentation outlining the merger parties' price setting process and any analysis used to set prices.
- e. an explanation of the supply chain (including any distribution channels) for the product(s)/services(s), and of any differences between separate geographic areas, where the merger parties overlap, in relation to the supply of the same such products/services.

15. For each Candidate Market where the merger parties overlap, explain to what extent the merger may give rise to unilateral effects (see section 5.4 of the *Merger Assessment Guidelines*), that is, to what extent it is likely to cause loss of competition. Include:

- a. information on the competitive constraint posed by each of the merger parties on each other, and

- b. information on the competitive constraint posed by the other principal suppliers in the Candidate Market(s). Include the merger parties' and each of their principal competitors' shares of supply (by value and volume) specifying the total market size(s) together with an explanation as to how these are calculated

Guidance Note to questions 15a and 15b

The information required for a Satisfactory Notification on the competitive constraint posed by each of the merger parties on each other and by each of the other principal suppliers will differ between cases and sectors. For an indication of what this might include, notifying parties are encouraged to refer to previous merger decisions published by the CMA and its predecessors, as well as *Merger Assessment Guidelines*. If notifying parties are unsure as to what information may be responsive to this question in their case, the CMA encourages notifying parties to contact the CMA to discuss in pre-notification.

For the purposes of calculating shares of supply in response to question 15(b), notifying parties should use merger parties' internal data and refer to industry data sources (and provide copies of the same), where available. Wherever figures are provided, use the most recent figures available and specify the period they cover.

If such shares of supply vary significantly from year to year, information for several years will be required. If the market is thought to be wider than the UK, provide separate figures for the domestic market and for imports (segmented by supplier if reasonably practicable) and exports. Where notifying parties have engaged in pre-notification discussions with the CMA and/or submitted drafts notifications to the CMA, the CMA will make clear to notifying parties as part of such engagement whether or to what extent it expects such information to be necessary in the case at hand.

Depending on the nature of the sector in which the merger parties operate, it may be necessary to supply figures only by value or volume. Notifying parties are encouraged to discuss this with the CMA during pre-notification if they think only one or the other will provide meaningful figures in their sector.

Notifying parties should provide estimates of shares of supply for the other principal suppliers in the market(s), and should identify the sources and explain the methodology used to calculate such shares and provide documents where available to confirm the calculation.

- c. a discussion of the extent to which the merger parties' products or services are substitutes and any supporting data (including, in sectors in which it is relevant, bidding data).

Guidance Note to question 15c

Bidding data

Bidding data need only be provided for Candidate Markets characterised by bidding processes and/or where customers typically issue requests for quotations. In such cases, provide details of any bids made by each of the merger parties in the last one to five years²⁷ to win business in the overlapping markets, indicating for each bid:

- a. whether this bid was won or lost
- b. if known, the reasons why it was won or lost
- c. what suppliers participated in the bid
- d. if available, the winner and the ranking of the other bidders
- e. the date of the bid
- f. the value of the bid, and
- g. the date and duration of the final contract.

Capacity, switching data and variable profit margins

Where the merger parties' combined share in a Candidate Market does not exceed 15%, notifying parties will not typically have to provide information on capacity, switching data and variable profit margins in relation to that Candidate Market in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties' combined share of supply on a Candidate Market exceeds 15%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent of any information on

²⁷ The time frame over which bidding information should be provided depends on the extent of the merger parties' bidding activity. For example, should the merger parties submit infrequent or irregular bids as part of their day to day business activity, the period for which bidding information should be provided is likely to be longer so that the CMA has a representative sample from which it can assess closeness of competition. Merger parties are encouraged to use pre-notification discussions with the CMA to discuss the appropriate scope of bidding information in their case.

capacity, switching data and variable profit margins in relation to that Candidate Market necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand²⁸ – consider that, in relation to a Candidate Market, certain further information on substitutability, such as information on capacity, switching data and/or profit margins, is required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 15%.

Any information on capacity, switching data and/or profit margins provided should include:

- a. an estimate of the merger parties' and, if available, their competitors' spare capacity
- b. if available, any data of customers switching between suppliers in the past three to five years or, more generally, information that points to the degree of competitive interaction between suppliers,²⁹ and
- c. variable profit margins (sales revenue minus direct cost of sales) for each of the products/services where the merger parties overlap. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded) or variable costs.

²⁸ For example, whether the parties' products are differentiated, whether the transaction would affect different customers in different ways, whether shares could have been calculated on a narrower basis, whether the merger involves a business with a promising pipeline product or whether shares are not an accurate reflection of market presence or power.

²⁹ This information can take various different forms and may involve pricing and volume information over time and/or in different geographic areas or competitive contexts. Notifying parties may also be required to identify any relevant events (such as significant price changes) that can be illustrative, through the analysis of customers' behaviours in response to them, of customers' preferences for different suppliers. The CMA encourages notifying parties to engage with the case team in pre-notification to establish the information available that may allow for an assessment of the closeness of substitution between products/services.

16. Provide the names and contact details for both merger parties' relevant customers and competitors.

Guidance Note to question 16

'Relevant' customers and competitors are customers and competitors of each party in each Candidate Market where the merger parties overlap.

Contact details are used by the CMA principally for the purposes of, early in its investigation, testing the competitive effects of the merger with third parties in the sector. As such:

- a. Contact details must include a named contact, address, email address and telephone number. Contact details, where reasonably practicable, should be for the named contact identified.
- b. The number of customers and competitors whose contact details are required will vary from case to case, depending on the total number of customers/competitors the merger parties have, how representative of the merger parties' overall customer/competitor set a given sample of such customer/competitors would be, and the extent to which the contact details provided would, having regard to the specific circumstances on the case at hand, permit the CMA to carry out an adequate market test.

Notifying parties are encouraged to discuss the number of contact details required in their case for a Satisfactory Notification with the CMA in pre-notification. However, by way of guidance, in the majority of cases, this should include, for each party:³⁰

- a. contact details for at least the top ten competitors (by volume or value) (including overseas companies/importers) for each Candidate Market

³⁰ For the avoidance of doubt, where one or both of the merger parties have less than the 10 competitors or customers, the CMA will only require contact details for the amount of competitors and customers they actually have.

- b. contact details and estimated share of the merger party's business of at least the top ten customers (by volume or value) of each of the merger parties for each Candidate Market (including overseas customers if appropriate)
 - (i) Where there are marked differences in the size or other features of the merger parties' customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for at least the top five customers (by value or volume) for each group of customers identified (for example, five large, five medium and five small customers). Where this may be relevant, notifying parties are encouraged to contact the CMA to discuss in pre-notification how to delineate each customer group
- c. to the extent that a Candidate Market is characterised by bidding processes (see question 15(c)) (and only insofar as not already provided), the contact details for the entity or entities running any bidding process in which either of the merger parties have participated, or of which notifying parties are aware, in relation to that Candidate Market
 - (i) If this means a larger number of responsive contact details (that is, more than ten such entities for each Candidate Market), notifying parties are encouraged to contact the CMA to discuss in pre-notification.

The CMA may – having regard to the specific circumstances of the case at hand (in particular, the extent to which contacts for ten competitors and/or customers would allow for adequate market testing) – consider that full contact details for further competitors or customers are required in response to this question before it can give notice that it has a Satisfactory Notification.

Increase in the merger parties' buyer power

See section 5.4.19 to 5.4.21 of Merger Assessment Guidelines

- 17. For any product(s) (including raw materials) or service(s) which the merger parties both purchase, provide details of the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of this merger and the effects of any such increased ability on competition on all levels of the supply chain.

Guidance Note to question 17

See section 5.4.19 to 5.4.21 of Merger Assessment Guidelines

Where the merger parties' combined share of procurement of the products/services they both purchase on a Candidate Market does not exceed 25%, notifying parties will not typically have to provide any details, in relation to that Candidate Market, on the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of the merger in order for the CMA to be able to confirm that the notification is satisfactory. In such cases, notifying parties should indicate that the merger parties' combined share of procurement is less than 25%.

Where the merger parties' combined shares of procurement on a Candidate Market exceed 25%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which, in relation to that Candidate Market, any information on the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of the merger is necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that, in relation to a Candidate Market, certain information relating to merger parties' buyer power is required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share in that Candidate Market does not exceed 25%.

In relevant cases, responses should include (but not necessarily be limited to):

- a. the merger parties' combined share of procurement from the market upstream to the product(s) or service(s) they supply (that is, the procurement of product(s) or service(s) which are used as input to a product or to provide a service, or that are sold on as bought)
- b. an explanation of whether, in notifying parties' view, any such ability could result in the suppliers being forced or induced to offer less favourable conditions to the merger parties' competitors. For example, where the supplier incurs fixed costs, it may recover such costs by charging a larger proportion of them to the merger parties' competitors than to the merger parties, as a result of the merger parties' increased buyer power (known as the 'waterbed effect'), and
- c. details of the merger parties' ability and incentive to reduce demand in order to reduce the purchase price (known as 'demand withholding'), as a result of the merger parties' increased buyer power.

18. Provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.

Guidance Note to question 18

Circumstances in which supplier contact details may not be required

Where the merger parties' combined share of procurement of the products/services they both purchase on a Candidate Market does not exceed 25%, notifying parties will not typically have to provide, in relation to that Candidate Market, contact details of relevant suppliers in response to question 18 in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties' combined share of procurement on a Candidate Market exceeds 25%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which, in relation to that Candidate Market, contact details of relevant suppliers are necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that certain contact details in relation to a Candidate Market are required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' combined share of procurement in relation to that Candidate Market does not exceed 25%.

Relevant suppliers

'Relevant' suppliers are generally the suppliers to each party of input for the overlap product or service (or of a product bought if sold on in the same state). However, they may include contact details for upstream suppliers other than the merger parties' suppliers (where this would be necessary in order for the CMA to carry out an adequate market test).

Number of contact details to be provided

Contact details are used by the CMA principally for the purposes of, early in its investigation, testing the competitive effects of the merger with third parties in the sector. As such:

- a. Contact details must include a named contact, address, email address and telephone number. Contact details, where reasonably practicable, should for the named contact.

- b. The number of suppliers whose contact details are required will vary from case to case, depending on the total number of suppliers the merger parties have and the extent to which the details would permit the CMA to carry out an adequate market test.

Notifying parties are encouraged to contact the CMA to discuss in pre-notification what number of supplier contact details is appropriate in their case. However, by way of guidance, in the majority of cases, the response should include contact details for at least the top five (by value or volume) of each of the merger parties' suppliers.

However in some limited cases, the CMA may – having regard to the specific circumstances of the case at hand³¹ – consider that full contact details for more than five suppliers are required in response to this question before it can provide confirmation that it has received a Satisfactory Notification.

Loss of potential competition

19. What barriers to entry or expansion exist for each merger party to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply)?
20. Are there any plans by either merger party to do so? Provide any internal documents setting out any plans of any merger party to expand in the overlapping product(s), service(s) and geographic area(s) or to enter a market where another merger party is operating.

³¹ For example, if five supplier contact details would not allow for an adequate market test. This could be the case where the top five suppliers account for a very small proportion of suppliers.

Coordination

See paragraphs 5.5.1 to 5.5.19 of Merger Assessment Guidelines

21. Describe the impact of the merger on the potential for coordinated conduct between remaining competitors in respect of the Candidate Market(s), post-merger.

Vertical effects

See section 5.6 of Merger Assessment Guidelines

22. If the merger parties operate at different levels of the supply chain (that is, they have a vertical relationship), describe whether the merger would, or would be likely to, limit the supply of inputs or access to customers such that downstream or upstream rivals would face higher costs post-acquisition or full or partial foreclosure of key inputs or of access to customers.

Guidance Note to question 22

Any response should cover (but not necessarily be limited to) the following:

- a. a description of the vertical supply chain (including each of the merger parties' and their key competitors' roles at each stage and the extent of pre and post-merger vertical integration)
- b. notifying parties' views on the scope for the merger to enable the merger parties to enhance their ability and/or incentive to engage in input or customer foreclosure or any other vertical effect
- c. for input foreclosure, the general importance of any input to the downstream product or service; for customer foreclosure, the importance of each customer to the upstream firm.
- d. each of the merger parties' share of supply in each level of the vertical supply chain or confirmation that each of the merger parties' share of supply in each level of the vertical chain is less than 10%.

Additional information on the vertical relationship

Where the merger parties' individual and (where relevant) combined shares of supply do not exceed 25% in either of a pair of upstream and downstream Candidate Markets where

the merger parties have a vertical relationship, notifying parties will not typically have to provide, in relation to that pair of Candidate Markets, the information identified in e. to k. of this Guidance Note in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties' individual and (where relevant) combined shares exceed 25% on either of a pair of upstream or downstream Candidate Markets where the merger parties have a vertical relationship, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which, in relation to that pair of Candidate Markets, any information in e. to k. is necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that, in relation to an upstream or downstream Candidate Market, certain information identified in e. to k. below is required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties' individual and (where relevant) combined shares of supply do not exceed 25% in one or other of that pair of upstream and downstream Candidate Markets.

As appropriate, provide:

- e. a description of the pricing mechanism at each stage of the vertical supply chain where any of the merger parties operates (as well as in any other relevant stage)
- f. variable profit margins (sales revenue minus direct cost of sales) for each of the products/services supplied by each party in the vertical supply chain. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded from the calculation of variable profit margin) or variable costs
- g. the ratio between average upstream and average downstream price for each of the products/services supplied by each merger party in each level of the vertical chain
- h. the degree of economies of scale or scope in the input product or service in any vertical supply arrangement and the extent to which demand is characterised by network effects (that is, when the value of a product increases when the number of customers using the product increases)
- i. if available, any estimate of cost-pass through
- j. a list of exclusivity agreements (to which one or other of the merger parties is a party) relating to the upstream or downstream product(s) or service(s) in the vertical

supply chain and any internal documents discussing any plans to put in place an exclusivity agreement regarding the same in the future, and

- k. supporting documents (as described in question 10) in relation to the products/services where the merger parties have a vertical relationship.³²

23. For all Candidate Markets in which the merger parties have a vertical relationship, provide contact details for the relevant competitors and customers of the merger parties on the upstream and downstream markets on which each merger party is active (to the extent not already provided in response to questions 16 and 18).

Guidance Note to question 23

Relevant customers and competitors

'Relevant' customers and competitors are the customers and competitors of each party in each upstream or downstream Candidate Market where they have a vertical relationship.

Number of contact details to be provided

Contact details are used by the CMA principally for the purposes of, early in its investigation, testing the competitive effects of the merger with third parties in the sector. As such:

³² If notifying parties are unsure what may be responsive, or if, in their case, the question results in a large number of responsive documents, the CMA recommends that notifying parties discuss the process for gathering these documents with the CMA in pre-notification. Where notifying parties provide no or limited documents (or if the documents provided contain limited information of substance), the CMA may request other documents that may contain the information it would expect to appear in the supporting documents described in question 10, for example, substantive emails to or from certain key individuals.

- a. Contact details must include a named contact, address, email address and telephone number. Contact details, where reasonably practicable, should be for the named contact identified.
- b. The number of customers and competitors whose contact details are required will vary from case to case, depending on the total number of customers/competitors the merger parties have, how representative of the parties' overall customer/competitor set a given sample of such customer/competitors would be, and the extent to which the contact details would permit the CMA to carry out an adequate market test having regard to the specific circumstances on the case at hand.

Notifying parties are encouraged to discuss the number of contact details required in their case for a Satisfactory Notification with the CMA in pre-notification. However, by way of guidance, in the majority of cases, notifying parties should provide:³³

- a. at least the top five competitors (by value or volume) of the merger parties on each upstream and downstream Candidate Market (to the extent not already provided in response to question 16 and 18), and
- b. at least the top five customers (by value or volume) of the merger parties on each upstream and downstream Candidate Market. Where there are marked differences in the size or other features of the customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for five customers for each customer group identified (to the extent not already provided in response to question 16 and 18). Where this may be relevant, notifying parties are encouraged to contact the CMA to discuss in pre-notification how to delineate each customer group.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand³⁴ – consider that, in relation to an upstream or downstream Candidate Market, full contact details for more than five competitors or customers are required in response to this question before it can give notice that it has a Satisfactory Notification.

³³ For the avoidance of doubt, where one or both of the merger parties have less than the five competitors or customers, the CMA will only require contact details for the amount of competitors and customers they actually have.

³⁴ Including, for example, if five competitor or customer contact details would not allow for an adequate market test.

Conglomerate effects

See section 5.6 of Merger Assessment Guidelines

24. Provide details of any related product(s) or service(s)³⁵ supplied by the merger parties.

Guidance Note to question 24

See section 5.6 of Merger Assessment Guidelines

Where the merger parties do not have common customers in related products or services or where their individual shares of supply do not exceed 25% in any of the Candidate Markets where the parties supply related products/services (related Candidate Markets), notifying parties will not typically have to provide information on the conglomerate effects of the merger in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties have common customers in related Candidate Markets and their individual share in any such related Candidate Market exceeds 25%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which information on conglomerate effects is necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that some information relating to conglomerate effects is required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties do not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 25% in any of the related Candidate Markets.

Any information on conglomerate effects should include:

³⁵ These are products or services which do not lie within the same market, but which are nevertheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

- a. each of the merger parties' share of supply in each of the related product(s) or service(s) and geographic area(s)
- b. the merger parties' variable profit margins (sales revenue minus direct cost of sales) for each of the products/services supplied by each merger party in each of the related product categories. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded) or variable
- c. the extent to which customers purchase the products/services together as a bundle or from the same supplier
- d. customer preferences for variety/range and one-stop shopping, and
- e. the costs to rivals of providing variety/range and one-stop shopping at a scale to enable them to compete effectively with the merged firm.

25. Provide contact details for the relevant competitors and customers of the merger parties for the related products/services in which each of the merger parties is active identified in relation to question 24 above (to the extent not already provided in response to question 16).

Guidance Note to question 25

Where the merger parties do not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 25% in any of the related Candidate Markets, notifying parties will not typically have to provide contact details in response to this question in order for the CMA to be able to confirm that the notification is satisfactory.

Where the merger parties have common customers in related Candidate Markets and their individual share in any such related Candidate Market exceeds 25%, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the CMA in pre-notification the extent to which these contact details are necessary for a Satisfactory Notification.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand – consider that contact details are required in response to this question before it can confirm that the notification is satisfactory, even where the merger parties do

not have common customers in related Candidate Markets or where their individual shares of supply do not exceed 25% in any of the related Candidate Markets.

'Relevant' customers and competitors are the customers and competitors of each merger party in each related product(s) or service(s) (identified in response to question 24).

Contact details are used by the CMA principally for the purposes of, early in its investigation, testing the competitive effects of the merger with third parties in the sector. As such:

- a. Contact details must include a named contact, address, email address and telephone number. Contact details, where reasonably practicable, should be for the named contact identified.
- b. The number of customers and competitors whose contact details are required will vary from case to case, depending on the total number of customers/competitors the merger parties have, how representative of the parties' overall customer/competitor set a given sample of such customer/competitors would be, and the extent to which the contact details would permit the CMA to carry out an adequate market test having regard to the specific circumstances on the case at hand.

Notifying parties are encouraged to discuss the number of contact details required in their case for a Satisfactory Notification with the CMA in pre-notification. However, by way of guidance, in the majority of cases, merger parties should provide:³⁶

- at least the top five competitors (by volume or value) of the merger parties in each related Candidate Market (to the extent not already provided in response to question 16), and
- at least the top five customers (by value or volume) of the merger parties in each related Candidate Market (to the extent not already provided in response to question 16). Where there are marked differences in the size or other features of the customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for five customers for each group of customers identified (to the extent not already provided

³⁶ For the avoidance of doubt, where one or both of the merger parties have less than the five competitors or customers, the CMA will only require contact details for the amount of competitors and customers they actually have.

in response to question 16). Where this may be relevant, notifying parties are encouraged to contact the CMA to discuss in pre-notification how to delineate each customer group.

In some limited cases, the CMA may – having regard to the specific circumstances of the case at hand³⁷ – consider that full contact details for further customers or competitors are required in response to this question before it can provide confirmation that it has a Satisfactory Notification.

Guidance Note to questions 26 to 29

If notifying parties submit information responsive to questions 26 to 29 below after the CMA has given notice of a Satisfactory Notification, the CMA considers that it is unlikely to have time to fully verify the claims made by notifying parties within the 40 working day statutory timeframe. Accordingly, where notifying parties wish to put forward such arguments, the CMA requires these to be made and evidenced at the time of the filing for the Notice to be a Satisfactory Notification and encourages advanced pre-notification discussion with the case team. However, for the avoidance of doubt, in the event notifying parties do not put forward such arguments for the purposes of the CMA's Phase 1 investigation, they will not be prevented from doing so in the event of a reference for a Phase 2 investigation.

Entry or expansion

See section 5.8 of Merger Assessment Guidelines

26. Provide details of any barriers to entry and expansion with respect to the Candidate Market(s).

³⁷ Including, for example, if five competitor or customer contact details would not allow for an adequate market test.

Guidance Note to question 26

See section 5.8 of Merger Assessment Guidelines

Where notifying parties wish the CMA to consider potential entry or expansion, notifying parties should provide the following information for the purposes of a Satisfactory Notification:

- a. how easy it is to start supplying the products/services in the appropriate geographical areas
- b. how easy it is for customers to switch between competitors' products or services, with an estimate of any switching costs
- c. an estimate of the capital expenditure and time required to enter the market on a scale necessary to gain a 5% share of supply, both as a new entrant, and as a company which already has the necessary technology and expertise (for example, a company located overseas)
- d. an estimate of the scale of annual expenditure on advertising/promotion required to achieve a 5% share of supply
- e. details of any other factors affecting entry, for example, planning restraints, technology or research and development requirements, availability of raw materials, length of contracts including, where possible, actual or estimated time and cost necessary to overcome these factors
- f. an assessment of the ease of exit from the market (including an estimate of to what extent costs are recoverable), and
- g. an explanation as to whether entry would be timely, likely and sufficient.

27. Provide:

- a. details of any expansion, entry or exit in any of the Candidate Markets over the past five years, and
- b. of any companies that the notifying parties consider are likely, post-merger, to enter or expand into any of the Candidate Markets in a sufficiently timely manner so as to adequately constrain the merged entity, including, in either case, any available evidence for that submission and contact details for any companies named.

Guidance Note to question 27

Merger parties may wish to submit that one or more third parties are likely to start supplying or expand their supply of products or services in competition with the merger parties in the near future to such an extent that any competition concern regarding the merger is mitigated or neutralised.

Where notifying parties wish the CMA to consider such potential entry or expansion, notifying parties should, for the purposes of a Satisfactory Notification:

- a. identify such entrant(s) and provide contact details for each of them
- b. explain whether such entrant(s) would have started supplying the products/services in the absence of the merger and the extent to which such entry would lead to greater competition
- c. provide evidence of any firms which do not currently supply the product(s) or service(s) but which, nevertheless, could readily enter
- d. provide evidence of any existing smaller suppliers that could readily expand, and
- e. explain whether any such entry would be timely, likely and sufficient.

Contact details must include a named contact, address, email address and telephone number. Contact details, where possible, should be for the named contact.

Countervailing buyer power

28. Explain, with evidence where available, whether the merged entity will be subject to any countervailing buyer power.

Guidance Note to question 28

See section 5.9 of *Merger Assessment Guidelines*

Where notifying parties wish the CMA to consider whether or not the merged entity will be subject to countervailing buyer power, they should, for the purposes of a Satisfactory Notification, provide an explanation of (but not necessarily be limited to) the following:

- a. whether there are single customers or groups of customers holding particular negotiating strength with the merger parties in any of the Candidate Markets (for example, where the customer(s) can easily switch its/their demand away from the supplier, can sponsor entry or supply the product(s) itself/themselves)
- b. whether and, if so, how customers outside such groups would be able to benefit from the negotiating strength of the customers within the group. For example, explain whether contracts are negotiated individually with single customers and the extent to which it is possible for the supplier to price discriminate across customers of varying negotiating strength, and
- c. how (and the extent to which) the merger will affect customers' negotiating strength.

Efficiencies and customer benefits

29. If the notifying parties wish the CMA specifically to consider at phase 1 any efficiencies or relevant customer benefits that the notifying parties believe will arise from the merger, describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies or relevant customer benefits.

Guidance Note to question 29

See section 5.7 of *Merger Assessment Guidelines* and paragraphs 4.1 to 4.13 of *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*

Where notifying parties wish the CMA to consider whether or not the merger gives rise to efficiencies, any description should include (but not necessarily be limited to) the following:

- a. a detailed explanation of how the merger would generate such efficiencies
- b. if reasonably practicable, a quantification of any such efficiencies, specifying the timeframe required to achieve them

- c. an explanation of the extent to which the efficiencies would be sufficient to prevent a substantial lessening of competition
- d. an explanation of the reasons why such efficiencies could not be achieved in the absence of this merger, and
- e. any documents prepared internally or by external consultants discussing the expected efficiencies.

Where notifying parties wish to submit that the merger gives rise to relevant customer benefits, any description should include (but not necessarily be limited to) the following: ³⁸

- a. a detailed explanation of how the merger would generate such relevant customer benefits
- b. if reasonably practicable, a quantification of any relevant customer benefits, specifying the timeframe required to achieve them
- c. an explanation of the extent to which the benefits generated by the merger are likely to be passed on to UK customers and UK final consumers
- d. an explanation of the reasons why such relevant customer benefits could not be achieved in the absence of this merger or a similar lessening of competition, and
- e. any documents prepared internally or by external consultants discussing the expected relevant customer benefits.

Other information

- 30. Provide the name and contact details (including address, email address and telephone number) for any relevant regulatory authorities covering the industry

³⁸ In healthcare mergers, the CMA will liaise closely with Monitor as to whether the information received with respect to relevant customer benefits will allow Monitor to start its assessment of the same (see paragraph 6.43 of the Guidance). The CMA reserves the right to consider the Notice incomplete if this is not the case.

in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

31. Provide the name and contact details (including address, and email address and telephone number) of any trade associations which cover the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).
32. Provide any other information that the notifying parties consider may be relevant to the CMA's Phase 1 investigation.

Guidance Note to question 32

Notifying parties may, of course, provide any other information they consider relevant. For example, references to earlier decisional practice within the same markets, contacts with other government departments or regulators about the merger, either because they have responsibilities in the relevant areas or because they are customers, and any contacts with overseas competition authorities. This could also include, for example, submissions on the relevance of the 'de minimis' exception (see *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122)).

Notifying parties are also welcome to give their own views on the competition implications or any other effects of the merger.

PART III – DECLARATION

Declaration

This Declaration must be signed by the authorised person.

I understand that:

It is a criminal offence for a person to supply information in a Notice which that person knows to be false or misleading in any material respect.

The CMA may reject any Notice if it is suspected that it contains information which is false or misleading in any material respect.

The CMA will bring the existence of the merger proposal described in this Notice, and the fact that the Notice has been given, to the attention of interested parties.

Signed:

Name: (block letters)

Position: (block letters)

Date:

I confirm that the person (if any) named in reply to question 1(b) is authorised to act (including to accept service or take receipt) on my behalf for the purposes of this Notice and that I retain responsibility for the contents of this Notice.

Signed:

Name: (block letters)

Position: (block letters)

Date:

Guidance Note to Part III

As noted above, see the CMA's webpages for information on how to submit a Notice.

The CMA will not accept a Notice unless the Declaration has been signed by the authorised person. The authorised person is defined as any person carrying on an enterprise to which the notified arrangements relate. The Declaration must be signed by a person or persons with authority to bind each notifying party. An authorised person may use an electronic signature to sign the Declaration. Where a Notice is submitted jointly, each notifying party must sign the Declaration.

The authorised person may, however, appoint a representative (such as a firm of solicitors) to complete the Merger Notice on his behalf and to act for him in further correspondence with the CMA. If he wishes to appoint such a representative, the authorised person should also sign the confirmation of authorisation.

The Declaration draws notifying parties' attention to two important provisions of the Act.

- The first relates to the provision of false or misleading information. Under section 117 of the Act, it is an offence:
 - knowingly or recklessly to give to the CMA information that is false or misleading in a material respect, either in the Notice, or in reply to any additional questions raised by the CMA during the consideration period, or
 - knowingly or recklessly to supply information to a third party that is false or misleading in a material respect, for example an authorised representative or legal adviser, in the knowledge that they will then supply it to the CMA.

The penalties for breach of this provision may include an unlimited fine or a maximum of two years' imprisonment, or both.

The CMA also has powers to reject the Notice, at any time before the period for considering it expires, where it suspects that any information given in the Notice, or in response to further enquiries, is false or misleading.³⁹ The effect

³⁹ Section 99(5)(a) of the Act.

of rejection is that the proposal which is notified will remain liable for reference for a period of four months after the date of its completion (subject to any extension in some circumstances).⁴⁰

- Secondly, the Declaration reminds notifying parties that the CMA will publicise the existence of the merger as notified in both completed and anticipated cases. The CMA will also draw the merger to the attention of third parties in order to seek their views. The CMA will have regard to the provisions of the Act in relation to disclosure of information. Its aim in publicising the merger is solely to ensure that those with an interest in the merger are given an opportunity to comment.

The Declaration also confirms the authorisation of any representative named in the Notice to act on behalf of a notifying party and accept service.

⁴⁰ Section 100 of the Act.