

# UK merger control: 2022/23 in review and a forward look to 2024

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# Overview

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# 01

CMA's caseload in  
2022/23 and  
2023/24

# Phase 1 – Caseload

Phase 1 Decisions	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24
Referred	17	13	10	8	7	8	9	14	8	6	11	5	9	11	13	9	10	14	4
UIL accepted	6	7	5	6	5	4	5	10	0	3	9	9	12	2	6	6	6	13	26
Unconditional clearance	118	86	78	53	43	43	62	49	42	56	36	39	37	41	38	18	33	11	18
<i>De minimis clearance</i>	0	0	3	4	7	4	3	4	3	7	4	3	4	0	1	3	1	1	0
Found not to qualify	69	22	15	9	10	14	21	23	12	10	2	1	0	2	2	1	4	2	5
Cancelled / Abandoned	-	-	-	-	-	-	-	0	0	0	0	1	1	1	2	1	1	2	2
<b>Total</b>	210	128	111	80	72	73	100	100	65	82	62	58	63	57	62	38	55	43	56
<b>CRM</b>	36	30	22	29	22	21	30	32	19	24	24	28	30	25	18	19	21	31	33

## ⚠ Notes

- Phase 1 decision date (clearance, referral, UIL) is recorded **in the year that final decision was made**, so the year may be different to the year of the **CRM** and **intermediate decisions**
- Significant uptick in the number of UILs acceptance decisions in 23/24 primarily results from two cases: **IVC/multiple independent veterinary practices** and **Medivet/multiple independent veterinary practices**

# Phase 1 – 2023/2024



## Referred

- Adobe / Figma
- Arcelik / Whirpool
- Tate & Lyle / Tereos
- Vodafone / CK Hutchison



## Abandoned

- Whitby / Kilhorne
- Qualcomm / Autotalks



## UIL accepted

- Eville & Jones / Vorenta
- Medivet / multiple vet practices\*
- Asda / Co-op (Arthur)
- Bestway / Lexon
- IVC / multiple vet practices\*\*
- LKQ / Uni-Select
- Microsoft / Activision Blizzard (ex-cloud streaming rights)
- Wolseley / Kooltech



## Unconditional clearance

- Stryker / Cerus
- Calisen / MapleCo
- Medivet / The Hollies
- Medivet / Canine Healthcare Limited (Vet Value)
- Medivet / Withy Grove
- EDF / GE
- ByBox / Pelipod
- The Key / RM
- Amazon / iRobot
- HSH Cold Stores / Associated Cold Stores
- Severn Trent / Andigestion
- Cameco / Westinghouse
- ABP / Scotbeef
- Alumasc / ARP & Rainwater
- Pharmacy2U / Lloyds Direct
- Daily Mail / News Corp
- Venus / Atlanta
- Aviva / AIG

### ⚠ Note

\*This includes 12 vet practices: *All Creatures Clinic, Barton Companion Animal Services, I T Kalogera, Caddy Veterinary Surgery, E Street, Ferring Street Vets, Fitzalan House Veterinary Practice, The Hackney Vet, Iffley Vets, The Oxford Cat Clinic, The Vet on Richmond Hill & The Vet in St Margaret's, The Vet Station Limited.*

\*\* This includes 8 vet practices: *Penrose Veterinary Group, Kevin Castle (Pet Care), Swayne & Partners, Treforest Veterinary Clinic, Mercer & Hughes, Swaffham Veterinary Centre, Anglesey Pet Clinic, Chiltern Equine Clinic,*

# Phase 1 – 2022/2023



## Referred

- NEC / Capita
- LSEG / Quantile
- Taurus / Perpetuus (PIIN)
- Cérélia / Jus Rol
- Carpenter / Recticel
- Sika / MBCC
- Microsoft / Activision
- Viasat / Inmarsat
- Copart / Hills
- Cochlear / Oticon
- Hitachi / Thales
- ForFarmers / Boparan
- Optum (UnitedHealth) / EMIS
- Broadcom / VMWare



## UIL accepted

- Noble Corporation / Maersk Drilling
- VetPartners / Goddard
- Ali / Welbilt
- CD&R / Morrisons
- CVS / The Vet
- Bouygues / Equans
- Culligan / Waterlogic
- Riviera / Dental Partners
- Morrisons / McColl's
- GIC / Greystar / Student Roost
- Korean Air / Asiana Airlines
- Baker Hughes / Altus
- Portman Healthcare / Dentex



## Unconditional clearance

- Assa Abloy / Arran Isle
- Warner Bros. Discovery / BT
- The Office Group / Fora
- Saint-Gobain / GCP
- Booking / Etraveli
- GXO / Clipper
- ALD / LeasePlan
- Macquarie and BCI / National Grid
- Capco / Shaftesbury
- Yokohama / Trelleborg
- Farfetch / YOOX Net-A-Porter / Richemont

### Note

For Eville and Jones/Vorenta, IVC/Multiple independent vet practices, and Asda/Arthur, the SLC decision was announced in 22/23, but the decision to accept UILs had not been taken by the end of that financial year, and are therefore not included in the data for 22/23

# Phase 2 – Caseload

Phase 2 Outcomes	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24
<b>Cleared</b>	7	4	5	1	6	1	7	4	6	2	8	1	4	3	3	1	2	2	4
<b>Prohibited</b>	1	0	0	2	0	0	1	1	2	0	0	1	0	1	2	2	2*	3	1
<b>Remedies (Behavioural)</b>	0	0	2	1	0	0	0	0	1	0	1	1	0	0	4	0	0	0	0
<b>Remedies (Divestiture)</b>	2	5	5	0	2	0	0	3	3	1	0	4	2	4	1	2	2	5	2
<b>Cancelled / Abandoned</b>	6	2	4	2	1	3	2	2	0	1	3	1	0	3	3	5	1	3	1
<b>Total Outcomes</b>	16	11	16	6	9	4	10	10	12	4	12	8	6	11	13	10	7	13	8

## ⚠ Notes

- Phase 2 outcome date is recorded in year that final decision made, so year may be different to date of Phase 1 reference decision
- \*Includes the Cargotec/Konecranes inquiry, which was abandoned shortly after the CMA's Final Report, setting out that the CMA had decided to prohibit the transaction, and therefore before final undertakings or an order implementing this decision could be made

# Phase 2 – 2023/2024



## Cleared

- NortonLifeLock / Avast
- LSEG / Quantile

## Remedies (Divestiture)

- Cochlear / Oticon
- Hitachi / Thales

## Prohibited

- Microsoft / Activision  
Blizzard

## Cancelled/ Abandoned

- Adobe / Figma



# Phase 2 – 2022/2023



## Cleared

- Viasat / Inmarsat
- Copart / Hills
- Broadcom / VMWare
- Optum / Emis
- Arcelik / Whirlpool

## Remedies (Divestiture)

- CHC / Babcock
- Veolia / Suez
- Carpenter / Recticel
- NEC / Capita
- Sika / MBCC

## Prohibited

- Meta / Giphy (remittal)
- Dye & Durham / TM Group
- Cérélia / Jus-Rol

## Cancelled/ Abandoned

- Ritchie Bros / Euro Auctions
- Taurus International Ltd and others / Perpetuus (PIIN)
- ForFarmers / Boparan

# Mergers Intelligence

MIC	17/18	18/19	19/20	20/21	21/22	22/23	23/24
<b>Transactions Reviewed</b>	>650	>600	>750	>600	>800	>700*	<b>785</b>
<i>Briefing Paper submitted</i>	39	25	63	82	174	146	<b>156</b>
<b>Cases called in for investigation</b>							
<b>Total</b>	13	14	15	7	14	13*	<b>15</b>
<b>CRM</b>	7	5	10	6	9	8	<b>2</b>
<b>SLC</b>	4	3	8	3	6	6	<b>2</b>
<b>De minimis exception</b>	1	0	0	1	1	0	<b>0</b>
<b>FNTQ</b>	0	2	0	0	1	0	<b>1</b>
<b>Phase 2 referral</b>	2	3	6	2	3	2	<b>2</b>
<b>Called in after “no further questions” letter</b>	0	0	2	0	1	0	<b>0</b>

## ⚠ Notes

- For up until and including 2018/2019, data for case initiation were based on the date that the Phase 1 investigation was launched. From 2019/2020 onwards, the data are based on when a case was called in for investigation and therefore include cases that remained in pre-notification as the year-end
- For up until and including 2018/2019, data for the Phase 1 outcome is allocated to the year in which outcome was announced (and may differ from year in which investigation commenced). From 2019/2020 onwards, the data are based on when the case was called in for investigation and therefore include outcomes that were not announced in the same financial year
- For the purposes of the table above, the two vet cases included in 2022/23 (IVC/multiple independent veterinary practices, and Medivet/multiple individual veterinary practices) have been considered as one case each despite being made up of multiple relevant merger situations
- These figures are correct as of March 2024. There may be transactions that were called in by MIC but have not yet reached CRM or decision stage

# IEO's

IEOs	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24
Completed cases	20	26	18	24	16	10	13	32*	4
Anticipated cases	1	6	2	5	3	1	4	4	4
Derogations	47	78	51	73	70	44	168	94	36

- Significant uptick in number of IEOs imposed in 22/23 primarily results from two cases: *IVC/multiple independent veterinary practices* and *Medivet/multiple independent veterinary practices*
- Both involved multiple relevant merger situations (with separate IEOs for each RMS)
- These two sets of acquisitions alone account for 25 of the 32 IEOs in 2022/23

# Process

Process	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24
Average length pre-notification (working days)	34	33	28	33	37	57	60	71	65
Average length Phase 1 Investigation (working days)	34	35	34	36	37	35	37	38	37
Cases cleared in ≤ 35 working days	25	23	25	22	23	10	26	3	2
Cases where Phase 1 timetable suspended	4	1	2	2	2	4	1	0	0
Cases qualifying for <i>De minimis</i> exception (at ISOP)	4(3)	3(1)	3(2)	0(0)	1(1)	3(2)	1(1)	1	0
Average length Phase 2 investigation (months)	5.7	5.9	5.3	6.3	6.4	6.9	7.1	6.1	6.5

- Decrease in average pre-notification period, but still see some cases with particularly long pre-notification
- Pre-notification period generally longer in multi-jurisdictional cases
- Constant average length of Phase 1 cases driven by higher proportion of CRM cases

## Notes

- Does not include cases which were abandoned, in which no final report was published, or cases which were remitted
- Average duration of a Phase 2 investigation is calculated from reference to final report

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Phase 1 highlights  
in 2022/23 and  
2023/24

# Booking/eTraveli (ME/6991/22)

## ***Clearance decision finding merger would not raise barriers to entry in UK; divergent outcome with EC***

- Acquisition of eTraveli, active in flight online travel agent (OTA) services by Booking, primarily active in the supply of accommodation OTA services (Booking.com).
- The CMA considered whether, by adding flight OTA capabilities to Booking.com, the merger could allow Booking.com to capture more of customers' accommodation business, making it more difficult for current or future rival suppliers to compete with Booking.com, strengthening Booking.com's existing market power in accommodation OTA services, and lessening competition over time.
- The CMA found that the merger would not give rise to a realistic prospect of an SLC on this basis:
  - Booking.com already had significant market power in accommodation OTA services in the UK and there were material barriers to entry and expansion.
  - But eTraveli had a modest market position within the supply of flight OTA services and was not a particularly significant customer retention and/or acquisition channel for rival accommodation OTA suppliers in the UK.
  - UK customers currently 'shop around' rather than purchasing multiple travel services from the same provider.
  - Booking.com and its rivals use several customer retention and acquisition channels that would be unaffected by the merger.
  - Looking forward, while there was some evidence that consumer behaviour in purchasing travel online could change, this could not have been expected to materially reduce the significance of the alternative customer retention and acquisition channels available to Booking's rivals.
- EC prohibited the deal following an in-depth investigation.

# Amazon/iRobot (ME/7012/22)

## *Clearance decision based on UK market features; divergent outcome with EC*

- Acquisition by Amazon of iRobot, producer of consumer robots, including robot vacuum cleaners (**RVCs**).
- TOH 1: Loss of potential competition in the supply of RVCs in the UK:
  - CMA found a realistic prospect that Amazon would develop its own RVC if it did not acquire iRobot.
  - However, iRobot had only a modest market position in the UK. So, given the numerous and stronger RVC competitors in the UK, the Merger would not give rise to a significant loss of competition.
- TOH 2: Foreclosure of rival smart home platform providers in the UK:
  - CMA considered whether smart home platform and device manufacturers require iRobot's data (eg mapping data of consumers' homes).
  - Evidence from platforms indicated that data from RVCs is not an important input for them. Plus, there are other alternative RVC providers (other than iRobot) that smart home platforms could partner with.
- TOH 3: Foreclosure of rival RVC competitors in the UK:
  - CMA found that, through its control of amazon.co.uk, Amazon had the ability to negatively impact RVC competitors' sales and revenue (eg changing display rankings or increasing commission rates).
  - However, the small size of the RVC market in the UK meant limited gains for Amazon if it tried to disadvantage RVC rivals on amazon.co.uk. Amazon would also lose revenue from not selling other RVCs; no evidence that iRobot's UK sales would likely grow to offset losses. Consequently, the CMA found that Amazon would not have the incentive to foreclose RVC competitors via its UK website.
- EC process and eventual abandonment
  - Transaction abandoned during EC's phase 2 investigation. EC considered that Amazon would have ability and incentive to foreclose RVC manufacturers.
  - Local market features affect the cost/benefits of foreclosure eg compared to EU member states, in the UK RVCs are generally less popular and price is a more important parameter of competition.

# Local merger cases

*Significant number of local merger cases resolved through UILs*

## 2022/23

- VetPartners / Goddard (**veterinary services**)
- CVS / The Vet (**veterinary services**)
- Riviera / Dental Partners (**dental services**)
- Portman Healthcare / Dentex (**dental services**)
- CD&R / Morrisons (**road fuel**)
- Morrisons / McColl's (**convenience stores**)
- GIC / Greystar / Student Roost (**student accommodation**)

## 2023/24

- Medivet / multiple vet practices (**veterinary services**)
- IVC / multiple vet practices (**veterinary services**)
- Asda / Co-op (Arthur) (**road fuel, groceries**)
- Bestway / Lexon (**pharmacies**)
- LKQ / Uni-Select (**car parts**)
- Wolseley / Kooltech (**air conditioning and refrigeration**)

- In almost all cases, the CMA found it appropriate to use a decision rule to identify local SLC areas.
- Nearly half of cases, merger parties requested the case to be fast-tracked to consideration of UILs.
- Four cases concerning veterinary services:
  - All four were completed transactions, with two (Medivet / multiple vet practices and IVC / multiple vet practices) not having been made sufficiently public at the time of their completion.
  - Occurring against a backdrop of a small number of corporate groups buying up large numbers of independent practices and local chains of vets across the UK.
  - In September 2023, the CMA launched a market study into the sector, and in March 2024, provisionally identified competition concerns, including as a result of significant sector consolidation



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Phase 2 highlights  
in 2022/23 and  
2023/24

# Viasat / Inmarsat (ME/6895/22)

## *Satellite merger cleared in view of pro-competitive market dynamics*

- Viasat's acquisition of Inmarsat, both active as satellite network operators that own and manage a fleet of satellites.
- Phase 2 investigation focused on the Parties' overlap in the supply of broadband inflight connectivity services to commercial airlines and business aircraft operators serving the UK.
- The Inquiry Group found that the Parties compete closely and would likely remain close competitors absent the merger. But the Inquiry Group also found that:
  - The satellite communications sector is expanding rapidly, a trend that was set to continue for the foreseeable future, due to ever-growing use of the internet by business and consumers.
  - The sector had seen disruptive entry by new players with innovative technologies and substantial resources.
  - Four new entrants (Starlink, Amazon, Telesat and OneWeb) had all launched, or had plans to launch, new generation low earth orbit constellations. Within the course of the Phase 2 review, OneWeb had completed its global satellite constellation, while Starlink launched a significant number of new satellites into space and secured its first contract with a European airline.
  - Established players – Intelsat, Panasonic and Anuvu – were responding to these threats and opportunities, with Intelsat and Panasonic recently signing agreements with OneWeb, allowing them to use OneWeb satellites to enhance their own offerings to airlines.
- The Inquiry Group considered the aggregate constraints that the parties would likely face from other rivals were significant and were likely to increase in the near future, such that the merger was not expected to give rise to an SLC.
- EC cleared the merger following a phase 2 investigation, and by the DOJ following a second request.

# Cochlear/Oticon Medical (ME/6999/22)

## ***Multi-jurisdictional review of two distinct markets, resulting in a partial prohibition***

- Cochlear is a global specialist in the production of hearing implants (specifically cochlear implants, CI, and bone conduction solutions, BCS). Oticon Medical is the hearing implants division of Demant, a large hearing technology group.
- The CMA's phase 1 review found competition concerns only in relation to BCS products, with the parties having a combined share of supply in the UK of [90-100]%.
  - This led the Phase 2 Inquiry Group to focus on the market for BCS products, where the Parties argued (i) for an alternative counterfactual on the basis of a strategic exit decision by Demant; and (ii) that Oticon Medical's current proposition in 'Passive BCS' was soon to become less relevant following the introduction of an 'Active BCS' product by Cochlear.
- In relation to a **potential strategic exit**:
  - The parties did not have contemporaneous evidence of a decision to close BCS; the Inquiry Group therefore considered Demant's ***incentives*** to close the business:
    - The business was profitable and had experienced growth following recent product releases, including since merger notification.
    - Demant produced later analysis showing that the BCS business was separable from the CI business and would likely continue to be profitable under its ownership.
    - The Inquiry Group therefore did not find evidence that it was likely for Demant to close the BCS business absent the merger.
- In relation to the **introduction of Active BCS shifting market dynamics**:
  - Evidence from clinicians and from internal documents demonstrated that Passive BCS products would continue to be prescribed to a significant proportion of patients over the medium term. Oticon Medical's BCS business was developing an Active BCS product to compete with Cochlear's offering.
- CMA cooperated closely with EC and the ACCC. EC and ACCC cleared revised 'CI only' deal following the CMA's prohibition of BCS sale.

# Hitachi/Thales (ME/6971/21)

## ***Multijurisdictional railway signalling merger cleared subject to remedies***

- Hitachi's acquisition of Thales GTS' business (£1,7 billion): both leading global suppliers of signalling systems for mainline and urban railway networks.
- **No SLC found in urban signalling:**
  - London Underground (LU) is the only urban rail network in Great Britain with new Communications-Based Train Control (CBTC) signalling projects planned in the foreseeable future.
  - Thales one of only two incumbent suppliers on the LU (the other being Siemens). Renewing signalling systems on the LU is particularly challenging compared to most other metro systems due to its size, age and complexity.
  - Inquiry Group found that Hitachi would be unlikely to meet TfL's requirements and compete closely with Thales for its next major signalling projects, as it would be unlikely to have attained the required level of experience in time.
- **SLC found in digital mainline signalling:**
  - Historically Siemens and Alstom have been the primary suppliers of mainline signalling systems in GB.
  - Shift to digital signalling and improvements to Network Rail's tendering processes (in line with the recommendations in Office of Rail and Road's market study) have afforded greater opportunities for non-incumbents.
  - Network Rail's next major tender – the Train Control Systems Framework (TCSF) tender – would involve selecting four suppliers for future digital mainline signalling projects covering the next 10 years, and was launched at the beginning of the Phase 2 investigation.
  - Inquiry Group found that Hitachi and Thales were both very strong suppliers of digital mainline signalling in Europe, and among the only few credible bidders for future digital mainline signalling projects in GB, including the TCSF.
  - Our competition assessment applies to the supply of digital mainline signalling more widely than the TCSF tender.
- Hitachi offered to divest its mainline signalling business in the UK, France and Germany. We found this to be an effective and proportionate partial divestment, subject to strong safeguards offered by Hitachi (eg customers' consent).
- CMA cooperated closely with EC, who cleared the merger subject to the same remedy at phase 1.

# Microsoft/Activision (ME/6983/22)

## ***Deal prohibited to protect innovation and choice in fast-growing cloud gaming market***

- The Phase 2 Inquiry Group found that Microsoft's acquisition of Activision would not be expected to result in an SLC in console gaming services but would do so in cloud gaming services.
- **Console gaming services**
  - Microsoft's Xbox and Sony's PlayStation compete closely with each other, and Activision's *Call of Duty* was important to the competitive offering of both consoles.
  - But the evidence indicated that Microsoft would not find it financially beneficial to make *Call of Duty* exclusive to Xbox, nor would making *Call of Duty* available on Xbox on better terms materially harm PlayStation's ability to compete.
- **Cloud gaming services**
  - Cloud gaming is a developing market that could be transformative for the gaming industry in the next few years.
  - Microsoft was already a strong cloud gaming service provider with a multi-product ecosystem – owning a popular gaming platform (Xbox and a large portfolio of games), the leading PC operating system (Windows), and a global cloud computing infrastructure (Azure and Xbox Cloud Gaming) – giving it considerable advantages in running a cloud gaming service.
  - Activision creates some of the most popular gaming content, which would be important for the competitive offering of cloud gaming services as the market develops.
  - Given Microsoft's already strong position, Microsoft would have the ability and incentive to withhold Activision's games from rival cloud gaming service providers, which may be expected to substantially reduce competition in this developing market.
- Inquiry Group considered prohibition would be the only effective and proportionate remedy.
- Phase 2 Final report published in April 2023, and in August 2023 the CMA imposed its Final Order, rejecting Microsoft's submissions on material change of circumstances or special reasons for reaching a different decision.
- EC accepted a behavioural remedy; FTC litigation ongoing.

# Microsoft/Activision ex-cloud streaming rights (ME/7068/23)

## *Restructured transaction cleared with remedies to address residual concerns*

- In August 2023, Microsoft announced a restructured transaction to acquire Activision excluding Activision's non-EEA cloud streaming rights:
  - Immediately prior to the merger, Activision's non-EEA cloud streaming rights for all current and future Activision PC and console games released during the next 15 years would be sold to Ubisoft (pursuant to a Divestment Agreement between Activision and Ubisoft).
  - Ubisoft would also receive a non-exclusive licence for Activision's EEA cloud streaming rights.
  - Microsoft would also receive a non-exclusive licence from Ubisoft for the non-EEA cloud streaming rights to the extent necessary for Microsoft to fulfil its obligations under the EC commitments and certain existing third-party cloud streaming agreements..
- The CMA considered the restructured transaction largely addressed the concerns arising from the original transaction:
  - Microsoft would not be in a position to unilaterally make Activision's games available only on its own cloud gaming service, or to withhold those games from rivals.
  - Ubisoft would be in a position to replicate the role that Activision would have played absent the transaction, with the right to license Activision streaming rights on a worldwide basis under any business model of its choosing.
  - The key parameters of the divestment were set upfront, with Ubisoft's ongoing interactions with Microsoft limited to the implementation of the transaction, rather than requiring ongoing negotiations to take place.
- But the CMA had residual concerns that the terms of the Divestment Agreement could be circumvented, terminated, or not enforced.
- Following a fast-track request, UILs were accepted to address that concern by enabling the terms to be enforced by the CMA, and for the appointment of a monitoring trustee if required.

# Adobe/Figma (ME/7021/22)

## *Multi-jurisdictional design software merger abandoned after CMA provisional findings*

- Parties both provide design software for creative professionals, used to design apps, websites, and digital user interfaces.
- In its phase 2 Provisional Findings, the Inquiry Group provisionally found SLCs in the supply of (1) all-in-one product design software, and (2) creative design software (both raster editing and vector editing).
- In relation to **product design**:
  - Figma has the market leading offering. Adobe supplied XD, one of Figma's two key competitors.
  - The Parties argued that Adobe XD was in 'maintenance mode' and not a real competitive constraint; and that Adobe's pipeline product (Project Spice) was not focused on product design and was cancelled before the merger.
  - The Inquiry Group provisionally found the merger would remove a key constraint on Figma, both from Adobe XD and from Adobe's ongoing product development and innovation. The Inquiry Group also found that Project Spice's cancellation was a result of the merger.
- In relation to **creative design software**:
  - Adobe is the industry standard and dominant provider with Photoshop (raster editing) and Illustrator (vector editing).
  - While Figma did not have a standalone offering, it had some creative design functionalities. Figma regularly explored the possibility of expanding its creative design offering and had the human and financial resources to do so.
  - Adobe internal documents showed that it was concerned about and responded to the threat from Figma's expansion. The Inquiry Group's theory of harm focused on the loss of dynamic competition that would result from the merger.
- Transaction reviewed in parallel with the US DOJ and the EC.
- Parties abandoned the merger shortly after the EC's Statement of Objections and the CMA's Provisional Findings.

# Dye & Durham/TMG (1586/4/12/23)

## ***Divestiture process***

- CMA found an SLC in property search report bundles and required the full divestment of TMG to a purchaser approved by the CMA.
- Around halfway through the divestment process, D&D submitted a twin track divestment process proposal; this included a process for proposed admission of TMG's ordinary shares to trading on AIM
- The CMA rejected the twin track proposal and D&D appealed this to the CAT
- On whether the AIM listing could fall within the terms of the original approved divestment proposal:
  - *"It is inconceivable that the terms 'sale' and 'disposal' encompass a distribution in specie to D&D shareholders of TMG's shares..."* (CAT, para 84)
- On whether the CMA should have agreed to vary the original divestment approach:
  - *"The whole point of the AIM Proposal was not that the divestment was not appropriate... but rather that the remedy could be implemented by a methodology that they considered would be more favourable financially to them. That does not satisfy the test of the remedy being no longer appropriate."* (CAT, para 108)
  - *"...the CMA was entitled to ensure that any remedy was an effective remedy and implemented without delay"* (CAT, para 115).



# Cerelia / Jus-Rol ([2024] EWCA Civ 352)

## ***Appeal on substance and process***

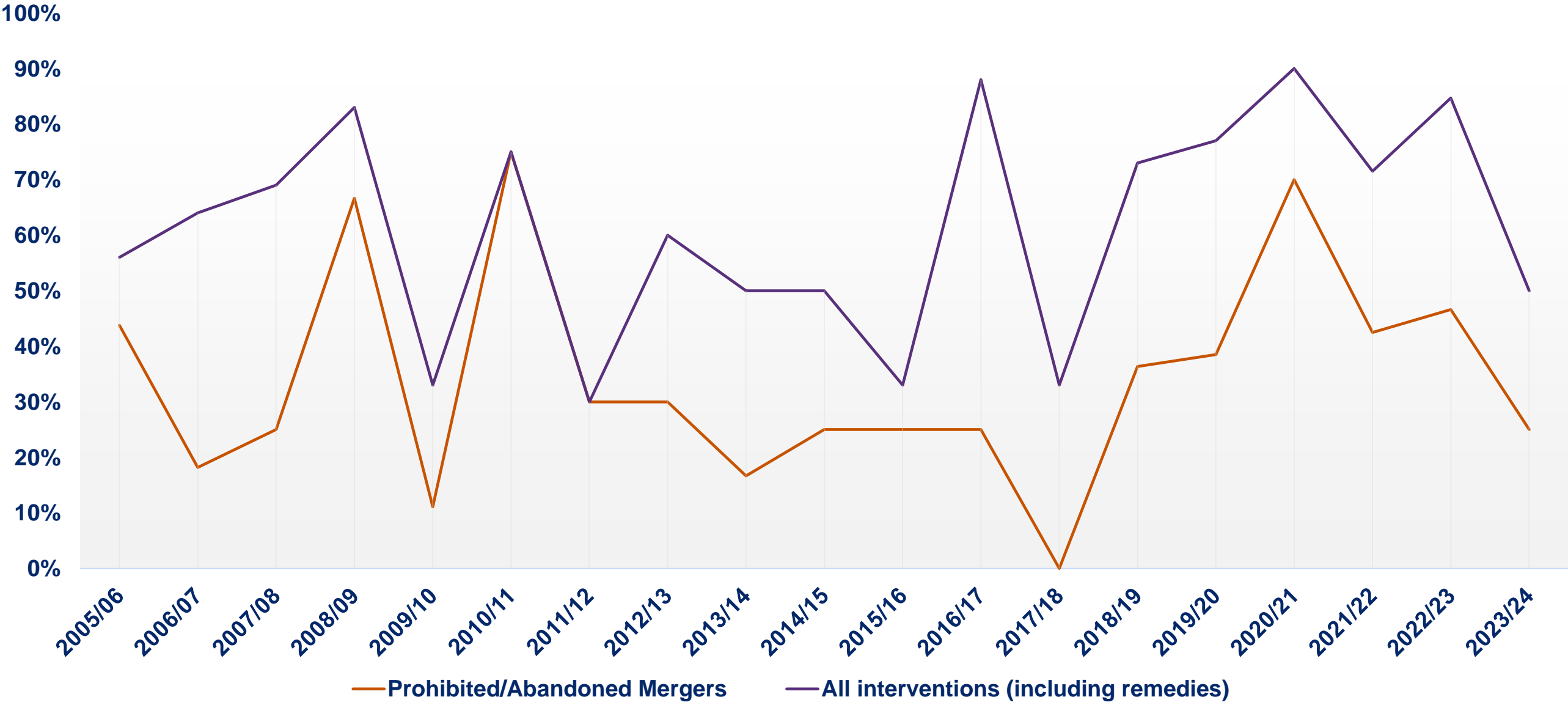
- Decision issued by Court of Appeal last week addresses
  - Scope of judicial review by the CAT in merger cases
  - Appeal on substantive grounds - dismissed
  - Appeal on procedural grounds - dismissed

04

Key enforcement  
trends

# Is the CMA getting tougher?

## Intervention rates (Phase 2), 2005-2023



### Notes

- Data include mergers that were abandoned after a reference to a Phase 2 investigation (and not abandonments at an earlier stage)
- Data for the intervention rate includes mergers that were abandoned, prohibited or where remedies were imposed at Phase 2

# Multi-jurisdictional Mergers

'Parallel' cases	21/22*	22/23*	23/24
<b>EU Commission</b>	14	12	7
<b>DOJ/FTC</b>	14	8	3
<b>Other authorities</b>	12	10	12

 **Notes**

\*Including cases which were later abandoned and cases currently on appeal

- No “one size fits all” approach
- Increased procedural flexibility (utilising approaches outlined in revised J&P Guidance, December 2020) to support alignment
- Standard confidentiality waivers used as basis to exchange information (limited scope for tailoring on case-by-case basis)
- Large volume of multi-jurisdictional cases not subject to any kind of formal CMA investigation at all (so formal outcomes overstate extent of divergence in practice)

# International alignment (1)

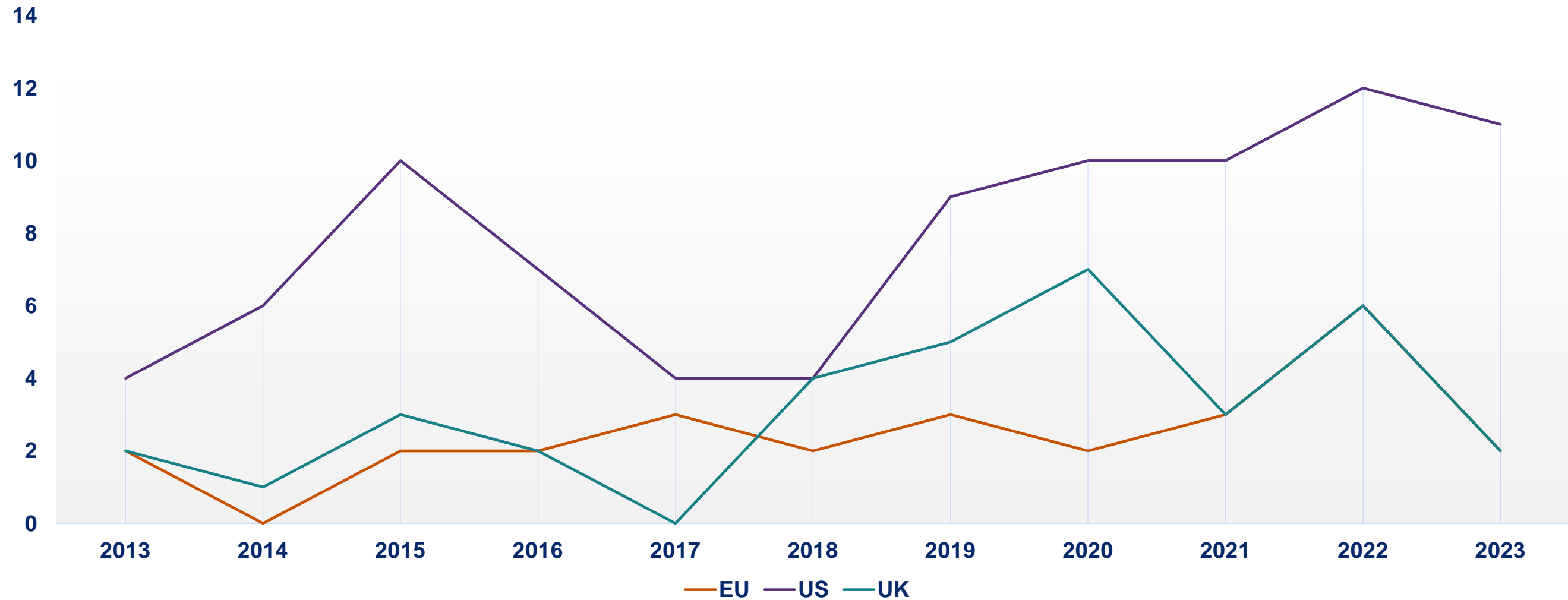
	Mar 2023	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan 2024	Feb	Mar
Cameco/Wstngs								●	●				
MS/Activision		●	●					●					
Hitachi/Thales								● ●					
Brdcom/VMWare					●	●							
Cochlear/Oticon				●				●					
Amazon/iRobot				●							●		
Calisen/Maple			●	●									
Viasat/Inmarsat			● ●										
Farfetch/Yoox	●							●					
Yok'hama/Trillbrg	● ●												
Korean Air/Asiana	●											●	
Adobe/Figma										● ●			
Arcelik/Whirlpool								●					●

CMA	EC
✓	✓
✓	✓
✓	✓
✓	✓
✓	✓
✓	✗
✓	✓
✓	✓
✓	✓
✓	✓
✓	✗
✓	✗
✓	✓

● CMA  
● EC

# International alignment (2)

## Blocked and abandoned mergers, 2013-2023



### Notes

Source: [2023 US and EU data from DAMITT 2023 Annual Report: Minding the Gap in Merger Enforcement](#)

US and EU data for calendar years; UK data for financial years but attributed to calendar years for ease of comparison (eg data for FY 2021/22 has been allocated to 2021)

05

Developments in  
policy and practice

# Developments in policy and practice



## Legislative reform

- **DMCC Bill.** On 23 April 2023, the UK Government published the draft Digital Markets, Competition and Consumers Bill (**Bill**) which brings a series of changes to, among others, the merger control regime:
  - New ‘non-overlap’ share of supply threshold for ‘*killer acquisitions*’ of nascent enterprises where one of the merging parties has a share of supply of at least 33% and a UK turnover of over £350 million;
  - Turnover threshold is increased to £100 million;
  - ‘Safe-harbour’ regime for small enterprises (each party UK turnover < £10 million);
  - Enhanced flexibility of fast-track reference to Phase 2 and more flexible commitments procedure at Phase 2; and
  - Increased financial penalties for non-compliance with the deadlines to respond to information requests or providing false or misleading information
- The Bill also introduces mandatory pre-completion reporting obligations for acquisitions by business with ‘Strategic Market Status’ (**SMS**) where:
  - An SMS firm acquires a stake of at least 15% in the target enterprise;
  - The transaction value is at least £25 million; and
  - The target enterprise has a UK nexus.
- Bill currently subject to Parliamentary process, with royal assent currently anticipated in Spring 2024.
- Revised CMA guidance anticipated before operative provisions enter into force.
- **Energy Act 2023.** Received Royal Assent in October 2023 and imposes a new duty on the CMA to apply a ‘special’ merger regime to certain energy network mergers. The CMA’s guidance on the procedure for the new regime published on 3 April 2024.



# Policy & Practice Updates



## Guidance updates

### Revised Phase 2 mergers process

- 20 November 2023, CMA published for consultation proposed changes to its phase 2 processes.
- Key proposed changes:
  - Streamline the start of the Phase 2 investigation – enabling an earlier focus on the key issues at stake in the case
  - Improve opportunities provided for all businesses affected by a merger to engage with the CMA Inquiry Group overseeing the investigation:
    - Earlier and less definitive provisional decision through new ‘interim report’
    - Revamped main party hearing intended to provide a ‘proper hearing on the merits’ following interim report
- Changes to the remedies process to help incentivise merging parties to bring forward credible remedies to address concerns at the earliest possible stage.
- Reflected in draft revisions to the guidance on the CMA’s jurisdiction and procedure, and a draft Phase 2 Remedies Form.

# Policy & Practice Updates



## Guidance updates

### De minimis exception

- The CMA also published for consultation on 20 November 2023 proposed changes to the de minimis exception:
  - Replacing the current two-tier threshold for applying the ‘de minimis’ exception
  - Increasing the market size threshold for the ‘de minimis’ exemption to apply (from £15 million to £30 million)
  - Removing the requirement for no clear-cut undertakings in lieu of a reference to be available in principle in order to apply the ‘de minimis’ exception
  - Replacing the cost/benefit analysis in the Current Guidance with a list of three factors intended to focus the CMA’s assessment on the importance of the markets in question, rather than the extent of the CMA’s competition concerns in those markets.

# Policy & Practice Updates



## Guidance updates

### Other changes

- Alongside the phase 2 and de minimis exception reforms, the CMA consulted on:
  - Other updates made to the guidance on the CMA's jurisdiction and procedure to reflect changes to the CMA's practice (across both phase 1 and phase 2), recent judgments of the CAT, and legislative changes.
  - Draft revised Merger Notice
  - Draft revised Template Waiver
- Consultations closed on 8 January 2024. CMA plans to implement the new guidance documents soon

Questions?