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**BritishAmerican Business Response to the Department for Business and Trade Open Consultation on “Refining our competition regime”**

We are writing on behalf of the members of BritishAmerican Business, to provide a submission to the Department for Business and Trade’s open consultation on “refining our competition regime”.

BritishAmerican Business (BAB) is the leading US-UK transatlantic trade association, incorporating the British-American Chamber of Commerce in the US and the American Chamber of Commerce in the UK. We are committed to strengthening the economic corridor between the US and the UK, and support policies and actions that enhance the environment for transatlantic trade and investment on behalf of our 500 member companies.

We are proud to be recognised as one of the UK government’s most trusted industry partners. We support the UK’s economic and trade portfolio through regular interventions and by participating in government events and initiatives. Our work is informed by our wide membership, as well as longstanding experience as a champion for transatlantic trade and investment.

As the leading trade association representing businesses active in the UK-US economic corridor, we appreciate the opportunity to provide our views on this inquiry.

BritishAmerican Business has been a consistent contributor to UK government consultations on competition policy and the CMA’s strategic direction, reflecting our members’ strong interest in a regulatory environment that is predictable, proportionate, and supportive of long-term investment. Over the past several years, BAB has submitted formal responses to successive government initiatives in this space, including:

- 2023: BAB’s submission to the Government’s consultation on its draft Strategic Steer to the CMA
- 2024: BAB & US-UK Business Council response to the CMA’s draft Digital Markets Competition Regime Guidance
- 2025: BAB Response to the UK Strategic Steer to the CMA

Across these submissions, we have consistently emphasised the need for evidence-based, proportionate intervention, predictability and transparency in regulatory processes, clear guardrails and accountability mechanisms and alignment between competition regulation and the government’s wider growth agenda.

We fully recognise and support the Government’s efforts to deliver on its pro-growth agenda by reviewing its regulatory approach, and we welcome the steps taken in achieving that. In this context, we are grateful that DBT is now undertaking this broader review of the competition regime. We view this consultation as an important step in creating a long-lasting, stable, pro-investment regulatory framework. In our view, the reforms set out in the consultation will only achieve their aims if shaped

by data, meaningful business input, and the insights of practitioners who understand how UK competition policy interacts with investment decisions, innovation cycles, and global competitiveness.

Our response below therefore focuses on ensuring that the proposed reforms are appropriate, durable, and grounded in real-world experience, so they deliver the certainty that businesses need and avoid unintended consequences.

## **Consultation Response**

### ***Chapter 1 — Enhancing accountability for CMA decision-making in mergers and markets Questions 1–3***

BAB welcomes the government’s intention to improve accountability and consistency in CMA decision-making, as well as alignment between case outcomes and strategic objectives, as a stable and trusted regulatory environment is core to the UK’s competitiveness. In this area, business’ concerns have typically persisted around the predictability of decision outcomes; the degree of discretion exercised at senior decision-making levels; the limited ability of businesses to understand, review, and respond to evidence in a timely manner; and the absence of sufficient internal checks to guard against confirmation bias.

#### **Q1. What impact do you think the proposed reform would have on the consistency and predictability of decision-making in merger and markets cases?**

We recognise the potential benefits of bringing Phase 2 decisions under a CMA Board subcommittee model, particularly the greater clarity it may bring to institutional accountability. However, the reform also removes an important external check on CMA power and a critical procedural fairness safeguard that the independent panel system provided. It concentrates significant power in a small number of CMA decision makers, with no corresponding check or balance.

To improve predictability and confidence in outcomes, structural change should be paired with stronger accountability mechanisms, for example procedural safeguards in the form of full merits review, so that parties have meaningful recourse where the substance of a decision is disputed. In parallel, a transparent and well-defined decision-making process, including clearer publication of how evidence is assessed and weighed, will be essential to ensure consistency over time and across cases.

#### **Q2. Would the proposed reform for greater accountability for the CMA Board for merger and markets decision-making be something you would welcome?**

BAB would welcome reforms that enhance accountability within the CMA’s governance framework. Ensuring that senior leadership has direct responsibility for major decisions is appropriate, provided that safeguards exist to balance internal perspectives with independent expert challenge. This includes a full merits review, permitting the CAT to review decisions on questions of fact, and meaningful access to case files, which would strengthen parties’ rights of defence.

#### **Q3. Do you support the proposed membership requirements for the mergers and markets sub-committees/committees?**

We support the inclusion of both senior CMA officials and external business/economic experts in decision making committees. This is crucial to maintaining credibility, drawing on real-world

commercial understanding, and avoiding an overly insular regulatory approach. We would, however, emphasise that these committees must contain sufficient external representation to ensure a diversity of perspectives.

## ***Chapter 2 – Markets Work and Market Remedies***

### ***Questions 8-10***

**Q8. Do you agree the CMA should consider sunset clauses when designing remedies?**

**Q9. Do you agree the CMA should review market remedies at least once every 10 years?**

**Q10. Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so?**

Given the pace of change in digital and technology driven markets, remedies that were effective at the time they were imposed may, over time, become less well targeted or create unintended distortions as market conditions evolve. Open-ended or indeterminate remedies can also contribute to long-term uncertainty, which may weigh on investment and innovation in affected sectors.

To ensure remedies remain proportionate, necessary and effective, BAB supports the systematic use of sunset clauses and regular, scheduled reviews calibrated to the type of remedy and the dynamics of the market. As a clear backstop, we believe reviews should not be deferred beyond 10 years. This approach would help ensure that remedies continue to address the specific competition concerns and consumer harms they were designed to remedy, without outliving their economic justification, and would provide businesses with the predictability needed for long-term planning and investment.

## ***Chapter 3 – Mergers: Increasing predictability in merger control***

### ***Questions 14–21***

BAB supports the government’s intention to create clearer, more predictable thresholds and tests in UK merger control. However, while codifying the tests into closed lists is a helpful step, we remain concerned that the current proposals do not sufficiently narrow discretion and may not materially improve predictability for business.

**Q14. Should share of supply be revised to a closed list of criteria, for both the share of supply and hybrid jurisdictional tests?**

**Q15. Do you support the proposed criteria for inclusion?**

**Q16. Are there any additional criteria that should be included?**

**Q17. Would the proposed reform for the share of supply test improve predictability for businesses?**

We agree with the goal of simplifying and clarifying the share of supply test, and we recognise the intent behind replacing the open-ended “other criterion, of whatever nature” with a closed list; however, the proposed closed list remains broad enough to capture an overly wide range of transactions – in other words, removing the catchall phrase does not meaningfully constrain outcomes, because the discretion simply shifts into expansive readings of the listed factors.

BAB members are also concerned that the proposed changes are selective and do not go far enough to address the core challenge of determining whether a transaction truly falls within CMA’s jurisdiction: with the proposals as currently drafted, the CMA would be able to assert jurisdiction even where there is minimal UK nexus or a clear competitive overlap.

To deliver genuine predictability, the government should narrow the CMA’s discretion further by providing greater specificity within each listed criterion (e.g. clearer metrics, thresholds and how they should be calculated), and by tightening the nexus to UK competition so that parties can self-assess reliably. Without this added precision, companies will continue to face material uncertainty at the jurisdictional stage, which raises deal risk and costs without corresponding benefits to consumers.

Furthermore, the share of supply test should be assessed by reference to an identified market to reduce the risks of even small minority investments falling under its scope.

**Q18. Should the material influence and de-facto control tests be revised to a closed list of statutory factors?**

**Q19. Do you support the factors proposed for inclusion?**

**Q20. Are there any additional factors that should be included?**

**Q21. Would the proposed reform for the material influence test improve predictability for businesses?**

Similarly, while defining material influence factors in statute offers greater transparency, the proposed statutory list of factors goes beyond the CMA’s recent guidance in scope and ambiguity, and it risks enabling future overreach. In particular, references to “commercial, financial or consultancy arrangements” are insufficiently defined and could be interpreted expansively.

To avoid overreach and uncertainty, BAB recommends that the statutory factors should be refined to focus on clear indicators of genuine control; ambiguous terms should be clarified; and the CMA should be required to demonstrate how identified factors translate into real-world influence over policy, strategy, or market behaviour.

A predictable merger control regime is fundamental to the UK’s growth ambition. Ensuring that tests are narrow, objective, and reliably self-assessable will make the UK a more attractive and competitive destination for investment. Moreover, while the CMA has demonstrated a more proportionate approach over the last 12 months, more work needs to be done to ensure this trend is maintained and it’s not affected by changes in leadership. As such, if the Government wants to deliver a regulatory landscape that has longevity and that will encourage inwards investment, it must make meaningful changes now.

#### ***Chapter 4 — Stronger investigative powers for algorithms***

**Question 23. Should the CMA be granted enhanced powers to investigate algorithms in its competition and consumer protection functions?**

BAB recognises that effective oversight of algorithms can play a role in modern competition enforcement. However, we worry that the powers proposed in this consultation would represent a substantial extension of regulatory reach.

Today, the CMA already has the power to analyse algorithms during investigations. The regulator can force firms to tell them what algorithms are used, how they impact customers, whether a company has conducted tests on those customers and information on decisions taken on algorithms. The CMA can also access source code. In short, the CMA already has sufficient powers to gather information on algorithms.

Members' concerns are around the disproportionate and intrusive nature of this expansion of a globally unprecedented experimental and untested power included in the DMCCA, and the associated risks of imposing obligations on companies that might not be equipped to manage them. Given the contentious nature of these powers during the passage of the DMCCA, we are concerned that expanding them further, and across the entire economy, would risk chilling innovation, deterring investment, and undermining the UK's stated growth objectives.

Equally concerning is the question of technical capacity. These powers require deep technical expertise to be exercised responsibly. Without robust capability and clear safeguards, involuntary CMA-directed testing, and particularly live testing on users, could introduce unintended harms, including liability risks, operational disruption, or distortive outcomes.

BAB would advise against adopting these expanded algorithmic powers in legislation. Should any extension be considered, it must be accompanied by strict statutory guardrails, narrowly defined triggers for use, and clear protections for commercial confidentiality and technical integrity.

## Conclusion

The consultation marks an important moment for strengthening the UK's competition framework and ensuring it is fit to support the government's broader growth ambition. We welcome the direction of travel and the recognition that a more predictable, transparent, and proportionate regime is essential for maintaining the UK's attractiveness to investors. However, we believe that several proposals require further refinement to deliver the durable, evidence-based reforms that businesses need.

We appreciate the opportunity to provide our views and input into this inquiry, and we are available to discuss this further. We remain committed to working constructively with DBT and the CMA to ensure that the UK develops a regulatory framework that supports businesses, strengthens competitiveness, and delivers long-term economic growth.

Yours sincerely,



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