

Title: Reforms to Merger Control IA No: BEIS057(F)-22-CCP RPC Reference No: Lead department or agency: Department for Business and Trade Other departments or agencies: Competition and Markets Authority	Impact Assessment (IA)
	Date: 20/04/2023
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion:

Cost of Preferred (or more likely) Option (in 2019 prices)

Total Net Present Social	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£50.0m	-£25.9m	£3.0m	Qualifying regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

- Recent academic studies and the 2020 CMA State of Competition Report suggest competition may have weakened since 2008 in several sectors.
- Vertical and conglomerate mergers and killer acquisitions can escape CMA intervention due to gaps in current jurisdictional thresholds.
- The core legislation underpinning the UK merger regime dates back to 2002 and requires modernisation in order to effectively deal with increasingly fast-moving markets.

What are the policy objectives of the action or intervention and the intended effects?

- Ensure the UK's merger control regime is focused more directly on mergers which are likely to cause harm to consumers and markets, whilst reducing or removing the burden to businesses where transactions are less likely to be harmful.
- Reduce the time and costs of merger review faced by businesses and provide greater clarity and certainty on when they will be covered by the UK's merger control regime.
- Improve market outcomes through promoting competition.

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year:	PV Base Year: 2025	Time Period Years: 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -19.3	High: 119.3	Best Estimate: 50.0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	0.7		26.2	225.8	
High	3.0		48.8	423.0	
Best Estimate	1.8		37.5	324.4	
Description and scale of key monetised costs by ‘main affected groups’ Additional costs of merger review to business arising from the new acquirer focussed threshold: <ul style="list-style-type: none"> • Administrative costs • Legal fees • Economic consultant fees • Familiarisation costs The acquirer focussed threshold is pro-competition, so these costs are exempt from BIT calculations. Additional costs to the Exchequer (CMA) due to expanded scope of review through the new acquirer focused threshold test.					
Other key non-monetised costs by ‘main affected groups’ Forgone business profits due to additional interventions in anti-competitive mergers					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	0		24.0	206.4	
High	0		63.0	542.4	
Best Estimate	0		43.5	374.4	
Description and scale of key monetised benefits by ‘main affected groups’ <ul style="list-style-type: none"> • Benefits to consumers resulting from savings through additional interventions in harmful mergers which would have led to consumer detriment, including higher prices and lower quality offered to consumers. • Benefits to businesses arising from forgone merger reviews costs because of the upwards revision to the turnover test threshold, the introduction of the fast track measure and introduction of the small merger safe harbour. 					
Other key non-monetised benefits by ‘main affected groups’ <ul style="list-style-type: none"> • Increased consumer savings through faster resolution of cases meaning competition harm is addressed more quickly. • Greater certainty and predictability in markets subject to CMA merger investigations. • More flexibility in merger investigations for the CMA and involved businesses • Increased innovation from enhanced competition. 					
Key assumptions/sensitivities/risks				Discount rate	3.5%

- Estimates of costs are sensitive to the assumed cost to business of merger review, in particular legal costs.
- Estimates of benefits are highly sensitive to the assumed consumer saving per merger intervention.
- Estimates of costs and benefits are highly sensitive to the assumed changes in caseload because of the proposals.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual)			Score for Business Impact Target (qualifying provisions only) £m: 15.0
Costs: 7.0	Benefits: 4.0	Net: 3.0 (net cost)	

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Evidence Base

Background

1. Competition is a process of rivalry between suppliers who compete for customers by offering products or services that have lower prices, better quality or are more innovative or unique in a certain way. Competition drives economic and dynamic efficiency which in turn promotes economic prosperity, and it must be upheld if optimal market outcomes are to be delivered for businesses and consumers alike. Recent academic evidence supports this notion, suggesting that rising market power has been associated with reductions in business investment, with implications for reduced productivity (Furman 2016¹, De Loecker and Eeckhout 2017²).
2. Mergers can have a significant impact on competition through the market power they may offer, particularly where markets are already concentrated. Furthermore, the incentives of increased market power and the associated profits which drive harmful merger and acquisition (M&A) transactions are strong and must be effectively regulated through competition policy. Maintaining high levels of competition has many positive macroeconomic effects. For example, a recent study of EU countries found that competition policy indices had a positive and statistically significant effect on labour productivity growth³ (Benetatou et al, 2019).
3. **As the UK's competition regulator, the Competition and Markets Authority (CMA) is the body responsible for investigating mergers and intervening in any such mergers which are likely to lead to a substantial lessening of competition (SLC) in the UK.** The CMA's ability to investigate a M&A transaction is determined by the jurisdictional thresholds of turnover and share of supply set out in the **Enterprise Act 2002 (EA02)**. These thresholds are outlined below:

It must be the case or be anticipated that two business enterprises will cease to be distinct and, either:

- a. The business that is being acquired must have a **UK turnover of more than £70m** (the "turnover test"); or
 - b. The merger would result in the creation or enhancement of at least a **25 per cent share of supply of particular goods or services in the UK**, or a substantial part of the UK ("the share of supply test")⁴.
4. The CMA operates a two-stage merger review system whereby the CMA can either clear, remedy or refer a Phase 1 investigation to further scrutiny at Phase 2. Phase 2 investigations are more rigorous as these cases have been determined by the CMA as having the realistic prospect of an SLC. Once the CMA has concluded the Phase 2 investigation, they will either clear, clear subject to remedy, or prohibit the merger.
 5. Furthermore, the regime is a non-suspensory and voluntary one. 'Voluntary' means that there is no requirement to notify a merger to the CMA. 'Non-suspensory' means parties are not prevented from completing and implementing a deal in advance of receiving merger clearance from the CMA. Subject to the jurisdictional thresholds being met, the CMA can investigate mergers which have been notified as well as initiate investigations

¹ Furman, J. (2016) Beyond Antitrust: The Role of Competition Policy in Promoting Inclusive Growth speech to Searle Center Conference on Antitrust Economics and Competition Policy.

² De Loecker, J., & Eeckhout, J. (2017). The rise of market power and the macroeconomic implications. (No. w23687). National Bureau of Economic Research.

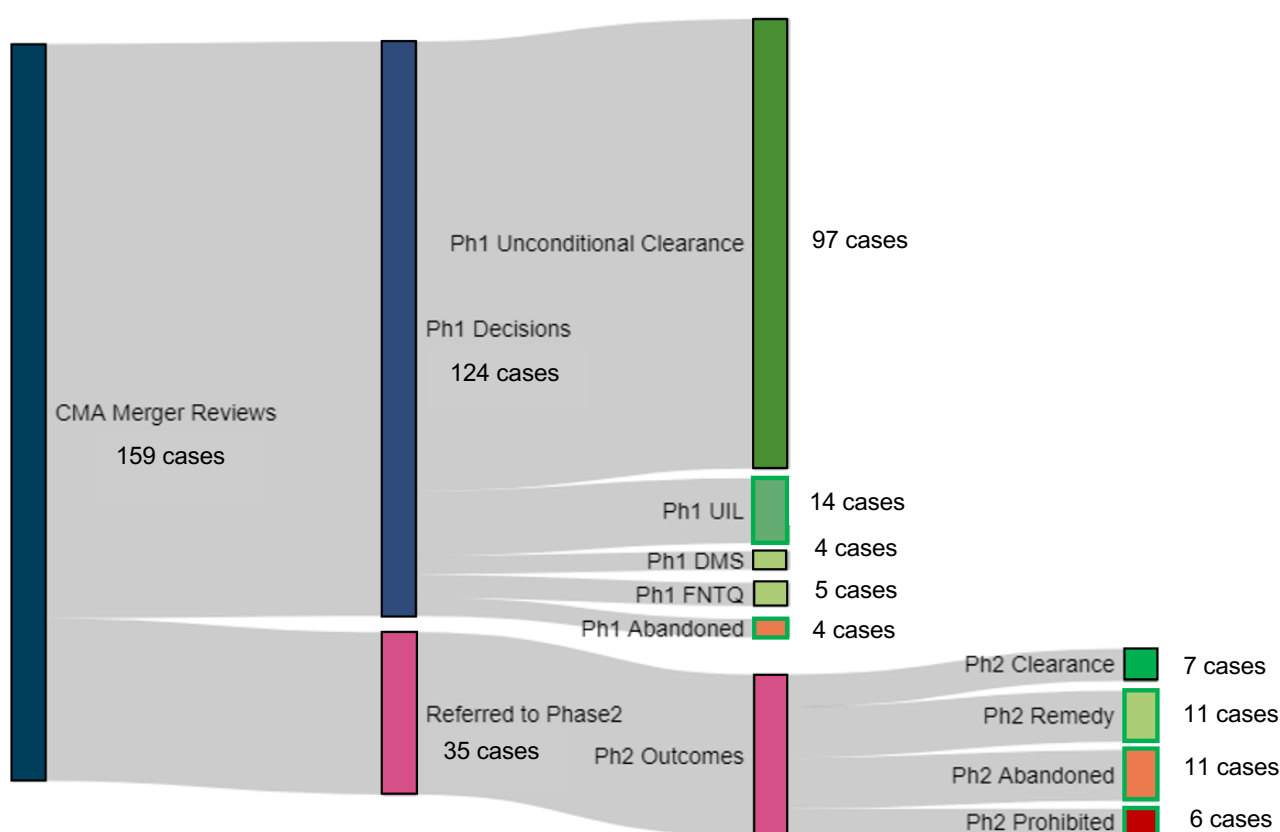
³ Kyriazidou, A, Benetatou, K, Katsoulakos, Y & Makri, G 2019, 'Competition Policy and Labor Productivity Growth: Some new evidence', *Empirical Economics*.

⁴ These thresholds also apply to merger review on public interest grounds via the Public Interest Intervention regime. Slightly different thresholds exist for a small number of public interest interventions as set out in the Special Public Interest Intervention regime.

of mergers not notified but for which its mergers intelligence function identifies that the transaction may give rise to an SLC.

6. The UK's voluntary notification regime is a key feature of the framework, with the CMA investigating roughly sixty transactions per year which is significantly less than comparable mandatory regimes. For example, in 2020 Germany's Federal Cartel Office (FCO) which operates a mandatory notification regime reviewed roughly 1,200 cases⁵. In 2019/20, the CMA reviewed a total of 62 cases⁶, for context, in the same period the Office for National Statistics (ONS) reported 881 mergers and acquisitions involving UK companies worth £1 million or more⁷ (the total number including firms worth under £1 million would be larger). This demonstrates that the CMA formally reviews only a small portion of all merger and acquisition (M&A) activity in the UK. This provides more certainty to businesses pursuing a benign merger that the majority of transactions will not undergo the costs of merger review in comparison to a scheme with broader jurisdictions. Therefore, if the regime is to retain the benefits to business of reviewing relatively few mergers, the jurisdictions must reflect those transactions likely to raise a competition concern as opposed to capturing a broad range of mergers which are likely benign.
7. Figure 1 below presents merger review outcomes from 2018/19-20/21 and illustrates that the CMA only intervene in a small portion of the mergers they review, with over half of the transactions reviewed receiving unconditional clearance at Phase 1.

Figure 1 - CMA Merger Review Outcomes 2018/19 - 2020/21⁹



⁵ Federal Cartel Office data, 2020

⁶ Merger Inquiry Outcome Statistics, CMA, 2021

⁷ Mergers and Acquisitions, Quarter 3 2021, Office for National Statistics, 2021

⁸ Includes inward and outward transactions involving UK companies worth £1 million or more, as it does not contain firms worth under £1 million it is likely an underestimate.

⁹ Undertakings in Lieu (UIL), Found not to qualify (FNTQ), De minimis clearance (DMS)

Problem under consideration and rationale for intervention

Decline in the level of UK competition

8. Benign mergers bring many benefits to the economy and help businesses and markets to grow. Therefore, it is crucial to ensure that whilst jurisdictional thresholds are focussed on the mergers which present a significant likelihood of threat to competition, they should also minimise any unnecessary costs or uncertainty placed on non-harmful cases.
9. There is a growing body of evidence to suggest that there has been a decline in the health of competition in the UK in recent years. (Bell, T., Tomlinson, D. (2018), Aquilante, T. (2019)). Despite the jurisdictional thresholds set out in EA02, a number of recently published academic studies have evidenced a deterioration in competition in the UK through estimated levels of market concentration¹⁰ and firm level 'mark ups'¹¹. Further to this, both measures are connected to the level of UK merger enforcement and suggest merger control in the UK can be improved.
10. Analysis from the Department for Business, Energy and Industrial Strategy (BEIS) finds that industry market concentration in 2018 was higher than 2008¹², with the CMA stating comparable findings in similar timeframes¹³. Bell and Tomlinson (2018) find broad increases in concentration across sectors of the UK economy between 2003 and 2016, particularly in the years following the financial crisis¹⁴.
11. Additionally, Aquilante et al (2019) estimate that average UK mark-ups rose from 1.23 in 1987 to 1.55 in 2017¹⁵. De Loecker and Eeckhout (2018) similarly estimate that average UK mark-ups rose from 0.94 in 1980 to 1.68 in 2016¹⁶. The CMA also finds concordant findings on mark ups, estimating that average mark ups have risen 8 per cent in the past 20 years¹⁷.
12. The level of competition in any market is determined by a multitude of economic factors and conditions, including the level of M&A activity, with measures of market concentration and mark-ups providing reliable indications to how competition is changing over time. Several academic studies have evidenced the impact of M&A activity on the level of competition through analysing the effects mergers have had on mark-ups in specific markets. Using evidence gathered from horizontal mergers investigated by the European Commission, Stiebale and Szücs (2019) estimate that mergers had a 2% to 4% impact on rival firm's mark-ups post-merger on average¹⁸. Furthermore, they found that these impacts were most pronounced when pre-merger market shares and mark-ups were already high. These findings also suggest that markups increased due to higher prices as opposed to reductions in marginal cost.
13. Blonigen and Pierce (2016) also find a significant and robust relationship between M&A activity and increased average mark-ups using data on firms from US manufacturing industries¹⁹. Furthermore, they find little evidence of firm level efficiency gains from the set of M&A activity they examine suggesting the increase in markups arose from higher

¹⁰ Market concentration measures the extent to which market shares are concentrated between a small number of firms

¹¹ A 'mark-up' is defined as the value that a business adds on top of the cost of producing a good or service in the final price charged to consumers.

¹² Department for Business, Energy and Industrial Strategy (2020b) Annex 2 – Existing competition indicators. State of Competition: letter from the Chancellor of the Exchequer and the Secretary of State for Business, Energy and Industrial Strategy to Andrea Coscelli, CMA.

¹³ CMA (2020) The State of UK Competition.

¹⁴ Bell, T., & Tomlinson, D. (2018). Is everybody concentrating? Recent trends in product and labour market concentration in the UK. Briefing, Resolution Foundation

¹⁵ Aquilante, T. et al. (2019), Market Power and Monetary Policy. Bank of England Staff Working Paper No. 798.

¹⁶ De Loecker, J., & Eeckhout, J. (2018). Global market power (No. w24768). National Bureau of Economic Research.

¹⁷ CMA (2020) The State of UK Competition.

¹⁸ Stiebale, J. Szücs, F. (2019): Mergers and market power: Evidence from rivals' responses in European markets, DICE Discussion Paper, No. 323, ISBN, Heinrich Heine University Düsseldorf,

¹⁹ Blonigen, Bruce A., and Justin R. Pierce (2016). Evidence for the Effects of Mergers on Market Power and Efficiency, Finance and Economics Discussion Series 2016-082. Washington: Board of Governors of the Federal Reserve System

prices as opposed to lower costs in these cases. It should be noted that these findings are not representative of all M&A activity, for example a large portion of mergers will lead to efficiency gains. Rather, these studies evidence the detrimental impact that the subset of potentially anti-competitive mergers can have on levels of competition.

14. Despite the difficulty in disentangling the effects of M&A activity in driving competition levels in the economy, the academic literature above provides robust evidence to prove that its impact is significant. Consequently, it suggests that inadequate merger enforcement may be partly responsible for rising markups and increasing market concentrations.
15. Potential reasons for the increase in market power include:
 - a. **Underenforcement:** a popular explanation for the rise in market power in the US is due to insufficient competition enforcement, either by insufficiently tackling and deterring anticompetitive behaviour or preventing anticompetitive mergers (Döttling et al 2017²⁰, Baker 2018²¹, Grullon et al 2019²²).
 - b. **Structural changes in the macroeconomy:** developments from globalisation have enabled large firms with access to global supply chains to achieve greater economies of scale (Berry et al 2019²³) which enable them to gain market share. Furthermore, the influence of technological developments, particularly through digital platforms which foster markets with network effects that are naturally concentrated, could also have been conducive to markets being concentrated by high productivity 'superstar' firms (Autor et al 2019²⁴).
16. As highlighted above, competition is influenced by a range of economic factors and recent trends in globalisation and digitalisation are changing the way modern markets operate as firms find new ways to utilise and gain market power. These recent developments have undermined the effectiveness of the merger control regime, where the jurisdictional thresholds set out in EA02 are now twenty years old²⁵, offering a partial explanation as to why competition levels may have declined.

Development in theories of harm

17. Historically, competition authorities and academics have considered the risks posed by vertical mergers to be lower in comparison to horizontal ones. This is because a merger's impact on competition was assessed in a static manner which did not consider whether a non-direct competitor could likely become a direct competitor in the future²⁶. Consequently, the current merger jurisdictional thresholds, which were designed to capture harmful mergers between current and direct competitors, are not fully equipped to tackle mergers between currently non-direct competitors (i.e., vertical and conglomerate mergers).
18. Globalisation and technological advancements have changed the way markets operate, with digital technologies now underpinning successful business models across the globe. These capabilities have changed the way businesses function as well as the manner in which they interact with consumers. As a result of these developments in the features of

²⁰ Döttling, R., Gutierrez Gallardo, G., & Philippon, T. (2017). Is there an investment gap in advanced economies? If so, why?. If so, why?

²¹ Baker, J.B. (2018) evidence to FTC Hearing #1: The Current Landscape of Competition and Privacy Law and Policy. Hearings on Competition and Consumer Protection in the 21st Century.

²² Grullon, G., Larkin, Y., & Michaely, R. (2019). Are US industries becoming more concentrated?. *Review of Finance*, 23(4), 697-743.

²³ Berry, S., Gaynor, M., & Scott Morton, F. (2019). Do increasing markups matter? lessons from empirical industrial organization. *Journal of Economic Perspectives*, 33(3), 44-68.

²⁴ Autor, D., Dorn, D., Katz, L. F., Patterson, C., & Van Reenen, J. CEP Discussion Paper No 1482 Revised May 2019 (Replaces May 2017 version) The Fall of the Labor Share and the Rise of Superstar

²⁵ EA02 was amended in the Enterprise and Regulatory Reform Act (2013) and the turnover test specifically was amended in The Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020 however the threshold was left unchanged

²⁶ Federico, G. Horizontal Mergers, Innovation and the Competitive Process, 2017

modern markets, businesses have also changed the way in which they compete with one another²⁷. Consequently, markets are constantly evolving in a manner which means non-direct competitors operating in different segments of a supply chain may well become direct competitors by entering the same segment in the future.

19. This means that if competition authorities assess mergers in fast changing markets in a static manner, longer term competitive outcomes may be compromised. For example, a large business may see a much smaller business offering an innovative and disruptive product, the smaller business is not a direct competitor but may well grow into the same segment of the supply chain in the future due to the success of its innovation. If the larger firm sought to acquire the smaller business and potential competitor, and this acquisition was assessed statically, the potential detrimental impact on future competition and innovation would not be considered.
20. In recent years this growing consensus on the harm that vertical transactions involving potential competition or dynamic theories of harm can lead to has been reflected in cases investigated by the CMA. High profile case examples investigated by the CMA include Amazon/Deliveroo, Tobii/Smartbox, Paypal/iZettle and Sabre/Farelogix.
21. Vertical mergers and acquisitions are common in the pharmaceutical and digital sectors given the rewards offered to firms in acquiring others who partake in complementary economic activity in different stages of the supply chain. Furthermore, in the case of digital firms, user growth may lead to indirect network effects whereby the data provided by additional users helps the firm to improve its offering for all users²⁸. This makes acquiring other digital firms with large user bases particularly attractive. More generally for any firm using data to improve their offering, Hagiu and Wright (2021) propose that incumbent firms who have already accumulated vast amounts of data may be incentivised to acquire firms it does not directly compete with to prevent rivals from acquiring and learning from the target's data²⁹.
22. A concerning type of practice that has emerged with modern markets is a 'killer acquisition', a situation whereby a large firm acquires a smaller innovative company in markets adjacent to their main activity to eliminate future rivals or threatening innovations. Lear (2019) on reviewing past UK merger decisions in the digital sector on behalf of the CMA, found that between 2008 and 2018 Google, Amazon and Facebook made a total of 299 acquisitions, with most acquisitions lacking clear horizontal elements. Lear notes how very few of these mergers underwent a Phase 1 review by the CMA or the EU Commission³⁰.
23. As well as being harmful to future competition, killer acquisitions can be harmful to innovation. They act as a disincentive for the acquirer to pursue innovations that it otherwise may have pursued to compete with the potential rival in the future, as it simply removes the rival. They can also result in the acquirer simply shutting down the rival's product, rather than bringing it to market, limiting the range of products available to consumers.
24. Using data from the US pharmaceutical sector, Cunningham, Ederer and Ma use empirical analysis to illustrate that when acquiring firms with overlapping projects, there is a higher likelihood these projects are then discontinued by the incumbent³¹. This supports the hypothesis that incumbent firms may acquire innovative targets with the intention of terminating future competition threats.

²⁷ Competition and Markets Authority, Merger Assessment Guidelines, 2021

²⁸ Parker, G., Petropoulos G. and Van Alstyne, M., Digital Platforms and Antitrust

²⁹ Hagiu, A. and Wright, J., Data-enabled learning, network effects and competitive advantage (2021)

³⁰ Lear (commissioned by the CMA), Ex-post Assessment of Merger Control Decisions in Digital Markets (2019)

³¹ Cunningham, Colleen and Ederer, Florian and Ma, Song, Killer Acquisitions (April 19, 2020). *Journal of Political Economy*, Vol. 129, No. 3, pp. 649–702, March 2021

25. During its merger investigations, where appropriate, the CMA will assess the potential impacts on potential or dynamic competition³², however the CMA can only assess a merger in this way if it meets the relevant jurisdictional thresholds. Furthermore, the recent emphasis on the need to assess potential and dynamic competition matters has revealed a gap in the jurisdictional thresholds related to vertical and conglomerate acquisitions. Given the recent developments in markets outlined above, firms who acquire smaller firms operating in different supply chain segments or adjacent markets may effectively eliminate future entrants into the market. This also has implications for future dynamic competition if, in the absence of the transaction, the acquired firm may have launched a competing product.
26. The current turnover test applies to situations whereby the target firm has over £70m UK turnover and therefore is ineffective in capturing the acquisitions of small but disruptive businesses. Furthermore, the share of supply test relies on the creation or enhancement of at least a 25 per cent share of supply of particular goods or services which limits its effectiveness in capturing transactions between firms in adjacent markets. The CMA may be able to investigate some cases of this nature through its existing jurisdictional tests however these will not always be suitable and their application in this context may create uncertainty amongst businesses. Therefore, without a dedicated jurisdictional test to enable the CMA to reliably assess vertical and conglomerate acquisitions there will be insufficient enforcement of these types of transactions. This jurisdictional gap also provides a potential explanation of a contributing factor to the UK's declining competition levels in recent years, with the continued increase in market power arising in sectors which see these sorts of transaction likely to lead to detrimental impacts for consumers and the wider economy outlined below.
27. **The key market failure set out above is that of market power.** The term 'market power' here is used to encompass any scenario whereby an increase in market share leads to worse outcomes for customers, and a deadweight loss to society. Tackling market power will alleviate several negative implications for the wider economy:
- a. **Higher prices for consumers**³³: De Loecker and Eeckhout (2018) estimated a mark-up increase of 0.94 to 1.68 from 1980-2016 using the financial statements of UK companies³⁴. As an illustrative example of how this may impact prices, assuming that cost levels were constant and higher mark-ups feed through to higher prices, a simplified calculation implies an annual upward pressure on average annual price inflation movements of 1.6 percentage points³⁵;
 - b. **Reduction in productivity**: recent academic evidence suggests that rising market power has been associated with reductions in business investment, with implications for reduced productivity (Furman 2016³⁶, De Loecker and Eeckhout 2017³⁷).

³² Competition and Markets Authority, Merger Assessment Guidelines (2021)

³³ Relative to a competitive situation, market power allows firms to raise prices and decrease output.

³⁴ De Loecker, J., & Eeckhout, J. (2018), Global Market Power, National Bureau of Economic Research, Working Paper 24768

³⁵ Aquilante et al (2019), Staff Working Paper No.798, Market power and monetary policy, Bank of England - This is a simplified calculation assuming costs are held constant and that an increase in mark-ups feeds through to higher prices. Therefore, to estimate the implied upward pressure on average inflation rates between 1980 and 2016 that will have cumulated over the period to generate the assumed price level increase arising from the increase in the mark-up uses the following calculation: $(1.68 - 0.94)^{(1/36 \text{ years})} - 1 = 0.016$

³⁶ Furman, J. (2016) Beyond Antitrust: The Role of Competition Policy in Promoting Inclusive Growth speech to Searle Center Conference on Antitrust Economics and Competition Policy.

³⁷ De Loecker, J., & Eeckhout, J. (2017). The rise of market power and the macroeconomic implications. (No. w23687). National Bureau of Economic Research.

- c. **Reduction in wages:** the increase in market power has also been suggested as a factor driving the fall in the share of income going to workers and thus potentially leading to stagnant wage growth (Autor et al 2019³⁸, Barkai 2020³⁹).
- d. **Poor consumer satisfaction:** firms that are not exposed to strong competitive pressure from rivals lack incentives to improve product or service quality. Survey evidence shows poor consumer satisfaction in several UK markets, with services⁴⁰ markets underperforming relative to goods markets⁴¹.
- e. **Reduction in innovation:** firms competing are likely to do so through product differentiation. Product differentiation distinguishes one good from another through some type of desirable characteristic to consumers which can often lead to innovative new products. Furthermore, firms may also compete through lowering price, which in turn may drive reductions in production costs to maintain margins, increasing productive efficiency in the process. Striving towards productive efficiency may lead to innovative new methods of production. An increase in market power and the associated fall in competition is likely to lead to a dampening of these innovative forces. Using data from horizontal mergers between pharmaceutical firms in Europe, Haucap and Stiebale (2016) estimate that in post-merger periods, innovation outputs by the merged entity and its competitors falls on average by over 30% and 7% compared to other firms respectively⁴²

A decline in the real level of the turnover threshold

28. A separate issue affecting merger control is that inflation arising from economic growth has led to a reduction in the real level of the turnover test. The existing threshold for UK turnover of £70m was introduced when EA02 came into force in 2003. The original threshold of £70m was chosen as it was identified as a sensible indicator of a large transaction which may present competition concerns whilst not being overly extensive in its jurisdiction over merger activity. Since then, it has not been updated for inflation, although the overall price level rose around 47 per cent between 2003 and 2020. As the real turnover threshold declines the number of businesses who fall into CMA's jurisdiction also increases. At the time of the thresholds introduction, data from the Financial Accounting Made Easy (FAME) database recorded 5,350 businesses generating £70m or more UK turnover in 2000/01⁴³. In 2020 FAME recorded roughly 7,700 businesses meeting this threshold.
29. The turnover of merging parties is not a conclusive indicator of a potential harm to competition when viewed in isolation, however the turnover threshold should uphold the balance of capturing large mergers whilst not overreaching as to cause unnecessary merger notifications from business, which would also be costly to the CMA. That said, the FAME data shows an approximate 44% increase in the number of businesses meeting this threshold over the period which illustrates the extent to which the turnover test has, and will continue, shifting towards capturing more mergers.
30. This effective increase in jurisdiction will lead to some risk averse businesses who are now within the threshold self-assessing as to whether they should notify the CMA. A large proportion of these self-assessments and the associated costs will be unnecessary as the turnover threshold's proficiency to act as a gauge of a potential SLC situation

³⁸ Autor, D., Dorn, D., Katz, L. F., Patterson, C., & Van Reenen, J. CEP Discussion Paper No 1482 Revised May 2019 (Replaces May 2017 version) The Fall of the Labor Share and the Rise of Superstar Firms.

³⁹ Barkai, S. (2020). Declining labor and capital shares. *The Journal of Finance*, 75(5), 2421-2463.

⁴⁰ Particularly telecommunications, transport and utilities.

⁴¹ CMA (2020) The State of UK Competition.

⁴² Haucap, J., Stiebale, J. (2016). How mergers affect innovation: Theory and evidence from the pharmaceutical industry, DICE discussion paper no. 218

⁴³ Hansard, House of Commons Debates, 30th October 2002, Column 937 -

<https://publications.parliament.uk/pa/cm200102/cmhansrd/vo021030/debtext/21030-22.htm>

deteriorates. Consequently, this gives reason to amend the turnover test to reflect its original intention and to ensure the regime is not overly onerous on likely benign transactions.

Policy objectives

31. Government seeks to have a merger control system that imposes proportionate requirements on benign or low risk mergers while ensuring robust scrutiny of mergers that raise potential concerns. The objectives of the reforms proposed are to help the UK merger control system operate more effectively:
 - i. Ensure the UK's merger control regime is focused on mergers which are likely to cause harm to consumers and markets, whilst reducing or removing the burden to businesses where transactions are less likely to be harmful.
 - ii. Reduce the time and costs of merger review faced by businesses during self-assessment and provide greater clarity and certainty to businesses about when they will be covered by the UK's merger control regime.
 - iii. Improve market efficiency and consumer outcomes through increased competition.
32. Accurately assessing the level of competition in the UK is complex as there are many contributing macroeconomic factors, furthermore there are various ways in which levels of competition are measured, with these metrics often being proxies for competition as opposed to holistic indicators. As the merger control regime is only one contributing component of the competition system, it is not possible to robustly assign key performance indicators to the SMART objectives. Considering the absence of measured policy objectives, the '**Monitoring and Evaluation**' section of this IA outlines how the key evaluation questions link to each objective to ensure the framework is adequately designed to determine whether the reforms were successful.

Rationale and evidence to justify the level of analysis used in the IA

33. The proposals outlined in this Impact Assessment include reforms to the jurisdictional thresholds required for the CMA to instigate a merger review and two reforms to the process itself. The merger review process entails various costs for firms pursuing the merger in the form of internal administration costs, and external legal and economic consultant costs arising from navigating and complying with the review procedures. Therefore, any measures that change the number of mergers that come into scope of review have the potential to create costs to business. Likewise, assumptions this analysis uses on the cost of merger review affect the estimated impacts.
34. Following the consultation, government has undertaken various evidence gathering activities to strengthen the quality of estimates made on the costs of merger review to business. These assumptions underpin the model used in the cost-benefit analysis. Specifically, surveys were conducted with key parties involved in the merger review process to collect information on the resource needed to facilitate merger review. Furthermore, these assumptions have been agreed with the CMA who hold vast experience in undertaking these procedures as the competition regulator and are in line with feedback received from the consultation.
35. Consumer benefits per intervention have been estimated by taking an average of the total consumer benefits estimated to have been delivered from merger interventions during 2018/19 – 2020/21 outlined in the CMA's annual impact assessment⁴⁴. This has been deemed a suitable approach given the CMA's extensive knowledge of their

⁴⁴ CMA Impact Assessment 2020 to 21, Competition and Markets Authority (2021)

interventions whilst also averting the need to commission extensive research into the consumer benefits delivered by merger control. Moreover, this approach is prudent as well as proportionate given that it does not capture the wider benefits of merger intervention such as deterrence which is recognised by the CMA as substantial. Therefore, government is confident that this approach does not skew the estimated cost and benefit profile, but rather is a justified and conservative one.

36. Government understands that each merger review is unique and therefore emphasises that these assumptions are indicative of a moderately complex merger case. However, following engagement with the CMA and industry stakeholders, government is confident that a proportionate approach to the analysis has been taken given a lack of alternative evidence sources on these matters. Further to this, to address uncertainty, the analysis uses ranges for each cost assumption as well for caseload implications of the proposed jurisdictions.
37. Please see the '**Risks and assumptions**' section (page 37) for a detailed assessment of key assumptions alongside their impact and quality rating.

Options longlist

38. Initially, a long list of options was considered which were judged to have a strong possibility of achieving the stated objectives. In line with Green Book methodology, following further research and engagement with stakeholders four Critical Success Factors (CSF) were defined which would be used to filter the longlist of options down to a shortlist of options using a multi-criteria decision analysis (MCDA).
39. The longlist of options consisted of a series of variations from the package of measures described in the preferred option (see para. 50). This list of proposals explored the possibilities of alternate jurisdictional threshold levels and policy combinations which were considered viable. Given the sophisticated nature of the merger control regime, many of the impacts theoretical thresholds could have on businesses are unquantifiable and therefore a MCDA would enable each option to be assessed holistically through qualitative means.
40. The CSF summarise the key elements of the reforms needed to achieve the intended objectives:
 - a. **Proficiency in capturing harmful mergers** – this criterion assesses a policy option's proficiency in capturing mergers which have a genuine prospect of resulting in a SLC. This considers horizontal and vertical mergers, as well as killer acquisitions and potentially harmful local mergers.
 - b. **Proficiency in minimising benign notifications** – this criterion assesses an option's proficiency in minimising the number of merging businesses with no prospect of a SLC notifying the CMA. The assessment considers whether the thresholds are set at an appropriate level to capture genuine SLCs as well as the clarity they offer to business.
 - c. **Ease of self-assessment for business** – this criterion concerns the ease with which businesses can self-assess themselves as in or out of CMA jurisdiction. It considers the certainty an option offers to businesses in ensuring self-assessment outcomes and CMA assessments are aligned.
 - d. **Ease of establishing jurisdiction for the CMA** – this criterion measures the efficiency with which the CMA can establish jurisdiction over a merger. It considers

how an option will facilitate speed, correctness and resource requirement for the CMA to establish jurisdiction.

41. Each CSF was assigned a weight to reflect the importance each CSF has in terms of achieving the stated objectives, the selected weights are presented in Table 1.

Table 1 – CSF weights

Critical Success Factor	Weight
Proficiency in capturing harmful mergers	0.25
Proficiency in minimising benign notifications	0.25
Ease of self-assessment for business	0.25
Ease of establishing jurisdiction for the CMA	0.25

42. The MCDA gathered qualitative assessments to score each option on a scale of one to five against each CSF, the scores were then totalled to arrive at an aggregate score on the viability of the option.

43. The preferred option described above scored the highest in the MCDA with this option taken forward and appraised quantitatively. The amendment to the turnover test threshold and the introduction of the safe harbour meant this option scored well on proficiency in minimising benign notifications and ease of self-assessment for business. Furthermore, these deregulatory provisions were assessed to not materially damage the CMA’s ability to capture harmful mergers or establish jurisdiction and therefore scored better than options offering more extensive deregulatory amendments. Additionally, the introduction of the acquirer focussed threshold fills a current gap in the CMA’s jurisdiction and bolsters the CMA’s ability to promote dynamic competition. In this regard, the government noted the expanded jurisdiction of this new threshold comes with trade-offs in terms of minimising benign notifications, however following consultation feedback the threshold levels were increased which led to it scoring more favourably in this respect.

44. Overall, the preferred option scored the highest when assessed across the CSF as it was qualitatively judged to have thresholds which balance the trade-offs between ensuring the CMA has the necessary jurisdiction to tackle harmful mergers whilst also ensuring the regime is not overly burdensome on business.

45. Given that some aspects of the CSF cannot be quantified robustly due to the subtle nature in which they impact the merger regime and involved parties, only the highest scoring option has been appraised. This was a proportionate decision taken to reflect the reality that some aspects such as business certainty under a specific option cannot be quantified due to a lack of available evidence, undermining the value of a quantitative assessment between options. However, these form part of the evidence to be strengthened through monitoring and evaluation to inform future policy decisions in the space.

Description of options considered

46. This impact assessment considers three options:

- a. Do-nothing
- b. Preferred option
- c. Non-regulatory option

Do-nothing option

47. This uses the current jurisdictional thresholds and acts as the appraisal's counterfactual scenario. Aside from mergers with national security considerations or other narrowly defined public interest dimensions, for the CMA to have jurisdiction it must be anticipated that two business enterprises will cease to be distinct (typically, this is because one business acquires another) and, either:
- a. The business that is being acquired must have a **UK turnover of more than £70m** (the 'turnover' test); or
 - b. The merger would result in the creation or enhancement of at least a **25 per cent share of the supply of particular goods or services in the UK**, or a substantial part of the UK (the "share of supply test").
48. Acquisitions of small businesses by much larger ones will likely be able to escape jurisdiction at the expense of potential and dynamic competition. Although the current jurisdiction tests will enable the CMA to investigate most transactions which potentially threaten competition there is likely to be a growing incidence of now identified harmful transactions which escape review as macroeconomic factors such as digitalisation and globalisation make markets increasingly dynamic.
49. **Furthermore, inflation arising from economic growth will lead to a reduction in the real level of the turnover test.** As the real turnover threshold declines the number of businesses who fall into CMA's jurisdiction also increases, leading to a subsequent increase in the number of businesses undertaking self-assessments to determine whether they should notify the CMA of mergers they pursue. A large proportion of these self-assessments and the associated costs will be unnecessary as there is a deterioration in the turnover threshold's proficiency to act as an indicator of a transaction large enough to potentially threaten competition.

Preferred option

50. This option introduces amendments and additions to current CMA jurisdictional thresholds set out in EA02 and introduces three measures which streamline or add flexibility to the merger review process:
- a. Raise the **UK turnover threshold from £70 million to £100 million** for the CMA to target a merger⁴⁵.
 - b. Create a '**safe harbour**' for mergers involving parties that have a **UK turnover of less than £10 million, by exempting them from review**⁴⁶.
 - c. Introduce a new acquirer-focussed threshold to enable the CMA to review a merger if any business involved has both:
 - i. **a share of supply of at least one third** of a particular category of goods or service supplied or acquired in the UK or a substantial part of the UK; and
 - ii. **a UK turnover of more than £350 million.**

⁴⁵ Government will ensure that the threshold for intervention in media mergers on public interest grounds will continue to be £70m.

⁴⁶ Public interest interventions in media mergers will be exempted from the small merger safe harbour.

- d. Grant the CMA the power to agree to make a decision to fast track a case to a phase 2 investigation (a 'fast track decision') where certain conditions have been met.
- e. Streamline and fast track the consideration of commitments during Phase 2 investigations.
- f. Enable the CMA and merger parties to agree to temporarily 'pause' the statutory Phase 2 timetable.
- g. Replacing a statutory requirement that the CMA publish the merger Notification Form on the Gazette with a requirement to publish the notification form online.

51. The package offers two measures which are deregulatory in the increase in the turnover test threshold and the introduction of a safe harbour for small businesses whilst also offering a regulatory provision in the addition of the acquirer focused threshold (referred to previously as the 'hybrid' test). An efficient voluntary merger regime is optimised by case mix, as opposed to sheer quantity of cases. The reason being that the CMA is not structured to dedicate time and resources processing many benign cases under its current budget, rather it is designed to focus on reviewing the minority of transactions which present a potential SLC situation. Here the proposal strengthens the CMA's ability to reliably capture problematic vertical and conglomerate transactions whilst reducing the burden on mergers which are less likely to be harmful.

52. **The existing threshold for UK turnover of £70m was introduced when EA02 came into force in 2003. Since then, it has not been updated for inflation, although the overall price level rose around 47 per cent between 2003 and 2020⁴⁷.** The original intention of the turnover threshold was to act as a signal against transactions which were large enough to create a potential SLC situation whilst minimising unnecessary benign merger notifications under the UK's voluntary regime which is intentionally designed to investigate a small portion of mergers. At the time, based on the features of mergers which were raising competition concerns it was decided that £70m was an appropriate threshold to fulfil the balance stated above. A threshold of £70m in 2020 is equivalent to around £48m in 2003 prices, which represents a considerably lower threshold than that of the original policy intention.

53. This means that more mergers qualify for review on the grounds of being a relevant merger situation than would have been intended, which increases both the regulatory burden to businesses and the cost to the CMA of carrying out additional merger investigations. Updating the threshold to £100m brings the threshold's jurisdictional extent back in line with its original intention in 2003⁴⁸. FAME data for 2020 lists approximately 5,600 businesses in the UK with £100m or more UK turnover. This brings the number of businesses who meet the threshold broadly in line with the 5,350 businesses estimated to be within scope at the time of its introduction in 2002.

54. The acquirer focussed threshold effectively fills the gap in jurisdiction related to large firms acquiring smaller firms in adjacent markets as it only requires one party to meet the criteria which the threshold sets out. This will enable the CMA to reliably investigate transactions which have implications for dynamic and potential competition as it ensures they have the means to reliably investigate mergers between non-direct competitors where needed. Furthermore, the effectiveness of this new jurisdictional threshold is likely

⁴⁷ HM Treasury GDP deflators at market prices, and money GDP March 2021 (Budget). Deflation factor 100 for 2020 and 67.86 for 2003.

⁴⁸ £100m in 2020 prices is roughly equivalent to £68m in 2003 prices.

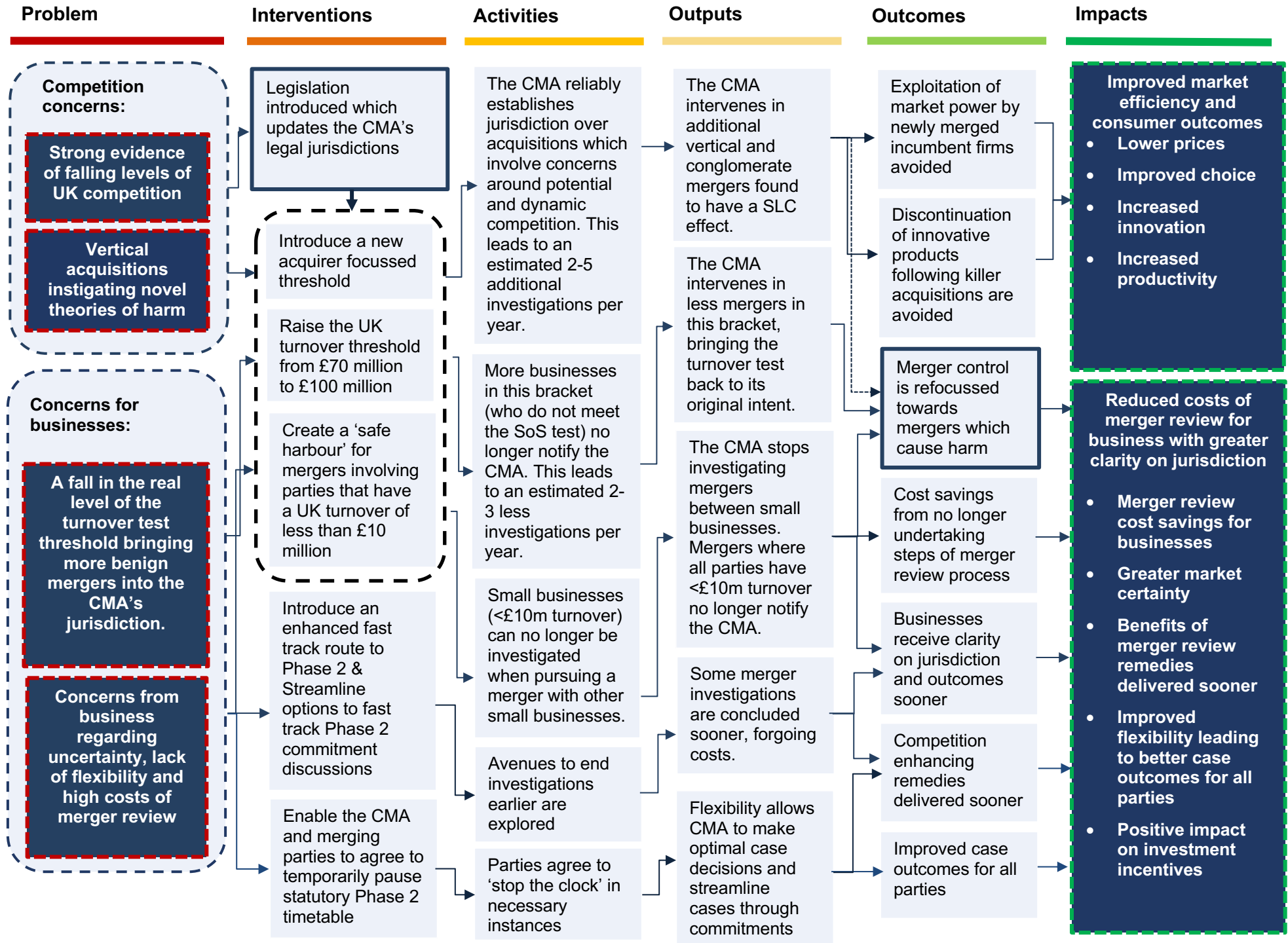
to be bolstered by the fact it builds upon pre-existing elements of the jurisdictional thresholds that the CMA are proficient in applying.

55. Following the consultation, **the acquirer focussed test thresholds have been increased to £350m and one third from £100m and one quarter respectively at consultation stage**. Whilst government seeks to provide the CMA the jurisdiction needed to adequately regulate M&A activity in rapidly evolving markets, an efficient regime balances both jurisdiction and certainty for business. Therefore, the upward revisions to the thresholds ensure that only the most relevant vertical and conglomerate M&A situations are captured whilst mitigating against the adverse impacts on business certainty of an over-extension of the CMA's jurisdiction.
56. It is anticipated that these levels will lead to the CMA investigating 2 to 5 additional cases of this type per year (see Table 3). Although this is a small increase in case load it is likely to bring significant competition benefits to the UK as this threshold is designed to capture the acquisitions of very large firms operating in already concentrated markets. Given the wide consumer reach of the large acquirers who will be subject to investigations through this threshold the potential benefits of additional CMA interventions, as well as these firms facing increased competition, will likely be large. Furthermore, where interventions involve disruptive and innovative firms the knock-on benefits to competition and consumer outcomes will be even greater relative to the alternative where a larger firm would have previously eliminated this potential rival through acquiring them without scrutiny.
57. The proposal to create a 'safe harbour' from CMA review for mergers involving parties that each have a UK turnover of less than £10m would offer certainty to small businesses seeking to merge as they will be exempt from CMA review regardless of their share of supply. Typically, mergers in this threshold see less scrutiny from the CMA as the scale of these firms means an SLC is less likely to occur in comparison to a merger between businesses operating at a much larger scale (the CMA will still intervene if an anti-competitive harm arises at a local level). Whilst government and the CMA are committed to upholding competition at a local level, the certainty this offers to qualifying businesses is valuable, particularly as small businesses who have struggled during the pandemic seek to recover.
58. The preferred option offers two measures which enable the review process to be streamlined in certain cases, with measures that allow businesses who suspect they will raise an SLC the ability to request a fast-track to Phase 2 whilst also enabling Phase 2 investigations to be resolved earlier through binding commitments from involved parties.
59. In some cases, where the potential for a merger to create an SLC is high, for instance when it involves two firms with large market share, merging parties may wish to waive their rights to early parts of the procedural process to reach an outcome more quickly. This may also be attractive to parties who are notifying their merger in multiple jurisdictions. The CMA therefore offers a 'fast track' process through which parties can request to either seek to settle the case with undertakings in lieu (UIL) or move directly to Phase 2 investigation. This reduces time and procedural burden on both the merging parties and the CMA.
60. Government has opted to proceed with an enhanced and flexible model for the merger fast track procedure. This will not set a cut-off point in legislation and will allow parties to request a fast track referral at any stage of pre-notification and the Phase 1 investigation (as opposed to requests having to be made prior to the Phase 1 investigation commencing). Government will allow the CMA to retain final discretion over whether to accept a fast track referral request. In these cases, the CMA will be able to make a

Phase 2 reference without the need to consult on the reference or issue a reasoned decision. Merging parties will not need to accept that the merger may create a substantial lessening of competition. This would avoid the CMA needing to do a substantial competition analysis at Phase 1, although the CMA would still need to determine at Phase 1 whether the merger is within its jurisdiction. This should lessen some of the procedural burden for involved parties and the CMA, leading to a reduction in administrative costs where the 'fast track' is used. It should not substantively affect the final decision as the competition concerns would be addressed in Phase 2, if necessary, but trims down potentially redundant early administrative process.

61. Currently, binding commitments can be offered either at the end of Phase 1 in lieu of a Phase 2 investigation or following the provisional findings of a Phase 2 investigation. Although a Phase 1 investigation will always have to run its course to adequately assess the need for a Phase 2 investigation, at Phase 2, if merger parties concede the SLC(s) identified at Phase 1 there is benefit to all parties in expediting commitment discussions. While the CMA would still have to conduct its Phase 2 investigation to arrive at its provisional findings, the Phase 1 SLC concession will allow for a lighter touch and quicker investigation. Considering this, the preferred option includes a proposal which updates CMA merger investigation guidance to streamline and fast track the consideration of commitments in a Phase 2 investigation. Through this proposed update to CMA guidance, the preferred option offers a practical and non-legislative avenue in which cases can be concluded sooner, reducing the cost and time of merger review to businesses at no expense to the CMA's ability to remediate harmful mergers.
62. Furthermore, the preferred option includes a measure which adds flexibility to the merger review process through enabling the CMA and merger parties to agree to temporarily 'pause' the statutory Phase 2 timetable where needed. Increased timeline flexibility at Phase 2 could in certain cases be in all parties' interest, for example, to align the CMA's investigation with overseas investigations in multijurisdictional merger reviews or to consider potential commitments. However, the current legislative framework does not allow for such clock-stopping even where all parties agree. Improved flexibility to 'stop the clock' in this regard would, in certain instances, improve the ability of both sides to arrive at the optimal case outcomes. Additionally, the need for both sides to agree to the pause eliminates any risk of gaming from either side.
63. Overall, the preferred option offers a balanced package of measures which will recalibrate and modernise jurisdictional thresholds and processes of merger review to focus on the transactions most likely to raise a relevant competition situation whilst offering more clarity and reductions in regulatory burden to businesses less likely to raise competition concerns.
64. Figure 2 (page 19) illustrates the intended mechanism of how the proposals set out in the preferred option flow through to the intended positive outcomes required to achieve the stated objectives.

Figure 2 - Theory of change



Non-regulatory option

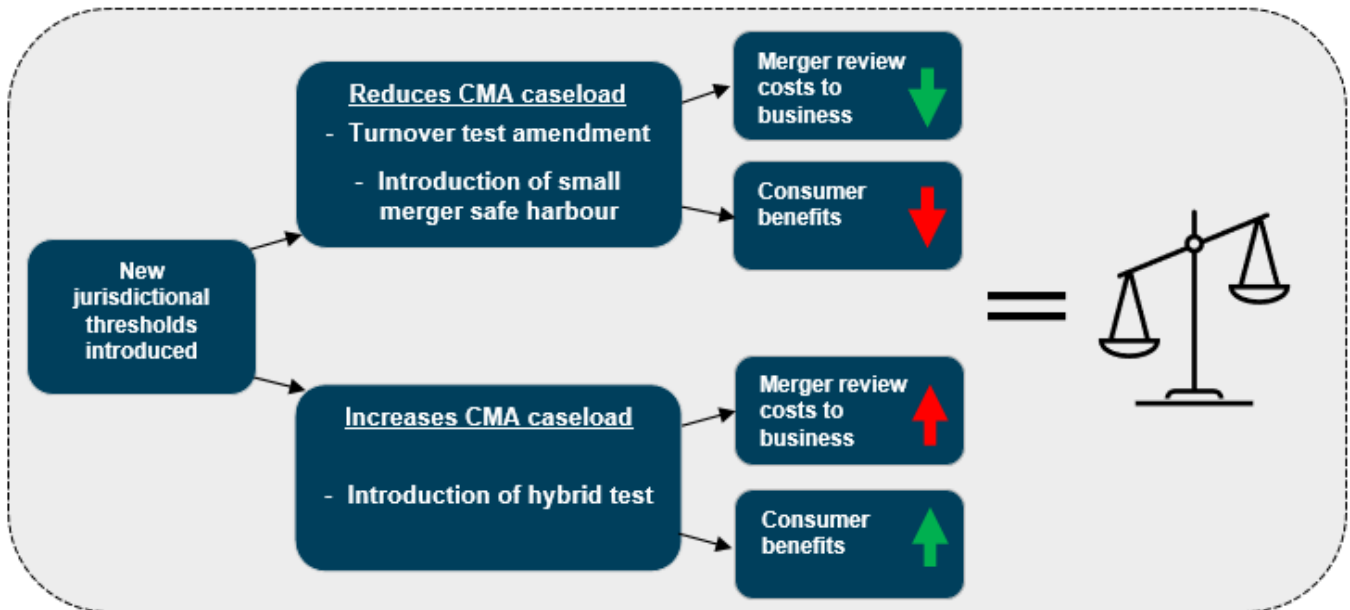
65. A non-regulatory option in isolation has not been appraised in this impact assessment as it would not adequately tackle the market failures, or the associated detrimental impacts described. That said, the preferred option does include a non-legislative measure which the government considers will contribute to achieving the stated objectives. The merger regime exists in its current form as free markets, absent of government intervention, would likely become concentrated if incumbent firms were free to exercise their market power and pursue supernormal profits at the expense of consumers.
66. Market-based incentives, self-regulation and increased provision of information fail to offer satisfactory avenues which present a real prospect of achieving the stated objectives. Even with competition law in place, there are frequent cases of businesses undertaking illegal activities such as price fixing and collusion in the pursuit of profit. This demonstrates the need for a public body to enforce competition law in a manner which a non-regulatory provision cannot achieve.
67. Regarding successful harmful transactions, revised merger guidelines were considered as an intervention before being discounted at the longlist stage. The CMA have recently updated their merger assessment guidance¹ and has gone as far as it can to effectively address harmful transactions where it has jurisdiction under the current legislation. The jurisdictional gaps outlined in this impact assessment, as well as the areas where the government seeks to ease jurisdiction, can only be addressed by updating thresholds outlined in legislation. In terms of reducing the burdens to business, the preferred option does propose that the CMA update their guidance to streamline and fast track the discussion of binding commitments earlier during Phase 2 investigations.
68. **The preferred option will come into effect through changes to EA02 implemented through primary legislation as part of the Digital Markets, Competition and Consumers (DMCC) Bill.** The CMA will issue guidance informing relevant parties of the implications these changes to the merger control system have. The arrangements will come into effect in 2025 once the Bill has undergone scrutiny in the fourth session of parliament. The implementation period will not contain a trialling period given the merger review process itself is largely unchanged.
69. **The CMA will be responsible for the ongoing operation and enforcement of the new arrangements given their role as the enforcer of merger law in the UK.**

Cost and benefit analysis framework

70. The cost-benefit profile is determined by the estimated change in caseload of the proposals and the associated impacts the compliance processes involved, and their outcomes have on businesses and consumers. Caseload changes have implications for businesses in terms of the additional costs imposed or foregone during merger review. For consumers, changes in caseload have knock on effects for the modelled number of CMA interventions which are assumed to deliver consumers benefits through the direct reduction in prices to consumers and the value to consumers of improvements in quality, service, or information provision following an intervention (see para. 74).

¹ Competition and Markets Authority, Merger Assessment Guidelines, 2021 - <https://www.gov.uk/government/publications/merger-assessment-guidelines>

Figure 3 - Cost-benefit analysis framework



71. The amendments proposed will not change the structure or complexity of the merger review process and its constituent parts. Only the Phase 2 ‘fast track’ measure will offer the option for a merger to forgo Phase 1 investigation, and this is a simplification of the process. Therefore, the estimated additional impacts of the proposed interventions arise from the expected caseload changes (or forgone Phase 1 investigations in the case of the fast-track) arising from each measure and the estimated costs of merger review.
72. The caseload implications of each amendment to the jurisdictional thresholds have been formulated using internal historic CMA case data and CMA expert advice. Moreover, in the case of the turnover test amendment and introduction of the safe harbour, historic case data is used to estimate the average number of yearly cases forgone based on previous investigations in the same brackets. In the case of the new acquirer focussed threshold, as transactions meeting these thresholds have not been previously observed the CMA has advised on the number of additional cases they expect to see based on recent merger activity. Merger activity is partly determined by wider economic conditions and therefore ranges have been used to convey this inherent uncertainty in all estimated caseload implications.
73. Assumptions on the proportion of cases which progress from Phase 1 to Phase 2 (16%) and the proportion of cases which the CMA remedies (28%) are estimated using CMA’s published merger outcome statistics². An average is taken from the last six years of data to ensure any assumptions on case progression are based on recent trends. When combined with the caseload change assumptions these form an indicative scenario of case outcomes which determine the extent of the costs or benefits of the additional cases faced by businesses and consumers.
74. The estimated consumer benefit per merger intervention is based on the direct financial benefits of merger control which the CMA reports in its annual impact assessment. The direct financial benefits to consumers may include direct reductions in prices to consumers, the value to consumers of improvements in quality, service and information provision following an intervention. To estimate the yearly impact of consumer benefits delivered, the CMA includes cases which have been amended through undertakings in

² Competition and Markets Authority, *Merger outcome statistics, 2022*

lieu, mergers that are abandoned, and mergers amended or prohibited by the CMA at Phase 2. The CMA estimates the consumer benefit of a specific case by multiplying the turnover of the affected goods and services (often called 'affected turnover') by an assumed benefit proportion which is developed from information gathered during an investigation. Similarly, the CMA case team often also collects information on affected turnover as part of its evidence-gathering and therefore it is often recalled from the original investigation. To be conservative, the CMA typically applies a narrow definition of the affected turnover by estimating it as the turnover of the directly affected firms. The CMA then aggregates the estimated consumer savings delivered by each case to arrive at the aggregate consumer benefit delivered during the period.

75. The benefits figures estimated by the CMA for mergers do not include the wider benefits of the CMA's merger control work and the wider merger regime. This includes the deterrence effect against anticompetitive mergers which the CMA expects has a significant impact.
76. The benefits from the UK merger regime are dependent on the cases that come to the CMA for assessment as well as the nature of the cases being assessed. Therefore, like the merger activity they are derived from, the estimated benefits of merger control are partly determined by the economic climate and can significantly vary year on year.
77. The average consumer benefit per intervention assumption is formed by taking the reported consumer benefits of merger control from 2019/20 to 2021/22 and dividing it by the number of CMA interventions in the same period. The three-year period was chosen to alleviate the effects of any year-on-year fluctuations in estimated benefits. This assumption is applied to all additional UK wide/multinational interventions (see Para. 94a for definition) modelled in the cost-benefit analysis. Given the anticipated benefits of any given intervention depend on many factors unique to that case, a more tailored approach towards modelling benefits would be inappropriate with the level of evidence available.
78. In the case of the small merger safe harbour proposal, when estimating the consumer benefits of anticipated changes in the number of interventions in small merger transactions the consumer benefit is scaled down to reflect the likelihood that impacts will be more contained, such as at a local level, given the smaller amount of affected turnover which will be involved. Here a ratio in line with the assumed difference in affected turnover is applied to scale down the benefit assumption.
79. The costs to business of the proposals are estimated by combining the expected caseload assumptions (and the subsequent case outcomes) with assumptions on the estimated cost imposed on businesses during each stage of merger review.
80. **Assumptions on the internal and external costs to business of the typical merger review process have been estimated using a Standard Cost Model. Here evidence gathered during the consultation and accompanying surveys has informed assumptions on the average amount of resource involved parties' input into each stage.** Please see the '**Risks and Assumptions**' section (para. 132) for more detail on the activities undertaken.
81. The Standard Cost Model involves the following parameters: tariff, time and frequency:
 - a. **Time refers to the number of staff hours diverted to the administrative activities of merger review** resulting from proposals considered in this Impact Assessment, and away from activity done towards the main purpose of the business. Time resource requirement assumptions for each stage of merger review have been formulated through surveys and CMA advice.

- b. **The tariff represents the cost of activity per hour.** Wage tariffs have been taken from earnings reported in the Annual Survey of Hours and Earnings³ (ASHE) and upscaled by a non-wage factor⁴.
- c. **Frequency refers to the number of additional businesses that will be subject to the requirement.** Frequency is assumed to be the change in caseload arising from the interventions.

82. The scope of this cost-benefit analysis is the merger review process itself and therefore it does not seek to quantify the costs associated with the logistics of merging. For this reason, it is assumed lawyers and economists are the only external specialisms sought for advice (in line with stakeholder feedback). Merging with or acquiring a firm is costly, therefore most businesses will seek a solid understanding of how likely the transaction is to raise a competition concern ahead of proceeding with a transaction. Businesses are incentivised to do this to mitigate the risk of incurring sunk costs only to have a transaction blocked by the CMA.
83. Whilst the government understands other specialisms such as accountants and tax advisors may be involved, this is likely at the discretion of the business as opposed to as a necessity. Furthermore, these specialisms are partly accounted for in the internal Standard Occupation Codes (SOC) used in the Standard Cost Model to represent a range of employees involved internally within a firm.
84. Government recognises that benefits delivered to consumers through lower prices because of an additional merger intervention represent a transfer from business given that, all else held equal, higher prices charged by a business lead to higher profits. Therefore, scenarios where an intervention means increased prices are not realised presents a cost to business in the form of foregone profit. The impacts a merger could have on consumers are complex and depend on various factors such as how many competitors remain in the market or whether any close product substitutes exist. This makes it difficult to assess the incentives for merging parties to increase prices post-merger for all cases, although the CMA will estimate the upward price pressure post-merger where the necessary evidence is available.
85. Given the difficulty in disentangling the price impact from the CMA's aggregated consumer benefit estimate in a robust manner, the government has not accounted for this cost in the appraisal. Given the wider benefits to all businesses from stronger levels of competition, the government is confident this approach is justified. Furthermore, consumers are likely to spend savings from lower prices in other areas of the economy. This case is strengthened by the reality that the CMA will only intervene in a merger found to be anti-competitive. This means any foregone profits would have arisen from increased market power as opposed to healthy business practices.
86. **The analysis assumes that the amendments to the jurisdictional thresholds impose additional familiarisation costs on legal firms only.** Given that only a small sub-section of the business population pursues a merger, it is unlikely that businesses themselves are highly familiar with the merger regime. Businesses become familiar with the regime at the point of scoping a merger meaning the amendments do not result in additional familiarisation costs for this group. However, as legal firms specialise in navigating the regulatory environment, it is assumed that corporate law firms practising M&A law in the UK will have to familiarise themselves with the amendments to the regime. Familiarisation costs per firm have been estimated by multiplying the average time taken to read the CMA's published merger guidance on jurisdictional thresholds by the assumed hourly legal rate to reflect the opportunity cost of foregone usual business

³ Annual Survey of Hours and Earnings: 2021 provisional results. Table 14.6a Hourly pay - Excluding overtime (£) - For all employee jobs: United Kingdom, 2020.

⁴ Derived from Eurostat data on wages and non-wage labour costs https://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs#Non-wage_costs_highest_in_France_and_Sweden

activity. This was then multiplied by the UK population of law firms specialising in M&A to arrive at an aggregate familiarisation cost estimate.

87. A breakdown of the familiarisation cost methodology is presented below:

Familiarisation cost = Reading time x Legal rate x Legal firm population

Key:

- *Reading time = (20,000 words⁵/100⁶ words read per minute) x 8 staff per firm*
- *Legal rate = £512⁷*
- *Legal firm population = 100 to 220 firms⁸*

88. It should be noted that inherent uncertainty arises in the analysis due to the variability in merger activity seen on a yearly basis which cannot be predicted with certainty.

Furthermore, each merger review is distinct in its characteristics. Therefore, all assumptions employ low, central and high sensitivities to convey the possible range.

89. Sensitivity ranges have been formulated using lower to upper bound estimates for assumptions on the costs of merger review and caseload changes of the proposals. When conducting surveys with industry on the costs associated with undergoing merger review procedures, the government asked businesses to provide lower to upper hourly resource estimates based on varying case complexity to inform sensitivity ranges. Furthermore, low and high caseload change sensitivities are informed by historic CMA case data and advice to form range assumptions on the expected change in caseload following the proposals based on recent trends. Familiarisation cost sensitivities have also been formed by constructing scenarios on the number of M&A firms who proactively familiarise themselves with the reforms. In the low scenario it is assumed that only high end and mid-market UK legal firms specialising in M&A familiarise themselves with the reforms. In the high scenario it is assumed that all legal firms in the UK specialising in M&A familiarise themselves with the reforms.

90. The central assumptions on the costs of merger review are the midpoint of the low and high assumptions. Government has taken this approach given that the costs of merger review will vary drastically and depend on the nature of the transaction and the complexity of issues involved in reviewing the case, including whether there are negotiations around undertakings or remedies. In this sense there is no such thing as a 'typical' merger case to formulate point central cost assumptions with, and doing so may imply false precision, this was also reflected in the feedback and evidence collected from stakeholders.

91. Please refer to the Risk and Assumptions section of this impact assessment to view an overview of the assumptions made with their impact and quality rating.

⁵ This is based on the CMA's existing merger guidelines document length

⁶ The words read per minute by legal compliance personnel is utilised in a recent FCA document - FCA (2021) Changes to the SCA-RTS and to the guidance in 'Payment Services and Electronic Money – Our Approach' and the Perimeter Guidance Manual

⁷ HM Government, Solicitors' guideline hourly rates. We conservatively assume London Grade 1, Class A: Solicitors and legal executives with over 8 years' experience working in London, 2021 (this is adjusted to 2019 prices in presented impacts)

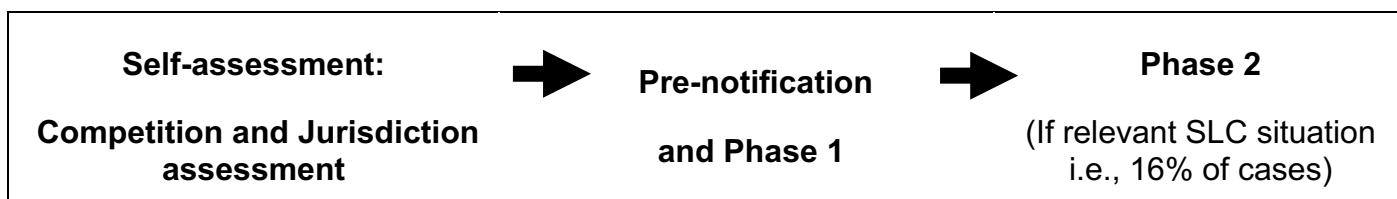
⁸ The population of UK based law firms practising M&A was estimated from 'Chambers and Partners' (2021) legal directory listings of corporate law M&A firms

Overview of quantified merger review procedures

92. The analysis breaks down the merger review process into three stages, producing cost estimates for each stage where applicable:

- a. **Self-assessment** – this is where businesses self-assess whether they should notify the CMA of a merger transaction they are a party to. This involves the business assessing whether they fall into the CMA’s jurisdiction and whether they may raise an SLC concern. Not all businesses who self-assess will go on to notify or be investigated by the CMA. This stage is assumed to impose internal business administration costs as well as external legal and economic consultancy costs to involved businesses.
- b. **Pre-notification and Phase 1** – this stage is assumed to start when a business begins interacting with the CMA concerning a transaction they are pursuing. This entails the processes business are subject to during the CMA’s investigation such as responding to requests for information and preparing a merger notice. This stage is assumed to impose internal business administration costs as well as external legal and economic consultancy costs on businesses.
- c. **Phase 2** – only a proportion of cases raising a relevant SLC situation go on to Phase 2. Similarly, to Phase 1, the costs of this process arise from facilitating the CMA’s investigation, but this time more in depth. Processes may include responding to an issues statement or a site visit from the CMA. This stage is assumed to create internal business administration costs as well as external legal and economic consultancy costs.

Figure 2 – Merger review process



Types of mergers

93. For the purposes of this appraisal, two categories of mergers have been classified to make a distinction between the types of mergers the different elements in the proposals will impact. Government recognises that no two merger cases are identical, however in the interest of quantification this categorisation conveys the difference in impacts of a smaller, local merger in comparison to a moderately complex case between two large firms.

94. Therefore, the analysis identifies the following types of mergers:

- a. **UK/Multinational merger transaction** – this group reflects a moderately complex merger transaction between two large businesses. For the purposes of the appraisal UK and multinational scale mergers have been grouped together. This decision was taken following feedback from stakeholders that there is great variation in the complexity within both UK and multinational mergers, with transactions between UK businesses having the potential to be as complex as multinational cases. Therefore, to avoid false precision in the assumed costs, these transactions were grouped together and share the same cost assumptions.

- b. **Small merger transaction** – this has been classified as a transaction between two parties who both have under £10m worldwide turnover. Typically, this would be a local merger between two smaller businesses and hence the associated costs and benefits of the merger review process are assumed to be significantly smaller than the above to reflect the relative complexity of the case.

Overview of quantified costs and benefits

95. Table 2 below contains a breakdown of the monetised costs and benefits for each group. Costs are classified as where an intervention leads to a subsequent increase in expense due to an additional increase in caseload, whereas savings occur where an intervention leads to a reduction in caseload and hence a merger review cost saving.

96. As costs arise from the policy provisions which increase CMA caseload and therefore increase the numbers of businesses going through merger review, **all costs to business estimated are classified as direct costs**. Indirect business costs have not been quantified in this appraisal as changes to the merger regime will only impact the small subsection of businesses considering or undertaking a merger. Furthermore, indirect impacts such as those on business certainty or deterrence cannot be quantified robustly with currently available evidence. Therefore, this appraisal does not attempt to quantify the indirect business impacts of updating the regime.

Table 2 – Breakdown of monetised impacts by group

Group	Impact (£)	Cost Category	Source
Business	Administration burden of self-assessment	Ongoing	Surveys to industry
	Administration burden of merger review	Ongoing	Surveys to industry
	Merger fees	Ongoing (transfer)	CMA fees
	External legal costs of self-assessment	Ongoing	Surveys to industry
	External economic consultant costs of self-assessment	Ongoing	Surveys to industry
	External legal pre-notification and review	Ongoing	Surveys to industry
	External economic consultant costs of pre-notification and review	Ongoing	Surveys to industry
	Familiarisation costs	One-off	Estimated from merger guidance

			and legal directories
Exchequer	CMA burden	Ongoing	Reported cost of review to CMA
	Merger fees	Ongoing (transfer)	CMA fees
Consumer	Consumer benefit per intervention	Ongoing	CMA Impact Assessment 2021/22

Administrative exclusions from the Business Impact Target score

97. The Business Impact Target (BIT) monitors the economic impact of qualifying regulatory provisions (QRPs) on businesses introduced during each parliamentary session.

98. In line with Better Regulation guidance⁹, there are specific instances whereby provisions do not count towards the BIT, for example if a provision promotes competition. These are referred to as non-qualifying regulatory provisions (NQRPs).

99. Given the merger reforms consist of both deregulation and regulatory competition provisions this section considers whether and where administrative exclusion D (pro-competition) applies. If the exclusion does apply to a provision, the measure will be classified as a NQRP and therefore its business impacts will not contribute to the BIT. A regulation meets the pro-competition administrative exclusion if it satisfies the following criteria:

- a. The measure is expected to increase, either directly or indirectly, the number or range of sustainable suppliers; to strengthen the ability of suppliers to compete; or to increase suppliers' incentives to compete vigorously.
- b. The net impact of the measure is expected to be an increase in [effective] competition (i.e. if a policy fulfils one of the criteria at (a) but results in a weakened position against another) and the overall result is to improve competition.
- c. Promoting competition is a core purpose of the measure.
- d. It is reasonable to expect a net social benefit from the measure (i.e. benefits to outweigh costs), even where all the impacts may not be monetised.

100. Although the acquirer focussed threshold will allow the CMA to review mergers it currently does not have jurisdiction over, the amendment to the turnover test threshold and introduction of the small merger safe harbour will take some investigations out of scope. In the low and high scenarios, it is expected there will be a reduction of -2 to -1 investigations respectively. The reforms have been designed to bring the mergers most likely to be harmful to competition into the CMA's jurisdiction whilst taking mergers less likely to be harmful out of jurisdiction to minimise the burden on businesses. Therefore, whilst the reforms are expected to lead to an overall improvement in competition, given there may be an overall reduction in merger investigation caseload, the pro-competition exemption will not be applied, and all measures will be classified as QRPs. All estimated direct costs to business across the entire policy package will therefore contribute to the

⁹ <https://www.gov.uk/government/publications/better-regulation-framework>

BIT. This is a prudent approach that will ensure the regulatory burden placed on businesses is not underestimated.

Monetised and non-monetised costs and benefits

101. Please see **Table 3** in the ‘**Risks and Assumptions**’ section of this Impact Assessment for detail on the assumptions which underlie the figures presented below. All monetised impacts are in 2019 prices unless stated otherwise.
102. The tables below present low to high impact estimates based on the cost assumption and caseload sensitivities of merger review used, i.e., the high scenario uses high merger review cost estimates and caseload assumptions.

Increasing the turnover threshold to £100m

	Annual Impact		
	Low	Central	High
Exchequer impact: CMA burden (£m)	0.20	0.25	0.30
Exchequer impact: Merger fees (£m)	-0.24	-0.30	-0.36
Exchequer impact: Total (£m)	-0.04	-0.05	-0.06
Business impact: administration burden of internal self-assessment (£m)	0.00	-0.02	-0.03
Business impact: administration burden of review (£m)	0.06	0.13	0.20
Business impact: Merger fees (£m)	0.24	0.30	0.36
Business impact: external legal self-assessment (£m)	-0.07	-0.30	-0.52
Business impact: external economist self-assessment (£m)	0.00	-0.18	-0.36
Business impact: external legal pre-notification and review (£m)	0.97	1.92	2.86
Business impact: external economist pre-notification and review (£m)	0.00	0.97	1.95
Business impact: Total (£m)	1.20	2.83	4.46
Consumer impact: interventions Total (£m)	-26.43	-33.04	-39.65
Net Impact (£m)	-25.27	-30.26	-35.25

103. **The amendment to the turnover test is estimated to lead to a reduction in the CMA’s Phase 1 caseload of 2 to 3 cases per year.** This has been estimated from CMA data from 2018/19 to 2020/21 showing that 8 Phase 1 reviews were opened on the grounds of the turnover test where the target had a UK turnover between £70-100m.

104. **Overall, the amendment to the turnover test level leads to an estimated annual net cost to society of £30.3m per year in the central scenario.** This is predominantly driven by the reduction in consumer benefits of £33m per year due to forgone merger interventions arising from the reduction in CMA merger investigation caseload. Given that this proposal reverts the turnover threshold back to its original intention, and that the Share of Supply test may still capture any potentially harmful mergers that do occur in the £70m to £100m bracket, it is expected that the consumer cost arising from this proposal may be smaller. That said, considering the lack of robust evidence and the importance of capturing the trade-off between business and consumer needs, which an effective merger control regime optimises, the full foregone merger intervention benefit is modelled. Furthermore, this proposal offers wider unquantified benefits to business (see para. 103) which further balance any anticipated cost to consumers.

105. **The intervention does lead to a small net benefit to business predominantly due to the avoidance of the external legal fees of merger review for businesses in the £70-100m bracket of £2.8m per year in the central scenario.** Although this proposal leads to a reduction in caseload, it is still assumed that 2 – 8 businesses earning £70-100m will now undergo a share of supply self-assessment to determine whether they remain within CMA jurisdiction. This imposes an additional cost as under the counterfactual these businesses would have fallen under jurisdiction due to meeting the £70m turnover test threshold (eliminating the need to assess share of supply), and it is assumed that it is costless for a business to assess their turnover. That said, these costs are outweighed by the savings arising from the avoided merger review costs because of the fall in caseload.

106. Furthermore, the proposal introduces a small cost to the Exchequer. The upwards amendment to the turnover threshold reduces caseload which offers a saving in CMA resource costs as they no longer need to pay the costs of running the investigations. However, the reduction in caseload also leads to a loss of merger fees charged to merging parties accrued by the CMA on behalf of HM Treasury. Merger fees vary by bracket¹⁰ depending on the UK turnover of the enterprise(s) being acquired, with the forgone revenue that would have been gained for transactions in this bracket outweighing the CMA saving.

107. **This measure is expected to introduce wider benefits which have not been quantified due to a lack of robust data.** These benefits predominantly concern the mitigation of benign notifications arising from the large fall in the real value of the turnover test since it was introduced. As merging is a costly process for involved parties, businesses are inclined to seek confirmation from the CMA that the merger they're pursuing does not raise competition concerns before incurring the sunk costs of merging. Businesses may do this by formally notifying the CMA or undertaking the informal briefing route the CMA offers. Being within the CMA's jurisdictional thresholds is a sufficient enough reason for many risk-averse businesses to seek confirmation from the CMA through either of the routes mentioned above. This imposes resource costs to both businesses and the CMA of undertaking these processes. Although inflation will continue to devalue the real level of the turnover test over time, the increase proposed will apply downward pressure to the number of businesses seeking CMA approval, reducing the associated costs for both businesses and the CMA.

¹⁰ Merger Fees Information (2018), CMA - <https://www.gov.uk/government/publications/merger-fees-payment-information>

Introducing an acquirer focussed threshold

	Annual Impact		
	Low	Central	High
Exchequer impact: CMA burden (£m)	-0.20	-0.35	-0.51
Exchequer impact: Merger fees (£m)	0.10	0.18	0.25
Exchequer impact: Total (£m)	-0.10	-0.18	-0.26
Business impact: administration burden of internal self-assessment (£m)	-0.03	-0.09	-0.14
Business impact: administration burden of review (£m)	-0.07	-0.22	-0.37
Business impact: Merger fees (£m)	-0.10	-0.18	-0.25
Business impact: external legal self-assessment (£m)	-0.70	-1.65	-2.60
Business impact: external economist self-assessment (£m)	0.00	-0.90	-1.80
Business impact: external legal pre-notification and review (£m)	-0.97	-2.87	-4.77
Business impact: external economist pre-notification and review (£m)	0.00	-1.62	-3.25
Business impact: Total (£m)	-1.87	-7.52	-13.17
Consumer impact: interventions Total (£m)	26.43	46.26	66.09
Net Impact (£m)	24.46	38.56	52.66

108. **The introduction of the acquirer focussed threshold is estimated to lead to an increase in the CMA's Phase 1 caseload of 2 to 5 cases per year.** Past acquisitions which met this test threshold would have previously been out of CMA jurisdiction and therefore historic CMA case data cannot inform its caseload implications. This assumption follows advice from the CMA whose Merger Intelligence Committee (MIC) considers cases that are not notified but which may fall within the CMA's jurisdiction. The MIC therefore holds extensive knowledge on the potential caseload implication of the introduction of this test to base an assumption on.

109. **It is estimated to have an overall positive impact on society at £38.6m per year in the central scenario.** This arises from increased consumer benefits following additional interventions in vertical and conglomerate merger cases.

110. **This measure is estimated to lead to a net cost to business of £7.5m per year in the central scenario.** The cost of additional businesses undergoing investigations because of the expanded jurisdiction imposes significant costs at an estimated £4.9m annually. Furthermore, additional businesses (assumed at 20-40) will have to undergo self-assessment because of this extension of the CMA's jurisdiction. Specifically, this is the cost businesses incur when they feel the need to evaluate whether they need to

notify the CMA of a merger they are considering, with the bulk of the cost arising from external legal and economic advice. This is estimated at £2.6m annually.

111. **This measure also introduces a small cost to the Exchequer at £0.18m annually in the central scenario.** The increase in caseload introduces an additional resource cost to the CMA who must conduct the investigations. Furthermore, this additional resource cost exceeds the merger fee revenue accrued on behalf of HM Treasury during the additional investigations for typical mergers in this bracket¹¹.

Introducing a small merger safe harbour

	Annual Impact		
	Low	Central	High
Exchequer impact: CMA burden (£m)	0.20	0.25	0.30
Exchequer impact: Merger fees (£m)	0.00	0.00	0.00
Exchequer impact: Total (£m)	0.20	0.25	0.30
Business impact: administration burden of internal self-assessment (£m)	0.00	0.00	0.00
Business impact: administration burden of review (£m)	0.01	0.01	0.02
Business impact: Merger fees (£m)	0.00	0.00	0.00
Business impact: external legal self-assessment (£m)	0.00	0.00	0.00
Business impact: external economist self-assessment (£m)	0.00	0.00	0.00
Business impact: external legal pre-notification and review (£m)	0.10	0.19	0.29
Business impact: external economist pre-notification and review (£m)	0.00	0.10	0.19
Business impact: Total (£m)	0.10	0.30	0.50
Consumer impact: interventions Total (£m)	-2.24	-2.80	-3.36
Net Impact (£m)	-1.93	-2.25	-2.56

112. **The introduction of the small merger safe harbour is estimated to lead to a reduction in the CMA's Phase 1 caseload of 2 to 3 cases per year.** This has been estimated from CMA data from 2018/19 to 2020/21 showing that there were only seven Phase 1 cases opened where both parties had a UK turnover of less than £10m.

113. **The small merger safe harbour is the lowest impact of the significant measures and presents a small cost to society of £2.3m per year in the central scenario.** This

¹¹ As this is an acquirer focused threshold test, it is assumed that most enterprises being acquired in this bracket earn £20 million or less and hence fall into the lowest CMA merger fee bracket of £40,000.

arises from the forgone consumer benefits (£2.8m) of the small number of transactions that may have previously been remedied in this bracket.

114. **The net impact on business of this measure is positive given the avoidance of merger procedure costs for exempt businesses (£0.3m annually in the central estimate). This measure also presents a net benefit to the Exchequer (£0.25m) due to the foregone costs of the CMA reviewing the cases.** There are no foregone merger fees in this instance as mergers in this turnover band are not eligible to pay fees as the firm being acquired would be exempt under the circumstance of it being a small or medium sized enterprise.
115. **This measure is expected to deliver wider benefits which have not been quantified in this analysis, including increased certainty to small businesses seeking to merge who no longer need to consider notification.** Given the wider benefits this offers to small businesses, particularly in light of the economic impact of the pandemic on small businesses, this measure has been deemed beneficial to society despite a negative SNPV.

Enhancing the merger fast track process

	Annual Impact		
	Low	Central	High
Exchequer impact: CMA burden (£m)	0.01	0.02	0.04
Exchequer impact: Merger fees (£m)	0.00	0.00	0.00
Exchequer impact: Total (£m)	0.01	0.02	0.04
Business impact: administration burden of internal self-assessment (£m)	0.00	0.00	0.00
Business impact: administration burden of review (£m)	0.03	0.12	0.22
Business impact: Merger fees (£m)	0.00	0.00	0.00
Business impact: external legal self-assessment (£m)	0.00	0.00	0.00
Business impact: external economist self-assessment (£m)	0.00	0.00	0.00
Business impact: external legal pre-notification and review (£m)	0.14	0.60	1.06
Business impact: external economist pre-notification and review (£m)	0.00	0.35	0.71
Business impact: Total (£m)	0.16	1.07	1.98
Consumer impact: interventions Total (£m)	0.00	0.00	0.00
Net Impact (£m)	0.17	1.10	2.02

116. The fast track measure has been assumed to lead to a reduction of 1 to 4 Phase 1 investigations per year. This is estimated to result in a net benefit to society of £1.1m annually in the central scenario. This comprises benefit to both the Exchequer and to business due to foregone Phase 1 merger review costs.

Streamline and fast track the consideration of commitments during Phase 2 investigations

117. There is no obligation for businesses to concede the Phase 1 SLC decision and subsequently enable a lighter touch Phase 2 investigation and expedite commitments discussions as the proposal only entails updates to CMA guidance and therefore is non-legislative. Furthermore, if they do, the extent to which this will reduce the time needed for the CMA to come to Phase 2 provisional findings is inherently uncertain and case specific. Therefore, in the interest of taking a prudent approach to benefits estimation, the impacts of this measure have not been quantified. That said, it is not expected to introduce any costs to businesses, consumers or the Exchequer. In cases where the enhanced CMA guidance does lead to the faster resolution of a Phase 2 investigation, both businesses and the Exchequer will benefit from cost reductions.

Enable the CMA and merging parties to agree to temporarily ‘pause’ the statutory Phase 2 timetable

118. There is no requirement on the CMA or businesses to pause the statutory Phase 2 timetable unless all parties agree it would be beneficial to the investigation. Therefore, this measure is not expected to impose significant costs on businesses or the Exchequer but rather it should lead to improved outcomes for the CMA and merging parties. For example, this would allow all parties to agree to ‘stop the clock’ to align the CMA’s investigation with overseas investigations in multijurisdictional merger reviews. The CMA notes that there can be substantial benefits (to merging parties and competition authorities, and therefore, in turn, to consumers) from cross-jurisdictional alignment in such merger reviews (e.g., by allowing competition authorities to communicate and coordinate extensively to reach improved and, where appropriate, aligned decisions on the competition assessment and remedies). In this scenario the parties under investigation may save on merger review costs because of alignment whereas the CMA will also be able to consider relevant factors of the overseas authority’s investigation. The power would also allow parties more time to consider potential commitments which lead to the quicker resolution of investigations.

119. In the circumstances where the timetable is paused, the resulting impact on the outcome of the investigation and involved parties will depend on the length and reason for the pause. As these factors are case specific and cannot be pre-empted, the impacts of this measure remain unquantified. Despite this, given the need for agreement from both parties, the timetable will only be paused where both parties perceive that the pause would be mutually beneficial. It is anticipated that this measure presents a net benefit to society, where increased Phase 2 timetable flexibility leads to more optimal resolution of competition concerns whilst lowering the costs and time constraints placed on parties under investigation.

Replacing a statutory requirement that the CMA publish the merger Notification Form on the Gazette with a requirement to publish the notification form online.

120. Businesses that wish to notify a merger to the CMA voluntarily use a prescribed merger notification form, also known as a Merger Notice. Currently, the CMA is required to

publish the latest version of this form in the London, Edinburgh and Belfast Gazettes, but in practice, has already been publishing its forms and guidance documents online through its website for a substantial period.

121. Government proposes that the existing obligation is replaced with a requirement for the CMA to publish the Merger Notice online, which the CMA has already started doing on its website. Given recent developments in digitalisation and the growing use of technology, the government considers that there is merit to future proofing the legislation by mandating that the merger notice is published 'online' in some form rather than specifically on the CMA's website.

122. Materially, this presents very little change from the status quo, and where change does occur it is likely to result in cost savings for the CMA publishing the notices online (for example, on their own website) whilst reducing search times for businesses and consumers who view merger notices. Therefore, this measure has been deemed as cost neutral.

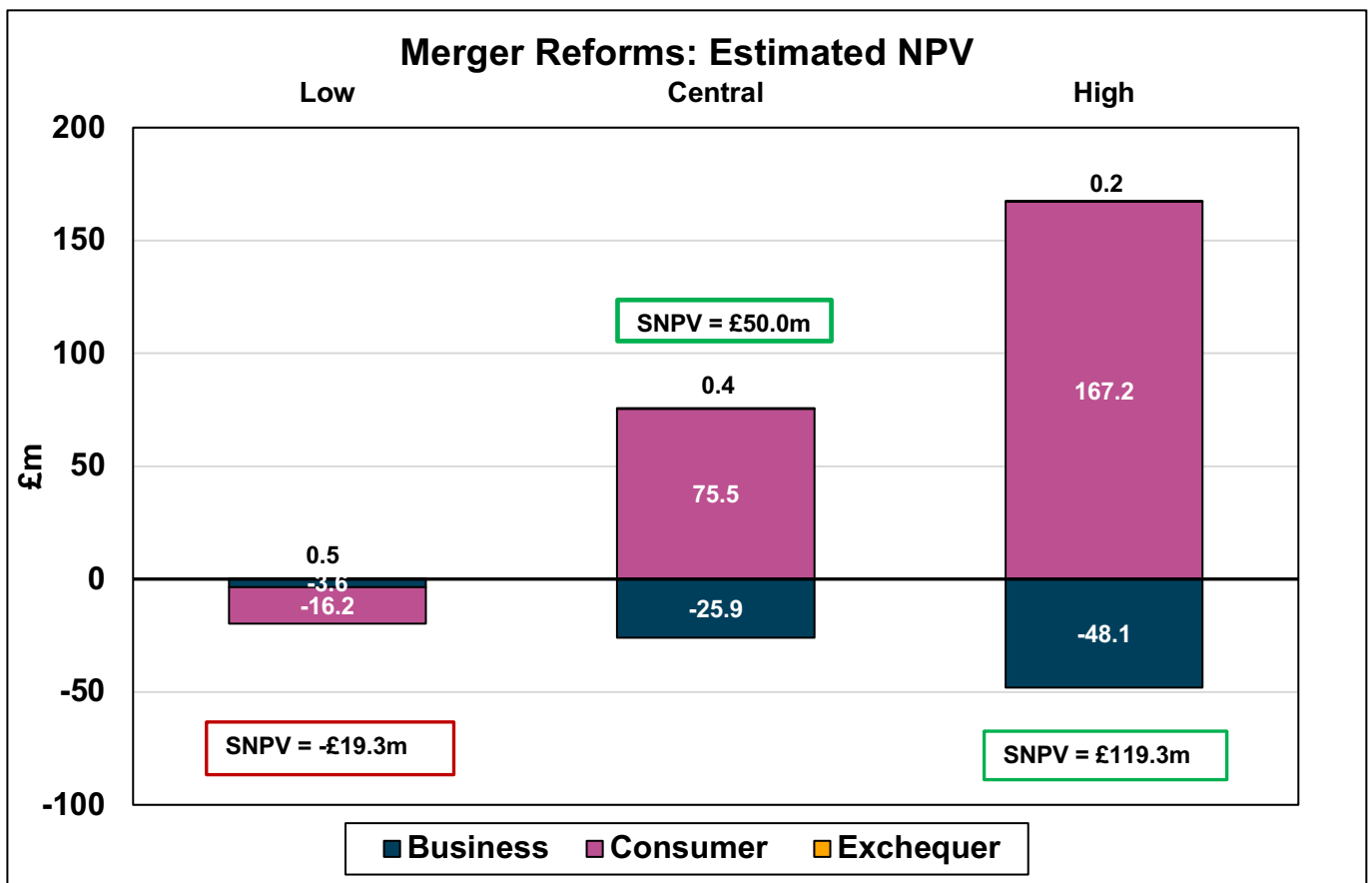
Total impact of the preferred option

	Annual Impact		
	Low	Central	High
Exchequer impact: CMA burden (£m)	0.21	0.18	0.14
Exchequer impact: Merger fees (£m)	-0.14	-0.13	-0.11
Exchequer impact: Total (£m)	0.07	0.05	0.03
Business impact: administration burden of internal self-assessment (£m)	-0.03	-0.10	-0.17
Business impact: administration burden of review (£m)	0.02	0.05	0.07
Business impact: Merger fees (£m)	0.14	0.13	0.11
Business impact: external legal self-assessment (£m)	-0.77	-1.95	-3.12
Business impact: external economist self-assessment (£m)	0.00	-1.08	-2.16
Business impact: external legal pre-notification and review (£m)	0.23	-0.17	-0.57
Business impact: external economist pre-notification and review (£m)	0.00	-0.20	-0.40
<i>Familiarisation cost¹² (one-off cost)</i>	<i>-0.81</i>	<i>-2.18</i>	<i>-3.56</i>
Business impact: Total (£m)	-0.41	-3.32	-6.23
Consumer impact: interventions Total (£m)	-2.24	10.42	23.07
Net Impact (£m)	-2.57	7.15	16.87

¹² This is not included in the presented total annual impact as it is a one-off cost imposed on legal firms.

123. **The total package of measures is estimated to result in a small net benefit to society of £7.2m per year in the central scenario arising from increased benefits to consumers.** The package is estimated to impose a small cost on businesses arising from increased self-assessment and merger review costs arising from the introduction of the acquirer focussed threshold. **The cost to business is estimated at £3.3m per year although comparing this to the overall consumer benefit gained shows that for every pound of cost imposed on businesses consumers are expected to receive roughly three pounds back.**
124. **The proposals are expected to impose a one-off £0.8 to £3.6m familiarisation cost on legal firms specialising in M&A in the UK.** This assumes there are 100 to 220¹³ legal firms who will examine the updated CMA mergers guidance.
125. **The policy package is expected to have a minor impact on the Exchequer overall in the central scenario, with estimates indicating a £0.05m benefit per year arising from a reduced cost burden to the CMA arising from a slight reduction in caseload.**
126. Assuming a ten-year appraisal period with costs and benefits commencing in 2025 and applying a 3.5 per cent annual discounting rate (2020 base year), **the package is estimated to have a Social Net Present Value (SNPV) of £50m (2019 prices).** See Figure 4 for a breakdown by affected group including low and high SNPV scenarios.

Figure 4: SNPV breakdown by group, (2019 prices, discounted)



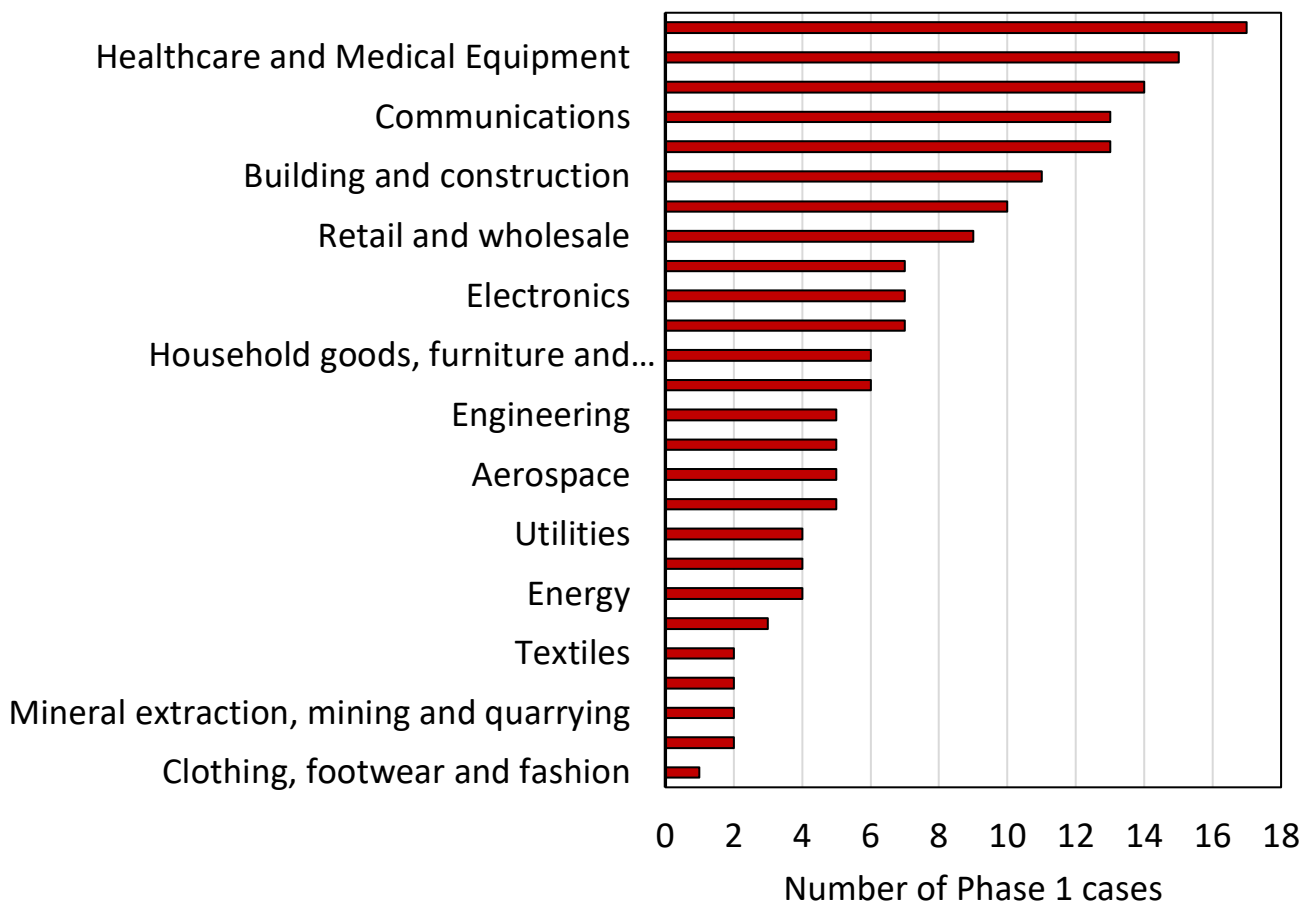
¹³ The population of UK based law firms practising M&A was estimated from 'Chambers and Partners' (2021) legal directory listings of corporate law M&A firms

127. **The total business NPV is estimated at -£25.9m (2019 prices) with a total Equivalent Annualised Net Direct Cost to Business (EANDCB) of £3m (using a 2020 base year)** arising predominantly from the costs to business of self-assessing whether they are within the new jurisdictional thresholds.

128. As set out in the administrative exclusions section, all measures in the package are classified as QRPs. **This results in a BIT score of £15m.**

129. In comparison to the appraisal conducted at consultation stage the estimated impacts are broadly similar. Upward revisions to the assumptions on the internal merger review costs to business are reflected in the updated analysis whereby the impact of increased merger investigations on business is much more pronounced and in line with stakeholder feedback. The upwards revisions to business costs are offset by an upwards revision in the monetised consumer benefits per intervention assumption following new information from the CMA. This leads to a slight increase in the estimated SNPV relative to the consultation stage assessment.

Figure 5 - Phase 1 cases opened by sector 2017/18 - 2019/20



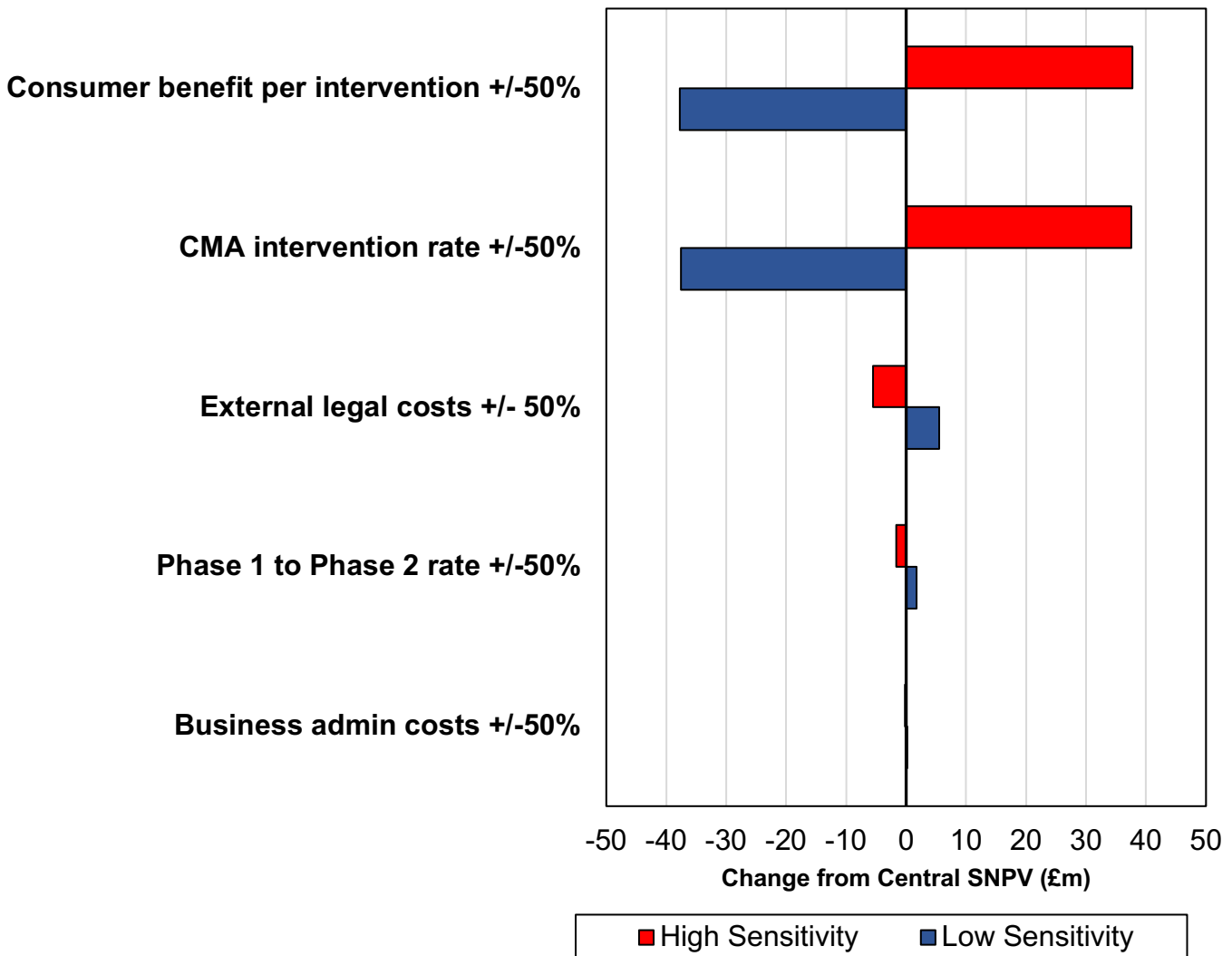
130. In terms of how impacts are expected to be distributed across sectors, Figure 5¹⁴ shows that merger investigations happened unevenly across sectors from 2017/18 to 2019/20, with most Phase 1 investigations being opened in the financial services, healthcare and distribution and service industries sectors. This disproportionality between sectors occurs due to variation in the competition characteristics of different markets, with merger enforcement naturally biting more in concentrated sectors where an SLC is more likely to arise, such as the financial services sector. Therefore, this disproportionality is no cause for concern as interventions will typically affect firms who hold considerable market power as opposed to vulnerable ones.

Sensitivity Analysis

131. Sensitivity analysis has been conducted to understand the impact of varying assumptions which hold significant uncertainty in the analysis. Whilst the analysis has used uncertainty ranges throughout, varying assumptions informs an understanding of the biggest drivers of the estimated impacts. Furthermore, it highlights risks which may arise as a result of external factors on the merger review process and the impact this will have on the estimated SNPV.

¹⁴ Please note, a small number of Phase 1 cases cut across several sectors and therefore have been duplicated in the sectoral breakdown. This means that the total of presented cases does not equate to the actual total number of Phase 1 cases opened over the period.

Figure 6 - Sensitivity Analysis Results



132. **Figure 6 demonstrates that the assumption on the consumer benefit per intervention has the largest impact on the estimated SNPV.** An increase in the standing assumption of fifty per cent leads to a subsequent 76 per cent increase in the modelled SNPV, and vice versa for an equivalent reduction in the assumption. Although this is a high-level assumption, it only captures the effect on price, quality, service or information provision of an intervention. It does not include wider benefits delivered to consumers through heightened competition levels such as innovation. This highlights the benefits that CMA intervention in harmful mergers can deliver to consumers, particularly in markets which reach a wide range of consumer groups.
133. **Similarly, the analysis is also very sensitive to the assumed proportion of cases which the CMA intervenes in.** Varying this assumption has the same impact as changing the consumer benefit per intervention assumption as it directly impacts the rate at which consumers receive benefits from CMA interventions.
134. **The analysis is slightly sensitive to assumptions on the costs of external legal resources to business.** This is expected given this cost forms the largest cost to businesses undertaking merger review. **The analysis shows that an increase in assumptions on legal fees of 50% lead to a reduction in the SNPV of 11% due to increased costs of review to businesses.** This is particularly important in the context of

complex cases which will require greater external legal resources and therefore will cost the involved parties significantly more.

135. **The analysis is not sensitive to the assumption on the proportion of cases which go on to Phase 2.** An increase in the Phase 1 to Phase 2 rate of 50 per cent leads to a reduction from the central SNPV of 3%. This arises from increased costs to businesses because of more in-depth Phase 2 investigations. Given that as a central estimate it is assumed that only 16% of businesses go on to a Phase 2 investigation the analysis is not sensitive to adjusting this assumption.
136. **The analysis is not sensitive to internal business administration costs given these costs form a very small portion of costs in comparison to legal fees.** A reduction in business administration cost assumptions of 50% leads to an estimated 0.4% increase in the SNPV.

Risks and assumptions

137. A series of assumptions have been made to enable the quantification of the expected impacts of the proposed merger control reforms, most notably on the costs a merger investigation imposes on a business. Government appreciates that no individual merger case is identical to another, and hence the resource and associated cost requirements will vary from case to case. Furthermore, merger activity varies year on year and is dependent on suitable economic conditions.
138. For these reasons, the analysis has used ranges for any assumptions to express the uncertainty present. Despite this, given a lack of wider evidence, error will still build in the estimates where uncertainty ranges come together. Table 3 below details the key assumptions made in the appraisal alongside the associated evidence source, quality and impact ratings.
139. Despite this uncertainty, the government is confident that this assessment has been conducted with the best available evidence following assumption testing conducted during the consultation period. Here, the government tested assumptions on the costs of merger review made in the consultation stage impact assessment with stakeholders familiar with merger review procedures. Stakeholder feedback stated that the assumptions made on the internal business administration costs of merger review were too low by an order of magnitude. In interest of strengthening these cost assumptions, the government conducted surveys with industry stakeholders to further understand the scale of costs merger review may impose on businesses. Government then used these responses to formulate new cost assumptions ranges which were broadly in line with feedback received during the consultation. These assumptions were then agreed with the CMA who have extensive knowledge on the merger review processes businesses will undertake.
140. Additionally, where assumptions have been assessed as high impact, sensitivity analysis has been conducted to inform on the possible outcomes of such scenarios.
141. Overall, the government has assessed there to be a low likelihood of unintended consequences arising from the package of measures proposed in the preferred option. The preferred option essentially updates and potentially streamlines a framework that has been in place for nearly 20 years. Businesses are familiar with this framework and aside from the issues the intervention aims to tackle, there should not be a huge change from business-as-usual.
142. Advocates of more relaxed merger control propose that concerns around sub-optimal innovation in concentrated markets may be unjustified given that as a market leader incumbent firms must constantly adapt and innovate to maintain their status. In respect to 'killer acquisitions' this may suggest that firms who acquire disruptive start-ups may do so with the intention of implementing the innovation themselves as opposed to discontinuing

it. Proponents of this also argue that market concentration enables firms to generate the profits needed to generate higher levels of investment which supports higher levels of innovation. Government has considered the possibility that enhanced merger control in respect to killer acquisitions may dampen innovation in certain markets, however Government has deemed that this unintended consequence will not materialise due to there being a substantial amount of evidence suggesting that this is not the case. For example, Cunningham, Ederer and Ma (2018) estimate that roughly six per cent of mergers in the US pharmaceutical sector result in the acquirer terminating a competing drug development¹⁵ evidencing that firms do acquire others with the intention of discontinuing innovative products.

143. Furthermore, the CMA finds that the likelihood of the very top firms in an industry remaining at the top has increased overall across the highest earning sectors in the UK over the last twenty years¹⁶. This consistent increase in rank persistence across key sectors indicates increasing stability for top businesses in the UK. This further undermines the argument that incumbent firms are under constant pressure to innovate.

144. The impact which M&A activity has on innovation depends on the balance between decreased firm incentives to innovate post-merger versus the increased ability to innovate post-merger following increased profits. Academic evidence suggests that generally the increased ability to innovate post-merger will not outweigh the decreased incentives to innovate. Hence mergers that reduce competition will likely result in harmful effects to innovation as well as to prices and output. For example, using a data set of mergers in the pharmaceutical industry that affected European product markets, Haucap and Stiebale find that after a merger, patenting and R&D expenditure activities decline in both the merged entity and among non-merging rivals¹⁷. These negative impacts on innovation were also concentrated in markets with high R&D intensity and firm heterogeneity before the merger took place.

145. Considering the above evidence, the government has concluded that the risk that the proposal could impact negatively on innovation is not material, in line with the academic literature concerning merger impacts on innovation.

146. Any potential risks associated with the preferred option have been carefully evaluated throughout the consultation process. The primary risks considered surrounded potential unintended consequences arising from the updates to the CMA's jurisdictional thresholds.

147. Specifically, the risks identified were:

- a. A large increase in self-assessing businesses and the associated costs due to the expanded jurisdiction arising from the acquirer focussed threshold test.
- b. Increased burden to the CMA arising from benign mergers requesting a fast-track to a detailed Phase 2 assessment. Conversely, a risk was identified that there may be incentives for harmful mergers to request an automatic referral to Phase 2 to limit the time the CMA has to gather the information needed for a Phase 2 decision after having forgone Phase 1 requests for information. Additionally, harmful mergers that raise public interest concerns may use the fast-track to bypass the Secretary of State's decision to issue a Public Interest Intervention Notice.

¹⁵ Cunningham, Colleen and Ederer, Florian and Ma, Song, Killer Acquisitions (April 19, 2020). *Journal of Political Economy*, Vol. 129, No. 3, pp. 649–702, March 2021

¹⁶ Competition and Markets Authority (2020), *State of Competition Report*

¹⁷ Haucap, J, Rasch, A, Stiebale, J, How mergers affect innovation: Theory and evidence, *International Journal of Industrial Organization*, Volume 63, 2019, Pages 283-325,

148. Once identified, these risks have been mitigated through amending the design of the measures in question. Firstly, the acquirer focussed threshold levels were increased (see para. 55) by a step change to target the intervention more clearly at acquisitions by very large firms with existing strong market positions. Furthermore, a UK nexus criterion was added to ensure that only transactions for which two of the merger parties are linked to the UK, and hence could present a potential SLC in the UK, are within jurisdiction to ensure interventions are focused on mergers which affect UK consumers.

149. Secondly, the fast-track measure has been amended so that any fast-track request is at the discretion of the CMA. This amendment militates all the risks associated with the fast-track measure above. In the case of a likely benevolent merger the CMA could now deny the request and come to a decision during a less resource intensive Phase 1 investigation. In addition, the fast-track process will provide the CMA with the ability to extend the investigation's timeline, if needed to gather information to make an informed decision. Finally, public interest mergers have been exempted from the fast-track measure.

Table 3 – Key Assumptions

Assumption	Quality	Impact
1. General		
A discount rate of 3.5% is assumed in line with HMT Green Book methodology <i>Source: The Green Book: appraisal and evaluation in central government, HMT</i>	High	Low
Hourly wages by SOC code have been taken from the Annual Survey of Hours and Earnings (ASHE) data set <i>Source: Table 14.6a – Hourly pay excluding overtime, 2021 (provisional), ASHE</i>	High	Medium
The hourly rate charged by a legal firm commissioned to work on a merger case is £512 <i>Source: HM Government, Solicitors' guideline hourly rates. We conservatively assume London Grade 1, Class A: Solicitors and legal executives with over 8 years' experience working in London, 2021</i>	High	High
The hourly rate charged by an economic consultant to advise on a merger case is £350 <i>Source: FTI Consulting, Annual Report 2020, Average billable rate per hour, Economic Consulting</i>	High	Medium
Non-wage uplift factor is 1.32 <i>Source: Derived from Eurostat data on wages and non-wage labour costs https://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs#Non-wage_costs_highest_in_France_and_Sweden</i>	Medium	Medium

2. CMA Assumptions		
<p>Share of Phase 1 mergers referred to Phase 2 is 16%</p> <p><i>Source: Merger outcome statistics, 2022, CMA – Number of Phase 1 referrals divided by total CMA decisions from 2014/15 to 2021/22 = 74/477 = 16%</i></p>	Medium	Medium
<p>Share of mergers cases involving CMA intervention is 28%</p> <p><i>Source: Merger outcome statistics, 2022, CMA – Total remedies (excluding abandoned mergers) divided by the total number of outcomes excluding De Minimis clearance and non-qualifying cases from 2019/20 to 2021/22 = 43/154 = 28%</i></p>	Medium	Medium
<p>The average consumer benefits arising from CMA intervention in a merger case is £47.2m</p> <p><i>Source: CMA Impact Assessment, 2022, CMA - £2029.8m reported total consumer benefit divided by 43 remedies (excludes abandoned mergers) from 2019/20 to 2021/22 = 2029.8/43 = £47.2m</i></p>	Low	High
<p>CMA merger fee assumptions have been assumed in line with CMA merger fee guidance</p> <p><i>Source: Merger fees payment information, 2018, CMA</i></p>	High	Low
3. Caseload		
<p>Increasing the turnover test from £70 to £100m will lead to a reduction of 2 to 3 Phase 1 cases per year</p> <p><i>Source: CMA internal data and advice</i></p>	Medium	High
<p>The introduction of the acquirer threshold will lead to 2 to 5 additional cases per year</p> <p><i>Source: CMA internal data and advice</i></p>	Medium	High
<p>The introduction of the £10m UK turnover safe harbour will lead to a reduction of 2 to 3 case per year</p> <p><i>Source: CMA advice and internal CMA data</i></p>	Medium	Low
<p>Increasing the turnover test from £70 to £100m will lead to an increase of 2 to 8 businesses assessing share of supply</p> <p><i>Source: CMA advice</i></p>	Medium	High
<p>The introduction of the acquirer threshold will lead to 20 to 40 additional businesses undergoing self-assessment per year.</p> <p><i>Source: CMA advice</i></p>	Medium	High
4. Merger review costs		

<p>Internal business administration costs arising from merger review have been assumed at:</p> <ul style="list-style-type: none"> • Self-assessment: £1,500 – £3,000 • Pre-notification and Phase 1: £25,000 – £55,000 • Phase 2: £30,000 - £65,000 <p><i>Source: Surveys conducted by DBT</i></p>	Low	Medium
<p>External legal advice costs arising from merger review have been assumed at:</p> <ul style="list-style-type: none"> • Self-assessment: £35,000 – £65,000 • Pre-notification and Phase 1: £270,000 – £530,000 • Phase 2: £1,350,000 – £2,650,000 <p><i>Source: Surveys conducted by DBT</i></p>	Low	High
<p>External economist advice costs arising from merger review have been assumed at:</p> <ul style="list-style-type: none"> • Self-assessment: £0 – £45,000 • Pre-notification and Phase 1: £0 – £360,000 • Phase 2: £0 – £1,810,000 <p><i>Source: Surveys conducted by DBT</i></p>	Low	Medium
<p>Costs incurred by CMA undertaking an investigation:</p> <ul style="list-style-type: none"> • Phase 1: £37,000 • Phase 2: £400,000 <p><i>Source: National Audit Office (2016) The UK Competition Regime</i></p> <p><i>Source: CMA (2018) Mergers: Exceptions to the duty to refer, CMA64</i></p>	High	Low

Impact on small and micro businesses

150. Small and micro-sized businesses are less likely to be subject to merger review under the existing regulatory framework as they are far less likely to satisfy the jurisdictional thresholds required for review and are less likely to have sufficient market power for a transaction to raise competition concerns. For example, assuming a small business is defined as earning £10.2m or less a year in terms of UK turnover, from 2018/19 to 2020/21 there were less than forty merger investigations involving a small business. Out of these investigations, less than a quarter of these transactions were between two small businesses with the majority involving a larger acquirer in terms of turnover¹⁸. When there is a M&A transaction involving a smaller target and a larger acquirer, the acquirer will pay

¹⁸ Internal CMA merger investigation data

the bulk of the costs associated with any merger investigation given that they are effectively attempting to absorb the smaller business into their own. This demonstrates that only a very small proportion of small and micro sized businesses encounter the UK's merger regime, and when they do it is unlikely that they are bearing the associated costs.

151. Furthermore, the proposed package of measures in the preferred option contains a de-regulatory provision, exempting transactions from review where both parties generate less than £10m UK turnover in the small merger safe harbour. The subsection of transactions between two small businesses mentioned above would have been exempt under this proposal. Therefore, despite small and micro sized businesses having minimal interaction with the merger control regime, a transaction between businesses of this type will always be exempt from merger review regardless of their share of supply.

152. The introduction of the acquirer focused threshold would bring some transactions within scope who previously were not, where a small or micro business is taken over by a larger business with UK turnover of more than £350m and which has at least one third share of supply in a UK market. This will introduce costs to businesses who now fall into the CMA's jurisdiction and undergo review, but these costs are borne by both parties including the acquirer, and in practice, these costs would be covered by the much larger acquiring firm given that they are better placed to cover these costs in the acquisition deal that they are pursuing. Furthermore, based on its merger intelligence activities, the CMA advises that it expects to investigate an additional two to five cases a year following the introduction of the acquirer threshold, and out of these additional cases only a subsection of this handful of businesses will be small or micro sized acquisition targets.

153. Considering the above, the proposal is not expected to introduce any disproportionate burdens on small and micro-sized businesses, rather it should reduce any existing burden present under the current regime given that the deregulatory benefit brought to this group by the small merger safe harbour is expected to outweigh the regulatory provision in the acquirer focused threshold through exempting small mergers from review.

154. Given this group will be largely exempt through the introduction of the small merger safe harbour, further exemption or mitigating actions have not been deemed appropriate. Only a minute proportion of the small and micro-sized business population encounter the UK merger regime, and when they do, evidence shows they are often the target of a much larger acquirer who will be placed to cover the costs of a merger investigation. Internal CMA data from 2018/19 to 2020/21 recorded 30 merger investigations involving a target with less than £10m annual UK turnover, the acquirers had an average turnover of over £500m¹⁹. These 30 businesses represent roughly 0.002% of all businesses in the UK private sector employing 1 to 50 people²⁰. In light of emerging evidence on acquisitions which involve dynamic competition concerns (see page 8), any further mitigation to this group would likely impede the CMA's ability to uphold competition and has been deemed disproportionate.

Wider impacts

155. **Welfare impacts – The proposed policy package is estimated to present a net annual benefit to consumers of £10.4m as a result of CMA merger interventions in the central scenario.** Assumptions on the consumer benefit per intervention have been developed from the CMA's annual impact assessment, which estimates a total of **£2,029.8m in consumer benefits delivered through lower prices and the value to**

¹⁹ Internal Competition and Markets Authority data

²⁰ Business population estimates for the UK and regions 2022, Office for National Statistics (2022)

consumers of improvements in quality, service, or information provision following an intervention from 2019/20 to 2021/22²¹. These interventions could occur across a range of sectors providing essential goods to consumers, including vulnerable groups. This is supported by a range of academic literature, such as that produced by De Loecker and Eeckhout (2018) which implied an annual upward pressure on price inflation movements of 1.6 percentage points²² arising from falling levels of competition. Therefore, the proposal is likely to improve outcomes for vulnerable socio-economic groups as it suppresses the upwards price pressures of increasing market concentration.

156. **Innovation impacts** – As highlighted earlier in this assessment, competition incentivises innovation through price and product differentiation. This is likely to lead to innovations in production and product characteristics as firms try to gain market share through these avenues. Given the proposed package will lead to increased competition it will also lead to the innovations outlined above. Using data from horizontal mergers between pharmaceutical firms in Europe, Haucap and Stiebale (2016) estimate that in post-merger periods, innovation outputs by the merged entity and its competitors falls on average by over 30% and 7% compared to other firms respectively²³. Furthermore, the introduction of the acquirer focussed threshold to tackle killer acquisitions will ensure more innovative goods and services can diffuse into markets as opposed to being acquired by a larger competitor threatened by the prospect which the innovation offers.

A summary of the potential trade implications of measure

157. While the proposals may lead to additional businesses needing to self-assess whether they fall into the CMA's jurisdiction the reforms themselves are not expected to increase the overall level of interventions in mergers. Further to this, given the CMA only investigates roughly sixty mergers per year, with many of these being transactions between two or more UK based businesses, it is unlikely that the amendments to the jurisdictional thresholds will have a significant impact on international trade activity.

158. Changes to merger rules will be considered by businesses undertaking investment planning, and changes to the jurisdictional thresholds could factor into an international business' decision to take its activity elsewhere due to concerns that it's M&A activity may now fall into the CMA's jurisdiction. Although this may have trade implications at the micro level, the reforms will only impact the decisions of businesses at the margins of the new jurisdictional thresholds with the underlying review process being unchanged. Further to this, of these businesses at the margin, the CMA will only intervene where a relevant situation presents itself to UK consumers. Therefore, whilst the government appreciates the implications its merger regime could have on trade, the proposals outlined in this impact assessment are a small diversion from the status quo for most businesses partaking in trade activity.

159. For these reasons, the government expects that the reforms will not have a detrimental effect on the UK's trade and investment prospects given the reforms are not a drastic change to the status quo. Despite this, in the interest of strengthening the evidence base on the wider impacts of the merger regime, the government will take the opportunity when the time comes to evaluate the reforms to assess the wider impacts, including international trade, that the regime has.

160. Following the UK's departure from the EU, the CMA is now independent of the European Commission's jurisdiction over international mergers which affect EU and UK

²¹ CMA impact assessment 2020 to 2021, CMA (2022)

²² Bank of England calculations in Aquilante et al (2019).

²³ Haucap, J., Stiebale, J. (2016). How mergers affect innovation: Theory and evidence from the pharmaceutical industry, DICE discussion paper no. 218

markets. This increases the prominence of the UK's merger regime internationally given that the CMA will now investigate specific international cases which meet EU and UK jurisdictional thresholds. Previously, these dual capture M&A transactions would have only been subject to scrutiny from the European Commission. Although the impacts this has do not arise from the proposals outlined in this impact assessment, it highlights the importance of ensuring the UK's merger control regime is able to capture harmful mergers.

161. Furthermore, increased UK prominence in the international merger landscape places increased emphasis on the impact the regime has on international trade and investment, hence making it an important area to investigate during the evaluation of the reforms.

Wider Justice Costs

162. This IA appraisal assumes full compliance with the merger control requirements as per guidance. However, in some cases, formal enforcement may be required to enforce non-compliance; and this would in some cases require involvement from the UK justice system which would incur time and resource costs for the courts. Furthermore, merging parties can appeal a merger decision by the CMA at the Competition and Appeals Tribunal, following from this the case may be taken to the court of appeals and then the supreme court. There will be business and exchequer costs associated with these proceedings.

163. Given that the reforms do not radically change the current regime, the government does not anticipate a large change from the status quo in terms of non-compliance and appeals and their implication for court resource costs. However, these costs will be explored further in a separate Justice Impact Test, prior to legislation being introduced.

Monitoring and Evaluation

164. The reforms proposed in this impact assessment are expected to be reviewed to assess whether they have achieved the stated objectives, and to inform future policy making. Given these amendments are being made through primary legislation, a review is non-statutory, however an evaluation will provide the government an opportunity to examine the impacts of the merger proposals as well as to inform any lessons learned for future interventions in this space.

165. Monitoring data gathering will begin before the reforms are implemented. Government expects that there may be some short-term volatility in merger control enforcement as businesses familiarise themselves with the reforms. Data will be collected beyond this period to ensure evidence is gathered once the reforms have settled.

166. Accurately assessing the level of competition in the UK is complex as there are many contributing macroeconomic factors. Furthermore, there are various ways in which levels of competition are measured, with these metrics often being proxies for competition as opposed to holistic indicators. Mergers are only one factor in a complex system which determines the level of competition in a market, making it very difficult to robustly attribute any changes in the level of competition to merger control in a quantitative manner. Consequently, key performance indicators cannot be assigned to the SMART objectives of the merger reforms. Despite this, the government recognises that it is key that the M&E framework is adequately designed to measure the success of the merger reforms.

167. DBT has identified the following key evaluation questions during workshops with stakeholders that are designed to inform the extent to which the reforms achieved their intended objectives as well as strengthening the wider evidence base for the future.

- a. What impact does the merger control framework have on levels of UK competition, trade and innovation?
- b. What are the costs of self-assessment of merger review for businesses and how many undertake this? What impact did the reforms have in this regard? Did the reforms impact SMEs?
- c. How have the reforms impacted the likelihood of businesses to notify the CMA of a merger? Did the reforms lead to any unintended consequences? Did the reforms affect the time taken by the CMA to review mergers?

168. Table 4 below maps how each evaluation question relates to the stated policy objectives.

Table 4 - Policy objectives and evaluation questions

<p>Policy Objective</p> <p>Evaluation Question</p>	<p>Ensure the UK's merger control regime is focused on mergers which are likely to cause harm to consumers and markets, whilst reducing or removing the burden to businesses where transactions are less likely to be harmful.</p>	<p>Reduce the time and costs of merger review faced by businesses during self-assessment and provide greater clarity and certainty to businesses about when they will be covered by the UK's merger control regime.</p>	<p>Improve market efficiency and consumer outcomes.</p>
<p>What impact does the merger control framework have on levels of UK competition, trade and innovation?</p>	<p>ü</p>		<p>ü</p>
<p>What are the costs of self-assessment of merger review for businesses and how many undertake this? What impact did the reforms have in this regard? Did the reforms impact SMEs?</p>	<p>ü</p>	<p>ü</p>	
<p>How have the reforms impacted the likelihood of businesses to notify the CMA of a merger? Did the reforms lead to any unintended consequences? Did the reforms affect the time taken by the CMA to review mergers?</p>	<p>ü</p>	<p>ü</p>	

169. The review may employ a combined process and impact evaluation to assess whether the reforms achieved the stated objectives as well as to answer the evaluation questions outlined above. The evaluation is expected to use a range of evidence from literature reviews, stakeholder opinions and mixed method research. Furthermore, this approach will lend itself well to the intricate policy landscape of the merger control regime where clear cut data is not always readily available.
170. The evaluation would require a data collection strategy involving quantitative and qualitative data sources. The CMA will be responsible for monitoring and enforcing compliance with the new proposed merger reforms. The CMA already undertakes annual assessments of the consumer benefit of their activities including merger control and publishes statistics on merger outcomes. This administrative data provides a high-level understanding of how the regime is operating and will form a key part of the evaluation's data collection strategy. As well as using administrative data from the CMA, the government may also look to collect new data through further research methods such as interviews and surveys.
171. Where third parties and sensitive data is involved, the government will ensure the necessary data sharing and handling agreements are in place. In planning the data collection strategy, the government will ensure it is proportionate and collect only the data needed to answer the evaluation questions.

Public Sector Equalities Duty

172. **The Department is required to comply with the public-sector equality duty (PSED) set out in the Equality Act 2010 (“the Act”).** The PSED requires the Minister to have due regard to the need to advance equality of opportunity, hinder discrimination and foster good relations between those with and without certain protected characteristics. This due regard is taken to eliminate unlawful discrimination and to tackle prejudice and promote understanding. The characteristics that are protected by the Act are: age, disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual orientation.
173. The merger reforms proposed would apply to businesses rather than consumers, however it is anticipated that the reforms will deliver benefits to consumers through strengthening competition. This is evidenced by the positive NPV for consumers over the appraisal period estimated in this impact assessment. That said, the likely recipients of the benefits of merger control will vary on a case-by-case basis, there may be a disproportionate impact on particular consumer groups due to the sector a merger intervention occurs in. That said, it is not expected that any intervention will lead to the detriment of any consumer group, nor any of the protected characteristics, only that some consumer groups may benefit more than others due to their proximity to a merger remedy.
174. In line with PSED impact assessment guidance, the government has considered whether the merger reforms will eliminate unlawful discrimination, advance equality of opportunity or foster good relations between people who share protected characteristics. In these regards, it is not expected that any direct impacts or issues will arise as the measures do not actively discriminate against any of the protected characteristics or other consumer groups. The reforms are anticipated to benefit consumers more broadly through lower prices and increased product choice where interventions do arise. Considering these benefits, it has been decided that further positive action is not needed.
175. **The matters considered in this Impact Assessment do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the policy does not discriminate or unjustly favour any person or group of**

people based on their protected characteristics. Therefore, considering these considerations, the government will proceed with the reforms as planned.