U.S. Chamber of Commerce

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March 16, 2026

UK Department for Business and Trade Consultation
"Refining Our Competition Regime"

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing the interests of more than three million enterprises of all sizes and sectors. As a staunch advocate for strong commercial ties between the United States and the United Kingdom, the Chamber established the U.S.-UK Business Council in 2016, currently maintaining more than 40 U.S. and UK firms as active members. The Council is dedicated to strengthening the commercial relationship between our nations and advancing our shared interests.

The Chamber recognizes the substantial economic impact generated by the close ties between the United States and the United Kingdom. Our nations have invested over $1.35 trillion in each other's economies, creating nearly 2.8 million British and American jobs. We are each other's strongest allies and single largest foreign investors. The U.S. serves as the UK's largest trading partner.

On competition policy, the Chamber supports the International Competition Network and its principles of non-discrimination and procedural due process. We advocate for sound policy frameworks that support economic growth and foster innovation. We are committed to engaging in a constructive dialogue to develop effective policies that benefit both countries. We also recognize the significance of your ambition to establish the UK as a global hub for technological innovation and investment.

Against this backdrop, the Chamber welcomes the opportunity to provide His Majesty's Government with our perspective on the Department for Business and Trade's (DBT's) consultation regarding "Refining Our Competition Regime." We appreciate the goals and objectives outlined in the consultation and support many of its specific proposals, though as noted below, we also maintain several concerns with the DBT's proposal.

Areas of Agreement

The Chamber agrees with many aspects of the consultation. *First*, and perhaps most importantly, we applaud the Government's goal to "unlock the full potential of competition to increase market dynamism and growth" and the Competition and Market Authority's (CMA's) initiative to "focus its work on growth and investment

while protecting consumers and businesses." These regulatory touchstones will benefit consumers and companies on both sides of the Atlantic.

Second, consistent with the "pace" goal, we agree with the proposed statutory time-limit of 24 months for single-phase market reviews and the overall goal of shortening many reviews even further. Expeditious reviews minimize market uncertainty, reduce overall costs, and improve the timeliness of any consumer remedies. Moreover, given the pace of change in many markets, time is often of the essence.

Third, we endorse the proposed single test of adverse effect on consumers. Competition law, of course, should promote the welfare of the consumer, rather than individual competitors, and the consumer's interests in terms of price, quality, and other competitive factors. Such a policy relies on competitive forces to police the market, avoids picking winners and losers, and acts only to ensure that the competitive process is benefiting consumers via such objective metrics as low prices, high output, quality products, and innovation. When competition policy focuses on objectives other than consumers, it becomes susceptible to devolving into an analysis of whether certain competitive conduct hurts individual competitors. As the consultation notes, a single test should remove ambiguity and expedite single-phase market reviews.

Fourth, in terms of remedies, we agree with the proposal that all market remedies must be reviewed at least once every 10 years, and for many markets where technology is driving change, we recommend even more frequent reviews. However, we would recommend going a step further. The CMA should formally adopt the position that behavioral remedies should be imposed for periods no longer than 10 years, after which time the agency should have to justify any extension. As the consultation suggests, many market remedies may make sense when implemented but can become unnecessary and burdensome over time, thereby distorting markets and imposing significant costs on consumers, businesses, and regulators.

Areas of Concern

Beyond these areas of agreement, we wanted to touch upon a few areas of concern. *First*, although we recognize that the proposal to replace the independent panel system for Phase 2 merger reviews with sub-committees is intended to drive accountability, we question whether the new structure will maintain sufficient business expertise, currently provided by the Panel, to evaluate complex business practices. In addition, by centralizing power without corresponding safeguards, could the proposal create confirmation bias, as the same body will investigate and decide matters?

Second, we recommend that the Government introduce a full merit-based appeal standard for merger decisions. The appellate judicial review standard currently allows firms to only challenge process, not outcomes. By including the mechanism of judicial review, the regulatory process gains an additional layer of scrutiny, ensuring legality, fairness, and accountability. Companies must have the opportunity to present their case based on merit, providing supporting evidence and arguments. By establishing a robust dispute resolution mechanism that incorporates judicial and merit-based review and ensures a separate and specialized review process for mergers, the UK can foster a regulatory environment that encourages investment, supports innovation, and promotes competition while maintaining efficiency and timeliness in the decision-making process.

Third, to further ensure procedural fairness, the Government should ensure that merging parties receive meaningful access to case files, including third party evidence, as part of any investigation. Such access would strengthen parties' rights of defense and support quicker, better informed merger decisions. At present, the UK provides merging parties with only the staff's summary, rather than full case files. This approach differs from many other jurisdictions, including the EU, France, Germany, Italy, and Spain. The UK's lack of transparency leaves observers uncertain about the precise factors shaping merger decisions, making it harder for merging parties to rebut any findings or to work with the CMA to mitigate competition concerns. By adopting widely held standards on access to case files, alongside robust protections for third-party confidentiality, the Government could improve the predictability of the UK's business environment.

Fourth, although we appreciate efforts to define the scope of the "share of supply test" and "material influence test," we suggest the Government provide narrower guardrails to cabin the CMA's discretion for both the present and the future. On share of supply, for instance, we appreciate that the consultation removes very broad language, such as "some other criterion, of whatever nature," but the consultation still affords the CMA substantial discretion within the listed categories to bring controversial cases without clear consumer harm. Similarly, regarding material influence, the consultation's proposed factors are more expansive than the CMA's recent Merger Guidelines, and concepts like "commercial, financial or consultancy arrangements" lack clarity and continue to afford the CMA broad discretion to investigate minority investments and partnerships, including in emerging sectors like AI.

Fifth, we disagree with the proposal to extend the CMA's algorithm powers, including compelling source code disclosure, mandating content presentation changes, and conducting algorithmic tests, across its entire competition and consumer protection remit. Even as the rest of the consultation seeks to reduce discretion and encourage growth, this proposal would significantly expand the CMA's

intrusive powers without cause, when in fact the CMA already possesses extensive capabilities to scrutinize algorithms, compel disclosure of source code, and review algorithmic testing for some of the largest companies designated. The proposed powers would also allow the CMA to interfere with far smaller companies without demonstrating consumer harm. Such overreach serves to discourage investment without an identified threat to competition or consumer protection. As a result, these proposed new powers raise serious concerns about regulatory overreach, commercial confidentiality, and the CMA's technical capacity to exercise such powers appropriately.

Without clear guardrails, broad powers raise serious concerns about the potential for selective enforcement, including against disfavored companies based on subjective criteria. While we recognize the importance of having a robust and independent competition authority, it is crucial to establish a framework that ensures transparency, accountability, and proportionality in the exercise of the CMA's authority. Clear checks and balances must be put in place to provide businesses with confidence in the fairness, objectivity, and consistency of the regulatory process.

In sum, we recommend that the Government introduce a full merits-based appeal standard for merger decisions, ensure balanced representation between CMA officials and external business experts on sub-committees, and grant parties "access to file" rights to review evidence before adverse decisions. We further recommend that the Government narrow the CMA's discretion by providing greater specificity within the share of supply criteria, clarifying ambiguous concepts in the material influence test to give companies meaningful guidance on where merger investigations could be pursued, and rejecting unnecessary new powers regarding algorithms.

Other Issues

In addition to the topics raised in the consultation, we raise one other issue that would promote growth and investment within the UK: increased respect for principles of international comity. The International Competition Network (ICN) recommends that competition authorities only assert jurisdiction over "transactions that have a material nexus to the reviewing jurisdiction," noting that "a material nexus to the reviewing jurisdiction is present when a proposed transaction has a significant and direct economic connection to the jurisdiction." Competition authorities typically show a nexus by pointing to local sales or local asset levels.

In keeping with these principles, the Government should ensure that the CMA does not review transactions or business practices that lack a material local nexus to the UK. Even then, the CMA should focus only on issues unique to the UK's consumers, particularly where the relevant conduct is under review from a foreign

competition agency that houses the relevant company or companies. In short, the Government should ensure that the CMA adheres to principles of international comity and local nexus requirements.

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We appreciate the opportunity to share our views. The Chamber and our member companies approach this dialogue with a commitment to collaboration, mutual understanding, and the shared objective of promoting a vibrant and competitive marketplace in the UK. We welcome further engagement with the Government and relevant stakeholders to develop an effective and balanced framework that promotes competition.

Thank you for your attention to our comments.

Sincerely,

Sean Heather
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U.S. Chamber of Commerce