

Template enquiry letter

This document is the template for the enquiry letter that is used by the CMA when initiating an investigation into a merger that has not been formally notified to the CMA by the parties to the merger. Further information about the enquiry letter is available in [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraphs 6.15 to 6.18.

This template will be adjusted for the merger in question. The CMA may request additional or more specific information than listed in this template.

[Acquirer]

From:

Direct line: 020 3738 [xxxx]

Our ref: [xx]

[Date]

By email to []@[]

Dear [name addressee]

**[COMPLETED/ANTICIPATED] ACQUISITION BY [ACQUIRER] OF [TARGET]:
SECTION 109 NOTICE**

The Competition and Markets Authority (**CMA**) understands that [in [month and year],] [legal name of acquirer] (**Acquirer**), either itself or through an affiliated entity, [acquired/will acquire] [target] (this acquisition referred to as the **Transaction**).

Under [section 5](#) of the Enterprise Act 2002 (**the Act**), the CMA has a function to obtain and keep under review information about matters relating to the carrying out of its other functions, including the competition assessment of mergers and acquisitions. This is done with a view to (among other things) ensuring that the CMA has sufficient information to take informed decisions and to carry out its other functions effectively. If a merger or acquisition qualifies for review by the CMA, [\[section 22 / section 33\]](#) of the Act imposes a duty on the CMA to refer this merger or acquisition to an in-depth Phase 2 assessment where it believes that it is or may be the case that the merger or acquisition [has resulted, or] may be expected to result, in a substantial lessening of competition in one or more markets in the UK.

The CMA is now assessing whether the Transaction gives rise to a relevant merger situation for the purposes of Part 3 of the Act and, if so, whether its statutory duty to refer the Transaction to a Phase 2 assessment set out in [\[section 22 / section 33\]](#) of the Act is triggered.

For the purposes of this assessment, I am now serving [Acquirer] with the attached notice (**the Notice**) made by the CMA in exercise of its powers under [section 109](#) of the Act.

The Notice requires [Acquirer] to produce the documents specified and supply the information described in **questions 1 to 8** of Annex 1 to the Notice **by 4:30 pm on [deadline one]** and provide the response to **all remaining questions** in Annex 1 to the Notice **by 4:30 pm on [deadline two]**. In both cases, the documents and information should be provided to the CMA by email to me at [email] and to my colleague [name] at [email]. You may also send the documents and information by post to the CMA at Victoria House, Southampton Row, London WC1B 4AD, marked for the attention of me and [name].

[If [Acquirer] does not provide the documents specified and information described in Annex 1 to the Notice by the above deadlines (with or without reasonable excuse), the CMA may, in accordance with [section 25\(2\)](#) of the Act, extend its four month statutory deadline for reviewing the Transaction by the additional number of days that it takes [Acquirer] to provide the documents/ information and for the CMA to assess whether the documents/ information form a satisfactory response.]

[In addition,] if [Acquirer] fails to comply with the requirements of the Notice without reasonable excuse, the CMA may impose a financial penalty on [Acquirer] under the CMA's powers in [section 110](#) of the Act. The financial penalty may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of the two. Further information can be found in the CMA's *Administrative penalties: Statement of policy on the CMA's approach* (CMA4), which can be found at <https://www.gov.uk/government/publications/administrative-penalties-statement-of-policy-on-the-cmas-approach>.

If you believe that [Acquirer] is not in a position to provide the documents specified and information described in Annex 1 to the Notice, please let me know as soon as possible. In that case, please also let me know which entity (if any) you believe would be better placed.

In addition to the specific documents and information requested in Annex 1 to the Notice, I encourage [Acquirer] to provide any additional data and documentary evidence that it considers may be useful for the CMA's assessment of the Transaction's impact on competition.

You may also find it useful to read the CMA publication *Quick Guide to UK Merger Assessment* (CMA18). You can find more detailed information about the CMA's processes in *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2 – for example, the purpose of this 'enquiry letter' is set out from paragraph 6.15) and about the CMA's assessment of the impact of a merger on competition in *Merger Assessment Guidelines* (OFT1254/CC2). It may also be useful to review the guidance notes to the Merger Notice under section 96 of the Act that the CMA has published to assist notifying merger parties to understand the nature and extent of information that notifying parties should provide to the CMA to enable it to assess a

notified merger. These documents are available at <https://www.gov.uk/mergers-how-to-notify-the-cma-of-a-merger>.

If you have any questions, please contact me on the above number or my colleague [name] on [phone number]. We would be very happy to discuss this request for documents and information, as well as the CMA's processes more generally.

[I am copying this letter to [name of main contact at company/organisation].]

Yours sincerely

[add electronic signature]

[Name]

[Email]

[COMPLETED/ANTICIPATED] ACQUISITION BY [ACQUIRER] OF [TARGET]

Notice under section 109 of the Enterprise Act 2002

Notice

1. Acting under [section 109](#) of the Enterprise Act 2002 (the **Act**) and for the purpose of an investigation into the above acquisition (the **Transaction**), a permitted purpose under [section 109\(A1\)](#) of the Act, the Competition and Markets Authority (**CMA**) hereby gives notice to [legal name of acquirer] (**[define Acquirer]**) at [acquirer registered address] that it is required to produce the documents specified and supply the information described in the attached Annex 1.
2. [Acquirer] is required to produce the documents specified and supply the information described in **questions 1 to 8** of the attached Annex 1 **by 4:30 pm on [deadline one]** and provide the response to **all remaining questions** in the attached Annex 1 **by 4:30 pm on [deadline two]**.
3. It should be produced to the CMA by email to [name] at [email] and [name] at [email]. It may also be produced by post to the CMA at Victoria House, Southampton Row, London WC1B 4AD, marked for the attention of [name] and [name].
4. [Acquirer] is not required to produce any documents or supply any information which it would not be compelled to produce and/or supply in civil proceedings before the High Court in England and Wales or Northern Ireland or before the Court of Session in Scotland.
5. Any reference in this Notice to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

Consequences of not complying with this Notice

Non-compliance with this Notice

6. Under [section 110](#) of the Act where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of this Notice it may impose a penalty of such amount as it considers appropriate. The amount of such penalty may be a fixed amount or an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.

7. Such a penalty is subject to the following limits:
 - (a) In the case of a fixed amount, such amount shall not exceed £30,000.
 - (b) In the case of an amount calculated by reference to a daily rate, such amount per day shall not exceed £15,000.
 - (c) In the case of a fixed amount and an amount calculated by reference to a daily rate, the fixed amount shall not exceed £30,000 and the amount calculated by reference to a daily rate shall not exceed £15,000 per day.
8. Any penalty imposed by reference to a daily rate shall not take account of any days prior to the service of the notice of the penalty and the amount of the penalty payable shall cease to accumulate at the beginning of:
 - (a) the day on which the requirement of this Notice is satisfied
 - (b) if earlier, the relevant day as defined in [section 110A](#) of the Act, namely the day when the CMA finally decides on whether the Transaction is referred to Phase 2 for an in-depth investigation under [[section 22](#) / [section 33](#)] of the Act.

Intentional obstruction or delay

9. Under [section 110\(3\)](#) of the Act, where the CMA considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 109(6) of the Act, it may impose a fixed amount penalty. Such penalty shall not exceed £30,000.
10. No penalty shall be imposed by virtue of [sections 110\(1\) and 110\(3\)](#) of the Act where more than four weeks have passed since the relevant day as defined in [section 110A](#) of the Act (see paragraph 8(b) above). This provision does not apply in relation to any variation or substitution of a penalty which is permitted by the Act.

Suppression or destruction of documents

11. Under [section 110\(5\)](#) of the Act, an offence is committed where documents required to be produced in accordance with this Notice are intentionally altered, suppressed or destroyed. A person who commits an offence under this section shall be liable:
 - (a) on summary conviction, to a fine;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

Statement of Policy on Penalties

12. The CMA shall have regard to its *Administrative penalties: Statement of policy on the CMA's approach* (CMA4), which can be found at <https://www.gov.uk/government/publications/administrative-penalties-statement-of-policy-on-the-cmas-approach>.

[add electronic signature]

[AD]

Assistant Director, Mergers

[Date]

Annex 1 to section 109 Notice

The Competition and Markets Authority (**CMA**) understands that [in [month and year],] [legal name of acquirer], either itself or through an affiliated entity, [acquired/will acquire] [target entity/ assets amounting to an enterprise] (**[Target]**) (this acquisition referred to as the **Transaction**).

In this Annex we refer to [acquirer full legal name] when we refer to that specific legal entity. [Acquirer full legal name] together with all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002, [but excluding [Target],] are collectively referred to as **[Acquirer]**.

Please provide the documents specified and supply the information described in **questions 1 to 8** of this Annex 1 **by 4:30 pm on [deadline one]** and provide the response to **all remaining questions** in this Annex 1 **by 4:30 pm on [deadline two]**.

Further information on the CMA's merger process can be found on the CMA's website: <https://www.gov.uk/mergers-how-to-notify-the-cma-of-a-merger>. This includes links to further guidance listed under the heading "Detailed information" on this web page, as set out in the cover letter to the section 109 Notice.

REPRESENTATIVES

1. Provide the contact details of the person with whom the CMA should communicate in relation to the Transaction. This can be a person within [acquirer full legal name] or, for example, a solicitor acting for it. Those contact details should include:
 - 1.1. Name
 - 1.2. Position
 - 1.3. Direct telephone line
 - 1.4. Direct email address
 - 1.5. Full postal address
 - 1.6. Please confirm that such appointed representative is duly authorised as provided for in section 126(4) of the Enterprise Act 2002 to receive communications and service of documents from the CMA on behalf of

[acquirer full legal name] and provide a copy of the document granting the authorisation.

2. Provide contact details (including the name and position of a contact person, his/her direct email address and direct telephone number) for [Target].

TRANSACTION DETAILS

3. Provide a copy of the contractual agreements or other documents forming and implementing the Transaction.
4. State whether the Transaction has completed and, if so state on which date this completion took place. If the Transaction has not completed, please state on which date completion is expected to take place.
5. Provide a diagram showing the pre- and post-Transaction ownership structure of [Acquirer], including the Target, showing all subsidiaries [Acquirer] controls which are active in the same economic sector as [Target].
6. Provide a copy of any press release and public report (such as a newspaper article) evidencing when and how [Acquirer]'s intention to engage in the Transaction and the completion of the Transaction were made public for the first time.
7. List all other jurisdictions in which the Transaction has been notified to the competition authorities.
8. List all other mergers, acquisitions, disposals and/or joint ventures undertaken by [Acquirer] in the last two years.

JURISDICTION

9. What was the turnover in the UK of [Target] in the last financial year?
10. To determine whether the 'share of supply test' is met for jurisdictional purposes:¹
 - 10.1. Provide your best estimate of the share of supply for any product or service of any description in relation to which [Acquirer] and [Target] have a combined share of supply in the UK, or in a substantial part of the UK, of 25% or more and where the merger causes an increment in such

¹ Information about the share of supply test can be found in [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraphs 4.53-4.62.

share. In addition to any other relevant product or service, please consider in any case [specific area of overlap CMA is aware of].

10.2. Please state the methodology and data sources you have used to produce your estimates.

BUSINESS ACTIVITIES

11. Describe the pre-Transaction business activities of [Acquirer] and [Target] in the UK, including a description of the products and services

11.1. where the businesses of [Acquirer] and [Target] overlapped before the Transaction, ie where there was a horizontal relationship between these businesses (the **Overlap Products**),² and

11.2. where before the Transaction the businesses of [Acquirer] or [Target] operate at different levels of the supply chain, ie where there was a vertical relationship between these businesses (the **Vertically Related Products**).³

12. Provide a list of all entities that form part of [Acquirer] (as defined in the second paragraph of this Annex above) and are active in the supply or purchase of the Overlap Products or the Vertically Related Products in the UK.

13. Provide a copy of the annual accounts and reports for the two most recent accounting periods for:

13.1. [acquirer full legal name]; and

13.2. [Acquirer] in consolidated form.

14. Provide a copy of the management accounts of [acquirer full legal name] for the twelve months prior to the Transaction.

15. If [Acquirer] has management accounts relating specifically to the business activities in which [Acquirer] and [Target] overlapped prior to the Transaction, please provide also those management accounts for the twelve months prior to the Transaction.

² Horizontal relationships relate to business activities in the same economic sector and at the same level of the supply chain, ie between competing (or potentially competing) businesses.

³ Vertical relationships relate to business activities at different levels of the supply chain. These can be, for example, the link between an upstream supplier (or potential supplier) and a downstream customer (or potential customer), either as an input into its own production or for resale.

16. If [Acquirer] is in possession of the management accounts of [Target], provide a copy of those for the twelve months prior to the Transaction.

GEOGRAPHIC AREA(S) OF ACTIVITIES

17. State the extent of the geographic area (or areas, if local or regional markets are relevant) in the UK in which, before the Transaction, (a) [Acquirer] and (b) [Target] supplied the Overlap Products and the Vertically Related Products. Explain how you have arrived at your response, including how you have assessed where most customers are located.⁴

COUNTERFACTUAL⁵

18. State your forecast for the short-term future of [Target] if the Transaction had not taken place. If your forecast is that [Target]'s position in this short-term future would have been materially different from its position before the Transaction, give your reasons for this forecast.

DOCUMENTS

Business plans and financial forecasts

19. Provide copies of the most recent business plan and financial forecasts of [Acquirer].
20. If available, provide copies of the most recent business plan and financial forecasts of [Acquirer] related specifically to one or more of the Overlap Products [and the Vertically Related Products].

The Transaction, its business rationale and investment case

21. Provide copies of all documents (including but not limited to minutes of meetings, studies, reports, presentations, surveys, analyses or recommendations) in the possession of [Acquirer] which:
 - (a) in the two years prior to the Transaction have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or shareholders of any [Acquirer] entity (whether prepared internally or by external consultants) and

⁴ Further information about the geographic market is at [Merger Assessment Guidelines](#), from paragraph 5.2.21.

⁵ The 'counterfactual' is the situation that would exist without the Transaction. See [Merger Assessment Guidelines](#), from paragraph 4.3.1.

- (b) set out the reasons for undertaking the Transaction, such as its investment case and/or the benefits for [Acquirer] of undertaking the Transaction.
22. To the extent accessible to [Acquirer], provide any Information Memorandum or Sale Information Brochure or similar document circulated by the seller of [Target] or its representatives when seeking expressions of interest for [Target] or during any 'due diligence' undertaken by or on behalf of [Acquirer].

Market studies and analysis

23. Provide copies of all documents (including but not necessarily limited to reports, presentations, studies, analysis, or industry market reports such as customer research and pricing studies) in the possession of [Acquirer] and either prepared by or for [Acquirer] or published in the last two years prior to the Transaction, which set out the competitive conditions, market conditions, estimated market shares and/or competitors in the industry or business areas in relation to which [Acquirer] and [Target] overlapped prior to the Transaction [or were in a (potential) vertical relationship], as identified in your response to Question 11 above.

Advertising and marketing

24. Provide copies of all internally or externally produced marketing and advertising strategy documents generated by, or on behalf of, [Acquirer] in the twelve months prior to the Transaction and which relate to the Overlap Products [or the Vertically Related Products].

Prices

25. As regards price lists of [Acquirer] for each of the Overlap Products:
- 25.1. Provide copies of these price lists, if available.
- 25.2. If [Acquirer] applies different price lists and/or discounts and/or rebates depending on the identity of the customer, the geographic area or any other factors, then provide each such list.
- 25.3. If there is more than one price list for the same Overlap Product, then please list any factors contributing to any differences in the price lists so that the CMA can identify the reasons for any differences.
- 25.4. If [Acquirer] does not have price lists for each Overlap Product, describe how [Acquirer] determines the prices it charges for those Overlap Products for which it does not have price lists.

Documents prepared by or for [Target]

26. To the extent accessible to [Acquirer], provide copies of the documents requested in questions 19 to 25 that were prepared by or on behalf of [Target].

Contractual arrangements with customers

27. Please list in an Excel spreadsheet the following details for the five largest customers of each of (a) [Acquirer] and (b) [Target] for each of the Overlap Products in each geographic area where [Acquirer] and [Target] overlap (as set out in your response to question 17 above):

- 27.1. Customer name;
- 27.2. Nature of the arrangement (for example, whether the contract was awarded by open tender, tender by invitation or bilateral negotiations);
- 27.3. Length of the arrangement;
- 27.4. Whether the arrangement has been rolled over or automatically renewed without further tender or negotiations, and, if so, how often;
- 27.5. Previous supplier (if known);
- 27.6. Total value of contract (annual);
- 27.7. Product or service supplied;
- 27.8. Value per unit of product or service (if known);
- 27.9. Competitors for the provision of this contract (if known);
- 27.10. Proportion of the revenues generated from this customer relative to [Acquirer]'s total revenue from each of the relevant product or service.

HORIZONTAL ISSUES

28. In relation to each Overlap Product:
- 28.1. State how each of (a) [Acquirer] and (b) [Target] market these products and services, for example whether the focus is on the price or quality of these products or services and whether they have specific characteristics that make them suitable for only specific customer groups.

- 28.2. [State whether each of (a) [Acquirer] and (b) [Target] sets the key competitive variables for these products and services at a local, regional or national level.]
29. State the revenues earned in the most recent financial year by each of [Acquirer] and, if known, [Target] for each of the products and services referred to in question 28.
30. Provide best estimates of the shares of supply held by each of [Acquirer], [Target] and their competitors based on volumes and revenues in each of the Overlap Products in each geographic area in which they are supplied by both [Acquirer] and [Target], as indicated in your response to question 17. State the methodology and data sources for your estimates.

[VERTICAL ISSUES]

31. For each Vertically Related Product, provide your best estimates of the shares of supply held by [Acquirer] and [Target] based on volumes and revenues in each geographic area indicated in your response to question 17 above.]

ENTRY OR EXPANSION

32. List the main factors affecting entry or expansion for each of the Overlap Products.
33. Provide details of all entry, exit or significant expansion over the past five years of which [Acquirer] is aware in relation to the Overlap Products, stating in each case (a) the product or service for which such entry/exit/expansion took place, (b) the relevant firm(s), and (c) if known, the scope and size of such entry/exit/expansion (in volume or revenues terms).

EFFICIENCIES AND CUSTOMER BENEFITS

34. List the main efficiencies and customer benefits that the Transaction will give rise to, if any.

CONTACT DETAILS

35. All contact details requested in this question should include, where available: (i) the name of a contact person, (ii) his/her direct telephone number and (iii) his/her direct email address. If [Acquirer] does not hold the relevant data, please provide the contact details of the Company Secretary or CEO of the relevant company. Please provide the contact details of:

- 35.1. **ten customers** of each of [Acquirer] and [Target] for each of the Overlap Products in each geographic area where [Acquirer] and [Target] overlapped prior to the Transaction, as indicated in your response to question 17, which should constitute a representative selection of their customers (for example, a sample of large, medium-sized and small customers); please also explain the basis on which these customers have been selected. If there are fewer than ten customers in any category, then provide details in relation to all customers in that category;
- 35.2. **ten main competitors** that [Acquirer] considers to be credible alternatives to [Acquirer] and [Target] for each of the Overlap Products in each geographic area where [Acquirer] and [Target] overlapped prior to the Transaction, as indicated in your response to question 17;
- 35.3. **[five main competitors** [Acquirer] considers to be credible alternatives to [Acquirer] or [Target] for each product or service in each geographic area where there was a vertical relationship between [Acquirer] and [Target] prior to the Transaction, as indicated in your response to questions 11.2 and **Error! Reference source not found.;]**
- 35.4. **five main suppliers** of each of [Acquirer] and [Target] for each product or service in each geographic area where [Acquirer] and [Target] overlap, as indicated in your response to questions 11.1 and 17;
- 35.5. any sectoral **trade associations** of which [Acquirer] is aware in respect of the Overlap Products;
- 35.6. any **government departments or regulatory authority** holding relevant information on this economic sector or from which the CMA could seek information or data on competition in any of the markets identified in this response.