

Rules of procedure for CMA groups

Consultation document

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Any enquiries regarding this publication should be sent to us at: Policy, Precedent and Procedures Unit, Competition and Markets Authority, Victoria House, 37 Southampton Row, London, WC1B 4AD or by email to guidance@cma.gsi.gov.uk.

This publication is also available at: www.gov.uk/cma.

SCOPE OF THIS CONSULTATION

Topic of this consultation

This consultation seeks the views of interested parties on the rules of procedure which the Competition and Markets Authority (CMA) proposes to issue to replace the rules of the Competition Commission in order to reflect the legislative changes introduced by the Enterprise and Regulatory Reform Act 2013 (ERR Act). These changes come into force on 1 April 2014.

Geographical scope

The geographical scope of this consultation is primarily the UK.

Impact assessment

Not applicable for this consultation.

Basic information

This consultation is aimed at all those who have an interest in the procedures of CMA groups exercising functions in relation to merger inquiries, market investigations, regulatory references and some appeals.

How to respond

We would welcome your comments on the Draft Rules contained in this document. Annexe A contains the specific questions on which your feedback is sought. Please respond to as many questions as you are able and provide supporting evidence for your views where appropriate.

You can respond to this consultation:

By email to: guidance@cma.gsi.gov.uk

By post to:

CMA Guidance,
Victoria House
37 Southampton Row
London
WC1B 4AD

When responding to this consultation, please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

Please also indicate whether you are happy for your response to be made available on the CMA's webpage. Further information regarding our use of data received during this consultation is provided below.

Enquiries

If you have any queries regarding the content of the consultation please contact guidance@cma.gsi.gov.uk or by telephone on 020 7271 0021.

Closing date

Responses should be received by 12 noon on 18 March 2014.

Next steps

The CMA will consider the responses to this consultation document before making decisions on the rules it proposes to adopt for CMA Panels and publishing those rules by 1 April 2014.

Compliance with the Cabinet Office Consultation Principles

This consultation complies with the Cabinet Office Consultation Principles. A list of the key criteria, along with a link to the full document, can be found at Annex B.

Consultation period

The deadline for responses to this consultation is 18 March. While this entails an expedited consultation period, we note that the in-depth Government consultation exercise which led to the decision to create the CMA asked a number of questions and yielded a number of valuable responses on issues related to this consultation, which have informed the contents of the Draft Rules. Furthermore, the changes made by the Draft Rules, are minor and consequential on the statutory changes made by the ERR Act. Given these considerations, the consultation period is considered an appropriate one to obtain responses from interested parties.

Feedback about this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Alex Chisholm
Chief Executive
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Data use statement for responses

Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to publish or refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.

Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

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1 INTRODUCTION

Background

1.1 The Enterprise and Regulatory Reform Act 2013 (ERR Act) established the CMA as the UK's economy-wide competition authority with a mission to make markets work well for consumers, businesses and the economy. On 1 April 2014, the functions of the Competition Commission (CC) and many of the functions of the Office of Fair Trading (OFT) will be transferred to the CMA and those bodies abolished.

Purpose of this consultation

- 1.2 Where merger and market investigation references are made to the chair of the CMA or references or appeals are made to the CMA under various regulatory statutes, the chair of the CMA must constitute a group under Schedule 4 to the ERR Act. The CMA is required to make rules of procedure for merger reference groups, market reference groups, and special reference groups under paragraph 51(1) of Schedule 4 to the ERR Act.¹
- 1.3 The purpose of this document is to consult on the main rules the CMA proposes to adopt to replace the existing rules of the CC regulating such procedures. It also invites comments on whether there are more substantive changes to the rules that the CMA should consider making in future as it gains experience of the operation of the new regime.
- 1.4 The rules the CMA proposes to make would not involve substantive changes to the existing rules of the CC save to the extent necessary to recognise the statutory changes that are introduced by the ERR Act (and the adoption by the CMA of a policy on conflicts of interest that in substance replicates the policy of the CC). However, in the light of the importance of transparency, the CMA considers it desirable that interested parties to proceedings before CMA groups should have available to them from 1 April 2014 an updated version of the main previous rules of the CC that reflects the limited statutory changes made by the ERR Act.
- 1.5 The draft rules which are the subject of this consultation will replace the Competition Commission Rules of Procedure (CC1). The text of the draft rules is included as Annexe D. It is intended that these will apply to all ongoing and future cases from 1 April 2014.

¹ These groups will carry out most of the functions currently undertaken by CC groups. That is, Phase 2 merger inquiries, market investigations as well as some regulatory inquiries and appeals.

- 1.6 For completeness, Annexe C lists the CC's other existing procedural rules that it is currently proposed the CMA Board should adopt and make. It is not intended that these be amended substantively; the CMA Board proposes to make CMA rules in the same terms, with the existing references to the CC being treated as references to the CMA.

Reasons for the CMA's proposed approach

- 1.7 The CMA is proposing to make very limited changes to the CC Rules at this point for the following reasons:
- The reforms to the institutional structure made by the ERR Act are not intended to affect the structure of decision making at phase 2 by independent groups of panel members.
 - The existing rules remain broadly 'fit for purpose'; permitting a highly desirable degree of flexibility to reflect different cases, while setting some essential basic procedural markers (in particular in requiring the publication of provisional findings and giving parties the opportunity to comment on them). This view is supported by the initial CMA consultations on the adoption of the guidance of the CC, where when the CMA indicated it intended to adopt CC1, no comments were received suggesting that CC1 needed to be revised.
 - The CMA will be able to review the rules substantively after 1 April 2014 if necessary, as it gains experience of operating with groups of panel members in a unitary authority.

2 SUMMARY OF CHANGES

Introduction

- 2.1 Schedule 4 to the ERR Act covers the CMA's governance structure, Board membership, formation of the CMA panel and constitution of groups and includes a power for the CMA Chairman to make and publish rules of procedure for CMA groups. This Schedule will replace Schedule 7 of the Competition Act 1998 (CA98) which included an equivalent power for the CC Chairman to make rules of procedure for groups, under which CC1 was made. It is proposed to replace CC1 with rules in the same terms as CC1, subject to minor changes to reflect the new statutory provisions, including the changes described below.

Draft Rule changes

The CMA Panel Chair

- 2.2 The ERR Act² makes provision allowing the functions of the CMA Chair relating to Groups, including those relating to the constitution of groups, to be exercised by a person who is a member of both the CMA panel and the CMA Board or a member of the CMA Panel designated by the Secretary of State for this purpose (the 'CMA Panel Chair'). The intention of the current CMA Chair and CMA Board is that functions of the CMA Chair in relation to CMA groups should be performed and discharged by the CMA Panel Chair. Draft rules 3.2 and 17.1 have therefore been amended to make clear that the rules will bind any such person.

Independent decision taking at phase 2

- 2.3 Schedule 4 to the ERR Act makes explicit provision requiring decisions by groups to be taken acting independently of the CMA Board (see paragraph 49 of Schedule 4). This is now reflected in Draft Rule 4.4.

Conflicts of interest

- 2.4 Draft Rule 4.2(a) replaces the obligation under CC1 on the Chairman of the CC to have regard when appointing a group to the CC's policy on conflicts of interest with an obligation on the Chair of the CMA (in practice, the CMA Panel Chair) to have regard to the published policies of the CMA on handling conflicts of interest. The published conflicts of interest policy of the CMA is

² At paragraph 48 of schedule 4.

Annexe B to the CMA Board Rules of Procedure.³ It is substantially the same in its application to panel members as the current CC guidance on conflicts of interest.

- 2.5 Draft Rule 4.4(b) is also a new provision in the Rules. This makes clear that members of the CMA Panel may not be appointed to a group if they participated in the CMA Board's consideration of whether to refer the matter to the Chair for the constitution of a group.

Removal of rule for standing group

- 2.6 The ERR Act adds to the Enterprise Act 2002 specific provision identifying the functions of the CMA which can be performed by groups constituted following merger and market investigation references in sections 34C, 46D, 62A, and 133A to the Enterprise Act 2002. (Sections 34C(3) and 133A(2) of the Enterprise Act 2002 also provide that certain limited functions relating to remedies arising from such inquiries that can be performed by CMA groups can also be performed by the CMA Board, where a group that was previously appointed has ceased to exist. By virtue of paragraph 29 of Schedule 4, the CMA Board may delegate the performance of these functions.)
- 2.7 The CMA has published guidance on the CMA's approach to overseeing action required to give effect to remedies,⁴ and on the variation and termination of merger, monopoly and market undertakings and orders.⁵
- 2.8 The CMA intends that specifically constituted groups will be asked to perform functions relating to remedies and so does not expect that the CMA will need a 'standing group' of members for this purpose in future, and accordingly the Draft Rules do not include an equivalent provision in this regard to rule 5.1 of CC1.

³ www.gov.uk/government/publications/cma-board-rules-of-procedure.

⁴ See paragraphs 14.2 to 14.7 of *Mergers: guidance on the CMA's jurisdiction and procedure (CMA2)*.

⁵ See paragraphs 3.9-12 of *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders (CMA11)*

ANNEXES

A. Consultation questions

The purpose of this consultation is to obtain feedback on how the Draft Rules are presented and on the clarity of the content is so that we can ensure its usefulness to its audience. To this end, the consultation questions are as follows:

- 1. Do you consider that the Draft Rules are fit for the purpose of providing for the basic procedure of CMA groups from 1 April 2014?**
- 2. Do you have any other comments on the Draft Rules?**
- 3. Are there any additional areas where you believe the CMA should in due course consider making additional provision in its procedural rules for CMA groups?**

B. Consultation criteria

The [Civil Service Reform Plan](#) commits the Government to improving policy making and implementation with a greater focus on robust evidence, transparency and engaging with key groups earlier in the process.

As a result the Government is improving the way it consults by adopting a more proportionate and targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focusing on real engagement with key groups rather than following a set process.

The key Consultation Principles are:

- Departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- Departments will need to give more thought to how they engage with and consult with those who are affected
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy, and
- The principles of the Compact between Government and the voluntary and community sector will continue to be respected.

The full Cabinet Office Consultation Principles can be found on the Cabinet Office website at: www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance.

This guidance replaces the [Code of Practice on Consultation](#) issued in July 2008 on the BIS website.

C. Status of existing CC rules of procedure

The table below shows the CC rules of procedure that have been published and will be in effect prior to the transfer of its functions to the CMA on 1 April 2014 which have been, or will be, adopted by the CMA Board in order to facilitate transition to the new organisation, and to minimise disruption to the parties and the CMA.

CC CODE	TITLE
CC10	Energy code modification appeal rules
CC14	Energy licence modification appeal rules
CC16	Postal services appeal rules
CC19	CC Airport Licence Condition appeal rules
CC21	National tariff methodology reference rules

D. Draft Rules

**CMA Rules of Procedure for Merger, Market and Special
Reference Groups
2014**

CMA17con

These Rules of Procedure are made and published by the Board of the Competition and Markets Authority under the Enterprise and Regulatory Reform Act 2013

CMA Rules of Procedure for Merger, Market and Special Reference Groups 2014

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Part 1: General

1. Introductory

- 1.1 These rules of procedure of the CMA are those referred to in, and required by, paragraph 51 of Schedule 4 to the ERR Act. These rules supersede the Competition Commission Rules of Procedure 2006.
- 1.2 Before making these rules the CMA Board consulted such persons as it considered appropriate.⁶

2. Application of the rules

- 2.1 The rules shall apply from 1 April 2014.
- 2.2 The rules shall apply in relation to merger reference groups and market reference groups.⁷
- 2.3 Where a special reference group is appointed, its procedure is provided for in Part 7 of these rules.⁸

3. Effect of the rules

- 3.1 The rules are supplementary to those statutory provisions which apply to the CMA under any enactment, or instrument made thereunder, and, in the event of any conflict between the rules and any statutory provision, the latter shall prevail.
- 3.2 The rules are binding on:
 - (a) the CMA Chair
 - (b) a CMA panel chair
 - (c) any group chair
 - (d) any CMA group, and
 - (e) any member of the CMA panel

⁶ This is required by paragraph 51(3) of Schedule 4 to the ERR Act..

⁷ Defined in paragraph 51(6) of Schedule 4 to the ERR Act.

⁸ Defined in paragraph 51(6) of Schedule 4 to the ERR Act.

- 3.3 If, at any time, a group encounters a situation which is not provided for in these Rules, then it shall determine its own procedure, but before doing so it shall consult the Chair and shall have regard to any guidance issued by the CMA Board.⁹

⁹ See paragraph 52(1) of Schedule 4 to the ERR Act.

Part 2: Appointment and conduct of groups

4. Appointment and conduct

- 4.1 When a reference has been made to the Chair, the Chair shall promptly appoint members to form a group and a member of the group to be the group chair.¹⁰
- 4.2 In making appointments to a group, the Chair shall:
- (a) have regard to any guidance published by the CMA on handling conflicts of interest and take into account any other factors which, in his opinion, might prejudice the independence and impartiality of the group, and
 - (b) not appoint a member of the CMA panel to the group if that member participated in the CMA Board's consideration of whether to refer the matter to the Chair for the constitution of a group.
- 4.3 A group must consist of at least three members of the CMA panel.¹¹
- 4.4 The group chair shall have a casting vote on any question to be decided by the group.¹²
- 4.5 In making decisions that a group is required or permitted to make by virtue of any enactment, it must act independently of the CMA Board.¹³
- 4.6 Rule 4.5 does not prevent:
- (a) the CMA Board from giving information in its possession to a group or
 - (b) a group giving information in its possession to the CMA Board.¹⁴
- 4.7 Any reporting panel member¹⁵ of the CMA panel who is not a member of the group may, at the invitation of the group chair, attend its meetings or otherwise take part in its proceedings for the purpose of offering the group advice about the exercise of its functions.¹⁶

¹⁰ Where the CMA Board considers whether to make a reference to the Chair, before it does so, the Chair must determine whether a person who is a member of the CMA Board might reasonably be expected to be a member of a group constituted in connection with the matter (paragraph 33(2) of Schedule 4 to the ERR Act). If the Chair determines that a person who is a member of the CMA Board might reasonably be expected to be a member of such a group, that person is not to participate in the CMA Board's consideration of whether to refer the matter to the Chair (paragraph 33(3) of Schedule 4 to the ERR Act).

¹¹ Paragraph 38(1) of Schedule 4 to the ERR Act.

¹² Paragraph 50 of Schedule 4 to the ERR Act.

¹³ Paragraph 49(1) of Schedule 4 to the ERR Act.

¹⁴ Paragraph 49(2) of Schedule 4 to the ERR Act.

¹⁵ See paragraph 35(2)(d) of Schedule 4 to the ERR Act.

¹⁶ See paragraph 45(1) of Schedule 4 to the ERR Act.

- 4.8 It shall be the duty of a group to have regard to any advice given to it by the member of the CMA panel referred to in rule 4.7 but that member may not vote or have any statement of his dissent from a conclusion of the group included in the group's report.¹⁷
- 4.9 A group may consult any member of the CMA panel with respect to any matter or question with which the group is concerned but, before doing so, the group shall consult the group chair, to avoid any conflict of interest arising.¹⁸
- 4.10 All members of the group shall have regard to any guidance issued by the CMA Board under paragraph 52 of Schedule 4 to the ERR Act, the advice and information requirements in sections 106, and 171 of the Act and to the CMA's *Administrative penalties: statement of policy on the CMA's approach (CMA4)*¹⁹ made under sections 94B(1), 116(1) and 174E(1) of the Act.
- 4.11 If, during the proceedings of a group:
- (a) a member of the group ceases to be a member of the CMA panel
 - (b) the Chair is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group, or
 - (c) it appears to the Chair that because of a particular interest of a member of the group it is inappropriate for him to remain in the group
- the Chair may appoint a replacement.²⁰

¹⁷ Paragraph 45(2) of Schedule 4 to the ERR Act.

¹⁸ See paragraph 45(1) and (3) of Schedule 4 to the ERR Act.

¹⁹ <https://www.gov.uk/government/publications/administrative-penalties-statement-of-policy-on-the-cmas-approach>

²⁰ Paragraphs 40 to 43 of Schedule 4 to the ERR Act.

Part 3: Procedures for market and merger reference groups

5. Timetable

5.1 It shall be the duty of the group to comply with the relevant statutory timetable provided by the Act for the reference in question. After the group has been appointed, it shall, as soon as practicable, make arrangements for an administrative timetable to be drawn up which shall make provision for the major stages of the reference.

5.2 The major stages of the reference may include, in particular, the following:

- (a) gathering information
- (b) issuing questionnaires
- (c) hearing of witnesses
- (d) verifying information
- (e) providing a statement of issues
- (f) considering responses to a statement of issues
- (g) notifying provisional findings
- (h) notifying and considering possible remedies
- (i) considering exclusions from disclosure, and
- (j) publishing reports

provided that these stages need not necessarily take place within the administrative timetable in the order in which they are mentioned in this rule.

5.3 The group shall, when drawing up the administrative timetable, have regard to any views which the main parties to the reference have submitted to it.

5.4 Once the administrative timetable has been produced, the group shall make such arrangements as it thinks appropriate in order for it to be notified to all parties to the reference and to the public. The CMA may publish the timetable on its website.

5.5 The group may proceed on the basis that the main parties to the reference will comply with the administrative timetable.

- 5.6 If, at any point during the reference, the group has reason to believe that the administrative timetable will not be met for any reason, including any unforeseen circumstance, any difficulty concerning any stage of it, or any change to the statutory timetable, then the group shall prepare a revised timetable to which the notification and publication requirements contained in rule 5.4 shall apply.

6. Hearings

- 6.1 It shall be the duty of the group to decide which, if any, of its hearings are to be held in public.
- 6.2 In taking that decision, the group shall have regard to:
- (a) the views of the main and third parties
 - (b) the likelihood that a matter relating to the private affairs of an individual or body might be made known to the public and, being made known, might significantly harm the interests of that individual or body
 - (c) the extent to which an individual or body might be inhibited from providing information to the group if the hearing were to be held in public
 - (d) the extent to which an individual or body might be encouraged to provide information to the group if the hearing were to be held in public
 - (e) the efficient and proper conduct of the reference
 - (f) the administrative timetable
 - (g) the resource implications for the hearing, and
 - (h) the transport implications of the location of the hearing.
- 6.3 If, during the course of any hearing in public, the group considers that it would be appropriate, having regard to the factors set out in rule 6.2(b), (c), (d) and (e), that the hearing should no longer continue to be held in public, it shall hold the hearing in private, after having given its reasons in public for doing so.
- 6.4 The group may, if it considers that it would assist a proper consideration of the reference, hold joint hearings with one or more of the parties.
- 6.5 If the group decides to hold joint hearings then it shall be the duty of the group to consider which, if any of those joint hearings are to be held in public, and in

taking that decision the group shall have regard to the factors described in rule 6.2.

7. Appearances at hearings

- 7.1 The group shall decide the extent, if any, to which persons interested or claiming to be interested in the subject matter of the reference are allowed:
- (a) to be present or to be heard, either by themselves or by their representatives
 - (b) to cross-examine witnesses, and
 - (c) otherwise to take part.²¹
- 7.2 For the purpose of any investigation in connection with a reference, a group, or any person nominated by it, may take evidence on oath and for that purpose may administer oaths.²²
- 7.3 Any person who objects to being sworn shall be permitted to make a solemn affirmation instead of taking an oath.

8. Investigation powers

- 8.1 A group may during the course of its proceedings exercise any of the investigation powers contained in sections 109 to 117 and sections 174 to 174D of the Act.
- 8.2 Where a group is minded to impose a penalty under section 94A or section 110(1) or (3) or section 174A(1) or (3) of the Act, it shall have regard to the CMA's Statement of Policy on Approach to Administrative Penalties made under sections 94B(1), 116(1) and 174E(1) of the Act.
- 8.3 Where, at any stage of a reference, any individual or body has been asked to provide information within a reasonable period of time and has failed to do so, without a reasonable explanation, the group shall not be obliged to have regard to any information received from that person or body after the date specified.²³

²¹ Paragraph 53(6) of Schedule 4 to the ERR Act.

²² Sections 109(5) and 174(6A) of the Act.

²³ Section 53(3) of Schedule 4 to the ERR Act.

Part 4: Findings on the terms of reference

9. Provisional findings

- 9.1 A group shall make provisional findings on any reference it has been appointed to determine.
- 9.2 Provisional findings shall include the group's provisional decisions on the statutory questions it has to decide in relation to mergers and market investigation references.
- 9.3 When a group makes provisional findings on any reference it shall notify the main parties to the reference as soon as practicable after it has made them.
- 9.4 The notice shall describe the group's provisional findings and give an explanation of its reasons for coming to them.
- 9.5 Every notice:
- (a) shall invite the main party affected, within such period being not less than 21 days as may be specified in the notice, to provide the group with its reasons in writing as to why such provisional findings should not become final (or, as the case may be, should be varied)
 - (b) shall, provided the group has formed a view, inform the main party affected of the procedure the group is minded to follow on receipt of such reasons, and
 - (c) shall not contain any information which the group considers should be excluded from the notice having regard to the three considerations set out in section 244 of the Act (specified information: considerations relevant to disclosure).
- 9.6 If any main party fails to provide reasons in writing by the date specified in the notice then the group shall not be obliged to take them into account.
- 9.7 A copy of any notice given under this rule shall be published on the CMA's website.

10. Remedies

- 10.1 A group shall have regard to the need to give as much notice as is practicable of the actions which it considers might be taken by the CMA for the purpose of remedying the effects of completed or anticipated mergers or for the purpose of remedying the adverse effects found in a market investigation.

- 10.2 Any notice of those actions may be contained in the provisional findings but, if it is not, the group shall notify the main parties as soon as practicable after it has notified them of its provisional findings.
- 10.3 A copy of any notice given under this rule shall be published on the CMA's website.
- 10.4 Any notice under this rule published on the CMA's website shall not contain any information which the group considers should be excluded from the notice having regard to the three considerations set out in section 244 of the Act (specified information: considerations relevant to disclosure).
- 10.5 The group shall consult the parties upon whom it has given notice under this rule and have regard to any representations received from them.

11. Final findings

- 11.1 Once the group has had regard to any reasons in writing or oral evidence submitted to or given to it following the notice of provisional findings then it shall take its final decisions on the statutory questions and actions, and proceed to make and publish the report as required by the Act.

Part 5: Reports

12. Preparation

- 12.1 A group may, for the purpose of preparing its report, send any material which it has produced back to any person or body so that its accuracy can be verified.
- 12.2 A group may, for the purposes of rule 12.1, ask any person or body to identify any matter which that person or body might wish to have excluded from its report.
- 12.3 Where the final decision of a group is taken by a majority then the report may contain a statement or statements from the member or members in the minority of his or their dissent from that decision.

13. Exclusion of matter

- 13.1 A group may exclude any matter from its report if it considers that publication of the matter would be inappropriate and in deciding what is inappropriate for this purpose the group shall have regard to the considerations mentioned in section 244 of the Act (specified information: considerations relevant to disclosure).

14. Publication

- 14.1 As soon as practicable after deciding which matter is to be excluded from the report, the group shall make arrangements for its publication in accordance with the provisions of sections 39, 137, 143, 143A and 144 of the Act.
- 14.2 A copy of the report shall be published on www.gov.uk/cma.

Part 6 Undertakings and orders

15. Consideration of actions

- 15.1 In any case where the report of a group contains a decision that, in the case of a merger reference, there is or may be a substantial lessening of competition, or, in the case of a market investigation, that there is one or more than one adverse effect on competition, and that remedial action should be taken, the group shall, in accordance with sections 41, 41A, 138 and 138A of the Act, consider what further reasonable and practicable actions it should take.²⁴
- 15.2 As part of its considerations the group shall consult any individual or undertaking likely to be affected by those actions and shall have regard to any representations submitted to it by them.²⁵
- 15.3 After the consultation has taken place, the group shall proceed to consider whether to accept an undertaking under sections 82 and 159 of the Act or to make an order under sections 84 and 161 of the Act, as the case may be.

²⁴ The order making powers are set out in sections 84, 86, 87, 88, 161, 164, 165 of and Schedule 8 to, the Act.

²⁵ Paragraph 2(f) and paragraph 5(c) of Schedule 10 to the Act.

Part 7: Rules for special reference groups

16. Special reference groups

- 16.1 The rules in Parts 1 to 3 and Parts 5 and 6 shall apply to the procedure of special procedure groups.
- 16.2 Instead of complying with Part 4 special reference groups shall determine their own procedures for findings on the reference but when doing so they shall have regard to any guidance issued by the CMA Board under paragraph 52(1) of Schedule 4 to the ERR Act.²⁶
- 16.3 In their application to Ofcom price control references, these rules shall have effect subject to the rules made under section 15 of the Act (rules with respect to proceedings before the Competition Appeal Tribunal) and any directions given to the CMA by the Competition Appeal Tribunal in exercise of powers conferred by those rules.²⁷

Part 8: Interpretation and title

17. Interpretation

- 17.1 In these rules:
- ‘the Act’ means the Enterprise Act 2002 as amended by the ERR Act
 - ‘Chair’ means the Chair of the CMA appointed under paragraph 1(1)(a) of Schedule 4 to the ERR Act or any CMA panel chair, as appropriate
 - ‘CMA’ means the Competition and Markets Authority
 - ‘CMA Board’ means the Chair and members appointed under paragraph 27 of Schedule 4 to the ERR Act
 - ‘CMA panel chair’ means a person who may, with the consent of the CMA Board, exercise a function of the Chair referred to in paragraph 48(4) of Schedule 4 to the ERR Act

²⁶ Given effect to by section 25(4) of the ERR Act.

²⁷ See section 193 of the Communications Act 2003.

- 'CMA panel' means the panel of persons available for selection as members of a group constituted in accordance with Part 3 of Schedule 4 to the ERR Act²⁸
- 'ERR Act' means the Enterprise and Regulatory Reform Act 2013
- 'group' means a group constituted by the Chair under Schedule 4 to the ERR Act²⁹
- 'group chair' means the member of a group appointed by the Chair to chair the group³⁰
- 'main parties' means, in the case of a merger reference, those parties which, in the opinion of the group, are the main parties to the reference
- 'main parties' means, in the case of a market investigation reference, those parties which, in the opinion of the group, are the main parties to the inquiry
- 'market reference group', 'merger reference group' and 'special reference group' have the meanings given to them in paragraph 51(6) of Schedule 4 to the ERR Act³¹
- 'third parties' means those parties which are not main parties but which, in the opinion of the group, have a sufficient interest in the subject matter of the reference or the inquiry to be treated as such, and
- 'Ofcom price control reference' means a reference made under section 193 of the Communications Act 2003.

18. Title

- 18.1 These rules may be referred to as the Competition and Markets Authority Rules of Procedure for Merger, Market and Special Reference Groups 2014.

19. Explanatory note

This note is not part of the rules.

These rules replace CC1: the Competition Commission Rules of Procedure of 2006.

²⁸ Paragraph 34 of Schedule 4 to the ERR Act.

²⁹ Paragraph 36 of Schedule 4 to the ERR Act.

³⁰ Paragraph 38(8) of Schedule 4 to the ERR Act.

³¹ See explanatory note.

The rules apply to merger reference groups, market reference groups and special reference groups as defined in paragraph 51 of Schedule 4 to the ERR Act:

‘market reference group’ means a CMA group constituted in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;

‘merger reference group’ means a CMA group constituted in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45 or 62 of the Enterprise Act 2002;³² and

‘special reference group’ means a CMA group constituted in connection with a reference under—

- (a) section 11 of the Competition Act 1980
- (b) 41E of the Gas Act 1986
- (c) 56C of the Electricity Act 1989
- (d) section 12, 14 or 17K of the Water Industry Act 1991
- (e) article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1))
- (f) section 13 of, or Schedule 4A to, the Railways Act 1993
- (g) article 15 of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2))
- (h) section 12 of the Transport Act 2000
- (i) section 193 of the Communications Act 2003
- (j) article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172).

Subject to any special or general directions given by the Secretary of State, and to any provision by or under any enactment, a CMA group that is not a merger reference group, market reference group or special reference group may determine its own procedure.³³

³² The reference in this definition to section 62 of the Enterprise Act 2002 has effect as if it included a reference to article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (SI 2003/1592), as amended by Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014.

³³ See paragraph 54 of Schedule 4 to the ERR Act.

As at the date of making these rules the CMA has made as procedural rules for other CMA groups the following rules (previously made by the Competition Commission):

CC10 The Energy Code Modification Rules

CC14 Competition Commission Energy Licence Modification Rules

CC16 Postal Services Appeal Rules

CC19 Competition Commission Airport Licence Condition Appeal Rules

CC21 National Tariff Methodology Reference Rules.