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Comments of the International Center for Law & Economics

UK Competition and Markets Authority Call for Evidence for Merger Efficiencies Review

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I. Introduction

We appreciate the opportunity to comment on the Competition & Markets Authority's (CMA) call for evidence (the *Call for Evidence*)[1] in connection with its *Merger Efficiencies Review*. The International Center for Law & Economics (ICLE) is a nonprofit, nonpartisan global research and policy centre dedicated to building the intellectual foundations for sensible, economically grounded policy. ICLE promotes law & economics methodologies to inform public-policy debates and has longstanding expertise in competition law and policy. These comments aim to help ensure that competition law remains grounded in clear rules, established precedent, sound evidence, and economic analysis. ICLE has also submitted views on related issues to the Canadian Competition Bureau regarding its draft merger guidelines.[2]

We commend the CMA's adoption of the '4Ps' framework.[3] A merger-control regime focused on pace, predictability, proportionality, and process aligns with a law & economics approach and supports markets in delivering lower prices, higher quality, innovation, and consumer welfare.

The CMA's review presents an opportunity to clarify how efficiencies should be assessed in practice. Because merger review is inherently prospective, both harms and benefits depend on projections about future competitive conditions. The framework should therefore treat uncertainty consistently, avoid systematically discounting longer-term benefits, and recognise that innovation, investment, and integration often generate consumer welfare over extended horizons.

Our recommendations are as follows:

- Preserve flexibility and analytical symmetry in the assessment of efficiencies, particularly with respect to timing. Where theories of harm rely on medium- or long-term projections, efficiencies over comparable horizons should be admissible and evaluated under similar evidentiary standards.
- Adopt a balanced approach to sufficiency by considering both likelihood and magnitude. Dynamic and innovation-related efficiencies should not be discounted relative to more immediate static effects.
- Interpret merger specificity pragmatically, focusing on whether efficiencies could realistically be achieved through less anticompetitive alternatives rather than requiring narrow 'buyer-specific' proof. Evidence from comparable transactions and industry experience should be relevant.

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[1] Competition & Markets Auth., *Merger Efficiencies Review: Call for Evidence* (15 January 2026), https://connect.cma.gov.uk/call-for-evidence-merger-efficiencies-review ('Call for Evidence').

[2] Ian Adams, Eric Fruits, Brian Albrecht, Daniel J. Gilman & Geoffrey A. Manne, *Comments of the International Center for Law & Economics to the Competition Bureau of Canada: Proposed Merger Enforcement Guidelines* (10 February 2026), https://laweconcenter.org/wp-content/uploads/2026/02/Competition-Bureau-Canada-Merger-Comments-2026.pdf.

[3] Call for Evidence, *supra* note 1, at 2.

- Clarify that efficiencies are not suspect merely because they strengthen competitive performance. Efficiencies that allow firms to compete more effectively—through lower costs, improved quality, or greater innovation—benefit consumers even if rivals lose sales.
- Apply consistent and proportionate evidentiary standards to harms and efficiencies. Internal documents, forward-looking plans, and qualitative evidence should be probative when assessing efficiency claims, just as they are when assessing theories of harm.
- Give appropriate weight to dynamic efficiencies and innovation, particularly in sectors characterised by high fixed costs, rapid technological change, and complementarities. Context-specific analysis reduces the risk of deterring pro-investment and pro-innovation transactions.

The sections that follow elaborate on these points by addressing timeliness, the balancing of harms and benefits across time and customer groups, merger specificity, pass-through to consumers, evidentiary standards, and the treatment of dynamic efficiencies.

II. Framework for Assessing Merger Efficiencies

The CMA applies a structured framework to merger efficiencies. Once it identifies a realistic prospect of competitive harm, the merging parties must show that the claimed efficiencies are rivalry-enhancing, timely, likely and sufficient, and merger-specific. The resulting benefits must also accrue to UK consumers. This section addresses each of these analytical steps and offers recommendations to improve their practical application.

Our comments focus on how the framework operates in practice. First, the assessment should treat uncertainty symmetrically: the evidentiary standards applied to long-horizon harms should also apply to long-horizon efficiencies. Second, the CMA should adopt a transparent approach to weighing harms and benefits across time horizons, competitive parameters, and affected customer groups, including cases involving innovation and two-sided markets.

Third, merger specificity should be evaluated with attention to real-world organisational constraints. Contractual alternatives such as licensing or joint ventures may not replicate the integration benefits of a merger, and the analysis should not impose unduly narrow buyer-specificity requirements. Fourth, evaluation of consumer benefit should centre on residual competitive pressure, including entry conditions and potential competition, which determine whether efficiencies are passed through to consumers.

Finally, guidance should clarify that efficiencies are not suspect merely because they strengthen the merged firm's ability to compete. Competition law protects the competitive process, not individual competitors. Clearer treatment of these issues would improve predictability, align the framework with legal and economic evidence, and encourage parties to present well-supported efficiency claims.

A. Temporal Symmetry in Assessing Efficiencies

The CMA seeks views on the factors it should consider when assessing the timeliness of merger efficiencies.[4] The current *Merger Assessment Guidelines* (MAGs) state that the CMA 'will assess whether the claimed efficiencies are to be realised (and the resultant rivalry-enhancing effects felt) within the same timeframe as the CMA has adopted in the rest of its analysis'.[5] This language is constructive because it recognises a principle of temporal symmetry between harms and efficiencies. The MAGs do not prescribe a fixed timeframe, and that flexibility should be preserved.

The MAGs then qualify the symmetry principle: 'usually the longer the time period necessary for efficiencies to be realised, the greater will be the level of doubt that efficiencies will be realised at all'.[6] This qualification effectively applies a rising scepticism discount to efficiencies. The Guidelines include no comparable qualification for theories of harm. Instead, they state that the CMA 'will generally take a forward-looking approach to the assessment of any theories of harm, considering the effects of the merger both now, and in the future'.[7]

In practice, the CMA routinely evaluates long-horizon harms. When analysing potential competition—*e.g.*, whether a firm 'would have entered or expanded and could be expected to become a strong competitor' absent the merger[8]—or assessing market-tipping risks in platform markets, the CMA projects competitive effects years ahead without applying an escalating doubt discount. The Guidelines therefore embed a structural asymmetry: long-term harms receive forward-looking treatment, while long-term efficiencies face progressive discounting based solely on time. The review should consider whether this one-directional scepticism is justified, or whether uncertainty should be treated symmetrically on both sides of the competitive assessment.

A more coherent approach—already implicit in the MAGs—is to apply equal evidentiary treatment. If a theory of harm relies on projected anticompetitive effects several years in the future, efficiencies expected over a comparable horizon should be admissible. Aligning the treatment of harms and benefits would improve analytical consistency and the credibility of the assessment.[9]

Timeliness should also reflect industry dynamics. In fast-moving sectors, market forces may mitigate short-term concerns, while longer-term competitive developments become decisive. Efficiencies may therefore materialise quickly and alleviate competitive risks. In industries with long development cycles, by contrast, a longer horizon for efficiencies is realistic and often necessary. As the OECD

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[4] Call for Evidence, *supra* note 1, at 7.

[5] Competition & Markets Auth., *Merger Assessment Guidelines* 61 (18 March 2021), https://assets.publishing.service.gov.uk/media/61f952dd8fa8f5388690df76/MAGs_for_publication_2021_~_.pdf.

[6] *Id.* ¶ 8.12.

[7] *Id.* ¶ 2.10.

[8] *Id.* ¶ 2.18(b).

[9] *See* Mario Todino, Geoffroy van de Walle & Lucia Stoican, *EU Merger Control and Harm to Innovation–A Long Walk to Freedom (from the Chains of Causation)*, 64 ANTITRUST BULL. 11 (2019) (making a similar call in the context of EU merger regulation).

recognises, 'mergers have a positive long-run impact on performance by creating efficiencies or synergies, even though such effects can take several years to materialize'.[10]

B. Weighing Harms and Efficiencies Across Time, Parameters, and Customers

The CMA also asks how it should evaluate claimed efficiencies when determining whether they offset potential anticompetitive effects, particularly where harms and benefits arise over different time horizons, affect different competitive parameters, or fall on different groups of customers.[11]

Balancing harms and efficiencies is inherently uncertain in merger enforcement. The task becomes more difficult when near-term harms must be weighed against more distant benefits. Static efficiencies may arise quickly but often generate modest welfare gains. Dynamic efficiencies—often associated with innovation—typically take longer to materialise but may produce substantially larger benefits.

One useful approach is analogous to risk-regulation frameworks that evaluate trade-offs along two dimensions: likelihood and impact. Short-term harms may be relatively certain yet limited in magnitude, while long-term efficiencies may be less certain but potentially transformative.[12] Explicitly assessing both probability and expected impact, to the extent feasible in a given case, would improve transparency and avoid systematically discounting longer-term efficiencies solely because of timing. It would also allow the CMA to capture the full value of efficiencies, while maintaining appropriate caution regarding short-term consumer harm.

Similar issues arise when harms and efficiencies affect different competitive parameters. A common example involves short-term price effects alongside longer-term innovation benefits. Such cases inevitably require policy judgement. Recent developments in UK competition policy—including greater emphasis on growth, investment, and innovation—reflect increasing recognition of dynamic competition. Careful evaluation of innovation-related efficiencies is therefore consistent with both economic evidence and evolving policy priorities.[13] The CMA's assessment in the *Vodafone/Three* merger,[14] where potential price effects were considered alongside longer-term infrastructure investment and innovation commitments, illustrates the relevance of this balancing exercise.

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[10] Org. for Econ. Co-operation & Dev., *Merger Control in Dynamic Markets* 12 (10 March 2020), https://www.oecd.org/en/publications/merger-control-in-dynamic-markets_d3752037-en.html.

[11] Call for Evidence, *supra* note 1, at 7.

[12] Dirk Auer, *Innovation Defenses and Competition Laws: The Case for Market Power* (2019) (Ph.D. dissertation, Univ. of Liège), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4667754.

[13] UFUK AKCIGIT & JOHN VAN REENEN, THE ECONOMICS OF CREATIVE DESTRUCTION: NEW RESEARCH ON THEMES FROM AGHION AND HOWITT (Harv. Univ. Press 2023).

[14] Competition & Markets Auth., *Merger Investigation into the Anticipated Joint Venture Between Vodafone Group plc and CK Hutchison Holdings Ltd. Concerning Vodafone Ltd. and Hutchison 3G UK Ltd.: Case Closure Summary* (2 June 2025), https://assets.publishing.service.gov.uk/media/683d54fffd325db61c5ff27d/case_closure_summary.pdf.

Mergers may also affect customer groups unevenly, whether geographically or temporally. A merger may raise prices in certain local markets while enabling nationwide investment that benefits consumers more broadly. In other cases, environmentally oriented innovation may increase short-term costs while generating longer-term consumer benefits through improved products or reduced environmental harm.[15] Similar issues arise in two-sided markets, where disadvantages to one side of market participants may coincide with benefits to another.[16] These 'out-of-market efficiency' scenarios underscore the need to assess efficiencies across relevant customer groups and time horizons, rather than focusing narrowly on immediate effects.[17] Where such mismatches arise, the CMA's policy mandate supports giving appropriate weight to nationwide and longer-term efficiencies.

C. Assessing Merger Specificity

The CMA also seeks views on how merger specificity should be assessed. The requirement reflects the principle that efficiencies must arise from the merger itself, rather than from less restrictive alternatives, such as licensing agreements or joint ventures.

Economic and management research suggests this assessment should be applied cautiously.[18] As the *Call for Evidence* recognises, practical barriers may prevent firms from achieving comparable efficiencies through contractual arrangements.[19] Transaction-cost economics shows that licensing agreements and joint ventures can be costly to negotiate, implement, and monitor.[20] They may also create dependence on jointly developed assets or specialised knowledge, increasing the risk of disputes or opportunistic behaviour. Anticipating these risks, firms may forgo such arrangements altogether, meaning the efficiencies would not materialise absent the merger.

Management literature likewise treats partnerships and mergers as distinct organisational modes, not functional substitutes. Partnerships typically involve complementary specialisation and limited coordination. Mergers enable deeper integration and broader deployment of resources.[21] While

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[15] Roman Inderst & Stefan Thomas, *Prospective Welfare Analysis–Extending the Willingness-to-Pay Assessment to Embrace Sustainability*, 18 J. COMPETITION L. & ECON. 551 (2022).

[16] Francesco Ducci, *Out-of-Market Efficiencies, Two-Sided Platforms, and Consumer Welfare: A Legal and Economic Analysis*, 12 J. COMPETITION L. & ECON. 591 (2016).

[17] The problem of 'out-of-market' efficiencies is not confined to the United Kingdom. *See* Geoffrey A. Manne & Kristian Stout, *The Evolution of Antitrust Doctrine After Ohio v. Amex and the Apple v. Pepper Decision That Should Have Been*, 98 NEB. L. REV. 425 (2019) (discussing the issue from a U.S. perspective).

[18] *See, e.g.*, Louis Kaplow, *Improving Economic Analysis in Merger Guidelines*, 39 J. ECON. PERSPS. 29 (2025); Howard Shelanski, *Efficiency Claims and Antitrust Enforcement*, in THE OXFORD HANDBOOK OF INTERNATIONAL ANTITRUST ECONOMICS (Roger D. Blair & D. Daniel Sokol eds., 2015).

[19] Call for Evidence, *supra* note 1, at 7.

[20] *See, e.g.*, Michael Riordan & Oliver Williamson, *Asset Specificity and Economic Organization*, 3 INT'L J. INDUS. ORG. 365 (1985); Armen A. Alchian, *Specificity, Specialization, and Coalitions*, 140 J. INSTITUTIONAL & THEORETICAL ECON. 34 (1984).

[21] David Mowery, Joanne Oxley & Brian Silverman, *Strategic Alliances and Interfirm Knowledge Transfer*, 17 STRATEGIC MGMT. J. 77 (1996).

both structures can generate efficiencies, they are not reliably interchangeable.[22] The CMA should therefore avoid assuming that efficiencies achievable through integration can readily be replicated through contractual alternatives.

Efficiency claims should also not be required to be 'buyer-specific' in an unduly narrow sense. Where multiple plausible acquirers could generate comparable efficiencies, that should satisfy the merger-specificity requirement. The parties should also be able to rely on evidence from comparable transactions within the industry.

Finally, willingness to pay can be informative. If an acquirer offers a materially higher price than other plausible bidders, that may provide corroborating—though not conclusive—evidence that the buyer expects to realise greater value from the transaction. Such expectations often reflect complementarities, scale economies, or integration efficiencies that the acquirer believes it can deploy more effectively than alternative purchasers.

D. Pass-Through and Residual Competitive Pressure

Finally, the CMA seeks views on how it should assess whether efficiencies are likely to benefit consumers, particularly through the pass-through of cost savings or quality improvements.[23] This assessment is necessarily contextual.

The key factor is the degree of residual competitive pressure after the merger. Consumer harm arises when competitive pressure weakens; consumer benefit arises only where sufficient pressure remains to induce firms to pass on efficiency gains. Evaluating that pressure requires a case-specific assessment of market structure, entry conditions, and the transaction's strategic rationale. Where a merger aims to strengthen competition against a larger incumbent or enable entry into new markets, the merged firm will often have strong incentives to translate efficiencies into lower prices, improved quality, or greater innovation. Where a merger substantially increases market power, pass-through becomes less likely.[24]

Entry conditions and potential competition therefore warrant particular attention. In technologically dynamic markets, competitive constraints often come not only from existing rivals but also from potential entrants and rapid innovation cycles. These forces can both discipline firms to pass on efficiencies and help explain why efficiency-seeking mergers occur in the first place.[25]

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[22] John Hagedoorn & Bert Sadowski, *The Transition from Strategic Technology Alliances to Mergers and Acquisitions: An Exploratory Study*, 36 J. MGMT. STUD. 87 (1999).

[23] Call for Evidence, *supra* note 1, at 7.

[24] Even here, a sufficiently radical innovation can induce a monopolist to pass benefits to consumers (*e.g.*, by pricing below the pre-innovation competitive level). *See* Kenneth J. Arrow, *Economic Welfare and the Allocation of Resources for Invention*, in THE RATE AND DIRECTION OF INVENTIVE ACTIVITY: ECONOMIC AND SOCIAL FACTORS (Princeton Univ. Press 1962).

[25] Michael Gort & Steven Klepper, *Time Paths in the Diffusion of Product Innovations*, 92 ECON. J. 630, 646 (1982).

Recognising these features would allow the CMA to evaluate efficiency claims more realistically in sectors characterised by rapid technological change.

E. Efficiencies, Rival Harm, and the Competitive Process

The *Call for Evidence* notes that some stakeholders have expressed concern that 'the CMA might consider that the efficiencies could reduce rivals' ability to compete effectively with the merged entity', creating a 'barrier to submitting efficiency claims'.[26]

There is no indication that this concern reflects actual CMA policy. Nonetheless, updated guidance could usefully clarify that efficiencies will not be treated negatively merely because they strengthen the merged firm's competitive position. Historically, some authorities in the United States and the European Union were sceptical of merger-efficiency arguments and occasionally treated them as suspect.[27] That approach changed as agencies and courts adopted a more economic framework. As the U.S. Department of Justice explained: 'challenging a merger because it will create a more efficient firm through economies of scale and scope is at odds with the fundamental objectives of the antitrust laws'.[28]

The relevant distinction is between efficiencies that disadvantage rivals by benefiting consumers—through lower prices, improved quality, or greater innovation—and conduct that harms rivals by distorting or blocking competition. The former is procompetitive and should be credited. Efficiencies that enable a firm to offer consumers a better deal reflect the competitive process operating as intended. As the DOJ further observed: 'efficiency and aggressive competition benefit consumers, even if rivals that fail to offer an equally "good deal" suffer loss of sales or market share'.[29]

Discouraging such transactions would protect competitors rather than competition, which would be inconsistent with modern economic understanding and with the CMA's stated objective of supporting growth and investment.

III. Evidentiary Standards for Efficiencies

Merger control differs from conduct investigations because it evaluates effects that have not yet occurred. The prospective nature of the analysis makes both the production and assessment of evidence more difficult. The CMA therefore asks what types and extent of evidence it should

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[26] Call for Evidence, *supra* note 1, at 6.

[27] William J. Kolasky & Andrew R. Dick, *The Merger Guidelines and the Integration of Efficiencies into Antitrust Review of Horizontal Mergers*, U.S. DEP'T OF JUSTICE (2003), https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11254.pdf.

[28] U.S. Dep't of Justice, Antitrust Div., *Range Effects: The United States Perspective – Antitrust Division Submission for OECD Roundtable on Portfolio Effects in Conglomerate Mergers* 3 (12 October 2001), https://www.justice.gov/sites/default/files/atr/legacy/2015/01/26/9550.pdf.

[29] *Id.* at 2.

consider when assessing efficiencies, and whether evidential standards should vary depending on the nature of the claimed efficiencies.[30]

No single answer fits every case. Each merger arises in a distinct competitive setting, and the evidence needed to substantiate efficiencies will vary across transactions. The CMA should therefore retain a flexible approach to evidential submissions. Analytical symmetry provides a useful organising principle. Evidence the CMA treats as sufficiently probative when evaluating potential harms—such as internal business documents, forward-looking projections, and strategic planning materials—should also be admissible to substantiate efficiency claims. If internal documents support a theory of harm, particularly in innovation-focused cases, comparable materials should also support an efficiency claim.

The same principle applies to longer-term efficiencies. Such claims inevitably involve uncertainty, but uncertainty is not unique to efficiencies. The CMA routinely evaluates long-run theories of harm that depend on extended time horizons and uncertain outcomes. In those cases, the agency relies on coherent documentary evidence, industry analysis, and economic reasoning[31] Applying comparable evidential standards to efficiencies would improve consistency. Parties can mitigate uncertainty by grounding claims in contemporaneous business plans, sectoral analyses tracking expected technological developments, or investment commitments that credibly bind them to future action.[32] This evidence will not eliminate uncertainty, but it can demonstrate that claimed efficiencies are plausible and tied to observable commercial incentives.

The CMA also asks whether qualitative and quantitative evidence should receive different weight.[33] A general preference for either would be inappropriate. The relevant evidential mix depends on the nature of the claimed efficiency and the characteristics of the industry. Short-term cost savings often lend themselves to quantitative substantiation through cost modelling, projected scale economies, or financial forecasts. Some longer-term efficiencies may also be partly quantifiable, such as achieving minimum efficient scale or measurable productivity gains. Innovation-related efficiencies are less amenable to precise quantification. Claims that a merger will accelerate product development, enable new technological trajectories, or combine complementary capabilities will rely more heavily on qualitative evidence, including internal strategy documents and technological roadmaps.[34] Such evidence should not be discounted merely because precise quantification is difficult. Instead, the

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[30] Call for Evidence, *supra* note 1, at 7–8.

[31] *See* Yossi Spiegel, *The Facebook–Giphy Merger*, REV. INDUS. ORG. (forthcoming).

[32] The CMA adopted a similar approach in the recent Vodafone/Three merger. Comparable recommendations also appear in Mario Draghi's report on European competitiveness.

[33] Call for Evidence, *supra* note 1, at 8.

[34] For example, in a prominent merger decision involving innovation considerations, the European Commission relied on extensive documentary evidence. *See* Nicholas Levy & Vassilena Karadakova, *The EC's Increasing Reliance on Internal Documents under the EU Merger Regulation: Issues and Implications*, 39 EUR. COMPETITION L. REV. 12 (2018).

CMA should evaluate it in light of the transaction's commercial rationale and the broader industry context.

A case-specific, context-sensitive approach, combined with symmetry between the treatment of harms and efficiencies, would improve both credibility and practical administrability. It would also reduce the risk that significant efficiencies are overlooked simply because they cannot be demonstrated with the same quantitative precision as short-term price effects. This approach aligns with the CMA's objective of supporting growth and investment.

IV. Assessing Dynamic Efficiencies and Innovation Effects

The CMA's final substantive question concerns the challenges of assessing and evidencing dynamic efficiencies. These are understood as benefits that generate 'long-term benefit to customers by increasing the merged firms' ability and incentive to innovate, invest or undertake research and development to improve the quality of products/services, introduce new products/services or improve production processes'.[35]

Mergers can affect competition not only through short-term price effects but also through innovation and investment. The CMA's focus on dynamic efficiencies is therefore welcome. Assessing such efficiencies, however, raises conceptual and evidentiary issues distinct from those associated with static cost savings. The analytical framework should ensure that potentially significant innovation benefits are not systematically discounted.

Dynamic efficiencies are inherently uncertain. Predicting future benefits requires evaluating firms' incentives, capabilities, and technological environment, rather than extrapolating from current market conditions. In this respect, dynamic-efficiency analysis resembles innovation-based theories of harm. Authorities regularly assess possible reductions in innovation rivalry using imperfect evidence. Comparable evidentiary tolerance is therefore appropriate when considering potential innovation benefits.

Mergers may enhance innovation where they combine complementary assets, capabilities, or resources that are difficult to coordinate contractually. Economic and management research emphasises that innovation often depends on integrating technological know-how, financial resources, data assets, and organisational capabilities within a single governance structure.[36] Where such complementarities exist, mergers can strengthen both the ability and incentives to invest in R&D. A merger that accelerates innovation or combines complementary capabilities may intensify competition over time, even if concentration increases in the short term. Gregory Sidak and David

[35] Call for Evidence, *supra* note 1, at 8.

[36] David J. Teece, *The Foundations of Enterprise Performance: Dynamic and Ordinary Capabilities in an (Economic) Theory of Firms*, 82 ACAD. MGMT. PERSPS. 328 (2014).

Teece similarly argue that a 'neo-Schumpeterian' approach places less weight on market share and greater weight on potential competition and firm capabilities.[37]

Scale also matters in innovation-intensive sectors characterised by high fixed costs. Achieving sufficient scale may enable firms to undertake projects that would otherwise be technically or financially infeasible. Larger integrated firms may also better absorb the risks associated with uncertain innovation outcomes and therefore sustain long-term investment.[38]

Fixed-cost efficiencies may not immediately lower prices, but they affect investment incentives, risk tolerance, and capacity expansion. Focusing exclusively on short-term price effects risks understating long-run competitive benefits. Oliver Williamson demonstrated that merger analysis should weigh scale economies against deadweight loss to avoid significant economic waste.[39]

Mergers can also facilitate access to intangible capital, including expertise, reputation, customer relationships, and technological infrastructure.[40] Smaller innovative firms often develop novel technologies but lack the resources required for commercialisation. Integration with a larger partner can accelerate deployment. This pattern appears frequently in technology-intensive industries, including pharmaceuticals, where acquisitions often support long-term development and market introduction.[41]

Evaluating dynamic efficiencies requires a broader evidentiary toolkit than static efficiency analysis. Quantification is often difficult because outcomes depend on uncertain technological trajectories, evolving consumer preferences, and rivals' responses. Nonetheless, several forms of evidence can support such claims. Internal business documents and strategic plans—such as R&D roadmaps, investment plans, assessments of technological complementarities, and integration strategies—provide a natural starting point. Industry studies and sector reports can contextualise technological

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[37] Gregory Sidak & David J. Teece, *Dynamic Competition in Antitrust Law*, 5 J. COMPETITION L. & ECON. 581 (2009).

[38] *See, e.g.*, Brian Albrecht, Geoffrey A. Manne, David J. Teece & Mario Zúñiga, *From Moore's Law to Market Rivalry: The Economic Forces That Shape the Semiconductor Manufacturing Industry*, INT'L CTR. FOR L. & ECON., at 30 (12 November 2025), https://laweconcenter.org/resources/from-moores-law-to-market-rivalry-the-economic-forces-that-shape-the-semiconductor-manufacturing-industry ('… standard indicators of market power—high market shares, long-term contracts, and customer relationship "stickiness"—are likely misleading in the semiconductor context. These features often reflect the natural result of technological and economic forces rather than strategic behavior designed to exclude rivals. The semiconductor industry's recurring pattern of competition for the market is characterized by fierce competition for technological leadership that resets with each generation, rather than a traditional winner-take-all race susceptible to permanent monopolization').

[39] Oliver E. Williamson, *Economies as an Antitrust Defense: The Welfare Tradeoffs*, 58 AM. ECON. REV. 18 (1968) ('[I]n the occasional case where efficiency and market power consequences exist, can economies be dismissed on the grounds that market power effects invariably dominate? If they cannot, then a rational treatment of the merger question requires that an effort be made to [estimate the tradeoffs].').

[40] Nicolas Crouzet, Janice Eberly, Andrea Eisfeldt & Dimitris Papanikolaou, *The Economics of Intangible Capital*, 36 J. ECON. PERSPS. 29 (2022).

[41] Melanie Büssgen & Tom Stargardt, *To Merge or Not to Merge? The Impact of Mergers and Acquisitions on Corporate Success in the Pharmaceutical Industry*, 45 MANAGERIAL & DECISION ECON. 2196 (2024).

trends and competitive dynamics.[42] Historical evidence from comparable transactions may also offer useful benchmarks.

Merger specificity should also be assessed in a commercially realistic manner. The CMA asks whether efficiencies could be achieved 'by other means', including independent investment or licensing.[43] EU guidance similarly examines whether less anticompetitive but realistic alternatives would produce comparable efficiencies. In dynamic-efficiency cases, the central question often concerns timing and governance: whether alternative arrangements could plausibly deliver equivalent integration of complementary intangible assets and coordinated investment within the relevant timeframe.

Finally, qualitative evidence should not be discounted automatically. Innovation effects often manifest through changes in organisational capability, technological direction, or strategic positioning, which cannot readily be captured through numerical forecasts. A balanced evidentiary approach that considers both qualitative and quantitative sources will produce more accurate assessments.

V. Conclusion

Merger-efficiency assessment should rest on sound economic analysis and reflect the realities of modern markets. Evaluating efficiencies is inherently forward-looking and uncertain, particularly where investment, innovation, and long-run competitive dynamics are involved. Merger control should therefore avoid rigid or formalistic requirements that exclude relevant evidence or systematically discount longer-horizon benefits. A case-specific, context-sensitive approach provides a more reliable basis for decision-making.

Several principles follow. The CMA should apply analytical symmetry between harms and efficiencies: when theories of harm rely on projections about future entry, innovation, or market tipping, comparable projections should be acceptable when supported efficiency claims are presented. Efficiencies should not be discounted merely because they materialise over longer timeframes or resist precise quantification. Assessment should instead consider probability and expected magnitude, as well as residual competitive pressure that determines whether benefits are passed through to consumers.

Merger specificity also requires a commercially realistic application. The question is whether comparable efficiencies could plausibly be achieved through less anticompetitive alternatives, not whether they are unique to a particular buyer. Contractual arrangements, such as licensing or joint ventures, often cannot replicate the integration of complementary assets, governance, and investment incentives that a merger provides. Recognising this reduces the risk of false negatives that

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[42] Jorge Padilla, Douglas H. Ginsburg & Koren Wong-Ervin, *Dynamic Competition and Antitrust: Quick-Look Inferences from the Analysis of Big Tech's R&D Expenditure Ratios*, 86 ANTITRUST L.J. 897 (2025).

[43] Call for Evidence, *supra* note 1, at 6.

deter welfare-enhancing transactions. Guidance should also clarify that efficiencies are not suspect merely because they strengthen the merged firm's ability to compete; competition law protects the competitive process, not individual competitors.

Evidentiary standards should remain flexible and consistent. Internal documents, business plans, industry analysis, and qualitative evidence may all be probative, particularly for dynamic efficiencies that cannot be reduced to short-term price effects. A balanced approach reduces the risk that innovation benefits, scale economies, and intangible-capital integration are overlooked.

These recommendations align with the CMA's '4Ps' framework. Clear and symmetric standards improve predictability for parties and stakeholders. Proportionate evidentiary expectations facilitate timely engagement on efficiencies and improve pace. A flexible, economically grounded analysis supports proportionality by calibrating enforcement to likely competitive effects. Finally, transparent treatment of efficiencies strengthens the review process and reinforces confidence that merger decisions promote growth, investment, and long-term consumer welfare.