

CMA slides

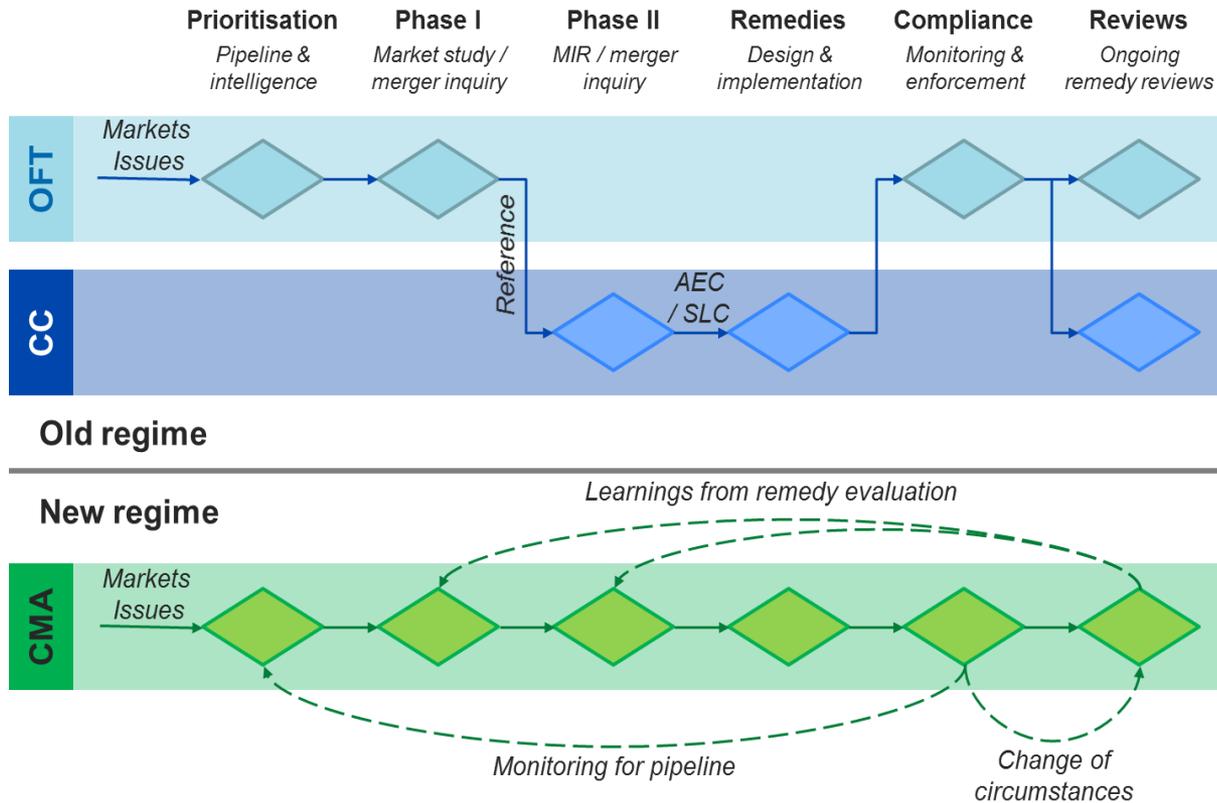
Merger remedies in fast changing markets

October 2018

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- **The CMA is unusual among competition / consumer agencies in having a distinct professional group focussed on remedies, business and financial analysis.**
- This brings two important **benefits** to the organisation:
 - Embedding a commercial perspective into CMA casework
 - Providing a centre of excellence for all aspects of CMA remedies
- Team of 30+ **experts** from a diverse range of professional backgrounds, including:
 - Accountancy
 - Banking and Corporate Finance
 - Consultancy
 - Regulation and competition policy
- **We work in partnership with other CMA professions – particularly law, economics and delivery - on both analysis and remedies. RBFA work is complementary to those other groups, enhancing the quality and depth of the CMA's output.**

Integrating the remedies lifecycle

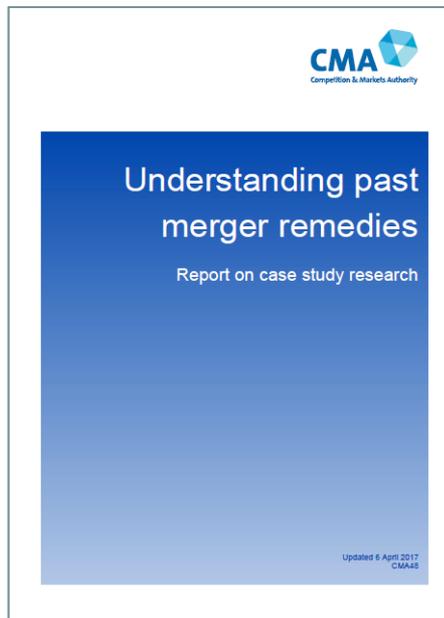


Bringing the whole remedies lifecycle into one organisation has enabled the CMA to retain knowledge across stages and work more efficiently overall.

We also have a greater focus on what happens after implementation and on working in partnership with other regulators to deliver good outcomes.

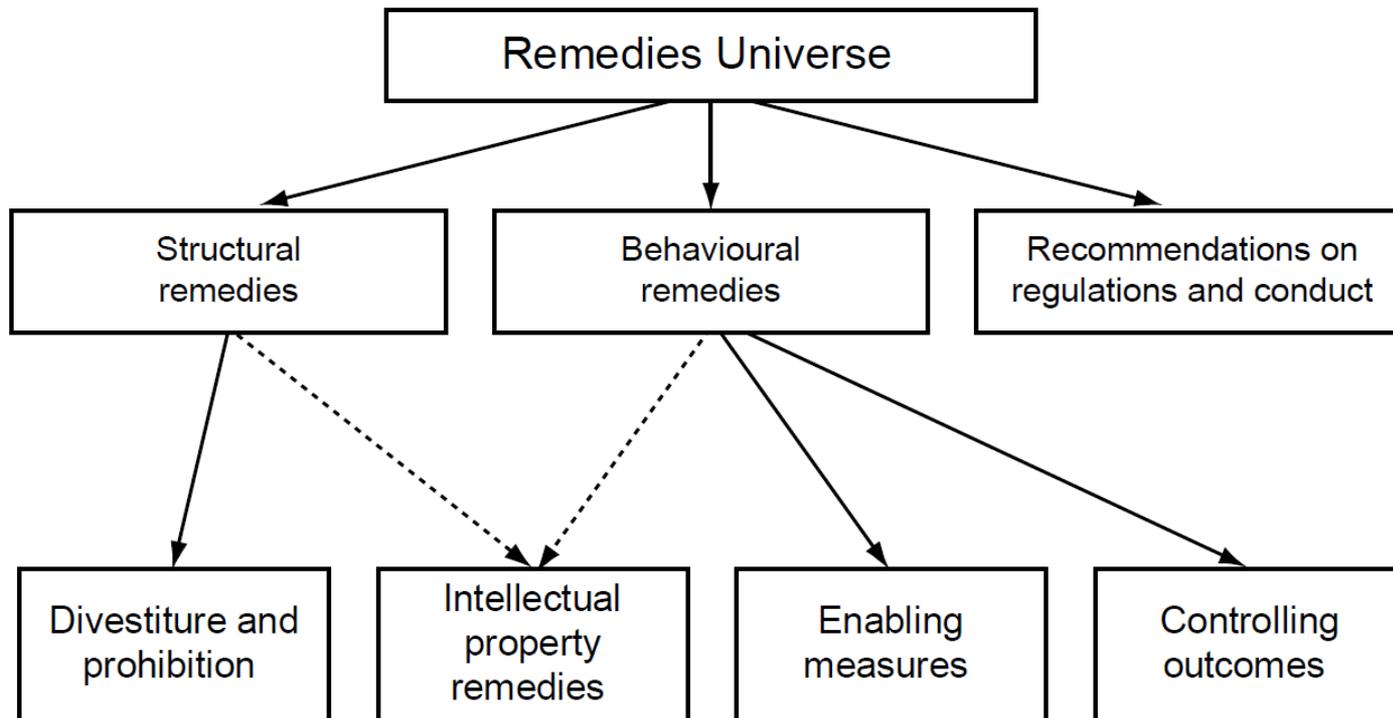
Ex post analysis of remedies

- Rolling programme of research into past remedies
- Most recent report (covering 15 previous remedies of different types) published in April 2017



Report has the aim of “*ensuring that learning points from past remedies are captured and fed into development of remedies policy and practice*”

Choice of Remedies



Challenges of remedies in fast changing markets

What is the business?

No easily identifiable tangible assets

Often the business consists of people, customer contracts etc all of which can be lost in a sales process

Value may lie in brand, reputation, intellectual property

App-based businesses (eg food delivery, taxis)

What is the transaction?

Transaction may involve agreements, informal arrangements etc rather than clear transfer of assets

Difficulty of identifying similar transactions (we typically prohibit “this or similar transactions”)

Case study – what is the business?

- In 2016 the CMA investigated the Tullett Prebon / ICAP merger and found a problem in the sale of ICAP's voice and hybrid broking and information businesses
- Remedy was sale of ICAP's London-based Oil desks (including key staff) as a going concern to a purchaser approved by the CMA.
- What is the business being sold?
 - Staff
 - Customers
- Challenges:
 - We cannot force employees to stay – they can choose to go where they want
 - Also we cannot force customers to stay – competitors will try to steal them
 - Reputation very important
- Need to protect the business being sold
 - Focus on maintaining the status quo, especially staff and customers
 - Appointed a monitoring trustee even though case was still anticipated – this was most important element

Case study – what is the transaction?

- **Proposed joint venture between BBC, ITV and Channel Four (UK's largest terrestrial TV channels) in 2009**
- **Developing market at the time, BBC, ITV and Channel 4 controlled most UK-developed content at the time and were proposing to create an online TV joint venture**
- **Prohibited by the Competition Commission - concerned at the loss of competition in the future**
- **Decision was “Prohibition of this or similar transactions” there were long discussions of what counts as a similar transaction**

Remedies - looking back

In 2012 the OFT cleared Facebook / Instagram merger

OFT saw the potential for Instagram to compete as a social network but did not anticipate the growth of Instagram into the large photo and video-sharing social network it is now, or that Facebook would move from an online friendship circle to a global public forum:

“While Facebook is predominantly used by off-line friends using their real identities to connect online and share experiences (including photos), Instagram is predominantly used to share artful images by individuals often using pseudonyms.”

“the evidence before the OFT does not show that Instagram would be particularly well placed to compete against Facebook in the short run.”

Lessons learned

- **Strong preference for structural solutions**
- **But sometimes behavioural solutions necessary**
- **Essential to preserve the business through monitoring trustees, especially when the value of the business consists of people, customer contracts or reputation**
- **Essential to review old decisions**