

Environmental sustainability and the competition and consumer law regimes

**Advice to the Secretary of State
for Business, Energy and
Industrial Strategy**

Call for inputs document

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Introduction

1. In July 2021, the Secretary of State¹ for Business, Energy and Industrial Strategy (BEIS), asked the CMA to provide advice to government on how the competition and consumer protection regimes can better support the UK's Net Zero and sustainability goals (including climate adaptation).²
2. This advice will complement the CMA's existing work relating to sustainability including: recent guidance on misleading environmental claims on products sold to consumers,³ our market study into electric vehicle charging in the UK⁴ and our publication of guidance to businesses on sustainability agreements and competition law.⁵ These align with our strategic objective to support the UK's transition to a low carbon economy.⁶
3. The request from the Secretary of State has asked us to consider the following questions:
 - (a) If, and how, do current competition and consumer legal frameworks constrain or frustrate initiatives that might support the UK's Net Zero and sustainability goals?
 - (b) Are there changes to the UK's competition and consumer law that would help to achieve the UK's Net Zero and sustainability goals?
 - (c) Are there other opportunities within the UK's competition and consumer policy toolbox that would support the UK's Net Zero and sustainability goals, which the government should be considering?
4. In addressing these questions, our primary focus will be competition law enforcement, the merger control regime, consumer protection law and the markets regime. We wish to gather views from the wide range of stakeholders with an interest in these issues. We will also conduct a

¹ The Rt Hon Kwasi Kwarteng MP

² [Letter from the Rt Hon Kwasi Kwarteng MP, Secretary of State for BEIS, to Dr Andrea Coscelli, CMA](#), July 2021. In particular the UK has committed to a legally binding target of Net Zero emissions by 2050 and clean growth is crucial to achieving this goal. See Department of Business, Energy & Industrial Strategy (2019), [UK becomes first major economy to pass net zero emissions law - GOV.UK \(www.gov.uk\)](#). This includes plans to cut emissions in heavy industry and promote green recovery. Scotland set a target for net-zero emissions of all greenhouse gases by 2045, [Climate change - gov.scot \(www.gov.scot\)](#).

³ CMA (2020) '[Misleading environmental claims](#)', last updated 20 September 2021

⁴ CMA (2020) '[Electric vehicle charging market study](#)', last updated 23 July 2021

⁵ CMA (2021) '[Environmental sustainability agreements and competition law](#)'

⁶ CMA (2021) [Annual Plan 2021 to 2022](#)

review of existing evidence and draw on the work of other organisations in this area.⁷

5. **This document represents a call for inputs (CFI) to gather views from interested stakeholders.** The document sets out in more detail the key areas we are considering. We have included specific questions in the document in relation to which we would particularly welcome views (see Appendix A for a summary of questions). **We would be grateful for submissions and responses by email to sustainabilityadvice@cma.gov.uk by 10 November 2021.**
6. The CMA will then aim to publish our advice responding to the Secretary of State's questions in early 2022. We may also use the responses to this CFI more broadly to inform our work in parallel to any further consideration by the Secretary of State of these issues.

⁷ The CMA intends to provide this advice under its function of providing information and advice to ministers. S.7(2) Enterprise Act 2002 (as amended).

Background

7. Sustainability is a broad concept, encompassing a range of objectives beyond the need to address climate change. The United Nations Sustainable Development Goals identifies the three core elements of sustainable development as economic growth, social inclusion and environmental protection.⁸ Similarly, the BEIS Secretary of State's request for advice focuses on 'the CMA's contribution to meeting our shared goals to deliver a Net Zero and more environmentally sustainable economy.'⁹ This CFI therefore focuses on environmental sustainability (hereafter, we will use interchangeably environmental sustainability and sustainability).⁹
8. The CMA believes that regulation and government policy are the primary means to achieve the UK's Net Zero and sustainability goals.¹⁰ However, the CMA also believes that other public bodies and businesses can play an important role through a wide range of initiatives (including cooperation agreements and unilateral initiatives), translating into more sustainable supply chains and more environmentally-friendly products and services for consumers.
9. Competition and consumer law exists to ensure that markets are working effectively and efficiently to meet the needs of consumers. They play an essential role in a productive economy. By examining the extent to which competition and consumer regimes are sensitive to sustainability considerations, we can help ensure they complement wider government policy and regulation in this area. For example, market studies can look at competition and consumer concerns that may exist in nascent sectors which are important to the UK's Net Zero objectives. Consumer law can help us tackle conducts that are harmful both to consumers and the environment, such as misleading 'green' marketing and planned obsolescence.¹¹
10. It may, however, be challenging (a) to identify and measure sustainability benefits of agreements, initiatives or mergers; and (b) to weigh them against competition or consumer protection outcomes. Whilst this could

⁸ UN, '[The Sustainable Development Agenda](#)'

⁹ In its recent guidance on sustainability agreements and competition law, the CMA also focused on the 'environmental aspect of sustainability agreements', given our strategic priority related to climate change. CMA (2021) '[Environmental sustainability agreements and competition law](#)'

¹⁰ In particular Department for Business, Energy & Strategy (2020) '[The Ten Point Plan for a Green Industrial Revolution](#)'; Environmental Bill, Climate Change Act 2008 and The Climate Change Act 2008 (2050 Target Amendment) Order 2019. See also specific emission targets for the Devolved Nations: Climate Change (Emissions Reduction Targets) (Scotland) Act 2019; Senedd targets that were agreed in March ([Climate change targets and carbon budgets | GOV.WALES](#)); Climate Change Bill at second stage of the Bill Process at Stormont ([Climate Change Bill \(niassembly.gov.uk\)](#))

¹¹ See section below on consumer protection law

potentially involve value judgements between competition (and consumer protection) considerations and sustainability outcomes, there is not an established framework for doing so in relation to environmental sustainability. We would therefore welcome views from stakeholders on how such potential trade-offs could be managed and assessed.

Scope

11. The Secretary of State's request asks the CMA to consider competition and consumer legal frameworks and legislative changes as well as 'other opportunities within the UK's competition and consumer policy toolbox'. This CFI is structured around the CMA's main functions in these areas:

- (a) competition law enforcement;
- (b) merger control regime;
- (c) consumer protection law; and
- (d) markets regime.

In each section we give an overview of the current regime, and identify some of the key issues that we have identified as particularly relevant to the UK's sustainability goals, based on our existing work and feedback from stakeholders. In some instances, we have already highlighted possible policy opportunities or legislative changes - most notably, in relation to consumer protection where we recently ran a call for information on misleading environmental claims (some of the responses to which highlighted broader sustainability issues).

12. The CMA has a number of policy tools available to it across its functions, which interested stakeholders may also want to consider in their response to this CFI.¹² These include:

- (a) formal decisions under the CMA's statutory functions;
- (b) guidance documents and/or public statements that clarify the CMA's approach to, and enforcement priorities in relation to, competition and consumer law;¹³

¹² The CMA also has some policy tools specific to the competition law regime. These include warning and advisory letters and recommendations that the Secretary of State introduce a new block exemption for any category of agreements that is likely to be exempt from the Chapter I CA98 prohibition.

¹³ As part of the CMA's function of giving information or advice in respect of matters relating to any of its functions of the public, under section 6(1)(a) Enterprise Act 2002 (as amended).

- (c) formal and informal recommendations to government;¹⁴ and
- (d) other powers specific to particular functions of the CMA, which we flag below where we expect stakeholders may consider them particularly relevant.

¹⁴ As part of the CMA's function of making proposal or giving other information or advice to ministers under Section 7 Enterprise Act 2002 (as amended).

Competition law enforcement

Summary of current competition law regime

13. Competition law is designed to protect businesses and consumers from anti-competitive behaviour. The law safeguards effective competition in order to deliver open, dynamic markets and enhanced productivity, innovation and value for customers.
14. To this end, the Competition Act 1998 (CA98) prohibits:
 - (a) agreements which prevent, restrict or distort competition (Chapter I CA98); and
 - (b) conduct which constitutes an abuse of a dominant position (Chapter II CA98).
15. The Chapter I and Chapter II CA98 prohibitions are applied and enforced principally by the CMA.¹⁵
16. In some circumstances businesses can benefit from an individual or block exemption from the Chapter I prohibition. Section 9 of CA98 allows businesses to self-assess whether their agreements could benefit from exemption on the basis that consumers enjoy a fair share of the resulting benefit.¹⁶ Block exemptions exempt specific categories of agreement on the basis that they are likely to benefit consumers. There are equally circumstances in which conduct can fall outside of Chapter II because it is objectively justified.
17. Exceptionally, courts have concluded that certain agreements that might have restrictive effects on competition can fall outside of competition law entirely where they are justified by a legitimate objective and where any

¹⁵ Certain sectoral regulators have concurrent powers with the CMA to apply and enforce these prohibitions within their respective regulated sectors. As at 29 September 2021, the sectoral regulators with concurrent powers were the Office of Communications (Ofcom), the Gas and Electricity Markets Authority (Ofgem), the Northern Ireland Authority for Utility Regulation (NIAUR), the Water Services Regulation Authority (Ofwat), the Office of Rail and Road (ORR), the Civil Aviation Authority (CAA), NHS Improvement (NHSI), the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR). In July 2021, the government introduced a 'Health and Care Bill' which proposes to remove NHSI's competition roles as introduced in the Health and Social Care Act 2012 (including concurrency), which as at 29 September 2021 had reached Committee stage in the House of Commons.

¹⁶ Section 9(1) CA98 provides an individual exemption from this prohibition for any agreement which:

- (a) Contributes to improving production or distribution, or promoting technical or economic progress,
- (b) while allowing consumers a fair share of the resulting benefit; and
- (c) does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

consequential restrictive effects are inherent in the pursuit of that legitimate objective.¹⁷

Relationship between competition law enforcement and sustainability

The Chapter I prohibition and environmental sustainability agreements

18. The CMA recently published guidance on [Environmental sustainability agreements and competition law](#) to provide businesses with an overview of how competition law may apply to sustainability agreements and assist businesses in considering how their sustainability agreement may comply with Chapter I CA98.
19. As described in more detail in the guidance, many forms of sustainability agreements are unlikely to restrict competition and so would not be prohibited by Chapter I CA98. Indeed, beneficial forms of cooperation – such as grouping together to purchase common inputs or for research and development – are unlikely to harm competition, provided the businesses do not have market power. The CMA guidance on [Environmental sustainability agreements and competition law](#) includes a ‘framework for assessment’ flowchart¹⁸ to help businesses quickly identify how to make their agreements competition law compliant and thus exploit all the possibilities already available to them under the current framework.
20. There may however be a tension between competition considerations and sustainability goals in certain circumstances. This can be the case for example where:
 - (a) Competitors agree to phase out particular products or technologies in pursuit of sustainability objectives. This could, in some circumstances, amount to a collective boycott that restricts competition.
 - (b) Competitors seek to impose new industry-wide standards which go beyond national laws or regulations to meet sustainability objectives (for example, in relation to the environmental performance of products). This could, in some circumstances, give rise to restrictive

¹⁷ For example, Case C-309/99 - Wouters and others, Judgment of 19 February 2002 and Case C-519/04 P - Meca-Medina and Majcen v Commission, Judgment of the Court of 18 July 2006.

¹⁸ Itself to be read together with the more detailed information included in that guidance and other CMA guidance on competition law and enforcement.

effects on competition, for example where other companies do not have fair access to the standard.¹⁹

- (c) Competitors exchange competitively sensitive information as part of a sustainability initiative or during the course of discussions about establishing a possible initiative. This could include, for example, sensitive information about new technologies such as carbon capture technologies.²⁰
 - (d) Businesses making significant investments in unproven, innovative technologies, may wish to mitigate associated risks by entering into long-term agreements for cooperation between actual or potential competitors (or exclusive supply or purchasing). These agreements may have the effect of restricting existing competition or preventing new players or technologies from entering the relevant market.
 - (e) Competitors agree a common roadmap concerning the increased use of recycled raw materials or phasing out existing unsustainable modes of production and make binding commitments to adhere to the roadmap, which could potentially increase the cost of the final product.
21. Even when sustainability agreements may restrict competition, a block exemption or individual exemption from the Chapter I CA98 prohibition may be available. The block exemptions most likely to be relevant are summarised in the CMA guidance on [Environmental sustainability agreements and competition law](#). When a block exemption is not available, the agreement may still be lawful if it meets the section 9 criteria for exemption to Chapter I CA98.
22. There is a discussion about the application of section 9 criteria (i.e. the criteria warranting exemption) in the context of sustainability agreements, including how relevant environmental benefits would be identified, measured and weighed against competition concerns. Some of the issues discussed are summarised in Appendix B and we invite stakeholders to consider these issues when responding to the questions raised in this CFI.

¹⁹ Further guidance on the application of the Chapter I prohibition to standardisation agreements can be found in European Commission (2011) [Horizontal Cooperation Guidelines](#), pp 55-72

²⁰ Further information on 'Sharing sensitive information' can be found in CMA (2021) '[Environmental sustainability agreements and competition law](#)'

Chapter II prohibition and sustainability agreements

23. Where a business (or businesses) with market power enters into sustainability initiatives or agreements, this may give rise to a Chapter II infringement risk if the initiative or agreement involves an abuse of this power. For example, Chapter II infringement risk may arise where:
- (a) A business with market power changes its pricing policies in connection with a sustainability initiative to incentivise customers to purchase more sustainable products and/or to use the relevant products or services in a sustainable way.
 - (b) A business with market power seeks to ensure it can recoup the cost of significant environmental investments through increasing prices or entering into long-term exclusive arrangements.
 - (c) A business with market power changes the terms on which it sells its products or services in connection with a sustainability initiative, for example making the purchase of one product or service conditional on the purchase of another sustainable product.
 - (d) A business with market power refuses to deal with suppliers or customers who do not meet sustainability criteria that the business with market power has set and which are not required by law.
24. If a business with market power conducts or takes part in a sustainability initiative that might otherwise be considered an abuse of dominance, this conduct may fall outside of the Chapter II CA98 prohibition if it can demonstrate that the conduct in question is objectively justified and proportionate. This would need to be considered on a case by case basis, and evaluating whether the conduct is 'proportionate' may, in practice, present challenges similar to those mentioned in paragraph 20 above in relation to the section 9.

Competition law enforcement questions

25. We would welcome responses to the following questions.
- (a) Are you aware of examples where the CA98 regime has constrained or frustrated actual or potential agreements or initiatives that could support the UK's Net Zero and sustainability goals? Please explain the issue faced and any solutions identified.
 - (b) Are there changes to the CA98 regime that would help to achieve the UK's Net Zero and sustainability goals? If so, what changes should be made to the regime, and what would they achieve?

- (c) To the extent not already covered by your responses to the previous questions, are you aware of examples of potential environmental sustainability initiatives which, in your view, would benefit from further CMA guidance or direct engagement with the CMA on the possible application of CA98? If so, please explain what further guidance would be necessary and why.

- (d) While the CMA is concerned primarily with public enforcement, we would also welcome any comments you may have in relation to private enforcement in this sphere. For instance, if you have suggested changes in response to previous questions, what impact, if any, do you think this could have on private actions?

Merger control regime

26. The CMA has sole responsibility in the UK to investigate mergers between enterprises to ensure that they do not result in a substantial lessening of competition (**SLC**).²¹ If a merger does give rise to an SLC, the CMA is required to consider remedies.
27. The CMA has a two phase merger review process. Most mergers that the CMA reviews are resolved at phase 1, including resolutions via remedies (known as ‘undertakings in lieu of reference’) offered by the merger parties. Cases that have a realistic prospect of resulting in an SLC (and are not resolved via phase 1 remedies) are subject to an in-depth phase 2 review.²² At phase 2, the CMA decides whether the merger is more likely than not to lead to an SLC (that is, on the ‘balance of probabilities’). If the CMA finds at phase 2 that a merger is expected to result in an SLC, it will decide what action should be taken to remedy, mitigate, or prevent that SLC, and can impose remedies by order if it is not able to agree them with the businesses, including prohibiting the merger.
28. The CMA views competition as a process of rivalry between firms seeking to win customers’ business over time by offering them a better deal. Rivalry creates incentives for firms to cut prices, increase output, improve quality, enhance efficiency, or introduce new and better products.²³ The CMA will consider any merger in terms of its effect on rivalry over time in the market or markets affected by it. When levels of rivalry are reduced, firms’ competitive incentives may be dulled, to the detriment of customers.²⁴
29. However, some mergers will benefit customers, either through greater competition in the market (‘rivalry-enhancing efficiencies’) or through some other benefits to customers (‘relevant customer benefits’ or ‘RCBs’).
30. Rivalry-enhancing efficiencies change the incentives of the merging firms and induce them to act as stronger competitors to their rivals as a result of

²¹ Under the Enterprise Act 2002 and the Enterprise and Regulatory Reform Act 2013, the CMA only reviews mergers when certain thresholds (turnover or share of supply) are met. Note that the CMA’s merger control regime is voluntary, such that there is no requirement on parties to notify the CMA about the transactions that meeting the jurisdictional thresholds, and the CMA does not review all transactions that do so. However, the CMA can also investigate transactions that meet its jurisdictional thresholds on its own initiative, ie even where parties do not notify a transaction to the CMA. In exceptional cases the Secretary of State may intervene if the merger affects national security, media plurality, the stability of the financial system or public health emergencies.

²² For further information regarding the CMA’s merger review procedure, see CMA (2020) [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2revised).

²³ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 2.2

²⁴ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 2.6

the merger.²⁵ Rivalry-enhancing efficiencies therefore must be relevant to the process of rivalry in the particular market in which the CMA is considering the possibility of an SLC.²⁶ The CMA may decide not to find an SLC in a merger if the rivalry-enhancing efficiencies outweigh any anticompetitive effects.²⁷ Benefits to the environment could therefore potentially be considered as rivalry-enhancing efficiencies in appropriate cases to the extent that they impact competition in the relevant market.

31. RCBs are defined in statute as being lower prices, higher quality or greater choice of goods or services in any market in the UK, or greater innovation in relation to the goods or services.²⁸ What constitutes higher quality, greater choice or greater innovation will depend on the facts of individual cases. It might be, for example, that benefits in the form of environmental sustainability and supporting the transition to a low carbon economy are RCBs in some circumstances.²⁹ RCBs can be taken into account in two scenarios:
- (a) In some cases, if a merger is likely to result in RCBs and it is likely to lead to an SLC, the CMA will consider those remedy options that preserve the RCBs. In rare cases the CMA may decide that no remedy is appropriate.³⁰
 - (b) In other instances, if the CMA believes that the RCBs will outweigh the SLC and any adverse effects caused by the merger it can decide not to refer the merger for an in-depth phase 2 review.³¹

Relationship between merger assessment and sustainability

32. The CMA considers that there may be aspects of the UK's Net Zero and sustainability goals which could affect competition and may therefore be relevant to the CMA's review of mergers, and which can therefore already be taken into account within the CMA's existing merger control framework. The CMA considers that these are likely to arise in one of three areas of its merger investigations.
33. First, where firms compete on factors directly relevant to environmental sustainability (eg more sustainable innovative technologies, or their

²⁵ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 8.3

²⁶ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 8.23

²⁷ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 8.4

²⁸ Enterprise Act 2002, section 30(1).

²⁹ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 8.21

³⁰ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 8.26

³¹ CMA (2021) [Merger Assessment Guidelines \(CMA129\)](#), paragraph 8.25

'green' credentials), a merger between two firms may result in a substantial lessening of this competition.

34. Second, a merger may result in a rivalry-enhancing efficiency which contributes to the UK's Net Zero and sustainability goals; for example, in moving to a more efficient and sustainable production process or enabling better innovation and R&D.
35. Third, a merger may result in RCBs which, as discussed above, might include benefits in the form of environmental sustainability and supporting the transition to a low carbon economy.
36. The CMA however recognises that weighing up an SLC and adverse effects on the one hand against rivalry-enhancing efficiencies or RCBs on the other will present challenges (see above, paragraph 10 in background section). For example, it may be that quantification of an efficiency or RCB relating to environmental sustainability is very challenging or not feasible. Even if quantification were feasible, the CMA notes that it would be weighing up two very different sets of considerations.
37. A related challenge is that the 'weighing up' exercise is likely to involve value judgements between competition and sustainability outcomes. While the CMA's assessment do sometimes incorporate certain value judgements, there is not an established framework for doing so in relation to environmental sustainability. In addition, there is not a clear independent body or sectoral regulator whom the CMA could consult on such matters (as it has done with NHS Improvement to assess potential benefits of hospital mergers, for example).
38. There may also be a challenge in assessing and establishing the merger specificity of a claimed environmental benefit. For example, merging parties may argue that they need the scale and scope of operation that only a merger can bring about to achieve their green objectives. However, when assessing RCBs, the CMA will need to be satisfied that there are no other feasible, less anti-competitive ways of realising the claimed benefits.³²

Merger control regime questions

39. The CMA would like to hear from respondents on these issues. We would welcome responses to the following questions:

³² See [Mergers: Exceptions to the Duty to Refer](#) (CMA64), paragraph 79

- (a) If, and how, does the current merger control framework constrain or frustrate initiatives or transactions that might support the UK's Net Zero and sustainability goals? If possible, please provide examples.
- (b) More specifically, are you aware of any examples of cases reviewed under the current merger regime where environmental factors have not been able to be fully taken into account? Please provide details.
- (c) Do you consider that the CMA's merger control regime could better contribute to protecting the environment and support the UK's Net Zero and sustainability goals? If so, please explain how.
- (d) Do you consider that the CMA is an appropriate body to assess environmental sustainability factors in relation to merger control, for example, where it is a basis on which firms compete? Do you consider there would be a benefit in having an additional or alternative body or regulator being available to provide advice on such matters? Please explain the reasons for your response.
- (e) To the extent not already covered by your responses to previous questions, are you aware of examples of potential environmental sustainability initiatives which, in your view, would benefit from further CMA guidance and/or direct engagement with CMA on the possible application of the merger regime? If so, please explain what further guidance would be necessary and why.

Consumer protection law

Summary of current consumer protection legislation

40. Consumer protection law has the fundamental aim of ensuring that consumers can make informed decisions about the products and services which they purchase, and that businesses cannot take advantage of them.
41. The Consumer Protection from Unfair Trading Regulations 2008 make unfair commercial practices unlawful. This includes:
 - (a) Misleading actions - a commercial practice which contains false information, or which is deceptive in its overall presentation;³³
 - (b) Misleading omissions (omission of information which the average consumer needs to take an informed decision).³⁴
42. In the case of both misleading actions and misleading omissions, in order for a breach to occur, the action or omission must cause, or be likely to cause, the average consumer to take a different transactional decision than they would otherwise have taken.
43. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 mandate the provision of certain information (including information about the main characteristics of goods or services) prior to the conclusion of certain contracts, including those made online.
44. The Consumer Rights Act 2015 provides that goods sold must be of satisfactory quality and services must be performed with reasonable skill and care.
45. In addition to consumer protection law, there are also rules protecting businesses. The Business Protection from Misleading Marketing Regulations 2008 are designed to protect businesses from misleading marketing. It applies where a business is a customer of another business and where it is a competitor.
46. The CMA has powers to enforce these different pieces of legislation. It shares these powers with a wide range of other enforcers, including trading standards services and sectoral regulators.

³³ Consumer Protection from Unfair Trading Regulations 2008, regulation 5.

³⁴ Consumer Protection from Unfair Trading Regulations 2008, regulation 6.

Relationship between consumer protection and sustainability

47. The current consumer protection law framework is silent on issues relating to the climate crisis, Net Zero and sustainability goals. It does not, for example, necessarily require businesses to give consumers information about environmental matters (unless, for example, not doing so would be a misleading omission). However, consumers have a significant impact on the environment through the things they buy, and the ways they use and dispose of those things.
48. Consumer protection law therefore has an important role to play in supporting the transition to Net Zero and the attainment of sustainability goals, by helping to ensure that consumers can make an informed choice about what to buy, and what not to buy. By protecting consumers and business from the provision of misleading environmental information, it can also encourage businesses to invest in and advertise green innovations.
49. Under the current framework, there are a number of ways in which consumer protection law can be applied to tackle consumer harm, and shift business and consumer behaviour to support the transition to Net Zero. These include tackling poor quality home efficiency services, greenwashing, planned obsolescence, dark patterns, and 'sludge'.³⁵
50. Based on our previous experience, and information gathered recently as part of our investigation on misleading environmental claims,³⁶ we have identified a number of ways in which the consumer protection framework could be further strengthened to support sustainable consumption. These improvements relate to:
 - (a) environmental information requirements;
 - (b) obsolescence; and
 - (c) over-consumption.

³⁵ 'Dark patterns' and 'sludge' refer to businesses providing misleading information or placing excessively difficult constraints on consumers to acquire information needed to make an informed decision. This can involve misleading website design, publishing fake reviews or manipulating review scores, applying pressure to consumers or trapping them into subscriptions.

³⁶ A report on the consultation on our guidance, and copies of the consultation responses can be reviewed on our website, CMA (2020) '[Misleading Environmental Claims](#)'. As part of this call for information, we will again review responses which contained comments going beyond the scope of our greenwashing work, but which may have relevance to the present call for information.

Environmental impact information

51. As already noted, consumer protection law typically protects consumers from misleading actions. It is designed to prevent businesses from supplying consumers with false information, presenting themselves or their products or services in a way which could deceive consumers.
52. However, one of the practical difficulties faced by consumers (and indeed by businesses) is a lack of a consistent set of definitions for key environmental terms. One of the most frequent requests in response to the consultation on the CMA's Making Environmental Claims guidance was for a common glossary of terms to ensure that all businesses were consistent in their meaning. Terms such as 'biodegradable' and 'compostable' were frequently mentioned, along with phrases like 'carbon neutral', 'carbon negative' and 'net zero'.
53. Introducing standardised definitions into consumer protection law would improve the comparability of products and enable consumers to make better decisions on which products to choose. It would also create a level playing field for businesses.
54. Consumer protection law also prevents businesses from omitting 'material information' which a consumer might need to make an informed decision. Material information includes, among other things, information about the main characteristics of the goods or services being sold.
55. In the CMA's view, the omission of information about the environmental impact of a product or service may, in some cases, amount to a breach of consumer protection law. This can be particularly problematic if products have a range of environmental impacts across their life cycle from production to disposal, but consumers are only given information about one aspect, or limited aspects, of those impacts.
56. However, the obligation not to omit material information does not equate to a positive obligation to disclose environmental information in every case.
57. The most direct and effective means of ensuring that information is disclosed to consumers would be to create specific obligations to do so. There are already a number of private enterprises exploring means of determining and disclosing the carbon footprint of goods. The European Union is also trialling standardised 'Product Environmental Footprints' for

specified categories of goods.³⁷ Disclosure of the information could also be achieved by amending the definition of material information that people must be given under consumer protection law, to include specified aspects of environmental information, such as the carbon footprint of the product concerned.

58. Placing obligations on businesses to provide information necessarily means that businesses must have access to the information that they are required to share. At present, however, while there are obligations on businesses further up the supply chain not to mislead the businesses to whom they sell goods and services, there is no proactive obligation to provide information.
59. During the CMA's investigation on misleading environmental claims, we have heard frequently from businesses who struggle to obtain environmental impact information from those further up the supply chain. Manufacturers may have difficulty in obtaining information from those supplying raw materials. Manufacturers may also refuse to provide retailers with information that substantiates claims, particularly because, in some cases, those retailers may also be competitors.
60. Improved supply chain transparency would seem likely to have a positive effect both for businesses further down the supply chain, and for consumers. In turn, this could support better consumer decision-making, as well as incentivising improved environmental performance from companies.

Obsolescence

61. It is generally accepted that, to meet Net Zero and other sustainability goals, we need to reduce the consumption of resources.
62. One means of reducing the consumption of resources is to extend the useful life of products, by repairing, refurbishing or reselling them, rather than sending them for recycling or incineration, or to landfill.
63. The CMA has previously taken action for failure to provide information about updates which affect a product's performance.³⁸ Although not specifically focused on sustainability, such action does have the benefit of extending the life of products which might otherwise be thrown away.

³⁷ See European Commission (2021) '[Environmental Footprint transition phase](#)'

³⁸ See CMA (2019) '[Apple pledges clearer information on iPhone performance](#)'

64. There are further opportunities to modify consumer protection legislation to ensure that consumers can make informed decisions about, for example, the likely life of a product they are thinking about purchasing. It is already arguable that information about the reparability and durability of a product is 'material information' for the purposes of consumer protection law, and that this information should be provided to consumers prior to purchase. Those requirements could, however, be clarified and strengthened.
65. It is worth noting though that purely informational remedies based on current patterns of production and consumption are unlikely to move things far enough or fast enough. Indeed, it could be seen to endorse the idea that it is acceptable to produce resource-intensive and polluting products provided this is made clear to consumers. Increasing the information available to consumers as a way of changing consumer purchasing habits is therefore only part of the solution to reducing consumption of environmentally damaging products.

Over-consumption

66. The CMA has already taken action in relation to dark patterns which can 'nudge' people in to buying the wrong things. Dark patterns, and indeed other online choice architecture not currently prohibited by consumer protection law, can also result in people buying more than they need.
67. In extreme cases, vulnerable people can be targeted by online advertising making it more likely that they will over-spend and over-consume.³⁹
68. Even in cases where there is no underlying vulnerability, people can be tempted to over-consumption as a result of marketing practices. These can include practices such as businesses sending follow-up emails to e-commerce site visitors, social norming practices ('15 people have bought this item today'), and even multi-buy offers.
69. While the role of consumer protection law has always been to protect consumers from unscrupulous businesses, if the UK is to shift patterns of consumption to meet sustainability goals, further consideration may have to be given to what, until now, have been considered legitimate forms of marketing.⁴⁰

³⁹ See, for example, Money and Mental Health's report on online shopping, '[Convenience at a cost](#)'

⁴⁰ The Advertising Standards Authority is already considering how to shift patterns of consumption. It has [announced](#) that the Committee of Advertising Practice, will issue Advertising Guidance to industry that sets out,

Consumer protection law questions

70. We would welcome responses to the following questions:
- (a) Does the current consumer protection law framework constrain or frustrate initiatives that might support the UK's Net Zero and sustainability goals?
 - (b) What changes to business-to-business protections are required, to address the current issues of supply chain transparency?
 - (c) What other opportunities are there to develop the consumer protection law framework to help to achieve the UK's Net Zero and sustainability goals?
 - (d) To what extent should the consumer protection law framework be prescriptive, for example, by mandating provision of particular forms of information, or by prohibiting particular types of conduct, in order to help to achieve the UK's Net Zero and sustainability goals?
 - (e) How far should the consumer protection law framework go to address:
 - (i) the planned obsolescence of products; and/or
 - (ii) commercial practices which promote over-consumption?

among other things, the key principles advertisers need to follow to ensure their advertisements are socially responsible when considering environmental issues.

Markets regime

71. Market studies and market investigations are among a number of statutory tools that the CMA can use to fulfil its role to promote competition in the UK.⁴¹ Collectively, these tools are referred to here as the 'Markets regime', as set out in the Enterprise Act (EA02) as amended by the Enterprise and Regulatory Reform Act 2013).⁴²
72. Through the Markets regime, the CMA can consider wider competitive conditions in UK markets including barriers to competition, such as customer behaviour, market structure and the impact of regulations. The CMA's Markets tools enable it to conduct an in-depth analysis of how a market is working, identify and examine possible issues and publish its conclusions. This includes considering practices across a range of goods and services and looking at developing markets.
73. The CMA has a wide range of options for remedial action using its Markets tools to address the issues identified and to help make markets work well, including: issuing guidance to businesses; providing information or guidance to consumers; taking enforcement action and/or making recommendations to government. Through a market investigation, the CMA can use its order-making powers to introduce legally-enforceable remedies.
74. The CMA board is responsible for key decisions relating to market studies (including whether to launch) and whether to make a market investigation reference. The CMA draws on a range of sources to help identify possible markets to assess, including research and intelligence gathering using existing evidence, complaints data, and engagement with government, regulatory and consumer bodies among others. In determining whether to undertake potential Markets work, the CMA board will assess it against the [CMA's prioritisation principles](#) to consider its potential impact, strategic significance, risks and resource implications.
75. The discretionary nature of Markets work can provide the CMA board with flexibility to determine whether to intervene in a particular market, having

⁴¹ Further information on market studies and market investigations can be found in the following guidance documents: [Market Studies: Guidance on the OFT Approach \(OFT519\)](#); [Guidelines for market investigations \(CC3\)](#) and [Market Studies and Market Investigations: Supplemental Guidance on the CMA's Approach \(CMA3\)](#).

⁴² Market studies are conducted under the CMA's general review function in section 5 of the EA02. Under section 131 of the EA02 the CMA can make a market investigation reference. Under section 5 of the EA02 the CMA may also carry out a range of other work – including engaging with market participants and other interested persons to seek their views and request information – which can help the CMA to understand how markets may be working and support the use of its Markets tools.

considered relevant factors – such as the CMA’s strategic objectives.⁴³ As set out in its [2021 – 22 Annual Plan](#), the CMA has committed to prioritise work across a number of key strategic themes to help deliver significant positive outcomes for consumers, businesses and the economy. This includes a focus on supporting the UK’s transition to a low carbon economy, in line with the UK’s wider climate change goals.

Relationship between the markets regime and sustainability

76. The CMA considers that the existing Markets regime provides a broad and flexible mechanism to ensure markets are working well. Through these tools, the CMA can consider and address a broad range of potential competition and consumer issues arising now or in future, and which may be impacting the development of effectively functioning markets. This includes markets which support wider sustainability goals.
77. Notably, the CMA’s Markets functions enable it to examine new or emerging markets which are evolving at pace, which is particularly relevant to emerging markets that are arising to support the UK’s sustainability agenda, as well as more established relevant markets. For example, earlier this year the CMA completed its [market study into electric vehicle charging](#) – a nascent but critically important sector in helping to achieve the UK’s Net Zero commitment, given that transport, in particular cars, is the largest source of emissions in the UK.
78. While recognising that there are still many uncertainties, the electric vehicle charging market study identified a number of challenges for the sector as it continues to develop and set out a significant package of remedies to help address these. This included recommendations to government to increase the pace and scale of charging roll-out across the UK (including through supporting local authorities to play a more active role in their areas) and to help build consumer trust in the charging sector – by helping to make charging as simple as filling up with petrol or diesel and tasking a public body with overseeing this. The CMA also took action itself by launching a CA98 investigation into long-term exclusivity arrangements for charging along motorways.
79. Using its Markets tools the CMA can examine and remedy economic harms to consumers arising from poor competition – for example in terms of price, quality, range or service. The CMA considers that within the existing Markets regime it can, where appropriate, take into account

⁴³ This needs to be balanced against non-discretionary areas of work and the CMA must decide how to prioritise its work in a way that best delivers on its statutory remit.

environmental sustainability to the extent that it leads to economic harm to consumers.

80. Notwithstanding the importance and flexibility of the current Markets regime in supporting the UK's sustainability agenda – as noted above – the CMA considers that there is scope to strengthen the regime. The CMA has previously identified a number of areas to help bolster the effectiveness and speed of its Markets tools, including for example the ability to address issues more quickly and review remedies.⁴⁴ The CMA notes that these reforms would be particularly beneficial when examining fast-paced, developing markets such as those related to environmental sustainability – where competition and consumer issues are likely to continue to evolve after the CMA's work has concluded. In this regard, the CMA welcomes the government's current consultation on reforming competition and consumer policy, which includes proposals to take forward a number of these areas of reform for the Markets regime.

Markets regime questions

81. The CMA welcomes views on the above, including potential markets for its consideration which may be relevant to the UK's Net Zero and environmental sustainability goals. We would welcome responses to the following questions:
- (a) How should the CMA use its Markets powers to support the government's strategic priorities on environmental sustainability and Net Zero?
 - (b) How can the CMA identify markets that may be particularly relevant and important in supporting the UK's strategic goals on environmental sustainability and Net Zero? Are you aware of specific examples?
 - (c) Are there changes to the Markets regime, other than those highlighted above, which would better allow it to support Net Zero and environmental sustainability objectives? Please be as concrete as possible in your answers.

⁴⁴ See CMA (2019), [Letter from Andrew Tyrie to the Secretary of State for Business, Energy and Industrial Strategy](#).

Other considerations

82. Our CFI has focused on specific CMA tools. However we invite submissions on any other considerations the CMA should take into account in responding to the Secretary of State's request for advice. This includes the wider CMA policy tools referred to in paragraph 12 above.

Other questions

- (a) What other considerations should the CMA take into account in responding to the Secretary of State's request for advice?
- (b) How should the CMA apply its wider policy tools to support the UK's Net Zero and sustainability goals?

Next steps and outcomes

83. The CMA has now launched its CFI as described above, and aims to publish its advice in early 2022.
84. The CMA intends the advice to contribute to the body of evidence available to the government in considering how the competition and consumer regimes can better support the UK's Net Zero and sustainability goals. The CMA may also use the responses to this CFI more broadly to inform its own work.⁴⁵

Responding to our CFI

85. The CMA welcomes responses from interested parties to the specific questions identified above. Please provide supporting evidence or examples for your views where possible. For ease of reference, these questions are collated in Appendix A.
86. **To respond to these questions, please email your submission to:**
- sustainabilityadvice@cma.gov.uk
- by no later than 10 November 2021.**
87. We are publishing this CFI on the CMA webpages and drawing it to the attention of a range of stakeholders to invite responses to our questions.

⁴⁵ [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).

88. When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
89. In accordance with our policy of openness and transparency,⁴⁶ we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive.
90. Appendix C sets out how the CMA may use personal data and information provided to it during the course of this project.

⁴⁶ [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).

Appendix A: Summary of questions

Competition law enforcement questions

We invite responses, accompanied by relevant evidence, to the following questions:

Question 1:

Are you aware of examples where the CA98 regime has constrained or frustrated actual or potential agreements or initiatives that could support the UK's Net Zero and sustainability goals? Please explain the issue faced and any solutions identified.

Question 2:

Are there changes to the CA98 regime that would help to achieve the UK's Net Zero and sustainability goals? If so, what changes should be made to the regime, and what would they achieve?

Question 3:

To the extent not already covered by your responses to the previous questions, are you aware of examples of potential environmental sustainability initiatives which, in your view, would benefit from further CMA guidance or direct engagement with the CMA on the possible application of CA98? If so, please explain what further guidance would be necessary and why.

Question 4:

While the CMA is concerned primarily with public enforcement, we would also welcome any comments you may have in relation to private enforcement in this sphere. For instance, if you have suggested changes in response to previous questions, what impact, if any, do you think this could have on private actions?

Merger control regime questions

We invite responses, accompanied by relevant evidence, to the following questions:

Question 5:

If, and how, does the current merger control framework constrain or frustrate initiatives or transactions that might support the UK's Net Zero and sustainability goals? If possible, please provide examples.

Question 6:

More specifically, are you aware of any examples of cases reviewed under the current merger regime where environmental factors have not been able to be fully taken into account? Please provide details.

Question 7:

Do you consider that the CMA's merger control regime could better contribute to protecting the environment and support the UK's Net Zero and sustainability goals? If so, please explain how.

Question 8:

Do you consider that the CMA is an appropriate body to assess environmental sustainability factors in relation to merger control, for example, where it is a basis on which firms compete? Do you consider there would be a benefit in having an additional or alternative body or regulator being available to provide advice on such matters? Please explain the reasons for your response.

Question 9:

To the extent not already covered by your responses to previous questions, are you aware of examples of potential environmental sustainability initiatives which, in your view, would benefit from further CMA guidance and/or direct engagement with CMA on the possible application of the merger regime? If so, please explain what further guidance would be necessary and why.

Consumer protection law questions

We invite responses, accompanied by relevant evidence, to the following questions:

Question 10:

Does the current consumer protection law framework constrain or frustrate initiatives that might support the UK's Net Zero and sustainability goals?

Question 11:

What changes to business-to-business protections are required, to address the current issues of supply chain transparency?

Question 12:

What other opportunities are there to develop the consumer protection law framework to help to achieve the UK's Net Zero and sustainability goals?

Question 13:

To what extent should the consumer protection law framework be prescriptive, for example, by mandating provision of particular forms of information, or by prohibiting particular types of conduct, in order to help to achieve the UK's Net Zero and sustainability goals?

Question 14:

How far should the consumer protection law framework go to address:

- (a) the planned obsolescence of products; and/or
- (b) commercial practices which promote over-consumption?

Markets regime questions

We invite responses, accompanied by relevant evidence, to the following questions:

Question 15:

How should the CMA use its Markets powers to support the government's strategic priorities on environmental sustainability and Net Zero?

Question 16:

How can the CMA identify markets that may be particularly relevant and important in supporting the UK's strategic goals on environmental sustainability and Net Zero?
Are you aware of specific examples?

Question 17:

Are there changes to the Markets regime, other than those highlighted above, which would better allow it to support Net Zero and environmental sustainability objectives?
Please be as concrete as possible in your answers.

Other considerations

We invite responses, accompanied by relevant evidence, to the following questions:

Question 18:

What other considerations should the CMA take into account in responding to the Secretary of State's request for advice?

Question 19:

How should the CMA apply its wider policy tools to support the UK's Net Zero and sustainability goals?

Appendix B: International discussion on the application of Chapter I to sustainability agreements

1. As mentioned in the [CMA's blog on Sustainability agreements](#), there is an international discussion involving various competition law specialists, including competition law practitioners and authorities about how the Chapter I exemption criteria (and their EU equivalents) could apply to sustainability agreements. Set out below is a summary of some of the issues under discussion in relation to each of the four criteria for a CMA exemption.⁴⁷

Discussion in relation to the first criterion, which requires that the agreement improves production or distribution or promotes technical or economic progress

- Whether product sustainability itself is a qualitative benefit that should be taken into account in applying the first criteria.⁴⁸
- Whether *progress* in terms of sustainability can meet the first criteria even if it does not have an impact on the actual quality of the product in question, for example where sustainable production processes considerably reduce carbon emissions, whilst keeping the end-product attributes and characteristics largely unchanged.⁴⁹ It has also been suggested that it be clarified that the pursuit of sustainability objectives would be considered a relevant efficiency gain in applying the first criteria, whether on the basis that this improved production/distribution or was considered technical economic progress.⁵⁰

Discussion in relation to the second criterion, which requires that consumers should receive a 'fair share' of the improvements or efficiencies

⁴⁷ As mentioned in paragraph 17 of the CFI, courts have concluded in a very limited number of cases that certain agreements that might have restrictive effects on competition can fall outside of competition law entirely where they are justified by a legitimate objective and where any consequential restrictive effects are inherent in the pursuit of that legitimate objective. Some practitioners have also argued that the logic of cases like *Wouters* and *Meca-Medina* could apply to agreements that serve sustainability objectives (see for example, Baker McKenzie (2020), [Competition Policy supporting the Green Deal – Baker McKenzie response to call for contributions](#), paragraph 3.9, and Cleary Gottlieb Steen & Hamilton (2020) [The "Polluter Pays" Principle as a Basis for Sustainable Competition Policy](#), section II (2)).

⁴⁸ Linklaters (2020) [Response by Linklaters LLP to the Commission's Consultation on 'Competition Policy supporting the Green Deal'](#), Section 10.3 and Dentons (2020) [Reply by Dentons Europe LLP to EC Consultation on Competition Policy Supporting the Green Deal](#), paragraph 21(iii)(b).

⁴⁹ [Reply by Dentons Europe LLP to EC Consultation on Competition Policy Supporting the Green Deal](#), paragraph 21(iii)(b).

⁵⁰ CMS (2020) [Joint Observations and Suggestions by CMS Competition & EU Group and CMS Consumer Products Sector Group – Competition Policy Supporting the Green Deal](#), page 9

- Which ‘consumers’ should receive a fair share of the improvements or efficiencies? Under the current guidance and case law that the CMA applies, ‘consumers’ for these purposes encompasses at least direct and indirect users of the products covered by the agreement.⁵¹ One question that has been raised is whether environmental benefits generated by sustainability agreements that benefit society *as a whole* rather than benefiting only the group of consumers affected by the agreement may be considered when determining whether the agreement should be exempted from competition law.⁵²
- How to determine whether the share received by consumers is ‘fair’. Under the guidance currently followed by the CMA, consumers receive a fair share of improvements or efficiencies where these are passed on to them to such an extent that the consumers are *at least* compensated for the restrictive effects of the agreement.⁵³ However, some have argued that consumers may receive a ‘fair share’ of environmental efficiencies even where this does not entirely compensate them for the relevant restriction of competition.⁵⁴ Regardless of which principle of ‘fairness’ were to apply, it might in any event be difficult to identify the ‘share’ of an environmental benefit received by customers (as quantification of the benefit may be very challenging or not feasible) and weighing that share against the effects of the relevant restriction of competition may be difficult, including because it is likely to involve value judgements between competition and sustainability outcomes. As we also note in the CFI in relation to the assessment of merger assessments, while the CMA’s assessments can incorporate certain value judgements, there is not an established framework for doing so in relation to environmental sustainability.

⁵¹ [Guidelines on the application of Article 81\(3\)](#), paragraph 84

⁵² See CMA January 2021 blogpost, [Environmental sustainability initiative and competition law](#). This was also flagged by respondents to the European Commission’s recent consultation on Competition Policy and the Green Deal, summarised in its recent [Competition Policy brief: Competition Policy in Support of Europe’s Green Ambition](#).

⁵³ [Guidelines on the application of Article 81\(3\)](#), paragraphs 84 and 85

⁵⁴ For example, the Netherlands competition authority has argued that in the specific case of sustainability agreements that seek to address / remedy environmental damage caused by production / distribution of the products/services being sold, parties to the sustainability agreement should not be required to compensate users of the relevant products / services fully for the relevant restriction of competition. ACM (2020) ‘[Guidelines: Sustainability agreements – Opportunities within competition law](#)’, paragraph 48

Discussion in relation to the third criterion which requires that the agreement does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives

- Competition law practitioners have suggested that regulators should consider and clarify whether, and in what circumstances, the third criterion might be met in the following situations:
 - (a) Where a restriction is needed to overcome a first-mover disadvantage (eg by avoiding free riding by competitors on investment costs incurred by the first firm to take unilateral action);⁵⁵
 - (b) To achieve economies of scales to set up and monitor a standard;⁵⁶
 - (c) To align and focus parties' sustainability efforts;⁵⁷
 - (d) Where individual businesses – even with strong buying power – lack the necessary leverage to induce systemic changes required in the supply chain.⁵⁸

Discussion in relation to the fourth criterion which requires that the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question

- Whether and in what circumstances the criterion that 'sufficient competition remains in the market' would be fulfilled where a significant part of the industry takes part in a specific initiative or pan-industry cooperation.⁵⁹
- It has been suggested that the fourth criteria might still be fulfilled in the context of pan-industry cooperation as long as the industry peers who are co-operating in relation to sustainability continue to compete on some other important parameters such as price or quality.⁶⁰

⁵⁵ Baker McKenzie (2020), [Competition Policy supporting the Green Deal – Baker McKenzie response to call for contributions](#), paragraph 3.40, Clifford Chance (2020), [Competition Policy supporting the Green Deal – Clifford Chance response to call for contributions](#), paragraph 31 and Freshfields Bruckhaus Deringer (2020) [Response by Freshfields Bruckhaus Deringer to the European Commission's call for contributions on Competition Policy Supporting the Green Deal](#), paragraph 70.

⁵⁶ Baker McKenzie (2020), [Competition Policy supporting the Green Deal – Baker McKenzie response to call for contributions](#), paragraph 3.40

⁵⁷ Baker McKenzie (2020), [Competition Policy supporting the Green Deal – Baker McKenzie response to call for contributions](#), paragraph 3.40

⁵⁸ Baker McKenzie (2020), [Competition Policy supporting the Green Deal – Baker McKenzie response to call for contributions](#), paragraph 3.40

⁵⁹ Linklaters (2020), [Response by Linklaters LLP to the Commission's Consultation on 'Competition Policy supporting the Green Deal'](#), Section 10.3.

⁶⁰ CMS (2020) [Joint Observations and Suggestions by CMS Competition & EU Group and CMS Consumer Products Sector Group – Competition Policy Supporting the Green Deal](#), page 9

Appendix C: Use of information provided to the CMA

1. This Appendix sets out how the CMA may use information provided to it during the course of this project.

Why is the CMA asking for information?

2. The information you provide will help us to assess how the CMA can better use its tools to achieve the UK's Net Zero and sustainability goals

Compliance with government consultation principles

3. In preparing this consultation document, the CMA has taken into account the published government consultation principles, which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

4. Any personal data you provide to the CMA will be handled in accordance with our obligations under the UK General Data Protection Regulation and the Data Protection Act 2018. Our personal information charter set out the standards you can expect from us when we collect, use or share personal data and provides details of your rights in relation to that personal data and how to contact us.
5. 'Personal data' is information that relates to an identified or identifiable the living individual. We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take CFI responses into account and to ensure that we properly consult on matters relevant to the advice requested by the Secretary of State before it is finalised.
6. We may only publish or share with others information that you provide to us in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable: (a) any information relating to the private affairs of an individual which might significantly harm the individual's interests; or (b) any commercial information which, if published or shared, we think might significantly harm the legitimate business interests of the undertaking to which it relates. If you consider

that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.

7. Please note that information provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.