

The retained Horizontal Block Exemption Regulations

Call for inputs document

CMA152con
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Introduction and background

1. The purpose of this Call for Inputs is to seek stakeholder feedback on the retained Specialisation Block Exemption Regulation (Specialisation BER)¹ and the retained Research and Development Block Exemption (R&D BER).² This feedback will inform the CMA's review of whether to recommend that the Secretary of State for BEIS should replace the Specialisation BER and R&D BER (referred to collectively as the retained HBERs) upon their expiry on 31 December 2022.
2. The Competition Act 1998 prohibits agreements between businesses that restrict competition in the UK (unless they meet the conditions for exemption in section 9(1) of the Competition Act or are otherwise excluded). This is known as the Chapter I prohibition. Agreements are horizontal (entered into between actual or potential competitors) or vertical (entered into between businesses at different levels of the supply chain).
3. An agreement is exempt from the Chapter I prohibition if it creates sufficient benefits to outweigh any anti-competitive effects. A 'block exemption' regulation automatically exempts agreements of a certain type from the Chapter I prohibition if the agreement satisfies the conditions set out in the block exemption regulation. The retained HBERs provide exemptions for two categories of horizontal agreements: R&D agreements and specialisation agreements. They are two of the 'retained exemptions' that were preserved in UK law after EU law generally ceased to have effect in the UK on 1 January 2021.³
4. This Call for Inputs also requests stakeholders' views on the EU Guidelines on Horizontal Co-operation Agreements (the Horizontal Guidelines),⁴ which were published by the European Commission alongside the HBERs in 2011. The Horizontal Guidelines provide guidance to assist businesses in carrying out an assessment of the most common types of horizontal co-operation agreements namely: R&D agreements, production agreements (including specialisation agreements), purchasing agreements, commercialisation agreements and standardisation agreements. The Horizontal Guidelines also set out some general principles for the assessment of the exchange of

¹ Regulation 1218/2010 on the application of Article 101(3) of the TFEU to categories of specialisation agreements.

² Regulation 1217/2010 on the application of Article 101(3) of the TFEU to categories of R&D agreements.

³ European Union (Withdrawal) Act 2018 and the Competition (Amendment etc.) (EU Exit) Regulations 2019, as amended by the Competition (Amendment etc.) (EU Exit) Regulations 2020.

⁴ [2011/C 11/01 Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements](#)

information between competitors, which are applicable to all types of horizontal co-operation agreements entailing the exchange of information.

5. The CMA's review is intended to assess whether the retained HBERs and Horizontal Guidelines meet their intended purpose and take account of specific features of the UK economy serving the interests of UK businesses and consumers. To that end, the CMA will draw on existing evidence from the European Commission's recent evaluation of the EU equivalents to the retained HBERs and the Horizontal Guidelines, to the extent that such evidence is relevant to the UK, and use feedback from this Call for Inputs to build on this.⁵ Stakeholders are encouraged to provide feedback in response to the questions set out in this Call for Inputs with a specific focus on the operation and application of the retained HBERs and Horizontal Guidelines in the UK, including (where they have knowledge of this), relevant differences between the UK position and the EU position. The CMA will also draw on evidence from the European Commission's recent evaluation of the EU equivalents to the retained HBERs and the Horizontal Guidelines, to the extent that such evidence is relevant to the UK.⁶
6. This Call for Inputs is structured into the following sections:
 - (a) General impact assessment questions (pages 7 to 8).
 - (b) Specialisation BER (pages 9 to 12);
 - (c) R&D BER (pages 13 to 16); and
 - (d) Horizontal Guidelines (pages 17 to 20).
7. Each section includes a brief introduction to the rationale for our questions and then the questions that we would particularly welcome responses to. Aside from the first of these sections, which is dedicated to impact assessment, the questions in each section are divided into those relating to 'policy' and 'impact assessment'. The CMA will consider the responses to the policy questions included in this Call for Input to reach a view on how best to address the underlying substantive issues. Stakeholders' responses to the impact assessment questions will be used to inform the preparation of an

⁵ The European Commission launched its own review of the EU equivalents to the retained HBERs and the Horizontal Guidelines in July 2019. In May 2021, the Commission finalised the evaluation phase with the publication of a Staff Working Document in which it concluded that these instruments are still relevant, but their effectiveness can be improved. Details of the Commission's review and evaluation are available here: [2019 hbers \(europa.eu\)](https://european-council.europa.eu/media/en/press-room/default.aspx?id=13187)

impact assessment of the CMA's final recommendation, if the Secretary of State decides to accept the recommendation.

8. Appendix A also includes information on how the CMA may use information provided to it during the course of this project.

General impact assessment questions for all respondents to complete

9. We would like to get a sense of the industries and size of businesses affected by the HBERs and Horizontal Guidelines as well as the extent of any impact that might arise from their renewal/maintenance, modification or lapse/withdrawal. To that end, we have included some general questions below that we would ask all respondents to this Call for Inputs to complete.

Questions for stakeholder feedback and input

IA1: Please confirm which of the following industries you operate in, or, if you are submitting a response to this Call for Input as an adviser or other third party, which of the following industries you consider are particularly relevant to this Call for Input.⁷

- (a) Agriculture, forestry and fishing;
- (b) Mining and quarrying;
- (c) Manufacturing;
- (d) Electricity, gas, steam and air conditioning supply;
- (e) Water supply, sewerage, waste management and remediation activities;
- (f) Construction;
- (g) Wholesale and retail trade, or repair of motor vehicles and motorcycles;
- (h) Transportation and storage;
- (i) Accommodation and food service activities;
- (j) Information and communication;
- (k) Financial and insurance activities;
- (l) Real estate activities;
- (m) Professional, scientific and technical activities;

⁷ This list is taken from the SIC codes classifications, available here with further detail about the activities that sit under each category: [Nature of business: Standard Industrial Classification \(SIC\) codes \(companieshouse.gov.uk\)](https://companieshouse.gov.uk/nature-of-business-standard-industrial-classification-sic-codes)

- (n) Administrative and support service activities;
- (o) Public administration and defence, or compulsory social security;
- (p) Education;
- (q) Human health and social work activities;
- (r) Arts, entertainment and recreation;
- (s) Other service activities;
- (t) Activities of households as employees, or undifferentiated goods- and services- producing activities of households for own use;
- (u) Activities of extraterritorial organisations and bodies.

IA2: Whether you are making a submission as a business in industry, an adviser, or otherwise, please provide any observations you have on the industry or industries that you consider each of the HBERs and the relevant portions of the Horizontal Guidelines to be particularly relevant to, including how widespread relevant agreements are within each such industry.

IA3: Please provide an indication of whether you are a small (<50 employees), or medium (50 to 249 employees) or large (250+ employees) business (and if the latter, give a broad indication of the number of employees you employ).

IA4: Whether you are making a submission as a business in industry, an adviser, or otherwise, please provide any observations you have on the size of business that, in your experience, typically makes use of each of the HBERs (distinguishing between the Specialisation BER and the R&D BER) and the relevant sections of the Horizontal Guidelines.

Specialisation BER

10. The Specialisation BER was originally introduced by the European Commission because of the potential that specialisation agreements have to improve production processes, lower costs, and lead to lower prices for consumers.
11. The Specialisation BER defines three types of specialisation agreement that can benefit from exemption under it, subject to meeting certain criteria:
 - (a) Unilateral specialisation agreements: these are agreements between two parties that are active on the same product market and where one party agrees fully or partly to cease production of certain products, or to refrain from producing those products and purchase them from the other party, which agrees to produce and supply those products.
 - (b) Reciprocal specialisation agreements: these are agreements between two or more parties that are active on the same product market and agree, on a reciprocal basis, fully or partly to cease or refrain from producing certain but different products and to purchase these products from the other parties, which agree to produce and supply them.
 - (c) Joint production agreements: these are agreements between two or more parties that agree to produce certain products jointly.
12. As noted above, alongside the Specialisation BER, the European Commission published the Horizontal Guidelines which define 'production agreements' as including the three categories of agreement covered by the Specialisation BER, as well as some categories of co-operation agreements relating to production that are not covered by the block exemption. See pages 17 to 20 of this Call for Inputs for background and questions in relation to the Horizontal Guidelines, including in relation to production agreements and, more broadly, whether and how the Horizontal Guidelines work well alongside the Specialisation BER.

Questions for stakeholder feedback and input

Policy questions

- S1: We would welcome your responses to the following questions:
- (a) Has the Specialisation BER contributed to promoting competition in the UK? It would be helpful to have some examples, if possible.

- (b) Has the Specialisation BER contributed to promoting economic activity that benefits consumers in the UK and would not otherwise have occurred? It would be helpful to have some examples, if possible.
- (c) Has your business entered into specialisation agreements that have benefited from the block exemption in the Specialisation BER?
- (d) Are there UK-specific considerations that the CMA should take into account in its review of the Specialisation BER? If so, it would be helpful if you could indicate why those differences are needed or justified (which might, for example, be because of particular characteristics you identify in the UK market that differ from the EU market).
- (e) Might any category of business, institute or body be discouraged from entering specialisation agreements under the current rules in the UK?⁸

S2: In relation to the definitions included in Article 1 of the Specialisation BER:

- (a) Are these sufficiently clear to allow you to identify the categories of agreement that can benefit from the Specialisation BER? If not, how should the definitions, in your view, be clarified or amended?
- (b) Are there any additional categories of agreement that are not already included in the definition of 'specialisation agreement' that, in your view, would be likely to meet the requirements for exemption from the Chapter I prohibition under section 9 of the Competition Act 1998?⁹

S3: In relation to the conditions for block exemption under Article 2 of the Specialisation BER:

- (a) Are the conditions for block exemption under Article 2 sufficiently clear?
- (b) If not, please explain how they should be clarified, and why this is needed.

S4: In relation to the market share threshold under Article 3 of the Specialisation BER:

- (a) From your experience, does this threshold allow most specialisation agreements that would be likely to benefit from an individual exemption to

⁸ For example, evidence received in the EU evaluation raises the question of whether SMEs may be discouraged from entering into specialisation agreements under the current rules.

⁹ For example, evidence received in the EU evaluation raises the question of whether the Specialisation BER should cover unilateral specialisation agreements with more than two parties and horizontal subcontracting agreements that aim to expand production.

be block exempted? If not, please provide examples and indicate any alternative threshold which would, in your view, achieve this aim.

- (b) Are the terms on which the market share threshold shall apply (as explained in Article 5 of the Specialisation BER) sufficiently clear and do they remain appropriate? If not, please explain why, and how they should be clarified or amended

S5: In relation to the 'hardcore' restrictions listed in Article 4 of the Specialisation BER:

- (a) Is the current list of hardcore restrictions sufficiently clear? Please explain your position.
- (b) Are there any further restrictions that it would be appropriate to treat as hardcore restrictions, in addition to those set out in Article 4 of the Specialisation BER?
- (c) The Specialisation BER does not currently set out any 'excluded restrictions' that would not benefit from the block exemption, but instead would need to be individually assessed to establish whether they benefit from exemption. Are there any such restrictions that it would be appropriate to exclude from the benefit of the exemption?

Impact assessment questions

S6: To the extent your answers to questions S1 to S5 suggest potential changes to the Specialisation BER, what impact would these have on your business or the businesses that you advise? Would this impact be *negligible*, *moderate* or *significant*?

S7: If the market share threshold under Article 3 of the Specialisation BER were to change, what would the impact on your business, or the businesses that you advise, be? For example, if the threshold were to be raised or lowered by 5% what would the impact be, and would it be *negligible*, *moderate* or *significant*?

S8: To help us to understand the impact of any changes to, or expiry of, the Specialisation BER:

- (a) Would you expect your business, or the businesses that you advise, to incur costs to *understand* the relevant legal framework and how it may

impact your business (eg costs for legal or expert advice) in the following scenarios?

- (i) The Specialisation BER lapses on expiry on 31 December 2022.
- (ii) The Specialisation BER is replaced from 1 January 2023 by an equivalent UK block exemption.

If you do consider that you would incur costs, it would help to understand whether these would be *negligible*, *moderate* or *significant*. If you are submitting a response to this Call for Input as an adviser, we would be grateful for any observations you can share on the likely costs for your clients in each relevant industry.

- (b) Would you expect your business, or the businesses that you advise, to incur costs to *implement* the relevant legal framework (eg costs to change your current business plans) in the following scenarios?

- (i) The Specialisation BER lapses on expiry on 31 December 2022.
- (ii) The Specialisation BER is replaced from 1 January 2023 by an equivalent UK block exemption.

If you do consider that you would incur costs, it would help to understand whether these would be *negligible*, *moderate* or *significant*. If you are submitting a response to this Call for Input as an adviser, we would be grateful for any observations you can share on the likely costs for your clients in each relevant industry.

Research and Development BER

13. The R&D BER was originally introduced by the European Commission because of the significant advantages that R&D cooperation agreements can bring, including the efficient allocation of tasks and resources and the likelihood of earlier breakthroughs. The R&D BER provides an exemption for agreements pursuant to which two or more parties agree to collaborate in relation to the research and development of products, technologies or processes. The agreement may involve the joint exploitation of the results of the R&D and it may also cover paid-for R&D (where one-party finances R&D conducted by the other). For an R&D agreement to benefit from the block exemption certain criteria need to be met during the period of research and development and then, if the products are jointly exploited by the parties, for up to 7 years from the time the contract products or technologies are first put on the market in the EU or UK.
14. The Horizontal Guidelines complement the R&D BER and provide guidance on the circumstances in which an R&D agreement may restrict competition and, if it does, whether it can benefit from an individual exemption in the absence of an applicable block exemption. See pages 17 to 20 of this Call for Inputs for background and questions in relation to the Horizontal Guidelines including in relation to R&D agreements and, more broadly, whether and how the Horizontal Guidelines works well alongside the R&D BER.

Questions for stakeholder feedback and input

Policy questions

R&D1: We would welcome your responses to the following questions.

- (a) Has the R&D BER contributed to promoting competition in the UK? It would be helpful to have some examples, if possible.
- (b) Has the R&D BER contributed to promoting economic activity that benefits consumers in the UK and would not otherwise have occurred? It would be helpful to have some examples, if possible.
- (c) Has your business entered into R&D agreements that have benefited from the block exemption in the R&D BER?
- (d) Are there UK-specific considerations that the CMA should take into account in its review of the R&D BER? If so, it would be helpful if you could indicate why those differences are needed or justified (which might,

for example, be because of particular characteristics you identify in the UK market that differ from the EU market).

- (e) Are the current rules discouraging any category of business, institute or body from entering R&D agreements?¹⁰

R&D2: In relation to the definitions included in Article 1 of the R&D BER:

- (a) Are the definitions included in Article 1 sufficiently clear to allow you to identify the categories of agreement that can benefit from the retained R&D BER? If not, how should the definitions, in your view, be clarified or amended?
- (b) Are there any additional categories of agreement that are not already included in the definition of 'research and development agreement' that, in your view, would be likely to meet the requirements for exemption from the Chapter I prohibition under section 9 of the Competition Act 1998?

R&D3: In relation to the conditions for exemption in Article 3 of the R&D BER:

- (a) Is the requirement for 'full access' rights to the results of the R&D covered by an agreement sufficiently clear to allow you to identify the circumstances in which agreements will benefit from the R&D BER?
- (b) Is the requirement for access to pre-existing know-how sufficiently clear to allow you to identify the circumstances in which agreements will benefit from the R&D BER?
- (c) From your perspective, should the requirement(s) of full access to the results and/or access to pre-existing know-how be maintained? Would you or those you represent benefit from any modification or removal of these requirements?
- (d) To what extent might the scope of the R&D BER need to be extended to adequately capture the pre-commercialisation stages of R&D, including the early stages where any prospect of commercialisation is several years away?
- (e) To the extent not already covered by your responses to questions 18(a) to (d), are the conditions for exemption sufficiently clear?

¹⁰ For example, evidence received in the EU evaluation raises the question of whether SMEs, research institutes and academic bodies may be discouraged from entering into R&D agreements under the current rules. We also would like to understand more broadly whether stakeholders consider the R&D BER strikes the correct 'balance' between the promotion of competition and incentives to invest in R&D activity.

R&D4: In relation to the market share threshold and duration of exemption under Article 4 of the R&D BER:

- (a) From your experience, does the 25% market share threshold allow most R&D agreements that would be likely to benefit from an individual exemption to be block exempted? It would be helpful to have some examples, if possible.
- (b) Does the current duration of the benefit of the R&D BER for non-competing companies under Article 4(1) and competing companies under Article 4 (2) of the R&D BER remain appropriate? If not, please explain why this is so and set out what would in your view be an appropriate duration.
- (c) Are the terms on which the market share threshold shall apply, as explained in Article 7 of the R&D BER, sufficiently clear and do they remain appropriate? If not, please explain why and how they should be clarified or amended.

R&D5: In relation to the 'hardcore restrictions' listed in Article 5 of the R&D BER and the 'excluded restrictions' listed in Article 6 of the R&D BER:

- (a) Is the current list of hardcore restrictions sufficiently clear? Please explain your position.
- (b) Are there any further restrictions that it would be appropriate to treat as hardcore restrictions, in addition to those set out in Article 5 of the R&D BER?
- (c) Is the current list of excluded restrictions sufficiently clear? Please explain your position.
- (d) Would it be appropriate to remove or modify any of the excluded restrictions? Please explain your position.
- (e) Are there any further restrictions that it would be appropriate to exclude from the benefit of the exemption, in addition to those set out in Article 6 of the R&D BER?

Impact assessment questions

R&D6: To the extent your answers to questions R&D1 to R&D5 suggest potential changes to the Specialisation BER, what impact would these have on your business or the businesses that you advise? Would this impact be *negligible*, *moderate* or *significant*?

R&D7: If the market share threshold under Article 4 of the R&D BER were to change, what would the impact on your business, or the businesses that you advise, be? For example, if the threshold were to be raised or lowered by 5% what would the impact be, and would it be *negligible*, *moderate* or *significant*?

R&D8: To help us to understand the impact of any changes to or expiry of, the block exemption included in the R&D BER:

(f) Would you expect your business to incur costs to *understand* the relevant legal framework and how it may impact your business (eg costs for legal or expert advice) in the following scenarios?

(i) The R&D BER lapses on expiry on 31 December 2022.

(ii) The R&D BER is replaced from 1 January 2023 by an equivalent UK block exemption.

If you do consider that you would incur costs, it would help to understand whether these would be *negligible*, *moderate* or *significant*. If you are submitting a response to this Call for Input as an adviser, we would be grateful for any observations you can share on the likely costs for your clients in each relevant industry.

(g) Would you expect your business to incur costs to *implement* the relevant legal framework (eg costs to change your current business plans) in the following scenarios?

(i) The R&D BER lapses on expiry on 31 December 2022.

(ii) The R&D BER is replaced from 1 January 2023 by an equivalent UK block exemption.

If you do consider that you would incur costs, it would help to understand whether these would be *negligible*, *moderate* or *significant*. If you are submitting a response to this Call for Input as an adviser, we would be grateful for any observations you can share on the likely costs for your clients in each relevant industry.

Horizontal Guidelines

15. The Horizontal Guidelines provide guidance on the application of the prohibition on anti-competitive agreements to cooperation agreements between competitors (in Chapter 1) and more specifically, on the following specific categories of horizontal co-operation: ¹¹
- (a) information exchange (in Chapter 2)
 - (b) R&D agreements (in Chapter 3)
 - (c) production agreements (in Chapter 4)
 - (d) purchasing agreements (in Chapter 5)
 - (e) commercialisation agreements (in Chapter 6); and
 - (f) standardisation agreements (in Chapter 7)
16. In each instance, the Horizontal Guidelines provide guidance on the circumstances in which agreements will restrict competition and the circumstances in which an individual exemption may be available to agreements that do restrict competition.

Questions for stakeholder feedback and input

Policy questions

HGL1: We would welcome your response to the following questions:

- (a) We are interested in understanding how coherently the retained HBERs work with the Horizontal Guidelines and alongside other rules and guidance in the UK, including other block exemptions. Are there any issues that could be usefully resolved or clarified either in revisions to the retained HBERs or additional guidance in the Horizontal Guidelines? If so please explain and, if possible, provide examples of the sort of agreements that could be impacted by these changes.
- (b) Would guidance in relation to any categories of horizontal cooperation agreement that are not covered in the Horizontal Guidelines be of benefit

¹¹ Although the Horizontal Guidelines provide guidance on the application of EU competition law, in applying UK competition law the CMA must have regard to relevant EU decisions or statements that were in place ahead of the EU Exit Transition Period to the extent that they are not withdrawn, as explained in the CMA's [Guidance on the functions of the CMA after the end of the Transition Period \(publishing.service.gov.uk\)](#) (see paragraphs 4.18-4.24 and 4.36).

to UK businesses, eg in relation to infrastructure sharing, collective bargaining, industry alliances, industry-wide cooperation agreements, and insolvency restructuring agreements? If so, please provide evidence of this, including details of the questions that you believe this guidance should address.

- (c) Would guidance in relation to digital-related issues, in revised or supplemented Horizontal Guidelines be of benefit to UK businesses, eg in relation to data pooling, data sharing and network sharing?¹² If so, please provide evidence of issues and details of the questions that you believe this guidance should address.
- (d) Should the CMA provide guidance in revised or supplemented Horizontal Guidelines on horizontal cooperation agreements that pursue sustainability goals? Would a dedicated chapter in the Horizontal Guidelines improve legal certainty in this area? If so, please provide evidence of this including details of the questions that you believe this guidance should address.
- (e) To the extent not covered by your responses to the other questions, please outline areas of the retained HBERs or Horizontal Guidelines where clarification or simplification would be useful.
- (f) To the extent not covered by your responses to other questions in this Call for Input, are there any categories of horizontal agreement that you believe are likely to be efficiency-enhancing and should be sufficiently unlikely to raise competition concerns that they should benefit from a block exemption, or at least be covered in the Horizontal Guidelines? If so, please explain your response by reference to the conditions set out in section 9(1) of the Competition Act 1998 and, where possible, provide relevant evidence.

HGL2: In relation to information exchange:

- (a) Do the Horizontal Guidelines offer sufficient legal certainty on types of information exchange that may be considered pro-competitive?

¹² These examples are drawn from the EU evaluation, which indicated that these categories of agreements might usefully be covered in revised Horizontal Guidelines. Data pooling is a form of data sharing arrangement in which data is shared with some element of reciprocity and at least some parties to the arrangement agree to share data (source: [Competition policy for the digital era - Publications Office of the EU \(europa.eu\)](https://ec.europa.eu/competition/policy_for_the_digital_era)). Network sharing agreements are a form of infrastructure sharing agreement entered into between telecoms operators; they were raised in the EU evaluation as especially relevant in the current context of the deployment of 5G technology (source: EU evaluation study).

- (b) Do the Horizontal Guidelines account sufficiently for business models or scenarios whereby parties are at the same time in a horizontal and vertical relationship?
- (c) Are there otherwise any areas of Chapter 2 of the Horizontal Guidelines on information exchange which require further clarification? If so, please explain which areas are unclear and, to the extent possible, provide examples of the sort of co-operation that would benefit from this clarification.

HGL3: In relation to R&D agreements:

- (a) Are there areas of Chapter 3 of the Horizontal Guidelines on R&D agreements which require further clarification? If so, please explain which areas are unclear and, to the extent possible, provide examples of the sort of co-operation that would benefit from this clarification.

HGL4: In relation to production agreements:

- (a) Are there areas of Chapter 4 of the Horizontal Guidelines on production agreements which require further clarification? If so, please explain which areas are unclear and, to the extent possible, provide examples of the sort of co-operation that would benefit from this clarification.

HGL5: In relation to purchasing agreements:

- (a) The Horizontal Guidelines currently state that market power is unlikely when parties to a joint purchasing agreement have a combined market share below 15% on the purchasing market or markets as well as on the selling market or markets. Does 15% remain an appropriate level for this 'safe harbour'? If not, please explain your position.
- (b) Are there any other areas of Chapter 5 of the Horizontal Guidelines on purchasing agreements which require further clarification? If so, please explain which areas are unclear and, to the extent possible, provide examples of the sort of co-operation that would benefit from this clarification.

HGL6: In relation to commercialisation agreements (defined in the Horizontal Guidelines as agreements which "involve co-operation between competitors in the selling, distribution or promotion of their substitute products"):

- (a) Is further guidance needed on any other category of commercialisation agreement not already covered in Chapter 6 of the Horizontal Guidelines, eg the assessment of joint bidding and non-indispensable consortia?

- (b) The Horizontal Guidelines currently state that market power is unlikely when parties to a commercialisation agreement have a combined market share below 15%. Does 15% remain an appropriate level for this 'safe harbour'? If not, please explain why, and what you think would be a more appropriate threshold.
- (c) Are there otherwise any areas of Chapter 6 of the Horizontal Guidelines on commercialisation agreements which require further clarification? If so, please explain which areas are unclear and, to the extent possible, provide examples of the sort of co-operation that would benefit from this clarification.

HGL7: In relation to standardisation agreements (defined in the Horizontal Guidelines as agreements which 'have as their primary objective the definition of technical or quality requirements with which current or future products, production processes, services or methods may comply') and standard terms of conditions of sale or purchase elaborated by trade associations or competing companies (which are also covered by Chapter 7 of the Horizontal Guidelines):

- (a) How easy is it to apply the provisions of the Horizontal Guidelines on standardisation agreements in practice?
- (b) Do the provisions in the Horizontal Guidelines that describe the role of FRAND (fair, reasonable, and non-discriminatory) terms, and the example given of how FRAND terms could impact the analysis of a standard essential patent licence, provide sufficient clarity?
- (c) Are there any other areas of Chapter 7 of the Horizontal Guidelines on standardisation agreements which require further clarification? If so, please explain which areas are unclear and, to the extent possible, provide examples of the sort of co-operation that would benefit from this clarification.

Impact assessment questions

HGL8: To the extent your answers to questions HGL1 to HGL7 indicate potential changes to the HBERs or Horizontal Guidelines, or the introduction of new block exemptions, what impact would these have on your business or the businesses that you advise? Would this impact be *negligible*, *moderate* or *significant*?

Appendix A: 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 inform the CMA's review of the retained HBERs and Horizontal Guidelines.

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. In accordance with our policy of openness and transparency, 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. When submitting your response please also let us know if you wish to remain anonymous.
5. The responses to the present Call for Inputs may also be shared with the Department for Business, Energy and Industrial Strategy in order to facilitate consideration of the CMA's recommendation.
6. 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 and other law designed to protect sensitive information. 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.
7. 'Personal data' is information that relates to an identified or identifiable 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.

8. 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.

9. 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.