Sent via email to: sustainabilityadvice@cma.gov.uk

17 November 2021

To Whom it May Concern

Lloyd's Response: CMA Call for Inputs - Environmental sustainability and the competition and consumer law regimes

Lloyd's welcomes the Competition and Markets Authority's call for inputs on how the CMA may advise the UK Government on how the competition and consumer protection regimes can better support the UK's Net Zero and sustainability goals (including climate adaptation). Lloyd's has reviewed the four questions the CMA has posed concerning the Competition Law regime and has set out its responses below. By way of background, Lloyd's has also provided a summary of its involvement and leadership of three environmental sustainability initiatives.

We welcome the CMA's review of our comments and remain available for a meeting to discuss our comments in further detail if required.

Lloyd's Engagement and Leadership of ESG Initiatives

Lloyd's is a Society of Members incorporated under the Lloyd's Acts 1871-1982, which operates as an insurance and reinsurance market based in London. Lloyd's (formally, the Council of Lloyd's) is responsible for managing the affairs of the Society and has powers to regulate the business of insurance at Lloyd's. All insurance business in the Lloyd's market is underwritten by Lloyd's members, organized into 73 active syndicates, managed by 48 managing agents. In 2020 the Lloyd's market's aggregate gross written premiums totalled £35.5bn. The business underwritten in the Lloyd's market is primarily non-life insurance and reinsurance.

With their industry leading experience and expertise, the participants in the Lloyd's Market provide leadership and insight to anticipate and understand risk, and the knowledge to develop relevant, new and innovative forms of insurance for customers across more than 200 territories, in any industry, at any scale. Lloyd's believes these qualities will become increasingly important in a world that has to adapt to the uncertainty that global warming may bring and to avert the worst effects of it. The Lloyd's Market continues a proud tradition of sharing risk in order to protect, build resilience and inspire courage everywhere.

Lloyd's has engaged in extensive consultations with its market, governments, regulatory authorities, brokers, NGOs and other key stakeholders as it looks to develop its Environmental, Social and Governance strategy. In addition, Lloyd's appointed its first Sustainability Director, committed the Corporation of Lloyd's to being Net Zero for its own operations by 2025 both in the UK and globally, and is further looking to transition its Central Fund investment portfolio to Net Zero greenhouse gas emissions by 2050. Lloyd's has also committed to and is leading several global initiatives that are listed in our response to question 3 below.

Lloyd's has published guidance to the Lloyd's Market on how managing agents may establish an ESG framework as well as how they may approach responsible investment and sustainable underwriting.[1] However, Lloyd's is fully cognisant that each managing agent must decide their own ESG policy, a principle which is repeated throughout the guidance.

Lloyd's is committed to compliance with competition law and supports the role played by competition law to ensure markets remain competitive for the benefit of customers. Nevertheless, climate change presents a unique challenge. While individual participants can undoubtedly take steps to transition their own businesses to Net Zero, that process could be accelerated and made more impactful if firms were able to join together to agree common approaches in areas where there is no existing regulation or where current regulation falls short of ambitious climate goals. In the context of the insurance industry, it is clear to Lloyd's that competition law as it is currently applied is having a direct impact on the ability of companies in the insurance value chain to move quickly to make their business 'greener'. Lloyd's would therefore welcome the positive changes to the current Competition Law framework that support the industry's green transition.

[1] https://www.lloyds.com/news-and-insights/news/lloyds-provides-market-guidance-and-best-practice-for-establishing-an-esg-framework.

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.

Due to its role as a regulator, overseer and operator of the Lloyd's Market, Lloyd's has a unique part to play in the insurance industry's transition towards Net Zero and sustainability. However, the risk of potential enforcement under the current CA98 framework can act as a strong disincentive to the insurance industry in pursuing sustainability initiatives that are capable of having a truly transformative impact. In particular:

- The approach taken so far to CA98 enforcement poses significant questions about any kind of industry-wide collaboration required to tackle major issues such as the need to transition to Net Zero, where such initiatives run the risk of being considered to be a concerted practice among competitors and there is a high degree of uncertainty as to whether a block exemption or individual exemption under CA98 would apply. This includes, for example, the ability for insurers to work with other insurance market participants to agree common approaches to responding to climate change, and to mandate actions to be taken (such as prescribing restrictions on the writing of certain types of risk in carbon-intensive industries) which, in the absence of voluntary action by a fragmented group of market players, may be necessary to ensure the industry's overall transition to Net Zero.

- The CA98 restricts the sharing of certain types of information between competitors, in particular information that is granular and forward-looking. On the other hand, information sharing in the context of cooperation to achieve shared sustainability objectives would support the progress towards Net Zero goals as it could be used to develop best practices, share R&D (which, for instance, could be used to develop and share costs in creating products that support the transition to Net Zero) and inform decisions that would help the market transition towards sustainability. The type of information anonymisation, aggregation and/or strict ringfencing that would be necessary to give a high level of comfort about competition law compliance often creates a practical barrier to achieving meaningful and effective cooperation, particularly where the perceived financial benefits to companies is limited compared to other forms of economic cooperation.

Whilst the problems noted above are not an exclusive list and are individually complex, one overarching solution could be for the CMA to give greater recognition to the long-term benefits to customers of a world that is Net Zero when assessing the competition law compliance of firms that are taking actions, the purpose of which is to support the transition to environment sustainability. A long-term view is crucial to the transition to Net Zero. As companies move away from the current low-cost high-carbon business model it will require more investment in greener technologies and products and a withdrawal from high carbon activities. For the insurance industry, this means insurers actively rebalancing their portfolios in favour of insureds that have sustainable businesses. Obviously, insureds will not be able to change their business overnight and Lloyd's is committed to supporting its clients to make the change to Net Zero. We refer to this as insuring the transition.

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?

Directing the flow of insurance premiums or insurance cover towards environmentally or socially sustainable initiatives or carbon negative technologies could have a significant impact on the UK achieving its target of Net Zero by 2050. This would directly assist the UK Government in its pursuit of a Net Zero economy whilst also having a global impact of setting an environmental sustainability standard across the insurance industry.

The CMA may thus consider providing guidance recognising the long-term benefits to customers of environmental sustainability, allowing firms to take coordinated action for the purpose of transitioning to Net Zero. A change that could also be made may be to provide an exemption that where collective action is taken that has as its object achieving Net Zero, if it will ultimately benefit the policyholder then this will not be deemed to be anti-competitive behaviour.

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.

Lloyd's has utilised its role as a global leader in the insurance market to participate in and, in some cases, be the lead in the following industry-wide initiatives:

HRH The Prince of Wales' Sustainable Markets Initiative (SMI) Insurance Task Force
Lloyd's is leading the SMI Insurance Task Force, which was launched in June 2021 to drive progress across the insurance industry to accelerate the transition towards a more sustainable future. Comprised of executives from a number of the world's largest insurance, reinsurance and broking companies, the Task Force has worked at pace throughout 2021 to deliver on a number of key objectives, available here and summarised below.

- Launching a product and services showcase detailing the wide-ranging insurance support currently available that is empowering customers to develop, invest in and scale their sustainability initiatives, supporting green innovation across multiple sectors and geographies.
- Developing a new disaster resilience framework aimed at proactively protecting countries most vulnerable to rising sea levels and extreme weather events through a novel public-private investment approach.
- Exploring the opportunity to drive sustainability across supply chains.
- Developing a set of proposals that could unlock an increasing amount of the industry's more than £30 trillion in assets under management towards green

investments. These proposals are currently being put before the PRA and FCA for consideration.

In addition, the Task Force is currently developing an open source measurement framework to track the global insurance industry's ability to support the transition towards Net Zero across multiple industries and geographies. This measurement framework will be aligned with and support the ambitions of the UN-convened Net Zero Insurance Alliance (NZIA) and Partnership for Carbon Accounting Financials (PCAF) to develop a standardised methodology to measure and disclose the GHG emissions of insurance and reinsurance underwriting portfolios, and will help catalyse further action throughout the sector.

Lloyd's commitment to Net Zero

Lloyd's approach will be to drive progress towards achieving Net Zero by 2050, recognising that each managing agent in the Lloyd's Market will make its own decisions on the risks it underwrites, the investments it makes, and the way in which to reduces its operational carbon emissions.

To further affirm our commitment to mitigate and manage the impacts of climate change and achieving Net Zero by 2050, Lloyd's joined the NZIA in October 2021. Further detail on this commitment is available in our press release.

All of the initiatives are highly sensitive to and cognisant of the need to ensure compliance with competition law as it currently operates. While these initiatives are effective in bringing together the insurance industry to address the challenges of transition toward Net Zero, competition law is acting as a restriction and a barrier to the initiatives having a deeper and wider impact. If the CMA amends the current competition law framework to allow for greater tolerance of collaboration and coordination in the sphere of environmental sustainability and the transition towards Net Zero then this would unlock the potential for accelerated change in the insurance and wider financial sectors, supporting the wider economy as it moves to Net Zero.

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?

Lloyd's may not be best placed to answer this question.