

Response to Questions from CMA: *Call for Inputs, Greenwashing*

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Q #	Question	Answers	Evidence
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.	CA 98 refers to how the CMA will use its powers toward enforcements on anti-competitive infractions. We (Supply Chain In-Sites, or "SCI") are not familiar with any specific cases where such enforcements have hampered a drive toward a particular sustainability goal.	However we can give one example that a member of the SCI team is very familiar with: The steps taken to prevent major food retailers working together in an anti-competitive way have prevented co-ordinated action that could be taken to accelerate the UK's progress towards meeting its goals.
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?	<p>The CMA should work with partners to build additionality benchmarks such that it is possible to measure objectively the sustainability gain compared to the loss as a result of deemed anti-competitive behaviour.</p> <p>To speed up activity of encouraging food retailers to collaborate more such that action could be taken more swiftly to reduce their environmental impact in their own operations and enable the</p>	<p>Additionality has been measured for renewable energy projects for almost 2 decades. Since the CMA is seasoned at pricing anti-competitive (£) losses, then it is easy to combine the two disciplines for an equitable financial assessment as the net difference of the two, or the gross total of the two (Penalty + rebate, where the outcome</p>

		<p>retailers to recommend steps that could be taken within their supply chains.</p>	<p>is a net payment to HM Government)</p> <p>As an example for food retailers, imagine the price reductions that could be achieved if all retailers were able to collaborate over solar panels that they wanted to purchase across their individual operations? Collaboration over each of the key items that they need to purchase to step change their own impact could move the overall industry situation forward faster.</p> <p>The same is true in relation to their suppliers and supply chains. It is again obvious that many items that suppliers need to purchase to reduce their footprint could be dramatically reduced in price if retailers were able to collaborate on items and specifications. Heat pumps for major energy intensive factories is one obvious item and area.</p>
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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.	<ol style="list-style-type: none"> 1. A huge one is the authentication of voluntary, and even perhaps CERs, carbon credits, and how a single credit can often be sold to simultaneously to different parties. (selling the same credit multiple times) 2. Businesses claiming "Carbon Net Zero" without including upstream supply chains' carbon footprints 	<ol style="list-style-type: none"> 1. There is no global body tracking these. We have a blockchain solution for this, as it is the only way to generate immutable evidence 2. CMA would require a combination of their own + external 3rd party assessors to check the footprints of a given supply chain. SCI is happy to collaborate on this
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	<ol style="list-style-type: none"> 1. SCI believes the CMA could work with Public and Private initiatives to foster investigative work by schools from junior through to senior and all levels of university to find publicly available greenwash statements, and educate on how to track. 2. The CMA, in collaboration with the FSA, could 	<ol style="list-style-type: none"> 1. SCI is already planning educational initiatives around animal welfare, and could add supply chain carbon assessments 2. SCI believes this would actually earn penalties (over and above the expenses) to the benefit of

	previous questions, what impact, if any, do you think this could have on private actions?	outsource the audits of publicly announced sustainability metrics by public companies whereby penalties for infractions could cover the investigation costs as a whole.	the UK tax payer as we believe Greenwashing is quite rampant
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	<ol style="list-style-type: none"> 1. Current merger control measures are quite one-dimensional in trying to prove aggregate consumer loss as a result of a merger. However, there could be many instances 2. A large market participant acquires another business to further vertically integrate where this move buys them access to much greener ways of producing/procuring its inputs. 	<ol style="list-style-type: none"> 1. SCI is bidding on a tender for the audits of all Scottish livestock farms (with an arm of the Scottish Government) but is also keen to bid on carbon advisory services for all Scottish farms. Anointing SCI as the successful bidder for both might seem anti-competitive but it would allow ONE fully-equipped auditor to make only one visit to each farm, as opposed to two visits (and the resulting carbon footprint and inefficiency)

			<p>from two different suppliers</p> <p>2. For example the acquisition of much greener Scottish Power by RWE</p>
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.	We are not aware of such	N/A
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.	<ol style="list-style-type: none"> 1. CMA could work to establish benchmarks together with HMRC and the FSA to measure whether the carbon footprint of a merger/acquisition actually increases (charge a penalty) or not 2. The CMA should begin by demonstrating its own Carbon Net Zero credentials 3. CMA could threaten CA98, or even jail time, for Principals making greenwashing 	<ol style="list-style-type: none"> 1. The CMA and its collaborating 3rd parties can audit both parties to the transaction up and down their supply chain as a whole and/or against benchmarks 2. SCI can assist 3. SCI, and other certification bodies, can assist

		<p>claims for a merger and beyond that is not supported by 3rd party certification.</p> <p>4. If the buyer is a leader in their field on net zero it could therefore be inferred that the leader buying a laggard would have a significant overall benefit. Therefore we would recommend reviewing whether the weightings of these factors should be changed to ensure it is appropriate as part of the overall mix.</p>	
8	<p>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</p>	<p>Yes, it is like asking if carbon assessors can also calculate the net costs to consumers based on pricing permutations as a result of the merger – the CMA simply has to adopt, or partner on, the expertise to assess carbon statements. No, there would be no benefit from a second public entity solely checking Greenwashing as it would greatly increase taxpayer expense.</p> <p>Up until now many environmental and climate claims made by businesses have been made voluntarily. Some businesses have gone</p>	<p>The CMA working to build up its own carbon assessment expertise, while at the same time collaborating with 3rd party carbon assessment firms could easily meet Government and public objections. Setting up a new such agency would require even more costs (esp. training and infrastructure) than CMA doing itself</p> <p>One example of voluntary claims just from this week (COP26): Several</p>

	<p>explain the reasons for your response.</p>	<p>further and had some independent validation of such metrics. However research completed by SCI shows these aspects need significantly more rigour.</p>	<p>food retailers announced they would halve their climate impact and that WWF would be monitoring their performance.</p> <p>Whilst NGO's of course have a role to play, there is no doubt that they do not have all the skills to forensically review the data across complex issues and reporting streams.</p> <p>SCI does have significant expertise and could help CMA to prepare for this role.</p>
9	<p>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</p>	<ol style="list-style-type: none"> 1. Association bodies' labelling or group statements around sustainability metrics where those associations have members who are businesses selling in that industry and who are likely paying membership fees into that association 2. Sustainable inputs such as Soy or Palm oil being claimed to not be related to forest eradication areas. SCI collaborates with another UK company that can 	<ol style="list-style-type: none"> 3. "Plant a tree" initiatives where the high number of promised plantings as a result of frequent transactions is unlikely to occur 4. Supermarkets importing cheap meats/produce from trading nations far away. This increases their profits and builds

	the merger regime? If so, please explain what further guidance would be necessary and why.	unveil the provenance of such commodities in real time remotely and immutably.	customer loyalty due to produce breadth and reasonable prices, but at what cost to the environment
10	Does the current consumer protection law framework constrain or frustrate initiatives that might support the UK's Net Zero and sustainability goals?	<ol style="list-style-type: none"> 1. Eliminating competitors due to scale and efficiency, which would be sensitive to the consumer protection law, but where such is also to the advantage of our environment could be better rather than worse 2. British purveyors of goods and services being successfully acquired by foreign entities that are serious net-carbon emitters must be deemed as wrong – so more carbon due diligence on acquirors is required, over and above general national interests 	<ol style="list-style-type: none"> 3. One example is how very few 3rd party auto mechanics can work on electric cars. Anti-competitive? Yes, as consumers MUST go to Tesla and others for their servicing, and it wipes out the 3rd party auto mechanics industry, but surely the ramp up of electric cars is good for our environment? 4. The current high number of gas/power firms being allowed to go bankrupt due to spiralling energy costs, where replacement energy in these times of

			<p>shortage by financially stronger bigger players tends to be blacker energy</p>
11	<p>What changes to business-to-business protections are required, to address the current issues of supply chain transparency?</p>	<ol style="list-style-type: none"> 1. Much greater transparency around supply chains will enable more complete carbon footprint analyses. This would also help to digitise manifests for speeding up border movements of goods, especially fresh produce/food 2. Digitising supply chains would also provide for mechanisms to make transparent to regulators but encrypted to competitors 3. Any lack of transparency between businesses within the same supply chain could result in risk or liability exposure that they are unaware of. 4. There is clearly a need for many businesses to collaborate and work together. For example one member of the SCI team has worked for two of the largest global food retailers. 	<p>These issues will be even more problematic with firms in the same supply chain but based in other countries. This would place increasing emphasis on our Government to have supply chain transparency stipulations in free trade deals that it negotiates</p>

		Global retailers share suppliers and therefore without good collaboration it is possible that problems will occur. One example would be double counting.	
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?	<ol style="list-style-type: none"> 1. Making changes to petrol station licensing whereby for a given number of pump stations, a pro rata number of electric recharging stations must also be established 2. The right for consumers to return goods for full refund in instances of criminal greenwashing 3. The ability for the public to lodge complaints over poor sustainability practice, or the covering up of, on a Better Business Bureau-type website 4. Industry groups can be encouraged to monitor themselves – see example 	<p>A clear example of industry stepping up itself to make sustainable changes in the absence of CMA regulations would be in the food packaging arena. OPRL (On-Pack Recycling Label initiative) Members agreed to ensure the advice given to consumers was more clear. Changes agreed by most of the major supermarkets and hundreds of suppliers, will see them switch to a simplified system with labelling telling consumers to either 'recycle' or 'don't recycle' products. It replaced previously confusing advice, where thousands of products carried labels advising consumers to instead check whether local authorities recycle packs. As most</p>

			<p>consumers could not be bothered to check this, it encouraged greater waste disposal. What's worse, only one in five councils accepted the materials in question. The new label changes mean large quantities of plastic packaging – including PVC, polystyrene pots and non-infrared detectable black plastic – will now clearly be labelled 'don't recycle'. In other words, consumers will get the information they need to eliminate or reduce unrecyclable plastic from their baskets. Like the growing list of actions by retailers and suppliers to remove plastic from shelves, this is a sign of the industry taking ownership of the issue, rather than passing blame to local authorities for the lack of plastic recycling.</p>
13	To what extent should the consumer	This is a good idea in order to establish baselines and benchmarks such that	For example, spring water may be more sustainable

	<p>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?</p>	<p>companies are viewed fairly against same-industry players. Each industry could have slightly different metrics to reflect its unique features. Certification Bodies with expertise in different industries could assist with establishing the types of information required in each. Perhaps initially, as greater transparency will take some time, the CMA could be more prescriptive around the parts of supply chains that are within the UK.</p> <p>In terms of conduct, it will be important to differentiate between deliberate and negligent greenwashers, with penalties being different between them. This is a complex area, so a due diligence defence should be considered.</p>	<p>(renewable) than tap water, where both are inputs into a food or beverage, yet spring water is often available in unsustainable plastic bottles</p> <p>An example of unfair prescriptive conduct would be where a small grocer selling only local seasonal vegetables being compared to a supermarket carrying much more varieties due to importing from exotic countries. The conduct of importing higher carbon footprint produce is bad for the environment but good for the consumer, thereby requiring prescriptive and balancing measurements</p>
14	<p>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?</p>	<p>(a) This is also a tricky area since planned obsolescence could be tied to increases in efficiency, e.g. batteries. But the CMA should mandate proof around obsolescence to hammer home the point that to avoid overflowing waste sites consumers</p>	<p>(a) Apple often comes under heat for this. But if they were required to demonstrate how discontinuing a line would be better due to power efficiency and meticulous</p>

		<p>should be encouraged to keep and use goods longer than what their manufacturers currently desire; i.e. prove both quantitatively and qualitatively that the environment is better off with the obsolescence</p> <p>(b) This is also a tricky area – by punishing a business for promoting over-consumption you will also be stopping one individual from buying more than another, which he/she may feel is a fundamental right in a democratic market society. How to define what is sufficient? We believe the only way would be for Government to establish a carbon limit per household where they still have the freedom to buy more of something but less of others in order to meet their overall sustainable footprint maximum. Producing businesses could have similar limits on their production.</p>	<p>recycling of old phones then it could be granted.</p> <p>(b) For example, Coca-Cola would be further incentivised to replace plastic bottles with more sustainable vessels to allow their consumers to purchase as much as they like</p>
15	How should the CMA use its	In basic form, Government would set limits, laws, and	In a similar way that NRA

	Markets powers to support the government's strategic priorities on environmental sustainability and Net Zero?	<p>exemplary practices while CMA would be the watchdog/adjudicator over the same. In the same way that a carbon credit purchased can offset footprint, the revenue from a CMA fine could go towards direct environmental impact initiatives supported by Government</p> <p>Assuming CMA incorporates environmental assessment capabilities, it could assist Government in blocking (or seeking other remedies for) mergers that are additive in carbon or non-sustainable impacts</p>	
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?	<ol style="list-style-type: none"> Perhaps it's best to rank industries in order of sustainability or carbon-emitting practices and work your way down. COP 26 is doing this by focusing more on Methane rather than CO₂, as its effects are much greater. It would also be more impactful to start with industries where financial punishments would be easier, with those funds going toward Government sustainability (as highlighted above) 	<ol style="list-style-type: none"> There will be publicly available lists from NGOs and lobby groups such as Greenpeace Adding a "carbon fee" for imports of goods that are equally available locally, e.g. UK vs. Australian beef

		<p>3. There are going to be significant commonalities between the impacts that businesses have that could provide a huge opportunity for CMA. For example, if you think of the top 10 food retailers' own operations their challenges will be very similar and the steps that they will need to take will also be very similar. There is therefore a significant opportunity to help businesses to tackle these issues in a collaborative way and thereby helping the UK achieve its targets faster.</p>	
17	<p>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.</p>	<p>The Markets Regime is a proactive role in analysing industries, rather than reactive from infractions that require investigation. As mentioned above, the CMA could create algorithms to seek out industries that require deeper dives on how sustainability is being fostered or abused allowing for the commencement of investigative work in those particular industries. Similarly, analytics tools online can also capture which industries pop up</p>	<p>For example, Google Analytics is a free and easy way to quickly rank industries by numbers of comments, positive or negative</p>

		<p>most for higher numbers of consumer complaints or compliments.</p> <p>Finally, the CMA could collaborate with data, statistics and business schools among UK post-secondary academic institutions to broaden out these proactive searches and seek domain experts within those institutions</p>	
18	What other considerations should the CMA take into account in responding to the Secretary of State's request for advice?	<ol style="list-style-type: none"> 1. There should be much dialogue around fairness and equity, as indicated in examples in previous questions. 2. Leveraging the idea of CMA generating financial penalties to be reallocated toward Government sustainability initiatives. 3. Bringing in collaborating 3rd parties to allow the CMA to move more quickly 	
19	How should the CMA apply its wider policy tools to support the UK's Net Zero and sustainability goals?	<ol style="list-style-type: none"> 1. It could apply carbon and sustainability metrics into every case it looks at, even where such is not a major component 2. It could establish algorithms that could constantly be random checking not only transactions (cases) but also 	

		<p>companies that are not involved in cases being put forward for review</p> <p>3. CMA could participate in more sustainability groups and meetings to better understand where the sustainability priorities are from various stakeholders, especially consumers</p>	
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