

RESPONSE OF THE SOCIETY OF MOTOR MANUFACTURERS AND TRADERS LIMITED TO THE COMPETITION AND MARKETS AUTHORITY CALL FOR INPUTS ON ENVIRONMENTAL SUSTAINABILITY AND THE CONSUMER AND COMPETITION LAW REGIMES

Introduction and background

1. The Society of Motor Manufacturers and Traders Limited (SMMT) represents a broad cross-section of automotive activities including: vehicle manufacturers; parts manufacturers, suppliers, distributors and fitters (both line-side and those in the aftermarket for service, maintenance and repair); data and technical information providers; tools and equipment suppliers; and accessories suppliers¹.
2. SMMT welcomes the opportunity to respond to the Call for Inputs on Environmental Sustainability and the Consumer and Competition Law Regimes.
3. The progress of the automotive sector in achieving environmental sustainability is underpinned by the Government announcement in 2020 of the end of sale of new cars and vans equipped with conventional petrol and diesel engines by 2030 and the end of sale of some plug-on and non-hybrid new cars and vans by 2035. So from 2035, new cars and vans will need to be fully zero emission. In July 2021 the Government published its Transport Decarbonisation Plan and more recently its Green Paper on a New Road Vehicle CO2 Emissions Regulatory Framework for the United Kingdom, which will govern the end of sale of petrol and diesel vehicles, as well as finalise plans for the use of hybrids and a Zero Emission Vehicle Mandate.
4. SMMT's 2021 Automotive Sustainability Report details the government proposals, regulatory roadmap and initiatives from the sector (individual members acting independently in pursuit of sustainability improvements) in environmental performance and identifies areas where further detail from government on achievement of environmental targets is requested .²
5. The CMA's Call for Inputs, in identifying areas for consideration, makes reference to a number of issues which have recently been the subject of parallel consultations, to which SMMT has separately responded, namely, BEIS's Consultation on Reform of Competition and Consumer Policy, the CMA's Call for Evidence on Misleading Environmental Claims, culminating in the publication of its Green Claims Codes, BEIS's Consultation Reforming the Framework for Better Regulation and as referred to in this CFI, the CMA's Market Study on the Electric Charging Infrastructure.

Competition law enforcement

6. In exercising a value judgement in taking account of the sustainability benefits as against the competition implications of agreements, mergers or sustainability initiatives under Chapter II CA98, an additional reference framework would be helpful. This would – as referenced in the CFI document – establish criteria for weighing up the potential trade-offs to be assessed and would provide guidance to businesses in assessing the potential value of sustainability agreements within the exemption framework of Ch I CA98 or in assessing conduct as objectively justified and proportionate within Ch II CA98.

¹ For the avoidance of doubt, SMMT does not represent authorised dealers, active in the resale of new vehicles to end users on either a solus or multi-brand basis.

² <https://www.smmt.co.uk/wp-content/uploads/sites/2/SMMT-Sustainability-Report-2021.pdf>

Consumer protection law

7. SMMT supports a level playing field in the adoption of terminology with commonly understood meanings for environmental descriptors. Within the automotive sector such terms have been successfully addressed through guidance from the Committee of Advertising Practice – for example, a vehicle that is described as ‘zero emission’ must not give the impression that this relates to anything other than while driving. Additionally, consistent nomenclature for different types of electric vehicle is referenced in the July 2020 ASA guidance on advertising hybrid and electric vehicles³. Additional regulation in this area may risk of providing a rigid approach as new technologies and concepts around environmental impact and sustainability develop. A more flexible approach arising through ASA/CAP guidance may be more appropriate.
8. Vehicle manufacturers marketing their vehicles are also required to comply with legislation governing the environmental labelling and fuel consumption information for vehicles as enforced by the Vehicle Certification Agency.⁴
9. Environmental, social and governance (ESG) framework commitments within businesses act as an imperative to provide environmental and sustainability information to consumers through their own websites.
10. Any proposed requirement on manufacturers to provide environmental (such as carbon footprint) information should be matched by the same requirement on other businesses in the supply chain whose end customer is not the consumer.
11. Additionally, the number of different raw materials in complex products like cars and vans means that there would need to be a pragmatic approach to the amount and extent of any such information that would be required to be disclosed as material information about a product.

³ <https://www.asa.org.uk/news/being-roundabout-when-advertising-hybrid-and-electric-vehicles-can-fuel-complaints.html>

⁴ <https://www.vehicle-certification-agency.gov.uk/download-publication/784/VCA061/>