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Driving progress
through partnership

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Response to the CMA's call for inputs in relation to the retained Horizontal Block Exemption Regulations

1. Introduction

1.1. Reed Smith LLP is a global law firm that regularly advises clients on competition law issues across, among other regions, the UK and Europe. We welcome the opportunity to comment on the CMA's consultation on the retained Horizontal Block Exemption Regulations (HBERs) and the Horizontal Guidelines (HGL) in relation to the planned recommendation to the Secretary of State. Our comments are based on the expertise of our Competition team, informed by conversations with our clients, and focus on the issues of information exchange and horizontal sustainability agreements. Our response highlights the issues we consider most pertinent to our clients and where additional clarity from the CMA is needed.

2. General impact assessment questions for all respondents to complete

2.1. Questions for stakeholder feedback and input

2.1.1. 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.

2.1.1.1. Reed Smith carries out professional, scientific and technical activities. Our clients represent a variety of industries including, among others, agriculture, energy, information and communication, real estate, financial and insurance, and transportation.

2.1.2. 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.

2.1.2.1. Reed Smith frequently advises and consults on the Specialisation and R&D BERs and on HGL for guidance on horizontal cooperation agreements. In this submission, we intend to focus on the issues of information exchange and sustainability agreements, which are of particular interest to our clients.

2.1.3. 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).

2.1.3.1. Reed Smith employs 3,000 people (including over 1,700 lawyers) globally across its 30 offices.

2.1.4. 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.

2.1.4.1. Both HBERs and the HGL are used by a wide variety of our clients and, in our experience, are of relevance to organisations of different sizes – ranging from small to large.

3. Horizontal Guidelines

3.1. Policy questions

3.1.1. Question HGL1 (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.

3.1.1.1. We welcome the recent developments in the field in the UK, in particular, the publication of the information sheet for businesses on how competition law applies to sustainability agreements prepared by the CMA. However, we acknowledge that one of the most significant obstacles to legitimate cooperation is still the lack of clarity. This could be remedied by introducing a dedicated chapter in the HGL on sustainability agreements or even a separate block exemption for these types of agreements.

3.1.1.2. There are four questions in particular in relation to the current legislation that we would invite the CMA to consider. **Firstly**, how do businesses quantify the environmental benefits generated by an agreement? Historically, the focus has been on the direct cost savings achieved by a sustainable initiative, or the willingness of consumers to pay for the

environmental benefit. However, this approach does not sufficiently address the wider sustainability gains. **Secondly**, who do the benefits need to accrue to? The protection of consumers has traditionally been synonymous with ensuring lower prices or increased quality of products and services. Additionally, the benefits should, on a traditional understanding, accrue to customers in the specific market where the agreement operates. However, when considering environmental benefits, the approach should be broadened to include wider markets where those gains materialise. **Thirdly**, how should businesses determine whether restrictions are indispensable for the claimed benefit? There may be instances where businesses need to cooperate to overcome a first-mover disadvantage and nudge consumers towards using more expensive, sustainable products (instead of cheaper, more polluting ones). However, if consumers value sustainable products, there is generally an expectation that profit-maximising companies offer such products independently rather than by cooperating, which may be difficult in practice. **Finally**, how should businesses interpret the non-elimination of competition condition when most companies in a sector want to adhere to a sustainability project?

3.1.1.3. These questions have also come up in the recent consultation during the review by the European Commission of the HBER and the HGL and in the public consultation on how competition law can support the European Green Deal. Many respondents have indicated general concerns that, in the absence of clarity, the risk of breaching competition rules would otherwise prevent businesses from investing in sustainable products or services. The respondents have talked, for example, about situations where individual companies are ready to consider pioneering new technologies or standards but are deterred by the risk of first-mover disadvantage, or where only collective demand (through joint action and pooled purchasing power) would enable the creation and development of sustainable technologies or infrastructure. Many respondents have also recommended that the position be clarified in guidelines or even in a separate sustainability block exemption. We recognise that sustainability agreements may be covered by the existing block exemptions. However, there may be some legitimate projects that would not be able to benefit from the exemptions. For those agreements, undertakings would have to self-assess whether they fall under the general exemption. It is clear from the responses to the EU consultations that businesses feel comfortable operating within a block exemption and face real difficulties with self-assessment, especially in the absence of more detailed guidance on the questions mentioned in the above paragraph. Therefore, such a safe harbour may be a welcome avenue for the CMA to consider next to the existing retained HBERs on R&D and specialisation agreements. In any event, a separate chapter in the guidelines on sustainability agreements would be a welcome development.

3.1.1.4. Reed Smith has recently submitted a detailed response to the CMA's consultation in relation to the environmental sustainability and the competition and consumer law regimes. Please see Annex I for more detail.

3.1.2. Question HGL2: In relation to information exchange**.** Do the Horizontal Guidelines offer sufficient legal certainty on types of information exchange that may be considered pro-competitive?

3.1.2.1. The retained HBERs and the HGL have had a major impact on promoting competition in the EU and in the UK. However, in our view, the guidelines on information exchange require further clarification.

3.1.2.2. Firstly, in relation to the issue of aggregated and individualised data, the HGL state that exchanges of genuinely aggregated data (i.e., where the recognition of individualised company level information is sufficiently difficult) are much less likely to lead to restrictive effects on competition than exchanges of company level data. They also recognise that "[c]ollection and publication of aggregated market data (such as sales data, data on capacities or data on costs of inputs and components) by a trade organisation or market intelligence firm may benefit suppliers and customers alike by allowing them to get a clearer picture of the economic situation of a sector". The issue faced by many trade associations is a determination of whether their publication of aggregated market data would infringe competition law. This issue is particularly prevalent for markets characterised by high market shares, low volumes or infrequent capacity changes, where it may be easier to discern individual data. A further question concerns the preparation of reports containing aggregated data and forecasts, for instance on future capacity. Investment companies are currently preparing such reports by obtaining information from the industries; however, trade associations are reluctant to do this in many circumstances. It would also be helpful to clarify whether there should be any conditions to such information exchanges, such as making the industry reports available to all market participants for a reasonable fee.

3.1.2.3. Additionally, Reed Smith and its clients would welcome more clarity on other aspects of information exchange, in particular, determination of what is considered historic data. Currently the HGL state that "[w]hether data is genuinely historic depends on the specific characteristics of the relevant market and in particular the frequency of price re-negotiations in the industry". While it is understandable that establishing a predetermined threshold when data becomes historic may not be possible, it would be practicable for businesses to have more guidance supported by examples in this respect.

3.2. Impact assessment questions

3.2.1. Question 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?

3.2.1.1. An introduction of a separate chapter or a new block exemption on sustainability agreements and a further clarification on information exchange would have a significant impact on the businesses that we advise. The issues of information exchange are

particularly important for trade associations, which strive to improve the markets by offering their members access to certain aggregated and historic information. When it comes to sustainability agreements, our view, informed by conversations with our clients, is that it is highly undesirable that numerous instances of cooperation in the field of sustainability could be forgone due to fears of repercussions imposed by competition authorities. Therefore, more guidance on these aspects would deliver much needed clarity.

11 January 2022

Annex I

Response to the CMA's call for inputs in relation to the environmental sustainability and the competition and consumer law regimes

1. Introduction

1.1. Reed Smith LLP is a global law firm that regularly advises clients on competition law issues across, among other regions, the UK and Europe. We welcome the opportunity to comment on the CMA's consultation on the environmental sustainability and the competition and consumer law regimes in relation to the planned recommendation to the Secretary of State. Our comments are based on the expertise of our Competition team, informed by conversations with our clients, and focus on the discussion around sustainability agreements and competition law enforcement. Our response highlights the issues we consider most pertinent to our clients and where additional clarity from the CMA is much needed.

2. Competition Law Enforcement Questions

2.1. **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.

2.1.1. We have encountered numerous examples of cooperation in the field of sustainability (and more specifically environmental sustainability) being foregone due to fears of repercussions imposed by competition authorities. These examples come not only from the UK but also from all around the world. This, in our opinion, reflects the nature of the environmental crisis, which is global in nature.

2.1.2. A notable example in the UK of such an arrangement was a proposal by the management of major supermarkets to discuss and potentially agree to introduce a 5p plastic bag charge. The proposal was firmly supported by the central government, but the legal advice on competition risks was such that no one was comfortable with an agreement, and no one was willing to start implementing the changes due to the first-mover disadvantage. Therefore, the government had to legislate, which substantially delayed the measures. The first-mover disadvantage is a commonly recognised problem for sustainability initiatives because the introduction of environmentally friendly products or processes is often associated with higher production or development costs, and as a result thereof, higher prices. This, in turn, may lead to customers switching to non-sustainable alternatives.

2.1.3. A more recent example concerns the Society of Lloyd's, which acts as a form of regulator for the Lloyd's of London insurance and reinsurance market. The Lloyd's market is the world's largest

energy insurer and underwrites a significant number of fossil fuel projects and companies. Lloyd's itself does not, however, underwrite insurance business, leaving that to its members. The Society, despite having powers to issue binding directions for Lloyd's members, is not imposing climate targets on a binding basis on its underwriters. Rather, the Society only asks managing agents (who manage the syndicates formed by Lloyd's members) to comply with climate targets on a non-binding basis. The Chair of Lloyd's Council recently gave an interview to the *Financial Times* in which he warned that "insurers that are slow to remove their backing for the most carbon-intensive activities" would "damage" the Lloyd's of London brand. However, he also cautioned that "competition law restricted how fast it could move against particular sectors" ("Climate laggards could 'let down' Lloyd's of London", *Financial Times* (8 August 2021)). This raises an issue of how far the various regulators' powers go in terms of encouraging sustainability.

2.1.4. Given that the CA98 regime is based on the approach of the European Union (EU), it is also important to mention a significant example from the region. A widely discussed example concerns the Dutch Chicken of Tomorrow initiative. In 2015, the Dutch Authority for Consumers & Markets (ACM) prohibited a sustainability initiative among supermarkets and other stakeholders to completely replace regularly produced broiler chicken with more sustainable alternatives in order to raise animal welfare.

2.1.5. Additionally, we would like to take this opportunity to draw attention to the fact that sustainability is a broad concept covering more than just the environmental element. Those other elements of sustainability, such as health and safety, managing global poverty, or sustainable farming should not be immediately omitted from the discussion as they may link to climate protection. The recent study by the Fairtrade Foundation collated evidence that competition law is a deterrent to a significant number of retailers from collaborating on sustainability issues, particularly on issues of low incomes and wages in the supply chain ("Competition Law and Sustainability" (17 June 2020)). This is because competition law restricts any collaboration between competitors in relation to prices within a value chain (unless it can be justified essentially on the grounds of consumer benefit). The report argues that unless farmers are paid fair prices for their crops, they will not make the necessary investment in making the crops more resilient to climate shocks. This could have a disastrous effect on countries like the UK, which imports over half of its food. The retailers, industry bodies and brands interviewed for the purposes of the report raised concerns that in order to deal with low farm-gate prices, stakeholders would have to collaborate, but finding a solution compliant with competition law would be difficult.

2.1.6. Furthermore, it is clear that fairtrade products face competition from cheaper alternatives. Therefore, many respondents to the Fairtrade Foundation's survey felt that cooperation would be crucial to their continued operation. For instance, a global chocolate company reported an example where a competing business was sourcing from and working with the same co-operative as the chocolate company. The chocolate company wanted to discuss how the two businesses could coordinate activities to increase efficiency for the producer. However, they were prevented from doing so by legal advice.

2.1.7. Following on the discussion concerning broader sustainability issues, an international shipping company has raised an example in their discussion with us relating to misdeclaring dangerous goods or carelessly storing cargo. The company argued that carriers who use unsafe practices should be registered in more detailed databanks than those currently used, in order to warn fellow carriers. This measure would have both safety and environmental benefits. This is because it would have the potential to, for instance, prevent fires or explosions on ships, which can cause hazardous substances to end up in the oceans. Collecting and sharing information within an industry is not unheard of. For instance, insurance companies may, in certain cases, share information on fraudulent claims. Nevertheless, shipping companies are very concerned about embarking on similar practices or opening discussions on individual enterprises for fear of competition law concerns.

2.1.8. Another issue raised with us by a different shipping company is that in order to avoid competition law repercussions, the company does not ever involve its commercial team when discussing technical or environmental standards. The company also expressed reluctance to join discussions on environmental projects without the involvement of the industry regulators or the government. It further argued that if a discussion is properly controlled, the risk to the businesses diminishes significantly, making it easier to join in.

2.1.9. A further example of a type of project that may be necessary to further sustainability goals is an industry-led proposal to create a US$5 billion fund focusing on the research and development of new technologies to reduce shipping emissions. The shipping industry proposed the establishment of an International Maritime Research and Development Board (IMRB) – a non-governmental R&D organisation that would be supervised by the International Maritime Organisation (IMO). The IMRB would be financed by shipping companies worldwide through a mandatory contribution of US$2 per tonne of marine fuel purchased for consumption, which would generate the required amount of core funding over a 10-year period. Although the programme and its funding is an initiative of the leading international shipowners' associations, the participation of additional stakeholders is welcomed. According to the officials involved, the fund could be in place by 2023 if it receives the backing of IMO member states. Such projects may need to become more common across various industries and may require competition law guidance. We know of other organisations, including a trade association, that are watching these developments closely.

2.1.10. Finally, a utility company has told us that it grapples with the above issues, especially around water-saving initiatives.

2.1.11. In summary, the cost of developing environmentally friendly products or processes means there can often be a competitive disadvantage connected to being the first mover when adopting green technologies. Additionally, policies that may have a positive environmental impact often require more than one company to make changes. Companies entering into sustainability agreements must determine themselves whether the agreement is likely to raise any competition concerns,

which often proves difficult, and the businesses choose to err on the side of caution. Unfortunately, the solution adopted is often, at best, securing non-binding commitments. In a large proportion of cases, however, the solution is simply to not discuss the issue or project. This is, in our opinion, wholly unsatisfactory. In light of the environmental crisis, the authorities should have a role to play in easing the burden on individual companies and encouraging cooperation where it would have a desirable effect. Currently, undertakings are reporting difficulties with establishing where the boundary of permitted and prohibited cooperation is. There are also not many cases that could serve as examples and help companies self-assess due to the fact that businesses are anxious to cooperate on sustainability initiatives in the first place. A better understanding of competition law in the sphere of sustainability agreements would certainly contribute to a more widespread introduction of impactful projects.

2.2. **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?

2.2.1. We welcome the recent developments in the field in the UK, in particular, the publication of the information sheet for businesses on how competition law applies to sustainability agreements prepared by the CMA. We also welcome the CMA's efforts to review the retained EU block exemptions, starting with the review of the Vertical Agreements Block Exemption Regulation. However, we acknowledge that one of the most significant obstacles to legitimate cooperation is still the lack of clarity. As sustainability is more likely to raise concerns in the context of horizontal agreements, the CMA's review of the retained EU horizontal block exemptions is eagerly awaited.

2.2.2. There are four questions in particular in relation to the current legislation that we would invite the CMA to consider. Firstly, **how do businesses quantify the environmental benefits generated by an agreement?** Historically, the focus has been on the direct cost savings achieved by a sustainable initiative, or the willingness of consumers to pay for the environmental benefit. However, this approach does not sufficiently address the wider sustainability gains. Secondly, **who do the benefits need to accrue to?** The protection of consumers has traditionally been synonymous with ensuring lower prices or increased quality of products and services. Additionally, the benefits should, on a traditional understanding, accrue to customers in the specific market where the agreement operates. However, when considering environmental benefits, the approach should be broadened to include wider markets where those gains materialise. Thirdly, **how should businesses determine whether restrictions are indispensable for the claimed benefit?** There may be instances where businesses need to cooperate to overcome a first-mover disadvantage and nudge consumers towards using more expensive sustainable products (instead of cheaper, more polluting ones). However, if consumers value sustainable products, there is generally an expectation that profit-maximising companies offer such products independently rather than by cooperating, which may be difficult in practice. Finally, **how should businesses interpret the non-elimination of competition condition when most companies in a sector want to adhere to a sustainability project?**

2.2.3. These questions have also come up in the recent consultation during the review by the European Commission of the Horizontal Block Exemption Regulations and Guidelines on Horizontal Cooperation and in the public consultation on how competition law can support the European Green Deal. Many respondents have indicated general concerns that, in the absence of clarity, the risk of breaching competition rules would otherwise prevent businesses from investing in sustainable products or services. The respondents have talked, for example, about situations where individual companies are ready to consider pioneering new technologies or standards but are deterred by the risk of first-mover disadvantage or where only collective demand (through joint action and pooled purchasing power) would enable the creation and development of sustainable technologies or infrastructure. Many respondents have also recommended that the position be clarified in guidelines or even in a separate sustainability block exemption. We recognise that sustainability agreements may be covered by the existing block exemptions. However, there may be some legitimate projects that would not be able to benefit. For those agreements, undertakings would have to self-assess whether they fall under the general exemption. It is clear from the responses to the EU consultations that businesses feel comfortable operating within a block exemption and face real difficulties with self-assessment, especially in the absence of more detailed guidance on the questions mentioned in paragraph 2.2.2. Therefore, such a safe harbour may be a welcome avenue for the CMA to consider next to the existing retained block exemptions on R&D and specialisation agreements. While we realise that block exemptions may not be a solution traditionally employed in the UK, such an exemption may be necessary to further environmental goals.

2.2.4. A major obstacle for companies seeking to collaborate on sustainability projects is the lack of recognition in competition law for benefits that arise over the longer term, are not easy to quantify, or benefit consumers outside the market to which the agreement relates. It is clear that sustainability gains do not fall under the narrow scope of economic benefits. Those gains are also likely to materialise in other markets or even for “future” consumers. Such sustainable benefits may be linked to social progress, sustainable development and the environment.

2.2.5. Some competition authorities in Europe have already taken steps to allow collaborations between competitors that would bring benefits to the environment. The Dutch ACM has taken a leading stance in the European debate and released guidelines that set out its approach to assessing the compatibility of sustainability initiatives with competition law. According to the guidelines, it should be possible to consider the benefits for the wider society as a whole instead of only the benefits for the users of the products involved. On the basis of this standard, the benefits of an agreement will more quickly outweigh the disadvantages when compared with the previously applicable legal standard. Additionally, the ACM has stated that, in principle, benefits generated outside of the Netherlands can also be taken into account in the competition law assessment. In terms of establishing sustainability benefits, the ACM published, in cooperation with the Greek competition authority, the Hellenic Competition Commission (HCC), a joint economic report on the methods to quantify the efficiency gains of environmental sustainability initiatives (“Technical Report on

Sustainability and Competition" (January 2021)). The ACM has stated that the guidelines are now ready for further European coordination.

2.2.6. In Greece, the HCC has been considering a proposal for a regulatory "sandbox" that would allow businesses to test and pursue sustainability agreements without fear of violating competition rules. The HCC has now concluded a public consultation on the matter and is yet to finalise the practical points of the proposal. It has so far indicated that the "sandbox" will operate as a digital platform connected to the HCC website. The platform will provide a secure messaging space, which will be the main means of communication between the parties and the HCC, thus ensuring the transparency of cooperation. All information requested will be submitted to the platform by the parties. "Sustainability advocates" appointed by the HCC will support the submission. Once the evaluation criteria are met, the HCC will be able to acknowledge that the parties' specific business plans do not raise competition concerns.

2.2.7. Another example of a competition law approach having the potential to further sustainability goals can be found in Australia and New Zealand. The two countries operate an authorisation regime whereby an anti-competitive arrangement may have sufficient public benefit to outweigh the competitive harm arising from it. The Australian Competition and Consumer Commission (ACCC) and the New Zealand Commerce Commission (NZCC) have considered sustainability factors in several decisions concerning the "public benefit test". A string of "stewardship cases" in Australia serves as a good demonstration of the application of the authorisation approach. In those cases, the ACCC gave the green light to sectoral agreements that fixed levies on consumers in order to fund programmes for the collection and disposal of waste or end-of-life products. In one of those schemes, competitors agreed to a fixed surcharge on batteries imported by members of the programme, which would be passed through the supply chain to the consumer as a fee. Rebates would then be paid to recyclers to help offset the cost of collecting, sorting and processing expired batteries. Such authorisations have only been granted after multi-stakeholder consultations and can be limited in time. If the parties seek longer-term protection, they can apply for a new authorisation, at which point it can be verified whether the claimed benefits materialised. Importantly, the claimed benefits do not need to be explicitly quantifiable in all cases. For instance, in the battery scheme example, the ACCC accepted that the scheme sought to avoid significant environmental harm and the levy and rebate system was likely to better align the price of batteries with the cost of their responsible disposal and increase the incentive for businesses to facilitate their recycling.

2.2.8. A number of other antitrust regimes worldwide, for instance in South Africa, also provide the relevant competition authority with the ability to take into account public interest concerns, outside "pure" considerations of economic efficiency or consumer welfare. In Europe, the *Wouters* judgement of the Court of Justice of the European Union provides that the competition rules do not apply to restrictions of competition that are necessary and proportionate for achieving a legitimate public interest. The application of this doctrine in the context of sustainability initiatives is, however, still to be tested.

2.2.9. The concept of competition authorities providing comfort to companies wishing to embark on desirable, cooperative projects is not uncommon. In the UK, this could be done under the short form opinion scheme. The CMA has recently withdrawn its "Guidance on the CMA's Approach to Short-form Opinions" as it considers that its resources should instead be dedicated to post-EU Exit and post-pandemic priorities. In fact, competition authorities around the world have been using similar procedures to combat difficulties faced by businesses in light of the COVID-19 pandemic. The ACCC has used the abovementioned regime for the authorisation of collaborations linked to the pandemic. The EU Commission set up a process to provide (where appropriate) ad hoc written comfort to undertakings engaged in cooperation projects aimed at addressing the shortage of essential products and services. This was a substantial change from the position introduced by Regulation 1/2003, which essentially removed comfort letters and required that undertakings must self-assess whether their arrangements violated competition law. Similarly in the United States, persons concerned about legality under the antitrust laws of proposed business conduct may ask the Department of Justice for a statement of its current enforcement intentions with respect to that conduct pursuant to the Business Review Procedure. The Department of Justice and the Federal Trade Commission have also set up an expedited procedure for issuing business review letters for COVID-19-related requests. In the UK, the Secretary of State for Business, Energy and Industrial Strategy can make public policy exclusion orders to relax UK competition rules for certain agreements which might normally be considered anti-competitive. The Secretary of State has made a number of exclusion orders to enable a coordinated response to the COVID-19 pandemic from a few specific industries.

2.2.10. Arguably, certain global emergencies, such as the environmental crisis should be treated on par with the threat of the COVID-19 pandemic. We would, therefore, invite the CMA to consider trialling an authorisation mechanism for sustainability agreements. This solution could provide the desired flexibility as determination would be made on a case-by-case basis.

2.2.11. Finally, one way of achieving sustainability goals is through regulation. While this option may provide legal certainty, it is not always the most efficient way of dealing with sustainability initiatives, which may come in different forms or may require different levels of participation. This is because environmental issues may require a more flexible approach, able to adjust over time. An example of this is voluntary agreements concluded by industries as alternatives to EU eco-design regulations for improving the environmental performance of products. The European Commission found that in certain sectors, such as in the imagining equipment market, a voluntary eco-design scheme would achieve the policy objectives more quickly and at a lesser expense than mandatory requirements.

2.2.12. In summary, voluntary or industry-led schemes have tremendous potential to achieve sustainability goals. In order to enable these forms of cooperation, the CMA should issue clearer communications to companies on how businesses can collaborate for broad sustainability purposes in a manner that would be consistent with competition law. Specifically, this means providing guidance or policies that would clarify the application of the prohibition and the

exemption criteria under Chapter I of the CA98. Additionally, the CMA could consider implementing a flexible authorisation approach. This would have the potential of allowing sustainability-focused initiatives in the public interest to go ahead without needing to change the objectives of competition law. Such authorisation frameworks can also be constructed to accommodate temporary exemptions during times of crisis. The CMA should also consider engaging with market players directly to provide comfort in discussions of sustainability projects. Lastly, an alternative, or perhaps a complimentary, change to consider would be to introduce a specific block exemption for sustainability agreements.

2.3. **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.

2.3.1. Please see our answer to Question 1.

10 November 2021