

DAIRY UK SUBMISSION TO CMA CONSULTATION ON DRAFT GUIDANCE ON SUSTAINABILITY AGREEMENTS

Introduction

1. Dairy UK is a trade association representing the dairy processors of the United Kingdom. Dairy UK members account for around 70% of the milk processed in the UK. Further information can be found at www.dairyuk.org
2. Dairy UK strongly welcomes the draft guidance on sustainability agreements with particular exemptions for agreements addressing climate change. Sustainability is recognised by Dairy UK as the biggest long term challenge facing the dairy sector. Our individual members also acknowledge that this issue has primarily to be addressed by the entire sector and that the best approach is through collaboration consistent with competition law.

Role of Trade Associations

3. Dairy UK would welcome more explicit treatment within the guidance of the role of trade associations in operating sustainability agreements and the type of initiatives that they could engage in. The implicit assumption behind the current draft guidance is that agreements are reached between competing enterprises. This ignores the leadership role Trade Associations can play in the process of developing and operating environmental sustainability agreements. This area needs to be addressed if the guidance is to be effective in giving organisations confidence to engage pre-competitively with the challenge of sustainability

The Dairy Roadmap

4. By way of example the dairy sector has developed the 'Dairy Roadmap' as its primary initiative to improve its environmental performance. The Dairy Roadmap was initially conceived by Defra in 2012 when it invited dairy sector organisations to come together to set environmental improvement targets for the drinking milk sector.
5. Since then the initiative has been overseen jointly by Dairy UK, the Agricultural and Horticultural Development Body and the National Farmers Union. Under the steering group run by these three organisations a number of working groups have been established that draw upon a wide range of sector organisations. The scope of the Dairy Roadmap has been extended to cover all dairy products.
6. Until now the Dairy Roadmap has confined itself to setting targets for dairy processors and dairy farmers. Reports on progress have been published every two years.
7. Adherence to the targets by individual processors and dairy farmers is entirely voluntary. No formal written commitment to the Dairy Roadmap has been requested from enterprises in the dairy sector. There has been a wide spectrum in the level of

engagement in the Dairy Roadmap, from relative unconcern, to enterprises integrating the Dairy Roadmap targets into their business planning and development.

8. Because the challenge of sustainability is growing increasingly urgent the dairy sector will be deepening and accelerating its commitment to the Dairy Roadmap. Current work streams include:
 - a. Creating more detailed targets for improvement in the environmental performance of dairy farms and dairy processors.
 - b. Compiling and scrutinising anonymised data on the environmental performance of processors and farmers from a variety of data sources for the purposes of monitoring industry progress and setting targets.
 - c. Seeking to standardise carbon footprint tools used by dairy farmers. The Dairy Roadmap Carbon Footprint Working Group has reviewed the current carbon calculators available to dairy farmers and is working to create standardisation across the market, ensuring reliability and consistency in reporting for the UK dairy sector. The group plans to standardise emissions reporting, then investigate the calculation of carbon sequestration and its value to the dairy sector.
9. Throughout the Dairy Roadmap has been operated in full compliance with competition law and has confined itself to activities that are recognised as permitted by the CMA. It has been and will remain entirely voluntary.
10. It is hoped that the leadership provided by the Dairy Roadmap will play an increasing part in the development of the industry and that the targets for improvement in environmental performance will become voluntarily embedded in the operation of businesses throughout the supply chain.
11. It would therefore give those enterprises concerned about competition law compliance greater confidence to engage with the Dairy Roadmap if such initiatives were explicitly covered by the CMA guidance.

CMA Open-Door Policy

12. The CMA is proposing that businesses considering entering into an environmental sustainability agreement can approach the CMA for informal guidance. We strongly welcome this commitment.
13. Our concern is over its operability. Competition law legal advice is expensive to obtain. The CMA could be subject to a very high level of demand. If the CMA does not have enough capacity to rapidly scrutinise proposed agreements, then it might inadvertently cause delays in the implementation of agreements. Expanded guidance might also be usefully provided on the what is expected from the self-assessment required to be undertaken before agreements are submitted.