

Dear Sir/Madam

Thank you for the opportunity to reply to the CMA's draft guidance on environmental sustainability agreements.

Marks and Spencer has committed to being a net zero business (including scope 3) by 2040. To achieve net zero, we know we will need to work in collaboration across our sectors, particularly where we have suppliers in common. We are members of UK Plastics Pact, Courtauld 2030 and Textiles 2030 and have signed up to the BRC Climate Action Roadmap. M&S is also a signatory to the WWF CEO Retailers' Commitment for Nature.

We welcome the CMA's proactive approach to "ensuring that competition law does not impede legitimate collaboration between businesses that is necessary to the promotion or protection of environmental sustainability". In particular, we appreciate the "more permissive approach to agreements which combat or mitigate climate change" and the CMA's open door policy and willingness to provide advice if approached.

This letter provides our key feedback on the draft guidance but we have also submitted into the substantive response of our legal partner, Denton's. In addition to agreeing with Denton's submission, we also support the BRC's submission and, in particular, the BRC's observation that producing a simple guide to the Guidance for environmental experts in business would be helpful to ensure this guidance is accessible for 'competition layman'.

Our input into Denton's submission focused on question 3 in the Consultation, with our suggestions concentrating on the description of environmental sustainability agreements. In relation to these agreements, we feel strongly that the following examples should be included in the CMA's final guidance to provide the required clarity to businesses when discussing these important topics with competitors.

1. Sector cooperation on sourcing and co-ordination of scarce technology and skills essential for reducing emissions in the timescale of UK legally binding targets e.g. for building retrofit e.g. refrigeration equipment, removal of gas boilers and installation of heat pumps. For logistics network, purchase of heavy good vehicles EVs.
2. It would be helpful to include one of the examples on carbon labelling for food products and (i) how it could be treated within this Guidance; and (ii) how that would change it if was purely a 'carbon only' label vs a wider eco-label considering other environmental and social (labour/animal welfare) factors.
3. It would also be helpful to include examples which demonstrate that biodiversity is linked to climate change for example:
 - a) deforestation in the supply of commodity crops such as palm, soy, leather, cocoa, tea, coffee, rubber.
 - b) Regenerative agriculture in farming standards to improve soil health and reduce emissions from fertilisers and pesticides.
 - c) Plant based protein both in changes of animal feed and as ingredients in the food industry.

We note that the scope of the guidance is very clear that it applies to 'environmental sustainability agreements' and that broader societal objectives such as working conditions are outside of scope. We note that the term Climate Change covers agreements which contribute towards the UK's binding climate change targets under domestic or international law.

It would be helpful to clarify if actions leading to reductions in emissions associated with products consumed in the UK but produced overseas were included (although they are not part of UK legally binding target, but they do form a significant part of recognised action on climate change). For example most clothing sold in the UK will be sourced from countries like China, Bangladesh, India and firms are likely to need to cooperate in agreements on renewable energy sourcing for suppliers in those regions.

We encourage the CMA to consider issuing further guidance in the future on cooperation to adapt to climate change as well as mitigate climate change. We are seeing a greater requirement to collaborate and build resilience into supply chains to adapt to impacts of climate change which would also include consideration of social sustainability i.e living wages for smallholders so that they can afford in adapting their farming practices.

We are grateful for the opportunity to respond to the draft guidance and hope these comments are useful. If you have any questions on our response please do not hesitate to contact me.

Yours sincerely