

Draft guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements consultation

Wildlife and Countryside Link welcomes the draft guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements between actual or potential competitors. It is important that businesses are able to reduce their environmental impact without unnecessary uncertainty over regulatory action linked to competition concerns. However, we would welcome greater clarity on how this guidance relates to plastic waste and, more widely, why agreements to conserve biodiversity are given less importance than those relating to the climate. It is widely accepted amongst climate and nature experts that the dual climate and nature crises must be tackled together or we will fail to tackle either¹ and the guidance should reflect this.

Questions:

- ***4.1 Are the content, format and presentation of the Draft Sustainability Guidance sufficiently clear? If there are particular parts of the Draft Sustainability Guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.***
- ***4.2 We are keen to ensure that the Draft Sustainability Guidance is as practical and helpful to business as possible. If you think that there are situations where additional guidance would be helpful or where the examples we have used could be made clearer or more specific, please let us know.***
- ***4.3 We are also keen to ensure that the description of the agreements in Section 2 of the Draft Sustainability Guidance is sufficiently clear so that businesses are in no doubt as to whether their agreement is covered by the Guidance.***
 - ***a) Are there any changes that you feel would improve the description of environmental sustainability agreements?***
 - ***b) Are there any changes that you feel would improve the description of climate change agreements (including in footnote 4)?***

Biodiversity crisis

We would welcome additional clarity on why agreements which aim to conserve biodiversity will be treated differently to climate agreements under the guidance. The consultation document states “while we recognise that agreements which aim to conserve biodiversity are also of critical importance, we do not consider that they fall into the same category as climate change agreements”, adding that they will therefore “not benefit from the more permissive approach that will be taken for climate change agreements”. While we support the approach to climate change, we believe that the biodiversity crisis also requires special treatment as it also represents a “special category of threat”.

There are three factors referenced in justifying a more permissive approach to climate change: firstly the “sheer magnitude of the risk that climate change represents”, secondly “the degree of public

¹ <https://www.theguardian.com/environment/2021/jun/10/climate-and-nature-crises-solve-both-or-solve-neither-say-experts>



concern about it”, and thirdly “the binding national and international commitments that successive UK governments have entered into”, which the guidance says “set it apart”. However, the global biodiversity crisis clearly also meets these criteria and without giving it specific attention, it will itself become an even greater contributor to climate change.

The magnitude of the risk is highlighted by data showing that wildlife populations - mammals, birds, amphibians, reptiles and fish - have seen a devastating 69% drop on average since 1970, according to WWF’s Living Planet Report (LPR) 2022.² Biodiversity loss threatens the very basis of life on earth, impacting food systems, water, medicine, a stable climate and economic growth, among other crucial aspects of our social and economic life.³

There is demonstrable public concern about the biodiversity crisis. Polling has found that 81% of UK adults believe nature is under threat and that more needs to be done urgently to protect and restore it.⁴ Further, polling has found that majorities of the public believe government agencies (59%), national (58%) and local governments (52%) should have very high levels of responsibility for the protection and enhancement of the natural environment.⁵

Finally, there are clear binding national and international commitments regarding biodiversity loss. These include, but are not limited to, the landmark UN Kunming-Montreal Global Biodiversity Framework⁶, the new High Seas Treaty⁷, the Leaders’ Pledge for Nature,⁸ and new legally binding domestic nature targets⁹. Therefore the absence of focus on the biodiversity crisis as part of the UK’s domestic agenda is out of step with these global frameworks and risks the UK falling behind on tackling this issue.

Plastic waste

Special treatment for biodiversity loss agreements as well as for climate agreements would be beneficial in driving business action to tackle threats to nature. For example, it may allow businesses to take stronger action in tackling issues such as unsustainable resource extraction and plastic pollution without having to justify this only on its climate benefits.

At present, the guidance sets out that societal benefits from agreements to reduce plastic waste can only be assessed based on the proportion of the wider societal benefit that can be apportioned to consumers of the product in question (and, where appropriate, in related markets). This is opposed to climate change agreements which can take into account “the totality of the benefits to all UK consumers arising from the agreement”. Because it can be unclear how to identify whether an agreement would be classified as an environmental sustainability agreement or a climate change agreement, this may hinder action to tackle environmental issues such as plastic waste which have benefits for reducing greenhouse gas emissions but do not provide exclusively climate-related benefits. It is worth recalling that a key moment in the public’s understanding of and concern with

² <https://www.wwf.eu/?7780966/WWF-Living-Planet-Report-Devastating-69-drop-in-wildlife-populations-since-1970#:~:text=WWF%20Living%20Planet%20Report%3A%20Devastating,wildlife%20populations%20since%201970%20%7C%20WWF>

³ <https://www.un.org/en/climatechange/science/climate-issues/biodiversity>

⁴ <https://www.wwf.org.uk/press-release/majority-uk-adults-believe-nature-crisis>

⁵ <https://www.brightblue.org.uk/uk-public-wants-nature-at-the-heart-of-policymaking/>

⁶ <https://www.unep.org/news-and-stories/story/cop15-ends-landmark-biodiversity-agreement>

⁷ <https://www.nhm.ac.uk/discover/news/2023/march/historic-treaty-to-protect-the-worlds-oceans-finally-agreed.html>

⁸ <https://explore.panda.org/newdeal/leaders-pledge-for-nature>

⁹ <https://www.gov.uk/government/news/new-legally-binding-environment-targets-set-out>

the impact of plastic pollution was a result of *Blue Planet II* and how it is hugely detrimental to wildlife, especially in the marine environment.¹⁰

In support of tackling the plastic pollution crisis, it would therefore be helpful to have more examples of how packaging agreements and reuse systems would be treated in the guidance. Competition law is frequently cited by industry as a barrier to greater collaboration on scaling up of reuse systems so to eliminate this barrier would accelerate progress on the systems changes required to mainstream reuse and refill.

¹⁰ <https://www.sciencefocus.com/nature/has-blue-planet-ii-had-an-impact-on-plastic-pollution/>