



CMA consultation on its draft guidance on environmental sustainability agreements

Response from the Future Homes Hub

Introduction

The Future Homes Hub is an independent, non-profit making organisation bringing together the homebuilding sector with the wider circle of supply chain, infrastructure, finance and government organisations that need to collaborate to achieve the climate and environmental challenges that lie ahead.

The Hub believes that pro-active collaboration across all these bodies is essential if steps and measures to meet climate and environmental objectives are to be successful and to produce wider societal and consumer benefit.

General comments

We welcome the CMA's objective of providing greater clarity and assurance on the application of the Chapter I prohibition in the Competition Act 1998 to agreements between competitors or potential competitors in relation to environmental sustainability agreements. The provision of CMA guidance in this field will be of value to all involved in meeting the extensive challenges that exist in achieving both national and global environmental goals and targets.

As an overarching principle, the Hub would wish to see as much clarity as possible in the guidance. The provision of examples of agreements that are acceptable and would be exempt from a Chapter I prohibition is helpful in this regard. We also welcome the CMA's commitment to an "open door" policy for parties to discuss prospective environmental agreements with it to provide assurance on their status under the Competition Act.

At a strategic level, the Hub believes, however, that the more permissive approach set out in the consultation for climate change agreements should also be applied to agreements relating to other environmental objectives where there are equivalent legally binding national targets to act and wider societal benefits would result from successful collaboration to this end.

Response to the consultation questions

Question 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.



The proposed guidance on environmental sustainability agreements is generally clear and is welcomed by the Hub.

However, we would find it helpful to further clarify the relationship between the statements made in paragraphs 7.7 & 7.12 in the draft guidance relating to the operation of the “open door policy”.

Paragraph 7.7 says that where the CMA feels comfortable to do so, it may “provide comfort to businesses that we do not think that competition law is engaged or we think that the conditions for exemption are met...” This is a welcome positive approach to providing assurance to the parties.

Paragraph 7.12, however, on the protection from fines, states that the CMA “..will not issue fines against parties that implement an agreement which was discussed with the CMA in advance and where the CMA did not raise any competition concerns...”

The drafting of the two paragraphs leaves a degree of uncertainty or ambiguity as to whether there is any distinction between, on the one hand, the assessment the CMA might make in relation to the general position of the Competition Act’s application in a particular case and, on the other hand, the possible issuing of a fine.

If there is any distinction in respect of the assessment criteria applied in each case, it would be helpful to set this out clearly. If not, the drafting of the two paragraphs should be made consistent – or a combined text provided to make the overall position on the relationship between the paragraph 7.7 and 7.12 assessments as clear as possible. For example, does 7.12 cover the position where under 7.7 the CMA may not have found a problem with a proposed agreement, but has not been able to provide comfort?

Question 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.

The draft guidance is practical and helpful to business and organisations and will provide greater confidence for them to collaborate on activity to meet environmental objectives.

It would be of even greater value if more examples of what proposed environmental sustainability agreements would and would not be permitted were made available.

The Hub itself is unlikely to be a party to any agreement, but as a body we are seeking to encourage homebuilders and other parties to collaborate and share information in order to achieve environmental goals, including ones that are directly contributing to the achievement of our legally binding national Net Zero target, key aspects of the 2023 Environmental Improvement Plan and the UN Sustainable Development Goals.

In this regard, in order to scale up the delivery of homes that are Net Zero ready under the Government’s proposed 2025 Future Homes Standard under national Building Regulations,

we envisage that the industry will need and wish to share information on which technical design solutions work and the results of pilot schemes for building to low Net Zero ready performance standards under the national Building Regulations. Likewise, to reduce upstream greenhouse gas emissions, we foresee the industry collaborating on the development of standard reporting practices and opportunities to reduce the embodied carbon of the materials used across development sites. We would welcome the provision of clarity and assurance in the guidance that the industry can work collectively in this way towards the achievement of national environmental goals. We believe from our understanding of the draft guidance that such collaboration and information sharing would be acceptable under the Competition Act, but would suggest that the inclusion of an example which illustrates this would be a helpful addition to the guidance.

Similarly, we think it would be helpful to clarify the position in relation to a situation in which a number of purchasers – say, a group of home builders – were to say that from a particular date they will only buy products that perform over a particular level in relation to environmental or sustainability objectives.

If done at enough scale, such a joint purchasing initiative should be able to achieve price advantage through economy of scale and allow manufacturers to refocus their range, offering customers better performing, lower cost to run products. It would be helpful to clarify that an example of this kind would be covered by the provisions of paragraphs 4.10 and 11 in the draft guidance if there was otherwise potential concern that such a purchasing initiative could infringe the Chapter 1 prohibition.

Question 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)?

We think there needs to be more clarity in the examples given of both Environmental Sustainability Agreements (ESAs) and Climate Change Agreements (CCAs) in section 2 of the draft guidance document.

For example, would a joint purchasing initiative by homebuilders of the kind mentioned in our response to Question 2 above be recognised as an ESA for the purposes of the guidance?

In addition, it might usefully made clear that the guidance would be relevant to actions to achieve the range of binding environmental targets now adopted by the Government under the Environment Act and included in the Environmental Improvement Plan 2023 as well as the UK's climate change targets.

There may also be a bigger interpretational issue in relation to understanding what might be covered by the term Climate Change Agreement. How direct does the contribution to achieving the UK's binding climate change targets need to be for an agreement to qualify for



the more permissive consideration under the Competition Act set out for CCAs? It might be helpful to consider adding a clarification on this point - with some specific examples of qualifying agreements.

Finally, there is an important larger strategic point that we think should be considered in relation to the more permissive regime for CCAs. While we agree with the rationale set out for the more permissive regime, we think this should be applied more widely as the UK now has other legally binding environmental targets under the Environment Act and the 2023 Environmental Improvement Plan (EIP). As with climate change, the achievement of these further binding targets is of high importance for the future and the benefits of collaborative action would generally go to society and consumers more widely than just those in a particular market such as homebuilding. We would therefore propose that the CMA consider the case for widening the current coverage of CCAs to include agreements that would contribute to the achievement of other legally binding environmental targets.

We would add that the logic for widening the coverage of CCAs would be reinforced by the fact that action to achieve other binding targets such as biodiversity will often assist the achievement of the climate change targets, as well as benefitting society at large.