

# CMA Informal Guidance: Green Agreements Guidance

Fairtrade Shared Impact Initiative

21 November 2023

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# **CMA INFORMAL GUIDANCE: FAIRTRADE SHARED IMPACT INITIATIVE**

## **1. BACKGROUND TO THE AGREEMENT**

### **The request**

- 1.1 The Competition and Markets Authority (CMA) has reviewed the request from the Fairtrade Foundation UK (Fairtrade) seeking informal guidance under the CMA's Green Agreements Guidance: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements ('the Guidance').<sup>1</sup>
- 1.2 The request relates to Fairtrade's planned Shared Impact Initiative (the 'Shared Impact Initiative') for the sourcing of Fairtrade banana, coffee and cocoa products by participating UK grocery retailers ('the Retailers'). The stated objective of the Shared Impact Initiative is to use longer-term supply arrangements between the Retailers and participating Fairtrade producers to provide the producers with the security they need to invest in sustainable practices, including farming practices which reduce the environmental impact of production. The CMA understands that if the Shared Impact Initiative is successful in achieving these objectives there is the potential for it to be expanded in the future.

### **The informal guidance**

- 1.3 This letter provides informal guidance to Fairtrade on how the Guidance applies to the Shared Impact Initiative. The purpose of CMA informal guidance is not to provide a definitive statement on the legality of an agreement, but to provide guidance in light of the information provided by the parties on aspects of the analysis to assist the parties in their own self-assessment and raise any competition concerns the CMA may have, if any, so that the parties can address them.<sup>2</sup>

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<sup>1</sup> Defined terms used in this document have the same meaning as in the Guidance unless otherwise defined.

<sup>2</sup> As explained in paragraph 1.16 of the Guidance, the CMA would not expect to take enforcement action where parties approach the CMA to discuss their agreement and the CMA does not raise any competition concerns (or where any concerns raised have been addressed).

1.4 The CMA intends to publish this informal guidance as doing so may provide more clarity or comfort to other businesses considering entering into similar environmental sustainability agreements. This informal guidance should be read in conjunction with the Guidance. As explained in the Guidance the CMA prepares its informal guidance on the basis of the parties' submitted facts and does not verify or market-test the statements and assessments they contain, nor whether any relevant information which would have made a material difference to the CMA's initial assessment was withheld.<sup>3</sup> As set out in our Guidance, Fairtrade should keep their agreements under review to ensure that they continue to correspond clearly to the principles of the Guidance and that there are no new factors which would make a material difference to the initial assessment set out in this informal guidance.<sup>4</sup>

### **Fairtrade International**

1.5 Founded in 1997, Fairtrade International is a non-profit, multi-stakeholder association that implements a global certification system which is designed to promote social, economic and environmentally sustainable trade for all participants in the food supply chain, connecting farmers and workers from developing countries with consumers and businesses across the world. Fairtrade International owns the Fairtrade mark that appears on its products and co-ordinates the activities of its member organisations, which include:

- (a) Three producer network organisations that represent farmers and workers in Africa and the Middle East, Asia-Pacific, and Latin America and the Caribbean;
- (b) 19 national Fairtrade organisations (including the Fairtrade Foundation that licenses the use of the Fairtrade Mark on products in the UK); and
- (c) FLOCERT, the main independent certification body for Fairtrade International, which has the primary role of inspecting producers and businesses to ensure they remain compliant with the standards.

### **The existing Fairtrade initiative**

1.6 The existing Fairtrade initiative involves Fairtrade certifying producers that meet certain standards (eg on the environment as well as in relation to workers' conditions and pay), in exchange for which businesses purchase their products at a Fairtrade minimum price and a Fairtrade premium. The Fairtrade premium is an additional sum of money, over and above the minimum price, which goes into a communal fund for workers and farmers to use – as they decide – to improve their

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<sup>3</sup> See '*informal assessment by the CMA*', paragraphs 7.8 to 7.11 of the Guidance.

<sup>4</sup> See paragraphs 1.13, 7.1 and 7.13 of the Guidance.

social, economic and environmental conditions. The Fairtrade minimum price and the Fairtrade premium are generally set for each product by country of origin and reflect other product specific characteristics (such as whether a product is organically grown). They are set and reviewed regularly by Fairtrade International and can be amended after consultation with producer groups to guarantee that the costs of production are covered.

## The Shared Impact Initiative

- 1.7 The Shared Impact Initiative is a programme with the Retailers that expands on the existing Fairtrade initiative.<sup>5</sup> The stated objective of the Shared Impact Initiative is to help a pool of suppliers working with Fairtrade to invest for the longer term in sustainability initiatives by providing them with greater security through the use of longer-term purchasing commitments. In particular, Fairtrade has told the CMA that it expects one of the outcomes of the Shared Impact Initiative to be that the participating suppliers use the greater security provided by the agreement to invest in more environmentally sustainable farming and production methods than they would absent the Shared Impact Initiative (see paragraph 1.9 below). Fairtrade will use the Shared Impact Initiative to help establish more precisely how these longer-term supply contracts can best achieve this objective. The CMA understands that if the Shared Impact Initiative is successful in achieving its objectives there is the potential for it to be expanded in the future.
- 1.8 The Shared Impact Initiative involves the Retailers committing to purchase, on an annual basis, **additional** Fairtrade banana, coffee and/or cocoa products where there is scope to source additional products (ie the Retailer does not already have a 100% Fairtrade category commitment) from suppliers selected to participate in a pool of suppliers. The CMA understands that the main features of the Shared Impact Initiative are:
- (a) the Retailers will make their commitment to participate in the Shared Impact Initiative public;
  - (b) the products will be sourced from a selected group of existing Fairtrade producers who currently sell low levels of Fairtrade products;<sup>6</sup>
  - (c) Fairtrade will ensure that the sourcing of the products from producers will not result in producers being overly dependent on one Retailer, providing additional security for producers;

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<sup>5</sup> Fairtrade is working with major UK retailers and traders, including [redacted]

<sup>6</sup> The producers will be selected by local Fairtrade producer networks.

- (d) the Retailers are each free to choose which of the banana, coffee and/or cocoa initiatives<sup>7</sup> they participate in (including participating in all three) and, subject to the core requirements of the Shared Impact Initiative and the existing Fairtrade minimum price and Fairtrade premium, the terms on which they purchase them;
- (e) the Retailers will also remain free to continue to source other banana, coffee and/or cocoa products as they currently do (the Shared Impact Initiative only gives rise to a commitment to source new additional volumes of Fairtrade products);
- (f) the Retailers will commit to purchasing their chosen products for a three to five year period;
- (g) as a core requirement of the existing Fairtrade initiative the Retailers will pay the relevant Fairtrade minimum price and the relevant Fairtrade premium for the products purchased under the Shared Impact Initiative; and
- (h) the monitoring of the impact of the Shared Impact Initiative will be operated by Fairtrade (via FLOCERT).

1.9 Fairtrade has told us that the Shared Impact Initiative aims to address the following environmental concerns:

- (a) Reducing deforestation: such as providing access to funds for productivity programmes, agro-forestry initiatives and reforestation activities.
- (b) Tackling biodiversity loss: through providing farmers with financial support and technical expertise to improve farm practices, and to ensure species and habitats are not negatively impacted by production or by switching from a synthetic fertiliser to an agri-residue to promote agro-biodiversity.
- (c) Reducing on-farm and on-plantation emissions: this may involve measuring and reducing greenhouse gas emissions, through changing agricultural practices (eg reducing monoculture), afforestation, or implementing energy efficiency initiatives.

1.10 The Shared Impact Initiative is focused on the purchase of three commodities in their raw form. When a Retailer has made a commitment in respect of one (or more than one) of the three commodities, they are required to meet overall minimum supply thresholds for that commodity so that the desired objective of enabling investments thanks to a certain demand over a sufficiently long period

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<sup>7</sup> Fairtrade has told us that the annual commitments per UK Retailer are not finalised but are envisioned to be in the order of 1500MT of cocoa beans to be sourced from Cote D'Ivoire, 400MT of coffee or 10% of total volumes, whichever is higher (to be sourced from Colombia, Kenya, and Brazil) and 1-2 banana SKUs or 5000-10000MT of bananas, whichever is higher.

can be achieved. Beyond this minimum threshold, the Retailer is free to choose from where to purchase any additional demand (and it is open to the Retailer to purchase additional volumes from the pool of suppliers).

- 1.11 The Shared Impact Initiative expands on the existing Fairtrade initiative, and its requirements, including the payment of at least a Fairtrade minimum price, and the Fairtrade premium. For the purposes of this assessment the CMA has focused on Fairtrade's self-assessment which considered the potential impacts of the Shared Impact Initiative and has not considered the existing Fairtrade initiative more widely, save where the existing Fairtrade arrangements provide relevant context.

## **2. THE CMA'S ASSESSMENT**

- 2.1 The CMA recognises that the terms of the Shared Impact Initiative may change over time, and Fairtrade has expressed an intention to review the agreement following an initial period of one year. The CMA has conducted its assessment on the basis of the Shared Impact Initiative in the form outlined above.

### **Is the Shared Impact Initiative an environmental sustainability agreement?**

- 2.2 Farming remains one of the main drivers of deforestation globally, as well as a significant contributor to an increase in global greenhouse gas emissions and biodiversity loss.
- 2.3 As noted above, Fairtrade has told the CMA that one of the objectives of the Shared Impact Initiative is to increase investment in more environmentally sustainable farming practices. On that basis, the CMA considers that the Shared Impact Initiative is an Environmental Sustainability Agreement (as defined in the Guidance<sup>8</sup>) which is eligible for informal guidance under the CMA's open-door policy.
- 2.4 The CMA recognises that the Shared Impact Initiative may also deliver other, non-environmental, benefits for the producers. The consideration of such benefits is outside the scope of the CMA's open-door policy.

## **Competitive Assessment**

### **Summary and overview of competitive assessment**

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<sup>8</sup> See paragraphs 2.1 and 2.2 of the Guidance.

- 2.5 Fairtrade told the CMA it had conducted a self-assessment of the Shared Impact Initiative and it believed it would not restrict competition by object or effect for the following reasons:
- (a) the initiative is unlikely to affect the main parameters of competition and is unlikely to have an appreciable effect on competition; Fairtrade has provided some data to support this.<sup>9</sup>
  - (b) the objective of the initiative is to facilitate access to UK groceries markets by Fairtrade producers, on fixed volume per year and duration contracts, which will enable investment in sustainability projects, including environmental, by those producers.
  - (c) the measures Fairtrade has proposed to adopt in the Shared Impact Initiative are limited to those which are necessary to deliver the initiative. For example, specifying the duration and volume of the products the Retailers will commit to procure from the pool of suppliers; and the selection of producers who could invest in environmental sustainability projects.
- 2.6 In assessing the Shared Impact Initiative, the CMA has considered the overall impact of the initiative on competition in potentially affected markets, both as to its effect on competition between Retailers and on competition between (Fairtrade) producers, taking into account the legal and economic context. In doing so, it has considered in particular the specific impact of the initiative on the main parameters of competition,<sup>10</sup> and whether any provisions of the Shared Impact Initiative that may restrict the commercial autonomy of the participants would likely be regarded as necessary and proportionate to implement the proposed Shared Impact Initiative.<sup>11</sup>
- 2.7 Based on what the CMA was told, and for the reasons set out in more detail below, the CMA believes that the Shared Impact Initiative is unlikely to raise competition concerns because:
- (a) The agreement as a whole is unlikely to affect the main parameters of competition on the potentially affected markets and is unlikely to have appreciable effects on competition in view of the limited scale of the pilot (relative to the overall size of the potentially affected markets). Further, this agreement is likely to result in additional availability and choice of Fairtrade products for UK consumers. On this basis, the CMA considers that the

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<sup>9</sup> Fairtrade has told us that it does not anticipate that the Shared Impact Initiative will appreciably affect the parameters of competition (price, output, product quality, product variety, innovation). This is especially the case considering it will only relate to a small number of SKUs per business, which will make up a very limited proportion of the overall market for these products in the UK.

<sup>10</sup> See paragraph 3.6 of the Guidance.

<sup>11</sup> See for example paragraphs 4.9 of the Guidance.



overall objective of the Shared Impact Initiative is likely to be assessed as being neutral or having positive effects on competition.

- (b) To the extent that any specific provisions within the Shared Impact Initiative may have some restrictive effects, such provisions are likely to be objectively necessary to implement, and proportionate to achieve the overall objective of, the agreement.

2.8 The CMA's understanding on which this view is predicated is set out in more detail below:

## 2.9 Competition between the Retailers

- (a) The Shared Impact Initiative does not involve the co-ordination of the retail price for the products by the Retailers. Each Retailer will set its retail prices independently.
- (b) The CMA's recent work provides some evidence on the competitiveness of the grocery retail sector, including the existence of price competition between competing retailers, changes in retailers' market shares, and consumers willing to shop around for the best deal.<sup>12</sup> Other than the core volume and duration features of the Shared Impact Initiative, each Retailer will continue to act unilaterally in respect of the terms on which it purchases from the suppliers (including price, subject to paying a base Fairtrade minimum price<sup>13</sup> and the Fairtrade premium). The extent to which any additional costs of the existing Fairtrade initiative are passed through to consumers is at the discretion of each Retailer.
- (c) The CMA was told that under the existing Fairtrade initiative some retailers currently pass-on some, or all, of the additional cost of producing Fairtrade SKUs to consumers whereas others choose to absorb the cost. The Retailers include retailers across the price spectrum, from those who price products at a premium level to 'discount' retailers. As a result, Fairtrade products are not always more expensive than non-Fairtrade products. For example, Fairtrade has told the CMA that [redacted].<sup>14</sup> Fairtrade also told the CMA that Fairtrade products can be priced cheaper than competing products within a single retailer.<sup>15</sup> Given that the same pricing structures will be used for the Shared Impact Initiative as are used for the existing Fairtrade initiative, it is likely that

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<sup>12</sup> CMA Competition, choice and rising prices in groceries, July 2023

<sup>13</sup> The CMA understands that the Fairtrade minimum price is a base price and that for many commodities the actual price paid is determined by competition, with market price often exceeding the Fairtrade minimum price. As explained in paragraph 1.11 the CMA has not prioritised an assessment of the underlying Fairtrade initiative when giving its informal guidance on the additional 'Shared Impact Initiative'.

<sup>14</sup> [redacted]

<sup>15</sup> <https://www.fairtrade.org.uk/media-centre/blog/are-fairtrade-products-really-more-expensive/>

similar price competition will also apply for products sourced under the initiative.

- (d) Similarly, the Shared Impact Initiative does not determine the quantity, quality or choice of the Fairtrade products offered by each Retailer. As such, each Retailer will continue to compete on the quality and range of products they offer consumers, including its Fairtrade range.
- (i) Fairtrade told the CMA that the likely effect of the Shared Impact Initiative would be increased choice and availability of Fairtrade products, in and between the Retailers. Further, Fairtrade told us that Retailers will continue to trade outside of the Shared Impact Initiative in both Fairtrade and non-Fairtrade goods, and there will continue to be plenty of alternative products, both Fairtrade and non-Fairtrade, supplied outside of the products covered by the agreement.
- (ii) Fairtrade told the CMA that how Retailers absorbed these additional volumes of Fairtrade products resulting from the Shared Impact Initiative in their offerings to consumers would vary from retailer to retailer and product to product. For example, whilst Fairtrade coffee might be incorporated into a new product, it might be an input into an existing Fairtrade coffee product or be absorbed into a non-labelled coffee product. How each Retailer flexes its competitive range or product offering would be decided unilaterally.
- (e) While the Shared Impact Initiative involves the Retailers publicly committing to purchase an additional volume of Fairtrade products in future, and as such involves the exchange of information relating to future conduct, based on our understanding of the facts, this information is not likely to reduce competitive uncertainty or be capable of influencing the competitive strategy of the Retailers, and in any event does not go beyond what is necessary to implement the Shared Impact Initiative for the following reasons:
- (i) It covers only a small part of the affected product markets. In particular, just three Fairtrade products are covered, and the volumes of those products covered by the Shared Impact Initiative are small. Based on the data provided by Fairtrade the CMA understands that approximately:
- less than 10% of total annual UK cocoa imports would be under the Shared Impact Initiative;
  - less than 5% of total annual UK coffee imports would be under the Shared Impact Initiative; and

- less than 15% of total annual UK banana imports would be under the Shared Impact Initiative.<sup>16</sup>
- (ii) The only information exchanged between Retailers is that set out in the public commitment to participate in the Shared Impact Initiative and the Retailers do not share information with each other about how they are going to unilaterally deliver the core requirements – for example, they will not exchange information on the actual volumes of the products that they intend to purchase (ie the extent to which they plan to exceed the minimum purchasing requirements). As such, the risk of disclosure of competitively sensitive information is reduced.
  - (iii) As an additional safeguard to avoid disclosure of other information, beyond what is described above, (including the risk of disclosure of competitively sensitive information) Fairtrade told us that where data collection is required to operate the Shared Impact Initiative or to assess its impact, Fairtrade will work with third-parties to collect and manage the data.
- (f) While certain provisions within the Shared Impact Initiative, such as the core volume and duration provisions, may restrict the commercial autonomy of the participants, these restrictions are likely to be regarded as ancillary to the overall Shared Impact Initiative to the extent that they are objectively necessary to implement, and proportionate to achieving the overall objective of, the agreement.

## 2.10 Competition between producers

- (a) As set out above, the Shared Impact Initiative is intended to increase the availability of Fairtrade producers by investing in the sector. However, Fairtrade producers who are either not eligible for, or are not participating in the Shared Impact Initiative, will continue to compete to supply the majority of the UK grocery market not covered by the agreement, and as such the agreement is unlikely to have an appreciable effect on these other Fairtrade producers to compete in the relevant market.
- (b) Whilst the Retailers would commit to procuring the committed volume from participants in the pool by virtue of the agreement, Fairtrade also told us that they would continue to source the rest of their supply, which would be the significant majority, from producers outside of the pool.
- (c) Fairtrade told the CMA that the Shared Impact Initiative is expected to cover only a small number of producers, depending on the choices made by the

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<sup>16</sup> Even if all Fairtrade products are taken into account, the proportions of Fairtrade products in each market are estimated by Fairtrade as less than 30% for bananas, less than 20% for coco and less than 10% for coffee.

Fairtrade Producer Groups and the Retailers. They expect that this initiative could cover 2-3% of all the Fairtrade producers across bananas, coffee and cocoa, or approximately 1.5% of all Fairtrade producers. This reflects the limited coverage of the initiative, with the majority of producers and most volume procured outside the initiative. Fairtrade told the CMA that its Fairtrade Producer Network would select the pool of producers, on fair, objective and non-discriminatory terms which were open to eligible producers able to invest in longer term environmental sustainability initiatives.

### **3. CONCLUSION**

- 3.1 For the reasons set out above, and on the basis of the CMA's understanding of the facts as submitted by Fairtrade, the CMA does not expect to take enforcement action in relation to the Shared Impact Initiative.

### **4. FURTHER COMMENTS**

- 4.1 If in the future we were to conclude that further consideration of the Shared Impact Initiative was necessary, the CMA would not issue fines against Fairtrade or the parties that had implemented the agreement if it were to subsequently conclude that the Shared Impact Initiative infringed the Chapter I prohibition of the Competition Act 1998.
- 4.2 For the avoidance of doubt, the CMA assessment is based on the current anticipated form of the Shared Impact Initiative outlined above. If Fairtrade and the Retailers decide to amend the scope or terms of the agreement, they will need to consider the extent to which it is appropriate to continue to rely on this informal guidance, and in particular whether the Shared Impact Initiative remains consistent with the considerations the CMA has taken into account for the purposes of this informal guidance. For example, if the Shared Impact Initiative were to expand to cover a material part of the market, a reassessment would be required and the assurances provided at paragraph 3.1 above would cease to apply.
- 4.3 In any event, the CMA will expect Fairtrade and the Retailers to keep the Shared Impact Initiative under review in light of any change in circumstances and taking into account the informal guidance provided by the CMA.<sup>17</sup> If aspects of the Shared Impact Initiative change then Fairtrade and the Retailers will need to assess the impact of these changes and, if necessary, how any anticompetitive impacts could be mitigated. For example, if the market coverage of the Shared Impact Initiative were to materially increase, Fairtrade and the Retailers should consider if it is necessary to take additional steps to safeguard competition.

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<sup>17</sup> See paragraphs 7.14 and 7.15 of the Guidance.

- 4.4 If Fairtrade and the Retailers believe that they require further guidance in relation to future phases of this Shared Impact Initiative, they may approach the CMA under the existing open-door policy again.
- 4.5 The assurance that the CMA does not expect to take enforcement action in relation to the agreement, and that no fines would be issued if it were to subsequently conclude that the agreement infringed the Chapter I prohibition of the Competition Act 1998, is given on the condition that Fairtrade and the Retailers did not withhold relevant information from the CMA which would have made a material difference to the CMA's assessment as set out in this informal guidance.<sup>18</sup>

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<sup>18</sup> See paragraph 7.13 of the Guidance.