

COMPETITION AND MARKETS AUTHORITY

PRELIMINARY INFORMATION TO PROVIDE TO THE CMA IN RESPECT OF INFORMAL GUIDANCE REQUESTS

Thank you for your interest in submitting a request to the Competition and Markets Authority (CMA) for informal guidance on your proposed environmental sustainability agreement.

Why use this guide?

We would typically expect businesses to approach the CMA at an early stage in the development of an environmental sustainability agreement, having first conducted an initial self-assessment of their agreement following the principles set out in the [Green Agreements Guidance](#) (the Guidance) as informed by the examples included in the Guidance (see paragraph 7.5 of the Guidance).

We developed this submission guide to help businesses when they are preparing requests for informal guidance (see paragraphs 7.5-7.7 of the Guidance). There is, however, no obligation to use this submission guide, and you can depart from it if you think that is appropriate in the context of your proposed agreement.

The questions in this submission guide are intended to outline the information that the CMA would find useful to give a preliminary overview of the proposed agreement and to help us determine whether the proposed agreement is suitable for an informal assessment under the open-door policy (see paragraph 7.3 of the Guidance).

We welcome early engagement on the substance of potential requests for informal guidance. If you wish to explore whether a proposed agreement is something the CMA would, in principle, be willing to consider providing informal guidance on, or would like further information about the open-door policy, you may wish to approach us for an initial discussion about your proposed agreement in advance of submitting a request for informal guidance. The CMA may, at its discretion, consider draft submissions and provide feedback to businesses if this is likely to help to improve the efficiency of the open-door process in a particular case (see paragraph 7.7 of the Guidance).

Please also contact us if you have any questions about how to use this submission guide.

What happens next?

You can submit your request to the CMA at sustainabilityguidance@cma.gov.uk. You can also contact the CMA via this email address if you would like to have an initial discussion with us about your initiative.

Submitting a request for informal guidance does not guarantee that your proposed agreement will be accepted under our open-door policy. Following our review of the information you have provided, we will contact you to explain any next steps.

If the CMA accepts your request and provides informal guidance, then the CMA provides some assurances regarding enforcement action and protection from fines where it has not raised concerns in its informal guidance, or where any concerns with the agreement that it has identified have been addressed by the parties. For more information, please see paragraph 7.13 of the Guidance.

Anything else to be aware of?

As explained in the Guidance, if your request for informal guidance is accepted, our review is light touch and relies on publicly available information and information shared with us by the businesses. If you withhold information that could be relevant to that assessment then you will not benefit from protection from fines if the CMA subsequently concludes that the agreement infringes the Chapter I prohibition, as explained in paragraph 7.13 of the Guidance.

How we use your personal data

Your name and contact details are your personal data. In collecting, receiving, storing, accessing and using your personal data, the CMA, as controller, is processing your personal data. The CMA processes personal data in accordance with data protection law. The CMA is processing your personal data so that it can contact you again, should it need further help or information from you, in order to carry out our statutory functions and our functions as a government department and a regulator.

For more information about how the CMA processes personal data and your rights relating to that data, please see our Privacy Notice:

<https://www.gov.uk/government/organisations/competition-and-markets-authority/about/personal-information-charter>.

PART 1 – Background Information

- 1.1 Who is making the request for informal guidance? [See Guidance Note to question 1.1](#)
- 1.2 Is this request time sensitive? Please outline any relevant timeframes. [See Guidance Note to question 1.2](#)
- 1.3 Is the request commercially sensitive? Please explain the confidentiality of your request, and please highlight any information that is confidential in your responses. [See Guidance Note to question 1.3](#)

PART 2 – Overview and context

In this section, please provide us with an overview and background to your proposed agreement. This information will set your proposed agreement in its broader context (eg the market(s) and parties involved) and provide information on the objectives of your proposed agreement (eg on the environmental harm that you are seeking to address and how you think the proposed agreement will address it), which will help the CMA to better understand your proposed agreement.

- 2.1 Please provide the following: [See Guidance Note to question 2.1](#)
- (a) A list of the parties to the proposed agreement (if available); and
 - (b) If relevant, details of any other organisations (eg trade associations, NGOs) facilitating or otherwise supporting the proposed agreement.
- 2.2 Please provide an explanation of the proposed agreement. [See Guidance Note to question 2.2](#)
- 2.3 Please provide a description of the market(s) or sector(s) that the proposed agreement may affect (eg groceries retail, house-building, fashion, etc) and if relevant, a brief description of how the supply chain operates in this sector. [See Guidance Note to question 2.3](#)
- 2.4 Please explain why the proposed agreement is needed. [See Guidance Note to question 2.4](#)
- 2.5 Do you believe the proposed agreement qualifies as a Climate Change Agreement or a Mixed Agreement? [See Guidance Note to question 2.5](#)
- 2.6 Is there any additional relevant history or context that it would be useful for the CMA to understand? [See Guidance Note to question 2.6](#)

PART 3 – Competition considerations

In this section, please explain your self-assessment of your proposed agreement following the principles set out in the Guidance. You should highlight the specific issues which are not clear from the Guidance and where you need guidance from the CMA.

If you need help conducting this assessment and don't have access to legal advisers, there may be other sources of advice you can turn to, such as the [Competition Pro Bono Scheme](#). This scheme offers an initial free consultation. Other legal advisers may also offer advice on a similar basis.

Questions on Sections 3 and 4 of the Guidance: is the proposed agreement likely to have an adverse impact on competition?

- 3.1 Do you think that any categories of agreement described in Section 3 of the Guidance could apply to your proposed agreement? [See Guidance Note to question 3.1](#)
- 3.2 Could the proposed agreement involve: [See Guidance Note to question 3.2](#)
- a. price fixing;
 - b. market or customer allocation;
 - c. limitations on output;
 - d. limitations on quality, range, service or innovation (eg restricting the parties' incentives to meet or exceed sustainability goals or to achieve those goals more quickly)?
- 3.3 Who, if anyone, could potentially be affected by the proposed agreement (for example, customers, suppliers, competitors, third parties) and how? [See Guidance Note to question 3.3](#)

(If applicable) Questions on Sections 5 and 6 of the Guidance: does the proposed agreement, in your view, fulfil the exemption criteria in Section 9 of the Competition Act 1998?

As explained in paragraph 4.14 of the Guidance, an agreement that restricts competition may still benefit from exemption from the Chapter I prohibition if it meets the conditions for exemption. If you think your proposed agreement could restrict competition, answering these questions at the outset may mean the CMA can provide informal guidance on the proposed agreement more quickly.

If you are unsure whether to fill out this section, please email us at sustainabilityguidance@cma.gov.uk

Benefits

- 3.4 What are the expected environmental benefits of the proposed agreement? [See Guidance Note to question 3.4](#)
- 3.5 Are there any other benefits (eg lower prices, increased choice, better quality, etc) for consumers from the proposed agreement? [See Guidance Note to question 3.5](#)

Indispensability

- 3.6 Is the proposed agreement indispensable to the achievement of those benefits? [See Guidance Note to question 3.6](#)

Fair share

- 3.7 Please explain who receives any benefits and how those benefits compare against any anticipated competitive harm. [See Guidance Note to question 3.7](#)

No elimination of competition

- 3.8 Please explain whether the proposed agreement will eliminate competition, for example on price, quality, sustainability credentials, or other aspects, in respect of a substantial part of the products or services subject to the proposed agreement. [See Guidance Note to question 3.8](#)

PART 4 – Questions for the CMA

In paragraph 7.5 of the Guidance, we ask parties to highlight the specific issues which are not clear from the Guidance and where you need informal guidance from the CMA. If you have any particular questions that are not already covered in response to the questions above, please set out the issues on which you would like the CMA to provide informal guidance.

PART 5 – Further information

Is there any further information that has not been covered above which you think the CMA should be aware of? If there are any supporting documents (information packs, slides, etc) that you would like to share with us, please attach them to your submission.

Guidance notes

Guidance Note to question 1.1

As per paragraph 7.4 of the Guidance the CMA will normally expect a request for informal guidance to be made by the parties to the proposed agreement but the CMA will also accept requests from appropriate representative bodies if they are acting on behalf of the parties to the proposed agreement (eg trade associations or NGOs).

Please include contact details of the individuals who will engage with the CMA to discuss the proposed agreement if it is considered suitable for the open-door policy, including any authorised representative (eg any business such as a law firm or consultancy acting on your behalf).

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Guidance Note to question 1.2

Please note that the CMA may not be able to accommodate all requests for certain timeframes to be met as, among other factors, this will depend on the nature and complexity of the request. We therefore encourage businesses to approach us as soon as possible if they believe they require informal guidance.

If it appears that the CMA will not be able to provide a response to the request for informal guidance by the specified date, the CMA will discuss this with you.

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Guidance Note to question 1.3

If the CMA has accepted your request and intends to provide informal guidance, the CMA will discuss its informal guidance with you and provide an opportunity to comment on confidentiality before the informal guidance is published. However, it will help the CMA when preparing any informal guidance if you can confirm what information is confidential when it is provided.

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Guidance Note to question 2.1

If the full list of the parties to the proposed agreement is not yet known, please provide as much detail as possible about who the parties are likely to be.

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Guidance Note to question 2.2

In particular it will help the CMA if you can explain:

- The products or services to which the proposed agreement relates
- The nature of the collaboration envisaged by the proposed agreement including the specific business practices the parties are agreeing to.
- If applicable, the length of the proposed agreement.
- An indication as to when you intend to enter into and implement the proposed agreement.

- What role different parties (businesses, non-governmental organisations, trade associations) will have in the proposed agreement.
- What geographic area the proposed agreement will cover.

Any other relevant background or documentation that might help the CMA understand the proposed agreement.

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Guidance Note to question 2.3

Your agreement may affect more than one market. For example, it may affect the market where the parties to the agreement compete but also a (new) market for a more sustainable input or a service that the parties to the agreement are collectively purchasing. Please consider all relevant markets in your answer to this question.

In particular it will help the CMA if you can provide:

- A brief explanation of what matters to consumers when choosing between the products and services subject to the agreement (for example, buying the cheapest product).
- A brief explanation of how pricing and other competitive parameters are determined (for example, whether set by suppliers, negotiated between suppliers and customers, or the result of a bidding process organised by customers).

To the extent that the information is easily available, the following will also assist the CMA's consideration of the proposed agreement:

- A brief explanation of any significant barriers to entry or expansion for the relevant products or services.
- Rough estimates of the shares of supply of the parties to the proposed agreement, or alternatively, an indication of the size and number of the players inside vs outside of the proposed agreement.
- Estimated market coverage of the proposed agreement (if different to the estimated shares of supply of the parties to the proposed agreement).

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Guidance Note to question 2.4

In particular, it will help the CMA to know:

- What environmental problem you are seeking to address with the proposed agreement;
- Whether the proposed agreement will contribute to meeting UK or international environmental targets;
- What progress is expected to be made towards the objective if the proposed agreement were not to go ahead (ie what is the 'status quo'?);
- What the intended or anticipated impact of the proposed agreement is on the environmental problem and how will success be monitored; and
- Any previous unilateral or joint action taken by the parties to address this issue and why this has not been sufficient?

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Guidance Note to question 2.5

Please see paragraphs 2.4-2.6 of the Guidance for more details.

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Guidance Note to question 2.6

In particular, it will help the CMA to know whether:

- you have approached any other competition authority for guidance or advice in relation to the proposed agreement; and
- whether any related agreements are subject to an investigation by any other authority, or subject to proceedings before a court or tribunal.

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Guidance Note to question 3.1

If yes, please outline which paragraphs you think apply and explain what features of your proposed agreement could meet and/or go beyond the scenarios described in Section 3 of the Guidance.

If you believe that the proposed agreement may fall outside the scope of the Chapter 1 prohibition for any other reason, please explain why.

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Guidance Note to question 3.2

As explained in paragraphs 4.4-4.8 of the Guidance, parties should be cautious in relation to environmental sustainability agreements which involve restrictions of competition “by object”, however the presence of these restrictions does not automatically mean that the proposed agreement is anti-competitive, and it is possible for the proposed agreement to meet conditions for exemption.

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Guidance Note to question 3.3

Please refer to paragraphs 4.14-4.16 of the Guidance for factors that you should consider to determine whether the proposed agreement would have any appreciable negative effects on competition. Your agreement may affect more than one market (see also the guidance note to question 2.3, above). Please consider all relevant markets in your answer to this question.

The following information, in particular, may be helpful to the CMA:

- Is the proposed agreement likely to cause a rise in prices, or a reduction in quality, range, service or innovation? If so, are you in a position to give an indication of how significant these changes are likely to be, and over what time period this change would take place?

- Could any businesses be negatively impacted by the proposed agreement? If you are able to do so, please identify the businesses or types of businesses that might be negatively impacted.
- Are there any other sources of costs (eg expenditure on environmental sustainability measures, or increased production or distribution costs) that would affect the terms of your offering to consumers, including the magnitude of these costs and the timeframes over which they would arise?

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Guidance Note to questions 3.4 and 3.5

In your answer, please provide a brief explanation of what the benefits are over and above what would have happened without the agreement and the likely or anticipated timeframes over which these benefits could arise. Are these benefits specific to the proposed agreement and measurable?

You may wish to cross refer to your answers to questions 2.4 and 2.5.

[Back to question 3.4](#) and [question 3.5](#)

Guidance Note to question 3.6

In particular it is likely to help the CMA if you can consider the following points in your response:

- Why is the proposed agreement needed (or the least restrictive means) to achieve the objective and overcome market failure or realise efficiencies?
- Why do unilateral actions not lead to the desired outcome? Is there market failure (including an explanation of the extent to which there is 'willingness to pay' for a more sustainable product by customers) that the agreement addresses or are there efficiencies (eg of scale) that the agreement helps realise?
- What alternatives have you considered, or have not been as successful as desired? Why have you not chosen to pursue these alternatives?
- Does the agreement enable the benefits to be achieved more efficiently (eg at a reduced cost or more quickly)? See paragraph 5.9 of the Guidance.

You may wish to cross refer to your answer to question 2.4.

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Guidance Note to question 3.7

In particular it is likely to help the CMA if you can consider the following points in your response:

- Who receives the expected environmental (or other) benefits that arise from the proposed agreement (direct current or future consumers, indirect users, third parties, etc);
- How the relevant consumers (see below) benefit from the proposed agreement;
- What is the scale of the benefits received by the relevant consumers?

Please see paragraphs 5.24-5.28 of the Guidance for guidance on conducting this weighing exercise. In general, the "relevant consumers" will be the consumers in the relevant market(s) affected by the proposed agreement. However, as explained in paragraphs 6.1-6.7 of the

Guidance, if your proposed agreement qualifies as a Climate Change Agreement (as defined in paragraph 2.4 of the Guidance), then the CMA considers it is appropriate to take into account the climate change benefits to all UK consumers.

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Guidance Note to question 3.8

Please see paragraphs 5.29-5.31 of the Guidance. In particular, it is likely to help the CMA if you can consider the following points in your response:

- Whether the parameters on which the parties to the proposed agreement agree to collaborate are the same as the 'competitive parameters' that are most important to customers of the products or services (eg price, choice/variety, quality/service levels, sustainability features, etc);
- Whether substantial competition remains from businesses who are operating outside the proposed agreement.

You may wish to cross refer to your answer to question 2.3.

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