

# **CMA Informal Guidance: Green Agreements Guidance**

**3Keel: Landscape Enterprise Networks**

**21 January 2026**

# CMA INFORMAL GUIDANCE:

## LANDSCAPE ENTERPRISE NETWORKS

### 1. BACKGROUND

#### The request

- 1.1 The Competition and Markets Authority (**CMA**) has reviewed the request from 3Keel seeking informal guidance under the CMA's Green Agreements Guidance: guidance on the application of the Chapter I prohibition of the Competition Act 1998 (**CA98**) to environmental sustainability agreements (the **Guidance**).<sup>1</sup>
- 1.2 The informal guidance relates to businesses collaborating to co-fund regenerative agriculture and drive landscape resilience through the Landscape Enterprise Networks (**LENs**). LENs is operated by 3Keel, a consultancy firm. The request concerns new processes that 3Keel has been establishing for LENs (the **LENs 2.0 scheme**).<sup>2</sup>
- 1.3 In essence, LENs connects businesses looking to carry out projects to improve environmental conditions in their local area with farmers, land managers and land owners (collectively referred to as '**Farmer(s)**' in this informal guidance)<sup>3</sup> able to carry out the work (see details para. 1.7 below). 3Keel acts as an intermediary between businesses and Farmers, collating demand and matching it with supply.

#### Preliminary Considerations

#### The informal guidance

- 1.4 This document provides informal guidance to 3Keel on how the Guidance applies to the LENs 2.0 scheme framework. The purpose of this informal guidance is not to provide a definitive statement on the legality of an agreement, but to provide clarity on the application of the Guidance, and comfort on the CMA's expected approach to enforcement action, in light of the information provided by 3Keel.
- 1.5 The CMA is publishing 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

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<sup>1</sup> Defined terms used in this document have the same meaning as in the Guidance unless otherwise defined. [Guidance on environmental sustainability agreements - GOV.UK](#)

<sup>2</sup> 3Keel submitted a request for informal guidance which does not cover pre-existing pilots. This informal guidance takes effect from its date of issue and is subject to the conditions set out in Section 3. See paragraph 7.12 of the Guidance.

<sup>3</sup> They could be smallholders, tenants or large-scale farmers. 3Keel self-assessment, paragraph 2.2.5 (g).

with the Guidance. As explained in the Guidance, the CMA prepares its informal guidance on the basis of publicly available information and the parties' submitted facts and does not market-test the statements and assessments they contain. In particular, the assurances set out in this informal guidance (see 'Conclusion' below) are provided on the condition that the parties did not withhold relevant information from the CMA which would have made a material difference to its initial assessment under the open-door policy.<sup>4</sup>

- 1.6 As set out in the Guidance, 3Keel should keep the LENs 2.0 scheme framework under review to ensure it continues 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>5</sup>

## Development of the LENs 2.0 Scheme

- 1.7 In its request, 3Keel explained that:

- (a) it launched LENs working closely with its client Nestlé (as a **Founding Partner**) in 2020, to facilitate the involvement of an increasing number of businesses to co-fund regenerative agriculture and nature-based solutions such as improving the resilience of crop production; reducing greenhouse gas emissions; increasing biodiversity; improving water quality; and protecting rivers;<sup>6</sup>
- (b) its role is to match businesses, public bodies, and NGOs (**Demand Partners**)<sup>7</sup> with supply aggregators and Farmers (**Supply Partners**) that will deliver or facilitate the regenerative agriculture and nature-based solutions that will enhance ecosystem services (ie the benefits humans derive from nature);<sup>8</sup>

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<sup>4</sup> Paragraph 7.13 of the Guidance.

<sup>5</sup> Paragraphs 1.13, 7.1 and 7.13 of the Guidance.

<sup>6</sup> Call between the CMA and 3Keel, 26 March 2025.

<sup>7</sup> 3Keel submitted that Demand Partners join the LENs scheme for a variety of reasons. For some it will be primarily around scope 3 emissions and the need to manage those in their supply chain, while others are interested in wider resilience. Some Demand Partners are interested in other ecosystem metrics, such as water quality, flood and drought mitigation, biodiversity. The LENs scheme is place based, so all companies have an interest in the relevant landscape. 3Keel response, 11 July 2025.

<sup>8</sup> The Dasgupta Review, an independent review on the economics of biodiversity, defines ecosystem services as the benefits humans derive from nature (natural capital), categorising them as provisioning services (eg food, water), regulating services (eg climate, flood control), maintenance services, (eg oxygen), and cultural services (eg recreation, spiritual). At a national level, the Dasgupta Review highlights the importance of offering incentives to farmers for practices that promote biodiversity and ecosystem services in addition to forms of sustainable land management. See Dasgupta, P, [The Economics of Biodiversity: The Dasgupta Review](#), (London: HM Treasury, 2021). In its response to the Dasgupta Review, the Government concluded that 'sustainable engagement with nature can only be achieved through coordinated action across the whole of society' which it committed to, including by utilising private sector finance and solutions. See [Government Response to the Economics of Biodiversity: The Dasgupta Review](#) (CP 504, July 2021), pages 4 and 9. The importance of ecosystem services and the private sector's contribution is reflected at an international level by the UN Convention on Biological Diversity, an international treaty that aims to address all threats to biodiversity and ecosystem services, including by promoting and supporting the private sector to contribute to its objectives. See Convention on Biological Diversity, [Decision 16/13. Mainstreaming of biodiversity within and across sectors](#) (1 November 2024).

- (c) the LENs scheme operated as small-scale pilots<sup>9</sup> to establish whether it would be feasible in the long term for it to be expanded to multiple geographies and diverse industries.<sup>10</sup> For example, Anglian Water, Cereal Partners UK and West Northamptonshire Council collectively have been funding regenerative agriculture in East of England under one of the LENs pilots; and
- (d) the projects delivered under the LENs scheme are regional or local projects and each project includes a number of specific local measures that enhance ecosystem services eg cover crops, minimum tillage and habitat restoration.<sup>11</sup>

1.8 Since 2021, the pilots have resulted in funding of more than £21m from Demand Partners to over 350 Farmers, for the implementation of measures). In 2024, LENs Farmers reduced and removed 49,370 tonnes of CO<sub>2</sub>e (carbon dioxide equivalent), which is equivalent to 140 hectares' worth of newly planted woodland for the next 100 years.<sup>12</sup>

## The LENs 2.0 scheme

- 1.9 The LENs 2.0 scheme refers to the new processes set up by 3Keel following its pilots, and which are designed to support the scaling up of the LENs scheme for the yearly agricultural trade cycle starting in February 2025 and beyond.<sup>13</sup>
- 1.10 From 2026, the LENs 2.0 scheme will be managed and operated by 3Keel (as a separate business unit), with two strategic partners (Diageo and Nestlé) playing an advisory role.<sup>14</sup> 3Keel submitted that organisations that are dependent on specific landscapes have an incentive to support the enhancement of ecosystem services. There is a diverse range of Demand Partners interested in participating in the LENs 2.0 scheme, including large businesses from the food and drink sector, utility companies, insurance companies, conservation organisations,<sup>15</sup> small businesses<sup>16</sup> and regional government bodies.<sup>17</sup> Similarly on the supply side, 3Keel told the CMA that supply aggregators (see below) taking part in the LENs 2.0 scheme range in size, including large businesses such as grain merchants and

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<sup>9</sup> In Yorkshire and East of England. See: [Where It's Happening - Landscape Enterprise Networks](#).

<sup>10</sup> 3Keel has also been operating LENs pilots in Poland, Italy and Hungary.

<sup>11</sup> 3Keel submitted that funding will move from 'measures' to 'outcomes' which are the real-world ecosystem service results that Demand Partners are buying. For example, cleaner water, lower greenhouse gas emissions, more carbon stored in soils, greater biodiversity, reduced flood risk, or higher resilience of priority crops. Measures are the land management practices a Farmer implements (eg five species autumn cover crop, reduced tillage, riparian buffer). They are the means to an end rather than the end itself. Whilst 3Keel refer to measures throughout, the scheme works similarly for outcomes. Call between the CMA and 3Keel, 26 March 2025.

<sup>12</sup> [Landscape Enterprise Networks \(LENs\)](#).

<sup>13</sup> 3Keel self-assessment, paragraph 2.2.4. 3Keel explained that less than 5% of UK arable lands are covered by the LENs 2.0 scheme. Call between the CMA and 3Keel, 11 September 2025.

<sup>14</sup> 3Keel response to factual accuracy check, 13 January 2026.

<sup>15</sup> 3Keel self-assessment, paragraph 2.3.

<sup>16</sup> With a dependency on a region. 3Keel self-assessment, paragraph 2.3.

<sup>17</sup> 3Keel self-assessment, paragraph 2.2.5 (a).

aggregators, as well as smaller entities such as the Rivers Trusts.<sup>18</sup> The role of supply aggregators can be illustrated by the recently launched LENS project in Leven, Scotland, which brought together organisations with shared land management needs that would be difficult to tackle within their own supply chain individually. Once these requirements (eg mitigating flood risk and improving water quality in rivers and lochs) were identified, an intermediary known as a ‘supply aggregator’ approached Farmers and worked with them to propose solutions that could be implemented on their land and to establish the cost of such solutions.<sup>19</sup>

### *Overview of interactions between parties to the LENS 2.0 scheme*

- 1.11 3Keel submitted that part of its role as a broker under the LENS 2.0 scheme is to manage ‘all communications on behalf of both parties during the trading process, where Demand Partners’ funding and measures are agreed and allocated to Farmers’.<sup>20</sup> Under the scheme, Demand Partners jointly fund a project, and Farmers jointly deliver the measures required by the project. The LENS 2.0 scheme therefore relies on joint purchasing and joint selling agreements.<sup>21</sup>
- 1.12 3Keel explained that the first step in developing a project is to carry out an analysis of which sectors in a given region have most at stake from reliance on the landscape (eg food producers reliant on crops, water companies reliant on water supply), which landscape assets (eg soils, woodland, rivers) are involved and identify where there are crossovers in interest in the same landscape assets by different organisations or sectors.
- 1.13 3Keel submitted that the LENS 2.0 scheme delivers what the Demand Partners require, with 3Keel capturing the measures the Demand Partners want to fund and collating proposals from supply aggregators (as facilitators) and Farmers who wish to provide these measures. 3Keel told the CMA that ‘supply aggregators’<sup>22</sup> (NGOs or commercial entities that work with Farmers to develop proposals)<sup>23</sup> would typically be involved as liaising with hundreds of individual Farmers is not practical.<sup>24</sup>

### *Allocation stage*

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<sup>18</sup> Call between the CMA and 3Keel, 12 May 2025. It is only on rare occasions that individual Farmers would submit proposals directly to 3Keel, or as a cluster.

<sup>19</sup> [Leven, Scotland - Landscape Enterprise Networks](#).

<sup>20</sup> 3Keel request for Informal Guidance, background document, paragraph 3 (II).

<sup>21</sup> The contractual arrangements for the LENS 2.0 scheme are: [3K]. ‘Project Agreement’ – a Farmer project delivery contract signed by 3Keel, Demand Partners, a single supply aggregator and a Farmer. The Project Agreement sets out the list of measures that the Farmer will provide, the standard they will deliver them to, and the price paid by each Demand Partner. [3K]. Other farmers working with the same supply aggregator can join the original Project Agreement. [3K]. 3Keel response, 11 July 2025.

<sup>22</sup> 3Keel self-assessment, paragraph 2.2.5 (a).

<sup>23</sup> 3Keel self-assessment, paragraph 2.2.6 (c). Under the LENS 2.0 scheme funds pass from Demand Partners to the supply aggregators, then on to the farms once the relevant measures have been delivered.

<sup>24</sup> 3Keel self-assessment, paragraph 2.2.5 (a).

- 1.14 Once 3Keel receives the Farmers' proposals, it scores them, based on several criteria including the priority areas of funding and cost-sharing and which proposals would meet the needs of both Demand Partners and Farmers. Based on this scoring, 3Keel told us that it allocates the best proposal to the right Demand Partner, without the need for the Demand Partners to interact in an open forum.
- 1.15 At the allocation stage and for each measure, 3Keel informs Demand Partners about the number of other partners funding the measure. 3Keel submitted that it shares information on the number of Demand Partners (but without revealing their identity) funding a specific measure as it is useful information that helps to convey additional value that Demand Partners are generating through the LENs 2.0 scheme, ie that costs are being shared with others and may explain why individual measures are higher in cost if they are not being shared with other participants.<sup>25</sup>
- 1.16 The type and number of Demand Partners and Supply Partners taking part in any given LENs project may vary. There will be instances where there could be Demand Partners from the same sector participating in the same LENs project (eg food and drink manufacturers that may be competitors in the sale of retail products).<sup>26</sup> On the supply side of a project, there are also Farmers that may be competitors in the supply of agricultural products to businesses.<sup>27</sup>

### *Contracting stage*

- 1.17 At the contracting stage, Demand Partners are able to see the identity of other Demand Partners funding particular measures on each farm.<sup>28</sup> This includes any other new Demand Partners that may be onboarded through the trade cycle.<sup>29</sup>
- 1.18 The prices Demand Partners pay are uniform for a particular measure, and all signatories to the Project Agreement see the specific price paid for each measure, even where they are not a purchaser of that measure.<sup>30</sup> Demand Partners typically purchase a whole range of measures so their overall spend will be different.<sup>31</sup>
- 1.19 3Keel submitted that it has established a number of mitigation steps to address the potential risks of anti-competitive exchanges of information.<sup>32</sup>

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<sup>25</sup> Not all Demand Partners will want to purchase the same measures.

<sup>26</sup> There are also LENs projects where the Demand Partners may not be competitors. For example, the LENs project in Leven (see paragraph 1.10) has Demand Partners that include Diageo, Scottish and Southern Electricity Networks Distribution and Perth & Kinross Council.

<sup>27</sup> 3Keel self-assessment, page 12.

<sup>28</sup> 3Keel RFI response, 8 May 2025.

<sup>29</sup> 3Keel RFI response, 8 May 2025.

<sup>30</sup> See footnote 21 above for a description of 'Project Agreement'.

<sup>31</sup> 3Keel RFI response, 8 May 2025.

<sup>32</sup> 3Keel RFI response, 3 April 2025. The mitigation steps outlined by 3Keel include: (a) making all parties to the LENs 2.0 scheme clear on the scope of the engagement (pre-collaboration); (b) ensuring that an anti-trust statement is included in pre-reading materials and in slide decks; (c) asking that anyone with any concerns at any stage of a meeting that participants may inadvertently stray into commercially sensitive disclosures is encouraged to speak out, and 3Keel

## Eligibility criteria under the LENS 2.0 scheme

- 1.20 3Keel submitted that it is actively encouraging new Demand Partners to join the scheme<sup>33</sup> and told the CMA that in general terms there are no barriers to entry to joining, provided certain criteria are met.<sup>34</sup> The criteria for Demand Partners are:
- (a) Geography of interest ie the Demand Partner is active in a region covered by an existing LENS project. If the new Demand Partner is interested in LENS but not in the precise region covered by an existing project, 3Keel may consider developing projects in the new trade area proposed by the Demand Partner.
  - (b) Sustainability goals and due diligence.<sup>35</sup>
  - (c) Multi-year commitment: 3Keel submitted that there are costs to onboarding new Demand Partners and engaging with Farmers, and these costs mean that it is only worthwhile taking on Demand Partners who intend to be involved for multiple years and make a long-term commitment to the landscape and Farmers.<sup>36</sup>
  - (d) Outcomes of interest, ie the measures that Demand Partners are buying align with the LENS 2.0 scheme – eg reducing greenhouse gas emissions, carbon removals, increasing biodiversity, improving water quality and Farmer welfare.<sup>37</sup>
  - (e) A financial requirement.
- 1.21 3Keel told the CMA that it is actively looking to expand the scheme into new regions<sup>38</sup> as well as encouraging more partners into existing regions. 3Keel sees those developments as a way to make a greater impact on the environment and to provide more opportunities for Farmers (eg through a greater number of funders) which will also give Demand Partners more opportunities to share costs and increase their impact.

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can immediately close down any element of the discussion; (d) having a statement that all participants sign before each agricultural trade yearly cycle – to reaffirm responsibilities and competition rules; and (e) taking steps to reduce the amount of open discussions there are that might lead to inadvertent disclosures including asking partners to submit information directly to 3Keel which they then collate and distil, rather than having an open discussion. In addition, 3Keel told the CMA that ‘Regarding data handling and storage, all sensitive data is managed in line with 3 Keel Data Privacy rules, and not shared between parties’. See 3Keel request for Informal Guidance, background document, paragraph 3 (II).

<sup>33</sup> For example, 3Keel submitted that by engaging with Demand Partners that are seeking more diverse outcomes, such as water companies, they are able to work with smaller and more diverse Farmers in each region. 3Keel request for Informal Guidance, background document, paragraph 3(V).

<sup>34</sup> 3Keel self-assessment, paragraph 2.3.3 and LENS New Demand Partner Process document, 16 May 2024.

<sup>35</sup> 3Keel self-assessment, paragraph 2.3.2. 3Keel notes their main concern is in relation to ‘greenwashing’ ie companies joining LENS whose objectives do not align with the long-term goals of LENS. See also 3Keel RFI response 8 May 2025.

<sup>36</sup> LENS New Demand Partner Process document, 16 May 2024, page 8.

<sup>37</sup> 3Keel RFI response, 8 May 2025.

<sup>38</sup> The CMA notes in this regard that a new LENS project recently launched in Leven (the first in Scotland). In addition, there is a small pilot underway in west Wales. 3Keel RFI response 8 May 2025.

- 1.22 3Keel submitted that it does not have eligibility criteria on the supply side but that it actively encourages new Supply Partners to join the LENS 2.0 scheme. 3Keel also added that it tends to work with supply aggregators that i) are already supplying Demand Partners in a region, or ii) have relationships with Farmers in parts of the region.<sup>39</sup> 3Keel explained that competition between supply aggregators takes place both prior to and during the trade, for example 3Keel has seen Farmers engaging with new supply aggregators in order to gain access to the scheme.<sup>40</sup>
- 1.23 3Keel submitted that the LENS 2.0 scheme does not overlap with publicly funded schemes and does not fund activities that Farmers have a legal duty to undertake.<sup>41</sup>

### 3Keel's self-assessment of the LENS 2.0 scheme

- 1.24 In its submission, 3Keel provided its self-assessment of the LENS 2.0 scheme against the Guidance.
- (a) Firstly, 3Keel submitted that the LENS 2.0 scheme corresponds to the scenario set out in paragraph 3.7 of the Guidance which relates to a situation where the agreement enables parties to do something jointly that none of the parties could do individually. 3Keel noted in particular that Demand Partners jointly fund activities to create landscape resilience, because acting alone they would be unable to do so for economic reasons, and in the case of the water sector, for regulatory reasons.<sup>42</sup> 3Keel added that through sharing costs, the LENS 2.0 scheme helps to reduce the costs on Demand Partners, while delivering broader ecosystem and resilience benefits.<sup>43</sup>
- (b) Secondly, 3Keel considers that the LENS 2.0 scheme is unlikely to infringe competition law because the operations and agreements within the LENS 2.0 scheme either do not relate to the way the Demand Partners and Supply Partners compete with each other, or they do not have an appreciable adverse effect on competition.<sup>44</sup> As a result, 3Keel considered that the LENS 2.0 scheme fell wholly within Section 3 of the Guidance. 3Keel added that Demand Partners are generally active across different sectors (water companies, commodity and ingredients producers, pet food, soft drinks, and local authorities) and are therefore not competitors. Further, 3Keel noted that

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<sup>39</sup> 3Keel response, 11 July 2025.

<sup>40</sup> 3Keel response, 11 July 2025.

<sup>41</sup> 3Keel told the CMA that there are a number of other initiatives relating to the provision of regenerative agriculture and nature-based solutions in the UK and abroad. For example, in the UK the publicly funded Sustainable Farming Incentive scheme (the **SFI scheme**) pays Farmers to take up or maintain sustainable farming and land management practices that protect and benefit the environment and support food production. Call between the CMA and 3Keel, 26 March 2025.

<sup>42</sup> 3Keel self-assessment, paragraph 3.1. For example, for the LENS project in Leven, referred to at paragraph 1.10, several waterbodies in the region have conservation designations and Demand Partners including Perth & Kinross Council, Diageo and Scottish and Southern Electricity Networks Distribution are set to fund measures in the area and are calling for further organisations to join.

<sup>43</sup> 3Keel self-assessment, page 11.

<sup>44</sup> 3Keel self-assessment, paragraph 3.1.



in situations where two or more Demand Partners in relation to a given LENS project do operate in the same sector (eg two food manufacturers), 3Keel does not consider that the LENS 2.0 scheme would have an appreciable adverse effect on competition because it considers that the collaboration relates specifically to co-procuring measures that enhance ecosystem services, which has no direct bearing on how two organisations in the same sector compete in their primary marketplace in terms of sales to customers.<sup>45</sup> 3Keel is therefore of the view that under Section 3 of the Guidance, the LENS 2.0 scheme would be unlikely to raise any competition concerns.<sup>46</sup>

## 2. THE CMA'S ASSESSMENT

### Is the LENS 2.0 scheme within scope of the Guidance?

- 2.1 The CMA considers that the LENS 2.0 scheme has environmental sustainability objectives. These objectives include reducing greenhouse gas emissions,<sup>47</sup> improving water quality, increasing biodiversity, increasing carbon sequestration, contributing towards the UK's Net Zero by 2050 target, helping to deliver on the Government's 25 year environment plan<sup>48</sup> and helping local authorities to meet their internal targets on Climate Change Action Plans.<sup>49</sup> As the LENS 2.0 scheme involves both climate change and other sustainability objectives, the CMA considers that the LENS 2.0 scheme constitutes a 'Mixed Agreement' as described in the Guidance.<sup>50</sup>
- 2.2 As noted in paragraph 1.11 above, the implementation of the LENS 2.0 scheme involves the relevant parties entering into joint selling and joint purchasing agreements. The competition analysis of these joint purchasing and joint selling agreements will be fact-specific (eg it will depend on which parties are involved in the agreement in question, whether they are competitors and on their respective market shares) and will therefore vary from agreement to agreement. The CMA is therefore not able to provide detailed informal guidance on them without knowing the specific facts of the individual arrangements. However, the CMA's Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements (the **Horizontal Guidance**) provides guidance in relation to joint purchasing and joint selling agreements (referred to in the Horizontal Guidance as commercialisation agreements) and the parties to such agreements

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<sup>45</sup> 3Keel self-assessment, paragraph 3.2. 3Keel submitted that 'as the funded LENS initiatives do not affect the price, quantity, quality, choice or innovation of agricultural products sold to Demand Partners, or by the Demand Partners sold to end-users, then from this perspective should not raise any competition concerns'.

<sup>46</sup> The Guidance, paragraph 3.6.

<sup>47</sup> 3Keel self-assessment, page 3.

<sup>48</sup> [25 Year Environment Plan - GOV.UK](https://www.gov.uk/government/publications/25-year-environment-plan)

<sup>49</sup> 3Keel self-assessment, page 8.

<sup>50</sup> The Guidance, paragraph 2.6 defines 'mixed agreements' as environmental sustainability agreements which generate both climate change benefits and other environmental benefits.

under the LENs 2.0 scheme should rely on that guidance to self-assess their agreements in advance.<sup>51</sup> We are nevertheless able to provide some further comments on the exchange of competitively sensitive information (**CSI**) to help the parties' self-assessment of the sharing of data, with a particular focus on joint purchasing agreements on specific projects (see below 'Further comments on exchange of CSI under the LENs 2.0 scheme').

- 2.3 The CMA considers that there are aspects of the LENs 2.0 scheme which it can provide informal guidance on. Those aspects relate to the overall framework agreed between 3Keel, Demand Partners and supply aggregators as to how the scheme will operate. This informal guidance covers whether the scheme falls within section 3 of the Guidance, the scheme's eligibility criteria, the use of guide prices and issues relating to 3Keel's position as the operator of the scheme.
- 2.4 The CMA notes that at the time of 3Keel's submission of its request for informal guidance, the LENs 2.0 scheme was prospective in nature as it was not implemented until February 2025.
- 2.5 Therefore, the CMA considers that the LENs 2.0 scheme framework is eligible for informal guidance under the CMA's open-door policy.

### **Does the LENs 2.0 scheme fall under the agricultural exemption?**

- 2.6 Schedule 3 to the CA98 disapplies the Chapter I prohibition to certain agreements that relate to production of or trade in an agricultural product. Paragraph 9(9) of Schedule 3 notes that an 'agricultural product' means any product of a kind listed in Annex 1 to the Treaty on the Functioning of the European Union (TFEU).<sup>52</sup>
- 2.7 The LENs 2.0 scheme relates to nature and agricultural-based solutions rather than 'agricultural products' as described in Annex 1 to the TFEU and those solutions are therefore not included amongst the agreements that are covered by the exemption.

### **Does the LENs 2.0 scheme fall within Section 3 of the Guidance (agreements unlikely to infringe the Chapter I prohibition)?**

- 2.8 The CMA considers that the LENs 2.0 scheme may relate to the way that some market participants compete. This is because sustainability activities can represent a parameter of competition between businesses (such as Demand Partners) in selling their products to consumers (as an aspect of the quality of the product or

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<sup>51</sup> See the Horizontal Guidance, Part 6 and Part 7.

<sup>52</sup> The Agriculture Act 2020 makes various amendments to Paragraph 9 of Schedule 3 to the CA98, however, these amendments are not yet in force.

service provided).<sup>53</sup> The purchase of measures that enhance ecosystem services also supports the Demand Partners' businesses in meeting environmental and sustainability targets<sup>54</sup> and helps them improve the resilience of natural resources on which their production and services depend. For example, absent maintenance and restoration of water resources supplying a company's production processes, a company may eventually be unable to continue operating.<sup>55</sup> In addition, the LENs 2.0 scheme establishes a framework for the joint purchasing and joint selling of measures that enhance ecosystem services and therefore may affect parameters of competition in relation to the purchase and sale of these measures. However, as explained above, these joint purchasing and joint selling aspects of the LENs 2.0 scheme are beyond the scope of this informal guidance.

- 2.9 Paragraph 3.5 of the Guidance provides that, where the parties to an agreement have a very small combined market share in any markets affected by the agreement and provided that the agreement does not have the object of restricting competition, the agreement is unlikely to cause an appreciable restriction of competition. For paragraph 3.5 of the Guidance to apply to an agreement between competitors, the aggregate market share held by the parties to the agreement must not exceed 10% on any of the relevant markets affected by the agreement.<sup>56</sup> There must also be no restrictions of competition by object in the agreement. The assessment of the market share threshold will be dependent on the parties to the agreement and may be exceeded by parties to the LENs 2.0 scheme framework agreement who are competitors. This threshold may also be exceeded by parties to a Project Agreement, however, as explained above, an assessment of each Project Agreement is outside the scope of this Guidance.
- 2.10 In respect of paragraph 3.7 of the Guidance, this is limited in scope: for it to apply, businesses must, for example, individually lack the resources or capabilities to achieve the environmental sustainability initiative in question, and not be able to carry it out using a form of cooperation that is less restrictive of competition, such that their cooperation does not restrict actual or potential competition that would have existed in its absence.
- 2.11 The CMA considers that paragraph 3.7 of the Guidance cannot be applied in the abstract. It requires consideration of the parties' resources and capabilities, which in the context of the LENs 2.0 scheme requires looking at the specific parties that enter into each Project Agreement and the nature of the project; as such it is fact dependent. If Demand Partners individually would be able to independently carry

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<sup>53</sup> The Guidance, paragraph 1.7. The CMA saw evidence that this was true in this sector. For example, Nestlé (a Demand Partner) publishes details of its sustainability initiatives together with a sign-up form for marketing communications. See: [Sustainability & Reducing Impact of Plastic Waste | Nestlé Pure Life](#)

<sup>54</sup> 3Keel self-assessment, page 9.

<sup>55</sup> A Nestlé report from 2011 states that its long-term success depends on the water resources that supply its business operations and support the livelihoods of suppliers and consumers. Nestlé, [Nestlé Creating Shared Value Report](#), 2011.

<sup>56</sup> Horizontal Guidance, paragraphs 3.55 to 3.59.

out some projects, paragraph 3.7 of the Guidance would not apply to that cooperation.

### **Conclusion on Section 3 of the Guidance**

- 2.12 In light of the above, the CMA cannot conclude that the LENS 2.0 scheme in its entirety falls within Section 3 of the Guidance.
- 2.13 There may be scope for 3Keel and its partners to rely on Section 3 of the Guidance in relation to the specific agreements under each project, however it would be for them to self-assess and re-approach the CMA if they remain uncertain.

### **The CMA's views on the framework and the operation of the LENS 2.0 scheme**

- 2.14 In this section, the CMA considers the eligibility criteria for joining the LENS 2.0 scheme,<sup>57</sup> as well as possible risks in relation to the framework and operation of the scheme itself that 3Keel and its partners should take into account going forward.

#### **Eligibility criteria**

- 2.15 3Keel asked the CMA to confirm that it is facilitating a fair and transparent route to entry to the LENS 2.0 scheme and that the eligibility criteria for joining the scheme do not create barriers that may be deemed anti-competitive.<sup>58</sup> 3Keel told the CMA that all interested parties on the demand side have to meet eligibility criteria set out above (see paragraph 1.20) to participate in the LENS 2.0 scheme.<sup>59</sup> 3Keel submitted that it considers the eligibility criteria to be objective and necessary for the scheme. 3Keel also submitted that the cost of onboarding new Demand Partners is high and, given this, 3Keel needs to ensure that they intend to be involved for multiple years.<sup>60</sup>
- 2.16 On the demand side, and based on the high-level information it has received, the CMA considers that 3Keel's assessment of the eligibility criteria for joining the LENS 2.0 scheme as being objective and necessary is plausible. In particular, they appear to set conditions that are reasonable and necessary for the scheme to be effective. Furthermore, the criteria appear to be capable of being met by a wide range of businesses and not to be discriminatory. To ensure that businesses can participate in the scheme as Demand Partners, on a fair and non-discriminatory basis, 3Keel should continue to ensure that the criteria (see paragraph 1.20

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<sup>57</sup> See paragraph 1.20 above.

<sup>58</sup> 3Keel request for Informal Guidance, background document, paragraph 3(IV).

<sup>59</sup> 3Keel self-assessment, paragraph 2.3.3: 'In general terms there are no barriers to entry into LENSs-all interested parties (both demand and supply) are able to join a LENSs, as long as they meet criteria that aligns with our core values and commitments to a landscape that helps us to exclude possible green washing.'

<sup>60</sup> *New Demand Partner process slides* provided by 3Keel.

above) are objectively justified, do not unreasonably exclude smaller businesses, and are applied in a non-discriminatory manner and kept under regular review to ensure that they are objective and necessary.

- 2.17 On the supply side, and in relation to paragraph 1.22 above, while we note that 3Keel does not have eligibility criteria, it has submitted that it actively encourages new Supply Partners to join the LENs 2.0 scheme. The CMA considers that 3Keel should continue to ensure that participation is not limited to particular supply aggregators and Farmers with pre-existing links to 3Keel and existing participants in the LENs 2.0 scheme, for example by ensuring that the promotion of the scheme has a broad reach.

### **Guide prices**

- 2.18 Under the LENs 2.0 scheme, 3Keel provides guide prices to Supply Partners for some measures.<sup>61</sup> Demand Partners also have sight of these guide prices.<sup>62</sup> 3Keel asked for feedback from the CMA on the use of guide prices.
- 2.19 Guide prices are non-binding prices calculated by 3Keel for some measures in order to assist Farmers in pricing. 3Keel explained that Farmers are free to price above or below the guide prices, and there are no incentives or punitive measures attached to them.<sup>63</sup>
- 2.20 3Keel submitted that it does not disclose to Farmers what specific prices other Farmers are proposing to charge for a particular measure.<sup>64</sup> 3Keel explained that Farmers are made aware of their obligations concerning compliance with competition law in the agreements that they sign.
- 2.21 Further, 3Keel explained that it provides guide prices because the provision of measures is fairly new and they reduce the risk of Farmers discussing pricing together, pricing too high for the demand side resulting in their proposals not being funded or pricing too low and not being adequately compensated.<sup>65</sup> 3Keel submitted that there had been instances where Farmers priced at a level that was not viable and so they were not able to implement the measure.<sup>66</sup> 3Keel also indicated that guide prices help to prevent Demand Partners over-paying.<sup>67</sup>

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<sup>61</sup> 3Keel response, 9 June 2025. Technical guidance documents are provided to supply aggregators and Farmers.

<sup>62</sup> Call between the CMA and 3Keel, 12 May 2025.

<sup>63</sup> 3Keel also submitted that different Farmers have varying approaches to pricing, so an aim of guide prices is to bring some commonality to the approach: Call between the CMA and 3Keel, 26 March. The CMA considers that, in these circumstances, this aim is likely to increase the degree of competition risk with the use of guide prices.

<sup>64</sup> 3Keel request for Informal Guidance, background document, paragraph 3 (III).

<sup>65</sup> Call between the CMA and 3Keel, 26 March 2025.

<sup>66</sup> Call between the CMA and 3Keel, 11 September 2025.

<sup>67</sup> 3Keel response, 9 June 2025. 3Keel self-assessment, paragraph 3.2. 3Keel told the CMA that guide prices are updated every year. Call between the CMA and 3Keel, 26 March 2025.

- 2.22 3Keel told the CMA that it calculates guide prices based on a number of factors, including: historic LENS prices, prices used in the SFI scheme,<sup>68</sup> and agronomic advice regarding a fair price of time, labour, fuel and other inputs for a particular measure.<sup>69</sup> Guide prices are not provided for some measures.<sup>70</sup>
- 2.23 The CMA considers that the use of guide prices would, in principle, be liable to generate an adverse effect on competition in circumstances where they facilitated collusion between Farmers or they otherwise acted as a focal point which softened competition.<sup>71</sup>
- 2.24 If, on the facts, the LENS 2.0 scheme or a given project under the scheme were to involve a horizontal agreement or concerted practice between competitors regarding the use of guide prices, this would be likely to restrict competition by object.<sup>72</sup> However, based on 3Keel's submissions, the LENS 2.0 scheme does not appear to entail an agreement or concerted practice between Farmers regarding the use of guide prices.<sup>73</sup> We have not seen any evidence to suggest that the Farmers have an arrangement or understanding between them to utilise guide prices and direct, or indirect, contact between Farmers regarding the use of guide prices does not appear to form part of the LENS 2.0 scheme.
- 2.25 The guide prices do, however, form part of the vertical set of agreements between 3Keel and individual Farmers. Vertical agreements that fall within the scope of the Vertical Agreements Block Exemption Order (**VABEO**) benefit from exemption from the Chapter I prohibition. However, on the basis of the available information, the CMA cannot conclude that the VABEO applies to these agreements, in particular as 3Keel's relevant market share may exceed 30%.<sup>74</sup>

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<sup>68</sup> See footnote 41 above on the SFI scheme.

<sup>69</sup> Call between the CMA and 3Keel, 26 March 2025.

<sup>70</sup> 3Keel response, 9 June 2025.

<sup>71</sup> See by analogy issues with recommended prices in the Vertical Agreements Block Exemption Order CMA guidance (the **Vertical Guidance**), paragraph 8.23. The CMA notes that this situation is distinct from that concerning SFI prices which are a customer publishing the prices it will pay.

<sup>72</sup> See: OFT, Rural Broadband Wayleave Rates Short-form Opinion ('**Wayleaves**'), paragraphs 7.24 to 7.27; Case C-45/85 *Verband der Sachversicherer e. V v Commission* [1987] ECR 405, paragraph 43; Case T-224/00 *Archer Daniels Midland and Archer Daniel Midlands Ingredients v Commission* [2003] ECR II-2597, paragraphs 118 to 120; and the Horizontal Guidance, paragraph 10.8. The fact that 3Keel submits that guide prices are partly intended to prevent overpricing by Farmers would not necessarily change a by object analysis because the object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they enter into it; it is assessed primarily by an examination of objective factors.

<sup>73</sup> The LENS 2.0 scheme is therefore distinct from the circumstances in *Wayleaves*. In *Wayleaves* the recommended prices were a decision by an association of undertakings and therefore treated as equivalent to a horizontal agreement. In the LENS 2.0 scheme, they do not appear to be incorporated into a horizontal agreement or concerted practice.

<sup>74</sup> For the VABEO to apply requires that there are no 'hardcore' restrictions and the supplier's market share on the relevant market on which it sells the services and the buyer's market share on the relevant market on which it purchases the services both do not exceed 30%. There is no indication of any hardcore restrictions in the vertical agreement. However, the CMA cannot exclude that the market share threshold may be exceeded in specific cases. For the purposes of this informal guidance, the CMA has proceeded on an assumption that the relevant market is the provision of customer intermediation services (that is matching customers for measures with providers of those measures) and that this market is regional, reflecting the current structure of the LENS 2.0 scheme. The CMA recognises that Demand Partners and Supply Partners may be able to participate in a range of schemes aside from LENS (eg those supporting carbon markets). The CMA has not defined the scope of the relevant market, and the informal guidance draws 3Keel's

- 2.26 If the VABEO does not apply, this does not mean that an agreement is presumed to be unlawful but instead it requires an individual assessment by reference to all the facts. The CMA cannot rule out that the use of guide prices in these vertical agreements may generate an adverse effect on competition in at least some contexts as the guide prices may act as a focal point which may soften competition or facilitate collusion between Farmers.
- 2.27 The CMA notes that the Farmers are free to determine their offer prices. In addition, the potential for the set of Farmers trading over a measure to change year-on-year, and the relatively infrequent (namely, annual) nature of trades and sharing of guide prices, both mitigate the prospect that the guide prices function as a focal point.<sup>75</sup>
- 2.28 However, there are a range of factors which increase the risk that the guide prices may act as a focal point for Supply Partners. The risk is elevated by 3Keel sharing the guide prices to a range of Farmers who will therefore be able to infer that rival Farmers have received the same guide prices.<sup>76</sup> The risk could be potentially appreciable. For example:
- (a) In the context of these vertical agreements, 3Keel is a supplier of customer intermediation services (that is, 3Keel operates the LENs 2.0 scheme and acts as an intermediary matching customers for measures with providers of those measures). If 3Keel possesses a relatively strong market position as a supplier of customer intermediation services for measures for which it provides guide prices, the risk of those guide prices softening competition is greater.<sup>77</sup> This could for example be the case where the measures are located in areas where 3Keel has strong relationships with Demand Partners or Supply Partners in a particular geography, or correspondingly because the set of participants do not have significant pricing experience in relation to these measures.
  - (b) If the measures in relation to which 3Keel provides guide prices are relatively homogenous across Farmers (for example, the guide price would apply equally well to the measures produced by two different Farmers and Farmers face relatively similar drivers of cost), the risk will be greater.<sup>78</sup>

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attention only to the risk that 3Keel (as the operator of the scheme) may have a share above 30% of a relevant market, if for example the local nature of the LENs scheme means alternatives are not closely substitutable. Call between the CMA and 3Keel, 14 January 2026.

<sup>75</sup> In particular, the low frequency of trades may increase the incentive of Farmers to deviate from a collusive equilibrium in which the guide prices act as a focal point. This could be true because deviating may allow Farmers to acquire more business in the trade in which they deviate, with any response from other Farmers to that deviation deferred into the (more uncertain) future.

<sup>76</sup> The Vertical Guidance, paragraph 2.7.

<sup>77</sup> See footnote 74 above on alternative schemes.

<sup>78</sup> Similarity in the drivers of cost across Farmers would imply that they face similar incentives not to deviate from guide prices as a focal point. This increases the prospect that guide prices become a reference point which could sustain a collusive equilibrium, even where guide prices do not incorporate all relevant cost drivers.

- 2.29 If the use of guide prices were to appreciably restrict competition, their use may still be permitted if it is an ancillary restraint. The use of guide prices would be an ancillary restraint if it is objectively necessary to implement an agreement which itself is not in breach of the Chapter I prohibition and is proportionate to its objectives. This would be the case where the wider agreement would be impossible to carry out without the use of guide prices.<sup>79</sup> On the information available, the CMA cannot assess whether these criteria would be satisfied in relation to the guide prices.<sup>80</sup> However, in principle:
- (a) Without guide prices it may be impossible to implement Project Agreements if Supply Partners are not sufficiently informed and experienced to price the measures provided by Farmers and/or Demand Partners have limited experience purchasing measures such that they are uncertain over what constitutes an acceptable price for them.
  - (b) In contrast, were Supply Partners still able to price and Demand Partners still able to identify prices acceptable to them absent the guide prices such that the Project Agreements were possible, guide prices would not be ancillary.
- 2.30 Should the use of guide prices not be ancillary, they may still be exempted under section 9 of the CA98. The Guidance explains how sustainability agreements can be capable of exemption if the section 9 criteria are met, among other things because the benefits of the agreement outweigh the competitive harm.<sup>81</sup> However, 3Keel did not provide a self-assessment of the section 9 criteria and therefore they are not considered in this informal guidance.
- 2.31 To mitigate the potential risks to competition attached to guide prices, the CMA considers that 3Keel should:
- (a) ahead of each LENs funding cycle, consider its approach to guide prices and only use these where, without them, it would be impossible to carry out the relevant Project Agreement effectively. Where 3Keel intends to use guide prices in such circumstances, it should consider whether price ranges would be sufficient to allow the agreement to be carried out; and

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<sup>79</sup> The Guidance, paragraph 4.9.

<sup>80</sup> For example, on the information available, the CMA is unable to assess whether potential alternatives to guide prices would be sufficient to allow the agreement to be carried out. Potential alternatives could include advice to farmers (which could be provided on request by individual Farmers) on how to set their prices, potentially identifying published information sources such as the government's SFI prices.

<sup>81</sup> In order to satisfy the requirements of section 9 of the CA98, it would be necessary for the parties to the agreement to demonstrate that each of the following criteria is met: (a) the agreement must contribute to improving production or distribution or to promoting technical or economic progress; (b) the use of guide prices must be indispensable to the achievement of the relevant benefits; (c) consumers must receive a fair share of the benefits; and (d) the agreement must not eliminate competition in respect of a substantial part of the products concerned. See further section 5 of the Guidance.



- (b) ensure guide prices (or price ranges as may be the case) are (and are understood to be) non-binding, with market participants free to deviate from them and not disincentivised from doing so.

2.32 Further, neither 3Keel nor supply aggregators should make any statements to Farmers:

- (a) on whether guide prices (or price ranges) are likely to be or will be relied upon in practice by specific Farmers in pricing (eg the levels at which Farmers actually intend to price); or
- (b) which indicate the frequency of their use in practice by Farmers (eg the levels at which Farmers have actually recently priced).

### **Risks of coordination arising out of 3Keel's position as the operator of the LENs 2.0 scheme**

2.33 3Keel acts as the operator of the LENs 2.0 scheme and establishes the processes by which Demand Partners and Supply Partners interact with each other.<sup>82</sup> The CMA notes that this role may give 3Keel the ability and incentive to coordinate explicitly or tacitly with some participants to their mutual benefit thereby distorting competition in the LENs 2.0 scheme. The CMA has not seen any evidence to suggest that such coordination is taking place, but sets out in this section the risks and mitigations.

2.34 In particular, depending on the facts of any specific project such as the participants involved, 3Keel may have an incentive to coordinate with Demand Partners which are also its consultancy clients or strategic partners of LENs, since 3Keel's ability to maximise its revenue from operating the LENs 2.0 scheme may depend on maintaining favourable relationships with those partners. Such coordination could involve for example:

- (a) setting guide prices generally to the lower end of their possible range on measures certain Demand Partners are interested in, whilst raising prices for other measures; and/or
- (b) allocating certain Demand Partners their first-choice preference of measures.<sup>83</sup>

2.35 3Keel should set up a conflicts of interest policy to govern its role as operator of the LENs 2.0 scheme and how it will guard against the risk of 3Keel coordinating with any particular participants (eg strategic partners) on the scheme's design or operation which might materialise as a result of 3Keel's wider business

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<sup>82</sup> 3Keel self-assessment, page 4.

<sup>83</sup> 3Keel allocates proposals to provide measures to Demand Partners willing to fund their provision. This involves 3Keel scoring Supply Partners' proposals and deciding which Demand Partner should receive which bid/proposal.

relationships with those participants (eg through its consultancy business). The CMA considers that the conflicts of interest policy should cover the identification, management and prevention of conflicts, whether actual, perceived or potential.<sup>84</sup> The policy should set out the steps required by 3Keel to identify and assess conflict risks, what 3Keel's expectations of staff are and what procedures staff are expected to follow when a conflict of interest arises. To help staff in identifying when a conflict may arise the policy should include examples of the types of conflicts that could occur.

- 2.36 3Keel should have general rules for matching demand and supply, and should be ready to explain their application in specific projects, in order to provide transparency to participants over these rules.

### **Further comments on exchange of CSI under the LENs 2.0 scheme**

- 2.37 As explained in paragraph 2.2 above, parties to any joint purchasing and joint selling agreements under the LENs 2.0 scheme should rely on our published guidance to self-assess their agreements. We set out below further comments that should help the parties' self-assessing the sharing of data in that context.

#### *Information exchange*

- 2.38 Information exchange between competitors can in certain circumstances give rise to competition concerns as set out below. A breach of competition law as a result of exchanges of CSI between competitors can arise where the exchange is indirect, as well as where it is direct. An indirect exchange can take place via a third party, such as a service provider or platform operator. It is possible for an anticompetitive agreement or concerted practice to be either facilitated or enforced via a third party. Depending on the facts of the case, the participating competitors and the third party may all be held liable. The Chapter I prohibition is not directed solely at parties to agreements or concerted practices that are active on markets affected by those agreements or practices.<sup>85</sup>
- 2.39 In the context of multi-party trading relationships such as the LENs 2.0 scheme, there is a risk of indirect information exchange through what is known as a 'hub and spoke' scenario. In such a scenario, a 'hub' or conduit for the exchange of CSI between competitors (here the Demand Partners or Supply Partners) can itself potentially be liable for an infringement.<sup>86</sup> 3Keel should therefore be vigilant to these risks and ensure that it does not facilitate an anti-competitive exchange of

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<sup>84</sup> The policy should cover the commercial interests of 3Keel's consultancy business as well as the personal interests of 3Keel staff (eg financial, personal relationships, outside positions such as directorships/trusteeships).

<sup>85</sup> Horizontal Guidance, paragraph 8.66.

<sup>86</sup> This would be the case if 3Keel intends to contribute by its own conduct to the common objectives pursued by the participants and was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same anti-competitive objectives or could reasonably have foreseen such conduct and was prepared to take the risk: see further the Horizontal Guidance, paragraph 8.69(c).

information between competitors by acting as such a hub. Similarly, 3Keel should make supply aggregators aware that they could also act as a ‘hub’ when Farmers share their proposals (including farmers’ identities, prices and quantities) with them, if the supply aggregator were to then share CSI between Farmers.

- 2.40 The Horizontal Guidance (see Part 8) provides further details on when an indirect exchange of information will breach competition law<sup>87</sup> as well as on how to assess whether an information exchange is a restriction of competition and, if so, whether it restricts competition by object or effect.<sup>88</sup>

#### *Information exchange under the LENs 2.0 scheme*

- 2.41 Whilst the competition law assessment of what constitutes CSI is fact-specific and therefore any exchange of information under the LENs 2.0 scheme will need to be self-assessed by the relevant parties, the CMA has identified potential risks that parties may want to consider when conducting their self-assessment having regard to the Horizontal Guidance.
- 2.42 The CMA understands that most of the information exchanged under the LENs 2.0 scheme that could potentially constitute CSI is exchanged at the point of contract conclusion when the Project Agreement is entered into.<sup>89</sup> At that point, Demand Partners will be aware of:
- (a) the overall budget (ie the total being funded) in a region;<sup>90</sup>
  - (b) the identities of all Demand Partners participating in a project and which measure each is funding;<sup>91</sup> and
  - (c) the specific price for each measure included within the Project Agreement they sign (see footnote 21 above). 3Keel told the CMA that the prices Demand Partners pay are uniform for a particular measure.<sup>92</sup>
- 2.43 3Keel submitted that Demand Partners would still not have a full picture of the total amount committed by other Demand Partners because:

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<sup>87</sup> See in particular paragraphs 8.66 to 8.69 of the Horizontal Guidance.

<sup>88</sup> See in particular paragraphs 8.83 to 8.99 of the Horizontal Guidance.

<sup>89</sup> Horizontal Guidance, paragraph 8.67: ‘Where competitively sensitive information is exchanged directly, a case-by-case analysis of the role of each participant is required to establish whether they are participating in an anti-competitive agreement or concerted practice. This assessment needs to take into account the level of awareness of the suppliers or recipients of the information regarding the exchanges between other recipients or suppliers of information and the third party.’

<sup>90</sup> 3Keel response, 3 April 2025. 3Keel submitted that it is not easy to separate this piece of information and that in regions where there are fewer partners it will allow a Demand Partner to determine allocations.

<sup>91</sup> 3Keel RFI response 8 May 2025.

<sup>92</sup> 3Keel diagram of Project Agreement, submitted by 3Keel on 12 May 2025.

- (a) Demand Partners typically purchase a whole range of measures so their overall spend will be different;<sup>93</sup> and
- (b) Demand Partner signatories to a Project Agreement only become aware of which measures others are purchasing and not the specific quantities<sup>94</sup> purchased by each.

2.44 Whilst the competition law assessment of what constitutes CSI is fact-specific, the CMA, having regard to Part 8 of the Horizontal Guidance, considers that a combined disclosure of the information summarised in (a)-(c) at paragraph 2.42 in the context of a specific project could in certain circumstances give rise to an exchange of CSI which could allow competing Demand Partners to gain insight into each other's purchases which could raise competition concerns. In particular, concerns may arise where Demand Partners are competitors in their own downstream markets and particularly to the extent that the purchasing of measures that enhance ecosystem services is a parameter of competition or input into competition those downstream markets.<sup>95</sup>

2.45 The CMA notes that the information exchanges described by 3Keel in its submissions would not be standalone exchanges of information but would mainly take place in the context of joint purchasing agreements between Demand Partners in relation to specific projects. In that context, the implementation of those agreements may require Demand Partners to disclose CSI. It is possible for such an exchange of CSI to be permissible under two scenarios. The first scenario is when an exchange of CSI is ancillary to another agreement that is pro-competitive or competitively neutral. For this exchange to be acceptable, it must be objectively necessary to implement, and proportionate to the objectives of, another form of cooperation that has neutral or positive effects on competition. The second scenario is when the exchange of CSI is not ancillary but meets the criteria for exemption under section 9 of the CA98. It is not possible for the CMA to apply the tests for ancillary information exchange or section 9 exemption to the project agreements under the LENS 2.0 scheme, given their highly fact-specific nature. The parties should consider these issues when conducting the self-assessment referred to above in paragraph 2.2. Further guidance on these scenarios is available in the Guidance and the Horizontal Guidance.<sup>96</sup>

2.46 For the avoidance of doubt, Demand Partners should be able to see all information associated with their own purchase, including descriptions of each outcome/measure, per unit prices, the Farmer who is delivering the measure and

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<sup>93</sup> Call between the CMA and 3Keel, 12 May 2025.

<sup>94</sup> This means the amount of a measure funded by a Demand Partner eg: number of acres.

<sup>95</sup> In certain applications of the LENS 2.0 scheme, sharing only some of this information could lead to appreciable risks of a collusive outcome.

<sup>96</sup> See in particular paragraphs 4.9 to 4.10 and Sections 5 and 6 of the Guidance. See also paragraphs 6.37 to 6.39 and Part 8 of the Horizontal Guidance.

the supply aggregator that is facilitating this delivery. However, to help mitigate the risk of CSI being exchanged or to ensure that any CSI that is exchanged can be deemed to be ancillary, Demand Partners should only gain access to limited information relating to other Demand Partners' purchasing, specifically only that information which enables the Demand Partner in question to gain a more complete understanding of what it is purchasing (and the associated environmental impacts).

- 2.47 The CMA considers there may be some other practical ways to minimise the risk that disclosure of CSI under the LENS 2.0 scheme gives rise to a restriction of competition. For example: using clean teams (made up of employees who are not involved in the day-to-day commercial operations of the relevant business), or independent third parties or trustees, to manage the flow of information on a 'need-to-know' basis and, wherever possible, providing information in an aggregated or anonymised form.<sup>97</sup>

### 3. CONCLUSION

- 3.1 Based on the high-level assessment set out above, and on the basis of the CMA's understanding of the facts submitted by 3Keel, the CMA does not expect to take enforcement action against the LENS 2.0 scheme framework.
- 3.2 The CMA's assurances are subject to the conditions set out in this informal guidance and collated at paragraphs 3.4 to 3.9 below.
- 3.3 As explained in paragraph 2.2 above, given the fact specific nature of the joint purchasing and joint selling agreements that would take place under the LENS 2.0 scheme, this informal guidance does not cover any joint purchasing and joint selling agreements in detail and the parties to such agreements should self-assess them on the basis of existing published guidance. Similarly, this informal guidance does not cover any exchange of CSI and the further comments provided in paragraphs 2.37 to 2.47 are to support this self-assessment.

#### *Eligibility criteria*

- 3.4 To ensure that businesses can participate in the scheme as Demand Partners, on a fair and non-discriminatory basis, 3Keel should continue to ensure that the criteria (see paragraph 1.20 above) are objectively justified, do not unreasonably exclude smaller businesses, and are applied in a non-discriminatory manner and kept under regular review to ensure that they are objective and necessary.
- 3.5 3Keel should continue to ensure that participation is not limited to particular supply aggregators and Farmers with pre-existing links to 3Keel and existing participants

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<sup>97</sup> Paragraph 6.39 and paragraphs 8.71 to 8.77 of the Horizontal Guidance.

in the LENs 2.0 scheme, for example by ensuring that the promotion of the scheme has a broad reach.

#### *Guide prices*

- 3.6 To mitigate the potential risks to competition attached to guide prices, the CMA considers that 3Keel should:
- (a) ahead of each LENs funding cycle, consider its approach to guide prices and only use these where, without them, it would be impossible to carry out the relevant Project Agreement effectively. Where 3Keel intends to use guide prices in such circumstances, it should consider whether price ranges would be sufficient to allow the agreement to be carried out; and
  - (b) ensure guide prices (or price ranges as may be the case) are (and are understood to be) non-binding, with market participants free to deviate from them and not disincentivised from doing so.
- 3.7 Further, neither 3Keel nor supply aggregators should make any statements to Farmers:
- (a) on whether guide prices (or price ranges) are likely to be or will be relied upon in practice by specific Farmers in pricing (eg the levels at which Farmers actually intend to price); or
  - (b) which indicate the frequency of their use in practice by Farmers (eg the levels at which Farmers have actually recently priced).

#### *Risks of collusion arising out of 3Keel's position as the operator of the LENs 2.0 scheme*

- 3.8 3Keel should set up a conflicts of interest policy to govern its role as operator of the LENs 2.0 scheme and how it will guard against the risk of 3Keel coordinating with any particular participants (eg strategic partners) on the scheme's design or operation which might materialise as a result of 3Keel's wider business relationships with those participants (eg through its consultancy business). As explained in paragraph 2.35, the CMA considers that the conflicts of interest policy should cover the identification, management and prevention of conflicts, whether actual, perceived or potential.<sup>98</sup> The policy should set out the steps required by 3Keel to identify and assess conflict risks, what 3Keel's expectations of staff are and what procedures staff are expected to follow when a conflict of interest arises.

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<sup>98</sup> The policy should cover the commercial interests of 3Keel's consultancy business as well as the personal interests of 3Keel staff (eg financial, personal relationships, outside positions such as directorships/trusteeships).

To help staff in identifying when a conflict may arise the policy should include examples of the types of conflicts that could occur.

- 3.9 3Keel should have general rules for matching demand and supply, and should be ready to explain their application in specific projects, in order to provide transparency to participants over these rules.