

CMA Sustainability Advice to Government

*Meeting with the BRC
1 November*

- BEIS's request
- Direction of travel
- Competition law enforcement & sustainability
- Merger control regime & sustainability
- Consumer law & sustainability

- **CMA to provide advice on how the competition and consumer regimes could better support the UK's net zero and environmental sustainability goals (including climate adaptation).**
- **3 specific questions posed:**
 - If, and how, do current legal frameworks constrain or frustrate initiatives that might support the UK's Net Zero and sustainability goals?
 - Are there changes to the UK's competition and consumer law that would help to achieve the UK's Net Zero and sustainability goals?
 - Are there other opportunities within the UK's competition and consumer policy toolbox that would support the UK's Net Zero and sustainability goals, which the government should be considering?

- **Scope of the CFI:**

- Competition law enforcement
 - Merger control regime
 - Consumer law
 - Markets
 - Other (capture submissions on other relevant considerations)
- } our focus today

- **Potential areas to be covered in the advice:**

- How things are working – real life examples
- If and how we could use existing policy tools to do things differently
- If necessary - how we could do things differently by making changes to the law (dependent on central government's policy goals for competition/ consumer law)

- **Government policy driving the net zero agenda**
 - Gov policy and regulation: primary means to achieve net zero
 - Businesses can play important role (e.g. cooperation agreements and unilateral initiatives)
 - CMA keen to ensure competition and consumer law regimes can complement
- **Key challenges**
 - For us, to be able to capture in the advice real life examples and difficulties businesses may be facing
 - Identification and measurement of sustainability benefits of agreements, initiatives or mergers; and
 - Weighing these sustainability benefits against competition or consumer protection outcomes.

Competition law enforcement & sustainability (1/3)

- **Ch 1 prohibition on anticompetitive agreements - examples of tensions and risks:**
 - Competitors agree to phase out products in pursuit of sustainability objectives
 - Competitors impose new industry-wide standards, beyond national laws, which restrict competition (with unfair access to competitors)
 - Competitors exchange competitively sensitive info as part of a sustainability initiative (e.g. info about new carbon capture technology)
- **We are keen to get your views: Are these examples familiar to you? How have you dealt with these? Are there any other examples?**

Competition law enforcement & sustainability (2/3)

- **Ch 2 prohibition on abuse of dominance - examples of tensions and risks:**
 - Business with market power changing pricing policies due to a sustainability initiative to incentivise customers to purchase more sustainability products and/ or to use relevant products/ services in a sustainable way
 - Business with market power seeking to ensure it can recoup the cost of significant environmental investments through increasing prices or entering into long term exclusive arrangements
 - A business with market power refuses to deal with suppliers or customers who do not meet sustainability criteria that the business with market power has set and which are not required by law
- **We are keen to get your views: Are these examples familiar to you? How have you dealt with these? Are there any other examples?**

- **We are very keen on receiving real world evidence from industry. Our CFI questions include:**
 - Has the CA 98 regime constrained or frustrated actual or potential agreements or initiatives that could support the UK's Net Zero and sustainability goals? We are very keen on specific examples
 - Are there changes to the CA98 regime that would help to achieve the UK's Net Zero and sustainability goals? *International debate here*
 - Examples of potential environmental sustainability initiatives which, in your view, would benefit from further CMA guidance or direct engagement with the CMA on the possible application of CA98?
 - Do you have any comments in relation to private enforcement in this sphere?

Merger control regime and sustainability (1/3)

- **3 areas where sustainability and net zero are likely to be relevant to merger investigations**
 - When environmental sustainability is a **factor relevant in the ‘competitive assessment’** alongside price, quality etc. Where there is close competition on environmental/sustainability factors, such a merger may result in an SLC (anti-competitive merger)
 - **Rivalry-enhancing efficiencies** e.g. more efficient and sustainable production methods (beneficial to consumers)
 - **Relevant customer benefits** - benefits to consumers e.g. environmental sustainability (beneficial to consumers)
- **Challenges: weighing up SLC and adverse effects on competition on one hand against rivalry enhancing efficiencies or RCBs on the other**

Merger control regime and sustainability (2/3)

- **We are very keen on receiving real world evidence from industry. CFI questions include:**
 - Does the current merger control framework constrain or frustrate initiatives or transactions that might support the UK's Net Zero and sustainability goals?
 - Are you aware of any examples of cases reviewed under the current merger regime where environmental factors have not been able to be fully taken into account?
 - Could the CMA's merger control regime better contribute to protecting the environment and support the UK's Net Zero and sustainability goals?
 - Is the CMA an appropriate body to assess environmental sustainability factors in relation to merger control, for example, where it is a basis on which firms compete?

Merger control regime and sustainability (3/3)

- **CFI questions (continued)**

- Would there be a benefit in having an additional or alternative body or regulator being available to provide advice on such matters?
- Is further CMA guidance and/or direct engagement with CMA on the possible application of the merger regime needed?

- **Options to support sustainable consumption:**
 - **Environmental information requirements: to support consumer decision-making and incentivise improved EP from companies**
 - Challenge: lack of consistent definitions for key environmental terms
 - If businesses are not clear what they mean when using some of these terms consumers could be misled, leading to a potential breach of consumer protection law
 - Specific obligations could be put on businesses to provide clearer information on how a term is used - this would also assist retailers in securing information about environmental claims from manufacturers
 - Most effective way of ensuring clarity is likely to be a UK-wide standard or requirement to define terms to ensure that they are used consistently

- **Obsolescence: informing consumers about the lifetime of a product allowing them to make informed choices and thereby reduce consumption**
 - Consumers are increasingly concerned about the overall lifespan of a product as well as its disposal (how easy it is to recycle etc.)
 - Information about the lifespan of a product is therefore likely to be 'material information' that should be provided to consumers prior to purchase – this requirement could be clarified and strengthened
- **Overconsumption: reframing what is considered to be legitimate forms of marketing under consumer law to shift patterns of consumption to meet sustainability goals**
 - Dark patterns are not prohibited under consumer law, which can result in people buying more than they need
 - Addressing other aggressive forms of marketing is an option to reduce overconsumption

- **CFI questions**

- Does consumer protection law constrain or frustrate initiatives that might support the UK's Net Zero and sustainability goals?
- What changes to business-to-business protections are required, to address the current issues of supply chain transparency?
- What other opportunities are there to develop the consumer protection law framework to help to achieve the UK's Net Zero and sustainability goals?
- Should consumer law be prescriptive by mandating provision of particular forms of information, or by prohibiting particular types of conduct, in order to help to achieve the UK's Net Zero and sustainability goals? e.g in areas of planned obsolescence of products; and/or (ii) commercial practices which promote over-consumption?

Questions?