

Green Agreements Guidance and Informal Guidance

CMA presentation to Law Society
22 February 2024

About the CMA

- Independent, non-ministerial government department
- UK's principal competition and consumer protection authority
- UK-wide remit
- Responsible for:
 - Promoting competition, both within and outside of the UK, for the benefit of consumers
 - Making markets work well, in the interests of consumers, businesses and the UK economy



Today's presentation

- **Context**
- **The Green Agreements Guidance**
- **Open door policy and informal guidance in practice**

The CMA's Sustainability Taskforce

- **CMA work that relates to sustainability (e.g. green claims, market studies)**
- **Annual Plan & three pillars of work**
 - Ensuring markets for environmentally sustainable products and technologies are developing in ways that are favourable to competition and consumers
 - Ensuring consumers can make informed decisions about what they buy
 - Helping businesses to transition to more sustainable business practice
- **Sustainability Taskforce**

Chapter I prohibition on horizontal agreements

- Prohibition on anticompetitive agreements between businesses
- Have an "object" or "effect" of the prevention, restriction or distortion of competition within the UK
- Certain named restrictions – eg price fixing
- Unless exempt



Roadmap to the Guidance

Advice to the
Secretary of State

March
2022

Information
sheet

January
2021

October
2023

Green Agreements
Guidance

Green Agreements Guidance

- **Guidance on sustainability agreements between competitors / potential competitors**

Help ensure that competition law is not an unnecessary barrier to companies seeking to pursue environmental sustainability initiatives (pillar 3)

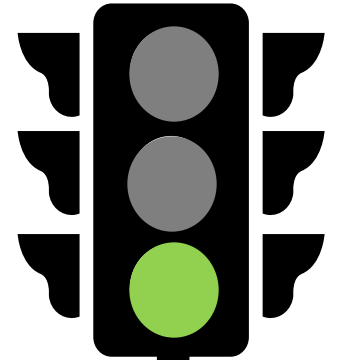


Green Agreements Guidance: Overview

- **Scope (Section 2):** agreements between competitors/potential competitors relating to environmental sustainability
- **We cover 3 broad situations:**
 - 1) agreements unlikely to infringe the Chapter I prohibition (Section 3)
 - 2) agreements that could infringe the Chapter I prohibition (Section 4)
 - 3) agreements that could infringe the Chapter I prohibition, but that can benefit from exemption (Sections 5 & 6)
- **Open door policy:** we are open to offering informal guidance for businesses (Section 7)
- **Protection** from fines and from investigation

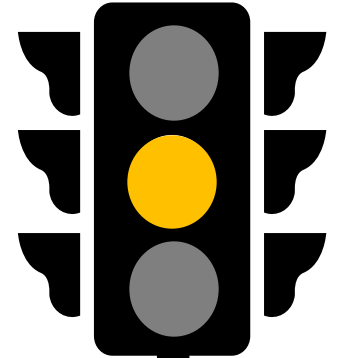
Section 3: Concrete examples and protection from enforcement action

- For e.g. ‘low risk agreements’ (section 3):
 - Creation of industry standards
 - Setting industry-wide environmental targets
 - Agreements to do something jointly which none of the parties could do individually, etc.
- Protection from enforcement action against environmental sustainability agreements that correspond clearly to the principles set out in the Guidance as informed by the examples
 - Obligation to keep agreements under review



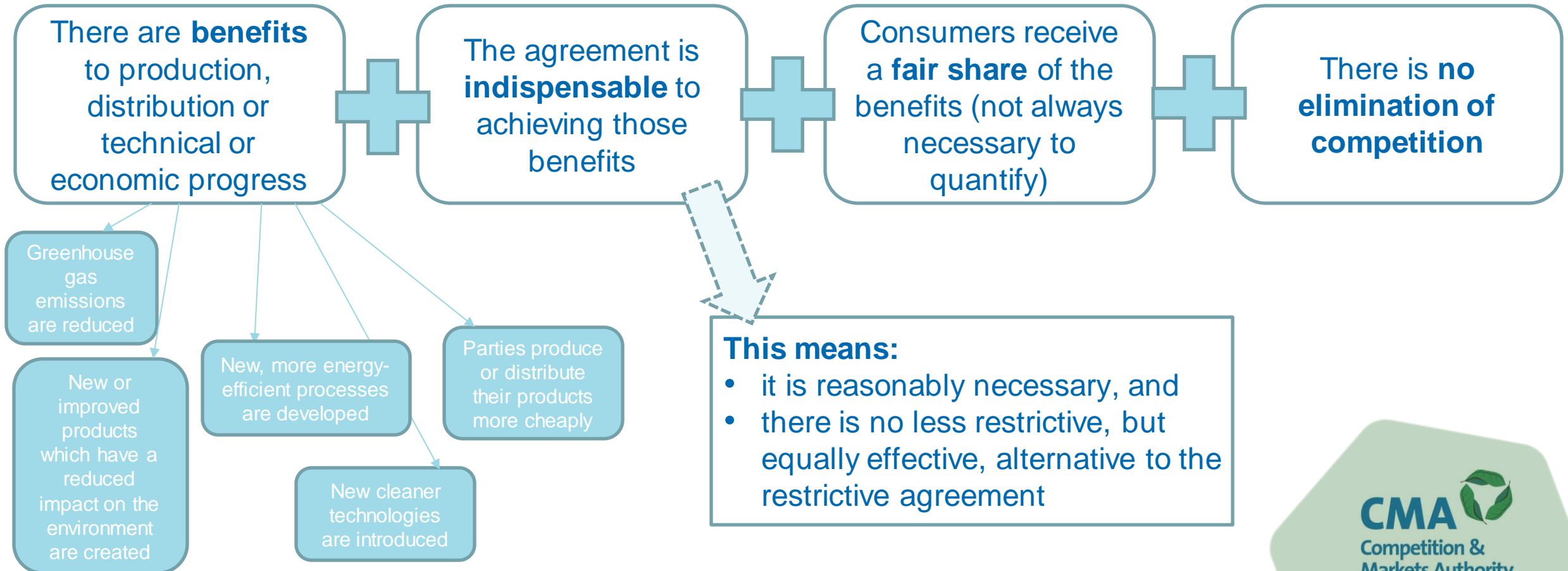
Section 4

- **‘Be careful’ situations (section 4)**
 - Agreements that result in an appreciable effect on competition;
or that have the ‘object of restricting competition’
 - **However**, can proceed if they benefit from an exemption



Section 5: Exemption for environmental sustainability agreements

Even if your agreement restricts competition, you can still go ahead if:



Section 6: more permissive approach for climate change agreements

- **If an agreement helps to combat climate change, the benefits of that agreement for all UK consumers may be able to be considered**
- **Expected benefits:**
 - Businesses move forward with agreements that will combat climate change and help meet the UK's net-zero targets (including Scotland's target of net-zero by 2045), which were previously on-hold due to competition fears

Protection from fines and enforcement

1



We will not expect to **prioritise enforcement action** against parties to agreements that correspond clearly to the principles in the Guidance as informed by the examples included in the Guidance

2



Open-door policy

The CMA can offer **informal guidance** on proposed environmental sustainability initiatives. This is a light touch review.

3



We will not expect to **issue fines** against parties that implement an agreement that was **discussed with the CMA in advance** where the CMA did not raise competition concerns

- **To note: parties have an obligation to keep agreements under review if they want to benefit from protection from fines and enforcement**

Fairtrade's Shared Impact Initiative

- Informal guidance published on 14 December 2023
- **Sustainable objective?**
To provide producers with longer term security that would enable them to invest in sustainable practices
- **How?**
By using longer-term supply arrangements/contracts between retailers and participating Fairtrade producers
- **Assessment?**
Section 3 of the Green Agreements Guidance – small number of units



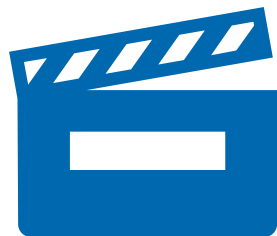
Second Request for Informal Guidance – coming soon!

- Prospective initiative to increase the scale and pace of reduction of GHG emissions in the supply chain
- Benefits of the proposed initiative considered under section 9 of the Competition Act
- Hope to publish the informal guidance shortly

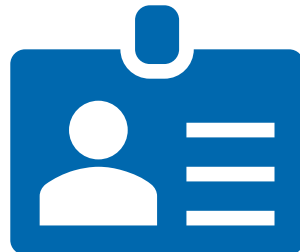
Links & contact



- **Summary of the Green Agreements Guidance**
[Green agreements guidance: how competition law applies to environmental sustainability agreements - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/green-agreements-guidance-how-competition-law-applies-to-environmental-sustainability-agreements)
- **Green Agreements Guidance, CMA185 (full)**
[Green agreements guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/green-agreements-guidance)



[Watch our video!](#)



Contact us!

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SustainabilityGuidance@cma.gov.uk – for informal guidance requests