

**Ad Hoc Expert Meeting Competition, Consumer Protection
and Sustainability**

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COMPETITION and SUSTAINABILITY

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Authority for
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Competition & Sustainability

Martijn Snoep (the Netherlands)

Markets that work well for people and businesses

Relevant areas for competition authorities

- Positive or negative effects on sustainability
 - *Cooperation agreements*
 - *Horizontal*
 - Vertical
 - Abuse of dominance
 - Merger control

Why guidelines?

- Incentives for companies to increase sustainability efforts beyond statutory minimum level
 - Customers wanting to pay for higher standards
 - Pressure from investors, (future) employees and NGO's
- If there are hold-up problems or first mover disadvantages, cooperation can lead to better outcomes in the absence of regulation
- Research shows that companies do not engage in cooperation for fear of competition law
- General guidance not sufficient; individual informal guidance also necessary

Corner stones of cooperation guidelines (1)

- Type of competition that is protected; not "illicit competition"
 - Practices prohibited by law or international treaties
 - Case: collective boycott by garden centers
- Irrelevant parameters of competition that can be restricted
 - Depending on context: packaging, shelf life, advertising
 - Case: Plastic handles on softdrink multi-packs
- Significant effect on relevant parameters of competition
 - What is a significant effect? <5%?
 - Case: Joint purchasing of wind energy

Corner stones of guidelines (2)

- Sustainability benefits that outweigh the negative effects on competition
 - Depending on law
 - EU: Legal exemption of article 101 (3) TFEU
 - AU: Authorisation general interest
 - Case: Temporary joint selling in Carbon Capture and Storage project

Road ahead in EU

- Discussion on scope of article 101 (3) TFEU in sustainability guidelines
 - Distinction between different types of sustainability agreements
 - Negative externalities
 - What is a fair share for consumers?
 - Full compensation of consumers or total benefits approach
 - Allocation of benefits
- Impact of EU draft Corporate Sustainability Due Dilligence Directive