

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

**Wednesday, 28 September 2022**

**Room XIX, Palais des Nations, Geneva**

COMPETITION LAW and POLICY and SUSTAINABILITY

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# Competition law and policy, and sustainability

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# I. Competition law and policy, and sustainability (1)

- ✓ In principle, competition law and policy aligns with sustainability.
  - ◆ Competition, as a process of rivalry between businesses, incentivizes businesses to cut prices, increase output, improve quality, enhance efficiency and stimulate innovation.
  - ◆ If consumers perceive sustainability as a quality parameter of a product, firms will fiercely compete to produce more sustainable products through disruptive innovation, and consumers will in turn, enjoy more choices.
- ✓ Competition law and policy can play a key role to support sustainability initiatives.
  - ☞ *The European Commission imposed a fine of EUR 875,189,000 on four major car manufacturers for colluding on technical development in nitrogen oxide cleaning.*

# I. Competition law and policy, and sustainability (2)

- ✓ There might be circumstances where competition law and sustainability initiatives are in tension (so-called “first mover disadvantage”).
  - ◆ Chicken of Tomorrow (Netherlands)
  - ◆ Indonesian Palm Oil Pledge (Indonesia)
  - ◆ Antitrust Investigation into car manufacturers which voluntarily agreed to meet more stringent vehicle emissions standards (United States)
- ☞ *There would be some circumstances where firms need to cooperate or collaborate with their competitors and therefore competition authorities need to provide clear guidance on what is allowed and not under competition law.*

## II. Initiatives undertaken across different jurisdictions

- ✓ So far, sustainability initiatives have mostly been undertaken within the EU.
  - ◆ (EU Commission) launched a public consultation on drafts of the revised Horizontal Exemption Regulations on R&D and Specialization, and Horizontal Guidelines.
  - ◆ (Netherlands) the Authority for Consumers and Markets (ACM) published its second draft Guidelines on sustainability agreements in July 2021.
  - ◆ (Austria) the amended competition law exempts certain types of sustainability agreements from competition law enforcement. The Austrian Federal Competition Authority published draft Guidelines on sustainability agreements in June 2022 to provide guidance on how the new exemption will be applied.

### III. ICN survey results

- ✓ The Hungarian Competition Authority (GVH) as the host of ICN 2021 annual conference, surveyed ICN members and Non-Government Advisors (NGAs). The results are as follows:
  - i) Efficiency or welfare standard does not seem to impede sustainability initiatives, and special competition law provisions do not seem to be conducive to such cases per se;
  - ii) Legislative action does not seem to be imperative, however soft laws and guidance are called for by NGAs;
  - iii) Sustainability considerations in competition law enforcement are not new, but case experience remains very limited;
  - iv) Sustainability and competition are more of an issue in Europe than elsewhere. However, interest and anticipation extend well beyond Europe, even if they are relatively modest so far.

## IV. Takeaways

- ✓ Competition authorities of member States other than several European jurisdictions have not yet undertaken initiatives to encourage sustainability.
- ✓ Further discussions are required to reach consensus on which types of sustainability benefits would be recognized as efficiency gains to offset anti-competitive effects.
  - ◆ A consensus might have been reached that compromising climate-change effects such as carbon emissions count as efficiency gains.
  - ◆ However, there are still grey areas whether the application of competition law is exempted in sustainable matters or not (e.g. bio-diversity which is recognized as efficiency gains by the Austrian competition law and its draft Guidelines)
- ✓ International organizations like UNCTAD should play an active role to facilitate discussions and exchange of information to encourage sustainability initiatives by businesses in a way that safeguards market efficiencies.

## V. Questions for discussion

- ✓ Should competition authorities shift to a more lenient approach regarding sustainability agreements? To what extent should competition authorities consider out-of-market efficiencies in their competition considerations?
- ✓ To date, apart from the European Union, there may not be sustainability initiatives with a regional dimension in the competition law and policy area. How can regional economic organizations contribute to coordination between competition and sustainability objectives?
- ✓ What are the challenges developing countries are facing and how can they be addressed? How can UNCTAD assist them in responding to those challenges?



# Thank you!

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