

Global Commission on Competition

ICC TASK FORCE ON COMPETITION POLICY AND SUSTAINABILITY

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Terms of Reference

Context

The climate change emergency is driving governments and companies worldwide to set increasingly ambitious sustainability targets, yet the pace of progress is irregular and, in most jurisdictions, lagging behind. There are signs that many businesses are eager to partner on sustainability efforts – recognising that co-operation is vital to achieve meaningful scale in addressing climate change and other environmental challenges.

Importance to global business

Competition law, however, is often perceived as a barrier to companies needing to co-operate in this area. There are concerns that the current framework is too focused on an overly narrow view of consumer welfare and is ill-equipped to recognise and quantify the broader and longer-term societal benefits. As a result, companies are deterred from the much-needed cooperation for fear of infringing competition law.

Alignment with strategic ICC priorities

This initiative aims to support one of ICC's three key strategic priorities *i.e.* to accelerate the transition to a green economy at global level.

Objectives

To promote the potential for competition policy to contribute to the fight against climate change and a more sustainable future.

Envisaged outputs

After the publication of a [first paper](#) on the role of competition policy in enhancing climate action in 2020, the Global Competition Commission intends to establish a task force which will continue to contribute to the debate regarding the relationship between competition law and the Sustainability Development Goals (SDGs). Going forward, the task force will endeavour to:

1. publish short papers - or policy briefs - honing in on specific topics to show how sustainability can be taken into account in a modern competition policy (both positively and negatively).
2. identify concrete actions and opportunities at national, regional, and global

level, to advocate for change in policy, law or case law where necessary by:

- responding to consultations conducted by competition authorities;
- organising dialogues with relevant authorities and government officials as appropriate using the policy briefs as references;
- providing live examples of where *fear* of competition policy/law is impeding important cooperation on sustainability;
- exploring potential partnerships with international or inter-governmental organisations and develop joint initiatives where the strengths and networks of these bodies could be leveraged to draw attention to the issue and provide speakers/chairs where ICC members (businesses and law firms) or NGOs want to discuss this, e.g. the ICC/OECD webinar series 2022 on Competition and Sustainability.

3. continue engaging with other competition authorities on this specific topic to encourage them to adopt best practices, e.g.:

- the Dutch Competition Authority ("ACM") published its [draft Guidelines on sustainability](#) agreements in January 2021;
- the Hellenic Competition Commission ("HCC") published a draft [staff discussion paper](#) on sustainability issues and competition law in 2020 and launched a public consultation on a sandbox for sustainable development in the Greek market in July 2021;
- the Austrian legislator introduced in September 2021 an express exemption from the prohibition of restrictive agreements where they substantially contribute to an ecologically sustainable or climate-neutral economy.
- In the UK, the Competition and Markets Authority (CMA) referred to supporting the transition to a low carbon economy among its strategic objectives in its [2021/22 Annual Plan](#). The CMA also published [information](#) to help businesses assess whether their cooperation agreements for the attainment of sustainability goals (sustainability agreements) comply with competition law.
- At the European level, the Commission submitted to public consultation a revised draft of the Horizontal Guidelines on Cooperation Agreements for stakeholder comments. Section 9 of the draft Guidelines provide for guidance on the assessment of sustainability cooperation agreements under Article TFEU 101(1) and 101(3). The period of consultation ended April 26, 2022. The ICC's response to Section 9 can be found [here](#).

4. bring together the perspectives of key countries in all continents and facilitate a common and better understanding on the role of competition policy in advancing environmental sustainability in different high-level fora, including:

- the second ICC/OECD webinar on 8 June 2022 to discuss Merger Policy and Sustainability (the first in March was on sustainability cooperation agreements);
- COP27 on 8-20 November in Sharm El-Sheikh, Egypt, where the task force seeks to present a policy paper focusing on the following substantive questions. With this paper, the Task Force hopes to enhance ICC's distinctive value-add to the COP27 programme by bringing this increasingly important issue to the table :
 - How should environmental factors and the SDGs be taken into account in a modern competition policy?
 - Should these factors be directly taken into account by antitrust enforcers or should we adopt rules to allow governments or agencies to review antitrust and merger decisions based on environmental grounds?
 - What should be the interplay between competition law and environmental regulation?
 - Should merger control have to pay more attention to environmental issues (both positive and negative)?
 - Are traditional ways to protect innovation under competition law appropriate to ensure sustainable development objectives?
 - Are traditional competition law remedies appropriate to achieve environmental objectives in antitrust and merger proceedings?

Audience

This project will be of interest to a wide spread of private and public stakeholders ranging from private practitioners to in-house counsel from different sectors and industries, as well as policy makers and government officials across the world.

Timeframe

The Task Force aims to finalise the paper in Q3 2022.