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Greening Antitrust: Exploring the concept of Sustainability under Article 101 TFEU

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INTRODUCTION

Our planet is encountering a climate and environmental crisis. The global community and governments worldwide have long acknowledged the catastrophic implications of climate change and the urgent necessity for immediate action. So far, the United Nations and the European Union have made significant commitments. Since the United Nations Stockholm Conference in 1972, discussions surrounding climate change have revolved around the consequences of human activities on environmental degradation, with a particular focus on the developmental factors contributing to global warming.

Within the Paris Agreement, nations engaged to limit the increase in global average temperature to below 2°C, limiting it to 1.5°C by 2030. However, there exists a substantial disparity between aspirations and reality: we are heading in the wrong direction. In fact, in the second half of 2023, the global average temperature exceeded 1.5° above the pre-industrial average. Unfortunately, this trend has persisted in 2024. Hence, immediate action within this decade is crucial to mitigate these impacts, safeguarding the environment, society, and the economy.

Based on these premises, it is clear that addressing environmental challenges requires the contribution of all European policies. Nowadays, promoting sustainable development is central to the EU Treaties. To this end, the European Commission has launched several initiatives, such as the European Green Deal, aiming to make the Union's economy climate-neutral, while increasing sustainability and enhancing environmental protection.

The interaction between sustainability and competition law is complex and varies across different jurisdictions. There are numerous ways to apply Article 101 of the TFEU to promote sustainability, thereby helping the European Union achieve its sustainability and environmental protection goals as outlined in the European Green Deal. In this context, antitrust can act as a shield to protect environmental initiatives and as a sword to combat unsustainable practices.

The purpose of this paper is to explore the concept of sustainability within the framework of Article 101 of the TFEU. To thoroughly examine this topic, this thesis is divided into three main chapters.

The first chapter provides an overview of the foundational principles and evolving landscape of sustainability and competition within the European Union context. It begins by exploring the alignment of objectives between the EU and the United Nations in pursuit of a sustainable future, as evidenced by initiatives such as Agenda 2030 for sustainable development alongside its 17 Sustainable Development Goals (SDGs). Subsequently, attention is directed towards the legal framework within the EU Treaties concerning environmental protection and sustainability, including an analysis of the pivotal European Green Deal. Furthermore, this chapter delves into the fundamental aims and theoretical underpinnings of EU competition law, highlighting the significance of TFEU Antitrust provisions, particularly Article 101 TFEU. The chapter also investigates the objectives of antitrust regulation and the role of National Competition Authorities (NCAs) in contributing to the sustainability debate. Last but not least, the first chapter explores various aspects of sustainability within the competitive landscape, including consumer willingness to pay for sustainability and the potential disadvantages faced by first movers in adopting green practices.

The second chapter examines the evolving interpretation and implementation of sustainability within the framework of EU competition law. It begins by analysing the pioneering role of the Dutch Authority for Consumers and Markets (ACM) in integrating greener practices into competition law. Subsequently, it explores the European Commission's adoption of revised Horizontal Block Exemption Regulations (HBERs) and updated Horizontal Guidelines, highlighting the introduction of a new section specifically addressing the definition of sustainability agreements and their assessment. Further, the concept of a “fair share” of benefits derived from sustainability agreements is discussed from various perspectives. Lastly, the chapter investigates whether competition law poses a barrier to sustainability collaborations, with a pragmatic approach focused on the agri-food sector.

The third chapter aims to provide a thorough analysis of the advantages and potential drawbacks of sustainability-oriented policies within the competitive landscape. It begins by addressing the risk of greenwashing, followed by the BMW, Volkswagen, and Daimler cases involving a cartel that hindered sustainability efforts. Afterward, it explores whether businesses can safely collaborate for sustainability, highlighting the role of the Dutch ACM in empowering sustainable collaborations through green energy initiatives.

Additionally, the chapter examines the significance of collective benefits and their impact on competition, the potential first-mover disadvantages for companies adopting green practices, and the interplay between innovation and antitrust, particularly in the context of balancing artificial intelligence advancements with competitive practices.

Ultimately, the conclusion suggests that competition law is not an obstacle but a vital instrument in supporting the EU’s sustainability objectives. The new Guidelines underscore the importance of competition law in facilitating the EU's path towards climate neutrality by 2050, emphasizing that effective interpretation and application of these laws are crucial for aligning with broader sustainability commitments.

CHAPTER I

SUSTAINABILITY AND COMPETITION: BACKGROUND AND EVOLUTION

1.1. EU and UN: Converging objectives for a sustainable future

"*We don't have a plan B because we also don't have a planet B. There are millions of stars, but so far, humans have not been able to discover another planet; this is the only one where we have oxygen, water, and technology. [...] We must ensure that our Earth is kept sustainable and prosperous*" (Ban Ki-moon, 2023)[1].

The concept of sustainable development is complex and subject to many interpretations. The universally recognized definition dates back to 1987 with the publication of the Brundtland Report (Our Common Future) by the World Commission on Environment and Development (WCED): it refers to "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*"[2]. Sustainable development requires an integrated approach that takes into consideration environmental concerns along with economic development[3]. This involves modernizing our economy to adopt sustainable consumption and production patterns, addressing imbalances in our food system, and transitioning our transportation, energy production, and architectural design toward sustainability.

As we confront the threats to our planet's health, the United Nations (UN) and the European Union (EU) find their shared values and goals even more crucial. The European Security Strategy emphasized that "*In a world of global threats, global markets, and global media, our security and prosperity increasingly depend on an effective multilateral system. (…). Strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority*"[4]. Tackling issues like climate change, environmental degradation, and resource scarcity, while upholding the principles of equality and self-determination, is essential for securing a sustainable future.

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[1] "There Is No Planet B", Warns Ban Ki-Moon – Amazônia E Novas Economias.

[2] Brundtland, G. (1987). Report of the World Commission on Environment and Development: Our Common Future. United Nations General Assembly Document A/42/427.

[3] United Nations. (n.d.). Sustainability.

[4] European Security Strategy - Brussels, 12 December 2003.

Sharing a vision of a sustainable, safe, and better future, the European Union and the United Nations act as partners. To achieve this collective goal, the EU has actively taken a leading role in the fight against climate change, supporting the goals of the Paris Agreement and implementing strategies and policies consistent with the Agenda 2030 across a wide range of sectors. The EU is committed to engaging with the UN, the UN Member States, regional organizations, and other stakeholders, to strengthen resilience and prepare the world for future shocks as we undertake the dual green and digital transitions.

1.1.1. Agenda 2030 for sustainable development: The 17 SDG's

The development and adoption of the Sustainable Development Goals are rooted in the extensive efforts undertaken by the United Nations over several decades. The 2030 Agenda is the result of a long process that started in September 2000, at the UN Millennium Summit, the largest gathering of heads of state and governments of all time until then. On this occasion, the UN General Assembly endorsed the United Nations Millennium Declaration, which called for a global partnership to reduce extreme poverty.

To support the Declaration, former UN Secretary-General Kofi Annan established eight accompanying objectives, known as the Millennium Development Goals (MDGs), to be achieved by the year 2015. Twelve years later, during the United Nations Conference on Sustainable Development (Rio+20), the emphasis shifted to the development of a green economy within the framework of sustainable development and the process of transitioning from the Millennium Development Goals (MDGs) to a set of Sustainable Development Goals (SDGs) was initiated.

Only in September 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development along with its 17 Sustainable Development Goals (SDGs). Signed by the governments of the 193 Member Countries of the United Nations, the 17 SDGs carry on the work begun by the Millennium Development Goals (MDGs) and are part of a broader program of action consisting of 169 associated targets to be achieved in the environmental, economic, social, and institutional domains by 2030 [5]. A few months later, in December 2015, 196 Member countries adopted the Paris

[5] Turano, V. (2020, December 20). The UN Agenda 2030 for Sustainable Development.

Agreement at the UN Climate Change Conference (COP21) held in Paris, France. Its overarching goal to hold *"the increase in the global average temperature to well below 2°C above pre-industrial levels"*[6] was in line with the Agenda's ambitious objectives.

The SDGs, together with the Paris Agreement on Climate Change, are the roadmap to a better world and to a global framework for international cooperation on sustainable development, including its economic, social, environmental, and governance dimensions[7]. Even though the SDGs are not legally binding, national governments bear the primary responsibility for establishing and implementing national frameworks aimed at achieving the 17 Goals.

The contents of the Agenda 2030 "*are rooted in the principles and values on which the Union is founded*"[8]. In this regard, the EU emerged as one of the leading forces behind the United Nations 2030 Agenda and has fully committed itself to its realization.

1.1.2. Environmental protection and sustainability in the EU Treaties

Despite not being explicitly included in the 1957 Treaty of Rome, environmental concerns have progressively become one of the main principles established in the EU Treaties through a series of treaty revisions. Since the Treaty of Lisbon came into effect on December 1, 2009, environmental issues have become more complex, extending beyond the traditional bounds of official disciplines[9]. Undeniably, sustainability and environmental protection are among the primary objectives of EU Law as laid down in the Treaties (i.e. TEU and TFEU), and the EU Charter of Fundamental Rights of the EU[10].

Notably, after the implementation of the Treaty of Lisbon, sustainable development was acknowledged as one of the European Union's long-term goals. The third paragraph of Article 3 of the Treaty on European Union states that "*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection*

[6] Article 2(1)(a), Paris Agreement.
[7] European Commission. (n.d.). The EU and the United Nations – common goals for a sustainable future: The 2030 Agenda for Sustainable Development.
[8] Deputati, C. D. (2018, March 23). Agenda 2030
[9] De Sadeleer, N. (2023). Environmental Law in the EU: A Pathway Toward the Green Transition.
[10] Malinauskaite, J. (2022). Competition Law and Sustainability: EU and National Perspectives.

and improvement of the quality of the environment. It shall promote scientific and technological advance"[11]. Therefore, sustainable development, and its intrinsic goal of environmental protection, should not be viewed as separate from other policies. Instead, it should integrate its objectives on equal footing.

Although not properly defined by Article 3, sustainable development is also encompassed by both Article 11 TFEU and Article 37 of the EU Charter of Fundamental Rights. These provisions establish sustainable development as the key objective of the EU's environmental policy, combining the EU's different policies and activities. Specifically, Article 11 of the Treaty on the Functioning of the European Union (TFEU) states that "*Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development"*[12]. Thus, it follows that during the elaboration and execution of new policies and activities, the EU institutions should work under an obligation to persistently strive towards safeguarding and maintaining the environment at an elevated level, as well as enhancing its quality.

Similarly, Article 37 of the Charter of Fundamental Rights lays down that *"A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development"*[13]. To promote sustainable development, environmental protection measures must be included in the conception and execution of Union policies and activities. Here, the reference to the two fundamental principles of EU environmental policy is more direct and explicit than in Article 11 TFEU. Still, it underlines that EU policies should also pursue the objectives of high environmental standards and the improvement of environmental quality[14].

The importance of EU competencies regarding environmental policy is further strengthened by Articles 191-193 TFEU. Specifically, Article 191 provides that "*Union policy on the environment shall contribute to the pursuit of the following objectives:*

[11] *EUR-LEX - 12008M003*
[12] *EUR-LEX - 12016M011*
[13] Official Journal of the European Union C 303/17 - 14.12.2007
[14] ClientEarth. (2021, December). Giving a voice to the environment by challenging the practice of integrating environmental requirements into other EU policies.

preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change"[15]. Differently, under Article 192 TFEU, the Union is empowered to act through the ordinary legislative procedure to pursue these goals. In this context, the European Green Deal serves as a concrete example.

1.1.3. The European Green Deal

Sustainable development is not only a fundamental principle for the European Union, but also a political priority for the European Commission.

In the period 2014-2019, the Commission set out its approach to SDG implementation in two major policy documents: a communication on "*Next steps for a sustainable European future"*[16] and a reflection paper "*Towards a sustainable Europe by 2030*"[17] presented by the former EC president Juncker during one of its final acts. The latter highlights how the SDGs, due to their universality, have the potential to address social disintegration both within and outside the Union and encourage "*working from an international perspective, urging countries, industries, and individuals to join in this mission*" [18] to build convergence of social, environmental, and economic policies, as *"green growth benefits everyone, both producers and consumers"*[19].

In July, during the opening speech of the Plenary Session of the European Parliament, chaired by the incoming president Ursula von der Leyen, the European Commission presented an action program to be implemented within five years, revealing the Union's willingness to achieve sustainable development objectives. Clearly, sustainability has been at central focus of the EU agenda since the beginning of President Von der Leyen's mandate.

In December of the same year, the Commission launched the European Green Deal, a set of policy initiatives aimed at making Europe climate-neutral by 2050: a milestone that fully aligns with the commitment undertaken by the European Union through the Paris

[15] EUR-LEX - 12008E191
[16] EUR-LEX - 52016DC0739 - EN
[17] European Commission. (2019, January 30). A Sustainable Europe by 2030.
[18] European Commission. (2019, January 30). Reflection paper: Towards a Sustainable Europe by 2030.
[19] Ibidem.

Agreement adopted in December 2015. The Green Deal has been proposed to transform the European Union into "*a fair and prosperous society, with a modern, resource-efficient and competitive economy*"[20]. Achieving this goal will necessitate a transformation of both Europe's society and economy, which needs to be both cost-effective and socially equitable. In this context, antitrust law does not appear to deviate from these objectives as it contributes to the effectiveness of green policies by promoting market outcomes that prioritize efficiency, as well as competition.

Competition policy serves as a powerful tool to leverage the Earth's scarce resources efficiently, thereby antitrust law seamlessly supports climate policies aimed at internalizing environmental costs. In light of the Consistency Principle, outlined in Article 7 TFEU, competition policy, and EU Green Deal do not contradict each other as "*the Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers*"[21]. Thereby, it is worth noting that the consistency principle serves as the common thread among the principles outlined in the European Treaties, antitrust legislation, and, finally, the Green Deal. Moreover, the role of antitrust in the Green Revolution, which the Green Deal aims to enact, is evident from the words of the former executive EC vice president Frans Timmermans, who emphasized that "*Europe's transition will be fair, green, and competitive"*[22].

Based on these premises, the challenge that antitrust law must face is clear: not only adapting to a rapidly changing world but also aligning and contributing to the modern green and digital economy.

1.2. Aim and Theory of EU Competition Law

In order to comprehend how the EU's sustainability policies interact with the Union's Competition regulations, it's fundamental to outline the objectives behind these provisions and the reasons behind their application.

According to the Encyclopaedia Britannica, competition policy encompasses a set of laws and public policies designed "*to ensure that competition is not restricted or undermined*

[20] COM(2019) 640 final (Brussels, 2019).
[21] OPOCE. (n.d.). *EUR-LEx - 12008E - EN*.
[22] European Commission. (2021, December 14). Efficient and green mobility.

in ways that harm the economy and society"[23].This policy seeks to prevent anti-competitive practices and behaviours that could negatively affect society.

The EU competition policy has retained its significance within EU law ever since it was set out in the Treaty of Rome in 1957. With the objective of creating a "*system ensuring that competition in the common market is not distorted*",[24] the treaty was initially signed by six countries and became effective in 1958. Officially known as the Treaty establishing the European Economic Community (EEC), the Treaty of Rome, or EEC Treaty, led to the establishment of the European Economic Community (EEC). However, following the Treaty of Lisbon in 2009, the Treaty establishing the European Community was renamed the Treaty on the Functioning of the European Union (TFEU).

Nowadays, the main objective of the EU competition rules is to enable the proper functioning of the EU's internal market,[25] ensuring that enterprises can compete on equal terms in the markets of all Member States. As recalled by Article 3(3) of the Treaty on European Union (TEU), the EU "*shall establish an internal market [...] based on [...] a highly competitive social market economy*". The concept of the internal market aims at the removal of trade barriers between member states and the creation of a system "*ensuring that competition is not distorted*" as recalled by Protocol no.27 on the internal market and competition, annexed to the TEU and the TFEU.

The European Commission is primarily responsible for implementing the EU competition policy, as entrusted by Articles 101-109 of the TFEU. Monitored by the European Court of Justice, competition policy embraces a broad range of areas including antitrust and cartels, merger examination, State aid, the liberalization of markets, and international cooperation[26].

1.2.1. TFEU Antitrust provisions: Article 101

European Antitrust policy is based on two separate provisions set out in the Treaty on the Functioning of the European Union: Articles 101 and 102. As far as concerns our analysis, the focus will be mostly on the former article.

[23] Britannica. (n.d.). Competition policy. https://www.britannica.com/topic/competition-policy
[24] Article 3(1)(g) of the Treaty establishing the European Economic Community.
[25] European Parliament. (2023). Competition policy. EU Fact Sheets.
[26] EU Competition Policy: Key to a Fair Single Market | Think Tank | European Parliament, n.d.

As outlined in the Treaty on the Functioning of the European Union, Article 101 consists of three paragraphs, the first of which prohibits "*all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market"*[27]. There are two main categories of restrictive agreements under Article 101(1): horizontal and vertical. The first ones are made between firms operating at the same level of the supply chains. Such agreements could involve price-fixing, production limitation, or bid-rigging. Vertical agreements, in contrast, are made between firms operating at different levels of the supply chain. Examples include resale price maintenance, distribution agreements, franchising, and exclusive supply agreements. Additionally, restrictions within these agreements can be further classified based on their object and effect. Restrictions by object are by their very nature considered anti-competitive as they primarily aim at restricting competition, therefore, no detailed examination of anti-competitive effects is required. Differently, restriction by effect occurs when an agreement, despite not having the object of hindering competition, ultimately reduces competition in the relevant market.

To properly assess the effects of the agreements it's required to define the relevant market, along both product and geographical dimensions. The EU Court of Justice has established that Article 101 TFEU does not apply when the agreement's impact on competition is negligible. If instead the agreement significantly restricts competition, it falls within the scope of the prohibition. As provided by Article 101(2) such agreements are automatically to be considered void for distorting competition within the internal market.

In August 2014 the European Commission adopted a revised version of the "De Minimis Notice", providing a safe harbour for minor agreements among firms below certain market share thresholds. This safe harbour is applicable under the condition that:

- the market shares of the undertakings concluding those agreements do not exceed
    - 10% for agreements between competitors or
    - 15% for agreements between non-competitors; and
- the agreements do not have as their object to restrict competition[28].

[27] EUR-Lex - 12008E101
[28] De Minimis Notice: Exemption for Agreements of Minor Importance | EUR-Lex, n.d.

This rule acknowledges that not all competitive restrictions have a significant impact on the market, and it aims to direct regulatory attention towards agreements that genuinely threaten the competition within the internal market.

Agreements falling within the scope of Article 101(1) may qualify for exemption if they create objective economic benefits that outweigh the negative effects of the restriction of competition, as outlined by the four criteria of Article 101(3). It follows that an agreement is exempted if the following conditions are satisfied:

- The agreement contributes to improving the production or distribution of goods, or to promoting technical or economic progress;
- Consumers receive a fair share of the resulting benefits;
- The restrictions are indispensable for achieving these objectives;
- The agreement does not allow the parties to eliminate competition in respect of substantial elements of the products in question[29].

Article 101(3) requires a case-by-case analysis as exemptions are granted based on specific conditions being met, including the agreement's contributions to efficiency, consumer benefits, the indispensability of restrictions, and the preservation of competition for a substantial part of the products.

However, the Horizontal Block Exemption Regulations (HBERs) comprise two Commission regulations that categorize specific research and development (R&D) and specialization agreements as more beneficial than detrimental. In fact, agreements that satisfy the criteria set by these regulations are consequently exempted from Article 101(1) TFEU. This exemption is based on the premise that these agreements meet the criteria specified in Article 101(3). For the safe harbour provisions to be applicable, the combined market share of the parties involved in the agreement must not exceed certain thresholds: 25% for R&D agreements and 20% for specialization agreements. However, the block exemption is only valid if the agreement does not include any of the hardcore restrictions identified in the HBERs and if other specific conditions are met.

[29] Guidelines on the Application of Article 101(3) TFEU (Formerly Article 81(3) TEC) | EUR-Lex, n.d.

Last but not least, the Guidelines on Horizontal Cooperation Agreements (HGL) offer guidance for the application of Art. 101(1) and Art. 101(3) TFEU across various domains, including sustainability agreements as a notable example.

1.2.2. Antitrust Objectives

As previously mentioned, understanding the purposes antitrust legislation seeks to achieve is crucial for effectively coordinating competition policy with other European policies, as in our case, the achievement of the sustainability goals pursued by the EU.

Whether antitrust policy promotes or should promote social goals other than efficiency and competitive markets deserves some thought because it lies at the root of so much controversy in antitrust[30]. Clearly, the ongoing debate concerning the objectives of antitrust law presents numerous interpretations and aims to establish whether antitrust law should also encompass non-economic goals or be limited to economic efficiency.

Rooted in the Chicago School of thought,[31] in the late 90s, the European Union introduced the so-called "more economic approach", according to which antitrust law should primarily pursue economic efficiency, focusing on consumer welfare. Apart from promoting market integration, EU competition regulations aim to safeguard effective competition which brings benefits to consumers, such as low prices, high-quality products, a wide selection of goods and services, and innovation[32]. This new approach led to major changes and lightened the debate regarding the extent to which competition law should promote efficiency. In order to answer this question, it's important to define the economic objectives components, specifically, static and dynamic efficiency, alongside consumer and total welfare.

The allocation of limited resources is a central issue in both economics and antitrust law. Contemporary economic theory emphasizes the optimal distribution of an economy's resources, suggesting that they should be allocated so that the Pareto-efficient criterion is

[30] Kenneth G. Elzinga (1977). The goals of antitrust: Other than competition and efficiency, what else counts? 125 U. PA. L. REV. 1191.
[31] Advocates for a more economic approach, focusing on consumer welfare in terms of prices, output, and quality, rather than merely on market concentration.
[32] *EUR-LEX - 52004XC0205(02) - EN*

satisfied[33]. The connection between efficient allocation and competition is shown by the First Theorem of Welfare Economics, according to which in the absence of any market failure a competitive equilibrium is Pareto efficient[34]. Therefore, if the assumptions of perfect competition hold, the optimizing actions of market participants will result in an efficient allocation throughout the whole economy. Clearly, from this welfare-theoretic perspective, competition serves as a tool to achieve allocative efficiency.

In competition policy, a clear distinction is typically made between the various types of economic objectives. Specifically, economic efficiency and welfare are categorized into allocative, productive, and dynamic efficiency, along with consumer and total welfare.

The goal of allocative efficiency is for an economy's resources to be distributed in such a way that the production of goods meets the Pareto criterion across the entire economy. This means that no individual can be made better off by redistributing these resources without simultaneously decreasing someone else's utility[35]. Differently, productive efficiency is achieved when a firm produces its output using a minimal amount of inputs or factors of production. It relates to the condition where the maximum quantity of certain goods or services is produced at the lowest possible cost, given the resources and technologies available. Both concepts are categorized as static because they operate under the assumption that the product mix, production technologies, factors of production, and preferences remain constant and unchanging. Consequently, these elements do not adapt or evolve in response to competitive forces.

On the contrary, dynamic efficiencies are associated with a firm's capacity and motivation to introduce new products or production processes, or to enhance existing ones, thereby "*moving the efficient frontier of production further or faster forward*"[36]. Thus, dynamic efficiencies are closely linked to innovation, experiential learning, and research and development (R&D) activities. Unlike static efficiencies, the impacts of dynamic efficiencies unfold over time. Nevertheless, many economists find it challenging to

[33] The Pareto criterion dictates that one allocation is considered more efficient than another if it provides that every individual is better off compared to the other. An allocation is said to be Pareto efficient (or optimal) when redistributing items among individuals would result in at least somebody being worse off.
[34] Oxford University Press. (n.d.). The First Fundamental Theorem of Welfare Economics.
[35] Kerber, W. (2008). Should competition law promote efficiency? Some reflections of an economist on the normative foundations of competition law. SSRN.
[36] Motta, M. (2004). Competition Policy: Theory and Practice, Cambridge University Press, Cambridge, United Kingdom.

comprehend the trade-off between competition and efficiency. For this reason, it can be beneficial to weigh the positive effects of specific business conduct on efficiency, against its negative anticompetitive effects.

Last but not least, consumer welfare represents the benefits that individuals gain from consuming goods and services. In economics, it refers to the concept of consumer surplus, which is the difference between the maximum amount consumers are willing to pay for a good or service and the actual price they pay. This surplus that consumers gain from purchasing a good lead to the term "consumer surplus" being frequently used interchangeably with consumer welfare. However, for economists, there is another alternative measure of welfare, namely total welfare. The latter refers to the combined benefits perceived by both buyers and sellers in a specific market. In economic terms, this implies that in a specific market, the goal is to maximize the sum of producer and consumer surplus, which together constitute the total surplus.

Still, there exists some confusion regarding the welfare criteria in competition policy, raising the question: for economic objectives to be achieved, what needs to be maximized? Should it be social welfare (total surplus) or consumer welfare? Among the distinct viewpoints identifiable in this debate, it arises that the concept of consumer welfare itself is not clearly defined[37].

On the one hand, the European Commission primarily advocates for a narrow consumer welfare approach, focusing on economic interests. On the other hand, a more expansive consumer welfare standard, such as the one adopted by the Dutch competition authority, also incorporates non-economic interests. This approach integrates non-economic advantages that are quantifiable in economic terms and not encompassed in the consumer welfare standard.

Nowadays, the accelerating effects of the climate crisis has highlighted the influence of competition policy on non-economic advantages, such as initiatives to reduce environmental harm, fasten the shift towards renewable energy, safeguard human rights, and promote workers' rights and well-being[38]. This issue raised a widespread discussion

[37] Cseres, K. J. (2007). The Controversies of the Consumer Welfare Standard. The Competition Law Review, 3(2), 121-173.
[38] Hearn, C. H. a. D. (2023, August 2). New report highlights the complex intersection of antitrust law and sustainability goals. Climate Law Blog.

about competition policy impacts on market behaviour and the allocation of resources, specifically influencing climate and sustainability targets.

1.2.3. NCAs' contribution to the sustainability debate

Through the European Competition Network (ECN), the European Commission, together with the national competition authorities (NCAs') of the EU Member States cooperate with one another. This collaboration is central to the implementation of European competition law.

Following the enactment of Regulation (EC) No. 1/2003, national competition authorities and courts were granted full enforcement powers for Articles 101, including its third paragraph. Thus, the objective of the ECN Network is to build an effective legal framework to enforce EC competition law against companies that engage in cross-border business practices that restrict competition and are harmful to consumers[39]. Thereby, the ECN serves as a tool for the Commission and the NCAs to ensure that their enforcement actions are both effective and consistent as well as a common platform to discuss broader questions related to EU competition policy.

Over the past two decades, numerous competition authorities across EU Member States have launched green initiatives to assess whether new sustainability policies align with competition law, more effectively understanding their role in advancing the shift towards a sustainable economy.

In January 2020, the French *Autorité de la concurrence*[40] published its priorities for 2020, emphasizing the importance of the links between competition law and sustainable development, thereby targeting competitive violations that endanger the environment. Moreover, the French authority showed its eagerness to participate in the revision of the Vertical Block Exemption Regulation(VBER) as well as certain research and development (R&D) in light of the recent sustainability goals.

Similarly, in July 2020, the Netherlands Authority for Consumers and Markets (ACM)[41] released draft sustainability guidelines, introducing a methodology for evaluating the

[39] European Competition Network. (n.d.). Competition Policy.
[40] Autorité de la concurrence. (2024, March 20). https://www.autoritedelaconcurrence.fr/en
[41] Acm. (2024, February 19). Authority for Consumers & Markets. ACM.nl. https://www.acm.nl/en/authority-consumers-and-markets

extent to which collaborative efforts on sustainability align with competition law. This proposal differs from the EC exemptions provided by Article 101(3) TFEU as it proposed a new criterion for evaluating environmental concerns that focuses on the broader societal benefits. Specifically, the ACM adopted a comprehensive stance taking into account all advantages, both in-market benefits (those that accrue to customers directly impacted by the restrictions of an agreement) and out-of-market benefits (those that accrue in markets not impacted by the agreement). By broadening the range of beneficiaries, this flexible and permissive approach provides companies in the Dutch market opportunities to collaborate on sustainability initiatives.

Finally, in September of the same year, the Hellenic Competition Commission (HCC)[42] published a discussion paper exploring the similarities and differences between sustainable development and competition law. Specifically, it introduced the "green sandbox" framework, allowing firms to test innovative products and services without the instant threat of violating competition rules.

In response to the previously mentioned initiatives, in October 2020, the European Commission published a call for contributions to "*launch a European debate on how EU competition policy can best support the Green Deal*" (Executive Vice-President Margrethe Vestager)[43]. Although it was remarked that competition policy is not in the lead when it comes to fighting climate change and protecting the environment,[44] the call for contributions was aimed at evaluating whether the enforcement of EU competition law, within its established limits, can more effectively contribute to the shift towards a green economy. Concerning antitrust, the EC aimed to identify any obstacles to agreements advancing European Green Deal objectives and, if that is the case, how to effectively overcome them. In this context, the EC requested stakeholders' feedback to:

i. Share concrete or hypothetical examples of beneficial collaborations between firms aimed at supporting the Green Deal goals which are not to be pursued due to the risk of breaching antitrust law;

[42] Hellenic Competition Commission. (n.d.). Επιτροπή Ανταγωνισμού / Hellenic Competition Commission. https://www.epant.gr/en/
[43] European Commission. (2021). Competition Policy Contributing to the European Green Deal.
[44] European Commission. (n.d.). The European Green Deal. Competition Policy.

ii. Question whether additional guidance about the types of agreements that can fulfil the Green Deal's goals without impeding competition;
iii. Consider if certain situations in which pursuing the Green Deal's objectives serves as a justification for agreements that limit competition beyond the allowed policies.

Clearly, this call for contributions was just one of the first steps in a path of sustainable-oriented policy reforms initiated by the European Commission. In the following chapter, the process leading to the adoption of the new sustainability agreements will be analysed in detail, focusing on its relevant policies and reforms.

1.2.4. Are consumers willing to pay for sustainability?

The 2020 call for contributions brought up the crucial question of whether the damage to the climate or environment should be considered as part of the "consumer welfare" that guides competition law enforcement. The discussion is unfolding among competition specialists regarding what kinds of sustainability advantages should be recognized as efficiency improvements that can counterbalance anti-competitive consequences, if any.

In this context, competition authorities aim to determine the extent to which consumers are willing to pay more for sustainable products in comparison to a similar but less sustainable option. For instance, should a consumer decide to spend additional euros on a sustainable product instead of a non-sustainable one, they could re-gain a few euros in the form of societal benefits accruing to all citizens.

According to the survey carried out by Euromonitor International's Voice of the Consumer, in 2023, 64% of global consumers are worried about climate change, while 41% complain about price being the main barrier to sustainable purchases [45]. As consumers' awareness regarding the effects of their purchasing choices rises, they are increasingly seeking evidence from companies to provide detailed sustainability claims and embrace circular solutions. This clearly suggests that prioritizing sustainable products and practices is essential for a company to maintain a competitive edge.

[45] Zuniga, J. (2024, January 12). Megatrends: Understanding Sustainable Consumers 2023 Key Insights. Euromonitors.

Furthermore, the United Nations Guidelines for consumer protection[46] suggest that the duty to adopt sustainable consumption patterns belongs to the societal sector as a whole, including both consumers and businesses. On the one hand, companies are encouraged to participate responsibly in sustainability efforts through the creation of ethical guidelines, self-regulation, and the adoption of sound business practices. On the other hand, consumers bear the responsibility to support sustainable consumption by avoiding products and services that adversely impact both their well-being and that of future generations. Therefore, the consumer right to access safe and effective products and services is intrinsically linked to their obligation to contribute to the environmental preservation of our planet.

1.2.5. Is there a first-mover disadvantage in going green?

Sustainability first-movers are companies that lead the way by introducing products made with sustainable materials or technologies into the market. For both new and established businesses, launching new products successfully is crucial for ongoing development. Therefore, sustainable businesses must ensure the economic viability of their product choices while also considering environmental protection, social welfare, and the strategic timing of product launches.

Normally, sustainability first-movers invest significantly in market development, introducing new products to consumers, and establishing brand recognition. This is especially important when technological uncertainty is high, as creating a strong brand preference can foster customer loyalty and expand market share. Early adopters of sustainable brands often become opinion leaders, advocating for the superior quality of these products compared to those introduced by later entrants. As a result, it becomes challenging and costly for subsequent entrants to disrupt the established reputation and brand recognition of the sustainability pioneers.

However, even if first movers in sustainability can secure long-term competitive advantages, they may also face certain disadvantages. Although many consumers express a preference for sustainable products, in practice, they are often unwilling to pay a

[46] United Nations Conference on Trade and Development. (2016). *UN Guidelines for Consumer Protection* (2016).

premium, or their willingness does not extend to covering the full cost of clean or sustainable production methods.

In this context, the concept of "first-mover disadvantage" highlights a significant challenge: individual companies are deterred from investing in sustainability due to the potential cost increases that would require price hikes. These higher prices might not be supported by consumers, leading to a temporary decline in the competitive standing and profitability of the firm that takes the initiative. Specifically, a firm might encounter a first-mover disadvantage when transitioning to eco-friendly practices, which could be offset by a sustainability agreement that facilitates coordinated efforts among competitors. This agreement can act as a mechanism to establish a new standard in the industry, helping firms collectively navigate the challenges of adopting sustainable practices. This issue is viewed as a collective barrier that likely requires the entire sector's coordination to overcome through joint sustainability efforts.

Nevertheless, companies can differentiate their products by highlighting their sustainability, and generally, consumers seem to be showing a growing willingness to pay for these eco-friendly options. This increased consumer interest can make it financially viable for firms to invest in sustainability on their own. One reason for companies' hesitation could be the uncertainty about how regulatory bodies will assess and balance the projected benefits against the costs. In this regard, the EU Commission Horizontal Guidelines feature a dedicated chapter on sustainability agreements designed to better prepare businesses to evaluate whether their cooperative agreements align with EU competition laws, particularly when these agreements are genuinely aimed at advancing sustainability initiatives.

CHAPTER II

DEFINING SUSTAINABILITY IN THE HORIZONTAL COOPERATION GUIDELINES: NEW PERSPECTIVES

"Sustainability has gone from being something we talk about, to a central goal of policies around the world. All of Europe's policies – including competition policy – have a role to play to get us there" (Margarethe Vestager, 2019)[47].

2.1. Dutch ACM: Opening the debate for a greener competition law

Sustainability has long been a priority of discussion within the competition law community. In this context, the Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt, ACM) stands at the forefront of the debate.

In 2014, the ACM released the "Vision Document on Competition and Sustainability", analysing the extent to which business sustainability aligned with competition law and, specifically, outlining the space for collaboration between undertakings concerning sustainability initiatives and the cartel prohibition. Even when competitive processes were affected, the ACM recognized the potential benefits of sustainable production for both current and future consumers, preventing the failure of societal-beneficial sustainability initiatives due to such uncertainties. Additionally, the ACM committed to providing case-specific guidance for assessing the compatibility of sustainability initiatives with competition law, offering advice to the involved parties on how to evaluate their initiatives' adherence to these regulations.

To provide a deeper understanding of sustainability initiatives assessment, the ACM analysed the so-called "Chicken of Tomorrow" case. This initiative referred to agreements between producers and retailers aimed at entirely substituting the regularly produced broiler chicken meat with sustainably produced options by 2020. Based on the gathered information, the ACM determined that these sustainability arrangements were restricting competition in the market and that their advantages were not outweighing the associated costs. As the sustainability agreements in the "Chicken for Tomorrow"

[47] GCLC Conference on Sustainability and Competition Policy,Brussels, 24 October 2019.

initiative did not generate any net benefits for consumers, the ACM has urged the organizers to revise these agreements to ensure compliance with competition laws.

In July 2020, the Netherlands Authority for Consumers and Markets released the first new draft guidelines on horizontal sustainability agreements,[48] clarifying that specific forms of collaboration not limiting competition should be permitted. When agreements restrict competition, they might be permitted if fulfilling specific exemption conditions outlined in the prohibition on cartels (Section 6 of the Dutch Competition Act, which corresponds to Article 101 of the TFEU). The main prerequisite for this to happen is that the collaboration's advantages, such as the reduction of carbon emissions, must exceed its drawbacks. According to this criterion, the collective societal benefits must equal or exceed the detriments to consumers rather than solely benefiting the specific group of consumers purchasing the products in question. Consequently, if an agreement demonstrates a net positive impact on society and aligns with governmental goals, it will be deemed acceptable.

Following a public consultation held towards the end of 2020, the draft Guidelines on sustainability agreements were revised and published again in January 2021 for further discussions in the European Union[49]. The revised draft guidelines aimed to establish a consistent EU-wide framework for evaluating sustainability initiatives within the context of competition law. The ACM defined sustainability agreements as "*any agreements between undertakings, as well as any decisions of associations of undertakings, that are aimed at the identification, prevention, restriction or mitigation of the negative impact of economic activities on people (including their working conditions), animals, the environment, or nature*"[50]. Moreover, the ACM established a specific category, namely "environmental-damage agreements", [51] designed to facilitate collaboration among businesses to mitigate environmental harm. This is because, for these agreements, there exists a unique interpretation applied to the criterion that consumers must receive a fair share of the agreement's benefits.

[48] ACM (2020), Draft guidelines sustainability agreements, 9 July 2020.
[49] ACM (2021), Guidelines on sustainability agreements are ready for further European coordination.
[50] ACM (2021), Second draft version guidelines on sustainability agreements, para.7.
[51] ACM (2021), Second draft version guidelines on sustainability agreements, para.8.

Finally, the last version of the guidelines was published in June 2023 to align the second draft guidelines with those of the European Commission, finalized in the same month. The revised Guidelines on Sustainability Claims provide practical advice and examples to assist companies in formulating their sustainability claims.

The ACM Guidelines outline five general principles designed to guide companies in making accurate sustainability claims. Specifically, companies are advised to:

i. Use correct, clear, specific, and complete sustainability claims;
ii. Substantiate their sustainability claims with facts, and keep them up-to-date;
iii. Make fair comparisons with other products or competitors;
iv. Describe their future sustainability ambitions in concrete and verifiable terms ;
v. Make sure that visual claims and labels are useful to consumers, and not confusing[52].

Clearly, in recent years, the Dutch ACM has been a driving force in promoting discussions at the European level and has played a key role in shaping the Horizontal Guidelines. This engagement stems from the fact that many initiatives in the Netherlands have implications for cross-border trade between Member States, requiring the application of European competition rules in support of the Dutch ones. As of now, the ACM is evaluating the potential discrepancies between its existing draft guidelines and those established by the European Commission to resolve them soon.

2.2. EC adoption of revised HBERs and revised Horizontal Guidelines

As previously mentioned, on June 1, 2023, the European Commission introduced its new Research & Development and Specialization Block Exemption Regulations, along with the release of the accompanying revised Horizontal Guidelines[53]. Entered into force on July 1, 2023, the latter includes a section dedicated to competition and sustainability, outlining the cooperative opportunities available for businesses to achieve sustainability goals.

[52] ACM (2023), Guidelines regarding Sustainability claims.
[53] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements C(2023) 3445 final [2011] OJ C11/1.

Taking a step back, the first Guidelines on the application of Article 81[54] EC to horizontal cooperation agreements[55] were released in January 2001.

Specifically, horizontal agreements are formed between companies that are actual or potential competitors. Although such agreements can yield significant advantages, they also have the potential to diminish competition and might violate Article 101(1) of the Treaty on the Functioning of the European Union (TFEU), which prohibits company agreements that restrict competition. For this reason, the Horizontal Guidelines offer a structured economic framework for evaluating relevant agreements between undertakings, including a section on environmental agreements [56]. However, the subsequent version of the horizontal guidelines published in 2011 (known as the 2011 Guidelines[57]) did not refer to sustainability agreements whatsoever.

After numerous years of debate, in May 2021 the Commission released a Staff Working Document, [58] detailing the findings from its review of the 2010 Horizontal Block Exemption Regulations (HBERs) and the 2011 Horizontal Guidelines. This evaluation confirmed that these frameworks effectively assist businesses in conducting self-assessments of horizontal agreements. However, it also highlighted the need to update the regulations to reflect market and societal changes since their initial implementation. In this occasion, Executive Vice-President Margrethe Vestager recalled that "*The evaluation has shown that the rules on horizontal agreements between companies and the Horizontal Guidelines are useful tools for businesses. At the same time, the evaluation has identified several areas where the rules are not sufficiently adapted to digitization and the pursuit of sustainability goals"*[59].

[54] Currently known as Article 101 TFEU (with effect from 1 December 2009).
[55]European Commission. (2001). 32001Y0106(01) - Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements. EUR-Lex.
[56] Ibidem, para.10.
[57] European Commission. (2011). Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. Official Journal of the European Union, C11, 1-72.
[58] European Commission. (n.d.). Evaluation of the Horizontal Block Exemption Regulations [Staff Working Document].
[59] European Commission. (2021). Antitrust: Commission publishes findings of the evaluation of rules on horizontal agreements between companies.

Later, in March 2022, a public consultation was launched to gather feedback on the proposed draft revisions of the HBERs and Horizontal Guidelines. The aim was to identify the potential areas for enhancing coherence and relevance, especially where the Horizontal Guidelines lack clarity. In this context, businesses voiced several concerns regarding potential collaborations with competitors on sustainability initiatives, such as the unclear criteria for the "soft safe harbour" assumption. The consultation outcomes were later summarized in the yearly Impact Assessment Report, providing an evaluation of the suggested modifications.

Finally, the 2023 publication of the Guidelines on Horizontal Cooperation Agreements (Horizontal Guidelines) marked the culmination of a comprehensive twenty-year evolutionary process. However, the Guidelines will continue to evolve in the future, aligning with the prevailing economic landscape and sustainability policies.

2.3. A new Chapter 9: Definition of Sustainability Agreements

According to the 2023 final Guidelines, competition law enforcement contributes to sustainable development by fostering effective competition. This enhances innovation, improves the quality and choice of products, ensures an efficient allocation of resources, reduces the costs of production, and ultimately contributes to consumer welfare[60].

The updated Horizontal Guidelines include a new chapter dedicated to the assessment of the so-called sustainability agreements. These are defined as "*any type of horizontal cooperation agreement between companies that pursues a sustainability objective, irrespective of the form of the cooperation*"[61]. Generally, they aim to foster economic, environmental, and social progress. This includes tackling climate change, reducing pollution and natural resource overuse, supporting human rights and fair wages, ensuring animal welfare, and minimizing food waste.

Chapter 9 of the Guidelines is divided into six sections and outlines the Commission's comprehensive strategy for companies to determine whether their collective sustainability efforts comply with competition laws.

[60] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2022/C 164/01), para. 518.
[61] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2022/C 164/01), para. 521.

2.3.1. Agreements that fall outside the scope of Article 101 TFEU

First of all, it is required to evaluate if the agreement in question alters the competitive dynamics or not. Indeed, the Guidelines clarify that not every sustainability agreement among competitors is subject to the prohibition on anti-competitive agreements under Article 101(1) TFEU. To facilitate the task, the guidelines outline four scenarios[62] where sustainability-focused collaborations among competitors do not provoke antitrust concerns due to their lack of impact on competitive factors. Some examples include agreements ensuring compliance with legal international standards; those concerning only the internal practices of businesses rather than their market behaviour; collaborations on developing databases about the sustainability of supply chains without mandating specific transactions; and collective efforts to raise industry sustainability awareness without promoting specific products jointly.

2.3.2. Assessment of sustainability agreements under Article 101(1) TFEU

In the second section of the chapter, we find the sustainability agreements falling under Article 101(1) TFEU. However, they aren't exempted under Article 101(3) if they misuse sustainability goals to cover cartel behaviours, such as price fixing, limiting output or sales, or dividing markets or customers. Impacting one or more aspects of competition, these kinds of agreements need to be evaluated under specific criteria designed to assess their compatibility with competition laws. The evaluation involves checking whether the agreement inherently limits competition "by object" or "by effect" unless undertakings can demonstrate their commitment to a sustainability goal to cast a reasonable doubt as to the anti-competitive object of the agreement[63]. Usually, when an agreement clearly restricts competition, enforcement agencies don't need to prove anti-competitive effects, as the object itself demonstrates significant harm.

The Guidelines mention that certain sustainability agreements, especially those related to setting sustainability standards, are considered intrinsically anti-competitive. However, sustainability standardization agreements[64] are not deemed to have negative effects on

[62] Ibidem, para. 528-531.
[63] Ibidem, para. 534.
[64] Agreements that set requirements to be met by producers, processors, distributors, retailers or service providers in a supply chain to a wide range of sustainability metrics, such as the environmental impact of production.

competition within the scope of art.101(1) TFEU when the following six cumulative conditions[65] are met:

I. The development procedure of the standard must be transparent and participative.
II. The adoption of the standard should be voluntary, with open access ensured for all participants in the market.
III. Undertakings should have the autonomy to apply higher sustainability standards even in situations where binding requirements may be mandated for those involved.
IV. The exchange of sensitive commercial information among parties is permissible only when it's deemed necessary and proportionate for the effective development, adoption, or modification of the standard.
V. The results of the standard-setting process must be effectively accessible to all, without discrimination.
VI. For a sustainability standard to be acceptable, it must either not significantly increase product prices or reduce quality, or the market share of all participating companies should not exceed 20% in any affected market.

However, failure to comply with at least one of the conditions does not imply a direct restriction of competition within Article 101(1), but it requires a normal assessment to evaluate any significant negative impacts the agreement may have on competition.

2.3.3. Assessment of sustainability agreements under Article 101(3) TFEU

Finally, the chapter offers detailed guidance concerning the evaluation of sustainability agreement advantages for each of the four cumulative conditions for exemption under Article 101(3) TFEU. This builds upon the previously established principles of the 2004 Commission's Guidelines[66] concerning the application of Article 101(3) TFEU.

To qualify for the exemption, undertakings must demonstrate that their agreement fulfils the following four specific criteria:

I. Efficiency gains

[65] Ibidem, para.549.
[66] Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08).

II. Indispensability
III. Pass-on benefits to consumers
    a. Individual use value benefits
    b. Individual non-se value benefits
    c. Collective benefits
IV. No elimination of competition

According to the first condition, an agreement must generate specific, tangible and measurable efficiency gains. These are broadly interpreted to include cost reductions in production and distribution, improvements in product variety and quality, enhancement in processes, and innovation boosts. However, these claimed efficiencies must be substantiated, objective, concrete, and verifiable, such as demonstrating product improvements or quantifying the reduction of environmental impact.

Differently, the second condition of the Guidelines prioritizes the examination of the indispensability of restrictive agreements for achieving sustainability benefits before considering consumer fairness. To be indispensable, agreements must be narrowly tailored to achieve claimed benefits without less restrictive alternatives. While market forces typically promote sustainability, certain agreements may be crucial for overcoming market failures or achieving goals more cost-efficiently than regulations mandate. Such agreements should not exceed what's necessary for their objectives, allowing for the possibility of setting and adhering to higher sustainability standards individually.

Moreover, undertakings must show how their agreements pass on benefits to consumers, considering all direct and indirect beneficiaries. Nevertheless, assessing whether sustainability benefits qualify as efficiency gains for consumers can be challenging, as the advantages often also benefit society broadly. For this reason, three types of benefits can be considered:

i. Individual use value benefits that enhance consumer satisfaction directly as the benefits from sustainability agreements include improved product quality and variety, price reductions from cost savings, and positive societal impacts.
ii. Individual non-use value benefits that indirectly reflect consumers' positive societal impact on others and translate into a higher willingness to pay more for sustainable options, despite no direct improvement in product experience.

iii. Collective benefits that reach consumers within a specific market, who may also be part of a larger beneficiary group. They are essential for broader societal benefits as they are significant enough to outweigh any harm.

Finally, the fourth condition recalls that an agreement should not allow participants to completely eliminate competition in the relevant market. Instead, it should ensure that some significant competition remains in at least one area, even if the agreement covers the entire industry. However, temporary restrictions on competition might be considered acceptable if they aim at achieving a sustainable objective.

2.4. The concept of "fair share" of benefits: Different perspectives

One of the most debated issues within the exemption criteria concerns the application of the "fair share of benefits to consumers" condition[67]. This is critical when evaluating whether the benefits of a sustainability agreement are sufficient to qualify for an exemption from competition rules.

The UK Competition and Markets Authority (CMA) has taken a similar approach to the European Commission by introducing specific guidance on how competition laws apply to sustainability agreements. In fact, on October 12, 2023, the CMA released its final Green Agreements Guidance[68]. The latter offers practical examples for businesses planning collaborative environmental initiatives to ensure compliance with legal standards.

The UK's Green Guidance aligns with the EC's stance but introduces notable distinctions. Specifically, the CMA adopts a more flexible approach towards climate change agreements, outlining that it will assess "*the totality of the climate change benefits to all UK consumers arising from the agreement*"[69]. Thus, for such agreements, the CMA may take into account all the advantages benefiting the entire UK population. This marks a notable difference from the traditional method of only considering benefits to consumers of the directly involved products or services.

[67] Luoma, A., Motta, G., & Bershteyn, B. (2023, November 10). Antitrust and sustainability: EU, UK and US take divergent enforcement approaches. Skadden Publication.
[68] Competition and Markets Authority. (2023). Green agreements guidance: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements.
[69] Ibidem, page 38.

Notably, the CMA has opted to move away from the conventional EU framework, embracing instead a more global perspective on benefits that more accurately mirrors the worldwide efforts needed to address the climate crisis. Additionally, the CMA's approach to sustainability is narrower than the EC's broader interpretation, which includes both environmental concerns and social objectives, like human and labour rights. The CMA's focus is primarily on environmental sustainability agreements, with a specific emphasis on climate change agreements. This specific choice reflects the urgency and significance of tackling this global issue.

Similarly, the Dutch Authority for Consumers and Markets (ACM) has updated its 2021 Guidelines on Sustainability Claims differentiating between environmental damage agreements, aimed specifically at mitigating environmental harm caused by greenhouse gas emissions, and other sustainability agreements. For environmental damage agreements, the ACM considers benefits extending beyond the users[70]. This applies particularly when such agreements adhere to international or national standards, or contribute to achieving specific policy objectives, such as the climate goals under the Paris Agreement. For environmental damage agreements, the ACM will consider the fair share criterion to be satisfied if the societal benefits outweigh the competitive harm, rather than just the benefits to in-market consumers. Clearly, even though both the Commission and the ACM recognize the concept of sustainability agreements, their methodologies diverge significantly.

Last but not least, the Austrian competition law distinguishes itself from EU law in its approach to evaluating the fair share of benefits for consumers. In September 2022, the Austrian Federal Competition Authority (AFCA) released its Draft Guidelines,[71] which detail the interpretation of Section 2,[72] Paragraph 1, of the Cartel Act concerning Sustainability Agreements. Similar to Article 101 TFEU, Section 1, Paragraph 1, of the Cartel Act prohibits agreements and concerted practices between two or more independent firms aimed at preventing, restricting, or distorting competition in Austria. However, the second section outlines the sustainability exemption to the prohibition on

[70] ACM(2021, Second draft version of "Guidelines Sustainability agreements", para.8
[71] AFCA (2022), Guidelines on the Application of Sec. 2 para. 1 Cartel Act to Sustainability Cooperations (Sustainability Guidelines).
[72] Section 2(1) of the Austrian Cartel Act corresponds to Article 101(3) TFEU.

competition-restricting agreements, contingent upon the fulfilment of specific cumulative conditions. Specifically, the Guidelines aim to simplify the application process for the Sustainability Exemption, providing crucial practical assistance to companies as they conduct self-assessments of their sustainability initiatives under Section 2, Paragraph 1, of the Cartel Act.

In this context, the Austrian FCA expresses skepticism about the recent amendment of Section 2, Paragraph 1, of the Cartel Act, questioning the efficacy of a legal exception to the cartel ban in attaining sustainability objectives. Differently, it advocates for focused enforcement against agreements that are detrimental to the environment. Unlike the traditional EU approach, the fair share of benefits to consumers in Austrian competition law does not require individual assessment. Instead, it mandates that the agreement must result in a significant and original contribution towards achieving environmental sustainability objectives, necessitating considerable improvements to overall social welfare through the promotion of a more ecologically sustainable or climate-neutral economy.

2.5. Is competition law a barrier to sustainability collaborations? A pragmatic approach in the Agri-Food Businesses

As previously mentioned, in its Horizontal Antitrust Guidelines the Commission adopted a narrow approach concerning the opportunities for businesses to form sustainability agreements. These might distort competition in a specific market but yield benefits across several other markets.

However, the EU's strategy towards sustainability agreements in the food and agriculture sector introduces a fundamentally distinct approach. In fact, Article 210a of Regulation (EU) 1308/2013[73] provides an exemption for agreements restricting competition which are deemed essential for reaching agriculture sector sustainability standards above the mandatory EU or national levels. As explained by the Commissioner for Agriculture Janusz Wojciechowski, the Guidelines for sustainability agreements in agriculture

[73] European Parliament, Council of the European Union. (2013). Regulation (EU) No 1308/2013 of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001, and (EC) No 1234/2007. Official Journal of the European Union

"*provide guidance to farmers and other actors of the supply chain on how to design their sustainability agreements to make use of the new exclusion from competition rules*"[74].

Taking a step back, Article 210a was integrated into the CMO Regulation[75] in December 2021. This provision allowed the existence of agreements designed to reach certain sustainability goals if any competition restrictions arising from these agreements were deemed essential for the fulfilment of those goals. Only upon request of the European Parliament and the Council of the European Union, in 2022 the Commission initiated a public consultation process inviting industry stakeholders to contribute insights and experiences related to crafting agreements focused on sustainability goals within the agricultural and food supply chains.

Consequently, the Commission released an initial draft of the Guidelines for public feedback, followed by a conference to delve deeper into the key concerns highlighted during the consultation period. Finally, in December 2023, the European Commission implemented new Guidelines [76] for evaluating sustainability agreements within the agricultural sector. The latter enhances the Commission's efforts in evaluating sustainability agreements under Article 101 of the TFEU but stands out when contrasted with the Commission's approach to assessing sustainability agreements beyond the realm of agriculture. Notably, Article 101 of the TFEU forbids agreements between undertakings that hinder competition, including those that result in higher prices or lower quantities. Moreover, Article 210 excludes Article 101(3) prerequisite that an exempted agreement should provide consumers "a fair share of the resulting benefit", differentiating from the Commission's refusal to consider consumer benefits outside of the market, regardless of their magnitude.

The comprehensive 71-page Guidelines outline the criteria for agricultural and food chain agreements to qualify for Article 210a exemption from the prohibitions on anti-

[74] European Commission. (2023, December 7). Commission adopts antitrust Guidelines for sustainability agreements in agriculture. European Commission - Press Corner.
[75] The Common Market Organisation (CMO) Regulation updates the CAP's previous framework (2014-2020), modifying rules for agricultural markets, EU quality schemes, and support for agriculture in the EU's outermost regions.
[76] European Commission. (2023). Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation (EU) No 1308/2013 (C/2023/1446). Official Journal of the European Union.

competitive agreements under Article 101(1) of the TFEU. Each chapter addresses a different aspect of the article. For instance, they:

i. Define the scope of the exclusion;
ii. Define the concept of sustainability objectives;
iii. Set sustainability standards prerequisites;
iv. Define antitrust authorities' role and powers.

Clearly, Article 210a of the CMO Regulation outlines the EU's proactive approach towards more sustainable practices within the food and agricultural sector. In fact, the article extends well beyond previously adopted HGL measures, as it encompasses both horizontal and vertical elements, whereas the HGL focuses strictly on horizontal concerns. Moreover, Article 201a provides broader exemptions than those usually available to agricultural producers, covering entire food supply chains as long as at least one producer is involved in the agreement. In light of this, the Guidelines, are crucial in providing legal clarity and encouraging the adoption of sustainable practices.

2.5.1. The Case of Bioland e.V.: Joint initiatives and sustainability agreements within an organic agriculture organization

Bioland e.V. is a registered association in Germany, standing as the foremost for organic agriculture in the country. Its primary objective is to facilitate the transformation of the agricultural and food sectors in line with rigorous ecological standards. The association encompasses a diverse group of stakeholders within the organic value chain, including producers, processors, manufacturers, distributors, and retailers. Together, they participate in Bioland's voluntary private standard and engage in sustainability agreements.

The core of Bioland and its guidelines lies in the "Seven principles of Bioland and agriculture of the future",[77] a framework that undergoes continual enhancement through its dedicated research and development efforts. The Bioland guidelines aim to establish a private standard for organic agricultural production and livestock farming, imposing significantly stricter requirements than those mandated by EU organic regulation. Following the enactment of Article 210a of the CMO, the Bioland guidelines included a

[77] Bioland. (n.d). https://www.bioland.de/about-bioland

new sustainability agreement, namely the "Added Value Assurance System Bioland Milk",[78] designed to support long-term sustainable milk production by compensating producers for the added sustainability value of their products. This compensation payment is deemed essential to maintain production at the required standard and sustain long-term operations and it's periodically revised according to the indispensability criterion outlined in Article 210a of the CMO.

However, due to the expenses incurred while adhering to the more sustainable standards sustainability agreements involve costs that cannot be overlooked. One of the main obstacles Bioland faces is guaranteeing its products' accessibility to consumers at reasonable prices. In the past years, research on consumer behaviour has highlighted a significantly strong willingness to pay premium prices for sustainable products. Nevertheless, the indirect interaction between producers and consumers hinders consumers' ability to accurately understand the sustainability of products displayed on the shelves. Hence, it is crucial for participants involved in the agri-food value chain to report on adherence to sustainability agreements and to publish clear market reports.

[78] Mehrwertsicherungssystem Bioland Milch; ibidem.

CHAPTER III

HOW DO THE ADVANTAGES OF NEW SUSTAINABILITY-ORIENTED POLICIES COMPARE TO THEIR POTENTIAL ADVERSE IMPACTS ON COMPETITION?

3.1. Hiding behind green initiatives: The risk of greenwashing

Sustainability has emerged as a critical consideration for consumers and investors who are concerned about the effects of climate change. Being one of the main focuses of the New Consumer Agenda,[79] the transition towards a greener economy has increased consumer interest in sustainable products. In this context, the European Green Deal highlights the importance of enabling consumers to make informed choices.

According to the European Environmental Bureau, the usage of EU Ecolabel[80] has been growing rapidly in the past six months, covering over 95000 certified products and services available on the EU market. Even though numerous labels assert that their products are greener or more sustainable compared to others, can consumers be sure that these claims are founded on solid evidence?

A 2020 investigation by the European Commission outlined that 53.3% of the examined 150 environmental claims assessed within the EU were ambiguous, exaggerated, or misleading, while the other 40% lacked substantiation. Nowadays, there are over 230 green labels across the EU, each varying greatly in terms of transparency and reliability. This phenomenon, called greenwashing,[81] is defined by the European Parliament as "*the practice of giving a false impression of the environmental impact or benefits of a product, which can mislead consumers*"[82]. Generally, it encompasses a variety of practices rather than a single type. Some examples include misleading labels, red herrings, irrelevant claims, or approximate terminology. The problem arises as consumers often recognize these broad environmental claims as absolute, perceiving that a product or service has

[79] European Commission. (2020, November 13). New Consumer Agenda: European Commission to empower consumers to become the driver of transition.
[80] European Environmental Bureau. (n.d.). EU Ecolabel. https://eeb.org/work-areas/circular-economy/eu-ecolabel/
[81] Term coined in the 1980s by Jay Westerveld, is a blend of green + whitewashing.
[82] European Parliament. (2024). Stopping greenwashing: How the EU regulates green claims.

zero negative environmental impact. Unfortunately, greenwashing goes beyond mere unethical business conduct since companies that deceive consumers are inflicting harm.

The lack of standardized regulations created an unequal competitive environment in the EU market, disadvantaging truly sustainable businesses. For this reason, in March 2020, the Commission proposed the Circular Economy Action Plan,[83] a product policy framework aiming to achieve sustainable products, services, and business model standards and to transform consumption patterns.

However, the need for more specific regulations for environmental claims led to the EC proposal of the March 2022 "Directive empowering consumers for the green transition through better protection against unfair practices and better information",[84] aimed at ensuring that "*consumers commitment is not hampered by misleading information"* and that they receive *"strong new tools to make informed choices and increase sustainability of the products and our economy with this proposal"*(Věra Jourová)[85]. By revising the Unfair Commercial Practices Directive (UCPD),[86] the proposal forbids companies from making broader environmental claims unless they can demonstrate environmental performance to be directly relevant to the claim. This measure is part of the initiatives outlined in the Commission's 2020 New Consumer Agenda and the 2020 Circular Economy Action Plan, serving as a follow-up to the European Green Deal. The Council and Parliament achieved a provisional agreement on this matter in September 2023, but it was formally adopted in the following February.

Designed to work in conjunction with the Green Claims Directive,[87] these legislative acts aim to enhance consumer protection by subjecting traders to more rigorous scrutiny regarding the environmental claims they make about their businesses and products. Furthermore, the Green Claims Directive establishes new criteria for environmental labelling programs, including a mandate for Member States to create a process for

[83] European Commission. (2020). A new Circular Economy Action Plan for a cleaner and more competitive Europe. COM(2020) 98 final.
[84] European Commission. (2022, March 30). Circular Economy: Commission proposes new consumer rights and a ban on greenwashing.
[85] Vice President of the European Commission for Values and Transparency since 1 December 2019.
[86] European Commission. (n.d.). Unfair commercial practices directive. European Commission.
[87] European Commission. (2023). Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) (COM/2023/166 final).

approving new environmental labelling schemes to include a certificate of conformity issued by an independent verifier. The Green Claims Directive received approval from a joint committee in January 2024 and is scheduled for a vote in an upcoming plenary session, after which it will be addressed by the new Parliament following the European elections scheduled for June 2024.

It's commonly observed across various industries that some companies engage in greenwashing their products to capitalize on the growing trend of green consumerism. Practically speaking, greenwashing remains a primary focus for both regulators and private enforcement agencies as "*EU antitrust rules allow companies to pursue genuinely green initiatives jointly, while preventing greenwashing that would harm consumers*" (Vestager, 2021)[88]. Recognizing the risks of greenwashing, some countries have taken steps to introduce Guidelines specifically dedicated to the use of environmental claims. With the EU leading the initiative through its new legislative package, companies should reassess their existing green claims to ensure that they are robustly substantiated, specifically those related to carbon offsetting. Companies should also establish appropriate processes to mitigate greenwashing risks because while some claims may require enhanced documentation and substantiation, others may no longer be allowed.

3.2. The BMW, Volkswagen, and Daimler Case: The cartel impeding sustainability

As explained in the Horizontal Guidelines, companies are allowed, under specific circumstances, to enter agreements to collectively pursue the objectives of sustainable development. However, there are cases where companies, ostensibly promoting environmental goals through such initiatives, ultimately engage in collusion to the detriment of competition. In these instances, combating cartels emerges as a central challenge for antitrust, given their negative impact on the market.

In July 2021, the European Commission fined German automakers BMW, Volkswagen Group, and Daimler a total of 875 million euros for violating EU antitrust rules by colluding on the technical development for nitrogen oxide cleaning. The contested

[88] European Commission. (2021). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A competition policy fit for new challenges. COM(2021) 713 final.

collusive conduct spanned over five years[89] during which car manufacturers colluded to restrict competition and refrained from developing technology beyond the minimum legal requirements, despite having the capability to do so. Specifically, Daimler, BMW, and the Volkswagen Group held regular meetings to discuss the development of selective catalytic reduction (SCR) technology, which reduces harmful nitrogen oxide (NOx) emissions from diesel cars by injecting urea (AdBlue[90]) into the exhaust. Sharing commercially sensitive information, the parties agreed on the expected tank sizes and ranges of AdBlue consumption for future car models. This cooperation effectively eliminated uncertainties about their future market actions regarding AdBlue refill intervals, thereby limiting competition regarding product features relevant to customers.

In October 2017, the Commission conducted inspections at the offices of German automotive manufacturers and subsequently opened a detailed investigation in September 2018. This probe assessed potential collusion among the firms aimed at avoiding competition in the development and deployment of emission-cleaning technologies for petrol and diesel cars. In April 2019, the European Commission issued a Statement of Objections against Daimler, BMW, and the Volkswagen Group. This was related to their collaboration on developing SCR systems for diesel cars and Otto particle filters for reducing emissions from petrol cars.

In this context, Margrethe Vestager, the Executive Vice-President of the Commission in charge of competition policy, stated that "*the five car manufacturers Daimler, BMW, Volkswagen, Audi and Porsche possessed the technology to reduce harmful emissions beyond what was legally required under EU emission standards. But they avoided to compete on using this technology's full potential to clean better than what is required by law. So today's decision is about how legitimate technical cooperation went wrong. And we do not tolerate it when companies collude. It is illegal under EU Antitrust rules. Competition and innovation on managing car pollution are essential for Europe to meet our ambitious Green Deal objectives. And this decision shows that we will not hesitate to take action against all forms of cartel conduct putting in jeopardy this goal"*[91].

[89] between 25 June 2009 and 1 October 2014.
[90] Liquid urea added to the exhaust stream to convert nitrogen oxide into harmless water and nitrogen.
[91] European Commission. (2021, July 8). Antitrust: Commission fines car manufacturers €875 million for restricting competition in emission cleaning for new diesel passenger cars [Press release].

Despite knowing that using more AdBlue liquid could have significantly improved the removal of nitrogen oxide emissions beyond legal requirements, automakers chose not to do so. Indeed, companies agreed that it was more beneficial for them to coordinate and ensure that none would exceed the minimum cleaning standard required by law. This approach eliminated the inherent threat of a competitive disadvantage if any of the competitors fully exploited the developed technology's capabilities. Such decisions negatively impacted the environment, consumer health, and innovation, which is a key driver of competition.

Consequently, in July 2021, the Commission finally adopted its decision, confirming the existence of a collusive cartel [92] among the three automotive manufacturers. The behaviour was considered an infringement by object, specifically a limitation of technical development, as clearly outlined in Article 101(1)(b) of the TFEU and Article 53(1)(b) of the European Economic Area (EEA) Agreement[93]. Both articles prohibit cartels and other practices that restrict business competition, including the limitation of technical development.

In conclusion, the cartel involving BMW, Volkswagen, and Daimler highlights how innovation serves as a key tool for Europe to tackle sustainability. At the same time, ecological initiatives should not be used as a means to collude but should serve as a new incentive for companies to increasingly compete. Only through such competition can the market become more efficient, offsetting the costs of technological development and sustainable initiatives, thereby enhancing consumer benefits.

3.3. Can businesses safely collaborate for sustainability?

Cooperation is crucial for addressing climate change and fostering a sustainable future. While individual company initiatives are important, the complex issue of climate change demands robust partnerships among businesses that are increasingly pressured by governments and consumers to meet environmental targets and adopt responsible practices. To achieve these goals, businesses often find themselves needing to collaborate.

[92] A cartel consists of a group of independent companies that join forces to fix prices, limit production, or divide markets or customers among themselves. Cartels may also collude on product quality or innovation.

[93] European Union. (2013). Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements (2013/C 362/03). Official Journal of the European Union.

Not only do such collaborations amplify impact through economies of scale, but also they mitigate risks and spur innovation, especially in the development of new technologies. By working together, businesses can access a broader range of expertise, skills, and resources that may not be available internally[94]. Furthermore, collaborations allow participants to leverage their unique strengths, making it possible to address challenges that would be insurmountable alone. However, such sustainability agreements must comply with competition laws, which presents a challenging regulatory landscape.

The latest guidelines from the European Commission regarding green initiatives provide clarity that existing anti-trust regulations concerning firms' collaborations shouldn't be viewed as automatic impediments to cooperative efforts toward sustainability. Instead, these guidelines serve to assist companies in evaluating their sustainability endeavours within the framework of EU competition law, thereby fostering an environment that safeguards companies committed to such initiatives. Consequently, the European Commission is actively urging investors to present their collaboration proposals for discussion and assessment to determine what qualifies as a low-risk collaboration.

3.3.1. The ACM's role in green energy initiatives: Empowering sustainable collaborations

Aligned with the recently updated European Commission Guidelines, the Netherlands Authority for Consumers and Markets (ACM) aims to ensure that competition regulations do not hinder agreements that foster a more sustainable society.

In 2022, the ACM approved two collaborative initiatives designed to enhance the sustainability of the energy sector. As noted by Martijn Snoep, Chairman of the Board of ACM, "*Businesses are allowed to join forces in order to realize sustainability goals. The Dutch Competition Act does offer such opportunities. We are happy to help businesses that have questions about such collaborations. Various organizations have already approached us with initiatives that contribute to the transition towards sustainable energy and other sustainability goals. We welcome that*"[95].

[94] The Sustainability Institute. (2020, December). Leveraging the Power of Collaborations (p. 22).
[95] Authority for Consumers & Markets (ACM). (2022). ACM favors collaborations between businesses promoting sustainability in the energy sector.

The first initiative involves a collaboration between the VEMW (Energy, Environment and Water Association) and the Hollandse Kust wind farm. This agreement sets a fixed energy price for association members in exchange for their commitment to a long-term power purchase agreement (PPA). Having the opportunity to directly purchase green energy from the producer, this cooperative arrangement enables VEMW members to lock in a stable electricity price for several years, use sustainable energy to decrease their CO2 emissions, and support the production of renewable energy by the participating members. According to the ACM, this initiative complies with the Dutch Competition Act (DCA) as it does not restrict the ability of businesses and wind farm developers to buy and sell sustainable energy through other channels. However, the ACM stipulates that all parties involved in purchasing energy under the power purchase agreement (PPA) must be members of VEMW.

The second initiative features a cooperative effort among Dutch regional grid operators to lower CO2 emissions by agreeing to a higher purchase price per ton of CO2, effectively incentivizing reductions in emissions. These agreements exemplify regulatory support for innovative partnerships aimed at environmental sustainability, making it more attractive for operators. Given that such collaboration could potentially breach cartel regulations, the ACM has provided an informal opinion upon request from the involved parties. Following an accurate evaluation, the ACM determined that the agreement meets the criteria outlined in Article 6(3) of the DCA and complies with the Draft Guidelines on Sustainability Agreements.

Clearly, the Dutch ACM emphasizes the importance of businesses in the energy sector contributing to a sustainable economy and achieving climate goals. Encouraging businesses across all sectors of the Dutch economy to engage in this effort, the ACM is open to reviewing business plans to ensure they comply with the Dutch Competition Act. This action facilitates market operations, benefiting both people and businesses now and in the future. Not only does this approach support environmental objectives, but also it ensures fair competition within the market.

3.4. How significant are collective benefits, and when do they matter?

The interaction between competition law and sustainability is quite controversial. Among the numerous topics debated, one critical aspect is the requirement provided by Article

101(3) of the TFEU. As previously explained, this article mandates that a sustainability agreement limiting competition can only be deemed lawful when "*allowing consumers a fair share of the resulting benefits*"[96] of the agreement. According to the Commission's strict interpretation, this provision suggests that the agreement must, at least, offset any negative impacts on the direct or indirect users of the products or services involved, caused by the competition-limiting nature of the agreement. Moreover, the Draft Guidelines outline several methods for determining how a "fair share" of benefits can be passed on to consumers. One approach is through the "use value", which encompasses the added enjoyment or improved quality that consumers gain from using a product with enhanced sustainability features. Otherwise, the benefits can also come from "non-use" sources, referring to the intrinsic satisfaction consumers experience from purchasing sustainably improved products, even if their direct use of the product remains unchanged.

However, sustainability-related issues become problematic when markets produce negative externalities, which are harmful effects resulting from the production and consumption of a good. These effects are not reflected in the product's price but adversely impact society and the environment. Thereby, the associated costs extend beyond the consumers to all stakeholders impacted by these externalities. Indeed, "*as the sustainability impact from individual consumption accrues not necessarily to the consuming individual but to a larger group, a collective action, such as a cooperation agreement, may be needed to internalize negative externalities and bring about sustainability benefits to a larger group of the society*"[97]. In this context, collective benefits can be quantified in various ways, including estimates of healthcare cost savings, non-market valuations of enhanced natural resource quality, or the reduction of emissions.

However, the Commission underlines that when considering collective benefits under Article 101(3) of the TFEU, it is essential that the users of the relevant products are included among the beneficiaries[98]. Clearly, the Commission limits its evaluation to the

[96] EUR-Lex - 12008E101 - EN
[97] European Commission. (2023). Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023/C 259/01). Official Journal of the European Union. Para. 582.
[98] Ibidem. Para.584.

benefits that accrue to consumers within the market, insisting on a "substantial overlap" between the beneficiaries and the consumer base. This approach results in a notable inconsistency with the objective of delivering sustainability benefits to broader segments of society and has led to considerable debate, particularly regarding the text and examples provided by Paragraph 585 of the 2023 Draft Revised Guidelines.

Specifically, Paragraph 585 provides two illustrative examples from the Commission: one demonstrating a sustainability agreement that benefits the product's users, potentially qualifying for an exemption under Article 101(3) of the TFEU, and another example where such benefits, and consequently the exemption, do not apply.

The first example pertains to a sustainability agreement among fuel producers aimed at reducing the pollution levels of petrol. This agreement might lead to higher fuel prices due to a decrease in the variety of available fuel types, an effect considered anti-competitive. However, it also benefits society by improving air quality. Under the Commission's suggested framework, such an agreement could be exempt from competition laws if the environmental advantages provided to consumers adequately offset the increased fuel costs. It is important to note that the negative health impacts of air pollution from vehicle emissions affect everyone in the affected area indiscriminately. However, the health benefits to other consumers, such as those who do not buy the less pollutive fuel but live in areas suffering from vehicle emissions, are not considered relevant in this assessment. If it were determined that the cost of the cleaner fuel outweighs the health benefits to consumers, then this agreement would not be approved under competition rules. In this scenario, there is a clear overlap between the consumers in that market and the pool of beneficiaries. The Commission recalls that "*to the extent that a substantial overlap of consumers and the beneficiaries can be established, the sustainability benefits from cleaner air are in principle relevant for the assessment and can be taken into account if they are significant enough to compensate consumers in the relevant market for the harm suffered*"[99].

[99] European Commission. (2023). Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023/C 259/01). Official Journal of the European Union. Para. 585.

Conversely, the second example involves a sustainability agreement among cotton growers to supply cotton cultivated using fewer chemicals and less water. The Commission specifies that benefits deriving from reduced chemical and water usage in the cotton production process would not be considered relevant under Article 101(3) of the TFEU if they are limited to local stakeholders, such as residents living near the cotton fields. Additionally, the Commission outlines that "*such environmental benefits could in principle be taken into account as collective benefits. However, there is likely no substantial overlap between the consumers of the clothing and the beneficiaries of these environmental benefits that occur only in the area where the cotton is grown*"[100]. Therefore, any agreement aimed at implementing these sustainability measures would not be eligible for an exemption from EU competition rules based on the collective societal benefits it provides. Both examples highlight the inherent challenge of demanding full compensation to users, raising questions about whether consumers should bear any costs to enhance the welfare of stakeholders outside the market. To address this issues, two potential changes could be considered either separately or together: expanding the definition of beneficiaries to encompass a wider array of consumers, and clarifying that benefits to consumers in the relevant market are valid even when the consumers are not significantly the same group as the beneficiaries. These modifications would ensure a more inclusive and equitable consideration of benefits arising from sustainability agreements.

3.5. Innovation and antitrust: Balancing AI with competition

Innovation is a key driver of economic growth and plays a crucial role in enhancing quality of life in the long run. Aiming to safeguard and stimulate competitive dynamics that transform innovative ideas into tangible benefits for consumers, antitrust law has increasingly focused on fostering innovation. The research on productivity and growth consistently indicates that innovation is the main factor behind improving living standards over time. Therefore, promoting innovation through effective competition policy is essential for substantial economic growth and overall welfare.

According to Nobel laureate Edmund Phelps, Western nations with historically strong and sustainable growth, which have also most effectively overcome crises, are those with

[100] Ibidem.

dynamic, innovation-driven economies. These economies constantly seek to develop new products and services or to discover innovative methods of production[101]. Clearly, innovation is an indispensable tool in both environmental-related issues and antitrust law. When companies compete to develop new products or services, consumers will benefit in terms of a variety of choices. Moreover, competition drives technological advancements, which are crucial for facilitating the green transition. Ultimately, competitive markets promote sustainable progress. Given today's resources, encouraging companies to compete with one another can lead to the development of cutting-edge technologies, which are often vital for achieving desired outcomes.

Nowadays, the rise of artificial intelligence (AI) is increasingly influencing various sectors, notably in enhancing environmental outcomes. In fact, AI offers technological benefits that could positively impact the attainment of the 17 Sustainable Development Goals (SDGs) and their 169 targets outlined in the 2030 Agenda for Sustainable Development. Research indicates that AI could serve as a tool for 134 targets (79%) across all SDGs, primarily through technological advancements that help address existing challenges. However, 59 targets (35% of the total SDGs) might be adversely affected by AI development[102]. Clearly, efforts to foster AI development aligned with sustainable development by 2030 could unlock significant benefits that extend well beyond the SDGs within this century. It is crucial for stakeholders from all countries to participate in this discourse to ensure inclusive progress. Conversely, delaying or avoiding such discussions risks leading to an inequitable and unsustainable AI-driven future.

As businesses and the global economy increasingly adopt artificial intelligence (AI), the relevance of competition law is growing, accompanied by complex techno-legal and regulatory challenges. AI technologies are transforming market dynamics, potentially disrupting traditional markets, and introducing unique competition concerns. The use of AI presents a potential risk as it enables firms to reach collusive outcomes without direct communication. Specifically, AI algorithms programmed to control pricing decisions, maximize profits, and access public information about competitors' prices can lead to

[101] Pitruzzella, G. (2015). Competition policy in the Italian economy: Current developments and lines of action.
[102] Vinuesa, R., Azizpour, H., Leite, I. et al. (2020). The role of AI in achieving the Sustainable Development Goals. Nature Communications, 11(1), 233.

unintended anti-competitive practices. Clearly, AI-driven anti-competitive practices, such as price-fixing and market manipulation, present new risks as these technologies can facilitate tacit collusion and undermine competitive market dynamics. This poses a significant compliance challenge for companies that use price matching and monitoring algorithms or implement blockchains for smart contracts, particularly in markets with only a few large competitors. Furthermore, AI can enable the exploitation of market power, resulting in discriminatory practices or the exclusion of competitors. This risk is particularly pronounced in situations involving mergers or exclusive cooperation agreements that consolidate vast amounts of Big Data. In fact, a dominant company with access to extensive and unique Big Data might leverage this information to discriminate against competitors or customers, thereby reinforcing its market dominance and undermining fair competition.

To address this complex challenge, competition authorities must take proactive steps. Developing in-house AI expertise is crucial, enabling them to understand the nuances of AI technologies and their impact on competition. Regulators should also issue guidelines and recommendations for the responsible use of AI to help businesses avoid anti-competitive practices. Conducting regular market assessments, particularly in sectors with significant AI penetration, is essential to detect anti-competitive behaviours effectively. Moreover, proactive enforcement against AI-driven anti-competitive practices, such as collusion or monopolistic behaviours, is essential to uphold fair competition.

In conclusion, the intersection of competition law and AI is a dynamic and rapidly evolving field that demands a proactive, swift, and nuanced approach to ensure fair competition, foster innovation, and maximize the benefits of AI while mitigating its risks.

CONCLUSION

As recalled by Commissioner Vestager, "*Sustainability is at the centre of our politics. […]. We've made a commitment to sustainability; but we're still working out exactly what has to change, to make that promise a reality. [...] Every one of us – including competition enforcers – will be called on to make our contribution to that change"*[103].

EU competition law plays a pivotal role in advancing sustainability objectives and combating climate change. Therefore, it is essential to interpret EU competition law provisions in alignment with the EU's sustainability commitments, including the Sustainable Development Goals (SDGs) and the EU Green Deal. The inclusion of a chapter addressing sustainability agreements in the Horizontal Guidelines represents a significant step forward in embracing the policy objectives outlined in the European Green Deal, which aims to support the EU in achieving climate neutrality by 2050.

In its pursuit of leading global climate action and achieving environmental targets, the Commission calls on businesses to contribute to fostering a more sustainable economy. Nonetheless, sustainability initiatives are not always aligned with EU law. Thus, it is important to properly evaluate these initiatives within the framework of Article 101 TFEU.

Often, individual businesses are discouraged from pursuing more sustainable innovative solutions alone due to the significant costs involved. This is why, in certain cases, collaboration serves as a crucial tool for achieving Green Deal objectives. However, collaboration carries substantial risks in terms of antitrust violations, prompting companies to exercise particular caution when considering joint ventures for sustainability purposes. Both the Commission and various national authorities have proposed initiatives to clarify the regulatory framework, ensuring that sustainable progress is not hindered by the risk of breaching existing regulations.

Specifically, in the 2023 Horizontal Guidelines, the European Commission dedicates an entire chapter to the assessment of sustainability agreements. Although Article 101 TFEU typically prohibits agreements among competitors, sustainability agreements between

[103] Commissioner Margrethe Vestager. (24 October 2019). GCLC Conference on Sustainability and Competition Policy, Brussels.

market participants may, under specific circumstances, qualify for exemption under the cartel exception outlined in Article 101(3) TFEU. However, there has been a considerable debate on how to assess sustainability agreements under Article 101(3) TFEU, particularly regarding the types of benefits they provide—whether these benefits are within or outside the market, to society as a whole, or only to those directly affected by the agreement, and whether they are long-term or short-term. The Guidelines provide guidance, but they will undoubtedly not conclude the debate.

Globally speaking, competition authorities have varied focuses: some combat greenwashing while others develop frameworks to facilitate competitor collaboration on sustainability. This results in a fragmented set of rules worldwide, complicating compliance efforts for businesses operating across different regions. To effectively tackle global sustainability challenges, a unified international approach is crucial. The growing interconnectedness of economies and ecosystems underscores that no single country or organization can address these issues alone. Sustainability achievement depends on a collective international effort that harmonizes competition law with environmental objectives.

The adoption of global standards plays a vital role in this process. Initiatives like the UN Global Compact's principles, the OECD Guidelines for Multinational Enterprises, and the UN Sustainable Development Goals promote cooperation among businesses in areas such as climate action, green energy, and responsible production. These standards are crucial for encouraging a common approach that respects competition law, ensuring that efforts toward environmental sustainability are both effective and legally compliant. Such frameworks not only facilitate global cooperation but also ensure that environmental and economic policies are mutually reinforcing, promoting sustainable development worldwide. International collaboration and coordination are therefore essential for a seamless transition to a more sustainable future.

In conclusion, considering that both the Commission and several Member States have already adopted concrete measures to promote sustainable progress, it is reasonable to believe that competition law does not represent an obstacle to sustainability action, but it's a key instrument to support the EU's focus on sustainability and progression towards climate neutrality by 2050.

BIBLIOGRAPHY

References

Ahuja, K. (2022). *Innovating antitrust law: How innovation really happens and how antitrust law should adapt*. Roosevelt Institute. https://rooseveltinstitute.org/wp-content/uploads/2022/09/RI_InnovatingAntitrustLaw_202210.pdf

Albæk, S. (2013). *Consumer welfare in EU competition policy.* Aims and values in competition law, 67-88. https://competition-policy.ec.europa.eu/system/files/2021-09/consumer_welfare_2013_en.pdf

Andersen, E. (2020). *The Role of Consumer Welfare in EU Competition Policy: How Understanding the Priority Conferred Upon Competition Policy Objectives May Shed Light on Modern Day Inconsistencies*. Konkurransetilsynet. https://konkurransetilsynet.no/wp-content/uploads/2021/03/2020_0073-13-Emily-Andersen-Master-Thesis.pdf

Beetstra, T., & Willis, P. (2022, March 16). *Dutch regulator actively facilitating sustainability developments*. Bird & Bird. https://www.twobirds.com/en/insights/2022/netherlands/dutch-regulator-actively-facilitating-sustainability-developments

Blockx, J. (2022, April 1). *Should European competition law only care about clean air for Europeans? – A comment on paragraph 604 of the European Commission's draft Guidelines on horizontal co-operation agreements*. Kluwer Competition Law Blog. https://competitionlawblog.kluwercompetitionlaw.com/2022/04/01/should-european-competition-law-only-care-about-clean-air-for-europeans-a-comment-on-paragraph-604-of-the-european-commissions-draft-guidelines-on-horizontal-co-operation-agreements/

Brundtland, G. (1987*). Report of the World Commission on Environment and Development: Our Common Future*. United Nations General Assembly document A/42/427. https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf

Business and Industry Advisory Committee to the OECD. (2023, June 2). *Advantages and Disadvantages of Competition Welfare Standards* – Note. Directorate for Financial and Enterprise Affairs, Competition Committee. https://one.oecd.org/document/DAF/COMP/WD(2023)30/en/pdf

Cambien, N. (2022). *Article 101 TFEU and the European Green Deal: from effective competition to sustainable competition*?. In Young Universities for the Future of Europe (YUFE) Law Conference Proceedings (No. 01). https://ssrn.com/abstract=4418154

Claassen, R., & Gerbrandy, A. (2016). *Rethinking European competition law: from a*

consumer welfare to a capability approach. Utrecht Law Review, *12*(1), 1-15. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2736284

ClientEarth. (2021, December). *Giving a voice to the environment by challenging the practice of integrating environmental requirements into other EU policies*. ClientEarth. https://www.clientearth.org/latest/press-office/press/eu-taxonomy-environmental-groups-take-eu-to-court-over-green-gas-label/

Costa-Cabral, F. (2021). *Reply to European Commission Call Competition Policy Supporting the European Green Deal.* Available at SSRN 3778154. https://ssrn.com/abstract=3778154

Cseres, K. (2006). *The Controversies of the Consumer Welfare Standard*. Competition Law Review, 3(2), 121-173. https://ssrn.com/abstract=1015292

De Sadeleer, N. (2023). *Environmental Law in the EU: A Pathway Toward the Green Transition. In Blue Planet Law: The Ecology of our Economic and Technological World* (pp. 21-33). Cham: Springer International Publishing. https://link.springer.com/chapter/10.1007/978-3-031-24888-7_2

Deng, F., & Leonard, G. K. (2008). *Allocative and Productive Efficiency. Issues in Competition Law and Policy*. Chicago: ABA Section of Antitrust Law, Wayne D. Collins, Joseph Angland, eds. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567099

ENRD Thematic Group on Sustainability Agreements. (n.d.). *Bioland e.V.: Collective initiatives and sustainability agreements in an organic farming association*. European Commission.https://ec.europa.eu/enrd/sites/default/files/enrd_publications/case_study_bioland.pdf

Ersbøll, N. C., & Naydenova, L. (2023, May). *ESG and Antitrust: The Austrian Rules Exempting Environmental Collaborations Explained*. Environmental Edge: Climate Change & Regulatory Insights. https://www.arnoldporter.com/en/perspectives/blogs/environmental-edge/2023/05/esg-and-antitrust

Frontier Economics. (2022, April 26). *The European Commission's draft revised guidelines on horizontal agreements – Sustainability agreements*. https://www.frontier-economics.com/media/b15kr5ey/ec-draft-revised-guidelines-on-horizontal-agreements-section-9-sustainability-agreements.pdf

Gassler, M. (2021). *Sustainability, the green Deal and art 101 TFEU: where we are and where we could go*. Journal of European Competition Law & Practice, *12*(6), 430-442. https://academic.oup.com/jeclap/article/12/6/430/6142276

Gerbrandy, A. (2019). *Changing Competition Law in a Changing European Union*. Competition Law Review, 14(1), 33-50. https://www.uu.nl/sites/default/files/2020%20Vol14Iss1Art2Gerbrandy.pdf

Hanawalt, C., & Hearn, D. (2023, August 1). *New report highlights the complex intersection of antitrust law and sustainability goals*. Columbia Law School - Climate Change. https://blogs.law.columbia.edu/climatechange/2023/08/01/new-report-highlights-the-complex-intersection-of-antitrust-law-and-sustainability-goals/

Hearn, D., Hanawalt, C., & Sachs, L. (2023). *Antitrust and Sustainability: A Landscape Analysis*. Available at SSRN 4547522. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4547522

Holmes, S. (2020). *Climate change, sustainability, and competition law*. Journal of Antitrust Enforcement, 8(2), 354-405. https://academic.oup.com/antitrust/article/8/2/354/5819564

Jevtić, M. (2023, May 8). *AI and competition law: Threat or solution*. Gecić Law. Retrieved from https://www.geciclaw.com/ai-competition/

Kenneth G. Elzinga. (1977). *The goals of antitrust: Other than competition and efficiency, what else counts?*125 U. PA. L. REV. 1191 (1977). https://scholarship.law.upenn.edu/penn_law_review/vol125/iss6/4

Kerber, W. (2008). *Should Competition Law Promote Efficiency? Some Reflections of an Economist on the Normative Foundations of Competition Law*. In J. Drexl, L. Idot, & J. Moneger (Eds.), Economic Theory and Competition Law. Cheltenham: Edward Elgar. Available at SSRN: https://ssrn.com/abstract=1075265

Kingston, S. (2011). *Greening EU competition law and policy*. Cambridge University Press. https://www.cambridge.org/core/books/greening-eu-competition-law-and-policy/DE2E92D56BF773F347CC35359833A838

Krabbe, N., Karpathakis, M., Beetstra, T., & Kuipers, P. (2023, July 19). *The new EU regime for horizontal agreements: Sustainability On The Menu In The Commission's Horizontal Guidelines*. Bird & Bird. https://www.twobirds.com/en/insights/2023/global/the-new-eu-regime-for-horizontal-agreementssustainability#:~:text=Sustainability%20agreements%2C%20as%20they%20are,labour%20and%20human%20rights%2C%20the

Kumar, D. (2023, November 5). *AI and antitrust: Balancing innovation with competition*. Business Standard. https://www.business-standard.com/economy/analysis/ai-and-antitrust-balancing-innovation-with-competition-123110500368_1.html

Little, D., Berg, W., Pradille, C., & Aubry, A. (n.d.). *The European Commission's new Guidelines on Sustainability Agreements—legal analysis and interplay with national regimes.* European Competition Law Review. https://www.lw.com/admin/upload/SiteAttachments/LW-Sustainability-2023-44-ECLR-Issue-12-Print.pdf

Loozen, E. (2024). *EU antitrust in support of the Green Deal. Why better is not good enough.* Journal of Antitrust Enforcement, *12*(1), 75-97. https://academic.oup.com/antitrust/article/12/1/75/7085722

Luoma, A., Motta, G., & Bershteyn, B. (2023, November 10). *Antitrust and Sustainability: EU, UK and US Take Divergent Enforcement Approaches*. Skadden Publication. https://www.skadden.com/insights/publications/2023/11/antitrust-and-sustainability

Malinauskaite, J. (2022). *Competition Law and Sustainability: EU and National Perspectives*. Journal of European Competition Law & Practice, 13(5), 336-348. https://doi.org/10.1093/jeclap/lpac003

Marco Colino, Sandra. (January 1, 2024). *Antitrust's Social "Ripple Effect"*. Berkeley Journal of International Law (BJIL), Vol. 42, No. 2, 2024, The Chinese University of Hong Kong Faculty of Law Research Paper No. 2023-29, Available at SSRN: https://ssrn.com/abstract=4681461

Modrall, J. (2023, December 20). *New EU Antitrust Regime for Agricultural Cooperation – Green Shoots.* Kluwer Competition Law Blog. https://competitionlawblog.kluwercompetitionlaw.com/2023/12/20/new-eu-antitrust-regime-for-agricultural-cooperation-green shoots/#:~:text=EU%20antitrust%20rules%20in%20the%20agricultural%20sector&text=Article%20210a%20exempts%20agreements%20of,law%20(subject%20to%20conditions).

Motta, M. (2004). *Competition policy: theory and practice*. Cambridge university press. https://www.cambridge.org/core/books/competitionpolicy/2A8ADAF8BF5443D9CE758DE371EE2C9B

Norton Rose Fulbright. (2020, January). *Sustainability, antitrust and the EU Green Deal.* https://www.nortonrosefulbright.com/enit/knowledge/publications/4d7ef55a/sustainability-antitrust-and-the-eu-green-deal

Norton Rose Fulbright. (2023). *New EU Antitrust Guidelines for Food & Agri Sustainability Agreements.* https://www.nortonrosefulbright.com/en/knowledge/publications/d7060076/new-eu-antitrust-guidelines-for-food--agri-sustainability-agreements

Nowag, J. (2021). *Sustainability & Competition Law and Policy–Background Note*. *OECD DAF/COMP,(2020)*, *3*, 1-39. https://one.oecd.org/document/DAF/COMP(2020)3/En/pdf

OECD. (2012). *Efficiency Claims in Mergers and Other Horizontal Agreements*. https://www.oecd.org/competition/EfficiencyClaims2012.pdf

Pitruzzella, G. (2015). *Competition policy in the Italian economy: Current developments and lines of action*. Presentation to the Italian Parliament of the 2015 Annual Report of the Italian Competition Authority. Rome, June 18, 2015. https://digest.syr.edu/wp-content/uploads/2016/04/Pitruzzella-7-10.pdf

Reed Smith. (2023, November 29). *ESG – approach of CMA's Green Agreements Guidance and EU's updated Horizontal Guidelines to sustainability agreements*. Reed Smith In-depth. https://www.reedsmith.com/en/perspectives/2023/11/esg-approach-of-cmas-green-agreements-guidance-and-eus-updated-horizontal

Ten Kate, A. (2016). *Economic Efficiency as the Ultimate Goal of Competition Policy*. Available at SSRN 2740523. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2740523

The Sustainability Institute. (2020, December). *Leveraging the Power of Collaborations* (p. 22). https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/report-leveraging-the-power-of-collaborations.pdf

Turano, V. (2020, December 20). *The UN Agenda 2030 for Sustainable Development*. Agenzia per La Coesione Territoriale. https://www.agenziacoesione.gov.it/comunicazione/agenda-2030-per-lo-sviluppo-sostenibile/?lang=en

Vinuesa, R., Azizpour, H., Leite, I. et al.(2020). *The role of artificial intelligence in achieving the Sustainable Development Goals*. Nature Communications, 11(1), 233. https://doi.org/10.1038/s41467-019-14108-y

Zhang, H., & Song, M. (2020). *Do first-movers in marketing sustainable products enjoy sustainable advantages? A seven-country comparative study*. Sustainability, 12(2), 450. https://doi.org/10.3390/su12020450

Zuniga, J. (2024, January 12). *Megatrends: Understanding Sustainable Consumers 2023 Key Insights*. Euromonitor. https://www.euromonitor.com/article/megatrends-understanding-sustainable-consumers-2023-key-insights

Institutional websites

Authority for Consumers & Markets (ACM). (2022, February 28). *ACM favors collaborations between businesses promoting sustainability in the energy sector*. https://www.acm.nl/en/publications/acm-favors-collaborations-between-businesses-promoting-sustainability-energy-sector

Authority for Consumers and Markets. (2014). *Vision document competition and sustainability*. https://www.acm.nl/sites/default/files/old_publication/publicaties/13077_vision-document-competition-and-sustainability-2014-05-09.pdf

Badea, A., Bankov, M., Da Costa, G., Cabrera, J. E., Marenz, S., O'Connor, K., ... & Zedler, M. (2021). *Competition policy in support of Europe's green ambition*. European Commission Competition Policy Brief, 1, 2021. https://competitionpolicy.ec.europa.eu/about/news/competition-policy-brief-12021-policy-support-europes-green-ambition-2021-09-10_en

EUR-Lex. (n.d.). *De minimis notice: Exemption for agreements of minor importance*. https://eur-lex.europa.eu/EN/legal-content/summary/de-minimis-notice-exemption-for-agreements-of-minor-importance.html

EUR-Lex. (n.d.). *Guidelines on the application of Article 101(3) TFEU (formerly Article 81(3) TEC)*. https://eur-lex.europa.eu/EN/legal-content/summary/guidelines-on-the-application-of-article-101-3-tfeu-formerly-article-81-3-tec.html

European Commission (2023). *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721(01)

European Commission. (2001). *Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements*. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001Y0106(01)

European Commission. (2020). *A new Circular Economy Action Plan for a cleaner and more competitive Europe*. COM(2020) 98 final. https://ec.europa.eu/info/sites/default/files/a-new-circular-economy-action-plan-for-a-cleaner-and-more-competitive-europe.pdf

European Commission. (2020, November 13). *New Consumer Agenda: European Commission to empower consumers to become the driver of transition*. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2069

European Commission. (2021). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the*

Committee of the Regions: A competition policy fit for new challenges. COM(2021)713. https://eurlex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:52021DC0713&from=EN

European Commission. (2021). *Competition Policy Contributing to the European Green Deal*. https://competition-policy.ec.europa.eu/about/green-gazette/conference-2021_en

European Commission. (2021, December 14). *Efficient and green mobility*. https://transport.ec.europa.eu/news-events/news/efficient-and-green-mobility-2021-12-14_en

European Commission. (2021, July 8). *Antitrust: Commission fines car manufacturers €875 million for restricting competition in emission cleaning for new diesel passenger cars* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581

European Commission. (2022, March 30). *Circular Economy: Commission proposes new consumer rights and a ban on greenwashing.* https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2098

European Commission. (2023). *Commission adopts antitrust Guidelines for sustainability agreements in agriculture.* https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6370

European Commission. (n.d.). *Background - European Competition Network*. European Commission - Competition. https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/background_en

European Commission. (n.d.). *Environmental protection.* https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/solidarity/environmental-protection_en

European Commission. (n.d.). *The EU and the United Nations - common goals for a sustainable future*. https://commission.europa.eu/strategy-and-policy/sustainable-development-goals/eu-and-united-nations-common-goals-sustainable-future_en

European Commission. (n.d.). *Unfair commercial practices directive*. European Commission. https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive_en

European Competition Network. (n.d.). *Competition Policy*. https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network_en

European Parliament. (2019, October 30). *EU competition policy: Key to a fair single market*. In-Depth Analysis. https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2019)642209

European Parliament. (2024). *Stopping greenwashing: How the EU regulates green claims*. https://www.europarl.europa.eu/topics/en/article/20240111STO16722/stopping-greenwashing-how-the-eu-regulates-green-claims

European Parliament. (n.d.). *Competition policy.* https://www.europarl.europa.eu/factsheets/en/sheet/82/competition-policy

Hellenic Competition Commission. (2020). *Draft staff discussion paper on sustainability issues and competition law*. https://www.epant.gr/files/2020/Staff_Discussion_paper.pdf

United Nations Conference on Trade and Development. (2016). *UN Guidelines for Consumer Protection* (2016), https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf

United Nations Framework Convention on Climate Change. (n.d.). *The Paris Agreement*. https://unfccc.int/process-and-meetings/the-paris-agreement

United Nations. (n.d.). *The 17 goals. Sustainable Development*. https://sdgs.un.org/goals

United Nations. (n.d.). *Transforming our world: the 2030 Agenda for Sustainable Development*. https://sdgs.un.org/2030agenda