

Sustainability Agreements

“assessment of agreements between competitors that pursue one or more sustainability objectives”

Discussion by Natalia Fabra

EAGCP, June 2022

Overview

- Overarching question:
 - How competition rules can help sustainability
- Main objective:
 - Provide more clarity in the guidance on horizontal agreements between competitors with a sustainability objective
 - *Soft safe harbour* for sustainability standards
 - Transparent, non-compulsory, open, with a monitoring system, should not involve info exchange and not lead to high price increases

Article 101(3)

Some restrictive agreements may generate economic benefits > negative effects of the restriction of competition

Cumulative conditions for the exemption:

1. Efficiency gains
2. Benefit to consumers (in the relevant market)
3. Indispensability
4. No elimination of competition

Major concerns

1. “Cartel greenwashing”

- Anticompetitive agreements might hide under the green label
- Communication among competitors, even if for good reasons, might trigger anticompetitive coordination in other directions
- Unclear why “sustainability” would merit a distinct treatment other than the attempt to soften competition rules

2. It might play against sustainability

- Competition is a major driver of innovation, which is key for sustainability
- Allowing for competition restrictions might hinder innovation
- Competition on the sustainability dimension eliminated

Major concerns

3. What are firms' true intentions?

- Why would firms “collectively” care about sustainability?
- Why are those “agreements” not achieved through regulation?

4. A cover for price increases?

- The presumption is that “sustainable” actions are costly, but how big is the required price increase?
- Very often, sustainability brings costs down, not up

**A very cautious assessment of
the sustainability agreements is
required!**

Some Remarks

- **Indispensability:** critical!
 - Dutch coal case (2013): assessment of benefits vs costs, but why was the agreement to close down the coal plants necessary?
 - Washing machine CECED (1999): why is an agreement necessary to stop producing low energy efficient washing machines? Diversion ratios?
- **Compensating benefits:**
 - Is this going to be constantly monitored?
 - Extremely complex to elicit WTP; oftentimes, non-existing products/technologies/materials involved
- **Residual competition:**
 - Rare to find cases in which *all* competition is eliminated
 - Even if residual competition remains, it does not mean it is not harmful

Sustainability efforts bring in positive externalities but it is unclear whether the best way to foster them is through a lenient interpretation of competition policy