10 COMPETITION AND SUSTAINABILITY: CRITERIA APPLIED IN THE ANALYSIS OF SUSTAINABILITY AGREEMENTS BETWEEN COMPETITORS[1]

Concorrência e sustentabilidade: critérios aplicados na análise de acordos de sustentabilidade entre concorrentes

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STRUCTURED ABSTRACT

Objective: this paper aims to contribute to the discussion about the competitive assessment of sustainability agreements between competitors by identifying and analyzing the position of various competition agencies on the subject. The hypothesis is that competition authorities have rarely addressed the issue, and, when this has been done, they have not yet provided criteria adapted to the economic challenges of the environmental problem, especially when it comes to quantifying benefits.

Method: a range of documents from 29 jurisdictions were mapped, with the purpose of determining how many and which authorities have already taken a stand in the debate and what criteria is being applied.

Conclusions: the data collected indicate that only 13 of the 29 jurisdictions analyzed have expressed a view on the subject, with different perspectives coexisting among the jurisdictions. We found fragmented guidance and recurring reliance on traditional consumer welfare tools that struggle to account for environmental externalities. Our review identifies five recurring and non-cumulative assessment criteria across jurisdictions: (i) prevention of the exchange of sensitive information; (ii) voluntary participation and possibility of adhesion by third parties; (iii) limitations on combined market share of participants and market coverage; (iv) time limitations on the agreements; and (v) preservation of other competitive aspects. We also document emerging, but sparse, approaches to out-of-market and collective benefits. By mapping these patterns, this paper intends to clarify the

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Recebido em: 14/01/2025 **Aceito em:** 05/11/2025 **Publicado em:** 10/12/2025

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https://doi.org/10.52896/rdc.v13i2.1921

current regulatory landscape and to provide a structured foundation to help reduce legal uncertainty and foster sustainability-oriented collaborations.

Keywords: antitrust law; sustainable development; consumer welfare; externalities; competition authorities.

RESUMO ESTRUTURADO

Objetivo: este artigo tem como objetivo contribuir para a discussão sobre a análise concorrencial de acordos de sustentabilidade entre concorrentes, identificando e examinando a posição de diversas autoridades concorrenciais sobre o assunto. A hipótese é que os órgãos de defesa da concorrência têm abordado o tema de forma esparsa e, quando o fazem, ainda não apresentam critérios adaptados aos desafios econômicos do problema ambiental, especialmente no que se refere à quantificação dos benefícios.

Método: foram mapeados diferentes documentos de 29 jurisdições, com o objetivo de determinar quantas e quais autoridades já se posicionaram sobre o tema e quais critérios estão sendo aplicados na análise.

Conclusões: os dados coletados indicam que apenas 13 das 29 jurisdições analisadas expressaram uma posição sobre o assunto, com diferentes perspectivas coexistindo entre as jurisdições. Identificamos orientações fragmentadas e uma dependência constante de ferramentas tradicionais de bem-estar do consumidor, que apresentam gargalos para a consideração de externalidades ambientais. Nossa análise identifica cinco critérios recorrentes e não cumulativos de análise entre as jurisdições: (i) prevenção da troca de informações sensíveis; (ii) participação voluntária e possibilidade de adesão de terceiros; (iii) limitações na participação de mercado combinada dos participantes e na cobertura de mercado; (iv) limitações de tempo nos acordos; e (v) preservação de outros aspectos competitivos. Também identificamos abordagens emergentes, porém esparsas, sobre benefícios coletivos e externos aos mercado relevante. Ao mapear esses exemplos, este artigo busca esclarecer o panorama regulatório atual e oferecer uma base estruturada para ajudar a reduzir a insegurança jurídica e promover colaborações sustentáveis.

Palavras-chave: direito concorrencial; desenvolvimento sustentável; bem-estar do consumidor; externalidades; autoridades concorrenciais.

Classificação JEL: D61; D62; K21.

1 INTRODUCTION

The environmental crisis is of undeniable urgency. In recent decades, global temperatures have risen significantly, and environmental disasters have become more frequent, causing immense damage in many parts of the world. As a result, social and political pressure has been placed on large companies to reduce the environmental damage and social costs caused by business activity. This pressure, combined with the development of complex corporate governance policies, has resulted in an increase in private sustainability initiatives (Eccles; Klimenko, 2019, p. 107-108; Dyck *et al*., 2019, p. 713). Due to different economic challenges, these initiatives are, in many cases, developed collaboratively, involving competitors in the same sector.

In the context of competition law, however, the receptiveness of competition authorities to sustainable cooperation agreements between competitors is still unclear, which can discourage market players. In this sense, this paper aims to analyze whether there is inertia (or inability) on the part of competition authorities to take a stance on the issue and, where necessary, adapt their dogmatic analysis, especially with regard to efficiencies, to the challenges of the climate crisis, even in the face of its irrefutable urgency.

The research described here seeks to identify and examine documents of 29 competition agencies, with the aim of specifying the analysis adopted for this type of agreement and the similarities and differences between jurisdictions, evaluating the effectiveness and possible limitations of tools used, especially regarding the quantification of benefits typically related to the consumer welfare standard.

We intend here to provide an overview of the positions of competition agencies around the world to verify the existence (or absence) of regulatory guidance on the subject, which can mitigate legal risks and uncertainties, and identify practical conditions under which sustainability agreements can be lawfully structured.

As detailed in the methodology section, our mapping relies on publicly available sources as of January 2024. This creates publication bias (informal or non-published guidance and non-reported cases are not captured) and time-bound inference risks given an evolving policy landscape. These constraints may understate guidance in some jurisdictions and limit comparability of depth across sources. We therefore present our findings as indicative patterns rather than definitive jurisdictional rankings.

https://doi.org/10.52896/rdc.v13i2.1921

This paper is divided into four parts, including this introduction. The second part presents an economic background to the research, discussing incentives for collaboration among companies on the establishment of sustainability policies and presenting possible obstacles related to the antitrust assessment of such collaborations. The third part then presents and discusses the data collected, with emphasis on the criteria applied by authorities. The fourth part concludes.

2 ENVIRONMENTAL URGENCY AND CHALLENGES TO THE TRADITIONAL ANTITRUST FRAMEWORK

2.1 Negative externalities and private environmental initiatives

As an alternative to individual action, sustainable agreements have emerged to overcome market failures that hinder private individual strategies to protect the environment. Such agreements deal with the establishment of binding obligations between the signatories to raise sustainability levels during production, distribution, supply or acquisition of products or services in a given sector. In this sense, they do not relate to mere compliance with environmental and regulatory standards, but rather to the establishment, between the participants, of a higher level of sustainability for their activities, going beyond the legal minimum required.

In many markets, there are problems of negative externalities – such as pollution. As it is borne by agents outside the production and consumption process, externalities are not transmitted in the final price passed on to the consumer if internalization mechanisms are absent and may jeopardize the efficient allocation of resources (Varian, 2015, p. 891). Therefore, it may represent a signaling failure in the price system, which shifts the economic system in a different manner than would be efficient[3] and desired by individuals if they had access to complete information (Nusdeo, 2015, p. 128).

In this sense, without a consumer market willing to pay a higher price for additional sustainable investments[4], it may not be economically rational for a company to invest individually in internalizing externalities. This is because it may suffer an increase in costs and lose its competitiveness when compared to other market players who take advantage of this price transmission failure to charge a lower price and capture all the diverted demand[5]. In this scenario, negative externalities would then remain at a similar or even higher level, hindering the achievement of collective benefits[6].

Alternatively, with the establishment of a sustainability agreement between competitors, economic disincentives are reduced; consequently, environmental initiatives are stimulated. The

3 Without considering the cost of pollution - an externality of the production of the good or service - there is an unrealistic movement in the equilibrium price of the product within the analysis of supply and demand. As a result, there is an incentive to achieve greater supply and consumption, encouraging polluting activities (Dolmans, 2020, p. 2).

4 As outlined by the definition of externality, pollution is a cost borne by society, even if the benefits of consumption are limited to the consumer. Thus, consumers may remain free riders, taking advantage of prices that do not include the real costs of production. This poses a problem of coordination and the related difficulty of achieving collective benefits when discussing the consumer's fear of "sacrificing" their interest when they are not sure that other agents will do so and will not engage in opportunistic behavior - which leads to the maintenance of a scenario of deficient equilibrium (Mielke; Steudle, 2018, p. 93-94).

5 Models show that, in some markets, a company's' profitability may fall after individual investment in sustainability (Paha, 2023).

6 In sequential analyses of games, one factor that stands out as limiting the contribution of agents with cooperative tendencies is precisely the perception of free riding, impacting their participation until, in the absence of institutional or communication mechanisms, they tend to direct their interactions in a "downward cascade" spiral (Ostrom, 2000, p. 142).

certainty of action by other market players allows companies to gain security to develop sustainable initiatives and reduces the risk of opportunistic behavior. Thus, considering the collective efforts, the deterrent effect of first-mover disadvantage is reduced.

From an antitrust standpoint, however, this type of agreement faces an obstacle: legal uncertainty regarding the antitrust authorities' perspectives on the legality of sustainability agreements between competitors. Although the environmental issue is of undeniable urgency, the approach of the competition authorities towards the authorization of such agreements is often silent and nebulous (OECD, 2021a, p. 48). This approach may impede initiatives, as it is uncertain what treatment will be given to the agreements or how they should be designed.

2.2 Antitrust obstacles to environmental corporate governance policies

Contemporary antitrust tools are mainly designed considering the consumer welfare standard (Fox, 1987, p. 918-919; Orbach, 2011, p. 137-138), which places value on practices that do not harm the consumer. If consumer harm is present, consumers need to be adequately compensated by efficiencies that are passed on to them (Cade, 2016, p. 45-46).

Usually, the analysis of efficiencies is restricted to efficiencies that occur in the market in which the anti-competitive effect is perpetuated. This is an apparent consequence of the consumer welfare standard: if the concern is centered on the surplus passed on to consumers, any damage inflicted on consumers must be compensated directly to consumers, without considering benefits outside the relevant market - analogous to an "in or out" model (OECD, 2023, p. 3).

In Brazil, although Article 88, Paragraph 6 of Law No. 12.529/2011 (LDC) (Brasil, 2011) expresses that the benefits of mergers that significantly restrict competition are relevant when passed on to consumers (i.e., without a clear limitation that efficiencies should be compensatory within the relevant market affected), practice has consolidated that only those benefits felt in the relevant market affected should be considered[7-8].

Another example is article 101, paragraph 3, of the Treaty on the Functioning of the European Union (TFEU), which has very similar wording to that of the LDC and states that efficiencies can be taken into account in agreements when they ensure "consumers a fair share of the resulting benefit". In Europe, there is also a prevailing understanding that harmful effects must be compensated by efficiencies accruing to substantially the same consumers that suffer the harm from the restrictive agreement (European Union, 2023, p. 4-5).

This is a central point for assessing sustainability agreements. Environmental externalities affect society as a whole. Thus, a reduction in such externalities raises collective benefits, not limited to consumers in a given market. In this sense, even if there is the negative effect of increased costs for the producer, which, as a result, may be reflected in the price paid by the end consumer, there is also the benefit of reducing the social cost of production.

This argument, however, would not be valid under an analysis that only considers efficiencies when they occur within the specific relevant market. The Brazilian Administrative Council for Economic

7 For example, Voting Opinion of Commissioner Victor Fernandes in Merger Case No. 08700.009905/2022-83.

8 **All Cade's public proceedings mentioned in this article can be found at: https://x.gd/BQwdc.**

https://doi.org/10.52896/rdc.v13i2.1921

Defense (Cade), for example, has stated that the reduction of negative externalities is only considered an efficiency when there is no alternative public policy to eliminate such externality. It also points out that the clearance of a transaction is not ideal, from the perspective of economic welfare, to eliminate externalities, demonstrating its aversion to considering the internalization of externalities as an efficiency in the competition analysis carried out by the authority (Cade, 2016, p. 47-48)[9].

From the perspective of maximizing consumer welfare, which focuses the analysis of negative and positive effects mainly on changes in supply and price (Hovenkamp, 2008, p. 13), sustainability agreements may be seen as harmful to competition, even if necessary to internalize externalities and, in a broader context, to address the climate crisis[10].

This analysis may hinder the adoption of sustainability agreements. This disincentive, reinforced by the lack of regulatory guidance, is already noticed in practice, as companies are reluctant to adopt environmental policies because they understand that, if collective action between competitors is necessary, they could be penalized by competition authorities (ICC, 2022, p. 6-9; Fairtrade Foundation, 2019, p. 14-17)[11].

Furthermore, this framework may lead to significant distributive consequences. By focusing narrowly on price, output, and product variety within the relevant market, it implicitly privileges short-term consumer surplus over long-term societal welfare. This prioritization has profound implications for how environmental costs are allocated across different segments of society, as it protects the interests of current consumers at the expense of broader societal well-being, thereby reinforcing a market logic that undervalues sustainability and overvalues short-term affordability. For example, an agreement to phase out polluting products may reduce consumer choice in the short term but generate long-term environmental benefits. Under the current framework, such trade-offs are rarely acknowledged, let alone valued.

3 RESEARCH ON THE COMPETITION AUTHORITIES' STANCE ON SUSTAINABLE COOPERATION AGREEMENTS BETWEEN COMPETITORS

3.1 Methodology

Initially, the sample of jurisdictions analyzed in this research was based on the authorities with which Cade has established bilateral cooperation agreements[12]. In addition, considering the participation in the debate, we also included the authorities that have expressed their views in the context of two OECD roundtables on the subject: "Sustainability and Competition" (OECD, 2020) and "Environmental Considerations in Competition Enforcement" (OECD, 2021a).

9 Even though the Guideline was published in 2016, this still echoes within the authority. For instance, President Alexandre Cordeiro's Voting Opinion in Merger Case No. 08700.009905/2022-83.

10 For instance, if an agreement establishes that companies in a specific sector must internalize the pollution costs arising from their activities, these products may become more expensive if this cost is passed on to the consumer to some degree – resulting in a negative effect under the consumer welfare analysis. Another example would be an agreement between competitors to cease production of a polluting product in favor of a more sustainable alternative, which would, at least in theory, reduce the variety of products available to consumers.

11 Another concrete example was the withdrawal of several insurers from the "net zero alliance" in the insurance market. The insurers explicitly cited the fear of antitrust risk as a motivation for leaving the initiative (Smit; Bryan, 2023).

12 A list of Cade's cooperation agreements with foreign competition authorities is available at: https://www.gov.br/cade/pt-br/assuntos/internacional/cooperacao-bilateral (Cade, [2025]).

This resulted in a total of 29 jurisdictions: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Ecuador, European Union, France, Germany, Greece, Italy, Japan, Lithuania, Mexico, Netherlands, New Zealand, Peru, Portugal, Romania, Russia, Singapore, South Africa, South Korea, United Kingdom and the United States of America.

Then, a search was carried out through online search engines, relevant doctrine, official websites of the authorities and websites of foreign law firms and news outlets, for material in English, Spanish, Portuguese, French and German that referred to judgments or statements from each authority, with a time limit of January 2024. Then, each document was analyzed, aiming to identify the position of the authorities in relation to sustainability agreements between competitors and the existence of guidance for this type of practice[13].

By mapping the approach (or lack of approach) of authorities, an overview was developed of how agencies address the particularities of environmental externalities, internalization of social costs and coordination problems. We sought to outline the manifestations both quantitatively and qualitatively, analyzing the criteria for the competitive assessment of sustainability agreements.

Finally, we assessed whether the instruments applied in antitrust law could, considering a possible limitation to the consideration of factors beyond the economic consumer relationship, represent a barrier to the implementation of sustainability agreements between competitors and, consequently, to private initiatives in the fight against the climate crisis.

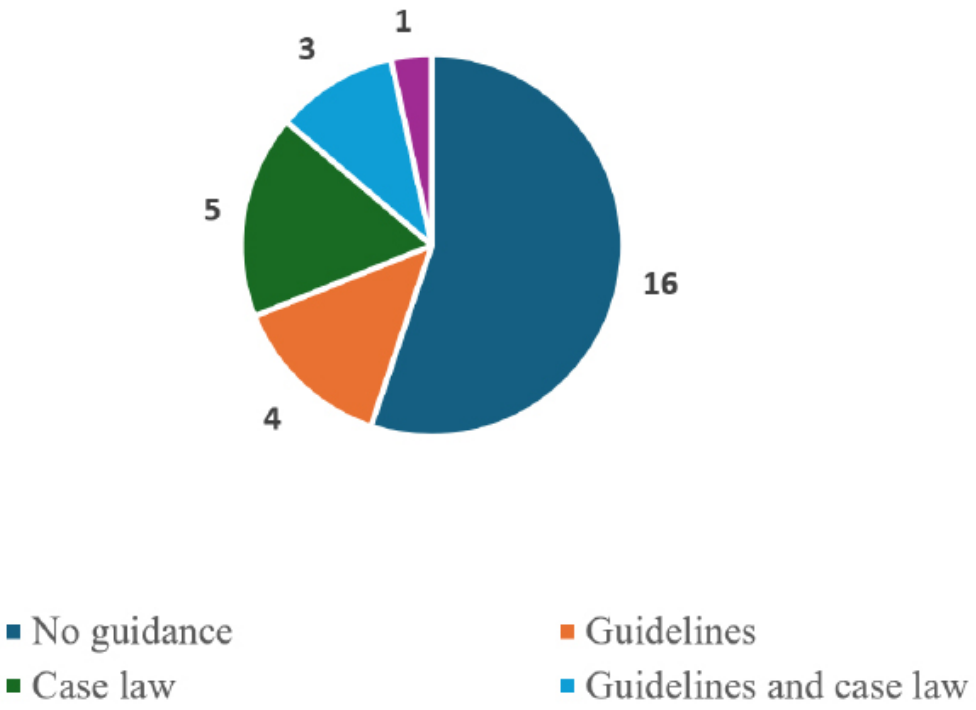
3.2 Quantitative overview of the positions of the competition authorities

As shown in Graph 1 below, of a total of 29 antitrust agencies analyzed, only 13 (approximately 45%) had some kind of guidance on the issue.

13 We recognize three specific research limitations. First, language coverage may omit guidance available solely in other official or regional languages. Second, reliance on official websites and secondary commentary may miss informal consultative practices (e.g., unpublished comfort letters, sandbox dialogues). Third, case availability varies across jurisdictions, creating uneven depth in the qualitative synthesis.

https://doi.org/10.52896/rdc.v13i2.1921

Graph 1 – Mapping of competition authorities' guidance on sustainability agreements



Source: elaborated by the author (2024).

There is also a diversity of instruments used by competition agencies to convey positions on the subject[14]. As can be seen in Graph 1 above, seven authorities (24% of the total of jurisdictions analyzed) issued guidelines on sustainability agreements, while eight authorities (28%) addressed the issue in the analysis of cases. Only three authorities (10%) issued guidelines and carried out analysis in cases. Finally, one regulatory sandbox (3%) was identified[15].

When we assess only the fourteen jurisdictions that submitted responses to the OECD roundtables related to sustainability and competition, the following numbers stand out: four authorities (29%) issued guidelines, six (43%) had cases concerning environmental issues and only one (7%) implemented a regulatory sandbox. Two authorities (14%) issued guidelines and analyzed cases concerning sustainability.

Table 1 below details the results obtained in each jurisdiction and the type of guidance expressed by each authority:

14 For the purposes of this research, we understand that these instruments, regardless of their format, can provide private agents with some kind of predictability about the analysis framework that would be applied by antitrust authorities to the analysis of sustainability agreements between competitors. Thus, they were all analyzed.

15 The Greek authority's regulatory sandbox is a particular approach and allows companies to submit their sustainability policies to the authority's scrutiny so that their anti-competitive effects and benefits can be evaluated. It aims to encourage sustainability initiatives, while providing predictability for companies and encouraging constant communication between the private sector and the authority. More information on the sandbox is available at: https://sandbox.epant.gr/en/.

Table 1 – Results in each jurisdiction

JURISDICTION	GUIDELINES	CASE LAW
Brazil	No	Yes
Argentina	No	No
Australia	No	Yes
Austria	Yes	No
Belgium	No	Yes
Canada	No	No
Chile	No	No
China	No	No[16]
Colombia	No	No
Ecuador	No	No
European Union	Yes	Yes
France	No[17]	No
Germany	No	Yes
Greece	Regulatory sandbox	No
Italy	No	No
Japan	Yes	No
Lithuania	No	No
Mexico	No	No
Netherlands	Yes	Yes
New Zealand	Yes	No
Peru	No	No
Portugal	No	Yes
Romania	No	No
Russia	No	No
Singapore	Yes	No
South Africa	No	No
South Korea	No	No
United Kingdom	Yes	Yes
United States of America	No	No

Source: elaborated by the author (2024).

16 For the sake of transparency, it should be noted that, within the Chinese jurisdiction, the case of Shenzhen Huierxun Technology v. Shenzhen Pest Control Society was identified, which was heard by the Guangdong Provincial Higher People's Court in 2013 and discussed the setting of minimum prices for pesticides. Although the argument that predatory pricing on pesticides could harm the public interest related to sustainability was outlined, this factor was not discussed in depth, and it was held that the conduct did not have anti-competitive effects. With this in mind and considering that this is not a position of the Chinese competition authority (the State Administration for Market Regulation), it was decided, for the purposes of this research, not to categorize this case as case law that analyzed sustainability agreements between competitors.

17 During the data collection, it was identified that the French authority had a draft note – with its final version published in May 2024 - providing instructions on how companies could seek consultations with the authority about sustainability agreements. This document, however, did not contain any guidance on how the agreements could be formatted or how they would be analyzed. In fact, it was limited to discussing procedural aspects of the consultation mechanism. Therefore, as it does not actually provide any concrete guidance for sustainability agreements, it was not included as a relevant result for the purposes of this research.

https://doi.org/10.52896/rdc.v13i2.1921

In view of the data obtained, the hypothesis is confirmed: in many jurisdictions, there are no guiding elements available to private agents when it comes to the competition authorities' analysis of sustainability agreements.

In this sense, the absence of guidance from 16 out of the 29 competition authorities raises important questions, as it may reflect deeper structural and conceptual tensions within the antitrust field as well as a reluctance to innovate. This silence may stem from a variety of factors, such as: hesitation to legitimize potential greenwashing practices under the guise of sustainability; difficulty in economically modeling collective and out-of-market benefits within the analytical frameworkof the consumer welfare standard; or political and institutional hesitation to shift antitrust enforcement away from its traditional focus on price and output.

This silence, nevertheless, comes at a cost: legal uncertainty prevails as to whether this type of agreement is lawful from an antitrust perspective or how it should be designed. As outlined above, this creates disincentives for collaborative sustainability policies between market players and, consequently, curtails potential strategies to address the climate and environmental crisis.

3.3 Factors considered in the antitrust assessment of sustainability agreements

3.3.1 Existence of a mechanism to prevent the exchange of sensitive information

In several jurisdictions, there was a significant concern about the exchange of sensitive information through sustainability agreements. Authorities believe that agreements are more likely to harm competition the more information is exchanged. When information exchange takes place, parties should exchange only information that is strictly necessary, respecting proportionality and relevance of the communications[18].

In Brazil, Cade concluded that mechanisms to control the flow of information were central to confirm the lawfulness of an agreement between companies in the agricultural sector[19]. Besides claiming that no sensitive or confidential data would be exchanged and that the data provided would already be publicly available to the parties even in the absence of the agreement, the parties signed an antitrust protocol to avoid unnecessary exchange of data. The parties' assertion regarding how they would manage sensitive information and mitigate its risks was perceived as positive by the authority during the analysis of the agreement[20].

Cade also considered the processing of sensitive information as a crucial factor in the analysis of Catena-X[21], a joint venture in the German automotive sector created to facilitate technological cooperation and innovation and to trace environmental impacts of production and possible sustainability initiatives. Although Cade's General Superintendence cleared the case[22] - considering that the parties were not yet active in the scope of the joint venture and that access to the platform would be made available to the market - the Tribunal requested for a second review, concerned with

18 For example, in its guidelines on collaboration and sustainability, New Zealand's antitrust authority stated that limitations on the exchange of sensitive information are essential when assessing agreements between competitors.

19 Merger Case No. 08700.009905/2022-83.

20 Vote of Reporting Commissioner Sérgio Costa Ravagnani in Merger Case No. 08700.009905/2022-83.

21 Merger Case No. 08700.004293/2022-32.

22 Opinion of the General Superintendence in Merger Case No. 08700.004293/2022-32.

possible risks regarding the exchange of information between companies.

The Reporting Commissioner of the case judged that the joint venture's contractual provisions and compliance instruments were not sufficiently clear and precise to prevent the exchange of sensitive information between the participants. As a result, the parties proposed remedies to modulate the scope of the agreement and reduce competition concerns. However, the Reporting Commissioner understood that the necessary mechanisms to ensure the applicability of the remedies were not present. For this reason, he conditioned the clearance of the transaction on the parties' adhesion to a term with remedies that he deemed necessary to prevent concerns related to the flow of information[23]. The parties did not accept it and informed the Tribunal that they had decided to terminate the proposed transaction.

3.3.2 Voluntary participation and the possibility for third parties to join the agreement

It was also highlighted by authorities that parties must be free to choose whether to participate in agreements. This is necessary to preserve companies' freedom of initiative and commercial autonomy. Also, voluntary participation is crucial to ensure that new individual or collective policies can emerge, which, through competition for members or reputation, may propose innovative or even more beneficial instruments to protect the environment[24].

In a case about a joint initiative to promote sustainability in the cocoa chain, the Bundeskartellamt considered that voluntary participation was essential for the lawfulness of the agreement (Bundeskartellamt, 2023). The voluntary nature was not limited to entry into the agreement, but also present in the absence of sanction mechanisms or exit impediments - which allowed the signatories to exercise legitimate autonomy even after the initial moment of adherence to the collaboration.

Competition authorities also value the possibility of any external agent entering the agreement, since refusing participation of third parties may create a barrier to market entry. For example, if consumers in a given sector perceive a certain sustainability certification as highly prestigious, a player unable to obtain such a credential may find its entry difficult or even impeded.

Thus, to avoid the risk of increasing barriers to entry or the exclusion of competitors, authorities often recommend that sustainability agreements establish objective, transparent, and non-discriminatory criteria for entry, ensuring neutrality and verifiability of justifications for possible refusals of adhesion by new members[25].

This was attested in the analysis of the IDH Sustainable Trade Initiative in Belgium, which dealt with the establishment of sustainability standards in the banana sector (Belgian

23 Vote of Reporting Commissioner Gustavo Augusto in Merger Case No. 08700.004293/2022-32.

24 For example, Singapore's sustainability guidelines stated that parties adhering to standards of conduct or codes of practice should not be limited to the standards of the agreement they are participating in, but should also be able to exceed them in their obligations or even develop alternative rules that ease the achievement of sustainable goals.

25 The Austrian authority, for example, in its sustainability guidelines, mentions transparency and possibility of adhesion by new members, as well as the absence of a strict binding effect on the commercial conduct of signatories, as positive factors. Transparency and access to new members should not, however, be used to publicize trade secrets or exchange sensitive information.

https://doi.org/10.52896/rdc.v13i2.1921

Competition Authority, 2023). The Belgian authority considered that transparency in the selection of the standards, voluntary participation, freedom to adopt higher standards and the possibility of adherence through the fulfilment of non-discriminatory conditions were essential to demonstrate the legality of the agreement.

3.3.3 Combined market share and market coverage of the agreement

Another important factor is the combined market share of the parties, which looks at what portion of the market would be encompassed by the agreement: the greater the combined market power of the participants, the greater the potential to alter market conditions and, consequently, to affect competition.

The safe harbor for the analysis of market power can vary between jurisdictions[26]. For example, when granting authorization for a purchasing group for sustainable energy, in addition to considering the importance of the environmental benefits brought by the agreement, the Australian antitrust authority pointed out that the agreement had a limitation on the entry of new members if the joint share of the group exceeded 5% of the aggregate demand for the consumption of energy in the national or state market. Under this threshold, it was unlikely that the agreement would encompass enough aggregate demand to raise competition concerns[27].

Similarly, the market coverage of an agreement is also relevant. This refers to the share of the market encompassed by the agreement and, to some extent, to the parties' market share and the number of products and substitutes covered by the agreement. Therefore, the smaller the market coverage of an agreement, the less potential there is for this agreement to raise competition concerns, as consumers will still have access to different substitutes that are not covered by the agreement.

Low market coverage, however, could be an obstacle not only to potential competitive risks, but also to the achievement of collective benefits. Sustainability agreements that aim to achieve collective benefits may need to encompass a significant portion of the market[28], since, in scenarios of first-mover disadvantages, coordination problems and free riding, companies may suffer from disadvantages by internalizing externalities and having their demand diverted to competitors - as explained in section 2.1 above. Therefore, some incentives and benefits of agreements between competitors – such as the possibility of modifying the general levels of sustainability of the practices disseminated in certain industries - may be weakened or even lost.

3.3.4 Time limitation

The duration of the sustainability agreement has also been raised as relevant by some authorities. In this sense, agreements should be limited in time, according to the needs of each

26 In the European Union, the Guidelines on Horizontal Agreements mentions that in agreements related to sustainability standards, if there is a significant increase in price or reduction in product quality, the combined market share of the signatories must not exceed 20% (European Commission, 2023b). The Singapore authority's sustainability guidelines also includes a relative presumption of absence of adverse effects at the 20% threshold (CCS, 2024).

27 Final Determination - Authorisation number: AA1000558 - Equinix (Australia) Enterprises Pty Ltd & Ors.

28 This is recognized by the European Union in its Guidelines on Horizontal Agreements (European Commission, 2023, paragraph 586).

specific situation, without extending it for longer than necessary for the achievement of its benefits. Hence, authorities believe that the longer the restriction lasts, the greater the potential for damage to the market[29].

For instance, an Australian precedent discussed an agreement between supermarkets chains to create a working group to establish strategies related to plastic recycling. Although the Australian authority recognized potential harm to competition - such as increased barriers to the development of recycling strategies by other agents - setting a fixed period for the agreement was seen as a way to greatly restrict the likelihood and extent of potential competitive harm. The agreement was authorized by the authority to last twelve months at most[30].

3.3.5 Remaining competition factors still under discretion of the participants

There is also a concern about preserving competition between the parties in at least one relevant aspect. Restrictions contained in the agreements must be proportional and indispensable to the purposes they intend to achieve, ensuring that parties still have the freedom to compete in significant parameters, even if competition is restricted in some manner. This type of precaution preserves competition, at least to a certain extent, even in the face of agreements that encompass the entire market, and provides an important distinction from collusive behavior.

When analyzing an agreement in the washing machine market to reduce the products' energy use, the European Commission (EC) emphasized in its judgment in favor of the lawfulness of the agreement the importance of maintaining competition between the signatories in relevant aspects such as price, brand, technical efficiency, etc. It also recognized informational failures and coordination problems involving consumer awareness on the production chain as barriers for unilateral policies[31].

Another interesting precedent was the Fairtrade Foundation UK's consultation with the British competition authority about a project to expand farmers' investment in sustainable cocoa, coffee and banana products, through long-term purchasing agreements with British retailers. Firstly, the authority recognized that this was an environmental sustainability agreement and expressed that its potential for restricting competition was low, since, although minimum purchase prices were established by Fairtrade for the products and premiums had to be paid to farmers, the transfer of these costs to consumers was subject to the retailers' discretion and was not mandatory. Also, the agreement did not contain obligations relating to the quantity, quality, or choice of products to be sold, and did not reduce the supply available to consumers. Therefore, the authority understood that important parameters of competition would remain open, concluding that the initiative was lawful under the terms in which it was proposed[32].

3.4 The assessment of efficiencies arising from sustainability agreements

29 The British sustainability guidelines, for example, states that the duration of the agreement is extremely relevant. It highlights that competition may be even suppressed for a limited time, competition can be restored and develop normally after the end of this period (CMA, 2023). Austria's sustainability guidelines also states that duration should be clearly specified in the scope of an agreement and not extend beyond what is strictly necessary to achieve the intended benefits (Austria, 2021).

30 Determination - Application for authorisation AA1000627 lodged by Coles Group Limited on behalf of itself and other participating supermarkets in respect of conduct in connection with the Soft Plastics Taskforce.

31 Case IV.F.1/36.718 (CECED).

32 CMA Informal Guidance: Fairtrade Shared Impact Initiative (CMA, 2023a).

https://doi.org/10.52896/rdc.v13i2.1921

As mentioned in section 2.2, there may be a dissonance between the traditional antitrust analysis and the consideration of the internalization of negative externalities. In this sense, the balance between competitive restraints and efficiencies of sustainability agreements may be inadequately assessed, because not all the existing benefits are considered.

As explained above, Article 88, Paragraph 6 of the LDC states that mergers that eliminate competition in a substantial part of the market may be cleared by Cade, provided that the limits strictly necessary to achieve, cumulatively or alternatively, the following are respected: (i) an increase in productivity or competitiveness; (ii) an improvement in the quality of goods or services; or (iii) favoring the achievement of efficiencies and technological or economic development. Further, a significant portion of the resulting benefits must be passed on to consumers.

Similarly worded, Article 101, § 3 of the TFEU[33] provides exemptions for agreements that cumulatively: (i) contribute in a concrete, objective and verifiable manner to improving the production or distribution of goods or to promoting technical or economic progress; (ii) do not impose restrictions that are not indispensable for achieving the related benefits, considering whether there are no viable and less restrictive alternatives; (iii) do not eliminate competition in a substantial manner, maintaining some level of residual competition in the market; and (iv) pass on a significant portion of the resulting benefit to consumers, outweighing the harmful effects suffered.

The pass-on criteria stands out in this discussion. In light of the particularity of the social cost of pollution, there may be some resistance from authorities in considering benefits that occur outside the relevant market or are enjoyed by a group other than the consumers affected. Therefore, we analyzed the authorities' guidance in order to provide an overview of how the concepts of consumers and the pass-on are defined, seeking to understand whether traditional antitrust analysis hinders sustainability initiatives.

First, it's worth analyzing the EC's guideline to horizontal agreements, which, since 2023, has a specific topic for sustainability agreements. When describing consumer benefits, it is mentioned that efficiencies usually relate to products included in the scope of the agreement. These are the well-known "individual benefits" – such as price reduction, increased variety and improved quality.

In addition to individual consumer benefits, there are also "collective benefits", which refer to positive effects that are felt by a larger group than just the consumers in the market and occur independently of the consumer's individual appreciation. In this sense, the European authority recognizes collective benefits as being closely related to the internalization of externalities, especially environmental matters. It even argues that for collective benefits to materialize, it is usually necessary for the agreement to have a high percentage of market coverage, given the particularities of agreements dealing with the reduction of externalities (European Commission, 2023b, p. 159-160).

This reflects an expansion of the traditional concept of efficiency passed on to the consumer. However, in order for these benefits to be considered, the authority sets out certain cumulative requirements: (i) the allegation of benefits must be clear and carry evidence demonstrating their occurrence or likelihood; (ii) the beneficiaries of the efficiencies must be unequivocally identified; (iii) the consumers in the affected market must overlap substantially with the beneficiaries of the

33 This rule is widely used not only by authorities within the European Union, but also by competition agencies in other jurisdictions to guide the analysis of sustainability agreements. The criteria of Article 101(3) of the TFEU are, for example, replicated in the sustainability guides of the Singaporean and UK authorities.

efficiencies or be part of this group; and (iv) the share of the collective benefits accruing to consumers in the market, together with their potential individual benefits, must outweigh the harm suffered by these consumers.

There is a strong focus on the consumer, in particular on the requirement to balance the benefits accruing to consumers with the harm suffered, with at least full compensation being necessary. Considering that the benefits that concern the specific consumer must outweigh their losses, there is an impediment to agreements that, on the one hand, significantly benefit society, but, on the other, result in a loss of consumer welfare, even if it is minimal when compared to the broad efficiency created for the larger community.

Thus, it is possible that sustainability agreements that are extremely important in combating the environmental crisis do not materialize because they harm end consumers, yet to a small extent, even when they are merely internalizing externalities that, due to market failures, are not reflected in the final price but are nonetheless part of the cost of production. Similarly, agreements that significantly reduce local pollution would also not meet the collective benefits test if consumers were in a different geographical area and the benefits were not perceived in that other region[34].

Contrastingly, the EC has an exception to this rule. In light of the inclusion of Article 210 (a) in the TFEU, which exempts the application of the ban on anti-competitive agreements for agreements between agricultural producers which aim to establish a joint sustainability policy above that required by law, the EC has issued guidelines of non-application of the ban, stating that the requirement for agreements to pass on a significant portion of the benefits to consumers was not applicable to agreements between agricultural producers (European Commission, 2023a). This represents a more flexible and lenient position and a recognition, even if indirect, of the limitations of traditional antitrust rules for the sustainable development of the European agricultural policy.

Additionally, some national authorities have differed from the view adopted by the EC, which shows how the issue is not consolidated even among agencies within the European space. The Greek authority, for example, has already expressed the view that the traditional analysis of the consumer in the relevant market may be inadequate for assessing certain agreements, and should be replaced, at least in certain situations, by a more dynamic concept of consumers - which would encompass, for example, not only immediate effects, but also future impacts that may arise from sustainability agreements. Under the traditional perspective, long-term collective benefits can be undervalued, even if they benefit society (OECD, 2021b, p. 5-6).

The Netherlands has also expressed a dissenting position. In its 2021 draft sustainability guidelines, the Dutch authority argued that in the case of agreements that aim to meet national or international standards or achieve a policy objective related to the environment, consumers do not need to be fully compensated. External benefits should be considered, and it would be fair, from a social welfare perspective, not to fully compensate consumers - since, besides enjoying the same benefits as the rest of society, it is precisely the demand of these consumers that creates the problem. Thus, the polluter pays principle would apply to a certain extent to the analysis of

34 The criteria of overlap between agents becomes even more limiting when we consider internationalized production chains, with precarious and polluting production centered in the Global South and the consumption of these products taking place in the Global North. According to the logic proposed under the collective benefits test, the reduction of environmental damage in the region of production could not be balanced against harm to the consumer market, something which, within the global production system, ultimately perpetuates a rationale of exploitation.

https://doi.org/10.52896/rdc.v13i2.1921

efficiencies. This exception, however, would only deal with environmental sustainability agreements that are necessary to comply with a voluntary standard or a concrete policy objective. Agreements that discuss sustainability issues in other spheres - such as the reduction of forced labor - would not be encompassed (ACM, 2021, p. 14-15).

It is worth noting, however, that in 2023, following the publication of the European horizontal guidelines in 2023, the Dutch authority published a new document, in which it modulated its previous position. In this policy rule, it adopted a more restrained position, stating that consumers in the relevant affected market should receive a considerable and effective share of the benefits, and must also belong to the group benefiting from the agreement (ACM, 2023, p. 4). Mentions of social welfare or dispensability of consumers' compensation were excluded.

The Austrian situation is also an interesting case. In 2021 there was a legislative change that established a presumption of passing on a significant portion of the benefits of practices between competitors that contribute to the development of an ecologically sustainable or climate-neutral economy[35]. Nevertheless, the authority established, in subsequent guidelines, a high standard of proof for the exemption – closely linked to traditional antitrust instruments. This may be related to a fear of distancing itself from the traditional analysis applied by the EC. Such concern was expressed by the Austrian authority in the guidelines (Bundeswettbewerbsbehörde, 2022, p. 8) and during the legislative amendment process (Bundeswettbewerbsbehörde, 2021, p. 37-39).

Outside Europe, different authorities have also discussed the issue. Singapore's sustainability guidelines recognizes that efficiencies in sustainability agreements may extend beyond the relevant market, since these agreements generally aim to reduce negative externalities or create positive externalities. It then proposes a distinct assessment: benefits brought to the whole of Singaporean society[36] should be considered, even if the consumer is not fully compensated (CCS, 2024, p. 12-13).

Similarly, New Zealand's sustainability guidelines states that agreements may be lawful if they result in public benefits - such as sustainability - that outweigh the competitive harm[37]. In this sense, its authorizations guidelines says that societal benefits are relevant regardless of the market in which they occur and could be considered even if not related to economic efficiency (COMCOM, 2023, p. 15). Thus, a benefit is any product of value to society that results from the agreement under analysis, and agreements that are not linked to economic efficiency but expand broader social welfare may be authorized.

The Australian authority also has a similar position. Article 90, Paragraph 7 of Australia's Competition and Consumer Act also allows authorizations for agreements that result in public benefits, which must be greater than any harms. The term "public" is used without any mention of consumers, which allows for the consideration of benefits outside the relevant market. Moreover, the

35 "**Consumers shall also be deemed to enjoy a fair share of the benefits** which result from improvements to the production or distribution of goods or the promotion of technical or economic progress **if those benefits contribute substantially to an ecologically sustainable or climate-neutral economy**" (Austria, 2021, emphasis added).

36 It is important to note, however, that a limitation to national citizens may be inadequate considering the global effects of pollution and the internalization of production chains. The assessment of benefits accruing only to the national consumers may undervalue positive effects of sustainability agreements that affect either communities located in other countries or generate benefits for all mankind.

37 This position is in line with Article 61, paragraph 6, of the New Zealand Commerce Act (New Zealand, 1986), which states that the competition authority must grant authorizations for proposed conduct that results in a public benefit that outweighs the expected reduction in competition.

authority's guidelines on authorizations directly mentions the internalization of externalities as a public benefit (ACCC, 2022, p. 35-36).

In the analysis of an agreement aimed at stimulating tire recycling and reducing environmental impacts in the production chain, including through the payment of certain fees, the Australian authority found that there were market failures that created disincentives for tire recycling, such as lower production cost for companies that, instead of recycling old tires, improperly disposed of or burned them. As such, firms did not have to bear the costs of recycling, but society suffered from pollution, health and safety damage related to the improperly disposed tires. Thus, the authority recognized that reducing this externality would generate a significant public benefit, which justified the agreement[38].

Moreover, it is worth mentioning the the exceptional nature of the British authority's position. Regarding sustainability agreements in general, the authority states that it will apply similar criteria to those set out in Article 101(3) of the TFEU. Hence, benefits must be passed on to consumers in the relevant market affected by the agreement, and compensation for any losses to such consumers is a necessary requirement for the agreement to be deemed lawful.

There is, however, an exception for agreements aimed at combating climate change. If the agreement is designed to combat or mitigate the effects of global warming, there is a more permissive approach regarding the need to pass on benefits to consumers, particularly in identifying such consumers. In this context, the authority recognizes that considering only the benefits passed on to consumers in the relevant market affected could result in harmful and perverse effects. Therefore, the authority departs from the traditional analysis and expresses that the total benefits related to the reduction of the climate crisis for all British consumers[39] should be considered, not just those within the relevant market. This position is justified, according to the authority, by the exceptional nature of climate change and, consequently, by the singularity of the benefits deriving from its mitigation. It argues that global warming represents a special category of threat, which requires an immediate response and must be distinguished from situations in which full compensation for consumers is required (CMA, 2023b, p. 37-38).

Therefore, the authority recognizes the limitations of the theoretical paradigms of antitrust analysis, to the extent that, when faced with a situation that it considers exceptional due to its urgency and impact, it dismisses the full application of traditional instruments - considering they can represent a harmful barrier to achieving environmental, social and economic effects which, when analyzed beyond the consumer welfare framework, represent important and necessary societal benefits.

Regarding the Brazilian context, as previously mentioned, the LDC does not explicitly require that efficiencies be confined to the relevant market affected by a merger or agreement. However, Cade's interpretative practice[40] has progressively narrowed legal provisions in ways that significantly constrain the possibility of incorporating environmental benefits into its efficiency analysis, effectively

38 Determination - Application for authorisation AA1000409 lodged by Tyre Stewardship Australia in respect of the national Tyre Stewardship Scheme.

39 The limitation of benefits accruing to British consumers may impede agreements that internalize externalities and generate a significant aggregated positive effect, as it restricts the considerations of benefits felt outside the United Kingdom. See also footnote 34.

40 For example, Merger Cases No. 08700.004293/2022-32 and 08700.009905/2022-83.

https://doi.org/10.52896/rdc.v13i2.1921

excluding out-of-market benefits from the competitive assessment. Even in cases where sustainability is a core component of a proposed agreement, Cade's analysis remains firmly rooted in traditional antitrust aspects, thereby creating a structural barrier to private sector collaboration on sustainability.

This scenario fosters a climate of legal uncertainty, which is further exacerbated by the absence of formal guidelines or sandbox mechanisms that could provide clarity or a safe harbor for experimental initiatives.

4 CONCLUSION

The research confirmed the hypothesis that competition authorities' guidance on sustainable agreements are still sparse - only 13 of the 29 jurisdictions analyzed had some guidance - and, in some situations, contradict each other. This can create a significant disincentive and legal uncertainty for sustainability initiatives, particularly for global policies and initiatives, which would be subject to the assessment of different authorities.

During the empirical data collection, the following criteria were identified as relevant to most authorities in attesting to the legality of a sustainability agreement: (i) prevention of the exchange of sensitive information; (ii) voluntary participation and possibility of adhesion by third parties; (iii) limitations on combined market share of participants and on the market coverage of the agreement; (iv) time limitations on the duration of agreements; and (v) preservation of other competitive aspects.

Competition agencies employ a notably diverse array of instruments to articulate their positions on the matter. While certain jurisdictions have enacted legislative changes to support sustainability agreements, others are relying on procedural tools - such as fast-track guidance, sandboxing, and comfort letters. These mechanisms help reduce *ex ante* uncertainty while maintaining case-by-case scrutiny, effectively serving as alternatives to more substantive regulatory reform.

It has also been shown that the traditional pass-on quantification - based on the rationale of the consumer welfare standard - can impose significant bottlenecks on the analysis of sustainable agreements, especially considering the economic particularities of the environmental issue. In this sense, few authorities recognize this limitation – especially when it comes to measuring external positive effects - and establish exceptions to the framework of analysis of these agreements, notably in light of the urgency of the climate crisis.

Nevertheless, in other contexts, even when acknowledging flaws in the analysis' tools used, competition agencies generally continue to apply these concepts in their analysis, which raises doubts about the effectiveness of the parameters as they do not enable a realistic assessment of the social and economic effects of business initiatives.

Thus, in practice, jurisdictions cluster along a spectrum. At one end, strict consumer pass-on tests constrain recognition of collective benefits even when net social welfare gains are large but geographically or temporally dispersed. At the other, more flexible regimes explicitly weigh societal gains - including the internalization of externalities - against competitive harm, thereby lowering the evidentiary threshold for sustainability-related cooperation between competitors.

Traditional analysis tools applied by authorities may hinder the consideration of social and collective benefits not only in environmental agreements, but also in other contexts, promoting

perverse distributive consequences: where production and environmental harms are concentrated in lower-income regions or among vulnerable groups, narrow market-by-market analysis can obscure intersectional impacts and perpetuate inequalities.

The persistent use of such tools by authorities could discourage private environmental policies that internalize externalities - such as sustainability agreements between competitors - and could ultimately undermine the protection of consumers' and society's interests.

REFERENCES

ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE (Cade). **Guide for the Analysis of Horizontal Mergers**. Brasília: Cade, 2016. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/guias-do-CADE/GUIDE%20FOR%20HORIZONTAL%20MERGER%20REVIEW.pdf. Accessed on: Oct. 24, 2025.

AUSTRALIAN COMPETITION & CONSUMER COMMISSION (ACCC). **Guidelines for authorization of conduct (non-merger)**. Canberra: Australian Competition and Consumer Commission, 2022. Available at: https://www.accc.gov.au/system/files/Authorisation%20of%20Conduct%20%28non-merger%29%20guidelines%20-%20December%202022_0.pdf. Accessed on: Oct. 24, 2025.

AUSTRIA. **Federal Cartel Act 2005, as amended effective 10 September 2021 (complete version)**. Vienna: Federal Competition Authority, 2021. Available at: https://www.bwb.gv.at/fileadmin/user_upload/PDFs/Cartel_Act_2005_Sep_2021_english.pdf . Accessed on: Oct. 24, 2025.

AUTORITEIT CONSUMENT & MARKT (ACM). **Guidelines on sustainability agreements**: Opportunities within competition law. The Hague: Authoriteit Consument & Markt, 2021. Available at: https://www.acm.nl/sites/default/files/documents/second-draft-version-guidelines-on-sustainability-agreements-oppurtunities-within-competition-law.pdf. Accessed on: Oct. 24, 2025.

AUTORITEIT CONSUMENT & MARKT (ACM). **Policy rule**: ACM's oversight of sustainability agreements: Competition and sustainability. The Hague: Authoriteit Consument & Markt, 2023. Available at: https://www.acm.nl/system/files/documents/Beleidsregel%20Toezicht%20ACM%20op%20duurzaamheidsafspraken%20ENG.pdf. Accessed on: Oct. 24, 2025.

BELGIAN COMPETITION AUTHORITY. **The Belgian Competition Authority assesses a sustainability initiative on 'living wages in the banana**. Brussels: Belgian Competition Authority, 2023. Press release n° 11/2023. Available at: https://www.belgiancompetition.be/sites/default/files/content/download/files/20230330_Press_release_11_BCA_0.pdf. Accessed on: Oct. 24, 2025.

BRASIL. **Lei nº 12.529, de 30 de novembro de 2011**. Estrutura o Sistema Brasileiro de Defesa da Concorrência; [...] e dá outras providências. Brasília, DF: Presidência da República, 2011. Available at: https://tinyurl.com/2o94bhj2. Accessed on: Oct. 2, 2025.

BUNDESKARTELLAMT. **German Initiative on Sustainable Cocoa**: Bundeskartellamt sees no reason for detailed examination. Bonn: Bundeskartellamt, 2023. Available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/13_06_2023_Kakaoforum.html. Accessed on: Oct. 24, 2025.

BUNDESWETTBEWERBSBEHÖRDE. **Guidelines on the application of Sec. 2 para. 1 Cartel Act to**

sustainability cooperations (Sustainability Guidelines). Vienna: Bundeswettbewerbsbehörde, 2022. Available at: https://www.bwb.gv.at/fileadmin/user_upload/AFCA_Sustainability_Guidelines_English_final.pdf. Accessed on: Oct. 24, 2025.

BUNDESWETTBEWERBSBEHÖRDE. **Stellungnahme der Bundeswettbewerbsbehörde zum Entwurf des Kartell- und Wettbewerbsrechtsänderungsgesetzes 2021**. Vienna: Bundeswettbewerbsbehörde, 2021. Available at: https://www.bwb.gv.at/fileadmin/user_upload/PDFs/Stellungnahme_GD_KaWeRAEG.pdf. Accessed on: Oct. 24, 2025.

COMMERCE COMMISSION NEW ZEALAND (COMCOM). **Authorization guidelines**. Wellington: Commerce Commission New Zealand, 2023. Available at: https://www.comcom.govt.nz/__data/assets/pdf_file/0012/91011/Authorisation-Guidelines-June-2023.pdf. Accessed on: Oct. 24, 2025

COMPETITION & MARKETS AUTHORITY (CMA). **CMA Informal Guidance**: Green Agreements Guidance: Fairtrade Shared Impact Initiative. London: Competition & Markets Authority, 2023a. Available at: https://assets.publishing.service.gov.uk/media/657999990959870012 95dfb1/A._Fairtrade_Foundation_informal_guidance.pdf. Accessed on: Oct. 24, 2025.

COMPETITION & MARKETS AUTHORITY (CMA). **Green agreements guidance**: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements. London: Competition & Markets Authority, 2023b. Available at: https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green_agreements_guidance_.pdf. Accessed on: Oct. 24, 2025.

COMPETITION AND CONSUMER COMMISSION (CCS). **Guidance note on business collaborations pursuing environmental sustainability objectives**. Singapore: Competition and Consumer Commission, 2024. Available at: https://isomer-user-content.by.gov.sg/45/cce9033c-f1c0-41ac-9fc1-e9420d79c256/CCCS%20Environmental%20Sustainability%20Collaboration%20Guidance%20Note_full.pdf. Accessed on: Oct. 24, 2025.

CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA (Cade). **Cooperação Bilateral**. Brasília: Cade, [2025]. Available at: https://www.gov.br/cade/pt-br/centrais-de-conteudo/internacional/cooperacao-bilateral. Accessed on: Apr. 23, 2024.

DOLMANS, Maurits. The 'polluter Pays' Principle as a Basis for Sustainable Competition Policy. *In*: HOLMES, Simon; SNOEP, Martijn; MIDDELSCHULTE, Dirk; AHMAD, Sonia (ed.). **Competition Law, Climate Change & Environmental Sustainability**. Paris: Concurrences, 2020.

DYCK, Alexander; LINS, Karl V.; ROTH, Lukas; WAGNER, Hannes F. Do institutional investors drive corporate social responsibility? International evidence. **Journal of Financial Economics**, v. 131, n. 3, p. 693-714, 2019. DOI: https://doi.org/10.1016/j.jfineco.2018.08.013. Available at: https://x.gd/BHkKi. Accessed on: Oct. 24, 2025.

ECCLES, Robert G.; KLIMENKO, Svetlana. The Investor Revolution: Shareholders are getting serious about sustainability. **Harvard Business Review**, v. 97, n. 3, p. 106-116, 2019. Available at: https://hbr.org/2019/05/the-investor-revolution. Accessed on: Oct. 24, 2025.

EUROPEAN COMMISSION. **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**. Brussels: European Commission, 2023a.

Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202301446. Accessed on: Oct. 24, 2025.

EUROPEAN COMMISSION. **Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements**. Brussels: European Commission, 2023b. Available at: https://competition-policy.ec.europa.eu/system/files/2023-07/2023_revised_horizontal_guidelines_en.pdf. Accessed on: Oct. 24, 2025.

EUROPEAN UNION. **Out-of-Market Efficiencies in Competition Enforcement**: Note by the European Union. Paris: OECD Publishing, 2023.

FAIRTRADE FOUNDATION. **Competition Law and Sustainability**. [*S. l.*]: Fairtrade Foundation, 2019. Available at: https://www.fairtrade.org.uk/wp-content/uploads/legacy/Competition-Law-and-Sustainability---Fairtrade-Report.pdf. Accessed on: Oct. 24, 2025.

FOX, Eleanor M. The Battle for the Soul of Antitrust. **California Law Review**, Berkeley, v. 75, n. 3, p. 917-923, 1987. DOI: https://doi.org/10.2307/3480656. Available at: https://www.jstor.org/stable/3480656. Accessed on: Oct. 24, 2025.

HOVENKAMP, Herbert. **The Antitrust Enterprise**: Principle and Execution. Cambridge: Harvard University Press, 2008.

INTERNATIONAL CHAMBER OF COMMERCE (ICC). **When Chilling Contributes to Warming**: How Competition Policy Acts As a Barrier to Climate Action. Paris: International Chamber of Commerce, 2022. Available at: https://iccwbo.org/wpcontent/uploads/sites/3/2022/11/when-chilling-contributes-to-warming-2.pdf. Accessed on: Oct. 24, 2025.

MIELKE, Jahel; STEUDLE, Gesine A. Green Investment and Coordination Failure: An Investors' Perspective. **Ecological Economics**, Amsterdam, v. 150, p. 88-95, 2018. DOI: https://doi.org/10.1016/j.ecolecon.2018.03.018. Available at: https://x.gd/aWjL5. Accessed on: Oct. 14, 2025.

NEW ZEALAND. **Commerce Act 1986**. Wellington: Parliamentary Counsel Office, 1986. Available at: https://www.legislation.govt.nz/act/public/1986/0005/latest/whole.html#DLM87623. Accessed on: Oct. 14, 2025.

NUSDEO, Fábio. **Curso de economia**: introdução ao direito econômico. São Paulo: Revista dos Tribunais, 2015.

ORBACH, Barak Y. The Antitrust Consumer Welfare Paradox. **Journal of Competition Law & Economics**, Oxford, v. 7, n. 1, p. 133-164, 2011. DOI: https://doi.org/10.1093/joclec/nhq019. Available at: https://x.gd/xpygcw. Accessed on: Oct. 24, 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). **Environmental Considerations in Competition Enforcement**: Note by Greece. Paris: OECD Publishing, 2021b. Available at: https://one.oecd.org/document/DAF/COMP/WD(2021)48/en/pdf. Accessed on: Oct. 24, 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). **Environmental Considerations in Competition Enforcement**. Paris: OECD Publishing, 2021a. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/11/out-of-market-efficiencies-in-competition-enforcement_5a8409ee/2f181e49-en.pdf. Accessed on: Oct. 19, 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). **Out-of-Market Efficiencies in Competition Enforcement**: OECD Competition Policy Roundtable Background Note. Paris: OECD Publishing, 2023. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/11/environmental-considerations-in-competition-enforcement_59cfd88d/2616c43c-en.pdf. Accessed on: Oct. 19, 2025.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD). **Sustainability and Competition**. Paris: OECD Publishing, 2020.

OSTROM, Elinor. Collective Action and the Evolution of Social Norms. **The Journal of Economic Perspectives**, Nashville, v. 14, n. 3, p. 137-158, 2000. DOI: 10.1257/jep.14.3.137. Available at: https://x.gd/0upwi. Accessed on: Oct. 4, 2025.

PAHA, Johannes. Sustainability Agreements and First Mover Disadvantages. **Journal of Competition Law & Economics**, Oxford, v. 19, n. 3, p. 357-366, 2023. DOI: https://doi.org/10.1093/joclec/nhad007. Available at: https://x.gd/mNTlQX. Accessed on: Oct. 4, 2025.

SMITH, Ian; BRYAN, Kenza. **Lloyd's and five big insurers quit sector's net-zero initiative**. London: Financial Times, 2023. Available at: https://www.ft.com/content/4940831b-72ec-459d-aaee-0d86fb7593df. Accessed on: Oct. 24, 2025.

VARIAN, Hal. **Microeconomia**: uma abordagem moderna. São Paulo: Elsevier, 2015.

Annex A – Documents analyzed in each jurisdiction

Authority	Jurisdiction	Does the authority have specific guidelines for sustainability agreements?	Does the competition authority have any case/ situation that discussed sustainability agreements?	Type of document	Document name	Document date
Administrative Council for Economic Defense (Cade)	Brazil	No	Yes	Note to the OECD	Brazil's note on the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
				Case	Merger Case No. 08700.009905/2022-83	21/06/2023
				Case	Merger Case No. 08700.004293/2022-32	20/12/2022
Austrian Federal Competition Authority (BWB)	Austria	Yes	No	Legislation	Austrian Cartel Act (KaWeRÄG 2021) (Federal Law amending the Cartel Act 2005 and the Competition Act, BGBl. I No. 176/2021)	10/09/2021
				Sustainability guidelines	Guidelines on the Application of Sec. 2 para. 1 Cartel Act to Sustainability Cooperations (Sustainability Guidelines)	28/09/2022
				Note to the OECD	Austria's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021

Authorité de la Concurrence	France	No	No	Consultation guidelines on sustainability	Notice on informal guidance from the Autorité in the area of sustainability	21/12/2023
Belgian Competition Authority (BCA)	Belgium	No	Yes	Case	IDH Sustainable Trade Initiative	30/03/2023
				BCA's priorities for 2022	Note de priorités de l'Autorité belge de la Concurrence pour 2022	31/03/2022
				Note to the OECD	Belgium's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
Hellenic Competition Commission (HCC)	Greece	No, but there is a sandbox in place for the issue, under the supervision of the authority	No, but there is a sandbox in place for the issue, under the supervision of the authority	Staff Discussion Paper	Draft Staff Discussion Paper on Sustainability Issues and Competition Law	01/07/2020
				Note to the OECD	Greece's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
				Note to the OECD	Greece's score at the OECD "Sustainability and Competition" roundtable	01/12/2020
				Legislation	Law 3959/2011	24/01/2022
				Technical Report (co-authored by the Greek authority and the Dutch authority)	Technical Report on Sustainability and Competition	01/01/2021
Autorità Garante della Concorrenza e del Mercato (ACGM)	Italy	No	No	Note to the OECD	Italy's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
Konkurencijos Taryba	Lithuania	No	No	Note to the OECD	Lithuania's score at the OECD "Sustainability and Competition" roundtable	01/12/2020
Consiliului Concurenţei	Romania	No	No	Note to the OECD	Romania's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
Federal Commission for Economic Competence (COFECE)	Mexico	No	No	Note to the OECD	Mexico's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
Japan Fair Trade Commission (JFTC)	Japan	Yes	No	Sustainability guidelines	Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act	31/03/2023

Authority for Consumers and Markets (ACM)	The Netherlands	Yes	Yes	Policy rule	Policy rule ACM's oversight of sustainability agreements Competition and sustainability	04/10/2023
				Draft sustainability guidelines	Sustainability agreements Opportunities within competition law	26/01/2021
				Guidelines to collaboration between farmers	Guidelines regarding collaborations between farmers	06/09/2022
				Note to the OECD	Note from the Netherlands at the OECD roundtable "Sustainability and competition"	01/12/2020
				Legal Memo	ACM Legal Memo What is meant by a fair share for consumers in article 101(3) TFEU in a sustainability context?	27/09/2021
				Case	Informal assessment of sustainability initiative regarding the recycling of commercial waste	04/10/2023
				Press release	ACM agrees to arrangements of garden centers to curtail use of illegal pesticides	02/09/2022
				Press release	ACM: Shell and TotalEnergies can collaborate in the storage of CO2 in empty North Sea gas fields	27/06/2022
				Press release	ACM is favorable to joint agreement between soft-drink suppliers about discontinuation of plastic handles	26/07/2022
				Case	Analysis by the Netherlands Authority for Consumers and Markets (ACM) of the planned agreement on closing down coal power plants from the 1980s as part of the Social and Economic Council of the Netherlands' SER Energieakkoord	26/09/2013
				Case	ACM's analysis of the sustainability arrangements concerning the 'Chicken of Tomorrow'	26/01/2015

Competition & Markets Authority (CMA)	United Kingdom	Yes	Yes	Sustainability guidelines	Green Agreements Guidance: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements	12/10/2023
				Case	CMA Informal Guidance: Green Agreements Guidance Fairtrade Shared Impact Initiative	21/11/2023
Competition Commission, Competition Tribunal and Competition Appeal Court	South Africa	No	No	Note to the OECD	South Africa's note at the OECD roundtable "Environmental Considerations in Competition Enforcement"	01/12/2021
European Commission (EC)	European Union	The subject is discussed in the Guidelines to horizontal agreements	Yes	Guidelines to horizontal agreements	Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements	01/06/2023
				Note to the OECD	European Union note on the OECD roundtable "Out-of-Market Efficiencies in Competition Enforcement"	06/12/2023
				Case	CECED	24/01/1999
				Press release regarding case trial	Antitrust: Commission fines car manufacturers €875 million for restricting competition in emission cleaning for new diesel passenger cars	08/07/2021
				Guidelines to sustainability agreements between agricultural producers	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	08/12/2023
				Guidelines to vertical agreements	Guidelines on vertical restraints	30/06/2022
Bundeskartellamt	Germany	No	Yes	Note to the OECD	Germany's score at the OECD roundtable "Sustainability and competition"	01/12/2020
				Case	German Initiative on Sustainable Cocoa ("Forum Nachhaltiger Kakao e.V." - "Kakaoforum")	13/06/2023
				Case	Initiative Tierwohl	25/05/2023
				Case	Living wages in the banana sector	18/01/2022
				Case	QM+ program	29/03/2022

https://doi.org/10.52896/rdc.v13i2.1921

Competition and Consumer Commission of Singapore (CCCS)	Singapore	Yes	No	Sustainability guidelines	Guidance Note On Business Collaborations Pursuing Environmental Sustainability Objectives	01/03/2024
Federal Trade Commission (FTC) and United States Department of Justice Antitrust Division (DOJ)	USA	No	No	N/A	N/A	N/A
State Administration for Market Regulation (SAMR)	China	No	No. There is only one case judged by the judiciary.	Legislation	Article 20.4 of the Anti-Monopoly Law	24/06/2022
				Case heard by the Higher People's Court of Guangdong Province	Shenzhen Huierxun Technology v. Shenzhen Pest Control Society	2013
Fiscalía Nacional Económica (FNE)	Chile	No	No	N/A	N/A	N/A
Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI)	Peru	No	No	N/A	N/A	N/A
Comisión Nacional de Defensa de la Competencia (CNDC)	Argentina	No	No	N/A	N/A	N/A
Federal Anti-Monopoly Service (FAS)	Russia	No	No	N/A	N/A	N/A
Korea Fair Trade Commission (KFTC)	South Korea	No	No	Press release	KFTC/Mercedes-Benz Group, BMW, Audi, and Volkswagen	09/02/2023
Commerce Commission New Zealand	New Zealand	Yes	No	Sustainabilit y guidelines	Collaboration and Sustainability Guidelines	30/11/2023
				Legislation	Art. 6 of the Commerce Act	28/04/1986
				Note to the OECD	Australia and New Zealand's score in the OECD roundtable "Sustainability and competition"	01/12/2020

Australian Competition & Consumer Commission (ACCC)	Australia	No	Yes	Note to the OECD	Australia and New Zealand's score in the OECD roundtable "Sustainability and competition"	01/12/2020
				Legislation	Art. 90 of the Competition and Consumer Act 2010	01/01/2011
				Case	Application for authorisation AA1000409 lodged by Tyre Stewardship Australia in respect of the national Tyre Stewardship Scheme	24/05/2018
				Case	Application for authorisation AA1000627 lodged by Coles Group Limited on behalf of itself and other participating supermarkets in respect of conduct in connection with the Soft Plastics Taskforce	30/06/2023
				Case	Application for revocation of A91354-A91357 and the substitution of authorisation AA1000418 lodged by Homeworker Code Committee Incorporated in respect of the Homeworkers Code of Practice (to be renamed 'Ethical Clothing Australia's Code of Practice incorporating Homeworkers')	30/08/2018
				Case	Application for authorisation AA1000558 lodged by Equinix (Australia) Enterprises Pty Ltd & Ors in respect of establishing a joint renewable energy purchasing group	11/08/2021
Competition Bureau Canada	Canada	No	No	N/A	N/A	N/A
Autoridade da Concorrência (AdC)	Portugal	No	Yes	Recommendation of best practices to a specific government initiative	Comments by the Competition Authority on the Proposed Strategic Plan for Non-Urban Waste (PERNU 2030)	07/10/2023
Superintendencia de Industria y Comercio (SIC)	Colombia	No	No	N/A	N/A	N/A
Superintendencia de Competencia Económica	Ecuador	No	No	N/A	N/A	N/A

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