

EXAMPLES OF WHERE FEAR OF COMPETITION LAW HAS INHIBITED VITAL ACTION TO SUPPORT NET ZERO AND OTHER SUSTAINABILITY GOALS.

1. In the supermarket sector, in order to bring about a meaningful reduction of single use plastic and increase rates of recycling, big names need to work together. If a single supplier works with each of its supermarket customers the systems they agree may not work for other suppliers: this is inefficient and sub optimal from a sustainability perspective. Similarly, if a supermarket works with each of its suppliers the systems they agree may not work for other supermarkets: again, this is inefficient and sub optimal from a sustainability perspective. If suppliers and retailers work together (with appropriate safeguards) whole systems can be made more sustainable and at a faster pace.
2. Deforestation is the 2nd largest source of GHGs and a major driver of biodiversity loss with most of this being driven by activity in the Amazon and Cerrado regions in the Mercosur. Leading soft commodity traders have expressed a willingness to work together to tackle this issue but often cite competition law concerns as a limiting factor. While there need to be limits to the information exchanged and what is agreed, the competition rules need to facilitate, rather than impede, vital joint work to tackle this.
3. A major and growing concern is the link between crops like soya and tropical deforestation and conversion of native vegetation with consequent impacts on biodiversity, carbon emissions, water systems and local communities. Initiatives like the UK RoundTable on sustainable Soya bring together key players in the market to work together to achieve a secure, resilient sustainable supply of soya: ie soya that is legal and cultivated in a way that protects against conversion of forests and valuable native vegetation. What is “sustainable” soya, and what is not, is a complex question which industry players (with expert advice) are well placed to analyse and to develop appropriate criteria- while leaving industry players free to make their own unilateral purchasing decisions. Again, this can be done without infringing competition rules but legal uncertainty has meant that many players, while in principle ready to play their part, are nervous of doing so.
4. The fashion industry has a huge environmentally harmful impact, particularly in terms of the raw materials going into garments which are often only worn for a few months, but also in terms of the impact in producer countries (land clearance, water usage etc). It also has a significant role to play in terms of social sustainability (eg avoidance of child labour and other forms of exploitation of workers in some of the poorest countries in the world). Many in the industry acknowledge this and the Fashion Pact was established to change things recognising that “no single company or executive can enact change at the scale or speed needed to protect our planet”. While respecting the boundaries, it is important that competition rules do not impede such valuable work.

5. Fishing quotas are agreed by governments but the industry and consumers have an interest in avoiding overfishing and depletion of stocks and are often willing to go further and/ or faster than governments. An example of this is an agreement among suppliers and UK retailers to ensure that mackerel is fished on a sustainable basis as stocks are depleted in the North Atlantic. The system is carefully designed to comply with competition rules but at one point one firm took the view that a boycott of unsustainably caught fish would transgress competition law as an anti-competitive boycott. Others appreciated that the system was competition compliant. We need to work hard to ensure that all businesses understand that such vital collaborative efforts can work within the existing competition rules and that such initiatives are not held up, or unnecessarily limited in scope, as a result of unfounded fear of competition enforcement.

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