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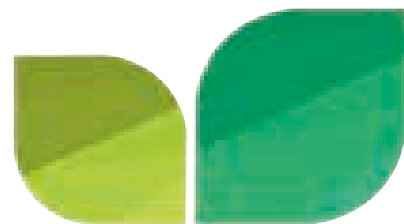
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[Source: Author]

COMPETITION LAW MUST PLAY ITS PART IN COMBATTING THE CLIMATE CRISIS

Climate change is an existential crisis for humanity, a crisis which calls for us to do everything we can to combat it. What does this mean for competition law, competition policy and the competition community? The short answer is: a lot.

- First, as Commissioner Vestager has recognised, everyone is called upon to play their part—including competition enforcers (and I would add everyone in the competition community).
 - Secondly, we must use all the policy tools we have available to us. Yes, environmental regulation is important- but it is often too slow coming; limited in jurisdictional scope (and this is a global crisis); and often lacking in ambition. Business is often prepared to go further and/or faster. Where this is the case, we need very good reasons if we are going to let competition law prevent it doing so. We must stop squabbling over whether regulation or private action is best. We need both—and we need them now.
 - Thirdly, where individual businesses can develop more sustainable products and compete profitably on the sustainability of their products, they should do so. However, this is often not realistic (e.g. where the sustainable product is more costly and too few consumers are prepared to pay a higher price for the product for it to be profitable). And, even where it is profitable, if this only results in a small niche market, this may not be enough. We need to transform our whole economy moving production and consumption onto a sustainable footing as fast as possible. Often this can only be done (or can only be done faster enough) by businesses working together. In most cases this can be done under existing competition law (with appropriate safeguards). I have written about this extensively elsewhere (e.g. [https://one.oecd.org/document/DAF/COMP/WD\(2020\)94/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2020)94/en/pdf)). My message today is simple. Rather than look to place obstacles to such urgent cooperation (tying ourselves in knots in arcane competition speak) the competition community needs to do everything it can to ensure that competition law does not stand in the way-and communicate that message clearly to those businesses keen to “do their bit”. Future generations will not thank us if we do not. Imagine explaining to your great grandchild why we opposed an agreement to develop new clean fuels or to eliminate plastic from a product.
- Finally, we should stop exaggerating the power of competition. Yes, competition can lead to leaner production using fewer resources-but, equally it can push businesses to use cheaper and less sustainable resources (even when they would prefer not to). Yes, competition can make prices more cost reflective-but not if those prices do not reflect all those costs conveniently left out and dumped on society (rather quaintly known as “externalities”).



The good news is that these key messages are being understood and promoted by more and more people in the competition community (they are already obvious to anyone outside the competition law bubble). This includes competition authorities. In addition to the thought leadership of the HCC, I would single out the Dutch and the Austrians:

- The Dutch ACM has developed an innovative approach to make it easier to exempt “environmental damage agreements”; and
- The Austrians have amended their law so that agreements that “make an essential contribution to an ecologically sustainable and climate neutral economy” can be excluded from the general ban on anti-competitive agreements (as always, if certain conditions are met).

So, three cheers for the Greeks, Dutch and Austrians! Now we need the others to follow-most importantly the EU (and in due course, the US).

Competition law is not the answer to the climate challenge but it can and must play its part. In fact the best thing it can do is not to get in the way (intentionally or otherwise) of the exiting and vital initiatives that our businesses are ready and will to pursue together to combat the biggest challenge we face today-the climate crisis.

