

A sustainable competition policy for Europe

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Abstract for the purpose of the *SER Scriptieprijs*

Introduction to the research

At the moment a very interesting debate on sustainable development is going on both in the academic world and in politics. The question that is at stake is pertinent but stays a hard one to tackle: how can we meet the needs of the present generation, without compromising the needs of future generations? Issues like climate change, depletion of natural resources such as oil and fish species, high emission of greenhouse gasses, increasing demographic pressure, ageing and even the financial crisis all show that this question is topical and highly relevant. *Sustainable development* is often mentioned as a solution to the issues mentioned above.

Governments, among which the European Union, have developed public policies in areas like the environment and public health which are partly aimed at sustainable development. However, governments often fall short of substantive action in the field of sustainability due to concurring interests or incapacity.

Cooperation between private parties could be another effective way of achieving sustainability. In fact, it could even be a more effective means than governmental intervention. Companies, for example, could try to develop energy saving production methods, or to purchase only fair trade products enabling farmers in developing countries to invest in their future, while fishermen could agree to restrict their catch in order to preserve biodiversity. Often it will however be very difficult for a single market player to implement sustainable production processes by itself. Instead, cooperation between market players could make sustainable development more feasible.

If companies decide to join their efforts on sustainability, competition issues could however arise. There will be a danger of different (European Union) public policies hindering each other in their functioning. Public policies connected to sustainability could get into conflict with competition policy. While policies directed to sustainable development will see private initiatives as a welcome support to their goals, competition policy might consider the initiatives as a threat to unhindered competition. The question rises if there are possibilities for reconciliation between these two types of policies. Which approach should be chosen to make sure that sustainable policies will be supported by competition policy, instead of being hindered by it? Do clues have to be looked for in the treaties, or is it the task of the Commission, the Community Courts or the National Competition Authorities (NCA's) to find a solution?

Main question and set-up

In this research the following question will be assessed:

How can public policy objectives which aim at sustainable development be supported more strongly by European Competition Policy at present?

The set-up of this research is as follows:

First, public policy within the context of EU law is discussed. Reference will also be made to economist's stance towards public policy. Next, the goals and the rules of European

Competition Policy are assessed. In the third chapter an overview is given of the legal framework for the implementation of public policies into competition law, as it is at present. In chapter four the importance of a sustainable competition policy is discussed and some practical examples of conflict between sustainability and competition policy are given. Finally, the fifth chapter contains an analysis including recommendations on future improvements to be made in order to support sustainable policies more strongly under European Competition Policy.

In this research the focus is on the cartel prohibition of Article 101 TFEU. Nevertheless, other economic policy areas will be mentioned to serve as examples or points of reference.

Main conclusions

In this research practical examples on the dairy sector, on binge drinking and on the shrimp fisheries sector are given which illustrate that conflict between competition policy and sustainable policies of the EU (such as the environment and public health) is a topical issue.

The main elements for answering the main question of this research 'How can public policy objectives which aim at sustainable development be supported more strongly by European Competition Policy at present?' lay with the European Commission. The Treaties nor the case-law of the European Courts form an obstacle on the road to a more strongly protection of sustainable policies under competition policy. The Treaties explicitly promote a competition policy which takes sustainable policies into account and also the European Courts have demonstrated in their case-law a positive stance towards a sustainable competition policy. It is however the Commission's *interpretation* of these sources of law (mainly through its guidelines) which forms the main obstacle to a more sustainable competition policy.

For the benefit of a more sustainable development the Commission would ideally depart from its strict economic approach to competition policy. A new approach should offer sufficient possibilities to balance competition interests with sustainability interests. For the purpose of such a paradigm change this research gives several suggestions which can be seen as a humble advice to the European Commission.

An important step towards a sustainable competition policy would be taken if the Commission would reform competition policy's consumer welfare goal. Such a reform can be structured in two different manners: either by moving towards a *broad* consumer welfare approach, or by moving towards a *total welfare* approach.

Another approach which can be taken by the Commission to contribute to a more sustainable European competition policy is to re-introduce a block exemption for environmental agreements. Till 1 January 2011 a specific block exemption was in place which dealt with environmental agreements. Re-introduction of such a block exemption could provide for clear and broadened possibilities to exclude certain sustainable private initiatives from the cartel prohibition.

Further reading

The Master Thesis 'A sustainable competition policy for Europe' is available online through the website of the Europa Institute of Utrecht University – Faculty of Law, Economics and Governance.

<http://www.uu.nl/faculty/leg/NL/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/europainstituut/Pages/MasterscriptiesEuropaInstituut.aspx>