

SUSTAINABLE DEVELOPMENT AND COMPETITION LAW
(Special project for the 2021 ICN Annual Conference – Survey)

APPENDIX C.2
to the Survey Report

Non-governmental advisors' questionnaire



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I. GENERAL

I.A. TECHNICAL INFORMATION

Reminder

Before responding to your questionnaire, please read the 'Introduction to the survey' and 'Technical remarks' carefully.

Please note that this is an online survey, indeed the pdf version of this questionnaire is only to provide a non-fragmented view of the questionnaire as a whole in order to facilitate proper responses online at the URL your agency has been provided with in the email of invitation to participate in the survey.

Please note that the term "sustainability" in this questionnaire refers to environmental sustainability (as opposed to social sustainability).

*Please **continue** responding to this questionnaire **only if your NGA has** experience in sustainability and competition which may be **either own experience** (e.g. involvement in competition enforcement) **or own research**, or both.*

I.A.1. Name of NGA

[small box]

Give the name of the NGA here only if the NGA in question is an organisation (that you represent).

If you are an ICN NGA as an individual, i.e. you respond to this questionnaire in your personal capacity, please insert an 'x' here instead of your name. While it is true that the questions in this questionnaire by design presume that NGAs are organisations, please interpret those same questions in a way that allows you to respond meaningfully.

I.A.2. Geographical presence of NGA

The activity of your NGA concerns one or more countries in the following region(s):*

(multiple choice allowed)

- Africa
- North America
- South America
- Asia
- Europe
- Oceania

Explanatory note:

**Please associate countries with continents according to the categorisation available at the ICN website (<https://www.internationalcompetitionnetwork.org/members/>).*

I.A.3. Contact person

Name	
E-mail	
Phone number	

- I have read and understand the content of the [privacy policy](#), and I hereby consent to the processing of my personal data as detailed in the privacy policy.

I.B. NGA BACKGROUND

I.B.1. Type of NGA

Please specify the primary profile of your NGA.

(multiple choice allowed)

- Business
- Law firm
- Economics consulting
- Think tank
- Academia
- Other for-profit, please specify
- Other non-profit, please specify

[small box]

I.B.2. Expertise of NGA

Please specify the primary area of expertise of your NGA.

(multiple choice allowed)

- Competition law
- Environmental regulation
- Competition economics
- Environmental economics
- Competition policymaking
- Environmental policymaking
- Other field of law/regulation, please specify
- Other field of economics, please specify
- Other domain of policymaking, please specify
- Other, please specify

[small box]

I.C. NGA EXPERIENCE

I.C.1. Type of experience

Please specify what type of experience your NGA has concerning sustainability.

(multiple choice allowed)

- Own experience (e.g. involvement in competition enforcement)
- Own research, please specify

[Small box]

Explanatory note:

Involvement in enforcement is only an example of own experience concerning sustainability.

Unless indicated otherwise, enforcement here – and elsewhere in this questionnaire, – refers not only to formal proceedings and investigations but also to events when the competition agency and parties seriously interacted concerning a concrete restrictive agreement in an informal setting, including receiving informal guidance from the authority.

I.C.2. Sector(s) involved

Which sector(s) has/have been involved by the experience* of your NGA concerning sustainability and competition?

(multiple choice allowed)

- Agriculture
- Fast-moving consumer goods (FMCG)
- White goods
- Energy, Resources, Utilities
- Transport and production of means of transport
- Waste management and recycling
- Other, please specify

[Small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

I.C.3. Geographical coverage of NGA experience

The experience* of your NGA related to sustainability and competition concerns one or more countries in the following region(s):**

(multiple choice allowed)

- Africa
- North America
- South America
- Asia
- Europe
- Oceania

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Please associate countries with continents according to the categorisation available at the ICN website (<https://www.internationalcompetitionnetwork.org/members/>).*

Please note that the set of countries where the experience of your NGA concerning sustainability and competition comes from may be different from the set of countries your NGA operates (which was the subject of question 0 (Give the name of the NGA here only if the NGA in question is an organisation (that you represent)).

If you are an ICN NGA as an individual, i.e. you respond to this questionnaire in your personal capacity, please insert an 'x' here instead of your name. While it is true that the questions in this questionnaire by design presume that NGAs are organisations, please interpret those same questions in a way that allows you to respond meaningfully.

Geographical presence of NGA)).

I.C.4. Recentness of topic

For how long has sustainability and competition been a topic of interest for your NGA?

- For less than 3 years (2018-2020(2021))
- For more than 3 years but less than 6 years (2015-2020(-2021))
- For more than 6 years (-2020(-2021))

[small box]

I.C.5. Degree of challenge

Is sustainability and competition a challenging topic for your NGA (for any reason)?

- Hardly challenging
- Somewhat challenging
- Fairly challenging
- Extremely challenging

[small box]

II. NGA VIEWS

II.A. RELEVANCE OF SUSTAINABILITY IN COMPETITION LAW

II.A.1. Competition law vs. other means

Should,* in your opinion/experience,** sustainability be assessed in competition enforcement in some cases, or should/does assessing sustainability belong exclusively to other domains of public policy (e.g. regulation, statutory prohibitions and exemptions)?

- There is a role for competition enforcement in assessing sustainability, at least in certain cases
- Other means are always better suited, please specify those other means

[small box]

Explanatory note:

**Please consider the “ideal” state rather than the status quo.*

***Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

II.A.2. Possible enforcement context(s)

In what competition enforcement context, based on the experience of your NGA,* may relevant sustainability aspects (and the need of their assessment) emerge in principle? **

	As a possible offence***	As a possible defence*** *
Restrictive agreements	Y/N / No opinion	Y/N / No opinion
Unilateral conduct	Y/N / No opinion	Y/N / No opinion
Mergers	Y/N / No opinion	Y/N / No opinion

(multiple choice allowed)

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Please consider the “ideal” state rather than the status quo.*

****Sustainability related competitive concern: a concern that reduced competition leads, or is likely to lead, to a loss in sustainability (rather than a price increase) and/or the restriction of competition occurs in terms of sustainability. An example of a restrictive agreement involving a sustainability related competition concern may be an agreement between car manufacturers to limit their efforts to reduce CO2 emission (as in this case the restriction occurs in terms of*

sustainability). A similar logic may apply to unilateral conduct and mergers. In such cases, the effect on sustainability can be an offence.

***Sustainability defence: a defence stating that the harm of reduction, or likely reduction, of competition is compensated/countervailed by sustainability benefits or likely sustainability benefits (produced by the same agreement / conduct / merger). An example of a restrictive agreement involving a sustainability defence may be an agreement between car manufacturers to jointly set ambitious CO2 emission reduction targets. Depending on the jurisdiction and other conditions, such sustainability defence may lead to the finding that the agreement in question is ultimately either restrictive but net beneficial or net non-restrictive.

II.A.3. Primary enforcement context(s)

In what competition enforcement context does your NGA primarily expect, based on its experience,* relevant sustainability aspects (and the need of their assessment) to emerge in practice?

	As a possible offence**	As a possible defence***
Restrictive agreements	Y/N / No opinion	Y/N / No opinion
Unilateral conduct	Y/N / No opinion	Y/N / No opinion
Mergers	Y/N / No opinion	Y/N / No opinion

(multiple choice allowed)

[small box]

Explanatory note:

*Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.

**Sustainability related competitive concern: a concern that reduced competition leads, or is likely to lead, to a loss in sustainability (rather than a price increase) and/or the restriction of competition occurs in terms of sustainability. An example of a restrictive agreement involving a sustainability related competition concern may be an agreement between car manufacturers to limit their efforts to reduce CO2 emission (as in this case the restriction occurs in terms of sustainability). A similar logic may apply to unilateral conduct and mergers. In such cases, the effect on sustainability can be an offence.

***Sustainability defence is a defence stating that the harm of reduction, or likely reduction, of competition is compensated/countervailed by sustainability benefits or likely sustainability benefits (produced by the same agreement / conduct / merger). An example of a restrictive agreement involving a sustainability defence may be an agreement between car manufacturers to jointly set ambitious CO2 emission reduction targets. Depending on the jurisdiction and other conditions, such sustainability defence may lead to the finding that the agreement in question is ultimately either restrictive but net beneficial or net non-restrictive.

II.B. APPROPRIATENESS OF COMPETITION LAW AND ENFORCEMENT

II.B.1. Competition law framework

Does your NGA, based on its experience,* agree with the following statement:

The current competition law framework is flexible enough to incorporate those sustainability aspects that are likely to be relevant in competition enforcement (i.e. taking into account relevant sustainability aspects would not contradict the basic principles and the overall analytical approach of existing laws).

- fully agree
- more agree than disagree
- more disagree than agree
- fully disagree [go to question II.B.4 (Transparency of analysis)]
- mixed experience,** please specify
- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Mixed experience refers to substantial variation in experience, e.g. jurisdiction by jurisdiction of those NGAs which have experience in multiple jurisdictions. Please do not mark mixed experience if variation of your NGA's experience is insignificant or limited to outliers of marginal significance.*

II.B.2. Competition law as enforced – recognition of sustainability

Does your NGA, based on its experience,* agree with the following statement:

Current competition law enforcement sufficiently incorporates the relevant sustainability aspects (i.e. competition law, as it is enforced, allows to take into account relevant sustainability aspects

and disregard those that are not relevant for competition analysis so that the right factors are identified and assessed in case work).

- fully agree
- more agree than disagree
- more disagree than agree
- fully disagree [go to question II.B.4 (Transparency of analysis)]

- mixed experience,** please specify
- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Mixed experience refers to substantial variation in experience, e.g. jurisdiction by jurisdiction of those NGAs which have experience in multiple jurisdictions. Please do not mark mixed experience if variation of your NGA's experience is insignificant or limited to outliers of marginal significance.*

II.B.3. Competition law as enforced – analysis of sustainability

Does your NGA, based on its experience,* agree with the following statement:

Current competition law enforcement appropriately incorporates relevant sustainability aspects (i.e. competition law, as it is enforced, takes them into account in the right way so that the analysis of the relevant sustainability aspects by competition agencies is appropriate now, including e.g. their measurement and comparison with competitive effects and other aspects).

- fully agree
- more agree than disagree
- more disagree than agree
- fully disagree

- mixed experience,** please specify
- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Mixed experience refers to substantial variation in experience, e.g. jurisdiction by jurisdiction of those NGAs which have experience in multiple jurisdictions. Please do not mark mixed experience if variation of your NGA's experience is insignificant or limited to outliers of marginal significance.*

II.B.4. Transparency of analysis

Does your NGA, based on its experience,* agree with the following statement:

Competition agencies provide the appropriate degree of transparency as to how they analyse, or intend to analyse in the future, sustainability and competition (so that stakeholders are in the position to understand it and to engage in meaningful interactions either in an enforcement context or a policymaking context).

- fully agree
- more agree than disagree
- more disagree than agree
- fully disagree

- mixed experience,** please specify
- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Mixed experience refers to substantial variation in experience, e.g. jurisdiction by jurisdiction of those NGAs which have experience in multiple jurisdictions. Please do not mark mixed experience if variation of your NGA's experience is insignificant or limited to outliers of marginal significance.*

II.B.5. Ways of enhancing transparency

What kind of efforts/projects of competition agencies, aimed at (further) enhancing the transparency of their current or prospective analysis of sustainability and competition, would be the most needed, based on the experience of your NGA.*

(multiple choice allowed)

- (more/better) guidance documents
- (more/better) engagement with stakeholders
- (more/better) elaboration in decisions and their public versions
- (more/better) feedback during enforcement (e.g. in state of-play-meetings)
- Other, please specify

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

II.C. PREPAREDNESS OF COMPETITION AGENCIES

II.C.1. Current state of preparedness

Please evaluate, based on the experience of your NGA,* the preparedness of competition agencies to assess relevant sustainability aspects in competition enforcement.

- excellent
- acceptable
- poor
- very poor

- mixed experience,** please, specify
- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Mixed experience refers to substantial variation in experience, e.g. jurisdiction by jurisdiction of those NGAs which have experience in multiple jurisdictions. Please do not mark mixed experience if variation of your NGA's experience is insignificant or limited to outliers of marginal significance.*

II.C.2. Current efforts/projects to enhance preparedness

Please evaluate, based on the experience of your NGA,* the efforts/projects of competition agencies aimed at enhancing their preparedness to assess relevant sustainability aspects in competition enforcement.

Please consider recent, ongoing and known prospective efforts/projects as well.

- excellent
- acceptable
- poor
- very poor

- mixed experience,** please specify
- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***Mixed experience refers to substantial variation in experience, e.g. jurisdiction by jurisdiction of those NGAs which have experience in multiple jurisdictions. Please do not mark*

mixed experience if variation of your NGA's experience is insignificant or limited to outliers of marginal significance.

II.C.3. Ways of enhancing preparedness

What kind of efforts/projects of competition agencies, aimed at (further) enhancing the preparedness to assess relevant sustainability aspects in competition enforcement, would be the most needed, based on the experience of your NGA.*

(multiple choice allowed)

- (more/better) research
- (more/better) internal capacity building**
- (more/better) co-operation with other parts of (domestic) public administration***
- (more/better) co-operation with NGOs****
- (more/better) co-operation with foreign competition agencies
- (more/better) engagement with stakeholders
- Other, please specify

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

***E.g. in-house / external (e.g. university) trainings, hiring staff / long term experts / consultants, dedicated unit / task force etc.*

****E.g. co-operation with ministries, regulatory authorities etc.*

*****E.g. co-operation with consulting firms, think tanks, research companies, academia etc.*

II.D. INTERNATIONAL ORGANISATIONS

II.D.1. Addressing sustainability and competition

Does your NGA regard, based on its experience,* (further) addressing the issue of sustainability and competition among the 5 most important items international organisations should deal with?

- Yes
- No [go to II.E (OUTLOOK)]
- No opinion/answer [go to II.E (OUTLOOK)]

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

II.D.2. Type of work product of international organisations

What type of work product of international organisations (further) addressing sustainability and competition would your NGA prefer, based on its experience*?

(multiple choice allowed)

- Recommendations
- Collection of good practices
- Collection of the results of theoretical research
- Other, please specify
- None / no answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

II.E. OUTLOOK

II.E.1. Extrapolation

Provided that competition enforcement remains on its current trajectory,* does your NGA expect, based on its experience, any negative effects due to systematic underenforcement/overenforcement?*****

- no
- yes

(multiple choice allowed)

- negative impact on sustainability due to too relaxed approach towards sustainability related competitive concerns****
- chilling effect on business due to too aggressive approach towards sustainability related competitive concerns****
- “greenwashing” on the cost of competition, and similar phenomena, due to too relaxed approach towards sustainability defences*****
- chilling effect on sustainability enhancing private initiatives due to too aggressive approach towards sustainability defences*****
- other, please specify

- no opinion/answer

[small box]

Explanatory note:

**Please consider the current trajectory rather than the current state (i.e. take a dynamic view by considering the board trends as well as recent, ongoing and known prospective efforts/projects of competition agencies aimed at improving their preparedness).*

***Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

****Please consider only undershooting/overshooting that is additional to the already existing general enforcement biases. (E.g. if there is a certain level of tendency to overshoot concerning benefit-based defences, such as an efficiency defence, the question is, in general, whether the assessment of sustainability defences suffer from an even stronger bias.)*

*****Sustainability related competitive concern: a concern that reduced competition leads, or is likely to lead, to a loss in sustainability.*

****** Sustainability defence: a defence stating that the harm of reduction, or likely reduction, of competition is compensated/countervailed by sustainability benefits or likely sustainability benefits (produced by the same agreement / conduct / merger).*

II.E.2. Importance of topic

Does your NGA, based on its experience,* agree with the following statement:

Assessing relevant sustainability aspects will be one of the major issues/challenges of competition policy in the coming years.

- fully agree
- more agree than disagree
- more disagree than agree
- fully disagree

- no opinion/answer

[small box]

Explanatory note:

**Please consider own experience (e.g. involvement in competition enforcement) as well as own research on sustainability and competition.*

II.E.3. NGA preparations

Is your NGA planning to enhance its knowledge/preparedness in sustainability and competition?

- no
- yes

(multiple choice allowed)

- by research in the topic
- by following competition enforcement, guidance documents and competition agencies' projects
- by following the work of international organizations
- by following the topic in other ways
- by learning by doing
- by other means, please specify

- no opinion/answer

[small box]

END OF QUESTIONNAIRE