FACTSHEET Competitor agreements must benefit consumers and sustainability

Consumers are increasingly concerned about the impact their consumption has on the environment and on communities across the world. Many of them want to be sure that their purchasing decisions do not support businesses that operate in violation of basic human rights or harm the environment around the world. Consumers need sustainable alternatives that are not only available but also affordable, attractive and convenient.

Risks for consumers, the environment and communities across the world

Business and consumers in Europe must play their full part in the indispensable transition to a sustainable economy. However, sustainability goals and policies should be set primarily by EU regulation rather than agreed between companies.

When competitors make agreements among themselves, the risk is that they do so to suit their own interests and with sustainability only as a pretext. The consequences may include:

- unacceptably increasing prices
- restricting supplies, choice or innovation
- presenting a practice as greener or more ethical than it really is – known as greenwashing and ethical washing respectively
- preventing much-needed higher sustainability standards for the environment and communities

Examples of competitor agreements that harmed consumers and the environment

Anticompetitive diesel emission standards agreement

A recent example of what can go wrong was an agreement on application of diesel emission standards between car makers Daimler, BMW, Volkswagen, Audi and Porsche that resulted in a worse outcome for consumers and for the environment. The companies collectively agreed not to use technology available to all of them to reduce harmful diesel car emissions beyond what was legally required under EU emission standards. In July 2021, the European Commission found that the companies' agreement was anticompetitive and violated EU competition rules because the car makers had colluded to deny consumers the option of buying cars with the best available technology to reduce pollution.

Coordinating prices on detergent products

Another such example was an agreement between Henkel, Procter & Gamble and Unilever to improve the environmental performance of detergent products. The problem arose because the companies used the agreement to also coordinate prices and their market positions. The Commission found in April 2011 that the companies had therefore broken EU competition rules.

BEUC The European Consumer Organisation

Co-funded by the European Union

How can EU competition policy help to achieve sustainability while protecting consumers?

It is essential that EU competition rules continue to play a crucial role in protecting consumers, in particular the least affluent, from bearing a disproportionate share of the costs of the transition to a sustainable economy. They can do so by making sure that any agreements between companies bring objective sustainability benefits and that a fair share of these benefits are passed on to consumers. In this way, EU competition rules can help to ensure an effective transition to genuine sustainability.

What should the European Commission do?

The Commission is reviewing how EU competition rules should apply to sustainability agreements between competitors (in its so-called 'Horizontal Guidelines'). BEUC has therefore requested the Commission to in particular:

- maintain its current overall approach to sustainability agreements in the draft Horizontal Guidelines, based on using competition law to ensure effective competition in markets to the benefit of all participants, including ultimately consumers and sustainable development
- not distort competition law analysis or facilitate green- or ethical washing
- be cautious in assuming that sustainability standards agreements will generally be beneficial. These agreements should be checked to ensure that they do not involve anticompetitive spill-over effects such as collective boycotts, discriminatory access or exchanges of competitively sensitive commercial information
- confirm that clearly substantiated sustainability benefits can be considered as efficiency gains. This would then enable a sustainability agreement to be considered for an exemption from the ban on anticompetitive agreements under competition rules
- maintain the strict interpretation of EU competition rules that agreements between companies must only include provisions that are indispensable to the declared objectives and do not eliminate competition, in particular price competition
- very clearly define the requirement that a "fair share" of the benefits of an agreement must be passed on to consumers
- include more detailed examples in the Horizontal Guidelines to better clarify the Commission's approach.

Find out more about BEUC's response to the public consultation in relation to Sustainability Agreements.