

Competition law needs to cooperate: companies want clarity to enable climate change initiatives to be pursued



Businesses globally are recognising the need to proactively address environmental, social and governance issues. Some will be able to make progress alone, but often collaboration within industries will be required to bring about long-lasting change.

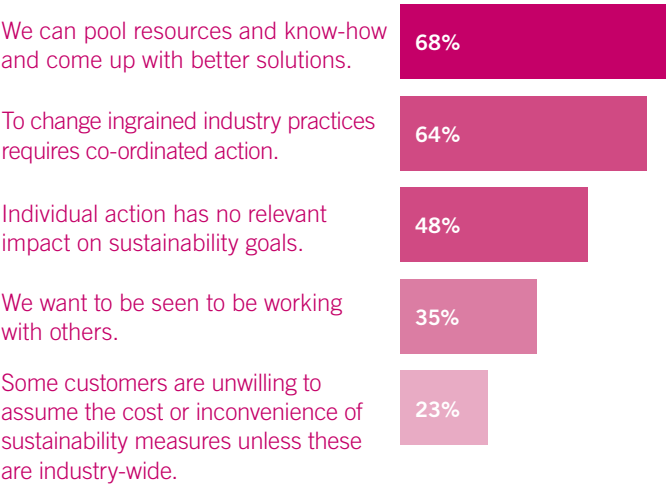
But, however laudable the aims, cooperation between competitors will bring competition laws into play. New research commissioned by Linklaters has found that sustainability leaders want to see changes to the competition rules to remove obstacles preventing collaboration on sustainability initiatives. The survey of 200 sustainability leaders in the UK, USA, France, Germany and The Netherlands sheds new light on the interplay between competition law and sustainability.

93%

A clear consensus
An overwhelming number of businesses want to work closely with peers when pursuing sustainability goals, with 9 in 10 saying that collaboration is key to achieve progress on ESG issues.

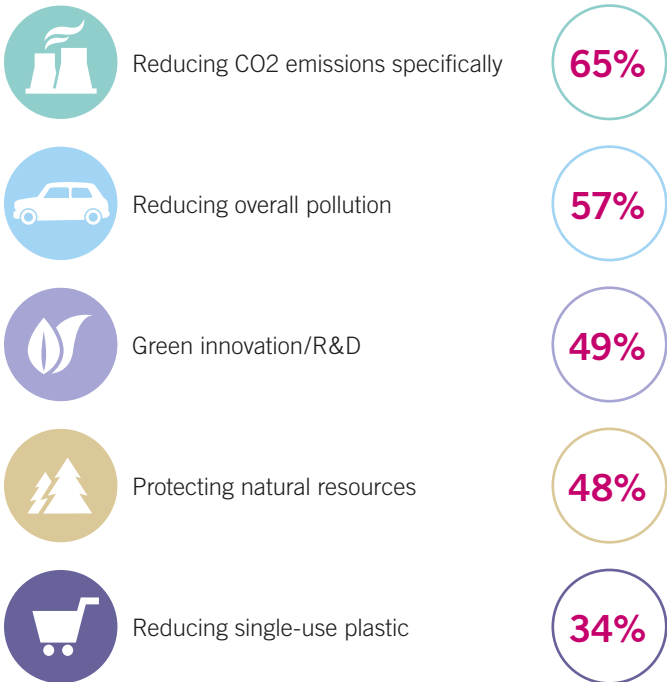
Strength in numbers
Sustainability professionals believe that collaboration offers the opportunity to pool resources and share expertise in order to develop best practice and establish new industry norms. There is also a recognition that changing ingrained industry practices requires an entire sector to come together.

Why do you think it is important to be working closer with peers to pursue sustainability goals?



Responding to the climate emergency
A variety of areas can benefit from collaboration. The most significant are those that help slow the pace of global warming, such as developing sector-wide initiatives to reduce CO2 emissions and pollution levels. Green innovation will also accelerate when competitors join forces, enabling the sharing of new ideas to address industry challenges.

Which areas do you think might benefit the most from cooperation?



Case studies: Soybean farmers and carmakers

Competition law as a hurdle to industry efforts in pursuing sustainability has united unlikely bedfellows. The “Amazon soyabean moratorium” – a commitment by trading firms not to buy soyabeans from parts of the rainforest cleared after 2008 – is widely credited with having significantly reduced soy-related deforestation. However, Brazilian farmers have complained to the local competition authority in an effort to overturn it. Carmakers also had to face down an antitrust investigation by the US Department of Justice after agreeing with the state of California to abide by a new set of vehicle emissions rules that were stricter than those proposed by the federal Environmental Protection Agency.

“Mounting social and political pressure is being directed at companies to **tackle climate change** issues. Whilst responses will vary across industries depending on the **challenges they face**, a consensus is forming for **greater collaboration** between players in order to bring about **long-lasting** and **radical change**.”

Nicole Kar, Head of UK Competition at Linklaters

A shift in attitudes

President Ursula von der Leyen has put sustainability at the top of the European Commission's agenda. The European Green Deal has ambitious aims to make Europe the world's first climate-neutral continent. Executive Vice-President Vestager says that “all of Europe's policies – including competition policy – will have their role to play in helping to get us there.”

The EC is currently evaluating its Horizontal Block Exemption Regulations and accompanying guidelines – due to expire in 2022. These carve out certain categories of agreements between competitors from the EU competition rules.

Absent any standalone block exemption or paper on the EC's enforcement priorities in this area, the position that the EC takes in the revised guidelines – and whether it decides to explicitly allow for cooperation around sustainability – will be an important gauge of how seriously it plans to take these issues as part of its future enforcement agenda.

Beyond Europe, neither the environmental commitment nor the timeline for competition authorities to engage (or not) is as clear. But the direction of travel is in one direction only. Sustainability is rising up the political agenda and competition authorities will need to be proactive in responding as shown by our case studies from the US and Brazil.

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Lifting barriers to collaboration

57%

of sustainability leaders say that there are concrete examples of sustainability projects that they have not pursued because the legal risk was too high. As advisors we see examples of companies walking away from genuinely beneficial projects because of competition law risk.

36%

want to see an exemption for sustainability from competition rules. An exemption would empower companies to work together on genuine environmental projects and clearly show authorities' support for them.

32%

want to see explicit guidance from competition authorities on what counts as lawful and unlawful cooperation. This guidance would offer much-needed reassurance on the rules of engagement for companies wanting to work together on sustainability initiatives and substantially lower the legal risk.

23%

want to see legislative changes. Although we don't see this as strictly necessary, this would send a clear signal from legislators that companies should feel encouraged to proceed with collaborations for ESG purposes.

Conclusion

The climate emergency is the challenge of a generation. Competition policy must be part of the solution, not part of the problem. Authorities around the world responded rapidly to relax competition law where necessary in sectors most affected by Covid-19. This should provide a blueprint for how competition law can flex in response to a crisis. It can and should enable companies to work together for the benefit of all citizens where it is necessary.

Methodology

In March 2020, 200 sustainability leaders at large corporates in the UK, USA, France, Germany and The Netherlands were polled on behalf of Linklaters by Censuswide to understand the interplay between competition law and sustainability.

Read more of our ESG insights on our [website](https://www.linklaters.com).