Sustainable development and competition, a growing combination

Our world is undergoing major societal upheaval, including the urgent need to create a more sustainable and resilient society. Sustainable development has therefore become an important topical issue for competition authorities both at the European level, with the ambitions of the Green Deal and the revision of the block exemption regulations, and at the national level, with the *Autorité*'s stated desire to invest in these areas.

Sustainable development issues are now playing an increasingly important role in litigation proceedings, advisory activities and merger control, particularly in the examination of new markets. They are also emerging in the support offered by the *Autorité* under its "open door" policy, which enables players involved in the transition to consult the *Autorité* on their projects at an early stage.



A clarified legal framework

When it comes to sustainable development, companies have started to take part in the change. While, at first glance, competition policy would not appear to be at the forefront of sustainability issues, **competition law and sustainable development nevertheless find a meeting point to the extent that, by safeguarding the competitive process, competition law protects and promotes not only consumer welfare, which is increasingly expressed towards sustainable products, but also sustainable innovations.** Even more directly, competition law **provides a framework for the initiatives envisaged by economic actors in the area of sustainable development.** Nevertheless, in some cases, these initiatives may potentially contradict competition law. By examining these initiatives, competition authorities can help to secure cooperation agreements that are favourable to sustainable development and

generate positive effects in terms of public interest that offset the negative effects on competition while sufficiently benefiting consumers.

In-depth reflection

In France, the *Autorité* is aware of the difficulty for economic actors to ensure, in certain cases, that their agreements do not create issues with respect to competition rules. That is why **the Investigation Services carry out in-depth reflections on these topics, within a dedicated internal network (Sustainable Development Network), and why the *Autorité* participates in various projects undertaken in international forums, whether at the OECD, within the European Competition Network (ECN) or the International Competition Network (ICN).**

At the European level, the new rules on vertical and horizontal agreements largely take account of the need to clarify the legal framework and adapt it to the economic and societal changes that have taken place over the last ten years in terms of digital and green transitions. **As a result, the guidelines on agreements between competitors now include a chapter on the assessment of agreements that pursue sustainability objectives.** They clarify when companies can lawfully cooperate with competitors, including, as the case may be, through individual exemption in the most complex situations. In particular, the guidelines give special attention to agreements that set sustainability standards, as, in practice, this is expected to be the most common form of cooperation for achieving sustainability objectives.

Support in analysing the most complex virtuous projects

The *Autorité* has also been committed to an "open door" policy since 2020. Players wanting to develop virtuous projects, but for which the analysis in terms of competition rules is particularly complex, can ask the *Autorité* for guidance so they can better self-assess the compatibility of their projects with competition rules.

In order to better support undertakings in their efforts, the *Autorité* wanted to offer a flexible procedural framework. To that end, the *Autorité* prepared a notice, which – following a large public consultation – was published on 27 May 2024. The notice is based on the chapter of the new European Commission horizontal guidelines dedicated to sustainability agreements, while taking a broader scope that covers all competition-related matters, with the exception of mergers.