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What we heard from the Competition and Green Growth Summit

2022



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Climate change may be the greatest market failure we have faced — if we can contribute to addressing it simply by doing our day job or sharing our unique insights with policymakers, we should think about that.”

– Matthew Boswell, Commissioner of Competition, Competition Bureau Canada

1. About the Competition and Green Growth Summit

The world is moving to act on the climate crisis. Canada and other countries are taking big steps toward a greener economy. Environmental and sustainability measures are playing a bigger role in how businesses compete to attract customers and investors. Consumers are also changing how they shop based on what they know about the environment.

How does this affect the role of competition law, policy and enforcement agencies? How can competition support the government’s greening efforts? Can existing competition law enforcement tools support efforts to move to a greener economy?

The Competition Bureau wanted to better understand the relationship between competition policy and sustainability goals. That’s why we hosted the *Competition and Green Growth Summit* in Ottawa on September 20, 2022.

The Summit brought together close to 400 people from more than 30 countries. Some attended virtually and others in person. The participants included experts from the legal, academic, business, policy and competition enforcement communities. They shared different thoughts on issues, including:

- How is the market changing because of the way governments, businesses and consumers are responding to climate change?
- How effective are competition agencies’ tools to support the movement to a greener economy?

- What policies and industry trends in the greening economy should competition agencies pay attention to?

This report summarizes what we heard at the Summit.

The views expressed by the speakers don't necessarily represent the Bureau's positions.

2.A green future: Competition policy and competitiveness

Panel 1 explored the role of competition for two goals:

- to help the Government of Canada's sustainability goals
- to improve how Canada competes with other countries

The panel began by talking about how the federal government used to make smaller step-by-step changes to act on climate change. It is now making broad changes in key Canadian sectors like energy, transportation and finance. In transportation, for example, the Government of Canada is now offering incentives. Consumers get money back when they buy [zero-emission vehicles](#). The government has also set sales targets for vehicle suppliers.

Some panelists talked about how these government efforts need to take into account that Canadian firms are competing in world markets. Those making environmental policies and regulations should think about how their decisions affect how Canadian firms compete globally. Their decisions also can impact Canada's ability to attract foreign investors. Others noted that public agencies should keep their policy objectives to their areas of focus. For example, they said competition agencies should deal with competition only.

Panelists also talked about carbon pricing and [smart regulations](#) that achieve sustainability goals without hurting competition. These can be good tools to shape markets.

Finally they said to keep the elements below in mind as Canada moves to a greener economy:

- The rules for the transition to a greener economy need to be clear and reliable. For example, carbon pricing needs to be more certain because it affects investment

risk and business plans. For competition, more certainty would help businesses substitute high-carbon products, services or business models with low-carbon ones.

- Businesses working together can create environmental benefits and innovation. That said, they need to be careful when they work together to avoid anti-competitive behaviour, like using their efforts to control prices.
- The change to a greener economy will likely need big spending on infrastructure. Businesses will be applying for permits for infrastructure. Canada should look for ways to improve the rules and processes for getting these permits.
- Climate change policy developments also affect consumers. For example, some marketing that contains carbon claims can influence shoppers to buy certain products. Consumers need relevant information to make informed choices about greener alternatives. One idea is to create a green label for products like the ones used to display nutritional information.

What we heard from Panel 1:

1. The change to a greener economy has started. It will continue. For businesses, the main factors driving this change include:
 - a. accessing money (debt or equity)
 - b. keeping the best staff
 - c. working within national and foreign laws
 - d. meeting consumer and public buyer demands
2. Some areas of competition law and policy work with sustainability goals. For example, better competition between firms can lower prices and improve products, and also help green Canada's economy. Where these goals don't work together, they shouldn't be imposed on competition agencies.



Competition is what ultimately drives innovation. That innovation helps fuel resource allocation. It drives efficiency and that helps to drive a rising standard of living."

– Craig Alexander, Chief Economist and Executive Advisor at Deloitte Canada

3. Enforcers roundtable: Perspective from competition agencies

Panel 2 was the enforcers roundtable. It included senior officials from the United Kingdom's Competition and Markets Authority (UK CMA), the EC DG COMP, the United States' Department of Justice, Antitrust Division (DOJ), and the United States' Federal Trade Commission (FTC). They discussed practical ways to consider the environment in competition enforcement.

The panelists said that the relationship between sustainability and competition law and policy is part of a bigger political and social context. For example, in the European Union (EU), sustainability is one of the European Commission's six high-level priorities. In 2019, the European Commission launched its Green Deal. This deal aims to make the EU carbon neutral by 2050.

Sustainability and competition are also major priorities in the United States. The Biden administration has issued two relevant executive orders. One directs the federal government to [use its buying power to limit greenhouse gas emissions](#). The other directs federal agencies to [use a whole-of-government approach to promote competition across the U.S. economy](#). This includes the DOJ and the FTC.

The panelists also presented ways competition agencies currently take sustainability into account in their work.

The EU went through a thorough fact finding exercise culminating in a conference on how competition and antitrust laws can help meet sustainability goals. It released a [competition policy brief](#) in 2021 that explored how EU competition rules can better complement environmental and climate policies. It is also reviewing EU competition guidance and regulations that are expired or expiring in the near future. This includes the guidelines and guidance for horizontal cooperation between businesses. Most importantly, the Commission has decided to include a new chapter 9 on sustainability agreements in its horizontal Guidelines, expected for early 2023. This chapter will define both, sustainability objectives and sustainability agreements and will provide examples of sustainability agreements concluded between competitors that do not raise competition concerns.

From consultations held so far, it seems that EU antitrust laws are sufficiently flexible to take sustainability considerations into account. For example, the EU's merger control laws allow for sustainability considerations at different stages of the analysis. And EU

[cartel investigations](#) can extend to environmentally harmful behaviour. For example, the EU conducted a cartel case against truck producers who colluded to delay stricter emission-reducing technologies.

Those consultations also revealed the need for some new tools. Some tools would be under traditional antitrust laws. For example, the EU can now review under Art 21 EU Merger Regulation non-notifiable mergers to mitigate the risk of [killer acquisitions](#). This new approach can help to prevent killer acquisitions that could squash innovations for a greener economy. Other tools would be outside the traditional antitrust laws. Under the Commissions State Aid control system, DG Competition can use specific tools, such as the [EU's guidelines on state aid for climate, environmental protection and energy](#), to boost green goals. In addition, other Commission departments managing the environment, climate or energy are working on strengthening a greener economy.

The U.S. panelists discussed how their current rules allow their agencies to include sustainability in their daily work.

For example, the DOJ's traditional antitrust tools often support sustainability efforts. These tools include antitrust enforcement, competition advocacy, and technical assistance. The DOJ considers sustainability as non-price competition (specifically, an aspect of quality or innovation). For example, the DOJ will carefully evaluate how a merger may affect innovation. As part of its analysis of a merger's competitive effects, the DOJ also assesses consumer preferences for more sustainable products, services, and business practices.

Another example is the DOJ's recent [monopolization](#) investigation into a utility supplier that was trying to eliminate its more efficient rivals. This type of monopolization analysis could similarly be applied to a case where green energy rivals are being excluded. The DOJ also discussed its guidelines on competitor collaboration. The DOJ offers guidance to companies on how to work together without violating the antitrust laws. The guidelines similarly apply to companies that may choose to collaborate to help meet sustainability objectives.

The DOJ has been working with other parts of the federal government on projects such as the [Procurement Collusion Strike Force](#). This project aims to make sure the money the government spends to support various policy objectives, including sustainability and carbon emission reduction, does not go to companies that are working together illegally. Another way the DOJ supports the change to a greener economy is through the [National Cooperative Research and Production Act](#). This law requires companies to tell the DOJ if they are cooperating on research and development (R&D). Finally, the DOJ reviews new

standards written by the Department of Energy to check for unreasonable costs or regulations that might hurt competition.

The FTC discussed how its consumer protection mandate supports its work on sustainability on issues such as the right to repair and its fight against false and misleading environmental claims. Its [Green Guides](#) help businesses to avoid false or misleading environmental claims. When lies or deceptions distort consumers' choices, that also skews competition for companies within the same market.

The FTC helps promote the ability for consumers to make meaningful choices by considering how the public understands marketer's environmental claims and analyzing the substantiation for these claims. The FTC has taken significant steps against organizations making false or misleading green claims, such as [those claiming that bamboo textiles were made using greener processes](#).

Turning to the UK, the CMA emphasized that supporting the transition to a low-carbon economy is a key strategic priority. It does this through its enforcement and forthcoming guidance to businesses on sustainability agreements, and using all of its available tools (antitrust, merger control, markets, consumer protection, and advocacy efforts) to maximise impact. The CMA also recently published the results of its [market study on the electric vehicle charging sector](#).

Last year, the U.K. government asked the CMA for [advice on how the current competition and consumer protection framework could better support the country's net zero and sustainability goals](#). The CMA concluded that no changes were needed to competition law at that time to support government sustainability goals but noted the need to be more agile and proactive in reviewing the need for legislative change in order to avoid the regime frustrating worthwhile initiatives. As part of a commitment to provide clarity for stakeholders, the CMA will be issuing draft guidance on sustainability that will apply to horizontal agreements. The CMA has also established an internal Sustainability Taskforce to increase internal expertise and build capacity across the organisation.

All panelists agreed that international cooperation among competition agencies is key to learn ways to help the change toward a greener economy.

What we heard from panel 2:

1. Competition law and policy are part of a broader political and social context. Public authorities other than competition agencies set the rules and regulations.

2. Current competition laws in the countries represented at the Summit generally provide competition agencies with flexibility and good tools to take sustainability into account. Efforts such as international cooperation should continue. They can help ensure such laws stay in tune with markets.



As competition authorities contributing to sustainability, we will always only be subcontractors. It is for others to do the main construction work. It is for them to set the rules and regulations, not for us.”

– Rainer Wessely, First Secretary of the European Union Delegation on behalf of the European Commission, Directorate General for Competition (EC DG Comp)

4. Competition enforcement in a greener economy

Panel 3 discussed the role of competition enforcement in the change to a greener economy. This included how to consider businesses working together and dealing with greenwashing.

Panelists agreed that the greener economy is vast and growing. It involves many markets and sectors. Some are already very concentrated and others are beginning to be.

Panelists highlighted where sustainability policies and competition law enforcement overlap. For example, sustainability projects and policies to act on climate change are reshaping both markets and consumer preferences more and more.

Competition enforcement already considers the environment in looking at innovation, R&D, investment and other aspects of competition other than price. However, some panelists noted how environmental and competition policy objectives can clash. Efforts to become more sustainable can lead to higher prices, higher profits and, eventually, greater market power. At the same time, sustainability efforts can benefit more people than just the direct consumer and can be difficult to assess.

Competition law enforcement needs to be balanced. For instance, it is important to look out for takeovers of start-up businesses that aim to squash future competition from

developing. Such mergers can take out possible competitors that could greatly change, and improve, a sector. They can also protect existing companies that are less green. At the same time, it could be good for businesses to buy companies if they genuinely want to develop newer, greener solutions.

Activities that can impede the change to a greener economy include:

- false and misleading environmental claims to consumers and investors
- cartels, for example, competitor agreements not to advertise environmental performance of a greener product
- sectors with dominant companies that prevent innovative businesses with greener business models from getting into the relevant market
- killer acquisitions that remove competitors or stop competitors from further developing greener products or services
- repeated non-notifiable acquisitions that raise competition concerns

Panelists discussed where the Canadian *Competition Act* could improve for helping to green the economy:

- Drop or change the [efficiencies defence](#) for anti-competitive mergers and competitors collaborations. Some panelists worried companies can use it to justify what are actually anti-competitive transactions.
- Improve how buyers' actions and unequal bargaining power is tracked and enforced.
- Reconsider having an environmental defence for cartels and competitor collaborations. Views on this were mixed. Some saw it as a way to give some certainty to businesses genuinely trying to collaborate for environmental ends. Others worried about creating a blanket defence for cartels.

What we heard from panel 3:

1. Competition analysis already considers the environment when related to aspects of rivalry. Adding more environmental considerations to Canadian competition law must take into account the constitutional division of powers. It must also consider that the *Competition Act* is an economic law.
2. Competition agencies must stay on top of greenwashing. False and misleading environmental claims prevent competition between businesses on their merits. They also erode consumers' confidence in a greener economy.



There will be certain types of process innovations on the environmental side where it will be valuable to have collaboration and then other instances where we'll probably want to ensure firms keep competing for those changes.”

– Margaret Sanderson, Vice President, Practice Leader of Antitrust and Competition Economics at Charles Rivers Associates

5. Conclusion

Summit participants agreed on the following:

- Competitive markets are key to helping the change to a greener economy. This change has already started and will continue.
- Competition law and policy is one of many tools available to build a greener economy. Tools such as other laws or regulations could be better used to shape markets. Competition agencies and policy makers need to work together to design laws and regulations that help sustainability efforts and avoid hurting competition by mistake.
- Some foreign competition agencies said they include sustainability in their work when they look at price and non-price effects, like innovation or quality, of business rivalry. They will continue doing this and also working with competition agencies in other countries.

The Bureau appreciated the many thoughts heard during the Summit. The valuable insights will help the Bureau continue its work on how competition interacts with green growth.



Competition underpins a dynamic and adaptable economy responding to climate change.”

– Matthew Boswell, Commissioner of Competition, Competition Bureau Canada

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