

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

APPENDIX C.1
to the Survey Report

Competition agencies' questionnaire



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I. 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).

I.A. AGENCY

I.A.1. Name of agency

[small box]

I.A.2. Region of agency

The activity of your agency falls within the following region:

- 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

1. Name	
2. E-mail	
3. 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.

II. LEGAL BACKGROUND

II.A. COMPETITION LAW

II.A.1. Welfare standard in competition law

Does your competition law refer to economic efficiencies and/or maximising consumer/social welfare as goals?

- Yes
- No

II.A.2. If there are other goals in competition law

Does your competition law refer to other goals than economic efficiencies and/or maximising consumer/social welfare?

- Yes
- No [go to question II.A.4 (Sustainability in competition law)]

[small box]

II.A.3. What are those other goals in competition law

Which are these “other” considerations that your competition law refers to?

(multiple choice allowed)

- Public interest
- National security/Public order
- Security of supply of energy or other essential products/services
- Media plurality
- Financial stability
- Other, please specify

[small box]

II.A.4. Sustainability in competition law

Does your competition law refer to sustainability?

- Yes
- No [go to question II.A.7 (Competition law outlook)]

II.A.5. Place of sustainability in competition law

Where does your competition act refer to sustainability?

(multiple choice allowed)

- General
- Restrictive agreements
- Unilateral conduct
- Mergers
- Other

[small box]

II.A.6. Sustainability related provisions in competition law

Which paragraphs/points of your competition act refer to sustainability?

Title of competition law	Weblink/availability	Text of paragraph/point which refers to sustainability

[20 rows or expandable table (to 20 rows)]

Please insert only text in English. If the original text is not in English, please insert its English translation or a brief description in English.

II.A.7. Competition law outlook

Does your agency anticipate the introduction of new sustainability related provision(s) into competition law in the near future (2021-2023)?

- No
- Yes, based on ongoing legislation
- Yes, based on legislative planning
- Yes, based on other factors, please specify
- No prediction/answer

[small box]

II.B. OTHER LEGISLATIONS

II.B.1. Sustainability in other, competition related legislations

Are there currently any other pieces of legislation which also relate to competition law matters and refer to sustainability?

- Yes
- No

[small box]

Explanatory note:

This question concerns pieces of competition related regulations that are e.g. applied by sectoral regulators, ministries as well as more general legislations that may nevertheless influence competition enforcement (such as “horizontal” constitutional requirements to consider sustainability).

II.B.2. Sustainability in other, competition related legislations – outlook

Does your agency anticipate new piece(s) of legislation which also relate to competition law matters and refer to sustainability in the near future (2021-2023)?

- No
- Yes, based on ongoing legislation
- Yes, based on legislative planning
- Yes, based on other factors, please specify
- No prediction/answer

[small box]

Explanatory note:

This question concerns pieces of competition related regulations that are e.g. applied by sectoral regulators, ministries as well as more general legislations that may nevertheless influence competition enforcement (such as “horizontal” constitutional requirements to consider sustainability).

III. CASE EXPERIENCE – RESTRICTIVE AGREEMENTS (vertical or horizontal)

III.A. GENERAL

III.A.1. Jurisdiction

Does your agency assess restrictive agreements?

- Yes
- No [go to question IV (OTHER)]

[small box]

III.B. EFFECTS ON SUSTAINABILITY AS AN OFFENCE

III.B.1. Sustainability related competition concern

Did your agency have restrictive agreement cases (either horizontal or vertical), closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed

(i.e. a concern that reduced actual or potential competition leads, or is likely to lead to a loss in sustainability (rather than a price increase etc.)

and/or the restriction of competition occurred in terms of sustainability)?

- Yes, and the sustainability related competition concern was the sole/main competition concern at least in one case.
- Yes, but other concerns were more important in all cases.
- No [go to question III.C.3 (Method document)]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

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).

III.B.2. Number of cases with sustainability related competition concern (by time period)

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed.

How many such cases did your agency have?

	2015-2017*	2018-2020*	2021**
1: Main/sole concern is related to sustainability			
2: One or more (but not main/sole) concerns are related to sustainability			
Total (1+2)			

*Please note that we would like to ask you to provide us with data **about the closed cases** in each period.

** Cases closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

III.B.3. Number of prohibitions and remedies (by time period)

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed.

How many of those cases ended – in relation to those concerns – with either a prohibition decision or a remedy decision?

	2015-2017*	2018-2020*	2021**
Prohibition decision (related to a/the sustainability related competition concern)			
Remedy decision (related to a/the sustainability related competition concern)			
Total			

*Please note that we would like to ask you to provide us with data **about the closed cases** in each period.

** Cases closed between 2020 and the response to this questionnaire (roughly January-February 2021).

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Prohibition decision here refers to agency actions aimed at forcing the parties to terminate/eliminate their restrictive co-operation in question.

Remedy decision here refers to agency actions aimed at forcing the parties to alter their restrictive co-operation in question so that it does not raise the original (sustainability) concern.

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

III.B.4. Court decisions/review

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed.

Were those decisions tested at court?

- Yes, one or more of those decisions were tested at court, and the position of the agency was confirmed in terms of the sustainability related competition concern(s).
- Yes, one or more of those decisions were tested at court, and the position of the agency failed in terms of the sustainability related competition concern(s).
- Yes, one or more of those decisions were tested at court with mixed or no results in terms of the sustainability related competition concern(s).
- No

[small box]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

Failure here refers to the merit of the case only in terms of the sustainability related competition concern: it is not intended to include failure due to / involving e.g. purely procedural issues.

III.B.5. Sector(s)

According to your response, your agency had restrictive agreement cases where a sustainability related competition concern was assessed in the past 6 years (2015-2020(-2021)).

Which sectors were involved in those cases?

(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]

III.B.6. Profile of cases

According to your response, your agency had restrictive agreement cases where a sustainability related competition concern was assessed in the past 6 years (2015-2020(-2021)).

Did you perceive the profile of those cases as different – in any systematic way – from the general set of the restrictive agreement cases your agency dealt with in the same time period?

Think of characteristics, inter alia, touched upon in this questionnaire, such as the type of conduct, likelihood of a prohibition or remedy outcome, type of remedies, success rate at court, intervention from other government agencies, inter-agency co-operation etc.

- No
- Yes, please explain

[small box]

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

III.B.7. Case presentation – main parameters

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed.

Please present the case you find the most relevant for this questionnaire. If you had cases where the sustainability related competition concern was the main/sole competitive concern, please present one of those cases.

First, please give the main parameters of the case.

Case name / party/parties	
Case ID	
Product/service/industry	
Date of decision	
Weblink of decision (English)	
Weblink of decision (Original)	
Weblink of press release on decision (English)	
Weblink of press release on decision (Original)	

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

III.B.8. Case presentation – description

Second, please describe the case briefly.

We would find it useful if your description clarified:

- whether the agreement in question was a hard-core cartel (as opposed to horizontal (non-cartel) co-operations or vertical restraints);
- what the theory of harm (of the sustainability related competition harm) was;
- what notion of sustainability was involved in the case in question;
- whether sustainability was a major issue in the case;
- whether the case ended with a prohibition or remedy decision or the case was not launched or was dropped;
- whether there was a Court review of the decision of your competition agency;
- whether sustainability was taken into account ex-officio or on the request of the parties or third parties or any other stakeholders,
- how sustainability was taken into account / analysed;
- whether taking into account sustainability (or the particular manner it was taken into account / analysed) made a difference and what difference in the assessment and the result,
- whether there were any broader consequences of the case and, if yes, what those consequences were.

[BIG BOX]

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

III.C. ASSESSMENT OF SUSTAINABILITY RELATED COMPETITION CONCERNS

III.C.1. Method's relation to general method

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed.

Which of these descriptions fits best the method your agency used when assessing the sustainability related competitive concern in those cases?

(multiple choice allowed)

- The general analytical framework of assessing competitive concerns that your agency would otherwise use in restrictive agreement cases in its original form without any need of extension or additional interpretation.
- The general analytical framework of assessing competitive concerns that your agency would otherwise use in restrictive agreement cases with a few appropriate interpretations and solutions concerning sustainability.
- An analytical framework designed specifically to assess sustainability related competition concerns, which nevertheless relies on the principles of the general analytical framework that your agency would otherwise use in restrictive agreement cases.
- An analytical framework designed specifically to assess sustainability related competition concerns, which is unique and materially different from the general analytical framework that your agency would otherwise use in restrictive agreement cases.
- Other

Explanatory note:

Please note that the analytical framework may vary over time and/or across different notions of sustainability etc. This is why multiple choice is allowed here.

We also recognise that the borderlines between the above options may be blurred and the choice may not be fully objective.

For instance, in certain jurisdictions it may be relatively straightforward to consider sustainability as a quality aspect of the products and services. If a competition agency applying this approach encountered only cases where qualitative analysis sufficed for any reason, it may be appropriate to mark the second option above only.

If the same agency applying the same approach also encountered cases that for some reason required more sophisticated analysis, such as involving measurement of sustainability, which was done in a somewhat distinct manner, it is appropriate to mark option three above too.

In any event – as these hypothetical examples illustrate – this question is intended to capture the nature of cases your agency encountered and the nature of your jurisdiction rather than the sophistication or preparedness of your agency.

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Please also consider cases where the original concern was not sustainability related, but later a sustainability related competitive concern emerged, e.g. parties proposed a remedy to solve the original competitive concern, but it raised a sustainability related competitive concern.

III.C.2. Method description

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability related competition concern was assessed.

Please briefly describe the method your agency used when assessing the sustainability related competitive concern in those cases.

Please highlight

- the sustainability specific aspects and their relationship with the general method that your agency would otherwise use;
- how methods used concerning different kinds of sustainability differed from each other (if applicable);
- whether the method(s) was/were different from those used in unilateral conduct and merger cases (if applicable – i.e. if your agency assessed those cases and had that type of cases involving a sustainability related competition concern in the same period of time);
- how the issues of trade-off between sustainability and price (and other non-price parameters) are dealt with, including measurement issues;
- whether there is a source of inspiration (such as pier experience, analogous situation/method, research) behind the method and, if yes, what it is.

[BIG BOX]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

III.C.3. Method document

Does your agency have any public document(s) (such as a soft law(s) or guideline(s)) outlining the method used in past cases or planned to be used in prospective cases when assessing the sustainability related competitive concern in restrictive agreement cases (either specifically in restrictive agreement cases or in a broader set of cases, including restrictive agreement cases)?

- Yes, one such document
- Yes, several such documents
- No [go to question III.D (PRIORITISATION)]

III.C.4. Method document details

According to your response, your agency has public document(s) outlining the method used in past cases or planned to be used in prospective cases when assessing the sustainability related competitive concern in restrictive agreement cases.

Please give the details of that document / first such document.

Title of document	Year of adoption	Weblink/availability	Paragraphs/points referring to sustainability	What notion of sustainability mentioned/involved	Still “in force”? (Y/N)

[20 rows or expandable table (to 20 rows)]

III.D. PRIORITISATION

III.D.1. Case selection and sustainability as an offence

Is it an enforcement priority for your agency, in terms of case selection, to deal with restrictive agreement cases involving sustainability related competition concerns?

- The emergence of sustainability related competition concerns increases the likelihood of launching a formal proceeding/investigation.
- The emergence of sustainability related competition concerns does not affect the likelihood of launching a formal proceeding/investigation.
- The emergence of sustainability related competition concerns decreases the likelihood of launching a formal proceeding/investigation.
- No agency discretion in case selection / No answer.

[small box]

III.E. EFFECTS ON SUSTAINABILITY AS A DEFENCE

III.E.1. Sustainability defence cases

Did your agency have restrictive agreement cases (either horizontal or vertical), closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed

(i.e. whether the harm caused by the reduction or potential reduction of competition was compensated/countervailed by sustainability benefits or potential sustainability benefits, produced by the agreement in question)?

- Yes, and the sustainability defence was the sole/main defence at least in one case.
- Yes, but other defences were more important in all cases.
- No [go to question [III.F.3 (Method document)]]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

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.

III.E.2. Number of sustainability defence cases (by time period)

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

How many such cases did your agency have?

	2015-2017*	2018-2020*	2021**
1: Main/sole defence is related to sustainability			
2: One or more (but not main/sole) defences are related to sustainability			
Total (1+2)			

*Please note that we would like to ask you to provide us with data **about the closed cases** in each period.

** Cases closed in 2021 before responding this questionnaire (roughly January-February 2021).

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

III.E.3. Number of cases with prevailing sustainability defence (by time period)

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

In how many of those cases did the sustainability defence prevail?

	2015-2017*	2018-2020*	2021**
The sustainability defence led to either not launching a formal investigation or dropping the case (as opposed to a prohibition/remedy decision).			
The case ended with a prohibition/remedy decision, but the sustainability defence led to dropping a particular competition concern (to which it was related).			
The case ended with a prohibition/remedy decision, and no competition concern was dropped, but the sustainability defence led to a reduction of fine or/and softer remedies.			
Total			

The rows of this table are not meant to overlap (except for "Total").

*Please note that we would like to ask you to provide us with data **about the closed cases** in each period.

** Cases closed in 2021 before responding this questionnaire (roughly 2021.01-02.)

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Prohibition decision here refers to agency actions aimed at forcing the parties to terminate/eliminate their restrictive co-operation in question.

Remedy decision here refers to agency actions aimed at forcing the parties to alter their restrictive co-operation in question so that it does not raise the original (sustainability) concern.

A sustainability defence regarded has as one that prevailed, if it altered the outcome of the case toward less severe intervention by the competition agency:

- *For example, a sustainability defence may lead to not launching a formal investigation or dropping an ongoing case (i.e. not to take a prohibition/remedy decision in the case).*
- *A sustainability defence may also lead to dropping a particular competition concern (such as a theory of harm or a concern related to a given product or geographic market), without the same effect regarding other competition concerns.*
- *In addition, a sustainability defence may lead to a reduction of fine or to the imposition of softer remedies even if it did not eliminate any of the competition concerns completely.*
- *Furthermore, sustainability considerations may influence remedies and fines even without a direct link to the competitive concerns originally arisen to avoid remedies that would for some reason interfere with sustainability.*

For the purpose of this survey, all of these examples are considered as prevailing sustainability defences.

III.E.4. Court decisions/review

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

Were those decisions tested at court?

- Yes, one or more of those decisions were tested at court, and the sustainability defence(s) ultimately failed.
- Yes, one or more of those decisions were tested at court, and the sustainability defence(s) ultimately prevailed.
- Yes, one or more of those decisions were tested at court with mixed or no results in terms of the sustainability defence(s).
- No

[small box]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

Failure here refers to the merit of the case and only concerns the sustainability defence: it is not intended to include failure due to / involving purely procedural issues or failure related to the original competitive concern.

III.E.5. Sector(s)

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

Which sectors were involved in those cases?

(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]

III.E.6. Profile of cases

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

Did you perceive the profile of those cases as different – in any systematic way – from the general set of the restrictive agreement cases your agency dealt with in the same time period?

Think of characteristics, inter alia, touched upon in this questionnaire, such as the type of conduct, likelihood of a prohibition or remedy outcome, type of remedies, success rate at court, intervention from other government agencies, inter-agency co-operation etc.

- No
- Yes, please explain

[small box]

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

III.E.7. Case presentation – main parameters

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

Please present the case you find the most relevant for this questionnaire. If you had cases where the sustainability defence was the main/sole defence, please present one of those cases.

First, please give the main parameters of the case.

Case name / party/parties	
Case ID	
Product/service/industry	
Date of decision	
Weblink of decision (English)	
Weblink of decision (Original)	
Weblink of press release on decision (English)	
Weblink of press release on decision (Original)	

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

III.E.8. Case presentation – description

Second, please describe the case briefly.

We would find it useful if your description clarified:

- whether the agreement in question was a hard-core cartel (as opposed to horizontal (non-cartel) co-operations or vertical restraints);
- what theory of harm and the theory of sustainability benefit were;
- what notion of sustainability was involved in the case in question;
- whether sustainability was a major issue in the case;
- whether the case ended with a prohibition or remedy decision or the case was not launched or was dropped;
- whether there was a Court review of the decision of your competition agency;
- whether sustainability was taken into account ex-officio or on the request of the parties or third parties or any other stakeholders;
- how sustainability was taken into account / analysed;
- whether taking into account sustainability (or the particular manner it was taken into account / analysed) made a difference and what difference in the assessment and the result;
- whether there were any broader consequences of the case and, if yes, what those consequences were.

[BIG BOX]

Explanatory note:

Cases here refer not only to formal proceedings and investigations but also to events when your agency and parties interacted concerning a concrete restrictive agreement in an informal setting, including giving informal guidance to parties.

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

III.F. ASSESSMENT OF SUSTAINABILITY DEFENCES

III.F.1. Method's relation to general method

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

Which of these descriptions fits best the method your agency used when assessing the sustainability defence in those cases?

(multiple choice allowed)

- The general analytical framework of assessing benefit related defences that your agency would otherwise use in restrictive agreement cases in its original form without any need of extension or additional interpretation.
- The general analytical framework of assessing benefit related defences that your agency would otherwise use in restrictive agreement cases with a few appropriate interpretations and solutions concerning sustainability.
- An analytical framework designed specifically to assess sustainability defence, which nevertheless relies on the principles of the general analytical framework that your agency would use to assess other benefit related defences in restrictive agreement cases.
- An analytical framework designed specifically to assess sustainability defence, which is unique and materially different from the general analytical framework that your agency would use to assess other benefit related defences in restrictive agreement cases.
- Other

Explanatory note:

Please note that the analytical framework may vary over time and/or across different notions of sustainability etc. This is why multiple choice is allowed here.

We also recognise that the borderlines between the above options may be blurred and the choice may not be fully objective.

For instance, in certain jurisdictions it may be relatively straightforward to consider sustainability improvements as efficiencies. If a competition agency applying this approach

encountered only cases where qualitative analysis sufficed for any reason, it may be appropriate to mark the second option above only.

If the same agency applying the same approach also encountered cases that for some reason required more sophisticated analysis, such as involving measurement of sustainability, which was done in a somewhat distinct manner, it is appropriate to mark option three above too.

In any event – as these hypothetical examples illustrate – this question is intended to capture the nature of cases your agency encountered and the nature of your jurisdiction rather than the sophistication or preparedness of your agency.

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

III.F.2. Method description

According to your response, your agency had restrictive agreement cases, closed in the past 6 years (2015-2020(-2021)), where a sustainability defence was assessed.

Please briefly describe the method your agency used when assessing the sustainability defence in those cases.

Please highlight

- the sustainability specific aspects and their relationship with the general method that your agency would otherwise use;
- how methods used concerning different kinds of sustainability differed from each other (if applicable);
- whether the method(s) was/were different from those used in unilateral conduct and merger cases (if applicable – i.e. if your agency assessed those cases and had that type of cases involving a sustainability defence in the same period of time);
- how the issues of trade-off between sustainability and price (and other non-price parameters) are dealt with, including measurement issues;
- whether there is a source of inspiration (such as pier experience, analogous situation/method, research) behind the method and, if yes, what it is.

[BIG BOX]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

III.F.3. Method document

Does your agency have any public document(s) (such as a soft law(s) or guideline(s)) outlining the method used in past cases or planned to be used in prospective cases when assessing the

sustainability defence in restrictive agreement cases (either specifically in restrictive agreement cases or in a broader set of cases, including restrictive agreement cases)?

- Yes, one such document
- Yes, several such documents
- No [go to question III.G (PRIORITISATION)]

III.F.4. Method document details

According to your response, your agency has public document(s) outlining the method used in past cases or planned to be used in prospective cases when assessing the sustainability defence in restrictive agreement cases.

Please give the details of that document / first such document.

Title of document	Year of adoption	Weblink/availability	Paragraphs/points referring to sustainability	What notion of sustainability mentioned/involved	Still “in force”? (Y/N)

[20 rows or expandable table (to 20 rows)]

III.G. PRIORITISATION

III.G.1. Case selection and sustainability as a defence

Is it an enforcement priority for your agency, in terms of case selection, to deal with cases involving sustainability defence?

- The emergence of sustainability defences increases the likelihood of launching a formal proceeding/investigation.
- The emergence of sustainability defences does not affect the likelihood of launching a formal proceeding/investigation.
- The emergence of sustainability defences decreases the likelihood of launching a formal proceeding/investigation.
- No agency discretion in case selection / No answer.

[small box]

III.H. OTHER (RESTRICTIVE AGREEMENTS ENFORCEMENT)

III.H.1. Government etc. intervention

Does your government (i.e. ministries or other agencies that are otherwise not involved in competition enforcement) have the power to intervene in restrictive agreement (horizontal or vertical) cases on sustainability grounds?

- Yes
- No [go to question III.H.3 (Further enforcement experience)]

III.H.2. Presentation of a government etc. intervention

According to your response, your government (i.e. ministries or other agencies that are otherwise not involved in competition enforcement) has the power to intervene in restrictive agreement (horizontal or vertical) cases on sustainability grounds.

Please present one of the cases, closed in the past 6 years (2015-2020(-2021)), if there has been any, you find the most relevant for this questionnaire.

We would find it useful if your description clarified:

- whether the intervention of the government permitted an otherwise anticompetitive agreement or prohibited an otherwise not anticompetitive agreement on sustainability grounds;
- in which part of the procedure (e.g. case initiation, investigation, decision-making) the intervention took place;
- what notion of sustainability was involved in the case in question;
- whether the elements of the process (e.g. due process considerations, transparency, impact assessment) were different from those used in the case of government intervention other than involving sustainability;
- whether the agency/other NGOs were consulted before the intervention;
- whether the intervention was subject to judicial review by parties/third parties.

[BIG BOX]

Explanatory note:

Please also consider cases that were closed in 2021 before responding to this questionnaire (roughly January-February 2021).

III.H.3. Further enforcement experience

Has your agency encountered the issue of sustainability in the context of law enforcement towards restrictive agreements in any other ways than described so far in this questionnaire that is nevertheless relevant for the purpose of this questionnaire?

- No
- Yes, please specify

[BIG BOX]

III.H.4. Restrictive agreement enforcement outlook

Does your agency anticipate encountering the issue of sustainability in the context of law enforcement towards restrictive agreements in the near future (2021-2023)?

- No
- Yes, based on guidance seeking by law firms / market participants / stakeholders
- Yes, based on knowledge about corporate activity related to sustainability
- Yes, based on indications of law firms / market participants / stakeholders
- Yes, based on foreign experience
- Yes, based on other factors, please specify

- No prediction/answer

[small box]

IV. OTHER ISSUES

IV.A. SECTOR INQUIRIES / MARKET STUDIES AND RESEARCH

IV.A.1. Sector inquiries / market studies with sustainability as a major issue

Did your agency conduct one or more sector inquiries / market studies where sustainability was a major issue or dealt with research into sustainability and competition?

Please report sector inquiries / market studies / research closed in the past 6 years (2015-2020(-2021)).

Please also report ongoing sector inquiries /market studies / research.

- Yes
- No [go to question IV.B(AGENCY PREPARATIONS)]

[small box]

Explanatory note:

Research here refers to research that either (a) was conducted by your agency, (b) was commissioned by your agency and conducted by others or (c) was relied on by your agency even if neither (a) or (b).

IV.A.2. Number of sector inquiries / market studies (with sustainability as a major issue) / research into sustainability and competition (by time period)

According to your response, your agency conducted one or more sector inquiries / market studies where sustainability and competition was a major issue or dealt with research into sustainability and competition in the past 6 years (2015-2020(-2021)).

How many such sector inquiries / market studies / research projects did your agency have?

	2015-2017*	2018-2020*	2021*/Ongoing
Number of sector inquiries/market studies / research projects			

*Please note that we would like to ask you to provide us with data **about the closed inquiries/studies** in each period.

Explanatory note:

Research here refers to research that either (a) was conducted by your agency, (b) was commissioned by your agency and conducted by others or (c) was relied on by your agency even if neither (a) or (b).

IV.A.3. Sector(s)

According to your response, your agency conducted one or more sector inquiries / market studies where sustainability and competition was a major issue or dealt with research into sustainability and competition in the past 6 years (2015-2020(-2021)).

That/those sector inquiries / market studies / research involved: (Please also report ongoing sector inquiries / market studies / research.)

(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:

Research here refers to research that either (a) was conducted by your agency, (b) was commissioned by your agency and conducted by others or (c) was relied on by your agency even if neither (a) or (b).

IV.A.4. Presentation of a sector inquiry / market study / research – main parameters

According to your response, your agency conducted one or more sector inquiries / market studies where sustainability and competition was a major issue or dealt with research into sustainability and competition in the past 6 years (2015-2020(-2021)).

Please present a sector inquiry / market study / research that you find the most relevant for this questionnaire. Please also report ongoing sector inquiries.

First, please give the main parameters of the sector inquiry / market study.

ID / Title	
Product/service/industry	
Time frame of the sector inquiry / market study / research	
Investigated phenomena / conduct	
Date of report / study	
Weblink of report/study/project (English)	
Weblink of report/study/project (Original)	
Weblink of press release on report/study (English)	
Weblink of press release on report/study (Original)	

Explanatory note:

Research here refers to research that either (a) was conducted by your agency, (b) was commissioned by your agency and conducted by others or (c) was relied on by your agency even if neither (a) or (b).

IV.A.5. Presentation of a sector inquiry / market study / research – description

Second, please describe the sector inquiry / market study briefly.

We would find it useful if your description clarified:

- what the subject and the structure of the sector inquiry / market study / research were;
- what notion of sustainability was involved in the sector inquiry in question / was the subject of research;
- what the main findings of the sector inquiry / market study / research in general as well as concerning sustainability and competition were;
- how sustainability was taken into account / analysed;
- whether the sector inquiry/market study / research resulted in any action by your agency (including the initiation of competition enforcement (i.e. individual case(s)), competition advocacy (e.g. proposing regulation or deregulation);
- whether there were any broader consequences of the sector inquiry / market study / research and, if yes, what those consequences were.

[BIG BOX]

Explanatory note:

Research here refers to research that either (a) was conducted by your agency, (b) was commissioned by your agency and conducted by others or (c) was relied on by your agency even if neither (a) or (b).

IV.B. AGENCY PREPARATIONS

IV.B.1. Expertise gap

Did the work of your agency involving sustainability in the past 6 years (2015-2020(-2021)) require additional expertise compared to what your agency originally possessed?

- Yes, at least in (a significant) part related to sustainability
- Yes, but (almost) exclusively unrelated to any sustainability aspect. [go to question IV.B.3(Effort(s) to close the / to prevent opening an expertise gap)]
- No, but it is anticipated, at least in (a significant) part related to sustainability
- No [go to question IV.B.3(Effort(s) to close the / to prevent opening an expertise gap)]
- No answer [go to question IV.B.3(Effort(s) to close the / to prevent opening an expertise gap)]

Explanatory note:

Work here refers to case work, sector inquiries / market studies and competition advocacy alike.

IV.B.2. Activity area context

The need of that additional expertise was / has been experienced in:

(multiple choice allowed)

- Case work
- Sector inquiry / market study / research
- Competition advocacy
- Other please specify

[small box]

IV.B.3. Effort(s) to close the / to prevent opening an expertise gap

Did your agency make effort(s) to acquire the additional expertise that was required by the work of your agency involving sustainability in the past 6 years (2015-2020(-2021))?

Please also report efforts which were made proactively to prevent opening an expertise gap in the past 6 years (2015-2020(-2021)). Please also report ongoing effort(s).

- no
- yes

(multiple choice allowed)

- by internal capacity building (such as training, hiring personnel or consultancy, establishing dedicated unit)
- by co-operation with other parts of (domestic) public administration (such as regulatory authorities)
- by co-operation with NGOs dealing with sustainability
- by co-operation with foreign competition agencies
- by other means, please specify

[small box]

Explanatory note:

Work here refers to case work, sector inquiries / market studies, and competition advocacy alike.

IV.B.4. Effort(s) to close the / to prevent opening an expertise gap - outlook

Is your agency planning to make effort(s) to acquire the additional expertise that was / anticipated to be required by the work of your agency involving sustainability in the near future (2021-2023)?

- no
- yes

(multiple choice allowed)

- by internal capacity building (such as training, hiring personnel or consultancy, establishing dedicated unit)
- by co-operation with other parts of (domestic) public administration (such as regulatory authorities)
- by co-operation with NGOs dealing with sustainability
- by co-operation with foreign competition agencies
- by other means, please specify

- no answer

[small box]

Explanatory note:

Work here refers to case work, sector inquiries / market studies, and competition advocacy alike.

IV.C. INTRA-AGENCY SYNERGIES

IV.C.1. Agency activity portfolio

Does your agency also deal with:

(multiple choice allowed)

- State aid control
- Consumer protection / deceptive and aggressive sales practices
- Abuse of economic dependence / superior bargaining power (as opposed to abuse of dominant position)
- Regulation of network industries
- Public procurements (other than cartel enforcement)
- Other, please specify
- None / no answer

[small box]

Explanatory note:

Please choose any of these options only if your agency deals with the particular issue as a principal regulator/enforcer rather than in any other contexts, such as competition advocacy.

IV.C.2. Synergies between various elements of activity portfolio

Have other activities of your agency influenced the willingness and/or capability of your agency to consider sustainability when enforcing competition law (e.g. through cross-fertilisation of ideas and/or the ability to combine multiple tools/expertise, etc.)?

If yes, please describe those synergies briefly.

We would find it useful if your description clarified:

- the activities involved;
- how those synergies work;
- whether it has increased or decreased the willingness of your agency to consider sustainability when enforcing competition law;

[BIG BOX]

IV.D. AGENCY & INTERNATIONAL AGENDA

IV.D.1. Agency agenda

Is the topic of sustainability and competition on the (strategic) agenda of your agency?

- Yes
- No
- No answer

[small box]

IV.D.2. Agenda of international organisations

Does your agency regard (further) addressing the issue of sustainability and competition among the 5 most important items international organisations should deal with?

- Yes
- No [go to END OF QUESTIONNAIRE]
- No answer [go to END OF QUESTIONNAIRE]

[small box]

IV.D.3. Type of work product of international organisations

What type of work product of international organisations (further) addressing sustainability and competition would your agency prefer?

(multiple choice allowed)

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

[small box]

END OF QUESTIONNAIRE (Thank you for your contribution.)