

# COMPETITION LAW, CLIMATE CHANGE & ENVIRONMENTAL SUSTAINABILITY

Foreword by Frans Timmermans

Introduction by Suzanne Kingston SC

*Edited by*

Simon Holmes

Dirk Middelschulte

Martijn Snoep

*Managing Editor*

Sonia Ahmad

# Table of Contents

Foreword .....	I
Introduction.....	III
Contributors .....	XI
Table of Contents .....	XIII

## Part I: Legal Themes

Preface: How Sustainability Can Be Taken Into Account in Every Area of Competition Law .....	3
Simon Holmes ( <i>Oxford University / UK Competition Appeal Tribunal</i> )	

### Chapter 1: Cooperation

Sustainable Competition Policy and the “Polluter Pays” Principle.....	17
Maurits Dolmans ( <i>Cleary Gottlieb Steen &amp; Hamilton</i> )	
Article 101(3) TFEU: the Roadmap for Sustainable Cooperation .....	39
Ella van den Brink and Jordan Ellison ( <i>Google / Slaughter and May</i> )	
A New Approach to Assess Certain Sustainability Agreements under Competition Law .....	55
Theon van Dijk ( <i>Netherlands Authority for Consumers and Markets</i> )	
Green Antitrust: Friendly Fire in the Fight Against Climate Change .....	69
Maarten Pieter Schinkel and Leonard Treuren ( <i>University of Amsterdam</i> )	

### Chapter 2: Abuse of Dominance

Radical For Whom? Unsustainable Business Practices as Abuses of Dominance .....	91
Marios Iacovides and Christos Vrettos ( <i>University of Oxford / Stockholm University</i> )	
Exploring the Sustainability of Article 102 .....	105
Christopher Thomas ( <i>Hogan Lovells</i> )	

## **Chapter 3: EU Merger Control**

Environmental Sustainability and EU Merger Control: EU Competition Policy's Dark Horse to Support Green Investment.....	117
Nicole Kar, Emma Cochrane and Bella Spring ( <i>Linklaters</i> )	
Can Environmental Interests Trump An EUMR Decision?.....	139
Alec Burnside, Marjolein De Backer and Delphine Strohl ( <i>Dechert</i> )	

## **Chapter 4: State Aid**

State Aid and Sustainability.....	155
James Webber ( <i>Shearman &amp; Sterling</i> )	
The Role of State Aid in Promoting Environmental Sustainability.....	169
Nicole Robins, Anton Burger and Laura Puglisi ( <i>Oxera</i> )	

## **Chapter 5: Public Procurement**

Environmental and Climate Sustainability in Public Procurement.....	183
Patrick Thieffry	
Procuring a Greener Future.....	193
Fiona M Beattie ( <i>Macfarlanes</i> )	

## **Part II: Industry Perspectives**

Preface: Competition Policy as an Enabler of a Sustainable Economy – A View Across Sectors .....	207
Dirk Middelschulte ( <i>Unilever</i> )	

## **Chapter 1: Automotive and Transportation**

Sustainability in the Automotive Industry, a Quest for Certainty in Troubled Times?.....	223
Jérôme Cloarec ( <i>Michelin</i> )	
Right on Track – The Legal Framework as a Locomotive for Sustainability in Transportation .....	231
Benjamin Linke and Udo Woll ( <i>Deutsche Bahn AG</i> )	
The Role of Competition Law in Shaping the Future of Road Transportation .....	243
Ian Rose ( <i>Volvo Truck Corporation</i> )	

## **Chapter 2: Banking and Finance**

- Competition Law as an Obstacle for Financing  
a Sustainable Economy?..... 255  
Stephan Bredt (*Ministry of Economics, Energy, Transport  
and Housing of the State of Hessen*)
- Potential Competition Concerns as the Banking and Finance Industry  
Responds to Climate Change..... 265  
Hugh Mullan, Marc Braithwaite and Rosy Cheetham-West (*UK Payment Systems  
Regulator / UK Financial Conduct Authority*)

## **Chapter 3: Consumer Goods**

- Competition Law and Sustainability: an Industry Perspective ..... 277  
Angélique de Brousse (*Johnson & Johnson*)
- Brands, Competition and Sustainability..... 287  
Andreas Gayk (*Markenverband e. V. – German Brands Association*)
- What Role Does Antitrust Play in How FMCG Companies Choose  
to Pursue Sustainability Goals?..... 297  
Ben Graham (*AB InBev*)

## **Chapter 4: Energy**

- Abuse of Dominant Position and Sustainability –  
How to Use Article 102 TFEU as a Sword to Promote Sustainability:  
Lessons Learnt From DE/DK Interconnector ..... 307  
Eleni Diamantopoulou (*ClientEarth*)
- Setting the Course – Removing Competition Law Obstacles  
to Industry Sustainability Collaborations ..... 315  
Morgan Frontczak (*Shell International BV*)

## **Chapter 5: Food Supply Chain**

- Competition Policy for a Sustainable Food Sector:  
An In-House Counsel Perspective..... 327  
Martyn Chu (*Danone*)
- An Environmentally and Socially Broken Global Food System:  
What Role For Competition Law? ..... 339  
Claudio Lombardi and Tomaso Ferrando (*KIMEP University / University of Antwerp*)
- The Footprint of Competition: Power, Value Distribution  
and Exploitation in the Food Supply Chain..... 351  
Michelle Meagher and Simon Roberts (*University College London / University  
of Johannesburg*)

## Chapter 6: Industrial Products

How EU Antitrust Law Elevates Sustainability – And How Not: An In-House Practitioner Perspective on the Relationship Between Antitrust Law and Sustainability Objectives .....	363
Boris Kasten and Hendrik Reffken ( <i>Schindler Management Ltd</i> )	
A Grey Area in Green Cooperation Between Competitors: Exchanging Non-Price Information Within a Trade Association .....	377
Gianni De Stefano ( <i>AkzoNobel</i> )	

## Part III: Agency Outlook

Preface: Can Competition Authorities Consider Sustainability in their Decision-Making?.....	391
Martijn Snoep ( <i>Netherlands Authority for Consumers and Markets</i> )	
Australia .....	397
Georgina Foster, Grant Murray and Wendy Thian ( <i>Baker McKenzie</i> )	
European Union .....	405
Luc Peepkorn ( <i>Brussels School of Competition / College of Europe</i> )	
France.....	415
Isabelle de Silva ( <i>French Competition Authority</i> )	
Greece.....	423
Ioannis Lianos ( <i>Hellenic Competition Commission</i> )	
South Africa .....	429
Tembinkosi Bonakele ( <i>Competition Commission of South Africa</i> )	
United Kingdom.....	441
Sandrine Delarue and Mike Walker	

## Part IV: Alternative Perspectives

A Sustainable Competition Policy is a Shared Responsibility .....	451
Martijn Han ( <i>True Price Foundation</i> )	
“It Ain’t Necessarily So...” .....	457
Willem Vriesendorp ( <i>#SustainablePublicAffairs</i> )	