

Incorporating Sustainability Benefits in a Competitive Assessment

Roman Inderst
Goethe University Frankfurt

- The (possible) incorporation of sustainability benefits raises many questions: Why? Which? How?
- Key role of the currently circulated/enacted first guidelines, commissioned expert reports and (first) cases to guide and focus this discussion
- This presentation: Informed by the EC's guidelines, but relying on the following paper *"The Scope and Limitations of Incorporating Externalities into Competition Analysis within a Consumer Welfare Approach"* (with S. Thomas, 2021)

“Case” (hypothetical example)

- Jointly agreed introduction of a new car fuel, phasing out of old car fuel.
[Implies that large fraction of citizen are consumers]
- No direct use value, but less (sufficiently “local”) harmful emissions
- Previous (individual) attempts to introduce new fuel failed (insufficient take-up)

Extending the scope of CW analysis

- First focus on standard / individualistic / “ceteris paribus” Willingness-To-Pay (WTP) elicitation of preferences
- There exist widely recognized tools, such as surveys or conjoint analyses
→ Example: Hypothetical choice experiments.
- Key notion: For elicitation of sustainability preferences (non-use values) changes in the context are important, e.g., in awareness, information, social norms
[Example: “Chicken-for-Tomorrow” case]
- In particular, currently observed purchase behaviour may provide insufficient information

Extending the scope of CW analysis

Notes on measurement:

1. Context-specific realization of WTP is not an artefact, but can represent an opportunity: Introduce sustainability objectives without compromising consumer sovereignty
→ But careful: No over-expansion (“consumer view not citizen view”, “consumer specific interests not general values”)
2. Careful phrasing of context for e.g. hypothetical choice experiments may make obsolete the super-imposition of “true preferences” (e.g. for supposedly not recognized energy-saving benefits)

Collective CW analysis

- To capture “within-market-externalities”
- WTP for a change (also) in other consumers’ choices. Elicitation thus not by “ceteris paribus” questions, but through scenario changes

Methods and measurement:

- Same methods can be used as previously
- Plus (e.g. in the fuel example) also indirect methods regarding impact on consumers, e.g.,
 - Hedonic pricing methods (in surrogate markets)
 - Measuring consumers’ averting or defensive expenditures
 - Health impact studies (monetizing increased morbidity risk etc.)

Collective CW analysis

Key point: Such an approach must be applied with great care

1. “WTP” for change of consumption of others is not paid up by consumer
2. Which preferences over consumption of others are “sufficiently legitimate”?
[E.g. animal welfare ?]
3. Competition authorities lack instruments for compensation / (re-)distribution of burden
4. Prevailing standards are the outcome of a political process, already reflecting collective preferences, including for distribution / fairness – and taking into account the whole set of available instruments

Beyond an Individualistic CW analysis

- Starting point (personal view): Importance of relying on a relatively narrow, well defined and measurable consumer welfare criterion for efficiency (Art. 101(3)) analysis
 - Proposals:
 1. If expansion through collective CW analysis, indispensability criterion may safeguard against over-expansion. E.g. asking why current standards / environmental taxes are deemed insufficient, why there is a “gap”
 2. Alternative: Rely on ancillary restraints doctrine
 - It is then up to legislators to generate “sustainability corridors”, to both prioritize certain sustainability goals and make their realization concrete / measurable
- [Inderst/Thomas. Legal Design in Sustainable Antitrust. 2022]*

Reports

R. Inderst. Incorporating Sustainability into an Effects-Analysis of Horizontal Agreements, commissioned by the European Commission.
https://ec.europa.eu/competition-policy/system/files/2022-03/kd0722074enn_HBER_sustainability.pdf

R. Inderst, E. Sartzetakis, A. Xepapadeas. Technical Report on Sustainability and Competition, commissioned by ACM/HCC.
https://www.acm.nl/sites/default/files/documents/technical-report-sustainability-and-competition_0.pdf

Academic papers

R. Inderst, S. Thomas. Sustainability Agreements in the European Commission`s Draft Horizontal Guidelines, Journal of European Competition Law & Practice. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4069374

*. Sustainability and Competition: How Competition Law Enforcement Needs to Be Overhauled to Achieve Sustainability Goals, Competition Policy International. <https://www.competitionpolicyinternational.com/sustainability-and-competition-how-competition-law-enforcement-needs-to-be-overhauled-to-achieve-sustainability-goals1/>

*. Legal Design in Sustainable Antitrust. 2022. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4058367

*. The Scope and Limitations of Incorporating Externalities in Competition Analysis within a Consumer Welfare Approach.2021.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3896243

*. Prospective Welfare Analysis: Extending Willingness-to-Pay Assessment to Embrace Sustainability. Journal of Competition Law and Economics

*. Reflective Willingness to Pay: Preferences for Sustainable Consumption in a Consumer Welfare Analysis. Journal of Competition Law and Economics

*. Measuring Consumer Sustainability Benefits. Journal of European Competition Law & Practice

R. Inderst, F. Rhiel, S. Thomas. Sustainability Agreements and Social Norms. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887314

R. Inderst, E. Sartzetakis, A. Xepapadeas. Firm Competition and Cooperation with Norm-Based Preferences for Sustainability.
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