

## **Harnessing Economic Competition for a Sustainable Europe**

Article by **Edouard Gaudot, Michelle Meagher**

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From a raging pandemic to war on its doorstep, the EU has experienced multiple costly crises over the past few years. As the economy has taken a hit, the green transition has lost impetus in the public debate, and competitiveness has dominated the conversation instead. But can competition policy actually help the EU achieve its sustainability targets?

As the dust of the European elections is slowly settling on the continental right-wing drift, the fate of the Green Deal haunts the EU conversation. This ambitious set of comprehensive strategies and detailed policies aiming at the carbon neutrality and ecological transition of the EU's economic model of production and consumption ranked very high among the concerns that drove the mobilisation of defiant, disgruntled voters to the polls.

Despite the recent changes in Europe's political landscape, the Green Deal has already set the trajectory for radical change. However, whether the goals of the landmark legislation can be achieved depends entirely on how member states deliver on their obligations. A key element in this effort is finance, and the Green Deal requires a massive budget.

Yet, as the EU and its member states can only finance so much, the regulatory environment they provide for private economic actors is also critical. Successfully pairing public funding with private investment in service of the Green Deal will require a sweeping paradigm shift in economic regulation. The need for change is perhaps nowhere as evident as in the foundational principles of market competition itself, embodied in the legal framework of EU competition law.

### **A challenging obligation**

Historically a driver of European integration and a pillar of the Union's original social market economy model, competition policy was, in principle, supposed to allow the EU to balance the benefits of its market economy with the protection of the democratic fabric of society from unchecked corporate power.

That has not, however, been the case. Under the EU's competition policy, there have been massive levels of industrial consolidation across the economy. This has led to an increase in unsustainable practices across many industries, such as in the seeds and agrifood sectors – or the media industry (to the point of prompting action from the Commission), to mention another aspect of the continuum.

This growing concentration of corporate power has led to calls for meaningful changes to the EU's competition policy, but the European discussion on this matter seems to focus exclusively on economic notions of European and global "competitiveness." Social and climate sustainability are rarely part of the conversation.

In 2023, the European Council commissioned former Italian Prime Minister Enrico Letta to write a key report on the single market. The report came out earlier this year, calling for an improved and reinforced single market to meet the EU's pressing challenges, namely the sustainability of its economic model and

its defensive autonomy. However, when the Council discussed its “new competitiveness deal” in April, member states mostly focused on competition between themselves and neglected most of Letta’s other recommendations; namely to put “a fair, green, and sustainable transition at the core of the EU’s Single Market”, integrating social and ecological goals into it.

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Additionally, a highly expected report on the future of Europe’s competitiveness due in September and entrusted to the former president of the European Central Bank, Mario Draghi, is set to recommend the consolidation of national industries into more European ones with the aim of enhancing the Union’s competitiveness on the global stage. Again, the ecological crisis seems to come only second as a priority.

In the current political landscape, the general obsession with national and European competitiveness seems to overshadow the urgency of putting sustainability at the core of the reflection on economic competition. Thus, it is important to ask if the EU’s competition policy can serve the transition to a sustainable economy, and to what extent.

The global competition powered by the strategic rivalry between the US and China, two heavily subsidised economies scrambling for supremacy over green technologies and industries, has intensified the pressure on the EU and its member states to catch up to the race.

However, the EU faces significant hurdles on this path. Cash-strapped national budgets are still affected by the financial consequences of the pandemic and a prolonged economic crisis, which means that financing the green transition is beyond the capacities of both the EU and individual member states. What is more, the social and political risks of a complete overhaul of the current industrial production structure are posing further challenges. To achieve a higher level of sustainability, the EU must address the structure of the economy, the organisation of the market and, potentially, the emergence of new economic players challenging the dominant position of established entities.

As the shift towards a more sustainable economy challenges our industrial organisation, it inevitably raises the issue of the EU legal framework. Whether it is about the Stability and Growth Pact imposing austerity on eurozone balances, the preference for market instruments, or the principles of competition policies, the set of rules that have driven the EU’s economic model for seven decades are being brought into question by the new “climatic regime”.

## **Redesigning the EU’s competition policy**

In this context, the legal niche that is competition law could prove to be much more important for the European Green Deal than is currently recognised. Competition policy has the potential to act as a fundamental element – or complement, or catalyst – for broader industrial policy, and there are various ways in which the green transition can engage with competition.

Firstly, in the EU, state investment into private enterprise must comply with rules on state aid and foreign

subsidies, whether it is a direct grant, tax relief, or another kind of benefit. However, the EU has demonstrated a willingness to show some flexibility on its competition rules to accommodate green initiatives, as has been the case with the approval of funding for Swedish and German decarbonisation projects. We can expect to see governments wielding many such enticing carrots over the coming years.

Second, climate adaptation will stimulate sectoral reorganisation and, thus, trigger mergers and acquisitions (M&A) which will come under review by competition authorities. Up to now, the benchmark used to authorise M&As has been the “consumer welfare standard,” which purports to protect consumer interests. In reality, though, the consumer welfare principle embodies a bias towards concentrated power which can harm consumers, citizens and businesses.

However, the EU Commission has updated its position vis-à-vis M&As through the Corporate Sustainability Reporting Directive, which entered into force in 2023. The new rules require companies to provide more comprehensive and transparent sustainability reporting in line with the Green Deal, and to avoid mergers that reduce green innovation.

Third, during the Covid-19 pandemic, we witnessed another instance of sustainability being prioritised over competition due to a need for exceptional collaboration, with the EU temporarily greenlighting alliances to address the need for improving the supply and distribution of scarce products. In the face of increasingly recurrent extreme weather events, we could again find ourselves having to bend competition laws to mitigate harm and speed up climate adaptation.

While few are paying attention beyond the technocratic circle, current debates around the intersection of competition law and climate have generally focused on the narrow question of whether and to what extent relatively superficial collaborations between big companies should be permitted. Although this didn't happen in the EU, a good example is an agreement by a coalition of the UK's biggest supermarkets to jointly purchase Fairtrade bananas and coffee, which the country's competition watchdog has greenlighted.

At the same time, competition policy is generally hostile towards looser, more decentralised forms of coordination, such as cooperatives of small businesses. This bias is also being called into question by anti-monopoly activists in favour of a more decentralised, resilient, and democratic market economy. One can easily imagine circumstances in which dispersed and localised forms of coordination may need to become commonplace. For example, there could be an urgent need for local food production and distribution cooperatives in the event of a food shortage.

Again, the content of the rules for permissions and exemptions on the one hand and prohibitions on the other will determine the resulting mix of collaborations. It is time to bring a broader group of commentators, embodying a wider set of values, into the debate on collaboration.

Fourth, the current competition laws could allow companies to occupy a temporary position of monopoly when there are supply chain disruptions as a result of climate-driven economic emergencies. This is similar to what happened during the Covid-19 pandemic, when profiteering led to an increase in the price of hand sanitisers, face masks, and certain food products.

Oligopolistic firms use such circumstances as a cover for tacit collusion to create excess profit, as captured by the term “sellers' inflation” or “greedflation.” These practices can lead to macroeconomic consequences, and it falls on competition authorities to investigate them. In turn, these probes can then contribute to sustainability by forming the basis for taxing excess profits or imposing windfall tax policies.

The mandate of competition authorities currently includes such responsibilities, but there is a risk that companies could avoid accountability with the help of regulatory loopholes.

Fifth, competition law is a powerful tool, giving authorities and courts formidable powers of discovery and remedy. The European Commission can fine law-breaking companies up to 10 per cent of their worldwide turnover, and it has, for example, initiated proceedings against tech giants Meta and Apple for their alleged infringements of the EU's anti-trust rules and unsustainable market practices. As a result, companies pay attention to competition law because it goes right to the heart of their business model, financial planning and bottom line.

Competition policy is a board-level concern, meaning that it has the potential to be used as a powerful tool for reordering the economy. This raises crucial questions about the use and potential misuse of competition law. In the US, for example, the threat of antitrust action has been weaponised by lobby groups to intimidate coalitions of investors engaging in perfectly legal, commercially self-interested decisions to divest from fossil fuels.

There is also a sixth reason why competition policy can serve the transition to a sustainable economy: in systemically important sectors – such as fossil fuels, food, transportation, shipping, and banking – concentrated market structure and the resulting market failures impact emission levels, land use, and ecosystem protection, and determine the viability of potential solutions. For instance, just 57 countries have been responsible for 80 per cent of greenhouse gases released into the atmosphere since 2016. Within the existing EU framework, competition policy acknowledges its role in influencing market structure to an extent, but not in contributing to other market failures.

Lastly, economic conflicts are often accompanied by intense interest group lobbying. A cautionary example is how the agricultural lobby, representing large, multinational agrochemical companies, has channelled the justified anger of farmers in Europe into a false dichotomy between farmers' livelihoods and the protection of nature. In reality, it is multinational enterprises and their representatives, not the farmers, that oppose the Green Deal because the existing system serves them well; and eventually, when the current system does inevitably change, these large firms will also be the ones with the resources to adapt.

Meanwhile, small-scale farmers see their incomes and way of life threatened. Many of them are already unable to continue with their profession and are leaving farming altogether, even without the added costs of complying with green regulations.

Competition policy shapes market structures and has enabled the relentless consolidation in the agricultural sector over recent decades. By allowing unrestrained economic growth, competition laws are indirectly responsible for the lobbying power of agrochemical companies, as well as dominant players in other climate-relevant sectors. This means that competition policy can also be indirectly leveraged to address existing imbalances by targeting the economic power of market giants.

In other words, competition policy can be used to ensure that the private sector remains governable and accountable to the public, and that it does its part in the efforts to bring sustainability to the European economy.

But there are limits to what can or should be achieved through competition policy. Competition law comes with its own doctrinal baggage, and there is nothing as difficult to dislodge as a set of bad ideas embedded amongst an international community of technical experts and academics.

Without democratic oversight, the competition regime has evolved in harmful ways. In the name of “freedom”, markets around the world have become dominated by powerful actors; a “competitive” market can be one dominated by just a few behemoths; “consumer welfare” is sought through low prices, even if that implies low wages and appears to serve corporate welfare better; big companies are regarded as “more efficient” even if they are better able to exploit workers and nature.

That international community of experts will not willingly relinquish their hold on the highly powerful lever of economic policy that they currently wield, even as they disclaim their responsibility for the social, economic, and ecological consequences of the mass consolidation of industry that their policies have created.

### **Competition in a time of crisis**

Fundamentally, competition policy is part of a wider set of tools for *capital governance* that will shape, both passively and proactively, how economic resources are channelled in the context of the green transition, and the responsibilities and obligations of companies for their role in it.

In addition, current and future competition enforcement will have a bearing on some crucial questions: What will food distribution look like beyond 2030? What technologies will we use to connect with each other and share information when weather or health events make it impossible to meet in person? How is AI being used to spread climate disinformation?

All this raises the issue of democratic accountability. While the urgency of the green transition is undeniable, it may be used to override the objections of local communities to projects like power plants, wind farms or mining operations. Although the European fossil fuel energy system has been undoubtedly technocratic and top-down, the transition towards a decarbonised energy system and a more sustainable economy presents an opportunity to empower citizens and local communities.

However, the EU still needs to address the democratic dimension of its Green Deal. Across Europe, grassroots citizens’ initiatives are increasingly demanding a say in the implementation of the green transformation. Competition policy tends to see citizens only as consumers, but there might be another dimension to entertain in the face of our current crises.

Still, the trend remains towards centralisation. Notably, the current EU legal framework does not guarantee NGOs or the public a right to challenge European decisions on granting state aid when they are contrary to environmental laws. As such, the EU is not in compliance with the Aarhus Convention when it comes to citizens’ right to live in a healthy environment. (A pillar of environmental democracy, this international agreement to which the EU is part of requires that the public – whether NGOs or citizens – are granted access to information, participation and even justice, should they consider that EU decisions do not comply with EU environmental law.)

Interestingly, the Commission could – under the pretence of complying with the Aarhus convention and seeking to protect citizens’ right to a healthy environment – choose a procedure that would exclude the European Parliament from the legislative process to the benefit of the EU Council. This would likely result in a structural power imbalance in favour of national governments, practically limiting the reach of civil organisations.

It is true that a citizen or NGO petition to the European Parliament can only have a limited impact. However, bypassing the only democratically elected body of the EU would ensure that competition policy remains in the dark, closed rooms where corporate interests meet governments’ (not necessarily

democratic) preferences.

Averting, mitigating, and adapting to climate catastrophe and biodiversity collapse will demand an unprecedented deployment of resources and economic coordination, whether through private or public means. The crucial policy questions of our generation revolve around the mix of resources we deploy, and how and when we do it. Whether the green transition is just and democratic depends on who decides on the deployment of those resources, and in whose benefits those assets are mobilised. Competition policy might very well be where the next battle for a sustainable European economy takes place.

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Edouard Gaudot is a historian and political scientist. He has worked at the College of Europe in Warsaw and in the European Parliament. He is a teacher, consultant, and writer. His latest book is *Les 7 Piliers de la Cité* (Plon, 2022).



Michelle Meagher is a British lawyer, author and campaigner. Meagher is advocating for an overhaul of competition policy away from the Chicago School antitrust consumer-centered paradigm.

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