CCCS-ESS Essay Competition 2020

"The role of competition and consumer protection laws and policies in supporting environmental sustainability in Singapore."

Abstract

Environmental protection has become one of the most critical concerns in 21st century. To meet the Paris agreement to limit global warming to below 2, preferably 1.5 °C, groundbreaking technologies and improvisation of industrial standards are needed. Due to the complexity and challenges in shifting businesses towards sustainability, competitors are often required to collaborate to bring about greater impact than acting independently. However, the nature of collaboration might potentially distort market competition. The aim of this paper is to discuss the role of competition and consumer protection laws and policies in supporting and incentivizing sustainable business practices while ensuring healthy competition within markets.

First, I will be exploring how rivalries could be engaging in productive collaboration without restricting competition.

Second, I will be exploring cases where collaboration, while creating positive environmental impact, is anticompetitive and might breach the competition and consumer protection law. I will then assess the effectiveness of current laws and policies in balancing the needs between promoting sustainability and ensuring fair competition. I argue that current competition assessment is inadequate in quantifying

the benefits derived from environmental protection and would suggest Competition and Consumer Commission of Singapore (CCCS) to (i) conduct a consumer's welfare cost and benefits analysis through consumer surveys; (ii) use environmental indicators to quantify environmental impact; (iii) use long time horizon for assessment.

Lastly, I will be exploring cases where collaborations are anticompetitive and detrimental to the environment. I will be focusing on greenwashing conduct. I will then assess the effectiveness of current laws and policies in combating such challenges. I argue that there is a lack of competition and consumer laws specifically targeting greenwashing and guidance for consumers to identify greenwashing. I suggested CCCS to write (i) a new Code to address greenwashing; (ii) publish legislative definitions to define sustainability jargons. (298)

1. Introduction

Climate change is identified to be one of the most catastrophic threats to the globe. In Singapore, the build-up of greenhouse gases (GHG), such as Carbon Dioxide (CO2), in the atmosphere has trapped more heat. Temperatures have risen by 0.25°C per decade from 1948 to 2015 (Ministry of Sustainability and the Environment). In addition, the mean sea level of Singapore has also grown at the rate of 1.2mm to 1.7mm in the period of 1975 to 2009. As a low-lying island, the rise

in sea level imposes security threats to Singapore (National Climate Change Secretariat Singapore).

Singapore's competition and consumer protection laws and policies should be part of the government's holistic solution to the climate crisis. While maintaining healthy competition and ensuring consumers' welfare, these laws and policies should be relaxed to a certain extent to allow firms to cooperate to implement 'green' initiatives. However, to what extent should the laws be relaxed is the critical question that I will be exploring. In addition, I will also investigate how the laws and policies could be refined to curb unethical business practices such as greenwashing.

This paper seeks to explore the role that consumer and competition laws should play in promoting environmental sustainability while maintaining healthy competition and protecting consumers' welfare and suggest areas in which these laws could improve on.

2. Collaborating Effectively Yet Competing Fairly

Collaboration between competitors is possible when involved parties have common goals and partnerships give them access to new resources, capabilities and opportunities that would not be available should firms only utilize their own assets (Dr James M Crick, 2019). There are three reasons why building sustainability into operation has become the common key goal of many firms. First, it allows more efficient usage of resources, hence improving companies' financial performances

(Sheila Bonini and Steven Swartz, 2014). Second, policies rolled out by the government pushes firms to move towards sustainability. For instance, Singapore will raise our climate ambition to achieve net zero emission by or around mid-century. Carbon tax will be raised from $5 per ton till 2023 to $25 in 2024 and 2025, $45 in 2026 to 2027, with a view of reaching $50 to $80 per ton by 2030 (Budget 2022). This will increase the cost of production of businesses significantly, especially those in emissions-intensive sectors. Third, consumers' preferences are increasingly oriented towards environmentally friendly products. Adapting supply of environmentally friendly products will allow firms to reap this demand (Blaine Friedlander, 2022). Thus, moving towards sustainability is no longer just a philanthropic act. It is impeccable for companies to reduce cost of production and develop new sources of growth.

Certain types of collaboration may bring about environmental benefits without breaching the Competition Act. This can be seen in Canada's oil and sand industry. In 2012, Canada's oil and sand industry came together to form Canada's Oil Sands Innovation Alliance (COSIA). Extreme collaboration happens as 9 major competitors decide to pool their expertise and resources, giving access to one another's sites and facilities to conduct research together (Wes Jickling, 2020).

They worked on 1,143 projects, including Oil Sand Pathway to Net Zero which focused on improvising carbon capture, utilization and storage truckline and the development of greenhouse gas reduction technologies like clean hydrogen (Brittany

Elves, 2021). Between 2009-2018, the intensity of greenhouse gas emissions in the oil sands has declined by 20 per cent (COSIA, 2022).

The members did not use the green initiative as a cover to form cartels or collude to increase prices and reduce options for consumers.

Such collaboration is most favorable as they create environmental benefits without compromising healthy competition. However, many horizontal practices are likely to restrict actual or potential competition by increasing the likelihood of collusion or put the parties' actual or potential competitors at a disadvantage (OECD, 2010). Companies might even use sustainability as a front to mask their intentions to collude or deceive consumers. These conduct risk breaching Section 34 of the Competition Act as well as The Consumer Protection (Fair Trading) Act (CPFTA). CCCS needs to decide to what extent damages to fair competition should be allowed to promote environmental sustainability and should intervene in the market to ensure an acceptable level of competition and protect consumers' welfare.

3. Anti-competition associated with environmental benefits

There are collaborations that, albeit anticompetitive, may be exempted from the Competition Act as they generate beneficial environmental effects that could possibly outweigh the competition restriction. This can be seen in a mandatory increase in industrial standards to address climate change. For example, European Committee of Domestic Equipment Manufacturers (CECED) members set up an agreement to

upgrade the energy efficiency of domestic washing machines in the Europe market. The European Commission discovered that such an agreement will reduce consumers' choice as they are forced to choose between a restricted set of more energy-efficient but more expensive washing machines (European Commission, 1999).

Another example will be the Chicken of Tomorrow agreement between firms in the poultry, broiler meat processing and supermarket industry to increase the standard of raising chicken to protect the environment through reducing GHG emissions. The Netherlands Authority for Consumers and Markets (ACM) found that this agreement will reduce consumers choice as non-conforming firms could no longer enter the market. Furthermore, consumers must bear a higher price at an estimated EUR 1.46 per Kilogram (ACM, 2014).

Such conflicts between maintaining healthy competition and environmental protection draws vigorous debate as to how to assess the legality of the collaborations due to the complexity in quantifying the monetary value created from environmental protection.

In such complex cases, critics may say that the analysis of non-immediate economic costs and benefits such as environmental impact is beyond the directive of competition authorities, expanding the scope would result in a discount in the credibility of the assessment (OECD, 2020). However, economic welfare is deeply dependent and interconnected with the quality of the environment (Stiglitz & Sen &

Fitoussi, 2009). Hence, it is necessary to integrate the environmental impact into Singapore's economic competition and consumers policies to improve the overall economic welfare. CCCS must consider the positive effects derived from environmental initiatives taken by firms when they might cause a loss of competition.

4. Current intervention

We will now examine how such anticompetitive cases will be assessed by CCCS.

As Singapore adopts the total welfare standard instead of the favoring the consumer welfare (Toh, 2018), positive externalities created will be taken under consideration when CCCS assesses the compatibility of these collaborations with competition and consumers laws. Competition Act stated that block exemptions may be applied to any agreements which contribute to (i) improving production or distribution; (ii) promoting technical or economic progress (Competition Act Chapter 50B, 2006). An example of this is evident in CCCS approval of airline alliance agreements which involved the coordination of ticket prices and flight schedules because it promotes Singapore as a regional air hub and this benefit overrides the damage to competitions in the related markets (Burton Ong, 2015). Hence, it is most likely that CCCS will weigh the potential restriction of competition against the overall environmental benefits for society and consumers.

5. Policies evaluation and recommendations

5.1 Limitations of current intervention

However, the conventional competitive assessment method which focuses on economic efficiency and consumer welfare adopted by CCCS is insufficient to quantify the externalities arising from environmental protection as the scale and complexity of ecosystems makes a long chain of cause and effect hard to measure. CCCS might find it challenging to apply its current Competition Act framework to conduct comprehensive Cost Benefit Analysis (CBA). These difficulties include (i) how to measure the impact of the complex changes of climate change in monetary terms; (ii) framing the time horizons because environmental impacts tend to be delayed and spread over time (Tadhg O' Mahony, 2021).

5.2 Recommendations

While it is not possible to fully estimate the impact that a change in environment quality has on the economy (OECD, 2018), CCCS still needs to strive its best to integrate environmental analysis into its assessment. I would like to propose 3 suggestions.

1. To determine if consumers are better or worse off from the 'green' initiatives, CCCS can conduct a consumer's welfare CBA through consumer surveys to understand how much they are willing to pay for the improvement in the environment. For instance, under the Chicken of Tomorrow case, ACM

conducted a survey and asked consumers how much they value the increased environmental sustainability in monetary terms. The result depicted that consumers valued the sustainability prospect of the product but not to the extent that would offset the price increase (ACM, 2014). In such circumstances, such mandatory increase in industrial standards cannot be justified as it does not generate net benefit to consumers.

2. To quantify the environmental benefits, I suggest using the environmental indicator to measure environmental impact. These include tons of GHG emission reduced. For example, under the CECED case mentioned in Section 3, the European Commission measured the reduction in electricity usage in using the eco-friendlier washing machines and calculated that over 3.5 million tons of GHG would be reduced. The Commission approximated these savings to be worth between EUR 41 to EUR 61 per ton of CO2, EUR 3000 to EUR 5000 per ton of Nitrous Oxide and EUR 4000 to EUR 7000 per ton of Sulphur Dioxide (European Commission, 1999). To depict the net economic cost of GHG emission, CCCS can consider using the Social Cost of Carbon (SCC) metric. The IWG[1] calculated the SCC values using the three most credible economic impact models that draw connections between physical impact and economic damages of CO2 emissions. They are DICE[2], FUND[3] and PAGE[4].

[1] Interagency Working Group
[2] Dynamic Integrated Climate-Economic Model
[3] Framework for Uncertainty, Negotiation and Distribution
[4] Policy Analysis of Greenhouse Effect

The central SCC estimate of around $41 per ton of CO2 (in 2016 dollars) emission (Institute for Policy Integration, 2017).

3. While there is no concrete rule for setting time horizons, I recommend long time horizons to be applied to measure environmental welfare impact. It is recommended to consider a time horizon of over 100 years to capture long-term economic and health impact of air contamination (Guy Hutton & Eva Rehfuess, 2006).

After overall CBA comparison, if CCCS found that the value of the environmental benefits yield from the collaboration exceeds the detriments brought to the market competition, such conduct can be exempted from consumers and competition laws. Otherwise, it will be considered as a breach to the laws and penalties should be imposed.

6. Anti-competition coupled with environmental damage

Conducts may be anticompetitive and harmful to the environment. An example will be greenwashing cartels where companies collude to mislead consumers regarding the environmental practices of a company or the environmental benefits of a product or service (Peeperkorn,L, 2020). They abused the significant imbalance of information between them and their consumers about their firms' environmental practices which leads to market failure due to information asymmetry.

For example, the Alliance to End Plastic Waste (AEPW), a Singapore-based non-profit organization supported by big oil and chemical companies like Shell and ExxonMobil, claimed to be spending $1.5 billion on cleaning up plastic waste in developing countries. However, an investigation by Reuters discovered that one of the Alliance's flagship projects failed to clean up the Ganges River in India as promised (Robin Hicks, 2021) and that AEPW and the large oil chemical companies backing it were colluding to plan for an increase of plastic production by allocating future billion-dollar investments in the expansion of plastic production (Recycling Network, 2019).

Misinformation induces market failure as consumers are unable to estimate accurately the marginal benefit in consuming the product, which might lead to overconsumption. These misleading languages hamper the movement towards sustainability. A survey done by OnBuy found out that more than 80% of consumers felt misled by sustainability buzzwords (Georgia Wright, 2020) and lack of trust is found to be the major barrier in buying sustainable products (The Conference Board, 2020). Additionally, such deceptive conduct penalizes legitimate eco-friendly businesses that are bringing real and meaningful innovations to the marketplace. Therefore, strict policies and laws need to be put in place to eliminate greenwashing.

7. Current Intervention

In Singapore, some general laws written are relevant in combating greenwashing. This includes:

a. CPFTA which shields consumers against unfair business practices such as deceiving or misleading claims and gaining advantages from asymmetric information failure. Aggrieved consumers may lodge a complaint with CCCS.

b. The Misrepresentation Act, which allows a consumer to reclaim damages from the merchant (according to contractual agreements) due to a misrepresentation led business transaction.

c. The Singapore Code of Advertising Practice (SCAP) requires all advertisements to be legal, decent, honest and truthful.

If any corporations are suspected of greenwashing, informants can highlight their suspects to CCCS through the Whistle-Blowing Scheme.

8. Policies evaluation and recommendations

8.1 Limitations of current intervention

However, the laws and regulations do not explicitly cover greenwashing. Several loopholes exist which delays rightful penalties to be imposed on guilty firms. For instance, AEPW has yet to be penalized by CCCS despite proven to be greenwashing. There is a need to fill up this loophole in laws to take a tougher stance against greenwashing.

In addition, according to research conducted by Euroconsumers, the existence of knowledge gap hampers consumers' ability to discern true green claims versus greenwashing. 54% of surveyors felt that environmental labelling is confusing and equitable to marketing ploy (Amy Buxton, 2021). Hence, the Whistle-Blowing Scheme may not be effective in empowering the public to be watchdogs and help CCCS identify greenwashing firms.

8.2 Recommendations

I suggest the following measures to help frame the laws and policies to provide CCCS the legal means to charge guilty firms and allow consumers to better identify greenwashing practices.

a. CCCS should publish a Code under CPFTA that explicitly states that all environmental claims must be truthful, accurate, be clear to consumers and be substantiated with evidence. For instance, if an advertisement uses a comparative term such as 'greener', it should be clearly stated what the product (or an aspect of the product) is being compared against. This is congruent with the Green Claims Code published by the Competition and Market Authority in the United Kingdom. The code must be enforced strictly. The code should be published to help businesses recognize and conform with the law when making green claims.

b. CCCS should introduce legislative definitions for some sustainability terms that are most commonly used but which consumers find the most confusing. Such terms include 'carbon-neutral', 'recycled', 'compostable' and 'biodegradable'. This will bridge the public's knowledge gap and allow them to better identify greenwashing.

9. **Conclusion**

In conclusion, current competition and consumer protection laws and policies are insufficient to promote environmental sustainability and to prevent anticompetitive behaviors which are detrimental to the environment. To decide whether an anticompetitive conduct can be exempted due to its environmental benefits, CCCS needs to work on building a comprehensive framework to conduct CBA. To avoid ambiguity in identifying and penalizing greenwashing firms, CCCS should fill up legislative loopholes and empower the public to be able to better recognize unsubstantiated green claims.

(2497 words – Including citations and footnotes, excluding headers)

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