Abstract

The competition and consumer protection framework in Singapore constitutes the range of mechanisms that the government engages to maximise the productivity and economic efficiency of its markets. As environmental sustainability takes an increasingly central and pivotal role in the national agenda, the existing efficiency logic arguably restrains the ability of businesses to undertake sustainability agreements without infringing the Competition Act. Considering the plausibility of a conflict between sustainability and the Competition Act, the green transition poses novel problems regarding the definition, quantification, and inclusion of sustainability under the current legal architecture. Concurrently, as more businesses seek to appeal to environmentally-conscious consumers, the issue of greenwashing intensifies.

Consequently, this paper argues that while a complete overhaul of current policies is unnecessary, calibrated amendments and increased governmental intervention is, however, imperative. Six suggestions will be provided to tackle both the incorporation of sustainability initiatives and the troubling practice of greenwashing. For the former, it asserts that:

I. The publication of sustainability guidelines detailing the CCCS's approach towards sustainability will be necessary to empower businesses in their green endeavours
II. The CCCS should employ state preference methods in their quantification of consumers' willingness to pay for environmental sustainability benefits

III. A review of the current competition regulatory framework to consider the inclusion of sustainability agreements that yield wider societal benefits will be crucial to tackling the climate change urgency

With regards to the curbing of greenwashing practices, it contends that:

I. The educating of consumers will be vital in bridging the information gap that currently hinders their ability to practise due diligence against greenwashing practices
II. The CCCS can issue consumer protection law guidance for all businesses making environmental sustainability claims to follow
III. Legislative changes should be implemented to explicitly target greenwashing and prompt voluntary civil compliance among businesses

Introduction

The Competition and Consumer Commission of Singapore (CCCS) was established to act as Singapore's primary national body on competition and consumer matters. The commission is responsible for enforcing and administering the Competition Act[1] and the Consumer Protection (Fair Trading) Act (CPFTA) which jointly seek to maintain and enhance Singapore's market conduct and efficiency.

The main objective of the Competition Act is to "promote the efficient functioning of Singapore's markets towards enhancing the competitiveness of the economy" (CCCS, 2019). Through this act, anti-competitive practices such as agreements which hinder, distort or restrict competition are prohibited in order to safeguard the innovation and competition of markets for the eventual benefit of consumers. Unlike the EU's Competition Law which requires a fair share of benefits, Singapore's Competition Act does not explicitly express a requirement of distributive justice in favour of consumers. Instead, previous precedents have showcased the use of total welfare standard instead of consumer welfare standard (CCCS, 2010).

Under the CPFTA, consumers are authorised to seek compensation and redress against unfair practices. Hence, the CPFTA is enacted to enable consumers rights with regards to goods that do not meet the contract (CCCS, 2022).

However, as sustainability plays an increasingly critical role in our national plan, some have argued that the privileging of market efficiency has led to narrow definitions of

[1] The CCCS is only responsible for the enforcement of the Competition Act.

anti-competitive practices and consumer protection that unfortunately leaves little room for supporting environmental sustainability initiatives (Loo and Ong, 2017; Chaturvedi, 2021). This paper does not affirm if such a philosophy is ideal. Rather, it contends that while a complete overhaul of the current framework is not necessary, there still exists scope for selective adjustments to existing legislations and a larger participatory role of the government to address the definition, quantification, and incorporation of sustainability benefits as well as to safeguard consumers against the salient threat of greenwashing.

This paper will thus first examine the role of the Competition Act in supporting sustainability agreements, before proceeding to examine the ability of CPFTA to curb the practice of greenwashing. In both cases, suggestions that tackle the role and capacity of both acts in driving environmental sustainability will be put forth.

A The incorporation of sustainability benefits under the Competition Act

I. The publication of sustainability guidelines detailing the convergence between sustainability and the Competition Act would provide crucial guidance to businesses seeking to adopt sustainability agreements

The third schedule of the Competition Act presents that evidence of net economic benefits (NEB) arising from agreements are permitted as exemptions to the Section 34 prohibition (CCCS, 2016). In CCCS's case precedents to-date, a valuation of economic benefits can be seen in the commission's approach towards prior agreements.[2] While sustainability agreements can produce implied economic benefits, the nexus to the NEB exemption is less straightforward (Chen and Clements, 2020). Furthermore, limited case precedents in the sustainability regard result in scant reference templates for businesses who wish to initiate similar collaborative agreements.

Aiming to provide more clarity, CCCS has recently issued a guidance note on business collaboration that specifies the commission's stance on the different types of business collaboration as well as its approach towards assessing their compliance with Section 34 (CCCS, 2022). However, the lack of explicit counsel on green cooperation in the guidance note causes sustainability agreements to still remain a mostly grey area with minimal established case law and legislative guidance. Hence, to tackle this climate of ambiguity, businesses would benefit greatly from **the publication of sustainability**

[2] More information can be found in CCCS's 2007 report on the Qantas & Orangestar Co-operation Agreement and its 2007 report on Cebu Air, Inc. and Tiger Airways Singapore Pte. Ltd.'s agreement

guidelines that clearly details CCCS's approach towards the assessment of sustainability collaborations. Such guidelines would require a declaration on the type of agreements that deviate from the purview of the Competition Act, suggestions on how to present and substantiate the benefits of agreements, as well as the provision of hypothetical examples with CCCS's demonstrated analysis of them. These extensive guidelines and specifications of criterion will comprehensively define the parameters of sustainability agreements under the competition framework. This thus results in businesses harbouring little doubts and aids in empowering them to charge full steam ahead in their initiatives.

II. Under state preference methods, a combination of choice modelling and contingency valuation techniques would be key to the quantification of sustainability benefits under Singapore's Competition Act

Presently, the most widely used methodologies to quantify consumers' willingness to pay (WTP) for benefits are revealed and stated preference methods. Given that revealed preference methods largely depend on historical and experimental data on consumption patterns, they are less appropriate for measuring WTP for sustainability benefits. This can be traced back to two main reasons. Firstly, environmental benefits are often not traded in the market. Secondly, there is a high possibility that WTP estimates will disclose consumers' limited knowledge about environmental benefits, rather than their true valuation of them. This problem is especially prevalent when analysing the WTP for sustainability benefits as revealed preference methods routinely underestimate their passive value and severely misconstrue consumers' WTP (OECD, 2021).

To tackle this issue, **state preference methods should be equipped by the CCCS to better elicit the passive value of sustainability benefits**. A combination of discrete choice modeling, which requires consumers to choose between options with different attributes, and contingency valuation, where participants rank options according to their preference, will allow participants to simultaneously rate options with different qualities and select their ultimate preferred choice. CCCS can thus look towards adopting this paired approach to better capture multi-dimensional changes in valuation and account for the passive value of environmental benefits.

III. The CCCS should review the current competition regulatory framework and reconsider if there exists more leeway for wider societal benefits accruing from sustainability agreements to be accounted

As opposed to most agreements which declare efficiency benefits concerning the advancing of production and distribution processes, sustainability agreements instead produce benefits that exist beyond the perimeters of the relevant market where the agreement occurs. This is because sustainability constitutes both in-market and out-of-market efficiencies to the wider public or consumers from future generations. Hence, to enable the Competition Act to play a bigger role in tackling the climate change urgency, a shift from the current structure which quantifies the more easily measured but arguably limited short-term benefit to a more progressive arrangement which considers broader benefits is needed.

This position towards sustainability is more achievable in Singapore considering that there is no explicit requirement for a fair share of benefits to consumers. Thus, it can

be argued that there exists potential in our competition framework for benefits to the broader population to be recognised. In this regard, a possible route to follow would be to take into account a separate category of agreements that aims to mitigate any prominent environmental concerns. Collaborative practices that aid compliance with international or national agreements, to which the state is bound, can also be permitted. Such reframing of the Competition Act will allow the benefits of sustainability agreement to more easily offset its costs, thus allowing more possibilities that support environmental sustainability efforts in Singapore.

Employment of 'environmental price to quantify these externalities can be considered as a potential solution. This would require societal costs which are removed by the agreement to be included in the analysis of its benefits. For instance, to quantify agreements which lead to a reduction in air pollution, the prevention of increased healthcare costs can be examined.

B Tackling greenwashing through the CPFTA

I. More needs to be done by the government to bridge the widening information gap that hampers consumers' ability to practise due diligence against greenwashing

Under the CPFTA, consumers are guarded against poor business practices. These would include the act of making untrue claims, conveying or excluding information that results in misguided or misled consumers, and taking advantage of vulnerable consumers who are unable to judiciously comprehend the nature, language, or implications of transactions (Singapore Statutes Online, 2022).

Though the CPFTA may possess some relevance with respect to greenwashing, it does not, however, explicitly cover the issue. Thus, under this architecture, the burden largely falls on consumers to argue what constitutes greenwashing. Yet, the current arrangement where the onus is placed on consumers is challenged by the rising opacity of business practices, increasing disinformation in the realm of sustainability, and the prevalence of competing green claims that confuse well-intentioned consumers. Hence, while consumers should still bear the "principal responsibility for protecting their own interests", more should be done to ensure that consumers are capable of narrowing the widening information gap (MAS, 2015).

On this note, it would be critical for CCCS to publish informational guides to educate consumers on what constitutes greenwashing and the thought process needed for analysing green claims. Consumer organisations like CASE will be well-equipped to initiate relevant greenwashing education programs for consumers. Moreover, CCCS can explore the possibility of allowing consumers to crowd-source information through a platform on CASE or CCCS's website that presents data on errant traders and permits the possibility of open reporting. Such measures are key to closing the widening information gap that obstructs consumers from making well-informed choices.

II. The CCCS can issue consumer protection law guidance for all businesses to consult when making environmental sustainability claims

A growing number of firms today, plagued by the rising interest of consumers in sustainability, are increasingly concerned with environmentally sustainable investments. Hoping to keep up with the green transition, greenwashing is perpetuated both intentionally and unintentionally by businesses (Roszkowska-Menkes, 2021). In the case of inadvertent greenwashing, it is committed due to a poor understanding of sustainability terminologies, and the methodologies needed to quantify green claims.

On this end, **CCCS can issue a consumer protection guidance note detailing the optimal process for defining, quantifying, and disclosing sustainability to help businesses avoid greenwashing**. Firstly, the guidance note will introduce standardised definitions for environmental terminologies such as “recyclable” and “biodegradable” that corporations adopt in their advertising strategies. Secondly, the declaration of a uniform method for quantifying environmental footprint will be key to ensuring that claims made by businesses are trustable, comparable, and verifiable across Singapore. Lastly, there should also be a consistent set of disclosure standards to allow for more thoughtful reporting, better benchmarking, and increased transparency to help consumers better fathom environmental claims. Additionally, regulators will also have to assume responsibility for ensuring that firms provide adequate and accessible information to consumers. This can be warranted through the drafting of various rules that businesses have to follow when making environmental claims. For instance, some of these would include mandating businesses to corroborate their environmental claims with relevant, up-to-date facts. Such measures are especially vital given the CPFTA’s assumption of relatively well-informed consumers.

III. Legislative changes should be put forth to explicitly target greenwashing and induce voluntary civil compliance among businesses

As mentioned previously, the current consumer protection architecture does not explicitly tackle greenwashing. This results in two main implications. Firstly, the primary burden is on consumers to argue what comprises greenwashing. Secondly, the framing of CPFTA makes it difficult for consumers to demonstrate that damage has transpired specifically due to greenwashing. Hence, to address these, the CCCS can consider **the implementation of a provision under the CPFTA which mandates that the making of false claims and the misleading of consumers due to the conveying or omitting of information concerning the environment or nature would constitute a poor business practice.**

Separately, as more consumers value sustainability and business practices become less transparent, greenwashing will likely remain a profound risk for many years to come. As commercial activities increasingly relocate to digital spaces, more fronts have opened up for the exploitation of consumers as greenwashing now takes place across a vast multitude of media formats and platforms.[3]

To better tackle the threat of increased investigation and monitoring cost of CPFTA violations, **more measures can be taken by the government to induce voluntary civil compliance.** This solution is imperative given the hard-to-detect nature of greenwashing practices and the foreseen increase in violations as e-commerce gains rapid momentum in Singapore. The rise in greenwashing cases, both in quantity and

[3] Greenwashing is committed through a range of mediums from company-consumer transactions to indirect media forms (Nguyen, 2020)

in form, will result in business practices becoming harder to monitor and control. For instance, Loo and Ong (2017) demonstrated that truly recalcitrant traders can continue to dodge the reputational costs of an injunction status. They then contended that prospects of investigation do not pose sufficient deterrence to the defiant trader.

Hence, one way to address this would be to increase the CCCS's institutional power, permitting it to apply to the court directly to impose pecuniary penalties rather than to refer the matter to the police (Loo and Ong, 2017). The increased threat of receiving monetary penalties will thus strongly deter errant traders from engaging in greenwashing practices and encourages businesses to comply with the CPFTA.

Conclusion

Evidently, a careful balance will need to be struck to ensure that the incorporation of sustainability initiatives will not cross the line into infringement of the Competition Act. With environmental sustainability becoming a prominent and influential aspect of Singapore's policies, sustainability agreements and greenwashing can be better addressed through carefully weighted amendments to existing legal and regulatory frameworks. As more global actors ramp up their efforts to build a greener economy, Singapore will similarly benefit from a more positive inclusion of sustainability agreements under its existing legal architecture.

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