Environmental Sustainability:

The role of competition and consumer protection laws and policies

ABSTRACT

In recent years, due to rising global environmental awareness, many countries including Singapore have been transitioning towards a greener economy. As more consumers shift towards sustainable products and more firms gear towards sustainable business models, this gives rise to increasing competition and room for unlawful acts in the market. Thus strong regulatory direction along with cohesive efforts across sectors are the key to transitioning to a green economy. In Singapore, laws such as the Competition Act and Consumer Protection (Fair Trading) Act (CPFTA) enforced by the Competition and Consumer Commission of Singapore (CCCS) have been regulating both the firms in the market and protecting consumers when achieving sustainable goals. However, both laws lack market context relating to sustainability and guidelines necessary for businesses and consumers to make key sustainability decisions. Therefore, targeted amendments have to be made to address these shortcomings.

Overall, this essay addresses 2 main aspects: (1) How current competition laws and policies can better enable companies to achieve their sustainability objectives; (2) How current consumer protection laws and policies can provide better protection for consumers against exploitation by green companies. In section 2, the role and limitations of the Singapore Competition Act relating to sustainability are outlined. Amendments and steps to take in 3 key areas - Anti-competitive sustainability agreements, Abuse of dominant position, Mergers and Acquisitions are also proposed.

This is followed by suggestions on how to quantify externalities accruing from sustainable practices. Section 3 evaluates the benefits and costs of competitors agreeing on energy-efficient standards, and its impact on consumers. Here, we propose government subsidies for SMEs to encourage competitors to agree on energy-efficient standards. Lastly, section 4 evaluates the role and limitations of the CPFTA in protecting consumers from exploitation by green companies whilst suggesting guidelines for making sustainability claims.

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TABLE OF CONTENTS

1. INTRODUCTION

In the realm of sustainability, competition and consumer protection laws play a vital role in ensuring Singapore's green economy (Chen, 2020) as well as cushioning adverse effects of current policies on businesses and consumers. Whilst existing policies and laws seem to suffice, cross industry collaborations and contributions are required from a multitude of players to achieve sustainable goals, thereby maximising efficiency and resources. Some examples of sustainable collaborations are joint research and development of greener technologies. Moreover, having adequate protection of consumer rights contribute to a more efficient and sustainable economy, as they play an important role in encouraging business innovation and sustainable consumption. However, with greener consumption habits comes higher priced outputs and possibly greenwashing by businesses. For instance, companies may pass on higher operating costs to consumers if carbon tax is raised without any alternatives for renewable technology.

Currently, the Competition Act prohibits three types of conduct/activities:

I. Section 34: prohibits agreements/concerted practices/decisions by competitors which prevent, restrict or distort competition
II. Section 47: prohibits conduct which amounts to the abuse of a dominant position
III. Section 54: prohibits mergers and acquisitions that result in a substantial lessening of competition

However, the Competition Act restricts competitors from collaborating to achieve their sustainability goals due to lack of clarity on sustainability arrangements which are exempted from Section 34. Additionally, there are inadequate guidelines verifying and quantifying sustainable benefits under Section 47 and 54.

The Consumer Protection Act (CPFTA) protects consumers against unfair practices and gives consumers rights for goods not conforming to contract. However, the current framework does not contain specific guidelines in protection against greenwashing.

To help shed light on the role of competition and consumer laws and policies in sustainability, this essay will;

I. Evaluate the relevance of the Competition Act to sustainability and provide suggestions to shortcomings
II. Analyse how competitors can collaborate on energy efficient goods and standards via government intervention
III. Discuss how the CPFTA can protect consumers against greenwashing more effectively

2. EVALUATION OF THE SINGAPORE COMPETITION ACT

In Singapore, the Competition Act aims to protect consumers and businesses from anti-competitive practices in Singapore. While current guidelines show potential for the CCCS to take into account the transition into a greener economy, there is still a lack of clarity regarding validity and exemptions of sustainable claims made. For example, an unintended consequence of allowing competitors to coordinate sustainability efforts would be more opportunities to collude on output or prices. Here, socially beneficial green collusion may be a ‘gateway’ to socially harmful restrictions to competition. Therefore, we would like to propose the following amendments to the guidelines to the

Act such that businesses can compete and collaborate fairly as they shift towards supporting sustainability.

a. ANTI-COMPETITIVE SUSTAINABILITY AGREEMENTS

Firstly, the Third Schedule of the Act, provides that evidence of net economic benefit (NEB) shall be an exception to the Section 34 prohibition against anti-competitive conduct or agreements. While sustainability benefits to society could have implied economic benefits, the nexus to NEB exemption is less direct. Thus, firms may be unwilling to collaborate on sustainable goals due to absence of clear guidance and quantification of sustainable benefits. CCCS has shown flexibility towards considering such benefits[1]. Even so, there is a need for clarity on how indirect sustainability benefits reveal themselves in the long term (ie. reduction in CO2 emissions), what positive externalities would meet the criterion and quantification of such environmental benefits. Thus under the Third Schedule containing exemptions to Section 34 Prohibition, it should explicitly state that sustainable agreements with benefits that offset diminishing competition is considered an exception.

CCCS could refer to the criteria below to verify if sustainability agreements have benefits that offset restrictions of competition:

a. The agreements offer efficiency gains, including the extent of sustainability benefits
b. The restriction of competition is necessary for reaping the benefits, and does not go beyond what is necessary

[1] CCS 400/005/17: CCCS approved a joint venture as the benefits (alleviation of land shortage, increased efficiencies in energy, water and waste disposal) outweighed potential harms.

To test whether the sustainability agreement should be exempted from Section 34, CCCS should evaluate the 'sustainable agreement' as concretely as possible. Only objective sustainability benefits should be evaluated, and not the subjective opinions of parties involved. Such benefits can relate to the reduction of negative externalities such as environmental and social impacts involving both users and society's welfare (Kar et al., 2020). Next, evaluating the *extent* of sustainability benefits expected**.** Namely, to what extent are certain harmful emissions reduced and over what period of time, providing evidence of estimated economic benefits to society. According to Gratham Research Institute, the health co-benefits (Stiglitz & Stern, 2017) of CO_2 mitigation could be estimated at over US$100/tonne CO_2 abated in high-income countries and US$50/tonne CO_2 in middle-income countries. For sustainable benefits that are difficult to quantify such as impacts on food supply, CCCS can identify the nature of the benefits and the likelihood of them being reaped. Therefore, the extent of sustainable benefits should be evaluated based on the level of detail, degree of quantification and likelihood of bringing about NEB.

b. ABUSE OF DOMINANT POSITION

Abuse of dominant position occurs when a dominant firm utilises its high degree of market power brought about by its sustainable business model to engage in anti-competitive behaviour, sometimes unfairly enhancing a dominant firm's position in the market as a sustainable business. For instance, Polieco[2] put in place an abusive strategy[3] aimed at reducing the number of Ecopolietilene[4] potential clients and

[2] A consortium comprising producers/importers/distributors of polyethylene goods
[3] A provision granting benefits for the payment of outstanding contributions conditional on prior registration with Polieco.
[4] A new consortium operating in the market dominated by Polieco in 2020

increasing market-entry costs (Balestra, 2021). Such conduct risks both reduction in competition and negative impacts on the environment, in terms of fewer goods recycled and poorer quality of environmental compliance services. Moreover, dominant firms could use sustainability arguments to shield abusive conduct.

Currently, under Section 47 Prohibition, only conduct spurred by legitimate commercial interests are considered objective justifications or that the restrictions imposed by the conduct are proportionate to the benefits claimed by the objective justification. However, sustainable environmental practices may result in broader social benefits. There is lack of clarity on whether wider stakeholder objectives qualify as objective justification. Hence, there is a need for clearer regulations in this regard and criteria to evaluate validity of sustainable practices. We would thus propose amending the Third Schedule containing exemptions to Section 47 Prohibition, adding that sustainable benefits brought about by dominant firms have to outweigh the restrictions to competition.

To evaluate objective justifications of an abuse of dominant position, CCCS should only consider objective evidence and not intentions of the dominant firm. Provided objective evidence is shown, fulfilling or working towards wider stakeholder objectives such as the Singapore Green Plan or cutting down on consumer’s individual carbon footprint should also be considered. Here, the burden of proof lies on the firm to provide evidence showing the exact quantity and quality of benefits towards the environment, of which offsets the exact quantity and quality of costs to competition (econometric evidence, physical evidence of environmental impacts etc). This can be measured by adding monetary values to the benefits and costs. For example, companies producing low-emission electricity (LEE) technology could justify their dominant position if the increase in GDP per capita and decreased CO_2 emissions outweigh adverse impacts on competition. To assist firms in calculating such evidence, CCCS could consider providing estimated monetary values of various environmental impacts in their guidelines or a platform where firms can calculate environmental benefits and costs directly. For instance, when LEE increases by 1%, GDP per capita increases by 0.16% and CO_2 emissions decrease by 0.848%. (Zhang et al., 2021)

In addition, to evaluate the validity of sustainable practices, CCCS could consider whether the dominant company has an environmental sustainability program, an ISO 14001 certification[5] and proof of sustainability audits of suppliers. This confirms that they are not using sustainability arguments to shield abusive conduct.

c. MERGERS AND ACQUISITIONS

A merger between competitors can lessen competition and harm consumers by creating or enhancing the ability of the remaining firms to act in a coordinated way on some competitive dimension, or by permitting the merged firm to raise prices profitably on its own. Both may lead to consumers facing higher prices, reduced variety and quality due to the merger. However, mergers and acquisitions (M&As) can also bring about more sustainable methods of production that reduces the overall negative impacts of reduced competition. M&As might trigger company reorganisations and thus optimise the firm structure, reaping technical economies of scale from indivisibilities such as fixed green capital being spread over larger output levels, lowering average cost. The positive impacts amidst sustainable production offset the

[5] An international standard on how to implement an effective environmental management system.

restrictions to competition, bringing NEB. As environmental factors increasingly feature in M&As, checking if sustainability and environmental factors are considered NEB would be increasingly challenging.

The Fourth Schedule of the Act provides that Section 54 prohibition shall not apply to any merger if the economic efficiencies arising from the merger outweigh the adverse effects due to substantial lessening of competition in the relevant markets. However, environmental factors are not explicitly stated under economic efficiencies. In line with this, we propose for sustainable benefits that are considered under economic efficiencies arising from merger to be explicitly stated under the Fourth Schedule.

d. QUANTIFYING EXTERNALITIES ACCRUING FROM SUSTAINABLE PRACTICES

When firms engage in sustainable practices, some benefits associated with the production or consumption of sustainable goods and services might spill-over to third parties for which no compensation is paid. For example, positive externalities arising from wind power development are mainly derived from avoided environmental costs and emissions associated with fossil-fuelled electricity generation. The reduced pollution would also result in health benefits to society. These social benefits can outweigh the restrictions to competition, bringing NEB.

Externalities can be quantified using carbon footprint calculation to measure and report the environmental impact by a firm. Lowering energy usage would lessen carbon footprint and reduce expenses. Another method is to measure health or crop yield benefits. Model results for 2030 suggest that health benefits from reduced ozone and

PM2.5 exposure could be as large as 5% of global GDP and substantial increases in crop yields (Xie et al., 2019).

3. ENERGY-EFFICIENT PRODUCTS AND STANDARDS

When deciding on whether to agree on energy efficient products and standards, the following factors have to be considered. Firstly, collaborating may bring about outcomes more effectively than acting independently and there may be competitive benefits for sustainable products as compared to non-sustainable products (Yurasits et al., 2021). However, high production costs insinuate competitive disadvantage especially for first adopter of green technologies and processes. Conversely, product differentiation gives a firm competitive advantages. Agreeing on certain standards might reduce innovation due to certain restrictions, leading to reduced variety or quality of goods. Also, smaller firms would suffer more than larger firms due to economies of scale, where higher prices drive their consumers away. It would also take them longer to sell their stocks due to their smaller network of distributors, incurring higher average cost. Therefore, cost disadvantages would deter smaller firms from agreeing on energy-efficient standards.

In this case, government intervention is necessary to encourage firms to agree on the production of certain energy-efficient goods or on certain energy-efficient standards to maximise profits. Currently, the National Environmental Agency in Singapore only offers incentives and grants that support industrial companies (ie. Energy Efficient Fund). We propose subsidising production of energy efficient household goods for small and medium enterprises (SME) only if they meet energy efficient standards. SMEs shall receive up to 50% of qualifying costs for the production of energy-efficient appliances 3 ticks and above or have Global Warming Potential ≤15 (ie R600a refrigerant). Lower costs of production would incentivize SMEs to produce more energy efficient goods that meet the standards, until marginal revenue is equal to marginal costs to maximise profits. Moreover, this lowers prices for consumers.

In general, sustainable products have higher costs of production, translating to higher prices for consumers. As studies have shown that people are not yet ready to pay more for sustainable products (Ryan, 2021), demand for sustainable goods is still rather price elastic. To address this, existing consumer subsidies such as the Climate Friendly Households Programme provide 1-, 2-, and 3-room HDBs with vouchers for energy efficient household goods, lowering utility costs.

Given the subsidies for SMEs and consumers, both supply and demand for energy efficient goods will increase, decreasing overall price. Henceforth, competitors can agree on energy-efficient standards.

4. CONSUMER PROTECTION AGAINST GREENWASHING

Greenwashing refers to creating a false impression of the degree to which a company or its products are environmentally sustainable. For instance, selective disclosure embellishes information related to positive environmental performance and conceals the negative ones. Decoupling entails putting a positive spin on the communication of the firm’s corporate social actions despite having a negative corporate social action performance. More consumers being misled into purchasing certain products indirectly negatively impacts the environment as they consume more of a product that is not ‘sustainable’ or choose it over less harmful alternatives. In Singapore, the CPFTA guards consumers against poor business practices. However, there is a need for clear guidelines on what constitutes greenwashing as it is difficult for consumers to prove that this is unfair business practice.

In order to make sustainability claims without contravening the CPFTA, businesses can follow the guidelines below:

a. Claims should be truthful and accurate
    i. Ensure that conditions or caveats are clearly stated, especially if a sustainability claim is only true subject to certain conditions/caveats
    ii. Use symbols and logos only under a legitimate basis and they have to be affiliated with an accredited organisation
b. Claims should be transparent and unambiguous
    i. Do not hide possible negative environmental impacts, etc.
    ii. Disclose the entire life cycle/net-environmental impact of the product (e.g by balancing the purported environmental benefit against other environmental harms at other parts of the life cycle)
c. Claims should be substantiated with robust evidence and data
    i. Broad sustainability terms, icons, symbols and logos should be substantiated (e.g "eco-friendly, green")

In addition, if a consumer believes that they have entered a business transaction after a misrepresentation was made, damages can be sought from the merchant. The onus is on consumers to detect greenwashing, which is difficult without sufficient knowledge. Currently, consumers can use the Ecolabel Index[6] under Singapore's

[6] A directory that tracks over 400 different eco labels in 197 countries

Green Labelling Scheme (SGLS) to verify ‘sustainable products’. Organisations such as the Consumers Association of Singapore can partner with educational institutions to raise awareness, allowing consumers to better verify ‘sustainable products’ and be protected.

5. CONCLUSION

Competition and consumer protection laws play a vital role in supporting environmental sustainability in Singapore. With the current guidelines and given modifications, progress towards a greener economy can be more secure as competitors and consumers are protected by the laws. Firms will know what to look out for when achieving sustainability objectives. Consumers are also better able to support collective efforts towards a greener economy with their increasing support and demand for sustainable products.

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