HARMONIZING BUSINESS COLLABORATION FOR ESG GOALS: NAVIGATING FRIENDLY COMPETITION REGIME

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ABSTRACT

The 2030 Agenda for Sustainable Development was adopted by all the Member States of the United Nations in 2015, and it aims to provide a common framework of peace and prosperity for people and Planet Earth on a long-term basis. It is premised on the 17 SDGs which are an urgent appeal to all nations, both developed and developing, to join hands in a global alliance. While India plans to achieve net-zero emissions by 2070, it is no strange that ESG concerns have started knocking on the doors of various countries across the globe. As a result, we are witnessing a sudden environment-centric approach by policymakers worldwide. A recent study found that approximately 79% of investors have an ESG investment policy in place which is up from 20% five years ago.

For a business to achieve sustainability, it cannot operate in isolation. Collaboration with other businesses and related industries is necessary to facilitate its journey toward sustainability. Business-driven ESG collaborations serve as vital forums to facilitate this shift towards a sustainable future for both industries and society. However, such collaboration can often fall under regulatory scrutiny by the competition authorities. It therefore becomes necessary to strike a balance between such collaboration and competition law. The paper gives an introduction to the ESG framework, and types of collaboration by corporations to achieve ESG goals, it further identifies the conflicts between such business collaboration and competition law. The paper highlights a strong need to harmonize ESG and competition law and create an ESG-friendly competition regime by highlighting examples across the globe and pointing out suggestions that can be implemented.

Introduction

In today's world, we confront numerous global challenges, including climate change, the shift from a linear to a circular economy, rising inequality, and the delicate balance between economic and societal priorities. There's a growing expectation from various stakeholders—investors, regulators, consumers, and employees—that companies must not only manage financial resources responsibly but also prioritize environmental and social concerns. Consequently, there's a rising trend among investors to integrate Environmental, Social, and Governance (ESG) factors into their decision-making processes. This elevates the significance of ESG considerations in securing both debt and equity capital for businesses. [1]

Business leaders understand that to tackle society's challenges and prepare their businesses for the future, collaboration is key. Business-led collaborations are crucial for advancing a sustainable future for both individual companies, their industries, and society at large. Through collaboration, businesses can collectively research emerging trends and address pressing issues.

A business-led ESG collaboration typically consists of companies within the same industry or across the industry's value chain who voluntarily join forces to address social and environmental risks and impacts. These collaborations often aim to innovate and co-create sustainable solutions for their sector. Importantly, they focus on non-commercial, pre-competitive collaboration, prioritizing shared goals over individual interests.[2]

Some of the common ESG focus business collaboration areas are-

1. Climate change
2. Water and ocean health
3. Circular economy
4. Biodiversity
5. Rural development

[1] *ESG explained: Article Series exploring ESG from the very basics: #1 what is ESG?* (2021) *Deloitte Hungary*. Available at: https://www2.deloitte.com/hu/en/pages/energy-and-resources/articles/esg-explained-1-what-is-esg.html (Accessed: 12 April 2024).
[2] Nakonieczny, M. and Strandberg, C. (2022) *Business led ESG collaboration: How-to guide for business*, *Coro Strandberg*. Available at: https://corostrandberg.com/wp-content/uploads/2022/05/business-led-esg-collaboration-guide.pdf (Accessed: 12 April 2024).

6. Health and food security

The pressing need for solutions to environmental and social issues is undeniable. The World Economic Forum's global risk report underscores the significant negative impact that these trends can have on businesses, the global economy, and society as a whole. The COVID-19 pandemic has further exacerbated these challenges, emphasizing the urgent need for swift and comprehensive action. Collaboration emerges as a vital strategy for accelerating the development and adoption of solutions for both industry and society. By working together, organizations can pool resources, expertise, and innovation to address complex challenges effectively. Moreover, collaboration enhances resilience by fostering cross-sector partnerships and sharing best practices. In the face of urgent global challenges, collaboration offers a pathway to drive meaningful change at the necessary pace and scale.[3]

Understanding ESG Goals

During the 1970s, socially responsible investing (SRI) emerged as a means for investors to align their investment portfolios with their personal values. This movement gained attraction in the 1980s, particularly through divestment campaigns targeting companies involved in South Africa during apartheid. Over time, SRI evolved into what we now recognize as corporate social responsibility (CSR), focusing predominantly on social issues such as human rights and ethical supply chains.

However, it wasn't until the 1990s that environmental, social, and governance (ESG) considerations began to feature prominently in mainstream investment strategies. In 1995, the U.S. Social Investment Forum (SIF) Foundation conducted a comprehensive review of sustainable investments in North America, revealing a total of $639 billion invested with a focus on principles rather than purely profit-driven motives.[4]

Over time, institutional investors began to acknowledge the potential for companies to enhance financial performance and mitigate risks by addressing environmental, social, and governance (ESG) issues, such as greenhouse gas emissions. In light of this recognition, asset managers

[3] Nakonieczny, M. and Strandberg, C. (2022) *Business led ESG collaboration: How-to guide for business*, *Coro Strandberg*. Available at: https://corostrandberg.com/wp-content/uploads/2022/05/business-led-esg-collaboration-guide.pdf (Accessed: 12 April 2024).

[4] Krantz, T. (2024) *The history of ESG: A journey towards sustainable investing*, *IBM Blog*. Available at: https://www.ibm.com/blog/environmental-social-and-governance-history/ (Accessed: 14 April 2024).

started to formulate ESG strategies and develop metrics to evaluate the environmental and social impact of their investments. This marked a significant shift towards incorporating ESG considerations into investment decision-making processes, reflecting a growing awareness of the interconnectedness between sustainable practices and long-term financial success.

The term "ESG" first gained prominence in 2004 when Kofi Annan, the then United Nations Secretary-General, invited 55 chief executive officers of major financial institutions to collaborate on an international initiative aimed at integrating environmental, social, and governance (ESG) factors into capital markets. This landmark project marked a pivotal moment in the recognition of ESG considerations as integral components of investment decision-making processes, emphasizing the importance of sustainability and responsible corporate behavior in the global financial system.[5]

What does ESG mean?

ESG, which stands for environmental, social, and governance, serves as a framework encompassing three key areas that companies are expected to address in their reporting. These areas are often referred to as pillars within ESG frameworks. the idea behind ESG is to look at all the non-money-related stuff that can affect a company's business. So, it's about things like how a company treats the environment, how it treats its employees and communities, and how it's run. The goal of ESG is to give a complete picture of a company's impact and how well it manages its risks and opportunities, not just how much money it makes.[6]

The E in ESG includes

When we talk about the environment in ESG, we're looking at things like pollution, both in the air and water and the gases that contribute to climate change, like greenhouse gases. We're also interested in how companies use resources—whether they're using new materials or recycling old ones. The goal is to make sure that companies are minimizing waste and maximizing the reuse of materials, so that less ends up in landfills and more gets recycled back into the

[5] Paisley, J. (2023) *ESG explained: What it is and why it matters*, *Global Association of Risk Professionals*. Available at: https://www.garp.org/risk-intelligence/sustainability-climate/esg-why-it-matters-063023 (Accessed: 14 April 2024).
[6] *ESG explained: Article Series exploring ESG from the very basics: #1 what is ESG?* (2021a) *Deloitte Hungary*. Available at: https://www2.deloitte.com/hu/en/pages/energy-and-resources/articles/esg-explained-1-what-is-esg.html (Accessed: 14 April 2024).

economy. It's about being more efficient with our resources and reducing our impact on the environment.[7]

The S in ESG includes

In the social aspect of ESG, we're looking at how a company treats different groups of people, like employees, suppliers, customers, and the community. This includes things like making sure employees are paid fairly, promoting diversity, equity, and inclusion, and creating a safe and healthy workplace. Companies are also evaluated on how they protect data and privacy, treat customers and suppliers fairly, and engage with the communities where they operate. Additionally, social factors consider a company's support for projects or institutions that benefit disadvantaged communities, as well as their commitment to upholding human rights and labour standards. It's about creating positive relationships with people both inside and outside the company.[8]

Governance

In ESG, the "G" stands for governance, which focuses on how decisions are made—from government policies to how power and responsibilities are divided among different parties in corporations. This includes the board of directors, managers, shareholders, and other stakeholders. Governance factors outline the rules and procedures for countries and companies, helping investors assess whether governance practices are appropriate. Key elements of corporate governance include a company's purpose, the composition of its board of directors, shareholder rights, and how the company's performance is evaluated. Essentially, governance ensures that companies are run ethically, transparently, and in a way that benefits all stakeholders.[9]

In 2012, SEBI (Securities and Exchange Board of India) introduced the Business Responsibility Report (BRR), requiring the top 100 listed companies by market capitalization

[7] *ESG explained: Article Series exploring ESG from the very basics: #1 what is ESG?* (2021b) *Deloitte Hungary*. Available at: https://www2.deloitte.com/hu/en/pages/energy-and-resources/articles/esg-explained-1-what-is-esg.html (Accessed: 12 April 2024).
[8] Mathis, S. and Stedman, C. (2023) *What is environmental, social and governance (ESG)?*, *WhatIs*. Available at: https://www.techtarget.com/whatis/definition/environmental-social-and-governance-ESG (Accessed: 14 April 2024).
[9] *What is the 'G' in ESG?* (2020) *S&P Global Homepage*. Available at: https://www.spglobal.com/en/research-insights/articles/what-is-the-g-in-esg (Accessed: 14 April 2024).

to submit reports assessing their ESG (Environmental, Social, and Governance) factors. This was aimed at promoting transparency and accountability in corporate practices.

In 2021, SEBI replaced the BRR with the Business Responsibility and Sustainability Reporting (BRSR), which expanded on the earlier framework to encompass a broader range of sustainability considerations.

Furthermore, in 2023, SEBI amended regulation 34(2) of the LODR (Listing Obligations and Disclosure Requirements) Regulations, introducing a new framework known as 'BRSR Core' and 'BRSR Core for the company's value chain'. Under this framework, the top 1,000 listed entities by market capitalization are mandated to disclose information regarding their ESG policies and practices.

These regulatory initiatives signify a growing emphasis on integrating ESG considerations into corporate reporting and decision-making processes, reflecting a broader recognition of the importance of sustainability in the capital markets and corporate governance.[10]

Importance of ESG integration in the corporate sector

When individuals and organizations collaborate, they can achieve far more than they could on their own. Some of the benefits of collaboration include:

- Increased capacity and access to resources like time and capital.

- Faster development of solutions.

- Enhanced corporate reputation.

- Access to shared data and research.

- Advancement in technological innovations.

- Greater efficiencies leading to cost and time savings.

[10] Singh, A. (2024) *Unraveling ESG regulations: A closer look at India's approach*, *Live Law*. Available at: https://www.livelaw.in/lawschool/articles/unraveling-esg-regulations-a-closer-look-at-indias-approach-250448 (Accessed: 14 April 2024).

- Improved resilience across companies and industries.

- Reduced risk through shared exposure.

- Meaningful discussions on complex ESG standards.

From this perspective, internal collaboration within companies and strategic partnerships with external organizations are not just effective, but essential pathways to achieving ESG goals. The urgency of sustainability challenges requires companies, industries, and governments to combine their efforts to ensure continued progress towards these targets. Collaboration allows for pooling of resources, sharing of knowledge, and collective action, ultimately leading to more impactful and sustainable outcomes.[11]

Business collaboration for achieving ESG Goals

Sustainable suppliers- They are those people who provide materials and products that adhere to specific environmental and social standards set by a company. By partnering with sustainable suppliers, businesses can work towards achieving sustainability goals by minimizing the environmental and social impacts associated with their supply chain operations. These suppliers contribute to sustainability efforts by offering products and materials that are produced and sourced in a responsible and ethical manner, thereby helping companies reduce their overall environmental footprint and promote social responsibility throughout their supply chain.[12]

Business and NGO's collaboration - Sustainability has emerged as a critical issue for both businesses and non-governmental organizations (NGOs). Through collaboration, they can develop initiatives that prioritize environmental conservation and social welfare, benefiting both society and the planet.

For example, a partnership between a global retail company and an environmental NGO has led to the adoption of eco-friendly practices across the company's supply chain. This

[11] *The power of a collaborative approach to ESG* (2022) *Academy for Sustainable Innovation*. Available at: https://sustainableinnovation.academy/power-collaborative-approach/ (Accessed: 14 April 2024).
[12] Overvest, M. (2024) *Sustainable suppliers - everything about sustainability*, *Procurement Tactics*. Available at: https://procurementtactics.com/sustainable-suppliers/#:~:text=Sustainable%20Suppliers%3A%20What%20Are%20They,social%20standards%20of%20a%20company. (Accessed: 14 April 2024).

collaboration has resulted in a substantial reduction in carbon emissions and has contributed to improving living conditions in local communities. By working together, businesses and NGOs can leverage their respective expertise and resources to drive meaningful change, demonstrating the power of collaboration in addressing sustainability challenges.[13]

Sustainability agreements - Sustainability agreements, also known as green agreements, are essential tools for businesses to foster collaboration towards achieving ESG (Environmental, Social, and Governance) goals. These agreements entail partnerships between corporations aimed at advancing economic development, environmental protection, social welfare, and human rights.

Key objectives of sustainability agreements include reducing pollution, conserving natural resources, safeguarding human rights, and ensuring animal welfare. By committing to these agreements, businesses strive to minimize their environmental footprint, uphold ethical practices, and contribute positively to society.

Overall, sustainability agreements serve as catalysts for collective action, enabling companies to address complex sustainability challenges and work towards creating a more sustainable and equitable future for all stakeholders.[14]

The Authority for Consumers and Markets (ACM) adopted its policy on sustainability agreements. This policy aims to explain the application of competition rules to sustainability agreements. The introduction of the policy is significant, particularly in light of the growing demand for the integration of ESG goals within the competition policy across jurisdictions.

Competition law and sustainability agreements

Sustainability agreements primarily target achieving a more efficient use of raw materials, reducing pollutant emissions and waste, and mitigating the negative impacts of production on humans, animals, and the environment. While these objectives are essential for promoting

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[13] Sustainability, M. (2023) *Collaboration and partnerships for Greater Impact*, *LinkedIn*. Available at: https://www.linkedin.com/pulse/collaboration-partnerships-greater-impact-mcbridesustainability/ (Accessed: 14 April 2024).

[14] Pandey , S.B. (2024) *Envisioning an ESG-friendly competition regime: Drawing lessons from the netherlands guidelines*, *NUALS Law Journal*. Available at: https://nualslawjournal.com/2024/01/03/envisioning-an-esg-friendly-competition-regime-drawing-lessons-from-the-netherlands-guidelines/ (Accessed: 14 April 2024).

sustainability, it's crucial to recognize that such agreements may still raise concerns under antitrust laws if they restrict competition.

Furthermore, sustainability agreements that are solely aimed at promoting product quality, product diversity, innovation or market introductions of new products will, in most cases, actually promote competition. That is why such agreements are usually not anti-competitive. However, such agreements cannot exclude other market participants and products.[15]

Sustainability agreements which are not anti-competitive

agreements that incentivize undertakings to make a positive contribution to a sustainability objective without being binding on the individual undertakings.

To understand this better Imagine you and your friends want to reduce the amount of garbage in your neighborhood to help the environment. Instead of making strict rules for each person about how much garbage they have to reduce, you all agree on a general goal: to reduce the total garbage by 50% within a year.

Now, each person can decide how they want to contribute. Some might start composting their food scraps, while others might recycle more or use less packaging. The important thing is that everyone is working towards the same goal of reducing garbage, but they have the freedom to choose how they want to do it.

In the same way, companies can come together in an industry, like the automotive industry, and agree on a goal like reducing carbon emissions. Each company can then decide how they want to reduce emissions, whether it's by making more fuel-efficient cars or investing in renewable energy for their factories.

Codes of conduct promoting environmentally conscious or climate-conscious practices.- These often involve joint standards and certification labels about the use of raw materials, production methods, etc.

Imagine there's a group of companies that want to show they care about the environment by

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[15] *Sustainability agreements* (no date) *Authority for Consumer and Markets* . Available at: https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf (Accessed: 14 April 2024).

using sustainable materials and production methods. They create a set of rules, like a "code of conduct," that all members agree to follow. These rules might cover things like using recycled materials, reducing waste, or minimizing carbon emissions.

Now, if a company wants to join this group and use their special label that shows they're environmentally friendly, they need to meet certain requirements. These requirements have to be clear and fair for everyone.

agreements that are aimed at improving product quality, while, at the same time, certain products or products that are produced in a less sustainable manner are no longer sold.

Imagine you're part of a group of companies that make snacks, like chips and cookies. You all want to improve the quality of your products and be more eco-friendly by using less packaging. So, you agree to stop using those small plastic bags inside chip packets to keep them fresh. Instead, you find a better way to seal the packets that doesn't use as much plastic.

Now, technically, this could be seen as the companies working together, which might sound a bit like a cartel (a group of companies colluding to control prices or limit competition). But here's the key: as long as this agreement doesn't make prices go up for customers or limit the variety of products available.

Agreements will fall outside the scope of the cartel prohibition if their sole purpose is to make the undertakings involved, their suppliers, and/or their distributors respect the laws of the countries in which they do business. Such agreements are particularly important for undertakings that have difficulties checking for themselves whether their business partners comply with the rules. By concluding covenants, they are able to make the necessary agreements, allowing them to perform such checks.[16]

How to assess sustainability agreements?

The Authority for Consumers and Markets (ACM) and the Treaty on the Functioning of the European Union evaluate sustainability agreements for anticompetitive effects based on the

[16] *Sustainability agreements* (no date) *Authority for Consumer and Markets* . Available at: https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf (Accessed: 14 April 2024).

following criteria:

1. **Efficiency gains:** The agreement should result in objective benefits, such as reductions in greenhouse gas emissions or improvements in human rights or food quality, that contribute to sustainability.

2**. Indispensability**: The benefits achieved through the agreement would not be possible without its implementation. The agreement is considered necessary for realizing sustainability benefits.

3. **Benefit to users**: Consumers must receive the benefits of the agreement. This can occur directly through individual use value, indirectly through individual non-use value, or through collective benefits that extend to society as a whole.

4. **Preservation of competition:** The agreement should not eliminate competition entirely. Parties involved must continue to compete in at least one important aspect, such as price, quantity, quality, choice, or innovation, to ensure that competition remains viable.[17]

Competition law and Sustainability agreements

In India, there is currently no specific legislation addressing sustainability agreements. Instead, the assessment of ESG agreements occurs retrospectively. This approach results in variable costs for the parties involved, meaning costs that fluctuate depending on the activity or output of a particular department or institution.

In the legal context, these variable costs are contingent upon the actions of institutions. For instance, in cases involving ESG collaborations, the costs of litigation and the challenge of undoing existing agreements, such as firms transitioning to more sustainable materials, contribute to these variable costs. Additionally, information transfer among parties may become irreversible, particularly in mergers and acquisitions scenarios.

Although there have been a few cases related to ESG agreements, the Competition Commission of India (CCI) has generally refrained from imposing penalties on the parties involved.

[17] Haanpera, T., Langer, M. and Partanen , H. (2023) *Quest for clarity on how to assess sustainability agreements - CE*, *Copenhagen Economics*. Available at: https://copenhageneconomics.com/publication/who-moves-first-the-quest-for-clarity-on-how-to-assess-sustainability-agreements/ (Accessed: 14 April 2024).

However, the process of litigation, its uncertainty, and the lengthy nature of disputes in India result in unnecessary costs for the parties.

Furthermore, the case-by-case approach taken by the CCI presents interpretational challenges due to its reliance on discretion. This discretion introduces the risk of personal bias influencing outcomes. For example, a collaboration aimed at reducing working hours for employees may lead to higher costs for companies and subsequently higher product prices, potentially affecting consumer interests according to the CCI's discretion.[18]

Harmonizing ESG goals with Competition Law

ESG collaborations often appear to conflict with the framework of competition law. While competition law aims to eliminate agreements, mergers, or actions by market players that adversely impact consumer interests, with a particular focus on minimizing additional costs to consumers, ESG collaborations among market players prioritize the adoption of environmentally sustainable practices, even if they result in some overall price increases in the market.

In essence, competition law prioritizes consumer welfare by ensuring competitive markets and preventing anti-competitive behaviour that could lead to higher prices or reduced choices for consumers. On the other hand, ESG collaborations prioritize broader societal and environmental goals, such as reducing carbon emissions or promoting sustainable resource use, even if these initiatives may lead to some short-term price increases.

This tension between competition law and ESG collaborations highlights the need for careful consideration and balance between promoting competition and fostering sustainability. Finding ways to reconcile these objectives while ensuring that consumer interests are safeguarded remains a challenge for regulators and policymakers.[19]

Imagine a market with several companies producing similar products, like smartphones. Each company competes with the others on price, quality, and features to attract customers.

[18] Pandey , S.B. (2024) *Envisioning an ESG-friendly competition regime: Drawing lessons from the netherlands guidelines*, *NUALS Law Journal*. Available at: https://nualslawjournal.com/2024/01/03/envisioning-an-esg-friendly-competition-regime-drawing-lessons-from-the-netherlands-guidelines/ (Accessed: 14 April 2024).
[19] Pandey , S.B. (2024) *Envisioning an ESG-friendly competition regime: Drawing lessons from the netherlands guidelines*, *NUALS Law Journal*. Available at: https://nualslawjournal.com/2024/01/03/envisioning-an-esg-friendly-competition-regime-drawing-lessons-from-the-netherlands-guidelines/ (Accessed: 14 April 2024).

Company Y wants to make its smartphones more environmentally friendly by using sustainable materials, even though it's more expensive. But if Company Y is the only one making this change, its smartphones will become more expensive compared to its competitors.

Now, if Company Y decides to team up with a competitor, let's call them Company Z, to both use sustainable material, their smartphones will still be more expensive than those of other companies that haven't made the switch. However, customers might appreciate the sustainability aspect and be willing to pay a bit more.

But if all the companies in the market come together and agree to use sustainable materials, it will raise the cost of production for everyone. As a result, the prices of smartphones across the market will increase. This might seem like the companies are colluding to fix prices, which is illegal and known as a cartel.

However, in this case, the companies aren't trying to control prices or limit competition. They're genuinely trying to make their products more sustainable. However, because the end result is a higher market price, it might still raise concerns under competition laws.

So, even though the companies' intentions are good and they're working together to benefit the environment, they still have to be careful not to violate competition laws by causing prices to go up unfairly.

Similar competition law provisions relating to abuse of dominance and mergers and acquisitions oust market situations where a dominant firm seeks to move to a more sustainable means of production, or where two or more firms seek to merge to further sustainability goals- both of these situations resulting in anticompetitive assessment of the firms.

Abuse of Dominance: In a scenario where a dominant firm in the market wants to transition to more sustainable production methods, competition law might come into play. If the move towards sustainability somehow leverages the dominant position of the firm to exclude or unfairly disadvantage competitors, it could be considered an abuse of dominance. For example, if the dominant firm uses its market power to force suppliers to provide sustainable materials at lower prices than competitors can obtain, it could harm competition in the market. Even though the intention might be to improve sustainability, competition law would still scrutinize whether the move unfairly harms competition.

Mergers and Acquisitions: When two or more firms seek to merge to further sustainability goals, such as combining resources to invest in eco-friendly technologies, competition authorities may still assess the merger's potential impact on competition. If the merger significantly reduces competition in the market, it could lead to higher prices or reduced choices for consumers, even if the intention behind the merger is positive. For instance, if two major players in the market for renewable energy solutions merge, it could lead to less competition and potentially higher prices for consumers, which would be concerning from a competition law perspective.

In both cases, while the firms may have genuine intentions to improve sustainability, competition law aims to ensure that these efforts do not result in anticompetitive behaviour or harm to consumers. Competition authorities would assess whether the actions taken by firms, whether moving towards sustainability or through mergers and acquisitions, result in a fair and competitive market environment. Thus, the endeavor of business entities towards ESG goals seems to be facing impediments from the competition policy due to its consumer-centric nature.

Harmonizing Competition law and ESG Agreements

In India, the Competition Act of 2002 (amended in 2022) does not directly address ESG or environmental factors. While some may speculate that the Competition Commission of India (CCI) could protect seemingly anti-competitive agreements or collaborations under Sections 19(3)(f) and 20(4)(1) of the Act, there are significant hurdles to this approach. Firstly, the Competition laws do not explicitly reference environmental factors. Secondly, there is no specific legislation regarding ESG formulated by the government or constitutional courts. Thirdly, while there may be initial price increases, in the long run, ESG initiatives could become more consumer-friendly, as seen with the Minimum Wages Act.

To address these challenges, market intervention strategies like subsidies can be proposed to offset price increases while incentivizing ESG-related production, such as green energy or water treatment plants. Regulators and courts can draw inspiration from competition policy to develop laws that align with international standards.

Section 54 of the Competition Act allows for exemptions in the interest of public security or public interest. By expanding the concept of security to include social, economic, and environmental (SEE) security, the CCI can develop exemptions that facilitate ESG mandates while promoting fair competition among competitors.

Possible ways to implement ESG collaborations while complying with Indian competition law include considering non-price motives. While competition law traditionally focuses on preventing actions that raise market prices or harm consumers, ESG initiatives promote environmental protection, social responsibility, and ethical behavior. Therefore, authorities may consider broadening the criteria for evaluating potential anti-competitive collaborations to include these non-price factors.[20]

The ACM guidelines envisage fixed criteria for the assessment of anticompetitive agreements with sustainable benefits and an informal guidance mechanism that entails cooperation between the competition authority and the parties.

Fixed Criteria- Establishing fixed criteria for assessing ESG collaborations is crucial as it reduces uncertainty in the anticompetitive assessment process. These standards allow corporations to self-assess their collaborations and provide reasonable certainty, mitigating the risk of judicial biases during assessment.

The guidelines used by the Authority for Consumers and Markets (ACM), drawing from the European Union's Treaty on the Functioning of the European Union (TFEU), exemplify this approach. Article 101 of the TFEU addresses anticompetitive agreements and follows a two-step procedure. Firstly, it assesses whether an agreement has any real or potential anticompetitive effects or objects under Article 101(1). Paragraph 3 of Article 101 then provides an exception, stating that agreements offering efficiency gains, including sustainability benefits, distributing benefits fairly to consumers, proportionally restricting competition out of necessity, and not substantially eliminating competition for the product, may be permitted despite being anticompetitive.[21]

[20] Jha, I.G. (2023) *Competition laws must adapt to support the ESG mandate*, *The Energy And Resources Institute*. Available at: https://www.teriin.org/blog/competition-laws-must-adapt-support-esg-mandate (Accessed: 14 April 2024).

[21] *Sustainability agreements* (no date) *Authority for Consumer and Markets* . Available at: https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf (Accessed: 14 April 2024).

Conclusion

In conclusion, the intersection of ESG (Environmental, Social, and Governance) agreements and competition law presents a complex challenge, but one that is imperative for fostering sustainable economic development while ensuring fair and competitive market dynamics. Throughout this research paper, we have explored the various dimensions of this issue, analyzing how ESG agreements can promote positive environmental and social outcomes while also considering the potential implications for competition within markets. On one hand, ESG agreements play a crucial role in advancing sustainability goals by encouraging collaboration among businesses to address pressing environmental and social challenges. On the other hand, competition law serves as a vital safeguard to prevent anticompetitive behaviour and protect consumer welfare. effective collaboration between policymakers, businesses, and competition authorities is essential to navigate the complexities of this balancing act. By fostering dialogue, cooperation, and innovation, stakeholders can work together to develop regulatory frameworks that promote both sustainability and competition, ultimately benefiting society as a whole. By harnessing the synergies between ESG agreements and competition law, we can advance toward a more sustainable, inclusive, and competitive global economy.