

**SUSTAINABLE DEVELOPMENT AND COMPETITION LAW**  
*(Special project for the 2021 ICN Annual Conference – Survey)*

**APPENDIX C.3**  
**to the Survey Report**

**Technical remarks to the questionnaires**



This document sets out useful technical remarks for respondents. A separate document introduces the survey by describing its substantive background and its main features.

#### *BOTH QUESTIONNAIRES*

*This survey is limited in scope to environmental sustainability (as opposed to social sustainability). Environmental sustainability may refer to elements such as reducing pollution, promoting renewable energy sources, reducing packaging waste, and mitigating the impact of climate change. The above list is not exhaustive. You will be able, and are actively encouraged, to specify what kind of sustainability you are referring to.*

*For the purpose of this survey, the term “case” has a broad meaning: unless indicated otherwise, it refers not only to formal proceedings and investigations, but also to occasions where the competition agency and parties interact in an informal setting, including the provision of informal guidance to parties. The same applies to “case work”.*

*For the purpose of this survey, we differentiate between the negative and positive effects of restrictive agreements on sustainability, i.e. “sustainability as an offence” or “sustainability as a defence”, respectively.*

- On the one hand, taking the effects of a restrictive agreement on sustainability into account may lead to the emergence of a sustainability related competition concern. It is a concern that reduced competition leads, or is likely to lead, to a loss in sustainability (rather than e.g. a price increase) and/or that the restriction of competition occurs in terms of sustainability. An example of a restrictive agreement involving a sustainability related competition concern may be an agreement between car manufacturers to limit their efforts to reduce CO2 emission (as in this case the restriction occurs in terms of sustainability).*
- On the other hand, its effects on sustainability can serve as the basis of a defence for a restrictive agreement when the harm caused by the reduction, or likely reduction of competition is, allegedly, compensated/countervailed by sustainability benefits, or likely sustainability benefits produced by the same restriction. An example of a restrictive agreement involving a sustainability defence may be an agreement between car manufacturers to jointly set ambitious CO2 emission reduction targets. Depending on jurisdiction and other conditions, this sustainability defence may lead to a finding that the agreement in question is ultimately either restrictive but net beneficial or net non-restrictive.*

*If you feel it is necessary to refine your answers (e.g. by providing context), you may add short comments to most of your responses. Such comments may assist us to accurately interpret your responses and may prove essential to their proper processing.*

*This is an online survey, and this questionnaire may only be completed online via the URL your agency has been provided with in the email invitation to participate in the survey. The PDF and Word versions of the questionnaire that have been provided may not be submitted and should only be used to facilitate your navigation while responding online.*

*While responding online, you will be able to pause and continue later from the same point of the questionnaire. You will also be able to modify your response until you click NEXT at the end of the survey. It is essential, however, that you use the same computer (the same IP address) during the whole process.*

#### COMPETITION AGENCIES QUESTIONNAIRE ONLY

- *Most of the questions in this questionnaire ask you to limit the information you provide in your responses to the specific timeframe of the past 6 years (2015-2020(-2021)).*
- *Where the questionnaire asks for data about the number of enforcement cases you had in a specific timeframe, please provide information and data about cases which were closed in that period (as opposed to cases which were launched in that period).*
- *Where we would also like you to provide information about ongoing projects, this is always explicitly stated.*

*For the purpose of this survey, we differentiate between competition law and other competition related legislation. The latter refers to (a) pieces of competition related legislation that are e.g. applied by sectoral regulators, ministries, as well as (b) more general legislation that may nevertheless influence competition enforcement (such as “horizontal” constitutional requirements that require sustainability to be considered).*

*Questions concerning competition law, by default, assume that certain features are most likely to appear in a “competition act”, i.e. a central statute consisting of most and/or the most fundamental provisions of competition law. However, please feel free to refer to other pieces of legislation if this is necessary to provide a meaningful response to the question, indicating only the kind or/piece(s) of legislation that your reply refers to.*

*Please only insert text in English. If the original text is not in English, please insert its English translation or a brief description in English. We are not in the position to deal with texts in languages other than English.*

#### NON-GOVERNMENTAL ADVISORS QUESTIONNAIRE ONLY

*This questionnaire seeks to collect experience and experience-based views. Therefore, please respond to the questionnaire only if your NGA has experience in sustainability and competition. Experience may be either own experience (e.g. involvement in competition enforcement) or own research, or both.*

*An NGA’s geographical scope of operation may or may not be the same as its geographical scope of experience in sustainability and competition. An NGA may operate in a number of jurisdictions, while having experience in sustainability and competition only in one or some of those jurisdictions. Therefore, an NGA’s geographical scope of relevant experience may be narrower than its geographical scope of operation.*

*NGAs with multijurisdictional scope of experience in sustainability and competition may find that their experience in one jurisdiction (or group of jurisdictions) is different from their experience in another jurisdiction (or group of jurisdictions).*

- *If this geographical diversity remains marginal (in the sense that the experience is typical except for a few minor exceptions), please report on the typical experience of your NGA.*
- *If the geographical diversity is very significant, with the result that your NGA effectively has two or more distinct bodies of experience, please report on these distinct bodies of experience by submitting multiple questionnaires under multiple NGA IDs (e.g. xy law firm EU, xy law firm Germany, xy law firm USA).*

- *If the geographical diversity falls somewhere in between the two above-mentioned categories (such as typical experience with important, or many exceptions), please mark “mixed experience” at relevant questions, and briefly specify details. “Mixed experience” is not necessarily limited to geographical diversity, it may occur within a single jurisdiction over time, or may reflect inconsistent practice etc.*

\*

*Should you require any further clarification, please do not hesitate to contact us:*

[icn2021budapest.specialproject@gvh.hu](mailto:icn2021budapest.specialproject@gvh.hu)

*Questions that seem to be of broader interest and our answers to them will also be incorporated (without naming the agency) into “Questions and Answers”, a living document supplementing our technical remarks as listed above. It is updated regularly.*