Sustainable Development and Competition Policy

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The European Union (EU) has in recent years made significant efforts to incorporate green growth issues to EU strategic policies in favor of public and private sectors. In this paper, we present critical aspects of the European Green Growth Deal and we discuss the role of competition policy on promoting sustainability issues. Competition policy should and can be a reliable mechanism to promote sustainable growth across the globe.

1. Introduction

The European Union (EU) has in recent years made significant efforts to incorporate green growth issues to a concrete framework that enables the implementation of green growth objectives in the EU strategic policies, in favor of public and private sectors. The objective of this paper is to present critical aspects of the European Green Growth Deal and to discuss the role of competition policy, on promoting and enhancing sustainability issues. For this purpose, Section 2 reviews the literature and Section 3 presents critical data of Sustainable Development Goals (SDGs). Section 4 highlights the role of competition policy and Section 5 concludes and offers some policy implications.

2. Literature Review

Competition policy relates to green growth, that is, it can take into account environmental and social priorities, through exceptions, exemptions and exclusions; through substantive competition rules fostering social or ecological purposes and through the enhanced application of competition laws (Gehring, 2006). The second and the third categories are common methods used in many jurisdictions and are often perceived as the legitimate expression of broader public policy goals.

Koundouri et al. (2020) state that public and private funding should be channeled to those businesses that are sustainable and those that are willing to invest and to be monitored according to the EU taxonomy for sustainable investments. Sachs et al. (2019) suggest six transformations to achieve SDGs, that is, education, health, low-carbon energy, nutrition, environment and digital revolution, through the collaboration of state and businesses.

Lianos (2018) questions the monocentric model of competition law relying on the price-based revealed preference approach of a representative consumer and presents a polycentric competition law.

Schinkel & Spiegel (2017) argue that coordination of output or prices may boost investments in sustainability if firms are willing to choose green investments before choosing their profit maximized variables.

3. European Green Growth Agenda

Green Growth should foster economic development and natural assets must continue to provide the necessary resources in favor of humanity. Environmental sustainability seems to provide economic opportunities rather than challenges through the implementation of innovation and investments (OECD, 2011).

The European strategy, as part of European Green Deal, focuses on sustainable growth through smart, inclusive and competitive low-carbon economy. On the same ground, circular Action Plan, “focuses on the entire life of products [for ensuring] that the resources used are kept in the EU economy for as long as possible.”

The European Green Growth Agenda (EGGA) is part of Commission’s policy to implement the United Nations (UN) 2030 Agenda as well as SDGs and covers all sectors of the economy (Sachs et al., 2019). It focuses on the transformation of the EU into a competitive economy with no net emissions of greenhouse gases in 2050. The SDGs, which were adopted in September 2015 by the General Assembly of the UN, defined 17 development goals for both developed and developing countries, encompassing economic, financial, institutional, social and environmental dimensions. Almost a year later, in 30 November 2016, the European Commission (EC), among others, proposed a new 30% energy efficiency target for 2030 (Polemis & Fotis, 2019).
4. Green Growth and the Role of Competition Policy

Competition authorities should not provide straightforward competition rules when certain segments of a market need to be guaranteed to promote the development of a desirable new technology. Enhancing further competition in certain markets could also be in favor of green growth. Policies to encourage green growth consumption patterns have an enhanced link with competition policy. For instance, competition laws that prevent misleading advertising could be helpful to ensure greater respect for the rights of consumers, which is a component of sustainable development in many instances.

Around the globe one of the first cases encompassing sustainability issues is the Shell/Tepco Case. In 2001, the Competition Tribunal of South Africa for the first time expressed its reading of the public policy evaluation in South African competition law. The European Court of Justice (ECJ), regarding Case C-379/98, stated that "[t]he use of renewable energy sources for producing electricity, is useful for protecting the environment in so far as it contributes to the reduction in emissions of greenhouse gases which are amongst the main causes of climate change which the European Community and its Member States have pledged to combat." The ECJ decided that while the law was violated by the anti-competitive behavior of the dominant firm, it was doing so for protecting the environment.

According to the HCC (2020), the Greek Competition Commission, has the power to issue an exemption decision under article 1 par. 5 of Law No 3959/2011. In its Decision No. 457/V/2009 the HCC issued an exemption decision under article 1 par. 3 of Law No 3959/2011 to the Public Company of Electricity (DEH) for an exclusive supply agreement for 15 years with a lignite mine for the generation of electricity, among others, on the grounds that security of energy supply would benefit direct consumers (HCC, 2009). Moreover, in its Decision No. 627/V/2016 the HCC cleared with commitments the acquisition of Piraeus Port Authority SA (PPA) by COSCO (Hong Kong) Group Limited (COSCO), among others, on the grounds that the clearance of the acquisition would benefit the public sector and the "users" of the Greek port, by €368,5 million (HCC, 2016).

With regard to Greek and European merger control, public interest considerations do not form part of the substantive test in both regimes. However, past case law indicates that HCC has engaged with green growth arguments, although in all of these cases sustainability has played a secondary role in the decision reached (HCC, 2020). Particularly, in HCC’s Decision No. 682/2019 the notifying party put forward two strategic objectives for the clearance of concentration; on the one hand, the reduction of energy required at all stages of its production process, through the recycling of aluminium products (scrap) by products whose use has been completed and, on the other hand, the achievement of acquired firm’s green attitude in favor of sustainable development (HCC, 2019).

All in all, the above mentioned case law indicates that competition policy should and must be the driving force of sustainability. The next step is to internalize green growth externalities into completion law towards sustainable growth.

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3 See also Fotis & Polemis (2018).
4 According to the interim report of Pr. Pissarides Commission, Greece lags behind most of the other EU member states, regarding the implementation of the EGGA goals for recycling and the circular economy, as well as energy efficiency.
5 The competition case law (across the globe or Greek) is presented in the Appendix.
6 See also IOBE (2016).
7 More merger case law by HCC can be found in HCC (2020), pp 42-45.
Table 1 Critical indicators of SDGs of the EU28, Eurozone, Greece and top five EU countries from 2010 to 2018

| Countries       | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  | 2016  | 2017  | 2018  |
|-----------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| EU28            | 13.16 | 13.41 | 14.69 | 15.39 | 16.22 | 16.73 | 16.99 | 17.47 | 17.98 |
| Eurozone        | 13.14 | 13.17 | 14.66 | 15.29 | 16.11 | 16.46 | 16.73 | 17.28 | 17.75 |
| Greece          | 10.08 | 11.15 | 13.74 | 15.33 | 15.68 | 15.69 | 15.39 | 16.95 | 18.00 |
| Latvia          | 30.37 | 33.48 | 35.71 | 37.04 | 38.63 | 37.54 | 37.14 | 39.02 | 40.29 |
| Finland         | 32.44 | 32.79 | 34.43 | 36.7  | 38.78 | 39.32 | 39.01 | 40.92 | 41.16 |
| Sweden          | 46.96 | 48.25 | 50.23 | 50.8  | 51.87 | 53.01 | 53.37 | 54.20 | 54.64 |
| Iceland         | 70.27 | 71.47 | 72.39 | 71.66 | 70.48 | 70.26 | 70.17 | 70.69 | 72.18 |
| Norway          | 61.51 | 64.70 | 65.55 | 66.75 | 69.19 | 69.19 | 70.16 | 71.65 | 72.75 |
| GGE             |       |       |       |       |       |       |       |       |       |
| EU28            | 92.6  | 92.1  | 91.8  | 90.4  | 89    | 88.7  | 87.7  | 86.4  | 84.9  |
| Greece          | 94.7  | 96.3  | 93.3  | 93.3  | 89.5  | 85.2  | 81.6  | 83    | 81.4  |
| Bulgaria        | 117.9 | 122.1 | 115.5 | 109   | 110.1 | 111.8 | 106.5 | 108.5 | 99.2  |
| Cyprus          | 103.3 | 101   | 100.5 | 100   | 100.8 | 100.5 | 99.9  | 97.4  | 93.5  |
| Lithuania       | 124.9 | 112.6 | 111.8 | 112.3 | 107.9 | 105.7 | 106.3 | 101   | 102.8 |
| Luxembourg      | 104.5 | 105   | 105.6 | 103   | 100.5 | 96.3  | 93    | 91.8  | 91.4  |
| Netherlands     | 97.3  | 96.2  | 94.4  | 96    | 96.9  | 99.9  | 97.9  | 95    | 93.4  |
| EID             |       |       |       |       |       |       |       |       |       |
| EU28            | 52.58 | 54.11 | 53.53 | 53.18 | 53.50 | 53.87 | 53.79 | 55.10 | 55.68 |
| Eurozone        | 61.79 | 62.39 | 60.99 | 59.85 | 60.10 | 62.06 | 61.87 | 63.03 | 63.25 |
| Greece          | 68.59 | 64.68 | 65.89 | 61.75 | 65.46 | 71.08 | 72.91 | 71.28 | 70.67 |
| Belgium         | 77.87 | 75.25 | 75.65 | 76.79 | 79.22 | 83.38 | 74.96 | 74.38 | 83.31 |
| Italy           | 82.57 | 81.35 | 79.11 | 76.74 | 75.81 | 77.03 | 77.65 | 76.98 | 76.34 |
| Cyprus          | 100.64| 92.26 | 96.75 | 96.08 | 93.09 | 97.32 | 95.84 | 95.93 | 92.49 |
| Luxembourg      | 79.04 | 78.60 | 77.53 | 75.56 | 74.93 | 75.45 | 74.78 | 71.96 | 74.25 |
| Malta           | 99.04 | 101.3 | 100.97| 104.14| 97.66 | 97.30 | 101.08| 103.04| 97.83 |
| RRW             |       |       |       |       |       |       |       |       |       |
| EU28            | 55    | 55    | 56    | 56    | 57*   |       |       |       |       |
| Belgium         | 75    | 80    | 81    | 78    |       |       |       |       |       |
| Italy           | 60    | 64*   | 67*   | 68*   |       |       |       |       |       |
| Lithuania       | 50    | 51    | 57    | 68    |       |       |       |       |       |
| Netherlands     | 71    | 71    | 72    | 72    |       |       |       |       |       |
| Slovenia        | 52    | 74    | 75    | 80    |       |       |       |       |       |

Share of renewable energy in gross final energy consumption by sector (SRE) (%) - Greenhouse gas emissions intensity of energy consumption (GGE) (2000=100) - Energy import dependency (EID) (%) - Recycling rate of waste excluding major mineral wastes (RRW) (%)

GGE: data for Eurozone is not available; RRW: data for Eurozone and Greece is not available

*Estimations

Source: Eurostat (https://ec.europa.eu/eurostat/databrowser/view/sdg_07_50/default/table?lang=en - https://ec.europa.eu/eurostat/databrowser/view/sdg_32_40/default/table?lang=en)

5. Results and Policy Implications

The interconnection between competition policy and sustainable growth is unquestionable. The former may play crucial role by enhancing sustainability through competition rules. National competition authorities must be the mechanism fostering sustainable growth by taking into account various aspects of externalities and comparing discounted gains against environmental costs. The analysis reveals that EU countries should strengthen their efforts towards Sustainable Development, particularly by eliminating their dependency from energy imports.
One of the critical requirements for green growth is green investments, as it has been set out by EGGA (EC, 2019). Competition policy should, therefore, offer the incentives to firms to improve technological progress towards greener technologies and to avoid investments funds being channelled to brown technologies for short-term returns (Capasso et al., 2019). For these purposes, it should balance the negatives and positives during the evaluation of firms’ anti-competitive behavior for protecting the environment.

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8 The need for long-run policies towards environmental investments for European countries is also well documented in Altinoz et al. (2020).
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REFERENCES

Altinoz, B., Apergis, N., & Aslan, A. (2020). Energy Consumption, Carbon Dioxide Emissions and Economic Growth: Fresh Evidence From Panel Quantile Regressions. Energy Research Letters, 1(3), 1–5. https://doi.org/10.46557/001c.17075

Capasso, M., Hansen, T., Heiberg, J., Klitkou, A., & Steen, M. (2019). Green growth – A synthesis of scientific findings. Technological Forecasting and Social Change, 146, 390–402. https://doi.org/10.1016/j.techfore.2019.06.013

EC. (2019). The European Green Deal sets out how to make Europe the first climate-neutral continent by 2050, boosting the economy, improving people’s health and quality of life, caring for nature, and leaving no one behind. https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6691

Fotis, P., & Polemis, M. (2018). Sustainable development, environmental policy and renewable energy use: A dynamic panel data approach. Sustainable Development, 26(6), 726–740. https://doi.org/10.1002/sd.1742

Gehring, M. W. (2006). Competition for Sustainability: Sustainable Development Concerns in National and EC Competition Law. Review of European Community and International Environmental Law, 15(2), 172–184. https://doi.org/10.1111/j.1467-9388.2006.00519.x

HCC. (2009). Decision No. 457/V/2009. https://www.epant.gr/apofaseis-gnomodotiseis/item/244-apofasi-457-2009.html

HCC. (2016). Decision No. 627/V/2016. https://www.epant.gr/en/decisions/item/1077-decision-627-2016.html

HCC. (2019). Decision No. 682/2019. https://www.epant.gr/apofaseis-gnomodotiseis/item/6-apofasi-682-2019.html

HCC. (2020). Staff Discussion Paper on Sustainability Issues and Competition Law. https://www.epant.gr/-en/enimerosi/competition-law-sustainability.html

IOBE. (2016). Economic effects of PPA’s privatization. http://www.olp.gr/el/pressreleases/-item/3165-oikonomikes-epidraseis-apo-tinidiotikopoisi-tou-organismou-imenos-peiraios-meleti-iove

Koundouri, P., Pittis, N., & Samartzis, P. (2020). Never Waste a Good Crisis: COVID-19, Macroeconomic Effects and the Way Forward, Perspectives on the Economics of the Environment in the Shadow of Coronavirus. Environmental and Resource Economics, 76(4), 447–517. https://doi.org/10.1007/s10640-020-00493-2

Lianos, I. (2018). Polycentric Competition Law. Current Legal Problems, 71(1), 161–213. https://doi.org/10.1095/clp/cuy008

National Plan for Energy and the Climate. (2019). Government Gazette, B 4893/51.12.2019. https://ec.europa.eu/energy/sites/ener/files/el_final_necp_main_en.pdf

OECD. (2011). Towards Green Growth, A summary for policy makers. https://www.oecd.org/greengrowth/48012345.pdf

Pissarides Commission. (2020). Plan for Growth for the Greek Economy (Interim Report, July 27, 2020). https://government.gov.gr/schedio-anaptixis-gia-tin-elliniki-ikonomia-endiamesi-ekthesi/

Polemis, M. L., & Fotis, P. (2019). European Commission's Energy and Climate Policy Framework. In M. Shahbaz & D. Balsalobre (Eds.), Energy and Environmental Strategies in the Era of Globalization, Green Energy and Technology (pp. 335–361). Springer Editions. https://doi.org/10.1007/978-3-030-06001-5_13

Sachs, J. D., Schmidt-Traub, G., Mazzucato, M., Messner, D., Nakicenovic, N., & Rockström, J. (2019). Six Transformations to achieve the Sustainable Development Goals. Nature Sustainability, 2(9), 805–814. https://doi.org/10.1038/s41893-019-0352-9

Schinkel, M. P., & Spiegel, Y. (2017). Can collusion promote sustainable consumption and production? International Journal of Industrial Organization, 53, 371–398. https://doi.org/10.1016/j.iijindorg.2016.04.012
APPENDIX

Competition Case Law:

Shell South Africa (Pty) Ltd and Tepco Petroleum (Pty) Ltd (Competition Tribunal Republic of South Africa Case No 66/LM/ Oct01, October 2001) (https://www.comptrib.co.za/case-detail/3877).

ECJ 13 March 2001, Case C-379/98, Preussen Elektra AG v. Schleswag AG [2002] ECR I-2099 (http://curia.europa.eu/juris/liste.jsf?num=C-379/98).

HCC (2009), Decision No. 457/V/2009 (https://www.epant.gr/apofaseis-gnomodotiseis/item/244-apofasi-457-2009.html) (in Greek).

HCC (2016), Decision No. 627/V/2016 (https://www.epant.gr/en/decisions/item/1077-decision-627-2016.html) (in English).

HCC (2019), Decision No. 682/2019 (https://www.epant.gr/apofaseis-gnomodotiseis/item/6-apofasi-682-2019.html) (in Greek).