Competition Law, Climate Change & Environmental Sustainability

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Introduction by Suzanne Kingston
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Radical For Whom? Unsustainable Business Practices as Abuses of Dominance

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I. Time for Action

The Paris Agreement marked its fifth anniversary on 12 December 2020. To date, the Agreement’s most important goal, i.e. to maintain global temperature increase up to 1.5–2°C by the end of this century,1 remains largely out of reach. The newly released 2020 United Nations Environment Programme (UNEP) Emissions Gap Report shows how current efforts at tackling the climate crisis remain woefully inadequate, while atmospheric greenhouse gas concentrations keep rising.2 Meanwhile, the COVID-19 pandemic has exposed the fragility of the global socioeconomic system by supercharging existing inequalities and pre-existing overlapping crises.

It is becoming all the more clear that our socioeconomic system’s method and goals, i.e. ruthless competition and profit for the sake of profit, are defined by the narrow boundaries of capitalist rationality, thus failing to appreciate the holistic

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nature of sustainability. Unfortunately, not even the global COVID-19 – induced reductions in economic activity are expected to have any significant long-term effect on climate change. Efforts to “Build Back Better” have largely fallen on deaf ears, with astronomically large fiscal recovery packages being earmarked to bail out carbon intensive industries like aviation, fossil fuels and Big Agriculture.3

The climate crisis is not, as is often argued, a “tragedy of the commons”, attributed to humanity’s greed and collective inability to manage its shared resources.4 It is a logical consequence of a system built on extreme material and carbon inequality.5 As the UNEP report asserts, emissions of “the richest 1 per cent of the global population account for more than twice the combined share of the poorest 50 per cent”.6 Similarly, just 100 companies are responsible for 71% of global industrial greenhouse gas emissions since 1988.7

To limit global temperature rise and ensure that environmental conditions remain conducive to the maintenance of an organised human society will require an enormous effort.8 To achieve this rapid decarbonisation, every economic sector and every part of society will need to adapt. As a step in that direction, an increasing number of states and cities are declaring climate emergencies, passing “Green Deal” – style policy packages and setting targets of net-zero greenhouse gas emissions within the next couple of decades.9

Nevertheless, to even begin to address these systemic issues, we must first acknowledge the extent to which society is embedded within ecological systems. Only then can we commence the urgent work towards finding solutions that promote both socioeconomic equity and environmental stewardship. The existential threat of the climate crisis requires a radical reconfiguration of societal relations. In practice, this means that business models and the societal institutions that guide them, such as law, will have to evolve to do their part.10

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6 UNEP (n 2), XV.
9 These include major economies like China, the EU, Japan, South Korea and the UK.
10 Notable examples illustrating how law can be used as a vehicle for socio-ecological sustainability include a successful civil society lawsuit against the government of the Netherlands (Dutch Supreme Court Case
Competition law can be no exception. Research shows how powerful transnational corporations precipitate ecological and climate breakdown, but they can also leverage their market power and influence to enhance stewardship of the Earth system. Yet, the discussion about how EU competition law can support sustainability goals, such as those of the European Green Deal, entirely neglects the role Article 102 TFEU can play. Equally absent is a discussion of the role competition law enforcement can play to strike down unsustainable business practices. Instead, the debate is mostly dominated by how competition law can facilitate (otherwise anticompetitive) agreements between undertakings through the application of Article 101(3) TFEU, essentially, offering less competition in exchange for sustainability initiatives.

Our research addresses the Article 102 TFEU gap in the debate and in the enforcement of EU competition law by looking at why and how the prohibition can be used as a sword to strike down unsustainable business practices. In this paper, we present our research on the nexus between dominance and unsustainable business practices (section II), examine briefly Article 102’s purpose and how it informs the concept of “abuse” (section III), and introduce our coming research project on unsustainable business practices as “abuses” of a dominant position (section IV).

II. Dominance and Unsustainable Business Practices

Realising that the apparent enforcement and research gap as to the role Article 102 TFEU can play as a cause of action against unsustainable business practices might exist because such practices and market power are unrelated, we decided to test the hypothesis that there is a nexus between the two. The method we used to test that hypothesis is unique in competition law research, as it regards competition law through a socio-ecological lens. That means that we understand “sustainability” in a way that is much more in tune with contemporary research in other fields than law.

Our definition of sustainability assumes the “planetary boundaries” framework as a departure point. The framework has been fundamentally influential for global sustainability research, paving the way for understanding the Earth as a globally interconnected, complex living system. This system is defined by ecological
thresholds and tipping points that should not be transgressed in order to maintain humanity within a safe operating space. Four of the boundaries have already been pushed beyond what is considered a safe limit, namely climate change, biodiversity loss, biochemical flows of nitrogen and phosphorus, and land system change.¹⁴

With “planetary boundaries” as departure point and drawing from socio-ecological studies, which consider society and the environment as inextricably linked and mutually embedded systems,¹⁵ for the purposes of our research we define as “sustainable” any action that both respects ecological boundaries (do no harm) and delivers societal benefits (do well). To concretise this holistic definition of sustainability, we use a heuristic tool by ecological economist Kate Raworth, the “Doughnut Framework”, that combines the planetary boundaries with the 17 UN Sustainable Development Goals.¹⁶ The Doughnut thereby delineates a safe and just operating space where every person’s minimum societal needs are met (e.g. healthcare, housing, decent work, access to water, food and energy, justice, equality, social equity), within the planet’s carrying capacity (i.e. without exacerbating the climate and environmental emergency). Accordingly, we define as “unsustainable” any practice that contributes to the transgression of the planetary boundaries and/or contravenes the SDGs, in other words, any action that pushes the world towards a more unsafe and unjust space.

To further operationalise this definition within the scope of our research we use the ten principles of the UN Global Compact for corporate sustainability, which relate to human rights, labour, the environment and anti-corruption.¹⁷ Without aiming to establish a causal relationship, as this is beyond the scope of this research and unnecessary for the application of Article 102 TFEU,¹⁸ we demonstrate empirically how market power facilitates undertakings engaging in unsustainable business practices.

We begin with a review of the rich socio-ecological literature examining the connection between consolidation and unsustainable business practices. We find there is a tendency for transnational corporations to grow so large that they effectively control critical functions of the biosphere.¹⁹ This is not a sector-specific issue; it is observed across most economic sectors, such as agriculture, forestry, seafood, cement, minerals and fossil fuels. Beyond their supply chain – wide range of impacts on society and the environment, large undertakings tend to leverage their market position to influence political processes, which in turn grant them additional competitive

¹⁵ We have relied in particular on the work of the Stockholm Resilience Centre, see “Planetary boundaries” <www.stockholmsresilience.org/research/planetary-boundaries.html>.
advantages, such as watered-down regulations for harmful toxins or waste management.\textsuperscript{20}

To test the veracity of the nexus identified in the reviewed literature and to be in line with EU competition law’s definition of dominance, we then shifted our attention to individual companies. We examined whether undertakings that have already featured in DG COMP’s enforcement of Article 102 TFEU as dominant undertakings have also engaged in unsustainable business practices. We identified 86 unique dominant undertakings in the decisional practice and have categorised them in six sectors. We cross-checked how many of these feature on the Environmental Justice Atlas (EJAtlas). The EJAtlas systematically collects and maps socio-ecological conflicts from across the world, analysing the actors behind each conflict, as well as the relevant impacts on society and the environment. The key findings of this exercise are summarised in Figure 1.

Figure 1: Key results from the matching exercise between the DG COMP list and the EJAtlas

- We found 27 undertakings (31% of the total 86) on the EJAtlas, featuring in a total of 176 cases.
- Cases of socio-ecological conflict are observed across all six surveyed sectors.
- Nearly half of the undertakings (13) and most relevant cases (149) are in the energy and mining sector.
- 154 cases (87.5%) involve environmental damage.
- In 142 (92.2%) of the 154 cases of environmental damage, there is also a breach of human rights, disregard for basic labour standards or corruption.
- Of the 51 cases where corruption is documented, 45 cases (88.2%) overlap with human rights violations.
- Of those same 51 cases, 41 cases (80.4%) overlap with breaches of environmental principles.
- We found cases of dominant undertakings engaging in unsustainable business practices both within and outside the EU.

We can deduce some key conclusions from our results. First, there are indeed dominant undertakings engaging in unsustainable business practices. Second, this is not a sector-specific phenomenon, but instead it seems to be characteristic of all economic sectors. Third, there is a wide prevalence of breaches of environmental protection, indicating that dominant undertakings systematically contribute to ecological breakdown. Fourth, the significant overlap between environmental damage, corruption, and human and labour rights violations empirically backs our theoretical stand, i.e. that environmental and social sustainability should be viewed

as inextricably related. Fifth, the pervasiveness of corruption and rent-seeking lobbying shows that competition law may have a significant role to play, even in the presence of regulation. Sixth, unsustainable business practices by dominant undertakings is not exclusively a problem for jurisdictions outside the EU.21

III. “Abuse” in Light of Article 102’s True Purpose

The nexus we identify between market power and unsustainable business practices is significant, as it shows that addressing such practices through the enforcement of Article 102 TFEU is not only a theoretical possibility, it is a real opportunity to tackle environmental and social injustices and thereby contribute to addressing the most important existential threat currently facing humanity; climate change. To be caught by Article 102 TFEU, such practices have to be “abuses”. In this section, we look at the meaning of “abuse”.22

Abuse is “the conduct of a dominant undertaking that, through recourse to methods different from those governing normal competition on the basis of the performance of commercial operators, has the effect, to the detriment of consumers, of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition”.23 Abuse is “an objective concept”24 and, thus, does not depend on the dominant undertaking’s intentions.

Unsurprisingly, the breadth of the definition has led to a proliferation of ways to show “abuse” in practice, and several tests have been proposed.25 In EU competition law, the predominant understanding of “abuse” revolves around the idea of competition on the merits.26 The antithesis of competing on the merits, and therefore “abuse”, is to compete by recourse to methods other than those that condition normal competition.

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21 For the full results, a more detailed method, and implications, see Marios C Iacovides and Chris Vrettos, “Falling Through the Cracks No More? Article 102 TFEU and Sustainability I – The Nexus Between Dominance Environmental Degradation and Social Injustice” (2020) Faculty of Law, Stockholm University Research Paper No 79.

22 This is part of an ongoing project, provisionally titled Marios C Iacovides and Chris Vrettos, “Falling through the cracks no more? Article 102 TFEU and sustainability II – Environmental degradation and social injustice as abuses of dominance” (forthcoming, 2021).

23 Case C–209/10 Post Danmark I EU:C:2012:172, [24]; Anne-Lise Sibony, “Selective rebates – Universal service obligations: The Court of Justice, Grand Chamber, rules that selective rebates targeting clients of a competitor are not abusive when prices are below incremental cost but cover marginal cost and when no intent to eliminate competitor has been established (Post Danmark)” Concurrences N° 2–2012 Art N° 45619, 64–68.

24 Case 85/76 Hoffmann-La Roche v Commission [1979] ECR 00461, [91].


26 E.g. Hoffmann-La Roche (n 24), [91]; Case C–95/04 P British Airways v Commission [2007] ECR I-2331, [66]; Catherine Prieto, “Fidelity rebates: The ECJ holds abusive the discounts system granted
The Court of Justice of the EU (CJEU) has on numerous occasions stressed that the list of examples of abuse contained in Article 102 TFEU is non-exhaustive.\(^7\)

Thus, the case law and decisional practice are abundant with “atypical” abuses,\(^8\) and new categories form as the case law develops and new economic activities and practices emerge.\(^9\) Moreover, “abuse” in any given case can emerge from a series of diverse events and may consist of a collection of different types of abusive conduct.\(^10\)

We can deduce that from the outset there is nothing in the way the CJEU has interpreted “abuse” that would preclude unsustainable business practices from constituting abuses of dominance within the meaning of Article 102 TFEU. Why, then, is it perceived as a radical position to suggest that unsustainable business practices can be abuses of a dominant position when subsumed in other abuses\(^11\) and even more so independently?\(^32\)

We think that this is because of a misconception, namely that the “more economic approach” requires us to focus on a narrowly construed “consumer welfare” standard, with the result of losing sight of what Article 102 TFEU is supposed to and is able to achieve. In our view, there can be no way of knowing what constitutes “abuse” within the meaning of Article 102, while being agnostic as to the true purpose of the prohibition.


\(^{32}\)These are the kinds of comments we have received while presenting our research at conferences and seminars. See also the Hellenic Competition Commission, “Draft Staff Discussion Paper on ‘Sustainability Issues and Competition Law’” (September 2020) <www.epant.gr/enimerosi/ygiis-antagonismos-viosimi-anapykisi.html>, 37.
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It may sound trite but Article 102 TFEU is part of the EU’s system of competition law. That law is a tool to achieve the goals of the EU’s competition policy. The significance of that is that ultimately the prohibition must serve the purposes of EU competition policy.

What are, then, the goals of EU competition law? The extensive literature providing answers to that question has recently been reviewed and summarised by Stylianou and Iacovides.\(^3\) On the basis of that, the authors identified seven overarching goals for EU competition law: efficiency, welfare, freedom to compete, market structure, fairness, single market and competition process. Furthermore, they conducted comprehensive empirical research, searching for 74 different keywords and phrases giving expression to the seven goals in 3,749 Commission decisions, CJEU judgments, advocate general opinions and Commissioner for Competition speeches.\(^3\) They found references to all seven goals and no goal emerged as being predominant, although they observed that EU competition law prioritises process (e.g. fairness, equality of opportunity, level playing field), over outcome (e.g. efficiency, welfare).\(^3\)

That the practice of EU competition law – when we regard it as a whole rather than choosing to focus on a few cases – reveals the pursuit of a variety of goals, should come as no surprise. We have made elsewhere the argument that this is mandated by the EU treaties,\(^3\) and others are of the same opinion.\(^3\) This is, we submit, the correct interpretation of the rules of EU competition law and the only one compatible with the specific EU law method of interpretation. It is also congruous with treaty provisions having horizontal application, in particular Article 7 TFEU (consistency) and several mainstreaming obligations regarding, for instance, environmental protection,\(^3\) equality, and the protection of workers.\(^3\)

Consequently, EU competition law is not and does not have to be focused on a Chicago school − inspired narrow “consumer welfare” standard.\(^3\) That it is

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34 ibid, s 3.
35 ibid, 26–30. The full database is available at <www.db-comp.eu>.
36 Iacovides and Vrettos, “Article 102 TFEU and Sustainability I” (n 21).
37 E.g. Holmes (n 31).
39 Arts 8–10 TFEU; Charter of Fundamental Rights, Title IV.
predominantly seen as being so\textsuperscript{41} is a product of the Commission’s conscious move towards a “more economic approach”.\textsuperscript{42} This is notable as, in effect, the Commission has been furthering a policy choice (consumer welfare with a specific content) through the application of primary EU law (Articles 101 and 102 TFEU).\textsuperscript{43} That choice, made in the 1990s, goes hand-in-hand with an ideology (neoliberal, laissez-faire, trickle-down economics) and a model of competition, between companies just as among states, that was prevalent at \textit{that} time. That ideology and model of competition has not only failed to deliver on its promises,\textsuperscript{44} it has catapulted our social, economic and ecological systems into perpetuating and mutually reinforcing crises.\textsuperscript{45} Either naively or because that policy choice has become so entrenched\textsuperscript{46} that it is now thought to be the only truth, competition lawyers are unable to think outside its narrow market logic confines.

Yet, obviously, policy \textit{can} and \textit{does} change and – to be aligned with the Commission’s overarching Green Deal goals of decarbonising the economy through a socially fair and just transition path\textsuperscript{47} and the European Parliament’s call on the Commission to “urgently take the concrete action needed in order to fight and contain the threat of climate and environmental catastrophe before it is too late”\textsuperscript{48} – it \textit{must} change.

\textbf{IV. Unsustainable Business Practices as “Abuses”}

If certain conduct is prohibited as abusive because it runs counter to what Article 102 TFEU is supposed to protect and, if we understand the latter correctly, which we can only do by reading Article 102 through the EU constitutional law lens, then we will see that “abuse” must be construed as including unsustainable business


\textsuperscript{43} Usually, the executive branch of government does not implement its policy choices through the application of constitutional provisions of primary law but rather through regulation and secondary legislation.


\textsuperscript{45} Steffen and others, “Trajectories of the Earth System” (n 8), 8252.

\textsuperscript{46} This has happened with a time lag, as policy choices of the Commissioner for Competition take years to materialise in cases and to seep through the system of competition law and enforcement.


\textsuperscript{48} European Parliament Resolution on the climate and environment emergency (2019/2930(RSP)).
practices. In this section, we explore how unsustainable business practices could be shown to breach Article 102 and we suggest – on the basis of our empirical research into such practices⁴⁹ – how such practices lead to distortions of competition.⁵⁰

Let us begin by looking at the kind of conduct we found dominant undertakings engaging in in the EJAtlas. Dominant undertakings are documented as violating human rights or being complicit in human rights violations, undermining the right to work, not upholding freedom of association or not recognising the right to collective bargaining, discriminating in respect of employment and occupation, producing under hazardous working conditions, undertaking activities that push the planet beyond the planetary boundaries, discouraging greater environmental responsibility and engaging in corruption and rent-seeking lobbying.

In terms of impact, such conduct is documented in the EJAtlas as leading, inter alia, to deaths, land dispossession, loss of livelihoods, chronic illnesses, increase in violence and crime, militarisation and increased police presence, repression, criminalisation of activists, lack of work security, occupational disease and accidents, unfair treatment of migrant labourers, biodiversity loss, pollution, large-scale disturbance of hydro and geological systems, deforestation, global warming, desertification, fires, drought, loss of indigenous knowledge and cultures, and increase in corruption and clientelism. Those effects may not immediately be identifiable as relevant for competition law, but in fact they have a lot to do with a model of toxic competition to which competition law has hitherto wilfully turned a blind eye.

There are two ways in which unsustainable business practices and their impacts can be shown to be more relevant for competition law and be shown to be abuses within the meaning of Article 102 TFEU. First, they can be subsumed in existing and well-established types of abuse. Second, they can be shown to lead to distortions of competition in their own right, if they harm the competitive process, distort the level playing field, lead to consumer harm, can be considered “unfair”, lead to reductions of welfare or, more broadly, to reductions in citizens’ wellbeing.⁵¹ Which approach will be most appropriate in each case will depend on the individual circumstances and whether they indeed fit existing types of abuse, just like with every other conduct that is examined under Article 102.

Irrespective of approach, successfully proving the abuse will depend on satisfying the relevant test, which, as mentioned above, relates to competition on the merits. Unsustainable business practices may be relevant to several typical

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⁴⁹ See section III.
⁵⁰ We develop our ideas on unsustainable business practices as abuses of dominant position in “Article 102 TFEU and Sustainability II” (n 22).
elements of the test, for example anticompetitive effects, barriers to entry and theories of harm, and econometric tests such as the as-efficient-competitor test (AEC test). To appreciate how our two suggested approaches could be operationalised requires consideration of how such elements are affected in practice.

What such practices have in common is that they push the planet beyond a safe and just operating space. In terms of effects, they result in making production inputs, such as raw materials, labour and energy, cheaper than they ought to be. A prime example is meat production. Meat has become cheap because large meat producers have succeeded in controlling the market and its rules; they secure subsidies, clear forest for grazing and avoid higher labour standards by getting exceptions for low-paid immigrant workers. Lower standards cheapen every aspect of production, resulting in lower production costs. Although the practices may also entail certain costs (e.g. reputational costs, litigation, fines), those are often too low to offset the increased profit made by engaging in them. These practices also have externalities, since the market prices of the products or services offered do not reflect the true costs.

Moreover, as a consequence of reduced costs, an undertaking engaging in unsustainable business practices gains a competitive advantage over any competitor that does not engage in them, even more so over competitors that sacrifice profit to actively pursue sustainable practices or innovate in order to be sustainable. This is unfair competition, as the competitive advantage cannot truly be attributed to normal competition on the merits. There can be nothing “normal” and “meritorious” in toxic competition through bribery, extortion, human rights violations, destruction of habitats and livelihoods, offering exploitative salaries and working conditions; EU competition law cannot pretend such competition is fair and on terms reflecting a level playing field, while being consistent with EU law. It may also enable the dominant undertaking to engage in all sorts of conduct that is typically abusive, such as cross-subsidies, loyalty-inducing rebates or margin squeeze.

Furthermore, unsustainable business practices may result in raising barriers to entry for competing undertakings. For instance, through bribery, a dominant undertaking may be able to secure a licence to extract a raw material needed for the production of a product, to the detriment of actual or potential competitors. Through rent-seeking lobbying, a dominant undertaking could put pressure to bring about regulatory changes in its favour, which act as barriers to entry for other undertakings. This may also be part of a strategy of raising rivals’ costs,

for example by forcing them to source inputs more expensively, or to spend more on marketing to counter unfair advantages enjoyed by the dominant undertaking. All this may result in both exclusion of competitors and exploitation of customers or consumers. Unsustainable business practices may exclude efficient competitors, at least if the chosen cost benchmarks are not those of the dominant undertaking, which will reflect the dominant undertaking’s market power and of the abuse itself. It seems absurd (and counterproductive) to rely on costs that are the result of unsustainable business practices in order to conduct the AEC test. Unsustainable business practices could also be exploitative, as they might allow the dominant undertaking to benefit from unfair purchase prices or impose other unfair trading conditions on its customers or consumers.

Additionally, unsustainable business practices may reduce incentives to innovate, as an undertaking engaging in such practices does not need to stay on top of the game in order to maintain or enlarge its market power. Even assuming such undertakings could be punished by consumers willing to pay for more sustainable alternatives, to the extent such alternatives exist and consumers behave rationally, this disregards the fact that market choices may themselves reflect market failures, such as lack of transparency and information or unincorporated externalities. Picking up our example of meat production again, how are alternatives, from slowly grown organic meat alternatives to vegan replacements, going to compete and get the necessary scale if not enough consumers are willing to pay for what they consider to be “expensive” and “elitist” sustainable choices?

Finally, a question we consider important to address is whether it makes any difference if unsustainable business practices are subsumed in existing abuses or if they are seen as standalone new abuses. Conceptually, it seems to us that it is much easier to argue convincingly for the former approach and it will be more palatable to competition lawyers, economists and authorities that are used to doing things in certain ways. Such an approach would also avoid any arguments about unsustainable business practices being new types of abuse and, thus, that finding a breach of Article 102 TFEU on the basis of one should carry no fine.

At the same time, we consider it important to also advocate for the latter approach. Accepting that unsustainable business practices can be abuses of a dominant position, regardless of whether they can be easily “translated” into our existing categories, makes sure that we focus on what we as a society and

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55 Based on the same logic, it is nowadays accepted that prices that are the result of market power cannot be a proper baseline for the conduct of a SSNIP test, in order to avoid the “cellophane fallacy”: Commission notice on the definition of relevant market for the purposes of Community competition law [1997] OJ C372/5, [19].

56 Holmes (n 31), 384–386.

57 “Novel” abuses have carried fines before, where the undertakings engaging in them could not have been unaware of the highly anticompetitive nature of their conduct: AstraZeneca (n 28), [164].
Article 102 TFEU care about. It ensures that competition law takes a stance against such ways to compete, something that carries significant normative force for undertakings. It creates fertile ground for the development of abuses that have hitherto been largely in the shadows, especially exploitative ones. It also ensures that cases can be brought and won on the basis of the kind of evidence that will be available (e.g. documented violations of labour rules or environmental damage), instead of having to procure or produce other evidence and analyses (e.g. econometric evidence). A market logic may work, but do we really want everything to be filtered through that logic, if that is only possible because we contort concepts (e.g. consumer welfare) and tests that were devised in a different time and on the basis of discredited assumptions and failed ideologies?

V. Radical for Whom?

In this short paper, we presented our research on the nexus between dominance and unsustainable business practices and, considering abuse in light of Article 102 TFEU’s purpose, introduced our coming research project on unsustainable business practices as abuses of a dominant position.

Our ideas for using Article 102 TFEU as a sword to strike down dominant firms’ conduct that harms people and planet will, probably, be dismissed by some as too radical. Undoubtedly, our approach is a departure from how Article 102 is currently enforced and will seem chimeric for competition lawyers and economists who espouse an economic approach to EU competition law that is obsessed with efficiency instead of fairness and level playing field, that understands competition as a race to the bottom to reward undertakings that care only about profit, that is disjointed from the acute problems our societies currently face, and that is based on a blind belief that markets will solve those problems. Yet, that approach has failed and there is nothing normal, logical or inevitable about the kind of competition it has enabled. We realised long ago that common standards (e.g. harmonisation), offsetting charges (e.g. tariffs, anti-dumping measures, countervailing duties for subsidies) or exceptions on public policy grounds are needed in order to ensure states do not compete unfairly with low regulation. Why is it radical to suggest that powerful market players should be constrained from doing the same?\footnote{The constitutionalisation of private law is certainly not a new phenomenon.}

Our approach is about more competition, just not the toxic kind. It is a call for refocusing competition policy and reconnecting concepts such as “abuse” with the goals of the system of EU competition law. Our proposals are activist, but they are certainly not radical.
The consensus is clear - climate change is the defining challenge of our time. Meeting this challenge requires a collaborative and inclusive response from all segments of society - including private businesses. What role then for competition law and policy?

This important and timely book gathers academics, enforcers, economists, lawyers, and industry representatives to explore the applications and limitations of EU competition law in achieving environmental sustainability aims in line with the European Commission’s Green Deal as well as the UN’s Sustainable Development Goals. They identify the challenges of integrating environmental considerations into competition analysis presented by the existing framework, whether through cooperation by businesses, practices by dominant companies, or consideration of sustainability efficiencies in merger assessments. Practical examples across various sectors are also provided, alongside agency views from different jurisdictions, to illustrate how competition policy can facilitate a sustainable economy.

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This is an excellent collection of essays by experts and deep-thinkers, into whether and how to receive sustainability into competition law and policy.

Eleanor Fox, Professor, New York University

This innovative book provides rich inspiration for policymakers when defining the important role of competition law in achieving a more sustainable economy.

Alan Jope, CEO, Unilever

The book is superbly structured and will be indispensable for anyone wishing to engage with this most important of subjects.

Richard Whish, Emeritus Professor, King’s College London