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GREEN AGREEMENTS VS. CARTEL PROHIBITION: NAVIGATING THE INTERSECTION OF SUSTAINABILITY GOALS AND COMPETITION POLICY

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I. ABSTRACT

Climate change is a collective action problem that individual firms cannot solve alone, yet the most natural corporate responses, such as jointly phasing out polluting inputs or adopting common sustainability standards, resemble the output restrictions and horizontal agreements that competition law forbids. This paper examines that tension, which it calls the 'green paradox': the risk that rigorous cartel enforcement suppresses the private climate action that public policy seeks to encourage. It reviews the responses of the European Commission, the Dutch Authority for Consumers and Markets and the UK Competition and Markets Authority, focusing on 'out-of-market' benefits and their quantification, and contrasts them with the United States, Germany, Austria, Japan and Australia. It then turns to India, whose Competition Act 2002 has no dedicated sustainability framework but contains textual hooks, namely the joint-venture proviso to section 3(3), the efficiency factors in section 19(3) and the exemption power in section 54, which a purposive reading could activate. The paper argues that accommodation of green agreements remains incomplete in every jurisdiction examined, and proposes a graduated framework of official valuation benchmarks, rebuttable presumptions and time-limited exemptions, adapted to Indian institutions.

II. KEYWORDS

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Sustainability agreements; green agreements; cartels; Competition Act 2002; Competition Commission of India; Article 101(3) TFEU; out-of-market benefits; climate change.

III. INTRODUCTION AND RESEARCH PROBLEM

In 2013 the Dutch competition authority, the ACM, examined an agreement under which the Netherlands' main electricity producers would close five older coal-fired power plants as part of a national Energy Agreement for sustainable growth. It concluded that the closures would raise electricity prices while delivering too little environmental benefit to offset the harm to consumers, and so could not be justified.⁴ Two years later it reached a similar conclusion about an arrangement among poultry farmers, processors and supermarkets to sell only slower-growing, higher-welfare chicken, the 'Chicken of Tomorrow'.⁵ In both cases the participants were pursuing publicly endorsed goals, and in both cases competition law stood in their way.

These episodes capture the central tension of this paper. Climate change is a classic negative externality: the costs of emissions fall on third parties and future generations rather than on the firms that cause them. A firm that unilaterally adopts costlier sustainable practices risks losing sales to rivals that do not, a textbook prisoner's dilemma. Cooperation among competitors, such as a joint decision to stop sourcing an unsustainable material, can remove the penalty for going first. Yet competition law presumes that competitors decide independently, and an agreement among rivals to stop selling a product is, in form, an output restriction. The risk is a 'green paradox': that strict cartel enforcement may suppress precisely the private climate action that governments say they want. The expression is used here in that enforcement sense, and not in Hans-Werner Sinn's sense of the effect that announced climate policy may have on the rate of fossil fuel extraction.⁶

⁴ACM, 'Analysis of the Sustainability Arrangements Concerning the Closure of Coal-Fired Power Plants as Part of the SER Energy Agreement' (26 September 2013).

⁵ACM, 'Analysis of the Sustainability Arrangements Concerning the "Chicken of Tomorrow"' (26 January 2015).

⁶Hans-Werner Sinn, 'Public Policies against Global Warming: A Supply Side Approach' (2008) 15 *International Tax and Public Finance* 360.

Competition authorities have responded unevenly. The European Commission added a sustainability chapter to its Horizontal Guidelines in 2023, the ACM and the UK Competition and Markets Authority (CMA) have issued guidance, and a substantial literature debates how far competition law should accommodate environmental objectives.⁷ In the United States, by contrast, climate cooperation has itself been recast as a potential cartel.

India presents a distinctive and under-examined case. The Supreme Court has recognised a constitutional right to be free from the adverse effects of climate change,⁸ and the country has announced a net-zero target for 2070. Yet the Competition Act 2002 is silent on sustainability, the Competition Commission of India (CCI) has imposed heavy penalties on cartels that restricted output or coordinated prices through trade associations,⁹ and, as far as the author is aware, the CCI has issued no guidance on green agreements.

The research problem is therefore the gap between India's constitutional and policy commitments to climate action and a cartel prohibition that supplies neither a sustainability defence nor any guidance on how collective climate initiatives will be assessed, leaving firms to self-assess against the presumption in section 3(3) and the penalty exposure in section 27. This paper argues that accommodation of green agreements is real but incomplete in every jurisdiction examined, and that India can build a workable framework from existing statutory text. Parts V to VII analyse the paradox and the European responses, Part VIII examines India, Part IX compares the United States, Germany, Austria, Japan and Australia, Part X sets out suggestions and recommendations in the form of a graduated framework, and Part XI concludes.

A. Research Objectives

⁷Simon Holmes, 'Climate Change, Sustainability, and Competition Law' (2020) 8 *Journal of Antitrust Enforcement* 354; Giorgio Monti, 'Four Options for a Greener Competition Law' (2020) 11 *Journal of European Competition Law & Practice* 124.

⁸*M K Ranjitsinh v Union of India* (2024) 19 SCC 139 (also reported as 2024 SCC OnLine SC 570 and 2024 INSC 280).

⁹*Builders Association of India v Cement Manufacturers' Association* (Case No 29 of 2010, CCI, 31 August 2016); cf the order of 20 June 2012, 2012 Comp LR 629 (CCI), set aside in *India Cements Ltd v Competition Commission of India* (COMPAT, 11 December 2015).

This study pursues four objectives. The first is to define the green paradox and to establish the doctrinal reasons why horizontal climate cooperation attracts cartel scrutiny. The second is to evaluate the European responses, in particular the treatment of out-of-market consumer benefits and the methods by which such benefits are quantified. The third is to assess whether the Competition Act 2002 contains textual hooks capable of accommodating sustainability agreements in the absence of a dedicated framework. The fourth is to derive from comparative practice a graduated framework of safe harbours suited to Indian institutions.

B. Research Questions

The study addresses four questions. First, to what extent does the cartel prohibition deter genuine climate cooperation among competitors? Second, how far do the European Commission, the ACM and the CMA permit out-of-market and collective benefits to satisfy the fair-share condition, and on what evidentiary basis? Third, do the proviso to section 3(3) and sections 19(3), 20(4) and 54 of the Competition Act 2002 support a sustainability reading, and what are the limits of that reading? Fourth, which of the guidance, legislative-presumption and ex ante authorisation models offers the most workable template for India?

C. Research Methodology

The study is doctrinal and comparative. The primary materials analysed are the Competition Act 2002 and the Competition (Amendment) Act 2023, the Constitution of India, Article 101 TFEU, the Competition Act 1998 (UK), the Austrian Cartel Act 2005, the Sherman Act and the Competition and Consumer Act 2010 (Cth), together with decisions of the Supreme Court of India, the Competition Commission of India, the Competition Appellate Tribunal and the National Company Law Appellate Tribunal, the Court of Justice of the European Union and the United States District Court for the Eastern District of Texas.

Authoritative soft law is examined alongside them, namely the Commission's Horizontal Guidelines, the CMA's Green Agreements Guidance, the ACM's policy rule and the Green Guidelines of the Japan Fair Trade Commission. The jurisdictions compared are India, the European Union, the Netherlands, the United Kingdom,

Germany, Austria, Japan, Australia and the United States, each selected as an instance of one of the three regulatory models identified in Part IX. Secondary literature is used to frame the economic analysis. The law is stated as at 5 October 2026.

IV. THE GREEN PARADOX: WHEN ENFORCEMENT SUPPRESSES CLIMATE ACTION

A. Why Competitors Need to Cooperate

Unpriced externalities lead markets to over-produce pollution. Arthur Pigou's classic solution was a corrective tax, with governments pricing carbon at its social cost and leaving firms to compete.¹⁰ In practice carbon prices are partial and uneven, regulation lags behind science, and firms face a first-mover problem: a company that abandons a cheap but unsustainable input bears higher costs and, if consumers will not pay more, loses share to rivals.

Collective commitments can break this deadlock. If all significant competitors agree to adopt a standard or to cease using a material, none is disadvantaged and suppliers receive a clear signal to invest in alternatives. Some economists argue that collusion can, under certain conditions, even promote sustainable consumption and production,¹¹ though the point need not be pressed that far: for some environmental problems, coordination among rivals may be the only feasible private response.

B. Why Green Cooperation Looks Like a Cartel

The features that make collective action effective are that competition law treats with greatest suspicion. A joint phase-out limits output and consumer choice, a common standard may entail price coordination if participants agree the premium for compliant products, and compliance monitoring may reveal sensitive data. Agreements that fix prices, limit output or allocate markets are generally restrictions

¹⁰Arthur C Pigou, *The Economics of Welfare* (Macmillan 1920).

¹¹Maarten Pieter Schinkel and Yossi Spiegel, 'Can Collusion Promote Sustainable Consumption and Production?' (2017) 53 *International Journal of Industrial Organization* 371.

of competition ‘by object’, so no proof of anticompetitive effect is required,¹² and a sustainability purpose does not itself change that.

The scepticism is not unfounded, because sustainability can be a pretext. In 2021 the Commission fined BMW and the Volkswagen group a combined €875 million for colluding to avoid competing on emissions-reduction technology beyond what the law required; Daimler escaped a fine as immunity applicant.¹³ The case shows that competition law properly polices ‘greenwashing cartels’, and that any accommodation of green agreements needs safeguards against disguised price fixing.

C. The Chilling Effect

The paradox lies in the cost of over-deterrence. Firms contemplating joint environmental initiatives face uncertainty, and the penalties for error, up to 10 per cent of worldwide turnover in the EU plus private damages claims, are severe. Rational firms may dilute, abandon or never start initiatives. The Dutch experience shows both the problem and its nuance: the ACM blocked the Chicken of Tomorrow, yet later observed that conventional broiler chicken had almost disappeared from supermarkets, suggesting that market and public pressure moved ahead without a formal agreement.¹⁴ That complicates simple accounts of regulatory harm, but it does not eliminate the risk that initiatives with less public momentum will simply not occur.

V. EUROPEAN REGULATORY RESPONSES

A. The European Commission’s Horizontal Guidelines (Chapter 9)

Before 2023 the Commission’s approach rested on isolated precedent, the best-known being *CECED*, where it exempted an agreement among washing-machine manufacturers to stop producing the least energy-efficient models because higher

¹²Case C-67/13 P *Groupement des cartes bancaires (CB) v Commission* EU:C:2014:2204, paras 49–58.

¹³Case AT.40178 *Car Emissions* (Commission Decision, 8 July 2021).

¹⁴ACM statements summarised in De Brauw Blackstone Westbroek, ‘Dutch Competition Authority First to Give Provisional View on Sustainability Initiatives’ (16 September 2020) <https://www.debrauw.com/articles/dutch-competition-authority-first-to-give-provisional-view-on-sustainability-initiatives> accessed 5 October 2026.

purchase prices were outweighed by lower running costs and environmental benefits.¹⁵ The revised Guidelines on horizontal co-operation agreements, adopted on 1 June 2023, added a dedicated chapter defining a sustainability agreement as ‘any horizontal cooperation agreement that pursues a sustainability objective, regardless of the form of the cooperation’.¹⁶

The chapter creates three tiers of treatment. First, agreements that do not affect parameters of competition, such as those on internal corporate conduct or joint awareness campaigns, fall outside Article 101(1).¹⁷ Second, sustainability standardisation agreements enjoy a ‘soft safe harbour’ if six cumulative conditions are met: transparent standard-setting; no binding effect on non-participants; freedom to adopt higher standards; exchange of sensitive information only as necessary; effective and non-discriminatory access; and either no significant price increase or quality reduction, or a combined market share below 20 per cent.¹⁸ Agreements that limit output or fix prices fall outside it. For agriculture, Regulation (EU) 2021/2117 adds a specific derogation.¹⁹

Third, restrictive agreements may be exempted under Article 101(3) TFEU if they yield efficiencies, are indispensable, give consumers a fair share of the benefit and do not eliminate competition. The Guidelines recognise individual use-value benefits, individual non-use-value benefits (consumers’ appreciation of the impact of their consumption on others) and collective benefits accruing to society regardless of individual preferences; as Part VII explains, the last is accepted only where beneficiaries substantially overlap with in-market consumers.²⁰ The Commission will also consider informal guidance requests on novel questions.

¹⁵Commission Decision 2000/475/EC *CECED* [2000] OJ L187/47.

¹⁶Commission, ‘Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements’ [2023] OJ C259/1 (Horizontal Guidelines) ch 9, s 9.1.

¹⁷Horizontal Guidelines (n 13) ch 9, s 9.3.1 (sustainability agreements that are unlikely to raise competition concerns).

¹⁸Horizontal Guidelines (n 13) paras 549 and 553.

¹⁹Regulation (EU) 2021/2117 amending Regulation (EU) No 1308/2013 [2021] OJ L435/262, inserting art 210a.

²⁰Horizontal Guidelines (n 13) ch 9, s 9.4, paras 558 and 569.

B. The Dutch ACM

The ACM was the first authority to engage systematically with the issue. Its 2020 and 2021 draft guidelines proposed permitting ‘environmental-damage agreements’ where benefits to society as a whole at least equalled the disadvantages to users, even if users were not fully compensated.²¹ After the Commission’s Guidelines appeared, the ACM moderated its ambitions. Its final 2023 policy rule emphasises in-market consumers but retains an enforcement-priority device: the ACM will not continue investigating an environmental-damage agreement if it is plausible that the agreement is necessary and its benefits sufficiently outweigh the competitive disadvantages, even without full consumer compensation.²² Out-of-market benefits thus influence whether the ACM acts, not whether the agreement is lawful.

C. The UK Competition and Markets Authority

The CMA published its Green Agreements Guidance on 12 October 2023.²³ It applies the Chapter I prohibition and the section 9 exemption of the Competition Act 1998, which mirrors Article 101(3), but covers only environmental objectives and creates a special regime for ‘climate change agreements’, defined as those that contribute to combating climate change by reducing greenhouse gas emissions.

For these the CMA assesses the fair-share condition by reference to climate benefits to all UK consumers, not merely consumers of the affected product, citing the exceptional nature of climate harms.²⁴ It does not expect to take enforcement action against agreements that clearly correspond to the Guidance and operates an open-door policy for informal guidance, although the Guidance does not bind courts or prevent private litigation.²⁵

²¹ACM, *Draft Guidelines on Sustainability Agreements: Opportunities within Competition Law* (July 2020; second draft July 2021).

²²ACM, *Policy Rule: ACM’s Oversight of Sustainability Agreements* (2023).

²³Competition and Markets Authority, *Green Agreements Guidance: Guidance on the Application of the Chapter I Prohibition in the Competition Act 1998 to Environmental Sustainability Agreements* (CMA185, 12 October 2023) (Green Agreements Guidance).

²⁴Green Agreements Guidance (n 20) paras 2.4 and 6.4–6.5.

²⁵Green Agreements Guidance (n 20) paras 1.13, 7.3, 7.13 and 7.19.

D. Divergence in Approach

The three regimes differ on whose benefits count: the Commission requires substantial overlap between beneficiaries and in-market consumers, the ACM broadly follows it while retaining discretion, and the CMA counts climate benefits to all UK consumers. A multinational initiative could thus be exempt in London but problematic in Brussels.

VI. OUT-OF-MARKET CONSUMER BENEFITS: DEFINITION AND QUANTIFICATION

A. The Doctrinal Problem

Article 101(3) requires that consumers receive a fair share of the benefits. Under the Commission's 2004 Guidelines the relevant consumers are those affected by the restriction, and efficiencies in a separate market count only where the consumers affected by the restriction and those benefiting are substantially the same.²⁶ This fits ordinary cost savings but not environmental benefits, which are non-excludable and non-rival: they accrue to everyone, wherever they buy, and largely to future generations who are not consumers of anything today.

The Horizontal Guidelines admit collective benefits only where the beneficiaries are identifiable and substantially overlap with consumers in the relevant market.²⁷ If the benefits of a sustainable cotton standard arise in the growing region rather than where garments are bought, the overlap condition fails however large the benefits. For a global public good such as climate stability the problem is magnified, since European consumers receive only a fraction of the avoided harm. Even the UK approach raises attribution questions: the ACM asked whether, if benefits are shared equally across the population, only a share proportionate to the UK population should count.²⁸ A narrow reading of consumer benefit also sits uneasily with article 11 TFEU, which

²⁶Commission, 'Guidelines on the application of Article 81(3) of the Treaty' [2004] OJ C101/97, para 43.

²⁷Horizontal Guidelines (n 13) ch 9, s 9.4, para 569.

²⁸ACM, 'Response to the CMA's Draft Guidance on Environmental Sustainability Agreements' (April 2023).

requires environmental protection to be integrated into Union policies, though the Commission has so far resisted that argument.

B. Quantification Methods

A benefit that cannot be measured cannot be weighed. The Guidelines accept customer surveys for individual non-use benefits, refer to the Commission's Environmental Footprint methods for environmental impact, and allow reliance on public authorities and recognised academic bodies for collective benefits, noting that long-term benefits must be discounted against immediate harm.²⁹ Two techniques matter most: the shadow price of an externality, notably the social cost of carbon, and discounting, which is notoriously sensitive to the chosen rate.

US estimates illustrate the range: an interagency working group's 2021 interim value was about US\$51 per tonne, while the Environmental Protection Agency's 2023 update put the central estimate near US\$190. Neither figure now operates as a United States federal benchmark, because Executive Order 14154 of 20 January 2025 disbanded the working group, withdrew its guidance and estimates and directed the Environmental Protection Agency to address the asserted inadequacies of the metric, leaving federal practice in flux as at 5 October 2026; the figures are retained here only to illustrate the range of valuations in use.³⁰

A stylised example shows the stakes. Suppose a phase-out raises a product's price by 2 units across 10 million units (an in-market harm of 20 million) and avoids 200,000

²⁹Horizontal Guidelines (n 13) paras 575, 578 (surveys), 559 (Environmental Footprint) and 588–591 (collective benefits); Commission Recommendation (EU) 2021/2279 on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations [2021] OJ L471/1.

³⁰Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide, Interim Estimates under Executive Order 13990* (February 2021); US Environmental Protection Agency, *Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* (2023). On discounting, see Nicholas Stern, *The Economics of Climate Change: The Stern Review* (CUP 2007). On the withdrawal, Executive Order 14154 of 20 January 2025, 'Unleashing American Energy', s 6; Office of Management and Budget, Memorandum M-25-27, 'Guidance Implementing Section 6 of Executive Order 14154 Entitled Unleashing American Energy' (5 May 2025) <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-27-Guidance-Implementing-Section-6-of-Executive-Order-14154-Entitled-Unleashing-American-Energy.pdf> accessed 5 October 2026.

tonnes of carbon dioxide. Table 1 shows how the result varies with the carbon value and with the share of climate benefit attributed to in-market consumers.

Table 1: Illustrative sensitivity of the net benefit of a hypothetical phase-out agreement (monetary units, millions)

Scenario	Carbon value per tonne	Climate benefit counted	In-market consumer harm	Net result
A: Low carbon value, all benefits counted	50	10.0	20.0	-10.0 (fails)
B: High carbon value, all benefits counted	190	38.0	20.0	+18.0 (passes)
C: High carbon value, only 10% attributed to in-market consumers	190	3.8	20.0	-16.2 (fails)

Assumptions: 10 million units; price increase of 2 per unit; 200,000 tonnes of CO₂ avoided; hypothetical figures.

Outcomes are highly sensitive to the carbon value chosen, which invites strategic valuation and supports official benchmark values. The attribution rule matters as much, since the same agreement passes under a ‘totality of benefits’ approach and fails if only the in-market share counts. Cost pass-through also needs analysis: in an illustrative example in the Guidelines, a commitment by retailers to buy only from producers paying minimum wages had no appreciable effect on competition because the cost increase was small and not appreciably passed on to consumers.³¹

³¹Horizontal Guidelines (n 13) para 601, Example 3.

C. Towards a More Workable Approach

A more workable approach would treat climate change as a distinct category, as the CMA has done, because the mismatch between global benefits and market-level consumer groups is most acute there. Authorities should also publish default values, such as an official social cost of carbon and standard discount rates, to reduce the evidential burden and strategic valuation. Where benefits are global, in-market consumers' share could be calculated by reference to their exposure to the harm avoided, avoiding both an all-or-nothing overlap test and an unverifiable 'societal benefit' test.

VII. THE INDIAN POSITION: STATUTORY HOOKS WITHOUT A FRAMEWORK

A. The Constitutional and Environmental Backdrop

Indian environmental law is rich in principle but thin in market-facing instruments. Article 21 of the Constitution, read with article 48A (a directive principle) and article 51A(g) (a fundamental duty), has been interpreted to include a right to a healthy environment.³² In *Vellore Citizens' Welfare Forum* the Supreme Court treated sustainable development, the precautionary principle and the polluter-pays principle as part of Indian environmental law,³³ and section 20 of the National Green Tribunal Act 2010 directs the Tribunal to apply them.³⁴ In *M K Ranjitsinh* the Court held that the right to be free from the adverse effects of climate change flows from articles 14 and 21.³⁵

In further orders of 19 December 2025, the Court disposed of those proceedings, adopting revised priority areas of 14,013 square kilometres in Rajasthan and 740 square kilometres in Gujarat, approving the expert committee's restrictions on future renewable energy projects within them and declining, pending further scientific

³²Constitution of India, arts 21, 48A, 51A(g); *Subhash Kumar v State of Bihar* (1991) 1 SCC 598.

³³*Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.

³⁴National Green Tribunal Act 2010, s 20.

³⁵*M K Ranjitsinh* (n 5); *M K Ranjitsinh v Union of India* 2025 INSC 1472 (SC, 19 December 2025).

study, to direct the deployment of bird flight diverters; the relief granted in 2024 was thus recast, but the constitutional holding relied on here was not disturbed. This jurisprudence does not displace the Competition Act, but section 62 provides that the Act is in addition to, and not in derogation of, other laws,³⁶ and the Act's long title itself refers to the economic development of the country. The public interest in climate action is therefore a legitimate part of the setting in which the CCI exercises its discretion.

B. The Cartel Provisions and the Weight of Enforcement

Section 3(1) prohibits agreements relating to production, supply, distribution, storage, acquisition or control of goods or services that cause or are likely to cause an appreciable adverse effect on competition (AAEC) in India. Section 3(3) goes further for horizontal agreements, including those of cartels, between enterprises engaged in identical or similar trade: any agreement that determines prices, limits or controls production, supply, markets, technical development, investment or provision of services, shares markets, or results in bid rigging is presumed to have an AAEC.³⁷ A phase-out agreement is a paradigm case of an agreement that 'limits or controls' production or supply, and would attract the presumption on its face.

Enforcement has been severe, and it has reached the trade associations through which sustainability coordination would naturally be organised. In the cement matter the Commission's order of 20 June 2012 was set aside by the Competition Appellate Tribunal on 11 December 2015 for breach of natural justice; on redetermination on 31 August 2016 the Commission penalised eleven manufacturers and the Cement Manufacturers' Association some Rs 6,300 crore for determining prices and limiting and controlling production and supply, holding the association to have supplied the platform through which price, capacity utilisation, production and despatch data were exchanged.

³⁶Competition Act 2002 (India), s 62.

³⁷Competition Act 2002 (India), ss 2(c), 3(1), 3(3).

The National Company Law Appellate Tribunal dismissed the appeals on 25 July 2018, and the further appeals admitted by the Supreme Court on 5 October 2018 remain pending as at 5 October 2026, recovery being governed by the Appellate Tribunal's interim order.³⁸ In the beer matter the CCI imposed penalties exceeding Rs 873 crore on brewers and the All India Brewers' Association for price coordination, treating the association as a conduit, and rejected the argument that the cartel did not appreciably affect competition within individual States; the National Company Law Appellate Tribunal declined to interfere in December 2022, but the Supreme Court stayed its order, including recovery, on 17 February 2023, and those appeals also remain pending.³⁹

The Supreme Court has likewise held that a joint platform of artists' and technicians' bodies, which barred the telecast of a dubbed serial to protect local employment, was an 'enterprise' and violated section 3(3)(b), notwithstanding its protective motive and trade-union character.⁴⁰ A benign or public-spirited motive, in short, has not by itself protected collective restraints in India; the cement and beer findings remain under appeal, but the Supreme Court's own holding in *Co-ordination Committee* is final and sustains the point independently.

Penalty exposure compounds the chilling effect. Section 27(b) allows a penalty on each cartel participant of up to three times its profit for each year of the cartel or ten per cent of its turnover for each year, whichever is higher.⁴¹ *Excel Crop Care* tied penalties to 'relevant turnover',⁴² but the Competition (Amendment) Act 2023 now permits penalties by reference to global turnover, as the CCI's 2024 penalty guidelines reflect.⁴³ The 2023 amendments also extended liability to 'hub-and-spoke' participants that

³⁸*Builders Association of India* (n 6); *Cement Manufacturers' Association v Competition Commission of India* (NCLAT, 25 July 2018).

³⁹*Alleged Cartelisation in Beer Industry* (Suo Motu Case No 06 of 2017, CCI, 24 September 2021); *Pawan Jagetia v Competition Commission of India* (NCLAT, December 2022); *United Breweries Ltd v Competition Commission of India* (SC, order of 17 February 2023).

⁴⁰*Competition Commission of India v Co-ordination Committee of Artists and Technicians of West Bengal Film and Television* (2017) 5 SCC 17.

⁴¹Competition Act 2002 (India), s 27(b).

⁴²*Excel Crop Care Ltd v Competition Commission of India* (2017) 8 SCC 47.

⁴³Competition (Amendment) Act 2023; Competition Commission of India (Determination of Monetary Penalty) Guidelines 2024.

actively further a cartel without being competitors, introduced ‘lesser penalty plus’, and made settlement and commitment procedures (sections 48A and 48B) available for vertical agreements and abuse of dominance but not for cartels.⁴⁴ A firm contemplating a green collaboration with competitors thus faces the harshest part of the Indian enforcement toolkit without a negotiated route to comfort.

C. Textual Hooks for a Sustainability Reading

Against this background the Act contains four provisions on which a sustainability reading could be built. First, the proviso to section 3(3) disappplies the presumption for joint ventures if the agreement ‘increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. The proviso has been read in commercial terms, but its words are not confined to cost efficiencies. A joint venture to collect and recycle packaging, or to co-fund a cleaner production technology, arguably increases efficiency in ‘production’ or ‘control of goods. The CCI’s 2016 closure of proceedings over a proposed joint venture among public-sector general insurers shows that efficiency arguments for joint ventures among competitors are entertained, although that case concerned commercial efficiencies.⁴⁵

Second, section 19(3) lists the factors to which the CCI must have due regard in determining AAEC, including accrual of benefits to consumers (clause (d)), improvements in production or distribution (clause (e)) and the promotion of technical, scientific and economic development (clause (f)).⁴⁶ These words are capable of accommodating environmental improvement, which is a species of improvement in production and of scientific and economic development, although the author is not aware of any decision applying them to an environmental objective. Because the section 3(3) presumption is rebuttable, the same factors are available to parties who

⁴⁴Competition Act 2002 (India), s 3(3) (as amended), ss 46, 48A, 48B; Competition Commission of India (Lesser Penalty) Regulations 2024.

⁴⁵*Association of Third Party Administrators v General Insurers’ (Public Sector) Association of India* (Case No 107 of 2013, CCI, 4 January 2016).

⁴⁶Competition Act 2002 (India), s 19(3)(d)–(f).

can show that a horizontal agreement does not in fact cause an AAEC, but the cement and beer decisions show how heavy that burden is in practice.

Third, in merger control section 20(4) directs the CCI to consider, among other things, the nature and extent of innovation, the relative advantage by way of contribution to economic development, and whether the benefits of a combination outweigh its adverse effects.⁴⁷ This shows that the legislature contemplated balancing competitive harm against wider economic benefits, and it weakens any claim that the Act is wedded to a price-only conception of welfare.

Fourth, section 54 empowers the Central Government to exempt, by notification, any class of enterprises from the Act or any of its provisions, if necessary, in the interest of the security of the State or in the public interest, and to exempt any practice or agreement arising out of and in accordance with an obligation assumed by India under a treaty, agreement or convention.⁴⁸ A public-interest notification for defined classes of climate agreements is textually available. The treaty limb is more doubtful, because the Paris Agreement rests on nationally determined contributions rather than binding emission targets, so private agreements can only loosely be said to arise out of an obligation India has assumed. The CCI's advocacy mandate under section 49(3) further supports the issuing of guidance.⁴⁹

D. The Regulatory Overlay

Indian climate policy increasingly operates through mandatory schemes that themselves require collective action. Extended producer responsibility (EPR) obligations for plastic packaging, electronic waste and batteries require producers, importers and brand owners to meet collection and recycling targets, often through producer responsibility organisations that pool obligations and set fees.⁵⁰ The Carbon Credit Trading Scheme, notified in 2023 under the Energy Conservation Act 2001 as

⁴⁷Competition Act 2002 (India), s 20(4)(l)–(n).

⁴⁸Competition Act 2002 (India), s 54(a)–(b).

⁴⁹Competition Act 2002 (India), s 49(3).

⁵⁰Plastic Waste Management Rules 2016, as amended by the Plastic Waste Management (Amendment) Rules 2022; E-Waste (Management) Rules 2022; Battery Waste Management Rules 2022, all made under the Environment (Protection) Act 1986, ss 3 and 6.

amended in 2022, creates a compliance market that depends on coordinated reporting and verification.⁵¹ The Central Consumer Protection Authority's 2024 Guidelines, issued under the Consumer Protection Act 2019, prohibit misleading environmental claims.⁵²

Two lessons follow. First, where firms act under a statutory scheme, collective fee-setting or target allocation within that scheme is best treated as part of the regulatory design; the Supreme Court's sequencing of a sectoral regulator's jurisdiction ahead of the CCI's in *Bharti Airtel* points that way.⁵³ But no general state-compulsion defence has been articulated, and voluntary initiatives that exceed regulatory mandates have no such shelter. Second, the greenwashing guidelines show that Indian consumer law already polices dishonest environmental claims, which reduces reliance on the cartel prohibition as the sole safeguard against pretext.

E. Assessment

The result is a framework with hooks but no handrail. The CCI assesses agreements ex post, parties must self-assess, and, as at 5 October 2026, the Commission has published no guidance, advisory or market study on sustainability agreements.⁵⁴ There are signs of institutional interest: its Secretary has said that competition cannot remain insulated from sustainability matters and that the Act is flexible enough to factor in sustainability issues,⁵⁵ and on 8 August 2026 the Commission hosted the heads of the BRICS competition authorities at Udaipur, who adopted a joint statement

⁵¹Energy Conservation Act 2001, as amended by the Energy Conservation (Amendment) Act 2022; Ministry of Power, Carbon Credit Trading Scheme 2023.

⁵²Central Consumer Protection Authority, *Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims* 2024 (15 October 2024), issued under the Consumer Protection Act 2019.

⁵³*Competition Commission of India v Bharti Airtel Ltd* (2019) 2 SCC 521 (decided 5 December 2018); cf *Competition Commission of India v Steel Authority of India Ltd* (2010) 10 SCC 744.

⁵⁴Competition Commission of India, Market Studies and Advocacy <https://www.cci.gov.in/> accessed 5 October 2026; Lex Mundi, 'Sustainability and Competition Global Practice Guide: India' (updated 6 September 2022) <https://www.lexmundi.com/guides/sustainability-and-competition-global-practice-guide/jurisdictions/asia-pacific/india/> accessed 5 October 2026.

⁵⁵Jyoti Jindgar Bhanot, Secretary (I/c), Competition Commission of India, remarks at the CUTS panel discussion on Competition Policy and Climate Change, World Competition Day, New Delhi, 5 December 2022 <https://cuts-ccier.org/competition-cannot-remain-insulated-from-sustainability-aspects-jyoti-j-bhanot-secretary-cci-on-the-occasion-of-world-competition-day/> accessed 5 October 2026.

on strengthening cooperation to promote fair competition, including in renewable energy markets.⁵⁶ But nothing yet binds the CCI or reassures firms.

VIII. COMPARATIVE PERSPECTIVES: THE UNITED STATES, GERMANY, AUSTRIA, JAPAN AND AUSTRALIA

A. The United States: From Obstacle to Weapon

US antitrust law contains no equivalent of Article 101(3). Agreements among competitors fall under section 1 of the Sherman Act, with per se condemnation of naked price-fixing and output restrictions and rule-of-reason balancing otherwise, and in December 2024 the Federal Trade Commission and the Department of Justice withdrew their joint guidelines on competitor collaboration.⁵⁷ The green paradox has become acute. On 27 November 2024 Texas and other states sued BlackRock, State Street and Vanguard in the Eastern District of Texas, alleging that the managers used their shareholdings in coal producers, together with commitments made through the Net Zero Asset Managers initiative and Climate Action 100+, to restrict coal output and raise energy prices.⁵⁸

In May 2025 the FTC and DOJ filed a statement of interest supporting the states' theory while acknowledging that passive investing and governance-focused advocacy remain lawful.⁵⁹ The court denied the motion to dismiss on 1 August 2025, Vanguard settled on 26 February 2026, and BlackRock and State Street continue to defend the

⁵⁶Press Information Bureau, 'Competition Commission of India (CCI) hosts BRICS Heads of Competition Authorities 2026 meeting' (Press Release, 9 August 2026)

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2296800> accessed 5 October 2026.

⁵⁷Federal Trade Commission and US Department of Justice, 'Federal Trade Commission and Justice Department Withdraw Guidelines for Collaboration among Competitors' (Press Release, 11 December 2024) <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-doj-withdraw-guidelines-collaboration-among-competitors> accessed 5 October 2026.

⁵⁸*Texas v BlackRock Inc*, No 6:24-cv-00437 (ED Tex, complaint filed 27 November 2024); see also Texas Attorney General, 'Attorney General Ken Paxton Scores Major Win to Hold BlackRock, State Street, and Vanguard Accountable for Illegally Conspiring to Manipulate Energy Markets' (Press Release, August 2025) <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-scores-major-win-hold-blackrock-state-street-and-vanguard-accountable> accessed 5 October 2026.

⁵⁹Statement of Interest of the United States and the Federal Trade Commission, *Texas v BlackRock Inc*, No 6:24-cv-00437 (ED Tex, May 2025).

case; no trial date is confirmed in the sources reviewed, and on 18 September 2026 it was reported that the Department of Justice was considering joining the suit.⁶⁰

Industry has retreated: the Net Zero Asset Managers initiative suspended its activities in January 2025 after BlackRock's exit and relaunched in 2026 with scaled-back requirements, while the Net-Zero Banking Alliance ceased operations in October 2025.⁶¹ Many factors contributed and the litigation is unresolved, so causation should not be overstated, but the sequence supports the paper's concern: when climate cooperation carries antitrust risk without a recognised defence, coalitions fragment or dilute their commitments, and enforcement priorities can invert within one electoral cycle. For India, the 2023 hub-and-spoke amendment, which reaches participants that are not competitors, makes a theory directed at investor coalitions at least textually conceivable.

B. Germany and Austria

Germany has no sustainability-specific provision; the Bundeskartellamt relies on enforcement discretion. It raised no objection in 2022 to a banana living-wage initiative or to extending the Initiative Tierwohl animal-welfare scheme, tolerated that scheme's uniform price surcharge during its start-up phase but pressed for its abolition in 2023 because it no longer appeared indispensable, and refused to endorse a dairy initiative

⁶⁰*Texas v BlackRock Inc*, No 6:24-cv-00437 (ED Tex, order of 1 August 2025); 'Vanguard Settles on ESG – BlackRock and State Street Fight On' (NYU Stern Center for Business and Human Rights, 7 April 2026) <https://bhr.stern.nyu.edu/quick-take/vanguard-settles-on-esg-blackrock-and-state-street-fight-on/> accessed 5 October 2026; State Street Corporation, Form 10-Q for the quarter ended 30 June 2026, note 10 (Contingencies)

<https://www.sec.gov/Archives/edgar/data/0000093751/000009375126000397/stt-20260630.htm> accessed 5 October 2026; 'DOJ Weighs Joining Texas BlackRock, State Street Antitrust Case' *Bloomberg Law* (18 September 2026) <https://news.bloomberglaw.com/antitrust/doj-weighs-joining-texas-blackrock-state-street-antitrust-case> accessed 5 October 2026.

⁶¹'Net Zero Asset Management initiative faces difficult road ahead as it suspends its activities' *Portfolio Institutional* (17 January 2025) <https://www.portfolio-institutional.co.uk/esg-hub/net-zero-asset-management-initiative-faces-difficult-road-ahead-as-it-suspends-its-activities/> accessed 5 October 2026; 'NZBA votes to cease all operations, abandon membership model' *ESG Dive* (October 2025) <https://www.esgdive.com/news/nzba-votes-to-cease-all-operations-abandon-membership-model/801935/> accessed 5 October 2026; 'Net Zero Asset Managers drops 2050 target ahead of 2026 relaunch' *ESG Post* <https://esgpost.com/net-zero-asset-managers-group-drops-2050-target-ahead-of-2026-relaunch/> accessed 5 October 2026.

whose real aim was a higher raw-milk price.⁶² Indispensability scrutiny thus polices pretext without a formal exemption.

Austria legislated. Since 10 September 2021 section 2(1) of its Cartel Act deems consumers to receive a fair share where efficiency gains contribute significantly to an ecologically sustainable or climate-neutral economy, extending to out-of-market benefits, but only for agreements that do not affect trade between EU Member States.⁶³ It pairs the presumption with an indispensability requirement and guidance on proof, including quantification of carbon savings.

C. Japan

The Japan Fair Trade Commission issued Green Guidelines on 31 March 2023, revised on 24 April 2024 to clarify joint abolition and joint procurement.⁶⁴ They state that most business efforts toward a green society raise no problem under the Antimonopoly Act, supply over seventy worked examples and invite consultation, but warn that conduct merely restraining price, quantity or technology remains problematic whatever its green label.

⁶²Bundeskartellamt, Case Summary, Initiative Tierwohl (Case B2-72-14) <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2022/B2-72-14.html> accessed 5 October 2026; 'Bundeskartellamt billigt zwei Nachhaltigkeitsinitiativen – erteilt aber keine Carte Blanche' *Der Betrieb* (15 February 2022) <https://der-betrieb.de/meldungen/bundeskartellamt-billigt-zwei-nachhaltigkeitsinitiativen-erteilt-aber-keine-carte-blanche> accessed 5 October 2026; 'Initiative Tierwohl: Verpflichtender Preisaufschlag wird abgeschafft' *Lebensmittel Praxis* (26 May 2023) <https://lebensmittelpraxis.de/handel-aktuell/37081-initiative-tierwohl-verpflichtender-preisaufschlag-wird-abgeschafft.html> accessed 5 October 2026.

⁶³Kartellgesetz 2005 (Austria), s 2(1), as amended by the Kartell- und Wettbewerbsrechts-Änderungsgesetz 2021, BGBl I 176/2021; see also Cerha Hempel, 'The AFCA Publishes Guidelines on the Austrian Sustainability Exemption' <https://www.cerhahempel.com/blog/competition/the-afca-publishes-guidelines-on-the-austrian-sustainability-exemption> accessed 5 October 2026.

⁶⁴Japan Fair Trade Commission, 'Compilation of the "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act"' (Press Release, 31 March 2023) <https://www.jftc.go.jp/en/pressreleases/yearly-2023/March/230331.html> accessed 5 October 2026; Japan Fair Trade Commission, 'JFTC Revises "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society under the Antimonopoly Act"' (Press Release, 24 April 2024) <https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240424.html> accessed 5 October 2026.

D. Australia

Australia uses *ex ante* authorisation: the Australian Competition and Consumer Commission (ACCC) may authorise otherwise prohibited conduct where the public benefit outweighs the detriment.⁶⁵ It has long authorised product stewardship levies, including Refrigerant Reclaim Australia's scheme (first authorised in 1994), re-authorised in part because it prices refrigerant gases in a way that better reflects their negative externalities, and the Paintback levy (first authorised in 2015 and re-authorised in 2021 for ten years).⁶⁶ Authorisation delivers certainty and an express public-benefit weighing, at the cost of an application process.

E. Comparative Synthesis and Lessons for India

Three models emerge: guidance and enforcement restraint (the EU, the Netherlands, the UK, Japan and, informally, Germany), legislative presumption (Austria and EU agriculture) and *ex ante* authorisation (Australia). The United States shows the hazards of having none. India is closest to the United States in lacking a recognised defence, but closer to Europe and Australia in statutory text, and its general exemption power in section 54 is broader than the comparable United Kingdom power: paragraph 7 of Schedule 3 to the Competition Act 1998 permits the Secretary of State to exclude a particular agreement, or agreements of a particular description, from the Chapter I prohibition for exceptional and compelling reasons of public policy, whereas section 54 extends to classes of enterprises and to exemption from the Act as a whole, on the wider ground of public interest.⁶⁷

Table 2 summarizes the comparison.

⁶⁵Competition and Consumer Act 2010 (Cth), ss 88, 90.

⁶⁶ACCC, Authorisations Register, Refrigerant Reclaim Australia Ltd <https://www.accc.gov.au/node/90751> accessed 5 October 2026; ACCC, Authorisations Register, Paintback Ltd (re-authorisation, 2021).

⁶⁷Competition Act 1998 (UK), sch 3 para 7; Competition Act 2002 (India), s 54(a)–(b).

Table 2: Comparative treatment of green agreements

Jurisdiction	Principal instrument	Out-of-market benefits	Legal certainty
India	Competition Act 2002, ss 3(3) proviso, 19(3), 54; no guidance	Not addressed; open question	Low: ex post self-assessment
EU	Horizontal Guidelines 2023, ch 9; Art 101(3) TFEU	Only where beneficiaries substantially overlap with in-market consumers	Medium: soft safe harbour; informal guidance
Netherlands	ACM Policy Rule 2023	Affects enforcement priority, not legality	Medium
United Kingdom	Competition Act 1998, s 9 and sch 3 para 7; CMA Green Agreements Guidance 2023	Climate benefits to all UK consumers counted	Medium to high: non-enforcement statement
Germany	s 1 GWB; Bundeskartellamt case-by-case practice	Case by case; indispensability closely tested	Medium to low
Austria	Cartel Act s 2(1) as amended 2021	Fair share presumed (agreements without EU trade effect)	High: statutory presumption

Jurisdiction	Principal instrument	Out-of-market benefits	Legal certainty
Japan	JFTC Green Guidelines 2023 (revised 2024)	Guidance with worked examples	Medium: consultation available
Australia	Competition and Consumer Act 2010 (Cth), ss 88, 90	Public benefit weighed generally	High: ex ante authorisation
United States	Sherman Act s 1; collaboration guidelines withdrawn 2024	No recognised defence	Very low: agencies and states may sue

IX. SUGGESTIONS AND RECOMMENDATIONS: SAFE HARBOURS AND A PROPOSED GRADUATED FRAMEWORK

A. What Exists

Existing mechanisms offer three levels of certainty. Binding safe harbours such as block exemptions do not exist for sustainability agreements in the EU, the Netherlands or the UK (Austria's statutory presumption and Australia's authorisations are the exceptions). Soft safe harbours and non-enforcement commitments (the Commission's standards safe harbour, the CMA's non-enforcement statement, the ACM's priority approach) form the second level, and informal guidance the third. All have limits: Commission guidelines do not bind national courts; the soft safe harbour excludes output limitations, the very agreements, such as coordinated phase-outs, that firms most want; the 20 per cent share alternative offers little in concentrated markets; and informal guidance risks inviting investigation.

B. A Proposed Graduated Framework

Reform should be graduated according to risk. Agreements that do not affect competitive parameters should stay outside the prohibition, and hardcore restrictions (agreements on prices charged to customers, market allocation unconnected with a standard, and exchange of future pricing intentions) should stay prohibited. For the difficult cases between, five elements are proposed for genuine climate-related agreements.

1. **A conditional presumption of exemption:** Agreements whose principal purpose is to reduce greenhouse gas emissions or meet a binding climate commitment would benefit from a rebuttable presumption that the fair-share (in India, the efficiency and consumer-benefit) condition is met, provided the parties show, using official benchmark values, that the assessed climate benefit exceeds the quantified consumer harm. In India this would require the government to adopt an official shadow price of carbon and discount rates. The withdrawal of the United States estimates in 2025 shows why those values should be anchored in statute, or in rules made under it, rather than left to executive determination, since an executive-set benchmark proved reversible within a single administration.
2. **Necessity and proportionality:** The parties must show that the restriction is indispensable, that no less restrictive means (unilateral action, a voluntary standard, lobbying for regulation) would work, and that price and output competition is not restricted beyond what the objective requires. This answers the pretext concern, as the German dairy episode illustrates.
3. **Openness and information safeguards:** Membership should be open to all competitors on non-discriminatory terms, the agreement must not be used to boycott non-participants or foreclose alternatives, and monitoring should use independent third parties or aggregated data. The Indian association cases show why safeguards on association platforms matter.
4. **Time limits, review and fast-track guidance:** Exemptions should run for a fixed period and be reviewed against outcomes. Authorities should commit to response times for guidance requests and protect good-faith applicants

from fines while a request is pending; for India, this implies a CCI guidance note and an informal-guidance channel, supported by a market study on sustainability.

5. **Legislative backing:** Because guidelines cannot bind courts, durable protection requires legislation: an EU block exemption, UK secondary legislation and, in India, either an amendment to the proviso to section 3(3) (or a new explanation) confirming that 'efficiency' includes environmental and climate efficiency or, as an interim measure, a section 54 notification for defined classes of climate agreements. Neither route would touch hardcore restrictions, and agreements failing the conditions would remain exposed to section 27. The United Kingdom supplies a precedent for the interim route, since orders under paragraph 7 of Schedule 3 to the Competition Act 1998 have excluded defined agreements from the Chapter I prohibition on public policy grounds.

Two objections deserve a response. The first is pretext: that firms will invoke green objectives to disguise cartels. The framework answers this through necessity, verifiable benchmarks, time limits and the continued prohibition of hardcore restrictions, and *Car Emissions* and the Indian cement and beer decisions show that authorities remain willing to act. The second is that environmental policy is for legislators. That view has force, and regulation should have the primary role, but competition law already affects private climate action; the question is whether it does so deliberately and proportionately.

X. CONCLUSION

Competition law and sustainability policy are not natural enemies, but the interface between them is poorly designed. The cartel prohibition rests on a sound premise, and sustainability can indeed cover collusion, as *Car Emissions* shows. Yet environmental problems are collective action problems, and a regime that treats every joint commitment as presumptively suspect will deter cooperation that is needed.

The European response has moved considerably from the Dutch coal and chicken decisions, and Austria and Australia show that legislative and authorisation models

are workable. But three weaknesses persist: the Commission's insistence on overlap between beneficiaries and in-market consumers, which is poorly suited to global public goods; soft safe harbours that give little ex ante certainty; and divergence among jurisdictions. The United States shows how fragile any accommodation is when enforcement priorities shift.

India has the most to gain from acting early. Its constitutional jurisprudence treats climate protection as a fundamental right, its Competition Act contains textual hooks for an efficiency-based accommodation, and its enforcement record shows what is at stake without one. A graduated framework of official valuation benchmarks, conditional presumptions, necessity and openness requirements, and time-limited exemptions would protect competition while reducing the cost of uncertainty. The task is neither to abandon the cartel prohibition for the climate nor to apply it mechanically against the climate, but to develop a transparent, evidence-based method for balancing the two. Without it, the green paradox will persist.

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