

Sustainability and competition: check the ACM's decision tree

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Companies are not always sure how much leeway they have under the competition rules to cooperate on sustainability issues. Following the Minister of Economic Affairs' new policy rule on sustainability and competition, the ACM has published a decision tree to help companies assess whether their sustainability initiatives are competition-proof. The ACM has also indicated that it will not usually act against widely supported sustainability initiatives if all the parties involved, including government, citizen representatives and companies, favour the initiative. Companies seeking to cooperate on sustainability should therefore use the decision tree as guidance when they do an initial competition law check on their sustainability initiatives.

The Minister of Economic Affairs published the new [policy rule](#) in October 2016. The ACM recently followed by publishing its [decision tree](#). The decision tree, together with the policy rule, clarifies that the following factors are relevant in assessing sustainability initiatives under the competition rules:

- the short-term and long-term benefits of the initiative;
- whether a fair share of the resulting qualitative or quantitative benefits, in the short or the long-term, end up with the consumer;
- whether all the restrictions resulting from the initiative are essential to attaining the initiative's objectives; this includes consideration of any possible first-mover disadvantages a company would face when setting up the initiative by itself;
- whether sufficient room is left for companies to compete on parameters unrelated to the initiative.

The policy rule is the first of three measures the Minister intends to take in response to the public's call for more leeway in sustainability cooperation after the ACM blocked a number of sustainability agreements. Examples of the ACM's approach can be found in its informal opinions on the closure of [coal power plants](#) and the promotion of animal welfare with regard to [chicken meat](#) sold in supermarkets. The second measure that the Minister is planning to introduce is a bill to regulate sustainability initiatives. Finally, as a third measure, the Minister will continue discussions at the EU level aimed at clarifying the possibility of sustainability initiatives under the EU's regulatory framework.