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Environmental Considerations in Competition Enforcement – Note by South Africa

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More documents related to this discussion can be found at https://www.oecd.org/daf/competition/environmental-considerations-in-competition-enforcement.htm.

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South Africa

1. Introduction

1.1. Sustainability in the South African context

1. The term "sustainability" may have been made popular by the climate change movement but the concept has come to encompass much more than the capacity of the environment to endure over time. By now the idea of sustainability has crept into various aspects of our lives and our work. It influences our choices for the environment, for the economy and for society. With a sustainability mentality creeping into the very psyche of humanity, there is no end to the areas of life that the concept will continue to influence into the future.

2. In South Africa sustainability is often discussed in connection with our economic development. In a country such as ours which is plagued by poverty, inequality and high levels of unemployment, there is a growing recognition that our development - no matter how ambitious - will have no meaning or relevance unless it is sustainable. Our past tells us that we cannot afford superficial economic interventions that ultimately keep the poor poor. The outcomes that our economic policies aim to achieve must have within them the ability to multiply and reproduce even better outcomes than the ones that came before. And so it should continue.

1.2. Sustainability written into our law

3. This recognition is what prompted our law makers to write sustainability into the very fabric of our current competition law which was promulgated in 1998: The Competition Act 89 of 1998. They did so by adding public interest factors into considerations on mergers and acquisitions and on exemption applications. What this means is that, in South Africa, we must consider the effect of a merger on the public interest and not just on the relevant market as defined in traditional economics. In fact our law provides that even where a merger may give rise to efficiencies, such a merger may be prohibited if it has a negative effect on the public interest. Concerning exemption applications, our law provides that firms may seek to be exempted from the application of the Competition Act if their anti-competitive conduct is necessary to achieve outcomes in the public interest. The Competition Act does not expressly refer to the exemption provisions as 'public interest' provisions however some of these factors are largely similar to the public interest objectives in their composition and objectives, particularly when we consider the 2019 amendments to the Competition Act.

4. Moreover, the substantial lessening of competition test (or SLC test), which is available in our law, does not limit the factors that can be considered as an anti-competitive effect nor as a lessening of competition. Traditionally competition is lessened when price and/or quality are negatively affected. However it is conceivable that, as environmental impact becomes a more and more important consideration to consumers, quality may well become a function environmental impact. Although the competition agencies have not yet assessed a case in which environmental concerns were cited as a competition concern, nothing in our law precludes parties from bringing such a case forward for assessment.

5. Therefore while South Africa's Competition Act of 1998, as amended, does not expressly provide for the assessment of climate change or environmental effects on

competition cases, the provisions of the Competition Act are broad enough to allow these effects to be taken into account. This applies in cases of both anti-competitive conduct and merger control.

1.3. South Africa's public interest provisions

6. Both in the case of mergers and exemptions, the list of public interest factors is defined and exhaustive. Section 12A(3) of the Competition Act provides that:

> *(3) When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on –*
>
> *a) a particular industrial sector or region;*
>
> *b) employment;*
>
> *c) the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; and*
>
> *d) the ability of national industries to compete in international markets.*

7. Amendments to the Act introduced in February 2019 further enhanced the public interest factors to be taken into account in merger assessments. The competition agencies' mandate now includes an additional public interest factor, namely the "*promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market*". In addition, section 12A(3)(c) was amended slightly to enable the agencies to take into account the "*ability of small and medium businesses or firms controlled by historically disadvantaged persons to effectively enter into, participate in or expand*" within a market.

8. In the case of exemption applications, section 10 of the Competition Act provides that firms wishing to engage in anti-competitive conduct may apply to the Competition Commission for an exemption of the firms' practices or agreements from the provisions of the Competition Act. In terms of this section, the Competition Commission may grant the exemption if:

> *a) any restriction imposed on the firms concerned by the agreement or practice concerned, or category of either agreements or practices concerned, is required to attain an objective mentioned in paragraph (b); and*
>
> *b) the agreement or practice concerned, or category of agreements or practices concerned, contributes to any of the following objectives:*
>
> *i. maintenance or promotion of exports;*
>
> *ii. promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive;*
>
> *iii. change in productive capacity necessary to stop decline in an industry; or*
>
> *iv. the economic stability of any industry designated by the Minister, after consulting the Minister responsible for that industry.*

9. In the recent amendments to the Competition Act, section 10(3)(b)(ii) has been amended to promote the effective entry into, participation in and expansion within a market

by small and medium businesses, or firms controlled or owned by historically disadvantaged persons. Section 10(3)(b)(iv) is now extended to the development, growth and transformation of a designated industry, not only its stability. Finally, a new ground for exemption was added, namely, competitiveness and efficiency gains that promote employment or industrial expansion.

1.4. Leading up to the current public interest regime

10. When the public interest criteria were included in the Competition Act during the policy and legislative process, approximately 20 years ago, entrenched business interests became concerned about the possible arbitrary use of public interest criteria. However, the argument which triumphed contended that competition policy could not ignore the social needs of the people and that competition was not a value in its own right but only in so far as it met socially desirable objectives. Therefore, in addition to the key competition objectives of efficiency and consumer welfare, the Competition Act includes objectives like protection of small and medium sized enterprises, the promotion of employment and the growth of black-owned enterprises.

11. Public interest criteria, as a stand-alone factor in competition assessment, was an uncommon phenomenon amongst competition agencies at the time. Recognising this, while describing the Competition Tribunal's approach to public interest grounds when assessing mergers, David Lewis, who was the first chairperson of the Competition Tribunal said:

> *I've come to treat our task in dealing with public interest in much the same way that I treat my mad uncle, in much the same way that every family treats its mad uncle – with wary respect. We may try and ignore him; we may even deny his existence. But he somehow manages to turn up, invited or not, at every major family event. For the most part he turns out be quite an amiable, agreeable old chap, but he does have the potential to behave in a very unpredictable manner, one that causes severe embarrassment to a smug, complacent family, often threatening to tear it apart and reduce its reputation and standing in the society at large. He is nevertheless often respected by the younger members of the family, who feel that he has insights about the real world lacking in the more staid leaders of the family.*

12. Lewis went on to acknowledge that few, if any, regimes specified - let alone employed - a pure public interest test to evaluate mergers. Even those competition statutes that explicitly required a consideration of public interest generally also specified that the competition impact be determined by reference to one or other of the dominant paradigms, these being the substantial lessening of competition test or the dominance test. However, Lewis stated, South Africa's unique circumstances had necessitated the consideration of development criteria in the implementation of the Competition Act.

13. While the suggestion to include public interest objectives threatened to derail the consensus seeking policy process in its earlier phase, its detractors were appeased once the technical mechanics of the law was worked on. Soon they realised that despite the public interest objectives, the substantive technical content of the law did not stray from a primary focus on efficiency within a market paradigm. The Competition Act set out clear criteria for assessment but assumed that economic efficiency and the public interest were not inconsistent. In the same vein, Lewis concluded that:

> *…we should take a pragmatic view of the introduction of public interest factors into a competition analysis. It is not evidence of a fatally compromised competition regime. In one way or another it is a feature of most regimes and, in those regimes where it is a particularly strong feature, serious consideration of the public interest by the competition authorities is likely to underpin the credibility of fledgling*

authorities. Moreover, it is possible to structure the evaluation in such a way that competition considerations occupy pride of place in the ultimate decision, indeed, in such a way that the competition authorities are able to use the public interest investigation to educate key public stakeholders about competition, rather than have them massively constrain the application of competition law.

14. To date the competition agencies have not decided the outcome of a merger solely on public interest grounds, though the Competition Act enables the agencies to. Instead, in the first 20 years of its existence the Competition Commission approved 369 mergers (out of 6 490 mergers notified) with conditions aimed at addressing public interest concerns such as unemployment or the development of small business.

15. What is interesting to note from the above is that thoughts of sustainability informed the introduction of public interest factors back in 1998 when the current competition regime came into force but also in the 2019 amendments to the Competition Act which broadened the reach of the public interest provisions. One of the reasons behind the 2019 amendments was the fact that, 20 years after the promulgation of the Competition Act and the establishment of the competition agencies, South Africa remained a highly concentrated economy with low levels of economic transformation in favour of the black majority. This position raised questions about the effectiveness of our competition laws to promote meaningful, sustainable economic progress. The amendments were thus brought in to strengthen the Commission's ability to deliver these much needed outcomes, along with other policy tools in the government's toolbox.

16. While the provisions of the Competition Act of 1998 ushered in a new era of thinking about sustainable economic development in every area of competition enforcement – an era that reverberated around the competition world – the 2019 amendments to our Competition Act demand that we show bold and tangible results from the application of public interest provisions. Several cases, particularly in the area of mergers and acquisitions, have already tested our resolve since 2019 so this third decade of our existence as a competition agency promises to be one in which the principle of sustainability moves from international roundtable discussions to concrete outcomes that have a lasting impact on our economy and its people.

17. Below we consider the cases that have raised environmental concerns.

2. Cases that Raised Environmental Concerns

2.1. Environmental sustainability as a factor in defining the market

18. In an August 2020 merger filed with the Competition Commission, the market definition hinged partly on whether customers of the merging parties considered the environmental sustainability of waste management processes as a significant factor when choosing a healthcare waste management supplier. A key question in defining the market here was whether incineration technology and thermal desorption - a form of burn technology that treats waste via pyrolysis technology, not combustion - were interchangeable processes in the treatment of pharmaceutical waste.

19. According to the customers the Commission contacted in its assessment, the extent to which either process was environmentally sustainable featured in their choice of supplier. For example, Customer 1 and Customer 2 submitted that thermal desorption was the preferred technology because the process was more environmentally friendly than incineration. However Customer 3, who was one of the target firm's main customers, submitted that thermal desorption was not necessarily their preferred technology in the

treatment of pharmaceutical waste. Customers views thus varied regarding the extent to which these two technologies were considered substitutable. In addition, customers preferences between the technologies was not only based on price differentials. For instance Customer 1 highlighted that if the prices of treating pharmaceutical waste using thermal desorption were to increase significantly, they would consider a number of factors but were more inclined to consider environmental sustainability, while Customer 2 submitted that they would switch to incineration but highlighted that price was not the only factor. Customer 2 highlighted that the treatment facility that it would use for incineration needed to comply with certain requirements, for example the presence of a pharmacist at the incineration plant as well as their licencing status.

20. In the final analysis the Commission found that although customers considered environmental sustainability as a factor, they ultimately had to weigh up several factors – such as licensing, the presence of adequate expertise on the site of an incineration, regulatory requirements and price – in choosing a process and supplier. Given this, the Commission concluded that incineration technology and thermal desorption were sufficiently interchangeable to consider them part of the same market.

21. In October 2020 the Commission prohibited the merger as it believed it would remove an effective competitor from the market and it would hamper the ability of small businesses to become competitive in the identified markets. Box 1 contains the media statement the Commission issued after prohibiting the merger.

Box 1. Competition Commission prohibits waste management merger

29 October 2020

The Commission has prohibited the proposed merger whereby Averda SA intends to acquire the Target Firms.

Averda is an end to end provider of waste management services globally and in South Africa. Averda's activities in South Africa include the collection, transportation, treatment and disposal of general waste (domestic and industrial) and hazardous waste (which includes general hazardous and hazardous healthcare risk waste ("HCRW")). HCRW includes anatomical waste, pharmaceutical waste, sharps waste and infectious waste. Of relevance to this merger assessment are Averda's HCRW treatment activities using burn technology (i.e. incineration) and non-burn technology (e.g. electro thermal deactivation and autoclaves) to treat / neutralise waste. Averda's waste treatment facilities are located in Gauteng, North West and Western Cape.

Through A-Thermal, the Target Firms operate an incinerator which can treat all forms of healthcare risk waste. A-Thermal also operates a thermal desorption facility which is a form of burn technology that treats waste via pyrolysis technology. Unlike an incinerator, the waste is not combusted. The thermal desorption plant is licensed by DEFF to treat hazardous pharmaceutical and chemical waste. Through Cecor, the Target Firms operate an autoclave which is a technology that treats healthcare risk waste such as medical sharps waste via disinfection. The Target Firms' waste treatment facilities are in Gauteng.

The merging parties both treat general hazardous waste and HCRW. The more significant overlap between the merging parties is regarding the treatment of HCRW. The Commission thus assessed the impact of the merger on the treatment of HCRW both nationally and regionally as follows:

- The market for the treatment of HCRW using burn-technologies.
- The market for the treatment of HCRW using non-burn technologies.
- The market for the treatment of pharmaceutical waste using burn technologies.
- The market for the treatment of anatomical/pathological waste using burn incineration technologies.
- The market for the treatment of infectious and sharps waste using non-burn and burn incineration technologies.

The Commission found that the merger will result in the merged entity having high market shares in most of the relevant markets assessed. The investigation showed that the Acquiring Firm has a history of expanding through acquisitions and has engaged in several acquisitions over the past 5 years, several of which were small mergers. The Commission found that Averda's acquisition of the Target Firms' additional burn technology capacity enables the merged entity to withhold supply of capacity to competitors, or price it at a level that makes rivals less competitive. The merged entity's acquisition of a portfolio of technologies used in HCRW treatment places it in a unique position to contest contracts/tenders. This may hinder the effective operations of the competitors, particularly SMMEs and HDI-controlled competitors, that traditionally rely on outsourced capacity to effectively compete in HCRW treatment markets. In addition, barriers to entry are high and there is currently insufficient burn capacity available due to various reasons. Thus, the Commission found that the merger is likely to substantially prevent or lessen competition in the relevant markets post-merger.

The Commission found that the merger has a negative effect on the ability of SMME and/or HDI competitors to effectively enter into, participate in or expand within the waste management (and treatment) sector. Waste management in particular has more scope for the entry and expansion of SMMEs and HDI competitors, but this requires that they are able to access treatment capacity on competitive terms. The Commission is therefore of the view that the merger raises significant public interest concerns.

The Commission and the merging parties were not able to agree on remedies to address the competition and public interest concerns identified. Accordingly, the Commission prohibited the merger.

2.2. Fighting for the sustainability of South Africa's food resources

22. According to Tejvan Pettinger (2018) environmental sustainability is concerned with several issues including the long-term health of ecosystems, that is, protecting the long-term productivity and health of resources to meet future economic and social needs, e.g. protecting food supplies, farm land and fishing stocks.

23. The protection of South Africa's food supplies is precisely what two environmental non-governmental organisations – Biowatch and The African Centre for Biodiversity (ACB) – were concerned with in 2011 when they applied to intervene in legal proceedings in the merger between Pannar Seeds and Pioneer Hi-Bred International. Pannar Seeds was a South African family owned business founded in 1958 and was South Africa's largest independent seed company. Pannar had an extensive maize germplasm inventory which, according to the environmental groups, presented great opportunities for development. Pioneer Hi-Bred International, on the other hand, was a major US based subsidiary of the

global chemical giant - Du Pont - looking to take Pannar over. Box 2 perhaps illustrates more succinctly the motivation behind the ACB's application to intervene in the merger.

Box 2. Article from the ACB, 2017

Seed diversity: its importance for the environment, food systems and small-holder farmers

Seeds are the very basis of human society and have been for all of human history. They are at the heart of a healthy food system and form the basis of the food we consume. The harvesting of seed from preferred plants is the basis of crop domestication over the 10 000 years of agriculture. Farmers have nurtured thousands of varieties; adapting these to changing conditions with each growing season. Some varieties are resistant to diseases or pests. Others are tolerant of weather extremes like drought or floods or early frosts. Some have better yields or better nutrition as well as other desirable qualities such as taste and aroma, ease of cooking and processing or long storage capacity. Some varieties may also be prized for specific cultural or ceremonial purposes. This nurturing and maintenance of diversity has been made possible through intricate connections between families, communities and generations, where sharing and exchange of seed was seen as an obligation. For example, in West Africa the kola nut has cultural and medicinal uses as well as a deep ritual and spiritual significance (Hosken, L. (ed) Undated). In Nigeria it is presented to elders at first meetings, and often forms part of a dowry ; among the Igbo a kola nut is broken open and prayed over ; while among the Tikari in Cameroon, kola trees are sacred and, as such, collectively protected by the whole community. (Hosken, L. (ed). Undated).

24. The transaction was prohibited by the Competition Commission in December 2010 on the grounds that it would substantially lessen competition in the maize seed market. The merging parties appealed this decision to the Competition Tribunal. The two environmental groups were granted the right to intervene in the Tribunal's proceedings on limited grounds. These related to the effect of the proposed merger on pricing and the availability of alternative products if the merger were to be approved; the effect on smallholder farmers, small-scale commercial black farmers and consumer choice; the resultant barriers to entry; and the public interest effect of the proposed merger, particularly in light of Pannar's extensive maize germplasm inventory and the opportunities that it presented for development.

25. The environmental groups saw the merger as part of the commercialisation and consolidation process that had characterised the global seed market during the preceding two decades. This had resulted in the sale of seeds across the globe being dominated by three powerful companies – Du Pont, Monsanto and Syngenta.

26. At the time Glenn Ashton of Biowatch said that the loss of an "independent" Pannar "*would remove our last remaining major seed company from the market, which would mean that our food supply would effectively be controlled by two US corporations, Pioneer and Monsanto*".

27. The African Centre for Biodiversity ("ACB") raised a number of concerns with the transaction such as the likely genetic modification of the maize seed that would likely follow the transaction; the suitability of a foreign controlled maize seed for local farming

conditions and the broader impact the merger would have on maize seed prices and quality into the future.

28. The Competition Tribunal, after hearing the Commission, the merging parties and the ACB, also prohibited the deal in 2011. The matter would later be approved with conditions by a higher court however ACB issued the statement in Box 3 when the Tribunal's decision was announced. ACB's statement highlights the concerns that both ACB and Biowatch had with the merger although Biowatch withdrew its intervention before the hearing, stating that it no longer believed it had more to add than what the Commission's case already covered.

Box 3. ACB Applauds Tribunal decision to prohibit Pioneer Hi Bred and Pannar seed merger

14 October 2011

The African Centre for Biosafety (ACB) applauds today's decision of the Competition Tribunal (Tribunal) to prohibit the seed merger between multinational seed company Pioneer Hi Bred, and South Africa's largest seed company, Pannar Seed.

During December 2010, the Competition Commission prohibited the merger and the merging parties referred the Commission's decision to the Tribunal for reconsideration. After a three-week long hearing, the Tribunal has decided to similarly prohibit the merger. Reasons for the decision are still forthcoming and no further information is at this stage available.

The ACB was granted leave by the Tribunal on the 19th August 2011, to intervene in the merger proceedings on public interest grounds, particularly with regard to the effect the merger would have on small scale farmers. This was itself precedent setting in that it was the first time the Tribunal had allowed NGOs to intervene in merger proceedings.

The ACB has in fact been involved in the merger proceedings since October 2010. The ACB participated in the proceedings and led the expert evidence of an agricultural economist working directly with small- holder farmers, who outlined the devastating impacts the merger would have on small-holder farmers and food security.

According to Mariam Maye, director of the ACB, "The prohibition is a victory for small holder farmers in South Africa and all those who advocate for a more equitable food system. The Tribunal's decision will create much needed breathing space for the development of an appropriate seed system for South Africa that responds to the needs of small holder and resource-poor farmers rather than those of profit-seeking multinational corporations."

The ACB notes that the South African government has prioritised the development of black small- holder farmers. Government must now do the right thing by building on the Tribunal's decision and work in partnerships with farmers to develop small- holder capacity to produce and distribute seeds that are appropriate to farmer conditions and needs.

"Government must stop pushing for the further propagation of the industrial agricultural model, including for small holder emerging and resource poor farmers. Far too little resources have been devoted to utilizing local knowledge and local varieties as genuine solutions to food insecurity," said Mayet.

Note:
Source:

29. As mentioned above the merger was ultimately approved with conditions by a higher court. The ACB, however, has continued its fight for the long-term sustainability of South Africa's food resources as its concerns with the 2011 merger came to pass. In February 2019 it was reported that the ACB had lodged an objection against Pioneer Hi-Bred's application for field trials of a gene-silencing genetically-modified maize. ACB said it refused to allow South African citizens and the environment to be used as "guinea pigs" for the untested and unproven technology.

30. Pioneer's regional media liaison in Africa, Barbara Muzata, said South Africa was chosen for the trial for three reasons: it had a high-level presence of expertise in the public and private sector; it was a conducive environment for science and technological investment; and it needed high-yielding agricultural technologies. Muzata said the end vision of the trial was to gain approval for use of the technology in South Africa and thereby contribute to increased maize yields and food production.

31. The ACB argued that the risks of the trail were untested, therefore it was premature to allow the seeds to be approved for environmental release as they could contaminate farmers' varieties and hence South Africa's food supply.

3. Conclusion

32. Competition law exists in a social context, which often requires a policy mix with complementarities and potential contradictions. This often imposes the need for trade-off's. Where one lands on these is a matter of one's objectives. For developing countries, especially South Africa which a history of racial exclusion, the pursuit of fairness, equality and equity is a necessary trade-off. The time may have also come to complement competition law with environmental sustainability and allow for coordination of these. South Africa, in its own way, shows that there is a workable framework for doing this, namely (1) public interest factors in merger assessments and (2) grounds for exemption that are rooted in the country's social objectives. A third possibility is in the conceptualisation of the SLC test which, in South Africa, is sufficiently broad so as to allow an assessment of environment factors.

33. Thus, although South Africa's Competition Act does not mention environmental sustainability as a desired outcome of implementing competition law, it covers the social objectives that were a priority to the law makers at the time of drafting. Those objectives – mainly employment, black economic empowerment and the development of small and medium sized businesses – remain a priority in South Africa today which is why the competition agencies were granted additional powers in 2019 to pursue these objectives in the Competition Act.

34. That being said, it is also clear that the successful pursuit of ancillary social objectives – such as environmental sustainability – through competition law does not depend solely on the law makers. It also depends on the resolve of administrators tasked with implementing the law to be courageous, consistent and transparent in their quest to achieve the social objectives set out in the law. In the policy formulation process there is

bound to be disagreement and opposition from competition purists and traditionalists who fear the dilution of competition policy with evolving social objectives and national priorities. However South Africa's experience over the last 21 years, as outlined above, demonstrates that it is possible to balance robust competition assessment with the prevailing social priorities of any jurisdiction and thus have competition law contribute to the overall development objectives of society at large.

4. Questions Raised in OECD Competition Committee Background Note

4.1. How do we take environmental and climate change considerations into account when enforcing competition law?

35. The South African regime does not have statutory provisions specifically incorporating environmental and climate change considerations into our competition assessments. However both the public interest factors listed in the law and the SLC test are sufficiently broad to accommodate environmental and climate change considerations.

36. When assessing cases of anti-competitive conduct it is arguable that the Commission could consider a negative impact on the environment as an anti-competitive effect, though this argument has not been brought to the judiciary as yet.

37. When assessing the impact of a merger on the public interest, the Commission could consider any environmental impact as "*the effect that the merger will have on a particular industrial sector or region".* It follows then that a substantially negative effect on the environment could lead to a prohibition of the merger or an approval with conditions. Moreover, insofar as environmental factors are considered a competitive dynamic in foreign markets, environmental concerns could also affect "*the ability of national industries to compete in international markets*" which is also a public interest factor listed in the Competition Act.

38. Finally, environmental sustainability could be considered as a ground forming the basis of an exemption application, particularly where environmental sustainability is seen as a competition dynamic in the market.

4.2. How do we integrate environmental protection considerations in our competitive assessment?

39. To date the Competition Commission has considered two matters which brought environmental considerations to the fore. These are discussed in more detail in paragraph 2 above.

4.3. In which circumstances does the existing legal framework require adjusting or broadening the interpretation of the law to allow taking into account environmental protection considerations?

40. Currently the public interest regime, exemption application regime and SLC test can each be used to consider environmental factors in competition cases. The public interest regime, in particular, has been extensively used to cover social objectives. This regime has proved sufficiently transparent, broad and clear to meet this need and does not appear to require adjusting or broadening at this point.

4.4. What are the available substantive and procedural tools allowing to assess, estimate and quantify in concrete cases environmental effects or anticompetitive harm and benefits that also have an impact on the environment?

41. Given the limited experience the SACC has had with cases raising environmental concerns, we believe that all the qualitative and quantitative tools available for assessing public interest interest factors, exemption applications and evaluating a substantial lessening of competition in the market would be available for use in assessing environmental concerns. Just as food security became a concern in the Pioneer/Pannar merger discussed above, environmental impact would fall to be assessed through a similar factual inquiry as that undertaken in the Pioneer/Pannar merger. Should environmental factors feature as a competitive dynamic in a merger or in the assessment of anti-competitive conduct, the traditional tools for measuring anti-competitive effects would likely be used to conduct this assessment.