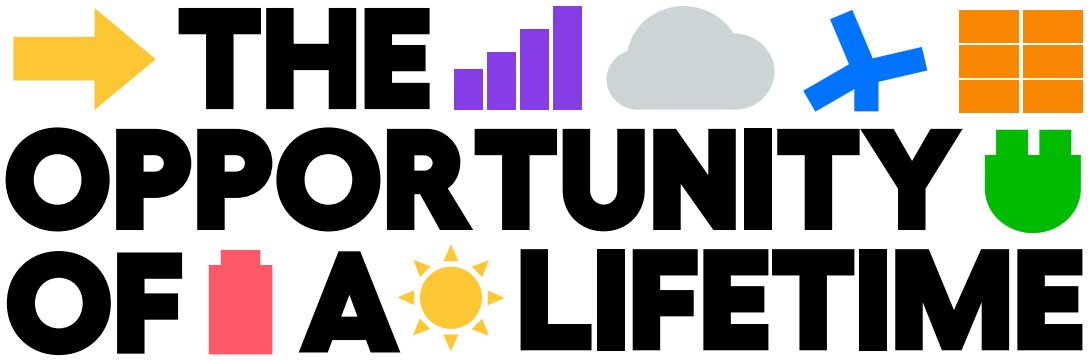


COMPETITION LAW AND THE CLIMATE TRANSITION IN SMALL AND INSULAR ECONOMIES

Policy brief

ICC

INSTITUTE FOR SMALL MARKETS LAW & ECONOMICS



A climate campaign led by the world's business organisation

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The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere – through policy advocacy, standard-setting, practical solutions and trusted dispute resolution. This is a pivotal time for climate cooperation. Through our Opportunity of a Lifetime campaign, ICC is mobilising business and calling on governments to create the enabling environments needed for climate action to scale.

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Executive summary

Climate change is a global phenomenon that affects economies of all sizes. In small and insular markets in particular, competition law enforcers are faced with a regulatory stalemate: mitigation of climate change, adaptation and ecosystem restoration may require cooperation, shared infrastructure and investment at a scale that narrow markets cannot sustain easily without increasing the risks of market power, exclusion and excessive coordination.

Competition law therefore must protect competitiveness, market entry and consumer welfare without becoming an unintended barrier to legitimate climate action. The question is not whether small markets should apply weaker competition rules. They should not. The question is how established competition principles should be applied where scale, geography and market structure make conventional large-market assumptions less reliable.

While the International Chamber of Commerce (ICC), the institutional representative of more than 45 million businesses in over 170 countries, recognises that taxation, procurement, energy policy or climate finance play a critical role in the transition to more sustainable economies, this publication looks at the climate crisis solely through the lens of competition law and policy.

More specifically, the paper aims to deepen the dialogue on **four recurring issues** which are:

1. **Sustainability cooperation between competitors,**
2. **Mergers and joint ventures that may create necessary scale,**
3. **Access to essential or shared infrastructure, and**
4. **Exclusionary abuse of dominance that can prevent green entry and innovation.**

In each case, the key objective is to preserve contestability and long-term consumer welfare without requiring forms of rivalry or infrastructure duplication that the market and the local ecosystem cannot realistically sustain.

This approach is consistent with ICC publications on competition and sustainability, which were introduced at previous UNFCCC Conferences of the Parties (COP) and beyond: legal certainty should enable responsible cooperation while preserving clear safeguards against price-fixing, market allocation, output restriction, exclusion and other forms of anticompetitive conduct.

With the Pacific presidency over COP31 negotiations and the pre-COP sessions occurring in Fiji in October 2026, this paper is placing a particular focus on small and insular economies and the challenges they face in achieving the transition to net-zero. These territories count among those most impacted by global warming and, thus, are in a unique position to break through the asymmetry of costs and benefits (which is at the core of the collective action problem) by setting an example for the world.

The paper proposes a set of competition law principles for small and insular economies.[1]

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1 For the purpose of this publication, "small" shall mean all those territories with a population of not more than 15 million people, and "insular" shall mean those territories which "*constitute distance from traditional centres of economic activities and, very often, relatively modest size that imply that, economically, economies of scale and scope that are present in large economies cannot be achieved in these geographies." (Ennis & Piffaut 2023) This includes characteristics such as geographical isolation, limited trade, dependence on specific industries, small market size, high transportation costs, cultural and social factors, and economic policy challenges.*

Ennis, S. & Piffaut, H. (2023). *Insular Economies: An overview of the national case law. Available here:* https://www.concurrences.com/

The six competition law principles are as follows:



Climate and sustainability objectives do not displace competition law; they form part of the factual and economic assessment where the applicable legal framework allows. Ecosystem destruction and climate change (and the attendant disappearance of low-lying islands) is not consistent with consumer welfare or the functioning of an efficient economic system. There is not much competition in an economy that is under water.



Concentration should not be assessed in isolation from entry conditions, efficient scale, innovation and the counterfactual, or the impact on sustainability.



Cooperation between competitors to achieve sustainability goals should be permitted only where it is genuine, necessary and proportionate to achieve those goals, with clear limits on competitively sensitive information.



Where infrastructure duplication is inefficient or not sustainable given the local ecosystem, competition should focus on fair access, interoperability, non-discrimination and future contestability.



Competition authorities should provide practical legal certainty for time-sensitive climate and sustainability initiatives, using guidance or early engagement mechanisms where legally available.



Any accommodation justified by small-market conditions should be evidence-based, transparent, reviewable and time-limited where possible and appropriate.

The paper is intended for competition authorities in small jurisdictions as well as for businesses and trade associations with a view to emboldening them to take meaningful action.

en/bulletin/special-issues/insular-economies-research-program/insular-economies-an-overview-of-the-national-case-law

1. Competition law and climate action: a global approach to tackling unsustainable practices

Since 2022, much of ICC's work on competition and sustainability[2] was geared towards reversing the narrative that competition law impeded the fight against climate change. Steeped in diverse climate advocacy efforts conducted at global level, ICC's stance is – and always has been – that competition law can be part of the climate solution; it should neither be treated as a barrier to climate cooperation under clear guidelines nor unduly relaxed in the name of sustainability regardless of the size of the jurisdictions. Climate change and nature/biodiversity loss are the result of a market failure, and cooperation to resolve or prevent these market failures is part of an efficient economic system, and consistent with competition law and policy goals.

With the Australian presidency over negotiations, COP31 offers an opportunity to hone in on some of the unique challenges faced by small and insular economies in relation to climate change and to reflect on possible practical solutions. These territories are among those most exposed to the effects of global warming, including rising seas, extreme weather conditions and supply chain disruptions. While there has been significant focus on the role of competition law as a "shield" and a "sword" in tackling unsustainable practices in several larger jurisdictions[3], it is important to note that legal frameworks can also help achieve mitigation and adaptation goals in small and insular economies.

According to the Institute for Small Markets in Law and Economics (ISLE), advancing sustainability goals in these geographically isolated regions starts with addressing the lack of sufficiently diversified markets, competitive supply chains and investment scale required to deploy green technologies rapidly. For competition regulation and policy to support the climate transition in these small economies effectively, as have in larger ones, enforcement should be adapted to local market realities.[4]

2. Competition in small and insular economies: enforcement challenges and the need for tailor-made solutions

2.1 Structural characteristics

Small and insular economies are not a homogeneous legal category. For competition analysis, however, many share recurring structural characteristics: narrow demand, high fixed costs, geographic fragmentation, dependence on imported goods, equipment and specialist services, a limited number of viable operators, infrastructure that is difficult or inefficient to duplicate, and vulnerable local ecosystems.

These characteristics matter because the climate transition frequently intensifies scale and coordination requirements. Renewable energy equipment, storage, charging systems, low-carbon logistics, recycling streams and resilient infrastructure may require minimum volumes, shared standards, common networks

2 Available at: https://iccwbo.org/news-publications/policies-reports/how-competition-policy-acts-as-a-barrier-to-climate-action/

3 See ICC reports released at COP29. Available at: https://iccwbo.org/news-publications/policies-reports/how-competition-policy-acts-as-a-barrier-to-climate-action/

4 Recognising the importance of small and insular economies in global supply chains and the demanding role of competition enforcers in these jurisdictions, ICC published a first report in May 2026. Available at: https://iccwbo.org/news-publications/report/when-competition-cannot-be-perfect-adapting-antitrust-to-small-and-insular-economies/

or long-term investment commitments. In a large market, several firms may be able to undertake these investments independently. In a small market, no firm may have sufficient scale on its own.

On the other hand, small and insular markets may experience more actionable levers because coordination is less difficult than in large economies, because political or legal decisions may have a quicker, more direct and more perceivable impact on markets, and because the higher exposure to the effects of climate change of most of these territories may help to reach a better societal consensus on a path to climate change.

Therefore, structural characteristics of small and insular economies should not be seen as making sustainability cooperation more difficult, but on the contrary as offering an opportunity to design, implement and test innovative transition policies that can later on be scaled up in large economies.

2.2 The competition law tension

Cooperation or consolidation may sometimes be necessary to make a climate project viable, for instance, where capital requirements of clean solutions are often high, but the same arrangements can reduce competitiveness or entrench incumbents. Conversely, a formal insistence on multiple independent infrastructures or operators may appear pro-competitive while producing no viable investment, higher unit costs or delayed technology adoption.

The proper objective is therefore not to maximise the number of firms at any cost. It is to protect competitive pressure, market access, innovation and consumer welfare over time, with a view to ensuring the highest possible efficiency of a sustainable economy in the interest of consumers. In small markets, contestability may be a more informative concept than concentration viewed in isolation.

2.3 What this paper does and does not cover

This paper addresses the application of competition law to climate-related conduct and market structure. It covers horizontal cooperation, joint ventures and mergers, dominance and access issues, and competition advocacy where barriers to entry affect climate technologies. It does not seek to discuss tax, subsidy, public procurement, sector-regulation or climate-finance policy.

3. Recurring key competition law issues

3.1 Sustainability cooperation between competitors

Some climate initiatives require competitors to cooperate to achieve economies of scale or scope. Examples may include joint procurement of specialised low-carbon equipment or sustainable input or energy, common technical or interoperability standards, shared charging or recycling infrastructure (including adoption of common standards), pooled logistics, data-sharing required for system operation, or collective commitments to phase out an unsustainable input.[5]

The assessment should focus on the genuine objective of the arrangement, whether cooperation is necessary to achieve it, whether the scope is proportionate, whether less restrictive alternatives are realistic, how benefits and costs affect consumers, and what safeguards prevent spillover into unrelated competitive parameters.

5 See examples and details in ICC (2026), How to navigate sustainability agreements without breaching competition law (First edition). Available at: ICC Practical Guide on Competition Law and Sustainability Agreements - ICC - International Chamber of Commerce

One of the concerns that tends to be associated with climate and sustainability action can be that the costs are borne by the small economies in question, whereas the benefits accrue to the world at large. It is important, however, that small and insular economies continue to lead the debates on climate and sustainability policy, with a disproportionate impact and ability to inspire and mobilise worldwide climate and sustainability action, precisely because of their vulnerability and visibility. It was, for instance, an initiative of a small island community that led to the International Court of Justice 2025 Advisory Opinion on the Obligations of States in respect of Climate Change[6]. Small and insular economies play a disproportionately visible and galvanising role in COP negotiations. The example set by local climate and sustainability action may have an impact on a worldwide level and encourage action elsewhere that inures to the benefit of these specific economies. This may be relevant when assessing the welfare effects and proportionality of local and regional climate and sustainability cooperation.

Practical safeguards for cooperation between competitors may include:

- Defining the subject matter and duration of the cooperation, so as not to exceed what is objectively necessary;
- Using independent trustees, clean teams, or aggregated data where sensitive information must be handled;
- Allowing participation on fair, reasonable and non-discriminatory terms where open participation is feasible;
- Avoiding coordination on prices, output, customers or territories unless strictly necessary and legally justified and proportionate;
- Documenting the climate objective, the market failure or scale constraint, and the reasons why less restrictive options are insufficient;
- Providing for periodic review as technology, market size and entry conditions change.

3.2 Mergers, joint ventures and efficient scale

Concentrated markets are common in small economies. This reality does not remove the need for merger control or scrutiny of joint ventures; it makes the counterfactual especially important. A transaction that reduces the number of independent operators may create the scale, financing capacity or risk-sharing needed for a climate and sustainability investment that would otherwise not occur.

Authorities should therefore assess both static and dynamic effects: loss of rivalry, entry barriers and bargaining power, but also investment incentives, innovation, resilience, minimum efficient scale and the credibility of the no-transaction scenario. Claimed efficiencies should be transaction-specific and substantiated where possible, not assumed.

Where concerns remain, remedies should be feasible in the actual market. Requiring divestiture to a buyer that is unlikely to enter, or duplication of infrastructure that cannot be economically sustained, may fail to protect consumers. Shared access, interoperability, minimum efficient capacity commitments, information firewalls or time-limited behavioural obligations may sometimes be more realistic, subject to the authority's legal framework.

6 Available at: https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-pre-01-00-en.pdf

3.3 Dominance, essential facilities and shared infrastructure

Climate transition can increase reliance on infrastructure that is uneconomic to duplicate: grids, ports, charging networks, storage, recycling systems, data platforms or other bottleneck assets. Shared infrastructure may be efficient, but it can also entrench gatekeepers.

Competition law should focus on exclusionary conduct and the conditions of access where the legal test for intervention is met. Discriminatory access, tying, margin strategies, exclusionary exclusivities, refusal to provide interoperability or strategic withholding of capacity can prevent sustainable entry even when the underlying infrastructure is efficient.

The policy objective is not automatic sharing of every asset. It is to ensure that control of a bottleneck does not become an unjustified barrier to competition. Where intervention is appropriate, remedies should be transparent, proportionate and capable of administration in a small jurisdiction.

3.4 Foreclosure of the private sector by public or semi-public companies

Particular attention should be given to ensure that government-sponsored entities (i.e. public or semi-public companies, local government entities, companies with special rights) do not prevent or jeopardise private activity and innovation. As an example, replying to a tender launched by a municipality or a local government will often not be attractive for a private operator if it faces competition by a company that is entirely or partially controlled by that same municipality or local government. Therefore, competition authorities should be able to assess whether the interaction between public and private sectors works well and whether public or semi-public operation is only focused on sectors where such operation is necessary to sustain universal services, and to fix that if necessary.

Competition authorities should thus both be able to apply competition law to public and semi-public companies (or any public or semi-public entities that play an economic role) the same way they would do with private companies. They should also have a developed advocacy capability, as a number of issues affecting competition between private and public or semi-public actors are under the control of governments. Similarly, over-regulation may *de facto* reduce competition on markets by disincentivising private initiative, and competition authorities should be able to advocate on regulations which reduce competition.

3.5 Entry, innovation and exclusionary strategies

Green technologies frequently arrive through new suppliers, new business models or cross-border entry. Small markets can be particularly vulnerable to strategies that raise competitors' costs because entrants already face high transport costs, thin demand and limited local service capacity.

Competition authorities should therefore be alert to conduct that forecloses innovative entrants: long exclusivities without objective justification, discriminatory access to key inputs or data, technical practices designed to impede interoperability, loyalty arrangements that lock up the available customer base, or collective standards that are controlled by incumbents and unnecessarily exclude alternative technologies.

Competition advocacy can complement enforcement. Where an entry barrier results from public rules rather than private conduct, the authority can identify its competitive effects without taking ownership of the underlying sectoral policy.

4. Practical tools and recommendations for small and insular economies

4.1 The Small-Market Competition and Climate Test

A targeted test or checklist can help competition authorities and businesses apply ordinary competition principles to the realities of small and insular markets without creating a special exemption.

The following **six questions** are intended as a disciplined assessment sequence.

Question	Competition-law purpose	Evidence to examine
1. Is the climate or sustainability objective genuine and measurable? What is the counterfactual?	Separate a bona fide sustainability objective from a pretext for reducing rivalry.	Defined objective, baseline, expected outcome, causal link between the arrangement and the climate benefit.
2. What is the real market and viable scale?	Ground the assessment in actual geography, demand, fixed costs and entry conditions.	Market size, island dispersion, import channels, minimum efficient scale, number and credibility of potential entrants.
3. Is cooperation or concentration harmful? If yes, how harmful? What are the effects on consumers, innovation and contestability?	Focus public means to intervene against arrangements that are most harmful; balance immediate restrictions against longer-term price, quality, resilience, entry and innovation outcomes.	Impact on prices, innovation and barriers to entry: price and quality effects, innovation incentives, future entry, access conditions, reliability and service outcomes.
4. If harmful, is cooperation or concentration necessary, in the sense that there is no less restrictive and equally effective viable alternative?	In case there is competition harm to compensate, test whether the arrangement addresses a demonstrated scale, coordination or investment problem.	Individual alternatives, financing constraints, prior failed entry, capacity requirements, transaction-specific efficiencies, narrower information exchange, open participation, shorter duration, non-exclusive models.
5. Do the benefits outweigh the disadvantages of the restrictive effects (proportionality)?	Balance immediate restrictions against longer-term price, quality, resilience, entry and innovation outcomes.	Price and quality effects, innovation incentives, future entry, access conditions, reliability and service outcomes, sustainability impact at local, regional, and worldwide level.
6. What safeguards and review mechanisms are required?	Prevent cartelisation, exclusion, overreach or permanent protection.	Information firewalls, non-discrimination, access rules, transparency, monitoring, sunset/ review clauses.

4.2 Recommendations for competition authorities in small jurisdictions, businesses and trade associations

For competition authorities in small jurisdictions

- **Publish practical sustainability guidance with a small market lens.** Explain how necessity, proportionality, consumer benefits, information exchange, market definition and efficient scale will be assessed where markets are narrow and entry is structurally difficult.
- **Advocate governments and law-makers** on incorporating competition principles in green public policy and on the risk of over- and under- intervention.
- **Assess the market failure as part of the evaluation of the cooperation.** Verify if and why individual action is insufficient and what specific climate or sustainability outcome the arrangement is intended to achieve.
- **Provide early legal certainty where the law permits.** Open-door policies, informal guidance, comfort mechanisms or expedited review can reduce the risk that legitimate climate cooperation is abandoned because of uncertainty.
- **Assess concentration dynamically, not mechanically.** In mergers and joint ventures, examine the counterfactual, investment needs, innovation, minimum efficient scale, future entry and access conditions alongside conventional indicators of concentration.
- **Design remedies for real markets.** Prefer remedies that preserve access and future contestability over requirements that depend on economically unrealistic duplication or hypothetical entry.
- **Prioritise exclusion that blocks green entry.** Scrutinise conduct by firms controlling bottleneck infrastructure, critical data or standards where it may foreclose innovative or lower-carbon alternatives.
- **Build regional cooperation among authorities.** Small jurisdictions can share expertise, precedent, market intelligence and training while retaining independent decision-making under their own laws.
- **Review outcomes ex post.** Climate technologies and market conditions change quickly. Authorities should revisit significant accommodations, remedies or guidance to determine whether they remain necessary and proportionate.

For businesses and trade associations

- **Define the market failure before designing the cooperation.** Record if and why individual action is insufficient and what specific climate outcome the arrangement is intended to achieve.
- **Build competition safeguards into the project from the outset.** Limit information exchange, define governance, preserve independent commercial decision-making outside the project and set review points.
- **Avoid unnecessary restrictions or exclusivity.** Where shared infrastructure or standards are created, use objective access conditions and interoperability where feasible.
- **Prepare evidence, not assertions.** Authorities will need credible data on scale, costs, entry, investment and consumer outcomes, especially where a project reduces the number of independent choices.

Conclusion

Small and insular economies do not need weaker competition laws. They need a competition law that is applied to the realities of their markets, that integrates sustainability economics in the antitrust economics, and this is particularly important as regards the transition to greener economies.

Cooperation may be necessary to create scale or scope for sustainable solutions; joint ventures may be the only way to finance or develop infrastructure; and shared networks may be more efficient than duplication. At the same time, concentration and bottlenecks increase the risk of exclusion, cartelisation and incumbent capture.

A context-sensitive competition analysis should therefore ask whether a restriction is genuinely necessary, whether less restrictive alternatives are realistic, whether consumers and innovation benefit over time, and whether safeguards preserve future contestability. This is not an exception to competition principles. It is their disciplined application to small-market conditions.

By combining clear enforcement boundaries with practical guidance, proportionate remedies and regional cooperation, competition authorities can help ensure that the green transition strengthens rather than weakens competitive markets.



About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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About the Institute for Small Markets in Law and Economics

At the Institute for Small Markets in Law and Economics (ISLE), we are dedicated to foster a deep understanding of competition law and economics tailored to the unique challenges faced by small market and insular economies. There is a long ongoing debate over whether competition policy and enforcement in small economies should consider the specific structural features and economic operation of these small and sometimes isolated markets.

The research institute ISLE is a non-profit organization founded in French Polynesia to actively stir that debate and ultimately help foster competition policies that are optimal for the development of such economies. Our mission is to contribute to the development of effective and durable competition policies that promote fair and competitive markets and tackle costs of living issues to benefit consumers.

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