



# Sustainability of Innovation and Competition An IP Perspective

**November 23, 2022**

Giovanni Napolitano  
Intellectual Property & Competition Policy  
Global Challenges and Partnerships Sector

[giovanni.napolitano@wipo.int](mailto:giovanni.napolitano@wipo.int) [www.wipo.int/ip-competition/en/](http://www.wipo.int/ip-competition/en/)

The views expressed in this presentation do not necessarily reflect those of the World Intellectual Property Organization. The author is responsible for any errors and omissions

# Competition and Sustainability

- Competition and sustainability has only recently started to be discussed among competition agencies at the international level
- The discussion affects several aspects of a competitive assessment in relation to sustainability:
  - Dealing with cooperation among competitors
  - Assessing a merger that results in the development of long term green technologies
  - Dealing with dominant companies' decisions to e.g. introduce green solutions that are more expensive for consumers

# Industry Cooperation and Sustainability

- Prudent interpretation of competition law may induce timid initiatives with little environmental impact
- Green finance: industry standards to qualify investments as sustainable (also to avoid greenwashing)
- How much information sharing are companies allowed to share (e.g. consumer data) in order to agree on green certification
- Mandatory vs non-mandatory standardization

# Competition and Sustainability Implications for IP

## ■ **Implications for cooperative endeavors**

- Management of IP input by companies participating in joint projects (so called background IP)
- Ownership of the IP generated by collaborations (so called foreground IP)
- Exclusive/open licensing
- The IP dimension in private/public partnerships

# Objectives of WIPO's work on IP, sustainability and competition

- Identifying the IP-related conducts under potential antitrust scrutiny, particularly when competitors work together on sustainability projects
- Assessing the different operational options concerning the joint endeavor (e.g. a third party research lab to which participating companies confer their IP)
- Assessing the options concerning the management of IP resulting from joint research activities on sustainability vis-à-vis antitrust assessment
- Identifying good practices that may help companies and competition agencies find balanced solutions to the IP/competition interplay

## The issues from an IP perspective

- WIPO's focus is mainly on collaboration among competitors
  - What happens to their IP once they decide to join forces ?
  - How do the different operational solutions affect the sharing of IP and the competitive assessment?
  - How does the competitive assessment change if participating companies decide to use third-party labs instead of one of their own labs? And how does the chosen option affect the way in which companies share their (background) IP?

# Guidance for licensing contracts (for foreground IP)

- Is the “sustainability element” going to affect the competitive assessment of IP licensing?
- A few examples:
  - Exclusive vs Non-exclusive Licenses
  - Pricing: Free / Fixed / “FRAND”
  - Commercial vs Non commercial Scope
  - Sector Restricted: Yes / No
  - Perpetual vs Fixed Term Duration
  - Territorial restrictions?