UK Businesses can and should seek to collaborate with competitors to address systemic human rights risks in global supply chains

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Collective action across industry actors is needed to address systemic human rights risks in global supply chains. However, businesses often express concern over collaborating on these issues???especially with competitors???while remaining compliant with competition law. To discuss this, BIICL recently held a panel discussion that brought together experts in competition law and human rights due diligence, businesses from the Bingham Centre Business Network, civil society organisations, and legal professionals.

Experts in the panel agreed that collaboration between competitors to address human rights risks in global supply chains is possible and desirable. The following five reflections are based on such discussion and should not be read as legal advice. These reflections aim to clarify common misconceptions, outline some of the legal and normative expectations from businesses to collaborate on human rights issues, illustrate successful collaborative initiatives, and inform further steps for businesses to collaborate with competitors on human rights goals and for regulators to provide tailored guidance.

1. Business should seek to collaborate with competitors to address human rights risks in global supply chains.

No single business alone can solve human rights challenges in global supply chains. Systemic issues demand a systemic response. Most human rights risks in global supply chains such as forced labour are systemic. This means they are widespread and deeply embedded in supply chain structures, disrupting entire sectors and regions. Through collaboration with competitors businesses can build resilient supply chains and reduce sectoral risks.

The rapid energy transition demands businesses to extend collaborations with competitors to human rights. The race to Net Zero is increasing human rights and environmental risks, but most collaborations so far among competitors has been focused solely on environmental goals. Not only is ensuring respect for human rights in global supply chains a necessary element for a just transition, but environmental and human rights risks are also mutually reinforcing and should be addressed holistically (e.g., forced labour and deforestation; extreme temperatures, forced displacement and forced labour).

Collaboration with competitors on human rights issues makes financial sense. Businesses do not have to pay for and hold systemic supply chain risks alone. Through collaboration with competitors businesses can pool knowledge, resources, minimise costs and maximise the effectiveness of their efforts (including by avoiding duplication of efforts).

Collaboration with competitors does not automatically translate into illegal market collusion or cartels. There are many successful examples worldwide of collaboration among competitors on environmental issues (e.g., Microsoft and Google, the Roundtable on Sustainable Palm Oil) and this can be replicated to address human rights risks. Taking a pre-competitive focus, collaborating via a third-party (e.g., NGO or industry association) and ensuring transparency are some of these key learnings (alongside consulting expert legal advice and following guidance from regulators).

Businesses can consider collaborating with competitors on human rights risks to i) map supply chains (e.g., Open Supply Hub), ii) map sectoral, sub-sectoral and geographical risks, iii) undertake audits and develop corrective action plans (e.g., The Bangladesh Accord), iv) undertake stakeholder engagements, v) jointly remediate for recruitment fees paid by workers (where relevant), vi) build capacity of shared suppliers through joint training, vii) share early warning data and grievance

mechanisms, viii) develop industry standards (e.g., Fair Ware Foundation), among others.

International business and human rights standards and guidance on supply chains encourage business to collaborate on human rights issues. Under the UN Guiding Principles (UNGPs) businesses are encouraged to collaborate with other actors to increase their leverage to prevent or mitigate adverse impacts, and where businesses have caused or contributed to the adverse impact, they are expected to provide for or cooperate in their remediation. The OECD Due Diligence Guidance for Responsible Business Conduct also encourages businesses to collaborate with industry players and the interpretative guide of the UNGPs encourages collaborative approaches to stakeholder engagement. Moreover, the UK's Transparency in supply chains updated statutory guidance encourages businesses to work with other businesses to have a greater impact, including through multi-stakeholder initiatives.

Supply chain legislation requires businesses to collaborate to address human rights risks. While it is currently under the Omnibus negotiation, the Corporate Sustainability Due Diligence Directive as adopted in 2024 requires companies "in compliance with Union law, including competition law, [to] collaborate with other entities" to prevent or mitigate (Article 10 (2)(f)) or end or minimise adverse human rights impacts (Article 11 (3) (g)). It also mentions that Member States "when deciding whether to impose penalties and, if such penalties are imposed, in determining the nature and appropriate level, due account shall be taken of any collaboration with other entities to address the impacts concerned" (Article 27 (c)).

2. Businesses are overly cautious about collaborating with competitors on human rights issues.

Concerns of breaching competition law are often raised by companies in the UK as a barrier for human rights collaboration with competitors. There is a fear of inadvertently breaching competition law and face severe sanctions such as fines and reputational damage. Likewise, past unsuccessful collaborative agreements have led to a "chilling effect". However, competition law does not impede legitimate collaboration between competitors and there are examples of successful sustainability collaborations in the UK (e.g., the Retailer Net Zero Collaboration Action Programme).

The legislation opposing Environmental, Social and Governance (ESG) initiatives in some States in the US, the lack of regulatory guidance, and examples of sustainability agreements collapsing in the US (e.g., Texas vs BlackRock) also add to these concerns and negatively influence business ambition to collaborate in other jurisdictions where ESG collaborations are encouraged???such as the UK and the EU.

Competition law training in the UK often focuses on what not do and the inherent risks in cooperation. This has led employees often dismissing potential collaborations before consulting legal teams. This is exacerbated by the lack of information about what businesses can actually do.

3. There is increasing guidance from regulators in the UK and the EU on business collaboration with competitors on sustainability initiatives, albeit the focus has largely been on environmental issues.

The Competition of Markets Authority (CMA) in 2021 published the Environmental Sustainability and Agreements in Competition Law. In this guidance, the CMA recognises that collaboration can help to achieve sustainability goals but that sustainability agreements should not be used as a cover for anti-competitive behaviour.

The CMA's 2023 Green Agreements guidance offers further guidance for environmental sustainability agreements. It provides concrete examples of what types of collaboration are compliant versus prohibited actions like collective price fixing. While it explicitly mentions that "agreements that pursue broader societal objectives (for example, improving working conditions) are outside the scope of this Guidance" (2.3), such agreements may be covered by the CMA's Guidance on Horizontal Agreements.

The revised 2023 European Commission Horizontal Cooperation Guidelines provide guidance for competitors to collaborate in sustainability agreements, including not only environmental but also societal goals such as labour and human rights. It establishes a new soft safe harbour for sustainability standards, subject to six conditions including transparency, voluntary participation, freedom to adopt higher standards, no exchange of commercially sensitive information (e.g., non-public information on pricing, costs, capacity, production, quantities, market shares, customers and business strategy is potentially commercially sensitive).

4. There are examples of collaborative initiatives among competitors in the UK that address human rights issues and that have been supported by regulators.

Fair Trade has developed a pre-competitive model of collaboration among competitors to promote sustainable and equitable farming practices. The Shared ImPact initiative brings together UK grocery retailers sourcing cocoa, coffee, and bananas under pre-competition terms to buy additional volumes on Fairtrade terms from the same pool of producer groups under long-term contracts. Farmers and workers benefit from selling more Fairtrade products and earning additional Fairtrade Premium which allows them to invest in community and development projects. This initiative has provided more security, higher wages and more resources for producers and reduced the costs needed to address human rights and environmental issues in the retailers' supply chain. For this initiative, the CMA provided informal guidance and further support through webinars and roundtables with potential participants.

5. To increase guidance and reduce uncertainty, more businesses need to engage in dialogue with regulators.

Businesses should not become inactive due to fear of breaching competition law but establish open dialogue with regulators. In the UK, everyone is allowed to have an informal discussion with competition authorities on whether what they are doing or would like to do is compliant with competition law. The more cases are put forward the more guidelines will be available, adding more evidence and public examples of how businesses can collaborate on human rights goals without breaching competition law. Businesses can provide feedback on how useful the existing CMA guidance is and encourage analogous guidance for a diverse set of human rights issues, including by submitting a request to the CMA for informal guidance.

At the same time, regulators like the CMA need to further encourage and normalise direct engagement with businesses. Regulators should work on making it easier and less intimidating for businesses to seek advice and encourage a cultural shift towards more open dialogue between businesses and regulators.

In sum, businesses *can* and *should* collaborate with competitors to address human rights risks in global supply chains. While more specific guidance on how to do so is urgently needed, businesses can play a key role in bringing about such guidance by establishing dialogue with regulators. Businesses can also capitalise on the lessons learned from environmental collaborations, where there has been more practice and guidance. A starting point is to seek to collaborate on the intersection between environmental and human rights adverse impacts.

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