 DOI: https://10.5281/zenodo.23503319

The Gate Before the Merits: Antitrust Standing and Environmental Grievances in the United States, the United Kingdom and India

Kulvir Shukla[1]
Abhinav Dwivedi[2]
© The Author(s), under exclusive licence to Oxford Law Review 2026.

Abstract

Competition law hands private litigants treble damages in some systems, binding infringement findings in others, and a ready-made liability theory against dominant firms. Environmental claimants have noticed. This paper asks how far the rules on who may sue stop a private plaintiff from using antitrust to remedy environmental and climate harm that is tied to market power. It reads the United States, the United Kingdom and India side by side, with short references to the European Union, Germany and the Netherlands. The argument is that standing doctrine excludes purely environmental injury almost completely, because every system measures harm through the market and treats ecological loss as something that happens outside it. The same doctrine leaves a real opening for plaintiffs who can show that collusion or dominance raised their prices, lowered the quality of what they bought or suppressed cleaner technology. The United States closes the door in layers. The United Kingdom opens it wide and then narrows the corridor behind it. India invites almost anyone to start a complaint but gives few of them anything to collect. The paper closes by defending the current gatekeeping and proposing better coordination between competition and environmental forums as the sounder reform.

Keywords: Antitrust Standing; Antitrust Injury; Competition Law; Environmental Harm; Climate Litigation; Private Enforcement; Comparative Law; United States; United Kingdom; India

1. Introduction

Picture a regional coal supplier that has pushed its last two rivals out of a river basin by pricing below cost, then raised prices once they were gone. Its washing plant leaks into the same river that supplies a town downstream. A lawyer looking at that supplier sees two wrongs and one defendant. She also sees an uneven set of remedies. The environmental claim will meet pleading burdens, causation disputes and, in many systems, a regulator who licensed the plant. The competition claim promises trebled damages in the United States, a binding infringement finding that unlocks follow-on damages in the United Kingdom, and in India a penalty regime that since 2023 can reach

[1] Gujarat National Law University (GNLU), Gandhinagar, Gujarat, India; ✉shuklakulvir77@gmail.com
[2] Institute of Law, Nirma University, Ahmedabad, India; ✉ahm31898@gmail.com

Copyright © Oxford Law Review. (editor@oxfordlr.com)

global turnover.[3] The pull toward pleading monopolisation and letting the competition statute carry the environmental grievance is easy to understand.

Courts have seen very few cases that fit the pattern, and the scarcity tells its own story. The nearest examples sit at the edges. Consumers and dealers in California sued five German carmakers over alleged agreements on diesel emission-cleaning technology and lost.[4] A group of American states sued three asset managers in Texas, alleging that they used their shareholdings to shrink coal output, and there the antitrust theory was aimed at climate-motivated conduct rather than deployed on its behalf.[5] In India the Supreme Court has said that any person may put information about a market abuse before the Competition Commission, yet nothing in the Commission's decided cases reads as an environmental judgment.[6] Each episode touches the question of who may sue and for what. None settles it.

This paper argues that standing rules keep out environmental claims that are only environmental, and that they do so for a sound reason. Competition statutes measure harm through markets: a price paid, a product degraded, a rival excluded, an innovation never funded. Ecological loss usually arrives by other channels. It falls on people who never bought from the defendant and who stand outside the transaction the statute watches. A claimant in that position holds an injury the statute was not built to count. The gate does its job. What deserves attention is the space it leaves for a plaintiff who can recast the grievance in market terms.

The research question asks to what extent traditional antitrust standing requirements prevent private plaintiffs from litigating cases that combine market monopolisation with environmental degradation. The answer comes in three tiers. A plaintiff whose only injury is ecological fails almost completely in the United States and India, and fails in the United Kingdom through the narrower mechanisms of loss and causation. A plaintiff with a genuine economic injury that traces to conduct with an environmental dimension faces a hurdle that can be cleared, though the American version is steep. Public plaintiffs feel the requirements least, which explains why the most active climate-related antitrust litigation of recent years has been brought by states.

The method is doctrinal and comparative. The paper works from statutes, judgments and regulator guidance, and it uses the secondary literature to test the reading. The United States receives the most space because the inquiry is framed around federal courts and because American doctrine on antitrust standing is the most developed and the most restrictive. The United Kingdom and India follow as the two principal comparators. The European Union, Germany and the Netherlands appear briefly where they sharpen a point. A caution about evidence belongs here. Direct authority on combined claims is thin. Where no court has ruled, the paper says so and

[3] Clayton Act 1914, 15 USC § 15(a); Competition Act 1998, ss 47A and 58A; Competition Act 2002 (India), s 27 as amended by the Competition (Amendment) Act 2023.

[4] In re German Automotive Manufacturers Antitrust Litigation, 497 F Supp 3d 745 (ND Cal 2020), aff'd, Audubon Imports, LLC v Bayerische Motoren Werke Aktiengesellschaft, No 20-17139, 2021 WL 4958987 (9th Cir 26 October 2021).

[5] State of Texas v BlackRock, Inc., No 6:24-cv-437-JDK (ED Tex 1 August 2025).

[6] Samir Agrawal v Competition Commission of India 2020 SCC OnLine SC 1024 (decided 15 December 2020).

Copyright © Oxford Law Review. (editor@oxfordlr.com)

reasons from adjacent decisions instead of inventing a line of cases. The materials are current to early October 2026, and the BlackRock litigation in particular continues to move.

The discussion proceeds in eight steps. Part 2 sets out the problem, separating four patterns in which market power and environmental harm meet and three things the word standing can mean. Parts 3, 4 and 5 take the United States, the United Kingdom and India in turn. Part 6 looks at Europe for contrast. Part 7 tests the three systems against the research question, Part 8 maps the routes still open, and Part 9 asks what the gate protects as well as what it blocks.

2. Framing the Problem

2.1 Four points where market power and environmental harm meet

Writers on the subject often treat 'environmental antitrust' as a single thing. It is at least four, and the standing analysis differs for each. Table 1 sets them side by side.

Pattern	Illustration	Competition theory	Typical harm and plaintiff
1. Power-enabled degradation	A dominant coal supplier whose washing plant pollutes a river	Pollution said to follow from freedom from competitive discipline	Ecological loss borne by residents; no market injury
2. Suppressed alternatives	German carmakers and the alleged agreement on emission-cleaning technology	Collusion or exclusion that withholds a cleaner product	Worse product or higher price; purchasers, dealers, rivals
3. Coordination on environmental grounds	Alleged pressure by asset managers to reduce coal output	Agreement restricting output or raising price	Higher prices for buyers of the restricted product; states
4. Sustainability agreements	An industry pact to phase out a cheap but harmful input	Cartel or restraint defended by environmental benefit	Higher prices or exclusion; customers, excluded competitors

Table 1: Patterns linking market power and environmental harm

The first pattern, power-enabled degradation, covers the coal supplier above. The defendant is dominant, it pollutes, and the plaintiff argues that dominance let it pollute more than a disciplined market would allow. The theory is attractive to a campaigner and weak in doctrine. What competition law condemns is how a firm acquires or uses power. The harm a powerful firm does in

Copyright © Oxford Law Review. (editor@oxfordlr.com)
URN:OXF:UK:0000OXFLR:V1Iz:277

the ordinary course of business falls elsewhere. A monopolist's pollution is a tort or a regulatory breach with an unusually large defendant.

The second pattern, suppressed alternatives, has a firmer footing. Here the conduct itself is anticompetitive and the environmental dimension is the thing that was suppressed: a cartel that agrees to hold back cleaner engine technology, or a dominant fuel distributor that tied up retail sites to keep out charging networks. The injured party is a purchaser who got a worse product, or a rival who was excluded. The German carmaker litigation belongs here, as does the Commission's car emissions decision discussed in Part 6.[7]

The third pattern turns the usual direction around. Defendants coordinate on environmental grounds, and the plaintiff says the coordination restricts output or raises prices. The BlackRock case is the leading example. Standing here is easy, since the claimants are buyers of the product whose supply was allegedly squeezed, and the contest moves to the merits.

The fourth pattern covers sustainability agreements between competitors, such as an industry pact to phase out a cheap but harmful input. Defendants invoke the environmental benefit as a justification, and the plaintiff, usually a customer or an excluded competitor, says the pact is a cartel in green clothing. Standing seldom troubles the plaintiff in this pattern either. The hard question is whether environmental benefit counts as a justification at all, and that question is answered differently in each of the three jurisdictions.

The research question has the first pattern in view: a plaintiff who suffers ecological harm and wants competition law to answer for it. In the other three the plaintiffs lose money. Much of what follows turns on that difference.

2.2 Monopolisation in three vocabularies

The research question speaks of monopolisation, and the three systems do not use the word alike. In the United States, section 2 of the Sherman Act condemns monopolisation, attempted monopolisation and conspiracies to monopolise. The offence has two elements: possession of monopoly power in a relevant market, and the wilful acquisition or maintenance of that power, as distinct from growth that comes from a superior product, business skill or historic accident.[8] Holding a monopoly is lawful. The wrong lies in how it was won or kept. In the United Kingdom, the Chapter II prohibition forbids an abuse of a dominant position, and the Indian statute builds section 4 on the same concept.[9] Neither condemns dominance as such.

The shared structure has a consequence for the environmental claim. Wherever the wrong consists of the way power was acquired or used, the injury that counts is the injury flowing from that wrong, which is typically the exclusion of rivals or the exploitation of customers. A firm's pollution can accompany its dominance, and may even be cheaper to sustain because of it, yet it forms no part of what makes the dominance unlawful. The same reasoning applies to cartels under section 1 of the Sherman Act, Chapter I of the 1998 Act and section 3 of the Indian Act. This paper

[7] Case AT.40178 Car Emissions (Commission Decision, 8 July 2021).

[8] United States v Grinnell Corp 384 US 563, 570–71 (1966); Sherman Act 1890, 15 USC § 2.

[9] Competition Act 1998, s 18; Competition Act 2002 (India), s 4.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

follows the research question in grouping these under the label of market monopolisation, but each system's doctrine of injury attaches to the particular wrong pleaded.

2.3 Three things 'standing' can mean

The word covers three separate gates, and running them together produces confusion. The first is constitutional standing, which in the United States derives from Article III and asks whether the plaintiff has a concrete, traceable and redressable injury. The second is statutory or 'antitrust' standing, which asks whether this plaintiff is the right kind of person, with the right kind of injury, to invoke a particular statute. The third is the procedural idea of *locus standi* familiar from Indian and English public law, which asks whether the claimant has sufficient connection to the matter to be heard.

The gates carry unequal weight across countries. American antitrust cases pass through the first and are shaped decisively by the second. English competition damages claims turn on a statutory phrase, 'loss or damage', that looks like a standing rule but works mostly as a causation and quantum rule. India runs two tracks, one with a very generous *locus standi* and another with a statutory compensation rule that requires a prior finding. A fair comparison needs to hold these apart.

2.4 Why the fit is poor

The mismatch is structural. Competition law grew up to protect a process, rivalry, and to protect the people who feel its results through prices and choice. Whatever one thinks of the dispute between consumer welfare and broader goals, every mainstream version measures harm by what happens in the market for the defendant's product.[10] A polluted aquifer is not a price. It is an externality, a cost the defendant pushes onto people with whom it has no market relationship.

Standing doctrine follows that logic. It asks whether the plaintiff stands where the statute's concern lies, and an ecological victim does not. Think of a turnstile at a stadium that checks for a ticket to this particular match. A fan holding a ticket to a different event has no complaint when it stays shut. Plenty of commentators still treat the refusal as a defect, and some of their arguments are serious.[11] Those arguments concern what competition law should protect. They say little about who may sue. Standing is where the symptom shows; the cause is the statute's substantive reach.

3. The United States

3.1 Two filters in series

An American plaintiff who wants to sue under the antitrust laws passes through two filters, one constitutional and one statutory, and the second is far the more demanding. Section 4 of the Clayton

[10] Maurice E Stucke, 'Reconsidering Antitrust's Goals' (2012) 53 Boston College Law Review 551.

[11] Simon Holmes, 'Climate Change, Sustainability, and Competition Law' (2020) 8 Journal of Antitrust Enforcement 354; Julian Nowag, Environmental Integration in Competition and Free-Movement Laws (OUP 2016).

Copyright © Oxford Law Review. (editor@oxfordlr.com)
URN:OXF:UK:0000OXFLR:V1Iz.277

Act gives a damages action to 'any person' injured 'in his business or property by reason of' a violation, with threefold recovery and attorney's fees.[12] Section 16 separately allows any person to seek injunctive relief against 'threatened loss or damage' from a violation.[13] Read literally, both provisions are wide. 'Any person' has never been read literally. In 1983 the Supreme Court said that Congress could not have meant every injured person to recover, and it supplied a framework to decide who could.[14]

The two filters answer different questions. Article III asks whether there is a real dispute with a real injury. Antitrust standing asks whether the injury is of the kind the statute protects. An environmental plaintiff usually thinks the first is the main battle, because environmental standing law is full of famous skirmishes about it. In an antitrust case the order is reversed. The constitutional hurdle is often low, and the statutory one is where the case dies.

3.2 Article III and the climate cases

The constitutional test is settled, though its history is contested.[15] A plaintiff needs an injury in fact that is concrete and particularised, a causal link to the defendant's conduct, and a likelihood that a favourable ruling will redress the injury.[16] Environmental plaintiffs have done reasonably well on the first element when the injury is personal. The Court has accepted that aesthetic and recreational harm counts, provided the plaintiff actually uses the affected area,[17] and that a reasonable fear of pollution can be an injury even without proof of physical damage to the environment.[18] It has also tightened what 'concrete' means. A bare statutory violation does not suffice,[19] and a feared harm must be certainly impending; a mere possibility will not do.[20]

Climate harm strains causation and redressability. In *Massachusetts v EPA* the Court found standing for a state suing over greenhouse gas regulation, giving states what it called special solicitude,[21] but private plaintiffs have not been treated as generously. The Ninth Circuit held in *Washington Environmental Council v Bellon* that injuries from global climate change were too far removed from the emissions of a handful of local refineries to be fairly traceable to them.[22] In *Juliana v United States* it accepted that the young plaintiffs had suffered injury and that government policy contributed to it, then held that the court could not grant relief capable of redressing the harm.[23] Common-law claims fare no better. The Supreme Court held that the Clean Air Act displaced federal

[12] Clayton Act 1914, 15 USC § 15(a).

[13] Clayton Act 1914, 15 USC § 26.

[14] Associated General Contractors of California Inc v California State Council of Carpenters 459 US 519, 529–35 (1983).

[15] Cass R Sunstein, 'What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III' (1992) 91 Michigan Law Review 163.

[16] Lujan v Defenders of Wildlife 504 US 555, 560–61 (1992).

[17] Sierra Club v Morton 405 US 727, 734–35 (1972).

[18] Friends of the Earth Inc v Laidlaw Environmental Services (TOC) Inc 528 US 167, 183–84 (2000).

[19] Spokeo Inc v Robins 578 US 330 (2016); TransUnion LLC v Ramirez 594 US 413 (2021).

[20] Clapper v Amnesty International USA 568 US 398, 409 (2013).

[21] Massachusetts v EPA 549 US 497 (2007).

[22] Washington Environmental Council v Bellon 732 F3d 1131 (9th Cir 2013).

[23] Juliana v United States 947 F3d 1159 (9th Cir 2020).

Copyright © Oxford Law Review. (editor@oxfordlr.com)

common-law nuisance claims against power plants, and the Ninth Circuit applied the same reasoning to an Alaskan village's claim against oil and utility companies, a case that also included an allegation of conspiracy to mislead the public.[24]

None of these decisions is an antitrust ruling. They still show what a combined plaintiff faces. If the pleading depends on global warming as the injury, the constitutional objections arrive early. The sensible response is to plead a different injury, and that brings the statutory test into view.

Article III rarely bites on the plaintiff who pleads commercial loss. A buyer who paid an inflated price has an injury in fact by definition. Money lost to an overcharge satisfies the constitutional test in the plainest way, which leaves the real contest for the next stage. So the first filter screens out the plaintiff with an ecological injury and a distant cause, and it lets through the plaintiff with a financial injury and a near one. The second filter then asks whether that financial injury counts.

3.3 Statutory antitrust standing

'Business or property'

The text of section 4 requires injury to 'business or property'. The Supreme Court has read the phrase to include a consumer's loss from paying more for goods, which means ordinary purchasers can sue.[25] It has also read the phrase to exclude injuries to the general economy of a state, so that Hawaii could not recover on behalf of its economy for an alleged price-fixing scheme in petroleum.[26] The rule has a direct consequence for environmental pleading. Personal injury, ecological harm and loss of amenity are not injuries to business or property. They may produce commercial loss as a by-product, such as a fall in property value or the closure of a fishery, but then the plaintiff must show that the commercial loss flows from the antitrust violation and not simply from the pollution.

Antitrust injury

The sharpest tool is the requirement of antitrust injury, a doctrine its critics find hard to square with the statute's text.[27] A plaintiff must show an injury 'of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful'.[28] In *Brunswick* the plaintiff bowling centres said a large operator's acquisitions of failing competitors kept those competitors alive and kept the plaintiffs' profits down. The Court held that the loss came from competition carrying on, and no reduction of competition produced it, so it was not antitrust injury. The doctrine applies to damages and has been extended to a rival's suit to block a merger or

[24] American Electric Power Co Inc v Connecticut 564 US 410 (2011); Native Village of Kivalina v ExxonMobil Corp 696 F3d 849 (9th Cir 2012).

[25] Reiter v Sonotone Corp 442 US 330 (1979).

[26] Hawaii v Standard Oil Co of California 405 US 251 (1972).

[27] Herbert Hovenkamp, Federal Antitrust Policy: The Law of Competition and Its Practice (6th edn, West Academic 2020).

[28] Brunswick Corp v Pueblo Bowl-O-Mat Inc 429 US 477, 489 (1977).

Copyright © Oxford Law Review. (editor@oxfordlr.com)

practice,[29] and it removes any claim in which the injury arises from something other than harm to competition.

Apply it to the first pattern from Part 2. Suppose a dominant supplier excludes rivals unlawfully and also pollutes. The unlawful act is the exclusion. The pollution comes from running a plant. It has nothing to do with the exclusion, so an ecological victim's injury does not flow from 'that which makes defendants' acts unlawful'. The test removes the claim cleanly, without any need to say that environmental harm is unimportant. A different plaintiff on the same facts, a customer who paid monopoly prices, passes it easily.

The Associated General Contractors factors

Beyond antitrust injury, courts weigh the factors set out in *Associated General Contractors*: the causal connection between the violation and the harm and whether the defendant intended it; the nature of the plaintiff's injury and whether it is of the kind Congress sought to redress; the directness of the injury; the existence of more direct victims who can enforce the law; and the risk of duplicative recovery or complex apportionment of damages.[30] Table 2 maps the factors onto the typical environmental plaintiff.

Factor	What the court asks	Difficulty for the environmental plaintiff
Causal connection and intent	Did the violation cause the harm, and did the defendant mean to cause it?	Pollution flows from operating the plant, not from excluding rivals; no intent aimed at the plaintiff
Nature of the injury	Is the injury of the kind Congress sought to remedy?	Ecological and recreational loss is not injury to business or property, and it does not come from reduced competition
Directness	How many steps separate violation from injury?	The chain runs through emissions, dispersion and environmental change, which is long
More direct victims	Is someone better placed to sue?	Purchasers and excluded rivals hold stronger claims
Speculative or duplicative damages	Can damages be measured and apportioned without overlap?	Valuing ecological loss and dividing it among defendants invites duplication

[29] Cargill Inc v Monfort of Colorado Inc 479 US 104 (1986); Atlantic Richfield Co v USA Petroleum Co 495 US 328 (1990).

[30] Associated General Contractors (n 12) 537–45.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

Table 2: The Associated General Contractors factors applied to an environmental plaintiff

The factors operate as a combination. No single one disqualifies a plaintiff, and courts differ on how heavily to weigh each. Yet the environmental plaintiff in the first pattern loses on nearly every count. The fourth factor is the cruellest, since in almost any scenario there is a customer or a competitor with a stronger claim. Courts treat the existence of that better-placed plaintiff as a reason to leave the field to them, and they are content to do so because the purchasers have the incentive and the evidence to sue.

Injunctions under section 16

Section 16 offers a different remedy and a slightly different test. A plaintiff seeking an injunction need only show threatened loss, with no completed injury required, yet the Supreme Court has held that antitrust injury still applies.[31] The route looks attractive to an environmental plaintiff. There is no damages case to prove, and a court could in theory halt a merger of two fossil fuel producers or a restraint that blocks cleaner entrants. The plaintiff must still be someone whose threatened loss results from reduced competition. An advocacy group that opposes a merger because the combined firm will drill more is threatened by drilling, not by any loss of rivalry. Its fear would be the same if the merged firm were the most competitive operator in the market. Antitrust injury defeats that group as surely as it defeats a damages claimant. The federal agencies that review mergers under the Hart-Scott-Rodino Act are not subject to the requirement, and they are the natural venue for environmental concerns that touch on market structure.[32]

Direct purchasers

The rule in *Illinois Brick* adds a further limit. Only the direct purchaser from the antitrust violator may recover overcharge damages, and indirect purchasers further down the chain may not, at least under federal law.[33] In 2019 the Court confirmed the line while holding that consumers who buy from an app store at prices set by the app developer are direct purchasers from the platform.[34] For environmental purposes the effect is to concentrate standing in intermediaries. A town that buys electricity from a utility which buys coal from a cartel is an indirect purchaser. The utility holds the claim. Many states have passed repealer statutes that allow indirect purchasers to sue under state law, which opens a partial route, though the plaintiffs gain only what the overcharge cost them.[35]

A note on zone of interests

[31] Cargill (n 27); Clayton Act 1914, 15 USC § 26.

[32] Hart-Scott-Rodino Antitrust Improvements Act 1976, 15 USC § 18a.

[33] Illinois Brick Co v Illinois 431 US 720, 746 (1977); Hanover Shoe Inc v United Shoe Machinery Corp 392 US 481 (1968).

[34] Apple Inc v Pepper 587 US 273 (2019).

[35] California v ARC America Corp 490 US 93 (1989) (federal law does not pre-empt state repealer statutes).

Copyright © Oxford Law Review. (editor@oxfordlr.com)
URN:OXF:UK:0000OXFLR:V1Iz:477

In a case on false advertising under the Lanham Act, the Court in *Lexmark* settled the test for statutory standing in terms of the zone of interests and proximate cause.[36] The reasoning does not govern the Clayton Act, where *Associated General Contractors* stays in force, but it shows the Court's current method: ask what the statute protects, then ask whether the injury travelled a short enough causal path. Both questions disadvantage ecological plaintiffs.

3.4 What the cases show

The German carmakers

The closest American case to the second pattern is the multidistrict litigation over the German automotive industry. The European Commission and the German competition authority had investigated cooperation among Audi, BMW, Daimler, Porsche and Volkswagen, and American consumers and dealers sued on similar allegations, among them an agreement not to compete on diesel emission-control systems. Judge Breyer dismissed the complaints in three rounds, ending in October 2020. He found no plausible 'whole car' conspiracy to reduce innovation, held that the alleged agreements on emission systems did not plainly harm competition, and rejected a separate steel-purchasing theory for want of antitrust standing and plausibility.[37] The Ninth Circuit declined to revive the dealers' claims in 2021.

Two points matter. First, the case failed mostly over the plausibility of the agreement and the relevant market. No rule about who may sue was in play. Standing was decisive only on the peripheral steel claim. Second, the outcome diverged from the European story, where the Commission in 2021 fined two of the manufacturers for colluding to avoid competing on emission-cleaning performance beyond what the law required.[38] The divergence reflects burdens of proof, market definition and the requirement of injury to American buyers, all features of a system that insists on market-based harm. A public authority could proceed on a theory of reduced innovation. A private class had to prove that the reduction damaged identifiable purchasers in an identifiable United States market.

Texas v BlackRock

The BlackRock litigation shows the inverse. Texas and other states allege that three large asset managers used their shareholdings in coal producers to press for lower output, and that coal output fell and prices rose between 2019 and 2022. In August 2025 Judge Kernodle largely denied the motions to dismiss, accepting that parallel conduct together with plus factors, among them a shared commitment to climate goals, could support an inference of agreement.[39] The reported rulings ask whether an agreement and anticompetitive harm were plausibly alleged. Who may sue is not the

[36] Lexmark International Inc v Static Control Components Inc 572 US 118 (2014).

[37] German Automotive (n 2).

[38] Car Emissions (n 5).

[39] BlackRock (n 3); Statement of Interest of the Federal Trade Commission and United States, State of Texas et al v BlackRock Inc et al, No 6:24-cv-00437-JDK, Doc 99 (ED Tex 22 May 2025).

Copyright © Oxford Law Review. (editor@oxfordlr.com)
URN:OXF:UK:0000OXFLR:V1Iz:277

issue. The states complain of higher prices and reduced output of a commodity, which is a textbook antitrust injury. The case is an environmental dispute in the sense that the alleged conduct was motivated by climate concern, but the plaintiffs are the ones aggrieved by climate action.

The lesson for the research question is awkward for those who want antitrust standing widened. The doctrine that blocks the ecological plaintiff is the same doctrine that gave the states an easy path. A standing rule that rewards pleading in the language of price and output will favour whoever can plead that way, whatever their politics.

Market definition as a second gate

A plaintiff who clears antitrust standing still has to define a relevant market, and for hybrid claims that is often where the case is lost. A market consists of products that buyers regard as reasonably interchangeable, tested by cross-elasticity of demand.[40] Environmental attributes complicate the test. A plaintiff may want to argue that buyers of low-emission vehicles, or of certified renewable power, form a separate market from buyers of the conventional product, so that a cartel in the premium segment is not disciplined by cheaper conventional rivals. The argument is coherent when buyers really refuse to switch. It fails when the evidence shows that they do. In the German carmaker litigation the court found that the proposed submarkets of 'German diesel vehicles' and 'German luxury vehicles' did not match consumption patterns in the United States, where non-German makers competed for the same buyers.[41] Standing gets a plaintiff in the room. The claim still has to be proved in market terms, and a distinct environmental market needs demand evidence that many plaintiffs lack at the pleading stage.

Justifications, petitioning and public plaintiffs

Two further doctrines shape how environmental arguments enter the case. The first is the treatment of non-economic justifications. In *National Society of Professional Engineers* the Court refused to accept that a ban on competitive bidding could be defended by reference to public safety, saying that the rule of reason asks whether the restraint promotes competition, not whether it serves some other good.[42] More recent decisions have been somewhat more receptive to procompetitive benefits that consumers value,[43] but a defendant who argues that its restraint saves the planet still has to translate the claim into a benefit that appears in the market.

The second is *Noerr-Pennington* immunity, which protects genuine petitioning of government from antitrust liability even where the petition aims at suppressing competition.[44] The doctrine shields environmental groups that lobby against a competitor's project, and it equally shields incumbents that lobby for rules that happen to favour them. A claim against a campaign

[40] Brown Shoe Co v United States 370 US 294, 325 (1962).

[41] German Automotive (n 2).

[42] National Society of Professional Engineers v United States 435 US 679 (1978).

[43] National Collegiate Athletic Association v Alston 594 US 69 (2021).

[44] Eastern Railroad Presidents Conference v Noerr Motor Freight Inc 365 US 127 (1961).

Copyright © Oxford Law Review. (editor@oxfordlr.com)
URN:OXF:UK:0000OXFLR:V1Iz:477

group is an uphill proposition. So is the reverse: arguing that an incumbent's lobbying against clean-energy rules is itself a violation meets the same wall.

Public plaintiffs have an advantage. States can sue as purchasers, and they can bring parens patriae actions for damages on behalf of natural persons residing in the state who were injured by Sherman Act violations.[45] What they cannot do is recover for harm to the state's general economy, which *Hawaii v Standard Oil* put beyond reach.[46] The practical effect is that states fill the gap that private environmental plaintiffs cannot, but only in cases where the grievance can be expressed as an overcharge.

3.5 Assessment

Put bluntly, a purely environmental plaintiff cannot get past antitrust injury and the *Associated General Contractors* factors, whether or not Article III is satisfied. A hybrid plaintiff with a commercial injury has a real path, narrowed by *Illinois Brick* and by the demanding approach courts take to market definition and plausibility. A state plaintiff has the easiest route when it frames its claim as a purchaser or through parens patriae. Hostility to environmental causes has nothing to do with it; the doctrine simply never asks about them.

4. The United Kingdom

4.1 A low threshold at the door

English law starts from the opposite premise. There is no doctrine of antitrust injury and no list of factors comparable to *Associated General Contractors*. Section 47A of the Competition Act 1998 allows a person who has suffered loss or damage as a result of an infringement of the Chapter I or Chapter II prohibitions, or of the equivalent EU provisions, to bring a claim before the Competition Appeal Tribunal, and the High Court hears competition damages claims as well.[47] Where the Competition and Markets Authority has already found an infringement, that finding binds the Tribunal in a follow-on claim.[48] The Tribunal can also grant injunctions, a power added by the Consumer Rights Act 2015 alongside the opt-out collective procedure.[49]

The generosity has a European source. In *Courage v Crehan* the Court of Justice held that any individual may claim damages for loss caused by a contract or conduct liable to restrict competition, and in *Manfredi* it repeated the point and added that national law must allow the claim, subject to a causal link between the infringement and the harm.[50] The Damages Directive of 2014

[45] Clayton Act 1914, 15 USC § 15c.

[46] Hawaii v Standard Oil (n 24).

[47] Competition Act 1998, s 47A. For a general account of private enforcement in the United Kingdom, see Richard Whish and David Bailey, Competition Law (11th edn, OUP 2024).

[48] Competition Act 1998, s 58A.

[49] Consumer Rights Act 2015, Sch 8; Competition Act 1998, s 47B.

[50] Case C-453/99 Courage Ltd v Bernard Crehan [2001] ECR I-6297; Joined Cases C-295/04 to C-298/04 Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA [2006] ECR I-6619.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

codified the principle for the Member States, and although the United Kingdom has left the Union, the rule in section 47A has not been narrowed.[51]

On its face, English law admits far more plaintiffs than American law. Claimants need not be consumers or competitors. All the threshold asks for is loss caused by the infringement.

4.2 Where the filter really sits

Three mechanisms do the filtering, and all of them sit behind the door. The first is the meaning of 'loss or damage'. Claims in the Tribunal are compensatory and they are about financial harm caused by the infringement. A plaintiff who says that a cartel in clean technology delayed the arrival of cheaper renewable energy and so raised his bills has a loss of the right type. A plaintiff who says that the cartel contributed to a warmer planet has no loss that the Tribunal can measure, and no loss distinct from that of everyone else.

The second is causation and passing-on. The Supreme Court has accepted that a defendant may argue that a claimant passed the overcharge on to its own customers, which reduces the claimant's loss and shifts the claim down the chain.[52] English law therefore departs from both American rules. It admits the pass-on defence that *Hanover Shoe* refused, and it lets indirect purchasers claim, which *Illinois Brick* refuses. An electricity consumer can in principle claim for a cartel in the supply chain, and the real obstacle is proving the pass-through and its quantum.

The third is the collective procedure. Since 2015 a class representative may seek a collective proceedings order for an opt-out claim on behalf of consumers. The Tribunal must certify that the claims are brought on behalf of an identifiable class, that they raise common issues, and that they are suitable for collective treatment.[53] In *Merricks v Mastercard* the Supreme Court said that certification is a filter and not a trial of the merits, and that the class need not be proven to have suffered loss at an individual level before the action can proceed.[54] That decision lowered the practical barrier for large consumer classes. An environmental body could in principle act as a class representative, provided the class has suffered a market loss and shares a common issue. The Tribunal's rules do not require the representative to be a class member in every case.

An environmental campaign group, as such, has no loss. It cannot bring a damages claim in its own name merely because the conduct harmed the environment. The English position therefore reaches the same result as the American one, by a different path. In England the work is done by how loss is characterised. No doctrine of standing is involved.

4.3 The public-law side

English law allows environmental litigants into court by a different door altogether. In judicial review a claimant needs a 'sufficient interest', and the courts have read that phrase generously for

[51] Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union [2014] OJ L349/1, art 3.

[52] Sainsbury's Supermarkets Ltd v Visa Europe Services LLC [2020] UKSC 24.

[53] Competition Appeal Tribunal Rules 2015 (SI 2015/1648), rr 78–79.

[54] Merricks v Mastercard Inc [2020] UKSC 51.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

public interest groups. Greenpeace was allowed to challenge a licensing decision on a nuclear facility, and the World Development Movement was allowed to challenge the grant of aid for a dam in Malaysia.[55] The Supreme Court heard the climate challenge to the third runway at Heathrow, and the argument was about the merits of the decision under the Planning Act and the Paris Agreement. Nobody questioned whether the claimants could bring it.[56] The Aarhus Convention supplies a treaty basis for access to justice in environmental matters.[57]

The two doors open onto separate corridors. Judicial review reaches public bodies and cannot reach a private monopolist. The competition damages action reaches private firms and cannot reach environmental harm. A combined grievance has to be split, and the plaintiff takes the commercial part to the Tribunal and the ecological part somewhere else.

Tort offers that somewhere else, and the English courts have been receptive. In *Vedanta* and *Okpabi* the Supreme Court allowed claims by villagers in Zambia and Nigeria against English parent companies for environmental damage to proceed in England, on the basis that a parent can owe a duty of care to those affected by a subsidiary's operations.[58] The cases are not competition cases, but they show that English law can hold a dominant corporate group to account for environmental harm without any detour through the competition statutes.

4.4 Environmental justifications

For the fourth pattern the British authority has moved ahead of the courts. In October 2023 the Competition and Markets Authority published guidance on how the Chapter I prohibition applies to environmental sustainability agreements. The guidance treats agreements that do not affect competition parameters as outside the prohibition, and for the rest it applies the exemption in section 9 of the 1998 Act.[59] For agreements that help combat climate change it takes a more permissive line: the benefits to all UK consumers may be counted when deciding whether consumers receive a fair share, since the harm from climate change is shared across the population. The burden of showing that the exemption conditions are met rests on the firms relying on it.[60]

That position matters for private plaintiffs in two ways. It makes a damages claim against a genuine climate agreement harder to win on the merits, because a defendant can point to society-wide benefit. It also shows an official acceptance that environmental gain can count in the competition analysis, an acceptance with no equivalent in American doctrine. The guidance is not binding on the courts or the Tribunal, so a private plaintiff is not bound to accept the CMA's view, but the weight the guidance carries in practice is likely to be considerable.

[55] Senior Courts Act 1981, s 31(3); R v Inspectorate of Pollution, ex p Greenpeace Ltd (No 2) [1994] 4 All ER 329; R v Secretary of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd [1995] 1 WLR 386.

[56] R (Friends of the Earth Ltd) v Heathrow Airport Ltd [2020] UKSC 52.

[57] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

[58] Lungowe v Vedanta Resources plc [2019] UKSC 20; Okpabi v Royal Dutch Shell plc [2021] UKSC 3.

[59] Competition and Markets Authority, Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements (12 October 2023); Competition Act 1998, s 9.

[60] Competition Act 1998, s 9(2).

Copyright © Oxford Law Review. (editor@oxfordlr.com)

5. India

5.1 A system built around the regulator

The Indian Competition Act 2002 gives competition enforcement primarily to a public body, the Competition Commission of India. The Commission can open an inquiry on its own motion or on information from any person, and it can order a firm to stop, impose a penalty and make other directions.[61] Civil courts are barred from entertaining matters that the Commission or the Appellate Tribunal is empowered to decide,[62] although the Act applies in addition to, not in derogation of, other laws.[63] The Act contains a duty on the Commission to protect the interests of consumers and to ensure freedom of trade, and it is silent on the environment.[64]

The design means that there are no private lawsuits for competition infringements in the American or English sense. A private person has two routes: to supply information to the Commission and hope for an inquiry, or, after a finding of contravention, to claim compensation.

5.2 The informant route

Section 19(1)(a) permits the Commission to inquire on receipt of information from 'any person'. For some years the Appellate Tribunal read the phrase narrowly and required the informant to show a personal legal interest. The Supreme Court corrected that in *Samir Agrawal*, holding that the informant need not be personally affected, because the Commission acts in the public interest and its proceedings are *in rem*, so the informant is a source of information and not a party with a private claim.[65] The Court dismissed the complaint on the merits, which does not weaken the point on access.

For an environmental organisation that is a generous rule. A group that believes a dominant firm is using its position to block cleaner entrants can lodge information without proving injury to itself. The standing problem so familiar in American law largely disappears.

What does not disappear is the requirement that the information disclose a contravention of the competition provisions. The Commission has no jurisdiction over pollution as such. That limit follows from the Act's text, and the Supreme Court's treatment of sectoral regulators points the same way: where another regulator holds specialised powers, the Commission is expected to let it settle the sector-specific questions first, although its competition jurisdiction is not ousted.[66] An informant who alleges that a firm's emissions are excessive has not alleged anything the Commission can act on. An informant who alleges that the firm is foreclosing cleaner rivals has. The point is the same one that structured the American analysis. Access follows the commercial framing of the grievance.

[61] Competition Act 2002 (India), ss 19, 26, 27.

[62] Competition Act 2002 (India), s 61.

[63] Competition Act 2002 (India), s 62.

[64] Competition Act 2002 (India), s 18.

[65] Samir Agrawal (n 4).

[66] Bharti Airtel Ltd v Union of India (2015) 12 SCC 1.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

Even then the environmental argument enters the analysis sideways. For agreements the Act directs the Commission to weigh listed factors, among them benefits to consumers, improvements in production or distribution, and the promotion of technical, scientific and economic development.[67] A cleaner process or product can be argued into those categories, and a defendant that formed a green alliance would do so. The Act also lets the Central Government exempt an enterprise or an agreement from its provisions in the public interest, a power that leaves the weighing of environmental trade-offs with the executive and not with a private claimant.[68] An environmental justification in India is therefore for the defendant to raise and the Commission to weigh. The informant does not control it.

5.3 Compensation

Section 53N provides that the Central Government, a State Government, a local authority, an enterprise or any person may apply to the Appellate Tribunal for compensation for loss arising from a contravention found by the Commission or the Tribunal.[69] The provision also contemplates representative applications where numerous persons have the same interest. The route is follow-on only. Without a prior finding, there is nothing to claim on, and the claimant must show that the loss resulted from the contravention.

Two features limit the route in practice. The first is its dependence on the Commission's choices. The 2023 amendments introduced settlement and commitment procedures that allow a firm to resolve a case without a finding of contravention, and as we read the amendments those outcomes cannot support a claim under section 53N.[70] The faster the Commission clears cases by commitment, the fewer findings exist for claimants to rely on. The second is the thinness of reported practice. We found no reported decision awarding compensation on an environmental theory, and awards of any kind under section 53N appear to be rare. The silence may reflect the relative youth of the provision, but it also shows that nobody has yet tested what 'loss' means in a case with environmental features. The substance of the standing rule is therefore the opposite of the American one. Indian law lets almost anyone start the process and gives almost no one a private right to finish it. A state government or local authority, which could plausibly claim for harm to public interests, is named expressly in the section, and that makes the Indian provision unusually explicit about public claimants.

5.4 The environmental track

Indian environmental law developed along a different line. The Supreme Court read the right to life in Article 21 to include a right to a healthy environment and clean air and water.[71] It relaxed *locus*

[67] Competition Act 2002 (India), s 19(3).

[68] Competition Act 2002 (India), s 54.

[69] Competition Act 2002 (India), s 53N. The Appellate Tribunal is now the National Company Law Appellate Tribunal, which took over the functions of the Competition Appellate Tribunal under the Finance Act 2017.

[70] Competition (Amendment) Act 2023, inserting ss 48A and 48B and amending s 53N of the Competition Act 2002.

[71] Subhash Kumar v State of Bihar (1991) 1 SCC 598; Constitution of India, arts 21, 48A and 51A(g).

Copyright © Oxford Law Review. (editor@oxfordlr.com)

standi so that public-spirited persons can approach the court on behalf of those who cannot, and a letter to a judge has served as a petition.[72] It created a principle of absolute liability for enterprises engaged in hazardous activity in *MC Mehta*, and it adopted the polluter-pays and precautionary principles as part of Indian law in *Vellore Citizens' Welfare Forum*.[73] In 2024, in a case about the great Indian bustard, it recognised a right to be free from the adverse effects of climate change as part of the rights to life and equality.[74]

The National Green Tribunal, created in 2010, hears civil cases involving a substantial question relating to the environment where the question arises from the enactments listed in its first schedule, and it can award relief and compensation. An application may be made by a person aggrieved, which includes a representative body and any person interested in protecting the environment.[75] The Competition Act is not among the listed enactments.

5.5 What the Indian position shows

India shows a standing question can be solved while the problem stays. A claimant who wants to complain about a monopolist's conduct can go to the Commission with almost no hurdle. A claimant who wants to complain about environmental harm can go to the Supreme Court, a High Court or the National Green Tribunal with almost no hurdle. Each forum is open in its own domain and closed to the other domain's question. The Law Commission recommended specialist environment courts more than two decades ago,[76] but nothing in the architecture invites a litigant to bring a combined claim, and the competition statute's text does not require the Commission to consider environmental impact when assessing effects on markets.

India's obstacle to combined claims is jurisdiction and remedy. Standing barely figures, which makes the diagnosis different from the American one and the reforms different too.

6. Europe as a Contrast

Three European systems are worth a short detour, because they test whether the American and English results are accidents of local doctrine or products of the subject itself.

At EU level, private standing is broad, and has been since *Courage* and *Manfredi*.[77] The Damages Directive requires Member States to guarantee full compensation to any natural or legal person who suffered harm from an infringement.[78] The substantive law has also moved toward the environment. Article 11 of the Treaty on the Functioning of the European Union requires

[72] SP Gupta v President of India 1981 Supp SCC 87; Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161; Rural Litigation and Entitlement Kendra v State of UP (1985) 2 SCC 431.

[73] MC Mehta v Union of India (1987) 1 SCC 395; Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212; Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647.

[74] MK Ranjitsinh v Union of India 2024 INSC 280.

[75] National Green Tribunal Act 2010, ss 14, 15, 18 and Sch I.

[76] Law Commission of India, 186th Report on Proposal to Constitute Environment Courts (2003).

[77] Courage and Manfredi (n 48).

[78] Directive 2014/104/EU (n 49), art 3.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

environmental protection to be integrated into Union policies, and the Commission's 2023 guidelines on horizontal cooperation contain a chapter on sustainability agreements, including a soft safe harbour for standards that meet stated conditions.[79]

The Commission's own enforcement is the clearest case of the second pattern. In July 2021 it fined Volkswagen, Audi, Porsche and BMW a combined €875 million for agreeing to avoid competing on technology to clean nitrogen oxide emissions beyond what the law required, with Daimler escaping a fine through the leniency programme.[80] The decision confirms that suppression of cleaner technology is a competition harm in its own right, and it opened the way for follow-on damages claims by buyers. The environmental dimension entered the case as the thing the cartel withheld, and the plaintiffs' standing rested on the ordinary status of a purchaser.

Germany shows the same structure. A person 'affected' by an infringement, meaning a competitor or other market participant adversely affected, may claim damages, and decisions of the Bundeskartellamt bind the civil courts.[81] The affected person must still be a market participant.

The Netherlands offers two data points that pull in opposite directions. In its 2015 analysis of the 'Chicken of Tomorrow' arrangement, the Dutch competition authority examined an agreement among producers and supermarkets to sell only slower-growing chickens. It found a restriction of competition and concluded that the animal-welfare benefit to consumers did not outweigh the harm to them from higher prices.[82] Environmental and welfare gains were thus treated as legitimate arguments, assessed against consumer harm on the merits. Separately, in *Milieudefensie v Shell* a Dutch court ordered a multinational group to cut its emissions in a case brought by an environmental foundation, which could sue under the Civil Code provision allowing organisations to act for collective interests.[83] The foundation had standing because the tort system recognises collective environmental interests, and the competition system does not.

The European evidence supports three observations. Broad private standing in competition law does not make ecological harm recoverable. Environmental benefit enters as a justification on the merits, never as an interest that grounds a claim. And the environmental victim's collective standing lives in tort and public law. Even where the gate is wide, the two tracks run in parallel.

7. Assessing the Three Systems

[79] Treaty on the Functioning of the European Union, arts 11 and 101; Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements [2023] OJ C259/1, ch 9.

[80] Car Emissions (n 5).

[81] Gesetz gegen Wettbewerbsbeschränkungen (GWB), ss 33, 33a and 33b.

[82] Authority for Consumers and Markets (ACM), Analysis of the sustainability arrangements concerning the 'Chicken of Tomorrow' (26 January 2015).

[83] Milieudefensie v Royal Dutch Shell plc, Rechtbank Den Haag, 26 May 2021, ECLI:NL:RBDHA:2021:5339; Burgerlijk Wetboek, Book 3, art 305a.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

7.1 The comparison in one table

Dimension	United States	United Kingdom	India
Main gate	Article III, then antitrust injury and the Associated General Contractors factors	Loss or damage caused by the infringement (s 47A); certification for collective claims	Information from any person (s 19); compensation needs a prior finding and proven loss (s 53N)
Who may start	Any person injured in business or property; states; federal agencies	Any person with loss; class representatives in opt-out claims	Anyone may inform the Commission; claimants apply after a finding
Role of a regulator's finding	Prima facie evidence in later private suits (15 USC § 16(a))	Binds the Tribunal in follow-on claims (s 58A)	Condition of any compensation claim
Ecological harm alone	No	No	No; the National Green Tribunal and constitutional courts are the forums
Hybrid claim with commercial injury	Possible but steep: direct purchaser rule, market definition, plausibility	Possible; hurdles are causation, quantum and the pass-on defence	Possible in principle; untested and follow-on only
Public plaintiffs	States as purchasers or parens patriae; no recovery for general economy	Public bodies may sue as persons with loss	State governments and local authorities named in s 53N
Principal obstacle	Antitrust injury	Characterisation and proof of loss	Separation of forums and dependence on Commission findings

Table 3: How the three systems handle combined claims

7.2 Answering the research question

The research question asks 'to what extent', and a single figure would mislead. The answer varies by the kind of claim.

For a plaintiff whose only injury is ecological, standing requirements prevent success in all three systems. In the United States the block comes from the statutory test: the injury is not to

Copyright © Oxford Law Review. (editor@oxfordlr.com)

business or property and does not flow from what makes the conduct unlawful. In the United Kingdom it comes from the definition of recoverable loss. In India it comes from the architecture of the Competition Act, which routes private claims through a prior finding of contravention and then asks for compensable loss. These are three different mechanisms producing one result, and the convergence suggests that the result follows from what competition law is for.

For a plaintiff with a commercial injury linked to conduct that has an environmental dimension, the requirements are an obstacle but not a wall. The American plaintiff must show antitrust injury, plausibly define a market, and, if an indirect purchaser, rely on state repealer statutes. The English plaintiff must show loss, causation and quantum, with the pass-on defence available to the defendant. The Indian plaintiff must wait for a finding. The practical record is sobering for all three: the German carmaker case failed in California while the Commission found an infringement in Europe, and we found no reported Indian compensation award on an environmental theory. But the failures trace more to evidence, plausibility and process than to a rule that bars the plaintiff in principle.

For public plaintiffs, standing is hardly a barrier at all. States in the United States litigate as purchasers and through parens patriae. Indian state governments and local authorities are named in the compensation provision. English public bodies sue like anyone else. The most prominent antitrust case with a climate dimension, *BlackRock*, was brought by states.

7.3 The coal supplier again

Return to the coal supplier of the introduction. Three claimants stand before the courts: the utility that bought coal at monopoly prices, the downstream town whose river is fouled, and an environmental group that has campaigned against the supplier for a decade.

The utility does best everywhere. In the United States it is a direct purchaser, and its overcharge is the textbook antitrust injury. In England it has suffered loss caused by the infringement and, if the Competition and Markets Authority has found the abuse, it can rely on that finding. In India it can apply under section 53N once the Commission or the Appellate Tribunal has made a finding. The fights that remain concern dominance, the counterfactual price and, in England, the pass-on defence.

The town is in a different position. Its injury is the pollution, which stems from the plant and not from the exclusion of rivals. In the United States it fails antitrust injury and the directness factor. In England it has no loss of the relevant kind caused by the infringement. In India the Commission has no mandate over the pollution. Each system points the town toward nuisance, negligence, the Clean Water Act or the National Green Tribunal, where its claim is strong and the supplier's dominance is beside the point.

The environmental group has the weakest claim and a useful part to play. It has no market injury in any of the three systems. In India it can inform the Commission, and in the United Kingdom it may persuade the CMA to act, but it cannot recover. It can help a class or a state to assemble the case, and it can bring citizen suits and public-law claims where those exist. Its standing problem is real in the competition forum and absent in the environmental ones.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

Sorted this way, the allocation looks sensible. Each claimant has a forum in which its injury counts. The troubling feature is not that the town and the group lose the competition case. It is that none of the three systems makes sure that facts found in one forum travel to the other.

7.4 How much of the failure is really about standing?

The answer is less than the question assumes. In the United States, the antitrust injury requirement does most of the work, and it is a standing doctrine only in a loose sense. It is better understood as a substantive limit on what counts as a compensable wrong. In the United Kingdom the gate is causation, quantum and certification, and standing hardly enters. In India, the decisive features are the jurisdictional split and the dependency on the Commission's findings, and the ordinary standing question has been resolved in the claimant's favour.

This matters for the way reformers frame the problem. A proposal to 'relax standing' in antitrust would have almost no effect in the United Kingdom or India, where standing is already relaxed, and in the United States it would run into a requirement, antitrust injury, that is really a rule about the scope of the cause of action. The obstacle is the definition of the harm competition law recognises.

7.5 Should the filter be loosened?

The case for loosening has some force. A cartel that holds back clean technology harms people beyond its customers, and if damages are limited to purchasers, the deterrent is weaker than the full social cost would justify. Treble damages were meant to compensate for the difficulty of detection and to reward private enforcement, and ecological victims might add enforcement capacity. Consumers also increasingly care about environmental attributes, which allows an argument that quality, including environmental quality, is a dimension of competition and that its suppression injures buyers who valued it.

The case against is stronger. Competition courts are poorly equipped to value ecological harm, apportion it among defendants or weigh it against the economic gains that competition produces. An opened gate would let in claims that are indistinguishable from ordinary tort or regulatory claims, and it would raise the stakes of antitrust litigation without improving its focus. The BlackRock example adds a point about symmetry. A broader standing rule would help any plaintiff who can claim a link to environmental harm or environmental policy, and the beneficiaries would include states and firms that want to attack climate cooperation as a cartel. A rule that serves both sides of a political dispute is not obviously an environmental reform.

This paper's view is that the gate should stay, with its logic openly acknowledged.[84] The more productive step is to make sure that plaintiffs who do have market injuries can plead them without being told that their environmental motive disqualifies them.

[84] Giorgio Monti, 'Four Options for a Greener Competition Law' (2020) 11 Journal of European Competition Law & Practice 124.

Copyright © Oxford Law Review. (editor@oxfordlr.com)

8. Routes That Remain Open

If the gate is calibrated to market injury, the practical question for a plaintiff or an advocate is how to present a combined grievance through it. Four routes emerge from the cases.

The first is to plead through price, quality and innovation. The German carmaker complaints tried this, alleging that the defendants agreed not to compete on emission-control performance. On the reported accounts, those complaints failed for want of specific facts showing an agreement that went beyond legitimate cooperation, and for want of a market in which the harm could be measured, not because a court held that buyers cannot be hurt by suppressed innovation. Plaintiffs who can show that a defendant's conduct degraded a product attribute that buyers paid for stand on firm ground.

The second is to work through public enforcers. In India an environmental organisation can lodge information with the Commission under *Samir Agrawal* without proving any injury of its own.[85] In the United States, private parties can encourage state attorneys general to bring parens patriae actions. In the United Kingdom, evidence given to the CMA may lead to an infringement decision that binds the Tribunal in follow-on claims.[86] The route sacrifices control, since the enforcer decides what to pursue, but it avoids the standing problem completely.

The third is to use the parallel track for the ecological harm. Citizen suits under the Clean Air Act and the Clean Water Act in the United States, the National Green Tribunal and constitutional petitions in India, and judicial review and tort in the United Kingdom all carry environmental claims that competition law cannot.[87] A combined case is best treated as two cases with a shared evidentiary record.

The fourth is institutional and belongs to legislators and regulators. Nothing now requires a competition authority to be told when an environmental tribunal finds that a dominant firm's conduct has shut out cleaner rivals, or the reverse. A statutory duty to share findings between the Commission and the National Green Tribunal in India, a memorandum of understanding between the CMA and the environmental regulators in the United Kingdom, and greater use of agency statements of interest in federal litigation in the United States would let each forum act on information that the other holds. The reforms are modest, and they respect the gate while improving the traffic around it.

A caution runs through all four routes. Any pleading that stretches an environmental motive into a competition theory invites the response that the claim is a regulatory complaint in disguise, and courts can be expected to say so.

9. Where the Filter Leaves Room

[85] Samir Agrawal (n 4).

[86] Competition Act 1998, s 58A (n 46).

[87] Clean Air Act 1970, 42 USC § 7604; Federal Water Pollution Control Act (Clean Water Act) 1972, 33 USC § 1365; National Green Tribunal Act 2010 (India), s 14; Senior Courts Act 1981, s 31.

Copyright © Oxford Law Review. (editor@oxfordlr.com)
URN:OXF:UK:0000OXFLR:V1Iz:277

 DOI: https://10.5281/zenodo.23503319

Critics often call these standing rules barriers to environmental justice. For the plaintiff with only an ecological injury the label fits; for almost everyone else it misleads. Nobody asks whether the plaintiff's cause is good. The only question is whether the plaintiff was hurt through the market in a way the statute counts, and many people with environmental concerns also hold market injuries: buyers who paid for products degraded by collusion, rivals excluded by a dominant incumbent, public bodies that bought at inflated prices.

The comparison also shows why simple fixes disappoint. The United States has the most layered filter and the most developed doctrine, and its weakness is that the doctrine's logic leaves no place for harm outside the transaction. The United Kingdom has the lowest threshold, and its weakness is that the threshold only moves the filtering to causation and certification. India has the most generous door, and its weakness is that no one holds a key to the room next door. In each system the missing element is a link between the forum that understands markets and the forum that understands ecosystems.

The BlackRock litigation shows the other side of the argument. If the states succeed in showing that climate-motivated coordination among investors restricted coal output, they will have used the market-injury filter exactly as it was designed, and the courts will have confirmed that it admits plaintiffs on both sides of the climate debate who can describe their loss as a price. The ecological victim, who cannot, will still be standing outside. The next advance will come from tribunals that talk to each other, and not from a competition statute stretched past what it measures.

References

Table of Cases

United States

American Electric Power Co Inc v Connecticut 564 US 410 (2011)

Apple Inc v Pepper 587 US 273 (2019)

Associated General Contractors of California Inc v California State Council of Carpenters 459 US 519 (1983)

Atlantic Richfield Co v USA Petroleum Co 495 US 328 (1990)

Brown Shoe Co v United States 370 US 294 (1962)

Brunswick Corp v Pueblo Bowl-O-Mat Inc 429 US 477 (1977)

California v ARC America Corp 490 US 93 (1989)

Cargill Inc v Monfort of Colorado Inc 479 US 104 (1986)

Clapper v Amnesty International USA 568 US 398 (2013)

OXFORD LAW REVIEW
Copyright © Oxford Law Review. (editor@oxfordlr.com)

Eastern Railroad Presidents Conference v Noerr Motor Freight Inc 365 US 127 (1961)

Friends of the Earth Inc v Laidlaw Environmental Services (TOC) Inc 528 US 167 (2000)

Hanover Shoe Inc v United Shoe Machinery Corp 392 US 481 (1968)

Hawaii v Standard Oil Co of California 405 US 251 (1972)

Illinois Brick Co v Illinois 431 US 720 (1977)

In re German Automotive Manufacturers Antitrust Litigation, 497 F Supp 3d 745 (ND Cal 2020)

Juliana v United States 947 F3d 1159 (9th Cir 2020)

Lexmark International Inc v Static Control Components Inc 572 US 118 (2014)

Lujan v Defenders of Wildlife 504 US 555 (1992)

Massachusetts v EPA 549 US 497 (2007)

National Collegiate Athletic Association v Alston 594 US 69 (2021)

National Society of Professional Engineers v United States 435 US 679 (1978)

Native Village of Kivalina v ExxonMobil Corp 696 F3d 849 (9th Cir 2012)

Reiter v Sonotone Corp 442 US 330 (1979)

Sierra Club v Morton 405 US 727 (1972)

Spokeo Inc v Robins 578 US 330 (2016)

State of Texas v BlackRock, Inc., No 6:24-cv-437-JDK (ED Tex 1 August 2025)

TransUnion LLC v Ramirez 594 US 413 (2021)

United States v Grinnell Corp 384 US 563 (1966)

Washington Environmental Council v Bellon 732 F3d 1131 (9th Cir 2013)

United Kingdom

Lungowe v Vedanta Resources plc [2019] UKSC 20

Merricks v Mastercard Inc [2020] UKSC 51

Okpabi v Royal Dutch Shell plc [2021] UKSC 3

R (Friends of the Earth Ltd) v Heathrow Airport Ltd [2020] UKSC 52

R v Inspectorate of Pollution, ex p Greenpeace Ltd (No 2) [1994] 4 All ER 329

OXFORD LAW REVIEW
Copyright © Oxford Law Review. (editor@oxfordlr.com)

R v Secretary of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd [1995] 1 WLR 386

Sainsbury's Supermarkets Ltd v Visa Europe Services LLC [2020] UKSC 24

European Union

Case C-453/99 Courage Ltd v Bernard Crehan [2001] ECR I-6297

Joined Cases C-295/04 to C-298/04 Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA [2006] ECR I-6619

India

Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161

Bharti Airtel Ltd v Union of India (2015) 12 SCC 1

Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212

MC Mehta v Union of India (1987) 1 SCC 395

MK Ranjitsinh v Union of India 2024 INSC 280

Rural Litigation and Entitlement Kendra v State of UP (1985) 2 SCC 431

Samir Agrawal v Competition Commission of India 2020 SCC OnLine SC 1024

SP Gupta v President of India 1981 Supp SCC 87

Subhash Kumar v State of Bihar (1991) 1 SCC 598

Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647

Netherlands

Milieudefensie v Royal Dutch Shell plc, Rechtbank Den Haag, 26 May 2021, ECLI:NL:RBDHA:2021:5339

Table of Legislation and Treaties

United States

Clayton Act 1914, 15 USC §§ 15, 15c, 16, 26

Clean Air Act 1970, 42 USC § 7604

Federal Water Pollution Control Act (Clean Water Act) 1972, 33 USC § 1365

Hart-Scott-Rodino Antitrust Improvements Act 1976, 15 USC § 18a

Copyright © Oxford Law Review. (editor@oxfordlr.com)

 DOI: https://10.5281/zenodo.23503319

Sherman Act 1890, 15 USC §§ 1–2

United Kingdom

Competition Act 1998

Competition Appeal Tribunal Rules 2015 (SI 2015/1648)

Consumer Rights Act 2015

Senior Courts Act 1981

India

Competition Act 2002

Competition (Amendment) Act 2023

Constitution of India 1950

Finance Act 2017

National Green Tribunal Act 2010

European Union and International

Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union [2014] OJ L349/1

Treaty on the Functioning of the European Union

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447

Germany and the Netherlands

Burgerlijk Wetboek (Netherlands), Book 3, art 305a

Gesetz gegen Wettbewerbsbeschränkungen (Germany), ss 33, 33a, 33b

Official Decisions, Guidance and Reports

Authority for Consumers and Markets (ACM), *Analysis of the sustainability arrangements concerning the 'Chicken of Tomorrow'* (26 January 2015)

Case AT.40178 Car Emissions (Commission Decision, 8 July 2021)

OXFORD LAW REVIEW
Copyright © Oxford Law Review. (editor@oxfordlr.com)

Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements [2023] OJ C259/1

Competition and Markets Authority, *Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements* (12 October 2023)

Law Commission of India, *186th Report on Proposal to Constitute Environment Courts* (2003)

Books

Hovenkamp H, *Federal Antitrust Policy: The Law of Competition and Its Practice* (6th edn, West Academic 2020)

Nowag J, *Environmental Integration in Competition and Free-Movement Laws* (OUP 2016)

Whish R and Bailey D, *Competition Law* (11th edn, OUP 2024)

Journal Articles

Holmes S, 'Climate Change, Sustainability, and Competition Law' (2020) 8 Journal of Antitrust Enforcement 354

Monti G, 'Four Options for a Greener Competition Law' (2020) 11 Journal of European Competition Law & Practice 124

Stucke ME, 'Reconsidering Antitrust's Goals' (2012) 53 Boston College Law Review 551

Sunstein CR, 'What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III' (1992) 91 Michigan Law Review 163

Publisher's Note

Oxford Law Review remains neutral with regard to jurisdictional claims in published maps and institutional affiliations. Oxford Law Review or its licensors retain the rights to this article pursuant to the applicable publishing agreement with the author(s) or other rightsholder(s). Any self-archiving, reproduction, distribution, or reuse of the accepted manuscript or published version is subject to the terms of the applicable publishing agreement and applicable law.