

Response by the Danish Government to the evaluation of the EU competition rules on horizontal agreements between companies

The Danish Government welcomes the opportunity to comment on the evaluation of the EU competition rules on horizontal agreements between companies.

The following remarks are aimed at the evaluation of the Commission's guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements (the Horizontal Guidelines).

Defining the boundaries for legal and illegal agreements can sometimes be difficult and relies on a case-by-case approach. In this respect, the Horizontal Guidelines is a very valuable tool providing helpful and necessary guidance to both the businesses engaging in horizontal cooperation and the national competition authorities when dealing with the legal questions arising from horizontal cooperation.

Continue to ensure free and fair competition

Since horizontal cooperation often will take place between actual or potential competitors, it is crucial that horizontal cooperation respects the competition rules in order to avoid negative effects for markets and citizens and thus jeopardizing the objectives of the competition rules. Therefore, the Danish Government do not call for a fundamental change of the Horizontal Guidelines as we believe that free and fierce competition is the best way to ensure efficient price-setting, choice and innovation, thus making European companies able to compete globally.

However, given the importance of the guidelines, it is essential that they reflect new developments. Therefore, the Danish Government urge the Commission to:

Update the guidelines in the light of the digital economy

New business models and new technologies have led to novel forms of cooperation, thus making it harder for businesses – and sometimes the authorities - to navigate on what is allowed and what is not by the EU competition

law. Without the necessary guidance, the willingness to engage in such co-operation may be hampered.

Thus, there is a need to update the Horizontal Guidelines in the light of the digital economy. To this end, there is a need to clarify the application of Article 101(1) and 101(3) to agreements in new areas such as platforms, digital ecosystems and data. In order to make the guidelines useful for both businesses and authorities it is that the guidelines contains as many practical examples as possible.

Focus on sustainable agreements

In order to deliver on the goals of the EU's Green Deal, there is a fast growing demand for sustainable solutions and consequently a growing requirement for advice on how to assess such initiatives in relation to the competition rules. Thus, defining the scope and interpretation of EU competition law as clearly as possible is needed.

The Horizontal Guidelines is a good opportunity to provide more clarity to business on how to put together sustainability agreements without distorting competition. However, it is important that the guidelines draw up the lines between acceptable sustainability agreements, and agreements, which breach Article 101(1), either because the agreements may harm competition as such or because they serve as a cover up for a cartel agreement.

As sustainability is difficult to measure it is important that the guidelines also explain what it takes to fulfil the conditions in Article 101(3); that the agreement must create objective efficiencies, which benefit consumers and the agreement is indispensable to obtain these efficiencies and do not unnecessarily restrict or eliminate competition. In this respect, it is important that guidelines emphasize that efficiencies will need to be substantiated.

We hope these comments will be useful for your evaluation on the Horizontal Guidelines. The Danish Ministry of Industry, Business and Financial Affairs would be at your disposal to further elaboration or any follow-up questions you may have.

Finally, we refer to the response by The Danish Competition and Consumer Authority which in its capacity of independent competition authority will provide more detailed comments on both the two Block Exemption Regulations for horizontal co-operation agreements (R&D BER and Specialisation BER) as well as the Horizontal Guidelines.