



Competition policy contributing to the Green Deal – Consultation by DG COMP

November 2020

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Energy Pool would like first to thank DG COMP for giving the opportunity to all stakeholders, including smaller ones like us, to give their opinion and contribute to DG COMP's works. To the best of our knowledge, this is a quite unique initiative lead by DG COMP.

We are not experts in competition law, but we would like to modestly share our experience as a new entrant on the electricity market and provider of energy transition solutions (ie load flexibility solutions, also called Demand Response).

Energy Pool is a French company set up in 2010 (but having also activities in the Netherlands, Japan, Turkey and Cameroun) working on load flexibility to the benefit of the electric system. Concretely, Energy Pool works together with consumers to unlock and assess their load flexibility potential (how they can change their consumption patterns to better adapt their load to the electricity real time availability), and offer this flexibility on the markets (either the balancing and reserves markets operated by TSOs, or wholesale markets). This activity is promoted by EU law since the Energy Efficiency directive (back in 2012) and again in the Clean Energy Package (2019) since it is facilitating energy transition (by allowing a greater integration of variable generation like renewables). Though, it is still not implemented in all Member States due to political/regulatory and market barriers.

While removing political/regulatory barriers is an ongoing process, involving potentially other services of the European Commission, we believe that DG COMP can have a key role to play in contributing to remove those market barriers that clearly hamper or even prevent us from delivering our services (despite their necessity for the achievement of the Green Deal).

PART 1 : State Aid control

1. **What are the main changes you would like to see in the current State aid rulebook to make sure it fully supports the Green Deal ? Where possible, please give examples where you consider that current State aid rules do not sufficiently support the greening of the economy and/or where current State aid rules enable support that runs counter to environmental objectives.**
2. **If you consider that lower level of State aid, or fewer State aid measures, should be approved for activities with a negative environmental impact, what are your ideas for how that should be done ?**
 - a. **For projects that have a negative environmental impact, what ways are there for Member States or the beneficiary to mitigate the negative effects ?**
3. **If you consider that more State aid to support environmental objectives should be allowed, what are your ideas on how that should be done ?**
 - a. **Should this take the form of allowing more aid (or aid on easier terms) for environmentally beneficial projects than for comparable projects which do not bring the same benefits (« green bonus ») ? If so, how should this green bonus be defined ?**

b. Which criteria should inform the assessment of a green bonus ? Could you give concrete examples where, in your view, a green bonus would be justified, compared to examples where it would not be justified ? Please provide reasons explaining your choice.

4. How should we define positive environmental benefits ?

a. Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy ? Or would any kind of environmental benefit be sufficient ?

1. As mentioned in the preliminary text of your consultation, « *State aid control relates to the assessment of the compatibility of an aid measure with the internal market* ». This is particularly relevant and useful in a context where the internal market is functioning properly and regularly according to a liberalised and competitive approach.

As far energy and more specifically electricity markets are concerned, the European Commission recently outlined in its communication on an EU-wide assessment of National Energy & Climate Plans¹ that the internal energy market, as defined in the Clean Energy Package, is still not fully properly implemented by Member States. In particular, the European Commission stresses that « *the NECPs assessment highlights several shortcomings in the energy market (flexibility through smart grids, storage and limited demand-side response). These have a negative impact on costs for consumers and industry, hamper a successful recovery, and the transition towards climate neutrality* ». The EC further highlights several causes of this underperforming internal energy market (amongst other subsisting subsidies to fossil fuels) and lists solutions to improve the functioning of the market (in particular the roll-out of smart meters allowing smart grids and flexibility to grow, and the development of interconnections). Nevertheless, the EC also stresses that « *though most Member States recognise the importance of the new electricity market design, only some have a holistic approach to necessary changes in forward-looking objectives* ».

This being said, we believe that DG COMP when allowing State aids has a key role to play :

- First of all, we wonder whether the traditional methodologies used by DG COMP (and other national competition authorities) for the assessment of State aids are relevant on this (electricity) market, considering its current pathologic state. Couldn't DG COMP adapt its tools and methodologies to the particular context of this very imperfect electricity market?

We strongly believe that DG COMP shall be able and authorised to adapt its jurisprudence to the specific market context.

To the best of our knowledge, this is exactly what DG COMP dared in its decision SA.43735 allowing the German Interruptibility scheme AbLaV, in which DG COMP recognised that a core objective of the measure is to (32) « *ensure short term system balance, not because there are no other means available to ensure system adequacy, but rather with the intention to **add a cost-efficient and environmentally beneficial instrument to the set of instruments at the TSOs' disposal to address short term system balance, similar – but not equal – to regular balancing or***

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600339518571&uri=COM%3A2020%3A564%3AFIN>

ancillary services ». DG COMP also added that (76) « *(t)he fact that there is a **growing need for additional capacity provided by demand side response in the German market** and in view of the fact that **market failures are being addressed by the German government but are currently still present in the market, the measure can be deemed necessary**. The Commission however also notes that if market barriers are successfully removed, the necessity to foster demand response via an interruptibility scheme may no longer be present in the future* ». Similar approaches shall be authorised and further implemented by DG COMP (in particular when assessing various Demand Response programs) in a view to develop a consistent State aid policy among Europe.

The pathologic state of the current electricity market also hampers necessarily investments to green our economy and in particular, our industry. As an example, electrification of industrial processes has been recognized as a key element to reach decarbonization of EU economy by 2050. Such electrification though requires R&D and investments today to be ready by 2050. To date, considering the lack of long term market signals on the electricity market (as well as the poor incentives given by the carbon price in EU), no market player truly and significantly invests in such transitioning/switching solutions. DG COMP might be act to ease such investments, notably via its State aid policy, but also by fostering collaborative R&D programs in the industry (including with several competitors) without considering these latters as being cartels.

- Second, as pointed out by the EC in its assessments of the NECPs, only few Member States « *have a holistic approach to necessary changes in forward-looking objectives* ». Considering this weakness in national policies, we believe that the EC shall further support Member States in defining the best changes to implement to reach « *forward-looking objectives* », including notably Green Deal objectives. In this respect, DG COMP in particular shall play a key role in making sure these changes happen, conduct to reaching both the objectives of the Green Deal but also, in the longer term, ensure the well-functioning of the internal energy market.

On this latter aspect, we suggest that :

- DG COMP systematically includes in its decisions on State aids the detailed conditions under which such aids can and shall be removed or suspended. This would give market players the necessary visibility to live with State aids and prepare for living without aids. Such conditions shall avoid if possible to be defined in terms of simple deadlines but rather in terms of market conditions ;
 - DG COMP should also assess as exhaustively as possible subsidies granted today in the energy sector. Most generation assets (from renewables to thermal power plants) benefit from State supports. In this context, it is nor fair neither possible to have well functioning « technology neutral » markets. In other terms, it is today impossible for alternative technologies like Demand Response to benefit from a level playing field on either electricity markets as long competitors benefit from support schemes (distorting necessarily the merit order). DG COMP shall therefore encourage the progressive and coordinated removal of such support schemes so as to prepare the conditions for a fair market. Please note on this aspect, that we cannot afford waiting too long for having this level playing field in place, since security of supply is at stake : as long electricity scarcity is not properly reflected in market signals, no trigger will be sent to launch the necessary investments to secure supply.
5. Now that the taxonomy directive exists and that delegated acts are about to be adopted and published, we believe that DG COMP shall rely on such texts. Nevertheless, the taxonomy

directive is not exhaustive. For instance, the directive does not mention the role and CO2 impact of prosumers (ie active consumers accepting to modify their load upon request) in general and of Demand Response in particular. This shall not be a reason for forgetting them in DG COMP assessments, and DG COMP should be able to consider additional environmental benefits not listed in the directive. By the way, in its above mentioned decision SA.43735, DG COMP was able to affirm that the interruptibility scheme in Germany is a « *cost efficient and environmentally beneficial instrument* », without having to refer to any other regulation or study.

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