



**Blockchain & Climate Institute's response to  
European Commission (DG Competition)  
Call for contributions on Competition Policy supporting the Green Deal**

**About the BCI**

1. The Blockchain & Climate Institute (BCI) is a progressive think tank providing expertise on the deployment of emerging technologies for climate and sustainability actions. Its mission is to effect positive changes by raising awareness of the potential of blockchain technology to considerably enhance state and non-state climate actions through targeted technological interventions. BCI's work includes advocating for and advising governments on the adoption of policy and regulatory frameworks which enable the deployment of blockchain and emerging digital technologies to support the decarbonisation of the global financial sector.
2. The BCI is a network of 80 climate blockchain expert members in over 30 countries. Among the members of the 100-strong secretariat, Alastair MARKE (Director-General), Jean-Paul FABRI (Director of Development), Dr Sai NELLORE (Principal Assistant Director-General), and Dr Maria GRAZIA-VIGLIOTTI (Deputy Head of Research (Finance)) are UK, Malta and India representatives to ISO TC307 Blockchain & Distributed Ledger Technology Standards Working Groups. The Director-General is also an ad hoc expert advisor to the All-Party Parliamentary Group on Blockchain.

**Executive Summary**

3. Although currently in the early stages of development, distributed ledger technology ("DLT") is a promising technology with enormous potential to help underpin the EU's Green transition. Specifically, DLTs can play a key role in supporting the Union's climate change mitigation and adaptation efforts and, as laid out in the Commission's Communication on the Green Deal, will act as a critical enabler in achieving the EU's broader sustainability goals across various sectors.
4. To unlock the full potential of blockchain and DLT to help achieve the Green Deal objectives, the collaboration among multiple users (who are often competitors) is unavoidable. **To enable innovation to take place and contribute to Green Deal objectives, participants need to be comfortable that they can collaborate in a way which does not result in investigations and fines for competition law violations.**
5. The BCI's response to this call for input, therefore, focusses on antitrust rules. In particular, certain features of blockchain and DLT can raise specific antitrust questions and uncertainties that could slow down the use of these technologies to help address Green Deal objectives.
6. Firstly, private (also referred to as 'permissioned') blockchain ledgers used for many blockchain applications involve an invitation to join and a set of rules governing which parties are allowed to participate. As a result, actors may need to ensure that such access control mechanisms do not violate competition law. (By contrast, 'public' blockchain ledgers are completely open and

enable anyone to join and participate in the network, but may not be suitable for certain blockchain projects, for example, due to limitations on the privacy of transactions).

7. Secondly, a key feature or benefit of blockchain and DLT is that it enables transparency of information sharing on a fully auditable ledger of transactions; each participant on the network maintains an identical record of the transactions recorded on the distributed ledger. However, where this involves information that may be competitively sensitive, participants may be concerned about potential competition law risks of sharing or recording this information. **Clarity on the type of information that can be stored on the blockchain (versus information that needs to be stored 'off-chain') or the factors to be considered could therefore be helpful to assess potential competition law risks of sharing information on blockchain.**
8. Thirdly, approval of transactions on blockchain often involves approval by consensus between the participants in the blockchain. Each transaction on a blockchain is performed by all participants ("nodes") in accordance with the so-called "consensus mechanism". Transactions are only added to the blockchain where a sufficient number of nodes agree that the transaction is valid.
9. **For projects seeking to deploy blockchain for climate and sustainability actions, uncertainty relating to competition law treatment of these aspects of blockchain technology raises additional legal risk that could discourage much-needed investment.** Guidance on the competition law treatment of blockchain technology could therefore help provide legal certainty. **Clarity is particularly important where collaboration is intended to achieve sustainability objectives that individual actors would be unlikely to achieve on their own.**

## Response to Consultation questions

### State aid control

*Consultation Question 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 provide 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.*

No response.

*Consultation Question 2: If you consider that lower levels 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?*

No response.

*Consultation Question 2a: For projects that have a negative environmental impact, what ways are there for Member States or the beneficiary to mitigate the negative effects? (For instance: if a broadband/railway investment could impact biodiversity, how could it be ensured that such biodiversity is preserved during the works; or if a hydro power plant would put fish populations at risk, how could fish be protected?)*

*Consultation Question 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?*

10. To increase the effectiveness of State aid, the *De Minimis* Regulation could be reconsidered to enable higher amounts of aid to be provided to projects to achieve Green Deal objectives. This could be achieved by raising the ceiling for certain qualifying projects above the existing €200,000 threshold, or by exempting payments relating to specific policy measures.
11. For example, the €200,000 ceiling has limited the effectiveness of the UK Feed-in Tariff and Renewable Heat Incentive to support community and renewable energy schemes in the UK. As a result of the *De Minimis* Regulation, any installation owners who has previously benefited from financial aid worth more than €200,000 over a period of three fiscal years were not eligible to receive the Feed-in Tariff or Renewable Heat Incentive payments. This has hampered the effectiveness of these policies to encourage investment in community energy generation.

*Consultation Question 3a: 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?*

12. Compliance with relevant ISO standards on climate change mitigation such as ISO 14064 and ISO 14067 could be used as part of the eligibility criteria for projects qualifying for additional State aid (or aid on easier terms). For example, if green projects (e.g. community energy) meet these standards, the State aid rules could be relaxed by means of increasing the state aid limit for a certain period during the initial phase of the community energy project.

*Consultation Question 3b: 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.*

No response.

*Consultation Question 4: How should we define positive environmental benefits?*

No response.

*Consultation Question 4a: Should it be by reference to the EU taxonomy<sup>3</sup> 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?*

No response.

### Antitrust rules

*Consultation Question 1: Please provide actual or theoretical examples of desirable cooperation between firms to support Green Deal objectives that could not be implemented due to EU antitrust risks. In particular, please explain the circumstances in which cooperation rather than competition between firms leads to greener outcomes (e.g. greener products or production processes).*

### Example 1 – Blockchain in supply chain management

13. The use of DLT in supply chain management could help to support sustainability outcomes in line with the Green Deal objectives by enabling visibility of efficient supply chains and assurance of ethical trading partners. However, to do so would involve the coming together of various players within the supply chain, including the sharing of proprietary technology and data between competitors.
14. As background, one of the challenges of sustainability in supply chains is that it is difficult for buyers to maintain genuine transparency throughout their complex networks of suppliers. This makes it difficult to properly assess how vendors operate in order to ensure they comply with the relevant standards. Blockchain and DLT can enable traceability of material/components in a supply chain, as every step of its journey can be immutably noted on a blockchain. This enables its exact provenance to be recorded and proved, adding much-needed transparency. For example, where the material is responsibly sourced, all parties in the supply chain would be able to verify the sustainability of the material, thereby incentivising more sustainable supply practices. In some cases, DLT-based smart contracts might specify automated punishments for deviations from the commonly agreed sustainable supply practices.
15. This traceability could also bring wider sustainability benefits. The ability to use DLT to accurately track substandard products and identify their occurrence further upstream in the supply chain could help reduce the scope of product recalls, with considerable greenhouse gas reductions and other resource savings. Increased supply chain data can also help improve practices and efficiencies, helping to decrease resource inefficiencies and consumption and boost movement to a clean, circular economy. For example, in a situation where one transporter is late and another early, predefined automated smart contracts could transfer an appointment from one transporter to the other, thereby saving transport costs and reducing CO2 emissions. In the future, the use of DLT in supply chains might also enable the application of costs to carbon in the supply chain.
16. However, for such schemes to be successful, by their very nature they involve the coming together of various players across and within the supply chain to develop the blockchain technology and its application together. These schemes would only be successful if a sufficient proportion of producers, suppliers, distributors and brand owners of a particular product come together to enable products/components to be traced. As explained above, blockchain-based supply chain networks may require a private, permissioned blockchain with a limited number of players (rather than a public blockchain). To enable this to take place, parties would need to be comfortable that they could participate in the network without concerns that this might constitute a prohibited concerted practice.
17. In particular, in relation to information sharing, a range of data may be available to the participants, including the status and type of product/component and the relevant standards, or data sharing between competitors for the purpose of identifying manufacturing processes that are less harmful to the environment. As this may include sensitive information, antitrust risks may mean parties are unwilling to share or use this information in a meaningful way. **Along with other barriers to entry, antitrust risk could prevent viable projects from getting off the ground. Sustainability projects might already be seen as 'non-essential' by businesses, who may be unwilling to accept the antitrust risks without clearer guidance from regulators.**

*Consultation Question 2: Should further clarifications and comfort be given on the characteristics of agreements that serve the objectives of the Green Deal without restricting competition? If so, in which form should such clarifications be given (general policy guidelines, case-by-case assessment, communication on enforcement priorities...)?*

18. The response of antitrust authorities to the Covid-19 emergency demonstrates that loosening rules on certain types of collaboration can help ensure the attainment of objectives that are critical to society as a whole. BCI would encourage similar types of reassurance and comfort letters in relation to the climate emergency. For example, issuance of comfort letters that competition authorities will not take public competition law enforcement action in relation to co-ordination between undertakings which is undertaken solely to address concerns arising from the climate change crisis. For this to be effective, businesses would need to be provided with clear guidance on the main criteria involved in assessing any such cooperation projects.
19. In the BCI's view, the most helpful way for clarification to be provided is up-front policy guidelines or communication of enforcement priorities (rather than case-by-case assessment, which may require legal advice to apply this to different projects). **Projects to use blockchain to address climate change are often small-scale with limited resources, including limited access to legal advice. It is therefore important that guidance is provided up-front and is sufficiently clear to provide the necessary assurance to participants.**

*Consultation Question 3: Are there circumstances in which the pursuit of Green Deal objectives would justify restrictive agreements beyond the current enforcement practice? If so, please explain how the current enforcement practice could be developed to accommodate such agreements (i.e. which Green Deal objectives would warrant a specific treatment of restrictive agreements? How can the pursuit of Green Deal objectives be differentiated from other important policy objectives such as job creation or other social objectives?).*

20. Further clarification could be provided in order to ensure that projects which are intended to bring about emissions reduction or other climate change mitigation measures can benefit from an exemption under Article 101(3) TFEU.
21. In the context of restrictive agreements, one of the conditions that is required to be met to benefit from an exemption under Article 101(3) TFEU is that "consumers get a fair share of the resulting benefit". The BCI consider that "consumers" for this purpose should be interpreted widely, to include prosumers, consumers and future consumers as a whole, and potentially, consumers/society as a whole in the spirit of intra- and inter-generational equity underpinning the UN Sustainable Development Goals.
22. A key challenge of climate change mitigation is that greenhouse gas emissions involve negative externalities, i.e. the indirect and societal costs of emitting greenhouse gases are not borne by the producer directly, yet are suffered by society as a whole. To help address this, the wider societal benefits of climate change mitigation projects needs to be recognised.
23. For example, consider the use of blockchain to trace the manufacture of a car / its components and provide assurance that the production methods used follow recognised lower-emission production standards. Although the individual purchaser of that car might receive some comfort from the assurance provided (for example through product certification), the real benefits of the scheme are to society at large, by enabling the manufacturer and its suppliers to be incentivised for investing in environmentally sustainable production methods. **The BCI considers that**

**these wider benefits should be relevant for the purpose of assessing the criteria under Article 101(3) TFEU of whether consumers get a fair share of the resulting benefit.**

Part 3: Merger control

*Consultation Question 1: Do you see any situations when a merger between firms could be harmful to consumers by reducing their choice of environmentally friendly products and/or technologies?*

No response.

*Consultation Question 2: Do you consider that merger enforcement could better contribute to protecting the environment and the sustainability objectives of the Green Deal? If so, please explain how?*

No response.

**Contact point**

24. Request for further discussions should be sent to:

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