



Hynek BROM
Vice-Chairman
Office for the Protection of Competition



UOHSX00E51UY

Brno, 20 November 2020

Dear Mr. Guersent,

On behalf of the Office for the Protection of Competition, the Czech National Competition Authority, let me take the opportunity to respond your request for contributions addressed to the European Competition Network. In October 2020, the European Commission published a call for contributions with the purpose of gathering ideas and proposals regarding relationship between the EU competition policy and the European Green Deal (hereinafter referred to as “the Call for Contributions”). It concerns mainly the question how competition rules and sustainability policies work together and whether they could do that even better.

The Call for Contributions consists of three parts – State aid control, Antitrust rules and Merger control. Within these three areas the Commission expects opinions and proposal, how competition policy could contribute to achieving the Green Deal objectives.

I would like to emphasize, that this letter focuses on Antitrust rules and Merger control only. In the area of State aid, the Czech NCA acts as a monitoring, coordinating and consulting body that advises governmental agencies on the handling of individual cases. That is why the Czech NCA has asked these State aid providers for submitting their own contributions directly to the Commission. We have proceeded in this way with regard to the nature of the Call for contributions and the questions raised by the Commission, which are rather ideological and which are to serve for opening further discussion. At a later stage, during drafting of possible State aid rules review, we are ready to submit our view and comments to the Commission.

Firstly, the Commission states in the Call for Contributions that competition policy already contributes to the Green Deal objectives. In particular, it does so by means of facilitating effective and competitive markets and thus helps to achieve goals of sustainable development policy.

The Czech NCA notes that in order to assess the competition policy and its possible changes, by which it should better promote the Green Deal, it is necessary to emphasize reciprocity of objectives and proportionality of instruments. The competition policy objective is to protect, promote and develop effective competition, delivering efficiencies to consumers. Generally,

the effective protection of competition may be achieved when there is a level playing field on the markets, which is actually its basic assumption. Therefore, competition law should not be based on the principle of regulatory tool, which is usually applied on ex-ante basis. When assessing possible changes to competition policy tools, which would contribute to promotion of the Green Deal in a better and more effective way, the Commission should take this principle of competition law as an underlying concept. Furthermore, the Czech NCA believes that any change to the competition policy should be based on the outcome of complex analysis taking into account fundamental questions, whether the competition law really is the effective tool promoting the Green Deal and whether the change to competition policy would not have negative impact on the market, either in a form of price increase, discrimination of certain market players or any other. In case of introducing changes to competition policy without proper impact analysis, there is a risk that implementation of tools which should promote the Green deal might be in conflict with the principle of equal access and equal conditions on the market. Such conflict would have negative impact on the common market and undermine basic competition principles. That is why the Commission should firstly analyze, whether the current competition policy is really not sufficient enough to approach achievement of the Green Deal, and whether there are no other instruments and/or policies which would be more appropriate to use when promoting the Green Deal more efficiently and without risk of conflict of objectives.

Within the area of antitrust, the Commission raises several questions. As regards the first question focused on the cooperation between undertakings, the Czech NCA states that it has no practical experience with the relationship between application of competition policy and achieving the Green Deal objectives. Subsequently, it has never dealt with the above-mentioned issue and it has not received any significant and the issue related complaints from market players. The Czech NCA is therefore not able to provide any specific case, representing potential conflict or discrepancy between current competition policy and activities relating to achievement of the Green Deal objectives. In other words, the Czech NCA has no indication that current competition policy would be incompatible with the Green Deal objectives.

Regarding the second question focusing on the cooperation between market players, in case the Commission concludes that change to the legal framework of the competition law is necessary, and that it needs to be complemented by any notion or link to the Green Deal, the Czech NCA is convinced that it is absolutely necessary to determine which activities lead to achievement of the Green Deal objectives. This applies not only in relation to assessment of agreements between undertakings, which are namely mentioned in the Call for Contributions. Anyway, the Commission shall eliminate any interpretation risks, which could threaten competition law enforcement on one hand and legal certainty of undertakings on the other hand.

Concerning the third question, the Czech NCA states that the possible “relaxation” or “adjustment” of competition rules applied only on particular market players achieving the Green Deal objectives may lead to a risk of unequal approach and thus to unequal market conditions. As the Commission itself states in its Call for Contributions, it considers that the competition policy already contributes to the Green Deal objectives. Should competition rules applicable to market players be anyhow “soften” such a measure may be introduced only on a basis of complex analysis showing this measure to be necessary for achieving the Green Deal objectives and, at the same time, proposing changes leading to minimizing possible negative impact on competition. It should

be mentioned that the aim of the competition policy is to protect, promote and develop competition, delivering efficiencies to consumers. There should be an exclusion of any regulatory measures following different aims that may create a risk of collision with the concept of fair competition.

The last part of the Call for Contributions presents the field of merger control. Basis for competition policy in this respect represents the requirement, which prevents the implementation of a concentration between undertakings which could have negative impact on competition on relevant markets. That means that the implementation of a concentration should not lead to weakening of competitive pressure which would be ultimately detrimental to customers (typically in a form of price increase of goods and services, supply restriction and possibly any other negative effects). In line with the above-mentioned, the Czech NCA comments on the first question in a sense that in case the assessed concentration would have positive impact on consumers and doesn't raise any competition concerns, then such a concentration would not be a subject to any remedies. Generally this principle should be applied to all concentrations on all relevant markets. In the Czech NCA's view, an assessment of particular concentration should not be dependent on the fact whether the concentration is in line with the Green Deal objectives. In other words, mainly the competition assessment should be applied in the first place. Concerning the second question, the Czech NCA agrees that the EU merger review should be led by competition principles. Similarly, as in the field of antitrust it should be emphasized that in case the Commission considers that merging parties producing goods and providing services in line with the Green Deal objectives should be subject to "softer" criteria for assessing mergers (or subject to adjusted notification criteria), the introduction of such measures should be based on complex analysis showing these measures as necessary for achieving the Green Deal objectives. At the same time, the Commission should propose especially amendments that would minimize the possible negative effects on the market. In any case, authorities reviewing concentrations should not approve a concentration which would have negative effect on competition or accept any commitments, which would be ineffective in order to minimize negative impact of assessed concentration on competition. The Czech NCA therefore concludes that there is no urgent need to change competition policy or its tools in the context of the Green Deal objectives even in the area of merger control.

With regard to the above-mentioned facts and considerations, the Czech NCA has no specific proposals to change competition policy or its tools in relation to better fulfilment of the Green Deal objectives.

Yours sincerely,



To:

Mr. Olivier Guersent
Director General
Directorate-General for Competition
Tour Madou – Place Madou 1
1210 Brussels
Belgium