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POSITION ON THE COMPETITION POLICY SUPPORTING THE EUROPEAN GREEN DEAL

Acknowledging the challenges related to the accomplishment of the objectives of the European Green Deal, the initiative undertaken by the Commission to commence the debate on competition policy supporting these goals is highly welcomed. European competition law has already proved to be an effective tool to combat anticompetitive behaviours and enhance other policy objectives. Fine tuning competition law regime in order to properly contribute to undertaking necessary actions related to European Union’s energy ambitions would be beneficial for European consumers, citizens as well as companies.

This position paper provides mainly for detailed answers to the part 2 of the call for contributions – antirust rules. Nevertheless, regardless the fields of competition law following aspects related to the application of competition policy to actions related to European Green Deal need to be highlighted:

i. **Hydrogen, biomethane and natural gas should be included in competition policy supporting the European Green Deal;**
ii. **Undertakings with significant position on the national markets are well-suited and should be enhanced to actively promote innovative and environmentally friendly sources of energy;**
iii. **New block exemption regulation supporting the European Green Deal would be welcomed.**

i. Support for sources of energy such as hydrogen, biomethane and natural gas

Only a cost-effective combination of all decarbonisation options can deliver EU 2050 climate neutrality. Gas – natural, renewable and decarbonised must be part of the solution. For Polish enterprises it is important to highlight the role of gas in the transition to a net-zero emission energy system relying chiefly on renewable electricity. The use of natural gas is key to shift from coal-based energy to sustainable energy. Natural gas plays an important role not just in providing flexibility and diversity of supply, but it also results in CO2 reduction and improved air quality. Quick and sustainable decarbonisation wins can be achieved through coal and oil to gas switching in power generation heating (including combined heat and power generation – CHP), industry and transport . Ambitious EU should aim towards large scale development of the gas technologies that Europe and countries around the world need to fight climate change.

Europe’s existing network of gas pipelines and LNG terminals is an important asset in the transition to hydrogen, a clean fuel which emits no greenhouse gases when burned. The European gas market is becoming increasingly integrated and diversified as a result of new LNG terminals, with more planned, and a multitude of new pipeline interconnectors—which received funding under CEF. These projects include the Trans-Adriatic Pipeline, set to be operational later this year, and the Baltic Pipe, which will connect Poland to Denmark and Norway in 2022. Investments in retrofitting and upgrading of the current natural gas infrastructure for renewable and hydrogen may be indispensable in the future.

Hydrogen may be treated as a source of energy and as a storage solution to stock up excess production of wind and solar power using the natural gas storage infrastructure. Hydrogen and biomethane can be used for almost all energy end use. In some cases, such as for heavy industry, full decarbonisation is difficult to achieve without the use of gas. While rapidly rising renewable power generation is integral to the transition, it may also spur a renaissance for gas plants in some Member States because of the need to balance variable wind and solar generation. Coal-to-gas switching reduces emissions by 50% (even up to 60% when compared to lignite) for producing electricity and by 33% for providing heat[1,2].

In reference to transport industry the use of increasing shares of renewable fuels in transport needs to be coupled by the development of new CNG and LNG stations and vehicles, which are fully compatible with their renewable equivalent (bio-CNG and bio-LNG). Natural gas in road and marine transport sector can also reduce GHG emission and improve air quality. Using liquefied natural gas (LNG) as a marine transport fuel can reduce SOx emissions by 100%, NOx by 80-90% and CO_2 emissions by up to 21%. With regard to heating, natural gas is also efficient and affordable. In particular gas Combined Heating and Power (CHP) facilities can considerably contribute to reduction of GHG emissions and air pollution. Moreover, in places with no access to district heating, replacement of old coal boilers by natural gas fired boilers could lead to significant GHG emissions reduction and improvement of air quality.

Natural gas is indeed replacing high emission sources in many countries, hence taking an important role in Europe's 2050 decarbonisation pathway and becoming a key driver towards new green policies. Competition policy, be it antitrust rules, merger control or state aid, should include aforementioned sources of energy. EU funding should be directed at using all forms of gas to reduce emissions. Such approach should be consistent throughout all the EU legislation and instruments: state aid rules, EU financial instruments (*inter alia*: cohesion policy, Just Transition Fund, Recovery and Resilience Facility, InvestEU, Horizon Europe), EU rules of taxonomy (including planned delegated acts).

ii. Enhancing actions of companies with significant market position

In order to achieve the objectives set by the European Green Deal significant investments and the promotion of new energy sources are required. Big companies with stable revenues are perfectly suited to contribute financially to the projects related to the new, innovative and sustainable energy technology. In particular the implementation of new plants or installations, such as hydrogen, biomethane or biogas production plants is connected with huge financial resources. Similarly the investment related to the projects increasing energy efficiency or contributing to the replacement of heat sources constitutes financial burden for consumers as well as small and medium enterprises. Despite the state aid which might be granted for such projects, it would be more than welcome for private undertakings to take part in the energy transition and finance or otherwise contribute to such initiatives and projects.

Undertakings with significant market power are less likely to benefit from the safe haven provided by block exemption regulations or other guidelines. Their actions are restricted by *inter alia* market share threshold which is easily met by them even in the new markets. The scope of their actions enables

[1] https://www.iea.org/reports/the-role-of-gas-in-todays-energy-transitions
[2] IEA: *CO_2 emissions from fuel combustion*, 2017

them to either rapidly gain significant market share or exposes them to the risk related to leveraging their position from one market to another. Moreover, other limitations stemming from art. 102 TFUE might apply to them and discourage them from taking actions beneficial for the environment.

In this regard it is of crucial importance to provide incentives for big companies to engage in many kinds of actions related to the European Green Deal. Regardless the market share of an undertaking if its actions are wholly or mainly aimed at attaining objectives enshrined in the European Green Deal, it should be shielded even temporarily from the application of competition law. As argued by Simon Holmes[3], showing a genuine environmental objectives should be sufficient to constitute an objective justification preventing the authorities from enforcing art. 102 TFEU to these actions. This justification shall be even more prevailing in relation to two types of actions:

1. **Market creation**. Companies with significant market share might undertake projects in order to build production capacity and therefore supply and demand for new technology or sources of energy. These projects would result in the increase of green technology development, the supply of green energy and more possibilities for other companies to participate in the newly created market. In this regard undertakings shall be allowed *inter alia* to conclude long-term contracts in order to recoup their costs invested in the projects stimulating the market creation. Similar solutions have already been adopted in the Commission Notice which stated that agreements which give rise to genuine market creation do not to restrict competition[4].
2. **Financial aid for environmentally friendly actions.** The companies with significant market share should be allowed to undertake actions in order to promote energy efficiency or the exchange of the sources of heat. The implementation of such programmes could benefit from less stringent application of competition law rules allowing these companies to conclude longer contracts or offer financial aid in combination with *inter alia* agreements for the delivery of energy sources.

These two types of actions constitute examples of desirable cooperation between firms or unilateral actions to support Green Deal objectives that might not be implemented due to EU antitrust risks as asked by the Commission in the call for contributions.

III. New block exemption regulation

General policy guidelines or communication of enforcement priorities providing clarifications and comfort for agreements that serve the objectives of the Green Deal would be highly welcomed. As mentioned above, such acts should include also the situation of cooperation among companies which exceed current threshold stipulated in block exemption regulations. It is recommended to depart altogether from the market share threshold and concentrate solely on the objectives of the cooperation or unilateral actions. The pursuit of the European Green Deal objectives justifies agreements beyond current legal framework, in particular beyond market threshold which currently are on might be reached by the undertakings.

[3] S. Holmes, *Climate change, sustainability, and competition law*, Journal of Antitrust Enforcement, Volume 8, Issue 2, July 2020, Pages 354–405.

[4] Commission Notice - Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, OJ C 3, 6.1.2001, p. 2–30.

The solution granting the highest level of comfort the European companies and customers would be to adopt new block exemption regulation related to the pursuit of the European Green Deal objectives. The regulation as a legally binding act would provide companies with sufficient degree of legal security which would enhance further actions and diminish the level of risks related to competition law compliance which might hinder decision making process. The adoption of new block exemption regulation could also differentiate the European Green Deal objectives from other important policy objectives. As mentioned above, it is highly recommendable that new block exemption increases or even departs from market share threshold. Moreover, as mentioned above in previous acts agreements which give rise to genuine market creation were deemed not to restrict competition. **The implementation of similar solution would contribute to the achievement of the European Green Deal objectives and the creation of new markets such as hydrogen or biomethane markets**.

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