



20 November 2020

Freshfel Europe response to European Commission Competition Policy supporting the Green Deal – Call for Contributions

Freshfel Europe supports the European Green Deal's aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy which takes into account societal concerns. Freshfel Europe is also supportive of the European Commission's ambitions to enable Europe to be the first climate neutral continent by 2050. However, in striving to achieve these objectives, especially through the European Green Deal's strategies and action plans such as the Farm to Fork Strategy, competition rules should not be comprised and effective competition in markets should continue to be promoted and protected so that efficient outcomes are delivered to the benefit of businesses and consumers.

Representing a sector with low environment impact production, Freshfel Europe agrees with the notion that competition policy can contribute to the effectiveness of green policies. Competition does incentivize more efficient use of resources to deliver more sustainable products and services to consumers. Nevertheless, reaching the highly ambitious objectives of the European Green Deal should not justify derogation from competition law. Competition law should remain as the key tool for ensuring the good functioning of the European economy and the Single Market. This, however is not to say that initiatives, for example under the CAP, which can apply on an equal level to all stakeholders under established harmonised EU rules should be hampered. Equally, attention must be paid to the specificities of the agricultural sector, which at EU-level is long acknowledged as being a highly sensitive sector.

Overall, Freshfel Europe believes that for primary agricultural products, such as fresh fruit and vegetables, maintaining the status quo on competition policy is essential. Starting to derogate from the standard European rules on competition for achieving specific policy objectives could create a dangerous precedent, which could significantly weaken competition policy in the long term. Consequently, Freshfel Europe would like to bring to attention the following aspects regarding state aid control, antitrust rules and merger control.

State aid control

Regarding state aid control, Freshfel Europe would like to emphasize that provision of state aid to support measures under the European Green Deal and its strategies should not be used as justification for market distortion. This is particularly significant concerning agricultural markets where a level playing field must be maintained.

Accordingly, the European Commission should duly reflect on the list of seven criteria outlined in the call for contributions relating to the ruling by the Court of Justice in case 594/18 P, Austria v Commission ("Hinkley Point") of 22 September 2020. These must be adhered to when assessing the compatibility of an aid measure with the internal market. Freshfel Europe would like to bring to attention the second aspect cited under the Hinkley Point "*the aid must bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern*". For

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example, in the case of the Farm to Fork Strategy's objective to at least reach 25% of the EU's agricultural land under organic farming by 2030 including boosting demand through promotion campaigns and green public procurement, it can be argued that this condition could not be met. In the fresh fruit and vegetable sector organic farming is a small but growing sector of EU production. This segment currently meets consumer demand, and even in some cases is over-saturated with supply outstripping demand and products being sold as conventional. This cannot be considered a market failure or equity or cohesion concern. Therefore, in this case, 25% organic production should not be reached at all costs, namely through state aid authorized with more flexible terms, which could create an uneven playing field in the Single Market, especially at risk of market instability or market distortion putting this particular segment at risk. Markets must be given the liberty to develop 'organically' with careful use of regulation rather than overregulation that may create market distortion.

Antitrust rules

Freshfel Europe believes that antitrust rules to prohibit anticompetitive practices by companies should be upheld by the European Institutions concerning the implementation of the European Green Deal's objectives. The European Green Deal objectives should not be achieved through derogation from antitrust rules. Normal competition between companies must be allowed to continue. Concerted action by companies to flout anti-trust rules is not admissible in any circumstance.

Freshfel Europe questions the European Commission's enquiry in the call for the need to further clarify characteristics of agreements that serve the objectives of the European Green Deal without restricting competition. If this further clarification is necessary, Freshfel Europe believes a case-by-case assessment would be preferable to ensure that antitrust rules are not informally relaxed by providing general guidelines or communication on enforcement priorities. Notwithstanding, if discussions between parties are necessary, Freshfel Europe reminds the European Commission of the necessity to establish an agreed format for discussions that are applicable to all. Freshfel Europe also reminds the European Commission that recently a European directive on Unfair Trading Practices (Directive (EU) 2019/633) was adopted and Member States are currently transposing the directive in their national legislation so that the new rules could apply as of November 2021.

Merger control

Freshfel Europe reiterates that meeting the European Green Deal's objectives should not be a derogation from European rules regarding merger controls. Mergers should take place based on market trends and not be facilitated by a softening of rules to further the ambitions of the European Green Deal.

Other remarks

1. A 'branche organization' would be a good platform for cooperation on sustainability challenges as it integrates the different partners of the chain. Facilitation of the creation of a 'branche organization' and a minimal financial support would be welcome.
2. Importance to respect the EU level playing field: taxes will come for certain types of packaging/plastics and approach in EU Member states might be different, with some Member States planning to pay certain taxes from the general budget and others presenting the invoice to the individual operators creating therefore distortion of competition among operators on matters resulting from the Green Deal

We remain at your disposal if you have any questions or require further information.

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