

NOTE

5. november 2020

Danish Government response to the call for contributions on Competition contributing to the European Green Deal

The Danish Government appreciates the opportunity to comment on the European Commission's call for contributions on Competition contributing to the European Green Deal.

The climate challenges are global and the Danish Government finds that both the member states and the EU are obliged to actively work for achieving the targets of the Paris agreement. The Danish government supports the Green Deal and the objective of climate neutrality in the EU by 2050.

To reach this goal there is a need to explore all instruments in the regulatory toolbox. Thus, the Danish government supports the general objective of this call to explore how state aid and competition policy can contribute to reaching the goals of the European Green Deal.

In general, we see a benefit in reviewing the state aid guidelines, in order to take into account the new technological developments. However, this must not mean a general relaxation of the rules. As for competition, we find that other instruments are more well-placed to achieve the goals of the European Green Deal. The Danish Government acknowledges that there is a need to look into how we can apply the competition rules in a manner that supports the goals of the Green Deal. We believe the green transition should support job creation, welfare, global trade and competitiveness. Competition drives innovation and the development of new technologies. By ensuring competition, the prices of new green technologies will decrease rapidly and green investments will be more affordable to our societies. We believe that by strengthening the demand for sustainable and green solutions, market forces including effective competition to deliver these solutions, will give a sizeable contribution to solve our challenges. Likewise, it will ensure that the EU can become a global leader within new green technologies, thereby ensuring its long-term competitiveness.

We should thus avoid stretching the interpretation of the EU-antitrust rules too far, as this will risk harming the transition to climate neutrality by making it less cost-effective.

State aid

The current state aid rulebook, including the Guidelines on State aid for Environmental protection and Energy (EEAG) and the General Block Exemption Regulation (GBER) and the Communication on Important Projects of Common European Interest (IPCEI), has played an important role in relation to fulfil and meet EU's energy and climate targets. Therefore, a key priority should be to maintain its supporting role, also in the context of the European Green Deal and the objective to decarbonize the EU energy systems as a mean to combat climate change and to promote a more sustainable economy and society as a whole.

This requires that the state aid rulebook, especially EEAG, GBER, and IPCEI should be revised, and reflect the road towards climate neutrality by 2050, the adoption of EU's energy and climate targets for 2030 – and that targets that are even more ambitious than the present, are expected to be adopted in the near future. However, an update or review towards contributing to the green transition must not mean a general relaxation of the state aid rules and their enforcement. The requirement to bring about a material improvement that the market cannot deliver itself, i.e. a market failure, must be maintained.

In general, we believe that IPCEIs should continue to be a possible way to pursue other objectives beyond climate and environmental objectives. However, IPCEIs related to industrial projects within strategic value chains should to a greater extent be oriented towards contributing to one of the EU's climate objectives. The 2014 communication already states that projects must contribute in a concrete, clear and identifiable manner to one or more EU objectives, including but not limited to sustainable growth and the 2030 framework for climate and energy policies. We suggest attaching higher significance to this criterion for projects to contribute to a climate neutral economy in the EU by 2050 at the latest, in the Commissions' assessment of strategic value chain IPCEIs, by giving it precedence over other EU objectives, i.e. exalting the criterion. In addition, the focus of IPCEIs related to industrial projects within strategic value chain should continue to on enabling research, development and enabling breakthrough innovation.

With the adoption of the current 2030 targets, “new elements” are introduced in the revised sector legislation implementing the targets, and the “modernisation” of this sector legislation, e.g. the Renewable Energy Directive, raises questions whether the EEAG and GBER are still satisfactorily aligned with the rules on e.g. renewable energy. Examples on new elements that lack some kind of clarity are e.g. the “sustainable criteria” and

“biofuels” (the current scope of the EEAG does not accommodate e.g. renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels).

Besides aligning the legislation it is – perhaps even more – important to ensure that the state aid rulebook, especially EEAG and the supplementing articles in the GBER, is revised in order to make the rules as future proof as possible. The speed at which renewable energy technologies develop underlines the need to try to future proof and include further technologies, as the time factor is important in relation to the development of new schemes. A non-exhausted list of new technologies and measures that should be addressed – and where market failures could be detected – are e.g.:

- The development of renewable hydrogen and the potential of electricity conversion through Power-to-X technologies. Power-to-X could – as a bridge technology that links the electricity market and markets for gas and liquid fuels – be a major game changer for decarbonising sectors that are difficult to electrify.
- Other combination of technologies from different sectors, e.g. conversion of electricity from solar and wind power to heating with heat pumps.
- Carbon capture, utilisation and storage (CCUS).
- Repowering projects, as repowering of existing renewable energy projects are becoming relevant in the near future. In this context, it would be relevant, among other things, to elaborate on the definition of the start of the works.

As for the question of using the EU taxonomy on sustainable finance, we support this idea. We find that this framework should be used wherever possible, as it provides a common definitions of what constitutes a green investment. By using this, businesses, Member States, and the Commission could gain a better understanding of how a project will contribute to a climate-neutral EU and identify the most relevant contributions in this area, considering both short-term and long-term impacts of the project. Using the above-mentioned taxonomy could moreover help to streamline the application process making it easier and more transparent for both investors and member states as the term ‘green investment’ is predefined.

Anti-trust – need for more clarity on sustainable agreements

There is a fast growing demand for sustainable solutions and consequently a growing demand for advice on how to assess such initiatives in relation to the antitrust rules and a need to avoid fragmentation. Therefore, there is a need for more clarity on how businesses can design sustainability agreements without distorting competition.

Clarification should primarily be given in the form of EU-general policy guidelines such as the Commission's Horizontal Guidelines or in similar forms. This is necessary to ensure, that undertakings cooperating on green initiatives and EU-competition authorities act based on the same interpretation of the EU-antitrust rules.

It is important to explore if the benefits of a specific sustainability agreement outweighs its costs, in terms of less competition and higher prices or reduction of choice. At least in part, this assessment depends on how the European Commission and National Competition Authorities assess the sustainability improvements and weigh these against the possible reduction in competition.

For undertakings involved in a sustainability agreement especially the second condition of Article 101(3), which states that the efficiencies must benefit consumers, may be difficult to apply in practice because the condition is linked to consumer welfare. In this respect, it is important that future EU-guidelines etc. describe the ways parties to a sustainability agreement can substantiate that consumers receive a fair share of the benefits or in other words, that consumers of the product appreciate the benefits obtained through the agreement and prefer to pay the extra price and/or accept the reduction in choice.

Merger control - an important tool to foster competition in green industries

The Danish Government notes that merger control is an important instrument in the competition policy toolbox in order to ensure effective competition in the Single Market – also as regards competition in green industries and between green technologies. Effective competition is fundamental for creating jobs, growth and prosperity in the EU – i.e. competitiveness of the industry in general.

The Danish Government finds that mergers should continue to be assessed by competition authorities on a case-by-case basis taking into account the facts and characteristics of the markets involved. Harmful mergers can affect consumers in various ways depending on these specific characteristics. A merger that significantly impedes effective competition can result in increased prices, reduced output or quality, less choice, or diminished innovation. It can also affect other parameters that consumers consider as important factors of competition. By way of example, a merger between two companies that are both engaged in research and development of green technologies can reduce short- and long-term innovation efforts resulting in fewer or less effective green solutions. Similarly, a merger between close competitors offering environmentally friendly products to consumers

can remove a substantial competitive pressure leading to an increase in price or a reduction in choice possibly resulting in adverse effects on demand. Such possible theories of harm are investigated in every merger case – also in mergers involving environmentally friendly products and/or green technologies.

In that way, effective merger enforcement can contribute to protecting the environment and promoting sustainability objectives by assessing possible risks of increased prices or reduced choice with respect to environmentally friendly products as well as through investigations into innovation theories of harm.

Need to explore the possibility of including environmental benefits in merger assessments

It is also worth noting that – as a part of the assessment of mergers – efficiencies fulfilling the criteria of benefiting consumers, being merger specific, and being verifiable can offset possible competitive harm otherwise arising from a merger. This includes efficiencies related to environmentally friendly products or green technologies. The Danish Government finds that it could be considered whether and how to include other substantiated efficiencies and environmental benefits in the competitive assessment e.g. in situations where it might be difficult to quantify the efficiencies in terms of cost savings. It would be beneficial to address these considerations in common EU-guidelines in order to ensure alignment of EU competition authorities when assessing how to take possible environmental benefits into account. However, it is important that such assessment is based on solid facts and objective criteria and that eventual costs of such environmental benefits are weighed against the benefits.