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## Competition Policy supporting the Green Deal / Call for contributions

The Finnish Competition and Consumer Authority (FCCA) appreciates the opportunity to answer the questions. Our answers are the following:

### Part 2: Antitrust rules

- 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).**

The FCCA has not so far encountered any cases relating to cooperation between undertakings to support Green Deal objectives. The lack of clarity of the Commission guidelines may have had the effect of restraining cooperation between companies also in cases where this might be desirable.

- 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...)?**

The FCCA considers that agreements promoting the Green Deal need further clarification. The FCCA believes that any instruments such as general policy guidelines, case-by-case assessment or communication on enforcement priorities would be useful as long as the chosen instrument would provide predictability to undertakings and is easily accessible to all interested parties.

Drafting detailed guidelines may be difficult in the absence of previous cases. Even with more detailed guidelines, the task of distinguishing beneficial agreements from the point of view of tackling climate change is extremely challenging. The FCCA proposes that it should be considered whether the Commission could re-introduce individual exemptions to agreements promoting the Green Deal. The Commission has the possibility to gather the required expertise to grant exemptions. In view

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of the importance of promoting Green Deal, the extra administrative burden related to individual exemptions seems well justified.

- 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?).**

In circumstances outside the current enforcement practice, the FCCA sees potential in further developing the manner in which consumer benefits and efficiencies are assessed under the TFEU 101(3) test.

Firstly, the second condition of TFEU 101(3) states that consumers must receive a fair share of the efficiencies generated by the restrictive agreement. According to the guidelines "*the "fair share" implies that the pass-on of benefits must at least compensate consumers for any actual or likely negative impact caused to them by the restriction of competition.*"<sup>1</sup> If such consumers are worse off following the agreement, the second condition of Article 101(3) is not fulfilled.

The FCCA points out that consumer benefits may need reconsideration and, in some cases, it may be necessary to assess them more broadly. The logic could be extended to situations where, for example, an environmental agreement significantly reduces CO2 emissions. In this example it may be useful to consider the net effects for all consumers or the society as a whole.

Moreover, the FCCA argues that future benefits to consumers should be appropriately considered in the analysis. In the fight against climate change, not only current consumers but even more so future consumers benefit from unpolluting. Therefore, there may be a need to analyze the long-term net effects for a broader group of consumers, including future consumers. As a result, short-term price increases for current consumers may be accepted if future consumers significantly benefit. Thus, the timeline to assess efficiencies should also be reconsidered. A crucial justification for why restrictive agreements may be acceptable in certain situations comes from the market failure due to negative externalities that are particularly widespread (*i.e.* global) and irreversible. It should be noted that current consumers benefit from gains available in

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<sup>1</sup> Communication from the Commission. Guidelines on the application of Article 81(3) of the Treaty, paragraph 85.

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the future, and in addition, are interested in the well-being of their offspring.

Secondly, when possible efficiencies are analyzed, the FCCA proposes that environmental economics and shadow prices could be utilized in the analysis. In the evaluation, it is of great importance to take into account the fact that potential benefits of restrictive agreements achieved among partners in terms of diminished carbon emissions can be eliminated at least partly through various indirect market mechanisms. For example, there might be increase in emissions in other sectors because prices of fossil fuels may decrease when demand of fuels among partners declines, or there may be a shift in consumption towards products of other sectors because of price increases of the products of the partners. In addition, possible increases in prices of the partners' products may also deteriorate their competitiveness relative to producers outside EU which may, in turn, increase their production, and emissions. To tackle the latter problem the use of carbon toll is an important complementary tool for pursuing environmental goals and avoiding harmful distortions in competition.

Finally, according to article 11 TFEU *“Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.”* The paragraph calls for the integration of sustainable development into various EU policies.

Thus, the FCCA considers that the pursuit of the Green Deal objectives can be differentiated from other important policy objectives if it is – at least initially – limited only to the prevention of climate change and, in particular, CO<sub>2</sub> emissions. Climate change threatens our societies and the existence of mankind. Therefore, the matter is more urgent than other policies and therefore deserves a different kind of treatment.