Topic D: Sustainability & clean technologies

A description and technical background for this topic is included below. The same text can also be found here. Questions on this topic are included after the text.

Topic Description

67. The transition to a clean and sustainable economy is one of today's key societal challenges. The EU's ambition of becoming the first climate neutral continent is vital for the future of our planet and for generations to come. The Commission has presented a **Clean Industrial Deal** for competitiveness and decarbonisation in the EU, a business plan bringing together climate action and competitiveness under one overarching growth strategy for Europe's economy.[59] As businesses across Europe strive to adjust to the clean transition, it is crucial to accompany decarbonisation efforts by supporting the investment in innovative clean tech and decarbonised production processes, stimulating a circular economy to extend the lifespan of resources, fostering the resilience of supply chains, and facilitating the access to affordable energy.

68. In this context, merger control has a role to play in allowing procompetitive mergers that have the potential to deliver on and/or support these objectives, while ensuring that **mergers bearing negative effects on competition and clean innovation, also impacting sustainability goals,** do not materialise.

69. In particular, **some mergers may be harmful to the clean transition or hamper climate and sustainability objectives**. That may be the case when, for example, an incumbent acquires a disrupting innovator offering a green product to slow it down or cannibalise it ('green killer acquisitions'), or when a merger has a chilling effect on competition, **reducing incentives to invest and innovate in green products or clean and decarbonised technologies**. Mergers between companies present at different levels of the supply chain may also have a negative impact, for instance when they remove or reduce access to products or services that are less carbon or energy intensive (including key green technologies and materials, such as batteries, renewable components, and recycling infrastructure), generate less waste, or require less raw materials, negatively impacting the affordability of sustainable products or green technologies.

70. To the contrary, other **mergers may support climate and sustainability objectives** and the clean transition and have a positive impact on clean innovation, for example on the deployment of cleaner/greener technologies or manufacturing processes that are in line with the EU Taxonomy and the Do No Significant Harm principle.[60] Mergers can provide companies the leverage needed to invest in the decarbonisation of their activities, cleaner

[59] The Clean Industrial Deal aims at turning decarbonisation into a driver of growth for European industries, focusing on the transition to a low-carbon economy and increased demand in the clean-tech sector, as well as strengthening the circular economy in particular for critical raw materials. See Communication from the Commission 'The Clean Industrial Deal: a joint roadmap for competitiveness and decarbonisation', February 2025. This is also acknowledged in, e.g., Mario Draghi's report 'The future of European competitiveness', September 2024: '*Decarbonisation must happen for the sake of our planet. But for it to also become a source of growth for Europe, we will need a joint plan*'.

[60] The EU Taxonomy is a classification system establishing a list of environmentally sustainable economic activities, to facilitate sustainable investment (see Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, pp. 13–43).

products and technologies, and more energy-efficient solutions and infrastructure. **Vertical integration** may also enhance the circular use of raw or recycled materials and allow companies to adopt a more innovative, efficient and clean resource management across larger segments of the supply chain. Some mergers may also generate sustainability benefits, that, in some instances, including in terms of innovative clean technologies, could offset negative effects on competition ('green efficiencies'). At the same time, a careful assessment will be necessary to avoid greenwashing attempts and to ensure that claimed benefits materialise post-merger. Mergers should not make 'clean' products or services, related for example to renewable energy, sustainable waste management and recycling, resource-efficient (digital) solutions, electric vehicles etc., less affordable or inaccessible to businesses and citizens.

71. More generally, the clean transition is resulting in the emergence of **new demand and supply patterns and is having a transformative effect on the economy**. Customer preferences for sustainable and green tech products are driving companies' incentives to invest and innovate in clean solutions, which, in turn, could amount to a competitive advantage for innovating companies.

72. While merger control primarily aims at preserving competition, the **growing interplay between competition, innovation and sustainability** considerations across industries and the benefits they could unlock for businesses and citizens should trigger a reflection on merger control's contribution to European sustainability objectives. In this regard, the methodology and parameters to be included in the competitive assessment to take due account of sustainability considerations, as well as the quantification and verification of 'green' incentives and efficiencies, will be key questions.

Technical background

73. In the context of merger control, the Commission may consider environmental and sustainability concerns as long as they are linked to the competitive dynamics and market realities at play.[61] In fact, competitive markets support and often go hand-in-hand with green tech efforts to invest and innovate. Consequently, in the past few years, the Commission has increasingly taken into account sustainability aspects, in various forms and at various stages of its merger review, from market definition[62] to the assessment of the potential effects arising out of the relevant merger.

74. In the Commission's recent case practice, sustainability considerations have played a role, in the context of horizontal mergers, as a **non-price parameter of competition**, e.g., where firms' offerings differ based on customers' preferences for recycled products or the use of green technologies;[63] in the assessment of whether the parties to the transaction are **close competitors**, which can be the case, e.g.,

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61 The Commission cannot intervene solely on public policy grounds unrelated to competition (see, e.g., reasoning included in case M.8084 – *Bayer / Monsanto*, Section XIV: Non-Competition Concerns).

62 By way of example, recent cases have shown shifts in demand patterns triggered, for instance, by regulation requiring the production and marketing of cleaner end-products (in case M.9076 – *Novelis / Aleris*, the Commission found that regulatory requirements for CO_2 emission reduction for cars and the fact that lighter vehicles mean lower emissions increased demand by car manufacturers for aluminium – instead of steel – body sheets) or by consumer preferences (in M.10047 – *Schwarz Group / Suez Waste Management Companies*, environmental costs were a relevant parameter for the assessment of geographic market definition for the sorting of lightweight packaging in the Netherlands, as customers try to avoid transports over long distances to minimise the ensuing CO_2 emissions). For further aspects relating to market definition, see the Commission Notice on the definition of the relevant market for the purposes of Union competition law, C/2024/165.

63 Customers' preferences for recycled (aluminium) products played a role in cases M.10658 – *Norsk Hydro / Alumetal* and M.10702 – *KPS Capital Partners / Real Alloy Europe*. See also case M.10047 – *Schwarz Group / Suez Waste Management Companies* for customers' valuation of recycling.

when the merging firms are both innovators on cleaner or more sustainable products or in green technologies;[64] or in the assessment of whether one of the merging parties is an **important competitive force**.[65] In these settings, the Commission has to rely on different types of evidence to assess, for instance, whether the acquisition by a leading player of a smaller key competitor offering cleaner technology at competitive prices is a potential opportunity to extend the sustainability benefits of the technology, or could result in a total or partial 'killer' acquisition, i.e. to make them less competitive to preserve the larger company's role. As part of this assessment, the Commission has developed new metrics to quantify and illustrate differentiation among low-carbon offerings, calculating shares of saved CO_2 emissions, representing how many emissions a supplier saved compared to the EEA average carbon emissions by producing low-carbon solutions (using renewable energy or relying on recycled inputs).[66]

75. Sustainability considerations may also be part of the **theories of harm** related to the loss of 'clean' R&D and '**green innovation**' competition. In one case, the Commission assessed a theory of harm based on the fact that the combination of two important innovators would likely result in a **decrease of innovation incentives** in the field of crop protection products, where innovation is key to deliver new products which are better suited to avoid potentially '*harmful consequences* (…) *for the environment'*.[67] In another recent case, the Commission assessed how certain innovative vessel technologies, including those allowing for lower fuel consumption and lower emissions, could represent **barriers to entry** or expansion.[68] In the market for concrete admixtures, the Commission found that product innovation had grown in importance due to the transitioning to a clean and circular construction industry, and that the combination of two powerful innovators could cause competitive harm.[69]

76. The Commission has also dealt with sustainability-related market shifts in the context of non-horizontal mergers. The potential of the **circular economy** to drive cleaner and more competitive sourcing of inputs also resulted in a tendency to vertically integrate, as companies try to secure key inputs or recycling capabilities. While such transactions can enhance efficiency and competitiveness, to the benefit of consumers, they could also result in market power at key junctures of the supply chain, reducing access by other companies to key assets in a circular economy, ultimately leading to overall worse outcomes. In such cases, the Commission accepted remedies that preserved access to key 'circular' inputs for the market at large.[70]

77. Finally, sustainability may also be relevant in the assessment of whether the potential anticompetitive harm of a merger may be offset by **efficiencies** resulting from it. Positive effects resulting from a merger may compensate the anticompetitive harm if they benefit consumers, are merger-specific, and are verifiable.[71] Under the Horizontal Merger Guidelines ("HMG"), efficiencies should in principle

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64 Cases M.9343 – *Hyundai Heavy Industries / Daewoo Shipbuilding & Marine Engineering*, M.10560 – *Sika / MBCC*, M.7278 – *GE / Alstom*, and M.10078 – *Cargotech / Konecranes*, paragraph 1416.

65 Case M.10658 – *Norsk Hydro / Alumetal*, section 9.1.3.3.7.

66 Case M.10658 – *Norsk Hydro / Alumetal*, section 9.1.3.3.7. The Commission based its analysis on 'saved emission' shares representing how many emissions a supplier has saved by producing aluminium foundry alloys with a carbon footprint lower than the EEA average.

67 See case M.7932 – *Dow / DuPont*, paragraph 1980.

68 Case M.9343 – *Hyundai Heavy Industries / Daewoo Shipbuilding & Marine Engineering*.

69 Case M.10560 – *Sika / MBCC*.

70 In case M.10702 – *KPS Capital Partners / Real Alloy Europe*, the Commission's investigation showed that the parties would be able to restrict access to recycled aluminium, as well as dross and salt slag recycling services post-transaction. To remedy the concerns, KPS offered to divest some of Real Alloy's facilities active in recycled aluminium production, dross recycling, and salt slag recycling. In case M.10249 – *Derichebourg / Groupe Ecore*, the Commission's investigation showed that, post-transaction, the parties would have had a strong market position and faced limited competitive constraints in the markets for the collection and recycling of metal scrap, as well as the recycling of electrical and electronic equipment scrap, among others. To remedy the concerns, Derichebourg offered, among others, to divest four recycling plants in France.

71 HMG, paragraph 78.

occur within the markets where competition concerns are found. As discussed in more detail in Topic F on Efficiencies, the Commission has assessed efficiencies related to innovative green products and technologies, but thus far, there have been no cases where the Commission has accepted 'green efficiencies' and no specific guidance is currently provided in the current HMG on such efficiencies.[72/73]

Questions

D.1. In your/your client's view, do the current Guidelines provide clear, correct, and comprehensive guidance on how merger control reflects the transition to a climate neutral, clean, and sustainable economy with clean and resource-efficient technologies and solutions? [One option possible]

a. Yes, fully
b. Yes, to some extent
c. No, to an insufficient extent
d. Not at all
e. I do not know

D.1.a [If 'Yes, to some extent' or 'No, to an insufficient extent' or 'Not at all'] Please explain which provisions of the current Guidelines (if any) do not adequately reflect the evolutions linked to the transition to a climate neutral, clean, and sustainable economy.

D.2. In your/your client's view, should the revised Guidelines better reflect the evolutions linked to the transition to a climate neutral, clean, and sustainable economy in relation to the following aspects? Please select the areas that you believe the revised Guidelines should address. [Multiple options possible]

a. Sustainability as a parameter of competition
b. Ability and incentives to innovate in clean and decarbonised products, technologies and services
c. Risks of discontinuation of or reduced innovation in clean and decarbonised products, technologies and services
d. The revised Guidelines should not reflect any of these areas
e. Other

D.3. How should the Commission factor in sustainability as a parameter of competition in its assessment of a merger's effects? In particular, please explain in which circumstances and based on which metrics (e.g., shares of saved CO_2 emissions) and evidence the Commission could consider the development of sustainable products or services as an important parameter of competition.

D.4. What type of harm to competition on the development and supply of clean and decarbonised products, technologies and services and the circular economy can a merger do? Please select the

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72 For example, a merger may result in improved quality products, generate less waste, require the use of less raw materials, or lead to the development of new technologies, green products, and other green innovations.

73 In case M.9490 – *Aurubis / Metallo*, concerning access to copper scrap in Europe, the Commission considered that there was at least a possibility that one of the alleged efficiencies advanced by the merging parties, concerning a better valorisation of copper scrap through the combination of the parties' complementary know-how and technologies, would materialise. If that was the case, i.e., if such efficiencies were to materialise to a significant extent, the Commission further concluded that they would at least partly be passed-on to customers, thus potentially partly offsetting any adverse price effect stemming from the transaction.

harm that you believe is relevant for mergers' assessment and provide concrete examples and underlying data. [Multiple options possible]

a. Reduced ability and incentives to invest and develop clean and decarbonised products, technologies and services;
b. Risks of discontinuation of clean and decarbonised products', technologies' and services' R&D;
c. Foreclosure of access to critical inputs for clean and decarbonised products, technologies and services;
d. Increased prices and lower quality of critical inputs for clean and decarbonised products, technologies and services;
e. Foreclosure of access to clean and decarbonised products, technologies and services;
f. Increased prices and lower quality of clean and decarbonised products, technologies and services;
g. Other factors (please list).

D.5. How should the Commission consider the ability and incentives to invest and develop clean and decarbonised products, technologies and services in its assessment of the impact of a merger on competition? [Free Text]

D.5.a Having in mind both horizontal and non-horizontal mergers, please explain in particular: What theory/theories of harm could the Commission consider? [Free Text]
D.5.b Having in mind both horizontal and non-horizontal mergers, please explain in particular: Under which conditions could this/these theory/theories of harm occur? [Free Text]
D.5.c Having in mind both horizontal and non-horizontal mergers, please explain in particular: What are the elements, including evidence and metrics, that the Commission could use to assess the competition risks beyond a foreclosure conduct? [Free Text]

D.6. What are the competitive benefits, related to clean and decarbonised products, technologies and services, and the circular economy, that a merger can generate? Please select the advantages that you believe are relevant for supporting the climate and clean transition [Multiple options possible] and provide concrete examples and underlying data. [Free text]

a. Vertical integration involving critical inputs
b. Better access to, or better purchase conditions of, critical inputs through new contracts
c. Combination of complementary R&D capabilities and staff
d. Access to new know-how and patents
e. Other factors (please list).

D.7. How should the Commission assess the benefits that mergers can bring to the transition to a climate neutral, clean, and sustainable economy, and verify that those are not mere claims made by businesses gaining market power (e.g., 'greenwashing')? What are the metrics that could be used to measure this? [Free Text]

D.7.a In which circumstances, and based on which evidence, benefits related to the transition to a clean and sustainable economy are likely to materialise post-merger? [Free Text]
D.7.b Under which conditions such benefits could be sufficient to outweigh competitive harm. Please illustrate with the specific benefits you considered relevant? [Free Text]

D.7.c Under which conditions such benefits would be passed on to business customers/consumers. Please illustrate with the specific benefits you considered relevant? [Free Text]

D.7.d What are the elements, including evidence and metrics, that the Commission could use to assess whether the benefits of the transition to a climate neutral, clean, and sustainable economy outweigh competitive harm, and will likely be passed on to business customers/consumers? [Free Text]

D.8. How should the Commission make sure that such benefits cannot be achieved with less harmful means, including via cooperation agreements? Please explain how green benefits can be achieved through cooperation and in which circumstances only a merger may bring such benefits and why.

D.9 Please provide examples of the types of mergers as well as of cooperation agreements (e.g., licensing, R&D sharing) that you/your client believe are beneficial to the transition to a climate neutral, clean, and sustainable economy, and explain whether your company has considered - or implemented - them and why/why not, as relevant.

D.10. How should the Commission make sure that such green competitive benefits would not have been achieved irrespective of the merger? Please explain how the Commission can, and based on which evidence and metrics, assess what would have been the situation absent the merger, and whether the green competitive benefits would not have been achieved in any case.

D.11 How should EU merger control account for global competition dynamics when it comes to sustainability, in particular where certain players receive subsidies for clean tech solutions?

D.12 Have you/your client experienced chilling effects in your industry, in the sense that a merger that would boost investment or innovation in clean tech and resource-efficient or sustainable solutions was not pursued due to concerns related to merger control scrutiny?

a. Yes
b. No

D.12.1. If yes, please identify the specific transaction that was abandoned, delayed, or restructured.