



# European Commission seeks views on competition law and sustainability

Governance and Impact – Part of the Horizon Scanning series

*“When we look around us, at the state of our environment and our climate in 2020, things can seem pretty bleak...*

*But very often, the darkest hour is before the dawn. Things are changing. Our world is coming to grips with the choices we need to make, to protect our environment, and keep climate change from running out of control.”<sup>1</sup>*

*Executive Vice-President Vestager (22 September 2020)*

On 13 October 2020, the European Commission (EC) launched a [call for contributions](#) seeking views on the extent to which the EU rules prohibiting anti-competitive agreements and practices hinder initiatives aimed at combating climate change or promoting environmental protection. The EC is also seeking views on the role to be played by the EU rules on state aid and merger control in contributing to European Green Deal objectives.

The EC’s call for contributions follows steps taken recently by other competition agencies to participate in the debate on the compatibility of competition law and environmental sustainability goals. Most notably, the Netherlands Authority for Consumers and Markets (AMC) launched a [consultation](#) on its draft “Sustainability agreements” guidelines in July 2020. The draft guidelines seek to provide guidance on how the ACM would assess agreements pursuing sustainability objectives under Dutch and EU competition law.

The Hellenic Competition Commission has also actively contributed to the current debate by publishing a [“Staff Discussion Paper on Sustainability Issues and Competition Law”](#) and

by hosting a conference on 28 September 2020 titled [“Sustainable development and competition law - Towards a Green Growth regulatory osmosis”](#).

Given the steps that national competition agencies are taking to clarify the application of competition rules to sustainability objectives, it is unsurprising that the EC has now launched its own call for contributions. Not least because the EC [recognises](#) the need to “provide further clarity and arrive at a uniform approach” across Member States on this important issue.

## Competition policy – already a green policy?

The EC’s Consultation Paper recognises that competition policy is not the best weapon in the fight against climate change, identifying taxation and regulation as more appropriate tools. Nevertheless it identifies the ways in which the rules on anti-competitive agreements and practices are already protecting the environment and contributing to the EU Green Deal objectives. For example, by sanctioning restrictive behaviours that harm the environment, such as in the development or roll-out of clean technologies.

However, the EC wants to know whether more can be done. In particular, it has posed three specific questions seeking views on:

- When cooperation instead of competition could better support the Green Deal objectives, and in particular specific examples of where antitrust rules prevent companies from cooperating to achieve these objectives.

<sup>1</sup> [Speech titled “The Green Deal and competition policy” by Executive Vice-President Vestager on 22 September 2020](#)

- Whether the EC needs to provide further guidance on the characteristics of agreements that will serve the Green Deal objectives without restricting competition, and what form such guidance should take.
- Whether there are circumstances when pursuing Green Deal objectives could justify companies entering into agreements that do restrict competition, which would otherwise be challenged under current enforcement practices.

These issues have been the topic of much debate recently. In particular, one question that is frequently raised is the extent to which competitors can collaborate to achieve environmental goals. This is especially acute where industry-wide participation is required to transition to greener technologies. For some companies, the perceived risk of potentially breaching competition law, whether legally founded or not, is preventing them from collaborating, when collaboration would significantly improve the chance of achieving the Green Deal objectives. That would suggest that there is an urgent need for clear and specific guidance from the EC on what is and what is not lawful and the EC's enforcement priorities if EU competition law is to play its part in contributing to the European Green Deal objectives.

Previous statements have suggested that the EC is sceptical of the need for significant changes to the competition rules. In particular, Executive Vice-President Vestager has previously said that there is no need for “*new competition rules*” to make sustainability agreements possible. The EC has also previously [indicated](#) that any guidance on this issue would be provided only in its planned update of its Horizontal Co-operation Guidelines and Horizontal Block Exemption Regulations or informally on a case-by-case basis on request. It will therefore be interesting to see whether the EC's position changes following this call for contributions, and whether, like the AMC, the EC decides there is a need for it to publish specific stand-alone guidance on the approach that it will take to assessing the compatibility of sustainability agreements with EU competition law.

## Your voice

It is essential that industry has a voice and is represented in the EC's consultation. Failure to speak now risks missing an opportunity to ensure EU competition policy and enforcement practice is aligned with Green Deal objectives.

With this in mind, we are in the process of preparing a submission to the EC and would welcome your input and views on the EC's questions. In particular, we would welcome practical examples of the ways in which you believe competition law is currently hindering or preventing your businesses from achieving your environmental goals. Please do get in touch if you would like to input into our submission or to discuss this issue further.

The call for contributions closes on 20 November 2020. The EC the plans to discuss the issues at a conference to be held in early 2021.

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