

The Competition and Consumer Protection Commission (the “CCPC”) agrees with the Dutch ACM that environmental sustainability is a core issue facing us all and we acknowledge that there is a global push for EU-wide approach in relation to these issues and a push for competition policy in general to do more in this area, we therefore welcome the discussion which was facilitated at the recent ECN Horizontal and Abuse working group meeting on Wednesday, 17 June 2020.

The CCPC does, however, have a number of concerns relating to the Dutch Guidelines on Sustainability Agreements presented at the ECN working group meeting.

When it is the case that the direct consumers of the firms party to the proposed agreement are not fully compensated for the costs of the agreement the ACM Guidelines on Sustainability Agreements suggest allowing out of market efficiencies to count towards the benefits side of the equation in the assessment. This brings us onto the first of the CCPC’s concerns. Under the draft guidelines, under certain circumstances, the NCA may be required to estimate the out of market efficiencies, such as a reduction in CO2 emissions, and it may not be within the technical ability of the NCA to do so. The benefits of horizontal agreements, the aim of which is to reduce harmful emissions, would have to be weighed up against the costs. While the NCA may be in a position to quantify the costs of an agreement (higher prices for example) it would generally not be within the NCA’s area of expertise to quantify the likelihood or quantum of emission reductions of an agreement - this would be more suited to an environmental protection agency. Similarly, the NCA may not have the technical expertise in the area to challenge reports or studies provided by the parties to the agreement. The CCPC considers that it may be appropriate to have a system where the NCA works in tandem with the relevant agency or ministry when making a decision. In this kind of system, the NCA would assess the competition issues and the relevant agency or ministry would assess the environmental sustainability issues. The Irish merger regime has a similar process in place whereby the CCPC assesses the competition concerns in relation to media mergers and the Department of Culture assesses the relevant media concerns to ensure a free and pluralistic media.

Secondly, while some countries, such as Ireland may have defined shadow prices for emissions, which is spelled out in our Public Spending Code,¹ others may not. If all countries do have spelled out shadow prices for harmful emissions these may not be equal. This means that an agreement that would not be allowed in one Member State may be allowed in another with the exact same competitive conditions, one only has a higher shadow price for carbon than the other – this would create inconsistencies in the application of Art 101

¹ The Public Spending Code is available here: <https://www.gov.ie/en/publication/public-spending-code/>. The shadow price of carbon is set out in the “*General Technical References and Economic Appraisal Parameters*”. The Shadow price of carbon increases annually for multi-annual projects starting out at €20 per tonne of CO2e in 2019 rising to €265 per tonne of CO2e in 2050.



Coimisiún um
Iomáiocht agus
Cosaint Tomhaltóirí

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TFEU. One Euro has a consistent nominal value across the world but one tonne of carbon dioxide emissions does not have a consistent shadow price under different public spending regimes.

The CCPC considers there is need for consistency across Member States on sustainability agreements and an EU-wide guidance will be very useful for ensuring this. .