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Competition policy measures in support of the Green Deal

- The Confederation of Swedish Enterprise's contribution to the EU Commission

The European Commission has published a general request for contributions to highlight the link between EU competition rules and the European Green Deal, so that these rules best support the available opportunities to meet its objectives. The Commission's request is open to all stakeholders, and the contributions received will form the basis for a conference in 2021 based on these insights.

Here below you can find the Confederation of Swedish Enterprise's views on the current issues.

Summary

- Business is the engine in the transition to a climate-neutral society. Competition rules must maintain those rules that protect efficient companies and well-functioning competition where commitment, efficiency and climate-smart innovation can be rewarded. Market-based solutions are the only reasonable way to meet the objectives in the Green Deal.
- State Aid rules are important to ensure a level playing field between companies from different Member States. The amount of State Aid should not be increased overall. At the same time, existing opportunities for support in pursuing an ambitious climate policy must be protected, for example the opportunities to reduce otherwise high energy taxes to certain industry sectors.
- The EU antitrust rules and the rules governing mergers should not be changed substantially in the light of the Green Deal. Competition authorities should focus on clarifying the existing rules and giving companies greater legal certainty on the opportunities to cooperate in those projects where cooperation is appropriate.

Our overall view

The Green Deal is the EU's specific plan for Europe to become the world's first climate-neutral continent before 2050. The plan sets demanding goals for all elements of society, embracing the public sector, business, private individuals and other parts of civil society. Nevertheless, business is probably the most important player for delivering powerful and lasting change. Swedish businesses are generally among those most committed to these issues; indeed, they are often the leaders when it comes to the capacity to switch to more climate-friendly production of goods and services and to develop and utilise more climate-smart technology.

Business is, and must remain, the engine of efforts to combat climate change. Therefore, it is also crucial that the dynamics and incentives that characterise a well-functioning market are maintained. The competition rules are necessary to ensure such a market

continues, where committed, efficient and innovative companies are rewarded. Enacting your business in a climate-friendly manner is an increasingly important competitive parameter. Providing a product or service of high quality and at a competitive price is just as significant as other aspects, such as longevity, good design or easy availability. Climate-smart solutions are a means of competition, both because regulations change and place higher demands on the properties of products and services and also because such a feature is being demanded by many consumers.

In order to continue to reward companies that are investing in climate-smart solutions, it is important to maintain the competition rules that currently exist and that have served the EU and the business community well up to now. Only then will there be the right incentives for the business community to continue to invest in climate-smart solutions and act as the engine required to combat climate change.

Part 1: State Aid control

State Aid rules restrict Member States' ability to provide selective Aid to certain companies. Such Aid can risk distorting competition between companies; this means that regulations therefore play an important role in safeguarding a level playing field, one where companies compete on their merits and not on the basis of the level of support they receive.

At the same time, the regulatory framework provides excellent opportunities for Member States to undertake initiatives, when justified, with objectives that are in the interests of the EU, not least including the objectives of the Green Deal. State Aid rules are widely used, and Member States provide large amounts of aid annually, in particular for activities and initiatives with environmental and energy objectives. Indeed such initiatives account for about half of the amount of Aid supplied.

The Confederation of Swedish Enterprise places great importance on State Aid regulations, their guiding principles and the Commission's active supervision of compliance with these regulations. It builds confidence in the functioning of the internal market and ensures that taxpayers' money is used efficiently, and that private investment is not excluded. The principles of supported expediency, necessity and proportionality are based on sound economic reasoning, which should not be modified.

State Aid regulations should not, as a rule, be relaxed to allow for greater amounts of Aid. For example, proposals to raise the level of the de minimis Regulation specifying what levels of support should not be subject to the rules should therefore not be implemented. What may be required are some limited changes specifically in support of the environment and energy, given their close association with the Green Deal. These may apply to the levels of support, for example, of how much of the eligible costs may be covered by the public sector. It is also important to present opportunities for safeguarding support in the form of tax rates for, for example, energy-intensive industries. This has been a prerequisite for Sweden to be able to realise its strong climate ambitions and to use high general tax rates as a means of control. This has taken place at the same time as reductions have prevented carbon dioxide leakage and safeguarded competitiveness for the business community from a global perspective.

In addition to changes to the opportunities for supporting environmental measures, the Commission should work on simplifying and clarifying the existing rules. The Commission has announced that it is working on developing templates that will clarify how Member States can implement their green investments without infringing State Aid rules. These will also address where State Aid rules will apply on how investments can be made to

avoid prior notification to the Commission, or - where notification is required - what is needed to design the measure in such a way that it can be approved by the Commission. The Confederation of Swedish Enterprise welcomes the fact that the Commission is working to simplify and clarify these rules. At the same time, however, it must not lead to a situation where the rules are simplified to the extent that they do no longer comply with the case law of the courts. Legal predictability is vitally important for companies, particularly as incorrect application of the law by the authorities can lead to the recovery of the Aid, with consequent, often significant, negative consequences for the recipient company.

Part 2: Antitrust Rules

EU antitrust rules prohibit anticompetitive practices, such as agreements between companies that restrict competition, or abuse of a dominant position. These rules are important in ensuring a well-functioning market, where companies that follow the rules have a fair opportunity to compete for consumer attention. There is therefore no pressing need to ease the rules and reduce their scope.

At the same time, the rules may limit companies' opportunities to cooperate for purposes other than that of restricting competition. Particularly relevant in this context is, of course, the opportunities for companies to collaborate in projects relating to the development of new climate-smart solutions of various types. The Confederation of Swedish Enterprise is not aware of any such collaborations that are both desirable to the business community and that currently risk infringing the regulations. It is also to recognise that the main solutions for how to meet the climate challenge is through effective competition between companies in developing smart solutions, rather than having companies cooperate. In some situations, however, cooperation may be required; in these cases it should be based primarily on a case-by-case assessment.

What the competition authorities should do is to make greater efforts to communicate more than at present on what the opportunities and limitations for companies to be able to cooperate when seeking to develop climate-smart solutions. The authorities should be more proactive and conduct greater outreach, rather than just passively allowing their services to be available to companies. It is conceivable that several companies could potentially realise greater synergy effects when they collaborate. However, where they choose not to act, it may be based on a perception that the rules prohibit this approach, and that they do not know - nor have the opportunity to prioritise active contacts with authorities - to examine the legal possibilities for this themselves.

In addition, it would be valuable if the legal conditions, in addition to being clarified as far as possible to increase the legal security of companies, could also be harmonised. This way, different interpretations of the regulations will not be made in different Member States. Otherwise, it is conceivable that different interpretations for the different companies involved could make collaboration more problematic. The competition authorities should take the initiative in this area, and work together to develop common guidelines that - in as an accessible way as possible - clarify the possibilities for collaboration. This will assist in developing climate-smart solutions - preferably with concrete examples - and then work to increase awareness of these among the business community.

Part 3: Mergers of companies

The current rules limit companies' opportunities to merge, if such a merger will lead to an overly dominant position in the market. This is reasonable and allows well-functioning competition to be maintained. This in turn is a prerequisite for creating the right incentives for companies to continue investing in climate-smart solutions, as described above. As far as the Confederation of Swedish Enterprise is aware, there is no empirical evidence that larger companies provide more climate-smart solutions than small companies relative to their size. Therefore there is no specific value in relation to the Green Deal to push for less-intrusive controls over acquisition. In addition, EU acquisition controls, as currently applied by the authorities, are well balanced, with very few mergers being prevented. Thus no special changes to this regulatory framework are required.