PRESS RELEASE

The CNMC takes part in the European Commission's public consultation on competition policy and environmental sustainability targets

- The CNMC includes the Sustainable Development Goals (SDGs) as one of its key areas of activity.
- Competition policy contributes to the SDGs by stimulating sustainable business strategies.
- The CNMC believes that such a policy can play an even more active role to promote sustainability within the current legal framework.
- Sustainability targets must not undermine effective competition or create distortions in the internal market.

Madrid, 10 December 2020 - The CNMC has published its inputs to the European Commission's public consultation on how competition policy can contribute to the Green Deal.

The European Green Deals aims at making Europe the first climate-neutral continent by 2050 by developing a fair and prosperous society that permits for the implementation of a modern and competitive economy using resources efficiently.

The European Commission has sought contributions from authorities, associations and operators in three areas: State Aid, prosecution of anti-competitive behaviour and merger control procedures. The feedback received will be shared at a conference to be organised next year.

By itself, competition policy affects sustainability by encouraging technological innovation and spurring competition between companies to offer consumers more sustainable products and services. Sustainability must be regarded as a differentiating factor of competitiveness that benefits consumers, one that competition policy must reinforce.

Assessment principles

Although, in general, competition and sustainability are complementary, sometimes they are not, so a balance that is satisfactory to society must be struck between the two. The necessity and proportionality test is the best way to determine this balance point.

In this regard, the CNMC believes that integrating sustainability considerations into competition analyses must comply with the following principles:

- provide the necessary **predictability** to economic operators in terms of how their actions will be assessed under competition rules.
- maintain the **consistency** and interpretation of competition rules within the EU, and avoid the fragmentation of the internal market.
- preserve effective **competition** in the internal market, so that it can be 'fine-tuned' without a radical transformation.

Moreover, we should not overlook the fact that a proactive effort for sustainability by competition authorities requires greater specialisation in these areas (professional skills, evaluation methodologies, etc.).

State aid

The CNMC considers it necessary to conduct a careful assessment of the risks involved in modifying the regulations on state aid. Each country should be allowed to reflect its sustainability concerns without distorting competition in the internal market.

The specific proposals made by the CNMC include clarifying the regulations on electricity **self-consumption**, developing a network of **recharging stations** to achieve the true deployment of electric vehicles, and **immature production technologies**, together with reducing incentives for production activities that rely on **fossil fuels** when it is technically possible to use clean energy. **Public procurement** can also be an equally effective instrument to curb climate change.

Anticompetitive practices

Agreements between operators that yield a clear environmental improvement and do not involve restricting parameters that are essential to competition are permitted by competition rules. Those agreements that, in addition to providing a clear environmental benefit, also restrict competition, are acceptable as long as they comply with the requirements of competition regulations (Art.101.3 TFEU and Art. 1.3 of Spain's Anti-Trust Law). However, there is a clear limit that must be respected: sustainability goals can never be an excuse to authorise cartels.

The CNMC notes that, in order to stimulate the adoption of cooperation agreements in favour of sustainability targets, operators should be given greater **legal certainty at the EU level** on the types of actions they can carry out without breaching rules on competition and on the evaluation of efficiencies.

Mergers control

Mergers can, in certain cases, have a negative impact on sustainability by reducing innovation or competition between sustainable operators. Another cause for concern is the so-called *"killing acquisitions"*, that is, mergers aiming at letting the acquiring company gain control of the acquired company in order to avoid developing or commercialising cleaner technology.

By contrast, some business mergers may help advance sustainability objectives. Including sustainability criteria as part of the efficiency analysis would require a review of the evaluation instruments (concepts, tools and profiles).

Link to the CNMC's position document