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Sustainability Belgium – The Impact of the Green Deal on EU Competition Law

How Sustainability Aspects are shaping the Rules and what it means for Businesses

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Introduction

In December 2019, the European Commission (the **Commission**) presented its European Green Deal, a set of policy initiatives aimed at making Europe climate-neutral by 2050. Executive Vice-President and Commissioner for Competition, Margrethe Vestager (the **Commissioner**), has clarified that this central Commission initiative will also impact the Directorate General for Competition and the way in which competition rules will be enforced in the future. While the Commissioner stressed that she does not see competition law enforcement at the forefront of Europe's green transition, she and her team will consider what more can be done "*to apply our rules in ways that better support the Green Deal.*"[1]

In 2021, Commissioner Vestager and her team have begun to demonstrate how they envisage that "better support" to work in practice. Following a call for contributions on how antitrust, merger control and State-aid rules should be changed and applied to increasingly take environmental and climate policy goals into account, the Commission organised a conference on this topic in February 2021. On 10 September 2021, the Commission published a competition policy brief – "Competition Policy in Support of Europe's Green Ambition" – setting out the conclusions that where drawn from the various contributions received (the **Policy Brief**).[2] It is expected that the results of this broad consultation process will also feed into the overhaul of a number of regulations and guidelines that are currently under review and need to be revised before they expire at the end of 2021 or 2022.

While the Green Deal is certainly one of the most ambitious and significant Commission policy initiatives that will influence all areas of the law for many years to come, it still remains to be seen what impact any changes to competition law will have on businesses. In an ideal world, the updated antitrust regulations and guidelines will provide much needed guidance and thus legal certainty, encouraging companies to set up and collaborate on sustainability projects without fear of intervention by the Commission. Regarding mergers, one would hope that the Commission would start adopting a more holistic approach, taking out-of-market efficiencies that benefit society as a whole into greater consideration. Broadening the scope of possible exemptions from the 's State-aid review and taking climate-positive activities into account should also help foster investments in the green transition of Europe's economy.

Antitrust

European antitrust rules, as codified in article 101(1) of the Treaty on the Functioning of the EU (the **TFEU**), prohibit agreements and concerted practices between businesses that restrict or distort competition. Where such behaviour does not relate to the so-called 'hard core restrictions' such as, for example, price fixing or market sharing, it is possible to justify the collaboration provided that certain legal requirements are met.[3] These include where the collaboration contributes to production improvements, or to promoting technical or economic progress, while at the same time allowing consumers a fair share of the resulting benefits.

The Commission acknowledges that there is a variety of types of collaboration that are actually beneficial, and that while they potentially lead to competitive restrictions, they also provide benefits which ultimately outweigh their negative impacts on competition. To provide companies with guidance on their potential collaboration, the Commission has adopted a number of so called 'Block Exemption Regulations' (**BERs**) and guidelines. These BERs and guidelines specify under what circumstances businesses may set up collaborations relating to, for example, R&D agreements, industry standardisation projects, etc. Agreements fulfilling the conditions will automatically be exempted from the prohibition against cartels.

The problem is that the BERs and guidelines pre-date the current discussions on sustainability and the ecological transition of Europe's economy. Therefore, they remain unhelpfully silent when it comes to collaboration aimed at things such as the reduction of CO2 emissions or improving energy efficiency. For businesses, this means that they are currently stuck with old partly-outdated rules that do not provide the required guidance and legal certainty. This is especially problematic as companies need to perform a self-assessment to ascertain whether their collaboration complies with EU antitrust rules. There is currently no institutionalised process available to approach the Commission in advance to receive its approval for an envisaged collaboration.

The Commission has realised that it needs to act. The main issues that it will have to address are: what types of agreements constitute relevant sustainability agreements that fall outside the remit of article 101(1) of the TFEU, and how can the existing TFEU legal requirements, justifying an otherwise restrictive practice, be interpreted to be fit for purpose, in particular with regard to the requirement to provide consumers with a fair share of the benefits?

From Commissioner Vestager's speeches on the subject, it seems clear that the primary goal is to "*apply the rules in ways that better support the Green Deal*." As the Green Deal is aimed at Europe's climate neutrality, it can be assumed that the Commission's focus on the provision of additional guidance will be on agreements relating to the reduction of CO2 and other harmful gasses, and probably to a lesser extent other areas commonly linked to sustainability, including social or work environment related improvements.[5]

Is the Commission ready to look beyond just lower prices and a broader choice for consumers?

The notion of 'a fair share of the benefits for consumers' plays a particularly important role in the current discussions. It is one of the requirements that must be fulfilled to justify an otherwise restrictive practice. Given that it is an express requirement in article 101(3) of the TFEU, a change to the wording itself seems highly unlikely, since this would require a change to the TFEU. Thus, the Commission will have to figure out whether this notion can be interpreted differently. The traditional approach of the Commission, reflected in the current BERs and guidelines, has been rather narrow and purely economically-driven. It has focused primarily on lower prices and a broader choice for those consumers directly affected by a collaboration. However, companies agreeing to collaborate, for example on ambitious lower emission standards in their production processes, may (at least in the beginning) actually have to charge consumers more for the additional costs that developing and implementing such stricter standards entail. Cleaner air is also something that benefits society at large, not just the companies' customers.

Judging from its recently published Policy Brief, the Commission at least seems to be prepared to adopt a broader approach. In the Policy Brief, the Commission notes that benefits achieved on separate markets "*can possibly be taken into account provided that the group of consumers affected by the restriction and the group of benefiting consumers are substantially the same*", thereby ensuring that consumers are "*fully compensated*" for the harm suffered. Referring to the example of collaboration leading to cleaner air, the consumer group that is affected by the harm resulting from the collaboration, eg., higher prices, would necessarily have to form part of the bigger group of consumers that benefits from the cleaner air; and those benefits would have to be significant. While the Commission's openness is certainly welcome, it will need to provide sufficiently detailed guidance on what kind of direct and indirect beneficial effects may be taken into account in the assessment, and how such effects should be quantified so that companies can prove that the benefits of their collaboration are significant[6] enough to fully compensate consumers.

The Commission has also expressed its willingness to consider requests for individual "guidance letters" for sustainability initiatives provided, however, that they relate to novel issues. Unsurprisingly maybe, this suggests that the Commission will not, as some stakeholders have demanded, reactivate the comfort letter, a tool that has not been used for more than a decade, and which allowed businesses to approach the Commission with their plans to obtain the green light in advance, irrespective of any possible novel issues that might be involved. However, maybe to compensate for this more selective approach, the Commission has noted in its Policy Brief that it may be prepared to also adopt (and thus publish) a formal decision that a sustainability initiative does not infringe competition law rules, should this be in the public interest. Through the use of this tool, the Commission could thus still provide additional guidance beyond that which is already included in BERs and guidelines.

It will also be interesting to see how the Commission deals with the sustainability contributions from the national competition authorities. In particular, the Dutch agency, the Netherlands Authority for Consumers and Markets (the **ACM**), which is currently forging ahead with its progressive draft guidelines on sustainability agreements. After having published its initial guidelines in September 2020, the ACM has already adopted an updated version, stating that they "*want to take the discussion to the next level*."[8] The Greek,[9] German[10] and French[11] authorities have also started to raise their voices. While EU antitrust rules prevail over national law, national regimes may still go beyond these EU antitrust rules and set rules to close perceived enforcement gaps. Obviously, a consistent approach throughout the EU would be preferable for businesses.

"The Commission has also expressed its willingness to consider requests for individual "guidance letters" for sustainability initiatives provided."

What changes and – hopefully – improvements can businesses expect?

Two very concrete examples that will allow the Commission to clarify how competition law rules should be applied in future to support the Green Deal are the BER for R&D agreements and the BER for specialisation agreements. Both are scheduled to expire at the end of 2022 and will need to be extended, to give the Commission the chance to amend them. The Commission has started the process of reviewing these regulations together with the Horizontal Guidelines, which provide guidance and concrete examples of additional types of agreements that are exempted from the Commission's cartel review. During the public consultation process, the lack of guidance on sustainability agreements was listed by businesses as a particularly important area that needed to be addressed by the Commission as part of its revision process.

As stated above, the Commission has also started a broader policy review process. Almost 200 stakeholders have provided their views on how the existing antitrust rules should be applied in the future to provide more legal certainty to businesses that wish to engage in sustainability projects. The Commission's Policy Brief provides the very first, and indeed a very brief (seven pages), overview of how it intends to move forward with the insights gained during the public consultation process.

What is already clear is that while the Commission is mindful that businesses understandably require more legal certainty, the conditions under which undertakings may profit from sustainability safe harbours will probably not be lenient. Commissioner Vestager has stressed that sustainability agreements must not be used to disguise cartelistic behaviour or be abused for greenwashing.

Anti-sustainability agreements – a new category of antitrust cases on the horizon?

A further element to consider is cooperation that does not relate to improvements to the environment but is detrimental to the environment. The Commission's willingness to confront these cases is already apparent. On 16 March 2021, the Commission opened an investigation under article 102 of the TFEU into the possible abusive behaviour of a dominant position by the Public Power Corporation (**PPC**), Greece's largest supplier of retail and wholesale electricity. The Commission is concerned that PPC may have restricted competition in the Greek wholesale electricity markets with its bidding behaviour. When announcing the investigation, Commissioner Vestager stated: "*Today we are launching an investigation of PPC's behaviour in wholesale electricity markets in Greece that might have distorted competition and slowed down investment into the generation of greener energy*,"[12] thereby linking the potential abusive behaviour of PPC to sustainability aspects. However, it remains to be seen what role, if any, this element will play in the substantive assessment of the case.

In another case, the Commission's intervention went even further. In July 2021, the Commission found that Daimler, BMW and Volkswagen group had colluded on technical developments in the area of nitrogen oxide cleaning. According to the Commission, the carmakers had agreed not to introduce technology that would have reduced harmful emissions beyond what was legally required under the EU emission standards, even though such technology was already available. For the very first time, the Commission identified an infringement by object in the form of a limitation of technical development, and imposed a fine of EUR875 million on the companies involved.[13] Commissioner Vestager commented: "*Competition and innovation on managing car pollution are essential for Europe to meet our ambitious Green Deal objectives. And this decision shows that we will not hesitate to take action against all forms of cartel conduct putting in jeopardy this goal*."

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Merger control

When it comes to merger control, sustainability aspects have only played a very minor role. In fact, in 2017, at the time of the Bayer/Monsanto merger, Commissioner Vestager made her views clear, when writing an open letter in response to requests from over 50,000 petitioners urging the Commission to block the merger: "*Many of you warn about the negative effects linked to Monsanto's and Bayer's products, including risks for […] the environment and the climate. […] While these concerns are of great importance they do not form the basis for a merger assessment*."[14]

Sustainability and merger control – will it be more than just window dressing?

Since 2017, the Commission's mind set has clearly changed, and the public consultation process on how competition law could better support the EU's sustainability goals also included merger control. In practice though, little has changed so far. In its decision regarding the creation of a joint venture between DEMB and Mondelez concerning the production of coffee, the Commission considered that organic and fair-trade coffee (or what it called "non-conventional" coffee) could belong to a different market than conventionally produced coffee. While arguably the Commission referred to aspects of sustainability in its assessment, when referring to organic and fair-trade coffee, the truth is also that it had simply applied the instruments in its current toolbox, analysing whether "non-conventional" coffee had different characteristics and customer groups than conventional coffee. Since organic and fair-trade coffee are perceived by customers to have other attributes (healthier, more environmentally friendly, more socially sustainable etc.) and are usually more expensive, a segmentation of the market indeed seems only logical. The case thus touches upon sustainability more by coincidence than as a result of applying an updated policy.

More interesting is of course the question of whether the Commission will take sustainability aspects into account in its substantive analysis of merger cases. At first glance it seems as if an initial attempt was made in the recent Metallo/Aurubis merger[15] relating to, amongst other things, the recycling of copper scrap. Here the Commission was concerned that the buying power of the combined business would allow the parties to obtain lower prices from their suppliers, which in turn might have negatively impacted these suppliers' incentives to actually engage in the collecting and sorting of copper scrap. When presenting the clearance decision after an in-depth phase 2 review, Commissioner Vestager stated: "*Copper is an important input needed for electric mobility and digitisation. A well-functioning circular economy in copper is important to ensure a sustainable usage of resources in the context of the European Green Deal. This is why we carried out an in-depth investigation of the merger between Aurubis and Metallo*."[16] However, looking at the decision and the Commission's reasoning, it does not seem as if any novel – environment-related – theory of harm was applied. Instead, the Commission focused on the rather conventional concern of the increased buyer power of the merging parties. The fact that Commissioner Vestager linked the case to the Green Deal seems more of a marketing ploy than any sustainability-driven application of the rulebook. That said, this shows that the Commission may be on the lookout for cases that have a sustainability angle and might wish to take a closer look at them.

Again, the Dutch are taking things one step further. After an in-depth investigation, the ACM cleared a transaction concerning calf purchasing in August 2021.[17] The authority was concerned that the merger could lead to a degradation in animal welfare and less sustainable dairy farming resulting from the price pressure exercised by the merging parties on dairy farmers. When opening the in-depth investigation, Martijn Snoep, head of the ACM noted: "*This is, I wouldn't say an experiment, but this is the first time that we in an actual merger case, […] are investigating a theory of harm based on sustainability considerations*."[18] However, it should be noted that the investigation was not solely based on sustainability concerns but also pursued other more traditional theories of harm relating to buyer power and monopsony pricing.

Another aspect of sustainability that is potentially affecting the Commission's merger control decisions is that of acquisitions relating to small, very innovative companies in the sustainability sector, also referred to as green-killer acquisitions. The term 'killer acquisition' is already well known in the digital start-ups sector, but it is not inconceivable that the Commission may wish to take a closer look at mergers involving businesses that have developed (or have in their development pipeline) products that would help, for example, to reduce CO2 emissions or the use of certain chemicals or pesticides.

Recent statements made by the Commission's Chief Economist, Pierre Régibeau, however, suggest that the Commission might also be willing to look at sustainability aspects to actually justify a clearance decision for a merger that would otherwise negatively affect competition in the market. During a conference in September 2020, Mr Régibeau explained that his team would be working on the development of tools that would allow the Commission to analyse "green efficiencies". By this, Mr Régibeau was referring to out-of-market efficiencies such as cleaner water or air that not only the customers of the merging parties would profit, but society at large. Next to the obvious challenges of quantifying these efficiencies, another issue is at the time of the merger the desired effects may not yet exist or even require more time post-closing to actually materialise. This again would require the C to broaden its understanding of what constitutes consumer benefits and include the broader public in its assessment. While the Commission may eventually be willing and able to analyse these efficiencies, presumably it will be tough for businesses to invoke such sustainability defence, given that the burden of proof lies with the merging parties to show that the claimed green efficiencies resulting from the merger not only exist but indeed outweigh other competitive concerns.

What can businesses that wish to engage in mergers expect from the Commission?

For businesses, this probably means that merger control will not be an area prone to many changes to its rules or their application. It would seem more conceivable that, as part of the Commission's general policy shift in line with the Green Deal, that the Commission will simply pay more attention to cases that may have a sustainability angle, if only to present itself as a "green regulator". This approach also seems to be confirmed by the Commission's Policy Brief, in that the Commission also makes it clear that the Commission will not (and cannot) intervene in mergers solely because they are likely to harm the environment.

However, the Dutch case shows that in this wider policy context, the Commission may still develop new sustainability-driven theories of harm. However, when experimenting with such theories, the Commission will always have to consider whether it is exceeding its mandate and stands a realistic chance of prevailing in court.

Likewise, the actual relevance of killer acquisitions seems often overstated, and for most mergers, such considerations, do not play a role at all. That said, businesses should be aware that the Commission is actively pursuing a policy change by encouraging Member State agencies to make use of the case referral mechanism of article 22 of the EU Merger Regulation to enable the Commission to review transactions that would otherwise fall outside its review scope.

State aid

Arguably the biggest impact of the Green Deal and its sustainability aspects on competition law will be in the area of State aid. The EU is keen to foster the economic transition required to meet its goal of becoming climate-neutral by 2050. Only by providing massive state support and subsidies, will the EU have a chance of realising its ambitions. To give an idea of the scale of support and subsidies, the Commission envisages mobilising at least 1 trillion euros over the next decade to finance the green transition in its Green Deal Investment Plan. Adjusting the EU State-aid framework is one of the key pillars of this plan.

In January 2019, the Commission commenced a 'fitness check' to evaluate whether the existing State-aid rules were still suitable or whether they required amendment. With the adopted policy goals relating to the EU's Green Deal and Industrial and Digital Strategy, the Commission has now included these policy goals in its exercise to make the State-aid framework fit for purpose.

One of the main pieces of legislation in the area of State aid is the General Block Exemption Regulation (the **GBER**). The GBER sets out the criteria under which certain categories of State aid are exempted from the requirement to be reviewed by the Commission, and thus assumes their compatibility with the internal market under the Treaty provisions of article 107(2) or 107(3) of the TFEU. Following the evaluation of the GBER in 2019/2020, the Commission is now looking into how its provisions and categories of exempted State aid should be revised to better support the Green Deal. One of the existing categories already includes State aid to enable undertakings to go beyond EU standards for environmental protection or to increase the level of environmental protection in the absence of EU standards. The duration of the current GBER has recently been extended until the end of 2023. In its Policy Brief the Commission states that it will undertake a further review of the GBER during the first half of 2022.

The Commission is also working on new Climate, Energy and Environment Aid Guidelines (the **CEEAG**), which will replace the 2014 Environmental and Energy State aid Guidelines and aim to better support State-aid measures that are consistent with the Green Deal objectives. The CEEAG envisage broadening the scope of State-aid eligible sectors and technologies and increasing the available State-aid amounts, while at the same time discouraging State aid to projects involving the most polluting fossil fuels. The CEEAG also aim at enhancing transparency with new public consultation requirements. It is currently envisaged that the CEEAG will enter into force on 1 January 2022.

Also under review is the communication relating to the so-called 'important projects of common European interest' (or in short, **IPCEI**). The purpose of this communication is to provide rules to allow Member States to jointly support bigger transnational projects that clearly contribute to Europe's economic growth, jobs and its competitiveness. Since its publication in 2014, a number of projects have been supported under this framework, with the 2.9 billion euro investment project between 12 Member States to boost the production of electric batteries from January 2021 being the most recent one. Given the huge challenges ahead, it is expected that the Commission will be keen to realise further IPCEIs. As part of its "fitness check", the Commission has evaluated the IPCEI communication

and concluded that the communication should be revised to ensure "consistency with EU policies, notably enabling the green and digital transformation." The subsequently launched public consultation ran until 21 April 2021. The Commission envisages adopting a revised communication in the second half of 2021, before the current version of the communication expires at the end of 2021.

What role will sustainability play in the assessment of a State-aid scheme?

How the Green Deal will affect the State-aid legal framework can already be seen with the newly published revised guidelines on regional State aid (the **Regional State Aid Guidelines**), which are the first guidelines to have been adopted after the announcement of the Green Deal.[19] The Regional State Aid Guidelines set out the rules under which Member States may grant State aid to companies to support the economic development of disadvantaged areas in the EU. In addition to increased maximum aid intensities,[20] which the Commission markets as support for the Green Deal objectives, the Regional State Aid Guidelines also include updated criteria for balancing the positive impact of the State aid against its negative effect on competition and trade. This assessment may now also take account of other additional positive and negative effects, such as a substantial contribution to the green and digital transition or some related negative externalities. Such positive effects would be related to, for example, environmentally sustainable activities, including low carbon, climate neutral or climate-resilient activities. The Regional State Aid Guidelines will enter into force on 1 January 2022.

Other sustainability related State-aid rules currently under revision include the State-aid Framework for Research, Development and Innovation. Its revised version should be adopted in the second half of 2021. In addition, in September 2020, the Commission adopted the revised Emission Trading System State Aid Guidelines in the context of the system for greenhouse gas emission allowance trading post-2021 which entered into force in January 2021. The Commission is also in the process of adopting a new block exemption regulation for land transport, and so promoting and supporting less polluting forms of transport.

What can businesses expect?

When trying to determine how the Commission may act in the future, it is always worth paying close attention to the European Court of Justice (the **ECJ**). Noteworthy in this context is a judgment from September 2020. In this case, Austria, supported by a number of other Member States, asked the ECJ to annul a decision by the Commission approving a State-aid scheme the UK had granted in connection with the construction of the new Hinkley Point C nuclear power station. While the ECJ did not decide in Austria's favour, it made clear that, as a matter of principle, State aid could not be declared compatible with the internal market where such aid contravened the general principles of EU law. These general principles included the principle of protection of the environment, the precautionary principle, the 'polluter pays' principle and the principle of sustainability, deriving from articles 11 and 194(1) of the TFEU. Given the political environment and that the Commission looking for ways to "better support" the Green Deal, the Commission may invoke such principles more frequently in the future to reject State-aid schemes for projects that would have a negative impact on the environment.

While it is difficult to predict how an amended State-aid legal framework will affect businesses, as long as no further updated State-aid regulations and guidelines have been published, the example of the Regional State Aid Guidelines shows that sustainability aspects will most likely be used as additional criteria in the assessment of an aid scheme's compatibility rather than replacing or forming an alternative to any of the existing criteria (such as the creation of jobs and/or the introduction of new activities). The Regional State Aid Guidelines also indicate the Commission's approach to the concept of sustainability, suggesting a somewhat narrower perspective that focuses primarily on carbon reduction and climate neutrality.

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Appendix

1. From the speech of Commissioner Vestager at the Renew Webinar on 22 September 2020, available at: https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/green-deal-and-competition-policy_en
2. European Commission, Competition Policy in Support of Europe's Green Ambition, Competition Policy Brief No 1/2021; available at: https://ec.europa.eu/competition-policy/system/files/2021-09/Competition%20Policy%20Brief%20-%20Green%20Deal%201-2021.pdf.
3. In theory, also hard core restrictions can be justified, though in practice that has proven all but impossible.
4. While not directly related to any sustainability initiative, it should be noted that the Commission has launched a process to ensure that EU competition rules do not stand in the way of collective bargaining for the solo self-employed, so that working conditions for this group can be improved through collective agreements. The notice is expected at the end of 2021. In addition, as part of its "farm to fork strategy" and in support of the Green Deal, the Commission announced that it will provide clarifications on how agricultural, fishery and aquaculture producers can collaborate to promote sustainability without falling foul for antitrust rules.
5. To see what a broader take on sustainability agreements would look like, the Dutch competition authority has published draft guidelines on sustainability agreements that leave the definition of what constitute a sustainability agreement relatively open.
6. European Commission, Competition Policy in Support of Europe's Green Ambition, Competition Policy Brief No 1/2021, page 6.
7. Second draft guidelines on sustainability agreements from the ACM, available at https://www.acm.nl/sites/default/files/documents/second-draft-version-guidelines-on-sustainability-agreements-oppurtunities-within-competition-law.pdf.
8. Press release from the ACM from 26 January 2021 accompanying the adoption of the second draft guidelines on sustainability agreements, available at https://www.acm.nl/en/publications/guidelines-sustainability-agreements-are-ready-further-european-coordination.
9. The Hellenic Competition Commission launched a public consultation and organised a conference on competition law and sustainability on 17 September 2020, after which it published a technical report mainly addressing environmental sustainability, available at https://www.epant.gr/en/enimerosi/competition-law-sustainability.html.
10. The Bundeskartellamt held a virtual meeting on 1 October 2020 on competition law and sustainability after which it published a somewhat working paper addressing sustainability as a public interest objective on which lawmakers should take a stance, available at https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Diskussions_Hintergrundpapiere/2020/Working_Group_on_Competition_Law_2020.pdf?__blob=publicationFile&v=2.
11. On 5 May 2020, the Autorité de la concurrence and eight other regulators published a joint document on climate emergency and the regulatory challenges for which they intend join forces, available at https://www.autoritedelaconcurrence.fr/en/press-release/eight-french-regulators-publish-working-paper-their-role-and-tools-face-climate.
12. See the Commission's press release on the initiation of the proceedings: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1205
13. Case COMP/AT.40178 – Car Emissions. As the immunity applicant who had disclosed the cartel, Daimler was not fined.
14. Letter from Commissioner Vestager dated 22 August 2017, available at https://ec.europa.eu/competition/mergers/cases/additional_data/m8084_4719_6.pdf.
15. Case M.9409 – Aurubis / Metallo Group Holding.
16. Press release from the Commission dated 4 May 2020 announcing the decision in case M.9409 – Aurubis / Metallo Group Holding, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_801.
17. Decision to open an in-depth investigation in case ACM/20/043574 from 26 March 2021 from the ACM, available (only in Dutch) at https://www.acm.nl/sites/default/files/documents/nader-onderzoek-nodig-overname-aj-van-dam-door-van-drie-concentratiebesluit.pdf.
18. Statement made by Martijn Snoep during the Competition Policy and the EU Green Deal, Concurrences webinar from 19 April 2021.
19. See here for the corresponding press release from 19 April 2021: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1825.
20. It is currently unclear if these increased maximum aid intensities correspond to what Commissioner Vestager referred to as "green bonuses". In September 2020, she had proposed to allow for higher State aid (as a share of the overall project costs) for projects that "*make a genuine contribution to our green goals*." However, the increased maximum aid intensities introduced by the Regional State Aid Guidelines are not reserved to sustainability related projects.

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