

COMPETITION POLICY SUPPORTING THE GREEN DEAL CEMBUREAU INPUT

CEMBUREAU, the European Cement Association (www.cembureau.eu), welcomes the opportunity to contribute to the European Commission's call for contributions on "*Competition policy supporting the European Green Deal*".

CEMBUREAU firmly supports the objectives of the European Green Deal and is determined to contribute strongly to the EU's vision for a carbon neutral society by 2050. On 12th May 2020, CEMBUREAU published its new [Carbon Neutrality Roadmap](#) setting out its ambition to reach net zero Greenhouse Gas (GHG) emissions along the cement and concrete value chain by 2050, in line with the European Green Deal.

In summary, CEMBUREAU considers that competition law, and in particular State Aid control, should foster smart forms of public support to achieve large-scale decarbonisation across all EU Member States. For the cement industry, this involves in particular the appropriate support for Carbon Capture, Utilisation and Storage (CCUS) technologies; the use of non-recyclable waste to phase out fossil fuels in cement production processes; and innovative ways to incentivise the use of low-carbon products. In addition, environmental tax exemptions should be maintained to support industries.

In this response, we focused our contribution mainly on the first part of the Commission's questionnaire on State Aid Control, which is the most relevant to our decarbonisation efforts. We remain at the Commission's disposal to further discuss this contribution.

Part 1: State aid control

1. What are the main changes you would like to see in the current State aid rulebook to make sure it fully supports the Green Deal? Where possible, please provide examples where you consider that current State aid rules do not sufficiently support the greening of the economy and/or where current State aid rules enable support that runs counter to environmental objectives.

CEMBUREAU believes that the existing EU State Aid rules, and in particular the State Aid Guidelines for Environmental Protection and Energy, should be updated to support the decarbonisation of European industries.

CEMBUREAU's [Carbon Neutrality Roadmap](#), published in May 2020, identifies the key pathways to decarbonise the industry, and its key findings are as follows:

- Carbon Capture, Use and Storage (CCUS) will account for 42% of the CO₂ emissions reduction in the sector.
- The replacement of fossil fuels by non-recyclable and biomass waste, and the use of alternative raw materials, will deliver another 15% of the emissions reduction in the cement industry.
- Bringing low carbon-cements products to the market will deliver an additional 13% emissions reduction.
- These decarbonisation efforts will require a significant increase in electricity usage in our member cement factories.

In light of the above challenges, that are not unique to the cement industry, CEMBUREAU believes that the revision of the State Aid Guidelines for Environmental Protection and Energy is a key opportunity to:

- **Maintain and enhance CCUS aid:** the utilisation of CO₂ should also be recognised in the Guidelines, as using the CO₂ will become an important part of CCUS projects in the future. In the cement industry, a number of projects look at using CO₂, either through mineralisation (permanent capture of CO₂ through carbonation) or through the re-use of CO₂ (for instance, as synthetic fuel through the blending with hydrogen, or for chemical purposes).
- **Strengthen the aid regime for waste management** which should also recognise co-processing investments in the cement industry where non-recyclable-waste is used as both alternative fuel and raw material to replace primary fuels and raw materials (i.e. for energy recovery and material recycling). It is essential there that the use of non-recyclable waste in industrial processes is supported where it can deliver significant CO₂ emissions reduction;
- **Incentivise waste heat recovery and generation of renewable electricity** through state aid to support installation costs and preferential feed-in tariffs.
- **Continue to support the availability of low-carbon electricity at an affordable price, which is essential to decarbonise energy-intensive processes like cement.** The ability to provide aid in the form of reductions in the funding of support for energy from renewable sources should therefore be preserved. In this context, it is essential to maintain the cement sector in Annex 3 of the Guidelines on State aid for environmental protection and energy. Furthermore, when modifying the Guidelines, appropriate attention should also be given to partial exemptions from costs related to energy transition and passed-on costs in electricity prices. This relates to both increasing market prices for electricity (e.g. due to coal and/or nuclear exit in Member States) and increasing grid charges (e.g. due to transmission system expansions and integration of renewable energies).
- **State aid mechanisms should also be available to support hydrogen use in energy-intensive industries.**
- **Maintain and enhance environmental tax exemptions.** The list of eligible sectors for Aid in the form of reductions in or exemptions from environmental taxes should not be restricted to these sectors covered by what is now Annex 1 of the recently adopted EU ETS State Aid Guidelines. Rather, sectors like cement will see electricity demand increase in line with their efforts to further reduce their carbon footprint, as utilization of alternative low-carbon raw materials or application of CCS/CCU technologies demand more electrical power input. This should be recognised and supported.

In addition to these changes, CEMBUREAU also believes that State Aid Control should support new forms of innovative funding to decarbonise industry. These could take the form of **Carbon Contracts for Difference**, whereby a carbon price is guaranteed by public funding at a given time horizon. Such mechanisms, alike to the funding for renewable installations in the existing guidelines, would greatly remedy the existing market failures and facilitate deep CO₂ cuts in heavy industries.

Furthermore, CEMBUREAU would like to stress that State Aid control should further facilitate industrial decarbonisation by:

- **Focusing primarily on the sectors in need of strong decarbonisation** and which are particularly hard to abate. Where a high degree of CAPEX/OPEX is needed to meet EU targets, this should be reflected in competition rules.
- **Covering not only capital expenditure but also operational costs.** The decarbonisation of energy-intensive industries will indeed result in increased operational costs, in addition to the necessary capital investments in breakthrough technologies; the de-risking of financing, including of OPEX, is very much key to see these investments happening;

- It will be important to allow for **greater aid intensity levels across the EU State Aid legislation**. As administrative barriers can be significant, appropriate levels of aid intensity will be required to incentivise investments.

We offer in the annex to this document a number of concrete wording suggestions to reflect the above points.

2. If you consider that lower levels of State aid, or fewer State aid measures, should be approved for activities with a negative environmental impact, what are your ideas for how that should be done?

CEMBUREAU considers that the best way to reduce support for activities with a negative environmental impact is to ensure that State Aid Control (in particular, the State Aid Guidelines on Environmental protection and Energy) is focused on technologies which are key for decarbonisation. As highlighted above, we believe that State Aid should focus primarily on the sectors in need of strong decarbonisation.

Conversely, a specific approach could be taken for activities which may have a negative environmental impact, based on comparisons with more environmentally-friendly alternatives. For instance, CEMBUREAU does not consider that granting operating aid to biomass plants is justified in all case. Rather, the use of biomass should be prioritised for industries where it provides an alternative to fossil fuel and allows deep CO₂ cuts and where mineral content of the biomass can be recycled into the final product, as is the case with biomass waste used in cement kilns. In the case of biomass, CEMBUREAU would therefore support an approach where investments in biomass plants is assessed against options of biomass use in the same geographical area and, where such alternative options are available, state aid should be limited.

- a. For projects that have a negative environmental impact, what ways are there for Member States or the beneficiary to mitigate the negative effects? (For instance: if a broadband/railway investment could impact biodiversity, how could it be ensured that such biodiversity is preserved during the works; or if a hydro power plant would put fish populations at risk, how could fish be protected?)

CEMBUREAU would urge caution on setting out new detailed criteria defining how mitigation measures should be taken for a given project. In practice, EU companies and project promoters are already subject to strict regulations related to environmental impact assessments, habitats, biodiversity, air quality and CO₂. These regulations have been established precisely to mitigate these potential negative impacts. Therefore, abiding by the existing environmental legislation at a national and European level could be the best way to ensure that these negative impacts are mitigated. We are not convinced that additional measures are required through State Aid Control.

3. If you consider that more State aid to support environmental objectives should be allowed, what are your ideas on how that should be done?

- b. Should this take the form of allowing more aid (or aid on easier terms) for environmentally beneficial projects than for comparable projects which do not bring the same benefits (“green bonus”)? If so, how should this green bonus be defined?

CEMBUREAU supports the idea of providing a “green bonus” for environmentally-beneficial projects, but we would however express caution on the comparability between the environmental benefits of different projects.

For instance, in the cement industry, the geographical location of a given cement plant may have significant consequences on its ability to reduce CO₂ emissions, depending on factors such as availability of non-recyclable waste or biomass waste to replace fossil fuels; availability of alternative raw materials; or the possibility to transport CO₂ through dedicated pipelines. Some plants which do not benefit from an “ideal” geographical location may precisely be the ones that will need state aid support for decarbonisation investments. With the necessary financial support, CCUS projects at these plants could create in the future new industrial hubs in areas with little employment opportunities, where SME are able to create innovative products from the CO₂ captured.

Therefore, CEMBUREAU would not advocate for an approach where “green projects” are differentiated through new criteria.

- c. Which criteria should inform the assessment of a green bonus? Could you give concrete examples where, in your view, a green bonus would be justified, compared to examples where it would not be justified? Please provide reasons explaining your choice.

From CEMBUREAU’s perspective, a possible criterion would be that a green bonus is delivered where projects deliver on multiple objectives of the Green Deal objectives and go “beyond the Best Available Technique (BAT)”.

4. How should we define positive environmental benefits?

- a. Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy? Or would any kind of environmental benefit be sufficient?

CEMBUREAU believes that using the taxonomy criteria could be pertinent, but sees significant limitations to it. The EU taxonomy was originally established for the purpose of providing financial institutions with a definition of green/sustainable activities. State funding, on the other hand, serves a fundamentally different purpose and may take a very strong economic and social dimension. We therefore believe that more flexibility is required, for instance in making reference to only part of the sustainability criteria of EU taxonomy i.e. the technologies which are key for decarbonisation of the sector.

Part 2: Antitrust rules

1. Please provide actual or theoretical examples of desirable cooperation between firms to support Green Deal objectives that could not be implemented due to EU antitrust risks. In particular, please explain the circumstances in which cooperation rather than competition between firms leads to greener outcomes (e.g. greener products or production processes).

Market uptake of low carbon products or solutions often faces difficulties, partly because of lack of consumer awareness, partly because of higher prices. Antitrust law typically kicks in at that “close to market” stage but competition law reforms may need to focus on facilitating cooperation between companies when it comes to furthering the market uptake of low carbon products or solutions, be it through the elaboration of standards or information and labelling towards the consumer. Provided such schemes are developed in a transparent and inclusive manner, they should be considered compatible with competition law.

More broadly, the Commission may find that certain R&D initiatives or other cooperation between competitors lead to certain limitations on competition. However, where such restrictions are necessary for the parties to justify their (significant) investment the Commission should take a balanced view and consider whether such restrictions would be outweighed by the potential benefits that the results of the cooperation would have on the environment.

CEMBUREAU therefore considers that industrial decarbonisation may require some flexibility with antitrust rules in certain specific circumstances, depending on the technology readiness (TRL) level, and would support a review of the existing rules in this respect. A key principle in this respect should be that *“the further you are from market uptake, the more flexible antitrust rules should be”*.

2. Should further clarifications and comfort be given on the characteristics of agreements that serve the objectives of the Green Deal without restricting competition? If so, in which form should such clarifications be given (general policy guidelines, case-by-case assessment, communication on enforcement priorities...)?

Today, the parties to a potentially restrictive agreements are left to self-assess whether or not their agreements comply with EU competition law. In particular for projects requiring huge investments (which is the case for most environmentally friendly projects in the cement industry) this leads to legal uncertainty which, as a result, will stop parties from further pursuing their projects given strict compliance requirements. CEMBUREAU believes that the European Commission should be more supportive in overcoming such legal uncertainty by (i) being open to informal guidance meetings with the parties and (ii) accepting voluntary notifications by the parties for projects where parties need confirmation of compliance with the competition rules or even an exemption from competition rules provided that the environmental and sustainability benefits outweigh the potentially negative effects on competition.

The elaboration of policy Guidelines in cooperation with stakeholders is also a very positive way forward with, possibly, a notification obligation only in case of doubt as to compliance with the Guidelines.

3. Are there circumstances in which the pursuit of Green Deal objectives would justify restrictive agreements beyond the current enforcement practice? If so, please explain how the current enforcement practice could be developed to accommodate such agreements (i.e. which Green Deal objectives would warrant a specific treatment of restrictive agreements? How can the pursuit of Green Deal objectives be differentiated from other important policy objectives such as job creation or other social objectives?).

Investments in breakthrough technologies may require the participation of companies across different sectors, not only horizontally but also vertically in that suppliers will often need to be part of the consortia formed. Industrial symbiosis is a concept often referred to when it comes to the execution of the Green Deal but this will require increased intersectoral cooperation for which the current antitrust rules do not provide sufficiently clear guidance.

Another aspect that needs to be added is the way in which the concept of an “essential facility”, ownership and access conditions to such facility, including fee structure, will be assessed for large CO₂ and energy infrastructures that need to be put in place and will serve different economic operators, again across more sectors.

Part 3: Merger Control

1. Do you see any situations when a merger between firms could be harmful to consumers by reducing their choice of environmentally friendly products and/or technologies?

The existing merger control legislation allows for an ex ante assessment of potential anticompetitive effects of a specific merger. This is, however a case-by-case analysis based on a thorough assessment of the relevant product and geographical market. It would therefore not be sound policy to *a priori* identify specific situations where harmful effects could arise.

2. Do you consider that merger enforcement could better contribute to protecting the environment and the sustainability objectives of the Green Deal? If so, please explain how?

The purpose of merger control is to ensure that competition in the internal market is not distorted and to ensure a dynamic and effective competition. Competition law is in essence an enforcement policy of these rules.

However, the Commission could take environmental or sustainability criteria into account when assessing a potentially anti-competitive agreement or merger. When balancing the anti-competitive effects, the Commission could for instance accept (i.e. not prohibit) the restrictions on competition or anti-competitive effects provided that they are outweighed by the environmental or sustainability effects. (e.g. consolidating two sites of competitors and investing into more environmentally friendly production, e.g. a new kiln).

In addition, the Commission could accept remedy offers where merging parties commit on implementation of certain environmentally friendly investments that they would not be able to implement without the merger and that, on balance, outweigh the negative effects on competition.

Annex - CEMBUREAU proposed changes to the State Aid Guidelines non Environmental Protection and Energy

- A new chapter on “**aid for decarbonisation of energy-intensive industries**” should be included in the Guidelines and describe the framework conditions for the approval of State Aid taking the form of Carbon Contracts for Difference.
- Throughout the document, references to CCS should include “utilisation” e.g. paragraph 18(h) “aid for CO2 capture, transport, **utilisation** and storage including individual elements of the Carbon Capture, **Utilisation and Storage** (‘CCUS’) chain”. The CCUS section should be modified accordingly. We also suggest the inclusion of a new paragraph 163: “**(163) The re-using of CO2 in other industrial processes, such as synthetic fuels, chemicals or mineralisation of products, may offer an additional output for the capture of CO2**”. In paragraph 165 we propose the following change: “*The aid is limited to the additional costs for capture, transport, re-use and storage of the CO2 emitted*”.
- The chapter on waste management should be upgraded to include “co-processing”. For this purpose, we propose the addition of a new paragraph 158(d): “**(d) In the case of aid for waste management for energy recovery, using waste not only allows for the production of energy, but also contributes to the reduction of CO2 emissions from industrial processes other than those of the aid beneficiary**”. Paragraph 157 should also be amended as follows: “*State aid for the management of waste, in particular for activities aimed at the prevention, re-use, recycling and recovery of waste, can make a positive contribution to environmental protection, provided that it does not circumvent the principles referred to in previous paragraph*”.
- Paragraphs 132-134 of the Guidelines relating to operating aid for biomass plants should be removed.