AGFW-Statement

On the

Call for Contributions published by DG COMP on questions about how competition rules and sustainability policies work together

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About AGFW

AGFW is a German based, international district heating and cooling (DHC) and combined heat and power (CHP) association representing around 550 companies, consisting of DHC utilities, energy service companies and supplying industry from various European countries. AGFW advocates the efficient use of resources through DHC and CHP. AGFW attends to the technical, economic, political and legal matters of the sector.

Central points of this contribution

1. **Fundamental reforms to the current State aid framework to enable and facilitate the decarbonisation of the heating sector by implementing a *green bonus-concept***

2. **The facilitation of the State aid notification procedures as a pivotal enabler for the green transition**

Effective State aid at the heart of the European Green Deal

AGFW welcomes the European Commission´s call for contributions to evaluate how European Competition Law can support the Europe´s climate ambitions and the Green Deal. Since achieving the common European climate targets will require considerable investments, enabling the mobilization of substanial public as well as private investment capital will undoubtedly be the crucial factor in our decarbonzation efforts. Here, the framework of European Competition Law, in particular with respect to State aid regulation, can play a major role in underscoring these efforts by steering and facilitating public investment decisions and through the creation of a competitive level playing field between market participants. In that regard, AGFW is of the opinion that several adjustments to the exisiting legal framework could help to fully unlock this regulatory potential in promoting the European energy transition.

Firstly, it is important to keep in mind that completing the decarbonisation of the energy sector will still be a long and challenging process, which is going to demand significant further technological innovation. It will also require energy companies to constantly restructure their business portfolios over the coming years in order to adapt to the nessecary technological innovations. Accordingly, the European State aid framework should likewise be adaptive to future technological developments and thus provide Member States with the necessary regulatory flexibility within their State aid policies. Consequently, such an adaptive set of regulations that would allow for the indispensable adjustability to new market developments should not be bound to a static normative framework like the taxonomy regulation, which scope is unable to fully encompass the course of future innovation. Such an approach would therefore be liable to promote the development and solidification of economic as well as technological inefficiencies and in consequence undermine our common climate ambitions. Instead, what is needed is a flexible conceptual baseline that is likewise adaptive to the ongoing transformation of the sector. Thus, when it comes to assessing the environmental benefits of State aid schemes, the EU´s existing climate and energy policy framework, which already sets out suitable standards for future decarbonisation pathways, should form the primary benchmark of the Commission´s assessment in this regard. Assessing the contributions of respective state aid schemes to these policy objectives and their subordinate targets with respect to the expansion of renweables, energy efficiency and carbon reduction without predefining the technological paths, would thus ensure the effectiveness and longterm efficiency of climate related State aid policies.

Secondly, as the climate policy agendas of the European Commission, the European Parliament as well as the Council have repeatedly emphazised, Europe´s climate transition has to happen fast and should be achieved in the most cost-efficient way. Accordingly, AGFW advocates that speed and cost-effectiveness should likewise be the overarching principles when it comes to aligning the European Competion Law framework to our climate ambitions. In particular with respect to State aid, such an approach would reeinforce the Commission´s existing strategic course of "*less and better targeted State aid*" by complementing it with a set of additional steering capabilites to support the European Green Deal ("green bonus"). Hence, the green bonus-concept should be designed in a way as to provide a favorable investment environment for green and carbon reducing goods and technologies in order to further the promotion of European climate and environmental policies without fundamentally altering the existing strategic principles of the State aid action plan. This contribution will thus lay out how the concept of a green bonus in conjunction with adjustments to the existing legal framework could initiate substantial incentives for the decarbonisation of the heating and cooling sector.

The need for an improved framework for DHC and CHP in State Aid policy

The European Commission has correctly identified the European heating and cooling market as the crucial sector to reach the common climate targets.[1] Being responsible for more than a third of the EU´s total greenhouse gas emissions, the Commission estimates that a reduction of emissions of as much as 60 percent as well as a significant reduction of energy consumption combined with a massive increase of renewables within the sector are an indispensable condition for the achievement of the common climate ambitions. According to the Commission´s assessment,[2] this will require a major economic effort for the sector and a consequent focusing on large scale decarbonisation programs that should therefore be appropriately reflected in GBER´s State aid ceilings. As however investment projects in our sector are characterized by high capital expenditures and very long amortization periods, public capital will be needed to overcome market failures created through an insufficient carbon pricing and to incentivize private investment into the sector. Given the budgetary constraints in many Member States that have experienced a further tightening in the wake of the Covid-19 pandemic and the fact that reaching the common 2030 targets requires rapid implementation, the necessary expansion of public capital should be guided by the strategic principle of achieving the decarbonisation of the sector in the most cost-effi-

[1] COM(2020) 562 final
[2] SWD(2020) 550 final; COM(2020) 662 final

cient and fastest way. Therefore, following the strategic course of "less and better targeted State aid", public spending to support the European Green Deal should be concentrated where in can have the greatest impact with regard to the 2030 targets. This premise should constitute the future baseline for the assessment of a green bonus concept. Regarding the question which form of additional benefits a green bonus should provide to the existing State aid framework, AGFW argues that a targeted raise of particular aid ceilings would not only constitute the most effective way to promote our climate ambitions, but would moreover be a very transparent and swiftly implementable measure. Based on this, the Commission should identify specific sectors and measures where State aid ceilings in particular within the GBER should be raised to support environmental and climate objectives. In the following AGFW will lay out how this practice could be applied to the heating and cooling sector.

Applying the concept of green bonus to the heating and cooling sector

When applying the green bonus-concept to the heating and cooling sector, the Renewable Energy Directive (RED) as well as the Energy Efficiency Directive (EED) set suitable criteria to define the conceptual baseline for a green bonus. Both Directives define clear targets with respect to the increase of renewables and the improvement of energy efficiency necessary to the achievement towards the 2030 targets. While the Energy Efficiency Directive clearly stipulates the need to promote efficiency in the heating and cooling sector (see: Art. 14 EED) especially when operated in conjunction with high efficient CHP plants (see: Art. 2 (41) EED), the Renewable Energy Directive underscores this, by explicitly identifying DHC as a key technology to increase competiveness and efficiency in a decarbonising heating and cooling sector (see: recital (49) RED).

Being both cost- and energy efficient DHC, as a fully matured technology, is therefore uniquely positioned to achieve the swift and cost efficient emission reduction required for the fulfilment of the 2030 targets. At the moment however, substantial investments into green DHC and CHP projects are severely obstructed through the narrow State aid ceilings within GBER. This is all the more regrettable as these restrictions oftentimes have the effect of creating a bottleneck; impeding further comprehensive decarbonisation efforts and instead forcing private investment towards cheaper but carbon intensive projects. This is where the green bonus-concept can be best applied. Transposing this concept into the heating and cooling sector, AGFW would therefore strongly recommend to reconsider the current State aid ceilings of Art. 4 GBER with regard to DHC and CHP. In particular, AGFW recommends to significantly raise the ceiling for DHC networks in Art. 4 (1) (w) from 20 Mio. Euros to at least 80 Mio. Euros and furthermore increase the aid for efficiency measures in (t) to 30 Mio. Euros and the ceiling for renewable electricity in (v) to 50 Mio respectively. Subsection (v) should furthermore be amended as to not only refer to the generation of renewable electricity but to CHP as well, since this would in particular incentivize investments into decarbonised heat generation.

AGFW is aware of the fact that higher aid intensities are at first sight prima facie hardly compatible with the principle of “less and better targeted State aid”. This conclusion however does not sufficiently take into account the additional efficiency generated through economies of scale which are cut off by narrow aid ceilings. Such narrow aid ceilings thereby incentivize spending into smaller and less efficient projects which are then in turn liable to require greater overall aid volumes to achieve the common climate targets. Viewed from this perspective, higher ceilings for individual aid help to ensure the effectiveness of public spending and in fact promote the limitation of overall State aid volumes. Thus, higher aid ceilings are not contradictory but instead beneficial to the Commissions strategic course of “less and better targeted State aid” and essential in warranting cost efficiency within the energy transition. Moreover, as DHC networks are by and large local standalone systems, even sizable aid schemes do not unfold any distorting impact on the internal market, an aspect that should always be considered within their compatibility assessment.

The facilitation of the State aid notification procedures as a pivotal enabler for the green transition

However, the extension of State aid ceilings alone will not sufficiently incentivize green investments as large scale projects will remain subject to the Commission´s notification procedures. Although clear notification parameters are without a doubt crucial from a market structure perspective, long-lasting notification procedures with uncertain outcomes are at the same time a considerable impediment to the green transition. Regrettably, the current framework and particularly the Notice on a Simplified Procedure for the Treatment of Certain Types of Aid have not sufficiently incentivized the facilitation of notification procedures as the administrative constraints of Member States do not allow for a full exploitation of the procedural framework´s envisioned potential. This creates a limbo where the Commission´s procedural facilitation mechanisms are unable to function in their intended way since Member States authorities refrain from planning and executing large scale state aid schemes as they perceive the notification process as a too onerous obstacle. Here, European State aid regulation as it currently stands has the effect of discouraging necessary infrastructure planning. If European Competition Law is to support the Europe's Green Deal ambitions, solving this institutional gridlock within the notification process by significantly improving the cooperation vis-a-vis Member States should be a top priority of the Commission´s agenda.

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