



By Gabrielle H. Williamson

Managing a Policy Convergence

The treaty establishing the European Community provides that environmental protection must be integrated into a variety of policies and activities to promote sustainable development. One such Community activity is establishing undistorted competition in the European market.

There is an obvious tension between environmental policy and competition policy. While the former considers long-term effects, the latter looks at the more immediate. The market is less interested in products and services that may benefit the environment but have a higher price. Here, EC environmental policy comes into play, and EC competition policy provides various instruments that respect environmental goals.

The Commission's 2001 Guidelines on State Aid for environmental protection declare aid should not be granted to companies to compensate for lack of cost internalization. Aid should not enable them to adapt to new or existing standards, except for smaller firms. The Guidelines provide for certain types of investment aid, specific aid to these smaller firms, and operating aid in order to promote waste management and energy saving.

The Guidelines expire at the end of this year. The new Guidelines, it is expected, will aim at a better balance between the common interest in the environment arising from a State aid

measure and its negative impact on competition and trade.

Each year, public authorities spend some 16 percent of the Community's GDP on goods, services, and works. The Commission believes that including environmental considerations in procurement would help to increase the demand for and quality of environmentally sound products. The EU's 2004 public procurement rules provide for authorities to integrate environmental considerations into procurement.

The EC Treaty's antitrust provisions prohibit certain anti-competitive arrangements between undertakings, but the Commission accepts that environmental agreements can escape these provisions. The Commission has also published Guidelines on "Horizontal Cooperation Agreements" that state it will not accept agreements that serve to disguise a cartel or squash competition, yet using the guidance it has supported agreements on waste take-back, collective waste treatment, and not to produce cheap but polluting products, among others.

In 2001, the Commission adopted two Decisions concerning Germany's Green Dot take back-program. The first said the program had breached the EC Treaty by obliging its customers to pay fees according to the volume of packaging sold bearing the Green Dot, rather than on the volume actually returned and treated, thereby preventing competitors' entry into the market. The second made clear that EC competition rules mandate that Green Dot's exclusive agreements with companies collecting the waste should not exceed a certain duration, and that the program must grant its competitors free access to the collection infrastructure.

These examples show that sometimes governments impose obligations to protect health and the environment. At the same time, these authorities accept that, in most cases, it is more efficient to deal with obligations collectively. When competitors discuss, for example, the take-back and recycling of their products, they may also use the occasion to discuss prices and other matters. Competition policy must ensure that these discussions are limited to meeting the environmental goals.

The new chemicals policy, REACH, is expected to enter into force in June. REACH requires manufacturers and

importers to register chemical substances. It encourages joint registrations but allows firms to opt out to avoid disclosing sensitive business data. (Companies are required to share animal testing data.) The close contacts between competitors under REACH raise potential anti-trust concerns. Compliance

training will be needed to educate firms on what information can be exchanged and what cannot.

The above EU policies are only a few examples of the convergence between environmental and antitrust principles. Sometimes governmental bodies and industry working mainly in one of the two areas do not understand the issues that concern stakeholders from the other. More training will certainly be needed in order to make the Commission's statement that environmental and antitrust policies are not mutually antagonistic become reality.

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