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 ('CC**U**S') 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.
