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EGDF response on the White Paper on Foreign Subsidies

About EGDF

The European Games Developer Federation e.f. (EGDF)[1] unites national trade associations representing game developer studios based 19 European countries: Austria (PGDA), Belgium (FLEGA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Malta (MVGSA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Altogether, through its members, EGDF represents more than 2 500 game developer studios, most of them SMEs, employing more than 35 000 people.

Games industry represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. European digital single market area is the third-largest market for video games globally. In 2019, Europe's video games market was worth €21bn, and the industry has registered a growth rate of 55% over the past 5 years in key European markets[2]. All in all, there are around 5000 game developer studios and publishers in Europe, employing closer to 80 000 people.[3]

Public support instruments have, for a long time, played an essential role in the game industry. Cultural state aid is the key enabler of the artistic risk-taking for the industry pioneers pushing the boundaries of the games as a cultural medium. State aid for research, development and innovation has enabled industry forerunners to exploit the possibilities of new technologies in game development fully and to develop groundbreaking novel business models. State aid for SMEs plays a crucial role in enabling young people with minimal industry experience to enter the industry by launching their first-round start-up studio.

In general

The role of foreign subsidies in European games ecosystem

[1] For more information, please visit www.egdf.eu
[2] ISFE Key Facts 2020 from GameTrack Data by Ipsos MORI and commissioned by ISFE https://www.isfe.eu/data-key-facts/
[3] European Games Industry in 2018: http://www.egdf.eu/wp-content/uploads/2020/08/European-Report-on-the-Game-Development-Industry-in-2018.pdf

It has always been a challenge for European video game developers to finance their products and services. Their funding has often been a mixture of publisher funding, equity funding, state aid schemes, loans and self-funding. Video games with higher quality standards, like so-called AAA games with budgets of tens of millions of euros, are inherently challenging to produce and finance. Today video games are mostly fully digital products and services and thus have to compete in global markets in a highly competitive international environment on talent, funding and players. Furthermore, this environment is often dominated and controlled by non-EU companies and platform holders.

It is important to remember that, as games markets are by their nature global, foreign production subsidies are rarely able to disturb price competition in the markets. In games markets, only the most efficient operators are able to survive. This fact is underlined by novel business models like Free-To-Download games that are free for consumers to download; subsidies cannot push down their prices as games are already free. However, foreign subsidies can play a crucial role in the companies' ability to compete on the top global talent (e.g. tax breaks or cash rebates on labour costs) or investment from big global publishers for their games.

Furthermore, in video game production, the sheer number of employees is relatively irrelevant. It is a misunderstanding that, in the Digital Era, subsidies in the new media space will create automatically more jobs, as only a small amount of employees can create high amounts of turnover with high-quality digital products and services.

Due to limited access to European venture capital, European companies have so far been seeking much-needed risk funding from outside the EU to finance their growth (mainly from the USA, the UK, China, South-Korean and Japan). It has also become a common practice for companies that are partly or heavily financed by foreign state actors to acquire promising EU companies. On the other hand, this enabled European companies to grow, and successful exits of European entrepreneurs are step by step creating venture capital markets targeting specifically game developer studios. But also, it is increasingly difficult for European companies to grow by acquiring other European studios as foreign investors have resources to outbid them.

The commission should not focus only on China

In a world of increasing competition between different blocs and the rapid decline of the multilateral peace and economic order up to the collapse of basic democratic principles among important allies, the democracies of Europe must position themselves more technologically robust in order to ensure the long-term viability of our economy - and to secure the European social model. The common communication space of "the West" may no longer be a viable construct in the foreseeable future. Therefore the existing threat of take-overs should not be misused to communicate a "new common enemy" of the West in order to disguise the reality of the breaking apart of the old world being replaced by a much more multipolar and less multilateral one. It must be clear that the Commission should not put their focus only on China, for example, but make equal efforts also to examine support structures from other parts of the world.

It is important to keep in mind that the cooperation with far Eastern companies and business models has in many cases brought advancement and wealth to Europe[4], especially through helping European SMEs to grow.

[4] See Malte Behrmann et.al., Vorbild Asien, Neue Geschäftsmodelle für medien und Kommunikation aus Asien für Europa, Potsdam 2019 (ISBN 9783947802302), p.7.

Companies in the video game sector in the EU, especially SMEs, are continuously acquired by foreign non-EU actors. Not only companies from China are known to aggressively identify and acquire EU companies, similar phenomena we find for other competing world regions such as the Middle East (Israel and Emirates) and North America (Canada and US). As video games are a cultural product, they can be used to undermine fundamental human rights (e.g. by limiting the freedom of arts and expression for European creators). Furthermore, games can provide a route for accessing personal data, like location data, of European citizens.

Module 1: General instrument to capture foreign subsidies

Module 1 addresses distortions caused by foreign subsidies in the EU (e.g. export financing, debt forgiveness, unlimited loan guarantees, operating subsidies like tax reliefs outside general measures or foreign subsidies for acquisitions).

In general

EGDF agrees that the proposed two-step procedure should be only applicable if efficient monitoring tools and procedures can be established, and if the correctness of information provided by companies can be attested to and be efficiently controlled.

EU Interest test

This harbours the great danger of EU bureaucracy introducing a "soft wall" for industries that are not directly identified as being useful to public policy objectives and thus affecting the development of free markets. The impact of video games as a cultural product and as a culture technique is not easily quantified and requires a deep understanding of the matter. Subjecting industries like that to the bureaucratic evaluation of "worthiness" in the context of EU policy goals can have adverse effects in the end since companies are forced to shape their product to fit policy goals. Protecting fundamental human rights should, of course, be a main focus of the new regulation, but it should not end up as something handled by a small bureaucratic entity. Instead, it should be understood as a general obligation.

Threshold of 200 000 euro

It can be safely assumed that funding coming from third-party countries subsidies below a de minimis threshold is not disrupting EU markets. Thus there should be no investigation on them, as it would lead to overburdening companies with non-necessary bureaucracy and therefore costs. Specific higher thresholds could also be applied in cases where the aid might fall under the thresholds under the European General Block Exemption Regulation.

Enforcement

EGDF seeks clear and unified enforcement of all EU rules in the videogame sector. It is true that shared responsibilities between enforcement authorities might indeed corrupt this goal through fragmented enforcement practices. Still, we agree that member states might have specific knowledge regarding disruption in their markets that a centralized European level authority might not be able to recognize as quickly and effectively.

Distortion from too tight regulation and miscommunication with member states

The Commission should not just focus on securing that foreign subsidies do not disturb the markets in the EU, the Commission should also ensure that European funding stays in Europe and does not cause disruptions in other market areas. For example, while introducing a national game support scheme (BMVI), the German government wanted to have a rule that 60% of the public spending should be obligatory to be spent within Germany. As a result of the notification process within the EU, this criterion was given up. As a result, 50% of the funding can be subcontracted. As this subcontractor does not to be in Europe, this easily leads to a situation where European public funding leaks to third countries outside the Union.

Module 2: Foreign subsidies facilitating the acquisition of EU targets

Module 2 is intended to specifically address distortions caused by foreign subsidies facilitating the acquisition of EU targets.

In general

At the moment, it looks like foreign investment, including investment coming from China, the Middle East and North America, into European video game companies is germinating from business interests. However, video game companies and their products and services can become preferred "Trojan Horses" for countries who want to directly invest into collecting data on European citizens for influencing them through other services[5]. Furthermore, games can be potentially used for spreading the authoritarian political agenda (e.g. through an in-game advertisement). European governments should be able to react if they find any evidence on this kind of behaviour[6].

Therefore, EGDF supports identifying acquisitions that are supported by foreign subsidies and present a danger to EU values, market fairness and overlying policies, as is accordingly identified as a priority in the White Paper.   Consequently, in general, we agree to the proposed model. However, it must be clear that the bureaucratic burden to companies, especially to SMEs, must be able to be minimised.

Thresholds

A lot of EU companies in the video game sector operate way under a 100 million Euro turnover rate thresholds and thus, according to the proposition, would not fall under the notification system. However, any strictly defined threshold may lead to a situation where foreign investors are encouraged to push the valuation of companies under the threshold and thus lead to the undervaluation of European companies. Furthermore, it is essential to keep in mind that a strict threshold might encourage foreign actors to invest in European companies earlier and thus make promising European SMEs a primary target for foreign subsidised acquisitions.

Enforcement

In order to limit bureaucratic burden, the notification obligation should cover only potentially subsidised acquisitions.

[5] See e.g. https://www.technologyreview.com/2020/08/19/1006455/gtcom-samantha-hoffman-tiktok/

[6] See e.g. https://www.asianstudies.org/wp-content/uploads/chinas-national-champions-alibaba-tencent-and-huawei.pdf or https://www.asiatimesfinancial.com/ccp-announces-plan-to-take-control-of-chinas-private-sector

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Research needs

However, research about public funding systems in the game development around the globe needs to be done much more systematically than in the past. EGDF supports the idea to launch a continuous series of calls to understand better the public funding landscape and practice in countries China, Israel, Singapore, USA (state level), Canada, Mexico, Brazil, Iran, Emirates, Japan and South Korea.

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