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From: General Secretariat of the Council
To: Working Party on Competition

Subject: Proposal for a Regulation on Foreign Subsidies distorting the Internal Market -
Articles 17 - 25

Delegations will find in annex a presentation given by the European Commission during the informal videoconference of the Working Party meeting on Competition on 6 October, agenda item 2



Chapter 3: Concentrations

Articles 17-25

Proposal for a Regulation on foreign subsidies distorting the internal market

*Competition Council Working Party
Brussels, 6 October 2021*

Overview

- Introduction to Chapter 3: Concentrations
- Distortions in concentrations (Article 17)
- Defining concentrations (Articles 18 and 20)
- Conditions for notification (Articles 18 and 21-22)
- Procedure (Articles 19 and 23-24)
- Fines & periodic penalty payments (Article 25)

Introduction to Chapter 3 on concentrations

- The right balance for a targeted and effective *ex ante* notification tool
 - Builds on existing tools (EU Merger Regulation), which businesses know
 - Stakeholders generally support the *ex ante* tool put forward in the proposal, noting their feedback was taken on board
 - Limited number of expected notifications
 - 33 per year, based on estimates from actual transaction data for 2015-2019 (see Impact Assessment Report)
 - Possibility of *ad hoc* notifications for relevant cases below thresholds

Article 17 | Distortions in concentrations

- Apply Articles 3 and 4 to the concentration at stake
- Only consider foreign subsidies granted in the three preceding calendar years
 - From conclusion of the agreement, announcement of the public bid or acquisition of a controlling interest

Articles 18 and 20 | Defining concentrations

- Notions taken from EU merger control
 - ‘Concentration’: change of control on a lasting basis (Art. 18(1))
 - Full merger or acquisition
 - ‘Control’: possibility to exercise decisive influence (Art. 20)
 - Ownership, voting rights, contracts...
 - Includes the creation of full-function joint ventures (Art. 18(2))

Articles 18 and 21-22 | Conditions for notification

- Notification based on **two** cumulative thresholds (Art. 18(3)):
 - **Turnover in EU of target** or one of merging parties is at least EUR 500 million
 - For joint ventures threshold applies to JV itself or any one of its parents (Art. 18(4))
 - **Foreign financial contributions** in last three years to all concerned undertakings is at least EUR 50 million
 - This is for all concerned undertakings and for all third countries combined
 - Only ‘financial contributions’, no need to assess whether there is a subsidy (done by Commission in its assessment)
 - Obligation to notify needs to be based on objective criteria to limit work and risk of error for firms
 - Take into account turnover and financial contributions for the undertaking (i.e. the whole group) (Art. 21 and 22): includes subsidiaries, parent companies and sister companies

Articles 19 and 23-24 | Procedure 1/4

- *Ex ante* compulsory notification system (like EU merger control)
 - Suspensive effect ('standstill'): no implementation before notification, or Commission clearance, or lapse of the time for the Commission's review (Art. 19 and 23)
 - If fail to notify, Commission can review without time limit (Art. 19(4))
 - Commission can request *ad hoc* notifications for relevant concentrations which do not meet the notification thresholds (Art. 19(5))
 - if the concentration is not yet implemented, and
 - where Commission suspects a foreign subsidy in the last 3 years

Articles 19 and 23-24 | Procedure 2/4

- Deadlines aligned with EU merger control
 - 25 working days from complete notification for the preliminary review (Art. 24(2))
 - 90 working days from opening of in-depth investigation
 - Extensions (commitments (23(1)(b), stop-the-clock (23(5)), agreement with parties (23(4)) and derogations (23(3)) similar to the EUMR

Articles 19 and 23-24 | Procedure 3/4

- Information gathering and assessment tools similar to *ex officio* review (Art. 24(1)): requests for information (RFIs), inspections, interim measures, decisions on the basis of facts available
- Final decisions (Art. 24(3)):
 - no objection decision,
 - decision with commitments or
 - prohibition

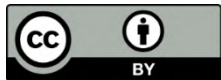
Articles 19 and 23-24 | Procedure 4/4

- Safeguards against non-compliance with *ex ante* system:
 - Commission may request dissolution of concentration which is found to distort the internal market (Art. 24(6)) if breach of standstill obligation.
 - Commission may revoke decision based on incomplete, incorrect or misleading information, or if commitments are breached (Art. 16 and 24(1)).

Article 25 | Fines & periodic penalty payments

- Same as *ex officio* (Article 15(1)) regarding inspections and RFIs; also for incorrect/misleading information in the notification
 - Fines up to 1% of turnover in preceding business year
 - Periodic penalty payments up to 5% of average daily turnover in preceding business year
- Same as *ex officio* (Article 15(5)) regarding breach of decisions with commitments or interim measures; also for failure to notify and breach of suspensive effect
 - Fines up to 10% of turnover in preceding business year
 - Periodic penalty payments up to 5% of average daily turnover in preceding business year

Thank you



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