

Bucharest, 20 November 2020

Attn: Margrethe VESTAGER
Executive Vice-President for A Europe Fit for the Digital Age and
Competition, European Commission

Subject: Point of View regarding the Call for Contributions to the Public Consultation
“Competition Policy supporting the Green Deal”

Dear Ms. Vice-President,

ALRO S.A. is one of the largest vertically integrated aluminium producers in Europe by production capacity, its activity being focused on the production of primary aluminium and processed aluminium. The aluminium production and processing facilities of the company are located in Slatina, Romania and currently comprise a smelter, including an anode plant, a casting house, an aluminium scrap re-melting facility (the “Eco Recycling Facility”), hot and cold rolling mills and an extrusion shop. In response to the call for contributions to the public consultation “*Competition Policy supporting the Green Deal*” launched by the European Commission, ALRO S.A. submits the contribution below.

I. STATE AID

Introduction:

- State aid rules are crucial to support European industry’s competitiveness and enable industrial transformation, necessary to achieve a climate neutral economy and preserving European strategic autonomy. Electro intensive industries such as aluminium are dependent on a fully functioning and robust framework allowing them to contribute to the objectives of the green transition, while remaining competitive on the global scale.
- The greening of EU competition policy must take into account the global competitiveness of European industry, not only competition on the internal market. Global warming is not an EU internal-market problem only, it is an international one. Through its energy and climate policy, Europe is leading on international climate action, but its effort will have limited effect if not matched by an equivalent effort by other large nations or regions. By acting alone, European industry is suffering from added costs not incurred by its international competitors. Until a global level playing field is established, European industrial competitiveness must be safeguarded also via competition policy. Presently, many fully globally competing industries, as aluminium, are exposed to market distortion due to different non-reciprocal climate policies worldwide. Therefore, it is of outmost importance that competition policy and state aid rules address international competition, going beyond internal market.

- As a consequence, protecting the competitiveness of industrial sectors that are strategic for the achievement of the EU's climate agenda should be clearly recognised as an objective of European common interest and as an objective of European competition policy.
- Aluminium is a key enabler of the energy transition – being used as raw material for green electricity transmission cables, electric vehicles, solar panels, wind turbines etc. The transition of the European aluminium's industry to a climate neutral economy requires enormous investments to develop, upscale and implement new technology in existing or new plants. These investment costs cannot be borne solely by the aluminium industry and must be proportionate given the high level of global competition we face. A revised state aid framework is extremely important to provide producers with long-term regulatory certainty that fosters financial support and investments.
- It is essential and would be greatly beneficial for aluminium undertakings if regulation would establish better long-term reliability. Such reliability would encourage long term investments in the aluminium sector (highly capital-intensive, where an investment cycle needs 20-30 years and therefore have long payback periods). At present, there is great uncertainty and insecurity regarding the future existence and scope of EU regulations. This regulatory uncertainty creates an unsuitable framework for investment and innovation in electro-intensive sectors.
- The main barrier in our sector for delivering on the EU's envisaged higher climate ambition is **electricity costs**. These relate to both accessing and consuming low carbon electricity at globally competitive prices (especially in the primary production process) as well as for financing those breakthrough and already available technologies needed to decarbonise the different industrial processes across our value chain.
- The EU Competition policy should allow for **reduction in or exemption from the future extra costs resulting from financing the Green Deal and higher climate ambition, which are not faced by international competitors.** These costs include direct funding support for additional infrastructure, storage that enables the targeted renewable electricity uptake in the power mix, investments or support schemes in hydrogen or CCS projects. Further, reductions in capacity mechanisms surcharges, system balancing costs and extra network investments should also be allowed.

Q1: What are the main changes you would like to see in the current State aid rulebook to make sure it fully supports the Green Deal? Where possible, please provide examples where you consider that current State aid rules do not sufficiently support the greening of the economy and/or where current State aid rules enable support that runs counter to environmental objectives.

For the purpose of ensuring EU strategic autonomy as foundation of the Green Deal, the state aid policy must integrate the following elements:

- Preserving the competitiveness of European industrial sectors strategic for EU security and the Green Deal must be clearly recognized as an objective of European common interest and as an objective of European competition policy.
- Preventing carbon leakage must remain a core objective of the competition policy and of the Green Deal; measures preventing carbon leakage of European industry must be preserved and improved where necessary.
- **Ensuring competitive electricity prices** for European industry:

- **Maintain the renewable energy surcharges exemptions** for electro-intensive industries; *expand the principle* to other costs to be incurred by the decarbonization of the energy sector such as, but not limited to: CCS and hydrogen support schemes, storage, grid development investments determined by the integration of renewables.
- **Include clear and specific guidance on how to design cost-effective, competitive bidding schemes for RES** and other technologies, how they should be implemented at national level and monitor the implementation of such guidance.
- The **massive decrease of RES technology costs must be reflected** in the maximum aid allowed; the state aid guidelines must include this.
- Operating aid is not the only measure that can ensure the deployment of renewables: **investment aid** can be a more viable option that offers certainty to investors in green technologies and state aid guidelines should encourage this approach.
- **Regulate clearly the “contract for difference” mechanism** which has recently started to be used for RES projects. The mechanism must also take into consideration the massive drop of RES technology costs.
- State aid legislation must include a maximum cap to the total climate costs in the electricity bill paid by industrial consumers facing global competition: various support schemes, public service obligations, capacity mechanisms, CHP-HP, storage, network tariffs, etc.
- **Include clear provisions for long term Power Purchase Agreements (PPAs).** At present, high power costs and the lack of regulatory certainty, are undermining the attractiveness to undertake a PPA here in Europe. It is apparent that when the overall electricity market is competitive and liquid and support schemes are correctly designed, both RES generators and energy-intensive consumers have incentives to sign long-term PPAs. The freedom to chose the right partner based on the bankability of the partners will accelerate the increase of the implementation of RES generators adding predictability to the energy intensive producers and help the efforts of the energy intensive industry to implement innovative and clean processes.

Within this paradigm, RES support costs and other taxes have a major impact on the competitiveness of the energy-intensive industry and their long-term investment strategies. The energy intensive industries’ interest to enter commercial RPPAs is depending on the framework conditions for industrial consumers with clarity on some regulatory components, in particular compensation for the indirect costs of the EU ETS and cost reductions in the EEAG, playing a crucial role.

- **Better coordination with other Commission services in assessing the national legislation that hinders the use of state aid instruments or other electricity market instruments (such as long-term PPAs¹).** The transposition and implementation of EU legislation at national level must also be analysed from the perspective of compliance

¹ Law 123/2012 on the electricity market contains provisions that set a ban on directly negotiated long-term PPAs for existing generation capacities, thus discriminating between the existing and future generation capacities and breaching the provisions of Regulation (EU) 943/2019 on the internal market for electricity

with state aid rules and **any breach should be urgently** and decisively pursued by the European Commission.

- **Legal certainty regarding the national implementation of state aid decisions** must also be addressed by the EU legislation. **Delays** of implementation of state aid measures at national level **must be forbidden by EU legislation** and state aid decisions should include a strict and clear deadline for the national authorities to carry out the commitments they've taken. Delays in implementation could lead to internal market distortions and failure to achieve the objectives of EU legislation.
- **Approval of all support schemes must be conditioned on the inclusion of an impact assessment study, prepared by a neutral party, a study that would analyse the costs incurred by the support measure on other market participants or on consumers.** Such a study would ensure social acceptance of the support measure and it is a tool specific to good governance.
- **Support schemes with a negative impact on energy-intensive consumers must include exempting measures for energy-intensive industry.** More than often, there is a significant delay of even few years between the approval and implementation of the state aid scheme for RES (for example) and the approval and implementation of the exemption scheme for energy-intensive industry. During this time, the competitiveness and financial health of EU industry is heavily affected, therefore such incoherent policy-making must be avoided.
- **Legal and regulatory certainty is essential for any business**, but more importantly for energy-intensive industries where investment cycles need 20-30 years. It would be greatly beneficial for European energy-intensive industries (which are also significant employers across Europe) if EU legislation (including state aid) would establish better long-term reliability. At present, there remains great uncertainty and insecurity regarding the future existence and scope of EU legislation, particularly with regards to climate ambitions. This regulatory uncertainty creates an unsuitable framework for investment and innovation in electro-intensive sectors.
- **Support for circular value chains and sorting infrastructure:** State aid Guidelines must reflect the higher ambition for climate and circularity under the Green Deal and recently released Circular Economy 2 Action Plan. Aid should go beyond waste management systems and focus higher up the waste hierarchy to support innovative circular solutions. Also, the leakage of the green energy under the form of exports of recyclable waste (which embed our green energy produced with such great sacrifices) should be a priority for the efforts to create reliable circular value chains. This has to be correlated with the introduction of high carbon waste from imports which will only hamper and taint our efforts.
- **Investment aid for energy efficiency and emission reductions projects in electro-intensive industries** should also be addressed by guidelines, similarly to aid for CCS projects, for instance. Setting up a clear legal framework would encourage innovation and investments in technologies otherwise too expensive. A fair view on the effective reductions of carbon by energy intensive industries and by the individual companies between 1990 and 2020 with forecasts for 2021-2030 and beyond should become a tool to monitor the real progresses across the Member States.

Q2: If you consider that lower levels of State aid, or fewer State aid measures, should be approved for activities with a negative environmental impact, what are your ideas for how that should be done? For projects that have a negative environmental impact, what ways are there for Member States or the beneficiary to mitigate the negative effects? (For instance: if a broadband/railway investment could impact biodiversity, how could it be

ensured that such biodiversity is preserved during the works; or if a hydro power plant would put fish populations at risk, how could fish be protected?)

For many negative environmental impacts, there is already the necessary EU legislation in place. Examples of this include on biodiversity and biological and chemical water quality. There is thus no need for additional requirements in state aid regulations.

Q3. If you consider that more State aid to support environmental objectives should be allowed, what are your ideas on how that should be done?

- a. Should this take the form of allowing more aid for environmentally beneficial projects than for comparable projects which do not bring the same benefits (“green bonus”)? If so, how should this bonus be defined?**
- b. Which criteria should inform the assessment of a green bonus? Could you give concrete examples where, in your view, a green bonus would be justified, compared to examples where it would not be justified? Please provide reasons explaining your choice.**

Incentivising direct electrification

Direct industrial electrification is a major opportunity for Europe to achieve its climate neutral objectives. Non-ferrous metals producers are the frontrunners in industrial electricity and would reduce their GHG footprint by 81% should power be decarbonised. Given the major potential of direct industrial electrification, equal treatment should be given between direct and indirect electrification (i.e. increased use of hydrogen powered by renewables, etc.). Any support schemes designed to support indirect electrification (contracts for difference for renewable power hydrogen, etc.) should also be available for direct electrification (i.e. renewable PPAs signed by non-ferrous metal producers).

Green bonus

The granting of state aid should primarily occur with respect to the activities which impact directly and most significantly on the environment. The industries with the most prominent footprint on the environment should therefore form the object of more urgent and significant new state aid measures, as well as of more flexible conditions for access to pre-existent state aid schemes, for the purpose of facilitating access to financing decarbonization projects.

Potential examples of green bonuses to be taken into consideration in the case of aluminium could be: the reduction of the carbon footprint, the use of recycled materials, the use of energy from renewable sources, participation of energy intensive industries in local or regional environmental projects with major impact on a region, etc.

In order to assess a green bonus, the following criteria should be taken into consideration:

- A general assessment of the environmental challenges posed by the sector in which the state aid is envisaged. The identification of the main environmental problems or concerns raised by certain industries should represent a prerequisite condition for any environmentally-oriented state aid scheme;
- An impact study pointing out the total effect on the environment of the granting of the state aid and of the measures taken by the beneficiary of the state aid.
- The sustainability of the commitments undertaken and of the measures implemented by the concerned company in order to gain access to the state aid

scheme. The adoption of highly innovative measures or technologies, whose maintenance or operation would be particularly costly compared to the general features of the activity of the company or with the specific features of the practice area in which the state aid scheme is granted would raise concerns in terms of economic sustainability;

Q4: How should we define positive environmental benefits?

- a. **Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy? Or would any kind of environmental benefit be sufficient?**

No, we do not recommend a reference to the taxonomy. There are **seven** main reasons why we believe so:

1. The Taxonomy Regulation is addressed to financial market participants and it's a transparency tool. Its scope it is not to restrict or condition access to financing, but to set up certain criteria to be taken into consideration when an investment can be labelled sustainable. State aid does not fall under the scope of the Taxonomy Regulation and this was not the intention of the legal-makers.
2. The Taxonomy process has been faulty: There is a lack of expertise in the Technical Expert Group. This is evident in the conclusions for the aluminium sector with regards the definition of sustainable aluminium.
3. The thresholds agreed are not optimal
4. The taxonomy only partly covers the sectors that are under the scope
5. The taxonomy does not cover all important sectors
6. The taxonomy does not target R&D and technology development
7. Linking state aid to taxonomy would eventually undermine the achievement of EU strategic autonomy and of the Green Deal objectives of decarbonizing EU economy by simply making access to finance more difficult and more expensive. EU economy needs massive amounts of investments to decarbonize and the taxonomy, due to its unrealistic criteria, prevent financing from supporting the market.

II. ANTITRUST POLICY

1. Please provide actual or theoretical examples of desirable cooperation between firms to support Green Deal objectives that could not be implemented due to EU antitrust risks. In particular, please explain the circumstances in which cooperation rather than competition between firms leads to greener outcomes (e.g. greener products or production processes).

An example in which the cooperation supporting the Green Deal could not be implemented is represented by the long-term power purchase agreements. The energy generators (including energy generators from RES), as well as the energy intensive industries may fear that the *conclusion of a long-term agreement could be regarded as a form of foreclosure of competition*, mostly in the situation when the conclusion of such agreement results in the sale of a large quantity of energy provided by the contracting supplier. Such risk is increased by the absence of clear rules at the EU level, setting the conditions in which the long-term power purchase agreements can be concluded without hindering the competition on the market.

Therefore, anti-trust rules must provide a clear legal framework strictly regulating the conditions and rules governing long-term power purchase agreements for the purpose of legal

certainty and encouraging market participants to make use of this instrument that encourages decarbonization of energy and industry sectors.

Furthermore, uncertainty should be addressed by strengthening the provisions of Regulation 1/2003 to allow for the exclusive competence of EU when faced with a refusal of a national authority to apply EU competition legislation.

2. Should further clarifications and comfort be given on the characteristics of agreements that serve the objectives of the Green Deal without restricting competition? If so, in which form should such clarifications be given (general policy guidelines, case-by-case assessment, communication on enforcement priorities...)?

An example of the necessity to adopt clear guidelines or regulations pointing out the characteristics of certain agreements that serve the object of the Green Deal is represented by the case of long-term power purchase agreements, essential for the activity of the energy intensive industries for the purpose of achieving decarbonization goals.

Until now, EU rules did not provide guidance on the competition aspects of long-term power purchase agreements. This maintains a certain level of uncertainty with respect to the conformity of such agreements with the competition rules and to the conditions in which such conformity exists.

The long-term power purchase agreements could become a key factor for the accomplishment of the objectives of the Green Deal. Once their legal regime is clarified by the guidelines (or by other similar document), the energy intensive industry would be motivated to identify the suppliers of sustainable energy and negotiated long-term supply.

3. Are there circumstances in which the pursuit of Green Deal objectives would justify restrictive agreements beyond the current enforcement practice? If so, please explain how the current enforcement practice could be developed to accommodate such agreements (i.e. which Green Deal objectives would warrant a specific treatment of restrictive agreements? How can the pursuit of Green Deal objectives be differentiated from other important policy objectives such as job creation or other social objectives?).

The pursuit of Green Deal objectives could justify restrictive agreements beyond the current enforcement practice, in so far as they are essential for the achievement of the environmental targets set forth by the aforementioned program (e.g. the supply of clean, affordable and secure energy; the mobilization of industry for a clean and circular economy; the preservation and restoration of ecosystems and biodiversity; the prevention and diminution of pollution, etc.). The assessment of such objectives should be documented by the parties to the agreement prior to the conclusion of the concerned agreement (for example, by means of an impact study, presenting the positive environmental impact of the agreement and its conformity with the objectives of the Green Deal. Such impact study should highlight also potential threats to jobs or to increase the poverty and should identify mitigating solutions).

The current enforcement practice could be accommodated by providing exemptions for potentially restrictive agreements which contribute to the achievement of the environmental objectives of the Green Deal. In order to preclude the arbitrary and indiscriminate use of such justification, the European authorities could issue guidelines or regulations establishing the precise conditions in which the exemptions could be granted.

III. 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 merger between firms could prove itself potentially harmful with respect to consumers' possibility to choose environmentally friendly products and/or technologies in so far as the merger enforcement procedure would not impose to the concerned companies the obligation to comply with specific environmental requirements. Therefore, a more detailed approach towards the environmental obligations of the merged companies – including after the completion of the merger process – could considerably mitigate the risk for the consumers to find their choice of environmentally friendly products and/or technologies jeopardized. This might be the case, for instance, in case of the approval of the merger procedure only after the drafting and approval of a plan (or of sufficient guarantees) providing for the implementation of environmentally friendly technologies, in line with the objectives of the Green Deal.

A particular attention should however be paid to mergers allowing non-EU companies to acquire participation in EU-companies, most notably those of strategic importance (telecom, energy, other strategic or critical infrastructure or industries etc). Taking into consideration that the latter are part of the critical infrastructure of the European Union and of the Member States, it would be appropriate that such measure to be scrutinized by the European institutions and issue a point of view on the merger. Such involvement could take the form of a consultative opinion issued by the Commission, pointing out its recommendations with respect to the merger procedure.

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?*

A particular attention should be paid to mergers allowing non-EU companies to acquire participation in EU-companies, most notably those of strategic importance (telecom, energy, other strategic or critical infrastructure or industries etc). Taking into consideration that the latter are part of the critical infrastructure of the European Union and of the Member States, it would be appropriate that such measure to be scrutinized by the European institutions and issue a point of view on the merger. Such involvement could take the form of a consultative opinion issued by the Commission, pointing out its recommendations with respect to the merger procedure. In our view, all merging partners (with focus on non-EU partners) should align with the Green Deal objectives and commitments (achievements and assumed obligations for the future period post-merger to align with Green Deal objectives). A mechanism to monitor post-merger implementation of the environmental commitments should be implemented.

Sincerely yours,

Gheorghe Dobra,
General Director

