



Council of the
European Union

Brussels, 19 May 2021
(OR. en)

8785/21
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RC 21

NOTE

From: Austrian, Belgian and the Czech Republic delegations
To: Council

Subject: Non-Paper on Essential building blocks for a competition law and State aid framework enabling European competitiveness
Proposed by Austria, Belgium and the Czech Republic
- Information from the Austrian, Belgian and the Czech Republic delegations

Delegations will find attached an information note from the Austrian, Belgian and the Czech Republic delegations : " Non-Paper on Essential building blocks for a competition law and State aid framework enabling European competitiveness" with a view to AOB items at the meeting of the Competitiveness Council on 27 May 2021.

**Non-Paper on Essential building blocks for a competition law and State aid framework
enabling European competitiveness**

Proposed by Austria, Belgium and the Czech Republic

Europe's competition policy and its State aid framework are at a crossroads. Clear rules and fair competition behaviour are crucial for the development of a level playing field in our common Single Market and have been essential for our wealth, global competitiveness and even more important for the current period of recovery and resilience. However, the global competition environment is evolving. The COVID-19 crisis has severely impacted the European economic system and its global trade relations and has shown shortcomings for which adaption and renewal are needed.

Path to a future competition framework

1. New rules for merger control that create fairness in global competition

In a globalized world, European companies must be enabled to remain at the forefront of global competition. It is especially important to revise the Market Definition Notice. Recent developments in the domains of global competition and digitalization must be duly taken into consideration. It might also be useful to introduce an economic interest test in merger control. Also, the Advisory Committee on Merger Control should allow a broader discussion with Member State representatives and thus strengthen the Commission's decisions.

2. Ensuring competition and enabling European digital sovereignty

We welcome the Commission's ambitious approach on the Digital Services Act and the Digital Markets Act. Clear dos and don'ts create a more predictable business environment for SMEs. For the DMA, case-by-case decisions would be too costly and time consuming and would mean "more of the same". Therefore, we need to undertake every effort that the proposal is not watered down.

We do need a streamlined gatekeeper designation and improvements for an effective enforcement. Furthermore, we call for better instruments in merger control concerning Big Tech Giants, such as an introduction of a transaction value threshold at the European level in order to tackle "killer mergers". The Article 22 referral is not an effective solution.

3. Competition law must not be an end in itself

The nature of global competition has changed. From 2004 to 2019, the world share of industrial production in China grew from about ten percent to nearly 30%. At the same time, the corresponding European share fell from 25% to 18%. This leads to a concentration of market shares favouring big companies or companies outside the EU, which can offer lower prices. This development is to the disadvantage of SMEs which are the backbone of the European industry, create jobs and safeguard social welfare. The sole focus on low consumer prices should, therefore, be complemented by better consideration of quality and innovation, as originally reflected in EU competition law. This should also be taken into account in a revised Block Exemption Regulation, which should enable better cross-border cooperation between EU companies. These measures would lead to more autonomy in certain sensitive sectors, such as the pharmaceutical sector.

4. Global level playing field with third country actors

Third country investors sometimes benefit from State subsidies or from protected domestic markets. This can heavily distort competition in Europe. We, therefore, strongly support the Commission's ideas to tackle that challenge, keeping in mind that future instruments shall not create disproportionate administrative burden and shall respect Member States' competences. We need to ensure that the distortive effects stemming from third country subsidies in EU public procurement procedures are efficiently and effectively addressed.. The EU should also pursue its efforts to ensure fair competition on the global stage by fighting unfair practices, using trade defence instruments wisely where appropriate, widening and deepening market access.

A fair competition in the internal market must be preserved, while ensuring that our companies face a level playing field at the global stage. The competition on the internal market and the access of SMEs to European and global value chains must remain an essential element of balanced, effective and independent EU competition rules, as well as the international competitiveness of our European players.

1. Pushing forward State Aid Modernization is a boost for recovery

The reform program "State Aid Modernization (SAM)" marks an important first step, taking into account the overall strategic EU policy background of the Green Deal and the Digital Agenda. A broad evaluation and impact assessment are essential for an updated State aid framework, enabling a speedy transition from the current COVID -19 crisis to a period of innovative and resilient recovery. In the context of the revision of the Framework for State aid for R&D&I, the scope of the innovation process needs to be widened. The definition criteria for "innovation" should be adapted correspondingly, rendering the transition from prototype production to market entry eligible.

2. Leave no one behind - " Company in difficulty"

In the course of the revision of the Guidelines for Rescue and Restructuring Aid, a re- definition of "Company in Difficulty" is essential. Many enterprises would have to be excluded from aid measures due to a low equity ratio in the short-term even if they could be considered viable in the mid- and long-term. Start-ups and enterprises in their early stages, particularly with a focus on research and development activities in high-technology sectors, usually show losses during several years after being set up and have to undergo a phase, which is called a "valley of death", until they succeed on the market. That is why the period in which a newly-founded innovative enterprise is not considered "in difficulty" should be increased to at least seven or eight years.

3. Temporary Framework as a basis for a future approach to State aid

Regarding the rules for support measures by Member States to cope with COVID -19, we welcome the prolongation of the "Temporary Framework", since the negative economic effects of the crisis will most likely continue to persist for a longer period. The Temporary Framework already allows a broad variety of aid instruments, which cover nearly all relevant types of State interventions. Both the scope of application and the particular conditions seem to be appropriate for the moment. Lessons and good practices from this framework should inform the reflections about the future framework, while preserving fair practices on the Internal market.

4. Guidelines for Risk Financing

Given the poorly developed risk capital markets in many Member States, rules for aid to risk financing should be simplified. Only programs with a considerable budget should be subject to prior notification, especially regarding the financing of early stages of a company's life cycle. Additional focus should also be put on addressing the needs for investment carried out by scale-ups.

5. Cross-border and multi-country State aid approach - the external dimension

In the future, cross-border cooperation will be essential to make the European Union more competitive globally and to increase its attractiveness to investors. While having established EU co-financing instruments for neighbouring Member States within the INTERREG programs, a similar framework could be envisaged for the cooperation of EU Member States in important projects of common European interest (IPCEIs). It needs rules that exempt SMEs from ex ante notification in IPCEI procedures. This should be reflected in a revised General Block Exemption for the period after 2023. Commission services will then have obtained sufficient experience with aid to such projects.

More broadly, our rules should be designed in a way that they allow effective policies for addressing emerging needs and state-of-the-art innovation policies and funding solutions, especially for start-ups and scale-ups and for collaborative approaches. The European Framework for State Aid should be reassessed to further stimulate innovation, especially concerning pilot and demonstration projects, go-to-the-market phases and deployment of Key Enabling Technologies (KET). The rules should also enable (rather than prevent) collaborative approaches across borders in support of SMEs. In that perspective, the GBER revision process should open new exemptions for collaborative approaches (eg. IPCEI scheme for SMEs, cross-clusters collaboration, interregional vouchers schemes,...).

6. The "green effect" of State aid

The future Guidelines on State aid for Environmental Protection and Energy should appropriately reflect the challenges arising from the green transition and offer both more aid possibilities and more flexible assessment criteria. The State aid rules need to effectively support to the fulfilment of the ambitious climate targets without excessive administrative burdens.

This includes enabling Member States to combat climate change, support sustainable investments and promote the development as well as the market introduction of new and innovative products and processes.
