COVID-19 Special Alerts | 11 May 2020

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1. EUROPEAN COMMISSION APPROVES BELGIAN REGIONAL SCHEME TO SUPPORT THE WALLOON ECONOMY IN THE CONTEXT OF COVID-19

On 30 April 2020, the European Commission ("*Commission*") approved a Belgian scheme of up to EUR 530 million to support companies in the Walloon Region that face difficulties due to the coronavirus outbreak. The scheme intends to reduce the risks linked to the granting of loans to companies severely affected by the COVID-19 crisis and to help them pursue their activities. It will be financed by the Walloon Region and will take the form of a loan guarantee scheme.

The measure is open to undertakings active in all sectors excluding the banking, financial and industrial sector. The aid will be channelled through credit and financial institutions that have entered into a partnership with the entities entrusted by the Walloon Region to implement the scheme. These entrusted entities will evaluate the individual applications received by the credit and financial institutions and decide whether to grant the aid.

The Commission considered that the scheme was in line with the conditions set out by the State aid Temporary Framework (the "*Framework*"), namely as (i) the amount of the loan per company does not exceed what is necessary to cover the needs in liquidity for the near future, (ii) the guarantee fee premiums comply with the levels set out in the Framework, (iii) no guarantee will be granted after 31 December 2020, (iv) the guarantees will not be granted for a period of more than six years and (iv) the scheme will be open only to companies that were not in difficulty on 31 December 2019, within the meaning of the General Block Exemption Regulation.

Please find a link to the Commission's press release here.

2. EUROPEAN COMMISSION APPROVES EUR 7 BILLION AID TO AIR FRANCE IN THE CONTEXT OF THE COVID-19 CRISIS

On 4 May 2020, the European Commission ("*Commission*") reported in a press release that it approved a EUR 7 billion French aid to Air France in the context of the COVID-19 crisis. The French aid was approved under the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April 2020.

The aid takes the form of a State guarantee on loans and a subordinated shareholder loan to the company.

With respect to the State-backed guarantees, France submitted an individual notification to the Commission because the guarantees provide a loan coverage of 90%, which exceeds the maximum threshold of 70% that was approved by the Commission under the French general guarantee scheme on 21 March 2020. The Commission approved the new scheme because it considered that the conditions under the Temporary Framework were met, namely: (i) the guarantee premium increases over time to encourage early reimbursement; (ii) the guarantee will be granted before 31 December 2020; (iii) the loan backed by the guarantee cannot exceed EUR 4 billion and is below the limits set by the Temporary Framework; (iv) the maximum duration of the guarantee is 6 years and will not cover more than 90% of the loan backed by such a guarantee; and (v) Air France was not in difficulty on or before 31 December 2019.

The Commission concluded that the measure was necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the Temporary Framework. On this basis, the Commission approved the measure under EU State aid rules.

3. EUROPEAN COMMISSION APPROVES GERMAN R&D "UMBRELLA" SCHEME FOR CORONAVIRUS RELEVANT PRODUCTS

On 28 April 2020, the European Commission ("*Commission*") approved a scheme to support investments in research and development activities needed for the production of crucial products to fight the coronavirus outbreak. The scheme is meant to enhance and accelerate both the development and the production of products directly relevant to the coronavirus outbreak, including medicinal products such as vaccines, hospital and medical equipment (ventilators), and protective clothing and equipment.

It is estimated that the overall budget for the scheme will not exceed EUR 5 billion. State support will take the form of direct grants, repayable advances and tax advantages. Guarantees to cover losses may also be granted, either in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. More specifically, support can be granted in the form of (i) R&D aid for COVID-19 relevant R&D projects; (ii) investment aid for testing and upscaling infrastructures; and (iii) investment aid for the production of COVID-19 relevant products and services. The scheme is open to all companies capable of carrying out such activities, regardless of their sector activity

Furthermore, undertakings are encouraged to cooperate with each other or with research organisations as they can benefit from a 15% aid bonus when (i) the R&D research project is carried out in cross-border collaboration with research organisations or other undertakings; or (ii) when the research project is supported by more than one Member State.

Please find a link to the Commission's press release here.

4. EUROPEAN COMMISSION APPROVES EUR 550 MILLION GERMAN AID TO AIRLINE CONDOR FOR DAMAGE CAUSED BY CORONAVIRUS OUTBREAK

On 26 April 2020, the European Commission ("*Commission*") approved a state-guaranteed loan of EUR 550 million to airline Condor under Article 107(2)(b) TFEU. This Treaty provision enables the Commission to approve State aid measures in order to compensate specific companies for damages directly caused by exceptional occurrences, in this case, the COVID-19 pandemic. A link to the press release of the Commission can be found here.

The aid will be granted via the German development bank Kreditanstalt für Wiederaufbau. The aid is provided to cover Condor's damages caused directly by the COVID-19 pandemic. The exact damage will be qualified based on Condor's operating accounts for the year 2020. Condor will have to repay all the public support received in excess of the actual damage.

The German Government is also currently in discussions with airline carrier Lufthansa concerning a potential State aid of up to EUR 10 billion.

5. GERMAN FEDERAL MINISTRY OF ECONOMICS AND ENERGY PROPOSES INTEREST DEFERRAL ON CARTEL FINES AND AN EXTENSION OF MERGER CONTROL REVIEW PERIODS AS A RESULT OF THE COVID-19 PANDEMIC

The Federal Ministry of Economics and Energy ("*BMWi*") presented a draft proposal to mitigate the consequences of the COVID-19 pandemic in competition law.

According to the proposal, businesses in Germany that have been fined for a breach of competition law will be exempt from paying interest on fines until the end of June 2021. The measure plans to ease the burden on companies that have suffered liquidity problems during the COVID-19 pandemic. Although the German Federal Cartel Office ("*FCO*") could already defer the payment of fines against companies under the existing law, the interest on those fines still remained due.

The BMWi proposal temporarily extends the review periods for concentrations. Under the proposed rules, the FCO's Phase I review period will be two months instead of one month commencing once the FCO receives the complete merger control notification. For an in-depth analysis of a Phase II review, the period will also be extended from four to six months. The extension is planned to apply to all notifications of concentrations from 1 March to 31 May 2020. The rationale behind the extension is that given the limited capacities of many companies, the current rules do not allow them to respond to enquiries from the FCO in a timely manner.

6. EUROPEAN COMMISSION APPROVES NUMEROUS ITALIAN STATE AID SCHEMES

As of 8 May 2020, the European Commission ("*Commission*") has approved the following Italian aid measures on the basis of Article 107(3)(b) TFEU and of the COVID-19 Temporary Framework:

- **On 13 April 2020, the Commission approved: COVID-19 Loan guarantee schemes under the *Fondo di garanzia per le PMI*.** The aid under this measure is granted in the form of guarantees on loans and grants covering the value of the premiums on those guarantees. The Guarantee Fund provides the undertakings that benefit from guarantees on loans with a grant equal to the present value of the fees due under the guarantee. The measure is addressed to all undertakings with up to 499 employees and self-employed persons in Italy, regardless of the sector in which they are active and who face liquidity shortage, due to the containment initiatives adopted by Italy. Please find a link to the Commission's decision here.

- **On 13 April 2020, the Commission approved a guarantee scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.** The aid is granted in the form of guarantees on new loans or refinanced existing loans granted after the entry into force of the Italian Decree Law n. 23 of 8 April 2020. The beneficiaries of the scheme are all undertakings registered in Italy (with the exclusion of financial undertakings), regardless of the sector in which they are active, and who face liquidity shortage due to the containment measures adopted by Italy. Please find a link to the Commission's decision here.

- **On 21 April 2020, the Commission approved loan guarantees and grants under the ISMEA Guarantee Fund according to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.** The aid under this scheme is granted in the form of (a) State guarantees provided to the financial intermediaries, banks and mutual guarantee institutions, in relation to new and existing loans; (b) State guarantees provided to the financial intermediaries, banks and mutual guarantee institutions, in relation to new loans; and (c) for undertakings who benefit from the guarantee of point (a), a State aid grant, equal to the present value of the fees due under the guarantee. The final beneficiaries of the advantages of this measure are SMEs operating in Italy in the agricultural, forestry, fishery and aquaculture sectors, who face liquidity shortage, due to the containment initiatives adopted by Italy. Please find a link to the Commission's decision here.

- **On 21 April 2020, the Commission approved the granting of State aid under the COVID-19 anti-crisis program provided for by art. 12 of the regional law n. 5/2020 in compliance with the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.** The aid is granted in the form of (a) subsidised interest rates for loans; (b) interest free loans; and (c) direct grants. The aid under this scheme is addressed to undertakings of all sizes, facing economic difficulties due to the COVID-19 outbreak, who operate in the following industry sectors: (i) primary production of agricultural products; (ii) processing of agricultural products into agricultural products and non-agricultural products (iii) marketing of agricultural products, forestry, fishery and aquaculture. The aid is limited to the territory of the "*Friuli Venezia Giulia*" Region. Please find a link to the Commission's decision here.

- **On 4 May 2020, the Commisison approved loans provided by ISMEA in favour of undertakings of the agricultural and fishery sector affected by the COVID-19 outbreak. T**he aid under this scheme consists of interest free loans granted by ISMEA, the Institute of Services for the Agricultural and Food market ("*Istituto di Servizi per il Mercato Agricolo Alimentare").* It is an economic public body comprising SMEs active in Italy in the agricultural, fishery and aquaculture sectors. Please find a link to the Commission's decision here.

7. SPANISH COMPETITION AUTHORITY RECEIVES QUERIES AND COMPLAINTS IN COVID-19 RELATED MAILBOX AND ADVISES ON LAWFULNESS OF COOPERATION AGREEMENTS CONCLUDED BETWEEN UNDERTAKINGS AMID THE COVID-19 CRISIS

Since the creation of the COVID-19 related mailbox on 31 March 2020, the National Commision of Markets and Competition of Spain (Comisión Nacional de los Mercados y la Competencia in Spanish, hereinafter the "CNMC") received around 300 queries and complaints filed by individuals and companies. In order to respond to these queries and complaints, the CNMC put together a team of technicians with the sole purpose of analysing queries, closely monitoring affected markets and carrying out necessary actions to prevent anticompetitive practices.

Several investigations have been initiated following the complaints received by the CNMC, particularly in the funeral, financial and medical devices distribution and marketing sectors. Those investigations are being conducted in order to determine if there are breaches of the Spanish Competition Law. The CNMC warned that it will launch sanctioning proceedings should it find that the undertakings are engaging in anticompetitive practices.

The CNMC also announced that it will continue to thoroughly analyse affected markets and the behaviour of undertakings. In addition, it will closely monitor any other markets where there is indication of anticompetitive practices and will take appropriate actions in defence of the public interest.

Likewise, the CNMC received various queries regarding the lawfulness of cooperation agreements concluded between undertakings amid the COVID-19 crisis. Such queries related to cooperation agreements entered into by undertakings in the insurance, hospital, banking and medical devices sectors.

In order to clear such agreements, the CNMC requires compliance with the following criteria: (i) the necessity and proportionality of the agreement; (ii) the temporary nature of the agreement and its openness to third parties; (iii) the existence of due precautions to avoid exchanges of sensitive commercial information between competitors; and (iv) the obligation to document agreements and to make these available to the CNMC if required.

The CNMC announced that it will maintain constant communication with the Spanish Autonomous Communities which have been transferred competences for competition related matters. The CNMC and the Spanish Autonomous Communities seek to provide a coherent response to competition related queries and to maintain vigilance in the markets to avoid anticompetitive practices in the context of the COVID-19 pandemic.

Please fin a link to the CNMC's press release here.