Covid-19 Special Alerts | 28 September 2020

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1. EUROPEAN COMMISSION APPROVES BELGIAN STATE AID MEASURE TO SUPPORT BRUSSELS AIRLINES IN THE CONTEXT OF COVID-19

On 21 August 2020, the European Commission ("***the Commission***") approved a Belgian aid measure under the State aid Temporary Framework ("***the Temporary Framework***") of EUR 290 million to SN Group, the parent company of Brussels Airlines, which has been suffering substantial losses in the context of the coronavirus outbreak. The measure will provide aid in two forms:

- a six-year loan of up to EUR 287.1 million with subsidised interest, not convertible into equity, which may be used in instalments of at least EUR 30 million upon request; and
- a recapitalisation of EUR 2.9 million that will take the form of "profit sharing instruments" (*winstaandelen / parts bénéficiares*), a hybrid instrument that qualifies as equity under Belgian accounting rules.

The aid measure is part of a larger state aid package previously granted by Germany (*see* VBB COVID-19 Special Alert of 21 August 2020) to the entire Deutsche Lufthansa AG (*DLH*), the holding to which SN Group belongs. As a consequence of the Belgian aid, the overall aid previously granted to DLH will be

proportionally reduced. In particular, the loan will proportionally reduce (i) the State guaranteed loan to DLH by Germany under the scheme approved by the Commission in March 2020 and (ii) the German recapitalisation of DLH approved by the Commission in June 2020.

The Commission considered that the Belgian aid measure was in line with Article 107(3)(b) TFEU and the conditions set out in the Framework:

- **with regard to the six-year loan with subsidised interest**, the Commission established that (i) the amount of the loan complies with SN Group's liquidity needs in the foreseeable future and remains below double the annual payroll of SN Group, (ii) the interest rates are in line with the reference rates and credit risk margins set out in the Framework and (iii) the duration of the loan will not exceed six years.

- **with regard to the recapitalisation**, the Commission found that (i) the amount does not exceed the minimum required to ensure SN Group's viability and does not go beyond restoring SN Group's capital structure before the coronavirus crisis, (ii) the Belgian State will be appropriately remunerated for the investment, (iii) the measure contains enough exit incentives for the company to repay the aid as soon as possible, (iv) SN Group is subject to a dividend ban until it has fully redeemed the recapitalisation and (v) until at least 75% of the recapitalisation is repaid, a strict limitation on management remuneration applies and SN Group cannot in principle acquire a stake of more than 10% in competitors or other operators in the same business sector.

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

2. EUROPEAN COMMISISON APPROVES EUR 6 BILLION GERMAN DIRECT GRANT SCHEME FOR REGIONAL AND LOCAL PASSENGER TRANSPORT

On 7 August 2020, the European Commission ("***the Commission***") approved a EUR 6 billion direct grant scheme for regional and local passenger transport companies. They will be entitled to compensation in the form of direct grants for damages incurred between 1 March and 31 August 2020 due to COVID-19.

Germany introduced emergency containment measures such as the closure of schools and nurseries, extended telework arrangements, social distancing, and restrictions on social gatherings to limit the spread of the virus. This led to a massive decrease in passenger numbers in local public transport by road and rail ranging between 70% and 90% during the pandemic, which resulted in a significant loss of revenue. Furthermore, transport operators incurred additional costs due to enhanced sanitary and hygiene measures.

During this time, local and regional public transport providers continued to provide essential services to citizens. Transport operators had an obligation to maintain a sufficient frequency of passenger transport services to ensure mobility of people without access to alternative means of transport, including critical workers such as health professionals.

This measure is thus designed to compensate each operator of regional and local public transport services. Through this measure, Germany aims to address the liquidity problems which risk driving many transport operators out of the market, while also ensuring that no individual transport operator receives more in compensation than it suffered in damages.

The Commission concluded that the scheme is in line with EU State aid rules under Article 107(2)(b) TFEU, which enables the Commission to approve State aid measures granted by Member States to compensate specific companies or specific sectors (in the form of schemes) for the damages directly caused by exceptional occurrences defined as an extraordinary, unforeseeable event with a significant economic impact such as the coronavirus outbreak.

A link to the Commission's decision can be found here.

3. EUROPEAN COMMISISON APPROVES GERMAN AIRPORT DIRECT GRANT SCHEME

On 11 August 2020, the European Commission ("***the Commission***") approved a German aid scheme to support German airports dealing with economic consequences of the COVID-19 pandemic. Particularly, smaller regional airports relying on one carrier have suffered from COVID-19, a recent German study commissioned by NGO Friends of the Earth Germany revealed.

The scheme is designed to enable German authorities at different levels (federal, state and municipal) to compensate German airports for revenue losses directly caused by the coronavirus outbreak between 4 March and 30 June 2020. At the same time, the scheme is aimed at providing liquidity support to address shortages resulting from restrictions that Germany and other Member States had to impose to limit the spread of COVID-19, thereby securing airport operations to ensure connectivity, mobility and air transport for the future. The aid will take the form of direct grants, guarantees on loans, subsidised interest rates and deferrals of certain taxes and charges.

Most liquidity support measures covered by the scheme, with the exception of deferrals of tax and charges, fall under existing schemes previously approved by the Commission under the Temporary Framework ("Bundesregelung Kleinbeihilfen 2020", "Bundesregelung für niedrigverzinsliche Darlehen 2020" and "Bundesregelung Bürgschaften 2020"). The Commission approved the scheme partially based on Article 107(2)(b) TFEU and partially under the State aid Temporary Framework.

- The Commission found that the **damage compensation measures** were in line with Article 107(2)(b) TFEU, which enables the Commission to approve State aid measures granted by Member States to compensate specific companies or specific sectors (in the form of schemes) for the damages directly caused by exceptional occurrences defined as an extraordinary, unforeseeable event with a significant economic impact such as the coronavirus outbreak.

- The Commission considered that the **deferrals of tax and charges**, were in line with the conditions of the State aid Temporary Framework since, (i) the measure supports undertakings that are active in a sector which is particularly affected by the coronavirus outbreak; and (ii) the aid will be granted before 31 December 2020 and the end date of the deferrals will be not later than 31 December 2022.

A link to the Commission's decision can be found here.

4. EUROPEAN COMMISSION APPROVES EUR 10 BILLION SPANISH RECAPITALISATION FUND TO SUPPORT COMPANIES AFFECTED BY THE COVID-19 OUTBREAK

On 31 July 2020, the European Commission ("***the Commission***") approved a EUR 10 billion Spanish scheme to set up a recapitalisation fund for viable companies which suffered considerably from the economic crisis in the wake of the coronavirus pandemic without limitation as to size or economic sector. The legal bases establishing the aid scheme are the Royal Decree-Law 25/2020 of 3 July 2020 on urgent measures to support economic recovery and employment and the Agreement in Council of Ministers on the functioning of the Solvency Support Fund for strategic enterprises, without legal personality, adopted on 21 July 2020.

The measure will take the form of an investment by the Solvency Support Fund through the purchase of financial instruments and securities issued by nonfinancial undertakings in Spain. The aid is subject to the following eligibility criteria: (i) systemic or strategic importance due to the sector of activity, in terms of links with public health and safety or influence over the whole economy, innovation, or their role in achieving the medium-term objectives of ecological transition, digitalisation, increased productivity and human capital; (ii) risk of ceasing operations or having serious difficulties to remain in business in the absence of temporary public support, as demonstrated in particular by the deterioration of the beneficiary's debt-to-equity ratio or similar indicators; (iii) demonstrate that a forced cessation of activity would have a high negative impact on economic activity or employment at national or regional level; (iv) establish medium- to long-term viability; (v) present a planned schedule of reimbursement of the nominal investment of the State and payment of the remuneration and (vi) not constitute an undertaking in difficulty as of 31 December 2019.

Until the beneficiary definitively reimburses the temporary public support received under the Fund to strengthen its solvency, the beneficiary will be subject to restrictions, such as a prohibition of distribution of dividends or bonus payments.

The Commission considered that the scheme is in line with the conditions set out in the State aid Temporary Framework as (i) the support is available if it is the most appropriate measure, (ii) the amount of aid must correspond to what is strictly necessary to allow beneficiaries to continue their activity despite the pandemic, (iii) aid must be repaid as soon as possible and (iv) guarantees should be put in place to ensure that beneficiaries do not unduly use the measure to the detriment of fair competition in the Single Market. If a company exceeds the threshold of EUR 250 million, the notification of the aid must be done separately for an individual assessment.

A link to the Commission's decision can be found here.

5. SPANISH COMPETITION AUTHORITY RECEIVES OVER 500 INQUIRIES AND COMPLAINTS IN ITS COVID-19 MAILBOX

Following the creation of the COVID-19 mailbox on 31 March 2020 (*see* VBB COVID-19 Special Alert of 4 May 2020), the National Commission of Markets and Competition of Spain (Comisión Nacional de los Mercados y la Competencia in Spanish, hereinafter the "***CNMC***") has received more than 500 inquiries and complaints from individuals and companies regarding the application of competition rules and the existence of potentially anti-competitive practices during the pandemic.

The CNMC reported that between March and May 2020, 45% of the inquiries it received involved the financial sector, 30% related to the prices of healthcare and food products, 5% involved the funeral industry and 1% involved the insurance sector. The remaining 19% of inquiries related to sectors within the competence of other divisions belonging to the CNMC, such as the energy and telecommunication sectors. The CNMC also received inquiries that fell outside the scope of its competence. In these cases the team of experts tasked with monitoring the COVID-19 mailbox, who report to the Council of the CNMC on a weekly basis, assisted the individual or company making the inquiry by identifying the agency to which the inquiry should be directed and where appropriate, the applicable extraordinary regulation.

Through its COVID-19 mailbox, the CNMC also received inquiries regarding the conclusion of cooperation agreements between undertakings primarily in the financial, insurance and health sectors, and between undertakings that provide support services. Following an analysis of the potential efficiencies and risks of the proposed cooperation agreements, the CNMC provided these undertakings with informal advice highlighting the risks involved in concluding the respective agreement and the criteria that must be met in order to avoid an infringement of Spanish competition law.

As a result of the inquiries and complaints received in the COVID-19 mailbox, the CNMC launched investigations in April 2020 and it continues to investigate the potentially anti-competitive practices in the funeral industry, financial services sector and in the distribution and marketing of healthcare products. In addition, the CNMC recently opened investigations in the insurance sector where it will focus on funeral and sick leave insurance, and it continues to closely monitor the prices of food and activity in other affected sectors.

Throughout the COVID-19 pandemic the CNMC continued to work closely with the Directorate-General for Competition of the European Commission and the national competition authorities of EU Member States in order to provide a fast and consistent response to the issues that have arisen in the EU during the pandemic. It also maintained constant communication with the Spanish Autonomous Communities which have been transferred competences for competition related matters, as demonstrated by the organisation of a virtual meeting where the actions carried out by each body were discussed in order to ensure the adoption of a coherent response to the pandemic.

Finally, the CNMC reminded all Spanish government agencies that it is available for consultation in relation to the potential impact that legislation enacted in response to the COVID-19 pandemic may have on competition in the markets and its consistency with the principles of efficient economic regulation, such as necessity and proportionality. The CNMC also highlighted its ability to provide advice regarding public procurement and grants. Furthermore, the CNMC emphasised that companies can contact it at any time for informal guidance on issues related to the pandemic.

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

6. EUROPEAN COMMISSION APPROVES EUR 11 BILLION UK GUARANTEE SCHEME TO SUPPORT THE TRADE CREDIT INSURANCE MARKET DURING COVID-19 CRISIS

On 28 July 2020, the European Commission ("***the Commission***") approved a UK guarantee scheme under the State aid Temporary Framework ("***the Temporary Framework***") to support the trade credit insurance market in the context of the COVID-19 outbreak. The measure has a maximum budget of approximately EUR 11 billion. Trade credit insurance covers companies supplying goods and services against the risk of non-payment by their clients. The guarantee scheme aims to ensure that trade credit insurance will continue to be available to companies, avoiding the need for buyers of goods or services to pay in advance, and reducing their immediate liquidity needs, which is essential in the current crisis.

The Commission considered that the scheme was in line with the conditions set out by the Framework, as (i) the trade credit insurers have committed to the UK to maintain their level of protection as before the coronavirus outbreak in spite of the current difficulties, (ii) the guarantee is limited to only cover trade credit originated until the end of 2020, (iii) the scheme is open to all credit insurers in the UK, (iv) the guarantee mechanism ensures risk sharing between the insurers and the State, and (v) the guarantee fee provides a sufficient remuneration for the UK. The Commission also found that the guarantee scheme was necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the UK. On this basis, the Commission approved the measure under EU State aid rules.

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

7. EUROPEAN COMMISSION APPROVES GBP 15 MILLION SCOTTISH LOAN SCHEME

On 24 August 2020, the European Commission ("***the Commission***") approved under its State Aid Temporary Framework ("***the Temporary Framework***") a UK scheme intended to provide support to Scottish companies of any size that have been negatively impacted by the COVID-19 pandemic. The scheme is worth up to GBP 15 million, with public support taking the form of subordinated loans with subsidised interest rates. It is envisaged that the scheme will enable companies to address their liquidity shortages and enhance their access to financing.

The Commission approved the scheme as it found it to be compatible with the provisions set out in the Temporary Framework. In particular, the subordinated loans (i) relate to investment and/or working capital needs of the beneficiaries in the near future; (i) will be issued by 31 December 2020; and (iii) have a maximum maturity of six years. Furthermore, the annual interest rates of the loans respect the minimum levels foreseen by the Temporary Framework.

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

8. UK CMA CLOSES INVESTIGATION INTO ALLEGED UNFAIR PRICING FOR HAND SANITIZER PRODUCTS

On 3 September 2020, the CMA announced the closure of its fourth investigation into the suspected charging of excessive and unfair prices for hand sanitizer products during the COVID-19 pandemic (*see*

Press Release). This follows the closure of the other three investigations, as announced on 13 July 2020 (*see* Press Release).

The CMA stated that its decision to close the investigation was made by reference to its "prioritisation principles" and did not amount to a definitive statement of whether the entities involved had actually infringed competition law. Rather, the CMA decided to close the case having concluded on the basis of the evidence collected during the investigation that the prices being charged by the retailer were *unlikely* to infringe competition law and that further investigation at this stage would deliver limited, if any, consumer benefits. Comments reportedly made by economics director at the CMA, Simon Roberts, indicate that the decision to close the investigation may have also been influenced by commitments made by the entities under investigation.