

5 May 2021

Flash Info: Foreign subsidies granted by non-EU governments under scrutiny of the EU Commission

On 5 May 2021, the EU Commission proposed a new Regulation to address the potentially negative effects on the EU market of subsidies provided by Governments outside the EU. According to the EU Commission, these subsidies may undermine the level playing field that is needed for all companies in the EU to compete on equal and fair terms.

The proposal of this new Regulation comes after a series of recent foreign takeovers of European companies and enterprises, whose prices declined because of the COVID-19 pandemic.

Under the proposed Regulation, the EU Commission will have the power to investigate financial contributions granted by public authorities of a non-EU country which benefit companies engaging in an economic activity in the EU and redress their distortive effects, as relevant. For these purposes, the proposed Regulation introduces three tools, two notification-based and a general market investigation tool. More specifically:

- (A)** A notification-based tool to investigate concentrations involving a financial contribution by a non-EU government, where the EU turnover of the company to be acquired (or of at least one of the merging parties) is € 500 million or more and the foreign financial contribution is at least € 50 million;
- (B)** A notification-based tool to investigate bids in public procurements involving a financial contribution by a non-EU government, where the estimated value of the procurement is €250 million or more; and
- (C)** A tool to investigate all other market situations and smaller concentrations and public procurement procedures, which the Commission can start on its own initiative (ex-officio) and may request ad-hoc notifications.

With respect to **the two notification-based tools under letter (A) and (B)**, the acquirer or bidder will have to notify ex-ante any financial contribution received from a non-EU government in relation to concentrations or public procurements meeting the thresholds. Pending the Commission's review, the concentration in question cannot be completed and the investigated bidder cannot be awarded the contract. If a company fails to comply with the obligation to notify a subsidised concentration or a financial contribution in procurements meeting the thresholds, the Commission may impose fines and review the transaction as if it had been notified.

The **general market investigation tool under letter (C)** will empower the Commission to investigate other types of market situations when it suspects that a foreign subsidy may be involved.



The European Parliament and the Member States will now discuss the proposal of the new Regulation in compliance with the ordinary legislative procedure. When the final agreed text is approved, the Regulation will be directly applicable across the EU.

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