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NOTE

From:	AT Delegation
To:	High Level Working Group on Competitiveness and Growth
Subject:	Essential building blocks for a competition law and State aid framework enabling European competitiveness

Europe's competition policy and its State aid framework are at a crossroads. Clear rules and fair competition behaviour have been crucial for the development of a level playing field in our common Single Market and are, therefore, essential for our wealth, global competitiveness and even more important for the current period of recovery and resilience. However, the global competition environment has evolved. 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.

I. <u>PATH TO A FUTURE COMPETITION FRAMEWORK</u>

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 addressed**. Especially to provide for more resilience, we need to sharpen our existing tools on foreign direct investment screenings with special respect to the sectors of strategic importance, such as the health sector.

II. PATH TO A FUTURE STATE AID FRAMEWORK

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 from three years 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.

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.

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 contribute 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.