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FSR Watch #2

Foreword

In this issue we cover relevant developments in the enforcement of the EU Regulation 2022/2560 on Foreign Subsidies (“**FSR**”) that occurred since the end of February. During this period, the European Commission (“**Commission**”) delayed a 16-billion EUR tender, used for the first time ex officio powers to collect information about leading Chinese car manufacturer BYD’s investment in the EU, and a transaction by Abu Dhabi National Oil Company raises novel issues.

1. Tighter tenders: a nuclear option

While the FSR’s concentration screening tool captures headlines, it is no secret that the number of notifications concerning public procurement procedures is considerably higher, with almost 2,500 cases registered so far. It is thus no surprise that DG GROW – responsible for public procurement scrutiny – is reorganizing, having now set up dedicated Unit G.3 to take on the gargantuan number of notifications.

Public procurement rose to the spotlight last year, when a series of Chinese enterprises were made the object of in-depth investigations and all subsequently withdrew from the tenders. A new case, which had brought some clamour, appears to have been quietly solved.

In the beginning of May, Stéphane Séjourné, the French Executive Vice-president of the Commission and Commissioner for Prosperity and Industrial Strategy, sent a letter to Czech Authorities, requesting to delay the execution of an EUR 16 billion contract with South Korea’s Korea Hydro & Nuclear Power (“**KHNP**”) for constructing two nuclear reactors at the Dukovany power plant.

The letter, disclosed by press sources, stated that the Commission had sent requests for information to KHNP and to Czech Authorities, the answer to which was deemed unsatisfactory by the Commission’s services, and that a delay to the execution of the contract was needed to allow the Commission to prepare a decision to carry out an in-depth investigation.

The Commission’s request was said to follow a complaint by French energy giant EDF, which had unsuccessfully participated in the same tender, alleging that KHNP had benefited from state subsidies. While KHNP denied receiving any government subsidies related to the bid, a Czech court temporarily blocked the contract's signing pending further legal review.

The behemoth contract is especially significant for the Czech Republic, a relatively small country depending on nuclear energy for 40% of its electrical power needs. So much so that the rumours of a potential in-depth investigation prompted President Petr Pavel to discuss with EC President von der Leyen in person and walked away with the promise of a quick and transparent solution.

Based on the latest news, it appears that Mr. Pavel’s efforts bore fruit: on 4 June 2025, the Supreme Administrative Court of Czechia annulled the order, and the contract with KHNP was signed on the same date.

2. Bringing Chinese technology into the EU: the fact-finding about BYD's investment in Hungary

On March 20, 2025, press sources reported that the European Commission ("**Commission**") was gathering information about BYD's 4-billion EUR-plant in Hungary. Through this fact-finding exercise, the Commission seeks to ascertain whether a foreign subsidy distorting the internal market exists. This is a very preliminary phase, for which the FSR does not set out any specific deadline. Based on experience from best practices in the neighboring State aid field, this phase could last up to 1 year.

The next step could be requests for information to the company and/or inspections. In case T-284/24 R, *Nuctech/Commission*, the EU General Court confirmed the Commission's approach of requesting information from undertakings located outside the EU, to assess whether foreign subsidies may have caused a distortion of competition in the EU (this is in line with long-standing case law in competition law and has been upheld on appeal by the Court of Justice in case C-720/24 P(R)). However, complying with such requests might contradict local regulations about listed companies' disclosure obligations. Thus, the current fact-finding could be a test-case for the Commission powers.

If it were to come to the view that a distortive foreign subsidy was granted to build the plant, then the Commission would have to open an in-depth investigation, for which the Commission has a non-binding deadline of 18 months.

Unlike the antidumping duties already imposed on Chinese car manufacturers, the present FSR investigation is different insofar as BYD invested to establish manufacturing capability in the EU (as opposed to simply importing vehicles). In this respect, the Commission is obliged under the FSR to conduct a balancing test, weighing the positive effects of BYD's investment for EU consumers and for achieving the goal of green mobility.

Thus, even if it were to launch an in-depth investigation, the Commission might end the probe concluding that such positive effects outweigh the distortion.

3. Abu Dhabi National Oil Company's acquisition of Covestro

The Abu Dhabi National Oil Company ("**ADNOC**") is seeking FSR clearance for its acquisition of Covestro, a German chemical company, in a 14.7 billion EUR takeover. Following extensive pre-notification contacts, on 15 May 2025, ADNOC formally requested approval from the Commission under the FSR. Notably, this follows unconditional clearance received under antitrust regulations.

Despite the above, on 4 June 2025, the Commission stopped the clock on the review, with a new request for information. Given that in early 2024 ADNOC secured FSR clearance for the acquisition of Fertiglobe, a fertilizer producer, one might wonder about the protracted time-table.

However, ADNOC's promise of a EUR 1.17 billion investment into Covestro might explain the Commission's seeking more information to discern whether this commitment could distort competition. In addition, by analogy with Emirates Telecommunications Group (e&) acquisition of Czech telecom group PPF, another concern could hinge on Covestro's improved market position post-transaction. In particular, one potential theory of harm could be that, once it becomes part of ADNOC's group, Covestro could leverage the state backing to improve its market position.

The foregoing shows that FSR reviews are very deal-specific, and each transaction needs to be looked at on its own merits.

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