

Subject: The consumers' perspective on State aid and COVID-19.

Dear Executive Vice-President Vestager,

The current State of emergency caused by the COVID-19 pandemic raises unprecedented challenges for consumers, businesses, governments and the European Union as a whole. BEUC fully understands the utmost importance of providing financial relief to reduce the economic impact of the pandemic. However, BEUC considers that it is essential to ensure that the measures adopted by European policymakers to counter the economic consequences of the outbreak also safeguard the rights and interests of consumers, as set out in our recent letter to Commissioner Reynders¹.

In your capacity as Executive-Vice President responsible for competition policy, we urge you to make sure that the measures taken at EU and national level to mitigate the effects of COVID-19 on the economy take full account of the interests of consumers, and in particular to ensure that State aid enhance and does not adversely impact consumer welfare. This is indeed a requirement under the horizontal consumer protection clause set out in Article 12 of the Treaty on the Functioning of the European Union (TFEU) according to which "consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities" including the whole body of EU competition law as outlined in Articles 101-108 TFEU.

Against this background, we would like to provide you with the consumer perspective on the recent developments concerning State aid, including the adoption of the "State Aid Temporary Framework to support the economy in the context of the COVID-19 outbreak" and decisions taken under Article 107(2)(b) and 107(3)(b) TFEU.

We have identified three areas where we consider the Commission and the Member States should pay special attention to uphold the interests of consumers and citizens when granting aid to beneficiaries. First, to ensure EU consumer and passenger rights are safeguarded when providing support to airlines (and other operators in the travel and tourism sector). Second, to make sure that funds for research and development (R&D) are made conditional on requiring that the benefits of this investment are shared in a fair and proportionate way with the general public. Third, to closely monitor and ensure that aid granted to undertakings does not amount to hidden subsidies giving rise to unjustified distortions of competition.

¹ BEUC letter sent to Commissioner Reynders, "COVID-19 –implications for consumers and BEUC recommendations for policy responses" on 3 April 2020, https://www.beuc.eu/publications/beuc-x-2020-018_commissioner_reynders_covid-19_policy_recommendations.pdf

State aid in the transport and tourism sectors

Transport and tourism are among the sectors, in the short-term, worst affected by the economic crisis induced by the outbreak. As we have seen in recent decisions, many airlines are turning to the State for support to cope with the financial implications of suspended operations. While this is justified, it is worrisome that some airlines are failing to fulfil their obligations under EU legislation on passenger rights (Regulation 261/2004) by denying refunds to passengers whose flights have been cancelled. It is therefore important for BEUC that Member States, when granting aid to their national airlines, make the support conditional on the airlines respecting their obligations under Regulation 261/2004 to offer reimbursement of flights that have been cancelled, instead of forcing consumers to accept vouchers or other solutions that are not in line with existing EU passenger rights. In the current situation, consumers run the risk of paying twice over: first as travellers, by being denied refunds for cancelled flights, and second as taxpayers, by funding the State support. Similar conditionality should apply to any State support for other operators in the travel and tourism industry.

We would therefore urge the Commission to work together with the Member States to ensure that State aid is available to travel operators in cases where they may have difficulties to fulfil their obligations to reimburse consumers. This could mirror the recent State aid decision allowing Denmark to expand its existing package travel fund temporarily by means of a DKK 1.5 billion (approximately 200 million EUR) loan to cover reimbursement claims by consumers against travel organisers due to COVID-19 cancellations.² Such solutions would be the most practical, most sustainable and most beneficial to both the travel industry and consumers.

We consider that a European or national fund(s) for insolvency protection for the travel and tourism industry should be created or existing funds be expanded to cover reimbursement claims for cancelled package travel arrangements and for flights under Regulation 261/2004. The European Commission should examine whether such measures should be undertaken via national State aid or via a European travel emergency fund. BEUC and its members are strongly in favour of such an approach across the EU³.

Conditions attached to R&D State aid

Under the Temporary Framework, Member States can grant aid in the form of direct grants, repayable advances or tax advantages for coronavirus and other relevant antiviral R&D. While BEUC believes that State support for R&D is fundamental to dealing effectively with the pandemic, we consider that there must be an adequate return on investment for the general public in the form of affordable medicines and treatments for COVID-19 developed thanks to State aid. This would allow the benefits of this research to reach the entirety of the population through national healthcare systems. Therefore, it is essential that State financial support for R&D related to medicines and treatments to tackle the pandemic must be conditional on the results being made available on fair and reasonable terms to national healthcare systems. We therefore welcome that in the amended Temporary Framework, the Commission has proposed to make State aid granted for R&D purposes conditional on the beneficiary committing to grant non-exclusive licences under non-discriminatory market conditions to third parties in the European Economic Area⁴. This should translate into wider availability and affordable prices for public bodies and hospitals to access medicines and treatments developed with the support of the State for COVID-19.

² European Commission Press Release of 3 April 2020, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_576

³ BEUC letter to Commissioners Reynders, Vălean and Breton, "European consumer and passenger rights in the COVID-19 crisis" on 2 April 2020, http://www.beuc.eu/publications/beuc-x-2020-017_letter_to_commissioners_eu_consumer_and_passenger_rights_in_the_covid-19_crisis.pdf

⁴ Paragraph 35 point (g) of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak as amended by the Commission communication of 3 April 2020, C(2020) 2215 final.

Pandemic-related State aid should not distort competition to the detriment of consumers

BEUC supports the European Commission's endeavours to ensure that State aid given during the COVID-19 outbreak is not abused by Member States and undertakings to give some companies an unfair competitive advantage after the crisis. Clearly State aid in the context of the COVID-19 outbreak can only be granted if it is directly related and proportionate to financial difficulties caused by the pandemic and are terminated effectively at the appropriate time. In this sense, State aid should not be used to support inefficient undertakings since this could allow them to undercut and push out of business unaided but viable undertakings. This would therefore lead to a negative impact on consumer welfare by preventing consumers from benefiting from competition on the merits in the form of better prices, choices and quality of products and services.

We remain at your disposal for any further information you might require.

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