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**Subject: State aid SA. 59045(2020/PN) – SPAIN -COVID 19 – Guarantee scheme for undertakings with composition agreements**

Excellency,

## 1. PROCEDURE

- (1) Following pre-notification contacts<sup>1</sup>, by electronic notification of 19 November 2020, Spain notified an aid scheme to provide compensation to certain undertakings (the “scheme”) on the basis of Article 107 (2)(b) of the Treaty on Functioning of the European Union (“TFEU”).
- (2) Spain exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958<sup>2</sup>, and to have this Decision adopted and notified in English.

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<sup>1</sup> The prenotification contacts started on 21 September 2020 and consisted of various exchanges on draft documents and information to be included in the formal notification such as the draft legal basis of the scheme and related information, discussed in various e-mail exchanges and four teleconferences, until 18 November 2020.

<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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## **2. THE IMPACT OF THE COVID-19 OUTBREAK AND HEALTH MITIGATION MEASURES**

- (3) The Spanish authorities explain that the COVID-19 outbreak has a significant impact on the Spanish economy.
- (4) In response to the pandemic situation, Spain has taken sequential mitigation measures (“containment measures”). By Royal Decree 463/2020 of 14 March 2020 a ‘state of alarm’ was declared. The Parliament extended the ‘state of alarm’ until 20 June 2020. For the period from 14 March to 20 June 2020, that Royal Decree and its extensions introduced measures throughout the country which include restrictions of movement except for essential activities, the closing of shops except for essential products, suspension of all the activities related to hospitality, sport, leisure, or culture with the obligation of closing all premises, teleworking, suspension of all educational activities, reduction of public transport and closure of borders, except for exceptional and justified reasons, such as Spanish nationals returning to Spain or transport of goods. Therefore, between 14 March and 20 June 2020, most activities that could not be carried out remotely through telematics tools were effectively suspended in Spain except for essential ones.
- (5) As a result, Spain’s gross domestic product fell significantly during the first two quarters of 2020, when the containment measures were implemented. The Spanish authorities explain that, during the first quarter, the production in Spain decreased by 5.2%, while on the second quarter it fell by a historic 17.8%, compared to the same period in 2019.
- (6) Based on information from the Spanish National Statistics Institute (INE), the Spanish authorities explain that almost all sectors were hit during the first and second quarters of 2020. This includes industry (-6.4% in Q1 and -19.4% in Q2) and construction (-6.9 in Q1 and -21.9% in Q2). Moreover, services, which accounted in 2019 for two-thirds of the Spanish GDP, decreased their contribution by 6.9% in the first quarter of 2020 and by 18.3% in the second one. The impact of the outbreak has been particularly strong on trade, transport, accommodation and restaurants, information and communication, professional, scientific and technical activities and arts, entertainment and other services, and to a lesser extent real estate activities.

## **3. DESCRIPTION OF THE SCHEME**

- (7) As part of the response to alleviate the effects of the COVID-19 outbreak, Spain plans to set up a compensation aid scheme in the form of public guarantees for access to finance for certain undertakings. Its purpose is to compensate beneficiaries for the damage suffered as a result of the containment measures.

### **3.1. The beneficiaries**

- (8) The scheme is open to self-employed persons and other undertakings that in the course of judicial insolvency proceedings have reached a composition agreement with creditors allowing the continuation of their activity that has been approved by the competent court<sup>3</sup> and have suffered substantial damage due to the COVID-

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<sup>3</sup> Under the Spanish Insolvency proceeding Law, composition agreements with creditors are reached in the course of a judicial procedure and must be approved by the Court within this judicial procedure.

19 outbreak containment measures because their economic activity ceased or was severely affected (the “beneficiaries”). Only applications of beneficiaries that are meeting the terms of the composition agreement will be granted.

- (9) The beneficiaries are undertakings established in Spain of all sizes active in all sectors. It is estimated that no more than 15,500 beneficiaries will apply for aid under the scheme.
- (10) When submitting the application for aid, to be eligible for the scheme, undertakings must solemnly declare and show in their application that the damage suffered was directly caused by the COVID-19 outbreak and the containment measures that prevented them from carrying out their activities in a normal way.

### **3.2. The nature and form of the measure**

- (11) Under the scheme, beneficiaries are eligible for compensation by means of public guarantees for: (i) new loans granted by supervised financial entities, and (ii) new notes issued on the Alternative Fixed-Income Market (“MARF”).
- (12) The period for which damage may be compensated is between 14 March 2020 and 20 June 2020 (“covered period”).

### **3.3. National legal basis**

- (13) The legal basis and conditions of the scheme will be laid down in an agreement of the Council of Ministers “*Agreement establishing the terms and conditions of the second tranche of the line of guarantees approved by Royal Decree law 25/2020<sup>4</sup> relative to financing granted to companies in insolvency proceeding which have reached a creditors agreement, 2019, and authorizing limits to acquire spending commitments against future years, in application of the provisions of article 47 of the General Budget Law 47/2003, of November 26*”.<sup>5</sup>
- (14) The notification concerns the guarantees described in Annexes I and II of that agreement, which are the object of this Decision.

### **3.4. Administration of the measure**

- (15) The competent authority to manage the scheme is the Ministry of Economic Affairs and Digital Transformation through the Instituto de Crédito Oficial (“ICO”). The ICO is a State-owned financial institution attached to the Ministry of Economy and Business, via the State Secretariat for Economy and Enterprise Support.

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“Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal” <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4859&p=20200507&tn=1#a4-16>

<sup>4</sup> BOE-A-2020-7311 <https://www.boe.es/eli/es/rdl/2020/07/03/25/con>

<sup>5</sup> Draft “*Acuerdo de Consejo de Ministros por el que se establecen los términos y condiciones del segundo tramo de la línea de avales aprobada por Real Decreto Ley 25/2020 para la financiación concedida a empresas en convenio, y se autorizan límites para adquirir compromisos de gasto con cargo a ejercicios futuros en aplicación de lo dispuesto en el art. 47 de la Ley 47/2003 de 26 de noviembre General Presupuestaria*”.

- (16) The guarantees will be provided to eligible supervised financial entities which at the date of publication of the legal basis have already formalized a collaboration agreement with ICO related to the issuance of guarantees under Royal Decree Law 25/2020.

### **3.5. Budget and duration of the scheme**

- (17) The Spanish authorities indicate that the scheme is financed directly by the general State budget up to a maximum of EUR 2.5 billion for guarantees of new financing granted by financial entities and EUR 50 million for guarantees of notes issued on the MARF.
- (18) The period of applications for the guarantees will start the day after the publication of the legal basis on the Official Gazette (*Boletín Oficial del Estado*). Beneficiaries may apply for aid until 1 June 2021.
- (19) To be eligible to the guarantee, notes must have been issued according to a note program incorporated into the MARF and effectively renewed and incorporated into MARF before the granting of guarantee. Besides, the notes must be issued after the adoption of the legal basis and the signature of the guarantee contract and no later than 30 June 2021.
- (20) The term of the guarantee issued will coincide with the term of the guaranteed loan or note, which will not exceed eight years and twenty-four months, respectively.

### **3.6. Basic elements of the scheme**

- (21) The guarantee scheme is designed to compensate losses for self-employed and other undertakings because of the loss of revenue caused by the containment measures (“the damage”) implemented between 14 March 2020 and 20 June 2020 (the “damage period”).
- (22) The scheme takes the form of public guarantees of new loans and on notes issued on the MARF to compensate the damage suffered by the beneficiaries resulting directly from the COVID-19 outbreak and related containment measures.
- (23) The calculation of the damage will be based on two different indicators:
- for beneficiaries which are subject to relevant accounting requirements on presentation of a profit and loss account, the calculation will be based on the difference of EBITDA (Earnings before Interest, Taxes, Depreciation, and Amortization) between the results observed during the damage period and the EBITDA obtained during the same period of 2019 (14 March to 20 June). As the months of March and June are not entire months in the damage period, the calculation of the difference in the EBITDA will take into account only half of the month for March and two thirds of the month for June.
  - in the case of self-employed carrying out a direct income tax return (*estimación directa*), the calculation will be based on the beneficiaries’ quarterly income tax (IRPF) returns. The damage will be calculated by the difference of the net income (*rendimiento neto*) declared for income tax purposes during the covered period and the same period of 2019, adjusting both figures by adding interests paid, depreciations and amortizations. As the

months of March and June are not entire months in the damage period, the calculation of the difference will take into account only half of the month for March and two thirds of the month for June.

- (24) The State guarantee on the repayment of the loans or notes will in no event exceed 90 % of the damage and will further be limited as follows:
- in case of SMEs and self-employed, 80 % of the principal of the loan or note;
  - in case of large enterprises and in the case of guarantees on issuance of new notes, 70 % of the principal of the loan or note.
- (25) The loans and notes will trigger a debt liability that the beneficiaries have to repay to the lender or to the note holder, together with interest, in addition to guarantee fees.
- (26) Any amount recovered by insurance, litigation, arbitration or other source for the same damage will be deducted from the damage in order to calculate the maximum amount of finance granted.
- (27) Following the submission of applications for aid, the ICO will check that the aid does not exceed the damage caused by the containment measures where the loans or notes amount to EUR 50 million or more. Below that limit, the granting financial entity will carry out that check, without prejudice to subsequent checks by ICO on the eligibility conditions.
- (28) The same check will be performed, either by ICO or by the granting financial entity, depending on the loan or notes' amounts, when the beneficiary publishes its financial accounts for 2020 in the commercial register. If the loan principal is higher than the damage suffered calculated using the financial accounts for 2020, the public guarantee will be reduced in an amount equal to that excess. If ICO detects that a granting financial entity has not complied with its obligations to evaluate adequately the fulfillment of the conditions of the compensation, either in the first check or ex-post, the guarantee will be reduced in the excess granted or cancelled.
- (29) The remuneration of the guarantees will be 20 basis points over the outstanding balance of the amount guaranteed for loans or notes issued on the MARF up to EUR 1.5 million to beneficiaries active in all economic sectors except for fisheries, aquaculture and agricultural production. For fisheries and aquaculture, the 20 basis points remuneration will be charged on loans and notes up to EUR 120,000 and for agricultural production, on loans and notes up to EUR 100,000.
- (30) In other cases, regarding the remuneration of the guarantees for new loans, it will be calculated as per Table 1 and will be applied until the term of the guarantee to the outstanding balance of the guaranteed amount:

Table 1: Remuneration of the State guarantees

	SMEs (80% coverage)	Other companies (70% coverage)
Guarantees with maturity up to one year	20 bp	30 bp
Guarantees with maturity above 1 year and up to 3 years	30 bp	60 bp
Guarantees with maturity above 3 years and up to 5 years	80 bp	120 bp
Guarantees with maturity above 5 years and up to 6 years	80 bp	125 bp
Guarantees with maturity above 6 years and up to 7 years	169 bp	260 bp
Guarantees with maturity above 7 years and up to 8 years	188 bp	285 bp

- (31) The remuneration of guarantees for notes issued on the MARF above EUR 1.5 million will be 30 basis points per year on the amount guaranteed for notes with a maturity of up to 12 months and 60 basis for notes of more than 12 months and up to 24 months.
- (32) The Spanish authorities further confirm that:
- If a guaranteed amount of loans or notes exceeds the damage, the amount of the guarantee will be proportionately reduced with the amount of that excess.
  - The benefit of the aid is excluded for any applicant who did not take measures to mitigate its damage.
  - Aid under the scheme cannot be cumulated with other aid for the same eligible costs.
  - All compensations paid out under the measure will be subject to ex post review and compared to the exact amount of damage incurred by each beneficiary, once the beneficiary has its financial accounts for financial year 2020 published.

### 3.7. Monitoring and reporting

- (33) The Spanish authorities have committed to provide a report no later than one year after the date of the Commission decision, specifying the amount of compensation granted.

## 4. ASSESSMENT

### 4.1. Legality of the measure

- (34) By notifying the scheme before putting it into effect, the Spanish authorities have respected their obligations under Article 108(3) TFEU.

## 4.2. Existence of State aid

- (35) For the measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (36) The measure is imputable to the State, since the competent authority to manage the scheme is the Ministry of Economic Affairs and Digital Transformation through the ICO, the Spanish State Finance Agency, and it is based on legislative acts of Parliament and a Council of Ministers agreement (recital (13)). It is financed through State resources since it is financed by the general State budget (see recital (17)).
- (37) The measure confers an advantage on the beneficiaries in the form of State guaranteed loans granted by supervised financial entities or notes in order to compensate losses which they incur in the course of their economic activities (see recital (21)).
- (38) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely the beneficiaries described in recitals (8) and (9).<sup>6</sup> The measure favours self-employed persons and companies of all sectors and sizes established in Spain that in the course of an insolvency proceeding have reached a composition agreement with creditors. Those beneficiaries are, in the light of the objective and effect of the measure to compensate damages, in a similar legal and factual situation as other undertakings which cannot benefit from it.
- (39) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries, which are active in sectors open to competition. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (40) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

## 4.3. Compatibility

- (41) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the Spanish authorities, the Commission has

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<sup>6</sup> The measure benefits directly the beneficiaries, whereas it does not amount to direct or indirect aid towards the respective financial entities granting the loan, which thus benefit at most from secondary economic effects of the measure in favour of the beneficiary. In any event, any indirect advantage conferred upon the respective financial entities by the measure as aid granted under Article 107(2)(b) TFEU to compensate the beneficiaries for direct damage suffered as a result of the COVID-19 outbreak would not have the objective to preserve or restore the viability, liquidity or solvency of that financial institution. As a result, such indirect aid (if any) does not qualify as extraordinary public financial support under Directive 2014/59/EU of the European Parliament and of the Council or under Regulation 806/2014 of the European Parliament and of the Council.

examined the notified measure pursuant to Article 107(2)(b) TFEU. That assessment has led to the following observations.

#### 4.3.1. *The notion of exceptional occurrences within the meaning of Article 107(2)(b) TFEU*

- (42) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other acts of Union law contain a precise definition of the notion of “exceptional occurrence”. As they constitute exceptions to a general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with settled Union case-law<sup>7</sup> has consistently held that notions of “natural disaster” and “exceptional occurrence” referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (43) The characterisation of an event as being exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field.<sup>8</sup> In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee,<sup>9</sup> (ii) significant scale/economic impact,<sup>10</sup> and (iii) extraordinary.<sup>11</sup>

#### 4.3.2. *COVID-19 as an exceptional occurrence*

- (44) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak rapidly

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<sup>7</sup> Judgment of 11 November 2004, *Spain v Commission*, Case C-73/03 EU:C:2004:711, paragraph 37 and judgement of 23 February 2006, *Giuseppe Atzeni and others*, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

<sup>8</sup> Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C204, 1.07.2014, p. 53).

<sup>9</sup> Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

<sup>10</sup> Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, recital 19).

<sup>11</sup> In its Decision of 19 May 2004 in case C-59/2001 (OJ L 32, 6.2.2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.



evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.

- (45) The WHO declaration of a pandemic<sup>12</sup>, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption<sup>13</sup>. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors. That disruption is thus clearly outside the normal functioning of the market.
- (46) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market<sup>14</sup>.
- (47) In that context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

#### 4.3.3. *Causal link between the COVID-19 outbreak and the damage compensated by the measure*

- (48) By Royal Decree 463/2020 of 14 March a ‘state of alarm’ was declared in Spain, which was subsequently extended until 20 June 2020 by the Parliament as an immediate consequence of the COVID-19 outbreak. The Spanish authorities adopted the containment measures described in recital (4) to limit the spread of COVID-19.
- (49) As a result of the measures adopted to counter the COVID-19 outbreak, there was a general suspension or significant decrease of virtually all economic activities, resulting in a sharp reduction of the gross domestic product across multiple sectors, hence affecting the turnout and profits of companies in almost all sectors, and leading to widespread liquidity shortages and difficulties to access to new credit.
- (50) The proposed aid measure is intended to compensate certain self-employed persons and companies because of the decrease of their revenue caused by the measures implemented by the Government of Spain between 14 March 2020 and 20 June 2020.

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<sup>12</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-mediabriefing-on-covid-19---11-march-2020>.

<sup>13</sup> ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID'19): increase transmission globally-fifth update, 2 March 2020.

<sup>14</sup> See also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

- (51) In any event, beneficiaries are only eligible for aid under the measure if the damage they sustained during the relevant period was caused by the containment measures in response to the COVID-19 outbreak.
- (52) The direct causal link between the damage caused by the exceptional occurrence and the aid is therefore confirmed.

#### 4.3.4. *Proportionality of the aid*

- (53) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.
- (54) The guarantee scheme is designed to compensate the damage suffered by the beneficiaries resulting directly from the COVID19 outbreak and the related containment measures described in recitals (3) to (6) between 14 March 2020 and 20 June 2020. The measure is therefore limited in scope.
- (55) The damage will be calculated as referred in recital (23) to ensure that the State guarantee will only cover damage caused by the containment measures.
- (56) In order to ensure that the aid amount does not exceed the damage, the guarantee will not cover more than 90% of the quantified damage. In the case of SMEs and self-employed persons, 80% of the nominal of the loan and for all other companies and in the case of guarantees of new notes issuance, 70% of the nominal amount. Therefore, the estimation of the amount of damage when the guarantees are issued will always be higher than the amount effectively guaranteed. Furthermore, the coverage of the guarantee will be reduced as the loans or notes are reimbursed (recital (24)). Compared to a compensation in the form of grant, the reimbursement of the loan or notes by the beneficiary will, therefore, reduce the amount of guarantee coverage and also the effective amount of damage compensated. The eventual reimbursement therefore rules out any risk of overcompensation of the calculated damage.
- (57) Moreover, the Spanish authorities have put in place the following additional safeguards, so that the compensation under the scheme does not exceed what is necessary to make good the damage suffered and thus meets the above mentioned criteria.
- (58) First, as is described in recital (27) and (28), for operations under 50 million EUR the financial entities granting the guaranteed loan will check that the eligibility conditions are met, without prejudice to subsequent checks by ICO. For operations over 50 million EUR, ICO will verify that the eligibility conditions are met in a complementary way to the analysis of the supervised financial entity.
- (59) Second, aid under the scheme cannot be cumulated with other aid for the same eligible costs (recital (32)).
- (60) Finally, the Spanish authorities commit to perform an ex-post review to ensure there was no overcompensation, once the beneficiary has its financial accounts for 2020 published in the official register. Any financing operation exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be cause

for the reduction of coverage of the guarantee in an amount equal to that excess (recital (32)).

- (61) Spain has therefore ensured that compensation under the scheme will not exceed the damage directly suffered by each beneficiary from the loss of revenue caused by the COVID-19 outbreak and the containment measures.
- (62) In view of the above, the Commission considers that the measure is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

## 5. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

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Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

