



# The Foreign Subsidies Regulation

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# Recalling some basic principles

- **Maintaining trade and investment flows**
  - Targeting the most distortive subsidies
  - Minimising administrative burden for notifying parties
- **WTO compatibility**
  - Non-discrimination, no overlap between FSR and SCM Agreement
- **Enforcement by the Commission**
  - One-stop-shop

# Some key concepts

- **A financial contribution**
  - Broad concept, based on WTO and EU State aid rules
- **A distortion of the internal market**
  - Negative effect on competition in the internal market
  - Subsidies that most likely distort the internal market
- **The balancing test**
  - Negative effects vs. positive effects

# The Implementing Regulation

- **Notification and transmission of documents**
  - Notification forms, procedural details, time limits for concentrations and PP
- **Commission investigations**
  - Procedural details on interviews, confidentiality, etc.
- **Rights of defence**
  - Access to file and submission of observations
- **Next steps**
  - Publication, 4-week feedback period, Advisory committee procedure

# Interplay with EU Merger Regulation

- **Parallel application of FSR and EUMR**
  - FSR: EU turnover twice as high (€500 mil.) => concentrations also notifiable under EUMR
- **Aligned concepts and procedures to facilitate notification**
  - ‘concentration’, ‘control’, etc.; preliminary review (25 WD) + in-depth (90 WD)
  - Possibility to re-use information from FSR procedure under EUMR if parties give waiver
- **Different assessment standards**
  - EUMR: ‘significant impediment to effective competition’ through concentration
  - FSR: ‘distortion in the internal market’ through foreign subsidy  
e.g. distortion of acquisition process

# Clarity of key concepts

- **3 years after entry into force**, Commission will publish **guidelines** based on experience with application on:
  - (i) criteria for determining a distortion;
  - (ii) balancing test;
  - (iii) assessment of a distortion in public procurement;
  - (iv) requesting ad-hoc notifications below thresholds for concentrations and PP
- Commission commits to provide **initial clarifications** on (i), (ii) and (iii) by **12 months after start of application**

# Evidence gathering

- **Wide range of investigative powers**
  - Requests for information, inspections, market investigations
  - Information from MS or any legal/physical person or association
- **Fines and periodic penalty payments**
  - E.g. if companies fail to provide the requested information or if they provide incomplete, incorrect or misleading information or if they refuse to submit to an inspection
- **Decision on the ‘basis of the facts available’**

# Interplay with trade policy

- Commission proposal already provided for carve-out of ASCM
- Political agreement complements the carve-out with:
  - **Joint declaration of the Parliament, Council and Commission**
    - Commitment to open and rules-based multilateral trading system and
    - to enhance the effectiveness of the multilateral framework on subsidies
  - **Commission unilateral declaration**
    - Modernising rules on industrial subsidies to enhance functioning of ASCM
    - Recalling trilateral cooperation with Japan and US on subsidies at WTO

# Thank you

