EUROPEAN COMMISSION CALL FOR CONTRIBUTIONS
"COMPETITION POLICY SUPPORTING THE GREEN DEAL"

SEA EUROPE CONTRIBUTION

20 November 2020

SEA Europe[1], representing the European shipyards and maritime equipment manufacturers ("the European maritime technology sector"), welcomes the opportunity to contribute to the European debate on "how EU competition policy can best support the Green Deal".

The present note sets out the views of SEA Europe on the role of competition policy in supporting the Green Deal, and more specifically on two of the topics addressed in the Commission's consultation paper, namely the "EU State Aid" and "Merger control" regimes.

1. Introduction

Europe's maritime technology sector is a global leader in the building of complex civilian and naval ships as well as in the production and supply of (advanced) civilian and naval maritime equipment, systems, and technologies, which are also enablers of blue (and "green") economy, in particular marine renewable energies. This global leadership is the result of continuous investments in research, development, innovation and high-skilled workforce.

European maritime technology companies are at the forefront in developing environmental and climate friendly technologies that enable the global shipping industry to become greener and climate neutral, in line with the European Green Deal ambitions. As recognised *inter alia* in the *New Industrial Strategy for Europe*[2], European shipbuilding with its maritime supply chain "has the responsibility and the potential to drive" the twin green and digital transitions.

Yet, to transform waterborne transport into a zero-emission mode of transport, significant investments will be necessary in Europe, not only in research, development and innovation (RDI) but also in the scaling up of existing technologies into mature ones, in their deployment and integration onboard ships. These significant investments come on top of those already carried out so far by the maritime technology sector.

Whilst being a key enabler for zero-emission waterborne transport and a producer of complex ships with advanced maritime technologies, systems and equipment enabling Europe to defend its coasts, access to trade and blue economy activities, Europe's maritime technology sector has been facing (and will continue to face) fierce and often unfair competition from Asia. European shipyards continue to suffer from a unique lack of tools able to effectively deter or counter distortions from foreign subsidies and other unfair practices. For example, existing trade defense instruments on imports, like anti-subsidy or anti-dumping duties, do not effectively apply to shipbuilding as ships are not physically imported for resale (contrary to most manufactured goods).

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[1] SEA Europe is the umbrella association representing the European shipyards' and maritime equipment sector, otherwise referred to as the "European maritime technology sector". SEA Europe represents close to 100% of the maritime technology sector in 16 nations, including EU Member States, Norway and Turkey. The maritime technology sector encompasses the building, maintenance, repair, retrofitting and conversion of all types of ships and floating structures - commercial as well as naval - including the full supply chain with the various producers of maritime systems, equipment material, technologies and services.

[2] EU's new Industrial Strategy was adopted on 10 March 2020 (COM(2020) 102 final).

The COVID-19 pandemic has inflicted a significant blow to European shipyards and maritime equipment suppliers. Ordering for newbuild vessels is expected not to recover until 2023/24, affecting the entire value chain, its added value creation and employment in maritime regions heavily depending on the sector. Due to long lead-times, Europe's maritime technology industry will see the full impact of COVID-19 only as of 2021-22 when a lack of new orders and delayed investments – due to growing uncertainty – will impact workload increasingly. To mitigate this impact, maritime technology companies will have to reorganize production (with new processes) and adjust capacity. But this will increase their costs and erode their margins.

Meanwhile, government distortions and predatory pricing from foreign shipbuilding nations will continue and have even increased with Covid-19, to the detriment of European companies. Without any European sectoral counteraction now, Europe's Maritime Technology Industry will not only suffer from additional structural damages but will see its chances for long-term existence and success diminished. If this would happen, Europe will become entirely dependent on Asia's shipbuilding and maritime equipment sector, for its own defence and security, for safeguarding its strategic maritime autonomy, for carrying its goods and passengers and for implementing its European Green Deal ambitions.

In this regard, SEA Europe agrees with the European Commission that "in a fast-changing world, and at a time when Europe is embarking on its major twin green/digital transitions", the EU should ensure that its "**competition rules remain fit for today's world**".

SEA Europe is of the opinion that the continuing existence of the maritime technology industry in Europe, with its global leadership in complex ship types and in advanced technologies, systems and equipment, including for zero-emission waterborne transport and for a sustainable use of the Oceans and Seas, which meets the highest environmental standards, must be part of the European Green Deal.

2. The role of EU competition policy in the context of the European Green Deal

SEA Europe supports a "**smart"** competition policy. We recognise the fundamental role that well-functioning competition rules play in the internal market, both in terms of limiting distortions and ensuring more efficiency and innovation by allowing competitors to enter new markets and protecting customer/consumer choice.

EU competition policy should indeed ensure that effective competition between companies exists thereby contributing to job creation, growth, and investment. At the same time, like many other sectors, we strongly believe that the **EU competition framework needs to be fit to the 21st Century world's challenges, the evolving global context and current international political and economic realities**.

In this regard, it is fundamental that there is a **close link between EU competition, trade, industrial and environmental policies** to enable the European industry, including the European maritime technology industry, to successfully navigate, and globally lead, the green and digital transition.

In the light of the impact of COVID-19, SEA Europe supports the recent plea to the EU from various EU Member States to consider "***these exceptional circumstances as an opportunity to invest massively in the ecological transition and to support businesses so they engage in the decarbonisation of their activities***". (Joint letter to Transport Commissioner Valean, d.d.2 April 2020, entitled "Call for Re-establishing a Stable Connectivity for Transport Sector").

In this context, SEA Europe believes that the EU policies, incl. competition policy, regulations and guidelines (e.g. on environmental state aid) have a major role to play to turn the current crisis into an opportunity, to foster the green and digital transition of waterborne activities and thus support

Europe's maritime technology sector as a strategic solution provider and a global leader in complex maritime products whilst ensuring a level playing field both in Europe and globally.

In parallel, Europe has to address – with effective means – the tremendous foreign distortions for which its trade policy has failed to establish effective counteraction since decades, to the detriment of Europe's maritime technology sector, and which have further aggravated due to China's determination to rise as maritime superpower[3] and COVID-19.

3. State Aid control

To safeguard fair competition in the internal market, the EU has established sound state aid control including effective enforcement mechanisms. Specific scrutiny in the shipbuilding sector has prevailed for many years and has established a level playing field within the EU. At the same time, however, the absence of any instrument to safeguard the level playing field at global level was accepted. This has led to a situation of self-restriction in terms of policy instruments and a full exposure to foreign distortions.

A strict state aid discipline has many important advantages; in practice it is necessary and it is based on a solid theory fundament. However, theory alone is not able to reflect the complexity of society and industry. It is, therefore, vital that clear rules are complemented by clear goals. In the end, EU policy should support European prosperity.

There has been a regularly voiced concern that EU state aid control applies the rules too legalistic, exposing a rather theoretic approach to real-life challenges, and a much too strong focus exclusively on the internal market. There is particular concern that the European Commission, so far, is not taking global competition sufficiently into consideration and this is particular relevant for the maritime technology sector. Indeed, government interventions in certain non-EU countries are, unfortunately, frequently witnessed in the global maritime technology industry. However, global trade rules are difficult to apply in shipbuilding. It is a fact that there is an enormous difference as to the scrutiny related to state aid discipline on EU versus WTO level. In a number of cases, European yards compete for individual contracts against non-EU competitors, which are not subject to the same or similar strict competition rules.

There is currently an absurd situation that penalizes European producers twice. On the one hand, under existing EU competition rules, European "buyers" (i.e. the shipowner) are allowed to benefit from state aid, which is prohibited in the EU Shipbuilding Sector. On the other hand, EU producers need to compete with foreign shipyards from third countries who often benefit from massive state aid. The state aid distortions from these third countries heavily distort European shipbuilding markets, also to the disadvantage of ship operators since overcapacities have e.g. a negative impact on the freight rates of ship operators.

SEA Europe does not call into question the current "EU state aid framework for shipping"[4]. These measures were introduced to boost successfully the global competitiveness of European shipowners in their fight against third country competitors (e.g. open registers) and have been, and still are, a success story, not least due to their sector-specific nature.

Contrary to EU shipping, instead, the EU state aid framework for shipbuilding (2011/C 364/6) prohibited measures aiming at supporting the European shipbuilding industry to face subsidised competition from third countries. This framework, which existed until 30 June 2014, provided an even

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[3] See e.g. ***"Hidden Harbors"*** by Jude Blanchette, Jonathan E. Hillman, Maesea McCalpin and Mingda Qiu, CSIS-briefs, July 2020, and J. Holslag "***The Silk Road Trap – How China's Trade Ambitions Challenge Europe***", Polity Press, 2019"

[4] Community Guidelines on State Aid to Maritime Transport (C(2004) 43). These Guidelines provide for the introduction of tonnage tax and other fiscal and social measures.

stricter discipline compared to the horizontal state aid rules. Operating aid in shipbuilding was abolished in the EU by Regulation 1540/98 despite that international rules on state aid discipline in shipbuilding had failed to materialise. The expressed view by the Commission Services that Europe would lead by good example and other shipbuilding nations would follow equally never materialised. Despite ongoing severe and unfair competition, mainly from Asian shipyards, and then consequential loss of merchant shipbuilding – and partly of offshore building – in Europe, the European Commission did not take any adequate (sector-specific) actions in support of Europe's shipbuilding industry (and of its maritime equipment industry)**.**

In SEA Europe's view, a reconciliation of policies is therefore urgently needed, to look holistically at the entire European maritime value chain as a highly strategic asset for Europe to safeguard.
In light of the current circumstance and challenges, and in response to consultation's question "*What are the main changes you would like to see in the current State aid rulebook to make sure it fully supports the Green Deal"*, SEA Europe wishes to make the following recommendation:

i. ***Temporary reintroduction of an EU-wide operating aid scheme (contract-related) for EU shipbuilding, limited in time and scope and strictly linked to the green fleet renewal.***

- This scheme should ultimately stimulate fleet renewal across Europe, based on common objectives, principles, whilst avoiding intra-EU competitive distortions.
- This temporary scheme, which may be based on the former EU operating aid to EU shipbuilding – should stimulate investments from shipping companies in new innovative green ships, in line with the European Green Deal, based on clearly defined parameters and utilisation boundaries.
- It should aim to (a) promote a decarbonized maritime sector (in line with the European Green Deal) and support a digital transition of the sector; (b) foster innovation, regional industrial growth and employment, throughout the entire maritime value chain; and (c) preserve the EU's strategic maritime technological sovereignty and capabilities.
- It should be used to finance the building and equipment of ships that meet the highest safety, environmental and social standards, with clear benefits for the full maritime value chain. It should be designed such that sufficient incentives are created bridging the additional costs of ships with improved environmental and safety standards as well as the cost disadvantages of European shipyards, which are themselves subject to higher environmental, occupational safety and social standards (f.i. by including environmental externalities during the production and the lifecycle of the ship).

SEA Europe wishes to underline that it does not advocate a permanent return to the shipbuilding state aid systems of the past (abolished by a decision from 1998). Neither does it advocate tolerance concerning distortions within the internal market.

However, we believe that Europe cannot afford a system which factually protects market distortions practised by non-EU competitors. This is all more the case at a time, like the current one, in which exceptional circumstances call for **exceptional measures to face the current challenges and ultimately progress in the urgent task of decarbonising the maritime sector whilst preserving the EU's strategic maritime technological industrial base in Europe**. It is also useful to underline that in the case of ships, "first-of-a-kind" application of new technologies are always for commercial uses (because no "prototype-vessel" is ever built just for demonstration), and this difficulty is not easy to overcome with RDI rules.

ii. ***Temporary EU-wide tax alleviation scheme to support European maritime technology companies when contributing to delivering on European green deal goals.*** The EU should authorize – at least temporarily – EU-wide common tax alleviations for shipyards and maritime equipment manufacturers, who invest in activities aligned with EU political objectives (e.g. green and digital production; waste management; circular production).

In SEA Europe's views, such (time-limited) EU-wide schemes linked to fleet renewal and greening will be crucial to enable the European maritime technology companies to bridge the expected temporary "ordering gap" resulting from the impact of COVID-19, and to stimulate the necessary investments into greener and digital production and climate-optimised and digital vessels.

Adequate support for such investments is key to achieve the greener and digital transformation of the entire maritime sector, including the maritime manufacturing processes. For example, engine and turbine diesel factories need to be changed. That means investment in new product development, manufacturing procedures, and workers reskilling. Besides, the application in Europe of higher standards in the production process, e.g. based on the "circular economy" philosophy, is likely to lead to an increase in the cost of the products, negatively affecting the (global) competitiveness of European companies, if this is not supported by adequate EU measures against unfair competition with non-sustainable products from foreign companies not abiding by the same rules and standards.

Equally, such support schemes should stimulate also the development of marine renewable energies and other blue economy activities in Europe – in line with the European Green Deal and Blue Growth ambitions – as they offer a major diversification opportunity for European maritime technology companies. Besides, these segments are also facing fierce and often unfair competition from non-EU competitors.

At the same time, it should be underlined that such schemes are to be considered only as a temporary solution. Effective level playing field both within the single market and globally requires new tools specifically adapted to the characteristics and features of the maritime technology industry. In this regard, SEA Europe welcomes the reflection launched by the DG COMP with the "White Paper on Foreign Subsidies" and refers to its detailed comments submitted during the public consultation.

As regards the use of "green bonuses", SEA Europe believes that this may be a possible good way to foster the greening of maritime economy, in particular if used in the context of financing by European institutions (f.i. EIB) and by Member States for the preparation of tenders, based on the taxonomy, and/or on labels, considering atmospheric emissions to other environmental criteria, as well as "localization" allowing the most environmentally-friendly production.

As regards the definition of positive environmental benefits, taxonomy should be the base, but the use of standards and labels could also be important.

4. Merger control

Supporting innovation and putting in place the best possible environment conducive to innovation and the creation, development and success of companies in Europe is one of the key objectives of the EU. Competition policy plays a crucial role in this regard, both in positive terms, but also potentially in negative ones depending on the strategic choices and business decisions that will be made, not least regarding mergers and acquisitions.

In this regard, SEA Europe would like to offer the following general comments, largely in line with those expressed by BUSINESSEUROPE on recent occasions, and its sector-specific views:

- As a matter of principle, EU competition enforcement should not prevent individual EU companies, alone or together, from achieving greater scale and technological leadership enabling them to compete at global level. At the same time, it should also take into account the safeguard of the effective functioning of the internal market.
- As stated in the consultation paper, such reorganisations are generally welcome if and to the extent that they do not produce harmful effects and contribute to increasing the global competitiveness of European industry, whilst not negatively affecting competition in the

internal market, but also to improving the conditions of growth and raising the standard of living in the EU.

- In this context it should be noted that private-led mergers and acquisitions in general, if and to the extent freely guided by market forces, in accordance with applicable competition rules and the principles of a level playing field, can potentially lead to more productivity efficiencies, including in the production process, and thereby to lower prices (to the benefit of consumers), and ultimately, through synergies, to more innovation and hence to "greener" products. This type of consolidation, driven by market considerations, should be distinguished from pure state-led and geo-strategic-driven consolidations in foreign jurisdictions.
- The European Commission should identify on the basis of objective and transparent criteria whether there are situations where it should put more weight on the global market environment when assessing certain concentrations bearing in mind overall market developments as well as competition within the internal market. Moreover, the European Commission should also take account of the various forms of public subsidies (e.g. export subsidies, loans, funding of state-owned companies, etc.) that companies from outside the EU enjoy.
- With regard to our sector, the European Commission should take into account that the global landscape in maritime technology is indeed characterised by fierce international competition from disruptive state economic models (e.g. China) and/or aggressive State-led industrial policies (e.g. South -Korea) where growth and consolidation of shipbuilding industry is led by governments through huge State subsidies. In contrast, Europe's shipbuilding industry is fully driven by private/market considerations.

There is thus a fundamental difference between Europe's and Asia's business models and institutional frameworks which should be well reflected in any EU merger control reform that may be considered.

Nevertheless, any possible reform of such rules may not be enough alone if, at the same time, the growth of foreign (shipbuilding) companies continues to be largely led by their government geo-political and geo-strategic ambitions through huge State subsidies and consequent (price) dumping activities.

A holistic, ambitious and forward-looking strategy linking closely competition, trade and industrial policies, is therefore needed for Europe to enable its manufacturing industry, including its strategic maritime technology industry, to build its resilience, thrive and lead globally in the green and digital transition.

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