

April 15, 2025

FSR Update: Insights From the First In-Depth FSR Decision

On April 4, 2025, the European Commission (the “Commission”) published the much-anticipated public version of its first decision to conditionally clear the acquisition of PPF Telecom by e& under the EU Foreign Subsidies Regulation (“FSR”) (the “Decision”).¹ The Decision is the only in-depth FSR merger decision to date. The Commission concluded that the foreign subsidies in this case could distort competition in the EU by increasing the merged entity’s “*indifference to risk*”² and enabling it to expand its activities beyond the capacity of an equivalent economic operator without such subsidies.³

This memorandum sets out the key takeaways of the Decision and considers the Commission’s assessment and the accepted commitments.



e&’s FSR Decision – Takeaways

- **Foreign subsidies can reshape M&A deals.** Even indirect or implicit support (like an unlimited state guarantee) can trigger FSR scrutiny and extend the regulatory timeline, lead to remedies or even block the deal.
- **Focus on post-transaction scenarios.** The Commission not only considers whether the subsidies will impact the transaction itself, but also whether they will distort competition in the EU post-closing.
- **Economic assessment is of utmost importance.** The Commission applies a market-conformity test and a detailed benchmarking to assess benefit and distortion. Advocacy supported by economic analysis is key.
- **The Commission’s flexibility.** The limits and nature of the FSR make the Commission look for pragmatic solutions. In this case, it permitted the articles of association of e& to be amended to limit an unlimited guarantee rather than blocking the deal.
- **Stay mindful of valuation and the competitive landscape.** The Commission may assess whether the transaction price and conditions reflect actual market conditions and whether there was meaningful bidding competition. Valuation assessments may be relevant in this context.

¹ Decision Case FS.100011 e&/PPF Telecom Group, September 24, 2024.

² Decision, paragraph 322.

³ Decision, paragraph 367.

- **Proactive approach identifying financial contributions.** This is particularly important where state-backed entities or sovereign wealth funds are involved.



e&'s FSR Decision – The Commission's assessment

- The foreign financial contributions under scrutiny comprised an unlimited state guarantee from the United Arab Emirates ("UAE") to e&, as well as grants, loans and other debt instruments to e&'s owner, the Emirates Investment Authority ("EIA").
- The Commission analysed each of the financial contributions:
 - **Unlimited state guarantee.** The inapplicability of ordinary bankruptcy proceedings otherwise applicable in the UAE qualifies as a foreign subsidy. The Commission found the existence of the unlimited guarantee to be problematic in itself, as it is liable to improve the conditions of e&'s commercial and financial transactions.
 - **Term loan.** The Commission found that the Term Loan did not, in itself, confer a benefit on e&. It considered in particular the conditions of the participation in the Term Loan and available information regarding comparable transactions.
 - **Foregoing of revenue otherwise due.** The Commission found that it could not conclude to the requisite legal standard that those grants were not provided under normal market conditions and therefore constitute foreign subsidies.
 - **Commitments of the UAE-controlled banks to the EIA.** The Commission found that the commitments amounted to foreign subsidies. In particular, the Commission found that the ownership structure of those banks indicates that (i) they are controlled by the UAE; (ii) board members hold public offices in the UAE; and (iii) those members can exercise decisive influence on the bank's decision-making processes.
- **Distortion of the acquisition process.** The Commission first found that some of the foreign subsidies could be considered as *"most likely to distort the internal market [by] facilitating the concentration"*⁴ under Article 5(1)(d) FSR. However, the Commission eventually concluded that the identified foreign subsidies did not lead to actual or potential negative effects on competition in relation to the acquisition process because e& could have performed the Transaction absent the e& Unlimited Guarantee.
- **Distortion in the activities of the entity post-concentration.** The Commission concluded that these foreign subsidies (i.e., unlimited guarantee and access to subsidised financial capacity) are liable to lead to actual or potential negative effects on competition.
- **Positive effects.** e& made reference to positive effects including improved customer service, network optimisation, fraud detection and improved roaming services. The Commission rejected this argument because these alleged improvements are not linked to any of the foreign subsidies.

⁴ Decision, paragraph 307.



e&'s FSR Decision – Commitments

- **When.** e& submitted commitments right after the Commission initiated Phase II.
- **Objective.** The Commitments aimed at ensuring that the merger did not create “*a conduit that would permit foreign subsidies to be channeled into the internal market in a way that distorts the internal market.*”⁵
- **Market test.** The Commission sent a non-confidential version of the Initial Commitments to the Target’s main competitors. It received feedback from 11 respondents.
- **Substance.**
 - **Removal of the unlimited guarantee.** Through the amendments to the articles of association, the Commitments ensure that e& does not benefit from an unlimited guarantee.
 - **No financing from the EIA/e&.** Any commercial transaction will be on market terms.
 - **Appointing a monitoring trustee.** The monitoring trustee will be in charge of monitoring the compliance of the Parties with the Final Commitments.
- **Duration.** 10 years. The Commitments could also be extended by the Commission to 15 years.

* * *

⁵ Decision, paragraph 386.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Ross Ferguson
+44-20-7601-8646
rferguson@paulweiss.com

Annie Herdman
+44-20-7601-8602
aherdman@paulweiss.com

Nicole Kar
+44-20-7601-8657
nkar@paulweiss.com

Henrik Morch
+32-2-884-0802
hmorch@paulweiss.com

Rich Pepper
+44-20-7601-8660
rpepper@paulweiss.com

Associate Timothy Noelanders and Trainee Lawyer Pablo J. Torres contributed to this Client Memorandum.