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Competition DG

Markets and cases IV: Basic Industries, Manufacturing and Agriculture
TF: Task Force Food

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COMP/E-TF[REDACTED]/2018/086362

European Smoking Tobacco Association
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Subject: Your letter to Commissioner Vestager of 29 June 2018

Dear Mr Van der Mark,

Thank you for your above mentioned letter, in which you raise the issues linked to the implementation of the Tobacco Directive (Directive 2014/40/EU), namely its provisions concerning tracking and tracing systems.

Commissioner Vestager has asked me to reply since the Food Task Force is in charge of antitrust tobacco matters in DG Competition.

Firstly, we would like to clarify that the EU competition antitrust rules apply primarily to the behaviour of undertakings, i.e. entities carrying out economic activities. They prohibit either anti-competitive agreements (Article 101 TFEU) or abuses of dominant position by the undertakings (Article 102 TFEU).

We understand that your complaint relates also to measures adopted by State/public authorities when implementing the Tobacco Directive. In general, antitrust rules may apply to administrative/regulatory/legislative measures adopted by the State to the extent that:

- such measures concern the behaviour of public undertaking and undertakings to which Member States grant special or exclusive rights. Competition rules would apply in this cases if the state measures lead to a potential anti-competitive agreement or an abuse of dominant position by such undertakings (Article 106 in conjunction with Articles 101 or 102 TFEU); or
- such measures make obligatory anticompetitive agreements between undertakings or oblige dominant undertakings to behave in a way that leads them to an abuse of

a dominant position (Article 4(3) EU in conjunction with Articles 101 or 102 TFEU).

The State measures at stake appear to concern the implementation of specific rules by public bodies/authorities, i.e. they entail action by the State and not action by undertakings. In other words, they appear to have no relation either to anti-competitive agreements or to abuses of a dominant position by undertakings.

Accordingly, based on the information contained in your letter, there appear to be no breach of EU competition rules resulting directly from the implementation of the Tobacco Directive.

In the light of the above, the matter at hand would be more appropriately addressed by other Commission services, in particular DG SANTE. We understand from your letter that you have already approached DG SANTE to express your concerns.

We appreciate that you have chosen to inform us of these issues and we have taken note of your concerns.

Yours sincerely,

