



Control of State aid in the EU

Torben TOFT
DG Competition
European Commission

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Overview: EU's State Aid Control

1. General principle prohibiting State Aid
2. Notion of State Aid
3. Introducing the criteria for the assessment of State Aid
4. Procedures for reviewing State Aid - notification and standstill obligations
5. Recovery of illegal State Aid
6. Transparency obligations

General principles prohibiting State Aid



Why a European Competition Policy?

DG Competition has a Consumer Welfare Approach:

"Competition in the marketplace is a simple and efficient means of guaranteeing consumers products and services of excellent quality at competitive prices. (...) The best deal for customers emerges as a result of a contest between suppliers."

"Competition policy aims to ensure wider consumer choice, technological innovation and effective price competition, thus contributing to both consumer welfare and to the competitiveness of European industry."

(From DG Competition web site: http://europa.eu.int/comm/competition/citizen/index_en.html)

Protecting Competition v. Protecting Competitors

Competition Policy and the European Internal Market

Why State aid control ?

EU State aid control is part of EU competition policy

- Preserve benefits of competition: system of incentives and sanctions creating efficiency, innovation and competitiveness
- Avoid subsidy races
- Create and maintain a level-playing field for all companies in the internal market of the European Union
- Avoid the creation of barriers by undertakings beyond frontiers in the European Internal Market

... but it also serves public policy objectives

- Role in cohesion policy: harmonious development of the European Union from the economic, social and territorial point of view

Basic principles:

- Principle prohibition: State aid is forbidden unless it is **expressly** authorised
- Aid may be authorised for objectives of common interest (e.g. regional development, R&D&I, environmental protection)
- Only the Commission can authorise State aid
- Notification obligation and standstill clause:
 - **Member States shall notify to the Commission and wait for the European Commission's authorisation before they grant the aid**
- Exception: aid covered by a block exemption

Notion of State Aid

The basic rule

Article 107(1) of the Treaty of the Functioning of the European Union (TFEU):

“...any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market”

NB: Competition rules only apply to **undertakings**

“Any entity engaged in economic activity, regardless of the legal status of the entity or the way in which it is financed”

- Economic activity: offering goods or services on a market
- Non-economic activity: state prerogatives (police, security), basic social security systems based on solidarity, ...

The elements defining State aid in EU

To fall within EU State aid rules, aid must:

- be granted through **State resources**;
- provide an **advantage** to an undertaking ("favouring")
- be **selective** ("certain undertakings or the production of certain goods")
- potentially **distort competition** and have an **effect on trade**

All criteria need to be fulfilled simultaneously!

"State Resources"

"granted by a Member State or through State resources"

- Including regional or local authorities
- Including other public or private bodies designated or established by the State and under State control
- Including public enterprises ? Only if the measures is "imputable" to the State
 - Imputability: no presumption, but no need to show clear instruction, set of indicators is sufficient (integration into the public administration; legal status; supervision by the State, ...)

"State Resources"

"in any form whatsoever"

A burden on the finances of the State in terms of an expenditure or a reduced income:

- Grants, subsidies
- **Capital injections**
- Loans where no market interest rate is paid
- Guarantees where no market interest is paid
- Income foregone: tax breaks, reductions of social security contributions; land sales below market price etc.

"Advantage"

Relief from charges normally borne by an undertaking

Benchmark: "transaction at market conditions"

- Market economy operator principle
 - compare the behaviour of public authorities to that of similar private operators under normal market conditions.
 - if comparable: no advantage, no aid
 - if not comparable: State acted as public authority, not as private operator
- Market economy investor principle (MEIP)

"Selectivity"

"Favouring certain undertakings or the production of certain goods"

- geographical specificity
- sector specificity
- specificity as to type of company (e.g. SME, coops...)
- discretionary power

Distinction – no selectivity:

- General Aid measures applicable to all companies in all sectors, e.g. aid to companies recruiting long-term unemployed

"Selectivity"

Fiscal rules

- General fiscal measures: applicable to all companies in all sectors, de iure and de facto; no discretionary power
- Three step analysis
 - What is the system of reference ? E.g. corporate tax; special levy
 - Is there a derogation from the system of reference ? Are companies in a comparable legal and factual situation treated differently ?
 - Is the derogation justified by the intrinsic logic of the system ?

"Distortion of competition"

Distortion of competition:

- Aid strengthens competitive position of the beneficiary - this distorts competition
- No need for distortion to be substantial

"Effect on trade"

Sufficient that a product or service is traded between Member States

- Even if the aid beneficiary does not export, or
- exports virtually all of its production outside the EU

No need for market definition or a detailed economic analysis

No need to demonstrate real effect on trade; sufficient that aid is liable to affect trade and distort competition

Consequence: criterion is nearly always fulfilled, except:

- Local transport?
- Low amounts, small beneficiaries?
- Example of no aid: Dorsten swimming-pool; local museum

"*De Minimis*"

De minimis aid does not constitute State aid:

- The aid is deemed too small to affect trade or distort competition and
- does as a result, it does not fulfil all the criteria to constitute aid in Article 107(1) TFEU

Conditions:

- total *de minimis* aid per undertaking may not exceed EUR 200 000 over any period of three fiscal years (road transport: 100 000)

Criteria for the assessment of State Aid

Prohibition subject to exemptions

Markets do not always achieve the desired objectives of public interest:

- Efficiency (e.g. externalities, deficient information...)
- Equity (e.g. broadband roll out)

The EU Treaty:

- Prohibition subject to exemptions with strict conditions:
- Exceptions for state aid granted to achieve benefits that are broader than interest of beneficiary companies:
 - contribute to EU objectives in the common interest (e.g. environmental protection, education, infrastructure...)
 - do not adversely affect trading conditions to an extent contrary to the common interest

Procedures for reviewing State Aid Notification and standstill obligations

State Aid notifications

State aid control:

- exclusive competence of the EU Commission
- under control of the EU Courts

Prior (*Ex Ante*) control system:

- Member States must notify any plan to grant or alter aid **previously approved**
- State Aid cannot be put into effect before it has been approved by the Commission - **Standstill principle**

State Aid notifications

All State aid has to be notified to European Commission

Notification exception

- aid covered by a block exemption (Laying down clear compatibility conditions)
- aid covered by an authorised scheme
- *de minimis* aid

Who must notify?

- Member States, including for also for regional measures

How to notify ?

- Notification forms; electronic notification system; pre-notification

Measures available against illegal State Aid:

Recovery of illegal State Aid

Unlawful aid: Recovery

Final negative decision (aid is unlawful and incompatible)

- Purpose to re-establish the situation existing prior to the granting of the aid
- The aid amount must be recovered together with recovery interests
- Recovery is not a penalty, but the logic consequence of finding an aid illegal and incompatible
 - Limitation period: 10 years from the granting of the aid
 - Recovery procedure: national law of the Member States,
 - Member States cannot make recovery impossible and must allow immediate execution
 - Principle of loyal cooperation between Commission and Member State
 - Action for annulment of the recovery decision has no suspending effect
 - Non-implementation of recovery decision: Commission action against the Member State before European Court of Justice: Member State can only invoke absolute impossibility

Transparency obligations

Transparency is a necessary safeguard

Transparency is a necessary safeguard

- most state aid is granted in accordance with conditions in aid schemes (Regulations, guidelines, communications)
- Transparency is a compatibility criterion

Main objectives of transparency :

- allow companies, other authorities, to get information on aid granted
- increase discipline and accountability, including for beneficiaries
- facilitate reporting & monitoring/control at different levels

Standard transparency requirements

- Central/ regional websites:
 - standard information on each aid measure
 - text of aid measure or link to it
 - standard information on individual awards > EUR 500 000
- Information provided in open format, searchable and available for download

• Name of the beneficiary
• Identifier (e.g. VAT code)

• Location (region)
• Type (SME/large)
• Sector (NACE)

• Aid amount
• Aid instrument
• Date of award

• Granting authority
• Legal basis (number)
• Objective of the aid

Transparency

State aid Register:

- Information on all Commission decisions on State aid cases (with link to text of decision)
http://ec.europa.eu/comm/competition/state_aid/register

State aid Scoreboard

- A benchmarking instrument
- Based on annual reports from by Member States
- Publicly accessible source of information on the State aid expenditure in the EU and the Member States

http://ec.europa.eu/comm/competition/state_aid/studies_reports/studies_reports.html

Concluding remarks

EU State Aid policy is an integral part of EU competition policy

- Competition rationale: Interferes with market mechanism and distorts allocation of resources
- State Aid can also be used to overcome “market failures” and serve public policy objectives

EU State aid model has served EU well

- Creation of a Single EU market → level playing field
- Building of trust → Facilitate integration
- Contributed to improved competitiveness
- Contributed to equity (limit subsidy races)

For an overview over the EU State aid rules:

http://ec.europa.eu/competition/state_aid/overview/index_en.html