

## **Opening remarks delivered at the ABA Antitrust Spring Meeting Panel discussion on Government Intervention and the EU Single Market**

**Washington DC, 29 March 2017**

When I take part in debates devoted to EU competition law outside of Europe, I am often asked why the EU has a supra-national authority that can check government interventions in the economy such as subsidies and tax breaks.

State aid control – as we call it – has been one of the pillars of the Union for 60 years – almost to the day. In fact, as you know, we celebrated the 60<sup>th</sup> anniversary of the Treaty of Rome last Saturday. It was in 1957 that the EU competition rules and with them state aid control as we know it today was brought into being.

But, why do we have State aid control in the EU in the first place?

The short answer is that we wouldn't have had the Single Market without it. Our internal market – and probably the EU – wouldn't have thrived. It wouldn't have grown as large and strong as it is today – despite all its remaining shortcomings.

Government subsidies and other measures can harm competition in the Single Market just as much as the practices of private business.

This is why our founding fathers had the vision and the political courage to keep State aid in check.

The EU Treaty specifies that EU countries can give support to business only when it is in line with the economic development of the Union as a whole. And this support must not tilt the level playing field in the Single Market.

The European Commission – as the EU competition authority – was given the responsibility to implement this policy and we have carried out this task consistently for six decades.

### **State aid control is pro-growth and jobs**

I would like to point out that State aid control does not stand in the way of national policies that invest taxpayers' money to remedy market failures; improve business conditions; and attract investments.

To put it simply, if these incentives are available to all and not just to certain companies, then there is no state aid problem. In our jargon, these incentives are not selective. The example is a low corporate tax rate for all.

Some incentives provide an economic benefit only to certain companies. Such incentives would then be qualified as State aid.

State aid is in principle prohibited under EU law unless authorised by the European Commission. We have two ways to do so:

One is to define *ex ante* – as in a "white list" - what State aid is authorised without a prior notification to the Commission – this is done by a so-called General Block Exemption Regulation.

In addition, we have also what we call a "*de minimis*" – we do not look at funds that are too small to have an impact on the market (currently 200.000 Euro over 3 years per recipient).

The other one is for the Commission to authorise the aid by a formal decision.

Currently, about 95% of the State aid measures implemented by Member States (with a combined annual expenditure of about EUR 28 billion) are block exempted. The Commission is only assessing aid more distortive for the internal market.

When we assess a State aid case, we balance the negative effects that the support may have on trade between EU Member States and on competition against the positive effects the aid has for well-defined objectives of common European interest. To ensure legal certainty, these objectives are defined in State aid guidelines.

To give you an idea, our guidelines are about investment incentives in poorer regions; investments in research and innovation, in broadband; investments in renewable sources of energy and to keep electricity supply secure.

On the other hand, we have strict rules for State bail-outs of inefficient companies.

These rules have withered even the storm of the financial and economic crisis since 2008. State aid control has played a major role in order to restructure the European banking sector. Without this control, the internal market might have collapsed, and there would have been no orderly way out of the crisis. State aid control has also prepared the transition to the Banking Union, of which it remains an integral part.

The upshot is that plenty of subsidies and local incentives comply with State aid rules. For example, financing of large-scale infrastructure projects in railways, motorways and inland waterways as part of the general public transport network is not State aid. Conversely, investments in local small-scale projects such as hospitals, old age homes or sports facilities do not affect trade between Member States and therefore are not State aid.

State aid rules allows Member States to compete with each other to attract business *precisely* because everyone operates in an open, fair and level Single Market in what we call a social market economy. State aid control is a centrepiece of 60 years of economic peace, growth and jobs.

## Fiscal aid

State aid can be given in all kinds of forms: grants, loans, guarantees or tax reductions. Fiscal aid is the focus of today's debate.

Let me first recall that the control of fiscal aid is not new.

In 1974 – in the case 173/73 Italy v Commission – the European Court of Justice confirmed the principle that governments can distort competition when they give tax relief to individual economic players.

In the late 1990s, the Commission issued a notice on the application of State aid rules to corporate taxes, explaining that, if a government offered a favourable tax treatment to selected companies, for example by tax rulings, that could be illegal.

At the time, Europe's leaders pushed for better coordination of corporate taxation in the EU. Professor Monti – then Commissioner for competition – launched investigations into distortive business-tax schemes involving ten countries in 2001. This resulted in 15 decisions in which the Commission asked Member States to stop such tax schemes.

Finally, in 2006, the European Court of Justice confirmed an important point in the case 182/03 Belgium v Commission, the Belgian Coordination Centres case. According to this judgment – to stay within the rules – companies that belong to the same multinational group must do business with each other following what has been called the arm's length principle. The Court specifically deemed that an advantage arises where, to quote from the judgment, *"the transfer prices do not resemble those which would be charged in conditions of free competition"*.

I am giving you this brief historical overview to show that our recent cases are nothing new for the European Commission.

The main difference is that in the early 2000s the Commission looked mostly into schemes and today, we are mostly looking into tax rulings for individual companies – which, to all intents and purposes, can give similar advantages. We of course see, generally speaking, tax rulings as a legitimate means of providing legal certainty and predictability to tax payers. What we are investigating is outliers, tax rulings that result in a lowering of the tax bill of one company compared to companies in a similar legal and factual situation.

What has not changed is our responsibility to fix the competition distortions that such selective advantages create and re-establish the level playing field.

## Corporate-tax cases

Some Member States have continued providing selective fiscal advantages in particular to multinational companies and have enabled tax-planning strategies that we have now been discovering in our practice.

We took the cue for our recent cases from public hearings devoted to this issue in the UK's House of Commons in 2012 and in the U.S. Senate the following year.

We treated these and media reports surfaced in 2014 as market information and decided to give a fresh look to fiscal aid.

This work is complementary to – but in no way purports to replace - the regulatory work of the EU legislator and of the OECD Base Erosion and Profit Shifting (BEPS) initiative. We stick to our competition authority mandate and tackle manifest cases of distortions of fair competition. We do not rewrite the tax code.

## China

Before I close, I would like to express my pleasure at sharing this stage with Ms Li.

We have followed with great interest the big steps the Chinese government has taken to enhance the role of competition policy in the country.

These include the introduction of a Fair Competition Review System, which requires government agencies at all levels to conduct competition reviews of their policies and regulations – including the use of subsidies.

I am also happy to report continuing progress in co-operation with China's competition agencies. The European Commission is looking forward to reinforce our relations and to share with the Chinese authorities the experience we have gathered over the years on State aid control.

## Close

Ladies and Gentlemen:

Let me just stress some of the points I've made to round up these opening remarks.

The EU gave its central competition authority the task of helping to build the Single Market. Our instruments converge on that task – including State aid control.

This means that our work on government subsidies, and – beyond State aid – in antitrust and mergers, has direct and indirect implications.

Our investigations and the decisions of the Commission help keep Europe open for business. The rules are clear and we apply them level-handedly to all players. Anyone is welcome to come and invest as long as they play by the book.

The Commission's decisions and investigations also affirm that the EU is a community of law. That we defend and protect the interests of all Europeans, who expect to enjoy the benefits of vibrant competition in the world's largest trade bloc.