

Lowri Evans

Deputy Director General, DG Competition

Law Society Conference - 29 June 2007

State aid reform – current directions

Brussels, 29 June 2007

Introduction

Thank you for inviting me to this Law Society European Group conference. You heard from Philip Lowe last night about the different competition law traditions in Europe. I've been asked to present to you the Commission's policy in the field of State aid. I'll try to explain how this fits into a wider picture. State aid reform is one building block of a wider Commission project to revamp competition policy in general and to make it a more effective, predictable and transparent tool to help deliver the EU's wider objectives.

The modernisation process that cuts across all areas of competition policy is based on a number of common lines:

- 1) an increased focus on consumers;
- 2) better priority setting, by focusing on cases/issues of Community interest;
- 3) implementing a more economic, effects-based approach;
- 4) increased emphasis on taking account of the global context;
- 5) working better with Member States.

1) Increased focus on consumers

The reform of antitrust (2003-2004), and the revision of the merger regulation and its accompanying guidelines (2004-2007), and the ongoing review of article 82 clearly show that a common consumer welfare standard is emerging in these fields: the relevant benchmark is whether, as a consequence of a given action or transaction, the consumer is likely to be worse off.

Our main reasons to control state aid are:

- to maintain a level playing field in the single market;
- to avoid subsidy races;
- to preserve benefits of competition: rewarding winners, promoting efficiency and innovation.

Even if these objectives, pursued by the prohibition of state aid provided in the Treaty, have much in common with the objectives of antitrust and merger policy, it is not possible to simply transpose a consumer welfare standard as such into State aid. Indeed, the test for exempting State aid under the rules is whether the aid is in the "common interest". State aid, even if it distorts competition to some (limited) extent can be allowed on the basis of public interest objectives. In shorthand, we're certainly trying to preserve the efficient working of markets in State aid to the benefit of consumers, but we have to bear in mind some equity, or wider public interest, considerations as well.

2) *Better priority setting*

This means focusing on issues of real Community interest, and better enforcement, across all our instruments. Commissioner Kroes is very strong on this, because she wants us to deliver results.

The modernisation of antitrust procedures through Regulation 1/2003 has allowed the Commission to focus its attention and we are now targeting cartels, serious abuse cases, and those markets – such as the energy markets and the financial services markets where very clearly the single market is not working as it should.

For mergers, the wave is in full force. 2006 saw a record number of 356 EU merger notifications and we are well on track for 2007 to reach a new record. In 2006, we also saw a record use of first phase clearance decisions on the basis of simplified merger procedures. Simplified cases represented 64 % of first phase clearances in 2006, thereby allowing the Commission to remain focused on the crucial cases, and for unproblematic cases to be dealt with quickly and easily.

We are working towards more efficient instruments also for State aid where we deal with around 700 cases a year. The new de minimis regulation now lays down that aid under € 200.000 has no impact on competition and trade – this is double the previous amount and should simplify, in particular, Member States' efforts to help SME's.

The most significant aspect though is the revisiting of the architecture and substance of our state aid rules which Commissioner Kroes has initiated. So far, the Commission has adopted risk capital and research, development and innovation (R&D&I) guidelines (2006), and draft environmental guidelines, published in May of this year. These are subdivided along an identical structure: a first section covering cases which can be assessed by the Commission – on notification – on the basis of a quick [simplified] standard assessment, and a second section covering more difficult cases to be assessed by the Commission on the basis of a more detailed economic assessment.

This then provides guidance to Member States and all interested parties as to the cases that the Commission will focus on: the bigger cases most likely to distort competition.

A third significant change is to be taken with the adoption of the so-called general block exemption (GBER). The draft GBER was adopted by the Commission in April, for consultation, and discussion with Member States in July.

The main advantage of this block exemption is that it allows Member States to grant some types of aid without needing to notify in advance to Brussels. This will allow beneficiaries to obtain the aid more quickly and under legally secure conditions.

This regulation should allow for aid of the following type: aid for companies investing in assisted areas [regional aid]; aid for SMEs investing in new facilities or new employees [SME investment aid]; for the first time, aid in the form of risk capital in favour of SMEs and aid for environmental protection including environmental taxes, aid for R&D projects including in favour of large undertakings; aid for training workers and aid for disadvantaged and disabled workers. The majority of these subsidies were until recently all subject to the traditional notification obligation.

These reforms should allow us all – now, and more so in the near future – to spend less time on obvious cases and more time on the cases which really matter in terms of impact on competition.

3) *A more economic, effects-based approach*

The Commission has produced substantial guidance regarding the type of economic analysis to be realised in antitrust and merger cases in recent years.

The guidelines recently adopted in the State aid area (risk capital, R&D&I and the draft environmental guidelines) are hardwiring our economic approach and methodology.

Our basic approach is to apply a balancing test to compatibility analysis. What is it ?

First of all, a well defined objective of common interest should be identified (such as cohesion, environment, education and training, promoting research and development).

Then the aid instrument should well target the identified objective of common interest:

- Is State aid the appropriate policy instrument ?
- Does the aid measure have an incentive effect ?
- Is the aid measure proportional to the problem tackled ?

The distortions of competition and effect on trade should be limited so that the aid measure is not on balance contrary to the common interest.

The main new feature lies in the systematisation and logic of the conditions which were set out first in the State aid action plan, then developed in the horizontal instruments. We are now implementing the approach in individual cases.

4) *Increased awareness of global context*

The Commission has the duty to ensure that competition policy in general, and State aid policy within that, should result in economically sound decision making within business-relevant timetables. We are moving in this direction, but we have some way to go for State aid.

We are sometimes asked whether our State aid rules take sufficient account of today's global economy, in particular where other locations compete with the EU for investments.

Business location decisions have been extensively researched. There is a general consensus that location decisions are primarily based on proximity to the market, availability and quality of the workforce, quality of infrastructure, and regulatory stability. State aid features far down the list of factors influencing investment choices. It can be helpful at times, but it is rarely decisive.

The State aid reform contributes to creating a better regulatory environment. And well targeted State aid can certainly accompany change and help companies face globalisation, but only as part of an overall policy mix.

In process terms, one key requirement to improve is for Member States to give us full information up front in the notifications. It can take a long time to get to the position of having the basic data to make an assessment. We have a lot to learn from the mergers world in this respect.

5) Working better with Member States

The modernisation of the antitrust rules that came into effect in 2004 [*Regulation 1/2003*] introduced a profound change in the way the competition authorities – Commission and Member States – work together. In that same year, the revamped merger regulation [*Regulation 139/2004*] provided for a series of additional possibilities for case referrals between the Commission and national competition authorities [*article 4 of Merger Regulation*]. These systems now work very well.

The main challenge ahead – in this perspective - is now to get our new State aid architecture right both in conceptual and operational terms. The conceptual side is sketched out in the State aid action plan, and deepened in the individual proposals. On the operational side, we are introducing clarity as to what does not need to be notified, what has to be notified but is subject to a simple check, and what has to be notified and may need checking in more depth.

The latest State aid scoreboard published yesterday has some interesting findings as to the cooperation between the Commission and Member States. We have analysed some 600 Commission decisions on illegal State aid adopted during the past seven years.

Let's define the terms. "Illegal" aid is aid which has been implemented in a Member State without prior notification, so by definition without optimal cooperation between the Commission and the Member State concerned. "Incompatible" aid is aid which the Commission has found to be – in a formal decision – harmful to competition and against the Community interest.

The analysis carried out for the Scoreboard concluded that illegal state aid is in general much more harmful to competition than notified aid. From 2000 to 2006, the Commission took negative or conditional decisions in a quarter of illegal aid cases. This is, regrettably, a high intervention rate. For notified aid the proportion was about 3%.

Moreover, the study shows that the share of incompatible aid measures tends to be higher in the large Member States. Germany, Italy, Spain, France and the United Kingdom account together for 73% of all illegal aid cases.

At the end of the school year, we're saying "could do better" here.

A positive sign is that the amount of recovered illegal aid has increased significantly in recent years: by the end of 2006, some €6 billion of illegal and incompatible aid had been effectively recovered, with €2.1 billion interest on top, while a further €1.2 billion has been declared lost in bankruptcy proceedings.

The €6 billion of aid effectively repaid represent 71% of the total amount of aid due to be recovered, a significant improvement compared with the situation in December 2004 when only 25% had been repaid. We have an active enforcement policy here. Where Member States do not take all measures available to implement recovery decisions within a reasonable time, the Commission actively pursues non-compliance by bringing the matter before the European Court of Justice. There are now 16 such cases pending before the Court.

Another important step towards better enforcement is the systematic application of the so-called "Deggendorf jurisprudence". The Commission began in 2005 to systematically order the suspension of payment of new aid (even if compatible) to companies that had not repaid previous illegal and incompatible aid. This has increased the incentive for Member States to pursue the execution of recovery decisions in a more rapid manner.

Further efforts are required to ensure a more immediate and effective execution of recovery decisions. But the best way forward would be stick to the rules - no aid without notification. No illegal aid means no recovery necessary. We are working together with the Member States towards this target.

Conclusion: In recent years, in all areas of competition policy – mergers, antitrust and state aid – a far-reaching modernisation process has been or is being undertaken. We are developing an integrated approach across all instruments. And we are developing a more integrated approach with the Member States.

Our emphasis is on market knowledge, and on deepening an effects based approach. Our focus is on helping markets work better, both through regulatory reform and through effective enforcement action, so that European citizens reap the benefits.

Thank you very much for your attention.