SPEECH

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State aid reform: a process of Lisbonisation

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I Introduction

Ladies and Gentlemen,

Let me start by thanking Professor Abel Mateus not only for organising this conference but also for putting the subject of state aid reform at the heart of this European competition day.

Commissioner Kroes said again this morning that the overhaul of the European state aid rules is the ongoing priority of her mandate.

In the paper that has been distributed, we recall that John Keynes famously hoped – a hope famous at least amongst economists – that economics would one day become as humble and routine as dentistry. In the Commission, we are working towards making economic analysis part of routine business for state aid policy, as it is already in the other main areas of competition policy, namely merger control and antitrust.

The State Aid Action Plan adopted in 2005 is essentially about two things. Firstly, it concerns better regulation: cutting red tape by making the rules more effective and more predictable. Secondly, and most important, our aim is to "Lisbonise" state aid. The aim is to transform state aid policy to help deliver the Lisbon Agenda of more growth and jobs in Europe.

The four pillars of the action plan are by now well known:

– less and better targeted state aid;
– a refined economic approach;
– more effective and predictable rules and enforcement;
– and a shared responsibility between the Commission and Member States.

There has been substantial work towards producing more efficient and effective instruments that hardwire this approach, and there is work in progress both as regards the specific legislative instruments and on the analytical front.

Let's quickly run through the instrument side. In the last two years we adopted new Regional Aid Guidelines, tailored to address the regional disparities in an enlarged European Union, and a Regional Block Exemption Regulation that removed the notification requirement for straightforward regional aid schemes.

2005 also saw the adoption of the so-called Altmark package. This package gives more clarity and predictability to those responsible for delivering vital public services across Europe.

2006 was very clearly a 'Lisbon year' for state aid policy, with our efforts targeted right at the centre of the Lisbon agenda. We adopted new Risk Capital Guidelines for SMEs and a new Research & Development and Innovation Framework. These are designed to allow even to encourage Member States, to draw up effective schemes to counter the market failures that exist, and to better support innovative companies throughout Europe.

Last year we also adopted the new de minimis Regulation, doubling the threshold to €200,000 over 3 years. This should simplify, in particular, Member States' efforts to help SMEs.

The top ongoing legislative priority is the General Block Exemption, due to be adopted mid 2008. With this instrument we want to cut red tape and make sure that small and straightforward aid measures for SMEs, employment aid, training aid, regional aid, risk capital aid, R&D aid and environmental aid measures no longer need the 'Brussels' stamp of approval'.
2007 has also seen the discussions on the new state aid guidelines on environmental protection. These guidelines are due for adoption in the first weeks of 2008.

Today I want to touch briefly on three issues related to the ongoing reform of state aid policy.

Firstly, I will address the issue of incentive effect and the way in which the Commission is implementing it both in different policy instruments and in cases. Then, I will take up the issue of cooperation between the Commission and the national competition authorities in the state aid field. And, I will close with a number of comments on the possible improvements of administrative practices by the Commission and by the Member States.

II The concept of 'incentive effect' and its implementation

Our refined economic approach is built in the first place around applying a balancing test to compatibility analysis. This means that:

The starting point is that a well defined objective of common interest should be identified (such as cohesion, environment, training, promoting research and development). What is the aid trying to achieve ?

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

- Is state aid an appropriate policy instrument?
- Does the aid measure have an incentive effect?
- Is the aid measure proportional to the problem tackled? Or to put it another way, can it be tackled with less aid ?

And the balancing: the distortions of competition and effect on trade – the negatives - should be limited so that the aid measure is not on balance contrary to the common interest.

There is still a lot of economic thinking and learning to be done within the state aid discipline and an important number of policy choices remain to be made.

One of the interesting challenges ahead is to bridge the gap between the theory of incentive effect and its practical implementation.

The formulation of the incentive effect test is now well established: aid is considered to have an incentive effect if it enables the beneficiary to carry out activities or projects which it would not have carried out otherwise. As regards aid to large enterprises – and, I stress not aid for SMEs; the test is only applied for large companies - this condition is considered as being fulfilled if business documentation prepared by the beneficiary establishes either:

- an increase in the size of the project; or
- an increase in the scope of the project; or
- an increase of the total amount spent by the beneficiary on the project.

The condition of incentive effect has been laid down in our recent policy instruments. It has also been applied in a number of cases.

On the one hand, for the large cases where we carry out a detailed assessment, the existence of an incentive effect is examined on the basis of a series of economic and financial indicators (such as level of profitability in terms of net present value of the different business scenarios, analysis of net revenue streams). This requires some technical knowledge, as well as an understanding of the sector of the industry concerned.

Such assessments may for example involve examining whether an investment in a particular production technology constitutes a risky innovation, or rather a mere catching up as compared to competitors. This type of assessment basically needs facts and is realised in the course of an interaction between the Commission and Member States.

On the other hand, the assessment of the presence of an incentive effect in the context of a regulation with direct effect, like the General Block Exemption Regulation (GBER), cannot imply a similar margin of appreciation; such a margin would imply legal uncertainty both for the subsidising authorities and for the beneficiaries of aid.

Some queries have been raised by stakeholders in this respect. To be workable, and to achieve what we want it to achieve, the GBER should only include conditions which can be easily applied, also by non-competition specialists.

We are currently reflecting on how we can clarify the intention of the draft text, without, in my view, needing to amend its substantive requirements.

Let me now turn to the second topic.

III The role of National Competition Authorities (NCAs) in the state aid area

Collaboration between Member States and the Commission is crucial both to conceive, and then implement in practice, our refined economic approach.

In order to further improve the cooperation between Member States and the Commission, we considered in the State Aid Action Plan that we should establish a network of state aid authorities to facilitate the flow of information and exchange of best practices. The underlying idea is that enhanced interaction between national administrations and the Commission is crucial to build up a common "State aid culture". I should add that the additional proposition in the action plan of examining whether independent authorities within Member States could play a role in terms of state aid enforcement did not provoke immediate enthusiastic support. It is worthwhile nevertheless therefore looking into the practical experience in some Member States where NCAs do play a certain role in the field of state aid.

As a benchmark, it is striking how a common "antitrust culture" has built up since the changes introduced through the modernisation Regulation n° 1/2003. This success builds on the very successful exchanges in the European Competition Network (ECN). Such an exchange culture is, in comparison, underdeveloped in state aid.

NCAs, when operating in the merger and antitrust field, are in a relationship with the Commission whereby both are pretty much trying to achieve identical goals on the basis of a common set of rules. In state aid, the traditional role is that ministries present aid measures in a notification process in which the Commission has exclusive powers of approval.

Now however, both the Commission and the Member States are in the process of moving to a more economic approach, where the rules are being explicitly rewritten so as to be coherent with the objectives of the Lisbon Agenda. This requires the traditional culture to evolve; much more collaboration and interaction is needed, to get the right facts on the table as early as possible, and then to get to the right interpretation of those facts.

Many Member States have set up efficient coordinating units in their Finance or Economics Ministries. These units play an important role in guiding and advising aid granting authorities.

But some Member States do go further. Amongst the Member States, the Danish Competition Authority, and the NCAs from the Czech Republic, Lithuania, and Poland have explicit state aid related competencies. From this year, the Spanish Competition Authority can be added to that list. The UK Office of Fair Trading also issues position papers on state aid policy, with an emphasis recently on economic analysis.

These NCAs are in a position to provide guidance to subsidising authorities on state aid rules, especially with respect to aspects which they deal with in antitrust and merger cases, like market definition or market power. Occasionally, NCAs are also involved in the design of the rules and in the formal notification process towards the Commission.

It is fairly clear that there is scope for more involvement.

We have some specific examples in the paper where that might make sense.

IV Improving State Aid Procedures

In the State Aid Action Plan, the Commission announced its intention to carry through a comprehensive reform of the existing state aid rules, covering both substantive and procedural aspects.

Improving state aid rules and practices is again a shared responsibility between the Commission and the Member States. We held a first discussion with Member States in June 2006 on how State aid procedures could be improved, and some more ideas and questions were floated this week in a multilateral meeting (13-14 November 2007).

Since 2006, DG Competition has continued efforts to identify measures to improve the efficiency of decision making on notified state aid cases. We have also started to analyse information on procedures so as to help identify bottlenecks.

On the basis of data from the period between January 2004 and June 2007 we can highlight some interesting facts:

– The vast majority (93%) of all notified state aid cases are approved at the end of the preliminary investigation procedure. The number of cases in which a formal investigation procedure is initiated remains very small in relative terms (7% of all notified measures).

– The average duration of preliminary investigations of notified cases is 5.2 months. Compared to 2004, the efficiency of the decision-making process has improved: the average duration of these preliminary investigations has fallen from 6 months in 2004 to 5 months in 2007.

– In notified cases decided after the initiation of a formal investigation procedure, the average duration was 21.4 months (7.7 months for the first phase and 13.7 for the second). There are significant variations within this.

We have therefore addressed a series of issues with Member States. We hope to kick-start further analysis also within the Member States, and a debate that will allow us to jointly improve quality and speed of decision making. The questions addressed are, in a nutshell, the following:

1) What were the precise reasons for the particularly long procedures in certain cases ?
2) How can we further improve the notification process ?
3) How to improve the pre-notification process ?
4) Would summary information about notifications trigger more input from stakeholders ?
5) How to improve the quality and speed of market information ? How to manage information requests addressed to businesses ?
6) How to improve the interaction between Commission and Member States as regards complaints ?

I would welcome any comment or suggestion you may have.

Allow me to wrap up.

V Overall conclusion

The Commission cannot improve state aid rules and the operation of the state aid system without the effective support of Member States. To go back to the routine dentistry story, we need to work together to improve precautionary dentistry in state aid, so as to avoid costly and painful extractions at a later stage.

NCAs have, for a long time, been the privileged partners of the Commission in tackling commercial behaviour that damages competition and is bad for consumers.

We can be really proud of our common track-record in mergers and antitrust. As intense an interaction involving NCAs would probably be difficult to achieve in the short and medium term for state aid. But there is surely more scope for NCAs to provide more input into state aid policy both at national and European level.

Delivery of the Lisbon Agenda is primarily a matter for the Member States. Mrs Kroes said earlier that with our reforms we are empowering the Member States to use state aid wisely, to prepare the changes needed for long term growth and sustainability in Europe. There's a lot of relevant expertise in this room that could be usefully deployed to help achieve that.

Thank you for your attention.