

OBJECTIVES OF STATE AID POLICY IN THE EUROPEAN UNION AND IN THE INTERNATIONAL CONTEXT

European Parliament

Information Seminar for MPs of the Candidate countries on E-C State aid policy
(In the presence of magistrates from the candidate countries)

26 May 2003, 11.00 – 12.30

Honourable Members of Parliament,

Ladies and Gentlemen,

Introduction

It is an honour and a pleasure to be invited to open this seminar bringing together parliamentarians from all the candidate countries as well as MEPs from the present Member States to discuss the very important topic of European State aid policy.

As Commissioner Monti pointed out in his remarks to the first of these State aid seminars last December, it is especially pertinent to discuss these issues with the representatives of the Parliaments, both at the European level and with national legislatures. You, as members of the parliaments, are in the key position when it comes to shaping the legislation, which forms the legal basis for any measures applied by governments in favour of businesses and industries. Equally important, your role is ultimately to ensure that the money from the public purse is used in an effective way that also burdens least the taxpayer. You, in other words, set the ground for the State aid policies in your respective countries.

It is also particularly welcome that members of the judiciary of the candidate countries have also been invited to this seminar. As I shall explain later in my remarks, national judges in the Member States have an increasingly important role to play in the field of State aid, whether through deciding whether a measure does in fact constitute State aid, interpreting and applying the block exemption regulations, or in ensuring that illegal aid is recovered effectively.

Although the title of this seminar refers to an information seminar for the candidate countries, I wonder if this expression 'candidate countries' is still appropriate for those 10 countries which should join the Community in May 2004. After all, the negotiation phase ended with the signature of the new Treaties in Athens last month, and we are now in a phase where each of those countries is now in the process of ratifying the agreements reached in accordance with its own constitutional provisions. In the Commission we are in the process of actively preparing for enlargement. Thus the State aid services of DG Competition will in the next month or so be recruiting a first wave of about 20 new temporary officials from these countries.

The objectives of competition policy

I would like to begin my substantive remarks with some general observations on the role of competition policy in general, and its relationship with competitiveness.

Competition policy aims at promoting competition for the benefit of consumers (either directly or indirectly); consumer welfare is the ultimate goal when competition authorities are reacting to the behaviour of firms. Competition policy aims at preventing and removing distortions of competition resulting from the actions of firms or public authorities, thus enabling markets to function effectively. Competition reduces price differentials and avoids waste of resources. Dynamic competition between competitive firms increases the rate of innovation and creates product diversity. Intensity of competition in companies "home markets" is positively correlated with the ability of firms to compete internationally.

Competition policy cannot have a direct and immediate effect on competitiveness. That depends on the firms' ability to compete. However, competition policy lines up fully with industrial policy in areas where the obstacles to competition and competitiveness take the form of restrictive public regulation and monopoly. Most often competitiveness is limited by protection. Therefore, there is a need for liberalisation together with full application of the competition rules. Similarly the competition rules apply to EU and third country firms equally. This reflects our open trade policy as much as our commitment to competition principles.

Do all transactions examined under competition law really result in more competition and therefore more competitiveness? Competition policy looks at actual or potential deterioration in competitive conditions, and not specifically at the impact on the competitiveness of firms. Many business transactions have a corporate (financial or shareholder) logic which is not necessarily overlapping with the competitiveness objectives of greater efficiencies and synergies whether in R&D, production, marketing or distribution. There is a similar divergence of objective in state aid control. At a political level, many public subsidies have a superficial attraction in terms of their support to certain sectors but they are often not really effective in competitiveness terms. Hence, the need for Member States not just to look at illegal, distorting aid but to eliminate ineffective aid. The Commission's role here is not obvious, but in the broader context of trying to ensure budgetary stability, Member States are increasingly looking to the Commission to take a role in looking not only at the effects of State aid on competition, but equally at its effectiveness in assisting the realisation of the broad economic policy objectives of the Community.

Why do we control State aid?

So more specifically, why do we control State aid? There are of course a variety of reasons which I will not present in any particular order of priority.

One objective, which I have already alluded to, is to promote the competitiveness of European industry, by promoting innovation and where necessary restructuring, and to ensure that Member States do not keep inefficient industrial dinosaurs in operation at the expense of their competitors.

The fear of a harmful subsidy race, with countries or regions competing against each other for inward investment, or promoting damaging delocalisations, has always been a strong factor in State aid control leading to the establishment of strict limits on aid for investment in the richer areas of the Union. At the same time, however, this has to be balanced against the Cohesion objective, which means that fairly generous levels of aid should be allowed in the poorer regions.

As the process of European integration has developed into a fully single market, and now, an economic and monetary union, it has been increasingly important to ensure that all companies across the Union benefit from equal conditions of competition, and in particular that competition is not distorted as a result of public interventions. Thus in recent years, the Commission has made substantial efforts to ensure fair competition in the financial services sector between publicly and privately owned banks. Likewise, a substantial effort has been put into ensuring that the benefits of liberalisation are not thwarted by continuing (and often disguised) support for the former national monopolies.

Last, but certainly not least, we should not lose sight of the social dimension of our State aid policy, and its role in assisting social solidarity, for example through aid for the training or recruitment of the disadvantaged or disabled, or in cushioning the social effects of restructuring.

The general context of State aid control

Of course, State aid control does not exist in a vacuum, but has to be seen in the context of the broader range of Community policies, in particular the economic reform agenda. The Lisbon Council has set the ambitious objective of making the EU the most competitive and dynamic knowledge based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. As a key part of this process, the Barcelona Council has set a target that 3% of EU GDP should be devoted to spending on research and development.

At the same time, however, at the Stockholm European Council, Member States committed themselves to continue their efforts to reduce the general level of State aid expressed as a percentage of the gross domestic product (GDP) by 2003, and the need to redirect aid towards horizontal objectives of common interest, including cohesion objectives. At Barcelona, the Heads of Government reiterated this commitment, calling as well for aid to be targeted towards identified market failures. Less and better targeted State aid is a key part of effective competition.

These conclusions have been followed up by a series of resolutions by the Industry Council, and subsequently by the new Competitiveness Council. Most recently, Council conclusions adopted under the Danish Presidency call for an economic approach towards less and better State aid. The main aim of

these conclusions is to develop a broader economic analysis of the effects of State aid by encouraging greater dialogue and exchange of information between the Member States. Member States are invited to consider, before granting aid, whether an intervention in the form of State aid is the most appropriate and effective way to address identified market failures and to continue to develop the use of ex-ante and ex post evaluations of individual State aid and State aid schemes in order to monitor the effectiveness of aid and its impact on competition.

One of the innovations introduced by Commissioner Monti in order to ensure greater transparency in the State aid field has been the State aid scoreboard. The most recent edition of the scoreboard, adopted a couple of weeks ago, covers the trend in aid levels up to the end of 2001. This shows that the overall volume of State aid, as a percentage of GDP has continued to decline in 2001, although less sharply than in previous years. In 2001, the total amount of aid granted was € 86 billion, or just slightly below 1% of GDP. Equally encouragingly, when the specific problem areas of agriculture, fisheries and transport (in particular the railways) are excluded, the proportion of aid devoted to horizontal objectives, such as R&D aid, aid for SMEs, the environment, employment and training, has increased markedly. Outside of these areas, in 2001, 71% of all aid was used for horizontal objectives, and for 8 of the current 15 Member States this figure exceeded 90%. In particular, we have noted a very sharp increase in the amount of environment aid, now up to 13% of the total, and a smaller but nevertheless encouraging increase in R&D aid, now also 13% of the total.

So far as the situation in the candidate countries is concerned, we published a special edition of the Scoreboard in the Autumn of 2002 devoted to the situation in these countries. This showed that the average amount of aid granted in these countries, in terms of GDP, was somewhat higher than the Community average, with relatively higher amounts of aid being awarded to specific sectors and lower amounts of aid allocated to horizontal objectives. However, it is not really fair to make direct comparisons because at that time these countries were still in the process of adjusting to the Community's State aid rules.

There are some who consider that there is an inherent contradiction between the Lisbon process, on the one hand, and the Stockholm process of reduction and reorientation of aid, together with the maintenance of a strict State aid control by the Commission. Let me be clear that I am not one of those people, and neither is my Commissioner. The structural problems of the European economy will not be solved by throwing money at them. Experience has shown us time and time again - and does so today - that the ill-considered use of public money to delay the difficult process of structural reform may in fact substantially harm our competitiveness in the longer term. Thus, while we are always prepared to examine requests from Member States or the social partners for additional flexibility to deal with specific, identified cases of market failure, with evidence that State aid may be an appropriate solution, we

cannot and will not allow generalised demands for flexibility to undermine the principle of a strict State aid control.

How has State aid control contributed to the achievement of these objectives?

I would now like to take a look at how these general principles have been taken into account in our work in recent years.

As regards the objective of reorienting aid towards horizontal objectives, the Commission has laid down a series of frameworks which cover the main types of horizontal aid, such as SMEs, research and development, environmental aid, training aid and employment aid. Each of these frameworks sets out the conditions under which aid can be accepted, and the limits which must be drawn in order to ensure that aid does not produce unacceptable effects on competition. During this meeting you will be receiving detailed presentations on many of these texts. For this reason, I will not go into details now, but rather pick out three key points.

First, we are committed to eliminating unnecessary procedural formalities whenever possible. In the case of aid for SMEs, training and more recently aid for employment, the old frameworks have now been replaced by block exemption regulations, which eliminate the need for notification by Member States of individual aid or aid schemes. The Commission has just launched a public consultation exercise on a new block exemption regulation which will exempt research and development aid for SMEs from prior notification to the Commission, while my colleagues in the Directorate general for Agriculture have likewise launched a consultation on a block exemption which will exempt much aid to agriculture from notification.

Second, we take great care to try to ensure that our State aid policy takes full account of other Community objectives, in particular in areas like environment policy, provided that the resultant distortions of competition are kept to the minimum. Thus for example the guidelines on State aid on environmental protection, adopted in 2001, provide a very generous framework for aid for the development of renewable energy supplies.

Third, in cases where it can be shown that our rules are too strict and may actually constitute a hindrance to the achievement of the broader economic policy objectives of the Union, we are prepared to take remedial action. A good example is the Commission communication on State aid and risk capital. In that case, working closely with the European Venture Capital Association, we were able to establish that there was a gap in the market provision of capital for high risk company start-ups and that a solution was not available within our existing frameworks. We were also able to show that any risk to competition could be minimised through appropriately designed schemes.

As regards the objective of reducing distortive aid, much of the work is undertaken through dealing with specific cases. I believe that the record of the

current Commission in ensuring the firm but fair enforcement of the State aid rules bears comparison with any of its predecessors. Key points have been to ensure fair competition in the financial services sector, a strict application of the rules on rescue and restructuring aid and elimination of the use of fiscal State aids as a means of unfair tax competition.

In addition, we have recently completed a review of the multi-sectoral framework for large investment projects which has led to a reduction in the intensities of aid allowed for large mobile regional investment projects. This is particularly important in preventing subsidy auctions to attract inward investment.

Services of general economic interest

One issue which has acquired a great deal of prominence in recent years is the treatment of State aid which is intended to compensate for the cost of services of general economic interest.

As you may be aware, last Wednesday the Commission adopted its Green Paper on services of general interest. This is a major consultation document which is intended to launch a wide-ranging debate on what is the role of SGI and their place in the future.

Nevertheless, I consider it important to try to clarify the role of State aid control in this context.

First, it is important to understand that the provision of SGI is above all a matter for the Member States. It is for the Member States to decide what services should be provided and to whom. The Commission intervenes only in case of abuse, and it is extremely rare that the Commission contests the conclusion of a Member State that a particular activity is to be considered as a SGI.

Likewise, Member States are free to decide whether they provide the services themselves, or entrust their provision to public or private enterprises.

The Member States are also free to decide on the most appropriate method of financing their public services. They may grant special or exclusive rights, provide subsidies or compensation or establish specific funds to finance the provision of services.

The only limits imposed by Community law result from the principle of proportionality. This means that any exclusive rights should not go beyond what is necessary to assure the provision of the service. Likewise, Member States can grant whatever compensation is necessary to ensure the provision of the service. Community law only prohibits overcompensation of the cost of

providing services of general economic interest, in particular when this overcompensation is used to cross-subsidise competitive activities.

Thus I genuinely do not understand criticism in the press that the Commission is harassing the provision of public services, or that the application of the State aid rules presents a threat to the social and territorial cohesion of Member States. Similarly, the criticism that the Commission wishes to impose the logic of the market on all forms of activity is fundamentally misplaced. The Commission recognises that certain activities such as police or education are regalian functions of the State. We likewise recognise that certain activities based on the principles of solidarity, such as social security, are outside of the economic sphere and thus not subject to the State aid rules.

Our programme in the run-up to enlargement

With enlargement now less than a year away, it is clear that we will have an extensive work-programme in order to be ready on time. For the moment, we are focussing on three main areas of activity: changes in procedures and working methods; devising simpler methods for dealing with less important aids and revising the substantive State aid instruments.

As regards procedures and working methods, Commissioner Monti has recently made a number of organisational changes to DG Competition. Although these focus more on the merger and anti-trust side of our activities, some of the changes made will also have implication for the State aid side of our activities. In particular the appointment of a Chief economist and the introduction of review panels should lead to a better motivation of the major economic issues involved in our key decisions.

We have also launched a dialogue with Member States (as well as the candidate countries) with a view to simplifying procedures to the maximum.

One of the issues raised by Member States in this dialogue is the need to avoid very heavy notification and assessment procedures for State aids which have only a minor economic importance and which do not raise significant competition concerns at the European level. Although we already have a de minimis rule, Member States would like us to go rather further in devising economic tests to deal with less important aids. We have therefore started an intensive internal reflection on what further action might be appropriate in this respect. This work is given added urgency by the fact that the additional resources being made available to us for enlargement are by no means commensurate with our estimates of the increased workload after enlargement.

As regards the State aid instruments themselves, it seems clear that our work over the next few months will be dominated by two key issues, the review of the regional aid guidelines, and the review of the guidelines on aid for rescue and restructuring companies in difficulty.

As regards the regional aid guidelines, it is clear that the situation will change significantly after enlargement. The greater part of the territory of the candidate countries will receive assisted region status. There will thus be a clear need to look again at our approach to regional aid, while at the same time taking full account of the parallel review of the structural fund regulations.

For rescue and restructuring aid, the situation is rather different. In contrast to regional aid, this type of aid has to be considered as potentially highly distortive, and the review of the current guidelines, which expire in 2004, will focus on whether we may not even need to attach stricter conditions to aid given to undertakings in financial difficulty, while at the same time ensuring that the necessary means are available for the training and reemployment of the workers concerned.

Progress towards enlargement

I would also like to devote a few words to update the report on the progress towards enlargement which Mr Monti gave in November. Generally, the **greatest competition difficulties** in the negotiations with the 10 acceding countries have been in the State aid field, where a proper enforcement record has taken some time to develop. The **co-operation** with competition officials of the Candidate Countries has been intense already in the pre-accession period, and will continue to intensify as we approach accession. We have had almost daily informal contacts with these authorities (e.g. asking advice on Commission practice in relation to cases), and there will now also be formal participation in many meetings and committees for the 10 acceding countries. From May 2004 onwards, the new members will immediately be considered **part of the larger European market** when applying the competition rules, with, as regards State aid only some very limited transitional arrangements.

Following the completion of the negotiations, the work is now focussing on implementing the transitional mechanism provided for in the Act of Accession and screening the lists of measures proposed by the candidate countries for inclusion in their existing aid lists.

For **Bulgaria and Romania**, the work is continuing intensively this year. On the basis of intensified efforts and increased assistance, further progress can be expected.

Role of the national judges

In view of the presence of magistrates from the candidate countries at this seminar, I would like to say just a few words about the role of the national judges in State aid control.

The case law of the Court of Justice is very clear that the definition of State aid in Article 87.1 of the Treaty is directly applicable and therefore should be

enforced by the national courts. If a national judge discovers that a State aid has been paid illegally, without prior notification and approval by the Commission, the judge's responsibility is clear. He should order the suspension of aid and the provisional recovery of any aid illegally granted.

Likewise the national judge may be called upon to rule in disputes about the enforcement of recovery orders issued by the Commission, which take place in accordance with national procedures.

You will be discussing these aspects this afternoon. However, it seems clear that attempts to lighten centralised Community procedures for the approval of aid through block exemptions also imply an increased role for the national judge. In the event of a dispute about whether a specific aid fulfils the conditions of an exemption regulation, the matter should normally be brought before the national judge, who can, if necessary, seek guidance from the Court of justice by way of a preliminary ruling. I'm not convinced that this new role of the national judge in the enforcement of State aid rules has been fully understood even in the existing Member States.

To conclude, Ladies and Gentlemen, we recognise that the successful assimilation of the State aid acquis in 10 new countries by May 2004, and possibly others a short while later, represents a substantial challenge. We are determined to do our best to help. In particular, my staff and I are prepared to do the maximum possible to assist in information and training programmes in the candidate countries. In return, we ask only one thing. That because our own resources are limited, both in time and money, that events should be organised to try to attract the widest possible participation of those concerned.

Thank you for your attention.