STATE AID:

THE COMMISSION'S PLANS FOR REFORM

Procedural Reform

The Significant Impact Test

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Ladies and Gentlemen,

Thank you for the invitation to be here today, to open this panel discussion on the Commission's plans for reform of State aid control.

In accordance with today's programme, I will focus my remarks on two key issues, procedural reform and the so-called 'economic impact test'.

However, before I go into these questions in more detail, I want to say a few words about our general approach to State aid control, and to try to set out the general considerations which underlay our more detailed proposals.

As Commissioner Monti said in his opening remarks this morning, more than any other Commission, this Commission has taken an economic approach towards State aid control. This has been reflected in our case-handling activities, where we have sought to extend the scope of State aid control in order to eliminate serious distortions of competitions in recently liberalised sectors or in the financial services sector. It has also been reflected in our more general policy work where we seek to ensure that State aid control is used as an instrument to further the broader economic objectives of the Community, including the construction of economic and monetary union, the development of undistorted competition in the internal market, and the economic reform process which underlies the so-called Lisbon Agenda.

This general approach implies that we need to try to make progress at two levels. On the one hand we need to adopt a very rigorous approach to more distortive forms of aid, in particular when such aid can be expected to create significant distortions of competition at the Community level.

This explains our hesitations about rescue and restructuring aid, in particular restructuring aid which is granted to large companies.

On the other hand, we need to provide greater flexibility to deal with aid measures which appear unlikely to produce significant effects of competition at the Community level. This type of flexibility is particularly important for Member States and regions to devise appropriate forms of support for SMEs, which have been identified as the key to future growth and prosperity in the European economy. In fact, we have already gone quite some way in this direction, with the risk capital guidelines, the block exemption regulations for SMEs, for training and employment aid and most recently with the block exemption for research and development aid for SMEs which should be adopted very soon.

Such a flexibility intends also to respond to the calls from throughout the EU for an approach that allows national, regional and local levels to adapt their action in order to best reflect trends in economic development, in particular by putting greater emphasis on tackling market failures and investing in public goods.

One of the main difficulties in implementing reform in the area of State aid control is that the whole process is essentially reactive. The vast majority of our workload is driven either by notifications of State aid which we receive from Member States or by complaints which we receive from third parties. The procedural regulation and the case law of the Court impose strict obligations on the Commission to deal with notifications within strict time limits and to investigate all complaints.

In other areas of Community law enforcement, the Commission does have the means to prioritise and focus its limited resources on key cases and issues of concern at the Community level. Indeed this was a

fundamental objective of the anti-trust modernisation processes. It is also a key element of the review of the merger regulation. Likewise, in its treatment of complaints about infringements of the general rules of Community law under Article 226 of the Treaty, such as the free movement of goods, the Commission has a clear policy of prioritising complaints.

Thus one of the central objectives of the whole State aid reform process is to provide the Commission with the means to prioritise its work and to focus its resources on cases and issues which are of significant interest and importance at the Community level. For other less important forms of aid, we will use block exemptions to the greatest extent possible. Where exemption is not possible, we wish to develop simple robust economic tests to identify measures which are unlikely to produce a significant impact on competition and very light approval procedures. Introduction of such tests would provide Member States with greater predictability and flexibility across the board and notably in the regional policy field.

THE SIGNIFICANT IMPACT TEST

Following extensive internal discussion we have prepared two draft instruments so to identify cases of little or no concern, to find ways of dealing swiftly with them, while providing, at the same time, greater margin of manoeuvre to Member States.

As Commissioner Monti explained this morning, these instruments are essentially based on the size of the aid and the anticipated effect of the measure on trade and competition, particularly in the other Member States. On the other hand they imply a recognition that the Commission should not be unduly concerned by relatively small scale distortions of

competition within the Member State granting the aid, provided that the aid is granted in pursuance of objectives of Community interest.

While this approach does not give rise to any great controversy among economists, it has given rise to some discussion among lawyers. It has even been suggested that our approach is contrary to the case law of the Community Courts on the interpretation of Article 87.1 of the Treaty.

This case law, as you know, has given a very extensive interpretation to the concept of effect on trade in Article 87.1. Thus in deciding whether an aid measure does effect trade between Member States, there is no need to demonstrate that the measure has actually effected trade, nor that the beneficiary is itself engaged in intra-Community trade. It is sufficient that the aid is granted in a sector of economic activity in which trade takes place. Thus for example in the recent Altmark case, the Court held that an aid in the form of a subsidy for the cost of providing local bus services in the German town of Altmark affected trade because there were companies established in other Member States who might have competed for and obtained the contract if no aid had been granted.

I therefore want to emphasise in the clearest possible terms that our ideas for the significant impact test in no way call this case law into question. Measures which pass the significant impact test will still be considered as aid, but they will be subject to much simpler and lighter assessment procedures than other aid measures, with a lower burden of proof imposed on the Member State.

In other words, what we are aiming to do is to introduce more proportionality into our State aid assessment procedures. In other areas of regulatory activity it has long been recognised that procedures should be

proportionate to the potential risks presented by the activity concerned, so why not also in the field of State aid?

Against this general background, the services of DG Competition have developed two tests, which, although different in their conception, are not mutually exclusive:

- The first one (**LASA**) is primarily relying on the limited amount of the aid involved and provides for compatibility of measures limited in size irrespective of their scope very general .

- The second (**LET**) could be used to address aid measures of greater amount, but that can still be considered of little concern when a number of conditions are met.

The tests will apply in all sectors with the exception of activities relating to agriculture and fishery within the scope of Annex I of the EC Treaty, and the coal sector. They will apply to the transport sector, with the exception of aid for the purchase of road haulage vehicles and inland waterway transport vessels.

Our intention is that both tests would apply until 31 December 2006. They would be reviewed before that date to take account of the general evolution of Community policy, in particular the Post-2006 financial perspectives.

The limited amount of State aid test (LASA)

Under the LASA test aid would be considered compatible with the common market under 87.3.c. if the following conditions are met:

- Aid must be linked to eligible expenses directly incurred for the achievement any of a predefined set of community objectives. The main objectives are the promotion of research and development, the protection of the environment, the creation of new and better employment, the promotion of training, risk capital, development of SMEs, regional development, cultural promotion and heritage conservation. The definition of objectives and eligible costs serves the purpose of establishing the compatibility of the aid, rather than effectively limiting the types of aid that can be given;

- Aid intensity must not exceed 30% of the eligible costs;

- Maximum amount of 1 million euros of aid to a single company over three years; companies will be identified as 'independent enterprises' following the SME definition.

- MSs are required to keep a national register of the aid grants under it. Such register should be public so that Commission and all Member States can have access at any time.

- An upper threshold will be established for the total amount of LASA which may be granted by each Member State. This threshold will be calculated so that the initial amount of LASA is fixed at about 5% of total State aid in the Community.

- A prohibition on cumulating this type of aid with 'conventional' aid granted under the normal rules.

The limited effect on trade test (LET)

The LET test builds on the conclusion that certain measures does not affect trading conditions to an extent contrary to the common interest. It applies only to selected activities that, by their nature, are unlikely to produce significant cross-border effects. For this purpose, a positive list of economic activities will be drawn up and annexed to the Communication. Additional, specific conditions are attached to State aid granted under LET, in order to avoid that it is the cause of negative spill-overs on other Member States. The additional conditions imposed should guarantee that the aid is not of too high amount and passed on as much as possible to consumers:

- aid must be linked to eligible expenses directly incurred in carrying out the activities concerned. The definition of eligible costs will again be broad (including operating aid);

- aid must be limited to a maximum amount of [3] million euros of aid to a single company per year; companies will be identified as 'independent enterprises' following the SME definition;

- aid must be awarded through either:
  i) a scheme that is open to all companies willing to carry out the identified activities within the jurisdiction of the granting authority, according to objective criteria; and does not allow for a single beneficiary to get more than [10%] of the total budget of the scheme actually spent; or:
  ii) a tender procedure to ensure that aid is limited to the minimum necessary (this would apply mostly to individual aid).

Ladies and Gentlemen, we are currently in the process of putting the finishing touches to the consultation documents, and they will be

transmitted to Member States over the next few days. We will also be placing the documents on the DG COMP web site towards the end of the year, and having detailed discussions with Member States early in the New Year.

OTHER PROCEDURAL REFORMS

In addition to this work on the significant impact test, we have also been looking at the scope to improve our general State aid procedures. The main goal is again twofold: on the one hand, to simplify the current procedures, reduce unnecessary burdens, speed up the process; on the other hand to ensure that our action is the most effective: our intervention, if necessary, must takes place timely, when the problem is there, rather than ex-post.

In this work we have been focussing on three main issues; notification procedures, enforcement and complaints.

The Commission has now adopted a draft Regulation laying down detailed provisions for the implementation of the State aid procedural regulation. The text of this draft Regulation has been transmitted to all Member States. It has also been published on the DG COMP web site for the information of all concerned. The draft regulation includes new provisions regarding notification forms, standardised reporting, the interest rate to be used for recovery of illegally granted aid and rules relating to time-limits.

As regards notifications, the draft regulation sets out a very comprehensive notification form which will in future have to be used by Member States. The objective is to explain clearly the information which the Commission needs to approve different types of aid in order to help

Member States to provide complete and comprehensive information. This should make it possible to reduce the need for the Commission to ask for additional information and greatly accelerate the treatment of notifications in accordance with very clear timelimits.

The provisions regarding reporting also represent a very substantial simplification compared to the current arrangements. For the future, we propose to clearly distinguish between reporting of the different types of aid, and its objectives, in the Member States for the purposes of the scoreboard, and the monitoring of compliance with Commission decisions which will be undertaken through a totally separate exercise.

Concerning the interest rates to be used for recovering unlawful aid, the draft develops on the principle set out in the recent Commission communication by confirming that compound interest rates must be used and it provides more detailed criteria for determining the relevant rates.

The whole area of recovery is a problem area, where we have to recognise that the past record in executing recovery decisions is not very good, either for the Member States, or for the Commission. As Mr Monti announced this morning, we are giving a high priority to this area, and we will be taking a much more active role in future. This will include carefully monitoring how Member States implement recovery decisions, with a greater readiness on the part of the Commission to bring matters before the Court of Justice in the case of unreasonable delay. In addition, we propose to look very carefully before approving any new aid in favour of companies which still have recovery orders outstanding against them.

We are also reflecting on whether we could not make greater use of the powers conferred on the Commission to issue suspension injunctions to halt the payment of unlawful aid. By taking a more active role in

preventing the payment of unlawful aid in the first instance, while at the same time ensuring a speedier treatment of cases, we can perhaps avoid recovery problems further down the road.

At the same time we are looking to rationalise our treatment of complaints. The Commission has recently adopted a State aid complaint form which has been published in the Official Journal. Without seeking an unreasonable amount of information, we do expect complainants to indicate clearly who they are, what they are complaining about and why they are complaining, so that both the Commission and the Member State which is the subject of the complaint can better understand the issues involved and give the complaint an appropriate follow-up.

Ladies and gentlemen, I would like to conclude these opening remarks by emphasising that the procedural changes we are envisaging and the significant impact test are two parts of the same process. It is to ensure a process of State aid control which is both strict in eliminating distortions of competition and trade at the Community level, and relevant to the broader economic policy objectives of the Community.

Thank you for your attention.