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**Concluding remarks**

**5th experts' forum on new developments in European State aid law**

European State aid Law Institute (EStALI)

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Ladies and Gentlemen,

It is a pleasure to be concluding this Estali conference today.

*[Commission and national authorities should meet regularly to develop and implement the SAAP]*

I particularly welcome the fact that so many representatives from national authorities have come to Brussels for this conference. This type of event offers an excellent opportunity to discuss the ideas and principles that help shape the roll-out of the State aid action plan.

More than that, it is particularly valuable for me and my colleagues from the Commission - and I presume for all other professionals in this field – to meet with those of you "on the front line": national civil servants in local, regional or national authorities and ministries who are setting up and implementing State aid measures on a daily basis. If we want the machine to work better, and we do, your contribution to our ongoing reform discussion is essential.

Commissioner Kroes has given you a full progress report on the State aid action Plan - her flagship project as Competition Commissioner - and so far we're on track.

Mrs Kroes has highlighted yesterday that beyond the successful adoption of the horizontal instruments, one of our joint challenges now lies in implementing the underlying principles. She calls this "using economics in practice".

We all need to work together to implement the refined economic analysis in schemes and cases. This is not a Commission monopoly. On the Commission side, let me make clear that we are at your service to help deal with any teething problems that may arise. Please feel free to come to us at the design stage of your planning. We are partners in a learning by doing process, and we are very happy to share our learning.

This morning's session - the roundtable of experts from national authorities - also highlights how interaction between national administrations is essential to build up a common State aid culture. It is remarkable how a common antitrust culture has built up since the changes introduced in that system in 2003, one of the fruits of the very successful exchanges between national authorities and the Commission in the European competition network. This exchange culture is underdeveloped in state aid in comparison.

In a nutshell: thank you to the organisers - Wolfgang Andreae and Andreas Bartosch - for providing us with this opportunity to meet in order to deepen the understanding of each other's concerns and intentions.

*[Finding the right balance between reform of substance (refined economic analysis) and streamlining the administrative process]*

This conference is also characterised by the presence and input of senior judges from the Luxemburg courts. Judge Meij's presentation this morning highlights one of the main challenges which the Commission is also facing when drafting the component parts of the State aid action plan. We need to reconcile the building of a more solid economic basis into our general regulations & guidelines and into the individual decisions, with , at the same time, the need to ensure that the State aid system we are setting up is simple enough to be applied smoothly in national administrative procedures. Both aspects – substance and procedure - are baseline requirements for an effective competition law enforcement system.

Some judges from the Court [*Judge Azizi CFI*] have posed questions during the last two days about the extent of judicial control which is appropriate when examining a State aid decision or scheme. What does "contrôle marginal" by the court imply precisely? To which extent can – or should - the Court substitute its own assessment for the more complex economic assessments carried out by the Commission in State aid cases?

Answering such crucial questions requires a subtle mix of assessments of fact, on the one hand, and of careful consideration for the legitimate rights of business and Member States, on the other hand. The precedent value of court judgments from Luxemburg clearly lead judges to reflect about the wider implications of the decisions they take at the end of their balancing exercise. This exercise is not so different from the one which the Commission undertakes when balancing substantive and procedural consequences of the horizontal instruments it adopts in the State aid area.

We can be confident that the Courts will find a way through this; as is happening for judicial review of merger cases for example.

*[Example from the draft GBER]*

Coming back to our ongoing projects, I would like in particular to highlight one provision of the recently adopted draft proposal for a general block exemption Regulation.

Article 8 of the proposal concerns the key feature of "incentive effect", one of the pillars of the refined economic analysis that has found its way already into the guidelines on risk capital, and the framework on R&D&I adopted last year. Only aid that has an incentive effect can be approved by the Commission. In other words, State aid should not be allowed to subsidise projects or activities which the beneficiary would have undertaken anyway, even in the absence of the aid. It is of course very much in the Member States' own interest not to give away taxpayers money for no result.

The challenge we face now is to integrate this concept of "incentive effect" into a Commission Regulation that is directly applicable. The draft therefore proposes that large undertakings which benefit from State aid are under an obligation to submit to the Member States concerned a business plan establishing the incentive effect on the basis of one or more suggested criteria.

We have heard some apprehension about the introduction of this obligation. In yesterday morning's session on the GBER, questions were also raised as to whether this was not going to add unnecessary red tape. It's difficult to see what the argument of additional red tape is based on. I cannot imagine that any large company (and we're only talking about those that have more than 250 employees here) would embark on a substantial investment project without drawing up in advance a business plan with alternative strategies and a serious cost/benefit analysis of the project. I can't imagine either that Member States are or would want to be spending significant amounts of money without knowing what the likely impact would be.

The new provisions of the general block exemption Regulation – striking a balance between content and process – should allow Member States to ensure "less and better targeted aid". Each Euro of State aid spending should contribute effectively to realising the Lisbon objectives. This is the common goal the Member States set themselves in the Council.

*[Speed of decision making]*

Commissioner Kroes outlined recently in the Informal Competitiveness Council in Wurzburg that 66% of State aid cases notified to the Commission are decided within four months, and 80% within 6 months. An increasing number of cases are now being exempted from notifications and no longer need our green light at all.

Nevertheless, it is clear to the Commission that we need to further simplify our legislation and speed up procedures. The draft general block exemption Regulation aims to substantially lower the administrative burden for companies and Member States alike. This should ensure that aids which do not pose problems for competition can be speedily granted, and so allow the Commission to focus its resources on the bigger, more problematic cases.

The big State aid cases that pose the greatest risk of distorting competition will always need to be notified. For complex cases, where the Commission sees difficulties with the notified project, approval may take much longer than the figures quoted above. The faster the Commission can decide on a State aid notification, the better it is for everybody.

But for the Commission to be able to decide on complex cases faster, experience shows that an important factor delaying the adoption of a decision is a lack of complete and reliable information on the facts of the case and the markets affected.

To speed things up, and to improve quality of decisions, we have taken several measures like the improvement of the notification forms so as to include more information relevant to our assessment, and the organisation of pre-notification meetings with Member States. These have proven very useful.

The Commission cannot solve the information problem alone. Today, the Commission is in the hands of the notifying Member State to get the right information. One of the improvements necessary is complete and accurate information from Member States upfront.

Mrs Kroes said yesterday that we will only be as fast in assessing aids as Member States are in delivering timely and complete information. She used the telling image of the car: the speed of the car being dependent not only upon the engine [Commission] but also on the fuel used [information provided by Member States]. And that we could get faster and better if we could counter-check this information on the market by directly asking competitors or contacting potential beneficiaries. We have a lot to learn from the mergers world in this respect about business-relevant timetables, and what is necessary to achieve them. On this potential aspect of reform, we are in the Member States hands. Do we have a demand for change here?

Allow me to wrap up.

Reform of State aid is going well, and there are plenty of ideas for further improvements in the pipeline. All constructive ideas are welcome! Here in the Concert Noble, we can say that we're getting into tune with Lisbon. The legislative acts adopted in 2005 and 2006, conclude the first movement of our reform symphony (in allegro). Implementation of the new principles in individual decisions is the second movement, now being played. In 2007, we will initiate the third movement with, most particularly the GBER and the environmental guidelines. This will require intense cooperation between all members of the orchestra, including the leading players in the national administrations.

Thank you very much for your attention.