Banca Intesa

International and European Affairs

BANCA INTESA COMMENTS TO THE CONSULTATION DOCUMENT

STATE AID ACTION PLAN

LESS AND BETTER TARGETED STATE AID:

A ROADMAP FOR STATE AID REFORM 2005 - 2009

Banca Intesa is one of the largest Italian banking groups and one of the main players in the European banking arena. Benefiting from its well established expertise in the field of public-private cooperation, Banca Intesa is very active in the participation, structuring and co-financing of project finance projects both in Italy and abroad.

Banca Intesa welcomes the constructive dialogue, which DG Comp has been pursuing concerning its new policy and legal strategy in the field of State aids, and would like to contribute with the following comments, which follow the structure of the Commission's paper.

I. A MODERNISED STATE AID POLICY IN THE CONTEXT OF THE LISBON STRATEGY FOR GROWTH AND JOBS

I.1 Rationale for State aid policy: why does the EU need a State aid policy?

Banca Intesa is convinced that State aid policy should fulfil a goal, only partially identified by the Commission, which is one of re-balancing situations of market power asymmetry, i.e. the "reverse competition".

The European Union markets operate in different ways and proprietary assets are not yet harmonised. For instance, whereas in some Member States all major companies are purely private, in other Member States some key companies are in public hands. Furthermore, it is common that in specific market sectors (e.g. energy) both "national champions" and smaller players are present in the same business area, within the same country.

Also the regulatory framework in which companies are active is often non harmonised. This is the case for the areas outside the scope of EU law, as well as for the fields where the mutual recognition principle has been introduced. In this context, different rules can put the companies of certain Member States at a competitive disadvantage towards those of located elsewhere, which – for instance – benefit from a more favourable tax treatment or are subject to lighter regulations.

The ultimate result of these diversities is that some companies are inherently at a competitive disadvantage towards foreign competitors because of their domestic market structure. In this scenario, the uniform and rigid application of the rules on State aids could further impair fair competition among enterprises.

Moving from the assumption that a fully standardised remedy can lead to fair consequences only if it is applied in comparable situations, we believe that the **State aid rules and regulations should be applied in the light of the peculiarities of each relevant market.** Accordingly, Member States should be allowed a certain degree of discretion in the analysis of the market failures justifying a State aid measure and in the evaluation of the prospected impact of an aid.

Therefore, in order to address properly this peculiar type of "market power" competitive distortion, Banca Intesa would invite the Commission to **maintain an appreciable level of flexibility in the assessment of State aids.**

I.3 How to face the new challenges?

Banca Intesa appreciates that the European Commission strives towards the balance between the necessity to ensure fair competition, a better prioritisation of public resources and efficiency in the granting of State aids in the light of the rules of the Treaty of Rome and of the Treaty of Maastricht.

In principle, the extensive use of a **refined economic approach** to select the State aids which might be allowed requires an objective and rigorous assessment method. Under EC Law, State aids should be permitted where these pursue an objective of common interest recognised by the EC Treaty or overcome a market failure, i.e. when the market alone does not deliver the wanted results. This requires sound economic principles for both the application of the market investor principle to a given State aid and the analysis of its compatibility (see §19 of the State Aid Action Plan). However, we maintain that a more adequate trade-off between short-term economic efficiency and long-term growth and social objectives should be pursued. In fact, future growth and social considerations should be a main driver when assessing the compatibility of an aid with the EC Treaty.

By way of example, in the case of an infrastructure to be built in a scarcely developed region, the market investor principle (based on a pure economic approach) shall be strictly applied in order to establish the very existence of aid. Conversely, as to the compatibility of the aid with the Treaty, pure economic considerations should give way to a more balanced approach, mainly focussed on growth and social considerations. This will allow State aids being justified not only in highly developed regions (where demand exceeds the offer), but also in remote areas, i.e. where investments would not be justified under a purely economic approach. This approach is consistent with a State activity that has inherently to pursue also social and general interests, such as the geographical cohesion and the boost of innovation and development.

Therefore, we would suggest that – when it comes to the assessment of the compatibility of the aid – the proposed economic approach be corrected with a "growth and development factor", which would lead to the achievement of also non-economic goals. By so doing, Member States would be able to deploy all possible devices (i.e. also State aids) in order to reach the goals of the Lisbon agenda, to the final benefit of the whole European economy.

II. Focusing on the Key Priorities

II.1 Targeting Innovation and R&D to strengthen the knowledge society

Banca Intesa appreciates the introduction of a broad definition of "innovation", rather than the limitation to R&D. Innovation is for sure a crucial factor for the development of the European industry, which has to be in position to improve its products, not only as a result of a R&D process but also by applying existing concepts and devices in new combinations and manners.

Coupling of R&D and innovation will prove a success as it will allow fostering - also by means of public subsidies - companies which develop new products, irrespective of how the new product has been obtained. In its policy, Banca Intesa has already focussed on innovation by launching a new financing product, called IntesaNova, expressly aimed at innovative companies.

II.4 High quality Services of General Economic Interest

In our experience, in addressing the issue of distortion of competition and of overcompensation in the field of State aids granted in connections with Services of General Economic Interest (SGEI), the peculiar structure of these activities should be taken into account while regulating the granting of State aids in this field. As a matter of fact, **SGEI are often organised in various layers**; e.g. in the case of railways, there can be a company managing the railway infrastructure, a company managing the trains for passengers and a company managing the trains for goods. This peculiar structure implies that focussing on a layer only can be partial, since all layers are **interconnected** and, as a matter of fact, mutually benefit from a subsidy given at any level.

Since State aid for SGEI can be, and often are, of material amount, the way they are granted takes into account the Eurostat 95 rules on State book-keeping.

For these reasons, we would invite the Commission to deal with State aids granted to SGEI according to an unbundled approach, bearing in mind the structure of each relevant market. In our view, this is the only way to effectively ensure fair competition and appropriate compensation.

We strongly recommend that this approach is taken into account before the Commission implements its strategy on this issue, and that no implementation takes place before the deadline of the consultation on the State Aid Action Plan (see Commission's decision on the application of Article 86.2 of the Treaty of

July 2005 and the related Community Framework for State aid in the form of Public Compensation D/52891, DGCOMP/D(2005) 179 and the proposal to amend Directive 80/723/EEC).

II.8 Setting up modern transport, energy and information and communication technology infrastructures

Banca Intesa strongly suggests that the Commission does not limit its focus on transport, energy and information and communication technology infrastructures and takes into account **all public utility infrastructures**. For instance, even though they are not expressly mentioned in the Lisbon Action Plan, we are convinced that **water pipes** are crucial for the development of the European Union and thus should be part of the State aid general strategy on infrastructures.

III. MODERNISING THE PRACTICES AND PROCEDURES OF STATE AID

III.1 Better governance – a shared responsibility with Member States

Under § 51 the Commission sets forth the idea to introduce operationally independent monitoring authorities that screen State aid measures, hence ensuring a better implementation of the rules and procedures. This would constitute the application on a wider and permanent scale of the *interim* solution which was adopted to screen the State aid granted in the new Member States before their accession to the EU.

In first place, we would like to emphasise that the experience of these authorities has been limited in time and scope. Secondly, we would ask a clarification from the Commission as to the accountability of these technical bodies. In fact, if they are going to be ultimately accountable to the national Member State, which is also the subject they are sanctioning, there is an inherent conflict of interest that can potentially undermine their impartial monitoring and judgement.

III.2 Less bureaucracy and better targeted enforcement and monitoring

Under § 55 the Commission suggests that "Private litigation in front of national courts could therefore provide increased discipline in the field of state aid". An increase in national litigation would have the effect to unduly block projects based on legitimate State aids. In this scenario, the cooperation benefit would be overridden by the increased uncertainty in such an important area as big projects based on a public-private cooperation.

Therefore, we strongly suggest the Commission to foster national litigation **provided that such litigation can arise only within a clearly identified time-limit.** In other terms, once the time-limit for litigation has expired, the State aid cannot be challenged any more and hence all partners of the project can fully rely on its legitimacy. This limit to the possibility to dispute a granted State aid is of crucial importance for private partners in big projects, such as Banca Intesa.

Brussels, 15 September 2005

* * *

For any further comments or questions, please contact:

Alessandra Perrazzelli

Head of International and European Affairs
Banca Intesa
Square de Meeûs, 35
B – 1000 – Brussels
alessandra.perrazzelli@bancaintesa.it

Elisa Dell'Anna

Legal and Regulatory Analyst
Banca Intesa
Square de Meeûs, 35
B – 1000 – Brussels
elisa.dellanna@bancaintesa.it