

RECENT DEVELOPMENTS AND AGENDA

HUMBERT DRABBE

Director responsible for State aid
DG Competition¹

Fünften Treffen des Berliner Gesprächskreises
Zum EU-Beihilfenrecht

24 September 2004

¹ The opinions expressed in this paper are purely those of the writer and may not in any circumstances be regarded as stating an official position of the European Commission.

Introduction

Let me first thank you for giving me the opportunity to speak at the fifth meeting of the Gesprächskreise. The timing of this meeting is such that we find ourselves at the end of the mandate of the Prodi Commission and at the start of the new Commission. The obvious question at this juncture is whether there will be changes in the Commission's state aid policy. To answer that question with certainty would be premature as the new Commission is not yet in place and still has to fix its policies. But state aid policy, as other policies, is of course characterized by a large degree of continuity. There is therefore a basis from which I can start to indicate what can be expected in the future.

The two main driving forces in state aid policy during Mr Monti's mandate have been enlargement and the Lisbon agenda. It is safe to assume that they will continue to be so. In my contribution today I will therefore place recent developments in state aids and expected actions for the future in this context.

The principal mission of DG COMP is to carry out the enforcement of the competition rules on merger control, antitrust and State aid control.

Making effective competition play is an important means to increase the competitiveness of industry, to produce wealth for society and to provide consumers with an enlarged choice of better quality goods. Therefore, the main purpose of a competition authority is that of ensuring or creating conditions which enable the market to function in a competitive way.

In addition to this, European competition policy has a unique specificity. It has been designed crucially to help the creation of an internal market which shows the characteristics of a single market. Indeed, competition policy is a key instrument to avoid that public barriers to trade, that the Community construction aims to abolish, are re-established in the form of private agreements, self regulation or public interventions.

Competition policy should also provide an essential contribution to the political priorities of the new Commission, and particularly that of boosting the economy and achieving sustainable economic growth, by means of reinvigorating the Lisbon process. There is a clear link between encouraging more competition in Europe and achieving a better performing economy. Open and competitive EU markets will make European companies more competitive internationally to the benefit of consumers and of European employment. In response to the Lisbon agenda, the Commission is progressively implementing a series of reforms in order to refocus its State Aid policy towards a more economic approach which aims at eliminating real distortions of competition resulting from State intervention.

It should also be noticed that the **accession** of ten new Member States adds a further geographical dimension to the goal of improving economic growth in the internal market. Broadening the internal market and bringing in the economies of the new members are crucial to a successful enlargement.

A first priority should be to focus enforcement on state aids which are most harmful for the European economy. In practice this means an increased focus on the economic effects of state aid on trade and competition so as to identify the most distortive aids. The proposal for a Significant Impact Test, identifying aids of lesser importance, also stems from this approach in that it introduces a fast track procedure for such aids.

Second priority should be given to ensuring favourable conditions for competitiveness and cohesion, in line with the Lisbon strategy. The forthcoming review of the Regional Aid Guidelines and a number of other horizontal measures is instrumental in achieving this objective.

Third priority should be to continue to focus enforcement on key sectors for the Internal Market and for implementing the Lisbon strategy. In particular, emphasis should be put on removing obstacles to competition in recently liberalised sectors like telecommunications, postal services, energy and transport. These sectors provide essential inputs to many other sectors and are of key importance for Europe's competitiveness. However, they are affected by various distortions to competition including state aids. In removing obstacles to competition, however, due consideration should be provided to the fact that these sectors are characterised by important public service obligations, with a view to providing services of general economic interest. These obligations must be preserved as they guarantee that the services remain affordable and accessible to all users. This is essential to safeguarding a socially inclusive society, which is another dimension of the concept of sustainable growth.

Finally, we should give priority to state aid advocacy in cooperation with Member States and within the Commission to raise awareness and acceptance of state aid policy as an instrument to achieve the main policy objectives I referred to right at the start.

Specific measures taken

As I said continuity is also an important element in state aid policy. In the run-up to enlargement we have reviewed state aid procedures with a view to making them more efficient and effective.

Earlier this year the Commission adopted the new regulation implementing the Procedural Regulation. It will enter into force on 1 October.

The new regulation lays down detailed rules as regards notification of State aid to the Commission, time limits, annual reports and the interest rates to be used for recovery purposes.

Among the key elements are:

- the establishment of comprehensive notification forms, which will become compulsory;
- new simplified notification requirements for minor changes to aid schemes;
- simplified annual reporting requirements which are intended to accelerate the collection of data for the scoreboard;
- clear rules on interest rates for recovery.

If I go into detail it is because we hope that this regulation will substantially simplify procedures and reduce the time necessary to approve notified aid. In particular, and provided Member States use the new forms correctly, the need for additional questions and lengthy investigations should be greatly reduced.

The Commission has also decided to formally repeal a large number of older communications and soft law texts on procedural matters which have now become redundant and can no longer be relied on.

A new communication aims to give clear guidance on how the Commission will deal with requests not to publish information for reasons of confidentiality, and new internal procedures have been established to deal with these requests.

Finally, as regards procedures we will be cutting red tape by introducing electronic notification, hopefully by the end of next year and by further developing the electronic network with MS (called CIRCA).

The European Councils in 2000 and 2001 set the objectives of reducing overall aid levels and of redirecting aid to horizontal objectives of common interest. As such, this would seem to warrant for a stricter approach towards the more distortive forms of aid, such as aid for firms in difficulty. The exit of inefficient firms is a normal part of the operation of the market. It cannot be the norm that a company which gets into difficulties is rescued by the State. On the other hand the Council conclusions require that we modernise our regional aid guidelines and other horizontal instruments. As regards the new regional aid guidelines, those should allow for a better concentration of regional aid on the least favoured regions, while increasing flexibility for pursuing development policies for other regions. In the same context, we will work on adapting our

other horizontal rules to facilitate innovation, R and D, and access to risk capital to strengthen durably the growth potential of regions.

Let me try to illustrate these points by commenting on some of our proposals.

The new guidelines for Rescue and Restructuring aid, adopted on 17 September and entering into effect on 10 October, reflect this policy line for instance by reinforcing the application of the “one time, last time” principle and by the maximum period of 6 months for rescue aid.

I just like to point out that the greater concern with the economic rationale of our decisions is reflected in the wider scope for compensatory measures. Traditionally, these would focus on divestments or capacity reductions i.e. on undoing primarily the effect of the aid on competitors. The new guidelines explicitly include now measures to strengthen market access which addresses more general competition concerns. The new guidelines also create more transparency in that they clarify a number of points which led to questions of interpretation in the past.

The focus on most harmful aids based on a more economic analysis of the effects of state support on trade and competition has led to the proposal for a **Significant Impact Test**.

It should allow MS more flexibility in implementing aid measures that have only limited effects on competition and trade. The underlying reasoning is that relatively small amounts of aid are likely to have a limited effect on trade and competition taking into account other factors such as the limited tradability of a given activity, the competitive structure of the market concerned, the possible market power of the beneficiaries and the availability in the market.

A new framework would provide for a simplified assessment (LASA-test) of up to 1 million Euro of aid granted in pursuit of Community objectives such as R & D, innovation, training, risk capital, regional aid, employment and development of SMEs. Where the R+R guidelines reflect in particular the drive towards reduction of distortive aids, the SIT thus reflects the other objective of refocussing state aid policy on the basis of a more economic approach and give MS more scope to adopt horizontal measures in line with Community objectives.

Following discussions with MS we have considerably reduced the reporting requirements for MS so as to avoid too heavy an administrative burden on companies and administrations, which is after all one of the SIT objectives. The framework will also set out some general orientations for the assessment of other types of aid which are not likely to produce significant effects on trade.

They are the same as I just mentioned for the LASA-test. The SIT will not anymore be submitted for adoption to the outgoing Commission.

In order to simplify the rules which are particularly important for SMEs, we will consolidate the existing block exemption regulations into one regulation. Adoption is planned for 2006 and will take into account the results of the discussions on the new Regional Aid Guidelines, on R and D and Innovation, and risk capital. This means that at the same time the scope of block exempted aid may well increase. If Parliament agrees to the principle we may also exempt small scale services of general economic interest from the notification obligation by end 2005.

As regards the Regional Aid Guidelines, in a nutshell, the main challenge for the future is to redefine regional State aid policy in an enlarged Union, reconciling the overall reduction of aid volumes with the Community objective of economic and social cohesion. The revision of the existing regional aid guidelines is not an isolated issue, but has to be conceived as an essential part of the general reform of State aid policies towards less and better targeted aid. At the same time, it will need to be inspired by the conclusions of the European Councils of Lisbon and Stockholm, calling upon the Commission to give clear priority to the least developed regions in conformity with the exceptional nature of regional State aid, and to take full account of the conclusions of the Third Report on Cohesion Policy.

The Third Cohesion Report lays down the foundations for a new cohesion policy by moving towards an approach which is less territorial and providing all the regions with the necessary flexibility to tackle local problems and address their competitiveness gap, in pursuit of key community priorities linked to the Lisbon and Gothenburg agendas.

In this context, the main policy objectives of the revision of the regional aid guidelines, which fits within the general move towards a more economic approach to State aid policy, are threefold: achieving concentration of regional aid to investment in the least favoured regions, ensuring an adequate margin of flexibility for Member States and regions to pursue local regional policy, and enhancing the long-term competitiveness and growth potential of all European regions.

In practice these objectives translate into:

- A strict concentration of regions eligible for regional aid on those regions most in need;
- A substantial reduction of aid intensities for regional investment projects

- The possibility to grant aid under the horizontal instruments which will be reviewed in the light of the Lisbon agenda to facilitate innovation, R and D, and access to risk capital for SMEs. This review will also block exempt investment aid for SMEs located in non-assisted regions. The Significant Impact Test is intended to provide an additional element of flexibility, also in regions which will no longer be assisted areas under art. 87(3)c.

The proposed new RAG imply an important change from earlier policy and, predictably, have led to a rather mixed set of critical comments.

For instance, where the new MS argue against a reduction of aid intensities, others plead for a further reduction as they fear for delocalisation of large firms or firms in border regions.

The proposed thematic (horizontal) approach is questioned, as it might not provide an adequate alternative for the existing possibilities to grant investment aid in today's C-regions, including aid to large firms. Some prefer to have it both ways: maintain the map-based approach and benefit from an increased flexibility under the horizontal rules.

Finally, a number of MS would prefer to have a complete picture of the review of all horizontal measures and of the structural fund regulation, before taking a final view.

All this means that the new Commission has quite a challenge in front of it in finalizing its proposal. And it is likely that further discussions and consultations will take a good part of next year and that the pieces of this jig-saw puzzle are likely to fall in place at a fairly late stage.

At the moment we are busy analyzing the comments by MS with a view to identify what changes should and could be made within the context of the overall Lisbon-based policy objectives.

As regards the review of the horizontal frameworks our timing is to finalize a communication on innovation by mid next year, and to have the new R and D framework and the revised Communication on risk capital adopted by end 2005, together with the RAG. This should coincide globally with the "super" block exemption regulation and the exemption regulation for small scale services of general economic interest. This is a quite ambitious programme, you will realise, but I expect that the proposed texts will be available in time so as not to slow down decision making on the RAG.

State aid advocacy

I mentioned state aid advocacy as a priority. State aid advocacy plays at two levels.

First, it aims at better integrating state aid policy in other EU policies and its focus should therefore be with intensifying the policy dialogue in house.

Second, and of more direct interest to you, it aims at raising awareness and acceptance of state aid policy with stakeholders such as MS, industry, national courts and others, including the general public. Certainly in an enlarged Union, raising awareness and acceptance is crucial in order to ensure the continued effectiveness of state aid policy. In comparison with antitrust and mergers, State Aid enforcement does not rely on a network of national competition authorities enforcing competition policy at national level, raising awareness and acceptance of the role of competition policy. More in general, it would seem that state aid policy is a relatively unknown area of competition policy, as shown, for example, by the low number of cases before national courts.

It would seem that there is at least one important factor which contributes to this situation. Where in antitrust the stakeholders are a relatively well defined group (industry, legal profession, courts) this is much less so in state aids. Authorities granting aid may be at national, regional or local level or even be public undertakings. In many MS there is no clear coordination between these authorities or no central point in the administration channeling notifications or making a state aid assessment before notification. At EU level we meet MS in the so-called multilateral meeting to discuss our proposals for frameworks etc. but there is no appropriate body for a more general policy dialogue as it exists for antitrust and mergers.

One crucial factor to raise at least awareness, if not acceptance, is of course by strengthening transparency as regards procedures, legal texts and by providing information on the results of state aid policy. On the Commission side I have referred to the measures to make state aid procedures more efficient and clear. In reviewing our horizontal rules we pay and will pay attention to produce clear texts and as consistent and straightforward as possible, although there will always be some scope for interpretation. On a practical point, the State Aid website will be made more user-friendly and give access to all decisions taken, before they will be published in the Official Journal.

The Scoreboard and the Register are now well established and have contributed importantly to make state aids more visible as to its results and effects. We will also continue to use the yearly multilateral meeting discussing the Scoreboard and as a forum to exchange ideas and develop benchmarks to promote the effectiveness of aid.

We will continue to improve our transparency enhancing measures in order to provide a basis for an effective state aid advocacy in order to ensure the continued effectiveness of state aid policy in the enlarged Union.

As regards the MS, the last multilateral meeting showed that quite a number of them are taking steps to get a better overview of aid measures and to achieve a more coordinated and consistent approach. Some MS have already introduced a form of coordinated state aid assessment when considering a new measure. From the Commission's viewpoint such a development can only be welcomed as it implies an increased awareness and acceptance of state aid rules. But also since it is more efficient to deal with state aid issues more up-front, i.e. before it becomes more difficult to withdraw or revise a measure. From our side, where we can be of help at an early stage of decision-making, we continue to be available to try to clarify any state aid issues that may arise.

* * *