



Bundesministerium
für Wirtschaft
und Technologie

Außenwirtschaft und Europa

State Aid Control – Procedural Aspects

MR'in Kristina Haverkamp
Head of Unit European State Aid Control Policy -
Federal Ministry for Economics and Technology
www.bmwi.de

Houston, we have a problem I: too many cases

Case handler in GD COMP?



Every year, the Commission is asked to review on average well over one thousand (!) new cases

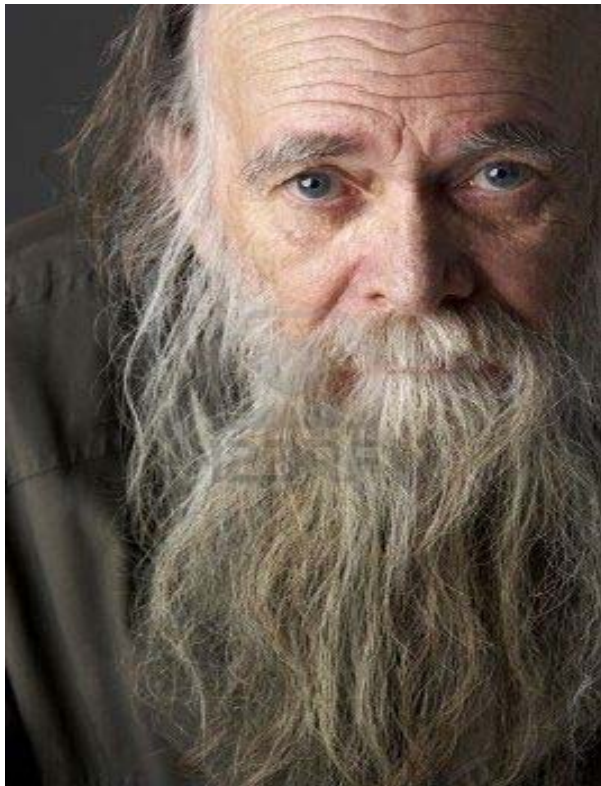
One third are complaints and the rest mostly notifications from public authorities.

A considerable proportion have no significant effect on competition/trade.



Houston, we have a problem II: lengthy procedures

Waiting for a decision.....



In 2009, 6 months were needed on average for the Commission to adopt decisions based on a preliminary investigation of notified measures and 20 months, if the Commission opened a formal investigation.

More recent figures?.

Houston, we have a problem III: lack of predictability

Predicting the contents of a decision...

More than 30 regulations, communications, frameworks, guidelines, notices....

Rather vague legal concepts (market failure, incentive effect, contrafactual analysis, proportionality....)

Involvement of DG COMP, Chief Economist, Legal Service, other DGs, cabinets...





We will fix it (2005)

„...Besides, the increasing complexity and number of documents progressively adopted by the Commission over time have created a need to **streamline state aid policy, focus attention on the most distortive types of aid** and make state aid control more predictable and user-friendly, thereby **minimising legal uncertainty** and the administrative burden both for the Commission and for Member States.“

State Aid Action Plan, **7 June 2005**



We will really fix it (2009)

„State aid procedures often suffer from long duration and lack of predictability“

„This is why the Commission is committed to **simplifying**, **streamlining** and thereby **accelerating** the conduct of state aid procedures“

FAQ ON Best Practice Code and Simplified Procedure,
29 April 2009



We will really, really fix it (2011)

„...This is why I want to take a more systematic approach to deal with State aid cases, I want to **simplify** and **clarify** our rules, and I want to **concentrate** available resources on the **aid that most hinders** the functioning of the Single Market.“

„My goal is ... clear: we need **less and clearer rules** and a stronger and more targeted enforcement.“

VP Almunia, GCLC`s Fifth Evening Policy Talk, Brussels,
19 April 2011



In search of solutions – some preliminary thoughts



- be bold – be pragmatic – be bold – be pragmatic – be bold – be pragmatic – be bold – be pragmatic – be bold – be pragmatic – be bold – be pragmatic – be bold -

Problem: case load (1/2)

Some very good ideas to reduce the number of notifications:

- ▶ Bold „no aid“-decisions
- ▶ Higher *de minimis* ceiling? (cf. „500 K“-discussion)
- ▶ Restore retroactive effect of *de minimis* aids
- ▶ More block exemptions
(e.g. alterations to existing aid that are now subject to the „simplified notification procedure“; protection of species, theatres, operas and other cultural activities, natural disasters...)
- ▶ Broader options to notify schemes (e.g. for standard R&R aid for large companies) and methods (e.g. for calculating the aid equivalent of subordinated loans),
- ▶ Applicability of the *de minimis* Regulation and the GBER to aid in the form of mezzanine financing

Problem: case load (2/2)

Some very good ideas to reduce the number of complaints:

- ▶ **Mandatory complaint forms**
(cf. Art. 3 (3) Implementing Regulation, which provides that any notification sent by a Member State through a communication channel other than SANI „shall not be considered as submitted to the Commission“)
- ▶ **Delegation of the power to reject prima facie non conclusive complaints to VP Almunia**

Problem: case load (2/2)

Further very good ideas to reduce the number of complaints:

Change the Procedural Regulation

(Art. 10 (1): „Where the Commission has in its possession information from whatever source regarding alleged unlawful aid, it **shall** examine that information without delay“)

- ▶ No obligation to examine complaints that are not submitted by an „interested party“
(= party whose interests might be affected by reason of the effect of the aid on its resp. its members **competitive** position)
- ▶ Discretionary power to refuse the examination of prima facie conclusive complaints on the basis of a balancing test
(criteria e.g.: impact on competition/trade, manpower necessary for examination, existing caseload and in particular the amount of cases with a potentially stronger impact on competition in the internal market).
- ▶ Charge administrative fees to cover the expenses?

Problem: lengthy procedures (1/2)

Some very good ideas to speed up the procedure:

- ▶ Less and simpler rules:
 - ▶ If public authorities and companies understand the rules well, they can prepare good notifications
 - ▶ If case handlers, Legal Service and Chief Economist Team share a common understanding, there will be less „surprising turns“
- ▶ Strict procedural provisions governing the input of the the Chief Economist and the Legal Service („what“ and „when“)
- ▶ Better preparation of „ information requests “ by case handlers. (Twice is more than be enough.)
- ▶ Reduce „in depth analysis“ to the absolute minimum necessary (criterion: aid amount)

Problem: lengthy procedures (2/2)

Some less good ideas to solve the problem

- ▶ New „Simplified Procedure“: Nice try, but
 - ▶ not simple enough (e.g. publication of a summary on GD COMP website)
 - ▶ too many softeners („back doors“) for the Commission
 - ▶ PN provisions don‘t take account of human nature

- ▶ Investigative powers of the Commission vis-a-vis companies
 - ▶ Not necessary (if information is not provided, Procedural Regulation authorizes Commission to deem a notification withdrawn after one reminder)
 - ▶ Not likely to be helpful (companies will sue when forced to submit information)
 - ▶ Not in conformity with the Treaty (State Aid rules adress MS, not companies)
 - ▶ Political concerns (risk of understanding between Commission and company on how the MS is supposed to spend his money)



Problem: lack of predictability

What we need: good legislation!

- ▶ Practicable rules („I know it when I see it“)
 - ▶ Good example: GBER
 - ▶ Bad example: Communication on in-depth assessment of regional aid to large investment programs; Risk Capital Communication

- ▶ Abstain from vague legal notions such as market failure, efficiency...
..., if absolutely indispensable, clarify in a simplistic (!) way

- ▶ No balancing

- ▶ Procedural steps to improve the practicability of state aid rules
 - ▶ Regular multilateral exchange between Commission and MS on horizontal issues
 - ▶ Early and comprehensive involvement of MS in rule making (no „ambush“)
 - ▶ Respect for the opinion of MS (e.g. 500 K; SG EI)



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Thank you very much for your attention!

Kristina L. Haverkamp