



FEDERAL COMPETITION AUTHORITY
Austria

Competition and State Aid Law & Policy

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Importance of competition and state aid law & policy:

- Competition **pushes down prices**
- Competition encourages companies to provide consumers products that consumers want- **more and better choices**
- Competition encourages **innovation**
- Key driver for **economic growth** and **wealth creation**
- Competition policy has a central but limited role to play in **overcoming** the spillover effects of the **financial crisis** into the real economy

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Competition law and State Aid Control are at the heart of EU economic and enlargement policy

- Article 3(1)(g) of the EC Treaty: “[...] a system ensuring that competition in the internal market is **not distorted**”
- ECJ case *Continental Can*: Art 3 considers the pursuit of the objectives which it lays down **indispensable** for the achievement of the community’s tasks
- One of the **Copenhagen criteria** for EU accession candidate countries: **“functioning market economy”**

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That is why EC law provides that:

- Agreements between two or more firms which restrict competition are prohibited (Art 81 EC)
- Firms in a dominant position may not abuse that position (Art 82 EC)
- **State Aid** in general is prohibited (subject to exemptions & derogations)- fundamental principle that any distortion of competition must be in proportion to the objective of the aid (Art 87 EC)
- Mergers are examined to see if they would significantly impede effective competition

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Art 87 EC- how it works:

1. Basic Principle: State Aid which distorts competition and affects inter-state trade is incompatible with the common market
2. MS need to notify state aids to the European Commission
3. Concept of what constitutes aid very wide
4. Art 87 (2) provides certain exceptions ex lege
5. Under Art 87 (3) the European Commission can declare compatible state aid which would otherwise fall under (1) – wide margin of discretion (guidelines etc.)
6. Unlawful and illegal aid must be recovered
7. The prohibition against non-notified state aids can be enforced in the national courts of the MS

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Definition of State Aid

- Concept of State Aid not defined in the EC treaty but defined by **case law**
- The concept of State Aid is very wide and embraces **not only positive benefits**, such as subsidies (payments made in cash or in kind) but also interventions, which mitigate the charges which an undertaking normally has to bear
- European Commission: **“An economic advantage that the undertaking would not have received in the normal course of business”**
- Example: Case 173/73 *Commission v. Italy*: the Italian government had given the textile industry some **partial relief from contributing to a compulsory national insurance fund** = State Aid
- Other examples: Tax and duty concessions, loan guarantees on preferential terms, making available land or buildings for free or on preferential terms, preferential interest rates...

Importance of State Aid Control

- Competition policies ensure that **markets** are and remain **competitive** so as to produce benefits for consumers
- **State Aid monitoring** constitutes an **essential component** of an **effective competition policy**
- The **objective of State aid control** is to ensure that **government interventions do not distort competition**
- Need to maintain a **level playing field** for all undertakings as selective advantages to some firms, **preventing or delaying the market forces** to rewarding the best performing **distorts competition**

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Draft Law on State Aid is an important step for Moldova:

1. To avoid **distortions** of competition by **government interventions State Aid control** is **essential** for a functioning **market economy**
2. Competition agencies and the business community need **clear and transparent rules**
3. Step closer to **EU**

The financial/economic crisis

Neelie Kroes: "in tough times, market distortions caused by state subsidies or anti-competitive practices hurt us even more than in good times"

In times of crisis efficient competition and state aid law and policy is even more important:

- Increased consumer welfare through competitive prices
- Increased efficiency and productivity
- Stimulating effect competition has on markets

Competition and state aid policy certainly not part of the problem but part of the solution!

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Example: State Aid granted in Austria during financial crisis

1. Guarantee measures with a total budget capped at €75 billion aimed at stabilising the interbank market
2. State guarantees on the liability and asset side, loans and recapitalisations, with a total budget of €15 billion.

European Commission **approved of the measures because:**

- ✓ **non-discriminatory access**
- ✓ **limited in time and scope**
- ✓ **require market oriented remuneration**
- ✓ **sufficient safeguards against abuses**
- ✓ **Commitment to renotify if prolonged**
- ✓ **Overall appropriate and limited to what was necessary**

Competition and State Aid law and policy- a cross cutting issue:

- **Coordination** at policy level: Needs to be mainstreamed & implemented through other policies and legislation
- **Political commitment**
- Competition advocacy & Promotion of competition culture
- **Cooperation** with other institutions (inter alia courts, regulators) and the government
- **Needs to be supported at all levels to be successful!**

Conclusio:

The creation of the NAPC in 2007 has been an important achievement. However, the adoption of the draft law on State Aid is a necessary step to ensure a functioning market economy! If it is not adopted the effectiveness of the Agency would be undermined by interventions and this could harm the economy of Moldova as a whole.

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More information at:

http://ec.europa.eu/competition/state_aid/legislation/legislation.html

http://ec.europa.eu/competition/state_aid/newsletter/index.html

THANK YOU FOR YOUR ATTENTION!