

# State Aid: A brief introduction

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# What Is State Aid?

State Aid refers to any assistance or subsidy given by a Member State which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods

# What is not Aid?

- General Measures
- Aid to individuals/non-undertakings
- Market Economy :
  - Investor
  - Purchaser
  - Lender (or borrower)
  - Seller

# Where else can we see what is compatible or acceptable aid?

- Guidelines and Frameworks
- Approved schemes
- General Block Exemption Regulation (GBER)
- De minimis

# Examples of the sort of thing which can be state aid

- Grants to firms for: investment, Research and Development (R&D) and training.
- Cash injections to public enterprises.
- Loans and guarantees.
- Consultancy advice
- Creation of Enterprise Zones and agencies for urban renewal.
- Aid to help companies invest in environmental projects.
- Deferral of tax, social security or other payments to the State.
- Writing off operating losses of public enterprises.
- Provisions to help prepare a public enterprise for privatisation.
- Sale of land/property at discounted rate.
- Legislation to protect or guarantee market share.
- Tax exemptions.
- Free advertising on State owned television.

# The penalties for unauthorised aid

- Unauthorised state aid is **illegal**. These are the consequences for giving such aid:
  - aid payments can be suspended
  - recipients are required to repay the State with interest
  - policies may have to be altered
  - legislation may need to be amended
  - member states and recipients could be sued by a competitor for damages
  - fines could be imposed on member states

# Commission investigation

- Anyone can complain
- Commission must investigate
- Commission has final decision (subject to limited overview by ECJ)

# Identifying State Aid: Key Tests



# How to spot State Aid

The key criteria for State aid to be present are identified as follows:

- The aid is granted by the State or through State resources;
- The aid confers an advantage on the recipient;
- The aid is selective, favouring only certain undertakings or the production of certain goods;
- It distorts or threatens to distort competition;
- It affects, or has the potential to affect trade between Member States.

All 5 tests have to be met for it to be considered to be State Aid.

# Test 1: Granted through state resources

“Granted by a Member State or through state resources in any form whatsoever”

- Member State

including regional or local authorities; and other public or private bodies designated or controlled by the state

- State resources

includes funds not permanently belonging to the state but under state control i.e. Lottery funds, EU funding

- Tax exemptions

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## Test 2: Confers an advantage

- Could either be:
  - Transfer of resources i.e. grant, soft loans, provision of services, guarantees, transfer of land at an undervalue;  
or
  - Relief from charges which an undertaking normally has to bear eg. tax exemptions
- Advantage is either for free or without adequate consideration

# Test 3: Is a selective measure

- Favouring certain undertakings or the production of certain goods
  - Geographical
  - Sectoral
  - type of firm e.g. SMEs
- Can apply to charities and voluntary organisations
- General measures available to all businesses across UK are not selective eg. generic tax benefits

# Test 4: Has potential to distort competition

- Aid could strengthen competitive position of beneficiary relative to competitors
- Distortion does not need to be substantial or significant
- General assumption that all aid distorts competition
- Small size of beneficiary, small amount of aid or small market share does not preclude distortion

# Test 5: Affects trade between member states

- Wide interpretation
  - It is sufficient that a product or service is subject to trade between Member States eg. insurance, construction
  - Even if *aid beneficiary* does not export, or exports all of its production outside EU
- Exception: local services BUT the hairdresser in Luxembourg
- Case law examples - property development, museums
- This criterion is normally fulfilled as most activities are viewed as tradable.

# What is an undertaking?

- An undertaking is an entity which is engaged in an economic activity.
- **Economic activity** means an activity which consists in offering goods or services on a given market and which could, at least in principle, be carried out by a private operator in order to make profits.
- The important thing is what the entity does, not its status. Thus a charity, a not for profit company or a Government Department can all be undertakings if they are involved in commercial activities.

# Identifying aid recipients

- State Aid must be examined at all possible levels, not just the end beneficiaries but:
- Non competitively procured Contractors
- Delivery Organisations and Intermediaries if they take a fee for their activity
- Private Sector Co-funders if they obtain a commercial advantage beyond pari passu investment terms i.e. obtain a secured return verse the public sector's unsecured return, or for example a software company which funds training and provides equipment which can only be used by SMEs if they buy from it from that company

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# Approved Schemes

- Schemes notified to the Commission and pre-approved
- English Property Development Scheme
- English Environmental Scheme
- English Risk Capital Investment Scheme
- English Research Development and Innovation Scheme
- Business Support Scheme

# General Block Exemption (GBER)

- The European Commission adopted a Regulation in 2008 giving automatic approval for a range of aid measures. Applies till 31<sup>st</sup> December 2013.
- This allows Member States to grant such aid without first notifying the Commission.
- The Regulation authorises aid in favour of SMEs, research, innovation, regional development, training, employment and risk capital.
- The Regulation also authorises environmental protection aid, promoting entrepreneurship and tackling problems, like difficulties in access to finance, faced by female entrepreneurs.

# GBER - what it covers (1)

- SME investment and employment
- small enterprises newly created by female entrepreneurs
- consultancy in favour of SMEs
- SME participation in fairs
- provision of risk capital
- research and development
- technical feasibility studies
- industrial property rights costs for SMEs
- research and development in the agricultural and fisheries sectors
- young innovative enterprises
- innovation advisory services and for innovation support services
- the loan of highly qualified personnel
- recruitment of disadvantaged workers in the form of wage subsidies
- employment of disabled workers in the form of wage subsidies

# GBER - what it covers (2)

- training
- compensating the additional costs of employing disabled workers
- regional investment and employment
- newly created small enterprises in assisted regions
- investment to go beyond Community standards for environmental protection
- acquisition of transport vehicles which go beyond Community environmental protection standards
- early adaptation to future environmental standards for SME
- investment in energy saving measures
- investment in high efficiency cogeneration
- investment in the promotion of energy from renewable energy
- environmental studies
- the environment, in the form of tax reductions

# Market Economy Investor Test

- Do the terms go beyond those that a private investor, operating under normal market economy conditions, and having regard to the information available and foreseeable developments at the time, would find acceptable?
- An acceptable return on the provision of funds within a reasonable period of time. The test does not require comparison with a private investor placing capital with a short term view of profitability.

# Loans and Guarantees

- Where a loan is provided under ‘standard’ commercial terms the aid element of the loan will be the difference between the actual interest rate and the relevant reference interest rate
- 2008 Communication from the Commission sets out the reference interest rates
- Commission Notice on Guarantees
- Note that guarantees can benefit lender and borrower

# De Minimis - Block Exemption

- Small amounts of funding
- €200,000 over rolling three year (fiscal) period
- Loan guarantees up to €1.5 million
- Aid per recipient **NOT per project**
- Must not be used for export aid
- Can be difficult to administer - goes to intensities
- All de minimis aid received in period from all sources must be cumulated
- It's different for road haulage and agriculture
- Look at it as a last resort

*De minimis funding is exempt from notification because the Commission considers that such a small amount of aid will have a negligible impact on trade and competition.*

# Reform

- Regional Aid updated - from 30 June 2014
- GBER currently being updated
- De minimis - consultation ongoing - EUR200,000 limit likely to remain



# CASE STUDIES

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# Questions?

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