

Unclassified

DAF/COMP/GF(2009)12

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

12-Nov-2009

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Cancels & replaces the same document of 10 November 2009

Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

-- Session I --

Call for Country Contributions

This document is a call for country contributions for Session I of the Global Forum on Competition to be held on 18-19 February 2010. GFC participants are invited to submit their contributions by 04 January 2010 at the latest.

Ms. H el ene Chadzynska, GFC Programme Manager, Tel: +33 1 45 24 91 05;
Email: helene.chadzynska@oecd.org

JT03274016

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TO ALL GLOBAL FORUM PARTICIPANTS

RE: Competition, State Aids and Subsidies

Global Forum on Competition (18-19 February 2010)

Session I

Dear GFC Participant,

The OECD Global Forum on Competition will hold a roundtable on Competition, State Aids and Subsidies on 18 February 2010. You are invited to make a written contribution by *4 January at the latest*.

The cornerstone of competition policy is the idea that competition on the merits encourages firms to be innovative and efficient, and that it fosters a permanent process of “creative destruction” by which more efficient firms displace inefficient ones, benefitting consumers and economic efficiency alike.

State aids to specific companies, in the form of subsidies, selective tax breaks, or whatever kind of advantage, are often likely to distort this process by altering the level playing field between firms. The ensuing disruption of competition is manifold. In the short run, state aids may shift production away from efficient firms to less efficient ones, thereby decreasing the total economic surplus. In the long run, state aids may induce firms to divert productive resources from investment toward rent-seeking expenditures. In addition, subsidy races across countries in order to retain or attract companies may prove very costly for public finances, for little aggregate benefit.

However, state aids are sometimes justified. In some circumstances, they allow governments to internalise the positive externalities generated by specific companies or specific activities, such as their impact on innovation, regional development or social cohesion. They can also palliate market failures, especially in the insurance and banking sector. Finally, state aids to nascent industries, especially in developing countries, can help jump-start new activities until they become self-sustaining.

The financial crisis has prompted many countries, in the developed and developing world, to resort to state aids. The public rescue of banks, meant to avoid a systemic crisis, has been widespread. More broadly, aids to industry have increased as companies suddenly saw the flow of credit dry up.

Since state aids are sometimes useful, while at the same time they run against the very logic of competition, one might expect competition policy to exert some control upon them, in order to ensure that competition distortions are kept minimal and that governments only grant genuinely useful state aids. However, there is no systematic control of state aids outside the European Union and a few other jurisdictions (aside from WTO disciplines on subsidies), except when competition authorities deal with possible anticompetitive behaviour by government-owned enterprises.

It is therefore of great interest to understand how GFC participants view the interplay between competition policy and state aids, on the basis of their own experiences. Written contributions including case studies would be particularly helpful.

To assist with the preparation of your contributions, a number of issues and questions are attached to guide your submissions.

This is not intended to be an exhaustive list. Participants are encouraged to address other issues based on their experiences. The questions are intended to provide a guide, recognising that they may not all be relevant nor readily answerable by some participants in some instances. A suggested bibliography is also attached.

Please advise the Secretariat **by 16 November** if you will be making a written contribution. Written contributions are due by **4 January at the latest (members and non members)**. Failure to meet that deadline could result in a contribution not being taken into account in the preparation of the scenario for the roundtable discussion. In addition, late contributions may not be distributed to participants in a timely fashion in advance of the meeting via the meeting website at <http://www.oecd.org/competition/globalforum>.

All communications regarding documentation for this roundtable should be sent to erica.agostinho@oecd.org, Tel. +33 1 45 24 89 73, Fax +33 1 45 24 96 95, with a copy to helene.chadzynska@oecd.org (GFC Programme Manager). Helene will be pleased to answer any substantive questions you may have about the roundtable and the GFC in general. Her phone number is: +33 1 45 24 91 05.

Questions for consideration

I. The use of state aids in your country

1. Does your country regularly engage into the following practices? If so, could you provide information about: (i) the affected sectors; (ii) an order of magnitude of the corresponding amounts, and (iii) the evolution over time? If possible, distinguish between government-owned and private firms.
 - a. Direct subsidies to companies;
 - b. Tax breaks to selected companies or selected sectors;
 - c. The granting of government-owned inputs (such as land, bandwidth, government facilities) to companies at a price below market levels (possibly a regulated price);
 - d. Government purchases at above-market prices;
 - e. The granting of loans at below-market rates;
 - f. The provision of loan guarantees at below-market rates.

2. To what extent have state aids in your country been motivated by the following goals? For each of them, please specify whether domestic and foreign firms have been treated differently.
 - a. Protecting employment (in the case of aid to ailing firms);
 - b. Fostering innovation and the development of new sectors;
 - c. Attracting firms to economically distressed regions;
 - d. Remedying competition distortions created by the granting of aid by foreign governments;
 - e. Inducing firms to supply goods or services deemed to contribute to the general interest in cases when market incentives alone were insufficient to ensure that these goods or services would be provided;
 - f. Palliating the undersupply of credit by the financial sector;
 - g. Preventing strategic firms from being purchased by foreign companies.

3. What are your country's laws, and the actual practice, regarding the provision of government-owned or government-controlled inputs? In which circumstances is an auction process mandatory? In which circumstances does a non-discrimination clause apply? In practice, what is the prevalence of auctions? If possible, please provide information about the way in which the following inputs have been allocated.
 - a. License to operate a mobile telephony network (with access to the corresponding bandwidth);
 - b. License to operate a television network;
 - c. Access to natural resources.

II. Aid to ailing companies, especially in the context of the financial crisis

1. In the context of the financial crisis, did your country provide emergency aid to some companies? If possible, please provide information on:
 - a. Specific rescue measures for banks and other financial institutions;
 - b. Aid to industrial firms (for instance in the car industry).
2. What are the criteria that have been used when delineating the beneficiaries of emergency aid, as well as the amount or nature of the aid?
3. Is aid to ailing companies in your country usually provided with conditions attached such as:
 - a. Clauses imposing at least partial reimbursement in the event of a return to better fortunes?
 - b. A cap on executive pay?
 - c. Restructuring (for instance, the closing of unprofitable factories or branches)?
 - d. Guarantees on total employment?
 - e. Clauses prohibiting the use of government funds in order to engage in predatory strategies?
 - f. An explicit commitment that the aid will be limited in time and will not be repeated?
 - g. Commitments regarding the environmental impact of the recipient's activity?

Please provide short information on each of these provisions and the standard conditions attached to them.

4. Does aid to ailing companies in your country sometimes take the form of temporary government ownership in return for capital injection? If so, are there examples where such policies allowed the government to turn a profit after the aided firm's situation improved?

III. Legal restrictions on state aids

1. Do competition authorities exert some control on state aids in your country? If so, has this control been weakened in the context of the financial crisis? Are there specific rules about aid to ailing firms, or aid to R&D? Please detail each, briefly.
2. Is the amount and nature of state aids limited by virtue of regional trade agreements to which your country participates (not taking into account WTO disciplines)? If so, is there a supranational control mechanism? Has it ever been used? In competition cases?
3. Did the competition authority in your country ever have to consider a case involving state aids? If possible, please distinguish the following (possibly overlapping) types of cases:
 - a. A private company complaining about predatory strategies (or unfair practices) implemented by a public company or by a private company benefitting from public funds (for instance in the case of a firm providing a public service and using the corresponding revenues in order to compete aggressively on an other market);
 - b. A company complaining about discriminatory treatment, in comparison to a competitor benefitting from state aids;
 - c. Cases involving the existence of price regulation;
 - d. Cases involving abuse of dominance or merger cases (for example, in the latter, would remedies be affected if the state aid were to be withdrawn?).

4. Are government-owned companies subject to competition law to the same extent as private companies in your country? Are there any specific mechanisms for their implementation?
5. To what extent are state aid issues addressed in your competition authority's advocacy activity? What is your competition authority's message on state aids? Is this message well understood and taken duly into account by other parts of the government? Please describe briefly the relevant institutional mechanism(s), if any.

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