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Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Argentina

-- Session I --

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COMPETITION, STATE AIDS AND SUBSIDIES

-- Argentina --

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;

1. There have been some cases where the state gave direct subsidies to agriculture and dairy industry, though the net subsidy had a debit balance because these sectors had to pay export taxes which were higher than the state aid itself.

b. Tax breaks to selected companies or selected sectors;

2. No.

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);

3. No.

d. Government purchases at above-market prices;

4. No.

e. The granting of loans at below-market rates;

5. Yes. For example, there has been a specific case in the automotive industry, where the state granted General Motors a loan for developing a car in which the majority of components ought to be from national industry.

f. The provision of loan guarantees at below-market rates.

6. No.

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);

7. This has been the main goal the state had whenever granting aid to the private sector, requesting firms not to fire any employees.

b. *Fostering innovation and the development of new sectors;*

8. There are special funds for I+D though they are not very significant because of the amounts granted. It is almost addressed to small business.

c. *Attracting firms to economically distressed regions;*

9. There are some cases like the province of Tierra del Fuego where the electronic industry is entitled with tax exemptions, and San Juan, San Luis and Mendoza where the principle aim is to promote agricultural industries.

d. *Remedying competition distortions created by the granting of aid by foreign governments;*

10. Only under the regular procedures of antidumping remedies.

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;*

11. It happened in the dairy and meat industries, where the state had to intervene to ensure these products would be produced.

f. *Palliating the undersupply of credit by the financial sector;*

12. Yes.

g. *Preventing strategic firms from being purchased by foreign companies.*

13. There is a case in which a large and very important national dairy company was into deep financial trouble. There was a proposal of purchase by a foreign company so the state mediated to help the local firm find the proper credit to solve its financial difficulties. The credit was granted by another country and it is being paid with products of the company.

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.*

14. For answering all the previous questions, it is to say that the regulation so determines that auction process is mandatory.

15. All these cases have being allocated by auction process.

16. The non discrimination clause is the rule though there is a specific case in which it doesn't fully applies. This is the case of the "Compre Nacional" exemption, which is applicable for the provision of those inputs the state needs for the regular administrative function (The government should choose a national provider is his offer is no more higher that 10%).

17. The sole exemption of not use an auction process comes in the case of urgency of buying things under special cases (remedies in a natural disaster, etc.)

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;

18. There were not “rescue measures” but a wider credit line from the Central Bank to the commercial banks.

b. Aid to industrial firms (for instance in the car industry).

19. The previously mentioned credit to General Motors.

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?

20. The specific needs from the taker, without discriminating between national or foreign firms but mainly regarding the maintenance of jobs.

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?

21. Banks already gave back the credits they’ve been granted with and in the case of the agriculture sector there is no reimbursement demand.

b. A cap on executive pay?

22. No.

c. Restructuring (for instance, the closing of unprofitable factories or branches)?

23. No.

d. Guarantees on total employment?

24. Yes.

e. Clauses prohibiting the use of government funds in order to engage in predatory strategies?

25. Not specified but predatory strategies are prohibiting by law.

f. An explicit commitment that the aid will be limited in time and will not be repeated?

26. No.

g. Commitments regarding the environmental impact of the recipient’s activity?

27. No.

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?

28. There's been a recent situation with the national airline, afterwards privatised. As the owner was going through financial difficulties, the state bought the company. The owners were the same of Air Commet that recently falls dawn.

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.

29. No.

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?

30. No, but there are bilateral negotiations when the imbalance starts affecting the local firms.

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);

31. No.

b. A company complaining about discriminatory treatment, in comparison to a competitor benefitting from state aids;

32. No.

c. Cases involving the existence of price regulation;

33. No.

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?).

34. No.

3. 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?

35. Yes, as any other private company.

4. 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.

36. The National Commission for the Defense of Competence has given its opinion publicly, in several conferences, advising the limitation in time and amount of these state aids, in order to minimise market distortions.

37. These recommendations can be resumed as followed:

38. These measures have to be exceptional, only justified by an interest superior to competence.

39. They ought to be of the slightest intensity possible, in amount and in duration.

40. They must be very transparently granted.

41. As for the objective of their existence, they should be non discriminatory, directed to benefit the sector instead of the company, or at least directed to benefit the firm instead of the owner of it. Besides, the benefits should be published.

42. They should tend to benefit the domestic market, but always considering the regional and global context.

43. Finally, the measures should try to promote international competitive companies which could offer goods and services of the greatest aggregated value.