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Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Croatia

-- Session I --

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COMPETITION, STATE AIDS AND SUBSIDIES

-- Croatia --

1. Introduction

1. The scope of the State Aid Act of the Republic of Croatia (2005) is to set out general conditions and rules for authorisation, monitoring the implementation and recovery of state aid for the purpose of the implementation of the international commitments undertaken by the Republic of Croatia, arising under the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States (further: SAA), whereas, the state aid to agriculture and fisheries is not covered by the same Act.¹ The provider of state aid is the Republic of Croatia through its authorised legal entities and central public administration authorities, local and regional self-government units and any legal entity granting or administering state aid. The beneficiaries of state aid are legal and natural persons who perform an economic activity and thereby participate in the trade of goods and services and who receive some form of state aid.²

2. The Definition of State Aid

2. Within the meaning of the State Aid Act, state aid represents any actual and potential expenditures or decreased revenue of the state granted in any form whatsoever by the aid provider, which distorts or threatens to distort competition by favouring certain aid beneficiaries, insofar as it may affect the international commitments undertaken by the Republic of Croatia. Furthermore, the state aid scheme represents any legal document on the basis of which, without any additional implementing measures required, individual aid may be granted to ex ante unspecified aid beneficiaries, and any legal document on the basis of which state aid which is not linked to a particular project may be awarded to one or more aid beneficiaries for an indefinite period of time and/or in an indefinite amount. Finally, individual state aid represents any state aid which is not granted under the aid scheme, and any state aid granted under the aid scheme which is subject to additional authorisation from the side of the Croatian Competition Agency.³

3. General Prohibition and Exemptions from the General Prohibition

3. Based on the Croatian State Aid Act, state aid in any form whatsoever, which distorts or threatens to distort competition by favouring certain aid beneficiaries, insofar as it may affect the international commitments undertaken by the Republic of Croatia shall be incompatible with the Law.⁴ However, state aid to mitigate or compensate the damage caused by natural disasters, exceptional or war occurrences may be declared as compatible with the Law, subject to prior authorisation of the Croatian Competition Agency, if the same does not affect the international obligations based on the Republic of Croatia's international

1. Art. 1. of the Act.
2. Art. 2. of the Act.
3. Art. 3. of the Act.
4. Art. 4. of the Act.

agreements with third countries. Therefore, the following kinds of state aid may be considered to be compatible with the State Aid Act: (i) state aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment; (ii) state aid to promote culture and heritage conservation; (iii) state aid to promote the execution of important international projects or to remedy a serious disturbance in the economy; (iv) state aid to facilitate the development of certain economic activities or of certain economic areas; (v) state aid to legal and natural persons which are in accordance with special rules entrusted with the operation of services of general economic interest or granted special rights to perform tasks assigned to them in the public interest, where in the case of absence of such aid these persons would be obstructed in the performance of the particular tasks assigned to them and provided that the aid in question exclusively covers the compensation for the performance and implementation of the tasks concerned.

4. Authority which holds Jurisdiction over the Assessment and Authorisation of the State Aids

4. The Croatian Competition Agency (hereinafter: the Agency) is the authority which holds jurisdiction over the assessment, authorisation, and monitoring of the implementation of state aid and is entitled to order the recovery of unlawfully granted state aid or aid used in contravention of the Law.⁵ The Agency is entrusted with the following empowerments: (i) assessment and consideration of state aid proposals and aid schemes within annual and multi-annual state aid approval plans; (ii) monitoring of the implementation and effects of state aid granted and empowerment to order the recovery of unlawfully granted state aid or aid used in contravention of the Law; (iii) collecting, processing and registering the data in relation to the already granted state aid; (iv) collecting data on the use and effects of state aid granted; (vi) keeping the state aid register; (vii) cooperation with the authority responsible for state aid to agriculture and fisheries in the preparation of annual reports on state aid; (viii) cooperation in the budget preparation process with the authorities responsible for the preparation of the state budget and the budgets of regional and local self-government units; (ix) reporting on granted amounts of the state aid to the Croatian Parliament annually; (x) cooperation with international authorities, in compliance with the international commitments undertaken by the Republic of Croatia; (xi) participation in the preparation of draft proposals of the legislation concerning state aid, as well as promoting and encouraging improvements in the state aid system; (xii) performing other activities relating to the implementation of the State Aid Act.⁶

5. Proceedings in Front of the Agency

5. General: The Agency is empowered to request in writing all data and documents it deems necessary for the authorisation and assessment of the particular state aid case, from the aid provider and aid beneficiary, respectively.⁷ Furthermore, the Agency issues Preliminary Binding Opinions on any draft proposals of laws which contain state aid before its submission to the Government of the Republic of Croatia, upon the request of the ministries and other public administration authorities, that grant the state aid to various beneficiaries.⁸ The Preliminary Binding Opinion is usually submitted to the Government of the Republic of Croatia and Croatian Parliament along with draft proposals of laws and other regulations containing state aid. Ordinarily the Agency issues opinions within 30 days after the receipts of the proposals from the side of ministries and other authorities in charge. The Agency's authorisation of the state aid can follow a priori and/or ex post. Namely, before any legislative proposals, which contain state aid, would be submitted to the Government of the Republic of Croatia for its adoption, ministries and other

5. Art. 5. of the Act.

6. Art. 6. of the Act.

7. Art. 9. of the Act.

8. Art. 10. of the Act.

public administration authorities are obliged to notify the state aid proposals in question to the Agency for its authorisation (authorisation a priori).⁹

6. Recovery and ex post Authorisation of State Aid¹⁰: State aid which is granted without authorisation of the Agency is presumably illegal. In such cases, the Agency shall order recovery of the state aid used, increased by statutory interest on arrears payable from the date on which the unlawful aid was first used. However, without prejudice to that stated above, the Agency may in duly justified cases grant an ex post authorisation of state aid if it finds that the state aid in question is compatible with the state aid rules. The ex post authorisation of the Agency may lay down particular conditions and time limits subject to which the state aid in question may be implemented.

7. Monitoring the Implementation and Recovery of State Aid: The Agency shall monitor the implementation of authorised state aid ex officio or upon the proposal of aid beneficiaries, aid providers and any legal or natural person having a legal interest. In such cases where the Agency might establish any irregularities in monitoring the implementation of state aid, there can be adopted a decision ordering the aid provider and/or aid beneficiary to remedy the irregularities in question within no longer than 3 months¹¹. In the case that the aid provider and/or aid beneficiary would not remedy the irregularities in question within the given time limit, the Agency shall order the aid provider and/or aid beneficiary recovery of the awarded state aid in the part in which irregularities have been established, increased by statutory interest on arrears payable from the date on which the established irregularities occurred. Furthermore, if the Agency would establish that a particular authorised aid scheme was no longer compatible with the international commitments undertaken by the Republic of Croatia, it shall issue a recommendation proposing to the aid provider concerned substantive amendment of the aid scheme or abolition of the aid scheme. Following the Agency's request, the aid provider concerned shall initiate the procedure for amending or abolishing the aid scheme in question within 90 days from being noticed, and then is obliged to inform the Agency about the measures taken without further delays.¹²

8. State Aid Data and State Aid Register: The Competition Council shall lay down the form and content of the notification and the method of data collection and keeping the State Aid register.¹³

9. Publication: Opinions and decisions of the Agency and judgments rendered by the court of competent jurisdiction which are based on the opinions and decisions concerned shall be published in the Official Gazette of the Republic of Croatia.¹⁴ Regulations and bylaws necessary for the implementation of the State Aid Act are also published in the Official Gazette, and in many cases also available on the Agency's web site – www.aztn.hr.

9. Art. 11. of the Act.

10. Art. 14. of the Act.

11. Art. 15. of the Act.

12. Art. 16. of the Act.

13. Art. 17. of the Act.

14. Art. 18. of the Act.

6. Call for contributions by the OECD Secretariat for Session 1 on State Aids and Subsidies

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;

10. Yes

b. Tax breaks to selected companies or selected sectors;

11. Yes

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);

12. No

d. Government purchases at above-market prices;

13. No

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

14. No

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

15. Yes

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.

16. Domestic and foreign firms are equally treated

a. Protecting employment (in the case of aid to ailing firms);

17. Yes (through restructuring aids)

b. Fostering innovation and the development of new sectors;

18. Yes

c. Attracting firms to economically distressed regions;

19. Yes

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

20. No

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;

21. Yes, Services of General Interest (SGI's)

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

22. No

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

23. No

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);

24. Not applicable under state aid statutes

b. License to operate a television network;

25. Not applicable under state aid statutes

c. Access to natural resources.

26. Not applicable under state aid statutes

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:

27. Within the framework for combating the global financial crisis, the Croatian Government had created 4 programmes of aid through the Croatian Bank for Reconstruction and Development (HBOR) and 1 programme of aid through the Ministry of Economy and Labour.

a. Specific rescue measures for banks and other financial institutions;

28. No

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

29. Yes (except for 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?

30. There have been used the criteria measured for the firms that have been in financial crisis.

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?*
31. No
- b. *A cap on executive pay?*
32. Yes
- c. *Restructuring (for instance, the closing of unprofitable factories or branches)?*
33. Yes
- d. *Guarantees on total employment?*
34. No
- e. *Clauses prohibiting the use of government funds in order to engage in predatory strategies?*
35. No
- f. *An explicit commitment that the aid will be limited in time and will not be repeated?*
36. Yes
- g. *Commitments regarding the environmental impact of the recipient's activity?*
37. Yes
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?*
38. Yes

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.*
39. Yes
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?*
40. No

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 benefiting 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 another market);

41. So far the Croatian Competition Agency did not have such a case, but if we had it we would act upon the complaint.

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

42. Yes, we opened several investigations upon the complaint (sector of Textile Industry).

c. Cases involving the existence of price regulation;

43. 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?).

44. No

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?

45. Yes absolutely

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.

46. State aid and competition advocacy are well done and prepared carefully; these are inevitable activities of the Croatian Competition Agency with a long tradition of implementation. The relevant institutional mechanisms are through the annual reports on state aids which are submitted to the Croatian Parliament.