



## POLICY ROUNDTABLES

# Competition Policy in Subsidies and State Aid 2001

### Introduction

The OECD Competition Committee debated competition policy in subsidies and state aid in February 2001. This document includes an executive summary and the documents from the meeting: an analytical note by Mr. Darryl Biggar for the OECD, written submissions from the Czech Republic, Denmark, the European Commission, Finland, Italy, Korea, Lithuania, Poland, as well as an aide-memoire of the discussion.

### Overview

Many sectors of OECD economies are strongly influenced by government policies, which provide financial support, assistance or aid to individual firms in an industry. Subsidies, like regulations, may be either beneficial or harmful, either promoting welfare or distorting competition, depending on the circumstances.

The debate focused on subsidies which arise whenever an enterprise or a consumer receives a benefit whose cost is wholly or partly, directly or indirectly, paid by the state. The roundtable discussed notably the different forms of control, and how they distinguish legitimate from illegitimate subsidies; it explored as well the nature of these controls, and in particular to what extent they are part of a broader system of controls on the quality of government intervention in the economy. The institutional mechanisms of these controls, whether at domestic or international levels, were also reviewed.

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Competition and Regulation Issues in Telecommunications (2001)  
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## **FOREWORD**

This document comprises proceedings in the original languages of a Roundtable on Subsidies and State Aid which was held by the Committee on Competition Law and Policy in February 2001.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of several published in a series entitled "Competition Policy Roundtables".

## **PRÉFACE**

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur les Subventions et les Aides Publiques, qui s'est tenue en Février 2001 dans le cadre de la réunion du Comité du droit et de la politique de la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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## EXECUTIVE SUMMARY

*by the Secretariat*

In the light of the written submissions, the background note and the oral discussion, the following points emerge:

- (1) *Governments of all levels (whether local, regional, state, national or supranational) may give financial assistance to firms in various ways. This financial assistance can have the effect of distorting competition in the markets in which the firms compete. This distortion of competition can be either the primary intended effect or a secondary or unintended effect of the pursuit of other objectives. In industries with imperfect competition, each jurisdiction may have an incentive to support its own firms in order to capture a larger share of the oligopoly rents to be earned in the industry. In the absence of rules constraining subsidies, this can lead to an inefficiently high level of subsidies.*

Governments at all levels (local, regional, state, national or supranational) sometimes intervene in competitive markets by giving financial assistance to firms. This financial assistance can take many forms, such as direct transfers to the firm, low-interest loans, the sale of inputs at below market prices, the purchase of outputs at above market prices or government guarantees of the firm's credit. Financial assistance can also take the form of reductions of taxes, including tax deferments, tax credits or tax holidays.

Financial assistance to firms is given for a wide variety of reasons. For example, it may be given to:

- encourage economic activity in a region, or to encourage firms to locate within a specific region;
- obtain services that the market would not otherwise provide (as might be the case in, say, support for broadcasting or for transport or communications services in remote areas);
- slow the rate of decline of an industry (as may be the case for subsidies for coal and steel);
- offset fluctuations due to natural phenomena (as may be the case in agriculture);
- maintain the incomes of producers;
- correct other market failures (such as support for R&D or support for environmental improvements);
- enhance employment (including employment of specific groups such as the young, women or handicapped); or to
- expand market share of the subsidised firms at the expense of firms in other jurisdictions.



Financial assistance to firms may enhance overall welfare. It may also distort competition and reduce overall welfare. It is more likely to reduce overall welfare when the objective of the assistance is to distort competition (as might be the case for export subsidies) or when the assistance is targeted towards firms which are less efficient or produce lower quality goods (as might be the case for assistance for failing firms). Governments appear to be particularly prone to provide various forms of assistance to state-owned companies. In some countries, privatisation has been a tool to reduce the incentive and scope for such assistance. In other countries (such as Australia), rules have been introduced to ensure competitive neutrality between state-owned and private companies.

In the case of an imperfectly competitive industry, when rival firms are located in another jurisdiction, government financial assistance may allow firms in one jurisdiction to expand market share at the expense of foreign rivals, enabling them to capture a larger share of the industry profits. Financial assistance may also assist firms to engage in credible predatory pricing or, in an industry with network effects, to gain sufficient “critical mass” in the early stages of development to enhance the likelihood of gaining long-term market power. Attempts by all governments to subsidise to capture these benefits may lead to a “prisoners’ dilemma” with inefficiently high level of subsidies.

As long as the affected firms are in another jurisdiction, there may be strong domestic support and little domestic opposition to subsidies. As in competition law cases, the beneficiaries tend to be concentrated and the costs of the subsidies are spread widely over the entire population. The domestic constraints on the subsidising government are likely to be weak.

The extent to which OECD countries provide assistance to industry differs from country to country and sector to sector. Subsidies tend to be high in shipbuilding, agriculture, steel and coal. In agriculture, total support in the OECD as a whole in 1998-2000 amounted to 35 percent of the value of farm receipts. In the EU, aid to industry excluding agriculture amounts to around 100 billion euros per year, or around 2.4 percent of EU government expenditure.

- (2) *Financial assistance to firms is just one way in which government policies may (deliberately or inadvertently) distort competition between firms. Many other sorts of government policies have an effect on competition between firms, including regulatory policies and policies with regard to the provision of public goods.*

Governments can intervene in markets in three broad ways – through financial interactions (i.e., through financial transfers to firms, investments, loans, purchases, sales and taxes); through rules and regulations (i.e., regulatory policy); and through the direct provision of goods and services (such as infrastructure and other public goods).

These other forms of government intervention – i.e., regulatory policies and policies regarding the provision of public goods – can, of course, enhance overall welfare. They may also distort competition and distort overall welfare. For example, in principle, a government may, by failing to impose regulatory controls on the firms in its jurisdiction, give domestic firms an advantage over foreign rivals. As before, there can arise a prisoners’ dilemma where each country chooses not to impose desirable regulatory controls or chooses to do so in a way which leaves domestic firms better off.

- (3) *Ideally, the control of subsidies would form part of a broader system of controls on the quality of government intervention in the economy. This quality-control process should be applied at a level of government large enough to encompass the geographical scope of the market affected by the*

*subsidy. In principle, all policy choices of lower levels of government which affect markets in other regions should be scrutinised to determine if they promote overall welfare in the most efficient manner possible.*

Ideally, the control of government financial assistance to industry would form part of a broader system of controls over all forms of government intervention in the economy. As argued in the context of the OECD's Regulatory Reform Project, all forms of government intervention in the economy should be subject to quality controls to ensure that the interventions promote overall welfare. A typical example of these quality controls are regulatory review processes which ensure that each intervention has a well-defined objective, that the different ways of meeting the objective have been considered and that the alternative approaches have been properly assessed for their costs and benefits. In many cases the underlying policy objective will be most efficiently achieved through a mechanism which preserves competition as much as possible – perhaps through competitive bidding for the subsidy.

If we assume that each level of government cares only about the welfare of the citizens living within its jurisdiction, then the promotion of overall welfare can only be assured if this quality-control process takes place at a level of government large enough to encompass the geographical scope of the market affected by the intervention under consideration. If the affected geographical market is strictly local, the quality control could be carried out by a municipal or local government. On the other hand, if the affected market is global (as might be the case in shipbuilding or agriculture) the quality control would (in theory) need to be carried out by an international organisation such as the WTO or the OECD.

A full analysis of the costs and benefits of different policies by a higher level of government requires detailed information about the effects of policies and the preferences of the citizens of lower levels of government. For example, an assessment of whether or not the absence of a system of environmental controls is a subsidy or not requires knowledge of the impact of pollution in the affected region and the preferences of the population towards the environment in that region.

In addition, for this form of control of subsidies to be effective, the higher level of government must of course have the ability to overturn or to overrule the decisions of the lower level of government.

There is some scope for this form of oversight of domestic policies at the national level. Indeed, many OECD countries have already implemented regulatory review processes at the level of central government (although these processes usually do not have power over the decisions of state or local governments). Denmark and some East European countries have implemented a system for control of financial assistance at lower levels of government.

At the international level, however, the limited powers of international authorities (with the possible exception of the EC) rule out the possibility of such a full scale reviews and control of domestic policies by an international organisation.

- (4) *At the international level, control of subsidies must take a simpler, and less discretionary approach. The controls in the EC Treaty are one such example. These controls focus only on (a) financial assistance to firms and (b) only in the case where some subset of firms is treated differently from the way firms are treated in the country as a whole. This approach has the advantage of focusing on distortions to competition, which are most likely to be inefficient. This reduces the need for controversial, discretionary assessments as to the welfare effects of different policies. Drawbacks with the EC approach are that it captures some forms of assistance which are*

*benign for competition (although these can be authorised) and it excludes some forms of assistance which could be harmful for competition (although these may not be important in practice). It also excludes from consideration alternative ways of meeting the underlying public policy objectives.*

Since a full scale review and control of the policies of lower levels of government is not yet feasible at the international level (not even in the EU), a simpler, less discretionary form of control is necessary at the international level.

The EU's system of controls on state aid is one such example. This system does not focus on all the possible forms of distortion to competition; it focuses exclusively on financial assistance to firms – an important, but limited, set of policies. In addition, it does not focus on differences in treatment of firms in the same market – rather it focuses on differences in treatment of firms in the same country. So-called “general measures” which apply to all firms in a country are not considered to be state aid. The need for the exercise of discretion is not entirely eliminated – the Commission must still consider whether financial assistance or tax breaks which are not shared by all the firms in an economy might nevertheless be compatible with the Common Market. But the scope for this discretion is relatively limited.

The EU approach, because it does not focus directly on competition, may label as state aid some forms of benign assistance and may not label as state aid some forms of assistance, which are inefficient. For example, an exemption on petrol taxes for a producer in a country with high petrol taxes who competes in an international market may not have a distorting effect on competition, yet might be labelled a state aid (This state aid could, however, subsequently be authorised). Conversely low interest loans for capital investment which applies to all firms in a small economy may nevertheless distort competition in the market in which the firms operate (although the cost of such policies may make them rare in practice). In addition, the Commission cannot question whether the decision to grant aid is the best way of achieving the underlying public policy objective.

Within the EU, other potential distortions to competition arising from differences in regulatory policies are addressed through sectoral directives which set minimum standards and processes for oversight and review by the Commission.

- (5) *Scope for enhancing the control of subsidies of all kind remains. At the domestic level countries should strengthen policy review procedures to ensure high quality public policy interventions at all levels of governments. Central governments should have the right to restrict or eliminate policies, which distort domestic competition when those policies have an effect on a geographic market, which crosses jurisdictional boundaries. In the longer term, these controls could be extended to the international level.*

## SYNTHÈSE

*par le Secrétariat*

Les communications écrites, le document de référence et les délibérations font apparaître les points suivants :

- (1) *Tous les niveaux d'administration (que ce soit à l'échelon local, régional, national, supranational ou à celui d'un Etat) accordent aux entreprises une aide financière qui peut prendre différentes formes. L'aide financière fausse parfois la concurrence sur les marchés où s'affrontent les entreprises. La distorsion de concurrence est soit le principal effet recherché, soit un effet secondaire ou involontaire de la poursuite d'autres objectifs. Dans les secteurs où la concurrence est imparfaite, chaque juridiction a parfois intérêt à soutenir ses propres entreprises afin de s'approprier une plus grande part des rentes de situation oligopolistique. L'absence de règles limitant les subventions peut alors conduire à un niveau de subventions élevé et inefficace.*

Tous les niveaux d'administration (à l'échelon local, régional, national, supranational ou à celui d'un Etat) interviennent parfois sur des marchés où la concurrence joue librement en accordant une aide financière aux entreprises. Cette aide peut prendre de nombreuses formes, telles que les transferts directs, les prêts à faible taux d'intérêt, la vente de moyens de production à des prix inférieurs à ceux du marché, l'achat de biens à des prix supérieurs aux prix du marché ou les prêts garantis par l'Etat. L'aide financière se présente également sous forme de réduction du taux d'imposition, notamment de reports d'impôt, de crédits d'impôt ou de trêve fiscale.

L'aide financière est consentie pour une foule de raisons, notamment dans les buts suivants :

- encourager l'activité économique d'une région ou inciter les entreprises à s'y implanter ;
- obtenir des services que le marché n'offrirait pas autrement (c'est le but, par exemple, de l'aide consentie aux services de diffusion audiovisuelle, de transport ou de télécommunications dans les régions éloignées) ;
- ralentir le déclin d'une industrie (par exemple, grâce aux subventions accordées aux industries du charbon et de l'acier) ;
- compenser les fluctuations dues à des phénomènes naturels (par exemple, dans le secteur agricole) ;
- maintenir les revenus des producteurs ;
- corriger les défaillances d'autres marchés (par exemple, appui à la R-D ou aux améliorations liées à l'environnement) ;
- accroître l'emploi (notamment de groupes spécifiques : jeunes, femmes ou handicapés) ; ou

- accroître la part de marché des entreprises subventionnées au détriment d'entreprises d'autres juridictions.

L'aide financière accordée aux entreprises améliore parfois le bien-être général. Elle peut également fausser la concurrence et réduire le bien-être général. Elle est plus susceptible de diminuer le bien-être général lorsqu'elle a pour but de fausser la concurrence (ce qui est parfois le cas des subventions à l'exportation) ou lorsqu'elle est versée à des entreprises moins efficaces ou qui produisent des biens de qualité inférieure (ce qui est parfois le cas de l'aide versée aux entreprises en difficulté). Les gouvernements semblent avoir une propension particulière à fournir de l'aide sous des formes diverses aux entreprises d'Etat. Dans certains pays, la privatisation a contribué à réduire l'attrait et l'ampleur de cette aide. Dans d'autres pays (comme l'Australie), des règles ont été instaurées pour garantir la concurrence neutre entre sociétés publiques et sociétés privées.

Dans les industries en concurrence imparfaite, l'aide financière de l'Etat, lorsque les firmes concurrentes sont établies dans des juridictions différentes, permet parfois aux entreprises d'une juridiction d'accroître leur part de marché au détriment de leurs rivales étrangères de même que leur part des profits provenant de l'industrie concernée. L'aide financière permet également à des entreprises de pratiquer des prix d'éviction crédibles ou, dans les industries où s'exercent des effets de réseau, d'acquérir une « masse critique » suffisante dès les premiers stades de développement pour être plus à même de détenir un pouvoir de marché à long terme. Les efforts déployés par toutes les administrations pour verser des subventions afin d'exploiter ces avantages aboutissent parfois au dilemme des prisonniers et à un niveau de subventions élevé et inefficace.

Pour autant que les entreprises affectées soient situées dans une autre juridiction, les subventions sont fortement appuyées et suscitent peu d'opposition interne. Comme on l'observe fréquemment dans les affaires de concurrence, les bénéficiaires tendent à être concentrés et le coût des subventions est largement réparti entre les contribuables. Les contraintes internes qui pèsent sur les administrations qui versent les subventions sont, en général, faibles.

L'ampleur de l'aide accordée à l'industrie par les pays de l'OCDE varie selon le pays et le secteur d'activité. Il existe une tendance à verser des subventions élevées à la construction navale, à l'agriculture, à la sidérurgie et à l'industrie houillère. En ce qui a trait à l'agriculture, le soutien total des pays de l'OCDE, pour la période 1998-2000, a représenté 35 pour cent de la valeur des revenus agricoles. Dans les pays de l'UE, l'aide à l'industrie, à l'exclusion du soutien à l'agriculture, a atteint environ 100 milliards d'euros par année, soit environ 2.4 pour cent des dépenses publiques de l'UE.

- (2) *L'aide financière est un exemple parmi de nombreux autres des politiques gouvernementales qui (volontairement ou non) contribuent à fausser la concurrence entre les entreprises. De nombreuses autres politiques agissent sur la concurrence entre les entreprises, notamment la réglementation et les politiques de mise à disposition des biens publics.*

En gros, on dénombre trois types d'interventions publiques sur les marchés – les interactions financières (transferts financiers aux entreprises, investissements, prêts, achats, ventes et impôts) ; les règles et la réglementation (politiques de réglementation) ; et la fourniture directe de biens et de services (infrastructures et autres biens publics).

Les autres types d'intervention des pouvoirs publics – c'est-à-dire la réglementation et les politiques de mise à disposition des biens publics – sont bien sûr susceptibles d'améliorer le bien-être général. Mais ils peuvent également fausser la concurrence et altérer le bien-être général.

Ainsi, en principe, une administration peut, en ne soumettant pas à des contrôles réglementaires les entreprises de sa juridiction, favoriser ces dernières par rapport aux entreprises rivales étrangères. Comme par le passé, cela peut engendrer le dilemme des prisonniers, chaque pays décidant de ne pas imposer les contrôles réglementaires souhaitables ou de les effectuer en favorisant les entreprises nationales.

- (3) *Dans l'idéal, le contrôle des subventions devrait s'inscrire dans un vaste système de contrôle de la qualité des interventions des pouvoirs publics dans l'économie. Le processus de contrôle de la qualité s'appliquerait à un niveau d'administration suffisamment important pour englober l'étendue géographique du marché affecté par la subvention. En principe, toutes les mesure pour lesquelles optent des échelons inférieurs d'administration et qui affectent les marchés d'autres régions devraient être examinées attentivement afin de déterminer si elles contribuent à promouvoir le bien-être général de la manière la plus efficace possible.*

Dans l'idéal, le contrôle de l'aide financière publique à l'industrie devrait s'inscrire dans un vaste système de contrôle de tous les types d'intervention des pouvoirs publics dans l'économie. Comme cela a été préconisé dans le cadre du Projet de l'OCDE sur la réforme de la réglementation, tous les types d'intervention des pouvoirs publics dans l'économie devraient être soumis à des contrôles de la qualité afin d'assurer qu'ils favorisent le bien-être général. L'exemple classique de contrôle de la qualité est celui des processus d'examen des réglementations, qui assurent que chaque intervention est assortie d'un objectif bien défini, que les différents moyens d'atteindre l'objectif ont été examinés et que les autres approches ont dûment fait l'objet d'analyses des coûts et avantages. La meilleure façon d'atteindre l'objectif sous-jacent de la politique consiste souvent à élaborer un mécanisme de protection optimal de la concurrence – en instituant par exemple un appel d'offres au titre de la subvention.

En supposant que chaque niveau d'administration se soucie presque exclusivement du bien-être des citoyens de sa juridiction, la promotion du bien-être général ne peut être assurée que si ce processus de contrôle de la qualité s'exerce à un niveau d'administration assez important pour englober l'étendue géographique du marché affecté par l'intervention envisagée. Lorsque le marché géographique affecté est strictement local, le contrôle de la qualité pourrait incomber à une administration municipale ou locale. Par ailleurs, si le marché mondial est affecté (dans le cas de la construction navale ou de l'agriculture), le contrôle de la qualité devrait (en principe) être réalisé par une organisation internationale comme l'OMC ou l'OCDE.

L'analyse complète des coûts et avantages de différentes politiques par un niveau supérieur d'administration nécessite des informations détaillées sur les effets des politiques et les préférences des citoyens des niveaux inférieurs d'administration. Par exemple, l'examen visant à déterminer si l'absence d'un système de contrôles environnementaux constitue ou non une subvention doit être conduit à la lumière d'informations sur l'impact de la pollution dans la région affectée et sur les préférences de la population de la région en ce qui a trait à l'environnement.

En outre, pour que ce type de contrôle des subventions ait une portée réelle, le niveau supérieur d'administration doit évidemment être habilité à renverser ou annuler les décisions prises à un niveau inférieur.

Il existe au niveau national un cadre pour ce type de contrôle des politiques internes. De fait, de nombreux pays de l'OCDE ont déjà mis en place des processus d'examen des réglementations au niveau de l'administration centrale (mais ces processus n'ont habituellement pas préséance sur les décisions des administrations locales ou des Etats). Le Danemark et certains pays d'Europe de

l'Est ont institué un système de contrôle de l'aide financière à des niveaux inférieurs d'administration.

Au niveau international, cependant, les pouvoirs restreints des autorités internationales (à l'exception, éventuellement, de la CE) ne permettent pas la réalisation d'un examen et d'un contrôle complets des politiques internes par une organisation internationale.

- (4) *Au niveau international, le contrôle des subventions doit se faire suivant une approche plus simple et dépendant moins du pouvoir d'appréciation. Les contrôles effectués en vertu du Traité instituant la Communauté européenne sont un exemple de cette approche. Ces contrôles portent seulement sur (a) l'aide financière accordée aux entreprises et (b) s'exercent seulement dans les cas où des sous-groupes d'entreprises sont traités différemment des autres entreprises d'un pays. Cette approche présente l'avantage de s'attacher aux cas où la distorsion de concurrence est le plus susceptible d'être inefficace. La nécessité de mener des examens sujets à controverse ou dépendant du pouvoir d'appréciation quant aux effets des différentes politiques sur le bien-être s'en trouve réduite. Les inconvénients de l'approche de la CE sont qu'elle englobe certaines formes d'aide qui n'affectent pas vraiment la concurrence (bien que ces aides puissent être autorisées) et qu'elle en exclut d'autres qui pourraient être dommageables pour la concurrence (même si ces aides sont négligeables dans la pratique). Elle exclut également les autres méthodes utilisées pour atteindre les objectifs sous-jacents des politiques menées par les pouvoirs publics.*

Etant donné qu'un examen et un contrôle complets des politiques adoptées aux niveaux inférieurs d'administration ne sont pas encore possibles au niveau international (ni même à celui de l'UE), une forme de contrôle plus simple et moins assujettie au pouvoir d'appréciation est nécessaire au niveau international.

Le système de contrôle de l'aide de Etat adopté par l'UE est un exemple de ce type de contrôle. Il ne s'applique pas à toutes les formes possibles de distorsion de concurrence ; il porte exclusivement sur l'aide financière consentie aux entreprises – c'est-à-dire sur une panoplie importante, mais restreinte, de politiques. En outre, il ne met pas l'accent sur les différences de traitement des entreprises d'un même marché – mais porte plutôt sur les différences de traitement des entreprises d'un même pays. Les « mesures générales » qui s'appliquent à toutes les entreprises d'un pays ne sont pas considérées comme une aide de l'Etat. La nécessité d'exercer un pouvoir d'appréciation n'est pas entièrement éliminée – la Commission doit toujours évaluer si l'aide financière ou les allègements fiscaux dont ne bénéficient pas toutes les entreprises d'une économie sont néanmoins compatibles avec le Marché commun. Mais la portée de ce pouvoir d'appréciation est relativement limitée.

La démarche adoptée par l'UE, du fait qu'elle n'est pas centrée sur la concurrence, assimile des aides négligeables à une aide de l'Etat, mais ne range pas dans cette catégorie certaines formes d'aide inefficaces. Ainsi, dans un pays où les taxes sur l'essence sont élevées, le fait d'exempter de ces taxes un producteur qui affronte la concurrence internationale n'induit pas nécessairement une distorsion de concurrence, mais peut être considéré comme une aide de l'Etat (susceptible cependant d'être autorisée ultérieurement). En revanche, dans une petite économie, le fait d'accorder des taux d'intérêt peu élevés à toutes les entreprises pour des investissements en capital, au risque de créer des distorsions de concurrence dans le marché sur lequel ces entreprises mènent leurs activités (dans la pratique, ces mesures sont toutefois rares en raison de leur coût), n'est pas nécessairement considéré comme une aide de l'Etat. En outre, la Commission ne peut se demander si la décision d'accorder une aide est la meilleure façon d'atteindre l'objectif sous-jacent de la politique des pouvoirs publics.

Dans les pays de l'UE, d'autres distorsions possibles de concurrence causées par les différences entre les politiques de réglementation sont traitées au moyen de directives sectorielles qui établissent des normes et des processus minimaux de contrôle et d'examen par la Commission.

- (5) *Le contrôle des subventions de toutes sortes peut encore être amélioré. Sur le plan interne, les pays devraient renforcer leurs procédures d'examen des politiques pour assurer la bonne qualité des interventions des pouvoirs publics, à tous les niveaux d'administration. Les administrations centrales devraient être habilitées à supprimer les politiques qui faussent la concurrence au niveau national ou à en restreindre la portée lorsque celles-ci ont un effet sur un marché géographique qui déborde les frontières de la juridiction. A long terme, ces contrôles pourraient être étendus au niveau international.*





## BACKGROUND NOTE

*by the Secretariat*

Many sectors of OECD economies are strongly influenced by government policies, which benefit certain firms at the expense of their rivals, such as policies, which provide financial support, assistance or aid to individual firms in an industry<sup>1</sup>. For example, in the EU the average total annual state aid to industry granted by the EU member states in the period 1996-98 amounted to 93 billion euros per year, around 2.4 percent of government expenditure and an average of 526 euros per person employed.<sup>2</sup> The structural aid funds administered by the EC<sup>3</sup> amount to an additional 60 billion euros per year<sup>4</sup>. In some individual sectors (such as shipbuilding or steel) aid can amount to 25 percent or more of the total sector value-added. In agriculture, support as measured by the OECD currently accounts for around 35 percent of the total value of farm receipts.

Of course, government financial support for industry is not limited to the EU. Virtually all OECD countries provide some form of financial support for domestic industries. These subsidies are often the source of serious trade friction and conflict. Of 82 cases currently pending before the WTO's dispute settlement body, 15 (almost 20 percent) concern subsidies.<sup>5</sup>

Government industry support policies (whether in the form of financial transfers, tax breaks or other forms of advantages to firms) form part of the wider set of policy instruments of governments, standing alongside other public policy tools such as regulation. The notion that regulation should be reviewed to ensure its consistency with principles of high-quality government intervention is now widely accepted amongst OECD governments. The ability of governments at all levels to enact regulation, especially regulation which affects trade, is routinely subject to control by higher levels of government. The review of these mechanisms on a country-by-country basis is one of the core components of the OECD's Regulatory Reform project.

The situation with industry aid policies is somewhat different. Although there is a well-developed framework for the control of certain forms of state assistance to industry at the level of the European Union and a system of controls of subsidies with implications for international trade in the WTO, few countries have similar controls at the national or sub-national level. Is it right that domestic regulation should be subject to close scrutiny while domestic subsidies are not?

At first glance, it might seem that controls on policies which benefit individual firms are not necessary. Subsidies for an industry in one country or region often not only do not hurt but may positively benefit consumers in other countries or regions. This suggests that, if anything left to themselves, countries or regions will have too little incentive to subsidise, and subsidies should be encouraged, rather than controlled.

This paper explores the basis for the control of industry support policies and the form those controls should take. We will see that there is a sound economic basis for controlling such policies when those policies affect other countries or regions. But what form should those controls take?

Industry and firm support policies can be implemented by all levels of government – whether city, region, state, national or supra national. Policies adopted by one level of government in one region can have an effect on firms in other regions. Since we will be interested in the effects of the policies of all levels of government, this paper will use the word jurisdiction to refer to a region and the governmental authority over that region (whether the region is a city, state, country or collection of countries). We will often be interested in the effect on other jurisdictions – whether that other jurisdiction is a neighbouring city, state, country or collection of countries.

The key points of this paper can be summarised in advance:

- There is no widely accepted definition of what constitutes a subsidy. However, the definitions that are used have in common that a subsidy is (a) a government policy which (b) affects competition in a market by favouring certain firms or sectors, and which (c) thereby reduces overall welfare. Subsidy definitions differ in the scope of policies which they consider and the definition of what it means for a firm to be favoured. There are many different types of policies that affect competition that might potentially be captured within the definition of a subsidy, including differences in the level of financial transfers to firms, differential tax treatment, differences in the provision of public goods or even differences in regulations or their enforcement.
- This paper focuses on three possible definitions of what constitutes a subsidy. The first definition covers all policies, which favour certain firms at the expense of others. This definition has the advantage of being broad, but by focusing only on relative differences between firms it does not capture policies which are pursued by all governments, even when those policies are collectively harmful. This approach also requires detailed case-by-case consideration of whether policies which distort competition are nonetheless efficient.
- The second definition focuses narrowly on the use of government funds. This definition captures those policies, which treat certain firms differently from other firms in the same country. This approach is used by the EC in its control of state aid. This definition has the advantage that it captures financial assistance to firms even when all governments give the same assistance. It also focuses on policies, which are very likely to reduce welfare, limiting the judgement required by the controlling authority. On the other hand it does not cover certain policies which can have a harmful impact on competition and may prevent certain policies which have no harm to competition.
- A third possible definition compares the way firms are treated relative to a benchmark set of prices. This approach is used by the OECD's Agriculture Directorate in measuring that part of support to agriculture producers which result from policies that drive a wedge between domestic and world farm commodity prices. This approach captures various harmful forms of assistance to firms, as well as other policies, which might be economically efficient overall. At the same time this approach does not capture certain policies which might be said to distort competition and reduce overall welfare.
- Ideally, controls on subsidies would take a form similar to the controls on government regulatory policies that are designed to ensure high-quality regulatory interventions. Subsidies should be subject to conventional regulatory-quality tests to ensure that the intervention is necessary and that, given the objectives of the policy, the best form of intervention is chosen – amongst other things, this usually implies that the policy should as far as possible preserve competition. These controls should be exercised by the government

of the jurisdiction large enough to include the geographic scope of the market affected by a given subsidy policy.

- Certain policies which distort competition are especially likely to harm efficiency and overall welfare. This is particularly the case for support to failing firms. These policies are usually discriminatory (given only to firms known to be failing) and discretionary. The effect is to weaken the budget constraint of subsidised firms, weakening the incentives for efficiency. Governments are particularly prone to this form of support in the case of “national champions” and state-owned firms. Some governments have explicit rules in place to limit the extent to which they can support state-owned firms in this way.
- In practice, certain levels of government (especially supranational authorities) are limited in their power, discretion and rule-making ability. In this context, it is desirable for a system of subsidy control at this level to be simple, non-discretionary and non-controversial. A system of full review of domestic subsidies at the supranational level is probably not feasible. This leads us to ask what controls on subsidies (short of the full review process) might be feasible. Of the three approaches mentioned the second approach has the advantage of being simpler and less discretionary, but is limited in scope. The other approaches have a broader coverage but require a greater exercise of judgement on the part of the higher authority.
- In the special case in which firms are mobile, subsidy control may take a simple form. In an industry with mobile firms, the link between the subsidy and a greater share of the monopoly rents due to imperfect competition can be broken by preventing discrimination between firms on the basis of their ownership (i.e., treating firms owned by residents of the jurisdiction differently from foreign-owned firms). When firms are mobile, allowing policy competition between jurisdictions subject to non-discrimination is beneficial because it causes firms to internalise in their location decisions some of the external or “spillover” effects on the surrounding community. In this context policy competition between jurisdictions to attract firms can lead to efficient outcomes.
- To date relatively few OECD countries have the ability to control subsidies domestically. Although some domestic subsidies are controlled by international authorities, nevertheless some domestic subsidies are not controlled at all. There is further scope for the development of national institutions for controlling subsidies (as has been developed in Denmark and countries acceding to the EU such as Czech Republic and Poland). In addition, the international controls on subsidies could be strengthened by extending their breadth of coverage and enhancing the power of international authorities to force subsidising countries to cease and desist and to require that subsidies already given be repaid.

## **1. A Brief Survey of Subsidy Practices, Measurement of Subsidies and Controls on Subsidies**

### ***1.1 Control of Subsidies by International Organisations***

The most important examples of controls on subsidies arise in international treaties including, primarily, the EC Treaty and the WTO Agreements.

Article 87 of the EC Treaty rules that “State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between member states, be incompatible with the common market”. Article 87 then goes on to qualify this blanket ban on competition-distorting aid by allowing certain forms of aid (in

particular, aid granted to individual consumers when the aid is granted without discrimination to the origin of the products concerned and aid to make good the damage caused by natural disasters). Article 87 concludes with a list of types of aid that may be allowed (such as aid to promote culture and heritage conservation, or aid to promote economic development of an area).

The Commission draws a distinction between state aids and “general measures”. General measures are deemed to not constitute aid and therefore are not controlled by Article 87(1) of the treaty. General measures do not fall under article 87(1) when:

- there is no specificity in terms of sector, region or category (for instance SMEs);
- the eligibility for the aid is based on objective criteria, without any discretionary power of the authorities;
- the measure is in principle not limited in time or by a predetermined budget.”<sup>6</sup>

Articles 88 and 89 empower the Commission to determine whether a particular aid is compatible with the Treaty and to make regulations setting out the procedures for making this determination and categories of aid which are exempted from the procedure.

Within the framework of the WTO, subsidies are controlled by the Agreement on Subsidies and Countervailing Measures. This agreement defines three categories of subsidies: prohibited, actionable and non-actionable subsidies. Prohibited subsidies are those that require the recipient to meet certain export targets or to use domestic goods instead of imported goods. These can be challenged under the WTO dispute settlement procedure and, if that procedure confirms that the subsidy is prohibited, the subsidy must be withdrawn immediately. If domestic producers are hurt by imports of subsidised products countervailing duty can be imposed.

A subsidy is non-actionable if it is not “specific”. In determining whether or not a subsidy is specific the following factors are to be taken into account:

- whether the rules governing the subsidy or its administration limit access to certain enterprises;
- whether the subsidy is administered under explicit, objective criteria for eligibility;
- and the exercise of discretion by the administering authority.

Non-actionable subsidies cannot be challenged under the WTO dispute resolution procedure and countervailing duties cannot be imposed, but the subsidies must meet strict conditions. In the case of actionable subsidies the complaining country has to show that the subsidy has an adverse effect on its interests, otherwise the subsidy is permitted. The interests of a country may be hurt if its exporters must compete against subsidised firms in other countries or if its domestic industry must compete against subsidised imports. If the WTO dispute settlement body rules that the subsidy does have an adverse effect, the subsidy must be withdrawn or the adverse effect must be removed.

Agricultural subsidies that are deemed to be production and trade distorting (the Aggregate Measure of Support) are subject to reduction under the disciplines of the 1994 Uruguay Round Agreement on Agriculture (WTO). The OECD’s Agriculture Directorate contributed to the Uruguay Round process through its long experience in measuring the cost of the monetary value of support arising from agricultural policies, using the Producer Support Equivalent (“PSE”) and Consumer Support Equivalent

(“CSE”) indicators. These indicators essentially measure the gaps between prices faced by domestic agricultural producers relative to benchmark “world” prices, in addition to support provided to agriculture through budgetary transfers and input subsidies. The categories of agricultural support are classified according to the ways they are provided, and include those provided nationally and at sub-national levels. Some transfers are paid on the basis of historical rather than current production, or on condition that farmers withdraw land and animals from production, or if they adopt farming practices aimed at improving environmental performance. The classifications for categories of support are:

- market price support – transfers to producers from consumers through policies that keep domestic market prices higher than world prices, generally by means of import barriers and export subsidies;
- payments for production – transfers to producers from taxpayers that raise domestic farm prices (but not consumer prices) and payments based on area and animal numbers;
- input subsidies – transfers to producers from taxpayers through lower input prices for fertilisers, water, and electricity; tax exemptions on fuel; capital grants and interest concessions on loans;
- income payments – transfers to producers from taxpayers based on levels or variability of incomes.<sup>7</sup>

There is also a significant amount of work on subsidies in other OECD committees. The OECD’s Fisheries Committee has examined government assistance to the fishing industry.<sup>8</sup> Subsidies in the steel and shipbuilding sectors are the subject of discussions within the OECD’s Steel and Shipbuilding committees. The OECD’s Industry Committee has conducted a study on public support to industry.<sup>9</sup> Finally, the OECD’s Committee on International Investment and Multinational Enterprises is looking at harmful policy competition to attract foreign investment, which addresses subsidies designed to influence location decisions.<sup>10</sup>

## **1.2 Control of subsidies by domestic organisations**

Relatively few OECD countries have chosen to implement rules to control the level of subsidies and policy competition at the national level. The most important exception to this rule are those countries seeking to accede to the European Union. These countries have, as part of the process of harmonising their laws to the laws of the EU, implemented rules controlling state aid, which parallel the controls in place in the EU.<sup>11</sup>

Most EU countries rely primarily on the rules set out in the EC Treaty to control domestic subsidies. An important exception is Denmark. From 1 October 2000 the Danish competition law was amended to grant powers for control of subsidies to the Danish Competition Council. The amended text of the competition law reads:

- Section 11 a. The Competition Council may issue orders for the termination or repayment of aid granted from the public funds, which has been granted to the benefit of specific forms of business activities.
- (2) An order pursuant to subsection (1) may be issued, when the aid:
  - i) Directly or indirectly has as its object or effect the distortion of competition; and

- ii) Is not legitimate according to public regulation.
- (3) The minister in question or the Board of Supervision makes a decision regarding the legitimacy of aid from the public funds, unless otherwise provided for by law.
- (6) Upon notification, the Competition Council may declare that on the basis of the facts in its possession, the public aid is not covered by subsection (2) i) and accordingly, there are no grounds for issuing an order pursuant to subsection (1).”

### **1.3 Subsidy practices**

Comprehensive statistics on subsidy policies are difficult to obtain. In part due to the substantial difficulties in identifying and quantifying what constitutes a subsidy (as discussed further in the next section). Nevertheless, some statistics are available, particularly from the EC.

The broad features of subsidy policies can be summarised:

First, most programmes which are classified as “subsidies” or “aid” are targeted not at specific industries but at cross-industry objectives. There are two broad categories of cross-industry programmes, which we can distinguish: regional development programmes, on one hand and other horizontal programmes on the other.

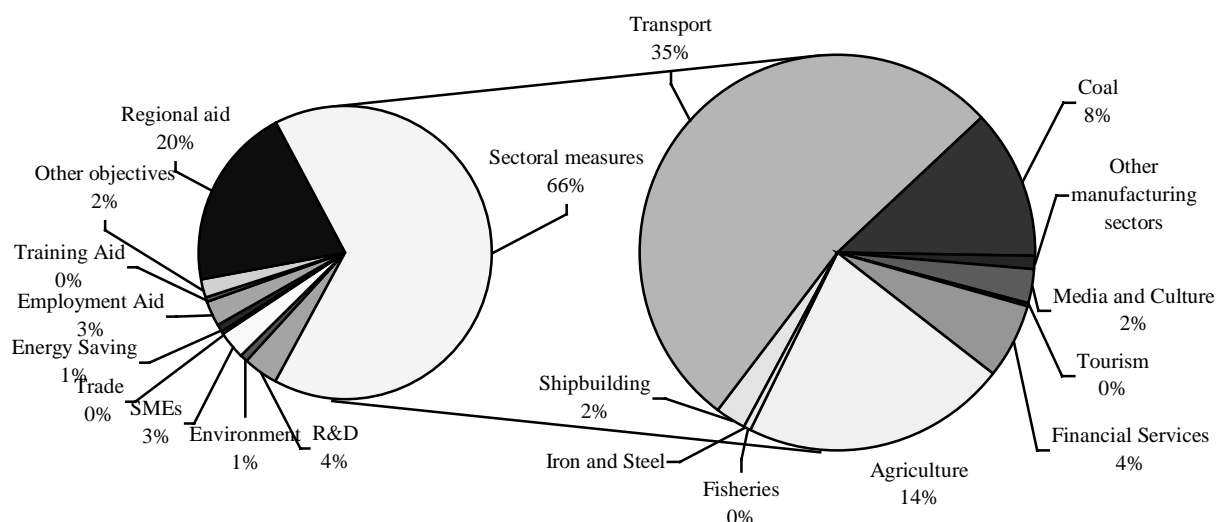
Many OECD countries pursue some kind of programmes to address disparities among regions. For example, as of 1996, the US had designated nine “Federal Empowerment Zones” and over three thousand (state) Enterprise Zones, which are specially designated areas entitled to tax breaks, grants, wage credits and a wide range of general interest programs, intended to attract new investment and revive socially and economically blighted communities.<sup>12</sup>

Among the various forms of other horizontal programmes, the EC distinguishes the following:<sup>13</sup>

- support for R&D and technological innovation;
- support for small and medium-size enterprises;
- support for labour and training;
- support for exports and foreign trade;
- support for energy-efficiency programmes;
- support for environmental protection programmes.

Some idea of the relative importance of the “horizontal” versus “sector-specific” measures in the case of the EU can be obtained from the following chart:

**Figure 1: Total State Aid, EU 15, 1998**



Source: EC (2000), Table A6/16

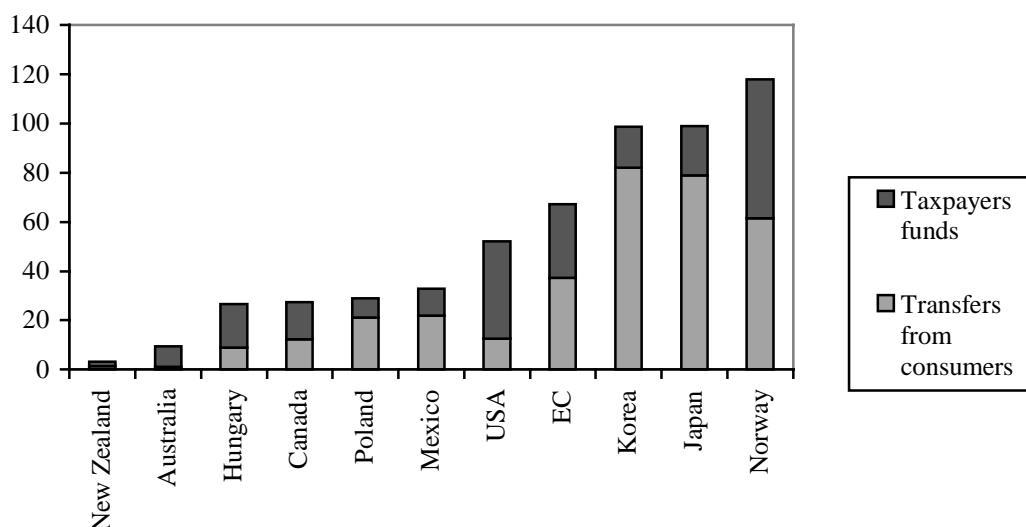
Second, of those programmes, which are focused on specific sectors, most of the funds are focused on just a few sectors, notably agriculture, railways, shipbuilding, textiles and steel. Putting aside agriculture and railways “more than 50 percent of sectoral programmes designed to benefit a single industry go to the shipbuilding, textile and steel industries, which together represent approximately nine percent of manufacturing GDP in OECD countries”<sup>14</sup>.

In the case of shipbuilding, in the EC, aid accounts for 25 percent of the sector’s value added (compared to an average of 3.5 percent for the manufacturing sector as a whole). The seventh shipbuilding directive<sup>15</sup> sets an aid ceiling of nine percent of the contract value for ships with a contract value over ten million ecus (and 4.5 percent for ships with a contract value below ten million ecus). The shipbuilding sector can also receive aid for restructuring. In Spain and Denmark, shipbuilding accounted for 19 percent and ten percent respectively of total aid to manufacturing. In December 2000 EU countries agreed to end subsidies for shipbuilding, despite intense competition from subsidised shipyards in Korea. Korea is reported to subsidise up to 40 percent of the costs of its shipyards, and has achieved a market share of 70 percent.<sup>16</sup>

Some idea of the magnitude of the subsidies in the agricultural sector can be obtained by examining OECD figures on support to agricultural producers. The chart below breaks the total support to agricultural producers down into two components – the direct budgetary transfers from government and the costs to consumers of border measures that maintain domestic prices higher than world prices. The combined amount is expressed as a percentage of the total value of farm receipts. In 1999, this percentage varies from a low of 3.3 percent in the case of New Zealand to more than 118 percent in the case of the Norway. In 1999 the US paid more than \$74 billion to its agricultural producers – larger than the entire GDP of smaller OECD countries.



**Figure 2: Subsidies for Agriculture:  
Taxpayers Funds and Transfers from Consumers as a % of Total Farm Receipts (1999)<sup>17</sup>**



Source: OECD Producer Support Estimate and Consumer Support Estimate Database

Third, a sizeable component of subsidies and aid are granted by sub-national governments. The OECD study on support to industry noted that the lack of information on sub-national programmes remained one of the principal problems of the study. In many instances data was unavailable on sub-national subsidy programmes. Canada, for example, did not report on provincial aid programmes. The United States was unable to forward information on aid programmes of the five largest states. Nevertheless, the figures that are available show that sub-national programmes are important. Programmes administered entirely by central government accounted for only 46 percent of all the aid programmes (and 72 percent of the funds spent).

Often, aid granted at the sub-national level is intended to influence the location decisions of firms. For example, in 1993 the City of New York made grants totalling more than \$360 million to keep enterprises from moving elsewhere. In the same year, the state of Kentucky offered a package of tax-credits, low-interest loans and new roads, amounting to \$140 million to induce a new steel plant, creating 400 jobs, to locate in Kentucky (rather than Ohio or Pennsylvania). In 1994 the State of Indiana offered a package of \$37 million to Steel Dynamics, Inc., to construct a 600-employee steel mill in Indiana (rather than Illinois, Kentucky, Ohio or Michigan).<sup>18</sup>

Lastly, governments continue to bail out or rescue failing enterprises. According to EC figures, about six billion ecus of aid were awarded on an ad-hoc basis in 1994-1996. The share of such aid in the total increased from 6.7 percent in 1993-95 to 8.4 percent in 1995-1997. "France (air transport, financial services), Italy (airlines, financial services and various other industries) and Spain (steel, shipbuilding) account for more than 80 percent of this rescue and restructuring aid"<sup>19</sup>. In 1994 the Commission approved French plans for a 20 billion-franc aid package for Air France. According to critics this amount almost equalled the total of world airlines' entire losses in 1993.<sup>20</sup>

The US has also, on occasion, rescued firms in financial distress. Some of the best known examples date from the 1970s and 1980s and include bailouts of Lockheed, Conrail and Chrysler. In the 1970s, following severe financial problems at Lockheed the US Congress allowed for up to \$250 million in loan guarantees to Lockheed. The reasons for this intervention include the large number of jobs at risk, the role of Lockheed in the defence contracting industry and the effect on competition in the aerospace

industry. Similar consideration lead to the granting of up to \$1.5 billion in loan guarantees for Chrysler in the early 1980s. Both of these bailouts were successful at restoring a profitable enterprise.

Some studies have found that certain subsidy programmes have significant social costs. “In Brazil, for example, dead-weight losses of wheat price subsidies have been estimated at 15 percent of the total cost of the subsidy program.<sup>21</sup> Larsen and Shah (1992) estimate that removing fossil fuel subsidies everywhere would result in an increase in world welfare of more than \$13 billion. ... in the European Union it has been estimated that real incomes would rise somewhere between 0.3-3.5 percent of GDP with the removal of the Common Agricultural Policy.<sup>22,23</sup>”

## **2. What, exactly, is a subsidy?**

There is no commonly accepted definition of a subsidy. Later in this section we will discuss three different approaches to defining a subsidy. In broad terms, these definitions have the following elements in common. A subsidy is:

- a government policy, which (in the light of the policies of other governments);
- favours certain firms relative to others (i.e. affects or distorts competition); and
- reduces overall welfare.

We will start by examining the possible range of government policies, which affect competition. As we will see, a wide range of government policies can have an impact on competition. Indeed, in certain circumstances the absence of a government policy can have an impact on competition. The question which we will consider later is whether it is necessary to include the full range of such policies within the scope of the definition of a subsidy.

### **2.1 *Government policies and the effect on competition between firms***

#### **2.1.1 *Financial transfers and competition***

The simplest form of policy which may affect competition is a financial transfer to a firm. However, some financial transfers between governments and firms are simply for the purposes of purchasing some desired output, service or objective. How can we distinguish competition-distorting from non-competition-distorting financial transfers to firms?

For the purposes of this definition we will adopt the following definition: A financial transfer to a firm affects competition when the cost incurred by the firm is not immediately and directly commensurate with the benefit the firm receives in exchange.<sup>24</sup>

Detecting a competition distortion is easiest in those cases where the transaction between the government and the firm involves marketed goods. In this case a subsidy arises when the government purchases an output from the firm at above-market prices or sells an input at below-market prices. Here we may include within the “output” of a firm the sale of its financial securities (i.e., shares and bonds). In this case a subsidy arises when the price of the securities differs from the price or the interest rate on similar investments elsewhere.

According to the EC's Market Economy Investor Principle (MEIP), a financial investment by the Government is subsidised if a hypothetical private investor would not have invested at the same terms and conditions under the same circumstances.<sup>25</sup> This principle can be applied to any transaction (not just a financial transaction) – a particular transaction involves a subsidy if a hypothetical self-interested private individual or group would not have transacted with the firm under the same circumstances.

The benefit received by the firm need not be in the form of a direct payment from the government. A reduction of taxes by the same amount, for example, will have exactly the same effect as a cash payment.<sup>26</sup> Indeed, no meaningful distinction can be made between subsidies and tax reductions. Almost any policy that can be implemented through a subsidy can be implemented through an equivalent tax reduction, with an identical effect. Furthermore, the benefit offered to the firm by the state can take any form which affects the firm's profitability, such as lowering the cost of inputs, lowering the cost of production or raising the quality, price or demand for output.

By way of illustration, the following transactions would be caught within this definition:

- straight transfer payments to firms and payments to firms conditional on increasing or decreasing certain outputs or inputs, such as payments conditional on increasing production, increasing employment or reducing pollution;
- loans guaranteed by the state or loans at below-market rates of interest from the state, or loans from the state with the understanding that, in the event of default, the state would not (or might not) exercise its rights to force insolvency;
- capital injections to firms at terms which a private investor would not accept;
- loans from private banks when those banks are required by the state to carry out certain forms of lending, whether or not those banks would be supported by the state in the event of failure;
- government purchases of goods and services at above-market prices, or requirements on other firms or individuals to purchase goods and services at above-market prices;
- government provision of goods and services at below-market prices (including the sale of assets and enterprises below their market value and all related forms of in-kind assistance), or requirements on other firms or individuals to provide goods and services at below-market prices;
- in the case of state-owned firms, failure to insist on a financial performance consistent with the level of capital invested;
- special or differential tax treatment (including tax exemptions, tax credits, tax allowances, special rate relief, tax deferrals, tax holidays or the accumulation of tax arrears).

### *2.1.2 Public goods and competition*

Government policies need not involve financial transfers to benefit certain firms at the expense of others. Governments can benefit certain firms by providing public goods such as roads, ports, airports, public amenities, public health, education and so on. Differences in the levels of these services can be just as important for competition as differences in taxes or financial transfers.

This raises the issue whether to include differences in public goods as forms of subsidies. For example, does the provision of a lighthouse by the government (which reduces the costs of shipping) constitute a subsidy to the maritime industry? Does a reduction in crime (reducing the costs of security measures) constitute a subsidy to the retail industry? Does an enhancement in local amenities, (reducing the costs of attracting staff) constitute a subsidy to local industry, generally?

These questions are not just theoretical. The following questions have arisen in actual cases in relation to foreign challenges to domestic subsidies:

While free general education may not be regarded as being a subsidy, does the subsidisation of the education of horticulturists give an unfair advantage to flower exporters?

Does the building of a wharf by a government provide a subsidy for fish producers and exporters?

Is the amount charged by the government to exploiters of a resource on public land relevant in determining whether exports of this resource are subsidised, even when the charge is the same whether or not the resource is exported?"<sup>27</sup>

### 2.1.3 *Differences in regulatory and tax policies*

Firms can be favoured, not only by financial transfers and differences in the level of public goods, but also by differences in differences in regulatory and tax regimes faced by the firm.

For example in an industry where most firms must pay for the pollution that they produce, a decision by the government not to impose pollution controls on firms in its jurisdiction may constitute a distortion to competition. More generally, in an industry in which some governments subject firms to regulatory standard X, the absence of some governments to impose regulatory standard X may constitute a form of subsidy, favouring the firms in that jurisdiction.

As with public goods, an obvious difficulty is that the absence of certain regulatory controls does not necessarily imply that firms in that jurisdiction are subsidised. Jurisdictions differ in their natural endowments and the preferences of their population. While pollution control may be appropriate in a densely populated area, it is (arguably) less important in a sparsely populated area. To the extent that differences in regulatory regimes reflect objective differences in jurisdictions, differences in regulatory regimes may do little more than reflect different prices for pollution which, in turn, reflect differences in the costs of harms in different jurisdictions.

Nevertheless, the possibility remains that a government could choose a weaker-than-appropriate regulatory regime, effectively setting the price for the harm lower than the cost of the harm inflicted. Firms in that jurisdiction would then benefit from this implicit "subsidy", in the same way that under-pricing of any input can constitute a form of subsidy.

### 2.1.4 *Initial entitlements*

Furthermore, even where two governments implement a regulatory regime addressing the same objective, the choice of "initial entitlement" of that regime can have the effect of benefiting a firm or an industry and thereby indirectly "subsidising" that firm or industry.

To see this, consider the following. In many instances the same policy objective can often be achieved in several different ways. For example, the government can restrict the incidence of activity X. by

either subsidising “refraining from X” or granting a tax reduction for “refraining from X”. Alternatively, the government could tax “carrying out X” or reduce an existing subsidy payment for “carrying out X”.

Each of these four policies achieves the desired objective. But the welfare of the firm under the first two of these policies is different from the welfare of the firm under the second pair. Under the first pair of policies the firm can either carry out X or receive the subsidy/tax reduction. Either way, the firm is better off. Under the second pair of policies the firm can either refrain from X or pay taxes/lose a subsidy. Either way, the firm is at best no worse off. Clearly the firm is better off under the first combination of policies; the government is better off under the second.

These two pairs of policies differ in their starting point or initial entitlement. In the first pair of policies the firm is entitled to X or to be compensated. In the second pair of policies, the firm is not entitled to X and must pay the tax if it wishes to carry out X. To make this more concrete, suppose that in one country firms must pay additional taxes if they wish to pollute, while in a second country firms receive payments from the state for refraining from polluting. It is clear that firms in the second country are better off and are likely to expand at the expense of firms in the first country.

In other words, even though two policies both achieve the same objective, differences in the initial entitlement that are embodied in the policies can affect competition across jurisdictions.

## 2.2 *Different approaches to defining a subsidy*

Having looked at the range of policies that can affect competition in a market, we turn now to look at different possible definitions of what constitutes a “subsidy”, “aid”, “assistance” or “support”. These definitions differ in the range of competition-distorting policies which they take into account and in their concept of what it means for a firm to be “favoured”. The concept of “favoured” is inherently relative – favoured relative to what? Different choices in the definition of the baseline lead to different definitions of a subsidy.

Three possible definitions and their pros and cons are considered here. A fourth possibility is considered at the end of this section.

### 2.2.1 *Approach A: purely relative approach*

Under the first approach, which we will consider, a firm is said to be “favoured” by reference to the situation faced by the other firms in an industry. For example, a firm would be said to be benefited or favoured if it received a higher level of financial transfers, lower taxes, greater benefit from public goods or fewer environmental or regulatory controls than its competitors in its market.

This approach has the primary advantage that it encompasses a range of different forms of policy competition, which distort competition and might therefore reduce overall welfare. This approach highlights for consideration competition-distorting policies, which might otherwise go unnoticed.<sup>28</sup>

The main drawback with this approach is that by focusing only on differences in policies across firms, it fails to capture policies, which are uniformly pursued by all governments even when those policies are undesirable from a global welfare perspective. If all other firms in an industry are being favoured by their respective governments, then a decision by the last government to favour its firms would not be counted as a subsidy under this approach as the policy merely “levels the playing field” without granting an advantage to one firm. For example, if all other firms in an industry are receiving financial handouts or

tax breaks then a policy decision by the remaining government to grant financial handouts or tax breaks would not count as a subsidy under this definition. This definition therefore controls tilting of the playing field but does nothing to remove policies, which are pursued by all governments no matter how collectively inefficient those policies are.

Another drawback with this approach is that by “spreading the net widely” it catches not only policies which reduce overall welfare, but a large ranges of policies which enhance welfare. Therefore, in order to determine whether a particular competition-distorting policy fulfils all of the criteria for a subsidy, it is necessary to in addition determine whether the policy reduces overall welfare.

For example, two jurisdictions may differ in their environmental regulations. Under the definition above, this is a distortion to competition (since the firms in the jurisdiction with less strict controls are in a sense favoured relative to the firms in the other jurisdiction). Yet, provided the differences in the regulations fully reflect differences in the impact of environmental damage in the two jurisdictions, such differences could enhance rather than reduce overall welfare.

### 2.2.2 *Approach B: focus on financial transfers relative to other firms in the country*

The previous approach had the drawback that it did not capture policies that were uniformly pursued by all governments, even when those policies were collectively harmful. In order to capture such policies, it is necessary to adopt some form of exogenous standard for defining when a firm is favoured (rather than a *relative* standard). One way to do that is to focus on financial transfers from the state and to use as a baseline the level of financial transfers to or from other firms in the same country (as opposed to in the same market). A firm would then be said to be benefited or favoured if it received a tax break or a financial handout different from other firms in the same country. This is essentially the approach adopted by the European Commission in its control of state aid.

This approach has several advantages. First, this approach captures targeted financial handouts (or targeted tax breaks) to individual firms, even if these policies are pursued by all governments simultaneously. In this respect, therefore, its coverage is broader than the first approach.

This approach also has the advantage that it makes it harder for the government to discriminate between firms competing in domestic markets and firms competing in international markets in tax and financial transfer policies. Since any special treatment for exporting firms must be shared with non-exporting firms, this approach raises the costs of special treatment for exporting firms. As a result this approach makes it less likely that a government will forego a policy which is otherwise welfare enhancing (such as stricter environmental controls) for fear of the harm it will do to exporting firms.

Finally, this approach also has the significant advantage that it identifies policies which are highly likely to reduce overall welfare (at least in the majority of industries). Therefore there is less need for subsequent consideration of whether or not a given policy raises or lowers welfare. Since such a determination (especially when made by a higher authority) is likely to be controversial and somewhat arbitrary, this is an important practical advantage of this approach.

There are several drawbacks with this approach. Because the definition is not based on competition principles, some distortions of competition will not be covered by this definition while other; innocuous differences across firms will be caught. For example, since the boundaries of the country need not correspond to the boundaries of the relevant markets, government policies which apply to all firms in a country (or all firms satisfying certain conditions in that country) would not be caught by this definition, but might still have an important impact on competition if the market is broader than the national

boundaries. (The constraint that the policy applies to all firms does make significant assistance to certain industries or firms more expensive, but it may not rule them out entirely).

On the other hand, policies which do not distort competition might be caught. Exporters in a country with high taxes on inputs may be competing in a world market with other firms who don't face the same taxes. A "level playing field" for competition at the international level may require granting the exporting firms certain discounts on taxes on inputs. This does not necessarily distort competition in a market, yet may be viewed as illegal under this definition of a subsidy.

Another drawback with this approach is that it is narrow and does not capture the various other forms of policy competition, which do not involve government financial transfers, such as differences in regulatory regimes or the provision of public goods.

### 2.2.3 *Approach C: focus on differences in prices relative to benchmark prices*

A third possible approach is to define as a baseline some measure of prices for the inputs and outputs of the firms in an industry. Earlier we mentioned that when the markets affected by a government policy have well-defined market prices, detection of a competition distortion is more straightforward – a competition distortion arises when the firm sells output firm at above-market prices or buys inputs at below-market prices. In other words, in industries with widely-traded goods, it might be possible to determine a set of benchmark "world" prices for those goods and then compare the prices paid or received by individual firms to detect whether or not that firm is favoured.

This is essentially the approach adopted by the OECD Agriculture Directorate in the measurement of Producer Support Equivalents and Consumer Support Equivalents in the agricultural sector.

This approach has the advantage that it captures a broader range of policies than the second approach above. In particular, this approach would capture not just financial transfers to firms, but also the "assistance" a firm receives as a result of tariff barriers or other border measures. In addition, it could reflect certain differences in regulatory regimes, when those regulatory regimes lead to observable differences in prices faced by the relevant firms.

This approach also has several drawbacks. To begin with, it may capture "too much". In particular, it may suggest the presence of a competition distortion even when one does not exist and even, in fact, when there is no difference in government policy! The reason is that not all inputs and outputs have the same geographic market. So there can be legitimate differences in input and output prices across regions. Differences in these prices do not necessarily reflect distortions to competition. For example, the prices for labour can vary across countries. Does this therefore reflect a distortion to competition?

On the other hand, this approach might also not capture certain policy differences, which do, in fact, distort competition, when that distortion is not directly reflected in observable prices. For example, competition in the provision of public goods or the strictness of environmental controls.

### 2.2.4 *Assessing the pros and cons of these approaches*

The following tables compare these approaches. The first table compares the coverage of the definitions by looking at whether or not various forms of policy competition would or would not be

captured by the definition. The second table compares the advantages and disadvantages of the three approaches.

Under these definitions above, for a policy to be classed as a subsidy it must reduce overall welfare. But the inverse is not true. For all three approaches, it is not the case that policies which are not classed as “subsidies” are necessarily “good” policies (i.e., policies which enhance overall welfare). For example, none of the three definitions would define as a subsidy the *absence* of a tax on environmental harm when no governments impose such a tax. Nevertheless, such a tax might improve overall welfare.

This suggests the possibility of a fourth approach under which a policy might be defined as a subsidy by comparison with a theoretical “ideal” set of policies. In effect, this is the approach of processes for ensuring the quality of regulation – these processes do not compare the proposed regulation against the regulation in other countries but against a theoretical ideal for high-quality regulation in the sector concerned. The next part of this paper argues that where this is feasible, this is the preferred arrangement for control of subsidies.

**Table 1: Comparison of the Coverage of the Three Subsidy Definitions**

<b>Policy under consideration:</b>	<b>Approach A: (Comparison of policy environment applying to other firms in the same market)</b>	<b>Approach B: (Comparison of financial transfer policies applying to other firms in the same country)</b>	<b>Approach C: (Comparison with a set of benchmark input and output prices faced by other firms in the same market)</b>
Financial transfer to a firm conditional on output	Captured by the definition*	Captured by the definition **	Captured by the definition
Tax break conditional on output	Captured*	Captured **	Captured
Exemption from input taxes	Captured*	Captured **	Captured
Financial transfer conditional on locating in a certain region	Captured*	Captured **	Captured
Regulation which lowers the input prices of the firm	Captured*	Not captured	Captured (provided the input prices can be measured)
Exemption from strict regulatory controls	Captured*	Not captured	***
Differential provision of public goods	Captured*	Not captured	***

\* Unless the same policy is pursued by all governments

\*\* Unless the policy applies to all firms in the same country

\*\*\* Depends on whether the exemption from regulatory controls or differential provision of public goods is reflected in input or output prices.



**Table 2: Summary of the Pros and Cons of the Three Approaches**

	<b>Approach A: (Comparison with policies environment of other firms in the same market)</b>	<b>Approach B: (Comparison of financial transfers with other firms in the same country)</b>	<b>Approach C: (Comparison with a set of benchmark input and output prices faced by other firms in the same market)</b>
Advantages	<ul style="list-style-type: none"> <li>▪ Broad scope covers many forms of policy competition</li> </ul>	<ul style="list-style-type: none"> <li>▪ Captures financial transfers to firms even when all governments pursue the same policy</li> <li>▪ The resulting policies are likely to reduce welfare, reducing the need for controversial determinations of what policies enhance or reduce welfare.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Scope of coverage is broader than approach B (but not as broad as A)</li> <li>▪ Captures forms of assistance to firms even when all governments pursue the same policy.</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>▪ Does not cover policies which are collectively undesirable when those policies are pursued by all governments</li> <li>▪ Captures a large range of policies which do not necessarily reduce welfare, therefore more emphasis is necessary on determining whether a policy reduces welfare</li> </ul>	<ul style="list-style-type: none"> <li>▪ Focus is narrower, excluding a range of alternative forms of policy competition, which may be undesirable.</li> <li>▪ Captures policies which do not distort competition (such as an exemption on input taxes for exporters)</li> <li>▪ Fails to capture certain policies that may distort competition (such as policies are applied to all firms in the region).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Captures policies which do not distort competition (such as differences in input costs when those differences reflect local scarcity and are not the result of government policy)</li> <li>▪ Fails to capture certain other forms of policy competition, which may be undesirable.</li> </ul>

### 3. Theoretically ideal control of subsidies

In practice, the control of subsidies is complicated by the lack of effective government rule-making powers and controls at some levels (particularly at the international level) and by jurisdictional rivalry between the different levels of government. In this section we will put these issues to one side and ask the question how might subsidies be controlled in an ideal situation.

The first question to address is the appropriate level of government at which to control a given policy (or set of policies). It is clear that the appropriate level of government is a jurisdiction with a geographic scope large enough to cover all of the effects of the subsidy. That is, a jurisdiction large enough for all of the benefits and/or costs of the subsidy, the costs of the tax used to pay for the subsidy and the geographic boundaries of any economic markets affected by the subsidy, all lie within the same jurisdiction. In this case, since there is no external effect on any other jurisdiction, there is no role for external control by a higher authority.

Given the appropriate choice of jurisdiction, control of subsidies is primarily a matter of ensuring that the subsidy meets the objectives of the jurisdiction in as efficient a manner as possible. Is it possible to

set down a list of such principles, which would assist this process of distinguishing economically efficient subsidies from inefficient subsidies?

The principles or guidelines to be followed in this context are just the same principles that ensure high-quality government intervention, that are well known from other contexts (see for example the OECD Reference Checklist for Regulatory Decision Making<sup>29</sup>). Such principles are often stated in the form of a list of questions against which proposals can be assessed. The list of questions typically includes questions such as: “Is government intervention necessary? Is the underlying market failure clearly defined? Has the list of potential interventions been identified? Have the benefits and costs of alternative interventions been correctly calculated?” and so on.

For our purposes the principle that is most relevant is that, whatever the objective of the subsidy, the subsidy should be structured in such a way as to, as far as possible, preserve competitive forces.

The preservation of market forces means allowing firms to thrive and prosper or shrink and disappear according to the quality of their services, their innovation, cost efficiency and the extent to which they meet the demands of customers, relative to their rivals. In general, therefore, a government intervention through subsidies should not act to discourage output, quality, innovation, cost efficiency or return on investment. Since a subsidy whose level increases with a certain action tends to encourage that action, the level of subsidies should not be increasing as the firm reduces output, reduces quality, increases costs, or lowers return on investment.

As is well known, there are two broad approaches to competition - competition in the market and competition for-the-market.

If the objectives of the subsidy could be met by many competing firms, as in other contexts it is preferable to preserve competition by ensuring that all of the competing firms (and new entrants) have access to the subsidy on the same terms and conditions. This requires that the subsidy policy is specified in advance and that it is applied to all firms in the same manner, without discretion (corresponding to the principles of pre-announcement, non-discrimination and non-discretion that we will examine in the final part of this paper).

If the objectives of the subsidy can only be met by one firm, that firm and the size of the subsidy should be selected through an open competitive process, akin to a competitive tendering process. The government should select the firm that offers the best achievement of objectives per unit of subsidy. The parallels with the principles of efficient procurement are clear

Finally, in the case where the objectives of the subsidy can only be met by one firm and there is no possibility of competitive processes in the selection of that firm, it is not possible to rely on competitive processes to reveal the underlying cost of meeting the governments objectives and to ensure that the subsidised firm is not over-compensated. Instead, the cost of meeting the government’s objectives must be determined through regulatory processes, such as analysis of the accounts of the subsidised firms.<sup>30</sup> Attention will need to be paid to the incentives on the subsidised firm to keep these costs to a minimum. Conventional regulatory tools such as incentive regulation and structural separation may be useful.

For example, suppose a government wishes to subsidise the delivery of mail in rural areas. In some cases it will be possible to hold a competitive tendering process, selecting the delivery firm, which requests the smallest subsidy. If mail delivery in rural areas can only be provided by one firm, the government should ensure that the subsidy does not exceed the costs incurred in providing the delivery service and that the subsidised firm has incentives to keep these costs to a minimum.<sup>31</sup>

### 3.1 *Subsidies for firms in financial distress*

Certain forms of subsidy will almost certainly violate these principles and therefore should be almost always controlled. One example is a subsidy for firms in financial distress – known in the EU as “rescue or restructuring aid”.

It is theoretically possible to imagine a policy of subsidies to failing firms, which is consistent with the principle of preservation of competition. For example, a government might announce of policy of giving aid according to a pre-determined formula to all firms that meet certain criteria. Provided this aid was not time-constrained, was appropriate in size and was linked to certain conditions (such as slowing the rate of lay-off of workers), this aid need not unnecessarily distort competitive processes. Alternatively, even if the government does not have a pre-announced policy of assistance to failing firms, the condition that all firms should be treated equally could be maintained by matching any subsidies paid to one firm with equal subsidies simultaneously paid to all other firms in the industry.

In practice, neither of these policies are common. In practice, subsidies for firms in financial distress are strongly likely to distort competition. Such subsidies are discriminatory in that they are applied only to those firms with the lowest quality or highest costs. Furthermore such subsidies are correlated with the size of the loss of the assisted firm, weakening the incentives on the firm to minimise that loss. Anticipating such assistance, firms have little incentive to increase efficiency, to innovate or to reduce prices. Martin and Valbonesi write:

“To realise the greatest gains from market integration, it should be the most efficient firms that stay in the market, while less efficient firms exit. Subsidies, especially competing subsidies granted by different [EU] member states, can distort the triage function of the market by allowing less efficient but subsidised firms to survive while more efficient firms that are not subsidised exit”.<sup>32</sup>

To make matters worse, firms which can expect to benefit from such subsidies can credibly threaten to take actions which would be unprofitable for other firms, such as engaging in predatory pricing. The mere expectation that a firm would have access to subsidies in the event of financial distress can deter other firms from entering the market.

The magnitude of the undesirable effects depends upon the extent to which the firm can expect to benefit from assistance in the event of financial difficulty. This, in turn, depends, in part, on the political consequences of failure. There are four cases where the political consequences of failure are high, which are worth highlighting:

- First, the case of a public utility firm, for which withdrawing from providing service would be difficult. Failure to provide telephone service or electricity service may be viewed as political untenable, forcing the state to intervene in the event of difficulty.
- Second, the case of a “national champion” firm. In certain industries, such as the airline industry, the government may have an explicit policy to promote a “national champion”. The failure of this firm may be difficult to swallow politically, making assistance more likely.
- Third, the case of a state-owned firm. Even if a firm is neither an “essential service” nor a “national champion”; it may be difficult to shutdown, especially if it is state-owned.

- Fourth, the case of a large bank – the problem of “too big to fail”. In the special case of banking, the loss of small depositors funds may create such a political problem as to make allowing a large bank to fail impossible to consider.

Of course the problems are often compounded – a state-owned firm is often a public utility firm and a national champion. In certain countries major banks are also state-owned.

Some countries have introduced legislation precisely to ensure that state-owned firms do not benefit from competition-distorting subsidies. For example, in Article 7 of the New Zealand State-Owned Enterprises Act requires that any non-commercial objectives on state-owned enterprises must be addressed through an arms-length contract: “Where the Crown wishes a State enterprise to provide goods or services to any persons, the Crown and the State enterprise shall enter into an agreement under which the State enterprise will provide the goods or services in return for the payment by the Crown of the whole or part of the price thereof.”

In Australia, the Hilmer report recommended that competitive neutrality between government owned and private businesses form part of Australia’s competition policy.<sup>33</sup> Specifically, the Hilmer report recommended that “Government businesses should not enjoy any net competitive advantage by virtue of their ownership when competing with other businesses” and “Government businesses competing against other firms within their traditional markets should be subject to measures that effectively neutralise any net competitive advantage flowing from their ownership”.

#### **4. The control of subsidies with inter-jurisdictional effects and with a limited higher authority**

The previous section assumed that for any subsidy there was a government with authority over the jurisdiction affected by the subsidy with sufficient powers to take whatever action was necessary to put in place efficient rules. Suppose now that this is not the case. In particular, suppose that the authority over the market affected by the subsidy only has limited powers. This is particularly the case, of course, at the international level, where national governments have been relatively slow and reluctant to cede rule-making powers to supra-national authorities. In this context we will look at the incentives for individual jurisdictions to subsidise and we will ask whether there are simple non-controversial rules for the control of subsidies which might be easily enforced by a higher authority with limited powers.

For simplicity, in this part of the paper we will focus on one particular form of subsidy – a financial transfer tied to the output of the subsidised firms, which are also called output subsidies.

The welfare effect of an output subsidy on a particular jurisdiction depends strongly on the mix of firms and consumers in that jurisdiction and in other jurisdictions. In some cases the interests of producers and consumers will be aligned while in other cases the interests of producers and consumers will be opposed.

Consider, for example, the case where all the producers are in one jurisdiction and all the consumers are in another. In this case the jurisdiction dominated by producers does not have any incentive to subsidise its firms; in contrast, it has a strong incentive to impose a tax on output. This tax will allow the producers collectively to reduce output to the monopoly level, allowing the jurisdiction to capture the monopoly rent, to the detriment of consumers in other jurisdictions. Overall global welfare is reduced by this policy.

Clearly there is a need to control this type of anti-competitive activity at the level of a higher authority. However this framework can only explain the need to control export taxes (or equivalently export cartels). It cannot explain why there might be a need to control export subsidies.

#### **4.1 *Subsidy competitions in imperfectly competitive industries***

The incentive to subsidise arises in the context where competing firms are located in different jurisdictions and there is imperfect competition. In this case a subsidy will have the effect of distorting competition between the producers, to the benefit of the subsidising jurisdiction.

##### **4.1.1 *Industries with Cournot Competition***

Brander and Spencer (1985) highlighted the case where the producing firms in separate jurisdictions engage in Cournot competition. In this context an output subsidy in one jurisdiction (assuming for the moment that other jurisdictions do not respond by increasing their own subsidy) will expand that jurisdiction's production, increase the jurisdiction's total profit and will reduce the output of all the other producing jurisdictions in the industry. Overall, total industry output increases and the market price declines. In effect, in a Cournot context, a subsidy on the output of one firm allows that firm to capture a greater share of a slightly smaller total industry profit.<sup>34</sup>

Since this is true for each producing jurisdiction, each has an incentive to subsidise its output and to increase its subsidies in response to the subsidies of other jurisdictions, in a process known as a "subsidy race". The outcome is the joint level of subsidy where each jurisdiction no longer has an incentive to adjust its own subsidies, given the subsidies of the other jurisdictions – the Nash equilibrium in subsidies.

Note that the first-best efficient level of subsidy is not zero. In an oligopolistic industry<sup>35</sup> the market price is above marginal cost. In this context, a subsidy can improve welfare by pushing the market price down to marginal cost.

Does the Nash equilibrium in subsidies lead to level of subsidies above or below the efficient level? Collie (2000) demonstrates that viewed from the perspective of global welfare (more precisely from the perspective of a jurisdiction large enough to encompass the total geographic market for the product with no imports or exports), in the special case where all the jurisdictions are identical, the result of the subsidy race is just the efficient subsidy level – a subsidy level precisely sufficient to push the price of the product down to marginal cost.<sup>36</sup>

More generally, whether an individual jurisdiction has the incentive to set a subsidy which is too high or too low relative to the efficient level depends on whether it is a net exporter or importer. A net exporter of the good has an incentive to set a level of subsidy that is too low relative to the efficient level. A net importer has an incentive to set a level of subsidy that is too high relative to the efficient level. In the special case identified by Collie, since all the jurisdictions are identical, there is no inter-jurisdictional trade in equilibrium. As a result, each jurisdiction faces exactly the right incentive to set the efficient level of subsidy. In the more general case, there is no expectation that subsidies will lead to an efficient level of output.

##### **4.1.2 *Industries with increasing returns to scale***

Another argument for subsidising output is based on the presence of increasing returns to scale – either conventional increasing returns on the supply side of the market, or increasing returns on the demand side (also known as "network effects"). In either case, if the increasing returns are strong enough there will

only be one (or at most a few) surviving firm(s) in equilibrium. That firm will typically enjoy substantial market power.

In this context a relatively small intervention at the early stages of market development could have long-term consequences for which firm emerges as the survivor in the long run. With conventional economies of scale, a firm which achieves an early size advantage can benefit from lower costs, reinforcing its size advantage and ultimately driving out its rivals. Alternatively with economies of scale on the demand side, a firm which is an early leader in sales, increases demand for its product, reinforcing its sales lead.

The incentive to use subsidies is clear. Subsidies allow a firm to lower its price, increasing demand for its products and increasing the likelihood that this firm will survive, capturing the monopoly rent for the subsidising jurisdiction. But, since this is true for all jurisdictions, jurisdictions compete to subsidise their own firms, in order to secure the prize of ultimately hosting the surviving firm or firms.

Such subsidies are very unlikely to improve upon market outcomes in the absence of intervention and, indeed, are likely to make the final outcome worse. Even in the absence of government subsidies, start-up firms in new industries will typically receive funding from the financial sector. Potential lenders are likely to select the most promising firm on the basis of relevant objective criteria (such as product quality or marketing skill). In contrast a government lender is more likely to be influenced by irrelevant criteria – such as the ownership of the firm. This enhances the likelihood that the surviving firm produces a lower-quality product, than would have been selected by the market mechanism alone.

#### 4.1.3 *Predatory pricing*

There is yet another possible reason for output subsidies in the context of inter-jurisdictional competition. The previous example was based on the observation that subsidies at the early stages of market development could influence the identity of the surviving firm in the long run. But, even in an established market it is possible that subsidies could change the market structure and the identity of the surviving firm, particularly if the subsidy permits the subsidised firm to engage in what amounts to predatory pricing. As is well known, predatory pricing can simultaneously reduce the number of current competitors and raise barriers to entry. Predatory pricing raises barriers to entry by allowing an incumbent firm to develop a reputation for acting aggressively in the face of new entry.

A conventional profit-maximising firm may have some difficulty developing such a reputation – in particular, if it has difficulty recouping the losses incurred fighting off new entrants, through higher prices later. However a firm which is not necessarily perfectly profit-maximising will find it significantly easier to develop such a reputation – without the need to strictly maximise profits its threat to react aggressively to new entry is significantly more credible.

In particular, a firm which is assisted by state subsidies may be able to send a clear signal to its rivals that it will respond strongly to new entry. As we have seen in other contexts, state-owned firms are often able to make the strongest threats of predatory pricing. But even private firms, backed by an unlimited government commitment to subsidies, may benefit from the same effect. Indeed, if the commitment is clear enough the subsidies need never be used – new entrants will never enter the market.

If each jurisdiction attempts to pursue such policies, it is clear that the strategies largely cancel each other out. The primary consequence is to weaken the budget constraint on producing firms – if there is some doubt when subsidies are being applied (as seems likely) each firm can claim that its losses are due to subsidies in other jurisdictions and therefore demand an increase in its own. In this context there is little incentive for innovation, efficiency or improvements in product quality.

#### **4.2 *How should subsidies be controlled?***

Each of these cases set out above provides justification for the imposition of controls on the use of subsidies. But what form should those controls take?

1. Three different approaches to the control of subsidies and their pros and cons were discussed in part II of this paper. Here we will just discuss the relative merits of each approach in the context of an authority (such as a supra-national authority) with relatively limited power. We will assume at the outset that the full regulatory quality analysis discussed in part III of this paper will not be feasible.

The first approach considered in part II of the paper (referred to as “Approach A”) captures a broad range of potentially harmful policies, which favour individual firms. The primary drawback of this approach when adopted at the international level is that it requires careful case-by-case analysis of the individual policies to determine which have a negative impact on welfare.

Such analysis, especially when conducted at the international level, is sure to be controversial. The assessment of the appropriateness of particular government interventions depends on local characteristics and preferences, which an international authority may find difficult to measure. Complaints may arise from legitimate differences in views on the appropriate role of governments. Snape notes:

“A fundamental problem revolves around what is, and is not, a normal or proper function of government. Much blood has been spilt over this issue, and the attempt by one country’s government to take actions through countervailing duties against other countries’ exports according to what it deems to be the appropriate role of government (which may differ from the view of the next government in the same country), or to obtain a ruling from a multilateral body regarding this role, is doomed to irritate.”<sup>37</sup>

The second approach discussed earlier focuses more narrowly on differential treatment regarding financial transfers and taxes between firms in the same country. This approach solves the problem of controversial assessment of the effect of policies by focussing on one particular category of policy, which almost always reduces overall welfare. The higher authority’s role in this context is largely mechanical – essentially determining when differential treatment exists. This approach therefore has the merit of being practical in the international context. As mentioned earlier, this is also the approach used in the EC (and to an extent in the WTO).

Whether or not the third approach represents a practical approach to the control of subsidies at the international level is not yet clear. Although it covers a broader range of policies than the second approach, it also suffers from the drawback that it captures policies, which do not necessarily reduce welfare. As a result, it would need to be supplemented by the same controversial case-by-case analysis of policies that the first approach requires.

#### **4.3 *Non-discrimination on the basis of ownership***

However, there is some merit in emphasising that, in the particular case when firms are mobile, subsidy control can take a particularly simple form – a form that could be enforced even by a supra-national authority with limited powers.

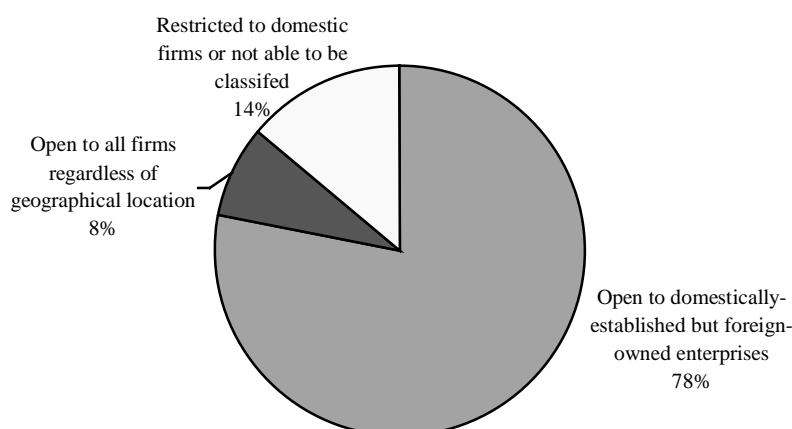
More specifically, when firms are mobile it is possible to control subsidies, not by limiting the ability of jurisdictions to distort competition but by limiting the incentive to do so. The incentive for subsidising can be removed by breaking the link between subsidies and the share of the monopoly rents earned by the subsidising jurisdiction. When firms are mobile, the link between subsidies and the share of monopoly rents earned by the subsidising jurisdiction can be broken merely by requiring that any policy which may have the effect of favouring certain firms be available to all firms (whatever the location or identity of their owners) on a non-discriminatory basis.

When the owners of a subsidised firm are located in a different jurisdiction the cost-benefit calculus implicit in the models described above completely changes. In the case of Cournot competition, a jurisdiction has less incentive to subsidise a firm located in the jurisdiction, at the expense of domestic taxpayers, if the benefits of that subsidy are primarily enjoyed by the firm's "foreign" owners. Similarly, a jurisdiction has less incentive to strategically subsidise a firm in an industry with increasing returns to scale, if the long-run monopoly profits are captured by residents of other jurisdictions.

In other words, in the context of firm mobility, subsidy controls need only insist that government policies be available to all firms, whatever their ownership, based on criteria that are transparent and non-discriminatory. Provided there are no barriers to the mobility of firms, the incentive to try to distort competition through subsidies would lead to an influx of foreign-owned firms, benefiting from the subsidy at the expense of domestic tax-payers.<sup>38</sup> Individual jurisdictions would remain free to choose the public policies that they want, to address particular characteristics and preferences of the subsidising jurisdiction, provided that those policies do not discriminate on the basis of firm ownership.

In practice, many subsidy programmes are open to all firms regardless of their ownership. A study by the OECD found that 78 percent of all subsidy programmes are open to domestically-established but foreign-owned enterprises. eight percent have no restrictions on the geographical location of firms and provide support even to enterprises abroad.<sup>39</sup> The remaining 14 percent of programmes are either restricted to only domestically-owned firms or are not able to be classified.

**Figure 5: Proportion of Programmes which Discriminate on the basis of Ownership**



Source: OECD (1996)

#### 4.4 What about policies that affect location decisions?

Even if subsidy controls required all public policies to be non-discriminatory, individual jurisdictions would retain certain incentives to subsidise and those subsidies would affect the incentives of firms to locate in that jurisdiction. Indeed, jurisdictions might subsidise firms precisely with the objective



of inducing firms to locate in that jurisdiction. Isn't there a danger that such subsidies could induce a subsidy race, allowing firms to play off one location against another, bidding up subsidies to inefficient levels? This concern has been expressed by OECD member countries in a paper prepared for the Committee on International Investment:

“An important issue is whether and to what extent the provision of financial incentives as a means to attract investment induces governments to enter into ‘bidding wars’ that lead them to raise the level of incentives provided in reaction to those offered by others. Such competition, which has the characteristics of a prisoners’ dilemma game, could potentially lead to spiralling costs for governments and could thus raise the cost of incentives to such a level that it would greatly outweigh the expected public benefits. On the one hand, there is a risk that governments that are not participating in the incentive competition could lose corporate investment to those that are actively offering incentives to attract investment, or that they would be incited to join the competition in order not to be overlooked as an investment location. On the other hand, governments engaged in incentive competition may not be more effective in being able to attract investment if it leads to others offering the same in seeking to level the playing field. Incentives may then simply cancel each other out and investments would be allocated in the same way, as would have been the case in the absence of incentives, although with a significant transfer from the taxpayers to the investor. Another issue is whether such competition is more detrimental to developing countries”.<sup>40</sup>

An economic argument can be made that far from being inefficient, such policy competition to attract investment is efficient as it encourages governments to provide efficient levels of public goods<sup>41</sup> and it enables firms to internalise the external effects of its location decisions.

Provided the subsidy is non-discriminatory, the subsidising jurisdiction can receive no benefits from the rents earned by the subsidised firm. The incentive for subsidising therefore arises from other benefits – such as the effects of the firm’s decision on employment or income of the residents. Different firms will presumably yield different levels of benefits to the subsidising jurisdiction. In addition, different jurisdictions will presumably receive different benefits and will value the same benefits differently.

The efficient outcome is for each firm to locate in the jurisdiction which values its external benefits most highly. But, in the absence of subsidies the jurisdiction may not be able to communicate the extent to which it would benefit from the firm. By allowing subsidies, jurisdictions can signal the extent to which they would benefit and the amount that they are willing to pay in subsidies. Competition between jurisdictions would ensure that these subsidies are bid up to levels, which properly reflect the benefits received. The result is that firms fully internalise the external benefits they impose and, as a result, make their location decisions efficiently.

This result is demonstrated by Besley and Seabright who note:

“Our analysis suggests that for multinational firms undertaking greenfield investment, where it is realistic to suppose that they can negotiate with several governments, there is no case for compulsory state aid control. The outcome of such [inter-governmental] competition will not always be efficient, but there is no reason to suppose that preventing state aids would improve matters, and it would remove from governments one of the principal means of internalising locational externalities”.<sup>42</sup>

In summary, when firms are mobile, subsidy control can take a particularly simple form – the higher level authority need only ensure that policies affecting competition are applied in a non-discriminatory manner.

In practice, of course, the range of industries in which firms are truly mobile may be strictly limited. In most industries there are substantial sunk costs associated with capital investment. As a result, once a location decision has been made, firms are unlikely to move unless economic factors change substantially. In these industries, there can be substantial short-run scope for tilting the playing field.

## 5. Conclusion

In certain industries government subsidies play a substantial role. These subsidies have the potential to very seriously distort competition. To make matters worse, attempts by one government to subsidise its firms can be met with retaliatory measures, such as counter-subsidisation or various forms of countervailing measures.

These arguments have led to demand for controls on subsidies by higher authorities – particularly at the national and supra-national levels. A full control of all policies that affect competition requires detailed case-by-case analysis by higher authorities of the decisions of lower government authorities. Higher authorities, especially at the international level, may not have the necessary powers to conduct such detailed oversight of domestic policies. As a result, subsidy control at the international level inevitably takes a simpler form.

This paper looked at different possible approaches to defining a subsidy that might conceivably be used by a higher authority. Simpler, less discretionary forms of controls on subsidies exist (such as those used by the EC), but they are narrow in scope and ignore certain forms of policy competition which may be harmful for overall welfare. A broader definition would control more forms of policy competition but requires greater discretion and authority on the part of the higher-level authority.

Certain forms of subsidies are almost always harmful. In particular, subsidies to firms in financial distress tend to be disproportionately directed towards firms, which are inefficient, weakening the incentives for efficiency for all firms, which can expect to be rescued in this way. On the other hand, in industries where firms are mobile, (which may reflect no more than a few industries) subsidy control can take a particularly simple form. The higher authority need only enforce standard international trade principles of non-discrimination and national treatment.

Given the economic harm caused by subsidies at all levels of government there remains substantial opportunity for strengthening the domestic and international institutions for controlling subsidies. To date, relatively few OECD countries have the ability to control subsidies domestically. Although some domestic subsidies are controlled by international authorities (domestic subsidies in the EU fall under the rules of the treaty when they affect trade between member states and the WTO subsidies agreement requires WTO members to take reasonable measures to ensure that regional and local governments comply with the agreement; and the Uruguay Round Agreement on Agriculture disciplines trade-distorting domestic subsidies), nevertheless some domestic subsidies are not controlled by any authorities. There is further scope for the development of national institutions for controlling subsidies (as has been developed in Denmark and countries acceding to the EU including the Czech Republic and Poland). In addition, the international controls on subsidies could be strengthened by extending their breadth of coverage and enhancing the power of international authorities to force subsidising countries to cease and desist and to require that subsidies already given be repaid.

## NOTES

1. There are many differing definitions of what constitutes a subsidy. These are discussed in part II of the paper.
2. EC (2000), table 23, page 53 and table 24, page 54.
3. Specifically, the European Social Fund, the European Agricultural Guidance and Guarantee Fund, the European Regional Development Fund and the Cohesion Fund.
4. Average 1996-1998, 60,689 million euros. EC (2000), table C2, page 125.
5. WTO, "Overview of the State of Play of WTO Disputes", 15 January 2001 – figures are drawn from cases listed under "Pending Consultations" which mention subsidies.
6. Simon (1999), page 47.
7. See OECD (2001) and Cahill and Legg (1990), page 15-16.
8. See OECD (2000b).
9. See OECD (1996).
10. See OECD (2000a).
11. See, for example, the submissions of Poland and the Czech Republic to this roundtable discussion.
12. Cacciato (1996).
13. The EC notes that: "The classification of aid is, in many cases, somewhat arbitrary because it is necessary to decide which of the objectives declared by a member state is to be considered as the primary objective. In some member states, aid for research and development is administered through sector-specific R&D programmes, in others, aid to particular sectors is limited to small and medium-sized enterprises, etc. Furthermore, primary objectives cannot give a true picture of the final beneficiaries: a large part of regional aid is paid to small and medium-sized enterprises, aid for research and development goes to particular sectors, and so on." Vanhalewyn (1999), page 36, box 1.
14. OECD (1996), page 25.
15. OJ L 380, 31 December 1990
16. "Shipbuilders call for fair market as EU subsidies end", *The Independent* (UK), 10 December 2000
17. These totals can exceed 100% because total farm receipts does not necessarily include subsidies.
18. Cacciato (1996).
19. Ilzkovitz, Meilkejohn and Schmidt (1999).
20. Anton van Schijndel, "A case for stricter discipline", *Financial Times*, 17 February 1995.

21. Calegar and Shuh (1988)
22. Rosenblatt et al (1988)
23. Schwartz and Clements (1999), page 130.
24. Conversely, we may say that a tax arises when a firm makes a payment or benefits the government for which the consideration given by the government is not directly and immediately commensurate with the payment.
25. See, for example, Simon (1999).
26. This is also the view of the EC. "A loss of tax revenue is equivalent to consumption of state resources in the form of fiscal expenditure", paragraph 10 in the Commission Notice on the application of state aid rules to measures relating to direct business taxation issued on 11 November 1998.
27. Mundheim and Ehrenhaft (1984), pages 95-107, cited in Snape (1985), page 143.
28. The importance of focusing not just on government financial transfers but on all policy measures which affect competition has been argued by, for example, Slotboom (1995): "What therefore should count is not the *origin* of the aid but the *effect* of the benefit a government measure brings to undertakings. Thus, state aid should not be defined from the viewpoint of the government granting the aid, but from the viewpoint of the effect of the aid on competition within the Community". Slotboom (1995), page 296.
29. In the March 1995 OECD Council Recommendation on Improving the Quality of Government Regulation. Another possible checklist adapted for subsidies is set out in the paper by Ilzkovitz et al (1999), which asks the following questions: Is there a need for government intervention? Is state aid the most appropriate form of government intervention, or would other policy instruments be more effective? Given the objective of the intervention, is the state aid targeted on the right beneficiaries? Is the amount of the aid sufficient to induce firms to change their behaviour in the desired way without being excessive? Do the conditions attached to the aid create the right incentives or do they rather encourage rent-seeking behaviour? Is the aid cost-effective?
30. See OECD (1999a).
31. See OECD (1999b).
32. Martin and Valbonesi (1999), page 23.
33. See Hilmer (1993), page 308.
34. This result depends on the assumption of Cournot competition. The results do not hold under Bertrand competition. Recall that Cournot competition is competition between firms in an oligopoly where the firms compete primarily by choosing the quantity that they place on the market (the market price is then determined by the total quantity produced). Under Bertrand competition, the firms in an oligopoly compete primarily by choosing the price at which they will sell their output. If the firms produce homogeneous products the market price is equal to the lowest price of all the firms in the market.
35. with Cournot competition...
36. Collie (2000), page 873.
37. Snape (1991), page 143.

38. The incentive to subsidise is not completely eliminated – as long as the industry is not perfectly competitive and as long as the government taxes corporate profits, it has an interest in attracting non-competitive industries to locate in its jurisdiction so that it can increase its taxes.
39. OECD (1996), page 20.
40. OECD (2000a), page 3.
41. Competition for investment by firms induces governments to provide the right mix of policies – taxes, public goods, sound macroeconomic policies, fiscal responsibility, good infrastructure, and so on.
42. Besley and Seabright (1999), page 36.

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## NOTE DE RÉFÉRENCE

*Par le Secrétariat*

De nombreux secteurs des économies de l'OCDE se ressentent fortement des effets des politiques publiques dont bénéficient certaines firmes au détriment de leurs concurrents, telles les politiques qui offrent un soutien financier, une assistance ou une aide à des entreprises déterminées dans une industrie<sup>1</sup>. Par exemple, dans l'Union européenne (UE), au cours de la période 1996-1998, le montant annuel total moyen de l'aide accordée par les États membres au secteur industriel a atteint 93 milliards d'euros, ce qui équivaut à quelque 2,4 pour cent des dépenses publiques et représente en moyenne 526 euros par personne employée.<sup>2</sup> Les fonds affectés à l'aide structurelle administrés par la CE<sup>3</sup> totalisent 60 milliards d'euros supplémentaires par an<sup>4</sup>. Dans certains secteurs (comme la construction navale ou la sidérurgie), l'aide peut atteindre 25 pour cent ou plus, de la valeur ajoutée pour l'ensemble du secteur considéré. Dans l'agriculture, d'après les données obtenues par l'OCDE, l'aide représente actuellement environ 35 pour cent de l'ensemble des recettes des entreprises.

Le soutien public à l'industrie ne se limite évidemment pas à l'UE. Presque tous les pays de l'OCDE accordent une aide financière à leurs industries nationales sous une forme ou sous une autre. Les subventions qu'ils versent causent souvent de graves frictions ou conflits commerciaux. Parmi les 82 litiges actuellement soumis à l'organe de règlement des différends de l'Organisation mondiale du commerce, 15 (soit près de 20 pour cent) ont trait à des subventions<sup>5</sup>.

Le soutien public à l'industrie (que ce soit sous la forme de transferts financiers, d'exonérations fiscales, ou d'autres formes d'avantages) est l'un des moyens d'intervention des pouvoirs publics, à côté d'autres instruments de la politique publique, comme la réglementation. Aujourd'hui, les gouvernements de l'OCDE acceptent généralement l'idée qu'il faudrait revoir la réglementation afin de s'assurer qu'elle est conforme aux principes d'une intervention publique de grande qualité. Les compétences des administrations publiques à tous niveaux en matière de réglementation, notamment dans le domaine du commerce, s'exercent en général sous le contrôle des instances supérieures. L'examen de ces mécanismes pays par pays est l'une des composantes fondamentales du projet de réforme réglementaire de l'OCDE.

Dans le cas du soutien public à l'industrie, la situation est quelque peu différente. S'il existe un cadre bien élaboré pour contrôler certaines formes d'assistance étatique à l'industrie au niveau de l'Union européenne ainsi qu'un système de contrôle des subventions ayant des répercussions sur les échanges internationaux au sein de l'Organisation mondiale du commerce, rares sont les pays qui disposent de mécanismes similaires au niveau national ou infranational. Est-il normal que les réglementations nationales doivent faire l'objet d'un examen minutieux alors que les subventions nationales y échappent ?

Il pourrait sembler à première vue que le contrôle des interventions publiques qui avantagent des firmes déterminées ne soit pas nécessaire. Non seulement, dans bien des cas, les subventions versées à une industrie dans un pays ou une région ne nuisent pas aux consommateurs des autres pays ou régions, mais elles peuvent également leur procurer des avantages. On pourrait en déduire que, laissés à eux-mêmes, les pays ou régions seront peut-être *trop peu* incités à verser des subventions, et qu'il faudrait encourager les subventions au lieu de les contrôler.



Dans le présent document, nous examinons les raisons pour lesquelles il faudrait contrôler les politiques de soutien public à l'industrie, ainsi que les formes que devraient prendre les mécanismes de contrôle. Nous constaterons qu'il est justifié sur le plan économique de contrôler ces mesures de soutien lorsqu'elles affectent d'autres pays ou régions. Mais quelle forme devraient prendre les mécanismes de contrôle?

Tous les niveaux d'administration peuvent mettre en œuvre des politiques de soutien à l'industrie et à des firmes déterminées — qu'il s'agisse des villes, des régions, des États, des instances nationales ou supranationales. Les mesures que des autorités d'une région décident d'adopter dans une région peuvent avoir des effets sur les entreprises d'autres régions. Comme nous nous intéresserons aux effets des politiques adoptées par tous les niveaux d'administration, nous emploierons dans le présent document le terme "juridiction" pour désigner une zone et le pouvoir exercé par le gouvernement dans cette zone (qu'il s'agisse d'une ville, d'un État, d'un pays ou d'un groupe de pays). Nous prêterons souvent attention aux effets sur les autres juridictions — que celles-ci soient une ville voisine, un État voisin, un pays voisin ou un groupe de pays voisins.

Il est possible de résumer comme suit les principaux points du présent document :

- Il n'y a pas de définition généralement acceptée de ce qui constitue une subvention. Les définitions utilisées reconnaissent, cependant, que les subventions sont (a) des mesures publiques qui (b) affectent la concurrence au sein d'un marché en favorisant certaines firmes ou certains secteurs et qui (c) de ce fait réduisent le bien-être global. Ces définitions diffèrent au niveau de l'étendue des mesures publiques considérées et au niveau de ce qu'on entend par « favoriser » une firme. Il existe de nombreux types de mesures affectant la concurrence qui peuvent potentiellement être intégrés dans la définition de ce qui constitue une subvention, y compris les différences dans le niveau de transferts financiers aux firmes, les disparités de traitement fiscal, les différences dans la fourniture de biens publics voire les différences de réglementation ou de mise en application.
- Le présent document s'intéresse aux trois définitions possibles de ce qu'est une subvention. La première définition englobe l'ensemble des mesures de soutien qui favorisent certaines firmes au détriment des autres. Cette définition a l'avantage d'être large mais en ne se focalisant que sur les différences relatives entre les firmes elle n'englobe pas les politiques d'aide qui sont mises en œuvre par l'ensemble des gouvernements, même lorsque celles-ci s'avèrent collectivement nuisibles. Cette approche demande également un examen détaillé au cas par cas pour déterminer si les mesures qui entravent la concurrence sont néanmoins efficaces.
- La seconde définition s'intéresse spécifiquement à l'utilisation des fonds publics. Cette définition englobe les mesures qui accordent à certaines firmes un traitement différent de celui réservé aux autres firmes dans un même pays. C'est l'approche retenue par l'Union européenne pour le contrôle de l'aide de l'État. Cette définition a l'avantage d'englober les concours financiers aux firmes même lorsque tous les gouvernements y ont recours. Elle porte aussi sur les mesures qui sont susceptibles de réduire le bien-être, limitant de ce fait le pouvoir d'appréciation dévolu à l'instance de contrôle. D'un autre côté, elle n'englobe pas certaines politiques de soutien pouvant nuire à la concurrence mais peut par contre en bloquer certaines autres qui n'entravent pas la concurrence.
- Une troisième définition compare la façon dont les firmes sont traitées en fonction d'une fourchette de prix de référence. Cette approche est utilisée par la Direction de l'agriculture de l'OCDE dans l'évaluation de la part du soutien aux producteurs agricoles qui provient des mesures créant un écart entre les prix intérieurs et les prix mondiaux des productions agricoles.

Cette approche englobe diverses formes nuisibles de soutien aux firmes, ainsi que d'autres politiques d'aide qui peuvent s'avérer économiquement efficaces en général. Dans le même temps, cette approche ne rend pas compte de certaines politiques qui entravent la concurrence et réduisent le bien-être global.

- Les mécanismes de contrôle des subventions devraient théoriquement ressembler aux mécanismes de contrôle des politiques réglementaires des États qui sont conçus dans le but d'assurer des interventions réglementaires de grande qualité. Les subventions devraient être soumises à des tests conventionnels de qualité réglementaire pour s'assurer que l'intervention est nécessaire et que c'est la meilleure forme d'intervention en fonction des objectifs fixés – cela implique habituellement, entre autres, que la mesure visée doive préserver autant que possible la concurrence. Ces contrôles devraient être exercés par les autorités de la juridiction qui recouvre la zone géographique du marché affecté par une forme de subvention donnée.
- Certaines mesures entraînant des distorsions de la concurrence sont particulièrement susceptibles de nuire à l'efficacité et au bien-être général. Cela est particulièrement vrai de l'aide accordée à des firmes en difficulté. Ces pratiques sont habituellement discriminatoires (la subvention n'est accordée qu'aux entreprises que l'on sait être en difficulté) et discrétionnaires. Elles ont pour effet de réduire la contrainte budgétaire des firmes subventionnées, ce qui les incite moins à rechercher l'efficacité. Les gouvernements sont particulièrement enclins à accorder un soutien de ce type aux firmes qui font office de "champions nationaux" et aux entreprises publiques. Certains gouvernements ont d'ailleurs établi des règles claires pour limiter le soutien qu'ils peuvent ainsi apporter à des entreprises publiques.
- En pratique, certains niveaux d'administration (en particulier les autorités supranationales) sont limités dans leurs compétences, leurs pouvoirs discrétionnaires et leur capacité d'élaborer des réglementations. Dans ce contexte, il est souhaitable qu'un mécanisme de contrôle des subventions soit simple, sans être discrétionnaire ni controversé. Un mécanisme d'examen complet des subventions nationales au niveau supranational n'est probablement pas réalisable. Cela conduit à s'interroger sur la nature des mécanismes de contrôle des subventions qui pourraient être mis en place. Parmi les trois approches précédemment mentionnées, la seconde a l'avantage d'être plus simple et moins discrétionnaire, bien que sa portée soit limitée. Les autres approches ont une portée plus étendue mais obligent les instances supérieures à faire preuve d'un plus grand discernement.
- Dans le cas particulier de mobilité des firmes, le contrôle des subventions peut revêtir une forme simplifiée. Dans une industrie où les firmes sont mobiles, le lien entre les subventions et l'obtention d'une plus grande part des rentes de monopole provenant de conditions imparfaites peut être rompu en empêchant la discrimination entre les firmes en fonction du critère de propriété (c'est-à-dire application d'un traitement différent aux firmes appartenant à des résidents de la juridiction et aux firmes extérieures). Lorsque les firmes sont mobiles, l'autorisation de la concurrence des politiques entre les juridictions s'avère profitable, sous réserve de proscrire la discrimination, car cela amène les firmes à internaliser dans leurs décisions de localisation certains des effets externes ou des « retombées » sur la communauté environnante. Dans ce contexte, la concurrence entre les politiques de soutien destinées à attirer les entreprises dans les juridictions peut conduire à des résultats efficaces.
- A ce jour, il y a peu de pays de l'OCDE qui soient en mesure de contrôler les subventions sur le plan intérieur. Bien que les instances internationales exercent un contrôle sur quelques subventions nationales, il n'en demeure pas moins que certaines autres subventions nationales

ne sont soumises à aucun contrôle. Il y a place pour le développement d'instances nationales de contrôle des subventions (suivant ce qui a été fait au Danemark et dans les pays accédant à l'UE comme la République tchèque et la Pologne). De plus, les contrôles internationaux en matière de subvention pourraient être renforcés par l'élargissement de leur champ d'action et l'accroissement des pouvoirs des instances internationales pour contraindre les pays qui accordent des subventions à cesser leurs pratiques et exiger que les subventions déjà octroyées soient remboursées.

## **1. Bref survol des pratiques, de l'évaluation et du contrôle des subventions**

### ***1.1 Mécanismes de contrôle des subventions par les instances internationales***

Les principaux exemples des mesures de contrôle des subventions proviennent des traités internationaux, dont au premier chef le Traité instituant la Communauté européenne et les accords instituant l'Organisation mondiale du commerce.

L'article 87 du traité instituant la Communauté européenne dispose que "sont incompatibles avec le marché commun, dans la mesure où elles affectent les échanges entre États membres, les aides accordées par les États ou au moyen de ressources d'État sous quelque forme que ce soit qui faussent ou qui menacent de fausser la concurrence en favorisant certaines entreprises ou certaines productions" Il atténue ensuite cette interdiction générale des aides qui faussent la concurrence en autorisant certaines formes d'aides (en particulier, les aides octroyées aux consommateurs individuels, à condition qu'elles soient accordées sans discrimination liée à l'origine des produits et les aides destinées à remédier aux dommages causés par les calamités naturelles). L'article 87 se termine par une liste des types d'aides qui peuvent être autorisées (telles que les aides destinées à promouvoir la culture et la conservation du patrimoine, ou les aides destinées à favoriser le développement économique d'une région).

La Commission fait une distinction entre l'aide de l'État et les « mesures générales ». Les mesures générales ne constituent pas de l'aide et ne sont pas régies par l'article 87(1) du traité. Les mesures générales n'entrent pas dans le champ de l'article 87(1) lorsque :

- il n'y a pas de spécificité en termes de secteur, de région ou de catégorie (par exemple PME) ;
- le droit à bénéficier d'une aide est fondé sur des critères objectifs, sans pouvoir discrétionnaire des autorités ;
- les mesures ne sont en principe pas limitées dans le temps ou par un budget prédéterminé<sup>6</sup>

Les articles 88 et 89 confèrent à la Commission le pouvoir de déterminer si une aide particulière est compatible avec le Traité, et de prendre des règlements pour définir la procédure à utiliser à cette fin ainsi que pour désigner les catégories d'aides qui sont dispensées de cette procédure.

Dans le cadre de l'OMC, les subventions sont contrôlées en vertu de l'Accord sur les subventions et les mesures compensatoires. L'Accord définit trois catégories de subventions : les subventions prohibées, les subventions pouvant donner lieu à une action et les subventions ne donnant pas lieu à une action. Les subventions prohibées sont celles qui sont subordonnées à l'atteinte de certains objectifs d'exportation ou à l'utilisation de produits nationaux de préférence à des produits importés. Elles peuvent être contestées aux termes de la procédure de règlement des différends de l'OMC et, s'il est confirmé que

la subvention est prohibée, celle-ci doit être retirée sans retard. Si des producteurs nationaux subissent un dommage du fait des importations subventionnées, des droits compensateurs peuvent être imposés.

Les subventions ne donnent pas lieu à une action si elles ne sont pas « spécifiques ». Pour déterminer si une subvention est « spécifique » on tient compte des facteurs suivants :

- Les règles régissant la subvention ou son administration limitent-elles l'accès à certaines entreprises ?
- Les critères d'éligibilité à la subvention sont-ils explicites et objectifs ?
- L'autorité administrative exerce-t-elle un pouvoir discrétionnaire ?

Les subventions qui ne peuvent donner lieu à une action ne peuvent être contestées aux termes de la procédure de règlement des différends de l'OMC ni donner lieu à l'imposition de droits compensateurs, mais elles doivent remplir des conditions strictes. En ce qui concerne les subventions pouvant donner lieu à une action, le pays plaignant doit démontrer que la subvention a nui à ses intérêts, sinon la subvention est autorisée. Il peut être porté atteinte aux intérêts d'un pays si ses exportateurs doivent faire concurrence à des firmes subventionnées dans d'autres pays ou si son industrie nationale doit faire concurrence à des importations subventionnées. Si l'Organe de règlement des différends de l'OMC statue que la subvention a effectivement un effet défavorable, celle-ci doit être retirée ou l'effet défavorable doit être supprimé.

Les subventions agricoles qui sont considérées comme donnant lieu à des distorsions dans la production et le commerce doivent faire l'objet de réductions dans le cadre des mesures disciplinaires prévues par l'Accord de 1994 de l'Uruguay Round sur l'agriculture (OMC). La Direction de l'agriculture de l'OCDE a apporté sa contribution dans le cadre des procédures de l'Uruguay Round par sa longue expérience en matière de mesure du coût de la valeur monétaire des mesures de soutien résultant des politiques agricoles, en utilisant les indicateurs « PSE » Estimation du Soutien aux Producteurs et « CSE » Estimation du Soutien aux Consommateurs. Ces indicateurs mesurent essentiellement les écarts entre les prix obtenus par les producteurs agricoles nationaux et les prix de référence mondiaux, en plus du soutien dont bénéficie l'agriculture par le biais des transferts budgétaires et des subventions aux intrants. Ces catégories de soutiens à l'agriculture sont classées en fonction de leur nature et comprennent les formes de soutiens accordées aux échelons national et infranational. Certains transferts sont faits sur la base de la production antérieure plutôt que sur la production actuelle ou à la condition que les agriculteurs excluent des animaux ou des terres du processus de production ou adoptent des modes de fonctionnement destinés à améliorer les performances en matière d'environnement. La classification des catégories d'aides est la suivante :

- Soutien aux prix du marché – transferts des consommateurs aux producteurs par le biais de politiques assurant le maintien des prix intérieurs à un niveau supérieur aux prix mondiaux, généralement au moyen de barrières tarifaires et de subventions aux exportations;
- Subventions à la production - transferts des contribuables aux producteurs qui ont pour effet d'augmenter les prix agricoles (mais pas les prix à la consommation) et paiements basés sur la zone d'activité et le nombre d'animaux;
- Subventions aux intrants – transferts des contribuables aux producteurs par le biais de réductions des prix des intrants tels que les engrais, l'eau, l'électricité; d'exonérations fiscales sur les carburants, de dotations en capital et de réduction d'intérêts sur les emprunts;

- Paiements de revenus – transferts des contribuables aux producteurs basés sur le niveau ou les variations des revenus<sup>7</sup>.

D'importants travaux sur les subventions ont également été réalisés dans d'autres comités de l'OCDE. Le Comité des pêcheries a étudié les concours publics à l'industrie de la pêche<sup>8</sup>. Les subventions dans le secteur sidérurgique et dans celui des chantiers navals font l'objet de discussions dans les comités sur la sidérurgie et sur la construction navale de l'OCDE. Le Comité de l'industrie de l'OCDE a réalisé une étude sur le soutien public au secteur industriel<sup>9</sup>. Enfin, le Comité de l'investissement international et des entreprises multinationales de l'OCDE étudie la concurrence dommageable des politiques destinées à attirer l'investissement étranger, et s'intéresse aux subventions destinées à influencer les décisions de localisation<sup>10</sup>.

### **1.2 *Contrôle des subventions par les Organisations nationales***

Il y a relativement peu de pays de l'OCDE qui ont choisi d'instaurer des règles pour contrôler le niveau de subventions et de concurrence entre les politiques d'aide à l'échelon national. Les pays cherchant à accéder à l'Union européenne constituent la plus importante exception à cette règle. Dans le cadre du processus d'harmonisation de leur législation avec celle de l'UE, ces pays ont instauré des règles de contrôle des aides de l'État qui sont équivalentes aux contrôles mis en place dans l'UE<sup>11</sup>.

La plupart des pays de l'UE s'appuient principalement sur les règles instaurées dans le Traité de la communauté européenne relatif au contrôle des subventions. Le Danemark représente une exception importante. Depuis le 1er octobre 2000 la loi danoise sur la concurrence a été modifiée afin de conférer des pouvoirs de contrôle des subventions au Conseil danois de la concurrence. Le texte modifié de la loi sur la concurrence dispose :

« Article 11 a. Le Conseil de la concurrence peut décider l'arrêt ou le remboursement de l'aide octroyée à partir de fonds publics, au profit de certaines formes spécifiques d'activités commerciales.

- 2) Une décision conforme au paragraphe 1 peut être rendue lorsque l'aide
  - i) a pour objet ou pour effet, directement ou indirectement, de fausser la concurrence, et
  - ii) lorsqu'elle n'est pas légitime au vu de la réglementation publique.
- 3) Le ministre compétent ou le comité de supervision rendent une décision relative à la légitimité de l'aide provenant de fonds publics, sauf dispositions législatives contraires.
- 6) Après notification, le Conseil de la concurrence peut, sur la base des faits dont il dispose, déclarer que l'aide publique n'est pas couverte par le paragraphe 2) i) et qu'en conséquence il n'existe pas de motifs justifiant de prendre une décision en application du paragraphe 1). »

### **1.3 *Pratiques en matière de subventions***

Il est difficile d'obtenir des statistiques complètes sur les politiques en matière de subventions. Cela est dû en partie aux difficultés réelles d'identification et d'évaluation de ce qui constitue une subvention (comme nous le verrons plus amplement dans la section suivante). Certaines statistiques sont néanmoins disponibles, en particulier celles de la CE.

Les caractéristiques principales des politiques en matière de subventions peuvent être résumées ainsi :

Premièrement, la plupart des programmes qui sont classés en tant que « subventions » ou « aide » ne visent pas des industries particulières mais plutôt des objectifs interindustriels. On peut distinguer deux grandes catégories de programmes interindustriels : les programmes de développement régional, d'une part, et les autres programmes horizontaux, d'autre part.

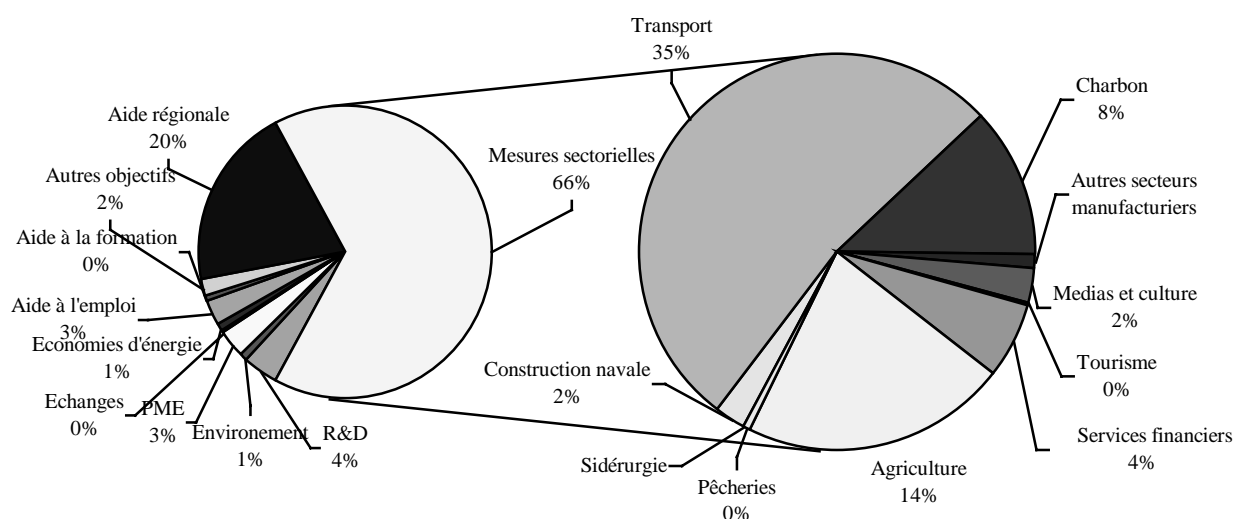
Nombre de pays de l'OCDE appliquent différents types de programme destinés à s'attaquer aux disparités régionales. Depuis 1996, par exemple, les États-Unis ont établi neuf "Federal Empowerment Zones" (zones de compétence fédérale) et plus de trois mille "(state) Enterprise Zones" (zones d'entreprises relevant de la compétence des États) qui bénéficient d'allègements fiscaux, de dons, de crédits au titre des salaires et d'un large éventail de programmes d'intérêt général, destinés à attirer de nouveaux investissements et à revitaliser des collectivités frappées de dégradation économique et sociale<sup>12</sup>.

Au sein des différentes formes de programmes horizontaux, la CE fait les distinctions suivantes<sup>13</sup> :

- aide à la R&D et à l'innovation technologique ;
- aide aux petites et moyennes entreprises ;
- aide à la main d'œuvre et à la formation ;
- aide à l'exportation et au commerce extérieur ;
- aide au titre des programmes d'efficacité énergétique ;
- aide au titre des programmes de protection de l'environnement.

Le graphique suivant donne une certaine idée de l'importance relative des mesures « horizontales » par rapport aux mesures « sectorielles » dans l'UE :

**Graphique : Aide publique totale, EU 15, 1998**



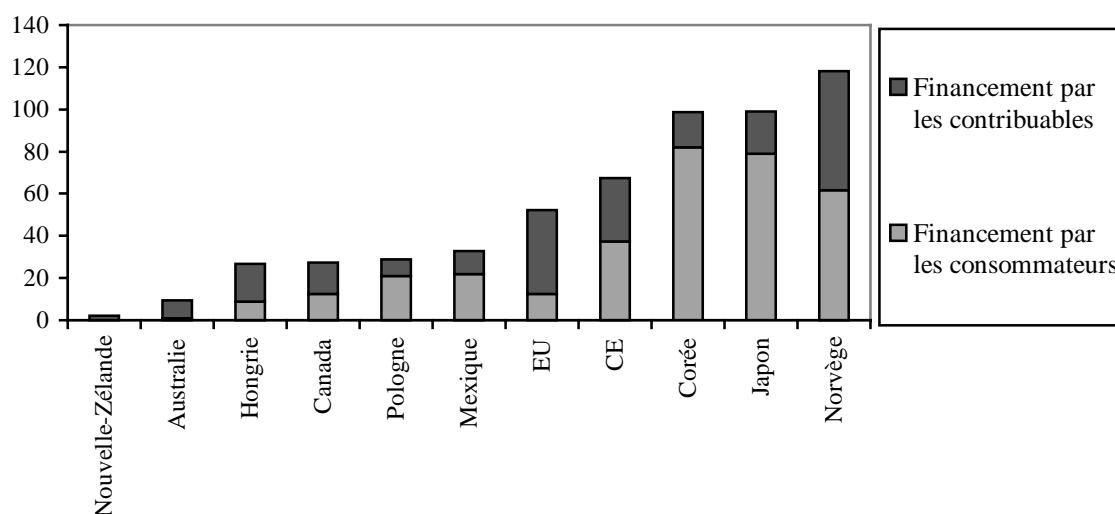
Source : CE (2000), tableau A6/16

Deuxièmement, dans le cas des programmes qui s'adressent à des secteurs spécifiques, la plupart des fonds ne sont acheminés que vers quelques secteurs, notamment l'agriculture, l'industrie ferroviaire, la construction navale, les textiles et la sidérurgie. Si l'on fait abstraction de l'agriculture et de l'industrie ferroviaire, "plus de 50 pour cent des programmes sectoriels en faveur d'une seule industrie vont à la construction navale, au textile ou à la sidérurgie, qui ne représentent conjointement que neuf pour cent environ du PIB manufacturier des pays de l'OCDE"<sup>14</sup>.

Dans le cas de la construction navale dans la CE, l'aide représente 25 pour cent de la valeur ajoutée de ce secteur (en comparaison avec une moyenne de 3,5 pour cent pour le secteur manufacturier en général). La septième directive sur la construction navale<sup>15</sup> plafonne l'aide à neuf pour cent de la valeur contractuelle des navires lorsque celle-ci supérieure à dix millions d'écus (et 4,5 pour cent pour les navires ayant une valeur contractuelle inférieure à 10 millions d'écus). Le secteur de la construction navale peut également recevoir des aides au titre de la restructuration. En Espagne et au Danemark, la construction navale a représenté respectivement 19 pour cent et dix pour cent de l'aide totale versée au secteur manufacturier. Les pays de l'UE ont accepté en décembre 2000 de mettre fin aux subventions dans le secteur de la construction navale malgré la concurrence intense des chantiers navals coréens subventionnés. La Corée subventionnerait jusqu'à 40 pour cent du coût de ses chantiers navals et a atteint une part de marché de 70 pour cent<sup>16</sup>.

Les données de l'OCDE sur le soutien aux producteurs agricoles permettent de se faire une idée de l'ampleur des subventions accordées au secteur agricole. Le graphique ci-après décompose en deux éléments le soutien total aux producteurs agricoles – les transferts budgétaires publics directs et le coût que les consommateurs assument pour des mesures marginales visant à ce que les prix intérieurs continuent à dépasser les prix mondiaux. Le montant combiné est exprimé en pourcentage de la valeur totale des revenus agricoles. Pour 1999, ce pourcentage varie de 3,3 pour cent dans le cas de la Nouvelle-Zélande à plus de 118 pour cent dans le cas de la Norvège. En 1999, les États-Unis ont versé plus de 74 millions de dollars à leurs producteurs agricoles – ce qui est supérieur au PIB total des plus petits pays de l'OCDE.

**Graphique 2: Subventions à l'agriculture: Sommes versées par les contribuables et par les consommateurs en pourcentage des recettes agricoles totales (1999)<sup>17</sup>**



Source: Base de données de l'OCDE sur l'estimation du soutien aux producteurs et l'estimation du soutien aux consommateurs

Troisièmement, une part appréciable des subventions et de l'aide est accordée par les gouvernements infranationaux. Dans l'étude de l'OCDE sur les aides publiques à l'industrie, il est indiqué que l'un des grands problèmes qui subsistent est l'absence de données sur les programmes infranationaux. Dans de nombreux cas, il n'y avait pas de données sur les programmes de subventions infranationaux. Le Canada, par exemple, n'a rien communiqué sur les programmes d'aide provinciaux. Les États-Unis n'ont pas été en mesure de fournir des données sur les programmes d'aide des cinq plus grands États. Il n'empêche que les chiffres disponibles montrent que les programmes infranationaux sont importants. Les programmes administrés uniquement par les gouvernements centraux ne représentaient que 46 pour cent de tous les programmes d'aide (et 72 pour cent des dépenses).

Souvent, l'aide accordée au niveau infranational vise à influencer sur les décisions de localisation des firmes. Par exemple, en 1993, la ville de New York a versé des subventions totalisant plus de 360 millions de dollars pour dissuader des entreprises de s'installer ailleurs. La même année, l'État du Kentucky a offert des crédits d'impôt ainsi que des prêts à intérêts bonifiés et a aménagé de nouvelles routes pour un montant total de 140 millions de dollars afin d'inciter une nouvelle aciérie, créatrice de 400 emplois, à s'installer dans cet État (plutôt qu'en Ohio ou en Pennsylvanie). En 1994, l'État de l'Indiana a mis en place à l'intention de la société Steel Dynamics, Inc., une série de mesures totalisant 37 millions de dollars américains pour qu'elle construise une aciérie créatrice de 600 emplois dans l'Indiana (plutôt que dans l'Illinois, le Kentucky, l'Ohio ou le Michigan).<sup>18</sup>

Enfin, les gouvernements continuent de renflouer ou de secourir des entreprises en faillite. Selon les chiffres de la Commission européenne, quelque six milliards d'écus ont ainsi été distribués au cas par cas en 1994-1996. La part de ce type de soutien dans l'aide totale est passée de 6,7 pour cent en 1993-1995 à 8,4 pour cent en 1995-1997. "La France (transports aériens, services financiers), l'Italie (compagnies aériennes, services financiers et diverses autres industries) et l'Espagne (sidérurgie, construction navale) comptent pour plus de 80 pour cent de cette aide au titre du sauvetage d'entreprises et de la restructuration"<sup>19</sup>. En 1994, la Commission a approuvé les plans envisagés par les autorités françaises en vue de mettre à la disposition d'Air France un train de mesures d'aide totalisant 20 milliards de francs. Les critiques formulées contre ces mesures étaient fondées sur le fait que cette somme équivalait presque à la totalité des pertes subies par les compagnies aériennes mondiales en 1993<sup>20</sup>.

Les États-Unis ont aussi, à l'occasion, sauvé des entreprises de la faillite. Certains des exemples les plus connus remontent aux années 70 et 80 et comprennent le sauvetage de Lockheed, de Conrail et de Chrysler. Dans les années 70, après les graves problèmes financiers connus par Lockheed, le Congrès américain a approuvé l'octroi à l'entreprise de garanties de prêts maximales de 250 millions de dollars. Le gouvernement est intervenu à cause notamment du nombre élevé d'emplois qui étaient menacés, de l'importance des contrats conclus avec Lockheed dans le secteur de la défense et des effets de la concurrence dans l'industrie aérospatiale. Des considérations similaires ont entraîné l'octroi de garanties de prêts maximales de 1,5 milliard de dollars à Chrysler au début des années 80. Ces deux opérations de sauvetage ont permis de restaurer la rentabilité des deux entreprises.

Des études ont montré que certains programmes de subventions comportent d'importants coûts sociaux. "Au Brésil, par exemple, on a estimé que les pertes sèches dues au soutien des prix du blé représentaient 15 pour cent du coût total du programme de subventions"<sup>21</sup>. Larsen et Shah (1992) estiment que si l'on supprimait dans le monde entier les subventions aux combustibles fossiles, le bien-être mondial augmenterait de plus de 13 milliards de dollars. ... Dans l'Union européenne, on a calculé que les revenus réels progresseraient de l'ordre de 0,3 à 3,5 pour cent du PIB si la politique agricole commune était abandonnée<sup>22, 23</sup>.



## 2. Qu'est-ce au juste qu'une subvention ?

Il n'existe pas de définition communément acceptée de ce qu'est une subvention. Dans cette section nous nous intéresserons à trois approches différentes permettant de définir une subvention. De manière générale ces définitions ont en commun les éléments suivants. Une subvention est :

1. une mesure publique, qui (compte tenu des mesures prises par les autres autorités publiques) ;
2. favorise certaines firmes par rapport à d'autres (c'est-à-dire affecte ou fausse la concurrence) et ;
3. réduit le bien-être général.

Nous allons débiter par l'étude de la gamme des politiques publiques qui affectent la concurrence. Comme nous le verrons une vaste gamme de politiques publiques peut avoir une incidence sur la concurrence. En fait, dans certaines circonstances, l'absence de politique publique peut avoir une incidence sur la concurrence. La question que nous étudierons plus loin est de déterminer s'il est nécessaire d'inclure la gamme entière de ces politiques dans le champ de la définition d'une subvention.

### 2.1 *Effets des politiques publiques sur la concurrence entre firmes*

#### 2.1.1 *Transferts financiers et concurrence*

Un transfert financier versé à une firme est la forme la plus simple de politique d'aide pouvant affecter la concurrence. Cependant, certains transferts financiers entre administrations publiques et firmes n'ont pour objet que l'achat d'extrants, biens ou services ou d'objectifs désirés. Comment peut-on distinguer les transferts financiers qui faussent la concurrence de ceux qui ne la faussent pas ?

Dans le cadre de la présente définition, nous retiendrons les éléments suivants : un transfert financier versé à une firme affecte la concurrence lorsque le coût assumé par la firme n'est pas immédiatement et directement proportionné au bénéfice que cette firme en retire en échange<sup>24</sup>.

Il est surtout facile de constater l'existence d'une entrave à la concurrence lorsque la transaction entre le gouvernement et la firme porte sur des biens marchands. Dans ce cas, il y a subvention lorsque le gouvernement achète un extrant de la firme à un prix supérieur à sa valeur marchande ou lui vend un intrant à un prix inférieur à sa valeur marchande. Nous pourrions inclure dans les "extrants" de la firme ses titres financiers (à savoir, les actions et les obligations). Dans ce cas, il y a subvention lorsque le prix des titres financiers diffère du prix d'autres placements similaires ou du taux d'intérêt servi sur de tels placements.

Selon le principe de l'investisseur en économie de marché de la CE, un placement financier effectué par le gouvernement est subventionné dans le cas où un investisseur privé hypothétique n'aurait pas investi aux mêmes conditions dans les mêmes circonstances.<sup>25</sup> Ce principe peut être appliqué à toute transaction (et pas simplement à une transaction financière) – une transaction donnée donne lieu à une subvention si un simple particulier hypothétique intéressé ou un groupe de simples particuliers hypothétiques intéressés n'auraient pas réalisé la transaction avec la firme dans les mêmes circonstances.

Il n'est pas nécessaire que l'avantage reçu par la firme se présente sous forme d'un paiement direct effectué par le gouvernement. Une réduction d'impôts du même montant, par exemple, aura exactement le même effet qu'un paiement en espèces.<sup>26</sup> A vrai dire, aucune distinction significative ne peut

être faite entre subvention et réduction d'impôt. Presque toute mesure d'aide publique pouvant être mise en place par le biais d'une subvention pourrait l'être par une réduction d'impôt équivalente et aurait un effet identique. De plus, l'avantage que l'État offre à la firme peut prendre n'importe quelle forme affectant la rentabilité de l'entreprise, comme une réduction du coût des intrants, une diminution du coût de production, une amélioration de la qualité, un relèvement du prix ou une augmentation de la demande pour l'extrait.

A titre d'illustration, les transactions énumérées ci-après pourraient répondre à cette définition :

- paiements de transferts directs à des firmes et paiements à des firmes subordonnés à l'augmentation ou à la réduction de certains extraits ou intrants, tels que les paiements subordonnés à l'augmentation de la production, à l'accroissement de l'emploi ou à la réduction de la pollution ;
- prêts garantis par l'État ou prêts consentis par l'État à des taux d'intérêt inférieurs aux taux du marché, ou prêts consentis par l'État sous réserve qu'en cas de défaut de remboursement l'État n'exercerait pas (ou ne pourrait pas exercer) ses droits à faire déclarer l'insolvabilité du débiteur ;
- injections de capitaux dans des firmes à des conditions que n'accepterait pas un investisseur privé ;
- prêts consentis par des banques privées qui sont tenues par l'État d'accorder certains types de prêts, que ces banques bénéficient ou non du soutien de l'État en cas de défaillance ;
- achat par le gouvernement de biens et services à des prix supérieurs à ceux du marché, ou obligation pour d'autres firmes ou personnes d'acheter des biens et services à des prix supérieurs à ceux du marché ;
- fourniture par le gouvernement de biens et services à des prix inférieurs à ceux du marché (y compris la vente d'actifs ou d'entreprises à des prix inférieurs à leur valeur marchande et toutes les formes d'aides non financières), ou obligation pour d'autres firmes ou personnes de fournir des biens et services à des prix inférieurs à ceux du marché ;
- dans le cas des entreprises publiques, non-obligation d'obtenir des résultats financiers correspondant au montant des capitaux investis ;
- traitement fiscal spécial ou préférentiel (y compris l'octroi d'exonérations fiscales, de crédits d'impôt, de déductions fiscales, de réductions spéciales des taux d'imposition, de différés d'impôt, d'exonérations temporaires ou d'accumulation d'impôts impayés).

### 2.1.2 *Biens collectifs et concurrence*

Les politiques publiques n'ont pas à mettre en œuvre des transferts financiers à certaines firmes au détriment des firmes concurrentes. Les politiques gouvernementales peuvent avantager certaines firmes en fournissant des biens collectifs comme les routes, les ports, les aéroports, les services publics, la santé, l'éducation etc. Les différences dans le niveau de ces services peuvent être tout aussi importantes pour la concurrence que les différences en matière d'impôt ou de transferts financiers.

Cela soulève la question de savoir s'il faut inclure parmi les subventions les différences au niveau des biens collectifs. Par exemple, la construction d'un phare par le gouvernement (qui réduit les coûts du transport maritime) constitue-t-elle une subvention à l'industrie maritime ? Une diminution de la criminalité (qui réduit les coûts des mesures de sécurité) constitue-t-elle une subvention à l'industrie du commerce de détail ? Une amélioration des équipements locaux (qui réduit les coûts à engager pour attirer la main-d'œuvre) constitue-t-elle une subvention à l'industrie locale de façon générale ?

Il ne s'agit pas de questions purement théoriques. Les questions ci-après se sont réellement posées lorsque des pays se sont plaints de subventions accordées par un autre pays :

1. "Bien qu'il ne soit peut-être pas possible de considérer que la gratuité de la formation générale constitue une subvention, les subventions à la formation des horticulteurs confèrent-elles un avantage injustifié aux exportateurs de fleurs ?
2. La construction d'un quai par le gouvernement constitue-t-elle une subvention aux pêcheurs et aux exportateurs de poissons ?
3. Faut-il tenir compte de la redevance perçue par le gouvernement auprès des entreprises qui exploitent une ressource sur des terrains publics pour déterminer si les exportations de cette ressource sont subventionnées, même si la redevance est la même, que la ressource soit ou non exportée ?"<sup>27</sup>

### 2.1.3 *Différences entre les politiques réglementaires et fiscales*

Les firmes peuvent être avantagées non seulement par des transferts financiers et par les différences dans la quantité des biens collectifs fournis, mais également par les différences dans les régimes réglementaires et fiscaux auxquels elles sont soumises.

Par exemple, dans une industrie où la plupart des firmes doivent assumer les coûts de la pollution qu'elles produisent, le fait que le gouvernement décide de ne pas imposer de contrôles de la pollution aux firmes qui exercent leurs activités dans sa juridiction peut constituer une entrave à la concurrence. De façon plus générale, dans une industrie où les gouvernements assujettissent les firmes à une norme réglementaire X, le fait qu'un gouvernement s'abstient d'imposer ladite norme peut constituer une forme de subvention avantageant les firmes qui exercent leurs activités dans la juridiction considérée.

Comme dans le cas des biens publics, l'une des difficultés évidentes découle du fait que l'absence de certains contrôles réglementaires ne signifie pas nécessairement que les firmes qui exercent leurs activités dans cette juridiction sont subventionnées. Les juridictions diffèrent de par leur richesses naturelles et les préférences de leur population. S'il peut s'avérer justifié de contrôler la pollution dans une région fortement peuplée, il est (sans doute) moins important de le faire dans une région peu peuplée. Pour autant que les différences entre les régimes réglementaires tiennent compte des différences objectives entre les juridictions, les premières ne peuvent pas faire grand chose d'autre que traduire l'existence de prix différents pour la pollution, lesquels témoignent à leur tour des différences entre les coûts des dommages occasionnés dans des juridictions différentes.

Ceci dit, il est toujours possible qu'un gouvernement opte pour un régime réglementaire moins sévère que ne le justifient les circonstances, ce qui aurait pour effet de fixer au dommage un prix inférieur à son coût. Les firmes de cette juridiction bénéficieraient alors de cette "subvention" implicite, tout comme le fait que le prix d'un intrant soit inférieur à sa valeur marchande peut constituer une forme de subvention.

#### 2.1.4 *Droits initiaux*

En outre, même lorsque deux gouvernements mettent en œuvre un régime réglementaire qui vise le même objectif, le choix du “droit initial” que confèrent ces régimes peut avoir pour effet d’avantager une firme ou une industrie et par conséquent de “subventionner” indirectement cette firme ou industrie.

A titre d’illustration, considérons l’exemple suivant. Il est souvent possible d’atteindre le même objectif par divers moyens. Par exemple, le gouvernement peut restreindre l’incidence de l’activité X, soit en subventionnant « le fait de s’abstenir de se livrer à l’activité X », soit en accordant une réduction d’impôt « à la firme qui s’abstient de se livrer à l’activité X ». Inversement, il pourrait aussi taxer « l’exercice de l’activité X » ou réduire le montant d’une subvention « si la firme se livre à l’activité X ».

Chacune de ces quatre politiques permet d’atteindre l’objectif visé. Mais avec les deux premières politiques, le bien-être de la firme n’est pas le même qu’avec les deux dernières. Dans le cas des deux premières politiques, la firme peut décider soit de se livrer à l’activité X, soit de recevoir la subvention/réduction d’impôt. Quelle que soit sa décision, sa situation s’améliore. Dans le cas des deux dernières politiques, la firme peut décider soit de s’abstenir de se livrer à l’activité X soit de payer la taxe/perdre une subvention. Quelle que soit sa décision, dans le meilleur des cas, sa situation n’empire pas. Il va sans dire que la firme se trouve dans une meilleure situation avec les deux premières politiques; le gouvernement, par contre, se trouve dans une meilleure situation avec les deux dernières politiques.

Ces deux types de politiques diffèrent au point de départ ou de par les droits initiaux qu’ils confèrent. Avec le premier type de politiques, la firme a le droit de se livrer à l’activité X ou de recevoir une compensation si elle ne le fait pas. Avec le deuxième type de politiques, la firme n’a pas le droit de se livrer à l’activité X et elle doit payer la taxe si elle veut le faire. Plus concrètement, disons que dans un pays, les firmes doivent acquitter des taxes additionnelles si elles veulent polluer, alors que dans un autre, elles reçoivent des paiements de l’État si elles s’abstiennent de polluer. Il est clair que dans le deuxième pays la situation des firmes est meilleure et que celles-ci s’y développeront aux dépens des firmes du premier pays.

Autrement dit, même si deux politiques permettent d’atteindre le même objectif, les différences au niveau du droit initial qu’elles confèrent peuvent entraver la concurrence.

## 2.2 *Les différentes approches de la définition des subventions*

Ayant examiné l’éventail des politiques qui peuvent affecter la concurrence sur un marché, nous entreprenons maintenant d’étudier les différentes définitions possibles des termes « subvention », « aide », « assistance », ou « soutien ». Ces définitions diffèrent au niveau de la gamme des politiques entravant la concurrence qu’elles prennent en compte et au niveau de leur conception de ce que signifie « favoriser » une firme. La notion de « faveur » est relative par nature – être favorisé par rapport à quoi ? Les choix pratiqués au niveau de la définition de base conduisent à des définitions différentes du terme subvention.

Nous examinerons ci-dessous trois définitions possibles ainsi que leurs avantages et inconvénients respectifs. Puis une quatrième possibilité sera étudiée à la fin de la section.

### 2.2.1 *Approche A : Approche relativiste*

Dans le cadre de la première approche, on considère qu’une firme est « favorisée » par comparaison avec la situation des autres firmes d’une industrie. Par exemple, on dira qu’une firme est avantagée ou favorisée si elle bénéficie de transferts financiers plus importants, d’impôts moins élevés,

d'avantages plus grands provenant de biens collectifs ou de mesures de contrôle environnemental ou réglementaire moins nombreuses que ses concurrents.

L'avantage principal de cette approche est d'inclure un éventail des différentes formes de concurrence entre politiques qui entravent la concurrence et sont de ce fait susceptibles de réduire le bien-être global. Cette approche met en lumière des politiques d'entrave à la concurrence qui autrement auraient pu passer inaperçues.<sup>28</sup>

Ne s'arrêtant qu'aux différences de politiques envers les firmes, son principal inconvénient est de ne pas arriver à rendre compte des politiques qui sont poursuivies de manière uniforme par tous les gouvernements même lorsque ces politiques ne sont pas souhaitables du point de vue du bien être général. Lorsque toutes les autres firmes d'une industrie bénéficient d'avantages de la part de leurs gouvernements respectifs, la décision du dernier gouvernement à ne pas l'avoir fait de favoriser ses firmes ne serait pas considérée comme une subvention dans la cadre de cette approche car cette politique ne ferait qu'établir des règles du jeu équitables sans qu'aucune firme ne soit favorisée. Par exemple, si toutes les firmes d'une industrie reçoivent des aides financières ou des crédits d'impôts, le fait que le seul gouvernement qui n'accorde pas d'aide décide d'offrir le même soutien financier ou fiscal ne constituera pas une subvention au sens de cette définition. Celle-ci porte sur les aspects inéquitables des règles du jeu mais sans s'occuper de l'élimination des politiques mises en place par l'ensemble des gouvernements malgré leurs inefficacités collectives.

De par son ampleur, cette approche présente un autre inconvénient car elle englobe non seulement les politiques qui réduisent le bien-être général mais également un large éventail de politiques qui améliorent le bien-être. C'est pourquoi, afin de déterminer si une politique spécifique d'entrave à la concurrence remplit l'ensemble des critères de la définition de subvention, il est nécessaire de déterminer de surcroît si cette politique réduit le bien-être général.

Par exemple, les réglementations sur l'environnement peuvent être différentes dans deux juridictions. Dans le cadre de la définition retenue, il s'agit d'une entrave à la concurrence (puisque les firmes de la juridiction où les contrôles sont moins stricts sont dans un sens avantagées par rapport aux firmes de l'autre juridiction). Cependant, sous réserve que les différences entre les réglementations reflètent fidèlement les différences au niveau de l'impact des dommages causés à l'environnement dans les deux juridictions, ces différences peuvent améliorer au lieu de réduire le bien-être général.

### 2.2.2 *Approche B : Accent mis sur les transferts financiers relatifs aux autres firmes du pays*

L'approche précédente présentait l'inconvénient de ne pas tenir compte de politiques poursuivies uniformément par l'ensemble des gouvernements même lorsque ces politiques étaient collectivement nuisibles. Pour bien saisir la nature de telles politiques, il faut adopter des critères exogènes (au lieu de critères relatifs) pour déterminer à quel moment une firme est favorisée. Ceci peut être réalisé en s'intéressant aux transferts financiers effectués par l'État et en utilisant comme point de départ le niveau des transferts financiers en provenance ou à destination d'autres firmes du même pays (et non pas aux autres firmes du même marché). Une firme serait alors dite avantagée ou favorisée si elle reçoit une exonération fiscale ou une aide financière qui soient différentes de celles dont bénéficient les autres firmes du même pays. C'est là l'approche principalement retenue par la Commission européenne dans le cadre du contrôle de l'aide étatique.

Cette approche comporte de nombreux avantages. Premièrement elle prend en compte les aides financières ciblées (ou les réductions d'impôt ciblées) en faveur de firmes individuelles, même si ces

politiques sont poursuivies simultanément par l'ensemble des gouvernements. A ce titre, d'ailleurs, son champ d'application est plus vaste que celui de la première approche.

Elle présente également l'avantage de compliquer pour les gouvernements, la pratique de la discrimination en terme de politiques fiscales et de transferts financiers entre les firmes qui se font concurrence sur les marchés intérieurs et celles qui se font concurrence sur le marchés internationaux. Puisque tout traitement spécial offert aux firmes exportatrices doit également être offert aux firmes non exportatrices, cette approche fait augmenter le coût du traitement spécial des firmes exportatrices. En conséquence, un gouvernement est moins enclin à renoncer à une politique, qui contribuerait à améliorer le bien-être par ailleurs, par crainte des dommages qu'elle pourrait causer aux firmes exportatrices.

Enfin, cette approche a aussi l'avantage significatif d'identifier les politiques qui risquent d'entraîner une réduction du bien-être général (au moins dans la majorité des industries). Il devient donc moins nécessaire de continuer à s'interroger pour déterminer si une politique donnée augmente ou réduit effectivement le bien-être. C'est là un avantage pratique important de cette approche, puisqu'une telle détermination (particulièrement lorsqu'elle est faite par une autorité supérieure) peut s'avérer discutable et quelque peu arbitraire.

Cette approche s'accompagne cependant de nombreux inconvénients. Puisque la définition n'est pas basée sur les principes de la concurrence, certaines entraves à la concurrence ne seront pas englobées par cette définition alors que des différences mineures entre les firmes seront retenues. Par exemple, puisque les frontières d'un pays ne correspondent pas forcément aux frontières des marchés visés, les politiques gouvernementales qui s'appliquent à l'ensemble des firmes dans un pays (ou à l'ensemble des firmes remplissant certains critères dans ce pays) ne seraient pas visées par cette définition, même si elles peuvent avoir un impact important sur la concurrence si le marché déborde les frontières nationales. (Si la politique d'aide doit s'appliquer à l'ensemble des firmes, l'aide apportée à certaines firmes ou certaines industries devient plus coûteuse, mais cela ne l'exclut pas complètement pour autant).

Par contre, des mesures de soutien qui ne faussent pas la concurrence peuvent être prises en compte. Dans un pays où les intrants sont fortement taxés, les exportateurs peuvent être en concurrence sur un marché mondial avec d'autres firmes qui ne sont pas soumises à la même taxation. Le « rééquilibrage » de la concurrence au niveau international peut exiger une réduction de la taxation des intrants en faveur des firmes exportatrices. Cela ne fausse pas automatiquement la concurrence sur un marché, bien que cela puisse paraître illégal au sens de cette définition de subvention.

On peut également reprocher à cette approche d'être limitée et de ne pas englober les diverses autres formes de concurrence entre des politiques d'aide qui n'impliquent pas de transferts financiers publics, comme les différences de régime réglementaire ou la fourniture de biens collectifs.

### 2.2.3 *Approche C : Accent mis sur les différences de prix par rapport aux prix de référence*

Une troisième approche possible consiste à établir comme point de départ des fourchettes de prix pour les intrants et pour les extrants des firmes d'une industrie. Nous avons rappelé précédemment que lorsque des marchés affectés par des mesures publiques ont des prix marchands bien définis, la détection des entraves à la concurrence est plus simple – une entrave à la concurrence se produit lorsque la firme vend ses extrants à un prix supérieur au prix marchand ou acquiert des intrants à un prix inférieur au prix marchand. En d'autres termes, dans les industries où les biens font l'objet de nombreux échanges, il serait possible de déterminer un éventail de prix de référence « mondiaux » et ensuite de comparer les prix payés ou reçus par les firmes individuelles pour détecter si ces firmes ont été favorisées.

C'est pour l'essentiel l'approche adoptée par la direction de l'agriculture de l'OCDE dans l'estimation du soutien aux producteurs et aux consommateurs dans le secteur agricole.

Cette approche a l'avantage d'englober un plus vaste éventail de politiques que la seconde approche. Ainsi, cette approche retiendrait non seulement les transferts financiers aux firmes mais également « l'assistance » reçue par une firme du fait de barrières tarifaires ou autres mesures du même ordre. En outre, cela pourrait refléter certaines différences de réglementation, lorsqu'elles entraînent des différences observables dans les prix auxquels les firmes visées sont confrontées.

Cette approche comporte également de nombreux inconvénients. Elle peut, tout d'abord, être trop large. Elle peut notamment faire apparaître à tort l'existence d'une entrave à la concurrence, même lorsqu'il n'y a pas de différence dans les politiques publiques ! Cela s'explique par le fait que les intrants et les extrants ne se trouvent pas tous sur le même marché géographique. Il peut donc y avoir des différences légitimes dans les prix des intrants et des extrants entre les régions. Des différences de prix ne reflètent pas obligatoirement des entraves à la concurrence. Les prix de la main d'œuvre peuvent, par exemple varier d'un pays à l'autre. Est-ce pour autant le signe d'une entrave à la concurrence ?

D'autre part, cette approche peut également ne pas englober certaines différences de politiques qui, en fait, faussent la concurrence mais ne sont pas directement reflétées dans les prix observables. Par exemple, en ce qui a trait à la concurrence dans la fourniture des biens publics ou dans la rigueur des contrôles environnementaux.

#### 2.2.4 *Évaluation des avantages et inconvénients de ces approches*

Les tableaux suivants comparent ces différentes approches. Le premier tableau compare le champ des définitions en fonction de la prise en compte ou non de différentes formes de concurrence entre les politiques d'aide. Le second tableau compare les avantages et les inconvénients des trois approches.

Pour qu'une politique soit qualifiée de subvention dans le cadre des définitions précédentes, il faut qu'elle réduise le bien-être général. Mais l'inverse n'est pas vrai. Pour l'ensemble des trois approches ce n'est pas parce que des mesures ne sont pas qualifiées de subventions qu'elles sont forcément de « bonnes » mesures (c'est-à-dire des politiques qui améliorent le bien-être général). Aucune des trois définitions ne qualifierait de subvention l'absence de taxe sur les dommages envers l'environnement quand aucun gouvernement n'en impose. Il n'empêche qu'une taxe semblable pourrait améliorer le bien-être général.

Cela fait naître la possibilité d'une quatrième approche dans laquelle une politique d'aide pourrait être qualifiée de subvention par référence à un ensemble de mesures théoriques « idéales ». En fait, c'est l'approche retenue par les processus assurant la qualité de la réglementation – ces processus ne comparent pas la réglementation proposée par rapport à la réglementation étrangère mais par rapport à un idéal théorique de réglementation de grande qualité dans le secteur concerné. Dans la seconde partie de ce texte nous soutenons que, lorsqu'elle est possible, cette méthode est préférable pour le contrôle des subventions.

**Tableau 1 : Comparaison du champ d'application des trois définitions des subventions**

Mesures sous étude	Approche A : Comparaison du contexte des politiques applicables aux autres firmes sur le même marché	Approche B : Comparaison des mesures de transferts financiers s'appliquant aux autres firmes du même pays	Approche C : Comparaison avec une série de prix de référence des intrants et extrants proposés aux autres firmes du même marché
Transferts financiers liés aux extrants	Englobé par la définition*	Englobé par la définition**	Englobé par la définition
Réductions d'impôt liées aux extrants	Englobé*	Englobé**	Englobé
Exonération fiscale sur les intrants	Englobé*	Englobé**	Englobé
Transferts financiers liés à la localisation dans une région déterminée	Englobé*	Englobé**	Englobé
Réglementation abaissant les prix des intrants	Englobé*	Non englobé	Englobé (si les prix des intrants peuvent être mesurés)
Absence de contrôles réglementaires stricts	Englobé*	Non englobé	***
Différences dans la fourniture de biens collectifs	Englobé*	Non englobé	***

\* à moins que la même politique ne soit poursuivie par l'ensemble des gouvernements

\*\* à moins que la politique ne s'applique à toutes les firmes du même pays

\*\*\* Selon que l'exemption de contrôles réglementaires ou les différences dans la fourniture de bien collectifs sont ou non reflétées dans les prix des intrants et des extrants



**Tableau 2 : Résumé des avantages et inconvénients des trois approches**

	Approche A :	Approche B :	Approche C :
	Comparaison du contexte des politiques applicables autres firmes sur le même marché	Comparaison des mesures de transferts financiers s'appliquant aux autres firmes du même pays	Comparaison avec une série de prix de référence des intrants et des extrants proposés aux autres firmes du même marché
Avantages	Champ large englobant de nombreuses formes de concurrence entre politiques	Englobe les transferts financiers aux firmes même lorsque l'ensemble des gouvernements poursuivent la même politique  Les mesures en résultant sont susceptibles de réduire le bien-être, limitant la nécessité de déterminer quelles sont les politiques qui améliorent ou réduisent le bien-être.	Le champ d'application est plus large que celui de l'approche B (mais pas autant que celui de A)  Englobe des formes d'assistance aux firmes même lorsque l'ensemble des gouvernements poursuivent la même politique.
Inconvénients	N'englobe pas les politiques qui sont collectivement indésirables lorsqu'elles sont poursuivies par l'ensemble des gouvernements  Englobe un large éventail de mesures qui ne réduisent pas nécessairement le bien-être général, il est par conséquent nécessaire de mettre d'avantage l'accent sur la question de savoir si une politique réduit le bien-être	Le champ est moins large, excluant une série de formes alternatives de concurrence de mesures qui peuvent être indésirables  Englobe des politiques qui ne faussent pas la concurrence (comme une exemption d'impôt sur les intrants pour les exportateurs)  N'englobe pas certaines politiques qui peuvent entraver la concurrence (comme les mesures qui s'appliquent à toutes les firmes de la région)	Englobe les politiques qui ne faussent pas la concurrence (comme les différences dans le coût des intrants lorsqu'elles reflètent la rareté locale et ne résultent pas de politiques gouvernementales)  N'englobe pas certaines autres formes de concurrence entre mesures qui peuvent être indésirables.

### 3. Le contrôle théorique des subventions

En pratique, le contrôle des subventions est rendu plus compliqué par le manque de pouvoirs de réglementation et de contrôles effectifs de certains niveaux d'administration (notamment au niveau international) et par la rivalité juridictionnelle entre les différents niveaux d'administration. Dans cette section, nous allons mettre ces questions de côté et nous demander comment pourrait se faire le contrôle des subventions dans une situation idéale.

La première question à laquelle il faut répondre porte sur le niveau d'administration approprié pour effectuer le contrôle d'une mesure (ou d'un ensemble de mesures) donnée. Il ne fait pas de doute qu'une juridiction dont le champ géographique est assez large pour couvrir l'ensemble des effets de la subvention constitue le niveau d'administration approprié. Il s'agit d'une juridiction assez grande pour que l'on y retrouve tous les avantages et/ou coûts de la subvention, les coûts de la taxe utilisée pour financer la subvention et les limites géographiques de tout marché économique affecté par la subvention. Dans ce cas, comme il n'y a aucun effet externe sur une autre juridiction, il n'y a pas lieu qu'une instance supérieure exerce un contrôle de l'extérieur.

Le contrôle des subventions consiste, sous réserve du choix de la juridiction appropriée, à s'assurer avant tout que la subvention permet d'atteindre de la manière la plus efficace possible les objectifs visés par la juridiction. Est-il possible de dresser la liste des principes qui contribueraient à distinguer les subventions efficaces d'un point de vue économique des subventions qui ne le sont pas?

Les principes ou critères à appliquer dans ce contexte sont tout simplement les mêmes que ceux utilisés pour s'assurer que l'intervention des pouvoirs publics est de grande qualité, et ils sont bien connus dans d'autres contextes (voir, par exemple la liste de critères de référence de l'OCDE pour la prise de décision en matière de réglementation<sup>29</sup>). Ces principes sont souvent énoncés sous forme d'une série de questions par rapport auxquelles peuvent être évaluées les propositions. Cette série comprend habituellement des questions telles que : "L'intervention des pouvoirs publics est-elle nécessaire ? La défaillance sous-jacente du marché est-elle clairement définie ? La liste des interventions possibles a-t-elle été établie ? Les avantages et les coûts des autres interventions possibles ont-ils été correctement calculés ?" Et ainsi de suite.

Pour les fins du présent document, le principe le plus pertinent est que la subvention devrait être conçue de manière à protéger le plus possible les mécanismes concurrentiels et ce, quel que soit l'objectif de la subvention en question.

Le fait de protéger les forces du marché permet aux firmes de se développer et de prospérer ou de s'affaiblir et de disparaître, compte tenu de la qualité de leurs services, de leur capacité d'innovation, de leur efficacité sur le plan des coûts et de la mesure dans laquelle elles répondent aux besoins de la clientèle, par rapport à leurs concurrents. De façon générale, l'intervention des pouvoirs publics au moyen de subventions ne devrait donc pas avoir d'effet défavorable sur les extrants, la qualité, l'innovation, l'efficacité sur le plan des coûts ou le rendement de l'investissement. Comme la subvention dont le niveau augmente avec une certaine action a généralement pour effet d'encourager l'action en question, le niveau des subventions ne devrait pas augmenter lorsque la firme diminue les extrants, amoindrit la qualité, augmente les coûts ou réduit le rendement de l'investissement.

Il existe deux grandes approches bien connues de la concurrence, la concurrence sur le marché et la concurrence pour s'implanter sur le marché.

Si, comme dans d'autres contextes, de nombreuses firmes concurrentes peuvent atteindre les objectifs visés par la subvention, il est préférable de préserver la concurrence en veillant à ce que toutes les

firmes concurrentes (et les nouvelles venues sur le marché) aient accès à la subvention aux mêmes conditions. Il faut pour cela que la politique en matière de subventions soit annoncée à l'avance et qu'elle s'applique à toutes les firmes de la même manière sans que les autorités publiques n'usent de leur pouvoir discrétionnaire (ce qui correspond aux principes de l'annonce préalable, de la non-discrimination et de l'application non discrétionnaire dont nous traitons dans la dernière partie du présent document).

Si une seule firme peut atteindre les objectifs visés par la subvention, cette firme et le montant de la subvention devraient être choisis par une procédure concurrentielle, similaire à un processus d'appel d'offres. Le gouvernement devrait choisir la firme qui permet de réaliser le mieux les objectifs par unité de subvention dépensée. Le parallèle avec les principes de l'adjudication efficiente des marchés est évident.

Enfin, lorsqu'il n'y a qu'une seule firme qui peut atteindre les objectifs visés par la subvention et qu'il n'y a pas moyen de recourir à une procédure concurrentielle pour la choisir, il n'est pas possible d'utiliser une procédure concurrentielle pour connaître le coût sous-jacent associé à la réalisation des objectifs du gouvernement et de s'assurer ainsi que la rétribution de la firme subventionnée n'est pas excessive. Il faut plutôt déterminer le coût de l'atteinte des objectifs du gouvernement au moyen de procédures réglementaires, telles que l'analyse des comptes de la firme subventionnée.<sup>30</sup> Il faudra prêter attention aux incitations de la firme subventionnée à maintenir ces coûts le plus bas possible. Les instruments réglementaires d'application courante, comme la réglementation incitative et la séparation structurelle, pourraient s'avérer utiles à cet égard.

Par exemple, supposons qu'un gouvernement veuille subventionner la livraison du courrier en région rurale. Dans certains cas, il sera possible d'organiser une procédure d'appel d'offres concurrentielles, et de retenir la firme qui demande la plus faible subvention. Si une seule firme seulement peut assurer la livraison du courrier en région rurale, le gouvernement devrait s'assurer que le montant de la subvention ne dépasse pas les coûts engagés pour fournir le service et que la firme subventionnée est incitée à maintenir ces coûts le plus bas possible.<sup>31</sup>

### **3.1 Subventions aux firmes en sérieuse difficulté financière**

Il est presque certain que certaines formes de subventions violeront ces principes et il faudrait donc presque toujours les contrôler. Les subventions accordées aux firmes en sérieuse difficulté financière – qualifiées dans l'UE d'"aide au sauvetage ou à la restructuration" – en sont un exemple.

Il est théoriquement possible de concevoir une politique de subventions aux entreprises en difficulté qui soit compatible avec le principe de protection de la concurrence. Par exemple, un gouvernement pourrait annoncer une politique qui accorderait, selon une formule prédéterminée, une aide à toutes les firmes qui satisferaient à certains critères. À condition qu'elle ne soit pas limitée dans le temps, qu'elle soit d'un niveau approprié et qu'elle soit subordonnée à certaines conditions (tel le ralentissement du taux de licenciement des employés), une telle aide n'a pas besoin de fausser inutilement le jeu de la concurrence. Inversement, même si le gouvernement n'a pas annoncé à l'avance sa politique d'aide aux entreprises en difficulté, il serait possible de satisfaire au critère du traitement égal si l'octroi d'une quelconque subvention à une firme s'accompagnait du versement simultané de subventions égales à toutes les autres firmes de l'industrie.

Aucune de ces politiques n'est répandue dans la pratique. En fait, les subventions versées à des firmes en sérieuse difficulté financière sont très susceptibles de fausser la concurrence. Elles sont discriminatoires en ce sens qu'elles ne s'adressent qu'aux firmes de la plus piètre qualité ou qui ont les coûts les plus élevés. En outre, elles sont proportionnelles à l'ampleur des pertes de la firme subventionnée, ce qui incite encore moins celle-ci à réduire le plus possible ses pertes. Comme elles anticipent une telle

aide, les firmes qui se trouvent dans cette situation sont peu incitées à améliorer leur efficacité, à innover ou à baisser leurs prix. Selon Martin et Valbonesi :

“Pour tirer le plus de gains possibles de l’intégration du marché, il faudrait que ce soient les firmes les plus efficaces qui demeurent sur le marché alors que les moins efficaces en sortiraient. Les subventions, en particulier les subventions concurrentes accordées par différents États membres [de l’UE], peuvent fausser la sélection opérée par le marché en permettant à des firmes moins efficaces, mais subventionnées, de survivre alors que des firmes plus efficaces qui ne sont pas subventionnées sortent du marché”.<sup>32</sup>

Pour aggraver les choses, les firmes qui peuvent s’attendre à bénéficier de telles subventions peuvent vraiment menacer de prendre des mesures qui seraient préjudiciables aux autres entreprises, comme la fixation de prix d’éviction. La simple éventualité qu’une firme puisse avoir accès à des subventions en cas de sérieuse difficulté financière peut dissuader d’autres entreprises de pénétrer sur le marché.

L’ampleur des effets non désirables dépend de la mesure dans laquelle la firme peut s’attendre à recevoir une aide si elle éprouve des difficultés financières. Ce qui, à son tour, dépend en partie des conséquences d’une faillite sur le plan politique. Il y a quatre situations où ces conséquences sont lourdes et sur lesquelles il convient d’attirer l’attention :

- Premièrement, le cas d’une entreprise de service public qu’il serait difficile de laisser interrompre la fourniture du service. Il pourrait être considéré intenable sur le plan politique de ne pas fournir un service téléphonique ou l’alimentation en électricité, ce qui obligerait l’État à intervenir en cas de difficultés.
- Deuxièmement, le cas d’une entreprise considérée être un “champion national” . Dans certaines industries, telles que le transport aérien, le gouvernement risque d’avoir clairement pour politique de promouvoir un “champion national”. Il pourrait s’avérer difficile sur le plan politique d’accepter la faillite de cette firme, ce qui rend l’octroi d’une aide plus probable.
- Troisièmement, le cas d’une entreprise publique. Même si une firme n’assure pas un “service essentiel” et n’est pas non plus un “champion national”, il peut être difficile de la laisser cesser ses activités, en particulier si elle appartient à l’État.
- Quatrièmement, le cas d’une grande banque – le problème de l’entreprise “trop grosse pour faire faillite”. Dans le cas particulier du secteur bancaire, la perte de leur argent par les petits déposants peut créer un tel problème politique qu’il est inconcevable de laisser une grande banque faire faillite.

Bien entendu, les problèmes sont souvent encore plus compliqués – une entreprise publique est souvent une entreprise de services publics et un champion national. Dans certains pays, les grandes banques appartiennent aussi à l’État.

Certains pays ont introduit une législation pour s’assurer justement que les entreprises publiques ne bénéficient pas de subventions qui faussent la concurrence. Par exemple, l’article 7 de la Loi sur les entreprises d’État de la Nouvelle-Zélande dispose que l’atteinte des objectifs non commerciaux des entreprises d’État doit se faire au moyen d’un contrat conclu dans des conditions de pleine concurrence: “Si l’État demande à l’une de ses entreprises de fournir des biens ou services à toute personne, l’État et son entreprise doivent conclure un accord aux termes duquel l’entreprise publique fournira lesdits biens ou services en contrepartie du paiement par l’État de la totalité ou d’une partie de leur prix.”

En Australie, le rapport Hilmer a recommandé que le principe de la neutralité concurrentielle entre les entreprises publiques et privées fasse partie de la politique de concurrence de l'Australie.<sup>33</sup> Ce rapport a plus précisément recommandé que “les entreprises publiques ne jouissent d’aucun avantage concurrentiel net du fait de leur propriété lorsqu’elles font concurrence à d’autres firmes” et que “les entreprises publiques qui font concurrence à d’autres firmes sur leurs marchés traditionnels soient soumises à des mesures qui neutralisent véritablement tout avantage concurrentiel net découlant de leur propriété”.

#### **4. Le contrôle des subventions ayant des effets sur d’autres juridictions lorsque les instances supérieures ont des pouvoirs limités**

Dans la section précédente, on présumait qu’un gouvernement exerçait son autorité sur toute juridiction affectée par une subvention et que celui-ci disposait de pouvoirs suffisants pour prendre toute action nécessaire à la mise en place de règles efficaces. Supposons maintenant que cela ne soit pas le cas. Supposons en particulier que l’autorité compétente sur le marché affecté par la subvention n’ait que des pouvoirs limités. Cela est particulièrement le cas, bien sûr, au niveau international, où les gouvernements nationaux ont été relativement lents et réticents à transférer leurs pouvoirs réglementaires à des instances supranationales. Dans ce contexte, nous allons nous intéresser à l’incitation des juridictions individuelles à subventionner et nous nous demanderons s’il existe pour le contrôle des subventions des règles simples et non controversées qui pourraient être facilement appliquées par une instance supérieure disposant de pouvoirs limités.

Pour simplifier, dans cette partie du document, nous nous intéresserons à une forme particulière de subvention – un transfert financier lié à la production des firmes subventionnées, également appelées subventions à la production.

L’effet d’une subvention à la production sur le bien-être d’une juridiction donnée dépend dans une large mesure de la combinaison de firmes et de consommateurs que l’on retrouve dans cette juridiction et dans les autres juridictions. Dans certains cas, les intérêts des producteurs et des consommateurs coïncideront alors que dans d’autres cas, ils divergeront.

Considérons, par exemple, le cas où tous les producteurs se trouvent dans la même juridiction et où tous les consommateurs se retrouvent dans une autre juridiction. La juridiction dominée par les producteurs n’est nullement incitée à subventionner ses firmes; par contre, elle est fortement incitée à imposer une taxe sur la production. Cette taxe fera en sorte que l’ensemble des producteurs ramèneront la production au niveau monopoliste, ce qui permettra à la juridiction de s’emparer de la rente de monopole, au détriment des consommateurs de l’autre juridiction. Dans l’ensemble, cette politique fera baisser le bien-être global.

Il va sans dire que ce type d’activité anticoncurrentielle doit être contrôlé par une instance supérieure. Mais ce cadre peut seulement expliquer pourquoi il est nécessaire de contrôler les taxes à l’exportation (ou, ce qui revient au même, les ententes à l’exportation). Il ne peut expliquer pourquoi il pourrait s’avérer nécessaire de contrôler les subventions à l’exportation.

##### **4.1 *La course aux subventions dans les industries imparfaitement concurrentielles***

L’incitation à subventionner se fait jour lorsque les firmes qui se font concurrence sont établies dans des juridictions différentes et que la concurrence est imparfaite. Dans ce cas, la subvention aura pour effet de fausser la concurrence entre les producteurs, au profit de la juridiction qui la verse.

#### 4.1.1 *Industries caractérisées par une concurrence de type Cournot*

Brander et Spencer (1985) ont fait ressortir le cas où les firmes productrices implantées dans des juridictions différentes se livrent à une concurrence de type Cournot. Dans ce contexte, une subvention à la production octroyée par une juridiction (si l'on suppose pour le moment que les autres juridictions ne réagissent pas en augmentant leurs propres subventions) fera augmenter la production de cette juridiction et son bénéfice total, et elle fera diminuer la production de toutes les juridictions où cette industrie existe. Dans l'ensemble, la production totale de l'industrie augmente et les prix du marché diminuent. En fait, dans un contexte de type Cournot, les subventions à la production d'une firme permettent à celle-ci de s'emparer d'une plus grande part du bénéfice total légèrement moindre de l'industrie.<sup>34</sup>

Comme cela vaut pour chacune d'entre elles, les juridictions productrices sont incitées à subventionner leur production et à accroître leurs subventions pour répondre aux subventions accordées par les autres juridictions, s'engageant ainsi dans une "course aux subventions" comme il est convenu de l'appeler. Il en résulte un niveau total de subventions pour lequel chaque juridiction n'est plus incitée à ajuster les siennes, étant donné celles qui sont octroyées par les autres juridictions – à savoir, l'équilibre de Nash dans le domaine des subventions.

Il convient de préciser que le premier niveau de subvention le plus efficient n'est pas zéro. Dans une industrie oligopolistique<sup>35</sup> le prix du marché est supérieur au coût marginal. Dans ce contexte, une subvention peut améliorer le bien-être en faisant tomber le prix du marché au-dessous du coût marginal.

L'équilibre de Nash dans le domaine des subventions produit-il un niveau de subventions qui est au-dessus ou au-dessous du niveau efficient ? Collie (2000) montre que du point de vue du bien-être global (plus précisément du point de vue d'une juridiction qui est suffisamment grande pour englober la totalité du marché géographique du produit et qui n'importe pas et n'exporte pas), et dans le cas spécial où toutes les juridictions sont identiques, la course aux subventions débouche simplement sur le niveau de subventions efficient – un niveau qui est justement suffisant pour faire baisser le prix du produit au-dessous du coût marginal.<sup>36</sup>

De façon plus générale, le fait qu'une juridiction soit incitée à fixer une subvention à un niveau qui est trop élevé ou trop faible par rapport au niveau efficient est subordonné au fait qu'elle est un exportateur ou un importateur net. L'exportateur net du produit est incité à fixer la subvention à un niveau qui est trop bas par rapport au niveau efficient. L'importateur net est incité à fixer la subvention à un niveau qui est trop élevé par rapport au niveau efficient. Dans le cas spécial mentionné par Collie, comme toutes les juridictions sont identiques, à l'équilibre, il n'y a pas d'échanges commerciaux entre les juridictions. En conséquence, chaque juridiction a exactement l'incitation qu'il faut pour fixer la subvention au niveau efficient. Dans le cas plus général, on ne s'attend pas à ce que les subventions permettent d'atteindre un niveau de production efficient.

#### 4.1.2 *Industries ayant des rendements d'échelle croissants*

La présence de rendements d'échelle croissants – qu'il s'agisse de rendements croissants classiques du côté de l'offre ou de rendements croissants du côté de la demande (également connus sous le nom d'"effets de réseau") – est un autre facteur qui milite en faveur des subventions à la production. Quoi qu'il en soit, si les rendements croissants sont suffisamment importants, il ne restera, à l'équilibre, qu'une seule firme (ou tout au plus quelques-unes). Cette firme jouira habituellement d'un pouvoir de marché important.

Dans ce contexte, une intervention relativement mineure aux premières étapes du développement du marché pourrait avoir des conséquences à long terme qui détermineront la firme qui survivra. Lorsque

les économies d'échelle sont classiques, la firme qui obtient au début un avantage sur le plan de la taille peut profiter de coûts réduits, ce qui accroît son avantage et évince ses concurrents du marché. Inversement, lorsque les économies d'échelle sont du côté de la demande, la firme qui au début s'impose par ses ventes, fait augmenter la demande pour ses produits, ce qui renforce sa domination.

L'incitation à utiliser des subventions est claire. Les subventions permettent à la firme d'abaisser ses prix, de faire augmenter la demande de ses produits et d'accroître ses chances de survie, ce qui donne à la juridiction qui la subventionne la possibilité de s'emparer de la rente de monopole. Mais comme cela vaut pour toutes les juridictions, celles-ci se font concurrence pour subventionner leurs firmes, afin que ce soient finalement elles qui survivent.

Ces subventions sont bien peu susceptibles d'améliorer les résultats du marché en l'absence d'intervention et, en fait, elles risquent en définitive d'avoir l'effet contraire. Même en l'absence de subventions des pouvoirs publics, les entreprises qui démarrent dans de nouvelles industries seront financées par le secteur privé. Les créanciers potentiels tendent à choisir la firme la plus prometteuse à partir de critères objectifs pertinents (tels que la qualité du produit ou de la commercialisation). Par contre, le créancier public est plus porté à être influencé dans son choix par des critères non pertinents – tels que la propriété de la firme. Ce qui accroît la probabilité que la firme survivante fabrique un produit de moindre qualité que si seuls les mécanismes du marché avaient présidé à son choix.

#### 4.1.3 *Fixation de prix d'éviction*

Il y a encore une autre raison possible au subventionnement de la production dans le contexte de la concurrence entre juridictions. Dans l'exemple précédent, nous partions de la constatation qu'aux premières étapes du développement d'un marché les subventions pouvaient faire en sorte que ce soit une firme donnée qui survive à long terme. Mais, même dans un marché bien établi, il est possible que les subventions influent sur la structure du marché et déterminent quelle est la firme qui survivra, en particulier si la subvention permet à la firme subventionnée de pratiquer en fait des prix d'éviction. Il est bien connu que la fixation de prix d'éviction peut à la fois réduire le nombre de concurrents et dresser des obstacles à l'entrée du marché. Elle fait obstacle à l'entrée parce qu'elle permet à une firme en place d'acquérir une réputation d'agressivité à l'égard des nouveaux venus sur le marché.

Une firme classique qui recherche la maximisation des bénéfices peut éprouver certaines difficultés à acquérir une telle réputation – en particulier, s'il lui est difficile de récupérer les frais qu'elle aurait engagés pour se débarrasser des nouveaux venus, en pratiquant par la suite des prix plus élevés. Mais il sera plus facile à la firme qui ne recherche pas nécessairement la pure maximisation des bénéfices d'acquérir une telle réputation – car si elle n'a pas à s'en tenir rigoureusement à une telle maximisation, elle a beaucoup plus de chances de faire croire qu'elle affronte les nouveaux venus avec hostilité.

En particulier, la firme qui reçoit des subventions de l'État pourrait être en mesure de faire clairement savoir à ses concurrents qu'elle réagira énergiquement à l'entrée de nouveaux venus. Ainsi que nous l'avons vu dans d'autres contextes, les entreprises publiques sont souvent celles qui sont capables de menacer le plus de pratiquer des prix d'éviction. Mais même les firmes privées, soutenues par l'engagement illimité des pouvoirs publics à les subventionner, peuvent bénéficier de ce même effet. De fait, si l'engagement est suffisamment clair, il ne sera jamais nécessaire de recourir aux subventions – les nouveaux venus ne pénétreront jamais sur le marché.

Si chaque juridiction cherche à poursuivre de telles politiques, il est évident que les stratégies s'annulent en grande partie mutuellement. La première conséquence est d'atténuer la contrainte de budget des firmes productrices – si le moment auquel les subventions sont octroyées est incertain (ce qui semble

probable), chaque firme peut alléguer que ses pertes sont attribuables aux subventions des autres juridictions et réclamer en conséquence une augmentation des subventions qui lui sont versées. Dans ce contexte, il y a peu d'incitation à innover, à être efficient ou à améliorer la qualité du produit.

#### 4.2 *Comment faudrait-il contrôler les subventions ?*

Chacun des cas exposés ci-dessus justifie l'imposition de mesures de contrôle de l'utilisation des subventions. Mais quelle forme ces mesures devraient-elles prendre ?

Dans la partie II du présent document, nous avons étudié trois approches différentes portant sur le contrôle des subventions ainsi que leurs avantages et inconvénients respectifs. Nous ne nous intéresserons ici qu'aux avantages relatifs de chacune de ces approches dans le contexte d'une instance (telle une instance supranationale) dotée de pouvoirs limités. Nous prendrons pour acquis dès le début que l'analyse de la qualité réglementaire complète abordée dans la partie III ne sera pas réalisable.

La première approche étudiée dans la partie II (appelée « Approche A ») englobe un large éventail de politiques favorisant les firmes individuelles, qui sont potentiellement nuisibles. Le principal inconvénient de cette approche quand elle est adoptée au niveau international est de nécessiter l'analyse au cas par cas des politiques individuelles pour déterminer lesquelles d'entre elles ont un impact négatif sur le bien-être.

Il est certain qu'une telle analyse, particulièrement si elle est faite au niveau international, sera controversée. L'évaluation du caractère approprié d'interventions gouvernementales données dépend des caractéristiques et préférences locales, qui pourront présenter des difficultés de mesure pour une instance internationale. Des différences légitimes d'opinions sur le rôle approprié dévolu aux gouvernements pourront donner naissance à des plaintes. Snape note que :

« Ce qui fait ou ne fait pas partie des fonctions propres ou normales du gouvernement est un problème fondamental. Cette question a fait couler beaucoup de sang, et les velléités d'action d'un gouvernement national par l'imposition de droits compensatoires aux exportations d'autres pays en fonction de sa conception du rôle du gouvernement (et qui peut ne pas être la position du gouvernement qui lui succède dans le même pays) ou d'obtention d'une décision de la part d'un organe multilatéral au sujet de ce rôle, seront sources de tensions »<sup>37</sup>.

La seconde approche étudiée précédemment se concentre plus strictement sur le traitement différentiel des transferts financiers et des impôts entre firmes du même pays. Cette approche résout le problème de l'évaluation controversée de l'effet des politiques en ciblant une catégorie particulière de politiques ayant presque toujours pour effet de réduire le bien-être général. Le rôle des instances supérieures dans ce contexte est largement mécanique – essentiellement déterminer l'existence de traitement différentiel. Cette approche a en conséquence le mérite d'être pratique dans le contexte international. Comme nous l'avons mentionné plus haut, c'est également celle qui est utilisée par la CE (et dans une certaine mesure par l'OMC).

On ne sait pas encore avec certitude si la troisième approche constitue ou non une approche pratique du contrôle des subventions au niveau international. Bien qu'elle couvre un éventail de politiques plus large que la seconde approche, elle présente également l'inconvénient d'englober des politiques qui ne réduisent pas nécessairement le bien-être. En conséquence, elle devrait être complétée par le même type d'analyse controversée des politiques individuelles qui est menée dans le cadre de la première approche.



### 4.3 *L'absence de discrimination fondée sur la propriété*

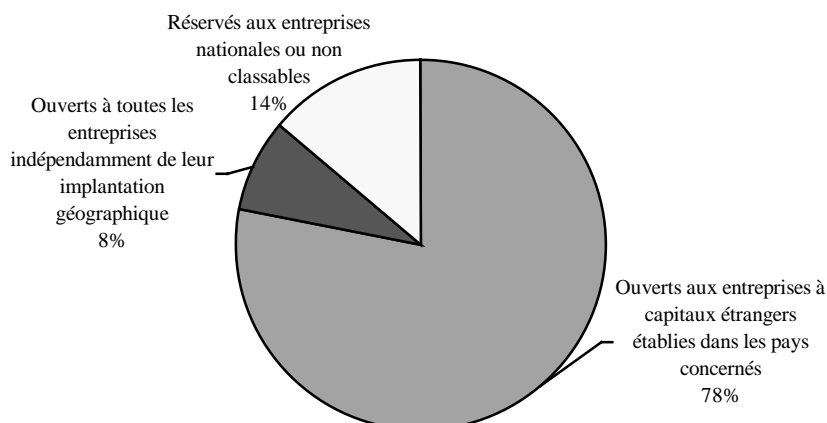
Il est en revanche utile de souligner que lorsque les firmes sont mobiles, le contrôle des subventions prend une forme particulièrement simple – pouvant être mise en application par une instance supra nationale aux pouvoirs limités.

Plus précisément, lorsque les firmes sont mobiles il y a moyen de contrôler les subventions, non pas en limitant la *capacité* des juridictions de fausser la concurrence, mais en limitant l'*incitation* à le faire. On peut supprimer l'incitation à subventionner si l'on élimine le lien entre les subventions et la part des rentes de monopole dont s'emparent les juridictions qui les accordent. Lorsque les firmes sont mobiles, il suffit de leur permettre à toutes (quelle que soit la localisation ou l'identité de leurs propriétaires) d'avoir droit sans discrimination à toute mesure pouvant avoir pour effet de favoriser certaines firmes pour briser le lien entre les subventions et la part des rentes de monopole dont s'emparent les juridictions qui les accordent.

Lorsque les propriétaires d'une firme subventionnée sont installés dans une juridiction différente, le calcul coûts-avantages que sous-entendent les modèles décrits ci-dessus est entièrement différent. Dans le cas du modèle de concurrence de type Cournot, la juridiction est moins incitée à subventionner, aux dépens de ses propres contribuables, une firme implantée dans la juridiction si ce sont les propriétaires "étrangers" de cette firme qui bénéficient surtout des avantages de la subvention. De la même manière, la juridiction est moins incitée à subventionner, d'un point de vue stratégique, une firme d'une industrie où les rendements d'échelle sont croissants si ce sont les résidents des autres juridictions qui s'emparent des bénéfices de monopole à long terme.

Autrement dit, lorsqu'il y a mobilité des firmes, le contrôle des subventions doit seulement consister à permettre à toutes les firmes de bénéficier des mesures gouvernementales sur la base de critères transparents et non discriminatoires et ce, quels que soient leurs propriétaires. A condition qu'il n'y ait aucun obstacle à la mobilité des firmes, l'incitation à chercher à fausser la concurrence par le biais de subventions se traduirait par un afflux de firmes étrangères qui en bénéficieraient aux dépens des contribuables locaux<sup>38</sup>. Chaque juridiction serait toujours libre de choisir les mesures de soutien public qu'elle prend compte tenu de ses particularités et de ses préférences, à condition que celles-ci n'établissent pas de discrimination sur la base de la propriété des firmes.

En pratique, bon nombre de programmes de subventions s'adressent à toutes les firmes indépendamment de leur propriété. L'étude de l'OCDE a permis de constater que 78 pour cent de l'ensemble des programmes de subventions étaient ouverts aux entreprises à capitaux étrangers établies dans les pays concernés, et que huit pour cent n'imposaient pas de restrictions à l'implantation géographique des entreprises et fournissaient même une aide à des entreprises situées à l'étranger.<sup>39</sup> Les 14 pour cent restants étaient réservés aux entreprises à capitaux nationaux ou à celles qui étaient inclassables.

**Graphique 5: Proportion des programmes qui établissent une discrimination fondée sur la propriété**

Source: OCDE (1996)

#### 4.4 *Quelle place occupent les politiques d'aide dans les décisions de localisation?*

Même si les mesures de contrôle des subventions exigeaient que toutes les politiques publiques soient non discriminatoires, chaque juridiction serait encore dans une certaine mesure incitée à subventionner et les subventions qui seraient octroyées influeraient sur les décisions de localisation des firmes. En fait, les juridictions pourraient subventionner les firmes dans le but même de les amener à s'implanter chez elles. Ces subventions ne risqueraient-elle pas alors de déclencher une course aux subventions, qui amènerait les firmes à jouer les juridictions les unes contre les autres et qui ferait monter les subventions à des niveaux inefficients ? Cette préoccupation a été exprimée par les pays membres de l'OCDE dans un document préparé à l'intention du Comité sur l'investissement international :

« Il est important de savoir si, et dans quelle mesure, l'offre d'incitations financières pour attirer les investissements conduit les gouvernements à entrer dans une surenchère qui les amène à augmenter le niveau des incitations proposées en réaction aux incitations proposées par d'autres. Une telle concurrence, qui a les caractéristiques du jeu du dilemme du prisonnier, pourrait potentiellement entraîner des coûts en spirale pour les gouvernements et par là augmenter le coût des incitations à un niveau tel qu'il excéderait les avantages publics attendus. Il y a d'un côté le risque que les gouvernements qui ne participent pas au mouvement de concurrence en matière d'incitations perdent des investissements de sociétés au profit de ceux qui offrent activement des incitations pour attirer les investissements, ou qu'ils soient incités à rejoindre la concurrence pour ne pas être oubliés en tant que lieu d'investissement. D'autre part, les gouvernements participant à la concurrence en matière d'incitations ne seront sans doute pas plus efficaces pour attirer les investissements si cela en conduit d'autres à offrir la même chose en cherchant à rééquilibrer le terrain. Les incitations pourraient alors s'annuler mutuellement et les investissements seraient répartis de la même façon que ce n'eût été le cas en l'absence d'incitations, bien qu'avec un important transfert des contribuables à l'investisseur. La question de savoir si cette concurrence cause des torts plus grands aux pays en voie de développement se pose également »<sup>40</sup>.

Du point de vue économique, on peut soutenir que loin d'être inefficace, une telle concurrence des politiques d'aide pour attirer les investissements est efficace car elle encourage les gouvernements à offrir des niveaux de biens publics efficaces<sup>41</sup> et qu'elle permet aux firmes d'internaliser les effets externes de leurs décisions de localisation.

Pour autant que l'octroi de la subvention n'est pas discriminatoire, la juridiction qui accorde des subventions ne peut tirer aucun avantage des rentes gagnées par la firme subventionnée. L'incitation à subventionner résulte donc d'autres avantages – tels que les effets de la décision de la firme sur l'emploi ou le revenu des résidents. On est en droit de supposer que des firmes différentes procureront des avantages de niveaux différents à la juridiction qui verse des subventions. On est en outre en droit de supposer que des juridictions différentes recevront des avantages différents et attacheront une valeur différente aux mêmes avantages.

Ce qui est efficient pour chaque firme, c'est de s'implanter dans la juridiction qui attache la plus grande valeur à ses avantages externes. Mais en l'absence de subventions, la juridiction risque de ne pas pouvoir faire connaître l'importance des avantages que lui procurera la firme. Car ce sont les subventions qui permettent aux juridictions de l'indiquer et de préciser le montant qu'elles sont prêtes à verser. La concurrence entre les juridictions permettrait de s'assurer que les subventions atteignent des niveaux qui témoignent correctement de la valeur des avantages reçus. En fin de compte, les firmes internalisent pleinement les avantages externes qu'elles apportent et elles prennent par conséquent leurs décisions de localisation de manière efficiente.

C'est ce que démontrent Besley et Seabright quand ils constatent ce qui suit :

“Notre analyse donne à entendre que dans le cas des firmes multinationales qui effectuent des investissements en installations nouvelles, et où il est réaliste de supposer qu'elles négocient avec plusieurs gouvernements, il n'est pas justifié d'exercer un contrôle obligatoire de l'aide publique. Une telle concurrence (entre gouvernements) ne produira pas toujours un résultat efficient, mais il n'y a pas de raisons de supposer que le fait d'interdire l'aide de l'État améliorerait les choses et retirerait aux gouvernements l'un de leurs principaux moyens d'internalisation des externalités de la localisation”<sup>42</sup>.

En résumé, lorsque les firmes sont mobiles, le contrôle des subventions peut prendre une forme particulièrement simple – l'instance la plus élevée hiérarchiquement n'a qu'à s'assurer que les politiques d'aide affectant la concurrence s'appliquent de manière non discriminatoire.

En pratique, bien sûr, la gamme des industries dans lesquelles les firmes sont réellement mobiles peut être strictement limitée. Dans la plupart des industries il y a des frais fixes associés à l'investissement en capital. Pour cette raison, lorsqu'une décision de localisation a été prise les firmes sont peu susceptibles de se déplacer à moins que les facteurs économiques évoluent substantiellement. Il peut y avoir dans ces industries d'importantes possibilités à court terme de modifier les règles du jeu.

## **5. Conclusion**

Les subventions accordées par les pouvoirs publics jouent un rôle important dans certaines industries. Elles sont susceptibles de fausser considérablement la concurrence. Pour compliquer les choses, le gouvernement qui cherche à subventionner ses propres firmes risque de devoir faire face à des mesures de rétorsion, telles que des subventions compensatoires ou d'autres formes de mesures.

C'est pour ces raisons qu'il a été demandé que des instances supérieures – en particulier aux niveaux national et supranational – exercent un contrôle des subventions. Un contrôle total de l'ensemble des politiques d'aide qui affectent la concurrence, exige de la part des instances supérieures une analyse au cas par cas des décisions des instances gouvernementales de rang inférieur. Les instances supérieures, particulièrement au niveau international, peuvent ne pas posséder les pouvoirs nécessaires pour exercer une telle surveillance des politiques intérieures. En conséquence, le contrôle des subventions au niveau international prendra inévitablement une forme plus simple.

Nous avons étudié dans le présent document les différentes approches possibles de définition des subventions qui pourraient en théorie être utilisées par des instances supérieures. Des formes de contrôle des subventions plus simples et moins discrétionnaires existent (comme celles qui sont utilisées par la CE) mais leur champ d'application est limité et elles ne tiennent pas compte de certaines formes de concurrence de politiques d'aide qui peuvent nuire au bien-être général. Une définition plus large permettrait le contrôle de formes de politiques d'aide concurrentes plus nombreuses mais exigerait une autorité et un pouvoir discrétionnaire plus larges de la part des instances supérieures.

Certaines formes de subventions sont presque toujours nuisibles. En particulier, les subventions octroyées aux firmes en difficultés financières ont tendance à être orientées de manière disproportionnée vers des firmes inefficaces, ce qui affaiblit les incitations à l'efficacité adressées à l'ensemble des firmes qui peuvent toujours s'attendre à être secourues de cette façon. Par ailleurs, dans les industries où les firmes sont mobiles (ce qui n'est le cas que dans très peu d'industries) le contrôle des subventions peut prendre une forme particulièrement simple. L'instance supérieure n'a qu'à appliquer les principes normaux du commerce international en matière de non-discrimination et de traitement national.

Compte tenu des dommages économiques causés par les subventions accordées par tous les niveaux d'administration, il y a encore place pour renforcer les institutions internes et internationales destinées au contrôle des subventions. A ce jour, relativement peu de pays de l'OCDE ont la capacité de contrôler les subventions sur le plan interne. Bien que certaines subventions intérieures soient contrôlées par des instances internationales (les subventions intérieures entrent au sein de l'Union européenne dans le champ d'application du traité lorsqu'elles affectent les échanges entre les Etats membres et l'accord sur les subventions de l'OMC demandent aux membres de cette Organisation de prendre des mesures raisonnables afin de s'assurer que les gouvernements régionaux et locaux respectent l'accord ; et l'accord de l'Uruguay Round sur l'agriculture sanctionne les subventions intérieures qui entravent le commerce.) il n'en demeure pas moins que certaines subventions intérieures ne sont soumises au contrôle d'aucune autorité. Il y a place pour le développement d'institutions nationales destinées au contrôle des subventions (comme c'est le cas au Danemark et dans les pays accédant à l'UE dont la République tchèque et la Pologne). De surcroît, les contrôles internationaux en matière de subventions pourraient être renforcés en élargissant leur champ d'application et en augmentant les pouvoirs des instances internationales dans le but de forcer les pays qui accordent des subventions à abandonner ces pratiques et à rembourser les subventions déjà versées.

## NOTES

1. Il existe de nombreuses définitions différentes de ce qu'est une subvention. Elles seront étudiées dans la partie II du présent document.
2. EC (2000), table 23, page 53 and table 24, page 54.
3. Il s'agit plus précisément du Fonds social européen, du Fonds européen d'orientation et de garantie agricole, du Fonds européen de développement régional et du Fonds de cohésion.
4. Moyenne 1996-1998, 60.689 million d'euros. EC (2000), tableau C2, page 125.
5. OMC, « Overview of the State of Play of WTO Disputes », 15 janvier 2001 – les chiffres sont tirés des cas énumérés à la rubrique « Consultations en instance » où il est fait mention des subventions.
6. Simon (1999), page 47.
7. Voir OCDE (2001) et « Cahill and Legg » (1990) , page 15-16.
8. Voir OCDE (2000b).
9. Voir OCDE (1996).
10. Voir OCDE (2000a)
11. Voir, par exemple, les présentations de la Pologne et de la République tchèque à ces discussions.
12. Cacciato (1996)
13. La CE note que « la classification de l'aide est, dans de nombreux cas, quelque peu arbitraire car il faut décider lequel des objectifs déclaré par un État membre doit être considéré comme l'objectif principal. Dans certains États membres, l'aide à la recherche-développement est administrée dans le cadre de programmes spécifiques de R&D, dans d'autres États, l'aide à des secteurs particuliers est limitée aux petits et moyennes entreprises, etc. En outre, les objectifs principaux ne peuvent pas donner une image vraie des bénéficiaires finaux : une large partie de l'aide est versée à des petites et moyennes entreprises, l'aide en matière de recherche et développement va à des secteurs particuliers, et ainsi de suite. » Vanhalewyn (1999), page 36, encart 1.
14. OCDE (1996), page 25
15. JOL 380, 31 décembre 1990
16. « Shipbuilders call for fair market as EU subsidies end » (les constructeurs de navires réclament une concurrence loyale alors que l'UE met fin aux subventions), The Independent (R.-U.) 10 décembre 2000
17. Les totaux peuvent dépasser 100 pour cent parce que les recettes agricoles totales n'intègrent pas obligatoirement les subventions.

18. Cacciato (1996)
19. Ilzkovitz, Meiklejohn and Schimdt (1999)
20. Anton van Schijndel, « A case for stricter discipline » (une situation demandant des mesures plus strictes), *Financial Times* (R.-U.), 17 février 1995.
21. Calegar et Shuh (1988)
22. Rosenblatt et al (1988)
23. Schwartz et Clements (1999), page 130.
24. Inversement, on peut affirmer qu'un impôt est levé quand une firme effectue un paiement ou fournit une prestation à l'administration et que ceux-ci ne sont pas directement proportionnés avec la prestation donnée par le gouvernement.
25. Voir, par exemple, Simon (1999).
26. C'est également l'avis de la CE. "Une perte de recettes fiscales équivaut à la consommation de ressources d'État sous la forme de dépenses fiscales", paragraphe 10 de la Communication de la Commission sur l'application des règles relatives aux aides d'États aux mesures relevant de la fiscalité directe des entreprises, publiée le 11 novembre 1998.
27. Mundheim et Ehrenhaft (1984), pages 95-107, cité dans Snape (1985), page 143.
28. La nécessité de ne pas s'arrêter uniquement aux transferts financiers publics mais également à l'ensemble des mesures affectant la concurrence a été soulignée, par exemple, par Slotboom (1995), page 296 : « Ce qui devrait donc importer, ce n'est pas l'origine de l'aide, mais l'effet de l'avantage octroyé à une entreprise par une mesure gouvernementale. C'est pourquoi l'aide de l'État ne devrait pas être définie du point de vue du gouvernement qui accorde l'aide, mais du point de vue de son effet sur la concurrence dans la Communauté ».
29. Dans la Recommandation du Conseil de l'OCDE datée de mars 1995 concernant l'amélioration de la qualité de la réglementation publique. Ilzkovitz et al (1999) présentent dans leur étude une autre liste de critères de référence, qui comporte les questions suivantes: L'intervention des pouvoirs publics est-elle nécessaire? L'aide de l'État est-elle la forme d'intervention publique la plus appropriée, ou y aurait-il d'autres instruments de politique plus efficaces? Étant donné l'objectif de l'intervention, l'aide de l'État s'adresse-t-elle aux bons bénéficiaires? Le montant de l'aide est-il suffisant, sans être excessif, pour inciter les firmes à changer leur comportement de la façon souhaitée? Les conditions attachées à l'aide créent-elles les incitations appropriées ou encouragent-elles plutôt les comportements de recherche de rentes ? L'aide est-elle efficace compte tenu de son coût ?
30. Voir OCDE (1999a).
31. Voir OCDE (1999b).
32. Martin et Valbonesi (1999), page 23.
33. Voir Hilmer (1993), page 308.

34. Ce résultat dépend de l'hypothèse posée dans le modèle de concurrence de type Cournot. Ce résultat ne tient pas dans le modèle de concurrence de type Bertrand. Rappelons que le modèle de Cournot s'applique à la concurrence entre firmes dans une situation oligopolistique où les firmes se concurrencent principalement par le choix de la quantité qu'elles mettent sur le marché (le prix marchand est alors déterminé par la quantité totale produite). Dans le modèle de Bertrand, les firmes en situation oligopolistique se concurrencent principalement par le choix du prix auquel elles vont vendre leur production. Si les firmes produisent des produits homogènes, le prix du marché sera égal au prix le plus bas pour l'ensemble des firmes présentes sur le marché.
35. Où règne la concurrence de type Cournot...
36. Collie (2000), page 873.
37. Snape (1991), page 143.
38. L'incitation à verser des subventions n'est pas complètement éliminée – tant que l'industrie n'est pas parfaitement concurrentielle et tant que le gouvernement impose les profits des sociétés, il a intérêt à attirer les industries non-concurrentielles dans sa juridiction pour pouvoir augmenter les recettes fiscales.
39. OCDE (1996), page 20.
40. OCDE (2000a) page 3.
41. La concurrence pour attirer l'investissement des firmes conduit les gouvernements à fournir le juste train de mesures – imposition, biens publics, saines politiques macroéconomiques, responsabilité fiscale, bonnes infrastructures, etc.
42. Besley and Seabright (1999), page 36.

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## **QUESTIONNAIRE SUBMITTED BY SECRETARIAT**

Governmental authorities at all levels (local, regional, state and national) influence and control the economy not only by making rules and regulations, but also through their controls on financial flows – i.e., through their ability to raise taxes and control how the funds are used, either in their spending decisions or decisions to subsidise or grant aid. Subsidies, just like regulations, may be either beneficial and harmful, either promoting welfare or distorting competition, depending on the circumstances.

Because some subsidies have the potential to seriously distort competition, most countries have some form of recourse against subsidies, especially at the international level and particularly by way of the WTO. The same countries may also have some form of control on domestic subsidies. These questions explore the nature of these controls at different levels of government and how the controls distinguish legitimate from illegitimate subsidies.

It is, of course, important to define what we might mean by subsidies. For the purposes of these questions, we may say that a subsidy arises whenever an enterprise, or a consumer, receives a benefit whose cost is wholly or partly, directly or indirectly paid by the state. This approach is broadly consistent with the EC Treaty which speaks of “any aid granted by a Member State or through State resources in any form whatsoever ... favouring certain undertakings or the production of certain goods” (Article 87(1)). The proposed definition would include, for example:

- straight transfer payments (whether paid to enterprises or to consumers);
- special or differential tax treatment (including tax exemptions, tax credits, tax allowances, special rate relief, tax deferrals or the accumulation of tax arrears);
- loans guaranteed by the state or loans at below-market rates of interest from the state, or loans from the state with the understanding that, in the event of default, the state would not (or might not) exercise its rights to force insolvency;
- loans from private banks when those banks are directed by the state to carry out certain forms of lending, with the understanding that the banks would be supported by the state in the event of failure;
- government purchases of goods and services at above-market prices;
- government provision of goods and services at below-market prices (including the sale of assets and enterprises below their market value and all related forms of in-kind assistance);
- in the case of state-owned firms, failure to insist on a financial performance consistent with the level of capital invested;

There are certain controls on subsidies and aid which apply to many countries – in particular, of course, the Community/EFTA-EEA state aid rules, the rules on Subsidies and Countervailing Measures of the WTO and rules on procurement in the EC/EFTA, NAFTA and WTO. To avoid duplication of work,

you do not need to go into detail on these measures, although you may wish to mention any unusual or interesting features about the application of these rules to your country.

Rather than respond to the questions individually, we invite you to prepare a single, continuous paper on this topic, using the questions below only as a drafting guide.

## **1. Examples of Competition Distorting Aid/Subsidies**

- (1) Thinking about activities of city, local, regional, state and national authorities, what are the most important forms of aid or subsidies? Which sectors are the biggest beneficiaries? (e.g., agriculture, fisheries, manufacturing, financial services, aviation, railways, buses, energy, high-technology, steel, ship-building, arts and audio-visual?)

Can you provide specific examples of forms of aid or subsidies which have (or have the potential to have) an effect on competition in a market? In responding to this question you might like to consider:

What complaints have you received about the effect of aid or subsidies on competition? What was the effect of the aid on competition? How did the aid change production, consumption or entry and exit decisions?

In what geographic or sectoral markets in your country does government aid or subsidies have an important effect on competition?

## **2. Rules and Regulations Governing Aid and Subsidies**

- (2) Thinking of the different levels of government (local, regional, state, national and supra-national), are there any rules which limit the freedom of a government authority to use its control over tax and spending decisions to affect competition between economic enterprises? If so, please describe them. Who enforces these rules?

For example, are there any limits on the ability of sub-national governments (cities, states or provinces) to attract firms to their jurisdiction by offering competing subsidies? Or tax breaks? Who enforces these rules?

Are there transparency requirements, which require different levels of government to disclose its subsidies or aid activities?

Are there limits on the ability of governments to provide subsidies for the sale of goods which leave their jurisdiction? Or to subsidise goods produced in the region? In other words, if a local, regional or state government wanted to subsidise goods or services produced locally, to the detriment of goods and services from other regions of your country, would this be prevented or restricted in any way?

Are there specific rules on state-owned or local-government-owned firms, which require them to compete “on a level playing field” with private firms (e.g., which require that these firms face the same cost of capital, the same expectation of state assistance in the event of difficulty, controls on their ability to cross-subsidise, and so on)?

Are there specific controls (such as controls on procurement processes) which control the manner in which a firm could be chosen to be the beneficiary of a subsidy or some other form of assistance? Are there rules limiting the ability of the level of government to discriminate against firms based in another jurisdiction? (e.g., to discriminate against foreign-owned firms?)

Are there any controls which would require that, where a subsidy is intended to make available a non-commercial good or service and where that good or service can be provided by many firms, that the subsidy be available to all eligible firms?

Are there rules that limit the ability of governments to intervene with subsidies or tax breaks in favour of specific enterprises that face the risk of bankruptcy? How discretionary are the options government faces?

Are there rules that limit the ability of firms, which may benefit permanently or occasionally from state funds (e.g., state-owned firms) to operate in other competitive markets?

Are there any controls, which require that a given objective be achieved in a manner, which is at least distorting of competition as possible?

Considering the EU rules against State aids, in your opinion have these rules worked adequately? Have they been able to effectively discipline member States? If not, could you give some reasons why not? Is it a problem of rules, of sanctions or of enforcement policy?"

### **3. Institutions and mechanisms governing aid and subsidies**

- (3) Do you have an explicit domestic mechanism, agency or institution for controlling aid and subsidies, whether that aid is given at the local, state, regional or national level? If not, could you give some reasons why not?

Do you think that there would be some merit in establishing some sort of mechanism or agency controlling the ability of city, regional or state authorities in your country to grant aid or subsidies? What sort of a mechanism or agency do you think should be established? Have you advocated for the establishment of such a mechanism in your country?

For those countries, which already have such a mechanism: how effective is the mechanism – does it catch all potentially inefficient subsidies? Does it discriminate adequately between efficient and inefficient subsidies? For those countries in the EU/EFTA – do the EC/EFTA rules adequately control subsidies – are there important categories of subsidies, which are not caught? Do the EC/EFTA rules adequately distinguish between efficient and inefficient subsidies?

In your view, is it possible to specify categories of aid or subsidies which should always be allowed, or always prohibited? How would you define these categories?

If you consider that it is important to set up an independent institution to review aid/subsidy decisions, what should be the relationship of that institution to the competition authority? Should the competition authority itself play this role, or is a new institution necessary?



## QUESTIONNAIRE SOUMIS PAR LE SECRÉTARIAT

A tous les niveaux (collectivités locales, régions, états et pays), les administrations exercent une influence et un droit de regard sur l'économie, non seulement par le biais des règles et réglementations dont elles assurent l'application, mais aussi par l'intermédiaire des flux financiers dont elles ont la maîtrise, notamment grâce au fait qu'elles sont habilitées à percevoir des impôts et des taxes et à vérifier l'utilisation qui est faite des fonds ainsi collectés, que ce soit dans le cadre de leurs décisions en matière de dépenses ou en matière d'octroi d'aides et de subventions. Les subventions, au même titre que les réglementations, peuvent se révéler aussi bien bénéfiques que préjudiciables selon les circonstances, favoriser la prospérité ou entraîner des distorsions de la concurrence.

Parce que certaines subventions risquent de fausser gravement la concurrence, la plupart des pays disposent, sous une forme ou une autre, de moyens de recours à l'encontre des subventions, notamment à l'échelon international et en particulier dans le cadre de l'OMC. En outre, ils possèdent parfois des moyens divers d'exercer un contrôle sur les subventions au niveau intérieur. L'objectif sera donc d'étudier en quoi consistent les moyens de contrôle mis en place aux différents niveaux d'administration, ainsi que la manière dont s'établit la distinction entre les subventions licites et celles qui ne le sont pas.

Il importe naturellement de définir ce que l'on entend par subvention. Pour répondre aux questions qui se posent dans ce domaine, on peut partir du principe qu'une subvention est accordée à chaque fois qu'une entreprise, ou un consommateur, se voit accorder un avantage dont le coût est totalement ou partiellement, directement ou indirectement, pris en charge par l'Etat. Cette définition reprend dans les grandes lignes les termes du Traité instituant les Communautés européennes qui considère comme des subventions « les aides accordées par les Etats ou au moyen de ressources d'Etat sous quelque forme que ce soit... favorisant certaines entreprises ou certaines productions » (Article 87(1)). La définition proposée recouvrirait par exemple :

- les transferts directs (qu'ils soient versés à des entreprises ou des consommateurs) ;
- les régimes fiscaux spéciaux ou préférentiels (notamment les exonérations d'impôt, crédits d'impôts, déductions fiscales, abattements, allègements et reports d'impôt ou autorisations de cumuler des arriérés d'impôt) ;
- les prêts garantis par l'Etat ou les prêts consentis par l'Etat à des taux inférieurs à ceux du marché, les prêts consentis par l'Etat et assortis d'une clause stipulant qu'en cas de défaillance, l'Etat n'exercera pas (ou pourra ne pas exercer) son droit de contraindre le débiteur à la faillite ;
- les prêts accordés par des banques privées lorsque ces banques sont dirigées par l'Etat et ont vocation à accorder certaines formes de prêts assortis d'une clause stipulant qu'elles bénéficieront du soutien de l'Etat en cas de défaillance du débiteur ;
- les achats par la puissance publique de biens et de services à des prix supérieurs à ceux du marché ;

- la fourniture par la puissance publique de biens et de services à des prix inférieurs à ceux du marché (y compris la cession d'actifs et d'entreprises pour un prix inférieur à leur valeur de marché et toute autre forme d'aide en nature) ;
- dans le cas d'entreprises détenues par l'Etat, le fait de ne pas exiger des résultats financiers en rapport avec le montant des capitaux investis.

Il existe un certain nombre de dispositifs de contrôle des subventions et des aides applicables à un grand nombre de pays, au nombre desquels, évidemment, les règles régissant les aides publiques en vigueur dans le cadre de la Communauté européenne, de l'AELE et de l'EEE, les règles de l'OMC concernant les subventions et les mesures compensatoires et les règles régissant la passation des marchés en vigueur dans le cadre de la CE/l'AELE, l'ALENA et l'OMC. Pour éviter les recoupements, il n'est nullement besoin d'entrer dans le détail de ces dispositifs, sauf si vous jugez utile de mentionner certains aspects originaux ou intéressants de l'application de ces règles dans votre pays.

Plutôt qu'à répondre aux questions une par une, vous êtes invités à rédiger une note complète d'un seul tenant, les points soulevés dans la suite du présent document étant uniquement destinés à vous servir de fil conducteur.

## **1. Exemples d'aides/de subventions faussant la concurrence**

- (1) Au vu des activités des municipalités, des collectivités locales, des régions, des états et des pays, quelles sont les principales formes d'aide ou de subvention existantes ? Quels sont les principaux secteurs bénéficiaires de ces aides ou subventions (agriculture, pêcheries, industries manufacturières, services financiers, aéronautique, transports ferroviaires, transports par bus, énergie, technologies de pointe, sidérurgie, construction navale, activités artistiques et secteur audio-visuel) ?

Pouvez-vous citer des exemples précis d'aides ou de subventions ayant (ou risquant d'avoir) des effets sur la concurrence sur un marché ? Pour répondre à cette question, vous êtes invités à prendre en compte les éléments suivants :

Quelles plaintes avez-vous reçues concernant les effets sur la concurrence d'aides ou de subventions ? Quelles ont été les incidences de ces aides sur la concurrence ? Comment ont-elles modifié la concurrence, la consommation ou les décisions d'entrée et de sortie du marché ?

Dans votre pays, sur quels marchés géographiques ou sectoriels les aides gouvernementales ou les subventions ont-elles eu des conséquences importantes sur la concurrence ?

## **2. Règles et réglementations régissant les aides et subventions**

- (2) Aux différents niveaux d'administration (collectivités locales, régions, états, instances nationales et supra-nationales), existe-t-il des règles limitant le pouvoir des administrations d'utiliser leur droit de contrôle sur les décisions relatives aux recettes fiscales et aux dépenses pour altérer les conditions de concurrence entre des entités économiques ? Dans l'affirmative, veuillez décrire ces règles et préciser l'instance qui en assure l'application.

Existe-t-il par exemple des restrictions limitant le pouvoir des administrations infra-nationales (villes, états ou provinces) d'attirer des entreprises sur leur territoire en leur octroyant des subventions concurrentes, ou des allègements fiscaux ? Quelle est l'instance qui veille à l'application de ces dispositions ?

Existe-t-il des obligations en matière de transparence en vertu desquelles les administrations, de quelque niveau que ce soit, sont tenues de déclarer les subventions qu'elles accordent ou de faire état de leurs activités en matière de soutien ?

Existe-t-il des restrictions limitant la capacité des administrations d'accorder des aides à la vente de marchandises destinées à quitter le territoire relevant de leur compétence ou de subventionner les biens produits dans une région ? Autrement dit, si une administration locale, régionale ou d'un état décide de subventionner des biens ou des services produits localement, au détriment de biens et services produits dans d'autres régions du pays, existe-t-il un moyen quelconque de prévenir ou de limiter ce genre de pratique ?

Existe-t-il des règles spécifiques relatives aux entreprises détenues par l'Etat ou des collectivités locales en vertu desquelles celles-ci doivent être traitées sur un pied d'égalité avec leurs concurrentes du secteur privé (c'est-à-dire des règles les soumettant à des conditions identiques en ce qui concerne le coût du capital, le soutien attendu de l'Etat en cas de difficulté, les dispositifs permettant de contrôler leur capacité de mettre en place un système de subventions croisées, etc.) ?

Existe-t-il des moyens de contrôle spécifiques (notamment de contrôle des régimes de passation des marchés) permettant de vérifier les conditions dans lesquelles une entreprise peut être sélectionnée pour bénéficier d'une subvention ou de toute autre forme d'aide ? Existe-t-il des règles limitant, à un niveau d'administration donné, la capacité d'exercer une discrimination à l'encontre des entreprises relevant de la compétence d'une autre instance (par exemple, d'exercer une discrimination à l'encontre des entreprises sous contrôle étranger) ?

Lorsqu'une subvention a pour objet de rendre disponible un bien ou un service à caractère non commercial et lorsque ce bien ou service peut être fourni par un grand nombre d'entreprises, existe-t-il des moyens de veiller à ce que celle-ci soit accordée à toutes les entreprises pouvant prétendre en bénéficier ?

Existe-t-il des règles limitant la capacité des administrations de favoriser des entreprises menacées de faillite en leur octroyant des subventions ou des allègements fiscaux ? Quelle est la marge de manœuvre dont elles disposent dans ce domaine ?

Existe-t-il des règles limitant la capacité des entreprises qui peuvent bénéficier, à titre permanent ou occasionnel, de fonds publics (notamment des entreprises détenues par l'Etat) d'opérer sur d'autres marchés concurrentiels ?

Existe-t-il des moyens de veiller à ce qu'un objectif donné soit atteint dans des conditions qui faussent le moins possible la concurrence ?

Considérez-vous que les règles en vigueur au sein de l'UE en matière d'aides publiques ont fonctionné de manière satisfaisante ? Ont-elles permis d'imposer aux Etats membres une véritable discipline en la matière ? En cas de réponse négative, veuillez indiquer quelques-unes des raisons pour lesquelles cela n'a pas été le cas. Cette situation est-elle due aux dispositions elles-mêmes ou aux sanctions prévues, ou encore aux modalités d'application ?



### **3. Institutions et mécanismes régissant les aides et subventions**

- (3) Disposez-vous sur le plan intérieur d'une structure, d'un organisme ou d'une institution ayant expressément vocation à contrôler les aides et subventions, que celles-ci soient accordées aux niveaux local, régional ou national ? Dans le cas contraire, pouvez-vous indiquer quelques-unes des raisons de cet état de fait ?

Estimez-vous qu'il serait souhaitable de mettre en place dans votre pays une structure ou un organisme chargé de contrôler la capacité des municipalités, des régions ou des états d'accorder des aides ou des subventions ? Quel type de structure ou d'organisme conviendrait-il, selon vous, de créer ? Avez-vous plaidé en faveur de l'instauration d'une structure de cette nature dans votre pays ?

Les pays qui disposent déjà d'une structure de ce type sont invités à indiquer si elle fonctionne convenablement, et si elle permet de déceler toutes les subventions potentiellement inefficaces et de faire la distinction entre les subventions efficaces et celles qui ne le sont pas. Dans les pays de l'UE et de l'AELE, les règles en vigueur dans le cadre de l'UE/l'AELE permettent-elles d'exercer un contrôle satisfaisant sur les subventions et existe-t-il des catégories de subventions importantes qui ne sont pas couvertes par les dispositions en vigueur ? Les règles applicables dans le cadre de l'UE/l'AELE établissent-elles une distinction correcte entre les subventions efficaces et celles qui ne le sont pas ?

Pensez-vous qu'il est possible de préciser les catégories d'aides ou de subventions qui devraient dans tous les cas être autorisées ou prohibées ? Comment les définiriez-vous ?

Si vous estimez qu'il est important de créer une institution indépendante pour contrôler les décisions en matière d'aides et de subventions, quel devrait le lien entre cette institution et l'autorité de la concurrence ? Est-ce à l'autorité de la concurrence de remplir cette mission ou convient-il de créer une nouvelle institution ?

## CZECH REPUBLIC

State aid in the Czech Republic is defined by Act No. 59/2000 Coll., on State Aid (the “State Aid Act”) which entered into effect on May 1, 2000. State Aid is deemed to mean the provision of funds out of public funds or other advantages granted to a certain business or industrial sector. Public funds are deemed to mean the state budget, budgets of state funds, budgets of regional and local self-administration, funds of the Czech National Bank, state assets and the public health insurance, as well as funds of legal entities fully or partly owned by the state, to the extent that the state is able to control the same directly or indirectly, provided such funds are applied in a way inconsistent with market principles, in particular the principle of maximization of profit, or funds ensuing from an advantage granted.

The State Aid Act further defines state aid which is prohibited, subject to certain exemptions, i.e., state aid provided in a manner which distorts or may distort economic competition by placing a certain business or industrial sector at an advantage, to the extent that the same may affect trade between the Czech Republic and EU Member States. The definition of prohibited state aid stems from Article 87 of the EC Treaty (Amsterdam wording). It needs to be pointed out that the State Aid Act does not apply to state aid provided to the agriculture and fishery sectors. Compatibility with the obligations of the Czech Republic under the Europe Agreement (European Agreement Establishing the Association between the Czech Republic and the European Communities and their Member States, adopted on October 4, 1993) is assessed by the Office for the Protection of Competition.

The above definition of public funds indicates that state aid may be provided by a ministry, region, municipality, state fund (e.g., the National Property Fund), a health insurance company, the Czech National Bank (the central bank of the Czech Republic) or an entity owned by the state (a state-owned company or a company in which the state holds an equity stake). State aid provided in the Czech Republic takes on a variety of forms: subsidies, soft loans, credit guarantees, tax relief and health insurance and social security relief, capitalization of receivables, sale of real estate below market level, advisory services). According to the latest annual report on state aid in 1999, the largest recipients of state aid were the following sectors: financial services, transportation, the coal industry and the processing industry (including research and development), as well as environmental protection, support to investments and employment; the greatest portion of funds was directed at the recovery and restructuring of industrial companies and banks (56 percent). In the year 2000, there was an apparent growing trend of provision of state aid towards the development of regions, which can also be attributed to new legislation, Act No. 72/2000 Coll., on Investment Incentives (the “Investment Incentives Act“, which also entered into effect on May 1, 2000; since 1998, this type of support was provided by virtue of government resolutions), in the form of support to investments (in particular with respect to start-up of manufacturing and expansion of production), and outside the scope of the act, also through development programs targeting the backward regions of Ostrava and Northwest Bohemia.

Monitoring of state aid does not focus on funds which do not involve business or industrial sectors (i.e., direct transfers to Czech citizens, such as social security payments, unemployment benefits, child allowances and other forms of support, e.g., customs rebates available on general terms and having a non-discriminatory nature). Further, the State Aid Act does not apply to aid to the agriculture and fishery sectors.

State aid in the Czech Republic mostly has the form of an investment incentive or recovery and restructuring.

## **1. Investment incentives**

State Aid is provided pursuant to the Investment Incentives Act and related legal regulations (e.g., the Act on Income Tax, the Employment Act, etc.) in the form of subsidies for the creation of new jobs and retraining of workers, tax relief (for five or ten years) and favorable transfer of land owned by the Land Fond of the Czech Republic; funds are also provided to municipalities for the purpose of construction of infrastructure for industrial zones. The aid is for the benefit of both foreign and domestic investors who invest in the construction of new plants in the territory of the Czech Republic (Greenfield investments), or who expand their production capacity or modernize production. The aid aims to encourage the economic development of regions - new investments help increase the GDP in the region (and the entire Czech Republic), create new opportunities in the form of both direct and indirect jobs, in most cases have a positive effect on balance of trade - newly established companies export most of their production, while importing hi-tech technologies, latest management know-how and findings in the area of science and research into the Czech Republic. The attraction of foreign investment into the Czech Republic is facilitated by a government agency, CzechInvest. In the Czech Republic, pursuant to the extension of an exemption granted by the Association Council, UE – CZ 1703/00, state aid of up to 50 percent of the total investment cost eligible for aid may be provided to investors.

This kind of aid may distort or at least jeopardize economic competition because it may only be provided to certain companies which meet the terms and conditions stipulated by the Investment Incentives Act. Aid amounting to up to 50 percent of the total investment cost eligible for aid greatly reduces the cost that the company would otherwise have to incur, thus placing the company at an advantage. The company is able to reduce its production cost and gains a competitive edge over other companies, e.g., in the form of lower product prices. Investment incentives as a form of regional aid are evaluated according to the relevant EC rules, in particular the Regional Aid Rules (1998/C 74/06) and the Multi-sector Framework for Regional Assistance to Large-scale Investments (98/C 107/05).

## **2. Recovery and restructuring**

State aid is mostly provided by virtue of government resolutions and targets companies in financial distress on the basis of the aggregate weight of certain indices (e.g., the company generates losses over a certain period of time, the company has a negative equity, decreases in the sale of products, etc.). In most cases, the enterprise receives assistance with respect to restructuring following the preparation of a restructuring plan (such assistance tends to be in the form of a loan, health insurance and social security relief, capitalization of receivables or some other form) - it may also receive assistance towards recovery (in the form of a loan or a guarantee for a loan); however, since the effective date of the State Aid Act, no such case has occurred as yet. The restructuring involves a financial restructuring (e.g., improving the balance sheet of the enterprise) and substantive restructuring (e.g., sale of residual assets, modernization of production and product lines, changes in management and organization, etc.). The aim is to enable the restructured company to return to the market and succeed in the market environment. The company's restructuring plan is to guarantee a long-term viability of the company and needs to include a reduction in its production capacity - this requirement serves as a counter-weight to the provision of the aid. In the Czech Republic, this type of state aid currently prevails as economic transformation forces enterprises and banks to gradually adapt to the emerging competitive market environment; in any case, they frequently grapple with the legacy of costly and inefficient production and products which are unable to compete on foreign markets. The provision of aid further motivates the restructured enterprises to adopt a market

behavior in the new competitive environment as restructuring assistance may be granted to a company only once in every ten years.

This kind of aid may distort or at least jeopardize economic competition because without the state aid, in most cases, the enterprises would not succeed on the market and would be declared bankrupt or liquidated. The selection of companies for the provision of aid is based on certain criteria.

Companies enjoying aid gain a significant competitive advantage in comparison to companies, which adapt to the new conditions of the market economy by means of their own internal measures without any state aid. Recovery and restructuring are assessed pursuant to the relevant EC rules, in particular Community Rules for the State Aid for the Recovery and Restructuring of Failing Companies (1999/C 288/02).

### **3. Legislation and institutions**

The adoption of the State Aid Act was one of the requirements of the European Union in the context of approximation of the national law of the Czech Republic to that of the European Communities. The State Aid Act introduces a unified system for the evaluation of state aid as applied in the European Union. The power to decide on the compatibility of state aid and the EU single market is currently vested in the Office for the Protection of Competition (the "Office"). However, under the State Aid Act, the EU Commission is entitled to consult with the Office; furthermore, in the event that the Association Council issues a recommendation, the Office acts in accordance with such recommendation.

The State Aid Act provides for a system for the evaluation and monitoring of state aid, while the implementing regulation incidental thereto stipulates the formal requirements of the information duty with respect to the state aid provided, as well as the process through which exemptions from the general prohibition of state aid are granted, including the sanctions imposed for violations of the law. The state aid provider, provided that the state aid in question falls into the category of prohibited state aid, must request that the Office - which, *inter alia*, is the public authority in charge of state aid - grant an exemption from the prohibition of state aid. The Office either grants the exemption by virtue of a decision, subject to certain terms and conditions, or dismisses the application. In the evaluation of state aid, both primary and secondary legislation of the European Communities, as well as the methodology of the Office, is taken into consideration. The Office elaborated its methodology in accordance with EC and Czech legislation.

In its monitoring capacity, the Office maintains records of state aid already provided and reviews the same to ascertain whether it was provided in accordance with the State Aid Act. The Office may also perform inspections at the state aid recipient to ascertain whether the state aid in question was used in accordance with the said act.

It needs to be pointed out that prior to the entry into force of the State Aid Act, the Ministry of Finance of the Czech Republic was the body responsible for the assessment and monitoring of state aid; the Ministry of Finance acted in this capacity pursuant to implementing regulations (notice of the Ministry of Finance of the Czech Republic on state aid, or rather on Article 64 of the Europe Agreement, which entered into effect on July 11, 1998), and pursuant to Government Resolution No. 818/1998. As the aforementioned provision of law did not allow for an adequate monitoring and assessment of state aid, the above-mentioned State Aid Act was adopted.

The Office was entrusted with the supervision of state aid instead of the Ministry of Finance of the Czech Republic, as the Office, unlike the Ministry of Finance, does not provide state aid and as such is fully independent in its decision-making.

Therefore, the Office is required to assess and monitor state aid pursuant to the State Aid Act and the related EU legislation; its powers do not consist in decision-making with respect to the allocation of public funds (this role is played in particular by the government). The Office, however, does evaluate the effectiveness of funds expended; for instance, regional aid can be permitted only if the distortion of economic competition due to the state aid is outweighed by benefits to the backward region, or, where state aid for the purpose of restructuring is provided, if the restructuring plan can guarantee long-term viability of the company being restructured.

The awareness of state aid in the Czech Republic is gradually increasing, also thanks to the Office which is well aware of the importance of this issue and which explains to the state aid providers what requirements need to be satisfied for the state aid to be compatible with EC regulations. The Office performs its activities in a transparent manner. The methodology, a handbook for state aid providers and any and all decisions issued by the Office are published in the Collection of Decisions of the Office, as well as on the Internet. It needs to be pointed out that the EU Commission in its latest Regular Report with respect to the Czech Republic for the year 2000 noted that the introduction of an independent system for the monitoring of state aid was highly beneficial.

## DENMARK

Part one of this paper considers two subjects. First the Danish sectors which are the biggest beneficiaries of subsidies and second, two studies by the Danish Competition Authority on the effects of subsidies.

Part two considers the rules and regulations governing aid and subsidies in Denmark with special focus on the new section 11 a in the amended Danish competition Act.

A draft working paper by the Danish Competition Authority on Public Subsidies and Productivity Growth is annexed to this paper.

### 1. Examples of competition distorting aid/subsidies

Correcting market failures and pursuance of political goals are the most common reasons for granting subsidies. But there are huge differences in the objectives for granting subsidies to different sectors. This is reflected in large differences in the size of subsidies that different sectors are granted.

E.g. transport via railway or buses are granted ten times as much state aid as the sector for research and development, cf. table 1. Of course there is a reason for the differences. Most parts of public transport in Denmark would not survive on a purely commercial basis and public transport in Denmark is given high priority.

**Table 1: Top ten Danish sectors receiving subsidies, 1995**

	<b>Subsidies, Dollar per employee</b>
Rail transport	85,300
Bus transport	31,900
Manufacture of sugar	28,500
Refuse collection and sanitation	19,300
Manufacture of diary products	15,700
Steam and hot water supply	15,200
Production and distribution of electricity	13,600
Casting of metal products	12,700
Recycling of waste and scrap	10,000
Research and development	8,000

*Source:* National accounts, Danish Statistics and calculation by the Danish Competition Authority. The Danish Competition Authority and the Ministry of Trade and Industry have done several studies on the effect of subsidies. The main issues have been the competitive and the productive effect of subsidies.

### ***1.1 Subsidies can harm competition***

The first study is focusing on the empirical effect of public financial subsidies on market competition. Subsidies are defined more broadly than the general definition of state aid in the EU-system.

Public support may keep inefficient firms alive, which may decrease market competition. But public financial support may also lower barriers to entry. And that may increase market competition.

Therefore, the aim of the study was to establish whether there were empirical evidence that public support most often go to sectors with high or low competition.

In general we did find clear evidence that subsidies often go to sectors with limited competition. This was the conclusion of several studies of partial indicators.

One indicator of low competition is the profit rate in the sector. We found that the profit rates in markets with high public financial support in general were larger than in markets with low public financial support. The study takes into account that the profit rate also depends on the entry rate, rate of capital etc.

Another indicator is taken from other studies. Each year The Danish Competition Authority identifies sectors in the Danish economy with low competition. When we compare the level of public support in the low competition sectors with the other sectors in Danish economy the trend is clear: Sectors with low competition are also granted the highest public financial support.

Other indicators were used in the study. All point in the same direction: Public support and low market competition go very often hand in hand.

### ***1.2 Subsidies can harm productivity***

The second study investigates the empirical effects of public financial support on firm productivity growth in enterprises.

The starting point of the study is that often the goal of giving public subsidies is not to increase the growth rate. But at other times it is.

In theory, public financial support can both increase and decrease firm productivity growth.

For example, public financial support can cause inefficiency in the receiving firms because the administration of support programs inside the firm can be seen as pure waste. But it can also cause technical inefficiency. For example if the public financial support mainly goes to one production factor.

And, if public subsidies have effects on growth rates, it is relevant to take these effects into account, when we design and evaluate the public financial support.

The study compares the growth rates of some 1 500 Danish firms, which all received some kind of public financial support form 1994 to 1997 with some 20 000 other, which did not.

The results are mixed, though, dependent on the sector receiving support and the aims of support.

But in general we do not find evidence that public financial support increases growth rates in the short run.

We did find evidence that firms receiving high public financial support in the transport sector and the trade, hotel and restaurant sector, generally increase their output slower than firms not receiving public financial support in the same sector.

The final results also show some evidence of public financial support for regional development and environment purposes may decrease growth rates. In particular, it seems to be the case when the subsidies are granted to firms in the business sector.

Finally, when financial support is granted to firms in the business sector there is evidence that public financial support for R&D may decrease growth rates.

### **1.3 Recommendations**

In most cases subsidies are used with good intentions. But unintended effects - or no effects at all - of the subsidies can harm good intentions. Considerations to the functions of the internal market and competition in national markets prompt state aid schemes to be run through a competition check. November 1999 the Danish Minister for Trade and Industry pointed this view out to her EU colleagues.

Finally the studies prove the need of a more systematic use of analyses of the effect of subsidies on competition and productivity.

## **2. Rules, regulations and mechanisms governing state aid and subsidies**

### **2.1 Introduction**

On 1 October 2000 the Danish Competition Act was amended. One of the amendments involved a new provision, which will contribute to ensuring that business activities of – or supported by - the State, the municipalities and county authorities takes place on equal competition terms with the private business sector. The rules are made to ensure that public as well as private business activities do not receive illegal aid, which distorts competition. The Danish Competition Authority administers the new provision and the full text of the provision is shown in annex A.

### **2.2 Definition of aid under this provision**

The aid concept includes any kind of complete or partial public cover of costs granted by public funds. Thus, it does not only include direct cash aid but also indirect aid by way of tax exemption, guarantees and reduction of duties. Furthermore, it includes loans, renting and purchase or sale on terms, which are more favourable than ordinary market terms.

Thus, it is of no importance whether the activity or the undertaking receives aid by means of a straight money transfer or by means of certain financial benefits - which may be unintended. Neither is the purpose of the aid of any importance. The decisive fact is the effect on the financial position of the recipient.



The concept public funds must be construed in a broad sense. It includes funds granted by the State as well as other public authorities. Public funds also mean funds from foundations and institutions, provided that a public authority has appointed the relevant fund or institution to administer the aid. This also applies where the funds originate from private undertakings, which according to public regulation are obliged to grant a contribution to the fund. Furthermore, an internal transfer of funds within a public undertaking - from one activity to another - may for instance also be considered aid by means of public funds (please see below under cross subsidisation).

### **Box 2.1 Examples of Financial Advantages**

An undertaking buys land owned by the public sector at a price, which lies below the market price.

For the purpose of business, materials or buildings are rented by the public sector at a price, which lies below the market price.

An undertaking receives consulting services paid with public funds.

A business activity is financed by a bank loan on terms, which are only obtainable, because the public sector guarantees the loan.

Cross subsidisation may also be subject to the provision. Cross subsidisation generally means that financial funds or assets are transferred from one market to another or from one activity to another.

If a private undertaking cross subsidises an activity with funds from a publicly supported activity, it will fall within the provision.

This is also the case if a public business activity is cross-subsidised by means of funds from a supported activity. Cross subsidisation of a public business activity may also take place with the public sector's own funds and it is of no importance whether the business activity is divested in a separate undertaking or not.

### **Box 2.2 Examples of Cross Subsidisation**

#### *Example 1*

A public kindergarten starts washing the children's clothes. If the price for this service does not include all the costs involved in the activity, it is cross subsidised. This may distort competition, to the damage of private laundries.

#### *Example 2*

A public exhibition undertaking has "active workshops" where the visitors may watch how the old handicrafts are carried out. For instance the workshops sell ceramics. If the price of the ceramics does not include all the costs of the making, the ceramics production is cross subsidised. It may distort competition.

#### *Example 3*

A municipality offers its elderly citizens a possibility to buy extra home care in addition to the already existing home care paid by the municipality. If the price of the extra home care does not include all the costs involved in the activity, the service is cross subsidised. It may distort competition.

Not all types of cross subsidisation are affected by the provision. The cross subsidisation is only affected if it takes place on "non-market economic terms". The concept should be understood by considering how a commercial player would act in a similar situation.

Thus, it is for instance quite normal that an activity is loss-making in the start-up phase. Therefore, it will not contravene with the provision if funds are injected from other activities within a limited period of time. The duration of this period depends on the activity. It is decisive whether a market economic investor would accept the period of loss making. For instance, a market economic investor would probably be able to accept that more extensive, long-term projects are loss making during a period of 2-3 years. However, in connection with smaller business activities it would be required that the activity makes ends meet within a considerably shorter time frame. Furthermore, it may be well founded from an undertaking point of view to inject funds in connection with re-arranging/re-structuring an activity. Likewise, a short-lived and temporary deficit on ordinary activities due to changed market conditions does not mean cross subsidisation.

The assessment of whether a cross subsidisation takes place on "non-market economic" terms is, however, complicated by the fact that several activities may have a number of indirect costs - e.g. rent or staff.

In practice, the assessment is made by means of an analysis of the cost structure where it is established which costs are attached to the individual activities. If the costs of one activity are carried by the earnings from another activity, it will constitute cross subsidisation.

The Danish Competition Authority and the Danish Competition Council do not wish to impose upon the county authorities and municipalities etc. unnecessary administrative burdens. Thus, specific accounting standards etc. are not required. It is important that it is rendered probable that the earnings in connection with the sale cover all the relevant costs when a business activity is operated under the auspices of the public sector. "All the relevant costs" cover direct costs of pay, materials etc., however, it also covers the indirect costs, i.e. expenses for return on and depreciation of machines, equipment, land, goodwill etc. and a well-founded share of the indirect costs such as administration and rent. How the indirect costs are dispersed may vary from case to case, however, the dispersion must be well founded.

Thus, it must be clearly shown which costs have been defrayed in connection with the presentation of the service and how the costs are included in the price of the service. When all costs are included in the price, distortion of competition will as a principal rule not occur.

The costs may be dispersed on the various activities in several ways. The choice of method depends on how the aid will affect an activity. In the following lines it is assumed that an aided principal activity has been initiated. Now, the undertaking wishes to initiate yet another activity using the same facilities and perhaps a number of new facilities as well (e.g. staff, buildings, equipment etc.).

If the principal activity would not have been initiated without aid, all the costs must be related to the new activity. Thus, it is considered as if it is carried on completely separated from the principal activity and the total costs of the required facilities must therefore be related to the new activity. This method can be applied in all situations and when costs are related in this way, it will not constitute cross subsidisation.

If the principal activity may be operated without aid but perhaps at a lower activity level, you may choose to disperse the costs proportionally. If this method is to give a true and fair picture, it will be necessary to have fair, objective and transparent criteria. They must ensure that it is possible to find out whether the individual activities defray the costs corresponding to the drain they make on the facilities.

Cross subsidisation may also distort competition if aid is transferred to other undertakings than the receiver, e.g. if the original receiver offers a few traders "artificially" low-priced goods or services. If this occurs, it may give rise to distortion of competition in relation to the competitors of the customer.

**Box 2.3**

*Example*

A sports centre receives public aid. If the centre uses it to offer a fitness centre an "artificially" low rent, it may distort competition in relation to other fitness centres.

In this example one may at best avoid cross subsidisation by offering the premises or make sure that it can be documented that the rent of the premises corresponds to the market price.

**2.3**      *When does aid falls within the act?*

The Danish Competition Council may only intervene in connection with public aid when the two following conditions are both met:

- the aid distorts competition;
- the aid is illegal.

The Danish Competition Council will assess whether the aid distorts competition. The assessment of whether the aid is legal - i.e. whether it is authorised by the public regulation - is made by the competent minister or supervisory board.

In the following section, it is described when a business activity is considered anti-competitive. Furthermore, it is described how it is assessed whether a business activity has authority in the public regulation or not.

**2.3.1**    *Distorting competition*

It is not possible to give an unambiguous definition of when publicly aided or performed business activities are distorting competition. However, it is possible to point out a number of directional lines, which can be applied when assessing the individual activities.

In the assessment of the question of anti-competition, two matters are in particular relevant.

The first matter is whether all undertakings of the market have access to obtain the relevant aid or cover of costs on equal terms. If this is not the case, competition could be distorted between the undertakings receiving aid and the ones not receiving aid. In general, you could say that the wider, more objective and non-discriminating the possibility of receiving aids is, the more likely it is that it will not distort competition. A public authority will typically ensure equal competition by using public procurement.

The second matter is whether an actual effect at the affected markets may be established. In general, aid may affect the competition situation in two ways.

Firstly, it may affect the receiver's decision to set up an undertaking on or leave a market. If the aid makes the undertaking enter the market, it may impair the terms of competition for the established undertakings not receiving any aid.

Secondly, competition may be directly affected. This happens if the aid is of direct importance with regard to decisions relating to the production, capacity and prices, e.g. if the production costs of the

undertaking are reduced. In that case, it will distort competition in relation to other market competitors. For instance this will be the case if a municipality offers to let out business premises to an undertaking at a rent which is lower than the market rent.

This distortion of competition can be minimised and perhaps avoided if attention is paid to the fact that the possibility of participating in the activities should be as general, objective and non-discriminating as possible. Thus, all undertakings should have the same possibility of receiving advisory and consulting services etc. if it shows to be desirable to support a business activity.

### 2.3.2 *Legal aid*

If aid to a business activity has authority in the public regulation, the Danish Competition Council shall not require that it discontinues or is returned.

The concept public regulation includes laws, regulations, instruments, general budget rules and the power of attorney of the local authority. Furthermore, liabilities according to ratified conventions and EC regulations will fall within the concept of public regulation.

Moreover, it has to be examined whether aid having authority in the public regulation is used in accordance with the criteria of the granting if need be.

It may be an ordinary situation when a municipality wishes to increase its supply of additional services, e.g. by offering window cleaning to the elderly people. In itself, it will not represent distortion of competition; however, it will be appropriate if the municipality complies with the principles of the direction given by The Danish Competition Authority, e.g. regarding a true and fair statement of costs.

The assessment of whether aid to the business activity has authority in the public regulation will in many cases coincide with the assessment of anti-competition. This will, among other things, show in relation to the power of attorney of the local authority, which forbids municipalities to support undertakings or individual consumers if it does not take place on the market terms. Therefore, the Danish Competition Council's assessment of the competitive effects of the aid may be included in a number of cases in the relevant authority's assessment of the legality of the aid.

## 2.4 *The relations to EC law*

Pursuant to Article 87(1) of the Treaty establishing the European Community, any aid granted by the State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

Any aid falling within the Treaty establishing the European Community shall as a principal rule be reported to and approved by the European Commission before it is implemented. Notification to the Danish Competition Council shall not replace notification to the European Commission.

The state aid provision of the Treaty establishing the European Community has a number of similarities regarding section 11 a of the Danish competition act. However, an important difference is that according to Article 87(1) of the Treaty establishing the European Community it is required that aid shall influence the intra-Community trade whereas this is not a requirement according to s. 11 a.

Thus, each of the two provisions has its field of application. The European Commission has exclusive competence as regards aid falling within the Treaty establishing the European Community whereas s. 11 a does not include this type of aid.

Thus, the Danish Competition Council has no competence to consider neither notifications nor complaints of aid falling within the rules of the Treaty establishing the European Community.

#### **Full text of section 11a.**

##### **Aid which distorts competition**

**Section 11 a.** The Competition Council may issue orders for the termination or repayment of aid granted from the public funds, which has been granted to the benefit of specific forms of business activities.

(2) An order pursuant to subsection (1) may be issued, when the aid

- i) Directly or indirectly has as its object or effect the distortion of competition, and
- ii) Is not legitimate according to public regulation.

(3) The minister in question or the Board of Supervision makes a decision regarding the legitimacy of aid from the public funds, unless otherwise provided for by law.

(4) An order for repayment of aid pursuant to subsection (1) may be issued to private undertakings, to private foundations and to corporate undertakings, which are wholly or partly owned by the public. The Minister for Trade and Industry may lay down further rules to the effect that orders for repayment of aid may also be issued to specific corporate undertakings, which are wholly or partly owned by the public.

(5) The Competition Council's powers pursuant to subsection (1) to order repayment of aid becomes statute-barred five years after payment. In accordance with the Act on Calculation of Interest, the Competition Council fixes the amount of interest accrued in connection with a repayment order pursuant to subsection (1), including rules that the interest due may be calculated from the time of payment of the distortive aid.

(6) Upon notification, the Competition Council may declare that on the basis of the facts in its possession, the public aid is not covered by subsection (2) i) and accordingly, there are no grounds for issuing an order pursuant to subsection (1). The Council may lay down further rules on notification, including rules on the use of specific notification forms.

## ANNEX

### 1. Introduction

There may be many reasons why public authorities subsidise private firms. From an economic point of view, a subsidy may correct a so-called market failure. For example when the production of a firm harms or benefits others than themselves<sup>1</sup>.

Also, political goals may be reached through a public subsidy. For example cultural goals. Goals of supporting geographical fringe areas. And goals of securing work for people with reduced working ability.

There are, however, also drawbacks linked to public subsidies. The drawback most frequently discussed is that subsidies may distort competition. The establishment of the EU Single Market causes this discussion, primarily. National subsidies clearly contravene the idea of the Single Market. They are, however, simultaneously, one of an EU Member State's last legal means of protecting its own business<sup>2</sup>.

In general, also a so-called dead-weight loss follows from a subsidy scheme. Subsidies have to be financed via taxes. In practice, levying taxes always implies distortions of the market and there are costs in terms of less welfare.

This paper focuses on an effect, which may seem ignored in the debate about subsidies. It addresses the correlation between subsidies and the productivity growth. First it points out, that the correlation is interesting because, in theory, it is ambiguous. Furthermore, the relatively few empirical analyses in this area have partly confirmed this ambiguity. Different analyses of different subsidies have reached different conclusions. See for example Bergström (1998) and Sløk (1998).

Therefore, this paper analyses the empirical correlation between a number of Danish subsidies and productivity growth in Danish firms. The analysis covers the years 1994-1997, which means that the analysis shows nothing specific about current Danish subsidy schemes. Instead, the analysis is to be seen as an attempt at initiating a debate on how various subsidies affect productivity. The analysis is, however, also meant to kick-start the development of methods to include productivity analyses in a general assessment of Danish subsidy schemes.

The reason why this analysis says nothing about current Danish subsidy schemes is that new ones have already replaced many of the subsidy schemes included in the analysis. The Ministry of Business and Industry is continually evaluating the advantages and disadvantages of its subsidy schemes. The Ministry uses the results to optimise its subsidy schemes and since 1997 the Ministry has, in particular, replaced direct subsidies by indirect subsidies. Broadly speaking, direct subsidies are granted to assist individual firms. Indirect subsidies, by contrast, are supposed to assist all the firms of in industry by improving their general framework conditions.

The structure of this paper is as follows. Section 2 considers some general theories regarding the correlation between subsidies and productivity growth. Section 3 accounts for the empirical model used<sup>3</sup>, including what is understood by productivity growth. Section 4 accounts for the data used. Section 5 contains the results. Finally, section 6 concludes.

## 2. Public subsidies and productivity

Theories about public subsidies and productivity show why consideration for productivity growth may provide arguments both for and against subsidising private firms.

There are, primarily, two arguments for a positive correlation between subsidies and productivity growth. The first is that subsidies may make it more profitable to employ staff and/or invest in new training, technology, equipment, and machines. The second is that subsidies may enable firms to realise economies of scale by producing more. The surveys of Sløk (1998) and Hoffmann *et al.* (1999) show that there may be some truth in it. At any rate, with regard to public subsidies granted for innovation in Danish firms.

By contrast, other factors direct attention to a negative correlation between subsidies and productivity growth. One of them is that the political interests overshadow economic interests. At the same time, politicians grant the subsidies and have interest in getting re-elected. This combination presents a risk that subsidies will favour interest groups that carry much political clout<sup>4</sup>, which may result in subsidies benefiting inefficient firms and industries. It may reduce mobility in society, and it may harm society's ability to adjust to new conditions. See for example Olsen (1982).

It may also impact negatively on the increase in firms' productivity if public subsidies distort or reduce competition. The Danish Competition Authority (1999d) has shown that large subsidies and little competition often go hand in hand. Others have shown that productivity increases most in markets subject to keen competition<sup>5</sup>. One explanation may be that the subsidies indirectly prop up firms, which would have gone bankrupt in a more competitive market. This may have a negative effect on society's ability to adjust. It may tie down too many resources and increase earnings in inefficient industries. Simultaneously, it may raise the prices of resources in all industries.

In addition, theoretical studies such as Schmidt (1997) have pointed out that a so-called "hard budget constraint" stimulates productivity growth. Firms exposed to the market forces with the risk of going bankrupt are, in theory, more efficient than firms with a "soft budget constraint" are. One explanation could be that subsidies might render private firms' budget constraint softer, primarily if the firm has relatively large debts.

Similarly, if subsidies are earmarked for specific purposes, they may impact negatively on firm productivity growth. Specific subsidies may favour one production factor and thus make firms turn their projects in a direction, which triggers maximum subsidies instead of maximum productivity growth. This is particularly the case if the projects are turned in a direction so those firms undertake activities that are not needed, but necessary in order to obtain subsidies.

## 3. The empirical model

This section sets out an empirical model to be used later for analysing the correlation between Danish subsidies and firm productivity growth. Readers not familiar with mathematics may want to go directly to relation (5).

The model is a standard industrial economic model, also used by Bergström (1998). It may also be used to explain the correlation between other factors and the increase in productivity.

The model is based on a standard production function:

$$(1) Y_t = A_t F(C_t, L_t)$$

$Y_t$  is the production at the time  $t$  as a function of three variables,  $L_t$ ,  $C_t$  and  $A_t$  which represent the use of labour, capital input and the efficiency of the factors of production.  $A_t$  is also referred to as total factor productivity (TFP)

For analyses of the correlation between public subsidies and productivity growth, the growth rate of TFP is relevant. It is found by expressing the growth rate of  $Y_t$  as a function of the growth rate of  $L_t$ ,  $C_t$  and  $A_t$ .

Disregarding the subscript ( $t$ ), the absolute growth of  $Y$  (in the period  $t$ ) may be written as follows through differentiation:

$$(2) \dot{Y} = \dot{A}F(C, L) + A[F_C \dot{C} + F_L \dot{L}].$$

$F_L$  and  $F_C$  represent the derivative of  $F$  with respect to  $L$  and  $C$ . And  $\dot{C} = dC/dt$ ,  $\dot{L} = dL/dt$ , and  $\dot{A} = dA/dt$ .

If we divide by  $Y$  on both sides, the growth rate of  $Y$  will be

$$\frac{\dot{Y}}{Y} = \frac{\dot{A}F}{Y} + \frac{A[F_C \dot{C} + F_L \dot{L}]}{Y}.$$

Or as  $Y=AF$  and  $C/C = L/L = A/A = 1$

$$\frac{\dot{Y}}{Y} = \frac{\dot{A}F}{AF} + \frac{AF_C \dot{C} C}{AF C} + \frac{AF_L \dot{L} L}{AF L}.$$

Then we define  $R = \dot{A}/A$  and use the fact that the elasticity of  $Y$  with respect to  $C$  and  $L$  is, generally, given by  $\alpha(C) = F_C C/C$  and  $\alpha(L) = F_L L/L$ . The final expression of the growth rate of  $Y$  is then reduced to

$$(3) \frac{\dot{Y}}{Y} = R + \alpha(C) \frac{\dot{C}}{C} + \alpha(L) \frac{\dot{L}}{L}$$

If the elasticities  $\alpha(C)$  and  $\alpha(L)$  are assumed constant, (3) is a Cobb Douglas production function expressed in growth rates. The growth rate of  $Y$ , that is, may then be explained by three conditions:

- A larger input of labour  $L$ , that is  $\dot{L}/L > 0$ .
- A larger input of capital  $C$ , that is  $\dot{C}/C > 0$ .
- An increase in TFP, that is  $R > 0$ .



In other words, R is the part of the growth rate of Y, which cannot be explained, by the growth rates of labour and capital. When R is positive, the firm may produce the same volume by using less labour and capital than previously. That means the firm is more productive.

With data for the growth rates of Y, C and L, (3) may be used to examine the correlation between subsidies and the growth rate of TFP. As in for example Dilling-Hansen *et al.* (1999) and Bergström (1998) it is assumed that R (the growth rate of TFP) is a linear function (g). We assume that TFP is a function of three factors:

- subsidy intensity at firm level (expressed as subsidies to the firm divided by the firms net turnover);
- subsidy intensity at industry level (expressed as subsidies to the industry divided by the industry's gross domestic product at factor cost);
- a vector X with other conditions which contribute to determining the increase in the productivity of the firm.

The subsidies, which are included in the subsidy intensities, are assumed to depreciate completely from one year to another. Technically, this implies that the subsidies are not part of the assets. This is, naturally, a simplification which implies, that it is difficult to interpret the effects of the subsidies in terms of return of the subsidies.

The function R (the growth rate of TFP) may, therefore, be written as

$$(4) R = g(\text{public subsidies}, X),$$

and the final empirical model is obtained by inserting (4) in (3). The result is

$$(5) y = \alpha_C C + \alpha_L l + \gamma X' + \varepsilon,$$

where y, c, and l are the growth rates in value added, use of capital, and use of labour, where  $\gamma$  is the vector of estimated parameters for the information in the vector X, where  $\alpha_i$ ,  $i = C, L$  are the elasticities, and where  $\varepsilon$  is a stochastic error.

The X vector comprises six pieces of information in this analysis. Most of them contain information about the individual firm. The rest of them contain information about the industry which the firm is part of.

The first piece of information is a dummy for whether the firm is subsidised or not. Technically, the dummy is defined to carry the value one if the Danish Agency for Trade and Industry or the Danish Environmental Protection Agency granted the firm subsidies in 1994-1995. Otherwise it carries the value zero. The idea of the dummy is to allow for any selection bias. That means to take into account whether the level of the productivity growth rate is, in general, at another level in firms, which are subsidised than in firms, which are not subsidised. If, for example, the subsidies are targeted at inefficient firms, this dummy will appear negative in the estimations

The second is an industry dummy at double-digit level. It follows the so-called main groups of industrial statistics according to Statistics Denmark. The hope is to allow for the differences between firms, which are due to the fact that they address various markets, such as differences in legislation.

The third is an indicator of the firm's solvency or credit standing. The indicator is defined here as the firm's equity capital in percentage of the value of its total assets. Low (high) credit standing indicates a hard (soft) budget constraint. Consequently, a negative correlation between productivity growth and credit standing must be expected (see section 2).

The fourth is a dummy for the age of the firm. If the firm was set up within the last 10 years, the value of the dummy is one. Otherwise it carries the value zero. The idea is that the age of the firm may, theoretically, impact on productivity growth in two ways, pulling in opposite directions, cf. Bergström (1998). On the one hand, increase in productivity may be linked to a learning-by-doing effect for two reasons: 1) the more experienced the staff of the firm, the more productive the firm becomes, or 2) the older the firm is, the more and better are its procedures and guidelines. By contrast, old firms may be less inclined to invest in new technology than younger firms do. Procedures and guidelines may also lead to bureaucracy and have a negative impact on productivity.

The fifth variable is a dummy for the number of employees of the firm, which is supposed to be an indication of the size of the firm. The value of the dummy equals one if the firm has more than 75 employees. Otherwise, it carries the value zero. Also the size of the firm may, in theory, impact on the growth rate in both directions. If large firms realise economies of scale, they will have the biggest growth rates. By contrast, the staff of large firms may, to put it in a popular manner, be in the way of each other, which may mean lower growth rates in large firms than in small ones.

Finally, there is a dummy for whether the firm is an ordinary joint-stock company (Ltd). Other surveys, e.g. Dilling-Hansen *et al.* (1999) have indicated that productivity (not the growth rate) is, in general, higher in a joint-stock company than in other types of firm (for example a private company, a co-operative society etc). One explanation may be that shareholders generally make the toughest demands on management for maximising efficiency.

#### 4. Data

To estimate (5), a database has been used, which was set up by cross-tabulating several data sources

- The Danish Agency for Trade and Industry and the Danish Environmental Protection Agency have provided information on what firms were promised subsidies by the two authorities and how big subsidies the individual firms were promised in the years 1994-1997. The Danish Agency for Trade and Industry has also broken down the subsidies by various subsidy schemes.
- Firm account data from a corporate database of the Danish Ministry of Business and Industry.
- For 1995 Statistics Denmark has broken down the subsidies included in central government accounts and in the municipal and county council accounts by 130 industries. Subsequently, the subsidy intensity of the 130 industries has been calculated by comparing the subsidies to the industry's gross domestic product at factor cost.
- In addition, there are a great many other data, primarily publications from Statistic Denmark. For example, price indexes used to deflate the accounting and subsidy figures. Furthermore, there are wage figures used to compute the wage bill of firms on the basis of the number of employees.

#### **4.1 Definitions and delimitation**

The firms included in the analysis have been chosen on the basis of certain definitions and selection criteria. Firstly, firms have been divided into "subsidised" and "non-subsidised" firms.

- A "subsidised firm" obtained subsidies from the Danish Agency for Trade and Industry or the Danish Environmental Protection Agency in 1994 and/or in 1995. It is also included in the corporate database of the Ministry of Business and Industry with accounting figures for each of the years 1994-1997. Among the subsidised firms there are firms which were subsidised only in 1994 and/or in 1995. However, most of them were also subsidised in 1996 and/or 1997.
- A "non-subsidised firm" received neither subsidies from the Danish Agency for Trade and Industry nor from the Danish Environmental Protection Agency in 1994-1997.

The two definitions imply that firms, which were subsidised in 1996-1997 only, are not included. This ensures that all subsidised firms are followed for at least two years while being subsidised. This will contribute to minimising any noise from subsidies, which have not yet had any effect on the firms.

Secondly, the analysis is limited to five sectors. They are

- construction;
- manufacturing;
- transport;
- business activities etc. (e.g. insurance, engineering consultancy activities and banks), and
- wholesale, and retail trade, hotels, and restaurants.

It means that some sectors have been sorted out completely. They are agriculture etc; electricity, gas and water supply; post and telecommunications, and public and personal services.

The reason for not including electricity, gas and water as well as post and telecommunications is that there are hardly any subsidised firms in the database. With regard to agriculture etc. as well as public and personal services, it is difficult to estimate a production function, and thus productivity, on the basis of account data. With respect to agriculture etc, land and natural resources are important for the production. Furthermore, agriculture is heavily subsidised by the EU, which makes it difficult to assess the effect of Danish subsidies.

Also, small inactive firms have been sorted out. This has been achieved by requiring:

- that the firms have at least one employee;
- that the total assets and equity capital should be positive;
- that the book value of the firms capital assets should be positive.

However, in order to cross tabulate with other data, the firm must also have a tax registration number and industrial classification in the corporate database of the Ministry of Business and Industry.

Moreover, subsidies promised have been equated with subsidies disbursed. This is the case most often, but of course not always.

**Table 1: Firms broken down by sectors, 1995**

Sector	Manufacturing	Business Activities	Wholesale, and retail trade, hotels and restaurants	Transport	Construction	Random sample total
Firms	5,456	4,690	8,209	1,311	3,636	23,603
Number of subsidised firms	803	281	260	38	109	1,491
Subsidised in percentage	14.7	6.0	3.0	3.0	3.0	6.3
Number of industries in sector	52	16	11	7	2	88

Source: Own data.

The analysis is, as mentioned in the introduction (section 1), limited to the period 1994-1997. Value added, which is normally defined as net turnover minus cost of goods sold is computed as operating income plus depreciation and payroll costs<sup>6</sup>. Capital and labour input is used as a measure of capital assets and number of employees, respectively. All amounts are calculated in fixed 1994 prices.

#### **4.2 Description of firms and subsidies**

The database is a so-called balanced set of data. It means that all firms are included for all the years 1994-1997. A total of 23 603 firms are included in the database.

1 491 or 6.3 percent of the 23 603 firms were subsidised by the Danish Agency for Trade and Industry or the Danish Environmental Protection Agency in the years 1994- 1997 (see table 1). With regard to manufacturing, 14.7 percent were subsidised. With respect to construction, transport as well as wholesale, and retail trade, hotels and restaurants only three were subsidised.

**Table 2: Description of the firms broken down by sector<sup>1</sup>**

		Manufacturing	Business activities etc.	Wholesale, retail trade, hotels and restaurants	Transport	Construction
Number of firms	Subsidised	803	281	260	38	109
	Non-subsidised	4,653	4,409	8,209	1,283	3,527
	Sector in DK	31,779	54,403	96,133	11,699	28,489
Balance sheet total million DKK	Subsidised	100.0	37.5	18.1	30.3	33.8
	Non-subsidised	34.6	39.3	19.6	32.5	5.5
	Sector in DK	10.7	3.8	3.2	6.2	2.0
Number of employees	Subsidised	94	47	23	45	65
	Non-subsidised	41	12	18	27	14
	Sector in DK	14	2	3	3	2
Age in years in 1999	Subsidised	19	16	18	18	17
	Non-subsidised	18	16	17	17	15
C/L <sup>2</sup>	Subsidised	369.56	447.16	326.31	561.98	185.42
	Non-subsidised	389.38	5,111.35	437.52	785.97	271.83
Y/L <sup>3</sup>	Subsidised	74.5	73.5	111.3	88.1	69.5
	Non-subsidised	84.0	179.8	118.6	89.1	54.8
Y/C <sup>4</sup>	Subsidised	0.71	0.92	1.08	0.27	0.50
	Non-subsidised	0.86	0.64	1.77	0.50	1.03
Growthrate TFP, 1997	Subsidised	-0.056	0.203	0.164	-0.897	0.027
	Non-subsidised	0.009	-0.001	-0.004	0.028	-0.001
Subsidy per subsidised firm DKK 1,000		483.7	2,548.9	201.7	436.9	649.7
Subsidy per employee, DKK 1,000		23.4	128.2	35.0	16.6	13.7

1. All numbers are means.

2. Booked value of capital assets in DKK 1,000 by number of employees.

3. Value added in DKK 1,000 by number of employees.

4. Value added in DKK 1,000 by booked value of capital assets in DKK 1,000.

Source: Own data and Generel erhvervsstatistik og handel 1996:16, Statistic Denmark.

Both the subsidised and non-subsidised firms seem to be relatively large compared to the total Danish sector. Table 2 shows that their total assets and number of employees are, on average, higher than the corresponding figures for the total population in the sectors. Table 2 shows, simultaneously, that the subsidised firms have, on average, more employees than the non-subsidised firms do.

The subsidised firms are also, if not altogether unambiguously, less capital intensive than the non-subsidised firms. On average, the subsidised firms have the smallest capital-labour ratio (C/L). By contrast, the total assets total is larger for the non-subsidised firms.

Finally, it appears from table 2 that the largest subsidies both per firm and per employee are to be found in business activities etc, that a subsidised firm receives the least in wholesale, and retail trade, hotels and restaurants, and that the smallest subsidy per employee is to be found in construction.

The fact that large firms are over-represented in relation to the population in the five sectors may be explained by two factors. Firstly, the above-mentioned delimitation of data. The overrepresentation is, however, especially due to the fact that only firms, which submit their annual accounts to the Danish Commerce and Companies Agency, are included. And they are only companies (e.g. ordinary joint-stock

companies, private companies and partnerships) as well as privately owned firms with no less than 10 employees.

The 1 491 subsidised firms received a total of about DKK 1 300 million in subsidies during the years 1994-1997. The Danish Environmental Protection Agency accounted for slightly more than half of it. The Danish Agency for Trade and Industry supplied the rest of it.

In table 3 the subsidies are grouped according to objective and sector<sup>7</sup>. The grouping has been conducted in such a manner that all firms which received subsidies for more than one objective are categorised under "several objectives" (second column from the right). The remainder of the subsidised firms which all received subsidies for one objective only are broken down by six objectives. This grouping has been chosen in order to best isolate the correlation to productivity growth for the individual objectives.

With regard to each subsidy objective, it is shown in table 3 for each of the five sectors how many firms received subsidies and the amount of subsidies in DKK 1 000. Both pieces of information comprise the period 1994- 1997.

First, only subsidies granted to subsidised firms, which received subsidies for one objective only, are considered. It appears that subsidies for research and innovation, environmental subsidies and regional subsidies are the three objectives which received most subsidies. These three received approximately DKK 250 million.

Then the individual sectors are considered. It appears that two sectors manufacturing and business activities etc. received a total of approximately 90 percent of the subsidy funds.

Finally, it appears from table 3 that 319 firms received subsidies for more than one objective and that these firms were subsidised by approximately DKK 800 million. More than DKK 560 million was granted to 65 firms in the sector of business activities etc. Primarily, these subsidies includes subsidies paid to consulting engineers for large, costly environmental projects in Denmark and abroad.

**Table 3: Breakdown of subsidies by sectors and objectives, DKK 1,000, 1994-1997**

		Research and innovation	Quality and competence development	Exports and International cooperation	Entrepreneurs	Environment, energy, and working environment	Regional business development	Several objectives	Total
Construction	Number	16	57	10	0	6	5	15	109
	Amount	8,901	3,721	3,878	315	4,872	2,364	47,079	70,815
Manufacturing	Number	149	193	92	26	56	83	204	803
	Amount	45,612	12,913	22,686	4,055	31,808	99,458	171,901	388,433
Business Activities etc.	Number	31	101	41	6	29	8	65	281
	Amount	29,936	7,128	11,120	811	77,110	30,083	560,056	716,244
Wholesale, retail trade, hotels and restaurations	Number	51	122	31	5	11	10	30	260
	Amount	7,525	8,137	6,762	1,017	2,731	7,506	18,773	52,451
Transport	Number	10	11	5	0	1	6	5	38
	Amount	1,634	726	677	0	1	11,156	2,401	16,604
Total	Number	257	484	179	37	103	112	319	1,491
	Amount	93,608	32,625	45,123	5,883	116,522	150,576	800,210	1,244,727

1. Subsidies to environment, energy and working environment cover subsidies both from the Danish Agency for Trade and Industry and all subsidies from the Danish Environmental Protection Agency.

## 5. Results

Table 4 shows the first empirical evidence concerning the theories behind (5). With regard to the correlation between the subsidy intensities and productivity growth, the signs of the subsidy intensities at firm and industry level and their significance constitute a total indication of whether the correlation is positive or negative in practice.

Similarly, the signs of the dummies as to whether the firms receive subsidies and their significance constitute a total indication of whether the subsidies are, generally, targeted at inefficient firms, or the opposite. That is, whether there is selection bias. See section 3.

**Table 4: Public subsidies and productivity growth, total estimate for all sectors, 1994-1997**

(1)	All firms, subsidies <u>not</u> by objectives (2)	All firms, Subsidies by objectives (3)
Constant	1.400** (0.098)	1.393** (0.093)
C	0.013 (0.008)	0.014 (0.013)
L	1.026** (0.013)	1.026** (0.018)
Credit standing	-0.006** (0.001)	-0.006** (0.001)
Dummy for established after 1989	-0.083** (0.033)	-0.056* (0.033)
Dummy for whether firm is a Ltd	-0.004 (0.037)	-0.005 (0.037)
Dummy for more than 50 employees	-0.086 (0.061)	-0.073 (0.062)
Dummy for whether firm received direct subsidy, all subsidies together	-0.180 (0.343)	
Dummy for whether firm received direct subsidy for:	-	
• Several objectives	-	-0.804** (0.322)
• Research and innovation	-	-0.118 (0.349)
• Quality and competence development	-	0.223 (0.297)
• Exports and international cooperation	-	-0.119 (0.232)
• Entrepreneurs	-	-0.446** (0.190)
• Environment and working environment	-	0.052 (0.407)
• Regional business development	-	-0.608 (0.601)
All firm-specific subsidies together	-1.370 (0.974)	-
Firm-specific subsidies to:	-	
• Several objectives	-	0.371 (3.067)
• Research and innovation	-	-0.481** (0.190)
• Quality and competence development	-	-13.885 (10.304)
• Exports and international cooperation	-	2.904 (3.414)
• Entrepreneurs	-	2.637** (1.186)
• Environment and working environment	-	0.902 (1.344)
• Regional business development	-	-2.849** (0.150)
Subsidy intensity at industrial level	-6.325** (2.070)	-6.300** (2.061)
R <sup>2</sup>	0.414	0.415
Number of observations	20,607	20,607

1. In each square, the top figure is a parameter estimate, whereas the figure in the parenthesis is the standard deviation of the estimate.

\* (\*\*) indicate that a zero hypothesis that the parameter equals zero is rejected at a significance level of 10 (5) per cent.

2. Tests indicated heteroscedasticity in business activities etc. Therefore, the standard deviations are taken from White's asymptotic covariance matrix. See for example Maddala (1992 pp 211-212).



Table 4, column 2 will be considered first. It shows the result of an aggregate estimate of (5) with firms from all sectors and with all subsidies from the Danish Agency for Trade and Industry and the Danish Environmental Protection Agency included in one dummy and one subsidy intensity.

Table 4, column 2 shows, firstly, that both the parameters for the dummy and for the subsidy intensity at firm level are negative, but not significant. From table 4, column 2 it is, therefore, not possible to conclude that the subsidised firms have lower or higher growth rates than the average firm. Nor is it possible to conclude anything regarding the correlation between direct subsidies and productivity growth in the firms.

Secondly, table 4, column 2 shows that there is a significant and negative correlation between the industry's subsidy intensity and the firm's productivity growth. From table 4, column 2 it is, therefore possible to conclude that firms in an industry with high subsidy intensity increase their productivity less than a similar firm in an industry with low subsidy intensity.

Table 4, column 3 shows, however, that the correlation between a direct subsidy and productivity growth depends on the objective of the subsidy. The only difference between column 2 and column 3 is that column 3 breaks down the direct subsidies to firms and the related dummies for whether the firms have or have not received subsidies by the objective of the subsidies. It means that column 3 has seven dummies and seven subsidy intensities (one for each of the six objectives as well as one for subsidies for several objectives) where column 2 has only one dummy and one subsidy intensity.

A more nuanced picture of the correlation between subsidies and productivity growth emerges once the subsidies have been broken down by objective. Four conclusions stand out in table 4, column 3:

The dummies for whether firms received or did not receive subsidies show first of all that firms that receive subsidies for several objectives have, in general, a lower growth level than non-subsidised firms. The same applies to the subsidy intensity at firm level.

Secondly, table 4, column 3 shows a significant, negative correlation between the subsidy intensity for subsidies targeted at regional business development and subsidies granted to research and innovation.

Thirdly, column 3 shows, by contrast, a significant, positive correlation between the subsidy intensity for subsidies granted to entrepreneurs and the growth rate of the firm.

Fourthly, column 3 shows a significant and negative correlation between the industry's subsidy intensity and the productivity growth of the firms when subsidies to firms are broken down by objectives.

### **5.1 *Separate estimates for the five sectors***

The correlation between the subsidies and productivity growth varies from one sector to another. This appears from table 5, columns 2-6.

In table 5, columns 2-6, relation (5) is estimated separately for the five sectors of the analysis. As was the case in table 4, column 3, seven dummies and seven subsidy intensities are included for the firm-targeted subsidies granted by the Danish Agency for Trade and Industry and the Danish Environmental Protection Agency.

Before discussing the results of table 5 in details, it should be mentioned that it makes greater demands on the data when the analysis is broken down by sector. With the same data, uncertainty increases. In other words, details come at a price.

The move from an estimation with all five sectors which distinguishes only between the objectives of the subsidies (table 4, column 3) to separate estimates for the five sectors (table 5), makes higher demands on the data. Especially, this poses a problem to the estimates of transport (column 5) and construction (column 6) where there are none or few firms that receive subsidies (observations) within some subsidy objectives. This makes it impossible to estimate a statistical correlation between these subsidies and productivity growth.

The uncertainty which the break down by sectors causes must be kept in mind at all times when table 5 is considered and interpreted. A first glance at the table confirms the suspicion that the break down primarily causes data problems and uncertainty for the estimates of the transport and construction sectors. It is, at any rate, in these two sectors that the largest variations in the parameter values are observed.

If, in spite of the uncertainty, the results for the individual sectors are interpreted, table 5 shows some interesting tendencies for the combinations of sectors and objectives. First, the dummies in table 5, columns 2-6 for whether firms have or have not been subsidised show that, in general, there is no significant difference in the level of productivity growth rates in any of the five sectors.

However, there are four combinations where the dummy is significant. For three of the four combinations the dummy is negative. It involves subsidies to entrepreneurs and subsidies granted to firms that receive subsidies to several objectives in business activities etc. as well as subsidies granted to quality and competence development in transport. Thus, these subsidies are granted to firms that are losing ground compared to their direct competitors. For the fourth combination, that is subsidies for regional business development in business activities etc, the indication is the opposite. The dummy is here significant and positive.

With regard to the statistical correlation between subsidy intensities and productivity growth, a number of new results appear from table 5. The first result concerns the correlation between the subsidy intensity at industry level and productivity growth (third line from the bottom). Table 4, column 3 showed a significant, negative correlation in the total estimate, but table 5 shows that this tendency covers various results in the five sectors. The significant, negative correlation holds good only in transport (column 5) and in wholesale, and retail trade, hotels and restaurants (column 4). In manufacturing (column 1) the correlation is, by contrast, significant and positive. In business activities etc. (column 2) the correlation is insignificant. And in construction (column 6) there are, unfortunately, not enough industries included in the database to estimate any correlation.

**Table 5: The correlation between subsidies and productivity growth, breakdown by sectors and objectives, 1996-1997**

Variables (1)	Manufacturing (2)	Business activities (3)	Wholesale, and retail trade, hotels and restaurants (4)	Transport (5)	Construction (6)
Constant	-0.080 (0.073)	2.167** (0.237)	0.286** (0.085)	0.513** (0.173)	-0.118** (0.040)
C	0.078** (0.018)	-0.101** (0.038)	0.077** (0.012)	-0.038 (0.038)	0.066** (0.008)
L	0.963** (0.028)	1,136** (0.057)	0.983** (0.020)	0.944** (0.058)	0.920** (0.011)
Credit standing	-0.001** (0.000)	-0.025** (0.004)	-0.001 (0.001)	-0.001 (0.003)	0.000 (0.000)
Dummy for established after 1989	0.033 (0.040)	-0.537** (0.170)	-0.006 (0.036)	-0.031 (0.154)	-0.000 (0.000)
Dummy for whether firm is a Ltd	-0.019 (0.040)	-0.166 (0.187)	0.038 (0.25)	0.151 (0.152)	0.96** (0.031)
Dummy for more than 75 employees	-0.004 (0.062)	-0.105 (0.440)	0.002 (0.08)	0.020 (0.263)	0.046 (0.070)
Dummy for firm specific subsidies to:					
• Several objectives	-0.089 (0.124)	-3.734** (1.120)	0.047 (0.230)	-0.626 (2.700)	-0.316 (0.673)
• Research and innovation	-0.389 (0.990)	1.307 (1.910)	0.006 (0.098)	-1.346 (2.252)	-0.178 (0.392)
• Quality and competence development	0.031 (0.079)	1.148 (1.040)	-0.082 (0.197)	-5.723** (1.635)	0.103 (0.293)
• Exports and international co-operation	-0.252 (0.163)	-0.155 (0.950)	-0.058 (0.182)	0.470 (2.790)	0.039 (0.581)
• Entrepreneurs	-0.010 (0.118)	-1.850** (0.430)	-0.685 (0.490)	-	-
• Environment and working environment	0.078 (0.110)	-1.021 (1.960)	0.104 (0.917)	-	-0.070 (0.852)
• Regional business development	-0.115 (0.190)	1.579** (0.330)	-	0.876 (1.283)	-0.458 (1.069)
Firm specific subsidies to:					
• Several objectives	0.609 (0.930)	3.344 (2.420)	-8.444 (6.090)	-1.092 (15.193)	14.058 (36.103)
• Research and innovation	-17.81 (95.33)	-1.407 (0.920)	-18.515** (10.24)	416.486 (619.007)	5.824 (14.808)
• Quality and competence development	-1.650 (4.180)	-33.311 (21.050)	11.493 (13.880)	117.637** (55.743)	-10.703 (28.546)
• Exports and international co-operation	7.903 (4.711)	3.321 (3.230)	11.893** (4.690)	-	-4.411 (61.429)
• Entrepreneurs	-5.813 (3.955)	13.690 (2.540)	4.547** (2.310)	-	-
• Environment and working environment	6.585 (6.150)	0.209 (1.450)	3.645 (5.910)	-	-144.913 (238.676)
• Regional business development	-1.158 (3.860)	-3.628** (0.274)	-	-14.457 (9.256)	13.371 (29.285)
Subsidy intensity at industry level	0.708** (0.346)	9.019 (5.520)	-15.000** (1.956)	-24.457** (1.410)	-
R <sup>2</sup>	0.707	0.283	0.575	0.416	0.781
Number of observations in the estimation	4,838	3,193	7,798	1,261	3,549

1. In each square, the top figure is a parameter estimate, whereas the figure in parenthesis is the standard deviation of the estimate.

\*(\*\*) indicate that a zero hypothesis that the parameter equals zero is rejected at a significance level of 10 (5) per cent.

2. Tests showed signs of heteroscedasticity in business activities etc. And there are standard deviations and t-values computed by White's asymptotic covariance-matrix, see Maddala (1992, pp. 211-212).

3. Squares with '-' indicate less than 5 subsidised firms in the database.

Second, table 5 shows that the significant, negative correlation for the firm-targeted research and innovation subsidies may only be traced to the sector for wholesale, and retail trade, hotels and restaurants (column 4). In all other sectors there is no significant correlation between these subsidies and productivity growth.

Third, it appears from table 5, column 3 that the negative correlation between firm specific subsidies for regional business development and productivity growth from table 4, column 3 is to be found, only, in the sector for business activities etc. In the other sectors the recipients of subsidies for regional business development raise neither their productivity significantly more nor significantly less than their competitors within the same sector.

Fourth, table 5 shows that the significant and positive correlation for firm specific subsidies from table 4 is a local phenomenon which is to be found only in the sector for wholesale, and retail trade, hotels and restaurants (column 3). In the other four sectors there are either too few observations to estimate a correlation (transport as well as construction, columns 5-6) or no significant correlation (manufacturing and business activities etc. (columns 1-2)).

Fifth, the industry specific estimates of table 5 show two result, which disappeared, in the total estimate of table 4. First, there is a significant, positive correlation between growth and subsidies for quality and competence development in the transport sector (column 6). The limited data basis of transport and the very substantial parameter value mean, however, that the result is rather uncertain. Second, in the sector of wholesale, and retail trade, hotels and restaurants there is a significant, positive correlation between growth and subsidies for exports and international co-operation (column 4).

Sixth, it appears from table 5 that the models explanatory power ( $R^2$ ) varies from 0.283 to 0.782 within the five estimates. This variation is, however, not a signal that the estimates are better or worse in some of the sectors. The fact that the model does not explain all variation in data is, naturally, an indication that other factors are excluded. In general, however, excluded variables impact only on the parameters for the included variables if the excluded variables are heavily correlated with the included variables. See for example Maddala (1992).

## 5.2 *Possible explanations of differences in growth rates*

The correlation between the productivity growth and the firm specific subsidies varies between objectives and sectors. Tables 4 and 5 demonstrate this.

This variation may be due to several factors. First, the data may not be sufficiently good. As mentioned above, there may, primarily, be reason to fear this when separate estimates for the five sectors in table 5 are included. And, in particular, when estimates for the transport, (table 5, and column 5) and the construction sectors (table 5, column 6) are included.

However, if the data are compared with the data of other empirical studies (e.g. Bergström (1998)), there is no reason to fear that the data are of worse quality than that of others. Thus, there is reason to believe that the variation in the results contained in tables 4 and 5 are not only due to data problems.

Second, the variation in results between both sectors and subsidy schemes may be caused by a large empirical variation in the effect of subsidies on the firm's productivity between both sectors and subsidy schemes.

Also, the dummies for whether firms are subsidised or not may catch all selection bias. However, an in-depth examination for selection bias requires, that the firms be followed both before and after the firms receive their first subsidies. The current data does not allow such an analysis but if we transfer the Swedish results in Bergström (1998) to Danish conditions, it is the subsidies, which impact on the growth rates, and not a selection bias. Bergström (1998) found, as a matter of fact, that selection bias did not explain a significant part of the variation in the results.

**Table 6: Logit-analysis of differences between subsidised and non-subsidised firms, 1995**

Explanatory Variables	Explained variable: Subsidised (non-subsidised) firm = 1 (0)
(1)	(2)
Constant	-3.5583** (0.0690)
Value added (Y)	-0.0000 (0.0000)
Capital input (C)	0.0000 (0.0000)
Number of employees (L)	0.0004 (0.0003)
C/L	-0.0004** (0.0000)
Y/L	-0.0000** (0.0011)
Y/C	-0.0005 (0.005)
Dummy for more than 75 employees	0.6711** (0.0909)
Dummy for younger than 10 years	-0.0029 (0.0622)
Dummy for joint stock company (Ltd)	1.3027** (0.0676)
Number of firms in the estimation	22,550
Number of subsidised firms in the estimation	1,455
-2 log L	664.29 (0.0001)

1. The top figures in the bottom row is test statistics for a likelihood-ratio-test for whether the model as a whole is significant. The zero by hypothesis is that the model is not significant. The figure in parenthesis in the bottom row is the p-value of the test.
2. In all other rows that the bottom one, the top figure is the parameter estimate. The figure in parenthesis is the standard deviation of the estimate. (\*\*) indicates that a test for whether the parameter differs from zero is rejected at a significance level of 10 (5) percent.

There is, therefore, reason to believe that the subsidies must be part of the explanation of the variation in the results. In order to gain a further overview of whether certain types of firm are subsidised, it is examined whether the subsidised and non-subsidised firms' varying productivity growth is due to other differences between the subsidised and non-subsidised firms. Specifically, it is examined whether

differences in age, size, corporate form, capital intensity, labour intensity or capital-labour ratio are part of the explanation.

Technically, a so-called logit model is formulated. For this, a binary variable is defined first for all firms. The binary variable is assigned the value 0 (1) for a subsidised (non-subsidised) firm and is with the logit model sought explained by a number of explanatory variables, which describe some characteristics of the individual firms. If a variable of the logit model proves positive (negative) and simultaneously significant, it is, other things being equal, an expression of the fact that an increase in the variable makes it more (less) likely that the firm is subsidised.

The logit estimate is shown in table 6. The analysis is only shown for all five sectors together as the analysis for the five sectors showed no decisive variations at this point. It appears that subsidised firms' capital-labour ratio (C/L) and labour productivity (Y/L) is, in general, smaller than that of non-subsidised firms (column 2). It may, *inter alia*, indicate that the subsidy schemes generally favour investments in labour rather than capital. If that is the case, it may lead to inefficient production processes and thus contribute to explaining that the subsidised firm's productivity growth rates are, generally, lower than those of the non-subsidised ones (see section 2).

1. Furthermore, the fact that the firm is a joint-stock company or has more than 75 employees makes it more likely that the firm should be subsidised (see table 6, column 2). The latter aspect is altogether in line with the picture presented in table 2. It showed that the subsidised firms have, in general, more employees than the non-subsidised firms. However, tables 4 and 5 showed that neither of the two factors has any impact on the firms' productivity growth rate. It means that the low productivity growth rate of the subsidised firms cannot be explained as a result of the majority of the recipients being joint-stock companies and large firms. By contrast, both factors may distort competition and prove unfortunate from a competition point of view.

### 5.3 *Other empirical results*

Finally, other results of the estimations will be briefly considered. They will be considered against the background of table 5 where (5) is estimated by sectors and where the subsidies are broken down by objectives.

Firstly, it may look paradoxical when the parameters for increase in capital input are very small or even negative. It must be interpreted as if increased capital input is without any effect on or directly harmful to the firms' productivity growth. The paradox may, however, be caused by the Danish economy having experienced relatively large net investments in the years after 1994<sup>8</sup>. The costs of large net investments are immediate, but often have no effect until a few years later. This may explain why increased capital input had no impact on or reduced the growth rates in 1997.

Another result of table 5 is that the credit standing has a negative effect only on the productivity growth in the sectors of manufacturing (column 2) and business activities etc. (column 3). In the other sectors, table 5 contains no indication that the credit standing has a significant effect on productivity growth. The result indicates that a hard budget constraint only benefits productivity growth in business activities etc. (see section 3).

The claim that new firms (established after 1989) increase their productivity growth less than older firms (see section 3) is not general either. Table 5 only indicates a significant, negative correlation between firm age and productivity growth in the sector of business activities etc. (column 3).

Finally, there seems to be no empirical evidence for the theses that productivity increases more or less in large firms and joint-stock companies than in other firms. Only in the construction sector (column 6) does it look as if joint-stock companies increase their productivity significantly less than other firms do.

## 6. Conclusion

This analysis comprises only the period 1994-1997. The analysis is therefore historical and contains little about current Danish subsidy schemes. The reason is that many of the public subsidy schemes included in the analysis have already been replaced by new subsidy schemes.

Simultaneously, the data could have been better. The four-year analysis period is not sufficiently long to include any long-term effects of the subsidies. The analysis would also have benefited from more data on the individual subsidy schemes in some of the five sectors of the analysis. Better data might, finally, have provided better measures for value added, capital input, labour input etc.

These reservations do, however, not imply that the analysis does not serve a purpose. The intention of the analysis is in no way to classify and label certain subsidies as "bad" or "good". The intention is to draw attention to the fact that analyses of how subsidies impact on productivity are natural and necessary when the effects of subsidy schemes are to be evaluated. The analysis is a success if it gives rise to a debate on how best to include productivity analyses in cost- benefit analyses of subsidy schemes.

The analysis showed first why a productivity analysis should be an integral element when subsidy schemes are evaluated and why increased knowledge in this field is needed. The analysis pointed out, initially, that public subsidies may, in theory, both benefit and harm productivity growth in the firms. That is also the case when increase in productivity is not the direct, explicit objective of the subsidies. Subsequently, the analysis stated that the empirical correlation between public subsidies and productivity growth has not been analysed much and that the few analyses that have been conducted have reached mixed conclusions.

The empirical part of the analysis underscores the need for better knowledge of the empirical correlation between public subsidies and productivity. The analysis examined five Danish sectors to discover whether productivity develops differently in firms that benefit from public subsidies granted by the Danish Agency for Trade and Industry and the Danish Environmental Protection Agency than in firms which receive no subsidies. The conclusion is that there are variations in productivity developments. However, the analysis does not answer all questions and it raises, simultaneously, new ones.

The analysis shows, on the one hand, that some types of subsidy are granted to firms with productivity growth rates corresponding to or higher than the average. By contrast, the analysis shows also that the efficiency development in subsidised firms seems almost only to differ for the worse. The analysis does, however, not explain why the subsidised firm's growth rates differ for different subsidy schemes. The reason may be poor data. It may be that some subsidy schemes attract firms with high or low growth. And it may be that the subsidies impact on the growth of the firms.

The analysis also draws attention to the fact that the subsidies are granted, in particular, to firms that are larger than average and to joint-stock companies. This may give rise to alarm as it may distort competition in the markets where the firms compete. Unfortunately, the analysis does not explain the background to the result.

The results of the analysis should be used as a starting point for further analysis. Apart from the fact that the data must be improved, the results of the analysis should encourage analyses of what factors decide whether a subsidy scheme is harmful to, has no effect on, or benefits productivity growth. The aim and objective of an analysis of this kind must be to obtain an idea of how subsidies should be designed to get maximum value for money. The results in tables 4 and 5 may constitute the point of departure and the reference framework for an analysis of this kind.



## Appendix

Table A1: The subsidy schemes of the analysis broken down by objectives, 1994-1997

	1994		1995		1996		1997	
	Number	DKK total	Number	DKK total	Number	DKK total	Number	DKK total
Subsidies from the Danish Agency for Trade & Industry								
Research and innovation:								
Design network	1	450						
Føtek	15	3,374						
Eureka	8	29,674	7	20,146	7	13,936	6	17,079
Development companies					6	13,314		
Knowledge and quality programme	356	66,190						
Product and process development in construction	3	750	2	16,227				
Subsidy to the Ørsted satellite	1	7,876	1	1,100				
Quality and competence development:								
Icebreaker project	359	23,564	264	17,392				
Ethnic icebreakers					11	726	6	396
Home Service					4	40		
Initiative area./Subcontractors	48	6,928						
Stride	3	2,196						
Supplementary financing Nordic Industrial Fund	5	263					1	67
Collective business promotion							1	75
Standardisation of feed equipment	1	120						
Exports and international co-operation:								
General export promotion	16	16	51	14,320	12	2,815	1	150
International co-operation	26	6,299						
Export network	78	16,461	20	5,203				
Export studies							13	627
Export development programme							2	611
Business related sector programme in Eastern Europe	46	7,554	79	20,589	32	8,051	23	7,764
Tendering for international contracts	15	1,998	26	3,003	17	1,709	14	1,762
Customs and forwarding	4	930						
Entrepreneurs:								
Entrepreneurs, analyses and tests			1	100				

**Table A1: The subsidy schemes of the analysis broken down by objectives, 1994-1997 (cont'd)**

Entrepreneurs, new product ideas	15	4,987	4	1,464	3	1,105			
Inventions, research, consultancy and sparring			2	83					
Entrepreneurial voucher	1	19							
Environment, energy and working environment									
KONVER	1	140							
Environmental icebreaker							9	556	
Environment, energy and working environment									
Environmental management and auditing etc.						2	2,616		
Environmental technology	108	23,653							
Regional business promotion:									
MUP2	45	58,337	5	231			2	68	
Target 2 Lolland			18	3,894	7	1,840	10	2,304	
Target 2 Nordjylland	25	8,860	64	36,630	39	29,652	17	3,676	
Target 1 5b			33	8,121	4	601	15	2,829	
National co-financing (EFRU)	26	9,213	109	38,955	47	17,804	40	8,638	
Perifa					1	110	2	680	
Regional development programmes	1	285			1	155			
Subsidies from the Danish Environmental Protection Agency	3	1,667	109	181,690	93	190,843	79	259,687	

## NOTES

1. It is an economic expression that activities have negative or positive externalities. See for example the Danish Competition Authority (1999a) or European Economy (1999).
2. For example Lavdas and Merdrinou (1999, pp 1-2).
3. Readers with no knowledge of mathematics may omit section 3.
4. To gain an overview of the theories about political interest groups' rent seeking, see for example Mitchell and Munger (1991).
5. Inter alia, Dilling-Hansen et al (1999).
6. Operating income and depreciation are drawn from the firm's income statement. Pay is calculated on the basis of number of employees and average pay per employee in Pay and Income Statistics of Statistic Denmark.
7. In the Appendix, the subsidies are broken down by specific subsidy schemes.
8. According to the national accounts, published by Statistics Denmark net investments increased from 1993 to 1994 from DKK 13.4 billion to DKK 31.6 billion. In the forecasts for 1995, 1996 and 1997 Statistics Denmark estimates that net investments have increased further to DKK 46.3 billion, DKK 48.9 billion and DKK 60.8 billion, respectively.

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## FINLAND<sup>1</sup>

### 1. Main points and present status of project

In May 1998, the FCA set up the Government and the Markets project as one of its strategic projects. The backdrop of the project was formed by the crisis that prevailed in the public sector in the 1990s, which has led to a significant ongoing structural development in public production from the viewpoint of competition policy, and one in the context of which the role of the public sector in the economy in general has had to be re-estimated. On the one hand, it is a question of the marketisation of the monopolistic production hierarchies of the public authorities and the opening up of monopolistic production to competition as a whole, and on the other hand, the expansion of public production into fields, wherein traditionally only privately owned companies have operated. A special and at first sight paradoxical structural feature of the Finnish public production is that both lines of development mentioned above – the introduction of competition and its expansion into traditionally private production – coincide in the same field of public production.

Marketisation and introduction of competition equal the bringing of public production into the sphere of competition legislation (i.e. the operation of business undertakings referred to in the Finnish Act on Competition Restrictions, hereinafter the Competition Act) in conditions where there was justified cause to doubt whether effective competition could be maintained due to the special competitive advantages enjoyed by public service providers. The expansion of public production into the sphere of traditionally private production threatens to restrict and distort competition, which is significant from the competition law viewpoint. Considering the experiences obtained by the FCA about the changes in public production during the deepest recession, the FCA found it important to set up a special project whereby it monitors the ongoing structural change, which has repercussions for the entire economy, and aims to prevent the use of practices forbidden or found harmful by the Competition Act and, altogether, to contribute to functional market and competition arrangements, which eliminate forbidden and restrictive competition restraints as efficiently as possible. The Government and the Markets project expands and activates the FCA's work on public competition restraints. The traditional work on governmental competition restraints still forms an important part of the FCA's work.

In its initial stage, the Government and the Markets project divided into two main parts. In "The limits of publicly-owned and privately-owned production", an investigation of some government offices, departments and companies began in 1998. The targets of investigation included the occupational health service provider Medivire, the Finnish Institute of Public Management providing training and consulting services, the Finnish grain trader Avena, the materials management and public procurement house Kauppatalo Hansel, the Finnish Meteorological Institute and the Finnish National Road Administration. The investigation of all but the first two continues. The object of investigation is to pinpoint the practices aiming at the exclusion of competitors or/and practices leading to the exclusion of competitors in the state's business operations and the unprofitable operations of government offices, departments and companies in the production of market outputs, thereby distorting competition.

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1. Issued in the Finnish Competition Authority Yearbook 2000

In the “Welfare Service” part, the previous health care project continues; as for welfare services, the interface of public and private production is monitored and the production process of public welfare services hierarchically arranged is examined in such a way that it is possible to influence the aims to boost and develop the services in general, particularly through market and competition instruments. Due to the potential competition distortions related to the competition between providers of welfare services, the project also deals with the effects of the economic support awarded by the Slot Machine Association RAY to the so-called non-profit organisations producing social and welfare services.

The investigation of government offices, departments and companies has continued during 1999. At the turn of the year, over 20 competition restraints cases were handled in the project, half of which dealt with the government offices, departments and companies and the rest welfare services. After the pilot stage, the investigation expanded in late 1999 to encompass the marketisation of the municipalities production business. The regional governments were primarily responsible for the fieldwork in the chosen 20 municipalities. The FCA and the regional governments analysed the results of the fieldwork and publish an intermediary report in late 2000. The problems under review and the aims of the investigation are basically similar to those of the investigation on government offices, departments and companies. It has been stated in the FCA’s strategic plan for 2001-2004, that the Government and the Markets project acts as one key project while all the investigations focus on certain well-defined special issues when the investigation on government offices, departments and companies has been completed.

## **2. Core problems of project**

Public production can be divided into marketised and non-marketised production, although the division cannot be unequivocal in practice. Marketised production is based on decisions on the allocation of resources based on and guided by signals coming from the market. A market place exists, wherein the public producer acting as a seller and the buyer party agree on exchange transactions based on the market signals delivered or received by them in the market place. Hence, marketisation is a change, which either directly or indirectly develops the following propensities: 1) a clearly identifiable market place, 2) economic operators making independent decisions, who 3) act on their own incentives and in accordance with the market signals received.

Non-marketised production is typically an authority-type hierarchy, whose policy on the use of resources is guided by administrative fiat, which is norm-based and where the users of the product pay administrative fees covering only a small part of the expenses at most. The backdrop for the change with respect to marketised production is a conscious elimination of monopolistic zones protected from competition on the one hand, and the effect of economic recession for the core operating area of the producers in question on the other. The recession lessened demand and unused resources were born as a result of it, but it was not possible for public production to quickly adjust its resources to meet with the decreased demand. In this situation, it was natural to commence expanding public production into fields wherein the underused resources fitted and which the public producers knew well e.g. due to previous supplier/client relationships. At the same time, reforms, which partially opened up operating areas of the said public producers, were carried out in the same sectors. These were related to deregulation also realised in other parts of the world, some of which were carried out through the EC internal market programme. The expansion of marketised public production into the sphere of traditionally private business operations led to complaints to the FCA already during the deepest recession.

Competition policy does not set barriers or restrictions to the freedom of action of business undertakings. Irrespective of the legal form or ownership, all have the right to expand to new operating areas as long as they do not abuse their market power in a way, which will compromise the benefits of the

consumers. However, if a dominant position in a certain field is used in a way, which will artificially ruin the competitors' operating prerequisites in another field so that the business undertaking in question has a great likelihood of obtaining a dominant position in the other field, too, the benefits of the consumers are at risk due to monopoly power. The competition authorities then have to apply the competition legislation to put an end to the destruction of the artificial operating prerequisites and the aborting of monopolisation. A company in a dominant position can, leaning on its protective zone, use many methods to artificially destroy the competitors operating prerequisites. If the benefit of the consumers acts as a guideline for competition policy, a company in a dominant position may cause serious effects in another field before the dangerous probability of monopolisation exceeding the application threshold of competition legislation prevails.

In some of the cases examined in the Government and the Markets project, one of the starting points for commencing the investigations is the above-mentioned expansion phenomenon into a new sector, which has caused similar doubts about the artificial exclusion of competitors and a monopolisation trend as the precedents dealt with by the FCA during the deepest recession. Even more significant is the possible artificial defence of dominant position against budding new competition – particularly through tying and predatory practices – in a traditional field freed from competition, by leaning on the remaining protected operating sector. The possibilities of public producers to artificially protect their liberated operations improve further if it threatens the traditional market position of the competitors in their traditional field by systematically expanding thereto. Due to this, the partial exposure of public production to competition and its expansion into the field of private business operations is a potentially threatening scenario, which has provided cause to the investigation.

If the producer is able to achieve such economies-of-scale by means of the protected operations which the competing producers cannot possibly obtain, the said producer may, with the aid of these economies-of-scale, beat its competitor(s) in the liberated operations or on the traditional operating area of its competitors, without having to apply underpricing or other artificial transfer of resources. The prerequisites of competition are thus ruined in advance, even if the competition legislation has not been violated. This viewpoint, which has significance in a wider sense, is present in many contexts in the Government and the Markets project.

Of the cases in the project, that of the Finnish National Road Administration (Finnra) most clearly demonstrates the above-mentioned scenario. In its present form, Finnra is an office, which has been internally divided into road administration and road production along the customer/producer model. Furthermore, a protected sector is the negotiation contracts between the road administration and road production (although, at the same time, road production has used subcontractors in dealing with negotiation contracts); the liberated sector contains the building and maintenance deals freely tendered; road production expands at the same time into the traditional operating area of private land and sewerage builders (markets outside of general road maintenance, such as municipal works), which is the result of the cutting of the road maintenance allowance from the annual FIM six billion into FIM four billion. The set-up poses doubts as to road production artificially displacing its private competitors on the opened sector with the resources received from the protected sector and artificially excluding competitors on the traditional operating areas of private producers as well. The development of competition may also be prevented by the mineral resources owned by the road production situated in strategically important places from the viewpoint of up-coming tenders. By refusing to deliver mineral resources to private producers competing on a tender on equal terms at least, road production may, in effect, prevent private contractors from tendering efficiently for the contracts.

The FCA is investigating the complaints caused by the road administration's complex case on the basis of the Competition Act. At the same time, it is clear that the basic reasons for the competition law viewpoints dealt with by the FCA are the road production's prerogative to negotiation contracts and the



legal office status of the National Road Administration. If road administration and road production are separated so that a transparent organisation will emerge from the latter, and the current negotiation contracts are freed to open tender and no artificial competitive advantages are left to road production, the prerequisites of effective competition are achieved in the whole sector and the present competition law investigations are no longer needed. In March 1999, the FCA made an initiative about the incorporation of road production and has later supported the plan of the Ministry of Transport and Communications to establish a state enterprise of road production.

In marketised public production, the recession thus has, due to the said factors, led through unused resources to expansion at the same time that the traditional market position is defended in the liberated sectors. In the non-marketised production welfare services where products are produced through a hierarchical planning process and delivered to consumers either for free or at administrative fees clearly undercutting costs, the basic problem is the gap between production resources and needs which is still deepening and continuing due to the cutting down of public spending. Changes in non-marketised public production in the 1990s have been based, above all, on rationalisation measures caused by the savings decisions. Opening up production to internal or entirely free competition is still at an early stage.

In the welfare services, it is important to distinguish between production, procurement and funding. The production of welfare services may be exposed to competition and the public authority may still retain the procurement power and the primary funding of the services offered. In this way, quasi-markets and competition on production may be created inside the public sector. Competition on production serves to increase the cost-efficiency of production and to promote other efforts to improve operating measures improving productive efficiency. Maintaining the share of funding of the public sector does not prevent the transfer of procurement power to consumers either; this may be realised via voucher arrangements, for example. If procurement power is freed to citizens, the production of welfare services may be opened up to full competition. If the procurement power is not given to individual citizens, the services offered to them are based on the plans of the public procurement organisation, which inevitably standardises the procured product. The transfer of procurement power to consumers would lead to variation in consumer preferences becoming visible, which would enable product differentiation raising consumer welfare in way typical of market order. Hence, it would be possible to estimate what kind of consumer needs and consumers public funding should concern in the future in the trend of more and more untenable demand.

The creation of a quasi-market and the maintenance of competition to the current non-marketised production of welfare services are not without problems and do not happen overnight. It requires a clear identification of products produced, monitoring of market activity and, in general, commitment to a persistent conscious creation of the market and competition. Many municipalities have referred to the lack of competing producers preventing the marketisation of their service production. However, this lack is above all due to no space having been created to market activities in the municipality or the nearby regions. The municipalities and preferably several municipalities co-operating should, by visible and persistent measures, create market space to which private business operations could be sustainably established.

While the public non-marketised service production is generally lacking resources, public producers are surprisingly expanding into the traditional operating areas of private producers. This demonstrates the typical problem of a hierarchical planning system: at the same time that there is a considerable over-demand of many services, certain parts of the production capacity are underused, and now these resources are used to expansion into the private sector with the same kind of problematic results as in marketised production.

Entirely its own chapter in the Government and the Markets project is the financially significant examination of the Slot Machine Association, RAY, about which the FCA has received several complaints.

In 2000, FIM 1390 million of RAY's is allocated profit to non-profit organisations in the social and welfare sector. The setting of public good as condition of support may spur other service providers with different legal forms to change that organisational form, which does not necessarily increase the efficiency of the operations. The support, which may take the form of operating, investment or development project funding, may, due to actual resource transfers spill over to outside operations occurring on the same horizontal level or, vertically, to different levels of operations (input markets, in particular) and thereby distort competition with serious consequences for business operations. The support may also enable a cost advantage to the receiver of support due to the economies-of-scale, which competitors cannot obtain. For these situations, the FCA seeks, in co-operation with RAY, business undertakings and their interest groups and the rest of public administration, to initiate new support policy measures and rules, which would eliminate these effects as wholly as possible even when the support is granted and the effects followed. Factually, it is a question of taking the outside marketing environment and its promotion into consideration more emphatically than before in addition to social and welfare aims, which, in the long run at least, would secure the achievement of the above-mentioned aims. Progress in this work is an essential part of the goals of the Government and the Markets project.

### **3. Conclusions**

The reform of monopolistic and non-marketised public production is without a doubt a significant economic phenomenon from the viewpoint of the functioning of competition, which has a serious bearing on the national economy, due to the volume of public production. A market-type-operating environment and effective competition can boost and diversify public production and at the same time ultimately promote the realisation of the aims of the welfare state. However, as suggested above, this line of development also includes potential threats, which should be understood and prevented. In effect, the danger is the prevalence of monopolistic conditions and even expansion into operations previously only operated by privately owned business undertakings. Even if the reforms were officially pointing at the opposite direction, they may destroy competitive prerequisites at the very start.

When production fields in the public sector are opened up to market competition, the above-mentioned restrictive and distorting circumstances should be excluded with conscious institutional arrangements. These arrangements are typically the basic causes of monopolistic development and concrete restrictive measures only the consequences. Since the experience obtained from practical competition policy is useful in the detection of potentially undesirable institutional arrangements, the FCA has sought in the Government and the Markets project to actively share of its expertise to support the authorities creating the institutional frames. A representative of the FCA has e.g. participated in the working group examining the reform of the Finnish National Road Administration.

Even though the institutional circumstances are typically the fundamental reasons of restrictive and distorting measures, the FCA still seeks to eliminate the forbidden or harmful practices with remedies provided for by the competition law. The direct application of the competition legislation forms a major part of the project work, which seeks to guarantee effective competition even when the institutional base is unfavourable to competition. This viewpoint has already proved relevant in the investigative work.

The renewal of public production is important for competition policy for the very reason that the reforms expand the field of application of the legislation and the threat of the competition restraints referred to in the law is apparent. However, the information received in the project work is also useful to the governmental ownership strategy, which also has business and industrial policy and, more widely, economic system policy repercussions. The investigative work of the Government and the Markets project

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may reveal many unintended results caused by the reforms of the publicly owned production, which have such wider significance.

## ITALY

### 1. State aids in Italy

Until recently, State subsidies have played in Italy a very important role. Financial transfers and other forms of direct and indirect support to entire sectors or individual enterprises were very frequently employed to boost economic development and to promote employment in the more backward regions of the country as well as for the achievement of industrial policy objectives of “pick the winner” type. Subsidies had been concentrated on “industrial policy” objectives, such as developing the steel and the chemical sector, considered to be vital for the industrialisation of the country. The failure of these programs for the achievement of an industrial specialisation justified by demand developments led to a serious reconsideration of such policies.

Indeed, in recent years, the amount of State subsidies to industry has substantially decreased. This is due to several concurring reasons. First, the application of the European Community rules aimed at ensuring that State subsidies (with an all-encompassing definition of state aid) granted by members countries do not distort competition and intra-community trade has become gradually more stringent. Second, the declining amount of the financial transfers to sectors or enterprises is also due to a changed perspective on the role of the State for the promotion of economic development. The State’s ability to choose “winners” in terms of industries and specific enterprises was increasingly questioned. Rather, the prevailing view is that the State’s role should be mainly aimed at promoting a market-based, stable and transparent institutional and regulatory framework conducive to economic growth and industrial development. Third, spending constraints aimed at reducing the budget deficit to ensure Italy’s participation in the European Monetary Union have led to important cuts in transfer payments.

A useful source of information regarding Italy’s financial transfers to enterprises, which allows comparisons with the funds allocated in the other EU Member states, is the yearly survey conducted by the European Commission. The most recent one, the eighth of the series, has been disclosed in April 2000<sup>1</sup>.

This latest survey (carrying data referring to the 1996-1998 period) reveals that Italy allocates around 1.5 percent of GDP, equivalent to three percent of total public spending<sup>2</sup>, for State aids. Of the total amount of the funds, around 70 percent are allocated for regional development purposes, while the remaining share is allocated to achieve “horizontal” objectives (R&D, SME, environment, energy saving, etc.) or to specific sectors (steel, shipbuilding). With respect to the overall aid (not considering their regional destination), around 50 percent of the total accrue to manufacturing, around 30 percent to transportation and the remaining share to other sectors, including financial services, tourism and agriculture.

With respect to manufacturing, Italy has granted an amount of state aid, expressed in proportion of sectoral value added equal to 4.4 percent, a figure almost double compared to the Euro-15 average. In terms of absolute values, Italy transferred, in the two years considered, around 9 000 million Euros of state aid to enterprises. This represents more than a quarter of the overall aid given in the European Union, in spite of an approximate 20 percent decline compared to the previous two-year period. Italy is also the

country with the highest aid per person employed in the European Union (around 2 000 Euros), despite a significant reduction compared to previous years.

Most of the aid to manufacturing, aims at the development of the poorest regions of the country (around 70 percent of the total, compared to 60 percent average in the EU). Around 10 percent of the funds promote the restructuring of declining sectors, or the rescuing of companies on the brink of bankruptcy. With respect to the form of aid used, 55 percent of the aid in manufacturing is allocated through direct grants, while around 40 percent consist of tax exemptions.

Transportation services are also the beneficiaries of significant aid. State aid granted for the running of the railways, in particular, was around 18 percent of sectoral value added.

## **2. Competition Authority decisions and State aid.**

The Italian competition authority has been involved in a number of occasions with complaints by enterprises denouncing the competition-distorting effects of State subsidies being granted to the complainants' competitors. These complaints denounced either the aids' anticompetitive effect accruing in the markets where the funds were used, or in other contiguous or unrelated markets through cross-subsidisation practices put in place by the beneficiary enterprises.

The competition Authority has dealt with most of such complaints by making use of its advocacy powers. Most of the complaints received concerned maritime transports. The competition Authority, in several occasions over the years, has reported to Parliament and Government the competition-distorting effects of subsidies being granted to the companies belonging to the State-owned shipping holding group Finmare<sup>3</sup>. These public subsidies were granted, on public interest grounds, to Finmare to ensure regular line services on several national (connections with the islands) as well as international routes, otherwise, allegedly, not supplied on a commercial basis. With respect to such State aids, the competition Authority, in the opinions to Parliament and Government, raised several objections:

- with respect to several subsidised international as well as national routes, there was an ongoing presence of competing not subsidised shipping companies able to provide regular line services on a normal commercial basis side by side with the subsidised companies;
- state subsidies had been granted to subsidise Finmare activities in an indiscriminate and generalised manner, without operating a clear distinction between public interest and commercial activities, leading therefore to an unjustified advantage for Finmare *vis-à-vis* its competitors on routes, which were not supposed to be subsidised. The costs incurred in order to ensure regular connections on not profitable routes should be accurately measured. This role should be fully under the responsibility of public authorities and not delegated to the involved companies.
- state funds disbursed in order to ensure public interest services should be made available to anyone willing and able to provide such services. Their allocation should be made on the basis of competitive bidding, through transparent and non-discriminatory procedures, as recommended by the European Commission guidelines with respect to state aids for maritime transport<sup>4</sup>.
- In 1995, following a complaint for an alleged abuse of dominant position on the routes connecting Italy to South Africa, the Competition Authority opened a proceeding against Lloyd Triestino, one of the shipping companies belonging to the Finmare Group<sup>5</sup>. The

complainant had reported that Lloyd Triestino had been resorting to predatory pricing, taking advantage of State subsidies, on the Italy-South Africa route. The Competition Authority closed the proceeding without ascertaining a violation of the law in view of the fact that the complained company, because of its limited market share, was found not to hold a dominant position. Nevertheless, the Competition Authority ascertained that the State aids had seriously harmed competition because they allowed Lloyd Triestino to maintain its presence on the market in spite of the substantial losses incurred over the years.

### 3. Regional aids and distortions of competition

Regional aid is granted both by "ordinary statute" regions and by "special statute" regions<sup>6</sup>. The "special" regions enjoy much greater financial autonomy than the former.<sup>7</sup>

A research (not officially endorsed by the Authority) published in 1998 by two staff members<sup>8</sup> revealed that funds allocated in all regions are mainly aimed at promoting the development of specific sectors, such as tourism or handicraft, considered to be characterised by positive environmental and cultural externalities. Significant resources are also allocated to firms willing to hire young, female and disadvantaged employees. Finally, several regional laws and regulations allocate significant funds to small and medium size enterprises (SMEs) to help them overcome alleged disadvantages deriving from their limited size.

The study, which refers to 1994 data, showed that the special statute regions located in the Northern part of the country granted an amount of subsidies, with reference to the sectoral value added and fixed investment, significantly greater than those granted by all other regions of the country, including those located in the South, which feature substantially lower per capita incomes compared to the North<sup>9</sup>. The research also noted that special statute regions in the North transferred to the private sector a greater amount of funds *vis-à-vis* the ordinary statute regions of the North even though those regions have similar per capita income.

The research concluded that such imbalance in the allocation of regional funds, with greater amounts disbursed in the special statute Northern regions, which include some of the richest regions in the country, may create distortionary incentives for location. In fact, enterprises may have the incentive to establish themselves, or to relocate, to the regions granting greater aids. The distortion originates from artificial barriers to entry, such as the presence of local or regional administrative constraints or quotas for the exercise of several economic activities, and for the legal constraints other Regions face, since they cannot match subsidies granted by "special" regions. Such last effects are magnified by provisions contained in a few of the aid granting laws considered that limit the possibility of receiving a subsidy to companies established in the granting regions for several years, effectively impeding the free movement of capital across regions. In any case, distortions in the competitive process may occur when regional aid goes to enterprises operating in relevant markets extending beyond the local or regional area.

Furthermore in many circumstances regional aid is not subject to Community scrutiny because of the existing *de minimis* principles. The problem with the Community *de minimis* rule in State aid is that it applies with reference to the amount of aid granted to individual enterprises (100 000 Euros over any period of three years) not taking into account cumulative effects<sup>10</sup>. So if a whole sector of small and medium sized firms is subsidised and the market is wider than that of the aid granting region, than such a scheme, because of its cumulative effect, is not *de minimis* at all, contributing to a significant distortion of trade flows.

## NOTES

1. European Commission, *Eight Survey on State Aid in the European Union*, COM (2000)205 Final, Brussels, 11.4.2000. The Survey focuses on State aid to enterprises falling within the scope of Articles 87 and 88 EC Treaty. The survey does not include, in particular: 1) aid whose recipient are not enterprises; 2) differences between the various tax systems; 3) aid granted by supranational and multinational organisations, including Community funding; 4) defence and public works disbursements.
2. The average for the 15 EC countries is 1.12 percent of GDP and 2.35 percent of total public spending.
3. See *Finanziamenti Gruppo Finmare*, Competition Authority Bulletin, n° 2/1993; *Piano di Riordino del Gruppo Finmare*, Competition Authority Bulletin; 1-2/1996, *Piano di Riordino del Gruppo Finmare*, Competition Authority Bulletin, n° 26/1998.
4. Communication of the Commission 97/C 205/5 *Community Guidelines for State aids in Maritime Transportation*, 5 July 1997.
5. See *Ignazio Messina & C./Lloyd Triestino*, Competition Authority Bulletin, n° 19/1995.
6. The Regions being granted Special Statute according to article 116 of the Constitution, which allows for greater autonomy, are: Val d'Aosta, Trentino Alto Adige, Friuli Venezia Giulia (in the North), Sicilia and Sardegna (in the South)
7. Only around 13 percent of funds allocated by the central government to the ordinary statute regions do not have an earmarked destination. The percentage goes up to around 67 percent for special statute regions (data referring to 1995). On average, special statute regions allocate 15 percent of their total funds to enterprises, while ordinary statute regions allocate around six percent. Special statute regions, similarly to ordinary statute regions, raise a very limited amount of funds through local taxation: 1.5 percent of the total budget compared to around six percent for ordinary statute regions. This occurs in spite of the special statute regions' greater autonomy to impose local taxes.
8. See Francesca Ammassari and Laura Marzorati, *Gli Aiuti Regionali alle Imprese*, Temi e Problemi serie n. 7, Autorità Garante della Concorrenza e del Mercato, May 1998.
9. The research focused on the agriculture, fisheries, manufacturing, handicrafts, trade and tourism industries.
10. The rules applying to *de minimis* State aid have been recently updated since a 1996 Notice by Commission Regulation (EC) n° 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid. This Regulation has been adopted on the basis of Regulation (EC) N. 994/98 which empowers the Commission to set out in a regulation a threshold under which aid measures are deemed not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification procedure provided in Article 88(3) of the Treaty.

## KOREA

### 1. Introduction

Subsidies and state aid have been employed in Korea as an economic policy tool to achieve rapid economic growth in the 1960s and 1970s. They came in the form of entry regulations aimed at protecting certain industries, policy loans to concentrate foreign loans and other limited resources on "national champions", tax cuts and exemptions and high tariff rates.

These subsidies and state aid, to a certain extent, contributed to Korea's high-speed economic development in a short time span. At the same time, however, they also gave rise to corresponding economic costs. In other words, they hampered the development of the financial industry and caused the concentration of economic power in conglomerates.

After the late 1980s, the government shifted its policy toward growth led by market mechanism of the voluntary functions and competition in the private sector, by reducing intervention and pursuing market opening. With the launch of the World Trade Organisation (WTO) in mid 1990s, the Korean government sought to allow market forces lead the economic development by scaling down subsidies and state aid to keep pace with the trends of globalisation and internationalisation of corporate management.

This paper will first address the definition of subsidies, and then move on the current status of subsidies in Korea, and conclude with thoughts on the control of subsidies.

### 2. Definition of subsidies

The Korea Fair Trade Commission (KFTC) has so far been bent on setting up new standards on conventional competition concerns and expanding the areas of competition law enforcement. As such, it has failed to pay enough policy attention to the issue of government subsidies. In addition, as there have been no subsidy-related complaints raised to the competition authority, subsidies have not been clearly defined under the competition law.

It should be noted, however, that the Korean government has been maintaining its subsidy policy in line with the WTO Agreement on Subsidies and Countervailing Measures (ASCM) and has been notifying the details of subsidy execution to the WTO.

The OECD Secretariat's Background Note comprehensively defines the subsidies as all the transactions between a government and a business that can undermine the equal basis of business environment. In this light, public goods and differences in regulatory regimes that can hinder the corporate competition are included in the definition as well. However, such a broad definition of subsidies has limitation in the actual application and the determination of anti-competitive effects. While government procurement, the provision of public goods and differences in regulatory policies have clear-cut impacts on



competition, they may have necessary and justifiable *raison-d'être* that outweighs their anti-competitiveness. Also, it is hard to eliminate them even if they restrict competition.

In a nutshell, a broadly defined concept of subsidies has the problem of application in the analysis of competition effects. Therefore, for the sake of applicability, it would be desirable to limit the concept of subsidies to mainly government's direct fiscal expenditures and tax cuts and exemptions, which have the analytical significance.

With respect to the issue of setting forth the concept of subsidies, the following issues seem to deserve further consideration.

First, we may consider the costs and/or benefits as a criterion for a subsidy. Regarding this criterion, it is useful to apply the principles of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). Article 1 of ASCM stipulates the definition of a subsidy. In particular, it consists of two major elements: a financial contribution by the government and benefits conferred on the recipient. Since the costs to the government and the benefits to the recipient do not always, in general, match each other, this causes a fundamental problem for effective enforcement of ASCM. Despite these limitations, ASCM provides useful guidelines for the development of disciplines, which intend to harmonise the competition rules with the subsidy ones.

Second, a subsidy can be defined as a direct or indirect subsidy, depending on the scope of its effects on the stream of production. Since it is not easy to draw a borderline, it is understood that ASCM mainly covers the direct subsidies. With respect to this definition, there is a need to discuss whether or not the possible disciplines cover upstream subsidies and/or downstream subsidies. For example, if a government grants certain types of subsidies to steel industry, the industrial users of steel product as inputs such as automobile industry may have benefits indirectly. In other words, upstream subsidies are deemed to exist. In this case, the relevant question is whether a competition authority limits its examination of the competition effects of steel industry programmes on the steel industry only or consider effects on both steel and automobile industry. On the other hand, we may consider indirect effects of subsidies in the opposite direction, i.e. downstream subsidies. As an example for downstream subsidies, we consider the subsidies for air transport services industry, which, in turn, may lead to an increase in demand for the aircraft.

Third, subsidies can be defined depending on the characteristics of the market which subsidies are intended to affect. In particular, they consist of export subsidies, import-substitution subsidies and domestic subsidies. Moreover, ASCM applies different disciplines to these subsidies. While export and import-substitution subsidies are classified as prohibited subsidies, domestic subsidies are deemed to be actionable subsidies provided that they are considered to be specific within the meaning of Article 2 of ASCM. On the other hand, the EC Treaty Article 92 does not necessarily examine whether the proposed subsidies have adverse effects on the third country market.

Fourth, when a government confers benefits on certain industries by relaxing standard levels or allowing the preferential access to valuable resources, the measures may be considered as subsidies, so-called regulatory subsidies. This definition, however, has a number of problems. One of them is that since the measures do not place a financial burden on governments, they may not be deemed as subsidies within the meaning of Article 1 of ASCM. Other problem results from enforcement process. It is not easy to identify them. Furthermore, it becomes more difficult to measure amount of benefits. The measurement problem may lead to an issue of what the adequate benchmark levels are.

Finally, we would like to address the scope of disciplines. While ASCM generally disciplines subsidies for goods only, the rules for services subsidies are Article XV of General Agreement on Trade in Services (GATS), whose details will be negotiated. Furthermore, GATS excludes services supplied in the

exercise of governmental authority from its scope. Article 1.3(b) of GATS, Article 1.3(c) of GATS stipulates that a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers. Thus, there is a need to discuss whether the competition rules apply both goods and services subsidies. If so, the related issue is how to establish rules for services subsidies in comparison with ASCM. Also, we may discuss whether and how to consider the various characteristics of services, in developing the competition rules. It is noted that unlike goods subsidies, GATS allows governments to provide discriminatory services subsidies under certain conditions. In other words, WTO Members are permitted to adopt services subsidy programmes, which are inconsistent with national treatment (NT) principle. Article XVII of GATS.

### 3. Status of Government subsidies reported to the WTO

The table below shows the status of subsidies as notified to the WTO under ASCM.

Type	96	97	98	99	2000
Prohibited Subsidies	5	4	-	-	-
Actionable Subsidies	17	17	15	15	15
Non-Actionable Subsidies	4	3	4	4	4
Total	26	24	19	19	19

A number of prohibited subsidies such as export and import-displacing subsidies existed in 1996 and 1997. However, they were all removed in 1998.

Last year, the Korean government reported to the WTO 15 actionable subsidies considered to be specific and four non-actionable subsidies. The actionable subsidies are granted mainly in the primary industries such as agriculture, forestry, and mining. Non-actionable subsidies include Diesel Vehicle Low Emission Technology Development, Assistance for Research and Development Activities from Basic Act on Information Promotion, Environmental Engineering & Technology Development Programme, and Science and Technology Promotion Fund and constitute subsidies in R&D field.

Subsidies notified to the WTO are granted to corporations that meet certain legal criteria and have few anti-competitive effects in the domestic relevant markets.

In analysing the competition effects of subsidies given out in primary industries on other countries, non-trade concerns of these industries should also be taken into account.

As an example of research and development subsidies, the R&D support based on the Information and Communication Promoting Fund is a policy loan aimed to assist IT-related R&D activities of companies. Firms that intend to carry out R&D in IT such as multimedia technology can qualify as recipients and the support is confined to research for industrial purposes and pre-competitive development activities. Since the support precludes R&D for commercial purposes, it is unlikely to have anti-competitive impact.

#### **4. Regulation of undue intra-group transactions by the Korean Competition Authority**

The anti-competitive effects of the above subsidies can be seen as similar to those of undue intra-group deals, a form of subsidisation among private firms, which are regulated by the KFTC. Thus, it is possible to draw inference from the effects of undue in-house transactions.

Korea's chaebols have sometimes engaged in acts of discriminatory supports favouring their affiliates over non-affiliates, thereby hampering competition in the relevant markets. Against such undue conducts, Korea's competition authority has taken actions. The regulation of undue in-house trading is designed to remove elements that hinder competition between independent firms and affiliates of chaebols and to induce un-competitive marginal firms' liquidation from the market.

#### **5. Control of subsidies**

##### **5.1 Related statutes**

General laws that govern subsidies include the Budget & Accounts Act which controls government budgeting, appropriations, etc., the Act on the Budgeting & Management of Subsidies which controls subsidies as government's direct fiscal expenditure, and the Restriction of Special Taxation Act that controls the government support through tax cuts and exemptions.

In the case of Korea, however, there are no laws and regulations to limit the subsidy programmes of central and local governments, which can have an effect on competition in the private sector.

The Act on the Budgeting & Management of Subsidies is enacted to control subsidies coming from appropriations of the government budget. Subsidies under the Act can be broken down into those granted to local autonomous bodies and those to private corporations and individuals. For the purpose of effective budgeting, the Subsidy Review Committee is established under the Ministry of Planning and Budget (MPB). The budget for subsidies is determined through considerable internal review.

**Subsidy Review Committee:** The Committee is composed of senior officials from the central and local governments and officials responsible for budgeting in the MPB. However, the composition of committee can vary depending on the nature of items under review.

Local governments can raise opinions in the process of central government's budgeting for subsidies, concerning the priority of projects within their jurisdiction and the adjustment of budgetary amounts. The final decision to provide subsidies are made after review of conformity with the purposes of relevant laws and budgets, appropriateness of recipient projects, etc. Unfortunately, the competition authority is not involved in the process of budgeting and execution of subsidies.

The Restriction of Special Taxation Act is designed to rationalise various tax cuts and exemptions. Numerous reductions and exemptions of tax that existed were integrated into the single statute. The Act stipulates individual statutes that can allow for tax cuts and exemptions. It prohibits preferential tax treatment in certain industries which may give rise to inefficient allocation of resources and provides the grounds for implementing taxation supports based on functions such as the technological and human resource development, investment promotion, assistance for a balanced regional development, etc. Another distinct feature of the Act is the sunset review provision. Supports granted pursuant to the Act are automatically terminated in one - three years unless extended; making the taxation supports more rational.

Broadly speaking, the Korean government has enacted special laws for the purpose of effective budgeting, and competition policy perspective has not been taken into account in such a regulatory process. However, it can be seen that the competition policy perspective has been partially reflected in the Restriction of Special Taxation Act, in that the Act does not allow tax cuts or exemptions given only to certain companies.

## **5.2 Subsidy control mechanism**

### *5.2.1 The need to set up a body to regulate subsidies*

In Korea, there is no agency that comprehensively control subsidies. The MPB only handles the budgeting of subsidies and the Ministry of Finance and Economy (MOFE) is responsible for preferential taxation.

Since the Korean government is firmly committed to the economic development led by market forces, there is a strong need to enhance the effectiveness of supports by having the competition policy views reflected in the process of granting subsidies.

### *5.2.2 Methods of establishing subsidy control body and other considerations*

Subsidy control body could be established under the KFTC, since government subsidies can have anti-competitive effects. However, as reforming subsidies is related to public sector reforms, agencies in charge of public sector reforms such as the Regulatory Reform Committee under the Prime Minister's Office could handle this matter as well. Since the KFTC Chairman sits on the Regulatory Reform Committee, it would be easy to reflect the competition authority's views in the regulatory process.

Setting up a new body can lead to the waste of resources and other problems in terms of efficiency. What matters here is having the competition policy perspective reflected in the existing regulatory process rather than establishing a new organisation. This can prompt the removal of existing subsidies or change the methods of support into more pro-competitive ones.

Currently, the legal ground for KFTC's involvement in subsidy-related matters is the requirement on other government agencies to have consultation with the KFTC on the enactment or revision of statutes that may restrain competition under Article 63 of the Monopoly Regulation and Fair Trade Act (MRFTA). Accordingly, the KFTC can raise its views when a law is enacted or revised to set forth a provision on anti-competitive subsidies. This testifies that the KFTC can play a role as a higher authority in terms of the functional boundary. The OECD Background Note divides subsidy control bodies into a lower authority and a higher authority depending on the "geographic boundary" of the effects of subsidy. When it is extended to "functional boundary", government bodies such as the KFTC that deal with competition issues of all industries, standing on a neutral position, can be viewed as controlling subsidy as a higher authority, even if subsidies only affect the domestic market.

However, there are no grounds for the KFTC to get involved in the execution of subsidy budget. This would be possible after an international norm is created at the global level such as by the OECD, or after a general consensus is reached domestically between government agencies and private companies.

In this respect, the KFTC agrees in principle with the non-discriminatory supports and transparency put forth as the guidelines for the control of subsidies in the OECD Background Note. However, given the different socio-economic situations and demands for economic development of each

country, it would not be desirable to apply a uniform standard at the international level in the control of all the subsidies.

In particular, the review of anti-competitive effect of subsidies on other countries should be conducted with extra-care. Competition effect analysis would be relatively easy with respect to subsidies within a single jurisdiction, since corporations are on an equal basis of business environment. However, the multi-jurisdictional effects of subsidies is difficult to examine, since companies face different business environments depending on countries, making it hard to determine whether there exists equal basis or not. Also, in these cases, the determination of anti-competitiveness of the subsidy of an individual country could be done from trade policy perspective based on political logic's rather than by applying competition principles from the market economic perspective.

Nevertheless, it should be highly lauded that the CLP initiated discussions on government subsidies that received little competition policy attention to date for political and economic reasons.

**APPENDIX**  
**Korea's Notifications on Subsidies to the WTO in June 2000**

Type of Subsidy	Purpose
Foodgrain Management Program	To maintain an adequate level of stock of basic grains for food security purposes
Livestock Support Program	Support for Pigment and Beef Production
Marketing Improvement Program for Fruits and Flowers	To improve quality of fruits and flowers and reduce costs
Plywood & Board Assistance Program	To support the replacement of plywood production facilities
Forest Products Utilisation Assistance Program	To provide financial assistance for modernisation of forestry machinery and facilities
Support for Development of deep-sea Fishery	To support the management of deep-sea fishery
Support for Fish Products Processing Development	To develop new fishery products, increase the production of high quality products and modernise the storage and processing facilities
Support for Fishing Activities	To support stable fishing business operation by providing loans
Support for Aquaculture Fishery Development	To promote the development of aquaculture fishing to ensure stable supply of fishery products and develop income sources of fishermen
Local Tax Reduction for Building and Acquisition of deep-sea Fishing Vessels	To reduce the tax burden on building and acquisition of international line vessels
Support Program for the Coal Industry	To support the restructuring of the coal industry
Support for Foreign Invested Enterprises	To induce foreign direct investment
Tariff Reduction on Aircraft Parts	To encourage the importation of aircraft parts which are not produced domestically and to reduce production cost
Reserve for Farm Machinery Production	To assist off-season production of farm machinery and meet the high demand for farm machinery in busy seasons
Support Fund for the Stone Industry	To develop domestic stone resources and stabilise its supply
Diesel Vehicle Low Emission Technology Development	To support anti-pollution technology
Assistance for Research and Development Activities from Basic Act on Information Promotion	To assist research and development activity on information and communication
Environmental Engineering & Technology Development Program	To support internationally-competitive environmental technology and promote environment industry to raise the national competitiveness
Science and Technology Promotion Fund	To assist R&D activities of private enterprises



## LITHUANIA

Any state aid provided to undertakings has its impact on the competition. The intensity of this impact, however, depends on the level of state intervention, the benefiting sector where the undertaking concerned is functioning and other factors. Therefore, while undertaking state aid monitoring activity, Lithuania is pursuing one of its basic principles, namely: state aid provided to individual undertakings or deemed to support the production of appropriate goods or provision of services and being susceptible of distorting competition or actually distorting the competition and making an impact on trade relations between Lithuania and EU member states, the parties to the free trade agreements or other conventions signed with Lithuania and containing the adequate provisions on the state aid, *is* prohibited.

On 18 May 2000 Lithuania has adopted the Law on Monitoring of State Aid to Undertakings. The said Law, that is based on the EU legal provisions, contains the definitions of the state aid, state aid providers, the state aid provided following *de minimis rules* and the essential state aid provision principles to be followed by the state institutions. In the Law the restrictions are imposed on the possibilities of central, local and other governmental institutions to provide, without any restrictions, the state aid to definite sectors, services or certain regions or to achieve certain objectives. The provisions of the Law are applicable to all undertakings without any distinction between state and private ownership.

The Competition Council is authorised to undertake both the enforcement and monitoring of the Law regulating state aid intervention procedure. Use of central and local government funds or other resources for state aid is feasible only upon consent of the Competition Council. The provisions of the Law on Monitoring of State Aid to Undertakings make allowance for provision of the state aid without the consent of the Competition Council in cases when:

- aid of social character is provided to individual users without any discrimination regarding the origin of some goods as well as emergency aid is used to alleviate the damage caused by natural disasters or other *force majeure* conditions in terms of coverage of losses suffered;
- aid is provided following *de minimis* rules, apart from such aid provided to ship building, transport, steel industry and export support sectors;
- aid has been approved based on the procedure specified in paragraph 3, Article 64 of the European Agreement in spite of the fact that it fails to be in compliance with the provisions of the Law on Monitoring of State Aid to Undertakings related to provision of the state aid to individual activity areas, to support regional development or to achieve certain objectives.

Based on the provisions of the Law on Monitoring of State Aid to Undertakings it is prohibited to provide state aid in support of export activities apart from the cases when it is not contradictory to paragraph 5, Article 64 of the European Agreement and other conventions.

Apart from the aforesaid Law, state aid provided in Lithuania is based both on the requirements of Article 64 of the European Treaty Establishing the Association between the European Community and the member states, on the one hand, and the Republic of Lithuania, on the other hand as well as on the Decree of the Competition Council of the Republic of Lithuania “On the State Aid Evaluation Procedure



and the Forms Used for Notification and State Aid Annual Reports” and other legal acts. Based on this Decree and the Law, state aid providers are obligated to provide to the Competition Council a comprehensive information necessary for evaluation of the state aid and for drafting of the State Aid Annual Report (within 6-month period, at the latest).

Subsidies and grants, tax exemptions, tax reductions and deferrals, write-off of default interest and penalties, soft loans, state guarantees, accrual of the stake or value of the shares owned by the state in the undertakings are the most widely used state intervention forms. The volume of the state aid provided during the period of 1996-1999 proves that the state aid has been rapidly decreasing: in 1996 state aid accounted for 2.68 percent of GDP (based on the current prices of 1996), while in 1997, 1998 and 1999 it accounted for 0.75 percent, 0.59 percent and 0.08 percent, respectively. Such variations have been caused by the changes in the objectives of the state aid provided. The changes, in their turn, have been stipulated both by restricted financial possibilities and ongoing saving policy. Loans granted with a state guarantee have been the most widely used state intervention form during 1998 accounting for 60.2 percent of gross state intervention level. Apart from that, other forms have been used as well: subsidies and grants as well as tax reductions and tax exemptions accounted for 24.5 percent and 11.6 percent, respectively, of the national state aid level. Subsidies and grants that have been allocated to support transport (78.65 percent) and manufacturing and service (19.09 percent) sectors have constituted the major share of gross state intervention level in 1999.

Based on the data collected in the 1999 State Aid Annual Report, the major share of subsidies and grants has been channelled to the transport sector: for investments into *Lietuvos avialinijos (Lithuanian Airlines) Stock Company* (for acquisition of aircraft), for provision of the grant to *Lietuvos geležinkeliai (Lithuanian Railway) Special Designation Stock Company* (for renovation of the traction vehicle fleet). Other part of subsidies has been destined to cover the expenses incurred by passenger carriers and to offset the income losses of the carriers suffered due to application of privileges in passenger transportation activity.

During the period under consideration agriculture was one of the sectors receiving the most favourable treatment in terms of state aid provided. The application of such aid measures is regulated by the Law on the State Regulation of Economic Relations in the Agriculture Sector. Rural Support Fund (starting from 2001 the Fund is no longer operating), Agriculture Loan Guarantee Fund *et al* have been serving as implementation sources of such measures. The support to agriculture from the Rural Support Fund in 1999 has amounted to 3963.44 million litas (97.8 million EURO). The major share of allocations from this Fund (112 million litas or 27.7 million EURO) has been used as subsidies for the products bought-up under quota regime and for sustenance of farmers’ income. In 2001 Special Rural Support Programme has been launched in Lithuania that shall be financed from the state budget funds. Measures shall be taken to make a transition to direct payment of benefits.

In the energy sector the major share of subsidies channelled from the state budget is meant for enterprises functioning in this sector, for instance, to *Lietuvos dujos (Lithuanian Gas) Stock Company* to offset the losses related to the heat energy consumption prices established for households, to *Lietuvos energija (Lithuanian Energy) Stock Company* to compensate, to a certain extent, the elevated heat and electricity costs for households. State aid is oriented to meet social needs, to alleviate the burden of household payments for use of energy resources.

The Competition Council, while following in its activities major state aid monitoring principles; contributions have been subsidised, to a certain extent, from the Export Promotion Fund in terms of compensation of insurance contributions made by the undertakings to the state budget. This type of aid scheme has been analysed and the following conclusions drawn up: private insurance companies are also acting in the market when insuring export credit commercial risk; no state aid, however, is provided for

them. Therefore, based on the EU legal provisions in this sphere of activity as well as on the provisions of the Law on Monitoring of State Aid to Undertakings and following export credit insurance market research results, the state aid provider has been committed to draft standard legal acts excluding any state aid in the sphere of export credit commercial risk insurance.

The Competition Council, following the provisions of the Law on Monitoring of State Aid to Undertakings, has also identified that the state aid provided under the scheme “Partial Subsidising of Exported Product Certification Costs” has been directly related to export volumes, therefore, this form of the state aid has not been approved.

Assurance of state aid monitoring regime to the subjects operating in free economic zones (FEZ) is another example. The aid provided to FEZ subjects may be aid incompatible with *acquis* provisions. In order to make this form of the state aid compatible both with the EU legal requirements regarding regional aid and with direct taxation procedure, in 2000 efforts have been taken to introduce amendments to the Law on Fundamentals of Free Economic Zones in terms of the provision that tax reductions or deferrals and other state aid forms are applicable to FEZ subjects to the extent they do not contradict with the provisions of the Law on Monitoring of State Aid to Undertakings. In this way, the Competition Council, upon receipt of the notification from the state aid provider about the state aid extended to FEZ subjects, will make an *ex-ante* evaluation of the would-be state aid intensity compared with the permissible regional aid intensity level. Ex post-monitoring procedure shall be introduced upon receipt of the Annual Report on the State Aid Provided to FEZ Subjects. The state aid that, following the notified state aid scheme, has been provided in excess of the permissible regional aid intensity level, shall be subject to recovery based on the established procedure.

While speaking about the opportunity offered to the municipalities to support enterprises at their own discretion, on the one hand, there is the Law on Local Self-Governance. Within the framework of one of the scopes of this Law aimed at definition of powers and functions of local government authorities, the said authorities have been conferred the right to make decisions on granting the privileges in the sphere of taxation and other fields, as provided by law, at the municipal budget expense as well as to establish the procedure on allocation of subsidies and refunds for all types of enterprises creating new jobs. This type of activity, however, is restricted by the provisions of the Law on Monitoring of State Aid to Undertakings; based on this Law, the local authority, prior to provision of the state aid, is committed to obtain the consent of the Competition Council. (The exemption is made to the state aid provided following *de minimis* rules and other cases as provided by the Law).

Targeted subsidies are granted following tendering procedure. The Public Procurement Law regulates the types of tenders and their initiation procedure. Based on the provisions of this Law, no discrimination is tolerated with respect to the undertakings located in another jurisdiction. Moreover, there is even the requirement that large-scale (high-value) tenders should be arranged on the international level.

In cases when the subsidy is targeted to reduce the price either of some commodity or the service and to make both of them accessible to the consumer, this type of a subsidy is considered to bear a social character and, naturally, this form of state aid is permitted. If it happens so that the commodity or service in question may be provided by several undertakings, then the provisions of the Public Procurement Law shall prevail. In the transport sector subsidies and grants aimed at coverage of losses incurred by passenger carriers because of privileges for using the transport means are regulated by the provisions of Law on Transport Privileges.

State aid provided to the enterprises facing financial hardships is regulated by several legal acts: The Law on State Aid to Undertakings (containing the conditions regulating the provision of state aid for rescue and restructurisation) and Enterprise Bankruptcy Law (specifying the type of enterprises subject to

bankruptcy proceedings). At present measures are taken to adopt new laws that have been made compatible with the EU law: The Law on Restructurisation of Enterprises (its major objective is to help the enterprises facing temporary financial hardships to avoid bankruptcy; restructurisation procedure aimed at restoration of solvency will be available to the enterprises that are developing their business activity, having access to the product realisation markets and, in the opinion of creditors, having no grounds to initiate bankruptcy case against them) as well as the updated Bankruptcy Law. The two Laws are planned to be adopted before 1 July 2001, at the latest.

While seeking integration into the European Union, Lithuania has virtually adopted *acquis* requirements in the sphere of state aid. Such requirements are reflected in the provisions of the Law on Monitoring of State Aid to Undertakings. The major task for the next year is successful implementation of *acquis* requirements and ensuring the ability of all state providers to apply relevant state aid rules within their own spheres of responsibility.

## POLAND

In 1998 Polish government decided to transfer the responsibility for supervising and monitoring of state aid from the Ministry of Economy to the Office for Competition and Consumer Protection (OCCP). As a consequence, in July 1999 the State Aid Unit was created within the OCCP. At the same time, work was carried out on the draft act on the conditions of admissibility and supervision of state aid for entrepreneurs, which was to provide clear rules on granting aid and to limit the discretion of the public authorities in deciding on its purpose and intensity, thus improve efficiency of public funds expenditure. The Act was adopted on 30<sup>th</sup> June 2000 and came into force on 1<sup>st</sup> January 2001. The adoption of the Act was followed by the transformation in November 2000 of the State Aid Unit into the Department of State Aid, with a staff of 20 lawyers and economists.

It is worth mentioning that the objective of improving public spending is also met by another act – the law on public finance (adopted in 1998), which introduced visibility and transparency of public finance and established clear rules on planning and spending of public funds.

It must be noticed that one of the objectives of the changes, both legal and institutional, in the field of state aid, is the fulfilment of the obligation imposed on Poland by the Europe Agreement to ensure compatibility of Polish law with EC legislation.

As already mentioned, the basic legal instrument concerning the granting of state aid is the act on the conditions of admissibility and supervision of state aid for entrepreneurs (the Act). The Act constitutes the legal base for the creation of a system of supervising and monitoring aid for entrepreneurs granted from public funds. It is not in itself a legal base for granting the aid; it does not establish any new instruments of support for entrepreneurs. These are regulated by separate acts and regulations e.g. the tax law, act on establishing of Scientific Research Committees, act on protection and development of the environment, act on vocational and social rehabilitation and employment of the disabled persons, act on local taxes and dues and others.

It should be stressed that from the scope of the Act the following are excluded:

- aid granted in the area of establishment and development of the technical infrastructure, on the condition that it shall not be designed for specific entrepreneurs (article 3.1);
- aid granted in order to compensate the costs of maintaining productive and repair capacity that are necessary for State's defences (article 3.2);
- aid in the amount not exceeding equivalent to EURO 100 000 granted to an entrepreneur within three consecutive years (so-called *de minimis* rule) (article 2.2).

In addition, the provisions of the Act do not apply to aid granted in agriculture, hunting, forestry and fisheries (article 3.3.).

The drafters of the Act elaborated in article 4.1 the legal definition of state aid. What constitutes state aid is conferring by organs granting the aid, including the public entrepreneurs, financial benefits to

specific entrepreneurs, thereby placing them at the privileged position against their competitors, mainly by making expenditures from public funds or by reducing the amounts due from them to the public finance sector. The provision also provides a non-exhaustive list of different forms of aid, e.g.: grants and tax privileges; provision of capital to entrepreneurs in situations or on terms, which are different from usual investment practices of private investors operating in a market economy; loans, credits, credit guarantees and warranties granted to entrepreneurs on more favourable conditions than those offered to them on the market as well as forbearance from the establishment and collection of tax, deferment, arranging payments of the tax into instalments.

On the basis of article 5, granting of state aid is prohibited unless otherwise provided by the Act or by international agreements signed by Poland. As a general rule, state aid can only be granted to support new investments or to create new jobs connected with a given investment. Exceptionally, aid for other purposes (i.e. supporting the normal functioning of the entrepreneur on the day-by-day basis) is admissible as long as it is limited in time and decreasing in its amount. In addition, the aid can only be granted up to the amount, which does not distort the competition on the market, nor it has a negative effect on the trade with other countries. Furthermore, admissible aid must be in compliance with all the following principles:

- principle of supplementarity i.e. aid constitutes the supplement to the private funds of the entrepreneurs;
- principle of proportionality i.e. the amount of aid, its duration and scope are proportional to the importance of the problem;
- principle of effectiveness i.e. brings about higher social benefits than those, which would have been obtained without granting the aid;
- principle of necessity i.e. aid is granted in the scope necessary and sufficient to attain its objective;
- principle of transparency.

It should be noted that article 6.1 of the Act prescribes that aid granted to repair damages caused by natural disasters or other exceptional events and aid granted to individual customers without discrimination related to the origin of the products concerned, is admissible *ex lege*.

In addition, according to article 6.2 the following aid may be admissible:

- to eliminate serious horizontal disturbances in the economy;
- to provide support to domestic entrepreneurs acting within the framework of an economic undertaking carried out in the European interest;
- to promote culture, science and education and to protect cultural heritage;
- to compensate entrepreneurs for losses or increased costs due to their participation in the implementation of public tasks (so called public service obligations).

Provided the conditions foreseen by the Act are met, regional, sectoral and horizontal aid can be granted.

Regional aid can be addressed to the entrepreneurs conducting their business activity in the areas economically underdeveloped in comparison to the rest of the country. Regional aid is thus the core element of regional policy. Regions eligible for the regional aid are regions where the level of GDP/capita is lower than 75 percent of average GDP/capita in the European Communities measured as an average over the period of the last three years. However the intensity of aid is to be differentiated depending on the level of development of each region, in order to give more assistance to the entrepreneurs operating in the least developed regions.

Sectoral aid is admissible as long as it accelerates necessary changes or development of the defined sectors, restores their proper functioning or decreases social and economic costs of changes in the defined sectors. However, in case of so called "sensitive sectors" granting of the aid will be governed by more restrictive provisions since the supporting of sensitive sectors from public funds distorts competition to the higher degree than in any other sector<sup>1</sup>.

The last category is horizontal aid – it is addressed to all entrepreneurs regardless of sector or region in which they conduct their activity. The horizontal aid is granted in order to support specified objective. The Act prescribes detailed conditions of admissibility of the following types of aid: rescue and restructuring, research and development, employment, development of small and medium-sized entrepreneurs, environmental protection and energy saving investments, development of technical infrastructure, rehabilitation and employment of disabled, training.

Consequently, introducing the new Act means reducing the aid for some entrepreneurs and limiting the scope of objectives for which aid could have been granted.

Granting of the state aid must be subject to verification, both *ex post* and *ex ante*. The Act provides detailed provisions of the two control procedures.

The supervising and monitoring authority is the President of the Office for Competition and Consumer Protection. In executing his/her duties the President of OCCP is assisted by the Department of State Aid. The decision to transfer the responsibilities from the Ministry of Economy to the OCCP seems very reasonable. The fact that the President is not empowered to grant aid guarantees objectivity and impartiality when assessing whether the aid was granted in compliance with the provisions of the Act. Secondly, state aid inevitably distorts competition on the market, therefore the President, being the organ responsible for protecting the competition, is the most adequate authority for monitoring the state aid.

Subject to *ex ante* control are:

- drafts of legal acts, which will constitute the bases for granting the aid, issued both by central government and self-governance authorities;
- drafts of decisions and contracts granting the aid to the entrepreneur, the value of which, including the aid granted in the three consecutive years before the day of issuing the decision or concluding the contract exceeds EURO one million. The most common example of such decisions are decisions issued by tax offices in tax cases, e.g. remission of the tax or postponement of the tax payment.

Organs of governmental and self-governance authorities are to ask the monitoring authority for an opinion as to compatibility of the drafts of legal acts, decisions and contracts providing basis for the aid, with the Act and ratified by Poland international agreements. This obligation does not refer to the aid which value does not exceed EURO one million in the three consecutive years before the day of asking for opinion. It must be however remembered that aid which is not to be notified but exceeds the amount

equivalent to EURO 100 000 received within three consecutive years, must be in consistence with the provisions of the Act.

If the monitoring authority finds that the drafts of legal acts are inconsistent with the Constitution or international agreements it can refer to the Prime Minister in order for the draft to be examined by the Constitutional Tribunal. The judgement of the Constitutional Tribunal stating non-compliance of the legal act with the Constitution and international agreements results in declaring the decisions and contracts issued on the basis of that act null and void.

In cases where the decision or contract on the basis of which the aid was granted is in breach of the Act, the monitoring authority refers the decision or contract in question to the adequate authority to declare its nullity.

In the above described cases the obligation to refund the granted aid arises.

The President of the Office is also obliged to monitor granted aid. Monitoring of aid consists in collecting, recording and transforming of data regarding granted aid. In order to fulfil this obligation the monitoring authority keeps a register of the aid and elaborate an annual report of aid granted in Poland. Data necessary to prepare these reports is obtained both from the organs granting aid and from entrepreneurs receiving it. Organs granting aid are obliged to submit to the monitoring authority reports containing in particular information on the types, forms and intensity of the aid as well as on the objective thereof.

On the basis of obtained data the monitoring authority is to assess the efficiency and effectiveness of the granted aid. Analysing the extend to which the set up objectives are met will allow to direct the aid where it is best used. It should be stressed that in the cases where the granted aid is used contrary to its objective the monitoring authority shall order the refund of the whole or relevant part of the received aid.

The following forms of aid are granted in Poland:

**Operations on taxes:**

- tax relief;
- tax deferment and spread of tax payment or tax overdue into instalment;
- forbearance from tax collection;
- amortisation of debt to the government budget.

**Operations on Para-budgetary dues:**

- deferment of amounts due to the Fund and spread into instalment;
- amortisation of debts to the Fund.

**Operations on loans:**

- preferential loans;

- conditional loan remittal;
- credit warranty and guarantees.

**Operations on capital:**

- contribution of capital to a company;
- temporary purchase of company's shares for prospective sales;
- conversion of enterprise's debt into equity.

**Subsidies:**

- grants.

According to the data provided in the "Report on the state aid in Poland granted to entrepreneurs in 1999"<sup>2</sup>, the amount of aid accounted for about 1.5 percent of the GDP and totalled to PLN 9 076.1 million<sup>3</sup>, 34.9 percent of which was granted directly from the government budget and 65.1 percent accounted for budgetary income decrease (tax exemptions and allowances, amortisation, forbearance from tax assessment and collection, etc.). In comparison, in 1997 the proportion was 31.3 percent and 68.7 percent respectively, in 1998 – 34.5 percent and 65.5 percent. Municipalities provided aid which amounted to 2.1 percent of the total aid granted<sup>4</sup>.

Most of the aid was granted for horizontal purposes (73.5 percent) such as employment (32 percent), investments (19.7 percent), rescue and restructuring of entrepreneurs (5.6 percent), foreign investments (3.4 percent), environment protection (2.8 percent), research and development (1.6 percent).

Sectoral aid amounted to 24.2 percent of the total aid granted. Sectors which benefited most were: hard coal and lignite mining (16.2 percent), transport (4.6 percent). The basic instrument used to support sectors remain subsidies (63.7 percent of all subsidies was accounted to sectoral aid).

The least support was given as regional aid – 1.3 percent of total aid provided; all of which was designated for special economic zones. Additionally, in the period of 1996-99, no subsidies were designated for regional aid.

In 1999, similarly to 1998, the most frequently used aid instruments were tax subsidies and subsidies (53.2 percent and 22.8 percent respectively). In the tax subsidy structure the largest portion is that of tax relief, i.e. 83.1 percent, followed by amortisation of debt to the Funds, i.e. 6.3 percent and amortisation of debt to the budget – 2.9 percent. Public aid granted by local authorities in the form of tax subsidies amounted to 2.4 percent.

The amount of "soft loans" increased about four times as compared to 1998 and figured to 22.8 percent of total aid. In 1999 the equity participation subsidies accounted only for 2.6 percent of the total amount of aid and related to contribution of capital into a company or debt for equity swap. Credit warranties and guarantees amounted to 3.2 percent.

It is worth noticing that Poland, as a member of WTO, EFTA and CEFTA, notifies the forms and intensity of the granted aid as it is required by the relevant rules. The obligation to annually report the amount and distribution of the provided aid is also imposed on Poland by the provisions of the Europe Agreement establishing the association between Poland and European Communities and their Member



States. In order to fulfil that obligation, since 1995 Poland has submitted the "Reports on the state aid in Poland granted to entrepreneurs" to the European Commission.

## NOTES

1. The following are deemed to be "sensitive sectors": coal and steel sectors, shipbuilding and motor vehicles and synthetic fibres. Granting of the aid to sensitive sectors will be regulated by the secondary legislation, which is now being adopted.
2. The data concerning the aid granted in 2000 will be available in the second half of 2001.
3. An equivalent of EURO 2 147.2 million (based on average annual exchange rate 1 EURO = PLN 4.2270).
4. Figure based on the data provided by 178 municipalities out of 2498 existing in Poland, constituting nearly 50 percent of Polish population.



## EUROPEAN COMMISSION

### 1. The EC definition of aid

In the European Union a system of State aid control has existed since the origin of the European Communities in the fifties. Both the Treaty establishing the European Coal and Steel Community (signed in Paris on 18 April 1951) and the Treaty establishing the European Communities (signed in Rome on 25 March 1957) contain rules governing the granting of subsidies / aid<sup>1</sup> by Member States.

Art. 87 (1) of the EC Treaty provides that *“Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.”*

It follows from this wording that measures are considered to be State aid within the meaning of this Article if they fulfil the following conditions:

- granted by a Member State or through State resources.

The aid measure must be financed from public funds and granted either directly by the State, including not only the central government but also regional and local authorities, or granted not directly by the State but by public or private bodies designated or established by the State. State resources are present if a measure either represents a cost for the state, or involves a loss of revenue.

- favouring certain undertakings or the production of certain goods.

The aid measure must be selective: it is granted only to certain enterprises or certain sectors of a Member State.

- it affects trade between Member States.

The aid must have an effect on intra-community trade. This criterion is normally fulfilled since, according to the jurisprudence of the European Court, for trade to be affected it is sufficient that the product or service concerned is subject to intra-community trade, even if the beneficiary is not involved in export himself or exports virtually all of its production outside the Community. Only strictly local goods/services, or goods/services for which there is no market, are therefore likely not to be caught by the State aid rules.

- it distorts or threatens to distort competition.

The aid measure strengthens the competitive position of the beneficiary in comparison to its competitors and thereby normally distorts or threatens to distort competition. As a consequence, this criterion, just like the previous condition, to which it is linked, is almost always fulfilled. It should be mentioned in this regard that there is no requirement that the distortion of competition or the threat of such

distortion and the effect on intra-Community trade must be significant or substantial. Neither the fact that aid is relatively small in amount, nor the fact that the beneficiary is moderate in size or its share of the Community market very small alter this conclusion.

## 2. Examples

It follows from the EC definition of State aid, as set out above, that this notion is very wide. It includes a large variety of measures, such as:

- grants;
- loans at below-market rates of interest from the state; interest subsidies;
- guarantees by the State for which the beneficiary does not pay a market fee;
- tax advantages: tax base reductions, tax deferral, tax cancellation, tax rate reduction; tax exemptions;
- reductions of social security contributions;
- provision of goods and services at below-market prices by the State;
- sale of land at below-market price by the State;
- purchase of goods and services at above-market prices by the State;
- capital injections not in conformity with the market economy investor principle.

For the manufacturing sector the instruments that are most frequently used in the EU are grants (58 percent), tax exemptions (23 percent) and soft loans (11 percent) (figures 1996-1998, eighth survey on State aid in the European Union). Aid in the form of state equity participation, represents only four percent of all aid to the manufacturing sector granted in the European Union. Tax deferrals - mainly accelerated depreciation and the constitution of tax-free reserves – as well as guarantees are not often used.

As to the mode of financing aid, at Community level, budgetary expenditure is thus the preferred form to award State aid and its share in manufacturing aid is around 73 percent. In comparison with tax foregone, the preference for the former, more transparent form of state intervention is, however, unequally distributed amongst the Member States. Whereas in some countries practically all of the aid, more than 90 percent, is given in the form of budgetary expenditure, in other countries over 30 percent of all aid to manufacturing is given in the form of tax breaks.

The form of an aid measure is in principle not relevant for its assessment by the European Commission. Where aid is awarded in a form other than a grant, the grant aid equivalent of the aid measure is calculated. Only for rescue aid, is it required that the aid takes the form of a loan or a loan guarantee.

## 3. The limits of Art. 87(1) EC-Treaty: examples of measures which do not constitute State aid

Although the notion of State aid under EC law is indeed very wide, it should be noticed that certain measures are not caught by Art. 87(1), although they may have an effect on the competitive

position of enterprises. The main categories of measures falling outside the scope of EC State aid control are the following:

- general measures.

Only selective measures, which favour certain enterprises or certain sectors within a Member State, can constitute State aid. Measures which apply to all enterprises in all sectors within that Member State, without any discretionary power of the State to grant them, do not fulfil the selectivity criterion and constitute so-called “general measures”. If a Member State, for instance, decides to lower the rate of corporate taxes for all enterprises, this is a measure of general economic policy, not caught by the State aid rules. In the same way, it would not be aid if a Member State decided to allow all enterprises to deduct for tax purposes certain expenditure (for instance the expenses incurred for the training of workers, or for certain environmental investments). The fact that some firms or some sectors benefit more than others from some of these (mainly tax) measures does not necessarily mean that they involve State aid. For example, measures to reduce labour taxation for all firms have a relatively greater effect for labour-intensive industries, while the reduction of taxation on capital tends to favour capital-intensive industries. In neither cases do such measures constitute State aid.

Furthermore, measures which contain elements of selectivity may fall outside of the scope of the State aid rules if the differentiation is justified by the nature or general scheme of the system. In this regard, the progressive nature of an income tax scale or profit tax scale is justified by the redistributive purpose of the tax. There may also be objective reasons for differentiation in taxation rules, depending on the type of company. Another example is measures targeted at certain categories of employees (e.g. less qualified or low-wage employees). Such measures will not be regarded as State aid provided they apply automatically to all firms and the differentiation is not targeted at a particular industry but at a type of employee. Modulating the extent to which social charges are reduced depending on the personal circumstances of an employee or on the level of his wage might have a redistribution effect between categories of workers and can be justified by the logic of social and labour market policy.

- the provision of public goods.

Although the provision of public goods such as education, infrastructure, social security, leisure facilities etc. has an effect on enterprises (e.g. availability of qualified workers, good communication and transport facilities etc.), it does not fall under the definition of State aid.

- regulatory measures not involving State resources.

Regulatory regimes in Member States can definitely have an important effect on the costs and competitive position of enterprises. Nevertheless they are not caught by the State aid rules if they do not involve State resources. For example, the level of environmental standards, the strictness of controls, the provisions of labour law and social protection of workers, etc. are not caught by the State aid rules.

In that respect, the inclusion or exclusion of certain businesses from particular aspects of the social protection system (e.g. protection of workers against unfair dismissal) does not entail any direct or indirect transfer of State resources to those businesses but derives solely from the legislature’s intention to provide a specific legislative framework for working relationships between employers and employees. It therefore does not constitute aid within the meaning of the EC Treaty.

A further interesting question in this regard is raised where the State sets prices for certain services which enterprises provide to other enterprises or consumers. For example, where the State determines the prices which enterprises and consumers have to pay for electricity, there may be a clear

advantage for the electricity producers, depending on the level of the prices. The economic effect of such a measure may therefore be the same as that of a State aid, but since there are no State resources involved, it is doubtful whether the State aid rules apply. This issue is raised in a case actually pending before the Court of Justice.

Given the potential difficulties in distinguishing State aid measures from other measures, the European Commission has provided clarification and guidance thereon in several documents.<sup>2</sup> The Court of Justice also interpreted the notion of aid in a number of Court cases.

#### **4. Sectors most benefiting from aid**

Figures on overall State aid in the Member States broken down into the main sectors, as well as detailed figures for certain sectors and per Member State can be found in the annual surveys on State aid in the European Union.

It appears from the tables presented in annex, that the largest beneficiaries are the manufacturing sector and the transport sector. A relatively large but continually decreasing volume of aid falling outside schemes promoting horizontal, sectorial or regional objectives is granted on an ad hoc basis to individual enterprises.

In the manufacturing, financial services and air transport sectors, a limited number of large individual aid account for a disproportionate part of total aid granted. Ad hoc aid which is granted mainly for rescue and restructuring of companies is most prone to distort competition. In the manufacturing sector it increased in volume from six percent of total aid to this sectors in 1992 to 12 percent in 1993 before dropping back to four percent in 1998. If aid granted to the new German Länder via the Treuhandanstalt/BvS is added - such aid can be considered similar to ad hoc aid - the share in overall aid to manufacturing increased from 19 percent in 1992, to 37 percent in 1994 and has subsequently fallen back to 12 percent in 1998.

#### **5. Rules and regulations governing aid in the EC**

##### **5.1 *The procedural rules***

According to Art. 88(3) EC Treaty, the Member States have to notify to the European Commission any plans to grant aid within the meaning of Art. 87(1). The aid measure envisaged may only be put into effect after the Commission has authorised it. The notification can concern either an individual aid measure or an aid scheme. Aid schemes are general programmes (laws, decrees, etc.) setting out the conditions under which aid may be granted to individual enterprises defined in a general and abstract manner. Where the Commission authorises an aid scheme, the individual aid awards on the basis of the scheme no longer need to be notified, except if the decision or the applicable rules explicitly provide so.

The central government in each Member State is responsible for the respect of the notification duty, even if the aid is to be granted by other levels of government (regions, local authorities, etc.).

Under the EC rules, the European Commission is the key authority for State aid policy and control. The Commission defines the rules under which aid can be found to be compatible with the common market and carries out the examination of cases, subject to control by the European Court of Justice. The examination of a case is launched either following a notification or, where the notification

rules have been infringed, on the basis of a complaint or ex officio. The Commission can thus at any time start to examine an aid measure granted illegally (without prior authorisation). If it considers that the aid measure or the aid scheme is incompatible with the common market, it will order the Member State to recover it from the beneficiary. The Member State has then to take all necessary measures to ensure that the aid sum, including interest from the payment until the date of recovery, is reimbursed.

Detailed rules on State aid procedures are laid down in Regulation (EC) No 659/1999 of 22 March 1999 (OJ L 83/1 of 27.3.1999).

Where aid has been granted illegally, national jurisdictions are also competent to sanction the breach of the notification obligation, since the procedural rules of Art. 88(3) EC Treaty are directly applicable in the Member States. National judges are not allowed, however, to assess the compatibility of such aid with the common market, which remains the competence of the European Commission.

## **6. The rules on the compatibility of aid with the common market**

### **6.1 *General principles***

Although the EC Treaty starts from the principle that State aid is incompatible with the common market, this principle is tempered by automatic and discretionary exemptions set out in Art. 87(2) and (3) EC Treaty. The system of discretionary exemptions confers upon the European Commission the power to assess whether aid can be considered to fall under one of the exemptions and is therefore compatible with the common market. The Commission enjoys here a wide margin of discretion to take a range of social, economic and policy considerations into account and to adapt its rules to the evolution of the common market and the Community objectives. However, the basic principle in the Commission's policy remains the same: aid can only be authorised if it contributes to the achievement of a Community objective in such a way that the distortion of competition is justifiable (principle of compensatory justification). The aid should thus promote Community objectives such as regional development, employment or R&D, which outweigh the distortion.

The principle of compensatory justification implies in practice that, first of all, the aid should serve a purpose that is recognised to be in the general interest of the Community. Second, it should be necessary to accomplish this objective. This is the case where market imperfections (externalities, misallocation of resources) prevent the social optimum from being achieved. If market forces alone are sufficient to attain the objective, no aid should be authorised. Finally, the intended result should be balanced against the distortion of competition. The aid measure should thus be proportional to the objective and the benefits for the Community should be sufficiently important to justify the distortion of competition.

This explains why the Commission has always taken a very negative position on operating aid, i.e. aid which relieves an enterprise of the expenses it would normally have had to bear in its day-to-day management or its usual activities. Such aid is not linked to a specific purpose and has no incentive effect on enterprises. It is considered to be very distorting while the distortion is normally not justified by a Community objective. Therefore, operating aid can only exceptionally be authorised.

The underlying principles of the Commission's policy, set out above, are embodied in more operational assessment criteria, which are laid down in guidelines, frameworks and communications. These quasi-legislative texts define the conditions under which aid projects can be authorised for different types of aid.



A first set of rules concern aid for so-called horizontal objectives:

- aid to SME;
- aid for R&D;
- employment aid;
- training aid;
- environmental aid;
- aid for deprived urban areas;
- aid for rescuing and restructuring enterprises in difficulties;
- regional aid.

For each type of aid, the Commission has defined the conditions for the aid to be found compatible with the common market: eligible costs, maximum intensities of the aid, threshold of individual notification for large projects, other conditions etc.

It should be mentioned in this context that for aid to SME and for training aid the Commission has adopted on 12.1.2001 two regulations which exempt these types of aid from the notification obligation provided the conditions of the regulation are met.<sup>3</sup> The regulations replace the system of prior Commission authorisation by a system where Member States have to check themselves whether the aid project fulfils the conditions laid down in the directly applicable regulations and where the Commission only carries out an ex post monitoring.

A second set of rules define the assessment criteria for aid to particular, so-called sensitive, sectors such as synthetic fibres, the motor vehicle industry, steel and shipbuilding. For these sectors, stricter rules are imposed given the specific problems of over-capacity, strong competition within the EU and with enterprises outside the EU, etc.

Finally, following the special characteristics of the sectors of agriculture and fisheries, as well as transport, these sectors are governed by specific rules.

It would go beyond the scope of this paper to enter into the detailed rules for all these types of aid. However, in general it can be said that the following types of aid are considered as more distorting than others and therefore subject to stricter rules or even forbidden:

- Export aid: this type of aid is already forbidden under the WTO rules and therefore also in the EU. An exception is made for certain types of “soft aid”, which may very indirectly be linked to export, e.g. aid to participate in international trade fairs, aid for consultancy under certain conditions.
- Operating aid (see above). This type of aid is considered to be very distorting and can only be authorised exceptionally and under strict conditions, e.g. as regional aid in the most deprived regions of the EU.

- Aid to enterprises in difficulties. This aid can only be authorised as temporary rescue aid or as restructuring aid in the context of a restructuring plan. Both types of aid are subject to strict conditions. For example, rescue aid can only be granted in the form of a guarantee or loan for the time needed to develop a restructuring plan. It has to be reimbursed if no plan is presented within six months. Conditions for authorising restructuring aid are, for example, the presentation of a credible plan allowing the company to become viable again, respect of the one time last time principle, counterparts offered by the company in terms of capacity reductions etc.
- Aid reserved to certain sectors, especially in the case of sensitive sectors. Such aid is subject to strict rules.

## **6.2 Public enterprises**

The Commission will in principle authorise State aid, which complies with the rules of the relevant framework/guidelines. These rules apply in the same way to private enterprises as to public (state-owned or state controlled) enterprises. The State is allowed to operate in the market, but when doing so, it must comply with the market economy investor principle. Under this principle, the Commission assesses whether the State behaved, as a private investor under market conditions would have done. If this is the case, the State intervention does not constitute State aid. If not, it will be assessed according to the same rules as all other State aid.

Public enterprises also have to comply with the requirements of the transparency directive<sup>4</sup>. They must establish, for example, separate accounts for reserved activities and competitive activities, in which they compete with private enterprises. This allows control, especially in cases of cross-subsidisation.

## **6.3 The selection of aid beneficiaries**

The EC rules do not normally control the manner in which firms are chosen to be the beneficiary of State aid. Unless specific rules on public procurement – independently from the State aid rules – apply, the Member State is therefore free to select the beneficiaries. Where the Commission authorises aid schemes, the notification will of course set out the general criteria under which firms will be able to benefit from the programme, but the Member State may retain a discretionary power to select the projects to which aid will be granted, for instance on the basis of applications. For regional aid, however, the Commission considers that ad hoc aid and aid limited to a single sector may have a substantial effect on competition in the sector concerned, while its contribution to the development of the region, which is the objective of regional aid, risks to be rather limited. Therefore, regional aid will in principle only be authorised if it takes the form of a multi-sectoral aid scheme, which is open, within the given region, to all the enterprises of the sectors concerned.

By its very nature and purpose, State aid is limited to enterprises situated within the territory of the Member State, or, if applicable, within the sub-national entity concerned. On the other hand, if a Member State made the granting of aid conditional upon criteria, such as the ownership (excluding firms owned by companies established in another Member State), these conditions would infringe the non-discrimination principle under EC law.

The EC State aid control provides special rules on services of general economic interest. Examples of such services could be public broadcasting, transport services, etc. Member States are generally free to define the contents of such services, subject to a control on manifest abuse, to entrust a

certain company with the provision of the service and to finance it. The compensation paid by the State for the costs of the service would however constitute State aid, according to the jurisprudence of the Court of Justice. It can be authorised by the Commission under Art. 86(2) EC Treaty if the following conditions are fulfilled:

- the contents of the service of general economic interest is clearly defined;
- the Member State has entrusted a company with the provision of the service;
- the aid is proportional to the objective and thus limited to the amount necessary for the provision of the service, so that there is no over-compensation. It should for example be avoided that part of the aid paid to a company to compensate for a service of general economic interest is used by the company for other, competitive activities (cross-subsidisation). In these circumstances, the principle of proportionality would not be respected.

If no public procurement rules apply, the Member State is thus in principle free to select the enterprise for the provision of the service and to grant the aid to this company, without being required to make the aid available to all enterprises that could provide the service.

In general it can be said that the State aid rules aim at ensuring that State aid achieves the Community objective in a manner which is as least distorting of competition as possible. For this reason, they define for instance maximum intensities of aid and prohibit overcompensation when the State finances services of general economic interest. On the other hand, there are clear limits to the European Commission's powers in this respect. Member States are free to choose within a wide range of possible economic measures the one they prefer, while the Commission's competence is limited to the assessment of those measures which constitute State aid. Similarly, the Commission could probably not refuse to authorise a State aid, complying with all the conditions defined in the relevant State aid rules, for the sole reason that the objective could also be achieved in a different, perhaps even more efficient way. The choices made by Member States are the result of a variety of political, economic and other considerations. It is not the Commission's task of competence to intervene in these decisions, as long as the State aid rules, which should within their scope ensure that the distortion of competition is kept to a minimum, are respected.

The same considerations apply when it comes to the question of the efficiency of State aid. The preliminary question for public authorities should be whether State aid is the most appropriate instrument for achieving their objectives. This question can obviously not be caught by the Commission's State aid rules. The latter only come into play after this decision is made and can thus not ensure that the most efficient decision from an economic viewpoint is taken. Nevertheless, within their scope of application, the State aid rules try to define conditions to limit the distortion of competition and to ensure that the aid measures are efficient. For example, they prohibit operating aid since this types of aid is considered to be inefficient and they make rescue and restructuring aid subject to strict conditions.

From an efficiency perspective, some additional difficulties inherent to EC system of State aid control can be mentioned:

- The Commission's assessment is in principle made before the aid is granted. It is thus based on the assumptions and information available. Member States rarely carry out ex post assessments of the efficiency of their State aid measures.

- A large part of State aid is granted on the basis of general aid schemes, so that no individual assessment on a case by case basis takes place. On the one hand, such an individual examination would obviously be practically impossible both for Member States and for the Commission, but on the other hand, it should be recognised that it is sometimes difficult to define and to assess the effects of programmes formulating the conditions for granting aid in a general and abstract way. This problem also arises in the context of the new block exemption regulations for SME aid and training aid. Individual notification requirements for cases reaching a certain thresholds are a partial solution for this problem.

### Statistical Annex

**Table 1**  
**Overall average annual national aid in the Community 1994-1996 and 1996-1998**  
Million euro

	1994-1996	1996-1998
<b>Overall national aid</b>	<i>104.215</i>	<b>93.127</b>
<i>Of which:</i>		
- <i>Manufacturing sector</i>	<i>38.531</i>	<b>32.639</b>
- <i>Agriculture</i>	<i>14.515</i>	<b>13.339</b>
- <i>Fisheries</i>	<i>294</i>	<b>*260</b>
- <i>Coal mining</i>	<i>9.079</i>	<b>**7.227</b>
- <i>Transport</i>	<i>36.666</i>	<b>*32.193</b>
- <i>Financial Services</i>	<i>1.959</i>	<b>3.283</b>
- <i>Tourism</i>	<i>316</i>	<b>229</b>
- <i>Media and Culture</i>	<i>636</i>	<b>748</b>
- <i>Employment</i>	<i>1.104</i>	<b>1.416</b>
- <i>Training</i>	<i>844</i>	<b>900</b>
- <i>Other Services</i>	<i>272</i>	<b>892</b>

\* 1998 total partially estimated

\*\* 1997 and 1998 data for French coal mining are not included

**Table 2**  
**State aid to the manufacturing sector 1994 – 1996 and 1996 – 1998**  
**Breakdown to main objectives**  
 Percent

	Horizontal Objectives		Particular Sectors		Regional Objectives	
	1994 -1996	<b>1996 -1998</b>	1994 -1996	<b>1996 -1998</b>	1994 -1996	<b>1996 -1998</b>
Austria	75	<b>68</b>	3	<b>3</b>	22	<b>29</b>
Belgium	41	<b>54</b>	34	<b>13</b>	25	<b>33</b>
Denmark	86	<b>90</b>	13	<b>9</b>	1	<b>1</b>
Germany <i>of which Treuhand</i>	20	<b>27</b>	6	<b>5</b>	73 <b>45</b>	<b>68</b> <b>31</b>
Greece	14	<b>2</b>	2	<b>2</b>	84	<b>96</b>
Spain	26	<b>33</b>	62	<b>52</b>	13	<b>15</b>
Finland	74	<b>72</b>	2	<b>11</b>	23	<b>17</b>
France	62	<b>52</b>	8	<b>8</b>	31	<b>40</b>
Ireland	22	<b>40</b>	9	<b>5</b>	69	<b>55</b>
Italy	27	<b>23</b>	9	<b>5</b>	65	<b>72</b>
Luxembourg	33	<b>32</b>	2	<b>0</b>	65	<b>67</b>
Netherlands	75	<b>82</b>	9	<b>6</b>	17	<b>12</b>
Portugal	40	<b>65</b>	48	<b>17</b>	12	<b>18</b>
Sweden	35	<b>44</b>	0	<b>0</b>	65	<b>56</b>
United Kingdom	40	<b>39</b>	1	<b>1</b>	59	<b>60</b>
EUR 15	31	<b>35</b>	11	<b>8</b>	58	<b>57</b>

**Table 3**  
**State aid granted on an ad-hoc basis in the manufacturing sector,**  
**Treuhand included and, financial and air transport services.**  
**Annual averages 1994-1996 and 1996-1998**

	Manufacturing In € million		Services In € million	
	1994-1996	1996-1998	1994-1996	1996-1998
<b>Austria</b>	64	26		
<b>Belgium</b>	28	4		
<b>Denmark</b>				
<b>Germany</b>	7905	3835	267	
<i>Of which Treuhand</i>	7288	3514		
<b>Greece</b>	10	8	461	288
<b>Spain</b>	955	757		
<b>Finland</b>		1		
<b>France</b>	197	566	2427	2985*
<b>Ireland</b>	17	17	46	
<b>Italy</b>	1671	808	393	823
<b>Luxembourg</b>				
<b>Netherlands</b>	29	50		
<b>Portugal</b>	129	28	252	136
<b>Sweden</b>				
<b>United Kingdom</b>				
<b>Total</b>	<b>11006</b>	<b>6103</b>	<b>3847</b>	<b>4231</b>

Averages in 1997 prices

\*including one ad-hoc case in the media sector.

**Table 4**  
**State aid on an ad-hoc basis and Treuhand aid awarded in the manufacturing, financial services and air transport sectors in the Community in the years 1992 to 1998**

	1992		1993		1994		1995		1996		1997		1998	
	In € million	% of total mfr aid	In € million	% of total mfr aid	In € million	% of total mfr aid	In € million	% of total mfr aid	In € million	% of total mfr aid	In € million	% of total mfr aid	In € million	% of total mfr aid
Ad-hoc aid to manufact.	2422	6	5236	12	4483	11	3482	9	3126	9	3624	11	1339	4
Treuhand aid*	5161	13	8774	20	10692	26	6480	17	4693	14	3522	10	2329	8
Total aid in manufact.	39062	100	44797	100	40341	100	39615	100	34486	100	33730	100	29702	100
ad-hoc aid in Financial services			795		478		2060		2811		3062		3171	
ad-hoc aid in Air transport			97		2425		2371		1395		1635		295	
Total ad-hoc aid	7583		14802		18078		14393		12025		11843		7134	

\* aid in Germany given via the Treuhandanstalt (THA) or the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS)

\*\* mfr: manufacturing

## NOTES

1. While the ECSC-Treaty uses the wording “subsidies or aid”, the EC-Treaty only kept the broader concept of “aid”. In practice, this terminological difference did not play a role.
2. See e.g. Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384/3 of 10.12.1998); Commission notice on monitoring of State aid and reduction of labour costs (OJ C 1/10 of 3.1.1997); Commission communication on State aid elements in sales of land and buildings by public authorities (OJ C 209/3 of 10.7.1997).
3. Regulations 68/2001 and 70/2001, OJ L 10 of 13.1.2001.
4. Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings *OJ L 193/75, 29/07/2000*.





## AIDE MEMOIRE OF THE DISCUSSION

*by the Secretariat*

### 1. Introduction

The Chairman introduced the discussion by setting out the broad questions to be addressed: What is the definition of a subsidy? Is it possible to distinguish between “good” subsidies and “bad” subsidies? How are subsidies controlled in practice in the European Union and in those countries in the process of accession to the European Union? How should subsidies be controlled? What sort of rules is necessary? Should there be some sort of constitutional or competition limits on different levels of governments?

The Secretariat then spent a few minutes introducing the ideas in the background paper. Broadly the background paper looks at the question of what is a subsidy and how we might go about controlling subsidies. The first essential step is to define what we mean by a subsidy. There are many different terms used in this context, such as state aid, assistance, subsidy, or support. Some of these words have a negative connotation and others have a special meaning in the context of national legislation or international treaties.

One approach to defining a subsidy is to assess whether or not a firm is “subsidised” or “assisted” in comparison to the situation faced by other firms competing in the same market. A firm would be said to be subsidised if it receives a net benefit from a government policy, which is not also shared by all the other firms in the same market. A firm could be said to receive a net benefit if, as a result of a government policy, the firm must incur a cost for which it receives more than adequate compensation or if the firm receives a benefit and the firm does not have to incur corresponding costs.

This approach to defining a subsidy catches all the normal forms of assistance that we would normally label a subsidy. There is a list of common types of subsidies in the EC submission. For example, a subsidy might arise when the government sells land to a firm below market value, or when a firm receives consulting services, which are paid for with public funds.

In addition to catching the normal forms of assistance or subsidy, this definition also captures a much wider set of policies, which may distort competition between firms. For example, governments can benefit firms not only through financial transfers but also by reducing a firm’s tax burden. The view of the European Commission is that special tax treatment, such as tax deferral, tax exemptions or tax advantages can amount to state aid.

But, clearly, some differences in tax regimes are perfectly legitimate. It is therefore necessary to carry out additional analysis to distinguish between legitimate differences in tax rules and competition-distorting tax subsidies. The EC resolves this problem by adopting a different approach to the definition of a subsidy (which they call a “state aid”). The EC approach does not compare the treatment of firms in the same market, but firms in the same country. Tax policies which treat all firms in a country the same way (so called “general measures”) are not considered to be a form of state aid. A drawback to this approach is

that it excludes from consideration and possible control certain broad policies, which treat all firms in a country equally, even though they distort competition on international markets.

Governments can benefit firms not only through differences in tax regimes, but also through differences in regulatory regimes. The European Commission, in its submission, raises the hypothetical example of an electricity producer which is forced to sell a certain quantity of electricity to another firm (such as a steel mill) below cost. Such a policy would not constitute a state aid under the EC rules, but would constitute a subsidy under the alternative approach discussed above. Governments could also benefit firms through differences in public goods, such as the provision of roads, an educated workforce or other sorts of public amenities.

A serious drawback of the alternative approach discussed here is that by casting the net wide, it captures a large range of policies which could distort competition, but places a substantial burden on the second step of the process – distinguishing between when policy differences amount to legitimate, welfare-enhancing differences, or when they amount to an illegitimate distortion of competition.

Nevertheless, there clearly exist some government policies which distort competition, are not welfare enhancing, and should be controlled. How should such policies be controlled? The first point that the background paper makes is that the right level of government for the control of such policies clearly depends on the geographic extent of the market which is affected – if the policy only affects the national market, it can be controlled at the national level. If the subsidies affect an international market (such as steel, shipbuilding or agriculture) then clearly there is a need for international measures.

Another point that is made in the background paper is that subsidy policies should (ideally) be subject to the same oversight and scrutiny as all other public policy interventions, of the kind advocated in the OECD's Regulatory Reform Project. It is common to subject potential public policy interventions to a checklist of questions such as: What are the objectives that the policy is trying to meet? What are the alternative ways of meeting that objective? What are the cost and benefits of those different ways of meeting the objective? Subsidy policies should be subject to the same controls.

Such careful scrutiny of subsidy policies might be possible in the national context, but there are various reasons why it might be difficult for international organisations to engage in a full cost-benefit analysis of different policies. In practice, international organisations are likely to require a much simpler and less discretionary form of subsidy control. This even applies to the European Commission. The EC, in its submission, emphasises that the Commission, under the EC Treaty's state aid rules, cannot ask the question whether a subsidy is the most appropriate tool for achieving the member country's objectives.

Are there simple and non-discretionary rules that could be used to control subsidies at the international level? A final point raised by the background paper is that in industries where firms are mobile and can move easily to the subsidising country, there is little need to be concerned about subsidies. In this context, there is no distortion to competition (all the firms in the sector can move to the subsidising country) and the subsidising jurisdiction must gain some continuing welfare benefit from the subsidy which outweighs the costs (whether that benefit is due to environmental, employment or other public interest policies). In other words, in this context, subsidy control could be limited to simply insisting upon national treatment and non-discrimination. Of course, in practice, firms may not have this freedom to move, in which case the argument would be irrelevant.

The Chairman asked the OECD's Agriculture Directorate to explain why subsidies in the agriculture sector are so common and if there has been a move towards more neutral ways of subsidising the agricultural sector.

The Secretariat (Agriculture Directorate) agreed that agriculture is one of those sectors, which is well known for having a high level of subsidies, although this varies between countries. The OECD has been measuring subsidies in OECD countries on an annual basis since the mid-1980s. In fact, the OECD measures what is known as “support”. The word “subsidies” was used for some time before being changed to the word “support”, partly due to the recognition that transfers to agriculture included some elements that might not strictly be called subsidies, (which has a negative connotation).

The reasons why countries give subsidies or support to agriculture go back to arguments (from the past) that (a) subsidies are necessary to ensure security and sufficiency in the food supply, particularly in the face of fluctuations in weather and disease; (b) to help farmers’ bargaining power (farms are often small, atomistic units and deal with rather few and larger units in the processing and retail sectors); (c) to maintain farmers’ incomes; and (d) to keep consumer prices low. Increasingly support is also justified as necessary to promote the environment or for food safety reasons.

How is agriculture supported? First, and most important, through trade barriers, import tariffs and quotas, export subsidies and credits, or state trading enterprises. Second, through administered prices, minimum prices received by producers, government purchases and some production controls (such as milk quotas). Third, budgetary payments to farmers (some with eligibility criteria, such as a requirement that farmers contribute to enhancing the environment). Fourth, input subsidies, such as subsidies on fertiliser or, particularly, water (these are implicit subsidies in a number of countries). Fifth, budgetary support for general services such as research, education, training and promotion.

How is support measured? In the OECD, there are two major measures of support - the Producer Support Estimate, which is the total value of transfers from consumers and taxpayers to farmers from agricultural policies and the Total Support Estimate, which is the support that is received by the agriculture as a whole. The OECD also derives some other indicators such as rates of nominal assistance and rates of protection. The support is measured primarily through the price gap between domestic prices and world prices (the gap in the price per unit of production compared to world prices if farmers purchased or had to sell on the world market) plus the budgetary transfers.

Agricultural support in the OECD, averaged over 1998-2000, amounted to \$340 billion dollars per annum or 1.3 percent of GDP. There has been a gradual decline of support since the mid-1980s, but there is a very big variation among countries and products. This support on the producer side represents 35 percent of the value of farm receipts and (importantly) two-thirds of the support is still linked to production, but the share is becoming smaller and better targeted. Countries like Australia and New Zealand have very low levels of support. The Czech Republic, Hungary, Turkey and Poland are rather lower than the European Union, which is in the middle; Japan, Norway and Switzerland have very high levels of support.

In fisheries, the total support to producers amounts to \$6.3 billion, or about four percent of the landed value of fish catches. Total support to the fisheries sector represents 17 percent of the landed value.

What are the controls on agricultural support? OECD Ministers agreed in 1987 to reduce and to better target support. The main control is the 1994 WTO agreement on agriculture which limited export subsidies and trade-distorting domestic support and increased market access. Domestic budgetary constraints, public concerns, and the influence of markets and technology are probably also factors, which are as important at limiting support as the controls in the WTO.

What is next in the OECD in measuring support? First, the OECD is seeking to measure the effects of different support on production, trade and the environment. Second, defining criteria for good and bad policies – how do we draw a line between what is a justifiable support and what isn't? Finally, the

agricultural directorate is considering an international workshop on measuring subsidies across all industries. The object is to stimulate discussion and to determine what is the latest research in this area.

The Chairman then invited a representative of the Fiscal Affairs division of the OECD to discuss its work on harmful tax competition.

The Secretariat (Fiscal Affairs Division) observed that the work of harmful tax practices, which has been going on for the last four or five years, has had a higher profile in the last year or so since the OECD Council decided to impose deadlines on so-called tax havens to remove harmful tax practices. This project has some similarities to the ideas in the background paper but also some significant differences.

The first point is that the primary aim of the project is not to promote trade or competition, rather the primary aim is to protect the tax base of countries that assert the right to tax their citizens on the basis of their world-wide income. The reason for that is twofold: first to allow countries to collect revenue to which they believe they are entitled, but also because there is an issue of horizontal equity – if some companies and their owners are able to avoid tax in their home countries, that places a greater burden on the rest of the population and is seen to be unfair. The aim is not directly to promote fair competition between companies in the same way as in the background paper.

The geographical scope of the tax competition project is worldwide – not just OECD countries, but also tax havens and non-OECD countries that are not regarded as tax havens. At the moment, the project is concerned with financial and other geographically mobile services. This is the area where there is the largest potential for tax base erosion from international tax competition and the least employment impact in the countries that attract the activities. However, there are some non-members countries, which are urging the OECD to extend the scope of this analysis to look at a real investment.

The aim of the project is not to equalise corporation tax rates across the OECD or across the whole world. As the background paper emphasises, different countries may have different preferences in terms of the provision of public goods, of social support and of taxation. Indeed, there is a legitimate and respectable case, though arguable, that taxation of corporations is not something that is necessary at all. Because of this argument it is hard for the OECD to insist that countries which have decided to have a low or zero corporate income tax rate must raise their corporate income tax to a minimum rate.

The project looks at countries that have low or zero corporation tax rates. These countries must satisfy three principles. The OECD is not insisting these countries cannot have lower rates of tax, but if they do they must meet these three principles. The first principle is exchange of information. A jurisdiction with low tax rates must be prepared to exchange information with the country of residency of the companies doing business in its jurisdiction, to allow the country of residency to levy taxes on the world-wide income of the resident companies. In other words, these regimes must not be used by companies in order to evade their tax liabilities. The second principle is transparency (and this has parallels in the background paper). The idea is that a tax preference regime must be publicly announced and open to all firms that are eligible on a uniform basis. The third principle is the principle of no ring fencing. This is similar to the idea in the background paper that subsidies should be available equally to nationals and foreigners. In tax competition work, however, preferential regimes are typically offered to foreign owned companies, but not to domestic companies, whereas in the background paper the primary concern is with subsidies offered to domestic but not foreign companies. The OECD is concerned with ring fencing because it allows a lower rate of tax on foreign-owned companies, to attract them to the jurisdiction, without reducing the domestic tax base. In other words, it is a cost-free way of distorting the allocation of resources.

The Chairman then turned to the European Commission, which has a highly developed system for controlling subsidies set out in the articles of the EC treaty. The Chairman asked about the treatment of specific sectors, such as agriculture, shipbuilding, maritime transport and fishing and about the utility of distinguishing between “general measures” and “selective measures”. The Chairman also asked the Commission to comment on the institutional arrangements for controlling state aid, the weaknesses or constraints of the current arrangements, whether the European Commission is seeking additional powers to control state aid and whether it would be possible to set up a network of national authorities, in the same way as has been done in the context of competition law enforcement?

The European Commission began by emphasising that the definition of a state aid, as set down in article 87(1) of the EC treaty, was created in the context of the promotion of the Common Market. This definition has been further developed by the Court of Justice and by the practices of the Commission, but, basically, it has not changed for more than 40 years. This shows that it is quite well adapted to its purpose. But, although the definition is adapted to its context, it is not necessarily the best definition, or the most appropriate definition in other contexts. It may be appropriate to have a different definition at a different level of government (such as at the WTO level or at the local level), as long as these definitions remain compatible with each other.

State aid control is only one tool to prevent distortions of competition. It is not a magic weapon to abolish all distortions of competition. That was not its purpose. It looks at one particular form of competition-distorting policies – an important, but limited, set of policies.

The Treaty gives the Commission almost exclusive competence on matters concerning state aids. The Commission also has exclusive competence for distortions of competition defined in articles 81 and 82 (distortions created by anti-competitive activities of enterprises). But other policy areas remain within the competence of member states. In these other fields, concerns over the effects of competition distortions could lead to EU-wide policies such as harmonisation, but this would be a question for the member states or the Council to decide.

In regard to the agriculture sector, the Treaty states that the state aid rules apply to production and trade in agriculture products only to the extent determined by the Council. If member states grant aid to agriculture, the state aid rules will apply, but it is up to the Council to decide the extent.

In regard to the limitations of the present system – the first limitation is the definition of state aid, itself. The powers of the Commission are limited by the definition. Certain cases are not covered by the definition. Should the definition be wider, as in the approach in the Secretariat’s background paper? The definition should remain operational and applicable. If the definition was broader it is not clear the Commission could still apply the definition. Would member states have to notify all regulatory measures? Would the Commission have to decide which public goods are justified and which are not? This is not currently the role envisaged for the Commission.

Another limitation of the present system is that the Commission only examines aid after the Member State has made the political choice to use aid as a policy tool and not to use other possible tools. For example, if the objective is environmental benefit, you could give aid to a company to induce it to not use a certain product, which is polluting. You could also simply ban the use of the product. But this is an assessment, which the Commission cannot make. It is a choice of member states. In exceptional circumstances, it is possible that the distortion of competition would be so disproportionate to the objective that it could indirectly play a role in the Commission’s assessment, but that would be an exceptional case.

Another limitation of the Commission's competence is the fact that the assessment is always made before the aid is granted (in principle, at least). Therefore the Commission’s assessment must be

based on assumptions and the information available at that stage. Ideally, aid programmes should be reviewed after a period of time - for example, after two years – to make an assessment of the effects of the programme. Does it serve its purpose? Does it have the effect, which was envisaged by the subsidy? If not, it should be modified.

Overall, within these limits, the system functions quite well. The Commission can adapt the criteria of compatibility with the Treaty as the Common Market develops. The Commission tries to prevent the most distorting forms of subsidies or to make them subject to various strict criteria. For certain horizontal types of aid, the Commission tries to define what the acceptable level of aid would be.

The delegate was sceptical about the proposal in the background paper that when capital is mobile we need not be concerned about subsidies. The delegate raised the issue, if a richer region offered a tax break for new investment, whether a poor region, without the same funds to offer the same tax break, would be able to compete, so that all the new investment would go to the richer regions. This would go against one of the objectives of the EC, which is to develop poorer regions.

The Chairman then opened the floor for a general discussion. The Chairman emphasised the point that one of the major difficulties in dealing with policies to control aid to industry is that, like competition offences, the beneficiaries are very concentrated and stand to gain substantially from the aid. At the same time, the costs to the general government budget are rather low and so the taxpayer doesn't care very much. In addition, other industries also do not care much. As a result, without some type of system of control (whether constitutional or through international treaties), it is difficult to control subsidies in an endogenous or voluntary way.

Denmark thanked the Secretariat for a splendid and comprehensive paper touching on many interesting questions. The delegate noted that not all subsidies are *per se* bad or evil. Certain forms of support such as aid for R&D, education or infrastructure are widely accepted. The delegate disagreed with the view that aid is not a concern as long as it is given on a non-discriminatory basis. In practice, firms are not as mobile as would be required for this to occur. On the other hand, countries should ensure that access to infrastructure and R&D assistance and so on is non-discriminatory. The delegate also noted the key role that the WTO and the OECD could play in continuing to address these questions in one form or another.

Denmark is the first EU member country to introduce national state aid control. This law came into force on 1 October 2000. The new law deals with aid which does not have cross-border effects and it is aimed particularly at aid given by local governments, not directly approved by the central government, or not within the legal practices developed for municipalities. The law states that in assessing aid, the competition authority is to put emphasis on whether aid is selective or discretionary. It is expected that most of the forms of assistance that will be addressed under this law will be indirect measures such as the provision of services to enterprises below market prices.

The Chairman asked whether the law gives the power to control laws passed by central and local governments or merely the actions carried out under laws already implemented?

Denmark responded that they cannot, of course, overthrow decisions by the national parliament, but they can, to an extent, overthrow decisions by local authorities, but it is somewhat more legally complicated.

The Chairman asked whether, now that the competition office has authority to control state aid in Denmark, it will be the counterpart of the European Commission in matters concerning state aid administration or whether this role will be taken up by the different ministries as it usually has been in the past?

Denmark responded that this question will be resolved over time. The delegate expressed the view that it is likely the authority will work more and more closely with the Commission over time. In many cases it is difficult to determine whether there are cross-border effects and therefore where jurisdiction properly lies. The competition authority also has to raise public and political awareness that it now has the same role as the Commission in keeping in line other levels of government. The competition authority will not play the role of defending other Ministries before the Commission. On the other hand, the authority may advise other Ministries as to the strength of their case before the Commission. The delegate noted that he could foresee a network of state-aid enforcers developing in the future. There is no reason why, politically, state aid should be administered very differently from competition policy.

France then asked a question concerning the distinction between private and public subsidies. We observe that enterprises, when they want to conquer a new market or when they want to invest in a new sector or product, have a tendency to subsidise their own activities. For example, an enterprise will often incur losses developing an export market or when introducing a new product. What is the difference either in the definition or in the appreciation of the facts, between a state aid (i.e., an aid given by a government) or an aid given by an enterprise either to develop new markets or new products? If we must use different criteria for the assessment of private aid and state aid, what is precisely the difference and the reason for the difference, the nature of the criteria that we must use? The EC uses the so-called Market Economy Investor Principle to distinguish between a subsidy and what would normally occur in an economic market, but how can we operationalise this principle given that certain enterprises subsidise their activities for decades? As another example, one of the recommendations of the Hilmer report in Australia was that state enterprises which are in competition with private enterprises must not benefit from measures which allow them to have a competitive advantage as a result of their belonging to the state. Concretely, how could this test be applied?

The United States (DOJ) noted that it found the background paper to be both thoughtful and thought-provoking, but found the open-ended approach to the definition of subsidies and state aid to be unrealistic and impractical. If you include any tax differences, or differences in public goods or differences in regulatory systems, it seems that measuring the degree of aid becomes impossible. It is probably better to stick to direct measurement of the financial transfers - what a government gets in return for whatever benefits it provides to a firm.

The United States (FTC) also questioned the broad approach to defining a subsidy. Is there really no distinction between tax reductions and subsidies? In what sense can a general across-the-board tax reduction be viewed as a subsidy? The background paper suggests that the decision to refrain from imposing taxes can constitute a form of subsidy. Does that mean that if a parliament is considering a tax and decides not to do so they therefore have implemented a subsidy? Also, the background paper seems to imply that if two countries impose a regime to control environmental harms - but do so in different ways so that the two regimes, although equally effective, have different costs - then the regime with the lower costs is somehow subsidising its industry. This seems to be a perverse result.

The Secretariat, responding to the question from the US, clarified that while certain differences in taxes across different countries can affect competition between firms, this does not imply that all differences in taxes should be eliminated because it may be efficient to have different tax regimes in different countries. Similarly, while differences in, say, the levels of environmental controls might affect competition between firms that might nevertheless be efficient. The reason is that the appropriate level of pollution controls will differ from country to country according to country-specific factors. A "lax" regulatory regime could be nothing more than an efficient response to a lack of environmental harm in one country, but it could also be an inefficient attempt to distort competition.



The Secretariat observed that the US was right to emphasise that it would be perverse if a regulatory regime was judged to be an inefficient distortion to competition simply because it achieved a certain outcome at a lower cost than another regulatory regime. What is important here is the regulatory outcome achieved – not the costs of the policy to achieve that outcome. In two countries with the same characteristics, if the regulatory regimes achieved the same outcome then one could not be said to be subsidised relative to the other. On the other hand, if economic efficiency demanded strict controls then the country with less stringent (but not necessarily less costly) controls could be said to be inefficiently distorting competition in favour of its firms.

The Secretariat went on to respond to the comment by France. The Secretariat observed that the difference between an “internal” subsidy by a private firm and an “external” or government subsidy of a firm lies in the source of the funds used. In a well-run firm subject to capital market disciplines, the firm must pay a cost for any funds it uses for internal cross-subsidisation. In other words, it must expect to recuperate sufficient revenue on its present “investment” in subsidising to pay for the costs of funds used. Provided the firm is not dominant and is not subsidising for the purpose of excluding competition (i.e., predatory pricing), such internal subsidisation can be equally carried out by all firms in the market (i.e., there is a “level playing field”) and is therefore not considered anti-competitive.

The situation is different, however, when one or a limited number of firms in the market can use funds for which it (or they) does not need to pay the full opportunity cost of the funds (i.e., if the firm can draw on funds from the government, or low-interest loans from a government-insured bank, and so on). In this case the firm has an advantage which is not shared by other firms in the market, which may amount to an inefficient distortion of competition. The problem is therefore to ensure that firms (especially state-owned firms) does not have access to public funds on non-commercial terms.

The European Commission explained how it applies the “market economy investor test”. This is a test which is used in situations where it is difficult to determine whether there is a subsidy or a state aid or not. For example, if a member state has given a capital injection to a company, it is not clear from first sight whether this is a state aid or whether this is a normal economic operation. The Commission compares the behaviour of the state with a hypothetical private company. This is an economic assessment, which is not always easy to carry out. The assessment is clearer in cases where there is a capital injection not only from the state but also from private investors. In that case, the fact that other investors also invest in the company shows that it is reasonable for the state to do so and that the intention is not to give aid but to make a profit.

The Chairman acknowledged that, logically, we can define what constitutes a subsidy to be as broad as we want. The broader the definition of the subsidy, the more important is the second step – determining whether a particular subsidy is inefficient in the sense that it reduces overall welfare. The Chairman noted that it is possible to argue that, since Paris has a well-functioning and efficient subway, the resident firms are subsidised relative to firms based in Rome (Parisien firms need to pay less to attract labour and have higher productivity workers due to less strenuous commuting). But, it is not necessarily inefficient for the Paris municipality or the French government to subsidise the metro system.

Korea expressed that the definition of state aid or subsidy must be operational. In this regard, it makes sense to limit the definition of a subsidy to just apply to tax expenditures and government expenditures. In regard to the question raised by France, Korea’s competition law sets out legal grounds for regulating parent companies that unduly subsidise their failing or weak affiliates. This is particularly aimed at the conglomerates known as chaebols. The KFTC can prosecute internal cross-subsidisation and ask the firms to desist or can impose criminal penalties.

Australia noted that the issue of subsidies is something, which Australia has grappled with on many fronts, particularly since Australian companies compete on the world market against other subsidised firms. The delegate commented that the background paper was a little too relaxed about the possible harmful economic consequences of subsidies. There is a tendency for subsidies to go to inefficient industries and sectors within industries. Perhaps the background paper could be narrowed to focus on one or two sectors. The presentation from the agriculture directorate demonstrates that the situation regarding subsidies in agriculture is vastly different from the situation with subsidies in many fields. Australia's approach is that agriculture should not be treated differently from other sectors. The delegate also expressed that more emphasis should be given to the role of border measures as a subsidy. It is something that is often ignored but it is perhaps the most obvious form of subsidy and something that Australian exporters struggle with.

The Secretariat from the Agriculture Directorate acknowledged that for a definition of a subsidy to be useful it must be operational. The OECD's definition of PSEs and TSEs, which are essentially a measure of transfers from consumers and government budgets, is largely operational. These definitions make possible comparisons across countries using a consistent methodology. They are also easily understood by policy-makers. The agriculture committee has been considering how to take into account arguments relating to public goods. Many countries have been arguing agriculture provides certain public goods, such as environmental or food security benefits, which justify the subsidy. The key question is how the subsidy is given. Is the subsidy given through a trade barrier or by some policy, which is better targeted?

The European Commission echoed the Secretariat that a definition needs to be operational. The definition used in the EC Treaty has now applied for more than 40 years so it has become quite operational. It is true that differences in environmental standards may have an effect on the competitive position of enterprises, but to have an operational definition of state aid you must also have some limits – you cannot bring everything under state control. Since the Commission has exclusive competence in matters concerning state aid there is a tendency to expand the definition of aid to expand the powers of the Commission, but this is not necessarily the right approach. There are other ways to attack distortions caused by different environmental standards, for example through harmonisation directives.

The Chairman observed that he did not want to put too much stress on the need for the definition to be operational. Of course you need a definition which is operational. But, you also need a definition, which is right. The contribution of the background paper is not to suggest a better operational definition but to highlight where existing definitions may be weak, even though they are operational. There is value in discussing points of an academic nature if they lead to deeper policies.

The Chairman then moved on by noting that certain OECD countries, apart from Denmark, have powers to control domestic state aid, particularly the countries that are seeking to accede to the European Union – namely the Czech Republic, Poland and Lithuania. The Chairman invited the Czech Republic to explain why agriculture and fisheries are excluded from the domestic control of state. The Chairman also asked whether the competition authority could intervene against subsidising laws directly or merely against the implementation of such laws?

The Czech Republic emphasised that the Office for the Protection of Competition has been involved in monitoring state aid only since 1 May 2000 – the date that the national state aid act came into force. This act prohibits those state aids, which distort or may distort competition by giving a firm an advantage, which may affect trade between the Czech Republic and member states of the European Union. The exemption of agriculture and fisheries is connected to certain specific features of the trade in these two sectors. As concerns the role of the Office, state aid that is defined as prohibited may be granted an

exemption based on a decision of the office. The Office is authorised to issue an individual exemption or exemption by decree (a so-called block exemption) for certain state aids.

The Chairman observed that Poland is also in the process of harmonising its laws with those of the European Union and has a new law controlling state aid, which entered into force on 1 January 2001.

Poland noted that according to this new law, monitoring of state aid is the responsibility of the Office for Competition and Consumer Protection. The law sets out the conditions under which state aid may be granted, following the European Commission rules. In addition, the law sets out procedures for monitoring and controlling aid. The collection of information about aid granted is necessary to make an assessment of the efficiencies and effectiveness of granted aid and it is also necessary for the preparation of reports for different organisations. All proposals for new laws must be submitted to the Office for its opinion. The Office gives an opinion about the compatibility of the rules set out in the proposed law.

Under the system of state aid control in Lithuania, the Lithuanian Competition Council is responsible for the authorisation and monitoring of state aid. A large part of the new law sets out procedural rules – rules specifying which aid must be notified and what the Competition Council must do to authorise state aid. The Council is now occupied with preparing the relevant secondary legislation. Agricultural state aid is excluded from the law. In one case that has arisen, the government made a decree under which the Ministry of Finance could provide aid in the form of insurance for exports. The Ministry of Finance must proceed to notify this aid to the Competition Council which will make a decision whether this kind of state aid is illegal.

The Chairman then introduced Italy, noting that Italy describes a case where the Italian Competition Authority used its advocacy powers in the maritime transport sector.

Italy noted that although Italy has a long history of state aid to industry, that aid has been reduced in the last few years primarily through privatisation and the intervention of the European Commission. There have been a couple of instances in which the competition authority has intervened in situations involving state aid. The first case related to the behaviour of a company providing maritime transportation services. This was a company belonging to the holding company known as Finmare. This holding company was receiving public subsidies to provide regular services on several national and international routes. Complaints were received by other companies, complaining about the subsidies that the Finmare Company was receiving and that were allegedly having a distorting effect on competition in the relevant markets. The competition authority, in its opinion, pointed out that on many of the routes there were competing operators, which were not receiving a subsidy. The justification for the subsidy was not that evident. The second point made by the authority was that the subsidy itself was not given according to a transparent mechanism. It wasn't clear how much the subsidy was related to the real costs incurred by the company to provide a service, which would not have been provided otherwise. Finally, the authority recommended to the Parliament and the government to make the subsidies subject to transparent and non-discriminatory rules and to introduce procedures to allocate the subsidy on the basis of competitive bidding procedures.

Italy also discussed an alleged abuse of a dominant position. In 1995 a case was raised against a company belonging to the Finmare group which was providing services on routes connecting Italy to South Africa. One of the complainants reported that these companies had been engaging in predatory pricing, taking advantage of the state subsidies received. The competition authority closed the proceeding stating that it was not a violation because the market share of the company in the relevant market was low and it did not hold a dominant position.

The Chairman noted that Korea is considering granting the competition authority the power to control subsidies. The Korean submission also raises the issue of the distinction between direct and indirect

subsidies. A subsidy can also have an effect on downstream competition. For example, a subsidy in the steel industry may have any effect on competition in car manufacturing.

Korea acknowledged that it is considering giving the KFTC the power to control some subsidies, which distort competition. This does not exist now, although some parts of the competition law give power to the KFTC to review, from a competition policy perspective, decisions of government Ministries to initiate or amend existing clauses of a law. The KFTC already has powers to review other laws closely, including laws that authorise the granting of subsidies from Ministries or local government. Korea welcomed the OECD initiative on this roundtable as it assists their attempts to open the discussion in the Korean government and to ensure that some regulatory authority has the power to review these kind of subsidies.

Australia reported that, as part of the National Competition Policy package the Competitive Neutrality Complaints Office was established. The role of that body is to receive and review all complaints from businesses relating to competitive neutrality. Wherever there is evidence of state government enterprises not competing fairly or taking advantage of a position as a government business the Competitive Neutrality Complaints Office can make a recommendation to the relevant Minister to rectify the situation.

Spain questioned whether terms such as “legitimate” and “illegitimate” were appropriate in the context of discussions of subsidies. Whether something is legitimate or not is related to the choices of society and is much broader than the idea of whether something is competition distorting or not.

The Chairman clarified that the terms “legitimate” or “illegitimate” were used to communicate the idea of economically efficient or “welfare improving”. A subsidy might distort competition but would not necessarily be inefficient. As an example, it is possible that, in order to maintain the beauty of the Tuscan landscape it is necessary to subsidise farmers. Depending on the preferences of individuals, this could be welfare improving and therefore legitimate. The difficulty is that this introduces fundamental public policy choices into the control of subsidies and the promotion of competition.

The United States raised the question whether the discussion should be limited to just the competition effects of subsidies, leaving aside the issues of what is or is not legitimate.

The Chairman noted that this working party focuses on questions at the intersection of competition and regulation. This involves asking the question whether a certain regulation is welfare improving or not, and not merely looking at the competition effects of regulations.

The Chairman concluded the roundtable noting that the discussion has raised more questions than it answered. The major problem identified is the issue of the definition - not just the definition of a subsidy but also the question of how to determine what is legitimate and what is not legitimate. The European Commission provides a very good example of how a supranational organisation can exercise powers to control state aid by member countries. But there has historically been little debate over what are state aids and the right policy tools and institutions for controlling them. One of the great successes of the European Commission in competition matters has been the fact that the European Commission early on took a key role in antitrust enforcement. Slowly member countries joined in and, one by one, introduced a competition law. Eventually a network of competition authorities was created. This sort of network for state aid control might well develop further in the EU, following the lead of Denmark.

This is an important issue because in many OECD countries 60-65 percent of companies receive some form of subsidy. This is a waste of resources. If everybody would agreed to cut subsidies we would all be better off.



## AIDE-MÉMOIRE DE LA DISCUSSION

*par le Secrétariat*

### 1. Introduction

Le Président ouvre le débat en posant les questions de portée générale qui seront abordées : Qu'est-ce qu'une subvention ? Peut-on faire la distinction entre « bonnes » et « mauvaises » subventions ? Dans la pratique, comment les subventions sont-elles contrôlées dans les pays de l'Union européenne et dans les pays engagés dans le processus d'accession à l'Union européenne ? Comment faudrait-il contrôler les subventions ? Quels types de règles faut-il instituer ? Faudrait-il fixer des limites à caractère constitutionnel ou concurrentiel dans les différents niveaux d'administration ?

Le Secrétariat présente ensuite brièvement les points soulevés dans la note de référence. En gros, cette note pose la question de savoir ce qu'est une subvention et par quels moyens il faudrait contrôler les subventions. Il est essentiel, dans un premier temps, de définir ce que l'on entend par subvention. Plusieurs termes sont utilisés dans ce contexte : aide de l'Etat, aide, subvention ou soutien. Certains ont une connotation négative et d'autres revêtent une signification particulière dans le cadre des législations nationales ou de traités internationaux.

Une approche possible pour définir une subvention consiste à déterminer si une entreprise est « subventionnée » ou « aidée » comparativement à d'autres entreprises concurrentes sur le même marché. Une entreprise serait réputée subventionnée si elle reçoit, au titre d'une politique du gouvernement, un avantage net qui n'est pas offert aux autres entreprises présentes sur le même marché. Une entreprise serait réputée recevoir un avantage net lorsque, du fait d'une politique du gouvernement, elle doit engager des dépenses en contrepartie desquelles elle reçoit une compensation supérieure ou si elle reçoit un avantage en contrepartie duquel elle n'est pas tenue d'assumer des coûts correspondants.

Cette définition englobe toutes les formes d'aide normalement considérées comme des subventions. La présentation de la CE fournit une liste des types courants de subvention. Par exemple, constitue une subvention le fait pour un gouvernement de vendre un terrain à un prix inférieur à la valeur du marché, ou le fait pour une entreprise de recevoir des services de consultation payés par les fonds publics.

En plus de recouvrir les formes courantes d'aide ou de subvention, cette définition englobe un éventail beaucoup plus large d'actions susceptibles de fausser la concurrence entre les entreprises. Par exemple, l'aide de l'Etat ne se limite pas à des transferts financiers, et peut être accordée par le biais d'une réduction de la charge fiscale. Selon l'opinion de la Commission européenne, un traitement fiscal particulier, notamment le report d'impôt, les exemptions fiscales et les avantages fiscaux, peuvent équivaloir à une aide de l'Etat.

Il est toutefois évident que certaines différences entre les régimes fiscaux sont tout à fait légitimes. Il faut donc mener une nouvelle analyse afin de faire la part entre les différences légitimes qui existent entre les règles fiscales et les subventions d'ordre fiscal qui faussent la concurrence. La CE résout

ce problème en adoptant une autre approche pour définir une subvention (désignée « aide de l'Etat »). La CE ne compare pas le traitement des entreprises d'un même marché, mais celui des entreprises d'un même pays. Les politiques fiscales (appelées « mesures générales ») qui réservent un traitement identique à toutes les entreprises d'un pays ne sont pas considérées comme une forme d'aide de l'Etat. L'inconvénient de cette approche est qu'elle exclut l'examen ainsi que le contrôle éventuel de certaines actions de portée générale qui prévoient un traitement égal pour toutes les entreprises d'un pays mais faussent la concurrence sur les marchés internationaux.

Les gouvernements peuvent accorder des avantages aux entreprises en instituant des différences entre les régimes fiscaux mais aussi entre les régimes de réglementation. Dans sa présentation, la Commission européenne cite l'exemple d'un producteur d'électricité qui serait forcé de vendre une certaine quantité d'électricité à une autre entreprise (par exemple, à une aciérie) à un prix inférieur à celui du marché. Cette politique ne constituerait pas une aide de l'Etat en vertu des règles de la CE, mais répondrait toutefois à la définition de subvention suivant l'autre approche déjà mentionnée. Les différences entre les biens publics, par exemple entre les réseaux routiers, la formation de la main-d'œuvre ou d'autres types d'équipements publics, pourraient aussi être considérées comme des avantages consentis aux entreprises par les gouvernements.

L'inconvénient de taille de l'autre approche évoquée ci-dessus pour définir une subvention tient à ce qu'elle est large et englobe donc un vaste éventail d'actions susceptibles de fausser la concurrence, mais qu'elle attribue une grande importance à la deuxième étape du processus, qui consiste à faire la part entre les différences de politiques qui engendrent des différences légitimes au chapitre de l'amélioration du bien-être et celles qui créent une distorsion de concurrence illégitime.

Il est toutefois indéniable que certaines politiques publiques faussent la concurrence, ne contribuent pas à améliorer le bien-être et doivent faire l'objet d'un contrôle. De quelle manière faudrait-il les contrôler ? La note de référence insiste d'abord sur le fait que le niveau d'administration appelé à exercer un contrôle est bien entendu fonction de l'étendue géographique du marché affecté – si la subvention n'affecte que le marché national, le contrôle peut s'effectuer au niveau national. En revanche, si les subventions affectent un marché international (sidérurgie, construction navale, agriculture) le contrôle doit à l'évidence s'exercer au niveau international.

La note de référence signale également que les politiques en matière de subventions devraient (dans l'idéal) faire l'objet d'un contrôle et d'un examen au même titre que les autres politiques gouvernementales préconisées dans le Projet de réforme de la réglementation de l'OCDE. Les politiques dont l'adoption est envisagée par les pouvoirs publics sont habituellement examinées au regard des questions suivantes : Quels sont les objectifs de ces politiques ? Quels autres moyens permettraient d'atteindre ces objectifs ? Quels sont les coûts et les avantages respectifs des différents moyens d'atteindre ces objectifs ? Les politiques en matière de subventions devraient faire l'objet des mêmes contrôles.

L'examen attentif des politiques en matière de subventions est sans doute réalisable au niveau national, mais pour diverses raisons, des organisations internationales pourraient difficilement mener une analyse complète des coûts et avantages de différentes politiques. Dans la pratique, les organisations internationales peuvent exiger que les subventions soient soumises à un contrôle beaucoup plus simple et moins assujéti au pouvoir d'appréciation. La Commission européenne elle-même procède de la sorte. Il est précisé dans sa présentation qu'en vertu des règles du Traité instituant la Communauté européenne relatives aux aides accordées par les Etats, la CE ne peut demander si une subvention est l'instrument le mieux indiqué pour l'atteinte des objectifs d'un Etat membre.

Existe-t-il des règles simples et échappant au pouvoir d'appréciation qui pourraient servir à l'exercice d'un contrôle sur les subventions au niveau international ? La note de référence souligne en

dernier lieu que dans les secteurs où les entreprises sont mobiles et peuvent facilement s'implanter dans le pays qui verse les subventions, il n'y a pas vraiment lieu de se préoccuper des subventions. Dans ces cas, en effet, la concurrence n'est pas faussée (toutes les entreprises du secteur peuvent s'implanter dans le pays en question) et la juridiction concernée retire, sur le plan du bien-être, un avantage continu supérieur aux coûts qu'elle a engagés (que l'avantage soit lié à l'environnement, à l'emploi ou à d'autres politiques d'intérêt public). En d'autres termes, le contrôle des subventions pourrait dans ces cas être centré sur le traitement national et l'absence de discrimination. Bien sûr, dans la pratique, il se peut que les entreprises n'aient pas la même liberté de mouvement, ce qui enlève toute pertinence à cet argument.

Le Président demande à la Direction de l'agriculture de l'OCDE d'expliquer pourquoi les subventions sont si courantes dans le secteur de l'agriculture et si l'on a noté une tendance vers des modes de soutien plus neutres dans ce secteur.

Le Secrétariat (Direction de l'agriculture) reconnaît que l'agriculture est un secteur réputé pour l'importance des subventions qu'il reçoit mais que la situation varie selon les pays. Depuis le milieu des années 80, l'OCDE mesure les subventions versées annuellement dans ses pays Membres. De fait, les mesures effectuées par l'OCDE concernent ce qu'on appelle le « soutien ». Le terme « subvention » autrefois utilisé a été remplacé par le terme « soutien », en partie parce que les transferts destinés au secteur agricole comportent des éléments qui ne répondent pas strictement à la définition de « subvention » (qui est connoté négativement).

Les raisons pour lesquelles les pays accordent des subventions ou un soutien à l'agriculture sont fondées sur les arguments (invoqués par le passé) selon lesquels les subventions (a) sont nécessaires pour assurer la sécurité et l'autosuffisance alimentaires, notamment en cas de variations météorologiques et de maladies ; (b) favorisent le pouvoir de négociation des agriculteurs (les fermes sont souvent des très petites unités qui traitent avec des unités plutôt moins nombreuses et de plus grande envergure dans les secteurs de la transformation et de la distribution au détail) ; (c) préservent le revenu des agriculteurs ; et (d) permettent de maintenir des prix à la consommation peu élevés. De plus en plus, le soutien est présenté comme nécessaire pour la protection de l'environnement ou la sécurité alimentaire.

De quelle façon l'agriculture est-elle soutenue ? Premièrement, et surtout, au moyen des barrières tarifaires, des tarifs douaniers et des quotas d'importation, des subventions et des crédits à l'exportation, ou des entreprises commerciales d'Etat. Deuxièmement, par des prix réglementés, des prix minimums reçus par les producteurs, des achats des pouvoirs publics et certains contrôles exercés sur la production (par exemple, les quotas laitiers). Troisièmement, par des paiements budgétaires aux agriculteurs (dont certains sont soumis à des critères d'admissibilité, par exemple l'obligation de participer à l'amélioration de l'environnement). Quatrièmement, au moyen des subventions à l'achat d'intrants, par exemple les subventions à l'achat d'engrais ou, en particulier, d'eau (subventions implicites dans de nombreux pays). Cinquièmement, un soutien budgétaire est accordé au titre de services d'intérêt général comme la recherche, l'éducation, la formation et la promotion.

Comment le soutien se mesure-t-il ? Dans les pays de l'OCDE, les deux principaux indicateurs du soutien sont l'estimation du soutien aux producteurs, qui est la valeur totale des transferts des consommateurs et des contribuables aux agriculteurs découlant des mesures de soutien à l'agriculture, et l'estimation du soutien total, qui correspond à l'ensemble des mesures de soutien à l'agriculture. L'OCDE calcule également d'autres indicateurs comme le coefficient nominal de soutien et le coefficient de protection. Le soutien est mesuré essentiellement en fonction de l'écart entre les prix intérieurs et les prix du marché mondial (écart entre le prix par unité de production et les prix du marché mondial si les producteurs agricoles ont acheté ou ont dû vendre sur le marché mondial), augmentés des transferts budgétaires.



De 1998 à 2000, le soutien moyen à l'agriculture dans les pays de l'OCDE a atteint 340 milliards de dollars par an, soit 1.3 pour cent du PIB. Depuis le milieu des années 80, il a baissé de façon graduelle mais varié considérablement selon les pays et les produits. Le soutien aux producteurs représente 35 pour cent de la valeur des recettes agricoles et (fait important) les deux tiers du soutien restent liés à la production, mais cette part tend à diminuer et à être mieux ciblée. En Australie et en Nouvelle-Zélande, les niveaux de soutien sont très faibles. En République tchèque, en Hongrie, en Turquie et en Pologne, les niveaux sont plutôt inférieurs à ceux des pays de l'Union européenne, qui se situent dans la moyenne ; le Japon, la Norvège et la Suisse ont des niveaux de soutien très élevés.

Dans le secteur de la pêche, le soutien total aux producteurs atteint 6.3 milliards de dollars, soit environ quatre pour cent de la valeur débarquée des prises de poisson. Le soutien total au secteur des pêches représente 17 pour cent de la valeur débarquée.

Quels sont les contrôles exercés sur le soutien à l'agriculture ? En 1987, les ministres des pays de l'OCDE ont convenu de réduire le soutien et de mieux cibler les approches. Le principal mécanisme de contrôle est l'Accord de l'OMC de 1994 sur l'agriculture, qui vise à limiter les subventions à l'exportation et le soutien interne induisant des distorsions des échanges et à élargir l'accès aux marchés. Les contraintes budgétaires internes, les préoccupations du public et l'influence des marchés et de la technologie sont des facteurs qui contribuent sans doute autant à restreindre le soutien que les contrôles exercés dans le cadre de l'Accord de l'OMC.

Quels sont les projets de l'OCDE en ce qui a trait à la mesure du soutien ? L'Organisation cherchera d'abord à mesurer les effets de différents types de soutien sur la production, les échanges et l'environnement. Il faudra ensuite définir les critères qui permettront de faire la part entre les bonnes et les mauvaises politiques. Enfin, la Direction de l'agriculture envisage d'organiser un séminaire international sur la mesure des subventions accordées à l'ensemble des industries. Ce séminaire aurait pour but de favoriser la discussion et de faire le point sur les recherches les plus récentes.

Le Président invite ensuite un représentant de la Division des affaires fiscales de l'OCDE à présenter un exposé sur les travaux de la Division relatifs à la concurrence fiscale dommageable.

Le Secrétariat (Division des affaires fiscales) indique que le projet sur les pratiques fiscales dommageables mené au cours des quatre à cinq dernières années a davantage attiré l'attention l'an dernier, à la suite de la décision du Conseil de l'OCDE de fixer aux paradis fiscaux des délais limites pour mettre fin à leurs pratiques fiscales dommageables. Ce projet présente certains points en commun mais aussi des différences notables avec les idées exposées dans le document de référence.

Premièrement, le projet a pour objectif principal non pas de promouvoir les échanges ou la concurrence, mais de protéger la base d'imposition des pays qui revendiquent le droit d'imposer leurs citoyens selon leur revenu mondial, et ce pour deux raisons : permettre aux pays de percevoir le revenu auquel ils estiment avoir droit et tenir compte de l'équité horizontale – lorsque certaines sociétés et leurs propriétaires parviennent à se soustraire à l'impôt dans leur pays, la charge fiscale du reste de la population est alourdie et cela n'est pas considéré comme équitable. Le projet ne vise pas directement à promouvoir la concurrence loyale entre les sociétés selon la méthode décrite dans la note de référence.

Le projet sur la concurrence fiscale a un champ d'application mondial – il ne concerne pas seulement les pays de l'OCDE mais aussi les paradis fiscaux et les pays non membres de l'OCDE qui ne sont pas considérés comme des paradis fiscaux. Pour l'instant, le projet est centré sur les services financiers et d'autres services mobiles sur le plan géographique. Ces domaines sont ceux où le risque d'érosion de la base d'imposition découlant de la concurrence fiscale internationale est le plus élevé et où

l'impact sur l'emploi, dans les pays attirant ces activités, est le plus faible. Cependant, certains pays non membres demandent à l'OCDE d'étendre le champ de l'analyse aux investissements réels.

Le projet ne vise pas à égaliser les taux d'imposition des entreprises parmi les pays de l'OCDE ou à l'échelle mondiale. Comme il est souligné dans la note de référence, des pays peuvent avoir des options différentes en matière de distribution des biens publics, d'aide sociale et d'imposition. De fait, selon une thèse légitime, bien que discutable, il n'est pas du tout indispensable d'imposer les entreprises. Cet argument fait en sorte que l'OCDE peut difficilement insister pour que les pays qui n'imposent pas ou très peu les sociétés instituent un taux d'imposition minimum pour les entreprises.

Le projet examine les pays où les taux d'imposition des entreprises sont faibles ou inexistant. Ces pays doivent respecter trois principes. L'OCDE n'insiste pas pour qu'ils s'abstiennent de pratiquer des taux d'imposition plus faibles qu'ailleurs, mais leur demande néanmoins de se conformer à ces trois principes. Le premier principe est celui de l'échange d'informations. Une juridiction qui pratique des taux d'imposition peu élevés doit être disposée à procéder à des échanges d'informations avec le pays de résidence des sociétés qui y exercent des activités, de manière à ce que ce pays puisse imposer leur revenu mondial. En d'autres termes, ces régimes fiscaux ne doivent pas être utilisés par les sociétés pour se soustraire à l'impôt. Le deuxième principe est celui de la transparence (on retrouve un principe similaire dans la note de référence). Selon ce principe, les régimes fiscaux préférentiels doivent être annoncés publiquement et être accessibles à toutes les entreprises admissibles, sur une base uniforme. Le troisième principe exclut le cantonnement. On retrouve dans la note de référence une idée similaire, selon laquelle l'accès aux subventions devrait être le même pour les ressortissants nationaux et étrangers. Le projet sur la concurrence fiscale concerne cependant les régimes préférentiels habituellement offerts aux entreprises étrangères et non aux entreprises nationales, alors que la note de référence s'intéresse surtout aux subventions offertes aux sociétés nationales et non aux sociétés étrangères. L'OCDE s'intéresse de près au cantonnement car il autorise une imposition plus faible des sociétés étrangères pour les attirer dans une juridiction, sans pour autant réduire la base d'imposition nationale. En d'autres termes, cette pratique équivaut à fausser l'affectation des ressources, sans qu'il en coûte quoi que ce soit.

Le Président s'adresse ensuite à la Commission européenne, dont le système très complexe de contrôle des subventions est décrit dans les articles du Traité instituant la Communauté européenne. Le Président demande des précisions sur le traitement réservé à certains secteurs comme l'agriculture, la construction navale, le transport maritime et la pêche ainsi que sur l'utilité de faire la part entre les « mesures générales » et les « mesures sélectives ». Le Président demande aussi à la Commission de formuler des observations sur les accords institutionnels visant à contrôler l'aide de l'Etat, sur les points faibles ou les contraintes des accords existants, de préciser si la Commission européenne cherche à se voir doter de pouvoirs supplémentaires pour contrôler l'aide de l'Etat, et de dire s'il serait possible de mettre sur pied un réseau d'autorités nationales semblable à celui qui a été créé pour l'application de la législation sur la concurrence.

La Commission européenne souligne d'abord que la définition de l'aide de l'Etat, telle qu'elle est énoncée à l'article 87(1) du Traité instituant la Communauté européenne, a été élaborée dans le cadre de la promotion du Marché commun. Cette définition a ensuite été étayée par la Cour de justice et au fil des pratiques de la Commission, mais est fondamentalement la même depuis plus de 40 ans. Cela montre qu'elle est très bien adaptée à son objectif. Cela étant dit, ce n'est pas nécessairement la meilleure définition ou celle qui convient le mieux dans d'autres contextes. Il conviendrait peut-être d'élaborer différentes définitions correspondant aux différentes instances (par exemple, l'OMC ou les administrations locales), pour autant que ces définitions soient compatibles.

Le contrôle de l'aide de l'Etat n'est qu'un des nombreux mécanismes qui permettent d'empêcher les distorsions de concurrence. Il ne supprime pas automatiquement toutes les situations de distorsion de

concurrence et n'a d'ailleurs pas été créé dans ce but. Il sert à examiner un type particulier de politiques qui faussent la concurrence – une panoplie de politiques importante, mais restreinte.

Le Traité dote la Commission d'une compétence presque exclusive sur les questions relatives à l'aide de l'Etat. La Commission détient aussi une compétence exclusive en ce qui a trait aux distorsions de concurrence définies aux articles 81 et 82 (distorsions engendrées par les activités anticoncurrentielles des entreprises). Mais d'autres domaines d'intervention des pouvoirs publics demeurent dans le champ de compétences des Etats membres. En ce qui concerne ces autres domaines d'intervention, les préoccupations suscitées par les effets des distorsions de concurrence pourraient déboucher sur l'adoption de mesures à l'échelle de l'UE, par exemple sur une harmonisation, mais cette question relève des Etats membres ou du Conseil.

S'agissant du secteur agricole, le Traité dispose que les règles relatives à l'aide de l'Etat s'appliquent à la production et au commerce de produits agricoles uniquement dans la mesure où le Conseil l'a déterminé. Si les Etats membres accordent un soutien à l'agriculture, les règles relatives à l'aide de l'Etat s'appliquent, mais dans la mesure où le Conseil l'a déterminé.

L'actuel système comporte des limites – la première étant la définition même de l'aide de l'Etat. Cette définition restreint les pouvoirs de la Commission. Certains cas ne sont pas couverts par la définition. La définition devrait-elle être étendue, de manière similaire à l'approche décrite dans la note de référence du Secrétariat ? Elle doit demeurer fonctionnelle et applicable. En cas d'extension de la définition, on ne sait pas bien si la Commission pourrait continuer de l'appliquer. Les Etats membres seraient-ils tenus d'indiquer toutes les mesures réglementaires ? Incomberait-il à la Commission de départager les biens publics qui sont justifiés et ceux qui ne le sont pas ? Ce rôle n'est actuellement pas envisagé pour la Commission.

Autre limite du système actuel, la Commission n'examine l'aide qu'après que l'Etat membre a décidé de s'en servir comme instrument d'action et a rejeté d'autres options. Par exemple, lorsque l'objectif recherché est lié à la protection de l'environnement, il est possible d'aider une entreprise afin de l'inciter à ne pas utiliser un produit polluant. Il serait aussi envisageable d'interdire simplement le produit. Mais il n'entre pas dans le rôle de la Commission de faire ce genre d'évaluation. Ces décisions relèvent des Etats membres. En de très rares circonstances, la distorsion de concurrence est tellement disproportionnée, compte tenu de l'objectif, qu'elle peut jouer un rôle indirect dans l'évaluation de la Commission, mais encore une fois, cela ne pourrait se produire qu'en des circonstances exceptionnelles.

Les compétences de la Commission sont également limitées par le fait que l'évaluation est toujours faite (du moins en principe) avant que l'aide soit accordée. L'évaluation doit par conséquent reposer sur des hypothèses et sur les informations disponibles à cette étape. En théorie, les programmes d'aide doivent être examinés après un certain délai – par exemple, deux ans – afin d'en évaluer les effets. L'examen vise à établir si la subvention remplit son objectif. L'effet recherché est-il atteint ? Dans la négative, l'aide doit être modifiée.

Dans l'ensemble, compte tenu de ces limites, le système fonctionne plutôt bien. La Commission peut adapter les critères de compatibilité avec le Traité à mesure que se développe le Marché commun. La Commission essaie d'empêcher les formes de subventions les plus susceptibles de créer des distorsions, ou de les soumettre à différents critères stricts. Pour certains types d'aide horizontale, elle tente de définir des niveaux d'aide acceptables.

Le délégué exprime son scepticisme au sujet de l'idée énoncée dans la note de référence selon laquelle, lorsque le capital est mobile, il n'est pas nécessaire de se soucier des subventions. Le délégué doute qu'advenant le cas où une région riche offre un allègement fiscal au titre d'un nouvel investissement,

une région pauvre qui ne disposerait pas des mêmes fonds pour offrir le même allègement serait en mesure de soutenir la concurrence, et conclut que tous les nouveaux investissements seraient par conséquent dirigés vers les régions riches. Cela irait à l'encontre de l'un des objectifs de la CE relatif au développement des régions plus pauvres.

Le Président ouvre ensuite le débat général. Il souligne que l'une des principales difficultés posées par les mécanismes d'aide à l'industrie est que, comme dans le cas des infractions aux lois sur la concurrence, les bénéficiaires sont très concentrés et luttent pour obtenir des avantages substantiels au titre de l'aide. Parallèlement, les coûts de l'aide, par rapport au budget général des Etats, sont plutôt faibles et les contribuables s'en préoccupent peu. Les autres industries ne s'en soucient pas beaucoup plus. Par conséquent, en l'absence d'un système de contrôle (prévu par la constitution ou par des conventions internationales), il est difficile de contrôler les subventions de l'intérieur ou sur une base volontaire.

Le Danemark remercie le Secrétariat pour son document remarquable et complet, qui aborde de nombreuses questions intéressantes. Le délégué fait observer que toutes les subventions ne sont pas par définition mauvaises ou condamnables. Certains types de soutien comme l'aide à la R-D, à l'éducation ou aux infrastructures, sont largement acceptés. Le délégué ne partage pas l'opinion selon laquelle l'aide de l'Etat ne pose pas de problème si elle n'est pas accordée sur une base discriminatoire. Dans la pratique, les entreprises ne sont pas aussi mobiles qu'il le faudrait pour empêcher la discrimination. Par ailleurs, les pays devraient s'assurer que l'accès à l'aide à l'infrastructure, à la R-D, etc. n'est pas discriminatoire. Le délégué note également le rôle clé que l'OMC pourrait jouer en continuant de traiter ces questions d'une manière ou d'une autre.

Le Danemark est le premier pays membre de l'UE à avoir introduit le contrôle de l'aide de l'Etat. La loi afférente est entrée en vigueur le 1<sup>er</sup> octobre 2000. Cette nouvelle loi porte sur l'aide qui n'a pas d'effets transfrontaliers et vise en particulier l'aide offerte par les administrations locales, non directement approuvée par l'administration centrale, ou qui sort du cadre juridique prévu pour les municipalités. La loi stipule que lorsqu'elles évaluent l'aide, les autorités de la concurrence doivent déterminer si elle est accordée de manière sélective ou discrétionnaire. Il est prévu que la plupart des examens menés en vertu de cette loi concerneront des mesures indirectes comme la prestation de services aux entreprises à un coût inférieur à ceux du marché.

Le Président demande si la loi confère un pouvoir de contrôle sur des lois adoptées par les administrations centrale et locales ou si elle ne couvre que les actions menées en vertu de lois déjà en vigueur.

Le Danemark répond qu'il n'est évidemment pas possible d'annuler des décisions du Parlement. Les décisions des autorités locales peuvent l'être dans une certaine mesure, mais cela est de fait plus complexe sur le plan juridique.

Le Président demande si l'office de la concurrence, maintenant habilité à contrôler l'aide de l'Etat au Danemark, sera la contrepartie de la Commission européenne en ce qui a trait au traitement des questions concernant l'administration de l'aide de l'Etat, où si ce rôle sera assumé par différents ministères comme par le passé.

Le Danemark répond que cette question sera résolue graduellement. Le délégué estime qu'au fil du temps, l'autorité compétente travaillera de plus en plus étroitement avec la Commission. Il est souvent difficile de déterminer la présence d'effets transfrontaliers et, par conséquent, l'autorité compétente. L'autorité de la concurrence doit également sensibiliser le public et les responsables politiques du fait qu'elle exerce dorénavant le même rôle que la Commission pour ce qui est d'assurer la cohérence des autres niveaux d'administration. Le rôle de l'autorité de la concurrence ne consistera pas à défendre

d'autres ministères auprès de la Commission. Par ailleurs, elle peut indiquer aux ministères les points forts des dossiers soumis à la Commission. Le délégué fait observer qu'il entrevoit, dans l'avenir, le développement d'un réseau de mise en œuvre des aides de l'Etat. Rien ne justifie que sur le plan de la politique gouvernementale, l'aide de l'Etat soit administrée très différemment de la politique de la concurrence.

La France pose ensuite une question sur la distinction entre les subventions privées et publiques. On constate que les entreprises, lorsqu'elles veulent conquérir un nouveau marché ou investir dans un nouveau marché ou un nouveau service, ont tendance à subventionner leurs propres activités. Ainsi, une entreprise essuie souvent des pertes lorsqu'elle développe un marché à l'exportation ou lance un nouveau produit. Quelle différence faut-il faire, en termes de définition ou d'appréciation des faits, entre une aide de l'Etat (c'est-à-dire une aide accordée par une administration) et une aide offerte par une entreprise pour développer de nouveaux marchés ou produits ? S'il faut appliquer des critères différents pour l'évaluation de l'aide privée et de l'aide de l'Etat, en quoi et pourquoi ces critères doivent-ils être différents ? La CE applique le principe de l'investisseur en économie de marché pour faire la distinction entre une subvention et ce qui surviendrait normalement sur un marché économique, mais comment ce principe peut-il être fonctionnel compte tenu du fait que certaines entreprises subventionnent leurs activités pendant des décennies ? Citons un autre exemple, à savoir que l'une des recommandations du rapport Hilmer, en Australie, était que les entreprises d'Etat qui sont en concurrence avec des entreprises privées ne doivent pas bénéficier de mesures qui leur procurent un avantage concurrentiel du fait qu'elles sont la propriété de l'Etat. Dans la pratique, comment cette évaluation peut-elle s'effectuer ?

Les Etats-Unis (ministère de la Justice) remarquent que la note de référence est fouillée et stimule la réflexion mais estiment que l'approche ouverte de la définition des subventions et de l'aide de l'Etat n'est ni réaliste ni pratique. L'inclusion des écarts fiscaux ou des disparités entre les biens publics ou les systèmes de réglementation empêche de mesurer le degré d'aide. Il est sans doute préférable de s'en tenir à la mesure directe des transferts financiers – c'est-à-dire de ce qu'un gouvernement retire en contrepartie des avantages de quelque nature qu'il accorde à une entreprise.

Les Etats-Unis (FTC) contestent l'approche large de la définition d'une subvention. N'existe-t-il vraiment aucune distinction entre les réductions d'impôt et les subventions ? Dans quelle optique peut-on considérer une réduction générale d'impôt comme une subvention ? La note de référence suggère que la décision de s'abstenir de prélever de l'impôt constitue une forme de subvention. Cela signifie-t-il que si un parlement qui a envisagé de percevoir de l'impôt pour ensuite changer d'avis a de ce fait institué une subvention ? En outre, le document de référence semble impliquer que si deux pays imposent un régime de contrôle des dommages à l'environnement – mais s'y prennent différemment, de sorte que les deux régimes, bien qu'également efficaces, n'entraînent pas les mêmes coûts – le régime le moins onéreux se trouve d'une certaine façon à subventionner l'industrie. Cela irait à l'encontre du but recherché.

Le Secrétariat répond à la question des Etats-Unis et précise que bien que certaines disparités fiscales internationales puissent affecter la concurrence entre les entreprises, cela ne signifie pas qu'il faudrait les supprimer toutes, parce qu'il peut se révéler efficient que différents pays aient des régimes fiscaux différents. De même, bien que des différences, par exemple entre les niveaux des contrôles liés à l'environnement, puissent affecter la concurrence entre les entreprises, elles peuvent néanmoins se révéler efficientes. Cela s'explique par le fait que le niveau approprié des contrôles de la pollution diffère selon les pays en raison de facteurs propres à chacun. Une réglementation « laxiste » tient peut-être simplement au fait que les dommages à l'environnement sont inexistant, mais peut aussi constituer une tentative inefficace de fausser la concurrence.

Le Secrétariat fait observer que les Etats-Unis ont raison de souligner qu'il serait opposé aux effets visés de juger qu'un régime de réglementation fausse la concurrence de manière inefficace

simplement du fait qu'il a obtenu un résultat donné à un coût moindre qu'un autre régime de réglementation. Ce qui importe est le résultat atteint au moyen du régime de réglementation – et non les coûts des mesures prises pour atteindre ce résultat. Si, dans deux pays possédant les mêmes caractéristiques, les régimes de réglementation ont permis d'atteindre des résultats identiques, on ne peut pas dire qu'un pays a bénéficié d'une subvention et l'autre non. Par ailleurs, si l'efficacité économique exige des contrôles stricts, on pourrait dire que le pays dans lequel sont exercés les contrôles les moins rigoureux (mais pas nécessairement les moins onéreux) a faussé la concurrence de manière inefficace en faveur de ses entreprises.

Le Secrétariat répond ensuite à l'observation de la France. Il fait remarquer que la différence entre une subvention « interne » d'une entreprise privée et une subvention « externe » versée par un gouvernement à une entreprise tient à l'origine des fonds utilisés. Une entreprise bien administrée soumise aux règles du marché des capitaux doit assumer un coût pour tous les fonds qu'elle utilise au titre de ses subventions internes. En d'autres termes, elle doit s'attendre à obtenir un rendement suffisant sur son « investissement » dans la subvention pour compenser le coût des fonds utilisés. Pour autant que l'entreprise ne soit pas dominante et ne verse pas la subvention dans le but de supprimer la concurrence (c'est-à-dire en pratiquant des prix d'éviction), ce type de subvention interne peut aussi être pratiquée similairement par toutes les entreprises présentes sur le marché (c'est-à-dire que la lutte se fait « à armes égales ») et ne sera donc pas considérée comme anticoncurrentielle.

La situation est différente, cependant, lorsqu'un nombre restreint d'entreprises présentes sur le marché peut utiliser des fonds sans devoir assumer le coût d'opportunité total des fonds (autrement dit, si ces entreprises peuvent bénéficier des fonds publics, de prêts à faible taux d'intérêt d'une banque d'Etat, etc.) Ces entreprises sont alors avantagées par rapport aux autres, ce qui peut créer une distorsion de concurrence inefficace. La difficulté qui se pose est par conséquent de faire en sorte que les entreprises (notamment les entreprises d'Etat) n'aient pas accès aux fonds publics à des conditions différentes de celles du marché.

La Commission européenne explique comment elle applique le « test de l'investisseur en économie de marché ». Ce test est utilisé lorsqu'il est difficile de déterminer la présence d'une subvention ou d'une aide de l'Etat. Par exemple, lorsqu'un Etat membre a injecté du capital dans une entreprise, on ne sait pas bien à première vue s'il s'agit d'une aide de l'Etat ou d'une opération économique normale. La Commission compare le comportement de l'Etat avec celui d'une société privée hypothétique. Cette évaluation économique n'est pas toujours facile à réaliser. L'évaluation est facilitée lorsque l'Etat investit avec des investisseurs privés. La présence d'investisseurs privés indique alors qu'il est raisonnable que l'Etat investisse et que son intention n'est pas d'accorder une aide mais de réaliser un profit.

Le Président admet que logiquement, nous pouvons définir ce qui constitue une subvention aussi largement que nous le voulons. Plus la définition est large, plus la deuxième étape est importante – elle consiste à déterminer si une subvention donnée est inefficace parce qu'elle réduit le bien-être général. Le Président note qu'on pourrait soutenir que comme Paris possède un métro fonctionnel et efficace, les entreprises qui y résident sont subventionnées comparativement aux entreprises implantées à Rome (les entreprises parisiennes doivent payer moins pour attirer la main-d'œuvre et celle-ci est plus productive parce que ses trajets quotidiens sont moins pénibles.) Mais on ne peut pour autant qualifier d'inefficace la subvention du système de transport en métro par la municipalité de Paris ou le gouvernement français.

La Corée fait valoir que la définition de l'aide de l'Etat ou de la subvention doit être fonctionnelle. A cet égard, il y a lieu de restreindre la définition de la subvention de manière à ce qu'elle ne s'applique qu'aux aides fiscales et aux dépenses publiques. En ce qui concerne la question soulevée par la France, la législation coréenne sur la concurrence pose le fondement juridique de la réglementation des sociétés-mères qui subventionnent indûment leurs sociétés associées en faillite ou en difficulté. Cette

disposition vise en particulier les conglomérats ou *chaebols*. La KFTC peut poursuivre une entreprise pour subvention interne et demander aux entreprises d'annuler ces subventions ou de leur imposer des sanctions judiciaires.

L'Australie remarque qu'elle a été saisie de la question des subventions sur plusieurs fronts, en particulier depuis que les entreprises australiennes font concurrence, sur le marché mondial, à d'autres entreprises subventionnées. Le délégué australien fait remarquer que la note de référence est un peu trop sereine à l'égard des éventuelles conséquences économiques dommageables des subventions. Il y a une tendance à subventionner des industries et des secteurs inefficients. On pourrait peut-être restreindre la portée du document pour la limiter à un ou deux secteurs. La présentation de la Direction de l'agriculture démontre que la question des subventions à l'agriculture est très différente de celle des subventions accordées dans de nombreux secteurs d'activité. L'approche de l'Australie vise à faire en sorte que l'agriculture ne soit pas traitée différemment des autres secteurs. Le délégué australien souligne également qu'il faudrait examiner davantage le rôle des mesures appliquées aux frontières assimilables à des subventions. Ces mesures, dont il est rarement question, sont sans doute la forme la plus évidente de subventions et les exportateurs australiens y sont confrontés.

Le Secrétariat de la Direction de l'agriculture reconnaît que la définition d'une subvention doit avoir une utilité pour être fonctionnelle. Les définitions de l'estimation du soutien aux producteurs et de l'estimation du soutien total élaborées par l'OCDE, qui sont essentiellement des mesures des transferts des consommateurs et des budgets des pouvoirs publics, sont largement fonctionnelles. Elles permettent d'établir des comparaisons entre des pays utilisant une méthodologie uniformisée. Elles sont en outre bien comprises par les responsables de l'élaboration des politiques. Le Comité de l'agriculture s'est demandé comment il fallait prendre en compte les arguments relatifs aux biens publics. Plusieurs pays ont invoqué le fait que l'agriculture fournit certains biens publics, comme des avantages liés à l'environnement ou à la sécurité alimentaire, qui justifient les subventions. Le tout est de savoir comment est attribuée la subvention. Est-ce par le biais d'une barrière commerciale ou d'une action mieux ciblée ?

La Commission européenne pense comme le Secrétariat qu'une définition doit être fonctionnelle. La définition utilisée dans le Traité instituant la Communauté européenne s'applique depuis plus de 40 ans et est devenue très fonctionnelle. Il est vrai que les différences entre les normes environnementales peuvent avoir un effet sur la situation concurrentielle des entreprises, mais pour que la définition de l'aide de l'Etat soit fonctionnelle, il faut également tracer des limites – tout ne peut être placé sous le contrôle de l'Etat. Comme la Commission détient une compétence exclusive sur les questions relatives à l'aide de l'Etat, il existe une tendance à élargir la définition de l'aide de manière à étendre les pouvoirs de la Commission, mais cela ne constitue pas nécessairement une bonne approche. Il existe d'autres moyens de lutter contre les distorsions causées par les différences entre les normes environnementales, par exemple l'harmonisation des directives.

Le Président remarque qu'il ne veut pas insister outre mesure sur la nécessité qu'une définition soit fonctionnelle. Il est entendu qu'une définition doit être fonctionnelle. Mais elle doit aussi être juste. La note de référence ne propose pas une définition plus fonctionnelle mais met en lumière les points faibles des définitions existantes, mêmes si elles sont fonctionnelles. Il est pertinent de discuter des points théoriques si cela permet d'engager des actions mieux ciblées.

Le Président passe à un autre sujet et remarque que certains pays de l'OCDE, à l'exception du Danemark, sont dotés de pouvoirs de contrôle sur l'aide interne de l'Etat. Il s'agit notamment des pays qui cherchent à accéder à l'Union européenne – la République tchèque, la Pologne et la Lituanie. Le Président invite le délégué de la République tchèque à expliquer pourquoi l'agriculture et la pêche sont exclues du contrôle interne de l'Etat. Le Président demande également si l'autorité de la concurrence peut annuler directement les lois relatives aux subventions ou simplement lutter contre leur mise en œuvre.

La République tchèque souligne que l'Office de la protection de la concurrence ne participe à la surveillance de l'aide de l'Etat que depuis le 1er mai 2000 – date d'entrée en vigueur de la loi nationale relative à l'aide de l'Etat. Cette loi interdit les aides de l'Etat qui faussent ou risquent de fausser la concurrence en donnant à une entreprise un avantage qui pourrait affecter le commerce entre la République tchèque et des Etats membres de l'Union européenne. L'exemption de l'agriculture et de la pêche tient à certains aspects spécifiques du commerce dans ces deux secteurs. L'Office de la protection de la concurrence peut par ailleurs autoriser exceptionnellement l'aide de l'Etat définie comme prohibée. Il est habilité à consentir une exemption au cas par cas ou par décret (exemption globale) pour certaines aides de l'Etat.

Le Président remarque que la Pologne procède actuellement à l'harmonisation de ses lois avec celles de l'Union européenne et a adopté, le 1er janvier 2001, une nouvelle loi contrôlant l'aide de l'Etat.

La Pologne note qu'en vertu de cette nouvelle loi, le contrôle de l'aide de l'Etat relève de la responsabilité de l'Office de la concurrence et de la protection des consommateurs. La loi établit les conditions aux termes desquelles l'aide de l'Etat peut être accordée, conformément aux règles de la Commission européenne. En outre, la loi détermine les procédures de surveillance et de contrôle de l'aide. La collecte des informations sur l'aide accordée est nécessaire pour évaluer son efficacité et pour élaborer les rapports destinés à différentes organisations. Tous les projets de loi doivent être soumis à l'examen de l'Office de la concurrence et de la protection des consommateurs, qui doit émettre son opinion quant à la compatibilité des règles qu'ils contiennent.

Dans le cadre du système de contrôle de l'aide de l'Etat en Lituanie, le Conseil de la concurrence de la Lituanie est chargé de l'autorisation et de la surveillance de l'aide de l'Etat. La nouvelle loi s'attache en grande partie à établir les règles de procédure – qui précisent le type d'aide qui doit être notifié et la procédure que doit suivre le Conseil de la concurrence pour autoriser l'aide de l'Etat. Le Conseil de la concurrence s'occupe actuellement de la préparation des lois accessoires correspondantes. La loi exclut l'aide de l'Etat à l'agriculture. Dans un cas, le gouvernement a autorisé par décret le ministère des Finances à accorder de l'aide sous forme d'assurance à l'exportation. Le ministère des Finances doit notifier ce type d'aide au Conseil de la concurrence, qui détermine sa légitimité.

Le Président présente ensuite l'Italie, et fait remarquer que ce pays mentionne une affaire du secteur du transport maritime à l'occasion de laquelle l'autorité de la concurrence a fait usage de ses attributions.

Le délégué de l'Italie note que même si l'Etat italien soutient son industrie depuis longtemps, l'aide publique a été réduite au cours des dernières années, notamment par le biais de la privatisation et de l'intervention de la Commission européenne. L'autorité de la concurrence est intervenue dans une couple d'affaires portant sur l'aide de l'Etat. La première affaire concernait le comportement d'une entreprise fournissant des services de transport maritime. Cette entreprise appartenait à la société holding Finmare. La société holding recevait des subventions de l'Etat pour assurer des services réguliers sur plusieurs liaisons nationales et internationales. D'autres sociétés ont porté plainte au sujet des subventions que recevait la société Finmare, en alléguant que celles-ci faussaient la concurrence sur les marchés concernés. L'autorité de la concurrence a émis l'opinion que sur plusieurs des liaisons en cause étaient présents des concurrents qui ne recevaient pas de subventions. Il n'était pas évident qu'une subvention était justifiée. L'autorité de la concurrence a en outre fait valoir que la subvention n'était pas versée selon un mécanisme transparent. On ne voyait pas bien quelle portion de la subvention se rapportait aux coûts réels que devait engager la société pour fournir un service qui n'aurait pu être fourni autrement. L'autorité de la concurrence a enfin recommandé que le Parlement et le gouvernement assujettissent les subventions à des règles transparentes et non discriminatoires et mettent en œuvre des procédures d'attribution des subventions sur appels d'offres.



L'Italie a également examiné une affaire d'abus présumé de position dominante. En 1995, une plainte a été portée contre une société du groupe Finmare fournissant des services sur des liaisons entre l'Italie et l'Afrique du Sud. L'un des plaignants a indiqué que ces sociétés pratiquaient des prix d'éviction en tirant parti des subventions versées par l'Etat. L'autorité de la concurrence a clos le dossier en déclarant qu'il ne s'agissait pas d'une violation parce que la part de la société sur le marché concerné n'était pas élevée et qu'elle n'occupait pas une position dominante.

Le Président note que la Corée envisage de doter l'autorité de la concurrence d'un pouvoir de contrôle sur les subventions. La présentation de la Corée soulève également la question de la distinction entre les subventions directes et indirectes. Une subvention peut aussi avoir des effets en aval sur la concurrence. Par exemple, une subvention à la sidérurgie peut très bien avoir des effets sur la concurrence dans le secteur de la construction automobile.

La Corée admet qu'elle envisage de donner à la KFTC le pouvoir de contrôler certaines subventions qui faussent la concurrence. Ces pouvoirs ne sont pas encore dévolus bien que certains aspects de la loi sur la concurrence permettent à la KFTC d'examiner, sous l'angle de la politique de la concurrence, les décisions des ministères d'ajouter ou de modifier des articles de loi. La KFTC a déjà les pouvoirs d'examiner attentivement d'autres lois, notamment celles qui autorisent le versement de subventions par les ministères ou une administration locale. La Corée félicite l'OCDE de son initiative de table ronde, qui va dans le sens de ses propres tentatives d'amorcer une réflexion au sein du gouvernement coréen et d'assurer qu'une autorité de réglementation soit habilitée à examiner ces subventions.

L'Australie signale que dans le cadre de la politique nationale de la concurrence, l'Office des plaintes relatives à la neutralité de la concurrence a été créé. Cet organisme a pour rôle de recevoir toutes les plaintes des entreprises relatives à la neutralité de la concurrence. Lorsqu'il est établi que les entreprises d'Etat pratiquent une concurrence déloyale ou tirent avantage de leur position en tant qu'entreprises d'Etat, l'organisme peut adresser des recommandations au ministre compétent pour qu'il remédie à la situation.

L'Espagne demande si les termes « légitime » et « illégitime » sont appropriés dans le contexte des discussions sur les subventions. La légitimité ou l'illégitimité relèvent des choix de société et dépassent largement des questions comme celles de savoir si une action fausse ou non la concurrence.

Le Président précise que les termes « légitime » et « illégitime » ont été utilisés pour communiquer l'idée d'efficacité économique ou d'« amélioration du bien-être ». Une subvention peut fausser la concurrence mais n'est pas nécessairement inefficace. Par exemple, il se peut que pour conserver la beauté d'un paysage toscan, il soit nécessaire de subventionner les agriculteurs. Selon l'appréciation de chacun, la subvention sera considérée comme une amélioration du bien-être et, par voie de conséquence, comme légitime. La difficulté tient au fait que la question des choix fondamentaux en matière d'action des pouvoirs publics vient se greffer sur celle du contrôle des subventions et de la promotion de la concurrence.

Les Etats-Unis posent la question : la discussion devrait-elle se limiter aux effets des subventions sur la concurrence et exclure les problèmes posés par la différenciation de ce qui est légitime et de ce qui ne l'est pas ?

Le Président note que le Groupe de travail examine des questions où se recoupent concurrence et réglementation. Cela sous-entend qu'il faut se demander si une réglementation donnée améliore le bien-être ou non et ne pas se borner à étudier les effets des réglementations sur la concurrence.

Le Président conclut la table ronde en notant que la discussion a soulevé plus de questions qu'elle n'a apporté de réponses. Le principal problème est celui de la définition – d'une subvention, mais aussi de

ce qui est légitime et de ce qui est illégitime. La Commission européenne fournit un très bon exemple de la façon dont une organisation supranationale peut exercer des pouvoirs de contrôle sur l'aide de l'Etat parmi les pays membres. Mais il ne s'est tenu jusqu'ici que peu de débats sur la définition des aides de l'Etat et des instruments et institutions de contrôle appropriés. L'une des grandes réussites de la Commission européenne en matière de concurrence est qu'elle a rapidement tenu un rôle clé dans l'application des lois antitrusts. Lentement, les pays membres se sont ralliés et un par un, ont adopté une loi sur la concurrence. Un réseau d'autorités de la concurrence a ensuite été mis sur pied. Un réseau similaire de contrôle de l'aide de l'Etat pourrait bien voir le jour dans l'UE, à l'initiative du Danemark.

Cette question est importante car dans de nombreux pays de l'OCDE, de 60 à 65 pour cent des entreprises reçoivent une forme quelconque de subvention. Il s'agit d'un gaspillage de ressources. Si chacun acceptait de supprimer les subventions, tous s'en porteraient mieux.