STATE AIDS (RESTRUCTURING): COMMISSION GUIDELINES

Subject: State aids

Industry: All industries

Source: Commission Statement 1P/99/470 dated 8 July 1999.

(Note. In two respects this Statement casts an interesting light on "protectionist Europe". First, it shows that, while the total volume of ad hoc state aid declined during the 1990s, this was solely due to the decline in aid to the new German provinces, so that for the rest of Europe the level actually increased. Second, it shows that four of the five largest Member States - Germany, France, Italy and Spain - accounted for 95% of the aid granted. Although the Commission is, quite rightly, acting against cartels and monopolies which distort competition, it seems unable to meet adequately the challenge presented by aids granted by governments which are influential in the European Union. At the same time, if the Commission vigorously pursues the policy set out in its new guidelines on restructuring aid, there may be a glimmer of hope for the future.)

The Commission has adopted a new set of guidelines against which it will assess Member States' plans to give aid to rescue and restructure firms in difficulty. The new text represents a tightening of the rules, in line with the commitment made by the Commission in the Single Market Action Plan in 1997.

Aid for rescue and restructuring companies in difficulty has been at the centre of some of the largest and most controversial state aid cases in recent years. The Commission has repeatedly expressed its concern about the level of such aid in the European Union, which is often given on an "ad hoc" basis in response to a sudden crisis and which is particularly apt to distort the single market. The new text strengthens the rules in several areas, notably repeated restructuring aid. The "one time-last time" rule excludes a second restructuring aid for a company for ten years after the end of its first restructuring. New firms and firms formed out of the assets of previous ones are excluded from the Member States' right to give aid approved for other reasons (such as regional aid) to companies undergoing an aided restructuring.

At the same time the text maintains the basic principles of the old one: rescue aid is a short term holding operation while the future prospects of the enterprise are assessed, and can be granted only in the form of loans and guarantees. Restructuring aid can be granted only in the context of a detailed restructuring plan which will restore the company to viability. The Commission's seventh survey on state aid in the European Union, published in March 1999, showed a decrease in the level of state aid given on an ad hoc basis from an annual average of €15,500 million in the period 1993-95 to €12,400 million in the period 1995-97. However, this decrease was accounted for entirely by the progressive reduction in aid in the new provinces of Germany. In other parts of the European Union, notably in Spain and France, the level of such aid increased between the two periods. Over 95% of such aid in the European Union is accounted for by four Member States: France, Germany, Spain and Italy.

The Commissioner responsible for competition policy, who proposed the new rules to the college of Commissioners, welcomed their adoption. He said: "The distortion caused by aid to failing companies can be very damaging to the internal market, because of its negative effect on the incentive to compete and to succeed. There have been several well-known and disturbing cases in the past. I have been determined to tighten the rules in this area and am delighted that the present Commission has agreed with me. We have created for our successors a solid base for controlling this particularly distortive type of aid. The new rules cover the special situation which has applied to rescue and restructuring aid in the new Province of Germany. In recent years the Commission has made special allowances for cases arising there in view of the special difficulties associated with the region's emergence from being a non-market economy. The new text sets clear time limits to this special treatment, the Commission being of the view that the justification for special treatment is now at an end."

With some exceptions, the new rules will come into effect for aid to large firms as soon as they are published in the Official Journal. They will come fully into effect for all firms from 1 July 2000 and will be valid for five years from publication. The text replaces the existing guidelines which were adopted in 1994, initially for 3 years. They have since been extended twice while the Commission has worked on their revision. Recent cases looked at under the old guidelines include Credit Lyonnais, other banking cases in Italy and France, and a large number of cases in the new Provinces of Germany. □

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