



European Commission

## Competition

**Global Forum on Competition,  
Paris, 16-17 February 2012**

# Competitive neutrality - focus on EU State Aid policy

**Gert-Jan Koopman**

Deputy Director-General for State aids  
DG Competition, European Commission

European Commission,  
DG Competition, Deputy Director-General for State aids



European Commission

## Competition

# Competitive neutrality in the EU

- EU integration: strong economically, less politically
- Role of State in economy: Different traditions in the EU - Continental Europe vs. UK - Ireland vs. Central Eastern Europe

⇒ Competitive neutrality is key to ensure a level playing field in the EU

⇒ Competitive neutrality is enshrined in EU rules

European Commission,  
DG Competition, Deputy Director-General for State aids



## Competitive neutrality in EU rules

Competitive neutrality requires strong rules at EU level

- EU Treaty, Art. 345: “The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.”
- Public procurement rules
- Taxation
- Transparency directive
- Competition control (antitrust/merger and state aid control)



## Undertakings – Economic activity

- Undertaking = entity engaged in an economic activity
- Economic activity = offering goods and/or services on a market
  - regardless of: its legal status (in-house activity by a public authority, SOE, private undertaking ...)
  - regardless of: the way it is financed
  - regardless of: profit-making or non-profit making

Substantive test, not formalistic; no definitive list of criteria; assessment on case by case basis



## State Owned Enterprises

- ⇒ can engage in economic activities
- ≠ do not necessarily offer public services (SOE ≠ SGEI)
- ≠ are not necessarily non-profit organisations
  
- ⇒ are free to operate as private undertakings
  - ⇒ then also same treatment as private undertakings
  - ⇒ also subject to competition rules (antitrust/merger and state aid control)



## Value of transparency

- Transparency Directive: essential instrument to ensure level playing field
- Obligation of separate accounts for undertakings enjoying special/exclusive rights or entrusted with SGEI that receive compensation
- Avoid overcompensation and cross-subsidisation from public service to commercial activities



## State aid control

- Article 107(1) TFEU  
*“[...] 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 internal market”*
- Articles 107(2) and (3) TFEU subsequently set out exceptions to the general rule (compatibility)



## State aid control

- Centralised control by the European Commission
- Compatibility guidance
- 1000 cases per year
- Based on notifications and complaints



European Commission

## Competition

### Public services

- State aid control allows aid for the provision of public services
- But requires
  - ✓ Value for money (no overcompensation)
  - ✓ Open and competitive markets
  - ✓ Avoiding spillovers
  - ✓ Incentives for efficiency

European Commission,  
DG Competition, Deputy Director-General for State aids



European Commission

## Competition

State aid control is good for you!

European Commission,  
DG Competition, Deputy Director-General for State aids



## Value of State aid control

For the EU, state aid control = essential tool to ensure the internal market  
BUT state aid control has value in itself

Supranational organisation is not necessary

Example: candidate countries, Russian Federation -> national systems of state aid control

- State aid control promotes competitiveness:
  - Re-directs public funds to good policy objectives (e.g. R&D)
  - Fosters productivity & innovation
- State aid control avoids wasting public funds:
  - Avoids subsidy races
  - No support for lame ducks



## More value of State aid control

- State aid control is a coordination tool
  - avoids distortions among States, regions
- State aid control guarantees a level playing field
  - transparent, predictable rules, applicable to all (private and public undertakings alike => essential tool for competitive neutrality)
- State aid control adapts to public service needs

Example La Poste



European Commission

**Competition**

Thank you for your attention

European Commission,  
DG Competition, Deputy Director-General for State aids