State aid to IBIDEN Hungary: Assessing the relevant market in the context of a large investment project

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Introduction
As defined in the Commission's 2002 Multisectoral Framework on regional aid for large investment projects (2) (MSF), a large investment project is an initial investment with an eligible expenditure above EUR 50 million. Such projects are considered to be relatively less affected by regional handicaps, because the companies investing in those projects generally benefit from economies of scale, easier access to capital and credit, a geographically wider pool of labour and considerable bargaining power vis-à-vis the aid granting authorities, which can create 'subsidy auctions' between Member States to attract those investments (3). Therefore, while the Commission recognises the benefits of large investment projects in terms of regional development in the assisted regions, the MSF provides for the automatic, progressive scaling-down of regional aid ceilings for these large investment projects so as to limit distortions of competition (4).

Moreover, the Member States must notify individually any aid for investment projects above certain notification thresholds, whether the aid is being based on an existing regional aid scheme or not. In such cases, aid exceeding the notification threshold is only allowed if the market share of the beneficiary does not exceed 25 % and the capacity created by the project does not go above 5 % of an underperforming market.

On 30 April 2008, the European Commission prohibited, under EC Treaty state aid rules, a regional investment aid of EUR 9.56 million in present value which Hungary planned to implement in favour of IBIDEN Hungary Gyártó Kft. (IBIDEN Hungary) (5). The Commission's formal investigation procedure, launched in July 2007, revealed that the project was not in line with the requirements of the EU rules on regional investment aid and, more particularly, not in line with the MSF. Specifically, IBIDEN's market share in the relevant market of ceramic substrates for diesel particulate filters, to be fitted in the exhaust systems of diesel passenger cars and light duty trucks, was found to exceed the relevant 25 % threshold in Europe. As the Hungarian authorities had not yet granted the aid, it was not necessary to order its recovery from the beneficiary.

In its decisions concerning regional investment aid to IBIDEN Hungary, the Commission has for the first time initiated and closed an in-depth investigation procedure under the MSF, after having received comments from several interested parties, with regard to the definition of the relevant market in the context of regional aid for a large investment project. The issue of the delineation of the relevant market was a key aspect to be addressed in assessing this case.

The Commission’s assessment in the present case will set a precedent as regards the extent of the information the Commission may take into consideration when assessing the issue of the relevant product market in the context of regional aid for a large investment project. The decision also illustrates the Commission's determination to take a restrictive line on regional aid for large investment projects which distorts competition in favour of a significant market player and is liable to cause considerable distortion of trade between Member States. This approach is in line with the European Council’s repeated requests for less and better targeted state aid, and also with the Commission’s State Aid Action Plan (6). The Action Plan advocates a more refined economic approach, which is particularly relevant in assessing the impact of the aid measure on competition and in checking the market position of the beneficiary and delineating the relevant market in which it operates.

(1) Directorate-General for Competition, units H-1 and D-3. The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

(2) Communication from the Commission — Multisectoral framework on regional aid for large investment projects, OJ C 70, 19.3.2002, p. 8, as modified by the Commission communication on the modification of the Multisectoral Framework on regional aid for large investment projects (2002) with regard to the establishment of a list of sectors facing structural problems and on a proposal of appropriate measures pursuant to Article 88 paragraph 1 of the EC Treaty, concerning the motor vehicle sector and the synthetic fibres sector, OJ C 263, 1.11.2003, p. 3.

(3) Cf. points 13 and 15 of the 2002 Multisectoral framework on regional aid for large investment projects.

(4) Cf. paragraph 21 of the MSF.


Facts of the case

IBIDEN Hungary, a Hungarian subsidiary of IBIDEN Co. Ltd., which has its headquarters in Japan, decided to set up its second production plant in the EU for the manufacturing of ceramic substrates for diesel particulate filters (DPF) in the Dunavarsány Industrial Park (Central Hungary region). Its first production plant in the EU was set up in France in 2001.

In order to undertake an assessment of the compatibility of aid for a large investment project in view of the potentially significant effects on competition, the MSF requires an individual notification of regional aid for large-scale investment projects (9). In August 2006, pursuant to this requirement, the Hungarian authorities notified the aid package to the Commission: it consisted of a direct grant and a corporate income tax allowance for IBIDEN Hungary’s investment project. The total eligible investment costs of the two phases of the investment project amount to EUR 168.30 million in present value and the total amount of aid which was planned to be granted to the beneficiary is EUR 39.29 million in present value. The aid was meant to promote the regional development of the Central Hungary region, which at the time of the notification was an assisted area, pursuant to the derogation in Article 87(3)(a) of the EC Treaty for the period 2004-2006 (9).

The aid to IBIDEN Hungary was to be granted on the basis of existing regional aid schemes (9). In line with the rules on regional aid, IBIDEN Hungary had already been granted aid under existing schemes worth EUR 29.73 million for the same investment project, i.e. up to the individual notification threshold established in paragraph 24 of the MSF. Thus, the Commission’s decision concerned only the remaining amount of EUR 9.56 million.

The Commission’s initial doubts concerning the relevant product market

On 10 July 2007, the Commission, pursuant to Article 6(1) of Council Regulation No 659/1999 (10), took a decision to initiate the formal investigation procedure (hereinafter: ‘opening decision’) into the aid for the investment project of IBIDEN Hungary (11).

In its compatibility assessment, the Commission considered, among other things, the conformity of the aid measure with the MSF rules. First, it confirmed that the proposed aid intensity of the overall aid package (22.44% net) was in compliance with the adjusted regional aid ceiling pursuant to MSF rules. Second, compliance of the notified aid with paragraph 24(a) (i.e. market share of the beneficiary at group level) and 24(b) (i.e. the capacity created by the investment) of the MSF had to be assessed.

(9) HU 1/2003 ‘Earmarked Scheme for Investment Promotion’ (which was submitted under the interim procedure and accepted by the Commission as existing aid within the meaning of Annex IV, Chapter 3, paragraph (1)(c) (under Article 22) of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary Malta, Poland, Slovenia and Slovakia to the European Union) and HU 3/2004 ‘Development Tax Benefit Scheme’ (which was submitted under the interim procedure and accepted by the Commission as existing aid within the meaning of Annex IV, Chapter 3, paragraph (1)(c) (under Article 22) of the Treaty of Accession; the amendment of this scheme was notified to the Commission (No N 504/2004) and approved by the Commission on 23 December 2004, ref. C(2004)5652).


Because the Commission’s decision to allow regional aid to large investment projects falling under paragraph 24 of the MSF depends on the market share of the beneficiary at a group level before and after the investment \(^{(12)}\) and on the capacity created by the investment, the Commission had first to identify i) the product(s) concerned by the investment, and to define ii) the relevant product and iii) geographic market for the purpose of carrying out the relevant tests under paragraph 24(a) and (b) of the MSF.

In the present case, the product concerned by the investment project is ‘ceramic substrates for diesel particulate filters’, which are installed in diesel passenger cars and light duty trucks. IBIDEN Hungary produces a ceramic part, i.e. an inner-solidsubstrate, which is an intermediate product (TIER 3). IBIDEN’s product is then sold under market conditions to independent companies, which in turn perform the coating of the substrate with precious metal to form a coated DPF (TIER 2). The coated DPF is then sold to exhaust manifold producers (TIER 1), which are the direct suppliers of car assembly plants.

Having established which product is concerned by the investment, the Commission proceeded to define the relevant market. In this regard, the MSF provisions are similar to those contained in the Commission notice on the definition of the relevant market for the purposes of Community competition law \(^{(13)}\) — i.e. the document which is used by the Commission in its analysis of antitrust cases. For the purposes of competition law analysis, the relevant product market comprises all those products which are considered to be substitutes, either by the consumer (by reason of the product’s characteristics, prices and intended use — i.e. so-called ‘demand-side substitution’) or by the producer (through flexibility of the production installations — ‘supply-side substitution’) \(^{(14)}\).

The Commission in its opening decision identified and analysed two products which were regarded by the Hungarian authorities as key parts of the exhaust gas system of diesel engine vehicles, namely diesel oxidation catalysts (DOC), which treat gases (i.e. carbon oxides (CO) and hydrocarbons (HC)) and to a certain extent the soluble organic fraction of particulate matter (PM); and diesel particulate filters, which are effective in treating the insoluble fraction of particulate matter, i.e. soot. In its decision the Commission provided a brief overview of both key parts of the exhaust gas system, identifying their characteristics, functions and uses \(^{(15)}\).

The next step was to assess whether a DOC can be considered as a (demand and/or supply-side) substitute for a DPF. If so, what is the extent of such substitution? In other words, the Commission assessed whether or not the DOC and DPF belong to the same product market. In this regard the Commission looked at the evidence available to it to reach a conclusion on the relevant product market. It is normal Commission’s practice to check all available public data, and in particular independent market studies and previous decisions in the field of competition, in order to check the definition of the relevant market as well as other data. When the information is contradictory, the Commission is likely to open a formal investigation procedure in order to give all interested parties, including competitors who would be affected by the state aid, the possibility to submit their observations.

In order to identify the relevant market, the Commission first looked at the arguments provided by the Hungarian authorities and the aid beneficiary, who argued for a broad definition of the relevant product market, which would cover all devices in the exhaust gas treatment system of diesel engine vehicles (i.e. both DOC and DPF). They argued that these devices were very similar to each other, since the purpose of both devices was to reduce harmful substances from emissions. In support of their view, the Hungarian authorities and IBIDEN Hungary stressed the fact that IBIDEN Hungary’s product should be considered as a technologically more advanced version of a DOC. In this regard, they presented the consequential stages in the development of the product. In their view, the DOC should be regarded as the first generation filter, which was installed in diesel cars in 1996 and which was meant to clean gases and soluble fractions of PM. The second generation filter, which is currently being produced by IBIDEN France, is known as an uncoated DPF and it only filters the insoluble fraction of PM. IBIDEN Hungary’s product, however, should be regarded as the third generation DPF, which is a multi-functional device, because it is able to filter HC and CO in addition to its main function of filtering soot (particulate matter). Furthermore, the Hungarian authorities and the aid beneficiary also argued that the production processes and technologies to manufacture the two components were very similar: the only major difference is that, in the case

of DPFs, the plugging process is added to that of DOCs. Thus, according to the Hungarian authorities and IBIDEN Hungary, DOC and DPF should be regarded as substitutes on the supply-side too.

The Commission, as a second step in order to establish the extent of the relevant product market, verified the information available from public sources. The Commission checked in particular the market research studies (by Frost & Sullivan Ltd. (F&S) (16) and by AVL List GmbH (AVL) (17)), which are mentioned in the decision. The Commission observed that the two market studies did not appear to support the approach of the Hungarian authorities and the aid beneficiary with regard to the relevant product market.

In particular, the Commission expressed reservations as to whether DOC and DPF can be considered as substitutes belonging to a single product market of after-treatment devices. First, the Commission looked at the characteristics and intended use of the products and noted that the DPF’s main function was to treat solid inorganic and insoluble particulate matter (i.e. soot), while the purpose of the DOC was to clean hazardous gases and the soluble organic fraction (SOF) contained in particulate matter, without being able to collect soot. While it is true that there is some functional interchangeability, inasmuch as the coated DPF also treats harmful gases to a certain extent, this does not remove the need for a separate DOC in the exhaust gas treatment system. The Commission stressed that both components will continue to co-exist and have to be installed together in the period under consideration (i.e. until 2008). For future Euro 5-6 technologies (18) DOCs will continue to be used for oxidation of CO, HC and SOF.

Thus, the Commission noted that there appeared to be no possibility of substitution on the demand-side, as these are two separate and complementary devices.

Moreover, the Commission noted that substitutability on the supply-side was also questionable. It emphasised that the Hungarian authorities and IBIDEN Hungary had not provided any hard evidence of DOC substrate producers who were also capable of producing substrates for DPFs with the same equipment without major additional investment costs, or vice versa. Substitutability was also doubtful because the price of the DPF appeared to be some four times higher than the price of the DOC.

Faced with such conflicting information, the Commission decided to initiate the formal investigation procedure in this case. In the decision, the Commission expressed doubts whether DOCs and DPFs can be considered as belonging to the same product market of after-treatment devices to be fitted in diesel exhaust systems of passenger cars and light duty trucks.

It has to be noted that, in the opening decision, the Commission did not express doubts with regard to the relevant geographical market, which is normally defined as ‘the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in this area’ (19). The Commission, in the absence of objections from the side of the Hungarian authorities and the aid beneficiary, defined the relevant geographical market as the European Economic Area (EEA) due to the differences in emission regulation and fuel quality standards compared to third countries and the lower share of diesel vehicles in other major automotive markets.

On the basis of the market research studies, the Commission found that IBIDEN’s share of the DPF market (which was the narrowest definition, and thus the worst case scenario in the present case) both before and after the investment substantially exceeded the 25 % threshold in volume terms (20). However, in the combined market of

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(16) «Strategic analysis of the European market for Diesel Particulate Filters», October 2006. The firm Frost & Sullivan is active in market/industry consulting and research.

(17) «Market survey on PM reduction after-treatment devices», March 2007. AVL List is closely involved with the design and development of internal combustion engines. According to the Commission decision of 10 July 2007, the AVL study, which was commissioned by IBIDEN Hungary ad hoc for the present case, argues that both DOC and DPF belong to the same relevant product market, however, the data and analysis presented in the AVL study do not confirm this argument.

(18) Paragraph 8 of the Commission notice on the definition of relevant market for the purposes of Community competition law.

(19) Ibiden Hungary’s ceramic substrate is an intermediary product, which is subject to further processing (i.e. coating, canning) at subsequent levels of the value chain (carried out by independent companies). Since data in value terms contained in the submitted studies refer only to the ready made DPF whose price is substantially higher that that of Ibiden’s product, and since no reliable data have been submitted as regards the price of the intermediary product, the Commission considered that the analysis in volume terms reflected better the market position of the beneficiary.

the DPF and DOC, IBIDEN’s market share would be below 25% in Europe both before and after the investment.

Consequently, the Commission had sound arguments, based on the above-mentioned two market research studies, to open the formal investigation procedure in the present case, as the compatibility of the aid of EUR 9.56 million depended on the delineation of the relevant product market. If it were confirmed by the investigation that the DPF market alone had to be considered as the relevant product market for assessing the proposed aid, the aid of EUR 9.56 million which was subject to the individual notification could not be approved under the MSF. It should be noted that the opening of a formal investigation procedure is simply a procedural stage in the Community monitoring of state aid and is without prejudice to the conclusions the Commission will draw from the investigation. Thus, quality of argument and additional information, which would be provided by interested parties and experts in the sector on the relevant product market, were essential in the present case, because they could remove or reinforce the Commission’s doubts and therefore could lead to a final decision that was positive, conditional or negative (22).

**Comments received from interested parties during the investigation**

In response to the publication in the Official Journal of the European Union of the decision to open the formal investigation procedure, the Commission received observations from the four interested parties; they were: the aid beneficiary IBIDEN Hungary; Aerosol & Particle Technology Laboratory, a centre for research and technology based in Greece; Saint-Gobain Industrie Keramik Rödental GmbH, a competitor (Saint-Gobain); and an interested party which, pursuant to Article 6(2) of Council Regulation No 659/1999, requested the Commission to withhold its identity. In accordance with this Regulation, the Commission forwarded the comments to the Hungarian authorities who gave their opinion on these observations.

As stipulated in the Commission’s final decision of 30 April 2008, the aid beneficiary and the Hungarian authorities maintained their position that it was necessary, in the present case, to adopt a broad market definition, which would cover all components (mainly DOC and DPF) in the exhaust gas treatment system of diesel engine vehicles. Aerosol & Particle Technology Laboratory also supported their arguments. According to this opinion, both DOC and DPF would be regarded as PM removal components, although IBIDEN Hungary acknowledges that DOC is not effective in treating the insoluble part of PM (i.e. soot). These parties argued that, as IBIDEN Hungary’s product is able to filter HC and CO in addition to its main function of filtering soot, it belongs to the same market as the DOC. It is up to car manufacturers to decide whether to construct the exhaust gas treatment line from independent components for detoxifying gaseous harmful substances and for treating the particle substances, or to use the multifunctional component.

The comments received from the other two interested parties — Saint-Gobain and the party whose identity is withheld — deserve a particular mention as they presented well-founded arguments which, in the end, served as a main basis of the Commission’s final decision not to approve the aid measure. According to them, the DOC and DPF cannot be considered as substitutes and thus do not belong to the same relevant product market. These parties proved that there is neither demand-side nor supply-side substitution between the DPF and DOC.

With regard to demand-side substitution, in particular, the interested parties focused, first, on the differences in the use of a DOC and a DPF (23): the primary purpose of a DOC is to oxidise certain gases by way of chemical reaction, while the primary function of a DPF is to filter out soot by means of a mechanical process. While, under certain circumstances, a DPF performs some of the functionalities of the DOC, the full oxidation effect cannot be achieved without the both parts being installed. They also indicated that, in keeping with the expectations of many car manufacturers, the DOC and the DPF will continue to be separate devices installed next to each other in the exhaust gas treatment system.

Second, the interested parties argued that the main (thermal) characteristics of the substrates for a DOC and a DPF are not the same: the DOC substrate is usually made from non-porous cordierite which has to resist temperatures of 400ºC, while the DPF substrate is in general made of porous silicon carbide which has to withstand 1000ºC. Third, these interested parties emphasised the price differences between the two components: a substrate (without the cost of catalyst coating and canning) of a DPF costs EUR 120 on average, while a substrate of a DOC costs on average between EUR 12 — EUR 20 (also without the cost of cata-

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(22) Article 7 of Council Regulation No 659/1999.

(23) Differences in the intended use between the end products, DPF and DOC, are a reflection of the different uses of their respective substrates.
lyst coating and canning). Therefore, for technical reasons DPF manufacturers cannot switch to a DOC substrate (which they would otherwise do, given the price difference) and a DOC producer would not substitute a DOC substrate with a DPF substrate as s/he would get a much more expensive product without an oxidation function.

Regarding the issue of supply-side substitution, Saint-Gobain and the party which withheld its identity also claimed that, contrary to the arguments provided by IBIDEN Hungary and the Hungarian authorities, the processes for producing the DOC and DPF substrates are very different: the non-porous cordierite used for the DOC substrate is air-sintered at 400°C temperature, while the silicon carbide used for the DPF substrate has to be prepared at very high temperatures (above 2000°C) in an oxygen-free atmosphere. This difference of temperature alone is vital and means that one of the most essential and costly production elements cannot be used to produce both types of product. Further, for the manufacture of DPF substrates a non-oxide high temperature sintering furnace, glueing and plugging equipment are needed, which is not the case in the production of substrates for DOC. Thus, the interested parties argued that DPF could not be produced on the DOC’s production lines, and vice versa.

**Commission conclusions regarding the relevant product market and final negative decision**

In the assessment part of the decision of 30 April 2008, the Commission considered that the arguments put forward by IBIDEN Hungary, the interested party Aerosol & Particle Technology Laboratory and by the Hungarian authorities did not dispel the Commission's initial doubts, which were confirmed by the comments of Saint-Gobain and the interested party whose identity is withheld.

In its assessment, the Commission concluded that from the demand-side perspective there are significant differences in product characteristics, intended use and prices between substrates for DPF and substrates for DOC. In addition to the comments provided by Saint-Gobain, the Commission observed that, although the belief expressed by IBIDEN Hungary and the Hungarian authorities concerning the tendency to use a multifunctional product, which integrates on one ceramic monolith the functions of both the DOC and DPF, might reflect the future trend in the development of emission control technologies, it did not reflect the current situation. In the period to be considered (from 2003 to 2008 i.e. one year before the start and one year after full completion of the investment project) for the Commission’s state aid analysis, both DPFs and DOCs continue to co-exist and are installed together because for future Euro 5 and Euro 6 technologies DOCs will continue to be used for oxidation of CO, HC and SOF.

Further, as far as the supply-side substitutability is concerned, the Commission noted the differences in the production processes of the DOC and DPF substrates and emphasised in particular that the relevant issue here was whether the same equipment could be used for the production of both substrates (for DOCs and DPFs) without significant additional costs. As no concrete evidence had been forthcoming from DOC substrate producers, who were going to be producing substrates for DPFs with the same equipment without major additional investment costs, or vice versa, the Commission considered that there was no substitutability between DOC substrates and DPF substrates on the supply-side.

The Commission therefore concluded that the relevant product market only covers substrates for DPF to be fitted in the exhaust systems of diesel passenger cars and light duty trucks. On the basis of the definition of the relevant product market that was established following the in-depth investigation, the Commission confirmed that the market share of IBIDEN in the DPF market in Europe substantially exceeded the 25 % threshold, both before and after the investment. The Commission also underlined that IBIDEN’s high market share reflected the prevailing position of the company in the DPF market: it is one of the two major filter substrate manufacturers in the world. The aid would have even further strengthened IBIDEN’s leading position in this market, making it more difficult for new competitors to enter the market and for smaller incumbents to consolidate their position on this market.

Thus, the Commission concluded that the aid that was the subject of the notification of EUR 9.56 million was not compatible with the common market as it was not in line with the requirements of the EC rules on regional aid and, in particular, with the MSF.

**Particular features of the definition of the relevant market in a state aid case**

The definition of the relevant market is a standard practice in the application of the EC competition rules. For example, in the context of the implementation of Article 81 and Article 82 of the EC Treaty, in order to establish whether agreements between firms have a significant effect on compe-
tion, or whether or not a firm holds a dominant position, it is necessary to define the relevant market correctly.

There are several advantages to precise market definition. The more accurately markets are defined, the more meaningful competition analysis and calculation of market share can be. Thus, the determination of the relevant market provides the basis for assessing market shares, dominant position and concentrations.

In the state aid context, the issue of market definition is also central to the analysis of the effects of a state aid measure on competition within the common market. Article 87 of the EC Treaty requires an assessment of whether state aids distort competition. Distortion of competition arises when competitors are affected. Thus, the market has to be correctly defined in order to delineate the firms and goods that are affected by the state aid measure and to track the effects of state intervention across markets. The motivation of such an analysis in state aid cases is different from that in antitrust cases, as ‘the focus of assessment in state aid cases is the aid recipient and the industry/sector concerned rather than identification of competitive constraints faced by the aid recipient’ (23). However, as outlined above, the essential elements in the definition of the relevant product and geographical markets are similar.

As demonstrated by the Commission’s decisions in the IBIDEN case, the relevant market in the state aid context incorporates both the product and geographical dimensions, which are defined simultaneously. However, one of the essential differences is that, in the state aid analysis, there is no benchmark comparable to the SSNIP (Small but Significant and Non-transitory Increase in Price) test (24), which is of crucial importance in antitrust and merger cases. In particular, this is because in state aid analysis the Commission has fewer investigative powers and, hence, has less data to be used in its assessment.

Indeed, as can be observed from the Commission’s decisions in the IBIDEN case, the Commission did not perform the SSNIP test to determine whether substrates for DOCs and DPFs belong to the same relevant product market. The Commission did not examine whether, for example, there were any recent changes in the relative prices of the products concerned, which could have led to changes in demand. Nor did the Commission carry out an evaluation of cross-price elasticity for the demand of a product or the trend in the dynamics of prices in different geographical areas and the reasons for that. In other words, the Commission did not use the quantitative tests which would normally be used in antitrust and merger control to determine the relevant product market.

The fact that there is no such benchmark, for example, comparable to the SSNIP stipulated in the EC state aid legislation on regional aid is not the main reason why the Commission did not perform such an analysis. The Commission’s notice on the definition of relevant market states that ‘when consideration of market power and therefore of the relevant market are raised in any particular case, elements of the approach outlined here might serve as a basis for the assessment of state aid cases’ (25). Thus, the Commission could in theory also apply the sophisticated tools, which have been developed over time in antitrust and merger control, in the field of state aid.

However, there are some important technical procedural differences between state aid on the one hand and antitrust and merger control on the other hand: the state aid procedure is, first of all, a formal dialogue between the Commission and a Member State, and thus there is always a stronger political dimension in state aid control, even though in the case of aid for large investment projects it is often the aid beneficiary and not the Member State concerned that is the source of essential information necessary for the delineation of the relevant market. However, this information is — by definition — limited and incomplete because it comes from a single enterprise only, i.e. the aid beneficiary, and thus there is a risk of a conflict of interests when providing the information needed for the assessment of the state aid measure. Therefore, in the case at hand, the Commission placed a great deal of emphasis on the studies compiled by independent market consultants in the field.

In antitrust cases, on the other hand, the process of collecting information is different and goes beyond the undertakings concerned. The Commission normally establishes contacts with main consumers and undertakings in the industry in order to obtain information about the boundaries of the relevant product and geographical markets. The Commission, at its discretion, may also request the opinion of the respective professional unions. It may send written questionnaires

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(23) Cf. footnote 1 of the Commission notice on the definition of relevant market.

(24) Cf. paragraph 15 of the Commission notice on the definition of relevant market: ‘[...] The exercise of market definition focuses on prices for operational and practical purposes, and more precisely on demand substitution arising from small, permanent changes in relative prices. This concept can provide clear indications as to the evidence that is relevant in defining markets.’

(25) Cf. footnote 1 of the Commission notice on the definition of relevant market.
to the participants in the market for the purpose of obtaining opinions and information about, for example, the substitutability of products, relations with suppliers, and pricing policies of undertakings. The Commission also has powers to oblige market players to reply. The Commission officials may also carry out on-the-spot inspections in business and non-business premises in order to obtain the necessary information about the market.

At present, in the state aid context, the opening of a formal investigation procedure is the principal information gathering tool in case of doubts about the delineation of the relevant market; it was also the tool which was used in the IBIDEN case. However, the opening of the formal investigation procedure may not always help in gathering relevant information from interested parties, as some of them might have no incentive to reply or might not be aware of such a procedure being initiated in sufficient time to submit their observations. Moreover, as this case has demonstrated, the information submitted by interested parties may be conflicting, and the Commission needs to perform an in-depth assessment to establish which information is relevant for the purpose of delineating the relevant market. However, as can be seen in the IBIDEN case, the Commission received useful information (in particular, from competitors) and was able to judge the relevance of different submissions, which allowed the Commission to confirm its doubts about the narrower market definition (covering only substrates for DPFs) being used in the present case.

**Conclusion**

In the decision on aid for IBIDEN’s large investment project in Hungary, the Commission has, for the first time, opened the formal investigation procedure under the rules of the MSF to delineate the relevant product market. It should be noted that this is also the first negative decision concerning regional aid for a large investment project in one of the new Member States, where maximum allowable regional aid intensities are the highest in order to compensate for the handicaps of disadvantaged regions.

The decision sets a precedent with regard to the key factors the Commission may take into consideration when delineating relevant (product) markets in the context of regional aid for large investment projects. This case also provides an example of the importance of strong factual evidence and economic reasoning, which need to be supported by independent market studies in the Commission’s assessment of the relevant market. This decision should also dispel the criticisms that there is little or no market analysis in the Commission’s state aid decisions. It also shows the Commission’s determination, as announced in the State Aid Action Plan, to move away from a form-based analysis towards a more effects-based analysis.