Introduction

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2002 ended with a series of decisions which will have a major impact on the scope and effectiveness of EU competition policy: the Council’s adoption of the regulation on modernization of EU antitrust rules, the launching by the Commission of proposals for some radical changes in our merger control system, and finally the historic decision on accession to the EU of ten new Member States. Despite the general downturn in economic activity, 2003 will therefore be a very busy year for DG Competition. We have to prepare for the implementation of the new antitrust rules and create the network of the 25 competition authorities who alongside the Commission will be responsible for antitrust enforcement action under the EU Treaty. We have to take part in the negotiations on the proposed recast Merger Regulation and complete consultations on draft merger guidelines as well as on Best Practice guidelines on the conduct of merger control procedures. We also have to give priority to the anti-cartel enforcement action, which is growing in importance and effectiveness on the basis of the revised Leniency rules.

At the same time the Commission’s role in monitoring and controlling the impact of public intervention on competition and trade inside the European Union will have equal priority with our efforts in the merger, cartel and other fields concerned with the structure and behaviour of private undertakings. There has been considerable discussion and debate in the Member States and in the EU institutions, including in the Commission itself, about the relevance and effectiveness of EU state aid control and about the length of its procedures.

People in government at national, regional and local level often see the Commission’s state aid policy as an illegitimate interference in the use of public money for public policy objectives which has nothing to do with distortion of trade or competition at the European level. Some of this criticism deliberately ignores the effects which some subsidies can have beyond the borders of the region or Member State concerned. However there is certainly a lack of understanding of what state aid control is trying to achieve. And there is the impression that we are simply applying rules which aim to curtail state aid as such rather than concentrating on controlling aid which really distorts the European single market.

The task of ensuring that we have less and better targeted state aid, as the Barcelona European Council requested one year ago, falls on both the Commission and the Member States. The Council had already requested the Member States to continue their efforts to reduce aid levels, in terms of percentage of GDP, and as a priority to reduce and ultimately eliminate aid which has the greatest distortive effects. The Commission was then invited to intensify the assessment of the impact of aid on competition, on the basis of economic criteria. In its report to the Copenhagen Council of last December, the Commission renewed its commitment to ensuring that its State aid control policy is based on sound economic criteria and that it addresses real distortions of competition having an impact on trade between states.

The Commission has already undertaken a large number of initiatives, which cover both procedures and substance. On the procedural side, the Commission has recently undertaken a detailed internal review with the aim of identifying the possibilities for simplifying procedures and reducing their duration. Some initial findings have been presented to and discussed with the Member States in December last year. Any significant change will require the active commitment and investment of the Member States themselves. On the substantive side, many improvements have already been made in the last years by adapting the existing policy instruments and introducing new ones, such as block exemption regulations, in order to bring state aid control in line with the changes of the economic and political realities.

In the last five years the Commission has significantly tightened up the control of state aids. We have to build on these achievements and further improve the enforcement of the state aid policy. At the same time, there is a need to rethink more substantially the role of this Community policy in the perspective of the accession of ten new countries to the Union.

In an enlarged Union, the scope for the control of state subsidies by the Commission has to be adapted to new realities. Even greater priority will have to be given to the assessment of those public measures that have the largest negative impact on competition and intra-community trade.
This requires additional work on the economic basis for a distinction between aid which is particularly harmful and one that does not raise major concerns. Simplified procedures could then be envisaged for cases, which — although fulfilling the legal definition of aid in Art 87.1 — do not significantly distort competition and trade. Such an approach could help provide better means, to determine priorities for enforcement in the state aid field, instead of being driven by the notification/complaint process. At the same time, the reflection should help to identify the key elements that the Commission ought to look at in its economic assessment of the impact of more serious state aids. It should also contribute to procedural reform by facilitating the examination of less important cases, as well as to helping justify state aid control by demonstrating that we focus on those cases which imply major distortions of competition.

In line with the requests from the European Council, high priority will be given to the establishment of guidelines concerning the compensation for the cost of providing services of general economic interest, while the need for a block exemption regulation will be kept under review in the light of developments in the case law of the Court of Justice. But the outcome of the present debate at the Court — which focuses on whether public financing strictly limited to the compensation of the public service costs falls under the definition of state aid and is thus subject to the notification obligation — may not give all the expected and desired answers.

The approach to the supply of services of general economic interest has profoundly changed over time. Today, governments rely to a much greater extent on market mechanisms and on commercial providers, which has often brought about greater efficiency, lower prices and better services for the citizens. There is also a need to reflect on the incentive structure of these operators, on the effects of state funding on their growing commercial activities and on the development of increasingly transnational markets for the provision of these services.

This requires both the Commission and the Member States to rethink their approach to services of general economic interest. On the one hand, the role of the Commission in ensuring that competition and trade are not distorted to an extent contrary to the interest of the whole Community should be enhanced. This however calls for clear and commonly agreed methods of analysis, prompt assessments and focus on cross-border effects.

On the other hand, Member states themselves must take greater care in designing means of intervention that achieve the desired goal with the least possible distortion of purely commercial activities. Some Member States have already put in place systems and procedures that alleviate major problems. Examples of such procedures are the use of a public competitive tender procedure in the attribution of a public service and an appropriate judicial mechanism for dispute settling.

The distribution of tasks between the Commission and the Member States in this area must be clear. It is for the Member States' public authorities to determine whether there is a need to define a public service mission and entrust a particular operator with it. It is the Commission's task, however, to ensure that the restrictions imposed are limited to what is necessary to carry out this mission. The Treaty already provides a good balance between these basic principles.

More broadly, there is a tangible need to better integrate state aid policy with the other Community policies. In many fields, ranging from fiscal to structural policies, the effectiveness of the control of state aid will benefit from a better definition of the synergies and the boundaries between different policy instruments.