Commission finds public participation in Austrian securitisation scheme is not State aid (1)

Almorò RUBIN DE CERVIN, Directorate-General Competition, unit G-3, and Volker ZULEGER, formerly Directorate-General Competition, unit G-3

On 9 February 2006, the Commission authorised the public participation of Austria Wirtschaftsservice GmbH (aws), a public body that administers the award of grants to Austrian companies, in a bond portfolio set up by the private bank Investkreditbank AG for Austrian enterprises. The public participation will correspond to 10% of a € 300 million bond portfolio. Austria had notified the measure for reasons of legal certainty, but believed it did not involve State aid. In its decision, the Commission agreed with Austria’s assessment, concluding that the public participation indeed does not constitute state aid pursuant to Article 87(1) EC as it is made on terms that would have been acceptable to a market economy investor.

Securitisation issues

The case is noteworthy because it concerns the first public interventions in favour of securitisation notified to the Commission in State aid control.

Securitisation (i.e. the conversion of assets into securities in order to raise cash) is widely seen as one of the possible answers to the potential problem for lending to small and medium-sized enterprises (SMEs) that may derive from the new capital requirements imposed by the Capital Requirements Directive (reflecting the Basel II agreement) which will be in place as of 2008. Securitisation would help reduce the risk of the lenders, who would be able to share part of it with other investors. At the same time, the development of the market for bonds linked to loans to SMEs would increase the amount of credit overall available to the SMEs.

In the proposal for the Competitiveness and Innovation Programme (CIP), the Commission itself has foreseen a new financial instrument to foster securitisation, to be managed by the European Investment Fund (EIF) along with those supporting guarantees and seed capital.

The Mittelstandsbondportfolio

During the investment phase Investkredit will subscribe bonds (€5m to €45m) from a limited number of medium-to-large sized enterprises at market rates, bundle them in a so-called bond-portfolio and divide them into three tranches.

During the subsequent capital market phase, the bond-portfolio will be offered to institutional and retail investors through the emission of bonds in the form of Credit Linked Notes (CLN), depending on the three different tranches and their risk qualities.

The following picture may illustrate the factual situation:


The content of this article does not necessarily reflect the official position of the European Communities. Responsibility for the information and views expressed lies entirely with the authors.
The public participation into the Mittelstandsbondsportfolio

aws will invest up to 50% of the third tranche, whilst the remaining percentage will be covered by Investkredit. Accordingly, the investment of aws will cover a maximum of 10% of the entire portfolio.

However, the case is made slightly more complex by the fact that aws does not have resources itself for the purpose of investments and is not allowed by law to raise capital from the capital market. Accordingly, for the purpose of raising the finance for its participation in the third tranche, aws will issue a guarantee covering the amount of its participation to Investkredit. Investkredit will then raise an amount equivalent to the guarantee given by aws as liquidity from the capital market at market rates. The guarantee provided for by aws will be remunerated by Investkredit as if it were a loan given on market conditions.

aws will share equally with Investkredit the profit from the net interest revenues of the third tranche, following deduction of Investkredit's administration costs for the issue of the third tranche and aws's administrative fees. Furthermore, the conditions for the third tranche will be at market conditions, as the remuneration will be on the basis of a market rate for (BB-) investments. Overall, both Investkredit and aws invest on equal terms.

The Commission's assessment

In its assessment, the Commission looked first into the conditions of aws's investment and second into the different aspects of the bond portfolio which concerns three levels of economic actors on which the Commission assessed the presence of State aid pursuant to Article 87(1) EC.

The Commission found that aws's participation is made on market terms and is based on conditions a private investor would have accepted (‘the market economy investor principle’). For the same reasons, the Commission concluded that there is no aid involved to Investkredit, the investors or the undertakings in the portfolio.

Conclusion

The case shows that there are ways of improving access to finance for small and medium-sized firms through public intervention without distorting competition, when the intervention is made using market-based instruments.