The principle of incentive effect applied to training aid — Some recent cases

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1. Introduction

Continuing training of workers is part of the investment in human capital that is central to the Lisbon agenda’s objective for growth and jobs. The Community has adopted detailed provisions setting out the conditions on which training aid can be authorised as contributing to its economic development.

These provisions are to be found in the General Block Exemption Regulation (2) (GBER), which entered into force on 29 August 2008. The GBER’s training aid provisions are largely identical to the earlier provisions of Regulation 68/2001 (3) which applied until 30 June 2008. They exempt training aid of less than €2 million from the notification requirement in Article 88(3) of the Treaty, provided a number of formal criteria (regarding e.g. what costs are eligible and the maximum intensity of aid) are met. If the aid exceeds the €2 million threshold, the aid has to be notified to the Commission, which will assess its compatibility with the common market on the basis of Article 87(3)(c) of the Treaty. This assessment will be made in accordance with the conditions set out in the GBER.

In addition to the specific compatibility criteria of the GBER (and previously Regulation 68/2001), the Commission will also assess whether the aid has an incentive effect, which is a general condition for the compatibility of any state aid. Put in simple terms, this means that state aid can only be approved if it is a necessary condition for the activity it is financing, i.e. if this activity would not take place without the aid (if the training would occur in any case, the aid cannot be said to ‘facilitate’ the development of certain economic activities’ within the meaning of Article 87(3)(c) of the Treaty).

The incentive effect requirement has been explicitly laid down in the GBER (which, under Article 8, exempts only aid ‘which has an incentive effect’) (4). Although not explicitly spelled out in Regulation 68/2001 it was applied also under these earlier rules as a general principle of compatibility (as for all state aid, irrespective of purpose) (5).

Starting in 2006, the Commission — reacting to changes in the behaviour of undertakings — has made closer assessments of the incentive effect in a series of training aid cases (which, coincidentally, have all concerned the car industry). The two first cases, Ford Genk and General Motors Antwerp, have been covered in an earlier edition of this newsletter (6). In these cases the Commission concluded that a significant part of the aid did not incite the beneficiaries to provide additional training since it funded training that was necessary for the normal operation of the companies (i.e. required either by the introduction of a new model or by other core business activities) and would have been undertaken by the companies in any event, on the basis of market incentives alone. Consequently, the Commission found that the training aid would not contribute to the Community objective of compensating for under-investment in workers’ training, but would simply cover normal operational costs.

(1) Directorate-General for Competition, unit E-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.
(4) The rationale for this provision is given in recital 28 to the GBER: ‘In order to ensure that the aid is necessary and acts as an incentive to develop further activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone.’
(5) The recitals to Regulation 68/2001 stated that ‘… enterprises in the Community generally underinvest in the training of their workers’ and that ‘State aid might help to correct this market imperfection and therefore can be considered under certain conditions to be compatible with the common market…’ (recital 10) and also indicated that, in pursuing this Community objective state aid should be ‘limited to the minimum necessary to obtain the Community objective which market forces alone could not make possible…’ (recital 11, emphasis added).
The purpose of the present article is to give an overview of two recent decisions which have elaborated on the incentive effect requirement in a training aid context.

2. Recent training aid cases

*Training aid for Vauxhall Motors Ltd (C 23/2007)* (7)

The car manufacturer Vauxhall Motors, part of General Motors, planned an extensive training programme for the staff at its production facility in Ellesmere Port in the UK. The training programme would benefit some 2 200 workers at a total of GBP 16.6 million of eligible costs. The UK notified GBP 8.7 million (approx. €11 million) of training aid in the form of a direct grant.

The training programme was divided into five different projects covering different aspects of activity at the plant (there was also some training for which the UK did not claim any eligibility for training aid, including training for changes of car models, which indicates that the UK had already taken on board the Commission’s conclusions in *Ford Genk* and *GM Antwerp*). In its decision of 10 July 2007 to open a formal investigation under Article 88(2) of the Treaty, the Commission raised doubts about the incentive effect of the aid in relation to three of the training projects as mentioned below (8).

— **Production System Training**, i.e. training in production and quality controls systems. The Commission considered that this training appeared necessary to ensure normal operations at Vauxhall, in which case there should be sufficient incentive to undertake the training without aid.

— **Integrated Training Plan**, which concerns implementation of the ‘Global Manufacturing System’ incorporating best practices and technologies into a manufacturing system for General Motors’ operations. Here too, the Commission doubted *prima facie* that the training was necessary for normal operations at the plant. In addition the Commission noted that Vauxhall appeared to need to meet a higher level of compliance with the Global Manufacturing System in 2008 than in 2007 in order to meet General Motors’ group standards, assessed on an annual basis. This requirement, although internal to the group, also appeared to provide Vauxhall with an incentive to undertake additional training.

— **Undergraduates**, a programme whereby Vauxhall organised 12-month courses for young university students, combining learning and work experience under the supervision of a mentor (the programme covered such job profiles as for example ‘Body Planning Engineer’ and ‘Finance Analyst’). The Commission noted that this training had been provided for a number of years without state aid and consequently questioned the necessity of the aid for the future.

In the course of the investigation the UK submitted detailed comments which satisfied the Commission that the aid did indeed have an incentive effect on the specific training projects:

For the **Production System Training**, the UK showed that the training necessary for the operation of the Vauxhall plant is provided as part of a continuous routine training programme. The Production System Training, although it also relates to manufacturing skills, deepens the routine training and expands it to include categories of staff that are not covered under the routine training and goes beyond what is necessary for normal operations. In this respect, the Commission also noted that Vauxhall’s annual routine training budget had remained stable during the period from 2002 to 2007, which indicated that the normal level of routine training was sufficient for the needs of Vauxhall’s normal operations.

Regarding the **Integrated Training Plan**, the UK showed that Vauxhall had been able in the past to meet General Motors’ internal compliance standards within its annual routine training budget. Although the need to meet a higher standard in 2008 might give Vauxhall an incentive to provide additional training, the Commission noted that the marginal improvement required was unlikely to provide a sufficient incentive for a training programme which would entail an increase in Vauxhall’s yearly routine training budget of about 60% (when comparing the planned spending to the normal annual training budget).

Finally, as regards the **Undergraduates** programme, the UK explained that, because of budget constraints, Vauxhall had failed to hire any of the 60 trainees that had undergone the Undergraduate programme since 2002. The UK further indicated that the Undergraduate pro-

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(7) The decision to open the formal investigation under Article 88(2) EC was taken on 10 July 2007 (OJ C 243, 17.10.2007, p. 3). The final decision was taken on 16 April 2008 (OJ L 236, 3.9.2008, p. 50). The decisions are also available on the European Commission’s Competition website: http://ec.europa.eu/comm/competition/state_aid/register/ii/by_case_nr_c2007_0000.html#23.

(8) The Commission also raised doubts about the distinction between general and specific training made in the notification, but these points are not addressed here as they fall outside the scope of this article.
gramme was under budgetary review and liable to be cut. The Commission accepted that Vauxhall’s inability to internalise the benefits of the training and recoup its training costs strongly reduced its incentive to provide this training solely from its own resources (\textsuperscript{9}).

On the basis of the additional information gathered in the investigation, the Commission was satisfied that the aid provided an incentive effect for the training.

\textit{Training aid for DHL at Leipzig-Halle Germany (C 18/2007) (\textsuperscript{10})}

Following the relocation of DHL’s European delivery and airfreight centre from Brussels to Leipzig-Halle, Germany planned to grant €7.7 million of aid to DHL for a training project amounting to €13.8 million (\textsuperscript{11}). The planned training activities had to be analysed in the context of the entire investment project amounting to €250 million, for which the Commission approved about €70 million regional investment aid in April 2004. This aid reached the maximum aid intensity of 28%.

The training measures related to four careers: (1) Ramp Agents II, responsible for the ground handling of airfreight, including loading and unloading of airplanes as well as preparation for take-off; (2) Security Agents, responsible for safety and security at the airport; (3) mid-level managers, who are singled out after the first training to obtain additional training in leadership and management; and (4) mechanics for pre-flight and ramp maintenance of airplanes.

On 27 July 2007, the Commission initiated a formal investigation procedure because it had doubts regarding the necessity of the aid. Following an in-depth assessment, the Commission concluded that for the majority of the training measures the aid was not necessary because the beneficiaries would be sufficiently incited to provide the training by market forces alone (the training being necessary for the operational needs of the company) or by the fact that the training was required by law.

First, the Commission found that most of the training measures were mandatory under national or European legislation. Given the nature of the services provided by DHL, which involve security risks, there are several minimum standards as well as conditions or safety requirements under national or European legislation for handling of freight and checks on aircraft. Consequently, these training measures need to be provided by the beneficiary in any event, even in the absence of aid.

Second, the Commission considered that the remaining training measures (i.e. those not required under national or European legislation) were necessary for the successful operation of the new delivery and airfreight centre. The relocation of DHL to Leipzig-Halle produced effects similar to the creation of a new undertaking in the sense that the company had to employ new workers in order to start operating. Since DHL could not find an already skilled workforce on the local market, nor envisage subcontracting certain services (because of its business strategy as well as for cost reasons), it was compelled to employ new workers who had to be trained. The aid therefore did not incite DHL to provide more training but simply relieved it of a normal cost that it should have borne in the course of its activities.

The Commission rejected the argument that training aid is automatically necessary whenever a beneficiary relocates activity to a new site. Germany claimed that the final decision for the relocation of DHL was conditional on the possibility of obtaining state support for comprehensive training; thus, it was argued, without training aid DHL would not have been incited to relocate to Leipzig-Halle and would consequently not have provided any training at all. However, the Commission observed that (re)location of undertakings is a normal feature of business in the European Union by which the undertakings attempt to reduce costs and increase their profitability. Undertakings considering relocating their production often put several sites in different Member States into competition. The decision on the location is not only influenced by forecasts concerning operating costs (including training costs for newly recruited, often unskilled employees) and other economic advantages or disadvantages (i.e. local rules on air flight schedules), but may also depend on the possibility of governmental support (i.e. regional aid and/or training aid). However, unlike regional investment aid, the objective of training

\textsuperscript{(*)} A similar point was accepted in the General Motors Antwerp case: see point 44 of the final decision in that case.

\textsuperscript{(\textsuperscript{10})} The opening decision was adopted on 27 June 2007 (OJ C 213, 12.9.2007, p. 28). The final decision was adopted on 2 July 2008 and has not yet been published. The opening and final decisions are available on the European Commission’s Competition website: http://ec.europa.eu/comm/competition/state_aid/register/ii/by_case_nr_c2007_0000.html#18.

\textsuperscript{(\textsuperscript{11})} DHL is one of the major express parcel operators with a worldwide turnover of €18.2 billion in 2005. The delivery and airfreight centre is operated by the two beneficiary companies, DHL Hub Leipzig GmbH and European Air Transport Leipzig GmbH, which are fully owned through other subsidiaries by Deutsche Post AG. DHL Hub will provide ground handling services related to the airfreight operation, whereas DHL EAT will provide technical inspections for the DHL air fleet.
State aid

aid is not to influence the choice of the location, but to increase the pool of skilled workers and to remedy the underinvestment in training in the Community.

Furthermore, the Commission considered that regional disadvantages, such as lower skills levels of the local workforce in comparison to other Member States, do not automatically render training aid necessary. Such regional disadvantages are part of the regional handicap and considered to be compensated by regional investment aid and not by training aid.

The Commission considered that only the aid for training mid-level managers provided a necessary incitement, since this training was not required by law and went beyond what was necessary for the successful operation of the airfreight centre. In addition, the in-depth investigation showed that a smaller number of Ramp Agents II would suffice for the successful operation of the hub, so that training for an additional 76 Ramp Agents II went beyond what was required by law or by the operational needs of the company. Consequently, the Commission approved €1.5 million of aid for these training measures.

In conclusion, the Commission found that a significant part of the training aid was not necessary and did not incite the beneficiary to provide additional training beyond what it would have provided in any event, and notably in the absence of aid.

3. Conclusions

Both Vauxhall and DHL integrate the obvious lessons of the first cases, i.e. that state aid can only be compatible if it has an incentive effect and that this is not the case where market forces alone give the beneficiary sufficient incentive to provide the training. Such market incentives exist in particular where the training is necessary for the normal commercial activities of the beneficiary and thus indispensable to allow it to stay in business. It seems safe by now to consider this principle a matter of stable decision-making practice in training aid cases.

DHL makes some interesting additions. First, it confirms what might seem obvious, namely that if market forces can provide an incentive to perform certain training, a legal obligation to ensure that your staff has certain skills will provide an incentive a fortiori. Second, the case confirms that any activity which is part of normal business life, i.e. which a company has to undertake in order to stay viable, will normally provide sufficient incentive for corresponding training; this is as true for the regular changes of car models in the first decisions as for relocations of production driven by the need to cut costs or to move close to markets. Finally, DHL makes an interesting point about the different rationales behind regional aid and training aid. Whereas the purpose of the former is to attract investments to certain areas suffering from certain regional handicaps (such as a lower general level of professional skills), the objective of training aid is to increase the overall skills pool in the Community. The necessity of training aid is therefore not automatically demonstrated by the fact that it is linked to training in a particular place which the beneficiary would not need to provide in some other location.

Vauxhall on the other hand provides some practical guidance. The case shows that the incentive effect requirement should not be taken to the absurd conclusion that only training which is useless to the beneficiary’s business can qualify for aid. On the contrary, Vauxhall illustrates that state aid may provide an incentive for training which is highly relevant to the beneficiary’s operations, provided that it can demonstrate that the training goes above and beyond the basic needs of its business. In this respect, the decision gives some useful indications of the kind of evidence that can be relevant to demonstrate the incentive effect. In order to show what level of training is ‘necessary’, annual training budgets over a longer period can provide the Commission with a benchmark to assess what could be considered a ‘normal’ level to be compared with the planned training programme. In addition, an element of cost/benefit reasoning can also be relevant: even if the proposed training would provide the beneficiary with an advantage in its business, is it commensurate to the cost and is it reasonable to expect that a prudent business operator would be prepared to bear the cost alone?