Policy developments

On 28 January the Commission published a guide to help public authorities understand how Member States may finance services of general interest in compliance with State aid rules. ‘The Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest’, states clearly that the rules are not about imposing a particular model for organising public services, but about ensuring that the funding provided does not go beyond what is necessary.

The guide addresses questions raised by recent Court judgments, the work of Member States and the Commission within the Social Protection Committee and the Commission services’ on-going dialogue with public authorities, organisations representing service users and providers, the European Parliament and other stakeholders.

On 23 March the Commission also adopted a Communication on the revision of European Union State aid rules on Services of General Economic Interest (SGEI) and a report on their application. These rules, also known as the 2005 post-Altmark package, have improved legal certainty for Member States and for service providers. The revision of the SGEI package shows, nevertheless, that certain aspects would gain from further clarification and the rules from further simplification for small amounts of aid as well as for compensation for social services.

The Commission proposes:

- to clarify a number of key concepts, for instance, regarding the distinction the Treaty and the jurisprudence of the Court apply between economic and non-economic activities or the limits Member States have to respect when defining an activity as a service of general economic interest;

- to offer a more diversified and proportionate approach to different types of public services: one element of this strategy could be to simplify the application of the rules for certain types of small-scale public services of a local nature with a limited impact on trade between Member States and for certain social services. At the same time, the Commission could take more account of efficiency and competition considerations for large-scale commercial services, with a clear EU-wide dimension.

In the first quarter of 2011, the Commission also launched public consultations on the EU Emission Trading Scheme (ETS), on regional airports and on public funding to broadband networks.

Cases adopted (1)

Decisions taken under Article 106 TFEU: services of general economic interest

Post Office Limited: Continuation of network subsidy payment and working capital facility

On 23 March, the Commission authorised £180 million (£212 million) of public assistance to the UK Post Office Limited (POL) for the funding of its network of post offices during one year starting 1 April 2011 (2). The Commission also authorised the continuation, over the same period, of existing loan facilities funding the provision of cash services at post office counters, necessary for POL to continue carrying out services of general economic interest entrusted to it by the UK Government.

POL is a company incorporated under UK private commercial law in 2001 and a subsidiary company of Royal Mail Group plc, and it operates a nationwide network of around 11,500 post office counter outlets. These outlets provide over-the-counter access to social benefit payments, basic banking services and other services in the UK, and act as focal points for the communities they serve.

The UK authorities notified the terms of the Post Office Card Account (POCA) contract signed between POL and the Department of Work and Pensions (DWP) on 5 March 2009. The POCA is a basic current account run by POL on behalf of DWP,

(1) 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 of the Commission - Reform of the EU State Aid Rules on Services of General Economic Interest

(3) This is only a selection of the cases adopted in the period under review.

(4) N 508/2010
used for paying social benefits to people who do not have any other bank account.

The Commission assessed all the measures under its framework on public service compensation and under Annex I of the Postal Directive as amended in 2008 and concluded that the aid is compatible with Article 106(2) of the Treaty on the Functioning of the European Union (TFEU) rules because it does not overcompensate the net costs of the important public service tasks entrusted to POL, and so it does not give rise to any unfair competitive advantage.

**Broadcasting**

**Danish radio channel FM4**

On 23 March the Commission authorised Denmark’s plans to establish a new public service radio channel, FM4, to increase competition on the country’s radio market for public service programming by supporting the creation of a new channel. (5) The Danish public service radio market is currently dominated by DR, with an audience share of almost 80%.

The Commission assessed the project under its Communication on the application of the State aid rules to public service broadcasting and found that the public service remit of the future broadcaster was well defined and that adequate mechanisms were in place to ensure that the provider of the service would not receive overcompensation. Moreover, the operator of the new channel will be appointed by an open tender. The contract will run for eight years, from November 2011 to October 2019. The annual budget, funded by the Government, is up to DKK 100 million (around € 13.4 million). The contract award criteria will be the quality of the proposed business plan, the programme profile and the amount of funding requested. The Commission therefore concluded that the providers’ public service remit is clearly defined, that the selection process is conducted through an open tender procedure, and that there are sufficient safeguards to avoid overcompensation. The measure is therefore compatible in accordance with Article 106 (2) TFEU.

**State funding and restructuring of TV2/Denmark**

On 20 April the Commission adopted two decisions approving the funding mechanism that was in place for the Danish broadcaster TV2 between 1995 and 2002. (6)

The first decision concluded that state financing received during the period 1995-2002 to compensate

for public service obligations was necessary and proportionate, according to the EU rules on State funding for public broadcasters in force at that time. The decision replaces a previous decision of the Commission (2004) declaring the aid illegal and ordering recovery of DKK 628 million (around € 84 million), which was annulled by the Court in 2008, as well as a Commission decision authorising a recapitalisation of TV2, which was set aside by the Court in 2009.

The second decision authorises restructuring aid for TV2, which was notified to the Commission and into which it opened an in-depth investigation in July 2009. The Commission considered that the notified restructuring plan would restore the broadcaster’s long-term viability, in particular through a new business model enabling the company to levy subscription payments for its main public service channel as of 2012. To compensate for distortions of competition, the government proposed that TV2 would not open new channels. This should be valid either until the end of the restructuring period on 31.12.2012, or at the very least until the start of subscription payments. Denmark has also undertaken to ensure that the capital structure of TV2 is benchmarked to that of comparable media companies, once the new business model is in place. As the restructuring is bearing fruit, all existing aid measures must be repealed with effect from the date of this decision and further aid that had been notified to the Commission must not be implemented. On the basis of these conditions, the Commission considers that the restructuring plan complies with the rescue and restructuring aid guidelines.

**Decisions taken under Article 107(1)**

**Amortisation of financial goodwill for acquisitions of foreign targets – Spain**

On 3 March the Commission requested Spain to abolish a 2002 provision in its corporate tax law that allows Spanish companies to amortise ‘financial goodwill’ deriving from acquisitions of holdings in companies in third countries (7).

Amortising goodwill is generally allowed in full mergers and cannot discriminate between national and foreign firms. It consists in the write off, over a period of time, of the ‘excess’ price paid for the acquisition of a business compared with the market value of the assets composing it.

The Spanish provision allowed for the amortisation of the financial goodwill (difference between the cost of the shares and the market value of the target company’s assets) in the acquisition of

(5) SA.32019
(7) SA.22309
shareholdings in foreign companies. This is a clear exception from the general Spanish tax system in that it allows the amortisation of goodwill even where the acquiring and the acquired companies are not combined into a single business entity. The provision was the subject of complaints and questions from Members of the European Parliament. This follows and closes an investigation which had already resulted in a decision, in 2009, concluding that the scheme amounted to illegal aid as regards acquisitions of shareholdings in other EU countries (\(^9\)).

The Commission asked Spain to repeal the provision concerning acquisitions outside the EU and to recover any aid granted since the start of the investigation, in 2007, with the exception of acquisitions in India and China, Countries where such obstacles (e.g. ban on cross-border legal combinations) can be demonstrated.

**German law on easing of fiscal carry-forward of losses**

The Commission decided on 15 March that a so-called reorganisation clause, or “Sanierungsklausel”, under German corporate tax law amounts to State aid. The provision enables an ailing company to offset losses in a given year against profits in future years (carry forward of losses) despite changes in its shareholder structure (\(^8\)). This is because corporate tax law does not generally allow offsetting of losses when there has been a significant change in the ownership structure, to prevent companies avoiding taxes by taking over failed companies for the sole purpose of using their fiscal carry-forward value.

The Sanierungsklausel was adopted in July 2009 with retroactive effect from January 2008. The provision was initially supposed to apply only during the financial crisis, but at the end of 2009 it was rendered permanent. However, it was not notified to the Commission. The German authorities’ view that the clause was merely a new technical feature of the German tax system, and could therefore escape being defined as State aid, did not convince the Commission.

The Commission concluded that the Sanierungsklausel favours ailing companies over financially-sound ones, which can also suffer losses in a given year, in particular during the crisis, but cannot offset them if there has been a significant change in their shareholder structure. The clause therefore distorts competition.

The Commission's decision in no way challenges the mechanism of carrying forward losses in the tax system which applies to all tax payers in a non-discriminatory way. The Commission has ordered Germany to recover any aid granted this way since 1 January 2008, when the clause came into force.

**Alleged aid to mining company Ellenikos Xrysos**

This investigation procedure was opened in December 2008, following a complaint, and was closed on 23 February by a Commission decision finding that the Greek State’s 2003 sale of the Greek Cassandra mines to Ellinikos Xrysos for €11 million was carried out below their real value (\(^10\)).

The sale was carried out without an open tender, nor was there a valuation of the mines’ assets by an independent valuer. The sale contract also provided for the waiver of transaction taxes.

The Commission based its decision on the findings of a report commissioned for Ellinikos Xrysos shortly after the sale that put the value of the mines at €25 million. The taxes that should have been levied on the sale amounted to €1.34 million.

The Commission has, therefore, concluded that Ellinikos Xrysos benefited from illegal State aid, which Greece needs to recover, including interest.

**Decisions taken under Article 107(2)(a) TFEU**

**Social support for individual consumers**

**Fiscal aid for supplementary sickness insurance policies and aid for collective supplementary insurance**

The Commission decided in two cases (\(^11\)) on 26 January and 23 February that a French scheme to support supplementary welfare cover for local government staff is compatible with Article 107(2)(a) of the TFEU, which permits aid of a social character.

Under these measures, local government institutions and local government-managed bodies will be able to pay staff and retired staff members an allowance if they take out insurance contracts and packages which have been approved by the Oversight Authority or if they sign up to supplementary welfare arrangements established between the local government body and an insurance undertaking after a competitive tender procedure. Both selection processes will be open to any type of insurance undertaking with which staff will be able to take out a contract or join an arrangement for

\(^{(*)} C 45/2007 \quad \spadesuit^{(*)} C 48/2008 \quad \spadesuit^{(*)} C 7/2010 \quad \spadesuit^{(*)} C 50/2007 \text{ and } N 495/2010
supplementary welfare cover. The allowance is provided in the form of a single annual payment per staff member and can either be paid directly to staff or to the insurance undertaking, which will have to deduct the amount in full from the fee or premium payable by the staff members covered by them.

The Commission was of the opinion that the measures under consideration are compatible with the internal market in view of the social character of the aid measure concerned, which will be paid to staff in full. The conditions laid down for the selection of the undertakings are objective, transparent, non-discriminatory and allow for competition among the players in the market concerned.

**Training aid**

**Training aid to De Tomaso Automobili SpA - Italy**

By its decision of 23 March the Commission authorised a grant of €19.2 million to the Italian sports car producer De Tomaso SpA for a project to train its workforce at its two production sites in Grugliasco (Piedmont) and Guasticce (Tuscany) (12).

De Tomaso SpA plans to launch the production of two new luxury sports car models and one new luxury car model. The company designed a comprehensive training programme to offer in-depth general training on upholstery, welding, painting and parts assembly to 1,038 workers at the two sites. A large proportion of the workers who will take part in the training are disadvantaged or disabled. The proposed aid will allow the company to offer this in-depth training to its entire workforce, not just the workers who need to be trained to produce the new models. The aid will therefore enable the workers to receive in-depth general training on issues that will improve their professional knowledge and increase their potential on the jobs market. Moreover, the acquisition of these skills will be certified by the Italian regional authorities. The company itself will make a significant contribution to this extensive training programme.

The Commission therefore concluded that the proposed aid measure, which is one of the first applications assessed under the 2009 Training Aid Communication, is compatible with Article 107(3)(c) TFEU.

**Transport**

**Aid for air transport between Martinique and Metropolitan France**

The Commission decided on 18 February to authorise air transport aid of a social character for certain residents in the French overseas department of Martinique (13). The aid will increase the aid applicable to air transport between Martinique and Metropolitan France, as well as to other EU and EEA Member States.

The Commission found that the aid was compatible with the three criteria of Article 107(2)(a) TFEU, as well as with point 24 of the Communication on Air Transport and previous case practice.

**Decisions taken under Article 107(3)(b) TFEU**

**Banking**

**Schemes**

The Commission has extended certain bank guarantee schemes for credit institutions in Lithuania, Portugal and Greece (14). The extended schemes comply with the 2010 Communication on support measures for banks during the financial crisis. The Commission has furthermore extended a recapitalisation scheme in Portugal. (15)

**Ad hoc aid**

**Recapitalisation of NLB**

On 7 March the Commission authorised an emergency recapitalisation of up to €250 million for the Slovenian bank Nova Ljubljanska Banka (NLB) (16). NLB passed the stress tests conducted in mid-2010 by the European Banking Authority (formerly CEBS), though only by a small margin, leading the Central Bank of Slovenia to decide that the bank must raise its capital levels to preserve an adequate level of Core Tier 1 capital.

NLB needs to raise €250 million of equity capital, equivalent to 1.6% of its risk-weighted assets. It will try to raise money through a public offering of its shares, in two tranches. In the first tranche, existing shareholders will be offered the opportunity to subscribe to the entire €250 million new shares, pro rata to their existing shareholdings. In the second tranche, any new shares not taken up by existing shareholders will be offered to the general public. The Slovenian State will participate in the emergency recapitalisation by purchasing new shares at least in proportion to its current shareholding (approximately 49%). The capital injection will help NLB to preserve an adequate level of Core Tier 1 capital.

(12) N 344/2010

(13) SA.32069

(14) Lithuania: SA.32188, Portugal: SA.32158, Greece: SA.32767

(15) SA.32157

(16) SA.32261
The Commission found that the recapitalisation plan to be well-targeted, limited to the minimum necessary, and proportional. Therefore, the Commission temporarily authorised the measure as emergency aid until it reaches a final decision on NLB’s restructuring plan, which the Slovenian authorities must submit within six months of the date of the decision.

**Restructuring of Kommunalkredit**

On 31 March the Commission approved several measures in favour of Kommunalkredit Austria AG \(^{(1)}\). Before the crisis Kommunalkredit was the seventh largest Austrian bank with a balance sheet of €37 billion. Its business consisted of granting public and project finance loans, and investing and managing a sizeable portfolio of bonds and credit default swaps (CDS). The securities and CDS portfolios were particularly hard hit by the financial crisis, leading to considerable impairments and losses.

The measures consist of state guarantees of more than €10 billion, a capital injection of €250 million in the form of ordinary shares, and a split of the bank through the separation of strategic activities and non-strategic activities, with a €1 billion non-refundable loan to Kommunalkredit Finanz, the entity winding down the non-strategic assets.

The Commission found, in particular, that the restructuring plan appeared suitable to ensure the long-term viability of Kommunalkredit through re-focusing on its core strategic activities. The Commission further found that nationalisation and a coupon and acquisition ban in particular contributed to an appropriate contribution by the bank’s shareholders to the cost of restructuring. The considerable downsizing of the bank, by 60%, the annual growth cap and the behavioural commitments the Austrian authorities provided sufficiently limit distortions of competition brought about by the aid. The Commission concluded that the restructuring plan was appropriate to restore the bank’s viability, while adequately addressing competition distortions brought about by state support.

**Restructuring aid to Fortis Bank Nederland ABN Amro**

On 5 April the Commission approved a support package and restructuring plan for the ABN AMRO Group, subject to certain conditions \(^{(19)}\). The restructuring package has been under implementation since October 2008, when the Dutch State purchased Fortis Bank Nederland and the Dutch activities of the then ABN AMRO Bank, which subsequently merged to form ABN AMRO Group.

To ensure the state funding is used solely to consolidate the viability of the merged entity and not, for instance, for financing aggressive growth at the expense of competing banks, the Commission subordinated its approval of the aid package to a set of conditions, including a ban on acquisitions and a requirement to achieve certain margin profit levels in the private banking sector, where the bank has a strong position, to avoid it using the aid to undercut competitors.

The Commission found that the need for state support did not stem primarily from excessive risk-taking or unsustainable business models of the two aided entities (as seen in other cases), but from the separation from their respective mother company, which left them as undercapitalised stand-alone entities, unable to finance the upfront costs related to the merger. In this specific context and taking into account the limited amount of recapitalisation aid received, the Commission concluded that no divestment was required.

**Real economy cases adopted under the Temporary framework**

**Schemes**

The Commission has authorised prolongations of certain schemes allowing for limited amounts of aid in Estonia, Portugal, the United Kingdom, France, Hungary, the Netherlands, Greece, Austria, and the Czech Republic \(^{(19)}\). Prolongations of French, Hungarian and Romanian subsidised guarantees \(^{(20)}\) have also been approved, as well as a prolongation of a subsidised interest rate in the Czech Republic \(^{(2)}\).

Furthermore, the Commission decided to extend the authorisation of the Slovenian, Danish and French Short-term export credit insurance schemes. \(^{(2)}\)

**Decisions adopted on the basis of Article 107(3) (c) TFEU**

**Regional aid**

**Preferential electricity tariff for energy intensive industry in Sardinia**

On 23 February, the Commission found that operating aid granted by Italy to Portovesme, I.A and

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\(^{(1)}\) SA.32745

\(^{(19)}\) C 11/2009

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\(^{(19)}\) Estonia: SA.32104, Portugal SA.32122, United Kingdom: SA.32110, France: SA.32140, SA.32173

\(^{(20)}\) Hungary: SA.32061, the Netherlands: SA.32506, Greece: SA.32512, Austria: SA.32171 and the Czech Republic: SA.32664

\(^{(2)}\) France: SA.32183, 32118, Hungary: SA.32215, SA.32216, Romania: SA.32551

\(^{(2)}\) SA.32665

\(^{(2)}\) Slovenia: SA.32066, Denmark: SA.32513, France: SA.32090
Eurallumina in the form of subsidised electricity prices is incompatible with EU State aid rules and needs to be recovered (23).

The Commission concluded that two preferential electricity tariff schemes introduced in the Italian Region of Sardinia to three energy-intensive companies constituted incompatible operating aid. Italy had argued that it had to subsidise the energy-intensive companies because electricity was more expensive in Sardinia. The scheme was financed by all electricity users in Italy, both companies and end-consumers.

However, compensating a company for higher energy or other costs distorts competition in the marketplace and would ultimately start a subsidy race in the European Union that would not be in the common interest.

Italy implemented the first scheme in 2004 without prior notification to the Commission. Following competitors’ complaints, the Commission opened an in-depth investigation on both measures. As a consequence, Italy discontinued the scheme that year. However, the following year, Italy notified virtually identical subsidies for the same three beneficiaries, plus Syndial, a chlorine producer also based in Sardinia. The Commission opened an in-depth investigation in April 2006. Italy did not implement the second scheme. The amount of aid paid in 2004 is estimated by Italy at around €12 million for Porvovesme, €5 million for Eurallumina and €300,000 for ILA.

After an in-depth investigation, the Commission concluded that the preferential tariffs offered to these companies merely reduced the operating costs of the beneficiaries and improved their competitive position without furthering any goal of common interest. The Commission also prohibited the project from granting identical tariffs as of 2005 to the same beneficiaries plus chlorine producer Syndial.

This decision is in line with the Commission’s practice regarding energy price subsidies for selected companies. In November 2009 the Commission found an identical tariff enjoyed by Aleoa to be incompatible with EU State aid rules and ordered the recovery of the aid (24). The same line was taken in 2007 in the similar “Terni” case (25).

**Aid for Glunz AG**

On 11 March the Commission decided that investment aid for Glunz and OSB Deutschland, two interlinked plants, constituted State aid that was compatible with the internal market under Article 107(3) TFEU (26). The measure was originally notified in 2000 and concerned an investment to set up an integrated centre for wood processing in the region of Saxony-Anhalt, Germany.

In 2001, the Commission adopted a decision not to raise objections to the notified aid, which it considered was compatible with the 1998 Multisectoral Framework on regional aid for large investment projects (27).

The decision was annulled by the CFI in 2004 (28) and that judgment was upheld by the ECJ in 2008 (29). The Court found that the Commission had not adequately assessed the relevant market and whether that market was in decline pursuant to the 1998 Multisectoral Framework, this assessment having an effect on the maximum allowable aid intensity.

Following the judgment, the Commission re-assessed the case, this time as unlawful aid, as the measure had already been implemented by Germany. The Commission concluded that the investment project constituted State aid, that it concerned two different products, one of which was found to be in a declining market. The aid measure was found to comply with the maximum allowed aid intensity, in accordance with the Multisectoral Framework and Article 107(3)(a) TFEU.

**R&D&I**

**Individual aid to Aernnova**

On 26 January, the Commission authorised Spain to grant an interest-free reimbursable loan of €129 million to Aernnova for the development of the next-generation horizontal tail plane (HTP) for the future Airbus A350 XWB (30).

When assessing the project under the EU framework for State aid for research, development and innovation, the Commission found that the R&D project could not attract sufficient financing from the market, because of the high technological, market and commercial risk it entails. On the positive side, it will contribute to raising the level of R&D activities in Europe and it is limited to the amount necessary to enable the project to go ahead. The Commission found that distortion of competition will be limited, given the particular structure of the aeronautical market, the expected growth in the market and the very small market share held by the beneficiary. The subsidy in the form of the foregone interest rate is estimated at €37.4 million. The

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(28) Joined cases C-75/05 P and C-80/05 P
(29) C-13/2006
(30) CR 36/2010
(31) C36a/2006
(32) C 13/2006
(33) CR 36/2010
(34) C36a/2006
Commission found the State loan compatible with EU State aid rules, since the positive effects of the research and development aid outweigh any distortion of competition that the aid may bring about.

R&D aid to Volvo Aero for Trent XWB

On 23 February the Commission authorised a repayable advance of 120 million Swedish crowns (around €12 million) that Sweden intends to grant to Volvo Aero Corporation for the development of the Intermediate Compressor Case (ICC) for the Trent XWB engine (32). The engine is being developed by Rolls-Royce and will equip the new Airbus A350 XWB aircraft family.

The Swedish authorities submitted evidence showing that without the risk-sharing loan the project would not get finance because of its capital-intensive nature, the risks involved and delayed return, if any, on the investment.

The Commission verified that the aid would be limited to the minimum necessary for Volvo Aero to carry out the project. If the project is successful, the aid will be fully repaid, including reasonable interest. The Commission considered the potential impact on competition to be limited, as Volvo Aero has a relatively small share of the engine components market, which has good growth prospects.

Finally, the fabricated titanium ICC Volvo Aero envisages will offer a lower weight alternative to a conventional casted component, potentially contributing to reducing the aircraft’s fuel consumption and its impact on the environment.

Energy & environment

Geothermal energy production in Beinheim

On 12 January the Commission authorised France to provide a €25.3 million grant for the construction of a heat boiler using a renewable energy source (geothermal energy) in Beinheim, the Alsace region (33). The project also involves the construction of a 15-kilometre pipeline to bring the heat from the underground geothermal source to the Beinheim site.

The aid will be granted to a joint venture between Roquette Frères, Electricité de Strasbourg and Caisse des Dépôts et Consignations. The joint venture will sell the produced geothermal heat to the industrial site operated by Roquette Frères in Beinheim, enabling the company to partly replace its existing gas-fired heating boilers.

The use of geothermal energy, a renewable energy source, will cut CO₂ emissions by 39,000 tonnes a year compared to the same volume of heat produced from natural gas, while contributing to achieving renewable production objectives.

The project will ultimately reduce the company’s operating costs, since geothermal energy is a free primary energy source, but requires a significant initial investment of €45.3 million in the boiler and network.

The T3 East Paris district heating project

On 26 January the Commission authorised France to provide a €26 million direct grant for the construction of a district heating network in the North-East of Paris. The aid beneficiary is CPCU, a subsidiary of GDF Suez and the current holder of the district heating concession in Paris (34).

The network is to be built along the T3 tramway line, currently under construction. The introduction of district heating will cut CO₂ emissions by a total of 65,000 tonnes between 2011 and 2024, compared to heating from conventional sources. More generally, it will encourage future investments in renewable heating boilers to be connected to this network, and will lead to the closing of a conventional boiler using fossil fuel. Thanks to this and other projects under way, by 2020 nearly 20% of the energy used for heating in Paris would come from renewable sources (biomass, biogas, geothermal) as opposed to none at the moment. The French authorities also extended the district heating concession to GDF Suez by seven years until 2024, to allow the beneficiary to recoup network investment costs without undermining the commercial operation of the concession contract. The French authorities have made a commitment to tender the concession anew in 2024 or to operate it directly as of then.

Pilot scheme for purchase of electric vehicles

On 8 March the Commission authorised DKK15 million (approximately €2 million) of public funding for a pilot programme incentivising the purchase of electric cars until 31 December 2012 (35). The scheme supports projects designed to test and test-run electric vehicles under realistic conditions and is expected to increase the number of wholly electrically propelled cars in Denmark, thereby decreasing dependency on fossil fuel and reducing CO₂ emissions.

The aid will cover the necessary additional expenditure incurred when purchasing electric vehicles

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(34) N 205/2009  (35) N 386/2010
rather than their conventional petrol- or diesel-driven equivalents, as well as the necessary expenditure on trials and equipment for charging the vehicles. The scheme is open to all fleet owners, public institutions and private enterprises alike. The beneficiaries selected by the Danish Energy Agency are responsible for making the results of the vehicle trials available to the public.

Aid applications are assessed independently of the make or model of car concerned, which ensures there is no discrimination between car manufacturers. Considering the scheme’s total budget of €2 million and its limited duration, it is unlikely that car manufacturers or dealers could derive significant indirect benefits from its operation and possible distortions of competition will therefore be very limited.

**Aid to energy-intensive businesses, Green Electricity Act (Ökostromgesetznovelle 2008)**

After an in-depth investigation opened in 2009, on 8 March the Commission rejected a specific provision of the revised Green Electricity Act of Austria (Ökostromgesetznovelle 2008) that would have provided energy-intensive businesses with a partial exemption from buying green electricity, which is more expensive than normal ‘grey’ electricity (35). Companies whose incremental costs from the consumption of green electricity exceed 0.5 % of their net production value could have applied to the State-controlled Austrian energy regulator for a derogation from the obligation to purchase green electricity. If the derogation had been granted, energy-intensive businesses could have been partly exempted from their share of extra costs for green electricity. Instead, remaining enterprises and private households would have had to buy more of the more expensive green electricity. If the measure had been authorised, smaller electricity consumers would have had to pay higher energy bills to compensate for subsidies granted to a number of large energy consumers.

Such aid would merely have covered the normal operating costs of a company and might have considerably distorted competition for tradeable goods in the internal market. Moreover, it would not have triggered any environmental benefits and could therefore not be found compatible under EU environmental aid guidelines. At the same time, the Commission decision addresses the concerns of a complainant regarding unbalanced burden-sharing between large energy consumers on the one hand and SMEs and private households on the other had the Austrian measure been implemented.

The Commission concluded that the new provision would have resulted in imposing extra costs on enterprises not qualifying for the exemption.

**Risk capital**

**French venture capital funds**

On 20 April the Commission concluded that the national venture capital fund, which aims to encourage the raising of risk capital for young innovative SMEs, is compatible with the guidelines on risk capital (36).

The French national venture capital fund (FNA) is a fund that will invest in other risk capital funds, which will in turn invest in innovative new businesses. The FNA will be allocated €400 million and will be managed by CDC Entreprises, a management company authorised by the French financial markets authority and wholly-owned subsidiary of the French Deposit and Consignment Office (CDC). CDC Entreprises will be responsible for selecting the funds on the basis of public selection criteria that correspond to market best practice. The chosen funds will invest in innovative SMEs not listed on a stock market and in business for less than eight years at the time of the initial funding. Each investment will include private participation of at least 50% (or at least 30% in areas eligible for regional aid) and funding of at least 10% from investors that are independent of the company in addition to the contribution from the business itself.

The initial funding will only be for small businesses in the seed or start-up phase, but it will be possible to refinance the business even if it has become medium-sized meantime. The ceiling for the tranches of funding will be set at a maximum of € 2.5 million per business per 12-month period.

The Commission has made sure that the measure fulfils all the conditions of the guidelines on risk capital and has also obtained a guarantee that the fund will intervene only to overcome the failures of the risk capital market so as to minimise any risk of distorting competition.

**No aid decisions**

**Alleged aid to Componenta**

Following the Court annulment (37) of a Commission decision of 2005, on 20 April the Commission adopted a decision stating that the purchase price paid by the Finnish municipality Karkkila to
Componenta does not constitute State aid under Article 107(1) TFEU (38).

In December 2003 Componenta sold its 50% stake in a real estate company to the city of Karkkila for €2.4 million. The Commission concluded in a 2005 decision that Karkkila had paid a sum higher than a private investor would have paid, that the purchase price constituted aid and that the aid distorted competition because it provided Componenta with funds it would not have received under normal market terms. Recovery was therefore ordered.

An appeal went to the General Court and the decision was annulled in 2008 for lack of motivation. Following the Court’s decision, the Commission reassessed the case and concluded that the price paid was actually a market price and that the transaction did not involve state aid.

Système de couverture dollar – Aero 2008 guarantee

On 8 March the Commission closed a formal investigation procedure opened in 2009 and found that a state guarantee put in place by France to cover the exchange rate risk for aeronautic suppliers (Aero 2008) does not constitute State aid (39).

The ‘Aero 2008’ guarantee enables aeronautic suppliers at Tier 2 and below (40), which normally conclude supply contracts in US dollars, to benefit from a state-guaranteed US dollar forward rate for a specified amount of turnover and for a maximum period of five years. The guarantee enables the undertakings concerned to cover themselves against risks of fluctuation in the dollar-euro exchange rate for supplies of up to €500 million. The measure is administered by Coface, one of the leading French credit insurance companies, and operates on behalf of the French authorities. So far, the amounts covered represent approximately €10 million, and only four undertakings have taken out the guarantee.

The Commission verified that the premium charged by Coface covered not only the market value of the guarantee (including a profit margin), but also the insured’s default risk and administrative costs. With regard to the staggering of the premium, the French authorities confirmed that any possible difference between the rates of interest applicable and the reference rates specified by the Commission will always be lower than the de minimis threshold.

The Commission therefore concluded that the Aero 2008 guarantee can be considered as operating in line with the market economy investor principle.

Trèves

Following an in-depth investigation, on 20 April the Commission decided that financial support of €55 million to automotive supplier Trèves from the Fonds de Modernisation des Equipementiers Automobiles (FMEA) does not constitute State aid. (41)

Trèves is a car component supplier specialising in car interiors and noise insulation. In response to the crisis affecting the car sector, the French authorities created the FMEA at the beginning of 2009, with funding from the ‘Fonds Stratégique d’Investissement’ (French public fund) and two French car manufacturers, Renault and Peugeot. The FMEA was set up to make risk capital investments in companies belonging to the French car parts sector. The French authorities did not notify the investment of €55 million in Trèves as they considered that the FMEA was primarily run by two car manufacturers who are private investors.

The Commission found that the measures did not constitute State aid, since both the investment of €55 million, as well as a plan for debt rescheduling, complied with the market economy investor principle and did not confer an advantage on Trèves.

(38) C 37/2004
(39) C 18/2010
(40) While Tier 1 and Super Tier 1 suppliers are partners sharing the risks with the aircraft manufacturers, Tier 2 and below merely work for a risk-sharing partner.
(41) C 4/2010