



EUROPEAN COMMISSION

Brussels, 20.04.2004
C(2004)1344fin

Subject: State Aid N 206/2003 – UK
Waterborne Freight Grant (WFG)

Sir,

1. Procedure

1. By letter dated 8 May 2003 the UK Permanent Representation notified the Commission of the “Waterborne Freight Grant” aid scheme in accordance with Article 88(3) of the EC Treaty. The notification was registered by the Secretariat-General of the European Commission under N 206/03.
2. As the notification was incomplete, the Commission requested additional information by letter dated 16 July 2003. A reply was received from the UK Permanent Representation by letter dated 21 November 2003, registered as DG TREN A/35759.
3. A new request for information was sent by the Commission on 29 January 2004. A reply to this request was received by letter dated 6 February 2004, registered as DG TREN A/12778.

2. Description of the aid scheme

2.1 Purpose

4. The objective of the scheme is to encourage the modal shift of freight from road to water by granting aid to new/existing coastal, short-sea or inland waterway services provided that they avoid journeys by lorry and that they generate environmental benefits within the UK. Beneficiary companies must undertake to move a specified annual freight tonnage by water.

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5. This new scheme is complementary to the existing Freight Facilities Grant (FFG) scheme¹.

2.2 Commission Decision of 20 December 2001, N 649/2001

6. The FFG scheme grants aid to operators of freight handling facilities for coastal/short-sea shipping. Such facilities may include quays, moorings and loading/unloading equipment and will be provided to all existing and potential users under non-discriminatory terms. The aid is intended to tip the balance in favour of short-sea shipping and to financially support investments in expensive and specialised equipment required for sending freight by water, which would not be needed if the goods went by road. By contributing to the cost of such facilities, grants will enable coastal/short-sea shipping to compete in financial terms with road transport.
7. Grant intensity will be calculated by the UK competent authorities for each individual scheme following the FFG rules. The FFG scheme first assesses the environmental benefit using a standard formula which takes into account the lorry-miles that will be saved over the agreed period of the individual scheme and their monetary value, which is the environmental benefit to be gained. This monetary environmental benefit, calculated by the UK competent authorities using the FFG formula, constitutes the maximum amount of grant that can be offered by the UK Government to applicants.
8. The Commission's decision of 20 December 2001 stated that the aid intensity should not be higher than 50% of the total project cost for facilities that are accessible to all existing and potential operators on non-discriminatory terms. Where access to the infrastructure is limited to one or more specific operators, the latter will need to be chosen through a transparent, fair and non-discriminatory public tendering procedure. Exceptionally, if the authorities can prove that the desired objectives cannot be met through the aid amounts as described above, higher percentages may be granted after prior notification and approval by the Commission.

2.3 Beneficiaries

9. Any company within the EU or in a third country within the EEA which operates new/existing coastal, short-sea or inland waterway services, provided that such services remove lorry journeys from roads in the UK. Such services may include services between other Member States, or between a Member State and a third country within the EEA, provided that the service in question would generate environmental benefits within the UK.

¹ N 649/2001- UK- Freight Facilities Grant; Commission decision of 20.12.2001

10. Only in exceptional circumstances will existing services benefit from the aid scheme. It must be proven that such services would, without a grant, definitely cease and therefore put traffic back on the roads. In such cases, a study will be carried out to determine whether the service could be performed by another operator with a smaller or no subsidy. Close attention will be paid to any inefficiencies which could have given rise to service failure.

2.4 Procedure

11. All projects will be required to offer worthwhile and quantifiable UK environmental benefits and to be viable after a maximum of three years' subsidy.

12. Prior to the granting of aid, the viability of the project will be verified by means of a feasibility study and a business plan. The setting-up of a separate legal entity between partners might also be requested.

13. In the case of mixed freight/passenger services, a separate accounting system will be requested in order to subsidize only the transfer of freight from road to water.

14. Prior to the granting of aid, projects will be subject to an assessment of any negative competition effects, such as diversion of business from neighbouring ports or from alternative modes of transport.

15. Annually, the details of the availability of WFG will be published in the Official Journal of the European Union (details of the budget available, who is eligible, the basis of the allocation, how WFG will be paid and how to apply).

16. From the second year onwards, details of the WFG awards made in the previous twelve months will also be published.

17. After appropriate examination of the applications, grants will be made available on a "first come, first served" basis. In the event of pressure on the budget, proposals can be ranked in accordance with the expected environmental benefits.

18. Aid is to be awarded for a maximum of three years against a specified annual tonnage to be moved by water. Periodic payment would be made in arrears in direct relation to the freight moved. In the event that freight was not transported by water, no payments would be made.

2.5 Type of aid and intensity

19. The aid will take the form of non-recoverable grants. As a general principle, the minimum aid necessary to achieve the objective will be paid.

20. Aid will be restricted to whichever is the lowest of the following:

- (i) the value of the environmental benefits of moving the relevant freight by water;
- (ii) the need for grant support as determined by a financial appraisal of the proposal comparing the water with the road alternative;
- (iii) 30% of the total water operating cost of the relevant service.

21. Aid will be payable for a maximum of three years. It will be degressive, and whether (i) (ii) or (iii) constitutes the cap on the grant, it will be paid in three annual instalments equal to 1/2, 1/3 and 1/6 respectively of the total award. There will be also an absolute ceiling applicable in all cases of €1 000 000 in the first year.
22. Care will be taken to ensure that operating costs which are to be subject of aid are broadly in line with those applying in the market place.

2.6 Eligible costs

23. The existing UK Freight Facilities Grant scheme covers the purchase of handling equipment, infrastructure and associated capital purchase costs.
24. Other costs directly attributable to services that move a specified volume of freight from road to water will be eligible under WFG. These will include:
 - The costs of hiring, leasing or amortisation of combinations of vehicles (lorries, trailers, semi-trailers, swap bodies or containers of 20 feet or more)
 - The cost of hiring, leasing or amortisation of inland waterways and sea going vessels subject, in the case of inland waterway vessels, to compliance with specific rules on structural improvements to inland waterway transport
 - The costs of hiring, leasing or amortisation of installations permitting transshipment between inland waterways, shipping routes, railways and roads
 - The costs of using inland waterway and maritime infrastructures
 - Expenditure relating to commercial operation of techniques, technologies or equipment previously tested and approved, in particular transport information technology
 - The costs of measures related to staff training and the dissemination of project results as well as expenses for information and communication activities to make new transport services known.
 - Costs associated with separate accounting and feasibility studies; preliminary feasibility studies where the potential environmental benefits are substantial.

2.7 Legal basis

25. Transport Act 2000, section 272; Transport (Scotland) Act 2001, section 71.

2.8 Cumulation

26. Where applicants wish to apply for both FFG and WFG, an overall ceiling of 30% of the total water freight project costs will apply. Below this global percentage, the limits of the two separate schemes will then apply.
27. When WFG is combined with other national or Community aid schemes such as Marco Polo, an overall ceiling of 30% of operating costs will apply to the combined total of national and Community aid.
28. The aid will not be cumulated with public service compensation.

2.9 Budget and duration of the aid measure

29. The scheme will be in force for 6 years. It is estimated that around £20 million will be made available for both FFG and WFG schemes in each year of the first three years. For the 6-year period the budget is estimated at £60 million.

III. Assessment of the aid scheme

3.1 Presence of aid

30. According to Article 87(1) of the EC Treaty, any aid granted by a Member State which distorts or threatens to distort competition shall be incompatible with the common market, in so far as it affects trade between Member States.

31. Under the proposed scheme, the selected beneficiaries will receive a commercial advantage from State resources, which other operators competing with them do not receive. The measure thus reinforces the competitive situation of the beneficiaries against other operators active in the same liberalised market.

32. In view of the above, the Commission finds that the notified aid scheme involves aid within the meaning of Article 87(1) and is hence, in principle, prohibited unless it may be deemed compatible with the common market by virtue of any of the exemptions provided for in the Treaty or secondary legislation.

3.2 Exemption of the aid scheme

33. The White Paper on Transport Policy² encourages the use of maritime and other environmentally friendly modes of transport in order to make them competitive alternatives to road haulage.

34. The Commission notes that the planned subsidy constitutes operating aid which, in principle, is incompatible with the Treaty.³ Such aid can only be authorised as an exceptional measure.⁴

35. The Commission must therefore satisfy itself that this scheme does not lead to a distortion of competition contrary to the common interest, even if the objective of the planned aid is in line with the Commission's policy of achieving a better distribution between modes of transport.

36. The Community guidelines on State aid to maritime transport⁵ (hereafter "the guidelines") allow the granting of operating aid to shipowners, within the meaning of Article 1 of Regulation (EEC) No 4055/86, in respect of ships flying the flag of one of the Member

² White Paper *European transport policy for 2010: time to decide*, COM(2001) 370.

³ See in particular the decisions to initiate the Article 88(2) procedure in Case C 2/97 of 20 January 1997 (OJ C 93, 22.03.1997) and Case C 21/98 of 4 May 1999 (OJ C 227, 28.8.1999).

⁴ See Community guidelines on State aid for environmental protection (OJ C 72, 10.3.1994); Community guidelines on national regional aid (OJ C 74, 10.3.1998); Community guidelines for State aid in the agriculture sector (OJ C 28, 1.1.2000).

⁵ Official Journal of the European Union 2004/C 13/03 of 17.01.04

States, for the launching of short-sea shipping services, provided that specific conditions are fulfilled. These guidelines are not applicable to inland waterways services.

37. Article 73 of the EC Treaty states that aids shall be compatible with the Treaty if they meet the needs of coordination of transport. The notion of *coordination* in Article 73 implies more than facilitating the development of an industry, it involves some form of planning by the State. In the light of developments in liberalisation, the need for State financial measures to coordinate land transport has now been considerably reduced. Therefore, Article 73, as implemented by Regulation 1107/70 on the granting of aids for transport by rail, road and inland waterway⁶, can not be considered as applicable.
38. Nevertheless, the development of activities shifting traffic from road to other modes is in the common interest within the meaning of Article 87(3)(c) of the Treaty.⁷ Consequently, the Commission finds that Article 87(3)(c) of the Treaty is the appropriate legal basis to analyse aid for the promotion of inland waterway services and to assess its compatibility with the common market.
39. Accordingly, it must be checked that the requirements of the guidelines are fulfilled with respect to shipowners, as well as those of Article 87(3)(c) of the Treaty regarding the rest of the beneficiaries and for inland waterway services.

3.2. 1 Application of Art. 87(3)(c)

Necessity of the start-up aid

40. Start-up aid has been defined as aid necessary for the launching of a new route or for the upgrading of services on an existing one. In this respect, the established selection criteria are transparent and guarantee a non-discriminatory access to the aid measure.
41. The obligation for beneficiaries to move a specified annual freight tonnage by water ensures that the subsidised projects will contribute to a real reduction in road traffic and to an improvement in the efficiency of intermodal transport services.
42. The Commission finds that these objectives fall within its policy of promoting alternative modes of transport and reducing road congestion.

Proportionality of the start-up aid

43. The Commission considers that the limited duration of the scheme combined with its degressive nature will limit the measure's impact on competition in the sector. Further, no aid will be granted in addition to financial compensation for public service obligations imposed on the selected services.

⁶ OJ L 130, 15.6.1970, p.1

⁷ See Commission decision of 8 July 1999, N 121/99, Austria, OJ C 245, 28 August 1999, p.2; Commission decision of 4 May 1999, Italy, OJ L 227, 28 August 1999, p. 12; Commission decision of 9 December 1998, N 598/98, the Netherlands, OJ C 29, 4 February 1999, p.13; Commission decision of 21 January 1997, C 2/97, the Netherlands, OJ C 93, 22 March 1997, p.11.

44. The Commission also notes that the aid is planned for a maximum of three years. This corresponds to the maximum period for Community financing under the Marco Polo Programme and the guidelines.
45. Financial transparency is guaranteed by the obligation to set up separate accounting, so that the financial flows for funding the selected projects will be clearly identified.
46. The Commission notes that the planned aid intensity of 30% is in line with the aid ceiling contained in the Marco Polo Regulation⁸ and with the established practice.

No distortion of competition

47. Projects will only be subsidised after verification that they will not serve to divert traffic flows between existing services or between alternative modes of transport.
48. Funded projects must also be viable in the long term and likely to make a real contribution to the reduction of road traffic through a new service or the improvement of an existing service.
49. The Commission considers that the proposed selection procedure avoids the danger of a diversion of traffic incompatible with the common interest. The arrangements will also guarantee no discrimination on grounds of nationality and the transparent and equal treatment of operators.
50. Further, the details of the scheme and the awarded projects will be published in the Official Journal of the European Union.
51. It is the Commission's view that the aid is both necessary and strictly proportionate to the set objective and that it does not distort competition to an extent contrary to the common interest.

3.2.2 Compliance with the guidelines

52. The Commission takes the view that all the conditions contained in the guidelines for the granting of aid for the launching of new short-sea shipping services are fulfilled.
53. The aid will be limited to three years and the subsidized projects must be viable after that period.
54. The subsidy will be granted on the basis of transparent criteria applied in a non-discriminatory way.

⁸ REGULATION (EC) No 1382/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 July 2003 on the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo Programme). OJ L 196/1 of 2.08.2003; State aid N 810/2002 – Italy - *Incentive Scheme for Railway Freight Transport - Article 38 of Law No 166 of 1 August 2002*, Commission decision of 10.12.2003; State aid C 65/00 – France - *Aid scheme for the start-up of new short-sea shipping services*, Commission decision of 30.01.2002

55. Finally, the aid will be limited to 30% of the costs of the service.

Accordingly, the notified aid scheme can be considered compatible with the common market pursuant to Article 87(3)(c) of the Treaty.

4. Decision

The Commission has accordingly decided:

- to consider the notified aid scheme to be compatible with the EC Treaty and not to raise any objection.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Energy & Transport
Directorate A
B-1049 Brussels
Fax No : 0032 (0) 2 2964104

Yours faithfully,

For the Commission

Loyola de Palacio
Vice-President