STATE AIDS: COMMISSION GUIDELINES

Subject: State aids
Environmental protection

Industry: All industries

Source: Commission Statement IP/00/1519, dated 21 December 2000

(Note. In our report in December on the Commission's new guidelines on environmental agreements, we pointed out that it was not too difficult to imagine circumstances in which environmental considerations were offered as a justification for competitive trading. Similarly, in the field of state aids, it is not too difficult to imagine circumstances in which Member States may seek to justify the granting of subsidies or other forms of aid on environmental grounds where these forms of aid would otherwise be illegal under the Treaty. The Commission itself gives possible examples of such circumstances in its new Guidelines on state aids for environmental purposes. It cites in particular the energy sector, in which it is easy enough to justify support on environmental grounds, but hard to justify in terms of a competitive market. The new guidelines are therefore a welcome advance on the old and may be expected to encourage genuine expenditure of state resources on protection of the environment and at the same time to discourage the use of state resources to five certain traders special advantages and thereby distort competition.)

The Commission has adopted new guidelines setting out the conditions on which Member States may grant firms aid to promote environmental protection. The guidelines, which have been adopted following close cooperation with the Member States and all those concerned, are intended to promote measures to protect the environment while preventing any state aid that is not justified. "Competition policy and environmental policy are not at variance with one another," said Mr Monti, the Competition Commissioner. "However, taking environmental requirements into account does not mean that all forms of aid must be authorised. Consideration has to be given to the effects of aid in terms of sustainable development and full application of the 'polluter pays' principle." Mr Monti also explained why the Commission had brought in the new guidelines. "The current rules, which date from 1994, have proved effective, but Member States now intervene more frequently, for example in the energy sector, providing aid in forms that were rather uncommon until recently, notably tax reductions or exemptions. Similarly, new forms of operating aid are proliferating."

The Commission policy on environmental protection is based on the 'polluter pays' principle; that is to say, the costs of protecting the environment must be borne by the firms causing the pollution. However, state aid may be counter-productive here in that firms will be able to avoid the costs of pollution which they themselves have caused. The Commission is aware that aid may be justified in some cases where it serves as an incentive or provides a temporary solution.

One example concerns firms which decide to do more in terms of environmental protection than is required by Community rules. A further example is the development of renewable energy sources, where production costs are higher than the market price of the energy. An approach which looks favourably on aid for renewable energy sources has therefore been adopted. Member States can now choose between several options for granting investment and operating aid. In the case of investment aid, the basic rate of aid has been increased from 30% (1994 guidelines) to 40% for investments in support of renewable energy, energy saving and the combined production of energy and heat. A bonus of 10 percentage points is available for small and medium-sized firms, for firms located in assisted regions, and for investments in renewable energy serving the needs of an entire community such as an island. This means that, depending on the case in question, the rate of investment aid may easily reach 50%.

In the case of renewable energy, Member States will also be able to choose between four options for granting operating aid. In the first place, they may grant aid to compensate for the difference between the production costs of renewable energy and the market price of electricity until the plant has been fully depreciated. The length of the depreciation period is left to the discretion of the Member States. Where necessary, the aid may also cover a fair return on capital in order to attract investment to this type of activity. In the second place, Member States may also have recourse to market mechanisms such as green certificates. In the Commission's view, these are mechanisms that can make an effective contribution to promoting renewable energy and should, therefore, be authorised. Member States will though have to ensure that such mechanisms do not result in overcompensation. In the third place, Member States may similarly grant aid on the basis of the external costs avoided. This is because the production of renewable energy makes it possible to avoid high external costs for society that can now be quantified. Until such time as these external costs are borne by the firms responsible, aid may be granted to renewable-energy producers in proportion to the costs avoided, in order to compensate for the handicap they face. However, conditions will be laid down in order to avoid any risk of overcompensation. Finally, Member States will also still be able to grant aid in accordance with the general rules governing operating aid; that is to say, aid may be granted for not more than five years and must, in principle, be wound down over time (degressive aid). This is only one of the four options but it will allow Member States to grant ad hoc aid to a project that does not require long-term aid.

The new guidelines contain specific provisions for small and medium-sized enterprises, which may be eligible for investment aid when adapting to new Community standards. The Commission here allows an exception from the principle that compliance with the standardscannot normally provide justification for granting aid. Taken together, the guidelines, which will come into force once they have been published in the Official Journal, constitute a coherent set of measures reconciling the requirements of environmental protection with the provisions of the EC Treaty governing the control of state aid. The new guidelines will be valid until the end of 2007. ■