STATE AIDS (BANKING): THE ITALIAN BANKS CASE

Subject: State aids
Undertakings

Industry: Banking

Parties: Italian non-commercial banks ("banking foundations")

Source: Commission Statement IP/02/1231, dated 23 August 2001

(Note. Much of the case law of the Court of Justice is concerned with the definition of an "undertaking" for the purposes of the rules on competition; and the essence of the definition is that an undertaking consists of an entity engaged in economic activity. If an entity is not engaged in an economic activity, it is not an undertaking within the meaning of the relevant articles of the EC Treaty and is therefore outside the scope of the competition rules. At first sight, banking is an economic activity; and there have been several decisions in recent years directed against banks where the competition rules have been infringed. But, where the banks perform non-economic tasks, such as the management of their own assets and the donation of grants to non-profit-making organizations, it is a different story. For these reasons, the Commission has held that Italian "banking foundations" are not covered by the rules on competition; specifically, in this case, by the rules on state aids.)

The Commission has ruled that certain Italian fiscal measures introduced in 1998 and 1999 in favour of banking foundations are not subject to the European Union's state aid rules. This is because the Commission considers that the activity of managing own assets and using the proceeds to donate grants to not-for-profit entities is not an economic activity. Therefore banking foundations are not to be considered as undertakings within the meaning of the relevant rules on competition. This decision is different and separate from a decision of December 2001, which found that other fiscal advantages granted through the same law, which benefited Italian banks, were illegal and had to be reimbursed.

Commenting on the decision Competition Commissioner Mario Monti said: "Today's decision shows that the Commission carefully draws a line between economic activities, to which the state aid provisions have to be applied in order to protect fair competition in the Union, and non-economic activities which are not subject to these provisions. When foundations fulfill a purely social or educational role the tax advantage from which they benefit is, therefore, not covered by the European state aid rules. At the same time, the Commission has been applying the state aid rules to the banking sector in an increasingly stricter way, as seen in the recent decisions on the German public banks and on the Italian and French cases."

The fiscal measures which are the subject of the Commission decision were introduced by Law N° 461 of 23 December 1998 and the related Legislative Decree N° 153 of 17 May 1999 and concern the attribution to banking foundations of the legal status of "non-commercial entities". This legal status implies a 50% reduction of the standard company income tax in Italy (IRPEG). Other advantages concern the tax exemption on the sale by foundations of the holdings they have in banks or on the acquisition of instrumental goods.

The Commission has taken the view that, since the donation of funds does not represent an economic activity, foundations that do not perform other tasks cannot derive from the legislative measures any competitive advantage in any specific market. Accordingly, the measures do not constitute state aid. The Commission was able to reach this decision only after the Italian government strengthened the separation between banks and foundations in article 11 of law n° 448 of 28 December 2001. The new legislation prevents joint control of banking institutions by more than one foundation and introduces stricter rules on incompatibility between managing positions. This excludes the exercise of banking activity by the foundations (through controlled banks).

The decision, however, indicates that, if foundations were to carry out economic activities and insofar as these activities would affect trade between Member States, any tax advantage could represent state aid and would have to be notified to the Commission.

Today's decision complements and does not contradict a separate decision of 11 December 2001, which ruled that another aspect of the Italian legislative decree n°153/99 was incompatible with the European Community's state aid rules. Last year's decision concerned fiscal advantages granted to banks to encourage the restructuring and consolidation of the Italian banking sector. The Commission considered that the measures were distorting competition, by favouring undertakings in a sector where trade between Member States was present. ■

The Vauxhall Case

STATE AIDS (MOTOR VEHICLES): THE VAUXHALL CASE

Subject: State aids
Necessity
Proportionality (cost-benefit analysis)

Industry: Motor vehicles

Parties: Vauxhall Motors Ltd (UK) (subsidiary of General Motors, US)

Source: Commission Statement IP/02/1327, dated 18 September 2002

(Note. There are two points of interest in this case. The first is that, while the state aid approved by the Commission will tip the balance between the choice of

Belgium and the choice of the United Kingdom for the choice of location – a matter of contention noted in the Continental Tyre case referred to earlier in this issue – a proportionality test, involving a cost-benefit analysis of the merits of the two sites, persuaded the Commission that the aid was justified. The second point is that there are, under the framework scheme for state aids to the motor vehicle industry, some restrictions on the accumulation of aid; and it is therefore a condition in this case that the UK could not grant further training subsidies for the same project under the specific Community training aid regulation.)

The Commission has taken a positive but conditional decision with regard to planned regional aid for investment by Vauxhall Motors Ltd., a UK subsidiary of General Motors of the US, at its plant in Ellesmere Port, in Cheshire. The Commission has concluded, after a careful investigation under the European Union's rules on aid to the motor vehicle industry, that it could clear the £10 million (around €15.92 million) that the UK authorities plan to grant in regional aid. The UK government had argued that the subsidies were needed to compensate Vauxhall for the higher costs of investing in Ellesmere Port rather than in Belgium, the alternative investment location, among others for the higher costs of training the workforce. The Commission agreed to this, but pointed out that the UK could not grant further training subsidies for the same project under the specific Community training aid regulation.

In August 2001 the United Kingdom authorities notified the Commission that they intended to grant £10 million in regional subsidies to help towards an investment of Vauxhall Motors at Ellesmere Port. According to the United Kingdom, parent company General Motors Europe considered two alternative sites for the project, Ellesmere Port and the Antwerp plant in Belgium. No comments from third parties were received; but the framework scheme for state aid to the motor vehicle industry requires the Commission to ensure that any aid granted in this sector is both necessary and proportional. As for necessity, the aid recipient must clearly prove that it has an economically viable alternative location for its project. The Commission concluded that the plant in Antwerp (Belgium) was indeed considered by General Motors Europe and was a credible commercial alternative and that the aid was necessary for the realisation of the project in Ellesmere Port.

To assess the proportionality of the aid, a cost-benefit analysis is carried out. This compares the costs, which an investor would bear in order to carry out the project in the region in question, with the costs for an identical project in the alternative location. It becomes thus possible to determine the specific regional handicaps of the project. The aid may neither exceed the regional aid ceiling applicable to new investments in that area nor the regional handicap calculated in the cost benefit analysis. In the project at stake, the cost-benefit analysis compared the costs of the project at Ellesmere Port with those of the alternative location in Antwerp. The analysis found that the proposal satisfied the ceilings under the scheme; but the Commission decided to take a conditional decision stating that no further, specific training aid could be granted for the project. ■