

Unclassified

DAF/COMP/GF/WD(2009)77



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

11-Jan-2010

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/GF/WD(2009)77
Unclassified

Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Ukraine

-- Session I --

This contribution is submitted by Ukraine under session I of the Global Forum on Competition to be held on 18 and 19 February 2010.

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JT03276831

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ESTABLISHMENT OF THE STATE AID SYSTEM IN UKRAINE

-- Ukraine --

1. Establishment of the state aid system is gaining a great importance under the conditions of market reorganisation and Ukraine's active integration into the international community.
2. Governments of many countries apply state aid instruments for achieving a wide range of economic, social and political goals, including the improvement of competitive ability of national manufacturers at international and national markets.
3. The assignment of the state aid system consists not in restricting the state entitlement to render economic aid or to narrow down the scope of such aid, but in ensuring the provision of such type of aid so that it would not bring about any negative consequences for competition.
4. State aid in Ukraine is provided by central and local agencies of public authorities, local government agencies and their authorised establishments at the expense of the state and local budgets. State aid is annually granted to thousands of business entities. All these elements constitute the expanded and comprehensive system of state aid that requires monitoring and control for the avoidance of adverse effect for competition.
5. Ukrainian state aid related laws are characterised as fragmentary and incomplete. Certain provisions of state aid control are contained in the Economic Code, The Economic Competition Protecting Law of Ukraine, The Concept of State Subsidies Restructuring (approved by the Cabinet of Ministers Resolution No. 182-p dated March 31, 2003).
6. The provisions for granting regional aid are determined by The Regional Development Incentives Law of Ukraine. Supporting activities in certain industries are provided for by several laws: The Concept of State Industry Policies (approved by the President of Ukraine Decree No.102/2003 dated February, 12 2003), The State Industry Development Program for 2003-2011 (approved by the Cabinet of Ministers Resolution No. 1174 dated July 28, 2003).
7. Furthermore, The Fiscal Code of Ukraine provides the possibility of granting subsidies to enterprises at the expense of budgetary funds via financing the support programs on priority branches of economy in accordance with the general national programs, and reducing budgetary incomes on account of granting tax benefits. The Taxation System Law of Ukraine provides incentives for enterprise production activity and active investments by introducing the taxation-related benefits on the profits (incomes) aimed at production development.
8. International obligations of Ukraine in the sphere of control of the state aid provision and use are determined by Article 49 of The Partnership and Cooperation Agreement of Ukraine, European Communities and their member-countries which provides the Parties abstaining from granting any state aid to certain enterprises or to production of commodities, or from rendering the services that impair or threaten to impair competition on condition of their affecting the trading process between Ukraine and the

Community. The information exchange procedure on request of the Parties to the Agreement and proper advising are also provided with regard to certain cases of state aid granting.

9. Signing the Free Trade Area Agreement with the EU will provide the prohibition of the state aid that impairs competition, if such support adversely affects trading between Ukraine and the EU. Ukraine will be obligated to ensure legal, institutional and organisational principles of the state aid system, and non-fulfilment of these obligations entails applying a dispute settlement mechanism including certain compensatory procedures.

10. The issue of state aid granting is only partially regulated by the economic competition protecting laws of Ukraine - with regard to prohibiting the authorities and the local government agencies to grant benefits and other preferences to individual business entities that place them on a privileged footing in relation to competitors which brings about or may bring about non-admission, removal, restriction and impairment of competition. But nevertheless, the concept of "benefits or other preferences" is not fully compliant with the notion of "state aid" present in the EU laws. Besides, the law provides no grounds for reimbursing the state aid that impairs competition. The most important disadvantage is the fact that Ukraine does not still have a consistently formed state aid monitoring system which serves as a prerequisite for any control.

11. Over the last five years, by order of the Government, the Anti-Monopoly Committee of Ukraine had been attempting to conduct integrated lawmaking in that sphere via the Supreme Council of Ukraine or to apply amendments to the current competition laws with the purpose of performing state aid control functions. Both bills were rejected by the Supreme Council of Ukraine.

12. One of the main reasons for rejecting the bills mentioned above was a lack of common attitude toward the institutional principles of the state aid control system, first of all, as to determining the authority that would be responsible for performing the control functions of the kind.

13. The issue of evaluating the effect the state aid makes on competition is only one of the aspects of the state aid institute. The issues of state aid monitoring and preparing reports on granted state aid that shall be obligatory elements of the control system are not in power of the Anti-Monopoly Committee of Ukraine. Nowadays certain elements of these authorities have been conferred to the Ministry of Finance, the Ministry of Economy and branch ministries; however each of these agencies is solely responsible for a certain sphere of social relations. There is no unified agency that would be authorised to perform the whole set of functions provided by the state aid control system.

14. In view of the aforesaid, pursuant to the Order of the Ukrainian Government, an interagency workgroup specialised on drafting the Concept of the state aid system forming was set up in July 2008.

15. Allowing for the complexity and diversity of the issue related to state aid granting and using, the Anti-Monopoly Committee of Ukraine initiated receiving technical support from the EU for resolving this problem. As of today there has commenced implementation of the EU technical support project named "Adjusting the competition protecting system and the state purchase system of Ukraine in accordance with the EU standards", one of the components of which is "State aid". The draft concept of the state aid system forming has been developed on the basis of the results of the interagency workgroup activities and is currently being agreed on by the executive branch authorities.

16. As determined in the draft Concept, the state aid system forming shall be ensured by the fulfilment of the following key tasks:

- 1) To form the state aid monitoring system on the national level;

- 2) To make up the state aid register containing generalised data on the support granted in Ukraine;
- 3) To create a state aid map for keeping balanced regional development;
- 4) To prepare regular (annual) reports on the scope and forms of state aid in compliance with international standards;
- 5) To introduce surveillance of how the granted state aid influences competition.

17. Efficient implementation of the tasks mentioned above will allow the forming of two main components of the state aid system in Ukraine – the state aid monitoring system and the state aid control system.

18. Fulfilment of the first five tasks will form the state aid monitoring system while the implementation of function five will turn it into the state aid control system.

19. Under the conditions of the difficulties existing in Ukraine when it comes to promoting laws in the sphere of state aid, it is advisable to make use of the experience of Poland and a few other countries of Central Europe that started resolving the problem of state aid control by creating the state aid monitoring system which was forming based on the EU standards.

20. Forming the state aid monitoring and reporting systems shall be launched on the basis of the Government's resolution and go through stage-by-stage implementation:

- Stage I – organising a pilot monitoring project on state aid granting with the central authorities involved in, creating the registering and reporting models of state aid;
- Stage II – organising the state aid monitoring system on the national level,
- Stage III – setting up the state aid register on the national level using monitoring results, preparing overall reports of state aid on the basis of this register and creating the regional map of state aid.

21. Expert training related to the monitoring procedure, register opening and report preparations shall be provided for the authorised agency and also for the central and local authorities – state aid granters - at all the stages of monitoring and reporting.

22. In order to carry out the state aid monitoring procedures, to keep records of state aid and to prepare reports an authorised agency shall be as fully informed as possible about types and schemes of state aid, have financial monitoring skills and ensure liaising with a broad spectrum of government authorities.

23. As determined in the draft Concept, the optimal institutional model related to solving the issue of forming the state aid system in Ukraine is the allocation of authorities based on fulfilling certain tasks of the state aid system between two government authorities, specifically, vesting the Ministry of Finance of Ukraine with the authorities of monitoring and report preparation as regards state aid using and granting, and the Anti-Monopoly Committee of Ukraine – with those of controlling the state aid influence on competition and international trade. Allocating authorities this way will ensure the possibility of employing staff and information resources, already available in these government authorities.

24. Resolving the issue stage-by-stage with its complexity and diversity taken into consideration will ensure the possibility of following a more balanced and reasonable approach to resolving all the issues and of amending certain approaches if necessary.
25. Evaluating an as-is state in the sphere of state aid due to the made-up register and the monitoring activities preceding the law adoption will be conducive to developing adequate and balanced state aid related laws.
26. Developing a legislative system in the sphere of state aid shall be conducted on a stage-by-stage basis as well and concurrently with implementing state aid monitoring activities:
- Stage I deals with developing the regulatory documents that will determine the procedure of state aid monitoring, and recommended practice of report preparation with EU standards taken into account;
 - Stage II deals with developing and adopting a special law of state aid based on monitoring results, that will determine legal, institutional and organisational principles of state aid system functioning;
 - Stage III deals with developing secondary laws that shall ensure state aid system functioning to the full extent.
27. Ensuring the interaction and information exchange for authorised agencies in the sphere of state aid and implementing the mechanisms of preliminary and follow-up control over the state aid influence on competition and international trade shall commence upon the completion of monitoring stage I, particularly, on the basis of the data obtained during the monitoring activities and after adopting the frame law of state aid.
28. All the stages of implementing the state aid system shall be accompanied by the activities aimed at the extension of public awareness of the state aid system functions and advantages.
29. The developed draft Concept is currently being reworked by ministries and establishments and agreed upon with all the co-executors. Consulting experts on the technical support project “Adjusting the competition system and the state purchase system of Ukraine in accordance with EU” is continued.
30. The choice of a certain optimal model of forming a state aid system and its stage-by-stage implementation shall be further based on the most efficient option the decision as to which shall be rendered by the Cabinet of Ministers of Ukraine.