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## Global Forum on Competition

### COMPETITION, STATE AID AND SUBSIDIES

#### Contribution from the Former Yugoslav Republic of Macedonia

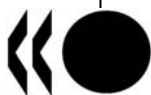
-- Session I --

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## COMPETITION, STATE AID AND SUBSIDIES

### -- Former Yugoslav Republic of Macedonia --

#### I. The Use of State Aid in the Republic of Macedonia

1. In the Republic of Macedonia there is no particular sector affected by the grants or tax breaks. Tax breaks have been given several times, but to all companies as general measure of the Government, so it could not be defined as State aid according to the Law on State Aid.
2. Selling of land owned by the State at a price below market level on 2 occasions has been treated by the Commission for Protection of Competition (CPC) as an unlawful aid, and as such asked with decision to be recovered.
3. Due to scarcity of sources of the State, very small difference between normal market rate and below-market rate, as well as harsh procedure to obtain soft loans, the granting of loans at below-market rates supposes to be so called *de minimis* aid (up to Euro 100.000 per undertaking in three consecutive years in existing Law on State Aid).
4. Attracting firms to economically distressed regions in a form of investment aid is primary goal of the Government as major State aid provider. The Government established scheme for providing regional aid on the basis of the Law on Technological Industrial Zones, and notified it to the CPC.
5. There have been also cases of support to companies that are performing services of general economic interest. Most of these cases have been regularly notified to the CPC. In this field, Macedonian State aid legislation is fully aligned with the legislation of the European Union (*acquis communautaire*).
6. Macedonian legislation and practice treat equally domestic and foreign companies.
7. So far, there have not been cases of remedying competition distortion created by the granting of aid by foreign governments, nor preventing strategic firms from being purchased by foreign companies. Moreover, the intention to attract more foreign investors pushes the aid in rather opposite direction.
8. Until the crisis, but also beyond it, companies had not suffered undersupply of credit by the financial sector. But the relative high market rate of the loan and crisis in real sector, forced the Government to help companies with loans which are at slightly lower rate than normal market rate.
9. The Macedonian Law on Public Procurement is fundamentally aligned with the *acquis*. A unified nomenclature for public tenders above certain thresholds is obligatory for all State institutions and all public companies. Standard tender documentation and user-friendly manuals are available on the website of the Public Procurement Bureau. There is also an established remedies system through the State Appeals Commission. Contracting authorities increasingly are using the e-procurement system.
10. Licenses to operate a mobile telephony network have been provided by the Agency for Electronic Communications. There are 3 mobile operators in Macedonia. It has provided also 2 licenses for 3G and

for radio frequencies for broadband wireless internet access. Agency for Electronic Communications fully cooperates with CPC in order to prevent distortion of competition on this market.

11. Licenses to operate a television network are provided by the Broadcasting Council. Competition on the electronic communications markets increased as a result of the liberalisation process, to the benefit of consumers.

12. Access to natural resources is regulated by the Law on Concessions and other Types of Public-Private Partnership of 2008. Responsible institution for licenses for concessions is the Ministry of Economy.

## **II. Aid to ailing companies, especially in the context of the financial crisis**

13. Aid to ailing companies in Macedonian State aid legislation is regulated in the Regulation on Establishing Conditions and Procedure for Granting Aid for Rescue and Restructuring of Firms in Difficulties; (Official Gazette of Macedonia No. 81/03 and 83/07)

14. This Regulation is aligned with the Community guidelines on State aid for rescuing and restructuring firms in difficulty (2004 OJ C 244/2).

15. Financial crisis has not affected Macedonian financial sector, so no specific rescue measures have been undertaken for banks and other financial institutions.

16. Also, there has not been aid to industrial firms, nor to particular industry.

17. A firm qualifies to use this kind of aid, if it is unable to meet its obligations through its own resources with the funds it is able to obtain from of its owner/shareholders or creditors to stern losses which, without outside intervention by the public authority will almost certainly condemn it to go out of business in the short and medium term. Rescue aid and restructuring aid can be provided only as a loan or loan guarantee on “one time last time principle” which means that one company can only once in 10 years receive rescue aid. In case of loan, the loan shall be repaid over a period of not more than 6 months following the last instalment paid to the firm.

18. The provider of the aid should inform the CPC for a restructuring or liquidation plan of the firm not later than 6 months after the rescue measure has been authorised or proof that the loan has been reimbursed in full, and/or the guarantee has been terminated.

19. The aid is restricted to the amount needed to keep the firm in business for at the period during which the aid is authorised (covering, e.g. wage and salary costs and routine supplies).

20. Compensatory measures should be taken as a rule to mitigate any adverse effects of the aid on competitors. These measures usually consist in restrictions on the presence of the firm on its market(s) during and after the period of restructuring, and:

- shall be implemented through the restructuring plan and conditions attached to it
- must make a contribution (in proportion to the amount of aid received and its impact on that market) to the improvement of market conditions
- above mentioned measures shall not be requested for small and medium-sized enterprises, except in case otherwise stipulated by the State aid rules for certain sector.

21. Restructuring aid should normally only be used to restore the firm's viability but not enable the firm to extend its production capacity during the implementation of the restructuring plan, except in cases when such extension is essential for restoring viability an undue distortion to competition.

22. It is requested that the aid beneficiary makes a significant contribution to the restructuring plan from its own resources, including selling a property which is not essential for the surviving of the company, or by financing from other sources under market conditions. This contribution must be realistic and to exclude expected profit as a cash flow and it should be higher as possible. It is considered that following contribution rates are appropriate: at least 25% in the case of small companies, at least 40% in the case of medium-sized companies and at least 50% in the case of large companies.

23. Sometimes the aid to ailing companies takes the form of temporary government ownership. So far, cases of such changing of ownership have been done on the market principles. There are not examples where government turns a profit after the aided firm's situation improved.

24. Until now, no rescue and restructuring aid has been provided in the meaning of the Law and the Regulation.

### **III. Legal restrictions on State aid**

25. By definition in the existing Law on State aid, any State aid, irrespectively whether it is granted under an aid scheme or as an individual aid award, which distorts or threatens to distort competition by favouring certain undertakings or certain products, is incompatible with the Law insofar as it may affect trade between the Republic of Macedonia and the European Community, which means, that, by virtue, State aid is forbidden.

26. Besides of the Law on State Aid, Macedonian State aid legislation consists of 4 Regulations. One of these Regulations is Regulation on Establishing Conditions and Procedure for Granting Horizontal Aid. (Official Gazette of Macedonia No. 105/07)

27. This Regulation regulates, inter alia, aid for the activities of researching, development and innovation. It may be considered compatible if it refers to one or more of the following categories of research:

- fundamental research (aid intensity 100% from eligible costs)
- industrial research (aid intensity 50% from eligible costs)
- experimental research (aid intensity 25% from eligible costs)

28. This kind of aid may be granted only if before the beginning of the project application has been made from the beneficiary to the aid provider. In all cases, providers of aid must before the CPC demonstrate incentive effect from the measures by preceding evaluation for increasing activities for researching, development and innovation. But for SME's and where the amount of aid is below Euro 3.75 million per enterprise, for industrial property rights costs for SME's, for young innovative enterprises, for advisory services, innovation support services and for loan of highly qualified personnel these determinations do not apply.

29. The Republic of Macedonia is Member State of CEFTA. The provisions of CEFTA Agreement in the field of competition and State aid are actually transposed from Articles 101, 102 and 107 of TFEU. So far, supranational control mechanism foreseen in CEFTA Agreement in the field of competition has not been used.

30. One of the tasks of the CPC is to monitor all State aid provided in the Republic of Macedonia, except State aid granted in the sector of agriculture and fisheries.

31. Until now, there is no reported case when private company complained about predatory strategies or unfair practices implemented by either public or private company benefitting from public funds.

32. There has been one case when company complained about discriminatory treatment, in comparison to a competitor benefiting from State aid in the form of purchasing of State owned land below market price. The CPC assessed this aid as unlawful and asked for recovery, i.e. full market price of the land to be paid by the aid beneficiary.

33. In the price regulated sectors, the CPC deals according to its authorisation and according to signed Memoranda of Understanding with regulators. However, there has not been reported case involving State aid in regulated sectors.

34. So far, the CPC have not had any case of abuse of dominance or merger affected from the State aid.

35. In Macedonian Constitution, public and private ownership are equal. So, there is no such discrimination in Macedonian competition legislation.

36. According to its Stabilisation and Association Agreement with the European Union, and its Interim Agreement of 2001, Macedonia committed to implement competition and State aid legislation until 2006. By adopting and implementing both legislations, the Republic of Macedonia fulfilled its obligation and now has functional competition and State aid legislation.

37. The Republic of Macedonia has State aid legislation since 2003. It is aligned with the State aid legislation of the European Union. However, despite clearly defined obligations for State aid providers, results of the implementation of the legislation in the first three years (2003-2006) could be defined as modest and without rising of any public awareness for existing of this kind of legislation.

38. With the amendments of the Law in 2006, monitoring of aid, as well as power to issue decisions on compatibility of State aid, transferred to the Commission for Protection of Competition (in further text CPC).

39. In last three years, monitoring of aid became more comprehensive, mostly as a result of much better cooperation of the CPC with the State aid providers. Every major State aid provider appointed person in charge to notify State aid provided by the corresponding provider. Since 2007, the Manual of the Government foresees obligation for all governmental institutions by submitting documents to the Government to declare if there is State aid in submitted document, and in the case of positive answer, to provide decision or opinion of the CPC.

40. It can be concluded that permanent advocacy on State aid among governmental bodies contributed to much better understanding of the notion of State aid among State aid providers. There is no doubt that proper implementation of the State aid rules, together with the competition rules, makes use of public funds more efficient in order to remedy eventual distortion of competition, but also to intensify economic activities where appropriate.