



European Commission

Competition

ISSAERE Summer School, Torino, 08.09.2010

EC Competition Policy: Introduction to State Aid principles

Dr. Vincent Verouden

Senior Economist, European Commission (DG COMP/CET)

Disclaimer (EN): the views expressed are those of the author and cannot be regarded as stating an official position of the European Commission



Overview

- Introduction to EU State aid control: purpose and main rules
- Focus: Services of General Economic Interest (SGEI)



European Commission

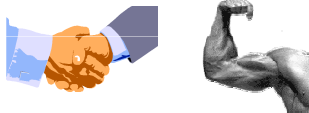


Competition

I. EU State aid control: purpose and main rules



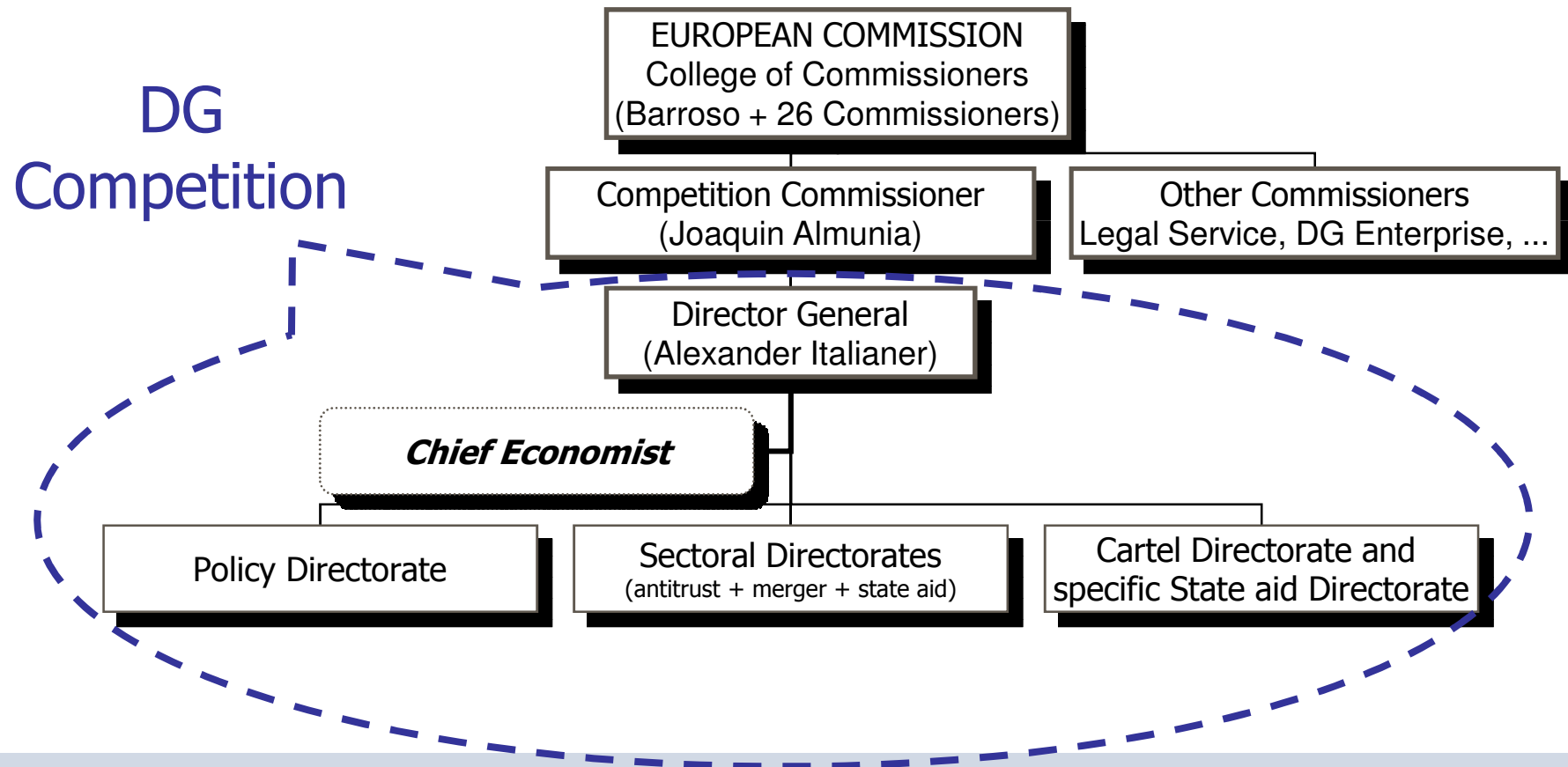
EU competition policy – an overview

Three pillars:

Antitrust 	Merger control 	State aid control 
<ul style="list-style-type: none">• To prevent cartels and other restrictive agreements in the market• To prevent abuses of dominant market positions	<ul style="list-style-type: none">• To prevent mergers and acquisitions that reduce competition in the market	<ul style="list-style-type: none">• To limit distortions of competition and trade resulting from state subsidies to firms; state aid can be permitted when is in line with the common (EU) interest



European Commission – DG COMP





“Two sides” of State aid

- State aid may pursue sound public policy objectives of the Member States
- State aid may distort competition and trade
 - negative spill-overs on other MS
 - undermine functioning of internal market



Art. 107 TFEU: a two step approach

- Article 107(1) TFEU: notion of state aid and general **prohibition**

“Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market”.

- Articles 107(2) and 107(3), 106(2) TFEU: **derogations** (aid compatible with Treaty)



Compatible aid under Art. 107(3) TFEU

- Art. 107(3) TFEU: the following types of aid “may be considered” **compatible**
 - (a) economic development of most disadvantaged regions of Community
 - (b) important common European project or serious disturbance in the economy of a Member State
 - (c) development of certain economic activities or certain economic areas
 - (d) culture and heritage conservation
 - (e) other categories as may be specified by a decision of the Council
- Margin of discretion frameworks and guidelines, block exemption regulations



Compatible aid

Regional development Art. 107(3)(a) +(c)	<ul style="list-style-type: none">• Aid for initial investment in assisted areas• Operating aid in exceptional circumstances• (reduction for large investments)
R&D&I Art. 107(3)(c) + exceptionally (b)	<ul style="list-style-type: none">• Aid for fundamental research• Aid for industrial research• Aid for precompetitive development activities• Innovation
SME promotion Art. 107(3)(c)	<ul style="list-style-type: none">• Aid for initial investment• Aid for advisory services and participation in trade fairs• Aid for R&D
Employment Art. 107(3)(c)	<ul style="list-style-type: none">• Aid for net job creation• Aid for disadvantaged workers/ handicapped people
Training Art. 107(3)(c)	<ul style="list-style-type: none">• Aid for general or specific training of employees



Compatible aid

Environment Art. 107(3)(c)	<ul style="list-style-type: none">• Aid for environmental investment• Operating aid
Risk capital Art. 107(3)(c)	<ul style="list-style-type: none">• Aid for risk capital measures
Rescue & restructuring Art. 107(3)(c)	<ul style="list-style-type: none">• Aid to keep ailing firms afloat to “buy time”• Aid to restructure firms to restore viability
Services of General Economic interest Art. 106(2)	<ul style="list-style-type: none">• Aid for the provision of SGEI



State Aid Action Plan (2005)

- Main goal of State aid reform in recent years: “Less and better targeted aid”
 - **enhance effectiveness** of state aid control by striking a better balance between
 - benefits of state aid (objective/effectiveness)
 - costs of state aid (distortions)
- Formulated as a “balancing test” (under Art. 87(3)(c) EC)
- Architecture of state aid rules: block exemption -- standard assessment -- more in-depth analysis



Balancing test

Three questions:

1. Is the aid measure aimed at a well-defined **objective** of common interest?
 - Does the aid address a market failure?
 - Does the aid enhance equity?
2. Is the aid **well designed** to deliver the objective of common interest?
 - 2a. Is State aid an appropriate policy instrument?
 - 2b. Is there an incentive effect (does the aid change the behaviour of firms?)
 - 2c. Is the aid measure proportional to the problem tackled (could the same change in behaviour be obtained with less aid?)
3. Are the **distortions of competition** and **effect on trade** limited, so that the overall balance is positive?



Distortions

- Distortion of **dynamic incentives** of competitors
 - Effect on competition *in* or *for* the market (competitors may reduce output, investment, R&D).
 - General concern about dynamic incentives when rents are allocated by governments rather than competition
- Inefficient market structures / **prevention of exit**
 - “Churn” process (entry/exit) important driver of productivity growth
- Possible **market power** concerns
- Distortion of **trade**/distortion of **location** choices



Implementation SAAP

- In Guidelines/BER
 - Risk capital (2006)
 - R&D&I (2006)
 - Regional aid (2006)
 - BER (2008)
 - Environmental aid (2008)
 - Broadband Guidelines (2009)
 -
- In cases
 - So far mainly in the field of R&D&I (Neoval, Soitec, TVMSL, PSA, H2E, Diehl ...), training aid (Ford Genk, Volvo Ghent, ...)
 - Cases under Art. 107(3), e.g. broadband, digital TV



The financial and economic crisis: the State to the rescue

- Aid to banks vs. aid to other firms
 - Systemic role of banks decisive
 - Systemic effects from bank failures: an externality such the social cost by far exceeds the private cost
 - Crisis of confidence (coordination failure within the market)
- Main forms of State aid to banks:
 - Recapitalisations
 - Guarantees on bank liabilities
 - Impaired asset relief



The State to the rescue (2) – the real economy

- In the wake of the financial crisis, also an economic crisis
- Commission initiatives to facilitate (and continue to control) State aid for the real economy
 - Instrument used: Art. 107(3)(b)
 - Implementation through Temporary Framework



European Commission

Competition

II. Services of general economic interest (SGEI)

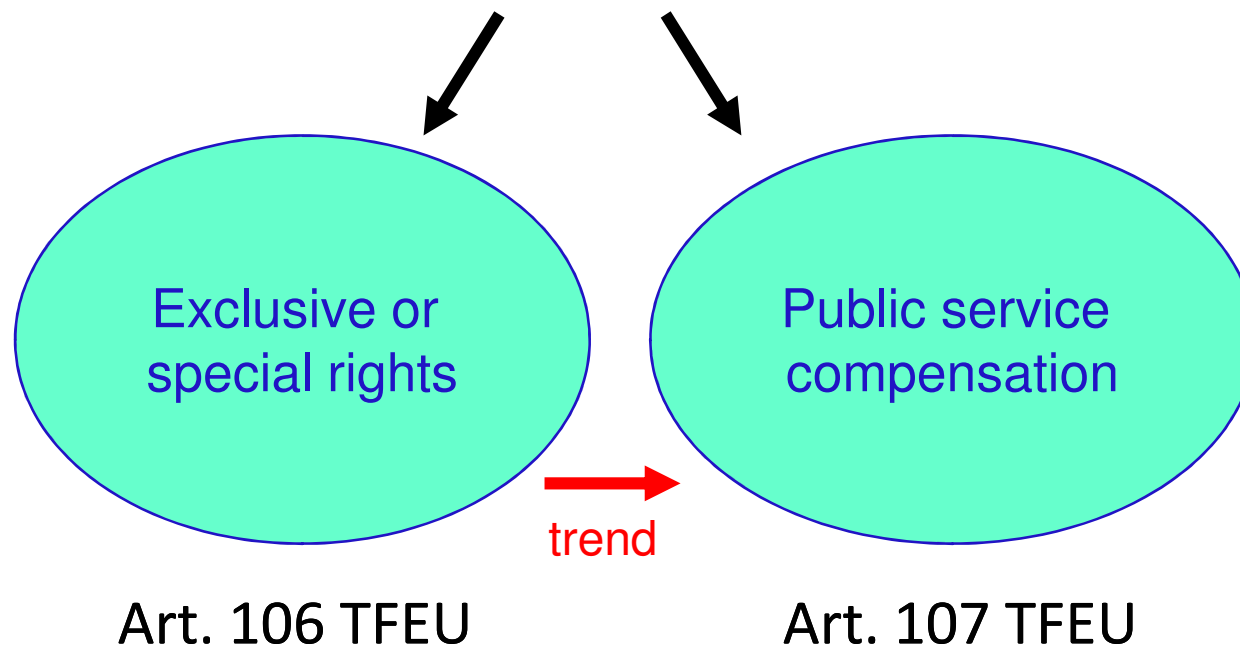


Definitions

- Services of general interest (SGI): Services that public authorities classify as being of general interest and therefore subject to specific public service obligations (PSO)
- SGI include:
 - Services of general interest which are not of an economic nature not subject to competition law
 - Services of general economic interest (SGEI) subject to competition law



Financing SGEI





Debate: does compensation for SGEI confer an advantage?

YES -- Transfer of State resources reinforces the competitive situation of the company (FFSA judgment of the CFI)

NO -- Financial transfer only compensates for « extra charges » imposed by the State (Commission analysis before 1997, and Ferring Judgment)



Altmark judgment ECJ (2003)

Compensation for an SGEI does not constitute aid if :

1. The undertaking actually has public service obligations to discharge and these obligations are clearly defined
2. The parameters of the compensation are objective and established in advance
3. The compensation does not exceed the net costs and a reasonable profit
4. Choice of service provider:
 - Tender procedureor
 - Compensation on the basis of the costs of a typical undertaking that is well run and adequately equipped



What if a SGEI compensation is a State aid?

- If a measure is qualified as a State aid:
 - It has to be notified to the Commission by the Member State
 - It cannot be implemented before having been authorised by the Commission
- If a State aid is implemented without having been authorised, it is an unlawful aid. The Commission or the national judge can order its suspension and recovery

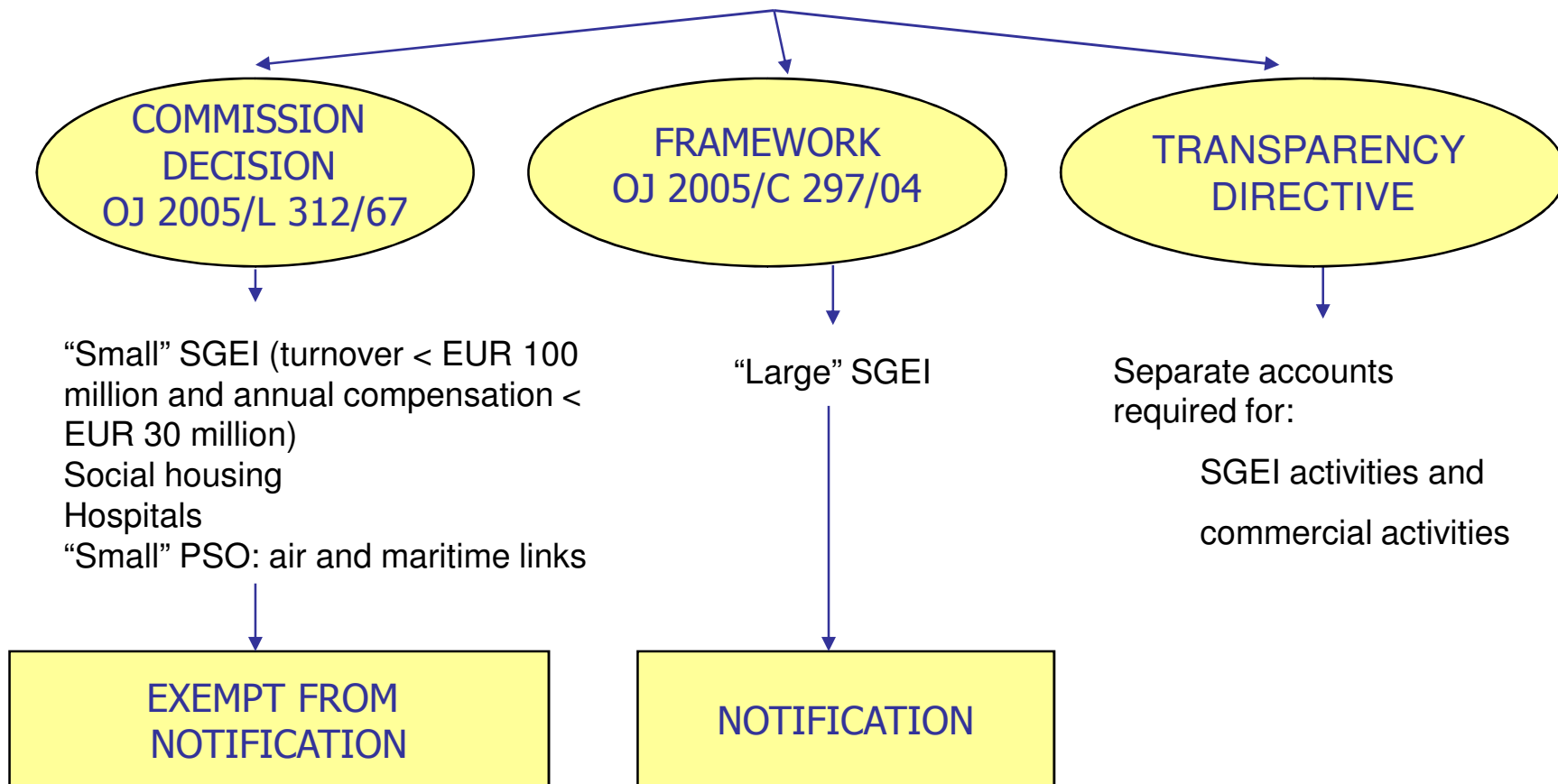


Adoption of the “SGEI package” (2005)

- Pursuant to the Altmark ruling, in practice many/most SGEI compensations involved unlawful aid
- Commission adopted the “SGEI package”
 - to ensure legal certainty for SGEI’s financing
 - to cut red tape by exempting from notification most public service compensations



SGEI package (2005)





Specific topics relevant for economics

- Determination of reasonable profit
- Cost allocation
- Efficiency considerations
- Relation State aid / public procurement



Evaluation of the SGEI package

- At present a consultation is held among public service providers, users, local authorities and other interested stakeholders on the application of the SGEI package
- <http://ec.europa.eu/competition/consultations/open.html>
- In a second step, the Commission will examine whether a reform of the rules is appropriate



European Commission

Competition

Thank you for your attention

- For questions/information:
vincent.verouden@ec.europa.eu