

**COMMUNITY GUIDELINES ON STATE AID FOR RESCUING AND
RESTRUCTURING FIRMS IN DIFFICULTY**

DRAFT GUIDELINES

Preliminary UNICE Comments

The risks of state aid measures having negative effects on competition and structural development are particularly high in cases of aid for rescue and restructuring purposes. Efficient firms will not achieve the market shares justified by their relative efficiency; and it is extremely difficult to assess in advance whether a restructuring plan will actually lead to viability in the long run for the aided firm.

In order to safeguard the competitiveness of European industry, it is therefore of utmost importance that the guidelines in this field are strict, and that the negative effects on competition of the aid in question play a central role for assessing whether or not an aid should be allowed, for assessing its acceptable size and for the conditions imposed.

UNICE's main demands:

In 1997, UNICE submitted comments on how the present guidelines could be substantially strengthened. UNICE continues to hold the views stated in these comments, and would particularly emphasise the following:

- The principle of “*one-time last-time*”(3.2.3) should be upheld strictly, and the guidelines should reflect this. The ten-year limitation to this rule referred to in the draft should be the absolute minimum. To allow a shorter period would be a serious mistake because that would make it possible for a firm to receive aid in consecutive recessions across the economic cycle. Examples from the past of such a policy can easily be found in the steel sector.
- It should be stated in the guidelines that for the *condition of long-term viability* (3.2.2) to be fulfilled, the expected long-term return on equity capital should be at least the return on state bonds plus a risk premium.
- In addition, in cases where large amounts of aid are involved, a *comprehensive analysis* of how and to what extent the aid negatively affects competition should be made. If such an analysis shows that competition will be significantly impeded in a substantial part of the common market, aid should not be granted. Part of the analytic methodology used by the Merger Task Force could usefully be applied in such cases. Moreover, in these cases, facts and assessments should be gathered as a matter of course, from competitors and customers, as is the case with

merger controls. This is often a necessary exercise in order to assess, for example, the relevant market.

Avoidance of undue distortions of competition

Furthermore UNICE would like to make the following comments regarding compensatory measures in order to avoid undue distortions of competition (3.2.2c):

- It is suggested that compensatory measures in the form of limitation of presence on a market should normally not apply to *SMEs*. UNICE would however observe that SMEs can be companies of considerable importance within their own field and their behaviour could have substantial effects on competition and economic efficiency in both regional and national markets, and at a European level. Allowing aid in these circumstances would harm efficient competitors. Moreover, a lenient policy could also prejudice the development of other SMEs, when these companies compete with an aided SME. In UNICE's view the possibility of demanding compensatory measures from SMEs must be available in such cases, while in others this may be excessive.

The concept of "*negligible markets*" is unclear. UNICE fears that such a market could be of economic importance and that aid on such markets may cause significant competitive distortions. Furthermore, aid to a firm on such a market may have a spillover effect on other markets where companies from the same group as the aided firm are present, due to the fact that the restructuring measures have been financed by the state rather than from within the group. The same argumentation may also be valid for firms holding minority interests in an aided firm

- UNICE is opposed to the stated position that the Commission may abstain from demanding compensatory measures if there is a risk of creating a *monopoly or tight oligopoly situation*. In other words, the Commission is proposing to use its powers under Articles 92 and 93 to intervene in the structure of a market in order to strengthen competitors and balance market dominance. This is an inappropriate use of those powers. A company achieving a strong market position as a result of a high degree of efficiency should not be "punished" by aid given to less efficient competitors. The correct procedure would be for the Commission to use its powers under Article 86 if the non-aided competitor were to abuse its dominant position.
- UNICE fully supports the Commission's view that compensatory measures might also be required when there is no *structural overcapacity*. There are two reasons for this position. Firstly, such a demand may reduce the claims for aid by firms in severe economic difficulties. Secondly, the inevitable negative effects of the aid on competitors may be counterbalanced to a certain degree by such a demand.

Procedural conditions regarding rescue aid

Lastly, in the draft guidelines (3.1) it is stated that, if a Member State fails to fulfil certain specified obligations regarding notification, the Commission will initiate proceedings under article 93(2). In order to be more precise, and make use of the existing legal instruments, a sentence should be added stating that "the Commission intends to apply the power in Article 11 of the new Procedural Regulation - recovery injunction - in these situations".
