



Mr Joaquin Almunia
Vice President of the European Commission
DG Competition
200 Rue de la Loi
1049 Bruxelles

29 June 2011

Dear Vice President Almunia,

I am writing to you in view of the upcoming reform of the EU state aid rules applicable to services of general economic interest (SGEIs).

The SGEI reform has to be seen in the context of the expected overall revision of state aid enforcement policy that you recently announced. In this regard, BUSINESSEUROPE believes reforms must achieve the right balance between two key factors:

- the need to focus state aid enforcement to cases that taken individually have relevance for the Single Market; and
- the importance of controlling the large number of small subsidies – e.g. for the provision of local services – that taken together can lead to competition distortions.

In particular in the area of public services, state aid rules can help guarantee that public money is spent properly and the services provided are efficient.

There is insufficient competition in the provision of certain SGEIs. This is detrimental to possible private providers of these services, as well as to companies and citizens who as users would benefit from increased competition.

Transparency, more open competition and better enforcement of state aid rules should be key components of the reforms. They would contribute in avoiding protectionist trends, reinvigorating the Single Market and providing better public services to European citizens.

We agree with the Commission that the reform should provide more clarity and simpler rules, but simplification must not lead to giving public authorities further freedom and flexibility in their application.

While measures to streamline state aid scrutiny could increase efficiencies, BUSINESSEUROPE is worried about a trend leading the Commission having less control on possible distortive measures put forward by Member States.

You will find more detailed remarks in the position paper at annex. We remain at your disposal to for a constructive discussion on this important issue.

Yours sincerely,

Philippe de Buck



29 June 2011

KEY COMPONENTS OF THE REVISION OF STATE AID RULES APPLICABLE TO SERVICES OF GENERAL ECONOMIC INTEREST (SGEIs)

In view of the upcoming revision the 2005 SGEI Package, BUSINESSEUROPE would like to highlight some key points that we believe should be taken into account when reforming the existing rules.

Improving on the application of the rules and increasing competition as an instrument for the provision of better SGEI should be leading components of the revision. We believe the following should be taken well into account:

- **Compensation must be justified and not distort competition:** public authorities have full competence in determining what constitutes a service of general interest and to formulate the criteria for the delivery of the public service. The Commission's role is to ensure that compensation for the provision of SGEIs is justified and does not distort competition.

As the Commission's resources are not unlimited in performing this important task, BUSINESSEUROPE understands the Commission's intention to focus its scrutiny on the compensation for services having a significant impact on the functioning of the Single Market. Nevertheless, it must ensure that companies willing to provide services even at local level do not face unfair competition as a result of public financing of SGEIs that is incompatible with state aid rules.

- **Notification and reporting obligations:** the Commission Decision of 2005 exempts from notification the compensation for the provision of public service obligations under certain conditions and specific thresholds. As a consequence, there is no information available as to the level of aid that is granted for all those cases that fall under the scope of the 2005 Decision.

Without questioning the rationale of this exemption, BUSINESSEUROPE believes that the Commission should strengthen reporting obligations for Member States in this regard. This analysis should be made known to the public and to operators active in the provision of SGEI.

- **Scope of block exemptions:** the Commission should carefully consider any extension of the list of services sectors that enjoy block exemptions from the notification of State aid. Extending the scope of exempted services would create a higher degree of uncertainty for companies.



The envisaged relief of administrative burden does not necessarily justify extending the scope of measures exempted from notification. BUSINESSEUROPE is worried that a trend towards less control by the Commission could open the door to an increase in distortive measures put forward by Member States.

- **Efficient provision of SGEIs:** at present, the compensation to public service providers can cover all the costs incurred plus a reasonable profit, regardless of how efficient the provider is. This contradicts with the growing need to make better use of public money and making SGEI provision more efficient and cost-effective.

The lack of application of an efficiency analysis to the compensation granted has a negative impact on trade between Member States and can decrease competition: allowing State aid for SGEI that is not based on a reasonable cost of supply does not incentivise public authorities to use tenders, thereby decreasing opportunities for potentially more competitive providers across the EU to deliver high quality SGEIs at the best price.

In addition, the current rules do not sufficiently stress the reference to the costs of a well-run company (efficiency analysis), making this important criterion irrelevant in practice. The Commission should consider introducing other, more effective instruments to test efficiency for SGEI provision. This approach would have the merit of encouraging public authorities to give greater consideration to optimising cost-effectiveness in the provision of SGEI.

- **Market testing:** market testing is a means of assessing optimal cost effectiveness. We believe the Commission should amend the Framework to give more favourable consideration to contracts that have been awarded based on proper market testing. This would also promote further use of public tenders or – in cases when it is not economically efficient – would at least ensure that there are realistic possibilities to evaluate whether the compensation granted to the chosen SGEI provider does not amount to State aid.
- **Use of tenders:** in the Altmark ruling, the Court of Justice established that, in the case where the undertaking is not chosen through public tender, the level of compensation must not exceed the cost of a well-run typical company. To encourage the use of tenders, the Commission should better clarify that if an SGEI provider is selected (e.g. for the awarding of a public contract or a concession) following a transparent, non-discriminatory and competitive public tender – and the other Altmark criteria are complied with – the compensation provided will not be State aid and will not need to be referred to the Commission, leading to obvious procedural and substantial advantages.
- **Thresholds:** any review of the package should not raise the thresholds further to avoid additional risks of competition distortions. Those thresholds are already very high and allow Member States not to notify most of their SGEI operations, assuming that those operations comply with the Decision's conditions. This has to be seen in



the light of the fact that private operators of SGEI are normally selected through a competitive process, and any compensation they receive would not be State aid since the package would not apply. Consequently, the turnover and subsidy thresholds in practice should mostly apply to publicly-owned entities. We believe the Commission could consider changing the thresholds only if new rules would ensure sufficient transparency and efficiency.

- **Transparency:** ensuring a great level of transparency in the application of the SGEI package is critical to its effectiveness, as currently there is no clarity as to the type and amount of aid granted for the provision of SGEIs by local, regional and national authorities, which prevents an effective control on whether competition is distorted.

Likewise, when Member States grant compensation for these types of services, they should have an obligation to make their decision publicly available and inform the Commission to ensure further transparency and limit possible distortive effects.

- **Better information and awareness:** if rules are not well understood, they will not be well applied. The Commission should make sure that relevant public authorities, at all levels of government, and national competition authorities better understand the criteria for providing compensation for the delivery of SGEIs. In addition, companies and other stakeholders need to be made better aware of the existing rules.

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