

## **Commission adopts guidance on in-depth assessment of regional aid to large investment projects**

Competition Commissioner Neelie Kroes said "The guidance paper is a useful and practical step to help public authorities and companies to understand how best to present regional aid projects involving large investments with a view to faster decisions. It is a further step towards the economic-based approach outlined in the Commission's 2005 State Aid Action Plan".

The Regional Aid Guidelines 2007-13 foresee that large investment projects above certain thresholds need to be individually notified to the Commission because they may carry a greater risk of distorting competition. The Commission opens a formal investigation procedure for projects where the aid beneficiary has a market share of more than 25% or the production capacity created by the project exceeds 5% of the market (while the growth rate of the product market concerned is below the EEA GDP growth rate). Regional aid to such large investments entails a higher risk of distorting competition. The Commission has now provided further guidance on how it will carry out this in-depth assessment.

The guidance is based on the principles of the Commission's State Aid Action Plan, in particular the balancing test that weighs the positive effects brought about by the aid against the negative impact of a potential distortion of competition which the aid might entail. Member States should therefore provide information on the positive effect of the aid as well as its appropriateness, proportionality and incentive effect. The Commission will base its overall evaluation of the aid on these criteria.

**[See the full text of the guidance paper here](#)**

### **What is the purpose of the guidance?**

The European Commission's Communication provides guidance on the methodology for the detailed compatibility assessment of regional aid to large investment projects. It is intended to explain the reasoning that underlies Commission decisions on the compatibility of such aid measures which are subject to an in-depth assessment and thereby increase transparency. The guidance paper is therefore a useful and practical tool to help public authorities and companies to understand how best to present regional aid projects involving large investments with a view to faster decisions.

### **Which measures are covered by the guidance?**

According to the Regional Aid Guidelines 2007-13, individual notification is necessary whenever the aid proposed is more than the maximum allowable amount of aid that an investment with eligible expenditure of €100 million can receive in the region concerned (notification threshold). Of these measures, an in-depth assessment is necessary where the aid beneficiary has a market share of more than 25% or the production capacity created by the project exceeds 5% of the market (while the growth rate of the product market concerned is below the EEA GDP growth rate).

### **What are the main principles of the compatibility assessment?**

The fundamental principles are set out in the Commission's State Aid Action Plan and have already been translated into guidelines for other types of aid, e.g. research, development and innovation, risk capital, environmental aid. The core element of these principles is the balancing test.

The idea behind this test is to disentangle the positive and negative effects resulting from an aid, evaluate them and then balance them. That means first looking at the purpose of State aid: to what extent does it contribute to the equity objective of economic cohesion? Furthermore the test looks at the design of the aid measure: is State aid the appropriate instrument to remedy the problem? Does it induce a change of behaviour in the aid recipient? Is it proportionate? These positive effects have to be balanced against possible negative effects the aid might have.

### **What information is required by the Commission?**

Member States must provide information to the Commission on the existence of a positive effect of the aid as well as on appropriateness, proportionality and incentive effect of the aid.

The criteria laid down in the guidance only apply to State aid measures above certain thresholds. Due to the large potential impact of these projects, the detailed assessment requires sufficient information to be delivered by Member States. In addition, the depth of the Commission's assessment and the kind of information it will require will be proportional to the risk of distortion of competition.

### **How can Member States demonstrate the existence of the incentive effect and the necessity of aid?**

Member States must provide information demonstrating that the proposed aid is necessary to produce a real incentive effect to undertake investments which would otherwise not be made in the region concerned. This can be proven in two possible ways: (i) that the aid gives an incentive to carry out an investment which would otherwise not be profitable at any location or (ii) that the aid gives an incentive to locate the planned investment in the relevant region rather than elsewhere by compensating for the net handicaps of this region.

### **What criteria can be used to demonstrate the positive effects of regional aid?**

The primary objective of regional aid is to foster economic cohesion. Positive effects can be demonstrated, for instance, in terms of the number of direct and indirect jobs created, the training activities to be undertaken by the beneficiary, the advantages resulting from clustering of economic activity or from technology transfer.

### **In which way will the Commission assess the proportionality of the aid?**

Member States must provide evidence that the aid amount is limited to the minimum needed for the investment to take place in the assisted region. In case the investment would not take place without the subsidy, aid will generally be considered proportionate if, because of the aid, the return on investment is in line with the normal rate of return applied by the company in other investment projects, with the cost of capital of the company as a whole or with returns commonly observed in the industry concerned. In case there is an alternative location for the

investment, aid will generally be considered proportionate if it equals the difference between the net costs for the beneficiary company to invest in the assisted region and the net costs to invest in the alternative region.

In no case can the aid intensity be higher than the applicable regional aid ceilings defined in accordance with the Regional Aid Guidelines 2007-13.

**How may regional aid measures to large investment projects lead to distortions of competition?**

In spite of the existence of positive effects of regional aid, measures involving high aid amounts to large investments bear a higher risk of distorting competition. This is all the more so as measures subject to the in-depth assessment involve either a beneficiary with a market share exceeding 25% or capacity created which exceeds 5 % of an underperforming market.

Therefore, the possible negative effects are linked to the notions of market power (i.e. the ability of a company to profitably increase prices on a market) and creating inefficient market structures (e.g. overcapacity). Moreover, the potential effect of the aided project on trade between Member States also has to be considered (in other words, would the aid allow the beneficiary to take business away from competitors in other Member States).