

State Aid Regulations (for tourism) Seminar

Tuesday 11 March 2014
Conference Aston
Birmingham





Department
for Business
Innovation & Skills

STATE AID – A GUIDE

Edith Templeton
Assistant Director State Aid BIS



Exploding A Few Myths

- State aid is not a black art
- State aid is not the preserve of lawyers and policy fanatics
- State aid is not designed to catch people out
- The state aid rules apply to ALL Member States



WHAT IS A STATE AID ?

- Article 107 (1) EC Treaty – 4 tests
- Granted from or through state resources
- Favours a particular undertaking
- Which distorts or threatens to distort competition
- Which affects trade between Member States
- ALL tests must be met



SO WHAT DOES THIS MEAN?

State resources –what it is

- All funding either direct or indirect from any part of government either local or national.
- Transfer of state resources is not just giving out money but also not taking money owed-e.g.... a tax break.
- Also includes ERDF and National Lottery funding as the Member State controls how this is spent.



Meanings

Undertakings

- any entity involved in economic activities. This could include charities, not for profit organisations and Government Departments. It is the **activity** that matters and not the **form**.
- Economic activity = putting of goods and services on a given market.
- Favouring – giving the company something they could not get on the market.



Meanings continued

- Competition can be easily distorted – it is after all only the *potential* to distort.
- And it doesn't take much to affect trade –only very local undertakings e.g.. hairdressers might not affect trade
- Even if the company you are aiding does not export if the good or service they deal in is traded then this condition is fulfilled.



WHY HAVE RULES?

- The reason we have rules is not to ban all state support. It rather sets up a framework that helps ensure that state aid is appropriate to its goal of correcting a market failure or achieving a particular policy objective, and that it does not unduly distort competition.”

Commissioner Almunia



WHY HAVE RULES?

- Risk of distortion in single market if state aid free for all
- Stops subsidy bidding war –can't have the deepest pockets winning.
- Aid dependent companies not good for consumers – inefficient.
- Original drafters took state aid so seriously that they gave its own Treaty Article
- And put down a prohibition Article 107(1)–with exceptions – aid is allowed for e.g. regional development, RD&I, environmental protection and SMES.
- NOT ALL AID IS BANNED.



De Minimis Aid

- Aid of less than € 200,000 to one company over a 3 fiscal years is not a state aid.
- BUT – it is not project related and must be cumulated.
- Aid giver must ensure that ceiling is not breached
- Aid recipient must be told that he is receiving de minimis aid and how much and must reveal if asked by other aid givers.
- Records of aid must be kept for 10 years



Other No Aid Routes

- Not all measures will result in aid
- GENERAL MEASURES – all companies throughout the whole UK.
- GUARANTEES NOTICE
 - Benchmarking and grid
- REFERENCE RATE COMMUNICATION
 - Loans at published reference rate plus a margin should be free from aid.
- PUBLIC PROCUREMENT – as long as you follow the European Procurement Rules
- But if Aid Cannot Be Avoided you must find a compatible way forward.



Compatible Aid Can Be Given

- ONLY the Commission can decide if an aid measure is compatible.
- Aid will need to be formally notified so that Commission can decide on compatibility
- Aid must be notified via BIS
- The process can take some time – around 6-9 months for straightforward cases but up to 11 month



How can aid be compatible?

GENERAL BLOCK EXEMPTION REGULATION

(Commission Regulation No 800/2008)

**NB THIS WILL BE CHANGED IN JULY 2014 – MORE
AID WILL BE EXEMPTED INCLUDING CULTURAL AID.**

Covers aid for :

Regional aid

SMEs

Risk Capital

Environmental Protection

RD&I

Aid for disabled workers

Training.



Frameworks and Guidelines

- If the block exemption will not work then there are a number of Frameworks and Guidelines
- Ones most of likely to be of concern are:
 - Regional aid
 - RD&I
 - Environmental aid
 - Risk Capital



Notification Process

- All aid which does not meet a block exemption must be notified to the Commission.
- All notifications are made via the SANI system
- Standstill clause operates until the Commission approves aid.
- Any aid given during this period is illegal.
- If the Commission does not approve aid it cannot be given.



STATE AID MODERNISATION

- The Commission launched its State Aid Modernisation (SAM) process in May 2012
- The aims are to:
 - Tie aid more closely to growth
 - Prioritise scrutiny of the most distortive aid
 - Streamline processes.
- This is not ripping everything up – more about finessing and ensuring that aid addresses genuine market failures and brings about something which would not otherwise happen – “good” aid.
- **DETAIL OF RULES WILL CHANGE IN JULY**



Conclusion

- What do you need to do?
- Familiarise yourself with the rules
- **THINK STATE AID FIRST**
- If in doubt ask
- Sources of help
 - <https://www.gov.uk/state-aid>



Department
for Culture
Media & Sport

What does the latest ruling from the EU mean

Gareth Evans

History of the Complaint

First submitted 5th November 2004 by Helpful Holidays Limited and Hoseasons Holidays Limited in respect of the EnglandNet project (online booking service)

“Visit Britain and regional tourism bodies are directly or indirectly offering commercial services in direct competition with existing private sector businesses”

Additional complaint that only properties inspected under the National Quality Assurance Scheme could be advertised

Parallel complaint in respect of the devolved authorities

State Aid Issues

- Do not apply to tourism authorities which applies to tourist authorities who receive no form of public funding
- Do not arise where tourist authority acts as a “market economy investor”
- Do not apply to tourist authority’s promotional remit of encouraging improvement in tourist amenities and facilities provided no advantage to individual tourism undertakings
- Apply to the funding of commercial activity that competes with activities that can be carried out by a private sector organisation

State Aid Compromise - Commercial Activity

The UK has agreed with the Commission that UK tourist authorities financed wholly or partly by public funds (including via financial assistance and operational support provided through any participation in joint ventures and/or other forms of commercial partnership) must not carry out or finance any commercial activity which is not undertaken primarily (or at all) to carry out the UK authorities' public purpose of providing tourist information and promoting the country, region or area and which does or may compete with activities carried out by private sector organisations in the tourist industry, including booking facilities, buying and selling holidays and holiday accommodation, and advertising.

De Minimis Aid

- Need for careful analysis of the *de minimis* regulation (Regulation (EC) No 1998/2006) to ensure that all the regulation's requirements are complied with fully. In particular, authorities should examine carefully the definition of what constitutes a separate undertaking for the purposes of their application for funding.

Disposal Of Assets

- Where authorities withdraw existing initiatives financed wholly or partly by public funds, and would like to dispose of the associated assets accordingly, tourism authorities will need to ensure that any such disposal takes place in accordance with state aid rules. All assets should therefore be disposed of at the market rate, to ensure that the undertaking purchasing the asset is not gaining an unfair advantage over its competitors as a result of the public investment. This would also require compliance with value for money principles.

Quality Assurance Schemes

There should be no link between participation in a given quality assurance scheme for accommodation providers and the listing of an accommodation provider on a website financed wholly or partly by public funds. For example, the listing of an accommodation provider must not be conditional upon them having participated in a given scheme, nor should the fee for participation in a quality assurance scheme being run on commercial terms include listing on an authority's website for no fee or for a reduced fee.

What is not allowed - Commercial

Commercial activities which can and may compete with activities carried out by private sector organisations

- Online booking
- Buying and selling holidays and holiday accommodation
- Advertising

Tourism authorities should take care where activities carried out in the course of their public function could potentially be seen to advertise one or more commercial products over and above other commercial products, in a way which is not part of that function. For example, activities should be aimed at providing information about local accommodation, rather than advertising an individual hotel.

What is Allowed – Promotional

- Examples Only
- Listings on websites and brochures providing information on local tourism activities and facilities without ranking or preferential treatment
- Publicity programmes focussing on regions, cities, themes
- Co-Operative Marketing Agreements (e.g Cottages4U) where costs and benefits are shared equally
- Charges for Attendance at fairs and events where non-discriminatory and open to all and complies with state aid rules
- In seeking and choosing commercial organisations as cooperative partners in the sectors of national, regional or thematic promotions tourism authorities should not use selection criteria which are biased towards certain organisations in the sector in question.