European state aid law

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European state aid law and policy is undergoing fundamental reform under the State Aid Action Plan (SAAP), with an increased focus on the use of state aid tools to promote the economic development and competitiveness of Europe. The SAAP provides the overall framework for reform in the European Community (EC) (see below, Developments in state aid policy and reform: Modernisation of state aid control - the SAAP). Its modernised, economic approach to state aid analysis has been implemented in new and proposed legislation and in European Commission (Commission) decisions in individual state aid cases. This new economics-based framework for analysis, which focuses on correcting market failures and balancing the positive effects of an aid measure against any resulting distortion of competition, may require increased involvement from the newly-appointed Chief Economist in the Commission’s Directorate-General for Competition.

The Commission is also continuing its efforts to ensure the effective recovery by member states of unlawful aid, including initiating court action against member states that fail to do so. Commissioner Kroes (European Commissioner for Competition) recently stated that: “the Commission intends to deal very strictly with member states that fail to implement its state aid decisions. This is crucial to ensure the credibility of policy in this field.”

Against this background, this chapter considers the following issues:

- The legal framework governing state aid.
- Recent selected cases from the EC’s courts, the Court of First Instance (CFI) and European Court of Justice (ECJ).
- Developments in state aid policy and reform.
- A look ahead at other state aid initiatives on the Commission’s agenda.

**LEGAL FRAMEWORK**

**General prohibition and exemptions**

The main provision on state aid is Article 87 of the EC Treaty, which contains three subsections:

- **General prohibition.** Article 87(1) generally prohibits member states from granting state aid:

  “Save as otherwise provided in this Treaty, 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, in so far as it affects trade between member states, be incompatible with the common market.”

For a measure to constitute state aid, all of the following criteria must be met:

- **State resources.** The measure must involve the use of state resources, which includes measures adopted by local, regional and central government as well as public or private bodies designated or established by the state, provided the measure is able to be assigned to the state. This also includes situations where the state foregoes income (for example, tax relief);

- **Economic advantage.** The measure must constitute a financial advantage to some undertakings, relieving them of charges normally borne by them;

- **Selective measures.** The measure must be selective in that it is not generally applicable to all the undertakings, sectors or regions in the member state;

- **Distortion of competition.** The measure must threaten to distort competition;

- **Effect on trade.** The measure may affect trade.

- **Exempted situations.** Article 87(2) sets out certain situations when aid is considered compatible with the common market and therefore exempted from the general prohibition on state aid, for example:

  - aid with a social character granted to individual consumers;
  - aid in situations of natural disasters or exceptional occurrences.

- **Possible exemptions.** Article 87(3) describes certain situations where the aid may be considered compatible with the common market, for example:

  - aid promoting economic development in areas of abnormally low living standard, or serious underemployment;
  - aid promoting important projects of common interest; and
  - aid for culture and heritage conservation.
Procedure and obligation to notify

Article 88(3) requires member states to notify aid measures to the Commission before they are implemented. It is a standstill obligation: member states cannot implement aid measures until the Commission authorises them. This provision has direct effect and can be enforced in national courts.

Regulation (EC) No. 659/99 laying down detailed rules for the application of Article 93 (now Article 88) of the EC Treaty (Procedural Regulation) contains rules on the procedures to be followed by the Commission when investigating and making decisions on state aid. It also provides the requirements of member states to notify new and existing state aid and enforce Commission decisions (for example, by seeking the recovery of unlawful aid) under national procedural law.

Implementing rules and regulations

The Commission has issued a number of regulations, communications and notices to guide member states in assessing aid measures to ensure legal certainty for undertakings. For example:

- The Commission has issued block exemption regulations for certain types of aid, for example:
  - Regulation (EC) No. 1628/2006 on the application of Articles 87 and 88 of the EC Treaty to national regional investment aid (Block Exemption Regulation for Regional Aid);
- The Commission has also issued a de minimis regulation exempting aid below a threshold figure (Regulation (EC) No. 69/2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (de minimis Regulation)). This currently provides a ceiling of allowed support of EUR100,000 (about US$127,000), but is shortly to be amended (see below, Developments in state aid policy and reform: Putting the plan into practice: New de minimis rules).
- The Commission has published notices and communications on:
  - particular categories of aid which apply across industries;
  - state aid to particular sectors of the economy;
  - certain types of state measures.

RECENT CASES

Commission state aid decisions can be appealed to the EC courts. Important aspects of the state aid definition and procedural rights have been clarified in the case law. Recent judgments have dealt with the procedural rights of aid recipients and their competitors and the role of national courts.

It is important to note that state aid control has the following specific characteristics:

- The Commission has the exclusive right to assess the substance of member states' aid measures, but rights of individuals are safeguarded by national courts.
- The parties to the state aid procedure are the Commission and the member state granting the aid, not the recipient of the aid.
- Negative state aid decisions by the Commission are enforced by member states. The natural consequence of unlawfully granted aid is recovery of the aid by the member state that granted the aid in the first place.

Rights protected by national courts

In state aid control, the Commission and national courts have complementary but separate roles. While the Commission has the exclusive right to assess and approve state aid, national courts must ensure that the rights of individuals are safeguarded if member states do not properly notify aid under Article 88(3) before implementation. National courts also have a role in assessing national measures when member states implement an order for recovery of aid.

Transalpine Ölleitung & ors v Finanzlandesdirektion für Tirol and ors (Case C-368/04) [2006]. In a judgment of 5 October 2006, the ECJ had the opportunity to elaborate on the scope of the power of national courts in relation to the notification requirement under Article 88(3).

The case before the ECJ was a referral for a preliminary ruling from the Austrian Higher Administrative Court (Verwaltungsgerichtshof) concerning a national law that excluded certain undertakings from a partial rebate on energy taxes which was likely to constitute state aid and which was not notified. The referring court asked whether Article 88(3) required that law to be disapplied even after the Commission had declared the aid compatible with the common market.

In its judgment, the ECJ stated that a Commission decision that unnotified aid is compatible with the common market does not have the effect of regularising implementing measures introduced before the Commission has approved them. An aid measure put into effect without prior notification is unlawful. The ECJ also concluded that:

- An application before a national court alleging that an aid measure was implemented in breach of the notification requirement relates to the unlawful situation resulting from the lack of notification.
- For the purpose of the national court's assessment of that unlawful situation, it is irrelevant whether the application before the court was made before or after the Commission decided that the (unnotified) aid is compatible with the common market.
- It is also irrelevant to the national court's assessment that the Commission states in its decision that its assessment relates to the period before the adoption of that decision.
On the question of what remedy the national court should offer, the national court may be called on to order recovery of the (unnotified) aid even if that aid has subsequently been declared compatible with the common market. Similarly, the national court can award damages because of lack of notification.

Kuwait Petroleum (Nederland) BV v Commission (Case T-354/99) [2006]. In a judgment of 31 May 2006, the CFI addressed the scope of the power of the national court in relation to the facts that it can take into account in a dispute concerning recovery of aid.

This case concerned the Commission’s decision that an aid scheme implemented by The Netherlands was partially incompatible with the common market and that such aid must be recovered. The decision was appealed by a large number of the individual beneficiaries of the aid scheme identified by the Commission. In one case, the applicant argued, among other things, that the Commission had disregarded the concept of state aid by finding that there had been an advantage conferred on the applicant.

The CFI made the general point that the legality of a decision concerning state aid is to be assessed in light of the information available to the Commission when that decision was made, and that the Commission is not required to identify in its decision the exact amount of aid received by individual beneficiaries of an aid scheme.

The CFI concluded that:

- The specific circumstances of one of the recipients of an aid scheme can be assessed only at the stage of recovery of the aid.
- The facts presented by the applicant in support of its argument that it was not a beneficiary could (even if they were true) not affect the validity of the Commission’s decision since the Commission was not aware of those facts at the time of the decision.
- The facts presented by the applicants that were unknown to the Commission at the time of its decision can affect only how the aid is recovered, and it is the national court that is to assess the implementation measure adopted by the member state (even where the Commission has given its approval to a proposed implementation measure).

Analysis. The judgment by the CFI in Kuwait Petroleum allows the national court to take account of facts unknown to the Commission at the time of adopting its decision. In addition, and here the judgment must be read narrowly, it allows the national court to reassess whether a beneficiary qualifies for state aid.

Both judgments afford a national court some margin of manoeuvre:

- In safeguarding the rights of individuals where a member state has implemented aid in breach of its obligation to notify (Transalpine Ölleitung).
- In the context of implementation at the national level of a recovery order (Kuwait Petroleum).

Procedural rights under the EC Treaty - the rights of competitors

The conditions for standing set out in Article 230 of the EC Treaty must be satisfied to bring an action before the CFI challenging an act by an EC institution. A person can challenge an act which is addressed to another person provided he can show that he is “directly and individually concerned” by the act in question (Article 230(4), EC Treaty).

In the area of state aid law, case law has qualified that condition differently in relation to a decision adopted by the Commission after a preliminary examination of the aid under Article 88(3) (Phase I), and a decision adopted by the Commission at the end of the formal investigation procedure under Article 88(2) (Phase II). In contrast to Phase I, a Phase II investigation includes a right for “parties concerned” to submit their comments on the aid to the Commission.

The important issue of the right of competitors of aid recipients to bring an action before the CFI against a Commission decision on state aid has been the subject of several interesting judgments.

Aktionsgemeinschaft Recht und Eigentum (ARE) v Commission (Case C-78/03 P) [2005]. The importance of this judgment to the application of a different notion of “individual concern” depending on the procedure (Phase I or Phase II) is shown by the opinion of the Advocate General: “the lack of consistency of the case-law has often been remarked upon, which explains why in its appeal the Commission has requested the Court, for the sake of legal certainty, to clarify that important issue ‘once and for all’.”

The case concerned a German land acquisition scheme which, following amendments in view of concerns expressed by the Commission, was subsequently approved. ARE (an association of groups concerned with property ownership issues) brought an action before the CFI for annulment of the Commission’s decision approving the scheme. Contrary to the Commission’s submission, the CFI found that ARE had standing to challenge the decision. The Commission appealed to the ECJ, which delivered its judgment on 13 December 2005.

The ECJ judgment confirms the different criteria for standing in relation to a Phase I and a Phase II decision as established in previous case law:

- A decision under Phase I not to initiate the formal investigation procedure can be challenged by the parties concerned, that is, those persons, undertakings or associations whose interests might be affected by the grant of the aid (in particular competitors and trade associations) and therefore would have benefited from procedural guarantees had the Commission opened the formal investigation.
- A Phase II decision, on the other hand, can be challenged only by those demonstrating a particular status according to the conditions laid down in case law (for example, that the aid substantially affects the applicant’s market position).

Further, standing as a “party concerned” requires that the plea before the CFI is to be clearly phrased so as to seek to safeguard the rights provided under Article 88(2). The question put must
be whether the Commission should have had serious doubts as to whether the measure qualifies as state aid or serious doubts on the compatibility of the aid with the common market. It cannot be on the merits of the Commission decision assessing the aid. In that case, the applicant has to meet the stricter criteria for standing.

**Air One SpA v Commission (Case T-395/04) [2006]**. In this case, the CFI extended the scope of “party concerned” to also cover potential competitors.

The Commission had rejected a complaint by Air One alleging that Italy had granted unlawful aid to Ryanair, on the grounds that Air One had no standing or the complaint was unfounded. Air One brought an action before the CFI against the Commission for failure to act. The CFI issued its ruling on 10 May 2006.

The CFI decided that Air One, as a potential competitor, could be considered a “party concerned” and therefore, had standing to bring an action against a Phase I decision. For this purpose, the CFI found there to be a sufficient relationship because:

- The two airline companies operated directly or indirectly, services providing scheduled air transport of passengers from or to Italian airports and, in particular, regional airports.
- It could not be excluded that Air One would expand its activities to include destinations also served by Ryanair, thereby bringing it into direct competition.

**Deutsche Bahn AG v Commission (Case T-351/02) [2006]**. Deutsche Bahn had complained to the Commission about a German tax exemption for certain passengers, which it considered a “party concerned”. The CFI decided that the letter did not constitute a challengeable act. The CFI issued its judgment on 5 April 2006.

The CFI found that, on the substance not the form of the letter, it included a decision made under Article 4(2) of the Procedural Regulation (that is, a Phase I decision not to open formal investigation procedure). Contrary to Article 25 of the Procedural Regulation, the letter (or decision) was not addressed to Germany, the member state. The CFI concluded that this detail could not exclude the decision from review, nor could it be relied on to deny Deutsche Bahn the procedural safeguards which it would have been entitled to as a party concerned had the decision correctly been addressed to the member state.

**Analysis.** In confirming the less strict standard for standing in relation to a Phase I decision, the judgments of the ECJ in *ARE* and the CFI in *Air One*:

- Underline the importance of protecting the procedural rights of third parties in the area of state aid. This is a significant point considering the Commission’s exclusive powers to assess state aid.
- Confirm the high standard for demonstrating “individual concern” required to challenge the merits of a Commission decision under Phase II.

- Confirm that the phrasing of the legal plea is decisive to determine whether a party has standing as a party concerned.

The CFI’s judgment in *Deutsche Bahn* also confirms the importance of safeguarding the procedural rights of third parties by finding that the Commission could not rely on its own error to deny the applicant its procedural rights under Article 88(2).

**Procedural rights under the EC Treaty - the rights of recipients**

In a judgment of 6 October 2005 (*Scott SA v Commission (Case C-276/03P) [2005]*), the ECJ held that Phase II takes place primarily between the Commission and the member state. The procedural rights afforded to the recipient merely allow it to provide information to the Commission and to put forward its argument; they do not make the recipient a party to the procedure. Therefore, a recipient only has the procedural rights granted to all interested parties and cannot claim those rights afforded to a party to the procedure (for example, the right to a fair hearing, rights of the defence and so on).

In a judgment of 23 February 2006 (*Guiseppe Atzeni and others v Regione Autonoma della Sardegna (Joined Cases C-346/03 and C-529/03) [2006]*), the ECJ distinguished between individual aid and aid schemes when deciding whether to admit a recipient to challenge a Commission decision in national courts when the time limit for bringing that action before the CFI has lapsed.

In its judgment, the ECJ elaborated on the so-called *Deggendorf* rule set out in 1994. This rule states that it is not possible for a recipient of aid, that could have challenged a Commission decision declaring that aid incompatible with the common market before the CFI and who allowed the time-limit for such an action to lapse, to call into question the lawfulness of that decision before a national court in an action against a national implementation measure.

The ECJ modified the *Deggendorf* rule in the following ways:

- Where the decision concerns individual aid and is communicated to the recipient, the recipient cannot challenge the decision before a national court.
- Where the Commission’s decision concerns an aid scheme intended for categories of persons defined in a general manner and that decision is not notified by the member state to any recipient, on the basis that it is not self-evident that the recipient would have standing before the CFI, the recipient can challenge it before a national court.

**Analysis.** The *Scott* judgment confirms the weak status of recipients in state aid cases. The judgment in *Guiseppe Atzeni and others*, however, seems to acknowledge the problems this status can cause unidentified recipients. The judgment can be seen as recognising that recipients in an aid scheme will not necessarily be made aware of a Commission decision on that scheme, despite it clearly affecting them. In such a case, where their procedural status under EC law indirectly deprives recipients of their procedural rights, they should still be able to rely on the procedural rights under national law.
**Recovery**

Where aid has been granted but the Commission finds it incompatible with the common market, the main concern is to remove the competitive advantage afforded to the beneficiary and to restore effective competition. It is therefore vital that member states enforce a Commission order to recover aid properly and effectively.

**Commission v France (Case C-232/05) [2006].** More than six years after the Commission had adopted a decision that a French measure constituted state aid incompatible with the common market, the aid had still not been recovered. This was mainly because under French law an action brought against demands for payment automatically suspends those demands and, therefore, they cannot produce any concrete effects to reimburse state aid before the national court has given its decision.

The ECJ ruled on the matter on 5 October 2006. It clarified that the measures by a member state to ensure implementation of a Commission decision must result in the actual recovery of the sums owed. The ECJ noted that under Article 14(3) of the Procedural Regulation, the application of national procedures is subject to the condition that those procedures allow for the immediate and effective execution of the Commission’s decision.

The conclusion reached by the ECJ was that a national procedural rule which does not fulfil the objectives pursued by the Community rules on state aid (that is, the aim of restoring undistorted competition as well as the principle of effectiveness) does not fulfil the conditions laid down in Article 14(3) of the Procedural Regulation.

**Analysis.** The judgment of the ECJ in Commission v France emphasises that when faced with a recovery order from the Commission, member states must actually recover the sums. In principle, national procedures that can considerably delay the recovery do not conform with that requirement.

**DEVELOPMENTS IN STATE AID POLICY AND REFORM**

State aid policy is an integral part of EU competition policy and a critical element in the EU’s ongoing economic reform.

**The Lisbon Strategy**

In 2000, the Council of Ministers (Council) concluded that the EU needed a new strategic goal to strengthen economic reform and social cohesion. The so-called Lisbon Strategy was launched and the goal set was for the EU to “become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion” by the year 2010. Five years later, the European economy was still under performing in terms of growth, productivity and employment. In March 2005, the Council therefore called for a re-launch of the Lisbon Strategy with a focus on economic growth and employment in Europe. Competition policy, including state aid policy, plays a significant role in promoting the objectives set out as in the renewed Lisbon Strategy.

**Modernisation of state aid control - the SAAP**

In response to the renewed Lisbon Strategy, the Commission presented a detailed plan for the reform of state aid legislation and the modernisation of state aid analysis in June 2005, the State Aid Action Plan (SAAP). The SAAP reflects the Commission’s desire to create a more economics-based approach to state aid analysis. The reform efforts under the SAAP are based on the belief that the improper usage of state resources can severely distort competition, whereas state aid targeted at areas where market forces are failing can benefit the European economy. The SAAP argues that subsidies can be used proactively to improve the functioning of markets and to support growth and jobs. This can be done, for example, by correcting market failures with horizontal aid, such as aid for:

- Research and development (R&D).
- Innovation.
- Risk capital.
- Targeted support for small and medium-sized enterprises (SMEs).

A parallel objective of the SAAP is to create a better regulatory environment for business, with less bureaucracy, more transparency and greater predictability. The SAAP was devised through a consultation process, and the whole reform process is progressing with direct co-operation with stakeholders. In addition, the Commission is proposing to set up a State Aid Network to establish a stable communication structure with stakeholders.

The SAAP also aims to strengthen the enforcement of state aid decisions. To that end, the Commission has increased its monitoring efforts to ensure that illegal aid is recovered from the beneficiary. This can be seen in its increased resort to legal action before the ECJ, such as in the cases of Greek aid to Olympic Airlines and French tax exemptions:

- In December 2002, the Commission decided that Greece had granted illegal restructuring aid and operational aid to Olympic Airlines. More than two years later, the aid had not been recovered. On 12 May 2005, the ECJ confirmed that the Greek authorities had failed to recover at least EUR161 million (about US$204.1 million) from the airline. Despite this ruling, on 18 October 2006 Greece had still not complied. The Commission has requested the ECJ to impose a lump sum penalty and a periodic penalty on Greece for failure to implement the decision of 2002.
- On 25 October 2006, the Commission referred France to the ECJ for failure to comply with the Commission’s decision of 16 December 2003 regarding aid awarded by France in the form of exemption from tax for takeovers of ailing companies.

**Putting the plan into practice**

In line with the renewed Lisbon Strategy, the SAAP has focused the Commission’s reform work on proposals explicitly benefiting SMEs and encouraging investments in R&D and innovation.
Services of general economic interest (SGEI). One of the first steps taken under the SAAP was to enact new rules on SGEI. The Commission has worked on clarifying the rules on financial compensation to SGEI to provide more legal certainty to providers of public services while avoiding distortions of competition, although further clarification is needed on certain issues. In response to the Commission’s white paper on services of general interest (SGI), the European Parliament’s Committee on Economic and Monetary Affairs has called for:

- Clarification of the different concepts of public services.
- Clarification on the distinction between SGI and SGEI.
- Legal clarifications, guidelines and principles on the application of internal market and competition rules in the field of SGEI.
- Clarification on how responsibilities are shared between the EC and member states.

Regional aid. Under Article 87(3), state aid granted to promote the economic development of certain disadvantaged areas within the EU may be considered to be compatible with the common market (see above, Legal framework: General Prohibition and exemptions: Possible exemptions). The Commission periodically establishes guidelines laying down the criteria for the assessment of such aid. The 1998 guidelines on regional aid were repealed in December 2005 by a new set of rules, applicable for 2007 to 2013. In the new guidelines, the Commission has reformed the rules on regional aid to take account of the EU’s enlargement, the need to focus aid in the most deprived regions and the need to create more flexibility for member states to target SMEs and specific market segments.

There are also some novelties under the guidelines:

- Rules on investment projects over EUR50 million (about US$63.4 million).
- Operating aid to counter depopulation.
- Aid to encourage business start-ups in assisted areas.

The Commission has recently adopted a block exemption regulation for regional investment aid, which entered into force on 21 November 2006 (Regulation (EC) No. 1628/2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid). Once regional aid maps for the period 2007 to 2013 are adopted, the regulation will exempt member states from notifying all transparent regional investment aid schemes to 2013 are adopted, the regulation will exempt member states from notifying all transparent regional investment aid schemes to the Commission before the end of 2006 so that it enters into force in January 2007.

New de minimis rules. The de minimis Regulation exempts aid under a certain threshold figure from the requirement to notify (see above, Legal framework: Implementing rules and regulations). On 20 September 2006, the Commission adopted a revised proposal for an amended de minimis Regulation which:

- Increases the ceiling of allowed support to EUR200,000 (about US$254,000) but limits its application to types of aid where it is possible to determine the precise amount of aid in advance.
- Introduces an exemption for guarantee schemes where the total amount of the loans underlying the guarantees does not exceed EUR1.7 million (about US$2.2 million).

The Commission intends to adopt the final version of the new de minimis Regulation before the end of 2006 so that it enters into force in January 2007.

Horizontal aid. Regulation (EC) No. 994/98 on the application of Articles 92 and 93 of the EC Treaty to certain categories of state aid allows the Commission to declare by regulations that certain categories of aid are compatible with the common market and do not need to be notified to the Commission. On 5 October 2006, the Commission published its draft proposal which would extend the scope of this regulation to include aid:

- For cultural and heritage conservation.
- In relation to natural disasters.
- To firms larger than SMEs in the agricultural sector.
- Having a social character in the transport sector.

Agricultural aid. On 6 December 2006, the Commission adopted a block exemption regulation which allows member states not to notify aid given to small and medium-sized undertakings involved in agricultural production and guidelines for state aid for the agriculture and forestry sector. The new rules apply from 2007 to 2013.
LOOKING AHEAD

Procedural developments

The following measures have been announced:

- Best practices guidelines (which have been finalised internally and discussed with member states for possible publication in summer 2007).
- Amendments to the Procedural Regulation (currently under internal discussion).
- A new notice on co-operation between national courts and the Commission in state aid cases (under preparation based on the March 2006 report on the application of state aid law by national courts).
- A communication on recovery.

General block exemption

The Commission is working on a general block exemption, which aims to simplify, consolidate and expand the scope for member states to grant aid without having to notify. High aid amounts or otherwise problematic cases will be subject to detailed assessment on the basis of specified criteria. The Commission hopes to adopt a draft general block exemption in December 2006.

Environmental aid guidelines

The Commission is reviewing the current Guidelines for State Aid for Environmental Protection, which expire at the end of 2007. The Commission is considering, for example:

- Expanding the scope of the current guidelines to also cover safety and health aspects.
- Introducing a block exemption regulation for environmental aid.
- Allowing aid for eco-innovation (in line with the Lisbon Strategy).
- Strengthening the polluter-pays principle.

In addition, the Commission sees a need to lay down rules for environmental investment aid to companies to deal with pollution caused by other companies.

State aid in the form of guarantees

The Commission plans to publish a new notice on state aid in the form of guarantees in 2007.

Direct business taxation

A new communication on direct business taxation will possibly be published in 2007.

Postal market

Since 1997, there has been a gradual opening of the postal market. On 18 October 2006, the Commission put forward a proposal to fully open the market by the end of 2009. This means that member states will no longer be able to grant exclusive rights to an operator or to maintain so-called “reserved areas” in their territory, for example reserving mail below 50 grams to national operators. Under the proposal, state aid as well as public procurement, compensation funds and cost sharing are all options available to member states to finance the universal service. An example of the Commission’s efforts in the postal market is a recommendation sent to France to end the unlimited guarantee enjoyed by the French Post Office (La Poste) in its capacity as a public body by the end of 2008.