STATE AIDS (BANKS): COMMISSION COMMUNICATION

Subject: State aids

Industry: Banks; credit and other financial institutions

Source: Commission Statement IP/01/739, dated 23 May 2001

(Note. Essentially, what the Commission is seeking to achieve in this Communication is the adaptation of the state aid rules, designed to meet what the Commissioner describes as the more sophisticated ways in which Member States are introducing measures to boost their risk capital markets. The state aid rules need to accommodate this trend, without lowering the Commission's guard against the distortions which inappropriate measures can cause. In the early 1990s, the European Community's record in the field of state aids to financial institutions was not a happy one; if the Commission's new policy is successful, its record in the next decade may well be to its credit.)

The Commission has adopted a Communication on state aid and risk capital, which sets out how the Commission will assess, under the state aid rules, measures designed to promote the growth of risk capital markets. An increase in risk capital is an objective which the European Union has been pursuing particularly strongly since the Lisbon European Council in March 2000. The Commission has recognised that public funds may play a part in achieving this. At the same time, it wants to maintain a careful control on state aid within the European Union and has found that existing state aid rules are not well adapted to the types of measures which have been developed by Member States' authorities to stimulate an increase in risk capital activity.

The document is a response to the request by Finance Ministers of the European Union, made in September 2000 in Versailles, for clarification of the approach to the assessment of risk capital measures under the state aid rules. The request was made in the light of the experience both of the Commission and of the Member States with certain such measures which clearly constituted state aid and could not be found compatible with existing state aid rules. Existing rules generally insist that state aid should be linked to certain specific types of expenditure (fixed investments, research and development, training and the like, known as eligible costs), whereas risk capital is often aimed simply at providing working capital for new and growing businesses. A further problem was that measures were being designed not to provide funding directly, but rather to provide incentives to potential investors to do so. Such measures were not compatible with the existing rules.

The document makes clear that Governments can take many measures to promote risk capital which have no state aid impact. Indeed, the Commission makes it clear that the philosophy underlying the strategy for developing the risk capital market in the European Union attributes primary importance to the creation of an environment favourable to creating and sustaining new and innovative businesses, through structural and horizontal measures. However, the Commission has also recognised a role for public funding of risk capital measures limited to addressing identifiable market failures. Even this may not constitute state aid if public capital is provided on terms which would be acceptable to a private investor operating under normal market economy conditions.

Where public intervention does constitute state aid, the Commission will now be prepared to apply different criteria from the link to eligible costs when assessing that intervention under the state aid rules. In line with its previously stated position quoted above, it will insist that the measure is addressing an identified market failure. This condition will be assumed to be met at lower transaction levels (€500,000, rising to €750,000 or €1,000,000 in regions eligible for regional aid under Articles 87(3)(c) and (a) respectively of the EC Treaty).

If the market failure condition is met, the Commission will assess the measure against certain criteria, notably: the size of the enterprises targeted by the measure (with a preference for small, start-up and early stage enterprises); the existence of safeguards to reduce distortion of competition between investors; and the nature of the investment decisions, which should be profit-driven (that could be shown to be the case in particular where the measure includes the contribution of significant amounts of capital provided by market investors). ■

The Intel Case

What the Commission sees as misleading press reports have prompted the Commission's spokesman for competition matters to confirm that it had asked the United States company Intel Corporation to react to allegations that it had abused its dominant position in the market for Windows-capable microprocessors by engaging in abusive marketing practices.

The Commission is examining two different complaints against Intel. It is not taking up previous efforts by the US Federal Trade Commission to investigate the same company, as suggested by a newspaper article.

The Commission is already examining Intel's replies. It has also sent request for information to several personal computer manufacturers and retailers. The investigation is at a very early stage and, and the Commission has not made any finding that Intel has actually committed an infringement of European Union competition law.

(Source: Commission Memorandum 01/129 dated 6th April, 2001.)