

State Aid after the Financial Crisis

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Outline of my Talk

- State Aid to the Car Industry: The Opel Saga
- State Aid to Broadband: Comments on the Commission Guidelines
- State Aid to Public Broadcasters (focus on new Internet services)

State Aid to the Car Industry

- State Aid to Opel is (a) a waste of money, (b) a significant distortion of competition,
- Opel's problems started long before the financial and economic crisis started (see next slide)
- Opel does not fulfill any criteria of the „Germany Fund“:
 - Problems started long before the crisis,
 - Aid distorts competition,
 - Unclear why Opel has no other sources for financing (60% US-Government-owned enterprise)
- EU Commission has rightly intervened!

New Cars Sold in Germany

Marke	2005	2006	2007	2008	in %
VW	621.978	689.116	608.820	615.229	20,0%
Mercedes	343.895	342.768	327.742	327.965	10,6%
BMW	290.969	297.457	284.889	284.767	9,2%
Opel	347.960	334.479	285.267	258.274	8,4%
Audi	248.765	262.356	249.305	251.393	8,2%
Ford	246.814	243.845	213.843	217.308	7,0%
Renault	167.718	155.808	140.281	147.167	4,8%
Skoda	102.216	118.523	118.682	121.277	3,9%
Toyota	134.768	147.995	132.535	95.781	3,1%
Peugeot	118.038	111.151	93.394	94.676	3,1%
Fiat	60.112	78.072	73.799	88.111	2,9%
Citroen	72.472	83.469	73.244	73.337	2,4%
Mazda	70.154	77.051	65.651	56.227	1,8%
Hyundai	51.704	52.405	47.523	51.667	1,7%
Seat	56.632	60.975	52.888	49.331	1,6%
Nissan	53.082	55.231	41.575	45.748	1,5%
Honda	43.845	48.588	41.729	40.133	1,3%

Broadband State Aid Guidelines

The Commission may declare compatible, under certain conditions, State aid measures that target areas where the provision of a broadband infrastructure is still a *de facto* monopoly provided that (i) no affordable or adequate services are offered to satisfy the needs of citizens or business users and that (ii) there are no less distortive measures available (including ex ante regulation) to reach the same goals.

For the purpose of establishing the above, the Commission will assess in particular whether:

- a) the overall market conditions are not adequate, by looking, inter alia, into the level of current broadband prices, the type of services offered to end-users (residential and business users) and the conditions attached thereto;
- b) in the absence of ex ante regulation imposed by a national regulatory authority ('NRA'), effective network access is not offered to third parties or access conditions are not conducive to effective competition;
- c) overall entry barriers preclude potential entry of other electronic communication operators; and
- d) any measures taken or remedies imposed by the competent national regulatory or competition authority with regard to the existing network provider have not been able to overcome such problems.

Broadband State Aid Guidelines

- State Aid to second firms to deploy broadband is critical (in so-called „grey areas“)
- Natural monopoly market structure and incentive to induce competition has so far not been a defense for state aid
- Subsidising market entry may have adverse consequences for the first firm's investment incentives – incentives may be to hold out to be second!
- Remedy appears not to be best suited to address market failure (access regulation appears to be more adequate)
- Guidelines are at odds with the Commission's balancing test

Balancing Test

Step 1:

Is the aid measure aimed at a well-defined objective of common interest, the elimination of market failure or other objective (e.g. cultural aid)?

Step 2:

Is the aid instrument suitable to realize the goal of common interest, that is, to correct the market failures or pursue any other goal?

- a) Is State aid the appropriate instrument?
- b) Does aid have an incentive effect, i.e. does it change the behavior of firms?
- c) Is the aid proportionate, i.e. could the same change in behavior be obtained with less aid?

Step 3:

Are the negative effects of aid (in particular distortions of competition and trade) limited, so that the positive effects outweigh any negative effects?

How significantly aid distorts competition, will depend on:

- the selection criteria for the beneficiaries and the conditions attached to the aid,
- the characteristics of the market and of the beneficiary, and
- the amount of aid and the type of aid instrument.

State Aid to Public Broadcasters

- State Aid to Public Broadcasters: Intense Debate between European Commission and Member States such as Germany
- State Aid Compromise of 24 April 2007:
 - Definition of Public Service Obligations of Public Broadcasters
 - Introduction of so-called 3-setp-test, similar to Public Value test conducted by Ofcom in the UK:
 1. Does a new service serve the democratic, social or cultural needs of society?
 2. Does the new service contribute to journalistic competition in a qualitative way?
 3. What financial resources are necessary?
 - Furthermore, a market impact assessment has to be conducted to evaluate the impacts on competitors and market competition.

State Aid to Public Broadcasters

- Analysis of Market Impact of Public Broadcasters' Online Services,
- The current market impact assessments are more or less a joke in Germany – there is little serious market analysis,
- Problem of Market Definition: Reverse Cellophane Fallacy: Both prices and advertising levels (hedonic prices) are so low (=zero) that hypothetical monopolist test fails if starting point is zero advertising and zero price – artificially low prices lead to reverse cellophane fallacy – markets are defined too narrowly!

Thank you for your attention!

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