

Compass Lexecon's European practice has extensive experience in State aid cases. We have evaluated the costs and benefits of the aids to the government to determine whether they satisfy the Market Economy Investor Principle. In other cases we have assessed the potentially distortionary effect of those aids on the marketplace.

As a leading economic consultancy specialising in competition policy, we are uniquely placed to advise on State aid cases in a wide range of sectors, from aerospace to telecoms, postal services and insurance.

Greek casinos: Our client considered bringing a complaint against Greek casinos, alleging that these casinos were receiving State aid from the Greek government. We carried out an economic analysis to determine whether State aid has been granted. We also estimated the amount of the aid.

Polish energy state aid: FTI-CL Energy (our combined energy practice with FTI Consulting) provided economic advice to the Polish transmission system operator, PSE, in the European Commission (EC) State aid investigation of the planned Polish capacity market. Based on our proprietary European power markets dispatch model, we audited the adequacy analysis and the market modelling developed by PSE to justify the necessity of a capacity remuneration mechanism. In parallel, we evaluated the participation of interconnections to this mechanism, taking account of the specificity of Poland regarding unscheduled flows.

Eastern European electricity firm: We advised our client, active in the energy sector, during an investigation by an Eastern European energy regulator. We analysed whether a long run agreement within a state electricity company could violate State aid rules. In a second phase of the project, we made a State aid analysis of the client's power purchase agreements. This included a financial analysis of the project, the effects of the project on the national electricity project, and consistency of the State support with the stranded cost guidelines.

Spanish energy subsidies: We advised on the proportionality of subsidies provided for investments in renewable energy generation in Spain (2007-2013), which were under investigation by the European Commission. We analysed whether the subsidies were sufficient to provide the right incentive to invest, without over-rewarding investors.

Corporate income tax Apple Ireland: We provided economic advice to Apple in the context of the European Commission's State aid inquiry against Ireland (Opening Decision of 11 June 2014). The EC investigated whether decisions by tax authorities in Ireland, with regard to the corporate income tax to be paid by Apple, complied with the EU State aid rules. In August 2016, the EC concluded that Ireland's tax benefits to Apple were illegal because it allowed Apple to pay substantially less tax than other businesses and required Ireland to recover the illegal State aid from Apple.

AWSA overcompensation: In the context of a State aid investigation by the European Commission, we analysed whether the economic agreement between the Polish government and Autostrada Wielkopolska S.A. (AWSA), the operator of the Polish A2 motorway, was at 'market rate' or whether it included a hidden subsidy. We prepared an economic report for submission to the European Commission. The EC concluded in August 2017 that AWSA was overcompensated, mainly due to a change in Polish law, and required Poland to recover the funds from AWSA.

EDF Energy: We supported EDF Energy during the European Commission's State aid investigation of the UK Government's support of a proposed Contract for Differences (CfD) with EDF for the construction and operation of a nuclear power plant at Hinkley Point. We advised EDF Energy in its interaction with Commission officials investigating the State aid compliance of the Hinkley Point C arrangements. We conducted a number of economic analyses to verify whether the CfD was consistent with the economic principles of State aid measures adopted by the Commission, and with the Commission's practice in State aid cases in the energy sector. The Commission concluded that the CfD scheme was compatible with State aid regulation.

Gaming: We provided advice on a State aid case involving online gaming in an EU member state. The case revolved around the valuation of an online gaming company and the interaction between online and offline gaming.

RIX vs Ryanair: One of our experts acted as an expert witness on the State aid claim in an arbitration between Riga International Airport (RIX) and Ryanair, regarding airport fees.

Airbus: We assisted Airbus in the context of the bankruptcy of one of its subsidiaries by demonstrating that the State aid it received to save the subsidiary was compatible with the rescue and restructuring guidelines from the European Commission. We helped the client allocate restructuring costs between public and private stakeholders with the purpose of showing that the public contribution to the restructuring was not larger than that of the private investor (Market Economy Investor Principle-test). The restructuring costs were to be faced over an extended period of time, requiring Compass Lexecon to advise on an appropriate discount rate to assess the present value of the restructuring costs.

OUR EXPERTISE STATE AID

Hellenic power market: We provided support in the design of a capacity Remuneration Mechanism for the Hellenic power market. We assessed the economic consequences of different contract lengths, reviewed State aid implications, and provided support in the design of a mechanism to regulate third party access to lignite and hydro assets of the Greek incumbent.

National Bank of Greece: We assisted the counsel of the National Bank of Greece (NBG) in preparing submissions to the European Commission on the respective roles played by the Greek sovereign and the Greek banks (such as NBG) in causing the Greek sovereign debt crisis and the subsequent need for State aid. We examined the extent to which NBG's past behaviour precipitated the financial crisis and, on that basis, assessed NBG's liability in burden-sharing. In addition, we helped assess whether, in any event, measures undertaken by NBG limit the need for further burden-sharing, the main goal of which is to limit moral hazard.

Veolia Transdev: We provided economic analysis to Veolia Transdev in order to assess whether the State aid to SNCM (a subsidiary of Veolia Transdev) complied with European Commission (EC) State aid rules. The case will be reviewed again by the EC, following a General Court decision.

European Low Fares Airline Association: We assisted the European Low Fares Airline Association with a submission to the European Commission, supporting the use of the MEIP (Market Economy Investor Principle) test in analysing the presence of State aid in regional airports' agreements with airlines.

Bank of Ireland: Our experts advised Bank of Ireland in relation to the State aid received during the economic crisis. We helped the bank in preparing a Restructuring Plan that it was required to submit to the European Commission. In addition, we advised the bank on the implementation of potential behavioural and structural remedies. The European Commission approved the restructuring plan in July 2010.

Directorate-General for Competition: Our experts provided a framework for the Directorate-General for Competition of the European Commission to analyse and evaluate State aid announcements. This included a review of the relevant literature, case law, and a critical analysis of the use of event studies to calculate the existence of State aid.

France Télécom: Our experts advised the European Commission in assessing whether the actions of the French government in supporting France Télécom complied with State aid rules. In particular, we carried out a MEIP test, an event study on stock prices, and an assessment of possible unfair advantages. Based on our analysis, the Commission concluded that the credit line granted to France Télécom constituted illegal State aid.

Health insurance: Our experts carried out a study for a leading health insurer into whether a proposed levy by a national government on health insurers to compensate for measures said to benefit all health insurers were appropriate. A key part of the analysis was whether the proposed measures would lead to a distortion of competition in favour of the State health insurer.

MEIP-test: Our experts analysed the applicability of the MEIP (Market Economy Investor Principle) test to an investment made by the Spanish Government. In particular, we analysed the profitability of the project set out in a business plan produced by an external advisor. The application of the MEIP test involved estimating the rate of return and calculating the net present value of the project.

Dell Poland: Our experts assessed whether support to the manufacturing plant of Dell Products in Poland was compatible with EC State aid rules. The aid was aimed at supporting Dell's investment in a new plant for the production of desktops, notebooks and servers in the Łodzkie region of Poland. Our work related to the proceedings described in the Regional Aid Guidelines and the Draft Guidance on the assessment of regional aid to large investment projects. We assessed each of the conditions set out in these guidelines by means of quantitative and qualitative analysis. One of the key tasks we conducted was comparing the Net Present Value of the investment at issue with and without the aid, in order to assess its incentive effect. In September 2009, the Commission concluded that the aid to Dell was compatible with the EC Treaty.

