

## TABLE OF CONTENTS

LIST OF CONTRIBUTORS . . . . .	VII
FOREWORD. . . . . <i>Neelie Kroes, European Commissioner for Competition</i>	IX
PREFACE . . . . . <i>Massimo Merola and Jacques Derenne</i>	XI
1. KEYNOTE SPEECH . . . . . <i>Neelie Kroes, European Commissioner for Competition</i>	1
2. THE ECONOMIC ANALYSIS OF STATE AID CONTROL . . . . . <i>David Spector</i>	7
3. THE MOST APPROPRIATE ECONOMIC TOOL FOR A BETTER TARGETED STATE AID POLICY . . . . . <i>Massimo Merola (Group Coordinator), Leigh Hancher, Pablo Ibañez Colomo, Maria Cristina Santacroce, Rainer Nitsche, Penelope Papandropoulos</i>	29
COMMENTS ON THE PAPER “THE MOST APPROPRIATE ECONOMIC TOOLS FOR A BETTER TARGETED STATE AID POLICY” . . . . . <i>Massimo Merola</i>	68
COMMENTS ON THE PAPER “THE MOST APPROPRIATE ECONOMIC TOOLS FOR A BETTER TARGETED STATE AID POLICY” . . . . . <i>Thibaut Kleiner</i>	75
4. COMPENSATION FOR SGEI: AN ECONOMIST’S LOOK AT THE ALTMARK TEST AND THE COMMUNITY FRAMEWORK. . . . . <i>Jorge Padilla, Urs Haegler</i>	79
5. TRANSFER OF STATE RESOURCES . . . . . <i>Pierre Kirch, Olivier d’Ormesson, José Wenceslao Rodríguez Curiel</i>	105

6. SELECTIVITY, ECONOMIC ADVANTAGE, DISTORTION OF COMPETITION AND EFFECT ON TRADE. . . . .	119
<i>Penelope Papandropoulos, Rainer Nitsche, Bernard van de Walle de Ghelcke, Denis Waelbroeck, Jacques Derenne, Frédéric Louis, Massimo Merola, Pablo Ibañez Colomo, Julien De Beys and Julie Bousin</i>	
COMMENTS ON THE PAPER “SELECTIVITY, ECONOMIC ADVANTAGE, DISTORTION OF COMPETITION AND EFFECT ON TRADE” . . . . .	156
<i>Vittorio Di Bucci</i>	
7. COMPATIBILITY OF STATE AID AND THE BALANCING TEST: ITS ROLE IN THE ARCHITECTURE OF THE SYSTEM OF STATE AID CONTROL . . . . .	161
<i>Phedon Nicolaides</i>	
8. PROCEDURE . . . . .	177
<i>Eric Morgan de Rivery, Sabine Thibault-Liger, Jacques Derenne</i>	
9. A COMPARISON OF WTO SUBSIDY AND EU STATE AID RULES . . . . .	197
<i>Antoine Winckler, David Little</i>	
10. KEYNOTE SPEECH: WILL THE ECONOMIC ANALYSIS ALWAYS LEAD TO A STRICTER APPROACH? . . . . .	213
<i>Loretta Dormal-Marino</i>	

## LIST OF CONTRIBUTORS

- Julie Bousin, trainee, Lovells LLP
- Julien De Beys, Aspirant, FNRS, Université Catholique de Louvain (UCL)
- Jacques Derenne, Partner, Lovells LLP, Brussels. Chargé de cours adjoint,  
University of Liège
- Vittorio Di Bucci, Legal Service, European Commission
- Loretta Dormal-Marino, Deputy Director General, DG AGRI, European Commission
- Olivier d'Ormesson, Partner, Linklaters LLP, Paris
- Urs Haegler, Managing Consultant, LEGC Ltd, London
- Leigh Hancher, Professor, University of Tilburg; Of Counsel, Allen & Overy LLP, Amsterdam
- Pablo Ibañez Colomo, Teaching Assistant, College of Europe
- Pierre Kirch, Partner, Paul, Hastings, Janofsky & Walker LLP, Brussels
- Thibaut Kleiner, DG Competition, A-3, State aid policy, European Commission
- Neelie Kroes, European Commissioner in charge of Competition policy
- David Little, trainee, Cleary Gottlieb Steen & Hamilton LLP, Brussels
- Frédéric Louis, Partner, WilmerHale LLP, Brussels
- Massimo Merola, Partner, Bonelli Erede Pappalardo, Brussels. Professor,  
College of Europe
- Eric Morgan de Rivery, Partner, Jones Day, Paris
- Phedon Nicolaidis, Professor, European Institute of Public Administration (EIPA),  
Maastricht
- Rainer Nitsche, Managing Director ESMT Competition Analysis GmbH, Berlin
- Jorge Padilla, Managing Director, LECG Europe, Brussels
- Penelope Papandropoulos, Economic Analyst – Economist, Chief Economist,  
DG COMP, European Commission
- Maria Cristina Santacroce, Senior Lawyer, Bonelli Erede Pappalardo, Brussels
- David Spector, Associate Professor, Paris School of Economics, Partner, Mapp  
(Microeconomic Applications)
- Sabine Thibault-Liger, Associate, Jones Day, Paris
- Bernard van de Walle de Ghelcke, Partner, Linklaters LLP, Brussels. Professor,  
College of Europe
- Denis Waelbroeck, Partner, Ashurst, Brussels. Professor, College of Europe  
and University of Brussels
- José Wenceslao Rodriguez Curiel, Spanish Ministry of Industry, Tourism and Trade
- Antoine Winckler, Partner, Cleary Gottlieb Steen & Hamilton LLP, Brussels

## FOREWORD

**Neelie Kroes\***

Fifty years ago, the first European State aid rules were written into the Treaty of Rome. Half a century later, the rationale of State aid control remains just as valid. Effective State aid control maintains a level playing field for free and fair competition in the Single Market. In the European Union we control state subsidies because in general they distort the market, resulting in lower competitiveness for our businesses, less innovation, and higher prices for consumers. However, we also recognise that in some cases efficient and equitable state support can stimulate competition and helps oil the wheels of economic growth, to deliver better standards of living and more and better jobs for European citizens. The European Commission's State aid policy thus aims to enable targeted government interventions where they are necessary for a well-functioning and equitable economy, whilst ensuring they do not distort competition and intra-community trade.

State aid reform is one of the top priorities of my mandate as European Commissioner for Competition. Taking forward the European Council's call for "less and better targeted State aid", in June 2005 the European Commission adopted the State aid Action Plan (SAAP), an ambitious blueprint for the comprehensive reform of the State aid rules. The SAAP was designed to encourage Member States to contribute to the Lisbon Strategy by focussing more of their aid budgets on improving the competitiveness of EU industry and creating sustainable jobs (more aid for R & D, innovation and risk capital for small firms), ensuring social and regional cohesion, and improving public services. It also committed the Commission to rationalising and streamlining procedures, so that the rules are clearer, and to accelerate decision-making.

Introducing a more refined economic approach to State aid analysis is at the heart of this reform. Economic analysis has always been central to the Commission's analysis of the compatibility of State aid with the EC Treaty. Expanding and improving the economic tools at our disposal will improve the transparency and clarity of the Commission's decision-making process, and allow a more efficient assessment of the likely positive and negative effects of proposed aid, including through the setting of filters and thresholds to determine the cases most likely to distort competition. This should result in quicker approval of less distortive aid, so that the Commission can concentrate its resources on the cases liable to create more serious distortions of competition and trade. It should also help Member States better target their aid measures to fill those gaps in the market which really matter.

The Commission has put the refined economic approach into practice through adopting the new Framework for Research, Development and Innovation and the new Risk Capital Guidelines. Both texts implement the "balancing test", by explaining how the positive effects of the permitted aid measures can be weighed against any negative effects. They also justify the

---

\* European Commissioner for Competition

conditions for compatibility with State aid rules, differentiating between cases requiring a lighter or deeper assessment, according to the risk of trade or competition distortion.

Developing and embedding this refined economic approach requires us to build upon experience of competition law and economic modelling, and innovate in our working practices and approaches. Definitions of key concepts must be agreed, as must the criteria against which compatibility of aid are assessed. I have always been clear that this will be best achieved through an open dialogue between policy-makers, economists, lawyers and academia. It was for this reason that I was delighted to contribute to the September 2006 conference organised by the Global Competition Law Centre which looked at the contribution and limits of the economic analysis of State aid rules. I am equally pleased that the presentations from that conference are being brought together in this publication, so that a wider public can get to grips with developments in State aid policy, and contribute to the debate.

This book makes an important contribution to the growing corpus of State aid economics. In assessing a wide span of State aid issues, including frameworks and justifications for economic analysis in State aid, and the work and policies of the European Commission, it provides a firm foundation for the growth of the discipline of State aid economics, and offers valuable food for thought on State aid, for students, practitioners and policy makers alike.