

A Balance Between Solidarity and Competition

Services of General Economic Interest and State Aid

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Notion of aid

- Article 87(1) EC Treaty:
 - “aid granted by a Member State or through State resources”
 - Advantage: “favouring”
 - Selectivity: “certain undertakings or the production of certain goods”
 - Effect on trade between Member States
 - Distortion or risk of distortion

Article 86(2)

- The State financing of services of general economic interest constitutes State aid
- The aid can be authorised if conditions of Art. 86 (2) are met:
 - Member States must define the service
 - entrust a company with the service
 - ensure proportionality (no overcompensation)

FINANCING SGEI

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graph TD; A[FINANCING SGEI] --> B[EXCLUSIVE OR SPECIAL RIGHTS]; A --> C[PUBLIC SERVICE COMPENSATION]; B --- D[ART. 86 (1)]; C --- E[ART. 87]
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**EXCLUSIVE OR
SPECIAL RIGHTS**

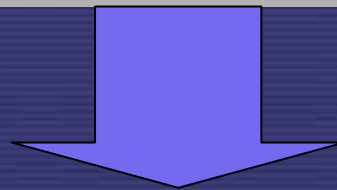
ART. 86 (1)

**PUBLIC SERVICE
COMPENSATION**

ART. 87

ALTMARK JUDGEMENT

1. PUBLIC SERVICE OBLIGATIONS CLEARLY DEFINED
2. PARAMETERS OF THE COMPENSATION OBJECTIVE AND ESTABLISHED IN ADVANCE
3. COMPENSATION CANNOT EXCEED COSTS
4. - PUBLIC PROCUREMENT TO CHOOSE THE COMPANY OR
- COMPENSATION ON BASIS OF COSTS OF A TYPICAL WELLRUN COMPANY



NO AID

Services of General Economic Interest:

- Commission objective is to guarantee financing of public service, and avoid unnecessary distortion of competition.
- accept of compensation necessary for running public service,
- no justification for overcompensation – gives e.g. risk of cross-subsidies on liberalised markets.

Public service compensation

- Tenders are not widely used, particularly for small services of general economic interest in municipalities.
- Altmark: compensation for many small services = state aid.
- Commission package: Exempting small state aids from the notification requirement as long as no over-compensation.
- Social housing and hospital sectors also exempted, provided no-overcompensation.

CONDITIONS OF COMPATIBILITY

- TRUE SERVICE OF GENERAL INTEREST
- ENTRUSTMENT
- COMPENSATION LIMITED TO COSTS OF PSO
(public service obligation)
- TRANSPARENCY

Public service and competition

- the Commission to concentrate on most distorting forms of state aid – “big fish”
- not meddling unnecessarily in essential small local and regional services.
- thresholds for exemption from notification: *30 million EUR compensation, 100 million EUR turnover.*

Hospitals & Social Housing

- Hospitals and social housing exempt from the notification obligation
- Very high amounts of aid per undertaking - aid almost always above thresholds - avoid bureaucratic burden.
- Risk of the money not going to a public service is limited, since compensation for public hospitals quite clearly goes to the cost of providing a public service.
- Decision **only applies if all the conditions are met**, in particular no over-compensation and a clearly defined public service mission.
- Transparency Directive: commercial (non-public-service) activities accounted for separately, to avoid cross-subsidies.

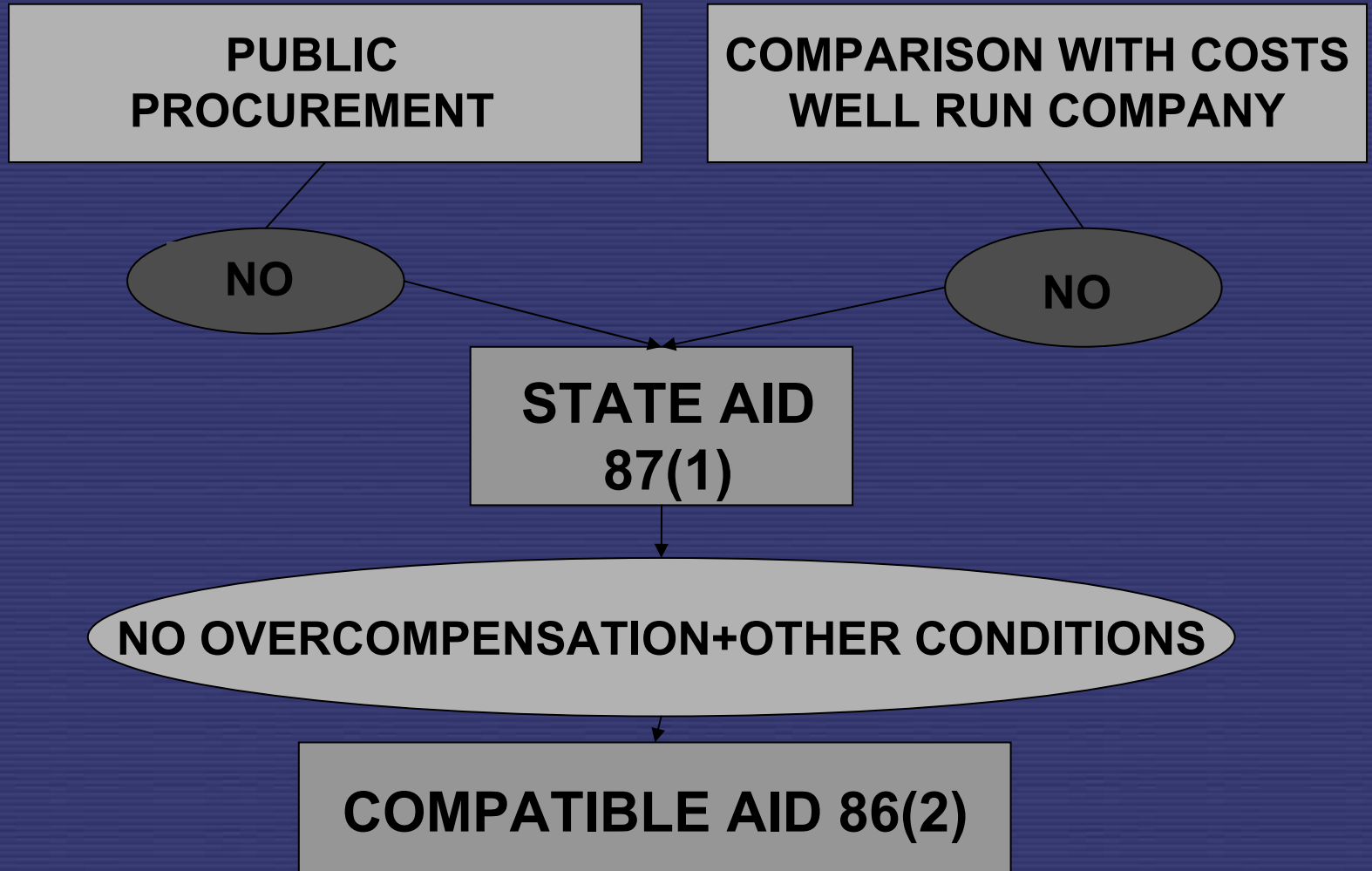
Public service – quality and price

- Up to Member States to define what “public service” includes
- Member States decide how they to provide public service, which quality level wanted
 - 1 - tender: ensures that citizens get defined quality at best price
 - 2 - providing the public service through public authority
- if costs are not excessive, normally compatible with the state aid rules.

Providing public service: Balancing solidarity and competition

- Taxpayer: Low cost
- Consumer: public authority defines quality of public service.
- Potential competitors: no overcompensation allowed, no distortion of competition allowed.
- public services operate at the quality level decided by the Member States and their public authorities.
- and: ensured that competition still possible.

PUBLIC SERVICE COMPENSATION



S. G. E. I.

PROPOSALS

- «SMALL» SGEI
- SOCIAL HOUSING
- HOSPITALS

- «LARGE» SGEI

**COMMISSION
DECISION 86/3**

**COMMISSION
NOTICE/GUIDELINES**

**EXEMPTION
NOTIFICATION**

NOTIFICATION