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Functional links between *locus standi* of third parties and the standard of assessment of impact on competition and trade in State aid cases[1]

Funkcjonalne powiązanie legitymacji procesowej podmiotów trzecich ze standardem oceny wpływu na konkurencję handel w sprawach z zakresu pomocy państwa

Abstract

This paper seeks to analyse the new interpretive approach taken by the Court of Justice in State aid cases. According to this approach, evaluating the impact on competition and trade is considered essential to determine whether an entity that is not a beneficiary of the European Commission's decision can be regarded as an 'interested party'. The author will assess the potential consequences of this interpretive approach, particularly examining whether evaluating the impact on trade and competition is an appropriate tool to guarantee access to the Court in State aid cases, especially for indirect competitors and plaintiffs claiming infringement of their non-economic interests.

Keywords: State aid, interested party, impact on competition and trade, *locus standi*, non-economic interest

JEL: K20, K21, K29, K40

Streszczenie

Niniejszy artykuł poświęcony jest analizie nowego podejścia interpretacyjnego Trybunału Sprawiedliwości UE, gdzie w sprawach z zakresu pomocy państwa traktuje przeprowadzenie analizy wpływu na konkurencję i handel jako gwarancję praw procesowych, gdyż tylko takie badanie pozwoli ocenić, czy podmiot niebędący adresatem decyzji Komisji Europejskiej będzie w danej sprawie „stroną zainteresowaną". Autor ocenia, jakie mogą być konsekwencje nowego podejścia do wielokrotnie krytykowanego za zbytnią rudymentarność standardu oceny wpływu środków pomocowych na rynek i czy rzeczywiście badanie wpływu na handel i konkurencję jest odpowiednim narzędziem gwarantującym dostęp do sądu w sprawach dotyczących pomocy publicznej, zwłaszcza dla podmiotów, które nie są bezpośrednimi konkurentami beneficjenta albo podnoszą naruszenie interesu nieekonomicznego.

Słowa kluczowe: pomoc państwa, strona zainteresowana, wpływ na konkurencję i handel, legitymacja procesowa, interes nieekonomiczny

Introduction

The inadequate standard of assessment regarding the impact on competition and trade in EU State aid cases has long been critiqued in academic circles (Ahlborn & Berg, 2004, pp. 40–65; Temple Lang, 2014, pp. 440–453; Parcu et al., 2020, pp. 15 et seq., 54 et seq.; Cnossen & Dictus, 2021, pp. 30–40). Despite significant progress following the 2005 State Aid Action Plan and the 2012 State Aid Modernisation initiative, this area still falls behind antitrust and merger control in terms of integrating economic expertise (cf. Witt, 2016, pp. 77 et seq.).[2] Notably, this

perfunctory approach is, in principle, endorsed by the Court.[3] From a procedural standpoint, it assists the European Commission (EC, the Commission) in identifying measures as aid and defending their compatibility assessments against legal challenges.

However, in the most recent case law from the second half of 2023, new developments have emerged in this area. The Court attempts to link the standard of assessment of State aid's impact with individuals' procedural guarantees. The argument asserts that to ascertain whether a non-beneficiary qualifies as an "interested party" – a *sine qua non* for the admissibility of an action for annulment against the Commission's decision – it is necessary to assess the effect of the measure in question to determine whether it indeed impacted that potential plaintiff.

In this context, this paper seeks to analyse the evolution of the case law. By identifying issues stemming from the new approach, the paper aims to assess three possible scenarios: whether there is a discernible shift toward using procedural guarantees for non-beneficiaries dissatisfied with Commission decisions as a means to improve the standard of assessment regarding the impact on trade and competition; or whether the pre-existing rudimentary standard might negatively impact individuals' access to the Court; or perhaps whether the new approach could lead to an inconsistent body of case law, effectively resulting in the parallel application of two standards for assessing the impact of aid measures. Based on these considerations, the author will attempt to determine the most suitable changes in the interpretive approach, leveraging the momentum generated by the new case law.

Standard of assessment of impact on competition and trade in State aid cases

Although the criteria for assessing the impact on competition and trade, as set out in Article 107(1) TFEU, are formally distinct, they are typically evaluated together and, functionally linked, effectively operate as a unified criterion.[4] Meeting one criterion usually implies fulfilment of the other, with only rare exceptions in case law (Cnossen & Dictus, 2021, p. 32; Zeigler, 2018, pp. 35–38).[5]

According to the prevailing interpretive approach, a measure must be at least "liable" to create a distortive effect.[6] To avoid favouring Member States that fail to notify aid measures *ex ante*, actual data demonstrating the measure's impact is not necessary.[7] Instead, the analysis concentrates on understanding the mechanism through which this impact could manifest.[8] Nevertheless, in cases such as T-254/00 Hotel Cipriani, the Court emphasized that distortive effects cannot be assumed; instead the European Commission is obliged to present circumstances specifically related to the mentioned case, leading to the conclusion that such effects might occur.[9] However, the extent of reasoning required is not particularly high.

Notably, there is no necessity to define the relevant market, evaluate demand structure, or analyse trade flows.[10] Identifying competitors is also not obligatory.[11] As emphasized by the Court in the T-210/02 RENV British Aggregates case, the existence of competition holds relevance, yet it is not the sole decisive factor.[12] This can be attributed to the fact that measures targeting entire sectors can be potentially distortive (Bacon, 2017, pp. 72–73, 85 and cases quoted therein). Therefore, identifying competitors within one Member State may not be pertinent. In essence, the *acquis* in this regard is rather *ad hoc*. Some further indicators can be gleaned from the Commission's decision practices. While none of these indicators is conclusive on its own, a measure might cause distortion in competition and trade if, for instance, there is structural overcapacity in sectors, compelling undertakings to seek outlets abroad.[13] This is also applicable in cases involving a significant number of transnational companies, substantial cross-border trade, or if the beneficiary operates in multiple markets (Cnossen & Dictus, 2021, p. 37).[14]

Although the Court emphasized in the C-15/98 Sardegna Lines case that a distortive effect cannot be equated with the mere existence of a selective advantage, especially the EC cannot simply apply its conclusion regarding the latter to the part of the decision analysing distortive effects.[15] Nevertheless, given the perfunctory assessment standard outlined above, this primarily pertains to the editorial aspect of the decision rather than its substantive content (Heimler, 2010, p. 91). Additionally, these criteria – selective advantage on one hand and distortion of competition and trade on the other – are inherently connected because distortions occur when only specific undertakings receive preferential treatment. Hence, in practice, the assessment is approaching the quasi-assumption that a measure conferring selective advantage is distortive (Heimler & Jenny, 2012, p. 347 et seq.).

The concept of 'interested party'

The evaluation in State aid cases, primarily centred on improving a beneficiary's position, naturally revolves around the relationship between the State and the alleged beneficiary. Distortions in the market, as well as all other entities impacted by aid measures, are treated as anonymized elements, forming a generalized backdrop for case assessment. Such a generalized view of non-parties to the case is understandable when considering that the EU competition rules, of which EU State aid law is a part, are designed to protect competition as a process rather than individual competitors (e.g. Jones et al., 2020, p. 31).

However, this perspective becomes somewhat problematic when a beneficiary's competitor emerges (at this point, only an alleged competitor) with the intention to challenge the Commission's decision addressed to that beneficiary. This scenario is hardly theoretical. When aid is approved, it implies that the EC has determined the

distortion of competition and trade to be offset by the positive effects of a measure (e.g. Bacon, 2017, p. 100 and cases cited therein). Such assessments might be contested by other market players alleging that the advantage granted to the beneficiary negatively impacts their operations. When the EC's decision is positive and aid is approved, only non-addressees might be interested in challenging it.

Therefore, for any non-party to the case to have *locus standi* in the action for annulment under Article 263 TFEU against the Commission decision addressed to other undertakings, it is necessary to determine that they are an 'interested party' within the meaning of Article 1(h) of Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.[16] An 'interested party' is defined as "any Member State and any person, undertaking, or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings, and trade associations".

At a conceptual level, the assessment in this regard relies on the well-established Plaumann formula.[17] This issue has been extensively discussed, so it suffices to briefly recapitulate: for a measure addressed to another undertaking to be of "direct and individual" concern to a non-addressee, it is necessary first to determine that this non-addressee is in a comparable situation to that of an aid beneficiary, and secondly, that its situation is distinct from that of other non-beneficiaries (Creve, 2014, p. 233).

At this juncture, a certain paradox of the current interpretive approach reveals itself. For the purpose of identifying the impact of aid measures on the market, there is no need to identify competitors or determine whether and to what extent they are directly or indirectly affected. It suffices to present an economically defensible, general mechanism for such impact on the overall market. Whereas the definition of 'interested party' suggests that in order to classify as such, a level of assessment of the measure's impact more extensive than in typical State aid cases would have been needed.[18] The implications of this observation and the connections between these two standards will be explored in the next section.

Competitor as 'interested party'

The functional links between assessing the impact on competition and trade and the procedural guarantees of individuals became the subject of the Court's scrutiny in Case C-466/21 P Land Rheinland-Pfalz v Deutsche Lufthansa (hereinafter C-466/21 P DLH case).[19] The case originally concerned the EC decision authorizing State aid for the regional airport Frankfurt-Hahn (HHN). Lufthansa, which has one of its main hubs in the international Frankfurt airport (FRA), located about 120 km from Frankfurt-Hahn, challenged that decision, arguing that the support conferred an unmarketlike advantage to the low-cost carrier Ryanair, which operates from the regional airport. Lufthansa claimed 'interested party' status due to the partially overlapping catchment areas of both airports, making Ryanair's operations competitive to them.[20]

In determining whether Lufthansa qualifies as an 'interested party', the Court clarified that the concept, within the meaning of the provision, encompasses not only undertakings directly competing with the aid beneficiary but also an indeterminate group of persons (para 85). According to the Court of Justice's case law, e.g. C-83/09 P Kronoply, C-647/19 P Ja zum Nürburgring and C-284/21 P Braesch, an undertaking need not be a direct competitor of the aid beneficiary to be classified as an 'interested party'.[21] In the author's view, this approach seems somewhat perplexing when considered alongside the Plaumann formula and the standard employed for assessing the impact on competition and trade in State aid cases. When applied simultaneously, these two approaches yield contradictory results: Plaumann requires the claimant to be in a distinctly different situation, while the current standard does not allow the identification of such a situation. Meanwhile, the quoted rulings on interested parties suggest that such a party must be identifiable, though not necessarily to the extent required by Plaumann. Which, in the author's perspective, unnecessarily complicates matters as the identification of parties affected has been thoroughly addressed in antitrust and merger cases.

In economic sciences, direct competition occurs when similar products are targeted towards the same group of recipients. In air transport cases, both in antitrust and mergers, the European Commission detect direct competition using the so-called Origin-Destination (O&D) method.[22] According to this approach, each pair of origin-destination cities constitutes a separate geographic market (see e.g. Faull & Nikpay, 2017, pp. 1791–1792). It is assumed that operations on overlapping routes are directly competitive. It must be noted that this is somewhat oversimplified, as there are additional factors that may be relevant, such as the number of daily rotations, their timing during the day, and transfer options (see generally Macario & Van de Voorde, 2021 and sources quoted therein). However, for the purpose of the current discussion, it suffices to assume that direct competition equals operations on overlapping routes. Therefore, since Lufthansa had no operations in Frankfurt-Hahn, there was no direct competition in Case C-466/21 P DLH (Ryanair had some flights from Frankfurt Airport (FRA), but these were outside the scope of the case and are irrelevant).

Whereas indirect competition refers to a situation where a product is somewhat different but targets the same users (Faull & Nikpay, 2017, p. 43; Ortiz Blanco, 2012, pp. 5–16). In competition cases, determining indirect competition involves the EC defining the relevant market and assessing substitutability.[23] This means examining whether consumers are willing and able to switch to different products available in different areas (Faull & Nikpay, 2017, pp. 51–52; Ortiz Blanco, 2012, pp. 15–17). If they are, these products are considered competitive within a specific market, either in

terms of the product itself or its geographical location.[24] Therefore, this assessment demands a relatively sophisticated approach. It requires identifying airport catchment areas, comparing consumer preferences – including those who might opt for a farther travel to Frankfurt-Hahn for a cheaper airfare and those who prefer the Frankfurt hub for its convenience, even if it is likely more expensive – and evaluating the carrier networks. Despite its complexity, this kind of market analysis is standard practice in antitrust and merger cases and is well-established in economic research.[25]

The Court explicitly acknowledged these economic relationships in Case C-466/21 P DLH, affirming that "the grant of the aid at issue was likely to have a specific effect on [Lufthansa]'s situation, particularly concerning the operation of Frankfurt Main airport, its primary 'hub airport', and competition regarding destinations of flights offered by [Lufthansa] departing from that airport" (para 87). The plaintiff raised these points during the initial proceedings before the Commission. However, the EC did not consider these arguments, partly due to the way Lufthansa presented them, inadvertently weakening their case (Garard, 2022, p. 555). It is important to note that the Commission's handling of the case in its initial stage was not substandard. On the contrary, the Commission adhered to the established interpretive template used in State aid cases and evaluated the impact on trade and competition in a manner consistent with other State aid cases (cf. with e.g. Bacon, 2017, pp. 84–88; Werner & Verouden, 2017, pp. 170–173, 178–183).

However, the interpretive novelty introduced by this case is the Court's dictum, stating that "it [was] apparent from an overall analysis of the application' that [Lufthansa]'s action concerned the annulment of the decision not to raise objections, calling into question the fact that the decision failed to carry out a complete investigation of the aid at issue. This failure caused harm to [Lufthansa] as an interested party, infringing its right to be heard and its procedural rights" (para 99). This establishes the *locus standi* to challenge the EC's decision in the action for annulment under Article 263 TFEU. The Court further elaborated that during the initial proceeding, when Lufthansa's challenge was declared inadmissible, the General Court failed to comply with its obligation to state reasons by simply stating that "the reliance by [Lufthansa] on an infringement of its procedural rights was clear on an analysis of the whole of the application at first instance" (para 104). Instead, what should have been done is an explicit reference to the paragraphs of that application on which the finding was based. This would enable the parties to understand the reasons that led to that conclusion and allow the Court to exercise its powers of review (para 104).

Therefore, the Court essentially stated that assessing the impact of aid measures on competition and trade allows the determination of whether a non-beneficiary party is affected to an extent that justifies its classification as an "interested party". However, the problem apparent in this context is how this can be determined. Firstly, the existing rudimentary standard for assessing the impact on trade and competition, especially the lack of the need to delineate the relevant market and identify competitors, is generally endorsed by the Court.[26] Secondly, the Court consistently emphasizes the Commission's wide discretion in conducting economic analysis in State aid cases.[27] Thirdly, on multiple occasions, such as in C-225/91 Matra, C-323/00 P DSG or C-290/07 P Scott cases, the Court explicitly stated that it cannot substitute the EC's economic analysis with its own, and that judicial review is limited to questions of law.[28] All this case law has been formulated concerning the EC's authority in carrying out State aid compatibility assessments (see Ortiz Blanco, 2013, pp. 992–993).

The above scenario potentially presents, therefore, a highly questionable logical construction where the Court would not require a sophisticated standard during the assessment of a measure's impact on competition and trade, relying instead on the current approach. However, it would necessitate such an enhanced, more advanced standard during the subsequent assessment of whether a non-beneficiary would be eligible to bring an action for annulment as an 'interested party'. Paradoxically, if, due to this higher standard, a case were deemed admissible and sent back for re-evaluation, the reassessment would then occur using the previous, lower standard, likely leading to the same outcome as during the initial assessment.

The Case C-466/21 P DLH has been sent back for re-evaluation to the General Court. At this point, it is premature to speculate on its long-term consequences, yet for the upcoming discussion, it can be said that it poses both an opportunity and a risk. The risk lies in the possibility that if this re-evaluation does not lead to an improvement in the overall standard for assessing competition and trade, it could result in the Catch-22 of a double standard, as mentioned in the previous paragraph. Simultaneously, there is an opportunity for procedural guarantees to compel the EC to enhance their assessment standards in State aid cases. However, regardless of the outcome, the approach linking economic impact with individual *locus standi* raises unanswered questions about the legal standing of potential plaintiffs who are not competitors. This issue will be explored in the next section.

Non-competitor as 'interested party'

The issue of non-competitors' *locus standi* in State aid proceedings has recently surfaced in the T-322/22 UNSA Énergie v Commission (hereinafter T-322/22 UNSA) case.[29] This case revolved around a complaint filed by the trade union representing workers of the French energy giant EDF. The union members contended that the State aid scheme for the energy sector in France, authorized by the Commission, would adversely impact their interests by leading to employment reductions. In the initial assessment, the EC denied the trade union participation, arguing that they did not qualify as an 'interested party' within the

meaning of Article 1(h) of Regulation 1589/2015.[30] The Court ruling supported the Commission's stance, declaring the complaint inadmissible.

Nevertheless, the Court explicitly stated, relying on the literal interpretation of 'interested party', that being qualified as such "does not necessarily presuppose a competitive relationship with the beneficiary of the aid" (para 18). This implies that assessing the effects on trade and competition would not suffice to identify the complete range of 'interested parties'. However, the subsequent elaboration only partially elucidated how to conduct this assessment in the case of non-competitors. This case brought attention to two interconnected sub-issues: first, defining non-economic interest in this context and assessing whether it can be considered actionable, and second, determining whether there has been an impact on such interest. While these concerns have arisen in actions for annulment generally (e.g. Eliantonio & Kas, 2010), their significance takes on a unique dimension in State aid cases due to their inherent focus on economic consequences.

The former sub-issue pertains to how to interpret non-economic interests as potentially actionable under Article 263 TFEU. In State aid cases, parties' interests typically refer to financial concerns. However, for various advocacy groups, interests may be moral, social, environmental, etc. Even if these translate into financial implications, they might not be direct. For example, in T-322/22 UNSA, it was argued – in principle, logically – that a reduction in employment would be detrimental to the financial situation of individual trade union members and consequently for the trade union itself (para 14). This argument was rejected, mainly because redundancies were not directly linked to state aid (paras 34–37).[31]

By focusing on the relationship between interest and the plaintiff, the Court did not elaborate on the nature of the interest that may be actionable under Article 263 TFEU. The broader issue of the very limited *locus standi* of non-privileged (broadly speaking, "advocacy") applicants is not new (Eliantonio & Kas, 2010). The *raison d'être* of a highly restrictive approach, focusing on direct and individual concern, automatically precludes organizations acting in the "general" interest, representing the environment or society's welfare as a whole (Eliantonio & Kas, 2010, pp. 123–124). Therefore, even though formally the concept of permissible interest under the action for annulment is not limited to any specific categories, taking into account the procedural side of proving being affected, in practice, it means that only economic and business interests are permissible.

With regards to the latter sub issue, in the subsequent sections of the T-322/22 UNSA ruling, the Court asserted that there might be instances where entities' interests are impacted by the granting of aid. Such cases would require the entity to demonstrate, to the necessary legal standard, that the aid is likely to have a specific impact on its situation (para 18). When this reasoning is viewed in light of the Plaumann test and the overall *acquis* concerning the admissibility of actions for annulment, the *ratione personae* non-privileged applicants (i.e., everyone except Member States and EU institutions) is not confined to any specific category (Klamert, 2019, pp. 1802–1806).[32] Therefore, merely being a trade union should not, on its own, exclude the possibility of being considered an 'interested party'.

The Court in the T-322/22 UNSA ruling gave scant attention to a crucial aspect: how to determine an impact sufficient to claim the status of 'interested party'. The argument that aid would lead to redundancies was dismissed with a simple statement, claiming that the reduction of employment was an autonomous decision of the beneficiaries unrelated to receiving State aid (para 21). However, this statement, besides being as general and vague as the initial claim (regardless of whether it is factually true), lacks guidance on interpreting the impact on non-competitors *pro futuro*, particularly when the impact on trade and competition is not a workable criterion.

However, when searching for identifying non-economic interests, the criteria for identifying State aid within the meaning of Article 107(1) TFEU, as elaborated in the *acquis*, only provide a rudimentary standard for assessing the impact on trade and competition, as described earlier. Meanwhile, the criteria for the compatibility of State aid with the Internal Market – whether sectoral or horizontal, unless referring to automatic compatibility – do not offer any applicable assessment methods (Bacon, 2017, pp. 99–104; Werner & Verouden, 2017, pp. 201–208).

One could argue that the only somewhat fitting approach would be to claim that a measure impacting someone's non-economic interest would not be proportionate and, by extension, not an appropriate instrument.[33] From a formal logic perspective, this argument might be defensible. If an aid measure results in adverse effects in non-economic domains, serious enough to be valid grounds for annulment in principle, demonstrating the probability of such an impact unnoticed by the EC would establish a party as "interested" within the meaning of Article 1(h) of Regulation 1589/2015.

However, firstly, it is practically impossible to identify all potential non-economic secondary and tertiary spillovers during the assessment of the aid measure.[34] Secondly, the existing interpretative guidance for aid compatibility assessments primarily emphasizes economic effects. Thirdly, even in the case of specific aid categories where general non-economic positive effects, such as environmental improvement, serve as objectives and criteria for compatibility, these effects are broad and general in nature. They cannot be directly and specifically associated with the non-economic interests of any particular party.[35]

Whereas, a prospective plaintiff must not only demonstrate that a circumstance was overlooked by the Commission but also establish that it should have been considered and additionally that this oversight have direct effect on a plaintiff (Klamert, 2019, pp. 1805–1806; Ortiz Blanco, 2017, p. 999). This presents a significant challenge, as such proof would necessitate questioning the validity of the EC's economic analysis, a step that goes beyond the typical scope of judicial review in State aid cases and delves into substantive matters rather than purely legal issues.[36]

In the author's view, the line of reasoning from T-322/22 UNSA, while not immediately apparent, is nevertheless connected to the previously discussed C-466/21 P DLH case. The implicit consequence of the T-322/22 UNSA ruling is that if the standard assessing the impact on competition and trade, typically not necessary in State aid cases, had been applied here and demonstrated such an impact resulting from direct or indirect competition, then the criteria for being an 'interested party' would have been met. The necessary "specific impact on its situation" would have been demonstrable. This is, so far, the only methodology available in competition law *acquis* (Bacon, 2017, pp. 84–88; Werner & Verouden, 2017, pp. 170–173, 178–183 and also in the context of antitrust law e.g. Faull & Nikpay, 2017, especially pp. 51–52). Since economic interests are the only ones detectable through methods for which there is some interpretative guidance in competition *acquis* (although predominantly in antitrust and mergers, not State aids); therefore, despite the Courts statement in the quoted passage of T-322/22 UNSA ruling that being an 'interested party' does not necessarily presuppose a competitive relationship with the aid beneficiary, it may appear that in practice a competitive relationship is indeed a *sine qua non* for admissibility.[37]

Conclusions

In attempting to conclude the discussion in this paper, at a certain level of generality, it can be said that every increase in the assessment standard of impact on competition and trade – bringing State aid closer to that of mergers and antitrust – should be welcomed. However, the problem here is the mechanism of how this is to be carried out and the potential knock-on effects. Firstly, to enforce this stricter standard, a viable plaintiff must be present. While this may be a common scenario, it is not guaranteed. Secondly, in the context of direct competitors, the Court has elaborated on the methodology, emphasizing the delineation of the relevant market. However, this approach contradicts the established *acquis* in assessing the impact on trade and competition. Consequently, there is a risk that the existing case-law might resist this change, leading to the coexistence of parallel standards. The higher standard will be used upon the request of prospective plaintiffs while the lower, older standard will be employed *ex officio*. In this context, it can be said that the early stages of changes in jurisprudence always require a certain "running in" of adjustments and mutual adaptation. However, in this scenario, placing absolute trust in this process is questionable, primarily because the older case-law remains directly unchallenged. Thirdly, building upon the previous point, the standard employed to assess the impact on indirect competitors operates within the upper echelons of what is typically undertaken in mergers and antitrust cases. While theoretically feasible, it is impractical to expect such a nuanced evaluation for every potential claimant, especially those with only peripheral connections to the case. This approach not only poses problems in terms of procedural economy but also opens the door to potential abuse of actions for annulment. Therefore, some additional guidance on the extent of market assessment needed would be welcomed. Fourthly, the predominant focus on the impact on competition and trade inherently sidelines non-economic factors.[38] In this context, the application of a stringent Plaumann test (and its variation – the closed category test) effectively restricts the ability of advocacy groups to contest State aid decisions. While this approach has its merits, preventing misuse through frivolous or vexatious claims, it also restricts the practical exercise of the fundamental right to access the court.[39]

In practical terms, it is unrealistic to expect all the aforementioned problems to be promptly resolved, particularly the longstanding issue concerning access to courts for non-privileged applicants, a situation persisting since the 1960s. Moreover, these challenges arising from the use of procedural guarantees as a means to compel an improvement in the assessment standard of impact on competition and trade suggest, in the author's view, the fundamental flaw in this indirect approach. It fails to ensure the definitive adoption of the higher standard and leaves room for the persistence of parallel standards. The famous quote attributed to Archimedes, "The shortest distance between two points is a straight line", captures the essence of the preferable solution: the inadequate standard for the impact on competition and trade should be directly challenged.

Notes/Przypisy

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[2] State Aid Action Plan – less and better targeted state aid: A roadmap for state aid reform 2005–2009 (SAAP), COM(2005)107 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *EU State Aid Modernisation* (SAM), COM(2012)209 final.

[3] See cases quoted in the next section.

[4] E.g. T-288/97 Regione autonoma Friuli-Venezia Giulia v Commission, EU:T:2001:115, para 41; T-50/06 RENV Ireland v Commission, EU:T:2012:134, para 113.

[5] This primarily applies to "purely local" operations that are unlikely to attract customers from outside a small geographic area: E.g. SA.33149 Kiel-Gaarden, 2015 OJ, C188; SA.44692 Port of Wyk, 2016 OJ C302; SA.44942 Basque Language, 2016 OJ, C369.

[6] E.g. C-148/04 Unicredito Italiano, EU:C:2005:522, para 55; C-667/13 Banco Privado Portugues and Massa Insolvente do Banco Privado Portugues, EU:C:2015:151, para 46.

[7] C-298/00 P Italy v Commission, EU:C:2004:240, para 49.

[8] C-346/03 Atzeni and Others, EU:C:2006:130, para 74.

[9] T-254/00 Hotel Cipriani v Commission, EU:T:2008:537, paras 227–228 and e.g. T-515/13 Spain and Others v Commission, EU:T:2015:1004, paras 198–204.

[10] T-160/16 Groningen Seaports and Others v Commission, EU:T:2018:317, para 91; C-654/17 P Bayerische Motoren Werke v Commission and Freistaat Sachsen, EU:C:2019:634, para 91.

[11] T-228/99 WestLB v Commission, EU:T:2003:57, para 295.

[12] T-210/02 RENV British Aggregates v Commission, EU:T:2012:110, paras 112, 144.

[13] C-351/98 Spain v Commission, EU:C:2002:530, para 64.

[14] E.g. C-310/99 taly v Commission, EU:C:2002:143, para 84; C-53/00 Ferring, EU:C:2001:627, para 21; T-253/12 Hammar Nordic Plugg v Commission, EU:T:2015:811, para 126.

[15] C-15/98 Italy and Sardegna Lines v Commission, EU:C:2000:570, paras 66–67.

[16] 2015 OJ, L248/9.

[17] The formula originated from the eponymous Plaumann case (25/62, EU:C:1963:17), where this interpretation was used for the first time.

[18] Notably, the Court's case law on this matter is not entirely consistent: Cf. orders T-90/09 Mojo Concerts and Amsterdam Music Dome Exploitatie v Commission, EU:T:2012:30 with T-344/10 UPS Europe and United Parcel Service Deutschland v Commission, EU:T:2012:216.

[19] EU:C:2023:666.

[20] SA.47969 Operating aid to Frankfurt-Hahn Airport, 2018 OJ, C121/1 and SA.43260 alleged aid to Frankfurt Hahn Airport and Ryanair, 2018 OJ, C310/5. The initial action for annulment was in case T-218/18 Deutsche Lufthansa v Commission, EU:T:2021:282.

[21] C-83/09 P Commission v Kronoply and Kronotex, EU:C:2011:341, paras 64, 65; C-647/19 P Ja zum Nürburgring v Commission, EU:C:2021:666, para 58; C-284/21 P Commission v Braesch and Others, EU:C:2023:58, para 60.

[22] C-66/86 Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs, EU:C:1989:140; M.2041 United Airlines/US Airways, 2000 OJ, C277; JV.19 KLM/Alitalia, 2000 OJ, C69/5.

[23] There is also, in general, the need to take into account intermodal competitions, such as high-speed ferries (M.5830 Olympic/Aegean Airlines, 2011 OJ, C195/7, para 41) or trains (A.38.477/D2 British Airways/SN Brussels Airlines, 2002 OJ, C306/10, paras 1–21). However, in the circumstances of the C-466/21 P, DLH case, this factor can be omitted.

[24] Notably, in the case M.5440 Lufthansa/Austrian Airlines, 2010 OJ, C 16/11 the Commission concluded that Frankfurt (FRA) and Frankfurt-Hahn (HHN) are not part of one relevant market for connections with Vienna. However, in M.4439 Ryanair/Aer Lingus (I), 2006 OJ, C274/45 it was determined that the same airports are part of one relevant market for connections with Dublin.

[25] E.g. M.5403 Lufthansa/bmi, 2009 OJ, C158/1; M.4439 Ryanair/Aer Lingus (I).

[26] Especially in T-298/97 Alzetta and Others v Commission, EU:T:2000:151, para 95; T-55/99 CETM v Commission, EU:T:2000:223, para 102; T-58/13 Club Hotel Loutraki and Others v Commission, EU:T:2015:1, paras 88–89.

[27] E.g. C-56/93 Belgium v Commission, EU:C:1996:64, para 10; T-358/94 Air France v Commission, EU:T:1996:194, para 71; T-9/98 Mitteldeutsche Erdöl-Raffinerie v Commission, EU:T:2001:271, para 114.

[28] C-225/91 Matra v Commission, EU:C:1993:239, para 23; C-323/00 P DSG v Commission, EU:C:2002:260, para 43; C-290/07 P Commission v Scott, EU:C:2010:480, para 64.

[29] EU:T:2023:307.

[30] SA.21918 Tarifs réglementés de l'électricité en France, methodology ARENH, 2012 OJ, C398/10.

[31] Similarly in case T-238/97 Comunidad Autónoma de Cantabria v Council, EU:T:1998:126.

[32] See e.g. T-18/10 Inuit Tapiriit Kanatami and Others v Parliament and Council, EU:T:2011:419, paras 71–75; C-132/12 P Stichting Woonpunt and Others v Commission, EU:C:2014:100, para 68.

[33] Cf. e.g. T-578/17 a&o hostel and hotel Berlin v Commission, EU:T:2019:437, paras 90–91; T-417/16 Achemos Grupe and Achema v Commission, EU:T:2019:597, paras 69, 84.

[34] This issue emerged in the context of potential indirect State aid. For some aid measures that have general positive effects, there is no practical way to identify all indirect beneficiaries. Due to the objective limitations of the control mechanism, a notion of 'secondary economic effects' has been coined (Gayger, 2016, p. 548).

[35] See e.g. SA.14225 Double hull tanker 2002 OJ C327/8; SA.64726 Aid scheme to promote the renewal of freight rolling stock, 2023 OJ, C327.

[36] See e.g. C-372/97 Italy v Commission, EU:C:2004:234, para 83; T-228/99 WestLB, para 282 and C-225/91 Matra, para 23; C-323/00 P DSG, para 43; C-290/07 P Scott, para 64.

[37] The Court stated on multiple occasions that the EC is under obligation when examining the impact of State aid to weight beneficial effects against its adverse effects "on trading conditions and the maintenance of undistorted competition": E.g. T-135/12 France v Commission, EU:T:2015:116, para 69; T-68/15 HH Ferries and Others v Commission, EU:T:2018:563, para 210. Notably, in the State aid case C-319/07 P 3F v Commission, EU:C:2009:435 concerning tax relief for seafarers employed on board vessels registered in the Danish International Register, the Court declared the challenge of the ecological advocacy group as inadmissible due to them not being an interested party.

[38] Notably, in the following cases, social interest has been brought up. However, in these cases, it is linked with economic interest, where detriment to the latter would result in a knock-on effect on the former: T-777/19 – CAPA and Others v Commission, EU:T:2021:588; T-639/14 RENV, DEI v Commission, EU:T:2021:604. Both are under appeal as of 28.10.2023.

[39] There is an observable trend of challenging acts of the EU on non-economic grounds. Therefore, it is already recognized that in the near future, the issue of *locus standi* of such non-economic, non-privileged applicants would have to be fleshed out to better distinguish between legitimate interest and baseless claims (Gutman, 2019; Lecomte, 2021).

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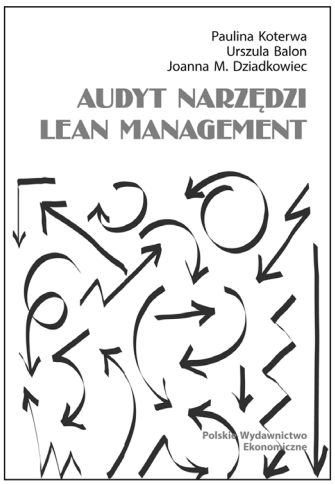
ZAPOWIEDŹ



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AUDYT NARZĘDZI LEAN MANAGEMENT

Książka jest poświęcona problematyce Lean Management – koncepcji zarządzania organizacją ukierunkowanej na spełnienie oczekiwań klienta przy równoczesnym wyeliminowaniu działań, które nie generują wartości dodanej. Wdrożenie Lean Management w organizacji przyczynia się do uzyskania wielu korzyści, m.in. wyeliminowania marnotrawstwa, ograniczenia kosztów, zwiększenia konkurencyjności przedsiębiorstwa na rynku, a także maksymalizacji produktywności i zysków.

W niniejszym opracowaniu opisano model ALIC (Audit Based Lean Implementations Canvas). Jest to autorski, uniwersalny model wdrażania koncepcji Lean Management, który bazuje na kluczowych wskaźnikach efektywności (KPI) i audycie wewnętrznym. Koncepcja Lean Management wraz z niezbędnymi narzędziami (praca standaryzowana, 5S, Kanban, SMED, automatyczne utrzymanie ruchu) oraz KPI zgodnie z opisanym modelem została wdrożona w trzech wybranych przedsiębiorstwach. Sposób wdrażania koncepcji, kolejność implementacji poszczególnych narzędzi, a także spostrzeżenia i wnioski obserwowane podczas wdrożenia oraz prowadzonych audytów wewnętrznych zostały przedstawione w części badawczej. Tak zweryfikowany model pozwala również na ocenę poziomu wdrożenia koncepcji Lean Management i zaproponowanie działań, które będą miały wpływ na jej doskonalenie.

Książka adresowana jest do szerokiego grona odbiorców, w tym menedżerów i przedstawicieli praktyki gospodarczej jako poradnik do wdrażania i oceny skuteczności wdrożenia narzędzi Lean Management w przedsiębiorstwie. Może być również wykorzystana jako literatura dla doktorantów oraz studentów.