

Brief report on the seminar on State Aid and Financial Services: Impact of the Credit Crisis?,

British Institute for International and Comparative Law, **Tuesday 25 November 2008**,

17:30 to 19:30

Chair: **Dr Lorenzo Coppi**, Vice President, CRA International

Speakers:

Christopher Vajda QC, Monckton Chambers
'Commission's Response to the Banking Crisis'

The first speaker highlighted the Commission's approach, consisting of a declaration that state aid rules do not apply to central banks' emergency liquidity assistance (ELA) to a financial institution in liquidity difficulties (contrast that with aid to an insolvent institution [Northern Rock]), nor to a generalized liquidity support to the financial sector. The Commission has now, for the first time, allowed state aid under Article 87 (3) (b) EC. This provision concerns aid "to remedy a serious disturbance in the economy of a Member State". Thus far, it had not been available (Crédit Lyonnais rescue packages in the 1990s, Northern Rock) but, under the recent Commission Communication giving guidance to Member States in the current crisis of 13 October 2008, it has. He emphasized the behavioural conditions imposed on banks to diminish the distortions of competition.

Prof Dr René Smits, Netherlands Competition Authority and University of Amsterdam
'The lender-of-last-resort function of central banks: issues of competence and competition'

This speaker gave an overview of terms used (Lender of Last Resort, ELA), the competences attributed to the National Central Banks (NCBs) and the European Central Bank - arguing that the ECB is competent to provide liquidity assistance even though the Eurosystem itself seems to hold otherwise - and analyzed the guidance that the Commission (pursuant to Article 87 EC) and the ECB (pursuant to its consultative function in respect of draft legislation in its areas of competence) try to give to the Member States when adopting support measures. Both agencies work on the basis of the coordinated response adopted by the Ecofin, the Eurozone Heads of State and Government and the European Council. The speaker identified competition concerns, including the potential for State influence on mergers between banks and the undermining of a level playing field by giving guarantees to both banks in need and banks which do not require such assistance. He argued for a central focus of authority for prudential supervision and for joint action in the

ending of the guarantees and with respect to economic stimulus packages, focusing on a simultaneous handling of the various challenges we face.

Luis Correia da Silva, Managing Director, Oxera
'Who judges the future of banks?'

This speaker, an economist, focused on the global repercussions of interventions, notably the recent one in respect of Citigroup, and the limited impact of state aid rules, restricted to certain geographical areas only. Even though superficially the State measures may seem similar, the details differ. Therefore, they have a different impact on the internal market. The joint ending of guarantees (now foreseen for late 2009) at the end of this crisis will be the major test of whether state aid control can make a difference.

Mark Friend, Partner, Allen & Overy LLP
'State Intervention: the Death of Competition Policy'

The last speaker gave an in-depth analysis of the newly adopted British legislation to allow government intervention in the banking sector and specifically, the takeover of HBOS. The Banking (Special Provisions) Act 2008 allows the government, by statutory order, to disapply "any specified statutory provision or rule of law". He feared that the behavioural constraints imposed upon banks would increase, rather than diminish, the distortions: banks that have been rescued cannot operate with lower (higher) interest rates for lending (deposits) for fear of undercutting their competitors without State funding, thereby squeezing the ultimate consumer twice: he has to bear the fiscal burden of the government action and is faced with higher (lower) interest rates. This raised the question of whether the competitive process (i.e., the competitors) or the ultimate consumer was protected.

A lively discussion ensued, ranging from the competition issues raised by the crisis and the measures taken, to the differences in approach between the United States and Europe.

René Smits
27 November 2008