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Restructuring aid to financial institutions: Compensatory measures and other innovative remedies

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Too systemic to fail

- Liquidation/insolvency was/is not really an option
- “Rescue” aid in many cases was irreversible *de jure* (recapitalisation, bad bank) or *de facto* (amount of debt/guarantee)
- Commission accepted individual aid to address “serious disturbance in Member state economy”

Package deal

- “While some banks may have been too big to fail, none are too big to restructure” (N. Kroes)
- Requirements of burden sharing and compensatory measures apply only to institutions that received (structural) aid > 2% of RWA (or rescue aid more than once)
- Commission is arbiter between aid recipients and competitors…
- … and follows a principles-based (rather than rules-based) approach

Compensatory measures - rationale

- Commission is arbiter between aid recipients and competitors
- Moral hazard (“punish” aid recipients that needed rescuing as a result of excessive risk taking)
- Sufficient consistency with “ordinary” R&R aid is vital
- But
  - How much compensation can we have without making matters worse?
  - “Systemic” institutions compete on a global scale … and banks aided by non-EU governments escape the compensatory measures requirement

Divestments

- Divestments can serve different goals (and more than one goal at the same time)
  - Viability
  - Own contribution
  - Compensation of competitors
- Selling assets in a distressed market may be a challenge
  - Interplay with exit/redeem or remunerate requirement
  - Deadlines longer than in merger control
  - Usually two step-process: (i) tender for at least book value; (ii) sell off at any price (via trustee)

Behavioural remedies

- Acquisition bans
- Price leadership bans
  - May be problematic in concentrated markets
  - ABN Amro variation: profitability requirement
- No advertising of State interest
- Compensatory measures by government, e.g. open the market (not available in merger control)
- Continue lending to real economy, limit executive compensation ($\neq$compensation of competitors)

Lessons for “ordinary” R&R aid matters?

- Principles-based approach – articulate relevant factors, move away from rigid thresholds e.g. “50% own contribution”
- Clearer link between (i) compensatory measures and (ii) amount/intensity of aid & burden sharing
- Import of “merger control” procedures for divesting assets (trustee, deadlines for divestment)
- Proven ability to complete formal procedures in less than 18 months

Thank you

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