Office of Competition and Consumer Protection

Cumulation of de minimis aid for entities with complex structure

STATE AID DAYS

Warsaw, 29-30 May 2012

DE MINIMIS AID – NOTION AND RULES

De minimis aid – aid that fulfills conditions from Commission Regulation No 1998/2006 (de minimis Regulation).

De minimis aid is deemed not to meet all the criteria of Article 107 (1) of the Treaty and therefore is exempted from notification requirement.

Conditions from de minimis Regulation

- limit of EUR 200 000 in three years (road transport EUR 100 000),
- certain sectors excluded,
- firms in difficulty not eligible,
- aid must be transparent,
- no cumulation if it would result in exceeding an aid intensity.

MONITORING SYSTEM

Two options:

1. System of certificates:
   - information in writing at the moment of granting, that the aid is de minimis,
   - obligation to obtain a declaration from the undertaking prior to granting the aid, about any other de minimis aid received during three years.

2. Central register that contains complete information on all de minimis aid granted by any authority.

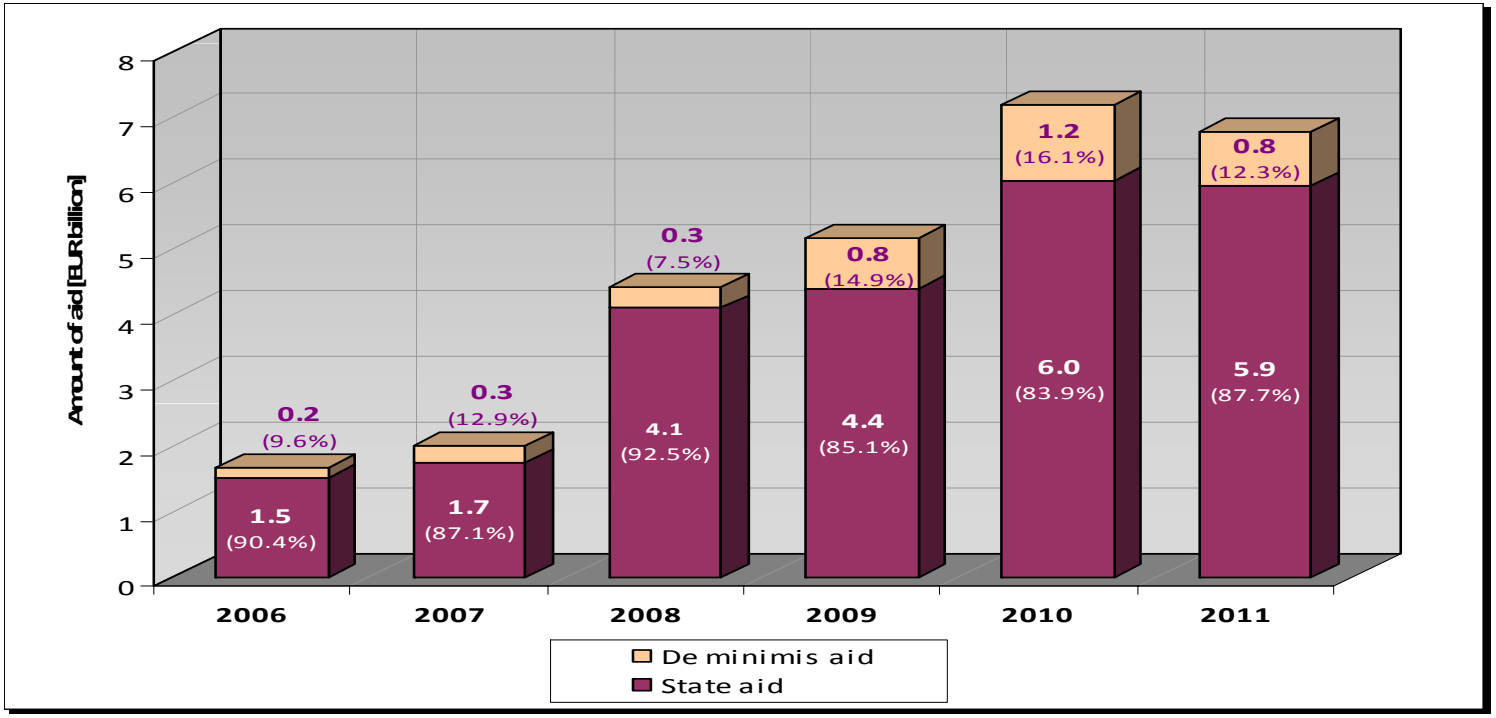
Individually restricted… but is it also globally small?

De minimis aid in Poland in 2006-2011.

	2006	2007	2008	2009	2010	2011
De minimis aid (in billion Euro)	0,16	0,26	0,33	0,77	1,16	0,83*

*figure for 2011 is preliminary (under verification)

The minimis aid and State aid in Poland in 2006-2011.



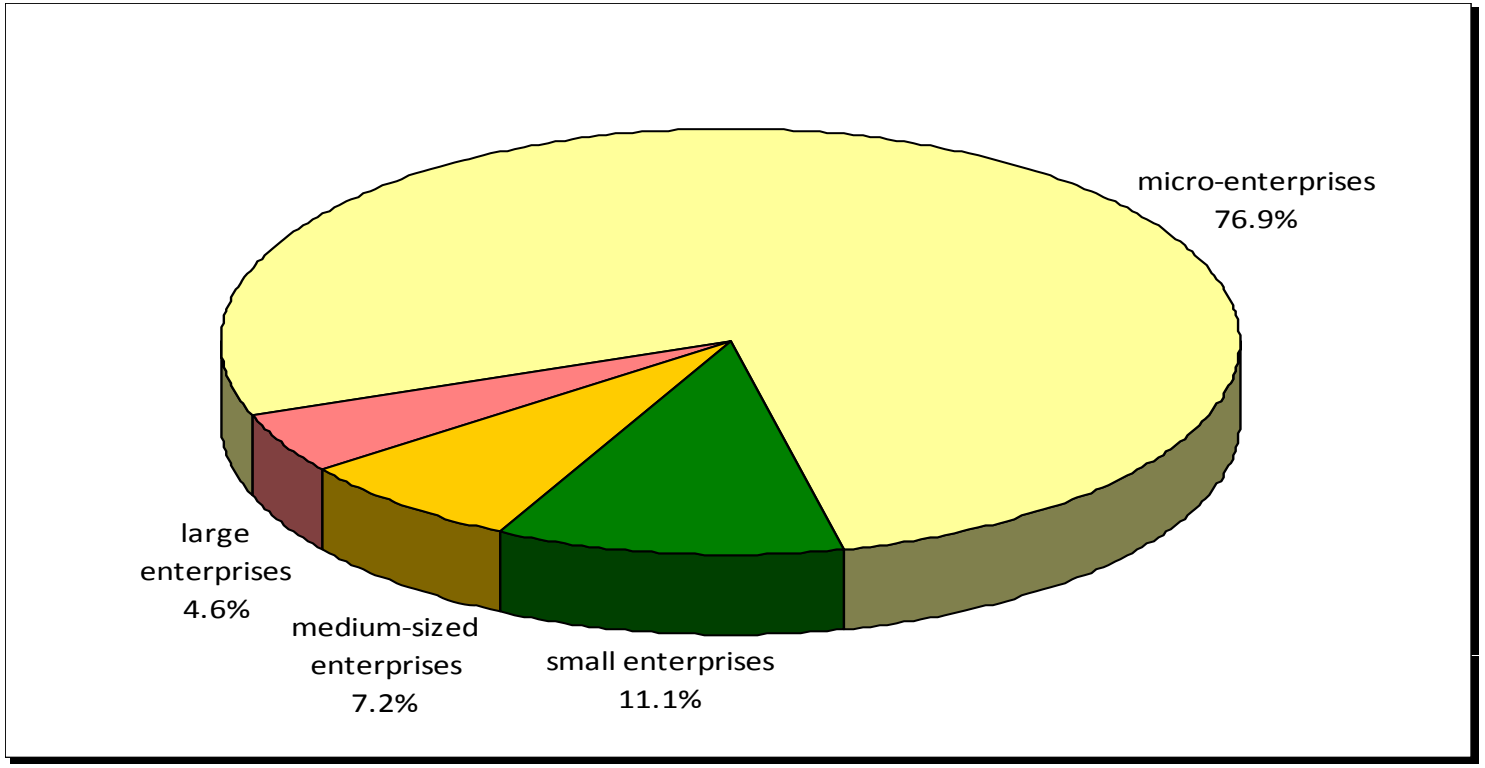
Methodology:
- no AGRI aid,
- amounts in gross grant equivalent,
- national funds (59% in 2010) and EU funds (41% in 2010) included,
- aid granted in the context of SGEI included.

Who is the beneficiary?

In 2010:

- 180 000 beneficiaries,
- average - one beneficiary was granted EUR 6 500,
- 95% of total de minimis aid granted to SMEs,
- 77% of total de minimis aid granted to micro-enterprises (employ fewer than 10 persons and annual turnover/annual balance sheet total does not exceed EUR 2 million).

Beneficiaries of de minimis aid in 2010 (according to size).



POLISH PRACTICE IN DE MINIMIS AID

W 2010 there were :

- 2 400 aid grantors,
- 180 000 beneficiaries (on average EUR 6 500 for each beneficiary),
- 580 000 cases of de minimis aid.

MONITORING SYSTEM IN POLAND

1. Currently - system of certificates:
   - information in writing at the moment of granting, that the aid is de minimis,
   - obligation for the undertaking to present all certificates or a declaration about any other de minimis aid received during three years.

2. Developing a central register:
   - around 3 000 authorities with on-line access (a few hundred still to be connected),
   - currently 30 days to register the aid, eventually 1 day.

PROBLEMS – NOTION OF "UNDERTAKING"

1. What an 'undertaking' means is in practice?
2. Should we apply this concept in the field of de minmis aid?
3. What are the criteria of single economic unit?
4. What kind of relations between entities should be taken into account?

DOUBTS

1. No definition of undertaking or single economic unit in de minimis regulation.
2. No provisions on cumulation obligation of de minimis aid received by separate entities.
3. Commission practice and Court jurisprudence related to single economic unit issued in the context of state aid or antitrust (except for only Dutch stations case). De minimis is not state aid.
4. Dutch stations case comes from long before de minimis regulation – if the Commission wanted to apply this concept to de minimis aid why did not include anything in the regulation (like it was done in GBER).
5. Main goal of de minimis rule is to simplify in order to reduce an administrative burden.
6. Without clear rules – different implementation in different Member States, in the result equal treatment rule undermined.

CONSULTATIONS WITH MEMBER STATES

Only 10 answers:

1. Monitoring:
   - 3 Member States developed and 3 others still developing a central register,
   - 3 MSs base only on declarations from beneficiaries,
   - 1 MS - responsibility for monitoring the limit lies on aid grantors.
2. Undertaking (single economic unit):
   - MSs aware of the concept,
   - different references on where it is defined.
3. Declaration of full compliance.
4. Practical implementation:
   - no details.

Result – no practical solutions.

QUESTIONS TO THE COMMISSION

1. Should we apply a concept of undertaking in the field of de minmis aid?
2. What are the criteria defining single economic unit?
3. Should we use Annex I to the GBER (No 800/2008):
   - perhaps linked enteprises but what about partners? should they be taken into account? how? in full or in some proportion? what?
   - in case of relationships through a natural person should we take into account the markets (same or adjacent markets).

QUESTIONS TO THE COMMISSION

4. Difficulties with detecting de facto co-operational and family relations.
5. Dynamic nature of groups structures.
6. How the aplicant can know what aid was granted to the other, separate entity?
7. Administrative burden.

COMMISSION ANSWER

1. The notion of undertaking applied in competition law is also applicable to de minimis aid.
2. An undertaking is an entity or a group of entities which effectively function as a single economic unit.
3. Single economic unit - a parent and its subsidiaries where the parent exercises decisive influence over the conduct of these subsidiaries.
4. Decisive influence – where subsidiary, despite having a separate legal personality, does not decide independently its own market conduct but rather is considered to operate in accordance with the will of its parent company.
5. Annex 1 to GBER not decisive in determining whether or not separate entities must be treated as one undertaking - the right criterion is decisive influence.
6. Member State obliged to organize an adequate system to ensure compliance through a system of self-certification by the recipient or by the creation of de minimis register.

SUMMARY

1. Such an enigmatic explanations makes it extremely difficult to apply the concept of an undertaking.
2. In the result (without clear and understandable guidelines):
   - granting and monitoring of de minimis aid extremely cumbersome,
   - the purpose of the de minimis Regulation (simplification of state aid rules) frustrated,
   - small authorities not able to implement this concept correctly and in an equal way,
   - unfair shift of the responsibility onto beneficiaries that bear economic consequences.

SUMMARY

Possible solutions - to reflect on in the context of recently announced comprehensive reform of state aid rules:

- simplification of de minimis rules as far as possible – in monitoring stick to separate entities, this could be possibly accompanied by a decrease of the limit,
- introduction of a general clause obliging to take into account other entities but only in case of suspected intentional circumvention of the aid limit by the beneficiary,
- in case of obligation to implement single economic unit concept - clear, simple and easily applicable rules must be defined.

Thank you for attention.

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