

Notes of meetings in Brussels in connections with transport services to the Isles of Scilly and Isle of Wight.

28th May 2013

Present Marian Bennett, FRIST Co-ordinator
Nick Finney, Ports adviser
Tony Berkeley, House of Lords

We met people from DG COMP and DG MOVE since the responsibilities between these two directorates in respect of state aids was recently changed. DG MOVE is responsible for public service obligations (PSO) in maritime cabotage (the so-called Maritime Cabotage Regulation). This Regulation establishes what kind of maritime routes can be subject to PSO and under what conditions.

DG COMP is responsible for state aid matters in transports and so they are in charge when it comes to assessing the compatibility of compensation paid for PSO with state aid rules (e.g. ensuring that there is no overcompensation). DG MOVE and DG COMP cooperate closely in maritime PSO cases, as the respective responsibilities are very much interlinked.

DG COMP

Met Alain Alexis, Head of Unit, State Aids Transport, and Aleksandra Kornberg, both DG COMP

The purpose of the meetings was to explore EC policies and regulations on state aids to ferry services to and from IOS (and IOW), both in terms of a subsidy for a trial winter service, and also for the longer term affordable service and to include the provision of a new ferry.

DG COMP made it clear that, provided that the passenger numbers did not exceed 300,000 passengers a year and that the service proposed complied with other requirements of Commission Decision 2012/21 of 20 December 2011, there was no need to put the service and the offer of compensation out to competitive tender. A brief notice informing interested parties of the intention to provide some kind of subsidy would suffice. The Decision will be adopted in September 2013.

The amount of subsidy and other information must, of course, be decided by the authority making the payment and be open to audit, but the key words in Art 5 1 are 'the amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligation, including a reasonable profit.'

Even for possibly larger state aids, such as might be needed for a new ferry and to provide an affordable service, the same comments apply. A new ship, probably financed by a leasing arrangements and handed to the operator to use during the period of its franchise, could equally be allowed under the block exemption rule, with no clearance required from DG COMP.

The above regulation is permissive; there is no requirement on a government to fund a public service obligation or contract.

DG MOVE

We met Eddy Liegeois, Head of Unit, legal matters and infringements, Joanna Warnel, Policy Officer, Maritime Transport and logistics, and Pedro Dias, Case Handler.

In respect of tendering of services, for small islands it was important not to push out the existing operator; unless there was a very strong case. DG MOVE would in any event be unlikely to



investigate. Longer PSOs or PSCs were possible if the financing, say, of a new ship required - possibly more than ten years, in the case of small islands services.

We were referred to Reg 3577/1992 on cabotage, together with COM 2003/595 which seeks to interpret the regulations. However, we were told that normal call for tendering not necessary for compensation in services carrying less than 300,000 passengers. An EU wide notice would suffice.

It was important to ensure that the PSC provided meets expectation in respect of prices/fares and quality of service, in designing the type of contract offered.

Market failure: The Commission were very clear that market failure did not mean a service ceasing to operate unless there were no alternatives. They felt a better definition would be that 'the service(s), frequencies and prices provided did not meet the expectations and prices of the users.'

Julie Girling MEP.

Expressed interest in the problem and the information given by the Commission, and offered to put down Written questions in the EP to explore further any of the issues raised.

Conclusion for IOS

COM 2003/595 para 5.2 states that 'It is for the Member States (including regional and local authorities where appropriate) to determine which routes require public service obligations. Public service obligations may be envisaged for regular (scheduled) island cabotage services in the event of market failure to provide adequate services.

'According to the conditions laid down by the Regulation, Member States may impose public service obligations in order to 'ensure the adequacy' of regular maritime transport services to a given island..., where Community ship-owners, if they were considering their own commercial interest, would not provide services of an adequate level or under the same conditions. Trade should otherwise remain free.'

There would be no need for competitive tendering – a notice of intention to offer such support would be sufficient.

Market failure – on the definition given by DG MOVE officials above, there is a strong case to argue that market failure on the route IOS – mainland has already occurred through the non-provision of an adequate winter passenger service. This differs from the UK Government's view.

For longer term public service support including a new ship and affordable fares, competitive tendering would almost certainly be necessary for the provision of a new ship. However, this could be provided in a similar manner to leased railway rolling stock, to the operator of the service. It may not be necessary for the operations to be subject to competitive tendering, since the maximum annual number of passengers does not exceed 300,000.

In either of the above public service options, it is up to the authority within the member state (Government or local authority) to determine the appropriate level of service, charges and fares and ensure that amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit.' (Commission Decision 2012/21 Article 5).

We conclude that there is no bureaucratic impediment to the provision of public sector support for the Isles of Scilly transport services, and no need for competitive tendering. All it needs now is a commitment to a small amount of funding.

Tony Berkeley

