



Digital Cinema Tango!
Getting the right rhythm for the digitisation of European cinemas

Public Aid Rules!

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Public Aid Rules!

EU Rules on State Aid

Article 107 TFEU declares incompatible with the common market any aid granted by a member state or through state resources, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between member states.

Main exceptions to this rule:

- **(3)(c)** aid to facilitate the **development** of certain **economic activities** or of certain **economic areas**, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- **(3)(d)** aid to **promote culture and heritage conservation** where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

Other exceptions:

- **de minimis aid**: small amounts of state aid may be exempted since they do not have a potential effect on competition and trade between member states.
 - The ceiling for the aid covered by the *de minimis* rule is in general EUR 200,000 per undertaking over any three fiscal-year period. In this time of crisis, the Commission has considered it necessary to temporarily increase the *de minimis* threshold to EUR 500,000 (cash grant) per undertaking.
 - The ceiling applies to the total of all public assistance considered to be *de minimis* aid. It will not affect the possibility of the recipient obtaining other state aid under schemes approved by the Commission.
 - The regulation only applies to “transparent” forms of aid, which means aid for which it is possible to determine in advance the gross grant equivalent.
- **General Block Exemption Regulation**: aid for general training measures, up to an aid intensity of 80% not exceeding EUR 2 million per training project

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State Aid Schemes Approved by the Commission (1)

UK - Digital Screen Network

- providing access throughout the UK to the “full range of British and international cinema” through the use of digital facilities.
- broaden the choice of films for audiences in the UK by increasing the availability of so-called “specialised films” in cinemas “characterised by an innovative cinematic style and by an engagement with challenging topics”.
 - Foreign language films;
 - Indigenous British films, which are not aimed at the mainstream;
 - Films which directly address cultural, social and political issues;
 - Re-issues of classic and/or restored archive films.

Compatible with the common market under the cultural derogation in Article 107(3)(d) :

- Aid aimed at increasing the availability of a cultural product (“specialized films”) in cinemas.
- Cinemas wishing to benefit from the initiative had to commit to showing such films.
- No nationality requirements as to how the funding would be spent.
- Aid did not affect trading conditions and competition in the Community:
 - Cinema customers are typically local.
 - Potentially indirect effects rather theoretical, given the size of the aid.
 - Any effect on trade between member states would be to stimulate trade in films, not to reduce it.

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State Aid Schemes Approved by the Commission (2)

Finland – Support for Equipment Procurement and Modernisations of Cinemas

- facilitating the access of the public to cinematographic productions
- enhance the technical capabilities of cinematographic exhibition activities by small cinemas and arthouses.
 - *raison d'être*: such cinema theatres cannot cover the necessary investment costs
 - Arthouse cinemas and one- to three-screen cinemas are eligible for support.
 - Those located in mid-sized localities are eligible for support under strict requirements.
 - Multi-screen cinemas and cinema chains located in the capital are not eligible for the support.

Aid for modernisation of exhibition equipment comes within the scope of Article 107(3)(c)

- aid aimed at providing financial support to activities, which are related to technical activities in the audiovisual sector.
- These types of aid are not related to the cultural aspect of audiovisual activities, but to their technical side and, therefore, the cultural derogation cannot be applied.

Effect on trade and competition between EU Member States is extremely small.

- limited geographical scope of these projects;
- imposed aid-intensity caps;
- relatively low aid amounts;
- aid to multi-screen cinemas and cinema chains is very limited.

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The Italian Case

Italian Tax Credit scheme

- extending the use of digital projection to increase the circulation of Italian and European cultural films.
 - 30% tax credit for the costs of introducing digital projection equipment in all of the 3,957 screens in Italy.
 - Small cinemas with between one and four screens and multiplex cinemas with between five and ten screens in towns with a population of 50,000 or less do not need to fulfill any programming requirement.
 - Bigger multiplexes (up to 24 screens) will be obliged to show cultural films for 50% of the screenings and to convert at least 50% of the screens to digital projection in order to profit from the tax credit scheme.

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The Italian Case

European Commission's concerns:

- maximum eligible installation cost of digital projection equipment (€166,667) may not be proportionate in view of the estimated standard installation cost per screen of €100,000;
- estimated standard installation cost per screen of €100,000 may not be a fair estimate of the necessary costs of installing digital projection equipment in all Italian screens;
- estimated standard installation cost per screen of €100,000 may not be an affordable investment for all Italian cinemas after deduction of a 30% tax credit;
- proposed aid may offer State aid to undertakings which would either have made the necessary investment in full without the State aid or which would have been able to obtain digital projection equipment through alternative commercial business models;
- Italian authorities would not be able to ensure that exhibitors which benefit from the aid would introduce the flexible programming allowed by digital projection to offer Italian cinema audiences a wider choice of cultural films;
- proposed aid is not directed towards the smaller Italian cinemas facing closure when distributors switch from analogue to digital prints;

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The Italian Case

More concerns:

- one-off investment proposed would not provide a sustainable and uniform solution to the digital conversion of all Italian cinemas;
- exhibitors could be induced to invest in one digital standard in preference to another;
- exhibitors may not have to ensure that, as a condition of the support, films released in any open digital format within the capacity of the supported equipment could be screened;
- proposed aid could artificially inflate the cost of projection equipment designed specifically for cinemas;
- proposed aid could accelerate the closure of the least profitable cinemas;
- distortion of competition and potential effect on intra-EU trade arising from the proposed measure would not be compensated for by the social and cultural benefits of the scheme.

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The French case

Fonds de mutualisation

- managed by the CNC
- open for membership to all cinemas and film distributors in France.
- Fund finances 75% of the cinemas' investment in digital projection equipment.
- VPF model: member distributors paying a fixed sum to the Fund whenever a member cinema screens digitally in the first week of exploitation one of the member distributors' films.

French Competition Authority's negative (not binding) opinion

- CNC's scheme might have significantly distorted or even eliminated competition in the market for digital cinema financing.
- Catered to the same needs as third-party investors and in direct competition with them.
- Fund has a competitive advantage (ties with the CNC and French state's backing).
- Fund would have imposed a VPF rate that could be artificially low and could therefore foreclose the market to private competitors (third-party investors).

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Conclusion?

Commission's Policy is not defined yet

- Public consultation follow-up?
- Difficult to extract general rules from the Commission's decisions
 - UK & Finland: too specific, they offer little guidance for the assessment of other cases.
 - Italian case: Definitive lines of reasoning cannot be extrapolated.
- Meeting of minds between Commission and *Autorité de la concurrence*?
 - improperly-targeted public support may distort or even foreclose the market for digital cinema financing.



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