EUDA AGM CONFERENCE (TH. 17 NOVEMBER 2015)
STATE AID AND TIED AID:
DIFFERENT APPROACHES TO GLOBAL COMPETITION
SUMMARY & KEY MESSAGES

Conference's Summary:
Governments' interventions in competitive markets impact on the functioning of these markets: they set the general rules of "*unhindered and fair competition*" and in some cases bend these rules to favour the one or the other national champion. Financial support provided by governments to companies is distorting competition and can take many forms. EuDA's Annual conference focused on two such approaches, State Aid and Tied Aid which have opposite objectives and effects on the global dredging markets.

The competitive advantages developed by the European dredging companies to allow them to compete on the global markets and remain leaders in their trade include high added value specialised services, high productivity and high environmental friendliness when delivering resilient waterborne infrastructure. As far as large complex infrastructure projects are concerned, the other worldwide competitors cannot match the level of the European Dredgers' services in quality and in price. In unbiased and open markets, Europeans have demonstrated their strong dominance with over 80% of the open world markets.

When some non-EU countries decide to bend the rules, they take measures that keep foreign competition off their domestic market and, additionally, they can also provide unfair advantages to their national companies competing outside their domestic market. One of the most commonly used schemes on non-domestic markets is **Tied Aid**, whereby large amounts of development aid are granted to a targeted country (usually a resource-rich developing country, non-signatory of the WTO Government Procurement Agreement) with the explicit condition of using exclusively the donor's national contractors for the development works. The consequences are severe distortions in these markets or even temporary closure to any foreign competition (for as long as the donor's aid lasts).

However, ***unfair competition practices are like coastal erosion****: markets are eroded and lost at a steady pace. Left untackled in the long term, these practices can wear out even the most resilient of companies*. This is why Europe has developed counter-schemes aiming at reducing competition distortions on global markets and reinforcing level playing field. One of the financial instruments used by Europeans to reduce distortions on some global markets is the *State Aid Guidelines to Maritime Transport*, which stopped the deflagging of European vessels and avoided the complete relocation of the maritime industries outside Europe.

The Conference opened with an overview of the European State Aid Guidelines to Maritime Transport. Then selected Tied Aid cases inside and outside Europe were presented followed by a description of possible ways forward for the European Dredgers.

Programme of the Conference on

State Aid and Tied Aid: Different Approaches to Global Competition

- Introduction to the Conference Theme and Speakers:
  - **Mr Filip Tuytschaever**, Contrast – European & Business Law, *Conference Moderator*
- Introduction to European State Aid to Maritime Transport:
  - **Mr Henrik Mørch**, Head of Unit for State Aids to Transport and Acting Director for Transport, Post and Other Services, *Overview of the European State Aid Guidelines to Maritime Transport*
- Examples of third country threats in Europe:
  - **Mr Ulrich Paetzold**, Secretary General of the European Construction Industry Federation, *Examples of threats in Europe.*
- Examples of third country threats around the world and Next Steps for Dredging:
  - **Mr Paris Sansoglou**, Secretary General of the European Dredging Association, *Examples of threats around the world* and *What's next for European Dredgers?*
- Open Discussion and Conclusions.

Summary of the Conference's key messages:

- "*Competition is a process of rivalry (on price, quality, skills, …) between suppliers seeking to win business.*" UK Office of Fair Trading
- Unfair trading practices can be eliminated by proper regulation of the markets which can also stimulate lower prices, better quality goods and services, greater choice for consumers, and provide strong incentives for firms to be more efficient and to invest in innovation, and create the right conditions fostering effective competition and productivity growth.
- Governments intervene on markets as regulators and fiscal authorities but they can also act as market makers, buyers and suppliers. Public procurement should be executed in a transparent way, exempt of any unfair practices. Moreover, the taxes and subsidies governments choose to impose change the costs of the concerned businesses and influence the decision making in those businesses. Therefore, they can affect competition both negatively, reducing competition, or positively where market failures (e.g. Maritime Guidelines) and cyclicals difficulties (e.g. banks in 2008) need to be addressed or where wider social or economic objectives (e.g. regional development, economic stimulation) can be achieved.
- Subsidies generally cause less distortion in highly competitive markets.
- The Maritime State Aid Guidelines are a unique instrument in the sense that they aim to address unfair practices from third countries, including more favourable fiscal treatment, lower environment and social standards, and creating competition distortions in global markets.
- Under the Guidelines, 'dredging' activities become eligible to benefit from aid, under the strict condition that the dredging vessels concerned spend at least 50% of their operational time in maritime transport on maritime transport activities (including *sailing loaded - sailing empty - unloading of extracted material;* excluding ***excavating and sailing while excavating***). Separate accounting for maritime transport activities is required.
- The DG COMP public consultation concluded that the Guidelines' objectives and main principles remain valid and that the Guidelines are still effective and needed, as 19 of the 23 EU coastal Member States have tonnage tax schemes.
- No imminent revision of the Maritime Guidelines is in view, although a limited revision of the Guidelines at some point in time cannot be completely ruled out.
- The case of the tendering of the A2 motorway in Poland (2009), clearly showed that irregularities and unfair treatment of competitors could also happen inside Europe to the detriment of European companies. This construction case highlighted the weaknesses in the tendering side as well as in the 'cavalier' approach of the third country contractor, namely a Chinese State-Owned Enterprise (SOE) using non market economy approaches to pricing, risk evaluation, margins setting and compensating its managerial inefficiencies with the financial and political support of its government.
- State-Owned Enterprises (SOEs) have no incentives to implement Market Economy principles or approaches, and usually don't. When private companies experience managerial inefficiencies in the medium to long term, they go bankrupt. When SOEs experience similar or worse managerial inefficiencies, they,

not only, can remain in business (e.g. thanks to regular capital injections from their government) but also thrive at the expense of their (private) competitors. The non-implementation of Market Economy principles or approaches can in effect keep inefficient business models or technologies in the markets, often leading to substandard or faulty under-priced products or services, and ultimately bringing no added value to the clients or even destroying value off the clients, at the expense of competitors with real competitive advantages, but also with real shareholders, requiring healthy financial results in the medium to long term.

- The tied financing practices, that were briefly described during the conference, have allowed Chinese SOEs to secure large foreign infrastructure projects, for instance in Africa, to progressively dry out these markets of any non-Chinese competitor, and to ultimately eliminate from these targeted markets any (fair) competition practices.
- Besides, these Tied Financing Schemes stimulate the learning curve of Chinese SOEs outside China, catching up on more technologically advanced competitors from countries with less organised or innovative financial firepower.
- Europe is more under threat from these unfair financial practices than effectively recognised, both inside and outside of the EU.
- Europe needs to develop an equivalent financial powerhouse, a European institution capable of financing sustainable public and private investments outside Europe, e.g. the EIB with a scope enlarged to also serve external policies.
- Finally, before blindly supporting the Chinese Infrastructure Plan, the famous “One Belt, One Road” (OBOR), Europeans should make sure, in reality and not just on paper, that the European companies are not excluded from the OBOR infrastructure markets, but are able to access them, including China’s domestic markets, without discriminatory fiscal treatment, and that the European companies are also eligible for funding from China’s OBOR strategy.