

PLAYING THE STATE AID GAME - GARRIGUES

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The State aid question is clearly now highly relevant to companies, believes José Luis Buendía, Head of Garrigues' Brussels office.

'The past 18 months have seen many European governments granting State aid on a unprecedented massive scale. However, antitrust infringements by companies are nothing compared to the distortions that may be caused by State aid.'

Consistency for the EC is now a very big issue, and which companies need also to address. 'State aid' can be a difficult issue to identify but the principles are clear and have to be applied across the European Union, which is not easy admits Buendía. 'Not all governments have the same resources but the EC must ensure a level playing field.'

Spanish companies need to take a more proactive approach to challenging before the European Commission (EC) the aid received by their competitors, he believes. "It may be a cultural thing, but

Spanish companies are often reluctant to complain against competitors receiving State aid. Being a complainant in Spain may not always be well-received, but companies have to be alive to those actions or decisions that may damage their own interests.'

Companies in other countries certainly do not have a similar problem using complaints as competitive tools, he says. The case on 'financial goodwill' for overseas acquisitions provides a good example.

Complainants persuaded the EC, wrongly, in Buendia's opinion, that this provision amounted to aid. 'This means that the discussion on the State aid character of this kind of provisions is now likely to move to the EU Courts.'

The paradox is that there are many tax benefits in other Member States that are more selective than this provision and which have not been challenged. This asymmetry is clearly unfair, says Buendía.

"The lesson is that at an EC level, formal challenges can be strategically important. Spanish companies are clearly at a disadvantage if they are not playing the game."