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Markets and cases III: Financial services
State aids II,
DG Competition
European Commission
Brussels
BELGIUM

10 May 2010

Ref: EH - D/7058 - CP80/10*UK*LEMC –
Guaranteed Export Finance Corporation Ltd

Dear Mr Soukup,

Thank you for letter of 7 May 2010.

As we understand it, DG Competition has taken the view that there are insufficient grounds to pursue our Complaint, because:

- a) “the alleged aid beneficiary is a non-profit vehicle company supporting the ECGD in performing its state's activities”; and
- b) “it does not seem to be in competition with commercial firms”..

We would point out that neither of the above grounds is in fact correct.

We are therefore writing to provide further supporting information for our Complaint and to clarify a number of points where there appear to be misunderstandings. For ease

of reference, we have quoted extracts from your response first and then replied to them below.

1. Status of GEFCO

“According to the information provided in your complaint, the GEFCO is a non-profit company”

The defining feature of a non-profit company is that it is bound by its Memorandum and Articles of Association to use its surplus funds to further its stated objectives, rather than distribute them to shareholders. Moreover, those objectives must have a public purpose.

There is nothing in GEFCO’s Memorandum and Articles of Association (appended at Annex 1) that limits GEFCO’s use of profits in this way. On the contrary, as the company’s 2008 accounts make clear, it is entirely open to the company to pay its shareholders dividends from its profits,¹ which would not be the case with a non-profit company. Moreover, its goals appear to be entirely commercial.

We would further point out that, within the UK, non-profit companies typically take one of the following legal forms, none of which apply to GEFCO:

- **A company limited by guarantee.** Such companies do not have shares or shareholders and any “trading surplus” they make through their activities must be invested in achieving their stated goals and not distributed to the company’s shareholders. *By contrast, GEFCO has shares and shareholders and its Memorandum and Articles of Association, as noted, contain no provisions limiting the distribution of profits.*
- **A Community Interest Company** (described by the UK’s Companies House as “a type of limited company designed for people who want to conduct a business or other activity for community benefit and not purely for the benefit of the members of the company”).² *By law, community interest companies must contain this fact in their name.³ GEFCO does not.*
- **A charity.** Charities must be registered with the UK Charity Commission. *GEFCO is not registered as a charity in the UK.* Although ECGD has claimed that GEFCO is owned by two charitable trust companies, First Securitisation Company Limited and its parent, Capita IRG Trustees Limited,⁴ neither company is a registered charity⁵ and neither appears to have charitable purposes.

1 GEFCO, 2008 Directors’ Report and Financial Statements, 2008, page 3. The Director’s report that the company made a profit but that they did not recommend a payment of dividends.

2 Companies House, “Community Interest Companies”, <http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#ch7>.

3 Companies House, “Community Interest Companies”, <http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#ch7>

4 ECGD, Resource Accounts 2008-09, Note 37, p.108, <http://www.ecgd.gov.uk/ecgd-resource-accounts-2008-09.pdf>

5 Hansard, 22 Oct 2009: Column 1651W, <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmhansrd/cm091022/text/91022w0022.htm>.

From the above, we conclude that GEFCO is, as stated in the original Complaint, a “for profit” public limited company.

2. Competition with other firms

“GEFCO seems not to carry out any activity, where it would be in competition with other firms”

This is correct but only because GEFCO currently has a monopoly over the refinancing of ECGD’s FREF loans. However, this monopoly is a direct result of the arrangements that are the subject of our Complaint. Rather than this monopoly being a reason for *not* investigating the Complaint, we believe that it is precisely a reason for doing so. Were ECGD to refinance its FREF loans via the open market – rather than exclusively through GEFCO – it is more than likely that GEFCO would have competitors.

You also raise a number of other issues on which we would like to submit further comments:

1. GEFCO’s Products

“GEFCO appears to be only a customer and does not offer any products on [the] market”.

This is incorrect. GEFCO has historically issued securities in the form of bonds, which have been particularly favoured as investments because they enjoy an AAA rating due to their being guaranteed by the UK government as per the arrangements that are the subject of our Complaint. The bonds have been widely sold to UK local authorities.

GEFCO also enters into interest rate swaps. The nature of such swaps requires that GEFCO offers products (interest rate positions) for exchange with counter parties. As such, it is not merely a customer in the market.

2. Impacts on market

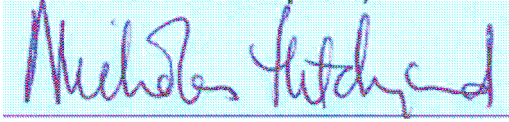
The market that the alleged aid impacts is that for ECGD’s refinanced loans. ECGD itself has acknowledged that the arrangements have an impact on the pricing of such refinance. In 1999, the then Department for Trade and Industry submitted evidence to a UK parliamentary Committee in which it admitted that the state aid arrangements complained of in our Complaint “could result in a saving of up to 50 basis points on the cost of funds”.⁶

We hope that the above is of assistance and that you will reconsider your decision not to investigate our Complaint further. Please do not hesitate to contact us if you require further information.

6 “Further Memorandum from the Department of Trade and Industry”, Minutes of Evidence, “The Work of the Department of Trade and Industry”, Trade and Industry Committee, 1999, <http://www.publications.parliament.uk/pa/cm199899/cmselect/cmtrdind/396/9042011.htm>.

Finally, we are grateful to you for forwarding that part of the Complaint that relates to infringements of Council Directive 98/29/EC and the WTO's Agreement on Subsidies and Countervailing Measure to DG Trade and would be grateful if you could supply us with contact details so that we can follow this up.

Yours Sincerely



Nicholas Hildyard, The Corner House



Ann Feltham, Campaign Against Arms Trade