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Neoliberalism, Competition, and EU State Aid Policy

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Market Bureaucracy

Neoliberalism, Competition, and EU State Aid Policy

Linda Nyberg



LUND
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DOCTORAL DISSERTATION

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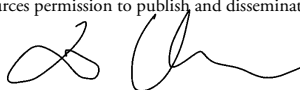
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Abstract <p>According to a predominant way of thinking, competition is believed to be what drives society forward. It is believed to lead to economic growth through lower prices, higher quality and a more efficient distribution of resources. Competition is also believed to stimulate progress by creating incentives for creativity and innovation. Furthermore, it is commonly associated with the values of freedom, by increasing freedom of choice, and justice, by rewarding those who work hard at succeeding.</p> <p>Drawing upon a theory of government from the literature on governmentality, this dissertation investigates this idea of competition as the expression of a neoliberal rationality of government. It shows how this rationality is spread through the European Union's policy on state aid, which aims to keep the member states from distorting competition on the internal market.</p> <p>The dissertation proceeds in four analytical steps. The first draws upon literature by and about neoliberal thinkers in order to construct the neoliberal rationality of government as consisting of three dimensions. These three dimensions are then traced in EU state aid policy, as a second step. The third step consists of a study of the means used by the European Commission in order to teach national governments how to reason like neoliberal states. The fourth and final step investigates what happens when the neoliberal rationality of state aid policy encounters political conflicts on a national level, as well as on a European level.</p> <p>From this study, I draw two main conclusions. The first is that the neoliberal rationality of state aid policy ushers in a new way of reasoning about the role of the state, where the difference between "good" and "bad" forms of government is determined according to what is good or bad for competition. In this way, state aid policy can be seen to function as an "anti politics machine" which turn political questions about the role of the state, into technical problems of competition that can be solved by economic experts.</p> <p>Secondly, this dissertation shows how the neoliberal rationality of government has made it possible for the European Commission to justify its interventions in member state's policies by claiming to be acting in the general interest of free competition. I argue that, far from leading to less government, the creation of "free markets" gives rise to a particular kind of government, which takes a distinctly bureaucratic form. Through the use of standardised forms, statistical models of evaluation and the collection of quantifiable data, state aid is made visible as an "objective" category of state action, and thereby becomes possible to govern.</p>		
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Neoliberalism, Competition, and EU State Aid Policy

Linda Nyberg



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Till Lena och Bo Nyberg

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1 Introduction

Perfectly (un)reasonable

Åre is the name of a small town, located roughly in the middle of Sweden, with about 1 400 inhabitants. It is known for its popular ski resort, placed directly on the outskirts of the town, which attracts more than 300 000 visitors every year from all over Scandinavia (Jannerling, 2009). The central areas of the town are densely built, with many small, winding streets. During the tourist season, the town therefore tends to overflow with people and cars. In order to reduce traffic, the municipality of Åre decided to convert the central square to a car-free zone. As a part of this plan, they asked the food and groceries retailer, Konsum Nord, to relocate from the square to a less central business area. In exchange for selling its current property to the municipality, Konsum was offered to buy a new plot of land for a symbolic 1 SEK. But the day before the deal went through, the municipal council was contacted by the German supermarket giant Lidl who offered to pay close to €700,000 for the same plot of land. Despite this, the municipality decided to stick with the original agreement and sold the plot to Konsum, but now at a price of €200,000 (Janssen, 2013).

A Swedish organisation called *Den Nya Valfärden* (The New Welfare), which aims to make Sweden “friendlier towards entrepreneurs”, picked up on this story and filed a complaint with the European Commission. They argued that the municipality of Åre was guilty of granting illegal state aid to Konsum by selling a plot of land at a price far below the market value. Such aid distorts competition on the internal market and is thereby prohibited by EU law. Taking Lidl’s offer as an indication of the market value, the organisation argued that Konsum had been given an unfair advantage that distorts competition, and that the municipality should have sold to the highest bidder instead. In turn, the municipality of Åre argued that the land sale was a necessary step in a bigger process of urban planning, which had

made it impossible for them to accept Lidl's offer in order to go through with the plan.

This way, a legal process began that would continue for six years. The Commission opened up an investigation which, amongst other things, made it necessary for the municipality to provide an assessment of the market value of the plot (Janssen, 2013). After more than two years, the Commission finally concluded that the market value did not match the purchase price and that the municipality was therefore guilty of granting state aid. As a result, Konsum was ordered to pay back the difference between the purchase price and the market value of approximately €500,000 to the Swedish government (SOU, 2011, p. 128). The Commission's decision was appealed by Konsum to the General Court of the EU which issued its judgement in the winter of 2011, this time in favour of Konsum. The Court held that the surrounding circumstances meant that the offer made by Lidl was not comparable to the price paid by Konsum. The Commission had therefore been wrong to take Lidl's offer as an indication of the market value. However, the Court did make clear that public land sales must be made at market value in order to avoid breaking EU rules, irrespective of whether they take place in a context of urban planning or not (Janssen, 2013, p. 117). Thus, the Court did not reject the Commission's decision because it found the objective of urban planning more important than free competition, but because it did not agree with the Commission's method for assessing the market value of the land plot.

Looking at this example from the perspective of EU-law, this way of approaching the actions of the municipality may appear perfectly reasonable. The EU treaties have given the Commission the task of removing barriers to trade and upholding free competition on the internal market. Free competition is believed to stimulate economic growth by leading to lower prices, higher quality and more innovation. The purpose of EU state aid policy is therefore to keep governments from acting in ways that distort the competitive process by providing some competitors with an unfair advantage. Lidl and Konsum are both active on a common European market. By selling land at a price below the market value, the municipality of Åre could be seen as providing Konsum with a form of "aid" that offers it an economic advantage. But because the market value of the property had not been established by the Commission on sufficiently strong grounds, the General Court decided that it could not be determined that the municipality had been guilty of state aid.

But looking at this case as an outsider, unfamiliar with state aid policy or competition policy in general, there are things that might seem strange, unreasonable or even absurd. Why is the European Commission getting involved in the everyday decision to sell a piece of property in a small Swedish town? The effect on trade between member states would surely be minimal, if not just theoretical. Secondly, is it really reasonable for it to take six years of investigation, paperwork, and court proceedings to close this case? Finally, on a more substantial level, one might call into question the very rationality of state aid policy as expressed in this case. Why should governments not be allowed to decide whom they conduct business with? What is the point of local democracy if elected representatives are not allowed to decide how to allocate public resources? Should not the decision whether to prioritise free competition or an urban planning objective be a *political* decision, made by local representatives and not by experts in EU law?

I wanted to understand the rationality of state aid policy: how has it become possible for the EU to govern the decisions of national governments with reference to free competition? The relationship between the exercise of government and ideas about competition is the focus of this dissertation.

New limits to government

Most people are likely to never have heard about EU state aid policy. Even if some states, or international organisations such as the WTO, have similar policies that target government subsidies, the term “state aid” is unique to the EU. State aid policy belongs to the broader category of EU competition policy, but sits as an odd duck within this framework. Competition policy is normally associated with policies that target private companies, such as rules on cartels, mergers or the abuse of a dominant market position. State aid policy is different because it does not regulate the behaviour of companies but of governments. This means that state aid policy often flies under the radar of political and academic debates which tend to approach competition policy as a matter of *governing the market*, rather than governing *governments*.

State aid policy is rooted in Article 107 in of the Treaty on the Functioning of the European Union (TFEU) which prohibits the member states from

giving “aid” to businesses in ways that distort competition on the internal market. While this article has remained almost unchanged since the establishment of the European Coal and Steel Community in 1951, the scope of state aid policy, and the strength of its enforcement, has grown significantly since then. Today, if you visit the website of DG Competition and download the summary of the currently applicable rules to state aid, you will get a document that is one thousand pages long (EC, 2014a). It is difficult to pinpoint exactly when this change occurred since the policy has developed in an incremental fashion through the decisions of the Commission and the EU courts (see López, 2015; Lavdas & Mendrinou, 1999). But previous research notes a strengthening of state aid control by the mid-1990s, with the “completion” of the Internal Market, and more recently, as the result of two rounds of policy reform which took place from 2005 to 2009, and from 2012 to 2016 (López, 2015).

I first heard of state aid policy as a master’s student in political science, doing an internship at the *Swedish Association for Local Authorities and Regions* in 2010. Local and regional governments in Sweden have a relatively high level of autonomy compared to other countries. They collect their own taxes and are responsible for the delivery of a wide range of welfare services, such as education, healthcare, child care, elderly care, public transport, waste treatment and spatial planning. During my time at the association, there was a noticeable feeling of perplexity and frustration over how state aid policy was starting to interfere with how things had usually been done. Local governments were discovering that they could be found guilty of illegal state aid by selling things at a price “too low” or buying things at a price “too high”, by supporting local businesses or projects, or even in the funding of their own public services.

Allegations of illegal state aid started cropping up in different situations; sometimes brought forward by representatives of private businesses, sometimes by the European Commission itself. One important case concerned state aid granted to municipal housing companies, which was claimed to be distorting competition on the housing market. Another case concerned the state aid to small, regional airports, which was claimed to be distorting competition on the market for transportation. A third example was a case concerning a public-private partnership to construct a new sports arena in the city of Uppsala, which was claimed to grant illegal state aid to the private businesses involved.

This new regulatory landscape that governments were facing gave cause to some concern. A negative decision from the Commission could mean that the state aid must be recovered from its recipients, in order to “un-distort” competition. Financially, this would naturally hurt the recipients more than anyone else, but for governments, the cost would come in the form of political costs from being forced to cancel plans or backtrack on decisions already made. To make matters worse, it can be difficult to determine what constitutes “state aid”, and whether such aid is compatible or incompatible with EU law. As the Swedish Association for Local Authorities and Regions has expressed in a recent policy statement: “experience has shown that the rules regarding state aid are extraordinarily difficult to apply. The impermissible interacts with the permissible in a way that, due to the complexity of the regulation, appears almost arbitrary” (SKL, 2015). This complexity is not only felt by government representatives – within the field of EU law, several volumes have been published aiming to tease out the currently applicable rules from the growing mass of case law (see for example Quigley, 2015; Säcker & Montag, 2016; Hofmann & Micheau, 2016). The Commission itself has motivated the most recent round of policy reform with the need to simplify and streamline what it described as a “complex legal framework” (Commission, 2012, pt. 22).

Reading Foucault’s lectures on Governmentality from the end of the 1970’s, there appears to be a parallel between state aid policy and what he described as a neoliberal rationality of government. In his lectures, Foucault talked about different ways of reasoning about the limits to government that have been dominant in different historical periods. For example, government has been limited with reference to the divine order of things, the natural and inalienable rights of human beings, or the sovereignty of other nation states. According to Foucault, neoliberalism can be defined as a rationality that relies on *competition* as a principle for determining the proper limits to government. Building on the assumption that free competition leads to economic growth, neoliberal thinkers argued that responsible governments would do what is good for competition in order to increase the well-being of their subjects. In this way, neoliberalism appears to promise a less intrusive government that will “leave things to the market” by respecting the self-regulating process of competition.

My interest in this book is not with the historical development of ways of thinking about government but to think with Foucault in order to understand the way we reason about the proper limits to government today.

State aid policy can be seen as an expression of a neoliberal rationality of government in that it seeks to limit government intervention on the market with reference to free competition. At the same time, state aid policy could be seen as giving rise to a paradox where the will to protect competition from government intervention has led to a surprising amount of government intervention. In order to keep the member states from distributing state aid, a whole range of government activities have been put into place. There has been an explosion in the number of regulations, case law, communications and guidelines from the EU institutions, aimed at making sure that governments do not distort competition. State aid policy has grown from a few articles in the EU treaties to an intricate system of rules covering a broad spectrum of policy sectors and different types government measures. New administrative procedures have been introduced in which the member states must notify the Commission about their plans to grant state aid and wait for approval before implementing them. National competition agencies have been organised in a *European Competition Network* where they engage in the exchange of information and best practices. The need to know how to interpret the rules has led to a demand for new courses that provides training in EU law, leading to the creation of a new kind of expertise.

This situation, where the creation of “free competition” and the expansion of government intervention go hand in hand, will only appear paradoxical if we believe that markets will regulate themselves, as by an “invisible hand”, if only governments can be kept from interfering. This is a notion that has been refuted time and again but which appears curiously difficult to shake (see Harcourt 2011). As argued by Polanyi, the capitalist market order was not the result of a spontaneous process or *laissez-faire*, but the “outcome of a conscious and often violent intervention on the part of government which imposed the market organisation on society” (1944/2001, p. 258). He claimed that rather than doing away with the need for control and regulation, the introduction of “free markets” have increased their range (Ibid., p.140). In a similar vein, David Graeber’s frustration with the bureaucratic nature of contemporary government led him to formulate an “iron law of liberalism” according to which “any market reform, any government initiative intended to reduce red tape and promote market forces will have the ultimate effect of increasing the total number of regulations, the total amount of paperwork, and the total number of

bureaucrats the government employs” (Graeber, 2015, p. 9). Markets do not regulate themselves, they are regulated by governments (see Vogel, 1996).

Even though most people would probably agree that markets are (to some extent) dependent on government intervention, we still tend to speak about the relationship between state and market as if it was a zero-sum game, where more of one thing leads to less of the other. This is not surprising considering the way we are trapped in a language that constantly reifies the impression of state and market as two separate spheres. Terms such as *free competition*, *liberalisation*, and *deregulation* are constantly opposed to *government intervention*, *planning* and *regulation*. As argued by Harcourt (2011, p. 32) these kinds of conceptual tropes hinder rather than help by projecting the image of the market as a “natural order” rather than a political one, thus shielding what happens in this sphere from political and moral debates.

It is clear that we cannot understand how we are governed by thinking within the framework of a state-market dichotomy. If we only think in terms of either/or, more or less, we will fail to see how policies which claim to “leave things to the market” are not resulting in *less government*, but in a particular *kind of government*. This dissertation sets out to investigate how a particular way of reasoning about the limits to government with reference to competition is shaping the practices of government. I want to understand how the EU, through its state aid policy, is shaping national governments into particular kinds of subjects that will reflect on their own behaviour in terms of its effects on competition.

Research questions and outline of the book

The purpose of this dissertation is to show how all of these elements fit together: ideas about competition, the reduced space for democratic politics and the expansion of bureaucracy. This study has been driven by the need to be able to tell “a bigger story” of state aid regulation, which pulls our attention away from its daily challenges and problems, and helps us get a broader sense of where we are and where we are heading. To help me tell this story, I have drawn from literature that has provided me with two main points of departure.

The first one is that, although state aid policy is in many ways unique in its purpose and form, it can be viewed as an expression of a more general *neoliberal rationality of government*: a way of reasoning about the proper role of government in terms of competition. This rationality can be seen to permeate political and economic thinking, as well as the way we think about ourselves. It can be seen in privatisation reforms which aim to expose public services to competition in order to make them more cost-efficient and more customer-oriented (Andersson & Kvist, 2015). It can be seen in the frequent use of benchmarking, ranking and other forms of performance measurements, where countries, organisations, units or individuals, are compared to each other in order to encourage competition (Fougner, 2008). It can also be seen in our tendency to think of ourselves as entrepreneurs investing in our “human capital”, in the form of education, life experience, looks or social skills, to make us more competitive in different kinds of markets (Feher, 2009). What makes this way of reasoning distinctly neoliberal will be developed further in a later section of this chapter, and in Chapter 3 of this dissertation. For now, I will just establish that I understand the neoliberal rationality of government as a way of reasoning about the role of government in terms of what is good (or bad) for competition.

The second point of departure is a theoretical perspective on government, inspired by Foucault, and what can broadly be described as the *governmentality* literature which has grown out of his work. As a practice, government is normally understood as something restrictive: as an exercise of control over subjects to keep them from doing things. Governmentality studies instead approach government as something productive: as an exercise of control seeking to shape subjects that will “do as they ought”. Government can be exercised in order to produce obedient, docile, and law-abiding subjects, as well as happy, healthy, responsible and democratic subjects. But what governmentality studies tell us is that even when there are good reasons to assume that the objectives of government are benign, as driven by an honest will to develop, empower or enable, it inescapably creates a relationship of power between those who *know* what it means to be developed, empowered or able, and how to get there, and those who must be *taught* (Li, 2009, p.7; see also Cruikshank, 1999). To study government from this perspective thus leads to a focus on how subjects are shaped in relationships of power and knowledge.

These two starting points have led me to approach state aid policy in a particular way. In my view, the customary way of understanding state aid policy as an attempt to improve upon competition keeps us from seeing what it really is: a policy that attempts to improve upon the behaviour of governments. Instead of approaching state aid policy as an attempt to govern competition, I will approach it as an attempt to govern governments *through a particular understanding* of competition.

As this study will show, state aid policy has been regarded as the solution to different problems over the years. At the forming of the European Coal and Steel Community, it was seen as a solution to the problem of barriers to trade caused by government subsidies. This meant that state aid regulation was mainly seen as an instrument to protect competition *between member states*. But as EU integration progressed and state aid policy became increasingly influenced by neoliberal ideas, the problem addressed by state aid policy became less a matter of barriers to trade and more a matter of insufficient market efficiency. State aid policy thus became seen as an instrument to protect competition *in general*, not just across national borders. Today, because of the connection between free competition and efficient markets, one of the main objectives of state aid policy is to teach national governments how to make “economically rational” decisions that are pro-competition and therefore pro-growth.

The over-arching research question guiding this study is: *How are the member states governed by EU state aid policy?* Starting from my understanding of government (that will be further elaborated upon in Chapter 2), this question is broken down into four theoretically informed sub-questions that correspond to the four empirical chapters.

- i. What rationality of government is expressed in neoliberal thought? (Chapter 3)
- ii. How does this rationality inform state aid policy? (Chapter 4)
- iii. Through what technologies are the member states taught to reason according to this rationality? (Chapter 5)
- iv. How does the neoliberal rationality of government impact on the field of possible political action? (Chapter 6)

Following these steps, this dissertation shows how state aid policy governs the member states by shaping them into neoliberal subjects that will act in

ways that do not distort competition. Chapter 3 and 4 traces a neoliberal rationality of government from early neoliberal thinkers in the mid-20th century to the EU state aid policy of today. In order to show how this rationality is spread in order to shape national governments into neoliberal subjects, Chapter 5 contains a study of the technologies used by the Commission in governing the member states. As a final step, Chapter 6 illustrates some of the consequences of this way of reasoning for political conflicts taking place both in a European and in a national setting.

The analysis in the different empirical chapters is based on different types of material. The chapter on neoliberalism is based on a reading of neoliberal thinkers, as well as recent literature on neoliberalism from perspectives of political theory, sociology and economic history. The study of state aid policy is essentially a policy study based on a variety of EU documents. The final chapter on politics builds on a mixture of policy documents and case studies. These different types of materials have been approached from the same methodological perspective and read with the help of the same analytical techniques. A more in-depth discussion of method and material will be presented in Chapter 2.

Based on this study, I will make the following two (main) arguments: EU state aid policy brings with it a new way of *seeing*. State measures that used to be understood in terms of their purpose or form are instead understood in terms of their effects on competition. This new way of seeing comes with a new way of reasoning about the role of the state. Instead of reasoning about what the *state should do* in terms of political objectives, state aid policy relies on a neoliberal rationality of government which defines the role of the state according to what the *market cannot* do (market failures). In this way, “the market” is made into a norm for government, and in order to justify state intervention, it has to be argued that the market cannot deliver the same thing on its own.

Secondly, state aid regulation works as an anti-politics machine that turns political conflicts into technical problems of competition. When a government measure becomes understood within the framework of the neoliberal rationality, it becomes difficult to voice political opinions that are not formulated in terms of competition. As a consequence, legal and economic knowledge is placed above other forms of knowledge, and the decisions of lawyers and economists are placed above the decisions of politicians, thus shaping the field of possible action for democratic politics.

Contributions

This dissertation aims to make three main contributions. 1) To provide a way of understanding state aid regulation that brings out the important political issues hidden in a dry and technical policy language and complex set of regulatory instruments. 2) To contribute to our understanding of how a neoliberal rationality of government is spread and its status as a dominant paradigm is maintained. 3) To contribute to the literature on governmentality by building upon on the analytical concepts of *rationality* and *technology*, in ways that can be used in other studies of government. The first and second contributions will be further developed directly below, while the theoretical contribution is explained further in Chapter 2. Lastly, this section closes with a few points of clarification in order to avoid some possible misunderstandings of the scope and purpose of this book.

Rethinking state aid policy

As a part of competition policy, state aid policy stands out as one of the areas where the supranational power of the EU is especially strong. European competition policy has been described as the “most supranational” (Cini and McGowan, 2009, p. 1) and “one of the most highly Europeanized” (Blauberger, 2012, p. 49) policies in the EU. It belongs to the so-called exclusive competences of the EU that cover the policy areas in which only the EU is allowed to legislate and adopt binding acts. Competition policy also stands out as an area where the powers of the European Parliament are especially weak. It is not part of the co-decision procedure, in which legislative powers are shared between the EU Council and the Parliament. Even the Council have relatively little influence over state aid policy, since it is rarely the subject of new Council decisions. Instead, competition policy has largely been developed through the successive interpretation of the EU Treaties by the EU courts. As such, competition policy has been described as an “extreme case of law-driven policy making” (Wilks, 2015, p. 162).

According to Wilks (2015, p. 163), the rules of competition resemble an “economic constitution” which is “more neo-liberal, more purely market-oriented, than many in Europe would be inclined to accept”. If there is a lack of awareness about the nature of EU competition policy, there is

arguably an even larger lack of knowledge about the nature of the rules on state aid. As mentioned, it sits uncomfortably within the competition policy framework by addressing different issues and actualising different conflicts, compared to the policies targeting private companies. State aid policy is unique to the EU and does not exist in any national context (Cini & McGowan, 2009, p. 163). In this field the Commission acts as a “truly supranational body enforcing unique powers not found in any other competition authority” (Wilks, 2015, p. 152).

At the same time, it is strange that state aid policy has not attracted more attention considering how it “strikes at the heart of persistent ideological debates about the role of the state” (Cini & McGowan, 2009, p. 198). The policy originates in Article 107 of the Treaty of the Functioning of the European Union (TFEU) which reads:

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

This has been interpreted as a general prohibition of all forms of state aid that might distort, or threaten to distort, competition on the internal market. But Article 107 immediately continues by presenting several exemptions to this rule for particular types of state aid, such as aid to “promote the economic development of areas where the standard of living is abnormally low”, to “promote the execution of an important project of common European interest”, or to “remedy a serious disturbance in the economy of a Member State”. There is thus ambivalence inherent in the treaty provisions between protecting competition and other political objectives. Article 107 can therefore be seen as a microcosm for studying the tension between ‘Market Europe’ and ‘Social Europe’.

Previous research has shown how state aid policy has developed through the strategic decisions of the Commission, navigating a sensitive political field, and the judgements of the CJEU, tasked with solving the tensions and filling in the blanks of the treaty provisions (see Lavdas & Mendrinou, 1999 and Doleys, 2013 for the former, and López, 2015 for a more detailed study of the latter). Its development has thus both been shaped by the political priorities of the Commission and the evolution of EU case law, which in turn has been shaped by how the courts have dealt with other areas of law

such as antitrust or the free movement rules (López, 2015, p. 9). These accounts all point to the lack of influence of the EU Council or Parliament over how state aid policy has developed. Based on these accounts I believe that it is warranted to speak of the member states being governed by the Commission and the Courts rather than the other way around.

Of course, there are limits to the discretion that can be exercised by the Commission and the Courts, especially considering the mechanisms of self-limitation inherent in the policy. Over time, the Commission and the Courts have become increasingly bound by their past decisions, as state aid policy has expanded from Article 107 into a complex system of soft and hard law (Blauberger, 2009). Furthermore, because the Commission must respond to complaints about illegal state aid that are issued by private actors, policy development is to some extent being shaped by forces outside the control of the EU institutions (Smith, 1998).

When it comes to the effects of state aid regulation on the member states' policies, the picture is more muddled. Previous research can be divided into **three main lines** of argument. According to the *first*, state aid policy has led to a significant reduction of member state's interventions in the economy. The Commission's own numbers show a decline in the amount of state aid rewarded by the member states since the 1980s. Levels fell from 3-5 per cent of GDP in Europe and 10 per cent of public expenditure in 1988, to 0.4 per cent of GDP and 1.2 per cent of public spending by 2006 (Wilks, 2015 p. 153). The financial crisis of 2008 saw a sharp increase in state aid levels due to the massive amount of rescue aid granted to the banking sector. But rescue aid excluded, state aid levels have remained low, which suggests that, although the crisis led to a temporary upsurge, the foundations of state aid policy have remained intact (see Davies, 2013). In 2014 the level of state aid was 0.7 % of GDP in 2014, due to the inclusion of certain aid schemes for renewable energy (EC, 2015a). Clift (2013) describes the effects of state aid policy as a 'clash of capitalisms' in which the Liberal Market Economy version of capitalism championed by the Commission clashes with, and gains dominance over, the so-called Coordinated Market Economies of countries such as Germany and Sweden. This has led to the conclusion that state aid policy has reduced the political autonomy of national governments. The effects of state aid policy have been especially noticeable and controversial in relation to public services. Due to the last decades of reforms, many of these services are today provided on markets, or "quasi markets" (Le Grand, 1991). As a result, state aid policy has become

applicable in sectors that were previously seen as existing outside the market sphere, and therefore outside the scope of competition regulation. Research has shown how the prohibition of state aid has reduced the scope for national governments to use public services as political instruments for intervening in society (Smith, 2005; Prosser, 2005; Koukiadaki, 2012).

The *second* line of argument warns against over-emphasising the supranational powers of the Commission and argues that the member states still have considerable influence over state aid regulation. A study by Zahariadis (2013) that compares aid levels between countries finds that larger countries that have more bargaining power with the Commission tend to give more aid, thus suggesting that the supranational elements of state aid regulation is weaker than what others have claimed. Similarly, Løvseth (2011) points to the ability of national governments to affect the Commission's decisions or use state aid policy for national political purposes.

The discussion about the consequences of state aid policy has thus mainly taken place as a “more-or-less” discussion: more or less supranational power, or more or less state intervention. The *third* line of argument points away from this focus on more or less state aid to *what kind* of aid is given. Article 107 holds both the rule and the exemptions, leaving the Commission plenty of discretion to judge how these objectives should be balanced. This discretion allows them to decide between “good” and “bad” forms of state aid and thus not only *restrict*, but also *redirect* state intervention. Nicolini, Scarpa and Valbonesi (2013) have shown that state aid to the car industry has led to both a reduction in aid levels over time, and a redirection of aid according to EU policy priorities. Blauburger (2009) discusses the impact of state aid policy in terms of positive and negative integration, the latter referring to integration by removal of barriers to competition, while the former refers to the way that state aid policy creates a common understanding of how state aid *should* be spent. Or as put by Lavdas and Merindrou (1999), state aid policy not only *restricts* state intervention but creates a *European policy of state intervention*.

With this dissertation I hope to make a contribution to the third line of argument about the effects of state aid. Although the question of “more or less state” is an important one, it is clearly insufficient to capturing the nature of state aid policy. By bringing a governmentality perspective to the

study of state aid policy I want to contribute to the literature by showing how this way of reasoning gives rise to a particular *kind* of state intervention.

Others have approached state aid policy from a similar perspective. Leila Brännström (2014) has written about Foucault's understanding of law in relation to state aid policy, arguing that the latter reflects a neoliberal governmentality which forces national governments to pursue objectives that are in line with the competitive market. William Davies (2014) has also drawn upon Foucault's governmentality lectures in analysing state aid policy as an expression of a neoliberal rationality which seeks to reconstruct social and political relationships according to market values and mechanisms. This dissertation builds and expands upon their accounts through an in-depth study of the ideas about competition expressed in neoliberal thought and state aid policy, and how these ideas are spread through government practices.

Furthermore, by studying how state aid policy governs the member states through a particular understanding of competition, this dissertation also contributes to the literature on the role of ideas about "the market" in the government of European integration. In his book, *Playing the Market* (2006), Nicolas Jabko has argued that the Commission has been able to expand its powers by strategically using the notion of the market as a *rationale* for framing EU policies. In a similar vein, Marija Bartl (2015) has proposed the concept of *internal market rationality* as a way to describe how ideas about the market have shaped the process and substance of EU law. She argues that this rationality builds on a neoliberal body of thought that offers a set of ideas "harmonious with the basic causal and normative beliefs behind EU economic integration" and "a convincing language to justify the need for the growth of the EU regulatory powers" (Bartl, 2015, p. 577). In this dissertation, I will argue that we can better understand both the rationality of EU integration, as well as that of neoliberal government, by focusing on the concept of competition. As suggested by Wilks (2007) the elevation of competition to an over-arching objective has made it possible to present EU competition policy as a "meta policy" to guide and support policies in other areas. The Commission itself has described competition policy as providing "a sound foundation to build upon in supporting the overall policymaking of the European Commission" (EC, 2015b, p. 2). By studying what ideas about competition that state aid policy builds on, this dissertation contributes to our understanding of how it has become possible

to present European integration as a solution to many of the main problems facing the member states.

Rethinking neoliberalism

According to David Gerber, the roots of EU competition policy can be found in a compromise between German neoliberal thought (ordo-liberalism), which emphasised the need to protect free competition, and a French tradition of *dirigisme*, which emphasised the need to balance free competition with other political objectives (2001, p. 346). Since then, competition policy has developed in a neoliberal direction, through the elevation of competition as an over-arching policy objective (Buch-Hansen & Wigger, 2011) and an increasing reliance on Chicago school theories of market efficiency (Bartalevich, 2016; Wigger, 2009).

This being said about competition policy in general, researchers are in less agreement on the ideological foundations of state aid policy in particular. The Commission still allows for a considerable amount of state intervention through the exemptions provided for particular kinds of state aid. This has been taken as evidence that neoliberal ideas are not as dominant in the field of state aid as compared to the other competition policies (Lavdas & Mendrinou, 1999). The extent to which state aid policy is seen as neoliberal depends on what is meant by neoliberalism. If neoliberalism is associated with policies aimed at reducing the power of the state, or with an ideological preference for “free markets”, then the fact that plenty of state aid is still approved by the Commission would seem to contradict the view that state aid policy is dominated by neoliberal ideas. This dissertation takes a different approach by viewing neoliberalism as a rationality of government. From this perspective, neoliberalism is not defined as a particular set of policies or reforms, but as a particular way of *representing problems and solutions* (see Bacchi 2009). The neoliberal rationality of government makes it possible to present complex problems facing governments, such as unemployment, globalisation, or public budget deficits, as problems of economic inefficiency caused by a lack of competition. According to this problem definition, the solution will always be *more competition*.

Starting from this definition of neoliberalism, previous research has made what I see as three important contributions: it improves our understanding of how it has become possible to propagate markets over state intervention,

why neoliberal reforms do not lead to less state intervention and, thirdly, why neoliberalism has become a dominant rationality that has proven difficult to challenge. I will expand on these three points below.

Neoliberalism is a notoriously ambiguous concept that is widely used but rarely defined (Boas & Gans-Morse, 2009). According to Kristina Boreus, what unites neoliberal thinkers is the belief in free, capitalist markets as a role model for the government of society (Boreus, 1994). What people often seem to mean when they talk of neoliberal politics is that something has become more "market-like". Just to mention some examples of definitions of neoliberalism as the elevation of the market as a norm: David Harvey describes neoliberalism as a theory of political economic practices that sees the role of the state as creating the necessary institutional framework for free markets (Harvey, 2005, p. 2). William Davies defines neoliberalism as "the elevation of market-based principles and techniques of evaluation to the level of state-endorsed norms" (Davies, 2013, p. 37). Jamie Peck describes neoliberalization as "a contradictory process of market-like rule" (Peck 2010:20)

A part of the reason why the concept of neoliberalism is perceived as vague is arguably that definitions often stop at identifying neoliberalism with "the market" without going into a further discussion of what is actually meant by "free markets" or "market-based principles". To allow for a more precise understanding of neoliberalism, this dissertation follows Foucault's suggestion that we understand *competition* as central to the neoliberal definition of the market (1979/2008, p. 118). By placing competition at the centre of the neoliberal definition of the market we can better understand how it has become possible to claim that markets are a superior way to organise the economy as compared to "government planning". Competition is widely believed to spur economic growth and development by forcing producers to become more efficient and innovative. Competitive markets are assumed to lead to an efficient use of resources by channelling them to the best performing competitors while making sure that less successful competitors are weeded out. While this creates losers in the short run, competition is believed to be in the general interest in the long run by bringing the necessary "creative destruction" that will increase the wealth of society as a whole. Neoliberal thinkers took this belief in the benefits of competition and used it as an argument against political intervention in the economy. They contrasted competition with politics and argued that competition is associated with the *common good*, *efficiency* and *freedom* while

politics is associated with *self-interest*, *corruption* and *coercion*. This provided a powerful argument against socialism and plan-economic systems that sought to distribute resources according to political will. This neoliberal rhetoric thus creates a distinction between the state and the market, giving the impression that market reforms can provide a way to reduce the need for government. It is claimed that if we allow resources to be distributed by self-regulating, competitive markets, we will have less need of rules and regulations and can reduce the number of government agencies and employees.

Secondly, looking at what neoliberal thinkers have to say about the nature of competition it becomes clear that neoliberalism is not an ideology of *laissez-faire*. By separating the rationality of neoliberalism from its free market rhetoric, it becomes evident that competition is understood as something that needs constant support and protection by a strong and active state. Neoliberalism is not built on an assumption of human nature as “economic men” who will make economically rational decisions. On the contrary, people are assumed to be naturally prone to seek protection from competition by forming cooperative arrangements such as cartels and labour unions. The role of government is therefore to force competition on all of us, in our own best interest. Rather than seeing neoliberalism as an ideology that seeks to limit the powers of the state, it can thus be viewed as a rationality of government which claims that the proper role of government is to do what is good for competition. As phrased by Foucault, the role of the market according to neoliberal thought is to “tell the truth to government” by presenting it with a sort of “permanent economic tribunal” that separates between good and bad government (2008, p. 247).

Finally, understanding neoliberalism as a rationality of government brings attention to the connection between power and knowledge. The assumption that competition leads to more efficient markets has strong support in economic theory. By drawing on this notion, neoliberal rationality appears to be “common sense” grounded in facts rather than ideology. Anybody who tries to question policies framed in accordance with the neoliberal rationality will therefore find themselves questioning one of the fundamental “truths” of economic theory. Furthermore, considering how ideas about competition permeate other fields of knowledge, such as evolutionary theory (“survival of the fittest”), sociology, and political science, competition can be seen as an “institutionalized modern imaginary”

(Werron, 2015). This surely contributes to the difficulty of challenging neoliberal rationality without being perceived as “irrational”.

By approaching neoliberalism as a rationality of government, the governmentality literature has contributed to a “re-thinking” of neoliberalism. It helps us to view neoliberalism as more than just a “negative” rationality of government that seeks to *remove* barriers to trade, *deregulate* markets or *reduce* the power of the state, by turning our attention to its “productive” dimensions: how it gives shape to particular forms of government, certain kinds of subjects, and a particular kind of state. A close reading of neoliberal reasoning reveal that free markets or *homo economicus* are not assumed to be the “natural” state of things, but things that need to be created by an active government (Brown, 2005, p. 41). As Tomas Lemke has argued, approaching neoliberalism as a governmental rationality helps us see it “not just as ideological rhetoric or as a political-economic reality, but above all as a political project that endeavors to create a social reality that it suggests already exists” (2001, p. 203).

This literature has also made evident that the “enemy” of neoliberalism is not the state, but majority democracy that holds the potential to demolish the liberal market order. As a result of neoliberal politics, it is therefore not mainly the judicial or bureaucratic institutions of the State which have retreated, but the institutions of representative democracy (Brown, 2015).

This dissertation seeks to make a contribution to the literature on neoliberalism in two ways. First, by taking a deeper look at the meaning of competition. A governmentality perspective focuses our attention on the fact that competition is not some objective thing that exists “out there”. Competition must be given meaning: it must be defined according to some criteria, effects need to be studied, and statistics need to be gathered in order for competition to be *known*. And then the experts on competition need to communicate this knowledge to others so that they can learn to act in ways that benefit competition. In order to understand neoliberal rationality of government it is therefore necessary to take a closer look at how the concept of competition is understood, and what consequences this definition has for the ideas of what governments should do. In other words, what assumption about the nature of competition must be made for neoliberalism to appear “rational”. State aid regulation provides an opportunity to study how competition is given meaning within government practices.

Secondly, although there is plenty of literature explaining and critiquing neoliberal thought, there is still a need for more studies on how its ideas are disseminated and its position as a dominant paradigm upheld, in spite of all the criticism and controversies. This dissertation makes a contribution by offering a detailed study of how neoliberalism is spread through the practice of governing state aid and by pointing to some of the challenges facing those that want to see a different rationality of government.

Some points of clarification

One of the most difficult things to write is a balanced critique. It takes a great control of language and skill of writing to express the necessary nuance. To make up for any failures on my part, this section ends with a few points of clarifications about what my critical ambitions have been.

First of all, the purpose of this dissertation is to re-think EU state aid policy as an expression of a neoliberal rationality of government in order identify dominant ways of thinking about the role of the state, competition and politics. This ambition to paint a bigger picture has made it necessary to make some simplifications. This dissertation does not aim to provide a full account of neoliberal thought. This can be better found in the literature that I build upon. Neither does this dissertation aim to provide a full account of EU law relating to state aid, with all its details and complexities. This is a dissertation in political science that deals with issues of law and economics. Readers with a background in these two fields might therefore find my analysis shallow in that I skip over a number of debates. My study is based mainly on what the Commission is communicating to national governments and. It therefore does not do justice to differences of opinion between legal scholars, between different *Advocates General*, or between the Courts and the Commission. Neither does this dissertation do justice to the debates within the field of economics, between different views on competition or the theory of “perfect competition”. I have considered these simplifications necessary to provide an account of some of the principal issues at stake in state aid policy without becoming bogged down in the legal or technical details that characterise much of the literature on this topic.

Secondly, questioning dominant ways of thinking is not the same as rejecting them. Barbara Cruikshank has described her critical approach as holding something to the fire, “not to destroy it or discount it but to bring

both its promises and its dangers to light” (2009, p. 125). Although I am critical of state aid policy, my ambition has not been to “destroy” it, but to point out some of the dangers with its current form. I find it problematic that state aid policy limits democratic autonomy by turning political conflicts between different values and objectives into technical questions that are solved via economic arguments and assessments. This does not mean that I see no value in competition or the policies that aim to protect and improve upon it. There are many good reasons for having a European policy on state aid, for example to keep wealthier countries from undermining the economy of poorer countries by subsidising their industries. Neither do I argue against the claim that competition, under certain circumstances, can improve welfare by lowering prices and making efficient use of resources. My criticism is directed towards the way that competition has been elevated to a principle that is somehow placed *above* politics, being used to evaluate government decisions, rather than being subjected to politics so that both the definition of “free” or “fair” competition, as well as how this objective should be balanced against others, can remain *political* decisions.

Finally, writing about EU policy, readers might find it strange that this dissertation focus so little on the turmoil that has faced the EU during the time it has been written. But this is not a book mainly about the EU and it does not depart from, nor aim to make a contribution to, the literature on EU integration. It is a book about the spread of a neoliberal rationality of government, which is a topic of broader relevance. That being said, I believe that a study of neoliberal rationality of government does speak to the problems that the EU is facing. I will return to this point in the concluding chapter.

2 Government

In this chapter, I present the theoretical perspective on government that this study builds on. It is drawn mainly from what is broadly understood as the governmentality literature. I also include the work of scholars who do not explicitly position themselves in this literature, but share many of its assumptions, such as Barbara Cruikshank, James Scott and James Fergusson. From the latter I have borrowed the metaphor of government as an anti-politics machine. While Fergusson specifically used this metaphor to describe the consequences of international development projects rolled out in Lesotho in the 1970s, I have, over the course of my study, come to view this as a metaphor for government in general.

I should mention straight away that, although I have approached my study of state aid policy from a “governmentality perspective”, I have chosen not to use the concept of governmentality itself. This choice will be further motivated later on in this chapter. Mainly, I wanted to develop a definition of government as a practice without getting too much entangled in the discussions of how to interpret, and build on, Foucault’s own work. This being said, I like to think that the definition of government presented in this chapter makes a small contribution to the governmentality literature by pulling together previous writings in a new way that can provide inspiration for future studies on different topics than mine. Here I am thinking mainly of the theoretical understanding of government as an anti-politics machine, and the ways in which I expand upon the concepts of *rationalities* and *technologies* of government.

A theory is not a mirror of the world but a lens that help us to see certain things. As Alvesson and Deetz point out, the metaphor of a lens should not be understood as something that necessarily provides us with a better or truer view. Just as a lens shapes the image which is being projected through it, a theory directs out attention to certain things while omitting others. The value of a theory should therefore be evaluated in terms of the extent to which it helps us see new things, recognize new patterns and react in new

ways (Alvesson & Deetz, 2000, p. 48). I am not claiming to present *the* definition of government, but rather a perspective that will help us see state aid regulation in a new light, that hopefully can open up new avenues for thinking and acting.

Governmentality studies

The purpose of this section is to situate my study in the governmentality literature by explaining 1) how I understand the concept of governmentality (and why I choose not to use it) and 2) why I have chosen to rely so much on scholars studying development projects in the Global South, in a study of the EU.

In order to study how states are governed through a particular way of reasoning about competition, it has been necessary to find a theoretical perspective of government that does not already start from assumptions about the meaning of competition, the role of the state, or the relationship between state and market. This led me towards the literature on governmentality. This literature covers a broad range of studies of government ranging from such topics as the government of animals (Wadiwel, 2015) development (Li, 2007), terrorism (Wittendorp, 2016), travelling families (Eriksson, 2015), etc. The diversity of governmentality studies makes it difficult to define what unites it as a field. One thing that these studies do have in common is a refusal to take for granted the categories used by those who govern, and instead investigate how government is exercised through the *categorization* of people and things in a particular way (Walters, 2012, p. 59). As a perspective on government, it prompts us to think along the lines of what we would see if we did not take for granted the existence of things such as development, mental disability, immigration, or in my case, competition. Instead of taking such categories as a natural starting point for the study of government, a governmentality perspective turns our attention to how things are given meaning *within* government practices (Foucault, 1979/2008). As explained by Foucault, “instead of starting with universals as an obligatory grid of intelligibility for certain concrete practices” we can start with these concrete practices and “pass these universals through the grid of these practices” (Foucault, 1979/2008, p. 3). In my project, this has led me to approach EU state aid

regulation, not by taking the existence of objects such as state aid, competition, states or markets, as a given starting point, but by studying how government is exercised through the construction of these objects as having a particular meaning that make people think and act in particular ways.

Governmentality studies can therefore be contrasted with other theoretical perspectives that build on concepts such as network governance, meta-governance, or multi-level governance. From a governmentality perspective such concepts are viewed with suspicion because they easily become involved in processes of government as justifications for certain types of government interventions (see Shore, 2006).

The main purpose of studying how things are given meaning within government practices is to denaturalise the taken for granted in order to open up for alternatives to the current order of things. The hope is that by bringing forward the truth claims and knowledge assumptions that inform current ways of governing, it will become easier to see how things could be differently. A second reason for applying a governmentality perspective is to better understand the failures and seeming paradoxes of government – for example, why attempts to include or empower certain groups of people, while claiming that they are somehow ‘different’ or ‘unable’, end up reproducing their status of being excluded (Cruikshank, 1999; Altermark, 2016). Or in my case, how an attempt to set markets free from government intervention leads to a particular kind of government intervention.

The governmentality literature is characterised by considerable ambiguity regarding how to interpret central concepts such as governmentality, biopower, pastoral power, rationality, or technology. I will not attempt to give an overview of these concepts here, but because it is so central to the literature, and because I have chosen not to use it, I want to say something about the meaning of *governmentality*.

According to one interpretation, the term governmentality creates a linguistic link between governing (*gouverner*) and modes of thought (*mentalité*), thus highlighting the relationship between ways of thinking and ways of governing (Lemke, 2010). But as argued by Sennellart, the French term *gouvernementalité* should be translated as deriving from the term government, just as “musicality” is derived from “musical” or “spatiality” from “spatial” (2007, p. 399; fn. 126). Following this translation, governmentality refers to something along the lines of “the specific

characteristics of the activity of government” (Ibid.). This definition thus seems less “theoretically charged” than the first one.

Foucault himself does not use the concept consistently in his lectures. Its usage varies from referring to a historically specific form of government that “has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument”, to a specific form of power that can be distinguished from, for example, sovereignty or discipline (Senellart, 2009, p. 388). Sometimes Foucault (and others) use the concept to refer to a specifically *liberal* form of government that works through the freedom of individuals in order to make them “choose” to govern themselves in a particular way. For example, Joseph defines governmentality as a rationality of government “that tries to shape people’s behaviour by getting them to take responsibility for their own actions” (Joseph, 2010, p. 30). At other times, governmentality appears to refer simply to *a way* of governing.

How one understands the meaning of governmentality will naturally determine its applicability. If it is understood as a historically specific form of power, exercised over a population by acting on their freedom to choose, the question arises to what extent the concept can travel between different times and contexts. For example, if governmentality can be used in relation to international organisations that do not operate directly on a population, or in relation to states that might not have the sufficient administrative capacity to govern in ways that shape people’s choices (Joseph, 2010).

The purpose of this dissertation is not to continue Foucault’s historical project, or to contribute to the theoretical discussions of how to interpret his work, but to find a theoretical definition of government that can help me understand the relationship between ways of governing and ways of reasoning. I have sought to find a theoretical definition of government *in general* that can help me to understand how EU state aid policy governs the member states, but which can also be applied to studies of other areas of government. Therefore, I have chosen not to use the term governmentality because of fear that its theoretical “baggage” would lead to more confusion than clarity.¹. Instead, I think of this study as departing from a

¹ By doing so, I hope to sidestep a potential discussion of whether or not the concept of governmentality can travel from the context of the nation state to an international context such, as the EU (see, for example, Walters, 2012 and Kalm, 2008 for arguments that it can)

“governmentality perspective” by building on a definition of government drawn from this literature.

Finally, I want to say something about why I have chosen to rely so much on theoretical approaches used in studies of international development projects rather than the European Union (i.e. Li, 2007; Ferguson, 1994). This was not a conscious choice at first; I just found them to be intuitively useful in capturing things that interested me about state aid policy. But later in the project, I started to see an increasing amount of similarities between the ways that the WTO and the World Bank have tried to govern “development” in faraway countries, and the way that the Commission tries to govern the member states. Both types of government bodies have tried to govern from a distance by applying “standardised solutions” that can be seen as insensitive to local contexts and knowledges. Just like “development”, the concept of “competition” has come to be viewed as something inherently positive, and to be backed by an academic field of expertise. As such, both international development agencies and the Commission can be seen as driven by a “will to improve” by engaging in knowledge based problem solving. As argued by Li, the will to improve deserves to be taken seriously, rather than being dismissed as a cover for hidden power motives. According to her, “the rush to identify hidden motives of profit or domination narrows analysis unnecessarily, making much of what happens in the name of improvement obscure” (Li, 2007, p. 9). Viewing the actions of the World Bank or the Commission in terms of interests turns our attention away from the more interesting question of how it has become possible to govern in the name of improvement. I believe that being inspired by studies of international development has helped me to identify what can be seen as common to practices of government in general, irrespective of context or policy field. This perspective on government will be explained in the following section.

A definition of government

I find one of the main benefits of a governmentality perspective to be that it turns some common perceptions of government on its head, thus allowing us to see things in a different light. The definition of government that has

guided my study will therefore be presented as a series of “shifts in perspective”.

Government is leading rather than coercing.

Government is commonly perceived as an exercise of coercion, as something that forces people to do things that they perhaps would not wish to do. A governmentality perspective shifts our attention towards government as a practice of *leading towards* something. Foucault understood government to be a form of power that is different from domination in that it assumes an element of freedom for those who are being governed. He referred to government as the conduct of conduct, playing with the double meaning of the word as both a manner of directing/guiding and a way of behaving (1982, p. 798). Guiding or directing entails active participation for the one who is being conducted. In order to lead, someone has to follow. As Nicolas Rose puts it, “to govern is to act upon action” (Rose, 1999, p. 4). So, instead of viewing government as an attempt to restrict people’s capacity to act, it is understood here as a power that seeks to make people act in certain ways by “structuring the possible field of action of others” (Foucault, 1982, p. 790).

The separation between domination and government can never be clear-cut. There is always an element of coercion involved in government. But as we know, the most successful cases of government are those where people do not think of themselves as governed at all, but have learnt to internalise a way of acting which seem natural and right. Instead of viewing government in terms of restriction we can thus view it as an attempt to *produce a certain behaviour* by making people *govern themselves* in particular ways. As formulated by Scott, paraphrasing Jeremy Bentham, government operates by ‘arranging things (so) that people, following only their own self-interest, *will do as they ought*’ (Scott, 1995, p. 202)

Bringing this perspective to state aid regulation, it emerges as an attempt to act on the actions of national governments, not just by prohibiting measures that distort competition, but by shaping their habits and beliefs so that they will govern themselves according to what is good for competition.

Government is productive rather than restrictive.

Continuing on the above, a governmentality perspective directs our attention to government as *productive* rather than *restrictive*. Instead of focusing on government as something that holds people back and gets in the

way of things they want to do, this perspective allows us see how practices of government give shape to things in ways that can be both restraining and enabling. Government is productive in two senses. First, to govern is not only to act upon subjects, but also to attempt to produce particular kinds of subjects. Foucault mentions two meanings of the word subject: being the subject of another person's control (as in the King's subject), and being a subject as in possessing a consciousness and self-awareness (1982, p. 781). Government produces both types of subjects. It produces people who are subjected to control, and it shapes people's sense of self.

Government is not only exercised to produce obedient subjects, but healthy, reproductive, happy subjects, etc. In her book *The Will to Empower* (1999), Barbara Cruikshank writes about the attempts to create active citizens out of welfare dependent individuals. She sees these attempts as an expression of a will to empower in order to help people take control over their own lives. Although the objective is to empower, to help people govern themselves, these attempts are also acts of government trying to shape people according to a normative idea about the ideal democratic citizen. Tania Murray Li tells a similar story in her book *The Will to Improve* (2007), about how international development agencies that are seeking ways to reduce corruption, target the behaviour or local populations in order to turn them into particular kinds of democratic subjects who will hold their governments accountable. EU state aid policy might seem far removed from these examples of policies directed towards shaping the behaviour of individuals, but in a similar way, it can be seen as an instrument for producing a particular kind of subject. Only this time it is the member states' governments that are the subjects which state aid policy is striving to shape. Not according to a norm of citizenship or democracy, but according to a norm of competition². As I argue in this book, state aid policy can be seen as an instrument for shaping national governments into particular kinds of subjects who will make rational economic decisions by respecting free market competition.

² A relevant question is whether it is appropriate to speak of governments or states as "subjects". I find that the term is warranted for the purposes of this study since national governments *are* the subjects of state aid policy, as in being subjected to it. Also, people in government are likely, to some extent, to engage in self-reflection on how to act in their roles as government representatives. It is therefore possible to study how the Commission tries to govern the member states by acting on the self-perception of national governments (see Haahr, 2004 for a similar argument).

Secondly, government does not only produce subjects, but also a particular way of seeing the world. To govern is not only to make a claim about how things should be, but also to make a claim about how things are: what exists and what the nature is of the things that exist. As argued by Rose (1999), government can be viewed as a matter of boundary drawing – of identifying domains with specific limits and particular characteristics such as the society, market, nation state or civil society. Programmes of government such as policies, plans or legislation, creates categories that “cut” reality in new ways – that draws lines of visibility that produce a new way of seeing. From this perspective, state aid policy is viewed not only as an attempt to govern state aid, but also as a claim that there is such a thing as “state aid” in the first place, with a specific nature.

Government is a problematizing rather than problem-solving activity

Government is usually seen as a practice of problem solving – as the response to already existing problems such as unemployment, alcoholism, or tax evasion. The third theoretical assumption is that government is a practice of *problematization* (Rose & Miller, 1992; Dean, 2010). To see government instead as a problematizing activity is to take seriously the notion that problems are not just “out there” waiting to be solved. Problems only appear when identified according to some normative vision about how things ought to be. There are no objective problem definitions, meaning that power does not enter at the point of proposing solutions, but at the point of identifying something as a problem in the first place. In other words, government starts already when a problem is defined.

From this perspective, problems are defined *within* practices of government, rather than existing as external entities that need to be addressed (Bacchi, 2009, p. x). This is not to say that problems do not exist until targeted by some government intervention. Poverty, disease, homelessness etc. are very real in the sense of being experienced by people. But in order to act on these problems, governments must not only define what the problem is, but why it is a problem, what caused it and how it can be solved. For example, policies aiming to reduce the number of abortions must give reason for why a high number of abortions is a problem, what leads to a high number of abortions and why this situation can and should be solved by government intervention.

Therefore, identifying something as a problem not only entails assumptions about how things should *be*, but also assumptions about how things *are*. By

acting on certain problem definitions, government defines categories of people or things as having certain characteristics and makes assumptions about causal relationships. In this way, government plays an active role in shaping the problems that it attempts to solve.

Government is seen as a depoliticizing rather than political activity

Government is normally perceived as synonymous with politics: as the carrying out of political objectives and plans, or as a political activity. The final theoretical assumption is that government is a practice of *depoliticisation*. Before moving on to explain this statement, I just want to acknowledge that dealing with the meaning of government and politics is bound to cause some confusion because we tend to have different conceptions about how they should be defined. Depending on the argument one is trying to make, it can be important to claim that, for example, administration or management are also political in nature. The following account should therefore be read as *one* perspective on the meaning of government and politics that allows us to notice particular things.

In order to govern, the field of possible action must be structured so that other problem definitions are closed off. As Sara Kalm (2008) has pointed out, the notion of problematisation has a double-sided nature since it suggests both an element of rupture and normalization. On the one hand, problematisation signifies a moment in which the taken-for-granted order of things is questioned. As Foucault writes, when a previously accepted set of practices is identified as a problem it “raises discussion and debate, incites new reactions, and induces a crisis in the previously silent behaviour, habits, practices, and institutions” (1983/2001, p. 74). In this way, problematisations rupture the stable order of things. But on the other hand, problematisations also entail a process of normalization. To govern is not only to formulate problems but also to impose solutions, which means that problems must be formulated in a way that makes them appear to be amendable by government. As Li points out, “the identification of a problem is intimately linked to the availability of a solution” (2007, p. 7). From this follows that government is both a moment when a given practice is opened up for questioning and a process whereby this issue gets “re-accommodated as manageable within the existing framework of categories and techniques” (Kalm, 2008, p. 82). To sum up, government can be described as an opening up in order to close down.

Following Li (2007) I therefore make an analytical distinction between the practice of government and the practice of politics. Government is seen as an attempt to close off alternatives in order to shape behaviour in a particular direction. Politics on the other hand, is understood as an attempt to challenge current ways of thinking and acting by identifying alternative problem definitions that draws on alternative knowledge.

Li calls this practice, where political questions are reposed as technical problems to be solved by experts, for “rendering technical” (Li, 2007, p. 7). As a consequence of the practice of rendering technical, a boundary is created between those who know and those who are governed: “between those who are positioned as trustees, with the capacity to diagnose deficiencies in others, and those who are subject to expert direction” (Ibid.). Even if the objective of government is to empower subjects to govern themselves, it is assumed that those who govern have some kind of expertise in behaving as an ideal citizen. An assumption which, in turn, serves to legitimize government intervention (Cruikshank, 1999).

Li differentiates between practices of governing that render issues technical, and practices of politics that she views as “the expression, in word or deed, of a critical challenge” (2007, p. 12). Government is thus seen as a practice in which an open field of possibilities is narrowed down, and the chosen way forward is presented as the rational response to a given problem. Importantly, this move is rarely completed. The political dimension is always present as a challenge to government. Governing can therefore be seen as a continuous, but never fully successful, attempt to turn politics into management.

To clarify my understanding of the relationship between politics and government, it can be compared to the distinction made by Chantal Mouffe between *politics* and the *political*. She defines politics as the “practices and institutions through which an order is created”, while the political refers to a dimension of antagonism that is ever present as the possibility of challenging the current order (Mouffe, 2005, p. 9, 17). I share Mouffe’s assumption that every social order is political in the sense that everything could always be otherwise. But what she describes as politics, I term government. I see government as the practice of ordering, and politics as the practice of questioning this order, or attempts at ordering.

This means that my use of the concept of depoliticisation differs from some other uses of the term. Some authors view depoliticisation as a political

strategy in itself. Burnham (2001) has described depoliticisation as a political strategy deployed in the economic policies of the Blair government. Others describe depoliticisation as something particular to *contemporary* forms of government. In a special issue on the topic of depoliticisation in *Policy and Politics*, Flinders and Wood describe depoliticisation as the “dominant form of statecraft in the twenty-first century” (2014, p. 135).

According to my definition of government, depoliticisation is a strategy of all government practices. I agree with Hay, Fawcett and Marsh, all in the same special issue, that we should be cautious when depicting depoliticisation as something novel, and instead view it as a strategy that has always been a part of government practices. What might be considered new, as Hay points out, is the *form* that depoliticisation takes today (2014, p. 300). The strategies used to close down alternative views and opinions in order to govern people in a particular direction, will differ depending on time and context.

I should clarify that, from this perspective on politics and government, depoliticisation is not necessarily a bad thing. There are many ways that we are governed that we perhaps would not wish to contest. For example, I would not want the right to abortion or same-sex marriage to be politicised on the grounds that these rights should be removed. Too much politicisation can also be a negative thing if it prevents parties from coming to an agreement with each other. My point is that the question of whether or not depoliticisation is a problem in a specific case is a normative one.

Summary: the anti-politics machine

In a study of development programmes in Lesotho, James Fergusson noted how the actions of development agencies, while constantly failing to deliver upon their promises of economic development, all seemed to produce a similar kind of outcome: an expansion of bureaucratic state power and a depoliticisation of political conflicts. This led him to describe the development apparatus as an “anti-politics machine” which constantly reposes political questions of land, resources or wages, as technical problems that can be solved by development-experts (Fergusson, 1994).

The perspective that I have presented here allows us to see government as leading rather than coercing, productive rather than restrictive, problematizing rather than problem solving, and depoliticising rather than political. Government is a process of leading in a particular direction, by

presenting problems in ways that make them appear to be amendable by government intervention. To support the claim that government can solve a particular problem, like the distortion of competition, it is necessary to refer to some form of knowledge which can legitimise a separation between the rulers (those who know) and the ruled (those who have to be taught). I have suggested that we view the practice of government as an attempt to turn politics into management by closing off alternative problem definitions in order to lead in a particular direction. From this perspective, the anti-politics machine seems not only as an appropriate metaphor for the government of development projects, but for government in general.

Tools of analysis

How do we bring this perspective on government into an empirical study of government practices? In order to study how government starts already in the problem definition, and how it shapes the subjects that it targets, we need to find analytical tools that direct our attention to the relationship between knowledge and power. Mainly inspired by Rose and Miller (1992) I have chosen to investigate state aid regulation in terms of its *rationality* and its *technologies*.

Why rationalities and technologies? Discourse analysis, narrative analysis and framing analysis also provide conceptual tools for studying the relationship between ideas and government interventions. One could probably conduct a similar study by using any of these concepts, instead. However, I was drawn to the concepts of rationalities and technologies because of the strong associative links to the relationship between knowledge and power, as will be further developed in the following sections.

Rationalities of government

If government is about identifying situations as problematic, on the one hand, and proposing technical solutions, on the other, then a *rationality of government* can be seen as the tie that binds problems and solutions together. A dictionary definition of reason and rationality provides the following meanings:

reason \ˈrē-zəʊn\ noun 1: a statement or fact that explains why something is the way it is, why someone does, thinks, or says something, or why someone behaves a certain way 2: a fact, condition, or situation that makes it proper or appropriate to do something, feel something, etc.

rationality \,ra-shəʊ-ˈna-ləʊ-teɪ\ noun 1: the quality or state of being rational 2: the quality or state of being agreeable to reason: reasonableness 3: a rational opinion, belief, or practice —usually used in plural

As is shown, there are two common definitions of reason. According to the first, reason is what we give as an explanation for why we behave as we do: “a statement or fact that explains why someone behaves in a certain way”. According to the second definition reason is judged externally, by a “fact, condition or situation that makes it proper or appropriate to do something”. This can be seen as a tension between a subjective and an objective definition of reason. This tension is reflected in philosophical debates between those who understand reason as an instrument for arriving at truths that can reveal, or be used against, power, and those who see it as a “camouflage” for power (Townley, 2008, p. 8).

In order to govern somebody’s behaviour towards a certain objective you need to provide reasons to justify your actions. In other words, to govern is to exercise a particular rationality – a certain way of reasoning that makes government seem like the “right manner of disposing things” (Foucault, 1991, p. 95). As Townley explains:

Reasons must be given for decisions taken, policies adopted, and power exercised. They may not be adequate, well thought out, based on viable analyses, believed or credible, but they must be offered. (...) To fail to offer reasons is to coerce. It is the exercise of overt power and the failure of authority. For authority to be granted, as opposed to power being exercised, engagement has to be based on reason. (Townley, 2008, p. 4)

But in order to be perceived as “rational”, government cannot be based on just any kind of reasoning. In order to appear rational, government must draw on available and commonly accepted standards of knowledge. Such knowledge can be anything from scientific theories, to religious dogma or tradition. The kind of knowledge that is accepted as being “rational” grounds for government will vary depending on context.

The purpose of using the term rationality in this context is not to compare practices of government to any particular standard of reason - to judge

whether a particular way of governing is rational or not (Foucault, 1981, p. 226). It is used in an analytical sense to investigate *what kind* of rationality is exercised in practices of government. Borrowing a formulation from Bent Flyvbjerg we can ask ourselves “what governmental rationalities are at play when those who govern govern?” (1998, p. 6) Instead of asking whether government is rational or not, the interesting question is how it has become possible for government to appear to be rational? Following Foucault, the purpose is to understand how power and knowledge work together to construct what is seen as rational truths while marginalising alternative knowledges/truths as “irrational” (Lilja, Baaz & Vinthagen, 2013, p. 210). Practices of government draw upon established forms of knowledge, and, in turn, reconfirm their status as truths or common sense. As Lemke has described the relationship between political rationality and knowledge:

(A) political rationality is not pure, neutral knowledge that simply “represents” the governed reality. It is not an exterior instance, but an element of government itself which helps to create a discursive field in which exercising power is “rational.” (Lemke, 2010, p. 55)

Mitchell Dean defines a rationality of government as “any form of thinking which strives to be relatively clear, systematic and explicit about aspects of ‘external’ or ‘internal’ existence, about how things *are* and how they *ought to be*.” (2010, p. 18). Nikolas Rose and Peter Miller use the term *political rationality* which they describe as consisting of three dimensions:

- A *moral* dimension that holds ideas and principles about what the fitting duties of government should be, such as the achievement of justice, freedom, empowerment or economic growth. Related to this are norms regarding the appropriate limits of government, and how power should be distributed between different types of authorities.
- An *epistemological* dimension that refers to the way that moral assumptions are formulated in relation to some account of the objects or persons over whom government is to be exercised, such as the market, environment, the unemployed or globalisation.
- An *idiomatic/discursive* dimension makes it possible to think and speak of something in a way that makes it possible to govern. Language is described as “a kind of intellectual machinery or

apparatus for rendering reality thinkable in such a way that it is amenable to political deliberations” (Rose & Miller, 1992, p. 179).

I will use Rose and Miller’s definition while making two important changes. First, because of the theoretical distinction I make in this study between politics and government, I have chosen to use the term rationalities of government, or governmental rationalities, instead of political rationality (see also Dean, 2010). Secondly, in order to bring clearer focus to the relationship between claims about how things *should be* and assumptions about how things *are*, I define a rationality of government as consisting of the following three dimensions.

- A *moral dimension*: containing claims about how things should be, and who should make it so.
- An *ontological dimension*: containing claims about what exists and the nature of what exists.
- An *epistemological dimension*: containing claims about what kind of knowledge we can rely on to know what exists.

These three dimensions will be used as analytical tools to investigate the rationality of government in neoliberal thought and state aid policy respectively (Chapters 3 and 4).

Technologies of government

technology \tek-’nä-lə-jē\ noun 1 a : the practical application of knowledge especially in a particular area b : a capability given by the practical application of knowledge 2: a manner of accomplishing a task especially using technical processes, methods, or knowledge 3: the specialized aspects of a particular field of endeavour <educational technology>

As stated by Rose, “thought becomes governmental to the extent that it becomes technical” (Rose 1999, p. 51). It needs to attach itself to a technology for its realisation. The term *technologies of government* can thus be defined as “the practices and devices through which political rationalities are operationalized and implemented in actual governance programmes and activities” (Merlingen, 2011, p. 153). In this study, technology refers not only to the use of particular technical inventions, such as surveillance cameras or fingerprint recognition sensors, but also in a broader sense to any

of the “programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions” (Rose & Miller, 1992, p. 175).

I think of technology as a useful metaphor for speaking about the means used to govern because, just like the concept of rationality, it directs attention to the relationship between power and knowledge. As the dictionary definition above illustrates, technology can refer to the “practical application of knowledge” in a specific area in order to “accomplish a task” or to produce a certain “capability”. As such, rationalities can be viewed as forms of knowledge that are given “practical application” through the use of particular technologies of government.

This does not mean that we can make a clear-cut division between thought and technology (Walters, 2012, p. 63). Instead, the relationship between governmental rationalities and technologies should be understood as mutually constitutive. Technologies are shaped by rationalities in the sense that particular means of government are born from certain ways of thinking. In other words, the “how” of government is dependent on the “why” and “what”. But the relationship also works the other way around, meaning that rationalities are in turn shaped by the use of particular technologies. The availability of technical means limits what it is possible to know and therefore, to govern (Dean, 2010, p. 42). For example, to govern the “market” it is necessary to find technologies for gathering knowledge about how the market works, such as statistics, economic models and computer programs. In this way, technologies serve to render things *visible* so that they can be subjected to government.

This relationship between government, technology and visibility has been addressed by James C. Scott in his influential book *Seeing Like a State*. In it, the expansion of the modern state is described as dependent on the development of particular technologies for gathering information about people and things so that they can be rendered *visible* and thereby *governable*. For example, before the introduction of a standardised metric system, a “Babel” of different local standards of measurements existed, which made it difficult for government officials to collect facts about things like harvests and prices. The lack of a “clear picture” made it difficult to control these processes in order to, for example, properly tax them (Scott, 1998, pp. 29-31). The metric system can thus be seen as a technology of government which created a standardised measurement that made it possible

to collect information which could then be compiled and compared. But, as is also emphasised by Scott, such technologies bring not only visibility, but also hides things from view. While local measurement standards could be defined according to local needs, for example to suit different goods and purposes, the standardised metric system made such local adaptation impossible. Thus, the technologies used in order to “see like a state” bring some things into clearer relief, while ignoring “anything lying outside its sharply defined field of vision” (Scott, 1998, p. 47). The lesson learned from Scott is that a technology of government should not be understood as an instrument for “revealing” what is already there, but as a lens that allows us to see certain things while omitting others. Technologies of government thus give shape to what they appear to reveal. As expressed by Rose and Miller, technologies of government create knowledge about objects of government in ways that make them governable:

Knowing an object in such a way that it can be governed is more than a purely speculative activity: it requires the invention of procedures of notation, ways of collecting and presenting statistics, the transportation of these to centres where calculations and judgements can be made and so forth. It is through such procedures of inscription that the diverse domains of 'governmentality' are made up, that 'objects' such as the economy, the enterprise, the social field and the family are rendered in a particular conceptual form and made amenable to intervention and regulation. (Rose & Miller, 1992, p. 5)

How does one identify a technology of government? Dean, borrowing from Foucault, defines a technology of government as the “regular application of some form of systematised knowledge” (Dean, 1996, p. 59). This definition is broad enough to be able to identify tools of government where we might not have searched before, allowing us to look beyond legislations, rules and policies to see how government is exercised through, for example, dialogue, benchmarking, opinion polls, maps, or architecture. At the same time the requirement that it must be regularly applied and systematised keeps us from labelling anything as a technology of government. This concept will be used in Chapter 5 to identify the technologies used to render state aid visible and governable.

Method and material

In the last section of this chapter I discuss the methodology, methods and material of this dissertation.

Re-thinking, re-problematizing

I have described the over-arching aim of this dissertation as an attempt to re-think state aid policy. In this sense, this is a critical study that sets out to question that which is taken-for-granted in order to point towards possible alternatives. An important element in such research is the ability to observe social phenomena in a different light than what is cast by dominant categories and distinctions (Alvesson & Deetz, 2000, p. 185). What method of research allows me to claim that I have succeeded in such a re-thinking? Attempting to question the taken-for-granted requires some kind of technique for creating a distance between the researcher and the object of study that makes it possible to approach the familiar and self-evident as something new and strange.

While performing this study, I quickly noticed that it is difficult to think and write about state aid policy without becoming sucked into the conceptual world of competition regulation. The language it comes with is filled with presumptions about the relationship between state and market. For example, the terms “free competition” and “free markets” are constantly contrasted with state intervention, regulation and planning. Also, as will be discussed further in the following chapter, to talk about “distortions” of competition projects the image that this is a self-regulating process which can be disrupted from its natural course. This discourse constantly reproduces the perception that the state and the market are distinct spheres of life, thus exaggerating the independence of political and economic power (Hearn, 2011, pp. 205-6). A challenge for my research project has therefore been to analyse the ideas inherent in state aid policy, while at the same time avoid reproducing them.

My method for doing this has consisted of starting from a theoretical perspective on government that allows me to use analytical concepts that are foreign to the policy discourse itself. These concepts have been my tools for creating that necessary distance between myself and the object of my study.

Instead of talking about the content of state aid policy in terms of its stated goals and objectives, I have approached it as an expression of neoliberal rationality. Rather than studying the effects of state aid policy in terms of “state intervention” and “free competition”, I have studied the effects of state aid policy on how we *think about* state intervention and free competition. Instead of talking about the means used by the Commission to govern the member states in terms of the official policy language of regulations, communications, case law etc., I have used the broader term of technologies of government. This has allowed me to see how government is exercised through other means, such as notification forms, evaluations, and statistics.

My method for re-thinking state aid policy has consisted of approaching it from a theoretical perspective on government that studies problematisations rather than problems. I have just described government as a problematizing activity in which problems are defined in a way that makes a particular way of governing seem rational. Governmentality studies deal with problematisations in two respects. First, it is the object of analysis: governmentality studies seek to identify the problematisations to which governmental programmes, strategies and tactics, have posed themselves as solutions (Rose, 1999 p. 58). Secondly, the research approach can itself be described as an act of problematisation. By attempting to problematize current problematisation, the researcher can be said to engage in a *re*-problematisation (Burchell, 1996, p. 31). Thus problematisation can be described as a “mode of inquiry”, where the researcher identifies problematisations as *problematic* in order to point towards alternative ways of thinking and being (Lövbrand & Stripple, 2015, p.101).

Research, like government, starts with the identification of a problem. And, in line with the theoretical assumptions of this dissertation, problem definitions are never objective, but always political. This research project grew out of my own experience of a discrepancy between my idea of what a democratic political system should look like, and how it actually seemed to function in the case of state aid regulation. The neoliberal thinkers that I cite in this study saw the role of the state as upholding the “rules of the game” which allow everyone to compete on equal terms. I see the role of the state as achieving political objectives that have been established through democratic processes. Such objectives may include interfering with the outcome of the competitive game through the redistribution of resources. A society in which democratic autonomy is limited with reference to the need

to respect competition is therefore, in my mind, a less democratic society. This is especially true when decisions about what is good and bad for competition are largely left to lawyers and economists, rather than politicians. This perspective has led me to see state aid policy as a particular problem of democracy, politics and power rather than as a response to the problem of competition.

Asking questions to texts

This study is based mainly on three types of material: books and articles by neoliberal thinkers, policy documents, government reports, and interest group statements. Chapter 3 on neoliberalism is based on literature by, and about, neoliberal thinkers, together with a broader literature on the concept of competition. Chapters 4 and 5 on state aid policy are based on a wide range of policy documents from the Commission. Besides Commission regulations, communications, and notices, I have also included speeches by the Commissioners, text from the website of DG Competition, press releases, FAQs, policy briefings and different kinds of reports. Chapter 6 on politics adds to this list, interest group statements, Swedish government reports, and newspaper articles.

These different types of material have all been approached in a similar way. Carol Bacchi has described the method for policy analysis used in governmentality studies as asking particular kinds of questions to policy texts, with the purpose of bringing forward the assumptions that make a particular problem representation seem “rational”. As argued by Bacchi, by looking at the way problems are represented “we can identify specific logics/rationalities of governance (styles of problematisations) at work and put them under critical scrutiny.” (Bacchi, 2009, p. 154)

Bacchi identifies six questions that can be used to this end (2009):

1. What is the problem represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the ‘problem’? (what makes it possible to frame the problem in the way that is done?)
3. How has this representation of the ‘problem’ come about?

4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5. What effects are produced by this representation of the 'problem'?
6. How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

These questions should not be viewed as a rigid analytical grid for text analysis, but as something that has been in the back of my mind constantly while going through my material. Besides this, the analysis has been guided by my theoretical understanding of a rationality of government, meaning that I have read my material looking for claims about what should be done (the moral dimension), what assumptions about the nature of things these claims are based on (ontological dimension), and what form of knowledge is assumed to tell the "truth" about how to get to the desired objective (epistemological dimension).

The way that I have chosen to conduct this study, the theories that I have chosen and the method for analysing my material, have inevitably shaped the account that will be provided in the following chapters. I will return to reflect on how the research process has shaped the conclusions of this study in the last chapter of this dissertation, Chapter 7.

3 Neoliberalism

The purpose of this chapter is to explain what I understand as a neoliberal rationality of government. This account draws heavily on Foucault's lectures on neoliberalism from 1979 and recent literature on neoliberalism, mainly by Dardot and Laval (2014), Davies (2014), Peck (2010a) and Brown (2015). It also builds on the writings of neoliberal thinkers such as Friedrich Hayek, Milton Friedman, Frank Knight, and Joseph Stigler, and writers associated with the German, Ordoliberal, school of neoliberalism, such as Walter Eucken and Wilhelm Röpke.

This chapter consists of three main parts. The first deals with the concept of competition itself with the purpose of placing neoliberal thought in a broader and historical context. The second deals with neoliberalism as a political project, in order to better understand the form which neoliberalism has taken today. The last, and most important section for the purposes of this dissertation, explores neoliberalism as a rationality of government in its moral, ontological and epistemological dimensions.

Competition

Competition, is typically defined along the lines of "a peaceful struggle for scarce goods" (Werron, 2013, see also Weber, 1922/1978, p. 38). This definition tells us little about the extremely different reactions the notion of competition can evoke in people. Consider the two quotes below from the beginning of the 20th century, where competition is described in such opposing terms as *war* and *love*:

(F)ar from being a good thing – much less a sacred thing – (competition) is as disastrous to the material advancement of the community as war, and disastrous in very much the same manner – in appalling waste of time, effort, money, and life, for competition is war, and "war is hell," as General Sherman said.(...) (F)ar from promoting progress, competition stays and hinders; it generates the bitterness, the jealousy, the distrust that disintegrate families, partnerships, classes, states, and nations." (Eddy, 1912, pp. 23,26)

(A)ll (the) negative entries in the social balance sheet of competition pale beside the incredible synthetic power of the fact that competition in society is competition for human beings, a struggle for applause and attention, for acceptance and devotion of every kind, a struggle of the few to gain the many as much as of the many to gain the few; in short, a web of thousands of sociological threads brought about through concentrating on the awareness of the wishes, feelings, and thoughts of fellow humans (...) Countless times (competition) achieves what normally only love can accomplish: uncovering the innermost wishes of another, even before he himself has become conscious of them. (Simmel, 1903/2008, p. 962)

Competition can thus be understood both as a *disintegrative* force which turns people against each other, as well as an *integrative* force which creates a "web of thousands of sociological threads" that keeps people together. This duality is characteristic of our everyday understanding of competition. We view competition as both something that brings out the *worst* in people by, rewarding selfish and ruthless behaviour, and as something that brings out the *best* in people by rewarding hard work and talent. We associate competition both with *coercion*, as a force under which we struggle, as well as with *freedom*, as the opportunity to compete for the good things in life instead of being forced to remain in our place. Furthermore, competition is associated with *innovation*, by creating incentives for creative thinking in order to get ahead, but it has also been associated with *imitation* by creating pressure to conform to current norms and standards. All in all, our everyday understanding of competition is clearly polarized and complex, holding both positive and negative connotations.

Stepping into the realm of contemporary political discourse, this complexity suddenly disappears as the negative connotations are dropped and competition is presented as something inherently good. Competition is described as a win-win solution to political problems by bringing about lower prices, higher quality, greater choice, more innovation, less

corruption, and greater equality. Politicians from both the left and right tend to support this view of competition, even if they might do so for different reasons. Historically, competition has been associated with liberal objectives of reducing government intervention and increasing freedom of choice. But it can also be associated with traditional social democratic objectives such as full employment and a more equal distribution of resources. For example, a 2000 proposal for a new competition policy by the Swedish Social Democratic government, suggested that competition can lead to less unemployment by keeping wages down, and to greater integration and gender equality by making it easier for new groups, such as women and immigrants, to enter new markets as entrepreneurs. The proposal also claimed that more competition would lead to greater economic equality through a more equal distribution of profits between companies and of wages between workers (Regeringen, 2000, pp. 25-26).

Philip Cerny argued already in 1990 that we are witnessing a transformation from the Welfare State to the "Competition State", where the main role of the state has become the promotion of economic competitiveness and competition (Cerny, 1990). Today, governments act to introduce competition in new fields, to support and protect competition. Furthermore, it has become common practice to frame policy objectives in competitive terms. For example, few people reacted to the way that the leader of the Swedish Social Democratic Party, Stefan Löfven, framed his labour policy vision as "reaching the lowest unemployment rate in Europe by 2020" in a speech on May 1st, the day of international labour solidarity. As Buch-Hansen and Wigger have argued:

Never before in the history of mankind has faith in competition enjoyed such an exalted, almost religious, standing and never before have more dimensions of social reality been immersed with its logic. (...) Exposed to continuous comparative evaluation, contemporary capitalist societies have transformed into true competition societies. (Buch-Hansen & Wigger, 2011, p. 1).

As Torbjörn Lundqvist points out there is a utopian element to what he describes as a "competition ideology". He argues that it is the tendency to treat competition as an idea built on rationality and efficiency, while failing to see its ideological and utopian elements, which have led to it being seen as a cure to so many of society's problems (2003, pp. 186-186). In this dissertation, this "competition ideology" is viewed as an expression of a

neoliberal rationality of government. But the belief in positive effects of market competition has a much longer history than neoliberal thought. Because of its close connection to the notion of “free markets”, it is at least as old as the field of classical economics. In order to understand how neoliberal rationality has become dominant it is therefore necessary to delve deeper into the conceptual history of competition in order to understand how it has become possible to elevate an everyday understanding of competitive behaviour to an over-arching principle for government.

From market behaviour, to ordering principle, to scientific model

Throughout history, attitudes towards competition have shifted, but we are rarely reminded of past discussions. According to Martin: “The debate on competition and its limits (...) has a phoenix-like quality. It periodically flares up, burns itself out and rises again, but largely without memory, unconscious of its previous incarnations” (2004, p. 16). This lack of historical perspective is reflected in academic research where there has been surprisingly little research done on the conceptual history of competition, despite its centrality in economic and political thought. The most in-depth and systematic study that I have come across is an Oxford doctoral dissertation from 1975 by Kenneth G. Dennis, titled *Competition in the History of Economic Thought*. It charts the history of competition in European economic thinking from the seventeenth to the twentieth century, based on a wide range of material including economic and philosophical literature as well as political pamphlets. This dissertation is interesting for many reasons, but for the purposes of this book, mainly for its description of how competition arrived at being understood as something inherently positive in economic thought.

According to Dennis, the concept of competition first appeared in economic literature as a trivial term, just mentioned in passing as a description of behaviour on the market, without being given any particular weight or importance. It was first in the mid-18th century that the topic was addressed more deliberately and systematically in economic texts (Dennis, 1975, p. 1). As economics developed into an academic discipline, competition came to gain a more prominent position as central to theories of how prices are formed on the market.

Competition was an important concept for the French group of economists known as the *physicorats*. François Quesnay, one of its leading figures, wrote in 1767 in his *General Maxims of Political Economy*: “Let us maintain complete liberty of commerce; for the policy in domestic and foreign trade that is the surest, the most appropriate, the most profitable to the nation and to the state consists in complete freedom of competition.”(Quoted in Harcourt, 2011, p. 78). But the idea of competition as central to the functioning of markets came to be most famously formulated by Adam Smith in *The Wealth of Nations* 1776. Competition and self-interest were assumed to be the two main forces of the “invisible hand” of the market, which guides people’s behaviour in ways that produce unintentional and positive outcomes for everyone.

According to Dennis, this notion of competition as fundamental to the functioning of markets developed gradually, with every author seemingly stating what was already commonly known, and nobody claiming credit for its “discovery”. As he argues:

The significance of competition as a concept in economic thought was neither suddenly discovered or immediately appreciated; nor did the word competition itself all of a sudden spring into use in economic theory. Both processes, the conceptual and the linguistic, took many decades and even centuries to unfold together, and indeed are still evolving to this day. (Dennis 1975, p. 1)

According to Dennis, the genius of Adam Smith did therefore not lay in his ability to invent new ideas, but in his ability to synthesise the preceding decades of economic thought (1975, p. 98). Smith built upon the idea of competition as an *equilibrating* process that regulates and facilitates market exchange between buyers and sellers in a way that leads to efficient use of resources (Ibid., p. viii). From this point onwards the concept of competition began to “harden” into a scientific and technical term as it became increasingly understood in terms of a natural law or system (Ibid., , p. 131). In other words, rather than seeing competition as a form of behaviour, it started to be viewed as an ordering principle that *structures* behaviour.

Furthermore, according to Dennis, it was also in the mid-18th century that the ideas of freedom and competition, which had gradually begun to be associated with each other, became so fused together that, by the 1760s,

people spoke of “free competition” rather than “freedom *and* competition”. This became the standard mode of expression even though, as Dennis points out, liberal theorists “rarely if ever claimed outright that competition was solely freeing (rather than constraining)” (Dennis, 1975, pp.76-77). The phrase “free competition” has been contributing to the positive connotations of the concept of competition ever since.

As competition became elevated to this “law-like status as a beneficent regulator of economic affairs” it soon became the target for a wide variety of critics from both socialist and conservative camps during the 19th century. These critics argued that competition aggravated inequalities and, far from leading to equilibrium, had a de-stabilising effect on society. Instead of seizing upon the tensions and dualities inherent in the concept of competition itself, the critics dismissed the idea of competition altogether and presented cooperation as its alternative. This led to a polarization of the debate in which the opposing camps saw competition either as something entirely good or entirely evil. As a consequence, the understanding of competition in liberal economic thought became less nuanced and morphed into “a larger-than-life symbol” filled with “enormous emotive significance” (Dennis, 1975, pp. 132-134). For example, the French liberal economist Frédéric Bastiat described competition in 1850 as the “most progressive, the most egalitarian the most universally levelling of all the laws to which Providence has entrusted the progress of human society” (quoted in Dennis, 1975, p. 170).

The latter half of the 19th century saw the advent of neoclassical economic theory and an increasing use of formal models. Neoclassical theorists sought to formulate a more scientific and rigorous theory of competition which could bring economics closer to the ideal of an exact science (Dennis, 1975, p. 178; see also Budzinski, 2008). This resulted in the theory of “perfect competition”, developed by economic scholars such as Cournot, Jevons, Walras and Edgeworth. The theory of perfect competition describes an idealised market structure in which resources are allocated as efficiently as possible. Although the theory has been debated, refined and criticised over the years (see Stigler, 1957) a basic textbook definition of perfect competition includes three necessary conditions: the number of competitors must be sufficiently high so that no single competitor can affect the market price, the industry output must be a standardized product (in order to be regarded as equivalent by the consumers), and there has to be free entry and exit to the market for new competitors (Krugman & Wells, 2005).

Dennis argues that, starting in the 1860s, the principle of competition was “supported less and less by a direct intuitive appeal to empirical evidence and more and more by the resort to abstraction and the logical rigour of mathematical theory” (Dennis, 1975, p. ix). According to Davies, the theory of perfect competition further chipped away at the nuances and ambiguities inherent to the concept of competition. This was necessary in order to tailor the concept of competition to the “severe requirements of simplicity imposed by a rather simple form of mathematical logic” (Dennis, 1975, p. 177).

With the theory of perfect competition an important change occurred in the way that competition was perceived. As is commonly recognized within economics, the theory of perfect competition gives expression to a radically different understanding of competition than how it is normally understood (see Stigler, 1957; Friedman 1962/2002; McNulty, 1968). While competition refers to a *process of rivalry*, perfect competition describes a *state of equilibrium* where competition no longer occurs. In a situation in which there are many competitors, all competitors are so-called “price takers”, meaning that they no longer have the ability to affect prices without incurring economic loss. In such a situation there is no longer any means of getting ahead, and thereby no possibility to engage in competition. This tension between the two different meanings of competition has given cause to conflicting views between different economists, as well as between different schools of neoliberal thought, as will be discussed later in this chapter (see Budzinski 2008).

In summary, Dennis’ account of the conceptual history of competition provides us with some possible explanations as to why our contemporary belief in competition is so strong. As a concept seemingly rooted in “common sense” observations, with strong connections to liberal values, and a status as a scientific fact, it is no wonder that competition has such a prominent position in contemporary political discourse. Over time, the negative associations of competition with things like conflict, coercion or inequality, have gradually been stripped away in the process of transforming competition into a scientific concept and model. Also, the polarized debate between different ideological camps further contributed to this process.

A second purpose of this section has also been to make the point that the belief in competition has a long history and has in no way been “invented” by neoliberal thinkers. This has been argued by Tobias Werron (2015), who

suggests that we view competition as a part of a broader “social imaginary” of western society, with deep historical roots. I think that there is much to be said for such an approach, considering how the concept of competition seems to permeate not only economics, but also other fields of knowledge such as political science, sociology and biology. For example, the idea that competition leads to progress and improvement is a central assumption in Darwin’s theory of natural selection as the “survival of the fittest”. Economists in turn, often use this evolutionary conception of competition as a metaphor for describing the functions of competitive markets (see for example Neumann, 2001, p. 4). In the field of political science, the idea of competition as an organising principle can be found in theories building on Schumpeter’s definition of democracy as a competitive struggle for the people’s votes (Schumpeter, 1943/1987). Also, in the sub-field of International Relations theory, competition figures in explanations of the political and economic “superiority” of Europe as a result of competition between a plurality of states (Hall, 2010). Unlike parts of the world dominated by large empires, the competition between European states is believed to have spurred innovation and technological progress.

It seems, perhaps, as if competition is as much a part of the “modern social imaginary” of Western Europe identified by Taylor (2004), as the notion of the social contract or the public sphere. To support the impression that there is something particularly Western and liberal about this attention to competition, a comparison can be made between Darwin’s theory of natural selection, and the evolutionary theory of the Russian biologist, and anarchist, Kropotkin. In his book *Mutual Aid*, he argued that it is not individual strength and cunning which drive evolution, but the ability to cooperate with others in order to gain strength in numbers (Kropotkin, 1904, p. 6). As Todes (2009) has suggested, perhaps it is no coincidence that the British and Russian evolutionary theorists saw different things when observing nature, considering how their perspectives are likely to have been shaped by their own cultural values and experiences:

For Darwin and other leading British evolutionists, (the idea of the survival of the fittest) appealed to common sense. Living on a crowded island with a capitalist economy and highly individualist culture, struggle for existence did not seem a metaphor at all, but, rather, a simple and eloquent description of nature and society. Russians, however, lived in a very different land. Their own cultural values and experiences would lead them to reject Darwin’s Malthusian metaphor (Todes, 2009, p. 36).

Thus, there seem to be a call for conducting a genealogy of competition, which traces its meaning across different times and context. This rest of this chapter will limit itself to the role of competition in neoliberal thought.

Neoliberalism as a political project

The previous section has shown how the idea of competition as a beneficial organising principle has long historical roots. With this in mind, why insist that the contemporary discourse be distinctly neoliberal? While the belief in competition is old, I argue that the way that it is currently related to certain ideas about the state, politics and democracy should be understood as particular to neoliberal thought.

Treating neoliberalism as a rationality or discourse makes it easy to forget how it began as a political project, with particular objectives, developed in a particular historical context. The beginning of this project has been traced to a five-day conference in Paris called the Walter Lippmann Colloquium which took place on 26 August, 1938. Its purpose was to discuss Lippmann's book *An Inquiry into the Principles of the Good Society* which was presented as a manifesto for the reconstruction of liberalism (Dardot & Laval, 2013, p. 51). The book described liberalism as undergoing a crisis due to people's increasing attraction to policies of redistribution, social security, regulation and protection. While some of the participants at the conference found little to change or criticise in liberalism itself, others saw a need for reinvention: for a *neoliberalism* (Ibid., p. 56). According to these scholars, the main failure of the "old" liberalism could be found in the idea of the market as a self-regulating "natural order" which somehow exists outside and independent of the legal order. This had, in their view, turned liberals into conservatives who were instinctively suspicious of any new government intervention (Ibid., p. 60). As expressed by Lippmann:

(I)n setting up this hypothetical and non-existent realm of freedom where men worked, bought and sold goods, made contracts and owned property, the liberals became the uncritical defenders of the law which happened actually to prevail in that realm, and so the helpless apologists for all the abuses and miseries that accompanied it. Having assumed that there was no law there, but that it was a natural God-given order, they could only teach joyous acceptance or stoic resignation. Actually they were defending a system

of law compounded from juristic remnants of the past and self-regulating innovations introduced by the successful and the powerful classes in society. Moreover, having assumed away the existence of a system of man-made law governing the rights of property, contract and corporation, they could not, of course, interest themselves in the question of whether this was a good law, or of how it could be reformed or improved. The derision poured out upon the latter-day liberals as men who had become complacent is not unjustified. Through they were probably not more insensitive than other men, their minds stopped working. Their unanalysed assumption that the exchange economy was 'free', in the sense that it was outside the jurisdiction of the state, brought them up against a blank wall (...) That is why they lost the intellectual leadership of the progressive nations, and why the progressive movement turned its back on liberalism. (Lippmann, 1943, pp. 191-2, Quoted in Dardot & Laval, 2013, p. 60)

According to Lippmann, it was because liberals had become apologists for the existing order (with its structures of privileges and power) that people who were seeking a progressive politics for justice and freedom were choosing to instead turn towards socialism or communism. To correct this mistake, a reinvention of liberalism, that acknowledged the economy's dependence on social and political institutions and the need for state intervention to adapt the legal order to new changes and developments, was perceived as necessary (Dardot & Laval, 2013, pp. 56-7).

Several of the participants of the colloquium later went on to form the Mont Pelerin Society (MPS) in Switzerland in 1947, which is more commonly associated with the start of the neoliberal project (see Mirowski & Plehwe, 2009). Its founders included several prominent figures associated with neoliberal thought, such as Friedrich Hayek, Frank Knight, Ludwig von Mises, George Stigler, and Milton Friedman. The MPS picked up where the Walter Lippmann Colloquium had left off and continued to discuss how a defence of liberalism could be formulated. Its original "statement of aims" is telling regarding how the MPS understood its purpose, and is therefore quoted in its entirety.

Statement of aims

The central values of civilization are in danger. Over large stretches of the Earth's surface the essential conditions of human dignity and freedom have already disappeared. In others they are under constant menace from the development of current tendencies of policy. The position of the individual

and the voluntary group are progressively undermined by extensions of arbitrary power. Even that most precious possession of Western Man, freedom of thought and expression, is threatened by the spread of creeds which, claiming the privilege of tolerance when in the position of a minority, seek only to establish a position of power in which they can suppress and obliterate all views but their own.

The group holds that these developments have been fostered by the growth of a view of history which denies all absolute moral standards and by the growth of theories which question the desirability of the rule of law. It holds further that they have been fostered by a decline of belief in private property and the competitive market; for without the diffused power and initiative associated with these institutions it is difficult to imagine a society in which freedom may be effectively preserved.

Believing that what is essentially an ideological movement must be met by intellectual argument and the reassertion of valid ideals, the group, having made a preliminary exploration of the ground, is of the opinion that further study is desirable inter alia in regard to the following matters:

- The analysis and exploration of the nature of the present crisis so as to bring home to others its essential moral and economic origins.
- The redefinition of the functions of the state so as to distinguish more clearly between the totalitarian and the liberal order.
- Methods of re-establishing the rule of law and of assuring its development in such manner that individuals and groups are not in a position to encroach upon the freedom of others and private rights are not allowed to become a basis of predatory power.
- The possibility of establishing minimum standards by means not inimical to initiative and functioning of the market.
- Methods of combating the misuse of history for the furtherance of creeds hostile to liberty.
- The problem of the creation of an international order conducive to the safeguarding of peace and liberty and permitting the establishment of harmonious international economic relations.

The group does not aspire to conduct propaganda. It seeks to establish no meticulous and hampering orthodoxy. It aligns itself with no particular party. Its object is solely, by facilitating the exchange of views among minds inspired by certain ideals and broad conceptions held in common, to contribute to the preservation and improvement of the free society.

Mont Pelerin (Vaud), Switzerland, April 8, 1947³

The Mont Pelerin Society saw the liberal order as being threatened by political forces on the left that did not respect the rule of law and the established moral standards, and which questioned the right to private property and the benefits of the competitive market. In order to change the tide of political development, the MPS sought to create an exchange of views between likeminded people whom could “redefine the functions of the state” in order to make clearer the “difference between a totalitarian and liberal order”.

The Statement of Aims shows the deep-seated suspicion towards democracy, understood as majority rule, inherent in neoliberal thought (see Brown, 2015). It can be seen in the arguments against the exercise of “arbitrary power” which undermines the position of the individual and represses the views of minorities. The MPS feared that majority rule, if left unchecked, would lead to the spread of socialism and the destruction the market economy. As expressed by Wilhelm Röpke, once the president of the Mont Pelerin Society: “the tyranny of the masses is the worst there is. (...) When liberalism advocates democracy, it can therefore do so only on condition that democracy is hedged in by such limitations and safeguards as will prevent liberalism's being devoured by democracy” (Röpke, 1969, p. 97).

The neoliberals of the MPS therefore sought to restrict the powers of the representative institutions of democracy, while strengthening the judicial branches of the state. The goal was to establish “a government by law instead of a government by men” (Friedman, 1962/2002, p. 51). The MPS consequently set out to define principles for the proper role of the state in a liberal society, in a way that would limit the powers of representative institutions and make socialist policies impossible.

I read the objective to “redefine the functions of the state” as an ambition to develop a *rationality of government*. Following the discussion at the Walter

³ <https://www.montpelerin.org/statement-of-aims/>

Lippmann Colloquium about the need to envision an active role for the state in upholding the liberal order, some kind of principle was needed to determine the limits to state power. The challenge for the neoliberals was thus to formulate a principle that could justify the government intervention necessary for upholding the liberal order, while restricting political majorities from destroying this order. As Milton Friedman wrote in a Norwegian liberal journal in 1951:

The fundamental error in the foundations of 19th century liberalism (was that it) gave the state hardly any other task than to maintain peace, and to foresee that contracts were kept. It was a naïve ideology. It held that the state could only do harm (and that) laissez faire must be the rule. (...) A new ideology must (...) give high propriety to limiting the state's ability to intervene in the activities of the individual. At the same time, it is absolutely clear that there are truly positive functions allotted to the state. (Friedman, 1951, as quoted in Peck, 2010a, p. 3)

The principle for separating between harmful and positive functions of the state was found in the idea of competition. As Friedman continues:

(I)n place of the nineteenth century understanding that laissez faire is the means to achieve (the goal of individual freedom), neoliberalism proposes that it is competition that will lead the way (...) The state will police the system, it will establish the conditions favourable to competition and prevent monopoly, it will provide a stable monetary framework, and relieve acute poverty and distress. Citizens will be protected against the state, since there exist a free private market, and the competition will protect them from one another. (Friedman, 1951, as quoted in Peck, 2010a, p. 3)

Hayek agreed similarly to Friedman in volume one of *Law Legislation and Liberty* that the role of the state is to create the conditions for effective competition, or as he puts it “planning for competition”.

The liberal argument does not advocate leaving things just as they are; it favours making the best possible use of the forces of competition as a means of coordinating human efforts. It is based on the conviction that, where effective competition can be created, it is a better way of guiding individual efforts than any other. It emphasizes that in order to make competition work beneficially a carefully thought-out legal framework is required...(However there is no) “middle ground” between competition and central direction... Planning and competition can be combined only by planning for

competition, not by planning against competition. The planning against which all our criticism is directed is solely the planning against competition. (Hayek 1973/2005, p. 46)

Competition thus came to fill the role as a principle for separating between good and bad state intervention that the MPS sought to find.

While the political project of neoliberalism was clearly to *redefine* the role of the state rather than to *reduce* its scope, neoliberalism is often misunderstood to be anti-state. By separating the neoliberal rationality from its rhetoric, it becomes clear that, while the former supposes that a liberal market order needs to be upheld by a strong and active state, the latter projects state and market as being two separate and independent spheres. Philip Mirowski has described this as the “double-truth” of neoliberalism and argued that the neoliberals of the MPS consciously chose a different rhetoric in order to sell their ideas to a wider audience (Mirowski, 2013, p. 68). In public, they warned about the dangers of state intervention, while in private they discussed the need for state intervention to uphold the market order. The public message was boiled down to “market good, government bad”, most clearly expressed by Milton Friedman in his efforts to educate the public about the benefits of capitalism through his books and television shows (Mirowski, 2014, p. 9). The double-truth also made it possible to portray the market as a self-regulating and spontaneous order, while at the same time working hard to convince political decision-makers to create this order. Furthermore, it made it possible to argue against political planning on the grounds that the economic system is too complex for the human mind to understand or control, while presenting themselves as experts in designing the most rational economic order (Mirowski, 2013, p. 69).

According to Dardot and Laval, the “state/market opposition has been one of the main impediments to an accurate characterization of neo-liberalism” (2013, p. 5). Studying the roots of neoliberalism as a political project makes clear that the main objective was never to replace the state with markets, but to redefine the role of the state. According to Foucault the main difference between eighteenth century liberalism and twentieth century neoliberalism is that the focus of the former was to limit the domain of government to keep it *from* the market, while for the latter, it was to identify the best way to govern *for* the market (Foucault, 2008, p. 121). Neoliberalism thus propagates “a state under the supervision of the market rather than a market supervised by the state” (Ibid., 116)

Neoliberalism as a rationality of government

This dissertation approaches neoliberalism not as an ideology or political programme, but as a dominant, and generally accepted, way of reasoning about the role of government. As expressed by Read, neoliberalism has ceased to be an abstract doctrine and become a concrete way of “comprehending and transforming the present” (Read, 2009, p. 26).

The rest of this chapter is dedicated to tracing this rationality of government in neoliberal thought with the help of the analytical categories set out in Chapter 2, where a rationality of government was defined as consisting of a *moral*, *ontological* and *epistemological* dimension. These dimensions have been identified through a reading of texts written by, and about, neoliberal thinkers with the help of the analytical questions proposed by Bacchi (2009), also described in Chapter 2. More specifically, I have read these texts searching for claims made about the proper role of the state, the assumptions about the nature of things that these claims are based on, and what form of knowledge that these claims and assumptions are grounded in

Governing for the market (moral dimension)

The moral dimension contains ideas and principles about what governments should do and why. As mentioned in the previous section, neoliberalism puts forward competition as a principle for differentiating between good and bad government. The view of competition as a process that needs to be both created and respected by government makes it possible to refer to competition as both a reason to limit *and* to encourage government intervention. Foucault captured the relationship between state and market in neoliberal thought well when describing the market as a source of veridiction (truth-telling) for governmental practices (2008, p. 32). As expressed by Hayek “it is one of the chief tasks of competition to *show which plans are false*.” (Hayek, 1976/2013, p. 276). Thus, according to the neoliberal rationality of government, what separates good from bad government is not whether it serves particular values like justice or equality, but whether it functions according to the “truth” delivered by the market.

Government should uphold the “rules of the game”

The first rule of government is that it should uphold the necessary legal framework for competitive markets. Neoliberal thinkers often made use of a sports analogy to describe the market as a game and the role of government as acting as a neutral umpire who upholds the rules to prevent cheating:

The “natural” tendency is for a game to deteriorate, if the participants follow their primitive impulses without conscious exercise of moral restraint. (...)

The minimum political problem in society is that of preventing (too much!) “cheating” and unsportsmanly practice. (Knight, 1935, p. 294)

According to neoliberal reason, it is not up to the governments to decide which goods should be produced or consumed, or whether the gap of earnings should be reduced. The role of the state is to uphold the formal order and never try to pursue a particular end (Foucault, 2008, p. 172). Both because it should not (because it will lead to the suppression of the minority by the majority) and because it cannot (because it is likely to fail in achieving its objectives due to a lack of necessary knowledge).

Upholding the legal framework for functioning markets does not necessarily entail a passive role for the state. Governments must “police the system” by protecting competition from being distorted by different interest groups that seek to protect their own privileges from competitive pressures (Friedman 1951). As Friedman puts it:

These are then the basic roles of government in a free society: to provide a means whereby we can modify the rules, to mediate differences among us on the meaning of the rules, and to enforce compliance with the rules on the part of those few who would otherwise not play the game. (Friedman, 1962, p.25)

According to neoliberal rationality, political power is needed to promote competition and extend market principles but it must also be restrained. The state must be bound by law to uphold the economic order, as much as any other economic actor (Brännström, 2014, p. 185).

Government should not listen to demands for redistribution

The second rule of government follows from the first. Continuing the sports analogy, because the role of government is to uphold the rules of the game “the question of who is to win does not and cannot arise” (Knight, 1935, p. 294). The state should never intervene in the outcomes of the competitive

game by redistributing resources between groups. Redistribution distorts the incentives of the competitive process by transferring resources from the more successful to the less successful. Therefore any interference in order to change the economic relations between particular individuals or groups constitutes a threat to the competitive order (Hayek, 2013, p. 40). Prudent governments who want to increase the wealth and well-being of their subjects must therefore refrain from responding to any demands for redistribution. The role of the state is to ensure that everyone will be a winner in the long run, even if this creates losers in the short run.

We have seen that the common good in this sense is not a particular state of things but consists in an abstract order which in a free society must leave undetermined the degree to which the several particular needs will be met. The aim will have to be an order which will increase everybody's chances as much as possible – not at every moment, but only 'on the whole' and in the long run. (Hayek, 2013, p. 274)

Also, according to Eucken, a prominent representative of the *ordo-liberal* school of neoliberalism, any state that engages in redistribution on the market risks increasing its vulnerability to political pressures from different interest groups (Budzinski, 2008, p. 306.). In order to retain authority it is therefore important that the state restrict its activities to controlling the institutional framework, while refraining from getting involved in the competitive game itself.

This does not mean that the neoliberal rationality of government cannot support arguments for some form of economic support for the losers of the market game. But, as Friedman argues, such support should be provided "outside the market" so that it does not interfere with the competitive process (Friedman, 2002, p. 191). This means that governments should only provide economic support at a level which is lower than what one would be able to earn on the market in order not to distort competition by providing a social security system that is more attractive than staying in the competitive game. Hayek goes as far as to suggest that it would be "immoral" for governments to abandon the common good of free competition in order to try to create a more even distribution of resources.

Once politics becomes a tug-of-war for share in the income pie, decent government is impossible. This requires that all use of coercion to assure a certain income to particular groups (beyond a flat minimum for all who cannot earn more in the market) be outlawed as immoral and strictly anti-social. (Hayek, 2013, p. 483)

Government should complement the market but never replace it

Since it is assumed that competition is always superior to political planning, the state should leave the production of goods and services in the hands of the market as much as possible. However, neoliberal thinkers acknowledged that markets sometime fail to function efficiently. Some goods or services cannot be delivered by the market on its own, due to what economic theory refers to as “market failures”. Such failures can be caused by some inherent characteristic of the good or service itself which makes it more cost-efficient for a single producer to provide it instead of several, as in the case of roads, railroads, or electricity, for example. Or, they can arise as a result of certain services being technically difficult to limit to only to those who pay for them, such as national defence or protection against natural disasters. In these cases, the state may step in to deliver these goods and services if they are deemed important to society. But since competition is assumed to be the “best way of guiding individual efforts” the state should always try to introduce competitive mechanisms to the greatest extent possible. As argued by Hayek, just because there is a market failure it is not automatically necessary for the state to take over production completely (2013, p. 378). Its role can often be limited to collecting the necessary funds to pay for the goods or services, while leaving the actual production to private enterprises on the market. Public sector provision is always assumed to be an “inferior method” which is only acceptable when the conditions for a functioning market are missing. If technical developments or new inventive policy makes competitive markets possible, then government should cease to intervene (Ibid.).

According to neoliberal rationality, the proper role of government is therefore to fill the “gaps” that the market cannot fill on its own. The state should complement or support the market, never replace it or provide an alternative to it.

Government should shape subjects in a competitive spirit

Neoliberalism is often thought to rest on an assumption of human nature as *homo economicus*: acting as rational and self-interested agents in order to maximise their own well-being. At a closer look, neoliberal thinkers did not presume that people are rational, in the sense of recognising that it is in their own self-interest to respect free competition. On the contrary, they assumed that people, left to their own devices, will act to protect themselves from competition. Workers as well as producers are expected to seek cooperation, in the form of labour unions or cartel-like agreements, in order to keep competition from creating a downward pressure on wages and profits.

According to neoliberal thought, rational economic behaviour is not something that will appear “naturally”, but something that can be constructed by law and political institutions (Brown, 2005). As explained by Hayek:

Competition is as much of a method for breeding certain types of minds as anything else: the very cast of thinking of the great entrepreneurs would not exist but for the environment in which they developed their gifts. (Hayek, 2013, p. 414)

An important role of the state is thus to create the right kind of institutional framework that will make people behave in ways that supports the competitive order. According to neoliberal reason, first comes competition, then comes rational actors, not the other way around. Thus, it is “in general not rationality which is required to make competition work, but competition, or traditions which allow competition, which will produce rational behaviour.” (Hayek, 1979/2013, p. 414)

The role of the state is thus not only to govern peoples behaviour by enforcing the rules of the market order, but also to “breed certain types of minds” with the right values and attitudes. By creating the right kind of environment, governments can shape their subjects into seeing themselves, not as collectives with common interests, but as individual entrepreneurs who invest in their “human capital” in order to make themselves more competitive on different types of markets (Feher, 2009).

This being said, different schools of neoliberal thought had different views on the issue of where the “right” kind of values and attitudes are produced. According to the Austrian and Chicago schools, competitive markets would themselves shape subjects into rational actors. As Hayek argued,

“competition will make it necessary for people to act rationally in order to maintain themselves” (1979/2013, p. 413). Competition will reward those who act in the best way and make it necessary for the rest to copy their behaviour if they want to prevail in the competitive race.

The Ordoliberal School was closer to Christian conservatism than the other branches of neoliberal thought (Ptak, 2009). Ordoliberal thinkers viewed the market as insufficient for creating the values needed for a healthy society and emphasised that the state had an important role in protecting and spreading the values of tradition, history and continuity. Wilhelm Röpke, professor in economy and one of the founders of the German model of social market economy, was highly critical of the idea that competition alone could foster subjects who would uphold a functioning market economy. According to him, competition risks undermining itself by eroding the moral values that are necessary for the competitive market to function:

Historical liberalism (particularly the nineteenth century brand), never understood that competition is a dispensation, by no means harmless from a moral and sociological point of view; it has to be kept within bounds and watched if it is not to poison the body politic. One held, on the contrary, that a competitive market economy, based on division of labor, was an excellent moral academy which, by appealing to their self-interest, encouraged men to be pacific and decent, as well as to practice all the other civic virtues. While we know today – what could always have been known – that competition reduces the moral stamina and therefore requires moral reserves outside the market economy; at that time they were deluded enough to believe that, on the contrary, it increases the moral stock. (Röpke, 1950, p.52)

The Ordoliberals, therefore, saw it as an important function of the state to provide the social and ethical framework needed to sustain the moral values which are favourable to a capitalist economy (Bonefeld, 2012). According to Röpke (1960), the proper values and attitudes had to be protected by institutions outside the market such as the judiciary, the churches and the educational system.

These important differences aside, both neoliberal schools share a way of reasoning about the proper role of the state in terms of its effects on competition. Whether it is competition itself that will spread the right values, or institutions outside the market, both schools assume that it is the

role of the state to give shape to subjects who will act in ways that sustain the competitive market economy.

The nature of competition (ontological dimension)

Moving on to the ontological dimension: what assumptions about the nature of competition make it possible to claim that markets are more efficient than government intervention? I will argue that the idea of competition as an ordering principle relies on a definition of competition and politics as each other's opposites. As will be shown, the positive view of the nature of competition is dependent on a negative understanding of the nature of politics.

The opposite nature of competition and politics

Neoliberal thinkers express a deep scepticism of “political planning” understood as the conscious attempt to transform society according to political objectives. Politics is associated with conflict, coercion, self-interest and irrationality. Because it is assumed that people will always act to protect their own privileges, conflicts and power struggles are assumed to get in the way of making rational political decisions. And, because these conflicts of interest will make consensus on the common good impossible, it is assumed that politics will inevitably lead to the oppression of minorities by the majority. Increasing the space for politics is therefore seen as equal to increasing the space for the domination of one group over the other, leading to a suboptimal form of government both in terms of effectiveness and freedom (see Hayek 1973/2013, pp. 481–5; Friedman 1962/2002, pp. 196–202).

The nature of competition is in turn presented as the opposite to that of politics. Competitive markets are believed to function as “information processors” that are more efficient than any individual or group of individuals will ever be (Mirowsky, 2014, p. 20). Unlike politics, where decisions are based on the knowledge of a small ruling elite, the competitive process brings together information dispersed over millions of people, that no single mind, or group of people, would ever be able to collect. Hayek thus described competition as a *discovery procedure* for finding out how resources should best be distributed (2013, p. 405–407). Competitive markets are assumed to transfer knowledge between producers and

consumers about supply and demand, and reveal the “true” market price of goods and services (see Foucault, 1979/2008, p. 32). Competition is also assumed to create incentives for innovation and the quick spread of more efficient means of production, as competitors try to out-perform each other in search for profits. The outcome of all this being lower prices, higher quality, and greater wealth for society in total, than could ever be achieved by political planning (Hayek, 2013, p. 407).

Similar to the view expressed by Simmel, of competition as a process that spins “a web of thousands of sociological threads”, neoliberals saw market competition as a way to organise interactions between people without the need for politics. As expressed by Hayek, “one of the main arguments in favour of competition is that it dispenses with the need for conscious social control” (1944/2006, p. 38). Instead of some central authority deciding what to produce and how much, competitive markets allow people to pursue their own preferences, leading to what Hayek has described as a *spontaneous order* that is the end result of a multitude of individual decisions on the market (1973/2013, p.35).

The idea that it is possible to differentiate between process and form is central to neoliberal thought (Gerber, 2001, p. 61). It makes it possible to claim that an order is spontaneous, or self-regulating in nature, even though the rules that regulate this order are the result of conscious decisions and planning (see Hayek, 1973/2013, p. 44). This assumption makes it possible to claim that the competitive market order does not demand that people agree on objectives, only on the rules of the game. This differs from a “politically planned” order, which forces parties to agree on objectives, or forces the minority to bend under the will of the majority. Allowing resources to be distributed through competition instead of political decisions is therefore believed to reduce the risk of conflict and tension between groups and individuals with incompatible views. In Friedman’s words competition “reduces the strain on the social fabric by rendering conformity unnecessary with respect to any activities it encompasses.” (1962/2002, p. 24)

This view of the opposite nature of competition and politics makes it possible to associate the competitive market order with freedom: freedom from having to bend to the will of the majority and to pursue whatever objective one wishes to. But at the same time, it is clear that neoliberalism advocates a different kind of coercion: the need to acquiesce to the

competitive process. Neoliberal texts are full of a language of coercion and obedience. Take, for example, the following quote by Röpke in which he explains how the competitive order disciplines behaviour:

An economy resting on division of labor, exchange, and competition is an institution which, in spite of its occasionally highly provocative imperfections, does tend, more than any other economic system, to adjust the activities governed by individual interests to the interests of the whole community. We know the mechanism of this adjustment. The individual is forced by competition to seek his own success in serving the market, that is, the consumer. Obedience to the market ruled by free prices is rewarded by profit, just as disobedience is punished by loss and eventual bankruptcy. The profits and losses of economic activity, calculated as precisely and correctly as possible by the methods of business economics, are thus at the same time the indispensable guide to a rational economy as a whole. Collectivist economies, of whatever degree of collectivism, try in vain to replace this guidance by planning. (Röpke, 1960, p. 122)

Neoliberalism views competition as a disciplining force that will keep any one group from dominating any other. Companies and labour unions will be kept from growing too powerful by being exposed to competitive pressures. People will be turned into “the servants of the market” by making “their private success dependent upon their services to the community” (Röpke, 1960, p. 30). Hayek has described competition as a “process in which a small number of people makes it necessary for larger numbers to do what they do not like, be it to work harder, change habits, or to devote a degree of attention, continuous application, or regularity to their work.” (Hayek, 1979/2013, p. 415). Here, competition appears to replace majority with minority rule, by forcing the larger numbers to apply themselves in the competitive race. This order is legitimised by the claim that the coercion exercised by competition is in the general interest, while politics will always tend to serve the self-interest of some group over another.

The neoliberal claim that markets are always superior to governments must therefore be understood as dependent on a separation between politics and competition as two *different* principles for resource distribution, characterised by *opposite* traits. On the one hand, politics is associated with self-interest, conflict, coercion, and inefficiency. On the other hand, competition is associated with the general interest, consensus, freedom and efficiency. The strong belief in the positive effects of competition thus only makes sense if it is contrasted with the negative effects of politics. It is telling

that competition is rarely defended on its own terms, but in terms of being better than the alternative of government intervention. As illustrated by Hayek's statement that wherever "effective competition can be created, it is a better way of guiding individual efforts than any other" (1944/2006, p. 46).

Competition as both self-regulating and in need of regulation

Neoliberalism appears to promise a way to reduce the need for government by "handing things over" to the market. But, as already stated, neoliberalism does not favour *laissez faire*, but rather, the need for a strong, active government. As mentioned in the previous section, competition is understood to be both a game that needs to be "set up" through government intervention, and a process that has its own dynamic that must not be distorted by government intervention. Competition must be forced upon the reluctant population, and on governments themselves, by some central authority. The market order therefore requires a state that engages in "permanent vigilance, activity and intervention" in order to develop and protect the space in which competition could function (Foucault, 2008, p. 132).

Considering this ontological assumption about the nature of competition, it is no mystery why we have not seen a withdrawal of the state despite claims that we are living in a time dominated by neoliberal ideas. As Hayek makes clear, neoliberalism does not deny the need for political planning as long as it entails planning *for* competition, not *against* competition (Hayek, 1944/2006, p. 44). This has been described as a paradox of neoliberal thought (Davies, 2013). On the one hand, competition is described as "self-regulating" – as a spontaneous order without the need for conscious planning. On the other hand, competition is described as something which can only appear with the right sort of regulative framework which must be upheld by a central authority.

Instead of seeing this paradox between competition as both self-regulating and in need of regulation as a weakness in neoliberal thought, I argue that it should be seen as *productive tension* because it provides a rationale, not only for reducing, but *reshaping* the role of the state. It makes it rational to refer to competition as something that both has its own logic that needs to be respected, and as something that can only function under conditions that have to be carefully and artificially constructed (Foucault, 2008, p. 120). In

this way, neoliberal rationality provides justification for the state to be passive in some ways, and active in others.

Process or equilibrium?

With this being said about the shared assumptions regarding the nature of competition, neoliberal thought also holds conflicting views. I mentioned earlier in the chapter a tension in economic thought between understanding competition as a process of rivalry and a state of peaceful equilibrium. This tension is reflected in different schools of neoliberal thought.

The theory of perfect competition, which projects the image of competition as a state of equilibrium, stands in opposition to the idea of competition as a process of rivalry. As Friedman explains:

Competition has two very different meanings. In ordinary discourse, competition means personal rivalry, with one individual seeking to outdo his known competitor. In the economic world, competition means almost the opposite. There is no personal rivalry in the competitive market place. (...) The essence of a competitive market is its impersonal character. No one participant can determine the terms on which other participants shall access to goods or jobs. (Friedman, 1962, p. 119)

This view was strongly criticised by Hayek, who insisted on the need to understand competition as a discovery process in which the outcome cannot be predicted. According to Hayek, the conflation between the concept of competition and the ideal state of “perfect competition” is dangerous because it risks leading to an underestimation of the beneficial effects of competition even in situations that are far from “perfect” (Hayek, 1948). He argued that the beneficial outcomes of competition are due to the process of rivalry, and that it is therefore misleading to evaluate competition with reference to a situation in which rivalry has been rendered virtually impossible.

If the state of affairs assumed by the theory of perfect competition ever existed, it would not only deprive of their scope all the activities which the verb “to compete” describes but would make them virtually impossible. (Hayek) Advertising, undercutting, and improving (‘differentiating’) the goods or services produced are all excluded by definition – ‘perfect’ competition means indeed the absence of all competitive activities (Hayek, 1948, p. 96).

This difference between understanding competition as a process, or as the end result of this process, has important consequences for the neoliberal rationality of government because it provides different answers to the question of how we can know what is good and bad for competition, as will be expanded upon in the next section.

Knowing competition (epistemological dimension)

As been shown, neoliberalism rests on an assumption about the nature of competition as both self-regulating and in need of regulation. The epistemological dimension of neoliberal rationality provides an answer to the question *how can we know what is good, or bad, for competition?*

Keeping in mind that the political objective of neoliberalism is to create a legal framework that reduces the scope for majority politics, the question of what is good or bad for competition must never become a *political* question. Following the pessimistic view of the nature of politics, allowing politicians to decide on the meaning of “free” or “fair” competition would only open up for the attempts of different groups to try to shape the rules of the game to suit their own interest. To prevent this from happening, the principles of the competitive market order must be enshrined in an “economic constitution” that binds both citizens and the state itself. The task of upholding the rules could then be left to lawyers trained in economic law and theory.

But how do we know what is good for competition? In order to be able to differentiate between good and bad government, i.e. between planning *for*, versus planning *against*, competition, it was necessary to find some kind of objective criteria for defining and assessing competition. The early neoliberals of the MPS were economists and saw economics as the natural source of knowledge. Economists could thus be presented as “spokespersons” for the market, with the necessary expertise for informing legislators about what should be done in order to improve upon the competitive order.

But as shown by William Davies (2015), there were conflicting views within the neoliberal camp on which role economics should play, more precisely. A separation can be made between the European branches of neoliberalism, i.e. the Austrian and German “ordoliberal” schools, with their emphasis on

competition as a process, and the Chicago school, with its emphasis on competition as a state of perfect market efficiency.

The European neoliberals, who emphasised competition as a process, saw a more limited role for economics. To Hayek, who understood competition as a discovery procedure, it was neither possible nor desirable to predict what the optimal outcome of competition would be. He saw competition as a process that *generates* knowledge, but cannot itself be *known* (Davies, 2014, p. 97). For Hayek, it was therefore important to ensure the *intensity* of the competitive process, by creating favourable conditions for a high number of competitors. From this epistemological assumption, the role of economics should therefore be limited to determining the proper institutional framework under which competition can function, not trying to assess its most efficient outcome. The Ordolibrals, in particular, placed heavy emphasis on the need to create an “economic constitution” where the rules of competition are protected by law (Bonefeld, 2012; Ptak, 2009). Once these economic principles are enshrined in law, legal knowledge about the rules of the formal order would be superior to economic knowledge of the reactions of the market (Davies 2014).

The Chicago School saw a much more interventionist role for economists, since economic theory and models were seen as capable of determining the optimal market efficiency. This knowledge could then be used to evaluate potential policy reforms in terms of how close to the optimal situation they would get. It is important to note that, according to this school of thought, it was also necessary to weigh in the *costs of government intervention* when assessing the need for regulation. It was in Chicago that a successful school of antitrust theory developed which would eventually come to dominate US competition policy. Leading figures such as Aaron Director and Ronald Coase used neo-classical economics to show that legal interventions which aim to increase competition might actually lead to more damage to markets efficiency than doing nothing (Ibid., p. 79). According the theory of “government failure”, government intervention always comes at a cost, which means that it sometimes can be more economically efficient to do nothing, instead of trying to improve upon markets through government regulation.

Chicago School economists argued that neoclassical economic theory could be used to assess the efficiency of different institutional and legal arrangements (Ibid.) What is good for competition did not have to be

evaluated by looking at the intensity of the competitive process (the number of competitors), but could be evaluated by economists using hypotheses and models (Davies, 2014, p. 78 QUOTE?). According to Davies, the Chicago School shifted away “from the ordoliberal definition of competition as a formal property of markets towards an empiricist definition as the maximization of utility” (Davies, 2014, p. 89). Moral/political arguments about what a market ‘ought’ to look like were turned into technical/empirical questions of which institutional arrangement led to a maximisation of welfare (Davies, 2014, p. 81).

Davies summarises the epistemological position of the Chicago school as privileging “the economist’s analytical insights over the intuition of market actors themselves” (Davies, 2014, p. 88). This can be contrasted with Hayek’s insistence on seeing competitive markets as information processors that produce knowledge not accessible to any person or group of people. Furthermore, this way of understanding the role of economics also strengthen the position of economists in relation to lawyers. According to the Chicago school, economic knowledge becomes superior to juridical knowledge, as lawyers become dependent on neoclassical economic analysis in order to know what rules are “right”. As put by Davies:

(Economics) is no longer simply furnishing legal analysis with additional empirical data, rather its formalistic methodological premise enables all firms, in all sectors, to be judged according to the single test of economic efficiency. Economics serves judgement over capitalism (...) and is blind to other types of moral appeal (Davies, 2014, p. 91).

Thus, as Davies points out, the neoliberal assumption that all actors are driven by self-interest seems not to have been applied to their own professional group, as economists are assumed to be able to evaluate behaviour and data in an objective and disinterested manner (Davies, 2014, p. 97).

Conclusions

This chapter has identified the neoliberal rationality of government as consisting of a *moral* dimension that asserts that the proper role of government is to increase the wealth of the population by doing what is

good for competition. This assertion is based on an *ontological* assumption about the nature of competition as both a self-regulating process with a “natural” direction which can be “distorted” by government intervention, and as a process in need of regulation in order to materialize and function efficiently. The first assumption conveys the image of the state and the market as two separate spheres, making it possible to claim that government is something external to competition, rather than something which shapes it from its very beginning. This, of course, contradicts the second assumption which clearly projects the image of competition as something which is created by, and dependent on, the state. I have suggested that, instead of seeing this contradictory definition of competition as a paradox or weakness in neoliberal thought, it should instead be viewed as *necessary* to the coherence of the neoliberal rationality of government. Without this contradictory definition, it would not have been possible to argue that the market is a “spontaneous order” while at the same time insisting on the need for government intervention for this order to function. Finally, the *epistemological* dimension of neoliberal rationality suggests that it is through economic theories and methodologies that we are able to understand what is good for competition, and therefore what governments should, or should not, do. This account has shown the importance of moving beyond the state-market dichotomy to focus on what kind of state neoliberalism seeks to create.

Returning to the aim of the Mont Pelerin Society to protect the “free society” from the threat of communism and socialism by developing a philosophy which could reinforce the belief in the rule of law, private property and the competitive market. To do this, they sought to “redefine the functions of the state” in a way that would “distinguish more clearly between the totalitarian and the liberal order”. I have argued in this chapter that it was by building on ideas about competition in economic theory that the MPS was able to succeed in their ambition. The neoliberal answer to the threat of socialism was to argue that the state should focus on establishing the conditions for competition, rather than interfering with its outcome through policies of redistribution (Davies, 2014, p. 45).

A theme running through this chapter has been the *fear of politics* expressed in neoliberal thought. I have argued that it is only by contrasting competition with politics that it has become possible to claim that the market is a superior principle for the allocation of resources as compared to government “planning”. The positive view of competition as associated with

efficiency, the common good, freedom and consensus only makes sense in relation to the assumed nature of politics as characterised by inefficiency, self-interest, coercion and conflict.

This separation between competition and politics has filled a rhetorical function by making it possible to argue that one can reduce the need for government by handing decisions of resource allocation over to the market. Neoliberal thinkers want us to believe that the rules governing the order can be separated from its outcome: that the competitive market order only decides on the means and not on the ends. But as this chapter has made clear, the neoliberal state is not neutral towards ends, but is actively engaged in shaping society according to a particular vision of how it should be organised. There are no a-political rules. Planning for competition is just as political as planning against competition: deciding to let resources be funnelled to the most successful in the competitive game is *as political a decision* as deciding to allocate resources to those that need them the most.

Although the neoliberal rhetoric of “free competition” and “state intervention” invites us to see the relationship between state and market as a zero-sum game, the neoliberal rationality of government projects an image of a state constantly at work on behalf of the market. This idea has been well put by Foucault:

The relationship between an economy of competition and a state can no longer be one of the reciprocal delimitation of different domains. There will not be the market game, which must be left free, and then the domain in which the state begins to intervene, *since the market, or rather pure competition, which is the essence of the market, can only appear if it is produced, and if it is produced by an active governmentality*. There will thus be a sort of complete superimposition of market mechanisms, indexed to competition, and governmental policy. Government must accompany the market economy from start to finish. (...) *One must govern for the market, rather than because of the market.* (Foucault, 2008, p.121, emphasis added)

Understanding neoliberalism as a rationality of government shows why neoliberal policies has not led to a withdrawal of the state, since it is not the state that is seen as the problem but the representative institutions of democracy. Neoliberals have sought to reduce the influence of politicians while strengthening the rule of law and the judiciary. What neoliberal government leads to is thus not less state or less politics but a particular kind

of state and a particular kind of politics. The neoliberal rationality of government provides justification for moving power away from political representatives, and to the judiciary and competition authorities, where lawyers and economists trained in economic theories on competition can have a say in what governments can and cannot do.

4 State aid rationality

The founding fathers of Europe understood that there would be no genuine integration without a Single Market – and no functioning Single Market without a strong competition policy enforced by a central competition authority.

Of course, our first goal is preserving good competitive conditions in the markets, which translates into lower prices, better quality and wider choice for consumers.

Therefore, Every time the Commission takes a competition-policy decision, we defend the interests of the citizens of the EU. Competition policy brings the Union closer to the people in a very tangible way.

European Commissioner for Competition,
Margarethe Vestager, 13 October 2015

The above speech by the Commissioner for Competition, the Danish social-liberal politician Margarethe Vestager, illustrates how the neoliberal rationality of government provides a platform from which to justify EU competition policy in a particular way. The assumption that more competition leads to lower prices, better quality and more freedom of choice makes it possible for the Commission to claim to be acting in the interest of all EU citizens, as protecting competition is seen as being equal to protecting the common good.⁴ The quote also illustrates the assumption that competition is not a self-regulating process but needs constant government intervention.

The purpose of this chapter is to show how the neoliberal rationality informs state aid policy. It consists of three main parts that correspond to

⁴ A term used by Vestager in a speech on April 9 2015 to describe EU competition policy: “It’s not even six months, but I’ve already seen quite a few examples of the temptation I’ve just mentioned; the temptation to break the rules that we have agreed together for the common good.” (Vestager, 2015)

the moral, ontological and epistemological dimensions of state aid policy with the purpose of showing how neoliberal rationality informs all of them. In a concluding section, I then move on to discuss how the neoliberal rationality of government has made it possible for the Commission to govern the member states by referring back to my theoretical understanding of government as a process of *problematisation*, *production* and *depoliticisation*.

The analysis is based on different types of policy documents produced by the Commission:

- *Commission communications* from 1978 up to today which communicates state aid policy developments to the member states.
- *The Reports on Competition Policy*, published annually since 1971. These reports summarise the Commissions activities in all fields of competition policy, including state aid.
- *The state aid surveys*, published more or less biannually between 1988 and 2001. These surveys provide statistics of state aid levels in the member states for specific industries.
- *Speeches* by the Commissioners for Competition, spanning from Hans von der Groeben in the 1960s to Margrethe Vestager today.

Although the purpose of this chapter is to show how state aid policy draws upon a neoliberal rationality an important point that needs to be made is that governmental rationalities are rarely blueprints for government programmes. Rose and Miller have suggested that the relationship between rationalities and policies is one of *translation* – as “a movement from one space to another” to address a “particular concern in another modality” (1992, p. 181). While the main concern of the early neoliberals of the Mont Pelerin Society was to prevent the spread of socialism, the main concern of the EU is to create a common European market through economic integration. In EU discourse, free competition has become associated with the free movement of goods and services between member states. State aid policy, therefore, translates the neoliberal rationality to address concerns that are specific to the EU. Furthermore, programmes of government should not be expected to be expressions of a *single*, coherent rationality of government. Government policies are often characterised by inconsistencies and tensions between different rationalities. Li describes government programmes as a form of *bricolage*, combining different forms of knowledge, practices of

calculation, vocabularies, and forms of judgement (Li 2007, p. 6). The Treaty rules on state aid are the result of a compromise between different ideological views on how to balance state intervention with free competition (Szyszczak, 2007; see also Sauter & Schepel, 2009). As the following sections will show, EU state aid policy is not only reflective of neoliberal ideas but contains compromises and unresolved tensions between different political ideas and objectives. However, as I will argue in this chapter, the Commission has come to rely on a neoliberal rationality of government in order to bridge these tensions and present state aid policy as a coherent whole.

Introducing the state aid rules

Before moving on to discussing the rationality of state aid policy, an introduction of the treaty provisions on state aid is called for in order to ease the reading of what will follow. State aid policy originates in Articles 107 to 109 in the Treaty of the Functioning of the European Union which begins with the following provision:

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

This means that any aid granted through state resources that distorts, or threaten to distort competition in a way that affects trade between member states is prohibited. But because the member states have seen the need to allow for certain forms of aid that fills certain purposes, this prohibition is followed by a number of exceptions. Article 107.2 lists three types of aid that *shall* be compatible with the internal market, and are thereby exempted from state aid regulation.

- a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- b) aid to make good the damage caused by natural disasters or exceptional occurrences;

- c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

This is followed by Article 107.3 which lists a number of exceptions that *may* be considered compatible with the internal market:

- a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- 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;
- d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

These forms of aid are not automatically exempted from the prohibition of state aid. Instead an assessment must be made in each case of what to prioritise: the objective of free competition or objectives such as regional development, employment, or the promotion of culture.

Article 108 sets out the rules of *how* state aid should be regulated. It makes clear that the main responsibility for supervising the rules lies with the European Commission, tasked with reviewing all state aid granted by national governments to make sure that it is compatible. It also gives the Commission the right to introduce new policy measures to keep up with the development of the internal market:

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.

If the Commission finds that state aid is *not* compatible with the internal market, then it has the right to decide that the member state concerned “shall abolish or alter such aid within a period of time to be determined by the Commission”. If a member state refuses to comply with this decision, the Commission, or any other member state, may refer the issue to the EU courts. It is also stated that the European Council has the right to intervene to allow certain forms of state aid, if “such a decision is justified by exceptional circumstances”. Furthermore, article 108.3 includes the so called “notification requirement” which requires the member states to inform the Commission *in advance* of any plans to grant state aid and to wait for the Commission’s decision before putting their plans into effect.

Finally, Article 109 states that the Commission may suggest new regulations to the Council and that these may be adopted “after consulting the European Parliament”.

It needs also be mentioned that aid amounts below a certain threshold fall outside the scope of the state aid rules, according to the so-called *de minimis* regulation. This is because small aid amounts are deemed not to have an impact on competition and trade on the internal market (EC, 2013a). Since 2006, the ceiling for *de minimis* aid has been set at €200 000 per undertaking over a three year period. Aid measures below this level are thus exempted from the state aid rules and, therefore, do not have to be notified to the Commission.

I would like to make two comments on the treaty provisions before moving on. First of all it is clear that, despite the fact that Article 107 prohibits governments from distorting competition, there is nothing *necessarily* neoliberal about the foundations of state aid policy. Within the framework set up by a general prohibition of state aid, and a number of exceptions to this rule, a wide span of policy outcomes is possible dependent on how these provisions are balanced against each other. A generous interpretation of the exceptions would allow for plenty of government intervention to pursue other policy objectives aside from free competition. An emphasis on the need to put competition first would, on the other hand, narrow the scope for such intervention.

Secondly, the treaty provisions clarify that the member states have to a large extent left it up to the Commission to decide what direction state aid policy should take. The Council always has the possibility to intervene, by changing the Treaty, cancelling a Commission decision, or adopting new regulations. Also, the Commission is cautious of introducing new policies that clearly do not have the support of the member states. But the day-to-day decisions on which aid to permit and which to prohibit are in the Commission's hands. It is also notable that the European Parliament only has advisory powers in the field of competition policy. Its influence on state aid policy is thus weaker than its influence on most other policy areas, where the co-decision procedure is being used.

In the following sections, I will argue that the Commission has come to rely on a neoliberal rationality of government in defining the purpose of state aid policy (moral dimension) and the meaning of state aid (ontological dimension), and in deciding what form of knowledge to draw upon when balancing different policy objectives (epistemological dimension). This way of reasoning has made it possible to not only reduce the amount of state intervention in the economy, but also redirect these interventions in ways that are in line with EU objectives.

Good and bad state aid (moral dimension)

In this section, I investigate the moral dimension of state aid policy, containing claims about what governments should do and why. It also contains claims about how authority should be distributed among different government bodies, here expressed in claims about the proper role of the Commission and the member states respectively.

The Commission has always provided two main reasons for state aid regulation: removing barriers to trade in order to create an internal market, and removing barriers to competition in order to make this market more efficient. As the first Commissioner responsible for competition policy, Hans von der Groeber, explained to the European Parliament in 1961:

(It is) beyond dispute – and the authors of the Treaty were fully aware of this – that it would be useless to bring down the trade barriers between the Member States if the Governments or private industry were to remain free through economic or fiscal legislation, through subsidies or cartel-like restrictions on competition, virtually to undo the opening of the markets and to prevent, or at least unduly to delay, the action needed to adapt them to the Common Market. (...) (R)estrictions on competition are as incompatible with the Common Market as are duties and quotas. It is the aims of the Common Market which themselves render a competition policy necessary. (von der Groeber, 1961)

State aid policy is thus presented as an instrument for European integration by protecting *cross-border* competition. State subsidies are seen as a barrier to trade, equal to duties and quotas that make it more difficult for companies to enter the market of another member state. It is assumed that member states would be less willing to open their borders to competition from foreign companies if these companies have been given an unfair advantage by their national governments. In the early days of state aid regulation, this was not only presented as a matter of integration, but also a matter of *solidarity* between the member states. Regulating state subsidies was described as necessary for ensuring that wealthier member states do not undermine the economic development of states with less financial capacity to subsidise their industries (EC, 1978, p. 5).

Besides removing barriers to trade, state aid policy has always had a second purpose: creating efficient markets by protecting competition *in general*. As von der Groeben continues in the same speech:

I should now like to go a step further and ask whether competition policy in the Common Market does not perhaps serve an even more fundamental purpose than just ensuring that the markets are kept open. If we scrutinize the Treaty carefully we will find that it prohibits not only those restrictions on competition which seem calculated to render illusory the opening of the market, or to cancel the reduction of duties and quotas, but that it requires the establishment of a system which will provide *a general assurance* that competition in the Common Market will not be distorted. (...) Why this effort to protect competition? In my view the answer can only be: because in the Common Market competition has an important part to play in giving guidance to producers, and because *any distortion of competition is a threat to the best supply of goods in the community*. (...) Competition on the markets

has the effect that consumers adapt their wants as far as possible to what can be produced and suppliers *make the best possible use of the means of production*. (...) I think it follows logically that we have the greatest interest in preserving (competition) and in making sure that it is not rendered useless, not reversed, not limited in its effectiveness. (von der Groeben, 1961, emphasis added)

Here we find the view shared by economic theory and neoliberal thought that competition leads to the “best supply of goods” and the “best possible use of the means of production”. But the more tentative voice of von der Groeben in this passage suggests that this second objective was seen as more controversial at the time of his speech.

The yearly Reports on Competition Policy show that the Commission has relied on both forms of justification when explaining the need for state aid regulation. But over time, the emphasis has shifted, meaning that today state aid policy is first and foremost depicted as an instrument for creating more efficient markets. The objective of removing barriers to trade appears in the policy documents as more of an afterthought. With this shift in problem definition (from barriers to trade to distortions of competition), a change has also occurred in the way that the Commission speaks about competition. Up to the 1980s, it was still possible to find references to potential *negative* effects of competition in the policy documents. The Commission expressed the view that removing barriers to trade and exposing industries to international competition could lead to social problems if taken too far, or carried out too fast (EC, 1972, p. 113). Although there was a clear emphasis on the benefits of competition, the Commission also mentioned that market conditions could sometimes “obstruct progress towards certain economic and social objectives”, and that competition could be intensified to “such an extent that it risks destroying itself” (EC, 1978, pt. 3.2). The role of the Commission in regulating state aid was therefore described in terms of creating a *balance* between protecting competition and other objectives of a social nature. As the Commission stated, a “healthy competition policy” would have to allow for the “pouring of oil on waters troubled by intolerable social tensions” (EC, 1980a, p. 9).

As state aid policy is increasingly presented as being an instrument to improve market efficiency, the references to negative effects of competition disappear and competition is portrayed as something entirely positive. Rather than seeing competition as one objective amongst others, it is

presented as an instrument for the attainment of other policy objectives because of its connection to economic growth. For example, during the 1990s, state aid policy was seen as a part of the solution to the problem of unemployment since more competition was assumed to make industries more efficient, and thereby more competitive, which, in turn, was assumed to safeguard European jobs from global competition (EC, 1993; EC, 1998). As a result of this strong connection between competition and growth, state aid policy has also been described as an important instrument for obtaining the objectives of the big, over-arching, growth strategies of the EU, i.e. the *Lisbon* and *Europe 2020* strategies (Juncker, 2014).

The following sections describe the moral dimension of state aid regulation in its current form, as it has been presented since the turn of the century. Beginning in the 2000s, we can witness a radical increase in state aid policy activity, as the Commission initiated two rounds of policy reform. The first took place between 2005 and 2009 with the publication of the *State Aid Action Plan*, while the second took place between 2012 and 2016 under the heading *State Aid Modernisation*.

Efficient markets, efficient governments

According to the moral dimension of state aid policy, the proper role of government is to ensure economic growth by refraining from distorting competition. Competitive markets are assumed to lead to the most efficient allocation of resources by rewarding the most competitive firms and creating pressure for lower prices, higher quality and more innovation. Efficiency is an absolutely central term, as illustrated by the following quote where it is mentioned five times:

State aid can frustrate free competition by preventing the most efficient allocation of resources and pose a threat to the unity of the single market. In many cases the grant of State aid reduces economic welfare and weakens the incentives for firms to improve their efficiency. Aid also enables the less efficient to survive at the expense of the more efficient. The resulting distortions of the market can lead to frictions between Governments and sometimes to retaliatory measures by third countries, which may be a source of further inefficiency. (EC, 2001a, p. 9)

It is worth noting in this quote how conflicts between member states caused by state aid, which had previously been described as a problem of market

integration, are now presented as a problem of market inefficiency. Competition is described in clear win-win terms as a “major driver of growth” which will benefit everybody. In reading the Commission documents, we learn of no “costs” of state aid policy. On the contrary, state aid policy is presented as being a “cost-effective policy” because “it can be deployed without any public or private spending” (EC, 2012a, p. 2).

State aid policy is not only presented as an instrument for creating efficient markets, but also for ensuring efficient government spending. The Commission claims that state aid policy leads to a more efficient spending of public funds in two ways. First, the reduction of government subsidies is assumed to free up resources that can be put to alternative use. As explained by the Commission in its State Aid Action Plan from 2005:

(I)t is important to realise that state aid does not come for free. Nor is state aid a miracle solution that can instantly cure all problems. Tax payers in the end have to finance state aid and there are opportunity costs to it. Giving aid to undertakings means taking funding away from other policy areas. State resources are limited and they are needed for many essential purposes, such as the educational system, the health system, national security, social protection and others. (EC, 2005 pt. 8)

Secondly, state aid policy is assumed to increase the efficiency of public spending by directing state aid towards *growth-enhancing*, rather than *growth-distorting*, objectives. By making sure that public resources are not “wasted” on keeping inefficient companies alive, the Commission claims that state aid policy improves government spending by directing resources “away from non-viable activities towards competitive and job creating industries of the future.” (EC, 1985, pt. 158). This has been one of the main objectives of state aid policy ever since the 2012 State Aid Modernisation Initiative, which claimed to strengthen the role of state aid policy as an instrument for promoting “a sound use of public resources for growth-oriented policies” (EC, 2012a, pt. 6). This way of framing state aid policy should be viewed in light of the financial crisis of 2008 that left many European countries with large budget deficits. As the crisis increased the pressure on national governments to spend more money on supporting the economy, it became more important for the Commission to defend the legitimacy of state aid regulation in terms of *improving* rather than reducing government spending. As explained by the Commission in 2012:

The economic and financial crisis has threatened the integrity of the single market and increased the potential for anticompetitive reactions. At the same time, the crisis has increased the demand for a greater role of the State to protect the most vulnerable members of society and promote economic recovery. But it has also put strains on Member States' budgets, requiring fiscal consolidation and better use of scarce resources. Last but not least, it has increased the disparity in Member States' leeway to finance their policies. Europe's growth potential can be increased by better focussing public expenditure and by creating appropriate conditions for recovery to take off and last. In particular, public spending should become more efficient, effective and targeted at growth-promoting policies that fulfil common European objectives (EC, 2012a, pt. 4-5)

In this passage, there is an implicit warning against government intervention that distorts competition because this would make economic recovery more difficult. According to the Commission, the way out of the crisis is not less competition, but more, in order to realise Europe's growth potential.

Thus having established that the moral dimension of state aid policy rests on the view that the role of government is to increase the economic well-being of the population by creating conditions for efficient market competition, we move on to the issue of what governments should do to ensure this objective.

The role of the Commission: protecting the “level playing field”

One difference between the moral dimension of state aid policy and the neoliberal rationality of government as described in Chapter 3, is the emphasis on *fair* competition rather than *free* competition. The Commission policy documents very rarely describe the need for state aid regulation in terms of protecting “free markets” or the freedom to compete. Instead, emphasis is placed on the need to create conditions for fair competition, as expressed in the often-used metaphor of competition as a game, and the market as a “level playing field”.

Metaphors are powerful categories of language in that they make us see two different things as being similar. The most powerful ones are those that are taken for granted as a literal or correct classification, and are thus not seen as metaphors anymore (Miller, 1992, p. 42). The metaphor of market competition as a game is arguably such a taken for granted metaphor. It is

easy to understand its attractiveness since it creates a connection between state aid regulation and fair play. The metaphor of competition as a game and the market as a playing-field creates the impression of state aid as a form of *cheating*: a kind of state sanctioned doping that enhances the performance of certain competitors. It also makes the Commission appear as a neutral umpire who enforces the rules of the game without taking anyone's side. As the former Commissioner Joaquín Almunia explains:

We're not here to serve private interests or corporative privileges, but the interest of every company that plays by the rules and of every consumer. Our duty is to instil openness and transparency in the markets and make sure that every player has the same opportunities to create jobs and generate growth (Almunia, 2014a).

The metaphor of competition as a game has important normative connotations because of its association with justice and fairness. Market competition is assumed to be a "fair game", which implies that state aid is "unfair". This way of describing the role of the Commission resonates with the neoliberal rationality which also envisions the role of government in terms of a neutral umpire who enforces the rules of the game.

As state aid policy was increasingly viewed as an instrument for creating efficient markets, rather than for removing barriers to trade, a change also occurred in the Commission's description of whose interest it was protecting. Before 1999, the Commission mainly described its role as protecting the member states from each other by making sure that state aid in one country does not impact negatively on the economies of other countries. It described itself as the defender of the "Community perspective" by being the one actor that could be trusted to look beyond national interest to see the interests of the community as a whole:

Experience has shown that Member States cannot always be immediately and fully aware of the Community perspective (...). The ultimate objective of Community aid action is, in fact, to reintroduce this Community perspective and to ensure that the aims of each Member State take its partners' interests into account, that they come within the context of a smooth economic growth of the Community as a whole, and that they contribute to its achievement (EC, 1972, p. 113).

In 1999, with the appointment of the Italian economist Mario Monti as Commissioner for competition, there was a clear shift in the Commission's

role, from protecting the common interest of the member states, to protecting the common interests of the *European citizens*. Monti announced that he was going on a “crusade” in order to inform European citizens of the benefits of EU competition policy for them, in their daily lives:

We need to do more to explain what our fight against cartels, our scrutiny of mergers and acquisitions and the control of state subsidies means to the man in the street: greater choice of products and services, better quality, better prices. (...) This is why I think that citizens should be better informed about what competition policy means for them and for the functioning of the economy as a whole. Once EU citizens understand these facts, they will become our best supporters in the Member States. (Monti, Lisbon 9 June 2001)

Today the Commission thus describes its main role, not as protecting the member states from ending up in a subsidy war with each other, but as protecting the interest of citizens in lower prices, greater choice, and better quality, against the decisions of their governments. In this way, the Commission expresses a similar distrust of politics as the neoliberal rationality of government. While the Commission never explicitly describes politics in a negative way, it is assumed that governments, if left to their own devices, cannot be trusted to make rational economic decisions. Instead, they need to be taught the difference between good (growth-enhancing) and bad (growth-distorting) forms of government intervention through EU state aid policy.

The role of national governments: filling “holes” in the market

Turning to the claims about the proper role of national governments, this is where the moral dimension of the neoliberal rationality of government is most noticeable. According to neoliberal thought, market competition is the best way to allocate resources in society, and the role of the state is therefore to create, protect and support competition, never to replace or provide an alternative to it. Government intervention should be limited to doing what the market fails to achieve on its own, as captured by the economic theory of “market failures”.

As we saw in the speech by Commissioner von der Groeben, the assumption that competition is the most efficient way to allocate resources has been

central to state aid regulation from its early days. The role of national governments has thus frequently been described in terms of doing things that the market fails to accomplish on its own. But with Monti as Commissioner for competition and the publication of the State Aid Action Plan in 2005, the technical term “market failure” was introduced as a way to explain the need for state intervention.

Competition is vital for the economy to be efficient, to untap Europe’s growth potential to the benefit of the European citizens. In this context, “efficiency” refers to the extent to which welfare is optimized in a particular market or in the economy at large. A “market failure” is consequently a situation where the market does not lead to an economically efficient outcome. (...) When markets do not achieve economic efficiency, Member States or the Union may want to intervene in order to correct the market failures. (EC, 2005, p. 7)

The document goes on to list five kinds of market failure as identified by economic theory: externalities, public goods, imperfect information, coordination problems and market (monopoly) power. Without going into details about what these “failures” entail, the introduction of this way of reasoning regarding what governments should do brought about an important shift in state aid policy. Previous to this, the need for state aid was discussed more in terms of objectives. The objective of protecting competition, while presented as most important, had to be weighed against other political objectives such as regional development, employment or environmental concerns. Determining what should be prioritised was thus a normative question of assessing what best served the Community interest. With the introduction of the term market failure, the matter of deciding when state aid should be allowed became an “objective” assessment of the market situation. Thus reflecting a neoliberal rationality of government, the market is turned into a norm for government, operating as an “economic tribunal” that tells the “truth” about the difference between good and bad state aid.

Neelie Kroes, the Commissioner for competition after Monti, clearly assumes the market as a norm for government when describing the role of the state as filling “clearly identified gaps” in the market.

(M)arkets alone will not always deliver an efficient outcome. Our reform measures seek to ensure that subsidies which really are needed are properly targeted and thus cause minimum distortion to competition. Our reform should thus help Member States get the best value for money. When state subsidies are used intelligently to fill clearly identified gaps, they can deliver sizeable spin-offs — for citizens, for consumers, for companies, for Europe’s overall competitiveness, for social and regional cohesion, for public services, for sustainable growth and for cultural diversity. (EC, 2007, p. 3)

The moral tone is strong: “intelligent” governments use their resources to fill the gaps in the market, while unintelligent governments waste money on trying to do things that could have been achieved more efficiently by the market on its own.

But the Commission also explains that state aid will not be automatically accepted just because a market failure can be identified. It must first be established that there are no other policy alternatives that would achieve the same objective while having a less distortive effect on competition (EC, 2005, p. 7). In a speech from 2012, Commissioner Almunia describes the difference between “good” and “bad” state aid: *Good aid* creates incentives for companies to act in ways that they would not have done without government intervention, and “has no better market alternative.” Such aid “avoids waste of public money” and causes a minimum disturbance to competition. *Bad aid* is conversely described as “aid that crowds out private investment; keeps inefficient and non-viable companies on indefinite life support; and generally wastes taxpayer’s money” (Almunia, 2012). Again, this reinforces the view that the need for government intervention is not a decision made with reference to policy objectives but with reference to “objective” facts about the market (Is there a market failure? Is there a better market alternative? Will this crowd out private investments? Etc.). “Bad” forms of state aid will not be permitted on account of being growth-reducing rather than growth-supportive:

State aid which does not target market failures and has no incentive effect is not only a waste of public resources but it acts as a brake to growth by worsening competitive conditions in the internal market (EC, 2012a, pt. 12).

To summarise the moral dimension of state aid policy, the influence of neoliberal rationality can be seen in the claim that the proper role of government is to respect competition by not interfering in its process, and

to support or complement competition when it fails to function efficiently on its own. The influence of neoliberal rationality has also been identified as a shift from seeing competition as mainly an issue of cross-border trade, to an issue of market efficiency. This shift has made it possible to describe state aid policy as an instrument for separating between “good” (growth enhancing) and “bad” (competition distorting) forms of government intervention. State aid policy thus turns competition into a principle for determining the proper role of government, in line with neoliberal rationality.

A theme that is missing from the Commission’s policy documents, that one might have expected to find, is that of corruption. Rules that aim to ensure that governments respect free competition, such as those on state aid and public procurement, are often described as instruments for reducing the scope for nepotism or clientelism. Yet, although the Commission never makes explicit reference to corruption, it is possible to trace such a theme in descriptions of State aid policy as a way to help citizens to hold their governments accountable. As illustrated by the following quote from commissioner Almunia when speaking about the need to increase transparency of state aid by creating national databases for public information:

Finally, I am convinced that transparency must be an ingredient in all responsible policymaking. Let us not forget that State aid policy is about the use of taxpayers’ money. This means that the people are entitled to know who is receiving aid, how much and why. We have an opportunity with this reform to help information technology keep its promise for more democratic control and participation. We can help our fellow citizens hold companies and public authorities accountable. (Almunia, 2013)

The nature of competition (ontological dimension)

Competition policy is one of the pillars of the European Commission's action in the economic field. This action is founded on the principle, enshrined in the Treaty, of 'an open market economy with free competition'. (...) However, the principle of an open market economy does not imply an attitude of blind faith or, possibly, indifference towards the operation of market mechanisms; on the contrary, it requires constant vigilance aimed at preserving those mechanisms. (EC, 2001b, p. 21)

In this section I investigate the ontological dimension of state aid policy, focusing on assumptions about what exists and the nature of what exists. In order for the member states to know how to avoid distorting competition they must know what competition is. As indicated by the quote above, state aid policy rests on an understanding of competition as a process that will not regulate itself but needs "constant vigilance" on behalf of government authorities. But the policy does not provide a definition of competition as its meaning is treated as self-evident. However, we can learn about the meaning of competition by studying what is said about when it is distorted, in other words, what is meant by "state aid".

In this section, I will go through the definition of state aid, showing how it is produced as a specific category of government action and what it tells us about the nature of competition. Furthermore, this section also shows what assumptions are made about the limits to competition. In order to distinguish between government measures that have, and do not have, an impact on competition, state aid policy has come to rely on a distinction between *economic* and *non-economic* activities. Furthermore, in order to deal with the problem of how state aid policy should be applied in relation to public services, a set of categories has been developed that distinguishes between so-called *Services of General Economic Interest*, and *Social Services of Economic Interest*. Together with the concept of state aid, these categories bring with them a new way of seeing the relationship between state and market.

An important disclaimer must be added about the following sections. Because the focus of this dissertation is on how the Commission communicates state aid policy to national governments, my account only draws on Commission policy documents. The Commission has published

several communications and guidelines to explain the concept of state aid to the member states. The most recent document is the 2016 *Commission Notice on the Notion of State Aid*. The following account is therefore mainly based on this document.

This means that I have not included references to the judgements of the EU courts, except for in a few cases. This account will therefore not do justice to the juridical discussions concerning the meaning of state aid, economic and non-economic activities and services of general interest. These are highly complex and contested fields of EU law that touch on controversial issues about the division of competences between the EU and national governments. This complexity is reflected in the Commission's documents which leave many unanswered questions. It could also be mentioned that the account in the following sections will be detailed and technical. But this is also the reality facing any national politician or public employee who, new to the field of state aid, tries to understand how the rules should be applied.

The definition of state aid

What is state aid? For examples, one can turn to the Commission's online database where all state aid cases have been registered since the year 2000. A search of all cases from all member states provides a list of some 24 000 cases (in the autumn of 2016). Scrolling through the list one finds a wide range of different measures, from almost every imaginable policy area. The list covers environmental policy, for example a case concerning a "Renewables support scheme" in Croatia, and "Restoring and maintaining forestry potential in the military areas" in Slovakia. It covers social and employment policies, such as a case of "Vocational introduction employment aid for young workers" in Sweden, or "Prolongation of social contributions exemption scheme for seafarers employed in maritime transport" in Belgium. It covers cultural policies, such as "Tax deduction for film and audio-visual productions in the Province of Biscay" in Spain. It even covers policies related to core welfare services, such as "Funding to public hospitals in the Hradec Králové Region" in Czech Republic and "Public financing of Brussels public IRIS hospitals" in Belgium. Other cases touch upon agricultural policy, research and development, infrastructure, animal health, natural disaster management, sports, tourism and more.

The EU Treaties do not provide a definition of state aid. Instead, it has developed over the years through interpretations of Article 107 by the CJEU and the Commission. To understand the definition of state aid, it is therefore necessary to return to Article 107.

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

This paragraph has been interpreted to contain four criteria that must be met in order for a measure to qualify as state aid. It must:

- a) constitute an economic advantage
- b) be granted by the State or through State resources
- c) favour certain undertakings or the production of certain goods
- d) distort or threaten to distort competition in a way that affects trade between the member states.

The following sections go through the four criteria in turn.

Advantage

The Commission explains the meaning of advantage in the following way:

An advantage, within the meaning of Article 107(1) of the Treaty, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention. (EC, 2016a, pt. 66)

To know if an undertaking has received an advantage it is thus necessary to compare its economic situation before and after state intervention. If it has improved, then the criterion of advantage has been met. Importantly, this means that the notion of advantage has nothing to do with the competitive position of the recipient undertaking, i.e. if it has received an advantage in relation to *other* undertakings. The only thing that matters is whether it has somehow improved the economic situation of the recipient in relation to what it was before. This means that economic support to an undertaking that nonetheless remains in a weak competitive position would still be

considered an advantage. Continuing the explanation of advantage, the Commission states that:

Only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention. (...) The precise form of the measure is also irrelevant in establishing whether it confers an economic advantage on the undertaking. Not only the granting of positive economic advantages is relevant for the notion of State aid, but relief from economic burdens can also constitute an advantage. (EC, 2016a, pt. 67-8).

A measure could thus be considered an advantage irrespective of that the cause or objective of state intervention has been. This means that a state measure could be classified as granting an advantage, even if this was not its intended purpose. Also, the *form* of the measure is irrelevant to the notion of advantage. An advantage could take the form of a subsidy, loan, guarantee, or other any other type of measure that would have the effect of improving the economic situation of an undertaking. The Commission also makes clear that “not only the granting of positive economic advantages is relevant for the notion of State aid, but relief from economic burdens can also constitute an advantage” (Ibid. pt. 68). This means that governments can be found guilty of state aid by exempting an undertaking from having to pay fees to the state. For example tax reductions, or reductions in social insurance fees which “normally” must be paid can be seen as an advantage.

Because the notion of advantage is defined by its effects and not by its form, it is not possible to provide a comprehensive list of state measures that constitute state aid. Every measure must be assessed on its own in comparison with “normal market conditions”. This procedure can be pretty straightforward when dealing with subsidies since their very purpose is to provide economic support to particular companies. But governments interact with market actors in many different ways. Some relationships are commercial, meaning that governments purchase and sell things on the market. Governments also invest in undertakings by giving loans or providing guarantees. In order to determine whether such transactions lead to an advantage, the state measure must be compared with the “normal market conditions”. Governments are thus guilty of providing an advantage if they pay “too much” for something, sell something “too cheaply”, or provide loans at an interest rate that differs from the going market price. Furthermore, it has also been determined that governments can be found guilty of providing an advantage if they purchase goods or services that they

do not really need. For example, the Basque authorities once purchased vouchers for ferry transportation to be handed out to students, school groups and pensioners. The Commission decided that the high number of vouchers purchased did not match the actual number needed and, therefore, could be seen as a covert form of state aid to the ferry company (C-442/03 *Pe&O European Ferries (Vizcaya) v Commission*).

The definition of advantage is thus very broad. The only explicit reference made to what state measures *do not* constitute an advantage is the kind of compensation for injuries that have been caused by the state to begin with. For example if the state reimburses an undertaking for illegally levied taxes, or provides compensation for the expropriation of an undertaking's assets, this does not constitute an advantage since it does not affect "normal market conditions" (EC, 2016a, pt. 71). In other words, such measures cannot constitute an advantage because they are aiming to compensate for economic damage caused by the state itself.

This is only the first of the four criteria that defines state aid, but already we have been given an indication of the nature of competition. By separating between "normal" market conditions, and the "abnormal" market conditions that are the result of state aid, the criteria of advantage projects the image of competition as natural, self-regulating process that can be distorted by government intervention. But in order to get a full understanding of what constitutes a distortion of competition, it is necessary to go through the remaining three criteria.

State resources (imputability)

The Commission makes clear that "only advantages granted directly or indirectly through State resources can constitute state aid" (2016, pt. 47). This is referred to as the criterion of "imputability" since an advantage must be imputable to the state in order to qualify as state aid. The criterion of imputability constitutes an important limitation to the definition of state aid since many government measures (if not most) will benefit some companies more than others, and could therefore be considered as providing an advantage. This criterion restricts the scope of state aid policy to measures that entail a *transfer of State resources*. This includes direct subsidies, grants or other types of investments granted directly to an undertaking. But, in line with the notion of advantage, it also includes indirect or "negative" forms of transfers, where the state forgoes revenue that it is due. As the Commission explains:

Waiving revenue which would otherwise have been paid to the State constitutes a transfer of State resources. For example, a ‘shortfall’ in tax and social security revenue due to exemptions or reductions in taxes or social security contributions granted by the Member State, or exemptions from the obligation to pay fines or other pecuniary penalties, fulfils the State resources requirement of Article 107(1) of the Treaty. (EC, 2016a, pt. 51)

Furthermore, the definition of state resources also includes measures that involve a “commitment to make State resources available at a later point in time” such as credit guarantees that entail “a concrete risk of imposing an additional burden on the State in the future” (Ibid., pt. 51). Thus, if a measure involves a reduction of state resources, actual or planned, the criterion of imputability is satisfied.

Importantly, the definition of the “state” has been given a wide interpretation as including all forms of public authorities, including local and regional governments, as well as publicly owned companies. Also, to prevent the member states from setting up autonomous institutions in order to sidestep the prohibition of state aid, the criterion “granted by the state” can also include private bodies if they have been made responsible for distributing state resources (Ibid., pt. 39).

As a side note, it is not seen as relevant to the definition of state aid whether a measure actually leads to an increase in state resources in the long run by, for example, creating new jobs which would lower the cost of unemployment benefits and raise more taxes. The definition of state aid only depends on whether or not a state measure, at the time it is granted, constitutes a reduction in the actual resources or planned income of the state (Indén, 2011, p. 41).

Selectivity

The third criterion that needs to be met for a measure to qualify as state aid is that it must “favour certain undertakings or the production of certain goods”. The key in this sentence is the word “certain”. General state measures that cover all competitors on a market, do not constitute state aid. In theory, this requirement is pretty straightforward: measures that affect all undertakings, or the production of all goods do not distort competition because all competitors are equally affected. In other words, the playing field is kept level although the conditions of the game have changed. To qualify

as state aid, a measure has to provide an economic advantage to a *selection* of undertakings. This is the meaning of the term “selectivity”.

In practice, however, separating between general and selective measures has proven to be more complicated. State aid policy makes a distinction between ‘material’ and ‘regional’ selectivity. Material selectivity covers measures that apply “only to certain (groups of) undertakings or certain sectors of the economy in a given member state” (Ibid., pt.120). There are two types of material selectivity: *de jure* and *de facto*. *De jure* selectivity occurs when the legal criteria for granting a measure is formally reserved only for certain undertakings (Ibid., pt. 121). For example, economic support that is reserved for companies of a certain size, use a particular kind of production technique, or have a certain legal form. *De facto* selectivity, on the other hand, is determined by looking at the effects and not the formal requirements of a measure. It occurs “in cases where, although the formal criteria for the application of the measure are formulated in general and objective terms” it results in effects that “significantly favour a particular group of undertakings” (Ibid., pt.121). For example, in 1978 the Italian government introduced a scheme where the state took over a part of the employer’s sickness insurance contributions for female workers in the manufacturing sector. This measure was not *de jure* selective because it applied equally to all companies, but was found to be *de facto* selective because it gave an economic advantage to the Italian textile industry which had a comparatively high percentage of female workers. The Commission thus viewed the measure as a covert way of improving the competitive position of domestic industries which distorted competition on the market (EC, 1980b).

While material selectivity differentiates among undertakings according to the nature of what they do, *regional selectivity* differentiates among undertakings according to where they are located. Government measures that provide an advantage to undertakings in a particular region, city or area are regionally selective. A complicated issue that can arise in these cases is the question of what the relevant “system of reference” should be. For example, in 1999 the government of the Azores decided to lower the income and corporation tax for companies located on the islands in order to create a more attractive business climate. The Azores is an autonomous region of Portugal with its own government and legislature. To determine whether this was a case of state aid it had to be determined whether the system of reference should be the state of Portugal or the region of the Azores. If Portugal were chosen, the

tax reduction would be selective since it would only benefit companies in the Azores region. If the Azores were chosen, it would be considered to be a general measure since it would affect all undertakings in the region equally. The ECJ decided that the Azores did not have sufficient political and economic autonomy to qualify as the system of reference and the measure was therefore considered to meet the criterion of selectivity (EC, 2006a).

Besides material and regional forms of selectivity, The EU Courts have also identified a third type of selectivity that stems from what is called “discretionary administrative practices”. This refers to aid measures that have been formulated in such vague terms that they risk leading to a selective effect even though they are meant to be general in nature. As the Commission explains:

General measures which *prima facie* apply to all undertakings but are limited by the discretionary power of the public administration are selective. This is the case where meeting the given criteria does not automatically result in an entitlement to the measure. Public administrations have discretionary power in applying a measure, in particular, where the criteria for granting the aid are formulated in a very general or vague manner that necessarily involves a margin of discretion in the assessment. (EC, 2016,a pt. 123-124)

Selectivity can thus arise as a consequence of public administrators using their discretionary powers in ways that grants an economic advantage to some companies over others. This type of selectivity has been applied to cases of corporate taxation, where national tax authorities have offered preferential tax arrangements to certain companies. For example, the Commission has found that the tax authorities in Luxemburg and the Netherlands instructed Fiat and Starbucks, through so-called “tax rulings”, to pay lower tax rates than they should have done (EC, 2015c).

Competition and trade

The final criterion for state aid is that it must “distort or threaten to distort competition” in a way that “affects trade between the Member States”. These are two separate criteria but are considered to be “inextricably linked”, and therefore normally treated together (EC, 2016a, pt. 186). With the creation of the internal market, the distinction between distortions of competition and effects on trade has become less meaningful. As companies are seen to be acting on a common European market, it is generally assumed that any state measure that affects competition in one member state will also

affect competition in the rest of the Union. As the Commission explains: “where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by the aid.” (Ibid., pt. 190).

This being said, some cases are seen by the Commission as being of such purely local nature that trade between member states cannot reasonably be affected. Examples provided by the Commission include sports and leisure facilities that are “unlikely to attract customers or investment from other Member States”, or media and cultural products “which, for linguistic and geographical reasons, have a locally restricted audience” (EC, 2016a, pt. 197). But these are seen as rare cases and the general rule of thumb is therefore that any state measure that meets the criterion of distorting “or threatening to distort” competition will also meet the criterion of affecting trade between member states.

When it comes to effects on competition, the Commission states that:

A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For all practical purposes, a distortion of competition within the meaning of Article 107(1) of the Treaty is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition. (EC, 2016a, pt. 187)

This passage makes clear that in assessing this criterion, it is not necessary to investigate what the actual effects on competition have been. If a government measure meets the previous three requirements for state aid (providing a selective advantage through state resources) it is assumed to have a distortive effect on competition. State aid is assumed to have distorted competition “even if it does not help the recipient undertaking to expand and gain market share”:

It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations. (EC, 2016a, pt. 189)

Thus, competition never needs to be investigated or assessed: in order to determine if competition has been distorted it is enough to establish that state resources have granted a selective advantage to an undertaking that it would not have been able to obtain without state intervention.

The nature of competition: both self-regulating and in need of regulation

We are now in a position to return to the question regarding what assumption of the nature of competition that state aid policy builds upon. As this account has shown, state aid has been given a broad definition as “an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities”⁵. The four criteria have been broadly interpreted, covering any form of state measure that provides an advantage, granted by any form of public body. Almost any transfer of government resources that affects competition is assumed to have an impact on trade between member states, and any transfer of state resources that has a selective effect is assumed to distort competition.

The concept of state aid claims to be *effects based* since it does not matter what the form or purpose of a measure is, only how it effects competition. But we have also seen that effects on competition are not determined by assessing how a state measure has affected the actual competitive positions of companies. There is no need to assess whether a measure has lead to an actual improvement of an undertaking’s position relative to its competitor’s in order to determine if it constitutes state aid. The only relevant effect is whether or not the economic situation of the individual recipient has improved.

State aid policy thus builds upon the *hypothetical assumption* that any government measure that distributes state resources in a selective way will distort competition (Indén, 2013, p.24). Competition is thus understood as an absolute, rather than a relative, principle as any state measure that changes the financial situation of a company from what it would have been under “normal market conditions” is assumed to create a “distortion”. The process of resource allocation through market competition is assumed to be the “normal” and state intervention an “unnatural” interference in this process.

⁵ http://ec.europa.eu/competition/state_aid/overview/index_en.html January 4 2017.

The conclusion can therefore be drawn that state aid policy shares the neoliberal assumption about the nature of competition as a process that is both self-regulating and in need of regulation. As stated in the quote that introduced this part of the chapter, competition is assumed to require “constant vigilance aimed at preserving (its) mechanisms”. At the same time, competition is assumed to be a self-regulating, natural process that will be distorted if governments intervene in “normal market conditions”. This neoliberal ontology of competition makes it possible for the Commission to justify its own regulatory interventions, while at the same time referring to the need for member states to respect the self-regulating process of competition.

The limits to competition: what defines a market?

State aid is not the only category introduced by state aid policy. As made clear by Article 107, the prohibition of state aid only applies to “*undertakings* or the production of certain goods”. It has therefore been necessary to define the concept of an “undertaking” in order to determine when the policy applies. The European Court of Justice has defined the meaning of undertaking in EU law as *any entity engaged in an economic activity, regardless of its legal status and the way it is financed* (Höfner C-41/90). This means that it is irrelevant whether an entity is publicly or privately owned, or whether it is for-profit or non-profit. An undertaking can take any legal form, for example, a limited company, an association, or a foundation. It also does not matter how an entity is financed: whether through public funds, fees charged by consumers or private donations. The only relevant criterion to defining an undertaking is whether or not it is engaged in an “economic activity”.

In turn, an economic activity has been defined by the Court as “*any activity consisting in offering goods and services on a market*” (EC, 2016a, pt. 12). From this it follows that state aid policy is only applicable to activities that are taking place on a market. The question then becomes, what defines a market? There is no clear answer to this question as the market concept is left undefined. The Commission explains that the existence of a market is a matter of *organisation* and will therefore differ between member states:

The question whether a market exists for certain services may depend on the way those services are organised in the Member State concerned and may

thus vary from one Member State to another. Moreover, due to political choice or economic developments, the classification of a given activity can change over time. What is not an economic activity today may become one in the future, and vice versa. (EC, 2016a, pt. 13)

The reference made in this passage to the way services are organised gives the impression that the concept of a market has something to do with ownership form: that services which have been privatised constitute economic activities taking place on a market, while services which are organised within the public sector are non-economic activities taking place outside the market. But the Commission goes on to explain that public services can still be considered to be economic activities if there are third party operators “willing and able to provide the service in the market concerned”:

The decision of a public authority not to allow third parties to provide a certain service (for example, because it wishes to provide the service in-house) does not rule out the existence of an economic activity. In spite of such market closure, an economic activity can exist where other operators would be willing and able to provide the service in the market concerned. More generally, the fact that a particular service is provided in-house has no relevance for the economic nature of the activity. (EC, 2016a, pt. 14)

This means that if, for example, a local council decides to offer a bus service through a publicly owned company, then this will still be considered an economic activity taking place on a market if there are private bus companies *willing and able* to supply the same service. State aid policy thus seems to lead us into a conceptual “dead end”: economic activities are those that take place on a market, and a market exists where there is a market.

This ambiguity aside, the above passage suggests that the issue of how to distinguish between economic and non-economic activities is an empirical, not a normative, question: any activity that takes place on a market, or could take place on a market, is economic in nature. But other parts of state aid policy seem to express the opposite view, that some activities are non-economic *by nature*. The Commission states that: “activities that intrinsically form part of the prerogatives of official authority” do not constitute economic activities (EC, 2016a, pt. 17). State aid policy is thus not applicable when the member states act “by exercising public power” or “in their capacity as public authorities” (Ibid., pt. 12). How to define the

prerogatives of official authority is not explained, but a list of examples of such activities is provided:

- a) the army or the police;
- b) air navigation safety and control;
- c) maritime traffic control and safety;
- d) anti-pollution surveillance;
- e) the organisation, financing and enforcement of prison sentences;
- f) the development and revitalization of public land by public authorities;
- g) the collection of data to be used for public purposes on the basis of a statutory obligation imposed on the undertakings concerned to disclose such data. (EC, 2016 pt. 17)

It is worth emphasising that state aid policy is thus based on a claim about what kinds of activities that are *intrinsically* part of the role and function of the state. It can also be noted that all of the examples provided are related to upholding law and order. There is no mentioning of any of the social functions of the welfare state. This point aside, this passage in the Commission's document appears to suggest that some activities are non-economic because of their nature as being central to state authority. But yet again, the policy creates ambiguity by introducing the caveat that these activities are only non-economic "*unless the Member State concerned has decided to introduce market mechanisms*" (Ibid.). We are thus thrown back to the empirical definition of economic activities as those that take place on a market. If governments decide to introduce market mechanisms in activities that are "intrinsically" part of state authority, then these would suddenly be considered as economic activities.

Adding to the ambiguity of the definition of a market, the Commission's 2016 communication also adds specific criteria for how to identify what constitutes an economic activity in the fields of social security, health care and education.

Because social security schemes, such as pensions or health care insurance, often involve private companies, the public funding of these schemes can give cause to state aid. To determine whether or not the state aid policy applies, the EU courts have made a distinction between *economic schemes* and *non-economic schemes* (EC, 2016a, pt. 19). According to the

Commission, a non-economic scheme “typically” has the following characteristics:

- a) affiliation with the scheme is compulsory
- b) the scheme pursues an exclusively social purpose;
- c) the scheme is non-profit;
- d) the benefits are independent of the contributions made;
- e) the benefits paid are not necessarily proportionate to the earnings of the person insured; and
- f) the scheme is supervised by the State. (EC, 2016a, pt.20)

Economic schemes are, in turn, “regularly characterised by” optional membership, their profit-making nature, and that entitlements are dependent on the contributions paid and the financial result of the scheme (Ibid., pt. 21) The Commission acknowledges that some schemes might contain elements from both categories, and that in such cases, an assessment must be made of their relative importance to that particular scheme. In relation to social security schemes, the separation between economic and non-economic activities therefore does not depend on whether there are private actors “willing and able” to perform a service, but on the way that these schemes are organised and financed.

Similarly, when it comes to healthcare and education, the EU courts have determined that these are “non-economic activities” if they have universal coverage (applying to the whole population), are funded by the state, and if the level of benefits is not dependent on the level of contribution. If, on the other hand, healthcare and education services are provided for “remuneration”, i.e. financed through fees charged to the individual patient or student, then these would qualify as economic activities to which state aid policy applies. As the Commission explains, where services are provided for remuneration, there is a “certain degree of competition”:

In many (...) Member States, hospitals and other health care providers offer their services for remuneration, be it directly from patients or from their insurance. In such systems, there is a certain degree of competition between hospitals concerning the provision of health care services. Where this is the case, the fact that a health service is provided by a public hospital is not sufficient for the activity to be classified as non-economic (EC, 2016a, pt. 26).

In regards to healthcare, the Courts thus appear to be relying on a different criterion for determining what constitutes a market. It is not whether there are private operators “willing and able” to provide the service on the market, but whether or not it is a service offered for remuneration. The same goes for education. The Commission explains that if public education is organised “within the national educational system funded and supervised by the State” then it may be considered to be a non-economic activity (Ibid., pt. 28). But if an education service is mainly provided for remuneration, as in financed by tuition fees, then it may be considered to be an economic activity. This can apply to a wide range of educational services, such as private and public primary schools and kindergartens, education in universities, and vocational training (EC, 2016a, pt. 29).

To sum up this rather winding section, we have seen how the EU courts and the Commission rely on a distinction between economic and non-economic activities in order to determine when state aid policy is applicable. We have also seen that there is considerable ambiguity concerning how to make this distinction. An economic activity is defined as “taking place on a market”, but two different criteria for identifying a market appear to be used: the existence of private companies willing and able to perform an activity and the granting of services for remuneration.

The question of which criteria should be applied has important consequences for the scope of state aid policy, and for the division of competences between the EU and the member states. According to the first criterion, almost all services can be seen as taking place on a market. Non-economic activities are reduced to activities that no private actors are “willing and able” to perform, in other words: market failures. This is in line with the neoliberal rationality of government, according to which it is assumed that all services that *can* be provided on the market *should* be provided on the market. According to the second criterion, all activities that take place within publicly funded, universally applicable, systems constitute non-economic activities. This would give national governments the power to decide what sectors are non-market sectors by choosing to organise them in this way. This breaks with the neoliberal rationality of government, as it would make the decision of what constitutes a market a *political* choice. To give a concrete example of the possible effects of applying these two different criteria: Swedish upper secondary education is organised in a system where public and private schools compete for students, but where education is publicly funded through a system that is universally applicable. Following

the definition of an economic activity as where there are private actors willing and able to perform a service, Swedish upper secondary education could qualify as a market, and state aid regulation would therefore be applicable. But following the definition of an economic activity as provided for remuneration, this system would not qualify as a market, and would therefore fall outside the jurisdiction of EU competition regulation (see Wehlander & Madell, 2013).

The nature of public services

As we have seen, the EU relies on a distinction between economic and non-economic activities in order to determine when state aid policy is applicable. But, of course, reality does not lend itself easily to such a separation. An area that has proven particularly challenging and controversial is the relationship between state aid policy and public services. Today, as a consequence of the past few decades of reforms, many public services are organised in a grey area between the state and the market spheres. The EU has therefore had to find a way to differentiate between public services which take place on a market, and should therefore be organised in a way that respects competition, and public services of a “non-economic nature” which fall outside the scope of state aid regulation. This brings us to the policy on *Services of General Interest*.

Services of General Interest (SGI) is a term used in EU law and policy to speak of public services. One explanation for why the EU has chosen not to use the well-known concept of public service is the need to use a concept that is neutral to whether a particular service is public or private since this can differ among the member states (Bauby, 2011). But, as suggested by Szyszczak, it can also be seen as an example of when the EU makes use of new concepts in order to create ownership over issues that have long been rooted in national cultures and traditions (2011, p. 6).

There are two categories of SGI, *Services of a General Economic Interest* (SGEI) and *Social Services of a General Interest* (SSGI). The first category includes, just as it says, services of a general interest that are economic in nature and therefore must comply with state aid regulation. The importance of SGEI is strongly emphasised in the EU Treaties which describe them as occupying a special place in the “shared values of the Union” and having a special role in promoting “social and territorial cohesion” (Article 14

TFEU). The Commission describes SGEI as having a fundamental role in providing a 'safety net for citizens' and in generating growth and jobs. They are also described as being a part of European culture and identity:

European societies are committed to the general interest services they have created which meet basic needs. These services play an important role as social cement over and above practical considerations. They also have a symbolic value, reflecting a sense of community that people can identify with. They form part of the cultural identity of everyday life in all European countries. (EC, 1996, pt. 6)

Furthermore, access to SGEI is enshrined as an EU citizenship right in Article 36 of the *EU Charter of Fundamental Rights* that entered into full legal effect in 2009 with the ratification of the Lisbon Treaty.

To protect the role and function of these services, Article 106.2 TFEU makes clear that SGEI are subject to EU rules on competition *only in so far* as that these rules do not "obstruct the performance, in law or in fact, of the particular tasks assigned to them". To balance competition regulation with the objectives of SGEI, a particular set of guidelines has been developed that will be discussed later in this chapter. For the purposes of this section, it is enough to establish that state aid policy builds on the assumption that there is a category of public services that are economic in nature. In a notice from 2011, the Commission clarified its understanding of the nature of SGEI in the following definition:

SGEI are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention. (EC, 2011, p. 3)

This makes clear that in the eyes of the Commission, SGEI are basically understood in terms of 'market failures' because the market would not be able to supply them (under the same conditions) without public intervention. Often-mentioned examples of SGEI are telecommunications, transport, postal services, water supply and waste management.

Social Services of a General Interest (SSGI) on the other hand, is not a term included in the EU treaties. According to Neergaard (2013) it first appeared in EU policy documents in 2001 and has since then not appeared in any of

the legally binding EU texts. It therefore has a much weaker standing than SGEI. The Commission describes the category in the following way:

Social services of general interest (SSGI) include social security schemes covering the main risks of life and a range of other essential services provided directly to the person that play a preventive and socially cohesive/inclusive role. (EC, 2011, p. 3)

A separation is made between two groups of SSGI, The first group includes social security schemes such as those linked to health, ageing, occupational accidents, unemployment, retirement and disability. The second group is more broadly defined as “other essential services provided directly to the person”. The Commission identifies four types of such services:

They comprise, first of all, assistance for persons faced by personal challenges or crises (such as debt, unemployment, drug addition or family breakdown). Secondly, they include activities to ensure that the persons concerned are able to completely reintegrate into society (rehabilitation, language training for immigrants) and, in particular, the labour market (occupational training and reintegration). (...) Thirdly, these services include activities to integrate persons with long-term health or disability problems. Fourthly, they also include social housing, providing housing for disadvantaged citizens or socially less advantaged groups. (EC, 2006b, p. 4).

From this passage we can gather that SSGI are social services, provided directly to the person which fill objectives of social security, rehabilitation, integration, employment, elderly care, childcare, and housing. But unlike SGEI, which are described in terms of market failures, it is not as clear what defines an SSGI. The Commission has listed some of the organisational characteristics that these services “often feature” as: being based on the principle of solidarity, not for profit, including voluntary workers, and “an asymmetric relationship between providers and beneficiaries that cannot be assimilated with a ‘normal’ supplier/customer relationship” (Ibid., p. 4-5). This description resonates with the definition of a non-economic activity as described in the previous section. But the EU court has made clear that SSGI can be *both* economic and non-economic in nature. As the Commission explains:

While some social services (such as statutory social security schemes) are not considered by the European Court as being economic activities, the jurisprudence of the Court makes clear that the social nature of a service is

not sufficient in itself to classify it as non-economic. The term social service of general interest consequently covers both economic and non-economic activities. (EC, 2011, p. 4)

This means that, just because a service is “social” in nature, it does not necessarily make it a non-economic activity from the perspective of EU law. Therefore, some services can be considered as both social *and* economic in nature, meaning that state aid policy still applies to them. The Commission has summarised the relationship between the two concepts in the following figure:

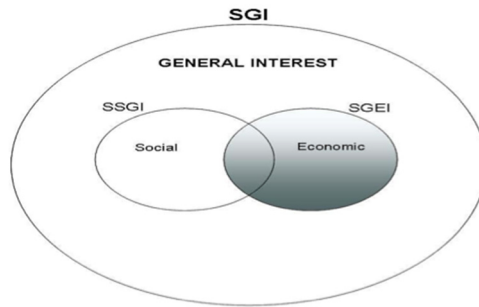


Figure 1: The relationship between different types of Services of General Interest (EC, 2013b).

It is therefore not clear how SSGI relates to state aid policy. The category does not seem to be of much relevance, since what matters most is whether the nature of a service is economic or non-economic. Those SSGI that are non-economic, i.e. found not to take place on a market, will fall outside the scope of competition regulation, while the SSGI that are economic will have to be organised in accordance with state aid policy.

This section has shown how state aid policy “produces” a new way of seeing public services. Services that used to be defined according to their “public” mission are now categorised according to their economic or non-economic nature. The ontological dimension of state aid policy is based on similar assumptions as the neoliberal rationality of government: competition is understood to be both self-regulating and in need of regulation, and what constitutes a public service can be determined by establishing what the market cannot accomplish on its own. Importantly, the question of where to draw the line between state and market, between the private and the public

sphere, is turned into an issue that can be empirically solved by answering the question *is there a market failure?*

“A more economic approach” (epistemological dimension)

I'm often asked about the values underpinning our competition policy. More specifically, people ask about the role of politics.

We can look at the politics of competition enforcement from three angles, starting from whether competition policy is based on political values and principles. The answer is, obviously, Yes. Keeping markets fair, level, and open is good for our economies and societies. It establishes a good environment for business in Europe where companies can generate wealth, create jobs, and invest in the future.

The second question is: Does competition enforcement relate to wider political priorities? And does it inform regulatory and other action taken to implement such priorities? Again, the answer is: Yes, it does. The Juncker Commission is a political Commission with a clear set of objectives and the College of Commissioners plays as a team. Competition policy – and I as Competition Commissioner – clearly have our own space in it. But there should be no doubt that I will do my part to help achieve the Commission's broader objectives.

The final question is; is competition enforcement in individual cases politicized? Here the answer is a resounding No. We enforce the law and serve the common interest. We are committed to the principles of fairness, good administration, transparency and due process. There is simply no room to spare for political interference.

(Commissioner Margarethe Vestager, 2 October, 2015)

Thus far, we have seen how the moral dimension of state aid policy gives voice to the belief that the proper role of government is to create the conditions for efficient competition and to “fill the holes” in the competitive market system by correcting market failures. Based on the ontological assumption that competition is a self-regulating process, it is assumed that

any state intervention that redistributes resources on the market constitutes a distortion of this process. But we have also seen that the Treaty holds exemptions for state aid that fills certain policy objectives. This creates an unresolved conflict between the objective of protecting competition and other policy objectives which must be settled in the application of state aid policy.

This section deals with the *epistemological dimension* of state aid policy that holds assumptions about what form of knowledge is considered appropriate for guiding state aid regulation. As evident in the quote from Commissioner Vestager, the enforcement of state aid policy is vulnerable to critique for being “politicised” in the sense of being affected by national governments, lobby groups or the Commission’s own priorities and interests. According to previous research, the early days of state aid regulation were indeed characterised by political negotiation where conflicts were solved mainly through dialogue between the Commission and the member states (López, 2015, p. 47). Criticism was levied against the lack of a sound economic-theoretical basis to state aid policy from those wanting to see greater reliance of microeconomic analysis and competition theory (Mause & Gröteke, 2016, p. 2). To address this criticism, and to ward off accusations of being politicised, the Commission has aimed to formulate clear and “objective” criteria for its decisions by drawing on concepts, theories and assumptions from economic theory (Kaupa, 2009). This development has happened gradually but truly took off with the launch of the State Aid Action Programme in 2005 which heralded the start of a “more economic approach” to state aid regulation.

The purpose of this section is to show how the epistemological dimension of state aid policy puts forward economics as the source of knowledge for solving the political conflicts inherent in state aid policy. It starts with a short description of what the more economic approach has entailed and continues with a description of three types of economic “tests” that have been developed to deal with three types of conflict.

“The disenchantment of politics by economics”

It has been claimed that EU competition policy has gone through an “Americanization” by adopting a US-style economic approach that is highly influenced by Chicago school economic theory (Wilks, 2015, p. 161). This school is characterised by its lenient attitude towards private monopolies, and by its optimistic view on the ability of economic theory and models to assess the efficiency of state intervention. Compared to the parts of competition policy which target private companies, it is not clear what a “more economic approach” to state aid policy would entail. Nevertheless, Kaupa (2009) has argued that state aid policy has become increasingly influenced by the theories and policy recommendations of neoclassical economics. This is expressed mainly in two policy developments: 1) an increasing reliance of the concept of market failures, and 2) the introduction of an efficiency-based approach that assesses the effects of state aid in terms of welfare optimisation. Rather than seeing this as “more economics”, Kaupa suggests that it entails “a more ideological approach” since state aid policy has come to rest on the normative assumption that markets are always more efficient in the absence of government intervention (2009, p. 317). Furthermore, the Commission has come to express the view that national governments, if left unchecked, will use state aid to pursue their self-interest of staying in power rather than acting in economically rational ways to increase the welfare of all (Mause & Gröteke, 2016, p. 3).

Mirowski has strongly argued against equating neoclassical economic theory with neoliberalism (2014, p. 8). According to him, neoclassical economics is a narrow doctrine restricted to economics, while neoliberalism constitutes a general philosophy of a society. Also, as was mentioned in Chapter 3, there are conflicting views within the neoliberal tradition on what role economics should play. While this is an important point, the independence of neoliberalism and neoclassical economic theory should not be exaggerated either. As Davies (2014) has shown, neoliberalism paves the way for an increasing reliance of neoclassical economics by providing a *rationale* for replacing political decisions with economic assessment. He elegantly describes neoliberalism as *the disenchantment of politics by economics*, meaning that what distinguishes the neoliberal state is not that it cedes power to the market, but rather that it justifies its decisions in terms of market-based principles and techniques of evaluation (Ibid., pp. 4-6).

The “more economic approach” to State aid policy should therefore be seen in light of the ascendance of a neoliberal rationality of government in EU competition policy. As a result, the question of how to balance competition with other policy objectives is no longer viewed as a political choice between conflicting alternatives, but as a problem that can be solved through an economic assessment of welfare maximisation. As former Commissioner for Competition Neelie Kroes once expressed with confidence “by looking at market failures and the economic need for government support (...) the Commission and the Member State can take the politics out of the discussion” (Kroes, 2008).

The following three sections show how economics can be used to “take politics out of the discussion” in relation to three different conflicts left in the EU Treaties. These are: 1) How to balance the member state’s right to engage in market transactions, with the interest of protecting competition. 2) How to balance the general prohibition of state aid with the exemptions allowed by Article 107 TFEU. 3) How to balance the member state’s right to assign public service missions to service providers acting on a market, with the interest of keeping a level playing field between public and private competitors.

The Market Economy Operator-test

The first type of conflict deals with a tension between Article 107, which prohibits states from distorting competition, and Article 345, which protects the member states’ right to own commercial enterprises and engage in business activities. From the perspective of EU law, the state is seen as having a “dual nature” in that it can act both as a *public authority*, pursuing policy objectives, and as a *market actor*, engaging in commercial activities in competition with private companies (Cyndecka, 2015, p. 269).

As we have seen, state aid policy prohibits governments from distorting competition by giving an economic advantage to an undertaking that it could not have obtained under “normal market conditions”, i.e. without government intervention. Taken to its extreme, this prohibition would in effect ban governments from engaging in any sort of commercial activity, because everything that governments do on the market (selling, purchasing, investing etc.) is by definition something that would not happen under “normal market conditions”. This is not an acceptable interpretation

according to the EU Treaties which protect the member states' right to run "mixed economies", i.e. the right pursue their own politico-economic agenda by choosing to engage in similar activities as private undertakings on the market (Cyndecka, 2015; Parish, 2003).

As stated by the Commission in the 2016 communication on the *Notion of State Aid*:

The Union legal order is neutral with regard to the system of property ownership and does not in any way prejudice the right of Member States to act as economic operators. However, when public authorities directly or indirectly carry out economic transactions in any form, they are subject to Union State aid rules. (EC, 2016a, pt. 73)

The dilemma, left for the Commission and the Courts to solve, has thus been how to balance the member states' right to act as economic operators with the objective of protecting competition from being distorted by government intervention. The solution has been the development of the so-called *Market Economy Operator-Test* (MEO) which rests on the simple yet controversial assumption that governments do not distort competition when engaging in commercial activities *if* they act like a "normal market economy operator" would.

The MEO-test was first introduced by the Commission in the beginning of the 1980s and was soon confirmed by the ECJ, but has developed since then in scope and detail (Cyndecka, 2015, p. 265). It starts off with one basic question: what would a private market actor do in a similar situation? (Parish, 2003, p. 71). The general idea is that governments engaging in market transactions on the same terms as a typical private market operator are not guilty of state aid because the transactions do not deviate from "normal market conditions". So, it is assumed that governments can avoid distorting competition by behaving like just another market actor, reacting to the signals of the competitive process.

How does a market economy operator behave, according to the Commission? They are assumed to be rational, prudent, informed, and acting guided solely by profitability (de Cecco, 2013, p. 64). The Commission makes clear that any public policy reasons that governments might have for engaging in market transactions are irrelevant when carrying out the MEO-test because a market economy operator would not normally take such considerations into account. As the Commission explains:

...(I)t is not relevant whether the intervention constitutes a rational means for the public bodies to pursue public policy (for example employment) considerations. (...) The decisive element is whether the public bodies acted as a market economy operator would have done in a similar situation. If this is not the case, the beneficiary undertaking has received an economic advantage which it would not have obtained under normal market conditions, placing it in a more favourable position compared to that of its competitors. (EC, 2016a, pt. 76)

When applying the MEO-test, governments must therefore “leave aside their roles as public authorities” (EC, 2016, pt. 77). Acting like a market economy operator, guided only by profitability, means that if governments *sell* something, they should sell to the highest bidder to make the most economically advantageous deal. If governments *buy* something, they should choose the “economically most advantageous offer”. If governments grant *loans* or *guarantees* they should do so on conditions that a private market operator would demand for the same service. Finally, if governments make *investments* they should do so expecting the same rate of return as a normal market economy operator would (EC, 2016a, pt. 97-112).

The MEO-test has thus allowed for a more economic approach to state aid regulation by making it necessary to assess the “normal market conditions” to which the government measure should be compared. The Commission describes two main methods for conducting such assessments: direct comparisons with the behaviour of private market actors in the same market, and, if this is not possible, the use of some form of “generally-accepted standard assessment methodology.”

If there are private actors engaging in similar activities, the MEO-test is relatively straightforward. For example, in the case of government loans the interest rate can be compared to the market rate of a loan granted by a commercial bank. Or in the case of government investment through acquiring shares in a company, the purchase price can be compared to the price quoted on the stock exchange (Parish, 2003, p. 72). If the government interest rate or purchase price is found to be lower than the market rate, then the difference between these amounts constitutes state aid. When it comes to governments purchasing goods or services on the market, the criteria of “normal market conditions” can be met by following a tender procedure in line with EU directives of public procurement. The rationality of this being that competition between companies for government contracts

will reveal the market price of goods or services. As long as governments choose the “most economically advantageous offer”, it is presumed that the price will match the market value, and therefore not constitute state aid (EC, 2016a, pt. 89-96).

In situations where it is not possible or appropriate to compare government transactions with private companies, or to use public procurement, other forms of economic assessments may be used. One such method is *benchmarking* where the normal market condition is assessed in light of a “comparable transaction”, carried out by “comparable private operators” in a “comparable situation” (EC, 2016a, pt. 98). Another option is to use a “generally accepted” methodology for profitability assessment which private market operators would themselves use. The Commission mentions the examples of calculating the *internal rate of return* (IRR) or the *net present value* (NPV) (Ibid., pt. 102). I will not go into the technical details of these methods. For the purposes of this chapter it is sufficient to conclude that governments seeking to ensure that they are not guilty of state aid might end up having to make use of quite advanced economic models for assessment.

While this can perhaps be perceived as reasonable from the perspective of state aid regulation, the MEO-test is controversial. As de Cecco argues, it has led to “a radical re-orientation in the role of the State as market participant” by forcing governments to ignore all other motives for engaging in market transactions than the maximisation of profits (2013, p. 73). I will return to this point in the concluding section of this chapter.

The compatibility test

The second type of conflict left unresolved in the Treaties is how to balance the prohibition of state aid with the exemptions in Article 107.3 for types of aid that *may* be considered compatible with the internal market. These are:

- a. aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment (...),
- b. aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

- 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;
- d. aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- e. such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

These exemptions are broadly formulated and leave a considerable amount of discretion for the Commission to decide what constitutes an “*important* project of common European interest” or a “*serious* disturbance in the economy of a Member State”, for example. This has led to a search for “objective” criteria which can be used to determine when these exemptions apply. Just like the MEO-test, such criteria have developed gradually through the Commission’s decisions and the judgements of the EU courts. Over time, this has led to an increasing number of policy documents dealing with the application of these exemptions in relation to different policy sectors, such as regional aid, environmental aid, or aid to stimulate research and development. To increase coherency across policy fields, the *State Aid Modernisation* initiative of 2012 set out to identify a set of common principles for assessing the compatibility of aid (EC, 2012a, pt. 18). This has resulted in the following criteria which have to be met for aid to be seen as compatible with the internal market:

- 1) The aid measure must be aimed at *an objective of common interest*;
- 2) It must be targeted towards a situation where aid can bring about a material improvement *that the market cannot deliver itself*, for example by remedying a market failure or addressing an equity or cohesion concern;
- 3) It must be an *appropriate* policy instrument to address the objective of common interest;
- 4) The aid must *change the behaviour* of the undertaking(s) concerned in such a way that it engages in additional activity that it would not carry out without the aid, or it would carry it out in a restricted or different manner or location;
- 5) The aid amount must be *limited to the minimum needed* to induce the additional investment or activity;

- 6) *Negative effects on competition and trade* between Member States must remain sufficiently *limited*;
- 7) The relevant acts and pertinent information about aid awards must be *transparent* (public). (EC, 2014b)

The first criterion states that an aid measure must target an objective of common interest. The objectives of common interest are defined in Article 107.3 as stated above. Since they are broadly and vaguely defined, further guidance on what qualifies as an objective of common interest must be found elsewhere in the policy documents. For example, the guidelines on *State aid for environmental protection and energy* refers to the environmental objectives in the growth strategy *Europe 2020* (EC, 2014c, pt. 3.2).

Criteria two to five aim to assess whether there is a market failure, and whether state aid really is the best possible way to deal with this failure. According to neoclassical economic theory, it is important to not only take account of market failures, but also *government failures*. This theme has been especially emphasised by the Chicago school (Backhouse & Medema, 2012). According to the theory of government failure, government intervention can do more damage than good in terms of welfare maximization if not carefully thought through. The compatibility test touches on this theory in criteria three to five (Friederiszick, Röller & Verouden, 2007, p. 625). Criterion number three aims to assess whether state aid really is an *appropriate* measure to address the objective of common interest, or if there are other instruments that are more efficient. Number four aims to assess whether state aid really has an *incentive* effect by leading to an actual change in market behaviour that would not be possible without government intervention. In order to determine whether state aid is compatible with the rules, it is thus necessary to engage in a counterfactual analysis of what the effects would be without the aid (EC, 2008). Criterion number five aims to assess whether the amount of state aid is *proportional* to the objective that it seeks to achieve. “Too much” aid would have an “unnecessarily” large impact on competition and therefore violate criterion number six.

This means that it is not sufficient to show that an aid measure aims to achieve any of the objectives stated in Article 107 for it to be exempted from the prohibition of state aid. It must also be shown that state aid is the most appropriate solution, that it will lead to a change in the behaviour of the recipients which would otherwise not have happened, and that the aid

amount is limited to what is absolutely necessary to achieve this effect in order to minimize the negative effects on competition. Importantly, this assessment must be made before the aid is actually granted since the Commission must approve all aid measures before they are put into effect (if not falling under the General Block Exemption Regulation, which will be explained in Chapter 5).

The compatibility test has thus made it possible to solve the goal conflicts inherent in Article 107 by turning the question of what policy objectives should be prioritised into a question of whether there is a market failure, and whether state aid is the most efficient way correct it.

The Altmark test for public services

The third and final economic test concerns the conflict between the prohibition of state aid in Article 107 and the protection of public services in Article 106.2 TFEU. The latter states that the rules on competition shall only apply to services of general economic interest “in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them”. This means that the member states shall be allowed to fund public services even if the service provider (private or public) is seen to be acting on a market. But, in providing this funding, they must also take care not to distort competition more than what is necessary.

In the 2003 Altmark judgement, the European Court of Justice held that the funding of public services on markets (i.e. Services of General Economic Interest) does not constitute state aid, given that the following four conditions are met:

- 1) the recipient undertaking must have public service obligations and the obligations must be clearly defined;
- 2) the parameters for calculating the compensation must be objective, transparent and established in advance
- 3) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;

- 4) Where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical well-run company. (EC, 2012b, pt. 43).

These criteria aim to make sure that public funding does not exceed what is necessary to accomplish the specific public service task. In order to do so, it is first necessary to define what the public service mission is. This can be more complicated than it might sound since public services often serve several different purposes. Public service TV, for example, may aim to ensure a broad variety of programmes, to provide education, to support democratic or cultural values, or to support minority languages. But in order to determine how much funding is necessary, a definition of the public service mission must be made in order to assess the “necessary compensation”. The ECJ has made clear that the level of compensation can be determined by using public procurement since open competition for government contracts is assumed to reveal the “true” cost of the service. But if this option is not available, the Court has stated that the level of public service compensation must be established “on the basis of an analysis of the cost of a typical well-run company”. Again, this requirement makes it necessary to engage in an economic assessment with a private market actor as the norm. The costs of providing a service by a “typical well-run company” must be assessed in order to create a benchmark for the level of public compensation.

Summary: the market as a norm

These examples have shown how the “more economic approach” has led to the introduction of different kinds of tests for solving tensions in the EU Treaties that all rely on economic terminology and methods of assessment. What unites these three tests is the expression of a neoliberal rationality that puts the market as a norm for government activities. When governments act on the market they must behave as a typical private market actor would. When governments grant state aid to achieve objectives of a common interest, they must first make sure that there is a market failure and that no other market alternative would be more efficient in achieving the same objective. When governments fund public services they must make sure that

the level of compensation for the public service task is similar to the cost of a “typical well-run company” on the market.

The more economic approach has arguably improved transparency by clarifying how the Commission reasons in making state aid decisions. But the extent to which these criteria have reduced the Commissions discretion (i.e. taken politics out of the discussion) can certainly be debated. The criteria still leave a lot of room for interpretation on what qualifies as appropriate and necessary aid (Parish, 2003; Kaupa, 2009). What the economic approach *does* achieve is a transformation of political discussions of what policy objectives should be prioritised, into a technical discussion of economic theory and methods. Thus surely succeeding in a “disenchantment of politics by economics”.

Conclusions

This rather long chapter has illustrated how the neoliberal rationality of government is *translated* in order to address the concerns of the European Union. The close association between European integration, competition, and economic growth has served as a powerful justification for state aid regulation. But it has also been shown that the neoliberal rationality is not a blueprint for state aid policy, which holds conflicting ideas and objectives. The claim that state aid policy is “neoliberal” can thus be qualified in the following way: State aid policy is not neoliberal in the sense of only serving the objective of creating free competition. This chapter has shown how the member states, through the European Council, have allowed room for the pursuit other policy objectives when drafting the EU treaties. But it has also been shown that neoliberalism has come to serve as the dominant *rationality* for dealing with conflicting policy objectives. By turning normative decisions about what the state should do, into empirical assessments of “the market” the neoliberal rationality of government has made it possible for the Commission to claim that its decisions are based on objective facts, rather than political judgement.

This chapter has shown that state aid policy shares the *moral assumption* of the neoliberal rationality of government that the proper role of the state is to act in ways that supports rather than distorts competition by “filling the holes” that the market cannot fill itself. While in its early days, competition

was seen as one policy objective amongst many others, and assumed to have both positive and negative effects; state aid policy today rests on the neoliberal conviction that competition is a win-win solution in the general interest. State aid policy has also been revealed as sharing the neoliberal definition of competition as self-regulating, and yet in need of regulation. This *ontological assumption* is reflected in the definition of state aid as any use of state resources that interferes with the “natural” distribution of resources on the market. At the same time, competition is assumed to require “constant vigilance” on behalf of the Commission to be created and upheld. Finally, it has been argued that state aid policy shares the *epistemological assumptions* of the neoliberal rationality of government in its emphasis on the need for a “more economic approach” to solve the conflicts and tensions in state aid policy.

Returning to the theoretical definition of government introduced in Chapter 2, the neoliberal rationality of government makes it possible for the Commission to govern the member states by providing a way to problematize, produce and depoliticize.

The neoliberal rationality of government has made it possible to shift the *problem definition* from understanding state aid policy as a solution to problems of barriers to trade, to a solution to problems of market efficiency. This, in turn, has made it possible to broaden the scope of state aid policy by providing a justification for Commission interventions in issues that concerns not only cross-border competition, but also distortions of competition in general. The assumed connection between competition and economic growth has made it possible to present state aid policy as an instrument for dealing with many of the major challenges facing the member states, such as recession, unemployment, globalisation, and public budget deficits. In line with the neoliberal rationality of government, these problems are posed as economic problems that can be solved by a more efficient distribution of resources. In other words: more competition. This change in problem definition has brought a change in the role of the Commission from solving conflicts of interests between the member states, to protecting the interests of the consumer-citizen against any “irrational” economic decisions of their governments. The main problem is no longer seen to be national governments that subsidise their industries in ways that hinder economic progress in other EU countries, but governments that fail to use their resources in an optimal way by distributing “bad” (competition-distorting) aid, rather than “good” (competition-supporting) aid.

This Chapter has also shown how state aid policy makes it possible to govern the member states by *producing* new policy categories that bring with them a new way of seeing the role of the state and its relationship to the market. The category of state aid has become an umbrella term for different kinds of state measures such as subsidies, grants, loans, and investments. This creates a new way of seeing where state measures are defined according to their effects on competition. Similarly, the distinction between “economic” and “non-economic” activities, and the redefinition of public services as either SGEI or SSGI, produces a new way of seeing state activities in terms of their relationship to the market, rather than in terms of their objectives. The introduction of all these different categories has been necessary in order to determine the scope and limits of state aid policy, but also makes it possible to act on them as objects of government.

Finally, this chapter has demonstrated how the neoliberal rationality of government makes it possible to govern the member states by providing a rationality for *depoliticising* state aid regulation. EU state aid policy can be seen as expressing a similar fear of politics as the early neoliberals did. The members of the MPS feared majority rule because it could be used to destroy the foundations of the liberal market economy. The European Commission fears politics for two main reasons. *First*, on the whole, the project of European integration can be seen as expressive of a fear of politics. There is always the threat that the project will come to a halt, or even disintegrate, if fundamental differences of opinion between the member states are allowed to surface, such as how to balance “social” and “market” Europe. Politics is feared because of the difficulties of coming to an agreement in the European Council. Keeping issues from being “politicized” by leaving it up to the European courts and the Commission to decide between conflicting views is therefore a way to keep the European project going (see Scharpf, 2010). *Secondly*, the Commission can be seen as expressing a fear of politics due to the fact that the legitimacy of its decisions rests on it being perceived as the neutral enforcer of EU law. It is therefore always vulnerable to accusations of being “politicized” and must strive for ways to appear guided by objective principles. The neoliberal rationality of government has made it possible to depoliticise European integration as well as state aid policy through its insistence on competition as a win-win solution to economic problems and by putting forward economic theories and methods as the means for solving political conflicts left in the Treaties.

The “more economic approach” launched by the Commission serves to depoliticise state aid regulation by turning political questions about how to balance different objectives, into technical questions about what measures are most “efficient”. As this chapter has shown, the solution to unresolved political conflicts is found in making use of a theoretical and idealised idea of the behaviour of a “market economy operator”, or a “typical well-run company”. As argued by Parish (2003) in relation to the MEO-test, three main objections can be raised against this approach. First, the more economic approach compares government measures to an ideal market operator that does not exist. Real life market operators do not engage in business solely motivated by profit and they have different sensitivity towards taking risks. Secondly, it is in the nature of the state’s authority that it has the power and the resources to do things that no private investor can. Comparing the state to a private market operator therefore often makes little sense. Finally, Parish makes the point that the more economic approach does not solve conflicts between those who prefer a liberal free market economy and those who prefer more state intervention in business. This is because those who argue in favour of state intervention do so, not because they want the state to behave like a private actor, but for the exact opposite reason: because they want the state to use its authority to realise policy objectives. They want the State to “curb the worst excesses of unregulated market forces”, not to “do what the market tells it to do” (Parish, 2003, p. 78, see also de Cecco, 2013, p. 77). Thus this chapter has shown how the neoliberal rationality of government makes it possible to confront the member states with what Foucault called “a permanent economic tribunal” (2008, p. 247). State aid policy sets forth the market as a norm for separating between good and bad government measures.

To conclude: state aid policy aims to teach the member states how to reason like neoliberal states. When drafting new policies, they should ask themselves questions such as: Does this measure result in an economic advantage to a selection of market competitors? Does this constitute an economic activity? Does this measure target a market failure? What form of state intervention would have the least negative impact on competition? And so on. The next chapter deals with the technologies used by the Commission to spread this neoliberal rationality of government to the member states.

5 State aid technologies

The previous chapter investigated EU state aid policy as an expression of a neoliberal rationality of government according to which, national government should reflect on their own decisions in terms of the effects on competition. This chapter investigates the technologies used by the Commission to teach this way of reasoning to the member states. A technology of government was defined in Chapter 2 as a practice or device for operationalizing and implementing a political rationality in actual government practices (Merlingen, 2011).

In the introductory chapter, I noted that scholars have pointed to a relationship between “free market” reforms, and the expansion of more bureaucratic forms of government. This chapter provides some insight into what this relationship looks like, by showing how “competition” is not something “out there” to be governed, but something which needs to be “rendered visible” through government practices.

A “common sense” definition of the meaning of bureaucracy can be found in the Oxford dictionary of English, where it is described as 1) “a system of government in which most of the important decisions are taken by state officials rather than by elected representatives” or 2) an “excessively complicated administrative procedure”. Following this definition, state aid policy appears as a truly bureaucratic form of government. The first claim, that most of the important decisions are made by officials rather than elected representatives, should be uncontroversial. The EU Treaties have granted the Commission the authority to interpret and enforce the rules in this area, together with the EU courts. The second claim, that this amounts to an excessively complicated administrative procedure, is a value judgement that can be debated. But the Commission itself apparently views state aid policy as overly complex, considering that it has motivated two rounds of state aid reform with the need to simplify and streamline the rules in order to “cut red tape” (EC, 2005; EC, 2012a). This chapter will show how state aid regulation is carried out through the typical paper-exercise that is

traditionally associated with bureaucratic forms of government, such as filling out standardised forms, conducting evaluations, and collecting information to be archived in databases. While this chapter will not land in the conclusion that these procedures are necessarily “excessively complicated”, it does provide a basis for raising the question whether this might not be the case.

Rendering visible

As James C. Scott has argued in his book *Seeing Like a State*, the expansion of state power has been dependent on technologies that could render the realm visible, and thereby governable. Before the introduction of standardised measurements and the use of statistical methods the state was largely blind to what was going on inside its borders. For example, the development of modern systems of taxation, central to state power, has been dependent on technologies for collecting information about the population such as their date of birth, place of residence, level of income and form of employment. *Seeing* is indispensable to *governing*. But seeing is never an objective exercise but always dependent on perspective. The state looks at things from the perspective of what it seeks to achieve, whether that is to collect taxes, reduce unemployment or prevent competition from being distorted. This way of seeing will focus on certain aspects of reality while ignoring whatever information is deemed irrelevant. As described by Rose, to govern “is not to act on a pre-existing thought world with its natural divisions” but to “cut experience in certain ways” by constructing a “new way of seeing” through the use of certain technical means (Rose, 1999, pp. 31-2). Scott’s critique of how modern states have looked at the world is that it has tended to be characterised by an overconfident belief in the ability to shape society according to the “expert” plans of central authorities. A belief, or spirit, that he refers to as “high modernism”. He argues that it is the narrow gaze of social engineers that has led many of their plans to fail because of the inability to take account of local specificity and the complexity of social, economic and ecological systems.

Today, it is often claimed that we have left the era of grand scale, centrally directed, government planning behind. Instead, as is emphasised in the governmentality literature, modern forms of government are often exercised

in order to make people *govern themselves* by acting on their beliefs or creating incentives for particular kinds of behaviour. An example which is almost too obvious can be found in the technology of “nudging”, a term used in marketing but now also in government, to “give a friendly little push towards behavioural change” without the use of legislation or coercion⁶. To avoid any confusion, technologies of “self-government” should not be understood as being more benign or less intrusive than central control. To govern through people’s perceptions of themselves and the world around them is, for better or worse, an exercise of power. But unlike more obvious forms of control, this is particularly difficult to identify and therefore to resist.

I think there is reason to be sceptical of the narrative that we have transitioned from one form of government to another, and left the era of rational planning and grand schemes behind. As discussed in Chapter 4 of this dissertation, EU state aid policy can be seen as embodying a similar kind of “high modernism” as the grand social schemes of the twentieth century. After all, state aid policy is based on a conviction that a small group of legal and economic experts can improve upon the economies of 28 member states, each with different political and economic systems, by applying the same set of narrow economic theories about competition. As was argued in Chapter 3, neoliberalism is just as much an ideology that seeks to transform society through the use of central power as state socialism, only with different means to different ends.

When state aid regulation first began, state aid was an unknown concept. The member states did not use it as a category and therefore kept no record of it. It did not exist. Therefore, the Commission had to devise technologies for rendering state aid visible, as a category of state behaviour that could be observed, measured, compared, and thereby governed. The most central of these technologies is the so-called *notification procedure*. It obligates the member states to report all planned aid measures to the Commission, so that it can assess its compatibility with the internal market.

Without the notification procedure the Commission would be mostly blind to what goes on in the member states since it has neither the authority nor the resources to monitor all decisions made by national governments and

⁶ Quoted from the webpage for “Nudging Sweden”, a public-private network which “aims to initiate, manage and promote behavioural change for a sustainable future”.
<http://www.awinwinworld.com/>

their numerous local and regional counterparts. But in order for national governments to know which measures they need to report, they must first understand what state aid *is*. The main challenge of state aid enforcement has therefore been to teach the member states to *think like neoliberal states* in order to understand what constitutes a possible distortion of competition which the Commission must be made aware of.

In order to capture the different ways that the neoliberal rationality of government is disseminated, I believe it is necessary to use a broader concept than “hard” or “soft” law that are commonly applied in studies of EU policy. I will use technologies of government as a term for speaking of the means used to teach governments how not to distort competition. As mentioned in Chapter 2, the meaning of technology can be understood as entailing both the *application* of knowledge and a method for *obtainment* of knowledge. As we shall see, the technologies used to govern the Member States fulfil this dual purpose. On the one hand, they disseminate knowledge to national governments about how to reason like a neoliberal state; on the other hand, they provide knowledge about state aid activities to the Commission.

Technologies of state aid regulation

This section describes seven different technologies used by the Commission to govern the member states. They have been identified according to the theoretical definition of a technology of government as the “regular application of some form of systematised knowledge” (Dean 1996, p. 59). I have searched for ways that the Commission spreads knowledge about state aid policy to national governments. Although I have included all the technologies that I have identified, it may be possible to find others. Again, the caveat should be added that I have focused on the actions of the Commission. I have thereby left out the important role of the CJEU and the technologies it uses to enforce the state aid rules.

Member state notifications

When notifying aid, governments must use certain standardized forms that are available on the Commission's website. The *general notification form* is a 17 pages long document which asks the member states to describe the nature of the aid measure, its recipients, its scope and duration. Looking at the first page, it is clear that one must be well acquainted with state aid policy in order to understand what information to provide (figure 1). The first subsection, "Status of the notification", guides the applicant through the four criteria for identifying State aid where the applicant is asked to answer the questions: Is it a transfer of resources from the State? Does it confer an advantage to undertakings? Is the measure discretionary? Does it affect competition? The form thus have the function of not only informing the Commission of what the member states' aid measures, but also, of informing national governments about the definition of state aid. It would be difficult for national governments to complete the form without having a clear understanding of what is meant by terms such as advantage, undertaking, and competition.

Part I. General Information

1. Status of the notification

Does the information transmitted on this form concern:

- (a) ☐ a pre-notification? If so, you may not need to complete the entire form at this stage but to agree with the Commission services which information is required for a preliminary assessment of the proposed measure.
- (b) ☐ a notification pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU)?
- (c) ☐ a simplified notification under Article 4(2) of Regulation (EC) No 794/2004¹? If so, please complete only the Simplified Notification Form in Annex II.
- (d) ☐ a measure which does not constitute State aid within the meaning of Article 107(1) TFEU but is notified to the Commission for reasons of legal certainty?

If you have selected point (d) above, please indicate below why the notifying Member State considers that the measure does not constitute State aid within the meaning of Article 107(1) TFEU. Please provide a full assessment of the measure in light of each of following four criteria, stressing in particular the criteria that you consider not to be met in the planned measure:

Does the notified measure imply a transfer of public resources or is it imputable to the State?

.....

Does the notified measure confer an advantage upon undertakings?

.....

Is the measure discretionary, available only to a limited number of undertakings, in a limited number of sectors of the economy or does it entail any territorial restrictions?

.....

Does the measure affect competition on the internal market or threaten to distort intra-Union trade?

.....

Figure 1: Page 1 of the General Notification Form (EC, 2017a).

The notification form also asks for information that will help the Commission to assess if the aid measure is compatible with the internal market. In Section 6 of the form, the member states are asked to specify how the aid measure meets the six requirements for compatible aid: that the aid 1) contributes to an *objective of common interest*, 2) that there is a *need for state intervention* (that it targets a market failure), 3) that the measure is *appropriate*, 4) has an *incentive effect*, 5) is *proportional*, and 6) that *negative effects on competition and trade* are minimised. Again, these questions provide information to the Commission as well as communicate the policy requirements to the member states. As shown in Figure 2, Question 6.1 clearly communicates what the Commission sees as an objective of common

interest by forcing the applicant to choose from a set of predetermined alternatives.

6. Compatibility of the aid		
Common assessment principles		
(Sub-sections 6.2 to 6.7 do not apply to aid to the agriculture, fishery and aquaculture sectors ¹¹)		
6.1. Please indicate the primary objective and, where applicable, the secondary objective(s), of common interest to which the aid contributes:		
	Primary objective (please tick only <u>one</u>)	Secondary objective ¹²
Agriculture; Forestry; Rural areas	<input type="checkbox"/>	<input type="checkbox"/>
Broadband infrastructures	<input type="checkbox"/>	<input type="checkbox"/>
Closure aid	<input type="checkbox"/>	<input type="checkbox"/>
Compensation of damage caused by natural disasters or exceptional occurrences	<input type="checkbox"/>	<input type="checkbox"/>
Culture	<input type="checkbox"/>	<input type="checkbox"/>
Aid or disadvantaged workers and/or workers with disabilities	<input type="checkbox"/>	<input type="checkbox"/>
Energy infrastructures	<input type="checkbox"/>	<input type="checkbox"/>
Energy efficiency	<input type="checkbox"/>	<input type="checkbox"/>
Environmental protection	<input type="checkbox"/>	<input type="checkbox"/>
Execution of an important project of common European interest	<input type="checkbox"/>	<input type="checkbox"/>
Fisheries and aquaculture	<input type="checkbox"/>	<input type="checkbox"/>
Heritage conservation	<input type="checkbox"/>	<input type="checkbox"/>
Promotion of export and internationalisation	<input type="checkbox"/>	<input type="checkbox"/>
Regional development (including territorial cooperation)	<input type="checkbox"/>	<input type="checkbox"/>
Remedy for a serious disturbance in the economy	<input type="checkbox"/>	<input type="checkbox"/>
Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
Rescuing undertakings in difficulty	<input type="checkbox"/>	<input type="checkbox"/>
Research, development and innovation	<input type="checkbox"/>	<input type="checkbox"/>
Restructuring undertakings in difficulty	<input type="checkbox"/>	<input type="checkbox"/>
Risk finance	<input type="checkbox"/>	<input type="checkbox"/>
Sectorial development	<input type="checkbox"/>	<input type="checkbox"/>

Figure 2: Page 8 of the General Notification Form (EC, 2017a).

There is no option to choose “other” or a blank line where the member states could themselves describe the objectives of their measure. The objectives are taken directly from the Treaty articles on State aid, or from other EU policies such as the growth strategy *Europe 2020*. Thus, the list clearly communicates what the Commission views as the legitimate objectives of state aid.

In Questions 6.2-6.6 (figure 3), the applicant is led through the remaining criteria for compatible aid. Information is requested as to why state aid is absolutely necessary to achieve an objective that the market cannot deliver on its own. The applicant must explain 6.2) why state aid will deliver a material improvement that the market cannot achieve on its own, 6.3) why there is no other way to achieve the same objective which would have less of a distortive effect on competition, 6.4) whether the aid would create incentives for market actors to engage in activities that they would not have done otherwise, 6.5) why the amount of aid does not go beyond what is absolutely necessary for achieving its objective, and 6.6) how the negative effects on trade will be outweighed by the positive effects in another area.

6.2. Please explain the need for State intervention. Please note that the aid must be targeted towards a situation where it can bring about a material improvement which cannot be delivered by the market itself, by remedying a well-defined market failure.

.....

6.3. Please indicate why the aid is an appropriate instrument to address the objective of common interest as defined in point 6.1. Please note that the aid will not be considered compatible if less distortive measures make it possible to achieve the same positive contribution.

.....

6.4. Please indicate whether the aid has an incentive effect (that is, when the aid changes the behaviour of an undertaking leading it to engage in additional activity which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner).

☐ yes ☐ no

Please indicate whether activities which started before the submission of an application for aid are eligible.

☐ yes ☐ no

If they are eligible, please explain how the incentive effect requirement is complied with.

.....

6.5. Please indicate why the aid granted is proportionate insofar as it amounts to the minimum needed to induce investment or activity.

.....

6.6. Please indicate the possible negative effects of the aid on competition and trade and specify the extent to which they are outweighed by the positive effects.

.....

Figure 3: Page 9 of the General Notification Form (EC, 2017a).

After completing the general notification form, governments must determine whether it is necessary to complete one of 19 supplementary information sheets which cover different types of aid, such as aid for rescuing undertakings in difficulties, aid for research and innovation, aid for the transportation sector, environmental aid, etc. These forms ask for more detailed information about the specific aid measure, allowing the Commission to assess whether it meets the policy requirements for the relevant sector.

For an uninitiated reader, parts of these forms will be difficult to understand. For example, Question 2.3.7 in the supplementary information sheet for regional investment aid:

Paragraph 99 RAG⁷ provides that "In the case of acquisition of an establishment only the costs of buying the assets from third parties unrelated to the buyer should be taken into consideration. The transaction must take place under market conditions. Where aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets should be deducted from the eligible costs related to the acquisition of an establishment. If the acquisition of an establishment is accompanied by an additional investment eligible for aid, the eligible costs of this latter investment should be added to the costs of purchase of the assets of the establishment.

If relevant in the notified case, please explain how those conditions have been complied with, providing relevant supporting documentation.

Or Question 2.5.6 on the same supplementary form:

Please confirm that the total amount of aid that will be granted to the initial investment project does not exceed the 'maximum aid intensity' (as defined in paragraph 20(m) RAG), taking into account the increased aid intensity for SMEs (as determined in paragraph 177 RAG) and the 'adjusted aid amount' (as defined in paragraph 20(c) RAG), where applicable. Please provide the relevant supporting documentation and calculations.

To complete the notification form it is thus not only necessary to be well acquainted with state aid policy, it can also require the delivery of supporting documents and calculations. The term "notification" form therefore, does not do justice to all that it encompasses: it is not only about

⁷ Regional Aid Guideline

notifying the Commission of a planned aid measure, but also about providing the Commission with the necessary information so that it can make its decision. This means that a significant part of the administrative burden for state aid regulation lies with the member states.

The notification requirement can thus be viewed as a technology of government that provides information to the Commission about the actions of the member states, and information to the member states about state aid policy. In order to fill out these forms correctly, governments must learn how to reason like neoliberal states. They must learn to determine whether they distort competition by providing economic benefits to some competitors more than others, how to identify a market failure, and to assess whether there are other policy alternatives that would have a less distortive effect on competition.

Private complaints

The Commission is not only made aware of state aid measures through the notification process but also through private complaints. Any person, undertaking, or association of undertakings “whose interests might be affected by the granting of aid” may issue a complaint to the Commission. This constitutes a second technology of government which helps to make state aid visible and thereby governable.

As the main objective of state aid policy changed from a protecting competition between member states, to protecting competition in general, more private actors have seen the opportunity to use the policy to defend their own interests. Private companies can use the complaints function to target state measures that they see as a threat to their competitive position. And since public organisations are also included in the concept of “undertaking” (if they are seen to be acting on “a market”), it has also become possible to use the private complaints function to target public sector activities that are seen as distorting competition. There are thus clear economic incentives for private companies to inform themselves about state aid policy in order to know how to use it to their advantage.

In 2014 the Commission introduced a standardised form for private complaints (figure 4). It had apparently been receiving a lot of complaints that were “not motivated by genuine competition concerns” and therefore

“led to a waste of the Commission’s limited resources” (EC, 2014d). By making it compulsory to use a standardised form, the Commission hoped that it would become easier to sort out the relevant cases for investigation. The private complaint form fulfils the same kind of educational function as the notification form. It asks the complainant to provide information that shows that the measure in question meets the definition of state aid, and that it is incompatible with the internal market.

7. Grounds of complaint.*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

Figure 4: Question 7 on the Online complaint form (EC, 2017b).

Even though the questions are phrased as “in your view” or “in your opinion”, they create incentives for the complainant to learn about the state aid rules in order to increase the chances that the Commission will open an investigation. As a technology of government, the private notification form creates incentives for private actors, with a stake in preventing certain government measures, to learn how to think according to the rationality of the policy. The threat of private complaints also creates incentives for national governments to learn how to comply with state aid policy in order

to reduce the risk of being subjected to Commission investigation, or worse yet, of receiving a negative decision.

The general block exemption regulation (GBER)

Not all aid measures must be notified to the Commission in advance. The *general block exemption regulation* (GBER) excludes some categories of aid from the pre-notification requirement. These are types of aid that the Commission normally find to be compatible with the internal market.

The history of state aid policy has been described as a long struggle by the Commission to make the member states comply with the rules (Lavdas & Mendrinou, 1999; López 2015). The period between 1958 and 1991 has been described as the “dark ages” of state aid regulation, as the member states were reluctant to cooperate and questioned the authority of the Commission (Kassim & Lyons, 2013, p. 7). As the state aid regime became stronger, and the member states started to adhere to the notification requirement while an increasing number of private complaints were being issued, the Commission suddenly found itself facing the opposite problem: an insurmountable workload (Mederer, 1997). DG Competition became swamped with cases to investigate as it was forced to deal with everything from big subsidy schemes, to relatively insignificant cases like the property deal in Åre that was described in the introduction of this dissertation. One of the objectives of the State Aid Modernisation initiative in 2012 was therefore to increase the scope of the GBER so that the Commission would not have to spend time and resources going through cases which were likely to be found compatible with the internal market. As a result, the scope of the general block exemption was expanded to include twelve categories of aid, including regional aid, aid to small and medium sized companies, research and development, environmental protection, culture and heritage conservation, and aid to disadvantaged workers and workers with disabilities. But the block exemption does not come without conditions. The member states must ensure that their aid measures fulfil certain necessary requirements. The GBER specifies who can receive aid, how the aid can be used, and the maximum amount of aid which can be awarded. This information must be reported to the Commission within 20 days of awarding the aid, using yet another standardized form.

It can thus be noted that, despite its name, the general block exemption does not allow the member states to *exempt* certain categories of state aid from the rules, altogether. The GBER only allows exemption from the process of pre-notification. In its place, a requirement for *post*-notification is introduced, in order for the Commission to be able to control for errors in how the GBER has been used. The Commission's control thus changes from *ex-ante* (before taking effect) to *ex-post* (after taking effect) inspection. The Commission has described this reform as a way to increase the member states' responsibility for state aid policy enforcement (EC, 2012a, pt. 21).

The form that the member states must use asks for general information about the aid measure such as its purpose, national legal basis, budget, and duration. The member states are thereafter asked to specify under which provision of the GBER the aid measure should be implemented (figure 5). The list of objectives communicates which types of aid are eligible for the block exemption. If national governments cannot fit their measure under any of the listed categories, then they must follow the standard notification procedure.

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
Regional aid — investment aid ⁽¹⁾ (Art. 14)	<input type="checkbox"/> Scheme % %
	<input type="checkbox"/> Ad hoc aid % %
Regional aid — operating aid (Art. 15)	<input type="checkbox"/> Transport costs of goods in eligible areas (Art. 15(2)(a)) % %
	<input type="checkbox"/> Additional costs in outermost regions (Art. 15(2)(b)) % %
<input type="checkbox"/> Regional urban development aid (Art. 16)	 national currency %
<input type="checkbox"/> SME aid (Art. 17-18-19-20)	 % %
SME aid — SMEs' access to finance (Art. 21-22)	<input type="checkbox"/> Risk finance aid (Art. 21) national currency %
	<input type="checkbox"/> Aid for start-ups (Art. 22) national currency %
<input type="checkbox"/> SME aid — Aid to alternative trading platforms specialised in SMEs (Art. 23)	 %; in case the aid measure takes the form of start-up aid: national currency %
<input type="checkbox"/> SME aid — Aid for scouting costs (Art. 24)	 % %
Aid for research, development and innovation (Arts. 25-30)	Aid for research and development projects (Art. 25)	<input type="checkbox"/> Fundamental research (Art. 25(2)(a)) %
		<input type="checkbox"/> Industrial research (Art. 25(2) b)) %
		<input type="checkbox"/> Experimental development (Art. 25(2)(c)) %
		<input type="checkbox"/> Feasibility studies (Art. 25(2)(d)) %
	<input type="checkbox"/> Investment aid for research infrastructures (Art. 26)	 %
	<input type="checkbox"/> Aid for innovation clusters (Art. 27)	 %
	<input type="checkbox"/> Innovation aid for SMEs (Art. 28)	 %

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
	<input type="checkbox"/> Aid for process and organisational innovation (Article 29) % %
	<input type="checkbox"/> Aid for research and development in the fishery and aquaculture sector (Art. 30) % %
<input type="checkbox"/> Training aid (Art. 31)	 % %
Aid for disadvantaged workers and workers with disabilities (Arts. 32-35)	<input type="checkbox"/> Aid for the recruitment of disadvantaged workers in the form of wage subsidies (Art. 32) % %
	<input type="checkbox"/> Aid for the employment of workers with disabilities in the form of wage subsidies (Art. 33) % %
	<input type="checkbox"/> Aid for compensating the additional costs of employing workers with disabilities (Art. 34) % %
	<input type="checkbox"/> Aid for compensating the costs of assistance provided to disadvantaged workers (Art. 35) % %
Aid for Environmental protection (Arts. 36-49)	<input type="checkbox"/> Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards (Art. 36) % %
	<input type="checkbox"/> Investment aid for early adaptation to future Union standards (Art. 37) % %
	<input type="checkbox"/> Investment aid for energy efficiency measures (Art. 38) % %
	<input type="checkbox"/> Investment aid for energy efficiency projects in buildings (Art. 39) national currency %
	<input type="checkbox"/> Investment aid for high-efficiency cogeneration (Art. 40) % %
	<input type="checkbox"/> Investment aid for the promotion of energy from renewable sources (Art. 41) % %
	<input type="checkbox"/> Operating aid for the promotion of electricity from renewable sources (Art. 42) % %
	<input type="checkbox"/> Operating aid for the promotion of energy from renewable sources in small scale installation (Art. 43) % %
	<input type="checkbox"/> Aid in the form of reductions in environmental taxes under Directive 2003/96/EC (Art. 44) % %
	<input type="checkbox"/> Investment aid for remediation of contaminated sites (Art. 45) % %
	<input type="checkbox"/> Investment aid for energy efficient district heating and cooling (Art. 46) % %
	<input type="checkbox"/> Investment aid for waste recycling and re-utilisation (Art. 47) % %
	<input type="checkbox"/> Investment aid for energy infrastructure (Art. 48) % %
	<input type="checkbox"/> Aid for environmental studies (Art. 49) % %

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
<input type="checkbox"/> Aid schemes to make good the damage caused by certain natural disasters (Art. 50)	Maximum aid intensity % %
	Type of natural disaster	<input type="checkbox"/> earthquake <input type="checkbox"/> avalanche <input type="checkbox"/> landslide <input type="checkbox"/> flood <input type="checkbox"/> tornado <input type="checkbox"/> hurricane <input type="checkbox"/> volcanic eruption <input type="checkbox"/> wild fire	
	Date of occurrence of the natural disaster	dd/mm/yyyy to dd/mm/yyyy	
<input type="checkbox"/> Social aid for transport for residents of remote regions (Art. 51)	 % %
<input type="checkbox"/> Aid for broadband infrastructures (Art. 52)	 national currency %
<input type="checkbox"/> Aid for culture and heritage conservation (Art. 53)	 % %
<input type="checkbox"/> Aid schemes for audio-visual works (Art. 54)			
	 % %
<input type="checkbox"/> Aid for sport and multifunctional recreational infrastructures (Art. 55)	 % %
<input type="checkbox"/> Investment aid for local infrastructures (Art. 56)	 % %
⁽¹⁾ In the case of <i>ad hoc</i> regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the <i>ad hoc</i> aid.			

Figure 5: Part II of Annex II in the General Block Exemption Regulation (EC, 2014h).

Besides notifying the Commission within 20 days, the GBER also requires member states to issue *annual reports* of their block exempted aid measures. They are also required to keep “detailed records” of the aid measures for a minimum of 10 years, including all the necessary information to establish that the conditions of the GBER have been fulfilled. The information made available through these forms and reports allows the Commission to check for errors made by member states in their handling of the GBER. Therefore, despite the talk of transferring responsibility to national governments, the Commission still retains control over state aid enforcement.

The GBER has been described as a way to lower the member states’ “administrative burden” and speed up the process of state aid regulation. As expressed by Commissioner Almunia:

These new rules will cut red tape for Member States and encourage them to put in place smart aid measures which contribute to economic growth and do not harm fair competition. If Member States make full use of the possibilities for granting aid under the extended exemptions from notification, most aid measures could be immediately implemented, without prior approval from the Commission. (EC, 2014e)

Considering the documentation that the member states are required to provide, it seems that the GBER has reduced the administrative burden of *the Commission*, rather than the member states. Even so, the GBER has proven to be popular amongst national governments. The Commission has estimated that this regulation will be used for approximately two-thirds of the total aid amounts granted by national governments in the years to come (EC, 2014e).

As a technology of government, the GBER creates incentives for national governments to exercise an element of *self-government*. There are clear incentives to try to fit aid measures under the general block exemption as this speeds up the process. Again, this makes it necessary for national governments to learn about state aid policy. The GBER can thus be seen as another technology that contributes to spreading the neoliberal rationality of government.

State aid evaluations

In 2014 the Commission introduced a requirement that the member states should conduct *evaluations* of certain aid measures to assess their effects on competition. According to the GBER, all aid measures over 150 million euros that are covered by the general block exemption should be evaluated. Besides this, the evaluation requirements also cover aid measures that are large, “novel in nature”, or granted in a field that is “expected to go through rapid future change” (EC, 2014g). The Commission explains the kinds of aid that may need to be evaluated in the flow chart (figure 6):

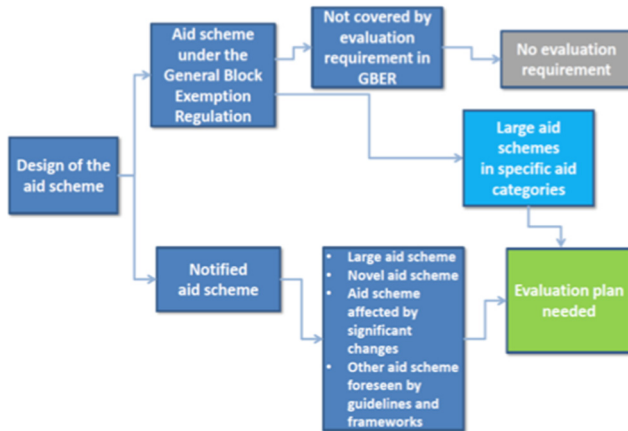


Figure 6: Selection of aid schemes for evaluation purposes, (EC, 2014g, p.16)

State aid evaluation is described as “a learning exercise” for both the Commission and the member states (EC, 2014f, p.5). Its purpose is to increase knowledge about the effects of state aid, both in terms of political objectives and effects on competition. This knowledge can then contribute to the design of future state aid policy reform. According to the Commission, evaluations will “close the circle” of the state aid policy cycle, as illustrated in Figure 7.



Figure 7: The State aid policy cycle (EC, 2014f)

National governments must follow specific guidelines set out by the Commission when designing their evaluation schemes. The ambition is to

streamline the member state's evaluations so that it becomes easier to identify best-practices which can be used to design more effective aid schemes in the future (EC, 2014f, p. 5). This makes it possible for the Commission to claim to be engaging in "evidence-based policy-making" by basing its decisions on "solid evidence on the actual impact of schemes in the markets" (EC, 2014f, p. 2). To this end, the Commission has issued a *Methodological Guidance Paper* which sets out the principles and methods of evaluation that it wants the member states to use. Amongst other things, the paper lists the kind of questions that should be asked:

1. Direct impact of the aid on beneficiaries, e.g.:

- Has the aid had a significant effect on the course of action taken by the aid beneficiaries? (incentive effect)
- Has the aid had an effect on the situation of the beneficiaries? (For example, has its competitive position or default risk changed?)
- To what extent has the aid had the effects expected?
- Have beneficiaries been affected differently by the aid? (For example, according to their size, location or sector)

2. Indirect impact of the aid scheme, e.g.:

- Has the scheme had spill-over effects on the activity of other firms or on other geographical regions? Did the aid crowd out investment from other competitors or attract activity away from neighbouring locations?
- Has the scheme contributed to the relevant policy objective?
- Can the scheme's aggregated effects on competition and trade be measured?

3. Proportionality and appropriateness of the aid scheme, e.g.:

- Was the aid scheme proportionate to the problem being addressed? Could the same effects have been obtained with less aid or a different form of aid? (for example, loans instead of grants)
- Was the most effective aid instrument chosen? Would other aid instruments or types of intervention have been more appropriate for achieving the objective in question? (EC, 2014g, p.6)

The evaluation questions thus mirror the policy requirements for compatible state aid: the aid must have an incentive effect, be proportional to its stated ends, have no better market alternative, and the positive effects of the aid must outweigh the negative effects on competition. Taking part in the state aid evaluation procedure thus teaches national authorities to reason like neoliberal states by separating “good” from “bad” government by identifying the existence of a market failure.

The Methodological Guidance Paper instructs national governments to use certain methods for identifying the causal impact of state aid.

State aid evaluations should be able to identify the causal impact of the scheme itself, undistorted by other variables that may have had an effect on the observed outcome, e.g. general macroeconomic conditions or firm heterogeneity (e.g. differences in firm size, firm location, financial means or management capabilities). (...) This causal impact is the difference between the outcome with the aid and the outcome in the absence of the aid (EC, 2014g, p. 7).

In order to separate cause from effect, the economic situation of the group of companies that have received aid should be compared with a group of companies that have not received aid. The Commission thus expects evaluators to engage in a counterfactual analysis of what the results would have been if aid had not been given. The Commission acknowledges that there are difficulties in making such a comparison because the performance of companies is affected by a range of other factors besides state aid. A simple comparison of one group of companies with another is therefore not enough to establish the causal effect because it is likely to “reflect this reality more than the effect of the aid itself” (EC, 2014g, p. 8). To isolate the effects of aid, it is therefore necessary to use more advanced methods of evaluation. A technical appendix to the Methodological Guidance Paper suggests the use of randomised experiments, quasi-experimental methods, regression discontinuity design and structural estimation.

To make sure that state aid evaluations are “objective, rigorous, impartial and transparent” they must be conducted by “experts who have the adequate and proven experience and the methodological knowledge” (EC, 2014g, p. 12). These experts must be independent from the authority granting the aid. Stakeholders should also be invited to discuss the evaluation plan, and both the plan and the final evaluation report should be made public (EC, 2014g, p. 13)

The evaluation requirement works as a technology of government that provides information which can be used in future state aid policy reforms. Similar to the notification form, these evaluations fill the dual function of keeping the Commission informed of national state aid measures, while communicating the nature of “good” aid to national governments. Similar to the GBER, the evaluation requirement increases the administrative burden on the member states by making it necessary to draft an evaluation plan early on, when designing their aid schemes, and then report back to the Commission with the final evaluation result no later than six months before the aid scheme expires. The ideal evaluation process is described by the Commission in Figure ????.

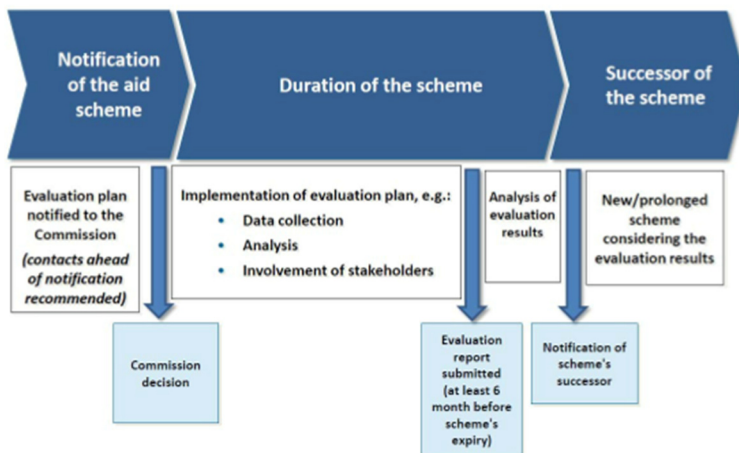


Figure 8: Overview of the evaluation process in the case of a notified scheme (EC, 2014g, p. 12).

National databases

In July 2016, the Commission introduced a regulation that requires all new state aid measures to be made publicly available on dedicated *national websites*. This requirement is limited to aid amounts above €500.000. National authorities have a period of six months after the aid has been granted to make the necessary information public. Besides giving instructions about the kinds of information that should be supplied (name of the beneficiary, type of enterprise, amount of aid, objective of the aid,

etc.) the regulation also provides information about how the information should be published:

Member States shall organise their comprehensive State aid websites, on which the information laid down in Article 9(1) is to be published, in such a way as to allow easy access to the information. Information shall be published in a spread-sheet data format, which allows data to be searched, extracted and easily published on the internet, for instance in CSV or XML format. Access to the website shall be allowed to any interested party without restrictions. No prior user registration shall be required to access the website. (EC, 2014h)

This regulation was introduced in the name of *transparency*. According to the Commission, information about which companies have received state aid, and the amount of aid they have received, will make it easier for citizens to hold their governments accountable as to how they spend public resources (EC, 2016b). As such, it is described as an instrument for increasing the effectiveness of state aid enforcement. Public information about state aid is believed to make it easier for citizens, as well as and companies, to monitor the actions of their governments in order to notify the Commission of any violation of state aid policy. As the Commission explains:

Transparency is important because it promotes accountability and more effective policies. Competitors of aid recipients and other interested parties will be able to see which companies have received state aid, how much and for what purpose. Transparency will *enable market monitoring and market discipline* of state aid, thus contributing to a level playing field between companies and between Member States. Transparency will promote the good use of taxpayers' money. (EC, 2016b, emphasis added)

The creation of national databases can therefore be seen as a technology of government that makes it easier for private actors to participate in the governing of the member states in order to keep them from distorting competition.

EU structural and investment funds

Another technology of government is the use of the *EU Structural and Investment Funds* (ESIF) to teach the member states about state aid policy. These funds are part of the EU cohesion policy which aims to reduce economic and social disparities between regions. The policy encompasses several funds, but the largest and most well known are the *European Regional Development Fund*, the *Cohesion Fund*, and the *European Social Fund*.

According to the European Court of Auditors, the state aid rules only apply to resources granted by member states. Aid granted by the Commission, or any other EU body, is therefore normally not subject to the rules (ECA, 2016, p. 17). But, it has been determined that resources distributed by the structural and investment funds can be seen as granted by the member states because they are *managed by national authorities* who decide how they should be distributed (Ibid.).

It is difficult to find information about when such EU-funding constitutes state aid. But as the website for *Interreg Baltic Sea Region* (an EU fund for supporting regional development around the Baltic Sea) makes clear, it is the responsibility of national organisations to understand what state aid is and what the relevant rules are:

Interreg Baltic Sea Region is bound to comply with the State aid rules which apply in the EU and the European Economic Area (EEA). (...) Therefore, organisations which intend to apply for funding from the Programme need to understand what State aid is and how the activities in the project can be carried out in line with the relevant rules.⁸

It is also stressed that non-compliance with the state aid rules will lead to cuts in project financing. There are thus clear economic incentives for national authorities to learn about state aid regulation in order to receive EU funding for their projects. As such, the ESIF can be seen as a technology of government that creates incentives for member states to exercise an element of self-government in making sure that they comply with state aid policy.

The relationship between the ESIF and state aid policy appears to be an area under development. The Commission has taken action to increase awareness of state aid policy in relation to projects funded by the ESIF during the

⁸ <https://www.interreg-baltic.eu/for-projects/state-aid.html>

programming period of 2014-2016. The European Court of Auditors has identified the cohesion policy as one of the main problem areas of state aid regulation, with a significant number of non-compliant cases (ECA, 2016). This could therefore be an area of state aid regulation that will become more important in the future.

The State Aid Scoreboard

All aid measures that are reported to the Commission, through the notification procedure, private complaints, or under the General Block Exemption Regulation, provide information for the so-called *State Aid Scoreboard*. The Commission started publishing statistics on state aid levels in 1988 with the introduction of the bi-annual State Aid Survey. In 2001 the survey was transformed into the State Aid Scoreboard and updated biannually up to 2012. Since then, the scoreboard has taken the form of an interactive tool on the Commission's website, where the user can choose to display statistics in different kinds of graphs or illustrated on a map of the member states.

The scoreboard can be seen as a technology of government that “produces” state aid as a category of government action, by transforming it from an abstract policy concept into something “real” which is possible to visualize in graphs and tables.

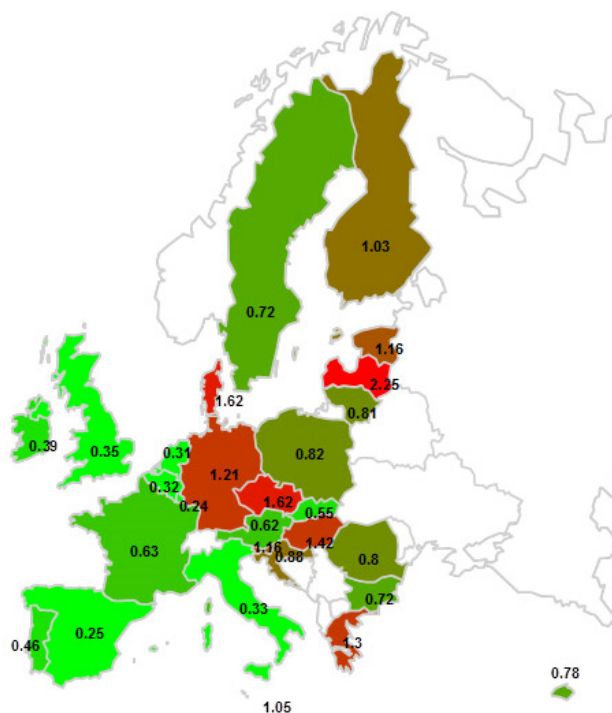


Figure 9 - State Aid expenditure as % of GDP (2015), less railways (EC, 2016)

The State Aid Scoreboard makes it possible to measure the amount of aid in each member state and to make comparisons among them, as in figure 9 where the countries with the highest aid levels are coloured an alarming red. It also makes it possible to compare aid levels over time, as in figure 10 where the blue dotted line shows the change in total levels of state aid since 2009.

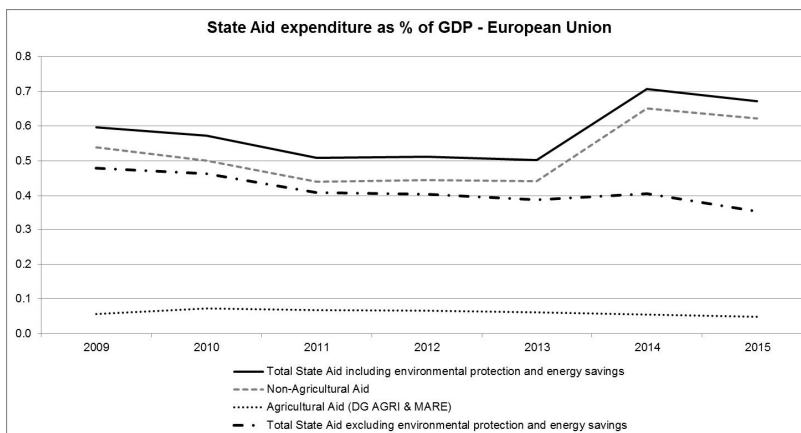


Figure 10 - Total State Aid expenditure, excluding aid to railways as % of GDP (EC, 2016c)

The total amount of aid can also be broken down into different types of aid, targeting different objectives, as is shown in figure 11, where the change in aid levels between 2014 and 2015 is shown in either green (a decrease) or red (an increase).

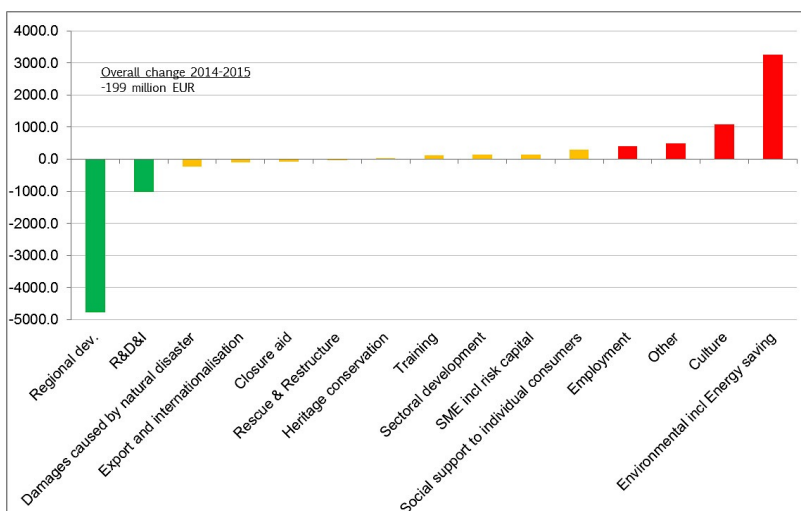


Figure 11: Overall change in State Aid expenditure by objective as % of GDP (EC, 2016c)

Because the Commission is dependent on the self-reporting of the member states, and private notifications, there are some obvious problems with these statistics. Aid that is *not* notified to the Commission is not visible in the State Aid Scoreboard, which means that member states that take their notification obligation seriously might end up looking like they have higher levels of aid than countries that are less inclined to notify the Commission of their aid measures. This makes it difficult to draw the conclusion that, for example, Finland has a higher level of state aid than Italy. Also, considering the complexity of the rules, different member states could come to different conclusions about what qualifies as state aid. The State Aid Scoreboard thus fail to take account of the fact that some aid measures are never reported to the Commission due to a lack of knowledge, or different interpretations, of the rules.

This being said, the State Aid Scoreboard fills an important function in governing the member states. Once state aid has been rendered visible in this way it can be the object of government. Seeing is the precondition for knowing and controlling. The Scoreboard provides information that can be quantified and compared both over time, and between states. This makes it possible to discuss increases and decreases and to devise theories of cause and effect, in order to adjust government measures to better exercise control in the desirable direction. As described by Cini and McGowan, state aid statistics make it possible for the Commission to present new policy initiatives as the necessary responses to troublesome developments or past errors (2009, p. 34). This process of rendering visible also improves conditions for governing by having normalizing effect. It reinforces the status of state aid as an existing category that governments must take into consideration.

Besides functioning as a technology of government that renders state aid visible to the Commission, it can also be seen as a technology of self-government. The state aid scoreboard, together with other surveys and reports, can create pressure on national governments to lower their state aid levels in order not to appear “wasteful” compared to other countries. (Cini & McGowan, 2009, p.178).

Conclusions

This chapter has described seven technologies of government that are used in state aid regulation. It has shown how these technologies all have a dual function. On the one hand, they serve to render state aid visible and thereby governable. Through notifications, private complaints, evaluation reports, national public databases, and the reports required in order to use the general block exemption or apply for EU funding, the Commission is able to see what goes on in the member states. This information can then be used to control the member states, and to identify the need for new EU policies. On the other hand, these technologies serve the function of teaching national governments about state aid policy. This knowledge is necessary for these technologies to function. If people within or outside government do not know about state aid policy, they will not know how to identify state aid that must be notified, evaluated and made public.

This chapter thus suggests that the practice of state aid regulation works as a self-reinforcing process: the more involvement actors have in the technologies of state aid regulation, the more they learn about the content of state aid policy and become accustomed to its way of reasoning about the nature of competition, the role of the state, and its relationship to the market. The more they become accustomed to this way of reasoning, the easier it becomes to identify new state aid cases that must be reported. This is how the neoliberal rationality of government is disseminated and how its status as an “objective truth” is reinforced. At least in theory. This dissertation does not include a study of how successful the Commission is in applying these technologies. A task for future research would be to study how national governments and private actors respond to the Commission’s attempts to govern state aid: to what extent they abide by state aid regulation, or ignore, resist, or are oblivious to it.

This chapter has shown how state aid regulation functions through a mixture of central control and self-government. The member states are bound by the Treaties to notify state aid to the Commission. If they do not, they risk private complaints or Commission investigations that can end up as court cases settled by the CJEU. As a result, governments could be required to abolish their aid measures and revoke any aid amount already given. This creates incentives for national governments to exercise an element of self-government in learning how to shape their policies so that

they can either avoid having to notify the Commission, or increase their chances of a positive decision. The often protracted process of receiving a go-ahead from the Commission also creates incentives for learning how to use the General Block Exemption Regulation. This, in turn, makes it necessary to exercise self-government in order to apply the rules correctly and to reduce the risk of the Commission finding the aid measure incompatible in its ex post controls. The requirement that projects funded by the EU structural and investment funds must comply with state aid policy also creates economic incentives for government authorities to learn how to adapt their activities according to the rules.

Finally, this chapter has shown the bureaucratic nature of state aid regulation. It requires the use of standardised forms, the collection of statistical information, the publication of evaluation plans and evaluation reports, and the storing and presenting of state aid cases in public databases on both EU and national websites. More complex cases can lead to long processes of investigation, which entail the gathering of more information, the involvement of lawyers, court decisions and court appeals. What is striking, in especially the evaluation requirement, is the rationalistic belief that reality will render itself visible in the way that the Commission wants. The instructions for how to assess the causal impact of state aid convey a positive view of the ability to separate cause and effect by using statistical methods. Here, the Commission can be said to display a kind of “high modernism” in its belief in rational planning.

Returning to the definition of bureaucracy from the beginning of this chapter, the answer to the question of whether these administrative procedures are “excessively complicated” or not will differ depending on what we understand their purpose to be. If we take the Commissions word that these procedures have been introduced in order to cut red tape and make state aid regulation faster and easier, then these procedures could perhaps still be seen as overly complicated. But if we view them as instruments used to teach the member states how to reason like neoliberal states so that they will know how to govern themselves, then they appear to be quite fit for their purpose.

6 The anti-politics machine

The purpose of this chapter is to illustrate how the neoliberal rationality of government sustains itself as a dominant paradigm through mechanisms of depoliticisation that render critical challenges difficult. Returning to Fergusson's metaphor of government as an "anti-politics machine", the previous chapters can be seen as investigations into the internal workings of the machine: the rationality according to which it has been built, and the technologies used to make it function. This chapter investigates what happens as the machine starts working, when political conflicts between different values and interest are fed into the machinery, and transformed into technical problems of competition.

The character of this chapter is slightly different compared to the preceding ones. It builds on a set of examples which provide snapshots of state aid regulation, from which it is not possible to draw any general conclusions. The purpose is rather to point to some of its possible consequences, in order to show the importance of further research. The first section contains a theoretical discussion about how to understand the relationship between government and politics. This is followed by two empirical sections which provide examples of the effect of state aid regulation on political debates taken from both EU and Swedish contexts.

De-politicising mechanisms

In Chapter 2, government was defined as a depoliticizing activity rather than a political one. The practice of government was described as entailing both a moment of rupture and normalization: On the one hand, new problems are identified in ways that question the order of things and provoke new reactions and debates. On the other hand, these problems are formulated in ways that make them appear amendable by government

intervention, using existing instruments and techniques. If government is understood as a process which opens up, in order to close down, politics can be understood as the expression of a critical challenge, seeking to keep the field of possible action open.

Rationalities of government can be seen as a form of discourse that relates specifically to the role of government. It is well known that discourses set the framework for political debates by limiting what is possible to think, write or say about “a given social object or practice” (McHoul & Grace, 1993, p. 31). In other words, discourses set the boundaries of political debates by shaping our perceptions of what constitutes a “reasonable” argument. But dominant discourses have both limiting and *enabling* effects on politics. As Simons (1995) points out, limits are the “conditions of possibility” because they are what give *form* to something. Although we are “limited by limits”, we are also indebted to them for the possibility of being anyone at all: for having an identity and the capacity to act (Simons, 1995, p. 3-4). Discourses can thus be described in terms of opportunity structures that reward certain strategies of action while making others more difficult. They structure the field of *possible action* rather than simply limiting the *possibility of action*.

Because of its focus on government, governmentality studies have been criticised for not dealing adequately with themes of politics, conflict and dissensus (see Walters, 2012). Although this may be a valid criticism there are examples of researchers who engage with these themes in their studies (see Li, 2007; Death, 2010; Altermark, 2016). Yet, because the focus is on dominant ways of thinking rather than on particular policy outcomes, governmentality studies, and studies inspired by Foucault in general, tend to provide a rather bleak picture of the possibility for radical change. They show how difficult it is to challenge dominant discourses considering that, even when we might perceive ourselves as engaging in acts of resistance, we can end up reproducing the structures that we are trying to replace (Nentwich & Hoyer, 2013, p. 559). For example, Reeves (2012) has argued that gender mainstreaming of peace and security governance empowers feminists and women’s rights activist by turning them into “gender experts” with the power to challenge traditional understandings of peace and security. At the same time, dominant rationalities of peacekeeping make it possible to subjugate the feminist agenda to the goal of conflict

resolution. Thus gender mainstreaming may end up lending legitimacy to a structure that it has sought to challenge.⁹

Thinking about government in terms of an anti-politics machine, how can we understand what happens to politics when it encounters a dominant rationality/discourse? I like to think of dominant rationalities as having a push-pull effect. Political claims that cannot be accommodated within the framework of the dominant rationality are pushed to the side as “irrational” or “unreasonable”. Thus generating a pull-effect, as an incentive to re-frame one’s political claims in order to be taken seriously. I will refer to these mechanisms as “rendering reasonable” by pulling critical arguments to conform, and “rendering unreasonable” by pushing un-conforming arguments to the margins of debate.

Dominant rationalities thus pose a well-known dilemma for political movements seeking to achieve change. By adjusting their claims to the dominant rationality they will appear reasonable but risk reinforcing the very structures that they wish to change. At the same time, by formulating their claims in a way that clearly breaks with the dominant rationality they direct a challenge to the dominant order, but risk being marginalised as irrational and/or unreasonable. This latter strategy can even end up reinforcing the dominant rationality by making it possible for its adherents to appear as the only viable alternative, compared to “extremist groups”.

Thomas Mathiesen, a Norwegian legal sociologist, has described in an accessible way how dominant “public meanings” can be put to strategic use in order to silence opposition (here adapted slightly to fit the theoretical language of this study). Speaking from within the framework of a dominant rationality of government, it becomes possible to force the opposition to accept the current terms of debate by:

1. Emphasising the need to be responsible and listen to reason. Those holding dissenting views are often reminded of the need to take responsibility by abandoning “unreasonable” claims.
2. Emphasising the need to focus on practical issues and aim for short-term improvements, rather than attempting to change

⁹ The insight that resistance might end up reinforcing the structures is in no way particular to governmentality studies but is well established in a wider literature on discourse or ideology (see Weitz 2001; Ferree 2003; Nentwich and Hoyer; 2013).

the system radically. By doing so, the opponents are pushed towards engaging in problem solving within the framework of the dominant rationality rather than challenging the problem definition, itself.

3. Emphasising the need to work for unity and the “common good”.
4. Emphasising the importance of compromises, reaching consensus, or taking a middle position. (Mathiesen, 1982, pp. 97-114)

With the help of Mathiesen the depoliticising mechanisms of rendering reasonable/unreasonable can thus be summarised in the following table.

<i>Rendering Reasonable</i>	<i>Rendering Unreasonable</i>
Rational, responsible	Irrational, irresponsible
Problem-solving	Problem-seeking
Realist, well-informed	Naïve idealist, uninformed
Cooperative, consensus-oriented	Uncooperative, conflict-seeking

How does one succeed in getting out of this dilemma? Scholars that are inspired by Foucault’s conception of power and discourse have suggested two main strategies. The *first strategy* consists of formulating a clear counter claim. This claim must offer clearly critical views that are constructed on carefully formulated premises that clearly break with the dominant rationality (Mathiesen, 1989, p. 161). In other words, it is necessary to base ones claim on an *alternative* rationality of government that connects arguments of how things should be (moral dimension) to claims about how things *are* and what we can *know* (ontological and epistemological dimension). By doing this, it is possible to challenge the taken-for-granted status of the dominant rationality and show how the power relations it upholds can be questioned and changed. If successfully done, this will force the representatives of the dominant rationality to engage in the debate on the premises of the opposition. This turns the tables and makes it possible for the opposition to use the same techniques of rendering their opponents reasonable or unreasonable.

The *second strategy* is to challenge the dominant rationality from *within* rather than from the outside. This would entail taking the dominant norms and assumptions as a starting point, but trying to use them “against themselves” rather than replacing them with alternative ones. Michel Feher has suggested that, instead of resisting a dominant rationality by rejecting its core ideas, one can embrace them “but only to impart them with unexpected meanings and to put them to unforeseen uses” (2009, p. 22). As an example, Feher points to the Workers Movement and the notion of the “free labourer”. The idea that workers are free to trade their skills on the market fails to acknowledge the reality facing workers who are forced to sell their labour power to an employer who decides how it should be used. But instead of discarding the idea of the free labourer, the Workers Movement has relied on this very notion by taking it seriously and asking the question “what would it take for workers to really be free?” Thereby the notion of the free labourer could be used as leverage in the struggle for workers’ rights.

The following two sections provide examples of how state aid policy functions as an anti-politics machine which marginalise critical challenges and turns political conflicts into technical problems of competition. The first section deals with politics at the EU level, while the second provides examples of the effects on national politics from a Swedish context. Because state aid policy is grounded in EU law, it can be argued that the depoliticising mechanisms are particularly strong. As Mathiesen points out, when law becomes applicable to political conflicts it becomes possible to force conflicts between opposing camps into a technical discussion about the correct interpretation of the legal rules (1982, p. 35). This makes it possible to draw a strong distinction between relevant and irrelevant argument, and thus to set clear boundaries for the debate.

Contesting competition

According to the neoliberal rationality of government, it is assumed that efficient competition will lead to economic growth for the common good. Therefore, anybody who opposes competition can be suspected of either arguing out of self-interest in order to protect their current privileges, or of being ignorant about the benefits of competition. Speaking from within its framework, the Commission has thus been able claim to be acting in the

general interest by offering a “win-win” solution to economic problems (see Blauburger, 2009). Opposition to competition policy is in turn described as a protectionist or populist reaction. *Protectionist* because of the association between competition and free trade. *Populist* because of the assumed connection between competition and economic growth, which makes it possible to dismiss claims that anything other than free competition would improve the economy as the false promise of a populist leader. Furthermore, the close connection between competition and European integration makes it possible to portray opposition to competition policy as being *anti-EU*. These mechanisms for rendering critical challenges unreasonable are illustrated in a speech made by Commissioner Almunia in 2014 entitled “Competition Policy Enforcement as a Driver for Growth”:

Competition policy can be a good antidote against populists, demagogues, nationalists and protectionists of this kind. I believe that all competition authorities in the EU are committed pro-Europeans – it’s in the very nature of our work. We need to come together and explain to the people what competition policy is about; how it boosts growth; how it benefits SMEs and ordinary consumers.¹⁰ We need to find better ways to explain how bad populism can be; how it is absolutely logical for pro-Europeans to fight against protectionism in all its guises and therefore defend the role of the Commission as the body entrusted with the defence of the common interest. This is why the founding fathers of Europe gave exclusive competences to the Commission. In particular, this is why the EU is the only jurisdiction in the world with State aid control. (Almunia, 2014b)

Disagreements regarding competition policy are thus described as conflicts among, on the one hand, protectionists, populists and nationalists, and on the other hand, pro-competition and pro-European forces. The Commission is portrayed as the defender of the common interest, with the important task of educating people about the benefits of competition in order to prevent them from being misled by nationalist agitators.

This way of de-emphasising political conflicts by claiming that they can be solved by providing more information about the benefits of competition is common in the Commission’s discourse. Arguments against competition regulation is regularly dismissed as arising from a lack of knowledge

¹⁰ SMEs: Small and Medium-sized Enterprises

regarding how state aid policy should be properly applied. As Cecilia Malmström, in her former role as Commissioner for Home Affairs, stated when referring to the impact of state aid regulation on public services:

The Commission is aware of the concerns expressed by public authorities and service providers on the application of the EU rules to social services. However, we would like to stress that EU state aid and internal market rules can help public authorities to organise and finance good quality, cost-efficient services. In addition, we believe that some of the difficulties encountered by the stakeholders are due to a lack of awareness and information of how EU rules are applied. (Malmström, 2011)

Arguments that state aid regulation has a negative impact on public services are thus dismissed as grounded in a lack of knowledge about how competition would actually make these services better and more cost-efficient, if only public authorities could understand how to apply the rules correctly.

We can thus observe how the neoliberal rationality of government makes it possible for the Commission to use the de-politicising strategies described by Mathiesen. The opposition to state aid policy is portrayed as being both ignorant and irrational, by acting on feelings rather than facts. They are portrayed as selfish and irresponsible, acting on the populist idea that protectionism will improve their own economic situation. Finally, the opposition is depicted as conflict seeking, uncooperative and as a threat to the fundamentals of European integration. In this way, the opposition is rendered unreasonable and their arguments are ignored. At the same time the Commission is able to portray itself as the rational and clear-headed defender of the common interest, seeking to solve problems through cooperation and consensus based on established knowledge. This way, the space for a political discussion between conflicting opinions, is narrowed and the neoliberal rationality of government is upheld as a dominant rationality.

To illustrate how these mechanisms of de-politicisation work when confronted with critical challenges, the following sections provide two examples of when state aid policy, or competition regulation in general, has roused debate. The first concerns the critique raised by former French President Nicolas Sarkozy in relation to the drafting of the new Lisbon Treaty. The second example concerns the critical responses to the *Green*

Paper on Services of General Economic Interest which was presented by the Commission in 2003. Green papers are used to initiate an early debate on topics in order for the Commission to get a sense of the public opinion. They are usually followed by a white paper with more concrete policy proposals.

These two examples have been chosen because they are extreme cases, not because they are representative of the political debate on competition policy in general. State aid policy is rarely the subject of more open, ideological debate in relation to Commission policy decisions. As previously mentioned, the room for party politics is limited by the fact that state aid policy is rarely up for decision in the Council. Furthermore, the European Parliament only has advisory powers in this area. The Commission regularly make use of public consultations when issuing new policy proposals. However, these consultations tend to be organised in ways that do not encourage broader debates. They normally take the form of a questionnaire, in which interested parties are asked to answer questions that have been pre-defined by the Commission, or they take place in relation to an already drafted policy proposal. This can be seen as a mechanism for “rendering reasonable” since the consultation format pushes the participants to conform to the terms of debate which have already been set by the Commission. The following examples of more ideological debate should therefore be seen as exceptions rather than the norm.

Competition. “What has it done for Europe?”

In 2007, French President Nicolas Sarkozy managed to get a reference to “free and undistorted competition” removed from one of the portal articles of the new Lisbon Treaty. The original formulation stated that one of the main objectives of the EU was to establish “an internal market where competition is free and undistorted”. Due to Sarkozy’s intervention, a full stop was entered after internal market (Der Spiegel, 2007).

Sarkozy, having pledged to protect France against the negative impacts of globalisation, argued that the change in the treaty would “give Europe a little more humanity” by treating competition as a means, rather than an end in itself (Ibid.). He also made a connection between competition as an ideological conviction and the diminishing public support for the EU by raising the rhetorical question:

Competition as an ideology, as a dogma, what has it done for Europe? Fewer and fewer people who vote in European elections and fewer and fewer people who believe in Europe. (Zarkozy, in Munchau 2007).

The removal of “free and undistorted competition” from a prominent position in the Lisbon Treaty led to speculations as to whether this would signal a change of direction in EU competition policy. Neelie Kroes, the Commissioner for Competition at that time, was quick to issue a statement where she made clear that the goal of creating free and undistorted competition still had strong support in other parts of the EU treaties, and that competition regulation would therefore continue in its current tracks.

An Internal Market without competition rules would be an empty shell - nice words, but no concrete results.

The Protocol on Internal Market and Competition agreed at the European Council clearly repeats that competition policy is fundamental to the Internal Market. It retains the existing competition rules which have served us so well for 50 years. It re-confirms the European Commission's duties as the independent competition enforcement authority for Europe.

Now I would like to get back to the job. The Commission will continue to enforce Europe's competition rules firmly and fairly: to bust cartels and monopolies, to vet mergers, to control state subsidies. That is in the interests of our Internal Market. It is in the interests of European citizens and consumers, it is what Europe's business community quite rightly expects and deserves, and it is a firm foundation for Europe's prosperity, notably by ensuring fair conditions for international investment. (Kroes, 2007)

Rather than acknowledging that competition regulation can create conflicts between different interest and values, Kroes emphasised that competition is in the interest of everyone. Her reaction also shows how difficult it is to criticise competition without being seen as questioning the whole project of European integration. Kroes stresses that an Internal Market without competition policy would be “an empty shell”, “nice words – but no concrete results”.

Sarkozy's intervention could definitely be seen as a protectionist or populist move: a way to protect national industries and to appear to be tough on Brussels for a French public that had recently voted to reject the draft EU Constitution. But it is also possible that it was grounded in real dissatisfaction with the political direction of the European project, concerns

about national political autonomy or the effects of globalisation. The purpose here is not to draw conclusions about French politics or Sarkozy's true motives. The point is to show how difficult it can be to bring about a political discussion about the benefits and drawbacks of competition. The change in the portal paragraph of the Lisbon Treaty did not issue a period of critical self-reflection or debate in the Commission, at least not in public. Its message was "business as usual", with no mention of the criticism, or of any potential negative effects of competition, in its ensuing policy documents.

"Public services are more than market failures"

One of the most controversial issues of state aid policy is its impact on public services. If these are found taking place on "a market", then state aid policy requires them to be organised in ways which do not distort competition. This can mean that public services would have to be organised according to conditions similar to that of a "typical-well run" private company. This, in turn, affects how national governments can use their public services to achieve political objectives other than those that a private market actor would engage in.

In 2003, the Commission issued its *Green Paper on Services of General Interest* that invited opinions on the relationship between public services and EU competition regulation. The Paper emphasised the importance of SGI as located "at the core of the political debate" since they "touch on the central question of the role public authorities play in a market economy" (EC, 2003, pt. 4). Policy developments in this field were therefore believed to deserve "a broader and more structured debate" (Ibid., pt. 8). While the Commission claimed that it wanted a broad debate, it is also clear that it wished to set certain limits to the discussion. The Paper starts from an assumption that there are no principal problems with opening up public services to competition and competition regulation. It is stated that experiences from the sectors of telecommunications, postal services, transport and energy, shows that there are clear benefits of exposing public services to competition (so-called "liberalisation").

Liberalisation (has) stimulated the modernisation, interconnection and integration of these sectors. It increased the number of competitors and led to price reductions, especially in those sectors and countries that liberalised earlier. Although there is as yet insufficient evidence to assess the long-term

impact of the opening to competition of services of general interest, there is, based on the available information, no evidence supporting the thesis that liberalisation has had a negative impact on their overall performance, at least as far as affordability and the provision of universal service are concerned. (...) Initial fears that market opening would have a negative impact on employment levels or on the provision of services of general economic interest have so far proved unfounded. (EC, 2003, pt. 5)

Competition is assumed to make public services better, cheaper and to lead to economic growth, which, in turn, will reduce unemployment. In line with the neoliberal rationality of government, it is assumed that all services that can be subjected to competition, should be. While it is acknowledged that some may be concerned that competition regulation will have a negative impact on public services, these concerns are dismissed as being based on “misapprehensions” (EC, 2003, pt. 7). It is suggested that the “uncertainties and concerns of citizens” can be met by further clarifying what the purpose of the rules are and how they should be properly applied (Ibid., pt. 9).

This Green Paper raised criticism from four European organisations representing different parts of the public sector.

- The *European Federation of Public Service Unions* (EPSU), representing public service employees.
- The *European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest* (CEEP) representing the public service employers.
- The *Council of European Municipalities and Regions* (CEMR) representing local and regional governments in 41 countries,
- *Eurocities*, a network including around 130 European cities.

Their criticism centred on two main arguments: that public services are not suited to become exposed to market mechanisms, and that state aid regulation restricts democratic autonomy.

CEEP starts its opinion on the Green Paper with a reminder that the reason that public services were created in the first place, was because governments believed that certain activities “could not just be subject to the ordinary law of competition and market forces, but required specific forms of organisation and regulation” (CEEP, 2003). The opinion states that public services were created to:

- guarantee the right of every inhabitant to have access to basic goods or services (right to education, health, security, transport, communications, etc.);
- ensure economic, social and territorial cohesion, build relationships of solidarity, develop social bonds, and promote the general interest of the local population concerned;
- create conditions for sustainable development, both economic, social and environmental, taking a long term view of competitiveness and the interests of future generations. (CEEP, 2003)

The opinion is thus based on the assumption that there exist a conflict between competition and the purpose and objectives of public services. In a similar vein, CEMR takes issue with the “overall philosophy” of the Commission’s approach to SGI. It argues that it is one-sided and partial in the way it presents these services as limited to dealing with market failures.

Many of our members would challenge these formulations, which relegate public services to the role of “provider of last resort” in cases of market failure or the inability of market forces to deliver. First, the market does not usually ensure the optimum allocation of resources for the benefit of society at large in many important areas, such as health, education, libraries, public housing, social services, whatever its merits in other arenas. (...) Second, there is a counter view – at least as valid – that inverts this logic, and asserts that it is the positive role of public authorities to provide for the essential needs and basic human rights of citizens, while taking into account the secondary role of the market and private sector. (Services of general interest are) provided by public authorities not because of a sense of market failure, but because human rights, human dignity, and the public interest, required that they were provided for all citizens. That remains the case today, even if in some domains there is more room for involving the private or other sectors. (CEMR, 2003, pt.10)

These views are echoed by EPSU and Eurocities who argued in a joint statement with CEMR that public services, “such as transport, water, healthcare, education, social care or care for the environment”, have a “value over and beyond that of addressing market failure” since they aim to ensure social protection and human rights (EPSU et. al., 2003). The organisations thus refuse the definition of public services as market failures and instead inscribe them with their own reason for being, as political instruments. Public services are understood in positive terms, defined by their distinct

qualities, rather than in negative terms as what the market cannot achieve on its own.

The second critique issued by all four organisations is that competition regulation should not encroach on the self-determination of national governments. This was most strongly argued by EPSU, Eurocities and CEMR in demanding that the scope of state aid regulation should be limited to “ensure that local and regional governments remain free to decide, democratically, how to best provide services for their citizens” (EPSU et. al., 2003.)

(D)ecisions as to the organisation of public services and services of general interest of a local or regional nature should remain in the hands of local and regional authorities, where democratically elected representatives are in the best position to judge the merits of different options (...) on behalf of their citizens and electors. Democratic control and accountability, responsible use of scarce resources, the prevention of abuses of market power, long-term service delivery and security of supply of many services require public intervention and cannot be left to market forces only. (EPSU et al., 2003, p.1)

The organisations refer to the *principle of subsidiarity* in the EU Treaties which aims to keep the decision-making process as close to the citizens as possible. According to this principle, the EU must not take action in an area unless it is more efficient than action at national, regional or local level would be. What is meant by “more efficient” can, of course, be debated, but the organisations refer to the principle of subsidiarity in order to argue that decisions concerning the organisation of services of general interest should remain under the competences of local authorities.

These two critical arguments made by the public sector organisations do not fit within the framework of the neoliberal rationality of government which acknowledges no tension between competition and public services, or between competition regulation and democratic autonomy. Unlike the neoliberal rationality of government which defines public services as those services that *cannot* be organised according to competition, the organisations define public services as services that *should not* be organised according to competition. And unlike the neoliberal rationality, according to which governments should be limited by rules protecting competition, they argue that democratic autonomy must come first.

The Commission's response illustrates the way that such critical challenges are marginalised. In the ensuing *White Paper on Services of General Interest*, the Commission concludes that:

The debate has revealed considerable differences of views and perspectives. Nevertheless, a consensus seems to have emerged on the need to ensure the harmonious combination of market mechanisms and public service missions. (EC, 2004, p. 3).

The alternative view, that there can be no such harmonious relationship and that choices must therefore be made between conflicting values and objectives, is thus ignored. Instead the Commission restates its conviction "that the objectives of an open and competitive internal market and of developing high-quality, accessible and affordable services of general interest are compatible":

Indeed, the creation of an internal market has significantly contributed to an improvement in efficiency, making a number of services of general interest more affordable. In addition, it has led to an increase in choice of services offered, as it is particularly visible in the telecommunications and transport sectors. (...) The Treaty provision therefore allows the reconciliation of the pursuit and achievement of public policy objectives with the competitive objectives of the European Union as a whole, in particular the need to ensure a level playing field for all providers and the best use of public money. (EC, 2004, p. 7)

Neither does the Commission acknowledge that there could be a tension between democratic autonomy and competition regulation. While it is recognised that such a concern was raised in response to the green paper, the Commission quickly turns this into a problem that can be solved by increasing the awareness of how state aid policy should be applied:

It was stressed in the consultation on the Green Paper that within the framework of a competitive internal market the relevant public authorities must retain the powers to ensure that defined public policy objectives are effectively being achieved and that democratic choices are respected, including with regard to the level of quality and the resulting costs. It is necessary for the relevant public authorities to have adequate instruments and expertise at their disposal. The existing sector-specific Community rules provide for specific legal instruments and powers that allow the authorities of the Member States to enforce public policy objectives. Above all, Member States should pay attention to the increasingly complex tasks of the

regulatory authorities and provide them with all necessary instruments and resources. (EC, 2004, p. 5-6).

Given the right information about how to implement the rules, it is assumed that national governments will be able to pursue their own political objectives in harmony with competition regulation.

In this way, the neoliberal rationality of government makes it possible to ward off critical challenges by claiming that competition regulation is a win-win solution. The anti-politics machine of state aid policy either pulls interest organisations in, by encouraging them to formulate their arguments according to the terms set by the Commission, or push them to the margins of debate.

A new field of possible action

What happens to already existing political conflicts when they encounter the anti-politics machine of state aid regulation? The following section provides three examples from a Swedish context. They have been chosen because they illustrate different scenarios in which state aid policy is actualised by different actors and in relation to different policies. The first example deals with housing policy and shows how state aid policy can be used as an instrument for private companies to defend their interests against national governments. The second deals with the privatisation of public services and shows how state aid policy can be used as an instrument in party political conflicts. The last example deals with unemployment and integration and shows how state aid policy can be actualised by national governments themselves, in early stages of policy formulation.

The purpose of these examples is to show how state aid policy can shape the field of possible action for national actors by drawing new boundaries, as well as creating new opportunities. Together they show two mechanisms at work: 1) state aid policy works like an anti-politics machine, turning political conflicts between different opinions and objectives into technical problems of competition. 2) the neoliberal rationality of government is reified as a dominant paradigm for understanding the role of the state and its relationship to the market.

It is worth mentioning that Sweden is known for its over-zealous interpretation of EU competition rules. The Swedish government has been reluctant to try pushing for the exemptions made possible in the state aid policy or the directives on public procurement (Ahlberg & Bruun, 2010; Madell, 2011; Wehlander, 2011). Reactions to state aid policy might therefore be different in member states that have a different attitude towards EU law. But nevertheless, following the theoretical assumptions of this chapter, there are reasons to believe that the neoliberal rationality of government will have a similar impact on politics, wherever it becomes dominant. The following examples can therefore be seen to give a provisional view of how state aid policy is re-shaping the field of possible action in the member states, which can provide a starting point for further studies.

Municipal housing companies

Since the 1940s, *municipal housing companies* have been an important part of Swedish housing, used as instruments for creating affordable living and reducing segregation (SOU, 2008a, p. 78). The policy is based on a system of rent control which forces private housing companies to adjust their rent levels to the public housing sector. The purpose of this is to prevent market rents, which are set according to supply and demand, since this associated with higher rental costs and increased segregation. Rent levels in Sweden are therefore determined more by the size and quality of the housing rather than its location.

This housing policy has been the subject of much political debate over the years. Those who oppose rent control claim that it is responsible for the lack of housing in larger Swedish cities. They argue that it reduces incentives for new construction, leading to a shortage of housing, which, in turn, has created a black market in rental contracts. Its opponents therefore argue against rent control on the grounds that it appears to defeat its very purpose, and that more housing would be built under a system of market rents (Fastighetsägarna, 2017). The proponents of rent control argue that it is a necessary tool to achieve the aforementioned housing policy objectives. They believe that the housing shortage should be solved mainly by government investment in housing construction, as Sweden has previously done when facing housing shortages (Hyresgästföreningen, 2016).

This debate reflects some central ideological differences between conflicting views about the role of the state. The social democratic and socialist parties have traditionally argued that the role of the state is to redistribute resources through taxes and subsidies in order to even out the effects of economic inequality on where you can afford to live. The liberals and conservative parties have, in turn, argued that the role of the state is to create the conditions for an efficient housing market that will deliver a supply of housing which meets the demand.

In 2002, this debate suddenly took a new turn. An interest organisation for Swedish property owners *Fastighetsägarna Sverige* filed a complaint with the European Commission claiming that the Swedish government was guilty of state aid by providing economic support to the municipal housing companies (SOU, 2008a, p. 161). This complaint was renewed with further information in 2005, filed then with the *European Property Federation* (EPF), a European interest organisation for private property owners. This time, it was claimed it was not only the Swedish national government, but also its *local* governments, that were guilty of providing state aid by running their housing companies under more preferential conditions than those available for private companies. According to an estimate made by the accounting firm Ernst & Young, the total amount of state aid to municipal housing companies amounted to roughly 12 447 million SEK (Rindstig, 2004). This estimate included direct subsidies, government guarantees, and a lower rate of return than the market rate (Ibid.). The EPF argued that, because public and private housing companies were competing on the same market, this aid constituted a distortion of competition. Furthermore, because the Swedish rental system demands that rent levels in both sectors be set with the public sector as the reference point, it was argued that state aid made it possible for public companies to lower their rents, putting private companies in an even more disadvantaged position. As expressed by the former president of the EPF in a letter to Commissioner Kroes:

It is the very constraints imposed on the private rental sector by the system that make the state aid to MHCs (*municipal housing companies*) unacceptable because it creates competitive advantage for MHCs on a market where MHCs set the rules for all players while competing with the private rental sector for the same tenants. (Gamero del Castillo, 2005)

Following the complaints, the Commission opened up an investigation and initiated a dialogue with the Swedish government about the nature of their housing policy and how it could be changed.

The Swedish government launched an investigation which aimed at developing some possible reform options. Two main alternatives were considered. One was to remove all forms of state aid, meaning that public housing companies would have to operate on the same terms as private housing companies. The second alternative was to define public housing as a *Service of General Economic Interest* and thereby make it exempt from the prohibition of state aid. In order to qualify as a SGEI, the report concluded that it would likely be necessary to limit public housing to low-income earners as in the model for “social housing” which exists in many other EU countries. Such a solution was deemed incompatible with Swedish policy because of a long-time ambition to make public housing available to *all* income groups. Since the report considered it unlikely that the Commission would approve the definition of Swedish public housing as a SGEI without limiting its scope, it recommended the first reform option, to remove state aid from municipal housing companies altogether (SOU 2008).

The report drew many responses from different interest groups. Two main critiques were lodged against the reform proposal: 1) that it would make it more difficult for local governments to use their housing companies as political instruments in achieving their housing policy objectives, and 2) that the application of state aid policy to housing policy went beyond the scope of EU competences and thereby constituted an illegitimate limitation of national and local democracy.

The Swedish Association for Local Authorities and Regions (Sveriges Kommuner och Landsting) argued that “there must be room for local governments to decide what tasks they want to give to their companies” and that removing public funding would “result in wide-ranging and unwanted consequences for the municipalities’ ability to use housing companies as one of the instruments in housing provision.” (SKL, 2008) Similarly, A national interest group for affordable housing argued that a requirement that municipal housing companies must act like “normal market actors” by engaging in profit maximisation “would lead to the disappearance of one of the most important housing policy instruments” (Jagvillhabostad.nu, 2008). To support their claim they pointed to examples of public housing that had been built with the purpose of providing lower rental prices or senior living,

arguing that this would be impossible under a profit-maximising regime. Furthermore, a network against the privatisation of welfare services also argued that the proposed reform would “in practice mean the abolishment of public housing and make it impossible for the municipalities to engage in social housing policy.” (Gemensam Valfärd Stockholm, 2008).

Such arguments, that the state should use public services as political tools to achieve redistributive objectives, do not fit with the neoliberal rationality of government which sees public services as instruments to address market failures. They were thus easily marginalised in the ensuing policy debate which focused on the two alternatives suggested by the government report. The conflict between different views on the role of the state in housing policy was thus transformed into a technical discussion of how to comply with EU state aid policy. In the end, the Swedish Parliament decided to go with the alternative of removing state aid to public housing, making it necessary for local governments to run their companies in line with market conditions. In 2011, almost ten years after the first complaint was registered with the Commission, a new law was passed that required municipal housing companies to be run on “commercial grounds”.

Besides providing an illustration of how state aid policy works as an anti-politics machine, we can also see how the neoliberal rationality of government “shapes the possible field of action” in ways that rewards some strategies more than others. By reframing their opposition to the Swedish rental system as a problem of competition, the organisation for Swedish property owners managed a change in policy that they had long sought to achieve.

Privatisation of elderly care homes

The second example concerns the privatisation of welfare services. The Swedish welfare state has gone through some major changes since the shift in government from a social-democratic to a liberal-conservative majority in 2006. One of the changes was the further opening up of publicly financed education and healthcare services to private service providers. Today, public and private healthcare centres, high schools, elderly care and group homes act in competition with each other for patients and students, although these services are still publicly funded through a universally applicable system. These reforms were motivated in accordance with the the neoliberal

rationality of government, as it was argued that competition would make these services better, cheaper and more innovative, while increasing individual freedom by increasing consumer choice (Hartman, 2011). In addition to this, the reforms were also motivated as a way to empower workers by allowing them the opportunity to start up their own businesses. As sectors such as elderly care and healthcare have a predominantly female workforce, the privatisation of welfare services was also claimed to improve gender equality by making it easier for women to become entrepreneurs (SOU, 2008b). A unique feature of the Swedish reforms is that private service providers are allowed to keep whatever profit they make on the public financing that they are provided. This has been seen as necessary in order to attract private investors to these sectors and to create incentives for increasing efficiency and productivity.

Local governments in Sweden have far-reaching autonomy when it comes to deciding how to organise welfare services. Because of this, municipalities have chosen to privatise their services in varying degrees. The city of Stockholm was among those that embraced these reforms the most. Between 2007 and 2009, under a conservative-liberal majority, the city council sold several of the public healthcare centres, pre-schools, in-home care services, and group homes to private for-profit companies.

The local division of the Social Democratic Party, was opposed to privatisation, mainly on the grounds that the profit motive of private companies would run counter to the mission and quality of welfare services and would drain these sectors of resources. They sought to prevent the selling of public property but lacked a majority for its position. The conflict took an unexpected turn when they realized that EU state aid policy could be used as an instrument to stop privatisation.

It became clear that the city of Stockholm had sold public property at prices far below market value. Since many of the public services were taken over by existing staff, there had been little chance for other companies to place a competitive bid for the same properties. It therefore became possible to argue that the privatisations distorted competition by allowing the new owners to buy public property for less than what they were “really” worth. The Social democrats seized on this argument and filed a complaint with the Commission in 2008 arguing that the city council of Stockholm had violated state aid regulation by providing an economic advantage to certain companies over others.

While waiting for the Commission's decision, criticism against the privatisations grew in Swedish debate. Especially after it was revealed that several of the new owners had made large profits by quickly selling their businesses at market value (Flores & Aschan, 2013). Meanwhile, a Swedish government report was published which supported the conclusion that welfare services had been privatised in a way that constituted a breach of EU state aid policy (Statskontoret, 2008, p. 10).

This critique led the city council majority to put a stop to the privatisation process in 2009, before the Commission had reached a decision. But it proved to be only a temporary halt. After adjusting their policy to make it compatible with EU rules, i.e. taking measures to ensure that assets would be sold at market value, the process of privatisation could be resumed. The Commission thus closed its investigation on account of the problem being solved.

This example shows how an ideological conflict between different views on public ownership was turned into a technical discussion about how competition is affected. It also shows that it is not only private actors that can try use state aid policy to their advantage. In this case, the social democratic opposition found temporary success by reframing their critique of privatisation, from arguing that privatisation had negative effects on the welfare services themselves, to arguing that privatisation had been conducted in a way that led to an irresponsible waste of public resources. Thus, this example provides an illustration of an attempt to use the neoliberal rationality "against itself" by preventing privatisations. It also illustrates how such a strategy can lead to short-term victories but end up reinforcing the structures it sought to challenge. By choosing to oppose privatisation with the argument that governments should not distort competition, the opposition ended up reinforcing the neoliberal rationality of government that had motivated the reforms in the first place.

Start-up zones

In 2013, the liberal-conservative government in Swedish proposed a system of tax-relief measures for companies in urban areas with high unemployment. The plan was to create so called "start-up zones" where companies with fewer than 50 employees, and where at least a fourth of the staff consisted of local residents, would be granted a reduction in their

social-security fees. The location of the start-up zones was to be determined according to three criteria: a high level of unemployment, a high number of residents with a long term dependency on income support, and a high number of residents without a high school diploma. The proposal aimed to create “positive socioeconomic development in urban areas with widespread social exclusion” and reduce segregation in order to contribute to “socially and economically sustainable living environments” (Regeringen, 2013, p. 1).

Because the reform would provide an economic advantage to companies based on location (this was its very purpose), it could be seen as a distortion of competition. The Swedish government was aware that the reform thus met the criteria for state aid that needed to be reported to the Commission. But a government report which had investigated the legislative space for creating start up zones, had come to the conclusion that the Commission was likely to approve the aid under the exception provided by Article 107.3(c) for aid that “facilitates the development of certain economic activities or of certain economic areas”.

The reform proposal stirred up a degree of national debate. Several governmental agencies, such as the Swedish Competition Agency, the National Audit Office, the Tax Agency, and the Agency for Government Employers, together with several local and regional governments, advised against the reform due to a lack of evidence that similar reforms in other countries had been successful (Regeringen, 2013, p. 34). It was also argued that the creation of start-up zones would have a negative impact on companies located in nearby areas that would be competitively disadvantaged. Representatives from the business sector such as the Swedish Federation of Business Owners and the liberal think-tank *The New Welfare*, were especially dismissive of the proposal due to the effects on competition. The Swedish government in turn maintained that the reform would be effective and referred to positive effects on employment and growth of similar reforms in other countries (Borg & Munkhammar, 2012).

The Commission was notified in May 2013. In September, the Swedish government was asked to provide additional details about the planned reform, which it did in December. In January 2014, the Commission issued a letter in which it invited representatives from the Swedish government to a meeting. In the letter, the Commission also expressed doubts that the “very limited” requirement that 25 per cent of the staff must consist of local residents would have a big enough impact on social exclusion to

justify the use of state aid (EC, 2014i). It also questioned the decision to provide aid to already existing companies and suggested that the problem could be better solved by introducing a reform that creates incentives for starting *new companies*, similar to what apparently had been done in Italy and France (Ibid.). Without reaching a formal decision the Commission thus signalled to the Swedish government that the proposal was likely to be found incompatible with the state aid rules, in what was then its current form.

The process came to an end in April 2014 when the Swedish government issued a press release stating that it would not go forward with the proposal for start-up zones. It was explained that:

The objections brought forward by the EU Commission would require changes to the proposal that would result in a significant increase in the administrative burden for the companies involved, and in fewer companies being eligible to receive aid. As a consequence, it would no longer be an efficient instrument for employment and entrepreneurship. The government will therefore not proceed with the proposal of start-up zones. (Regeringen, 2014)

The press release also noted that even if changes would have been made in order to meet the Commission's requirements, it would be uncertain *when* the reform could have been put into effect, considering that an in-depth investigation by the Commission would further delay the process years. On account of these factors, the government decided to scrap the whole proposal.

Like the previous two examples, this illustrates how state aid policy works as an anti-politics machine by transforming a political debate that was focused on objectives (such as how to decrease segregation in an effective way) and conflicts between different objectives (combatting segregation or protecting fair competition) into a technical discussion on how to comply with state aid policy. This case also illustrates how state aid policy puts the Commission in the position where it gets to assess not only the effects on competition but also the means-end rationality of government decisions. In its letter to the Swedish government, the Commission questioned whether the percentage of the workforce that needed to be local residents would be enough to have a sufficient impact on social exclusion.

Furthermore, this case shows how national governments can learn to exercise a degree of self-government by taking note of state aid regulation early in the policy development stage. Initially, the Swedish government was aware that their proposal could be seen as a measure of state aid, and duly notified the Commission. This shows how adjustment to state aid regulation can happen without a formal decision being made by the Commission. This means that some effects of state aid regulation are invisible in the official statistic. They happen as a result of national governments learning to reason like neoliberal states in order to predict what the Commission's decision might be, and adjusting their policies accordingly.

Conclusions

This chapter has illustrated some of the ways in which neoliberalism sustains its position as a dominant paradigm. The neoliberal rationality of government makes it possible to render the opposition to state aid policy “unreasonable” by “pulling” critical challenges towards conforming to its assumptions, or by “pushing” them to the margins of debate. Criticisms of state aid policy that questions the value of competition risks being dismissed as expressions of protectionist self-interest or the irrational and irresponsible protests from those who fail to understand the benefits of efficient market competition. This language of “you’re either with us or against us” can be seen as symptomatic for the polarised debates regarding the future of the EU, in general. It becomes difficult to hold important political discussions about the pros and cons of market integration and about who wins and who loses, when debates are framed as pro-EU versus anti-EU, integration versus disintegration, and globalisation versus protectionism.

Moreover, this chapter has illustrated how the neoliberal rationality of government makes it possible for state aid policy to function as an “anti-politics machine” that repose political debates between opposing views and objectives about what government should do, into technical problems of competition. In doing so, decision-making power is transferred from politicians to experts in EU law and competition theory. The mechanisms of de-politicisation thus have two, interrelated, effects: 1) a discursive effect that transforms normative conflicts about what *should* be done, into empirical questions of the effects on competition, and 2) an institutional

effect caused by moving decision-making power away from political representative institutions in the member states, to the administrative and juridical institutions of the EU.

But this chapter has also shown that politics do not simply vanish. Conflicts between different interests and objectives remain, but they are pushed towards a new field of possible action. State aid policy becomes a new arena for politics where different interests try to use the rules to their advantage by framing their claims in accordance with the neoliberal rationality of government. These cases illustrate how actors use the “machine” of state aid regulation to achieve different objectives, such as pushing through changes in housing policy or preventing privatisation. Importantly, in this new political field, knowledge about EU law and economic theory becomes a valuable resource that can be used to defend ones interests. This also affect power relations in society, since those that are able to access this kind of expertise will gain an upper hand in political conflicts taking place within the framework of state aid policy.

This chapter has also highlighted some examples of attempts to challenge the neoliberal rationality of government. Criticism of state aid policy that questions the benefits of competition, or which is based on alternative ideas about democracy and the nature of public services, provides a possible challenge to neoliberalism. But the examples included here also illustrate how such critical arguments can be “rendered unreasonable” and thereby possible to ignore.

The case of Sweden’s privatisation of welfare services also provides an illustration of how the neoliberal rationality of government can be resisted by using it “against itself”. By arguing that the selling of public property were taking place in a way that distorts competition, it was possible for the Social democratic opposition to prevent a reform that was otherwise in line with neoliberal objectives. Yet, this example also demonstrates the difficulty of challenging a dominant rationality since this strategy failed to put a permanent stop to the privatisations. Instead, it ended up reinforcing the neoliberal rationality by reifying the norm that governments should not act in ways that distorts competition.

7 Conclusions

Market bureaucracy and the fear of politics

This dissertation has examined neoliberalism as a rationality of government. By doing so, neoliberalism appears in a different light. Its status as a dominant paradigm appears less as an expression of a fundamentalist belief in the superiority of markets, and more as a reflection of a society characterised by a deep-seated fear of politics. The belief that competitive markets will increase economic growth and well-being for the good of everyone has made it possible to paper over political conflicts by claiming to have found a win-win solution to various economic problems. This dissertation has shown how the Commission has drawn upon a neoliberal rationality of government in order to deal with the tensions left unresolved in the EU Treaties between liberal and social-democratic ideologies. The fear of politics, of bringing these differences to light in ways that would inevitably give rise to disagreement, has resulted in a search for a way to “rationalise” state aid regulation in order to make the Commission’s decisions appear to be based on objective assessment rather than political judgement. As this dissertation has shown, the neoliberal rationality of government has made this possible.

This section summarises the conclusions of this dissertation according to its four main themes: neoliberalism, state aid policy, government, and politics.

Chapter 3 traced *neoliberalism* as a rationality of government which builds on a particular assumption about the nature of competition as a process that is both self-regulating and in need of regulation. On the one hand, competition is assumed to have a “natural” course or direction that can be “distorted” by government intervention. On the other hand, competition is assumed to require a strong state that can uphold the necessary regulatory framework for competition to function. This assumption about the dual nature of competition has made it possible for neoliberal thinkers to

differentiate between the rules of an order, and the “content” of that order. It has made it possible to claim that the competitive order is *spontaneous*, or self-regulating, even though the rules that regulate competition are the result of conscious political decisions (see Hayek, 1973/2013, p. 44).

Furthermore, it has been shown that the positive view of competition is dependent on a negative view of politics. By contrasting competition with the deleterious effects of “political planning”, it has become possible to claim that the market is a superior principle for distributing resources in society compared to political decision-making. The neoliberal assumptions about the opposing nature of competition and politics can be summarised in the following table.

<i>Competition</i>	<i>Politics</i>
Efficiency	Inefficiency
Knowledge/competence	Ignorance/incompetence
Innovation	Stagnation
General interest	Special interest
Consensus	Conflict
Freedom	Coercion
Justice/Fairness	Partisanship/corruption

Drawing upon this distinction, the neoliberal thinkers of the Mont Pelerin Society were able to (re)define the role of the state as a neutral umpire who upholds the rules of the game, but never intervenes in its outcome. This rationality of government provided them with a powerful argument against socialist and social-democratic policies of redistribution. Moreover, the separation between competition and politics has also made it possible to hide the *political nature* of competition from view. Just as the rules of any game will affect who wins and who loses, the rules of competition will affect who will be successful on the market. As Harcourt (2011) argues, the notion of the market as a “natural order” has served to shield the distribution of resources which takes place there from political and moral debates. Instead, judgements about how to define “free” or “fair” competition have been made by relying on economic theory and assessments.

Turning to the topic of *state aid policy*, Chapter 4 showed how the Commission relies on the neoliberal rationality of government to “rationalise” its interventions in the member states. The connection between competition, economic growth, and European integration creates a powerful justification for both the EU project as a whole and state aid policy in particular (see Akman & Kassim, 2010). Since more competition is assumed to lead to more economic growth, state aid regulation and European integration could be presented as the solution to many of the economic problems facing national governments.

State aid policy was shown to share the neoliberal assumption about the nature of competition as both self-regulating and in need of regulation. This ontological assumption has made it possible for the Commission to justify its interventions in the policies of the member states, while at the same time arguing for the need to limit government intervention. The examination of the definition of state aid revealed that it is based on an a-priori assumption that all government intervention which deviates from “normal market conditions” constitutes a distortion of competition. This serves to elevate the market as a norm for government in the sense that it “tells the truth” to governments about which policies will be growth-enhancing and which will be growth-distorting. State aid policy teaches governments how to avoid distorting competition by acting like a “market economy investor” would do, namely by putting profit-maximisation above all other objectives. Thus it is assumed that if governments act like any other private competitor, then the self-regulating process of competition will not be distorted.

Placing the market as norm has also meant redefining public services in terms of what the market fails to deliver on its own. In order for a public service to qualify as a *Service of General Economic Interest*, and thus be allowed a degree of exemption from state aid regulation, it must be seen as targeting a market failure. The limit to state aid policy (and thus the boundary between EU and national competences) is drawn on the basis of a distinction between economic and non-economic activities, defined, in turn, according to whether or not they take place on a market.

By placing the market as a norm for separating good from bad government, the Commission has allowed for a “more economic approach” to state aid regulation. Chapter 4 described four different economic “tests” that are used to assess compatibility with the state aid rules. All in all, by drawing on the neoliberal rationality of government, it has thus been possible to redefine

major political questions, such as what the role of the state should be, what defines a public service, and how to draw the line between state and market, into economic questions that can be solved through the “objective” assessments of economic facts.

This dissertation has also contained a study of *government*. It began with the observation that creating the conditions for “free competition” does not lead to less government, but rather a particular kind of government. By approaching state aid policy from a governmentality perspective, one can see that competition is not something that exists *external* to government, but something that is given meaning *within* government practices. Chapters 4 and 5 have shown how it has been necessary for the Commission to define what constitutes a distortion of competition, and to render these distortions visible, in order to govern state aid. This has been made possible through the use of technologies of government which have distinctly bureaucratic qualities. Through the use of standardised forms, reports and statistical models of evaluation, the Commission has been able to gather information about the nature and levels of state aid, making it possible to identify “problem areas” and to justify the need for new regulations and policies. These technologies have in turn communicated information to national governments about what competition “is” and how not to distort it. Far from handing over the faith of the European economies to the spontaneous processes of the market, these bureaucratic procedures convey a strong belief in the ability to achieve political change through the rational planning of central authorities.

The final theme of this dissertation has been politics, or rather the conditions for politics under neoliberal government. With the help of the metaphor of government as an “anti-politics machine”, I argued that the neoliberal rationality of state aid policy transforms political conflicts between different visions of the role of the state, into technical problems of competition. In this way, political questions are turned into economic and juridical questions to be solved by experts in these fields. I have suggested that this results in less room for political contestation. But we have also seen how state aid policy not only limits the space for politics, but also opens up new venues for political action. Examples from Swedish politics show how state aid policy can be used as a strategic instrument in political conflicts to further the interests of different groups. But in order to do so successfully, these political claims must be formulated in accordance with the neoliberal rationality of government. Political claims that are formulated in different

terms risks becoming marginalised. In this way, neoliberalism is upheld as a dominant way for reasoning about the role of government.

Neoliberal states

Returning to the research question that has guided this study: *How are the member states governed by EU state aid policy?* This question has been answered via the theoretical perspective on government as productive rather than restrictive, problematizing rather than problem solving, and as an exercise of depoliticisation rather than an exercise of politics.

This dissertation has shown how state aid policy governs the member states through a particular way of *problematizing* the world. By presenting the economic problems facing Europe as problems of market efficiency, the Commission has been able to push state aid policy as the rational solution. By reframing problems such as globalisation and unemployment, which previously had been understood as problems *caused* by competition, as problems of market efficiency, state aid policy can be presented as part of the solution, never the problem.

Secondly, state aid policy governs the member states by trying to shape them into neoliberal subjects that will reason about their actions in terms of the effects on competition. This is accomplished through the *production* of new policy categories that brings with them a new way of seeing. State aid is introduced as a new category for what was previously understood as different types of government intervention, by defining them in terms of their effects on competition rather than their purpose. Public services are redefined as either *Services of General Economic Interest* or *Social Services of General Interest* according to their nature as “economic” or “social” rather than according to a definition of the “general interest”. These concepts bring with them a new way of seeing the role of the state as determined by the market.

Finally, state aid policy governs the member states by having a *depoliticising* effect. The claim that state aid will improve the economic well-being of everyone, makes state aid policy difficult to question and politicise. The connection between free competition and economic integration makes it possible to dismiss any opposition as protectionist and anti-EU. While there

is room for moderate criticism within the framework of the existing policy, questioning the foundational assumptions of state aid policy means that one risks being dismissed as irrational: as ignorant or problem-seeking instead of as engaging in problem solving for the greater good.

What kind of consequences does this hold for national governments? This has not been a study of the effects of state aid policy in terms of the *extent* to which it impacts on the member states. But it has shown how state aid policy does not necessarily reduce the role of the state, but rather *redefines* it. State aid policy aims to shape national governments into neoliberal subjects which allows three main roles for the state: 1) *The referee*, acting as a neutral umpire who uphold the rules of the game, but never intervenes in its outcome. 2) *The market supporter/complement*, doing what the market fails to accomplish on its own, while refraining from doing “too much”, knowing that there are “government failures” as well. 3) *The market actor*: acting on the market as any private market actor would, making decisions based on rational calculations of profit-maximisation.

Based on this, we can ask which roles of the state are excluded by the neoliberal rationality of government. There is no role for the state as *an instrument for redistribution*, because any state intervention which allocates public resources on the market can be seen as a distortion of competition. This limits the ability of national governments to use their resources to achieve political change by supporting certain groups, activities or investments. Neither is there a role for the state to act as *an alternative to the market* by deciding to organise certain sectors of society in different ways. Because it is assumed that all services that can be provided on the market should be provided on the market, the neoliberal rationality acknowledges no role for governments to provide alternative forms of organisation for any moral or political reason. Finally, there is no role for the state to function as a *market alleviator* by providing protection from the more destructive effects of competition. In order to create an efficient allocation of resources, competition must be allowed to reward the successful and punish the less successful. This reduces the room for state intervention in order to mitigate any negative impact on competition on industries, in order to, for example, save jobs or reduce economic inequalities between regions.

It should be noted that this dissertation has not provided evidence that state aid policy has reduced the member states capacities for redistributive policies. What it does suggest is that redistribution has become *more*

difficult, since the policy requires that such objectives be reframed in accordance with the neoliberal rationality of government in order to be seen as compatible with the rules. Thus, I have hopefully provided an argument for why we need further research which focuses on the effects of state aid regulation on national policies.

Reflections

In this section I provide some reflections on how the research process has shaped the conclusions of this study. This dissertation has brought together three different literatures, on three different topics: neoliberalism, state aid policy and government. Reading these literatures together has meant that my understanding of these topics have informed each other, in a way in which my understanding of neoliberalism has shaped by my understanding of state aid policy and governmentality, and vice versa. This has brought certain things to light and thus enabled me to fulfil the main purpose of this book, namely to tell “a bigger story” about state aid policy. The possible downside to this process is that my understanding of government, neoliberalism, and state aid policy have informed each to the point that I have almost managed to convince myself that this is the *only* way of understanding things, which is, of course, not true. With this in mind, I would like to point out a few things that my perspective might have led me to overstate.

First, there is a risk that my reading of state aid policy from the assumption that it is reflective of neoliberal ideas may have led me to de-emphasise the other ideas inherent to the policy. Although the claim that state aid policy relies on neoliberal ideas is supported by previous research, I might have observed stronger tensions between different ideas if I would have approached state aid policy from a different theoretical perspective. Throughout this book, but especially in Chapter 4, I hope that I have succeeded in alerting the reader that EU policy includes exceptions to the prohibition of state aid in order to allow for the pursuit of other political objectives aside from free competition. But I do maintain that neoliberal ideas are the most dominant.

Secondly, studying neoliberalism together with state aid policy may have led me to overstate the claim that competition is central to neoliberal thought,

or that what has been identified as a neoliberal rationality of government is *the* neoliberal rationality of government. I have come to see competition as the key to understanding the neoliberal belief in the superiority of markets over politics. As suggested in Chapter 3, the belief in competition is more fundamental to neoliberal thought than the belief in individual freedom, (because this is encroached upon in order to force people to accept competition) or an antipathy towards the state (because it is assumed that the competitive order needs to be upheld by a strong state). But considering how my reading of neoliberalism has been influenced by my study of a policy dealing with competition, I remain open to the objection that it is possible to see other ideas as central to neoliberal thought.

Thirdly, my focus on government may have led me to exaggerate the powers of the Commission in governing the member states. My one-sided focus on the Commission has led me to neglect the ways that national governments may also govern the Commission. Although the Commission has far reaching powers in the field of competition policy, it still answers to the Council and the Parliament, and as argued in previous research, the Commission is sensitive to the political opinions of national governments when making its decisions (Zahariadis, 2013). A second way that I might have overstated the powers of the Commission is by focusing only on how it tries to govern the member states, and not on the possibility for national governments to resist, or simply ignore, state aid policy. By doing this, I might have projected the view that of state aid policy has a bigger impact than it actually does. As I have already mentioned, in order to determine the extent to which EU state aid regulation affects national governments, further research must be conducted which addresses this particular question.

Finally, the problem of state aid policy which I have identified in this book will only appear problematic from a particular normative understanding of democracy which emphasise the importance of representative institutions. If approached from a different understanding of democracy, state aid policy might be seen as less of a “problem”. For example, one can read David Gerber (2011) as providing an argument against the conclusions of this dissertation in criticising the view that EU competition policy represents a “pure” bureaucratic regulation, “created for and by bureaucrats” (Gerber, 2011, p. 432). According to him, EU competition policy is built on a long tradition of European competition law that has broad support from both ends of the political spectrum. He argues that as long as people realise that EU competition law is the “product of a long struggle to protect consumers

from ‘exploitation’” it can be perceived as legitimate (Ibid., pp. 432-3). My criticism of Gerber’s argument is that it resembles that of the Commission: if people only understood the benefits of competition, then EU policy in this field would be perceived as legitimate. Such “output legitimacy” is an insufficient requirement for a democratic system. A democratic form of government must allow for ways to exert popular influence over policy making. As argued by Buch-Hansen and Wigger, “Precisely because competition regulation is inherently political, it should also be subjected to political mediation” (2011, p. 145).

An alternative rationality?

Since the financial crisis of 2008, many has suggested that neoliberalism is on its way out as a dominant paradigm. As Davies (2014) argues, the crisis has exposed neoliberalism’s false promise of less government intervention by revealing its dependence on a strong, interventionist state in order to protect the market order. This has resulted in a loss of faith in neoliberal ideology, now bereaved of its status as a “consensual reality”, as well as a loss of faith in economic judgements which no longer appear as “objective” or “neutral” as they once were (Davies, 2014, pp. 186-187). But despite this apparent lack of support for neoliberalism, its dominant position has proven to be difficult to shake. As Crouch (2011) and Peck (2010b) have argued, we are witnessing a strange “non-death” of neoliberalism that continues to walk the earth like a zombie.

Looking on while President Trump carries out the promises he made to his electorate, less democracy and more bureaucracy might seem like a preferable option to the unpredictable nature of politics. Considering the stark division between people’s opinions and world-views that characterise contemporary societies, one might also feel the need to agree with neoliberals such as Hayek and Friedman that politics only serves to create “insufferable strains on the social fabric”. But as pointed out by Hay (2014) depoliticisation does not always make for good or effective governance and therefore, is no guarantee for a stable and peaceful order. As has been strongly argued by Mouffe (2005; 2013), if the EU does not provide legitimate channels for the expression of political conflicts, it will pave the way for more antagonistic politicisation at more extreme ends of the

political spectrum (see also Bartl, 2015). If concerns about competition continue to be dismissed as protectionist or anti-EU, or met with the condescending attitude of being mere “misapprehensions”, then it is understandable if people will seek other outlets than the established political institutions to voice their dissatisfaction.

MacEwan (1999) has argued that the way forward is not “more state” or “more market”, but more democracy, in order to put people in a position to exercise political power over their economic lives. But in order for there to be democracy, there must be politics since a democracy without different political alternatives to choose from is not worth its name. What this means is that the solution lies in more politics, not less. As Cruikshank states, the “solutions to the problems of politics will not be found in a particular form of government, in a theory, in human reason, or in some truth; they will be found, for better or worse, in more politics” (Cruikshank, 1999, p. 2).

This dissertation has shown some of the difficulties of politicising neoliberal government. It is easy to see what makes the neoliberal rationality so attractive: it provides direction in uncertain times by making sense of complex political problems in ways that makes them appear possible to solve. Problems of unemployment, strained public budgets, or struggling industries can all be understood as problems that stem from inefficient markets, able to be solved by more competition. In a time when trust in politics is low (Hay, 2007) the neoliberal rationality of government offers a way for politicians to appear responsible by handing over authority to “the market”. In order to challenge neoliberalism and replace it with something else, it is therefore necessary to provide a similarly coherent account of the problems facing us, and how they should be solved. But as many scholars have pointed out, there is a lack of political alternatives. Buch-Hansen & Wigger have argued that despite the financial crises and the questioning of neoliberalism there is still a lack of ideational input for a paradigm shift as “no clearly articulated counter-project has surfaced so far, leaving the neoliberal discourse and the importance given to competition largely unchallenged” (Buch-Hansen & Wigger, 2011, p. 142).

It would thus seem that we are stuck with neoliberalism unless we are able to replace it with an alternative form of reasoning (Brown 2015, p. 201). The concept of a rationality of government teaches us that, in order to change the ways that we are governed, it is not enough to put forward an alternative claim of how things should be. It is also necessary to present an

alternative claim of how things *are*, by drawing on alternative forms of knowledge. As Bourdieu has argued, “the only effective way of fighting against national and international technocracy is by (...) putting forward, in place of the abstract and limited knowledge which it regards as enough, a knowledge more respectful of human beings and of the realities which confront them” (Bourdieu, 1998, p. 27-28).

The literature on neoliberalism that this dissertation builds on has suggested two strategies forward. *The first strategy* would be to challenge neoliberal rationality “from the inside” by providing an alternative definition of competition. It is possible to imagine an alternative rationality of government which begins from a different conception of “fair” or “free” competition”. Perhaps as something that not only requires formal equality, but also substantial equality. Those who want to see a more redistributive state could argue that a more equal allocation of resources is necessary in order to create a truly “level” playing field. Along these lines, Buch-Hansen & Wigger have suggested that a new conception of what it means to be competitive could involve an emphasis on “extra-economic dimensions”, giving shape to a conception of competition that is “more attuned to society at large”.

The competitive performance of companies should instead be assessed according to various social interest criteria. Such criteria could for example include an assessment of the social usefulness of new products, ecologically sustainable production methods, the safeguarding of employment and employee rights in the corporate governance structure, (or) fair trade practices. (Buch-Hansen & Wigger, 2011, p. 144)

After all, the etymological origins of competition can be found in the Latin words *com* and *petere*, meaning literally “to seek together”. By starting with a definition of competition which focus more on interdependence, it might be possible to provide an alternative to the currently dominating view of competition as actors engaging in a process of rivalry, independent of one another (McNulty, 1968, p. 654). A similar approach, but focusing on a different concept in neoliberal thought, has been suggested by Feher (2009). He proposes that we take the idea of “human capital” which is central to the neoliberal conception of the human subject, as a starting point for developing an alternative rationality. Instead of rejecting this idea, we could broaden it to include a wider range of “assets” which we need in order to

increase the “value” of our existence. For example access to healthcare, culture and knowledge.

A *second strategy* would be to challenge the neoliberal rationality of government “from the outside” by building an alternative rationality around some other concept than competition. Davies (2014) has argued that the strength of the neoliberal rationality of government lies in how the notion of competition is able to offer both a vision of how society is held together as a collective, and a vision of individual agency. For an alternative rationality to be successful, it might therefore have to find an alternative idea which can link the individual and the collective, to replace the notions of competition and competitiveness:

Dispensing with competition, as the template for all politics and political metaphysics, is therefore only possible if theory proceeds anew, with a political-economic idea of individual agency and collective organization, at the same time. What this might allow is a different basis from which to speak of human beings as paradoxically the same yet different. The problem of politics is that individuals are both private, isolated actors, with tastes and choices, and part of a collectivity, with rules and authorities. An alternative answer to this riddle needs to be identified, other than simply more competition and more competitiveness, in which isolated actors take no responsibility for the collective, and the collective is immune to the protestations of those isolated actors. (Davies, 2014, p. 200-201)

Dardot and Laval (2013) have argued for the need of a new governmental rationality that does not fall back on previous ideas of social democracy and Keynesian or Fordist economics. They suggest that an alternative rationality should draw upon ideas of mutual aid and cooperation to construct a “reason of the commons” (Dardot and Laval, 2013, p. 321). Leila Brännström (2014) has suggested that adversaries to neoliberal government should replace competition with a rival set of principles such as the public good, the good life, or solidarity. Such a strategy might be successful in exempting different areas of life from the domain of market principles.

Also, the structure of neoliberal governmentality, which sets the rights of market actors, rather than the rights of the political sovereign or the individual as such, as the most fundamental, indicates that the forces of opposition would try to limit the privileges of market actors, rather than those of the political power. Indeed, the struggle against neoliberal

government action might entail a move to augment the authority of the political sovereign.” (Brännström, 2014, p. 186)

Either of these two strategies, redefining competition or replacing it with an alternative concept, seems like a promising way forward. But if we wish to open up a space for politics, there is also a danger in substituting competition with concepts such as cooperation, solidarity, or the public good (or “trust” as the Swedish government is currently investigating). There is always the risk that this will give rise to a new form of expertise, this time perhaps spearheaded by political scientists or sociologists, which can be used by government as an “anti-politics machine”. For the same reason I am sceptical towards attempts of trying to counter the spread of market mechanisms and values with claims that some aspects of life are “by nature” not suited for the market (as for example argued by Sandel, 2012). Considering how the neoliberal rationality of government is built on a negative view of politics, my suggestion is that an alternative rationality should begin in a different conception of politics. Perhaps we could find the beginnings of an alternative rationality by looking at the table that was introduced earlier in this chapter which described the neoliberal view of competition and politics. By swapping places between the headings “competition” and “politics”, we would turn the neoliberal rationality on its head. Instead of seeing politics as a sphere of coercion and self-interest, we could draw upon Hanna Arendt’s (1958) reading of ancient Greek philosophers and revive the old notion of politics as the only sphere in which we have the ability to change the structures, in the market or in our private lives, under which we are forced to struggle as individuals.

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