

Move on Up

A former and long-time Chief Executive Officer of the Walt Disney Company once said: “*Our business is telling stories*”. The Walt Disney Company surely did, as movie pictures such as Peter Pan, the Lion King, Cinderella, Pocahontas and so many many others and, most importantly, in the light of Caroline’s last inaugural editorial to this Quarterly, Mary Poppins demonstrate so aptly and all so vividly. Story-telling has always also been an ambition of this Quarterly. What State aid control law needed very desperately when this journal came into being was a stage, all abound with spot-lights to be turned on and curtains to be lifted, to have the audience watch the movies that depicted the stories that for too long were kept a secret pleasure to the services of the European Commission and the Member States’ authorities.

Since its inception this Quarterly has presided over two wholesome reforms of EU State aid law, branded in the first round as the State aid Action Plan (SAAP) and in the second the State aid Modernization (SAM). With these having been duly finalised (perhaps with the exception of the project of the Notion on the Concept of an aid still lingering in the cupboards of the Directorate General for Competition) the question arises whether the engine of this Quarterly is at risk of running out of fuel. No, I do not think so. The reasons for this are manifold. Yes, there is a novel General Block Exemption Regulation in place, meant, as DG COMP chiefs never stop assuring the crowds, to cover almost the entirety of all aid grants in this Union. But, when looking at it more closely, it is abound with terms completely cryptic. The Commission, with its more conservative knights having taken the lead, has drafted an attempt to explain to Member States what the notion of an aid is all about. Apart from the more procedural feature that this notion is still in nascent, meaning draft state, it resembles in many parts more a dreamy version of Peter Pan’s flight to the Neverland than a sound analysis of the jurisprudence of the EU courts. An initiative is on the way to tackle unfair tax competition identified in multinational groups’ low tax payments due to the sneaky use of the enigmatic tool of inter-group transfer pricing. However, the opening decisions stemming from 2014 look all but legally convincing. A more recent one is clad in more robust argumentative attire, granted. Still, the new Commissioner’s time-table to adopt final decisions before the summer break 2015 has recently been reported to have collapsed. Finally, as perhaps no one would deny any more, the most recent amendments of the procedural rules on State aid can hardly be termed a reform. Procedures are therefore still slow and out-of-touch with economic reality, third parties still reduced to the role of bloodless backbenchers and many substantive results being simply based on the eager and persistence of Member States’ muscles menu than on apt administration.

Stories are therefore still many to be told, projects of improvement not lacking even in the absence of a third big reform. One of the tunes of Curtis Mayfield, the man who composed many of the songs that formed a core part of the US Civil Rights Movement of the 1960ies, is entitled “*Move on up*”. This, I guess, is where State aid control law needs to be moving and, perhaps this is what Caroline had in mind when she asked in the end of her inaugural editorial to have us fly a kite.

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