



**The role of the State in the Hellenic  
Shipyards case;  
Thoughts reflecting the financial crisis  
presented at the Third International  
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**Hammonds**

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## The role of the State in the Hellenic Shipyards decision- Case C 16/2004 (under appeal before CFI)

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- 16 measures- Recovery order < EUR 300 mil.  
(Formal investigation decision > EUR 1 billion).
- Two hot topics, namely:
  - A) State support to military production (Article 87 et seq. v Article 296 EC Treaty);
  - B) Warranty and indemnity clauses in privatization agreements.

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## Article 296 et seq v Article 87 et seq EC Treaty

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- Measures clearly supporting military activities (Art. 296 EC - Protection of essential interests of national security).
- Measures clearly supporting civil activities- Application of the State aid rules (Art. 87 et seq EC).
- Measures supporting both military and civil activities- How to make the distinction?
- Compare the present decision with the Commission decision in *ELVO* (C 47/2005).

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## Warranty and indemnity clauses during privatizations

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- The State/ the Seller undertakes to indemnify the buyer of the privatized shipyards in case of recovery of any potential State aid.
- Such clauses, according to the Commission, may endanger the recovery order and/or may constitute State aid per se.
- According to the Commission the State did not act as a prudent market economy seller when granting the warranty.

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## Various arguments- Legal uncertainty for investors

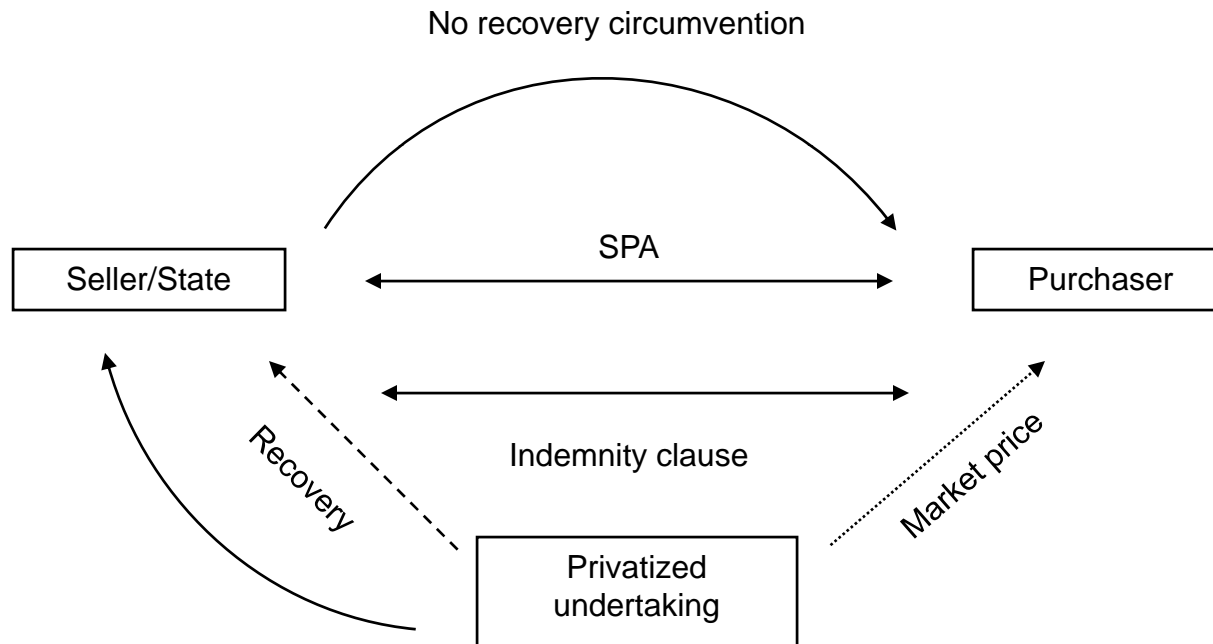
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- Normal commercial behavior to contractually agree to take responsibility;
- The warranty was not granted by the State but by a private undertaking, thus no aid;
- The identity of the beneficiary. (HSYs, the buyer, all bidders?)
- Rational behavior to privatize and provide for the warranty compared to letting the undertaking go bankrupt- Prudent Market Economy Vendor principle- Liquidation more costly;
- Commission denied all arguments concluding that such an indemnification mechanism constitutes State aid.

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## Further arguments- Example 1- Market price/ no recovery

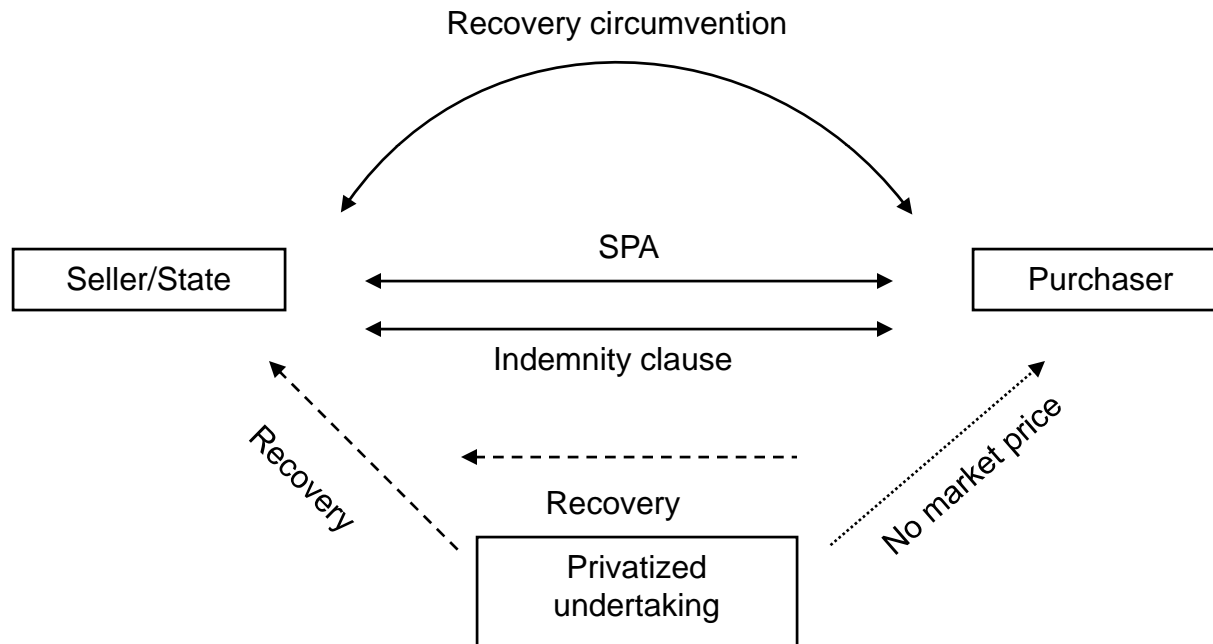
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## Example 2- No market price/ recovery possible

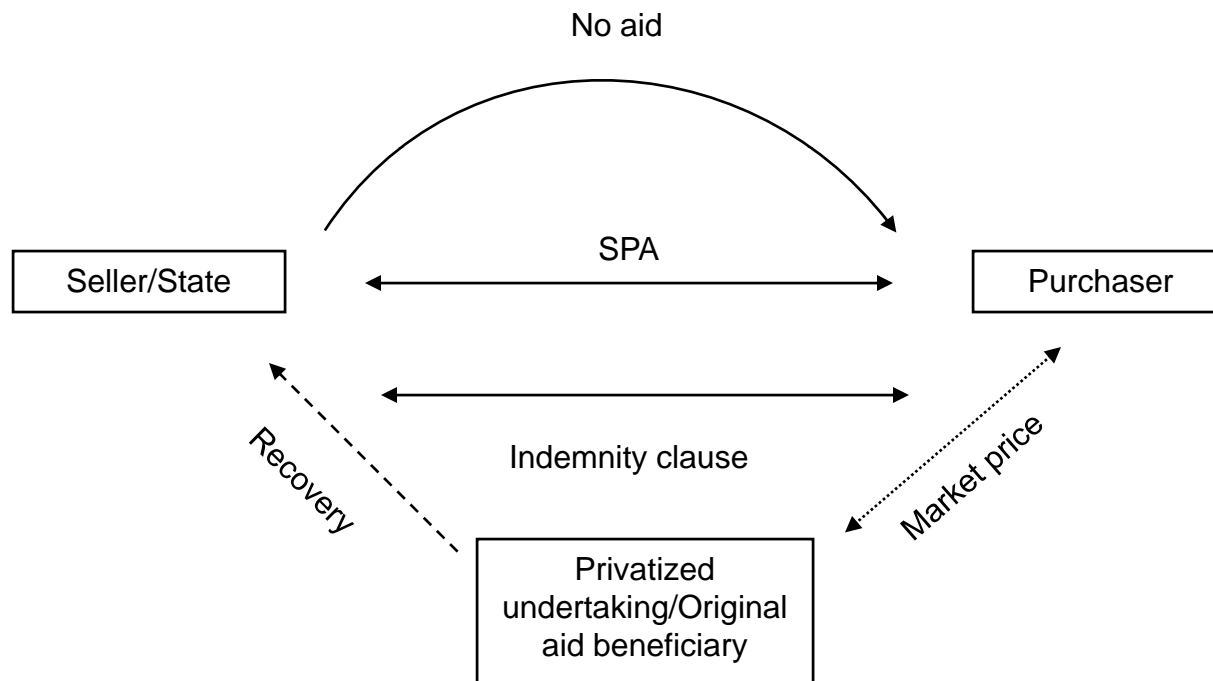
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## Example 1- Market price

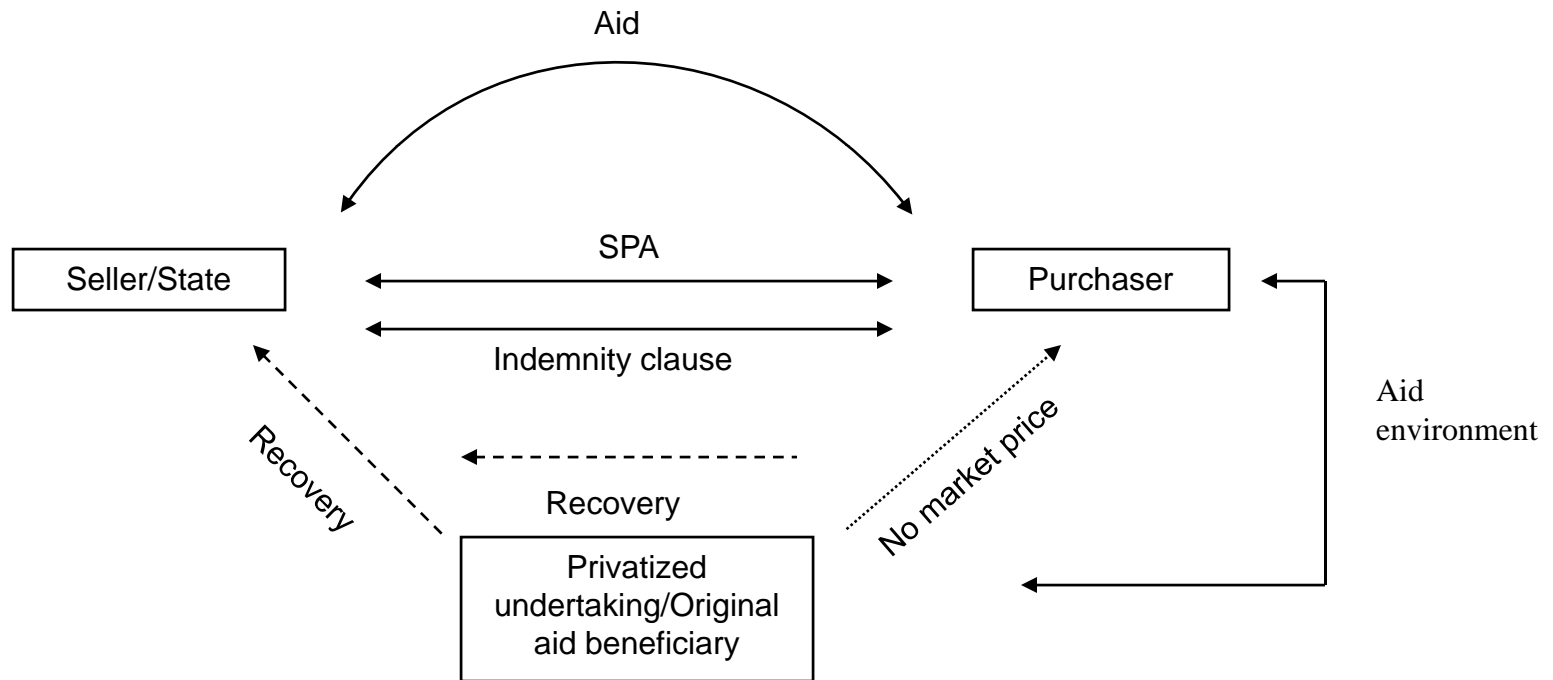
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## Example 2- No market price

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# Conclusion

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## State aid and the Financial crisis- Some food for thought...

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- U-turn in the Commission's State aid policy or is the Commission to be congratulated for its efficient and speedy response?
- A note of caution is important;
- The real challenge lies ahead;
- Level playing field in practical terms.