

# EU competition policy and the consumer

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## Making sure companies play fair



**In a free market, business is a competitive game. Sometimes, companies may be tempted to avoid competing with each other and try to set their own rules for the game. At times, a major player in the game may try to squeeze its competitors out of the market. The European Commission acts as the referee to ensure that all companies play by the same rules.**

### **Why are cartels so bad for the economy and how do you find them?**

A cartel is a group of similar, independent companies which join together to control prices or divide up markets and limit competition. Participants in a cartel can rely on their agreed market share and do not need to provide new products or quality services at competitive prices. Therefore, consumers end up paying more for less quality.

This is why cartels are illegal under EU competition law and why the European Commission imposes heavy fines on companies involved in a cartel. Since cartels are illegal, they are generally highly secretive and evidence of cartels is not easy to find.

The 'leniency policy' encourages companies to hand over inside evidence of cartels to the European Commission. The first company

in any cartel to do so will not have to pay a fine. This results in the cartel being destabilised. The policy has been very successful since its introduction in the EU.

In recent years, most cartels have been detected by the European Commission after one cartel member confessed and asked for leniency, though the European Commission also successfully continues to carry out its own investigations to detect cartels. Annual fines totalling between EUR 0.5 billion and EUR 1 billion have been imposed in cartel cases. These fines go into the Community budget, help finance the EU and ultimately save taxpayers' money. Perhaps more importantly, the risk of large fines deters companies from setting up or continuing cartels.

### **VITAMIN CARTELS**

In 2001, the European Commission fined eight companies (among which Hoffman-La Roche) for their participation in cartels designed to eliminate competition in the vitamin sector. Vitamins are used in a wide variety of products, such as cereals, biscuits, drinks, animal feed, pharmaceuticals and cosmetics. This was reflected in the fine of more than EUR 800 million. For almost 10 years, the companies were able to charge higher prices than if there had been real competition between them, harming consumers and allowing the companies to make illicit profits.

**Companies conclude agreements every day: are they all illegal?**

There are certain types of agreements which are particularly harmful for competition and are therefore almost always prohibited, namely secret cartels and other agreements in which competitors agree to fix prices, to limit production or to share markets or customers between them. Agreements between a producer and its distributors may also be prohibited, especially if they fix resale prices.

Not all agreements which restrict competition are necessarily illegal. Agreements which have more positive than negative effects are allowed. Generally speaking, agreements are more likely to be allowed when they are not concluded between competitors or where the companies involved have only a small part of the market.

Agreements between rival companies may restrict competition but may also be necessary to improve products or services, develop new products or find new and better ways of making products available to consumers. For example, new products requiring expensive research may only become available to consumers if several companies pool their efforts to develop them. Research and development agreements and technology transfer agreements are therefore often compatible with competition law. This may also be the case for other cooperation agreements (concerning joint production, purchasing or commercialisation, or standardisation), but will normally depend on a detailed analysis of circumstances and economic benefits of these agreements.

Other types of agreement which may restrict competition are those between suppliers and retailers. For instance, distribution agreements

for luxury perfume impose some restrictions on retailers as to the shop decoration or the training of personnel. On the other hand these agreements ensure that consumers can both buy in an environment which suits the product and benefit from personalised advice. They also avoid a situation where one distributor 'free rides' on the promotional efforts of another distributor. Whether other distribution arrangements, such as exclusive distribution or selective distribution, are lawful will depend on the market position of the companies involved and requires individual assessment above certain market share thresholds.

**VIDEO GAMES**

Between 1991 and 1998, Japanese video games maker Nintendo and seven of its official distributors in Europe worked together to maintain artificially high price differences across the EU. Each distributor was obliged to prevent exports from its territory to another through unofficial distribution channels (so-called parallel trade). Under Nintendo's leadership, the companies collaborated intensively to find the source of any such exports. Traders who allowed these exports were punished by being given smaller shipments or by being boycotted altogether. As a result, prices for play consoles and games differed widely from one European Union country to another, with the United Kingdom being up to 65 % cheaper than Germany and the Netherlands. The European Commission imposed a total fine of EUR 168 million on Nintendo and the distributors.

### CAR SALES BETWEEN EU MEMBER STATES

In 1998, following many complaints from consumers, the European Commission fined Volkswagen AG EUR 90 million for banning its Italian dealers from meeting orders from German and Austrian customers attracted by lower prices in Italy. It is illegal for car manufacturers to discourage their dealers from selling to customers resident in other EU Member States. The European Commission publishes a six-monthly review of pre-tax car prices in each of the EU Member States to help consumers to identify the country in which the car they might want to buy is cheapest.



#### What if a large company tries to squeeze competitors out of its market?

If a company (or group of companies) has a large proportion of the business in a particular market, it is likely to have a dominant position in the market. Dominant companies have the economic strength to act without having to take account of either their competitors or their consumers. This is why it is illegal for companies to abuse their dominant position.

Such abuses may involve:

- charging unreasonably high prices, which may exploit customers;
- charging unrealistically low prices, which may be used to drive competitors out of a market or to make it more difficult for competitors to enter the market;
- discriminating between trading partners, for example by refusing to deal with

certain customers or by offering discounts only to those customers which obtain all or most of their supplies from the dominant company;

- forcing unjustified trading conditions on trading partners, for example where a dominant company makes the sale of one product conditional on the sale of another product.



## **TYRES**

In 2001, the European Commission fined French tyre-maker Michelin EUR 20 million for abusing its dominant position in the market for heavy vehicle replacement tyres in France during most of the 1990s. Over 50 % of new replacement tyres for heavy vehicles and an even higher share of retread tyres were made by Michelin. None of its competitors were comparable in size so it was difficult for dealers to avoid doing business with Michelin. Michelin used a system of rebates and bonuses to make dealers dependent on its tyres and prevented them from choosing their suppliers freely.

## **MICROSOFT**

In 2004, the European Commission fined Microsoft EUR 497 million for abusing its dominant position in the market for operating systems for personal computers (PCs) between 1998 and 2004. Microsoft's Windows operating system holds a 95 % share of the market. Microsoft was found to have:

- (i) withheld information which rival server software would have needed to 'talk' properly with Windows-based PCs. This meant that rivals could not compete fairly in the market; and
- (ii) made the purchase of Windows conditional on the simultaneous acquisition of Microsoft's separate Windows media player product. This had the effect of populating virtually all PCs with Windows media player, and hence distorting competition by artificially driving content providers and applications developers to the Windows media platform. Microsoft has appealed to the European Court of First Instance against this decision.

## **Who enforces EU competition law on business practices which restrict competition?**

The European Commission applies and enforces EU law. It can require companies to provide information and, if necessary, carry out surprise inspections in the offices of companies and, with a court order, in the homes of company personnel.

If the European Commission finds evidence of illegal business practices which restrict competition, it can act to prohibit such behaviour. It can also fine companies up to 10 % of their annual turnover if the companies have, for example, participated in a cartel that fixed prices or agreed how to share out the market between them.

## **Does the Commission enforce EU competition law alone?**

No. All EU Member States have national competition authorities which have the power to enforce EU competition law. They can order agreements and practices which

restrict competition to be stopped and fine companies that have broken EU competition law.

As part of their close cooperation in the European Competition Network (ECN), the European Commission and the national competition authorities inform each other about new cases to avoid multiple investigations. They also inform each other before taking a decision in their cases to ensure that the law is applied consistently regardless of who enforces it. More information on the ECN can be found below.

## **Can national courts be asked to apply EU competition rules?**

Yes. Like the competition authorities, national courts have the power to determine whether a particular agreement complies with the requirements of EU competition law or not. Companies and consumers can claim damages if they have been the victim of illegal behaviour which restricts competition.

## The European Competition Network

The European Commission and the national competition authorities in all EU Member States cooperate with each other through the European Competition Network (ECN) by:

- **informing each other of new cases and decisions;**
- **coordinating investigations, where necessary;**
- **helping each other with investigations; and**
- **exchanging evidence.**

This creates an effective mechanism to counter companies which engage in cross-border practices restricting competition.

The main objective of the ECN is to ensure that EU competition law is applied consistently across the EU. Through the ECN, the competition authorities inform each other of proposed decisions and take on board comments from the other competition authorities. Where it is necessary to ensure consistent



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and effective application of the law, the European Commission may decide to deal with a case itself.

Within the ECN, groups of experts in certain sectors (for example, insurance and railways) discuss

competition problems and promote a common approach. In this way, the ECN allows the competition authorities to pool their experience and identify best practices.

### Legislation: Article 81 of the EC Treaty (restrictive agreements)

Agreements between companies or 'undertakings' which lead to an appreciable restriction of competition are prohibited. In fact, they are automatically void, so that the normal rule 'agreements need to be respected' does not apply. The European Commission or a national competition authority can order companies to end such illegal agreements and impose fines on companies for having concluded them. This applies also to unwritten agreements, as well as to concerted practices.

Examples include agreements which:

- fix purchase or selling prices or other trading conditions;
- limit production, markets, technical development or investment;
- share markets or sources of supply between competitors; or
- apply discriminatory conditions to companies that are not parties

to the agreement, placing them at a competitive disadvantage.

However, some restrictive agreements between companies are allowed as they may encourage competition, for example by promoting technical progress or by improving distribution. An agreement satisfying all of the following conditions is allowed:

- it improves the production or distribution of goods or promotes technical or economic progress;
- it allows consumers a fair share of the resulting benefit;
- the restriction of competition must be necessary to achieve the two points above;
- it must not eliminate competition for a substantial proportion of the products or services.

On that basis, the European Commission has adopted so-called block exemption regulations which spell out the conditions to be fulfilled by certain categories

of agreements in detail. Restrictive agreements that fulfil the conditions of a block exemption regulation are allowed under Article 81. Current block exemption regulations cover notably research and development agreements, specialisation agreements and technology transfer agreements, as well as distribution agreements — both in general and, more specifically, in the car sector. Furthermore, a number of block exemption regulations relating to particular sectors (insurance, transport) are in place.

The European Commission also issues guidance on how it will apply the conditions mentioned above in order to help companies to distinguish between agreements that are compatible with competition law and those which are not. Commission guidelines on the assessment of horizontal agreements (mainly between competitors) and of vertical agreements (such as distribution agreements) are a case in point. These guidelines discuss how the

most common types of agreements affect competition and use examples to illustrate how the Commission would look at such agreements.

Regulations and guidelines are published in the *Official Journal of the European Union*. Details and additional information — like an introductory brochure specifically dealing with vertical agreements — are available on the Internet (see [http://europa.eu.int/comm/competition/antitrust/legislation/entente3\\_en.html#iii\\_1](http://europa.eu.int/comm/competition/antitrust/legislation/entente3_en.html#iii_1)).

### Legislation: Article 82 of the EC Treaty (abuse of dominant position)

This article prohibits the abuse of a dominant position and applies under the following conditions:

- the company holds a dominant position, taking into account its market share and other factors, such as whether there are credible competitors, whether the company has

its own distribution network and whether the company has favourable access to raw materials; all are factors which allow the company to evade normal competition;

- the company dominates the European market or a 'substantial part' of it;
- the company abuses its position by, for example, overcharging customers, charging excessively low prices designed to squeeze out competitors or bar new entrants from the market, or granting discriminatory advantages to some customers.

The European Commission or a national competition authority can prohibit an abuse and fine the offending company.



## Examining mergers

**While companies combining forces (referred to below as mergers) can expand markets and bring benefits to the consumer, some combinations may reduce competition and harm consumers.**

### **Why are mergers examined at the European level?**

Combining the activities of different companies may allow the companies, for example, to develop new products more efficiently or to reduce production or distribution costs. Through their increased efficiency, the market becomes more competitive and consumers benefit from higher-quality goods at fairer prices.

However, some mergers may reduce competition in a market, usually by creating or strengthening a dominant player. This is likely to harm consumers through higher prices, reduced choice or less innovation.

Increased competition within the European single market and globalisation are among the factors which make it attractive for companies to join forces. Such reorganisations are welcome to the

extent that they do not impede competition and hence are capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the EU.

The objective of examining proposed mergers is to prevent harmful effects on competition. Mergers going beyond the national borders of any one Member State are examined at European level. This allows companies trading in different EU Member States to obtain clearance for their mergers in one go.

### **Which mergers are examined by the European Commission?**

If the annual turnover of the combined businesses exceeds specified thresholds in terms of global and European sales, the proposed merger must be notified to the European Commission, which must examine it. Below these thresholds, the national

competition authorities in the EU Member States may review the merger.

These rules apply to all mergers no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities. This is so because even mergers between companies based outside the European Union may affect markets in the EU if the companies do business in the EU.

The European Commission may also examine mergers which are referred to it from the national competition authorities of the EU Member States. This may take place on the basis of a request by the merging companies or based on a request by the national competition authority of an EU Member State. Under certain circumstances, the European Commission may also refer a case to the national competition authority of an EU Member State.

### When are mergers prohibited or approved?

All proposed mergers notified to the Commission are examined to see if they would significantly impede effective competition in the EU. If they do not, they are approved unconditionally. If they do, and no commitments aimed at removing the impediment are proposed by the merging firms, they must be prohibited to protect businesses and consumers from higher prices or a more limited choice of goods or services. Proposed mergers may be prohibited, for example, if the merging parties are major competitors or if the merger would otherwise significantly weaken effective competition in the market, in particular by creating or strengthening a dominant player.

### When does the European Commission approve mergers conditionally?

However, not all mergers which significantly impede competition are prohibited. Even if the European Commission finds that a proposed merger could distort competition, the parties may commit to taking action to try to correct this likely effect. They may commit, for example, to sell part of the combined business or to license technology to another market player. If the European Commission is satisfied that the commitments would maintain or restore competition in the market, thereby protecting consumer interests, it gives conditional clearance for the merger to go ahead. It then monitors whether the merging companies fulfil their commitments and may intervene if they do not.

### MERGERS IN THE PHARMACEUTICALS SECTOR

Two large mergers in the pharmaceutical sector were notified to the European Commission: Sanofi/Synthélabo and Pfizer/Pharmacia. The European Commission concluded that both mergers could have an adverse impact on competition, limiting the choice of certain drugs available to patients. In both cases, the parties proposed transferring some of their products to competitors, which the European Commission agreed would restore competition in the markets and so protect the interests of patients. In the case of Sanofi/Synthélabo, among the products transferred or sold were, for instance, vitamin B<sub>12</sub> sold under the name 'Delagrangé', certain antibiotics, hypnotics and sedatives. In the case of Pfizer/Pharmacia, the parties, for instance, proposed transferring to competitors certain products

in development which would compete with Pfizer's Viagra, thereby allowing the deal to be cleared.

### MERGERS IN THE CONSUMER GOODS/FOOD SECTOR

The initial analysis of the European Commission concluded that the merger between the food companies Unilever and Bestfoods would reduce competition in the markets for instant soups, pasta sauces, jams and other food products in almost all EU Member States. Consumers would have been significantly affected by the proposed merger, which could have resulted in a reduced choice of products at higher prices. As a result, the parties proposed the sale of an estimated EUR 1 billion of their business to competitors and this allowed the European Commission to give conditional clearance to the merger. When examining the acquisition of Wella by Procter & Gamble, the

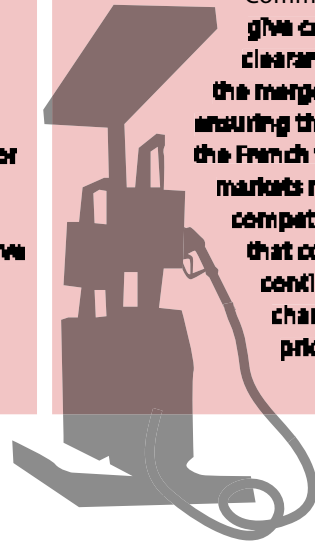
European Commission concluded that competition could be reduced in the markets for hair-care products (such as shampoos, conditioners, treatments and colourants) in Ireland, Sweden and Norway. To correct this, the parties offered to license a number of hair-care brands such as Herbal Essences, Silvikrin and Catzy to competitors in these countries. This allowed the European Commission to give conditional clearance to the acquisition.

#### **MERGER OF FRENCH PETROLEUM COMPANIES**

TotalFina and Elf Aquitaine were the main players in the French petroleum products sector and their merger would have allowed them to push up costs for independent petrol distributors. In particular, this would have affected supermarkets, which have helped to reduce fuel prices in France. The combined company would have operated around 60 % of

the service stations on French motorways. It would also have become the leading supplier of liquid petroleum gas (LPG). The European Commission considered that this level of market power would have pushed up prices. To remedy these competition concerns, TotalFina/Elf proposed the sale of a large proportion of these operations to competitors. For example, it proposed selling 70 motorway service stations in France to competitors. This allowed the European

Commission to give conditional clearance to the merger while ensuring that the French fuel markets remained competitive and that consumers continued to be charged fair prices.



## Community law on merger control

### Regulation (EC) No 139/2004 — the merger regulation:

- The European Commission has the exclusive power to investigate mergers with a Community dimension. Companies thus have a one-stop shop for merger control, which simplifies and reduces administrative procedures. The main benchmarks for determining which mergers have a Community dimension are that the worldwide turnover of the merging companies is over EUR 5 000 million and that their Community-wide turnover is over EUR 250 million.
- Mergers with a Community dimension have to be notified to the Commission for its agreement before they are put into effect. The Commission currently receives between 200 and 300 notifications

every year. The detailed statistics are available on the Europa competition website. Details of the notification requirements as well as the notification form (Form CO) are regulated by Commission Regulation (EC) No 808/2004.

- After an initial scrutiny period of 25 working days, the Commission decides either to authorise the transaction or, if it thinks that the concentration might result in a significant impediment to effective competition, it may initiate an in-depth investigation procedure which usually takes up to a further 90 working days (in certain circumstances, this may be increased to 105 or 125 working days).
- At the end of this procedure, the Commission may authorise the merger conditionally or

unconditionally, or it may prohibit it, notably in cases where the companies have not been able to propose appropriate solutions to the concerns raised by the Commission. 'Conditions' attached to the authorisation frequently entail the sale to competitors of assets, shares, patents, etc.

- Over 90 % of notified cases are approved after the initial scrutiny period of 25 working days. Most cases going through the 90 working days' in-depth investigation procedure are resolved by a conditional authorisation. Since 1990, there have been only 18 outright prohibitions. Detailed statistics are available on the Europa competition website.
- The Commission has adopted a number of interpretative notices on various aspects of

merger control which provide a detailed explanation of the analytical framework employed by the Commission in assessing the likely impact of mergers on competition, and of some of the basic terms used in merger control law (such as, for example, a notice on the concept of concentration). These can be found on the Europa competition website.



# Opening up markets to competition

Services such as transport, energy, postal services and telecommunications have not always been as open to competition as they are today. The European Commission has been instrumental in opening up these markets to competition (also known as liberalisation).

LIBERALISATION

## What are the advantages of liberalisation?

In the EU Member States, services like these have previously been provided by national organisations with exclusive rights to provide a given service. By opening up these markets to international competition, consumers can now choose from a number of alternative service providers and products.

Opening up these markets to competition has also allowed consumers to benefit from lower prices and new services which are usually more efficient and consumer-friendly than before. This helps to make our economy more competitive.

## LOW-COST AIRLINES

Low-cost airlines have been able to start operating and developing in Europe thanks to the European Commission opening up the airline industry to competition. The wider and more affordable range of services now available are enjoyed by many European consumers.

## GAS

In 2004, the European Commission intervened when the French and German gas companies Gaz de France and Ruhrgas allegedly refused to allow the Norwegian gas producer Marathon access to their gas networks. Both the French and the German companies subsequently offered to improve access to their respective networks, allowing customers in France and Germany to benefit more effectively in future from the opening of the gas markets to competition.

## How has freedom of choice been introduced?

The approach of the European Commission has evolved over the years. In 1993, when requiring Denmark to end the monopoly rights of the State-owned railway company DSB on the port facilities at Rødby, the European Commission left the Danish government the choice to allow competitors to use the same facilities or, alternatively, to construct new facilities near the existing port. However, it soon became apparent that establishing competing facilities, especially in the case of nationwide networks, requires a great deal of investment and is usually inefficient. So the European Commission developed the concept of legally separating the provision of the network from the commercial services using the network.

In the railway, electricity and gas industries, the network operators are



now required to give competitors fair access to their networks. In those industries, monitoring fair network access by all suppliers is essential to allow the consumer to choose the supplier offering the best conditions.

Does this have a direct effect on consumers?

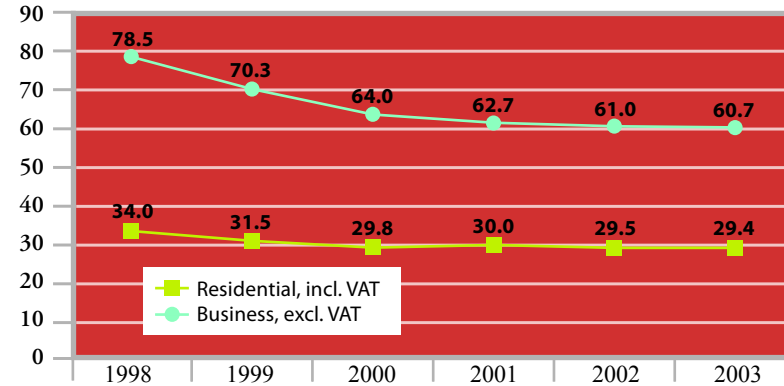
In the two markets which were opened up to competition first (air transport and telecommunications), average prices have dropped substantially. This is not the case for markets which were opened up to competition later or not at all (such as electricity, gas, rail transport and postal services), where prices have remained unchanged or have even increased. Although this may be due to sector-specific factors — for instance, gas prices are closely related to oil prices — it seems that consumers have been able to benefit more easily from lower prices in sectors which are more open to competition.

### THE COST OF CALLS FROM FIXED TELEPHONES

The European Commission opened the telecommunications sector completely to competition on 1 January 1998. This allowed residential and business users in Europe to save 13 % and 23 % respectively on their telephone bills for domestic calls from fixed telephones between August 1998 and August 2003.

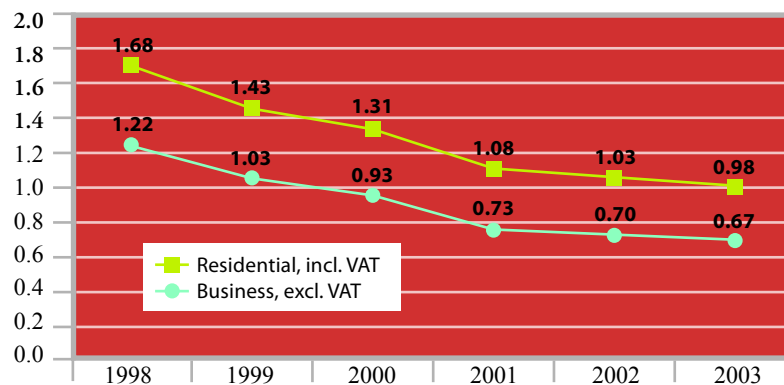
The savings were even more dramatic for international calls, where the average cost of calls to all OECD countries fell by 41 % for residential users and by 45 % for business users.

Average monthly phone bill for national calls (EUR)



(Source: Ninth report on the implementation of the telecommunications regulatory package, COM(2003) 715 final).

Average cost for 10-minute international calls (EUR)



(Source: Ninth report on the implementation of the telecommunications regulatory package, COM(2003) 715 final).

LIBERALISATION



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### Can public services be delivered properly in a competitive market?

Opening up new markets requires additional regulation to ensure that public services continue to be provided and that the consumer is not adversely affected. When applying competition law, the European Commission always takes account of the special obligations placed on any organisation benefiting from 'monopoly rights'. This approach ensures that there is fair competition without handicapping the State-funded provider, which is obliged to provide services in the public interest even where this is not profitable.

### POSTAL SERVICES

The State-funded German postal service, Deutsche Post, is obliged to maintain an expensive, nationwide network of post offices and therefore has higher costs than its competitors. In March 2001, when the European Commission asked Deutsche Post to provide its parcel services at a fair price, it recognised that part of Deutsche Post's costs came from this obligation. As a result, it only asked Deutsche Post to set its prices to cover the extra cost of providing parcel services, over and above the cost of maintaining this network (i.e. the incremental cost).

### Legislation: Article 86 of the EC Treaty

The EC Treaty states that the 'activities of the Community shall include a system ensuring that competition in the internal market is not distorted'. The European Commission opens up markets to competition through the use of different legal instruments, including Articles 81 and 82 of the EC Treaty. Article 86 of the EC Treaty gives the European Commission a specific duty to monitor public undertakings and undertakings to which Member States grant special or exclusive rights. It gives the European Commission the power to address appropriate directives or decisions to Member States which enact or maintain measures contrary to the rules contained in the Treaty.

The European Commission has adopted directives under Article 86:

- to ensure that financial relations between the Member States and their public companies are transparent; and
- to open up the electronic communications markets to competition.



If EU Member States do not comply with directives, the European Commission initiates an infringement procedure under Article 226 of the EC Treaty.

The decisions taken by the European Commission under Article 86 also contributed significantly to the opening up of markets to competition. By 2004, decisions had been adopted in most of the areas where Member States granted special and exclusive rights (for further details see <http://europa.eu.int/comm/competition/liberalization/decisions/>):

- postal services (5),
- mobile telecommunications (2),
- airports (3),
- ports and maritime transport (4),
- insurance (1) and
- broadcasting (1).

The European Commission also examined complaints in other sectors, such as energy, but solutions favourable to consumers were found without the need for formal decisions. In addition, the European Commission has proposed measures to the European Parliament and the Council to open up some of these markets to competition.

# Monitoring State aid

**It is of fundamental importance that competitors operate on an equal basis. Faced with free trade between EU Member States and the opening of public services to competition, national authorities sometimes want to use public resources to promote certain economic activities or to protect national industries. The granting of these resources is known as State aid.**

**State aid can distort fair and effective competition between companies in Member States and harm the economy, which is why the European Commission monitors State aid.**

## What is State aid?

A company which receives government support obtains an unfair advantage over its competitors. Therefore, the EC Treaty generally prohibits State aid unless it is justified by reasons of general economic development. To ensure that this prohibition is respected and exemptions are applied equally across the European Union, the European Commission is in charge of watching over the compliance of State aid with EU rules.

As a first step, it has to determine if a company has received State aid, which is the case if the support meets the following criteria:

1. there has been an intervention by the State or through State resources which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all

or part of a company, or the provision of goods and services on preferential terms, etc.),

2. the intervention is likely to affect trade between Member States,
3. the intervention confers an advantage to the recipient on a selective basis, for example to specific companies or sectors of the industry, or to companies located in specific regions,
4. competition has been or may be distorted.

By contrast, general measures are not regarded as State aid because they are not selective and apply to all companies regardless of their size, location or sector. Examples include general taxation measures or employment legislation.

## STATE AID TO GERMAN, AUSTRIAN AND FRENCH PUBLIC BANKS

The German and Austrian *Landesbanken* obtained State guarantees from their governments protecting them from bankruptcy. These guarantees allowed the public banks to grant loans on more favourable conditions than their commercial competitors. After an investigation of the guarantees, the European Commission concluded that the guarantees constituted illegal State aid and negotiated their phasing out with the German and Austrian governments. A similar decision was taken with regard to a guarantee by the French government to the public financial institution Caisse des Dépôts et Consignations ( CDC ) to support the commercial banking activities of CDC. The Commission also demanded the phasing out of the guarantee, allowing CDC to adjust its operational and legal environment to operate under the same conditions as its competitors. These decisions of the Commission contributed to restoring fair competition in the banking sector.

STATE AID



### When is State aid allowed?

The EC Treaty contains a list of possible circumstances in which State aid may be granted. Over the years, the European Commission has developed a clear framework for State aid measures which are in the common interest of the European Union and thus allowed. These include developing disadvantaged regions, promoting small and medium-sized enterprises (SMEs), research and development (R & D), the protection of the environment, training, employment and culture.

The most controversial types of State aid, which are subject to an in-depth investigation by the European Commission, are rescue and restructuring aid, financial transactions between the State and its public companies resulting in aid and aid to companies in certain sensitive sectors such as steel, shipbuilding and motor vehicles. In particular, aid for the rescue and restructuring of companies in financial difficulties may allow a company on the verge of bankruptcy to stay in

business, usually at the expense of competitors and their employees. Even the jobs maintained at the company which receives the State aid are often uncertain. The Commission has adopted guidelines reflecting an increased focus on large companies that trade across the EU. These companies usually have large market shares and State support in their favour affects competition and trade more significantly. The new guidelines introduce stricter rules concerning the efforts big beneficiaries have to make to finance their own survival. For example, large companies should in the future carry around 50 % of the restructuring cost themselves.

Aid which does not contribute to any of the commonly accepted objectives of the European Union cannot be allowed. Examples of such unlawful aid are general investment aid for large companies outside well-defined disadvantaged regions, export aid and operating aid (which is aid to cover the running costs of companies).

### TRAINING AID TO FIAT

The European Commission approved training aid amounting to EUR 38 million for the Italian car manufacturer Fiat to improve the knowledge of workers whose jobs were at risk due to rationalisation measures and who needed training to adapt to changes in production processes and demands. The European Commission is generally favourable towards training aid measures. Several European Councils have declared that training is an important factor to make the European economy more competitive on world markets.

### RESEARCH AND DEVELOPMENT AID TO MOTOROLA, PHILIPS AND ST MICROELECTRONICS

In 2003, the Commission approved aid in the amount of EUR 293 million for a joint research project of the three companies to develop new technology for first prototypes of integrated circuits with nano-metric dimensions. The aid was approved for research in all stages, i.e. fundamental, pre-competitive and industrial

research. One of the positive elements of the project was the substantial increase of research personnel as well as the increase in R & D expenditure, thereby contributing to European Council targets to increase R & D spending by industry and Member States to foster the competitiveness of European industry.

### STATE AID TO ALSTOM

The European Commission approved restructuring aid by the French government to Alstom, a group with a wide range of production activities mainly in the transport and energy sectors. The aid was approved on the condition that the company adopts so-called compensatory measures, such as selling off businesses in various sectors of the group's activities. These compensatory measures were necessary to ensure that the restructuring aid would not cause substantial harm to competitors operating without State aid and to restore fair competition in the transport and energy sectors.

### How does the European Commission monitor State aid?

Generally, EU Member States are obliged to inform the European Commission about State aid plans by means of a notification prior to their implementation. It is only after the approval of the aid that the Member State is allowed to put it into effect.

In some cases, however, a notification is not required and an information sheet shortly after the aid has been granted is sufficient. This simplification applies to areas where the Commission has considerable experience with certain types of State aid, which contribute to the overall development of the European economy. Among these are aid to encourage training, employment, SMEs and R & D activities, particularly when carried out by SMEs.

Aid of up to EUR 100 000 given to companies over a three-year period is not considered to be State aid as it

is not large enough to have an effect on trade between Member States. This simplification also allows the Commission to focus on more important cases.

The Commission approves around 85 % of all notified State aid measures after a preliminary assessment. It only makes a formal investigation in contentious cases and publishes its decision to do so in the Official Journal and on the competition homepage ([http://europa.eu.int/comm/competition/state\\_aid/](http://europa.eu.int/comm/competition/state_aid/)). The procedure gives interested parties the opportunity to comment on the aid and enables the Commission to consider all aspects before reaching a final decision.

The European Commission also investigates aid granted by EU Member States which has not been notified in advance (known as unlawful aid). It might find out about unlawful aid from complaints by companies or individuals, or through reports in the media. In addition to informing the Commission, third parties, usually

competitors, can challenge State aid measures directly before national courts.

If the European Commission finds unlawful aid to be incompatible with the principle of fair competition on the internal market and in violation of EU law, it requires the Member State to abolish the measure and to recover the aid from the beneficiary to restore the situation which existed before the aid was granted.

### State aid scoreboard

The European Commission is also in charge of monitoring the overall amount and nature of State aid granted by each EU Member State. Its analysis shows that Member States have reduced the level of State aid considerably in recent years and redirected most State aid to stimulate activities in the common interest of the European Union. This positive development contributes to make the European economy more competitive and improves national markets as well

as Europe's position on the global market. Details of this analysis are published at:

[http://europa.eu.int/comm/competition/state\\_aid/scoreboard/analytical\\_section.html](http://europa.eu.int/comm/competition/state_aid/scoreboard/analytical_section.html)

### SCI SYSTEMS

In the late 1990s, the Dutch authorities granted SCI Systems a generous aid package to build a factory for the assembly of PCs for Hewlett-Packard in Friesland. In February 2001, the European Commission found that this aid broke the rules on regional investment aid. These rules prevent authorities from having an expensive subsidy race to attract mobile investment projects and the jobs they could bring to their region. Such races would be costly for taxpayers and undermine cohesion objectives because richer authorities could continuously outbid poorer ones. In August 2002, the company paid back NGL 3.8 million (EUR 1.7 million) to the Dutch authorities.

### **What measures has the European Commission taken to improve its State aid control system?**

On several occasions, the European Council has underlined the need to grant less but better targeted State aid in order to boost the European economy. **The** Commission has reacted to this demand by adopting a number of new instruments to accelerate and facilitate the granting of State aid where it would conform to EU objectives.

For example, formalities have been reduced in cases where the aid is likely to be in conformity with European law and generally does not pose problems (see above under ‘How does the European Commission monitor State aid?’). In these cases, Member States need to inform the Commission after granting the aid as a procedure in the interest of transparency.

Another improvement is that the Commission now provides forms for notification and information. **The** forms have the clear advantage

of providing the Commission with the information it needs and of clarifying the required content for the Member States.

Furthermore, enforcement of Commission decisions ordering the recovery of unlawful aid has been improved through the creation of a specialised unit to ensure strict **monitoring**. **The** effective recovery is a necessary complement to the Commission’s power to control State aid, and Member States now have an increased incentive to implement recovery decisions.

### **Why is particular attention paid to public services which have been opened up to competition?**

Public services (also known as services of general economic interest) are crucial to the proper functioning of the economy as well as our society. **Therefore**, it has to be guaranteed that public services are available on a continuous and sufficient basis. As mentioned in the previous section on ‘Opening up markets

to competition’, many of them like postal and transport services, electricity and telecommunications have experienced a radical overhaul through their liberalisation and face difficult situations on the competitive market.

**Thus**, to ensure the uninterrupted provision of public services, companies in these sectors have to be compensated for costs incurred by assuming this responsibility. However, the possibility that companies use the compensation for activities which should be performed under normal competitive conditions means that this has to be watched closely under State aid rules.

### **STATE AID TO TV2 DENMARK**

In May 2004, the European Commission ordered the Danish public broadcaster TV2 to pay back excess compensation for public service tasks. It had initiated this investigation following a complaint from a commercial broadcaster operating on the Danish market, claiming that TV2 received State aid to finance its public service tasks. The investigation showed that the total amount of State aid TV2 received exceeded the costs of accomplishing its public service mission by EUR 84.4 million. TV2 could use the excess compensation to finance its commercial activities, unduly favouring it over competitors that did not receive State funding. In order to restore competitive conditions in its commercial activities, the Commission ordered TV2 to refund the excess compensation plus interest.

### What are the challenges for the new Member States?

The 10 new Member States which joined the European Union on 1 May 2004 previously had different traditions concerning State aid. However, since joining, they have had to comply fully with European State aid provisions. This has resulted in a drive for less and better targeted aid, which also helps the new Member States to integrate better into the internal market. As regards State aid measures in the new Member States which already existed before they joined the European Union, these measures continue to be applied without the risk of recovery until they are, where necessary, brought into line with EU State aid rules.



### Legislation: Articles 87, 88 and 89 of the EC Treaty, regulations and block exemptions

Article 87 contains the substantive rules governing State aid, namely the general principle that State aid is incompatible with the common market, as well as a list of possible exemption clauses. The Commission has adopted a number of interpretative frameworks and guidelines clarifying how it applies the exemption clauses, thus ensuring a coherent application of State aid rules across all Member States and sectors of the industry. Examples include the Community framework for State aid for R & D and the Community guidelines on State aid for environmental protection. In areas where the Commission has gained sufficient experience, it has adopted a number of legal instruments known as block exemption regulations, setting out the conditions under which Member States may implement aid without notifying it to the Commission. Examples include aid

for training, employment and SMEs. To ensure transparency, however, Member States are obliged to send an information notice to the Commission shortly after the aid is implemented.

Article 88 sets out the basic procedural rules regarding the enforcement of Article 87, in particular the obligation of Member States to notify any plans to grant aid to the Commission and to implement aid only after the Commission's approval. The Treaty provisions have been complemented by the procedural regulation (Council Regulation (EC) No 659/1999) and the implementing regulation (Commission Regulation (EC) No 794/2004).

Article 89 is the legal basis for Council regulations in the State aid field, such as the procedural regulation and the enabling regulation (Council Regulation (EC) No 994/98) which is the basis for block exemption regulations.

## International cooperation

**With increasing globalisation, more and more companies, mergers and cartels are international. As a result, the activities of companies based outside the EU may affect competition within the EU. This has made international cooperation on competition policy essential.**

INTERNATIONAL  
COOPERATION

### **Does the European Commission examine mergers or cartels involving non-EU companies?**

Any company whose activities affect the EU market is subject to European competition law. It does not matter whether the business has its registered office, headquarters or shareholders inside or outside the EU.

This is why European competition authorities may take action if a cartel affects the EU market, even if the companies involved are based **outside the EU**. The same cartel may also be examined by competition authorities outside the EU.

Likewise, the European Commission can intervene where a merger affects competition in the EU, whether or not the merging companies are based within the EU. Indeed, all mergers involving companies with an aggregate turnover within the EU exceeding

a certain level must be notified to the European Commission for clearance.

### **What gives the European Commission authority to decide whether the behaviour of a non-EU company restricts competition or not?**

Many non-EU companies sell their products globally, including in the European Union, which tends to be one of their main markets. They must therefore respect EU competition rules in the same way that European companies must respect the laws of other countries when operating outside the EU.

### **How are practices which restrict competition dealt with outside the EU?**

Over 100 countries and regions, including the most significant trading partners of the EU, have

competition policies.

The competition authorities in these countries or regions are increasingly called upon to investigate the same international mergers or take action against international cartels. Almost all of them are members of forums such as the International Competition Network (ICN), which is an informal, worldwide network of competition authorities.

**International Competition Network: see [www.internationalcompetitionnetwork.org](http://www.internationalcompetitionnetwork.org)**

The European Commission believes that competition authorities around the world can benefit from pooling their experience and this is why it has been playing a leading role in the ICN since its creation. Even though the ICN was formed quite recently, it has already delivered an impressive series of recommendations within

a relatively short time. In time, these recommendations should lead to a more coherent approach to competition policy around the world.

### **How does the European Commission cooperate with other competition authorities?**

The European Commission is frequently in contact with competition authorities outside the EU. For example, in Europe the European Commission cooperates with the EFTA Surveillance Authority. Also, the European Commission has coordinated with the Canadian, Japanese and US competition authorities to carry out simultaneous inspections in six EU Member States, Canada, Japan and the US in connection with an alleged international cartel.

The European Commission also discusses technical approaches to specific cases with other competition

authorities which may also be ~~examining the same case~~. The European Commission believes that this kind of direct cooperation is not only efficient but is also welcomed by the companies concerned, which might otherwise be faced with apparently contradictory remedies imposed by the different competition authorities involved.

The EU has competition cooperation arrangements with several countries and regions. All of these are published on the website of the Directorate-General for Competition of the European Commission.

**Cooperation between the EU and other countries and regions: see <http://europa.eu.int/comm/competition/international/bilateral/bilateral.html>**

### **What are the advantages to EU consumers and companies of the cooperation between the EU competition authorities and other competition authorities?**

The more close-knit the international community of competition authorities is, the more likely it is to ensure that consumers and companies get the best deal in prices and quality by taking uniform and decisive action against companies which form cartels or abuse their market power, affecting different countries or regions. At the same time, by cooperating with competition authorities outside the EU, the European Commission aims to create the level playing field necessary for companies of whatever nationality to compete on their merits even outside the EU.

**International cooperation by the EU on competition matters: see <http://europa.eu.int/comm/competition/international/overview/>**



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**INTERNATIONAL  
COOPERATION**

## In practical terms ...

### ■ What can I do if I suspect that a business practice restricts competition?

In your daily life, you may come across situations in which there are signs of business practices which may restrict competition, such as those described in this brochure. For instance, companies have sometimes refused to accept orders from consumers from other Member States. Such a refusal may be a sign of illegal, restrictive practices and you may want to inform a competition authority about them.

### STEP 1: DECIDE WHICH COMPETITION AUTHORITY TO INFORM

If the situation you have encountered is specific and limited to the country or the area in which you live, or involves no more than three Member States you may in the first place want to contact a national competition authority. The competition authorities of all EU Member States now apply the same competition rules as the European Commission and very often they are well placed to deal with your problem. If you think that a larger number of Member States are concerned, you may primarily choose to contact the European Commission. Even if you are unsure about the scope of the problem, do not hesitate to contact either the European Commission or a national competition authority. The authorities cooperate and may allocate a case that could arise from your report between them as appropriate.

### STEP 2A: IF YOU WISH TO INFORM THE EUROPEAN COMMISSION

#### Reporting your concerns to the European Commission

You can report your concerns to the European Commission by e-mail to [comp-market-information@cec.eu.int](mailto:comp-market-information@cec.eu.int). Alternatively, you can write a letter to the European Commission, Competition DG, Antitrust Registry, B-1049 Brussels. Please indicate your name and address, identify the firms and products concerned and describe clearly the practice you have observed. This will help the European Commission to detect problems in the market and can be the starting point for an investigation.

#### Making a formal complaint with the European Commission

If you are directly affected by the practice which you suspect restricts

competition and able to provide the European Commission with specific information, you may want to lodge a formal complaint instead. In this case, you would need to fulfil certain legal requirements which are explained in detail in the Commission Notice on the handling of complaints (for further information see <http://europa.eu.int/dgcomp/>). You can also send an e-mail to [comp-market-information@cec.eu.int](mailto:comp-market-information@cec.eu.int) to ask for further information on the lodging of a formal complaint.

#### Informing a consumer association

As an individual consumer, you may also inform a consumer association of your observations. The consumer association can then decide to pool information received from different consumers and make a formal complaint to the European Commission.



### **STEP 28: IF YOU WISH TO INFORM A NATIONAL COMPETITION AUTHORITY**

At the end of this brochure you will find a list with contact details of national competition authorities of all EU Member States. National competition authorities in the EU Member States can gather information from the companies concerned and take action to remedy the problem if they find that EU competition law has been broken.

Please note that the procedures followed by the national authorities depend on their national laws and may differ from one EU Member State to another. So, before contacting a national competition authority, you may want to check its website or seek guidance from the authority on how best to report your concerns.

### **■ What can I do if I think my company may be involved in a cartel or is restricting competition in some way?**

If your company decides to take advantage of the European Commission's policy towards companies in a cartel which give inside information about its existence, it may approach the European Commission either directly or through an intermediary, such as a legal adviser. An application for immunity or reduced fines under this policy should be sent to the dedicated fax number: **(32-2) 29-94585**. This ensures that the precise time and date of the contact is recorded and that the information is treated with the utmost confidentiality. If necessary, initial contact can also be made through the following dedicated telephone numbers: (32-2) 29-84190 or (32-2) 29-84191. Under the policy, the first company to submit evidence of a

cartel unknown to, or unproved by, the European Commission may receive total immunity from fines. Companies submitting later applications may benefit from reduced fines.

If you are an employee or former employee of a company which you believe is restricting competition in some way, you may approach the European Commission using the following dedicated telephone numbers: (32-2) 29-84190 or (32-2) 29-84191 to pass on any information and evidence you may have of this. Your identity will not be disclosed without your consent. Based on the information and evidence you have provided, the Commission may decide to open an investigation.

### **■ How can I make a merger-related complaint or suggestion to the European Commission?**

In case you wish to make a complaint or a suggestion relating to a merger, you may contact the European Commission by e-mail at [comp-mergers@cec.eu.int](mailto:comp-mergers@cec.eu.int) or by writing to:

European Commission  
Directorate-General for Competition  
Merger Registry  
B-1049 Brussels

■ **What can I do if competition is distorted through a State aid measure?**

**Lodge a formal complaint**

You can lodge a complaint with the European Commission if you believe that competition is distorted through a State aid measure. A special form and further guidance are available on the Internet at the following address:  
[http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/index\\_en.htm#aides](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#aides).

**Inform the European Commission during a formal investigation**

You can also make your voice heard when the Commission opens a formal investigation procedure. The Commission must always take this procedural step where it has doubts that State aid can be accepted. A letter will be published in the *Official Journal of the European Union*, explaining the difficulties the Commission has approving the aid and inviting interested

parties to provide comments. The published letters can also be found on the Competition DG website: [http://europa.eu.int/comm/competition/state\\_aid/oj/](http://europa.eu.int/comm/competition/state_aid/oj/).

■ **Is there a contact point for consumers on competition issues?**

The European Commissioner responsible for competition appointed a Consumer Liaison Officer within the Commission's Competition DG to ensure a permanent dialogue with European consumers. To contact him, you may send him an e-mail to his mailbox: [comp-consumer-officer@cec.eu.int](mailto:comp-consumer-officer@cec.eu.int).

## Where can I get more information?

### From the European Commission

#### On the Internet

You can find more details about the information contained in this booklet as well as information on mergers notified to the Commission, the full text of competition decisions in the antitrust, merger and State aid areas, and the relevant legislation on the website: [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html).

#### In print

The following publications are on sale in print form but can be downloaded free of charge (unless otherwise stated) from the above website:

- the annual *Report on competition policy*;
- information on mergers notified to the Commission, formal decisions of the European Commission in the antitrust, merger and State aid areas, as well as the detailed legislation on which they are based, are published in the *Official Journal of the European Union*;

- *The competition rules for supply and distribution agreements* and the *Competition policy newsletter* are available, free of charge, from the European Commission's representative offices in the EU Member States and from EU Info-Points;
- a review of the work of the European Commission on competition matters is included in the annual *General report on the activities of the European Union*, which can be consulted online on the website <http://europa.eu.int/abc/doc/off/rg/en/welcome.htm>

#### By e-mail or letter

If you have any questions about the contents of this booklet, you can send an e-mail to [infocomp@cec.eu.int](mailto:infocomp@cec.eu.int) or write to the following address:

European Commission  
Directorate-General for Competition  
B-1049 Brussels  
Tel. (32-2) 29-91111

**Where can I get more information?  
For contact points in the Member States →**