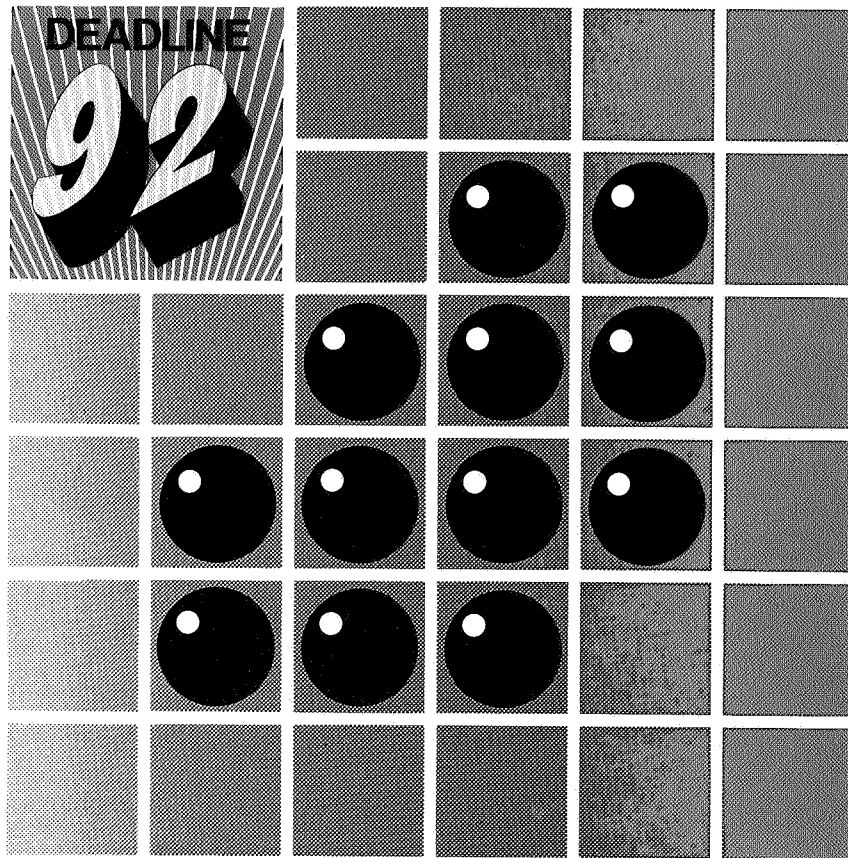


EEC COMPETITION POLICY IN THE SINGLE MARKET



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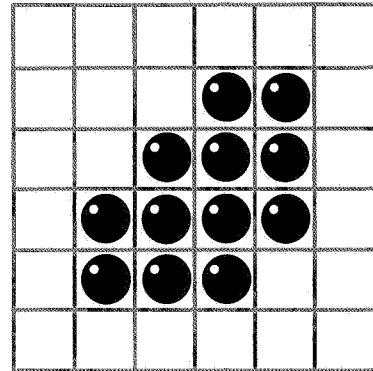
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Maintenance of undistorted competition is one of the fundamental principles of the free-market economy on which the European Community is based.

The competition rules which have been established in this context are aimed at ensuring that a healthy competitive environment exists throughout a unified European market, for the benefit of all — producers, traders, consumers and the economy in general.

With the creation of a unified internal market among the 12 Member States of the European Community by 1992, there is even greater need for an effective policy to ensure fair competition throughout the Community.

This brochure explains the objectives and rules of European competition policy, and it shows how they work. It not only applies to big companies which are already preparing for an enlarged European market: it is as relevant to small and medium-sized enterprises, showing how they may benefit from cooperation with other firms and take full advantage of a unified European market.



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in the single market**

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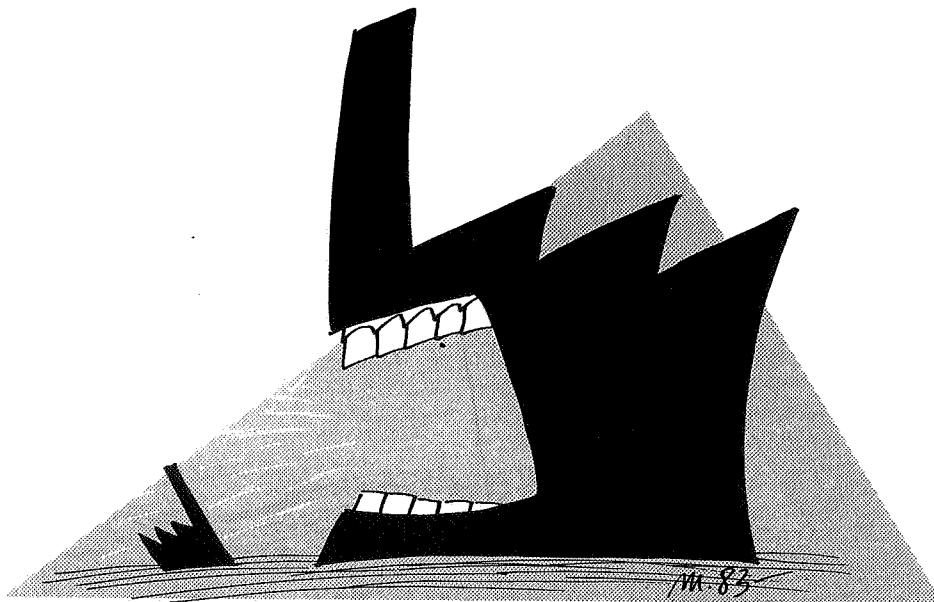
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Introduction

The purpose of the European Community is to lay the foundations of an ever-closer union among the peoples of Europe and to ensure economic and social progress in its member countries by common action aimed at eliminating the barriers which divide Europe. Over the years, the Community has progressively dismantled many obstructions to trade including customs duties, quotas, and charges or measures which have an equivalent effect. It has been recognized, however, that genuine economic integration requires more extensive action in a number of fields. In accepting the Commission's proposals for completing the internal market the European Council pledged the Community in 1985 to a strategy which would lead to the realization of this objective.

If one considers the historical, cultural and economic diversity of the Member States, the idea of creating a common market is clearly an ambitious undertaking. Enlargement has provided the Community with further challenges. From a group of six countries with



a relatively homogeneous economic structure, the Community now has 12 members, some 320 million inhabitants and an economy which shows marked regional disparities. All the Communities' efforts are now being applied to strengthening the cohesion of this unit and to removing the remaining obstacles which stand in the way of the Community's development.

Community businesses are also increasingly recognizing that a strengthening of the European dimension is indispensable in order to maximize commercial opportunities. There is a growing awareness that the creation of the single market can help to provide stability to European industry by placing it on a more equal economic footing with its major world competitors.

An efficient competition policy has a key role to play since it leads to the optimal allocation of resources and helps to create the best possible climate for fostering innovation and technical progress in the unified market. The Cecchini Report recognizes that the expected benefits of the single market, including increased productivity, lower prices and greater employment opportunities, will not be realized unless free and fair competition is fully maintained in the post-1992 Community.

The policy must ensure that new protectionist barriers are not erected, whether as a result of restrictive business practices or through measures by Member States in favour of national enterprises.



The existing Community rules for dealing with restrictive agreements, concerted practices and abuses of a dominant position are already making an important contribution to the integration process, to the extent that they prevent market partitioning cartels, restrictive vertical agreements and abuses of monopoly power. These rules will continue to have an essential function in creating and consolidating the single market. The Commission is also seeking the adoption of a Community system of merger control, in order to put in place the more complete legal framework which is necessary, if the benefits of the integrated market are to be maximized.

In the context of 1992 the control of State aids also has considerable significance. Government assistance to enterprises could be used as a protectionist tool, thus undermining the wider strategy, which rests on the philosophy that the single market must be free and competitive. The consistent application of the Community's State aid rules is therefore an essential element in the creation and maintenance of a unified market.

As the pace towards the realization of the single market accelerates, the significance of competition policy increases. This brochure has been prepared by the Commission in recognition of this, and it sets out, for the benefit of companies and individuals who will be operating in the single market, the essential provisions of the Community competition rules, in so far as they affect undertakings.

I — What is the EEC?

Definition and aims of the EEC

The European Economic Community (EEC) was established in 1957 by France, Italy, the Federal Republic of Germany, Belgium, Luxembourg and the Netherlands, for the purpose of creating a union of European States, bound together by common economic goals. In 1973, Denmark, Ireland and the United Kingdom joined and since 1981 Greece has been a member. The entry of Spain and Portugal in 1986 brought the total membership to 12.

By creating a single 'common market' the Member States strive together to achieve the harmonious development of economic activities, continuous economic expansion and a faster rise in the standard of living. With these goals in mind, the activities of the EEC include:

- (a) the elimination of customs duties between the Member States;
- (b) the creation of a common commercial policy towards third countries;
- (c) the creation of common policies in a number of specific sectors, such as agriculture and transportation;
- (d) the removal of obstacles to the free movement of persons, services and capital throughout the Community;
- (e) the creation of common funds to promote social and regional development;
- (f) the approximation, or 'harmonization' as it is often referred to, of national laws;
- (g) the establishment of a system which ensures that competition is not distorted.

Many of the most important barriers affecting trade between the Member States have already been removed, and the Community's programme for the completion of the single European market by 1992 is aimed at eliminating those which remain. Thus, undertakings in the Community are increasingly able to reap the benefits of operating in a large unified market of 320 million consumers.

Next to this general economic community which exists between the Member States a common market has also been established in the coal and steel sector (ECSC, the European Coal and Steel Community) and in the field of nuclear energy (Euratom, the Euro-

pean Atomic Energy Community). Together, the three Communities are commonly referred to as the European Community (EC).

The institutions

The responsibility for achieving the aims of the European Community lies with four institutions:

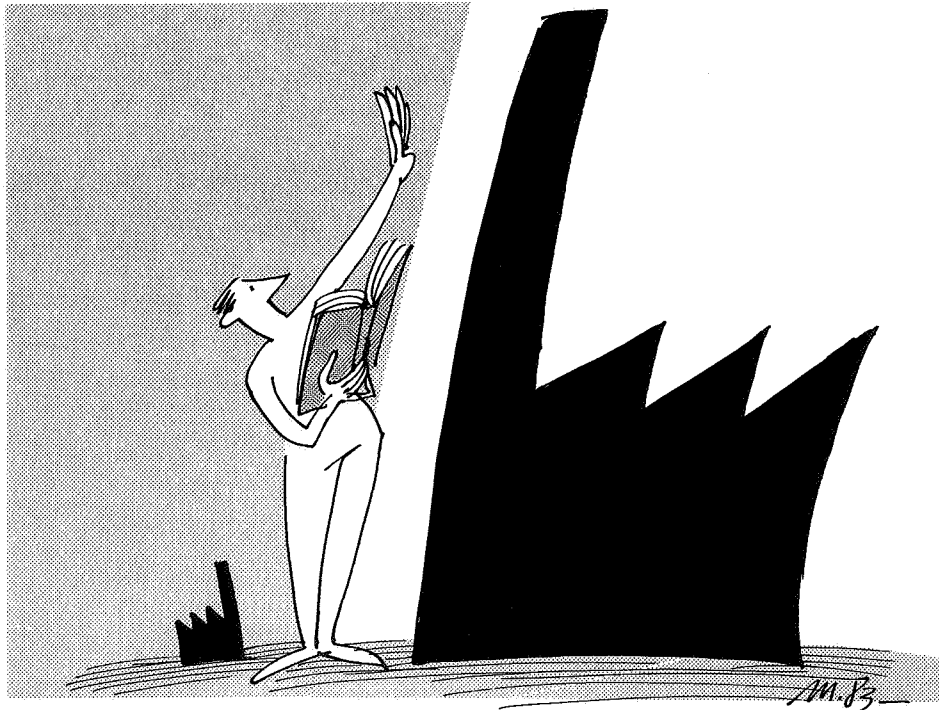
- (i) The European Parliament, which has 518 members, is elected directly by the citizens of the Member States. The parliamentarians are not organized in national sections, but in Community-level political groups. The Parliament must be consulted on the more important Commission proposals to the Council and has far-reaching powers in the budgetary field, among others the power to reject the Community budget as a whole. Also, the Parliament can compel the Commission to resign as a body by passing a motion of censure.
- (ii) The Court of Justice, composed of 13 judges, assisted by six Advocates-General, ensures that implementation of the Treaties is in accordance with the rule of law. It plays an essential role in the interpretation of European law, frequently at the request of national courts. The Court also deals with disputes on Community matters between Member States, between Member States and the Community institutions, or between the latter and individuals, including firms.
In the field of competition policy, the Court has issued important decisions which give valuable guidance to undertakings as to the meaning of the competition rules.
- (iii) The Council consists of representatives of the governments of the 12 Member States. Although the 'main' representative for each is its Foreign Minister, membership of the Council varies with the subjects down for discussion. Meetings are thus often attended by the Ministers for Agriculture, Transport, etc.
Under the EEC and Euratom Treaties, any measure of general application or of a certain level of importance must be enacted by the Council, which can, however, only in rare cases proceed without a proposal from the Commission.
- (iv) The Commission is a collegiate body consisting of 17 Members, appointed by agreement between the member governments. Throughout their four-year term of office, Members must remain independent of the governments and of the Council. The Commission has a wide range of duties:
 - (a) it is the guardian of the Treaties;
 - (b) it is the executive arm of the Communities;
 - (c) it is the initiator of Community policy and exponent of the Community interest in the Council.

Other Community organs include the Economic and Social Committee, the European Investment Bank and the Court of Auditors.

Legislation in the EEC

The EEC Treaty mentions four instruments which the competent Community institutions can use to establish law or policy:

- (i) regulations, which are laws directly applicable and binding in the Member States;
- (ii) directives, which are addressed to Member States and which lay down the results to be achieved, but leave the Member States free to choose form and methods;



- (iii) decisions, which are binding on those to whom they are addressed, whether a Member State, a legal entity or a private person. In the competition field, decisions issued by the Commission can have a far-reaching impact on the behaviour of undertakings;
- (iv) recommendations and opinions, which have no binding force.

This list of Community acts is not exhaustive: use is also made, for example, of communications, memoranda, guidelines and general programmes.

In the competition area, the Commission has issued several notices which, although not binding, can none the less be useful for undertakings as general guidance.

Community law is a factor which all those operating in the common market must be aware of and take into account. Not only do the EEC rules — including the rules of competition — apply, often directly, in all the Member States but, in cases of conflict with national laws, Community law prevails.

II — The EEC competition rules which apply to undertakings

The creation of a single European market requires, among other things, the elimination of economic barriers such as customs duties, quantitative restrictions, and other charges and measures having an equivalent effect, which exist between the Member States. Accordingly, where national legislation impedes, for example, the free movement of goods across Member State frontiers, it is the national authorities who will come under attack for violating the Treaty.

Private arrangements, however, may also interfere with cross-border trade by creating divisions within the European market. For instance, companies may agree to keep out of each others' national markets and in such cases, it is the companies themselves who may face legal action under the competition rules.

The EEC Treaty provides for the establishment of a system to ensure that competition in the common market is not distorted. The objective of market integration is as important as the traditional role which competition plays in free market economies, ensuring efficient allocation of resources, stimulating enterprises to make the best use of their know-how and skills and encouraging them to develop new research techniques and products.

The rules of competition are contained in Articles 85 to 94 of the EEC Treaty.

Articles 85 and 86 relate to anti-competitive behaviour by enterprises which has an effect on trade between Member States. These are the rules which undertakings must be aware of and must comply with in all their commercial dealings.

Both Articles are aimed at preserving and enhancing competition rules by different means. Article 85 is directed at agreements or concerted practices between two or more enterprises, whereas Article 86 is aimed at abusive behaviour by monopolies or firms with very considerable power.

Competition can, of course, also be distorted when national governments favour certain undertakings, by granting them aids in whatever form, such as outright grants or special tax advantages. This aspect of competition policy, which is dealt with in Articles 92 to 94 of the Treaty, is of indirect importance to enterprises in the sense that if the Commis-

sion finds a certain State aid to be illegal, it will intervene against the national government concerned and not against the company to whom the aid is given. However, in view of the fact that companies might be obliged to reimburse any aids illegally received, it is obviously also of direct relevance for them. A brief outline of the rules in this area is given in Chapter V.

Note: The ECSC Treaty imposes special competition rules on undertakings operating in the coal or steel industry.

Article 85

Basic principle — the prohibition of Article 85 (1)

Article 85 of the Treaty relates to anti-competitive behaviour by two or more undertakings or decisions by their associations and it prohibits agreements or other practices which distort competition and which are liable to affect trade between Member States. Examples of such prohibited activities are price fixing between competitors, agreements on market shares or production quotas, or tie-in clauses. The acquisition of shares in competing companies, and other agreements leading to economic concentrations may also fall within the scope of Article 85 (1). The prohibition of Article 85 applies both to so-called horizontal agreements, meaning agreements between undertakings at the same level of commercial activity (competitors), and to vertical agreements, such as agreements between manufacturers and the distributors of their goods.

The following checklist can be used in considering whether a particular commercial activity will be caught by the prohibition of Article 85 (1):

- (i) there must be an agreement (in writing or oral), or a decision by an association of undertakings (for example a trade association) or a so-called concerted practice, which covers positive action falling short of an actual agreement, to align undertakings' activities (hereinafter, the term 'agreement' will be used to cover all three types of activities);
- (ii) there must be more than one undertaking involved; the term 'undertaking' must be viewed in the broadest sense, covering any entity engaged in economic or commercial activities such as production, distribution or the supply of services and ranging from small shops run by one individual to large industrial companies;
- (iii) there must be a noticeable restraint upon competition involved; this applies not only where the actual object but also where the effect is such a restraint;
- (iv) the agreement must have a perceptible effect, actual or potential, on trade between Member States. Agreements which have no effect on trade at all, for example agreements relating to warning labels on dangerous products, and agreements which

