

Information Guide



Competition Policy

A guide to the European Union's Competition Policy, with hyperlinks to sources of information within European Sources Online and on external websites

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Introduction

2011 was a year of turbulence. The financial crisis turned into a sovereign debt crisis in parts of the euro area, threatening the banking sector and the fiscal sustainability of many European governments. It also severely impaired credit flows towards the real economy.

In that economic context, fair competition continues to be an essential condition for the full realisation of the Internal Market and a key component of a common strategy to contribute to the recovery of the European economy and thrive at the global level.

This Communication presents how in 2011 the Commission used competition policy as an instrument in the resolution of the financial and sovereign debt crises and how, generally, competition policy and enforcement actions taken during the year contributed to the wider policy objectives of the Europe 2020 strategy and supported growth, jobs and the competitiveness of the EU economy.

From: 'Report on Competition Policy 2011', [COM\(2012\)253](#), 30 May 2012.

Background

Competition policy is intended to benefit everyone - businesses and consumers - by ensuring that competition between companies is not distorted, and that choice, innovation and competitive prices are available.

The policy covers a wide range of activities, including: agriculture and food, consumer goods, energy, financial services, information and communication technologies, media, motor vehicles, pharmaceuticals, postal services, professional services, sports, telecommunications and transport.

The policy is managed by the European Commission's Directorate-General for Competition (DG COMP), which according to the DG's [Management Plan 2013](#):

carries out its mission mainly by taking direct enforcement action against companies or governments when it finds evidence of unlawful behaviour – be it anticompetitive agreements between firms, abusive behaviour by dominant companies or attempts by government to distort competition by providing disproportionate support for particular companies. It prevents mergers when they would significantly reduce competition. At the same time it helps direct State support to improving competitiveness and/or reducing regional and social disparities and away from aid which distorts competition on the market without any compensating benefit. Typically this positive kind of state support addresses market failures by public aid to R&D, innovation and risk capital, SME's, environmental protection and training and, more generally, achieving the targets set in the EU 2020 strategy.

In the international context, the DG 'strives to shape global economic governance by strengthening international cooperation in enforcement activities and making steps towards increased convergence of competition policy instruments across different jurisdictions.'

DG Competition's [Management Plan 2013](#) states:

Competition is not an end in itself. It is an indispensable element of a functioning Single Market guaranteeing a level playing field. It contributes to an efficient use of society's scarce resources, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole. Therefore, competition contributes to the wider objectives of promoting strong and sustainable growth, competitiveness, employment creation and tackling climate change. Competition policy therefore contributes directly to the Europe 2020 Strategy for smart, sustainable and inclusive growth.

The European Commission has significant powers in relation to competition policy. These include investigating suspected anti-competitive behaviour by requesting relevant documentation and carrying out surprise inspections of companies' premises (events known as 'dawn raids').

The Commission can fine any company which is found guilty of acting in an anti-competitive way or which fails to comply with its demands (fines can be up to 10% of a company's annual turnover).

In June 2006, in an effort to increase the deterrent effect of its fines, the Commission revised its [Guidelines on the method of setting fines](#). Whilst keeping within the maximum 10% of total annual turnover, the new guidelines allow for fines to be based on up to 30% of a company's annual sales to which the infringement relates, multiplied by the number of years the company has been infringing the legislation (see Press Release [IP/06/857](#) and the Commission's [Fines](#) page).

The Commission's 'Report on Competition Policy 2010' ([COM\(2011\)328](#)) showed that there were 274 mergers notified to the Commission that year, and also that the Commission adopted decisions against seven cartels (fining 70 businesses a total of over €3 billion) and registered 214 new state aid cases (see also [reports for other years](#)).

The Commission's 'Report on Competition Policy 2011' was adopted on 30 May 2012 as [COM\(2012\)253](#) (see also [SPEECH/12/466](#)). It set out:

how in 2011 the Commission used competition policy as an instrument in the resolution of the financial and sovereign debt crises and how, generally, competition policy and enforcement actions taken during the year contributed to the wider policy objectives of the Europe 2020 strategy and supported growth, jobs and the competitiveness of the EU economy.

The accompanying Staff Working Paper [SWD\(2012\)141](#) showed that there were 309 merger and acquisition cases notified to the Commission in 2011 and the Commission adopted four cartel decisions (fining 14 businesses a total of more than €614 million).

The Commission does not act in isolation: its annual Report on Competition Policy is debated by the European Parliament; the Court of Justice of the European Union (CJEU) hears competition cases, and the General Court (previously the Court of First Instance) hears complaints against the Commission concerning competition policy.

Legal basis

Article 3(b) of the [Treaty on the Functioning of the European Union](#) (TFEU) gives the European Union exclusive competence to establish 'the competition rules necessary for the functioning of the internal market'.

Details of those rules are set out in Title VII of the TFEU, in which Chapter 1 deals with 'Rules on competition', with Section 1 (Articles 101-106) focusing on 'undertakings' and Section 2 (Articles 107-109) on 'State aid'. Under the previous Treaty establishing the European Community, Articles relevant to competition bore different numbers, as shown on the DG Competition page on [Changes after the entry into force of the Treaty of Lisbon](#).

Antitrust

Article 101(1) [TFEU](#) reads:

The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

However, Article 101(3) allows for an agreement, decision or concerted practice between companies to be permitted which:

contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102 concerns abuse of a dominant position:

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The legislative framework for ensuring compliance with Articles 101 and 102 is set out in Article 103, which allows appropriate Regulations and Directives to be adopted.

Article 105 allows the European Commission to open infringement proceedings, in cases where companies are suspected of breaching the principles of Articles 101 or 102. 'If it finds that there has been an infringement [the Commission] shall propose appropriate measures to bring it to an end' and, if it is not brought to an end, 'the Commission shall record such infringement of the principles in a reasoned decision.'

On its [Antitrust](#) pages, the Commission notes that:

Antitrust rules are contained in various legal instruments. The basic (and brief) provisions are contained in the Treaty on the Functioning of the European Union [as shown above]. A number of regulations have later been adopted, either by the Council or the Commission. Some of these regulations contain the general rules for the implementation of the Treaty provisions laying down, among others, the investigative powers of the Commission. Other regulations deal either with particular types of conduct or with specific sectors.

Finally, the Commission has adopted various non regulatory documents, which may take various forms (notices, guidelines, etc). Such documents are intended to explain in more detail the policy of the Commission on a number of issues, either relating to the interpretation of substantive antitrust rules or to procedural issues, such as access to the file.

On 2 April 2008, the Commission issued a White Paper on 'Damages actions for breach of the EC antitrust rules' ([COM\(2008\)165](#); see also Press Release [IP/08/515](#) and DG Competition's [Actions for damages](#) page) which made a number of suggestions for improving reparation to any citizen or business who suffers harm as a result of a breach of EC antitrust rules, including:

- clarifying what type of damages can be claimed by whom
- facilitating the position of consumers and other indirect victims in situations where an illegal overcharge has been passed on to them
- improving the efficiency of follow-on actions for damages by providing that final infringement decisions of national competition authorities constitute sufficient proof of an infringement
- ensuring that claimants can obtain fair access to evidence through disclosure in court
- providing for effective collective redress
- suggesting rules to ensure a smooth interplay between private and public enforcement, including protection of leniency programmes.

On 29 April 2009, the Commission adopted a 'Report on the functioning of Regulation 1/2003' ([COM\(2009\)206](#); see also Press Release [IP/09/683](#)), reviewing the effectiveness of the modernisation of EU antitrust enforcement rules since the Regulation entered into force on 1 May 2004.

Further to the publication of the White Paper on 'Damages actions for breach of the EU antitrust rules', the European Commission held a public consultation on a Draft Guidance Paper on '[Quantifying harm in actions for damages based on breaches of the EU antitrust rules](#)' from 17 June to 30 September 2011. The European Commission specifies on its [Action for Damages](#) page that:

The aim of the Guidance Paper is to offer assistance to national courts and parties involved in actions for damages by making more widely available information relevant for quantifying the harm caused by antitrust infringements. The paper sets out insights into the harm caused by anticompetitive practices and provides an overview and illustration of the main methods and techniques available to quantify such harm in practice.

On 17 October 2011, the European Commission adopted a set of measures, so called Notice on Antitrust Best Practices, and aiming at better informing the parties by increasing the transparency and fairness of competition proceedings in case of antitrust (see Press Release [IP/11/1201](#) and [MEMO/11/703](#)).

On 27 August 2012, the Commission announced that it had published a FAQ on the application of EU antitrust rules in the motor vehicle sector (see Press Release [IP/12/915](#)).

On 19 February 2013, the Commission announced that it would not prolong or renew guidelines on the application of EU antitrust rules to maritime transport services. The maritime guidelines will therefore expire on 26 September 2013 (see Press Release [IP/13/122](#)).

Mergers

Article 102 covers mergers, which, whilst sometimes bringing benefits to consumers, can also reduce competition, by creating or strengthening a dominant player. The Commission can investigate mergers before they happen and has the power to stop any which it considers incompatible with the Treaty provisions. This applies to all mergers, whether or not they involve companies based in, or operating in, the EU.

Proposed mergers which would result in the businesses concerned having a combined annual turnover above specified thresholds in terms of global and European sales, must be notified to the European Commission. The Commission can also examine mergers referred to it by Member States' national competition authorities - which can themselves review proposed mergers which would be below the thresholds. In December 2009, the Commission introduced a web-based [eQuestionnaire](#), allowing companies in merger investigations to provide information online.

In October 2008, the Commission launched a public consultation on the functioning of Regulation 139/2004 (the 'Merger Regulation'; see Press Release [IP/08/1591](#)) and on 18 June 2009 published a 'Report on the functioning of Regulation No 139/2004' ([COM\(2009\)281](#); [IP/09/963](#)) which, said the Commission, 'has contributed to more efficient merger control within the EU since it came into force on 1st May 2004'.

Speaking on the theme of merger control on 2 November 2012 (see [SPEECH/12/773](#)), Commissioner Almunia noted:

Since the Merger Regulation came into force in 1990, the Commission has cleared more than 4,600 deals and blocked only 22. Fewer than five in every thousand cases!

Cartels

Article 102 also covers cartels: illegal, secret agreements concluded between competitors to fix or increase their prices, to restrict supply, and/or to divide up their markets or customers. Appeals against the Commission's cartel decisions can be made to the

General Court (previously the Court of First Instance) and then to the Court of Justice of the European Union (ECJ).

To help fight cartels, the Commission operates a Notice on Immunity from Fines and Reduction of Fines in Cartel Cases ('Leniency Notice'), which rewards companies that report cartels and provides guidance to whistle-blowers. The [latest Leniency Notice](#) entered into force in December 2006 (see Press Release [IP/06/1705](#) and the Commission's [Leniency](#) page).

Companies found by the Commission to have participated in a cartel can, since 30 June 2008, settle their case by acknowledging their involvement in the cartel and in return getting a smaller fine (see also the Commission's [Settlements page](#), Press Release [IP/08/1056](#) and [MEMO/08/458](#)).

(For further information, see the Commission's [Cartels page](#) and [MEMO/10/290](#)).

Liberalisation

Article 106 [TFEU](#) concerns 'public undertakings and undertakings to which Member States grant special or exclusive rights'. Article 106(1) prohibits Member States from enacting or maintaining any measure 'contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.'

In that context, Article 106(2) states:

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, 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. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

Article 106(3) authorises the Commission to ensure the application of these provisions and address appropriate Directives or Decisions to Member States where necessary.

In the context of Article 3(b) of the [TFEU](#), which allows the EU to establish 'the competition rules necessary for the functioning of the internal market', the Commission has sought to 'liberalise' (i.e. to introduce competition into) markets such as transport, energy, postal services and telecommunications. Following its experience with the state-owned Danish railway company DSB (see the brief summary in this [overview](#)), the Commission developed the idea of legally separating the provision of a network from the commercial services using it.

Liberalisation has met with mixed success, as is noted on the Commission's [Liberalisation](#) page:

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.

State aid

Provisions on State aid are set out in Section 2 of the [TFEU](#), where Article 107(1) 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.

The types of State aid which are considered compatible with the internal market are listed in Articles 107(2) and 107(3). They include:

- 'aid to make good the damage caused by natural disasters or exceptional occurrences'
- 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment'
- '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'
- 'aid to facilitate the development of certain economic activities or of certain economic areas'
- 'aid to promote culture and heritage conservation'.

Under Article 108, the Commission must constantly review all systems of aid in the Member States and is empowered to require national provisions permitting illegal aid to be abolished or amended.

According to the 'State aid action plan: Less and better targeted state aid: a roadmap for state aid reform 2005–2009' ([COM\(2005\)107](#); see also [Summaries of EU legislation](#)), controls on State aid are needed 'to maintain a level playing field for all undertakings active in the Single European Market, no matter in which Member State they are established.'

Proposed state aids must be notified to the Commission, which has the power to stop them or to reduce the amounts involved. Where aid has already been granted, the Commission can insist on repayment.

There are some exceptions to the prohibition on State aid, and funding can be declared compatible with the Treaty where it meets clearly defined objectives of common interest and does not unduly distort intra-EU competition and trade.

There are [sector-specific](#) rules governing: agriculture, audiovisual production, broadband, broadcasting, coal industry, electricity (stranded costs), financial sector, fisheries, postal services, shipbuilding, steel, synthetic fibres (motor vehicles industry), transport.

There are also [horizontal](#) rules, which apply across all industries to particular categories of aid and currently include: actions in response to the economic and financial crisis, aid to disadvantaged and disabled workers, training aid, regional aid, research & development and innovation, environmental aid, risk capital, rescue and restructuring aid, definition of SMEs.

Under [Council Regulation \(EC\) 994/98](#) 'on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid', the Commission is able to introduce Block Exemption Regulations (BERs) for State aid (the Articles were later re-numbered 92 and 93 and have since been replaced by Articles 112 and 113 of the [TFEU](#)).

Under the Regulation, block exemptions can be adopted for the following:

- (a) aid in favour of:
 - (i) small and medium-sized enterprises;
 - (ii) research and development;
 - (iii) environmental protection;
 - (iv) employment and training;
- (b) aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.

Block exemptions allow Member States to grant aid providing it meets the criteria specified in the Regulations - without having to go through the formal notification procedure (see also [Summaries of EU legislation](#)).

In June 2005, as part of a process intended to 'rationalise and streamline procedures', the Commission presented a consultative document 'State Aid Action Plan: Less and better targeted state aid: a roadmap for state aid reform 2005–2009' ([COM\(2005\)107](#)); see also Press Release [IP/05/680](#) and [MEMO/05/195](#)). In a reference to the Lisbon Strategy (see below under Europe 2020) the Commission said the time had come 'to build a momentum within the Commission and in partnership with Member States and stakeholders, so that state aid rules better contribute to sustainable growth, competitiveness, social and regional cohesion and environmental protection.'

The Commission's 'Report on Competition Policy 2009' ([COM\(2010\)282](#)), published on 3 June 2010, noted that the State Aid Action Plan (SAAP) continued:

with the adoption of guidance papers on training aid and aid to disabled and disadvantaged workers. Guidance on the in-depth assessment of regional aid to large investment projects was also adopted. The principles detailed in these guidelines were applied for the first time in the Dell Poland case, where the Commission concluded that the investment project by Dell to set-up a manufacturing plant in Łódź would significantly contribute to regional development and that these benefits outweigh any potential negative effects on competition.

(Details of the guidance on training aid and aid to disadvantaged and disabled workers, adopted on 3 June 2009, are given in Press Release [IP/09/863](#); on in-depth assessment of regional aid to large investment projects, adopted on 24 June, in [IP/09/993](#); and of the Dell Poland case in [IP/09/1348](#).)

August 2006 saw the publication of [Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises](#), aimed at helping SMEs access finance in their early stages of development (Press Release [IP/06/1015](#)).

In November 2006, the Commission adopted a [Community framework for State aid for research and development and innovation](#) intended 'to clarify to Member States how best they can give state aid ... without infringing EC Treaty state aid rules' (see Press Release [IP/06/1600](#)).

[Guidelines on national regional aid for 2007-2013](#) were issued in March 2006, and in October 2006 [Regulation 1628/2006](#) 'on the application of Articles 87 and 88 of the Treaty to national regional investment aid' was published, permitting Member States not to notify the Commission of regional investment aid schemes meeting the criteria set out in the Regulation (see Press Release [IP/06/1453](#) and the Commission's [Regional aid](#) page; Regulation 1628/2006 was subsequently repealed by [Commission Regulation \(EC\) 800/2008](#)).

January 2007 saw the entry into force of [Regulation 1998/2006](#) concerning de minimis aid (the 'de minimis Regulation'; see also Press Release [IP/06/1765](#)) which exempts small subsidies (up to €200,000, granted over three years) from the obligation to notify them in advance for clearance by the Commission.

Early 2008 saw a number of initiatives: Community guidelines on State aid for [environmental protection](#) were published in January, and public consultations on State aid for [public service broadcasting](#) and for [shipbuilding](#) were opened in January and February respectively; and in [Regulation 271/2008](#), published in January 2008, the Commission aimed to 'facilitate and accelerate the submission of State aid notifications by Member States' by making them - from July 2008 - submit State aid notifications and associated correspondence electronically.

In May 2008, a new 'Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees' was published (see [Specific aid instruments](#) page). The Notice 'sets out clear and transparent methodologies to calculate the aid element in a guarantee and provides simplified rules for SMEs'.

Discussions on the 2005 State Aid Action Plan (SAAP) were published in February 2006 and showed 'that stakeholders broadly endorse the principles and practical proposals set out in the document' (see results [summary](#) and Press Release [IP/06/144](#)). A conference was held in November 2008 to review implementation and discuss further developments (see the [State aid reform](#) page).

In September 2008, the Commission issued an updated version of its [Vademecum: Community rules on State aid](#), reflecting the latest changes in State aid rules, including the new General Block Exemption Regulation.

On 28 July 2009, the Commission launched a public consultation on proposals to revise the Block Exemption Regulation and Guidelines on supply and distribution agreements (vertical restraints), in the light of market developments, in particular the increased buyer power of big retailers and the evolution of online sales (see Press Release [IP/09/1197](#)). Subsequently, [Commission Regulation \(EU\) 330/2010](#) 'on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices' was adopted on 20 April 2010 and entered into force on 1 June 2010 (see also Press Release [IP/10/445](#) and [Vertical agreements](#) page).

On 21 December 2009, the Commission launched a public consultation on proposals to revise the Block Exemption Regulation and Guidelines on motor vehicle sales and repair agreements. New rules were adopted on 27 May 2010 (see Press Releases [IP/09/1984](#) and [IP/10/619](#) and the [Block Exemption Review](#) page).

On 24 March 2010, the Commission adopted a new Block Exemption Regulation for the insurance sector, which entered into force on 1 April (see Press Release [IP/10/359](#)).

On 20 December 2011, the European Commission adopted a new package of EU state aid rules for the assessment of public compensation for services of general economic interest (SGEI; also known as the 'Almunia Package' after the Commissioner responsible; see Press Release [IP/11/1571](#) and [MEMO/11/929](#) and [Commission's SGEI page](#)).

On 14 February 2012, the Commission launched a public consultation to seek stakeholders' views on the application of the 2004 EU Guidelines on State aid to maritime transport (see Press Release [IP/12/116](#)).

[Commission Regulation \(EU\) 360/2012](#) 'on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to

undertakings providing services of general economic interest' was adopted on 25 April 2012.

On 8 May 2012, the Commission adopted the Communication [COM\(2012\)209](#): 'EU State Aid Modernisation (SAM)', setting out three objectives for reform of State aid:

- to foster sustainable, smart and inclusive growth in a competitive internal market
- to focus Commission ex ante scrutiny on cases with the biggest impact on the internal market, whilst strengthening Member States' cooperation in State aid enforcement
- to streamline the rules and provide for faster decisions

The main elements of the reform are expected to be in place by the end of 2013 (see also Press Release [IP/12/458](#) and [SPEECH/12/657](#) by Joaquín Almunia on 25 September 2012).

On 13 July 2012, the Commission announced that, in the context of the SAM initiative, it was inviting comments on the application of procedural rules in State aid investigations (see Press Release [IP/12/783](#)).

A review of Regulation 1998/2006 applying to small aid amounts (the 'de minimis' Regulation) was announced by the Commission on 26 July 2012 as part of the SAM initiative. Following a public consultation, the Commission is expected to issue proposals to revise the legislation by the end of 2013 (see Press Release [IP/12/848](#)).

As part of its SAM initiative, the Commission announced on 31 July 2012 that it was reviewing EU Guidelines on State aid for environmental protection. The review started with a public consultation, seeking stakeholders' views on the functioning of the guidelines since their adoption in 2008 (see Press Release [IP/12/872](#)).

EU guidelines on State aid for the rescue and restructuring of companies in financial difficulty were due to expire on 9 October 2012. Ahead of reviewing the guidelines in the context of the State Aid Modernisation initiative, the Commission announced on 28 September 2012 that it was extending the current guidelines until new rules were adopted (see Press Release [IP/12/1042](#)).

Revised guidelines for the application of State aid rules to the broadband sector were adopted by the Commission on 19 December 2012 (see Press Release [IP/12/1424](#)). A Commission Communication on 'EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks' was published on 26 January 2013 as [2013/C 25/01](#).

On 5 December 2012, the Commission announced that, in the context of its State Aid Modernisation initiative (SAM), it was proposing to amend two Regulations on State aid control: Council Regulation (EC) 994/98 (the Enabling Regulation) and Council Regulation (EC) 659/1999 (the Procedural Regulation). The proposals were adopted as [COM\(2012\)730](#) and [COM\(2012\)725](#) respectively (see Press Release [IP/12/1316](#); check progress via the PreLex dossiers for [COM\(2012\)730](#) and [COM\(2012\)725](#)).

On 18 February 2013, the Commission published an updated guide to the application to services of general economic interest (SGEI) of EU rules on state aid, public procurement and the internal market, in the light of the Almunia Package (see Press Release [IP/13/123](#)).

State aid and the economic crisis

On 17 December 2008, in the context of the global economic crisis, the European Commission adopted a temporary Framework for Member States to 'tackle the effects of the credit squeeze on the real economy' (see Press Release [IP/08/1993](#)). The Framework introduced a number of temporary measures allowing Member States to address the exceptional difficulties faced by businesses trying to obtain finance, and was one of a number of measures announced in the November 2008 European Economic Recovery Plan (see [IP/08/1771](#)). The measures were initially supposed to run until the end of 2010, with the Commission to decide whether they should then be extended. In December 2010, the Commission approved a prolongation of the Temporary Framework until the end of 2011 with a focus on SMEs and a limited range of measures. In December 2011, the Commission decided to modify and prolong these measures from 1 January 2012 onwards.

The [Handbook on Community State aid rules for SMEs](#) (amended version of February 2009) gives a concise overview of the aid available to smaller companies and also includes measures covered by the Temporary framework for State aid measures to support access to finance during the economic crisis.

The April 2009 State Aid Scoreboard (issued as [COM\(2009\)164](#); see also Press Release [IP/09/554](#)) focused on measures adopted by Member States in the financial and economic crisis. In May 2010, the Scoreboard ([COM\(2010\)255](#); see also [IP/10/623](#)) stated that:

Competition policy and in particular the coherent and predictable enforcement of State aid rules has played an important role in the response to the crisis. The extraordinary rescue measures at the beginning of the crisis have proven successful as they were capable of restoring financial stability and of supporting the economic recovery. As this recovery, albeit still fragile, seems to assert itself, it is important to continue the necessary restructuring of the banking sector, including the cleaning of balance sheets and the strengthening of banks' risk-bearing capacity, in order for the banks to be able to perform their function of lenders to the real economy without State support. Likewise, as the economic environment continues to stabilise, it is appropriate to steer towards transparent and coordinated phasing-out of the different support schemes, starting with government guarantees, in order to create conditions for a progressive return to normal market functioning.

The December 2011 State Aid Scoreboard (issued as [COM\(2011\)848](#) and Press Release [IP/11/1487](#)) showed that the volume of national support to the financial sector taken by banks amounted to around €1.6 trillion (13% of GDP) between October 2008 and 31 December 2010.

On 16 June 2009, the Commission issued a Notice 'on a simplified procedure for treatment of certain types of State Aid' ([2009/C 136/03](#); see also [Citizen Summary](#) and DG Competition [Rules on procedure](#) page). Comprising the Notice and associated Guidelines, this 'Simplification Package' aimed to improve the effectiveness, transparency and predictability of the Commission's State aid procedures. It entered into force on 1 September 2009.

On 2 July 2009, the Commission announced that, due to the 'difficult and unstable economic situation', it was renewing the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, which were due to expire on 9 October 2009 (see Communication [2009/C 156/02](#)).

On 14 December 2010, the Commission adopted a revised set for the assessment of horizontal co-operation agreements (see Press Release [IP/10/1702](#), [MEMO/10/676](#) and the Commission's page on [Horizontal Cooperation Agreements](#)).

One of a number of overviews of national measures adopted in response to the financial crisis was presented in [MEMO/12/65](#) of 6 February 2012, which also identified a number of measures taken by the Commission regarding State aid in the form of Communications on:

- 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis', 13 October 2008 ([2008/C 270/02](#); see also Press Release [IP/08/1495](#))
- 'The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition', 5 December 2008 ([2009/C 10/03](#); see also Press Release [IP/08/1901](#))
- [The Treatment of Impaired Assets in the Community Banking Sector](#), 25 February 2009 (see [IP/09/322](#))
- 'Temporary framework for State aid measures to support access to finance in the current financial and economic crisis', adopted on 17 December 2008 and amended on 25 February 2009 ([2009/C 83/01](#); see also Press Release [IP/08/1993](#))
- [The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules](#), 23 July 2009 (see [IP/09/1180](#))
- 'State aid rules to support measure in favour of banks in the context of the financial crisis', 7 December 2010 ([2010/C 329/07](#); see also Press Release [IP/10/1636](#))
- 'State aid rules to support measures in favour of banks in the context of the financial crisis', 6 December 2011 ([2011/C 356/02](#); see also Press Release [IP/11/1488](#)).

The DG Competition page [Tackling the financial crisis](#) also looks at the role of State aid and merger control:

The control of these aids ensures these measures do not destroy the level playing field between aid recipients and their competitors, whether based in their own or in other Member States. By exercising State aid control in a flexible fashion but based on solid competition principles, we are safeguarding the economic and practical benefits of Europe's internal market.

Were the State aid rules not to apply, we would see a subsidy race and unfair damage to healthier companies. State aid and other competition rules will continue to apply in order to avoid such a scenario.

The Report on Competition Policy 2010' ([COM\(2011\)328](#)) states that:

Restructuring of a number of European banks was among the main challenges of 2010 and followed three main principles: (i) the return to long-term viability without State aid, based on a sound restructuring plan, (ii) burden sharing between the bank/its stakeholders and the State and (iii) limitation of competition

distortions, usually through structural (divestitures) and behavioural measure (acquisition bans or limitations on aggressive commercial behaviour).

On 20 December 2012, the Commission provided its latest overview of State aid decisions and on-going investigations in the context of the financial crisis (see Press Release [MEMO/12/1018](#)).

Adopted on 21 December 2012 as [COM\(2012\)778](#) (see also Press Release [IP/12/1444](#) and [State Aid Scoreboard](#) page), the 2012 State Aid Scoreboard found that:

Total expenditure on non-crisis State aid further decreased in the EU in 2011 to € 64.3 billion or 0.5% of EU GDP, when compared to previous years. While, generally speaking, Member States continued their efforts to reduce overall aid levels, a substantial part of the decrease is probably due to tougher budget conditions in many Member States.

Speaking on 11 January 2013 on the topic of State aid reform in times of austerity (see [SPEECH/13/14](#)) the Commissioner responsible for Competition Policy, Joaquín Almunia, said:

Since 1957, the implementation of State aid law has underpinned economic integration in Europe and ensured the smooth functioning of the Single Market. The system has no equivalent anywhere else in the world. No other country, jurisdiction or trade bloc has had to make sure that decisions taken by national governments would not undermine the integrity of a super-national internal market. The basic principles of the system have not changed over the years. The main objective remains the search for the right balance between state intervention and the invisible hand. When the market does not deliver the goods that the people need, our governments can step in to fix the market failure. The present Treaty articles establishing the State aid rules – which are now in the Lisbon Treaty numbers 107 and 108 – have remained unchanged since the Treaty of Rome came into force on the 1st of January 1958.

However, the story of State aid policy has been one of adaptation and resilience. To keep pace with change, the legal framework governing State aid control, developing the Treaty provisions, has been updated regularly over the years and the assessment of the effects of aid measures has become more sophisticated. During the last decades, State aid control has had to adapt to the dramatic increase in the size and functions of our public sectors and the number of government interventions through public subsidies.

The Commissioner went on to argue that the main goal of the Commission's reform of State aid rules is to help national governments make more efficient use of scarce resources.

International aspects

Competition within the EU can be affected by companies and actions outside it. The Union has therefore established bilateral agreements on competition, including with major trading partners and countries seeking EU membership.

Candidates for EU membership must show that they meet the 'Copenhagen criteria' setting out the general political and economic conditions for joining the EU, and which demand that potential members have 'a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union'. In terms of competition policy, this means that they must have in place national competition laws

(reflecting the principles of EU law), national competition authorities to implement them, and a credible enforcement record in all areas of competition policy (for more information see DG Competition's [International](#) pages and [Summaries of EU legislation](#)).

Consumers

There has been a steady move towards emphasising the benefits of EU competition policy to consumers. In 1992, following consumer complaints about differences in car prices between Member States, the Commission started publishing regular [car price reports](#), initially every six months, but then annually as of May 2007.

In its 2004 layperson's guide [EU competition policy and the consumer](#), the Commission highlighted four examples of how the policy impacts on consumers:

- Nintendo - maintained differential pricing across the EU
- Volkswagen - stopped Italian dealers selling to customers in other Member States
- Michelin - prevented dealers from choosing their suppliers freely
- Microsoft - abused its dominant position for operating systems for personal computers.

On 23 July 2009, the Commission published its 'Report on Competition Policy 2008' ([COM\(2009\)374](#)). It was the first such annual report to include a chapter dedicated to a topic considered to be of particular importance in the field of competition policy. The topic chosen was 'Cartels and consumers' and the relevant chapter contained the statement:

The fight against cartels is central to ensuring that the benefits of a properly functioning competition regime are offered to the final consumer in a given market for products or services. Cartels are amongst the most serious violation of competition law. They shield participants from competition, thus allowing them to raise prices, restrict output and divide markets. As a result, the money ends up in the wrong place, harming consumers through higher prices and leading to a narrower choice of products and services.

On 21 October 2009, the Commission hosted a conference on [Competition and Consumers in the 21st Century](#), which focused on how the enforcement work of the Commission and other competition authorities affects consumers.

The website of DG Competition includes a subsection on [Delivering for consumers](#), with links to the [Is it fair?](#) website and to information about the Unfair Commercial Practices Directive ([Directive 2005/29/EC](#)).

Europe 2020

In the context of the Lisbon Strategy launched in March 2000, the European Commission argued that 'competition makes it possible to reward those businesses which innovate as well as delivering better products at lower prices, therefore stimulating productivity and innovation'. The Commission also noted that 'State aids that distort competition need to be reduced' and that 'Remaining aid should be better targeted, that is to say redirected towards the Lisbon Strategy priorities, to boost innovation, research and development, and to stimulate entrepreneurship.' In March 2005, the European Council decided to re-launch the Lisbon strategy, and the European Commission subsequently adopted guidelines for developing and implementing the renewed 'strategy for growth and jobs'.

On 3 March 2010, the Commission published details of the successor to the Lisbon Strategy: Europe 2020. In the Communication 'Europe 2020: A strategy for smart, sustainable and inclusive growth' ([COM\(2010\)2020](#); see also Press Release [IP/10/225](#) and the [Europe 2020](#) website). 'An industrial policy for the globalisation era' - one of a number of Flagship Initiatives within Europe 2020 - commits the Commission to work:

To develop a horizontal approach to industrial policy combining different policy instruments (e.g. "smart" regulation, modernised public procurement, competition rules and standard setting).

The role of competition policy is also highlighted in section 3 'Missing links and bottlenecks':

To gear the single market to serve the Europe 2020 goals requires well functioning and well connected markets where competition and consumer access stimulate growth and innovation.

[...]

Through the implementation of competition policy the Commission will ensure that the single market remains an open market, preserving equal opportunities for firms and combating national protectionism. But competition policy will do more to contribute to achieving the Europe 2020 goals. Competition policy ensures that markets provide the right environment for innovation, for example through ensuring that patents and property rights are not abused. Preventing market abuse and anticompetitive agreements between firms provides a reassurance to incentivise innovation. State aid policy can also actively and positively contribute to the Europe 2020 objectives by prompting and supporting initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development.

Information sources in the ESO database

Find updated and further information sources in the ESO database:

[6.2 Competition policy - General \[all categories\]](#)

- [Key source](#)
- [Legislation](#)
- [Policy-making](#)
- [Report](#)
- [Statistics](#)
- [News source](#)
- [Periodical article](#)
- [Textbook, monograph or reference](#)
- [Background](#)

[6.2.a Antitrust policy - Article 101](#)

[6.2.b Antitrust policy - Article 102](#)

[6.2.c State aids](#)

[6.2.d Merger policy](#)

[6.2.e International dimension](#)

Further information sources on the internet

- European Commission: DG Competition
 - [Homepage](#)
 - [Competition website](#)
 - [Antitrust](#)
 - [Mergers](#)
 - [Cartels](#)
 - [Liberalisation](#)
 - [State aid](#)
 - [International](#)
 - [Agriculture and food](#)
 - [Consumer goods](#)
 - [Energy](#)
 - [Financial services](#)
 - [Information and communication technologies](#)
 - [Media](#)
 - [Motor vehicles](#)
 - [Pharmaceuticals and Health Services](#)
 - [Postal services](#)
 - [Professional Services](#)
 - [Sports](#)
 - [Telecommunications](#)
 - [Transport](#)
 - [European Competition Network](#)
 - [National competition authorities](#)
 - [Delivering for consumers](#)
 - [Publications](#)
- Europa
 - Policy areas: [Competition](#)
 - Summaries of EU legislation
 - [Competition](#) (subsections on: [Rules applicable to firms](#), [Competition: international dimension and enlargement](#), [Rules applicable to specific sectors](#), [Rules applicable to state aid](#))
- European Commission: DG Communication
 - [RAPID](#) press releases database - [Competition policy](#) (pre-set search)
 - EU news: [Economy, finance and tax](#)
- Legislative and policy making information
 - [Treaty on the functioning of the European Union](#): Article 101-109
 - EUR-Lex: Legislation: [Competition](#)
 - EUR-Lex: Preparatory legislation: [Competition](#)
 - EUR-Lex: Consolidated legislation: [Competition](#)
 - EUR-Lex: Case Law: [Competition](#)
 - EUR-Lex: Summaries of EU Legislation: [Competition](#)
 - European Commission: DG [Competition](#)

 - Court of Justice of the European Union: InfoCuria [Homepage](#): at 'Subject-matter' box, click icon at far right to open list of subjects. Choose 'Competition' and click 'Enter' to return to main search page. Select dates if required. Hit 'Search' at top or bottom of page.

- European Parliament: Legislative Observatory (OEIL)
[Homepage](#): Carry out a [Simple Search](#) (scroll down right-hand menu and expand 'Subject'; then expand 'Internal market, SLIM'; then expand 'Competition' and select appropriate sub-section).
- Council of the European Union
 - [Competitiveness Council](#)
- European Parliament
 - [Economic and Monetary Affairs](#) (ECON)
- European Parliament: Fact Sheets
 - Section on [The Internal market](#) has subsection on competition, with Fact Sheets on [General competition policy and concerted practices](#), [Abuse of a dominant position and investigation \[of\] mergers](#), [State aid](#), [Public undertakings and services of general interest](#)
- Committee of the Regions
 - [Commission for Economic and Social Policy](#) (ECOS)
- European Economic and Social Committee
 - [Section for Single Market, Production and Consumption](#) (INT)
- International Competition Network
 - [Homepage](#)
- Organisation for Economic Co-operation and Development (OECD)
 - [Homepage](#)
 - [Competition](#)
- World Trade Organization (WTO)
 - [Homepage](#)
 - [Interaction between Trade and Competition Policy](#)

Alan Blanchard

**Course leader for the European law for non-lawyers course at TFPL
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