

3. EU Competition Policy

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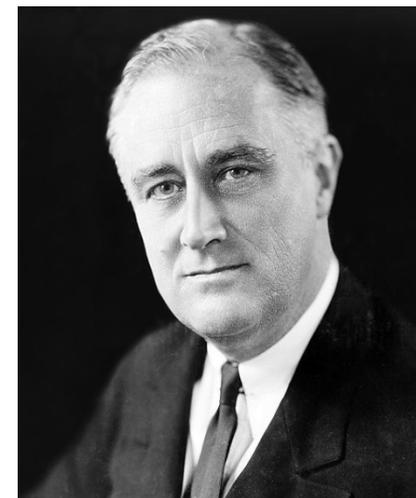


Standard Oil (Refinery No. 1 in Cleveland, pictured) was a major company broken up under US antitrust laws

1.A) From vertical (sector) to horizontal (temathic) approach

- Liberalism and Neo-Liberalism – what is the difference? The USA **Antitrust laws**, starting with “Sherman Antitrust Act” (1890). **Competition policy is the first horizontal approach measure in the industrial (economic) policy of the state.**

- The Great Depression indicated the role of the state in other important directions – **investments in infrastructure** (John Maynard Keynes); **social dialog and employment** (FDR - Franklin Delano Roosevelt, pictured).



- The post world war social and economic development indicated as new horizontal approaches: **SME support (related to competition policy); innovations (related to cold war and later globalization); environment protection.**

But there are also some sectors or branches with remaining vertical approach of the industrial policy on the EU level (agriculture, energy, transport).

Summary: The horizontal approach is dominant in the present industrial policy of the developed economies.

1.B) Main horizontal measures, concerning the regulation of the EU common economic area:

- a) Competition policy (antitrust, merger and state aid control)
- b) SMEs support policy (enterprise or business support policy),
- c) Some aspects of Social policy (social dialog, non-discrimination, social integration),
- d) Innovations policy (common projects, institutes, enterprises etc.)
- e) Environment policy (regulations on waste management, greenhouse gas emissions, etc.)



European Commission is responsible only for the Competition policy on the EU Single market!



Die Bayerische Landes-
kartellbehörde



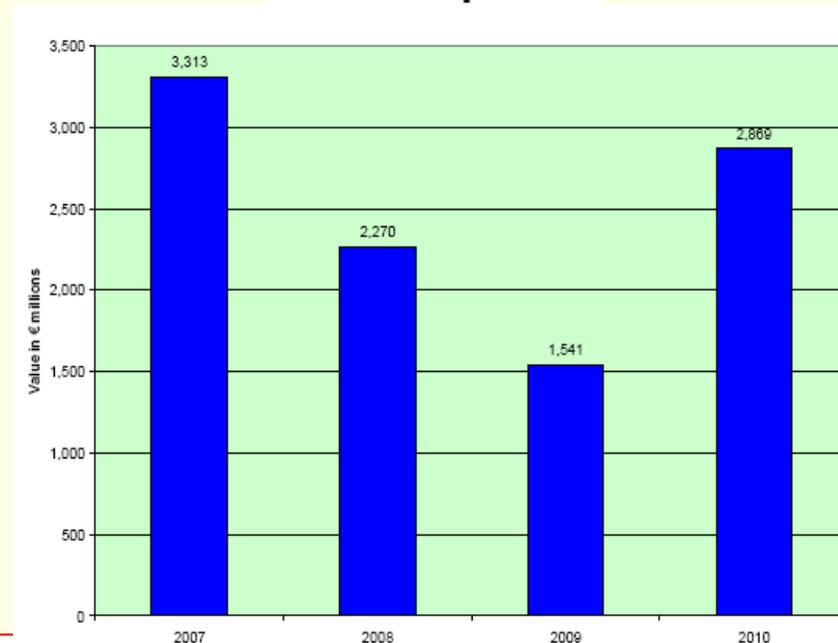
For the Competition policy on the Member State markets are responsible the national Competition Agencies. On the regional markets – the regional agencies, etc.

B) Antitrust measures - prohibited cartel agreements between undertakings

- **Open and covered cartel agreements**
- **Price fixing cartel agreements or those fixing any other trading conditions** (limiting or controlling production, raw materials, markets, technical development, or investments).
- **Horizontal and vertical cartel agreements.**

Horizontal are agreements between enterprises on the same production or marketing level, **vertical** are those between enterprises on different levels.

Fines imposed



Determinant factors for the position of the European Commission:

- ✓ **Market share under agreement.** The rule is to tolerate agreements among SMEs with insignificant effect on the market;
- ✓ **Product characteristics.** In case of high-tech products with large costs for development, design and marketing is possible to tolerate some kind of agreement, limiting the freedom of the market if the positive effect for society is bigger than the market disruption. For example, cartel agreement for the development of a new important vaccine could be tolerated.
- ✓ **Impact on the EU global positions.** It is possible to tolerate some limitation of the competition in order to create better EU position on the global market. For example – global market of large airliners (Airbus versus Boeing).
- ✓ **Use of trade agents.** Use of agents is allowed in insurance business, real estate trade, sale of air tickets and some other kinds of services.
- ✓ **Use of franchising.** Franchising has grown rapidly in EU in recent years, but the industry is still largely unregulated. Unlike the United States, the EU has yet to adopt a uniform franchise disclosure policy. Nevertheless limitation of competition due to franchising agreements is tolerated by the European Commission.

Some of the most successful franchising enterprises:

[McDonald's](#) (30,300 partners); [7-Eleven](#) Inc. (Convenience Stores, 28 200 partners); [Subway](#) (22,000 partners); [Hampton Inns](#) & Suites (Midprice Hotels); [Supercuts](#) (Hair Salons), etc.

- ✓ **Use of leasing.** In general leasing agreements are not considered as unfair competition but in some cases they could be classified as disturbing the market.

An example of market disruption using leasing is the case of the Belgian beer producing company Interbrew. The company concluded special leasing agreements with about 7 000 small enterprises offering beer in different parts of Belgium. The leasing partners received commercial equipment under the condition that they will sell only beer produced by Interbrew. These were in fact vertical cartel agreements. After intervention by the European Commission, the special arrangements in the leasing agreements concerning the origin of the beer were abolished and the porterhouses got the right to sell the beer their clients wanted to drink.

In EU Sanctions against cartels depend on:

- ✓ **Dimension of the market disruption.** In case of small violations the fines are between €1000 and €1,000,000. By serious cases of disruption the fine can reach €20,000,000 or 10% of the annual turnover of the guilty company.
- ✓ **Duration of the guilty behavior.** In case of long time violations of the anti cartel regulations the fine can be increased. By violations lasting between 1 and 5 year fines will be increased by up to 50%. By much longer violations the fine can be increased by 10% for every extra year of violation.
- ✓ **Willingness to cooperate by the investigation.** If the guilty company is ready to cooperate with the European Commission during the investigation the fine can be reduced or even avoided.
- ✓ **Presence of recidivism.** In cases of repeated guilty behavior the sanctions will be increased.

1.5. Ten highest cartel fines per case (since 1969)

Year	Case name	Amount in €*
2008	Car glass	1.383.896.000
2009	Gas	1.106.000.000
++2007++	Elevators and escalators	832.422.250
2010	Airfreight	799.445.000
2001	Vitamins	790.515.000
2008	Candle waxes	676.011.400
2010	LCD	648.925.000
2010	Bathroom fittings	622.250.782
++2007++	Gas insulated switchgear	539.185.000
++2007++	Flat glass	486.900.000

1.6. Ten highest cartel fines per undertaking (since 1969)

Last change: ++14 July 2011++

Year	Undertaking**	Case	Amount in €*
2008	Saint Gobain	Car glass	896.000.000
2009	E.ON	Gas	553.000.000
2009	GDF Suez	Gas	553.000.000
2001	F. Hoffmann-La Roche AG	Vitamins	462.000.000
2007	Siemens AG	Gas insulated switchgear	396.562.500
2008	Pilkington	Car glass	370.000.000
2010	Ideal Standard	Bathroom fittings	326.091.196
++2007++	ThyssenKrupp	Elevators and escalators	319.779.900
2008	Sasol Ltd	Candle waxes	318.200.000
2010	Air France / KLM	Airfreight	310.080.000

C) Merger control

➤ Why are mergers examined at the EU level?

Some mergers may reduce competition in the EU single market, creating or strengthening a dominant player. This is likely to harm consumers through higher prices, reduced choice or less innovation.

➤ 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**.

These rules apply to all mergers no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities.

➤ What can happen if the merger is creating a dominant player on the EU market?

If the merger significantly impedes effective competition in the EU and no commitments aimed at removing the impediment are proposed by the merging firms, **the merger will be prohibited** by the European Commission.

➤ Does the European Commission approve mergers even if they threaten the competition?

Yes, if the parties 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. In this case the European Commission gives the so-called **conditional clearance**.

Example

- *The European Commission prohibited the merger of the French company Sidel SA and the Swedish company Tetra Laval B.V., which is a daughter company of Tetra Laval Group. The reason for the Commission's decision was the expectation that after the merger a dominant player will be created on the EU market of packing equipment. Tetra Pak owns about 80% of the EU market of equipment for cartons and Sidel SA has a leading position on the EU market of equipment for plastic packaging.*

D) State aid control

a) General rule

The assessment of eligibility of some kind of state aid (subsidy) is based on a consideration of the **balance between the positive effects of the aid (achievement of some clear purpose of important common interest) and the negative effects occurring in market disruption.** In order some state aid to be declared acceptable it must be both necessary and proportional to the achieved common purpose.

b) Traditional scope of acceptable state aid in EU:

- *For agricultural enterprises (CAP)*
- *For enterprises in economically underdeveloped regions (EU regional policy)*
- *For research and innovations (with some restrictions – fees, wages, etc.)*
- *For environmental measures (but only as a share of the costs – about 25%)*
- *For SMEs (EU enterprise policy)*

European Commission could under some special conditions (social unrests or environmental dangers) allow state aid to a specific industry sector, for example the steel industry, or the shipbuilding industry, if all enterprises in the mentioned sector get the same kind of assistance. On the other hand, the Commission will be strongly against any subsidy which favours a single enterprise or a single group of enterprises in any industry sector.

C) Development of aid eligibility criteria

COMMISSION REGULATION (EC) No 800/2008

of 6 August 2008

declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

The European Commission adopted in 2008 a regulation determining some common rules for eligibility of state aid with the competition requirements. It is called **General Block Exemption Regulation – GBER**)

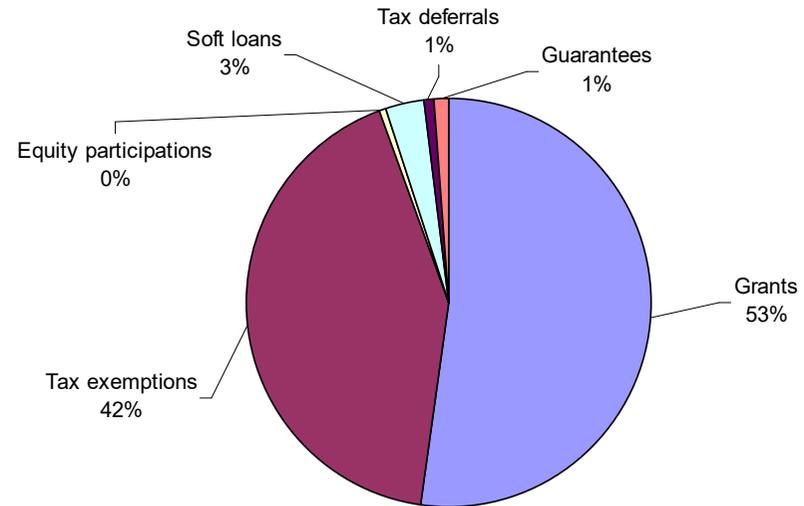
- ❑ **GBER scope:** all sectors of economy with exception of **agriculture, fishery and aquaculture, mining, regional aid for the steel industry, shipbuilding industry, production of synthetic fibres.**
- ❑ **GBER** should not apply to export aid or aid favouring domestic over imported products.
- ❑ **GBER** should not apply to ad hoc aid granted to large enterprises, except as aid provided in the form of regional investment or employment aid.

Acceptable state aid after GBER

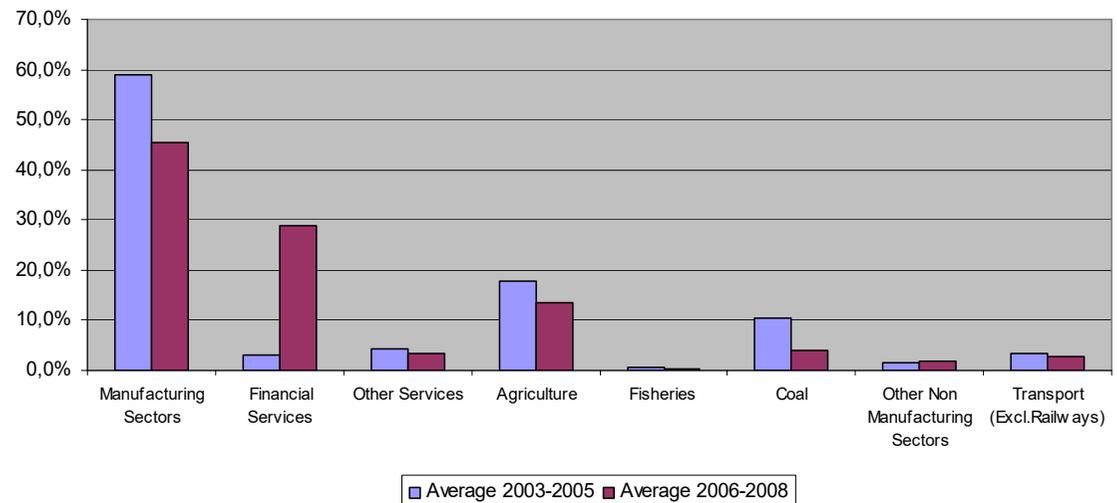
(in blue are the new kinds of acceptable aid)

- **CAP**
- **Regional policy**
- **Research and Innovations**
- **Environment**
- **SMEs**
- **Training**
- **Employment policy**
- **Risk capital**
- **Non-discrimination in the enterprises**

Share of each aid instrument in total aid to industry and services (2006-2008)



State aid by sector as a percentage of total aid, EU27 (2003-2008)



Examples of European Commissions measures

- ❖ *The European Commission forced the American company Scott Paper to return the aid received from the community in the French town of Orleans and from the local Regional Council to the amount of about €12 million (including interest payments). The aid was granted in order to stimulate the American firm to build in the town a pulp and paper factory. The instrument used for subsidizing was sale of land for the factory at price far under the market price in the region. The Company Scott Paper with the support of the French government tried to challenge the Commission's sanction in the EU Court of Justice but it didn't succeed.*
- ❖ *Often in order to avoid the Commission' sanctions, Member States or communities try to camouflage the aid as some of the allowed exceptions. One example of such camouflage was the activity of the British state owned "SBS Incubation Fund". Theoretically the fund was created to support SMEs. The fund operated with an amount of about €115 million to be spent in 4 years. The instrument of support was partly a compensation of the interests paid by the enterprise on the credits for purchase of premises and office equipment. The problem was that the fund did not support only SMEs. In order to create working places and boost the local economy it supported also companies with huge turnover such as financial enterprises or companies dealing in real estate. That was the reason why the European Commission started an investigation and decided to punish the fund with a sanction and to order the return of all grants received by big enterprises in violation of the rules for support of small and medium size companies.*

3. Summary

	Antitrust measures	Merger control	State aid
Initiation of proceedings	By: 1. Written warning by an interested company 2. Consumer complaints 3. Warning by member state antitrust authority 4. Own-initiative	Companies are obliged to inform the Commission 1 month in advance if the expected global turnover after merger will exceed €5 billion and the EU turnover will exceed €250 million.	Beyond the effects of GBER, Member States are obligated to inform the Commission in advance for all kinds of state aid.
Preliminary investigation	The Commission considers whether there are sufficient data to start a full investigation. If not, the case is closed.	Within 1 month the Commission has to decide whether to allow the merger without conditions or to start an investigation in order to set conditions.	In 2 months the Commission has to allow the aid or to start an investigation.
Full investigation	Data are collected by visits and hearings. Consultations with Member States. Opinion of the Advisory Board.	Carry out a detailed expertise with the participation of the Advisory Board.	Carry out a detailed expertise with the participation of the Advisory Board.

	Antitrust measures	Merger control	State aid
Decision making	<u>Possible decisions:</u> 1. To close the case without sanctions 2. To ban the cartel 3. To ban the cartel and impose a fee	<u>Possible decisions:</u> 1. To allow the merger without conditions (rarely) 2. To introduce conditions -if the companies fulfill them to allow the merger. -If the companies fail to discharge them to ban the merger -If the companies fail to follow the ban to repeat it and fine the companies	In 6 months the Commission has to decide to close the case or to order the aid to be paid back. If the decision is not fulfilled can follow Commission's sanctions.
Appeal	2 months to start an appeal to the Court of Justice	2 months to start an appeal to the Court of Justice	2 months to start an appeal to the Court of Justice

DG Competition

https://ec.europa.eu/info/departments/competition_en

Cases

<http://ec.europa.eu/competition/elojade/isef/index.cfm>