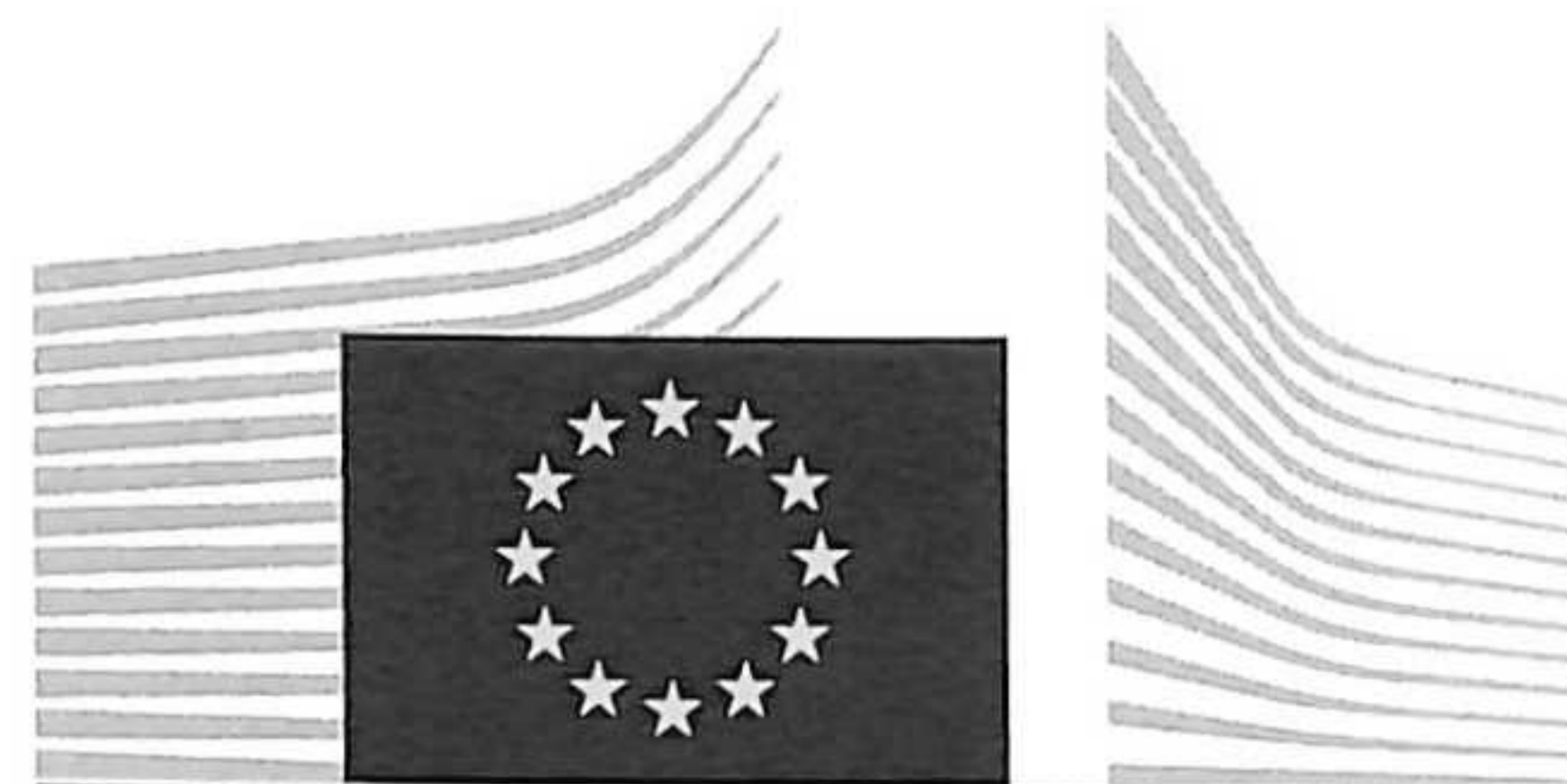


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THE EUROPEAN
UNION
EXPLAINED

Making
markets
work better



European
Commission

Competition

EU competition policy ensures that companies compete equally and fairly in Europe's internal market.



THE EUROPEAN UNION EXPLAINED

This publication is a part of a series that explains what the EU does in different policy areas, why the EU is involved and what the results are.

You can find the publications online:

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CONTENTS

Why we need a European competition policy	3
What European competition policy is about	4
Antitrust	5
State aid	7
Mergers	8
Liberalisation	9
How to lodge a complaint	11
Outlook	12
Find out more	12

The EU explained: Competition

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Citizens information
1049 Brussels
BELGIUM

Manuscript updated in November 2014

Cover and page 2 picture: ©iStockphoto/dswebb

12 pp. — 21 × 29.7 cm
ISBN 978-92-79-41486-2
doi:10.2775/31003

Luxembourg: Publications Office
of the European Union, 2014

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Why we need a European competition policy

Subrayar y/o marcar este libro;
en caso de devolverlo subrayado,
SE COBRARA SU VALOR

The European Union's competition policy has been an important part of the EU's work ever since it was set out in the Treaty of Rome in 1957. The treaty instituted 'a system ensuring that competition in the common market is not distorted'. The aim was to create a set of well-developed and effective competition rules, to help ensure that the European market functions properly and provide consumers with the benefits of a free market system.

Competition policy is about applying rules to make sure companies compete fairly with each other. This encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality. These are the reasons why the EU fights anticompetitive behaviour, reviews mergers and state aid and encourages liberalisation.

Low prices for all: The simplest way for a company to gain a high market share is to offer a better price. In a competitive market, prices are pushed down. This is not only good for consumers — when more people can afford to buy products, it encourages businesses to produce and boosts the economy in general.

Better quality: Competition also encourages businesses to improve the quality of goods and services they sell — to attract more customers and expand market share. Quality can mean various things: products that last longer or work better, better after-sales or technical support or friendlier and better service.

More choice: In a competitive market, businesses will try to make their products different from the rest. This results in greater choice — so consumers can select the product that offers the right balance between price and quality.

Innovation: To deliver this choice, and produce better products, businesses need to be innovative — in their product concepts, design, production techniques, services, etc.

Better competitors in global markets: Competition within the EU also helps make European companies stronger outside the EU — and able to hold their own against global competitors.

Competition: a Europe-wide issue

Sometimes violations of competition rules happen within just one country, so a national competition authority (NCA) would often handle the case. But with the growth of the internal market and globalisation, the effects of illegal behaviour, like running a cartel, are often felt in many countries across the EU and beyond. The European Commission is often well placed to pursue these trans-EU cases. The Commission has the power not only to investigate but also to take binding decisions and impose substantial fines.

The Commission was given the power to investigate possible anticompetitive behaviour in 1962, and jurisdiction over large mergers in 1990. The Commission enforces the EU competition rules together with the NCAs of the EU countries.

All EU countries have these authorities with the power to enforce EU competition law, with essentially the same powers as the European Commission. Since 2007, NCAs have applied the EU competition rules in almost 570 decisions.

These authorities and the European Commission exchange information on implementing EU competition rules through the European Competition Network (ECN). This network makes it easier to identify which authority should be dealing with particular issues, and which others could provide assistance. The network helps to ensure effective and consistent application of EU competition rules. Through the ECN, the competition authorities inform each other of proposed decisions and take on board comments from other competition authorities. In this way, they can pool their experience and identify best practices.

Competition authorities throughout Europe make sure businesses and governments stick to EU rules on fair competition, while still leaving space for innovation, unified standards and the development of small businesses.

National courts also have the power to decide whether a particular agreement complies with EU competition law or not. Companies and consumers can also claim damages if they have suffered as a result of illegal behaviour restricting competition.

What European competition policy is about

The European Commission, together with the national competition authorities, works to prevent or correct anticompetitive behaviour. The Commission directly enforces EU competition rules to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits. Specifically, it keeps an eye on companies to make sure they don't club together to share the market between them or act in a way to exclude would-be competitors. If they step out of line then the Commission can impose considerable fines on them which can be up to 10 % of their turnover.

Through state aid, antitrust and merger control the Commission ensures undistorted competition within the internal market. This level playing field ensures access to the large and sophisticated EU internal market for all European companies, including small and medium-sized enterprises (SMEs).

Competition policy in Europe is a vital part of the internal market. Its aim is to provide everyone in Europe with better quality goods and services at lower prices. The focus continues to be on the following activities:

- the fight against cartels;
- the prevention of dominant companies abusing their market power in any sector or any country in Europe;
- rigorous scrutiny of proposed mergers;
- the control of state support for sectors and companies that risks distorting competition.

The Commission has also put forward measures to improve the right for consumers and businesses to get damage compensation when they are victims of anti-competitive conduct, and has strengthened and streamlined state aid investigation procedures.

The main rules

Under EU rules, businesses:

- *may not agree to fix prices or divide up markets amongst themselves (Article 101 of the Treaty on the Functioning of the European Union (TFEU));*
- *may not abuse a dominant position in a particular market to squeeze out smaller competitors (Article 102 TFEU);*
- *are not allowed to merge if that would put them in a position to control the market. Larger companies that do a lot of business in the EU cannot merge without prior approval from the European Commission — even if they are based outside the EU (the merger regulation).*

EU rules also cover government assistance to businesses (state aid), which is monitored by the Commission (Article 107 TFEU). The following, for example, are forbidden unless they comply with certain criteria:

- *loans and grants;*
- *tax breaks;*
- *goods and services provided at preferential rates;*
- *government guarantees which enhance the credit rating of a company compared to its competitors.*

Also, no state aid in any form may be given to ailing businesses that have no hope of becoming economically viable.

Antitrust

The term antitrust refers to the action of preventing or controlling trusts or other monopolies. It is always done with the intention of promoting competition in business.

Anticompetitive agreements

Article 101 of the TFEU prohibits anticompetitive agreements. This means all agreements that reduce competition, whether or not the parties actually intended to restrict competition.

The antitrust rules on anticompetitive agreements are contained in various regulations, some of which deal either with particular types of conduct or with specific sectors. They also describe the powers of the Commission to investigate companies, including the right to search premises for evidence.

The Commission has also adopted various non-regulatory documents like notices and guidelines. These explain Commission policy in more detail, and relate either to the interpretation of substantive antitrust rules or to procedural issues, such as access to the file.

What do we mean by 'anticompetitive agreements'?

These are agreements between companies that restrict competition — for example, cartels where companies agree to avoid competing with each other, or agree the prices at which their products will be sold.

Cartels: why are they so bad, and how does the Commission spot them?

Companies in cartels that control prices or divide up markets try to protect themselves from competitive pressure to launch new products, improve quality and keep prices down. Consumers end up paying more for lower quality.

Cartels are illegal under EU competition law, and the European Commission imposes heavy fines on the companies involved. Since cartels are illegal, they are generally highly secretive and evidence is hard to find.

In order better to detect cartels, and successfully break them up, the Commission implements a 'leniency policy'. In essence, the leniency policy offers companies involved in a cartel which confess and hand over

evidence either total immunity from fines or a reduction of fines which the Commission would otherwise have imposed on them.

Parties to a cartel case can also acknowledge what they did and accept their liability for it using the Commission's cartel settlement procedure. This shortens the duration of the case, saving Commission resources. It also leads to a reduction in the fine for companies that settle.

However, cartel settlement is not a negotiation between the parties to a cartel and the European Commission — the Commission will already have gathered evidence during an investigation and built a strong case against the participants before settlement discussions begin.

Agreements are anticompetitive if the participants agree to:

- fix prices;
- limit production;
- share markets or customers;
- fix resale prices (between a producer and its distributors).

However, an agreement may be allowed if it:

- has more positive than negative effects;
- is not concluded between competitors;
- involves companies with only a small combined share of the market;
- is necessary to improve products or services, develop new products or find new and better ways of making products available to consumers.



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Competition policy aims to provide better quality goods and services at lower prices.

The Commission can allow companies to cooperate in developing a single technical standard for the market as a whole, for example. Research and development agreements and technology transfer agreements are often compatible with competition law, because some new products require expensive research that would be too costly for one company working alone. Agreements on joint production, purchasing or sales or on standardisation may also be legal.

Smaller companies may also be allowed to cooperate if this strengthens their ability to compete with larger ones.

Abuse of a dominant position

A company can restrict competition if it is very strong on a given market. A dominant position is not in itself anticompetitive, but if the company exploits this position to eliminate competition its behaviour can be considered to be abusive. This is prohibited by Article 102 of the TFEU.

What is abuse of a dominant position?

For example, when a major player in a market tries to squeeze its competitors out of the market, it could be abusing its dominant position if competition is eliminated because of its actions. This will result in higher prices or reduced choice for consumers.

In doing business with smaller firms, large firms may not use their bargaining power to impose conditions which would make it difficult for their suppliers or customers to do business with their competitors.

Other examples of abusive behaviour by a dominant company include:

- charging unreasonably high prices;
- selling at artificially low prices with the aim of harming or even excluding competitors from the marketplace;
- requiring consumers to buy a product which is artificially related to an in-demand product, so that alternatives for either or both types of product are excluded and competition is distorted;
- refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company;



Agreements between companies can sometimes limit competition.

- making the sale of one product conditional on the sale of another product.

What are the Commission's investigative powers?

The Commission can investigate possible anti-competitive behaviour. This means, among other things, that if the Commission decides to conduct an inspection its officials are empowered to:

- enter any company premises, land or means of transport;
- examine the business books and other records related to the business;
- take or obtain in any form copies of or extracts from such books or records;
- seal any business premises and books or records for the period and to the extent necessary for the inspection;
- ask any company representative or member of staff for explanations of facts or documents relating to the subject matter and purpose of the inspection and record the answers.

State aid

Sometimes governments spend public money to support local industries or individual companies, giving them an unfair advantage and thus damaging competition and distorting trade. This is prohibited by Article 107 of the TFEU.

According to Article 108 of the TFEU, it is the Commission's job to prevent this, allowing government support only if it is genuinely in the wider public interest — if the support benefits society or the economy as a whole.

In the last couple of years the Commission has made it easier for EU countries to use aid targeted at market failures and objectives of common European interest. The Commission focuses its enforcement on cases with the biggest impact on the internal market, streamlining rules and taking faster decisions.

How does the European Commission decide what support is allowed?

First, the Commission has to answer these questions.

- Have state authorities given support — for example in the form of grants, interest and tax relief, guarantees, holdings in companies or goods and services provided on preferential terms?
- Is the support likely to affect trade between EU countries?
- Is the support selective — does it confer an advantage on specific companies, parts of industries or companies in specific regions? General tax measures and employment legislation, for instance, are not selective because they apply to everyone.



State aid control ensures government interventions do not distort EU competition and trade.

- Has competition been distorted or might it be in future?

If so, the Commission must not allow the support — unless it is shown to be compatible with the internal market.

Exceptions

Some exceptions to the general rules are possible. State aid will get a green light if there is a real chance that a business in difficulty — or a new venture — can eventually become profitable and if it is in the interests of the EU (e.g. by preserving or creating jobs).

The overriding considerations are whether consumers will benefit or other businesses will be harmed. The Commission often allows aid for research and innovation, regional development and small businesses, because these serve overall EU goals.

How is government support monitored?

EU governments must inform the European Commission about planned subsidies and other support before granting it. The Commission approves around 85 % of all notified support after just a preliminary assessment.

When a formal investigation is required — in contentious cases — this is announced in the *Official Journal of the European Union* and the European Commission's online register of state aid cases. Interested parties can comment, and the Commission considers all aspects before reaching a final decision.

The European Commission also investigates support it has not been officially informed of, but which has been brought to its attention through its own investigation, complaints from companies or individuals, or media reports. If the Commission finds this support incompatible with EU law and fair competition, it instructs the government authorities to stop giving it and to recover any support already provided.

The Commission's state aid scoreboard gives statistics on the overall amount and type of support given by each EU country. Moreover, as from January 2016, citizens in all EU countries will be able to find information on subsidies over €500 000 on the internet.

The scoreboard shows that most support previously given to individual companies or industries has now been redirected to activities in the EU's common interest. This should help make the European economy more competitive on the global market.

Mergers

The merger regulation gives the European Commission the power to prohibit mergers and acquisitions that threaten to significantly reduce competition.

The main laws for merger decisions are the EU merger regulation and the implementing regulation. The merger regulation contains the main rules for assessing concentrations and the implementing regulation concerns procedural issues (notification, deadlines, right to be heard).

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

But some mergers may reduce competition, for example by creating or strengthening a dominant player. This is likely to harm consumers through higher prices, reduced choice or less innovation.

Before merging or forming associations, large companies that operate cross border must ask the Commission for authorisation and provide the information it needs to reach a decision.

Competition authorities make sure that, when two or more companies join forces permanently or temporarily, the market balance will not be upset in ways that could impede competition or create a dominant position that could be abused.

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The EU examines proposed mergers to prevent harmful effects on competition.

Why do mergers need to be cleared at European level?

It allows companies active in more than one EU country to obtain clearance for their merger Europe-wide, in one go.

Which mergers does the European Commission examine?

The Commission looks at any merger involving companies whose turnovers exceed certain thresholds. Below these thresholds, mergers can be reviewed by national competition authorities (NCAs).

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

The Commission may also examine mergers referred to it by either the merging companies or an NCA. Under certain circumstances, the Commission may also refer a case to an NCA.

How are mergers rejected or approved?

Proposed mergers may be prohibited if the merging parties are major competitors or if the merger would significantly weaken or restrict competition in the EU, for example by creating or strengthening a dominant player.

However, it is rare for the European Commission to block a merger, as it can usually approve more problematic mergers by imposing binding conditions or remedies on the merging companies. These conditions or remedies will ensure that the market is not distorted once the merger takes place. Companies may commit, for example, to selling part of the combined business or to licensing technology to another market player. If the Commission is satisfied that the commitments would maintain or restore competition in the market, it conditionally approves the merger and monitors whether the merging companies fulfil their commitments. The Commission may intervene if they do not.

If the Commission concludes that a merger would not restrict competition, the merger is approved unconditionally.

Liberalisation

Some essential services — energy, telecommunications, transport, water and post — are still controlled by public authorities rather than private companies in some countries. EU governments can entrust specific public service functions to a company, conferring on it duties, specific rights and financial compensation. This must comply with state aid rules.

When these services are liberalised — that is, opened up to competition between several companies — the Commission will see to it that the services remain available to all, even in parts of countries where they are not profitable. Moreover, it is essential to ensure that the liberalisation process is done in a way that does not give an unfair advantage to the old company that had the monopoly before the liberalisation.

What are the advantages of liberalisation?

There are several advantages to liberalising markets.

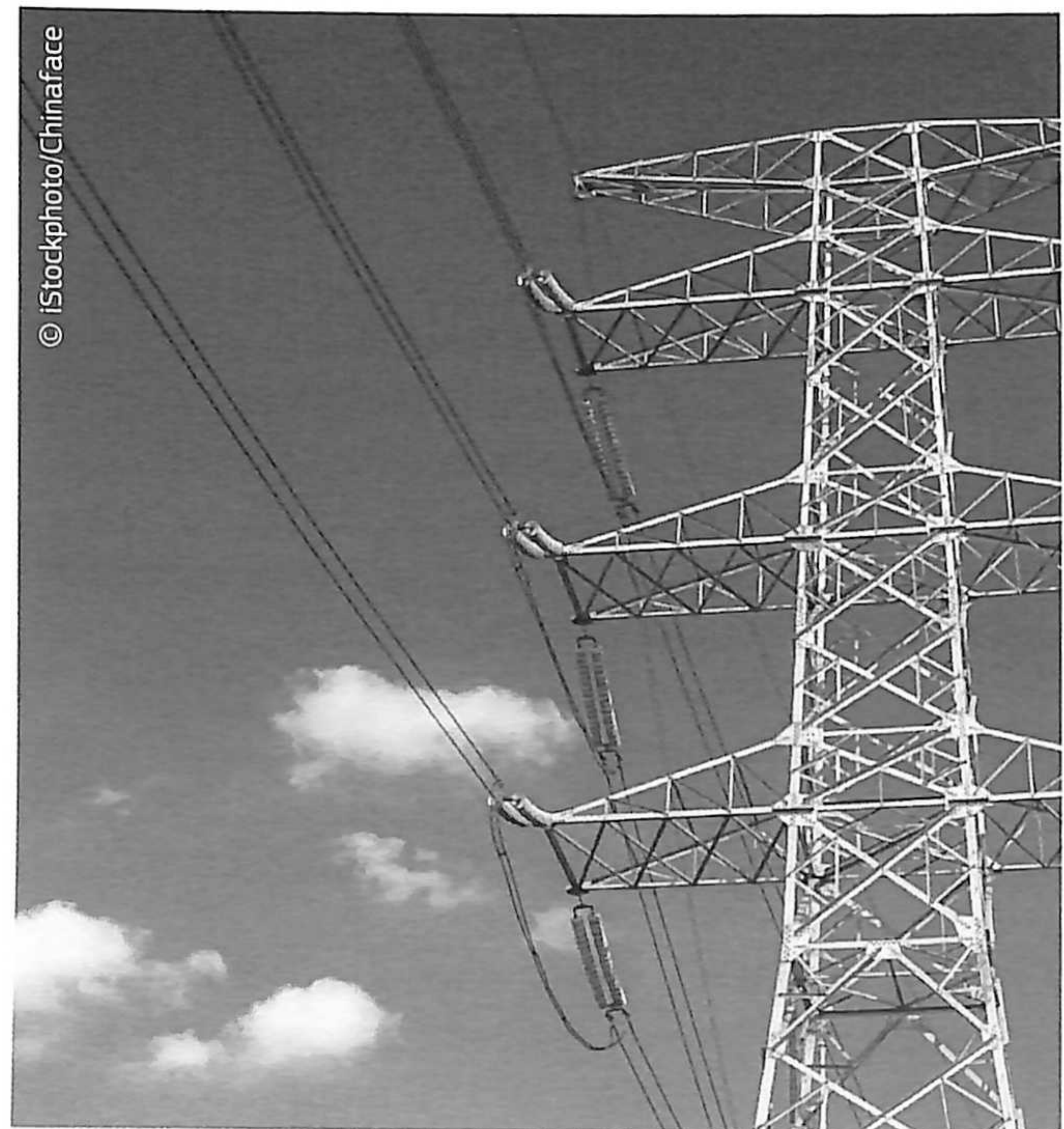
Consumers can choose from among different service providers and products. For example, in the railway, electricity and gas industries, network operators are now required to give competitors fair access to their networks. In these industries, monitoring fair network access by all suppliers is essential, so that:

- consumers can choose the supplier offering the best conditions;
- consumers benefit from lower prices and new services which are usually more efficient and consumer-friendly than before;
- national economies become more competitive.

Can public services be delivered properly in a competitive market?

Yes, as long as regulation ensures that public services continue to be provided and that consumer interests are not harmed.

The Commission always takes account of the special obligations placed on any organisation benefiting from 'monopoly rights'. This ensures fair competition without handicapping the state-funded company, which is obliged to provide services in the public interest even where this is not profitable.



Consumers can choose from a number of energy providers in Europe.

The Commission may agree to a company having a monopoly in special circumstances — for example where costly infrastructure is involved ('natural monopolies') or where it is important to guarantee a public service. However:

- monopoly companies must be able to demonstrate that they treat other companies fairly;
- natural monopolies must make their infrastructure available to all users;
- profits from providing a public service may not be used to subsidise commercial operations, potentially undercutting competitors' prices.

Does this benefit consumers?

Yes, but it takes time.

In the two markets that were opened up to competition first (air transport and telecommunications), average prices have dropped substantially. This has not yet happened in markets that were opened up to competition later or not at all (electricity, gas, rail transport and postal services), where prices have remained unchanged or have even increased.

However, this may be due to sector-specific factors — for instance, gas prices are closely related to oil prices. But overall, consumers are far more likely to pay lower prices in sectors that are more open to competition.

What are the consequences?

The Commission investigates whether companies are violating or could potentially violate the competition rules. This means it can act either before or after the rules are broken, in order to safeguard a competitive market. As a result of the Commission's investigations, it can decide to prohibit a certain conduct, require remedial action or impose a fine, depending on the situation. So the Commission acts both to prevent and to punish competition violations in the EU.

The EU competition laws are directly applicable in all the countries in the EU. National competition authorities can apply EU rules as well as their own competition laws.

Anticompetitive conduct must have an effect on trade between EU countries for the Commission to be able to act. The Commission has strong competition law enforcement powers, given to it under the treaties by the EU Member States. Its decisions are binding on both companies and national authorities that violate the rules, but the decisions can be appealed to the EU's General Court and further (on points of law) to the Court of Justice. Companies and EU governments regularly lodge and sometimes succeed in appeals against Commission decisions.

What are the results?

The consumer benefits resulting just from Commission decisions prohibiting cartels were estimated to be in the range of €4.89 to 5.66 billion in 2013.

The money received in fines does not increase the EU's overall budget, but instead reduces the amount of money that EU countries have to contribute to the previously agreed budget amount.

The Commission's decisions have benefited European consumers in a variety of ways over the years.

One of the European Commission's competition cases involving abuse of a dominant position was against the US computer giant, Microsoft. The Commission fined Microsoft for its practice of bundling various types of software together in a single package. It decided that Microsoft had been unfair to consumers by depriving them of choice, keeping prices artificially high and stifling innovation in the software industry.

In 2012, the Commission has also fined producers of TV and computer monitor tubes €1.47 billion for two decade-long cartels. Between 2001 and 2006, Asian

producers of LCD screens operated a cartel, agreeing prices and exchanging sensitive information on large screens for TV and computer applications. The cartel had a direct impact on European consumers, as most LCD TVs, computer monitors and notebooks come from Asia.

In 2006 and again in 2012, low-cost airline Ryanair informed the Commission it wished to take over Irish national carrier Aer Lingus. The Commission examined the potential impact on competition and consumers, especially the over 14 million passengers flying to or from Ireland every year. Combining the two airlines would have created a company with a monopoly or dominant position on many routes to or from Ireland, leaving consumers with reduced choice and very likely price increases.

The Commission prohibited the proposed takeover on the basis of the EU merger regulation.

Responding to the financial crisis

The Commission is striving to ensure that national responses to the crisis do not hamper competition, but rather take the wider European picture into account.

The rules on government support are there to stop governments trying to outdo each other in a costly race to subsidise their own companies, and putting healthy companies at an unfair disadvantage.

However, the Commission recognises that governments may need to take action to sort out problems in the financial sector and had issued special temporary rules on support for banks.

These rules do not allow banks to accept public support without taking action themselves to remedy their problems.

To give EU governments some extra leeway to tackle the effects of the credit squeeze, the European Commission has adopted temporary rules directed at companies other than banks and allowed governments to use measures including:

- easing companies' access to finance;
- state guarantees for loans at a reduced premium;
- export credit insurance;
- subsidised loans (particularly for eco-friendly products).

How to lodge a complaint

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

In your daily life, you may come across business practices that you think may restrict competition. For instance, companies sometimes refuse to accept orders from consumers in other EU countries. This 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

Contact the national competition authority (NCA): if the situation you're concerned about is specific and limited to the country or the area where you live, or involves no more than three EU countries. All NCAs now apply the same competition rules as the European Commission and very often they are well placed to deal with your problem.

Contact the Commission: if you think that more than three EU countries are concerned.

Even if you are unsure about the scope of the problem, do not hesitate to contact either an NCA or the European Commission. The authorities cooperate and can decide together on the allocation of a case that might arise from your report.

► Step 2A: Inform a national competition authority

NCAs in the EU countries 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 country 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.

The national competition authorities:
http://ec.europa.eu/competition/nca/index_en.html

► Step 2B: Inform the European Commission

You can report your concerns to the European Commission by e-mail to comp-market-information@ec.europa.eu. Alternatively, you can write a letter to:

European Commission
Directorate-General for Competition
Antitrust Registry
1049 Brussels
BELGIUM

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 to the European Commission

If you are directly affected by the practice which you suspect restricts competition and can provide the European Commission with specific information, you may want to lodge a formal complaint instead. In this case, you need to fulfil certain legal requirements which are explained in detail in the Commission notice on the handling of complaints.



The price of TVs became fairer when the EU eliminated cartels which secretly agreed to charge high prices.

Informing a consumer association

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

Contact a consumer organisation in your country:
http://ec.europa.eu/consumers/eu_consumer_policy/consumer_consultative_group/national_consumer_organisations/index_en.htm

Outlook

The European Commission intends to mobilise competition policy tools and market expertise so that they contribute to the Union's jobs and growth agenda, including in areas such as the digital internal market, energy policy, financial services, industrial policy and the fight against tax evasion.

In this context, it will be important to keep developing an economic as well as a legal approach to the assessment of competition issues and to further develop market monitoring in support of the broader activities of the Commission.

The Commission will keep pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and state aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and world-wide. The Commission will promote international cooperation with other competition authorities around the globe.

Find out more

You can find more details about EU competition policy and rules, as well as information on mergers notified to the Commission, the full text of competition decisions in the antitrust, merger and state aid areas, the latest competition policy briefs and the relevant legislation, via the 'Competition' pages of the Europa website (http://ec.europa.eu/competition/index_en.html).

You can also follow competition developments live on the Twitter account (https://twitter.com/EU_Competition).

The following publications are available in print form but can also be downloaded free of charge:

- ▶ **The *annual report on competition policy***: <http://ec.europa.eu/competition/publications/index.html>
- ▶ **Information on mergers notified to the Commission, formal decisions of the European Commission in the antitrust, merger and state aid areas and the detailed legislation on which they are based are published in the *Official Journal of the European Union***: <http://eur-lex.europa.eu/oj/direct-access.html>
- ▶ **A review of the European Commission's work on competition matters is included in the annual *General Report on the Activities of the European Union***: http://europa.eu/generalreport/index_en.htm
- ▶ **Questions about the European Union? Europe Direct can help**: 00 800 6 7 8 9 10 11 — <http://europedirect.europa.eu>.

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