

European Union¹

The European Union (EU) covers a large part of the continent of Europe, from the Arctic Circle to the Mediterranean and from the Atlantic to the Aegean. It covers an area roughly one-third the size of the United States. Its population is the world's third largest after China and India, and accounts for some six percent of the total world population.

Though richly diverse, the countries that make up the EU (its 'member states') are all committed to the same fundamental values: peace, democracy, the rule of law and respect for human rights. They seek to promote these values, to build and share prosperity and to exert their collective influence by acting together on the world stage.

In 2004, its membership increases from 15 to 25. A further two countries namely Bulgaria and Romania are on the track of possible membership by 2007. The enlarged EU of 27 countries will have a population of nearly half a billion.

The EU today faces new challenges, i.e. to become more competitive while remaining a fair and caring society, the EU needs to get more people into new and better jobs and to give them new skills.

Economy

The EU is amongst the largest economies in the world. The ultimate aim of the EU is economic progress. Especially since the 1980s, a lot of work has been done to break down the barriers between the EU's national economies and to create a single market where goods, people, money and services can move around freely. Trade between EU countries has greatly increased and at the same time the EU has become a major world trading power.

Competition Policy

The EU is based on the rule of law. This means that everything that it does is derived from treaties, which are agreed on voluntarily and democratically by all Member

List of EU Member Countries		
Member countries		Candidate Countries
Austria	Hungary	Bulgaria
Czech Republic	Latvia	Romania
Finland	Malta	Croatia
Greece	Cyprus	Turkey
Italy	Estonia	
Luxembourg	Germany	
Poland	Ireland	
Slovenia	Lithuania	
United Kingdom	Netherlands	
Belgium	Slovakia	
Denmark	Sweden	
France	Spain	
	Portugal	

States. Previously signed treaties (the founding treaties) have been changed and updated to keep up with developments in society. The founding Treaties were:

- Treaty of Rome – Established the European Economic Community (EEC). Signed in Rome on March 25, 1957, and entered into force on January 01, 1958;
- Merger Treaty – Signed in Brussels on April 08, 1965 and came into force since July 01, 1967. Provided for a Single Commission and a Single Council of the then three European Communities;
- Single European Act (SEA) – Signed in Luxembourg and The Hague, and became effective on July 01, 1987. Provided for the adaptations required for the achievement of the Internal Market;
- Treaty on European Union – Signed in Maastricht on February 07, 1992, entered into force on November 01, 1993. The Maastricht Treaty changed the name of the EEC to simply 'the European Community';

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- Treaty of Amsterdam – Signed on October 02, 1997, entered into force on May 01, 1999. It amended and renumbered the EU and EC Treaties; and
- Treaty of Nice – Signed on February 26, 2001, entered into force on February 01, 2003. It dealt mostly with reforming the institutions, so that the Union could function efficiently after its enlargement to 25 Member States.

The Treaty on EU, in one of its principles states that the Community's Member States are to adopt an economic policy in accordance with the principle of an open market economy with free competition. European competition policy is based on a Community legislative framework essentially provided by the EC Treaty (Articles 81 to 90). Further rules applicable to merger control are provided by a Council regulation (Regulation 4064/89) known as the 'Merger Regulation'. The Treaty of Rome recognised the importance of common competition policy to ensure that consumers enjoy the benefits of European economic liberalisation.

The EU has the following notions about competition policy:

1. Competition policy recognises the pursuit of economic integration as a goal in its own right;
2. It ensures that the market remain competitive;
3. Competitive markets aim to ensure benefits for consumer and lead to technological innovation;
4. It enhances consolidation of internal markets; and
5. It contributes to ensuring the competitiveness of European industry.

However, in April 1999, the EC proposed certain amendments which resulted in extensive and substantial modifications, in the arrangements for implementing Articles 81 and 82 of the Treaty which will repeal Regulation 17 of 1962, one of the foundations of Community competition law. This step will replace the system existing since 1962 of administrative authorisation that is centralised at Commission level by one in which not only the Commission but also the national authorities and courts will be able to apply Article 81 in full. This was a major step taken by the Commission in the history of EU competition policy.

The proposal intended to strengthen competition and to give national competition authorities and courts powers to apply Community law in full. However, it will require better surveillance of markets in order to identify those practices, which are likely to create the greatest harm to competition and the consumer. The new Regulation was also the first step in strengthening private enforcement before national courts by giving the latter the power to also apply Article 81(3).

The Council adopted this proposal as Council Regulation (EC) No 1/2003 of December 16, 2002, which replaced the Regulation 17 on May 01, 2004.

In case of merger control, the new Regulation has enhanced the possibilities for referring cases from Member States to the Commission and vice versa, which would help the Commission to focus its enforcement activities. It created a new criterion for evaluating mergers after some high profile case decisions were rejected by the European Court of Justice.

Institutions and its Competencies

Unlike the other political federal entities like the US or India, EU (previously known as European Community) is unique and the countries that make up EU, remain independent sovereign nations but they pool their sovereignty in order to gain strength.

Box 71.1: DaimlerChrysler Escapes Fine

The European Court of First Instance (CFI) has slashed a •72mn fine against DaimlerChrysler, the world's fifth-largest car manufacturer, overturning a ruling that the carmaker's behaviour in Germany and Spain was found anticompetitive. However, DaimlerChrysler must still pay •9.8mn for breaking antitrust law in Belgium.

In 2001, the EC had levied fines of •47mn and •15mn on DaimlerChrysler. The German company had required non-Germans to put a 15 percent deposit on Mercedes-Benz cars bought in Germany. It had also refused to sell cars to independent leasing companies in Spain until they had found customers – a condition it waived for its own leasing subsidiaries.

But, on September 15, the CFI said that because DaimlerChrysler's conduct in Germany and Spain was 'unilateral', it did not contravene European law, which only covers coordinated behaviour between two or more competitors.

On the other hand, in the case of Belgium, DaimlerChrysler sold fewer cars to dealers who refused to comply with rebates that DaimlerChrysler set on their purchase price. The CFI was of the opinion that the conduct 'was intended to restrict price competition' and upheld the original fine of •9.8mn.

Source: Global Competition Review, September 2005

EU's competition regime involves the following institutions:

- *European Parliament (EP)*: EU's legislative organ, which represents EU citizens and is directly elected by them to represent their interests. Its origins go back to the 1950s and the founding treaties, and since 1979 its members have been directly elected by the people they represent.

- *Council of the European Union*: It is the EU's main decision-making body. Similar to European Parliament, the Council was set up by the founding treaties in the 1950s. It represents the member states.
- *European Commission (EC)*: EU's executive arm independent of national governments. Its job is to represent and uphold the interests of the EU, as a whole. It drafts proposals for new European laws, which it presents to the European Parliament. EC is responsible for managing the day-to-day business of the EU: implementing its policies, running its programmes and spending its funds. EC was also set up in the 1950s under the EU's founding treaties.

The EC has been entrusted by Member States with the power to deal with competition matters at Community level. In some cases, this power is shared with the Member States' own competition authorities and law courts, while in other cases, the authority lies exclusively with the Commission.

Box 71.2: EU Busts Austria Cartel

The EC fined seven banks in Austria, amounting to •124mn, for allegedly colluding and fixing fees between January 1995 and June 1998. The Commission, as a result of its investigation, seized many documents, including minutes of meetings, records of telephone conversations, and correspondence. The Commission alleged that the banks knew that they were acting illegally.

The Commission added that the banks' Chief Executive Officers met regularly to exchange confidential information and co-ordinate fees. The Executives, known as the Lombard Group, established a network of cartel committees that covered the whole of Austria. These committees reported to the Lombard Group on how the banks should agree on fees for a host of services, including money transfers and export financing; fixing the rates paid on savings accounts, and charging for loans.

Two out of the seven banks have disputed charges, on the basis that the charges are unfair. The banks, Erste Bank AG and Raiffeisen Zentralbank Osterreich AG, would challenge their individual fines in the Court of First Instance in Luxembourg, an arm of the European Court of Justice.

Source: *Wall Street Journal*, 13.06.02

Two other institutions that have an important part to play are:

- a) European Court of Justice (ECJ) that upholds the rule of European law. It is the Supreme Court of the EU

and adjudicates on matters of interpretation of European law; and

- b) Court of First Instance (CFI) is an independent court attached to the European Court of Justice and comprises of 25 judges, one from each member state. Appeals are sent to the ECJ.

In principle, it is the Commission that proposes new laws, but it is the Parliament and Council that adopts them. Besides, the EU has a number of other bodies that play specialised roles:

- the *European Economic and Social Committee* represents civil society, employers and employees;
- the *Committee of the Regions* represents regional and local authorities;
- the *European Investment Bank* finances EU investment projects, and helps small businesses via the European Investment Fund;
- the *European Central Bank* is responsible for European monetary policy;
- the *European Ombudsman* investigates complaints about maladministration by EU institutions and bodies;
- the *European Data Protection Supervisor* safeguards the privacy of people's personal data;
- the *Office for Official Publications of the European Communities* publishes information about the EU; and
- the *European Communities Personnel Selection Office* recruits staff for the EU institutions and other bodies.

Anticompetitive Business Practices

The Commission has considerable powers to prohibit anticompetitive activities, to issue injunctions, and to impose fines on firms found guilty of anticompetitive conduct. It also approves mergers and agreements.

Community competition law does not enter into force until such time as trade between Member States is affected by the practices in question and directly affects the Community market. For example, a price-fixing agreement between local companies in a given town will not have any impact on the Community market, and European law is, therefore not applicable to this kind of situation.

Member States have their own domestic laws to counter anticompetitive practices. This makes it possible to take action under national law against practices, not having any impact on trade between Member States. Enforcement of national competition law is the sole responsibility of the Member States concerned.

The EU's competition regime covers the following situations:

- **Antitrust & cartels**: The elimination of agreements, which restrict competition (e.g. price-fixing agreements, or cartels, between competitors) and of abuses by firms who hold a dominant position in the market. These principles are laid down in Article 81 and Article 82 of the EC Treaty.

Box 71.3: European Commission Imposes Record Fines on Vitamin Cartels

In 2001, the EC fined eight companies a total of •855.22mn for participating in eight distinct secret market-sharing and price-fixing cartels. The company leading the cartel and enjoying a market share of 50 percent worldwide was fined •462mn.

For a time period of up to ten years, the companies had fixed prices and allocated quotas worldwide for various vitamins, and had set up a mechanism to monitor and enforce their agreements; participating in regular meetings on a most senior level to implement their plans.

The collusive behaviour allowed for the charging of higher prices, than if the full forces of competition had been at play, thereby harming consumers with the undertakings, earning the companies illicit profits.

In calculating the fines to be imposed, the Commission takes into account the gravity of the infringement, its duration and the market share of the company with, at that time, an upper limit for the fine of 10 percent of the company's total annual turnover.

One company was granted full immunity under the terms of the Leniency Notice of the Commission.

In 1999, the main players of the cartels had pleaded guilty to similar anticompetitive conduct in the US, and had paid heavy fines including US\$500mn for the main actor.

- Merger control: The control of mergers between firms (e.g. a merger between two large groups which would result in their dominating the market). This is the most recent addition to the EU competition policy.
- Liberalisation: introducing competition in monopolistic economic sectors (e.g. telecommunications).
- State aid control: The control of state aid measures by Member State governments to ensure that such measures do not distort competition (e.g. the prohibition of a state grant designed to keep a loss-making firm in business even though it has no prospect of recovery).

State Aid

By giving certain firms or products favoured treatment to the detriment of other firms or products, state aid seriously disrupts normal competitive forces.

Box 71.4: Fine for Price-fixing

The European Commission has fined four building material companies a total of •478mn for a six-year price-fixing conspiracy. A four-year enquiry concluded that the companies had conspired to fix the price of plasterboard in France, UK, Germany and the Benelux countries by agreeing to stop a damaging price war.

France's Lafarge was hit the hardest, being fined •250mn – the third largest penalty ever levied by the Brussels authorities on a single company – with its UK rival, BPB, getting a penalty of •139mn. The German group, Knauf, has been ordered to pay •86mn, while Gyproc of Belgium was fined •4mn.

Lafarge had sales of •13.7bn and BPB's turnover was •2.5bn last year. Though the Commission has the power to fine companies up to 10 percent of their worldwide turnover, but it rarely opts to impose the full penalty.

Source: *Financial Times*, 28.11.02)

State aid that distorts competition in the Common Market is prohibited by the EC Treaty. *Article 87 of the EC Treaty* "prohibits 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 firms or the production of certain goods".

The EC Treaty, however, allows exceptions to the ban on state aid where the proposed aid schemes may have a beneficial impact in overall Union terms. Article 87 of the EC Treaty allows the following forms of aid:

- aid having a social character, granted to individual consumers;
- aid to make good the damage caused by natural disasters or exceptional occurrences; and
- aid designed to:
 - ◆ promote the economic development of underdeveloped areas;
 - ◆ promote the execution of an important project of common European interest;
 - ◆ remedy a serious disturbance in the economy of a Member State;
 - ◆ facilitate the development of certain activities or areas; and
 - ◆ promote culture and heritage conservation.

Box 71.5: Concerns on Polish State Aid

The EC expressed concerns on aid worth •593mn granted to Polish shipyards.

The Commission's main focus was the aid of •97mn granted to Gdynia Shipyard but was also troubled by •14.5mn to Gdansk, and by about 10 percent of one to Szczecin. Actually the matter was whether the aid in question was granted before Poland acceded to the EU.

The president of the body in charge of granting the aid to the shipyards, expressed surprise with the Commission's decision and pointed out that the EU authorities raised no doubts in the previous correspondence; on the contrary, they expressed their understanding for their actions.

Source: *Global Competition Review*, June 2005

Sectoral Regulation

Telecommunications Sector

The situation in the EU's telecommunications sector which was characterised by a strong public service monopoly tradition remarkably began to change in the early 1980s, with privatisation and the introduction of limited competition in some Member States.

The common telecommunications policy has been set by the consultative process initiated by the Commission in 1987, and the key Resolutions adopted by the Council and European Parliament, and by the ECJ. The telecommunications regulatory process in the EU should be seen as part of the wider process of the economic integration initiated by the Treaty of Rome.

Box 71.6: Fine Levied for Blocking Car Exports

French carmaker Automobiles Peugeot has been fined •49.5mn euros by the European Commission for infringing European competition rules. According to EC, Peugeot blocked the cross-border sale of new cars from the Netherlands to consumers in other member states.

Peugeot devised a two-part strategy to prevent Dutch car dealers from selling to people elsewhere in the European Union. First, it ensured that remuneration of Dutch car dealers was dependent on the final destination of the car and refused to pay them performance bonuses if they sold cars to foreign citizens. Peugeot also threatened to reduce the number of cars it supplied to dealers who had significant export activity.

Source: *Global Competition Review*, October 14, 2005

The mechanism chosen to liberalise telecoms in the EU was Commission directives based on Article 86 of the Treaty. The liberalisation directives were complemented by a series of harmonising directives adopted by the Council and European Parliament, under Articles 95, 47 and 55. The aim of these measures was to put in place a detailed harmonised regulation to ensure that the aims and principles set out in the Article 86 Directives were upheld across the EU.

Energy Sector

"A competitive energy market helps efficient energy use". In December 1995, the EC issued the white paper, "*An Energy Policy for the European Union*". Even though two of the three treaties that form the legal foundation of the EU (the European Coal and Steel Community Treaty of 1951 and the European Atomic Energy Community Treaty of 1957) are based on cooperation in the energy sector, the EC has not, until recently, created a common EU energy policy.

By the creation of a common energy policy, the Commission aims to promote its three main energy policy concerns i.e. competitiveness, supply security, and environmental protection, through the creation of trans-European energy networks. This can be fulfilled through Community-wide reduction of existing regulatory barriers and the introduction of competition in the energy industries, especially gas and electricity. Certain steps were taken in this area:

- Adoption of a Directive for the Internal Market for Electricity in 1996 which marked the first major legislative step towards the creation of an open and competitive European electricity market. Under this law, all Member States were required to open at least 25.37 percent of their electricity markets to competition till February 1999; and
- Adoption on the EU Common position on rules by the Council of Ministers' in February 1998 for internal market in natural gas.

Consumer Protection

In addition to ensuring a high level of protection through legislation, the EU aims to safeguard the health, safety and economic interests of consumers.

The most important legislative measures are those adopted as part of the single market. Among the measures already in force are directives covering:

- Price indications on foodstuffs and non-food products;
- Misleading advertising, distance selling and consumer credit;
- Unfair terms in consumer contracts; and
- Specific measures protecting purchasers of package tours and time shares.

Box: 71.7: DG Comp Finds Flaws in Remedies

The agency has just finished a follow up study, looking at the mergers remedied between 1996 and 2000. It found 'serious issues' arising in nearly two thirds of such remedies. In many cases though, a flaw in the remedy could be put right.

The study followed up on 96 remedies used in 40 mergers. Competition Directorate General (DG Comp) (picked the 40 because its distribution by type of remedy mirrored the general pattern at that time. Officials interviewed company officers who had negotiated the remedy and others who were close to events. The report found 'serious issues' arose 194 times. On 134 occasions these could be corrected. Not every remedy could be properly assessed. Sometimes

it proved impossible to separate the effect of the remedy from general developments, such as liberalisation, in the market. The final picture was 49 out of 85 remedies 'worked' some of those had hiccoughs though. 20 cases raised design of implementation issues that 'defied resolution.'

A source within DG Comp described the study having found 'a litany of problems.' DG Comp has given no indication of how it might adjust its practice. The research period predates its current merger remedies notice. Neelie Kroes, the Commissioner has welcomed the report. She said, "We should only accept remedies that clearly and unambiguously address the identified threats to competition".

Source: www.globalcompetitionreview.com/news_print.cfm?item_id=3264

There also exists a position of European Ombudsman (EO) in EU, which was created by the Treaty on EU (Maastricht, 1992). The Ombudsman acts as an intermediary between the citizen and the EU authorities. EO is entitled to receive and investigate complaints from EU citizens, businesses and organisations, and from anyone residing or having their registered office in an EU country.

New legislation will set high and harmonised EU safety, security and health standards designed to increase consumer confidence.

The Consumer Policy Strategy for 2002-2006 states the following objectives:

- guarantee essential health and safety standards, so that buyers are sure the products they purchase are safe and that they are protected against illegal and abusive practices by sellers;
- enable individuals to understand policies that affect them;
- establish a coherent and common environment across the Union; and
- ensure that consumer concerns are integrated into the whole range of relevant EU policy areas.

A new European Consumer Consultative Group (ECCG), bringing together representatives of national consumer organisations and the Commission, formed and commenced work in December 2003.

Concluding Observations and Future Scenario²

Taking into account the increasing responsibilities and the growing number of Member States (enlargement), European regulators need to respond more rapidly to new challenges, the move to a knowledge-based economy and the globalisation of business. The situation calls for a separate body notably 'European Competition Agency' in order to increase transparency and accountability in decision-making.

Market definition is an essential element in all cases under EU competition law, whether they concern restrictive agreements, alleged abuse of market dominance or mergers.

Therefore, the Commission needs to review its criteria and economic concepts on relevant geographical and product markets. These need to take into account the driving forces behind competition in EU markets. Past experience should not be the basis for deciding competition cases. EU competition policy needs to reflect the new market realities faced by European industry.

Emphasis should be put on removing obstacles to competition in the recently liberalised sectors as well as certain other regulated sectors, namely telecommunications, postal services, energy and transport. These sectors provide essential inputs to many other economic sectors and play a vital role in bringing about competitiveness in the European markets.

2 At the time of writing of this paper, the OECD was doing a peer review of the EC competition regime, which will throw up a better sense of the future of the regime and its contours.