



# State aid under EU law

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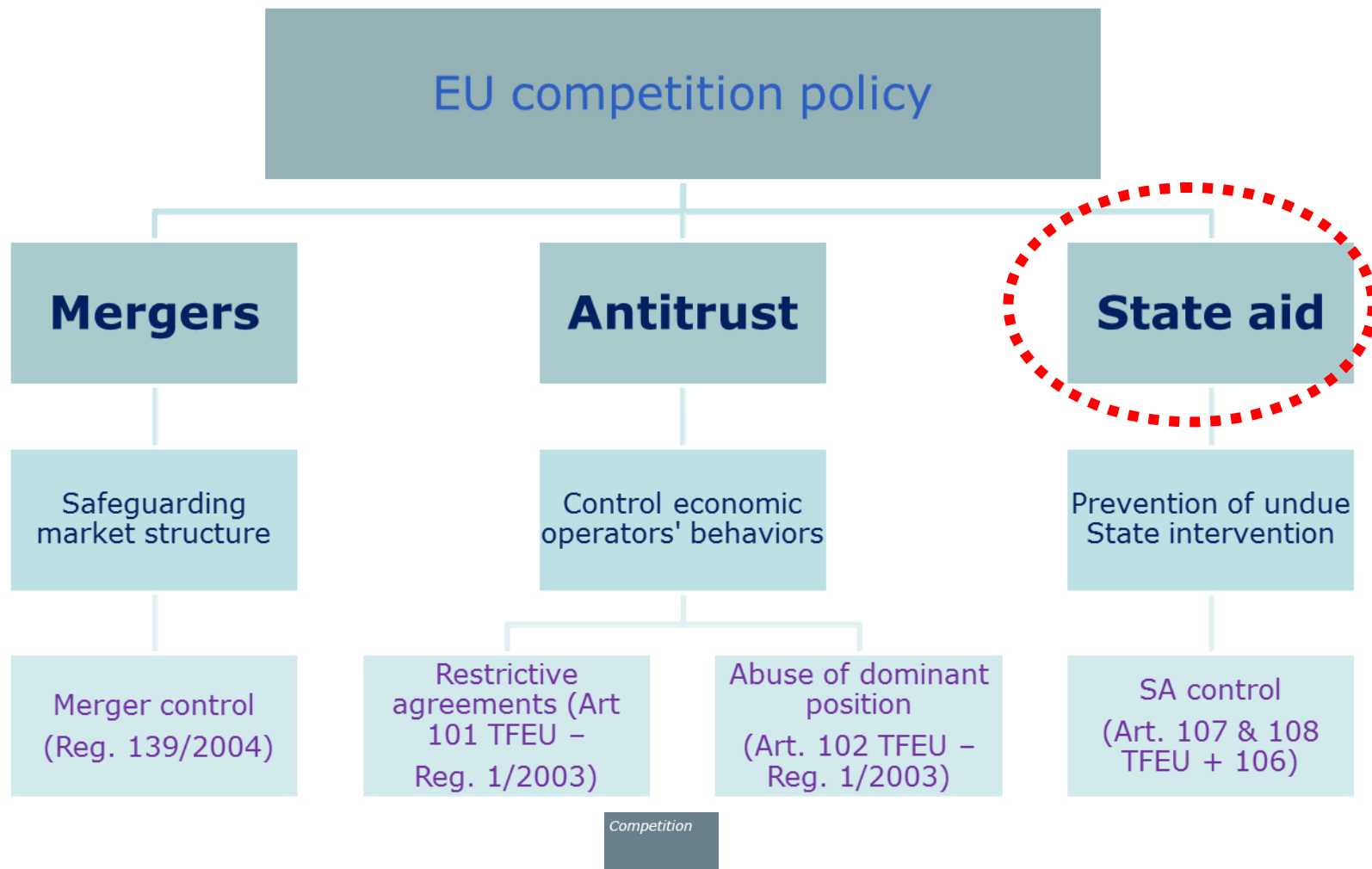


# State aid

- I. What is State aid?
- II. Why State aid control?
- III. Legal framework and key concepts of EU State aid law
- IV. State aid procedure
- V. Examples of recent State aid cases



# Tools of EU competition policy





# State aid: legal framework

Article 107(1) TFEU: general prohibition

*"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, insofar as it affects trade between Member States, be incompatible with the internal market".*

Article 107 (2) and (3) → de jure and discretionary compatibility



## Why State aid control?

- To preserve the benefits of fair competition
- To avoid subsidy races between Member States
- To avoid partition of the internal market
- To ensure level playing field throughout the EU
- Role in cohesion policy: harmonious development of the European Union from the economic, social and territorial point of view



# What is State aid? – Key concepts (I)

Article 107(1) TFEU

*"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, insofar as it **affects trade between Member States**, be incompatible with the internal market".*



## What is State aid? – Key concepts (II)

- (1) State resources
- (2) Confers an advantage to an undertaking
- (3) Selective advantage
- (4) Potential to distort competition
- (5) Effect on trade between Member States

**Article  
107(1) TFEU  
– all criteria  
must be met**

- **Equal treatment** of public and private companies - Art. 345 TFEU
- **Effects** of the measure, not its declared objective
- Objective notion, burden of proof on the Commission



## What is State aid? – Key concepts (III)

- An **undertaking** is "every entity engaged in **economic activity**, regardless of the legal status of the entity and the way in which it is financed"
  - Economic activity → offering goods and services in the market
- "Granted by a Member State or through **State resources**"
  - Member State, including regional and local authorities
  - Also other public or private bodies designated or established by the State to administer public funds, only if the decision is "imputable" to the State





## What is State aid? - Key concepts (IV)

- **Advantage**
  - transfer of resources (e.g. loan, guarantee) or relief from charges which a company would normally have to bear (e.g. tax exemption, debt waiver)
  - provided for free or without adequate consideration
  - the market economy operator test (MEO)
- **Selectivity** – favour certain undertakings or the production of certain goods



## What is State aid? – Key concepts (V)

- **Effect on trade between Member States**
  - it is sufficient that the product or service is subject to trade between Member States
- (Risk of) **distortion of competition**
  - Aid strengthens the competitive position of the beneficiary in respect to its competitors and thereby distorts competition
  - Not required that distortion is substantial or significant




# When is State aid acceptable?

- Art. 107(2) TFEU: "**shall be** compatible"
  - a) Aid having a social character, granted to individual consumers
  - b) Aid to make good the damage caused by natural disasters or exceptional occurrences
  - c) Aid granted to the economy of certain areas to compensate for the disadvantages caused by the division of Germany
- Art. 107(3) TFEU: "**may be** considered compatible"
  - a) Economic development of most disadvantaged regions
  - b) Important common European project or serious disturbance in the economy of a Member State
  - c) Development of certain economic activities or certain economic areas
  - d) Culture and heritage conservation
  - e) Other categories as may be specified by a decision of the Council





# State aid procedure (I)

- Commission has **exclusive competence** to authorise State aid
- New aid needs to be notified before it is granted
  - unless it is covered by a block exemption regulation (GBER or *de minimis*) or by an approved scheme
- Preliminary phase  2 months
- At the end of Preliminary phase, the Commission can:
  - Find that the measure is not a State aid
  - find that there is no doubt as regards the compatibility of the measure (Decision not to raise objections)
  - Have doubts as to the compatibility of the measure (Decision to initiate the formal investigation procedure)



## State aid procedure (II)

- Formal investigation → It starts with the Decision to open a formal investigation  18 months (indicatively)
- New information gathering tools
- At the end of Phase II, the Commission can:
  - Find that the measure does not amount to State aid
  - Find that the measure is compatible (Positive decision)
  - Find that the measure is compatible subject to conditions (Conditional decision)
  - Find that the measure is not compatible with the common market (Negative decision)
- Recovery of the aid  re-establish the status quo ante



# Examples of recent State aid cases

- Spanish football clubs (Spain)
- Fiat Finance and Trade (Luxembourg)
- Starbucks Manufacturing (Netherlands)



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**Thank you for your time**

**Questions?**

**For further information on competition policy:**  
**[http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html)**