The Single Market

The removal of all barriers to the free movement of goods, people and capital – to the extent necessary to ensure the smooth operation of the European Common Market – was the central objective of the 1957 Treaty of Rome (articles 3a to 3c), while the removal of barriers to the provision of services was considered to be an implicit objective of the Treaty. Collectively, these form the four freedoms of what is today labeled the Single European Market (SEM) or "the Internal Market". Market integration – linked to the improved competitiveness of European economies and firms and economic growth – has been the central objective of the European Economic Community. The first stage in the construction of the European Common Market involved a ten-year program, starting in 1958, to eliminate all tariff barriers on industrial products and proved to be a resounding success. However, given national obstacles, there were delays on the removal of non-tariff barriers to trade (NTBTs) which can be defined broadly as any national policies that in effect discriminate against products entering the national market from other countries. Examples of such barriers include:

- Different national regulations on product standards that may block imports otherwise perfectly safe for consumers.
- Rules on establishment which require companies (such as banks) to go through lengthy and expensive application procedures to set up operations in another member state.
- Government procurement programs, whereby governments discriminate in favor of national companies in the purchase of items.

From the perspective of competition, the official aim of EU market integration – and, more specifically, of the EU's Competition Policy which is discussed below – is to create a "level playing field" whereby companies from one European member state are not placed at a competitive disadvantage because of the market distorting practices of governments and firms in either their own member state or in any other. Market integration thus contributes to the competitiveness of EU firms. The competitiveness of American and other non-EU firms operating in the SEM is likewise enhanced in that, once established in one EU member state, these firms can take full advantage of the EU-wide "level playing field" legislation and practices in force.

The creation of the Single European Market by the end of 1992 (thus the "1992 Program") was the central objective of the Single European Act (SEA) of 1986. The SEA was necessary because political efforts and legal developments following the signing of the Treaty of Rome did not create sufficient momentum to complete the Common Market. The term "Single Market" is thus not substantively different from the

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term "Common Market" but it was adopted to clearly distinguish between what already existed and what the Treaty of Rome said should exist – a real common market in which there should be no barriers to the free movement of goods, people, capital and services. The SEA was based on the recommendation of the Cockfield Report of March 1985 which was a Commission White Paper outlining all the EC legislation necessary for removing the remaining barriers in the Common Market with measures to regulate market access, competitive conditions, market functioning and sectoral policy in markets for products, services, persons and labor and capital.

Developments since 1986 have been quite remarkable and far-reaching. The 1992 date was not respected largely because certain member states were slow in transposing EC laws and modifying national laws and because new directives, not originally recommended in the Cockfield Report, had to be adopted. Still, the SEA created considerable political momentum in the European Community. The legislation adopted has completely transformed the operation of the internal market and removed numerous barriers. To provide some significant examples:

- All intra-EU frontier controls on products have been removed (and for most member states, controls on persons as well).
- All intra-EU capital controls have been removed.
- The approximation of technical regulations has progressed.[1]
- In banking and insurance the principle of mutual recognition with "home country control" has been established with the elimination of licensing restrictions.
- Governments have been required to discriminate in favor of national firms in the provision of contracts (rules on public procurement).

While academic debates continue over the extent to which the SEM program has contributed to economic growth in the European Union, there is no doubt that the newest member states of the EU from Central and Eastern Europe have benefited considerably from their access to the SEM (although the right of the citizens of the new member states to work in the older member states remains restricted for several years) with economic growth rates in these eight new member states far exceeding the average for the older 15 member states and inward investment from outside the EU (notably the US and Japan) rising dramatically.

The Incomplete "Single" Market

Much remains to be accomplished in the construction of the SEM. There are still significant delays in many member states with regard to the transposition of various European directives into national law (to allow their application) and many member

[1] The EU passes regulations which are non-binding in national law and so have to be "approximated" by national parliaments. The progression of these regulations means that European regulations have been issued and the national parliaments are in the process of translating these into the national legal framework.

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states fail to apply these laws (see the scoreboard below). However, it is clear that transposition rates are improving and the Commission continues to name and shame recalcitrant member states. At 1.6% the average transposition deficit is significantly lower than three years ago, but remains above the ambitious target of 1% member states have set themselves for 2009. Respecting European rules on the mutual recognition of standards (as long as these respect the harmonized minimum standards established at the EU level) also remains a problem for several member states. The latest monitoring by the European Commission has revealed an increase in the number of infringement cases, averaging 53 for each member state, up from 50 only six months ago. Italy and Spain top the league table for total proceedings brought against member states for infringement of European single market law. More importantly, the creation of a true SEM remains a distant goal as several member states continue to block the adoption of liberalizing European legislation.

The Single Market Scoreboard, 2004 and 2007

	Percentage of single market legislation not transposed into national law		Infringement proceedings
	13/07/04 (Rank)	02/07/07 (Rank)	Total open proceedings, 02/07/07 (Rank)
Lithuania	0.8 (2)	0.5 (1)	17 (2)
Latvia	19 (23)	0.7 (2)	22 (5)
Slovakia	12.6 (21)	0.9 (3)	20 (4)
Denmark	0.7 (1)	0.9 (4)	30 (8)
Germany	3.5 (14)	1.0 (5)	82 (21)
Estonia	8.3 (19)	1.0 (6)	18 (3)
Cyprus	18.1 (22)	1.0 (7)	30 (9)
Malta	40.4 (25)	1.0 (8)	36 (10)
Slovenia	5.7 (18)	1.0 (9)	17 (1)
France	4.1 (17)	1.2 (10)	99 (23)
Hungary	11 (20)	1.2 (11)	28 (7)
United Kingdom	1.2 (4)	1.2 (12)	59 (17)
Austria	1.7 (7)	1.4 (13)	58 (15)
Finland	1.3 (6)	1.4 (14)	37 (11)
Sweden	1.8 (8)	1.4 (15)	48 (14)
Belgium	2.1 (10)	1.5 (16)	71 (19)
Netherlands	2.8 (11)	1.6 (17)	47 (13)
Ireland	1.2 (5)	1.7 (18)	59 (16)
Poland	3.9 (15)	1.8 (19)	59 (18)
Spain	0.8 (3)	1.9 (20)	108 (24)
Czech Republic	23.6 (24)	2.3 (21)	27 (6)
Greece	3.9 (16)	2.4 (22)	89 (22)
Italy	3.1 (12)	2.7 (23)	153 (25)
Luxembourg	3.2 (13)	3.3 (24)	42 (12)
Portugal	1.9 (9)	4.4 (25)	75 (20)
EU average	2.2 (EU-15)	1.6	53

Sources: European Commission (2004, 2007)

Ongoing Efforts to Construct the Single European Market

Over the past few years, the most highly publicized attempt of the European Commission to reform the rules of the Single Market came in the area of services. With the service

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sector accounting for some 70% of jobs and GDP in the European Union, remaining restriction on the provision of services across the EU have for long been a thorn in the side of the European Commission. A 2004 Services Directive – the infamous Bolkestein Directive – sought to remove obstacles on the provision of services by promoting the so-called 'country of origin' principle. According to this principle, service providers would have been subject to the laws of their home country, when providing services aboard. This aroused a storm of protest amongst western European countries that feared an erosion of their labor, environmental and other standards. A bout of consultations led to the adoption of a slimmed down service directive in 2006, that replaced the 'country of origin' principles with the 'freedom to provide services' principle. The new directive removes some obstacles to the free exercise of services, but maintains that service providers will be bound by the regulations of member states concerning health, the environment, labor laws, and others.

Major progress has been made in the area of financial services. With 98% of the Financial Service Action Plan (FSAP) reportedly implemented, since 2005 the emphasis of the Commission is now on enforcement and supervision. However, some significant measures have been added in late 2007, including the adoption of the Markets in Financial Instruments Directive (MiFID) and the introduction of a new Europe-wide clearing and payments system TARGET 2. Further progress is expected with the creation of a Single European Payments Area (SEPA), which is scheduled for implementation in 2010. However, resistance to further liberalization of financial services remains high, especially amongst some of the bigger member states and some banks that fear increased competition from non-traditional banking sectors.

EU Competition Policy

The development of a European competition policy has been a vital element in the construction of the Single European Market in that unfair competitive practices are in effect barriers to the free movement of goods and services. Such unfair practices distort the operation of the market – by allowing the operation of cartels, companies maintain an unfair dominant market position and hold on to certain kinds of state aids (e.g. subsidies). The creation of competition policy over the past forty-eight years has taken place in tandem with the reinforcement of national policies. The success of this competition policy owes very much to the strength of the rules in the 1957 Treaty of Rome and the willingness of the Commission to apply them. Article 3(f) in the Treaty of Rome establishes the goal of preventing the distortion of competition in the common market. The rules on competition contained in Articles 85-94 of the Treaty – renumbered 81-89 in the Treaty establishing the European Community of 1997 – are to enable the achievement of this goal by setting out what is to be considered anti-competitive conduct and the conditions under which exemptions can be granted. Of particular importance are articles 85 and 86 (now 81 and 82) on anti-trust and abuse of dominant position respectively, 90 (now 86) on public undertakings, and 92 (now 87) on state aids. In 1989, the Commission was assigned further specific powers to examine whether mergers – creating a company of a potentially market distorting size – were to be permitted. These treaty

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and legal provisions provide for flexibility in the application of competition policy allowing the Commission to negotiate with governments and firms and allowing other principles of integration to inform decisions – thus market distorting state aids can be allowed, for example, in the context of assistance to economically backward and socially disadvantaged regions.

Several Council regulations (in particular Regulation 17 from 1962) grant the Commission the responsibility for administering competition rules, which is undertaken by Directorate-General Competition and the Commissioner responsible for competition policy. Regulation 17 grants the Commission specific powers, notably, a notification process, consultation procedures, and investigative and fining powers. However, it was not until the 1990s that the Commission was able to exploit the potential of EC competition rules and its assigned powers. In the 1960s and 70s several member states balked at the application of EC competition rules that potentially contradicted interventionist national industrial policies. Slow progress was also the result of Regulation 17 itself: by the mid-1960s over 35,000 notifications were already made to the Commission which, lacking the staff to deal with such a workload, forced it to adopt "coping strategies", a mixture of block exemptions and informal procedures. The Commission's assertion of a more activist EC competition policy was to be one of the most significant features of the SEM Program of the 1980s, even if the Commission had to adopt a pragmatic application of the rules to diminish the threat of a political backlash from the member states. The Commission engages in a largely informal process of negotiation with national authorities, private firms and their lawyers.

Most of the Commission's work has revolved around Article 81 (ex 85) which covers the areas of market-sharing and price fixing activities, cartels and other forms of collusion. The Commission works with firms to seek clarification of their plans to cooperate. The large majority of agreements are covered by either informal decisions or block exemptions – which the Council approves – leaving only a small number (on average 15 a year since 1962) to be decided formally by the Commission. In these formal decisions, the Commission can apply its full weight (with full investigations and raids on companies, etc.) and fines. There have been some heavy fines imposed upon cartel arrangements but also companies abusing their dominant market share. Companies maintain the right of appeal, although the ECJ has supported the vast majority of Commission decisions. Every year since 1990, the Commission makes several decisions on the permissibility of cross border mergers. While there are very few cases of the Commission blocking a merger outright, it has insisted that merging companies cease certain activities or pay minor fines. However, the Commission has flexed its muscles in a few very high profile cases, which will be detailed below.

Commission decisions can also be made with regard to the operation of non-EU based firms and the merger of these firms if they have a significantly large market presence in the EU. In one noteworthy recent ruling in September 2007, the European Court of Justice upheld an earlier decision by the European Commission to fine Microsoft for abusing its dominant market position in the group server operating systems and media player market. The ruling ended a nine year old legal struggle between the two, by imposing fines and penalties close to €2 billion on Microsoft and strengthening the Commission's regulatory role. With regard to mergers, in 2001 the Commission opposed and effectively blocked General Electric's takeover of Honeywell – a merger of two big American corporations that had previously been approved by US competition authorities – on the grounds that the combined group would hold too high a share of the EU's aerospace market.

All government subsidies or state aids are contrary to the principle of the free market. However, EC Competition rules tolerate some subsidies more than others, and it is the Commission's responsibility to differentiate between acceptable and unacceptable aid. Mercantilist state subsidies for firms designed to enhance their internationally competitive position are not normally tolerated, while funding aimed at regional development or the provision of public goods, e.g. infrastructural projects and vocational training programs, are permissible. In fact, given political sensitivities, the Commission has traditionally only challenged member state governments in a small number of cases where the subsidy provided resulted in a grotesque distortion of the market.

According to the 2007 state aid scoreboard, in the period 2000-2006, the Commission took 608 decisions on accusations of unlawful aid. In addition, there remain some 200 pending unlawful aid cases which are still under Commission scrutiny. Of these new unlawful aid cases registered, the Commission had to open formal investigations in around 40% of cases. Recently the Commission has decided to enforce a tougher line on companies that had been found to receive unlawful aid. Thus, since 2005, the Commission began to systematically order the suspension of payment of new aid (even if compatible) to companies that had not repaid previous illegal and incompatible aid. According to the latest state aid scoreboard, in 2005, Malta was the member state providing the most state aid at 3.16 per cent of GDP, followed by Hungary, Finland, Cyprus and Sweden, with Luxembourg, Greece and the UK providing the least. The average for state aid provided throughout the EU-25 (Rumania and Bulgaria are not yet included in the statistics) has leveled at 0.59 per cent of GDP, while it remains significantly higher amongst the new member states at 0.93 per cent. It should be noted that the overall level of state aid in the EU has remained largely unchanged in the last few years.

In 2005 the Commission adopted a new State Aid Action Plan (SAAP) for the period 2005-2009. In line with the Lisbon strategy, the Commission wants to simplify state aid rules and refocus aid on the promotion of growth and innovation. More specifically, the Commission wants member states to use state aid to promote innovation and R&D, to stimulate eco-efficiency or help out less developed regions. It also wants to make the rules on state aid more transparent and less bureaucratic. To this effect, in 2007 the Commission launched a consultation on simplified rules for block exemptions. Under the Commission's plans, rules on block exemptions, requiring no prior notification of state aid to the Commission, will be consolidated and extended to environmental aid, aid in the form of risk capital and R&D aid for large companies. At the same time, the

Commission has confirmed its attention to focus in the future primarily on big state aid cases, which carry a greater risk of distorting competition.

Summary

The EU has achieved considerable progress in the construction of a single market. However, numerous significant non-tariff barriers to trade – principally in the area of services and market distorting State aids – continue to exist, making the use of the term "Single Market" more wishful thinking on the part of some than reality to all. There still is considerable opposition amongst a certain spectrum of European society to the kind of measures necessary to achieve the construction of the single market. Indeed, the 29 May 2005 "No" vote to the European Constitution in France was to a great a reaction against the "liberal" policies of the European Commission. The constitutional turmoil that followed spelled a further delay in the construction of the single market. However, with a way out of Europe's constitutional mess at last in sight and with new governments in France and Germany willing to embrace more openly market liberalization measures, it can be expected that the construction of the Single Market will gather a new momentum. Still, the greater divergences created by Europe's eastern enlargement will likely mean that further progress on the creation of a Single Market will remain piecemeal for the foreseeable future.

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