

# Fairness in the context of State Aids

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# Fairness: what in a noun

- Impartial and just treatment or behaviour without favouritism or discrimination  
(*Oxford Dict.*)
- Decency, equitableness, equity, impartiality, justice, legitimacy, rightfulness, uprightness  
(*Collins Thes.*)

# A policy rationale of EU competition rules

Fairness is not an legal principle

Fairness is the policy rationale which sits at the core of the Commission competition policy:

- In the design of the rules
- In the enforcement proceedings
- As the targeted outcome

# State Aids discipline

State aids are unfair by nature ?

Only incompatible aids are prohibited

The wider dimension of fairness in the SA context

# Fairness in the enforcement process

## Commission duties

- Rigour and accuracy
- Equal treatment and even-handed enforcement
- Due process and right of defence

Specificities in the SA context: the rights of the Member States and those of the other interested parties

# Fairness as the targeted outcome of SA discipline

The direct purpose : ensuring fair competition, in the ultimate interest of the consumers

The indirect consequence: ensuring the proper use of taxpayers' money

Limits of the SA discipline : tensions in the internal market stemming from divergent rules among the Member States

# The wider dimension: compatible State aids

The delicate balance: undistorted competition  
v. objectives of general interest

The Commission's margin of discretion and its  
limits

An essential requirement: predictability

- General block exemption regulations
- Guidelines

# SA in the energy sector

Promotion of renewable energy and of energy efficiency

- Integrating energy and environmental policies into competition rules
- The paradox: claim of breach of the "fair and equitable treatment provision" by disappointed investors

Levy reductions in favor of energy intensive users

- The even more complex balance of interests

# SA in the banking sector

The 2008 crisis and the Commission response:  
saving the banks or the real economy ?

The 2013 Banking communication: shifting the  
burden more on the investors, while protecting  
depositors

The interplay between SA discipline and the  
Banking union rules

# To sum up: is SA discipline fair?

The positive message of the SA discipline

- To the market operators
- To the society at large

... and the Brexit ?