

EU Competition Policy

a blueprint
for the chemical
industry in the
next millennium

November 1998



Executive summary

The chemical industry acknowledges the importance of competition law in the EU where it plays an important role in ensuring the conditions and the principles upon which the single market is founded. These are reflected in the policy and practices of companies operating within that market.

The industry believes, however, that competition policy should not be confined to the enforcement of the EU competition rules, as set out in the Treaty, but should seek to promote and enhance international restructuring and trade flows. Competition policy should also be flexible, without the undue sacrifice of legal certainty, and be capable of adapting to new trade and business environments -for example, to accommodate the distinct trend towards the "globalisation" of markets and the consequences likely to flow from the significant enlargement of the EU which is contemplated.

CEFIC is clearly of the view that competition policy should not be seen as something which exists in opposition to industry in the EU. On the contrary, it should serve to complement industrial effort and assist in establishing a regime under which the chemical industry is able to compete on equal and fair terms with its many world-scale competitors.

This paper sets out the manner in which CEFIC considers competition policy in the EU should develop and describes those considerations to which such policy should have regard and certain of the more important criteria by which its efficacy should be judged.

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Statement on Principles and Competition Policy Issues

Revision of the Treaty – Reaffirmation of the Commission's Powers

The representatives of the Member States, at the Amsterdam Summit in June 1997, rejected the proposal for a separate European competition authority and reaffirmed the powers of the Commission regarding Competition Policy under the Treaty.

The chemical industry welcomes this reaffirmation and the fact that, in general terms, it is the Commission which deals with issues of Competition Policy at European level.

It is true that Competition Policy has sometimes been viewed by industry with some concern, and on occasion irritation, insofar as it has at times appeared, at worst, as unsympathetic towards broader industrial objectives, and at best, as demanding procedures which are both bureaucratic and administratively burdensome.

However, it would be wrong to equate Competition Policy only with the Commission's actions against alleged "hard core cartels". Indeed, it embraces wider objectives which, it is recognised, the Commission seeks to achieve, especially, in recent years. This movement towards action in a broader context is appreciated by CEFIC members.

Also welcomed are the efforts of the Commission to liberalise certain state monopolies which were supported by the last Treaty revision. CEFIC is particularly keen to have the effective pursuance of the continuing liberalisation of the energy market.

Enlargement – Agenda 2000

The process of enlargement raises serious issues in relation to competition policy, including state aid. The chemical industry would urge the Commission to put in place the necessary arrangements to enforce competition policy whilst reflecting the fact that market integration within states adhering to the EU will be at a different stage of development from that which applies in the EU as constituted at present. This factor will require that competition policy be applied in such a manner that it should avoid chemical companies in the current EU suffering a detriment because of the existence of those different levels of integration mentioned above.

In parallel with the enlargement negotiations, the Commission is also pursuing a policy of decentralisation of the administration of competition policy. The challenge for the Community will be to avoid a situation where either the local administrative bodies or the local courts in the new Member States are allowed a greater role than is appropriate, given their initial inexperience in EU competition matters. This will require that people working in the national judicial system and authorities but also local companies have a sufficient understanding of EU competition law.

The chemical industry relies on the Commission to secure fair and objective application of competition policy law by national authorities in the new Member States, under the supervision of the European courts, in accordance with the Treaty.

In this context, the chemical industry submits that it is timely for the Commission to

undertake a process of at least approximation of the various national competition laws, including those of the current EU Member States. This is seen as a crucial requirement, given the fact that membership of the EU is likely to increase drastically, and that the chemical industry operates at least Europe-wide. This is a very important consideration as there is a significant number of cases in which it is not possible to take advantage of the "one stop shop" facility offered by the Commission and there is a tendency for the Commission to increasingly involve national authorities including for the application of EC competition set of rules.

Regarding mergers, in particular, CEFIC requests that the Commission consults industry, to assess the application of the revised Merger Control Regulation, as applied since 1 March 1998. This could be done three years after that date, with a view to determine whether the new system is effective in general and, in particular, whether it has taken properly into account the consequences which flow from extending the scope of the Merger Control Regulation to a larger number of mergers, speedy procedures, and full function joint ventures, in the new geographical environment.

This is important since chemical companies that conduct their operations at European level, may be faced with the possibility of having to notify up to eventually 18 national authorities.

More generally, CEFIC appreciates the Commission's decision to review most of the applicable rules (to improve them and, possibly, simplify them), including those on state aid, before enlargement takes place.

Modernisation of Competition Policy

Regarding Articles 85 and 86 of the EC Treaty, CEFIC is of the opinion that the Commission in reviewing its various applicable rules, should take into account the following parameters :

- Globalisation of markets. This is particularly true for the chemical industry.
- New business structures and organisation.
- Increased need for enhancing competitiveness, and creation of level playing fields with the rest of the world.
- Proper regard to health, safety and environment requirements.
- The integration of the Single Market which is not yet fully achieved.
- The substantial body of case law which has developed with respect to competition, while companies are by now generally aware of the principles of the law.

Against this background, CEFIC would advocate a less restrictive and formal approach, including a reduction in bureaucratic requirements and automatic notifications. This would obviously assist the chemical industry but it will also enable the Commission to better use its resources and to concentrate on the most significant and important cases as well as taking up and investigating complaints.

Regarding state aid, the members of CEFIC encourage the Commission to pursue its efforts to progressively reduce state aid, and to review its rules. The chemical

industry suggests that the Commission, in carrying out this review, takes into consideration the following needs:

- Simplification of the rules and procedures applicable.
- Transparency of the cases reviewed.
- Effectiveness of enforcement.
- Monitoring both before and after the aid is granted.
- Full consideration of third party rights.

Challenge of Markets, Promotion of New Investments in the EU, and Competition

CEFIC stresses that the chemical industry, comprising large, medium and small enterprises, is involved at local, national, European and indeed international levels. Trade has a major importance for it, a fact that cannot ever be overemphasised.

It is important therefore that competition policy should promote international trade flows, rather than having a restrictive effect, when Articles 85 and 86 do not demand such an effect. A too bureaucratic and theoretical approach would not serve this objective and not correspond to the chemical industry needs.

It is also important that competition law should not remain static, but should be sufficiently flexible to allow adaptation to necessary changes in industry -and to international markets with which the chemical industry is increasingly faced.

Furthermore, new investments in the EU should be treated positively by competition authorities. Indeed, it may sometimes be the case that companies willing to invest in the EU are afraid that their contractual arrangements would only be valid for a limited period, much too short with a view to assuming a normal pay-out of the investment.

Competition Policy and Innovation

Competition law and industrial property rights such as patents and trade marks, are sometimes seen as two opposing systems which need to be reconciled.

Innovation is crucial to the chemical industry. Patents are the key to translating such innovation into commercial success and enhancing competitiveness. In this context, patent protection is the linchpin to the process of innovation.

The Commission has used EU Competition Policy as a means to furthering the objective of completion of the Single Market and in doing so, has somewhat undermined the value of patent protection. This is seen in the way in which competition rules have been applied to parallel imports and EU patent regional exhaustion.

Although the chemical industry accepts this objective, it firmly believes that there

should be no further weakening of the value of industrial property rights, in particular, when applying related principles at international level.

Furthermore, CEFIC supports any regime that would encourage and facilitate technology transfer, rather than discouraging it by application of over bureaucratic demands.

The Euro

The introduction of the Euro will further facilitate the achievement of the Single Market, and where Competition Policy is concerned, it will lead to greater transparency, notably in relation to prices, to the benefit of the final consumer.

This should not however prompt the Commission to apply competition rules too rigidly and automatically, since there will be factors to be considered, such as:

- In addition to the direct consequences and adaptation to the new European currency, the industry would need time to adapt to the "new market" place to be created and that would represent a necessary, but indirect cost.
- Initially, there would be different zones, composed of Member States either in or out the system. This would demand further flexibility from the chemical industry, for which the market is often EU-wide.
- Companies are sometime faced, and this will not be changed by the use of the Euro, with the necessity to adapt their price, to meet local cross border competition (with regions outside of the Community), or global competition.
- Price differences may also be justified by objective criteria often encountered by the chemical industry. For example, regarding transportation: packaging variations (and so, cost variations) due to difference of climate.

Health, Safety, and Environment Requirements

Health, Safety and the Environment represent important values in society today. The chemical industry, as evidenced by its Responsible Care Programme, is committed to constantly improve its performances in these areas.

Competition Policy should acknowledge these objectives and not impede their fulfilment by the industry.

This applies to "general measures" such as the so-called voluntary agreements and phase out, as well as to other more precise measures and behaviour which are part of the daily business of chemical companies, for example regarding the transport and delivery of products. Measures of this kind are designed to avoid damage to the environment, protect the safety of workers and the health of the consumer. These objectives also generally correspond to those included in international conventions.

Therefore, the chemical industry asks the Commission to facilitate the possibility for the industry either individually or collectively, to be able to go beyond the current applicable texts of regulation, in relation to Responsible Care, the well recognised

programme based on voluntary initiatives, should the need to do so be objectively justified.

Competitiveness — Co-operation and Restructuring

The European chemical industry is a mature industry, which significantly contributes to scientific progress, wealth and employment in the EU. However, it is often subject to profound cyclical variations in supply, demand and production. Therefore, it is crucial that Competition Policy incorporates adequate measures to enable the industry to adapt its structures and improve its competitiveness.

Co-operation between undertakings is very important in this context. Co-operation is generally aimed at improving and can improve efficiency. Competition Policy needs thus to promote certain type of co-operation in those areas where economy of scale is vitally needed, such as for example, certain R&D agreements.

Accordingly, it is necessary that the authorities lend support to the creation of the necessary entrepreneurial climate and allow restructuring where that is required. It is submitted by the chemical industry, therefore, that the Commission should view with pragmatism large operations which may be the natural product of the restructuring process aimed at enhancing the industry's competitiveness on the world scene.

In this context, initiatives to carry-out benchmarking exercises ought to be fully supported by the Commission, even if it implies the use of "sensitive data", provided the necessary mechanisms to preserve confidentiality are in place.

Globalisation — The International Scene

The trend towards globalisation of the chemical industry, amongst other, is today a reality. This is a trend which will undoubtedly continue and influence many aspects of EU Competition Policy, including most of those mentioned in this Position Paper.

Therefore, CEFIC believes Competition Policy should accommodate this trend. The Commission should pursue its efforts to address this issue at all levels, whether at bilateral or multilateral (including at WTO level). The chemical industry is anxious that any measure contemplated in this regard should not put the European industry at a disadvantage and should be made by reference to a number of tests, including:

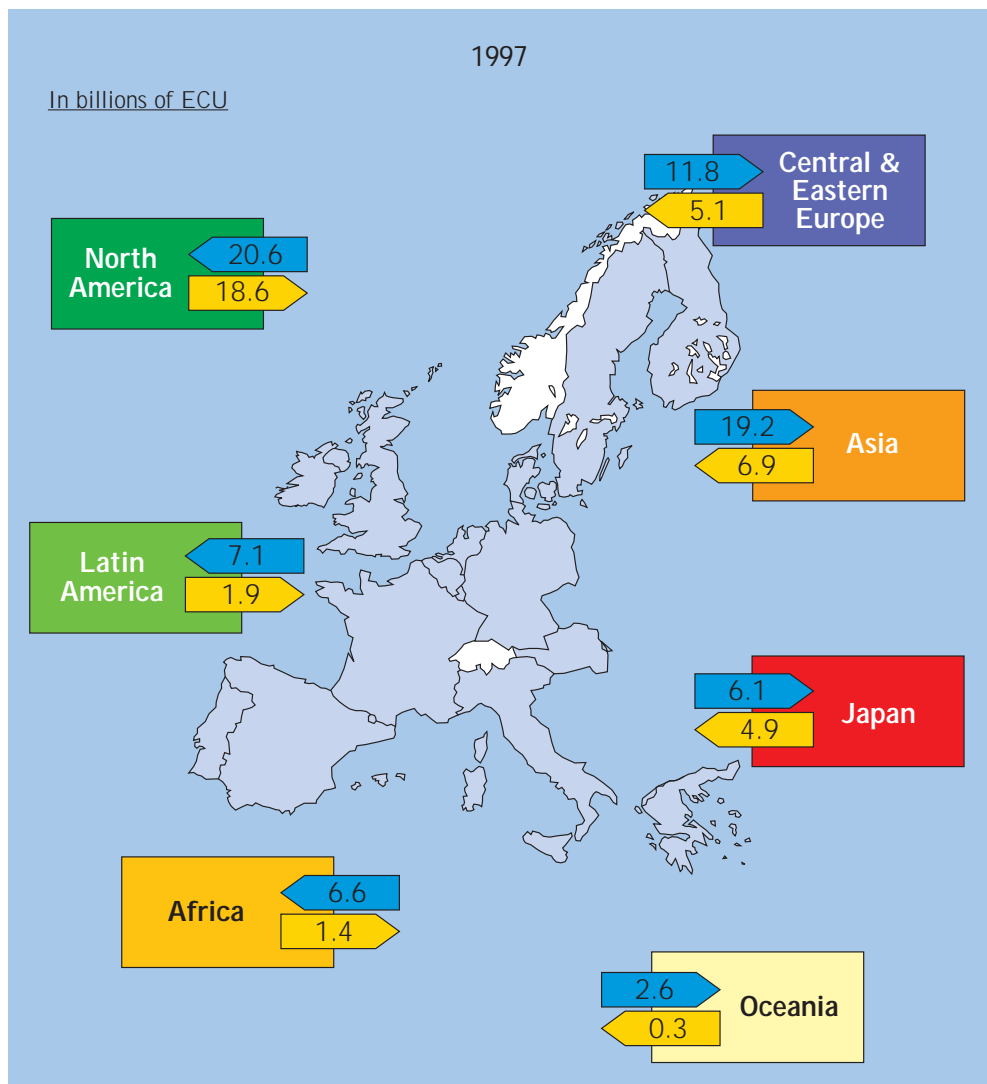
- Avoidance of creation of administrative bureaucracy.
- Respect for the genuine rights of industry, as for example the confidentiality of business information.
- Promotion of trade and business.
- Assessment of all direct and indirect consequences, for the industry, including the chemical industry.
- The creation of an acceptable degree of legal certainty for economic operators.

Did you know :

■ CEFIC represents the chemical industry located in Europe, ie : more than 40,000 large, medium and small companies which :

- account for : 30 % of the world chemicals production
- employ about 2 million people.

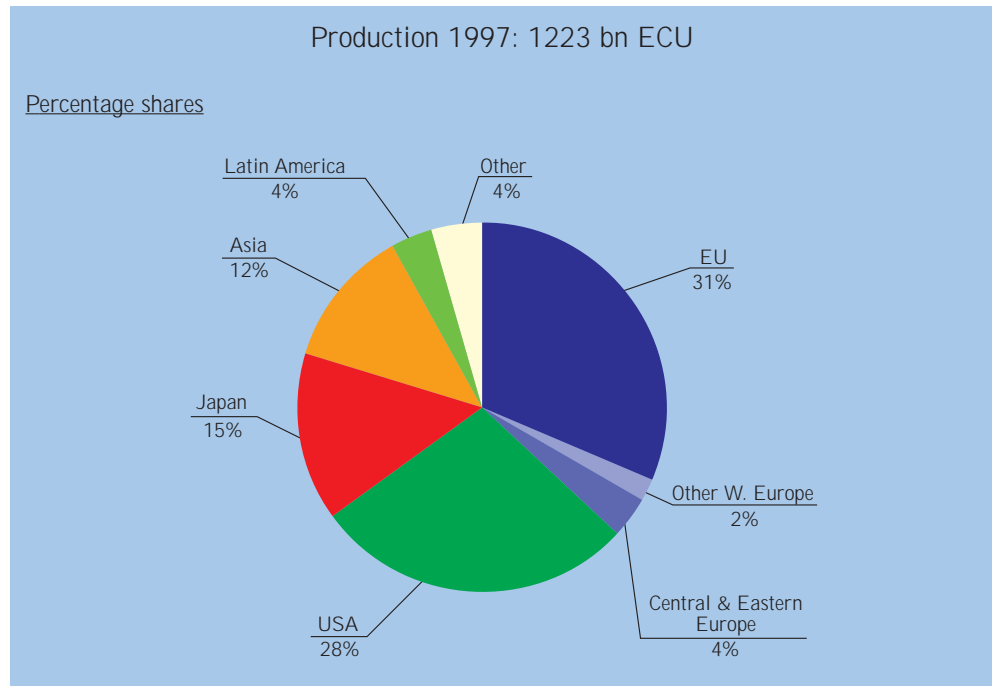
■ Extra-EU chemical trade with major geographic blocs



Sources : ESCIMO, COMEXT & CEFIC-Ecostat analysis.

Notes : Asia does not include Japan.

■ **Geographic breakdown of world chemicals production (*)**



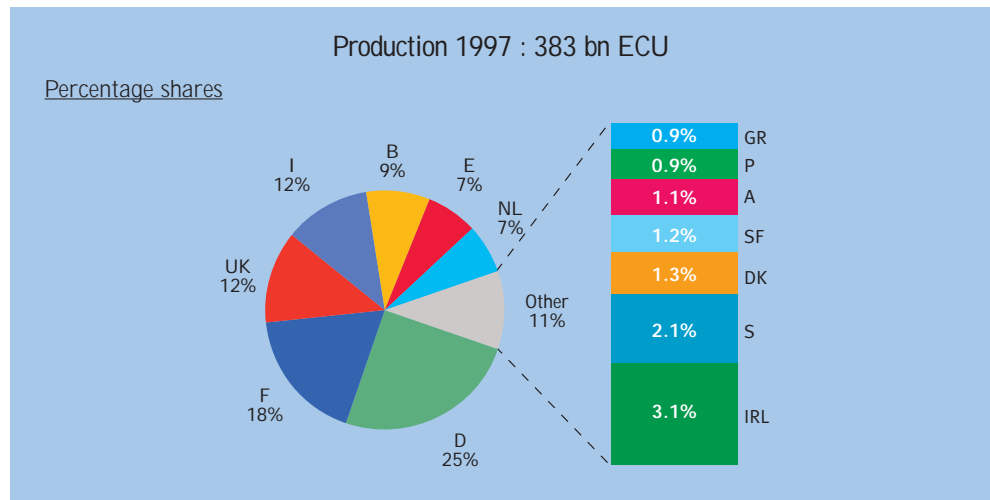
Sources: ESCIMO, UNIDO Industrial Statistics & CEFIC-Ecostat analysis.

Notes: Estimated world production; estimates for all regions except EU, USA & Japan.

Other = Africa, Oceania, Canada, Turkey, Malta & other Balkan States.

(*) Strictly speaking, value of production sold, augmented by value of sales of products purchased and resold in their original condition.

■ **Geographic breakdown of the EU chemical industry production (*)**



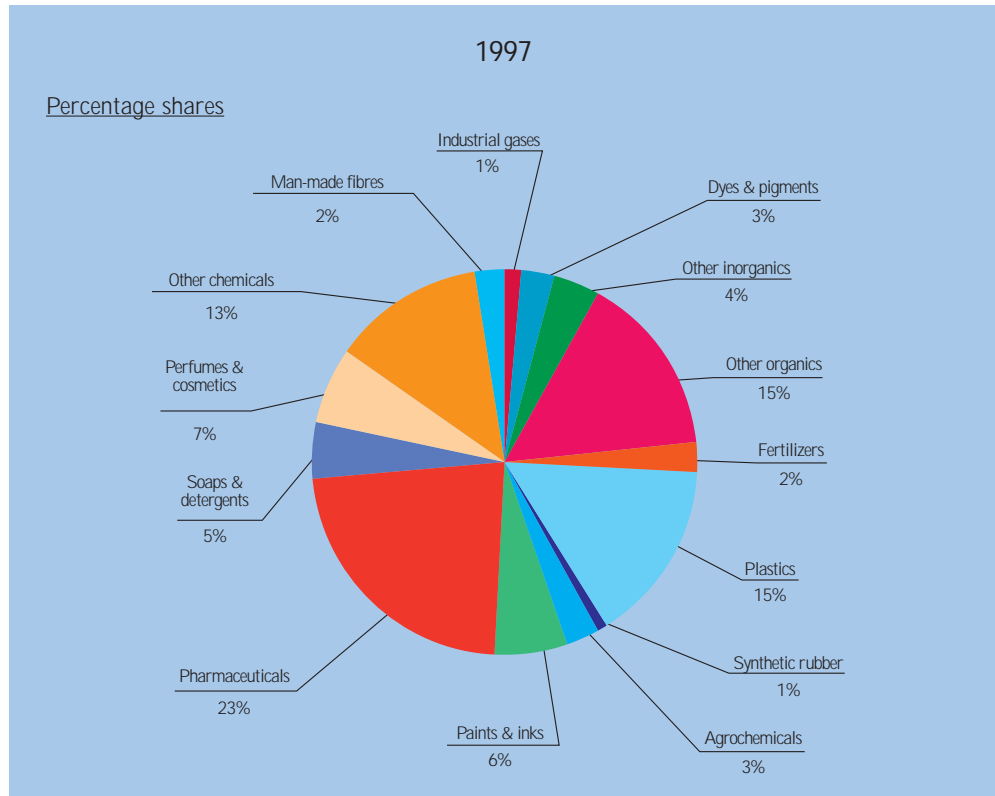
	1997 Production In mio ECU	1997 Production In mio ECU	
Germany 16BL (D)	96 161	Ireland (IRL)	11 973
France (F)	68 965	Sweden (S)	8 203
United Kingdom (UK)	47 194	Denmark (DK)	4 890
Italy (I)	44 983	Finland (SF)	4 485
Belgium (B)	32 711	Austria (A)	4 256
Spain (E)	26 388	Portugal (P)	3 621
the Netherlands (NL)	25 740	Greece (GR)	3 262
Total EU		382 833	

Sources: ESCIMO & CEFIC-Ecostat analysis.

Notes: the data presented above are not perfectly comparable. Indeed, there is no common definition of the chemical industry across countries. In particular, fibres, rubber and plastic processing can be either included or excluded.

(*) Strictly speaking, value of production sold, augmented by value of products purchased and resold in their original condition.

■ Sectoral breakdown of the EU chemical industry production (*)

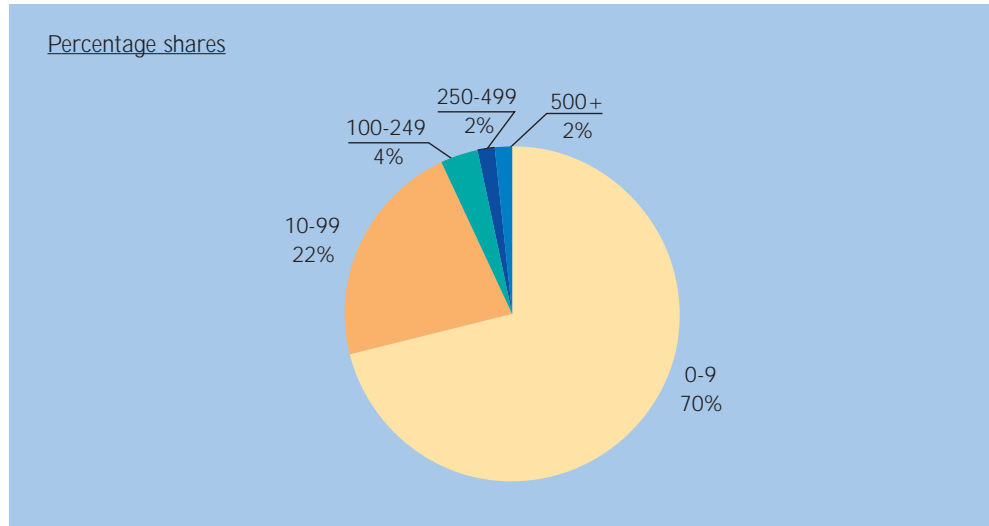


Sources: ESCIMO & CEFIC-Ecostat analysis.

Notes: Weighted average calculated on the basis of data for D, F, UK, I, NL & E.
(Weighting factor = 1997 value of production)

(*) Strictly speaking, value of production sold, augmented by value of sales of products purchased and resold in their original condition.

■ **Number of enterprises by employment size-class in the EU chemical industry**



Sources: EUROSTAT, Enterprises in Europe & CEFIC-Ecostat analysis.
Note: 1992 data.

More information can be found in CEFIC publication "Facts & Figures – The European chemical industry in a worldwide perspective", published every year and available either on request or on CEFIC Web side : <http://www.cefic.org>