

INSTITUT D'ECONOMIE INDUSTRIELLE / La Poste

6th Conference: Regulation, Competition and Universal Service in the Postal sector

Session 4

Competition and Strategy

Competition Policy

- A tool that cannot fail in times of crisis

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State aid control

Toulouse, 26 March 2010

Outline

- The Crisis and the EU response
- Role of Competition policy in times of crisis
 - Antitrust and merger control
 - State aid control
- The enforcement of State aid rules
 - The Banking Communications
 - The Temporary Framework
- Conclusions

The Crisis

2007 / 2008 / 2009 / 2010 ...

■ Severe crisis

- ❑ Numerous failures in the economic system
- ❑ Spread worldwide like wildfire
- ❑ Outmoded institutional structure: Global economy

■ Systemic crisis

- ❑ Financial system collapse
- ❑ Entire set of rules of economic system
- ❑ Regulatory oversight

■ Review Institutional / Regulatory frameworks

■ Competition policy: Relaxation ?

The EU Reaction

European Economic Recovery Plan

- **Guidelines on Aid to Financial Institutions** (1st: Oct. 2008)



Banking
Communication

- **European Economic Recovery Plan** (EU Council, Dec. 2008)
 - Coordinated response (Commission / Council / Member States)
 - Two objectives: Purchasing power + Long-term competitiveness

Measures

- Budgetary stimulus € 200 000 mill. (National 80 % / EU 20 %)
- Partnerships PP
- Investments in Greener economy through technology
- Acceleration of Structural Reforms
- Maintenance of Competition policy

- **Adaptation of State Aid control** (Dec. 2008)



Temporary
Framework

Diagnosis

Causes / Effects

Economic Policy

- Trade imbalances
- Excess of liquidity
- Too low interest rates

Regulation

- Lenient prudential rules
- Inadequate Corporate regulation
- Inadequate Accounting standards

Undertakings

- Biased incentives (Rewards packages)
- Ineffective Corporate Governance (Best practices)
- Untrustworthy risk calibration

- Real estate bubble
- Financialisation
- Over-leverage
- Over-confidence

- Uncontrolled securitisation (Derivatives)
- Lack of transparency (Opacity)
- Risk-blurring
- Questionable Accounting and Disclosure practices

- Excessive risk-taking
- Lack of reliability

Role Competition / Competition policy

Competition Policy

- *Any failure* ?



- **At risk**
- Insolvencies / Lay-offs



- Protectionism
- Interventionist Industrial Policy



State aid control

Problem ?



Antitrust control

Unnecessary ?

Antitrust control

Effects of relaxation

Relaxed Antitrust control



Counterproductive

- Selection Efficient /Inefficient firms
 - Promotion of productivity within and between firms
 - Keep downward pressure on costs
 - Undue transfer of rents from consumers to undertakings
 - Counter stimulus actions and delay recovery
 - Double penalization : Lay-offs + Purchasing power depression
-
- Lasting negative effects of decline in competition culture

Antitrust control

Effects of relaxation

Abuse control

- Particularly vigilant in crisis / Fertile period for exclusionary conducts against smaller, more financially constrained rivals

Cartel control

- Crisis cartels : Increased tendency / Fossilize inefficient market structures + Delay recovery / Pass on to consumers consequences of crisis

Merger control

- Failing firm defence : Stability enhancing rents may not work / Admissible only when loss of efficient resources

State aid control

Effects of relaxation vs. Targeted aid

Relaxed State aid control



Counterproductive

Financial crisis / Credit crunch



Market failures



Coordination failures

- Risk aversion / Mispricing
- Social cost > Private cost

- Self-fulfilling perceptions
- Amplifying dynamics

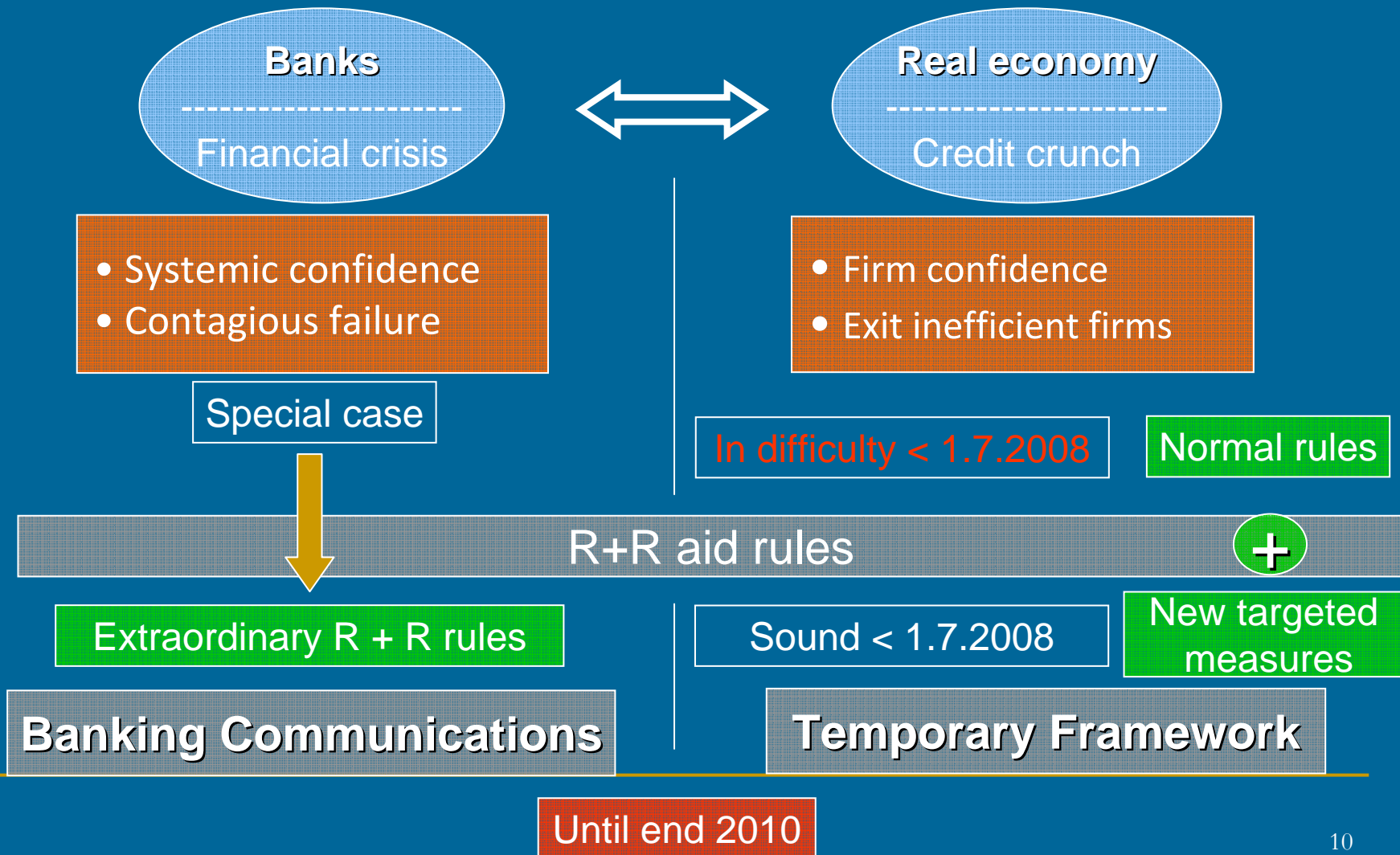
Adaptation:
Targeted State aid types



Efficient

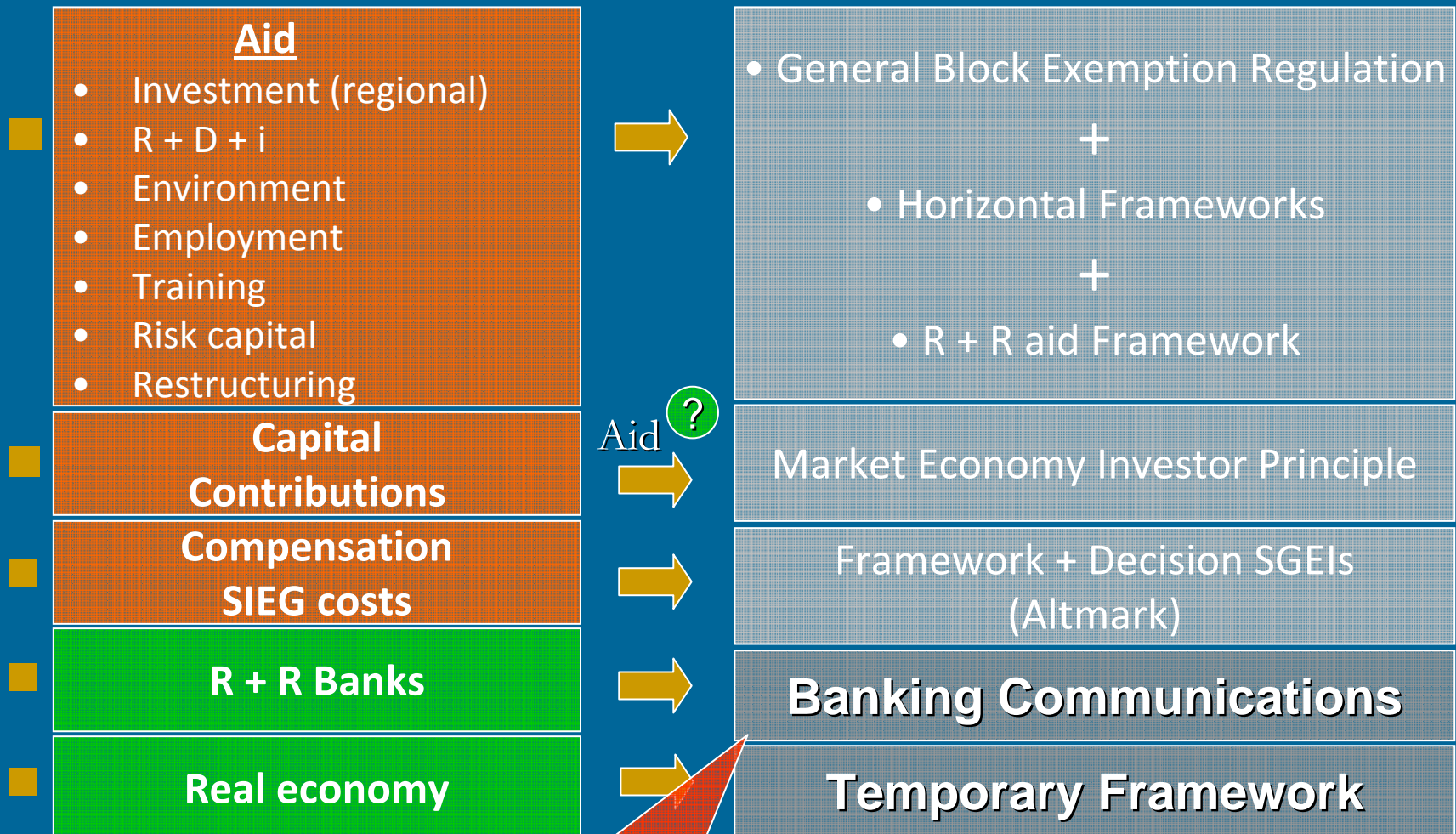
State aid

Differentiated approach



State aid

Compatibility Assessment frameworks



Article 107 (3) b) TFEU

Until end 2010

Banking Communications/Temporary Framework



Banking Communications

I Guarantees
Oct. 2008

Common Principles

- **Underlying pples. of R + R Aid Framework apply**
 - Viability
 - Burden sharing
 - Limited distortion
- **Schemes / Individual awards**
- **Non-discriminatory access**
- **Limited in time and scope**
- **Adequate remuneration with incentives for repayment**
- **Constraints on behaviour (Not undue expansion)**

Banking Communications

II Recapitalisation

Dec. 2008

- **Bank differentiation**
 - Fundamentally sound
 - In distress
- **Schemes (6 months control *ex post*)**
- **Remuneration**
 - Sound = Price corridor [7 – 9,3 %]
 - Distressed = Costlier [Closer to actual market levels 15%]
- **Exit mechanism / Incentives for capital redemption**
- **Distressed : Notification of Restructuring Plan in 6 months**

Banking Communications

III Impaired assets

Feb. 2009

- Schemes with 6 months window (incentive effect)
- Transparency and full disclosure prior to aid
- Asset valuation at national level
 - Method : Real economic value (rather than Market value)
+ Remuneration
- Implemented by independent expert / Certified by bank supervisor
- Free choice of model: Bad bank, Insurance, Swap, Hybrid
- Individual restructuring / viability plan within 3 months

Banking Communications

IV Restructuring

July 2009

- **Complements three previous Communications**
- **Guidance: Transparency, Predictability and Equality of treatment**
- **Restructuring notification required:**
 - Distressed bank: Recapitalisation
 - Any bank received aid > 2% RWAs (Otherwise 6-monthly report)
- **R + R aid Pples. continue to apply but adapted to the specific temporary circumstances of the financial crisis**
 - Viability : Stress test / Restructuring up to 5 years
 - Adequate burden-sharing : Own contribution < 50 % with claw-back clauses / No subsidies for shareholders' remuneration
 - Limit distortion : If structural measures not possible, behavioural measures / No one-time-last-time pple.

Aid to Banks

Statistics (until Dec. 2009)

**Banking
Communications**



100 Authorisations / 10 Investigation proceedings

Guarantees



€3 trillion

Recapitalisation



€0,3 trillion

**Impaired assets
/Liquidity**



€0,5 trillion

EU: 30 % GDP

Temporary Framework (Dec. 2008)

Objectives

Coordinated response

- ❑ Transparency / Level playing field

New Measures

- ❑ Article 107 (3) b) TFEU: *“Remedy a serious disturbance in the economy of a MS”*
- ❑ Address market failure: Higher perception of risk

Objectives

- ❑ Facilitate access to financing
- ❑ Limited amount of aid: Rapid and effective
- ❑ Encourage to continue investing in sustainable technologies

Limitation in time

- ❑ Until 31 December 2010 (Can be extended)

Temporary Framework (Dec. 2008)

Eligibility

Complementary to existing aid instruments

- General Block Exemption Regulation (GBER)

Scope

- All sectors
 - SMEs / LEs
 - Sound as at 1 July 2008
 - Respect the single market rules
- **LEs:** Definition R + R Aid Framework (Art. 1.7)
- **SMEs:** Definition GBER (Point 2.1)

Cumulation

- Within the limits established in the relevant frameworks

New measures under the TF

I Compatible limited amount of aid

II Guarantees

III Subsidised loans

IV Subsidised loans for production of green products

V Other Measures

- ❑ Temporary adaptation of the Risk capital Framework
- ❑ Simplification of Escape-clause of aid to Export-Credit Insurance

I Compatible limited amount of aid

- Only admissible if granted under an Aid scheme
- 500 000 € per undertaking
- Cumulation with *De minimis* aid
- Applies to Transport / Not to Fisheries, nor Agriculture
- Any use, except favouring Exports or national Production

II Guarantees

- **Reduction of the safe-harbour premiums**

- Commission Notice on Guarantees
- 25 % SMEs
- 15 % LEs

- **Granted until 31.12.2010 / During 2 years**

(8 more under safe- harbours)

- **Investment / Working capital**

- **Limits**

- Loan: Salary bill 2008 / New: Estimate (First two years of operations)
- Guarantee: 90 %

III Subsidised loans

- **Reduction of the safe-harbour rates**
 - Commission Communication on Reference rates
 - IBOR 1 year (3-month average) + Margin 60 – 1000
(Solvency /Collateralisation)
 - Compatible rate: CBOR + Premium = Difference average 1 Y IBOR
and average CBOR (1.1.2007-30.6.2008) + Risk premium
- **Investment / Working capital**
- **Loans granted until 31.12.2010**
- **Subsidy applies to interests paid until 31.12.2012**

IV Subsidised loans for Green products

- **Reduction of the TF Subsidised loans rates**
 - 50 % SMEs
 - 25 % LEs
- **Investments for New projects / Existing (*where necessary*)**
 - Early adaptation to / Going beyond future standards
- **Granted until / Investment started before 31.12.2010**
- **Subsidy applies during 2 years from loan granting**

V Other Measures

Risk Capital Communication

■ **Temporary adaptation of compatibility**

- Increase in the maximum tranche of investment in a target SME per each period of 12 months

€ 1.5 million



€2.5 million

- Reduction in the minimum funding provided by private investors

50 %



30 %

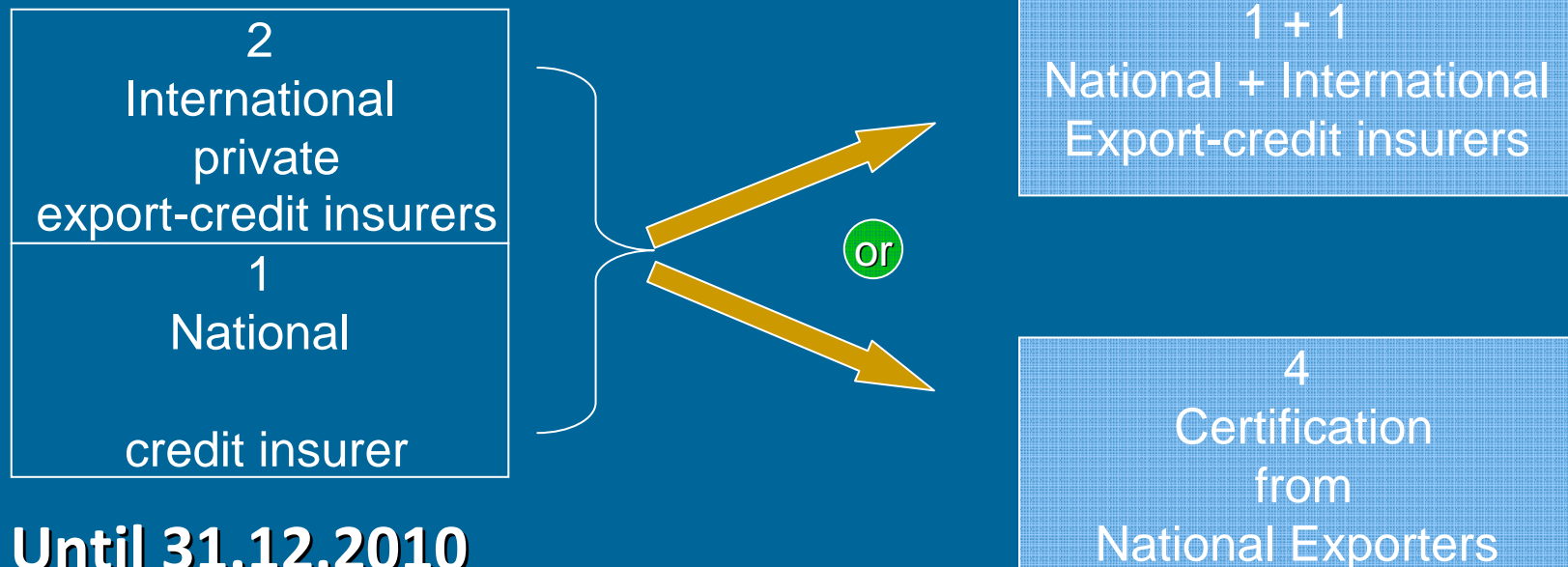
■ **Until 31.12.2010**

V Other Measures

Export-Credit Communication

- **Simplification of requirement to use “Escape-clause”**

[Allows to cover marketable risks with aid if refusal of coverage is proven]



- **Until 31.12.2010**

Temporary Framework aid

Statistics (until Dec. 2009)

Temporary Framework



70 Authorisations / 1 Investigation proceeding

500 K

Guarantees

Soft loans

Green products

**Risk capital
& Others**



€30 billion

€55 billion

€45 billion

€20 billion

€15 billion

EU: 1,5 % GDP

Conclusions

- **Competition policy cannot fail in time of crisis**
 - Robust & Rigorous / Relaxation is counterproductive
 - Antitrust control more vigilant / Recession is a culture medium for market indiscipline
 - Review of working priorities by Competition authorities
 - State aid control adapted and applied in the light of the specificities of the circumstances of the financial and real economy crisis
- **Exit strategy: Withdrawal or Phasing-out of temporary measures**
 - In principle by end 2010
 - Careful study of how and when not to hamper recovery
- **Regulatory and Supervisory reforms: Competition friendly**



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