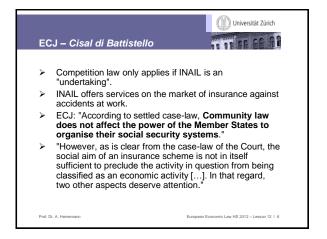
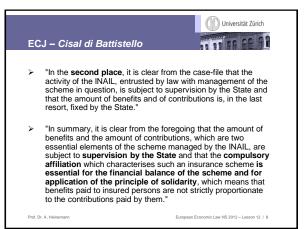


a) <sup>°</sup>	The State as an Unde	Universität Zürich
٨	Competition law applies to	o all <b>undertakings</b> .
٨	activity, that is, an activity	Any entity engaged in an economic consisting in offering goods or t, regardless of its legal status and ced
→	Also the state, including a competition law.	Il subdivisions, is subject to general
<b>→</b>	But only as far as the state (e.g. postal services, telecom supply of water, gas and elec	nmunication, employment agencies,
→	Competition law is not app authority.	blicable to the exercise of public
Dead D	r. A. Heinemann	European Economic Law HS 2012 - Lesson 12 / 4



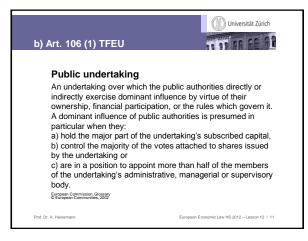


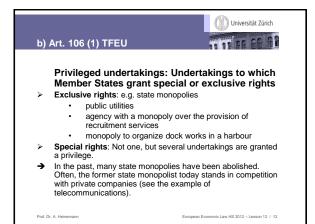
EC	CJ – Cisal di Battistello	
*	"In the first place, a number of elements tend to demonstrate that the insurance scheme in question in the main proceedings applies the <b>principle of solidarity</b> ."	
>	"The absence of any direct link between the contributions paid and the benefits granted thus entails solidarity between better paid workers and those who, given their low earnings, would be deprived of proper social cover if such a link existed."	
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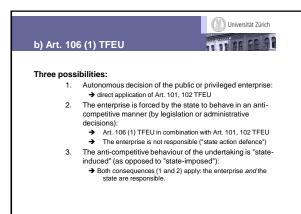
b) A	rt. 106 (1) TFEU
vrt.	106 (1) TFEU
	"In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 18 and Articles 101 to 109."
	- Art. 18 TFEU: prohibition of discriminations on grounds of nationality
	- Art. 101 et seq.: General competition law
	- Art. 107 et seq.: Aids granted by states





b)	Art. 106 (1) TFEU
>	EU competition law does not only apply to the behaviour of public or privileged undertakings, but also to competition-related acts of Member States themselves.
>	Member States may not adopt measures encouraging undertakings to conclude cartels (Art. 101 TFEU) or to abuse a dominant position (Art. 102 TFEU).
~	In every case, it has to be established if the (public or privileged) undertaking is responsible for a competition law violation, or if it is the State.

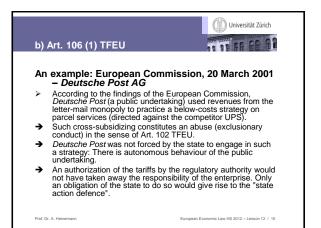
Prof. Dr. A. Heinem



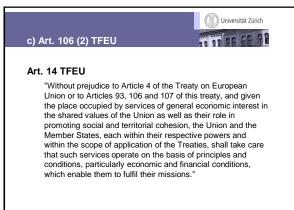
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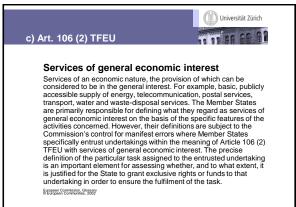


Art. 106 (2) TFEU "Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules doe obstruct the performance, in law or in fact, of the particula tasks assigned to them. The development of trade must rule be affected to such an extent as would be contrary to the interests of the Community."	Zürich
general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules doe obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must r be affected to such an extent as would be contrary to the	
	s not ar



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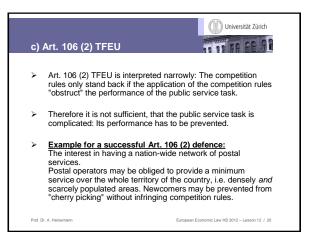
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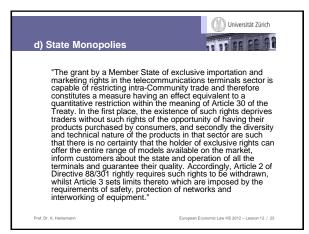
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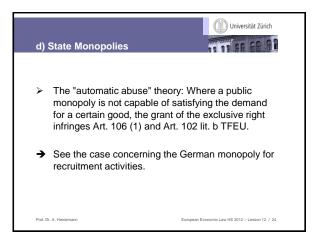
c)	Art. 106 (2) TFEU	Universität Zürich
٨	Services of general economic energy telecommunication postal services transport water waste-disposal services	
٨	Revenue-producing monopoli According to the dominant opi discriminate in order to genera	nion, it is not allowed to
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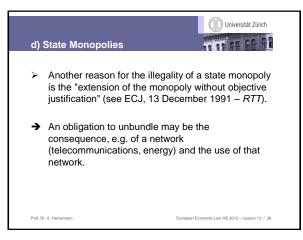
d) State Monopolies	Universität Zürich
<ul> <li>certain activities in the → Member States may ch</li> </ul>	ber States governing the
<ul> <li>etc.).</li> <li><u>But:</u> Commission and ECJ requirements, providing for public and private undertal neutrality").</li> <li>→ level playing field</li> </ul>	I have given strict requality of treatment of
Prof. Dr. A. Heinemann	European Economic Law HS 2012 - Lesson 12 / 21

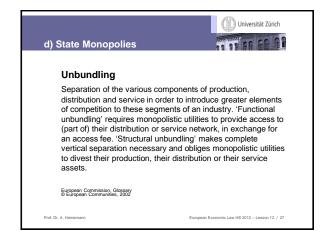
d) State Mo	nopolies	Universität Zürich
	tence of state mono under legal scrutiny	
· · · ·	April 1974 – <i>Sacchi</i> tate monopolies are a	
terminals	March 1991 – Telec s equipment tate monopolies may	communications
fr		etition rules). In absence
Prof. Dr. A. Heinemann		European Economic Law HS 2012 - Lesson 12 / 22



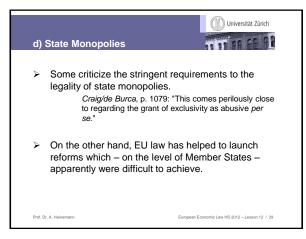


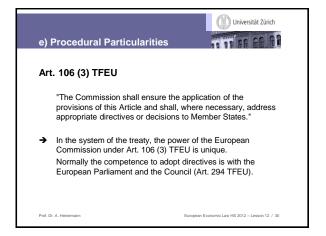
d) State Monopolies	Universität Zürich
≻ ECJ, 23 April 1991 – Hö	ifner and Elser
two provisions [sc. Art. 106 in question, merely by exerc cannot avoid abusing its do A Member State creates a a service is limited when the u exclusive right extending to manifestly not in a position 1 market for activities of that I such activities by private co maintenance in force of a st	situation in which the provision of a undertaking to which it grants an executive recruitment activities is to satisfy the demand prevailing on the sind and when the effective pursuit of mpanies is rendered impossible by the tatutory provision under which such non-observance of that prohibition
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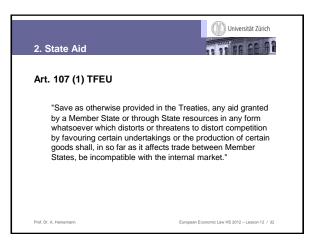


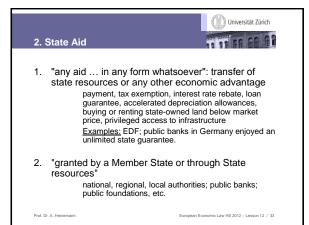
d) State M	onopolies	Universität Zürich
	ean Commission, 7 Oc nská Pošta	tober 2008 –
•	An amendment to Slovakia's extended the monopoly of th <i>Pošta</i> ) to hybrid mail service open to private competitors).	e incumbent (Slovenská s (which previously were
•	Competitors are prevented fractivity.	rom continuing their
•	hybrid mail services: content transferred to an operator wh delivers the letters.	
•	The amendment infringes Ar Art. 106 TFEU: extension of	t. 102 in conjunction with a dominant position.
•	No Art. 106 (2) TFEU defend that the extension of the more finance the universal postal s	ce: It cannot be shown nopoly is necessary to service.
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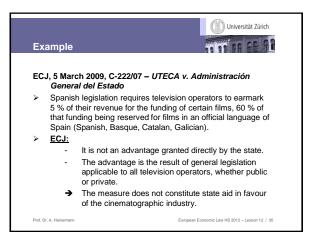


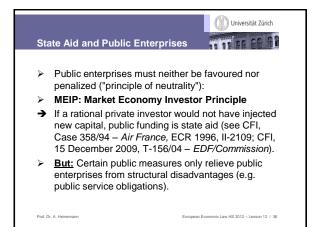
2. State Aid	Universität Zürich
<ul> <li>State aid may confer s certain enterprises thu affecting trade between</li> </ul>	control in the internal market. EU
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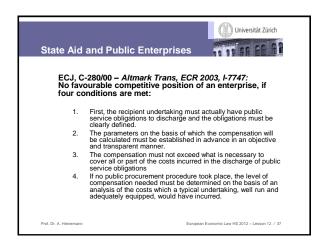


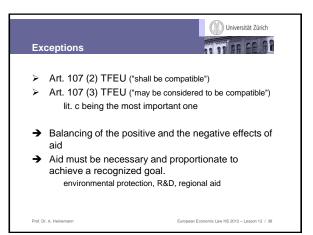


2.	State Aid	Universität Zürich
3.	"distorts or threatens to disto favouring certain undertaking certain goods" selectivity as opposed to nation- and sector-wide fi	gs or the production of general measures (e.g.
4.	"affects trade between Mem A potential effect is suffic	
Prof. D	Dr. A. Heinemann	European Economic Law HS 2012 - Lesson 12 / 34









Procedure	Universität Zürich
grant an exceptional pe Art. 108 (3) TFEU: Mer Commission in advanc If not, the Commission and fix a deadline.	stances", the Council may ermission. nber States have to inform the
<ul> <li>Unlawful aid has to be recovere question. Only exception: recov</li> </ul>	
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St	ate Aid in the Times of Crisis
Cra	aig/de Búrca, 4 <sup>th</sup> edition, p. 1095: "The second limb of this Article concerning serious disturbance to the economy of a Member State [sc. Art. 87 (3) lit. b EC] will only rarely be used, since the economic problem must afflict the whole of the national economy." (I)
Еι	Iropean Commission
<b>A</b>	Communication from the Commission - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis (17 December 2008, as amended on 25 February 2009);
٨	Communication from the Commission - The application of State aid rules to measures taken in relation to financial institutions in the context of the current diobal financial crisis (25 October 2008).

(M) Universität Zürich IL LE FE FE AR State Aid in the Times of Crisis n. 53 of that text: ۶ "The Commission has taken appropriate steps to ensure the swift adoption of decisions upon complete notification, if necessary within 24 hours and over a weekend." rescue aid: temporary assistance to keep an ailing firm afloat ۶ after six months: restructuring or liquidation plan
 "one time. last time" "one time, last time" ۶ restructuring aid: restoration of long-term viability • . compensatory measures: reduction of overcapacities • significant contribution of aid beneficiaries (50 % in case of large firms) • "one time, last time"

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