

LSE European Institute “Perspectives on Europe” public lecture

Next Steps in EU Antitrust Law: boosting national enforcement

Speaker: Margrethe Vestager, European Commissioner for Competition.

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Ladies and Gentlemen:

Thank you for the warm welcome. I've noticed that you have a tradition here at LSE of making us Danes feel at home.

Not least our Queen, Margrethe II, who studied here in the 1960s.

And in these dark days, what we're doing here this morning - people from different backgrounds, coming together to discuss the things that matter to us – well, that's more important now than ever.

Because it's a reflection of the free and open society we believe in.

The attacks in Paris last Friday were attacks on people who had joined together to share the experiences they loved, to live and to laugh.

The attacks have left us with a feeling of deep sorrow, for the victims and their families.

But they have also left a determination - not to be divided, not to give up our way of life. Not to stop working together for a better world.

In my area of responsibility – competition policy – we work together every day to try to make our economy work fairly for everyone.

You might have heard that I'm the person who enforces European competition law. But actually, I - or rather the Commission - only do a small part of that job.

If you think about it, that's not surprising. There are more than 25 million businesses in the EU. The Commission can only keep tabs on what a small fraction of them are doing.

So enforcing European competition law is – has to be - a huge team effort. The team is known as the European Competition Network. It's a pretty big team, with 29 players - the national competition authorities of the 28 EU countries, and the Commission itself.

To give you an idea of the division of labour, since 2004, the national competition authorities have taken 85% of all decisions that applied European competition law.

So it's impossible to really understand our competition enforcement system without understanding the ECN. That much I have learned during my first year in office!

That's why today I want to do two things. I want to tell why I think the ECN has been a success. And I want to look at what we could do - working with the national competition authorities, the European Parliament and national politicians - to make it work even better.

The ECN: A success story

At the turn of the century, our antitrust enforcement system was under severe pressure.

Businesses had to notify all potentially anti-competitive agreements to us in advance, unless those agreements complied precisely with some very detailed rules.

That system was unsustainable. The Commission was drowning in notifications. We had no scope to focus on the most important issues; the ones that affected consumers most. We needed to simplify and we needed to empower Member States and work closely with their national competition authorities.

So, in 2003, we ended the practice of notifying agreements in advance.

And we gave national competition authorities full powers to apply the EU competition rules.

To make sure that the rules were applied evenly, we set up the European Competition Network.

More than ten years later, we can see that the new system, and especially the ECN, has been a great success. That's because it makes the most of what each – the Commission and the 28 national competition authorities - can offer.

The national competition authorities bring a deep familiarity with their local markets. That local knowledge is hugely valuable, even when it's the Commission that investigates a particular case.

For example, the UK national authority – at that time the OFT – carried out its own investigation into makers of trucks.

After a review of the evidence and exchanges with the European Commission, the OFT concluded that the Commission should take the case forward as part of its on-going wider investigation of the European truck industry. UK consumers would be better served if the investigation was dealt with at European level.

Or take the food sector. This is an area where cooperation between the Commission and national authorities has been key.

Over the past few years, the action of national authorities has brought down the price of seeds for farmers, and busted national cartels in products like pasta and bread. Action at national level is essential as so many of the markets concerned are national or even local in nature.

The ECN also provides a platform for pro-competition advocacy. In 2012, for example, the ECN issued a resolution on the reform of the Common Agricultural Policy which fed into the review that was then on-going.

All this is possible because EU competition rules give us a shared set of goals. They ensure that the same standards apply everywhere, regardless of who enforces them.

The network also helps us to learn from each other. By regularly discussing issues and sharing experiences, we refine our thinking.

For example, some NCAs have been looking at the new challenges we find in digital markets.

The competition authorities of France and the UK issued a joint report on digital markets at the end of last year. Among other things, the report looked at how easy – or difficult – it is for consumers to switch from one digital ecosystem to another and to compare the costs of different systems.

In addition, the French and German competition authorities are about to conduct a joint study into how companies can gain market power by accumulating large sets of personal information – one of the issues in the “big data” debate.

That is an issue of Europe-wide interest where all contributions are welcome.

And the Commission? Well, our contribution is our European perspective. We coordinate the work of the whole ECN. And we deal with cases where the European perspective has added value – for instance those that affect several different countries.

Challenges

So I think the ECN has more than proved its worth.

But that's not to say that the system is perfect.

I said a moment ago that the competition policy standards are the same throughout the EU.

That's the principle.

But all competition authorities know that in the end, it's not about the rules. It's about how you enforce them.

Of course we discuss enforcement in the ECN. The network has issued a whole series of recommendations. But recommendations have their limits. Some authorities just don't have the legal powers to collect all the evidence they need, or to impose fines that are tough enough to deter cartelists. Or authorities don't have strong guarantees of their independence and impartiality.

That can cause problems for consumers and businesses.

Evidence-gathering

Let me start by looking at how we gather evidence.

Our leniency programme gives lower fines - or even no fine at all - to companies that tell us about cartels they are involved in.

For example, last month, the Commission took action against a cartel of makers of disc drives. Some of them had to pay fines of between 7 million and 37 million euro. The first to tell us about the cartel, as usual, paid nothing.

That's the sort of incentive that makes leniency programmes work. They keep cartelists constantly looking over their shoulders, wondering who is going to the authorities first. It becomes hard to maintain the confidence you need to keep a cartel going.

Which is just the way it should be.

But if every ECN member has its own leniency programme, how can a company be sure it is the first to approach every single relevant authority?

We have a system to deal with that, based on short applications that should protect an applicant's place in line. But some competition authorities don't recognise those applications, or they treat them in different ways. So it isn't always clear who is first in the queue.

And I don't need to tell a British audience about the importance of forming an orderly queue.

Of course, companies subject to our investigations must have their procedural rights respected. And that's a top priority. But there's also an issue with the type of evidence some authorities can collect.

These days, our personal information lives on smartphones, laptops, even in the cloud. It's the same for business information. You miss out on a lot of evidence if - like some authorities - you don't have the power to search that type of device.

Fines

The next issue is about how fines are set.

We need to make sure that forming a cartel is never a risk worth taking. Big fines are a central part of that.

But fines also need to be based on common principles, so that the same offence carries a comparable level of fine throughout the EU.

Unfortunately, we're not quite there yet.

Different principles apply in different countries. That means that the penalty for the same offence can be as much as 25 times higher in one EU country compared to another.

Or take another example. Some cartels go on for years, shifting money from consumers to cartelists with every single year that passes. In the summer, for example, the Commission fined ten companies for a series of food packaging cartels, some of which lasted for nearly eight years.

The fines should cover every one of those eight years. But some authorities can only impose fines that cover part of the period.

It's even possible, in some countries, to avoid paying fines altogether by restructuring the company that took part in the cartel.

The bottom line is that the price of getting involved in a cartel depends on who eventually takes the case. And that's bad news, because in a world of uncertainty, more companies will decide it's worth just taking the risk.

Independence

You won't be surprised to hear me say that we need strong competition enforcement. It sort of goes with the job. But I also think competition enforcement is essential if we want our economy to be fair and work in everyone's interests. Above all, in our citizens' interests.

Because I don't want to see a world where companies can agree to charge high prices to consumers with no fear of competition.

I don't want to see innovation crushed by powerful players with a vested interest in things staying the way they are.

So we need to make sure that competition works. That's what gives all companies – large and small – a fair, fighting chance to succeed on their merits.

And I think, by and large, that the public – in Britain and throughout the EU – shares these views.

But competition authorities need to show that they deserve the confidence of the public.

People need to know that competition decisions are taken for the right reasons. Not to favour one company or to comply with the wishes of a government. But to act for the common good; the good of the people of Europe.

There are two ways to ensure that trust. One is through formal guarantees that competition authorities will apply European law impartially, without taking instructions from anyone.

It sounds obvious. But sadly, not all national competition authorities benefit from those guarantees.

There's also another, less obvious, approach.

Competition authorities deal with powerful companies, influential governments, huge teams of lawyers. It's a job which needs capable, expert staff, with the right resources to assess the situation independently – and to defend that assessment.

Right now, not all authorities have that. Some don't have the resources to raid all the members of a cartel at once, which could give other cartellists time to destroy evidence. Others don't have the money to buy tools that can extract hidden evidence from a company's computer systems.

We need to fix that. The public needs to know that their competition enforcers have the resources to defend their interests.

Next steps

Of course, not every competition authority faces all of these issues.

And many national governments are already taking steps in this direction.

Here in the UK, for example, a new competition authority, the Competition and Markets Authority, has been in place for the last 18 months. It has gained stronger investigation and enforcement powers.

I can only welcome that.

But if you look around the ECN, you can see that there are still gaps. And I think the time has come to fill them.

We're already consulting on how best to deal with the issues I've been talking about today.

I hope you will contribute to this consultation. You have until 12 February to take part, so you still have a little bit of time to think about your answers.

The next step will be to consider whether we need EU legislation to address these issues and create a more effective ECN.

That means empowering national competition authorities with the tools they need to play a full part in applying European competition law. It's not about harmonising or determining the details. It's about empowering national competition enforcers. It's about working better together as a team in our shared interest for fair and open markets and so a more competitive Europe.

Conclusion

Ladies and gentlemen,

I realise that you may have been a little surprised to hear me put the spotlight on the ECN today.

You might have expected to hear about the latest developments in our case concerning Google. Or where things stand with our State aid tax investigations. Or my thoughts about the UK's relationship with the EU.

Those are important issues, of course. But there are no new perspectives that I can usefully offer you today. And the UK's relationship with the EU is a matter above all for the British people.

So what I have tried to do instead is to show that there's more to our work than you see in the headlines.

Because in competition policy, like in other areas, the Commission is as much a facilitator as it is a decider.

That type of work may be less visible than decision-making, but that doesn't make it less important. In fact, by making competition enforcement better and more consistent, we make the single market work better.

Predictable rules give businesses confidence to reach out beyond national markets.

Impartial enforcement provides a level playing field where innovators can thrive.

Tough penalties for cartelists allow competition to do its job: bringing down prices and improving quality and choice.

The result is a single market that delivers what we expect from it: more investment, more jobs, better products at lower prices, competitive firms that can also go out and compete on a global scale.

And a single market with a little more fairness too. We don't want the largest companies dictating the rules of the game to others. We want a market that is open to newcomers.

To get there, we need to work as a team. With strong, independent national authorities working together for a common goal. That's why it's a priority to help make those authorities as effective as they can be.

The stronger they are, the better the results we can achieve together.

And that, I think, is how we make a difference.

Thank you.

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