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Fact-based competition policy - the contribution of sector inquiries to better regulation, priority setting and detection

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

13th International Conference on Competition and the 14th European Competition Day

Münich, 26th March 2007

Ladies and gentlemen, it is a pleasure to be here with you to celebrate the German Presidency and yesterday's anniversary of the Treaty of Rome.

The central role of the European consumer

"Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer."

So wrote Adam Smith, in *The Wealth of Nations*, in 1776. Consumer welfare is not a new concept, unless you take a really very long historical perspective.

Today's conference is the Bundeskartellamt's 13th International Conference on Competition, and the 14th European Competition Day. Both still young compared to Adam Smith, but both have already made a real contribution to competition policy from the general international perspective, and from the specific viewpoint of consumers.

Sector Inquiries: added value for competition enforcement

Today, I want to focus on fact-based competition policy and in particular the contribution of the sector inquiry tool under European competition law.

The Commission launched inquiries in the energy sector and in the financial services sector in 2005. In January of this year we presented our final reports on gas and electricity, as well as on retail banking, comprising payment cards and current accounts. We're currently in the middle of a public consultation on the preliminary findings in business insurance, the last part of the financial services inquiry, and a final report will be made public in September.

Our sector inquiries are unique in covering the whole European market, but several national competition authorities also have similar instruments in various forms. Some authorities even have the power to impose a wide range of remedies directly within the context of a sector inquiry, which is not possible under European competition law. Our sector inquiries, in contrast for example to market investigations conducted by the Competition Commission in the UK, are only a step towards action. They help direct the Commission's attention to where enforcement cases should be opened by uncovering evidence, and they shine a spotlight on anti-competitive business practices which sometimes is enough to get the companies themselves to solve the problems. There is a further advantage. The improved understanding these inquiries give us also informs the Commission's policy decisions about the framework for the market concerned, helping us to regulate better.

In line with the emphasis on facts-based competition policy, I would like to mention some of the key results of the financial services and energy inquiries before dealing with some of the wider implications and lessons to be learnt from these first experiences.

Financial Services

The financial services inquiry has three parts, retail banking, payment cards and business insurance. I will concentrate on the first two, where we have already published our final report.

Core retail banking

In core retail banking services we found that markets are still largely national and that entry for foreign banks is difficult.

Different languages, laws and tax systems partially account for this difficulty. But there are also barriers to entry that seem difficult to justify. Payment systems in some markets still have restrictive access rules or high joining fees. In many Member States banks cannot get access to credit information because the systems are biased in favour of the incumbents.

We also looked at the conditions that some banks impose on their customers and found problems in many Member States, in particular problems arising from conditions that make it harder for consumers to switch banks and thus to make competition work for them.

Payment cards

As far as concerns payment cards, we need to keep in mind that the annual volume of retail sales paid for by card is around 1.350 billion euro per year. And out of this total, the fees that banks charge for providing payment card services account for 25 billion euro. It is not surprising that the findings of our inquiry have received considerable attention.

We found several problems in the market for payment cards, arising from the way the industry sets card fees and from the rules that incumbents set to keep new entrants out of the lucrative payment cards market.

First, payment card fees vary substantially across Member States. Retailers in some countries pay up to four times higher fees than in other countries. In my view these high fees are the result of a lack of competition in a market where 95% of cross-border card payments are made by two companies. The situation is even bleaker in some Member States, where there is only one single acquiring bank servicing retailers.

Secondly, the Commission has serious concerns about the level of interchange fees. Our inquiry has gathered the best empirical evidence available. And that evidence casts doubt on the various and often contradictory justifications advanced by payment card networks in defense of their practices. The current situation where consumers paying with debit cards or cash subsidise consumers paying with credit cards is unacceptable.

The Commission has an open case against MasterCard and once the Visa exemption decision expires, we will be look again at their interchange fees too.

And things are not all gloomy. Companies in Austria, Finland and Ireland have already taken action to address some of our concerns. Domestic interchange fees in Portugal have been lowered. In Italy, various fees for closing accounts have been abolished.

I hope to see more proactive steps like this, from industry and national authorities. To deliver real change on retail banking and payment cards markets requires a long-term effort. But by raising the profile of these problems, by engaging stakeholders, and by an enforcement partnership with National Competition Authorities, I believe we can turn the situation around.

Sector Inquiry Energy

Findings and recommendations

Let me now turn to the energy sector. As you know, despite two waves of European liberalisation Directives, we found that Europe is still far from having a single, competitive and well-functioning energy market.

Incumbents remain dominant on their traditional markets throughout the supply chain. To enter a market, new players need access to energy supplies, to the network and to customers. Yet they run up against three interlinked structural problems:

- First, many energy markets are highly concentrated
- Second, there is an absence of cross-border integration and cross-border competition and
- Third, there is insufficient unbundling of network and supply activities.

Why ownership unbundling is needed

This third point has, as you may have noticed, generated some debate in the past weeks.

The EU's liberalisation directives cautiously introduced a system of legal unbundling. But legal unbundling does not remove the fundamental problem here, namely: conflict of interest inside a company. Vertically-integrated incumbents are naturally out to optimise their return. That's normal, in business. But for that very reason, such incumbents do not have an interest in enabling non-discriminatory third-party access to the network. Nor do the integrated companies have an interest in investing in network capacity to allow new entrants – new competitors – into the supply markets. For example, the sector inquiry uncovered practices by vertically-integrated companies that make new entry very difficult. These include the hoarding of capacity by the incumbent, discriminatory terms and conditions for new power plants to be linked to the network, and the use of artificially small balancing zones to raise costs for new entrants. Information leakage through the 'Chinese walls' between these companies' transmission and supply activities is all too common, giving their supply businesses an advantage over competitors.

This conflict of interest within vertically-integrated companies also seems to have depressed investment in interconnector capacity. In a recent case in Italy, the national competition authority fined the gas incumbent for delaying investments into its supply infrastructure because of the negative effect this would have had on its own gas sales. Where interconnector capacity is in limited supply, it is auctioned off to the highest bidder, generating congestion revenues. If you look at our report, you will find that from 2001 to 2005, three German TSOs (transmission system operators) generated congestion revenues of over 400 million euros. Of these revenues, under 30 million euros were used to build new interconnectors- that's less than 10%!

In contrast, our experience shows that fully unbundled operators invest in interconnectivity because they are focused on making best use of the network. And investment in interconnectivity is immensely important for European security of supply.

The inherent conflict of interest for vertically integrated companies will not change by itself. Legal unbundling has failed to solve the problem. That is why the Commission sees full ownership unbundling as the most effective option to solve the problems of discrimination and investment incentives.

On 9 March, the European Council confirmed the importance of unbundling as a key element for the future of energy in Europe and agreed on the need for effective separation of supply and production activities from network operations..

For my part I will not hesitate to use the full spectrum of available remedies, including structural remedies if that proves necessary, in individual competition cases. But let's not kid ourselves that competition enforcement can be enough here. We need to amend the framework, and we need to do it now. The sector inquiry presents the hard facts and figures, and the Commission and European Heads of State and Government share a clear view about the conclusions to draw. We now need to work together to implement this courageous but essential change.

The right balance between competition and regulation: added value for policy shaping and better regulation

So there you have the results of our inquiries. I think it is obvious that they have added real value, and in some cases, have already prompted change for the better. But the ultimate test will be a consumer test. As consumers, will we see improvements to our energy supply? To our financial services? For that, it is too soon to say, but I am optimistic.

But we can draw more general conclusions about the use and value of sector inquiries.

Although a sector inquiry gathers evidence that may be relevant for antitrust enforcement, as I said at the start, this must not be the end of the story. The knowledge gained can fruitfully be used to guide our thinking in merger and state-aid cases. But just as importantly, it can inform and guide proposals for legislation, embedding competition principles and sectoral knowledge in the wider policy work of the Commission.

Competition law enforcement can often tackle aspects of the problems identified by a sector inquiry but often the root of the problems does not lie in individual company behaviour as such. A good doctor does not just tackle the symptoms but targets the underlying cause of illness. However, framing the problems in competition terms is often useful for finding more far-reaching and durable solutions. For instance, both our inquiries arrived at the right moment to have a positive impact on other Commission and national initiatives in the respective sectors.

Sector inquiries are at their most effective when they help to identify the right balance between competition policy and regulatory intervention. This is at the core of the Barroso Commission's better regulation approach and is particularly important for newly liberalised or regulated sectors.

4. Conclusion

Ladies and gentlemen,

Looking forward, the Commission will now evaluate the choice, the handling and the follow-up of the inquiries, and we will draw lessons for using the tool again in the near future. These inquiries have been a success but we cannot rest on our laurels. It is important to get the next ones even more right.

We need to focus on areas

- where there appear to be durable competition problems
- where these problems may be due to competition infringements
- where there are implications for better regulation

and

- where the sector is key for consumers and/or competitiveness

Sector inquiries need substantial resources – legal, economic and sectoral - and these resources must remain committed not just during the inquiry, but also for the follow-up antitrust cases. This last point is vital – it is crucial that the team that runs the inquiry should follow it up with individual cases if suspected infringements are uncovered. Hitting the ground running saves substantial re-education time, and the team has an incentive to be practical, not academic and ambitious, not unrealistic.

And finally we need to continue with inquiries that are – quite deliberately – inclusive. We need to draw on and complement the work of the National Competition Authorities and sectoral regulators, and fully involve industry and other stakeholders, including consumer groups.

But that is all for the future. Today I am more concerned about the present, and the follow up to the two sector inquiries that have already been undertaken. The expectations for making the European energy and financial services markets work better will not and cannot be fulfilled via competition cases alone. And these expectations cannot even be fulfilled by the Commission as a whole unless backed by Member States and the European Parliament.

I can assure you, however, that the Commission will do its share.

And I am confident that national governments, parliamentarians and companies will all recognise that competition on important markets like energy and financial services cannot be subordinated to producer interests.

European consumers deserve nothing less.