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GLOBAL COMPETITION REVIEW



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A year of dialogue with stakeholders

It is a pleasure to address *GCR* readers in this introduction to the *European Antitrust Review 2012*. It is very important for us at DG Competition to keep a constant and rich dialogue with competition law practitioners representing a full spectrum of interests – from large multinational businesses, to SMEs or consumer organisation advisors. Their field experience and expert feedback are invaluable to us in devising new policy initiatives, in reviewing existing guidelines and procedures, and in generally ensuring that European competition law keeps pace with market developments.

Over the last months, we have engaged in public consultations on all the key competition policy dossiers. We took on the advice of market players in a number of areas, be it on Horizontal and Vertical Guidelines, on Best Practices for Antitrust Proceedings, or on more technical issues in pending dossiers such as collective actions, merger cooperation between competition authorities, and guidelines on aid for broadband. In parallel, and whenever possible, we have also stepped-up our advocacy work, seeking to express support for our stakeholders' efforts to comply with competition rules.

Supporting compliance

Businesses and their advisors should not construe compliance with competition rules as a dull formality. First, because it is their legal duty to comply with competition law, just as it is with every other law. Second, because compliance efforts – and in particular well-designed compliance programmes – help to protect companies and their shareholders from the consequences of an infringement. Compliance efforts reduce the risk of an infringement occurring, which would not only damage the company's finances through the imposition of a fine and ensuing litigation, but would also negatively impact on the corporate reputation and, ultimately, on share value.

My colleagues and I frequently repeat at conferences and other public events that, as antitrust enforcers, we do not enjoy imposing fines. Indeed, the rationale behind our enforcement work is to promote a competition culture in Europe, where companies can grow, innovate and offer a competitive array of products and services to their customers at affordable prices. This goes hand in hand with promoting a culture of compliance that minimises the possibility of infringements and the need for sanctions.

We are very supportive of the many companies throughout the EU that have set up compliance programmes. The efforts of SMEs in this sense are particularly laudable, since it is difficult for them to spend any time on other issues than production and marketing. This is why we take every opportunity possible to remind all companies that the cost of compliance is far lower than that of breaking the law.

I must highlight, however, that under EU law we believe that a successful compliance programme brings its own reward. This occurs through a virtuous circle effect: by complying, a company avoids breaking the law, being fined, going to Court and paying costly damages on top. Therefore, we do not offer additional rewards to those who set-up compliance programmes. This means that when we calculate our fines, we do not take into account the

existence – or lack of – a compliance programme. This approach has been endorsed by the rulings of the European Courts and we will not change our policy in this respect. We stand firm on the principle that companies should not break the law in the first place.

Protecting the Single Market from anti-competitive behaviour

Throughout the last 12 months, we have stayed the course in our enforcement action. We continued to pursue and sanction cartels, with decisions such as the one on *Consumer Detergents* and the launch of a number of investigations in markets as diverse as electronic books publishing, rail freight, pharmaceuticals, liner conferences or credit default swaps. These sectors are indeed diverse but share one common feature: they are key sectors of the EU Single Market, where we have to be particularly vigilant that market players do not collude, thereby affecting growth, innovation and consumer welfare. We need these sectors to be competitive and open to new market players, especially in the context of the current economic situation.

In such sectors we have also taken – and continue to take – claims of abuse of dominance very seriously, because once again we cannot afford that a company or group of companies raises barriers in the Single Market and keeps efficient competitors out. We have illustrated this recently in our *Telekomunikacja Polska* decision where the extensive evidence that we gathered showed how the company had sought to limit competition on the broadband markets by placing obstacles in the way of alternative operators. Europe needs a competitive digital market and the Commission has made it a priority to promote the development of the digital economy. As EU antitrust enforcers, it is thus our task to complement this policy and to ensure that markets, platforms and data remain open to innovative firms and new market players in the digital arena.

This echoes in our merger control activity where we insist that mergers do not lead to the creation of players that could put efficient competition at risk. We have generally obtained good remedies from parties in the majority of cases where we had recently expressed concerns. To take only two examples from the high-tech sphere, we were very pleased with the interoperability remedies obtained in *Cisco/Tandberg* and *Intel/McAfee*.

When adequate remedies were not put forward by the parties, we have not shied away from prohibiting a merger. In the *Aegean/Olympic* case, despite our efforts and dialogue with the parties, no solution could be found to ensure that consumers would not be harmed. The transaction would have led to a quasi-monopoly for domestic air transport in Greece and this would have consequently meant higher fares and less choice for passengers.

As demonstrated in our antitrust cases, the distortive behaviour of companies can 'deform' the Single Market. In a similar way, aid granted by states can have a distortive and harmful effect. This underscores the need for rigorous state aid control, a powerful tool that we have at our disposal to preserve the integrity of the Single Market. In using this tool, we go to great lengths to ensure that state intervention in the EU is kept to the minimum necessary to

achieve sensible objectives that support growth beyond supporting a particular sector.

State aid control has proven to be essential during the financial crisis and thanks to our supervision we ensured that swift solutions were provided to the failing financial sector but that the support came with conditions to ensure a return to long term viability. In many cases, this led to the restructuring of the institutions (*Dexia*, *RBS*, *ING*, *Commerzbank*, etc). Our work has contributed to reform the financial sector in a way that makes it both fairer, more stable and more transparent. These objectives are very important because a sound and trustworthy financial sector is the backbone of a thriving economy and will be indispensable if we want Europe to return to growth.

Reaching out to fellow competition agencies

In addition to the fruitful cooperation carried out with sister agencies within the ECN or the ICN, last year we have also continued to deepen bilateral dialogue on competition issues. To take only one example, the recent Free Trade Agreement with Korea marks a new step in our cooperation. It is the first time that a bilateral trade agreement contains substantive rules on subsidies on goods that are enforceable through bilateral dispute settlement with commercial sanctions attached. Through this agreement, the EU and Korea are sending a strong anti-protectionist signal to the rest of world and, once ratified, the agreement will help European firms abroad to compete on the merits with their Korean peers. In parallel, we also work closely with the Korean Fair Trade Commission, as we do with many other competition agencies whenever the need arises in our antitrust cases.

These are positive developments for competition agencies in terms of boosting enforcement action and they are positive for the businesses operating in our markets too. Indeed, businesses will benefit from our joint efforts to keep markets undistorted and from our contribution towards pro-competitive policy making in our jurisdictions.

About the author

Prior to becoming director-general for competition in February 2010, Alexander Italianer was deputy secretary general in charge of the Better Regulation Agenda and chairman of the Impact Assessment Board from 2006.

He holds a graduate degree in econometrics and a PhD in economics from the University of Groningen (Netherlands), and was a research associate at the Catholic University of Leuven (KUL) before joining the European Commission in 1985. After 10 years in its Directorate General for Economic and Financial Affairs, he worked successively in the cabinets of President Santer, Commissioner Verheugen, Commissioner Telicka and President Barroso interrupted by a brief spell as director for International Economic and Financial Affairs between 2002 and 2004.



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