

Consumers at the heart of EU competition policy

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In her address at the dinner hosted by BEUC (the European Consumers' Organisation) in Strasbourg on 22 April 2008, Neelie Kroes, the Commissioner for Competition, stated that "Defending consumers' interests is at the heart of the Commission's competition policy. In concrete terms: competition gives citizens better goods and services, and ensures businesses have more opportunities to sell them."

This statement reflected the importance of competition policy to consumers, and the importance of consumer welfare when implementing competition policy. Consumers are in most cases the final beneficiaries from strong enforcement of competition rules. They will also be the ultimate losers from any lack of competition since this will mean increased costs, less choice or lower service quality. For consumer products, in some cases a breach of the competition rules may affect them directly⁽²⁾, and in other cases, an infringement of competition law may take place higher up in the supply chain for a particular product. This may concern either a component part of the end-product or a separate product or service used in the production of consumer goods⁽³⁾. For instance, machinery used in manufacturing a consumer product has to be purchased or hired by the manufacturing company. Anticompetitive behaviour may thus impact on the costs or quality of production of the final product, and can indirectly affect end-consumers.

Yet consumers are more than simply passive beneficiaries or victims of competition or market abuse. As highlighted in Commissioner Kroes' remarks, informed, educated and active consumers are the real drivers behind a competitive marketplace. It is ultimately their choices and purchasing decisions at the end of the supply chain that drive a market's requirements and needs upstream, and it is these choices made by consumers that enable businesses to decide on where to focus investment and innovation in order to be successful. Where the benefits of this investment, innovation and any resulting efficiencies are passed on to end-consumers it further empowers them to exercise informed choice, building a virtuous circle and a strong economy.

⁽¹⁾ The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

⁽²⁾ E.g. Bananas (Press Release IP/08/1509, 15.10.2008)

⁽³⁾ E.g. Car Glass (Press Release IP/08/1685, 12.11.2008); Fasteners (Press Release IP/07/1362, 19.9.2007)

It is important, therefore, that the thinking behind European competition policy is underpinned by an understanding of the needs and welfare of consumers. It is equally important that consumers feel they are able to engage with the issues raised by competition policy and enforcement. Therefore, in the process of prioritising cases, focusing resources on those cases where there is an effect on the market downstream represents good practice not only from a competition law perspective, but also in terms of the use of taxpayer's money and the punitive and deterrent value of fines. This applies in particular to cartels, which by their nature restrict the products available and/or drive prices upwards. The Commission therefore fines undertakings that engage in such behaviour.

The fact that consumers and other customers on the downstream market are most likely to suffer harm as a result of a breach of competition law also drove the thinking behind the White Paper on **damages actions**⁽⁴⁾. One of the key proposals in the White Paper is that consumers be given easier access to redress through representative actions — allowing designated consumer bodies to bring actions for damages on behalf of groups of consumers. This reflects the fact that if the total loss to consumers may be high but individual losses are comparatively low, the costs and risks of bringing individual actions may be prohibitive.

In all cases, including abuses of a dominant position or agreements which restrict competition (but are not cartels), the Commission can identify the effect of a particular form of behaviour on consumers, and may **seek commitments or remedies** in the place of, or in addition to, fines. The purpose of such remedies is to ensure that a market can be returned to a fully competitive state operating in the consumer interest. The Commission also uses commitments and remedies in its merger control work, anticipating the effect of any merger on competition and enabling parties to take appropriate steps to allow mergers to continue in a way that does not impede competition. Although the Commission can block mergers where they are clearly not in the interests of competition and consumer welfare, in most cases competition can be enhanced by allowing the merger with certain limitations — for instance by requiring the merged entity to sell on all or part of a

⁽⁴⁾ Press Release IP/08/515, 3.4.2008.

business controlled by one or more of the merging parties⁽⁵⁾.

In order to effectively assess consumer welfare, and to prioritise those markets where there is a clear downstream effect on consumers, it is vital that the Commission should “think consumer”, by working with consumers and their representative associations. To enhance this work 2008 saw the creation of a dedicated Consumer Liaison Unit. The Unit is building on the work of the Consumer Liaison Officer by deepening relationships and dialogue with European and national consumer organisations, providing simpler and clearer information and links to information of greatest relevance for citizens/consumers and improving the points of contact with the European Commission for consumers regarding competition issues.

Consumers and their representatives are able to bring helpful information about potential market failure to the Commission’s attention. Consumer input is also an important asset in understanding markets, as consumers and their representatives are best placed to

explain directly how they perceive the impact of a particular action. Such input has been requested and used by the Commission in antitrust cases⁽⁶⁾, in sector inquiries and on policy issues (e.g. the pharmaceutical sector inquiry⁽⁷⁾, policy consultations such as the White Paper on damages actions and the review of Article 82⁽⁸⁾ or the reflection on a regulatory strategy to promote very high speed Internet⁽⁹⁾) and frequently in a number of merger cases. By understanding the consumer viewpoint, the Commission is better able to place all aspects of the market or issue in context when identifying issues and remedies.

When combined, we are confident that the Commission’s continued engagement with and focus on consumers will ensure that competition policy is of relevance to citizens and to consumers. We will also be better equipped to respond to feedback, both on the work that the Commission is doing and on the perception of that work. Building on this feedback will serve as a good basis for further developments in competition policy and communication regarding competition issues.

⁽⁵⁾ E.g. REWE/ADEG (Press Release IP/08/995, 23.6.2008); StatoilHydro/Jet Scandinavia (Press Release IP/08/1556, 21.10.2008)

⁽⁶⁾ E.g. Intel (Press release IP/09/745, 13.5.2009), Rambus (MEMO/09/273, 12.5.2009)

⁽⁷⁾ Press release IP/08/1829, 28.11.2008

⁽⁸⁾ Press Release IP/08/1877, 3.12.2008

⁽⁹⁾ Press Release IP/09/909, 12.6.2009