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Global Forum on Competition

THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

Contribution from the European Commission

-- Session IV --

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THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

-- European Commission --^(*)

1. Introduction

1. Both competition policy and consumer policy play a central part in meeting core EU goals. They play a key part in the EU's "Lisbon strategy" to improve the competitiveness of the EU but also to seek to improve the day to day life of citizens, in their role as consumers. Consumer protection policy deals with the behaviour of economic operators in their direct contacts with consumers, and competition policy deals with the relations of economic operators with each other (e.g. mergers, cartels).

2. The EC Treaty set down the "principle of an open market economy with free competition". Competition stimulates innovation, encourages companies to provide to consumers products and services that consumers want, and pushes down prices. It rewards firms offering lower prices, better quality, new products, and greater choice.

3. However, while competition is necessary to deliver consumer welfare and competitiveness, it is not sufficient. Competition policy is effective at tackling market problems that arise from agreements or collusion between undertakings, mergers, and an abuse of a dominant position by an operator. It does not seek to tackle operators who apply, individually or collectively, commercial practices which adversely affect consumer choice and welfare, in other ways than agreements, collusion, mergers or abuse of a dominant position. Such practices (misleading or aggressive advertising, complex pricing or unfair contracts terms) when they are industry-wide or adopted by non dominant firms, can only be tackled by consumer policy instruments. These failures cannot be addressed by competition policy but can be equally harmful to both competition and consumers.

4. Despite the difference in their field of operation and type of remedies, it is essential for competition and consumer protection policy to operate in a complementary and mutually enhancing way, in the interest of the EU's consumers and its international competitiveness.

2. Complementary application of competition and consumer policy

5. Although they tackle different types of market failure, the complementarity of both policies in enhancing competition and consumer welfare has been shown in a number of recent examples, which fall neatly into the category of competition or consumer policy. For example:

- Regarding cartels, in the six-year period 2002-2007 (to 5 December 2007), the Commission imposed over €7 billion euros of fines on over 235 different companies involved in 39 different cartels in sectors such as beer, glass, elevators, plasterboard, and synthetic rubber¹. Hard-core cartels, including those on wholesale markets, have a direct and clear effect on consumers. In

^(*) Joint paper of Directorates-General for Competition and for Health and Consumer Protection.

¹ <http://ec.europa.eu/comm/competition/cartels/statistics/statistics.pdf>.

merger cases handled by the Commission, consumer-related issues are often central to the evaluation. For example, a number of mergers in the banking sector involved switching costs as a central part of the analysis.

- Recent EU consumer protection measures will also enhance competition in the retail sector. For example, the Directive on Unfair Commercial Practices which came into force on 12 December 2007² will enhance competition on the merits and real choice by banning unfair practices such as misleading advertising. More importantly it will enhance competition by facilitating cross-border advertising in the EU, deepening competition in the retail economy.
- On enforcement of consumer legislation, in September 2007 the Commission has coordinated the first EU "Sweep" on websites selling air tickets. Member States carried out a simultaneous and coordinated check of websites to investigate breaches of consumer protection law and initiated further enforcement actions when it was necessary. Many companies adopted voluntary measures changing their sites while in other cases agencies had to use their enforcement powers. This action was conducted in the framework of the Consumer Protection Cooperation Regulation³ and it strengthened competition by forcing companies to abolish deceptive practices providing unfair advantage for them over honest traders.

6. However, where market failures clearly exist which do not fall neatly into the traditional areas of intervention of competition and consumer protection rules, a cross-category approach is needed. The position of the Commission as a supra-national body, places it in a position to evaluate sectors as a whole and determine subsequently which response is appropriate, be it investigations under competition rules, enforcement of consumer legislation, EU-level regulatory proposals or others measures like promoting information or self-regulation codes. For example:

- Cross-border payments in the euro zone are the subject of a Regulation adopted in 2001⁴, laying down that cross-border payments of up to €50,000 within the euro zone, should not be charged at a price higher than the price charged for an equivalent payment domestically. Since its adoption fees for cross-border inter-bank money transfers have fallen considerably, from 24 euro in 2002 to 2.50 euro in 2006 for a payment of 100 euro⁵. Regarding cross-border credit card payments, the Commission in December 2007 decided that the way in which MasterCard applies "interchange fees" for cross-border payments in the European Economic Area violates the EC Treaty rules on restrictive business practices; this will likely have the effect of reducing the fees paid by retailers for credit card acceptance, and competition between retailers should ensure that this reduction is passed on to consumers⁶.
- In car retailing the Commission has actively brought cases, with increasingly high fines, against car manufactures who agree with or pressurise dealers not to accept purchases from residents of

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (Official Journal L149/22)

³ Regulation (EC) N. 2006/2004 of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation).

⁴ Regulation 2560/2001, which entered into force on 1 July 2002 for payment card transactions and withdrawals from cash machines and 1 July 2003 for credit transfers.

⁵ See Commission press release IP/07/32 of 11 January 2007.

⁶ Decision of 19 December 2007. See press release IP/07/1959

other Member States (for example, a fine of €43 million on Opel Nederland in 2000⁷). The latest Block Exemption Regulation for car distribution, in force since 2003, no longer authorises certain restrictive practices which were previously exempted. Furthermore, the Commission has published a six-monthly car price report since 1992. Since 1992, price differentials for motor vehicles, and absolute prices, have progressively fallen in the EU.

3. Current and future measures to improve complementarity between competition and consumer policy

7. Competition and consumer policy at EU level differ substantially as to their enforcement structures.

8. Regarding *competition policy*, the Commission has enforcement powers enforcing articles 81 and 82 of the Treaty (which prohibit anti-competitive agreements between undertakings and abuses of a dominant position) but only as regards restrictions of competition with a cross-border effect ("effect on trade between Member States"). It does not however have an enforcement monopoly regarding articles 81 and 82 of the Treaty, as the national competition authorities of the EU member states can also apply those articles of EU law themselves⁸.

9. This shared enforcement task requires co-ordination, regarding case allocation, and interpretation of the law. For this reasons, the European Competition Network was created in 2004. The EU Commission and competition authorities from EU member states cooperate with each other through the ECN by: informing each other of new cases and envisaged enforcement decisions; coordinating investigations, where necessary; helping each other with investigations; exchanging evidence and other information; and discussing various issues of common interest. This Network focuses in particular cross-border business practices which restrict competition and aims at effective and consistent application of Community competition laws. In the cross-border cases, it is decided within the Network to whom the case should be allocated.

10. The structure of enforcement of the EU *consumer policy* is essentially different. The Commission has a monitoring and co-ordination role, but no enforcement powers. The enforcement of consumer law is the responsibility of the Member States. The Consumer Protection Co-operation Regulation⁹ provides coordination and facilitation of enforcement. As well as requirements to cooperate in cross-border cases, the competent national authorities are encouraged to coordinate their enforcement actions especially in cases when consumer rights are infringed in numerous Member States. The co-operation concerns, besides exchange of information (in particular on complaints), training and exchanging officials.

11. There is also co-operation between consultative bodies for competition policy and consumer policy. The European Consumers Consultative Group, composed of the representatives of national and EU consumer organizations has a sub-group to examine competition policy.

12. The Commission's contribution to the preparation of the OECD Recommendation on Consumer Dispute Resolution and Redress was formed thanks to the close co-operation of the Competition and the Health and Consumer Protection Directorates General.

⁷ See press release IP/00/1028 of 29/9/2000.

⁸ Regarding restrictions of competition on their territory which do not affect trade between EN member States, they apply national competition law.

⁹ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 (Official Journal L364/1)

13. Co-operation between both policies at EU level seems likely only to grow. The Commission's recent Communication on the single market for 21st century in Europe¹⁰ underlined that the single market needs to deliver more results for citizens, consumers and SMEs. As well as putting a strong emphasis on enforcement of all EU policies, it also highlighted the need to develop further an outcome and evidence-based approach to the single market. A process to monitor and screen markets for market malfunctioning has been established. Screened markets should then be studied in greater depth.

14. The review also underlined the need for a greater focus on evidence and outcomes from a consumer perspective. To that end, it has recently adopted a Consumer Markets Scoreboard. The Scoreboard sets in place a process to gather data on consumer markets on prices, complaints, switching, satisfaction, safety that will enable consumer markets to be effectively screened for malfunctioning.

15. In time these new monitoring and analysis processes will enlarge the areas for co-operation between both policies. Work on price comparison of products across the EU may indicate competition problems. Switching indicators may also indicate competition or consumer policy problems. Not all of this co-operation will take place at EU level. Monitoring and analysis at EU level may indicate problems in either policy area at national level. At a time of rising retail food prices, recent action by both UK and Greek competition authorities in the dairy sector show the potential for co-operation in analysis and market comparison.

16. A further area where greater co-operation seems likely between both policy areas at both national and EU level is in developing work on behavioural economics. The new research offers interesting insights into consumer policy but also competition policy in relation to retail markets. The Commission is therefore actively participating in the OECD work to make behavioural economics operationally useful for policymakers and enforcers.

¹⁰ A single market for 21st century Europe (COM(2007) 724 final of 20.11.2007)