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Competencies of Commissioner for Competition in creation and enforcement of competition policy

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Abstract

The EU's Competition Policy applies rules to make sure that companies compete with each other and innovate and offer good prices to consumers. The European Commission's Directorate General for Competition oversees issues of antitrust, mergers, cartels, liberalisation, state aid and the challenges of globalisation. The article presents one of the executive authority of European Union, i.e. Commissioner for Competition and its power in creating competition policy in all Member States. It also describes the position of this commissioner in the European Commission structure and puts importance on the emphasizes the importance of European competition policy for consumers.

Descriptive method was used in the paper.

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1. Introduction

The European Commission is the EU's executive body and represents the interests of Europe as a whole (as opposed to the interests of individual countries). It is the decisive body that is responsible for creation and shaping of European policies.

Originally, each of the Community had its own authority called High Authority. Position of this body in various Communities was varied. In the ECSC Treaty concerning this authority was touted as the supranational Community body with far-reaching decision-making powers. The High Authority consisted of 9 members, 8 of which have appointed the Member States and the ninth was elected by commissioners themselves. The High Authority prosecuted the implementation of the provisions of the ECSC and had extensive powers over the regulation and enforcement of Community law. The Treaty establishing a Single Council and a Single Commission of the European Communities (Merger Treaty) of 1965 established a single authority for all three Communities (High Council, EEC, Euratom) and changed its name to the European Commission. In that treaty, the European Commission was not already been described as a supranational body. (Sitek M., 2010, 61). This happened as a result of declining support for the creation of strong supranational structures at that time in Europe. The main decision-making powers have been entrusted to the EU Council. The European Commission was more creating than executive body. In the second half of the 60s Commission began to make efforts to increase its role in the institutional system of the Communities (which was one of the causes of the institutional crisis at the time).

In the 70s and 80 along with the progress of European integration, it began to clearly indicate the need to strengthen the position of the European Commission. These aspirations are reflected in the provisions of the Single

European Act, which entrusted the Commission powers of control in the cooperation procedure and granted further powers for enforcement.

The Treaty on European Union (Maastricht 1992) extended the term of office of Commissioners of 4 to 5 years (so that the term of office of the European Commission was equal to the term of the European Parliament) and ensured the participation of the European Parliament in the appointment of the European Commission (before the Treaty on European Union only governments of Member States shall decide on the composition of the European Commission). The Treaty of Amsterdam (1997) further strengthened the role of Parliament in the appointment of Commissioners and the President of the European Commission was entrusted to exercise political leadership of European Commission. (Skubisz R., Skrzydło-Tefelska E., 2008, 76; see also: Sitek M., Dobrzańska B., 2009, 10-58).

2. European Commission (EC)

The term 'Commission' refers to both the college of commissioners and the institution itself – which has its headquarters in Brussels, Belgium with offices in Luxembourg. The Commission also has offices known as 'representations' in all EU member countries.

The Commission is an institution functioning in the single institutional framework of the European Union. From the perspective of public international law, the Commission is a unique international body, a construction of an administrative nature, which is focused in the scope of its activities primarily executive competencies, but also - in the limited area - legislative powers, and even quasi-judicial.* (Kenig-Witkowska M., Łazowski A., Ostrihansky R., 2008, 124).

The basic legal act that defines the scope of the operation of the European Commission's is consolidated version of the Treaty on the Functioning of the European Union and the consolidated version of the Treaty on European Union. The basis of EC are provided in Article 13 of the Treaty of European Union:

“The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

- *the European Parliament,*
- *the European Council,*
- *the Council,*
- *the European Commission (hereinafter referred to as ‘the Commission’),*
- *the Court of Justice of the European Union,*
- *the European Central Bank,*
- *the Court of Auditors.”*

More detailed basis on the functioning of EC can be found in articles 244-250 of Treaty of functioning of European Union. In addition, the European Commission works on the basis of the Commission decision of 15 November 2005 introducing changes in the internal rules of the Commission (205/960/WE, Euratom). This decision was partially transformed by the Commission Decision of 30 April 2008 amending the Rules of Procedure as regards detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation and Access to Justice in environmental Matters to Community institutions and bodies. This amendment, however, did not result in significant changes in the rules of procedure of the European Commission in 2005. (Sitek M., 2010, 61).

The Commission's main roles are to:

- set objectives and priorities for action propose legislation to Parliament and Council

* Eg. in the area of competition law, the Commission may establish an infringement of rights by individuals and legal entities.

- manage and implement EU policies and the budget
- enforce European Law (jointly with the Court of Justice)
- represent the EU outside Europe (negotiating trade agreements between the EU and other countries, etc.).[†]

The commissioners meet once a week, usually on Wednesday, in Brussels.

When the Parliament holds its plenary sessions in Strasbourg, the Commissioners usually meet there. The agenda for each meeting is based on the Commission work programme.

Each item on the agenda is presented by the Commissioner responsible for the related policy area, and the whole team then takes a collective decision on it. The meetings and debates are not open to the public, but the agendas and minutes are available.

The Commission also meets when emergencies need to be addressed and when major issues are being discussed by the Council of Ministers.

A new team of 27 Commissioners (one from each EU country) is appointed every five years.

The European Council nominates a candidate to be president of the Commission, who must be approved by a majority of members of the European Parliament. If the MEPs reject the candidate, the Council has one month to put forward another. The president-elect chooses the commissioners (and their policy area) from candidates put forward by EU countries.

The list of commissioners is then submitted for approval (by qualified majority) first to the Council of Ministers, then to Parliament. If Parliament approves, the new Commission is officially appointed by the Council.

The current Commission's term of office runs until 31 October 2014, and its President is José Manuel Barroso from Portugal.

The Commission is divided into several departments and services. The departments are known as Directorates-General (DGs). 23 000 staff members work in the Commission in departments, known as directorates-general (DGs) or services, each responsible for a particular policy area and headed by a Director-General, who reports directly to the President.

The DGs draft laws, but their proposals become official only once the College of Commissioners adopts them during its weekly meeting.

Each DG is classified according to the policy it deals with. The Commission services deal with more general administrative issues or have a specific mandate, for example fighting fraud or creating statistics.

Nowadays there are 33 Departments (DGs) taking care of many different aspects of the functioning of EU from the most substantive, such as agriculture or justice to more administrative facilitating communication within EU.

3. Commissioner for Competition

Fair competition is crucial for honest market economy. Different local and national organizations both public and private refer to the best practices associated with the operation of the fair market. For example in Poland Polish Confederation of Private Employers Lewiatan (PKPP Lewiatan) – an organization of private employers introduced Ethical Code of Employers, where it is stated that fair competition is vital for the development of enterprises: *“We are solid partners in production of goods and multiplication of values; our capability of responding creatively to changes in the social environment is proved by fair competence and profits we achieve”* (Bochniarz, 2010, 395-402; see also: Augustyniak, Kazmierczuk, 2012, 31-51).

The European Commission, together with the national competition authorities, directly enforces EU competition rules, Articles 101-109 of the Treaty on the Functioning of the EU (TFEU), to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits. Specifically, it keeps an eye on companies to make sure they don't club together to share the market between them or don't act in a way to exclude would-be competitors. Competition law is a part of convergence strategy no matter how complicated it might be to proceed. Convergence appears to be the central strategy for long-term responses to globalization and economy open for consumer. (Gerber, 2010, 435-448 and Kovacic, 2010, 477-510)

[†] Information about European Commission from official website of European Union: http://ec.europa.eu/about/index_en.htm [07.10.2012].

According to Article 3 of Treaty of functioning of European Union: “Union shall have exclusive competence in the following areas: (...) establishing of the competition rules necessary for the functioning of the internal market”.

The European Commission, together with the national competition authorities, directly enforces EU competition rules, to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits. This benefits consumers, businesses and the European economy as a whole.

Incumbent Commissioner for competition and Vice-President of European Commission is Joaquín Almunia, Spanish lawyer, economist and politician. His aim for this term in office is as following:

“As Competition commissioner, I'm here to ensure that competition policy delivers for consumers and for businesses. To that end I will focus on fighting against cartels, preventing dominant companies from abusing their market power in any sector or any country in Europe, and maintaining a rigorous scrutiny of proposed mergers. I also intend to further consider how to achieve effective compensation for victims of illegal antitrust behaviour.

As regards state aid control, the most pressing issue is to manage the financial crisis and its impact, but I will also examine to what extent it is possible to streamline state aid control procedures.”

The main duties and responsibilities of the Commissioner for Competition are as following:

- To ensure that the internal market operates efficiently and without distortion, thus contributing to the welfare of businesses and consumers and the competitiveness of the European economy
- To enforce of the competition rules on anti trust, mergers, state infringement and state aids control. In order to reinforce the coherence of state aids policy, he will also be responsible for state aids in the areas of transport and energy
- To develop an economic as well as a legal approach to the assessment of competition issues and to develop further our market monitoring
- To be responsible for competition advocacy and promoting international co-operation with competition authorities outside the EU.[‡]

The main instrument for the implementation of consumer policy is a directive. EU authorities have recognized that the lack of harmonization of consumer protection across EU countries, among which there is intensive trade in goods and trade in services may constitute a barrier to trade. Among many directives regarding competition and consumer protection a few policy-making should be mentioned, such as: Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, Directive 2005/29/ec of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (‘Unfair Commercial Practices Directive’), Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, Directive 2001/95/ec of the European Parliament and of the Council of 3 December 2001 on general product safety, Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.

The task of the Commissioner is to provide direct enforcement of the legislation i.e. directives (Powałowski A., 2010, 13-15).

Despite such a variety of legislative acts in constantly changing social environment, there are still new aspects of life to be covered by law in case to ensure legal protection for consumers, i.e. protection of rights of single people as consumers (See more: Such M. 2008, 198-199).

4. Directorate-General for Competition

[‡] The responsibilities of the Commissioner for Competition are enlisted in the mission entrusted by Jose Manuel Barroso – President of the European Commission on 27 November 2009 in Brussels, text available at: http://ec.europa.eu/commission_2010-2014/almunia/about/mandate/mission_letter_en.pdf [07.10.2012].

Within the Commission, the Directorate-General (DG) for Competition is primarily responsible for these direct enforcement powers. There are strict limits to its powers – DG Competition can only intervene if it has evidence of an infringement of the competition rules – and its decisions are subject to appeal before the Court of Justice of the European Union. DG Competition is therefore unlike most parts of the Commission in that, rather than proposing legislation, its work is concentrated on action against companies or Member States if it believes they are breaching the rules. DG Competition can act against several types of anti-competitive activity if it affects cross-border trade.

DG Competition has around 900 staff and costs less than € 100 million a year to run. In mergers and State aid, DG Competition mostly deals with notifications; in Article 101 and 102, it opens cases on its own initiative, or following a leniency application or a complaint. When DG Competition is working on a case, details of the case have to be kept confidential. DG Competition is under a legal obligation to protect the business secrets of the companies with whom it is in contact. If DG Competition concludes that a company or Member State has breached the competition rules or - in the case of a merger - would significantly reduce competition, it can propose that the College of Commissioners adopts a formal decision. The decision can prohibit the conduct, and can require remedial action. In antitrust cases, the Commission can also impose a fine as both a punishment and a deterrent. DG Competition monitors markets and conducts sector inquiries (recent examples include energy, financial services and pharmaceutical markets) to see where competition problems might be occurring. This allows DG Competition to better understand markets and ensure a more effective enforcement by pro-actively detecting cases which are most harmful to consumers.

DG Competition produces documents that explain how the competition rules set out in the Treaty and interpreted by the Court apply. These include implementing regulations, block exemptions, guidelines and communications. When these are revised, DG Competition consults widely before issuing new versions. DG Competition works with national competition authorities in the Member States to ensure a coherent and co-ordinated enforcement of the competition rules in Europe, and works with other agencies around the world to exchange information, promote best practice, and co-operate in individual cases. DG Competition works to embed competition principles into regulation and legislation and with other DGs to determine which markets DG Competition should investigate. Each year, DG Competition prepares a report of its activities, and its assessment of upcoming issues for the European Parliament. This is in addition to the detailed information that DG Competition makes available to the general public on a daily basis on its website and in its press releases. The Commissioner for Competition also appears before the Economic and Monetary Affairs Committee (ECON) three times a year to discuss current policy developments and answer questions.

Conclusions

EU Commissioner operates as a minister and as a member of the European Commission and therefore is responsible for enforcing common policy. The European Commission deals with current issues concerning the functioning of the Union, and thus the competition policy. In addition, the Commission is an institution dedicated to the construction and presentation of all acts of the Union. In this regard, the Commission shall establish law and therefore EU policy. In this regard, the Commissioner for Competition creates consumer and competition policy. The Commission is also preparing proposals usually treaties and other international instruments, which are then discussed at the meetings of the European Council. The European Commission also oversees the governments of the Member States on the implementation of changes to laws in the country resulting from the adaptation of national legislation to EU arrangements.

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