

Competition authorities face enormous challenges when executing their work. This is one of the most well-known facts in the field of competition law and policy. Some of these constraints and challenges are political in nature. After all, it is not possible to talk about competition law existing in isolation in the real world, regardless of the jurisdiction in question.

The work competition authorities do: an appraisal



Politics can have an enormous influence in building a competition law regime, in the formulation of a competition policy within such a regime, and sometime in the way in which actual decisions are taken. One only needs to look as far as the area of cross-border merger control to see how this is so.

Nonetheless, one of the key challenges facing competition authorities lies on the credibility front. Three points should be noted in this regard. *First*, almost all over the world, competition authorities are subjected to continuous criticism, much of it is unfounded. *Secondly*, competition authorities sometimes swim against the tide of deep reservations about their meaningful role in an economy. *Thirdly*, in many parts of the world competition authorities are seen as total aliens. The last point in particular is worth emphasising because it is undoubtedly so that the majority of people around the world are not familiar with competition law at all and the existence of competition authorities.

The existence of such serious challenges and reservations should give us a good

reason to celebrate what competition authorities succeed in doing, whether in prosecuting big cases and busting harmful practices or enhancing public awareness of competition and competition law. One should appreciate such success especially when one takes into account the limited budgets all competition authorities have.

This is not to say however that everything that competition authorities do is right and is justified. Not at all! Sometimes competition authorities go too far in their reliance on theories and in the use of their imagination of the world being one of „perfect competition“ when in reality something different exists. It is also the case that many competition authorities could benefit from better internal administration. The experiences from different jurisdictions show that it is important to subject competition officials, especially those in position of power and authority, to close scrutiny. Checks and balances are needed not only to ensure that the correct substantive decisions are reached but also to make sure that no abuse of power would be committed. Checks and balances are also needed to ensure that everyone in the competition authority is properly supervised.

There are many examples which help demonstrate this point. One particular example actually comes from the United Kingdom. It happened within the UK Office of Fair Trading (OFT) which is a good organisation but which soon will be replaced – along with the UK Competition Commission – by a new competition and markets authority. This example concerns the apology the OFT had to issue in 2008 to the supermarket chain *Morrisons* and the 100,000 the OFT had to pay – by way of compensation – to *Morrisons* because of the false accusation levied against *Morrisons* that it had committed a competition breach. Apparently the whole saga was caused by a civil servant within the OFT who simply decided to add their [■] „signature“ to the case!

What this example, among many others around the world, shows is that there is a

need for a „reality check“ in relation to what competition authorities do and there is a need for a tight internal administration and control within almost every single authority in the world.

Experience with various authorities around the world seems to indicate that there is a big room for improvement on the internal administration front. What is quite interesting here is that almost all competition authorities are fascinated with cooperating and talking with other authorities. This is certainly good practice and very welcome; and no doubt it is both helpful and necessary in a globalised world. But, one wonders sometimes to what extent competition officials are equally enthusiastic about communicating properly and effectively with their colleagues at home (within the same authority). Some certainly are, though not all. Yet, such proper and effective internal communication is vital for the success of competition authorities.

One should hope that this issue of internal administration is something that competition authorities and relevant international bodies will turn their attention to, and that sooner rather than latter the issue will become a priority item on the global agenda in the field of competition law. Such agenda would become far more enriched when issues of international cooperation and convergence would be complemented with those of internal assessment.

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