Digital International Conference – Athens, 4 February 2021

"The intersection between Competition and Regulation: Prospects for Reform"

Panel 2: Towards a national competition and regulatory network

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With regards to the main topic of today's workshop: The Intersection between Competition and Regulation.

In my opinion a regulator developing competition skills is a straightforward approach.

There is no one-size-fits-all model in the institutional arrangements for competition enforcement. This is natural since the relevant legal contexts differ from one country to another. There are complex trade-offs that should be explored during the institutional design.

Granting sector regulators exclusive competition law enforcement powers in their respective sectors has undoubtedly several advantages:

- It takes advantage of the sector-specific knowledge and understanding and of its regulations. Competition enforcement is based on the sector specific know-how.
- It allows the application of an optimal mix of competition law enforcement and regulatory solutions. This model facilitates the selection of the most appropriate field, under the sector regulatory framework or competition law, to explore a specific case.
- It allows regulators to take into consideration competition principles when issuing regulatory frameworks.

Furthermore, the European Union regulatory model in the electronic communications sector already embraces many competition law principles, which means that a number of critical decisions need to be made by the regulator with a view to establishing a competitive landscape. The need to adopt regulatory decisions that are sensitive to promoting competition is made clear in many provisions of the European Electronic Communications Code. For instance, the powers of NRAs to adopt decisions in relation to co-investment constitutes a significant grant of competition powers directly to NRAs, as these are issues that would normally be considered to fall within the remit of ex post analysis rather than ex ante analysis.

In short, it is clear that the Code itself has greatly expanded the competition-style powers of NRAs in the electronic communications sector, while at the same time allowing it to limit its SMP-related powers to a narrower range of markets.

On this basis EETT's allocation of competencies (regulation and competition) has been confirmed very recently in September 2020 through legislation (law 4727/2020).

With regards to the main topic of our panel:

The path of cooperation, apart from an explicit legal provision, has always been and actually is an essential and conscious choice for EETT, whether it is cooperation with independent authorities and sector specific regulators, on a national basis, or with public authorities of other EU Member States and countries around the world.

I believe we would all agree that cooperation must be based on the good faith of those involved, on mutual appreciation and respect. Good faith is a prerequisite for positive and constructive cooperation.

As cooperation presupposes and relies on the awareness and respect of the responsibilities of each authority, does not require therefore, a strictly delimited procedural framework in order to be able to adapt on a case by case basis, and be timely and flexible.

It requires binding rules only to the extend necessary for the existence of a legal basis enabling the exchange of confidential data / information in terms of business privacy or personal data and the protection of legal rights of individuals / operators during this process.

The currently in force framework of cooperation with other (independent) authorities at national level (Article 24, Law 3959/2011), but also the recently repeated provisions in article 113 par. 1 of Law 4727/2020, adequately addresses the need for cooperation. It is flexible and effective and this has been proven in practice in many cases in which it was used in the past, for example for cooperation with the Hellenic Competition Authority, until recently in 2018. Neither Directive 2019/1 (ECN +), nor experience in practice requires anything more than that.

It is in this context that we will proceed to the signing of MoU for cooperation with Regulatory Authority for Energy / Hellenic Regulatory Authority for Railways and Hellenic Regulatory Authority for Ports.

A lot of discussion has been made recently about the establishment of a "national Competition and Regulation Network" as a means of that cooperation / coordination. Of course one could not object to the idea of a national network where coordination is required, and this is mostly the case when different bodies are acting as competition authorities and as sector regulators, or when there is an issue of concurrent jurisdiction, where specific formal procedures are required to determine "how" and "when" one of the authorities with concurrent jurisdiction is taking action.

Such coordination **is especially important across overlapping disciplines** such as consumer protection, data protection, data security, the operation of the B2B Regulation, content regulation, telecommunications regulation and competition policy.

Such coordination is undoubtedly needed when **ALL COMPETITION POWERS are allocated to a SINGLE Competition Authority**, which does not have the understanding of the sector or the knowledge of its regulations and requires expertise of the sector regulation.

Of course there is always the argument about the **need to ensure consistency of application of competition policy across sectors, but isn't that precisely what European Competition Network is about?**

It is certain that there is no "ONE SIZE FITS ALL" solution also in this case.

In any case, any enforcement through legislation of specific models / mechanisms of cooperation/ coordination between independent authorities, should undoubtedly:

- Abstain from affecting the allocation of competencies among the authorities involved in the cooperation
- Respect the independence of the Authorities and ensure equality and justice between the Authorities involved

Comments with regards to the very interesting and relevant discussion taking place around digital platforms at European level.

As the Commission's approach to digital platforms reflected in its draft Digital Services Act and Digital Market Act legislative package suggests, the more complex network dynamics become, the greater the need for public policy to focus on pro-competitive ex ante regulation rather than ex post punitive action. If one looks at the focal point of government intervention, it is shifting very heavily to the domain of regulation. This is partly explained by the fact that many network industries have characteristics which lend themselves more readily to assessments of market failure, rather than market abuse. Accordingly, it is regulation that can address these types of issues through binary obligations, rather than waiting for harm to occur to exercise competition rules.

I am really looking forward to the discussion that will follow at European level around these issues.