The application of EC competition law in practice – how can the consistent application be ensured throughout Europe?

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The views expressed are purely those of the author and may not in any circumstances be regarded as stating an official position of the Hungarian Competition Authority.

INTRODUCTION

- aims of EC competition law at the outset (level playing field, etc.)
- main provisions:

1) prohibition of cartels (e.g. Sotheby's / Christie's; Hungary: motorway cartel) – Art. 81 EC Treaty
2) prohibition of abuse of dominance (e.g. Microsoft) – Art. 82 EC Treaty
3) merger control
4) public + 'privileged' companies
5) state aid rules
6) + opening up markets for competition (liberalisation) – e.g. air travel, telecommunications, energy, postal services, etc.

Application of EC competition law 1.

- fight agains cartels and abuse of dominance
- Modernisation Regulation: enforcement reform on 1 May 2004
  - reasons behind the delegation of competences

Application of EC competition law 2.

- current mechanism – entities which apply EC comp. law:
  - European Commission [+ appeal to the European Court of First Instance and to the European Court of Justice (Luxembourg)]
  - National competition authorities (GVH, Bundeskartellamt, Office of Fair Trading, etc.)
  - National courts (private enforcement of EC competition law)

Hungarian Competiton Authority = the competition watchdog

GAZDASÁGI VERSENYHIVATAL

- origins
- independence
- structure

Application of EC competition law 3.

- notion of „effect on trade between Member States"
- action
  - by a single NCA, possibly with the assistance of NCAs of other Member States <u>or</u>
  - by several NCAs acting in parallel <u>or</u>
  - by the European Commission
- legal basis for action
  - substantive law: EC competition law / national competition law
  - procedural law: national law (+ EC principles)

European Competition Network

- **European Commission + 27 National competition authorities (NCAs)**
- **actions**
  - provision of information to each other about new investigations and decisions (secured intranet, etc.)
  - coordination of investigations (e.g. dawn-raids)
  - assistance at investigations
  - exchange of evidence

Consistent application of EC law 1.

- **27 NCAs … is it possible at all?**
- **cornerstones**
  - EC and national provisions have been harmonised
  - notices and guidelines from the Commission
  - possibility to consult the Commission
  - obligation of the NCAs to send their draft decisons to the Commission
  - NCA's decision must not run counter to a Commission decision
  - Advisory Committee meetings
  - amicus curiae (expertise of the NCA and the Commission towards national courts)

Consistent application of EC law 2.

- necessary financial resources of NCAs („budgetary legitimacy" through fines)
- effectiveness of mutual consultations between the NCAs and the NCAs and the Commission
- the rôle of attorneys at law and in-house counsels

Further issues

- different sanctions (UK: hard-core cartel is a criminal offence)
- attempt by the Commission to influence national procedural rules – for ex.: working groups on
  - leniency programmes
  - legal professional privilege

The future: competition culture

- often: naive infringements → the competition agencies' rôle in spreading competition culture
- make companies and consumers aware of their rights (for ex.: complaints – everybody may submit it to the GVH)

Thank you for your attention!

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