



VIEWPOINT:

An Unfortunate Turn for Europe

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An Unfortunate Turn for Europe

By Antonio Bavasso*

As the curtain closes on the Brussels summit it is time to reflect on the implications of the removal of the reference to “free and undistorted” competition from the Union’s objectives. Commissioner Kroes is of course saying today that it is business as usual but it is hard to ignore the statements attributed to the instigator of this change. President Sarkozy, who refers to competition as a “dogma” and salutes a new era for European champions. This short-term view is bad news for Europe and, if not resisted, has the potential to generate a downward spiral in international relations.

Many argue that the references now contained in the separate protocol do not change the *status quo* (and President Barroso appears to believe that this adds legal certainty) but the political significance of the change cannot be overstated. President Sarkozy has little in common with the Leopard, the protagonist of the novel set in 19th century Sicily, who famously said that “*everything must change so that everything remains the same.*” Sarkozy wanted a change and he obtained it. In my view stating otherwise is either delusional or window dressing.

The change is designed to relegate competition policy to an ancillary function within the establishment of the internal market. This is an attempt to set back in one night half a century of enforcement policy and case law. Competition policy is demoted within the EU constitutional ranking of the new Treaty. It is an unwelcome birthday present for the European Union that is celebrating its 50th year. The fact that undistorted competition is mentioned an alleged 13 times (I have not counted) does not mean much. The point is, that within the Reform Treaty, it is no longer included where it matters the most: in the list of the Union’s objectives. The foundations of competition enforcement are now weaker.

What are the practical implications of this change? Will this alter ordinary antitrust and merger control enforcement in the short to medium term? I do not think so. However, this may have longer term implications in relation to the constitutional, and ultimately political, support for antitrust enforcement in Europe. The Commission will have to work harder to avoid this effect; resulting in an unnecessary divergence of resources which should be focused on taking forward reforms within antitrust enforcement. In my view the most direct impact will be felt in areas where the Commission has to take on Member States (and it does from time to time), most importantly concerning market liberalizations (e.g. energy and communications), but also State aid.

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It is disappointing to see the political class not only failing to explain the benefits that sound competition policy brings to the economy (and therefore consumers), but going so far as using it as a scapegoat for problems whose origin lies elsewhere. Presenting this as beneficial to the public is perverse. Competition policy has delivered for European consumers and continues to deliver for them. The challenge for competition policy is to find the optimal enforcement equilibrium that combines short-term consumer benefits with longer-term benefits for business and incentives to innovate. The solution is not economic nationalism and trade protectionism that fuels mercantilist tendencies in national policies.

Business also seems, understandably, to be against this change. Individual companies may have their divergences with the Commission on need for reform and the use of economics in enforcement policies. But, business understands that overall economic welfare sits in sound, tough and fair competition not in protectionism that favors individuals' short-term interests.

It is even more disappointing that this initiative came from someone who is set to be a new protagonist on the European stage in the years to come. It may seem odd that the initiative came from a self-professed economic liberal but not surprising for those who read Sarkozy's presidential manifesto which listed the *Alstom affaire* (when he faced up to the then-Commissioner Monti) as a high point in his political pedigree and greater protectionism as an economic goal. Then again we live in an era where success in Europe is a function of what Governments can take back home in the form of trophies with red lines all over them, scapegoats that take us back 50 years. The change is now agreed, water under the bridge. In the future we will have to work with what we have. But, the evil of protectionism is now, more than ever, alive and kicking. This tide should be resisted, in everyone's best interest.