

E-ALERT | Competition

October 3, 2014

VESTAGER CONFIRMED BY EUROPEAN PARLIAMENT AS NEW COMPETITION COMMISSIONER

Margrethe Vestager, designate European Commissioner for competition, has won the support of the European Parliament following her confirmation hearing on 2 October 2014. Recurring topics were growth and innovation, the creation of jobs and the importance of a strong and fair application of competition rules. Priorities are set on tax evasion, state aid, the energy market and the digital sector, including the heavily debated topic of data protection. Special attention will therefore be given to, among others, the Google and Gazprom investigations.

In her opening statement, Vestager immediately framed competition policy as a tool in the wider fields of job creation, innovation, investments and growth, thereby confirming the goal of cooperation between Commissioners, set by President-elect Jean-Claude Juncker. Acknowledging the importance of the short-term social dimensions of competition enforcement measures, Vestager nevertheless pronounced herself to be in favour of strong competition policy in the EU, as innovation, lower prices and a broader choice of products will benefit consumers in the long run.

Vestager announced that investigations will be performed regardless of size, industry or nationality of undertakings. European companies should not be cushioned from competition on European – or even global – markets, Vestager said, thereby setting out her averseness of relaxed competition laws allowing to create European champions. Vestager believes that strict maintenance of competition in the EU will make companies strong enough to compete globally. In that light, she considers it essential to also tackle those concerns in negotiations with other trade blocks. Vestager will keep in place the high level of fines, as they are supposed to constitute a deterrent, outdoing the illegal profits a company envisaged in its breach of competition law. While encouraging competition on the merit, she also said that she would “not hesitate taking care of firms unduly squeezing out smaller competitors”.

TAX EVASION

Vestager revealed that she will continue the work of Almunia, who launched investigations into Apple, Starbucks and Fiat in a number of Member States. She insisted on the importance of tackling tax issues through competition law as well, without it being “tax policy through the back-door”. Vestager advocates a structural approach, allowing the Commission to gain knowledge in the sector and create deterrence against corporate tax evasion.

STATE AID AND THE BANKING SECTOR

The banking sector is currently in the process of transforming from a system of bail-outs to one of bail-ins before state aid is required. However, there may still be a gap in between, where state aid could provide a solution. Vestager said that quality asset review and stress tests may expose banks that need more capital to remain viable and that state aid regulation should therefore be in place by the time the Bank Recovery and Resolution Directive (BRRD) enters into force.

This should fit within the more general aim of the state aid modernisation agenda, enabling Member States to take more responsibility, but forcing them to increase transparency as well. Vestager said her task, and that of DG Competition, is limited to ensuring that state aid rules are followed in that exercise, but within those limits Member States should have a broad discretion.

DIGITAL SECTOR AND PERSONAL DATA

Concerning the digital sector, it is a challenge to keep competition rules up to speed with new market developments, says Vestager. Especially concerning personal data, which Vestager identified as being “the new currency of the internet”, and its protection, there is yet a lot to learn. Once again, she stressed the importance of co-working with fellow Commissioners on this topic. Nevertheless, she holds high hopes that the Google investigation can proceed quickly, as it is in the benefit of all consumers, competitors and European innovation to open up this market. She did not tackle the issue of integrating data protection in competition policy, but did mention that her portfolio certainly comes with limits and that some concerns should be tackled by different Commissioners.

ENERGY MARKETS

Vestager recognised the concerns expressed regarding energy markets where there has been a transition from legal to de facto monopolies. Even though competition policy could, in some cases, offer a direct remedy through antitrust, merger control and state aid rules, this could only work against the background of the development of an energy union – a project high on President-elect Juncker’s priority list.

In that light, Vestager confirmed that she would continue and finalise the Gazprom investigation quickly but thoroughly, recognising the impact of high energy prices on any business in the EU. Current Commissioner for competition, Joaquín Almunia, said his team was preparing formal antitrust charges in his last month of office.

CONCLUSION

Vestager frequently emphasised neutrality, impartiality and rigour as the basis of her actions. The standard of her investigations is set at Court level, as she wants her decisions to survive potential appeals with the European Court of Justice.

Throughout the hearing, there was a strong focus on cooperation of the different Commission portfolios, in order to achieve the priorities that Juncker has set out for the Commission as a whole.

Vestager herself indicated her intention to focus on energy markets, the digital sector, state aid and tax evasion schemes. She also committed to considering self-regulation and enhanced transparency as potential alternative tools in competition regulation.

Next week, the European Parliament will decide whether or not to accept the whole college of Commissioners. Individual members cannot be vetoed officially, but the threat of a negative vote may persuade Juncker to switch portfolios or governments to replace their nominee.

If you have any questions concerning the material discussed in this client alert, please contact Johan Ysewyn, Co-Chair of the Competition practice. Tel: +32.(0).25495254 or email: jysewyn@cov.com

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