

European Commission Merger Policy Speech Reflects Alignment with US Agency Policy, Pre-2021

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

2 MIN READ

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By: Michael L. Keeley

Today's speech by Guillaume Lorient -- the EC's Deputy Director General for Mergers -- is worth a read. Without agreeing necessarily with all of the enforcement decisions described therein, it is striking how much the speech reminds me of those given by US antitrust officials back in the 1990s, 2000s, and much of the 2010s.

For most of that span, you could count on leaders of the US Federal Trade Commission and Department of Justice's Antitrust Division -- regardless of administration -- to give speeches and publish articles evangelizing the US approach to merger policy to regulators in Europe, Asia, and the rest of the world. The rule of law; predictability in the process; tailoring remedies, including behavioral ones, to preserve competition as a way of allowing mergers that would unlock important efficiencies; a laser-like focus on the usefulness of the consumer welfare standard; and an avoidance of important but unrelated social issues such as employment levels and environmental issues.

And it worked! To be sure, the European Commission's DG Comp sometimes adopted competition theories that were broader than those typically advanced by the US agencies. (Dow/DuPont comes to mind. And the EC's Form CO is no picnic compared to the simplicity of an HSR Form.) However, the EC and many other jurisdictions observed and adopted the basic merger review ideas that the US agencies had been advancing.

The current US enforcement posture -- of course -- has shifted significantly in recent years. Rejection of the consumer welfare standard has become a shibboleth of sorts. And any merger that is abandoned for any reason is deemed a “win for consumers”. (Or, the only good deal is a dead deal.)

Competition policy has become an issue of more general interest and concern to the citizenry in many countries (which, as an antitrust lawyer, I think is a fantastic development) and politicians and policymakers understandably wish to engage. Ideally, though, the balance is towards more policymaking and less politics.

Loriot’s remarks reflect an approach that embraces the consumer welfare standard; is built on “examining the facts and evidence of each specific case; taking a reasoned decision one way or another, under a transparent process, as required by our framework”; and, which endorses accepting remedies to allow consumers to benefit from the pro-competitive efforts of companies to become more efficient and capable competitors. There is room for disagreement about how any agency, including DG Comp, lives up to those ideals. But they are good ideals.

We know...that unfettered in-country consolidation within Member States is not the answer to make up for the limited geographic scope of national markets. It will neither lead to better prices for customers nor to greater investment by firms. On the contrary evidence shows that it is the presence of competition that encourages investment, rather than hinders it.

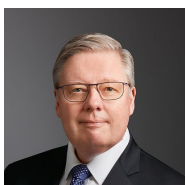
That is why the Commission continues to be committed to ensuring competitive telecoms markets across the EEA in the interest of all players, and in the interest of fair prices, quality and choice for consumers, in line with the broad consumer welfare standard we have always taken in the EU.

...[A]nd we remain dedicated to examining the facts and evidence of each specific case; taking a reasoned decision one way or another, under a transparent process, as required by our framework.

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