Balance of Competences Review
Free Movement of Services

Discussion Event
Madrid, 12 November 2013

NB: the following views were expressed by meeting attendees.

Points made in discussion:

The Non-life Directive for insurance (1973) gave Spain, previously a very traditional market in insurance, the opportunity to import products and capabilities, enabling a national market to develop as a result. Directives give space for goldplating, including allowing regulators to insert additional requirements. The single market in services is working well, enabling investments to be made across the EU and giving Spain access to import more highly rated financial services from other Member States. There was a bias towards buying from the domestic market because insurance is limited by gold plating – greater EU regulation would limit the scope for national gold-plating.

The EU doesn't have many disadvantages – further harmonisation is needed as greater consolidation is needed in the market to be globally competitive (the EU has 80 mobile providers, compared with 8 in the US and 3 in China). A more fragmented market would hinder the development of the market. The Single Market mechanisms could be improved; whilst there is a common framework, implementation is very variable, with a national flavour in enforcement still quite strong.

The digital economy is moving so quickly as to make *ex ante* regulation impossible; a more flexible approach led by outcomes is required. In future, there will be greater convergence of services. For example, Netflix is not covered by broadcasting regulation but by other regulations, but delivering much the same service on consumers. There should be 'the same service, the same rules' – a common set of rules to cover all similar services. Regulation needs to be technologically blind and focused from the perspective of the consumer (demand-oriented) rather than supply-oriented. The industry is a scale business – we need more Europe in order to get scale.

The UK is the 3rd largest e-commerce market in the world (after the UK & China) yet there is no e-commerce single market as there are many barriers remaining, such as VAT, a lack of common IP rights, differing consumer protections (notifications, privacy) and language. These complexities hinder SMEs in particular. The US and China have a competitive advantage because they have a larger harmonised home market. We should focus on fixing the Single Market first by implementing properly what we have agreed, as most trade is within the EU, before venturing globally – put our own house in order. There is a lack of support from the EU, particularly in the protection of investments (for example in Latin America) – the EU needs to combine economic and political power to ensure a coherent response to threats to investment.

We have no single EU energy market, but rather a number of energy markets as there is no EU energy policy, but large amounts of regulation at Member State level. Some of the elements are coming together but we will not have a single market in energy by the target date of 2014. The US also don't have a single energy market so the project was always very ambitious, as it is technically complex to align the technical rules necessary to enable trading at a single price across the EU. Currently decisions on energy mix and security of supply are taken at national level; one size fits all would be a mistake but more trading energy cross borders and investment of resources will need a long process of building very complex regulation. It will also be expensive because of the need to build a lot of infrastructure; Member States will need to invest not just for their own benefit but for mutual benefit. The EU needs to think in a global perspective – to compete in a global market place, the EU needs economy of scale. If the EU imposes additional costs, competitiveness will be harmed and production will move overseas. The use of ten-year infrastructure plans to guide the plans and efforts of individual Member States is welcome, but these should be collated into an EU-wide infrastructure plan. Some Member States may be isolated from a single energy market, such as the UK and Iberia, where there is weak interconnection to the continental core.

There is a high diversity of regulation in banking at a national level, so for example you need a banking license in Germany to carry out outsourced support service transactions (as if you were a bank) but not in other Member States. Under the Securities Regulation, the industry will need to standardise their securities operations, which is good news as it will drive further consolidation in the market, enabling economies of scale. Under Insolvency 2 regulations, the need for a banking license will create a more homogeneous market. There is a more coherent approach in banking than in other sectors, with a single banking regulator compared to 28 national regulators in the telecoms market, all with different remits. National regulators are more prone to lobbying so a move towards a single European telecoms regulator would be welcome. The EU had a strong ICT equipment industry but it had lost its leadership position to now have no indigenous industry. Telecoms operations stay in the EU because they are inherently local, but equipment manufacturing has gone overseas.

In outsourced public services, the single market exists but has a lot of bureaucracy because of different local mechanisms and procedures. To invest in outsourced services (e.g. through PFI), the private sector needs certainty and national governments can act unilaterally which erodes that confidence to invest. The complexity of public procurement is reducing the diversity of the tendering base so that the sector is becoming less resilient to economic shocks. The single market enables multinational businesses to operate across the EU as a single business unit, rather than 28, reducing costs and achieving economy of scale.

Summary

- Business needs regulatory certainty and the EU offers greater certainty than individual Member States.
- Implementation of Single Market legislation is more important than passing new laws.
- Trade diversion as a result of participating in the Single Market is not apparent.
- There is a tension between enabling economies of scale and encouraging new entrants to maintain strong competition in the market.
- Regulation should be based on the outcome – ‘same service, same rules’ – rather than the delivery mechanism (whether broadcast or broadband).
- Free movement of services is inextricably linked with free movement of people and social/employment policies, as services depend on people.