

Review of the Balance of Competences between the United Kingdom and the European Union

Competition and Consumer Policy

Introduction

EEF, the manufacturers' organisation is the representative voice of UK manufacturing, with offices in London, Brussels, every English region and Wales. We are a not for profit organisation with a growing membership of almost 6,000 companies of all sizes, employing some 900,000 people from every sector of the engineering, manufacturing and technology based industries.

UK Steel, a division of EEF, is the trade association for the UK steel industry. We represent all the country's steelmakers and a large number of downstream steel processors in the wire drawing, tube-making, bright bar and narrow strip sectors.

This submission focuses on competition and state aid policy. EEF has no views to express regarding consumer policy.

General remarks

EEF has on previous occasions submitted its views that the EU internal market is of critical importance to UK manufacturing. In our report *Manufacturing: our Future in Europe*¹ we highlighted amongst other things the importance of trade between the UK and the rest of the EU for UK manufacturing, and the key role that EU membership has played in attracting foreign direct investment into the UK manufacturing sector.

Accordingly, the overwhelming need is to ensure that nothing is done to undermine the functioning of the internal market and the UK's position within it.

Anti-competitive practices

Ever since the very first of the European treaties², it has been a central tenet that anti-competitive practices (e.g. cartels and abuses of dominant positions) can reduce the effectiveness of the internal market. By reducing competition, such practices increase prices for consumers and can inhibit innovation, thereby eroding Europe's international competitiveness.

When such practices cross national frontiers (for example by involving companies based in multiple jurisdictions) they can be far more effectively policed by a "supra-national" body than by mere cross-border cooperation between national authorities. Thus the Commission's exclusive competence over practices "which may affect trade between Member States and which have as their object or effect the prevention,

¹ Published October 2013. Available at: <http://www.eef.org.uk/NR/rdonlyres/A7D05ADB-E32E-4CD1-A5F1-05DAE51C41BE/23166/EEFManufacturingfutureinEurope.pdf>

² The Treaty establishing the European Coal and Steel Community, which came into effect in 1952, in fact gave the Commission competence over all competition matters including those of a purely national dimension.

restriction or distortion of competition within the internal market" is core to maintaining a successful internal market.

This competence does not detract from the ability of Member States to police activities within their own territories. National competition authorities retain competence over anti-competitive practices that have only a local or national impact. It does however mean that competence is placed at the level where it can be most effective.

Furthermore, the Commission has been effective at performing this task. Having levied extremely large penalties in a number of high profile cases, many companies have now adopted stringent internal competition law compliance policies, and compliance similarly features highly on the agendas of trade associations. It would also appear that the Commission co-operates effectively with the national competition authorities.

Moreover, the fact that UK competition law now adopts the same principles as EU law makes compliance by companies less burdensome.

Although perhaps not strictly within the scope of this review, it is worth commenting on two further aspects:

1. The Commission has issued a draft directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. Some degree of harmonisation of national practices for companies to sue for damages suffered as a result of anti-competitive practices would appear to be desirable, provided a sensible balance of interests is maintained.
2. Breaches of UK competition law can also be criminally sanctioned, whereas the only recourse under EU law is to fine the companies. Thus despite the high degree of harmonisation between UK and EU competition law, the UK regime is harsher.

Merger controls

In EEF's view, the same principles apply. The control of mergers is an integral part of ensuring a properly functioning, competitive market. It is thus entirely appropriate that the Commission should have exclusive competence for controlling mergers that have an EU dimension, while the national authorities retain competence for controlling mergers which have only a national or local impact.

Again, the Commission has performed these functions effectively.

State aid

State aid can fundamentally upset the efficient functioning of the internal market. If a company in one Member State receives aid not enjoyed by competitors, this distorts competition and can result in the less efficient driving out the more efficient, thereby undermining market efficiency and ultimately making European supply chains less competitive.

The Commission has evolved a set of principles for assessing state aid proposals. These principles seek to allow aid only in cases where market failures are preventing

the achievement of certain societal goals (for example by stimulating investment in depressed regions or encouraging companies to undertake research). The Commission cannot of course require Member States to pay subsidies in these cases, so it attempts to minimise competitive distortions by applying conditions and restrictions on the volume of aid payable.

Inevitably, state aid decisions are more of a judgement call than decisions on anti-competitive practices. Also the Commission has also sought to reduce its workload by delegating certain decisions to the Member States through the General Block Exemption Regulation. And with some Member States more willing (or financially able) to provide aid than others, the playing field can never be truly level.

Furthermore, state aid decisions can be highly political – as they affect decisions taken by Member States, not by companies. The current controversy surrounding the draft Environmental and Energy Aid Guidelines, which could seriously delay the UK's Energy Market Reform proposals, is a good example.

Nevertheless, despite the imperfections, maintaining a large degree of control over state aid is a desirable objective, and can only be achieved at EU level. Indeed, it is perhaps worth recalling that historically, other Member States have been more inclined to support their industries than the UK (the large subsidies provided to support the steel sector in the 1980s is a good example), so UK industry has benefited from the controls exercised by the Commission.

EEF therefore on balance supports maintaining the Commission's competence in this field too.

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