The Commission defends the EU consumer

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Introduction

2007 witnessed several examples of the European Commission invoking the defence of consumer rights in its single market policy proposals and competition policy decisions. The Commission placed emphasis on other themes – business friendly 'better' regulation, competitiveness, innovation and helping small- and medium-sized enterprises (SMEs). A consumer-oriented discourse, however, took centre stage in the Single Market Review and was the leading element in the Commission's justification for a range of single market and competition policy decisions throughout the year. Several observers have argued that consumer interests have traditionally been poorly represented in European Union (EU) policy-making (Grant 1993; Greenwood 2003) and that neither the EU nor any of the EU Member States has the kind of consumer lobby or consumer advocates that exist in the US. Nonetheless, the presence and influence of the consumer lobby and interests has increased over the past decade (Young and Wallace 2000; Greenwood 2003). Moreover, since the 1990s, the Commission has placed increasing emphasis on consumer interests in its strategy and discourse on single market and competition policies. Multi-annual consumer policy action plans have a two-decade history and consumer policy was officially mainstreamed through the 1997 Amsterdam Treaty (Article 153). In its 2001 report on the 'Action Plan for Consumer Policy 1999-2001,' however, the Commission accepted that efforts in consumer policy were ad hoc and focused primarily on product safety. The Commission set about reinforcing the consumer orientation of its policies, recognising in its 2001 report that its efforts were rather belated but also arguing that consumer policy had become a 'central element of overall EU policy development' (Commission 2001: 21).

While this shift principally reflected Commission concerns with regard to dealing with high profile food safety issues, the consumer-oriented strategy was also applied to market integration and competition policy. The consumer policy strategy for 2002-6 was the Commission's most ambitious to date and included a proposal to find a mechanism to attach legal implications for failure to observe company self-regulatory codes and provide a general framework directive on fair trading practices. The strategy created considerable stir in BUSINESSEUROPE, the Confederation of European Business (then called UNICE), but was keenly supported by the main EU consumer lobby, BEUC.

The heightened emphasis on consumer interests reflects the deliberate aim of increasing EU citizen (as consumer) interest in and support for the single market. The Commission's turn to the consumer can be seen as an effort to legitimise market integration in the face of powerful forces, both governments and economic interests, that have hindered progress and succeeded in watering down recent pieces of single market legislation, including the Services Directive adopted in 2006 (see Howarth, 2007).

This article outlines some of the main developments in the single market and competition policy areas in 2007 and draws out the consumerist focus in Commission policy documents, decisions and discourse on these developments.

Towards a new and improved single market?

2007 saw the completion of a major review of the Single Market, the outcome of which was the Commission communication ‘A single market for 21st century Europe’ published on 20 November (Commission 2007l). The Review calls for further investigation into new approaches to make the single market more impact-driven, result-oriented and network-based and to enhance its effectiveness, decentralisation, accessibility and responsiveness to the global context. It spells out how the single market can do more to take advantage of globalisation, improve opportunities for small businesses, and stimulate innovation, all the while maintaining high social and environmental standards. ‘A Single Market that puts consumers and small business first’ is the Commission’s official slogan for the review and the emphasis upon ‘empowering consumers’ is repeated directly in three (and indirectly in two) of the six core review themes, which are to:

- help consumers to exercise their contractual rights and obtain redress across borders;
- help consumers to benefit to a greater extent from the opening-up of financial markets;
- provide better information for consumers and small businesses;
- respond to weaknesses in sectors where the single market should deliver more;
- propose a ‘small business act’ and introduce a ‘researcher passport’;
- specify how Community rules are to apply to services and social services of general interest and promote the quality of social services across the EU.

The Review sets out a new approach to the single market, explicitly avoiding a ‘classic legislative action programme’ (*ibid.* 4). The aim of the Review ‘is rather to foster flexibility and adaptability while maintaining the legal and regulatory certainty necessary to preserve a well-functioning single market’ (*ibid.* 4). The Review provides various illustrative actions and is accompanied by documents that clarify the Commission’s preferred approaches to market monitoring, single market instruments, trade instruments and, more specifically, on the application of these approaches to the retail financial services sector. The Review dedicates considerable attention to the goal of improving the day-to-day management of the single market with increased focus on Commission assistance for senior national officials to identify the best ways to help member states implement and enforce EU policies, notably through the creation of national 'Single Market Centres'. The Review outlines a modification of the annual Single Market Scoreboard, which will from 2008 monitor the overall performance of the single market, rather than focus on transposition delays and infringement cases, and will include a new 'consumer scoreboard' on the performance of consumer markets. Amongst other proposed initiatives, the Commission announced that it would propose a small business act in 2008 that would seek to cut red tape, reduce obstacles to cross-border activity, increase SME access to European programme funding, and increase their share of public procurement contracts.

The Commission's new reform proposals for EU telecom rules were presented as a flagship of the new single market (Commission 2007i and j). Presented on 13 November, two proposed directives aim to complete the single market in telecom services and enable consumers to benefit from better-quality communications services at lower prices. The new legislation aims to address the problem of the telecom sector being largely fragmented upon national lines, with very few operators present throughout the EU market and even fewer offering pan-European services. The proposals involve improving regulation in the telecoms sector by removing regulation in 11 of the 18 markets in the sector where it is no longer necessary because competition has been achieved and by focusing new regulatory action in those markets where the dominance of incumbents has been least challenged. The Commission also proposed a regulation calling for the creation of a European Electronic

Communications Market Agency (Commission 2007k) that will assist the Commission and the national regulatory authorities to ensure the uniform and consistent application of market rules and consumer protection throughout the EU. Protecting the financial interests, security and privacy of consumers was a central element of the Commission's reform proposals. The Commission called for new obligations to be imposed on operators to publish information on prices and to facilitate transfer of customers from one service provider to another so that they can effectively take advantage of improved transparency on prices and conditions.

Wanting to avoid accusations of prioritising market integration and liberalisation over social progress, the 20 November communication includes a section covering social, environmental and cohesion dimensions. Moreover, on the same day, the Commission published an additional communication (Commission 2007m) on services of general interest, including social services of general interest and a paper which outlined a 'new social vision' for the EU (Commission 2007n).

The Single Market Review was the subject of considerable discussion and debate throughout the year that involved several EU institutions including the European Economic and Social Committee, Committee of the Regions, European Parliament (EP), Council and European Council. The Commission presented its interim report on the Single Market to the March European Council (Commission 2007c). In its response, the European Council stressed the need to improve still further the way the single market worked so it could adapt to new economic developments. The EP's 4 September resolution on the Single Market review placed emphasis on making the single market work better by improving the implementation and enforcement of existing rules.

The Commission's Single Market Review represents a shift in the strategy to advance European market integration at a time when integration has stalled in a range of sectors, most notably financial services. Much in the review is not new: it reflects the move away from legislative devices that has been taking place over the past decade as a pragmatic response to the powerful opposition to further integration in a range of sectors and the glacial speed of the EU legislative process. The shift also reflects a broader intellectual change and a business-centred agenda. Moreover, the traditional model of market integration involving legislation to approximate national rules is better suited to removing barriers to trade in goods than services and has largely run its course. At the very least, legislation needs to be complemented by alternative mechanisms. Services account for over 70 percent of EU15 gross domestic product (GDP) and 67 percent of employment, but only 20 percent of intra-EU15 trade. This is because numerous administrative, tax, regulatory and supervisory factors restrict the free movement of services. Thus there is significant scope for cross-border growth of trade in a range of services and major efficiency gains and lower costs for consumers from increased competition. The 2006 Services Directive (2006/123/EC), while achieving some progress in this area, failed to eliminate many barriers. The directive does not apply to a range of sectors, including services of general interest (SGI), social services of general interest (SSGI) and services of general economic interest (SGEI) – including health care, audiovisual services, transport (including taxis), energy and telecommunications – financial services, notaries, temporary work agencies, as well as casinos and other gambling venues (see Howarth 2007).

Moreover, there are several long-standing criticisms of the EU legislative method: slow transposition to national law, incorrect application and inadequate enforcement (for the EU25 in May 2007 there were over 1628 instances of a member state not having yet transposed a directive into national law).[1] The tendency to opt for legislative action in the past resulted in a failure to consider non-legislative alternatives. EU rules have also been criticised by many EU-based firms for undermining their competitiveness by imposing high (and uneven) regulatory burdens on producers. Moreover, attempts to legislate in sensitive areas of economic and social activity, such as services of a general interest, have triggered political opposition.

The difficulties of making progress using the traditional model of integration helps to explain the drive for 'better', less, and more flexible regulation. The 'better' regulation/market-oriented approach is also very much part of the Lisbon Agenda – the galvanising reform programme intended to transform the EU into the 'most dynamic knowledge-based economy in the world by 2010'. This emphasis on non-legislative mechanisms – such as co-regulation, standardisation and self-regulation – to achieve progress in market integration was picked up in the Single Market Review.

Free movement of goods

In addition to the push towards new mechanisms to advance market integration, the Commission also dedicated considerable attention in 2007 to the free movement of goods, which should have been attained long ago, but where many less evident obstacles remain. On 14 February, the Commission outlined an important package of legislative measures to be adopted on the development of the single market, the principal element of which was the communication 'The internal market for goods: a cornerstone of Europe's competitiveness' (Commission 2007b). The package comprises four initiatives that seek to streamline freedom

[1] 'Internal Market Scoreboard: Member States need to focus on correctly applying Internal Market rules', Commission, Press release, IP/07/991, 2 July 2007.

of movement of goods and to simplify and modernise the rules and principles governing the single market. The Commission proposed two regulations, a decision and an interpretative communication. The first regulation seeks to establish procedures relating to the application of certain national technical rules to products marketed in another member state; the second seeks to set out requirements for accreditation and market surveillance relating to the marketing of products. The decision seeks to create a common framework for the marketing of products, while the communication seeks to clarify existing procedures for the registration of motor vehicles originating in another member state. The Commission also insisted that it would recommend measures to reinforce existing rules on product safety.

Freedom to provide services and freedom of establishment

Financial services have been the focus of renewed attention since the beginning of 2007. On 27 February, the Council adopted conclusions on the clearing and settlement of securities transactions, a key component of financial integration within the EU where significant progress is needed to improve the efficiency and the reliability of post-trading services, such as clearing and settlement. On 19 March the Commission presented an interpretative communication (Commission 2007e) on the respective powers retained by the home member state and the host member state in the marketing of undertakings for collective investment in transferable securities (UCITS) – which include managed, mutual and other funds that allow an individual to invest with others in a wider range of investments than may be feasible for the individual. The communication seeks to correct diverging interpretations of the existing UCITS directive (Directive 85/611/EEC) in order to improve the way it works. The directive was adopted to allow collective investment schemes to operate freely throughout the EU on the basis of a single authorisation (UCITS status) from one member state.[2] However, the imposition of additional regulatory requirements by several member states – usually with the effect of protecting local asset managers – has blocked free operation. The Commission placed emphasis on the importance of progress in the construction of a single market for transferable securities for consumers in that economies of scale reduce costs for investment managers which can be passed on.

In April, the Commission adopted a report (Commission 2007f) on the continued appropriateness of the requirements for professional indemnity insurance imposed on intermediaries under Community law and a Green Paper (Commission 2007g) on retail financial services in the single market. In its report, the Commission argued that major efforts are needed in both these areas if consumers are to reap the benefit of a genuine single market in financial services. On 8 May, the Economic and Financial Affairs (Ecofin) Council welcomed the Commission's 2006 White Paper on enhancing the single market framework for investment funds (Commission 2006a). On 18 December the Commission adopted a White Paper (Commission 2007o) that outlined its comprehensive review of the level of integration of mortgage credit markets and identified a package of measures designed to improve their competitiveness and the efficiency, which will benefit consumers, lenders and investors. The Commission also adopted a communication 'Financial Education' (Commission 2007p) that set out non-binding principles to guide the member states and other concerned parties when drawing up and implementing financial education schemes for the

[2] In 2005, approximately €5 trillion euro were invested in collective investments, of which 70% were UCITS ('Collective investment fund regulation (UCITS Directive)' in EurActiv.com, 15 July 2005, http://www.euractiv.com/en/financial-services/collective-investment-fund-regulation-ucits-directive/article-142577, accessed 20 March 2008.

general public. Moreover, in its communication of 21 December, the Commission put forward measures intended to increase cross-border investments by venture capital funds (Commission 2007q). During 2007 work also continued within the various EU institutions on the directive seeking to complete the single market in postal services (amending Directive 97/67/EC). On 1 October, EU transport ministers agreed to support a plan to open up postal services to full competition ending national monopolies on the delivery of lightweight letters and postcards, in 2011, two years later than originally planned – a delay due to opposition primarily from France and Italy.

The payment services directive

In another direct plug to consumer interests, on 27 March, the Council agreed to a draft of the payment services directive that was drawn up to streamline and unify the EU's national payment regimes in order to eliminate the cost of cross-border transactions and allow banks, credit card companies and other payment providers to compete more freely across the EU. The directive was a core element of the Commission's long-standing campaign to create a single market for financial services and improve competition in a sector that has operated largely along national lines. Under an EU law from 2001, cross-border credit and card transfers cannot cost anymore than domestic payments. Consumer groups, led by BEUC, have long criticised banks for exploiting the lack of harmonised rules to overcharge customers (*Financial Times* 28 March 2007). The status quo affects citizens who have to make regular cross-border transfers – for example because they own a second home in another country and thus are almost always required to open a bank account in the country where the bills fall due. Beyond the costs and hassle for consumers, the Commission estimated that the annual cost of making payments between the various national systems amounts to 2 to 3 percent of EU GDP. While the directive will not eliminate all barriers to free movement, it aims to facilitate the use of credit and debit cards in other EU member states, encourage cross-border money transfers and new forms of payment services, including money transmitters such as Western Union and mobile phones, which will further intensify competition in the sector. In addition, by 2012 providers will be expected to process all cross-border credit and debit transfers within one working day. Moreover, the directive sets out common rules on the information that companies must provide to their customers and on liability. The adoption of the payment directive, by providing a legal framework, was a crucial step in the development of the Single Euro Payment Area (SEPA) to begin in 2008. SEPA, an industry initiative supported by the Commission and the European Central Bank, aims to facilitate and cut the cost of cross-border payments through a pan-European payment infrastructure. On 13 November, the EP and the Council adopted the final version of the payment services directive (2007/64/EC).

The 'roaming' fee debate

In 2006 the Commission proposed a regulation to lower international mobile call ('roaming') fees, pushing for cuts of up to 70 percent by mid-2007. The Commission's campaign to cut roaming fees has been one of its highest-profile initiatives in favour of the consumer in the history of European integration. Viviane Reding, the Commissioner for Information Society and Media, argued that roaming fees were unjustifiably high for the EU's 478 million mobile phone subscribers and had been warning operators since 2005 to cut their fees voluntarily or face possible legislation. Moreover, the Commission had in 2004 and 2005 begun anti-trust investigations against Vodafone (UK and Germany), O2 (UK) and T-Mobile (Germany) for abusing their dominant market positions by demanding 'unfair and excessive' roaming fees. In particular, the Commission challenged the level of wholesale rates that the companies charged one another for network use in the UK and Germany. The adoption of maximum roaming charge fees was strongly opposed by Europe's mobile phone companies, which made an estimated €8.5 billion a year from roaming services. They argued that it was inappropriate for the EU to engage in price regulation.

On 12 April, the EP's Industry Committee gave strong support to the introduction of tough limits on roaming fees. It approved a cap of €0.40 a minute to make a call and €0.15 to receive one and stipulated that caps apply automatically to users unless they rejected them for another price scheme. The mobile phone industry body, the GSMA, said these tariffs would force them to operate below cost, and Vodafone claimed that the proposed prices were extreme and far lower than any others that had been suggested (*Financial Times*, 13 April 2007). There were significant divisions in the EP between those MEPs who supported the position of the Industry Committee and those who – siding with industry – supported significantly higher maximum fee caps.

The cuts in roaming fees were also the subject of considerable debate among the member states which threatened to derail the Commission's plan for the cuts to come into effect in time for the 2007 summer tourist season. Britain, France and Spain (home to Vodafone, France Telecom and Telefonica respectively) and some other member states opposed cuts to roaming fees and opposed the maximum fee caps adopted by the EP Industry Committee. Most of the smaller member states, including Denmark and the Netherlands, favoured sharply lower fees as their citizens were likely to travel to these popular tourist destination countries for foreign holidays.

Negotiations collapsed in early May and the EP vote scheduled for 9 May was postponed until later in the month to allow more time to reach an agreement. On 16 May, the member states industry ministers reached an agreement to cuts to a maximum of €0.49 a minute for outgoing calls while in another EU country. Charges to receive a call while abroad would be capped at €0.24 a minute. The maximum charges (the ‘eurotariff’) was to fall further in 2008 and 2009 when it would reach €0.43 for outgoing and €0.19 for incoming calls. While higher than the EP’s Industry Committee’s proposed figures, these amounts were still a substantial decline from the previous average roaming rates on calls between two EU countries of €1.10 and €0.58 respectively. As only maximum rates were set, several mobile operators could continue to offer lower rates and roaming fees would continue to vary widely across the EU. The automaticity of the maximum rate preferred by the EP’s Industry Committee, however, was blocked; phone users who had signed up to mobile operators' overseas price plans would have to request the lower price for it to apply to them. The maximum charges (the ‘eurotariff’) was to fall further in 2008 and 2009 when it would reach € 0.43 for outgoing and € 0.19 for incoming calls. On 23 May, the EP agreed to the compromise. Thanks to the new regulation, prices started dropping in July, and the Commission reported that by October EU mobile users were able to save up to 60 percent on calls made or received in another member state.

On 18 July, the Commission closed its long-running investigations into three big mobile phone companies that were accused of charging excessive roaming charges. The decision to close the case was unusual in that the Commission rarely stops anti-trust investigations without either securing a settlement or imposing a fine. The Commission argued that the new law addressed the issues raised in the anti-trust proceedings. It was also suspected, however, that the Commission was offering a goodwill gesture to the operators (*Financial Times* 19 July 2007).

On 16 September, however, the Commission challenged the mobile phone operators again. Commissioner Reding announced the need for rules to harmonise the rates that mobile phone operators could charge for connecting calls to their networks. The rates are known as wholesale charges because they are paid by telecommunications companies rather than consumers. The amounts involved were substantial: in the UK, in 2007, the charges represented about 15 percent of mobile operators' revenues, amounting to approximately £2.5 billion (*Financial Times* 16.9.2007). Charges varied considerably across member states and most mobile phone operators were opposed to convergence. Some individual member state telecommunications regulators – as in France – were already attempting to impose cuts in the charges. However, those member states with low charges and the Commission argued in favour of EU regulation to bring about greater harmonisation and price cuts. 2007 ended with the hanging threat of EU legislation.

Competition policy

DG Competition as a world leader

In a major survey published in early June (*Global Competition Review*, 9 June 2007), the Commission was crowned one of the three best antitrust enforcement agencies in the world out of 38 agencies examined, along with the UK's Competition Commission and the US's Federal Trade Commission. Although these three agencies often pursue different policies and cases, the range of anti-trust experts interviewed for the survey found little difference in the analytical skills of the three bodies. The results provided a rare boost to the Commission, which has often been criticised for being more interventionist than its US counterpart, showing a greater willingness to place companies under investigation. Since the appointment of Neelie Kroes as Competition Commissioner in 2004, the Commission has intensified its crackdown on companies operating price-fixing cartels. In 2006 the Commission imposed record-breaking fines of €1.8 billion, more than all of the other agencies in the *Global Competition Review* survey combined. The *Global Competition Review* also praised the Commission's role on merger control and its use of sweeping sector inquiries in industries such as energy and financial services. The principal negative evaluation of the Commission's activities was the slow pace of its cartel investigations, which averaged 35 months, making it one of the slowest examined. Some of the anti-trust experts surveyed also criticised the inadequate economic reasoning of the Directorate General for Competition in some cases.

Legislative developments

The Commission's major legislative initiative in competition policy consisted in a two-part proposal for a new block exemption regulation for state aids. The proposal, of 24 April and 8 September, was the Commission's response to several member states' criticism of the operation of EU state aid policy. The German government has led the charge in favour of softening the hard line adopted by the Commission against governments that grant state aid to private sector companies. The German government consistently provides more state aid than any other member state (€20 billion out of €64 billion in total in 2005). The Germans argued that many non-EU companies enjoyed subsidies which placed them at a competitive advantage in relation to EU-based firms (*Financial Times*, 25 April 2007). In April, the German government circulated a paper to member state Industry ministers calling for the relaxation of EU state aid rules in individual cases to allow member states governments to 'match' financial enticements offered by governments outside the EU. The German discussion paper also placed emphasis on the need for an 'efficient, rapid and predictable' Commission procedure for reviewing state aid plans.

As a partial response to these kind of objections to the existing state aid regime, the proposed Commission regulation was designed to simplify and consolidate into one text the four existing block exemptions for aid to SMEs, including aid for research and development, employment, training and regional development. The new regulation would also allow the block exemption of two additional types of aid – environmental aid and aid in the form of risk capital – as well as an expanded definition of allowable research and development aid, including to large companies. On 12 December the Commission amended regulations from 1999 and 2004 that set out the rules for the application of Article 93 of the EC Treaty, including new details on the notification procedure and new forms for notifying aid in the areas of venture capital and research.

Battling the cartels; defending the consumer

2007 was also noteworthy for the record level of fines levied by the Commission and some high profile Commission decisions and supportive judicial decisions. In its own documentation about these cases, the Commission argued that 2007 was a particularly successful year for the EU's competition policy in safeguarding consumer interests. 'The EU's robust competition policy is there to ensure that dominant companies cannot use their market power to restrict competition. The focus is on consumer choice and on maintaining a level playing field for companies throughout the EU single market'[3] The rise in the level of fines was in large part due to the new fining guidelines adopted by the Commission in 2006, which made it easier to impose maximum penalties, equivalent to 10 percent of a company's annual global turnover. In January the Commission imposed a record fine of €751 million on 11 firms involved in a long-running price-fixing cartel in the gas insulated switchgear sector, including a record single fine of €397 million on the German company Siemens for its leading role in the cartel. Commissioner Kroes announced that 'the Commission [had] put an end to a cartel that [had] cheated public utility companies and consumers for more than 16 years' (*Financial Times*, 24 January 2007). In February, the Commission issued another record anti-

[3] Commission, 'Europe and EU in 2007: A snapshot of EU achievements: Dominant companies cannot limit consumer choice,' Available at http://ec.europa.eu/snapshot2007/consumer/consumer_en.htm. Accessed 16 April 2008.

trust fine (€992 million) on five companies that make elevators, including the German engineering group ThyssenKrupp, which received a new record fine for a single company of €479.7 million. Kroes said the lift and escalator cartel had behaved ‘outrageously’, while a Commission spokesman said taxpayers, public authorities and other customers had been ‘ripped off big time’ (*Financial Times* 22 February 2007). The Commission also urged customers of the companies involved in the agreement to renegotiate their contracts and said they might have the right to sue for damages. On 4 July, the Commission levied a fine of €151 million on Telefónica for abuse of a dominant position imposing unfair prices on the Spanish broadband market over a period of five years. All told, in 2007 the Commission imposed fines totalling €3.33 billion.

Sectoral investigations: Challenging banks and credit card companies

Starting in 2006, the Commission undertook major investigations into several sectors of the EU economy in which there were significant obstacles to both competition and cross-border trade. In January 2007, the Commission published the results of two inquiries into the European gas and electricity sectors (10 January) and retail banking markets (31 January) (Commission 2006b; 2007a) and stressed that it was vital to apply both competition and regulatory-based remedies to barriers in these sectors. On 25 September, the Commission presented the results of its inquiry into business insurance and recommended a series of measures to intensify competition (Commission 2007h). Although the Commission’s sector-wide investigations were not directed at any specific companies and thus did not trigger antitrust fines, the Commission let it be known that its investigations would allow it better to pursue individual infringements in the future.

In its 31 January report, the Commission criticised retail banks and credit card companies for charging artificially high fees (and 'ripping off customers') and a lack of cross-border competition (*Financial Times*, 1 February 2007). The Commission argued that 'in some member states the combination of high profits, a high level of concentration and the existence of barriers to market entry is worrying, with the banks being able to abuse their market power towards consumers and small businesses' (*Financial Times*, 1 February 2007). The Commission was particularly critical of the high level of market concentration among savings banks and cooperative banks in several member states, including France, Germany, Italy and Spain, and their failure to compete with each other in local markets. The Commission highlighted the barriers that discourage consumers from switching banks, such as fees for closing an account.

The Commission also challenged cross-border 'interchange fees,' the charges paid between banks' servicing retailers and those servicing cardholders – which raise competition concerns and result in higher costs to consumers. The problem is long-standing; associations representing retailers presented complaints about these fees to the Commission a decade previously and the Commission began investigations into various aspects of the credit card industry in June 2000, the day after American authorities launched anti-trust cases against Visa and MasterCard activities. Visa and MasterCard and other major credit card companies argued that the elimination of interchange fees would create chaos in the EU's payment card system (*Financial Times*, 30 January 2007). In 2002, Visa avoided Commission action by lowering its fees. In 2007, MasterCard was still waiting for a Commission decision on whether its fee structure violated competition rules. In its 31 January report, the Commission noted its preference for self-regulation by banks and credit card companies, but also threatened action if the situation did not improve. The Commission, however, stopped short of calling for the abolition of fees or of specifying reductions.

In spite of the apparently soft position of the Commission on interchange fees in its 31 January report, by the end of the year, it adopted a tough stance on MasterCard. On 19 December, the Commission told the company that it would face daily fines of US$316,000 unless it eliminated within six months its cross-border interchange fees for cross-border payment card transactions with MasterCard- and Maestro-branded debit and consumer credit cards which, the Commission argued, violated EC Treaty rules on restrictive business practices. The Commission stressed that, while interchange fees were not inherently illegal, they were only compatible with EU competition rules if they contributed to technical and economic progress and benefited consumers. The Commission argued that MasterCard's fees did not meet these criteria. MasterCard said it would launch a legal challenge to the ruling (and was eventually to do so on 2 March 2008). The Commission's 2002 deal with Visa also expired on 31 December and the company was then required to eliminate its fees altogether or face fines.

Microsoft's defeat at the Court

On 17 September, the Court of First Instance (CFI) confirmed most elements of the Commission's decision of March 2004 that found Microsoft guilty of abusing its quasi-monopoly position in the market for PC operating systems and media players. The Commission fined Microsoft €497 million for infringing the EC Treaty rules on abuse of dominant market position (Article 82).[4] In its battle with Microsoft the Commission placed

[4]Directorate General Competition, Commission, 'Anti-trust cases: Microsoft case', http://ec.europa.eu/comm/competition/antitrust/cases/microsoft/. Accessed 2 March 2008.

considerable emphasis on the negative effects of the company's practices on both innovation and consumer choice. The Commission found that Microsoft acted illegally by preventing data exchange with competing operating systems and by bundling products together, thereby limiting consumer choice. The Commission found that Microsoft prevented innovative server products from being brought to the market and distorted competition in the streaming media player market. The CFI court largely upheld this decision. A Commission statement on the CFI ruling said that the court has underlined that computer users are 'entitled to benefit from choice, more innovative products and more competitive prices'.[5]

The Commission's victory against Microsoft was not total, however. While the CFI confirmed the Commission's assessment as to the appropriate legal tests to be applied, in addition to the evidence needed to satisfy those tests, it annulled aspects of the Commission's decision that ordered Microsoft to submit a proposal for the appointment of a monitoring trustee with the power to have access, independently of the Commission, to Microsoft's assistance, information, documents, premises and employees and to the source code of the relevant Microsoft products. The Commission had also wanted Microsoft to bear all the costs associated with that monitoring trustee.

Conclusion: Defending the citizen consumer

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[5]Commission, 'Antitrust: Commission welcomes CFI ruling upholding Commission's decision on Microsoft's abuse of dominant market position', press release, MEMO/07/359, 17/09/2007, http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/359&format=HTML&aged=0&language=EN&guiLanguage=en. Accessed 10 March 2008.

During 2007 the Commission extensively justified its advocacy of market integration and assertive application of EU competition policy in terms of protecting consumer rights. The Commission's intention appears to be to increase EU citizen interest in, and support for, the single market following the stumbling progress of recent years in integrating services markets. The shift in strategy and discourse should also be seen in terms of the decreasing relevance of the traditional model of advancing economic integration through legislation and the corresponding increased focus on alternative mechanisms to achieve progress. There is an element of populism in the Commission's consumerist discourse. Presenting its Single Market Review, the Commission sniped at 'vested interests with disproportionate market power' 'creaming off' the benefits of globalisation and promised to 'take action where markets do not deliver for consumers'.[6] The Commission appears to respond to widespread public concern about the economic and social effects of liberalisation and globalisation. This kind of message seems to target an audience that has not traditionally looked to European market integration for salvation. While the message should meet with a favourable (but sceptical) hearing in the UK, in some member states with different socio-economic cultures (notably France) one wonders if addressing citizen-consumers will have the same kind of appeal.

Key readings

Commission (2007l) 'A single market for 21st century Europe'. The review sets out the Commission's new approach to the single market, deliberately avoiding a 'classic legislative action programme' (4). House of Lords (2008) provides the best critical account to date of the European Commission's Single Market review.

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[6] 'Commission unveils its vision for a modern single market for all', Press release, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1728, accessed 2 March 2008.

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Commission (2007c) ‘Communication: A single market for citizens — interim report to the 2007 spring European Council’, COM(2007)6, 22 February.

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