



# **CONFERENCE ON INSTITUTION BUILDING OF THE COMPETITION AUTHORITIES IN SOUTH-EAST EUROPE**

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**Antitrust, Mergers, State Aid and consumer policy under the same umbrella  
- does a political compromise prevails an expert approach?**

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# CHALLENGE – ESTABLISHING AN EFFICIENT SYSTEM

## Three basic elements:

1. Transparent user-friendly legal framework
2. Institutional framework:
  - functional independence
  - sufficient human and financial resources
  - internal organization
  - qualified staff
3. Efficient implementation:
  - credible enforcement record

# **THREE (WHAT ABOUT MORE) DIFFERENT CHALLENGES UNDER ONE UMBRELLA**

- 1. COMPETITION (ANTITRUST + MERGER CONTROL)**
- 2. STATE AID**
- 3. CONSUMER PROTECTION**
- 4. PUBLIC PROCUREMENT**
- 5. SECTOR REGULATION**
- 6. GOVERNMENT INDUCED DISTORTIONS OF COMPETITION**

## **SPECIFIC CHALLENGES:**

- Who protects whom and from whom
- What is the focal interest

# PHILOSOPHY OR IDEOLOGY

**Interesting, however totally missed, approach:**

The goal of competition policy is to protect (?!):

- Consumers
- Competitors
- Market structure

**Very important:**

- Mario Monti: consumer oriented competition policy; level playing field
- Margrethe Vestager: Competition is a consumer issue
- Relevant issue: better choice and price/quality ratio

## CONSUMER PROTECTION – OPEN QUESTIONS

1. Is consumer protected, and if yes – how?
2. What is the role of other authorities, institutions, NGOs?
3. How are all relevant stakeholders financed?
4. Should competition law and policy be focused on consumer protection – how?
5. To what extent should competition authorities help consumers?
6. Are competition advocacy and awareness raising neglected/undrestimated categories?
7. What are we talking about – an average consumer or informed/reasonable consumer

# STATE AID – FEW BASIC FACTS

## TFEU, Art. 107/1

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

## SAA – Art. 73

1. The following are incompatible with the proper functioning of this Agreement, insofar as they may affect trade between the Community and Serbia:

(iii) any State aid which distorts or threatens to distort competition by **favouring certain undertakings or certain products**.

3. The Parties shall ensure that an **operationally independent authority** is entrusted with the powers necessary for the full application of paragraph 1(i) and (ii) of this Article, regarding private and public undertakings and undertakings to which special rights have been granted.

## STATE AID – WHAT ABOUT POLITICAL INFLUENCE

1. What are the focal points in antitrust, mergers and state aid policy?
2. Why is in State Aid policy the supra-national competence so important?
3. Is there enough knowledge what state aids really are?
4. How to break through with the relevant information?
5. Who disposes with the relevant data?
6. What could be the right model – having in mind operational independence (SAA)?
7. Who decides at the end of the day?
8. What about the future, after the EU accession?

# INSTITUTIONAL FRAMEWORK

## Functional (operational) independence:

- No political influence
- „There is no free meal“
- No accountability to Administration
- Final decisions (Court review only)
- Independent financing
- Access to information
- Professional level (Ulf Böge: „You’re as independent as you’re qualified“)
- Public support (Communication Strategy)

## **CRITICAL (PROVOCATIVE) VIEW – CONCLUDING REMARKS**

1. If there is a competent institution, let's merge it with the others in order to have the positive outcome
2. There are too many institutions, a merger would have positive financial effect
3. Creating independent institutions would burden the (never sufficient) budget
4. The investment into new institutions is expensive (the most expensive is the investment you don't have)
5. Is there any cost/benefit analysis?
6. How the situation with the existing institutions looks like?