

Revisiting Modernisation: the European Commission, Policy Change and the Reform of EC Competition Policy

BACKGROUND

- The European Community's antitrust regime has been radically changed with the adoption of a package of reforms over the period December 2002 - April 2004.
- A key element of the package is the establishment of a European Competition Network (ECN), comprising the Commission and national competition authorities (NCAs) from all member states, as the main mechanism for ensuring the enforcement of antitrust rules across the Union. The Network allocates cases according to the 'best placed to act' competition authority. Four features of the network are important:
 - NCAs cannot contradict or overrule Commission decision, and when the Commission initiates proceedings, national authorities are relieved of their competence;
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 - national authorities are obliged to apply Community law in any case where trade between member states is affected; and
 - member states can only apply national laws that are stricter than Community rules in the case of prohibition of unilateral conduct.
- The dominant view within law and political science of the European Commission is to perceive it as a self-interested actor, motivated by the desire to maximise its influence and to expand its power. This view informs accounts of modernisation of the Commission's anti-trust rules. It is perceived that, under the guise of decentralisation to national authorities, the Commission has in fact *extended* its central position and overall control of antitrust activity.

METHODOLOGY

- The paper draws on fieldwork conducted by the authors to challenge the dominant view of the Commission's objectives and procedures in undertaking modernisation.
- Key elements in the analysis include: the modernisation package and its measures; core elements of the preceding regime; the main changes implemented as part of reform and their significance; and the procedures at work in the development of policy change.

October 2007

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KEY FINDINGS

- Critical analysis of the dominant view of the Commission exposes four assumptions that are open to interrogation:
 - the Commission is driven fundamentally by a concern to extend its own authority and power;
 - it will exploit, and even create, opportunities in its pursuit of these goals;
 - the Commission has the ability to impose - or more weakly, to engineer - the negotiation of a settlement that advances its interests thus defined; and
 - the Commission is a monolithic actor with a single set of preferences.
- An alternative account of the Commission points to the importance of ideational, institutional and organisational factors in modernisation:
 - the original impetus to change came from *outside* the Commission rather than from within it: modernisation was engendered by changing norms and understandings within the community of competition law and policy experts with regard to how antitrust rules should best be designed and administered;
 - the Commission is a body that operates within a complex institutional setting that imposes requirements and constraints;
 - interactions within the organisation contributed to the shaping of policy: there were several areas of contention where negotiations or other interventions led to significant changes or compromise to the Commission's original proposals; and
 - the idea that the ECN is a fail-safe instrument to perpetuate Commission power and control is inconsistent with the preparedness of the Commission to knowingly establish an instrument bearing a number of risks and posing a number of as-yet unanswered questions.

THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper (CCP Working Paper 07-19) and more information about CCP and its research is available from our website: www.ccp.uea.ac.uk

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