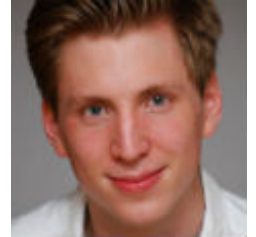


Racing for the exit? How the EU has influenced Britain's competition policy

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*Although competition policy is one of the key competences of the European Union, it has received little attention in the discussions about Brexit. **Philip Kessler** argues that if we left, British competition policy – which is largely inspired by the EU – would be cut off from its strong continental ties and be marginalised. The effects of a Brexit on EU competition policy would be less dramatic, but there is a danger of Britain leaving a gap that would be filled with demands for a European industrial policy by Southern European member states.*



To give a brief introduction, competition policy tries to enhance competition in markets by regulating anti-competitive behaviour, which includes cartels, the abuse of market dominance and merger review. The European Commission also has powers to regulate state aids, which is a unique feature of its regime to create a level playing field for trade among member states. Because of these far-reaching powers, competition policy has often been described as Europe's first supranational policy.



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This is not to say that national competition regimes are irrelevant, though. EU competition policy regulates anti-competitive conduct that has an effect on trade between member states, whereas member states' competition policies are responsible for national anticompetitive conduct. As of recently, and in line with greater demands for subsidiarity, the Commission has tried to facilitate the decentralised enforcement of EU competition policy on the national level. In order to achieve uniform enforcement across member states, the [European Competition Network \(ECN\)](#) has been set up, which allocates cases amongst its members and generally functions as a platform of information exchange and learning.

Despite pioneering privatisation and economic liberalisation in Europe, Britain has not always been at the forefront of developments in national competition policy. Before major reforms in 1998, which effectively harmonised British with European competition policy, Britain relied on a discretionary and lenient competition regime. In contrast to the EU, Britain's competition authorities did not prohibit cartels and abuse of dominance per se and also lacked the necessary enforcement tools to track down anticompetitive conduct. Andrew Scott has thus characterised Britain's

competition policy approach before 1998 as [‘tentative, partial and under-enforced’](#).

Against all stereotypical portrayals of the EU, European policy-makers did not impose their policy approach onto Britain – rather, British politicians came to realise that an EU-inspired policy reduces red tape and creates legal certainty for companies.

Today, the [Competition and Markets Authority](#) (CMA) is one of the most respected authorities in Europe, but what will happen to it after Brexit? It seems hard to avoid the conclusion that British competition policy would be worse off outside of the EU, largely for two reasons.

First of all, leaving the EU does not mean that Britain leaves the jurisdictional reach of EU competition policy. Not even the US is able to escape EU’s regulatory power in competition policy, which is most vividly illustrated by the EU blocking a merger between two major American companies, General Electric and Honeywell, in 2001. Hence, a Brexit would constrain sovereignty rather than increasing it, since neither the European Free Trade Area (EFTA) nor a bilateral agreement with the EU would allow Britain to avoid or influence EU regulations.

Second, Britain would also lose its ECN membership and would therefore miss out on learning from other authorities’ best practices. It seems questionable how Britain could maintain its hitherto close relationship to other agencies, such as France’s *Autorité de la Concurrence*, Germany’s *Bundeskartellamt* and of the course the European Commission’s DG Competition.

The only real option, which could be on the table for the UK post-Brexit, is to more closely coordinate its policy with the US. However, this would not render Britain more independent in competition related questions – it would rather mean that Britain would simply switch sides (and being a junior partner to the US might diminish Britain’s influence even more than in an EU setting). Also, any post-Brexit competition policy agreement would most likely be part of a US-UK trade deal that according to Barack Obama would remain [‘at the back of the queue’](#) of bilateral trade deals for a while.

Whilst a Brexit might have serious repercussions on the British competition system, EU competition policy should not experience a major drawback in the short term. However, depending on Europe’s economic recovery, caution should be exercised. Austerity-ridden Southern European countries – as well as France – share a strong legacy of state intervention in the economy and might thus use the opportunity of a Brexit to question Europe’s competition policy consensus. Some [French parliamentarians](#) have already criticised the EU’s strict competition regime in the past, highlighting that Europe should prop up national champions to compete successfully on the international stage.

These sentiments are in line with demands of Eurosceptic parties that demand less free trade and more economic nationalism. Although there is undeniably a need for Europe to address the increasing hegemony of US tech companies, a European economy with strong national champions might risk undermining the single market.

Margaret Thatcher’s vision of Europe as a ‘family of nations’ might be outdated in the 21st century, but Britain – as a staunch opponent to an increasing EU budget and thus to a European industrial policy in particular – has always played an important role in keeping financial expansion on the European level at bay. A potential Brexit might not only jeopardise Britain’s influence on competition policy matters, but also Europe’s very own economic constitution that is based upon the protection of free trade amongst its members.

This post represents the views of the author and not those of the BrexitVote blog, nor the LSE.

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