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Competition policy and antitrust: the Italian and Dutch way

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Competition and its opponents

Markets need to be made ready for competition, freeing them from unnecessary restrictions, licensing and alike, that are among the most damaging legacies of both colonial times and socialist experience. (Joseph Stiglitz, World Bank).

Everybody agrees

Why then is competition so difficult to introduce?

New entry is the most effective way of competing.

Existing market participants have a great incentive to restrict entry, either privately or by lobbying the government

The case for competition. A difficult task

- Special interests are concentrated and gain substantially by blocking competition
- The losers from any restriction are scattered across society each losing a minimal amount
- Special interests always picture competition as disruptive, while protectionist measures are always presented as beneficial, promoting employment, quality, universal service etc.
- Eliminating existing regulatory restrictions is very difficult. It is easier to block the introduction of new restrictions.
- Antitrust authorities can be very effective in their competition advocacy efforts. But they cannot be alone. Consumers, academia, the press are its natural allies.
- An antitrust authority cannot survive without active enforcement.

A plan of action for an antitrust authority: the Italian example

- No explicit policy objective in the law. Consumer welfare and market access
- The law has to be interpreted referring to European principles
- Independence of the Authority
- Annual report to be submitted to the Prime Minister and to Parliament
- Investigations in response to complaints or *ex-officio*
- Parties have full opportunity to present their views and respond to charges (that are made fully known to them)
- Powers: right to request documents and on-site inspections
- Even major cases are concluded within a year from the start of the investigation

A plan of action for an antitrust authority: the Italian example

cont.

- Sanctions between 0 and 10% of turnover. Highest fine 315 million Euro. No leniency program yet
- Appeals are presented in front of the administrative Courts. Fast track procedure: parties can expect a final judgement by the Council of State within a year after the decision by the Authority
- In the past ten years personnel has almost doubled and so has the budget.

A plan of action for an antitrust authority: the Italian example

cont.

- Enforcement started immediately a few months after the law entered into force. Early major cases against former legal monopolies trying to block competition on liberalized markets
- More recent cases: horizontal agreement between all Italian car insurance companies for exchanging sensitive information; bid rigging in public procurement (many cases); production allocation in quality consortia in agriculture (ham and parmesan cheese)
- Many cases of abuse of dominance: Telecom, Alitalia, Post, Enel, Coca Cola, Ferry Boat services etc.
- Not many mergers blocked. All together 10.

A plan of action for an antitrust authority: the Italian example

cont.

- Competition advocacy very important. Three reports have been issued at the request of Parliament: Public procurement, Retail trade, Public services. All of them have been very influential.
- All together more than 200 reports. They have provided visibility to the Authority but have not been very effective: The Authority arrives too late in the process, when a political solution has been already found. As a consequence only very marginally has its advice been accepted.
- Misleading advertisement essential for visibility and reputation: everybody understands what it is all about; action against big business (major banks, TLC, pharmaceuticals)

A plan of action for an antitrust authority: the key points to remember

- 1 The Authority was given a number of incentives to become a high reputation body: decision making institution fully in charge of antitrust enforcement, including power to impose sanctions; no overriding powers by Ministries; domestic mandate but under an EU umbrella;
- 2 Young and motivated staff, also because of a relatively good salary.
- 3 Status of members of the Authority analogous to Constitutional Court judges;
- 4 The constraint that the law has to be interpreted according to European principles enhances the independence of the Authority
- 5 Power to intervene against misleading advertisement

A plan of action for an antitrust authority: the key points to remember

- 6 The Courts in charge of judicial review gained very rapidly a reputation of independence and expertise
- 7 Journalists became very soon interested in the activity of the Authority because of its enforcement actions against big business and because of the heavy sanctions it imposed.
- 8 All complainants receive a kind letter in a very short time stating in detail the reasons for action/no action.
- 9 Very transparent decision making: all decision are fully motivated, published every two weeks and put on the web site
- The asset of the Competition Authority is that it applies a law. Credibility is achieved only by being independent. Nobody can criticize the Authority for doing what the law says it should do.