



CPI Talks: Interview with Commissioner Margrethe Vestager, Commissioner for Competition of the European Union



Today in CPI Talks we have the pleasure of interviewing EU Commissioner Margrethe Vestager, current Commissioner of the European Union and Head of the DG Competition. We will be asking a few questions about the 'Hot Topics' we will be talking about in our Chronicle.

Thank you, Commissioner, for accepting our invitation.

AITOR ORTÍZ: Our first question (while not so new anymore) is about State-Aid and rulings in the Tax field. We have heard about Starbucks, Amazon, etc. The first question is - Why these companies and not others? Seems like the Tax rulings could apply to other companies, or other countries with different tax rulings. Why these ones?

Margrethe Vestager: First of all, because they have come to our attention that they may not be playing 'by the book.' Second, we try to find cases from different sources. Some of these cases come from hearings in parliaments (the UK parliament, among others); others come from the media or we may ourselves get worried about whether the situation is as it should be. And our concern is of course, if two companies compete door-to-door with similar products and they compete on prices, services, quality; but when one company has a selective advantage - not to pay full taxes- then of course the playing field has been completely tilted. That is the reason why we put quite a lot of effort into looking into these cases from a State-Aid perspective because in the EU, this has been against our treaty from the very early days - to twist the playing field like this, and enabling some companies to have selective advantages.

AO - Some people have mentioned to us that the Criteria of Selectivity might not be very strong, that these tax rulings might apply across the board to all companies, and that the selectivity might be a little weak before the court. Do you agree with this assessment?

MV: Well, that is eventually up to the courts to decide on. The question of selectivity is very very important: That a tax ruling gives a specific advantage to you which is not available to me as a company. Tax rulings are typically Specific - they concern specificities within the company, the transfer classes





used, the internal interest, the financing of the companies. For us, it is obviously important to be able to prove selectivity, because these cases are all built on facts, and on evidence, and on how this evidence is being interpreted in terms of the State-Aid cases. And that of is very important.

We sometimes find selectivity in more general schemes. We found a scheme here in Belgium which gave a selective advantage to multinationals, which was not open to a stand-alone company, and that is also selectivity that is illegal in our treaty.

AO: We have recently seen, in the Sharing Economy or MFN clauses, that different member states are taking different approaches- UK, France, Germany - they're all conducting different investigations, and sometimes the results are not very consistent across Europe because of the different regimes. Do you think these topics will soon have a common EU approach?

MV: Well, for us it has been a learning experience in terms of how we work. But before I get into that, I think we have to resolve that issue for all member states. The MFN clauses have been shrinking - they were very wide before - and the work done by the member states has enabled a much more narrow use of MFN clauses. In some member states they are completely forbidden, but I still think that we're moving forward.

What we have learned from the case is of course, that we should coordinate even closer. We are now discussing with member states and within the European Competition Network how we can create such an 'early warning system', if a member state pays attention to a specific issue and then wants to build up the case. I think that is very crucial - that we learn from how we work, in order to coordinate better.

AO: Can we say that the recent Public Consultation that was closed recently about the Sharing Economy, platforms, etc. will help for promoting this approach? Or is it a different consultation?

MV: It is a different consultation, but I think it helps to give us a much broader but also a much more detailed understanding of how platforms work. We launched it very neutrally as a fact-finding consultation. And what came out was all these pictures of platforms being very very different, but also that platforms offer a lot of innovative services to consumers within the Union. That of course is a huge benefit for consumers, and of course there were those who thought that it could be regulated easily. On the contrary, it is quite tricky because we don't want to lose the innovative forces of platforms.

AO: Regarding multi-sided platform regulation- We can have Ex Ante regulation or Ex Post intervention, all with their own benefits and risks. Where do you (or the commission) stand in regards to ex ante intervention or ex post regulation?

MV: I think it's very important not to regulate if competition law enforcement can do the job. Therefore, it takes quite a deep analysis to make sure that, if we regulate, that we get it right. And we're in the process of analyzing both what came from our public consultation, but also where it would lead us. Because the risk of legislating is of course that you get a beautiful piece of legislation for the past, right? But it's not equipped for the future, where competition law should always be applied here and now, in ways that enable innovation, different choices, different prices, that we would all like to have, but of course i think it is important to keep an eye on whether developments would trigger needs for new regulations.





AO: In Europe, can we expect a shift in the analysis of Dominant cases? Maybe trying to be more flexible?

MV: I think what we're seeing is that markets have widened. Over the last 10 years the number of markets we see that are more than European-wide, I think has grown by 13 to 15 percentage points, from well below 50 to the other side of 60-something. For us, I think it's a very important starting point for our analysis to take note of the market. Otherwise, you miss the consumer's perspective. Where can I turn to if the merging companies lower quality, raise their prices— whatever may happen in a merger? Is there somewhere else that I can turn to? Can I get another mobile phone subscription? Can I get my product from another vendor?

I think that, as a starting point for the analysis, is a very good thing. It's not the end of the story, but to know where the market begins and where customers face that there's nowhere else to go, I think that's important in merger cases in order to get the right facts of the market into the process.

AO: But some customers may find it difficult to understand why the Commission is looking at some private services, because for them it might be beneficial. One example could be Uber, could be Google - but for consumers not knowledgeable about competition it's just a new service, a new product, they benefit... So, how to explain to these consumers that what is actually benefiting them is not correct, or that they could benefit even more after these investigations?

MV: I think very often consumers are quite right: If they say "Well, this is a wonderful product and I want to use it", well that's the success of the company. I think one should congratulate companies if they are successful. Only thing is that congratulations stop if we get the concern that a dominant position is being misused- to for instance, promote yourself in neighboring markets, or to ask consumers for something that you shouldn't ask, but that you can ask for just because you are dominant. In that, I think quite a lot of consumers realize that you can both have the benefits of a wonderful product that appeals to you and you like to use it, and that it is a good thing that someone is still looking over the shoulder of the company to see if things are still as they should be.

The thing is that some of the services that we use today - they weren't even invented, or even thought of ten years ago. If the market had been completely closed, then no innovator would have had the courage, the energy, or been able to raise the capital to innovate and launch a new product, and get the attention of consumers. In that respect, I think that it is very important that the market stays open, because otherwise innovators would be discouraged.

AO: Since you arrived to the Office a year and a half ago you have definitely left a finger-mark compared to your predecessors. Also very interesting- the number of fines is increasing, the number of high-profile cases is also increasing... Why these changes, and what can we expect in the next two-and-a-half to three years of your term?

MV: First of all, on the question of fines: Unfortunately, that cannot be ascribed to this or that Commissioner, because it depends quite a lot on how cases develop. The cartel cases and antitrust cases that would provoke a fine may have a very, very long life before they get to the final decision or get through the court system. Therefore, you find that the level of fines goes up and down over the years. That is more a question of timing of the casework.





I think it is important to apply competition. Europe has been through a socially, economically and humanly very hard crisis, first with the financial crisis, then with the sovereign debt crisis. In rebuilding the economies, I think it's very important for people to know that, if I do my best, then I have a fair chance of making it. The bigger ones are not closing the market. Member states are not just pouring taxpayers' money into my competitor - I have a fair chance of making it. That for me is a very important part of the job: To say "this is what we do", but also to apply it. That people know that it is actually a competition. If I do my best I have a fair chance of making it. It's not fixed, it's not doped, it's not anything - it's a fair playing field.

AO: Some people have said - Citizens, not people in Competition - that the EU works well when everything is going well. When it was a time of success and wellbeing everything was good. Now that we have a few crises - the economic crisis, immigration, Brexit; also the two-speed Europe and that when things go wrong barriers are created again, etc. Why does it seem like Europe works well when everything is good for everybody, but when you start having problems everyone becomes more nationalist?

MV: I think it's a natural thing. I think it goes for member states within the Union, and I think it's a tendency that we find in ourselves as humans. When things become more stressful we turn inwards to the family instead of turning outwards. The paradox is that some of the times when the Union has developed the most is in crisis and post-crisis situations, realizing that we need to do more. For instance, in the financial crisis it took quite some time, where member states said "I think about myself first". But then, eventually and gradually, came this sense of urgency: "I cannot do this alone, we need to work together." That enabled a very strong, very solid new demands on the financial sector: If they make a mess of it to pay for themselves and not to take taxpayers' money, to give you the very short version. I think that shows that, even though things look very, very troublesome, sometimes solutions are found. Now from decades of experience- you may lean back for a while, but if you want to solve things, you have to lean forward and work with other people.

AO: Thank you very much, Commissioner. It was a pleasure having this interview.

Don't miss our full video (<https://vimeo.com/162687240>) and supplement questions. (<https://www.competitionpolicyinternational.com/wp-content/uploads/2016/04/Interview-with-Margrethe-Vestager-Supplement.pdf>)

