

THE ANALYSIS OF THE EUROPEAN COMPETITION POLICY BASED ON STAKEHOLDERS' INFLUENCE

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Abstract: *This paper analyses the importance of stakeholders' actions on the effectiveness of the European competition policy. The national governments, European decision-makers, advisory institutions and civil society take the form of interest groups that have expectations, invest resources and advocate on competition policy. The paper follows the process of adopting a specific strategy (insider/outsider), depending on the type of the interest group and it divides the organizations in those with "strong ties" and "weak ties". The goal of each interest group is to arrive at the main European competition law authority, the European Commission. As it has the full power to investigate cases and manage the process, as well as implementing decisions based on proposals, influencing this institution represents a real challenge for the stakeholders. In this process, some relevant aspects are the perfect timing for lobby, the dimension of the lobbying coalitions and also the capacity of attracting supporters of the cause. Interest groups do not have equal amount of influence power nor the resources but they do change the policy, according to their particular interests, by choosing the right strategies, partnerships and means to influence the decision-makers.*

Keywords: *European Union; Competition Policy; stakeholders; interest groups; citizens; trade unions; business / employers' associations; consumer organizations; regional authorities; governments; European Commission; European Parliament; European Council; EU Council; Economic and Social Committee.*

JEL Classification: *F13; F15; F42; J58; K21; K33; L44.*

1. Interest groups – approaches and strategies

National governments, European decision-making and advisory institutions, companies, employers, citizens, employees, and trade unions that organize them, including civil society as well, take the form of interest groups that have expectations, exert different levels of pressure on competition policy, and determine to rethink its design. The study of interest groups represents the analysis of the organization, aggregation, articulation and intermediation of the societal interests within the definition of public policies (Beyers et al., 2008). As Tatham (2015) points out, as states concede elements of their sovereignty to the supranational level of their international organizations, as in the case with the 28 EU Member States, sub-national interest groups (e.g. local/regional authorities, citizens' organizations, trade unions, or employers' unions) mobilize at the supranational level of the state in an attempt to influence European policies. Superior effects on the influencing process

are held by the most representative players, as well as the most endowed regions that institutionally are well-developed or that have a numerous population (the cumulative effect applicable not only to regions but also to other interest groups). In the literature that addresses this, we find research papers that analyses the way and the circumstances in which the interest groups are mobilizing. As Beyers and Kerremans (2012) demonstrates, naturally, regardless of the sector of activity or of the country, local/regional/national interest groups tend to lobby particularly (or at least first) around close to the decision makers. Yet, when they are missing or they are weak, the possibility that the group interests to call on to others levels of government increases, the decision being usually made according to the policy in question (and obviously its national or common nature), using a cost-benefits analysis. Regarding the channels through which they have access to influencing European policies, as I have explained before, belonging to European network or to an influential network among decision-making institutions can be a solution. Eising (2007a, 2007b) affirms that European officials are discussing among them as much as they discuss with the representatives of the organizations that have various interests. The access is defined as the frequency of connections/meetings and is determined by four aspects:

- the European institutional context (this means the allocation of power between the European institutions and the favourable circumstances of contacting and accessing the European decision-makers);
- the dependence of the state resources/business environment (The business environment bears the costs or benefits of the advantages of the European legislation issued by the European institutions, so it is important for it to be in touch with the representatives of the institutions. On the other hand, the European institutions needs qualitative and accurate information because based on them, there are taken the best and acceptable decisions that can be implemented. Additionally, the business environment could be a good source of information and becomes useful and approachable especially if it has a large economic and/or a European dimension);
- the organization of the interest group (the access to the financial resources and the specialization are advantages; e.g. EU institutions generally consult a multitude of stakeholders; instead, taking into account the multi-level governance structure, political leaders prefers technical expertise, the economic influence and the capacity of organization to be able to represent as many interests as possible and to build a common platform at European level, ahead of national interests; also, they prefer as discussion partners big firms to the detriment of business associations);
- its strategy regarding the way how they decide to represent the interests (three types: insider – through direct and close relations with European officials and parliamentarians; outsider – pressure through media or public's assistance; nationalist – the selection of dialogue partners using language or nationality criteria).

From a strategic point of view, as Beyers (2004) advocates, the interest/aim pursued could be gaining access and, implicitly, gaining a favourable decision and/or

creating a “voice” for calling attention or for creating a political/institutional conflict. Depending on these and on various institutional variables, they have a particular influence in deciding whether to adopt a specific strategy or combining more strategies (the most popular mix being “go public”/insider with outsider).

The decision of following a certain strategy also depends on the type of interest group. Professional associations and organizations that represents citizens' interests are more prone to adopt outsider/“go public” strategies; even they have access to generous resources. Inside strategies (access) prove to be more useful when the decisions are taken at Commission level (e.g. implementation of competition policy or the legislative proposals on this topic), while outsider strategies under public support would be most likely be the best option for the case of the Council, the Parliament, and generally the political or party representatives, who are more sensitive to the subject related to the public perception.

Chalmers (2013) supports and develops the idea discussed by Eising (2007a): lobbying is based mainly on providing information by interest groups. Due to the time passing pressure faced by European decision-makers and due to the lack of sufficient human resources made available to have access to all categories of information in all sectors of activity, the informational network of interest groups allow them easy access to influence the policies. These networks are divided in two groups. The first are those with “strong ties” built on mutual trust, inside them circulating usually redundant information. The second are those with “weak ties” composed of known players with diffuse connections from various expertise groups, inside this group the flow of new ideas and information being more vivid and intense. Several factors determine the way and the moment in which interest groups influence the various policies. First of all, if the influence activity takes place as a part of an organized campaign and, especially, a funded one: the balance tips in the favour of business interests that have more financial resources. Klüver (2011) emphasizes that as long as decision-makers are usually approached about the same policy by several interest groups that simultaneously want to influence it, the success of lobbying is somewhat independent of the type of interest group brought into discussion, but the success rises as the number of lobbyists involved increases, and especially if it is carried out within lobbying coalitions composed of interest groups that pursue the same interest and push political decision-makers in the same direction.

The success of lobbying/the power of influencing a policy depends on to a significant degree on the relationship between the importance/prominence of the policy under discussion and the dimension of the lobbying coalitions/interest groups that wants to influence the policy. In the case of an interest group being part of the largest coalition, the importance of policy for the European space has a positive effect. Thus, emphasizing the importance of the policy that the interest group want to influence in order to attract attention and implicitly attract supporters of the cause is one of the successful approaches.

The European Commission ensures the implementation of European competition law. As Lowe (2008) mentions, it is important to underline that the main European competition law authority is the European Commission that has delegated to DG

COMP the full power to investigate cases and manage the process, as well as implementing decisions of the competent Committee/Commissioner. The Commission takes final decisions on proposal and political documents (e.g. directives, communications) and on various cases based on proposals made by Commissioner for Competition, makes legislative proposals to the Council's attention.

2. The main interest groups

Citizens represents the main beneficiaries of competition policy. For a better understanding, it is necessary to clarify the meaning of citizens that have to be understood as consumers even the large majority of them are in the position of workers/employees. Generally, although this policy has an undeniable direct impact on citizens, the influence on the policy by them can be exercised in a more tangible and effective way only through the elected deputies in the European Parliament but it is limited, as the competition policy is not the subject of the co-decision procedure like about 75% of the European Union policies. Competition policy is rather the aptitude of technocrats involved in an apolitical decision-making process based more on expertise, in which the democratic aspect of some debates is preferred to be present as little as possible. The most significant and powerful moment for the European Parliament is voting, together with the European Council, the Commissioner responsible for coordinating this policy, nominated by the Commission's President among the proposals of the national governments. Although the European Competition Commissioner has implemented a structured dialogue with Parliament as a form of implementation of the consultation provided in the Treaty on the Functioning of the European Union, Parliament considers it important but not sufficiently consistent with regard to its democratic control function over the Commission.

A larger possibility for citizens to influence the policy is through National Governments representatives in the EU Council, competition policies issues being addressed within the Competitiveness Council. In addition, the citizens' view could be endorsed by the Heads of State/Heads of Governments that participate at the European Council summits. Taking into account the increasing transnational/global profile of companies and national tensions that are particularly sensitive to availability of employment matters or unemployment rate, Member States, at group level, have been more focused on precise matters related to State aid contributions. Yet, both in State aid rules and merger control, making concessions to satisfy the national interest can influence the proper functioning of the markets. In the report from 2010, Mario Monti asserted that in the case of mergers there is the need of removing the "2/3 rules" which gives jurisdiction to national competition authorities where more than two-thirds of turnover of companies which merge take place in a single Member State. In order to encourage the emergence of some "European champions", this situation is proposed to be eliminated (inherently, this implies the relocation of the central European administration – European "one-stop shop" – and the cooperation between national competition authorities needs to be increased),

because it favours the support of states national companies by using national veto rights. As regards to State aid, the proportional and European-directed control is still considered a condition for a possible allocation of resources to non-performing public investments and therefore, their depletion.

In the design of various European policies, the European Union (just like the rest of the Member States) uses social dialogue formula since 1985. It involves discussions on social and labour issues, consultations, round of negotiations, as well as common actions of social partners (particularly associations of employers and trade unions). These initiatives can be bipartite (when it refers to those two categories of partners mentioned above) or tripartite (when the three parts of the dialogue are trade unions, the associations of employers and the representatives of the European Union institutions).

As the trade unions represent an important stakeholder in the design of the European competition policy, the influence of the employees consolidates in a regulatory framework by the appearance of the European Works Council in 1994 as a result of Council Directive no. 45 on September 22, 1994. Another factor is the procedure for information and consultation of employees of “community-scale companies”. The directive clarifies the notion of “community-scale” of a company and it also clarifies a “community-scale group of companies”. In the two types of organizations, a European Works Council may be set up or it may be applied the procedure for information and consultation at the request of at least 100 employees or at request of their representatives from at least two companies in at least two Member States. This can be achieved through the dialogue between a special negotiating committee (purposely composed of employees and elected by them, with a minimum membership of 3 representatives and a maximum of members equal to the number of Member States, respecting a balanced activities and gender distribution) and the central management of the company with the support and at its expense, under a written agreement.

Because of the trade union pressure from European Trade Union Confederation – ETUC and the European Trade Union Federations, new European Directives that regulates the efficiency of European Works Councils update the previous normative version. The concept of “consultation” of employees is linked to the elements of time and procedure optimization that allow expression in a dialogue and take into consideration employee representatives’ opinions in the company decision-making process. On this occasion it is officially recognized the important role that social dialogue partners can play, both representative and competent trade unions organizations, the employees’ representatives and employers’ organizations. The latter have to be informed during the negotiation stages in order to proper supervise the process of creation of European Works Councils and to encourage best national and transnational practices. European Works Councils, whose transnational role is better highlighted, can have a small committee to ensure daily performance of the activity.

Trade unions have required to be informed by the Commission when companies submit notifications for a merger of acquisition. At the same time, they have requested the Commission’s trade unions consultations not to be limited to an

ordinary meeting, but to create a real dialogue space and to maintain employees' representation structures during the actual merger or acquisition for not putting in order not to endanger interests of employees. This proves a great interest in politics, but the two categories of social partners generally have a low influence power. The consultations with them are limited to art. 153 of the Treaty, to elements related to the social rights of workers: promotion of employment, improvement of working conditions, social protection, representation, and human resources development. Companies and associations consider that competition policy helps eliminate cartels and seeks to avoid the abuses of dominant position and to settle various agreements between companies, having effects on the efficiency of companies and markets and contributing to economic growth in the European Union. However, companies believe that politics is a problematic instrument with many rules that has led to a very complex and complicated economic system, far too restrictive and inflexible. These generally have little interaction with the Commission and with DG COMP, with the frequency of contacts being higher only if they must interact because of economic interests or are under investigations. They are generally skeptical about the decisions taken by the Commission, about how the Commission decides and invokes the legal arguments, some of them questioning whether their points of view are taken into account.

Employers' organizations have begun to take on an increasingly important European dimension (BUSNESSEUROPE is relevant and active at EU level) compared to other non-business groups (e.g. trade unions, professional associations, and various citizens' organizations). One of the reasons previously invoked is the material resources that their member can mobilize in their desire to influence the policies that directly affect them.

Most of the business associations are regularly consulted (including online) by DG COMP on the development of new guidelines. The vast majority of them have regular interactions with authority, which resulted in satisfaction. In the case of financing/acquisitions/mergers/surveys, a dissatisfaction of associations is about the burden of reporting information on their business (the reporting format, some requested information is considered redundant, the need to allocate human resource for this activity) and the short response time that makes their activity difficult.

Consumer organizations, environment organizations etc., civil society in general, because of the diversity of their profiles have, as Dür & De Bièvre (2007) points out, diffuse benefits and costs in relation to competition policy. Their interests are punctual (graphically recorded as limited), and generally have limited resources and little ability to influence regulatory design. The European Consumers' Bureau (Bureau Européen des Unions de Consommateurs - BEUC) is based in Brussels and represents 41 national profile organizations from 31 European countries. BEUC monitors the decisions of the European institutions and has assumed as an important goal to protect the interests of European consumers. A second European consumer institution recognized as a dialogue partner of the European Commission is ANEC. This organization advocated for standardization by promoting the creation of technical standards for the implementations of European policies and regulations.

The European Commission carries out consultations in the field of consumer protection and their interests with national organizations and the two European-level organizations within the European Consumer Consultative Group – ECCG). This consultative group meets three times a year and represents a source of information. It offers consultancy for the Commission, promotes community actions and provides opinions (upon Commission's request or with its' agreement). The Commission shall appoint the members of the Group, one full member and one alternate member per Member State, based on three proposals made by the Group. Given the Commission's recent concerns, inside the Group functions two groups: one for energy and one for the Single Digital Market.

The main consultative body of the European Union institutions (Council, Commission, Parliament) is the European Economic and Social Committee (EESC). Since 1957 (Part Five "Institutions of the Community", Title I, Chapter III, art. 193-198, The Treaty of Rome) it is divided in a tripartite structure. The three groups include employers, employees, and other interest groups from civil society; the third category consists of organizations that protect the common interests of consumers, farmers' associations, environment associations, NGOs, representatives of economic, civic, professional and cultural field. The Committee is composed of 350 members in the present appointed by the EU Council based on nominations by each government of the Member States up to proportionate shares to the population of the given country, which have a renewable five-year term. The task of the Council, which meets annually in 9 (nine) plenary sessions is to provide opinions (for clarity, it is essential to underline the fact that they are not mandatory) to legislative proposals. Moreover, it also provides recommendations on topics considered to be newsworthy and important, being from a functional point of view a civil society consultation mechanism (including consultation of national and regional Economic and Social Councils), and opinions gathering, structuring and response mechanisms.

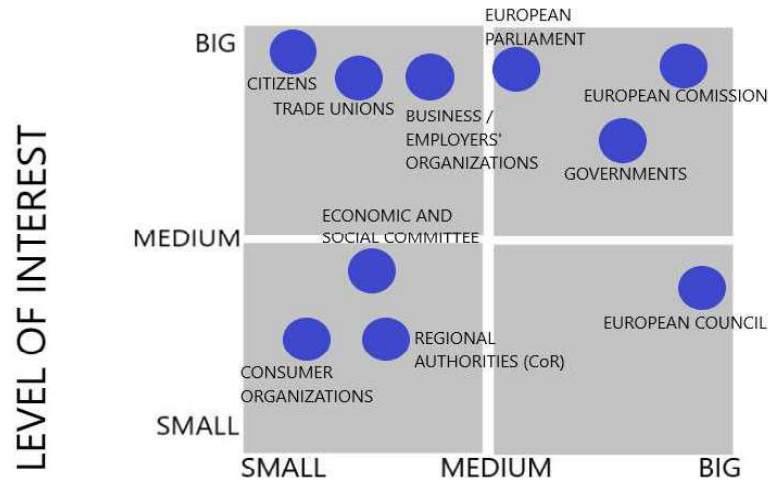
The three constituent groups are distinguished by various public positions on topics such as industrial policy, the competitiveness of European industry, European innovation and good practices, employees' rights, the development of alternative solutions such as collaborative economics, social innovation, SMEs access to credit.

Competition policy issues catches EESC's general interest, particularly when the Commission's Competition Policy Report is discussed. In the first round is discussed in groups, then is discussed in the EESC section entitled "The Single Market, Production and Consumption" (INT) and at the end is put to the plenary vote.

There have been plenary opinions, both requested and on their own initiative. They contain recommendations on State aid (more transparent allocation of resources and the implementation of ex-ante and ex-post assessment tools); merger control; the transition to an ethical European market based on the holistic concept of the economy of common good serving the citizens; the effects of digitalization on the service sector and industrial changes; supporting creative and cultural industries.

Regional authorities (local/regional governments) as Öner (2004) underlines, even if at the beginning they opposed the process of European integration (due to fear of

losing democratic control and the benefit of market principles), after the 1980s they started to accept and then support it (the integration being perceived as a new platform for affirmation of identity and extension of autonomy), and have turned into institutions supporting the growth of European Union law, the structural funds having a consistent contribution to this particular evolution. Although, they rather act on the implementation side of legislation than on the participation in the decision-making process.



POWER OF INFLUENCE

Figure 1. Stakeholders matrix (of interest groups)

Source: personal working and analysis process

The Committee of the Regions (CoR), created in 1994, according to the Treaty (art. 305 – 307 of TFEU) is the second consultative body alongside the Parliament, the Council, and the Commission. It is composed of maximum 350 members (appointed for a five-year term by the Council based on proposals made by Member States within the certain quotas limits depending on the number of population) that are local and regional elected representatives of the 28 Member States (e.g. local/county councillors, mayors, presidents of county councils, members of regional parliaments). Their role is to transmit the views of local/regional authorities in order to be included in the European decision-making process. The three European institutions mentioned above are obliged to consult the Committee of the Regions in areas such as economic and social cohesion, employment, health, educations, youth and culture, transport, energy, the environment and climate change, otherwise it can submit a complaint to the European Court of Justice. Just as EESC,

the Committee of the Regions can issue their own-initiative opinions. The CoR meets annually in 6 (six) plenary sessions in which it discusses and decides on the opinions prepared/adopted within the specialized committees. Competition policy and State aid are handled by the Committee on Economic Policy of the Committee (ECON), alongside industrial policy, economic and monetary policy, the internal market, economic governance and the European Semester, trade policy.

Depending on the coordinates analysed above, in Figure 1 we can find the most relevant interest groups associated to the European common competition policy, positioned according to their vision of this policy, being scaled the interest and power of each to influence it.

3. Conclusions

Resources endowment of interest groups increases the possibility of this group to mobilize and then to carry out influencing activities on the policy, and the richer the organization is it has a more privileged access to European and national decision-makers (e.g. the European Commission, the governments of the Member States) (Dür and Mateo, 2012). This is also demonstrated by Klüver (2012), which emphasizes that information transmitted by a stakeholder group to the Commission is an important tool for influencing the political decision. And even interest groups do not have equal access to decision-makers, nor the same amount of influence power, the volume of information to which they have access and which they deliver to the Commission increases according to the group's resources endowment level. The Commission's proposal for an Interinstitutional Agreement to simplify legislation and ensure a better/efficient/transparent law-making process at EU level highlights the willingness to extend European models of governance, implying all levels ("shortening" the national-European inter-levels communication channels and the use of "direct lines" through the REFIT platform: the governments group for national government – the Commission, respectively, the Interest Groups for European citizen – European legislator). This proposal is made in order to extend the direct consultation of citizens and interest groups when drafting European legislation, including the use of online procedure, and the use tools to assess the impact of various policy measures on citizens and employees in particular, an ex-ante and ex-post policies assessment type.

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