

## Editorial

### The Art of Regulation and the Ethics of Competition and State Aid

*"We found a continent scarce in natural but rich in human resources and their produce!"*

The above or something similar might be the glowing first report of a discoverer of modern day Europe. The account would most likely disregard the fact that humans are not only 'resources' but also the source of wellbeing and that human dignity is an end in itself. Likewise, our pioneer would most likely miss the cultural, religious and philosophical sources of the old continent, and the fact that its wealth rose from centuries of wars, strife, revolutions and toil. Voyaging deeper into the continent, the discoverer would learn that most of its nations are united in a political and economic Union, which is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. Our voyager's second and more enlightening report might then say that the essence of Europe's wealth is rooted, to a large extent, in intelligent supranational governance and public regulation.

The ethics of EU supranational regulation is strongly characterised by the objective to work for sustainable economic development and social progress. In his Apostolic Exhortation, *Evangelii Gaudium* (The Joy of the Gospel) of November 26, 2013, Pope Francis is much clearer: He states that overcoming an economy of exclusion is the ultimate goal of regulation in the economy and that better man-made regulation is the means to achieve this:

*"In this context, some people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system. Meanwhile, the excluded are still waiting."* [Evangelii Gaudium, paragraph 54]

*"While the earnings of a minority are growing exponentially, so too is the gap separating the majority from the prosperity enjoyed by those happy few. This imbalance is the result of ideologies which defend the absolute autonomy of the marketplace and financial speculation. Consequently, they reject the right of states, charged with vigilance for the common good, to exercise any form of control."* [Evangelii Gaudium, paragraph 56]

*"The right of States to exercise any form of control"* includes regulatory powers. Good regulation can prevent the abuse of both capital and economic dominance. Any such abuse would undermine the economic foundation of justice, sustainability and inclusiveness. Pope Francis voices his concern over the abuse of private capital, but does not appropriately address the public cause of abuse. Neither did Karl Marx before him. Those who in the meantime have criticized the public cause of capital abuse were all too often labelled as neo-liberals. Abuse of public capital, though, is as omnipresent as the abuse of market dominance by private capital. Indeed, the State has vast resources at its command and can use them to intervene in the market. Such interventions may be necessary e.g. to provide infrastructure and services of general economic interest, or to give necessary incentives to industry where the market fails. The wasteful allocation of public monies, however, could do immense harm: It could crowd out private investment, distort private incentives and foreclose markets. In any case, it deviates

scarce funds from those who most need them. The abuse of public capital thus undermines sustainability and inclusiveness, the very values the State should protect. Examples for the abuse of public funds abound: underutilised airports, mega stadiums for third league matches and operating aid to ailing industries that are plagued by overcapacity. The margin for abuse in so-called innovation partnerships, where public procurers may limit the choice of suppliers before product development has even started, remains to be assessed.

Successful supranational regulation to reach sustainable wealth is an art. EU State aid control in the area of electricity from renewable sources encapsulates that art's complexity: support to energy from renewable sources is raised through charges which are subsequently passed on to consumers and undertakings. This may put certain undertakings in a difficult competitive situation. Hence, Member States may wish to grant partial compensation for additional costs to avoid relocation of industries outside the EU and thus the loss of jobs and, not least, carbon leakage. There is a dilemma: on one hand, failure to provide adequate compensation may lessen public acceptance of ambitious renewable energy support measures. On the other, compensation that is too high or awarded to too many undertakings may equally affect public acceptance. Regulation therefore has to precisely target State aid to sectors that are exposed to a significant risk of carbon leakage due to the funding of support to energy from renewable sources. At the same time, State aid regulation must not compromise environmental sustainability.

This journal, too, is an account of an on-going discovery: the voyage into the heart of markets that once were dominated by State monopolies and are now undergoing transformation and liberalisation. State aid is part of the solution, but can be part of the problem, too. Therefore, good regulation of State aid is just as essential as regulation against the abuse of market dominance by private capital. The ethics of competition and State aid must be guided by the commitment to build an inclusive economy. Broadband coverage of remote areas or affordable electricity prices exemplify the art of regulation.

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