Kluwer Competition Law Blog

The Financial Crisis – three lessons for antitrust (III)

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Over the past two years, while the world witnessed the devastating impact of the financial crisis, experts of all kinds have speculated about the root causes thereof and ways to address them so as to prevent the recurrence of a similar meltdown in the future. In the meantime, the role of competition authorities in the management of the crisis has been quite different from one jurisdiction to the other. In the EU, the European Commission has been heavily involved, notably as it ended up coordinating all national bailout plans and other ad hoc rescue measures by means of the EU State aid rules (for an early overview, see here and for the latest report from the front, here). Recurring questions remain, however, as to the precise relation between the crisis and "competition" – as the term is used rather loosely in this context. In a sequence of three short postings, I would like to address three issues related to the financial crisis by means of deliberately "big-picture-op-ed-style" comments and to venture three lessons for antitrust, with the view of eliciting reactions.

This is the third – and last – of such postings.

3. Third: antitrust as a discipline.

Was the financial crisis handled so well in the EU? Was the competitive level-playing-field really maintained? Didn't some Member States act in a selfish and protectionist manner? Who knows whether moral hazard has been effectively tackled? Those are perfectly legitimate questions and it might be possible to find empirical evidence to support that it wasn't always the case. Probably not in great quantity, though. And maybe it does not even matter so much. Because here comes a third possible lesson from the financial crisis.

What is perhaps the most remarkable about the way the European Commission handled the financial crisis is that it stuck to its guns: it expressly and consciously ensured that the rules of the games were complied with, that no exception-regime was created, only to exploit the flexibility offered by existing rules. It adopted a rule-bound approach. And it took all necessary steps to ensure that that approach be sustainable: it made sure it could act swiftly to authorize acceptable rescue measures and provided guidance to Member States as to the way to design those measures, in a timely and thoroughly fashion. It brought legal certainty in times of great uncertainty, it brought stability, it helped re-building confidence and credibility. And it continued to crack down on cartels and to go after abusive practices. It made sure that "*like puppies, competition law is not just for Christmas*", as John Vickers once said.

Maybe some issues slipped through, maybe some cases were not optimally settled and some solutions were unwarranted (as the Commission acknowledged itself at one point, cf. growth ceiling for the recipients of public money). The Commission does make mistakes. But in the framework of the financial crisis, it pursued a clear, credible, reliable competition policy – it enforced market discipline. It remembered Easterbrook: “when everything is relevant, nothing is dispositive” (in the “Limits of Antitrust”). The financial crisis and the way it was handled in the EU provide a healthy reminder that antitrust is a discipline and that by setting clear and consistent rules for business (and policy makers), it creates a predictable environment conducive to investment, innovation, competitiveness, and indeed efficiency.

In closing this series of postings, the financial crisis episode brings two words to mind: hope and modesty. Hope because antitrust remains, in spite of the circumstances, a major tool to ensure that firms abide by the right incentives. But also modesty: antitrust does not and cannot address each and every market failures. Sector-specific regulation is necessary. And competition law as such can do little to tackle unemployment or curb on people’s smoking habits. Some bankers burned their fingers and, perhaps with the unintended complicity of central bankers and governments, almost brought down the house. Competition policy, in Europe at least, may have in fact contributed to keep the house together. It must continue to do so by implementing established principles in a transparent and consistent manner, on the basis of sound empirical evidence, and with conscience of its limits and of the world around it.

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