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Comment

European competition policy needs urgent reform

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Italy has managed, in effect, to block the merger of Spain's Abertis with the Italian Autostrade – which would have created a pan-European infrastructure group – by moving the goalposts in the middle of a merger procedure and introducing substantial uncertainty about the terms of highway concessions.

In spite of objections from the European Commission, Rome has got away with it – for the moment and perhaps for good – for three reasons. First, regulation is fragmented and the Italian regulator, Anas, need not respond to any European logic. Second, the Italian government, instead of confronting Brussels' authority directly, claimed the issue was Italian. Third, the tools of European competition policy are limited. This is particularly so in nationally regulated sectors and whenever there is public ownership.

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In Europe, there are many tensions between regulation and competition policy. In the energy market, vertically integrated companies that control transport (pipelines) and transmission (high-tension grid) can discriminate against entrants and block entry. They also lack incentives to provide adequate interconnection capacity across countries. National regulators may themselves not have the right incentives to fix the problem if they reflect short-term government wishes.

In telecommunications, there is talk about regulating wholesale markets to lower mobile roaming charges. In this sector, the European Commission, the competition authority, is also tempted to intervene in a regulatory capacity to promote access to existing networks. An alternative might be to foster infrastructure competition, for example, between incumbent and cable operators in the provision of broadband services.

In banking, the level of "interchange" fees between merchant and customer banks in the credit card business may be targeted for regulation. An alternative could be the fostering of competition between banks' proprietary networks and associative ones such as MasterCard to keep in check potential market power.

Problems are compounded where there are publicly controlled companies, since in this case the government is both on the side of the regulator and of the regulated and therefore the regulator faces a conflict of interest – something particularly relevant in the energy sector.

A satisfactory resolution of the conflicts between regulation and competition policy has to be based on three pillars: confinement of regulation to natural monopoly sectors as a general principle; the building of a Europe-wide system of regulators with common principles and books of rules; and the progressive elimination of public ownership in "network" industries such as energy, telecoms and banking.

With respect to the first pillar, whenever Brussels tries to regulate a competitive business sector, it gets into trouble because the regulation ends up being intrusive – the telecoms sector is no exception.

On the second pillar, national regulators should be integrated into a European system with common rules, sector by sector, that provides an even playing field. For example, transmission and transport in energy markets should be "unbundled" from supply and generation because they are a natural monopoly and control of this bottleneck has high potential for excluding rivals. Interconnection capacity across boundaries should be managed at the European level. In highway concessions, national regulators should abide by a set of European rules that avoid regulatory opportunism and arbitrary changes. In the banking sector there are further stability arguments, based on the potential systemic damage of pan-European bank failures, in favour of tighter co-ordination of national regulators.

With respect to state-run companies, the distortions they introduce may end up paralysing reform and market integration in a whole industry. In the energy sector this may be the result of French government control.

In order to foster European integration in network industries we need to rely on clear guidelines about the balance between regulation and competition policy and to take serious steps towards a system of European regulators that ends fragmentation. These measures would contribute decisively to the lifting of the present obstacles to an enlarged competitive market. For this, Brussels must promote more competition than regulation as a matter of principle and more co-ordinated regulation as a matter of practice.

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