10 Years of Regulation 1/2003: A Retrospective

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All views expressed are strictly personal
10 Years of Regulation 1/2003: A Retrospective

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I. Introduction

- previous enforcement regime (Regulation 17), characterised by a centralised notification and authorisation system for Article 101(3) TFEU, replaced by a system of decentralised *ex post* enforcement, in which European Commission and NCAs, forming together the ECN, pursue infringements of Articles 101 and 102 TFEU

- when exactly 10 years?
II. Genesis
A. Modernisation Group

• January 1997: *groupe de modernisation* inside DG Competition (chair G. Rocca)
• objective: adapt procedural rules to planned accession of 10 CEE countries
• 1950s/60s debate on notification and autorisation system (DE) *versus* directly applicable exception system (FR) revisited
• agreement of Commissioner K. Van Miert
• after two years and fifty meetings: draft White Paper
B. White Paper, legislative proposal and final compromise

- surprise, but reactions mostly (very) positive
  - one exception: Germany
  - one qualification: industry & European Parliament: fear of renationalisation of competition policy
- legislative proposal (2000):
  - Article 3: sole applicability of EU law
- final compromise:
  - Article 3
  - Joint Statement on the functioning of the network
III. Results
A. NCAs and ECN

• no doubt: major success, beyond expectations
• from 1 May 2004 to 31 December 2012:

<table>
<thead>
<tr>
<th>NCAs</th>
<th>EC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1344</td>
<td>228</td>
</tr>
<tr>
<td>646</td>
<td>88</td>
</tr>
<tr>
<td></td>
<td>investigations final decisions</td>
</tr>
</tbody>
</table>

• NCAs account for 88% of all decisions
• eightfold increase in number of decisions
### III. A. NCAs and ECN: top 20 EC & NCAs

<table>
<thead>
<tr>
<th>Country</th>
<th>EC</th>
<th>Country</th>
<th>NCAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>90</td>
<td>Hungary</td>
<td>21</td>
</tr>
<tr>
<td>Germany</td>
<td>84</td>
<td>Sweden</td>
<td>17</td>
</tr>
<tr>
<td>Italy</td>
<td>82</td>
<td>Lithuania</td>
<td>15</td>
</tr>
<tr>
<td>Spain</td>
<td>73</td>
<td>Portugal</td>
<td>15</td>
</tr>
<tr>
<td>Netherlands</td>
<td>41</td>
<td>Poland</td>
<td>12</td>
</tr>
<tr>
<td>Denmark</td>
<td>39</td>
<td>Slovakia</td>
<td>12</td>
</tr>
<tr>
<td>Greece</td>
<td>32</td>
<td>Belgium</td>
<td>10</td>
</tr>
<tr>
<td>Romania (since 2007)</td>
<td>23</td>
<td>Finland</td>
<td>10</td>
</tr>
<tr>
<td>Slovenia</td>
<td>22</td>
<td>Czech Republic</td>
<td>8</td>
</tr>
</tbody>
</table>
III. Results
A. NCAs and ECN

ECN = clear success

- work sharing generally unproblematic
- cooperation and coordination mechanisms generally work well
- significant degree of voluntary convergence of NCA procedures and sanctioning powers, supported by ECN policy work
III. Results
B. National courts

three types of (roles of) national courts:

1) national courts acting as NCAs
2) review courts
3) national courts dealing with litigation between private parties in which 101 & 102 TFEU may be applied
   - as a shield, to avoid contractual liability
   - as a sword, by victims of (alleged) infringements:
     - in actions for injunctive relief
     - in actions for damages
III. Results

C. European Commission

mostly as expected

- good use of increased investigatory and sanctioning powers
- use of increased scope for prioritisation
- prediction in White Paper that number of individual prohibition decisions could be expected to "increase substantially" may have been too optimistic
### III. C. European Commission: number of decisions

<table>
<thead>
<tr>
<th></th>
<th>Yearly Average</th>
<th>Yearly Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>prohibition</td>
<td>7.5</td>
<td>7</td>
</tr>
<tr>
<td>condition or obligation</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td><strong>total</strong></td>
<td><strong>9.5</strong></td>
<td><strong>10</strong></td>
</tr>
<tr>
<td>exemption or negative clearance</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td><strong>total</strong></td>
<td><strong>15.5</strong></td>
<td></td>
</tr>
</tbody>
</table>
III. C. European Commission: number of decisions

why no "significant increase"?

- resources devoted to 101 & 102 TFEU gone down?
- substantial amount of resources spent on coordination tasks?
- result of increased prioritisation: inherently more complex cases?
- even if cases not inherently more complex: more resources spent on dealing with them?
  - increased levels of internal quality control
  - further analysis of economic effects (on consumers)
paper

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