



Media Matters – The Role of Media in European Competition Cases

DG Competition is the executive arm of the European Commission responsible for overseeing mergers, cartels and State Aid within the EU, the world's largest single trading bloc. This makes its Commissioner one of the few in Brussels who has real power across the Union and at Member State level. Its current incumbent, Margrethe Vestager, has clearly stated that decisions are not taken in a vacuum. While competition law defines the framework, in reality a decision will be influenced by a multitude of different factors. The media has an important role to play.

STATS & FACTS

- 300 M&A DEALS ARE NOTIFIED EVERY YEAR TO THE EUROPEAN COMMISSION AMOUNTING TO €900BN PER YEAR ON AVERAGE
- BETWEEN 2010 AND 2015, 34 CARTEL DECISIONS WERE TAKEN INVOLVING 208 COMPANIES BEING FINED FOR €9.2BN
- 300+ STATE AID CASES ARE NOTIFIED EVERY YEAR TO THE EUROPEAN COMMISSION WORTH AN ESTIMATED €12BN OF ILLEGAL AID RECOVERED

It's not just the Commission that is influenced by what it reads, sees or hears. How a story is portrayed by a dedicated corps of Brussels based competition media can have a significant impact on how any investigation is determined by a number of key decision makers. It can also influence the analyst community, investors and your broader corporate reputation, both in your home markets and around the world. The media can be seen as this overarching force that helps to form public opinion. So how a company is portrayed in the media during a competition case does matter.

THE COMPETITION MEDIA IN BRUSSELS

Year on year, the media interest in competition cases has grown – especially with a number of high-profile cases becoming front-page news around the world. Even the most routine cases are examined and covered by the specialised competition agencies (Mlex, PaRR) as well as by leading international business news agencies Bloomberg and Reuters. When it comes to the 'big name' cases, the international business news agencies will follow every step in the case. At key stages in the process, The Financial Times, The Wall Street Journal and other leading European newspapers such as Le Monde, Handelsblatt or El Pais will be watching and waiting to splash a scoop on the case outcome or in anti-trust cases – the size of the fine against a company.

HOW CAN MEDIA DIRECTLY IMPACT A COMPANY INVOLVED IN A COMPETITION CASE?

FINANCIAL MARKETS: Every headline and relevant story in the media is scrutinized across the financial and corporate sector to help guide investment decisions. Analysts, fund managers, bankers and brokers all demand minute by minute reporting of every twist and turn in a competition investigation as this can often impact the share price of the key stakeholders. Every step in the process will be reviewed by the competition journalists who remain under constant pressure to be the first to deliver coverage which has the edge over rival news outlets. Given the stakes, it's important that speculation is managed, misreporting is avoided and key messages are understood.

CORPORATE REPUTATION: Any investigation of your business by DG Competition will generate interest from a broad array of stakeholders and influencers including your suppliers, customers, competitors as well as policy makers, regulators and academics. Many of them will take a public view and potentially seek to influence any outcome. You cannot afford to leave an information vacuum that others will be keen to define and which will have an impact on the profile of your business. This could cause reputational damage. It is imperative that you manage the media through the decision making process. It has the power to amplify the opportunity or conversely taint perceptions which may have a longer term impact on your business.

Coverage, whether good or bad, will be read by those who are making critical decisions. Speculation can also drive a story and fuel further rumour and inaccurate reporting. There is also the potential for media to misinterpret key stages of what can be a very technical process. The impact can be extremely damaging. It is vital that this process is managed well in order to make sure the right voices are heard and a company's good reputation is maintained.

MAKE THE JOURNALIST YOUR ALLY - INFLUENCE THE DEBATE

Whatever happens in Brussels, the public mood in any domestic market will be important. Get it right and you can leverage this support back in Brussels. Get it wrong and you could be more vulnerable and isolated. This is where the media has its greatest influence. With public opinion a highly fickle thing, it is a brave team that doesn't prepare and anticipate how the public will react and how the media will report.

For example, a Statement of Objections (SO) is a standard step in an M&A investigation. It sets out the Commission's concerns on how a deal could affect competition. It is not uncommon however

for its publication to be picked up at the national level by domestic media who do not understand the technical process which is reflected in subsequent coverage. The consequence, as we have seen before, is a perception that there is a problem, even suggesting that a deal is likely to fail, when in reality it is a key milestone for your business to set out its case and address any residual concerns.

Journalists therefore have significant influence. If you establish a mutually respectful relationship you are better positioned to ensure your voice is heard to balance those of your competitors or detractors who will inevitably be active in promoting their views.

MEDIA DOES MATTER

Our recommendation is that you are going to be in a better position if you engage the media as part of a proactive communications strategy. You have the choice of if, how and when but it is often harder to reach out to the press later in the process than to define your position from the beginning.

Media plays a valuable role in competition procedures. How you position your business and respond to key stages in the process is important. Ensuring your target media understand your position must be balanced with being overly responsive during what can be a highly confidential and sensitive process. But when it is done right, working together with Brussels based competition journalists will – besides protecting your share price and reputation – safeguard a more positive environment within which a decision is taken. The power of journalism should not be underestimated.

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