

CHALLENGE EUROPE

Challenges and new beginnings: Priorities for the EU's new leadership

September 2014



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The single market and competitiveness – the challenges for the Juncker team

Malcolm Harbour

The announcement of the new European Commission is encouraging for single market supporters, especially in terms of how internal co-ordination and cross functional working will be organised. It is particularly significant that the responsibility for the single market in both goods and services is to be combined under one Commissioner portfolio. There is much to be gained from a combined focus, especially on enforcing the existing rules. A unified Consumer focus is also much welcomed. The European Parliament's Internal Market and Consumer Protection Committee (IMCO), which I had the privilege to Chair over the last five years, was extremely critical of the fragmented approach to consumer policy and legislation adopted by the outgoing Commission. A strong consumer focus underpins a dynamic and well-functioning market place and encourages more competition.

It is notable that the Competition Commissioner portfolio is the only one in the new Juncker line up that remains unchanged. Moreover, none of the Vice Presidents are given a policy co-ordination role over Competition. Hopefully this is because President Juncker wishes the Competition team to be given an independent role and to take impartial action in enforcing rules or approving mergers. It will be important for the single market that consumer detriment due to absence of competition or abuse of dominant positions is swiftly dealt with.

The role of the new team in the single market arena must focus on effective application and enforcement of existing rules rather than major new initiatives. In this respect, the new Vice-President (VP) for Better Regulation will play a key role. President Juncker has said that his senior VP will ensure that "every" Commission proposal respects the "principles of subsidiarity and proportionality". For the single market, this is too narrow a remit. Efficiency and effectiveness of measures must also be optimised. Top of VP Timmermans' in-tray should be a major reform of the Commission Impact Assessment rules, to give far more emphasis to "post implementation assessments" – actually understanding what is working on the ground in Member States to make the single market work. Combining the Better Regulation role with Inter Institutional relations will give him a greater chance to tackle the biggest weakness in the structure – the Council of Ministers.

The Council is a key player in agreeing, implementing and enforcing single market rules. Yet the Council is only making tentative and timid steps forward for a "better regulation". There is very weak input from Member States on the enforcement cost and effectiveness of the existing *acquis*. Ministers – and especially their Parliaments – are not systematically engaged in strategic reviews which would pave the way for reforms, improvements, simplification or even repeals of existing rules. The European Parliament is way ahead of the Council in collecting data and guiding legislative Committees to carry out extended strategic reviews. The new Commission can work with the Parliament to put pressure on all Governments to modernise the Council and open opportunities for national Parliaments to become engaged.

The Vice-Presidential team also needs to tackle the continued problem of ineffective application and weak enforcement of key single market measures by Member States. A "fast track" method of dealing with Member State non-compliance without recourse to expensive, cumbersome and time consuming infringement procedures is clearly needed. VP Timmermans could also exploit his 'inter-institutional' role by securing agreement for better co-ordinated transposition of new and amended rules across all Member States, combined with exchanges of best practice and better use of the mutual evaluation tool pioneered in the Services Directive. The Council should be encouraged to review its Ministerial 'formations' and ensure that issues of clear under performance or market protectionism are running items on all Ministerial meetings.

Given the new team, applying "better regulation" and improved co-ordination, the priorities for action to apply these new policy tools need to be systematically identified. The Digital Single Market has been given a welcome boost by a Vice Presidential role. But it is important that digital tools are seen as a mechanism to deliver existing single market benefits more efficiently and to encourage cross border competition. It is sometimes too easy to become mesmerised by the latest online shopping application, while forgetting that speedy, reliable low cost delivery of items ordered online is a key factor in enhancing online sales. Full implementation of the Consumer Rights Directive, with online redress, will also raise confidence and encourage more consumers to go 'online'. Vice-President Ansip will need to take a down to earth, pragmatic, approach and tackle the less glamorous issues vigorously.

On the core single market legislation, it is time for a major review of the goods market and a full appraisal of the provisions of the Mutual Recognition Directive. Far too many goods are still subject to entirely unnecessary local testing regimes or blocked from being placed on the market by unjustified restrictions. The 2005 Mutual Recognition provisions were supposed to give producers or importers of goods, new rights to challenge arbitrary restrictions, and to require public authorities to justify import bans on clear public interest grounds. It is clear that many companies are unaware of their rights to challenge restrictions, or frustrated by a lack of response to their questions, despite the fact that clear deadlines are written into the rules. The new Commissioner should press for an intensive screening of the biggest problem sectors, with a mutual evaluation programme by national authorities, allowing them to challenge restrictions imposed by their peers. This process can be modelled on the lines of the Services Directive, deploying the shared expertise of combined goods and service sector teams.

The Services Directive will be subject to a mandatory review and possible revision during this Commission cycle. Member States must be closely involved from the outset, and should be collecting data on potential opportunities, and amassing evidence on unjustified barriers. The existing output from the "mutual evaluation" process must be published more widely, and Member States maintaining unjustified restrictions on business highlighted. The Commission needs to ensure that any changes will really make an improvement, and not used by Member States as a 'smoke screen' to disguise their underperformance.

Public Procurement is another of the 'flagship' measures that underpin an effective single market. Moreover, it is increasingly realised that the strategic use of public procurement will

help deliver other key policy goals. A major reform of the Procurement Directives, and new measures on Concessions, were agreed by Parliament in 2013 and formally enacted in March 2014. At the heart of the changes are simplified and more flexible measures to encourage SMEs to supply to the public sector; provisions to encourage innovative suppliers to develop tailored solutions, responding to customer demands; and the possibility for suppliers to take parameters such as life time costs into account. The new Commission must take a strong role in working with Member State authorities to introduce these rules in a consistent way and ensure that the potential for more competitive market based solutions are realised.

The deployment of some of the new provisions, such as "Innovative Partnership Procurements" needs to be encouraged by the development of training programmes and best practice exchanges. Otherwise, risk averse purchasing teams may be reluctant to work with innovative companies to develop leading edge solutions. The use of public contracts to drive innovation must be a policy imperative for all the Commissioners in the Jobs, Growth and Investment Portfolio, and commends itself to Vice-President Katainen as a lead project. It would be especially appropriate in view of Finland's leadership in exploiting public procurement of innovation, and linking university research teams and innovative companies with smart customers. In this respect, VP Katainen should demand a co-ordinating role for Research, Science and Innovation, which in the published Juncker plan is reserved only for the VP Energy Union.

In the last Commission cycle, there was a welcome boost in the political profile of the single market. The adoption of two Single Market Acts (SMA) set out clear political programmes across the Commission to boost its functioning. These Acts were also widely welcomed by all stakeholders. The SMA was an initiative of the European Parliament, and it should be energetically followed through by the new Commission, as it is fully in line with the goal of more co-ordinated policy making. The SMA was modelled on an earlier Commission initiative, the Small Business Act, and the drive to make the European Union more SME friendly needs to be stepped up. A further imperative is to encourage more innovation by enterprise and public authorities. The new Commission needs to ensure that Member State performance in meeting these critical competitiveness goals are included in the European Semester, as demanded by Parliament in its last mandate. VP Dombrovskis is a known single market enthusiast and should be ideally placed to take on this task.

At first sight, this new Commission seems well placed to put the single market at the forefront of policy making, and to focus on better implementation alongside "better regulation". The European Parliament hearings should concentrate on this aspect of the new Commissioners' competences, and judge them on their potential to deliver good results for the European economy. The European Council and especially, the Council of Ministers, need to look at their own internal procedures, and engage their National Parliaments much more deeply in the competitiveness journey. Let's hope for real progress.

Malcolm Harbour was Chairman of the Internal Market and Consumer Protection Committee in the European Parliament between 2009-2014.