



BRUSSELS À JOUR

Much More than a (Letta) Report

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Völzke report on the
latest developments from
the European capital of
competition law.

The dust, stirred up by the run to the ballot boxes, is gradually settling... but after the election is before the post haggling. Worthwhile having a look on the possible content of the mission letters of the next Commission, regardless of who will receive them from the new President. As the much-anticipated report by *Mario Draghi* on the EU's competitiveness has not yet been published, a report authored by *Enrico Letta* ("Report"), Mr. *Draghi's* compatriot and also a former Prime Minister of Italy, may offer some initial guidance.

The *Letta* Report

In 2023, the European Council called on the Spanish and Belgian EU Council Presidencies and the Commission to have an independent and high-level report prepared on the future of the Single Market. The Commission, Belgium and Spain hoped to find concrete and ambitious recommendations for the further development of the Single Market.

Enrico Letta released his Report in April 2024. The Report's full title reads "Much more than a Report – Speed, Security, Solidarity. Empowering the Single Market to Deliver a Sustainable Future and Prosperity for all EU Citizens". Quite an ambitious mission statement for a report. The Report offers a range of policy recommendations for the future of the Single Market, calling on EU institutions, Members States and EU citizens to take action. The Report's key themes include the introduction of a "fifth freedom", focusing on research, innovation, knowledge and education, to enhance the Single Market's innovation capabilities within the new global landscape; fostering innovation within the Single Market to mobilize private and public resources and direct them towards bridging the current investment gaps and financing the bloc's key objectives; the Single Market's role in enabling the scale-up and growth of European companies; improving the distribution of the benefits of economic integration within the Single Market; and developing a pragmatic approach to improve the regulatory framework and strengthen enforcement tools with the aim of enhancing speed and efficiency in the Single Market.



While the Report does not specifically address the EU competition law's role in perfecting the Single Market, some of its key themes could well have implications for the bloc's competition policy and DG COMP's enforcement priorities. So, if the Commission's new President were to look at *Letta's* Report when drafting the mission letter for the new Competition Commissioner, what might it say?

Merger Control – A Call for Consolidation and European Champions?

To *Letta*, scaling up EU companies within the Single Market is essential to maintain and enhance the EU's international role, to bolster its strategic autonomy, economic power, and global policy influence. Scaling up will allow EU companies to diversify their supply chains, champion European standards worldwide, and enhance their global competitiveness. According to *Letta*, their success will attract foreign investment, foster innovation ecosystems, and project a strong image of the EU. Ultimately, a thriving economy fueled by powerful companies would empower the EU to negotiate favorable trade deals, shape international standards, and effectively address global challenges. As such, to *Letta*, scaling up EU companies is not merely an economic but a strategic imperative.

Any impact on the new Competition Commissioner's mandate?

The Report appears to be committed to a traditional approach of EU competition law and policy, i.e., as a tool to protect competition and maximize consumer welfare. According to *Letta*, competition policy – and competition law enforcement – should not be used to engineer specific market outcomes. This would seem to suggest that *Letta* would not have the EU take legislative action to clear anti-competitive mergers on public interest grounds or have DG COMP stretch merger control concepts to allow the creation of European champions. This is not to say, though, that the next Competition Commissioner should give due weight to the globalized competitive environment when defining the relevant geographic markets, as made clear by the Report's reference to the Commission's revised Market Definition Notice.

To *Letta*, perfecting the Single Market is key to enable EU companies to achieve the scale needed to compete with their larger – and sometimes heavily subsidized – rivals at a global level. This requires the integration of what used to be – and still are – national markets to create more truly EU-wide markets which, in turn, might then allow further consolidation across the EU. Leaving merger control aside, to *Letta*, national markets often act as a ceiling, hindering EU companies' potential also for internal growth. As such, the Report calls on the EU institutions to take regulatory action to further market integration across a broad range of industries, including finance, telecommunication, defense and space, health and transport. Once the market environment has changed, market definition will follow suit.

Bottom line: Achieve consolidation and scale through truly integrated, EU-wide markets!



Antitrust Enforcement as a Tool to Remove Restrictions of Cross-border Trade

Consistent with the Report's focus on perfecting the Single Market, *Letta* would likely have the new Competition Commissioner's mission letter emphasize the need to take enforcement action against contractual and other arrangements that artificially restrict cross-border sales and hamper market integration across the EU.

The railway industry is one of areas the Report focuses on. For example, *Letta* calls upon regulators to ensure that national regulations do not create barriers to the EU-wide use of high-speed rolling stock and to oversee incumbent operators' management of redundant rolling stock. While the Report appears to focus on regulatory action, there may also be a role for competition law enforcement. *Letta* also mentions ticketing services, multimodal information platforms, networks promoting information exchange for consumers, and EU-wide payment services, which could all facilitate cross-border purchase of services/goods and could act as an integrator in view of a cross border and eventually pan-European offers.

Again, the Report seems to be calling primarily for a EU-wide regulatory environment conducive to the development of interoperable and non-discriminatory services in this space. However, there is also an EU competition law angle, as evidenced by recent enforcement action. Both the Commission and the German Federal Cartel Office investigated the conduct of incumbent railway operators which had denied access to information to platforms offering ticketing services. The Federal Cartel Office went after Deutsche Bahn because the company had refused to make information on delays and cancellations available for mobility providers. In *RENFE (AT.40735)*, the Commission looked into whether the Spanish railway operator had failed to provide similar real time data and data on the range of tickets, discounts, and features.

State Aid, Subsidies and the EU's Industrial Policy

State Aid enforcement would likely be top of the list if *Letta* were to draft the next Competition Commissioner's mission letter. According to the Report, the substantial increase in public subsidies, funded primarily by Member State budgets, may weaken one of the Single Market's key propositions, i.e., fostering competitive markets by ensuring a level playing field for companies doing business in the EU. The Report acknowledges that EU's common objectives warrant a more assertive industrial policy in face of geopolitical challenges and that subsidies may have a role to play in that context. However, subsidies as an element of the EU's industrial policy must comply within the Single Market framework. *Letta's* proposal and assignment for the next Commission: Stricter enforcement of the EU's State Aid rules at Member State level, based on a set of common policy objectives, combined with progressive expansion of EU level funding.

The Report reflects on how the EU has used the available exemptions in the its State Aid framework to develop instruments such as Important Projects of Common European Interest (IPCEIs), made changes to the General Block Exemption Regulation (GBER) rules, created a more elaborate State Aid framework for the green transition, and added flexibility



through several temporary frameworks. *Letta* calls on the EU to decide which elements should be integrated more permanently into a unified governance system.

Separately, the Report sets out ways for the EU to think about common objectives for its State Aid policy and how to define conditionalities for the disbursement of subsidies which ensure the strategic use of public funds to achieve these objectives. For example, the EU may use funds to direct companies' behavior towards public policy objectives, profit-sharing, and reinvestment requirements. These objective may include concerns such as economic security, the environment, human well-being, workers' rights, as well as good governance and accountability.

Developing and enforcing these rules will be a major task for the incoming Commission.

Beyond EU Competition Law

Enforcement of the Single Market rules is essential to *Letta*. He calls for a compliance culture within public authorities across the Member States, advocating for an EU Single Market Office at the EU level and binding minimum criteria for the investigation of potential breaches of EU law. He goes as far as to suggest a similar model to that used in EU competition law enforcement for handling cases of significant legal, economic or social impact, or to alternatively delegate a specialised entity to investigate potential infringements, helped by a cohesive network of Single Market enforcement bodies across Europe (similar to the frameworks of OLAF, European Public Prosecutor's Office).

If the new Commission President were to take up *Letta's* recommendations, we may see these or similar instructions in the mission letter to the new Commissioner for the Internal Market. That person, according to *Letta*, should hold the position of an Executive Vice-President and be specifically tasked with serving as a Chief Enforcement Officer of the EU.

Let's see what *Draghi's* report will bring! Until then, follow us on LinkedIn to keep abreast of recent development in EU competition law.

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