

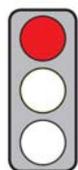
SECOND CONSUMER MARKETS SCOREBOARD

Status: 06.04.2009

MAIN ISSUES

Objective of the Communication: In an ongoing survey of markets, the Commission wishes to identify if they “are not functioning well for consumers”.

Parties Affected: Consumers, manufacturers of goods and services for consumers.



Pros: –

Cons: (1) The Communication reveals a fundamental lack of understanding of the way markets work.

(2) The conclusions are arbitrary; they are based on an inappropriate base data, are in parts unsubstantiated and in parts contradictory.

CONTENT

Title

Communication COM (2009) 25 of 28. January 2009: Monitoring consumer outcomes in the single market – **Second edition of the Consumer Markets Scoreboard**

Brief Summary

► Functions of the Consumer Markets Scoreboard

- The consumer markets scoreboard serves to monitor the “performance” of the internal market from the consumers’ perspective and to identify parts of it that “are not functioning well” (Part 1, p. 5-10).
- Moreover, it is to be determined to which extent an integrated internal market exists in terms of cross-border retail trade (Part 2, p. 10-11). Further market surveys are later to follow this example.
- Finally, the consumer markets scoreboard is to benchmark the general conditions for effective consumer protection in the single Member States (Part 3, p. 11-12).

► First outcomes and data required in the future

- The Commission has gathered first outcomes of the method pursued by the consumer markets scoreboard in a comprehensive working paper that underlies the Communication [SEC(2009) 76 of 28. January 2009].
- The Commission stresses, however, that the current evidence is still not enough “from which to draw definite conclusions” and that work “on many areas” of the consumer markets scoreboard is still incomplete.
- However, the Commission assumes that conclusions as to market malfunctioning may be drawn from price comparison once sufficient data of “good quality” are available [SEC(2009) 76, Part 1, p. 7].
- In future consumer markets scoreboards, consumer satisfaction surveys are to be extended to “all main consumer markets”.

► Part 1: Screening Consumer Markets

By means of five indicators, the Commission identifies the markets which the Commission believes are „at risk“ of not satisfying consumer needs concerning economic and social aspects.

– Consumer complaints

- According to the Commission, though consumer complaints may be a “key indicator of malfunctioning”, few complaints do “not always mean that there are no problems”.
- The data submitted by the Commission indicates a high number of complaints in the services markets, especially transport, telecommunications, banking services and insurance.
- Since data gathered by Member States has hitherto been inconsistent, the Commission intends to develop a harmonised method for classifying consumer complaints.

– Price level

- In a number of goods and services, the Commission found “unexplained” and “undue” cross border price variations between Member States, e.g. for certain high-tech products (DVD players, blank CDs), washing machine powder and food (e.g. coffee, olive oil, orange juice), as well as banking services, conveying services and broadband access.
- According to the Commission, price variations between Member States might on the one hand reflect differences in costs, taxes, living standards and consumer preferences, but on the other hand, “undue” price variations may be an indication of the “malfunctioning” of the internal market.

- **Consumer satisfaction**
 - The Commission has surveyed consumer satisfaction in nineteen markets for goods and services, such as goods markets for new motor vehicles, IT technology, fruit and vegetable and service markets for urban and extra urban transport, fixed telephony and postal services.
 - The Commission states that consumers are consistently less satisfied with the functioning of the services than of the goods markets.
 - The Commission measures consumer satisfaction against the consumers' trust in the functioning of markets, their perception of choice, comparability of prices and quality of the goods and services, as well as negative experiences of consumers.
- **Switching options for consumers**
 - The Commission deems it essential that consumers are able to switch providers and thus choose the "best offer".
 - Consumers consider the conditions of car insurances, internet providers and mobile phone providers as easily comparable and, for this reason, switch them often.
 - While many consumers consider it difficult to switch their current bank, energy or gas provider, after switching they often find their concerns unjustified.
 - The Commission's survey shows that 70-80% of the surveyed consumers do not switch their contract partners since they are not interested in switching.
- **Product safety**
 - Almost half of all consumers think that only a small number of products are unsafe. A further 17% think that essentially all products are safe, while 18% of all consumers believe that a significant number of products are unsafe.
 - According to the Commission's figures, during the last two years 2% of consumers have suffered accidents themselves or within their family circle due to defective products, whereby vehicles and sports equipment stand out particularly.
 - According to the Commission, within the last 12 months it has been the experience of 20% of retailers that products offered by them were recalled by their manufacturers. In the same period, 14% of retailers received complaints about the safety of products sold.
- ▶ **Part 2: Retail market integration**
 - The Commission stresses that a well-functioning internal market should offer consumers a "wider choice of products, the best possible prices and, at the same time, a high level of consumer protection".
 - According to the Commission, the proportion of consumers shopping cross-border has not changed since 2006. Accordingly, 25% of consumers shopped outside of their Member State last year. The average expenditure on cross-border purchases in the EU is € 737 per consumer per year.
 - The proportion of retailers selling cross-border has decreased since 2006. 75% of retailers have sold only to consumers in their own country. As to all retailers, however, cross-border sales make up 10 to 17% of their revenue.
 - While shopping over the internet is increasing (2006: 27%, 2008: 33%), cross-border e-commerce is stagnating (2006: 6%, 2007: 7%). Along with the first consumer markets scoreboard, the Commission has published a report on cross-border e-commerce [SEC(2009) 283 of 5. March 2009].
- ▶ **Part 3: Benchmarking consumer policies in Member States**
 - The Commission stresses that the free circulation of safe goods in the internal market and the protection of consumers from rogue business practices depend on efficient enforcement and market surveillance in all Member States.
 - The Commission benchmarks the general conditions for consumer protection in Member States. This is to identify best practice.
 - The proportion of consumers who feel adequately protected by existing consumer protection measures varies significantly from Member State to Member State. In most countries, it was lower in 2008 compared to 2006.
 - About 50% of all consumers feel well-protected by the existing consumer protection law.
 - About 50% of consumers were dissatisfied with the handling of their complaints.
 - Only 40% of consumers found it easy to resolve disputes with sellers and service providers through alternative dispute resolution mechanisms. Only 30% find it easy to resolve disputes through courts.
- ▶ **Action points for 2009**
 - The Commission has announced for 2009 its intention to investigate the markets for banking services and electricity for private customers to identify any possible malfunctionings to the detriment of consumers.
 - Moreover, it wishes to analyse the problems consumers encounter when shopping online across borders.
 - The Commission has announced a communication on a global strategy for the effective enforcement of EU consumer protection rights. To this end, it intends to develop "appropriate indicators" for measuring the "empowerment" of consumers.
 - The Commission wishes to promote the regular collection of average consumer prices of comparable consumer goods and services through Eurostat and the national statistical offices.

- It wishes to develop a harmonised methodology for classifying consumer complaints.

Changes Compared to the Status Quo

The Communication itself does not lead directly to any changes in applicable law. However, should the Commission as a result of the consumer markets scoreboard come to the conclusion that markets which do not generate the “best possible” outcomes need correcting, then a significant increase in regulative intervention into the economy is to be expected.

Statement on Subsidiarity

The Communication does not address the question of subsidiarity.

Political Context

In its “EU Consumer Policy Strategy (2007-2013)” [Communication COM (2007) 99 of 13. March 2007, cf. [CEP Policy Brief](#)], the Commission demanded that consumer policy be put at the centre of the upcoming development phase of the internal market. The initiative to monitor the internal market under consumer aspects goes back to the Communication “A single market for 21st century Europe” [COM(2007) 724 of 21. November 2007]. According to the Commission, the main finding of the first edition of the Consumer Markets Scoreboard [Communication COM(2008) 31 of 21. January 2008, cf. [CEP Policy Brief](#)] was that “there is practically no relevant, comparable, EU-wide data” which would make it possible to assess “whether the internal market is meeting the needs of the consumer”.

In order to promote the cross-border supply of goods and services, the Commission proposed a directive aiming to fully harmonise consumer contractual rights in the EU [COM(2008) 614 of 8. October 2008, cf. [CEP Policy Brief](#)].

Options for Influencing the Political Context

Leading Directorate General:	DG Health and Consumers
Consultation procedure:	Not intended/provided.

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The Communication reveals a complete lack of understanding of the way markets work, of evaluating statements on market outcomes **or of a diligent survey and evaluation of data**. The undefined term “market malfunctioning” gives the impression that regulating EU action is demanded in many respects. As the central term market malfunctioning remains undefined, the Commission presents an accumulation of conspicuous findings and arbitrarily construes them as market malfunctioning. In so doing, even the Commission itself admits repeatedly that the data gathered are insufficient. Amongst others, it uses data which have been collected and processed for purposes other than those constituting the object of the consumer markets scoreboard.

With its assumption that there are “undue” price variations between Member States, **the Commission suggests that prices and price variations are generally subject to justification**. In fact, prices are scarcity signals informing market actors which use of resources is worthwhile. Such a coordinating function leaves no room for any evaluating statements on market outcomes, such as for instance price variations. The abuse of market power or unfair competition is to be dealt with by competition authorities, but should not be the object of a comprehensive screening without any initial suspicion. The Commission itself writes that the insufficient nature of the base data it uses means that no conclusions whatsoever can be drawn as to “market malfunctioning” [SEC(2009) 76, Part 1, p. 7]. However, this does not prevent the Commission from referring to “unexplained” price variations which are basically unexplainable precisely because the Commission makes no effort to explain them nor to gather appropriate data.

However, these price variations are in part not quite as “unexplained” after all as the Commission writes in its Communication; the Commission even refers to this itself [SEC(2009) 76, Part 1, p. 8]. For instance, as the demand for olive oil is much higher in southern countries than in northern countries, there is no reason to assume that prices for olive oil should be similar in both markets.

The Commission’s account is so contradictory that one could, if one wanted, draw upon it to support any conclusion. It is precisely because the issues addressed by the Commission are so complex that clarity in the evaluating statements and in the analysis of data is indispensable. The fact that the Communication lacks both is quite alarming. For instance, in the Commission’s view consumer complaints are “key indicators of malfunctioning markets” [Communication p. 6; SEC(2009) 76, Part 1, p. 1]. At the same time, it claims that a high level of complaints is not an indication for malfunctioning markets, but rather for mature consumers [SEC(2009) 76 Part 1 p. 2]. Finally, it refers to the fact that especially in markets where the level of satisfaction is extremely low, very few consumer complaints are submitted [SEC(2009) 76, Part 1, p. 6].

The whole idea of using consumer satisfaction as an indicator for the functioning of markets is fundamentally flawed. Under appropriate conditions, the coordination of individual actions through markets might indeed lead to outcomes which reflect the scarcity of goods and resources as well as the desires and the consumers' ability to pay. However, that does not mean that a certain (however measurable) level of consumer satisfaction does or should exist in markets. How should the satisfaction with breads be compared to the satisfaction with banking services? It is therefore completely misleading to use different levels of satisfaction as an indicator for "malfunctioning" and even more so to use them as a justification for regulating interventions.

Impact on Efficiency and Individual Freedom of Choice

In its Communication, the Commission demonstrates that it does not hesitate to publish statements which, due to their lack of sufficient data and lack of clarity in evaluation, lead to arbitrary outcomes. **Should future regulations be proposed on such a basis, then considerable damage to the functioning of markets is to be expected.**

Impact on Growth and Employment

Should the presented "outcomes" lead to measures eliminating the alleged "market malfunctioning", then over-regulation might threaten growth and employment.

Impact on Europe as a Business Location

Unproblematic.

Legal Assessment

Legislative Competence

The legislative competence for determining and evaluating information from Member States relating to consumer policy is laid down in Art. 153 (3)(b) TEC. If as a result of the consumer markets scoreboard measures in consumer policy or other policy fields were established they would have to be assessed separately.

Subsidiarity

Unproblematic.

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

Unproblematic.

Alternative Policy Options

The Commission should abandon the consumer markets scoreboard.

Possible Future EU Action

While no concrete EU future actions are foreseeable at present, the consumer markets scoreboard might lead to a significant increase in interventions into the economic process in the form of proceedings under competition law, regulation and consumer protection measures.

Conclusion

The Commission's Communication reveals a fundamental lack of understanding of the way markets work. The Commission is publishing contradictory statements based on inappropriate base data. Its evaluating conclusions are not substantiated and therefore can only be described as arbitrary. Should any future regulations be proposed on such a basis, the functioning of markets will be threatened.