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More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

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BEUC

1. Introduction

1. BEUC considers good co-operation between competition authorities and regulators to be essential for the well-functioning of markets. While regulators are often trusted with implementation of *ex-ante* policies and legislation to guarantee that their respective markets function properly, competition authorities have a role to play when it comes to intervening ex-post against anti-competitive practices in such markets, which are often characterised by the presence of strong incumbents.
2. Further to this, markets are becoming increasingly complex and permeable: a certain business conduct can fall within the remit of different competent authorities. Examples of this include not only digital markets but also more traditional markets in which companies provide services subject to different regulatory regimes e.g. bundled offers (e.g. combination of energy and telecoms products). Competition authorities and regulators therefore must work in a coordinated and complementary manner to ensure that markets deliver choice, protection and quality of services to consumers.
3. In this contribution, BEUC would like to share a useful European example of such co-operation in the energy sector: the Partnership for the Enforcement of European Rights (PEER).

2. PEER: Cross-institutional collaboration in the energy sector

2.1. What is PEER?

4. The Partnership for the Enforcement of European Rights (PEER) was established by the EU's energy regulators to improve enforcement of European consumers' rights through enhanced inter-authority cooperation at EU level¹. PEER brings together interested authorities responsible for protecting and/or supporting Europe's consumers across a range of sectors including consumer protection authorities; data protection authorities; consumer bodies; ombudsmen; competition authorities; and sectoral regulatory authorities (e.g. energy, telecommunications, financial). PEER was launched in 2017 as an initiative of the Council of European Energy Regulators (CEER) supported by BEUC, The European Consumer Organisation.
5. The objective of PEER is to explore cross-sectoral and cross-authority collaboration at EU level on issues such as smart meters, the Internet of Things, data privacy, data protection, bundled products and Alternative Dispute Resolution (ADR) to the benefit of consumers.

¹ CEER, "PEER to PEER: collaboration on consumer rights", brochure available at <<https://www.ceer.eu/documents/104400/6120855/PEER+Brochure/7ebc5063-2cf8-2734-06a3-27d6580bac1e>>

2.2. Authorities involved

6. PEER brings together authorities responsible for protecting and enforcing European consumers' rights across a range of sectors, including regulators (e.g. energy, telecommunications, financial, energy); consumer protection authorities; data protection authorities; consumer bodies; ombudsmen and Alternative Dispute Resolution (ADR) entities; and competition authorities.

2.3. Modus operandi

7. PEER's activities are focused on building a community of public authorities and relevant EU agencies committed to improving together the enforcement of European consumers' rights. The authorities participate in the forum on a voluntary basis.

8. PEER's current activities focus on raising awareness of the need for more cooperation between authorities, both at EU and at national level. They do so by organising PEER events on cross-cutting issues (e.g. Internet of Things, bundled products, cyber security) that raise challenges to different regulators and consumer rights enforcers. The CEER website offers an online platform for the sharing of good practices (e.g. case studies and guidelines on enforcement) that help consistent and effective consumer enforcement in general.

9. Activity in the mid-term could potentially involve working with the European Commission on developing common principles for the enforcement of rights that are partially covered by the different public authorities.

2.4. Deliverables: the case of bundled offers

10. In recent years, consumers are increasingly purchasing so-called "bundled products". Businesses are marketing packages of combined goods and/or services within a sector, for example broadband bundles (e.g. internet + fixed telephone + TV + mobile telephony services) or products bundled across multiple sectors (e.g. energy + household insurance; banking + travel insurance; credit cards + travel; or other combinations).

11. The complexity and multi-sectoral nature of such products raises the question of how to help consumers make better choices and how to ensure consistent enforcement of the different consumer rights recognised in different elements of EU law and how the rules should be applied to the different components of the bundled offer.

12. Against this background, under the PEER framework, the Council of European Energy Regulators published a Guide on Bundled Products². This guide outlines ten principles for companies (in all sectors) offering bundled products and three principles for regulators:

² CEER, "Guide on Bundled Products", November 2019, available at: <<https://www.ceer.eu/documents/104400/-/-/51479de6-9f10-4e9b-91f6-ac46632c76b3>> Annex 2 lists the organisation across different sectors that support the Guide: the Body of European Regulators for Electronic Communications (BEREC), BEUC - the European Consumer Organisation, the National Energy Ombudsman Network (NEON) and the Authority for Mobility and Transport in Portugal (AMT). This list of supporters is expected to grow with increased awareness about the Guide.

13. First, the ten principles companies are recommended to follow when designing bundled products are:

1. Ensure transparency
2. Keep it simple
3. Communicate clear and understandable contract terms and conditions
4. Apply clear liability principles where there are multiple parties/contracts involved in the bundled product
5. Comparison tools should endeavour to reflect the features of all components in a bundle
6. Allow customers the possibility to switch out of a bundle
7. Provide consumers with a single bill or a single summary sheet or single portal to find their different bills associated with their bundle
8. Make clear the choice of payment methods for bundled-only products
9. Signpost who is responsible for handling complaints (in-house or external)
10. Protect essential services.

14. Secondly, regulators are advised to follow the following three principles:

1. Clarify and educate companies on the rules and obligations applicable to bundles in general consumer law and in sectoral rules
2. Monitor bundled products
3. Cooperate across sectors with relevant authorities.

15. Since bundled offers is an area where consumers face many uncertainties regarding their rights, this initiative is to be welcomed. Other areas of co-operation between agencies could include providing guidance on comparison sites in which consumers can compare the different elements of the bundle.

3. Formalising cross-institutional co-operation in the EU

16. PEER is a good example of cross-institutional co-operation, but its success depends on the commitment of the authorities to participate. Formal and informal regulatory cooperation models exist at national and EU level. For example, the UK Regulators Network (UKRN) and the Irish Economic Regulators Network brings together regulators, competition authorities and consumer enforcers from different sectors. CEER organised regulatory cooperation workshops on bundled products in Autumn 2019 in the UK and Ireland inviting the members of these regulatory networks. Such cross-authority exchanges proved to be very helpful as we gained insights on the different regulatory regimes of bundles in different sectors, which helped CEER improve our Guide on Bundled Products before its publication.

17. A greater degree of co-operation could be achieved through the creation of specific channels of communication between the authorities that would provide a pre-defined mechanism for authorities to co-operate. Such a mechanism could be defined in a common agreement between the authorities e.g. in a Memorandum of Understanding or in a legal instrument e.g. in the European regulations setting up the networks of authorities.

18. A good example of co-operation by common agreement is the co-operation charter signed by the French competition authority (*Autorité de la concurrence*) and the French consumer protection authority (*DGCCRF*). The purpose of the Charter is to formalise their existing cooperation to better detect competition and consumer protection infringements; define common priorities; share investigative methods; jointly train staff and ensure better transmission of evidence³.

19. A good example of co-operation by a legal instrument can be found in the recently revised EU Consumer Protection Cooperation (CPC) Regulation⁴ which mandates co-operation for consumer financial services cases. Article 23 of the CPC Regulation provides for formal cross-sector collaboration between consumer protection authorities and the European Banking Authority, which is invited to be an observer to the CPC in cases that involved the breach of Directives 2014/17/EU (mortgage credit)⁵ and 2014/92/EU (payment accounts)⁶. Recital 45 of the Regulation states that the new CPC Regulation promotes cooperation and coordination among the consumer protection network and the networks of regulatory bodies and authorities established by sectoral Union legislation. However, this co-operation e.g. between the CPC and the EDPB, takes place on a voluntary basis.

20. Similarly, in the ongoing revision of the EU's European Banking Authority (EBA) Regulation, the European Parliament has proposed that the banking authority "*shall closely cooperate with the European Data Protection Board to avoid duplication, inconsistencies and legal uncertainty in the sphere of data protection*"⁷.

21. These are examples of how the legislator can create channels to encourage or oblige authorities to co-operate on cases of common interest. One possibility in the context of competition law enforcement could be to include a similar provision in EU Member States' legislation to implement the Directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (the so-called ECN+ Directive)⁸.

22. In this sense, cooperation between competition authorities, data protection, consumer authorities and sectoral regulators could be facilitated by a legal provision formalising the exchange of information between the authorities. This could take place in the context of joint meetings of the European Competition Network (ECN – comprising

³ Les Echos, « La DGCCRF et l'Autorité de la Concurrence vont coopérer davantage », July 2019, available at : <https://www.lesechos.fr/politique-societe/societe/la-dgccrf-et-lautorite-de-la-concurrence-vont-cooperer-davantage-1040186>

⁴ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, O.J. 2017 L 345/1

⁵ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property, *OJL 60*, 28.2.2014, p. 34–85.

⁶ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, *OJL 257*, 28.8.2014, p. 214–246.

⁷ Article 9(4) of the European Parliament position.

⁸ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *OJL 11*, 14.1.2019, p. 3–33.

the European Commission and the competition authorities of EU Member States, the European Data Protection Board (EDPB) and the Consumer Protection Cooperation Network (CPC-net) to be coordinated by the European Commission. In such meetings, the authorities could exchange priorities and discuss topics of common interest as well as identify cases in which the input of an authority would be needed.