MAINTAINING THE RED LINES IN EUROPEAN COMPETITION POLICY, NADIA CALVIÑO

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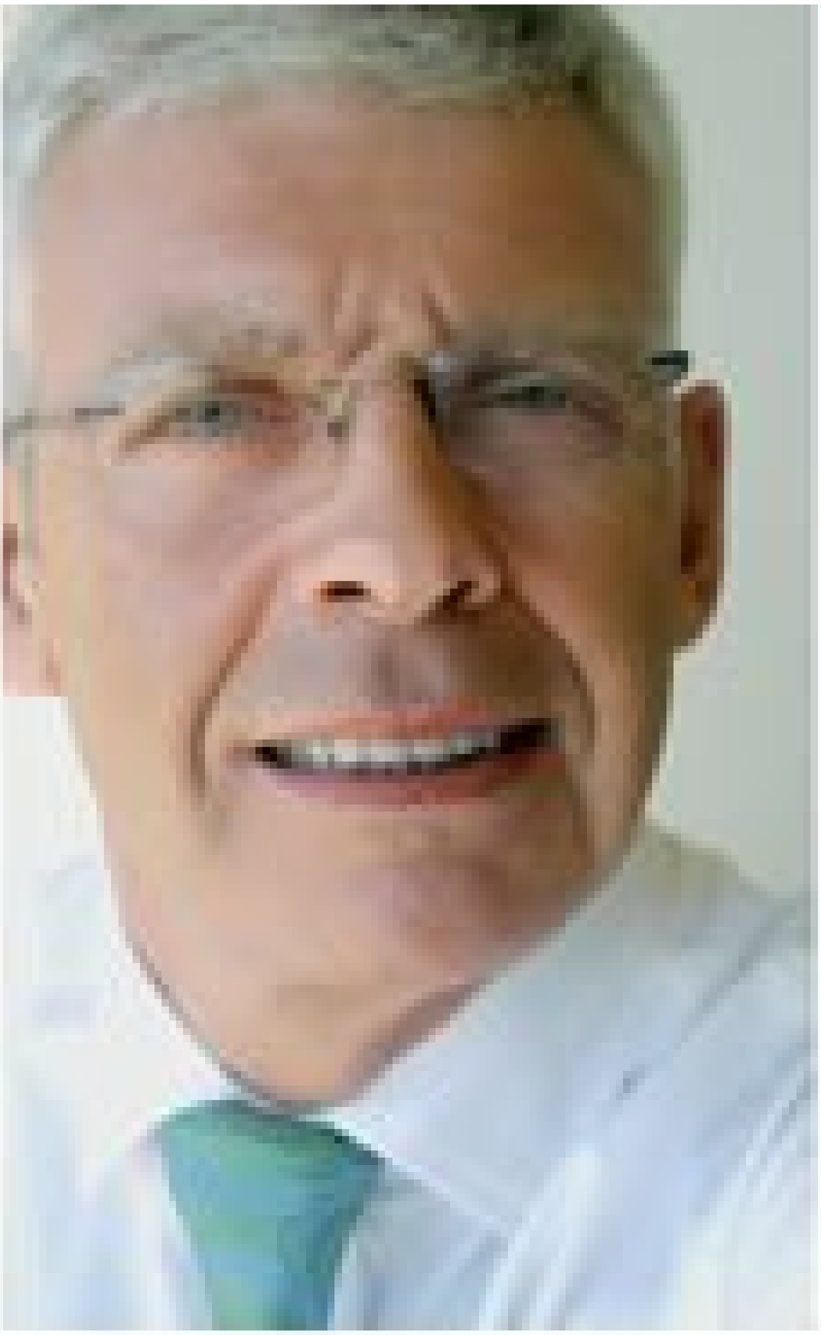

"The nature of legal services will continue to evolve and improve but the driver for innovative change should now be the clients themselves."

Category: Opinions

The past 18 months have seen unprecedented pressures placed on the European economy bringing to the forefront role of the European Commission (EC), says Nadia Calviño, Deputy Director General for Mergers and Antitrust in the European Commission

Within the European Commission we have tried to deal with the issues that have arisen throughout the financial crisis in a fair and pragmatic way, trying to find suitable solutions but with an emphasis on consistency and protection of the principles that guide our policy. In merger control we have been flexible with procedural issues such as, if justified, grating derogations from the standstill obligation and shortening our decision-making periods. We have been as always open to negotiation and willing to explore remedies suggested by parties and also open to grant extensions of the divestiture periods when justified, as it may take longer to find buyers.

Ultimately the challenge however has been not to damage substantive competition principles as they have been applied for the past 40 years while applying these rules in a rapidly changing and unstable economic environment.

Throughout the crisis we have embraced the need therefore to be proactive in publishing guidelines to clarify EC policy and to help make the decision-making processes as transparent as possible. These guidelines have been produced at amazing speed, but the impact of the financial crisis has meant a steep learning curve for all of those involved in applying and interpreting competition rules, both within and outside of the Commission.

"Of course we need to ensure consistency between our State aid and merger control decisions and so far we have been able to interpret and apply the rules in an intelligent way and in a manner compatible with wider competition principles.

At the time when there was a fear of banks collapsing, we were able to deal with the individual cases and national schemes in a very fast and effective way first and then to publish guidelines in order to set the clear lines for all Member States to follow, to minimise competition distortions and preserve the level playing field in Europe. In parallel with the actions taken by governments seeking to avoid a systemic crisis, we have published guidance concerning guarantees, recapitalisation and toxic assets as well as on restructuring.

It would be fair to say that we have taken a two stage approach: first, we need to ensure that financial institutions are rescued to the benefit of economic stability. But then we will need to assess whether those banks that have received State aid will need to restructure so as to be viable in the mid-term without public support. In fact, our initial State aid decisions already have included elements facilitating the restructuring and exit of banks from support schemes, for instance through the increasing interest rates, which try to avoid institutions becoming dependent on them.

Los últimos 18 meses han visto una presión sin precedentes en la economía y en la regulación y los principios de competencia según Nadia Calviño en la Comisión Europea (CE). La CE, sin embargo, lo ha intentado todo para hacer frente de manera pragmática a los problemas que han surgido de la crisis económica con énfasis en la sostenibilidad y la búsqueda de soluciones. La sugerencia de que algunas autorizaciones de fusiones están siendo revocadas afirma como incierta, y comenta que la

CE ha sido muy clara sobre los requisitos preestablecidos, su razón y plazos.
So there has been a very consistent line from the outset of dealing with the shortterm but also the long-term challenges, posed by the need to create a future based on healthy competition between viable financial institutions, and not a scenario of zombie banks unable to achieve their role to lend to the real economy.

Stability

The second half of 2008 saw the potential for a systemic collapse in the global financial markets and evidently the past year has seen much emphasis on ensuring that institutions survive, but with the caveat that necessary structural remedies will be applied further down the line.

We have seen merger clearances given within brief periods of time and State aid approvals given sometimes within 24 hours of a notification made, but we have also been adamant that once the immediate crisis has passed then institutions' situations will be reassessed. We have also been adamant in the need to work with national competition authorities to avoid inconsistencies.

Throughout the financial crisis I believe the Commission has sought to address issues in a transparent way, and as they have arisen, but with a firm competition standpoint – we have tried to keep the red lines very clear.

The end of 2009 saw a certain upturn in merger activity across Europe, but while the number of notifications may still be down the complexities of the cases have not however diminished. Once the worst of the financial crisis seems to have passed, we now need to start thinking about the exit strategy from the massive State aid interventions. This process will have to be coordinated and timing is crucial.

The start of 2010 has seen the arrival of a new Competition Commissioner, Joaquin Almunia, but a continuation of the goals and aims of the competition authorities, both at an EC and national level, in defence of the consumers of Europe. Of course every Commissioner brings something different to the role, but the history of competition enforcement nonetheless continues to be one of remarkable consistency in both good and bad economic times. Since 2006 Nadia Calviño has been the Deputy Director General for Mergers in the Directorate General for Competition of the European Commission, and is a former Iberian Lawyer 40 under Forty Award winner.

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