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Margrethe Vestager: The New EU Competition Commissioner

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The competition portfolio in President Juncker's new Commission falls to Margrethe Vestager, a social liberal politician from Denmark.

Margrethe Vestager is expected to take up her post as the new Competition Commissioner on 1 November 2014, following approval of the College of Commissioners by the European Parliament in Brussels today. It is expected that the Council will confirm the Parliament's vote in the next couple of days.

Background

Before her designation as the Danish EU Commissioner, Vestager was Deputy Prime Minister and Minister for Economic and Interior Affairs in Denmark (2011-2014) and leader of the centre left *Radikale Venstre* (2007-2014). During Denmark's Presidency of the EU in 2012, Vestager chaired the ECOFIN Council. Previously, from 1998 to 2001, she was appointed as Minister for Education and Church Affairs in Denmark. She first became a Member of the Danish Parliament, the *Folketing*, in 2001.

With such a background in financial policy and holding a Master of Science in Economics, Vestager becomes the fourth successive economist appointed as Competition Commissioner and speaks to Juncker's intention to "keep developing an economic as well as legal approach to the assessment of competition issues."

Vestager also brings commercial experience to the role, having been a member of board of advisors to Royal Greenland A/S, the world's largest supplier of cold water prawns (2004-2007) and, before that, a director on the board of an investment company, ID-Sparinvest A/S (1996-1998).

Vestager's New Role as Competition Commissioner

During her approval hearing before the Economic and Monetary Affairs Committee of the European Parliament on 2 October, Vestager set out her values, goals and focus for her term in office, in line with Juncker's mandate for her to support his policies for growth and employment in "the digital single market, energy policy, financial services, industrial policy and the fight against tax evasion."

In her opening speech, she made clear that she would enforce EU competition law in line with what she considered the fundamental values of neutrality, impartiality and rigour. Authoritativeness of EU competition enforcement, she said, rests on independence, impartiality and confidentiality of case handling.

Vestager said the goal was to tackle the key obstacles to growth and to encourage innovation in order to create (high value) jobs and get Europe back on her feet. She insisted that the competition portfolio should not be a “lonely portfolio,” stressing that we need competition policy just as much as we need research, development, innovation, investment and a very well educated workforce. This is why she promised, if confirmed, to work in close cooperation with her fellow Commissioners.

Her focus will be on the energy and digital sectors, and she recognised the need for alertness in order to ensure that dominant players respect the rules and to create an environment in which SMEs will flourish. She also aims to foster European champions, who will be able to compete on the global stage, not by “cushioning” European businesses, but rather by ensuring a tough line on competition enforcement at home, which will set businesses up for a fight abroad.

Challenges Ahead

Vestager inherits her portfolio from outgoing Spanish Commissioner Joaquín Almunia. Almunia’s tenure, while marked with enforcement victories, will leave a bitter pill in the mouths of a number of companies (and their lawyers).

During Almunia’s term, record cartel fines were imposed on banks involved in the LIBOR/EURIBOR manipulation scandal, on automotive parts manufacturers and on producers of TV and computer monitor tubes. Investigations into potential abuses by giants such as Google, Gazprom and Samsung Electronics were also launched. On other fronts, the Commission sought to control state aid to banks, making sure that the public money they received was used to restructure them and make them viable again. The Commission also won the approval of the European Parliament and the Council on the draft Directive on actions for damages.

Nevertheless, Almunia’s tenure received heavy criticism, in particular for the trend towards increasing recourse to commitment decisions, which allow the Commission to circumvent the (complexity of an) effects-based approach as advocated by its own guidance. By nature and because they are not subject to effective jurisdictional control, these commitment decisions provide limited guidance into the Commission’s thinking and leave companies in the dark. It also ended with the politicisation of the Google case in a way not seen for over a decade and with a major state aid decision for the proposed Hinkley Point C nuclear reactor changing direction at the last minute. Whether Vestager will take a less opportunistic approach to enforcement remains to be seen.

In the coming months, Vestager will have to tackle a number of ongoing cases and initiatives:

- **Google and the digital sector:** The probe into Google’s potential abusive practices relating to its search-advertising services, and into its use of Android and power over YouTube will continue. When asked the “Google question,” Vestager cautioned against anti-Americanism, emphasising, in line with her values for the role, that it would be important to look at the cases rather than the origin of companies. She confirmed at the same time, however, that it is not the end of the road for Google and that there would be further action “but what kind [it] will be, it [was] too early for [her] to say.”

When asked, in general, whether she thought the present competition rules were right for a digital society, Vestager highlighted the need to keep abreast of developments in these markets to ensure effective enforcement. She also said she hoped that new issues that came to light in ongoing investigations in this sector were not just a way of prolonging investigations because, as she reiterated throughout, speedy resolution of cases is high on her agenda. As far as digital markets are concerned, she recognised the need to (i) work quickly because of the speed at which businesses in these areas develop, (ii) get a much deeper understanding of the issues at stake to make sure that DG

Comp is ahead of market developments and (iii) work closely with the Commissioner in charge of data protection and relevant EP Committees.

- **Gazprom and the energy markets:** The Gazprom investigation will continue and hopefully be completed. Vestager stressed that this investigation is key in supporting Juncker's priority to get a secured and sustainable supply of energy within the EU. The energy market will receive serious attention as a whole at EU level. There is a need to investigate misuse of dominance, encourage diversification and ensure the secure and sustainable provision of energy. Vestager noted that in order to achieve this, co-operation with other Commissioners will be required.
- **Tax incentives as state aid:** Vestager will consider the possible use of competition powers to deal with certain national tax incentives, including in Ireland, Luxembourg and the Netherlands. Vestager said, without commenting on substance, that she would continue investigations in this area as a priority. If DG Comp has proof and can substantiate these cases, she will pursue these matters not least in order to send an important signal to the market.
- **Law reform initiatives,** including the introduction of controls on minority stakes.

Key Players

Vestager was keen to stress that competition should not be a "lonely portfolio," and her willingness to work with other Commissioners sits comfortably with Juncker's new-look Commission.

The new-look Commission includes seven Vice-Presidents, five of whom come from smaller Northern or Eastern Member States, who will be responsible for coordinating their teams of Commissioners and serving as deputies to Juncker. Vestager is expected to work closely with Jyrki Katainen, the former Finnish prime minister who will be responsible for Jobs, Growth, Investment and Competitiveness and politically overseeing Vestager's competition portfolio, as well as Andrus Ansip responsible for the Digital Single Market and Maroš Šefčović responsible for the Energy Union. The open question is how this setting of competition enforcement within the context of other EU policies will change the approach of the Commission.

Within DG Comp there has also been some notable re-organisation: The new Head of Cabinet, Ditte Juul-Jørgensen, comes, unusually, from outside DG Comp. Juul-Jørgensen has been Director in charge of WTO, Legal Affairs and Trade in Goods in DG Trade since 2012. Linsey McCallum has been promoted to Deputy Head of Cabinet from her post as Director in charge of Information, Communication and Media in DG Comp, another unusual move that shows Vestager is serious about tackling the digital sector. Other changes in DG Comp include the appointment of Carles Esteve Mosso as Director of Policy and Strategy and Céline Gauer as Director of Energy & Environment.

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