

Big Tech's nemesis

Is Margrethe Vestager championing consumers or her political career?

She is the rich world's most powerful trustbuster



Print edition | Business

Sep 14th 2017

EVEN her enemies admire the bloody-mindedness of Margrethe Vestager, the European commissioner in charge of competition policy. Last autumn, not long after she had ordered Apple to pay €13bn (\$14.5bn) in back-taxes to Ireland, to the fury of many in America, she flew across the Atlantic on a charm offensive. The Americans were not charmed; Ms Vestager was unmoved. Buckling up for the flight home, she tweeted that she had never felt so European.

Since she assumed her current role in November 2014, Ms Vestager has had several high-profile clashes with American tech firms. In May she fined Facebook €110m for misleading EU trustbusters about its takeover of WhatsApp, a messaging service. In June a long-running investigation resulted in a €2.4bn fine on Google for using its search engine to promote its own comparison-shopping service. EU trustbusters have also charged Google with using its Android operating system to

promote its mobile-phone apps and services over those of rivals. That investigation continues.

Latest updates

How burdens are passed on to the next generation
THE ECONOMIST EXPLAINS

Too late, China and America see North Korea the same way
DEMOCRACY IN AMERICA

Theresa May's Florence speech should help the Brexit talks edge forward
BRITAIN

[See all updates](#)

Ms Vestager has said the job of agencies like hers is “not to get too cosy with special interests but to have the courage to defend the public interest”. Few would quibble with that. All too often regulators and trustbusters come to see the world as big business sees it, to society’s cost. But a long-standing concern is that the commission acts as prosecutor, judge and executioner in cases against dominant firms. The courts in Europe have been a

weak check on its powers in recent years in this regard.

That may be changing. Last week the European Court of Justice asked the lower courts to look again at the economic merits of a case against Intel, which in 2009 was fined €1.06bn for abusing its dominant position in chipmaking. But the courts move slowly. Some worry that a number of Ms Vestager’s recent, crowd-pleasing victories over big tech firms may come back to haunt the commission. And by then she might have moved on to a bigger job.

Oceans apart

To assess how fair that concern is, it helps to be clear about how competition policy varies between America and Europe. There are three main parts to the job: the control of mergers, the policing of cartels, and checks on “dominant” firms, or those that supply the bulk of a market. Cartel-busting is quite similar in both places. Europe has mimicked the American policy of offering immunity to firms that rat on their fellow price-fixers, for instance. The EU approach to mergers, especially “horizontal” tie-ups between competitors in the same industry, is also a lot like America’s method (though research suggests that merger control has been far more lax there).

The big transatlantic gap is in the policing of dominant firms (known in Europe as Article 102 cases, after the relevant passage in the EU treaty). Europe’s trustbusters have been far more likely to worry that a dominant company, of the sort that technology industries tend to produce, will force rivals out of business, leaving consumers facing less choice, higher prices and worse services. Trustbusting in America, in contrast, has taken its cue from the economist Joseph Schumpeter who believed that the promise of monopoly profits is a spur to the innovation and risk-

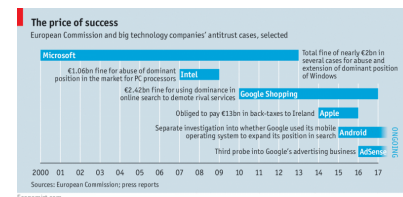
taking that drives economic growth. In this view, the dominance of tech firms is likelier to attract competition than to crush it.

Since Ms Vestager took office, a mostly polite difference in philosophy has hardened. Brussels believes the growing power of big tech firms to shape politics, society and the economy requires a counterweight. The battle is of greater urgency, the commission reckons, because the data that tech monopolies have accumulated make it far harder for upstart firms to displace them or keep them in check.

Few in Silicon Valley, meanwhile, doubt that competition policy in Europe is anything but thinly veiled protectionism aimed at shielding the region's old-economy firms from disruption. Challenged on whether she might have tech-envy when it comes to American giants, Ms Vestager resolutely denies a bias. There are Article 102 cases under way against many non-American firms, including Russia's Gazprom.

Even so, she has brought a different approach to competition policy, says Robert McLeod, of MLex, a market-risk agency. Her predecessor, Joaquín Almunia, was more inclined to compromise. He might well have agreed a settlement with Google over the shopping case, insiders say. His predecessor, Neelie Kroes, a Dutch former politician, was bold but tended to follow the advice of her civil servants.

Ms Vestager seems to relish a confrontation. Her principles and zeal probably come from her upbringing as the daughter of Lutheran ministers. As Denmark's deputy prime minister, she regularly upstaged her boss, Helle Thorning-Schmidt. She has a knack of boiling down complex issues to catchy soundbites, such as "Europe is definitely open for business but not for tax evasion." In some of the battles she has started, tech giants had a case to answer. Facebook's misdeed, for instance, is not much disputed. The Google Android investigation seems to have merit.



But in other headline-grabbing cases, it is not clear how consumer welfare has been much enhanced. The commission said Google abused its dominance of online search to promote its own comparison-shopping service and relegate those of rivals. Yet it did not show, for instance, that consumers were denied a superior service as a consequence. Google said this week that it will appeal against the decision.

The benefit to competition from the Apple tax case is harder still to fathom. Under European law, it is illegal for a government to provide a subsidy to an individual firm, known as “state aid”, which gives it an edge over its rivals. At its best, the enforcement of state-aid rules has severed the links between governments and national champions, such as flag-carrying airlines. Very often such firms are loss-making and a burden to the exchequer. Preferential treatment makes it hard for better firms to challenge them—so state-aid rules that cut them loose hugely benefit consumers.

Where’s the harm?

But the case against Apple does not fit the paradigm. The thrust of the commission’s argument was that Ireland cut a bespoke tax deal with Apple that was not open to other companies, equivalent to state aid. But which firm is the peer against which Apple’s tax affairs should be gauged? How was competition distorted? Where are the chronic inefficiencies? The politics of the case seem clearer than the competition-policy benefits. Big EU states have long been critical of Ireland’s 12.5% rate of corporate tax. But it is a stretch to use state-aid rules to achieve the sort of tax harmonisation that is favoured in Brussels.

Many in the competition-policy establishment were deeply dismayed by the Apple decision. Ms Kroes publicly criticised the use of state-aid rules (a commission spokesperson later shot back that this was all too predictable from someone in the pay of Silicon Valley—Ms Kroes is on Uber’s public-policy advisory board). Mr McLeod reckons the judgment will be overturned by the courts.

Perhaps Ms Vestager suspects this, too. Her main aim may have been to get the issue of corporate-tax evasion firmly on the agenda. If so, it was a tactical masterstroke. It also raised her personal profile. She is one of the front-runners to succeed Jean-Claude Juncker as president of the European Commission.

Ms Vestager is described by one of her peers as “the most politically effective” trustbuster in recent memory. It is a judgment, admiring and grudging at the same time, that others in the field share. There is admiration that she has raised the profile of competition policy in a way that her dry and technocratic peers and predecessors could not. And there is a grudging acknowledgment that her brand of populist policymaking might be just what is needed to address the growing heft of big firms. But mixing politics with trustbusting so overtly is a dangerous game. The competition directorate’s standing as a neutral arbiter may get damaged in the process.

This article appeared in the Business section of the print edition under the headline “Big Tech’s nemesis”

