

Europe

## Ukraine crisis raises the stakes for Gazprom investigation

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Lawyers in the EU and Russia are divided on how diplomatic tensions arising from the Ukraine crisis will affect the commission's ongoing abuse of dominance investigation of Gazprom – whether it will be judged on antitrust grounds or if the commission's approach cannot help but be influenced by the geopolitical background.



(Credit: Paul Munhoven, Wikimedia Commons)

Already strained by the occupation of east Ukraine by pro-Russian separatists, relations between the EU and Russia became even more fraught last week following the shooting down of a civilian airliner over the region. EU leaders are currently discussing extending economic sanctions on Russia.

DG Comp opened an investigation of Gazprom in [September 2012](#) for allegedly abusing its dominance in the supply of gas in Eastern Europe. Despite appearing close to settling the case around the [turn of the year](#), the matter remains ongoing.

Ian Forrester QC, at White & Case in Brussels, says that while DG Comp enjoys wide autonomy in pure competition policy, the Gazprom investigation clearly has significance beyond antitrust.

“In a matter that touches the foreign relations of the EU and especially one where

action could inflame a very volatile situation where there is actual conflict the leaders of DG Comp would want their policy to form an integral part of the policy of the EU as a whole,” he says. “Yes DG Comp is an independent-minded service, and so it should be, but its decisions have got to be taken with an awareness of other policies and priorities.”

DG Comp is accustomed to receiving and resisting pressure from governments regarding national champions and state aid, but an investigation of a Russian oil giant in a period of high international tensions following a loss of life is another matter altogether, Forrester says.

“Its senior people will want to act as part of a collegiate body that is running several policy themes at once,” he says. “I imagine senior DG Comp officials will be extremely cautious for fear of inadvertently escalating the delicate situation. I think the Gazprom case will get a lot more senior supervision than less politically sensitive cases. If there is a real danger of exacerbating a foreign relations crisis then I imagine action would be put on hold.”

Evgeny Khoklov, at Antitrust Advisory in Moscow, says sanctions can not target specific companies simply because they have violated competition law; therefore, any involvement of the case in measures taken against Russia by the EU would be “unofficial”.

Even so, he doubts the case will be involved in the sanctions, even unofficially. “I do not think that such a reputable competition enforcer as the European Commission will accept using competition policy in order to achieve political goals in such an apparent way,” he says.

Jarosław Sroczyński, at Markiewicz & Sroczyński in Cracow, says while the recent events appal and concern him as a human being and a citizen – 298 people died in the plane crash, which is widely blamed on pro-Russian separatists – as a lawyer he believes that there should be no political influence in the investigation.

“Either there has been an abuse of dominance or there hasn’t,” he says. “I have sufficient confidence in the independence of the commission and the integrity of the politicians that DG Comp won’t use the investigation as a way to punish Russia. Even if it did, then there are courts that can overturn bad decisions.”

“The slightly more depressing side to this is that Russia and Gazprom retain influential supporters among big businesses and politicians,” Sroczyński goes on, citing the example of former German chancellor Gerhard Schroeder, who is on the board of Gazprom and close to Russian president Vladimir Putin.

“Terrible as the plane crash was, it is not sufficient to turn these vested interests against Russia,” he explains. “They will make sure that the case is heard fairly, on its merits as a competition matter, I think. In that respect at least, these questionable interests are actually promoting a worthy end.”

The case is complicated and the fact that it is still unresolved after nearly two years isn’t, in itself, remarkable, he says, adding that tricky investigations can take up to three years.

“If there is a danger of impartiality – and as I said, I don’t think there is – then it is that DG Comp could be too lenient on Gazprom,” Sroczyński goes on. “The new commission may want to demonstrate its independence and avoid any hint of political interference.”

A spokesperson for the UK’s foreign ministry told *GCR* that the competition investigation is “completely separate from any EU measures against Russia in respect of its illegal annexation of Crimea and continuing campaign of destabilisation of the East of Ukraine.”

The commission is concerned that Gazprom may have divided gas markets, hindered new suppliers and imposed unfair prices on customers in several member states in eastern and central Europe.

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