Interview with Margrethe Vestager, Executive Vice President and Commissioner for Competition, European Commission

Editor’s Note: Margrethe Vestager is Executive Vice President for A Europe Fit for the Digital Age and Commissioner for Competition in the European Commission. This is her second term in charge of European Union antitrust, merger, and state aid policy and enforcement, an unprecedented occurrence in recent times. To this, she has now added the Digital Age portfolio, a major European policy and legislative priority, separate from her competition role, a dual set of responsibilities which is also unprecedented. As Executive Vice President she is one of the three deputies to the European Commission President. Prior to joining the European Commission in 2015, she held several ministerial roles, including Deputy Prime Minister and party leader in Denmark. She holds a masters degree in economics. In this interview Executive Vice President Vestager discusses her priorities for European competition policy for the 2019–2024 Commission mandate.

This interview was conducted for ANTITRUST on January 24, 2020, by Associate Editor Vanessa Turner, Senior Advisor—Competition at BEUC, The European Consumer Organisation, Brussels.

ANTITRUST: Your appointment to two roles in the new European Commission—Executive Vice President for A Europe Fit for the Digital Age and Commissioner for Competition—is unprecedented and you have taken steps to separate your responsibilities. But you can’t put a firewall in your head, and competition law is often about shades of gray. So, the question would be: Is it a problem if a policy priority you decide on as the Digital Age Commissioner affects how you see those shades of gray in a competition case?

MARGRETHE VESTAGER: If it is a problem, it has always been a problem. I would rather see it as a strength, because the setup in the Commission where you have the law enforcer embedded with the rest of the Commissioners has been challenged and tested, also with our Human Rights Court, and found to be fine. So on the rule of law, rights of defense, this has all been sorted.

The thing is, what we do actually informs a lot of things. More things are coming from Competition into the rest of [the European Commissioners’] portfolios than the other way around. Because we learn so much from the specific cases, to make that available in a generalized manner—of course never in the specifics—is very helpful.

When colleagues in [the European Commission with responsibility for] Climate propose new legislation on market design for energy, as they did in the last mandate, and when colleagues are building up the framework for the Digital Single Market, to get the generalized insights from our sector inquiry in e-commerce, with all the checks and balances in place, I think it serves policies well that there is timely, real-life knowledge about how markets work.

ANTITRUST: To pick up on one of the points you touched on, how do you see DG Competition’s role in terms of delivering the European Green Deal [a package of measures for Europe to become “the world’s first climate-neutral continent by 2050”] and will that affect the outcome of cases?

MARGRETHE VESTAGER: We have had quite a number of, in particular, State Aid cases in the first five years I was here—cases on support schemes to renewable energies, launching electric buses in cities, enabling people to transition, building infrastructure—many cases to support the transition. Now we have established a strategic goal to be climate-neutral by 2050, but a lot of things have happened before that.

We have seen how [auctions have] also been helpful, not only when you want to subsidize but also to get the prices right, because we have been pushing for auctions to be held when you decide on what subsidy you want to give.

I know this firsthand because I used to be the speaker way back in the days when Denmark was establishing some of the first offshore windmill parks. We negotiated the subsidy, politicians among politicians, by desk. Then I left, and the next thing they did was to hold an auction, and I think the subsidy was more than halved.
When you use an auction instead of deciding the subsidy in a political process, you really save taxpayers a lot of money. And that we have seen work very well indeed. When you auction, you can also auction different technologies at the same time if they have a similar cost curve.

So we have already done a lot, also in the capacity mechanisms that Member States establish in order for their transition to work smoothly so that everyone will still have electricity in the grid when they need it.

That being said, we are now going through our different [State Aid] guidelines and procedures to see if there is more that we can do. For instance, we see that not many Member States are aware of the ways that they can support refitting buildings. We see that is almost undiscovered territory from our guidelines, so we want to push that to make Member States see this.

We have also had merger cases that are on the fringe of the Green Deal, where the question of innovation comes to the forefront. Obviously, it’s very important that a merger still allows for affordable prices, differences in quality and services, but also to push for innovation.

We have done quite a lot already, and we will push for more as we move forward with revision of some of our [State Aid] guidelines to make sure that we get it right as fast as possible. The frontrunner in this would be the guidelines on how to enable energy-intensive businesses to have some help on indirect costs coming from the emissions-trading scheme. That is already in public consultation.

ANTITRUST: In a related question, last year, the issue of European industrial policy arose in the competition enforcement context. I was wondering what role European industrial policy will play in your new mandate?

MARGRETHE VESTAGER: The most important thing is that competition is a driver for competitiveness. If you have markets that are open for competition, no one remains unchallenged. If you remain challenged, then you have to keep moving, you have to keep innovating, you have to keep improving your services.

What we’re thinking about in industrial policy is: First of all, it has to be for all because the European industrial fabric is very diverse—you have giant companies, you have medium-sized companies, and you have many small companies as well—so industrial policy will have to address that and the value chains coming from it.

Second, obviously, it has to be green because everything is about greening because this strategic goal of ours to be climate-neutral informs everything we do.

The third thing is that industrial policy will have to be based on fair competition because otherwise we lose the driver for competitiveness because we lose the driver for innovation.

That being said, one of the things that I have found very interesting to work with is when Member States want to establish among themselves—with many, many businesses being part of the project—what we call “important projects of common European interest.” Here we see that there are things that you really cannot expect the individual company to do because it would be too risky and the benefits would not be for the individual company.

We also see that there are areas where we have market failures, where the market as such would simply not deliver.

A good example of things that are not in the interest of the individual business is in the battery project that has been launched by Member States and approved by us in December because that will do different things. It will work on the next generation of batteries—how should they work; on what kind of resource, because there are a lot of input restraints when it comes to more traditional batteries. But not only what should the next generation of batteries be; but also what should be the infrastructure that allows you to have the best use of batteries and what should be the circular economy part of that, how do we make sure that resources—whatever it is that goes into batteries—are fully recycled.

I think this is a good way to say when you’re in between the interests of the individual company, the sector as such, and societal priorities, then you can do something. You can authorize much more aid in order for this to happen.

ANTITRUST: Linked to that, my next question would be that you and other enforcers in the competition area have talked about the need to level the playing field. What do you mean by that in more concrete terms?

MARGRETHE VESTAGER: It can be different things. One of the things that we have on the workbench right now is trying to find a tool that will allow us to deal with what you could call “foreign direct subsidies.” Within the Union we are neutral on ownership. You can be publicly owned or privately owned—we don’t care—State Aid rules apply in the same way. But we check that, if you’re publicly owned, you are subject to the same rules, benefiting from market conform conditions or subject to State Aid control. But the thing is that, outside of Europe, we have no access to control State-owned businesses, and other jurisdictions are very different.

So what do we do if a State-owned company wants to acquire a European company and establish itself here? How do you make sure that you do not then import third-country State subsidies to the detriment of the level playing field?

This is a work in progress, but indeed very interesting. There was a gap in our approach that we identified last spring. I find it very important to address this because when you ask businesses to compete, then you also take upon yourself the challenge to make sure that they themselves are faced with fair competition. That would be a very practical, tangible example of what it would take to level the playing field.

ANTITRUST: That would be on the international level. Taking it slightly more down to individual markets, do you
think it’s also the enforcer’s role to open the markets up to new entrants, to smaller rivals? Is that part of the level playing field?

**MARGRETHE VESTAGER:** That would depend on the situation. If you have, for instance, an abuse of a dominant position that makes it very difficult for rivals in the period of time where the illegal behavior is ongoing; and if then the illegal behavior stops, but the detriment or the bad things that happened to rivals during the illegal behavior make it very difficult for them to come back into the marketplace, then you might want to consider what it will take for them to have a fair chance of getting back in because they were the first victims of the illegal behavior and also consumers suffered since they didn’t have the benefits of a competitive marketplace.

Here you can see what has been done in the Google Shopping case. You also know that a preference menu, a choice screen, will soon be offered to people buying Android phones in Europe. It is that kind of thinking—it remains to be seen what comes from it—that we will now do more often.

As you know, our decisions have three different elements: a fine to punish past illegal behavior; cease and desist orders to stop what you’re doing and not to put anything in place that has equivalent effect; but the third thing is, then what? Here we will think, also more as a matter of principle, about what kind of remedies would be good, based on the learning that we have had from previous cases.

**ANTITRUST:** Switching back from antitrust to State Aid, the Apple State Aid tax case is pending before the Court at this time, and we have seen some decisions by the General Court. Apple State Aid tax case is pending before the Court at this time, and we have seen some decisions by the General Court. The three things that we have had from previous cases.

**MARGRETHE VESTAGER:** Obviously, case-by-case does not solve the horizontal issue. Under the leadership of my colleague Pierre Moscovici, the [European] Council adopted 14 pieces of legislation—and it is difficult because it takes unanimity—in order to enable, in particular, tax authorities to work together to know the full tax history of an individual company. Part of the 14 proposals is also the implementation of the OECD project to prevent base erosion and profits from being shifted. Now all of that is in the process of being implemented.

The specific tax cases serve a very specific purpose to make sure that when people see: Oh, I work in a business that pays its taxes, and I see other businesses that pay their taxes, but they are faced with competitors who are being allowed to get a very light touch by the tax authority, they see the unfair implications of this.

I think the two approaches together serve a sense of both a level playing field but also tax fairness because most people pay their taxes; most businesses pay their taxes.

**ANTITRUST:** Coming back to the advantage you have of having a second term as the Competition Commissioner along with your other role, what would you like to see in terms of change to DG Competition’s policies and procedures now?

**MARGRETHE VESTAGER:** Of course, I couldn’t know that I could become the Commissioner for Competition again since, as you say, it doesn’t happen. I wanted to prepare for the next Commissioner so that, you know, there was a smell of freshly baked bread and you could come in and get started.

We started—and I think many jurisdictions around the planet are doing this also—to figure out how to make sure that our rules are relevant and enforceable in a digital age. So we had the [Shaping competition policy in the era of digitization] conference; we had the call for public entries; we had the special advisors. We learned a lot from that.

At the same time, we started to plan the revision of the Vertical Block Exemption Regulation, two Horizontal Block Exemption Regulations, and also [the Block Exemption] on motor vehicles. So we got started on a number of issues in order to make sure that the next mandate could be an active mandate from day one.

What we will do is look at the Notice on market definition because one of the things I did in the first mandate was to have two scholars go through 15 of our recent merger cases in order to test what they think about how we do this in practice—so not theory, but practical things—and they said: “Well, you’re on track. You use some methodology that is comparable with U.S. counterparts. But the thing is that if a lawyer sits and reads the Notice on market definition, he or she will not have a complete picture of what it is that you’re doing because the Notice is 20 years old and your methodology has improved and developed over time.” It’s a good thing if you can read it and then understand what it is that we’re doing.

The second thing is that since markets develop also with non-monetary payments—for instance, some of the tests that we use have to be supplemented, like the SSNIP [small but significant and non-transitory increase in price] test, where you look at how consumers respond to small but significant increases in price. If you do not put in your credit card anywhere, how do you see a price change? Because the changes may be that your service provider is asking more data of you or that quality is deteriorating.

**ANTITRUST:** Does that mean you would potentially look at the concept of consumer welfare in a broader way going forward?

**MARGRETHE VESTAGER:** At least we will figure out—because we have tested this already in digital cases—what it
will take for consumers to leave a provider. For instance, if more data is being asked for, if quality deteriorates, what are the barriers to leave? You have to understand this if you want to see what the market is here because things may seem free, but if basically your provider can do a lot of things to you because it’s so difficult for you to move, then you have to take that into consideration, and the people we work with will have to know that we take these things into consideration. These are a couple of reasons why it’s a good idea to look at the Notice.

Then, as I said, we have the full review of our State Aid guidelines, the “fitness check.” There is a lot of activity right now.

And, of course, I am also very happy with the fact that we could use the tool of interim measures. It’s always a good thing that your toolbox is in order. I do that myself with my screwdrivers and hammers.

**ANTITRUST:** You have screwdrivers and hammers that you use at home?

**MARGRETHE VESTAGER:** Yes, because my husband lives in Denmark and sometimes I have to do something, then I take out my toolbox. I know, as a physical, practical thing, the things that are sort of in the lower drawer, if you don’t see them, you don’t use them. Now we have taken the interim measures tool not only to the front of the toolbox but placed it on the workbench to be sure that when we vigilantly deal with cases, that we have these tools available. That of course is completely case-dependent. But the fact that you have done it once increases the probability that you will do it again.

**ANTITRUST:** Picking up on that and moving specifically into the digital markets that you mentioned, you spoke recently about “taming the dark side” of the tech giants. Previously you had said that the Commission’s approach would be based on Articles 101 and 102 [TFEU] and the case law thereunder. Do your more recent statements suggest a potential change in that view?

**MARGRETHE VESTAGER:** It’s important to see the full sentence because I think the rest of the sentence says “in order to get the full potential of tech.” I am really an optimist when it comes to the use of digital technologies under the precondition that we can control, as I said, the “dark side,” because otherwise I think that people will simply not trust technology and that will then diminish what we can do with technology. For instance, we really need technology to help us fight climate change. That is the full perspective.

I still think that the main route is Articles 101 and 102, but it is important to have an eye for issues where regulation may be needed. So our legislature passed legislation that we call “Platform-to-Business” that will give businesses that depend on a platform certain minimum rights, such as to know how they are ranked and how to solve issues quickly if issues arise. One of the things that we will now consider is how to deal with the market power of dominant companies. You can be dominant in Europe; you’re more than welcome to be successful. If customers like your products and you grow, we congratulate you. The thing is that the market power of a dominant company is a different creature in the digital era compared to what it was before because of speed and scope. What you have to do in order to be aware of the responsibility that comes with your success and your market power as a dominant company is something we want to discuss in the coming months to get a better idea if we need to refine our reasoning here.

**ANTITRUST:** Would data protection issues fall within your reasoning? In the past, you seemed to say they could be dealt with under the General Data Protection Regulation [GDPR]. Is there potential for taking more account of that in competition law as well?

**MARGRETHE VESTAGER:** It will be very case-specific. One of the things that we are discussing right now is how to better enable people to enforce their rights because that is still a challenge. It’s a good thing to have rights; even better to be able to use them. This is something in particular that we will focus on.

When it comes to privacy, we will consider in our analysis if privacy, or copyright, issues become competition issues. But we do not see a competition case everywhere there is a copyright infringement or a privacy infringement because that simply would not make any sense.

But, of course, we are very well aware that there is a gray zone where some of these issues could become competition issues. In that respect it’s important not to have overlaps so that multiple authorities throw themselves into a certain case. It is also important that we then coordinate well, and make sure that we stay off their turf when it is about privacy or copyright but also that we work well where copyright or privacy tools are being used and where you then have a competition law infringement.

**ANTITRUST:** That brings me to another point. Particularly in the digital economy, companies can potentially fall afoul of several different types of laws—competition law, data protection privacy law, and consumer law. You touched upon it, but maybe you can expand a bit more on how you would streamline enforcement to make sure that you avoid overlaps or inconsistent results and, most importantly, to ensure the best outcome for consumers.

**MARGRETHE VESTAGER:** I think the important thing here is to coordinate among authorities and we know them very well. For instance, the unfortunately now late Giovanni Buttarelli, who was the European Data Protection Supervisor, was the first one to reach out to say, “We have to know each
other very well so that we stay off your turf and you stay off mine if cooperation is not needed; but, if cooperation is needed, that we then coordinate very closely.”

ANTITRUST: Talking of different turfs, in Article 102 enforcement over the last 15 years or so the Commission has focused primarily on exclusionary conduct, but more recently there have been some investigations opened looking into unfair or excessive pricing, so more exploitative cases.

MARGRETHE VESTAGER: Yes.

ANTITRUST: Is that a sign of a shift in Article 102 enforcement?

MARGRETHE VESTAGER: No, I wouldn’t say so. I think it is very much case-dependent. It’s not a policy shift as such.

ANTITRUST: Looking at enforcement on the international scale, do you see international convergence as important in today’s world, particularly when dealing with new challenges in antitrust?

MARGRETHE VESTAGER: We have a globalized world but we do not have a global competition authority. The only way that we can mend that is when we work very closely together. I don’t think that harmonization of competition law is anything that one could realize anytime soon or within my lifetime, but what we can do is to make full use of coming together.

I am very impressed with the work of the International Competition Network (ICN). For instance, when you see their Guiding Principles for Merger Notification and Review Procedures, it is hands-on, it is tangible, it is go do, and that I like very much. Instead of them traveling all the way to “Let’s harmonize laws and regulation,” you say, “There is a commonality that allows us in our methodology, in our procedures, to align ourselves,” and that I find to be hopefully helpful for businesses because it cuts red tape, but it will also serve citizens well no matter what jurisdiction they’re in. At the same time, it respects the fact that markets are very different—what can be a giant merger case here may have a footprint in the United States, but it’s a very small sized foot. I think that is the balance.

ANTITRUST: Thinking again on the international comparative front, the European competition enforcement regime is based on an administrative regime rather than being directly enforced by courts. We have seen in recent years an increase in the use of commitment decisions and settlement decisions. Are you concerned that this may lead to too little judicial oversight by our European courts, particularly in novel areas of the law?

MARGRETHE VESTAGER: I think the first important thing is that the Commission has the discretion to decide to do one thing or the other. That gives us a responsibility to find the best solution in a case for competition to be restored, for the market to serve consumers and customers again. We have done settlements, yes, but we have also done prohibitions. I think you have the pipeline of court cases that will allow you to have an established practice because I completely share with you that it is important, and that is always the balance.

The first responsibility for us is not to fall in love with one way of doing cases or another way of doing cases but to look at the case specifically. As far as I see, we have a pipeline of cases for the Court to deal with, including now our latest interim measures case. And here it is also very important that we get the Court’s guidance. At the same time, in other cases we have settlements that allow everyone to move on and the consumers and customers to be well served again. That is how we’re trying to do things.

ANTITRUST: Speaking of consumers, you mentioned the importance of consumers having choice in prices and all angles of competition. How do you think the consumer’s voice can become central to competition law enforcement in the European Union?

MARGRETHE VESTAGER: Good news only travels mouth to ear. I think for a long time it has been very much only for the competition community to see the benefits and the role competition can play in order for the economy as such to serve the citizens. I have tried to do my bit because I think if you have a sense that the market actually serves me—in my role as a consumer, as a business, as a customer, I am being well served by the market—then you feel more empowered. And that may rub off on the rest of society because, obviously, the market is not society; it’s just a part of it. But if you feel, I’m empowered here, then I think you also look at other things in your society in a different way.

I think this is part of the puzzle of making people feel for real that they live in societies made for them. I do a lot of public speaking and I see a lot of people come and say: “Oh, I never thought about that. Maybe that’s a good idea.”

Also now, for instance, I voice why State Aid rules are an excellent tool if you want to fight climate change. The reasoning is quite simple: When State Aid tools are well used, you get the cheapest possible option, so you can either do more or taxpayers can save money. You do not crowd out private investment. We cannot fight climate change with just public means. This is not going to happen. You need a lot of investment to change the focus and the way it’s done, so you really don’t want to crowd out private investment.

Last but not least, it ensures a level playing field, and that gives you competition as the driver for innovation. Even though we have a lot of technology that will help us fight climate change, we are not done yet. We need much more technology. So you really want that drive for innovation. Then people say, “Oh that may be so because all I really hear about
State Aid rules is that it takes a long time and you’re being annoying.” [Laughter]

For me, it’s very important to say, “This is what we do,” to boil it down to something tangible that you can see, because otherwise you get a debate where the benefits of competition are thinly felt but the pain of competition is deeply felt by some people because their business gets into trouble or a factory will have to close because they lost out in the newest products or whatever. That I think is a very important point.

Second, in our analysis we must make sure that we understand consumer behavior by looking at the effects of it.

**ANTITRUST:** Are you thinking of looking more into behavioral economics? I know the Google Android decision referenced status quo bias, as a behavioral economics example.

**MARGRETHE VESTAGER:** I think it’s very important for us to follow the academic discussions here because this is a developing field. I don’t think that we have to understand the rationale of each and every consumer. Consumers are very different from the old-school textbooks. I don’t think there is any reason to assume that every consumer is old-school, rational, comparing everything—quality, delivery times, cost of delivery, services with the provider—because then you never get to do your shopping. At the same time, I think it’s important not to fall into the other side of things, to say, “Everything is completely irrational compared to the old approach.”

So what we try to do is to see what the effects are without feeling the need to go into the heads of each and every one to fully understand, because when we look at the effects on consumers, we learn a lot about what is working or not working in the marketplace.

**ANTITRUST:** I have one last question for you: Who do you most admire today and have not yet met? And I’m sure you’ve met a lot of people!

**MARGRETHE VESTAGER:** I have met a lot of people. Just yesterday I met an amazing, old CEO who built his company from nothing. They still exist.

The one that comes to mind would be Greta Thunberg for many reasons. What she has inspired—that young people are really hitting the streets—is important for climate change obviously. But it’s also important for claiming back democracy, to be a real thing among people. When a generation learns that it makes sense to work with other people that you don’t know but where you share a common agenda and you take the trouble to get dressed and do the science and get to the place and be there, instead of just looking at your screen and pressing a “Like” button, that in itself I find to be very, very important. If we accept democracy as a digital thing, we will have lost it.