EUROPEAN COMMISSION

[CHECK AGAINST DELIVERY]

Joaquín ALMUNIA
Vice President of the European Commission responsible for Competition Policy

Competition policy for the post-crisis world: A perspective

Celebrating ten years of the GCLC
Bruges, 17 January 2014

Ladies and Gentlemen:

I thank Massimo Merola for his kind invitation to be part of the celebrations for the first ten years of the College of Europe's Global Competition Law Centre. I also want to thank Professor Demaret for his words of introduction and extend my heartfelt congratulations to the administrators and to the teaching staff of the GCLC. I am sure that, looking back, you will be proud of your achievements. I wish you all a very happy anniversary and many more years of success.

Such an occasion – in this unique European academic environment – allows me to take a step back from our day-to-day investigations and decisions to analyse from a broader perspective the significance of competition policy for Europe's process of integration and the debates it has stimulated along the years.

Today, I will try to give a comprehensive look at the reasons why the robust enforcement of EU competition law in a genuine internal market is necessary not only to underpin and develop the internal market, but also to improve productivity and increase growth in Europe.

I am aware that not everyone shares the same conviction. Even before the crisis, some negative opinions circulated about the role of competition policy in the EU. There were several reasons for these critical views. Some were in response to the perceived threat to our competitiveness posed by the emerging economies. Others were motivated by a resistance to complete the Single Market, especially in certain areas such as energy, the service sector – including financial services – the digital industries and telecoms markets.

During the crisis additional concerns have been added. Now some critics of competition policy are worried about deindustrialisation and the inefficiencies of financial markets. In the worst cases, sceptical views come from the growing populist camp. These are part of what I regard as a purely defensive and ultimately misguided response to Europe's predicament these years.

I don't want to remain silent before these critics and sceptics. I think their views are wrong, and in some cases represent a real danger for the future of European integration.

What Europe needs today is exactly the opposite of laxer competition control and protectionism. What we need is a pro-active approach, not a defensive one, to reinforce the foundations of a credible and sound EU strategy for growth. A strategy whose goals must include a fully-fledged Single Market and a real Economic and Monetary Union equipped with the instruments that were missing in its original design. A strategy capable of reinforcing competition policy; not as an obsession of dangerous Brussels fundamentalists – as we are sometimes depicted – but as a vital component in the policy mix that can put Europe back on track.

These are the issues I want to talk about today. But first, let me look at some key features of Europe’s economic juncture to put the discussion in its proper context.

Today's juncture

Almost seven years after the first signs of the financial crisis began to appear in the summer of 2007, Europe's economy has not yet returned to its pre-crisis levels. Most EU countries have not regained the GDP levels of that year and in many of them unemployment figures have grown to alarming levels, in particular for the young.

Excluded from the labour market, 26 million Europeans today cannot develop their skills or acquire new ones. They cannot enjoy fully their citizenship rights. The EU is at risk of squandering the human capital of an entire generation, with obvious harmful effects on the social fabric and on our growth potential in the future. To prevent this disaster, the EU urgently needs to create the best possible conditions for sustainable growth. This is a huge task and the solutions are not simple.

Yet, looking at the global economy of the 21st century and at the role that Europe needs to play not to be left behind by the vigorous and dynamic players we have to compete with, one thing is clear: a credible plan for higher and sustainable growth in the EU must rely on the internal market as its basic ingredient.

Realising the full potential of the Single Market is of the essence. Any temptation to go backwards trying to find protection behind old national economic borders is a recipe for disaster. The Single Market is our best asset and our most powerful lever to achieve growth through higher productivity and half a billion consumers. And realising full potential means breaking the remaining national barriers and ensuring effective competition within and across Member States.

It is obvious that dismantling the remaining barriers in the internal market is mainly the task of *ex ante* regulation, which aims to increase economic integration across the EU. However, my experience as Commissioner for competition shows that – despite the regulatory efforts carried out since the 1980s – competition enforcement is absolutely necessary to remove the obstacles that still encumber many sectors.

In particular, I am thinking about the areas where regulatory national barriers still remain, hindering growth possibilities and our competitiveness.

Telecoms and online markets are one of the sectors where growth prospects are in theory very high. But Europe’s telecoms markets are still dominated by national regulations, enforced by national regulators, and the spectrum is still allocated on a country-by-country basis. Every time I am asked, during a merger case, to consider markets as global because the main players are global, I am obliged to recall this obvious fact, which unfortunately cannot be ignored.

As to online markets, they are clearly underdeveloped in the EU compared to other parts of the world. It is not logical that in 21st-century Europe online transactions between EU Member States are still hampered by poor online payment systems and national copyright systems.

Another sector where national barriers still persist and where a genuine pan-European market could bring growth to Europe is energy. No fully integrated internal energy market has yet been achieved in Europe. While data show that liberalisation has ensured healthy competition at wholesale level, national components such as network costs and taxes have led to high energy prices and lower efficiencies, which hinder industrial development and lower the standards of living of many fellow Europeans. A truly European energy policy would also allay our present concerns about security of supply and increase the profitability of all infrastructure investments, including in low-carbon technologies.

To complete this quick and selective overview, let me refer to the situation of Europe's banking and financial sectors. The Banking Union will enhance financial integration in the euro area. Yet, until this ambitious project is fully in place, capital markets will remain fragmented, which prevents the optimal allocation of capital across national borders. At the same time, venture-capital markets are still underdeveloped in Europe, which makes life unnecessarily difficult for start-ups and for anyone who has an innovative product or service to bring to the market.

Of course, competition policy is already contributing in practice to the establishment of the internal market in these and other key sectors. Although the challenges we have to cope with are quite difficult; we are not starting from scratch. Most of the national barriers affecting the manufacturing sector were dismantled at the end of the past century. The effective enforcement of antitrust rules and our control of mergers and State aid strive to keep their respective markets level playing fields across Europe.

But even in these markets – especially in times of crisis – the temptation of governments to protect their national champions is strong. Precisely because we are still in difficult times, I want to recall once again that history has taught us that protectionism does not pay. In fact, protectionism is actually a negative-sum game. The absence of truly pan-European industrial markets prevents the development of global champions and hinders industrialisation.

Competition policy works for open and fair pan-European markets. It fights cartels and prevents the creation of new ones; it makes sure that mature industries do not live off monopolistic rents; and it keeps governments from supporting failing companies. Effective competition contributes to productivity – and therefore to economic growth – mainly through three channels:

- First, competition encourages individual firms to become more efficient to stay ahead of their rivals;
- Second, competition also promotes sectoral productivity by allowing high-productivity firms to replace laggards;
- Finally, competition pushes firms to invest and innovate and therefore encourages dynamic efficiency.

Competition rules, when enforced across open and large markets, ensure the exit of firms with a poor performance and promote the entry of innovative ones. Contrary to the views of those who are afraid of competition enforcement, the implementation of our rules in goods markets contributes to the industrialisation of the EU because it makes it easier for innovative firms to launch new products and processes, thus opening global markets to European operators.

Corrective, preventive and policy action

Ladies and Gentlemen:

Within this context I would now like to discuss in more detail how the different instruments of competition policy contribute to the ultimate goal of enhancing growth across the EU. To do so, I will divide the work of DG competition in three kinds of action: corrective action for antitrust including cartels, preventive action with reference to our review of proposed mergers, and policy action for our work in the State aid domain.

Antitrust and cartels – corrective action

I have said many times that the main priority of the action of DG Competition in antitrust is our fight against cartels. The reasons are simple. Firms that set up cartels directly impose higher prices on their customers – whether they be final consumers or other companies along the value chain. They also limit competition among rivals and negatively affect incentives to invest and innovate. Finally, they often raise barriers to shield the cartel members from the entry of more innovative and efficient rivals. Every time we dismantle a cartel – and every time we prevent the creation of one thanks to the power of deterrence of our fines – we do our part to make our economy more competitive.

But not all agreements between competitors are as damaging as cartels; some may actually be growth-promoting. For instance, R&D cooperation among rivals can allow companies to undertake more fundamental research with larger spill-over and growth-inducing effects. Enforcing competition policy, therefore, means being able at all times to tell pro-competitive agreements from anti-competitive ones.

Vertical agreements between firms operating at different stages of the production process often enhance efficiency and pose problems to competition only in specific circumstances. This is the case when we fight against one specific type of vertical agreement – territorial restrictions. Absolute territorial restrictions result in artificial price differences between partitioned national markets which are incompatible with the Single Market objectives.

Only last Monday, I opened an investigation to examine certain provisions in licensing agreements between several major US film studios and the largest European Pay-Tv broadcasters. We will investigate whether these agreements prevent broadcasters from providing their services across borders, even in response to unsolicited requests from potential subscribers in other Member States – the so-called "passive sales". Such partitioning of the Single Market along national borders would deprive consumers from the benefits of competition between broadcasters and limits the broadcasters' incentives to compete and innovate.

But anti-competitive practices are not limited to agreements between undertakings. In some cases a dominant company in a market can try to exclude rivals through unfair practices so as to extract monopolistic rents. The ability and incentives of firms to become larger push them to invest and innovate and are key drivers of economic growth. This is why obtaining a dominant position through internal growth is not a competition problem in itself. What EU competition law forbids is the *abuse* of a dominant position.

We sanction dominant firms when they exclude smaller rivals or new entrants from the market or when they relegate competitors to a niche segment. These practices distort the competitive process and are illegal. The prospects for economic growth are hampered if dominant firms are allowed to raise barriers to entry and prevent or constrain the innovations of rivals. The case that first comes to mind is our on-going investigation of Google. Antitrust enforcement should not prevent Google from improving its services if it wishes to do so, but should at the same time allow innovative products from rivals to be able to compete on their merits.

A well-functioning patent system and efficient standard-setting organisations are of crucial importance in innovative industries. Our cases in the area of standard-essential patents relate directly to incentives to invest and innovate. The patents involved in these cases are of a specific type – they have been submitted to a standard-setting body with a commitment to let other companies use them in return for reasonable remuneration. This commitment allows companies to focus on innovation, safe in the knowledge that their products will work with those of others. But these systems can also be abused, for instance when patent holders seek injunctions based on Standard Essential Patents against companies that are willing to enter a licence on FRAND terms.

Merger control – preventive action

Let’s look now at our enforcement regarding mergers. Dominant firms do not appear overnight. In many cases, they have grown large because they have been more successful than their competitors and we often observe that large firms are more efficient. However, when two firms merge the resulting entity may not necessarily be more efficient.

Through the careful assessment of proposed mergers, we make sure that they do not end up creating market structures with one or several firms having excessive market power. Bad mergers are those that result in a larger firm that can increase prices substantially because it is no longer constrained by rivals. Good mergers are those that create a more efficient and more innovative player. As was the case with pro- and anti-competitive agreements, what counts here is being able to sort out good mergers from bad, and give the green light to the deals that raise no competition concerns and, arguably, may have a positive effect on growth.

Let me say one word on the impact, on our review of mergers, of the survival of national markets in industries that are supposed to be integrated in the Single Market. I have already referred to sectors where the internal market has not been achieved. Given the existence of national barriers in these markets, here we are forced to consider the impact of mergers on the national markets affected.

For instance, in the telecoms industry we are reviewing Hutchison's acquisition of O2 Ireland and Telefónica's acquisition of KPN's E-Plus business in Germany. Both mergers entail combinations between mobile-network operators active in the same Member State. Since a genuine Single Market for telecommunications services is still incomplete, the Commission's assessment of these mergers will most likely continue to be carried out on the basis of national markets.

Even in the case of manufacturing and consumer-goods markets where an internal EU market has largely been realised – as specific national borders no longer exist – our merger assessment still leads us to conclude that the impact of the merger should be considered on regional markets rather than EU-wide markets. At times, in strong disagreement with the merging parties. However, when defining the limits of geographic markets, we consider whether customers would switch their orders to companies located elsewhere in reaction to a price increase. Local preferences or the presence of transportation costs can therefore lead us to conclude that competition takes place on local or national markets even though no national trade barriers exist.

State aid – policy action

Finally, let me turn briefly to State aid. Favouring underperforming companies or keeping them alive upsets the entry and exit process and hampers productivity and therefore growth. But State aid can also foster growth and strengthen the internal market when it is designed well.

The Treaty makes the European Commission responsible to control all forms of public support, including through taxation. To this day, no other jurisdiction has anything comparable to our State aid rules. Our task is to allow 'good aid' and block 'bad aid'. This requires rules that are well-designed and easy to apply across 28 Member States. The revision of the sectoral Guidelines I launched in 2012 with the State aid Modernisation strategy ensures that aid fosters entry, innovation, employment, access to finance, and environmental protection.

The reform of the State aid framework is now approaching its final stretch. A couple of days ago the Commission approved the new guidelines that will help Member States promote access to risk capital for SMEs, especially when they are in their early development stages. Next in line are the revised rules for the public support of airports and airlines; whereas the draft guidelines on environmental and energy State aid will be issued in spring as will the new guidelines on research, development and innovation.

Although public subsidies have become a scarce commodity, there are still many opportunities for good and well-designed aid to promote growth, social development, and to strengthen the internal market. This is the kind of aid that targets market failures; has a real incentive effect; and does not distort competition. In parallel, we will redouble our efforts to discourage all forms of bad aid, such as the subsidies that crowd out private investment; waste taxpayers’ money; and weaken the power of markets to re-start Europe’s growth engine.

Ladies and Gentlemen,

We badly need growth. Everybody will agree on that. But the way competition can help us to achieve our goals is open to discussion.

I have tried to argue in favour of a strong competition policy as one of the best tools EU authorities should use to create better conditions for investors and innovators; increase productivity levels; and raise our competitiveness vis-à-vis our most dynamic global partners.

Better-functioning markets are needed to reconcile the market economy with the aspirations of our citizens. And the best way to achieve this is completing a real Single Market at EU level. New entrants are needed to replace old and inefficient parts of our productive system and develop new sectors and activities. A simpler but robust State aid control is the best guarantee to preserve a level playing field and at the same time to make the best possible use of scarce public resources.

This is what EU competition policy is about. And these are, at the same time, essential elements of a sound growth strategy.

Thank you very much for your attention.