EUROPEAN COMMISSION

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Honing the instruments of EU competition control

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Ladies and Gentlemen:

I thank Professor Baudenbacher for inviting me again to speak at St. Gallen.

This is the fourth time I address this audience, and it'll probably be the last one in my present capacity given that my term as Commissioner for Competition comes to an end in a few months.

I want to tell you that this conference is not only one of the leading events for the competition-law community, but one where I have always felt at ease.

I would also like to send a special greeting to Vincent Martenet, president of Switzerland's Competition Commission.

Co-operation between our respective authorities will be boosted by the innovative cooperation agreement signed last year between the European Union and the Swiss Confederation.

I am happy that the agreement has been endorsed by the European Parlament and Council on our side and I am looking forward to the finalisation of the process.

Today, I would like to share with you my views on some of the topics that will be debated here.

In addition, I will take the opportunity to give you my personal comments on some competition-enforcement issues that are attracting a lot of attention these days from political leaders, the community of experts, and the media.

In my view, the way the current debate about the role of competition policy in the digital era will evolve; the discussions about what to do to make competition enforcement compatible with the competitiveness of Europe's industry; and the political conclusions that will follow will define our enforcement action in the coming years.

I will start with the Directive on antitrust damages actions, which I regard as one of the most significant developments in the competition-policy domain in the current mandate.

Infringements of EU competition law are not only bad for the competitiveness of our economy. They also harm companies and consumers directly.

We recognise that every individual consumer and business has the right to be compensated for this damage. However, given the legal systems of EU countries, only a few victims obtain compensation in practice.

The time has come to translate our principles into actual practice.

Last year the Commission tabled a proposal to remove existing obstacles in national rules and make it easier for victims to obtain compensation across the EU through private enforcement.

The European Parliament and the Council have seized the opportunity and reached a political agreement with remarkable speed.

The Parliament voted the final text by an overwhelming majority, and the formal approval by the Council is expected before or shortly after the summer.

This outcome is a major success for a number of reasons.

First, from the perspective of victims, the Directive will make it easier for them to get hold of the evidence they need to prove the damage, because national courts will be empowered to order disclosure of relevant evidence.

The Directive also allows victims to rely on decisions taken by national competition authorities when these find an infringement.

Moreover, it introduces clear rules on several aspects of competition litigation, thus reducing the existing uncertainties, which have a cost for all parties.

From the perspective of the internal market, the Directive sets a minimum standard in all Member States, which means more legal certainty and a more level playing field throughout the EU.

Finally, from the perspective of competition authorities, the Directive fine-tunes the interaction between their work and the compensation claims by private parties. This is thanks to rules that preserve the incentives of companies to cooperate in antitrust investigations.

In parallel to the Directive, the Commission has also adopted a Recommendation inviting Member States to introduce collective redress mechanisms at national level by mid-2015.

The Recommendation includes basic principles that would ensure fair, timely and affordable procedures across the EU. The Recommendation is not limited to competition law but covers all policy fields.

The next policy development I will touch upon is in the merger-control domain.

Simpler rules for merger control – what we call the 'merger simplification package' – took effect at the start of the year and have made our review more focused and effective.

More deals are being reviewed in simplified procedure and the system has become even more business friendly.

I will now take another step with the publication of a White Paper in the coming months. The purpose of this initiative is twofold:

- First, it will suggest ways to streamline the rules under which merger cases can be referred from competition authorities in Member States to the Commission and vice versa.
- Second, the White Paper will propose the extension of the EU Merger Regulation to cover possible sources of competitive harm from acquisitions of non-controlling minority shareholdings.

At present, minority shareholdings fall outside the scope of our control of mergers and I think the time has come to close this gap and align our rules to those of other competition agencies – such as in the US, Japan and some EU countries – which can review such deals and have good experiences to report.

However, the existing notification system will not be transferred wholesale to minority shareholdings.

We need a flexible system that only looks into the stakes that give a certain degree of influence in a competitor or in a vertically related company.

The overall goal is to find the best way to tackle problematic cases without imposing an unnecessary administrative burden on companies.

Let me now turn to aspects of EU competition policy that involve national competition authorities in the Member States.

This year we are celebrating the 10th anniversary of the entry into force of Regulation 1/2003.

The ECN was originally set up as a platform for cooperation between the Commission and the Member States. Ten years later, cooperation within the ECN is a daily part of our work and this has promoted the emergence of a common competition culture.

So, looking back to these first ten years, we should be proud of our achievements. The ECN has exceeded expectations, but I think we can further improve our already excellent system.

Before the end of my mandate I want to set in motion a reflection on how the system has functioned so far and its future development.

In particular, we should explore ways to make sure that every NCA has a complete set of basic enforcement and fining powers.

And of course, NCAs must also be independent and have the resources they need to carry out their work.

Here, we continue to face challenges; and in a few cases I have serious concerns.

- A number of national authorities struggle with insufficient human and financial resources;
- There have also been issues concerning the position of NCAs vis-à-vis their respective governments – for instance, regarding the appointment and dismissal of management and decision-makers;
- Concerns may also arise when NCAs merge with other regulators. We need to ensure that these reorganisations do not weaken competition enforcement.

In areas such as telecoms and energy, EU law already provides for detailed requirements on the independence, financial and human resources of national regulators. I would like to discuss how we can put in place similar guarantees for all NCAs.

In my view, authorities should have their own budgets. Managers and board members should always be appointed on merit and never dismissed for decisions taken as they carry out their tasks. Finally, robust rules to prevent conflicts of interest should be universal.

Now, let me briefly comment on the issue of how to apply competition law to State activities, which you will also debate tomorrow.

Since the start of Europe's process of integration, the Commission has the exclusive responsibility to make sure that state intervention in the economy is compatible with the internal market.

This provision shows the vision and wisdom of our founding fathers, because the Single Market simply could not work if the playing field were tilted by governments that decided to use public funds to support certain companies flouting the State aid rules enshrined in the Treaty.

Time has come to update the framework under which we implement those rules. In May 2012 I launched a comprehensive reform of this policy domain; the State aid modernization strategy.

The strategy has three main goals. First, it is designed to encourage Member States to use public resources to boost growth and create jobs across the EU by aligning their policies with the objectives of the Europe 2020 strategy.

Second, it will help national governments improve the quality of their spending and taxation policies – and these decisions have become crucial in times of fiscal constraints.

Third, the reform package will also make State aid rules simpler and better focussed on the kinds of aid that have a significant impact on the competition conditions in the Single Market.

We have been working hard on the sectoral guidelines and regulatory components that make up the reform package and I'm happy to report that we are almost there.

If everything goes according to plan, next week we are going to build the roof on top of the new State aid regime with the adoption of guidelines on Research, Development and Innovation, on projects of common European interest, and with the new General Block Exemption Regulation.

This will crown the work done since last year with the new Procedural Regulation and a number of guidelines to promote access to risk capital for SMEs, on the public support of airports and airlines, and on energy and the environment.

The two remaining pieces that may find their way into the reform process during the summer are a procedural clarification on the notion of aid and new guidelines for the rescue and restructuring of non-financial firms.

Under the new rules, we estimate that two-thirds of aid amounts and three-fourths of aid measures will be exempted from ex-ante notication obligations.

Ladies and Gentlemen:

Let me move on to what I described at the start as the crucial debate for the future of competition policy in the EU.

I want to share with you my views on a couple of issues in our enforcement work that have attracted a great deal of attention over the last few months: our action regarding mergers in the telecom sector and our ongoing Google investigation.

At present, we are looking into two mergers between mobile-phone operators in Ireland and Germany and we have just opened an in-depth investigation of the acquisition of Dutch cable operator Ziggo by the telecommunications group Liberty Global.

Recently, Chancellor Merkel and EPP candidate Jean-Claude Juncker have joined the debate. Talking about the fragmentation of telecom markets in Europe, they called – among other things – for the reform of EU competition law in the sector as a condition to overcome our difficulties vis-à-vis US or Chinese competitors.

I totally agree with their analysis about the problems coming from the fragmentation of the telecoms markets in Europe. Over the last few years, my colleague Neelie Kroes and I have said many times that our real problems in this key sector are caused by the internal barriers that are still present in the Single Market. However, I do not agree with the solution they proposed. Let me tell you why.

When many European telecom operators, especially large ones, call for an integrated European market for telecoms they are pointing to the right direction – provided what they have in mind is a genuine Single Market.

It is obvious that existing barriers in the internal market for the telecom and digital sectors prevent EU companies from competing on a European scale and reach out to a customer base of half a billion potential users.

This is what makes the difference with other large telecom markets overseas. In the US and China, for instance, there are fewer and larger operators which can look at large numbers of potential customers and invest faster in new technologies.

But this is mainly because their respective markets have no internal barriers; are overseen by a single regulator; and spectrum is allocated by a single authority.

Therefore, let us put things in the correct order. Starting from the reform of competition rules – as Merkel, Juncker and others seem to suggest – would be misguided and it would have as a consequence a transfer of costs towards the consumers.

A different course of action is required. The first and most important step to take must be tearing down the barriers that still fragment the Single Market along national borders.

But this is beyond the remit of competition policy. In fact, these barriers are kept in place by many EU national governments. What political leaders are asking for requires solutions that are first and foremost in their hands.

These governments don't want to allocate spectrum at EU level because they are not willing to forgo the billions raised in auctions, which go directly to their respective national coffers. And they resist to move upwards the responsibilities of national regulators. Unfortunately, they prefer to keep spectrum allocation and regulatory decisions in their national hands.

Instead, what we need to bring Europe's telecom industry into the 21st century is a genuine Single Market for telecommunications with a fully-fledged EU telecom regulator, EU-wide spectrum allocation, and no roaming charges.

As to competition rules, they would not have to change for enforcement to adapt to this scenario. We would then conclude that a single EU-wide market has replaced today's 28 national markets.

In an integrated EU market, the definition of relevant markets would automatically change. The Commission would assess the impact of most mergers on the whole of the EU – and not on individual national markets that would no longer exist.

Therefore, if our political leaders want to be rigorous when they talk about the telecom industry in the EU, they should start thinking as European leaders, rather than giving precedence to their respective national priorities.

Those who believe that economic nationalism can still be a recipe for success in the digital era should update their views. The challenges of the 21st century cannot be tackled with the mindset and the policy solutions of the past century.

Finally, as I said, I will say a few words about our ongoing investigation into Google's business practices in online search and advertising.

Two days ago I replied to an open letter published earlier by Matthias Döpfner, the CEO of the German publishing house Axel Springer, who expressed concerns about Google's power – which I obviously share – and made critical remarks about the way the current Google case is being conducted.

I recalled in my reply that in this investigation the Commission is challenging a number of Google's business practices. One of them is the prominent display of its own specialised search services, which could divert internet traffic away from the services of its rivals.

Following difficult negotiations, Google agreed to make significant concessions. Let me recall some of the main ones:

- Whenever Google promotes its own results, users would be informed of this favourable treatment;
- The links would be clearly separated from the normal search results; and
- Google would present links to three competitors in a way that is clearly visible to users and comparable to the way Google presents its own services.

This would allow users to choose between several alternatives. Today, by contrast, the promotion of Google's own services means that users may not be aware of the services of rivals because they are not visible on the first search results page.

These concessions would give a real opportunity to Google's rivals to attract users. It would then be for users to choose the service they want to click on. These decisions are up to informed users, not to competition authorities.

One aspect of the proposals has been especially misrepresented: the issue of payment. Let me explain what the proposals actually say.

When merchants do not pay Google for being displayed in its specialised services – for example in Google's Local search results – then competitors would not have to pay a single cent to have their links displayed.

But there are cases where Google charges merchants to appear in its specialised services, such as in the price comparison service. So, in cases like Google Shopping, the space on the page that merchants pay to appear in would also have to be shared with Google's competitors.

Under the proposals, instead of just selling this space to its own customers, Google would have to give a part of it to its competitors.

To be selected, Google's rivals would compete in an auction which would be strictly reserved to providers of specialised search services.

As you can see, the system that would emerge from the concessions would not create any additional earnings for Google. Nobody can say that it does without ignoring what is really on the table.

In fact, the proposals – if they were to be made legally binding through an Art. 9 decision – would regulate part of the company's operations.

One principle must be clearly understood: the role of competition policy is not to prevent Google from innovating and offering new services. This would not be in the best interest of users. Our role is to ensure that Google does not prevent competitors from doing the same.

What are the next steps? We are in contact with complainants and will soon start to send them letters explaining why we consider that the concessions we have obtained can swiftly allay the competition concerns we have raised in this investigation. We will carefully look at what complainants say before deciding whether to make Google's proposals legally binding.

There are many other potential issues involving Google's practices that go beyond the scope of this investigation.

These include issues related to the Android operating system, which we are analysing. Beyond the remit of Art. 102, we have copyright issues, tax-planning practices – where State aid can intervene – and the protection of personal data. For instance, let me just remind you of the judgement of the Court of Justice a few days ago confirming that Google has to comply with EU data protection law.

All these issues should be addressed using the most suitable policy instruments. Competition rules on abuses of dominant positions can be used to solve well-identified and well-investigated antitrust concerns. They cannot, and should not, be used as a substitute for other policy or regulatory actions.

Ladies and Gentlemen:

These are my remarks before you start your discussions. I want to thank you for the support many of you are giving to our enforcement work in these difficult times, and I look forward to meeting you again in my present position as well as in my future occupations.

In particular, I want to express my sincere gratitude to professor Baudenbacher for his unfaltering friendship and cooperation.

I wish him and all his team every success and I encourage him to continue in his efforts to make these yearly meetings ever more stimulating and influential.

Thank you.