

**Dinner speech at the ProbusBNW Dialogue**  
**"Priorities of competition policy, contribution to Competitiveness**  
**and challenges from Enlargement"**  
**18 September 2003**

**ProbusBNW Dialogue Dinner**

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**Ladies and Gentlemen,**

I have been invited to talk this evening about the priorities for EU competition policy and the way they are contributing to European competitiveness. I would like to begin by explaining why I believe that competition policy is essential to the goal of becoming "the most competitive and dynamic knowledge-based economy in the world". I will then say a few words on some of our priorities in day-to-day enforcement activities. Finally, I will concentrate on strategic priorities, that encompass a large programme of reforms, aiming at ensuring an effective competition policy in an "enlarged" marketplace.

**I regard the efforts for establishing a regulatory framework that upholds effective competition as a contribution both to the welfare of consumers and to the competitiveness of the European economy.** Competition policy is about protecting competition as the most efficient system for allocating the resources of the society and not about protecting competitors. A dynamic business environment that ensures competition sets incentives to innovate and fosters productivity growth; it induces firms to enhance their efficiency and thus enables them to better prepare to compete in home and international markets.

In particular, practices such as **cartels** among producers constrain entrepreneurial freedom and hamper innovation, because producers are mainly concerned with maintaining their existing position, than with improving performance. **That is why the fight against cartels remains one of the key priorities of EU competition policy.** Indeed, the Commission in the last years has clearly intensified its efforts in this respect. In 2002 nine prohibition decision were issued concerning sectors ranging from banking services to chemicals and from auction houses to construction materials.

But market distortions may arise as well from **public interventions, such as the grant of State aids.** The elimination of these distortions is at least as an **important enforcement priority in the Commission agenda.** The tough stand taken in the Alstom case may prove it. Our view is that the overall competitiveness of Community industry is best served by maintenance of a firm state aid policy. The structural problems of the European economy will not be solved by throwing money at them. Experience has shown us that the ill-considered use of public money to delay the difficult process of structural reform may in fact substantially harm our competitiveness in the longer term.

In general terms, I think we can look back with some satisfaction on the results of our state-aid policy in recent years. We have taken a number of important decisions covering such diverse issues as stranded costs in the energy sector, the competition

implications of new market instruments being developed to meet the Kyoto targets, cross subsidization in the German Post Office and State guarantees for the Public Banks.

The fight against cartels and unlawful public funding are only some of our key priorities in day-to-day enforcement of competition law. We also have specific objectives for specific sectors, I shall just mention the enforcement actions relating to the opening of **energy** and **transport** markets, as well as the scrutiny of sensitive sectors, such as **liberal professions**.

But **I will now turn to our general strategic priorities**. I am referring here to a vast programme of reforms and activities ranging from the modernisation of antitrust rules to the review of state-aid policy and from the recast of our merger control regulation to the developments in international co-operation. **Ensuring a more efficient enforcement of competition rules is the common denominator of these initiatives**, having clearly in mind the competitiveness goal on the one hand and the challenges coming from **enlargement** on the other hand.

Accession will have a significant impact on the way in which the Commission carries out its enforcement activities. The investigation in a large number of cases will have to be extended to the ten new Member States. Enlargement will further require a close co-operation with the ten additional national competition authorities.

- In the State-aid field where the Commission has an exclusive competence to decide on the compatibility of aids with the common market, the number of notifications is expected to increase by up to 30%. And we have also to keep in mind that eight of the ten acceding countries are transition economies, which, until very recently, were characterised by a high degree of State intervention.
- The number of Community dimension mergers will increase as a direct result of enlargement because the additional turnover of firms in the new MS will count towards the EU turnover threshold determining EC competence. The number of national markets to be considered in the individual cases will also significantly increase, which will lead to a generally higher complexity of cases in substantive terms.
- The accession of ten new Member States will also add nine new official languages. This will add another challenge to the implementation of competition policy.

However, **preparation for enlargement is well underway in all policy areas**. Moreover, the recruitment and training of new officials from the accession countries is already underway, so that a sufficient number of new colleagues mastering the languages of the acceding countries will be operational from day 1 of enlargement.

#### a) Modernisation of antitrust rules

In the field of antitrust, I believe that **the new Regulation 1/2003 is an excellent tool to guarantee an effective competition policy in a Union of 25 Member States and more**. There are many reasons why I believe this is the case, but let me just mention two of them:

- A first one is the abolition of the notification system: it is clear to each one of you that if we had maintained the present notification system in an enlarged European

Union, it would have led to a paralysis of our enforcement activities. **The decision to abolish the notification system will free Commission resources, which will be dedicated to competition enforcement activities.** However, I know that both the economic environment and the legal settings are evolving and in case of genuine legal uncertainty, the Commission will hold itself available to issue guidance letters.

- A second reason why I believe that the new enforcement procedures will lead to an increase in the effective enforcement of EC competition rules is **the joint responsibility with national competition authorities and national courts to enforce EC competition rules.** This will be a formidable factor of integration for the internal market and will give much more weight to the EU antitrust rules. At the same time, the reform also contains a number of safeguards ensuring a **consistent application** of the rules throughout the Community both as regards the national courts and the national competition authorities.

#### b) State-aid policy

In the State aid field, particularly in view of enlargement, **we are refocusing our efforts so that we can concentrate our time and resources on important cases** which present real competition concerns at the Community level. In this context, we have launched a process to modernise and reform State aid control. This involves:

- Procedural change, to accelerate, simplify and modernise procedures.
- Improving the economic under-pinning of State aid control, by explaining the rationale for State aid control, its objectives and means and perhaps also its limits.
- and a Review of State aid instruments, to simplify them and remove possible conflicts between the different texts. High priority will be given to the establishment of guidelines concerning the provision of compensation for the cost of providing services of general economic interest. As regards existing instruments, priority will be given to updating and simplifying the existing block exemptions and frameworks

So far for the future, but a number of steps have already been undertaken to ensure that Community State aid rules will be effectively enforced in the acceding countries from 1 May 2004:

- For many years, since the late 1990s, we have been working closely with the authorities in the Acceding States to prepare for **a gradual introduction of State aid control** in line with the EU *acquis*. During the accession negotiations, we have consistently maintained that the Commission would not recommend the closure of the Competition Chapter unless Candidate Countries could demonstrate a credible State aid enforcement record in line with the *acquis*. This approach has been very effective in convincing the Acceding States to phase out or align their most distortive forms of aid, ie. aid for the bail-out of ailing businesses as well as incompatible fiscal aid measures, largely designed to attract internationally mobile investments.
- The Accession Treaty provides for a **mechanism that enables the Commission to screen State aid measures** that entered into effect before the date of accession and that the authorities of the acceding countries intend to continue to operate after that date. The Treaty provisions enable the Commission to object to any such measure, if it considers that it is incompatible with the common market.

### c) Merger reform

**The reform proposals for a recast Merger Regulation include several elements.** Discussions in the Council working group are progressing well, so that we are confident that the new legislative framework can be adopted in time to enter into force on the date of enlargement. One important element is **the streamlined referral mechanism to cope with mergers in a Community of 25.**

Another important element of the reform is the clarification of the **substantive test** based on the concept of 'dominance'. The Commission proposes to make it clear that the test applies to situations of non-collusive oligopoly which may give rise to competition problems (so-called "unilateral effects").

A series of measures not requiring legislative changes are also being taken in order to improve the **quality of our decision-making** and, at the same, time enhance the involvement of merging companies during the course of an investigation. The new measures include, for example, the appointment, for most in-depth merger investigations, of a peer review panel, whose task is to scrutinise the investigating team's conclusions with a "fresh pair of eyes", state of play meetings and triangular meetings.

Finally, I shall mention that a concrete step was taken to enhance the Competition DG's economic capabilities. As you may know, Mr Röller took up recently the new position of **Chief Economist** that has been created. The role of the Chief Economist would not be limited to his involvement in merger control, but it will also extend to other policy areas.

### d) Promoting international co-operation

I would like to conclude with a few words on our strategic priorities in the field of international co-operation.

I have already mentioned the negotiations in the competition field with accession countries. Let me now say a few words on the developments at the international level. What is well known is that we **closely co-operate with our US counterparts**. This clearly has become part of our working routine, and especially in **mergers** where, I would estimate, about one fourth of all deals that we look at involves at least 1 US company.

But we equally co-operate in the pursuit of international **hard core cartels**. There are also bilateral co-operation agreements with **Canada and now with Japan**. The most visible results of this were the recent first-ever coordinated investigation simultaneously in Japan, the EU, the US and Canada.

In the multilateral arena, there are currently two main fora. Unfortunately, at the level of the **WTO**, the discussions on a possible binding instrument, albeit very limited in scope, did not come very far in Cancun last week.

Finally there is also the International Competition Network, or **ICN**. It is a virtual network that brings together almost all of the world's existing competition agencies. It lacks any formal regulatory powers, but puts forward recommendations that the leaders of its member agencies believe represent the best approach to a certain issue. So far, in the ICN, we have been concentrating on the review of international mergers. Over time, it is clear that this soft-law approach will produce some very real changes

to the way that agencies conduct the review of such mergers. This will make these reviews more efficient, more predictable, and less burdensome for the companies involved.