

Introduction

Mr Blix, Ladies and Gentlemen: Good morning.

We have heard about the positive implications of new electronic tools for business. I will turn now to the implications as regards the application of the competition rules.

My comments will be general because the European Commission's thinking is very much in development. Many of the Internet related cases dealt with so far have raised no competition problems, and we are only beginning to see the full scope of competition issues thrown up by the Internet.

I can say with certainty, however, that the Internet does not pose any threat to the competition rules themselves. Some people believe that these developments require a rethinking of the fundamentals of competition law: this is far from the truth. As Commissioner Monti made clear this morning, the objective of the competition rules is simple:

"... to ensure consumer choice, innovation and lower prices. This is achieved by ensuring that businesses compete; by ensuring that they compete against their competitors rather than collude with them; by ensuring that they compete against their competitors rather than abuse their market power to undermine them."

This simple objective holds true whether we are examining traditional cases involving coal or steel, or the most advanced new products and services on the Internet. **The goal remains the same, only the facts change. This difference is not negligible: but it is a challenge, rather than a threat.**

Competition Law and the Internet

1.1. General Comments

Many of the cases that have come before the Commission have raised no competition problems. It's important to remember that the new economy is an ally of competition authorities, given the enormous benefits that it brings. I would highlight three benefits in particular:

- **an increase in transparency** of the availability of goods and services and of their price; (This transparency is a double edged sword, as we shall see when I touch on issues relating to Business to Business exchanges.)
- **a growth in the size of markets:** the Internet lowers the barriers to entry for companies, allowing them to compete in wider geographic areas than would otherwise be possible. (Though not all markets are becoming global, as consumer demand and regulatory considerations may still lead to national geographic markets.);
- **a reduction in transaction costs:** the use of some B2B exchanges could cut transaction costs by 90%. Even allowing for the exaggeration that too-often characterises this sector, this will bring tremendous benefits to the economy and, ultimately, to all of us, the consumers.

These developments point the way towards more competitive markets: costs will be cut; producers will have improved access to customers; customers will have greater information, greater choice of producers, and lower prices.

But there may also be less positive consequences: the lowering of prices, for example, will squeeze companies' profit margins, increasing their incentives to collude to keep prices high.

1.2. Specific Areas

Turning from the general to the specific I want to touch on the competition issues surrounding:

- First, Business to Business Exchanges; and then
- Business to Consumer Services, including leveraging of existing market power, and goods distribution.

1.2.1. *B2B*

One area where there has been a lot of debate, but fewer cases than might have been expected is that of business to business (B2B) exchanges.

These come in a number of different forms, but all aim to provide a more efficient environment to bring together buyers and sellers of particular products or services. **We are certainly not opposed to the creation of B2B electronic market places.** That these exchanges try to sign up as many industry players as possible does not in itself create a competition problem. As with stock exchanges, the liquidity and effectiveness of price discovery of a B2B electronic market place may well increase with the number of users.

However, **there are issues that could raise competition concerns.** The concerns are different depending on whether we are looking at the position of the sellers, or of the buyers.

Looking at the sellers, the questions include:

- Will the B2B marketplace allow the exchange of sensitive information between competitors?
- Could the systems be used to exclude individual companies from the virtual market place ?

Looking at the buyers, we would need to examine whether there was an anti-competitive concentration of buyer power.

There is also an important procedural element: the interplay between the Merger Regulation and the basic antitrust Regulation 17. Many of the concerns surrounding these new exchange systems relate to the operation of the exchange in practice – the exchange of confidential information, the possibility of collusion and so on. As the Merger Regulation is concerned with the creation of the exchange, concerns as to its operation need to be assessed under Articles 81 and 82. This may require a Regulation 17 procedure even where a Merger Regulation clearance has been obtained. There have so far been no cases where this has appeared necessary.

Business to business exchanges can clearly bring about significant cost savings: but consumers will only see lower prices if we ensure that the exchanges are created and continue to operate in a pro-competitive manner.

1.2.2. *B2C*

As regards business to consumer (B2C) services, few if any problems have arisen in relation to the online provision of the services themselves. Problems do arise, however, where there are existing strong market positions in related markets, or where the development of electronic commerce is being hampered. The

Commission has taken action in a number of cases to maintain consumer choice by ensuring that companies providing services to consumers are not disadvantaged because of the upstream market power of their competitors.

1.2.2.1. Leveraging

1.2.2.1.1. Telecommunications

In several cases, the Commission was concerned that control over telecommunications infrastructure could be used to leverage the parties' positions into related markets . You can see this concern, for example in:

- the Worldcom / MCI and MCI Worldcom / Sprint cases as regards backbone infrastructure;
- the Telia / Telenor case as regards local fixed infrastructure; and
- the Vodafone / Mannesmann and Vizzavi cases as regards mobile infrastructure.

This concern is a common one when looking at internet-related markets, and isn't limited to infrastructure:

- As far as content is concerned, let me mention the **AOL / Time Warner** concentration. It would have brought together AOL's service provision with content from Time Warner, EMI (as a result of the proposed EMI / Time Warner deal) and Bertelsmann (through the AOL Europe joint venture). This could have led to a strengthening of the merged entity's position

on a number of markets. The commitment to separate AOL / Time Warner from Bertelsmann, and the not unpainful abandoning of EMI / Time Warner allowed the merger to proceed.

- Similar concerns arose in **Vivendi / Seagram**: This concern was addressed by conditions ensuring arms length negotiations for the sale of Universal's film rights, and non-discriminatory access to Universal's music catalogue. The balance between immediate competition concerns and the need to ensure long-term investment was struck by limiting these undertakings to a period of five years.

1.2.2.2. Distribution

Finally, on this rapid tour through the competition law and the Internet I want to touch on an area where new clarifications have been given to existing legal principles: the area of distribution agreements.

The Commission recently concluded a re-examination of its vertical restraints policy and issued a block exemption and guidance modernising our traditional approach. One element of this is taking into account the implications of the Internet. This is a particularly important area for consumers: if producers can monopolise the online sale of their goods or services, then the online world risks offering only very limited consumer choice.

For example, restrictions preventing distributors from using the Internet as a distribution mechanism fall foul of Article 81. If the producer wants to ensure a certain quality of website and service

for internet sales, then there are less restrictive means to achieve that end than by banning internet sales by its distributors.

The question of active and passive sales also requires reconsideration: if a producer has established exclusive distributors in each of the Member States, it may prevent distributors from actively selling into the exclusive territories of others. But how do we assess whether a sale is active or passive on the Internet ?

As with many problems, in competition policy and elsewhere, it is mostly a matter of common sense. If a distributor based in France registers with a .DE domain name, or advertises on German websites, or sends commercial emails to German customers, then these actions would appear to be active. If, on the other hand, the French company simply provides a German language version of its website, then we would regard that as passive – the Internet equivalent to speaking German on the telephone to a customer who has called you.

There are, of course, complications and unresolved issues, but further elaboration of these principles will probably come from cases, where the theory can be tested against the practice.

Concluding Remarks

As you can see from the brief points I have made, the area where the Internet and the competition rules can interact is potentially vast, and we are only beginning to see the important competition issues.

However, we can already draw some clear conclusions:

- ❖ our competition rules are perfectly adaptable to the new factual and economic challenges brought about by the Internet. The rules remain the same; but the application of the rules to the Internet requires an understanding of the new factual situations;
- ❖ although the new opportunities brought about by the Internet are pro-competitive, there are clear risks of anti-competitive behaviour. It can be a result of:
 - companies using existing market positions in respect of infrastructure or content to force their way into new markets;
 - companies preventing the development of electronic commerce services either to protect their existing offline services, or to slow down market developments until they feel ready to compete on the new markets;
 - companies reacting anti-competitively to the increased competition brought about by the Internet.
- ❖ Although the benefits of the Internet provide tremendous possibilities for consumer choice and lower prices, these benefits can only be assured by the rigorous application of the competition rules.

Ladies and Gentlemen, this was a very brief overview of a pretty complex subject. I would like to thank you all for listening so attentively.