

"ENLARGEMENT AND COMPETITION POLICY"

**Intervention by Mr Pons, Deputy Director General
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Panel on "competition policy and privatisation"

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Ladies and Gentlemen,

I am very pleased to have the opportunity today to address you on such a topical subject: the enlargement dimension of competition policy, with specific reference to privatisation.

As you all know, this autumn is critical for the whole enlargement process. Difficult political decisions will be taken on the membership of new countries into the European Union by the end of the year. In the Copenhagen summit at the end of the Danish Presidency the current Member States are due to decide. The Commission of course has been actively involved in the process, and will in about one month release its Progress Reports on the candidate countries presenting its analysis on the situation in the countries, including Slovenia.

In the field of competition policy, the negotiations have been much more challenging than many would have anticipated. This is a reflection of the approach chosen by the European Union to conduct negotiations based on a criterion that the country can be considered to be ready for the EU membership only if its

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companies and public authorities have become accustomed to a competition discipline such as that of the Community well before the date of accession.

In concrete terms, it is required that:

- the necessary legislative framework is in place;
- the necessary administrative capacity has been established and
- the country can show a credible enforcement record of the competition acquis.

The objective of this approach has been to ensure that the internal market also in the new Member States functions from day 1 of the enlargement. This would not be the case if cartels would continue to flourish, incompatible State aid would continue to be given to prop up ailing companies or attract new businesses, etc.

This approach led the EU in the last autumn to provisionally conclude the negotiations on the competition chapter, in view of the satisfactory efforts so far undertaken by Slovenia to enforce the competition rules; both in the areas of antitrust and State aid control. This was an outstanding achievement, particularly as we know that with six countries [*Poland, Hungary, Malta, Bulgaria, Slovakia, Romania*] the chapter is still open and expected to be one of the challenges on the way to Copenhagen summit.

However, let me stress that, when it comes to enforcement of the competition rules, there is really no room for complacency. Not in the candidate countries, nor in the present European Union. Ensuring efficient competition on the markets is a formidable challenge, where competition authorities play an essential role. This is how the success of competition policy, and ultimately that of the internal market, will be measured.

For competition authorities this means that they must have an adequate administrative capacity. Only then can the competent authorities deliver a credible enforcement record, which, in my view, is the most important element in bringing about concrete benefits for the consumers. In Slovenia there are functioning

competition authorities with very professional and enthusiastic staff. The first assessment of the enforcement record of the Competition Protection Office in the area of antitrust, and the Slovenian State aid Commission in the area of State aid was positive. As to the antitrust, decisive action was taken with regard to cartellisation of the telecommunications markets. As to the State aid, the Slovenian legislation on the special economic zones was successfully aligned with the criteria of the *acquis*.

However, securing and developing resources for these authorities deserves continuous attention by the political decision-makers. It is essential that these authorities can, on the basis of sufficient resources, continue to actively develop their activities. An important part of the enforcement is also the role of the judiciary in ensuring that the judicial appeal is available in a fair and timely manner. Otherwise there is a risk that past success turns into a failed opportunity for the future.

Can I also say a word about awareness of the competition rules. It is not enough that authorities know what the rules are and that they make their best efforts to enforce them. The players in the market should also be aware of the competition policy framework; about its benefits, but also about the obligations it brings to companies. Breaching competition rules is against the law, but equally so the benefits of abiding by the law are attractive: the establishment of a level playing field for business throughout Europe, to the benefit of consumers, innovation, competitiveness and sustainable growth.

Let me then turn to privatisation. As we know, this has been a major process in practically all the candidate countries. The case in point is also liberalisation of previously regulated sectors which can bring clear benefits for consumers. However, this brings new tasks for competition policy. It is not enough to

liberalise or privatise, if the companies can then group together and by e.g. forming cartels hinder competition on the markets. It should not be possible replace public barriers by private barriers.

The competition rules are especially relevant to consider in the context of privatisation, as there may be State aid involved in the process, which then has to be assessed so as to ascertain its compatibility with the acquis.

First of all, it is necessary to distinguish between two separate issues: whether there is aid to the investor that buys the company in question, and the assessment of aid granted to the buyer.

The basic indicator to the involvement of state aid to the investor is how the privatisation procedure is conducted. Normally, if a competitive tender is held that is open to all parties and transparent, if the company is sold to the highest bidder; and if bidders are given enough time and information to carry out a proper valuation of the assets as the basis for their bid, it can be assumed that the privatisation would not give an advantage to the investor, and no aid would, hence, be involved.

One should stress that the assessment of these type of cases takes into account many detailed issues that are dependent on the specific circumstances of the case in question. By way of illustration, however, the following cases should deserve more attention from the State aid perspective:

- sales after negotiation with a single prospective purchaser or if there are only selected bidders;
- operations preceded by the writing-off of debt by the State, other public enterprises or any public body;

- operations preceded by the conversion of debt into equity or capital increases; and sales on conditions that are not customary in comparable transactions between private parties.

If the State in other words acts as if it was a private investor when selling assets, we could conclude that no State aid is given to the buyer. This is because a private investor's actions would aim at selling a company at the highest possible price or limiting the losses to the greatest possible extent (but not including expenses stemming from a State's sovereign competencies and tasks, such as unemployment benefits, etc.).

If these above conditions are not fulfilled, there may be aid under the EU State aid rules. Aid granted in connection with privatisation would normally be compatible only as restructuring aid. This type of aid can only be granted to a company in difficulty, with strict conditions attached. The conditions normally relate to a reduction of capacity and viability of the company which must be assured during the restructuring period.

Assessment of aid granted in connection with privatisation is a very complicated matter, and the Commission in the EU has also struggled with such cases in the past. In the run-up for accession, these are very important, however, to be scrutinised by the Slovenian State aid authority, as they have the potential of really creating distortions on the market which may have a tangible effect on competitors, both within the country and elsewhere in the internal market.

I know that the privatisation of banks is a very debated issue in Slovenia. In this area, the above issues can be critical, and I would encourage to carefully examining any aid elements that might arise.

I would with these remarks like to conclude my intervention, and thank you again for the opportunity to be present here today. Of course, I would be glad to exchange views on this topic in the roundtable discussion.

Thank you for your attention.