



EUROPEAN COMMISSION

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Competition: the heart of the European cause

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Competition

Competition: the heart of the European cause

Rector Magnificus, Dean, Chairman and fellow Members of the Curatorium of the Europa Institute, students, ladies and gentlemen, friends.

It is a great honour for me to deliver this second Europa Lecture, following the first such lecture by the Polish Foreign Minister, Radoslaw Sikorski, last year.

I would particularly like to thank Professor Tom Ottervanger for this initiative.

This meeting is a twofold challenge for me: firstly, as an economist I feel like the odd man out among so many lawyers; and secondly, the University of Leiden is not my alma mater.

However, I do have a close link with the famous Europa Institute and the University of Leiden. I have the honour of being a member of the Institute's Curatorium and I was a pupil at the Stedelijk Gymnasium here in Leiden.

What's more, both my father and one of my grandfathers studied law at Leiden.

My father was closely involved in European integration for many years. I can still remember that, when I announced my intention to study econometrics, he sighed and said 'but you can't do anything useful with that'.

Of course, he could never have suspected that I would end up at the European Commission and would have the opportunity of being involved

in such important integration projects as the euro and the enlargement of the EU with the former Eastern bloc countries.

As to whether my work is really useful – well, that is what I wanted to talk about today.

Working at the Commission

While we are on the subject of the European Commission I would like to start with a spot of advertising. What is the current situation with regard to the Dutch presence in Brussels?

At top management level, the Netherlands is still well represented, but the total number of Dutch nationals is declining.

The Dutch account for just 2.6 per cent of all Commission officials, whereas they make up 3.3 per cent of the EU population.

And the average age of Dutch EU officials is 50, which is closer to my age than to that of a student, and five years above the Commission average.

Sadly, relatively few Dutch nationals take the 'concours', the competitive entrance exam for the European institutions: between 2010 and 2012 barely 1.5 per cent of candidates were Dutch.

The problem does not lie with the success rate. In the past, the exams focused on not always relevant factual knowledge. But nowadays they are geared more to general skills, and the Dutch, with their high standard of education and good knowledge of languages, stand a good chance of passing.

This is also borne out by the figures: in the same period from 2010 to 2012, over four per cent of Dutch candidates passed the

exam, which is a very good pass rate when compared with other, similar countries.

Obviously, when you work for the European institutions you are working for the European common interest, not for an individual Member State.

But Dutch people bring with them their knowledge of the Dutch political context, their personal network and links with Dutch society.

Not to mention qualities such as business acumen, entrepreneurship and that typical Dutch directness, which is something we could use a bit more of in Brussels now and again.

But above all, the Dutch bring a number of important values, such as openness, the importance of free trade and fair competition.

Which is why I believe we could do with a few more Dutch people in Brussels, for the sake of both the Netherlands and Europe.

Of course, lawyers – and I imagine there are plenty of them here in the audience today – have other options, particularly if they choose competition law.

To be sure, they are equally welcome on the other side of the table, as advisers to one of our 'clients' so to speak.

However, I am struck by how many talented lawyers, after a few years in a law firm, decide to swap the private interest for the common interest, the interest of citizens and consumers.

Often at significant financial cost in terms of their income.

They do so because they are committed to the European cause.

End of advertisement.

Elections

Choices.

The European elections are coming up shortly.

What are the options? What are the elections about?

Are they about being for or against Europe? Or are they about having more or less Europe, a Europe of the Left or of the Right, a protectionist or an open Europe, a regional or a global Europe, a Europe that stands together or a Europe that stands alone, or about one or other candidate for President of Europe, and so on and so forth?

I sincerely hope that we can halt the decrease in voter turnout that we have seen in recent years, but, in any event, every voter projects his or her own idea of Europe onto these elections.

Actually, this is a phenomenon that we see in every election, whether national, regional or local, and it is not unique to the European elections.

I am not a politician, so it is not for me to take a stance on this. But I do have something to say about the nature of the debate, the meta-debate, if you like. I would like to distinguish between three levels of debate.

1) For or against Europe

At the first, most basic level the debate is about being 'for or against Europe'. This translates into sometimes radical positions, such as 'we must abandon the euro', 'we must leave the European Union' or even 'we must break up the EU'.

This is a legitimate discussion on principles. But how realistic are these statements? And what is often missing is a clear picture of what the alternative situation – the counterfactual – would look like.

Despite the vehemence of the arguments, an opinion poll conducted by Maurice de Hond shows that 73 per cent of Dutch voters are in favour of the EU.

According to Eurobarometer, only 23 per cent of Dutch voters believe that our country would be better off outside the EU.

So I wonder whether this debate is really what it's all about for most people, although it is understandable that citizens may turn away from something they can't seem to get a hold on, in the same way as they react to a phenomenon like globalisation.

2) More or less Europe

One step up from this level there is a less fundamental – but no less fierce – debate in which the European Union is taken as a given, with the discussion revolving around whether we want 'more or less Europe'.

Here we find statements like 'Europe shouldn't interfere in everything', or 'the Member States must regain their sovereignty', or 'we need a referendum on the EU's powers'.

This debate is more specific. We hear things like: 'Europe must keep its hands off our health services, social security legislation, culture, pensions and taxes'.

There is something strange going on here in relation to public opinion. In opinion polls Dutch people often say they want less Europe. But then if you ask the Dutch in what areas they think Europe should play a role they

often mention areas in which the European Union currently has relatively little say, such as foreign policy and defence.

And it turns out that, in European elections, the Dutch would like to vote for truly European electoral lists. All of which could be described as 'more Europe'.

3) What kind of Europe?

Finally, there is a debate – which is necessarily rather more technical but none the less political for all that – about what kind of Europe we want. Here we come across statements like 'all euro countries must stick to the rules', or 'the taxpayer should not have to foot the bill for saving the banks', or 'Europe must safeguard our energy supplies'.

These are specific problems which are bigger than individual Member States. The real debate here is about the nature of the responses, one example being the intense debate surrounding the Banking Union.

You can probably guess which type of debate I prefer, as a technocrat, but that does not detract from the legitimacy of the other levels of debate.

So I will examine all three levels of debate more closely: for or against Europe, more or less Europe, and what kind of Europe.

Fortunately, one element is always beyond dispute in these debates, namely that the single, internal market is and will remain at the heart of the European project.

This makes perfect sense, for the benefits are obvious.

The Centraal Planbureau – the Netherlands Bureau for Economic Policy Analysis – has calculated that every Dutch person is between 1500 and

2200 euros better off each year thanks to the EU. And that Dutch GDP is five per cent higher than it would be without EU membership.

Recent international research confirms that EU membership is good for growth - in the case of Ireland, growth is as much as 43 per cent higher per capita, according to estimates.

The internal market is such a big success that even those critics who would like to see the end of the EU entirely, or call for the Netherlands to withdraw from the EU, or would prefer less EU, all want at the very least to retain the internal market.

The question is, is it possible to enjoy the delights of the internal market without further integration or the controls that go with it?

I) EUROPE YES OR NO?

Ensuring fair competition in this market is essential.

We need a level playing field for everyone in the European market.

Dutch firms doing business in other countries must be able to operate under fair conditions. And vice versa. Because fair competition is good for growth, employment and innovation.

This keeps prices down and ensures that there is always enough choice in the shops and that new products keep appearing to satisfy the changing demands of the consumer.

The purpose of policing restrictive practices is to maintain fair competition for the benefit of the consumer.

Obviously it is good that shoppers are better off financially thanks to Europe, but it's not just a question of money.

Tough competition is good, but it must also be fair.

So it is a matter of justice.

Strict and fair – a fine motto.

The word 'fair' in the expression 'fair competition' refers to the idea of justice. Businesses must be able to compete on the merits. We prosecute firms that cheat in order to gain an unfair advantage over their competitors and the consumer.

If you read our cartel decisions or those of the Authority for Consumers and Markets (ACM) here in the Netherlands, you will see that they sometimes deal with highly specific matters, such as electricity cables or TV screens. And sometimes with very small things, like shrimps.

Geert Mak, who has incidentally written a wonderful book about Europe, complains that Europe spends too much time on the little things, such as chocolate and window cleaners. And he is not alone in this.

But I disagree. There is beauty in small things.

Even without Europe diplomats squabble over seemingly minor matters.

For example in 1904 – 110 years ago – the French and the English were negotiating an alliance.

One of the points that had to be resolved concerned a definition: is a lobster a fish or not?

Imagine Brussels coming up with something like this. I can just picture the headlines in the tabloids.

The French and English negotiators knew perfectly well that a lobster was an arthropod, not a fish.

The issue concerned lobster-fishing rights off the coast of Newfoundland, so there were major economic interests at stake. It was even a matter of war and peace, because these fishing rights had cropped up in every war between France and England since the eighteenth century.

This dispute lasted hundreds of years. Say what you like, but nowadays we resolve things a bit quicker than that.

I have another example of a more recent, apparently trivial issue. Namely a ball bearing. In March we fined a cartel that had fixed the price for ball bearings for motor vehicles. The fine was €950 million.

Quite a difference between the size of the fine and the size of the ball bearing, you might think.

But you would be wrong.

First of all, the fine is not that big, relatively speaking. Our fines are never more than ten per cent of the annual turnover of the company involved. We want to enforce competition, not put companies out of business.

And secondly, ball bearings may be small but they are not unimportant.

They ensure that the car runs smoothly and absorb shocks when you brake. They are as essential to the car as the brakes or the steering wheel.

But when you consider that bearings are found not just in the wheels but also in the gearbox, the transmission, the water pump, the air conditioning and many other places; and when you also consider that we have uncovered cartels involving numerous other car components; and

when you consider what a large share of spending by consumers and firms is accounted for by motor vehicles, then you realise that these cartels can cause enormous economic harm.

In other words, in this particular "ball game" the damage can be on an almost macroeconomic scale.

Consumers are often directly or indirectly the victims of cartels or firms that abuse their economic power.

A cartel is essentially a conspiracy to defraud consumers and other firms. Members of a cartel are regarded as economic criminals and in certain countries, including the United States, they can end up in prison. And they do indeed behave like criminals.

Just like 'real' villains, members of a cartel use untraceable prepaid mobile phones. We had one inspection where a member of staff tried to escape through the window with a pile of documents. Another example of a guilty conscience: once, a company received a tip-off and all its computers just happened to be replaced over the weekend before our surprise inspection.

If the evening news leads with one of our fines against a company that was fixing prices for TV screens, or a bank that was fiddling financial figures, I don't believe your first reaction is 'What has Europe got to do with this?'

Even if it is a Dutch company. And even if you are a Eurosceptic.

I am not making this up. Let me quote one reaction on what is usually a Eurosceptic Dutch website:

Quote:

'Price-fixing is always wrong ... even if it is done by the pride of Dutch industry. Don't imagine they are all as good as gold ... just because they are fellow-countrymen.'

Unquote.

I think it is immediately obvious to a lot of people why we have to tackle cartels at European level.

The Netherlands as 'cartel country'

Interestingly enough, for many years the Netherlands did not recognise the importance of cartel-busting and rigorous enforcement of competition rules.

Although the Treaty of Rome laid the foundations of European competition law as early as 1957, cartels had yet to be prohibited in the Netherlands.

Instead, the government kept a register of cartels. In the 1980s the Netherlands was seen as a paradise for cartels and was known as 'cartel country'.

It was not just multinationals and large companies that fixed prices; cleaners, painters, vets, doctors, hairdressers and taxi firms all conspired to short-change the consumer.

It finally dawned on people in the Netherlands, too, that free competition called for a certain amount of law enforcement.

In 1998 the Dutch Competition Authority was set up following the enactment of the new Competition Act.

In the first five years of its existence, the Authority carried out no fewer than 35 cartel investigations in 20 sectors.

And whereas European fines are no more than ten per cent of worldwide turnover, I understand that the Minister for Economic Affairs wants to raise the fines which the Authority for Consumers and Markets can impose to up to four times that percentage, depending on the duration of the cartel.

That is the situation in the Netherlands.

But what would the Netherlands look like without European antitrust enforcement?

To answer this we need to go back a hundred years to a time when there was no antitrust legislation or competition law. Such legislation scarcely existed at national level and – in the absence of the EU – obviously not at European level either. The United States had just adopted its Sherman Antitrust Act and this was supplemented in 1914 by the Clayton Act.

This was a time when newspapers printed headlines such as this one in the *Nieuwe Rotterdamsche Courant* of 7 April 1910: 'Dutch coal banned in the Netherlands'.

What was this all about?

Before the First World War Dutch markets for virtually all industrial raw materials were in the hands of foreign – mostly German – cartels.

One big German coal cartel, the *Rheinisch Westfälische Kohlensyndikat* (RWKS), controlled the Dutch coal market, with a 75 per cent market share. The Dutch subsidiary of this cartel was the Steenkolenhandels-Vereeniging (SHV), which had a monopoly on coal imports.

Apparently a market share of 75 per cent was felt not to be enough, because in 1910 the German coal cartel instructed SHV to 'prevent a single wagon of Limburg coal being imported into Holland.'

Nowadays we would call this 'abuse of a dominant position'.

German cartels prevented the output of Dutch businesses, in this case from Limburg, from reaching the Dutch market.

So much for national sovereignty.

Such a state of affairs is unthinkable nowadays.

You cannot have an internal market with fair competition without an antitrust policy.

And if you want to preserve competition in a single European market you need an impartial umpire, which is what the European Commission has been since the very beginning.

The market therefore leads to integration.

And this is why competition, and competition enforcement, lie at the heart of the European cause.

II) MORE OR LESS EUROPE?

The second level of the discussion is about whether we need more or less Europe.

This is by no means a new debate. This discussion has always been integral to the European project. The tension between integration on the one hand and the role of the Member States on the other, economic union versus political union has been and always will be part of the whole venture.

The creation of the European Coal and Steel Community in 1953 did not primarily serve an economic purpose. It was an attempt to lay the Franco-German enmity to rest, that had led to three terrible wars in one human lifetime, in 1870, 1914 and 1939. Schuman and Monnet's brilliant plan was to place the raw materials needed for war – coal and steel – under the control of a supranational authority.

Further plans for European integration failed when the European Defence Community was defeated in the French *assemblée nationale* in 1954. Incidentally, my father was a member of the Dutch delegation negotiating the Defence Community.

It was the Dutch Minister for Foreign Affairs, Wim Beijen, who, in 1957, pushed for further European economic cooperation in the form of the European Economic Community (EEC), as an alternative to rapid political integration.

Nevertheless, the idea of political integration was not abandoned. With the simultaneous creation of Euratom in 1957, nuclear material, like coal and steel, also came under joint control, a major consideration here being energy security.

The tension between the market on the one hand and integration on the other has always been a feature of the European project, precisely because it is an economic project. Entrepreneurs do not like superfluous rules, but they do like equality before the law and a level playing field. And these require regulation.

Economic and Monetary Union was – and is – a prime example of this tension. Preparations for EMU, spurred on by Jacques Delors, were well advanced when they were overtaken by the fall of the Berlin Wall and German unification.

Against this backdrop there came a proposal, on a Franco-German initiative, to launch a second set of negotiations in parallel, on European Political Union (EPU).

These were – in 1991 – literally parallel negotiations: I can still remember some sessions of the Intergovernmental Conference on EMU where the delegates had to wait for Delors because he was tied up in the talks on EPU.

At that point political union was only partly achieved, and I hardly need to remind this audience of Black Monday.

A follow-up conference was planned, and to some extent each treaty that followed Maastricht was about the imperfections of the political union.

The Treaty of Amsterdam (1997) plugged the holes in the Treaty of Maastricht. The Treaty of Nice (2001) was intended to prepare the European Union for enlargement, but only partially achieved this.

After the failure of the Constitutional Treaty, the Treaty of Lisbon (2007) ironed out various other problems. And most recently, in 2014, the negotiations on Banking Union have also almost run aground because of the imperfections of the current treaty.

So Europe remains a work in progress, as Commission President Barroso explained in detail in his Humboldt lecture in Berlin on Schuman Day, last Friday.

Regulation

The debate about more or less Europe is also about more or less regulation.

The European Commission has embarked on a major clean-up operation

to overhaul existing regulations. It goes by the name of REFIT and has been welcomed by all Member States.

For a number of years I was responsible at the Commission for 'better regulation' and I know from experience how hard it is to wind back existing legislation. I know of businessmen who do not want this: they have done their utmost to comply with all the requirements and have no desire to undo all this work. They would rather that new rules were carefully thought out and introduced only where strictly necessary and useful.

Only in a very small proportion of cases does the Commission itself take the initiative of introducing rules. In most cases we regulate at the request of the Member States or the European Parliament, which in turn do so because they have been asked to by the interested parties.

The British tabloids, for example, have for years made fun of a supposed European ban on bent bananas.

In fact, it was the Member States themselves and the industry that asked the Commission to replace the various national quality standards for fruit and vegetables with a single European standard.

You might almost say 'You pick 'em, we play 'em'.

In fact, we repealed the banana regulation in 2008, but not without protests from some Member States.

So you have to be careful when it comes to abolishing regulations: it is like the many-headed Hydra, if you chop off one European regulation 28 new national ones grow back in its place.

Subsidiarity

As well as regulation, the principle of subsidiarity features prominently in the debate about 'more or less Europe'.

In the competition field we shifted certain powers from the European to the national level long before this was fashionable.

Until 2004, the European Commission retained a monopoly on competition enforcement in the European market. Since then we have shared this task with national competition authorities. The national competition authorities – including the Dutch ACM – therefore implement European law.

This step was a big success. Since 2004 the Commission and national authorities together have taken more than 820 decisions – much more than the Commission could ever have managed alone.

By way of comparison: in the same period the Commission took 133 decisions.

Significantly, the national authorities largely decide for themselves how they organise their enforcement of the European rules. As a result we find various different systems operating within the European Union. A few countries, such as the UK and Ireland, allow the criminal prosecution of offences, for example. Most countries have purely civil systems and some a hybrid system.

The situation in the Member States is also changing all the time. A new competition act has just come into force in Belgium; in Spain the competition authority was merged with six other supervisory bodies last summer. You are familiar with the Dutch situation, where the National Competition Authority (NMA), the Consumer Authority and the Independent Post and Telecommunications Authority (OPTA) merged to form the Authority for Consumers and Markets (ACM).

There is only one requirement for the way the Member States organise enforcement, which is that the national authority must be capable, in practice, of effectively applying EU competition rules.

We believe, for example, that it is important for national authorities to be independent and able to operate without political interference.

The consequence of this approach is that there are now national authorities throughout Europe enforcing European competition rules, each in their own way.

As a result, the legal systems in the Member States are gradually growing closer together in this area.

III) WHAT KIND OF EUROPE?

I come now to the third level of the debate: what kind of Europe do we want? This is a less abstract debate and one I feel more comfortable with. How are we to deal with everyday problems? This is the Europe I am familiar with.

Let me start with a few examples.

I could talk about the Banking Union. Almost seven years after banks plunged America and Europe into crisis we have taken measures to ensure that something like this can never happen again.

Thanks to new common rules the likelihood of problems arising is smaller and any difficulties can be resolved faster, for example using the Single Resolution Mechanism (SRM).

The second example is the telecoms sector.

It is easy enough to get in the car and drive straight to Berlin, Riga or Budapest without stopping. But on the digital superhighway there are still

barriers to traffic.

Almost half of all Europeans switch off data roaming on their mobile phones when they go on holiday: the telecoms market is essentially still a national market. Which is why the European Commission presented plans last year for a single European digital market.

These included provisions on net neutrality and on further limiting roaming charges and the cost of international calls.

This is another market where competition must be maintained.

Firms are not allowed to block or throttle data on the ground that they offer comparable services. Last summer we carried out inspections at various telecoms companies to investigate this.

The Internet is unexplored territory where national authorities are doing a lot of pioneering work.

The Netherlands leads the field in net neutrality. When phone companies tried to charge for free services like Whatsapp, the Dutch Parliament put a stop to it.

In France the perfume company Pierre Fabre prohibited retailers from selling its products online. The French competition authority thought there was something “smelly” about this situation and fined the company. The European Court upheld its decision.

The German and British authorities investigated whether hotel booking websites were complying with the rules. We are also keeping an eye on this sector.

We are currently also looking into suppliers of pay TV by satellite and online. With pay TV you can watch whatever you want whenever you

want. But not wherever you want.

This is primarily a problem for the internal market. In many cases it is a matter of contractual restrictions in the field of intellectual property.

But competition aspects may also play a part.

We are therefore investigating companies that offer online television in conjunction with satellite broadcasts.

We are looking specifically into the agreements between film companies and pay TV suppliers and whether competition rules are being broken there.

There is a precedent for this.

Karen Murphy was the landlady of a pub in Britain. She used a Greek decoder to show Premier League football matches more cheaply in her pub. She appealed against the fines she incurred.

The European Court of Justice finally ruled that the restrictions imposed on her were incompatible with competition law. These restrictions divided markets along national lines.

Energy (security)

The final practical example is the energy sector. Here, too, a crisis has led to calls for closer cooperation. As well as a Banking Union people are now calling for an energy union.

Whether this will happen, only time will tell, but Europe is already building a single energy market. We are working on the infrastructure by linking

gas pipelines and electricity networks. We are also enforcing competition in the energy market.

We step in if companies secretly divide up the market.

Or if they abuse their market position in order to charge excessively high prices in certain Member States.

Or if they use dirty tricks to thwart their competitors, for example by deliberately underinvesting, hoarding capacity or unfairly reserving capacity on the network.

Making competition law more democratic

Let me give you one final, concrete example, which is the democratisation of competition law.

Every consumer or firm that is a victim of a cartel or other breach of competition rules has the right to claim compensation.

The Commission presented a proposal to this effect to the European Parliament and the Council last year. The three institutions reached agreement on this proposal in March.

We worked closely with Parliament and the Council, and both institutions left their imprint on our proposal.

There was heated debate about the degree of protection for incriminating statements by companies that tip us off about cartels. In the end we were able to reach a satisfactory compromise.

Some MEPs emphasised the interests of industry. Others took the side of the consumer.

Here, too, the choice of what kind of Europe played a key role.

Conclusion

Ladies and Gentlemen,

Last year Minister Sikorski raised a number of very interesting points about respective responsibilities in the debate about Europe. He argued that it should be possible to hold both Member States and the European institutions accountable for decisions by "Brussels", regardless of how remote these seem to be from the ordinary citizen.

The Dutch Advisory Council on International Affairs wholeheartedly agrees. Last month the Council said it was 'essential' that Dutch politicians make it absolutely clear that they themselves take part in making European decisions and that they take responsibility for them.

Because Brussels is all of us, it is a shared responsibility. Commission President Barroso stated this very forcefully once again in his Humboldt lecture last week, which I mentioned earlier.

The debate about being for or against Europe is an important issue of principle on which opinions are fiercely divided. But the internal market as such is not controversial. Only a small minority want no European Union at all.

The choice between 'more or less Europe' is also a question of principle, but one to which there is no clear answer. The Commission itself is also in favour of subsidiarity and against unnecessary regulation. In some areas the critical voter actually wants more Europe. Europe has historically been – and remains to this day – a work in progress, where the balance swings backwards and forwards between integration and pragmatic economic cooperation.

However these two debates turn out, Europe's day-to-day problems will remain and these will still require solutions, whether we are talking about banking, the environment, the Internet or energy.

We are working on solutions in Brussels, but voters indicate the direction we are to follow, in national and European elections. Voters determine what sort of Europe it is to be.

Competition is at the heart of the European cause for several reasons.

Strict, but fair enforcement:

- 1) is essential for the internal market, which is the core of the European project.
- 2) is good for the consumer and leads to economic growth, innovation, greater choice, better products and lower prices.
- 3) And finally, such enforcement is equitable. If we break up a cartel that is excluding cheap painkillers used in cancer treatment from the market, people regard that not only as economically valuable but also as just.

I think that this is also clear to those who are critical of Europe.

They also realise, I think, that without enforcement, international cartels or mega-mergers can paralyse the economy and drive up prices.

That only in a European context can we stand up to multinationals like Google or banks that rig the interest rate. And that if we want to do this we need an impartial umpire.

And that an internal market therefore cannot function without European integration, without leadership.

Let me leave you with a philosophical question.

Does Europe need a soul as well as a heart, as Jacques Delors once argued?

The Roman poet Juvenal spoke of 'mens sana in corpore sano'. A healthy mind in a healthy body. Surely nobody could object to that.