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**EU priorities and competition enforcement**

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Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

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## **Introduction**

Ladies and Gentlemen,

I would like to start by thanking Jill Donoghue at the Institute and Declan Purcell at The Competition Authority for inviting me to be here today, and to open the "Competition Enforcers Series" that their two organisations will co-host.

I understand these seminars will feature leading practitioners and academics, as well as members of competition authorities from around the world. If globalisation is the keyword in current economic development, this is equally true for competition enforcement. The European Competition Network, which brings together the European Commission with the national competition authorities, dates from 2004. In May we will be celebrating the tenth anniversary of the worldwide International Competition Network, the ICN, in The Hague. So in competition enforcement, globalisation is also a relatively young phenomenon and an excellent overarching theme for the Seminar Series.

The upcoming speakers will undoubtedly also address the importance of competition enforcement in overcoming the present economic difficulties, restoring competitiveness and in promoting growth.

So on all accounts, I would like to warmly congratulate both the Institute and The Competition Authority for this initiative.

I am not saying this out of mere courtesy. These seminars could not have been better timed: many of the national economies in Europe and in particular that of Ireland have suffered, and continue to suffer, from the financial crisis.

We are all working hard to put this crisis behind us. And there is no doubt that we need to use all the assets that we have at our disposal if we are to return to a period of economic prosperity. Competition policy and vigorous competition enforcement are such key assets and we must use them to their maximum potential.

This brings me to the three topics that I would like to touch upon today and which are intertwined. These are: i) the role of competition authorities; ii) the contribution made by my Directorate, DG Competition, to competition enforcement; and iii) the link between competition law enforcement and wider public policy priorities.

Allow me to start with the first theme – a plea in favour of the crucial role that competition authorities play.

## **1. The crucial role of competition authorities**

I frequently talk about the importance of competition policy for creating the right environment for growth and innovation. Competition policy is the basis for keeping markets undistorted and for providing legal certainty to businesses operating in the Internal Market. Having clear competition rules is a necessity, not a luxury.

Indeed, the rules are important. But the rules are meaningless if there is no one to enforce them. This is why I want to highlight the role of competition authorities. It is on their shoulders that lies the responsibility of efficiently investigating and deterring those who distort competition, who make our livelihoods more expensive or who leave us, as consumers, with less choice.

Throughout the last two years, we have heard some voices argue that we should close our eyes in the face of some of these distortions, because the economic conditions were harsh enough. But on what basis could we? And what effect would closing our eyes have had on the budgets of families that were already tightening their belts? Well, those households would have paid higher prices, for products and services of lower quality. And we could simply not accept that, especially during the unprecedented crisis that struck Europe.

In the EU, National Competition Authorities, alongside the European Commission, are in charge of the public enforcement of the Treaty provisions on anticompetitive agreements and abuses of dominant positions. Since 2004, their competences have been broadened as the EU moved towards a more decentralised enforcement system. The National Competition Authorities thus have a vital role as enforcers of competition law in the Internal Market. They are also trusted advisors to their governments and legislators, helping promote strategies that foster a competition culture in their jurisdictions.

I am proud to say that the European Competition Network, that brings together the Commission and all the Competition Authorities from the Member States, has withstood the calls to relax competition rules during the crisis. We have all continued to enforce these rules rigorously and I will give you a few examples in my presentation today.

So, we have not relaxed the rules, but we are still under heavy pressure. Governments in Europe almost universally have to consolidate their finances and to re-fill their depleted coffers. We hear of budgetary constraints and cuts every day. At the same time, Competition Authorities are often expected to deliver top-class results quickly but with less staff and less means.

This is why I wanted to recall at this first seminar the importance of Competition Authorities being adequately equipped for their tasks, whether in terms of effective enforcement mechanisms, efficient structures or adequate resources. Clearly, they must also be allowed to act in an impartial and independent manner. Such means for effective and sustained operation must be guaranteed, especially in times of budgetary constraints. Competition enforcement is always a sound investment and it outweighs its costs. The returns come through more efficient and innovative markets.

Indeed, competitive markets contribute to a faster adjustment to the new economic conditions, and therefore to economic recovery and a better livelihood for households. And competition enforcement protects consumers and competitive firms against anticompetitive practices that can worsen economic hardship.

Last November, the Heads of all the European Competition Authorities met in Brussels. We signed a Resolution that calls for our Authorities to be endowed with the appropriate infrastructure and the required experts to fight competition law infringements. Moreover, the Resolution recalls that Authorities must also be in a position to fully cooperate within the European Competition Network and other relevant international fora so as to jointly address competition problems and improve global convergence.

In Ireland, you have an excellent pool of experts that work for the Competition Authority. Unfortunately, they are down by around a third and this is why they can only afford to work on high priorities at the moment.

Despite economic hardship and budgetary pressure on their organisation, they are dedicated to their work and reach tangible results.

Take the recent BIDS<sup>1</sup> case that lasted for over eight years: the Competition Authority fought in all instances, from the High Court to the European Court of Justice and back. It pleaded throughout that a particular scheme entered into by beef processors was anticompetitive.

The BIDS agreement entailed that major players in the industry would agree to pay those players who would voluntarily leave the industry. In return for the payment, the leaving players would decommission their plants, refrain from using the associated lands and sign a two-year non-compete clause with regard to processing anywhere in Ireland. The Competition Authority viewed the BIDS scheme as incompatible with both section 4(1) of the Competition Act 2002 and Article 101(1) of the TFEU and took legal action in 2003. The case went all the way to the European Court of Justice that estimated that the kind of arrangement at issue constituted a restriction of competition by object within the meaning of Article 101(1) of TFEU. The case was then remitted to the High Court in order to assess whether the agreement could fulfil the conditions of Article 101(3) TFEU, which sets the conditions for such restrictions to be nevertheless acceptable. During the High Court proceedings in 2010, the European Commission intervened as *amicus curiae* by making some observations on how Article 101(3) TFEU applies to crisis cartels in general, referring also to its Guidelines on this Article.

We were therefore very pleased to hear in January that the beef processors finally withdrew their claims. This was a victory for the Irish Competition Authority and also for Irish consumers as collusion between competitors ultimately risks harming them.

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<sup>1</sup> Beef Industry Development Society.

As background for the work of the Competition Authority, it is also important to highlight the need to improve Ireland's cost competitiveness in order to tackle the current difficulties. This has been equally recognised in Ireland's commitments in the EU/IMF Memorandum of Understanding. Structural reforms focusing on increased competition in sheltered sectors of the economy are outlined as part of the way forward. This is an opportunity to be seized in order to promote competition in all sectors of the economy. The work carried out by the Competition Authority thus has a substantial role to play in achieving the exit from the crisis and a return to growth.

As Declan Purcell has put it in the Authority's Activity Report for 2010, it is clear that improving the country's competitiveness is the key to ensuring that future generations can enjoy the levels of opportunity and prosperity that Ireland has seen in the past.

Allow me now to say a few words on the challenges that my Directorate, DG Competition, has faced over this last year – my first in office.

## **2. Enforcing and updating the rules at EU level: the work of DG Competition**

2010 has still been marked by the financial crisis and the European Commission's first priority has been to work collectively towards putting it to an end. State Aid policy has played an important role throughout the crisis. Through our swift decisions on State aid to banks, we helped reduce distortions of competition and we contributed to avoiding a chain collapse of financial institutions across Europe.

Over the last months we also focused on gradually preparing the ground for an exit from the exceptional crisis-related State aid regime. In general terms, and market conditions allowing, banks should not rely on State support for longer than what is absolutely necessary.

I would like to briefly refer to the difficult situation in Ireland as unfortunately the Irish banking system has been one of the most affected. The funds made available under the EU/IMF Programme to directly recapitalise and downsize viable banks will be a key element to revert to normal market conditions. We therefore fully support the restructuring of the Irish banks as foreseen under the Programme. The viability of these institutions is the first objective of the Programme and a core requirement from a competition law perspective. In this context, it is more important than ever to limit distortions of competition.

In the context of the Programme, Irish banks will submit restructuring plans, setting the path for return to normal business. We are in constant discussion with the Irish authorities on how such restructuring should foster competition. Although it is still too early to have a final view on the restructuring of banks, we will make sure that competition in the banking sector will bring benefits to Irish consumers in the near or medium-term future. For example, Bank of Ireland, who has already committed to a number of measures, committed to open-up competition from 2012 onwards, through offering certain services to its competitors and facilitating customer mobility.

The Irish banks were not the only ones to be rescued. Altogether we have adopted 32 bank restructuring decisions so far. We are now taking stock of the lessons learnt during the crisis, by the Commission, the Member States and the stakeholders. We will translate this experience into revised guidelines on state aid for rescuing and restructuring firms in difficulty. These should replace the



temporary rules that are currently in place. We hope to be in a position to issue new permanent guidelines for the rescue and restructuring of financial institutions by end of this year.

Assessment under the State Aid rules required significant resources from our side throughout the crisis. But nevertheless, throughout last year, DG Competition has also continued to be a tough enforcer of antitrust rules, particularly in the area of cartels. As I mentioned earlier, it is precisely in times of crisis that enforcement should be toughened.

We therefore imposed over 3 billion euro in fines in 2010 to sanction cartels in areas as diverse as animal feed, LCD screens, bathroom fittings, air cargo, DRAMs and pre-stressing steel. The high level of these fines reflects the duration and gravity of these infringements, which were serious. Our fines are designed to make a stance and deter others from breaking the law. In addition, their revenue flows directly into the EU budget. Most importantly, we estimate that our action over the last year against cartels has saved customers at least 7 billion euro. This just goes to show that Competition Authorities cost far less than what they bring to the economy!

We have also continued to enforce the antitrust rules in key sectors of the Internal Market, for example accepting commitments from companies in the financial, energy and transport sectors that will ensure that these markets remain open to competition in the future.

Our policy in mergers has remained unchanged. We clear most cases unconditionally and when we have concerns, we try to work them out with parties in a way that maintains a level-playing field and leaves consumers unharmed. Our aim is not to hamper creative and innovative business plans that

can bring important efficiencies to the market. We have a duty to intervene only when such ventures are capable of distorting competition and harming consumers.

In the merger context, we also broadened our experience with merger remedies in high-tech industries this year as illustrated for example by the *Intel/ McAfee* case. We are very pleased with the interoperability remedies put in place as they will play a key role on the market, leaving room for the security solutions that competitors of McAfee will invent while not touching the potential efficiency gains from this merger.

There are rare occasions when we have to prohibit mergers, as seen this year in the *Olympic/ Aegean* case. We had no choice but to prohibit given that the merger would have harmed consumers. Incidentally, this was the first prohibition case since *Ryanair/Aer Lingus* in 2007.

Broadly speaking, our enforcement action should encourage companies to compete on the merits and to innovate, so that the economy as a whole benefits from increased competitiveness.

In line with this competitiveness objective, 2010 has seen a modernisation of some of our rules. Our aim was to provide increased legal certainty to businesses and their advisors and to ensure that the rules reflect the pace of market development, whether it concerns online sales, standardisation or research and development. For example, we updated the rules on cooperation agreements between competitors (“horizontal agreements”) and those on agreements between manufacturers and distributors (“vertical agreements”). The revised rules will for instance contribute to boosting e-commerce and pro-competitive cooperation between competitors in vital areas of the economy such as research

and development or the design of technical standards. These revisions are important because they aim to facilitate innovation, which in turn will foster growth and provide consumers with better and hopefully cheaper products and services.

This brings me to the third topic that I wanted to mention today, which is the link between competition policy and the priorities that we have commonly agreed for Europe for the coming years.

### **3. How does competition policy underpin priorities set for Europe?**

I think you will agree that Irish people have throughout time learned how to turn hardship into a better future. And this is what we should do at European level with this difficult economic period: we have to use it as a stepping stone to build a more competitive Europe.

In order to do so, the Commission has made proposals to improve European Governance. On 12 January this year, the first Annual Growth Survey was published. It marked the launch of the European Semester which introduces an EU dimension into national budgetary and economic policymaking. This will also help Member States keep track of their progress towards meeting EU 2020 objectives. As we speak, Heads of State and Government are discussing the new economic governance for Europe at the European Council in Brussels.

The Annual Growth Survey sets three priority areas: i) Macro-economic stability; ii) Structural reform, especially in labour markets; iii) Measures to enhance economic growth.

Competition policy has a role to play in all these areas, but especially in the third, measures to enhance economic growth. It can underpin measures that lead to increased growth, productivity and innovation.

By unlocking the potential of the Internal Market, competition policy can allow businesses – whether established ones such as agribusiness, or start-ups or SMEs - to turn innovative ideas into products and services that meet the demand of globalised markets. By increasing competitiveness in the Internal Market, these businesses will also be strengthened and able to take on international competition.

Unfortunately, barriers to market entry and obstacles to entrepreneurship are still a reality. This is clear from the Annual Growth Survey and progress reports on EU 2020.

This is why for example, by clarifying the competition rules applicable to online distribution, we contribute to bringing these barriers down. This is why by sanctioning cartels or abuses of dominance we ensure that no private entity can raise obstacles to trade, preventing consumers from getting the best deal. This is also why, when we promote interoperability in high-tech industries, whether through cases in the IT sector or through clarifying the rules on standard-setting, we contribute to allowing innovative entrepreneurs enter the market. We allow them to come forward with improved solutions that Europe can sell to the rest of the world.

It is clear that competition policy and enforcement are essential if we want to return to durable prosperity in a sustainable world.

To come back to what is undoubtedly closest to your hearts and minds, the situation in Ireland, it is also clear that competition enforcement is part of the solution. The Memorandum of Understanding that I referred to earlier sets out clear commitments towards competition reforms in the third and fourth quarters of this year already. These reforms concern mainly services and network industries, as well as competition enforcement as such.

Today is therefore not a time to shelter particular services or sectors from competition. On the contrary, it is a time to open up markets, bring barriers to commerce down and allow consumers to reap the benefits of increased competitiveness. At the same time, adjustment of competition enforcement such as to be able to pursue certain cases including penalties through a civil procedure would enhance deterrence.

## **Conclusion**

I hope that my remarks today set the tone for a fruitful debate at all the forthcoming events of the “Competition Enforcers Series”. Again, I commend the Institute and The Competition Authority for their initiative.

It is very important for competition enforcers to step-up communication efforts and to repeatedly explain to the public and to policy makers why competition enforcement is crucial and why our work directly matters on the market.

I hope to have contributed to this effort today.

Thank you.