

6th International Competition Forum Seoul

Session on Digital convergence and competition issues

15 September 2010

Safeguarding and promoting competition in the age of digital convergence

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

**Alexander Italianer
Director General
Directorate General for Competition
European Commission**

Introduction

I would like to thank the organisers of the International Competition Forum for giving me the opportunity to speak to you today. It is indeed a pleasure for me to be in Korea for the first time since I took over as Director General for Competition of the European Commission.

Yesterday also marked the occasion for the first official meeting with the Korean competition authorities since the **EU-Korea Bilateral Cooperation Agreement on anti-competitive activities** entered into force last year. This Agreement is a cornerstone in our cooperation and provides us with further tools to strengthen our coordination on enforcement activities. It sets the grounds for mutual assistance, reciprocal notification of cases under investigation and exchange of information. It also sets a framework for our discussions on priorities, economic sectors of common interest and competition policy developments.

My department and the Korean Fair Trade Commission (KFTC) have already established a solid collaboration which has led us to fruitful results over the last years (for example on the Microsoft and AMD/ Intel cases) and there are other cases in the pipeline. We hope to see this partnership grow in the future and the Agreement that we have recently entered into provides a solid basis for this.

We are discussing today the numerous **challenges posed by increased "digital convergence" to the enforcement of competition law**, and to us as enforcers in particular.

The development of the Internet and of wireless networks over the last decade brought increased networking and connectivity and led us towards global "digital convergence". Constant innovation has brought "computer-like" characteristics to an entire array of devices ranging from mobile phones, to personal digital assistants and portable content devices, to name but a few.

Digital convergence in high-technology industries means that value is shifting away from single-product performance. Value today lies in products capable to support a variety of digital content such as software applications, music, movies, games, and in the ability of such products to share content with as many other devices as possible. As a result, consumer electronics and computing are transformed by this "convergence". We are witnessing a trend of growing interoperability among products and technologies, and what matters most is the enhanced ability of devices to exchange information with each other.

There are enormous economic, business and policy issues raised by this ongoing process:

- **What are the implications of digital convergence for market definition?**
- **What will be its impact on competition and who will compete against whom?**

- **Who are the players most likely to succeed? Where does competitive advantage lie in a converging digital world?**
- **And, more practically, what is the role that antitrust enforcers should play in this context?**

The starting point must be that digital convergence offers considerable opportunities:

- **For consumers**, the choice and quality of the digital products and services available has boomed. Companies are undertaking colossal investments in on-line services, video-on-demand, interactive TV and entertainment content. Digital services also play an increasingly important role in areas as diverse as education (e.g. long-distance learning, student-student learning, etc) or medical care (e.g. online consultations, crisis alarm systems, etc).
- **For businesses**, the development of the Internet has opened outlets that were previously unthinkable. The development of corporate networks, of new cross-border channels of distribution and of new instantaneous communications have changed the way business is done - around the globe and around the clock.

For us as competition agencies, **the biggest challenge is to understand the complexities of this digital landscape and to ensure that competition is respected and fostered**. Our main job is to provide all businesses with a level-playing field, to the ultimate interest of consumers.

I would like to say a few words on:

- the European perspective on the role that information and communication technologies ("ICTs") play in ensuring growth, on
- the importance of stimulating competition in the digital world, and on
- some of the main challenges that we foresee for antitrust enforcement.

1. The EU perspective on the crucial role that ICTs play in ensuring growth.

Over the last two years the European Commission had to focus on the exit from the economic and financial crisis and we are now working full speed on fostering the transition towards long-term growth in a low-carbon economy. The winners will be the ones that are most responsive to change, for instance in green technology.

But a key element is that in Europe we need to **embrace the change that increased digital convergence brings.**

We need to invest in ICT innovation as we cannot afford to stay locked into the "analogue museum". We are working on creating the right environment to promote technical progress and change. If we succeed in doing so, entrepreneurship can lead us to the productivity and growth that we need.

Korea is a leading international example of successful public policies promoting a digital society. You have an advanced information and communication infrastructure and the highest internet penetration and utilization rates in the world. You are strong promoters of the use of ICT in education. By using highly advanced IT infrastructures for young pupils, you accustom them to use technology in their daily lives from an early age. These young "digital natives" do not have to learn to "be digital". They simply learned "in digital" the first time around as if it were a language.

In order to harness the opportunities presented by the digital fluency of these young people, the Korean government is shaping the regulatory and educational framework in an innovative manner. A good example is your government's project on ways to digitalize school textbooks.

Like you do in Korea, in Europe, we see ICTs as propellers of economic recovery. We have given great prominence to the **Digital Agenda for Europe in our EU 2020 strategy**. Competition policy will be one of the main tools that help us achieve this.

We need to **safeguard the level-playing field** and the **access to markets**, to the **platforms** and to the **data** that are useful in developing new and innovative digital products and services.

2. This brings me to the importance of stimulating competition in the digital sphere.

As antitrust enforcers, we see our work in the digital sphere as no different from our work in the "tangible" economy. Our aim is to **ensure that anticompetitive foreclosure does not occur**. Firms in the digital world should compete on the basis of their merit in terms of quality, price and innovation and no player should be left out because of anticompetitive barriers. While stimulating excellence, we also need to act against abuses of dominance when they occur.

It is also crucial to ensure interoperability and access to standards, on fair, reasonable, and non-discriminatory terms. This is what we call the “FRAND” commitments. In the *IPCom* and *Rambus* cases, we have shown that we are ready to intervene under competition rules to enforce such principles. We are currently reviewing our *Guidelines on Horizontal Agreements* and we are bringing-in experience learned from cases such as the ones I just mentioned.

In the merger field, our action also ensures that competition is maintained and encouraged: I refer you to cases such as the spectrum divestiture in T-Mobile/Orange that aimed to ensure competition in the future 4G market, the Cisco/Tandberg interoperability remedies on video conferencing systems, or the recent modification of the Sky Italia commitments to ensure more competition in the free-to-air space.

Competition is important because it will foster "**trendy innovation**" that consumers thrive on and are willing to pay for. One has only to look at the queues and waiting lists when new devices are launched to understand that these markets are **sources of economic growth**. Look at the success of laptops, smart phones, portable media players, e-books and the likes.

In a fast-paced world where consumers and business representatives travel constantly, the importance of **portable devices** cannot, for example, be overrated. When such devices are able to communicate between them and to offer access to other products such as online content or on-demand services, their value grows exponentially. This is why we are looking at strengthening our **Single Market for content**, at intensifying **cross-border electronic commerce** and at creating **innovative methods for online payments**.

Our **State aid policy** also has a role to play. For example, intelligent subsidies can intervene, where necessary, to achieve public interests: access to basic services, access in remote areas or for low-income households, scientific and artistic creation, regional cohesion, privacy protection, etc. The **Broadband Guidelines** we published last year lay down the rules that can allow public funds to be granted to the deployment of broadband networks. Moreover, our Framework on Research, Development and Innovation encourages intervention by setting the rules under which EU Member States can subsidise young innovative businesses or innovation clusters.

Of course, as a complement to competition policy, regulatory intervention is also warranted.

3. Let me now say a few words about the challenges for competition law enforcers: summarising, I would say we are navigating between a "small world" and "the sky is the limit".

Digital convergence has undoubtedly made the world smaller as people and businesses interconnect worldwide, in real time. By "sky is the limit" I mean the opportunities provided by competition to companies that can have access to open markets, to innovate and to grow.

We face challenges in a number of areas, and I will only mention today a few:

- **Telecom Networks:**

Fast internet amounts to “digital oxygen”: it is a pre-requisite in today’s fast paced world. Through successive regulation and a series of antitrust cases, we have built over time a strong legal environment that promotes both solid investment and competition.

The European Commission is preparing a ***Recommendation on Next Generation Access Networks*** which will be published imminently. This Recommendation will provide **increased regulatory certainty** across Europe. It aims to encourage the development of very fast broadband across Europe. I know that in this field we can learn quite a lot from the Korean experience and we salute your vision in this respect.

In preparing the Recommendation, the main challenge was to strike the right balance between the need to create the **right incentives for expensive investment**

and the need to **guarantee a fair game** for all the players involved, including potential market entrants. Allow me to expand on what the Recommendation entails:

- We could of course not afford losing the benefits of a decade of liberalisation by creating new private monopolies: we will continue to **mandate access to the network when a dominant player operates** in a given market.
- We will **promote co-investment** so that networks carry multiple cables, with different owners. This is a novelty in our policy. We will also continue to encourage competition between infrastructures and strong regulatory oversight where necessary.
- We aim to **reward investment**, and we will do so when calculating the price for mandated access to networks. And State aid will remain an option to cover the areas where demand is more uncertain.

- **After telecom, we have various Emerging Platforms:**

Digital convergence is transforming the way we use the Internet. The **next generation of digital devices** is allowing us to enter vast "ecosystems" where we can access a wide range of content and services, through a one-click gate.

Cloud computing is one of the most important current trends in the field of ICT management, for consumers, organisations and businesses. Cloud service providers enable users to access and use the necessary ICT resources via the Internet. To

provide these resources, suppliers often rely on other providers in the cloud, which, for example, make storage capacity available for customer data or provide data processing functions.

The advantages of the cloud model relate to the flexible and easily accessible alternative the cloud provides to conventional IT outsourcing. Clouds can offer vast cost savings in the provision of IT infrastructures.

Of course, it is not **the role of competition authorities to predict the future development of such environments**, or which business models shall prevail. Some companies favour open and interoperable systems, others build upon closed environments and others are in between. The markets will decide which models will succeed. But it is **our task to ensure that these markets are not foreclosed to existing competitors and new entrants. Market access is crucial** in stimulating innovation of next generation businesses and we need the economic growth these businesses will provide.

Market definition is likely to raise some challenges when we will deal with such fast-evolving technologies, where the exact boundaries of existing product markets may be blurred – in particular in emerging or converging markets. The assessment of potential or future competitive constraints will also be complex and we will be challenged to find effective remedies.

However **competition law enforcement is a flexible tool**, a tool that has proven to be able to adapt to the markets' development. We may not have ready-made answers to all the complex questions that will arise, but we will endeavour to find

effective solutions, always taking into account the **specific characteristics of each case** we deal with.

Throughout the years, the European Commission has taken a strong stand in favour of **open models and interoperable solutions**. We deem that open and interoperable models favour market entry by a greater number of players and that they stimulate competition. We also believe that such systems attract innovation, by bringing its costs down. The Internet has undoubtedly become such a success-story thanks to open and interoperable standards and protocols.

Access will be crucial in developing new generation technologies. We have fought in favour of interoperability in complex anti-trust cases and ex-post enforcement has paid off. We will continue to work on the promotion of interoperability in those instances where access is so restricted that it can foreclose competition.

The Commission is also thinking about ex-ante legislative proposals, but it is too early to come forward with definite plans and we need to carefully listen to what stakeholders tell us first. Mrs. Kroes, formerly Competition Commissioner and currently in charge of our Information Society portfolio is working on this.

Conclusion

Ladies and Gentlemen, competition law enforcement is a flexible tool that we have strived to modernise constantly. We have proven capable of analysing complex markets in a dynamic way. Our tools have served us well in the past and I believe they will also serve us well in the new digital era.

Our aim has not changed: we want to foster competition, innovation and growth, to the benefit of businesses and consumers. The rules of the game remain the same. All we need to do is to see how best to apply our principles to the digital sphere and to increasingly converging markets.

I am confident that we will succeed and that tomorrow will bring new products and services to consumers and businesses that seem unconceivable today. For the first time in 1901, Marconi radio-telegraphed across the Atlantic Ocean. Little did he know that about a hundred years later, the Internet would carry the majority of telegraphic messages in the form of e-mail. Marconi's first message over open sea in 1897 had been "are you ready?" I would reply "yes, we are ready".