



EUROPEAN COMMISSION

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**Closing remarks at the
"Shaping competition policy in the era of digitisation" conference**

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

**"Shaping competition policy in the era of digitisation" conference, 17
Brussels, 17 January 2019.**

Ladies and gentlemen,

It is my privilege and pleasure to wrap up and to tell you about the follow up. I will not deliver conclusions today – that would be tantamount to underexploring the richness of this debate and to overstretch your patience. I will just mention a few thoughts that crossed my mind during the day and announce very practical next steps.

But first, I would like to address very warm thanks to our 21 speakers and moderators, who did a terrific job today. The immediate and most welcome takeaway from today's debate is that we can talk about quite complex and difficult issues in a very comprehensible language. Please join me in congratulating the speakers and moderators once again.

I also want to take this opportunity to thank the translators, the conference organisation team, the logistics team, and the catering team, without whom this event would not have taken place – and not in the least our Commissioner Margrethe Vestager, who had the idea for this day and whose enthusiasm for and commitment to this debate and dialogue has driven the preparation and today.

And I especially want to thank you, the audience, in the main room, in the listening rooms, and on the web; thank you in particular for the many thoughtful questions throughout the day.

Today we have heard about several points, from data access to the dual role of platforms to the role of regulation in shaping markets – and even the role of the state in fostering innovation.

This conference is one of the three "input channels" in the Commission's reflection on competition policy and digitisation. The other "input channels" are the public consultation that ran from July to September, and the report of Commissioner Margrethe Vestager's three special advisers, which is scheduled for later this Spring.

As we reflect on the conclusions of today's conference – and, no doubt, different people will draw different conclusions – I would suggest five big-picture themes that frame this reflection.

The **first theme** is that digitisation touches all sectors of the economy. From e-commerce to hotels to taxis. From financial data to car data to health data. From plant seeds to air transport to energy grids. And that raises the stakes. So we have a responsibility to get it right.

The **second theme** is that we either shape digitisation or it will shape us. There are many public policy issues related to "digital" – from AI policy to fake news to "e-health". Some of them are directly related to EU competition policy, others have their centre of gravity in other regulatory disciplines. Some of them must be broken down into distinct dimensions. Some types of data may require a different response from other types of data, for example. In sum, this reflection on competition policy and digitisation involves prioritising some issues, unpacking the issues, and drilling down into the specifics. At all stages of this

reflection, we need to consider whether to act now or later or not at all; whether to apply a broad "fix" or a narrow "fix"; and whether to act through competition enforcement or regulation or both.

The **third theme** is that the fundamental EU competition rules as embodied in the treaties have shown over their first 60 years of existence that they can capture changing realities and new phenomena.

The treaty rules have been crafted to capture a film, not just a photograph. It is clear – not only from today's discussion – that the application of some of the existing theories, legal tests, analytical methods and investigative procedures need to be reconsidered to ensure that we adequately address new phenomena. Tomorrow's cases and legal outcomes will not necessarily be exactly the same as yesterday's cases and legal outcomes. We may also need to scope new categories of behaviour or broader categories of behaviour. But the fundamental EU treaty rules can capture a lot as long as we understand properly what it is what we need to capture.

In this regard, we are helped by the fact that the fundamental parameters of application of EU competition law have been crafted through sophisticated case-law and jurisprudence that gives us much help in dealing with facts once they are well established.

In other words, EU competition enforcement is not "unfit for purpose".

But that does not mean "business as usual".

Whilst we need to consider precedents carefully – learning what we can from precedents – we must distinguish current situations when needed. Learning from the past, but also learning about today's new phenomena. Adjusting theories, tests and analyses, as well as procedures, without becoming unmoored from the fundamental principles laid down in the treaties.

The **fourth theme** and maybe the theme that ran most obviously throughout the day is a renewed emphasis on understanding and analysing the facts. Certainly, we should not rush to new types of cases without a solid factual grounding. But, equally, we must be ready to revisit assumptions and theories in light of new facts. Indeed, the complexity and novelty of digitised markets and practices means that we need to place even more importance on understanding markets. To paraphrase Karl R. Popper, we must verify. And we must accept when past assumptions and theories are falsified in the process.

In this context, "evidence-based antitrust" is more than just a slogan. It involves deciding *which* evidence is relevant, and *who* has the burden of providing such evidence at each stage of the case. In that sense, what matters is the optimal search for evidence in particular cases, but also optimal decision-making for the competition enforcement system as a whole.

It is on this basis that we can address the **fifth theme** properly and adequately.

This is the fact that we are not talking about technicalities that will reveal and solve themselves automatically through quantifiable models and calculations. Even though we need those to refine and challenge our understanding. We are talking about issues that require specific normative choices and whose assessment must be based on broad normative choices. In making our specific normative choices we are guided, here in the EU, by fundamental normative choices laid down in the treaties. From the Charter of

Fundamental Rights to the competition rules in Art. 101 seq. They are underpinned by the conviction that competition is an effective means, a discovery process, maybe the best means and process, to further the realisation of our fundamental normative choices. They ask us, time and again, to revisit the outcomes in the light of the question whether the competitive process, and the competition analysis and law that we practise, actually deliver.

When I was a boy, my first exposure to economic issues was a TV series. It was called "Free to choose", a title that has resounded through the decades. That people should be free to choose was taken up both at the very start of today with the keyword of user-centricity and the very end of today with the keyword of letting the customer decide.

More or less at the same time when the TV series issued, forty years ago, competition policy discussions focussed around emblematic work on an "antitrust paradox" (Robert Bork). These discussions have shaped generations. I have the feeling that right now, we are at a similar moment when we come together and focalise, like today, around "economics for the common good" (Jean Tirole).

The richness of today's discussion, the fact that all over our continent and beyond, similar discussions take place as we speak, shows indeed that we are at a watershed and that what is shaped - and what is not shaped - today will again define things for generations to come.

So what is the way forward?

We need to further formulate and consolidate insights and concepts – and make them operational. Here at the Commission, whilst casework must and indeed does go on, the next conceptual step will be the report of Commissioner Margrethe Vestager's three special advisers in the Spring. I expect the debate to intensify once again, but then also to crystallise, in the run-up to the next institutional cycle that starts with the elections of the European Parliament in May.

In a "participative antitrust" spirit, let me make a couple of practical points on the follow-up to this conference.

We will soon publish two things on the conference website: a short summary of each panel and the video recording of the entire conference.

For the students listening to this conference, I draw your attention to the Student Challenge. You can submit your own text, in 250 words, on "*What would you have talked about if you had been a speaker?*" on one of the four panels. The deadline is 31 January. There will be four winners – one for each panel theme. They will win a trip to Brussels to meet Commissioner Vestager on 13 March. You can find the rules on the conference website.

And that's not all.

For everyone using Slido today, you can go back to Slido now – in the app or browser – and you will see a poll entitled "*What is your main takeaway from this conference?*". You can then enter your key takeaways in the free text box. Your key takeaways may be good points that you heard from the presentations, practical proposals for competition enforcement (or non-enforcement), broader policy ideas, or comments on today's

conference and presentations. This Slido poll will close on Monday at 12. We will look at all your ideas carefully.

These are small steps. But I hope forward ones.

So, as you head back home, whether on the Brussels metro or on the airport train, please stay with us on this journey. Take a moment to share ideas with us.

We need your expertise - and your active citizenship - throughout this defining time and certainly this year.

I wish you a safe trip home, and thank you once again.