



EUROPEAN COMMISSION

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Empowering and protecting European citizens in an evolving media landscape

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1 Introduction

I would like to thank Antonio Bavasso for the kind invitation to speak at the Jevons Colloquium and Giovanni Pitruzzella and the *Autorità Garante* for hosting us today.

It is a pleasure to be once again at a Jevons event.

It is a privilege to be back in Rome and at the *Autorità Garante*, which under Giovanni's leadership has contributed to debate with such energy in our European Competition Network and beyond.

And it is both a pleasure and a privilege to come back to some of the issues that got me started many years ago – in fact, two decades ago – first as case-handler in what was then called DG IV in the European Commission, later as a member of the cabinet of the then Commissioner responsible for audiovisual policy, Viviane Reding.

I had more hair at the time – and I knew a lot more detail about the media sector than I know today.

But you can imagine how much I look forward to exchanging views with such a distinguished audience on our ever-changing media landscape and the implications of its development for the enforcement of EU competition rules and other public policies.

Even if my remarks will necessarily be broad brush and far from exhaustive, I still hope they will show the wood composed by the many trees that we will examine together today.

2 Changing media markets

Now saying that the media landscape is ever-changing has been a bit of an understatement for quite some time. Over the past thirty years or so, we have witnessed one revolution after the other in the way people read, listen to speech and music or watch pictures and films. And the trend shows no signs of abating.

Let me mention some of the developments in today's media markets that we are observing in our practice at DG Competition.

One obvious development is that many digital products and services reach end-users at no monetary cost. They are rather "paid for" with attention and personal data.

This is, of course, a feature we can observe both in media markets and other markets.

As large digital players amass vast amounts of data, competition policy and enforcement must be on the lookout to make sure that the data is not used in anti-competitive ways.

As Commissioner Margrethe Vestager said a few months ago, "controlling large amounts of data shouldn't become a way to shut rivals out of the

market,” adding that “if data does become an obstacle to competition, we have the tools we need to stop that.”¹

Another feature we have noticed is geo-blocking in the Single Market. Many users find this baffling or outright irritating. While the digital distribution and consumption of content in principle knows no borders, media organisations have adapted digital tools to manage or limit the content that users can access based on where their devices are located. But since the action of the EU’s competition enforcers is predicated on a seamless single market, digital barriers erected by companies through collusion or anti-competitive unilateral conduct by dominant firms cannot be out of our focus.

Another market trend we are observing is of immediate interest for merger review – but of course not only for merger review.

This is the progressive integration of traditional and new players, such as content producers, content aggregators and content distributors across different levels of the value chain.

And yet another trend is the emergence of new players, new channels and new offers, such as – to name three companies in separate markets – Facebook, Amazon and Netflix, that offer services to end users on the basis of different business models.

3 Tackling online disinformation and preserving media plurality

We are also noticing a trend that can not only disrupt whole industries but also have implications for society at large. A growing number of users receive their news and entertainment from only a handful of large digital hubs.

To gauge the size of this shift, consider that for the first time last year U.S. consumers spent more on entertainment that was streamed to their TVs and digital devices than to buy tickets to go to the cinema.²

A recent study by the European Commission's Joint Research Centre points out that two thirds of consumers of online news prefer to access it through algorithm-driven platforms, such as search engines, news aggregators or social media websites. The study also finds that market power and revenue streams have shifted from news publishers to

¹ Speech on “*Clearing the path for innovation*”, Web Summit, Lisbon, 7 November 2017, accessible at https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/clearing-path-innovation_en.

² Motion Picture Association of America, *A comprehensive analysis and survey of the theatrical and home entertainment market environment (THEME) for 2017*, accessible at: https://www.mpa.org/wp-content/uploads/2018/04/MPAA-THEME-Report-2017_Final.pdf.

platform operators who have the data to match readers, articles and advertisements.³

This trend has obvious consequences for traditional media. The printed press, broadcasting and television must all – at least to a point – reconsider their business model and societal role. And it has obvious consequences for present and future generations of users. Past parameters for distinguishing trustworthy from untrustworthy information and content do not translate seamlessly from the analogue to the digital environment.

In contrast, the amount of unreliable and sometimes artful news in circulation – and the efficiency of this circulation – appears to be growing at a fast clip. And with it grow our concerns that people's views can be manipulated and the democratic process meddled with. This is worrying for reasons that far exceed competition control.

The most recent policy response at the EU level is the initiative presented by the European Commission in April this year. Inserted into the wider policy, regulatory and enforcement agenda of the Juncker Commission, it comprises inter alia a set of measures specifically tailored to tackle online disinformation.⁴

The Communication includes the idea of an EU-wide Code of Practice on Disinformation. But it also reminds of the competence and responsibility of EU Member States to ensure the access to and the support for quality and diversified information and content.

Member States have a wide margin to foster the production and distribution of content by supporting public broadcasters, film production and press activities, without falling foul of State aid rules.

And Member States have the faculty – recognised by Art. 21 (4) of the EU Merger Regulation – to assess media plurality concerns in addition to and independently of competition concerns. The ongoing public interest probe by the UK into the Fox/Sky transaction cleared on competition grounds by the European Commission quite some time ago is just one example.⁵

Reliable information, free and diverse cultural expressions, and media pluralism are non-negotiable values in the European Union. Indeed, the Amsterdam Treaty's statement that "public broadcasting in the Member States is directly related to the democratic, social and cultural needs of

³ Martens, B., Aguiar, L., Gómez-Herrera, E. & Mueller-Langer, F. (2018), *The digital transformation of news media and the rise of disinformation and fake news*, Digital Economy Working Paper 2018-02, JRC Technical Reports, European Commission, accessible at <https://ec.europa.eu/jrc/sites/jrcsh/files/jrc111529.pdf>.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Tackling online disinformation: a European Approach*, 26 April 2018, COM(2018) 236 final. Accessible at <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-online-disinformation-european-approach>.

⁵ Case M.5932, *News Corp / BSkyB*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_5932.

each society and to the need to preserve media pluralism” is but one expression of these principles.⁶

I will come back to this again in a moment.

4 Policy teamwork

From what I have just said, it is clear that public policy in media markets is carried out by different actors at different levels.

We can try to systematise it using two distinctions.

The first is between the issues in the media landscape that belong with competition policy and enforcement and those that belong with other regulation and legislation – both at EU and national level.

This distinction runs across all media markets and all sectors, particularly those subject to sector-specific regulation, such as telecommunications.

The second distinction runs between the issues that belong with the EU level, notably the European Commission, and those that belong with the national level, notably the national competition authorities in the EU Member States.

So, we have a simple two-by-two table: other regulation and competition control on the two rows, and EU and national level on the two columns.

How can we draw the table so that the different policies dovetail and, together, produce the best results?

The current, overarching policy framework is provided by the Digital Single Market strategy, which sits among the top priorities of the Juncker Commission.⁷

The strategy can be described as a concerted effort to put the Single Market online in a coherent and comprehensive fashion for the benefit of consumers, businesses and society at large.

The Digital Single Market covers the essential areas, including e-commerce, copyright rules, audiovisual rules, cybersecurity, free circulation of data, fast internet connections, privacy and the fostering of digital skills.

A number of directly media-related regulatory measures fall under its broad umbrella.

Let me mention the main ones for our purposes, starting with the Audiovisual Media Services Directive.

The Commission's proposal to amend the Directive updates for today's Internet-centred environment rules that were written for a landscape

⁶ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Protocol annexed to the Treaty of the European Community - Protocol on the system of public broadcasting in the Member States, OJ C 340, 10.11.1997, p. 109. Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_1997.340.01.0001.01.ENG.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe*, 6 May 2015, COM(2015) 192 final. Accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0192>.

dominated by TV. Indeed, the original name of this legal instrument was "Television without borders".

The goal is building a more level regulatory environment for the entire audiovisual sector, including on-demand services and video-sharing platforms. The proposal's fundamental elements were agreed by the European Parliament, the Council and the Commission last April. After formal confirmation by the Council and the European Parliament's plenary vote, its rules will soon be ready to be transposed into national law.⁸

Secondly, the Regulation on Cross-border Portability of Online Content Services that was adopted in 2017. It ensures that consumers who buy or subscribe to films, sport broadcasts, music, e-books and games can access them when they travel to other EU countries.⁹

This legal text belongs to the wider field of copyright regulation, which also includes the Commission proposals for the Copyright Directive¹⁰ and the "SatCab" Regulation proposal¹¹, which are still pending in the legislative process.

The Copyright Directive concerns inter alia copyright rules for text and data mining for scientific purposes, a negotiation mechanism to facilitate the availability of audiovisual works on video-on-demand platforms and the introduction of a right to fair remuneration and to information claims of authors against contract partners and, where Member States foresee so, distributors. Particularly debated are provisions on ancillary copyright for news publishers for so-called "snippets" and monitoring and filtering obligations of online service providers.

The "SatCab" Regulation would extend the so-called "country of origin" principle, already applicable to satellite transmissions for about two decades, to ancillary online broadcasts. Rights would only need to be cleared for the broadcaster's country of establishment, covering simulcast and catch-up services, but not video-on-demand services.

Also this proposal is hotly debated, which is why narrowing the scope of the "country of origin" principle to e.g. news and current affairs is being considered in the European Parliament, as well as in the Council.

⁸ European Commission (26 April 2018), *Audiovisual media services: breakthrough in EU negotiations for modern and fairer rules*, Press Release IP/ 18/3567, accessible at http://europa.eu/rapid/press-release_IP-18-3567_en.htm.

⁹ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, OJ L 168, 30.6.2017, p. 1–11. Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.168.01.0001.01.ENG.

¹⁰ Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, 14 September 2016, COM(2016) 593 final. Accessible at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0593>.

¹¹ Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, 14 September 2016, COM(2016) 594 final. Accessible at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0594>.

This being said, the adoption of the Commission proposals would undoubtedly foster the further emergence of a European public sphere. This in turn could open up business and debating dynamics hitherto thwarted by the fragmentation of the Single Market for audiovisual content.

Last but by no means least, all of this is complemented by the Geo-blocking Regulation, devoted to ending the geo-blocking practices, that will enter into force in December.¹²

I would also add a number of measures which, although not exclusively linked to media markets, deal with core issues for digital players – especially platforms and social media.

I am referring, for example, to the EU net neutrality rules adopted in 2015¹³ and the General Data Protection Regulation, which is putting privacy rights and interests of European citizens at the centre, which will come into effect later this week.¹⁴ And also to the Commission's latest proposal for new rules on online platforms' terms and transparency¹⁵, in particular vis-à-vis small businesses, presented at the same time as the afore-mentioned initiative on tackling online disinformation, that is complementary to the user-oriented "New Deal for Consumers" proposals presented earlier, also in April.¹⁶

Crucially, no overview would be complete without the work on the regulatory framework for the communication infrastructure. Its centre-pieces are the Commission proposals for the European Electronic Communications Code¹⁷, connectivity¹⁸ and the 5G Action Plan¹⁹. Without

¹² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, OJ L 60I, 2.3.2018, p. 1–15. Accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R0302>.

¹³ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1–18. Accessible at <http://eur-lex.europa.eu/eli/reg/2015/2120/oj>.

¹⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88. Accessible at <http://data.europa.eu/eli/reg/2016/679/oj>.

¹⁵ Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, 26 April 2018, COM(2018) 238 final. Accessible at http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51803.

¹⁶ European Commission (11 April 2018), *A New Deal for Consumers: Commission strengthens EU consumer rights and enforcement*, Press release IP/18/3041, accessible at http://europa.eu/rapid/press-release_IP-18-3041_en.htm.

¹⁷ Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code, 12 October 2016, COM(2016) 590 final/2. Accessible at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:COM_2016_0590_FIN.

the right framework for the infrastructure, new and enhanced content will simply not reach the user.

The updated “Significant Market Power” guidelines²⁰ will orient national regulatory authorities when they analyse telecoms markets. They contribute to competitive markets through reflecting the latest developments and addressing issues previously not included.

Examples are the competitive impact of online service providers who have started to offer internet-based services, increased provision of bundled services at retail level, competitive pressure of cable-based services as well as the transition from monopolistic to oligopolistic market structures in some countries.

I am mentioning these measures because I believe that, at this point in time, there is an obvious sensitivity among the European public: the desire to keep or regain control of the news, media and online experience in a level, safe and open digital environment.

The EU institutions are delivering on this in a joined-up fashion.

5 A coherent approach for competition policy and enforcement in media markets

After this summary review of the EU’s regulatory work in media markets, I will now try to show how the action of DG Competition dovetails with it. Let me start with a statement of principle. The function of competition policy and enforcement is not to duplicate or correct other regulation. It is to address and prevent – taking account of the regulatory framework – specific failures resulting from the behaviour of firms that collude, abuse market power or could, if merged, significantly impede effective competition.

I am stressing what to this audience must seem to be a truism because in the fast-moving reality just described, a lot of expectations are focussed on competition law. The Commission uses its remit under competition law in full, but in the full respect of its limits.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society*, 14 September 2016, COM(2016) 587 final. Accessible at http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17182.

¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *5G for Europe: An Action Plan*, 14 September 2016, COM(2016) 588 final. Accessible at http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17131.

²⁰ Communication from the Commission, *Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services*, OJ C 159, 7.5.2018, p. 1–15. Accessible at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0507\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0507(01)).

Or, as Commissioner Vestager recently put it: "Just because you have a wonderful hammer, it does not mean that everything is a nail."²¹

The central objective of our approach to media markets is keeping the market for the provision of content open, innovative and well-functioning, including across borders in the Single Market.

I have already mentioned one of the practices that fragment the Single Market in digital industries; geo-blocking. The prevalence of geo-blocking was one of the main findings of our e-commerce sector inquiry.²² Our analysis showed that as much as 70% of distributors in digital content markets used it to prevent cross-border access to digital content.

When geo-blocking is based on contractual restrictions or on the unilateral conduct of dominant firms, there is a role for competition law enforcement to verify whether they are justified or not.

We also make sure that the playing field is level for both public and private operators, and for incumbents and new market entrants. This is crucial for innovation.

Incumbents should not prevent entrepreneurs with fresh business ideas from bringing them to the market.

Another consistent aim – especially pertinent in merger review – is making sure that the value chain over which content is produced and delivered to end users remains competitive.

This includes both fixed and mobile infrastructure, which are increasingly our preferred means to access content.

For example, in the Orange/Jazztel transaction²³, we identified competition concerns in relation to the delivery of fixed services – including TV – to Spanish consumers. In the end, we approved the deal only subject to the divestiture of Orange's fibre network in Spain, among other things.

In the Hutchison/Wind²⁴ merger in Italy, the Commission approved the deal subject to a remedy that would pave the way for a new fourth mobile network operator in Italy, Iliad. The company has just announced its commercial launch in the coming weeks. Again, the goal was ensuring sustained infrastructure competition, here in the country's mobile sector. We also assist EU countries in their efforts to remedy market failures when it comes to the underlying infrastructure with the shared objective

²¹ Remark by Commissioner Vestager reported by the press at the American Enterprise Institute, Washington D.C., 18 September 2017. Published speech accessible at https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/how-competition-can-build-better-market_en.

²² Report from the Commission to the Council and the European Parliament, *Final report on the E-commerce Sector Inquiry*, 10 May 2017, COM(2017) 229 final. Accessible at http://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf.

²³ Case M.7421, *Orange/Jazztel*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7421.

²⁴ Case M. 7758, *Hutchison 3G Italy/Wind/JV*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7758.

of offering citizens the backbone connectivity needed for data-intensive products and services.

Given the significant roll-out of infrastructure in recent years, the potential for market distortive effects of State aid in this area has increased, which is why the complementarity of the General Block Exemption Regulation (GBER)²⁵ and the specific State aid guidelines for broadband²⁶ offer a targeted and adapted framework to assess public support to broadband roll-out.

Using our State aid guidelines, we have applied a pro-competitive philosophy in more than 150 positive decisions over the past ten years, including in Italy's multi-billion Banda Ultra Larga project.

EU Member States are also keen to use the flexibility of the General Block Exemption Regulation: as many as 113 cases in the last four years have been reported.

Under the GBER, aid can be granted in support of the objectives of the Digital Single Market. At the same time, public tenders and the requirement of open access to the subsidised networks prevent that taxpayers' money goes into expensive and closed monopolies.

So, we try to always find the right balance between addressing market failures in underserved areas and keeping private market incentives intact, avoiding the overbuilding of commercially funded infrastructure, notably in well-served areas.

Moving from the infrastructure heading to the content heading, let me give you a few other examples drawn from our practice.

To make sure that users have access to content and service irrespective of where they happen to be within the Single Market, we are looking into contractual restrictions on cross-border sales.

Some cases concern the distribution of goods, such as consumer electronics and licensed merchandise, while others relate to services such as Pay-TV²⁷ or PC video games²⁸. All these investigations tackle potential barriers to cross-border trade, including on-line.

²⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26 June 2014, p. 1, as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L 156, 20.6.2017, p. 1-18. Both accessible at http://ec.europa.eu/competition/state_aid/legislation/block.html.

²⁶ Communication from the Commission, *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ C25, 26.01.2013, p.1-26. Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.025.01.0001.01.ENG.

²⁷ Case AT.40023, *Cross-border access to pay-TV*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023.

Two cases featuring e-books exemplify our approach vis-à-vis large platforms.

One is the Amazon e-books case decided last year²⁹, where we came to the preliminary conclusion that Amazon may have abused its dominant position in the distribution of e-books to European consumers.

We were concerned that by imposing so-called "Most Favoured Nation" (or "Most Favoured Customer") clauses on publishers, Amazon was preventing competitors from launching competing new and innovative business models.

To address our concerns, Amazon offered not to enforce or put in place such clauses during a period of five years.

Its commitments were made binding last year until 2022.

Before the Amazon case, already in 2012-2013, we had investigated alleged horizontal collusion between Apple and e-books publishers affecting the prices charged to consumers.³⁰

At the time, the e-book market was still nascent in most of Europe but also highly dynamic and the Commission felt bound to intervene.

Apple and the publishers also offered commitments for a duration of five years that addressed these concerns.

I would like to add that our Google Search / Comparison Shopping Services³¹ and our ongoing investigations into Google Android³² and Google AdSense³³, whilst of course not media-specific, offer insights on the working of digital markets that are valuable beyond these cases. We will check the lessons learned from these cases carefully against the specific facts of other cases, including in the media field.

To complete the above-cited two-by-two table, I must stress that many media-related issues are handled at the national level – for instance the sale and licensing of rights, e.g. sports rights or film rights.

The Autorità Garante and many other national competition authorities have also detected and addressed possible abusive conduct by collecting societies.

²⁸ Cases AT.40413, *Focus Home*; AT.40414, *Koch Media*; AT.40420, *ZeniMax*; AT.40422, *Bandai Namco*; and AT.40424, *Capcom*. For further information see IP/17/201 of 2 February 2017, accessible at http://europa.eu/rapid/press-release_IP-17-201_en.htm.

²⁹ Case AT.40153, *E-book MFNs and related matters (Amazon)*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40153.

³⁰ Case AT.39847, *E-books*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39847.

³¹ Case AT.39740, *Google Search (Shopping)*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740.

³² Case AT.40099, *Google Android*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40099.

³³ Case AT.40411, *Google Search (AdSense)*, accessible at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40411.

In some instances, they opened up newly liberalised markets to new entrants.³⁴ In others, they brought the pricing practices of collecting societies to the attention of the Court of Justice.³⁵

Following the implementation of the 2014 Directive on collective rights management, DG Competition is also closely monitoring newly created opportunities for licensing on a cross-border basis.

We are also working through State aid rules with EU Member States in their efforts to support quality information and creation, media literacy or linguistic diversity, as emphasised in the already mentioned initiative to tackle online disinformation.

The Commission approved individual national measures for news agencies – Agence France Presse in France and Agencia EFE in Spain – as guarantors of independent and impartial quality journalism and providers of reliable news.³⁶

Let me stress that EU Member States may also channel aid away from beneficiaries that would do not meet certain standards.

For instance, we have recently approved a national aid scheme in France for the distribution of smaller publications.³⁷

The scheme specifically excludes companies that have been found guilty to disseminate hate speech.

Examples concerning the value chain spanning content, aggregation and distribution come from merger control.

Transactions combining different levels of the value chain can raise input and/or customer foreclosure concerns.

In the 2014 Liberty/De Vijver transaction in Belgium³⁸, the company that resulted from the merger was going to be present in the production of TV content, the wholesale of TV channels and the retail distribution of TV services.

In the 2017 Discovery/Scripps transaction³⁹, competition concerns arose with respect to the Polish market, where the transaction risked increasing

³⁴ AGCM Decision n. 26497 of 22 march 2017, A489 - NUOVO IMAIE-CONDOTTE ANTICONCORRENZIALI, *Bollettino* n. 13/2017.

³⁵ Case C-177/16, *Biedrība „Autortiesību un komunikāciju konsultāciju aģentūra - Latvijas Autoru apvienība” v Konkurences padome*. Request for a preliminary ruling from the *Augstākā tiesa*, judgment of the Court of 14 September 2017, ECLI:EU:C:2017:689; and Case C-525/16, *MEO — Serviços de Comunicações e Multimédia S.A. v Autoridade da Concorrência*, judgment of the Court of 19 April 2018, ECLI:EU:C:2018:270.

³⁶ Case SA.30481, *State Aid in favour of Agence France-Press (AFP)*, accessible at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_30481; Case SA.35474, *State aid to news agency EFE*, accessible at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_35474.

³⁷ Case SA.47973, *French Press Aid 2015 Decree*, accessible at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_47973.

³⁸ Case M.7194, *Liberty Global/Corelio/W&W/De Vijver Media*, accessible at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_7194.

³⁹ Case M.8665, *Discovery/Scripps*, accessible at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8665.

Discovery's bargaining power vis-à-vis TV distributors, because of the acquisition of certain channels.

In both decisions, the Commission accepted remedies from the merged entities.

In Liberty/De Vijver, the concerns were removed by a combination of "supporting actions" and formal commitments submitted by Liberty. Competing TV distributors were guaranteed access to the "must have" channels Vier and Vijf under fair, reasonable and non-discriminatory ("FRAND") terms for seven years, which removed the input foreclosure concerns. Competing TV channels were guaranteed access to the merged entity's distribution operation, Telenet, through amended terms offering protection against a possible customer foreclosure strategy.

Discovery committed to make Scripps's crucial TVN24 and TVN24Bis flagship news channels available to TV distributors for a reasonable fee determined by reference to comparable agreements for a period of seven years.

Another vertical media merger we handled was AT&T/Time Warner, which we cleared unconditionally under the simplified procedure in March last year.

That was admittedly a much less eventual affair than the U.S. case, which we are following with obvious interest.

The main factor that accounts for this difference is that AT&T has a very limited presence in the EU, other than in certain specific business-services markets where the link with Time Warner would not give rise to competition concerns.

The story is actually instructive. When different competition authorities take different decisions in the same case, it is often because of different market conditions.

Different decisions do not automatically mean divergent approaches.

Conversely, two authorities may take the same approach and still arrive at different outcomes when market conditions are not the same.

6 A look into the future

These examples paint a quick sketch of our present action. As we look into the future, we cannot avoid certain looming questions.

First, which media outlets will survive and thrive? Second, who will ultimately pay – and how – for production and distribution of content?

Third, what are the further implications of the developments we are witnessing for regulators and competition enforcers at EU and national level and for society as a whole?

One can argue that traditional models are under threat with the emergence of new production and distribution outlets and platforms. Several players in these markets, e.g. certain newspaper publishers, struggle to monetise content. Others, in contrast, have undertaken major

shifts towards subscription-based services and online advertising, and prosper.

For now, no global or pan-European business model has emerged that would specifically build around Europe's values and rich cultural and linguistic diversity. Instead, more often than not, national and even relatively small players are up against players that capitalise their global reach.

This being said, in the music sector, certain European streaming services paved the way for an industry rebound.

What can be drawn from this is the fact that open and level markets carry a diversity of opportunity whose outcomes are not pre-determined.

One thing is certain. We will continue to nurture and build upon our tradition, our values and our cultural and linguistic diversity, accompanying EU Member States in their support of quality and diversified news and creation.

At the same time, there is a clear need to remove ever more decisively unjustified regulatory or contractual barriers to the emergence of successful new business models and operators active across Europe and world-wide.

But let us not forget that, while competition enforcement may contribute to broader policy objectives, it is fact- and case-specific, hence by its nature pointillist. A picture emerges once you have taken some distance and connected all the spots on the media-landscape canvass.

We can see strong trends on this canvass, in content and distribution and advertising.

There are important moves towards immediacy, proximity and customisation.

Services and infrastructure convergence is as steadfastly continuing as its concrete deployment is enigmatic.

At the same time, multi-homing blurs the boundaries between different ways to access content and advertising.

Non-price dimensions such as quality, innovation and availability are increasingly important.

Certain markets in certain countries may become more concentrated as a consequence of a drive towards consolidation.

But none of this limits the ability of the European Commission and of the national competition authorities to intervene if there is evidence that certain firms do not compete on the merits.

This is also true for the digital sphere and is attested by the broader story told by enforcement in past and recent years.

From the Microsoft cases⁴⁰ to our Google investigations mentioned above, we incorporated analysis relating to, inter alia, intellectual property,

⁴⁰ Case AT.37792, *Microsoft*, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_37792; Case AT.39530,

network effects, "free products", zero marginal costs or the importance of data.

In our Amazon MFN case just described, for the first time we dealt with a novel issue – non-price MFNs – in less than two years, thus providing guidance on how to deal with MFNs by dominant companies.

In past sports rights cases, we addressed rights licensing issues.⁴¹ And for a long time, we have struck the balance between public service and private business, e.g. in broadcasting.⁴² Our market definitions and competitive assessments are in tune with the times.⁴³

To preserve this ability, we must nurture our capacity to take rapid and decisive action, in terms of resources, technological capacity, intelligence, analysis and procedures.

We need to monitor developments with extreme care so that the next concern – if and when it materialises – will find us prepared to protect the rights and interests of our fellow European citizens.

And we have seen that developments in the media landscape may have implications in different areas: competition in the Single Market, information and creation, even for democracy.

This means that lawmakers, regulators and competition enforcers – both at EU and national level – should continue to cooperate openly and effectively, because change is fast and the balance between the various public authorities concerned will likely remain shifting.

All actors involved should play as a team guided by the wellbeing of the citizens of the EU as their shared, ultimate goal.

At a time when it seems that our lives are overseen by devices that are ever more powerful; software that becomes ever smarter; and companies that grow ever bigger and more influential, I believe that this is what Europeans expect of their public authorities. So that the opportunities out there, manifold and precious, can be enjoyed by all, not just a few.

Microsoft (Tying), accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39530.

⁴¹ Case AT.37398, *UEFA*, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_37398 ;

Case AT.37214, *DFB*, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_37214; Case

AT.38173, *The Football Association Premier League Limited*, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_38173.

⁴² Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 257, 27 October 2009, p.1-14. Accessible at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52009XC1027(01)).

⁴³ See, for example, Case M.5932, *News Corp / BSkyB*, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_5932; Case M.7217,

Facebook / WhatsApp, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7217; and Case M.8124,

Microsoft / LinkedIn, accessible at

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8124.

In delivering this task, the dialogue and exchange with our global partners is of the essence – for example with our partners from the USA present here today and whose presence I salute.

This conference contributes to dialogue, understanding and hence excellence in the pursuit of regulation, and competition policy and enforcement.

So thank you, again, for having me today.

And thank you for what money cannot buy – your attention.