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The new economic climate: driving competition in key sectors

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

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Ladies and Gentlemen,

It is a pleasure to address you here at the Chatham House, which has become over the last century a symbol of open and frank debate.

The theme of this year's competition policy conference could not be better chosen. In the new economy we are building, competition policy is key if we want to make Europe come out of this crisis stronger and better equipped to take on the challenges of globalisation.

Today's topics are indeed unmistakably part of the new economy :

- We need an ambitious long-term vision for our **energy** policy so that it can support economic recovery. And yesterday's unique decision by the IEA to release an additional 2 million barrels of oil per day for the next month reminds us of the continued vital role of energy for a sustainable world economic order.
- Secondly, we need a more transparent and prudent operation of **financial services** through reforms setting the ground for a more robust sector, that is more trustworthy in the eyes of investors, businesses and citizens;
- And finally we need to unleash the creativity and innovation brought by **new media**, while ensuring that the market remains open to new players and their innovations, and that consumers are the ultimate beneficiaries of the increased digital convergence.

I would like to speak today about how European competition policy - through all its instruments and as a complement to the regulatory framework - can support growth in each of these sectors in the new economy that is emerging.

## **1. Energy**

### **1. Internal market for energy: the importance of embedding sound competition principles**

Energy is not only the backbone of any growing or emerging economy, but also in many respects a finite resource. This makes the completion of the internal market for energy critical.

At the moment - and despite many achievements obtained through the liberalisation process of the last years - the European energy market is still fragmented, with de facto monopolies on the gas market and only a small proportion of EU electricity traded cross-border<sup>1</sup>.

In this context, continuing to open-up markets to competition will provide incentives for competitive investment and help increase the efficiency of market players by exercising pressure on their costs and by prompting them to offer real benefits to consumers.

Europe needs competitive energy prices, security of supply, investments in infrastructure and energy sources that respect environmental targets. And competition has a positive impact on all these four aspects:

- It protects consumers and businesses against unjustified price increases or artificially inflated prices.
- It gives companies access to the opportunities offered by large and integrated markets, while allowing for a diversification of risk. More market players that look across borders for supply opportunities are a safeguard for safe and stable supply. We have seen this in our competition cases and I will mention some later on.
- Competitive markets also set the right price signals to attract investment in new and innovative infrastructures.

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<sup>1</sup> As highlighted in the "*Report on the progress in creating the internal gas and electricity market*", published by the Commission last year.

- And, finally, competition can help deliver the EU's energy efficiency or greenhouse gas emission targets.

## **2. Competition law enforcement across instruments**

Let me illustrate these issues with examples from our enforcement practice:

- In an antitrust case for example, EON agreed to release transport capacity at international entry points into its gas networks in Germany. A quite similar pledge was made by ENI, which agreed to sell its shares in international pipelines. Through these commitments, we managed to open up cross-border transport capacity, allowing opportunities for new entrants to bring gas into domestic markets.
- In the EDF case we dealt with competition within the national market. In order to keep France's market open to competition, the restriction on the resale of electricity was removed and customers were allowed to make contracts with EDF's competitors.

Similarly, in our merger control activity we also focus on keeping markets open, preventing the reinforcement of incumbents in their domestic markets where this could harm consumers. When new entrants challenge the incumbents, this has a positive effect on long-term prosperity and consumer welfare.

So, when energy mergers raised competition concerns recently, these could be resolved by the remedies put forward by the parties. Examples include EDF/ British energy; RWE/ Essent, EDF/ Segebel and GDF Suez/ International Power. Going forward, obtaining good remedies will be key, in particular when markets have recently been opened-up to competition.

State aid policy has also accompanied the development of a sustainable economy. The revision of the Environmental Aid Guidelines of 2008 and the introduction of the General Block Exemption regulation allow aid that supports EU energy and climate change objectives. But such aid needs to be well targeted so that it addresses market failures or objectives of common interest and that distortions of competition are avoided.

For instance, State aid provisions allow the promotion of renewable energy. Let me illustrate the importance of State aid control with two points on renewables:

- The share of renewables in total production is growing, in line with EU objectives. But, if aid is not properly targeted, the amount of public support for renewables (for instance minimum electricity tariffs when they constitute aid) may result in insulating the green part of energy production from competition forces.
- The promotion of renewable energy also affects infrastructure investment and adaptation of the grid, since new wind farms are not necessarily located in the same place as the demand. Aid to infrastructure, and preferential access to the grid, should be carefully monitored so that advantages do not excessively favour renewables over other forms of energy production.

This is why the Commission will closely monitor State aid to renewables in the future to avoid overcompensation and other distortions, and to ensure a cost-efficient path to reach the EU's environmental targets.

### **3. Considerations on future challenges**

For the coming years, the greatest challenge for us will therefore be to consolidate the work towards a common energy policy and a truly integrated energy market through regulatory measures as well as competition law enforcement.

## **2. Financial services**

### **1. Promoting a fair, stable and efficient environment**

In the financial services sector, the need for competition authorities and financial regulators to work together to promote a stable and efficient environment has become fully apparent during the crisis and in its aftermath.

In Europe, the Commission's current legislative agenda is full, with forthcoming amendments to the Capital Requirements Directive; the directive on Deposit Guarantee Schemes; the

banking crisis framework and a review of the Market in Financial Instruments Directive (MiFID).

Three new supervisory bodies have already been set-up to increase the coordination and powers of supervision of European financial regulators. Stress tests are being run by the EBA and The European Systemic Risk Board has also been entrusted to carry out macro-prudential supervision and prevent the accumulation of systemic risk.

Another related area of great importance that I want to mention is the completion of the Single Euro Payments Area (SEPA).

SEPA will allow consumers and companies to make cross-border payments as easily and safely as domestic payments, which should create significant efficiencies and remove one of the major remaining barriers to our Internal Market.

SEPA started as a self-regulatory project of the banking sector, but that approach may have reached its limits. This is why last December the Commission adopted a proposal for a Regulation to promote the transition to the SEPA credit transfer and direct debit schemes. This proposal includes an article that bans inter bank fees for SEPA direct debit imposed on a *per transaction* basis, as supported by the Council.

## **2. Competition law enforcement**

Regulation can be vital in the financial sector, because it tackles broad structural market failures. But there are also situations when regulation alone is not enough.

In parallel, we need rigorous competition enforcement , to tackle the harmful behaviour of individual market players.

No undertaking or group should be allowed to be a gatekeeper to essential infrastructure, such as trading and clearing platforms or pre-trading services, unless this is objectively necessary to provide the services or if it creates efficiencies and passes on a fair share of the benefits to consumers.

It is true that market concentration can be the result of efficiency and rationalisation processes. But what we want to prevent is that it is the fruit of market foreclosure.

We are particularly attentive to transparency for all market players. Transparency is important in all areas of financial services - in payments, where we are concerned with the lack of transparency in the business rules of payment schemes; or in the provision of financial information to the market, where we see very opaque market conditions. This is also why we have recently started to investigate the markets for Credit Default Swaps.

### **3. The role of State aid policy**

I mentioned antitrust, but State aid policy played a leading role during the financial crisis.

We had to adapt State aid rules to the crisis context and to deal with the unprecedented support extended by governments to banks. We swiftly put in place "crisis rules" that allowed us to limit the effects of the crisis as much as possible and to ensure a level playing field in the Internal Market. Our goals were:

- to keep distortions of competition – both within a given Member State and between Member States - to a minimum and to attach conditions to the government bail-outs;
- to preserve financial stability; and
- to help financial markets resume normal lending as soon as possible.

Since the beginning, we tried to strike a balance between urgent short-term needs and long-term considerations. In doing so we have continuously thought of the post-crisis market conditions and of the need to reform the sector in a way that makes it both more stable and more transparent.

We will now integrate the lessons learnt into more permanent guidelines for the rescue and restructuring of financial institutions, that we hope to issue by the end of this year.

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As Commissioner Almunia recently pointed out, the age of deregulation is coming to an end on a global scale, and it is our responsibility to use both regulatory and enforcement action in financial markets to protect the interests of citizens and businesses, and to set much higher standards of transparency and fairness in financial markets.

### **3. New media and high-tech industries**

#### **1. Unearthing growth**

Now, moving onto new media and high-tech industries – here the growth potential worldwide but also for Europe is quite obvious. It is predicted that internet traffic will grow by 35% for fixed internet and more than 100% for mobile internet in the next five years. That highlights how important it is to develop good infrastructure and to ensure that access to this infrastructure is not hindered by anticompetitive behaviour.

For example, in 2010 the Commission approved under the EU guidelines for state aid to broadband, the use of over €1.8 billion public funds for broadband development. These funds aim to ensure that all citizens have access to high speed Internet in the EU, including in rural or remote areas.

This public support will have to comply with strict conditions in order to avoid distortions of competition: public funds can only be used in areas where private operators are unlikely to invest on commercial terms; and all broadband networks should be open to competition, with subsidised operators offering access to others.

More generally, the Commission has made it a priority to promote the digital economy.

As antitrust enforcers, our main job is to complement that regulatory push and to ensure that markets, platforms and data remain open to innovative firms and new market players. We have to make sure that no private or public entity is able to distort competition and limit access to the digital arena.



In particular, it is our duty to ensure that foreclosure does not occur. Firms in high-tech sectors, just as in any other, should compete on the basis of merit whether in terms of quality, price or innovation, and no player should be excluded because of anticompetitive barriers.

In order to achieve this, the application of competition law must keep pace with the dynamic high tech issues that may arise.

- This means we must be able to effectively analyse the relevant competition concerns and swiftly enforce where we detect infringements. To do that, we must develop sufficient market intelligence to understand the new market dynamics that emerge and how they may impact on the level-playing field.
- Second, we need to set, where possible, clear rules that provide legal certainty for businesses.
- And third, we must devise adequate remedies to the competition concerns that arise.

I believe that the Commission has shown that it is capable to take on such challenges, and I will mention a few examples.

## **2. Enforcing competition rules to strengthen policy of openness, interoperability and fairness.**

In our recent enforcement practice we have promoted interoperability and access to standards on fair, reasonable, and non-discriminatory terms – the so-called “FRAND” commitments. In cases such as *IPCom* and *Rambus*, we have shown that we are ready to intervene under competition rules to enforce these principles. Translating this experience, we have recently finished the review of our *Guidelines on Horizontal Agreements*.

In the revised *Guidelines*, we reiterate the rationale behind the FRAND commitment. That is to allow companies to invest in making standard-complying products with the comfort that implementation of the standard will not be prevented by IPR holders who would either not wish to license or would only license on prohibitive terms.

We have also attacked the practice of dominant firms in high-tech industries to set prices at levels that prevent competitors from covering their costs, the so-called margin squeeze. The European Court of Justice has supported this policy in its jurisprudence – take for example the recent ruling that upheld our position in the *Deutsche Telekom* margin squeeze case.

Similarly, only two days ago, we imposed a fine of €127 million on *Telekom Polska* for refusing to supply wholesale broadband services to alternative operators who could have made a real difference in the market, to the benefit of consumers.

In the years to come, we will continue to intervene with enforcement where necessary to restore competition in high-tech markets. By combining enforcement with targeted regulation – and by regulation I also mean soft regulation such as the Recommendation on Next Generation Access – we have built over time a strong legal environment that promotes thriving competition and also provides incentives for solid investment.

### **3. Finding the right remedies**

In the field of new media and high-tech industries, devising timely remedies to competition problems is vital.

We have many good examples of remedies that effectively opened-up markets to competition, promoting interoperability:

- An early example was when, in our 2004 decision, we required *Microsoft* to disclose complete and accurate interface documentation to allow non-Microsoft work group servers to achieve full interoperability with Windows PCs and servers. This aimed to enable rival vendors to develop competing products.

In high-tech merger cases, we have had various recent examples, such as *Cisco/Tandberg* where interoperability will be ensured between the merged entity's products and those of actual and potential competitors.

We are also very pleased with the interoperability remedies obtained in *Intel/ McAfee*. We managed to ensure a balance in these commitments, preserving both competition and the beneficial effects of the merger in terms of integrating hardware and software.

Going forward, access will continue to be decisive in developing new generation technologies. This is why we will continue to promote interoperability whenever access conditions risk to foreclose competition, thereby depriving consumers of a rich choice of new, innovative products.

Interoperable standards and protocols are behind the Internet success-story and we hope that they will be the basis for further innovation in the years to come.

## **Conclusion**

Competition enforcement will therefore continue to complement the regulatory framework in the three sectors we are discussing today and will play an important role in making them more competitive in the years to come.

The Commission, together with national competition authorities, will continue to advocate for competition principles to be embedded in their reform in order to ensure that markets remain open to competition and that consumers in Europe benefit from a greater choice, better quality products and better prices.