

European Policy Forum Roundtable

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Ladies and Gentlemen,

Introduction

- The economic climate in which I have taken up my new functions in the Directorate General for Competition at the European Commission is an unprecedented one.
- As you know competition policy has been one of the tools deployed to avoid a complete meltdown of the financial systems in the wake of the financial crisis. In the short term, the application of the state aid rules have maintained a level playing field and preserved the achievements of the Single Market. In the longer term, they are helping pave the way for economic restructuring and European recovery. We must now think about the phasing out of these exceptional measures that were put into place to answer exceptional circumstances. This is true independently of the sovereign debt crisis facing some of the eurozone members.

- Drawing lessons from the crisis, which is by no means behind us, we must also think ahead and consider longer term objectives for the economy in Europe. This is what the Europe 2020 strategy recently put forward by the Commission and broadly endorsed by the Heads of State and Government, attempts to do. It is a strategy for rising out of the ashes, and achieving a new period of growth and dynamism in Europe. I am deeply convinced that Competition policy also has a role to play in this strategy. Let me explain why.
- An EU-wide competition policy helps create a level-playing field for business across Europe. It creates opportunities for companies, which have access to a wider market for their goods and services. It also creates challenges for them to improve their performance, as they are competing with companies from across the EU. This has a positive impact on companies to compete globally. They will be in a better position to compete outside our borders if they are capable of investing, innovating and creating jobs within the internal market.
- Let me put the subjects I have just mentioned in perspective in order to better assess the challenges ahead of us.

Competition policy and the financial crisis

Let me start by talking about the application of the state aid rules to the financial sector.

- When the crisis broke out in the Autumn 2008 the Commission's initial objectives – in line with those of the Member States – were to preserve financial stability, deal with the risk of bank insolvencies and restore lending.
- In order to do that, the Commission adopted four Communications between October 2008 and July 2009, setting out how we would apply State aid rules to government measures to support the banking sector. These communications related to the conditions under which government guarantees could be given or banks recapitalised; the conditions under which assets which had lost their value could be removed from the banks' balance sheets; and finally to the restructuring aid given to banks.
- By giving Member States clear guidelines on what would or would not be acceptable we also helped achieve a degree of consistency in Member State responses across Europe.
- We are now still at the stage of restructuring. In the news, you will have followed this as regards Lloyds or Royal Bank of Scotland. Essentially, the idea is that those banks that have received large amounts of aid and that have unsustainable business models will have to restructure in order to return to long term viability without relying on State support.

- In our assessment of the various schemes (guarantee schemes, recapitalisation schemes, liquidity interventions, asset relief interventions) but also individual cases put before us, and which so far amounted to over EUR 3.6 trillion (or 29% of European GDP), we have applied the following principles:
 - **ensure fair competition between Member States** [measures taken by one Member State with respect to its own banks should not give them an undue competitive advantage compared to banks in other Member States];
 - **ensure fair competition between banks** [measures must differentiate between beneficiary banks according to their risk profiles, to avoid giving an undue advantage to distressed or less-performing banks];
 - **ensure a return to normal market functioning** [measures must address how to return the financial sector to long-term viability, where banks operate without state support].

This process is still ongoing.

Real Economy

What started off as a financial crisis soon turned into a real economy crisis, with the worst recession we have experienced in the post-war period.

So, what have we done as regards the real economy?

- In December 2008 the Commission adopted a temporary State aid Framework which provides additional possibilities for Member States to grant State aid. Its objective is to facilitate companies' access to finance and therefore reduce the negative effects of the crisis in the real economy. Sufficient and affordable access to finance is a pre-condition for investment, growth and job creation by the private sector.
- On the basis of the Temporary Framework, Member States may, for example, intervene with €500.000 per undertaking to cover investments or working capital for 2 years, offer a state guarantee for a loan at reduced premium, subsidise loans, encourage risk capital or grant short term export credits.
- The Temporary Framework has generally been very well received by the Member States and stakeholders. To date approximately 86 decisions have been adopted by DG Competition within very short deadlines.
- The Temporary Framework is an exceptional measure and therefore needs to be limited in time. It is foreseen to expire on 31

December 2010 and we are currently checking the effective use of the framework.

Exit strategy

- These state aid measures whether directed at the financial sector or at the real economy were meant to cater for exceptional circumstances. Now is the time to start thinking about phasing them out. An appropriate and timely phasing out from these measures is a key element of European recovery from the crisis. This in spite of the sovereign debt issues we are now facing.
- On the real economy, the withdrawal of measures should depend on the capacity of financial institutions to supply adequate credit to companies. The Commission is currently gathering information on the use of the Temporary Framework by Member States as well as the state of credit supply to companies. When the financial situation normalises, the Temporary Framework should normally expire. Priority should then be given to normal state aid rules in favour of SMEs, employment, research or environmental protection.
- For example, targeted State aid can help Europe reach its climate change targets, by supporting clean energy and energy efficiency. The environmental aid guidelines allow state support for environmental objectives, if, on balance, the environmental benefits of such support outweigh the potential competition distortions. Concrete examples are the aid recently granted to the steel works of Arcelor Mittal or Salzgitter AG in Germany.
- On aid to the financial sector there is a general consensus that the exit process should start, in particular for government guarantees. Exit from government guarantees need to be well coordinated and

flexible enough to take into account national specificities and potential new stress to the financial markets.

- We have therefore decided to slightly tighten the conditions for the extension of guarantee schemes beyond June 2010: this means the pricing of government guarantees should be gradually brought closer to current market conditions. It should also better reflect the banks' current creditworthiness. Banks which still depend heavily on government debt guarantee will also have to undergo a viability review. The idea is that necessary structural adjustments should not be postponed for banks that cannot obtain sufficient liquidity.
- Today the ECOFIN Council endorsed these tightened conditions.

While we are grappling with the exit from the crisis, we should also realise that for many in Europe we are at the beginning of a new Era. New European Parliament, Treaty, Commission, EU new President, even a new government in some Member States.

Europe 2020

- Competition policy will also have to play a key role in driving the so-called Europe 2020 strategy. Last March the European Council broadly endorsed the Commission's Europe 2020 Strategy. The heads of state and government concluded that innovation and competitiveness are fundamental to this strategy, alongside protection of the environment and social inclusion.
- The Europe 2020 strategy includes seven priorities, what we call "flagship initiatives". Five out of seven of these flagship initiatives are directly linked to EU industrial sectors: innovation, a digital

agenda for Europe, a resource-efficient economy, an industrial policy to tackle globalisation, and new skills and jobs.

- I believe competition policy can contribute to helping European industry emerge from the current financial and economic crisis so that it becomes better equipped for the sustainable growth identified under Europe 2020.
- I just explained how State aid has been instrumental in tackling the crisis and setting Europe on the road to recovery. Let me now turn to the other competition policy instruments we have at our disposal.

Antitrust and cartel enforcement

- On antitrust and cartel enforcement, what is absolutely key is that we must not weaken our enforcement because of current economic circumstances.
- Cartels, for example, raise the prices of input and intermediate goods that go into the manufacturing of final consumer goods. Most cartels touch intermediate, not final goods. By combating this type of conduct, anti-cartel enforcement in the EU also supports the competitiveness of EU industry.
- Firms sometimes enter into cartels due to excess capacity in the sector concerned. Arguments have been raised in favour of dealing with such structural problems by a temporary suspension of competition rules. This approach was tried in the US in the 1930s under President Roosevelt's new deal– but the result was lower output, higher prices and reduced purchasing power. The effect of those measures was to prolong the depression by several years. So now is not the time to weaken our fight against cartels and you can expect strict enforcement from us in this regard including

through the use of relatively new instruments such as settlements on which we will soon adopt a first decision.

- On antitrust, we need to put our money where our mouth is. Enforcement needs to take place where we can make a difference. I would argue that to help meet the objectives of Europe 2020, we need to focus on those sectors which are key to the development of the Single Market.
- Energy, for example, is a sector where liberalisation has not yet delivered all the benefits to consumers that it might. Lack of competition in network industries – such as the energy sector - harms EU industry as a whole by driving up input costs, making it globally less competitive.
- Following on from the sector inquiry that we conducted, the Commission has brought a number of competition cases in the energy sector, and has achieved significant results. For instance, we have obtained remedies in several cases involving potential abuses of dominance in gas and electricity markets
- The remedies or commitments obtained address concrete competition concerns and will result in more competition and better functioning markets for gas and electricity in Europe. In turn this will encourage much-needed investment in the sector. Just last week the Commission made legally binding commitments by E.ON to effectively open up access to the German gas market.
- In addition to steady enforcement of the rules, what we must also do is ensure that our legal framework for competition is brought in line with market developments and is as clear and predictable as

possible. This is essential for the competitiveness of the EU economy and for consumer welfare.

- For instance, we have just renewed our regulation and guidelines on distribution – or what we call in our jargon vertical- agreements. This renewed legal framework and guidelines concern hundreds of thousands of distribution agreements in Europe. The updated rules and guidelines in particular take into account the development of sales over the Internet with the consumer's interest in mind. It is therefore important for the security and predictability of the business environment of firms.
- On horizontal agreements (that is agreements between competitors on R&D or specialisation agreements), we are carrying out a review of our rules and have just launched a public consultation on our proposed adapted guidelines. What is new in these guidelines is that we are proposing to give guidance on two new issues: 1) on information exchanges between competitors and 2) on standards. These information exchanges do not always create competition problems and we should explain when they do, and when they create efficiencies for example. Think for instance of pooling insurance data.
- This review will also address standards. Standards have become increasingly important in facilitating innovation in our knowledge based economy. Standardisation must take place in an open, transparent and non-discriminatory manner, as this is the basis for fostering innovation. We must therefore seek to deter anticompetitive conduct in connection with standard setting procedures such as patent ambush. This is why in our proposed

guidelines we attempt to clarify what is expected from standard setting organisations if their standardisation agreements are to comply with the competition rules.

- On cars, we will soon be replacing the regulation on their distribution in the EU. Our objective is to give carmakers more flexibility in the ways in which they distribute new cars, while making it easier for the Commission to enforce competition rules on the so-called "aftermarkets". These are the markets for car maintenance and spare parts, which are less competitive and need more intervention.

Collective redress

- In relation to our antitrust and cartel enforcement, let me say a few words about the antitrust damages actions.
- Let me recall that the vast majority of victims of competition law infringements in EU Member States does not receive any compensation for the harm suffered. Victims of antitrust infringements are foregoing up to EUR 20 billion of compensation per year due to obstacles they currently face under national rules governing actions for damages
- As you know the European Commission has been looking at this question and at ways to ensure that consumers – and businesses – are able to obtain proper redress for the harm they have suffered.
- The Commission's April 2008 White paper on antitrust damages actions started a wide and sometimes passionate debate in Europe, particularly on our suggestions regarding collective

redress. In these discussions it has been widely acknowledged, also by the European Parliament, that something needs to be done to improve the current situation.

- Vice-President Almunia has now announced that the European Commission is currently examining the wider framework for collective redress, covering for instance also consumer protection law in addition to competition law. The intention is to carry out a joint public consultation on these topics this autumn. The objective of the consultation is to identify common legal principles to both areas that should guide any future sector-specific legislation such as the one on damages actions.
- Our proposal, when it comes, will need to ensure that safeguards are put in place against the kind of abusive litigation culture that has developed in let me call it "other jurisdictions". The challenge is to design a solution that is, at the same time, effective in ensuring compensation for victims of competition law infringements and effective in providing such safeguards against abuses.
- Let me underline here that compensation is not the same as deterrence, although an effective compensation system can be part of improved deterrence against anti-competitive behaviour.

Let me now look at Mergers

- Looking into the future of merger policy requires some stock taking with past recent achievements. Much work has been done over the past years to ensure that our instruments are up to date. These

instruments reflect our current practice and are well rooted in economic thinking.

- This development started with the adoption of the recast merger regulation in 2004. It continued with a set of guidance tools with regard to our assessment of what cases fall within the scope of the merger regulation, of horizontal and non horizontal mergers, as well as of remedies. I therefore think we are well prepared for the future in this regard.
- The recent economic crisis was a good "water proof test" of our instruments. The financial instability and economic downturn at times required swift and flexible procedures in the scrutiny of mergers. This was to ensure financial stability in the short term while safeguarding the need for undistorted competition in the medium to long term. The Merger Regulation provided the necessary framework for this.
- Our consistent policy over time is reflected in our intervention rate (cases in which the Commission intervenes by seeking remedies for example) that has remained stable over time. The cases where we identified potential problems remained in the range of 6-8%. By contrast, the volume of the case load has been volatile, and we have seen a clear correlation between the number of cases and the economic cycle. The recent economic crisis is no exception. After a boom that culminated in 2007 we have seen a sharp decline from about 400 cases to only 250 cases in 2009.
- There can be no surprise that we are likely to see an increase in the number of cases as soon as the economy takes off again. We

do not yet have any clear signs yet to suggest that this process has started.

- One clear trend though is that cases are becoming increasingly complex, both at the stage of the assessment of the substance and at the stage of remedies where required. Industry consolidation is continuing and an increasing number of mergers involving technically complex industries are coming under our scrutiny. This is a trend that we expect to continue.
- To sum up, much work has been done and we will continue to consolidate these past achievements in our day-to-day enforcement activities. We will maintain the current approach of vigorous merger control to ensure that market structures remain competitive. Particular market characteristics and market conditions will remain important factors that we take into account in our substantive assessment, but they will not lead us to reconsider our current approach.

Due process

Let me close by saying a few words on a subject that is much debated at the moment, due process.

- An essential feature of all enforcement is a guarantee of due process and the rights of defence. I am convinced that we have a sound and robust enforcement system in Europe. Indeed, when the Commission decides to act, this decision is not only extensively reasoned and subject to the Courts' judicial review, it also comes after a process that fully involves the companies concerned.

- During this process, companies can defend themselves against the Commission's concerns: they have the right to be heard both orally and in writing; they have access to the Commission's file and their procedural rights are guarded by the Hearing Officers, who report directly to Vice-President Almunia and the College.

- At all times the Commission must act as an impartial and objective public authority, which it does. This is illustrated by the fact that cases are often amended after the parties have been heard on the Commission's concerns. Some cases are even dropped altogether.
- The Commission's decision-making process is aimed at ensuring such impartiality. Within DG Competition already, cases involving complex economic analysis gather officials of various profiles: case teams, policy coordinators and members of the Chief Economist Team, on top of the DG's management. Difficult cases are subject to a "peer review" panel and the Commission's Legal Service provides legal advice all along the process.
- Additional "safeguards" include a review by national competition experts sitting in the Advisory Committee, and a review by other Commission directorates.
- Moreover, at the end of this extensive process, Commission competition decisions are adopted not by DG Competition or Vice-President Almunia, but by the College of Commissioners – 27 appointed Commissioners from across Europe – who have sworn to be and are genuinely independent of national, political and business interests. And cases are not over by then. The Courts of course will hand down their final judgment, if there is an appeal.

- We should of course always look for improvements. The European Commission has recently been working on best practices, amongst others in the field of antitrust. Guidelines were put out to consultation earlier this year and immediately put in practice provisionally. Once definitively put in place, they will achieve increased transparency and predictability in our proceedings. Operating in a transparent and predictable manner is beneficial to businesses and to our working relationship with stakeholders more generally.
- This process was also conducted in the field of merger control a few years ago and allowed the Commission to achieve practical but important improvements to the process. I believe that the same can be done in the field of antitrust.
- Let me finally say that I am aware that much of what I have said may not sound new to the ear of seasoned practitioners which I am sure many of you are. But as Horace already said: "Bis repetita placent" or "the things that please are those that are asked for again and again" which is what I have tried to do this afternoon.