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Introduction

Good morning,

It is a pleasure for me to be here today and a privilege to open this conference with my colleague from the Korean Fair Trade Commission, Dongsoo Kim.

The Asia-Pacfic region is at the confluence of the world's fastest growing economies. It is home to some of the newest competition laws, as well as to competition agencies with an excellent record, such as the KFTC. The KFTC has undoubtedly contributed to the promotion of a solid competition culture in Korea and has therefore helped in the long-term development of the Korean economy.

Today, markets and businesses are increasingly global, not least because of the great leaps forward in terms of electronic communications. In this context, we note that the challenges that competition authorities face are increasingly the same, in your region and beyond.

In broad terms, all competition authorities currently work on a better detection of cartels and on tailor-made and deterrent sanctions; we all engage in a close scrutiny of dominant companies in order to avoid abuses and we all strive to set-up appropriate merger control mechanisms. There are of course differences and nuances in our systems since each enforcement system and case is based on the local legal traditions and market conditions. But I believe that these differences should not stop competition authorities from continuing to work towards common principles in the years to come. Most importantly, I think that we all ultimately share the same objectives in our enforcement actions across

jurisdictions, including a commitment to an effects-based approach put to the benefit of consumers.

Before we open the rich discussion panels planed for the day, allow me to share a few thoughts on some of the global competition issues that are relevant to all of us.

Setting-up an appropriate merger control

I would like to start with mergers, an area where we've probably seen less cases in the last two years, but where the cases that we dealt with were perhaps more complex – at least this was our experience in Europe.

Mergers and acquisitions are an inherent part of business life and they will continue to provide businesses with opportunities to recombine their assets and to generate synergies. Merger activity may trigger overall positive results for the economy in stimulating innovation or disseminating know-how. But of course, an appropriate merger control is essential in preserving an undistorted market, that leaves room for innovation and where efficiencies are passed-on to consumers.

I think that a common feature of today's competition authorities is that we do not oppose mergers for the mere sake of intervention. Our objective is not to interfere with the business plans of companies insofar as these plans do not harm consumers or stifle innovation. In addition, we do not only look at the potential harm of mergers. If companies require mergers and acquisitions to drive down costs, increase output and innovate, then we will look at these efficiencies as well – if they are claimed - and to the benefits they may bring to consumers.

In most merger cases, we try to find a remedy that deals with the risk to competition adequately but that allows the merger to proceed. In Europe, since the entering into force of the EU Merger Regulation, more than 9 out of 10 mergers have been approved without conditions. This is simply because we know that mergers can allow companies to develop in ways that would not be feasible on a stand-alone basis. However, we will continue to look closely at those mergers that may lead to further consolidation in already concentrated markets.

Our rules and assessments should also be kept up to date with the rise of new and innovative sectors in the economy. We have for example recently seen more merger activity in fast-growing and innovative high-tech industries. In light of the complexities of such sectors, competition authorities need to be able to perform a dynamic analysis of the markets. We need to look for suitable remedies to resolve the competition problems arising in these sectors as we have done for instance in the EU cases of *Intel/ McAfee*; *Cisco/ Tandberg* and so on. We have to continue to be vigilant and to ensure that high-tech mergers do not close-off competitors by raising fresh barriers to entry. Our remedies therefore need to preserve the incentives to innovate both for new entrants and incumbents.

By making reference to incumbents and remedies, let me now turn to enforcement in key sectors of the economy.

Rigorous enforcement in key sectors of the economy

In antitrust cases in key sectors of the economy, an important challenge for enforcers is to be able to intervene in a timely fashion, before it's too late. We do not for instance want that by the time our remedies are in place, the market

has already moved past the problems that we had identified. This is sometimes a challenge given the lifespan of an antitrust case.

Recent EU experience has shown us that commitment decisions can be a very effective way to achieve timely remedies in antitrust cases. And I think that we have numerous good examples of remedies that effectively open-up markets to competition.

For example, following our decision in the Microsoft browser case, computer users with the Microsoft Windows PC operating system are now shown a Choice Screen which gives them a choice between the most widely-used web browsers that run on Windows. They can therefore choose to download as many of the browsers as they like. Or they can choose to continue using Microsoft's web browser. In addition, computer manufacturers and users are able to turn Microsoft's web browser off and set other browsers as their default browser. And Microsoft is also prohibited from circumventing free and effective browser choice by any contractual, technical or other means.

We have more recent examples in our cases of 2010 in the energy market[1]. We adopted four decisions in this sector that made the commitments offered by incumbents in France, Germany, Italy, and Sweden legally binding. We accepted the commitments offered by the companies because we were satisfied that they would grant present and future competitors more effective access to their respective markets.

Another example was the reduction of the interbank fees for Visa debit cards. This was an important decision that will bring benefits to large numbers of card owners and businesses and that is worth between €10 and €20 billion a year.

[1] ***E.ON***, IP/10/494**;** ***EDF***, IP/10/290; ***ENI***, IP/10/1197; ***Svenska Kraftnät***, *IP/10/425*

Such cases show how we try to intervene as early as possible when we see that remedies can bring effective and lasting solutions.

However, when this is not possible and that the right commitments are not coming our way, our enforcement action has to remain vigorous and any breach of competition law sanctioned. Of course, some network industries, which are still dominated by former national incumbents in Europe, such as energy, telecoms, or transport, remain high on the Commission's agenda.

We also need to be vigilant in other important sectors for the economy, such as wholesale financial services, where we are taking a close look at pre-trade and post-trade information; or the ICT industry, where we are facing network effects conducive to extremely large market shares. In all these sectors, we need to make every effort to leave the door open for new competitive companies to enter the market and be able to challenge the established players on the merits.

On the specific topic of unilateral conduct, the various jurisdictions have different approaches. It is essential to understand that these differences are anchored in the specificities of each enforcement system, based on the legal traditions we each have.

Full convergence on unilateral conduct is therefore not an end in itself. In the EU for example, Article 102 has been an important instrument to achieve the internal market. There have traditionally been more monopolies and exclusive rights in the EU than in other jurisdictions, and the Commission's and EU Courts' approach has been more interventionist. We therefore have to value the diversity of historical, legal and political traditions in our jurisdictions. But good progress can be made in this area, for instance through the work carried out in

the ICN, as we have seen at the latest workshop hosted in Brussels on this topic last December. The KFTC is indeed an active member of this Network of competition authorities.

I would now like to say a few words about the work to fight cartels.

Establishing effective anti-cartel regimes

On cartels – there are no nuances. Competition authorities concur in considering them the most harmful type of competition law infringement.

In today's globalised economy, where cartels often go beyond our borders, it is also of the utmost importance that competition authorities around the world cooperate efficiently. For example, several cooperation agreements between the EU and other major jurisdictions around the world – such as Korea – are already in place and are working well. We have for example collaborated with the KFTC on a number of cartels, such as organising inspections in the *Marine Hose* case and collaborating on the timing of our investigative measures into the *LCD* cartel.

In terms of the Commission's policy on cartels going forward, Commissioner Almunia has announced our willingness to start more cases *ex-officio*. It is important to be particularly vigilant in those markets where experience and market intelligence tell us that cartel behaviour is likely. We have also developed our forensic IT tools considerably over the last years and they are being put to good use in our inspections.

On fines, the Commission's line ahead is also clear. We intend to continue to set them at a level that sanctions cartel behaviour and also induces corporate

deterrence (over €2.8 billion in 2010). Against the background of the economic crisis, the seven cartel decisions adopted in 2010 led to thirty two applications for a fine reduction on grounds of inability to pay, nine of which were granted after a thorough analysis of the financial situations of the applicants. As economic recovery picks up, we expect such instances to be increasingly exceptional.

The Commission has also introduced last year its new cartel settlement tool with three decisions to date (*DRAMs, Animal Feed Phosphates, Detergents*). Where parties acknowledge their participation in the cartel upfront, the Commission is able to conclude the investigation more quickly and to re-deploy resources on other priority cases. In our latest decision adopted a few weeks ago in the detergents case, we concluded our case in less than three years which is a good life span for such a case.

Of course, the introduction of this tool does not mean that we will be softer in our approach to cartels, on the contrary, it will allow us to use our resources to detect more cartels.

Conclusion

Ladies and Gentlemen,

I have tried to give you an overview of the issues that are keeping competition authorities busy across jurisdictions, against the backdrop of my experience at DG Competition. I look forward to listening to your views and to sharing more detailed reflections on issues as diverse as the criminalisation of cartels or the best use of economic evidence in antitrust cases during our next panel.

Thank you.