EUROPEAN COMMISSION

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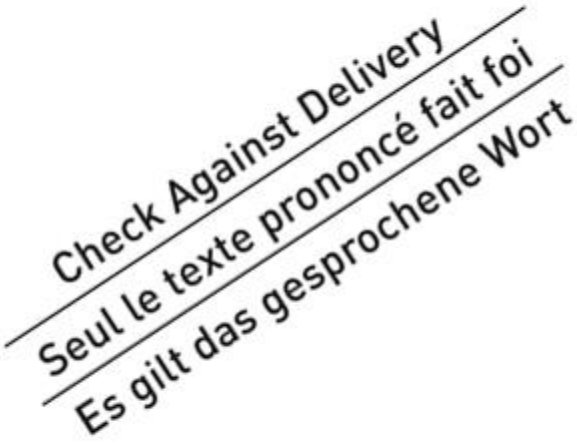
Closer together: The Case for International Cooperation



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Competition

A common history

I am happy to launch this evening's debate and I thank Nicolas Charbit for his kind invitation. Concurrences has chosen the 'Atlantic divide' on the enforcement of competition rules as this evening's theme.
This is an intriguing proposition, but are we sure it best describes how things stand on either side of the Atlantic as far as antitrust issues are concerned? I will, of course, confine my remarks to this.
Looking back before looking forward, though, there is certainly no history of fundamental divide on antitrust issues on the two sides of the Atlantic. Historically, I would rather use the image of a tree fork.
The roots of competition law can be found in Roman law, such as the Lex Julia de Annona of about 50 BC.
This legal tradition – which continued to evolve in Europe through the centuries – branched off when rules against unfair business practices were introduced in North America at the end of the 19th century and in Europe after World War II.
The two branches took somewhat different shapes, but both stemmed from the same trunk. Today, one difference, for example, is the US's judicial system compared to the EU's administrative system.
But perhaps the main difference lies in the broader context rather than in points of law or procedure.
US enforcers look at an integrated market in a federation that is almost 250 years old, whereas EU enforcers operate in a relatively young Union of sovereign countries that has given itself the task to establish a single market without simultaneously becoming a federal state.
There are still gaps at regional and city levels in the US economy, but barriers such as those to inter-state commerce began to be removed around the time the Sherman act was passed.
In contrast, the EU single market is still a work-in-progress and helping to build it is precisely one of the statutory goals of Europe's competition enforcers.
This goal is not at odds with the underlying principles of competition enforcement. In fact, the benefits of a large, well-oiled internal market overlap with the benefits of robust enforcement.
Both improve doing-business conditions and attract business; both make markets more efficient on all sides – that is, for firms and households; both give Europeans lower prices and wider choice.
In addition, a single market that encompasses the world's largest trading bloc levels the playing field between competition enforcers in the EU and today's corporate behemoths.
Margrethe Vestager, European Commissioner for Competition, made this same point in a speech last month – and I quote – "the companies we deal with every day are pretty big. But in Europe, we are more than 500 million people. So we're pretty big, too".

Evolution in the EU

The Treaty articles that form the basis for competition control in the EU have not changed over the past 60 years.
Earlier this year, we celebrated the anniversary of their coming into being with the Treaties of Rome. And we commemorated that their enforcement has evolved to keep pace with the times.
To cite just two examples, a landmark turn in this evolution was the Continental Can ruling the European Court of Justice took in 1973, regarded as the cradle of Europe's merger control. Another one was the shift from Regulation 17/62 to Regulation 1/2003, the cradle of the European Competition Network.

It is thanks to rulings and legislation like these and to the impartial and consistent enforcement of competition law that today European consumers can rely on a strong and nimble system. And I believe that this protection is more needed now than ever.
Sectors of the population – in Europe and elsewhere – feel they are disenfranchised and pushed to the margins of the economy and society.
Many people think the cards are stacked against them. There is a sense of unfairness, helplessness and mistrust.
These trends have vast ramifications, many beyond the reach of competition policy and enforcement. But within their proper remit, competition enforcers should do their part to address them.
People would be worse off as consumers and feel even more disenfranchised as citizens if they could not rely on public institutions that stood up for them.
In this respect, it is comforting to see the latest Eurobarometer survey that appeared in the summer. The European institutions' poll numbers are on the upswing.
Competition agencies are among the public institutions that the people, including law-abiding entrepreneurs, rely on to have their rights and interests defended.
It's in the DNA of competition agencies in Europe, the Americas, and around the world to make sure the game is not rigged; everyone has a fair chance; and no company takes illegal advantage of its power or business relations to milk consumers and crush rivals.
Our case practice in recent times and further back in the past attests to our determination to carry out these tasks seriously.

- By fighting horizontal cases, such as last year's cartel case involving truck manufacturers;
- By making sure that big corporate mergers do not eliminate incentives to innovation, such as this year's decision on the Dow/Dupont deal that was cleared with commitments;
- By ordering a dominant firm to cease an abusive practice, as in last June's Google shopping decision;
- By investigating and following up on vertical results that perpetuate barriers in the single market, like in our e-commerce sector inquiry.

These are just a few illustrations.

Cooperation

The branches of competition control that have grown on the two shores of the Atlantic have inherited their traits from their common trunk.
We have our differences. Market conditions on the two sides of the Atlantic are not always identical and there are abuses that we tackle under EU antitrust law that would not be tackled under US antitrust law, like excessive pricing by dominant companies.
But the overlap is far larger than these differences, and this is one reason why our agencies have a long tradition of dialogue and cooperation.
The Commission became more aware of the international side of its action in the wake of cases such as the IBM Personal Computers case of 1984.
Not coincidentally, the first formal agreement with an international sister agency was the EU/US Competition Cooperation Agreement signed in 1991.
EU and US competition agencies have since been a driving force for cooperation and convergence on a global level. Once again, I am convinced this is needed today more than ever.

Today's global markets call for commonly agreed rules on a global scale. Think of the Dow/Dupont merger I just mentioned. The deal was notified in as many as 24 jurisdictions.
In this environment, companies legitimately expect that competition rules in different jurisdictions are not incompatible and do not lead to conflicting outcomes. And – ideally – we should reach an even stronger consensus around enforcement priorities and legal and economic views.
When a cartel, the conduct of a company or a proposed merger harms competition across jurisdictions, competition enforcers can restore level market conditions in each if they play as a team.
The effectiveness of each enforcer is predicated on the strength of its cooperation with the others – and a lot is at stake on our effectiveness.
Failing to show to our respective constituents that we enforce the rules robustly and even-handedly, and that we take care of their interests, may reinforce their mistrust and sense of helplessness.
Quite simply, we must meet the demand that everyone gets a fair deal and continue to deepen our bilateral and multilateral cooperation.
We must expand and reinforce the international rules, procedures and institutions we have built over the years – which are the best venues where we can agree common enforcement standards.
Multilateral bodies are also crucial when, inevitably, we disagree on points of law, implementation or priorities. It's always better to meet on neutral ground when you need to iron out the occasional difference.
At this stage – when we see a lot of soul-searching about the benefits of bilateral action versus the benefits of multilateral action – I would like to be very clear: we all stand to lose by going weak on multilateral cooperation.
President Juncker's State of the European Union speech yesterday followed this line.
The President renewed the commitment towards multilateral approaches and institutions, including the proposal for a multilateral court to settle disputes between business investors and government authorities.
He also put on the table the issue of government interventions in the economy – including subsidies.
As the world's economies grow increasingly inter-dependent, the goal is harnessing globalisation so that its benefits are shared by all and not just a few.
President Juncker also noted that since last year "partners across the globe are lining up at our door to conclude trade agreements with us".
He mentioned the agreement with Canada, which is about to become operational, proposals to formally start negotiations with Australia and New Zealand, and the political agreement between the EU and Japan to do the same.
He was also optimistic about new economic partnerships with Mexico and South American countries.
The President also announced a new framework for the review of Foreign Direct Investments – and if some of you wondered whether this contradicts our commitment towards multilateral cooperation, let me pre-empt the question: it does not.
The goal of the framework is to make sure that takeovers do not raise security or other public-order concerns. Such frameworks exist in the US, as well as in Canada, Australia, Japan or China.
The Commission proposal is built on Member States' rules and provides a transparent and predictable mechanism that will ensure the respect of fundamental public-policy interests.
Crucially, this framework is set apart from merger control under competition rules, so that competitive and other public-policy concerns are not mixed up.
The EU remains open for business within a rules-based system.
The more we agree on such rules worldwide, the better we will be able to make sure that the benefits of globalisation are preserved and its rules integrated.

Close

It will be clear by now why I questioned the phrase 'Atlantic divide' at the start. I am convinced that rifts and gaps between US and EU competition authorities – or any two authorities, for that matter – are in nobody's interest.

EU and US enforcers need to renew their engagement in multilateral bodies and international institutions. They are vital to give international business the consistent rules it expects and to negotiate the differences that inevitably arise.

We must also continue to strengthen our relations into the future; bridge the gaps that opened in our past and in recent times; and defend the interests of our respective consumers. Andrew Finch, acting Assistant Attorney General, said as much in his remarkable speech earlier today at Fordham.

This is crucial, because the dangers of uneven and ineffective enforcement may spill well beyond competitive conditions in the markets – and more crucial still where the inequalities and divisions are worse.

And when we do come closer together, we will be reminded that we really are branches of the same tree. Affirming dialogue, mutual trust and cooperation across continents and oceans is vital in the inter-dependent world we live in.

The world we live in is not a zero-sum game, where my gain can only come at the expense of someone else's loss. If we grow closer together according to agreed rules, we all gain. If we grow asunder, we all lose.

Thank you.

Q&A

Question 1: Latest in multilateral cooperation, including strengthening cooperation within the ECN through the ECN+ project

The Commission has been active on both the bilateral and multilateral fronts.

1.1 Bilateral

The Commission has put in place quite a few formal bilateral agreements with other agencies since the 1990s. In different formats, we now have bilateral relations with over 30 jurisdictions.
Next to the US, we have dedicated competition agreements with Switzerland, Canada, Japan, and Korea.
Recently we have started to look at reinforcing these agreements to include, among other things, exchanges of information collected in the course of our respective investigations.
A second-generation agreement with Switzerland is already in effect. Negotiations with Canada are in their final stretch and those with Japan are about to start.
The agreement with Canada is proof that the difference between judicial and administrative systems is not a hurdle when two agencies see the benefits of deeper cooperation. When there's a will, there's a way – as the saying goes.
We have also signed Memorandums of Understanding with all BRICS countries; Brazil, the Russian Federation, India, China, and – since last year – South Africa.
In addition, competition chapters are included in broader Free Trade Agreements with 17 jurisdictions, and negotiations have started with a few more.

1.2 Multilateral

Moving on to multilateral links, let me remark that the Commission can draw on its experience with the European Competition Network, which includes all national competition agencies in the EU, plus the Commission itself.
In a sense, the network – established in 2004 – is the Commission's closest form of international cooperation.
As to the global enforcement community, the broadest forum is the International Competition Network – or ICN.
The ICN was created in 2001 after initial attempts by the World Trade Organisation to set up a multilateral forum for competition enforcers.
When the ICN was born, it had 14 members. Now it has over 130, skilfully led by current Chair Andreas Mundt. These figures alone show the need for a truly global venue for competition enforcers.
The Commission is also active in other international organisations such as the OECD and the UN Conference on Trade and Development.

The Commission's competition department, representing the EU, participates in the OECD Competition Committee focussed on best practices, country peer reviews, long-term projects and advocacy work towards non-OECD members.

If the members of the OECD are developed countries, UNCTAD promotes the integration of developing countries into the world economy – and I'm not sure where the spreading of a competition culture brings more benefits.

We participate in the yearly meetings of UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy.

2 Question 2: Most important goals in the cooperation with other authorities, such as China's competition authorities

Last June, Competition Commissioner Vestager and Mr He Lifeng, Chairman of China's National Development and Reform Commission, signed a Memorandum of Understanding to start a dialogue on China's Fair Competition Review and on subsidies and other government intervention in the economy.
It's the latest major development in international cooperation from Brussels.
The earliest formal links with China were established in 2004 when then-competition Commissioner Monti signed Terms of Reference for competition dialogue with the Ministry of Commerce (MOFCOM) on behalf of China.
Then, in 2012, came another Memorandum of Understanding with the National Development and Reform Commission (NDRC) and the State Administration for Industry and Commerce (SAIC).
DG Competition and MOFCOM signed a merger-review cooperation framework in October 2015, allowing both sides to share information and discuss timetables at key stages of investigations.
MOFCOM, NDRC and SAIC are China's three competition authorities.
Our dialogue with China encompasses all aspects of antitrust and merger enforcement, including procedural fairness.
The companies involved in a competition case expect fair process. In my opinion, this sort of reassurance is as important as the final outcome of an investigation. Indeed, substance and process go hand in hand.
This year's MoU is a welcome and promising development. I will describe it using Commissioner Vestager's own words. She said: "Decisions by one country to grant a subsidy to a company that operates globally may affect competition elsewhere. The European Commission is pleased to start a discussion with China on how to best handle state intervention in the economy".
DG Competition will seek to support the NDRC in the implementation of a Fair Competition Review System, which would effectively promote an “effective, transparent and non-discriminatory state aid control and fair competition review” and would contribute to “prevent public policies from distorting and restricting competition while maintaining fair market competition and promoting a unified market”.
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