"Latest developments of our competition policy"

Speech at the meeting of the Executive Committee of UNICE

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Introduction

- Thank you for invitation to exchange views on "latest developments of our competition policy". Always a pleasure to exchange with business community. This community is not only primarily concerned by the evolutions in our policy, but also at the forefront of the rapid changes that characterise the economy. This is why DG COMP always pays great attention to UNICE's contributions.

- The same way a company must constantly adapt to changes in the market to stay competitive, Commission confronted to rapid changes of its environment and must regularly *review* the features of its competition policy to warrant its *effectiveness* and *legitimacy*.

- In this respect, Commission faces a triple challenge. As *a* **regulatory body**, it must *adjust the substance of its policy and legislation to market trends*. As **custodian of the Treaty**, it must *preserve its capacity to enforce the rules* vis-à-vis those who are determined to cheat them. Finally, like any **public authority**, it must keep a critical look its functioning and *stand ready to undergo the radical procedural changes that may require a proper accomplishment of its mission*. A rapid analysis of our recent achievements and initiatives illustrate the coherence of our action along these three strands.

1. Adjust our policy to market trends, initiate change if necessary

- Overall objective: foster competitiveness. Create an environment favorable to economic activity and a level playing field in the EU. Need to bring the *substance of the rules more into line with the way markets currently operate* and *simplify* legislative framework to *lower compliance costs*. One shall not forget that companies are the primary source of growth and job creation. Let me quote some examples of recent achievements in this respect.

1.1. Adjust the substance of our sectoral legislation to market trends

- In the energy sector, political agreement found in November on *the new "acceleration Directive" for the liberalisation of electricity and gas sectors*. By aligning legislation on the new features of the energy markets, the Directive will eliminate the distortions of competition that resulted from the differing rhythms at which liberalisation was carried out in the Member States. Adoption last June of a *Regulation on cross-border electricity trade* also paves the way towards more competition in the sector, thus lower energy prices for businesses.

- Likewise, the *new postal Directive* adopted in June clears the way for more competition between operators on what will become a *genuine single market in postal services*. For its part, the *new regulatory framework for electronic communications networks and services*, adopted just one year ago (but its final piece of the framework - a Commission's Recommendation - was put just one week ago) assigns a more decisive role to analysis of competitive conditions with a view to rolling back "ex ante" regulation as far as possible. Again, this means lower prices and new opportunities for businesses.

1.2. Initiate change when required

- Neither must the Commission lose sight of its role as an *initiator of change*. Where markets do not function satisfactorily in the light of the Treaty objectives, we must instigate the necessary changes.

- Adoption last July of the *new exemption regulation for motor vehicle distribution:* concrete example of our determination to force the pace of change when it is a long time coming. It is high time we had a genuine single market in cars, for the benefit of consumers but also in the interests of the competitiveness of the industry. Old BE regulation was no longer appropriate: the market integration it was pursuing had not been achieved to the extent hoped for. We had to amend the rules in order to *give a fresh boost to market integration* while *allowing scope for business initiative* so that consumers can benefit from better prices, wider choice, more services and greater security.

- Same approach inspired our action in the *media sector*. Access to premium content in general, and more particularly the access to content for new media such as the Internet and UMTS networks, was causing problems in Europe. We tackled those problems. For example, in June an *agreement was reached with UEFA on the issue of the joint selling of television rights to Championship League matches*. UEFA undertook to sell the rights under an open, fair and non-discriminatory procedure for periods of not more than three years. Splitting up the rights into several lots will offer access to a larger number of players, including some of the new media.

1.3. Adjust the substantive rules contained in our instruments

- I have highlighted our endeavor to adjust the substance of our sectoral legislation. We must also strive to bring *the substantive rules of our own monitoring instruments* in line with ongoing developments.

- In the *antitrust field*, the Commission has undertaken over the last couple of years, a *systematic revision of the substantive rules applying to both horizontal and vertical agreements.* The objective of simplification and reduction of red tape has been sustained and achieved (New BER on verticals/Dec 99; Guidelines on vertical restraints/May 00; New BER on Specialisation agreements and R&D/ Nov 00; Guidelines on horizontal cooperation – Nov 00; ongoing revision of Technology Transfer BER). We have streamlined our legislation and based it on a

more economic approach, so that companies with no market power do not bear excessive compliance costs.

- In the *merger field*, after intensive discussion we presented the Council on 11 December with a proposal for a root-and-branch reform of Regulation 4064/89. We have proposed improvements to the substantive rules can be summed up under three main headings. The first aim of the changes is *to formulate more clearly the content of the test to be used*. We finally proposed that the market dominance test be kept, while spelling out some aspects more clearly: this test has proven perfectly capable of dealing with the complexity of today's transactions. The second aim is to *ensure that our reasoning is more transparent*. To that end, a draft notice on the appraisal of horizontal mergers has already been adopted by the Commission, and other notices will follow. The third objective is *to take greater account of the efficiencies that can result from mergers*. These should be taken into consideration in the analysis provided that they are of direct benefit to consumers, substantial, verifiable and directly linked to the transaction.

- In the *state aid field* progress was also made towards simplification and clarification of the rules. *The new multisectoral framework for large regional projects*, adopted in March last year, lays down clearer rules for assessing major investment projects and does away with the prior notification requirement for aid granted under an already approved scheme. *A new regulation on aid for employment*, adopted on 6 November, also facilitates Member State initiatives to promote job creation by eliminating the requirement to notify certain aid measures.

2. Strengthening the Commission's ability to detect and punish the most serious infringements

- But the Commission shall not only establish a competition framework. It must also be an *effective enforcer of the law* and be able to *detect and deter the most serious infringements of competition law*. The results achieved in 2002 show that the challenge has been taken up.

2.1. Another year illustrating our determination to fight cartels

- Following the resounding precedent set in 2001, 2002 was another exceptional year for prohibition decisions, particularly in cartel cases. Ten negative decisions taken, imposing *fines totaling more than one billion euros*. Reflects our effort to step up the fight against cartels. Crowned with success. Among the decisions taken last year, I can mention the fine of €124 million imposed in the *Austrian banks* case for operating a sophisticated cartel covering all banking products in that country. For setting up a cartel with its opposite number Christie's, the *auction house* Sotheby's was fined €20 million, while Christie's was granted immunity for having spontaneously reported the behavior to the Commission. In the *plasterboard* case, we fined the main European producers a total of €478 million for having engaged in a long-standing cartel in this mass-market product. As far as vertical restraints are concerned, we fined *Nintendo* and its distributors a total of €168 million for seriously hindering parallel trade in game consoles and video games to the detriment of consumers.

2.2. New investigation tools

- Over and above individual cases, major advances were achieved on the detection and investigation front. Let me take two examples.

- The adoption on 13 February 2002 of a *new Leniency notice* considerably strengthens our ability to detect and punish cartels. A firm can now immediately obtain conditional immunity from fines if it is the first to provide us with decisive information on the existence of a cartel. This new policy is already yielding substantial results, and the rate at which we issue decisions in the cartel field will probably be stepped up in the years ahead.

- Thanks to the new antitrust Regulation (I will get back to this), the Commission now also has wider investigation powers. When circumstances require, it will henceforth be possible to *carry out searches at the homes of individuals implicated in a cartel*. Our inspectors will also be able *to take statements during inspections and place seals* on certain premises as a precautionary measure. This upgrading of our powers to the scale of the challenge facing us should make our action even more effective, even though last year already witnessed an unprecedented number of inspections on businesses.

3. Adapt our procedures to the requirements of a modern regulation.

- Commission would not do its job if it did not stand ready *to question its own practice* and *radically modify the way it works when the changes of its environment so require*. This capacity of adaptation is fully reflected by the *radical overhaul of antitrust* that has just been carried out and *the ongoing review of the merger Regulation*.

3.1 Regulation 1/2003: an unprecedented overhaul of antitrust enforcement procedures

- Adoption by the Council on 16 December last, by a unanimous vote, of the new regulation 1/2003 laying down the framework for applying Articles 81 and 82: probably *one of the best and far-reaching examples of our determination to adapt ourselves to the change of times*. With the ever-increasing integration of the European market, and in view of the enlargement, enforcement of EC competition rules had to be further decentralised, without being re-nationalised.

- The maturity acquired by businesses and national authorities and courts made it not only desirable but also feasible. Such decentralization will lead not to a relaxation of compliance but on the contrary to tighter enforcement. The Commission, the national authorities and the national courts will join forces in applying *a single body of rules throughout Europe*. Decision-making will be brought closer to the market players and individuals, and a common competition culture will disseminate.

- Businesses will no longer have to comply with possibly sixteen different legal systems. A level playing field will be guaranteed, thereby significantly reducing

compliance costs. All actors concerned will be made more responsible. *Companies,* who will have to assume their new freedom by assessing their own conduct under competition rules (abolition of notification system), *national authorities and Courts*, who will apply the full extent of the law, and of course *the Commission*, who will be vested with the mission to ensure coherence and to swiftly detect and punish the most damaging infringements.

3.2. Complying with the most stringent standards of due process in merger control.

- As regards *mergers*, the calibre of our substantive rules would count for little if we were unable to apply them in a decision-making process that satisfies *the most stringent standards of due process and transparency*. While we have to be firm in protecting the interests of consumers, the *legitimate initiatives of economic operators should not be hindered by hasty or faulty enforcement*. Hence the considerable importance we attach to respect for due process, without which there can be no legitimate decision-making.

- In December we proposed a raft of measures aimed at *guaranteeing more effectively the right of businesses to be heard during the procedure*. We first proposed that the deadlines laid down in the regulation be made more flexible, as regards both the timing of notifications and consideration of the appropriate remedies.

- We also announced a thorough overhaul of our in-house procedures in order to give even greater meaning to the concept of due process, among other things through *early, systematic access for all the parties concerned to the documents in the file and information on the stage reached in our analysis*. We are also considering developing *checks and balances* by further strengthening the role of the hearing officers, the status of interested third parties and consumers and the role of the Advisory Committee.

- Finally, we must strive relentlessly to improve the quality of the investigation and DG COMP's economic expertise. The decision by Commissioner Monti to appoint a chief economist bears witness to this quest for excellence.

3.3 A continuing dialogue with our international partners

- But these efforts would be in vain if we lost sight of the fact that globalization makes it essential for us to discuss competition issues with our trading partners. Our efforts will bear fruit only if similar action is taken in other countries. That is why we have always endeavored to develop international cooperation, at both bilateral and multilateral level. Here too, last year saw a good deal of progress.

- With a view to preparing for enlargement, efforts by the candidate countries to implement the *acquis communautaire*, particularly in the state aid field, continued, and this enabled negotiations with the Czech Republic, Hungary, Malta, Poland and Slovakia to be rounded off before the end of the year.

- As far as bilateral cooperation is concerned, clear headway was made towards the *conclusion of a cooperation agreement with Japan*, with the adoption of a proposal for a Council decision to that effect. I would also like to mention the *Best practices on cooperation in merger investigations*, agreed last October between the Commission and the US agencies, which further enhance cooperation in merger review, thus promoting coherence and reducing burdens on merging parties.

- Finally, at multilateral level, work is progressing satisfactorily. The inaugural conference of the International Competition Network was held in Naples in September, and the WTO working group on trade and competition continued its discussions at meetings where we put forward highly concrete proposals.

Conclusion

As you can see, modernising our competition policy is our ambitious and permanent programme. It is not only aimed at the protection the consumers but at the maintenance of a high degree of competitiveness in the EU market, bot the benefit of all the business community. I think I have also made clear that in our pursuance of these objectives we bear in mind the necessity to reduce as much as possible compliance costs. Because we are well aware that there is no competition without competitive businesses.

Thank you for your attention.