



**EUROPEAN COMMISSION**

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## **Leveraging the power of the single market**

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

Keynote at the “Antitrust between EU law and national law” Conference  
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*Autorità,  
Signore e signori,*

*Vorrei ringraziare innanzitutto Adriano Raffaelli per il graditissimo invito. È un grande onore per me aprire i lavori di questa conferenza assieme al mio stimato collega Giovanni Pitruzzella.*

*Devo aggiungere in tutta onestà che è anche un grande piacere essere stato invitato a Treviso; non solo perché è una città che non conoscevo e che mi ha veramente stregato; ma anche perché mi offre l'opportunità di avere uno scambio di idee con un pubblico di esperti di grande levatura. Oggi più che mai abbiamo bisogno di un dialogo franco e aperto.*

And this, unfortunately, is as far my Italian can take me.

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The programme of this important conference will look at a significant number of issues in quite some detail. So please allow me, for these introductory remarks, to take a step back from the detail and take a broader brush.

I want to talk about context, the context in which competition policy is evolving today; about cooperation, the cooperation that we need so that competition policy and enforcement is effective; and about coherence, the coherence that inserts the individual cases that we work on into a broader agenda that gives them relevance and usefulness.

So I will talk about cases – this is after all what our work is about – but more to illustrate my points than to describe them in minute detail.

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The enforcement of the European Union's competition law – at European and national level – is not always mentioned when the development of the EU is debated in the public. What is news are individual cases that are discussed controversially by the interests affected. Yet, most observers and commentators familiar with our work would agree that it is a success story of European integration – an indispensable pillar of the building of the European house, six decades on.

## **1 The Single Market: Economic prosperity, economic peace, six decades on**

The EU's competition authorities promote an open, level and integrated Single Market, which is perhaps the EU's most valuable asset. They do so under the rule of law, with legal objectivity and rigorous analysis of economics and facts.

The Single Market has contributed to our Union's prosperity in a significant way. But, beyond the economic sphere, its governance to which competition law belongs has also brought what I would call 'economic peace' to the continent; promoting mutual understanding, the

development of common policies and shared goals. It has replaced the impositions of power with the rule of law beyond borders.

And the Single Market continues to be a factor in the EU's economic performance, which according to the latest figures has been beating expectations.

Earlier this month, the European Commission released its Spring Forecast. Economic expansion across the EU hit 2.4% in 2017 – the highest growth rate in ten years – and overall unemployment levels are back to around pre-crisis levels.

However, other parts of the Forecast are less encouraging. Especially when it highlights the increased risks due to volatility in financial markets and the danger posed by trade protectionism.

So we are looking at mixed perspectives.

On the one hand, the encouraging figures show that the measures jointly agreed and taken by all EU Member States over the past ten years have managed to tackle the unprecedented crisis we have had to face.

On the other hand, the risks looming at the horizon and the uncertain geopolitical outlook are a call for all EU Member States to close ranks and keep making progress along the reform path – together.

Reforms in the EU produce the best results when they are taken in coordination. The overall strategy put forward by the European Commission for the current mandate provides a framework that is both consistent across the Union and adaptable to specificities in the Member States. The strategy includes ten objectives, among which I would like to single out three:

- Taking the Single Market online, which is the core of the Digital Single Market approach;
- Building a genuine Energy Union, and make the economy and society more sustainable in the process; and
- A deeper and fairer internal market for all.

I will try to show how the action of our Union's competition enforcers can bring these goals closer, but let me make a more general point first.

European citizens can count on a world-class competition-control system. The EU's competition enforcers defend the interests of consumers against economic operators who do not play by the book, i.e. who do not compete on the merits.

This in turn also defends law-abiding entrepreneurs. So that everyone has a fair chance to do business in the Single Market and succeed for the welfare of consumers.

This is our mandate, derived straight from EU primary law that has proven both its relevance and its resilience throughout the over six decades since it was enshrined in the Treaties of Rome.

It is a mandate that works for all, rather than for the lucky or the privileged or the better-connected few.

This is public service that must be held to the highest standards. We at DG Competition in the European Commission have been fortunate to carry it out under strong and inspired leaders such as Commissioner Margrethe Vestager today and – in years past – Senator Mario Monti, just to mention in his own homeland an Italian who has done so much for competition control in the EU. Crucially, we carry it out under the unlimited jurisdiction of the Union courts who hold us to account whenever we may fall short of these standards.

## **2 The European Competition Network and the ECN plus proposal**

To fulfil this mandate, the European Commission and national competition authorities work together in the European Competition Network – or ECN. The strength of the ECN lies in mutual trust, good cooperation and cross-fertilisation – as relations between the Commission and the *Autorità Garante* over the years and especially in present days testify abundantly. When we observe market practices across the EU that can have a direct impact on consumers, the cooperation between the Commission and the national competition authorities ensures the broadest and deepest protection of European consumers and markets.

The ECN is the place where the Commission and national authorities coordinate their approach to enforce competition rules.

Take the pharmaceutical sector, where in recent years one can observe sudden price increases for certain off-patent medicines in a number of markets.

Such practices have led to various enforcement actions across Europe, including in the Aspen Pharma case, which is a good example of how, depending on the specific features of each case, we can find effective ways to work in a joined-up fashion.

In 2016 the *Autorità Garante* imposed a €5 million fine on Aspen Pharma for increasing the price of certain cancer medicines in Italy by up to 1,500%.

Recently, the Commission started formal proceedings on the same company's practices to see whether they may also raise competition concerns in other countries in the European Economic Area.

Let me stress that – as for all companies involved in our formal investigations – the presumption of innocence principle applies for the Commission's investigation until it is concluded.

The ECN is maybe the EU's most advanced regulatory network and in general it works very well. But we can do even better. In fact, we must do even better.

It is essential that every authority in the network is independent from political or other interference, well equipped and resourced, and effective in the enforcement of the rules. In March last year the Commission proposed a Directive that pursued three main goals:

- Strengthening the independence of national authorities;
- Guaranteeing they have enough resources; and
- Filling gaps in their enforcement toolbox and our seamless cooperation.

The Directive is advancing well in the legislative process and the feedback from both the Council and the European Parliament is good.

We can realistically hope that it will be adopted during this mandate. And when its standards are operational across the EU, we will have an even more effective system to enforce competition rules for all Union citizens – none excluded.

### **3 The case and urgency of international cooperation in a global economy**

You may have noticed that I called the ECN a 'regulatory network'.

To be fully effective vis-à-vis global markets, such a network needs to be itself inserted into a global dimension.

How can we, in Europe, not defend the ultimate goal of international cooperation – that is, a level playing field that spans the world?

Europeans know well the benefits of an internal market with clear, well implemented rules – as opposed to mere laissez-faire approaches. It is only by harnessing globalisation that we can reap its benefits for all.

This is why we are active participants in several multilateral fora devoted to competition matters, such as those of the Competition Committee of the OECD, the United Nation's UNCTAD, or work with the World Bank.

We are also members of the International Competition Network, which deserves special mention here for being the home of over a hundred competition authorities around the world, the place where consensus is forged about convergence for best practices world-wide.

In addition, we have bilateral links with many partner countries and jurisdictions and we are actively seeking to expand them.

It is precisely because of the geopolitical volatility that I just mentioned that now seems to be a good time to do that. There is an urgency to preserve and strengthen international co-operation. I can touch it first-hand every time I travel overseas. It finds its expression in the presence here today of so many participants from non-EU jurisdictions. In particular, from the USA.

Competition authorities are natural and credible advocates of open and well-regulated markets and respond in this way to the recent rise of economic nationalism and protectionism.

Not to speak of the fact that there is no efficient application of competition law in – say – mergers affecting multiple jurisdictions without effective international coordination.

## 4 Strategic priorities and competition policy and enforcement

I mentioned earlier three strategic priorities set out by the current Commission: the Digital Single Market, the Energy Union, and the efforts towards a deeper and fairer Single Market.

Let me quickly show how the enforcement of EU competition law dovetails with these broad objectives starting with the Digital Single Market strategy.

### 4.1 Digital Single Market

There are many features that competition enforcers should keep an eye on as they work to keep the digital Single Market as level and fair as the analogue, brick-and-mortar version.

To name but three: fast technological innovation, the capacity to partition markets including through geo-blocking, and network effects – the latter being associated with high switching costs and the propensity for dominance that we can observe in certain markets.

In the new scenario determined by such features, the enforcement of EU competition rules has proven to be robust and flexible: while the basic principles remain constant, the tools can adapt to the circumstances of each case.

Two notable recent examples of this "principled adaptability" – as it were – are the decision the Commission took in January 2018 against Qualcomm for abuse of dominance in the market for LTE baseband chipsets and the Google Search / Shopping Comparison Services decision of June last year.

The Qualcomm decision is, among other things, noteworthy because it is the first abuse of dominance decision taken by the Commission after the European Court of Justice's important judgement in the "Intel" case, which clarified the approach to exclusivity rebates by dominant companies and their analysis under EU competition law. The decision is an early illustration on how the Commission follows the Court's guidance. The Google decision is noteworthy as an example of how the Commission's analysis keeps pace with fast-moving technology and markets. We analysed over 5.2 TB of data, namely 1.7 billion real-life search requests.

Further back in time, I would also mention the Hutchison/Wind joint venture. This 2016 decision opened the way for Iliad to become one of Italy's mobile operators. The company has just announced its commercial launch in the coming weeks.

This case is a good example on how to allow businesses to consolidate whilst keeping competitive constraints in a Single Market logic.

It is also a good example of fruitful cooperation between the Commission and the *Autorità Garante*, where both authorities worked together very effectively while respecting each other's sphere of competence.

The ability of our tools to respond to digital markets is a result of our efforts to understand the reality of digital markets as accurately as we can.

This is why in 2015, the Commission launched a sector inquiry in the e-commerce sector, which – not coincidentally – is also one of the strands of the Commission's Digital Single Market strategy.

We published the final results almost exactly a year ago and have since launched follow-on antitrust cases in consumer electronics, video games, hotel accommodation and distribution agreements.

## 4.2 Energy Union

Moving on to EU energy markets, our current assessment identified a number of issues that may slow down progress towards a genuine Energy Union and that can be addressed through competition law. These include national markets that are not open enough to competition and levels of cross-border competition that are still too limited.

The energy mix is changing, with growing quotas of renewable sources of energy. This positive development is due in part to government support for renewable generation. However, increasing shares of intermittent renewables also pose new challenges for electricity grid management, which the relevant bodies have to deal with.

In such circumstances several EU countries decided to introduce so-called capacity mechanisms to make sure that the lights stay on at all times.

However, if these schemes are not designed well they may hinder competition and electricity flows across EU borders.

While the solution to many of these issues has a regulatory side, our action can help drive energy markets in the right direction

The Commission launched a sector inquiry also in this sector, specifically to get better information on the use of capacity mechanisms: in fact, that was the first State aid sector inquiry ever.

Since its conclusion in 2016, we have been looking into many such schemes across the EU on the basis of a consistent set of criteria and last February we approved the schemes set up in six countries under our State aid rules, making sure that their design allows for ensuring security of supply at the lowest possible cost and with limited competition distortions.

We are also looking into the support of renewables across the Union. The good news here is that our Energy and Environment State aid guidelines work. The cost of this support is falling thanks in part to tenders and market-integration obligation required under State aid rules.

In addition, a number of antitrust investigations try to make sure that no barriers hinder energy flows in the internal market.

Let me mention the case involving Gazprom of Russia, where the Commission has now adopted a decision imposing on Gazprom a set of obligations that address the Commission's competition concerns and



enable the free flow of gas at competitive prices in Central and Eastern European gas markets.

Gazprom is the dominant gas supplier in a number of Central and Eastern European countries. In April 2015, the Commission sent a Statement of Objections to Gazprom. It set out the Commission's preliminary view that the company breached EU antitrust rules by pursuing an overall strategy to partition gas markets along national borders in eight Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). This strategy may have enabled Gazprom to charge higher gas prices in five of these Member States (Bulgaria, Estonia, Latvia, Lithuania and Poland).

The Commission decision puts an end to this behaviour by Gazprom and imposes on the company a detailed set of rules that will significantly change the way it operates in Central and Eastern European gas markets. In particular, Gazprom must:

- remove any restrictions placed on customers to re-sell gas cross-border;
- facilitate gas flows to and from isolated markets (i.e. the Baltic States and Bulgaria);
- abide by structured process to ensure competitive gas prices; and
- not act on any advantages concerning gas infrastructure, which it may have obtained from customers by having leveraged its market position in gas supply.

Combined, these obligations address the Commission's competition concerns.

Recently, the Commission also opened a case against German grid operator TenneT for severe reduction of interconnection capacity for electricity at the Danish-German border and launched a market test for commitments to solve the issue.

## **5 A deeper and fairer Single Market**

Finally, two concrete examples of how our action helps make the Single Market deeper and fairer.

At the end of the day, this rationale is of course embedded to a point in every decision taken by the Commission and the national competition authorities under EU competition law.

But this couple of cases is, I think, particularly illustrative of how the rules we enforce help to keep the internal market working as intended.

First, in November last year, we set out our initial concerns that AB InBev may have broken EU competition rules by hindering cheaper sales of some of its Belgian beers into Belgium from the Netherlands.

To this end, AB InBev appears to have limited the quantities of certain products sold to Dutch retailers and restricted the availability of certain promotions if there was a chance that the Dutch retailers could sell the products into Belgium.



The case is ongoing and – once again – conclusions can only be drawn once the procedure is finalised.

Second, you may be aware that credit card payment cases have been accompanying us for quite a while now. Our actions in this field are also prime examples of how competition enforcement can contribute to and complement the development of sound and solid regulation.

Since June 2016, all elements of the so-called Interchange Fee Regulation became fully applicable. These new rules make the costs of payments with debit or credit cards issued in the European Economic Area more transparent to retailers and consumers and allow them to make efficient choices.

In the past, the fees charged by the banks for these card payments were largely kept in the dark even though the costs were ultimately paid by consumers. The Interchange Fee Regulation capped these fees, thus lowering costs to the benefit of millions of European consumers and retailers.

Our investigations into Visa's and MasterCard's multilateral interchange fees laid the foundations for these rules, which are now expected to reduce hidden fees on card payments by up to €6 billion annually.

But as the previous investigations and the Regulation only cover interchange fees within the EEA, we still have to make a final judgment on whether conduct involving cards issued in other parts of the world and used in Europe – the so-called inter-regional interchange fees – lead to similar anti-competitive results.

That is why we are still continuing our investigations into MasterCard's and Visa's inter-regional multilateral interchange fees which are not capped by the regulation. We are striving to complete our action in this field as soon as possible.

You will discuss many other current topics in this ambitious conference. So I should close now.

## **6 Tribute to President Giovanni Pitruzzella**

But before I leave the floor to President Pitruzzella, let me stress once again the excellent cooperation between our agencies that goes back many years and is as strong and thriving as it can possibly be.

I had many opportunities to personally appreciate Giovanni's outstanding work and that of his staff since I took office.

We really appreciated the efforts of the *Autorità Garante* under his leadership for the transposition of the Damages Directive with the adoption of the implementing legislative act in January 2017.

I would also recall the support the *Autorità Garante* gave to the ECN plus proposal, especially during the fact-finding exercise that helped us shape mutual-assistance rules.

And I would like to commend the advocacy work done since Giovanni took office, especially in the context of the adoption of the first Italian Annual Market and Competition Law in 2017.

I know Giovanni followed closely the developments for years and has intervened everywhere in Italy to promote competition.

The *Autorità Garante* is among the most active members of the ECN and we are confident that Giovanni's successor will continue this tradition, together with Board members Gabriella Muscolo and Michele Ainis and the staff under Secretary-General Roberto Chieppa.

Since 2004, your authority consulted the Commission on 154 cases where EU antitrust rules were applied.

We have fond memories of one of them in particular; a case involving ice-cream that you shared with us last summer. You wanted to make sure that foodies would still enjoy the famous La Bomba popsicles, which a dominant firm was trying to push out.

We read about this case's market definition as Brussels was sweltering under a heat wave. I cannot rule out that our support was influenced – a little bit – by our longing for *ghiaccioli* that day.

Thank you very much, Giovanni. My very best wishes for your next position, from where you will continue to serve the European project.

In the still-dominant working language of the European Union's courts:

*"Ce n'est qu'un au revoir!"*

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And to all of you present here today, thank you for your attention and for your commitment to keep EU competition policy and enforcement excellent in practice and scholarship.

*Vi ringrazio per l'attenzione e vi auguro un proficuo dibattito.*