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Competition DG

“Competition Policy and the Challenges of Enlargement”

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“Competition Policy: Convergence and Economic Integration”**

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* The views expressed in this speech, are those of the author and do not necessarily represent the views of the European Commission.

Mr. Chairman, Ladies and Gentlemen,

I would like first to thank the organizers, the International Bar Association for their invitation and for the organization of this Conference in Istanbul on “Competition Policy, Convergence and Economic Integration” at a very appropriate time.

As most of you probably know, in the European Commission, we are working hard on two issues which are at the centre of this Conference:

1. The development of international cooperation between competition authorities, both on a bilateral and on a multilateral basis. As for multilateral cooperation, we support the introduction of a competition chapter at the next WTO round and we also support the creation of a Global Competition Forum, which will be discussed this afternoon;
2. The development of an efficient competition policy, based on the rules of the European Union, in the 12 countries candidate for the membership of the EU with which the negotiations have started, but also for Turkey. This morning, I will focus on this second topic, competition policy in the candidate countries and in Turkey.

I would like to underline first that the European Commission is expected to assess in the second half of 2001 and for each of the 12 candidates, whether the conditions are met that could allow for the provisional closure of the competition chapter of the negotiations.

As for Turkey, the competition related provisions of the EU-Turkey Customs Union are steadily gaining in importance. After the Helsinki Summit in December 1999, the Directorate General for Competition has further intensified its contacts with the Turkish authorities by proposing rules that would help to implement the disciplines establish for the Customs Union. The perspective of joining the European Union has further increased the interest for the Turkish society to align its competition rules to those of the EU. May I add that in the present difficult economic situation in Turkey, the efforts towards more competition are certainly more useful than ever.

I will now start by stressing the importance of competition policy in the enlargement process, and in the EU-Turkey Customs Union, before describing the situation – as we assess it in Brussels today – and the prospects of the countries concerned.

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The importance of competition policy in the enlargement process

- Enlargement raises many very important issues: Economic-convergence, mobility of workers, redefinition of common policies, budget, institutions etc. But the issue of competition policy must also not be underestimated.
- The EU has consistently taken the view that the candidate countries can be considered to be ready for accession only if their companies and public authorities have become accustomed to a competition discipline similar to that of the Community well before the date of accession. This is, of course, necessary to ensure that the economic actors in the candidate countries will be able to withstand the competitive pressures of the internal market resulting from the full and direct application of the competition *acquis* upon accession. It is also essential to maintain the competition discipline on the internal market after accession.
- This leads me to a general remark on the role of competition policy. Effective competition enforcement is, of course, an essential part of a functioning market economy, and it clearly plays a central role in keeping our internal market healthy. As we have experienced within the European Union, businesses have learnt to respect the rules and consumers are increasingly aware of its benefits. For the successful integration in the Union, the Candidate Countries need such a competition culture too. This is particularly important as awareness of the important role of competition policy also leads to enhanced enforcement of the rules. In this respect, business associations and chambers of commerce have a crucial role to play in helping to spread the message, both on the general importance of competition policy and on its more detailed rules. I am grateful to IBA which has been playing an active role in these countries.
- Along with the public enforcement by the competition authorities, companies and private individuals can do a lot to help to enforce the rules by bringing forward

competition cases before Courts and complaints before the competition authorities. I hope this type of private enforcement could also increasingly happen in the candidate Countries, thus helping to ensure healthy competition in the markets and, thereby, complete the transition of the applicant countries to well functioning market economies.

Competition policy and the EU-Turkey Customs Union

- Everybody in this room is aware that a Customs Union in which you still use anti-dumping and countervailing measures cannot be regarded as complete. On the other hand, a single customs territory without any internal duties can only be maintained if the “rules of the game” – and these are largely competition rules – create and ensure a level playing field for all economic operators. This importance is explicitly recognised in Article 44 of the Customs Union Decision according to which the use of trade defence measures could be suspended in view of the implementation of competition, including State aid control and other relevant parts of the *acquis communautaire*.
- This is worthwhile to note: whilst the full alignment of the Turkish competition policy is required in the context of preparation for the accession process, the benefits of progress in the field of competition policy could be harvested earlier in the form of completing the Customs Union.

The elements of the assessment before enlargement and in Turkey

- As you know, three elements must be in place before an alignment with competition policy *acquis* is fully achieved: (1) the necessary legislative framework with respect to antitrust and State aid; (2) an adequate administrative capacity; and (3) a credible enforcement record of the *acquis* in all areas of European competition policy.
- These three conditions will be assessed by the European Commission during the accession process, in particular the enforcement record. We are, for instance, taking a detailed look at the cases that have been dealt with by the competition authorities of candidate Countries, both in the State aid and antitrust area. This will

enable us to assess the degree to which the competition discipline has actually already been enforced in a particular Candidate Country. In DG Competition, we have therefore set up a special Task Force to co-ordinate this assessment work, in particular for State aids.

- Of course, these requirements are not new for the candidate Countries where the analytical assessment of their competition policy has already started. It will not be different once a detailed look will be taken at the Turkish situation. Indeed, in the area of competition policy, the Europe Agreements have provided us with a solid legal basis in preparation for accession. The Customs Union Decision under the Association Agreement with Turkey can be qualified as being even more developed.
- I should also point out that the Commission has made special efforts to help the candidate Countries in meeting these requirements. In addition to the daily technical assistance to the competition offices of the candidate Countries, we also organise intensive joint training sessions in antitrust and State aid, as well as annual conferences between the Commission and the competition offices of the candidates to help them prepare for the moment of accession. Our friends from the *Rekabet Kurumu* have already participated in some of these activities. Actually, in the month of June, the Competition Directorate-General will organise an important Conference in Lubljana with the heads of all competition authorities of the candidate Countries. Commissioner Mario Monti, responsible for Competition in the European Commission, will open this meeting that will serve to exchange our experiences with and among the candidate Countries. We are delighted to notice that Turkey has accepted our invitation.

Track record of the candidate Countries

- Let me now turn towards the actual track record of the candidate Countries. Two issues stand out clearly. Firstly, the difference between the State aid and anti-trust fields. Whereas most candidate Countries already have a functioning anti-trust regime, the putting in place of a proper State aid discipline is often more recent. In most candidate Countries, the State aid framework is still in need of fine-tuning.

- In this manner, candidate Countries have made continuous good progress over many years, in particular in the field of antitrust. As regards enforcement, many of them have already a record as regards the number of cases. The Turkish Competition Authority has equally proven to reach a high standard of professionalism since the beginning of its operation in 1997. It is now essential to ensure that the authority of the *Rekabet Kurumu* is extended to all public enterprises and enterprises with special rights.
- In the State aid area, progress has long been lacking, but the last year has brought some clear improvements: most of the candidate Countries have now put a legal framework in place, which covers the basic principles of EC State aid rules. Several countries have also aligned important aid schemes, finalised a regional aid map, and an enforcement record is beginning to emerge.
- In this – I admit - difficult area, experience has shown that, together with the legal framework, the major challenge is the setting up of a national State Aid Monitoring Authority. The creation of such an Authority allows to start a virtuous cycle inside the respective Candidate Country. We are pleased to note that the Turkish Government is now looking seriously into the possibility of establishing such an Authority in the near future and we have therefore offered our assistance to promote the process. The benefits stemming from the operation of such an authority in Turkey would be considerable for the Turkish society and the competitiveness of Turkish enterprises. Early progress here is clearly in the interest of the Turkish public, citizens and consumers, on its own merits - and for the completion of the Customs Union.
- Of the three criteria I mentioned earlier: legislation, administrative capacity, enforcement, it is clearly the enforcement record which is the final and most important step. Via the enforcement record, we are also able to assess whether the legislation and administrative capacity of candidate Countries are really adequate in order to maintain competition discipline in line with European practice.
- The actual enforcement of the State aid disciplines is not satisfactory. And in this context, I think it is important to also send a clear message to the representatives from industry. We are looking with great care into the investment incentive schemes of the candidate Countries. Candidate countries are already at this stage -

under the Europe Agreements - bound to apply the Community State aid rules. It is only if those rules are correctly applied that Candidate Countries and investors will be able to avoid the legal and economic uncertainty that goes hand in hand with incompatible aid awards. The EC-Turkey Customs Union Decision incorporates the same substantive obligations in this area.

- Since this is a very important subject, please allow me to go somewhat into detail. We are not saying that the candidate countries cannot grant any investment incentives or even State aid. It is essential, however, that State aid is explicitly recognised as such, and that proper attention is paid to the compatibility of the aid with the rules of the *acquis communautaire*.
- In many cases, investment incentives in the candidate countries are granted as tax breaks. I think it is useful to briefly recall the main elements that need to be taken into account when assessing the compatibility of those fiscal aid incentives. First, it is essential to make the distinction between State aid and general fiscal measures as clarified in the Commission Notice on the application of the State aid rules to measures relating to direct business taxation. In most instances, tax incentives granted by the Candidate Countries qualify as State aid, and not as general measures, since they constitute an exemption or reduction from the general obligation to pay corporate tax. Furthermore, tax breaks are generally not open to all companies on an equal access basis, but are limited to those fulfilling certain investment criteria. By conferring advantages through State resources of certain undertakings, investment incentives will often distort competition and affect trade between the EU and the candidate countries in question. Thus, they will qualify as State aid.
- As you know, the fact that State aid is being granted to attract investment is not necessarily against the rules. However, the aid can only be compatible with the Community *acquis* if the conditions of the regional aid guidelines are fulfilled.
 - (a) Should the intention be to grant investment aid (in the sense of initial investment), an aid ceiling must be calculated as a percentage of the investment's value and/or wage costs arising from net job creation. This should be done according to the eligibility rules laid down by the regional aid

guidelines and has to be verified by the State aid monitoring authority of the candidate country in question.

In any case, we know that the guidelines set a maximum net aid intensity ceiling of 50% or 40% in regions such as the candidate countries, which have a status equivalent to Article 87(3)a of the EC Treaty.

- (b) Furthermore, regional aid of this kind should be made conditional on the maintenance of the investment and/or newly created employment for a minimum period of five years.
 - (c) As you know, operating aid (defined as aid aimed at reducing a firm's current expenses) is normally prohibited. It may exceptionally be granted in regions under the derogation in Article 87(3)a, but only provided that all the very specific conditions laid down in the regional aid guidelines are fulfilled. (In particular, operating aid must be justified in terms of its contribution to regional development and its level must be proportional to the handicaps it seeks to alleviate. Furthermore, operating aid must be both limited in time and progressively reduced).
 - (d) Finally, it should also be made clear that the relevant sectoral rules and/or limitations must be complied with. In areas such as steel, car manufacturing or shipbuilding, incentives are either not permitted or only permitted under specific conditions.
- While some Candidate Countries already seem to have started in applying these rules, most of the applicant States still need further alignment. Turkey is as yet at the very beginning of this process. I think that the business community, and the lawyers providing their consulting services, can make a very important contribution in this regard, by showing awareness of the rules and by encouraging the Candidate Countries to apply them. That will, of course, prevent problems at a later stage, both for the investor and the future Member State.

Conclusion

In conclusion, Mr. Chairman, ladies and gentlemen, I would like to underline first that the Customs Union between the EU and Turkey will develop its full potential only when the enforcement of competition policies reaches the marketplace on a continuous basis. In order to increase the bilateral exchange of experience between the Competition Authorities of Turkey and the European Community and in order to

facilitate the enforcement of competition disciplines inside the Customs Union, the conclusion of the Implementing Rules on Competition, as required by the Customs Union Decision and as currently under discussion, is a major step in facing the challenges of enlargement in the field of competition.

Secondly, looking at enlargement from a historical perspective, tremendous progress has been achieved in legislative approximation and in the creation of market systems in the Candidate Countries. More generally, to make accession a success and to ensure the proper functioning of the EC internal market after enlargement, it is especially important that we make further progress in the creation of a genuine competition culture, also in the Candidate Countries. The active involvement of all interested parties, the business community, the lawyers, the universities and the authorities will in many respects be essential to obtain that result.

However, more progress is needed quickly, especially in the State aid area. Once again, candidate countries will be assessed at the end of this year on the basis of their enforcement record and the Commission will not be indulgent to countries which have not reached a satisfactory level in the implementation of competition policy.

Ladies and gentlemen, thank you for your attention.