Competition Policy, maintaining consistency in a changing world

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Ladies and gentlemen,

It's always a pleasure to be in Florence, and especially in September – for me, it always carries that sweet end-of-summer taste, just before the Indian summer, when the competition caravan moves from Florence to New York.

Yet, this year is a bit different. Margrethe Vestager normally stands in front of you on this occasion. Since she is - as you know - currently on leave from the Commission, and Commissioner Reynders has only just stepped in to take care of the Competition portfolio, I am afraid you will have to do with the Director General this year.

Anyway, some things remain the same: September very much means 'back to school'! I can tell you that some of us at DG COMP, including our DMA and Foreign subsidy colleagues, actually never left school throughout the summer. We have already achieved a lot in 2023, and more is to come. In a few minutes, I will talk about what lies ahead. But before we do that, I want to take a minute to take stock of things that happened last year – call it a report card on some of the things we've done since the last time we were all in Florence.

State aid

I will start with State aid. As you know, the past few years have been a busy time for EU State aid control. With the Temporary Framework for Covid, we used the full flexibility of our rules by enabling Member States to provide support to their businesses that mitigated the economic damage caused by the pandemic.

The Commission did not take this policy choice lightly. We enabled necessary aid and carefully calibrated safeguards to limit competition distortions. Still, understandably, some people saw risks that we were undermining State aid control and the level playing field. In fact, we know now that the Framework worked as intended. Our surveys show that the aid approved across EU countries was proportionate to the pandemic response. Most importantly the Single Market did not suffer distortions, and when the crisis passed, we began phasing out the Framework.

Of course, it would have been nice to celebrate this success. But we barely had time to breathe before the next crisis struck, this time caused by Russia's war of aggression. As in the case of Covid, the whole point is to answer effectively to short term crisis without dis-aligning too much from long term goals. So we put in place safeguards to ensure that the aid response by Member States is proportionate. And like for Covid, we want to keep this Framework 'temporary'.

As it happens, today is the deadline for EU Member States to respond to the survey on the future of the Temporary Crisis and Transition Framework. In the coming weeks, we will assess the responses and set out next steps.

I should point out that we have not only put in place temporary crisis rules. At the same time, we also continued to work to update our State aid rulebook to make them fit for the green and digital challenges ahead. For example, we have also amended the General Block Exemption Regulation to facilitate the implementation of projects involving beneficiaries in several Member States, such as projects related to Important Projects of Common European Interest, or provide for more aid possibilities in support of the green transition without having to notify.

Last but not least, we continue to apply our rules and guidelines through decisions. For example, we have in the past few months approved in total over EUR 5 billion in support for decarbonising steel production processes by switching to renewable hydrogen, across eight different projects in four Member States. By linking the aid to measures that support decarbonisation and energy efficiency, we advance our green agenda, while still making sure that the aid is appropriate and proportionate.

Digital regulation

State aid has of course not been the only thing grabbing the competition policy headlines in Brussels. The topics of digital enforcement, and this summer in particular digital regulation, have remained in the spotlight, especially with all the work we have done on the DMA.

I must say our experience with the DMA so far gives us grounds for much optimism. The process of passing the new rules revealed how deep and cross-cutting the political will around the need for digital regulation is. Passing new laws in Europe is never easy, but with the DMA and its sister act, the Digital Services Act, things went reasonably smoothly for such a large-scale reform. That shows how much consensus there is around the need for action – in every corner and on every political level.

As you know, the first round of gatekeeper designations was concluded last week. Six gatekeepers were designated for a total of 22 core platform services. They were so designated because they met certain quantitative criteria to do with turnover, and number of active users over a certain period of time.

For these designated gatekeepers, we have now entered the implementation phase. Early next year, we will then move into the last phase in the process: enforcement. And this will be another big step because it makes the whole thing much more concrete. Enforcement, and therefore compliance on the ground, will be our next challenge. We believe and we think there are good reasons to believe that de facto, the

regulation will change behaviours. We think and hope that compliance with the DMA will be more 'the norm' than otherwise. But we also know that the close relationship between DMA and antitrust enforcement, both at EU level and in the Member States, will require more vigilance, more rigour in our analysis, and more coordination among enforcers than ever, if we want to be effective in our enforcement strategy.

Antitrust

To be clear, enforcing the DMA does not translate into less antitrust enforcement. It does mean we will have to be sophisticated enough in our enforcement and coordination work to reap all the synergies that the interplay between the two offers. Synergies between ex ante regulation and ex post control, between the EU level and the national level of our Member States, and between EU action and action in like-minded foreign jurisdictions. We enforcers need to exploit these synergies to the best of our abilities.

So, more DMA does not mean less digital Antitrust.

On the contrary, we will continue to open new cases, including in the digital sector, in a way that is fully complementary to our regulatory work. And of course several important investigations are already underway, such as the one into Microsoft's bundling of Teams with its cloud-based suites for business customers; as well as Google's practices in online ad tech markets, which we think are abusive.

And of course, our antitrust case work is by no means limited to the digital sector. We have several important ongoing cases in so-called traditional sectors, including in pharma, consumer goods, and transport . Let us not forget either that the economic turbulence of the crisis period has shaken the economy. And we know crises can be the breeding ground for abusive behaviours and illegal collusion, especially in sectors with higher market concentration.

I would conclude on Antitrust with two points of attention: First, inflation. Competition provides for lean and cost-effective structures that keep costs low and innovation incentives high, but it is not a tool to fight inflation. This is in particular true where inflation is the result of a supply shock. At the same time, when inflation or inflated prices continue to be sustained long after the supply shock has passed, it is only legitimate for enforcers to wonder whether this stickiness is linked to market characteristics or to less legitimate reasons. Second, green. The European Commission is in favour of allowing agreements that promote green efficiencies, in particular reduction of greenhouse gas emissions. We have provided guidance to allow for sectors and companies to cooperate when it comes to finding more sustainable solutions under the new horizontal guidelines. Beyond the new horizontal rules, we have a standing invitation for companies to seek the Commission's informal guidance where this is still necessary – we revised the Informal Guidance Notice last Autumn to open up possibilities for companies to seek informal guidance, very much with the green transition in mind. At the same time, we are especially

sensitive to the risks of greenwashing. If companies think they can use a green label as a cover for anticompetitive behaviour that is neither necessary to achieve green efficiencies, nor proportionate, they are very much mistaken.

Mergers

The past year has also been a busy period for merger control. We have continued to enforce our merger control rules rigorously, be it in relation to transactions in traditional, mature markets, or in novel, nascent ones. Our goal here is to be sophisticated, intervene when it matters including on new grounds when necessary making use of the in-built flexibility of the EUMR, while keeping being reliable and predictable for businesses and the legal community.

We have used the flexibility of our merger control framework to make sure we have jurisdiction to assess all the transactions that matter to competition across the EEA. Just recently we accepted two referral cases under the revised approach to Article 22 (Qualcomm/Autotalks and Nasdaq Power/EEX).

Since it was announced in 2021, this recalibrated approach has given rise to lots of discussion in the competition policy community, with concerns about possible overreach by the Commission and the creation of legal uncertainty.

The final word on this is pending at the Court of course, but let me assure you, the last thing we want to do is increase the number of cases we examine. We have more than enough to do as it is. This is why we

have so far used our recalibrated approach to Article 22 referrals as a targeted, selective tool, rather than a new norm for EU merger control, and we fully intend to keep it that way.

We have also been using the flexibility of our EU merger control framework to capture potentially harmful competitive effects flowing from transactions in dynamic or nascent markets. Especially in the digital economy, the pace of growth in new markets has made enforcers more wary of missing tipping points. At the same time, network effects within a digital ecosystem can magnify the anticompetitive effects of even a relatively small acquisition. These are just two of the reasons why our theories of harm and the design of our remedies in digital cases are increasingly sophisticated and adapted to the market specificities, in order to get ahead of these kinds of changes and address competitive concerns intelligently.

So the enforcement environment is becoming more complex. Within this complexity, our aim is not to look extensively at every merger and intervene left right and centre, or to over-intervene only to be seen as tough. We're not interested in that, and more importantly we do not think it’s the most effective use of our limited resources. We want to focus our efforts and resources where they matter for the market and for consumers. On the substance, this means intervening where necessary, in a courageous yet sophisticated way and it often means being the first or the only authority in the world taking action. I could think of cases like Meta/Kustomer for instance, or Broadcom/VMware. From the point of view of process, it is also why, earlier this year, my

teams worked hard to get our new merger simplification package over the line. The goal was to bring more cases under the umbrella of simplified treatment, and to further reduce the information and compliance burden companies face when they do come under that umbrella.

We think this is a win-win, and the market seems to agree: Not only does it free up our scarce resources for those cases that really need to be investigated. It also helps non-problematic transactions along, including by reducing the information burden and by making notification easier.

Cooperation

The new use of Article 22 brings up another challenge: the constant need for good cooperation among competition authorities. For Article 22, it's about internal cooperation within our European Competition Network, which works very well through agreed processes and years of working together. But good cooperation internationally is something we also value very much indeed, and strive every day to achieve. The EU is just one part of a highly globalised and integrated economic world order. We simply cannot escape the fact that successful cooperation between authorities contributes to healthy competitive markets, and also that it improves the transparency and efficiency of our work, in a way that makes it easier for companies to do business.

I am sure all the enforcers represented here are continuously looking to foster and improve that cooperation at all levels of our organisations - building trust and personal relationships, respecting each other's responsibilities and sovereignty while sharing knowledge, minimising the burden on business whenever doable, and all that while enhancing enforcement in the best interest of the markets and consumers in our respective jurisdictions. This is what all jurisdictions in the world should naturally be committed to. We in Brussels are certainly deeply committed to continuing to invest in international cooperation bilaterally and multilaterally with likeminded authorities across the globe.

Conclusion

So that is a very short version of my report card from the past year, together with some insights into how I see the year to come.

From the programme, I can see that the discussions planned for today and tomorrow give us plenty of opportunity to go into all these issues in more detail – and I'm excited to see there are a lot more topics on the agenda, such as Artificial Intelligence and the link between competition policy and inequality. This promises to be a very fruitful set of discussions.

I can't imagine a better way for us to kick off the new school year together.

Thank you.