Olivier Guersent
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Thank you for your kind invitation to speak at the annual CRA conference, which is a fixture of the Brussels competition scene!

Every year I am impressed: it is really a who's who in global competition policy, and it's a privilege to share the limelight with such distinguished speakers.

Just to name a few of those guests, I see from the programme that later today you will hear from former Prime Minister of Italy but for us more importantly a fondly remembered former Commissioner for Competition, **Mario Monti**, and of course our Commissioner **Didier Reynders** who will close the day.

You will also have the pleasure to listen to other brilliant speakers, including Deputy Assistant Attorney General of the US Department of Justice, **Michael Kades**, the Chief Executive of the CMA **Sarah Cardell.**

But it is not just about big names, the substance of the various panels looks incredibly topical: we just discussed **antitrust during a cost-of-living crisis** – with interesting insights from national competition authorities and academia – and we'll later dive into the following topics:

- **Digital regulation**
- **Exploitation and privacy**
- **Economic approach**
- **What's new in mergers – nascent markets, ecosystems, and divergent outcomes**

I see a common thread that ties these topics together and that is: **innovation. Innovation is increasingly relevant in market dynamics and this led competition policy to evolve in step with the times**, while remaining true to its fundamentals of rigorous analysis and respect for the rights of the parties.

In my address, I will give you a few insights on how the protection of innovation and the protection of the capacity to innovate and reap the benefits from innovation is now centre stage in our enforcement policy. I will do this taking three of those topics: the **Digital Markets Act (DMA)**, recent developments in **merger control**, and our initiative for **Article 102 Guidelines**.

DMA

With the DMA, we have been working hard towards translating an entirely new digital architecture into change on the ground.

The designation on 5 September 2023 of the first six gatekeepers (Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft), for a total of 22 core platform services, completes the design phase of the DMA.

We are continuing to work on potential additional designations.

We have five ongoing market investigations into additional services offered by Microsoft and Apple (Microsoft's Edge Internet browser, Microsoft's Bing search engine, Microsoft's Advertising business, Apple's iMessage and Apple's iPadOS).

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Some potential gatekeepers (for instance Booking.com) have also publicly announced that they expect to notify their gatekeeping status to the Commission early 2024.

With the designation decisions, we have reached an important milestone in the implementation of the DMA as we have determined the current **scope** of the DMA: it is now clear which companies need to respect the DMA and in relation to which services.

The aggregate outcome of DMA over time will lead to **reshaping of the digital markets**, with an emergence of new business models.

These new business models will develop from a new value allocation in the markets, based on new opportunities for business users and choice for end-users.

But designation decisions also kick-started a new phase – that of **compliance and enforcement**.

So now the focus of the Commission shifted to the "How?" What should compliance with the obligations look like?

With compliance by gatekeepers kicking in on 7 March 2024, some **concrete and tangible changes** will be immediately visible (e.g., new third-party app stores, choice screens on new devices).

However, the **full effects** on digital market structures **will**, depending on the specific obligation, **take time to materialise**.

This is because DMA obligations **create opportunities** rather than prescribe market outcomes.

The scale of the impact of DMA will also depend on the take up of the newly created opportunities by market players, and/or the switching by end-users to alternative service providers.

When it comes to compliance, the DMA is very clear: the burden of proof is on gatekeepers. But they are not doing this in a vacuum.

We are continuing to **engage** with gatekeepers to guide their compliance efforts on all areas of application of the DMA.

In practice, this means that the DMA team is currently handling over **150 files** (there is one file for each obligation, for each relevant core platform service, per gatekeeper).

We are therefore knee deep in compliance work, ensuring that the DMA delivers on its promises and objectives.

However, we are realistic.

We know that, notwithstanding the precise and directly applicable obligations, enforcing the DMA will not always be straightforward, and there is a risk that gatekeepers employ subtle techniques to frustrate the objectives of the DMA. The Commission is working hard to avoid this risk, including through its continuing use of the full spectrum of competition instruments. Remember, this is one of the key notions in the DMA: **the DMA complements competition rules.**

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They are no substitute one for another and we will need the full power of both to be successful in achieving real change on the ground.

In this Herculean task, the Commission attaches high importance to the views and input from **third parties**, because they operate in the same markets. For compliance solutions to be credible, they need to be **tested on the ground**.

Views from third parties will also be key for monitoring and **detecting non-compliance**, notably on the basis of the public version of the compliance reports that gatekeepers will need to publish.

A number of **thematic workshops** have already been organised by the Commission (for instance on app stores or self-preferencing). They proved very beneficial. We may therefore do additional workshops focused on compliance.

Feedback from the market will continue to play a key role to ensure the DMA achieves its objectives.

I will also say that we take compliance very seriously and in the absence of compliance by gatekeepers with our priorities, we are ready to take steps towards an **enforcement action**. We will not shy away from using the tools at our disposal to ensure compliance.

So, as you can see, the DMA team is working full steam ahead – not in isolation, but in a continuous complementarity exercise, notably with our teams in charge of competition enforcement in the digital sphere, but also with the colleagues in DG CNECT in charge of implementing the DSA, and with our partners in the Member States – all to make the DMA deliver on its promise to foster innovation by opening new opportunities for competitors and customers.

MERGER CONTROL

Our track record with non-horizontal theories of harm

As I just explained, we are not only relying on the DMA team to tackle novel challenges in competition policy – in digital markets and beyond. Our busy merger units are doing the same – as my colleague **Guillaume Loriot** will argue later today in the merger panel.

The Commission has a strong track record in the enforcement of **non-horizontal theories of harm**. We want to protect the contestability of markets at all levels of interaction, so we take and have always taken non-horizontal concerns very seriously.

We note that, in the past, we have often been the first ones – sometimes the only ones - to intervene in non-horizontal transactions raising complex issues, by requiring commitments from the merging parties – for example in *Google/Fitbit* or *Meta/Kustomer*.

Mergers can have **exclusionary effects** which, although inherently more complex to assess than horizontal overlaps, can be as harmful as horizontal consolidation in some instances.

The theories of harm in non-horizontal cases depend on the **competitive dynamics** of each case. Transactions may lead to input or customer **foreclosure**.

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Furthermore, they can enable the **leveraging** of market power from one market to another, or allow the **entrenchment** of market power in a core market.

While theories of harm capturing the enlargement of digital ecosystems seem to be the most discussed, non-horizontal mergers take place very much **across all industries**.

Last year, **non-horizontal concerns featured in 7 of our 18 intervention cases**.

Examples of recent non-horizontal interventions resulting in remedies include:

- *KPS/Real Alloy Europe* in relation to input foreclosure in recycled aluminium;
- *Advent/GfK,* which raised conglomerate concerns in the consumer research markets across the EU; or
- *Microsoft/Activision Blizzard*. In the latter case we investigated, and found concerns for, **the nascent cloud gaming market** (or rather segment). We concluded that post-transaction Microsoft could **be tempted not to make Activision Blizzard's games available on cloud game streaming services other than on its own streaming services**.

Both this year and last year **we prohibited transactions between companies that were not active on the same markets**:

- In September this year we blocked the ***Booking/eTraveli*** transaction because we were concerned that it would lead to the **entrenchment of Booking's dominant position in hotel online travel agencies (OTAs)**. We found that **the Transaction would allow Booking to expand its ecosystem of services as well as strengthen network effects and customer inertia, raising barriers to entry and expansion**.
- In 2022, we prohibited the ***Illumina/GRAIL*** transaction, which shows why merger control is beneficial to innovation.

Why merger control is beneficial to innovation

Indeed, the starting point is that **competitive markets promote innovation**, which is one of the main drivers of growth and employment in the EU economy, bringing benefits to consumers.

The EU merger control rules echo the importance of innovation and put **harm to innovation on an equal footing with increased prices and reduced output**.

Merger control, as an ex-ante tool, aims to ensure that market consolidation or vertical and conglomerate integrations do not reduce or in any way harm innovation. And the Commission has been **at the forefront** of enforcement in merger cases that would have led to harm to innovation – whether horizontal or non-horizontal.

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Of course, innovation plays a pivotal role in the **pharmaceutical industry**. In pharma, we have intervened in cases where there was a risk that pipeline products would have been discontinued, delayed or diverted – e.g., *Pfizer/Hospira*, *Johnson & Johnson/Actelion, Abbvie/Allergan*.

Coming back on the prohibition of ***Illumina/GRAIL***.

This decision underlines that innovation in a dynamic market can also be harmed if competitors do not have access to an important asset. Illumina would have had the ability and incentive to **foreclose** GRAIL's competitors from its high-throughput next generation sequencing (NGS) systems – a key asset required by companies developing cancer detection tests. This would have stifled innovation on the emerging downstream markets for NGS-based cancer detection tests.

However, it is not just pharma or bio-tech where innovation is a driver of competition.

Innovation is also of course driving the transformation to meet the Green Deal targets and is a key pillar in the digital transformation too.

There are a number of cases where we have looked at **dynamic and innovation effects in established industries**, for example, the competitive impact of a merger on incentives to innovate or to engage in R&D.

Past decisions in the agrochemicals sphere are well-known (i.e. *Dow/Dupont* and *Bayer/Monsanto*), but just recently this year we had ***Sika/MBCC***, a merger between two companies playing a crucial role in developing chemical admixtures to make **"greener" cement**.

The divestiture, which was a condition for the clearance, included global R&D assets so as to preserve green innovation.

Thus, effective merger control promotes innovation as it ensures that **R&D projects don't get discontinued**, that **killer (or reverse killer) acquisitions don't eliminate important innovators** and that mergers don't lead to a **structural reduction of innovation** where companies' capabilities and incentives to innovate would be harmed by a merger.

ARTICLE 102 GUIDELINES

Before concluding, let me now turn to antitrust, and to an important policy project concerning the enforcement of Article 102 that is also part of our increased focus on innovation. I will just say a few words here, as my colleague **Linsey** will later discuss this further in the "economic approach" panel.

As you know, on 27 March we launched an initiative aiming at adopting **Guidelines on exclusionary abuses of dominance**.

In response to our Call for Evidence, we received 48 submissions. We have reviewed these contributions in detail. The **respondents generally welcome the initiative** and see it as an important opportunity to systematize the case law and bring more clarity to the enforcement of Article 102 while maintaining the "effects-based" approach. And indeed, the main purpose of the Guidelines is to clarify how the effects-based approach applies. Economics definitely plays an important role here, as it can help us understand when a theory of harm is sound

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and which type of qualitative or quantitative evidence can be appropriate to show anticompetitive effects.

So let me be clear: **economic theory** has played and will continue to play a key role in our assessment of unilateral conduct. But of course, this does not mean that in each and every case it is necessary to make use of **economic evidence** in order to prove an infringement.

And even when such evidence is used, it is **only one part of the story** – in other words, economic evidence always needs to be considered together with all other relevant facts and circumstances.

We are also aware of the need to give **pragmatic guidance to businesses**. We intend to respond to calls for clear and operational guidance and for legal certainty concerning the application of the effects-based approach to exclusionary abuses.

In this regard, we are planning to articulate the standard of intervention for specific abuses, as developed by the Union courts. I think this will give guidance on the specific elements required to prove abuses such as margin squeeze, tying and refusal to supply.

We plan to publish a **draft of the Guidelines by mid-2024**. On the route to achieving that, we will **continue engaging with NCAs and other stakeholders.**

CONCLUSION

I will shortly wrap up as I have been long already.

When I look at our ongoing enforcement challenges across instruments and policy projects, in both digital and more "traditional" sectors – I see that our **competition policy really is evolving in step with the times**. Innovation becomes increasingly important across the board (and also in State aid Control by the way) as it increasingly shapes the driving forces of competition. And it does so with a different time horizon than 20 years ago when innovation was shaping the competitive landscape of 10 or 15 years later. Nowadays, the innovation of today is the competition of tomorrow, in a year time, sometimes six months, much more in tune with the time horizons in antitrust and mergers.

In other words, time frames are shrinking, and this puts a lot of pressure on enforcement, but also on making sure we have the right tools and the right combination of tools. Indeed, we are constantly looking at ways to improve our toolkit so that it remains up to date and effective – think about the ongoing **evaluation of Regulation 1/2003**.

And I talked a lot about digital markets today – but the **green transition** is equally important and innovation is equally important here if we want to be successful and reach carbon neutrality by 2050. This is already reflected in our thinking – see for example the new "Sustainability chapter" of the HBER, or the work done in State aid control, to allow Member States to decarbonise their economies, while protecting the level playing field in the Single Market.

Thank you very much

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