

SPEECH

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**International Cooperation between competition agencies:
Achievements and challenges**

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Ladies and Gentlemen, dear colleagues,

It is with great pleasure that I will present to you today my personal thoughts on the achievements and challenges of international cooperation in the field of Competition. My sincere thanks go to Chairman Kwon for inviting me to this conference to speak on a topic which is of paramount importance in the 21st century.

Globalisation warrants a greater focus on international cooperation

Economies are moving ever closer together and becoming more interdependent. Globalisation, so long talked about, is now an everyday reality. On a microeconomic level companies increasingly operate across borders. Although we have witnessed an ever increasing number of competition regimes world-wide over the last twenty years, these competition laws - and the practices of competition authorities and courts - have remained largely national (or regional). Co-operation does exist of course. In the early days of international cooperation there were few competition law systems around the world, and we inevitably talked to only a few authorities, all of them in developed countries of the western hemisphere. Nowadays, there are approximately 100 competition regimes around the world, many of them in developing countries, who are increasingly aware of the importance of putting a sound competition policy in place. Bearing in mind these developments, one can easily understand the necessity of effective international cooperation as well as its important benefits. And even more so the risks connected to a lack of cross-border dialogue and coordination.

Take the example of international cartels, where companies create anti-competitive alliances and operate them across borders. For competition authorities to respond appropriately they have to speak to other authorities at an early stage in the investigation, coordinate enforcement activities and exchange information. Companies will consequently be aware of the increased costs and risks when engaging in competition law infringements across frontiers. Deterrence will be greater. By contrast, if we do not co-operate we cannot hope to have effective competition law enforcement.

When looking at each others' experiences we engage in a continuous mutual learning process. This increases efficiency as information is exchanged and results are compared, to the benefit of all stakeholders concerned (including the parties to the investigation).

Main forms of international cooperation: Bilateral context

Let me say a few words on bilateral cooperation and its evolution. Since 1976 (when the first bilateral agreement was signed between the US and Germany) bilateral cooperation has proliferated. The European Commission cooperates with numerous foreign jurisdictions, using a range of instruments, which are adapted to the practical requirements of each relationship. With a very small number of jurisdictions we have so far concluded formal intergovernmental agreements: these are the US (1991), Canada (1999) and Japan (2003). With some other jurisdictions we have concluded inter-agency arrangements, which provide a broad framework for cooperation and allow us to establish closer and more regular contacts: Our Memorandum of Understanding with Korea (2004) is a very good examples of this. With some emerging jurisdictions (e.g. China) we have agreed on Terms of Reference to structure our dialogue and help them in the process of putting in place their competition regimes. With certain European countries which are potential accession candidates we conclude association agreements (e.g. with some Balkan countries such as Albania, Macedonia, Croatia, Bosnia

and Herzegovina). These agreements are very particular (*sui generis*) as their purported aim is to further integrate the partners' market and harmonise competition laws and practices in view of a possible accession/association with the EU.

In addition to dedicated competition agreements or arrangements the Commission cooperates with foreign jurisdictions in the field of competition through Free Trade Agreements (FTAs) and economic partnership agreements or EPAS (see for instance the Trade agreement with Mexico 1998, the Partnership agreement with Russia 1997 or the EU-Mediterranean association agreements with Morocco and Tunisia). Finally, it is worth noting that with some important partners we actively cooperate in the absence of a formal agreement or arrangement (one example being our cooperation with the Australian Competition and Consumer Committee).

Main forms of international cooperation: Multilateral context

At a multilateral level the Commission/DG COMP participates actively in a series of multilateral forums, in particular ICN, OECD and UNCTAD. These forums have gained importance over the past few years, especially after unsuccessful attempts at including competition law into the WTO framework. The ICN, a virtual network of competition agencies, is the only international body devoted exclusively to competition law enforcement. Over its 5 years' existence it has produced guidance and best practices in a number of important areas including merger control and cartels. The ICN works by consensus and soft convergence (bottom-up approach). The second main forum for a competition dialogue is the OECD with its regular competition sessions and the discussions held in the wider Global Forum for Competition (which also includes countries nonMember countries). The OECD has produced a whole set of recommended practices on several topics, for example:

- 1995 OECD Recommendation concerning cooperation between member countries on anti-competitive practices affecting international trade;
- the 2005 OECD Best Practices for the formal exchange of information between competition authorities in hard core cartel investigations;
- the 2005 OECD Guiding Principles on Regulatory Quality and Performance.

These are all actively used by jurisdictions around the world and which have made international cooperation among them easier. I should also mention UNCTAD's important contribution to international cooperation in competition with a special focus on developing countries and emerging jurisdictions.

Achievements of international cooperation

The achievements of international cooperation are in my view remarkable, considering the variety in approach and procedures, legal traditions and the different level of economic and institutional development of agencies world-wide. I will give you some concrete examples of what can be achieved through cooperation in concrete terms, from an EU perspective. Content wise at the EU we tend to distinguish two main pillars of cooperation: first, case cooperation and second, policy dialogue.

A common practical example of case co-operation is our bilateral cooperation with partner jurisdictions on cartel cases (including the planning and coordination of dawn-raids, for example the international cooperation in the vitamins and graphite electrodes cartels). We also cooperate on abuse cases (see example of our recent cooperation with the KFTC in the

Microsoft case) and on mergers: Take as an example the 2002 EU-US Best practices on cooperation in reviewing mergers, which put in place a structured basis for co-operation in reviews of individual merger cases.

A common example of policy dialogue is the exchange of views on policy initiatives and experiences. For example, we are currently conducting a review of our policy on abuse of dominance and we have produced a discussion paper with this purpose and we are holding discussions with our main partners on this topic. Our policy dialogue within OECD and ICN has matured over the past years. We have reached widespread agreement amongst agencies on the benefits of having competition rules and the basic principles, including due process. We are now moving towards a more advanced stage in our international relations. This involves discussions on more controversial policy issues such as the current debate on substantial merger assessment and abuse of dominance or the debate on second generation agreements.

Challenges of international cooperation

The challenges which arise in international cooperation are typically linked to the specific relationship between the agencies or jurisdictions involved and their respective development and experience as well as their individual requirements. It is therefore difficult to generalise although some difficulties are more frequent than others. I will give you a few examples of my own experience,

- First, we sometimes encounter difficulties in the coordination of investigations (e.g. if investigations are at different stages in the authorities involved or if difficulties arise due to the different time zones).
- We also face difficulties in dealing with different legal systems (civil versus criminal system), enforcement cultures (e.g. focus on public or private enforcement) and different priorities (e.g. strict merger rules as opposed to ex post abuse control).
- Other common hurdles include language problems, shortcomings in the internal organisation of competition authorities (e.g. lack of competences to fully cooperate) or a lack of transparency.

Some of these difficulties cannot be completely removed or avoided. But agencies can try to minimise their adverse impact.

In general, cooperation will be easier if there is broad consensus between authorities and in areas where they share common interests. By contrast, cooperation will be rather tricky and burdensome in controversial areas, in particular if the underlying rational and objectives of competition laws differ considerably (e.g. total versus consumer welfare standard; per se rules of abusive conduct versus pure economic effects approach).

One of the most challenging areas of cooperation concerns the exchange of sensitive information and data between competition agencies. A recent ICN Report on “Cooperation between Competition agencies in Cartel Cases” (published in May 2006) highlights these shortcomings referring to the inability of jurisdictions to provide the information requested by the other agency. The reasons for these problems can be found in the limitations on the sharing of confidential information under the respective domestic laws. Once we have overcome these difficulties significant advantages are likely to arise from such advanced cooperation.

How to improve cooperation in the bilateral context

Now that we have identified the remaining shortcomings in our international cooperation we can move on to the issue of how to improve the situation. A few rather simple recommendations suggest themselves. To start with, we should take time to identify where the common interests lie and what are the expectations. When choosing our cooperation partners and the right framework a balance has to be struck between input and outcome, costs and benefits. Long-term strategic considerations have to be taken into account, too (e.g. the possibility to cooperate with a whole region or an authority of regional or supranational competences).

How to improve cooperation in the multilateral context

I think that we all share the ambition of further enhancing our level of multilateral coherence and understanding, as we move on to new and promising areas of cooperation. I am a great believer in the role of multilateral forums which help agencies to develop a more transparent policy dialogue. This is crucial as we start covering more controversial and complex topics, including the abuse of dominance (see for instance the recent creation of the Unilateral Conduct Working Group within the framework of the ICN) or the field of competition assessment of legislation (see current debate on OECD Working Party 2 on Competition Assessment in Regulatory Impact Assessment). Multilateral forums may also be used by agencies to mutually support each other on important policy initiatives (e.g. in their efforts to introduce more competition in formerly protected sectors such as telecoms or air transport). Furthermore, we need an open exchange of views in multilateral forums as our cooperation has to be constantly adapted to technological progress. Take as a recent example our exchange in the ICN on electronic evidence gathering and computer forensics in cartel cases.

Conclusion

In conclusion it is fair to say that international cooperation has achieved a lot, especially over the past few years. It is very reassuring that an increasing number of jurisdictions recognise the fundamental importance of sound competition regimes. The importance of efficient cooperation will further increase with globalisation, and so will the role of competition enforcers. The ball is in our court.

Globalisation and increasing competitive pressure will not make our task easier. We will be asked to explain why competition and not protectionism is crucial to make our industries more competitive. We will have to react to new trends and developments (for example with the new wave of bilateral trade deals in the pipeline we will have to determine a coherent strategy with regard to competition and trade policy). But one thing is for sure: together we will be stronger! If competition agencies stand together in the fight against cartels or abusive behaviour, the deterrent effect will be multiplied. If we join forces we can improve our overall enforcement record. Our joint impact will be stronger than the sum of all our individual interventions.

Before I conclude my intervention I would like to add a few words on EC relations with the KFTC, which is hosting this conference. Since the conclusion of our Memorandum of Understanding in 2004 we have strengthened our bilateral contacts and our cooperation has matured. We have been cooperating in a constructive spirit on large antitrust and cartel cases and policy issues. Time is ripe for upgrading our bilateral relationship. I am therefore glad that at our June 2006 Bilateral Meeting we agreed to enter into exploratory talks on a future

intergovernmental agreement between the EU and the Republic of Korea. These talks have meanwhile started and I hope that we will be able to start negotiating on a draft text within a short while.

With this positive outlook I would like to conclude my welcome address. Thank you very much for your kind attention.