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## **Compliance and Competition policy**

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

Businesseurope & US Chamber of Commerce. Competition  
conference

**Brussels, 25 October 2010**

Let me first thank you for your invitation. Compliance with competition law, one of the main topics of your conference, is a very important subject, in particular for what concerns the fight against cartels, and that is what I will focus on.

It gives me the opportunity to go through our cartel enforcement system and underline its **preventive features**.

This afternoon I will touch upon three broad themes:

- the economic and social implications of cartels and related infringements of competition law,
- the fining policy that the European Commission has developed over the years, and
- our efforts to encourage companies to comply with EU competition rules.

Ladies and Gentlemen:

When a group of companies make secret arrangements to fix prices, share markets, and rig bids through a cartel, the harm they cause to the economy can be very large indeed.

The 18 cartels prohibited by the Commission between 2005 and 2007 cost companies and consumers an estimated €8 billion.

Fighting cartels, therefore, saves a great deal of money, by acting as a deterrent of anti-competitive behaviour, and helps restore a sense of justice in the business community and among ordinary people. Our action on cartel control saved consumers about €1.7 billion in 2009 alone.

But cartels don't only mean higher prices. Companies that operate behind the curtains of an illegal agreement with competitors also have weaker incentives to control costs and to innovate.

By removing price competition, cartels keep less efficient companies on the market. Cartels thus reduce efficiency across the economy and undermine long-term competitiveness.

But if we are serious about fighting cartels, we need to see things through the eyes of the offenders – or potential offenders.

It's easy to see that cartels are a strong temptation. Studies have found that companies can raise prices by between 10 and 30% when they operate a cartel.

Enforcement authorities need to have a clear view of the potential benefits for a company; so that they can impose comparable potential penalties when they are found out.

**Companies need to understand the cost of non-respect of competition rules, the cost of a cartel, and this cost must be larger than what they hope to gain from entering into the price-fixing or other similar illegal behaviour, in the first place.**

### **Cartels and the crisis**

At this point, let me put an urgent issue on the table. How should our fight against cartels and other illegal commercial practices respond to the aftermath of the crisis?

Some think we should take a more considerate approach at a time when doing business has become so much more difficult.

Well, I don't agree with these views. In fact, I believe that during a crisis fighting cartels is more important than ever.

One reason is that most cartels do not concern final goods, but rather raise the prices of the input and intermediate goods that go into the manufacture of consumer goods.

Currently, low demand and tight credit conditions cut the profit margins of European firms; it is unacceptable that cartels put further pressure on these margins by raising production costs.

Many of the cartels we have fined in recent times concern input goods. To take an example, we imposed fines on competitors which had cartelised the car glass sector; an input for car manufacturers.

We cannot afford our hard-pressed car industry to lose competitiveness because cartelists charge artificially high prices.

The companies that were fined for price-fixing in the fluoride aluminium industry are another example. This is an intermediate product which allows users to cut electricity consumption; a large cost component in aluminium production.

Again, keeping production costs unnecessarily high in a sector characterised by fierce international competition is unacceptable.

I could give you many more examples, but I think that I have already made my point; to sustain the recovery, **we do not need cartels; we need better functioning markets, more competitiveness, and more innovation.**

By combating this type of conduct in input goods, the fight against cartels can help European industry take the recovery path.

The same reasoning applies to the competitiveness of our economy in a broader perspective. When this crisis is over, global competition will be even stronger, putting pressure on European firms competing in world markets.

Finally, the types of cartels I have referred to hurt households as well, because the higher prices are passed on through the value and manufacturing chains.

We have also dealt with a number of cartels that directly affected consumer goods, as in the recent cases of the bathroom fittings and beer sectors.

I am convinced that public authorities have a higher responsibility to protect the interests of ordinary consumers in a period still marked by high unemployment and social costs.

For all these reasons, I believe that the case for effective enforcement and deterrence is actually stronger when the economy is weak.

### **Inability to pay**

One last thing before I turn to the next topic.

If our fight against cartel is more necessary than ever, I am fully aware that there are companies on the brink of bankruptcy in today's economic climate.

In no circumstance should the fines we impose push a troubled business off the cliff. When their financial difficulties are real, I will always take that into account and lower the fine. Competition policy is about promoting competition, not eliminating firms from the marketplace.

For instance, in the bathroom fittings case I referred to earlier, five companies were in dire straits and we concluded that they would not be able to pay the original fines. As a result their fines were reduced: by half for three of the and by a quarter for another two.

However, these reductions are the exception and not the rule. We are seeing more of them in the current crisis, but even now they are the minority.

## **Cooperation with the US**

Ladies and Gentlemen:

As announced at the beginning, let me say a few words on our cooperation with other competition authorities.

Competition enforcement needs to tackle a challenge: a growing number of cases are transnational. Actions by companies that are based in one country can affect competition in another. That is why EU competition laws apply to EU and non-EU companies alike.

Nevertheless, competition law and enforcement remains territorial. As cartels involve European, US and other markets, they often attract the attention of several competition authorities. The European Commission deals with many cases with a worldwide geographic coverage that are simultaneously investigated by several competition authorities. So competition authorities must find the best ways to work with each other.

This is a long-standing policy of the European Commission which I intend to reinforce. Our cooperation with the national competition authorities in the EU is already very intense within the European Competition Network.

In addition, we have excellent relations with other authorities around the world, especially in the US.

We all know of the legal and practical differences between Europe and the US – but where there's a will there's a way. I will make sure that our commitment and engagement remain as strong as ever.

This is going to be an easy pledge to keep. Our cooperation is almost 20 years old and, in time, it has probably become deeper and stronger than in any other area of EU-US cooperation.

My services have almost daily contacts with our counterparts in the US. We organise co-ordinated inspections – as in the “international freight forwarding” and “marine hoses” cases, or more recently in “refrigeration compressors”. Often our co-operation goes further: in the “TV and Computer Monitor” case - where we sent a Statement of Objections last November - we not only co-ordinated the inspections, but kept regularly in touch to discuss and update each other on the progress of our respective investigations.

Finally, we also have regular discussions with other countries. One example is our advocacy work with China and our joint support of the International Competition Network.

Ladies and Gentlemen:

**The ultimate aim of our cartels and antitrust policies is not to levy fines – the objective is to have no need for fines at all.**

So, I would like to tell you how our system can foster a culture of compliance.

Fines are designed not only to punish the company concerned, but to deter as well. Fines that are set at the appropriate level do have a deterrent effect as discussions with our stakeholders clearly show.

For the fine, we start with a fixed amount, irrespective of other circumstances. We then look at a number of criteria including the size of the company and of the cartel, the value of the affected sales, and the duration of the cartel.

Finally, we impose higher fines for repeat offenders.

Our fining structure sends out a three-point message to the business community: **“Don’t enter into a cartel; if you did, get out of it as fast as you can; and when you’re out, don’t do it again”**.

I am convinced that this clear message encourages companies to comply with EU antitrust and cartel rules.

Apart from the deterrent effects of fines, we have built other tools in our system to promote compliance. Our leniency policy is one of these tools.

Many companies have cooperated with us and helped us discover illegal practices in exchange for our offer of immunity from fines.

When do companies decide to take advantage of our leniency programme and decide to cooperate with us?

Many take this decision as a response to external events; for instance, when investigations in one sector make the company look into its other lines of business.

Other immunity applications are triggered by internal events; for instance, when a company has a new CEO or is acquired by another company and the cartel is uncovered in the due diligence exercise; or when an employee blows the whistle.

Immunity and reductions help companies comply with our rules because they raise the risk of being exposed by the other members of the cartel.

And we know that – apart from the level of sanctions – deterrence depends on the likelihood that the illegal behaviour is discovered and punished.

Although the cooperation of companies is very important, we also investigate cartel cases *ex officio*; as a matter of fact, a quarter of our decisions are initiated without a request for immunity.

In these cases too, we motivate companies with lower fines if they decide to cooperate with the investigation – and many of them do.

When I talk about these things, I am often asked whether companies should be rewarded for operating compliance programmes when they are found to be involved in illegal commercial practices.

**The answer is no.** There should be no reduction of fines or other preferential treatment for these companies.

As already mentioned, we reward cooperation in discovering the cartel, we reward cooperation during the proceedings before the Commission, we reward companies that have had a limited participation in the cartel, but that, I think is enough.

To those who ask us to lower our fines where companies have a compliance programme, I say this: if we are discussing a fine, then you have been involved in a cartel; why should I reward a compliance programme that has failed?

The benefit of a compliance programme is that your company reduces the risk that it is involved in a cartel in the first place. That is where you earn your reward.

Perhaps the best means we have to ensure compliance is comprehensive, accurate, and widely accessible information on EU competition rules.

To help companies understand in detail what the law provides and how we enforce it, we strive to make this information easily available through the web and other supports.

Our documentation is constantly updated and clarified to keep pace with changing market and legal conditions.

We also use our constant dialogue with companies and other stakeholders in our effort to improve our guidelines, notes, FAQs and other documents.

I strongly encourage companies to build their own compliance programmes and training on the basis of the information we publish. I understand that more and more companies invest time and resources in these programmes and this is excellent news.

I am also aware that ensuring compliance represents a cost to business. It is a worthwhile investment – preventing participation in just one cartel leading to high fines upon discovery would more than cover the cost of compliance.

And I note in passing that this is another problem with rewarding compliance. Specific rewards would result in unequal treatment between those companies that have the resources to set up a compliance programme and other – often smaller – companies that cannot afford them.

For smaller companies, setting up and implementing a compliance programme can be difficult. I would therefore support initiatives that lead to a public discussion and exchange of best practices in this area.

Ladies and Gentlemen:

This afternoon I've touched upon the main aspects of our fight against cartels.

We have seen that they do terrible damage to the economy and society – especially in these uncertain times – and that our action needs to be more robust than ever as long as the economy remains weak.

We have also seen three ways in which the competition enforcement system we have in Europe can promote compliance: our fining structure, our leniency measures, and information that is easily accessible and of good quality.

These are among the most fascinating and important issues in my portfolio, because prevention is always better than cure.

In closing, I will repeat my main message: imposing fines is a means not an end of our cartels and antitrust policies.

My ultimate objective is to foster a culture of compliance that minimises the need for sanctions in the first place.

Thank you.