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Current developments in EU Competition Policy and Croatia's accession process

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I am very pleased to take part in this Competition Day that marks the 10th Anniversary of the Croatian Competition Authority.

Ten years may seem like a rather short period when compared with the fact that competition policy has been a cornerstone of the European Union ever since the EEC Treaty was signed 50 years ago.

At the same time, the fact that the Croatian Competition Authority was established already ten years ago - which is before the Association and Stabilisation Agreement entered into force - shows that at that time Croatia was convinced that although competition is not an end to itself, it is the best means anyone has found to create growth and jobs.

A lot has been achieved in the last ten years. Croatia has not only established a sound competition regime but in doing so, as a future member of the EU club, it has continuously aligned its rules to those of the EU, and is gradually extending and deepening its enforcement record. The European Commission has found in the Croatian Competition Authority a reliable partner as our formal and informal contacts have steadily been increasing.

As we are now really getting to tackle the most difficult issues of the competition chapter of the accession negotiations, our contacts will only intensify. We know that those issues entail complex industrial and social restructuring and adjustments. They are real, they are difficult, and we know that the Croatian Competition Authority will be confronted with difficult challenges.

And we know this because the European Commission has been faced, and in many ways still faces, the same kind of challenges. We have seen Member States' meddling in cross-border mergers, building 'national champions' at others' expense, or propping up ailing companies with State aid. These practices not only violate core Treaty provisions, but they also hamper European market integration and handicap our industry in the global race.

But from previous accessions I suspect that there may be an additional difficulty for the Croatian Competition Authority in that it may sometimes bee perceived as applying some "alien Brussels rules" that somehow hurt the Croatian economy. Nothing would be further from reality, of course. The Croatian Competition Authority is implementing Croatian rules, namely rules that have been adopted by the Croatian government and Parliament. Also, the Croatian Competition Authority is helping the Croatian economy by ensuring that aid to companies effectively tackles market failures, instead of counterproductively wasting tax-payer money by distorting competition.

As you know, the EU (then European Economic Community) that was created fifty years ago was based on an ideal of peace and reconciliation, but using very pragmatic tools. Competition policy was part of that Europe of tangible results from
day one, and remains it. In fact, today markets are increasingly international and companies pursue global strategies, so the need for a strong European competition policy is more prominent than ever.

**General developments**

I mentioned globalisation. Our competition rules need to, and indeed must be regularly reviewed so that we can cope with new challenges. This is why Croatia also faces a "moving target" in aligning its rules and practice with those of the EU. I would now like to take you through some of the major latest and current developments in EU competition policy.

- **Cartels**

As you know, when Mrs Kroes took up her job as Competition Commissioner, she indicated that the battle against cartels would be one of her top priorities. The fight against cartels is being stepped up by the Commission on several fronts.

First, **new guidelines on fines** were adopted in 2006, which increase the initial fines depending on the length of time a company participated in a cartel. It is now also possible to double fines in the case of repeat offenders. The first cases of application of the new guidelines are already in the pipeline and may be adopted by the end of the year.

Second, the Commission is not only using a stick to destabilise cartels. There is also a carrot. In 2006, the Commission revised its very successful *Leniency Notice* so as to enhance transparency and the certainty of the thresholds and conditions for leniency.

Third, our **Direct Settlement Initiative** will allow cartelists admitting to an infringement under certain circumstances to receive lower fines. This will shorten the procedures and free up Commission resources to proactively prosecute cartels. The business community has shown great interest in this instrument, for which a public consultation has just been launched.

The Commission's determination to bring down cartels is illustrated by the fact that it has imposed fines of more than €2.3 billion against cartel members in 2007 alone. We have already taken five cartel decisions against 32 companies this year and more is yet to come.

We are taking all these initiatives because experience shows us that the only way to be effective against cartels is by a credible enforcement practice and a deterrent enforcement. This is also why the Commission welcomes the proposals that have been tabled in Croatia with a view to setting up an efficient system for imposing fines and improving judicial control, and encourages Croatia to speedily adopt them. In the absence of this the work of the Croatian Competition Agency regarding anti-competitive conduct cannot have sufficient deterrent effect.
Private enforcement

But the fight against cartels and other anti-competitive behaviour is one that the Commission cannot take alone. In addition to national competition authorities and national courts, the Commission wants to increase the involvement of customers and consumers. They pay most of the price of illegal behaviour, after all.

This is why the Commission launched a **Green Paper on damages actions** for breach of the antitrust rules in 2005. The debate on the Green Paper showed the importance stakeholders attach to the parallel approach advocated by the Commission: private actions should complement public enforcement, not replace it. There is also agreement that national procedural rules should be designed so that the victims' rights to damages can be exercised effectively.

To focus further our thoughts, we will issue a **White Paper** at the beginning of next year. I want to stress that the Commission will not propose a unified European model of antitrust damages. Nor will it import the US private competition litigation system.

- Mergers

On the merger front, after the new Merger Regulation of 2004 and the Guidelines on the assessment of horizontal mergers, the Commission is currently working on a **new remedies notice** and on our **non-horizontal merger Guidelines**.

In the remedies field, we want to draw the conclusions from our remedies study, which revealed some shortcomings in our past remedies practice. The upcoming non-horizontal Guidelines are all about making our decision-making practice more predictable for the companies concerned.

- State aid

We need to fight State aid that distorts competition on the merits. But balanced State aid discipline can help Member States target support where it brings the best results to spur competitiveness or assist change.

We are now halfway though implementing the **State Aid Action Plan** which aims to support Member States to use less aid and to use it better, and to introduce a refined economic approach and more effective procedures.

Now the priority is the **General Block Exemption regulation**, due to be adopted mid-next year at the latest. The Commission wants to cut more red tape where it can be cut, and make sure that small and straightforward aid for SMEs, employment aid, training aid, regional and some risk capital aid – and even some environmental aid measures – no longer need the "Brussels" stamp.

Moreover, in December of this year, the Commission will adopt **new guidelines on State aid for environmental protection**. The aim is to find a proper balance so
that environmental measures can be promoted while at the same time minimising distortions of competition.

**Specific cases and sectors of particular importance**

Overall, 2007 has been full of challenges for all the work I have just mentioned and because competition is always a challenging job. But this has been also a year of achievements for our competition policy. I would also like to say a few words about some important more case- or sector specific developments of the last months.

- **Microsoft**

The 17 September 2007 CFI judgement on the Commission's 2004 Microsoft decision is of course a great source of satisfaction to the Commission. I will not go in the details of it: the case was in many cases exceptional and has attracted so much attention.

Generally speaking, the Commission's Decision set an important precedent in terms of the obligations of dominant companies to allow competition, in particular in high tech industries. It sends a clear signal to such companies. And when it comes to competition practice, the CFI confirmed the Commission's assessment as to the appropriate legal tests to be applied as concerns tying and refusal to supply, and the evidence needed to satisfy those tests.

As we talk of Microsoft and Article 82, I would like to say the following on the state of play with regard to our Discussion Paper. We have taken some time to reflect on the various messages we received from last year's public consultation, and we were also keen to receive the CFI's judgment on Microsoft. Obviously, the formulation of policy guidance on a legally and economically complicated topic like unilateral conduct needs careful analysis. In this matter 'getting it right' has priority over speed.

- **Telecommunications**

Telecoms is also an area where technology and markets are evolving at a rapid pace. As you know, we are reviewing the current regulatory framework for electronic communications with a view to significantly rolling back regulation in those markets where there is effective competition. I understand that the Commission proposals are in fact coming out as I am speaking now.

On 4 July 2007 the Commission imposed a fine of €152 million on Telefónica, the Spanish telecoms incumbent, for abuse of dominant position in the form of a margin squeeze in the Spanish broadband markets.

Here too, I will not go into the details of the case. I would just recall that it sets out a very comprehensive margin squeeze methodology. But I would rather like to reflect more generally on what can be drawn from this Decision for other sectors, and in
particular sectors with rapid technological development and innovation, as well as regulated sectors.

Here, as in the case of Microsoft, the dominant undertaking's incentives to invest and innovate are not at stake. First, Telefónica's, just like most other telecoms' incumbents infrastructure, is to a large extent the fruit of investments that were undertaken for the provision of traditional fixed telephony services well before liberalisation. This is why there are access obligations as concern this infrastructure.

Second, prices which have the effect of excluding as efficient competitors and which have a long-lasting consumer harm send the wrong investment signals.

The case also confirms that the existence of ex ante regulation does not preclude the application of competition law. Sector regulators put in place ex ante regulatory mechanisms allowing competition to develop, but can only do this on the basis of market and cost forecasts. In so doing regulators lessen, but cannot entirely eliminate the risk of anti-competitive behaviour.

- The energy sector

Like telecommunications, EU energy markets are undergoing liberalisation, which started in the late 1990s with the ending of legal monopolies in the energy industry and giving large industrial energy customers the right to freely select their suppliers.

A second legislative package was adopted in 2003, with stricter rules: we moved from negotiated third party access to regulated third party access (based on published tariffs) and from accounting unbundling to legal unbundling. Also, the right of large industrial energy customers to select their suppliers was extended to all customers.

Despite these waves of liberalisation legislation, obstacles to free competition remain. This was confirmed by the sector enquiry that the Commission carried out in 2005 and 2006 and which showed that national energy markets are still highly concentrated, vertically integrated companies foreclose competition through their control of access to their network, and the level of cross border trade between Member States is still very low.

So what is the Commission doing about this? In addition to a number of individual cases we are pursuing, in September 2007 the Commission adopted a third liberalisation package. It pushes for full ownership unbundling, which is the most effective way to deliver non-discrimination and to encourage new investment.

Conclusion

I cannot of course touch on all the other initiatives and cases tat are on-going, despite the importance of many, such as the sector enquiries into retail banking and business insurance.
Competition activities and workload increased very considerably in 2006 and 2007. The trends for 2008 and beyond clearly continue in the same upward direction.

This is a challenge for the Commission, as so is it for the Croatian Competition Authority that will be implementing the rules as they evolve until accession, but also thereafter, given today’s system of parallel application of EU competition law by the Commission and the national competition authorities. This system relies on close cooperation between all European competition authorities.

But for now let me come back to the most immediate challenges, which are those that the CCA faces in the current enlargement process.

As you all know, the negotiations on the Competition Chapter have not yet been formally opened. Their opening depends on the fulfilment by Croatia of certain conditions related in particular to the restructuring of the steel and shipbuilding sectors and to the alignment with the State aid rules of certain fiscal regimes like the Free Zones.

I cannot stress enough how important for us is the role that the CCA plays in this respect. The CCA is the one that will assess the measures directed to fulfil those conditions. It is the CCA that will check compatibility with the State aid rules and that will ultimately be in charge of authorising or not authorising these measures.

And this very important role will continue once the negotiations on the competition chapter are opened. As you know, one of the conditions for acceding to the EU is to have a credible and sustained enforcement record in all areas of competition policy: antitrust, mergers and State aid.

As I said before, we have found in the CCA a very reliable partner and I have no doubts that the CCA is up to this task. I want to take this opportunity to confirm today the support of the European Commission to the CCA: we stand by the CCA, to assist and advise whenever necessary.

But even more than our support, the CCA needs the support - which I am sure that it gets - from the Croatian Government: from ministries, and local entities, from all the State aid grantors, from companies and even from the press. The CCA has to be involved early on in the decision making process concerning the design of aid schemes and individual grants of State aid, and its opinion and advice has to be taken fully into account in this process.

We at the European Commission will continue, and indeed intensify our cooperation with the CCA. I believe that this cooperation forms a very solid basis to cope with the many challenges ahead. Up to accession ... and thereafter!

Thank you for your attention.