EUROPEAN COMMISSION

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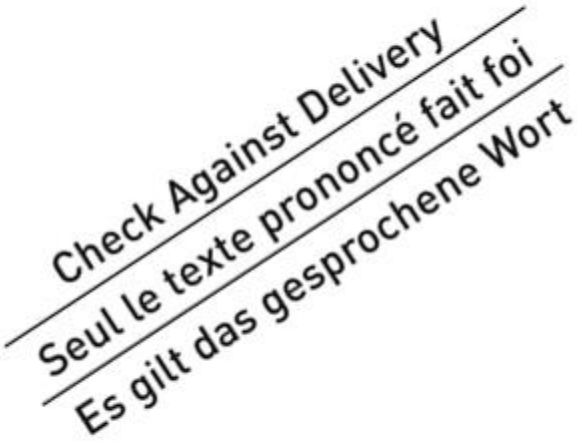
The legacy of Commissioner Vestager and a peek into the future



AmChamEU's competition policy conference

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Competition

Ladies and Gentlemen:

It is an honour for me to close your 2019 competition-policy conference. This is traditionally the place where competition-policy actors from both sides of the Atlantic take stock of events over the past year and exchange notes.

This year, because of the transition to the von der Leyen Commission, you have given us a more difficult task. You have asked us to make predictions, which – as someone said – is very difficult, especially if they are about the future.

When we corresponded in the summer to arrange for my participation, we agreed this talk would be about Commissioner Vestager's legacy and its implications for the next commissioner for competition.

Since then, Commissioner Vestager has been confirmed in her role and will also be Executive Vice President for digital affairs. So, properly speaking, we can no longer talk of "legacy". We can talk of "continuity and evolution – evolution and change", instead.

Therefore, I will review the main principles that have guided our action over the past five years and see how they will continue to guide us in the next mandate. I will also point at likely areas of evolution as competition policy adjusts to an ever-changing economy and to the strategy of the next Commission.

Two principles…

One hallmark of Commissioner Vestager's first mandate has been her frequent reference to the full implications of competition policy.

In many speeches and interviews the Commissioner has stressed the political and social impact of our action. For instance, during her confirmation hearing at the European Parliament she said – and I quote – that: "enforcing competition rules can make markets work for the people, and not the other way round". She was refering to the ethical and human dimension which must inform our enforcement.

We are talking about an ethical choice anchored in the values of the EU that underpins our policy. It is for us all not for large corporations and platforms to decide the kind of society we want to live in. We cannot ignore this aspect of competition policy – especially not at a time when so many people in Europe and around the world feel excluded and powerless.

Expect this EU approach to the enforcement of competition rules to be preserved in the next Commission.

Another thing we can expect will not change is the vigorous defense of the independence and impartiality of enforcers. The ECN+ directive was a major achievement in this respect.

The directive assumes that keeping the single market level and open is a task carried out by the European Commission and its sister authorities in EU countries.

Its main goal is giving all competition authorities in the EU a set of standards that guarantees sufficient resources, independence and effectiveness, while at the same time safeguarding due process for companies.

We are stronger together – competition enforcers know this well – and this is just as true at the international level.

In these turbulent times for global cooperation, we have been strengthening our international relations over the past five years, especially in multilateral fora such as the International Competition Network, the OECD and the G7.

The EU is open to business and will remain so.

We welcome anyone who plays by the book. The flag that flies on top of a company's headquarter will continue to be immaterial. We will continue to assess every case on its merits and demand respect for our rules and principles.

If we are serious about playing in the same team for a global level playing field, reciprocity and mutual respect must be among our long-term objectives.

...and a focus on digital

Another feature of the past mandate we are likely to see in the next is a focus on digital industries.

We all welcome the opportunities held out by the digital revolution, but we must not be blind to its challenges, not only for the economy but also for our societies and democracies.

In her first mandate, Commissioner Vestager has helped to shape a growing international consensus that digital markets and big technology firms need to be tackled vigorously.

Let me remind you of the international conference we held at the start of the year titled Shaping Competition Policy in the Era of Digitisation and of the report that three special advisers presented in April to look at the evolution of competition policy in the digital age.

Of course, we were not alone. Many competition authorities have been conducting similar research starting with the Hearings on Competition and Consumer Protection in the 21st Century conducted by the Federal Trade Commission. More studies have been carried out by competition authorities in Australia, Japan, the UK, France, Germany and other EU countries.

In sum, we are looking at a truly global effort.

Digital challenges from our practice

What have we seen at the European Commission?

We have good, first-hand evidence that many digital firms strive to win a battle *for* the market, and not just *in* the market as was common in the past – and some are succeeding.

I want to make clear that competition rules are perfectly fine with a company that grows in size and dominance thanks to its success. Competition rules are there to make sure that its rivals can still exert competitive pressure and the market remains open to new entrants.

As the special advisers confirm in their report, the incentives to *abuse* market power are very strong in digital markets. Take a couple of features that we often observe: returns to scale and network effects. They are not new to competition assessment, but in digital markets they are extreme.

The special advisers and many stakeholders have called for extra vigilance and robust enforcement. This is good advice. Among other things, we will continue to make sure that digital incumbents don't make it too difficult for consumers to switch to competitors or use them in parallel.

There are many good arguments to make the point that competition authorities should not over-enforce.

But we also need to be aware of the harm that under-enforcement can do, especially when we talk about companies with billions of users and a space where information, software updates and anticompetitive harm can spread across the globe in a flash.

Trusting the market to correct itself would be a costly mistake. This is not what our practice tells us we should do. We need to strike the right balance. In fast-moving digital markets we need to use our tools to their full extent and before it's too late.

Antitrust

The Google Android decision that the Commission took last year is an example of what I mean here.

The company was fined €4.34 billion for using bundling and fidelity rebates to keep rivals at bay. As a result of our decision, some of you may have already seen a choice screen for the default browser and search engine you want to use on your smartphones.

As to the need to move faster in fast-moving markets, I will refer to the recent Broadcom decision. We found, prima facie, that the contracts the company imposed on its customers would undermine its rivals and likely create serious and irreparable harm to competition in the markets for certain chipsets.

As a result – in a so-called 'interim measures' decision – the Commission ordered the company to stop applying certain clauses in existing contracts and not use them again in new ones. The full investigation is proceeding and the Commission will eventually take an ordinary decision on substance as well. But in the meantime consumers are protected and the decision, when it is taken, will not come too late.

When the facts and the circumstances of future cases call for interim-measures, we can expect that they will be used again.

I have just given you two examples and both involve companies headquartered in the U.S. How does this square with my earlier pledge that we are indifferent to flags?

The answer is simple. It is almost inevitable to find U.S. companies when we look at digital markets, since they occupy the scene globally. For the same reason, when we look at the banking sector, we will find UK or Swiss lenders; and when we look at the automotive sector, chances are we will find German manufacturers or Japanese cartelists supplying them.

As a matter of fact, earlier this year we sent a Statement of Objections to five German carmakers with our concerns that they may have harmed competition on the development of technology for cleaner emissions.

If you go through the list of all antitrust and cartel decisions over the past five years, testimony to the huge amount of work delivered by DG Competition under Commissioner Vestager's guidance, what you will find is plenty of flags and what you will *not* find is bias against any one of them.

Since November 1st, 2014 – when Commissioner Vestager took up her post – to the end of October, the Commission adopted 80 decisions under EU antitrust rules and 27 of these were cartels. The rest of our action is in merger review and State aid control, to which I will now turn.

Mergers

In mergers, one trend in Commissioner Vestager's first mandate was a sharp increase in transactions.

Each year we would receive 5% to 10% more notifications than the previous one until we hit a new record high in 2018. In total, the Commission took almost 1,800 merger decisions during the mandate, 38 of which were complex cases that required in-depth investigations.

Six proposed deals were prohibited[1], three of them in 2019. However, the overall rate of intervention (counting remedies in Phase-I and Phase-II cases, withdrawals in Phase-II and prohibitions) has remained constant during the last years in the typical band of 5% to 8%.

One prohibition decision that hit the headlines across Europe and beyond is Siemens' planned acquisition of Alstom in the rail industry. I mention it to you because it helps me make two important points.

First, that although digital industries have taken the limelight, competition enforcers are active and alert in all economic sectors – and you will agree that consumers need safe and modern trains just as they need shiny smartphones.

[1] Hutchison 3G UK/Telefonica UK, Heidelbergcement/Schwenk/Cemex Hungary/Cemex Croatia, Deutsche Börse/London Stock Exchange Group, Siemens/Alstom, the Tata Steel/Thyssenkrupp joint venture, and Wieland/Aurubis Rolled Products/Schwermetall.

The second reason is that this major decision is more evidence that the Commission's competition enforcement is even-handed. When we conclude that a deal is likely to harm the competitive structure of a market, we ask the companies to find good solutions and – when they fail to do so – we will block it.

Standing by the side of consumers sometimes means standing up against corporate giants.

But prohibitions remain decidely rare. Every time we find that a planned deal would raise competition concerns, we make every effort to prevent anticompetitive harm relying in particular on structural remedies.

I would like to mention a couple of other trends that emerged over the past few years.

One is the increase in simplified cases since 2014, when we introduced a package of simpler and business-friendly procedural rules. While in the past simplified cases would be just over 60% of the total; the figure increased to almost 70% following the adoption of the package and to 75% in 2018.

The other trend is the extension of our assessment beyond straightforward theories of harm related to price. During Commissioner Vestager's mandate, the Commission has also investigated competition concerns related to data – for example in the Microsoft/ LinkedIn and Apple/Shazam cases – or to a loss of innovation – as in the Dow/DuPont and Bayer/Monsanto decisions.

State aid

To complete my quick overview of our action over the past five years, let me tell you that, to the end of October, the Commission took 2,385 State aid decisions.

I will use State aid to show another feature that we are likely to see over the next few years: how competition control dovetails with the broader policies of the EU.

The top priorities for President Juncker included:

- Boosting investment in research and development;
- A stable and safe banking financial sector; and
- Having corporations pay their fair share of tax.

And we have brought our contribution under each heading using our State aid tools. Let us just think of:

- The so-called Important Projects of Common European Interest – or IPCEIs for short;
- Our continuing work in the banking sector under Banking Union rules; and
- The cases involving corporate taxation.

The IPCEIs have already allowed the release of €1.75 billion for a microelectronics project in four EU countries – and another case involving investments in battery technology is ongoing. These are investments that do not harm competition because they address needs that are crucial for our future and that the market alone cannot meet.

In the banking sector, over the past five years competition policy has worked together with the Banking Union institutions to halve the average level of non-performing loans, which are part of the legacy of the financial crisis.

For example, the Commission aproved an Italian scheme in 2016 that has helped to move over €62 billion of bad loans off the balance sheets of Italian banks. And last month we approved a similar scheme in Greece.

Finally, since October 2015 the Commission has taken eight decisions involving selective tax advantages that the authorities of some EU countries granted to corporations such as Fiat, Apple, and Engie.

Having said this, we are fully aware that State aid control is not a panacea. For instance, competition rules are an imperfect tool to address the problem of large companies that fail to pay their fair share of tax.

A comprehensive and stable solution to this problem will only come from legislators, not enforcers, and it will probably have to be coordinated in multilateral organisations of world governance.

And if you ask me, I would like a global tax regime where companies large and small pay taxes right there where they generate their profits – which is one principle behind the Common Consolidated Corporate Tax Base proposed by the Commission back in 2011.

Ladies and Gentlemen:

Competition control is only part of what we need to take full advantage of the opportunities in the digital age and minimise the risks it carries with it. But it is a significant part.

As a competition enforcer, I can tell you that we will continue to enforce the law in a robust, objective and independent manner.

We will continue to keep all channels open with legislators, industry representatives and social advocates to constantly keep our rules, policies and priorities ahead of the curve.

We will continue to call for dialogue in the EU and with our international partners, especially in our multilateral organisations. The ideal goal of a global level playing field can give us a common sense of direction.

We will continue to preserve the integrity of the single market and make sure it works as intended to the benefit of consumers and of anyone who wants to do business in the EU – Europeans and non-Europeans alike.

A level, open and vibrant single market is integral to our idea of a united Europe. And a public policy that – like competition policy – stands by the side of the people lies at the foundation of the Europe we want to build together.

Thank you.

Competition decisions between 01/11/2014 and 31/10/2019

Antitrust non-cartel decisions (not including rejection decisions) All antitrust non-cartel decisions	29 53
Cartel decisions (including re-adoptions, but not amendment decisions)	27
Merger Phase II decisions (not including withdrawals) All merger decisions	38 1,796
State aid decisions (including corrigendum decisions, information and suspension injunctions, etc.)	2,385