



SPEECH | 11 September 2020

The future of EU merger control

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'Please check against delivery'

Introduction

Thank you so much for inviting me to be with you today.

I'm so pleased that you've been able to make this event happen, even though we are kept physically apart due to the risk of infection. Because the competition enforcers and experts of the world are rather like a family. And like any family, it does us good to get together – especially when, like today, we have something to celebrate.

Thirty years ago this month, on 21 September 1990, the EU's first merger rules came into force. Two weeks later, the first filing came through the Commission's door – Renault and Volvo wanted our approval to link their bus and truck businesses.

In the three decades since then, the Commission has received nearly eight thousand more merger filings. And the merger rules have become an essential guarantee of competition in Europe.

Thanks to merger control, consumers and businesses can count on lower prices, wider choice, more innovative products. That means a better life for everyone; it also helps businesses to keep down costs, and successfully compete in global markets. And the merger rules also make Europe more competitive, by giving the best and most innovative companies plenty of room to grow.

These are not marginal benefits that we're talking about. In the last five years, our merger work has directly saved customers billions of euros each year – and that doesn't count the harmful mergers that never left the boardroom, because companies knew they wouldn't get approved.

The figure also doesn't include the benefits of innovation – and those benefits can be huge. They can even be a matter of life and death. In 2015, we stepped in to make sure that research on some promising new drugs would continue after a deal between two drug companies, Novartis and GSK.

Three years later, the company which took over that research - which might have stopped altogether if we hadn't intervened – produced a new and better drug for the most dangerous type of skin cancer.

The importance of competition in a changing world

Not every intervention in a merger can directly save lives. But every one of them can contribute to a stronger, fairer economy. And we need that contribution now more than ever.

The coronavirus has not only created a lot of pain in many families all over the planet, but also the deepest recession in a century. It's changing our economies in fundamental ways, ways that may well turn out to be permanent. And those changes come at a time when our economy is already dealing with the challenges of globalisation and digitisation.

So today, in order to stay competitive in a fast-changing world, we need to be able to adapt to those changes. And competition can give us that ability. It helps and encourages us to innovate, by giving the best ideas the room to succeed, no matter who they come from. It gives the industries of the future the chance to draw in the investment that they need, without having to compete for funding with outdated monopolies.

And so the last thing we should do now is to ease off the enforcement of competition rules.

In 1933, in the depths of the Great Depression, the United States adopted the so-called the National Industrial Recovery Act. That Act partially suspended the US antitrust rules, in the hope that less competition would make industry stronger. But in fact, it did the exact opposite. The Act held back the recovery of the US economy – so much so that the Roosevelt Administration itself reversed course after just a few years. And since then, economic studies have shown the huge cost, in growth and jobs, of relaxing the antitrust rules.

Keeping the EU merger rules up to date

So this is not the time to give up on competition enforcement. But we do need to make sure our efforts are focused where they're needed.

In the same year as the first EU merger regulation came into force, doctors also did the first laser eye surgery. That technology seemed pretty terrifying at first. But it worked, because the lasers are utterly precise. Their power is focused in exactly the right place, so they cut where they need to – and leave everything else intact.

And that is also the principle behind the EU merger rules – to concentrate on the things that matter for competition, and leave the rest alone. After all, just a very small number of the thousands of mergers that reach competition authorities across the world every year seriously threaten competition.

That precision is the reason why our rules have worked so well. But the more precise your rules are, the more important it is to make sure they're focused in the right place.

One of the things that makes laser eye surgery hard is that our eyes jump around a lot – a hundred times a second. So the devices that track the position of our eyes have to update themselves thousands of times every second, so the laser can focus on the right spot.

Our economy – luckily – doesn't change this fast. But we do still need to calibrate our merger rules regularly, to make sure they stay focused in the right place.

In my last term as Commissioner, we started another round of calibration, when we launched an evaluation of some important elements of our merger procedures. Since then, we've had around a hundred replies to our public consultation – including a very valuable contribution from the IBA's Antitrust Committee. We've met and discussed with businesses, government and expert advisers. I'm very grateful to everyone who contributed to that work. And we aim to be able to publish the full report of the evaluation early next year.

In the meantime, there are a few preliminary conclusions we can draw, from the work we've done so far. We don't think that the merger regulation as such needs to change. But there are a number of things we can do, to make the rules work even better.

Thresholds

One of the main issues that we looked at was whether our thresholds for filing a merger, which are based on the companies' turnover, are still the right way to spot mergers that matter for competition. Because these days, a company's turnover doesn't always reflect its importance in the market. In some industries, like the digital and pharmaceutical industries, competition in the future can strongly depend on new products or services that don't yet have much in the way of sales.

We've discovered that, on the whole, the existing thresholds work well. But there are a handful of mergers each year that could seriously affect competition, but which we don't get to see because the companies' turnover doesn't meet our thresholds.

One solution could be a new threshold that's based on the value of the merger, not the sales of the companies. But it's not easy to set a threshold like that at the right level. If it's too high, it doesn't really help – you still end up missing a lot of the cases that matter. On the other hand, if you set it

low enough to make sure that you see all those mergers, you risk making companies file a lot of cases that simply aren't relevant. So right now, changing the merger regulation, to add a new threshold like this, doesn't seem like the most proportionate solution.

In fact, the answer is hiding in plain sight. On a few occasions, we did get to see the mergers that we wanted to see anyway – because Europe's national competition authorities referred them to us. And those referrals could be an excellent way to see the mergers that matter at a European scale, but without bringing a lot of irrelevant cases into the net.

There's just one small issue. Like the Commission, most of Europe's national competition authorities can only review cases where the companies' turnover meets a certain threshold. And in recent years, the Commission has had a practice of discouraging national authorities from referring cases to us which they didn't have the power to review themselves.

That practice was never intended to stop us from dealing with cases that could seriously affect competition in the single market. And yet today, when a company's importance for competition isn't always reflected in its turnover, it could have exactly that effect – meaning that some important mergers can't be reviewed by the Commission, or by national authorities.

So the time has come to change our approach. We plan to start accepting referrals from national competition authorities of mergers that are worth reviewing at the EU level – whether or not those authorities had the power to review the case themselves.

This won't happen overnight – we need time for everyone to adjust to the change, and time to put guidance in place about how and when we'll accept these referrals. But if all goes well, I hope we'll be able to put this new policy into effect around the middle of next year.

Simplification

Our evaluation also looked at how to make it even simpler to file a merger – especially for the cases that are least likely to harm competition.

The evaluation put forward some ideas for fundamental changes to the EU merger rules, like not requiring companies to notify certain types of merger. Overall, there wasn't a consensus that this would be the right way forward.

But even without changing the merger regulation, there's still a lot we can do to make life easier for companies that have to file mergers. In the months ahead, we plan to review some of the rules and guidance that put the regulation into practice. That includes our best practices on merger proceedings, our notice on the simplified procedure, and the merger implementing regulation – all with the aim of making our procedures simpler and easier.

Our simplified procedure allows us to deal with the vast majority of mergers very simply and quickly. In 2013, the Commission expanded the categories of cases that come under this procedure – and the proportion of filings under the simplified procedure jumped from two-thirds to three-quarters. But that still left almost a hundred cases last year that didn't qualify for the simplified procedure - and we want to see if we can reduce that further, without losing our ability to protect competition.

We also want to see if we can cut the amount of information that merging companies have to provide, and make it simpler to submit that information. And just as importantly, we want to look at whether there are ways we can make our merger procedures faster.

In many cases, we discuss a merger with the companies involved for some weeks, before we get the formal notification. Those pre-notification discussions can be very valuable indeed. But some cases are so straightforward that there's really nothing to discuss before the merger is filed. So we'll look at how we can cut back on pre-notification discussions.

Reflecting on the substance of merger assessments

But of course, calibrating the system is not just about procedure. It also means checking that we're getting things right, when we assess whether a merger will harm competition.

The most obvious way to check if an instrument is well calibrated is to see if you hit the target the last time you used it. So the first thing we'll do is to look back at some of our recent decisions, to see, for instance, what effect those decisions have had on prices and choice, quality and innovation.

But looking back can only be part of the story. We also need to make sure that we fully understand how the world around us – the world in which we apply our rules – is changing. And for that, we need your help. So we're now launching a reflection, to discuss ideas and share evidence on how to improve our merger rules – rules that still work very well, but which also need to adapt to a world that keeps changing.

Digitisation, for instance, can transform the way markets work. It can give the biggest companies more power than ever – thanks to the insights from huge collections of data, or the big networks that make a service attractive to users. So we want to see if digitisation means we need to change some aspects of the way we assess how a merger affect competition.

We also want to understand what the growing concentration in Europe's markets means for the competition rules.

In the big European economies, several industries are more concentrated now than they were twenty years ago, with the biggest companies controlling more of the market. And at the same time, corporate profits have been taking a growing share of GDP – perhaps because, in these concentrated markets, competition is less fierce, and companies find it easier to raise their prices. So it's important that we understand what's causing these changes – with your help, of course.

So we're open to ideas, no matter where they come from. But we'll only take a decision when we've considered all the evidence. So we won't immediately be drafting new merger guidelines. And anyway, it wouldn't make sense to do that now, while the European Court is still considering our appeal in the Hutchison mobile merger case.

Conclusion

We are proud of the record of thirty years of EU merger control in the European Union. It has made our economy stronger and fairer. And if we take the right decisions now, it can help us to face the even bigger challenges of the future. It is a lot of team work, over years, that has made this happen. It also shows what community we are.

To have a well functioning single market and economy, that doesn't just depend on the competition rules, of course. Companies also need finance, to help them recover strongly in the months and years to come – which is why our recovery plan, Next Generation EU, will make 750 billion euros available to help put Europe back on its feet. And we also need rules to keep the economy working fairly – like the ones we suggested in June, to protect the level playing field in Europe from the effects of foreign subsidies.

Competition won't take the place of these policies. But it will give us the strength and the adaptability, to make the most of the opportunities they offer.

That's why we need to keep our merger rules working as well as they possibly can. And to do that, we need to draw on all the knowledge and experience that this international competition family has to offer. So I hope I can count on your help, to get the best out of the competition rules – and the best from our economy.

Thank you.