EUROPEAN COMMISSION

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Trends and milestones in competition policy since 2010

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Ladies and Gentlemen:

It is a pleasure to speak at AmCham's competition policy conference. I thank Hendrik Bourgeois for offering me one more opportunity to review the state of competition enforcement in Europe. And, of course, many thanks to Salomé for her kind words of introduction.

Given that this is the last time I will attend your conference before leaving the Commission, I will tell you what – in my view – are the more significant trends and milestones in competition policy with a focus on matters of interest to US companies.

The impact of globalisation in our enforcement practice is one such trend, particularly noticeable in our review of mergers and acquisitions.

Over the last decade, we have seen a significant increase of merger cases involving non-EU companies. Such global transactions now represent almost 60% of all our merger cases.

Not surprisingly, up to half of the acquisitions of EU companies by foreign firms involved US-based companies with a significant business presence in Europe.

Globalisation of mergers and acquisitions activities is also reflected in the growing international cooperation among enforcers. We have cooperated with other agencies in around half of our past significant merger cases where we had to intervene.

We work with our counterparts from the US DoJ and FTC on a regular basis to ensure a smooth alignment of our investigations and remedy solutions, but also with other agencies, such as the Korean KFTC and the Japanese JFTC.

The vast majority of proposed mergers do not raise concerns and get the green light. In about 5% of cases, we approve them when the companies offer remedies that allay our competition concerns.

Very rarely we have to prohibit a transaction. In fact, I've had to block only four since I took office. US companies were involved twice – in the NYSE/Deutsche Börse and UPS/TNT cases.

This should be seen against the hundreds of positive merger decisions involving US companies. Notable cases include Microsoft's acquisition of Skype in 2011, Google's purchase of Motorola Mobility in 2012, and the Facebook-WhatsApp deal we've seen in the papers these days.

I will now move to the other areas and instruments of competition policy enforcement.

In our fight against illegal collusions and abuses of dominant position, let me recall our decisions of 2012 and 2013 in the market for e-books involving Apple and a number of leading publishers; the two decisions we took last April related to the so-called smartphone patent wars involving Samsung and Motorola; and the ongoing Google antitrust case.

The latter has generated a deluge of comments from a broad spectrum of stakeholders: from publishers to data-privacy advocates. However, not all the comments I've seen are related to our present investigation – or even to the enforcement of EU competition law.

Let me give you the state of play. The twenty formal complainants in the case have provided new evidence and arguments during the summer on certain aspects of the latest commitments proposed by Google.

They did so in response to so-called pre-rejection letters, which we send out as standard practice to complainants in antitrust cases to give them the opportunity to comment on the Commission's reasoning before adopting final decisions.

I informed Google of these developments at the beginning of September and asked them to offer improved commitments.

Google is now considering the next steps. We are waiting for their reaction to my request, and we will decide the follow-up accordingly.

It is vital to keep antitrust and, more generally, competition enforcement free from political interference.

This is why I can assure you that my request to Google to improve some aspects of its previous proposals is not due to any political pressure or to any bias related to its US origin.

In fact, the main arguments I took into account as I asked for improved commitments were also provided by some US complainants.

Given the prominence and visibility of Google, it was to be expected that this case would make waves. But the credibility of competition enforcers depends on their ability to stick to the facts of each case, follow tried and trusted procedures, and respect the jurisprudence of the Courts.

This is what the Commission will do in this as in any other case. And I don't rule out that the Commission will face other very sensitive cases in the future.

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The growing integration of business on a global scale is also apparent in our fight against cartels. Here the good news is that major enforcers around the world are responding by reinforcing their cooperation – and that between DG Competition and US enforcers is part of our daily enforcement practice.

For example, some recent cartel investigations and decisions in the market for car parts have been conducted in close cooperation with the US Department of Justice.

As to formal cooperation instruments, the EU-US competition agreement goes back 23 years and has become one of the most developed areas of transatlantic cooperation at Commission level.

Looking beyond transatlantic ties, we have agreements and MoUs with the competition authorities of Canada, Japan, Korea, Brazil, Russia, China and – most recently – India.

The agreement that will soon come into effect with Switzerland goes a step further, because it covers exchanges of evidence obtained by both competition authorities during their respective investigations.

In addition, we are active participants in the International Competition Network – the multilateral forum for over one hundred world enforcers – and in the OECD Competition Committee.

Finally, let me stress the importance of the many international conferences and meetings devoted to competition enforcement. Thanks to these events, we are almost in constant touch with each other. We exchange our views, discuss common cases and concerns, and build mutual trust on a personal level.

Ladies and Gentlemen:

If you ask me, the area in which competition policy has made the most difference in the past few years is banking and finance.

As a matter of fact, the competition enforcement stories with the highest coverage in EU media –apart from the Google case- have been those related to the rate-fixing practices adopted by certain banks – often dubbed the Libor and Euribor scandals.

This is not surprising. Our cartel investigations and decisions, carried out in parallel with other regulators and financial watchdogs across the world, have unveiled totally unacceptable practices in a sector that was already under enormous pressure to reform.

At the end of last year, the European Commission meted out a total €1.7 billion in fines in two landmark cartel decisions.

In these cases several large banks – two of them from the US – and a broker settled with the Commission by admitting they had colluded to manipulate benchmark rates.

Three banks – including JP Morgan for the Euribor case- and a broker did not accept our findings. Normal cartel proceedings are continuing against them.

Last spring these parties received a Statement of Objections. Now they have the opportunity to submit their arguments and fully exercise their rights of defence.

After a full analysis of their submissions, the Commission will decide its final position. There are more ongoing investigations in the financial sector and some of them are advanced.

These cases are a top priority. We have spared no efforts to unveil and punish irresponsible practices that bring us back to before the outbreak of the financial crisis; affect millions of people; and undermine one of the pillars of our economy.

'Credit' derives from a Latin word that meant 'trust'. I hope that our work will help to bring the term closer to its root.

Another milestone in the financial sector is our work related to EU efforts to avert the collapse of the financial system in 2008/2009 and manage the subsequent sovereign-debt crisis.

Soon after the financial crisis broke out, competition policy was quickly deployed – the instrument called State aid, to be precise – to keep in check government bailouts of banks hit by the financial crisis.

We have made sure that the rescued banks – equivalent to about a quarter of the EU banking system in terms of assets – would restructure, return to viability, and no longer need taxpayers' money.

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State aid policy has also been overhauled over the past two years. As you know, we use State aid to make sure that the support granted by Europe's governments does not distort competition in the internal market.

However, many EU governments have had to consolidate their budgets in the recent past, so we designed a State aid modernisation strategy to help them improve the quality of public spending – in other words, do more with less.

I hope this sweeping reform will also be regarded as a tangible response to the many voices that have asked us to take into account public subsidies granted by third countries.

I believe that Europe now stands on firmer ground as it calls for extending to global markets the same level playing field we strive to guarantee within the EU. This is one of the points where the TTIP negotiations are linked with competition enforcement.

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State aid has also been used to avoid selective treatment using tax regimes. The Commission is tackling the issue of tax competition since the late 1990s.

This has resulted in a notice on the assessment of direct taxation in 1998, a large scale investigation into a number of preferential tax regimes for multinationals in 2001, and the prohibition of various tax regimes that granted tax exemptions to multinational companies.

Recently, new formal investigations have been announced, receiving a lot of media attention.

Last June I opened three State aid investigations regarding transfer-pricing arrangements validated by tax rulings. The cases involve Apple in Ireland, Starbucks in the Netherlands, and Fiat Finance&Trade in Luxembourg.

Last week, I opened another investigation into the arrangements between Luxembourg's tax authorities and Amazon and extended the on-going in-depth investigation into Gibraltar's preferential corporate tax regime.

Similar aspects are being discussed in the US, where public attention on practices such as tax inversion is growing and the US government is taking concrete measures.

The OECD has also been working on aggressive tax planning with its Base Erosion and Profit Shifting project.

The main reason behind our State aid action is the realisation that governments can distort competition in the Single Market not only by granting subsidies but also by offering sweetheart tax deals.

In particular, the deals we have identified benefit only a handful of large multinationals that can put enticing investments and job opportunities on the negotiating table. Smaller companies cannot wield the same bargaining power.

This is where things stand.

But let me now clarify two important points.

First, these investigations cannot be seen as an attempt to harmonise tax policy by the back door. I am not trying to modify tax legal systems. What I want is to avoid that through their interpretation, national authorities will grant selective advantages to a few companies at the expense of all the others present in the same jurisdiction.

Secondly, none of these investigations is directed against specific companies. They look into the tax practices of certain EU countries. EU tax authorities are responsible to ensure a level playing field, instead of offering different treatments to companies with comparable legal standings and operations.

Ladies and Gentlemen:

The US and the EU established a transatlantic partnership some decades ago, covering areas such as the economy, education, science and culture. As I said earlier, our cooperation in competition enforcement is a bright spot in in this picture.

We all stand to gain by keeping markets open and the playing field level. The current negotiations on the Transatlantic Trade and Investment Partnership are another excellent opportunity to make progress in the same direction. And the competition related provisions of the future agreement can show the way, once again, of a new step forward towards an even more fruitful partnership, building on our present experience.

Before I close, let me thank once again the American Chamber of Commerce to the European Union for its keen interest in competition policy matters and for the open dialogue we have had during these years.

Thank you.