

SPEECH

Mario MONTI

European Commissioner for Competition

**COMPETITION POLICY ISSUES AND
TRANSATLANTIC RELATIONS**

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Ladies and Gentlemen,

It is a real pleasure for me to speak to you all on such a pertinent subject. The College of Brugge is certainly an appropriate place to think ahead on one of the most important aspects of my responsibilities: the international dimension to the Community's competition policy.

It is, I believe, not an exaggeration to say that competition policy enjoys more prominence today than it has ever done; this has, to a large extent, been a product of the economic changes we have witnessed in recent times. Worldwide economic trends over the past two decades have seen a progressive move toward an ever wider acceptance and adoption of the market system. These trends have been most clearly exhibited in the economies of the developing world and in the remarkable transformation of so many centrally-planned economies.

However, these trends have also been evident in our own economies here in Europe and across the industrialised world: the process of deregulation has liberated large segments of our economies which had previously been sealed off from the benefits of competitive forces, and there is an increasing recognition that there should be limits to the State's engagement in commercial activity. In this newly liberalised world, there is an increasing recognition of the indispensability of pursuing a robust competition policy, so as to ensure that the competitive playing field is not distorted by anti-competitive behaviour. No better illustration of this can be provided than by pointing to the extensive competition legislation that our Member States have adopted in recent times.

In parallel with this worldwide economic liberalisation, we have witnessed a progressive reduction in trade barriers, and a very dramatic increase in the volume of goods and services being traded across borders. This development, in combination with remarkable technological advances, has resulted in a marked inter-dependence between economies worldwide. This globalisation presents major challenges for competition authorities around the world, and has highlighted the importance of seeking to ensure a maximum of convergence and coordination between the growing number of competition enforcement systems.

I will focus on two central aspects to the international dimension of my responsibilities as Competition Commissioner. Firstly, I will explain how we are developing our bilateral cooperation with non-EU countries in competition matters, and in particular how we are cultivating closer ties with the foreign competition law enforcement agencies of our main trading partners. And secondly, I will speak to you about our efforts in the multilateral arena: I am of course talking about the Commission's initiative to persuade our WTO partners that negotiations should commence on the conclusion of a competition agreement, and of the ideas - which you may have heard about - for the creation of a global competition forum.

Cooperation with foreign competition agencies

An indispensable response to the challenges which the Commission faces as a result of the rapid globalisation of the world economy is the pursuit of bilateral cooperation with foreign competition agencies. Practical and legal problems associated with the policing of anti-competitive practices engineered on a global scale have sharpened our awareness of the important benefits to be gained from effective cooperation between competition authorities in the enforcement of our respective rules.

This awareness arises, in part, from a realisation that there are major limitations - both legal and practical - to our ability to apply our own rules extra-territorially, and that there are many drawbacks to doing so: it can give rise to conflicts, or to incoherence, with the rulings of foreign agencies or courts, and even to conflicts with foreign laws; to do so can moreover

give rise to conflicts with foreign governments, bringing with it the risk of trade conflict or political tensions; applying our rules extra-territorially will often involve logistical fact-finding problems: how can we conduct effective investigations where crucial evidence may be located outside of the EU?; and extra-territoriality can give rise to difficulties of enforcement: it can, for example, be difficult to enforce injunctions or the collection of fines, and to impose and monitor remedies of one kind or another.

Cooperation with the US authorities

You are probably all familiar with the catalogue of EUIUS trade disputes, over what often seem almost trivial issues - bananas, beef hormones and the like. I do not propose to enter into a discussion about the reasons underlying these disputes, or to venture any views as to the merits of the arguments advanced on the two sides of the Atlantic about those disagreements. However, I am proud to say that there are no such problems in the field of competition policy. Indeed, EUIUS cooperation in the area of competition law enforcement has become something of a model for transatlantic cooperation generally.

As you may know, over the past decade we have concluded two competition cooperation agreements with the United States: the 1991 (basic agreement) and 1998 ("positive comity") agreements. Our experience of EU/US cooperation has been that it works very effectively - and particularly so in merger cases, substantially reducing the risk of divergent or incoherent rulings. Indeed, Commission staff are in close and daily contact with their counterparts at the Antitrust Division of the US Department of Justice and Federal Trade Commission.

Cooperation in merger cases has been more intensive during 2000 than ever before: an unprecedentedly large number of operations were scrutinised simultaneously on both sides of the Atlantic. Inter-agency discussions tend to focus on issues such as the definition of markets, the likely competitive impact of a transaction on those markets, and the viability of any remedies suggested by the merging parties. Merger investigations involving close transatlantic cooperation included the Alcoa Reynolds, MC1 Worldcom/Sprint, Novartis/AstraZeneca, Boeing/Hughes, AOL/Time Warner, and Time Warner/EMC cases, to name but the most "eye-catching" ones. It continues with a case, which is presently under examination: The acquisition of Honeywell by General Electric.

It is gratifying to see that we almost invariably see eye to eye with our US counterparts in the assessment of these cases - I have painted a rosy picture for you. But we should not be complacent: there is a potential for political tensions to result from competition policy decisions. You may recall that, in 1997, the European Commission was preparing to prohibit the merger between Boeing and McDonnell Douglas, after the transaction had already been approved by the US authorities. At the time, the media was talking about trade wars and other such scenarios. Ultimately, however, the case was resolved satisfactorily (following substantial concessions by the merging companies). In my view, had it not been for the close, cooperative relationship between the Commission and the US antitrust agencies, it is quite possible that it could have escalated into a transatlantic row like the recent banana debacle. All the same, we have learned some lessons from the case: it is helpful to identify, at an early stage, possible areas of disagreement in sensitive merger cases being dealt with on both sides of the Atlantic, and it is best - if possible - to resolve those issues before clearance is granted to the merger in either jurisdiction.

Our cooperation agreements with the US even allow us to request each other to take enforcement action in relation to a particular matter, by means of the cooperative mechanism known as "positive comity". In July 2000, for example, the Commission concluded an investigation of Air France for alleged discrimination against SABRE, an American-owned computerised reservation system (CRS) which felt it was being treated on less favourable terms by Air France than that airline's own CRS, Amadeus. At the origin of

the investigation was a complaint originally filed with the US Department of Justice. Invoking the "positive comity" mechanism provided for in the 1991 cooperation agreement (a mechanism subsequently elaborated on in the 1998 Agreement), the Department of Justice requested the Commission to investigate the allegations under the EU competition rules. Such innovative cooperative arrangements herald, in my view, a whole new avenue for bilateral cooperation, opening the possibility for sensible burden-sharing between agencies located in different parts of the world - positive comity allows a particular problem to be dealt with by the agency best-placed (notably in terms of fact-finding or the imposition of sanctions) to do so.

Cooperation with other countries

I am moreover seeking to expand and intensify our bilateral cooperative network in the competition field. In 1999, the EU concluded a competition cooperation agreement with Canada, and last year the Commission reached a mutual understanding on the substance of a similar bilateral cooperation agreement between the EU and Japan. I am hoping that this agreement can be initialled sometime later this year. This agreement will make it easier for the competition authorities in the EU and Japan to exchange information, to engage in consultations, and even to coordinate investigations. As the existing agreements that the EU has concluded with the US and Canada have done, this newly-intensified cooperation between Japan and the EU will serve to complement and re-inforce our already important economic and trade links, to the ultimate benefit of all of our citizens.

Moreover, as the EU and its Member States have recognised for some time, bilateralism has its limitations: we cannot realistically expect to build the same intensive cooperative relationship with all of our counterparts around the world - the price, in terms of expenditure of scarce administrative resources, would simply be too high. It is therefore time, in my view, to intensify the pursuit of multilateral and plurilateral solutions.

Multilateral/plurilateral initiatives

Let me first discuss the possibility of a competition agreement within the World Trade Organisation. I am convinced of the need to put in place a World Trade Organisation framework agreement ensuring the respect of certain basic competition principles. As you know, the Commission (with the whole-hearted support of all the Member States of the European Union) has been the principal advocate of such an initiative, and has, through the deliberations of the World Trade Organisation Working Group on Trade and Competition, been attempting to persuade member countries of its merits. We are convinced that a framework agreement would serve to underpin the impressive progress, which has been made in trade liberalisation over the past few decades, by ensuring that governmental barriers to trade are not replaced by private ones which have the same effect.

A World Trade Organisation agreement on competition would be firmly premised on a commitment by member countries to have in place, and to enforce, domestic competition laws. The EU is suggesting that these laws be based on "core principles" reflecting what we believe already represents a consensus between World Trade Organisation members: the principles consist in a set of systemic guarantees, coupled with a commitment to outlaw the most economically harmful forms of anti-competitive behaviour.

As regards systemic guarantees, one is the fundamental World Trade Organisation principle of non-discrimination, meaning that domestic laws should not discriminate against firms on the basis of their "nationality". In addition, we believe the principle of transparency should apply: competition laws and regulations should be publicised, including any exclusions or exceptions, thereby enabling firms to familiarise themselves with the applicable law. Finally, enforcement should respect the "due process" of law, including the opportunity for those

being investigated to put their case to the authorities before a decision is taken, as well as the right to appeal such decisions to another body, be it administrative or judicial.

As regards substantive commitments, the EU is proposing that all World Trade Organisation members should outlaw cartels. We are convinced that this reflects a common view among members, not just among developed countries but in the developing world as well, as to the economic harm that such behaviour engenders. Building consensus about the need to regulate other anti-competitive practices will be an ongoing process and the World Trade Organisation agreement would evolve to accommodate such common views.

However, I should be clear about one thing: in calling for a World Trade Organisation agreement, we are not seeking to establish by stealth a global competition authority which would erode the sovereignty of national authorities. On the contrary, strong national enforcement agencies are indispensable to the success of a framework agreement. Nor is the EU proposing a harmonisation of substantive competition laws or that individual decisions of national competition authorities should be subject to dispute settlement under the World Trade Organisation.

I am very hopeful that we can convince our trading partners of the importance of this initiative, and that substantive negotiations can be undertaken as part of the next trade Round which, I hope, will be launched at Qatar in November.

A Global Competition Forum

There has been considerable talk over the last year or so about the idea of creating some kind of a broadly-based global forum for the discussion of competition policy issues generally. Let me at once declare my hand: I am an enthusiastic proponent of the idea! As I explained during a speech which I delivered at the European University Institute in October 2000, I am convinced that the creation of such a forum would meet the need to put in place a focal point for discussion between those responsible for the development and management of competition policy worldwide. There are today over 80 countries that have enacted some form of competition law regime, many of which have only been introduced during the past decade - and more are in the pipeline. There is a clear need for a place where the whole range of competition policy issues - substantive, systemic and enforcement-related - can be debated. The end-objective should be to achieve a maximum of convergence and consensus between participants through dialogue, and an exchange of experiences on enforcement policy and practice.

A few weeks ago, I joined a number of like-minded senior competition law officials and professionals at an informal gathering, for a first "brainstorming" to discuss how we should set about the launching of what has become known as the "Global Competition Forum".

We agreed that the forum should not be a new international institution, and that it should involve a minimum permanent infrastructure, with support primarily provided by its participants. It should be first and foremost a competition authority forum, but would draw together all interested parties - both public (for example, other international organisations) and private (for example, business, professional, consumer and academic bodies), who could all be appropriately associated with the forum, as participants and "facilitators". The support of facilitators could take a variety of forms including the provision of venues for discussion or of technical expertise; the International Bar Association has already generously provided its services to the development of the initiative.

I know that many of you will be asking: *"But are we not already committed to pursuing multilateralism in competition policy in the next trade Round? Wouldn't this initiative risk to undermine those efforts?"* Thus allow me to clarify this: the forum is not being proposed as

an alternative to a multilateral competition law framework at the World Trade Organisation. Rather, the two should be regarded as complementary. As I have just explained, our World Trade Organisation initiative is currently aimed at putting in place a set of basic systemic guarantees, coupled with certain minimum substantive requirements, that would be binding on member countries. The EU believes that this agenda reflects an existing consensus about what should be the central features of a sound competition policy. The work of the global forum will, in my view, reinforce that consensus and extend it to other aspects of competition policy. So the two avenues can be followed in parallel, and be mutually reinforcing in their pursuit of the same ultimate competition policy objectives.

Developing countries to benefit from these multilateral initiatives

The global forum, and indeed a WTO competition agreement, will - in my view - be of particular benefit to developing countries. Closed and intransparent markets, and the absence of effective competition between enterprises, are obstacles to economic growth in much of the developing world. The pursuit of a robust competition policy by developing countries should be an important ingredient in any economic reforms designed to promote growth: it encourages industrial competitiveness by rewarding efficiency and innovation, thereby fostering investment.

The fact that many developing countries are still in the process of developing a competition law framework renders the advent of the forum - and, in due course, of a World Trade Organisation competition agreement - all the more timely: this would help ensure that new competition regimes are based on commonly agreed principles, and that developing countries can benefit from the experience acquired by other countries in the establishment of effective enforcement structures. These initiatives will moreover ensure that competition authorities in developing countries can benefit from enhanced international cooperation, including the provision of technical assistance.

Thank you very much for your attention and I am extremely interested to hear your comments and questions thus I pass the floor to you all.