

**50<sup>th</sup> European Competition Day**  
*“Challenges of competition law in the 21<sup>st</sup> century in the European Union”*  
Mardi 22 octobre 2024 à 9 heures 30

Mr President, Mr Minister, dear colleagues, dear friends,

It is an honour and a great pleasure to speak to you today. Thank you for asking me to give opening remarks.

Köszönöm, hogy meghívott Budapestre!

In our field of work, I can hardly think of a broader yet more adequate topic to address than *the challenges of competition law in the 21<sup>st</sup> century within the European Union*.

We find ourselves at a pivotal moment, one shaped by the transformative forces of the environmental transition, digitisation and global competition, against the background of an increasingly fragmented global economy.

As Europe seeks to maintain its competitive edge and to preserve its unique social and economic model, competition policy should help meet these unprecedented challenges.

- ***Industrial policy and competition policy are joined at the hip***

=> Among these challenges, I would like to start upfront with the one that attracts the least consensus, namely the role of industrial policy to support today's European economy.

- For the past few years, there has been a rather heated debate in the EU about the relationship between competition policy and industrial policy.

There is no denying that the European economy is experiencing a slow decline, in relative terms compared with other regions of the world. Should our growth rate continue to lag behind that of the US or, worse, should the gap get wider, then it is not just that we would be discontent as consumers and workers, but also as citizens and families – our social model and even our democratic values would be at risk.

In his report of September this year<sup>1</sup>, Mario Draghi courageously spelled this out, and we owe him for saying it aloud, in his well-respected voice.

Yet the merit of the Draghi report lies not only in its forthrightness but also in its attempt to reconcile industrial policy with its supposed hereditary foe, competition policy.

Simple as it is, its message has been too seldom heard recently.

To put it plainly, there is no effective industrial policy without competition. Industrial policy is meant to foster innovation and, for innovation to bloom and flourish, fair and open competition is essential. Our companies need to step up their competitiveness at home before they may confidently move on to the international scene, and this can only happen if they have been in a situation to compete on their merits, without any undue hindrance. Competition rules are meant to offer a solid basis for industrial development, not to impede it.

In short, competition policy and industrial policy are joined at the hip. In many respects, competition policy *is* industrial policy.

- I fully adhere to the reasonable approach put forward by Mario Draghi, in that competition law should accommodate a more proactive industrial policy, without losing its soul in the process. Achieving both the consolidation of industries and robust competition is doable, and desirable.

I read a comment<sup>2</sup> suggesting that Mario Draghi's report, when advocating so, was abiding by the Goldilocks principle: we need competition, only just "the right amount of it". In that children's bedtime story, Goldilocks chooses the lukewarm porridge over the one that is either too warm or too cold.

I beg to disagree. Competition policy does not need to cool off, rather it should strive to be effective and adapt to today's realities. And if better, then why not more of it?

To better support the emergence of European champions, competition enforcers should not back up, but they should just be mindful of other policy objectives. In mergers, for instance, the law already allows us to factor in innovation, or take account of efficiency gains, including in relation to sustainable development. Why not take over these tools more actively? This would make for a boiling hot bowl of competition porridge, and one that is tastier.

- Yet we needn't be too apologetic either. Another relevant point made by Mario Draghi is about the unnecessary fragmentation of the EU's regulatory landscape. Market integration stands as the unfinished project of the EU, and competition enforcement is hardly to be blamed for it. In many crucial sectors, be it telecoms, banking or energy, Member States

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<sup>1</sup> M. Draghi, The future of European competitiveness, September 2024.

<sup>2</sup> <https://theplatformlaw.blog/2024/09/12/the-draghi-report-on-eu-competition-law-a-welcome-attempt-to-answer-europes-goldilocks-dilemma/>

maintain their own legal frameworks that create as many hurdles hampering the development of European businesses. Regulatory fragmentation, more than competition policy, stands in the way of creating European champions. Changing our market definitions is not the silver bullet politicians would like it to be.

Similarly, the granting of State aids on a national basis has the adverse effect of widening the gap between the economies of Members states, and runs counter to the Single Market, hence Mario Draghi's proposal to channel State aid to EU-wide projects.

This may sound remote from our priorities as competition enforcers, but it is not. Again, we are joined at the hip. We have an existential stake in making industrial policy work and be pro-competitive. And the completion of a genuinely Single market is the *raison d'être* of the unique level of integration of European competition law, with the decentralised enforcement of one set of rules, enshrined in the Treaty.<sup>3</sup> Supporting its achievement is one of the great challenges we face in the 21<sup>st</sup> century.

- ***The digital economy and the rise of tech giants***

=> No discussion of competition law in the 21<sup>st</sup> century can ignore the rise of the digital economy and the challenges it presents.

- Over the last decade, we have seen the emergence of digital market players that have gathered unprecedented market power. As recent Nobel Memorial Prize winners Acemoglu, Johnson and Robinson have taught us, rent extraction does not make for sustainable growth. We need an institutional framework which favours fairness and market entry.

The EU has taken decisive steps to address the issues raised by this particular kind of dominance. Specific legislation, primarily with the Digital Markets Act (DMA), was designed to curb the power of digital “gatekeepers” by ensuring that market players in their ecosystems can compete on a fair footing.

It is a cause for satisfaction that the very backbone of the DMA is made of obligations and prohibitions that derive from concerns that we, competition enforcers, identified in the first place. The DMA is the continuation of competition policy by other means. It is therefore only natural for national competition authorities to help the Commission move forward along this new competition-related route, although it is ultimately its prerogative to steer the implementation of the DMA. Meanwhile, we will keep enforcing article 102 TFEU to all practices we will deem to fall outside the remit of the DMA.

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<sup>3</sup> See B. Cœuré, “The Single Market as cornerstone of European sovereignty”, keynote speech at the Academic Conference on the 30<sup>th</sup> anniversary of the Single Market, Prague, 7 December 2022, <https://www.autoritedelaconcurrence.fr/sites/default/files/2022-12/discours-prague.pdf>.

- Talking of falling outside the remit of existing legislation, digital mergers are also a case in point. Now that the European Court of Justice has ruled out the extended application of article 22 of the merger regulation, we have to be creative again and find, or devise, a legal basis to catch problematic non-notifiable mergers. If we don't act swiftly, together and at national level, the jurisdictional fragmentation caused by the diversity of legal frameworks throughout Member States will be detrimental to the very clarity and certainty that undertakings (and, as it seems, the Court) were hoping for.

- Looking at the challenges of the digital economy, the recent rise of generative artificial intelligence (AI) introduces a new layer of complexity. The AI success story is not being written on a blank page and we can learn from past experiences.

Generative AI is known to feed on massive amounts of data, computational capacities, and specialised talent. As it happens, a few major digital players have already established for themselves privileged access to these inputs. Furthermore, their vertical and conglomerate integration gives them unmatched access to users, businesses and end-consumers. As a result, they could use their existing dominance in one area to cement their advantage in AI.

A recent own-initiative study by the French *Autorité* found that they already hold significant positions on several markets up and down AI's value chain, and barriers to entry and expansion are such that few small or young rivals may make it into these. As competition enforcers, this is cause for worry. Making sure AI is an opportunity for growth and innovation is indeed a pressing challenge that European competition enforcers must rise to in the 21<sup>st</sup> century. Beyond the European Competition Network, effective international cooperation will be of the essence, as illustrated by the communiqué recently issued by G7 competition authorities.<sup>4</sup>

- ***The ecological transition and competition law***

=> Another critical challenge for competition law, and beyond, in the 21<sup>st</sup> century is the environmental transition.

- Competition enforcement should try and support a green transition that is both fair and efficient. If not properly geared, subsidies and public support for green technologies and infrastructures could reinforce the market dominance of incumbents and larger firms, stifling competition and innovation. State aid rules aiming to prevent government subsidies that could unduly distort competition must be applied firmly, yet they ought to allow for public investments seeking to meet climate goals.

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<sup>4</sup> G7 Competition Authorities and Policymakers' Summit, Digital Competition Communiqué, Rome, 4 October 2024, <https://en.agcm.it/en/media/press-releases/2024/10/G7-Competition-Authorities-against-AI-risks>.

- Competition enforcers can and should do their part toward sustainability, even though they are not at the forefront of the fight.<sup>5</sup>

We can prioritise enforcement that goes after anticompetitive practices that are the most harmful to the environment, cracking down on practices that hinder the environmental benefits of innovation, such as agreements that limit consumer awareness of the environmental qualities of products. We can carry out market studies into markets that matter to the decarbonation of our economies – for instance, the Commission as well as several NCAs, including the French *Autorité*, have looked into the competitive functioning of charging stations for electric vehicles. We can also, and we did – to be fair, that was the easy part – identify new markets in relation to growing consumers’ preference for more sustainable products and services such as organic foods or green electricity.

- Now, several antitrust enforcers are taking a bigger step to integrate sustainability issues into competition law. At the *Autorité*, we have recently established an informal framework for companies that have a project with sustainability objectives to come talk to us and check, upon the launch of such initiatives, whether they are compatible with competition rules. This is a new exercise for us, on many levels. We want to open our door to undertakings while keeping away from greenwashing; we want to retain a flexible approach but ensure our intervention is secure and predictable enough; we want to help reach sustainability objectives but we must stick to our sole mission of competition enforcement. Last July, we issued a first so-called “informal guidance” to companies in the animal nutrition sector that wanted to establish a common methodology to measure their carbon footprint. Others have approached us, and we are confident this will expand further.

The challenge lies in ensuring that environmental and competition objectives are aligned, to enable for the kind of transformative change demanded by the urgency of the ecological transition. We also need to devise how best to interact among European enforcers, to ensure awareness of the various initiatives and approaches taken to tackle this issue, while retaining enough flexibility in our dialogue with both undertakings and policymakers.

- ***Conclusion***

- As we look to the future, it is quite clear that competition law in the European Union is being challenged in many ways. Yet its very relevance is not questioned. Quite on the contrary, much hope is placed into its capacity to tackle new issues, to embrace new objectives and to find new avenues to enhance its effectiveness. This is an encouragement to level up competition policy in ways that foster innovation, promote fairness, and strengthen Europe’s position in the global economy.

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<sup>5</sup> See B. Cœuré, Pourquoi la transition écologique a-t-elle besoin du droit de la concurrence ?, Archives de philosophie du droit, tome 65, October 2024.

We won't have much time for doing it. The great economist Alexandre Lámfalussy argued in 2000 that the European Union had a clear choice “either to dawdle aimlessly along in our slowcoach, in the slow lane – with ... the world passing us by, or to change and capture the benefits”.<sup>6</sup> This is a fitting description of the situation we find ourselves in now.

Thank you.

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<sup>6</sup> Summary of remarks made to the press by Alexandre Lamfalussy, Chairman of the Committee of Wise Men on the Regulation of European Securities Markets, concerning the Committee's initial report published on 9 November 2000, [http://ec.europa.eu/internal\\_market/securities/docs/lamfalussy/wisemen/lamfalussy-summary\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/lamfalussy-summary_en.pdf).