

# Competition and the rule of law

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*Romanian Competition Council Anniversary Event, Bucharest, 18 May 2017*

## **PLEASE CHECK AGAINST DELIVERY**

### **Introduction**

Ladies and gentlemen

I want to thank Bogdan Chirițoiu, and the Romanian Competition Council, very warmly for inviting me to be with you today.

It's a great honour to have the chance to take part in this celebration, of twenty years of Romanian competition law.

Twenty years is a long time. Children who were born when the competition law was signed are now finishing their studies and going out into the world. Their parents are looking at old photos, and wondering where the time went.

And when you do that, you notice something strange. When those children were young, you had no idea what their future might be.

And yet, when you look at those old pictures, it feels as though everything was planned from the start. You see the future engineer playing with her building blocks, the future dancer on stage. The future competition enforcer raiding the kitchen at dawn.

### **Twenty years of Romanian competition law**

And looking back at twenty years of Romanian competition law gives you the same sort of feeling. Because the basic principles were all there from the start.

Today, the Competition Council has the same responsibilities as competition authorities all over the world. To defend Romanian consumers against cartels. To stop powerful companies misusing that power to harm consumers. To make sure mergers don't give companies the power to raise prices. And it's had those responsibilities since the very first day.

And that's not all. From the start, the law has been clear that public companies, not just private ones, have to play by the rules. On its first day, the Competition Council had the job of making sure that state aid didn't harm competition.

Because what matters to consumers is that the market works for them. And if it doesn't – if they pay more than they should, because markets aren't competitive – then it's no comfort to them to know that the public sector is to blame.

And today, once again, the Competition Council is helping to make sure state support doesn't harm competition.

In recent years, we've been working hard to roll back the need for state aid to get our approval in advance. Ninety-five percent of the state aid measures that were first paid out in 2015 were given without being notified to us. And yesterday, we decided to expand that even further, by exempting support for ports and small airports.

That puts a big responsibility on national governments, to make sure the aid they are giving doesn't harm competition. So it's really valuable that the Romanian authorities can rely on the Competition Council's expertise, to check that the aid they give is in line with the rules.

That's why I'm glad to have this chance, not only to celebrate with you, but also to pay tribute. To the pioneers who started all this, twenty years ago.

They couldn't have known how competition would take root in Romania. Or how the world – and Romania's place in it – would change. But they still had the courage to take the first step.

## **The EU and the rule of law**

And it's important that we recognise that. Because the first step is always the hardest.

Sixty years ago, when our founders signed the Treaty of Rome, they too had no way of knowing what the future would bring. But they did have the courage to follow their convictions, that Europe would only flourish if we found a way to work together.

And their solution was to build a Europe that was based on the rule of law.

For most of our history, peace has depended on a fragile balance of power – or rather, a balance of fear. But the founders of the EU decided to try a new way. They decided to make the rule of law a part of everything we do.

And that includes enforcing the competition rules.

That's why it's so important that companies have the right to defend themselves. To put their case to us, before we decide. To know the case against them, so they can defend themselves effectively.

And of course, that doesn't just apply to the decisions the Commission takes. Because enforcing the EU competition rules is a team effort.

## **ECN+**

A lot of things have changed in the twenty years that the Competition Council has been around. One of the biggest changes came when Romania joined the EU, and the Competition Council got an entirely new job – enforcing not just Romanian competition law, but the EU rules as well.

Because since 2004, the Commission has shared the job of enforcing the EU competition rules with national competition authorities. And that has helped us all do more to protect consumers throughout Europe.

These days, 85% of the decisions that apply those rules are taken, not by the Commission, but by national authorities. Important cases, like the Competition Council's decision against six oil companies that ran a petrol cartel here in Romania.

So I want to be sure the EU is doing all it can to support you.

That's why the Commission has proposed new rules to make sure every national competition authority has the powers it needs to enforce the EU competition rules effectively. Powers to investigate cartels. To be able to impose fines that deter law-breaking. And the independence to be able to follow the evidence, wherever it leads.

But of course, as a wise man said – either Voltaire or Spider-Man's uncle, depending on who you believe – with great power comes great responsibility. And the most important responsibility is to obey the rule of law.

That's why the proposal makes clear that authorities have to respect fundamental rights. Companies should have the chance to defend themselves, before an authority decides. And they should have the right to appeal to court, if they disagree with that decision.

## **Companies' procedural obligations**

If we claim to be a Union of law, we have to respect those rights. We have to guarantee that our decisions are based on the evidence and the law – and nothing else.

But to meet that promise, we have to be able to get hold of the evidence. Which is why we take it very seriously when companies obstruct our investigations.

Some years ago, the Commission raided the German energy company, E.ON. At the end of the first day, our officials sealed the office they were working in, so no one could tamper with the documents inside. But when they came back the next morning, they found that the seal had been broken.

For that broken seal, the Commission fined E.ON thirty-eight million euros.

That's a lot of money. And it should be. Because when companies get in the way of a dawn raid, or give us misleading information, then that strikes at the very heart of our ability to do our job – protecting consumers.

And that's why our proposal on the powers of national competition authorities includes the power to impose fines that deter that sort of behaviour.

## **Facebook**

That's equally important when we're looking at mergers.

We deal with those cases to very strict deadlines. We simply don't have the time to second guess the information we get. So it's essential that we can rely on companies to give us facts that are accurate.

That's why we have announced today that we have given Facebook a fine of 110 million euros, for giving us wrong or misleading information when it took over WhatsApp.

When we looked at that merger in 2014, Facebook told us it could not automatically link WhatsApp users with their Facebook profiles.

But two years after we approved the merger, WhatsApp brought in a new privacy policy. That policy allows it to share users' data with Facebook. And it does that by automatically linking them to their Facebook profiles. In other words, by doing exactly what Facebook said couldn't be done.

It turned out that Facebook's staff knew that was possible in 2014. Which is why we've decided to fine the company.

Facebook cooperated with that investigation. It brought the change in WhatsApp's privacy policy to our attention. And when it replied to our Statement of Objections, the company admitted that it had broken the rules. Thanks to that cooperation, the fine is lower than it would have been otherwise.

And the fine doesn't affect our decision to approve the merger. Though the information was relevant to our work in 2014, it was only one of several issues that we looked at. In fact, we even considered what would happen if Facebook could automatically match users – and we found that it wouldn't affect our conclusion. That's why we haven't had to revoke our decision to approve the merger.

But that doesn't change the basic principle. If we get information that's wrong or misleading information, we can't do our job quickly and well. And that is something we can't accept.

## Jumping the gun

We need to work quickly, because we know people are waiting.

And we need companies to wait until they have our OK, before they start to put a merger into effect. Because otherwise, the harm to competition could already be done, before we have the chance to intervene,

So if they jump the gun, we take that very seriously indeed.

In 2015, we looked at a merger between two telecoms companies – the multinational Altice, and PT Portugal. While that review was going on, we were surprised to read in the newspapers that executives from Altice had been visiting PT Portugal. And we wanted to know, were those contacts innocent, or did they mean Altice and PT Portugal had crossed the line in terms of what is allowed before we approve a merger?

When we looked closer, we found that Altice's agreement to buy PT Portugal seems to have allowed it to control its rival even before we approved the merger. It appears that Altice had already been acting as if it owned PT Portugal. It seems that it gave instructions on how to handle commercial issues, such as contract negotiations. And it also seems to have been given sensitive information. Information that only PT Portugal's owner should have had - and without any safeguards to stop it misusing that information.

So we have just set out our initial view that Altice jumped the gun. It's now up to Altice to respond to those concerns. If we do find at the end that it has broken the rules, we could fine the company up to 10% of its turnover.

I don't see these cases as a distraction from our work reviewing mergers. Quite the opposite. Because these obligations are what makes it possible to do our job. We need to be strict in those – hopefully rare - cases where we find that companies aren't taking their obligations seriously enough.

And I know that many national competition authorities – including the Competition Council – are as committed as we are to making sure companies meet those obligations. That's clear from the two fines you imposed last year for jumping the gun.

Because we all share the same goal. We're all here to make sure that markets work for consumers. And these rules are vital, because they give us the power to do that.

## Conclusion

Sixty years ago, when the European Union was founded, it wasn't built simply as a talking shop. Our founders were determined that it would make a real difference to people's lives.

And that's why the competition rules were in the Treaty from the start. Because they made sure that when we broke down the barriers between our economies, that would benefit everyone, not just the biggest companies.

Competition enforcement doesn't play favourites. We base our decisions on the evidence and the law.

But that doesn't mean that our work is neutral. Quite the opposite. Our purpose is clear: we're here to defend the consumer.

So when Romania first adopted its competition law, twenty years ago, it sent a powerful message, that consumers' interests mattered. And it sends the same message today, with every decision of the Competition Council.

So I want to congratulate you again on the first twenty years of competition law. And I want to wish you every success for many years to come.

Thank you.