Autorité de la concurrence

"The Single Market as cornerstone of European sovereignty"

Keynote speech by Benoît Coeuré, President of the Autorité de la concurrence, at the Academic Conference on the 30th anniversary of the Single Market, Prague, 7 December 2022

Ladies and Gentlemen,

I would like to thank the Czech Presidency of the European Union and the European Commission for giving me the opportunity to participate in this high-level event, and to contribute to celebrating the 30th anniversary of the Single Market.

Just like in a family gathering, let me start with a fond recollection of where and when it all started.

There is a much-adorned room at the French ministry of foreign affairs, known as the Clock room – obviously, it takes its name from the beautiful clock that sits there. The room came previously under a series of names, reflecting the events of the time – the Emperor's room, the Festivities' room, the Concerts' room, then the Peace room, a name that was changed after the First World War.

It was in this Clock room that French Foreign Minister Robert Schuman made a breakthrough declaration, on 9 May 1950 – this date being now "Europe Day" – whereby he proposed the creation of an institution that would jointly manage French and German coal and steel resources.

Less than a year later, on 18 April 1951, the Treaty of Paris was signed in that same room. It established the European Coal and Steel Community (ECSC), the first supranational European organisation with its own institutions, among France, Belgium, Germany, Italy, Luxembourg and the Netherlands.

This Treaty of Paris was one of the founding acts of the European Union. In the immediate aftermath of World War II, it was a bold move and an act of faith in the future of Europe to pool together resources that had been the very commodities from which arms and munitions had been manufactured.

Since then, the clock in that room has continued to tick, and Europeans have continued to get into any "*ever closer union*". We should acknowledge how this first attempt at joining European economies together, albeit on one limited sector, anticipated on the European Union as we know it.

This first Community was a fine prefiguration of the forthcoming, cross-sector European Economic Community established with the 1957 Treaty of Rome that launched the customs union and common external tariff.

One can hardly think of a setting more different from this Clock room than the brick and concrete building sitting by and, to some extent, on the Meuse River, in Maastricht, where the Treaty that gave the European Union its very name was signed 30 years ago, on 7 February 1992. We do not know whether this unusual building has a remarkable clock of its own, but its inauguration was a timely event nonetheless, as it occurred in 1986, the year of the signing of the Single European Act – one of the most significant steps on the road to European integration.

In February 1986, in Luxembourg and The Hague, the Foreign Ministers of the then twelve European Economic Community Member States signed the Single European Act, which came into force on 1 July 1987. This treaty combined in a single text the provisions relating to institutional reform, to the extension of the powers and responsibilities of the Community, and to cooperation regarding European foreign policy. The Single European Act was, moreover, an essential stage in the completion of the Single Market, as it established the deadline of 1992 for its achievement.

In December 1991, a European Council meeting was held in Maastricht. During that meeting, the twelve Member States reached agreement regarding a treaty on European political union, which would convert the then European Community into the European Union, and regarding a treaty relating to monetary union, leading to the birth of the euro.

Moreover, in order to facilitate the completion of the Single Market, the Maastricht Treaty gave the European Parliament and the Council equal power on legislative acts ("co-decision"), taking a significant step towards enhancing the democratic legitimacy of the Union.

The gradual establishment of the Single Market would not have the same significance, had the European Union been confined to its initial membership, or even to that of 30 years ago. With 13 new countries joining in 2004, 2007 and 2013, the Union has more than doubled its previous number of members, and spread across a continent. The added strength brought about by enlargement is not to be measured only in terms of GDP, population or square kilometres. It was also, or primarily, about the completeness of Europe.

Ten years ago, upon the 20th anniversary of the Single Market, Jacques Delors called it the "*cornerstone of the European Union*".[1] It is a concise and powerful way to put it, away from superlatives. 30 something years later, it is befitting that we gather here to celebrate these events.

Completing the Single Market: an unfinished journey

Enshrining freedom of movement at the scale of a whole continent for goods, people, services

[1] J. Delors, "The Single Market, Cornerstone of the EU", tribune, Notre Europe - Jacques Delors Institute, 22 November 2012, https://institutdelors.eu/en/publications/the-single-market-cornerstone-of-the-eu/.

and capital was a tremendous commitment. Looking back at what has been achieved since 1992, the picture looks rather different along these four dimensions.

- Freedom of movement for people is the most tangible benefit of the Single Market for all Europeans. A significant part of this freedom does not date back to 30 years ago, it is rather a consequence of the Schengen agreement, as later included in the legal framework of European Union through the Treaty of Amsterdam in 1999 – but still, it certainly makes Europe visibly, materially a single space. Parliament, in a rather sentimental move, called the Schengen area "*a cherished achievement at the very heart of the EU project*"[2]. In the recent past, Brexit has possibly further revived this feeling.

- Originally, the free movement of goods was seen as part of the customs union, and then moved on to be rather about the elimination of remaining obstacles – mainly of a regulatory nature. Institutional reform made it realistically possible for this overarching goal to be achieved, at least to a large extent: the guiding principle is the mutual recognition of national rules, and harmonisation takes place only to meet essential requirements, when domestic laws cannot be considered equivalent and maintain restrictions.

- Turning to freedom of movement for services, things look distinctly different. Clearly, the Single Market was initially established with trade in goods in mind, rather than that in services. Today, services account for 65% of the EU's GDP, while industry is down to 23%.[3] The services sector today accounts for more than 75% of European employment, compared with 45% in 1970.[4] This is a massive shift from when the Single Market came to life. In services, much more than in goods, widespread regulatory heterogeneity between Member States adds to the costs of doing business.

  We can do better to make the EU a level-playing field for service providers, for customers, and for workers.

  The 2006 Services (or "Bolkestein") Directive, implemented by end 2009, was specifically meant to help realise the full potential of services markets in Europe by removing legal and administrative barriers to trade and establishment. But this ambitious legal framework has not fully lived up to firms' and consumers' expectations. Thousands of national rules on professions continue to give a headache to, or discourage entirely, professionals willing to exercise their skills in another Member state. Except in a few sectors and countries, cross-border intra-EU posting of workers is cumbersome, due to a lack of transparency about relevant requirements and processes.

  This fragmentation in turn has consequences in my own field of work, competition law and policy. Regulatory barriers are also entry barriers in the competition sense. They stand in the

[2] European Parliament resolution of 19 June 2020 on the situation in the Schengen area following the COVID-19 outbreak, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0175_EN.html.
[3] Source: World Bank, 2021 data.
[4] See B. Cœuré, "The rise of services and the transmission of monetary policy", speech at the 21st Geneva Conference on the World Economy, 16 May 2019, https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp190516_1~37af9e6bcb.en.html.

way of European services firms achieving scale and profitability, they deprive consumers of access to a wider array of purchasing options, and they ultimately stifle innovation. Completing the Single Market in services is a necessity in order for European economies to boost business entry rates, technology creation and dissemination, and to lift our weak productivity growth – all of which we know for a fact are closely linked.

- Let me finally address freedom of movement for capital. With it, all restrictions on capital movements between Member States as well as between Member States and third parties were to be removed, albeit with a few exceptions. This particular freedom supports the three other freedoms by enabling capital to flow to where it can be optimally invested.

  When one mentions the freedom of capital, what comes to mind for most European citizens is surely the euro – although this is somehow legally inaccurate, the single currency being more a necessary condition for that freedom than a component of it. Martin Schulz said upon the 25th anniversary of the Maastricht treaty that the "*Euro was first and foremost a policy for the citizens*", which is very true.[5]

  But when it comes to the single capital market itself, there is some way to go. European businesses tend to finance their debt mostly through bank lending rather than on the stock market, and four fifths of this lending is domestic. Stock market capitalization in Europe is less than a fifth of that in the United States.[6] This is another fragmented market.

  A truly integrated single market for capital would foster competition for good credit and lower the cost of equity capital. By diversifying the funding mix of European businesses, it would help them finance investments in intangible assets for which collateral values are hard to quantify, or in new sustainable technologies with highly uncertain future payment streams. This is of the essence to accompany climate transition, which implies massive investment in renewable energies.[7]

  Furthermore, it would help prevent future crises by better sharing economic risks across countries.[8] Last but not least, it would support the international role of the euro by making the European market more attractive for foreign investors.[9]

  The Capital Markets Union (CMU) initiative was launched to great fanfare in 2014 by the

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[5] M. Schulz, Speech on the occasion of the 25th anniversary of the Maastricht Treaty, https://www.europarl.europa.eu/former_ep_presidents/president-schulz-2014-2016/en/press-room/speech_on_the_occasion_of_the_25th_anniversary_of_the_maastricht_treaty.html.

[6] Source: World Federation of Exchanges database, market capitalization of listed domestic companies in 2018. European Union = 5.79 trillion dollars, US = 30.44 trillion dollars.

[7] In France only, net (public and private) investment needed to support the transition to carbon neutrality has been estimated to be 70 billion euros, or 2.5 % of GDP by 2030. See J. Pisani-Ferry and S. Mahfouz, "L'action climatique : un enjeu macroéconomique", Note d'analyse de France Stratégie, n°114, November 2022, https://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/fs-na114-action-climatique-pisani-mahfouz8novembre2022-20h.pdf.

[8] See B. Cœuré, "The single currency: an unfinished agenda", speech at the ECB Representative Office in Brussels, 3 December 2019, https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp191203~043847dfc1.en.html.

[9] See B. Cœuré, "The euro's global role in a changing world: a monetary policy perspective", speech at the Council on Foreign Relations, New York City, 15 February 2019, https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp190215~15c89d887b.en.html.

European Commission, but it has been sputtering along the road. Besides a few tangible achievements such as the recent regulation on markets in crypto-assets (MiCA), it has faced the twin challenges of removing barriers to cross-border capital flows that are deeply rooted in national laws and regulations, and overcoming vested interests to make the European Securities Markets Authority the single watchdog of Europe's financial markets and infrastructures. Rebooting CMU is urgent if we want digitisation and the climate transition to be funded.

Setting the rules of the game

There is one policy that has flourished steadily and rather consistently along the years, that was neither born out of nor abated by economic shocks: competition policy.

Competition policy is intrinsically connected to the Single Market. A level playing field allows firms to flourish and to put forward their own merits. Competition law enforcement goes after every behaviour that distorts this process. It does so by fighting anticompetitive practices through which market players try and evade competition rules by agreeing among themselves to freeze market conditions – for instance by allocating customers or fixing prices. It also sanctions conduct that allows companies to stifle competition because they are dominant and abuse this special position, and force rivals out from the market or impose on them exploitative conditions of operation.

It does so, moreover, by identifying regulatory obstacles that hinder or prevent altogether entry onto a market and further development therein.

On both aspects, the Single Market is the reference of national competition enforcers. A typical case was the cartel whereby German and French millers concluded a 'non-compete agreement' aimed at limiting their respective access to one another's market and at maintaining their respective exports of packaged flour at a predetermined level. These firms were fined by the French Competition Authority in 2012.[10] A more general illustration is the legal ban on the prohibition of parallel imports – it is a so-called hardcore restriction of competition for a manufacturer of, let's say, Pokemon collectibles[11], to prevent its retailers from selling cross-border to consumers but also to other wholesalers and retailers in other Member States. It is the very aim of EU competition policy to ensure that undertakings can compete on equal terms throughout the Union.

Competition policy does not only support the establishment and functioning of the Single Market. It also *embodies* the Single Market, in that it is indeed a single policy. There is hardly any better example of European integration than the way European competition law is enforced: one set of rules, enshrined in the Treaty to reflect true singleness with the Court of Justice of the European Union as guardian; decentralised enforcement by national competition authorities, to

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[10] See Autorité de la concurrence, decision 12-D-09 regarding packaged flour marketed in the food retailing sector, https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/13-march-2012-packaged-flour-marketed-food-retailing-sector.

[11] See Commission Decision of 26 May 2004, COMP/C-3/37.980, Souris-Topps.

ensure ownership by the Members states; with a clear and binding framework between them and the Commission, recently updated and strengthened by the "ECN+" Directive[12], to allow for effectiveness and consistency.

The Single Market also allows Europe to affirm its international standing and contributes to one of its *raisons d'être*, which Václav Havel described on receiving the Charlemagne Prize in Aachen as being "*to help to shape creatively a new pattern of global coexistence*".

Havel further commented that "*Europe's task will no longer be to spread – violently or non-violently – its own religion, its own civilisation, its own inventions or its own power. Nor will it be to preach to the world about the rule of law, democracy, human rights or justice. If Europe wants it can do something else, more modest yet more beneficial: through the model of its own being, it can serve as an example that many diverse peoples can work together in peace without losing any part of their identity; through its own behavior, it can show that it is possible to treat our planet considerately and to think also of the generations that will succeed us.*"[13]

Competition policy is a powerful tool – maybe the most powerful – Europe avails of to assert its values and interests vis-à-vis the rest of the world. In the eyes of the companies that are fined by the Commission or by any of the national competition authorities on the basis of articles 101 and 102 TFEU, in the eyes also of fellow antitrust agencies abroad with whom we interact in the International Competition Network and bilaterally, the Single Market is undoubtedly a regulatory and enforcement bloc.

The digital economy is a case in point.

In June 2022, Meta submitted for the first time commitments to an antitrust authority, to address competition concerns regarding its behaviour in the online advertising sector[14]. Although the French Competition Authority has jurisdiction only over the territory of France, Meta voluntarily chose to extend the benefit of its commitments to all eligible business partners, beyond this geographic scope. The European legal perspective on the abuse of dominance thus prevailed on a worldwide scale, due to the perception that the single market is large and unified enough that it makes sense for such a global player as Meta to refer to it as an authoritative standard.

Similarly, the establishment of an *ad hoc* European regulation of digital platforms shows how the lessons learnt from competition law enforcement do, in turn, reinforce the Single Market, and project its values globally. The definition of the specific obligations on gatekeepers set forth in the Digital markets act was largely based on the antitrust decisions issued by European competition enforcers. Here again, the values embodied in our approach to competition have

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[12] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

[13] See V. Havel, "Europe as task", an address in Aachen, 15 May 1996.

[14] See Autorité de la concurrence, decision 22-D-12 of 16 June 2022 regarding practices implemented in the online advertising sector, https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-online-advertising-sector-0.

been enshrined in a legal standard, that will be binding upon any firm doing business in the Single Market.

More and more, the Single Market is also establishing itself as a competition bloc in terms of the general conditions it places on foreign undertakings willing to trade in the EU, to the benefit of sovereignty and resilience. The Single Market does exist because it produces and enforces a credible body of law within its boundaries, but it also exists because the EU is itself a global policymaker. The recent agreement on a monitoring scheme on foreign subsidies is an illustration. Through mandatory notifications of foreign subsidies, assessment of possible competition distortion and, as the case may be, redressive measures or commitments, the EU will be better equipped to make sure the Single Market is open for business – but on fairer terms.

The Single Market is a remarkable asset. It serves not only our businesses and our consumers at home, it also serves to disseminate our values globally and assert our sovereignty. This is not always appreciated by European citizens who are used to reaping its benefits in their daily lives, just as they don't see the air they breathe.

The next major challenge to address in terms of fairness, with even greater implications, is that of sustainability.

On this aspect too, the European Union has a distinct voice and wants it to be heard. Its initiatives rest on its capacity to offer a harmonised regulatory landscape. The European Green Deal set out a path towards becoming a climate-neutral area by 2050. Against this background, the current draft Carbon Border Adjustment Mechanism, or "carbon tax", is a powerful climate initiative that somehow mirrors the EU's Emissions Trading System and will extend carbon pricing rules to EU importers and non-EU producers, with a view to averting the risk of carbon leakage. Competition policy should not stand in the way of decarbonisation, and it is in fact moving in sync, towards carving more space for sustainability initiatives between companies.[15]

A market forged in crises

I would like to conclude my remarks with a note of caution.

Time and again, major crises have revealed loopholes in the Single Market, and prompted a response on the part of policymakers. We all have in mind Jean Monnet's famous comment that "*Europe will be forged in crises and will be the sum of the solutions adopted for those crises*". When the weather is calm, we would like him to be wrong. Today, we are again at a time when we hope he will be proven right.

The Single Market always proved flexible enough to accommodate these crises. Banking Union was a reaction to the Great Financial Crisis and the ensuing crisis in the Eurozone. Closer to us, the Single Market Emergency Instrument was adopted in September 2022 to ensure that the

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[15] See European Commission, "Antitrust: Commission invites comments on draft revised rules on horizontal cooperation agreements between companies", 1st March 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1371.

Single Market would continue to operate fully when we most need it.

After Russia's aggression against Ukraine, price volatility and energy insecurity have direly affected European businesses and households. To address the need for affordable energy, the EU and its Member States are reshaping and accelerating their energy and climate strategies.

The comforting aspect is that an emergency Council Regulation is on its way already, laying down a framework for the joint purchasing of gas, and the Commission presented a proposal for emergency measures in electricity markets, which includes demand reduction targets, a wholesale cap on infra-marginal revenues, and a solidarity contribution from fossil fuel businesses.

The less appealing side is that this sudden crisis is a wake-up call for all policy makers in Europe, that there is still no single energy market to speak of. Already ten years ago, Jacques Delors called for an Energy Community to optimise resources, support a European industrial policy, and strengthen Europe's hand (in Delors' own words) "*in negotiating with the world's big boys, especially with Russia*".[16] Since then, not much has happened.

European leaders are now pondering options to protect businesses and consumers, connect energy grids across our continent, build a bridge towards cleaner energy, and react to initiatives taken by other global players, including the US Inflation Reduction Act.

A trade war which would be fuelled by national subsidies, or which would ignore or stretch too far the rules of the common game, including the state aid guidelines, is almost surely bound to fail its primary objective of restoring Europe's competitiveness. It would fragment further the Single Market and harm the trust its members need to build together for the future.

May our leaders bear in mind the lessons of past crises, and make sure that the initiatives they are taking today will not erode one of Europe's most precious assets, the Single Market. We want it to be stronger, more resilient, and fitter for purpose in today's dangerous and highly uncertain world.

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Upon the presentation of her college of commissioners and their programme, on 27th November 2019, President-elect Ursula von der Leyen gave a speech before the European Parliament Plenary. It starts with a clock. I would like to quote her words.

"*Today, the 27th of November and exactly 30 years ago, the clock strikes twelve. Church bells ring. Sirens blare. Workers down tools. Factories, mines and shops empty as the streets fill up with dance and hope. The historic two-hour general strike in the middle of the Velvet Revolution*

[16] See J. Delors, *op. cit.*

saw people from Prague to Bratislava take part in a beautiful, peaceful wave of freedom, courage and unity.

For me, these two hours go to the heart of what the European Union has always meant. It is not only about parties and politics, rules or regulations, markets or currencies. It is ultimately – and above all else – about people and their aspirations. It is about people standing together. For their liberty, for their values, simply for a better future."

Here we are today, in Prague, gathering in this beautiful room, and we can clearly picture these events unfolding here on that day. We stand within walking distance of the extraordinary astronomical clock, on the Old Town square, created about half a millennium earlier, under the rule of a Luxembourgish emperor, which must have been among those clocks that struck twelve on that crucial day recalled by President von der Leyen.

There is no better way for me to conclude than by picking up one quote from her speech, from the great Václav Havel, who gave this simple yet strong piece of advice that Europeans can, and should, adhere to: "*Work for something because it is good, not just because it stands a chance to succeed.*"

Thank you.