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Developments in EU competition policy

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Ladies and Gentlemen:

I would like to thank the Hellenic Competition Commission, and in particular President Kyritsakis and Vice-President Loukas, for hosting us today in Athens and for inviting me to open this European Competition Day – which, in fact, will go on for two days.

Since the epicentre of the crisis moved to Europe in early 2010, Greece has implemented a comprehensive adjustment programme and introduced far-reaching reforms. Greece has come a long way in these four years, thanks in particular to the sacrifices of its population. The first positive results are now visible. But the road ahead is still long and far from easy. Exiting from this crisis was always going to be more like a marathon than a sprint. We need you to win this race, and I encourage the Greek people to keep their eyes on the finish line. As a consequence of the recent reforms, Greece is improving the competitive conditions in its markets. Competition enforcement – including State aid control – can provide additional positive elements in this direction. After the comprehensive reform of competition law in 2011, the HCC has become a stronger and more effective enforcer and has influenced structural reforms. I commend the good work the HCC has done in spite of a rather difficult environment.

Strengthening our enforcement activity and our advocacy is not easy in these times, but this is precisely our responsibility. We're not here to serve private interests or corporative privileges, but the interest of every company that plays by the rules and of every consumer. Our duty is to instil openness and transparency in the markets and make sure that every player has the same opportunities to create jobs and generate growth. This is why public authorities, companies, and the general public must understand how important it is to support the HCC in the present circumstances. Keeping markets open and efficient is one of the things that Greece – and the whole of the EU – need to regain the ground lost these years.

The constant need to adapt to changing conditions is a thing that national competition authorities and the European Commission have in common. Competition enforcement must evolve at all times to stay relevant and fulfil its goals. The Commission is leading the way and I'm quite proud of the results achieved since 2010. In antitrust and cartels, we have developed better tools to detect anti-competitive behaviour; due process has improved; and our private-damages initiative is about to become law. We have also streamlined our merger-review procedures and with the State aid modernisation strategy we are completing a comprehensive reform of the way we control government intervention in the economy.

Let me now focus on these policy developments in detail, starting with the Directive on antitrust damages actions.

The Directive is the first ordinary legislative initiative in the competition domain and the European Parliament is expected to adopt it next week in Strasbourg. Then, after the final vote in the Council, the Directive will come into force. Let me first acknowledge the engagement of the Greek Presidency, which was crucial in the latest stages of the process. A

political agreement was reached only nine months after the Proposal was tabled and this is an excellent example of cooperation among EU institutions. This important piece of legislation will democratise competition-law enforcement. When the Directive is operational, it will empower the victims of antitrust infringements to seek compensation for the harm they suffered.

So far, the principle that all victims have the same right to compensation in the EU has faced a difficult application in practice, especially for SMEs and ordinary consumers. The Directive will eliminate the present obstacles and establish minimum standards applicable everywhere across the Union. This means that we will get a bit closer to a level playing field when it comes to the private enforcement of competition law. Thanks to the Directive, national judges will be able to order companies to disclose the evidence victims need to prove their claims. In addition, the victims will be able to wait for the decisions of competition authorities and rely on them in their own actions. The legislative proposal has also been the opportunity to fine-tune the interaction between the private and public enforcement of competition law – that is, between court actions and the work of national and European competition agencies. In particular, it will preserve a company's incentives to cooperate with competition authorities through leniency programmes and settlement procedures as these will not be disclosed. In addition, immunity recipients – usually the first to be sued – will be liable only to their own customers and not to those of their co-cartelists. I believe that these measures strike the right balance affirming the principle that private enforcement crucially depends on a strong public enforcement.

The second policy development I will mention is an example of how antitrust enforcement can be adapted to support innovation in Europe. I'm talking about the new rules for the assessment of licensing agreements adopted by the Commission last March. Through these agreements, innovative firms license the use of their patents, know-how and software to other companies. A good licensing system strengthens the incentives for research and development; helps to spread innovation; and allows licensees to bring new products and services to the market. However, the system can also be used to stifle competition. For instance, two companies can use a licensing agreement to divide markets between themselves instead of competing with each other. The rules we have approved in March will give better guidance to firms on how to license in ways that stimulate innovation and preserve a level playing field in the Single Market.

I will round up this review of policy developments in antitrust and mergers with an initiative we will take to mark the tenth anniversary of the ECN. Regulation 1/2003 ushered in a totally new system for the application of EU antitrust rules and we plan to report how it has functioned and to explore further improvements in the way the Commission and the national competition authorities will continue to apply the same EU antitrust rules. The system put in place when the ECN was launched ten years ago has boosted enforcement considerably allowing the Commission to focus on the most serious infringements and on key sectors – such as energy, telecoms and the digital industries. In time, enforcement by national authorities has become crucial and cooperation within the ECN is a great success. But we never rest on our laurels. What else can we do to establish a genuine common enforcement area in Europe? Voluntary action in the countries of the EU has been fruitful, but we still have a patchwork of different systems for applying the same rules. So, I intend to launch a reflection on the future landscape of competition enforcement in Europe, one in which every national authority is truly independent; has enough resources; and can rely on a full set of basic enforcement powers.

Let me open a brief aside here. I've just described energy, telecoms and digital as key enforcement domains, because I regard these sectors among the most promising drivers of growth in Europe. If we are serious about sustaining the recovery in Europe after years of

recession, we should complete and extend the integration of these markets across the EU and make sure that the best possible competitive conditions prevail. But things are not going that way. Let me take the example of Europe's telecom markets. What we see here is something of a paradox. On the one hand, many of us call for the creation of a genuine internal market where telecom operators can invest in new technologies and networks; scale up in a market of half a billion people; and take on their international competitors, in particular the so-called over-the-top players. On the other hand, telecoms regulation and spectrum allocation remain very much national affairs. As a result, every time we have to look into a merger or an acquisition between operators, we have no option but to assess it in the national market where it takes place. Building and reinforcing the Single Market through the twin forces of regulation and competition control has always been crucial for our process of integration. This is still the case. But now what is at stake is boosting growth and competitiveness when Europe most needs it. We all know that these are priority sectors for action and we also know that only action at European level will do.

Let me now turn to merger control. The simplification of merger-control procedures took effect on January 1st this year to make our review even more focused and effective when it comes to potentially problematic transactions. We've already seen tangible results in these first few months. Many more transactions are reviewed in simplified procedure, which reduces the burden on companies and on our own resources in cases that do not warrant intensive scrutiny. But there is more to come. I am planning to issue a White Paper before the end of my mandate to see how our system – already quite efficient – can be improved further. One issue the White Paper will include is that of minority shareholdings. At present, these fall outside the scope of our control while they are part of merger review in some EU countries and in other jurisdictions outside Europe. The White Paper will put forward the idea that the Commission could review the deals that do not lead to the complete control of a company. However, this would not occur at all times, but only when transactions of EU dimension are potentially problematic; such as for minority shareholdings involving direct competitors. In these cases, it is suggested that the information burden on businesses is kept to a minimum. The Commission would then decide whether to investigate the transaction further. The White Paper will also propose ways to streamline the referral system between NCAs and the Commission to make it quicker and simpler for businesses and public authorities.

Ladies and Gentlemen:

The most comprehensive reform of competition policies during the term of the present Commission has been in State aid. The modernisation strategy I launched over two years ago is aligning State aid control to the Europe 2020 strategy for growth and jobs and to the policies designed to help our economies take again the path of growth. The reform will also help Europe's governments improve the quality of their expenditures. This means above all promoting good and well-designed aid that targets market failures and does not distort competition. Finally, it will make the rules clearer and easier to comply with to make implementation as easy as possible. A modern State aid control needs to focus on the measures that cause the most damage to the internal market hindering the recovery in the EU. To do this we are introducing appropriate safeguards in terms of more transparent procedures and better ex-post monitoring and evaluation of measures.

The first guidelines of the new batch – on the public financing of broadband projects – appeared in December 2012. Last year those on regional aid and cinema were approved, together with the enabling and procedural regulations. This year, three new guidelines have been issued; on risk finance, aviation and on energy and the environment. The first will allow governments to grant larger subsidies to SMEs and mid-caps more quickly. This is a significant move to support the recovery at a time when market conditions and access to

credit are still difficult for SMEs across Europe. Then came the new guidelines to promote a sound use of public resources for airports and airlines. These rules will limit competition distortions in the industry, in particular by avoiding overcapacity and the duplication of unprofitable airports.

The energy and environmental guidelines were approved only yesterday, let me say a few words on them. The new guidelines are designed to preserve the achievement of the EU's ambitious climate and energy objectives. They extend their scope from aid for environmental and energy efficiency to include the energy field. For the first time, they will comprise rules for energy infrastructure and generation-adequacy measures. They will ensure that support systems for renewables are sustainable, and also take a long-term view on the integration of renewable sources of energy in electricity markets thanks to modern, market-based support schemes. To take account of these subsidies on the competitiveness of the European industry, the new rules allow EU governments to partially relieve the industries that are particularly exposed to international competition from the burden of financing renewables. The new guidelines also encourage the physical completion of the energy Single Market by taking a positive presumption towards investment aid in infrastructure projects that have a cross-border impact or contribute to regional cohesion.

This much on the guidelines that have already been approved. What remains to be done to complete the State aid modernisation strategy? Before the summer, new guidelines will be issued on the rescue and restructuring of non-financial firms and on research, development and innovation. The latter will include new rules on large-scale projects that pursue common European interests. I will also propose a new General Block Exemption Regulation, which will simplify the control of State aid by allowing Member States not to notify in advance their aid measures when certain conditions are met. With the new Regulation, up to 90 per cent of 'good aid' measures – representing two-thirds of the total amount of aid – could be exempted from notification, thus simplifying the administrative procedure for the granting of aid at national level and leaving the role of ex-post monitoring to the Commission.

I would like to add here a remark on the application of State aid policy in countries that are implementing large structural reforms as part of their economic adjustment programmes. In Greece, these reforms include the consolidation and restructuring of the banking sector and broad privatisation plans. The European Commission has been assisting the Greek government to make sure that these reforms are in line with State aid rules. In the case of banks, the main goal of the talks is ensuring that the large amounts of aid received will eventually be used to finance the real economy. Following the stress-test results in the Greek banking sector, I'm happy to note the recent positive developments on private recapitalisation, with two of Greece's 'pillar banks' returning to the market. Overall, the restructuring plans of Greek banks are progressing well. However, some challenges remain ahead of us. It is now key for Greek banks to ensure a return to profitability focussing on their core activities. We will be very attentive in the State aid process that banks return to lend to the real economy. Our talks also cover the privatisation of many state-owned enterprises and infrastructures that have received State aid. Here, the key is creating conditions that attract private investors. A central State aid unit has been set up within the Ministry of Finance, which is one of our main interlocutors. I commend this decision. It makes implementation easier; improves coordination within the administration; and must produce a more rational allocation of public resources.

Ladies and Gentlemen:

I said in opening that the Hellenic Competition Commission is intensifying its work in spite of a difficult environment. I encourage the HCC to continue undeterred in its enforcement and in the advocacy work it does on how to remove structural barriers to competition that stifle

growth. I also encourage the government to continue implementing its suggestions. Because of the very nature of our work, competition authorities know well what should be done to revitalise economic activity. Establishing better conditions for competition in the economy is crucial for the eventual success of the adjustment and reform programmes. But the most important factor of success is the active cooperation of the population – and I want to praise again the Greek people for their engagement. We are aware of the sacrifices this long stage of transition requires and of the need that everyone bears their fair share. I am convinced that – thanks to these huge efforts – Greece has taken the right path out of this crisis and can finally look at the future with confidence and optimism.

Thank you.