

Studienvereinigung Kartellrecht
International Forum on EU Competition Law
10/11 March 2016 - Brussels

Welcome and opening remarks

Dr. Frank Montag, Chairman

Dear Commissioner,

Dear members and friends of Studienvereinigung Kartellrecht,

I welcome all of you to the 2016 International Forum on EU Competition Law. Last year, we celebrated our 50th anniversary, and it is with this International Forum that we enter the second half of our first 100 years.

I am very pleased to see how many of you have made it to this event and I am sure that we are all looking forward to a selection of excellent panels and discussions.

Let me already now thank all the panellists that have agreed to participate – the outstanding expertise and the open discussion culture that we have created here over the years is thanks to you and we are very grateful that you have come to Brussels (for some of you indeed not the first – or the second – time) for this event.

I am delighted that among us are many leading enforcers, lawyers, scholars and judges from all over Europe, in particular the General Court, the European Commission, the ESA, and the three national competition authorities of our home jurisdictions.

After the Commissioner's opening address, we will continue with recent developments in the field of Article 102 with Professor Rupprecht Podszun from the University of Bayreuth and Kris Dekeyser, the acting director of the Policy Directorate in DG Comp. In this area of the law, the Google investigations

have drawn a lot of public attention, and we are awaiting with interest the Commission's next steps. Also, the area of rebates has remained a hot-topic under Article 102 – the most recent judgment being “Post Danmark II”.

We will kick off the afternoon sessions with a discussion of the EU cartel settlement procedure. The European Commission has gained substantial experience in this area since the first settlement decision was adopted in 2010 (DRAMS). Since then, about half of the cartel decisions adopted were concluded following the settlement procedure. Robbert Snelders from Cleary's Brussels office will address this topic.

The afternoon will be concluded by a very special speaker: Sir Nicholas Forewood QC, former judge at the General Court in Luxemburg will give us some insight on how the role of counsel is viewed from a judge's perspective. I am keen to hear from him what mistakes we make when pleading in Luxemburg and how we can improve our performance and thereby the chances of success of our cases.

The second day is equally packed with very interesting topics. We will discuss closeness of competition from an economic perspective and also learn about the jurisdiction for damage claims in international cartel cases. Finally, we will see what has happened in merger control since we met last on the occasion of this forum.

Tomorrow's enforcer panel will include four heads of national competition authorities, namely Andreas Mundt from Germany, Bruno Lasserre from France, Vincent Martenet from Switzerland and Chris Fonteijn from the Netherlands. We will however not miss the European perspective because Johannes Laitenberger, Director General at DG Comp, will also join this esteemed panel.

There are a number of most interesting questions that relate to the alignment of competition law between national authorities themselves and also in relation to the Commission. Verticals were discussed here two years ago, but are still a topic of

interest with the hotel and best-price cases taking different directions in different Member States and the platform discussion still on-going, e.g. in Germany with the recent Asics case.

At the same time, when on the Union level the Commission conducts its sector inquiry into e-commerce, the French and German authorities have started to study jointly the issues raised by “big data”. The French Autorité de la Concurrence is considering to follow-up on this study with a true sector inquiry. And the BKartA has just started to investigate whether Facebook could have abused a dominant position by breaching data protection rules.

And last but not least, the reform of regulation 1/2003. Its goal is to empower the national competition authorities to be more effective enforcers. The Commission has just closed a consultation on this project in mid-February. Of course, we do all agree with the Commissioner, who said in a recent interview that it is very important to empower the national authorities so that citizens can trust that their markets are being looked after. We also agree that the enforcer landscape in the EU should be a level playing field and that it is of utmost importance to ensure the independence and effectiveness of national authorities and that those authorities have all the tools they need for this challenging task.

However, reading the questions of the consultation and the recent statements by the Commissioner and others, I am concerned that we could forget that the idea of a level playing field does not only apply to the powers of the authorities, but also to their natural and indispensable counterpart, the rights of defence. As much as we need to make sure that enforcement works effectively across the board in the Union, we do need to ensure that the fundamental protections afforded to defendants by the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union are equally effectively granted in all proceedings before NCAs. This concerns the right to be informed about the charges, the right see

the evidence, the right to make written and oral submissions in the defence of a target of an investigation, legal privilege for the communication between lawyer and client, to name only a few. Also the long-standing demand of the defence bar for a one stop shop for leniency applications should be considered again. What better place could there be to ensure the effective protection of the fundamental rights of defence than a revised regulation No. 1 that sets the scene for in all member states of the Union?

Commissioner Vestager, in the interview I referred to before you were asked what you would want your legacy to be. Very wisely, you have talked about fairness. Fairness in relation to a level playing field that ensures that not only the big companies are profiting from the markets within the EU but that everyone has a fair chance to benefit. From a lawyers perspective, the fairness point is a very important one, and the protection of the rights of defence is paramount to its achievement.

Ladies and gentlemen, it is my great pleasure to now welcome once again to our conference the Commissioner for Competition, Margarete Vestager. Since you last spoke to us a year ago at the same place, you have had already a number of big decisions to take. Be it in merger control (telecom consolidation, large gas turbines or cement) or in antitrust (Google), you have gained the reputation in the legal community of someone who listens and considers carefully all arguments. We are absolutely delighted that you have agreed to once again open the conference with a key note speech.

Commissioner, welcome back and please take the floor.
