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Speech “Competition and ‘Zeitenwende’”

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Dear Andreas Mundt, dear Margrethe Vestager, dear Marco Buschmann,
dear heads of agencies, ladies and gentleman,

Two years ago, at this conference, I already had the chance to speak. My main conclusion back then: The more economic approach in enforcement is in decline. Concentration, market structure and power have become more important again. The antitrust pendulum had swung away from Chicago. I am happy to say today: This is still true. And: Also in Germany we have used the pendulum swing effectively.

But the last two years have been intense. We have seen a massive geopolitical rupture. Ukrainians are fighting for their lives. China is watching closely. And inside Germany and Europe, we have to stand up to defend our democracies.

Our Chancellor has used the German notion of “*Zeitenwende*”: historic turning point, watershed moment, epochal shift.

The underlying geopolitical rupture has also far-reaching economic consequences for Germany and Europe. It has also raised new challenges for competition policy.

Therefore today, I want to address three questions:

First, what does *Zeitenwende* mean for competition policy, what are the main challenges and opportunities?

Second, what have we achieved over the last two years? Have we used the window of opportunity due to the antitrust pendulum swing?

Third, what do we want competition policy to achieve in the years to come?

**“Zeitenwende” /
(New) challenges for competition policy**

Let me start with the first question: What does *Zeitenwende* mean for competition policy?

Defending and holding together our European democracies requires improving our economic strength and competitiveness. Probably all of us agree on that.

It is fair to assume that the next European Commission will be all about competitiveness and industrial policy voices, based on the Green Deal and digital transformation.

There will be calls for more state aid. There will be calls for European champions. And there will be the political background song: domestic competition would be bad for competitiveness and bad for security. I do not only strongly disagree. I firmly believe the opposite is true!

Strong competition in the EU is a necessary condition for the international competitiveness of our firms and for our security. Why?

First, firms in markets with fierce competition tend to be more dynamic and flexible. They better adapt to shocks and changes in capacity.

Second, more competition leads to more differentiated supply chains. This helps to reduce choke points and structural dependencies.

Third, when we grant state aid, competition is necessary to guarantee an optimal take-up and efficient use of the subsidies. If industrial policy is designed well, competition and industrial policy are complementary.

Fourth, there is little that fosters innovation, investment and the transformation as much as effective competition.

Therefore, let me clearly say: Competition is not part of the problem. Competition is part of the solution.

We can have consolidation in the European defence industry. We can give state aid to chip manufacturers. We can mandate and incentivise pharmaceutical production within the territory of the EU. But in all cases, we need market forces and competitive pressure to deliver the best results. And obviously all this has to happen under the oversight and control of the European Commission in order to secure the integrity of the internal market.

True: Competition and state aid policy alone will not solve our competitiveness and security challenges. But: Markets and competition have to be an ingredient in every recipe.

Zeitenwende does not only mean that we have to defend competition within the EU. It also means that we have to take up the systems competition.

Effective and fair competition in the Internal Market can be Europe's comparative advantage over state capitalism. But there are several conditions for the long-term success of our social market economy. One is: We have to protect the Internal Market against distortive subsidies. Therefore, the Foreign Subsidies Regulation is a huge step forward.

Some of you – certainly you, Margrethe – may remember the fight over Siemens/Alstom. We are fortunate that the conclusion was: It is not our merger rules that are the problem. It is unfair Chinese subsidies. In the Siemens/Alstom markets the subsidies to the China Railway Stock Corporation CRRC.

The Foreign Subsidies Regulation will cost the Commission a lot of enforcement work and resources. But this is the right way: being systematic and tough on the root causes of the problem.

We are closely watching the current first test case for the Regulation: a tender offer by CRRC in Bulgaria. That the first case is about CRRC is not only an irony of history. It is also proof that the EU has been dead right on the Regulation. We cannot be naïve in the systems competition. This is even more true given that the train funding in Bulgaria partly comes from the EU's recovery and resilience fund.

Another angle of fair competition is consumer protection and product safety. The EU rightly has high standards. But we also need to enforce them. Platforms such as Temu have to be systematically scrutinised, and if necessary, banned from selling unsafe or otherwise illegal products. And if Member States do not live up to their task of enforcing our standards, the Commission should step in to force effective implementation. Effective implementation is not a side dish in the internal market.

Zeitenwende is not only about competitiveness and systems competition. It also means that politics re-allocates political priorities, resources and budgets.

For Germany, we will very probably not see an increase in civil service at the Federal level for a while. That is an inconvenient truth – unfortunately also for you, Mr. Mundt. Sorry about that.

But we can alleviate the conflict between tasks and resources if we become more efficient. That means cutting red tape. And this cuts two ways: On the one hand, we have to focus on the important problems and cases, looking for potential to free up the resources of competition authorities. On the other hand, we have to speed up procedures of authorities and courts.

Competition enforcement has grown into a complex and costly machinery. This is also due to lawyers and economic consultants making their money by throwing in the next 100 pages or more-document. This is also sometimes due to authorities sending the next broad request for information. We need limits, self-restraint and courage to take decisions to focus on delivering results.

Stock taking: Where did the “antitrust pendulum” swing?

Let me turn to the second question I want to address: What have we achieved over the last two years?

We have the Digital Markets Act in the books. The big question now is: will the gatekeepers comply? Margrethe, you have already expressed your doubts in public. I say it in my own blunter words: At least some of the gatekeepers seem to be dodging compliance.

Those gatekeepers probably think they are smart when using their usual playbook of throwing every legal resource into a game of obstruction. Let me be very clear: These tactics of selling the public for fools will backfire. Politicians are watching very closely.

We will not blind ourselves into just repeating “the DMA has to be a success”. There will be enforcement of the DMA. And there will be swift political judgment on the enforcement.

If the DMA enforcement does not achieve changes in behaviour and markets quickly, there will be a tougher and different upgrade. This would have to include wider discretionary powers for the Commission and, as a measure of last resort, structural separation.

Breaking the power of these gatekeepers is essential to restore fair competition, to achieve a fairer distribution of opportunities and wealth. It is essential for our economies and for the credibility of our democracies.

For US antitrust policy, you will hear from Jonathan Kanter. You will also later discuss “the Brandeisian ambitions – What’s here to last?”. As a European, I wish that not only the Brandeisian ambitions will last. I wish that the Brandeisians will last after the Presidential elections. And I wish that your enforcement activities will succeed in the courts.

In Germany, we have introduced a new competition tool last year. Minister Marco Buschmann has already mentioned it. Mr. Mundt helped to get it through the legislative process.

The Bundeskartellamt already had the powers to investigate a sector before our reform. Now, it also has the powers to stop a significant and continuing malfunctioning of competition. Possible remedies include closer monitoring of mergers, the facilitation of market access, or – as ultima ratio – the divestiture of parts of an undertaking.

Why such new competition tool? Two main reasons: First, for significant structural competition problems in a sector, we need more than the one-off and piecemeal enforcement against specific infringement.

Second, Martijn Snoep uses to say, conduct on the markets nowadays moves away from blunt cartels to the fringes of existing competition law. Therefore, we need to fill the gaps in our toolbox to tackle some of this behaviour.

We have taken inspiration from the UK CMA market investigation model. Some EU Member States are also considering introducing such instrument.

Mr. Mundt, you sometimes say that the Bundeskartellamt did not call for the tool and that the additional legal thresholds that came into the final text are challenging. True.

But there are competition authorities which would crave such tool. And there are sectors in Germany out there that merit scrutiny. So we hope the Bundeskartellamt can make the most out of its new tool.

What do we want competition policy to achieve within the next years?

Our new German competition tool brings me to the third and final question I would like to address: What do we want competition policy to achieve within the next years?

I will set out the priorities for the German Federal Ministry for Economic Affairs and Climate Action. These also include proposals for the EU level. I would like to see an ambitious work programme for the next European Commission in the field of competition.

A competition tool for the European Commission would be high on our wish list.

Last month, the European Parliament already welcomed the initiatives across several Member States. It calls on the Commission to introduce a similar market investigation tool to avoid enforcement gaps.

Next week, we will more submit a concrete proposal for new competition tool on the EU level. We would like to see it in the reports by Mario Draghi and Enrico Letta.

We suggest to focus the EU competition tool on those sectors which have an international dimension and are of high importance for the overall EU economy. The tool should take into account global competitiveness, the new geopolitical reality and the security of supply.

Current examples for essential sectors providing key inputs for the EU economy would include raw materials, energy, transport, semi-conductors, and cloud computing. These sectors are part of the supply side for many European industry customers. Competition in these sectors may help European industry customers to compete better internationally.

A second area where I see a future interplay of national and EU action is sustainability.

We will reform German competition law on sustainability agreements. We will follow into the steps of the Netherlands and the UK in particular with regard to environmental out of market efficiencies.

We would like to set the signal that the next EU Horizontal Guidelines should be more ambitious in this regard. We would also like to set a signal for the international debate here.

The third area where I would like to see progress is the fight against cartels.

Competition authorities in the EU have seen a drop in leniency applications. We understand that several factors are at play.

But it would be hard to ignore the incentives set by the EU Damages Directive. This problem is well-known now for some years. Therefore, we would urge a public consultation and a swift and thorough assessment of the Damages Directive by the next Commission.

In Germany, court procedures in damages cases take way too much time and resources. Therefore, we will attempt to streamline procedures in our upcoming reform.

A fourth area where we see room for improvement are abuse of dominance cases. We welcome the Commission's ongoing reform of its Article 102 guidelines. This is one of the key areas to drop the more economic approach.

We understand that the Commission has to take the ECJ on board. But only if the Commission leads the way and tries to set the right direction, there will be change.

The best scenario would be that DMA enforcement becomes a laboratory and model for more efficient and quicker Article 102 enforcement. The experience and expertise of DG COMP is important. But sometimes a rupture with the old habits of how things have been done is helpful.

A fifth area of course are digital markets. DSA and DMA enforcement are of utmost important. The Commission needs additional resources for enforcement. We propose that for the DMA, we should introduce the same fee financing as under the DSA.

On generative AI, I am glad to hear the general attitude of competition authorities. The aim is to prevent a re-run of the gatekeepers' playbook of advancing their ecosystem through acquisitions and exclusionary conduct. But this is not sufficient. We should prepare for an upgrade in the DMA to safely include cloud computing and AI.

The sixth and final area of need for action in my point of view is merger control. We acknowledge that DG COMP seems to have learned from past mistakes such as Facebook/WhatsApp. There seems to be a tougher enforcement line emerging, including the prohibition of Booking/eTraveli and the abandoned acquisition of iRobot by Amazon.

In Germany, we will revise our merger thresholds to free resources at the Bundeskartellamt.

The thresholds in the EU Merger Regulation have been unchanged now for 35 years. Taking into account inflation, this amounts to a de facto decrease of thresholds of up to 50%. This has led to a constant expansion of the scope of the Merger Regulation. This ties up significant resources in DG COMP, which could be used for other priorities.

We also need a legally sound solution for killer acquisitions. Therefore, the next Commission must look into a reform of the Merger Regulation and the guidelines on horizontal and non-horizontal mergers. The new merger guidelines in the US this time may provide some inspiration.

The German Government will also make a proposal for merger reform for the Draghi and Letta processes.

Conclusion

Now I would like to turn to the conclusions and take competition to a new level. Some of you have moved over from the Cristina Caffarra conference to Mr. Mundt's event today. The competition for the greater event is yet undecided.

The two conferences have similar topics, similar speakers, similar speeches. Oddly enough, both take place at a Steigenberger hotel. One has public funding, one has corporate funding. The events seem to operate be in the same market which is highly concentrated. The two conferences clearly exert market power. Is there a cartel at work? Is there misuse of a dominant position? My challenge now to all supervisors here is: Who takes over the case?

I have seen that the Caffarra event has been dubbed as "Anti-Davos". Perhaps, Mr. Mundt's event will become the new Seattle.

So competition policy is back on the bigger political agenda. That's good. The issues discussed here are of critical importance for our common future. You carry responsibility for economic freedom and fairness and plurality.

But: even when discussing what matters most we should never forget our humour.

I wish you good luck for your efforts.