



EUROPEAN COMMISSION

Joaquín Almunia

Vice President of the European Commission responsible for Competition Policy

Competition among financial markets operators

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

ECMI Annual Conference (National Bank of Belgium)

Brussels, 17 October 2013

Introduction

Ladies and Gentlemen:

It is a pleasure to be here today and I thank Karel Lannoo for his kind invitation.

During my presentation, I will share with you my insights on how competition among financial markets operators works.

I will do so on the basis of recent and on-going investigations led by the European Commission as enforcer of competition rules.

The context

The state of competition in Europe's capital markets is uneven.

Competition is strong in the trading and clearing of equity, but it is rather weak for other financial instruments – such as derivative contracts – where markets are still highly concentrated.

Equity markets were opened up by the Markets in Financial Instruments Directive – or MiFID – of 2007, which introduced significant regulatory changes.

The Directive has improved transparency in these markets and made it possible for new types of trading platforms to compete with the traditional exchanges.

MiFID has shown the benefits of more competition between financial operators; it has lowered prices and improved the technology to the benefit of consumers.

As to Derivatives markets, regulatory work is still on-going. I am referring to the MiFIR regulation, which was adopted by the Commission in 2011 and is currently discussed in the European Parliament and the Council.

To address the concentration in these markets, the measures proposed in MiFIR would lower the barriers to entry in exchange-traded derivatives markets and make them more contestable.

Of course, lowering entry barriers is not a goal in itself, because we are talking about sensitive markets that should be accessible only to reputable players.

But the draft MiFIR regulation strikes a good balance: on the one hand, it opens these markets to competition and, on the other, it makes sure they remain safe and stable once its provisions become operative. The European Parliament has requested some key amendments, but discussions are on-going.

What we do

After this quick overview of what is going on in the regulatory side, I will now turn to the enforcement of EU competition law, which goes hand-in-hand with it and pursues similar objectives.

State aid for banks

As competition authority, the Commission's work in financial markets covers all its instruments: State aid, antitrust and merger control.

Since 2008, when Member States started to support massively their banking systems, the Commission introduced a State aid framework tailor-made to deal with rescued banks with three main objectives:

- maintaining financial stability;
- safeguarding the internal market; and
- protecting the interests of taxpayers.

We have been using this framework to assess and approve rescue and restructuring plans for every bank in distress in Europe.

Overall, and on top of the analysis of the national schemes to support their respective systems, we have worked on the restructuring or the resolution of almost 70 entities, an equivalent to around one quarter of Europe's banking sector in terms of assets. In doing so, the Commission became de facto a central crisis management and resolution authority.

Banking union

Now we are at a turning point in terms of building up the Banking Union. Indeed, this is a complex and critical work, both to restart the adequate lending flows to the real economy and to complete the architecture of the Economic and Monetary Union.

A lot of progress has been done during the last months. In particular, the Bank Recovery and Resolution Directive –to be adopted soon– offers a set of instruments that can tackle potential banking crises at three stages: preventive, early intervention, and resolution. Hopefully, a Single Resolution Mechanism for the euro area will accompany next year the Single Supervisor finally endorsed this week by the ECOFIN.

One of the key tools at the disposal of the resolution authorities will be bail-in.

Under the draft Directive, a bank under resolution can be recapitalised via the imposition of losses or the conversion into capital on shareholders and unsecured creditors, including junior and senior bondholders and some categories of depositors.

This tool is a powerful private backstop. It would reduce the need for public backstops. Or, at least, it will help to reduce their size.

More importantly, the introduction of bail-ins would help break the vicious circle between banks and sovereigns in which failing banks can undermine the financial stability of whole countries and ultimately erode their credibility vis-à-vis the markets.

New SA rules for banks

To accompany the changes that will take us to the Banking Union, we have reformed the special State aid rules for banks in distress we have used over the past five years.

I would like to clarify how the new State aid rules, in force since August first, fit in the overall framework of the Banking Union and will help to manage the transition.

The new rules introduce three main changes.

First, there will be no bail-out before a larger share of the burden will be borne by the banks.

In other words, before resorting to taxpayers' money, banks should foot the bill by going to the market, using internal resources, and asking for the contribution of shareholders, hybrids' holders, and junior debt creditors.

The burden-sharing requirements apply to all state aid granted to banks, not only in resolution scenarios. It can also help to ensure a smooth passage to the future bail-in regime under the BRRD, and it facilitates the transition towards the functioning of the Single Resolution Mechanism.

The second major change of our new State aid rules follows from the positive experience of the Spanish Memorandum of Understanding approved last year.

No State aid in the form of recapitalization or impaired-asset relief will be approved before the burden sharing takes place and the restructuring plan is approved by the Commission.

The third main change that the new rules introduce is a cap on executive pay for all aided banks.

With the new rules we are better equipped to react quickly and to ensure that banks contribute to a maximum extent before tapping public aid.

In particular, the burden-sharing principle will help to limit the size of the potential public backstops that might be needed. Finally, banks should also have the time and the incentive to build up a sufficient capital buffer.

Antitrust

Ladies and Gentlemen:

Let me now move on to our action in antitrust and merger control, which is more directly relevant to the trading and clearing of financial instruments.

I will start with our work in antitrust.

As you know, our rules cover both the individual behaviour of a single company – under Article 102 of the Treaty – and agreements between several market participants under Article 101.

Let me explain a couple of examples of agreements that are being currently investigated.

CDS

The first investigation I will mention is in the market for credit default swaps.

Between 2006 and 2009, Deutsche Börse and the Chicago Mercantile Exchange tried to enter the credit derivatives business.

These two exchanges turned to the International Swaps and Derivatives Association (ISDA) and the data service provider Markit to obtain licenses for their data and index benchmarks. These licences are necessary to operate in this market.

However, according to our preliminary findings, some of the world's largest investment banks decided to control financial information on CDS and block exchanges from entering the credit derivatives business in order to protect the revenues they gain by acting as intermediaries in over-the-counter deals. The banks controlling ISDA and Markit instructed both organisations to give the exchanges licenses only for over-the-counter trading and not for exchange trading.

This practice is harmful because exchange-trading of credit derivatives could have made the trading of these contracts cheaper and could have improved transparency and market stability.

As I said, the investigation is not over and the investment banks know our concerns. We are now waiting for their replies.

Once we will analysed their comments, we will move forward towards a final decision and, in case our concerns will be confirmed, we will sanction this behaviour.

Libor/Euribor

Another antitrust investigative effort I will mention is in the area of interest rate derivatives. The media has dubbed it the Libor scandal. A parallel investigation refers to similar practices regarding Euribor.

We are investigating suspected cartel arrangements between traders involving a number of international banks and, in certain cases, brokers.

We are trying to find out if traders of interest-rate derivatives colluded to manipulate the Euribor and Libor benchmarks in order to obtain a benefit in their own trading positions. Such collusive behaviour can be caught by our antitrust rules. Other regulatory authorities are investigating the same facts under their correspondent perspectives.

Our cartel investigations are very well advanced, and there will be news soon.

This is a case of primary importance. I am convinced that the rigorous enforcement of competition rules – in addition to ex ante regulation recently proposed by the Commission– is essential for restoring trust in the reliability of benchmark rates and in the financial industry at large.

Platts

These actions show that if we have clear indications of manipulation of benchmarks in other markets, we will immediately act.

For instance, we carried out inspections last May at the premises of several companies active, such as the price reporting agency Platts, in providing services to the crude oil, refined oil products and biofuels sectors.

We are investigating. Our concerns in this case are that price benchmarks for a number of oil and biofuel products were distorted; in particular as a result of collusion between companies participating in the reporting process.

DB/NYSE vs ICE/NYSE Mergers

As I said earlier, we use all our instruments to enforce EU competition law in capital markets. After my comments on State Aid control and antitrust investigations, let me now conclude with our review of mergers.

Merger rules aim at preventing the creation of market structures that may harm competition, with the effect of higher prices or less innovation.

I would like to explain our thinking using the examples of two deals involving exchanges; the proposed merger between Deutsche Börse and NYSE Euronext we prohibited in February 2012 and the acquisition of NYSE Euronext by InterContinental Exchange – or ICE – that we cleared last June.

In the first case the merger would have created a monopoly, whereas in the other one there would remain a number of meaningful competitors to the company resulting from the merger.

The first decision set a precedent for the analysis of the markets concerned. The ICE/NYSE Euronext deal was assessed in light of this precedent. However, every transaction is analysed on its own merits and the factual differences between the two cases explain the different outcomes.

In both cases, our assessment focussed on the impact that each deal would have on the trading and clearing of derivatives.

The core derivative business of both Deutsche Börse and NYSE Euronext – the companies involved in the first transaction – were European financial derivatives.

Our analysis of the internal documents of the two companies showed that each exerted a strong competitive constraint on the other. Hence, the merger would have led to a near-monopoly in European financial derivatives worldwide which could not be remedied by the commitments submitted by the parties. Therefore, we had no alternative that to block it.

In contrast, the contracts offered by ICE and NYSE Euronext meet different trading needs. ICE's core derivatives businesses are in energy.

At first sight, overlaps with NYSE Euronext seem to exist, in particular in the area of the so-called 'soft-commodity derivatives' such as cocoa, coffee and sugar derivatives.

But also here the difference in terms of underlying assets between ICE and NYSE Euronext contracts were such that could not been regarded as competing with each other.

In sum, our investigation showed that ICE and NYSE Euronext did not look at each other as the only main direct competitor. We therefore approved the merger because it would not likely have a negative impact on price or quality to the detriment of consumers.

Conclusion

Ladies and Gentlemen:

I will conclude by repeating that the proper functioning of Europe's financial system is of crucial importance for funding the real economy.

For this reason, safeguarding competition in this sector remains a top priority. We will spare no effort to make sure that market players abide by EU competition law. From State Aid to merger control, from abuses of dominance to fight against cartels.

When it comes to competition control, financial markets are markets like any other. They will not receive special treatment from us, only special attention when financial stability is at stake.

Thank you.