



Closing Remarks

1 December 2017, 12.30 pm

Roberto Chieppa

Secretary General of the Italian Competition Authority

Tempus fugit - time flies, the Latin poet Virgil wrote.
And indeed, the time has flown at this Workshop.

So we can close this workshop with a quotation, as we opened this event with the quotation used by Gregory Werden of DOJ, who remembered us “*First don’t harm*” about the intervention in the digital economy.

With regards to this quotation, I agree that there is a risk of an excess of intervention in the new sectors of the digital economy.

Competition agencies have to avoid this risk and also the risk to transform themselves into regulators.

Mr. Assimakis Komimnos reminded us that regulators should deal with market structure and market failure while competition authorities should address conducts.

Indeed, while this is true with regards to the enforcement activity, I would like to add that intervention by regulators or legislators also carries out the risk of exceeding in the attempt to have specific provisions for these new phenomena.

This risk should be avoided, although competition authorities should not refrain from intervening in these sectors.

Antitrust experts from all over the world are gathered here today and of course I do not think that this workshop should conclude with the statement that there is no room to intervene in digital markets and that the competition agencies may also shut down. I am joking of course.

However we all know that there is an intense debate on the scope of intervention of antitrust authorities in these sectors and that in the US justice Posner asked in a provocative way, “*Antitrust is dead, isn’t it?*”.

I strongly believe that antitrust is not dead in Europe, it is not dead in the USA and in all over the world.

In my view, competition authorities have to study these new markets, with particular regards to their structure and markets failure, in order to exercise their advocacy powers; they also have to evaluate the possibility to put under discussion the use of traditional antitrust tools in the digital economy (I refer, for instance, to the tools of merger control).

When intervening against illicit conducts with their enforcement powers, competition authorities should bear in mind the results they intend to achieve, as reminded by Mr. Alvaro Ramos, and they do not have to open proceedings just to demonstrate to be active in these sectors.

This ICN group deals with unilateral conduct and we know that there are relevant differences between the frameworks of many countries, for instance between USA and Europe.

These differences shall not be an obstacle to our work, but a possibility and an encouragement to enrich our reciprocal experiences.

Indeed we had several encouragements during this workshop; let me just remind you some of them.

Regarding platform market power, we have had an interesting discussion on the issues raised by multi-sided markets. We discussed whether market power should be found in all sides of the market and how to assess markets where services are provided for free. We need to reconsider certain specific features of the market, taking into account key factors like the role of access to data and innovation.

Vertical restraints, which were considered a traditional, well-established topic, have gained new momentum with online platforms. In this context, we have to balance, on the one hand, possible negative effects, like foreclosure of rivals at the retail level and the raising of entry barriers at the platform level and, on the other hand, efficiency arguments. The exchange of our experiences provided new elements for reflection.

Many of our competition agencies have dealt with price parity agreement cases. Enforcement outcomes and regulatory approaches have varied across jurisdictions,

but today we all agree on the analytical framework and the possible competition implications, particularly with regard to wide parity clauses.

Different views persist on several topics addressed during this Workshop, but – as Mr. Paolo Palmigiano highlighted at the beginning of the last Plenary session – the level of disagreement within the ICN Unilateral Conduct Working Group has significantly decreased over time.

A final remark on due process, procedural fairness and length of proceedings.

For competition enforcers, procedural fairness plays a key role as it (i) allows the parties (and also the judge) to understand the decision making process; (ii) maximizes the quality of competition agencies output (I am convinced that discussions with parties under investigation, as someone suggested, are important, and of course I refer to discussions within the proceeding); (iii) ensures that subjects to competition investigation are treated fairly.

Procedural fairness goes together with the length of our proceedings.

Currently, we very often see a mismatch between the judicial and economic timeframes, being the judicial one much longer. We have to be aware that this is a problem not only for the parties under investigation, but also for the whole market, as such mismatch may significantly affect legal certainty.

During the workshop some participants indicated that a solution could be a more intensive use of interim measures. I think that interim measures are a tool that could be used more frequently (in Italy we have used interim measures two times in the last year, in both cases in proceedings concerning unilateral conduct), but they provide only a partial solution.

A more comprehensive solution should tackle investigation timetables directly, allowing competition authorities to close proceedings in a reasonable timeframe, and not after 7, 9 or 10 years when the markets have already completely changed and the antitrust intervention loses its effectiveness.

Finally, I want to remark that it has been a pleasure to receive such a diverse and passionate group of competition experts. It does not occur often to enjoy the presence of more than 140 delegates coming from all over the world, literally from A (Argentina) to Zed (Zambia), encompassing Barbados, Jamaica and Vietnam and many other countries.

I am sure that all of us are leaving this Workshop bringing back new inspiration for our daily work, together with great memories and some new friends.

Let me thank the speakers, the moderators and the resource persons for their contribution, and congratulate you all on your enthusiastic participation.

Let me express my gratitude to our co-Chairs of the Unilateral Working Group – the US Department of Justice and the Australian Competition and Consumer Commission – for the great work that we have done together in preparation for this Workshop.

Let me highlight the hard work done by our International Affairs Department, in coordination with the Board and the staff of the Italian Competition Authority.

And, for the luckiest amongst us, it will be great to meet again in South Africa at the next Unilateral Conduct Workshop in 2018.

I wish you a safe journey home and to enjoy the rest of your time in Rome.
Thank you all.