ViewPoints
FOR THE AUDIT COMMITTEE LEADERSHIP SUMMIT

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Dialogue on EU competition policy

On 28–29 June 2016, members of the European Audit Committee Leadership Network (EACLN) and the North American Audit Committee Leadership Network (ACLN) met in Zürich, Switzerland, for their 11th summit meeting. On 29 June, members discussed competition policy in the European Union (EU). They were joined by Paul Csiszár, Director in the Directorate-General for Competition (DG Comp) at the European Commission, and Stephen Kinsella, Partner and head of the European antitrust/competition group at the law firm of Sidley Austin. For biographies of the guests, see Appendix 1 on page 12. For a full list of participants, see Appendix 2, on page 13.

Executive summary

In conversations before, during and after the meeting, guests and members touched on various aspects of the following topics:[1]

- **Background on EU competition policy and enforcement** *(page 2)*

  EU competition policy is the responsibility of the European Commission, which has extensive investigative and enforcement powers. The Commission coordinates its work with authorities at the national level as part of the European Competition Network and separately with antitrust authorities from outside the EU. Members discussed interesting differences between European and American systems of competition enforcement.

- **Merger control** *(page 3)*

  The Commission reviews proposed mergers for their potential effect on prices and innovation, and while it approves the vast majority of mergers, it may also block them or approve them with remedies such as the sale of certain assets. The review involves defining the relevant market and assessing customer concerns and company motivations in order to understand how the competitive constraints in the market would change after the merger. Both Mr Csiszár and Mr Kinsella recommended that companies consult with the Commission even before they file the notification that starts the formal review process.

- **Antitrust actions** *(page 7)*

  The focus of antitrust actions includes anticompetitive agreements such as cartels, or abuse of a dominant position. Fines for violations are rising, partly because the Commission does not have recourse to other sanctions. Mr Kinsella noted that only some companies have robust antitrust compliance programs and suggested that the Commission provide more credit for efforts in this area when prosecuting violations. Mr Csiszár said that such compliance programs serve the companies' own interest, and that granting credit for failed programs is unwarranted.

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[1] *ViewPoints* reflects the network's use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments are not attributed to individuals or corporations. Italicized quotations reflect comments made in connection with the meeting by network members and other meeting participants.

- **State aid control** *(page 8)*

  The Commission seeks to ensure that state aid to companies or industries is not preferential in ways that distort competition. Though the Commission allows a good deal of state support, it has recently received extensive media attention for its crackdowns on tax rulings, which – like some of its actions on antitrust – have been seen as biased against American companies. Both Mr Kinsella and Mr Csiszár argued that these accusations do not stand up to scrutiny, but they also urged companies to engage more with the Commission to clear up uncertainties and misunderstandings.

For a list of discussion questions for audit committees, see Appendix 3 on page 14.

Background on EU competition policy and enforcement

The EU's focus on promoting competition originates with the 1957 Treaty of Rome, which envisioned undistorted competition as a key element of the European single market. In 1962, the European Commission acquired the power to investigate anticompetitive behavior, and in 1990, it became responsible for assessing large mergers.[2] Within the Commission, responsibility for these areas rests with DG Comp. The Commission has extensive powers of investigation, and it can make binding decisions to block or impose conditions on mergers, require dominant firms to divest or grant access to their property, and impose large fines for antitrust violations.[3]

The Commission works with national competition authorities (NCAs) to enforce EU competition rules, as part of a system known as the European Competition Network. The NCAs have the same powers as the Commission, and cases are divided up between the Commission and the NCAs. For example, violations of the antitrust rules involving no more than three countries are more often handled by the NCAs, while the Commission takes on trans-EU cases.[4] In the area of mergers, the Commission handles those involving companies larger than a certain size, while those involving smaller companies are handled by NCAs.[5] Since 2004, the NCAs have handed down 85% of all decisions applying EU competition law.[6]

The Commission also seeks to coordinate its activities with competition authorities in other countries, both multilaterally, through organizations like the International Competition Network and the Organization for Economic Cooperation and Development,[7] and bilaterally, through direct cooperation with authorities such as the Department of Justice (DOJ) and the Federal Trade Commission (FTC) in the United States.[8] Mr Csiszár noted in advance of the meeting that *"the more we align our thinking and analyses, the better it is for everyone, that is, for industry as well as for competition agencies around the world. Inconsistency erodes predictability, effectiveness and our moral authority."*

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[2] European Commission, *The European Union Explained: Competition* (Luxembourg: Publications Office of the European Union, 2014), page 3.

[3] Ibid.

[4] Ibid., page 11.

[5] Ibid., page 8.

[6] Margrethe Vestager, "Setting Priorities in Antitrust," (speech, 11th GCLC Annual Conference, Brussels, 1 February 2016).

[7] "Facing the Challenges of Globalization," European Commission, accessed 6 June 2016.

[8] "Bilateral Relations on Competition Issues," European Commission, accessed 6 June 2016.

There are meaningful differences, however, between European and American competition enforcement systems, despite their having aligned objectives, Mr Csiszár said. For example, he noted that *"in the Continental system, we don't have the same discovery process as in the American system. It makes it more difficult to obtain all relevant facts in a relatively short time period, which gives rise to criticism that we in Europe are too slow."* Another difference is that *"DOJ and the FTC have to go to court if they would like to block a merger. In Europe, we have the so-called administrative system, where the competition agency is both prosecutor and judge, only in the first instance of course."* Mr Kinsella agreed with these observations, though he added that *"the Commission has sweeping information-gathering rights, and if you don't provide information, they can take a decision on incomplete information."*

Mr Csiszár also mentioned that since the responsibility for addressing complaints related to competition law falls to antitrust authorities in the first instance, European authorities sometimes appear more active in some areas than their American counterparts: *"In the US, antitrust enforcement is 95% private litigation, whereas in Europe, you cannot initiate private litigation as effectively as in the US. So people come to us with formal and informal complaints, and when we get a complaint, we have to deal with it, either by initiating an investigation or formally rejecting it with appropriate legal reasoning."*

Merger control

EU law requires large companies with cross-border operations to ask the European Commission for authorization to merge or form an association and to provide the information the Commission needs to reach a decision.[9] The merger laws include regulations for assessing market concentrations and additional regulations that specify the procedures that companies and the Commission must follow, including rules on notifications, deadlines and hearings. According to the Commission, "The rules apply to all mergers, no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities – because even mergers between companies based outside the EU may affect EU markets if the companies do business here."[10]

The merger review process begins when a company notifies the Commission of a proposed merger, which all companies meeting certain revenue thresholds must do.[11] If the firms involved are not in the same market or if their combined market share is below 15% in any market where they compete (25% in vertically related markets), the review consists of a routine check and approval.[12]

[9] European Commission, *The European Union Explained: Competition*, page 8.

[10] Ibid.

[11] Primary thresholds in the EU are met if (1) combined worldwide revenues of the undertakings concerned exceed €5 billion and (2) Union-wide revenues of at least two of the undertakings concerned exceed €250 million. Secondary thresholds can also be triggered. See European Commission, *Competition: Merger Control Procedure* (Brussels: European Union, 2013), page 1.

[12] European Commission, *Competition: Merger Control Procedure* (Brussels: European Union, 2013), page 1.

Above those thresholds, the Commission undertakes an investigation that may have up to two phases:[13]

- In the first phase, the merger may be approved, with or without remedies. Remedies can be proposed by the merging companies and might include a commitment to sell a part of the business to guarantee continued competition.
- If competition concerns are not resolved in the first phase, the investigation moves to a second phase, which consists of a more in-depth analysis. This phase could, again, result in approval with or without remedies, but it may also result in the merger being blocked. Decisions by the Commission are subject to judicial review, and companies can appeal a decision within two months.

Recent decisions by the European Commission illustrate how merger reviews can play out and the concerns they address. In May 2016, for example, the Commission approved AB InBev's £71 billion acquisition of SABMiller, but the approval requires AB InBev to sell all of SABMiller's beer business in Europe in order to ensure that the takeover will not reduce competition in Europe and lead to an increase in the price of beer.[14] In the same month, the Commission blocked the acquisition of Telefónica's UK business, O2, by CK Hutchison, which owns a rival network. Hutchison had proposed remedies, including promises to hold down prices and let competitors establish services on its network, but the Commission stuck to its harder line, on the argument that flexibility on competition could be useful in encouraging investment in new products and services.[15] In September 2015, the Commission approved GE's $14 billion acquisition of Alstom's energy business, but the approval requires the merged company to sell some of its turbine operations to an Italian engineering company, Ansaldo Energia.[16]

Analyzing a proposed merger

In a pre-meeting conversation, Mr Kinsella said a common question among his clients is whether approvals for mergers are getting harder to secure. *"I try to remind my clients that the Commission only blocks on average one merger a year. Most go through. Only 3% or 4% are taken into the second phase of analysis, and only 2% or 3% are tinkered with. The blocking of a merger is rare,"* he said. He noted that the Commission takes very seriously the efficiency benefits of mergers. At the meeting, Mr Csiszár agreed and explained in detail the Commission's approach to merger reviews. He elaborated on the negative effects that the Commission is most worried about:

- **Price increases.** Less competition in a market can enable companies to raise prices. Mr Csiszár said, *"If we have reason to believe that prices, post-merger, could rise by 5% to 10% for a given product, we intervene unless adequate remedies are provided by the merging parties."* Referencing the AB InBev-SABMiller merger, for example, he noted that product characteristics such as price inelasticity and brand loyalty can exacerbate the

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[13] European Commission, Competition: Merger Control Procedure (Brussels: European Union, 2013), pp 1-3.
[14] "EU Regulators Approve AB InBev-SABMiller Deal," *Financial Times,* 24 May 2016.
[15] "Vestager Makes the Right Call on Three and O2," *Financial Times,* 11 May 2016.
[16] Christian Oliver, Michael Stothard, and Ed Crooks, "Brussels Clears $14bn GE-Alstom Deal, but with Conditions," *Financial Times,* 8 September 2015.

impact: *"If you have the most popular brands, you can probably mark up your price as beer is generally a very inelastic product. Just because it is a little more expensive, consumers may not switch or wouldn't buy less beer."*

- **Curtailed investment and innovation.** While mergers can generate innovation as technologies are integrated, they can also suppress it, depending on the incentives. Mr Csiszár explained the Commission's concerns, using the biotechnology industry as an example: *"The industry feeds on both big companies' in-house innovation and buying smaller ones or their pipeline products, and we are concerned if there are pipelines that will not deliver to market if the merger happens."* Protecting innovation was also a factor in the remedies imposed on the GE-Alstom deal.

Mr Csiszár also explained the approaches and criteria the Commission uses to assess the possible extent of these negative effects, such as the need of defining the relevant market and assessing customer concerns and management views.

Defining the relevant market

The number of competing companies and their market shares left in the market after a merger is a key criterion, Mr Csiszár explained. When mergers take the number from four players to three or from three to two, *"it is generally not good for the market, society or the economy."* Determining the relevant product and geographic markets may not be straightforward, however, and geography and product characteristics come into play: *"To put it simply, the concept is substitutability and pre- and post-merger competitive constraints in the market: If the price were to go up, could the purchasers buy the same good or service from elsewhere after the merger? Are there other alternatives? For example, what is the geographic market for you to do your groceries? Five kilometers, more or less? How far would you walk or drive if prices went up 10% in your local supermarket(s)?"* The point is to understand how much of a constraint on its market power the merged company would face from competitors and potential competitors after the merger is consummated.

The impact of online business also complicates the issue, because an online competitor may not represent a competitive constraint for all customers, as Mr Kinsella explained: *"With Staples, Amazon is a competitor for a small customer, but not for a large customer who needs to deal directly with one of the big players."* He noted that companies may need to educate the Commission about the evolving digital dynamics in a market: *"Online players may represent a constraint, but the burden comes down to you. You need to show that digital entrants pose a lot of competition."*

Assessing customer concerns and employee views

The Commission is very interested in what customers think about the impact of a merger, and Mr Csiszár noted that companies often have overly optimistic impressions of customers' views: *"CEOs are always shocked that customers are concerned about the deal. They say they called each of them when they announced the merger, and the customers all said they were very happy. When the CEO or CFO tells the board it will be an easy sale, take it with a dose of salt."* Mr Kinsella pointed out the implications for companies seeking approvals: *"If you know what your customers are going to be saying, you will be a lot of the way there."*

Understanding how employees within the company view competitors and the rationale for a merger is also helpful to the Commission. Referencing a recent merger review, Mr Csiszár said, *"We saw a lot of internal documents that were revealing about how they deal with competitors."* The lesson for companies is to ensure that employees are mindful about what they write down, Mr Kinsella explained: *"When writing a memo, you should think about whether you would be comfortable with it appearing in public."*

Importance of pre-notification

The Commission's review takes place under specific procedural deadlines (25 working days for a phase-one investigation and 90 working days for a phase-two investigation, though some extensions are possible). But a lot of work happens before filing. Mr Kinsella said, *"Most of the work is done before the clock starts, and that period is getting longer. Now, we are factoring in three or four months, even for a deal we are convinced will be very simple. You still need to spend time talking with the Commission, dealing with the case team. The last thing you want is for someone to come in with an argument that no one is prepared to address. Give the Commission permission to start their informal conversations. It's massively complicated in a hostile deal."* Mr Kinsella again highlighted the need to educate the Commission on new technology, and he gave an example of how the Commission evolved in its view of piracy in digital markets.

Mr Csiszár also encouraged companies to invest in the pre-notification process: *"The cases that are cleared in phase one have significant pre-notification. We do our due diligence, and if we can do a lot of work in pre-notification and clear the merger in phase one (with or without remedies), we are delighted. Investment in pre-notification is worth it for both sides. If we still have concerns, then we go to phase two and conduct an 'in-depth' investigation."* He noted that the specific deadlines imposed after notification make it all the more important to try to resolve difficult issues before notification, and he said that hiding relevant information is ill-advised: *"It will sooner or later surface and could spoil an otherwise good working relationship."*

Comparing Europe and the US

The European merger environment is trickier in certain regards than the American one, Mr Kinsella noted in a pre-meeting conversation: *"In Europe, the Commission doesn't have to convince a court – you have to sue to convince a court [that the Commission is wrong]. It's easier for them to block a merger, and if you get off on the wrong foot, you have to persuade them to change their minds. Defeating the Commission before the European Court is very difficult because they will be shown considerable deference in relation to economic assessments."*

On the other hand, many aspects of the European system work well, Mr Kinsella said: *"The EU process has its benefits. It's relatively transparent and has a fixed timetable, which is generally adhered to. If they decide to block your merger, you get a document with an explanation and you get a hearing."* Both competitors and customers can raise concerns with the authorities, he added, though the views of customers may receive more weight than those of competitors. He added that the Commission *"would rather impose conditions and*

reengineer the deal than block it." An ACLN member whose companies had successfully completed several mergers agreed: *"It's how you maneuver through the process – they are reasonable."*

Mr Csiszár noted that there is close cooperation between Europe and the United States on mergers. Responding to Mr Kinsella's observation that the *"amount of actual cooperation is hit or miss,"* Mr Csiszár explained that *"the parties are not always aware that we are talking. There are biweekly calls in most complex cases. The teams know each other personally, and there is strong determination to cooperate more and more closely, and coordinate on remedies which is also very useful for the parties."*

Antitrust actions

The European Commission defines antitrust activity broadly as "preventing or controlling trusts or other monopolies … with the intention of promoting competition in business."[17] Its antitrust actions include two main areas of focus:[18]

- **Anticompetitive agreements.** These include agreements to fix prices, limit production, share markets or customers or fix resale prices. However, the Commission may allow agreements under certain circumstances, such as when the positive effects of an agreement outweigh the negative, or when the companies involved have only a small combined share of the market.
- **Abuse of a dominant position.** This includes various ways in which a company can exploit its dominance in a market to restrict competition or exploit its customers. Mr Csiszár said that the Commission's emphasis is on preventing exclusionary conduct leading to foreclosure of competition, such as, for example, certain rebate schemes requiring exclusivity, or certain most-favored-nation clauses that have the effects of excluding alternative products or services. In other words, they have traditionally devoted less time to investigating "exploitative" practices such as excessive pricing.

The Commission has extensive powers to investigate anticompetitive behavior. It can enter company premises (and even private homes, though that authority is rarely exercised); examine and take copies of books and other records (including advice by any lawyers who are not independent lawyers with an EU bar membership); seal off company premises during the inspection; and ask any company representative or staff member for explanations of the facts or documents relating to the investigation.[19]

The European Commission's antitrust actions often attract considerable attention precisely because they typically target large and powerful companies. For example, the Commission has investigated several American technology companies that have achieved global dominance in high-profile markets, charging them in a number of cases with using their power to suppress competition in various ways.[20]

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[17] European Commission, *The European Union Explained: Competition*, page 5.
[18] Ibid., pp 5-6.
[19] European Commission, *The European Union Explained: Competition*, page 6.
[20] James B. Stewart, "Europe's Case Against Google Might Help Rivals More Than Consumers," *New York Times,* 28 April 2016.

In the area of anticompetitive agreements, the European Commission has also been active, though overall 2016 activity is down in recent years. The *Financial Times* reported in May 2016 that the Commission is about to impose the "biggest cartel fine in its history" on Europe's six largest truck makers. The Commission is charging the companies with colluding on price and delaying the introduction of new emissions technologies. Four of the companies have put aside $2.6 billion in anticipation of the fine, a sum that far exceeds the record fine of €1.4 billion imposed in 2012 on a cartel among producers of television and computer monitor tubes.[21]

Mr Kinsella noted that companies' antitrust compliance programs are often lacking: *"A number of companies are without much in the way of antitrust compliance programs, and they don't send the message down from the top that it's serious. It feels like window dressing."* At the same time, the Commission, unlike some NCAs, is not ready to incentivize such programs by giving discounts for having one even if a violation would suggest that a program did not fully achieve its goals. At the meeting, Mr Kinsella remarked, *"I don't think companies get enough credit for antitrust compliance programs. The Commission is looking for board level engagement and the message coming down from the top, but if the company is really doing that, more credit should be given. Instead, the Commission pushes back and says it found a problem in a unit, so the program didn't work."*

Mr Csiszár defended the Commission's stance: *"If a compliance program fails, you should probably not get credit for it. A good compliance program serves your own interest – it is not about checking a box for external parties. If a company engaged in anticompetitive behavior and is caught, it should be a lesson for management that its compliance program needs to improve."* However, he suggested that compliance efforts could be bolstered by proactive engagement with DG Comp: *"I would encourage companies to come and brainstorm with us if they are wondering if something might be a problem."* For example, a large company might want to confer on whether a certain rebate scheme offered to a key client would be anticompetitive.

As in other areas of compliance, such as bribery, the question of whether to self-report potential violations can arise. Mr Kinsella explained the self-reporting process for a cartel: *"The EU is following a US approach. There's immunity for the first company that approaches, and a sliding scale of discounts for those who cooperate later.[22] There's no criminal liability in the European Commission, so there's a big incentive to go in first. But a big question is, once someone has blown the whistle, do you follow or fight?"*

State aid control

The European Commission's mandate in the area of state aid is to ensure that government support of local industries and companies does not distort competition across the EU, or in other words, to avoid a "beggar my neighbor" approach. In determining whether to allow state aid, the Commission says it first answers the following questions:[23]

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[21] Christian Oliver and Peter Campbell, "EU Set to Impose Record Cartel Fine on Truckmakers," *Financial Times,* 29 May 2016.

[22] Fines can be reduced by 100% for first applicant, up to 50% for next, 20-30% for third and up to 20% for others. See European Commission, *Fines for Breaking EU Competition Law* (Brussels: European Commission, 2011).

[23] European Commission, *The European Union Explained: Competition*, page 7.

- Have state authorities given support – for example in the form of grants, interest and tax relief, guarantees, holdings in companies or goods and services provided on preferential terms?
- Is the support likely to affect trade between EU countries?
- Is the support selective – does it confer an advantage on specific companies, parts of industries or companies in specific regions? General tax measures and employment legislation, for instance, are not selective because they apply to everyone.
- Has competition been distorted or might it be in future?

The Commission allows a good deal of state support and indeed has followed a trend over time of relaxing the rules, and not just in response to the recent financial crisis. It approves around 85% of all notified support after a single preliminary assessment and permits some exceptions even if the conditions outlined above pertain.[24] The Commission's "overriding considerations are whether consumers will benefit or other businesses will be harmed," and it "often allows aid for research and innovation, regional development and small businesses, because these serve overall EU goals."[25] Mr Csiszár noted that the Commission generally does not oppose or even welcomes many kinds of state grants, for example, for R&D, training and investment in less developed regions, but it scrutinizes carefully company or industry "rescue" activities. He said that *"whether the support is selective or not is key."*

Nevertheless, some of the European Commission's recent activities in the area of state aid control have sparked controversy, especially its recent investigations and decisions on the tax rulings of some national authorities that have benefitted certain companies. In October 2015, for example, the Commission ruled that deals the Netherlands made with Starbucks and Luxembourg made with Fiat were illegal, and it ordered both countries to reclaim between €20 million and €30 million in taxes from the companies.[26] These actions received considerable media attention, as experts assessed the repercussions. In a November 2015 EACLN discussion on the tax landscape, Chris Sanger, a tax expert at EY, noted that the cases involved transfer pricing – often a gray area where there is no obviously correct answer – so the probability of finding violations is high, and it is difficult for national tax authorities to challenge findings.[27]

A political lightning rod

In a pre-meeting conversation, Mr Kinsella said that a key issue in the area of state aid control is whether the actions of the European Commission are too political. There is widespread suspicion that the Commission is driven at least partly by concerns about tax evasion rather than competition: *"It got swept up at least presentationally in the issue of companies not paying enough tax."* He said there is also the sense that the Commission interferes too much or at least inconsistently with member states' rights to determine tax policy: *"Governments are*

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[24] European Commission, *The European Union Explained: Competition*, page 7
[25] Ibid.
[26] Tom Fairless, "EU Regulators to Require Starbucks, Fiat Pay Millions of Euros in Back Taxes," *Wall Street Journal,* 21 October 2015.
[27] European Audit Committee Leadership Network, *The Evolving Tax Landscape and Oversight of Tax Strategy*, *ViewPoints,* 4 January 2016, page 6.

saying they thought they had a right [to strike these kinds of deals], so it's clearly political. That's why the Commission had to target a number of member states."

In the meeting, Mr Csiszár acknowledged that the European approach to state aid control might seem a bit odd, especially perhaps to American business people who are used to the idea that states in the US can offer deals to attract business. But he reminded members of the original rationale for controlling state aid: *"The smaller member states were historically concerned about the possibility that the bigger economic powers in a common market could subsidize companies, or even whole industries, and thus attract them away from their place of origin resulting in a one-to-one subsidy race to the bottom."*

He also acknowledged that issues like tax avoidance generally are of concern to other directorate-generals of the Commission, and he claimed little impact on the work of DG Comp: *"What we do is a much narrower state aid enforcement based on the concept of "selectivity", and this complements broader policy initiatives of the Commission. In essence, 'selectivity' means that we narrowly take a widget maker and say, you got something from the state that your competitors did not get … In other words, we do not make judgments on individual country tax regimes in comparison to one another, we look into whether, in a given tax regime, a company received a special tax treatment that its competitors have not."*

Is the European Commission disproportionately targeting US companies?

The Commission's recent activities have raised concerns in the United States that it is tougher on American companies than on European ones, especially with regard to antitrust actions but also with regard to state aid control. Some suspect the actions against companies like Google, Apple and Amazon, for example, are designed to beat back the dominance of American technology giants. In a letter to Jean-Claude Juncker, the European Commission president, US Treasury Secretary Jack Lew said the Commission "appears to be targeting US companies disproportionately" in its investigations on tax rulings.[28]

In a pre-meeting conversation, Mr Kinsella pointed out that the apparent bias partially reflects the prevalence of American companies among the types of companies being targeted: *"The companies on the receiving end are large companies in the technology sector that operate internationally. And technology is by its nature a sector where business can be booked in different jurisdictions to take advantage of differential rates, as well as licensing the relevant technology between group companies."* During the meeting, Messrs Csiszár and Kinsella both said that there was no bias against American companies. Some members remained unconvinced.

Conclusion

Mr Csiszár opened the discussion in Zürich by noting that, in order for markets to work, the invisible hand needs a little help: *"You can't have a good competition without good referees. It's extreme to think that the invisible hand [of the market] could fix everything. The referees need to be wise, balanced, with a light touch. But when it is needed, that is, when effective competition is stifled, the whistle of the referee should blow."* He and Mr Kinsella explained

[28] Jim Brunsden, "Vestager Denies Brussels Is Targeting US Companies in Tax Probes," *Financial Times,* 29 February 2016.

the principles and processes by which the European Commission promotes vigorous and fair competition in the single market, addressing members' questions about how markets are defined, how the Commission views antitrust compliance programs, and why American companies might be the target of investigations. They underscored the importance of engagement with the Commission to clarify the complexities of mergers and other strategies that might impact competition.

About this document

The European Audit Committee Leadership Network (EACLN) and Audit Committee Leadership Network (ACLN) are groups of audit committee chairs drawn from leading European and North American companies committed to improving the performance of audit committees and enhancing trust in financial markets. The network is organized and led by Tapestry Networks with the support of EY as part of its continuing commitment to board effectiveness and good governance.

ViewPoints is produced by Tapestry Networks to stimulate timely, substantive board discussions about the choices confronting audit committee members, management, and their advisers as they endeavor to fulfill their respective responsibilities to the investing public. The ultimate value of *ViewPoints* lies in its power to help all constituencies develop their own informed points of view on these important issues. Those who receive *ViewPoints* are encouraged to share it with others in their own networks. The more board members, members of management, and advisers who become systematically engaged in this dialogue, the more value will be created for all.

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Appendix 1: Biographies of guests

Paul Csiszár

After graduating from ELTE School of Law of Budapest, Paul Csiszár studied international comparative law and earned a second Juris Doctorate at Loyola Law School in the United States. Following his admission to the bar in 1986 in California, he practiced as a corporate, securities and M&A lawyer in the United States, and then in Central Europe, with the international law firm of Squire Sanders, from 1997 until 2003 when he joined the public sector. Currently Mr Csiszár serves as Director of Basic Industries, Manufacturing and Agriculture at the Directorate-General for Competition of the European Commission.

Stephen Kinsella

Stephen Kinsella OBE (Officer of the Order of the British Empire) is Partner and head of the European Antitrust/Competition group at Sidley, based in the Brussels office. He has over 30 years' experience advising clients on all aspects of EU competition law, with particular focus on cases in the media, technology and pharma sectors. Stephen has been involved in some of the highest profile EU competition cases of the past decades. He is past chair of the competition and trade law committee of the International Bar Association and past co-chair of the international committee of the American Bar Association section of antitrust law.

Appendix 2: Participants

Members participating in the summit sit on the boards of over 40 public companies:

- Les Brun, Audit Committee Chair, Merck
- Aldo Cardoso, Audit Committee Chair, ENGIE
- Mary Anne Citrino, Audit Committee Chair, HP Inc.
- Pam Daley, Audit Committee Chair, BlackRock
- Edgar Ernst, Audit Committee Chair, TUI AG
- Tim Flynn, Audit Committee Chair, Wal-Mart Stores
- Liz Hewitt, Audit Committee Chair, Novo Nordisk
- Lou Hughes, Audit Committee Chair, ABB
- Shonaid Jemmett-Page, Audit Committee Chair, GKN
- Blythe McGarvie, Audit Committee Chair, Viacom
- Hanne de Mora, Audit Committee Chair, Sandvik
- Nasser Munjee, Audit Committee Chair, Tata Motors
- David Vitale, Audit Committee Chair, United Continental

EY was represented in all or part of the meeting by:

- Andy Baldwin, EY EMEIA Area Managing Partner – elect
- Jean-Yves Jégourel, EY EMEIA Assurance Leader
- Frank Mahoney, EY Americas Vice Chair of Assurance Services
- Allister Wilson, Assurance Partner, Ernst & Young LLP

Appendix 3: Discussion questions for audit committees

- How much time and effort does the company spend on preparing merger notifications to the European Commission? What is the engagement with the Commission like?
- What factors complicate or smooth the approval process?
- What questions does the board ask management about the company's efforts to secure approval? Do you worry about employees generating "unhelpful" documents that may need to be disclosed?
- What kind of antitrust compliance programs do your companies have in place? How do you judge their effectiveness?
- What questions does the board ask management about avoiding or responding to antitrust violations?
- How has the Commission's focus on tax rulings affected your companies' tax strategies?
- What aspects of this issue does the board focus on?