Ladies and gentlemen,

I’m very grateful to the Italian Antitrust Association, for inviting me to be with you today. It's a pleasure to have this opportunity, to talk with you about the future of competition law. And it's also a joy just to be here in Rome – to feel the energy and bustle that has filled these city streets for thousands of years.

I used to think that nothing could make me love this city more. And then I learned that Rome was the birthplace of competition law. Two thousand years ago, the emperor Augustus – or it may have been his predecessor, Julius Caesar – laid down that "anyone who commits any act, or forms any association by means of which the price of provisions may be increased" would have to pay a fine of twenty gold pieces.

And that struck me as rather noteworthy. Not just what an easy task it must have been to apply the Roman fining guidelines. But also that the first competition law in history was a law against cartels.

That makes sense, of course. After all, cartels are the most fundamental threat to competition – the "supreme evil of antitrust", as the US Supreme Court once put it. And so, ever since the early days of the EU, the fight against cartels has been right at the top of the Commission’s priorities.

But in the last couple of years the pandemic has made it hard to carry on some of our work at full speed. Like other organisations throughout Europe – and beyond – we’ve managed to shift a lot of work online. But there are some things – like dawn raids – that you can’t do online. And for nearly two years, it's been practically impossible to do coordinated raids in many countries at once.
But our commitment to tackling cartels has never wavered. In the last two years, we’ve taken decisions against cartels for rail cargo and food packaging, financial benchmarks and ethylene. We’ve fined five carmakers more than 875 million euros, for agreeing not to compete to produce cleaner cars. And we’ve imposed about 400 million euros in fines on several global banks, in two separate bond trading cartels.

And now, as the pandemic starts to recede, our work on collecting evidence is gathering pace. Last week, we carried out our first international dawn raid in two years, when we inspected companies in several EU countries, on suspicion of a cartel in the wood pulp industry. And that’s just the start of a series of raids that we’re planning for the months to come – you’ll understand if I don’t say exactly when or where they’re going to happen.

These investigations are important – but they aren’t an end in themselves. What consumers and industry ultimately need is an economy that doesn’t have cartels in the first place. Which is why, in the end, the goal of everything we do is to deter cartels – of all kinds.

The ancient Roman law dealt with one specific type of cartel – price-fixing agreements. And cartels like that are still the bread and butter of our work – alongside market-sharing agreements.

But the more we focus on these familiar cartels, the more companies will look for other ways to collude. And for deterrence to work, we need to show that when they do, we’ll be waiting for them.

In the last few years, for instance, we’ve dealt with several cartels that manipulated industry reference prices, rather than fixing final prices. Last year, we fined four ethylene buyers more than 260 million euros, for conspiring to reduce the reference price that was applied in long-term contracts.

Buyer cartels like this one may not raise prices for consumers. But that doesn’t make them some sort of victimless crime. They still make our economy work less efficiently. And they still have direct victims – even if it’s suppliers, not consumers, who suffer.

And some buyer cartels do have a very direct effect on individuals, as well as on competition, when companies collude to fix the wages they pay; or when they use so-called “no-poach” agreements as an indirect way to keep wages down, restricting talent from moving where it serves the economy best.

And that’s not the only way that an agreement not to poach each other’s staff can create a cartel.

There are markets where you can only compete if you have expensive machinery, or costly IP. And then there are those where the key to success is finding staff who have the right skills. So in these cases, a promise not to hire certain people can effectively be a promise not to innovate, or not to enter a new market.
In one way or another, most of the cartels we deal with are still fundamentally about fixing prices. But sometimes, what we want as consumers is not so much a cheaper product as a better one. More and more, for example, we want to be sure that the products we’re buying won’t harm the environment. So a cartel that holds back improvements in the quality or the sustainability of the products we buy can be just as harmful as one that fixes prices.

This is why we took our decision in July against the five German carmakers who limited competition between them on how effectively they would clean the exhaust of their diesel cars. The cartel took place within what was otherwise perfectly legal, even beneficial, technical cooperation. The companies were developing a new cleaning technology that used an additive, which they called AdBlue, to remove harmful nitrogen oxides from car exhausts. And they needed to cooperate to tackle the practical challenges – to set up a network of AdBlue filling stations, for example, or to design a standard pump nozzle that would fit any car.

But they crossed the line into illegal collusion when they indicated to each other that they wouldn’t aim at cleaning beyond the level required by the legal standard. They knew they could remove even more pollution than the law required, by injecting more AdBlue into the exhaust. So they could have competed to attract environmentally-conscious consumers, by making even cleaner cars. But instead, they chose not to compete for the best possible cleaning performance.

A case like this can be a powerful deterrent, showing companies that they can’t escape the rules, by colluding in novel ways.

But deterrence works best when companies know exactly what it is that they’re not allowed to do. And that’s especially complex in a case like this one.

Because we know that cooperation can help industry to produce better, greener products. That’s why, in the Policy Brief that we published last month, we explained that we plan to give businesses more guidance on how to assess if cooperation to produce greener products is legal – both in guidelines and also, potentially, in connection with individual cases.

And that’s what we’ve done with the car emissions cartel. At the same time we took the decision, we also wrote a letter to the companies, where we identified the elements of their technical cooperation on emissions cleaning technology that we didn’t find problematic. And we’re planning to publish that letter on our website, together with our decision just as soon as we can.

These efforts to improve deterrence are well worthy – because deterrence really does make a difference in practice. And a recent study of cartel enforcement in the chemical industry – an industry that saw a lot of enforcement activity, in the first decade of this century – gives an interesting case study of what that really means. In the short term, enforcement elsewhere in the
And it’s not just the chemical industry that’s invested in compliance. In 2020, the In-House Competition Lawyers Association found that 80% of its members around the world had a dedicated antitrust compliance programme in place. And that’s mirrored in our own experience, where more and more of the immunity applications we get are the result of these programmes.

At the same time, we’re seeing fewer of those applications. And it would be nice to think that at least part of the reason could be that deterrence is working, making companies more wary about forming cartels.

But I think you’d need a very hopeful view of human nature, to believe that we’re close to wiping out cartels. And as long as they exist, we need to make sure our leniency programme is working well. Not just because it helps us discover collusion. But also because its very existence can destabilise cartels, undermining the sense of trust which they need to survive.

Our Leniency Notice offers companies a good deal – complete immunity from fines in the EU, in return for information that lets us launch a dawn raid. But when companies decide on applying for immunity, they think about the risks as well as the benefits. And many of those risks are increasing. More countries around the world are actively enforcing cartel rules – which means more cost and risk to get immunity from them all. And more cartel victims are using their right to claim compensation from the cartelists – something which our Damages Directive, for instance, has made easier.

These are good things, of course, when it comes to deterrence. But for companies that are thinking of applying for leniency, they could shift the balance of risks.

That’s why we’ve launched regular discussions with business, to get their views on how our leniency programme is working. And we’re talking with other competition enforcers, to see what we can learn from their experience with leniency in their own territories. So we can understand how changing circumstances, like the growth in private compensation claims, are affecting the attractiveness of applying for leniency – and what, if anything, we can and should do to adapt.

But of course, leniency isn’t the only way to discover cartels. We’ve been tipped off by customers and whistleblowers; we’ve identified cartels from information we gathered from the market. And now, with the number of leniency applications going down, we are investing more effort in building up these other ways of detecting cartels.
Compliance programmes, for instance, can mean that employees are more likely to know a cartel when they see one – and more likely to be willing to become whistleblower. And to catch this wave, we've introduced an electronic tool, which whistleblowers can use to approach us – and which we can use to ask for more information, without blowing their cover.

This tool has helped us uncover new cartels, and strengthened cases that we already had. It now handles about a hundred relevant messages each year – and the quality of leads it produces is getting better.

But you don't always have to be on the inside to work out what's going on behind closed doors. Specialised investigators and intelligence analysts know there's a lot you can learn from public information – "open-source intelligence", they call it – and from talking to other law enforcers. And data scientists have the skills to find suspicious patterns in very large volumes of data.

Some years ago, we realised that these skills could be incredibly useful, to track down cartels. So we did the obvious thing – we hired them. In 2016, we set up an intelligence unit, which is using these skills to design more modern, more effective strategies to detect and prosecute cartels. In those five years, the unit has helped with investigations in more than 30 cartel and antitrust cases. And it's likely to play an increasingly vital role in our work, in the years to come.

But as any detective will tell you, sometimes the best way to solve a case is picking up leads by talking to people on the ground. The companies in a market know better than anyone if the market's working properly – and if there's a cartel, they often have their suspicions. Which is why we're also spending time talking to businesses about what they can do if they suspect a cartel. We want to make clear that every little tip helps – and that we're interested in hearing from them, even if they can't provide conclusive evidence. And we'll also continue sharing ex officio leads with competition authorities and other law enforcement agencies – something that's already been instrumental in helping us discover cartels.

We all know our economy is facing huge challenges – not just the need to recover from the deep crisis which the coronavirus has caused, but also to rebuild in a way that's consistent with our green and digital future. And at a time like this, it's more important than ever that we keep our markets working fairly and well – not least, by taking firm action to tackle cartels.

That's why we're investing so much at the moment, to make sure our work stays relevant. It's why we're developing new ways to spot cartels, and why we take an interest in new types of cartel, as well as more familiar ones.

This is still work in progress. But the choice has been made. As Julius Caesar would have said, the die is cast. And the months and years ahead will show the results.

Thank you.