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Regulators: help or hindrance?

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

International Corporate Governance Network (ICGN) - 12th Annual
Conference

Cape Town, 6 July 2007

Introduction

Ladies and Gentlemen,

Let me begin by congratulating the International Corporate Governance Network for organising this Conference here in South Africa. It is a very positive sign. Africa is currently enjoying strong growth. And South Africa is leading the way. We need a strong Africa. To fight poverty and pandemic diseases. To sustain growth. Sound corporate governance standards play an important role in economic growth. They ensure that businesses put down firm, healthy roots, so they can grow and flourish creating wealth and employment, rather than withering on the vine.

The debates over the past two days have shown that in today's global markets, a solely domestic rule book is no longer relevant. Spill-over regulation, international standards and financial globalisation have dramatically changed the landscape. Companies increasingly shop around to get the best deal. Restructuring their organisations, settling where the business environment is optimal. And regulators, like companies, have to adapt to global competition. It is not regulators versus companies. We will succeed or fail together.

Regulation in Europe: the better regulation way

How can regulators in this global marketplace play a constructive role? How can they help rather than hinder?

The main job of the regulator is to get the legislative framework right. To strike the right balance. To create a framework which allows entrepreneurs to flourish, but which also engenders trust in investors and consumers. To my mind, this means establishing a few essential rules. Not overburdening or stifling companies with detailed legislation. But setting down the essential rules and ensuring that they are properly applied in practice.

Since I took up office as European Commissioner, I have been striving to apply this philosophy at EU level. My mantra is "Less is more". I have been making my contribution to what the EU calls its "better regulation" approach.

To my mind better regulation should mean 3 things in practice: (1) fewer, and where they do exist, better targeted rules; (2) improved procedures before rules are adopted - open consultation, economic impact analysis, early participation of market professionals and national regulators; and last, but not least, (3) better implementation and enforcement. For far too long the EU has been about adopting rules at EU level, simply for the sake of having rules at that level. Once adopted the rules have been left to gather dust on the statute book. My approach is a different one. We should adopt fewer, better quality rules and then devote our energy to making sure they are properly enforced.

Better regulation in action

Let me illustrate this approach with a few examples of better regulation in action.

In the area of company law and corporate governance, we have tightened up auditing rules-providing for public oversight and robust rules on internal controls, yet avoiding the excesses of the Sarbanes-Oxley legislation.

We have not opted for a one-size fits all EU Corporate Governance framework. At EU level, listed companies have to make annual statements indicating which corporate governance code they apply on a comply or explain basis. Otherwise, our action has been limited to elaborating a few key principles in the area of non-executive directors and directors' pay and encouraging convergence between Member States' corporate governance codes.

This framework will only be effective if shareholders hold companies and boards to account. If rates of shareholder participation increase. That is why we have also been working to ensure shareholders of listed companies have timely access to information ahead of general meetings and to simplify cross-border voting.

The related question of shareholder democracy - one share, one vote - is, for the moment, a hotly debated topic in Europe. I decided that it was time to put all the issues on the table, to clear the air. We commissioned a factual study. It showed that there is no clear macro-economic evidence demonstrating a negative effect of deviations to the "one vote, one share" principle. An impact assessment of the available options is now being prepared. I am open-minded on the way ahead. I expect to be in a position to weigh the options and take a decision in the Autumn.

More generally, in the area of company law, I want to cut red tape for business in the EU. To keep the useful rules which help companies to operate across borders in Europe, but to get rid of any out-dated, unnecessary rules. My priority over the next 2 years will be to overhaul the existing legislation and sweep out some of the cob-webs that have accumulated over the past 50 years.

The same "better regulation" approach is being applied in other areas of financial services.

On clearing and settlement of financial transactions in Europe, we had a major fragmentation and competitive problem. No interconnection. High prices as transparent as a cluster of black holes. To modernize the industry, we were faced with a choice. The first option was to table a proposal for legislation and embark on a period of three to four years of negotiation with Member States and the European Parliament and implementation during which we would see little by way of concrete result. I decided to pursue a novel approach. I set a challenge for the industry. I said I would not propose legislation if they could come up with concrete proposals to improve competitiveness and transparency in the EU's clearing and settlement infrastructure. The industry rose to the challenge. The result was that they signed a code of conduct last year. The professionals accepted commitments to open and interconnect their infrastructures and to publish their prices. Progress has already been made on the first part, i.e. price transparency. And just last week agreement on the more difficult part, namely access and interoperability, was announced. In parallel, stock exchanges are consolidating, making much needed economies of scale. And blueprints for new stock exchanges are emerging. This is the first time such an innovative approach has been taken and the experience to date has been very good.

On the much publicized subject of hedge funds, there has been strong pressure to introduce more regulation. However, we talked extensively to everyone: market professionals, governments, central banks, regulators, investors. We examined thoroughly financial stability issues. And we decided to rely on an indirect approach. In other words, to ensure that national supervisors are sufficiently monitoring upstream the prime brokers as well as the investment banks dealing with the hedge funds, in particular where the real prudential risks lie. This approach is working well. Allowing financial innovation to prosper. A hedge fund industry is now developing in Europe at a remarkable pace. Without impeding the sound functioning of financial markets.

But if this approach to regulation is to work, market participants have to play their role. There can be no ticking of boxes and then sitting back. As I said at the beginning, we will succeed or fail together ...

I also spoke earlier about the need to ensure that the rules once adopted are properly applied. Markets move fast. The European Commission needs to be quicker off the mark. We need to be more vigilant and intervene more swiftly when the rules are broken. We need to up our game, we need to prioritise the important cases and process them quickly.

We must also recognise the heavier burden that globalisation and better regulation places on supervisors in Member States. They are faced with difficult decisions. They can no longer simply act on the basis of national reflexes. They have to take decisions in the broader public interest. We have updated our legislation to ensure that purely national considerations do not impede on cross-border mergers and acquisitions. And supervisors need to be free from political interference. I think there is a role for the Commission in clarifying what independence means and how it can best be achieved. I intend to give this issue priority over the next few months and we will try and craft some fundamental principles which could form the basis for regulatory best practice in Member States.

International regulatory dialogues

I started by noting that integrating markets and globalisation, means that no rule is domestic anymore. The world financial system has become huge, global and complex. National regulators have big challenges ahead. To understand financial innovation, to assess properly the risks, to cooperate on global and unprecedented scope. This is why the EU has set up regulatory dialogues on financial services. With the US. But also with Japan, China, Russia and India. Our financial markets dialogue with the US is, of course, the flagship of the fleet. I am sure that Roel [Campos] will confirm that it works well and it works at every level. We are making fine progress on accounting standards and I welcome the initiative which the SEC has recently taken on mutual recognition in securities regulation. This is an excellent idea and I look forward to working on this in the coming months.

In our dialogues, we are pragmatic. This is not about negotiating lengthy treaties. We want to solve problems – not to shout at our counterparts with megaphones, set up more bureaucracy and complex procedures. To work with the industry. To address regulatory issues which are creating business problems. To end legal nightmares. We believe in competition and a level playing field for companies, not in spill-over regulation or in over regulation.

I firmly believe in international competition and open markets. I have always been very firm with Member States and national regulators when protectionist tendencies spring up. It is the same for third countries. Protectionism is for 20th century historians, not for 21st century regulators.

One of our key objectives has been to promote international standards. Carefully crafted, they are a powerful tool to extract the best from globalisation. Take, for example, IFRS accounting standards. Soon we hope that they will be accepted in every significant financial centre: the EU of course, US, China and Japan. One set of accounting rules for those companies who wish to list in the world's best financial markets. Is this not the right mix between competition, efficiency and regulation? Look also at Basel II. Principles-based regulation and a risk based approach are bringing the same benefits for global banking. And tomorrow Solvency II will bring the same advantages for the insurance industry.

Conclusion

So are regulators a help or a hindrance? The old vision of tough or loose regulation is out-dated. Flexible, principles-based regulation is delivering results. Regulators, markets and companies must work together. The reality of today's financial markets means we have no choice. Strong markets need active participants and smart regulators. We will succeed or fail together.

Thank you for your attention.