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DAF/COMP/A(2009)1/REV2

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

12-Feb-2009

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

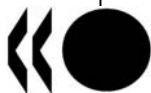
DRAFT AGENDA OF THE 105th MEETING OF THE COMPETITION COMMITTEE

16 - 18 February 2009

-- Starting at 10:00am on 16 February 2009 --

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- I. **ADOPTION OF THE DRAFT AGENDA** DAF/COMP/A(2009)1/REV1
- II. **ADOPTION OF THE SUMMARY RECORD OF THE LAST MEETING** DAF/COMP/M(2008)3, ANN1 and ANN2
- III. **ACCESSION REVIEW OF ISRAEL** **CONFIDENTIAL**
Draft Agenda DAF/COMP/ACS/A(2009)1
- IV. **ACCESSION REVIEW OF ESTONIA** **CONFIDENTIAL**
Draft Agenda DAF/COMP/ACS/A(2009)1
- V. **ACCESSION REVIEW OF CHILE** **CONFIDENTIAL**
Draft Agenda DAF/COMP/ACS/A(2009)1
- VI. **DRAFT BID RIGGING CHECKLIST**
For approval: Note by the Secretariat DAF/COMP(2009)1
- VII. **OTHER BUSINESS**
- a) **FTC at 100” Self-Assessment Initiative**
Oral presentation by the FTC
For information: FTC report DAF/COMP/WD(2009)1
- b) **Future WP3 Roundtable topics** DAF/COMP/WP3/WD(2009)1
- c) **Future Committee Roundtable Topics** DAF/COMP/WD(2009)46
- VIII. **COMPETITION AND FINANCIAL MARKETS—FOUR ROUNDTABLES:**
- 1) **Roundtable on Principles: Financial sector conditions and competition policy**
- 2) **Roundtable on Crisis: Role of competition policy in financial sector rescue and restructuring**
- 3) **Roundtable on Real economy: Challenges for competition policy in periods of retrenchment**
- 4) **Roundtable Going forward: Adaption of competition rules, processes and institutions to current financial sector issues.**

For discussion

Background note by the Secretariat

DAF/COMP(2009)2

Notes by Delegations

Belgium	DAF/COMP/WD(2009)33
Canada	DAF/COMP/WD(2009)2
Denmark	DAF/COMP/WD(2009)4+ADD1
Finland	DAF/COMP/WD(2009)17
France	DAF/COMP/WD(2009)5
Germany	DAF/COMP/WD(2009)18+ADD11
Ireland	DAF/COMP/WD(2009)21
Japan	DAF/COMP/WD(2009)19
Korea	DAF/COMP/WD(2009)15+ADD1
Mexico	DAF/COMP/WD(2009)6
Netherlands	DAF/COMP/WD(2009)7+ADD1,2&3
New Zealand	DAF/COMP/WD(2009)8
Sweden	DAF/COMP/WD(2009)24
Switzerland	DAF/COMP/WD(2009)16
Turkey	DAF/COMP/WD(2009)9
United Kingdom	DAF/COMP/WD(2009)10+ADD1,2&3
United States	DAF/COMP/WD(2009)11+ADD1
European Commission	DAF/COMP/WD(2009)12+ADD1,2&3
Brazil	DAF/COMP/WD(2009)22
Chile	DAF/COMP/WD(2009)3
Russian Federation	DAF/COMP/WD(2009)23+ADD1
Chinese Taipei	DAF/COMP/WD(2009)20+ADD1
BIAC	DAF/COMP/WD(2009)25

SCHEDULE

Monday 16 February

10:00-1pm	Items 1-IV CONFIDENTIAL
3:00-5:30pm	Item V CONFIDENTIAL
5:30- 6:00pm	Items VI &VII

Tuesday 17 February

9:30-1pm	Item VIII-1) Roundtable on Principles
3:00pm-6pm	Item VIII-2) Roundtable on Crisis

Wednesday 18 February

10- 1pm	Item VIII-3) Roundtable on Real economy
3pm-6pm	Item VIII-4) Roundtable on Going forward

Social event

Monday 16 February at 6pm: On the occasion of its accession review the Delegation from Chile will host a cocktail for Competition delegates in the Chateau de la Muette

NOTES

Item I

The Committee will exceptionally meet three days (16 -18 February 2009). On Monday 16 February, items I to V will be addressed including Other Business related issues (item VII). Tuesday and Wednesday (17-18 February) will be devoted to discussing competition issues related to financial markets. The Committee meeting will be followed by the session of the Global Forum on Competition (19-20 February). The next WP2 and WP3 meetings will take place in June 2009.

ITEMS III, IV AND V

Follow up to the October 2008 accession review of Israel as well as Accession reviews of Estonia and Chile will take place in a confidential session on **Monday 16 February 2009 respectively at 10:00 a.m and 3:00 p.m.** A separate agenda for these three confidential items is available on OLIS under DAF/COMP/ACS/A(2009).

ITEM VI

The draft Bid Rigging Checklist which was developed by WP3 is a tool meant to help public procurement officials reduce the risks of bid rigging through careful design of the procurement process and to help them detect bid rigging conspiracies. Further to the October 2008 WP3 discussion, the draft checklist was circulated for comments to the Public Governance Committee and the Working Group on Bribery. As a result, a draft with some edits will be submitted to the Committee for its approval at its February session. This will be discussed on **Monday 16 February by 5:30pm**

ITEM VII

a) FTC at 100

Federal Trade Commission Chairman William Kovacic has launched an in-depth assessment of FTC effectiveness, developing an agency “report card” and “grading criteria”. Chairman Kovacic will report on this initiative, named “FTC at 100”, which aims at identifying what the FTC must do “to continue the valuable work the agency performs today” and “to identify steps we must take to do still better in the future.” As part of this initiative, the FTC conducted 27 consultations with foreign counterparts and held four public hearings in the U.S. More information is available at <http://www.ftc.gov/ftc/workshops/ftc100/index.shtm>,

b) Future WP3 Roundtable topics

The Competition delegates will consider the topics for its WP3 roundtable discussions in June 2009, based on the result of a delegates survey by the Chair.

c) Future Committee Roundtable topics

The Competition delegates will consider the topic for a second roundtable to be held in the October 2009 session of the Competition Committee.

For memory, The Committee already agreed to hold two roundtables in June 2009 on i) Competition—Patents and Innovation (Part 2) and 2) Two-sided markets, and another one in October 2009 on Competition and Sports.

ITEM VIII

At its October 2008 session, the Committee acknowledged that addressing the financial crisis and its aftermath is an important challenge for the Competition Committee and agreed to hold analytical discussions on issues of concern for CAs. In consultation with the Bureau, competition topics related to financial markets were identified and broken down into four roundtables, which should last about 3 hours each, and will spread over two days, **17 and 18 February**.

As described in a letter from Chairman Jenny to Competition Delegates (Comp/2009.20 on 22 January) a number of Guest speakers were invited, who represent a mix of legal and economic expertise from a number of OECD countries. They were allocated to each roundtable on the basis of their preferences and availability in making a distinction between panellists and discussants. Panellists will be given 15 minutes each to make a short presentation; Discussants will be invited to intervene throughout the discussion that will follow the presentations by the panellists. In addition, some Delegates will be given a lead role in the discussion. This is to respond to the interest expressed by some to make a broader contribution addressing several related issues under such and such roundtable and not to be limited under the scenario based on the country contributions.

The details of this two day programme are **attached as an Annex**.

ANNEX

COMPETITION AND FINANCIAL MARKETS

COMPETITION COMMITTEE

(17-18 February 2009)

-- Tuesday 17 February 2009 --

9: 30-10am --OPENING SESSION

Mr. Blundell-Wignall, DAF Deputy Director

Ms Carletti, Joint Chair for the Economics Department and Robert Schuman Centre for Advanced Studies of the European University Institute

10am-1pm --SESSION I

ROUNDTABLE ON PRINCIPLES: FINANCIAL SECTOR CONDITIONS AND COMPETITION POLICY:

This part of the program will lay a foundation by examining the development of competitive conditions in modern financial markets and the interface between the competition and regulatory regimes that have applied to them. Competition policy must take into account fundamentals of financial sector policy; thus, competition authorities inquiring about payment services have been concerned about fees and customer switching costs, but safety and finality are also important. This session should include presentations by financial market experts and representatives from the other OECD committees that deal with banking and securities. The purpose is not to perform a general analysis of the origins of the crisis, but to understand better how competition has promoted or impeded achieving policy goals in these markets.

Questions of interest include:

- How are financial markets distinct from other types of markets? In what ways might competition policy treat financial institutions and products differently as a result of these differences?
- Does competition necessarily promote efficiency in financial markets? How should “efficiency” be characterized in financial markets?
- What failures of competition may have contributed to the crisis in the financial sector?
- What has been the role of competition in credit rating services, and of barriers to entry into providing those services?

Panellists:

Mr Cotis (France) General Director of INSEE

Mr Jacquillat (France) Professor at the Institut d'Etudes Politiques in Paris

Mr Pons (France) Director, Affaires Européennes and Internationales – Fédération Bancaire Française

Mr Veale (Australia) High Representative of the Reserve Bank of Australia --Vice Chair in the Bureau of the OECD Committee on Financial Markets

Discussants:

Mr Ludwig (United States) Chairman and Chief Executive Officer of Promontory Interfinancial Network and former U.S. Comptroller of the Currency

Mr Peltzman (United States) Professor of Economics at the University of Chicago

Mr Vives (Spain) Professor of Economics and Financial Management at the IESE Business School, University of Navarra

Lead Delegate:

Mr Lowe (European Commission) Director General of Competition

3:00pm-6pm--SESSION II

ROUNDTABLE ON CRISIS: ROLE OF COMPETITION POLICY IN FINANCIAL SECTOR RESCUE AND RESTRUCTURING:

Governments and financial regulators have taken emergency and *ad hoc* measures to shore up financial institutions, in response to severe liquidity shortages and breakdown in lending markets and trust. These measures have included investments and guarantees, asset purchases and time-sensitive mergers. Competition authorities are hard-pressed to participate in these actions, and not just because of the intense time pressure for action. More fundamentally, the usual tools of competition analysis and enforcement presuppose stable market conditions. Competition authorities must consider how to safeguard competition principles in these emergency settings without hampering policy measures that may be necessary to avoid the costs of a slump and of erosion of trust on the financial sector.

Questions of interest include:

- Should competition law be set aside in the financial sector during a systemic crisis, on public interest or other grounds? If so, how should this be done?
- How should competition agencies apply general competition policy rules about mergers, anticompetitive conduct and state aid during a crisis? Is it practicable to apply failing firm doctrines to mergers as crisis actions? Is the consideration required for merger review of the financial sector during a crisis different from that required for merger review of other sectors?

How should negative competitive impact on the market structure in the medium and long term be assessed in reviewing mergers required to sustain the financial system?

- To minimize negative competitive impact to the market structure in the medium and long term, are there effective measures as remedies (e.g. temporary behavioral commitments or certain monitoring measures)?
- What standards and safeguards or other provisions are needed to prevent distortions of competition when government funds are used for injections of equity or guarantees?
- What lessons may be learned from how competition authorities have participated in responses to the recent crises and to previous events such as the Asian financial crisis of 1997? Are there any experiences from past financial crises in which measures for emergency response to the crisis in the short term, like mega mergers in the financial and other business sectors, caused greater harm to the competition in the medium and long term?

Key Note Speaker

Ms Neelie Kroes (European Commission) Commissioner for Competition

Panellists:

Mr Ito (Japan) Professor at the University of Tokyo

Mr In-Ho Lee (Korea) Professor at the Seoul National University

Ms Rabbe (United Kingdom) Head of Government Affairs EMEA – Goldman Sachs International

Mr Vives (Spain) Professor of Economics and Financial Management at the IESE Business School, University of Navarra

Discussants:

Ms Carletti (Italy) Joint Chair for the Economics Department and Robert Schuman Centre for Advanced Studies of the European University Institute

Sir Callum McCarthy (United Kingdom) former Chair of the Financial Services Authority

Mr Veale (Australia) High Representative of the Reserve Bank of Australia

Lead Delegate:

Robert Kramer (US), Director of Operations , Antitrust Division -- USDOJ

WEDNESDAY 18 FEBRUARY

9:30-12:30am --SESSION III.

ROUNDTABLE ON REAL ECONOMY: CHALLENGES FOR COMPETITION POLICY IN PERIODS OF RETRENCHMENT:

In the wake of financial crisis, governments are under pressure to support distressed industries through subsidies and protections. Competition agencies may in turn be under pressure to loosen enforcement standards in order to favour economic recovery. In responding to these pressures, competition policy makers are challenged to show that competition is still part of the solution for benefiting consumers and fostering innovation, competitiveness and productivity. Governments should also try to minimise the negative impact of the financial crisis on other sectors of the economy. This session should thus also address measures that could limit the negative spill-over of the financial crisis and not shift burdens to other countries.

Questions of interest include:

- What should be the position of competition agencies towards subsidies to ailing firms or sectors? How should they respond to efforts to protect national champions and obstruct acquisitions by foreign investors?
- How should competition rules apply to acquisitions of failing firms or firms in distress, in current financial market conditions? How should negative competitive impact on the market structure in the medium and long term be assessed in reviewing mergers or state aid?
- Will tightening financial markets create barriers to entry and expansion in the real economy? If so, how should competition enforcement respond?
- How should competition policy respond to proposals for modern versions of “depression” or “rationalization cartels” and similar schemes? What lessons can be drawn from previous crisis-driven policies to reduce competition, such as the self-regulation that was encouraged during the depression of the 1930s?
- Is it necessary to consider the risk of harming long-term economic development by revitalizing failing firms or firms in distress via protective measures by the government and consequently putting other healthier firms at a disadvantage in their terms for competition?

Panellists:

Mr Gerber (United States) Distinguished Professor of Law at the Chicago-Kent College of Law

Mr. Dougherty (OECD Secretariat) Division for Structural Policy Analysis in the Economics Directorate

Discussants:

Professor Ito (Japan) Professor at the University of Tokyo

Mr Jacquillat (France) Professor at the Institut d'Études Politiques in Paris

Mr. Gerard (Belgium) Chair of European Law at the University of Louvain.

Lead Delegate:

Mr. Collins, Chair of the United Kingdom Office of Fair Trading

Mr. Goto (Japan) Commissioner of the Japanese Fair Trade Commission

Commissioner In-Ok SON (Korea)—Korean Fair Trade Commission

Mr. William Kovacic (US), Chair of the US FTC

3:00pm-6pm --SESSION IV.

ROUNDTABLE ON GOING FORWARD: ADAPTATION OF COMPETITION RULES, PROCESSES AND INSTITUTIONS TO CURRENT FINANCIAL SECTOR ISSUES:

Looking beyond emergency actions to stabilise financial markets, competition agencies will need to take appropriate action about competition issues in these markets in the medium and long term. Effective enforcement of merger and antitrust rules after consolidations and nationalisations in the banking sector may require improvements in rules and institutions. This session should include representatives from financial and securities regulators.

Questions of interest include:

- What have competition agencies learned from merger decisions in financial services sectors? How have they dealt with interactions between, and evolution of, financial markets?
- How can competition policy seek to improve competitive conditions in the financial sector, such as by reducing switching costs or improving the availability of credit data?
- Should competition authorities extend the conception of consumer welfare to include macroeconomic benefits from ensuring system stability?
- How does state ownership affect competition? Should bringing a number of individual firms under public control be treated as a notifiable “merger operation”?
- On the relationship between financial sector regulators and competition authorities:
 - How does the role of competition agencies interact with the role and remit of authorities and regulators responsible for financial services, securities and commodities exchanges, monetary policy, financial stability and accounting standards? What should be the

respective responsibilities and scope of coordination between competition agencies and these regulators? Should competition agencies develop in-house expertise about financial markets?

- What are the legal and practical impediments to competition agencies and financial sector regulators sharing information and market analysis and working together to formulate policy initiatives and interventions? How best can competition agencies engage in coordinated competition advocacy?
- As the institutions for overseeing and regulating financial markets are improved, how can the policy goals of market competition and financial system security be best co-ordinated?

Panellists:

Mr Ludwig (United States) Chairman and Chief Executive Officer of Promontory Interfinancial Network and former U.S. Comptroller of the Currency

Sir Callum McCarthy (United Kingdom) former Chair of the Financial Services Authority

Mr Peltzman (United States) Professor of Economics at the University of Chicago

Discussants:

Mr Jacquillat (France) Professor at the Institut d'Études Politiques in Paris

Lead Delegate:

Dean Amel (US) Division of Research and Statistics --Federal Reserve Board

Mr Goldman (Canada) Vice Chair of BIAC Competition Committee

Mr Lowe (European Commission) Director General of Competition