

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

Cancels & replaces the same document of 02 June 2010

Working Party No. 2 on Competition and Regulation

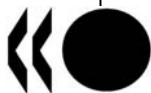
DRAFT AGENDA OF THE 45th MEETING OF WORKING PARTY No. 2

14 June 2010

To be held on 14 June 2010 in Room 12 of the OECD Conference Centre, 2 rue André-Pascal, 75116 Paris.

Please contact Mr. Sean Ennis if you have any questions regarding this document [phone number: +33 1 45 24 96 55 - E-mail address: sean.ennis@oecd.org].

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DRAFT AGENDA OF THE 45th MEETING OF WORKING PARTY NO. 2

14 June 2010, from 10.00 – 18.00
OECD Conference Centre, Room 12
2, rue André-Pascal, 75116

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|-------------|--|----------------------------|
| I. | <u>ADOPTION OF THE DRAFT AGENDA</u> | DAF/COMP/WP2/A(2010)2/REV1 |
| II. | <u>APPROVAL OF DRAFT SUMMARY RECORD FROM LAST MEETING</u> | DAF/COMP/WP2/M(2010)1 |
| | <u>For information:</u> | |
| | -- List of Participants | DAF/COMP/WP2/M(2010)1/ANN1 |
| III. | <u>STANDARD SETTING</u> | |
| | <u>For discussion:</u> | |
| | -- Issues paper by the Secretariat | DAF/COMP/WP2(2010)4 |
| | -- Submissions by delegations | |
| | Australia | DAF/COMP/WP2/WD(2010)16 |
| | Chile | DAF/COMP/WP2/WD(2010)17 |
| | Germany | DAF/COMP/WP2/WD(2010)18 |
| | Greece | DAF/COMP/WP2/WD(2010)19 |
| | Italy | DAF/COMP/WP2/WD(2010)20 |
| | Ireland | DAF/COMP/WP2/WD(2010)21 |
| | Japan | DAF/COMP/WP2/WD(2010)22 |
| | Korea | DAF/COMP/WP2/WD(2010)23 |
| | Spain | DAF/COMP/WP2/WD(2010)24 |
| | Switzerland | DAF/COMP/WP2/WD(2010)25 |
| | Turkey | DAF/COMP/WP2/WD(2010)26 |
| | United Kingdom | DAF/COMP/WP2/WD(2010)27 |
| | United States | DAF/COMP/WP2/WD(2010)28 |
| | European Union | DAF/COMP/WP2/WD(2010)29 |
| | Brazil | DAF/COMP/WP2/WD(2010)30 |
| | Bulgaria | DAF/COMP/WP2/WD(2010)31 |
| | South Africa | DAF/COMP/WP2/WD(2010)34 |
| | Chinese Taipei | DAF/COMP/WP2/WD(2010)32 |
| | BIAC | DAF/COMP/WP2/WD(2010)33 |

IV. STRUCTURAL SEPARATION IN GAS AND TELECOMMUNICATIONS

For discussion:

-- Paper by Dieter Helm DAF/COMP/WP2(2010)5

For information:

-- Paper by the Secretariat DSTI/ICCP/CISP(2010)5

V. INTERNATIONAL MOBILE ROAMING SERVICES AND BUNDLING

For information:

-- Papers by the Secretariat DSTI/ICCP/CISP(2010)1
DSTI/ICCP/CISP(2010)2

VI. SERVICES TRADE RESTRICTIVENESS INDEX

For information:

-- Papers by the Secretariat TAD/TC(2007)4
TAD/TC(2009)5
TAD/TC/WP(2010)22

VII. COMPETITION ASSESSMENT: DEVELOPMENTS

VIII. OTHER BUSINESS

ANNOTATIONS**Proposed Timetable**

10.00 am – 10.05 am	Item I-II
10.05 am – 1.00 pm	Item III (Roundtable on Standard Setting)
1.00 pm – 3.00 pm	Lunch break
3.00 pm – 5.15 pm	Item IV (Structural Separation)
5.15 pm – 5.25 pm	Item V (Mobile Phone Roaming)
5.25 pm – 5.45 pm	Item VI (Services Trade Restrictiveness Index)
5.45 pm – 6.00 pm	Item VII (Competition Assessment)

Item III.

Standard setting is the process of determining a common set of rules for a good or service. Standard setting covers many different outputs, from table salt quality to motorcycle wheel size to gasoline formulations to high-technology areas where interconnection is important, such as computer chip protocols. This roundtable will focus on standard setting that can have anti-competitive consequences. Perhaps surprisingly, all the standards just mentioned can involve substantial restrictions to competition. That is, standard setting can create competition restrictions even outside the high-technology topics where much litigation and academic debate occurs. This suggests that even if competition law is not always a recognised solution to competition problems, advocacy by competition authorities is important for taking competitive effects into account when setting standards.

Standards cover a wide range of activity:

- *Quality standards*: define acceptable product characteristics related to performance, safety or efficiency (e.g., emissions standards)
- *Information standards*: generate information for distribution to consumers (e.g., nutrition reporting in food)
- *Uniformity standards*: reduce “proliferation” of product categories, seek to achieve optimum variety while increasing economies of scale in production (e.g., container size standards)
- *Interoperability standards*: assure that related products will operate with each other (e.g., USB)
- *Professional conduct and certification standards*: standards that apply to the way that professionals or business operate (e.g., advertising restrictions in a profession)

Establishing standards for products can help to ensure product quality, safety and coordinate otherwise disparate actors who might not be able to construct a “new generation” product or convince customers to purchase it. Standards can ensure greater interoperability among products, thus helping to promote competition between different suppliers within a standard. At the same time, standards can compete with each other to deliver the same type of product.

Standard setting is particularly prone to anti-competitive behaviour because standards are often set by groups that include actual and potential competitors. Standards can have the effect of excluding non-chosen technologies. Standard setting can yield cost advantages for certain technologies, can result in

payments from one competitor to another for technology and can ultimately have substantial influences on the prices paid by consumers as well as product variety. Some recent cases have alleged that firms on occasion “hijack” the standard setting process by urging a standard-setting body to promote a technology which standard-setting body members believe will be accessible at no cost and then patenting key elements of the standard and charging royalties. At the same time, standard setting bodies may be urged to announce prices for different technologies prior to setting the standard, to avoid such hijacking, but these announcements and decisions based on them could pose risks of collusion and price fixing.

Standards can be open or closed. Open standards will be defined as standards that have a non-discrimination requirement, i.e. no firm can be refused a licence to practice the standard as long as it is willing to pay royalties. Open standards may employ licence terms that protect against subversion of the standard by so-called “embrace and extend” tactics that would have the effect of reducing the openness of the standard or substituting it for a closed standard. Some standards are explicitly royalty free. Closed standards may not allow any licencing at all or may involve discriminatory licences.

A number of topics may be addressed in the roundtable. These include:

- What are the potential benefits and harms from standard setting activity?
- How can the harms be mitigated?
- To what extent should the government be involved in setting standards?
- What licencing rules are applied to intellectual property related to standards?
- What is the appropriate role of government in the resolution of disputes about standards?

As well as our regular delegates, officials from standard setting institutions or institutions with responsibility for are especially welcome. Presentations will be made by Prof. Damien Geradin, Mr. Paul Lugard and Ms. Veronica Mansilla.

Item IV.

The Working Party No. 2 developed the OECD Council Recommendation concerning Structural Separation in Regulated Industries (2001). The Recommendation calls for occasional reporting back to the Council on developments with respect to the recommendation. In recent years, a number of countries have experienced major developments in structural separation. In the February meeting, delegates suggested not going through a large reporting exercise but rather a more focused discussion on major developments. The session will be focused on two sectors: gas and telecommunications. Structural separation in the gas sector has been hotly debated in recent years, particularly in Europe. Structural separation in the telecom sector has been very active, notably in the UK, where functional separation was implemented in 2006, Italy where a weaker form of separation has been introduced and Australia, where structural separation is under open consideration by the government. Many developments in the telecom sector are described in the Working Party on Communication Infrastructures and Services Policy outline paper “NEXT GENERATION NETWORKS AND MARKET STRUCTURE: OUTLINE” (DSTI/ICCP/CISP(2010)5).

Experts will speak on each sector. Delegations that have already agreed to speak or make presentations include Australia, Austria, the European Union, Italy and the UK. Non-government experts speaking on the topics will include Prof. Martin Cave and Prof. Dieter Helm.

Delegations with recent experience or domestic debates on structural separation are asked to prepare to discuss any experience in the gas or telecommunications sectors AND IN OTHER SECTORS.

Item V.

The Secretariat will make a short presentation on the International Mobile Phone Services draft recommendation. International mobile phone charges are often considered a competition problem. The recommendation mentions competition law and competition authorities. The Secretariat will also mention current work on bundling for communications services. Questions and comments will be welcome.

Item VI.

The Secretariat will brief delegates about ongoing work on the preparation of a Services Trade Restrictiveness Index. This work includes preparation of a sub-category on barriers to competition that would be of particular interest. Questions and comments will be welcome.

Item VII.

Delegates will be invited to discuss any recent activity in competition assessment in their jurisdictions. The Working Party will discuss how to proceed with respect to implementation of the recommendation, including promoting the general process of competition assessment and developing sample competition assessments with other OECD bodies.

The Secretariat requests that delegations to submit materials (such as reports or submissions to other parts of government) that can serve as examples of competition assessment and that the OECD website's Toolkit section can link to, www.oecd.org/competition/toolkit.

Item VIII.

Other business will be discussed.

The next meeting of Working Party No. 2 will occur on 25 October 2010. The roundtable topic will be "Emissions Trading, Environmental Regulation and Barriers to Entry" as described in Alberto Heimler's letter sent to delegates on Thursday 26 November 2009.