DRAFT AGENDA OF THE 105th MEETING OF THE COMPETITION COMMITTEE

16 - 18 February 2009

-- Starting at 10:00am on 16 February 2008 --

JT03257807
I. ADOPTION OF THE DRAFT AGENDA

II. ADOPTION OF THE SUMMARY RECORD OF THE LAST MEETING

III. DRAFT BID RIGGING CHECKLIST
   For approval: Note by the Secretariat

IV. ACCESSION REVIEW OF ISRAEL
    Draft Agenda

V. ACCESSION REVIEW OF ESTONIA
    Draft Agenda

VI. ACCESSION REVIEW OF CHILE
    Draft Agenda

VII. COMPETITION AND FINANCIAL MARKETS
    Roundtable 1-- Principles: financial sector conditions and competition policy
    Roundtable 2-- Crisis: Role of competition policy in financial sector rescue and restructuring
    Roundtable 3-- Real economy: Challenges for competition policy in periods of retrenchment
    Roundtable 4-- Going forward: Adaption of competition rules, processes and institutions to current financial sector issues.
    For discussion
    Issues paper by the Secretariat
    Notes by Delegations

VIII. OTHER BUSINESS
    “FTC at 100” Self-Assessment Initiative
    Oral presentation by the FTC
    For information: FTC report
NOTES

Item I

The Committee will exceptionally meet three days (16-18 February 2009). On Monday 16 February, items I to VI will be addressed including Other Business related issues. 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.

ITEM III

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. It is expected that the current draft will be submitted to the Committee for its approval at its February session.

ITEMS IV, V & VI

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 VII

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 2 hours and a half, each. The Roundtable topics are attached as an Annex.

ITEM VIII

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.
ANNEX

Competition and the Financial Markets – Topics for Discussion

Roundtable 1 – Principles: Financial sector conditions and competition policy

(Tuesday 17 February, morning)

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?

Roundtable 2 – Crisis: Role of competition policy in financial sector rescue and restructuring

(Tuesday 17 February, afternoon)

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?

Roundtable 3. -- Real economy: Challenges for competition policy in periods of retrenchment

(Wednesday 18 February, morning)

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?

**Roundtable 4 -- Going forward: Adaptation of competition rules, processes and institutions to current financial sector issues**

(Wednesday 18 February, afternoon)

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?

A Secretariat issues paper and Country contributions (See the Secretariat Email on 8 December 2008) will provide the background for the discussions. They will also benefit from the participation of several experts invited as panellists by the Secretariat to dialogue with Competition delegates (see the revised version of this agenda to be circulated before the Committee meeting)