ANNEX TO THE SUMMARY RECORD OF THE 119th MEETING OF THE COMPETITION COMMITTEE HELD ON 30-31 OCTOBER 2013

-- Summary Record of the Discussion on Ex Officio Cartel Investigations and the Use of Screens to Detect Cartels --

JT03359115

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.
SUMMARY OF DISCUSSION

1. Mr. Frederic Jenny, the Chair of the Working Party 3 (WP3) opened the roundtable on “Ex officio cartel investigations and the use of screens to detect cartels” and welcomed all the participants.

2. The Chair introduced the discussion pointing out that it is a very interesting topic with different views expressed in the 25 contributions submitted by the delegations. Fighting cartels is a high priority for all competition authorities. Most of them rely on reactive tools to detect cartels such as complaints by competitors or consumers and leniency applications. More rarely, competition authorities rely on proactive detection tools or use tools such as behavioural or structural screens. There are different views on whether the use of reactive tools, and especially of leniency programmes, is sufficient to detect cartels. Some countries have experienced good results from the use of screens whereas in other countries, the results were not sufficient to get a conviction or a proof of an antitrust violation.

3. The Chair explained that the discussion would be structured around six main topics:
   (i) the right balance between pro-active and reactive cartel detection tools;
   (ii) the experience with behavioural screens;
   (iii) the experience with structural screens;
   (iv) the challenges faced by the implementation of a cartel screening programme;
   (v) the role of screens in detecting bid rigging; and
   (vi) what other reactive measures have been used and found successful.

4. Before opening the floor for the discussion, the Chair introduced the expert panellists invited to participate to the roundtable: Professor Rosa M. Abrantes-Metz (Global Economics Group, United States), Professor Maarten Pieter Schinkel (University of Amsterdam) and Professor William Kovacic (George Washington University, United States).

1. Relationship between reactive and proactive cartel investigation tools

5. The Chairman invited the delegation of Israel to discuss the Israeli competition authority’s policy on the use of reactive and proactive cartel detection tools. He noted that Israel is one of the countries that strongly rely on ex officio cartel investigations despite having in place a leniency programme in 2005.

6. The Israeli delegation confirmed that the authority’s cartel practice is unique in the sense that it relies extensively on detection tools which are not based on the leniency programme. However, because of limited resources, Israel does not use sophisticated screening techniques but relies on intelligence work similarly to police work. The investigation is conducted by the intelligence team and followed by the investigation team (22 people in total). The delegation stressed that leniency programme is not commonly used by companies in Israel for various reasons, the most important being the fear of the social boycott.
against the applicant. This is the reason why during the past 5 years, only two cartel investigations were initiated thanks to the leniency programme, whereas 15 were based on other tools. The delegation concluded by describing the main advantages and disadvantages of reactive and proactive cartel detection tools. For example, they emphasised how proactive tools allow the authority to better prioritise its enforcement action and to focus on the most important cartels.

7. **Professor Rosa M. Abrantes-Metz** congratulated Israel on the efforts to use cartel detection tools beyond the leniency programme and stressed that resource intensiveness is a common argument against the use of screens. However, as demonstrated by the Israeli experience, 22 employees might be sufficient to detect cartels through the use of screens. It is a matter of choice on the most effective allocation of the agency resources.

8. **The Chair** thanked the Israeli delegation and Professor Abrantes-Metz for their remarks and turned to the US delegation. The Chair noted that according to the US paper in the past the Department of Justice (DoJ) had experimented with screening tools and pro-active ways to detect cartels but concluded that reactive instruments were the most efficient.

9. The delegation from the **United States** started its presentation by explaining that screens had been widely used in the past. However, the experience cannot be considered as successful, given that these programmes did not manage to detect many cartels. However, the US delegation noted that having a successful leniency programme does not necessarily mean that the authority cannot have also a proactive role in cartel detection. For example, the DoJ has a variety of other initiatives such as training on red flags and collusion, dedicated websites, speeches by senior officers, meetings with trade associations that can all be considered as pro-active cartel enforcement. The US delegation noted that cartels require a high degree of proof and the US amnesty program, by providing a cooperating witness from inside the cartel, has proved very successful. The delegation also noted that the previous unsuccessful experiences with screens do not necessarily mean that the US will never use screens in the future, especially if the agency is able to acquire crucial evidence through the screening method.

10. **Professor Abrantes-Metz** made a few remarks on the US intervention. She emphasised that a very well-known case, the **Libor** case, was detected through screens which consequently led the case to a successful leniency application. Professor Abrantes-Metz emphasised that screens and leniency programme are not substitutes. Screens are a complementary tool that can strengthen the effectiveness of a leniency programme. Finally, screens may not provide the authority with the necessary evidence that can be presented in court to prove an infringement but screens can raise enough red flags and finally lead to cartel detection and investigation.

11. **The Chair** then turned to Canada as an example of a more balanced view, given that the Canadian Competition Bureau make extensive use of both the leniency programme and other methods to detect cartels.

12. The delegation from **Canada** emphasised that the Competition Bureau uses every available tool to detect cartels. In Canada a percentage of 80% of the investigations derives from immunity applications. Other detection mechanisms are used as well, such as active outreach programmes, regular contact with procurement authorities, speaking with the business about compliance, liaising with other government investigative bodies to raise their awareness of the jurisdiction of the Bureau. All these proactive tools have proved very effective. The Bureau also identifies investigations though media and press monitoring and by reviewing trade associations’ reports and press releases. The delegation concluded that for the Bureau the leniency program is an extremely important enforcement tool but it is important not to rely exclusively on it this if one wishes to have an effective cartel detection program.
Concerning more specifically the use of screening techniques, the Canadian delegation explained that screens raise cost/benefits concerns, especially if investigative resources are limited as is the case in Canada. Another issue related to the use of screens is the lack of proper data to run the screen; access to the necessary data is a serious limitation that can affect the results of screening tools. But the most important challenge with screens is that they generally do not lead to strong evidence of an agreement and therefore, it is difficult to proceed without further investigation.

The Chair thanked for the Canadian delegation for the interesting remarks and turned to Professor Schinkel to present his views on why leniency alone may not be sufficient to detect cartels.

Professor Schinkel stressed that cartel enforcement is like an oversight game. Companies with in-house counsels are antitrust professionals and are usually well prepared to avoid detection and investigations by competition authorities. According to Professor Schinkel the balance between proactive and reactive methods differs between agencies. The majority of agencies consider leniency programmes as very efficient and hence preferable to screens. However, leniency and screening are not substitutes but complements. Professor Schinkel described five reasons why he thinks competition authorities should not rely exclusively on leniency programmes. First, the success of leniency should not be shown only by the number of applications or cartel decisions. Leniency is good in prosecution but not always in discovering cartels. Second, the type and quality of a cartel detected through a leniency programme is sometime dubious. Leniency does not always detect sophisticated cartels but rather cartels that are no longer successful and stable. Third, active cartelists can monitor the authorities’ enforcement agenda and predict (and try to avoid) detection. Hence the initial comparison with an oversight game. Professor Schinkel explained that screens do not produce conclusive evidence and their results need further investigation. Sophisticated economics or even econometrics will be needed in some cases. Professor Schinkel concluded that the ideal cartel detection program should combine, in an intelligent way, leniency with the analysis of information from various sources (e.g. press and trade journals) and data analysis looking for red flags.

The Chair thanked Professor Schinkel and invited BIAC to elaborate on the direct and indirect benefits of screens from a business perspective.

BIAC pointed out that the successful use of screens can enhance the effectiveness of a leniency programme and hence increase the success rate of cartel enforcement. However, BIAC believes that there are important limitations in the use of screens and advocated a very measured use of them. BIAC explained that the question should focus on which tool provides the best results, given that businesses benefit from effective detection of cartels. Leniency, even if it is difficult to provide precise measurements, results in a high detection rate. However, leniency may not work effectively in all jurisdictions and in all circumstances. Hence, it should be up to each agency to decide whether to focus its resources on pro-active or reactive tools, or on both.

The experience from the use of behavioural screens

The Chair thanked BIAC for its contribution to the discussion and invited delegations to share their experiences with the use of successful behavioural screening. To start this discussion he called on Mexico to present its experience with the IMSS case.

The Mexican delegation views the leniency programme as the main tool for cartel detection in Mexico. However, they see the value in trying to implement a mixed approach with *ex officio* investigations next to leniency cases. The delegation presented its experience with the use of screens in the IMSS case. The case started in 2006 when the Mexican Social Security Institute (IMSS) informed the Federal Economic Competition Commission (CFCE) of suspicious bidding patterns it had noticed in tenders for the procurement of certain medicines. The CFCE prioritised the analysis of the bids through
screens. The screens were based on improbable events and controlled groups covering the period from 2003 to 2007. The use of screens provided some interesting results, especially in two groups of medicines, insulin and serum: the annual average of the winning and losing bids was similar and the average changed after the entrance of a new competitor. During the years in which there cartel operated, the average price was even 70% higher. The data showed also evidence of bid rotation schemes with almost equal winnings for each firm involved. Based on this initial evidence, the CFCE opened an in-depth investigation which revealed evidence of contacts and communications between bidders. The delegation concluded that screens may be quite useful but agencies should be taken into account that there is a high risk of errors and their use can be very resource intensive.

20. **The Chair** turned to Sweden to present their experience with behavioural screens.

21. The **Swedish delegation** discussed a successful application of a behavioural screen in the market of funerals and transportation of deceased persons. After receiving a tip off, the Swedish authority decided to screen all the relevant public tenders over a period of two years. This allowed them to identify a number of identical bids submitted by competing firms. A dawn raid followed and fines were imposed. Another example provided by the Swedish delegation was a bid rigging case in the construction industry. With the use of bidding information, the authority observed that there were no differences on the first decimal of the percentage difference between a winning and a losing bid. The probability of this happening was calculated as one out of 3,000 and led to suspicions of a potential cartel. However, after a dawn raid no evidence of wrongdoing was found.

22. **The Chair** thanked the Swedish delegation and invited Chile to discuss a very interesting experience in the poultry market where a general investigation and the use of screening led to an actual cartel case.

23. According to the **Chilean delegation** behavioural screens have proved a very useful investigative tool taking into account that leniency programme is not very successful in Chile. The delegation provided two examples on the use of screening methods. First, they presented the pharmacy retail case, where a fine of 40 million dollars was imposed. The case started with the flagging of unusual price increases which followed a period of steady price declines and could be justified by cost or demand shocks. Based on this analysis, further investigative activity led to the acquisition of actual evidence of competitors’ communications (i.e. emails). In the poultry case, which is pending before the competition tribunal, the agency analysed the companies’ market shares levels and their stability. The data showed stable market shares for a long period of time. The authority requested and received a judicial authorisation for a dawn raid; which led to further evidence been acquired.

3. **The experience from the use of structural screens**

24. **The Chair** opened the discussion on structural screens and invited Australia to share his experience with a structural screening project called the Cartel Intelligence Project.

25. The **Australian delegation** noted that the interaction between behavioural/structural screens and immunity policy has given visible results. The use of screens established the possibility for the Australian Competition and Consumer Commission (ACCC) to require the production of documents from the industry participants. The delegation emphasised that screens need an initial resource investment but given the flexibility of the process, the need of resources is comparatively little once the screening programme is operational. However, screens cannot lead to a successful prosecution as such, and it is for this reason that there is a need to combine screens and other reactive tools, such as the immunity policy, in order to ensure valuable results.
26. **The Chair** thanked the Australian delegation and turned to Japan to ask to discuss the links between structural factors and the risk of cartelisation discussed in a report published by the Competition Policy Research Centre of the Japan Fair Trade Commission (JFTC).

27. The **Japanese delegation** explained that the JFTC does not use structural screens, but it is currently considering such a possibility. The Competition Policy Research Centre (CPRC) is attached to the JFTC and includes academics in charge of conducting independent studies and research. In one of their report, the CPRC used industrial data spanning over a period of 15 years and conducted an econometric study to estimate the probability of cartels in different industries. The study used a number of variables (e.g. concentration ratio and entry barriers) to predict the probability of a cartel formation. However, the statistical results were not very significant. In this perspective, the analysis and its results can be used as reference information for cartel detection but not for proving the existence of a cartel. The delegation concluded that this type of analysis should be used very carefully and that the results should be used more as a complement to the traditional investigative activity.

28. **The Chair** gave the floor to Professor Schinkel and Professor Abrantes-Metz for a short reaction.

29. **Professor Schinkel** made a quick remark noting that structural screens should be used very carefully indeed. The fact that an industry shows the characteristics which might favour collusion does not mean that a cartel exists in that industry. Behavioural screens provide with a wider net for analysis. **Professor Abrantes-Metz** agreed with Professor Schinkel and added that the exclusive use of structural screens may lead to enforcement errors. Structural screens should be used together with behavioural or empirical screens in order to combine the structure of the industry and the evidence on firms’ behaviour.

30. **The Chair** thanked for these interventions and invited Chinese Taipei to discuss their experience with the use of structural screens.

31. According to **Chinese Taipei** the leniency programme has not proved very successful, with only one application received so far. This is due to various reasons, some of them cultural and others related to the fact that domestic businesses are of medium-small size. Because the leniency programme did not yield the expected results, the agency focussed more on structural and behavioural screens. The delegation explained how the competition authority monitored 6 structural indicators (i.e. industry scales, concentration, entry barriers, operational efficiency, innovation and industry growth trends) in the main national industries such as manufacture of food products, manufacture of other non-metallic minerals, computers and electronic and optical products, electricity and gas, specialized construction activities, waste collection, and others. Many of these industries were characterised by high entry barriers, homogenous products, and very low innovation rate leading to the identification of significant price uniformity. Most of these sectors experiences cartel activities.

32. **The Chair** invited the UK to share the view of its agencies on structural screens. According to the paper submitted by the UK for the roundtable structural screens are unlikely to provide sufficiently strong evidence for initiating a cartel investigation.

33. The delegation of the **United Kingdom** stressed that there is no scepticism about structural screens. On the contrary, UK had attempted in the past to identify what structural factors in a market can lead to collusion. This means that structural screens are an important complementary tool and it shows that the UK is not sceptical on the use of screens. The delegation also pointed out that next to leniency cases, the UK has opened a number of cases based on the OFT’s own detection activity. The OFT has a strong intelligence unit which works in close contact with the economic branches and this has delivered results. The delegation also noted that the use of screens (e.g. analysis of price movements) cannot be considered a sufficient basis for requesting a dawn raid or for the use of intrusive surveillance which requires a
reasonable degree of suspicion (e.g. telephone records) to be approved by a judge. Therefore, screening methods can be a useful tool but further investigation is always required before the OFT can initiate a cartel case.

34. **The Chair** thanked the UK and gave the floor to the Netherlands.

35. The **Dutch delegation** reported that in the last 7 years the NMa has performed a complete structural screening of the Dutch economy with more than 500 sectors reviewed in light of various structural indicators. This screening process led to the creation of a competition index which shows the risk of anticompetitive behaviour in certain sectors. The method is publicly available and cannot be manipulated. The NMa experience shows first that choosing a really stable screening method can be difficult, and that there is a constant need to check the validity of the methodology used and to improve it. Second, validating the results of the screening method may be challenging. And third, that screening methods are most effective when combined with leniency and other cartel detection methods. The delegation concluded that once the method is established it is not anymore very labour intensive.

36. At this point, **Professor Schinkel** observed that structural screens are exposed to type II errors (i.e. fail to detect existing cartels). In the Netherlands, for example, the NMa competition index was not able to detect the construction cartel, the biggest cartel ever investigated in the Netherlands. Professor Schinkel also noted that announcing the screening program to the public is important to generate deterrence, but the competition authority should not disclose the methodology on which the screen is based to avoid that firms put in place countermeasures to avoid detection. The **Dutch delegation** agreed that the construction cartel could not be detected with the use of screens. However, there are some false positives from the use of screening but also some false negatives and this is why structural screens should be combined with leniency programme and behavioural screens.

37. **The Chair** thanked the delegation and turned to Professor William Kovacic for his presentation.

38. **Professor Kovacic** gave a presentation on the benefits of diversification in cartel detection. He outlined the options faced when designing an anti-cartel programme. Assuming that it has the necessary resources, an agency has different options to become a more effective cartel enforcer: a) to focus on the nature of the law and establish categorical prohibitions; b) to broaden the evidence that is considered to prove a concerted action; c) to increase the likelihood of detection; d) to increase the likelihood of prosecution, e.g. by establishing private rights of actions to supplement the authority’s enforcement powers; d) to increase the effectiveness of the adjudication; e) to raise the level of sanctions; f) to invest resources in advocacy. There are three main obstacles to diversification. First, the experience with the use of screens is not always successful. Professor Kovacic recalled his personal experience at the Federal Trade Commission (FTC) where screening programmes were poorly designed and led to insufficient results. Second, leniency programmes deliver strong evidence and give visible results which are essential to invest in cartel enforcement. Third, especially for less well-funded agencies, a major investment can create additional burden and hence it is not attractive.

39. According to Professor Kovacic it is also important to remember that cartels undergo a process of ingenious and inventive adaptation to avoid detection. Cartelisation is enormously profitable and good cartels adapt more and more effectively to a new environment. Professor Kovacic concluded by describing the specific approaches that an agency should follow. There is a constant need of investing in new techniques and changing older ones. The leniency programme for example, was an investment and required a high degree of experimentation before it could give results. Another approach is represented by investing in market studies. The FTC for example, conducted series of market studies with successful results in the petroleum and pharmaceutical sectors. These market studies can increase the rate of cartel detection.
40. **The Chair** thanked Professor Kovacic and invited Professor Abrantes-Metz to discuss how to design sophisticated screens.

41. **Professor Abrantes-Metz** opened her presentation explaining that she has been working with screens for almost ten-year and she has always perceived some resistance to the use of these tools. According to Professor Abrantes-Metz it is not fair to compare the current screening methods with those used 40 years ago and which proved unsuccessful. The economic thinking and evidence on how cartels work and the methodologies used to model collusion and competition have developed significantly in recent years and today screens are much more reliable than they used to be. Professor Abrantes-Metz provided many examples of successful screening applications, such as the Mexican IMSS case discussed by the Mexican delegation, the screen used in Brazil in gasoline markets, the screen that detected the alleged NASDAQ conspiracy in US in the 1990s, i.e. the Madoff’s Ponzi scheme, the screens used on stock prices in the US, the Canadian case on road construction and finally, the most successful and recent case, the LIBOR case.

42. The LIBOR case started in 2008 when the Wall Street Journal wrote about possible manipulation of the index. The application by Professor Abrantes-Metz and other of screens found that LIBOR followed certain unusual patterns and this might have been a sign of possible collusion. For example, Professor Abrantes-Metz showed how the LIBOR did not move at all for almost a year compared to other benchmarks that were –even with minor changes- moving. Additionally, when other benchmarks (e.g. Credit Default Swaps) reflected an increased risk in the market, the LIBOR did not respond to that factor at all. These patterns could not be considered as proof of a manipulation of the index, but raised serious concerns on the credibility of the index. This triggered the interest of the authorities and led to leniency applications and to many investigations around the world of the LIBOR index. Other cases on similar indexes are pending before a number of competition authorities. Professor Abrantes-Metz emphasised that the LIBOR case shows the true value of screens. Screens have a high likelihood of detecting cheating. Of course there is complementarity between screens and leniency programmes. Screens can also be valuable tool to help agencies prioritise resources and focus their investigative efforts on markets and/or cases which deserve the enforcer’s attention the most. They can also help to detect and deter illegal practices, i.e. if firms know that there is a screening progress they will think more carefully before forming a cartel.

43. The criticisms against screens usually focus on several issues. First, the errors that can result from the screening exercise are an actual risk but they may depend on a variety of factors sometime unrelated to the screen itself (e.g. there is a lack of proper expertise to run the screen correctly). Second, some argue that screens cannot distinguish between tacit and explicit collusion. Professor Abrantes-Metz provided the example of LIBOR and showed that in one specific day, almost all of the 16 banks turned in to the same quote. Of course this is not a proof of explicit collusion but explicit collusion is more likely than tacit collusion. A third argument against screens is that they are resource intensive. This can be true but not in every case; for example, the screening the data which unveiled the LIBOR manipulation took no longer than 5 days. In conclusion, Professor Abrantes-Metz stressed that competition agencies should consider screens seriously. The data and techniques are much better today as compared to 40 years ago and the LIBOR case can be used as a very good example to convince the sceptics.

4. **The implementation of a screening programme**

44. **The Chair** thanked Professor Abrantes-Metz and moved to the next part of the discussion, i.e. the challenges that agencies might face with the implementation of screens. To start this discussion the Chair invited Estonia to present the position of a small competition agency with limited resources.
45. According to the Estonian delegation, *ex officio* cases opened by the competition authority were mostly based on media reports, a process that may raise risks of distortions or false claims. However, the competition authority had some good results from the co-operation with the media. In 2010, a daily newspaper asked the competition authority to comment on the legal effect of a potential infringement of market sharing by several security providers before publishing an article on this story. An inspection followed and after a leniency application, the authority imposed fines to the security providers.

46. The Chair thanked the Estonian delegation and invited Hungary to present its experience with the use of mixed screens.

47. The Hungarian delegation reported the use of a variety of tools for cartel detection. The Hungarian competition authority (GVH) uses reactive tools such as formal complaints, whistleblowers and leniency policy. Recently, the authority introduced a variety of pro-active tools such as a leaflet for public procurement officials, training sessions and a website on compliance. With respect to the use of screens, the delegation described three examples of attempted use of screens during the last seven years. In 2007, the authority tried to introduce a two-step system, with first an industry analysis to describe the level of competition and second a critical event analysis to unveil the cartel activity. The project failed because of the lack of resources to run it. In 2010, the Chief Economist of the GVH and his team tried to implement a behavioural model for detecting cartels; however, the amount of data needed was very large and not readily available. Currently, the authority focuses on detection of bid rigging cases using an electronic database on public tenders. The GVH is currently co-operating very closely with the public procurement authority to address several problems identified with the data and their organisation in the database.

48. The Chair then turned to BIAC for a short intervention before opening the discussion on the use of screens on bid rigging.

49. According to BIAC, the 20 years of experience on the economic analysis of cartels shows that the vast majority of cartels are not sophisticated cartels. The use of screens for bid rigging is reasonable, as it is easier to identify an unusual conduct in public tenders, i.e. when bidders submit identical bids or there is a rotating scheme over time among competitors. However, the use of screens on price fixing is more difficult because of the data limitations, which makes it very difficult to prove unusual price increases or changes in price volatility. BIAC stressed that the experience on cartels shows that even where the data is available, it would be difficult to prove the existence of explicit collusion. BIAC concluded that in order to design screens to identify collusive behaviour, it would be useful for the authorities to assess the actual effect of this conduct.

5. The use of screens to detect bid rigging conspiracies

50. The Chair invited Korea and Italy to present their experience on the use of screens on bid rigging cases.

51. The Korean delegation presented its Bid Rigging Indicators Analysis System (or BRIAS). The BRIAS is an automatic quantitative analysis system which receives online information from public procurement agencies in Korea and analyses the possibility that tenders’ results may be affected by bid rigging. The system elaborates different information such as the rate of successful bids, bid price, number of failures, price increases etc. and produces an index of bid rigging risk for each tender. The Korea Fair Trade Commission (KFTC) has benefitted from the use of BRIAS in particular as a deterrence tool. The market is aware that KFTC monitors tenders constantly and that has deterred this type of behaviour. In addition, thanks to BRIAS, the KFTC has opened a successful investigation of a bid rigging conspiracy for the extension of a subway line. Following an investigation, the cartel was fined 20 million dollars.
52. The Italian delegation took the floor and noted that the Italian Competition Authority is very active in trying to improve its cartel detection capacity and especially its ability to detect bid rigging cartels. The collection of the procurement data necessary to run bid rigging screens is done in co-operation with the authority responsible for the supervision of public procurement contracts. However, the database is not yet ready to give results from screening indicators. The delegation stressed its ongoing efforts to improve the data and noted that difficulties with data collection should not discourage agencies from using screens. In conclusion, the delegation noted that there are always benefits from this process; for example in the case of Italy the information collected led to the preparation of a handbook for public procurement agencies on how to detect bid rigging.

6. Other reactive tools that have proved successful

53. The Chair thanked the delegations that shared their experiences with screens and asked to the European Commission (EC) what was the source of the 30 *ex officio* investigations since 2005 that the EC reported in its paper, given that they do not make extensive use of screens.

54. The delegation of the European Union explained that their experience with the use of economic screens, which started in early 1990’s, was not very successful. However, this does not mean that the Commission does not open *ex officio* investigations. Actually these investigations amount to approximately 20% of all cartel investigations opened by DG Competition between 2005 and 2010. The investigations originated from the following sources: a) outside information such as complaints from the public and whistle-blowers; b) from other departments of the European Commission, such as the raw tobacco cartel detected though the information from the Director General of Agriculture; c) information from antidumping complaints; d) market intelligence and market inquiries; e) information from other competition authorities and especially through the European Competition Network (ECN). The EU delegation concluded that even if the leniency programme is very successful, *ex officio* investigations are absolutely necessary in order to expose stable cartels that are not usually detected by the leniency program and to provide stronger incentive to potential leniency applicants to approach the European Commission.

7. Conclusion

55. The Chair thanked the experts and all the participants for their contributions and concluded the discussion with some final comments.

56. First, he emphasised that the discussion showed how almost every country uses different types of cartel detection tools and that irrespectively of the tools they use, they all seem to benefit from relying on a variety of instruments for cartel detection.

57. Second, the roundtable showed that there are both substitutability and complementarity between screens and leniency programmes. In some countries, where leniency programmes do not work effectively, screens are a very useful tool to support a cartel enforcement program. In other countries, screens have proved a useful complement to leniency programmes by providing stronger incentives to firms to report cartel activities.

58. Third, there is a difference between structural and behavioural screens. However, a combination of the two instruments is preferable. The discussion showed that screens can be used as a starting point for an investigation, but cannot lead to sufficient proof of cartel activity. Screens need to be followed up by a proper investigation.

59. Finally, media monitoring, market inquiries and market studies can be a very good alternative way to screens and can represent a successful pro-active cartel detection method.