

Unclassified**English - Or. English**

17 October 2019

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Cancels & replaces the same document of 16 October 2019****Working Party No. 3 on Co-operation and Enforcement****Summary of discussion of the roundtable on the standard of review by courts in
competition cases****Annex to the Summary Record of the 129th Meeting of Working Party 3 on Co-operation and
Enforcement**

4 June 2019

This document prepared by the OECD Secretariat is a detailed summary of the roundtable on the standard of review by courts in competition cases held during the 129th meeting of Working Party 3 on 4 June 2019.

More documentation related to this discussion can be found at
www.oecd.org/daf/competition/standard-of-review-by-courts-in-competition-cases.htm

Please contact Ms Despina PACHNOU if you have any questions regarding this document
[+33 1 45 24 95 25; despina.pachnou@oecd.org]

JT03452956

Summary of discussion of the roundtable on the standard of review by courts in competition cases

On 4 June 2019, Working Party No. 3 held a roundtable on the standard of review by courts in competition cases chaired by the United States Department of Justice (“DOJ”) **Assistant Attorney General Makan Delrahim**.

The **Chair** outlined the aim of the roundtable to look at standards of review by courts of first-instance competition decisions, taken either by a competition agency in an administrative setting or a trial court in a judicial setting. The Chair noted that meaningful review by a competent and qualified court or tribunal of the investigative process, factual findings, conclusions of law and final decisions is a fundamental element of due process and supports the legitimacy of competition enforcers. The roundtable aimed to take stock of the approaches of OECD Members and Competition Committee Participants with regard to standards of review by courts, for example examining review of the merits versus legality review, review of conclusions of law versus factual findings, review of economic arguments and consideration of economic models.

The three panel experts were **Paul Crampton**, Chief Justice of Canada's Federal Court, **Ian Forrester**, Judge at the General Court of the European Commission and **Jonathan Jacobson**, partner at Wilson Sonsini Goodrich and Rosati.

Chief Justice Crampton started with an explanation of Canada’s decision-making in competition cases. The Commissioner of Competition who heads the Competition Bureau does not exercise adjudicative functions for the most part. In criminal matters, the Commissioner must refer matters to the Director of Public Prosecutions and, in non-criminal matters, to the Competition Tribunal, who will then adjudicate.

Chief Justice Crampton focused on non-criminal matters in his remarks. He gave some background into the Competition Tribunal, which he sits on. The Competition Tribunal was created in 1986 and is comprised of up to six judicial members, who all come from the Federal Court, and non-judicial lay members who are typically expert economists or industry experts. The composition of the tribunal was chosen to ensure sufficient expertise to adjudicate complex economic issues.

Questions of law and questions of fact may be appealed from the Competition Tribunal to the Federal Court of Appeal without any restriction. Questions of law are reviewable on a standard of correctness whereas questions of mixed fact in law are reviewable on a standard of reasonableness. Reasonableness has been described by the Supreme Court of Canada as a deferential standard of review. Namely, reviewing courts cannot substitute their own appreciation of the appropriate solution but rather must determine if the outcome falls within a range of possible acceptable outcomes that are defensible in respect of the facts and law. Any decision that is rationally supported, within a range of acceptable outcomes, would be considered to be valid.

Chief Justice Crampton mentioned that the Federal Court of Appeal has accorded deference to the Competition Tribunal’s determinations with regard to factual questions and questions of mixed fact and law, applying the standard of reasonableness. However, the Federal Court of Appeal reviews questions of law on a correctness standard and, on this basis, has sometimes overturned the Competition Tribunal’s decision, even in cases where the

tribunal's expertise was key in determining the question of law, and the judge sitting on the Federal Court of Appeal had no experience in hearing competition cases.

Chief Justice Crampton gave four case examples that he had also submitted in a note for this roundtable, where the Federal Court of Appeal overturned the decision of the Competition Tribunal regarding market definition, the meaning of anticompetitive acts, the assessment of anti-competitive effects of a merger on a total surplus standard, and the assessment of merger efficiencies.

Chief Justice Crampton added that in Canada appeals on questions of law and fact can be lodged without restriction. This has meant that appeals against decisions of the competition tribunal are very common and add to the time, cost and uncertainty associated with contesting enforcement decisions. As a result, parties frequently settle their cases with the Commissioner of Competition, particularly in mergers where timing and certainty are critical, thus putting the Commissioner in the position of being the investigator and the adjudicator. Chief Justice Crampton mentioned that litigating parties may raise broad arguments that either were not raised or were not materially addressed at the first instance, as they know that these may resonate better with the generalist appellate judges. This creates scope for rendering contested proceedings more costly and time-consuming, and less predictable.

Chief Justice Crampton queried whether, in general, non-expert appellate courts should review the determination of expert competition tribunals on questions of law on a correctness standard. He suggested that it would be better to apply a reasonableness standard. He pointed out that expert first-instance competition law adjudicators who are independent from the enforcement authority are better placed to assess competition matters than non-expert appellate courts, with little or no background in competition law. He suggested that, in Canada, narrowing the scope of appellate review of the Competition Tribunal's decisions would reduce the time, costs and uncertainty associated with contesting the Tribunal's conclusions and give incentives to parties to contest findings much more frequently, instead of agreeing to settlements with the Commissioner.

The Chair then opened a discussion on the types of competition enforcement framework.

1. Enforcement frameworks

Brazil follows an administrative competition enforcement system. The competition authority, CADE, is responsible for the investigation and the first-instance decision-making on competition matters. All its decisions (final decision, charging documents or procedural acts) are subject to appeal before a federal court in any of the federal states in Brazil.

Chile has an adversarial competition system for the last 15 years. The institutional design is similar to Canada's. They have two institutions in charge of competition enforcement, the National Economic Prosecutor's Office, Fiscalía, which investigates cases, and the Competition Tribunal, which is the first-instance decision-maker on cases brought before it by the Fiscalía or private parties. The Competition Tribunal is a specialised independent tribunal, with five members: three lawyers and two economists. The decisions of the Competition Tribunal can be challenged before the Supreme Court, which can review fully questions of law and fact, and the merits of the decision. The Supreme Court is generally deferential towards the decisions of the Competition Tribunal, and only around 15% of the decisions of the Competition Tribunal are overturned by the Supreme Court.

France has a bifurcated system where administrative and civil judges, and in some cases criminal courts, have authority to review certain kinds of competition enforcement decisions. Namely, civil judges review conduct cases, administrative judges (the supreme administrative court, the Conseil d'Etat) review of merger decisions, and criminal judges review investigative measures.

The Paris Court of Appeal (civil court) has jurisdiction on all economic affairs. This court has two chambers dedicated to competition conduct cases, as well as cases of other market regulators. Thus, while the judges are not specialized in competition law, they only deal with specific issues and frequently with competition cases, and therefore develop expertise. The jurisdiction of civil courts over conduct cases was decided in 1986, as it was considered more productive and effective for competition litigation to be dealt with alongside commercial, not administrative, litigation.

The **US Federal Trade Commission** (“FTC”) spoke on this internal adjudicating process. The FTC can issue an administrative complaint, and refer it to an administrative law judge, who sits within the FTC and adjudicates on the matter. The process followed is like a trial in federal district court. The initial decision can be appealed by either side before the Commissioners, who review both legal and factual issues, and issue a final decision. This final decision can then be appealed before the competent federal circuit court, who will review questions of law de novo, but give deference to factual determinations that are supported by substantial evidence. The win rate at trial for the FTC is quite good, as, in over 80% of cases, courts confirm the decisions taken through the adjudicative process. The courts in the US regard the FTC as an expert agency.

The internal adjudicative process is used for complex matters, to help develop the facts of the case and the application of the law to those facts. The internal process has been used in cases involving the intersection of intellectual property and antitrust, such as cases involving the settlement of pharmaceutical patent litigation (Schering-Plough), standard-setting organisations (Rambus) and trademark litigation. The process has been also used in consummated mergers cases (Evanston), restrictions on advertising (California Dental Association), and to determine the scope of antitrust liability for actions of States within the United States, i.e. government actions that under certain circumstances may violate the antitrust laws. The FTC can also, instead of using the internal adjudicative process, file cases in the district courts from the start, in cases where less analysis is required and the FTC is interested in just enforcing anti-trust laws.

The FTC highlighted that, in general, the process of common law development in antitrust, by generalist judges informed by economic learning, has been positive in the main.

The Chair then opened the main discussion, on the standard of judicial review of competition enforcement decisions.

2. Standard of judicial review of competition enforcement decisions

In **Germany**, first-instance decisions are taken by the competition authority, the Bundeskartellamt, and are subject to review by the Dusseldorf Higher Regional Court, a civil court. The centralisation of all competition cases within the same court ensures that judges develop expertise.

The court may fully reassess law and facts, as well as the merits of decisions. For example, the court may reach a new market definition, different from that decided by the authority.

The court can examine evidence, rehear witnesses, and may request that the Bundeskartellamt collect more data and provide additional analysis to aid the courts' review. The court can also annul or amend decisions on fines and may even increase the fine, which happens often. The standard of proof is full conviction beyond a reasonable doubt, including on matters of economic evidence.

The President of the Bundeskartellamt explained that the court in the booking.com case asked the authority for a new investigation. The Bundeskartellamt spent one year and a half collecting answers to the approximately 30 additional questions asked by the court, including conducting a consumer survey. Still, on June 4 2019, the court overturned the authority's decision, finding that the narrow best price clause, which the authority had prohibited, was a lawful necessary side agreement to make the booking.com business model work.

As the court's review of the decisions of the authority is intense, it ensures that the authority works thoroughly, knowing that it will have to defend fully its decision before the court. According to the President of the Bundeskartellamt, the intensity of the court scrutiny helps balance the fact that officials who take part in the investigation are also part of the group that takes the decision, as this decision is litigated fully. The judgement of the court may be appealed on points of law to the Federal Court of Justice where competition cases are assigned to a specialist chamber.

Austria has an adversarial system. The competition authority investigates cases but does not take decisions. It brings the cases before the specialized cartel court that decides upon seeing all the evidence. The decision of the cartel court may be appealed before the Supreme Cartel Court. Until 2017, the Supreme Cartel Court could not review the correctness of the underlying facts of decisions, though there existed already jurisprudence allowing the Supreme Cartel Court to review the reasonableness of factual assessments. A new law adopted in 2017 allowed the Supreme Cartel Court to review facts in certain instances and slightly broadened the review competence of the Supreme Cartel Court. Court procedures are efficient in Austria and the duration of the whole enforcement procedure, including courts, is not very long.

In **Israel**, for many years the Israeli Competition Tribunal, a specialized tribunal, with expertise in competition law, could review de novo the merits of an enforcement decision taken by the competition authority. In 2006, the Israeli Supreme Court ruled that the Israeli Competition Tribunal should take the authority's decision as a starting point, in view of the knowledge, acquired expertise and experience of the authority. Still, the Competition Tribunal has very broad review powers. It reviews the substance of cases in depth, examines the evidence and reviews the analysis of the authority.

Chinese Tapei said that in recent years, there has been a tendency to increase the intensity of judicial review by courts such as in cases like high fines of banks. If courts find wrong calculations or lacking evidence, they may set aside the authority's decision.

The **UK** spoke on the proposal by the Competition and Markets Authority ("CMA") to the Secretary of State in February 2019, calling for the reform of the country's competition laws, which included two proposals on the review of competition enforcement decisions. The UK has two different standards of review for competition enforcement decisions: full merits review of decisions in conduct cases, and so-called judicial review, on limited grounds, for merger decisions and decisions imposing remedies based on market investigations. In conduct cases, the Competition Appeal Tribunal has full jurisdiction to review factual findings, economic assessments and the application of the law underpinning

the CMA's decisions. It can set aside the decision, remit the matter to the CMA, or impose or revoke or vary the amount of penalty.

The two proposals seek: (1) restrictions on the admissibility on appeal of new evidence that was not adduced during the administrative procedure before the CMA, and less reliance on oral testimony; and (2) transition from the full-merits standard of review to the judicial review standard, or a new standard of review, setting out specified grounds for permissible appeals for all cases.

The point of the first proposal is to ensure that all relevant evidence is presented during the administrative phase and informs the original decision of the CMA. The background to the proposal is the fact that appeals in Competition Act cases subject to a full merits review had moved beyond a review of the findings and of the evidence and reasoning supporting those findings. Appeals had become a channel for parties to raise new arguments and present new evidence, which could and should properly have been raised during the administrative phase. In addition, the time devoted to oral factual and expert evidence had lengthened appeals hearings.

The point of the second proposal is to have the same narrower review standard for all competition decisions, close to the Canadian reasonableness standard. The overall aim of the proposal was to improve the efficiency of the process for Competition Act cases, and bring the review of cases into line with international practice. The CMA mentioned that, for example, the General Court of the EU can annul a decision of the European Commission on one of four judicial review grounds. If the General Court annuls that decision, it cannot replace its decision for that of the European Commission (which is possible in the UK); it may only require the European Commission to take measures necessary to comply with the judgement. The UK reported that the government has not acted on the CMA proposals so far.

Judge Forrester presented the European competition law review system. His court, the General Court of the EU, endeavours to deliver an in principle complete judicial review of fact and law. There are EU cases where the Court was very interventionist, and cases where the Court noted that the formal requirements were adequately complied with, and did not intervene further. Judge Forrester stressed that competition law enforcement is the whole process from the start of the case to the final decision, and that it is vital that the whole enforcement review process guarantees the right to a fair hearing. While an adequate judicial review at the end confers legitimacy, still the whole beginning-to-end enforcement process must be conducted following due process standards.

Jonathan Jacobson presented the standard of judicial review in the US. He started off by explaining that the US has very broad statutes that need interpretation by the courts. Namely, section 1 of the Sherman Act provides that every contract in restraint of trade is illegal. Section 2 stipulates that every person that shall monopolise trade or commerce shall be deemed guilty of felony. The FTC Act entrusts the FTC with the task to combat "unfair methods of competition". It was left to the courts to spell out the specific meaning of these broad concepts, and, therefore, the primary source of US antitrust law development are judicial decisions, not legislation. In the area of merger control, agency guidelines have detailed enforcement steps and criteria, but, for the rest, courts have enjoyed a wide margin of interpretation.

DOJ can only proceed by filing a case in court. The FTC has a choice of either going to court or using the internal administrative adjudicative process which was explained earlier in the discussion. Mr Jacobson stressed the importance of the FTC's internal adjudicative

process for cases that involve issues that are unique or have not been encountered before, and require an in-depth evidentiary showing. This process allows making a decision based on a full record.

Mr Jacobson stated that, when the DOJ and the FTC litigate, they are given considerable deference, although the courts have no formal duty of deference. Courts are even more deferential to the DOJ than to the FTC. Still, investigatory steps like subpoenas, civil investigative demands or second requests are almost invariably confirmed. Challenges against them fail, even if, technically, the standard of court review is the same as that for the substance of decisions, i.e. whether the law was applied correctly. Agencies are thus, for the most part, free on scheduling and procedural matters.

Mr Jacobson argued that bringing a private case is not easy. The vast majority of private cases are resolved on motions to dismiss and summary judgments, and only really sound cases get past those stages and get to trial. In the past, summary procedures were officially disfavoured. Since the 2007 Twombly case, courts are encouraged to dismiss cases prior to discovery, on the grounds that discovery is expensive, and that a case has to have some theoretical merit before it is allowed to proceed. Mr Jacobson mentioned that cases brought by the FTC and the DOJ fare much better.

Mr Jacobson stressed that judicial review is central to US antitrust policy, since the Congress rarely weighs in with legislation. The US Supreme Court's and all courts' decisions are, broadly speaking, met with public acceptance. He concluded that there is respect for the judiciary as the ultimate arbiter of antitrust policy in the US, and consensus that the antitrust enforcement system is overall fair and provides appropriate checks and balances.

The **FTC** stressed that, after the US Congress passed the first antitrust laws, there was a desire for an expert agency to give its view on the application of vague law concepts. So, the FTC was established to look at how markets were working, and where competition was failing, and has enforced the law in accordance with this broad mandate.

The Chair mentioned that the role of the executive in the US is to enforce the antitrust laws, and that of the Congress to set the broader competition policy and examine whether laws needed to be changed. The US system was designed to make it difficult for laws to change at the whim of political parties.

Judge Forrester took the floor to answer a question on whether the competition docket of the General Court. He confirmed and offered three explanations. First, since 2004, when Regulation 1/2003 came into force, competition enforcement was decentralized to national competition authorities and courts. Secondly, the European Commission is now settling more cases, which therefore are not litigated and thus do not come before the Court. Thirdly, the Commission's own docket has shifted since 2004, when the Commission decided to focus more on the biggest cases and encourage the spreading of local enforcement by the Member States. Currently, there are more competition questions sent from national courts to the Court of Justice for a preliminary ruling on the interpretation of EU law, than there are appeals against the European Commission's enforcement decisions.

Chief Justice Crampton mentioned an Alberta Court of Appeal judicial review decision, which he relied on to decline to exercise his discretion to hear a matter where judicial review seemed to have been used to go around statutory restrictions on appeals. The Court of Appeal had said that it would not grant judicial review, if a decision were made in the course of a process that had been conducted according to law, as otherwise judicial review could be used to obtain an appeal not intended by the legislation.

The Chair concluded that the discussion highlighted the varying degrees of intensity of judicial review, and opened a discussion on the review of procedural decisions.

3. Review of certain procedural decisions

Hungary described the process for the challenge of the agency's qualification of information as a business secret or the termination of that protection. The qualification decision can be issued by the case handler or the competition council, the decision-making body of the Hungarian competition authority. These decisions can be appealed before the regional court and the Hungarian supreme court, the Curia. The Curia only hears appeals against first-instance decisions if there is an underlying and important question of legal theory.

Lithuania explained article 32 of the Lithuanian competition law, under which undertakings or other persons whose rights may have been infringed have a right to lodge a complaint with the Competition Council (Lithuania's competition authority) regarding the actions or decisions of the Competition Council's officials during the administrative enforcement procedure. If the complainants do not agree with the decision of the Competition Council, or if the Competition Council does not adopt any decision within ten days from the date of the complaint, there lies a further appeal with the Vilnius Regional Administrative Court. The judgment of that court can be further appealed before the Lithuanian Supreme Administrative Court. Lodging a complaint does not suspend the investigation. In 2018, the Supreme Court confirmed that investigative actions such as seizures can be challenged, overturning a judgment of the Vilnius Regional Administrative Court, which had held that procedural acts could not be challenged separately, as they were only intermediary acts which did not produce legal effects. The Supreme Court held that refusing to accept complaints against procedural acts would run counter to the principle of justice and the equality of parties. Still, in a later 2018 case, the Supreme Court held that procedural acts could not be appealed separately, but only be challenged as part of and together with the final enforcement decision.

The **Russian Federation** gave an outline of Article 52 of the law on protection of competition of the Russian Federation, which provides that the decision of the authority can be appealed to the arbitration court within three months from its date of issuance. Appeals by third parties are not very common.

Mr Jacobson gave the view that, in jurisdictions where private actions are difficult, it is very important for third parties to have the chance to complain to the agency and seeking relief in court of appeals, though warned of abuses. He suggested that consumers' complaints may be more grounded than competitors' complaints.

Judge Forrester then spoke on the confidentiality claims, when these are raised before the General Court. The judges' approach is to hold informal meetings with parties to designate what is really confidential. He stated that this informal method has worked well and encouraged reasonableness.

The Chair mentioned that in many jurisdictions the enforcement agency has complete discretion to decide whether to open or close an investigation, while other jurisdictions permit interested parties to appeal those decisions. Belgium were then invited to speak on this topic.

In **Belgium**, all decisions of the competition authority can be appealed before the Market Court, which is a specialized section within the Court of Appeal in Brussels. Decisions of the investigation branch of the authority to close enforcement proceedings (for example, because the case was based on a complaint that was found to be groundless, or because of different enforcement priorities of the authority) can be appealed before the College of Competition (the authority's decision-making body). The College of Competition will assess whether the investigators erred in law or in the assessment of the facts in rejecting the complaint, or whether the decision to close the case on the basis of different enforcement priorities was not manifestly unreasonable. As a result, investigation files tend to be detailed, to be able to prevail in this complaint process.

Mexico created in 2013 specialized courts and limited the types of decisions subject to judicial review to only final acts and decisions without suspension; certain types of intermediary steps or decisions can only be challenged together with the final act or decision. According to COFECE's data, the creation of specialized courts and the narrowing of appeals to final acts and decisions lessened the caseload by 60% and reduced the average time for the resolution of cases from 18 to 8.7 months, in the sectors that fall within their competence. Specialized courts show deference to the technical expertise of the competition authorities, which follow specific standards to prove anticompetitive conduct. Courts rely on expert opinions for technical matters, and sometimes do not follow legal precedents.

Ukraine had cases where parties used constitutional clauses to appeal against competition decisions and circumvent limits on the scope of judicial review. Namely, the Ukrainian Constitution contains two articles applicable to competition, which parties use to challenge actions of the competition authority. A number of constitutional lawsuits challenged the investigative processes and interim decisions, like the initiation of a case or investigative actions, which would normally be excluded from the scope of judicial review. Constitutional lawsuits are filed before the administrative courts, not the economic courts, which are competent to hear competition cases. The Supreme Court on Ukraine is expected to rule soon on the admissibility of certain lawsuits and the jurisdiction of courts in competition cases, and thus clarify this matter.

Korea took the floor on the different standards for civil versus criminal cases. Civil cases are decided on a preponderance of evidence, and criminal cases on proof beyond reasonable doubt. Because of this difference, in some cases where there is an administrative sanction, a criminal conviction cannot be obtained.

The Chair moved onto the last topic for the roundtable on how courts gain access to competition expertise when reviewing complex matters.

4. Access to competition expertise

The Chair opened this last part of the roundtable mentioning that many jurisdictions entrust antitrust enforcement to generalist courts, while some have introduced specialised competition courts.

Israel has a specialized tribunal that is composed of both judges experienced in competition and representatives from industry and consumer organizations. These representatives are not experienced in competition enforcement, but still contribute to the comprehensiveness of decisions. In cases of direct conflicts of interest, the concerned member of the tribunal recuses itself.

The Chair referred to initiatives to educate judges in competition law and economics.

The **Italian competition authority**, together with the French Authority, trained judges on EU competition rules in a training project funded by the EU. The training was deemed necessary, as competition cases are becoming more complex and increasingly require economic expertise, while the curriculum of judges in Italy involves little or no training on economic analysis. The judges received the training very well and appreciated its workshop format. An important factor of success was the involvement in the design of the project of the national school of the judiciary, which is the body that provides training to judges in Italy, and of the Italian Council of State. Also, the fact that the project was designed by two competition authorities made it easier for judges to accept it.

The **Slovak Republic** also trains its judges on competition law and economics and considers that on-going education is imperative. Most court cases in the country are cartel cases, which do not usually involve the assessment of complex economic issues. When a case does involve evaluating complex economic matters, for example an abuse of dominance case, courts, who may be neither familiar with the economic concepts underpinning the authority's decision nor call economic experts to assist them, tend to dismiss the authority's decisions as insufficiently proven. It is, therefore, helpful that both judges and the authority can rely on the case law of the Court of Justice of the EU to clarify technical issues. Courts also refer preliminary questions to the Court when dealing with an unclear point. Finally, courts have invited the European Commission to submit its views as *amicus curiae*, and this has helped the resolution of cases.

Spain mentioned the Spanish Competition Act of 2007, which allows the involvement of the Spanish competition authority in court cases through verbal or, usually, written comments, submitted *ex officio* or at the request of the judges, in difficult cases involving technical issues. While this practice has increased over the years, it is still not very common.

The **DOJ** stated that it has been a longstanding practice for the DOJ and FTC to intervene as *amicus curiae* in cases pending before the Supreme Court, often at the request of the court, and on occasion in the courts of appeals. Still, the DOJ did not participate frequently in cases before the courts of appeals, and it did so very rarely before the district courts. Since 2017, the DOJ decided to enhance its participation in cases that are pending in the federal courts in which the DOJ is not a party. Consequently, the DOJ pays very close attention to cases before the trial and appellate courts and looks for opportunities to help steer the development of antitrust law by contributing their expertise. There is a statute that permits the Attorney General, whose powers in antitrust cases are delegated to the Assistant Attorney General, to file statements in the district courts, whenever the US has an interest that it wishes to express. The DOJ has done that more than a dozen times in a variety of cases on substantive antitrust law issues as well as jurisdictional and procedural issues, with very positive results. This process has allowed the DOJ to leverage its resources, and participate in private cases, or in cases brought by other federal agencies, where they give their view, without having to open a case and conduct an investigation. For example, in May 2019, the DOJ participated in a private no-poaching case between the Duke University and the University of North Carolina, and, for the first time, became a party to the settlement agreed between the parties and thus able to enforce compliance with the settlement's provisions.

Latvia stated that courts sometimes turn to the Latvian competition authority, the Competition Council, for an expert opinion; this has happened five times in the last five years. Courts may not know when to ask for opinions, maybe due to lack of knowledge

regarding competition infringements. The Competition Council conducts training workshops for judges. Courts can also ask for the opinion of the European Commission as an *amicus curiae* and can also refer a question of EU law to the European Court of Justice for a preliminary ruling, but they rarely do so.

Switzerland noted that the duration of court proceedings is long. Recently, the federal administrative court decided a case that had been pending for more than eight years before the court. The long duration is a burden for the parties and harms the effective enforcement of competition law, as unresolved questions are detrimental to legal certainty. A possible solution is the introduction of deadlines for cartel proceedings. The Swiss Parliament is looking to simplify the proceedings before the courts, and speed them up by introducing deadlines in the legislation.

The Chair thanked the experts and the delegates for a very fruitful discussion.