SUMMARY RECORD OF THE 79TH MEETING OF THE COMMITTEE ON COMPETITION LAW AND POLICY HELD ON 5 AND 6 JUNE 2000

-- Aide-Mémoire of the Roundtable Discussion on Mergers in Financial Services --

The attached document is an annex to the Summary Record of the meeting held on 5-6 June 2000. It is circulated to Delegates FOR APPROVAL BY WRITTEN PROCEDURE. Delegates are requested to respond with written corrections, if any, by 8 September, after which, the proceedings including this document will be distributed as a free publication.
1. The Chairman began by noting that a lot of very interesting contributions were received for this roundtable reflecting a great deal of experience with mergers in the banking sector in many jurisdictions. He stated that it would be impossible to refer in the course of discussion to all the points covered in the written submissions and urged the delegates to read those documents if they had not already done so.

2. The Chairman decided to focus on bank mergers and organised the roundtable into six sections: context (i.e. the banking sector in perspective); market definition; barriers to entry; competitive impact assessment; efficiencies assessment; and remedies.

1. Context

3. After remarking that many of the submissions either discussed context or referenced contextual reports, the Chairman opened this section of the roundtable by calling on the Italian delegation. Its submission discusses at some length the specificity of the Italian banking industry and offers some general views on an alleged inverse relationship between the degree of competition and the level of stability of the banking sector. The Chairman reminded delegates that the Bank of Italy is responsible for enforcing competition rules in the Italian banking sector, but it does so in close co-operation with the Italian Competition Authority ("Autorita"). This is formalised through a Memorandum of Understanding between the two institutions. The Italian delegation was invited to present its views regarding the relationship between competition policy and stability in the banking sector, and to inform delegates whether the "division of labour" between the Bank and the Autorita is motivated by that vision.

4. An Italian delegate (from the Bank of Italy) began by noting that as with all other banking supervisors, the Bank of Italy wants stability in the overall banking system as well as in individual banks. A necessary condition for long run stability is that banks be efficient and this requires competition. In that sense, stability and competition are complementary.

5. In the 1980s, 90% of Italy's banking sector was publicly owned, and efficiency was not a prime concern. Italy had a very regulated banking system. A strong de-regulation wave began in the 1980s. Currently, only 13 percent of the banking sector is subject to public or quasi-public control. This was a big change that involved some 58 mergers primarily motivated by a desire to enhance efficiency in order to cope with greater competition. Sixteen of the mergers were subjected to formal investigation, and the Bank of Italy imposed conditions on ten of those.

6. The delegate contrasted the Italian and U.S. experience stating that problems in relation to mergers have always involved the deposit rather than loan side of the business. This probably reflects differences in the two banking systems, but in any case it calls for very different remedies.

7. Concerning institutional matters, the delegate noted that competition policy decision making is conducted in a separate department of the Bank, but the Bank’s general experience and enormous database are nevertheless available to assist in resolving competition cases. Data are also supplemented through close, sometimes daily, co-operation with the Autorita. The Bank of Italy is also active in enforcing competition policy across the board. In addition to the sixteen merger reviews, there have been twelve formal investigations into agreements and five concerning abuse of dominance. This level of investigation compares favourably with competition enforcement in other sectors of the Italian economy and with levels of investigation found in other countries' banking sectors.

8. The Chairman asked the delegate for further detail as to why competition law is enforced by the Bank rather than the Autorita, and specifically if there were reasons why the Autorita could not undertake such enforcement itself. The response was that there would be no problem today with the Autorita having the enforcement function, but ten years ago when the division of labour was established,
the banking system was different and also the banking products were changing very rapidly. Presently there is a need for very close co-operation with the Autorita because there is considerable overlap in financial services products (e.g. insurance and banking).

9. The Chairman turned to the U.S. for further views regarding the trade-off between stability and competition in banking, plus comments on what Italy had stated about this.

10. A United States delegate noted that U.S. experience does not support the existence of a trade-off between enforcing competition laws and bank stability. As the Italian delegate pointed out, enforcing competition laws tends to induce efficiency in the banking system, as in other sectors, and that enhances the performance of the banking sector. He also confirmed what the Italian delegate had said by noting that when bank mergers present problems in the U.S., these tend to be focused on loans to small and medium sized businesses. Such customers’ ability to raise capital seems to depend most upon personal relationships that overcome what might otherwise be a disadvantage in terms of persuading potential lenders of their creditworthiness. These are the customers most potentially at risk in highly concentrated local markets. There is no reason to believe that local concentration in the provision of banking services to small and medium sized customers could in any way contribute to capital maintenance and the like for banks, hence to the stability of the banking system. In sum, it has not been U.S. experience that there is any kind of tension between sound and vigorous competition enforcement on the one hand and stability of the banking system on the other hand.

11. The Chairman next noted that U.K. contribution refers to a study commissioned by the Chancellor of the Exchequer [the Cruickshank report], looking at levels of competition, innovation and efficiency in the U.K. banking market. That report pointed to the specificity of the banking sector, to a particular concern with competition and concentration in that sector, and suggested that U.K. merger policy in the banking sector has been somewhat lax. The Chairman called on the U.K. delegation to comment on those aspects of the study.

12. A United Kingdom delegate began by rejecting the study’s criticism and added that, in any case, the urge to merge has largely by-passed the U.K. banking sector. The U.K. has had only two significant retail banking mergers in the last five years. The second, occurring last year, was between the Royal Bank of Scotland and the National Westminster Bank, a merger between a predominantly Scottish bank and a predominantly English or English/Welsh bank. There was relatively little overlap between the merging parties. No problems were found in the retail banking sector. The competition authority was more concerned about small and medium enterprise banking (i.e. SME banking).

13. Although building societies have entered the retail banking sector in recent years, they have not entered SME banking. There are still only a few banks providing SME banking services and the Royal Bank of Scotland and National Westminster accounted for a particularly large share of these in the Northwest of England. In the end, no difficulty with SME banking services was found despite the high concentration because all the traditional players were present in the Northwest.

14. The delegate noted that although the Cruickshank report identified some price differences in SME banking across certain areas, this could not be attributed to variations in local concentration levels. He mentioned, however, that the competition authorities do not differ with the Cruickshank report’s view that in a sense banking services are special. They are not very special, however. In any retail sector, competition authorities become concerned at lower threshold levels of concentration if they find an absence of buyer power plus the presence of information asymmetries and the like.

15. Another United Kingdom delegate highlighted the Cruickshank report’s view that many of the competition problems in the industry seem to stem from high switching costs, both as regards changing
branches and banks. There are survey results showing that 50 percent of customers rate services from their bank as poor or very poor, yet only three to four percent of customers switch each year.

16. The delegate also noted that in the U.K. geographic markets for SME banking may be widening. Although SMEs still require a local depository for their cash, increasingly bank managers are taking on a regional orientation, servicing customers over a wider area.

17. The Chairman opined that consumer inertia could be a very powerful barrier to entry into banking and should perhaps considerably increase concern about high levels of concentration. It also raises difficult issues about appropriate remedies for problem mergers. If switching costs are high enough, then whether there is only one bank or there are ten, there will not be much difference from the point of view of competition. The Chairman proposed returning later to this issue if delegates so wished. In the meantime, he turned to Australia.

18. The Australian submission refers to a string of reports and a number of different market definitions. The contribution states, for example, that the Wallace report emphasised the global nature of banking and as a result, the Australian Competition & Consumer Commission (ACCC) changed its market definition. The Chairman acknowledged that it was probably not that simple and asked the Australian delegate to comment further on the Wallace report and on market definition in particular.

19. An Australian delegate responded that it may be an over generalisation to suggest that the ACCC has endlessly changed its market definitions. As for the Wallace report, which has been beneficial to the ACCC, this report was commissioned by the Australian Government in 1997. It examined all elements of Australian financial market regulation. It was written in the context of a general microeconomic reform process that has been going on in Australia for the past decade. Although the report examined mergers, its main emphasis was on deregulation as regards interest rates, prudential regulation, etc. The report recommended, for example, the establishment of a new prudential regulator separate from the central bank.

20. Besides having standard competition law applying to banks, Australia has, or had, a very specific merger restriction, i.e. "the six pillars policy". Australia had and still has four major banks. Those banks had around 80 percent of the Australian banking market. The six pillars policy specified that the four major banks and two major life insurance companies could not merge under any circumstances. The Wallace report recommended abolishing the six pillars policy.

21. The government responded by allowing insurance companies and banks to merge, but continued to prohibit mergers among the four main banks.

22. Australian bank mergers are concurrently reviewed by the ACCC and the prudential regulator. Both organisations report their findings to the Treasurer. The Treasurer lacks the power to approve mergers which have been rejected by the ACCC, but he can reject mergers which have been approved by the ACCC. The ACCC analyses bank mergers strictly on competition grounds, just the same as in any other industry. The Treasurer, in contrast, looks at whether or not a bank merger is contrary to the national interest.

23. As in the U.K., Australia has had just two bank mergers in the past five years (the latest completed in May 2000), but the ACCC considered these to be very important transactions since Australia has so few banks. The ACCC applies a substantial lessening of competition test to bank mergers and if that test is breached, the merger is rejected. The parties can apply for authorisation of a merger on public benefit grounds. This is a very public process, however, and experience shows that banks are very unwilling to go through it.
2. Market Definition

24. The Chairman remarked that market definition was extensively discussed in many of the contributions. There seems to be general agreement that the lending and borrowing sides of bank activities are in separate product markets, but there are considerable differences in the categories actually used in various countries. This appears to be owing to perfectly understandable differences in local circumstances. About the only generalisation the Chairman could make was that countries define geographic markets roughly according to what one would expect based on transaction costs. As a result, the closer the banking service is to the final consumer, the narrower the geographic market tends to be.

25. Instead of getting deeper into the empirical questions posed by market definition, the Chairman drew attention to a particular issue featured in a number of contributions. This was the extent to which banking products compete with insurance products. He called on the European Commission to begin the discussion and to focus on the substitutability between bank services and credit insurance.

26. A delegate from the European Commission (EC) predicted that the question of substitutability between banking and insurance products will turn up in many future cases, including with regard to the joint provision of banking and insurance services.

27. In the vast majority of cases where the issue of substitutability of banking and insurance products could have arisen, the EC actually was not obliged to make a formal market definition because there was no competition problem regardless of the definition chosen. There were, however, four cases, all involving credit insurance or more specifically "delcredere" insurance, where the issue had to be squarely faced. The delegate described one of those cases, i.e. the takeover of Assurance Générale de France by the German insurance company, Allianz.

28. Delcredere insurance is a particular segment of credit insurance which basically protects suppliers against buyer insolvency. It is a very narrow field of credit insurance. In the Allianz case, the EC focused on the demand side (there was a clear supply side separation since banking services and delcredere insurance were offered by different institutions). The EC asked whether delcredere insurance buyers could alternatively turn to banking services including core lending, factoring and letters of credit. Its investigation revealed that the products were more complements than substitutes. This conclusion was reached because factoring companies were themselves asking clients for guarantees in the form of assigning various insurance policies. In addition, the factoring companies themselves purchase credit insurance, and there is a difference in the services provided by the factoring companies and by credit insurance. The factoring companies and other providers of financial guarantees do not offer risk analysis prevention services. Finally, factoring companies exercise choice in which specific risks they will accept, i.e. there is no portfolio transferred.

29. The delegate also noted that for a number of other insurance and banking products there might be substitutability in the future. She specifically mentioned the Crédit Suisse Winterthur case where the EC considered packages of insurance and banking products tailor made to meet the needs of individual customers.

30. The Chairman then turned to Korea whose submission also touched on the substitutability of banking and insurance products. He noted that the Korean Fair Trade Commission had reviewed five major bank mergers since 1997. Citing Korea's submission, the Chairman read: "...similar products offered by non-bank financial institutions have low demand/supply elasticity and thus are not in competition." He asked the Korean delegate to expand on that.
31. A Korean delegate explained that this conclusion was based on investigations which revealed important differences between banking and non-banking institutions, namely: banking services are much greater in total size; non-banks do not offer the same full range of services offered by banks; non-banking institutions invest in much higher risks; and deposit insurance (limited to about $20,000 per depositor) does not extend to deposits in non-banks. In addition, it was found that customers tend to concentrate bank service purchases in a single bank, and are highly loyal to that bank. During a crisis, depositors may abandon their bank, but they return once stability is restored.

3. Barriers to Entry

32. After pointing out that some other contributions also supported the view that there is low substitutability between banking and insurance services, the Chairman advanced to barriers to entry. He noted the attention paid in the submissions to consumer inertia and to regulatory barriers, but drew attention to the impact of electronic banking developments. There was a mix of views in the submissions concerning whether electronic banking increased or lowered barriers to entry or had a differential impact of various individual barriers to entry. The Finnish contribution appeared to support the view that electronic banking simultaneously lowered some barriers to entry while raising others. The Chairman called on Finland for further detail.

33. A Finnish delegate began by noting that there are three general types of barriers to entry. First, there are legal or regulatory barriers, which are non-existent in Finland. Second, there are classic economies of scope and scale. Finally, there are strategic barriers to entry arising when incumbents seek to make new entrants’ lives difficult. He also noted that barriers to entry are of little import to large corporate customers who can source services internationally. They are considerably more significant, however, as regards services provided to small and medium sized enterprises and households.

34. With specific reference to electronic banking, its effects on barriers to entry depend heavily on the stage or technological level of electronic banking being examined and on the customer class. As regards ATMs and Internet banking, one can say that barriers to entry are reduced to the extent there is less need to build extensive branch networks to reach customers. This is especially important in sparsely settled countries like Finland.

35. At later stages, electronic banking moves in the direction of transactions over mobile phones and banks begin to enter joint ventures with telephone companies as well as Internet and IT companies. At this stage, electronic banking could raise barriers to entry. For instance, Swedish banks have approached the Finnish Competition Authority with concerns about a joint venture between a telecom and IT company. The Swedish banks fear that this could lead to the development of national standards benefiting Finnish banks but harming foreign banks.

36. Although the Finnish Competition Authority generally welcomes electronic banking, and Finland features among the top three countries in the world in its development, caution is required as regards competition issues especially in the longer run.

37. The Chairman stated that the Australian contribution also has mixed views concerning electronic banking and its effect on barriers to entry. It focuses particularly on one possible barrier to entry, i.e. interchange fees which are access charges in regard to private networks set up by incumbent banks. He turned to Australia to provide further information on this point.

38. An Australian delegate began by commenting that the ACCC’s view so far has been that branch networks are still very important in as regards transactions accounts and deposit services. Australian banks with extensive branch networks have significantly lower costs of obtaining funds than banks without
such networks. This is possibly due to customers keeping funds in low interest paying accounts at their local banks. The ACCC also found that branch networks are very important to SMEs. Such enterprises typically rely very much on some form of relationship banking requiring a local presence.

39. At first sight, automatic teller machines and electronic funds transfer at point of sale (EFTPOS) appear to reduce the need for branch networks. However, due to the network characteristics of electronic banking, barriers to entry may in fact be raised. Consumers apparently need and demand fairly extensive ATM and EFTPOS networks. A significant barrier to entry arises if a new entrant cannot get access to somebody else’s ATM machines in a commercial arrangement and that brings up the issue of interchange fees. In Australia, such fees are affected by the relative bargaining strength of the two parties which is linked to the relative size of their electronic networks. A new entrant typically pays much higher interchange fees than an incumbent bank that already has an extensive network. Where two of the major banks decide to enter into some sort of arrangement to allow their customers to use each other’s ATM machines the interchange fees are typically much lower than either would charge a small bank for the same access.

40. The ACCC is currently conducting a major inquiry together with Australia’s central bank into interchange fees in the context of looking at recent bank mergers and has started to have some reservations about existing interchange fee arrangements. Its tentative view is that the arrangements between Australia’s major banks may in fact be in breach of the Trade Practices Act.

41. Concerning the notion of inertia as a barrier to entry, the delegate believed these words have been used as a catch phrase to cover a number of different things. One obviously is transaction costs which may be quite substantial for consumers shopping around. The ACCC found that SMEs attached a high importance to maintaining some form of credit standing. They are very concerned that if they change banks, they will have a lot of difficulties getting an appropriate credit standing and this makes them quite immobile. This is not to suggest, however, that they are inert or indifferent to change.

42. The Chairman commented that the issue of interchange commission fees has also been addressed at the European Union level and in France. He also noted that whereas Australia appears to see some problems associated with differences in these fees, in some other jurisdictions uniform fees were suspected of causing competition problems. [Delegates returned to this issue in the general discussion - see below.]

43. Canada was the next country the Chairman called on. He invited discussion of some empirical evidence relating to consumer inertia as well as Canada’s view that technological developments may have raised rather than lowered barriers to entry.

44. A Canadian delegate stated that in two merger reviews conducted in 1998 relating to four of Canada’s six largest banks, the parties argued that Internet and telephone banking would lower barriers to entry by eliminating or reducing the need for an extensive and expansive branch net work. The Canadian Competition Bureau found, however, that this was not the case. Branches remain very important to customers who have come to expect that banks would offer both distribution channels. So electronic banking has become a complement as opposed to a substitute for branches, thus increasing a new entrant’s sunk costs.

45. Interestingly, the banks’ technology expert also expressed the view that although people are using it, the new technology would not replace bank branches at least for another 5 to 10 years. Another expert added that it would take 10 to 15 years before technology really infiltrated the market place. An interesting connected point is that electronic banking developments might make customers less willing to split their banking services among several banks. Customers prefer to concentrate their transactions accounts with
one bank, and related services, including those electronically based, are located in the same bank in order to lower administrative burdens etc.

46. The **Chairman** next turned to the European Commission to describe governmental barriers to entry by a foreign bank as illustrated in the *Champalimaud* case.

47. A **European Commission** delegate expressed the hope that this will prove to be an exceptional case. She also stated that there are no EU legal or administrative barriers to the acquisition of holdings in banks by foreign acquirers. EU banking directives merely require acquirers of qualified holdings in a financial institution to notify the national authorities.

48. The *Champalimaud* case concerned an attempt by the Portuguese government to oppose by decree (i.e. "Despacho") an acquisition of some bank interests owned by a Portuguese citizen, Mr. Antonio Champalimaud, by Spanish based *Banco Santander Central Hispano*. This cross border takeover was planned for Spring 1999. The Portuguese government opposed it based on alleged prudential concerns having to do with the viability and soundness of the acquirer. The EC took countermeasures under the insurance directives and the EU Treaty rules concerning freedom of establishment and free movement of capital. It also took action, and here is the novelty of the case, under the Merger Regulation.

49. In the first of two decisions related to the case, the EC stated that the Portuguese government failed to notify its prudential rules, hence had to suspend the measures taken. In a second decision, the EC took the position that the Portuguese Despacho was not justified under the Merger Regulation, Article 21(3) [granting the EC exclusive powers to assess concentrations having a Community dimension]. This was the first time in ten years of merger control that the EC had applied Article 21(3). Perhaps this should be taken as a signal that further such actions might be taken in the future.

50. The **Chairman** rounded out the discussion of barriers to entry by calling on Poland to explain how its bank guarantee fund simultaneously raises barriers to exit and lowers barriers to entry. He also requested information about any special *de jure* or *de facto* barriers inhibiting takeovers by foreign owned banks, and invited comment on what the competition office is doing about such barriers.

51. A **Polish** delegate began with the question of the bank guarantee fund stating that it effectively lowered barriers to entry into the financial services sector which is 90% composed of the banking sector. The fund does not seek to protect incumbent banks. Instead, operating with rules similar to those found in the EU, the fund is merely designed to lower depositor risk and thereby to stabilise the very important banking sector.

52. As for *de jure* or *de facto* barriers to foreign takeovers in the banking sector, neither exists in Poland. It should be noted that most Polish banks are now privately owned and close to 60% of the necessary private capital came from abroad. Concerning the authorisation required from Poland's banking supervisor, this is administered without discrimination as to country of ownership.

53. At this point, the **Chairman** opened the floor to general discussion and a **Canadian** delegate began by commenting on consumer inertia, stating that the Competition Bureau found corporate documents showing that no financial institution had gained more than one percent market share other than through acquisition. This of course supported the idea that there is considerable customer inertia.

54. The **Chairman** picked up on that point and asked what implications customer inertia should have on merger review, i.e. does it make mergers more or less problematic. He conceded that such inertia means greater consumer vulnerability to abuse by banks, but if customers are truly inert, what difference does the number of banks make?
55. The same Canadian delegate basically agreed with the thrust of the Chairman's comment and noted that when divestments are proposed to reduce a merger's anti-competitive effects, customers tend to complain about their branch being sold to another bank. They are apparently not all that concerned about possible price increases and prefer to remain with their current bank. The delegate opined that customer inertia will only be reduced by new entrants offering truly new services, including those connected with electronic banking.

56. A Mexican delegate put a question to the European Union about product substitutability. He noted that some substitutability is based on changes in relative prices and some may be related to long term trends. It is the first that is most relevant to anti-trust market definition, but relative price changes are difficult to measure in the financial services sector because of the wide diversity of products offered. The delegate wished to know the degree to which the European Commission based its market definition in financial services cases on substitutability in response to relative price changes.

57. A European Commission delegate responded that in the earlier described Allianz case, as regards the substitutability of delcredere insurance with factoring as well as with other forms of credit insurance, the EC sent out its usual questionnaire to customers and competitors. Customers clearly responded that delcredere insurance did not have substitutes. In addition the EC found that the prices for delcredere insurance were higher than for other forms of credit insurance and the barriers to entry appeared to be higher as well. Given this information, it was not necessary to go into an in-depth inquiry into price correlations. This would certainly be done however, in a similar future case if a second phase analysis were required.

58. At this point, an Australian delegate returned to the Chairman's earlier remarks about interchange fees noting that although these are equal among Australia's largest four banks, they are substantially higher as between large and small banks. The real issue from Australia's point of view is whether the similarities and differences are cost justified.

59. The Chairman called on an observer from Israel for his thoughts about interchange fees.

60. The Israeli observer addressed this issue in the context of credit card systems, explaining that in such systems, the business selling goods on credit pays a "merchant commission" to the merchant acquirer who actually processes the payment. The merchant acquirer turns around and pays most of this commission to the card issuer as an interchange fee. So the interchange fee is an expense for the merchant acquirer and becomes the floor for what are often quite high merchant commissions.

61. The observer mentioned several reasons why interchange fees should concern everyone. First of all, such fees are often non-transparent constituting a hidden cost ultimately paid by the consumer. Second, they are set in a way that ordinarily would be unacceptable to antitrust officials, i.e. by agreement among banks. This is permitted because it ostensibly confers certain advantages particularly when systems are first being set up. Thirdly, in the context of competing credit card systems, interchange fees tend to be raised as a means of attracting card issuers. For further information about such concerns, the observer referred delegates to a recent article on interchange fees by David Balto of the FTC.

62. The observer questioned the need for interchange fees in banking systems where there are only a few rather than many banks. He referred to an investigation by the Israeli competition office that focused on the entire credit card market and included a look at interchange fees. The investigation showed that interchange fees were being set in a way that did not encourage efficiency. It also revealed that where there are few processors, or limited competition between processors, interchange fees tend to be broken up by categories in a way that enhances the power of the processors and does not necessarily benefit the merchant or the public.
63. A Canadian delegate continued on the point of interchange fees noting that Canada had a "non-dual" credit card system in which members must choose to be either with Visa or with Mastercard. This has resulted in different interchange fees, i.e. Mastercard pays a higher interchange fee and consequently charges a higher merchant commission. Mastercard was the second credit card network to be set up in Canada and it has constantly struggled to gain market share against the generally larger Visa banks. The delegate also asked other delegations what their experience has been concerning whether dual or multiple card membership has had any effects on interchange fees, but no one volunteered an answer.

64. An Italian delegate asked the United States whether its greater concern for the effects of bank mergers on small business borrowers as contrasted with effects on depositors is influenced by the fact that the latter, through the Internet and other technological developments, have better options than the former. A United States delegate responded that such was indeed the heart of the matter.

4. Competitive Impact Assessment

65. The Chairman noted that this topic is well covered in the written submissions and the ideas are very difficult to summarise. Obviously, concentration ratios are a screen used by most competition agencies to decide whether there is the likelihood of competitive problems. This analysis is usually carried out at the level of each banking service or relevant market, but the U.S. submission raises an interesting question about that. The current practice of the Department of Justice is indeed to look at each separate banking service market to decide whether or not there is a likelihood of reduction of competition in it. At the same time, there is a line of U.S. Supreme Court decisions espousing what has been described as a "cluster approach", i.e. commercial banking is identified as a relevant market and a merger is assessed by its competitive effects on that composite market. He asked the United States to describe the current status of the cluster market approach.

66. A United States delegate began by noting that the Supreme Court will naturally have the final word in this matter. But this may be one of several instances in which contemporary anti-trust analysis used by the agencies and by the courts, when called upon to engage in it, is more rigorous, empirical, and focused on sound economic analysis today than were some of the Supreme Court cases in the 60s and 70s. The Department of Justice applies the same kind of economic analysis for banking that it uses in other sectors to the economy. It defines markets by starting from the customer and asking what are the products it acquires and what are good substitutes for them.

67. Although ultimately an empirical question, the Department's best sense is that looking at clusters of services is likely to be misguided. Firms providing a certain cluster might not be offering the particular products sought by the customer, i.e. a cluster market approach could produce a misleadingly wide market. In some other instances, specialised providers offering certain products of interest to a customer might wrongly be excluded from a cluster market if they do not offer the entire cluster of services.

68. It is possible that when the Supreme Court made the decisions 30 or 40 years ago featuring cluster markets, it was applying a correct intuition about the nature of banking relationships. At the time, these might have been more geographically local, relationship based and might have involved a greater instance of clusters of products and services than is the case today.

69. The delegate went on to note that banking agencies in the U.S. often continue to apply the cluster approach. That may reflect a kind of regulatory rigidity and failure of the regulators to adapt the more progressive modern ways of thinking. It may also reflect, however, the fact that the regulators do not have the fact gathering and compulsory process tools available to anti-trust agencies. They may find it convenient, perhaps even necessary, to use a short hand market definition in relation to which they do have
reliable data. In contrast, the Department is convinced that its disaggregated approach is consistent with contemporary anti-trust analysis and that the Supreme Court, if called on in an appropriate case, would at least review the question de novo, rather than simply recite its earlier decisions about clusters of banking services.

70. The Chairman, who admitted to never having dealt with a banking merger, stated that he found distinctions between, for example, short and long term consumer loans, to be somewhat counter-intuitive. The idea of there being so many separate markets runs counter to the idea that most customers appear to seek a bundle of products from their banks and display considerable inertia in changing banks, i.e. would presumably be reluctant to change banks in order to obtain better terms on one particular product. The same United States delegate agreed with that observation, but reiterated that the question is ultimately empirical, i.e. depends on actual consumer behaviour.

71. The Chairman opined that in assessing the competitive impact of banking mergers, one first examines how they affect the relevant markets for banking services. Sometimes, however, the analysis goes into whether the mergers affect some other activity. For example, if the merging banks have extensive industrial holdings their transaction could have an effect on "real" markets. This appears to have happened in Spain which the Chairman called on to develop this point.

72. A Spanish delegate explained how the Spanish competition authorities have approached two large bank mergers notified in 1990. The first, Banco Santander/Banco Central Hispano, involved the first and third biggest banks in the country. The second merger, Banco Bilbao Vizcaya/Argentaria, involved what were then the second and third biggest banks. In both cases, the competition authorities analysed possible effects on the non-financial sector of the economy, especially the electricity, telecommunications and broadcasting industries.

73. In the first merger, both banks had equity stakes in major undertakings in the electricity and telecommunications sectors. Both those industries have oligopolistic structures and were recently liberalised. The competition authorities feared that the new bank with its stock holdings in competing companies would be in a position to reduce the independence of those competitors and this could produce anti-competitive practices. The case was ultimately resolved by the Minister limiting what the new bank could hold in the stocks of competing electricity and telecommunications companies. Specifically, the new bank was restricted to just 3% of the stocks of one of the competing companies in the affected sectors. The parties were therefore required to make divestitures and had two months to present their plan to the competition authorities. This was the first time that such a remedy had been applied in a Spanish merger.

74. The second merger turned out to be considerably more complicated because while it was being analysed, the merged entity reached agreement with Telefonica to develop Internet services and electronic commerce and this also involved each buying stock in the other, i.e. BBVA was slated to buy ten percent of Telefonica and Telephonica five percent of BBVA. The Competition Tribunal recommended that the government approve the merger subject to the condition that BBVA be prohibited from having significant stakes in the stocks of competing undertakings in the media, telecommunications or electricity sectors, i.e. they were restricted to no more than 3% of the shares of just one major competitor in each of the affected sectors which included electricity, hydrocarbons, cable operators, fixed telephones, and local loop services. Again the parties had two months to present their divestiture program.

75. The Chairman mentioned that Germany also had to face cases where cross-holdings between banks and other enterprises, insurance companies in particular, may have been an issue in assessing the impact of a merger and asked the German delegation for comment.
76. A German delegate noted that bank holdings in other industries are indeed a special feature of the German banking system. Such holdings are not limited by law. But given the high degree of competition in German banking system, these holdings are always far below market dominance.

77. Contrary to earlier expectations that globalisation pressures might lead to the emergence of a large conglomerate financial firm, there is now a clear tendency towards separation of banks and insurance companies. There was one insurance merger case which caused some problems because of the parties' participation in a particular bank. This was resolved by requiring divestment of the affected bank.

78. The delegate pointed out that in Germany, it is often stakeholders rather than managements which are the driving force behind mergers. In particular, banks have often promoted industrial mergers and sometimes the reverse has also occurred. For example, in the recently aborted Deutsche/Dresdner Bank merger, it is no secret that Allianz was one of the forces promoting the merger.

79. In concluding his remarks, the delegate described a curious case where the Bundeskartellamt moved to block a major construction merger. The parties responded by widening the merger to include a bank in order to transfer jurisdiction to Brussels. The strategy failed when Brussels sent the case back to Berlin. The bank subsequently withdrew from the merger.

80. The Chairman turned next to the Japanese delegation seeking information about the Fair Trade Commission's review of the Dai-Ichi Kangyo/Fuji Bank/Industrial Bank merger and further comments about the effects of cross-holdings between banks and other firms.

81. A Japanese delegate noted that the Japan Fair Trade Commission (JFTC) received a request for prior consultation from the Dai-Ichi Kangyo Bank, the Fuji Bank and the Industrial Bank of Japan, regarding the establishment of a common holding company, i.e. the Mizuho financial group. The three banks plan to establish by October, 2000 a common holding company. At the same time their subsidiaries, including three securities companies and two trust banks are to be merged. The group's total assets would exceed those of any existing bank in the world. The JFTC examined the request and replied in May 2000. Before providing more detail concerning this case, the delegate described three important developments in the Japanese financial sector.

82. First, in recent years deregulation has been promoted in Japan with the aim of developing the capital market to facilitate companies financing through issuing stocks, bonds and so forth. As a result, large corporations have becoming increasingly less dependent on banks. City banks, whose main clients used to be large corporations, now must turn to medium and small enterprises and households. City banks eventually will be faced with vigorous competition from local financial institutions such as regional banks. In dealing with large corporations, City banks are now expected to place greater emphasis on underwriting stocks and bonds, offering financial services and products such as securitization of corporate assets, and acting as intermediaries in mergers and acquisitions. This makes fierce competition with foreign financial institutions and major domestic securities companies inevitable.

83. Second, advanced information technology and improved communication infrastructures are helping the banking industry to exploit new media such as the Internet. Also information technology related businesses, such as construction of customer databases are now essential for banks to remain competitive. IT and communication industry developments are simultaneously providing an opening for companies in other industries to enter banking in various innovative ways.

84. Third, banks holding huge amounts of bad debts in the wake of the collapse of the so-called bubble economy, are now being forced to restructure their businesses in order to improve their profitability, write-off bad debts and restore the soundness of their assets.
Returning to the Mizuho case, the JFTC has assessed competitive effects by first identifying five distinct relevant markets: deposit activities; lending activities; foreign exchange; securities business; and trust banking business. The overall conclusion was that in light of the three developments outlined above, the proposed consolidation may not substantially restrain competition. However, upon completion of the proposed consolidation, the three banks will be providing loans to 1,600 companies out of the 2,300 companies listed on stock exchanges, excluding banks and insurance companies.

The Mizuho financial group will become the top lender for nearly 700 of the 2,300 listed companies. The JFTC decided that this warranted conducting a survey by way of questionnaires and hearings involving 500 businesses of various sizes currently financed by the three banks. The survey unearthed two issues that the JFTC has discussed with the three banks. Companies whose dependence on the three banks will rise because of the merger expressed concern that the new bank may interfere with their managements by attempting to tie loans and other services, or by requesting borrowers to employ certain securities companies as bond underwriters. Such conduct may constitute unfair trade practices violating section 19 of the Anti-monopoly Act. The JFTC has therefore required the banks to take steps to ensure this does not happen. The other potential difficulty concerns corporate groups.

Both Fuji Bank and Dai-Ichi Kangyo Bank have corporate groups for which they host regular meetings. The earlier mentioned survey revealed that many companies within and outside the groups foresee no changes in transactions. However, some companies are concerned that relationships among group member companies may be strengthened. The JFTC concluded that certain measures needed to be taken to prevent business relationships from becoming exclusive and closed.

The three banks have proposed to deal with the JFTC’s concerns by stating that the new holding company will ensure compliance with the Anti-monopoly Act by executive officers and staffs of the group as a whole. In addition, the Mizuho financial group assured the JFTC that it does not intend to form any particular exclusive corporate groups. The delegate noted in passing that the operation of corporate groups centred on banks will be reviewed by the Spring of 2002. Even dissolution of the groups is not excluded in the review.

The JFTC has decided to accept the three banks’ proposals, but will carefully monitor their execution and deal strictly with violations of the Anti-monopoly Act. When the planned further restructuring of the three banks takes place in Spring 2002, the FTC will examine the case as necessary.

5. Efficiencies Assessment

The Chairman initiated the discussion of efficiencies by calling on the United States. He noted that its written contribution contained a rather extensive discussion of different types of efficiencies that can come from bank mergers and, unique among the submissions, also included some empirical estimates of efficiencies.

A United States delegate stated that there are two basic types of efficiencies that appear to be realised in U.S. bank mergers. The first is a simple efficiency of scale. Some years ago the data seemed to suggest that scale efficiencies were realised at relatively small scales, and indeed above $100 million in assets, banks became less efficient. More recent data indicate instead that the very large banks are the most efficient. It may be, of course, that efficiency does not increase monotonically with size and that there are certain opportunities to realise efficiencies at an enormous scale that cannot be realised in the mid-range.

There is some reason to believe that some efficiencies of scale in banking might be reaped through joint venturing and collaboration among banks particularly as regards information sharing and the
use of certain information technologies. If this is true, such efficiencies are not merger specific and should not be considered when deciding whether to prohibit a bank merger.

93. The second kind of efficiency arising in U.S. bank mergers is one which, until recently, bank regulations prohibited banks from taking advantage of. It derives from diversification through geographic market extension. Banks that were previously confined to individual states or individual localities are now able to be multi-state banks and this enables them to diversify their portfolio of loans and deposits, particularly loans. That in turn could reduce their risk and increase efficiency. Recent empirical studies show that it is indeed geographic diversity more than scale that seems to account for increased efficiency among the very largest U.S. banks.

94. The Chairman next referred to an intriguing statement in connection with the Mexican contribution’s discussion of two mergers: the HSBC take-over of Grupo Serfin and the Bank of Montreal’s acquisition of Grupo Financiero Bancomer. The Mexican contribution states that perhaps the acquisition of an under-capitalised bank by a strongly capitalised bank could be counted as an efficiency gain from the merger. Of course, this raises the question of whether there might be a less anti-competitive way to re-capitalise an under capitalised bank.

95. A Mexican delegate responded that maybe the contribution used the wrong word. Perhaps it is not an efficiency, but rather a difficulty with under-capitalisation of a number of Mexican banks that was eased not by take-overs per se, but instead by an injection of foreign capital. For example, the Serfin case was not a take-over. The bank only received an injection of capital. Similarly, Bancomer was not taken over by the Bank of Montreal, but it too received an injection of capital. Recently things changed. Serfin was taken over by a Spanish bank, Santander. For several reasons, Mexican authorities thought this would strengthen Serfin’s position and thereby improve competition. This would obviously be the case if, absent the acquisition, Serfin would have had to exit the market with the result of further increasing concentration in the Mexican bank market.

96. The delegate next turned to the FCC’s recent review and approval of the proposed acquisition by Spain’s Banco Bilbao Viscaya-Arentaria (BBVA) of 40% of the shares of Bancomer, the second biggest bank in Mexico. While the review was underway there was a hostile offer by Banamex, the largest bank in Mexico, for Bancomer. This presented a much more controversial case because Bancomer is the largest bank in Mexico. That transaction was still under review at the time of the roundtable.

6. Remedies

97. The Chairman noted that there were extensive discussions in the various contributions of both structural remedies and behavioural remedies. Despite an evident preference for structural remedies, there were several examples of behavioural remedies being imposed. One arose in Australia’s Westpac/Bank of Melbourne case about which the Chairman sought further detail.

98. The Australian delegate began by affirming the ACCC’s preference for structural remedies, but with only four large banks in Australia, divestiture remedies themselves usually generate antitrust concerns.

99. In the Westpac/Bank of Melbourne case, a national bank was acquiring a bank operating in just one city in which it had a large market share. The Bank of Melbourne was considered quite unique in that it provided a range of services not offered by other Australian banks. There was not a great deal of difference, however, in terms of prices, interest rates and so on. The ACCC considered structural remedies but, given the fact that the acquired bank operated in just one city, the options for breaking up the assets and trying to sell some to one purchaser and others to another was simply not possible. The ACCC then
looked at what seemed to be the principle issue here, i.e. that the bank was seen as being a local bank, and decided that the appropriate solution was to obtain behavioural undertakings designed to ensure local autonomy.

100. This case has provided the ACCC with a very useful, although not particularly successful example. It underlines the need for caution in terms of accepting behavioural undertakings. The undertakings generated a high degree of consumer expectation, but in practice it proved difficult to deliver on that. With the passage of time, perhaps not surprisingly, the Bank of Melbourne ended up behaving pretty much like any of the other main banks.

101. A week before the roundtable, the ACCC completed its review of Australia’s largest banking merger. This one also required behavioural undertakings, but the ACCC certainly did not consider undertakings regarding management autonomy.

102. The Chairman next called on Switzerland to discuss its UBS merger where conditions were imposed concerning maintaining existing loans on pre-merger conditions. The Chairman was especially interested in learning what the competitive problem was and how the condition has worked out, including any monitoring burden it has imposed.

103. A Swiss delegate explained that in the UBS case, the market the Competition Commission focused on was commercial credits below two million Swiss francs, i.e. credit extended to small and medium sized businesses. Twenty-five regional markets were identified. Among those twenty-five geographic markets, eight were judged to present some competition problems. The primary risk was one of collective dominance but there were also unilateral dominance issues. The Competition Commission permitted the merger but required UBS to accept certain structural and behavioural obligations.

104. Among the structural conditions was the divestment of a network of a minimum of twenty five banking points around the country as well as a divestment of some specific branches identified by the Competition Commission. Concerning the behavioural conditions, the Competition Commission required UBS to freeze for six years the terms and conditions applying to existing commercial credits below a threshold of four million Swiss francs. This threshold was chosen on the assumption that a small or medium sized business might have obtained credits amounting to two million Swiss francs from both of the merging banks.

105. The purpose of the behavioural conditions was to protect small and medium sized businesses already borrowing from one of the merging banks from subsequent abuse by UBS. The condition was limited to six years because this was believed to be the time necessary for the borrowing firms to find alternative competing suppliers.

106. As for monitoring the behavioural condition, the UBS must furnish the Competition Commission every three months with a detailed report on outstanding credits below the four million franc threshold. A year and a half later, the Competition Commission has received only three complaints in connection with the obligation. One emanated from a failing firm, hence was unfounded. Nevertheless, despite this reasonably good experience it must be conceded that behavioural obligations impose a heavy, practically daily, monitoring task and that it is indeed wise to prefer structural remedies.

107. The Chairman asked for clarification as to whether the obligation on UBS attached solely to existing credits, or to all credits below the four million franc threshold. The Swiss delegate responded that it applied only to existing credits. The Chairman then enquired why the Competition Commission was not concerned about potential ill effects of abuse of dominance on new as well as old borrowers. The
Swiss delegate noted that the prime concern was about a possible collective abuse of dominance but he basically conceded the validity of the Chairman's implied critique.

108. At this point the Chairman turned to Italy which he noted not only requires divestitures in certain bank merger cases, but sometimes even requires closure of branches. He then quoted from the Italian submission as follows:

   Branch closures can have different effects according to the competitive dynamic of the specific market; if the bank has other branches in the same market, the redistribution of the market share to other banks may be limited and the market power of the bank, resulting from the merger, could be substantially unchanged; but, if the bank has no other branches, the competitive impact of closures can be very effective.

The Chairman noted that if the bank has no other branch in the market, requiring closure of its single branch causes a decrease in the number of banks in that particular market and this would not seem to be good for competition. He wondered in what kind of cases it would be good to require an exit from a market with respect to a banking merger.

109. An Italian delegate (from the Bank of Italy) explained that perhaps the English of the paper leaves something to be desired and went on to note that the Bank of Italy uses various remedies. The first and most effective is branch divestiture. The second is branch closures, and the third is restricting the merged bank from opening new branches in the market. He mentioned in passing that geographic market definitions are very small. There are basically 100 geographic markets as regards deposits meaning that one needs to travel no more than 15 or 20 minutes to change market.

110. As concerns what constitutes a dominant market, the delegate noted that, for example, one can find a dominant position in the market when a bank has 50 percent of the market. One can also find a dominant position where there are two contiguous markets and a bank has 45 percent of the single market, or in three or four contiguous markets where a bank has about 40 percent of the market.

111. The Italian submission clearly says branch divestiture is the best remedy to use. This was the point of the sentence immediately preceding the passage the Chairman quoted, i.e. the passage was intended to explain why branch divestiture is generally preferable. The submission merely was trying to say that if a merged bank has several branches in a particular market and the competition agency requires one of them to be closed, there is a risk that some of the clients will move to other branches of the same bank. If you want to be more effective in a case where a bank has a dominant positions in three or four contiguous markets, the competition agency can close all branches or only one. That was what was meant by the phrase "...to close all branches in one market to make less strong the position in a market in wider market". The delegate admitted that this might still not be clear. He conceded that closing a branch could mean that a competitor is lost, but to some extent that disadvantage is offset by the advantage of not having to find a suitable buyer.

112. Finding an appropriate buyer, except in the more prosperous north of Italy, can sometimes be a real problem. In Sardinia, the Bank of Italy ordered a limited number of branch closures because it was very difficult to find suitable buyers. Finding appropriate buyers also seems to be a problem in Sicily, particularly in cases where banks have a lot of non-performing loans.

113. The Chairman enquired as to the frequency with which branch closure is employed in Italian merger cases. The Italian delegate answered that in ten of the sixteen formal investigations [into bank mergers] conditions were imposed. In five of those divestiture was required. The Bank of Italy does not
yet have clear information concerning how effective those have been but there is some evidence that the remedies employed have led to reductions in deposit concentrations.

114. The Chairman suggested that the Italian delegate may have been referring to a cluster of geographic markets as a single market when seeking to explain the passage that the Chairman had earlier cited. He then turned to Hungary whose submission touched on international co-operation arising out of a merger involving Creditanstalt-bankverein.

115. A Hungarian delegate regretted having to disappoint, but noted that there was no formal co-operation between the Austrian and Hungarian competition authorities in that case. Instead the case provides a good example of the extraterritorial reach of the Hungarian competition statute. The Office of Economic Competition ("OEC") supervises not just cases stemming from decisions taken in Hungary, but as well mergers arising abroad which have actual or potential effects on Hungarian markets. This is why the implicated banks sought authorisation from the OEC. Both had subsidiaries in Hungary. No competition problems were found in the relevant markets, and the merger was cleared.

116. The delegate added that the OEC is very willing to co-operate with other countries’ competition offices as well as to benefit from their experiences in merger cases.

117. The roundtable was concluded with a general discussion time led off by an Italian delegate (from the competition authority). The delegate asked Spain for more information about how stock holdings falling short of control positions by merging banks in other companies could present competition problems in the cases the Spanish delegate had presented. He conceded that there could be difficulties where stock holdings confer some degree of control. The answer provided by a Spanish delegate underlined the fact that the sectors concerned featured a very small number of formerly regulated competitors. Also the intent of the 3% restriction was to ensure against a bank being able to nominate members of the boards of directors of a small number of competing companies and to be able to bring about an exchange of confidential information among them.

118. A Dutch delegate followed up on Italy’s point by noting that there could be a problem if two banks together gained control of a company after they merged and wondered what kind of remedy could be applied in such a case. Related to that, he also asked what competition authorities should do when a merged bank ends up having members on the board of two competing companies causing a risk that they start co-ordinating their behaviour, and what kind of remedy could be applied in such a case. An Italian delegate responded that he had earlier been referring to a different situation. He noted that there can be a situation where three banks together acquire the capital of another bank. All three together control it. Such a situation may not be subject to merger review, and it is difficult as well to remedy. The case the Dutch delegate is referring to is logically one where the company the merged bank gains control of should be analysed as part of the merger, i.e. applying the normal dominance or substantial lessening of competition tests.

119. A Canadian delegate remarked that while she could not envisage imposing a branch closure as part of a merger remedy, she could see imposing restrictions on who would be allowed to buy branches where a divestment has been ordered. In particular she could see the need to restrict purchases by banks already having branches in the area which, after acquiring the divested branch, would either close it or a currently competing location. She asked the Swiss delegation whether it imposed conditions as to who could purchase divested branches in the UBS case. A Swiss delegate answered that as regards the twenty-five banking points intended to constitute a network, UBS was obliged to submit to the competition authority a list of points that are spread throughout Switzerland and located close to the centre of cities etc., i.e. the idea is to have a network that is commercially viable. The Canadian delegate then refined her question to focus on the situation where a purchaser has an existing branch network and then proposes to
close its own branch or the branch that it is acquiring. Would Switzerland condition purchases of divested assets to prevent either event from occurring? The same Swiss delegate answered that it did not impose particular conditions on potential buyers.

120. A Mexican delegate asked the Canadian delegation about what, if anything is done to ensure that branch divestitures succeed in transferring clients as well as assets. Did Canada impose limitations on the merging banks about, for example, restricting communication with transferred clients, or engaging in various forms of cream skimming designed to keep the best clients? He also wished to know whether Canada had done any analysis concerning the degree to which clients undo divestitures by opting to remain with their original bank.

121. A Canadian delegate responded that the question was somewhat premature since the Competition Bureau had just authorised its first ever merger involving a bank [Toronto Dominion/Canada Trust]. The Bureau did impose some non-solicitation conditions to prevent transferred customers from being targeted by communication from their former bank, and restricted the transfer of data concerning such customers. But of course the clients are free to move as they wish. The case is further complicated by the fact that the acquired trust company was an innovator and a lot of its clients were people who were turned off by banks and had gone to the trust company because of its allegedly more friendly and personal service, and because it was not a bank. The purchaser of the divested branches was another bank, and it will be interesting to see whether the clients remain with it or go to another trust company.

122. A Finnish delegate posed two questions to the Italian delegation. He recalled that the Bank of Italy plays a key role in competition surveillance. He also remarked that competition authorities in other countries sometimes have difficulty getting branch level data and presumably the Bank of Italy has direct access to such information. His first question was whether the Bank of Italy monitors the competition situation using annual reports etc. He also asked whether there are any legal obstacles prohibiting an Italian bank or some foreign bank from extending its branch network or otherwise expanding its banking operations.

123. An Italian delegate (from the Bank of Italy) confirmed that the Bank has a great deal of data, plus it has about 100 branches throughout the territory. As to legal barriers to entry into Italy, these are very low. Banks from any European Union member are free to enter the market with or without branches. He also noted that although the number of banks declined in the last ten years from 1200 to 800, clients are now able to choose on average among 30 different branches. As concerns monitoring competitive conditions, the delegate confirmed that the Bank uses its data to do so, keeping track of Herfindahl indexes in separate geographic markets and watching various interest rates. Moreover, the Bank of Italy publishes a great deal of statistical information allowing others to monitor the situation and publishes an important report each May which contains a chapter on competition.

124. At this point the Chairman called on a BIAC representative who remarked that the roundtable showed that the competition authorities are struggling in defining markets, remedies and the likelihood of barriers to entry disappearing as a consequence of technological developments. He was somewhat puzzled by a remark he attributed to Canada to that effect that it will take ten years before there is a notable change in market conditions or at least a reduction in market barriers as a consequence of current technological changes. He thought this might be based on past more than current experience.

125. The delegate also drew attention to a joint ICC and BIAC paper distributed the day before to the CLP. He reviewed three of its general points concerning the disciplines that should govern merger review processes. First, jurisdictions should apply their laws in a non-discriminatory matter, without reference to firms’ nationalities. Second, non-competition factors should not be applied in anti-trust merger review. He made specific reference to national security exemptions but noted the same applies to national
interest or prudential rules factors. Exemptions to that general principle should be limited and made using a very transparent process. The third general remark was that political concerns should not play a role in the merger review process.

126. The Chairman wished to clarify that the fact the CLP is holding a discussion of mergers in the banking sector does not mean that competition offices are struggling with the definition of relevant markets. As a matter of fact, on that particular issue, there was considerable commonality in the contributions received. There may be other areas where things are more difficult, but defining relevant markets is probably not one of them.

127. A delegate from the European Commission wished to pose a question about automated HHI assessment, but withdrew it given that time had run out.