SUMMARY RECORD OF THE 80TH MEETING OF THE COMMITTEE ON COMPETITION LAW AND POLICY

Held at the Château de la Muette, 75116 Paris, on 24-25 October 2000
I. Adoption of the Agenda -- DAFFE/CLP/A(2000)3/REV1

1. The Committee adopted the draft agenda.

II. Approval of Summary Record of last meeting - DAFFE/CLP/M(2000)2

2. The Committee approved the summary record of its previous meeting. It noted that the proceedings of the Roundtable on Mergers in Financial Services have already been published [DAFFE/CLP(2000)17].

III. Reports by Chairmen of Working Parties

a) Competition policy and international trade

3. The Committee noted a report by Mr. Fels, the co-Chairman of the Joint Group on Trade and Competition, on the meeting held on 9th June 2000. The Joint Group elected its Bureau for the year. It heard two presentations from the WTO Secretariat on developments relating to trade and competition policy, as well as from Mr. Rill, Co-Chair of the U.S. International Competition Policy Advisory Committee (ICPAC). Mr. Fels also reported on the Joint Group's discussion on a third draft of a study on the Assessment of WTO and Competition Rules for Enterprises with Exclusive or Special Rights which, subject to some minor changes, was subsequently approved under written procedure (7th November). Similarly, the Joint Group also looked at a second revision of a note on the Competition and Trade Effects of Abuse of Dominance (approved on 14th July). Finally, it reviewed and endorsed a report on Remedies Available to Private Parties under Competition Laws that had been sent back to it by Working Party No. 3.

b) Regulation and Competition Policy

4. The Committee took note of a report by Mr. Heimler, the Chairman of Working Party N° 2 (Regulation), on the meeting held on 7th June 2000. The Working Party continued its discussion on the issue of whether or not to vertically separate regulated companies, which comprise both a competitive and a non-competitive component. It heard the views of delegations on the revised draft of the OECD Council recommendation and further to the suggestion from France, asked the Secretariat to prepare a note outlining experiences of member countries with vertical separation. In addition, the Working Party held a roundtable discussion on regulatory reform and competition law enforcement issues arising in the pharmaceutical industry. The Working Party also reviewed in the context of the OECD Regulatory Reform programme specific sectors in Italy (electricity, gas and railroads) and Greece (electricity, domestic ferries and trucking).

c) International Co-operation

5. The Committee took note, in the absence of M. Konrad von Finkenstein, of an oral report by the Secretariat on the Working Party n°3 (International Co-operation) meeting, held on 23d October. Three main items – the compliance roundtable, the anti-cartel program, and transborder mergers - were addressed. The compliance roundtable discussion focussed on different agencies’ approach to corporate compliance programs of firms, and it disclosed that some countries have begun to look very systematically on the costs and benefits of various means to achieving compliance. On cartels, the Working Party offered
comments on the Secretariat’s draft questionnaire on cartel cases and authorised its issuance subject to some further changes. It also decided to have a roundtable in February on information sharing in cartel cases with a particular focus on BIAC’s specific concerns. In addition, the Working Party asked for a few revisions in the Secretariat’s note on leniency programs, which will be again considered at the February meeting. On mergers, the Working Party again solicited BIAC’s suggestions for future work and discussed the Secretariat’s proposals. This discussion will be resumed in February.

\[d)\] **UNCTAD**


**IV. Relationship with Non Member countries (Confidential item)**


8. The Committee decided to revisit at its next session the question of UNCTAD observership in the Joint Group on Trade and Competition and meanwhile agreed to its invitation on an *ad hoc* basis.

**V. Roundtable on Joint Ventures**

9. On the basis of twelve country contributions, the Committee held a roundtable on Joint ventures. The discussion focused on two issues: a) the relevance of distinctions between different forms of joint ventures and b) associated treatments under merger review provisions and prohibitions of anti-competitive agreements. In his conclusion, the Chairman remarked that contrary to the European type of review of joint ventures, somewhat legalistic, the U.S one appears more economic in nature approach and generally friendlier to joint ventures. The Chairman also acknowledged that there was a significant trade off between the advantages of a flexible, economic based approach and the benefits of assuring greater certainty to the business community. A detailed aide-memoire on this discussion is circulated separately as an Annex to this summary record [DAFFE/CLP/M(2000)3/ANN6].

**VI. Annual reports on Competition Policy**

Reports presented at this session of the CLP - DAFFE/CLP(2000)20/02; 20/04; 20/01; 20/09; 20/12; 20/14; 20/06; 24; 28 and 27

10. The Committee heard statements on recent competition policy developments in Canada, Germany, Greece, Italy, Norway, Spain and Brazil. In addition, Mr. Ilia Yuzhanov, Minister for Antimonopoly Policy and Support of Entrepreneurship of the Russian Federation, presented a report on recent competition law and policy developments in his country. He focused his presentation on the Ministry’s highest priorities, including (1) development of a competition approach to regulating natural
monopolies, (2) effective control of increasing concentration due to mergers, and (3) use of the competition law and other means to control corruption and break down internal trade barriers in Russia.

VII. Global Competition Initiative

11. The Committee took note of a statement by the US Delegate (US DOJ) on a Global Competition Initiative. This Initiative was initially articulated in the ICPAC report and subsequently presented by the former Assistant Attorney General Joel KLEIN, at the EC merger Control Xth Anniversary Conference in Brussels on 14th September 2000 (see http://www.usdoj.gov/atr/public/speeches/6486.htm.). As commitment to competition policy (phase I) has now been successfully diffused throughout the world with 90 countries having a competition law and 20 considering its promulgation in the near future, it is time, according to the US DOJ representative, to turn to phase II. This second phase will focus on the effective implementation of competition laws. Many reasons support such a move: i) beyond their promulgation, it is important that laws be adequately and sensibly enforced; ii) there is an advantage to coherent and compatible competition laws from nations to nations: one competition law can inadvertently affect efficacy of another; iii) inconsistent results can give rise to transnational conflicts. The Global Competition Initiative will be open to all countries, which have already adopted competition laws or have a serious intention to do so. It will not be a new international bureaucracy and it will not be a locus for negotiating international agreements. Instead, the Global Competition Initiative will try to advance a culture of sound competition and to forge a consensus through dialogues (roundtables; exchanges of views; peer reviews) on practical problems of mutual interest.

VIII. Regulatory Reform

Review of Ireland

12. The Committee reviewed the role of competition policy and enforcement in regulatory reform in Ireland with Korea and New-Zealand acting as lead examiners. John Fingleton, Chairman of the Competition Authority, and Brian Whitney, Assistant Secretary General, Department of Enterprise, Trade and Employment headed the Irish delegation. They welcomed the competition chapter, noting that it would help in resisting demands for anti-competitive exemptions and assisting efforts to expand resources. The Irish delegation also reported recent developments to implement recommendations of the Ireland’s Competition and Mergers Review Group about merger enforcement and a leniency programme. One area of disagreement was the draft’s implication that there was a conflict between consumer and competition policies. The delegation acknowledged that the consumer protection office still technically handles some older policies, such as controls on prices in pubs, but noted that in general both consumer and competition policies are based on the same principles. It emphasised that the draft’s discussion of pubs should address new legislation, adopted after the report was drafted, that made significant changes in the licensing system. Also, the discussion addressed a number of problems including vindicating competition and consumer interests in policy-making; developing consumer awareness of the effects of non-competitive markets; relations with sectoral regulators; the Groceries Order rules about “price below cost”; judicial enforcement and co-ordination with the public prosecutor in criminal cases; international co-operation, and problems in the pharmacy and services sectors.

IX. Roundtable on Electronic Commerce

13. On the basis of eleven contributions, the Committee held a roundtable on Electronic Commerce. These contributions revealed that competition agencies are still in the early stages of sorting out the pro-
competitive efficiencies and the potential anti-competitive harm of electronic commerce. The Committee mainly focussed its discussion on the transaction side of e-commerce rather than on the infrastructure (i.e. access to the Internet) issues. Market definition, efficiencies, network effects, collusion and other co-ordinated effects, buyer power, vertical restraints, and ownership considerations were the main topics addressed. The Chairman’s summary remarks reflected current uncertainties about the actual competition effects of e-commerce. The Chairman also noted that e-commerce tends to increase the need for international co-operation among competition agencies. The Committee tentatively agreed to hold another roundtable on e-commerce once competition agencies have accumulated more experience in dealing with actual cases. A detailed aide-memoire on this discussion is circulated separately as an Annex to this summary record [DAFFE/CLP/M(2000)3/ANN3].

X. Other Business

Future CLP Roundtables

14. The Committee agreed to hold one roundtable discussion in May/June 2001, on Transparency and price information (does publishing prices and terms facilitate collusion or help consumers?). In addition, the CLP will have an exchange of information and experiences on training programmes organised by National Competition Authorities for their officials. The Committee also considered topics for its Autumn 2001 session, and decided to hold a roundtable discussion on Portfolio effects in Conglomerate mergers. If time allows for a second roundtable in Fall 2001, the Committee selected the topic on Access to Local Cable TV networks. However, at this point, the Committee did not excluded either to hold a second roundtable on electronic commerce and competition if Competition Agencies have accumulated meaningful cases, over the period. The Committee decided to revisit at its next meeting this question of a second roundtable at the Fall 2001 session. [An updated working document listing the topics for future roundtables has been put on OLIS since then, as DAFFE/CLP/WD(2000)56].

Meeting dates in 2001 and 2002

15. The Committee confirmed the meeting dates for 2001 as follows:

**February 2001**

Monday 12  Working Party No. 2  
Tuesday 13  Working Party No. 3  
Wednesday 14  
Morning: Joint Group on Trade and Competition  
Afternoon: CLP  

**May/June 2001**

Monday 28  Working Party No. 2  
Tuesday 29  Working Party No. 3  
Wednesday 30  Joint Group on Trade and Competition  
Thursday 31  CLP  
Friday 1st  CLP
October 2001
15 to 19 Sequencing to be determined

16. The Committee took note of the meeting dates for 2002:

February 2002
Week beginning the 11th

May 2002
Week beginning the 13th

October 2002
Week beginning the 21st