

Unclassified

English - Or. English

12 February 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Summary of Discussion of the Roundtable on Competition in the Circular Economy

Annex to the Summary Record of the 140th meeting of the Competition Committee

14 June 2023

This document prepared by the OECD Secretariat is a detailed summary of the roundtable discussion on Competition in the Circular Economy, held during the 140th OECD Competition Committee meeting on 14-16 June 2023.

More documents related to this roundtable can be found at
www.oecd.org/competition/competition-in-the-circular-economy.htm

Please contact Mr Antonio Capobianco if you have questions about this document.
[Email: Antonio.CAPOBIANCO@oecd.org]

JT03559673

Summary of Discussion of the Roundtable on Competition in the Circular Economy

1. Introduction by the Chair

On 15 June 2023, the OECD Competition Committee held a roundtable on competition in the circular economy, chaired by Professor Frédéric Jenny.

The Chair introduced the main topic of the roundtable, the circular economy, which refers to a system in which resources and input waste, emissions and energy leakages are minimized. This topic relates and expands the OECD's work on sustainability, which focused on examining how competition authorities can integrate sustainability considerations into their competition analysis and how competition policy and enforcement can support the green transition whilst remaining faithful to the consumer welfare standard. The Chair stressed that the notions of circularity and sustainability are related, but do not necessarily overlap, and he then presented the three main questions that would be later discussed: (i) the question of compatibility between the goals of competition law and the incentives and dynamics which are created by the circular economy; (ii) the role of competition policy in circular markets, asking whether competition naturally drives circularity; and (iii) the role of competition authorities and the theories of harm that arise in circular markets.

The Chair thanked the twelve delegations which had submitted contributions, and clarified that the discussion would be structured in three parts:

- An analysis of the suitability of the competition legal framework to integrate issues of economic circularity.
- A reflection on economic analysis, theories of harm and efficiency gains that arise in circular economy markets;
- And a discussion on the cooperation between competition authorities and policymakers, focusing on the role of other instruments in supporting circularity, such as market studies and competition advocacy campaigns.

The Chair introduced the four speakers who took part in the discussion:

- **Peter Börkey**, Circular Economy Lead at OECD Environment Directorate;
- **Benoît Durand**, Partner at RBB Economics;
- **Helen Gornall**, Partner Competition Law, De Brauw Blackstone Westbroek;
- **Herbert Hovenkamp**, James G. Dinan Professor, Penn Law & The Wharton School, University of Pennsylvania.

2. Background paper by the Secretariat

The Chair then thanked the Secretariat for its background paper, and asked Cristina Volpin, Competition Expert at the OECD Competition Division, to present its main findings for the Secretariat.

The Secretariat presented the example of lithium batteries and the technologies that are being developed to recycle their components as an example of the untapped potential in

decoupling productivity growth and resource consumption, transforming the linear economy into a circular one. The Secretariat then reminded participants that global demand and consumption of raw materials is expected to more than double by 2060, according to OECD data. Since some of these materials are sourced from a small number of countries, there is a higher risk that spikes in demand may unleash price spikes, shortages and supply chain disruption across the world. Circularity has the potential to shield supply chains from the volatility of these raw materials, and it presents huge economic potential thanks to the savings it can create for companies. Companies are indeed adopting circularity strategies to boost their savings and their revenue.

The Secretariat then observed that, since the circular economy is a system that maximizes the value of resources without depleting them and aims to extend their lives within the supply chain, it is fundamentally based on productive efficiency. For this reason, it is profoundly aligned with the objectives of competition policy. Competition enforcement can, for instance, promote circularity through industrial symbiosis and standardisation, enable the development of different circular economy business models, such as digital platforms to share underused assets or infrastructures and stimulate circular innovation. However, many of the features of the circular economy can also contribute to market power (e.g., natural monopolies, costly infrastructure, data collection or information exchanges). Therefore, competition authorities can play an important role in facilitating the transition towards a circular economy also through enforcement against anti-competitive strategies, market studies and advice to governments. Suitability of the competition legal framework to integrate issues of economic circularity

The Chair thanked the Secretariat for its background paper. He then asked Peter Börkey to introduce the sector of circularity.

Peter Börkey started his intervention by providing further context to the definition of the circular economy and describing the different circular business models. Regarding the origin for the need of circularity, the speaker stressed the growing demand for material resources and the doubling of global consumption by 2060. This growth in material consumption becomes problematic for two main reasons: its environmental impact and scarcity issues. In this regard, a very large share of greenhouse emissions is directly linked to material extraction. For this reason, environmental protection demands a curb in material consumption, which is the goal of the circular economies. Peter Börkey then explained that there are different approaches to circularity. The first of these is based on closing the material loop through recycling. A second approach aims to slow the throughput of materials through an increase in their lifespans. And a final approach consists in increasing asset utilisation rates. The speaker then clarified the role of firms in these approaches, which is sustained on the consolidation of circular business models.

In this regard, there are various circular business models that can be potentially adopted: (i) the resource recovery or recycling business model, which carries the challenge of ensuring the quality of the recycled product; (ii) the product life extension model, that aims to extend the useful life of products through refurbishing and remanufacturing; (iii) sharing models, which seek to share underutilised assets and increase their intensity, (iv) co-ownership of assets models, which differ from sharing models and are based core access to capacity; and (v) models based on the marketing of a service rather than a product. The speaker explained that scaling up can be very easy in these sharing models, and illustrated how policymakers are trying to boost circularity through pricing strategies that internalise environmental externalities. There are understandings that these policy frameworks should not favour incumbents, and there is also recognition of some potential undesirable anticompetitive effects of circularity that need to be addressed.

The Chair asked Helen Gornall to intervene and present her participation in a case before the Dutch Competition Authority relating an agreement between soft drink producers to reduce plastic consumption.

Helen Gornall discussed her advice to Coca Cola in a case relating to an agreement between soft drink producers to decrease the use of plastic packaging and improve its recyclability. She argued this is a case in which the connections between competition law and circularity become evident and serves to counter those negative examples in which sustainability initiatives among competitors led to cartel enforcement. One of the main challenges for circularity initiatives Gornall discussed was the first mover disadvantage, by which consumers might perceive the circularity changes as a decrease in quality or an increase in prices and therefore shift towards the products and services of competitors. To face this challenge, Coca Cola wanted to launch discussions with competitors to jointly implement the circularity strategy regarding plastic packaging for soft drinks. To avoid anti-competitive risks, the company consulted with the competition authority, which counts with case handlers that specialize in circularity and sustainability initiatives. The speaker added that the European Commission's horizontal guidelines (which include a chapter on sustainability) were also followed.

She then presented a series of reasons for which Coca Cola's initiative was accepted by the competition authority : (i) discussions with competitors were transparent and open, and always kept the authority on board; (ii) the circularity standards that were pursued were not imposed on competitors, they were simply incentivized allowing for the possibility to even go beyond them; (iii) no exchange of commercial information was permitted (unless that it was critical for the coordination of circularity measures); (iv) the outcome of the circularity strategy was open to all consumers and competitors, inviting all other manufactures to get on board; and most importantly (v) there was an assessment of potential increases in price and/or decreases in quality. The speaker ended her intervention by calling on competition authorities to expand their assessments beyond pure price considerations, considering other factors such as quality, innovation, sustainability, or products' lifespan.

The Chair thanked the speaker for her presentation of the case and asked her whether she agreed on the existence of a first mover disadvantage.

Helen Gornall clarified that in the case she presented, first mover disadvantage was not necessarily critical because consumer surveys proved that customers were willing to absorb the circularity measures. However, she stressed that in many other cases, first mover disadvantages are essential and that many times consumers do not account for the sustainability impacts of their purchases. Helen Gornall also clarified that in some other cases, there is a first mover advantage by which circularity measures can be pursued ahead of competitors.

The Chair then asked the speaker a second question regarding the Coca Cola case, inquiring about the consideration of efficiencies by the Dutch Competition Authority.

Helen Gornall replied that the consideration of efficiencies was two-fold: first, on the amount of plastic consumption that was reduced, and second, on the increase in recyclability. She highlighted that under the view of the Dutch Competition Authority, the global reduction in emissions is an important factor to consider, as consumers of soft drinks are global citizens. In this regard, circularity agreements that reduce greenhouse gas emissions can be clearly seen as beneficial, while the benefits of other types of circularity agreements are more subjective and need to be analysed on a case-by-case basis.

The Chair thanked Helen Gornall for her intervention, and asked Austria to present its horizontal agreement guidelines which make special reference to circularity.

Austria shared that its newly introduced legal test for horizontal agreements explicitly refers to ecological sustainability and climate neutrality. The Austrian legislator's notes also made special reference to the circular economy, including the promotion of recyclability and repairability. Austria has introduced a legal fiction in its law by which horizontal agreements are allowed when consumers are deemed to enjoy a fair of the benefits, as long as those benefits contribute to a an ecologically sustainable or climate neutral economy. In this regard, sustainability benefits must take place at the society level and be substantial, and this criterion replaces the regular or fair share consumer test that was previously applied.

The Chair invited Australia to present its system which authorises agreements that lead to a net public benefit.

Australia shared its commitment to achieve a circular economy by 2030. The delegate explained that the government is committed to transitioning into a more resilient and regenerative circular economy, in which the value and reuse of materials is maximised, and waste and pollution minimized. Within these efforts, the competition authority can authorize collaboration between competitors when their collaboration brings net public benefits, meaning that the sustainability benefit outweighs the competitive detriment. This test is different to the substantial lessening of competition test, since it goes beyond purely economic benefits. The delegate then presented two cases in which this authorization scheme has been applied, one referring to tyre recycling and another one to batteries. In the latter, the competition authority authorized the agreement on the basis of various public benefits: increasing public awareness of battery disposal and reuse, increasing collection and then recycling and reuse, and supporting increased innovation research and development.

The Chair asked Australia to clarify the criteria used in the case referring to tyre recycling.

Australia explained that the agreement in this case was authorized because it did not impose a mandatory scheme on industry participants, and therefore competition restraints were reduced.

The Chair then gave the floor to Japan about the modernisation of its guidelines on horizontal agreements for the realisation of a green society?

Japan highlighted that its competition authority (the JFTC) has long been involved in the promotion of a circular economy, and its guidelines on recycling agreements date back to 2001. The JFTC also conducts business consultations on the circular economy and sustainability, and in March 2023 published new green guidelines which aim to increase product predictability and transparency for enterprises regarding green activities and prevent anti-competitive conducts. These guidelines do not only cover joint activities, but also vertical restraints, mergers and monopolisation, and they will be periodically revised in the future.

The Chair asked the BIAC delegation to discuss its satisfaction with the guidelines that have been released by competition authorities.

The **BIAC** delegate called on competition authorities for further action on their guidance for businesses, which should be encouraged to easily recur to authorities for advice without the procedural challenges of filings.

The Chair asked Helen Gornall to share her thoughts on the delegations' interventions.

Helen Gornall praised competition authorities' efforts for guidance in the area of sustainability enhancing agreements, and reminded the importance of ensuring that companies are not using agreements for greenwashing purposes. She then stressed the need

for rapidity in the implementation of horizontal agreements, which is favoured by informal conversations between businesses and competition authorities.

The Chair then turned to Professor Hovenkamp to present the evolving discussion around sustainability and circularity within the context of antitrust enforcement in the United States.

Professor Hovenkamp explained that antitrust law in the United States primarily focuses on prohibiting restraints of trade, monopolization, and substantial lessening of competition. These laws do not specifically address environmental issues. There has been a fair amount of academic literature discussing the use of antitrust in sustainability and circularity efforts, but enforcement agencies, like the Department of Justice, have not been heavily involved. In this regard, the Department of Justice and the Federal Trade Commission (FTC) have not taken significant initiatives related to sustainability and circularity within antitrust enforcement. The agencies' primary focus has been on traditional antitrust matters, and there has been little movement toward expanding their roles in sustainability. And while there is interest in using antitrust to promote sustainability, the courts in the United States have been cautious about broadening the scope of antitrust laws beyond their traditional applications. Courts tend to focus on maintaining antitrust within its established boundaries.

Professor Hovenkamp then presented case involving the Net Zero Insurance Alliance, where a group of insurance companies pledged not to invest in non-climate-compliant firms. Some state attorneys general raised concerns that this agreement might violate antitrust laws. The outcome of such cases is uncertain and largely untested. Beyond this case, the Professor explained that antitrust attitudes toward resource savings and efficiency are evolving. There is a need to consider resource-saving practices, such as circular economy efforts, as part of antitrust evaluations. He also suggested that both extreme right-wing and left-wing positions on efficiency should be avoided. Instead, a balanced approach should be taken, considering the impact on resource savings and the environment. Furthermore, he recommended conducting more empirical studies to understand the nature and necessity of resource savings and how they relate to various business practices. Such research can help shape antitrust policies and considerations related to sustainability and circularity.

The Professor concluded by stating that the U.S. antitrust landscape is gradually addressing sustainability and circularity issues, but there is still a need for more research, policy development, and potential adjustments to antitrust enforcement practices to fully integrate these concerns into the framework. The tension between antitrust enforcement and environmental goals remains an ongoing debate and challenge, and Professor Hovenkamp stated that the US remains behind all other jurisdiction on this front.

3. Economic analysis, theories of harm and efficiency gains in circularity markets

The Chair invited Benoît Durand to share his insights from a case that covered theories of harm and an economic analysis for circularity markets.

Brazil explained that the maximum price suggestions were made individually to the gas stations, which cannot fully understand how these suggestions are made to other resellers. This would avoid coordinated effects.

The Chair then asked Spain to present the PROPTECH case, an ex officio investigation launched by its competition authority (the CNMC) on algorithmic price fixing.

Benoît Durand introduced the AURUBIS/METALLO case, which involved copper recyclers, and discusses the theories of harm and analysis of efficiencies in the context of circular economy markets? He explained that AURUBIS is the largest integrated copper producer in Europe, while METALLO is a significant copper scrap refiner. The circular economy in metals, particularly copper, has been growing due to technological advancements enabling the recycling of metal scraps. The European Commission conducted an in-depth investigation into the merger, and initially, it considered various theories of harm but ultimately focused on the monopsony power theory. The concern was that after the merger, the combined entity would have substantial monopsony power, leading to reduced prices for copper scraps. The theory of harm extended to suggest that lower scrap prices could increase the cost of production for industries selling scrap, leading to cost increases passed along the supply chain and ultimately affecting consumers. The Commission cleared the merger but highlighted that the share of purchases may have been overstated in the initial assessment. However, it retained the theories of harm.

Additionally, Benoît Durand briefly mentioned another case, Norsk Hydro/Alumetal, which also involved metals and the circular economy. Norsk Hydro produces aluminium foundry alloy (AFA) from primary materials, while Alumetal produces AFA from recycled material. The Commission investigated whether Alumetal, a leading AFA producer from recycled materials, could become a strong competitor. Concerns centred around a "green killer acquisition" scenario, where a traditional AFA producer like Norsk Hydro might acquire Alumetal and potentially stifle a competitor with strong environmental credentials. The Commission explored theories of harm related to customer preferences for low-carbon footprint materials, especially in the automotive sector. Ultimately, the Commission cleared the merger by concluding that there were other environmentally friendly materials producers developing similar products.

The speaker concluded that these cases highlight the complex considerations involved in assessing mergers within the circular economy, where competition, environmental impact, and innovation all play significant roles in the analysis.

The Chair thanked Benoît Durand for his intervention, and asked Italy to discuss the theories of harm it has used in cases regarding circularity in waste management and recycling.

Italy discussed five cases focusing on simultaneously ensuring competition and sustainability. In these cases, different theories of harm were applied. In cases like CONAI and CORIPET, the Italian Competition Authority investigated allegations of abuse of dominance by incumbent waste management consortia. These consortia had historically held a dominant position in collecting fees and managing recycling processes. The authority's concern was that these incumbents were using their dominant position to engage in anti-competitive practices. These practices included blocking authorization for new entrants and engaging in exclusionary deals with local municipalities to prevent entrant consortia from gaining access to waste streams. In the Erion case, the Italian Competition Authority looked into allegations of price discrimination. The consortium was suspected of applying a most favoured nation clause and requiring worse conditions for its members compared to what they offered to entrant consortia. This price discrimination could hinder competition by putting entrant consortia at a disadvantage. In cases like COBAT, structural issues within the consortium were examined. The fact that some consortia had both producers and recyclers as members raised concerns. The authority considered these structural barriers to competition because they could potentially limit the ability of new entrants to compete on an equal footing.

The delegate also explained that the Italian Competition Authority faced the challenge of ensuring a smooth transition from a monopolistic consortium-based system to a

competitive one while also promoting sustainability and circularity in waste management and recycling. To address these challenges, the authority employed various approaches. In some cases, the authority accepted commitments from the parties involved. These commitments were aimed at removing regulatory or structural barriers that hindered competition. Accepting commitments provided a way to address the issues without resorting to fines or lengthy legal proceedings. In cases where anti-competitive practices were confirmed, fines were imposed to deter such behaviour and ensure that competition was not hindered. The authority recognized the importance of fostering sustainability and circularity in the waste management and recycling sector. While addressing competition concerns, they also aimed to incentivize innovation and sustainability.

Italy concluded its intervention by stating that the competition authority will stay active to ensure that waste recycling processes run smoothly, and that despite its help towards liberalisation efforts, a consortium approach still prevails.

The Chair then asked Spain to present the Ecoembes case and its resolution.

Spain presented a comprehensive overview of competition-related issues in the waste recycling and electric vehicle charging infrastructure sectors. In the context of waste recycling, they discussed an ongoing case involving Ecoembes, a dominant player in the collection and recycling of packaging waste in Spain. The case focused on concerns related to anti-competitive practices and barriers to entry for recyclers. The delegate highlighted several problematic aspects of the recycling market, including the requirement for recyclers to obtain certification from Ecoembes to participate in tenders. This certification, which was not a legal requirement, appeared to create artificial barriers to entry and hinder competition. The Spanish competition authority took interim measures to address these issues, including introducing greater transparency in tender procedures, third-party audits for certification, and limits on the amount of waste that could be awarded to a single recycler.

In addition to discussing their enforcement actions, the Spanish delegate emphasized the importance of integrating sustainability considerations into competition analysis. They mentioned a market study on packaging waste management, which revealed various concerns from stakeholders, such as packaging companies facing imposed conditions by waste management monopolists and public administrations dissatisfied with their relationships with certain monopolists. These concerns highlight the need for competition authorities to consider sustainability and environmental factors in their assessments. Furthermore, the delegation provided insights into another ongoing market study concerning electric vehicle (EV) charging infrastructure. As governments promote the adoption of EVs to reduce carbon emissions, it is essential to ensure fair competition in the emerging EV charging market. The study aims to identify competition risks associated with market structure, business practices, and administrative interventions in the EV charging sector. The Spanish delegate concluded that public authorities must ensure the proper functioning of the new market of electric charging services.

The Chair then invited Latvia to discuss the CleanR Grupa/Noma case.

Latvia explained that this case focuses on construction waste management services, and that the Competition Council of Latvia examined the definition of the relevant market, market shares, and the impact of the merger on competition and consumer benefits. The relevant market was defined as the construction waste management market in Riga and its suburbs, which included the collection, transportation, sorting, and processing of construction and production waste. The geographic market was identified based on the competitive landscape and the ability of service providers to offer equivalent prices within a 30–33-kilometer radius of Riga. The merger raised concerns that the combined market

shares of the merging parties could potentially lead to dominance in the relevant market. The Competition Council considered both current and future market conditions in its assessment. The merger was expected to reduce the competitiveness of smaller market players in the short term and limit customer choice. However, the Latvian competition authority also identified several benefits resulting from the merger, leading to its clearance. These benefits included: (i) increased demand; (ii) capacity expansion; (iii) technological advancements; (iv) comprehensive service; and (v) environmental benefits. The delegate concluded that the clearance was based on the fact that a more environmentally friendly construction waste management system would be incentivized.

4. Advocacy activity

The Chair stressed that while many of the cases presented relate to the issue of organizing competition in the circularity sector, many other competition authorities are equally active in non-enforcement initiatives. He then invited Hungary to elaborate on its option to conduct accelerated market studies in the circularity sector, which has been applied recently in two cases.

Hungary explained that its competition authority has conducted market studies and sector inquiries in two areas: insulation materials and wood materials used in construction. These inquiries aimed to assess market conditions, competition dynamics, and the role of sustainability and circularity considerations. In the insulation materials market study, it was found that while undertakings were beginning to incorporate sustainability and circularity into their practices, there was room for improvement. The Hungarian Competition Authority recommended that manufacturers integrate waste into their production systems to reduce costs and achieve circularity at earlier stages of the supply chain. Furthermore, the delegate explained that the Hungarian Competition Act includes two exemption clauses related to circular economy principles: (i) an environmental protection exemption (agreements achieving waste reuse or resource efficiency in the production of insulation materials may benefit from this exemption); and (ii) a public interest exception (if a merger restricts excessive extraction of wood materials, aligning with sustainability and circularity goals, it may be cleared under this exception). The delegate noted that these theoretical links between competition law exemptions and circular economy objectives have not yet been applied in practice. However, they highlight the potential role of competition law in promoting sustainability and circularity throughout a product's lifecycle.

The Chair then invited Romania to explain its use of the advocacy power to advise the government on a deposit return system, focusing on the competition challenges that were detected.

Romania explained that its competition authority provided advisory input to the government regarding the creation of a deposit return system (DRS) for recycling plastic, glass, and metal bottles. The DRS aimed to help Romania meet its waste management targets as required by EU regulations. The delegate presented a series of key competition challenges and the authority's recommendations. First, regarding merger assessment, the authority assessed whether the creation of the DRS entity, called RetuRO, constituted a notifiable merger under the Merger Regulation. Based on the share structure and voting rights, it was determined that the conditions for acquiring control in a fully functional joint venture were not met. However, the authority reserved the right to reevaluate the situation if the share structure changed in the future. Second, the authority also recommended that the government to not grant an unlimited licensing period to RetuRO, the monopolistic company responsible for managing the DRS, since it could potentially block access to competitors and distort normal competition in the market. And third, the authority

recommended implementing a black box data management system to ensure that sensitive data would not be misused or compromised. Ultimately, the Romanian Competition Authority's involvement in advising the government on the DRS was aimed at ensuring that the system would meet sustainability goals without creating anti-competitive effects.

The Chair asked France to share the opinion that its Competition Authority provided to the Ministry of Economy regarding the amendment bill of the requirements for producer responsibility schemes in recycling of household packaging.

France presented the key aspects of the opinion and advice provided. First, regarding eco-exclusivity, the bill granted eco-organisations exclusive rights for the take-back of specific plastic waste categories, which were necessary due to significant required investments in recycling infrastructure. The authority considered this exclusivity necessary in the short and medium term, but it recommended imposing a time limit on these exclusive rights, which would be valid until 2029. Furthermore, the bill introduced a mechanism for distributing obligations across eco-organisations based on their respective upstream market shares. However, the authority raised concerns that this mechanism might further strengthen the dominant position of the most significant player in both upstream and downstream materials markets, creating an imbalance. To address this, the authority recommended limiting freedom of contract to eco-organisations with market shares below 50% to prevent potentially restrictive competition effects. Lastly, the delegate explained that the Authority emphasized in its opinion the importance of reviewing contracts between eco-organisations and eco-companies by an independent body to mitigate any competition concerns in the market.

The Chair turned to Canada to present the activities of its Competition Bureau in advising the government on regulation action to support the circular economy.

Canada explained that its Competition Bureau has played an active role in advising government on policies and regulations to support the circular economy, particularly by addressing barriers to competition. Regarding some value retention processes, the Bureau has identified barriers impeding increased participation by independent firms in value retention processes. These barriers included limited access to information and spare parts, which affected competition in sectors involving product repairs and maintenance. Furthermore, the Bureau has recommended or encouraged several measures to governments aimed at enhancing competition among independent firms and original equipment manufacturers (OEMs) while respecting OEMs' legitimate business interest, including pro-competitive policies, measures ensuring consumers have access to essential product information, such as the minimum product lifespan, provided before purchase and amendments to the Copyright Act to introduce exceptions for repairs in the technological protection measure framework. The delegate also presented the Bureau's consumer information campaign, which focused on the right to repair, and the two bills that have been introduced to amend the Copyright Act.

The United States took the floor to clarify that it had not prepared a submission for this roundtable, thanked all previous speakers and noted that Professor Hovenkamp did not speak for the United States delegation.

5. Concluding remarks

The Chair noted the wealth of cases (either on mergers or agreements for the organization of the circular economy) in which competition authorities have intervened, and he shared the learning that jurisdictions can apply public interest or public benefit tests, by which efficiencies can be considered beyond narrow in-market considerations. He then presented

the three main types of cases that had been discussed: those on users of recycled materials, those in which organization (regarding waste treatment) is the problem and those in based on collaborative agreements. Furthermore, recycles themselves may expel competitors. The Chair highlighted the active role of authorities in advising governments in the regulation of circularity agreements, focusing on their need for short-term enforceability. He then asked the speakers for their concluding remarks.

Professor Hovenkamp acknowledged that he was speaking on his behalf and not representing any specific agency. He discussed the fundamental challenges in industrial organization related to the circular economy, emphasizing the need for empirical studies in this area, particularly considering the social cost of waste. He mentioned a past report on the Robinson-Patman Act, which estimated significant social costs related to waste and suggests the importance of revisiting such studies, and also commented on the limitations of the 2010 US merger guidelines, particularly regarding efficiencies, arguing that they focus too narrowly on reducing prices to pre-merger levels as a measure of efficiency, neglecting other costs related to waste and inefficiency that do not directly impact product prices. Lastly, he encouraged a broader consideration of efficiencies in merger cases and reiterates the need for further economic research in this complex area.

Benoît Durand provided insights on the importance of considering efficiencies in the context of mergers related to the circular economy. He noted that while some mergers may raise concerns about impeding effective competition, they can also result in significant supply-side efficiencies. He then identified two layers of efficiencies: (i) operational efficiencies, citing the AURUBIS/METALLO, where the merger allowed for the redistribution of waste materials across different locations, reducing logistical costs; and (ii) technological advancements, which are extremely important for the circular economy (particularly in the metals sector). The speaker also highlighted the positive environmental impact of the circular economy, particularly its effect on CO2 emissions. Ultimately, Benoît Durand encouraged competition authorities to carefully assess the trade-offs and impacts on CO2 emissions in the context of merger control.

Peter Börkey stressed that most of the interventions had only focused on one of the business models that he had presented, probably because historically it is where the circular economy has focused. However, he pointed to alternatives geared towards more upstream retaining value at the level of product repairs (in a similar line to Canada's intervention). He explained that it is from these alternatives that most efficiencies can be derived from an environmental standpoint, and he then reinforced Professor Hovenkamp's call for more empirical studies to assess the social costs of wates and the life cycles that can be expanded through circularity.

The Chair thanked all expert speakers for their participation.