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10 years on from the Financial Crisis: Co-operation between Competition Agencies and Regulators in the Financial Sector

Summaries of Contributions

4 December 2017

This document reproduces summaries of contributions submitted for Item 3 of the 64th meeting of the Working Party No 2 on Competition and Regulations on 4 December 2017.

More documents related to this discussion can be found at

www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm

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10 years on from the Financial Crisis: Co-operation between Competition Agencies and Regulators in the Financial Sector -- Summaries of Contributions --

This document contains summarises of the various written contributions received for the discussion on Co-operation between Competition Agencies and Regulators in the Financial Sector Price Discrimination (64th meeting of Working Party 2 of the Competition Committee meeting, 4 December 2017). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

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Argentina

In the case of Argentina, since the appointment of its new authorities in February 2016, cooperation between the National Commission for the Defense of Competition (CNDC) and the Central Bank of the Argentine Republic (BCRA for its Spanish acronym) has been intense and very productive. Moreover, this cooperation has been useful for the three main areas: a) Advocacy department: Study of the market of credit and debit cards and electronic payment systems; b) Mergers department: Acquisition by Prisma Medios de Pago S.A. (hereinafter "PRISMA") of Banelco S.A. (hereinafter "BANELCO"); and c) Antitrust department: Investigation for abuse of dominant position against PRISMA and for collusion of its shareholders. In all three cases, cooperation with the BCRA was crucial to help the CNDC in its decision making process, as it helped understanding the technical details of the workings of the market; designing and implementing pro-competitive regulatory changes; and assessing the potential impact of the remedial measures on the market.

In the market study, the CNDC worked in collaboration of the BCRA during all stages of the investigation. This close interaction explains why the CNDC's recommendations, although non-binding, had a real impact on the market. Since the issuance of the recommendations, the BCRA has implemented several measures oriented to promoting competition, such as: a) setting new rules forcing the banks to provide all their clients with systems to pay through immediate transfers from their savings or current accounts; b) setting maximum values for the interchange fees for credit and debit card transactions; c) reaching an agreement to gradually reducing the merchant discount fees; d) promoting the issuance of licenses to allow other companies to acquire the Visa brand.

As regards the merger case, the BCRA explicitly stated that improving competition in the market from electronic payment systems was one of its main objectives. Although the view of the central bank was that the competitive impact of the operation was hard to predict, the authorities commit themselves to cooperate in order to monitor the evolution of the market and its regulation.

Finally, cooperation with the BCRA also referred to the settlement agreement offered in the context of the antitrust investigation. The BCRA suggested that the agreement could include a reference to exclusivity in the acquiring market and to the fact that the company should operate in multi-acquiring context and limit promotion of exclusivities. In addition, it also explained the need to reduce barriers to entry to new providers of payment systems (in particular, their access to the bank account balances), so that they be able to compete on the provision of immediate transfer services.

Australia

In recent decades, particularly following the start of the global financial crisis, regulation of the Australian financial system has focused on promoting and safeguarding financial stability and mitigating risks. Notwithstanding its emphasis on stability, Australia's financial regulatory framework is also evolving to increasingly account for competition objectives. In 2013, the Australian Government established the Financial System Inquiry (FSI) to examine the nation's financial system. The FSI recognised the importance of competition for the financial system, and made recommendations accordingly. In response, the Australian Government and regulators have increased their focus on competition. For example, the Government recently tasked the Productivity Commission with conducting an inquiry into the state of competition in the financial system. It also provided the Australian Competition and Consumer Commission (ACCC) with funding to establish a specialised unit to undertake regular inquiries into competition issues in financial markets. Throughout this process, the ACCC and financial regulators have begun to increasingly engage with each other and coordinate their approaches on competition objectives.

The ACCC considers the Australian regulatory set-up affects its antitrust work in the financial services sector in two key ways: 1) an antitrust issue it investigates may be a symptom of the regulatory environment, rather than a result of any specific anti-competitive behaviour; and 2) advancing an antitrust case may depend on obtaining information from or cooperating with an overseas regulator. With respect to the latter, the ACCC considers it essential to develop a global regulatory framework that facilitates effective cross-jurisdictional engagement, particularly between competition and financial regulators. Therefore, a key recommendation of the submission is reforming international arrangements to enhance their capacity to work together to progress antitrust cases. The ACCC supports inviting appropriate groups to identify shared objectives and explore methods of enhancing cooperation among regulators.

Canada

The Competition Bureau (Bureau) participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace to complement its law enforcement activities. The Bureau launched a market study into technology led innovation in the Canadian financial services (FinTech) sector in May 2016 and in February 2017 hosted a one day workshop to provide a forum for market players, regulatory authorities and policymakers to engage directly in a discussion about how best to ensure that Canada's FinTech sector delivers competitive benefits to the marketplace. Following the workshop, and extensive stakeholder consultation, the Bureau released its report for public comment in November 2017.

The study explores the competitive impact that FinTech is having on the financial services industry, barriers to entry faced by companies, and whether there is a need for regulatory reform to promote greater competition while maintaining consumer confidence in the sector. The report provides 11 broad recommendations to financial sector regulators and other relevant authorities on how to ensure that regulation does not unnecessarily impede innovation and competition in the sector.

The contribution provides a summary of the Bureau’s market study report.

*Denmark**

The Danish Competition Council recently published a sectoral inquiry into the Danish mortgage market. In addition to a high degree of concentration and high barriers to entry, it identified that financial regulations had indirect anti-competitive effects that increased prices for consumers and allowed large financial institutions to remain less efficient than they might have been.

For example, allowing large institutions to use IRB-models to assess capital requirements made it more difficult for efficient entrants to compete since they were unable to use IRB (internal ratings based) models and had to use the standard approach. The European Union's Capital Requirements Regulation also allowed investors to use large mortgage bonds to meet their liquidity coverage requirements. This increased the demand for large mortgage bonds, which only the largest institutions could assemble, thus giving them a cost advantage over efficient smaller institutions.

A third example is that benchmark caps on mortgage institutions were also introduced by the Danish supervisor. For example, no firm can have more than 25 percent of its loans with a loan-to-value ratio of 75 percent and an interest rate fixed for less than two years. Since there is transparency on how close rivals are to these benchmarks, a firm knows when its rivals are unable to accept consumers that might want to switch away if it increases its price. Combined with a concentrated market this therefore reduces price competition.

Given these examples, it therefore seems that there are instances where financial regulators do not take the implications on competition into consideration. It is therefore worthwhile considering whether the goals in regards to financial stability could be met in ways that do not impede competition.

EU

The European Commission is very active in promoting effective and undistorted competition in financial services. It uses antitrust enforcement, state aid and merger control to address anti-competitive conduct and to ensure efficiencies and free and equal access to financial services. While the financial crisis fundamentally challenged models of regulation and oversight in the financial sector, in the EU the application of competition rules, including State aid rules, were crucial for recovery. Since the crisis, the Commission applied State aid rules to numerous national measures supporting financial institutions, ensuring that the level playing field between aid recipients and their competitors is maintained: State aid control has forced the financial sector both to restructure and to share the burden of its rescue with taxpayers State aid rules also limit the amount of public funding of failed financial institutions, requiring shareholders and hybrid capital holders to participate in restructuring costs. Burden sharing measures shall help to curtail moral hazard.

Competition rules and regulation in financial services have to ensure undistorted competition and, in State aid, financial stability through protection of the financial interests of investors and depositors. In addition there is complementarity with the Commission's priority to create a genuine single EU capital market (Capital Markets Union) as part of a deeper and fairer internal market. The CMU shall address the fragmentation in EU financial services, where significant differences persist in financing conditions and market practices.

In the EU, the interaction between competition and regulation in financial services has to be considered in this context of further market integration. EU financial regulation is used to resolve systemic and structural problems of stability, to further market integration and to open up financial markets to competition. While this reduces the risk of competition issues, competition enforcement is necessary to ensure that markets are well-functioning, that all companies compete fairly on the merits and that companies do not circumvent sector rules.

EU financial regulation seeks to address all these key policy objectives simultaneously. For example, the Markets in Financial Instruments Directives (MiFID and MiFID II) aim at creating an integrated financial market, market stability through effective protection of investors, improved transparency and oversight, and enhanced competition for investment services and trading venues.

Competition enforcement addresses the harmful behaviour of market participants operating within this framework. At times, this enforcement may itself trigger new financial services regulation. EU competition policy and advocacy also ensure that the evolution of financial markets does not lead to structures that allow individual undertakings to harm market participants.

The European Commission thus uses competition law and policy in two ways to promote a pro-competitive Internal Market in financial services: enforcing EU competition law and promoting the integration of pro-competitive measures in legislative initiatives.

Finland

In Finland, the competition authority is exclusively and independently responsible for competition law enforcement in antitrust cases and mergers relating to banking and financial services. The role of financial regulator is a consultative one but still very important.

The concrete Finnish cases demonstrate that in banking competition matters, it is not automatically a ‘competition authority versus financial market authority’ situation. Borderlines can be somewhere else. Rather, it seems that competition and financial authority have shared same concrete philosophy on competition, arguing for more market-based solutions than regulatory ones.

The FCCA believes that it is possible to implement both regulatory and competitive framework that delivers a financial system being both stable and efficient. It is possible to design regulatory systems which simultaneously support competition and stability objectives. Benefits of competition should not be sacrificed for the sake of banking stability when other prudential tools are also available.

New entrants and product innovations in the banking sector means new regulatory challenges. An open and honest co-operation between competition authorities and financial market regulators is central to meet these challenges.

Hungary

The contribution of the Hungarian Competition Authority (GVH) discusses the cooperation between the competition authority and the financial regulators in Hungary since the financial crisis. The focal points of the contribution are the efforts undertaken by the GVH to analyse competition problems in the financial sector, to propose regulatory changes if necessary and to use its competition law toolbox to enhance competition in the industry.

First, the contribution describes sector inquiries that have been conducted in relation to financial services, and also a sector inquiry that is currently ongoing. The GVH analysed the question of customer mobility in retail banking, and identified several factors that distorted competition on the market (unilateral modification of contracts, high switching costs, etc.). The competition authority made legislative proposals to address these issues, and the Parliament amended the relevant regulation, incorporating the proposals of the GVH. In its sector inquiry into the building society market the GVH also identified a number of shortcomings of the sector-specific regulation, and made proposals to remedy them. The GVH is currently conducting a sector inquiry into the market of card acceptance. The GVH noticed that smaller traders faced less favourable service fees than larger traders on the market of cash-substitute payment instruments, i.e. the market of accepting bank cards when initiating and maintaining payment with them, and decided to launch a sector inquiry to analyse the market.

The contribution also deals with the competition enforcement and regulatory measures that have been taken in connection with the bank card and insurance market. Significant cooperation between the GVH and the regulators has been taking place regarding the bank card sector, materialising in joint efforts to make regulatory proposals with respect to interchange fees and to enhance competition on the market. The contribution also details the discussions that have taken place between the GVH and the regulators with respect to a database concerning Motor Third Party Liability (MTPL) insurance contracts.

Finally, the contribution discusses an enforcement proceeding with respect to an anticompetitive concerted practice of banks aimed at limiting the full prepayment of foreign currency loans in Hungary.

India

Financial sector is the backbone of any economy considering that a healthy financial sector is expected to support the economy and stimulate growth. In India, independent financial regulators regulate the key financial areas of banking, capital markets and commodities markets, insurance, and pension funds. These financial regulators are mandated to not only regulate the concerned activities but also to work on development of the sector which leads to overlaps in their functions and those of the competition regulator, i.e., the Competition Commission of India (CCI).

This interface between the competition regulator and the financial regulators to some extent has been captured in the Competition Act, 2002 (Act) in accordance of which the CCI has been set up.

Though India is a mandatory merger notification regime, the Act exempts share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement from the review process. However, the other provisions relating to anti-competitive agreements and abuse of dominance apply in entirety to the financial sector.

Section 49 of the Act provides that Central Government (of India) (GOI) or State Governments, may, in formulating a policy on competition (including review of laws related to competition) or any other matter, make a reference to the Commission for its opinion on possible effect of such policy on competition. CCI, GOI and financial regulators have engaged with each other in accordance with the referral framework provided in the Act particularly in relation to the issues in the Indian banking sector. The financial regulators have attempted to gain exemption from the application of merger review provisions of competition law for their respective sectors. The CCI, while considering such requests have engaged with the stakeholders and considered such requests positively in cases which demand an urgent action for preserving the financial stability such as failing banks. However, the GOI, considering the scale of bad loans has decided that its priority for the time being is to ensure financial health of the sector and in accordance with the same objective exempted certain other categories of bank mergers from application of competition law. Considering that banking sector is saddled with non-performing assets and may not be characterized by effective competition, this approach also has a lot of merit and in fact may be considered as a competition driver. Further, the fact that the exemptions have been given only for the mergers and acquisitions and CCI continues to look into anti-competitive agreements and unilateral conduct cases, the exemptions are more likely to do more good than harm.

Apart from the issue of exemptions to financial sector, as detailed above, CCI has been engaged in providing comments on legislations and undertaking competition assessment of existing legislations *suo moto* such as review of Financial Resolution and Deposit Insurance Bill, 2017 relating to resolution of failures of financial service providers and the securitization law called as Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi). The experience of CCI in this regard has been good with its concerns being addressed in the bill relating to resolution of insurance companies. The recommendations on Sarfaesi are under review with the GOI at this stage.

Israel

The financial market in Israel is supervised by three main financial regulators (The Banking Supervision Department in the Bank of Israel, The Capital Market, Insurance, and Savings Authority, and the Israel Securities Authority). The allocation of the relevant regulator who supervises each institution depends on the institution legal status and the business that is performed by the institution. In addition to these regulators, the Israel Antitrust Authority (hereinafter "IAA"), among other regulators, supervise certain aspects of the financial sector. While the financial regulators mainly focus on the stability and soundness of the financial sector, the IAA focuses on its competiveness. These two different points of view often lead to tension between the IAA and the financial regulators that need to be discussed and resolved.

The characteristics of the activity in the financial sector influence greatly on the entry and switching barriers, which are considered high. The main entry and switching barriers are: (i) the need to comply with many regulation directives, (ii) economies of scale, (iii) asymmetrical information between different financial providers and between the customer and his current provider and (iv) the need to establish reputation in order to attract new customers.

In Israel, the financial sector market structure constitutes another major entry barrier. About 95% of the banking system's assets are controlled by five banking groups; the sole three credit card companies are subsidiaries of the three largest banks; and the two companies which are in charge of clearing payments, credit cards and transactions among the banks are co-owned by the largest banks.

The IAA's involvement in the banking services sector is reflected in two main ways: (i) advocacy, which includes participation in governmental committees, performing governmental consultations and initiating market studies, and (ii) core antitrust activities, i.e. examining the competitive impacts of mergers and restrictive arrangements.

In recent years, the IAA has greatly succeeded to reduce the entry and switching barriers derived from regulation and asymmetrical information, and to improve the financial sector market structure. These successes were achieved through the IAA's participation in the governmental Committee for Increasing Competition in Banking and Financial Services in Israel; the IAA's governmental consultation in the mortgages sector; the IAA's initiated market study in the trade market and through the examination of Automated Bank Services Ltd. restrictive arrangement.

The IAA's successes in reducing the entry and switching barriers are the direct result of the IAA's ability to execute its authority while establishing strong relationships with the financial regulators and while inducing them to instill competition considerations among their other considerations.

*Italy**

In 2005, antitrust enforcement in the banking sector (mergers, cartels and abuse of dominant positions) was transferred from the Italian Central Bank to the Italian Competition Authority (AGCM). As a result, mergers and acquisitions are now separately assessed by the two entities. In cases of conflicts between competition and financial stability the Central Bank of Italy can ask AGCM to authorize an otherwise anti-competitive transaction for the purposes of the financial stability of one or more of the parties involved, provided that the authorized transaction does not impose restrictions on competition which are not strictly necessary for the pursuit of financial stability.

After the 2008 financial crisis, regulatory supervision was strengthened in order to ensure the stability of the financial system and sound and prudent management of intermediaries. Since the crisis, a focus of the AGCM's advocacy efforts has been corporate governance reform. It has also conducted sector enquiries that revealed low customer mobility deriving from consumer inertia, high switching costs as well as lack of transparency from sector operators, making very difficult for customers to compare and assess products/services. In particular, it identified that mere compliance with transparency provisions was not always sufficient to achieve "substantive" transparency, especially when dealing with financial intermediaries. It therefore made several recommendations to improve transparency and product comparison and facilitate consumer switching. These have been adopted by the Central Bank.

In regards to consumer protection, the Italian institutional framework involves a "dual" system for the supervision on the transparency and correctness of operators in banking, financial and insurance sectors. The AGCM has a cross-cutting role in protecting consumers across the economy, in addition to the regulators surveillance on behalf of investors/savers. Given this institutional architecture, AGCM has agreed several cooperation agreements or protocols with financial regulators over the last few years with the aim of promoting efficiency and consistency of administrative action, as well as minimizing the burdens on financial intermediaries for the exercise of surveillance activity.

Lithuania

In addition to the co-operation agreement signed in June 2016 between the Council of the Republic of Lithuania and the Bank of the Republic of Lithuania, there are a number of Lithuanian legal provisions providing a framework for such a co-operation. For example, the Law on Competition foresees that an expert opinion from the Bank of Lithuania has to be submitted to the Competition Council together with a notification about the planned merger. Although this legal provision has been implemented in practice, the Project on the Amendment of the Law on Competition proposes to delete it from the aforementioned law. Such an amendment basically aims at reducing the administrative burden on the side of the undertakings and explains that there are other legal provisions in the Law on Competition that still guarantee the right of the Competition Council to request and to obtain relevant information if needed. As regards the enforcement of competition law, the co-operation between the Competition Council and the Bank of Lithuania is mostly visible in merger control. Yet, the Competition Council also dealt with (alleged) anti-competitive agreements in the financial sector, which are worthwhile mentioning. Finally, the co-operation between the Competition Council and the Bank of Lithuania is also relevant in the ongoing investigation on the alleged abuse of a dominant position, since the commitments offered by the dominant undertaking directly refer to compliance with the Best Practices announced by the Bank of Lithuania

Mexico

By the end of 2013, the Mexican government passed several structural reforms in key sectors, including the financial sector, as part of a wider strategy to promote economic growth in the country. The reform in the sector had a four-pronged approach: 1) by fomenting credit through Development Banks; 2) by increasing competition; 3) by expanding private financial institution credit and 4) by ensuring financial sector solidity and prudence. For the first time, the strengthening of competition was explicitly considered in the sector agenda as a paramount element for developing a stable, transparent and efficient financial system.

Through this Reform, several laws were changed aiming at ensuring access to financial services under competitive and favorable conditions. Among the amendments, financial authorities and regulators were empowered to further intervene when competition conditions in their respective activities were at stake. However, as this contribution broadly describes, tensions between the criteria established in the competition law and the new financial regulations arose, reaffirming the need for greater cooperation and coordination between Cofece and key authorities, such as the Central Bank, the Ministry of Finance and several financial regulators, to oversee and promote competition in the sector.

In pursuing the objectives of the Reform, Cofece was mandated to conduct an evaluation of the state of competition within the sector. In July 2014, the Commission presented the "Market study and recommendations regarding competition conditions in the financial sector and its markets", which included 36 recommendations in five key aspects, to improve competition in the sector and/or enforcement of the competition law. In particular, the recommendations aimed at enhancing competition and address low mobility of users in the markets; and to address lack of incentives of financial intermediaries to attract customers through quality, innovation and low prices.

This contribution provides a broad overview of the system of cooperation and coordination between Cofece and financial authorities, the formal and informal devices, and possible conflicts between policy objectives, since the Financial Reform. The second part further elaborates on the major findings of Cofece's 2014 market study and main policy recommendations, providing a brief report about the progress in its implementation. The last part contains examples of competition enforcement cases, where the competition authority has interacted with financial regulators to promote competition in the financial sector..

Netherlands

The Netherlands Authority for Consumers and Markets (ACM) frequently engages with regulators in the financial services sector. Our objective is to ensure that the general interest of competition is balanced fairly and sufficiently against other general interests in the regulatory framework. We describe a few common themes we experienced while co-operating and interacting with financial sector regulators. First, promoting competition often coincides with, or does not stand in the way, of financial stability. By pointing this out, we were able to get support from policy makers and financial regulators. Second, sector regulators may have an advantage in terms of resources and available information compared to the competition authority, which may unintentionally result in an overemphasis on the interest that the sector regulator represents. One option to solve this asymmetry is to enable free exchange of information. The asymmetry may also exist on international level. There is not always a natural platform to discuss competition issues on the European level.

Underlying these common themes are two issues. The first is that policy makers are trying to reach a large number of objectives at the same time. Regulations often introduce supervisory tasks for more than one regulator, which creates coordination challenges and the risk of less transparency. The second issue relates to the fact that regulation of financial markets is by its very nature highly political. Once a topic becomes politically charged, co-operation tends to suffer. Based on current trends, we suggest a number of future actions. First, fast emerging new digital technologies ask for a problem-solving approach, strong co-operation with stakeholders, more information exchange between supervisors, more knowledge on new technologies, and timely contributions to the policy agenda. Second, the trend that national borders are (slowly) disappearing increases the need to harmonise rules between European member states, intensify the co-operation between the national and European level, and the importance of having an international strategy. Finally, the trend of increasing competition between different sectors and technologies asks for activity-based, technology-neutral, and proportional regulation and supervision. Our conclusion is that the co-operation with financial regulators in the Netherlands is constructive. However, when issues become politically charged or general interests are (or seem to be) conflicting, co-operation cannot be taken for granted. Regulators need to continue to invest in joint activities to make co-operation an intrinsic part of supervising financial markets.

Norway

The financial crisis revealed the need for regulatory reform in the financial sector. New regulation has consequently been implemented across Europe in the years following the financial crisis. The objective of regulatory reform has partly been to ensure a stable financial system. As a member of the European Economic Area (EEA), Norway and Norwegian financial institutions have been adapting to the reforms in the EU.

It is important to ensure financial stability through more solid banks. The Norwegian Competition Authority (NCA) and the regulators in the financial sector have a continuous dialogue concerning the impact of regulation on competition. In this process, the NCA has focused on how the implementation of regulation in the Norwegian market could influence competition in the financial markets.

The NCA has used several advocacy approaches to express opinions on the implementation of regulation in the financial sector. Among other things, the NCA has submitted responses in different consultation processes. The NCA also published a market study on the Norwegian mortgage market in 2015. The theme of the market study was competition in the mortgage market in general, but it was also about the regulation of banks. In addition, the NCA has authored a paper and an op-ed about the possible impact of reduced competition on financial stability.

In its advocacy work, the NCA has focused on two areas. Firstly, the NCA has encouraged the regulatory authority to evaluate the competitive effects of a proposed new regulation before implementation. As regulation may have an impact on competition, potential competitive effects should thus be considered.

Secondly, the NCA has emphasized the importance of harmonized regulation across the EU/EEA. This is to ensure that banks operating in Norway will have an equal opportunity to compete. Specifically, this concerns the distinctively Norwegian interpretation of the Basel I floor.

In particular, the NCA has expressed concerns regarding how the national interpretation and implementation of the Basel I floor could adversely affect competition between banks. First, because of the difference in regulation, Norwegian banks have to hold more capital than foreign banks that operate in Norway. This leads to a cost disadvantage for Norwegian banks. Second, the distinctively Norwegian capital regulations cause Norwegian banks to appear less robust than foreign banks. This may contribute to relatively higher funding costs for Norwegian banks in the international capital markets. The NCA has thus advocated a policy for implementing the Basel I floor in a way that is more harmonized, and consequently with a less adverse effect on competition.

Furthermore, the NCA has argued that regulation that favours some banks may counteract financial stability, which is the opposite of the intended effects of the regulation. Observations of the Norwegian market indicate that branches of foreign banks may have benefitted from the more favourable regulation.

Portugal

The financial crisis led to difficult economic conditions in Portugal that culminated in an economic and financial assistance programme in 2011 and the public recapitalisation of several banks in 2012. The stated objectives of the economic and financial assistance programme regarding financial stability were to reinforce the solvency of the banking sector, promote the deleveraging of banks' balance sheets and ensure their stable funding, strengthen the supervision of the banking sector and improve banking regulation.

Ten years on from the financial crisis, the financial sector in Portugal is still subject to certain risks regarding financial stability. In a recent financial stability report (June 2017), the Portuguese Central Bank (Banco de Portugal - BdP) notes that these risks stem from factors such as high public and private sector indebtedness, low potential growth, significant stock of non-productive assets on credit institutions' balance sheets and sensitivity of banks' credit portfolio to changes in benchmark interbank interest rates.

The financial sector is of vital importance to the Portuguese economy. It is crucial that financial institutions are financially sustainable, so that consumers can trust them to meet their obligations. It is also crucial that the financial sector is efficient, including through a thorough risk-based loan approval process, and that competition between market players acts as a driving force for efficiency and innovation, thus delivering high quality products and services at competitive prices.

This contribution provides a brief overview of the Portuguese financial sector regulatory and competition law frameworks. The contribution highlights regulatory changes that followed the financial crises, namely developments relating to transparency of information, financial innovation and "caps and floors". The note also addresses the changes in concentration and profitability in the banking and insurance sectors that followed the financial crisis. Finally, this contribution points to areas where conciliating competition concerns and financial stability require a more balanced approach in favour of the former.

Romania

According to the national competition law, Romanian Competition Council (RCC) will consult line ministries and central or local government bodies in relation to privatization and sector policies and it will exchange information and seek assistance from other authorities in order to fulfill its responsibilities. For example, RCC has cooperated with the Romanian Consumer Protection Authority (ANPC) on several subjects of interest, such as the transposition of the Consumer Credit Directive (CCD) into the national law and the removal of the penalty for early reimbursement for all bank consumer loans which was RCC's proposal.

In order to get a better understanding of the banking and insurance sectors, RCC has cooperated with regulating authorities from the financial and banking sector (the National Bank of Romania - NBR and the Financial Supervisory Authority - FSA).

The national competition authority and the NBR have signed and have an ongoing agreement that lays out the particular framework with reference to which the two authorities will address State aid and competition matters.

The RCC and the Insurance Supervisory Commission (currently, the Financial Supervisory Authority) have concluded a cooperation protocol in order to promote competition in the insurance sector. This protocol is no longer in force due to regulatory changes. Despite this, the two authorities have continued their cooperation in two cases: one related to a study in the life insurance sector and the other concerns the investigation on the automotive insurance sector in Romania. In both cases, the Financial Supervisory Authority has provided valuable data to the national competition authority for analysis purposes.

Another subject of interest for RCC is the transposition of the Payment Services Directive (PSD 2) – Directive 2015/2366/EU, which will allow the entrance on the market of new actors (such as Fintechs). At present, the competent authorities (NBR and RCPA) are working on a transposition of a draft regulatory act, which will also be sent to the RCC for an evaluation from a competition point of view. In addition, the transposition of the Directive 2014/92/EU will increase market transparency and help customers take informed decisions.

*Singapore**

The Competition Commission of Singapore has provided advice to the Monetary Authority of Singapore on a wide range of financial markets on subjects ranging from the competition impact of the Authority's initiatives, to whether certain market conduct would raise competition concern. For example, the Commission therefore undertook a competition impact assessment of a number of measures proposed by the Authority.

The Commission works with the Authority on market studies such as the provision of motor insurance. The Authority also provides information to the Commission during the course of merger and enforcement cases. Some financial mergers such as clearing houses are exempt from competition law in Singapore. The Commission is aware that the Authority encourages innovation within the financial technology landscape through a "regulatory sandbox" where promising innovations are tested within a well-defined experimental space.

Cooperation between the Commission and the Authority is supported by the Community of Practice for Competition and Economic Regulations. This is an inter-agency platform for the Commission, sectoral competition regulators and other government agencies to share best practice and experience on competition and regulatory matters. It hosts regular lunches, seminars, newsletters and training. The Commission has seconded staff to the Authority and ensures that its board always includes a member of the Authority.

South Africa

The Competition Commission of South Africa ("CCSA") has had numerous cooperation with the financial regulators over a long time. In South Africa, National Treasury is responsible for policy formulation in the financial sector whilst the South African Reserve Bank (SARB) play an implementation and regulatory role. For simplicity, in this note, National Treasury and SARB will be collectively referred to financial regulators.

CCSA has extensive cooperation with the financial regulators in a number of areas. Firstly, cooperation takes place during investigations by the CCSA (abuse cases, mergers and acquisition cases, cartel cases involving the financial sector participants). For instance, SARB and CCSA collaborated recently on the creation of a new entity to acquire African Bank Limited. The SARB, the Public Investment Corporation and the 4 large banks, including Investec Bank and Capitec Bank, took up shareholding in the new entity. This process required both SARB and CCSA approval.

Secondly, cooperation takes place at policy development where CCSA's role is to influence financial regulators to foster competition in policy formulation. Thirdly, cooperation takes place during drafting of legislation, either at the initial phase or by providing commentary on draft bills. Fourthly, in the recent past, CCSA participated in workshops and seminars organised by the financial regulators.

Given the various facets of cooperation between CCSA and financial regulators, for purposes of this note, CCSA will focus only on its collaboration with the financial regulators related to the implementation of the Banking Enquiry recommendations. The scope and historical perspective of the Banking Enquiry is discussed below.

The CCSA's submission will address the following themes based on its experiences and interaction with the financial regulators and policy makers in the financial sector:

1. Successful co-operation to implement a regulatory and competitive framework that works for consumers;
2. Improved transparency on some of the financial products which assisted consumers to make informed choices and facilitated switching; and
3. Prudential regulation also taking into account the need for competition in the financial sector.

Spain

The restructuring process of the financial sector in the past few years, mostly driven by the global financial crisis, has triggered important concentration processes in the banking sector in Spain.

This process has implied a strong coordination between Spain´s National Authority for Markets and Competition (CNMC), before National Competition Authority (CNC), and financial regulators. An intense learning process, within the framework of merger control and antitrust in the financial sector, has characterized this coordination, first to ensure an effective coordination in terms of the information requested and provided, but also in terms of procedural deadlines.

The legislative change, in the merger control procedure, from the date of entry into force of CNMC, 7th of October 2013, that removed the obligation (Art. 17 of the Competition Act 15/2007 (CA), to request a report from the sectoral regulators, has not reduced the coordination but has made it flexible.

Collaboration with the financial regulators in conduct cases has also been frequent in recent years as it is described in two recent cases: Case S/DC/0579/16 DERIVADOS FINANCIEROS and the CNMC´s 2016 Report on cash machine fees.

The framework of merger control and antitrust in the financial sector is particularly relevant given the process of both technological and regulatory change that this sector is experiencing. From a competition advocacy perspective, in recent years this process has been carried out partly by newcomers or new entrants that have disputed, for the first time in decades, the market to traditional financial institutions.

Information is by far the most essential input of the financial sector and the impact of new technologies on the financial system (Fintech), such as mobile wallets and online payments, blockchain and cryptocurrencies, asset management, crowdfunding, insurtech, is but a breakthrough in capitalizing on information.

For CNMC, it is soon to ascertain the effects of Fintech on financial systems but given the fundamentals of the financial industry, it is possible to glimpse some opportunities and challenges of the phenomenon of Fintech. Financial regulation must embrace competition and innovation coming from new business models and innovation while safeguarding trust and investment protection.

Sweden

Both the Swedish Competition Authority and the Swedish Financial Supervisory Authority are authorities under the Government, although they fall under different ministries and ministers within the Government Offices.

The Swedish civil service is characterized mainly by the independence of the administrative authorities from the governmental powers. There is, as a general rule, no expectation on the administrative authorities that they reconcile their opinions or adjudication processes with those of other authorities.

The Financial Supervisory Authority sometimes accepts a certain gold-plating to satisfy the interest of consumer protection and financial stability, while the Competition Authority relatively often takes a stance which promotes similarity between regulations in different EU Member States.

The Financial Supervisory Authority relatively often focuses on the direct conditions for consumers on the financial markets, while the Competition Authority's focus on the same consumers appears to be more indirect. The Competition Authority has been reluctant in requiring standardized information to consumers, and making drafting of such mandatory.

In regard to payment services it has so far been difficult to see any clear differences between the standpoints of the authorities. Matters relating to home loans, a ban on commissions in insurance brokerage, and mandatory pension systems have, however, clearly divided the two authorities when they have presented their respective opinions on proposed legislation.

A ban on commissions in insurance brokerage was never implemented, which was in line with Competition Authority standpoints. However, the amortisation requirement was implemented, as the Financial Supervisory Authority advocated. These were obvious matters for balancing, where the legislator picked a certain path and priority. Counteracting macroeconomic and financial stability risks was seen as more important than competition, while the smaller mutual fund undertakings were seen as more important than the incentive risks of commissions.

The two authorities have clear, joint interests in keeping the consumers on the financial markets mobile and well-informed. The immediate focus of the Competition Authority has been on mobility, while that of the Financial Supervisory Authority has been to ensure that consumers are well-informed.

The Financial Supervisory Authority has considered information to the consumer to be a prerequisite for, and an incentive to, mobility. If the consumer is not aware that there is a better offer, the consumer has no incentive to switch service suppliers. The Competition Authority, on the other hand, has focused on the fact that if there is no possibility of switching, consumers will not have an interest in comparing different options. Both points are correct and relevant. The question is how the two aspects depend upon one another and which concrete measures thus become vital?

Ukraine

The financial sector in Ukraine has its own regulators, which issue licenses, keep registers of professional participants in financial institutions, oversee market participants, monitor their solvency, make orders to eliminate identified violations of financial services legislation. The regulator of the banking services market in Ukraine is the National Bank. In the area of financial services markets, its regulator is the National Commission. State regulation of the securities market is carried out by the National Securities and Stock Market Commission. Each segment of the financial services market in Ukraine has a sufficient number of participants, which testifies to the functioning of these markets on a competitive basis.

The 2008 crisis has had a profound impact on the Ukrainian financial services market, in particular on the banking services market and its consumers. After the crisis of 2008, a lot of complaints were received by the AMCU from bank borrowers on the actions of banks that were to impose the services of a certain insurance company along with a loan agreement, the cost of insurance services was significantly higher than that of other insurance companies. As a result, the largest Ukrainian banks were given the recommendation to ensure the public disclosure of insurance companies and borrowers about the requirements of banks to insurers, including insurance contracts accepted by the bank as collateral for a loan, and the possibility of insurance of borrowers in any insurance company, which is checked by the bank, and meets its requirements. Subsequently, by a joint application of a group of banks and insurance companies, the Committee granted permission for concerted actions by approving the rules of cooperation between banks and insurers.

Today, Ukraine has a special law on consumer lending, which regulates the general legal and organizational principles of consumer lending in accordance with international legal standards in this area. It should also be noted that after the crisis of 2008, legislative changes were made that increased the requirements for banks.

The Antimonopoly Committee of Ukraine did not support the position of the National Bank of Ukraine regarding the establishment of a new process of work with insurance companies because the establishment of additional criteria (requirements) for insurance companies to insure the property that is in collateral as a security of the requirements of the National Bank of Ukraine, as opposed to those defined by the current insurance law, may lead to restriction of competition in the insurance market services.

Another example of ensuring financial stability that the Committee does not support is the Government's decision to change the procedure for selecting banks that are authorized to pay pensions, cash benefits and salaries to employees of budget institutions. In the decision of the Government, the main requirement for banks is that the applicant bank should have assets that account for at least 1 percent of the assets of the banking system or a controlling interest must belong to international financial and banking institutions that have an international rating of the investment grade from internationally recognized rating agencies or the state should have a stake of over 75 percent. The Committee does not endorse the decision of the Government, since after the crisis of 2008, even large banks whose assets exceeded 1 percent of the assets of the banking system were found to be insolvent, which had significant negative financial and consumer disappointments.

United Kingdom

This paper sets out the submission made by the Competition and Market Authority (CMA) on co-operation between the CMA, as the UK's primary competition authority, and each of the three regulators in the financial services sector: the Financial Conduct Authority (FCA), the Payments Systems Regulator (PSR) and the Prudential Regulation Authority (PRA). It broadly covers the questions set out in Annex A.

Each of the three regulators has provided a separate submission which broadly covers the questions set out in Annex B. The regulators' submissions are set out in Annexes to this paper. However, since as explained further below, the division of responsibilities between the CMA and the regulators is not as clear cut as in other jurisdictions, particularly since the regulators to varying degrees exercise competition as well as regulatory functions, there are some overlaps in the various submissions.

The CMA's paper starts with a background to the UK competition regime which explains in particular the various functions exercised by the CMA and the regulators. It is followed by a more detailed explanation of how the concurrency regime operates in the UK under which the FCA and the PSR have powers alongside the CMA to enforce competition law in their respective sectors. The submission then sets out an overview of the work that the CMA has undertaken within the financial services sector since 2008 with a particular focus on interactions it (or its predecessors) have had with the regulators in this sector. The submission covers the following competition functions: (i) competition enforcement; (ii) markets work: (iii) merger control; and (iv) consumer work.

United States

The first part of this paper discusses the role of the Department of Justice Antitrust Division ("the Division") in prosecuting cartel crimes in the financial industry in the aftermath of the financial crisis. It then outlines the Division's review of the competitive effects of bank mergers in the United States. Finally, the paper highlights recent case cooperation between the Division and financial regulators in the financial services sector and provides lessons learned from those experiences.