

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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**Summary of Discussion of the Roundtable on the Extraterritorial Reach of
Competition Remedies**

**Annex to the Summary Record of the 126th Meeting of Working Party 3 on Co-operation
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This document prepared by the OECD Secretariat is a detailed summary of the discussion held during the 126th meeting of Working Party 3 on 5 December 2017.

More documents related to this discussion can be found at
www.oecd.org/daf/competition/extraterritorial-reach-of-competition-remedies.htm

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Summary of Discussion of the Roundtable on the Extraterritorial Reach of Competition Remedies

By the Secretariat

The chair of the Working Party 3 on International Co-operation and Enforcement (WP3), Mr. Frédéric Jenny, opened the roundtable, mentioning the relevance of discussing the appropriate territorial scope of antitrust remedies aiming to cure foreign anticompetitive acts, in view of recent merger and conduct cases where extraterritorial remedies were sought. The Chair mentioned past WP3 work on the topic, in particular the October 2015 roundtable on cartels involving intermediate goods, which looked at the prevalence and conditions of the effects doctrine -the jurisdictional test that enables countries to review foreign conduct that causes domestic harm. As this roundtable's focus is on remedies, i.e. measures imposing a course of conduct and not sanctions, and since hardcore cartels are usually subject to prohibitions and sanctions only, the discussion focused on extraterritorial remedies in mergers, vertical restrictions and abuse of dominance cases, some involving intellectual property rights.

The Chair presented the speakers in the panel: Senior judge Doug Ginsburg - professor at George Mason University's Law School, and Chairman of the International Advisory Board of the Global Antitrust Institute of the same University; Professor Florian Wagner-von Papp – professor at University College London; and Mr. Jay Jurata - partner in Orrick's Washington D.C. office, and leader of the firm's Antitrust and Competition Group.

The Roundtable was organised in three parts: (1) the appropriate scope of remedies; (2) the application of comity principles to extraterritorial remedies; (3) international co-operation in the design and enforcement of extraterritorial remedies.

Despina Pachnou from the Secretariat introduced the topic and went over the main points of the Secretariat's background paper. Remedies need to be (1) effective, i.e. likely to combat the identified harm, (2) enforceable, i.e. able to be followed or to trigger sanctions for non-compliance when they are not followed, and (3) proportionate, i.e. the least restrictive of the available effective measures. Proportionality is relevant to the assessment of the right coverage of extraterritorial remedies as it requires limiting the geographical scope of remedies to that necessary to correct the harmful conduct.

Ms Pachnou outlined the following possible issues for discussion: (1) the rationale and extent to which remedies should extend beyond national borders; (2) conflicting substantive standards in different countries, which may lead to treat and remedy the same conduct differently; (3) the consideration of enforcement alternatives and the reasons for imposing one uniform remedy of cross-border application versus a combination of separate domestic remedies that apply in each separate domestic market; (4) the implications of the principle of comity in situations where there is a conflict of laws, or where other countries' important interests risk being harmed; (5) international co-operation among competition authorities, including discussing or jointly deciding remedies, or deferring to another authority's enforcement action and remedies; (6) the value of convergence of substantive standards.

The Chair then invited the first speaker, Professor Florian Wagner-von Papp, to give an overview of principles that can help define the appropriate geographical scope of remedies.

1. The appropriate scope of remedies

Professor Wagner-Von Papp started by explaining that limitations on the reach of remedies may be imposed by principles of public international or domestic law. The lines between public international and domestic law principles are blurred, as they affect each other, and it is therefore hard to identify public international law limitations on the reach of remedies.

Professor Wagner-von Papp explained that, on the one hand, the jurisdiction to prescribe a remedy may be territorial or extraterritorial, provided that there is a link between the jurisdiction taking action and the conduct that is prescribed or proscribed. The almost universally followed test to establish prescriptive jurisdiction over foreign conduct is the qualified effects test, requiring substantial direct harm in the territory. The obvious result is that, where there are no qualified effects in the territory, there is no jurisdiction to prescribe or proscribe the conduct, and therefore no jurisdiction to impose remedies. The jurisdiction to enforce a remedy is, on the other hand, strictly territorial. Enforcement on foreign soil can only be achieved with the consent of, or legal assistance from, the foreign state, or by compelling the party to fulfil the extraterritorial remedy (for example, by the imposition of additional remedies in the territory of the enforcing jurisdiction like periodic penalty payments).

The implications of the qualified effects test are that, where a merger or conduct can be separated into two parts, one that produces qualified domestic effects and another that affects a foreign territory, the home competition authority has jurisdiction only over the part of the transaction or conduct that produces domestic effects. Authorities should carefully consider whether the merger or conduct can be separated and only partially prohibited and/ or remedied. When a conduct or transaction is not separable into parts, the state has prescriptive jurisdiction over the whole. As a result, in non-separable cases, more than one competition authorities may have prescriptive jurisdiction over the same conduct. The proliferation of competition law regimes, in more than 130 jurisdictions, means that a conduct may be caught under the rules of more than one jurisdictions and trigger cumulative enforcement. The question, in such cases, is whether there are limits on the exercise of the prescriptive jurisdiction of the involved countries, to avoid over-enforcement and the risk of overlapping or conflicting remedies.

Public international law does not offer a clear basis for limiting the exercise of prescriptive jurisdiction and the reach of remedies. There may be public international law limitations when there is a true conflict, i.e. one state prescribes a remedy and another proscribes it, although the doctrinal basis for this limitation is unclear. Still, given the competition authorities' broad discretion to select cases and design remedies, Professor Wagner-Von Papp proposed that competition authorities should, as a matter of exercising prosecutorial discretion, take into account the fact that cumulative enforcement may lead to overlaps, conflicting remedies and conflicts with foreign jurisdictions. Authorities should give consideration to another sovereign's important interests, and thus tailor their enforcement actions so as to minimise conflicts, i.e. give consideration to negative comity. Professor Wagner-Von Papp also called for more co-operation among competition authorities, by entering into co-operation agreements, agreeing to form joint working parties, jointly negotiating remedies, or even pooling jurisdiction or appointing a lead jurisdiction.

The chair invited the **Russian Federation** to share their views on extraterritorial jurisdiction.

Russia's **Federal Antimonopoly Service** (FAS) explained that the Russian federal competition law establishes jurisdiction over foreign conduct with harmful effects in

Russia. The delegate presented recent Russian cases (the Bayer/Monsanto merger, and the Microsoft and Apple abuse of dominance cases) in which FAS limited the scope of the imposed remedies the local market. Finally, the delegate mentioned the difficulties of enforcing extraterritorial remedies in the absence of bilateral agreements with other states. Russia has bilateral agreements for criminal and civil matters, but competition cases, which are governed by administrative law, are not covered by them.

The Chair thanked the Russian delegation and turned to the **European Commission (EC)**. The EC explained that the geographic scope of the remedies should reflect the scope of application of the European Union (EU) competition rules which apply to conduct that occurred, was implemented within or produced effects in the EU or the European Economic Area (EEA), as set forth in the Woodpulp, Gencor and Intel cases. The delegate referred to the EC's conditional clearance of the acquisition of Alere by Abbott Laboratories and of the Dow/ DuPont merger. In these cases, the EC accepted the divestment of assets located outside the EU/ EEA as it found that the commitments met its requirements of having an impact within the EU/ EEA and adequately addressing the significant impediment to effective competition within the EU/ EEA.

The EC described the Motorola standard essential patent (SEP) case, where the EC limited the remedies imposed to Motorola (for abusing its dominant position as a SEP holder by seeking an injunction against Apple in Germany) to conduct occurring in the EEA and patents granted in the EEA. Namely, the decision only constrained Motorola's ability to enforce its European SEP in Germany, even if Motorola was adopting similar conduct outside the EEA on the basis of its non-European SEPs. In this case, the EC took into account that the US Federal Trade Commission (FTC) had adopted a consent order in its investigation against Google/ Motorola addressing similar concerns outside of the EU. The EC in general co-operates with other jurisdictions, especially when there are parallel investigations, and supports substantive standards convergence through multilateral fora like the OECD.

Korea described the Korean Fair Trade Commission's (KFTC) 2005 Guidelines on remedies. Remedies should follow 5 principles: 1) effectiveness: remedies must be able to correct the violation in an effective manner; 2) correlation: remedies must be imposed in connection with the illegality of the violation; 3) clarity and specificity: remedies should be clear and specific, to help implementation by the parties and monitoring by the KFTC; 4) ability of implementation: remedies must be able to be implemented; 5) proportionality: remedies must be proportionate to the violation.

The Korean delegate explained that the principles of the Guidelines can serve as the basis for determining the scope of extraterritorial remedies. So, if the relevant market is worldwide and remedies limited to the Korean territory cannot resolve the anticompetitive effects of the conduct, extraterritorial measures can be imposed. In the 2016 Qualcomm abuse of dominance case, the KFTC found that the affected market was worldwide, since Qualcomm's practices drew no distinction between the domestic and overseas markets. The delegate explained that it was difficult to limit the scope of the corrective measures to the domestic market. Thus, the decision required Qualcomm to grant access to its non-Korean SEPs in accordance with the remedies principles of effectiveness, correlation and proportionality. The KFTC considered comity; it consulted with other competition authorities when it was investigating the case and analysed the relevant cases of foreign competition authorities and courts.

Chinese Taipei's Fair Trade Commission then explained that they have jurisdiction to impose extraterritorial remedies. In order to monitor the implementation of the remedy, the

authority can ask for assistance in collecting this information from other agencies, trade associations, or non-government organisations.

Canada informed the delegates about a recent (non-competition) decision of the Supreme Court of Canada, which held that Canadian courts have discretion to issue injunctions with extraterritorial application. In particular, the Supreme Court held that a court can grant an injunction enjoining conduct anywhere in the world, if this is necessary to ensure the injunction's effectiveness. The Competition Bureau may adopt extraterritorial remedies if necessary to ensure that the anticompetitive conduct does not substantially lessen competition in Canada. The Bureau gives careful consideration to the remedies it imposes on a case-by-case basis; one of its primary concerns is to prevent conflicts that may arise when a remedy has extraterritorial effects. In their assessment, the Bureau considers other jurisdictions' interests and policies and co-operates with them. For example, it worked with the US FTC and the EC in the Abbot Laboratories/ Alere merger to ensure that remedies did not conflict.

India raised issues regarding the enforceability of remedies, including serving documents abroad and enforcement against companies that do not have a presence in the territory.

The Chair then opened the second part of the discussion – the application of comity on extraterritorial remedies.

2. The application of comity principles to extraterritorial remedies

Judge Ginsburg introduced the discussion on comity. He highlighted that the growing number of competition regimes increases the potential for conflicting substantive standards. Given the almost universal application of the effects test that enables jurisdictions to review foreign conduct with perceived domestic effects, there may be several competition authorities investigating the same conduct at the same time. As a result, there may be cases with divergent outcomes, in particular where substantive standards differ. Standing competition fora, including the OECD and the International Competition Network, promote a meaningful discussion of the substantive differences among jurisdictions and identify areas of convergence.

Judge Ginsburg stressed that in cases of cumulative jurisdiction over the same conduct, it is important for agencies to co-operate bilaterally or multilaterally through either formal agreements or case-specific discussions. Typically, a bilateral agreement includes some mechanism for resolving substantive conflicts, like the consultation process foreseen in the EU/ US competition co-operation agreement, or deference to the principle of comity set forth in the preamble to the US/ Japan competition co-operation agreement. Case specific discussions are more limited, and more focused on information sharing rather than on conflict avoidance; they still bring some agencies (like the US agencies and the EC) into very frequent contact.

It is also very important to consider the interests and policies of other jurisdictions, i.e. respect comity. Judge Ginsburg defined strong comity as consideration to both more as well as less restrictive foreign regimes, and weak comity as consideration to more restrictive regimes only.

Judge Ginsburg explained that comity became a part of the US positive law with the Foreign Trade Antitrust Improvements Act of 1982. The scope of comity has been addressed in US court decisions such as *Hartford Fire* in 1993 and *Empagran* in 2004.

American courts have also endorsed the related concept of the foreign sovereign compulsion defence, which releases a party from liability when its conduct is compelled by a foreign government. The US antitrust agencies apply comity in two situations: 1) when a foreign competition authority regulates the conduct in a different way; 2) when a foreign agency decides not to regulate the conduct in question. In each of these cases, the agencies have to decide how to proceed, taking into account comity considerations.

Judge Ginsburg argued that decisions, like the KFTC's recent decision in the Qualcomm abuse of dominance case to impose a global licensing remedy on patents that were not registered in Korea, follow the weak form of comity (i.e., which justifies abstaining from enforcement only in cases where a hard conflict of laws makes it impossible for a company to comply with the laws of two jurisdictions at the same time) and may lead to the most restrictive rule applying globally. Judge Ginsburg argued that agencies should give serious consideration to the potential effects of their orders outside their jurisdiction and whether the imposition that the order would cause in other countries is unavoidable and nonetheless desirable. In particular where the bulk of the effect is felt outside the jurisdiction issuing the order, agencies should tailor the order to avoid spill over in other territories.

The Chair pointed out that strong comity may have the opposite effect of weak comity, i.e. it may lead to the least restrictive regime prevailing globally. He noted that it is, in all cases, important for agencies to provide clear arguments for their decision to impose an extraterritorial remedy. **Korea** took the floor to explain that the KFTC considered comity in the 2016 Qualcomm case, and took into account relevant enforcement cases by foreign authorities.

The Chair gave the floor to **BIAC** to provide the business perspective on extraterritorial remedies. The delegate stressed that if businesses are required to follow the law of all jurisdictions where their conduct may have an effect, then the most restrictive jurisdiction would de facto set the rules of global commerce. BIAC acknowledged that there is a tension between, on the one hand, an agency's entitlement to cure consumer harm in its territory including through extraterritorial orders if needed; and, on the other, the risk of remedies' interfering with the policy choices of other foreign sovereigns about what is better for consumer welfare in their own domestic commerce and, therefore, which acts should be allowed or prohibited. While different jurisdictions may have different views on how to best serve consumer welfare, each jurisdiction should have a substantial say in the determination of which laws businesses should follow in its own jurisdiction. BIAC argued that businesses should be able principally to observe the law and policy choices of domestic jurisdictions in which they operate, while, at the same time, competition authorities should respect the law and policy choices of foreign jurisdictions where it does not undermine their own competition laws.

BIAC suggested the following conditions for relying on extraterritorial remedies. First, the agency should have appropriate authority over the persons or entities subject to the remedy. Domestic subsidiaries cannot dictate or control the conduct of their foreign parents, and this has to be recognised as a limitation. Similarly, joint ventures do not control their foreign partners. This implies that agencies should consider limiting the remedy to the domestic entity (unless the foreign parent is also found directly liable). Secondly, subject matter jurisdiction should lie with the agency and the enforcing courts. If the enforcing court does not have jurisdiction over a matter (such as foreign patents), arguably neither does the agency. Third, there should be a substantial harm in the territory before enforcement is executed. As Advocate General argued in the EU Intel case, a remote or hypothetical effect is insufficient.

BIAC argued that extraterritorial remedies should be, first of all, exceptional and imposed only when the majority of the harm cannot be remedied by a domestic remedy. Also, the remedy should not be broader than necessary to address the domestic effect. A worldwide remedy would, therefore, rarely be justified because it necessarily has spill-over effects in foreign jurisdictions. If a conduct is not segregable into parts and thus the remedy cannot be tailored to a domestic part of the conduct only, the better course of action would be to require the company to resolve the problem as it affects the domestic territory, irrespective of where the conduct must be changed. This would allow the company the ability to resolve all domestic harm, including by making a service or product segregable. Finally, comity should be considered and extraterritorial remedies avoided both where there is a hard law conflict as well as where the foreign law is less restrictive, since foreign authorities or governments should be free in choosing how to regulate their own commerce. Whether the objectives sought by competition law enforcement can be achieved by foreign enforcement should also be taken into account. There is need for guidance on how comity will be applied and how foreign interests will be recognised by agencies. BIAC concluded that these conditions are necessary to keep businesses efficient and promote consumer welfare.

The Chair gave the floor to **South Africa**. South African competition rules can apply to foreign conduct with effects in South Africa. The Competition Act does not refer specifically to the principle of comity; however the principle is recognised by the competition authority and the courts. Remedies are tailored, to the extent possible, to address only effects in South Africa. In international cartel cases, the authority has cooperated closely with other involved authorities, in particular the US agencies and the EC, and taken steps to avoid double jeopardy in the imposition of penalties.

Singapore explained that since it is a small and open economy, it is vulnerable to anti-competitive activities originating in other territories. Singapore has jurisdiction over foreign conduct occurring overseas and affecting Singapore, and recognises comity. When analysing a domestic case with extraterritorial aspects, the competition authority assesses whether remedies imposed by other jurisdictions sufficiently address the competition concerns in Singapore; if this is the case, it may not take additional action.

New Zealand presented the Reckitt Benckiser and Johnson and Johnson merger. The merger was between two key brands in the personal lubricants market. The two brands dominated the New Zealand market. The Commerce Commission could not find appropriate remedies, like other jurisdictions had in relation to the same merger, since there was no viable divestiture option in New Zealand. Therefore, the Commerce Commission could not reach a conclusion similar to that of other authorities, and blocked the merger.

Canada commented that the principle of comity is very important for the Competition Bureau. The Bureau assesses if a harmful conduct occurs primarily in another jurisdiction, and if the remedy issued in the other foreign jurisdiction is effective, viable, and will be enforced, as well as sufficient to resolve the competition concerns in Canada. If these conditions are met, the Bureau will defer from taking action. This allows the Bureau to focus its enforcement resources. For example, in the Nishikawa auto parts bid rigging case that was concluded in July 2016, the Bureau, having consulted extensively with the US Department of Justice (DoJ), determined that the bid rigging primarily targeted US consumers. The Bureau was satisfied that the 130 million USD fine imposed by the DOJ effectively dealt with the adverse effect both in Canada and the US.

Mr. Jay Jurata took the floor to share some practical concerns with extraterritorial remedies, in particular in cases concerning intellectual property rights (IPR) where a remedy is imposed by a jurisdiction which has not issued the patent or other IPR. The legal

effect of IPRs is by definition limited to the territory where they are issued; the corollary is that they should be enforced in that territory. Extraterritorial remedies on IPRs may reduce innovation and competition by discouraging efforts to design around intellectual property, if competitors can expect that competition authorities may negate the rights of their competitors. Extraterritorial remedies may also encourage trade wars to promote industrial policy and national champions. Extraterritorial remedies may, finally, raise IPR transaction costs for businesses, which would then transfer those costs to consumers. In particular, the risk of extraterritorial enforcement may cause moving from a cost-efficient single worldwide patent license, to smaller, regional, patent licences, which may help insulate the patent licences from extraterritorial remedies, but increase transaction costs. Recent cases where different authorities applied remedies with different geographical scope on the basis of similar underlying facts make a case for more consistent enforcement approach.

Mr. Jurata shared some suggestions on designing extraterritorial remedies. First of all, consistent with the consumer welfare competition standard, when the reviewing agency assesses the effect of a foreign conduct in the jurisdiction, it should focus on the effects on domestic consumers (therefore, affected prices and quantities for end users), and not domestic manufacturers. Also, the agency can consider deferring to the jurisdiction with the closest nexus to the challenged conduct and abstain from taking action. If it takes action, it should limit the geographic scope of the remedy to the scope of the jurisdiction of the courts that will be reviewing the remedy, as well as seek input from the jurisdictions that are affected by the proposed remedy.

The Chair opened the last part of the discussion: co-operation in the design and enforcement of extraterritorial remedies, as one of the conditions for comity.

3. International co-operation in designing and enforcing extraterritorial remedies

The chair gave the floor to **Brazil**. The Brazilian delegate presented the Dow/ DuPont merger, the first major international merger where Brazil applied extraterritorial and domestic remedies. The competition concerns in Brazil related to three markets, out of which two raised global competition concerns that required cross-border remedies. During the review process, Brazil's competition authority CADE was in close contact with many jurisdictions, including the US and the EU.

The **UK** explained that in multi-jurisdictional mergers the UK Competition and Markets (CMA) co-operates closely with other authorities early in the process, in particular when there is a possibility that extraterritorial remedies will be sought. The CMA stressed the importance of early confidentiality waivers. It is also important that the different involved authorities review the merger at the same time. When parties notify multiple competition authorities on a staggered basis, the assessments of the merger substance and remedies take place at different times, and this increases the likelihood of divergent outcomes. Timing is particularly important in the UK, as it has a voluntary merger notification system that can lead to transactions being subject to review at a later stage in the UK compared to other jurisdictions. Effective information sharing agreements can help to avoid the problems associated with staggered merger review. Co-operation with other authorities on the design of the remedies, suitable purchasers and enforcement mechanisms has proved important and often sufficient to achieve an effective and enforceable solution to cross-border competition issues through the conflation of the remedies within the limits of each jurisdiction. In CMA's experience, often the least onerous and more effective remedy is a domestic one. The delegate described the CMA's co-operation with the DoJ in the

GTCR/PR Newswire merger which helped align remedies, and the Nufarm/ AH Marks merger, where the CMA, the US FTC and Canada's Competition Bureau accepted the same type of remedies.

Germany spoke on their co-operation with other authorities. The German competition authority (Bundeskartellamt -BKA) co-operates often with other agencies, usually informally. In the merger between General Electric and Invision, the parties offered divestments to the BKA and the US FTC. The competition authorities discussed the remedies with the parties, and arrived at a remedy that solved the concerns in both jurisdictions. The authorities discussed with the parties the conditions and time limits for the remedies, as well as the nomination of a security trustee.

Mexico's competition authority **COFECE** also co-operates with other competition agencies when 1) a merger or conduct affects Mexico; 2) when the decision taken by COFECE might affect another jurisdiction or vice versa; 3) in complex cases that other authorities are reviewing at the same time, when it wishes to compare approaches and discuss issues of common interest. COFECE co-operates with other authorities early on in the investigation, to prevent inconsistent outcomes. They exchange investigation strategies, timing, publicly available information, opinions, certain competitive effects, the internal analysis of the case. If they have secured confidentiality waivers, they also exchange detailed information and evidence. In the Dow/ DuPont merger COFECE relied on the remedies negotiated with the US and the EC, and abstained from taking action. The reasons were that the market was global, the company's production assets were located outside Mexico, and the sales of the companies inside Mexico were low compared to the global activity. COFECE considered the divestment agreed with the US and the EC addressed adequately all competitive concerns.

Mexico's telecommunications competition authority **IFT** co-operates with other agencies to identify mutual concerns, share information and design suitable non-overlapping remedies. In the AT&T and Time Warner merger, remedies were imposed on all companies involved and not only those who operate in Mexico.

The **DOJ** spoke on the importance of procedural fairness in designing remedies, and the fact that an open frank dialogue with the parties leads to better remedies and an understanding of remedies considered in other jurisdictions. The delegate referred to the US 2017 Antitrust Guidelines for International Enforcement and Cooperation, which stipulate that remedies should address harm to US commerce and consumers and avoid conflicts with remedies contemplated by foreign counterparts. The US agencies do not only look at hard law conflicts but also consider the extent to which a foreign sovereign leaves parties free to choose between different courses of conduct. Effective co-operation with other jurisdictions is crucial to avoid divergent remedies that have the potential to impair firms' abilities to compete globally.

The **FTC** mentioned that their point of view is consistent with the DOJ's. When an agency finds that an extraterritorial remedy is necessary, it is important that the parties have the opportunity to understand what that remedy is and provide inputs in the decision, so that the remedy is effective and not counter-productive. Due process makes sure that the parties' input is available. Also, an explanation of why a particular remedy is necessary enables foreign agencies and other entities to understand the rationale for its application.

France spoke on the [Booking.com](#) case regarding the online hotel booking sector, where the French authority worked closely with its Swedish and Italian counterparts. The three authorities followed their own procedural rules but co-ordinated their actions and jointly

negotiated commitments applicable to the three jurisdictions and which resolved the competition concerns in each jurisdiction. The co-operation was conducted in the framework of the European Competition Network, which allows the exchange of confidential information. Alongside the three authorities, the EC negotiated extending the commitments to the EEA, and Booking offered these commitments to other authorities.

The Chair and the experts summarised the discussion. **Professor Wagner-Von Papp** mentioned that since public international law offers little guidance regarding limitations to the exercise of prescriptive jurisdiction and the reach of remedies, it is all the more important that competition authorities defer to negative comity concerns and engage in bilateral or multilateral co-operation. **Judge Ginsburg** mentioned the usefulness of the solution suggested by delegates to allow the parties themselves to propose a solution to the problem that the agency identified, as they are better placed to tailor the commitment to the domestic problem. **Mr Jurata** underlined the need for consistent enforcement outcomes.

The Chair closed the roundtable emphasising the high level of co-operation between the agencies that was mentioned in the delegations' written contributions and during the discussion. The Chair also highlighted the need to provide clear grounds for the decision of the agency. This will help transparency and promote convergence.