Organisation for Economic Co-operation and Development

DAF/COMP/WP3/M(2020)1/ANN1/FINAL

Unclassified

English - Or. English

17 November 2020

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

Summary of discussion of the roundtable on Criminalisation of cartels and bid rigging conspiracies

Annex to the Summary Record of the 131st Meeting of Working Party No. 3 on Co-operation and Enforcement

9 June 2020

This document is the summary of discussion of the roundtable on access to the case file and protection of confidential information held during the 131st meeting of Working Party 3.

More documentation related to this discussion can be found at http://www.oecd.org/daf/competition/criminalisation-of-cartels-and-bid-rigging-conspiracies.htm

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JT03468585

Summary of discussion of the roundtable on Criminalisation of cartels and bid rigging conspiracies

On 9 June 2020, Working Party No. 3 held a roundtable on criminalisation of cartels and bid rigging conspiracies chaired by the United States Department of Justice Assistant Attorney General Makan Delrahim.

The **Chair** presented the topic and noted the timeliness of this discussion, considering the recent update and strengthening of the OECD *Recommendation concerning Effective Action against Hard Core Cartels*. He pointed out that competition agencies remain vigilant when it comes to bid rigging in times of increased public spending. In this regard, he added that vigorous criminal enforcement, especially against individuals, can send a powerful message and promote deterrence. The Chair added that the aim of the roundtable was to explore different approaches to the investigation and prosecution of criminal offences, including ways competition agencies co-operate with prosecution authorities, to identify areas of convergence and share practices that can be useful for other jurisdictions.

The **Chair** then introduced the three experts who took part in the discussion: **The Honourable James Donato**, Judge at the United States District Court for the Northern District of California; **Barbara Rosenberg**, Partner at Barbosa Müssnich Aragão, Brazil; and **Peter Whelan**, Professor of Law and Director of the Centre for Business Law and Practice at the University of Leeds, UK. The Chair expressed his gratitude for their video contributions and other materials prepared for this roundtable.

Box 1. Summary of the experts' video interventions*

The Honourable James Donato's video intervention focused on the tools and factors used by judges in the United States to determine how individuals should be sentenced in antitrust cases.

He briefly discussed the provisions of 18 U.S. Code § 3553(a), which mandate sentencing by federal courts be fair and proportionate. He then introduced the Sentencing Guidelines, which, while advisory, provide a reference point for judges. He explained that in antitrust cases, the "offence level" – an important sentencing factor – is determined by the volume of commerce affected by the cartel. After the offence level is determined, the sentence is tailored to the defendant through a variety of means, in particular by taking into account a pre-sentence report prepared by the United States Probation Office, containing substantial information on the defendant's personal circumstances, as well as oral and written statements by the defendant.

He also noted that cartel participants are often overseas nationals based outside the United States and, therefore, beyond the reach of federal prosecutorial powers. He explained that this poses a major challenge for enforcement against individuals.

Finally, he explained that the average custody time for individuals involved in cartels and price-fixing in the United States is 18-20 months. He concluded with an open-ended question stating that it is important to look at whether sentencing individuals to jail time does have a sufficient deterrent effect or whether there is a need for other remedies such as a time-limited debarment of individuals from positions which would enable them to take part in additional criminal antitrust activity.

Barbara Rosenberg's video intervention addressed the main challenges that private parties face when dealing with criminal and administrative enforcement. She explained that the misalignment of incentives between companies and individuals, which arises especially in jurisdictions with dual administrative and criminal enforcement systems, is a major challenge. While individuals who risk prison sentences may be seriously concerned about criminal enforcement, companies, which are ultimately subject to fines, may not see practical differences between criminal and administrative enforcement. In her view, criminal enforcement against individuals may reduce the incentive to co-operate with competition authorities, when companies are concerned about the implications for their employees, or when individuals co-operating with competition authorities are not adequately protected from criminal enforcement.

Another challenge concerns the need to co-ordinate between different agencies within a jurisdiction. She noted that this challenge arises especially in countries with dual enforcement systems, or where other agencies have the power to investigate and prosecute the same conduct. In such cases, practitioners must be aware of the extent to which one public body may use information disclosed to another public body.

Furthermore, she observed that co-ordination across jurisdictions poses another set of challenges because disclosure of information in one jurisdiction might trigger criminal, administrative or civil liability in another. Therefore, parties need to be mindful to present a consistent fact-specific narrative across jurisdictions in order to reduce legal risks.

Finally, she briefly discussed some practical issues, namely challenges resulting from rules in different jurisdictions regarding joint representation, evidence thresholds for administrative and criminal leniency applications, statutes of limitations, requirements regarding oral and written disclosure, and civil liability risks.

Peter Whelan's video intervention dealt with some theoretical and practical questions and challenges faced by those advocating the criminalisation of cartel offences. He noted that while the debate often focuses on deterrence, moral issues such as the morality of cartel activity, societal norms, and the nature of criminal sanctions, as well as practical issues such as the design and implementation of criminal procedure, should also be considered.

On deterrence, he stated that, arguably, imprisonment of individuals is the only effective deterrent against cartel activity because, according to estimates, fines are effective only if set in the range of 150-200% of the offending company's annual turnover. However, imposing such high fines would raise legal challenges and could result in negative externalities, such as risks of liquidation and exit of the fined company. Other arguments supporting criminalisation relate to the powers given to authorities in that context, and to its potential positive impact on leniency programmes, provided criminal immunity is granted to individuals. He suggested that, while effective, criminalisation may not be necessarily an efficient way of dealing with cartels, considering the associated costs.

Finally, as for the question of morality, which is often overlooked in this debate, he questioned whether cartel activity displays a degree of moral wrongfulness that merits imprisoning individuals who are usually productive members of society. The law is limited in its power to educate about morality, and therefore one should strive to demonstrate the existence of a social norm against cartels. The norm against stealing could be used, if it can be established that free market is socially accepted and that consumers have an ownership right over the cartel overcharge. He flagged that one problem with employing the norm against stealing is that in many jurisdictions

legislation prohibits cartels even if they are not implemented and nothing is actually "stolen" from consumers.

Note: * These videos were made available on the dedicated webpage before the discussion.

The **Chair** opened the discussion by giving the floor to the United States to present a brief overview of their long experience with criminal antitrust enforcement.

The **United States** explained that even though their experience with criminal antitrust enforcement dates back to the adoption of the Sherman Act in 1890, the modern era of criminal cartel enforcement can be traced back to the adoption of the leniency programme in its current form around 30 years ago. The success of criminal enforcement can be attributed to the Department of Justice Antitrust Division's (Division) commitment to three "cornerstones": the threat of severe sanctions; a heightened fear of detection; and transparency and predictability.

Regarding the threat of severe sanctions, the Division considers imprisonment of individuals to be the single most effective deterrent. Over the years, hundreds of individuals have been sentenced to prison terms in the United States. The longest prison term imposed so far is 5 years, and the average prison term has increased from about 8 months in the 1990s to 19 months in the last 20 years. This trend was supported by the Division's decision to ramp up international cartel enforcement. Increased capacity and co-operation with agencies abroad led the Division to abandon the practice of entering into plea agreements that do not call for defendants' imprisonment. Moreover, the United States noted that it took some time for judges, who are also bound by sentencing guidelines designed to prevent disparities, before starting to impose meaningful sentences. Finally, the Division enjoys the benefit of the public and courts recognising that cartel offences are morally wrong.

As to the fear of detection, the Division is committed to use every tool at its disposal, including leniency (which remains the most effective tool), to uncover and investigate cartels.

As to transparency and predictability, the Division undertakes significant efforts to clarify its policy changes and have an open dialogue with the public.

Finally, the Division believes that its institutional framework supports efficient criminal enforcement. Attorneys, who are conscious of the high burden of proof required to obtain criminal convictions, are involved in the early stage of investigations and are skilled at litigating complex cases before juries. The fact that the Division is the only agency in the United States that can authorize criminal antitrust charges against hard core cartels makes it easier for defendants to co-operate with the Division, while mitigating collateral consequences.

The **Chair** noted that, in addition to the United States, other jurisdictions have experience with criminal enforcement, with jail sentences as well as other sanctions that can be imposed against individuals and companies.

Canada explained that, while bid rigging and price fixing are criminal offences that could lead to imprisonment terms of up to 14 years, none of those convicted of these crimes has been imprisoned in over 20 years. Rather, Canadian courts have imposed conditional sentences of less than two years such as house arrest, curfews and community service, which are served in the community (rather than in custody).

However, there is an increased possibility of imprisonment for such offences. First, the Safe Streets and Communities Act (2012) prevents judges from imposing conditional

sentences for conspiracy and bid rigging offences. Second, in 2018 the Quebec Court of Appeal invalidated conditional sentences imposed on individuals involved in a bid rigging scheme, which also included fraud and forgery allegations, and instead sentenced these individuals to prison terms. While the bid rigging charges were dropped and the conditional sentences imposed only related to fraud and forgery allegations, the views expressed by the Quebec Court of Appeal on the seriousness of the offences are an indication that cartelists may face imprisonment in the future.

The Competition Bureau concluded that to achieve effective deterrence, individuals must face a real prospect of serving prison sentences.

Israel pointed out that effective criminal cartel enforcement is resource intensive, and that it requires a long-term, continuing commitment. It is not (just) a matter of emending the law; it requires a strategic decision by the agency. Israel identified three major steps towards effective criminal enforcement. The first step required the development of an investigation department within the agency. The second step was for the agency to directly prosecute criminal antitrust cases, without having to rely on the Attorney General's Office, which has often limited resources to dedicate to antitrust cases. The third step was to reserve judicial resources to hear cartel cases, which are often very complex and characterised by a high standard of proof.

Israel concluded that it took a long time to persuade courts of the severity of criminal offences. Many courts remained reluctant to punish corporate executives, let alone to send them to prison. Until 2016, prison sentences were imposed only in two cases. Since then, substantial prison sentences have been imposed in four cases.

Chinese Taipei explained that criminal enforcement can be initiated only after cartelists fail to cease or rectify their behaviour pursuant to an administrative infringement decision calling on them to do so. While the agency has the power to impose fines on legal persons, criminal enforcement is directed against natural persons. Moreover, it is carried out by prosecutors who have relatively broad investigative powers, and who have to meet a higher standard of proof than the standard required in administrative proceedings. Criminal proceedings may result in fines or prison terms, as well as in greater reputational consequences.

The **Russian Federation** recognised that criminal liability is an important tool for deterrence. It explained that individuals involved in cartel activity may face criminal charges and sanctions such as monetary fines, prohibition on engaging in certain activities or on holding certain positions, community service or imprisonment of up to seven years. Companies, however, may not be criminally prosecuted.

Criminal proceedings are initiated and handled by the law enforcement agencies, and not by the Federal Antimonopoly Service (FAS). However, these cases are often based on FAS's investigations and decisions. An order of the Government of the Russian Federation of June 2019 approved an interdepartmental programme for detection and suppression of cartels and other agreements restricting competition. This programme has led to better co-operation between FAS and law enforcement agencies. Moreover, competition offences are often accompanied by other crimes such as fraud and bribery. One notable example regards the former mayor of Vladivostok, who was found guilty of bribery and abuse of official powers in the context of a road construction procurement. This individual was sentenced to 15 years of imprisonment, a fine of RUB 500 million and a disqualification from holding public offices for a period of ten years. The court's decision relied in part on materials provided by FAS.

The **Chair** then moved to jurisdictions where competition authorities can only impose administrative sanctions against cartels, while the same conduct may also result in other offences under criminal law.

Spain noted that cartel enforcement is a top priority and, since the implementation of its leniency programme in 2009, fines were imposed in 77 cartel cases, and 19 of them involved bid rigging conduct. Moreover, it observed that competition law offences are exclusively subject to administrative sanctions (including fines up to EUR 60 000 against individuals), even though the criminal code covers conduct that resembles cartel activity, and that the implementation of the ECN+ Directive provides clarity as to the protection of leniency applicants from criminal proceedings.

In addition to imposing administrative fines against individuals, the National Commission on Markets and Competition (CNMC) publishes the names of those being sanctioned. The publication of individuals' names has a very important adverse publicity effect and, according to the CNMC, contributed to the increased number of leniency applications submitted by individuals.

In a recent case in the sector for railway electrification and electromechanical equipment, fines were imposed on 14 individuals and on 15 companies. In addition, the offenders (excluding the leniency applicants) were banned from participating in future public tenders. The CNMC believes that this ban from participating in public tenders can also significantly contribute to deterrence.

Poland explained that managers who intentionally enter into anticompetitive agreements face administrative fines of up to PLN 2 000 000 (approximately EUR 450 000). However, such fines cannot be imposed for bid rigging, which is considered a criminal offence. While this distinction eliminates possible overlaps between criminal and administrative enforcement, the wording of Section 305 of the Polish Penal Code, which prohibits bid rigging, raises significant issues, in particular regarding the interpretation of the term "public procurement" and the burden of proving certain elements of the criminal offence. Amendments are currently being discussed to address these issues and to increase prison terms that may be imposed on individuals involved in bid rigging. Finally, the implementation of the ECN+ Directive should better clarify the interaction between competition and criminal law enforcement, in particular as to the protection of leniency applicants from criminal sanctions.

Lithuania noted that while cartels are not criminal offences, in its administrative proceedings the competition authority often uses evidence collected by other bodies in criminal investigations of related offences such as corruption. This situation raises a few issues.

First, there is a risk of self-incrimination, which has a negative influence on the competition authority's ability to collect oral testimony. The other side of the issue is that the competition authority is sometimes told that it cannot use evidence collected in criminal investigations. Second, prosecutors sometimes ask the competition authority to delay the issuing of its statement of objections or decision pending a criminal investigation. However, this delay can put at risk the administrative proceedings. Third, the fact that the same conduct may be subject to criminal proceedings and administrative sanctions raises the issue of "double jeopardy".

To conclude on the first part of the discussion, **the Chair** asked Business at the OECD (BIAC) to share its views on the issue of criminalisation.

BIAC believes that for cartel criminalisation to be a meaningful enforcement tool, it must focus on custodial sentences against individuals, with a realistic likelihood of

imprisonment. The image of a businessperson in custody renders the matter personal, and among other things, it contributes to deter recidivism.

However, BIAC noted that there appears to be no consensus that prison sentences are more deterring than significant administrative fines. It would be difficult to isolate and quantify the effect on deterrence of the risk of incarceration, considering the effect of fines and other administrative sanctions as well as private enforcement (e.g. class actions). For instance, some scholars argue that class actions with treble damages are key to the United States' success in deterring cartels. BIAC suggested to carefully study different models before adopting an incarceration-centric enforcement regime.

Before moving to the second part of the discussion, the **Chair** asked The Honourable James Donato to comment on the presentations and, in particular, on whether there are sanctions other than imprisonment, which could have a similar deterring effect, and, if so, should these be imposed through criminal proceedings.

The Honourable James Donato explained that an American citizen convicted of an antitrust crime could lose the right to vote and companies may be reluctant to employ a convicted felon. However, he showed a degree of scepticism as to the impact of criminal sanctions imposed against foreign individuals in antitrust cases in the United States.

He recounted that he recently sentenced two foreign individuals to prison, and that both individuals voluntarily returned to the United States to serve their sentences. However, they kept their jobs overseas, and one of them even received a promotion after returning to his home country. He deduced that, in these situations, incarceration does not seem to have deterred the individuals or their employing companies, who are known as repeated offenders.

Finally, he noted that as a trial judge, he is limited to sentencing individuals to prison or to some form of custodial or monitored release outside of prison. In his view, a debarment remedy would be a powerful tool and it would prevent individuals from obtaining a position allowing them to facilitate cartel conduct. Similar remedies exist under securities laws.

The **Chair** agreed that debarment is an important issue, especially in industries dealing with the government. In some cases, debarment raises challenges that must be dealt with, such as the exclusion of a competitor from a highly concentrated market.

The **Chair** then moved to the challenges of having agencies other than competition authorities investigate and prosecute cartels, and the effect this may have on leniency programmes.

Mexico pointed out that the Federal Commission of Economic Competition (COFECE) has the authority to conduct investigations for the purpose of administrative enforcement, while criminal proceedings in cartel cases are handled by the Attorney General Office and may be initiated pursuant to a criminal complaint filed by COFECE. Since cartels were criminalised in 2011, COFECE has filed two criminal complaints with the Attorney General Office. COFECE maintains regular contacts with the Attorney General Office.

COFECE has also the power to request a dismissal of criminal charges in the course of a trial. According to COFECE policy, this power is to be exercised only in cases where the defendant complies with COFECE's administrative decision, and is not considered to be a repeat offender. In addition, COFECE considers the defendant's commitment to preserve or promote competition, the infringement's effects on social welfare, and the defendant's criminal record. Such a request, which would lead to the dismissal of a criminal case, has never been submitted thus far.

In its investigations, COFECE is increasingly focused on obtaining sufficient evidence to meet the burden of proof for criminal proceedings and has taken steps to improve its investigative capabilities – a key measure to enhance its leniency programme. COFECE is also working on implementing OECD recommendations and on improving co-operation with the Attorney General Office.

The **Chair** referred to Korea's written contribution noting that the Korean Prosecution Service has the power to request the Korean Fair Trade Commission (KFTC) to refer a case for prosecution, even if the KFTC had previously decided not to do so. The Chair gave the floor to Chile, which seems to have a similar regime in place.

Chile described the context that led to the adoption of special rules regarding criminal proceedings against cartels. Criminalisation of cartels in Chile was popular among the general public and politicians. However, criminalisation was less supported by the antitrust community because it was concerned that criminal enforcement could endanger the successful civil enforcement regime. Moreover, the general public's support for custodial sentences seems to remain very high. As a result, the Chilean National Congress enacted a set of procedural rules, allowing criminal prosecutors to initiate criminal investigations in cartel cases only after the National Economic Prosecutor's Office (FNE) has fully prosecuted a cartel and its decision has been upheld in civil proceedings. Moreover, criminal proceedings can only initiate when the FNE files a criminal complaint. FNE's decision whether to refer a case for criminal prosecution is subject to criteria set out in its 2018 guidelines. These procedural rules seem to have protected FNE's civil enforcement programme, but they delay criminal proceedings.

The **Chair** turned to the interplay between criminal prosecution, leniency programmes and immunity decisions.

Australia noted that the Commonwealth Director of Public Prosecutions (CDPP) takes independent decisions on whether and how to prosecute criminal cases. The CDPP and the Australia Competition and Consumer Commission (ACCC) have entered into a Memorandum of Understanding to co-operate in serious cartel cases and other cases referred to the CDPP. This arrangement was updated in 2014 and, at the same time, the ACCC determined it had to invest in dedicated criminal investigators.

When considering immunity applications, the CDPP applies the same criteria the ACCC applies for granting immunity in civil proceedings and considers ACCC's recommendations. While the CDPP recognises granting immunity is in the public interest, the procedure was lengthy at first, so the CDPP began granting "letters of comfort" before formally granting criminal immunity.

As for prosecution, the CDPP implements an overarching prosecution policy, and it considers whether the evidence is sufficient to prosecute the case and whether prosecution is in the public interest. The ACCC may initiate civil proceedings when the CDPP declines to take a case. While this is a rare occurrence, it is worth noting that the ACCC has recently decided to do so in one case after the CDPP found insufficient evidence to prosecute a company criminally (while it found sufficient evidence to support obstruction of justice charges against a senior executive who tampered with evidence against the company).

Australia agrees with Israel's comments regarding the strategic commitment required to criminally investigate cartels. It added that criminalisation requires relationships within the government and with courts to develop relevant expertise.

Austria explained that bid rigging can be subject either to administrative enforcement by the Federal Competition Authority (BWB) or to criminal enforcement by public prosecutors. The BWB and public prosecutors work in close co-operation: investigations

and dawn raids are co-ordinated; the BWB has a duty to report suspicious conduct to the public prosecution, and prosecutors often shares evidence with the BWB.

This dual track is also reflected in the leniency programme: individual leniency applicants with the BWB may enjoy immunity from criminal prosecution. Ultimately, criminal immunity may only be granted by the Federal Cartel Prosecutor of the Ministry of Justice, who is not involved in investigations conducted either by public prosecutors or the BWB. The Federal Cartel Prosecutor's impartiality provides security to the parties, and Austria believes that this is an effective system, which contributes to the large number of leniency applications.

The **Chair** noted that Colombia's and Finland's contributions elaborate on concerns regarding the negative effects criminalisation may have on leniency programmes.

Colombia reiterated the point made in the OECD Secretariat's background note, that leniency programmes do not operate in a vacuum, and that criminal and civil liability come into consideration when parties contemplate applying for leniency. In Colombia, it appears that criminalisation of bid rigging has led to a low number of leniency applications compared to leniency applications for other types of antitrust infringements. Convicted individuals may face imprisonment for 6 to 12 years, a fine of 200 to 1 000 monthly minimum wages, and a ban from contracting with state entities for eight years.

The leniency programme does not provide automatic immunity from criminal prosecution, rather a successful leniency application may result in a reduction of imprisonment terms by one third, a 60% reduction of fines, and a shorter ban from contracting with state entities. In addition, immunity from administrative proceedings has no effects on civil liability for damages. Finally, administrative immunity does not limit the prosecution's broad powers to prosecute employees of companies involved in bid rigging arrangements, regardless of the role in their respective companies.

Finally, the Superintendence of Industry and Commerce is working on strengthening co-operation with the Attorney General's Office in an effort to improve detection, prosecution and further sanctioning of cartels.

The **Chair** noted that antitrust offences are often prosecuted together with other crimes, and asked Peter Whelan whether there exists a correlation between this practice and the perceived moral wrongfulness of cartels in some jurisdictions.

Peter Whelan replied it was a difficult question to answer considering the lack of empirical data. In theory (and beyond the genuine overlap in conduct constituting the offences), there may be strategic reasons why prosecutors choose to couple cartel charges with charges for other crimes like bribery. One reason is that taking on additional charges may lead to longer prison sentences. Another possible reason relates to the ability to use certain investigative powers, which in some jurisdictions are reserved for serious offences that carry longer prison sentences. Moreover, prosecutors may prefer to be perceived as prosecuting crimes like bribery, rather than cartel offences. Finally, adding up charges may help maintain a fall-back position, should prosecutors fail to prove certain charges.

This phenomenon may imply that cartel activity is not "morally charged", which is why prosecutors may be trying to relate cartel activity to other crimes that are considered immoral. This conclusion may be supported by anecdotal evidence from Germany, where a recent survey found that only 28% of respondents believed that cartel offences warranted imprisonment. This may explain why cartel charges in Germany are often prosecuted together with charges of fraud.

He warned that employing this strategy of coupling cartel charges with charges for other crimes may undermine efforts to change attitudes towards cartel offences, in particular

because these cases may not be reported as cartel offences. In Germany, for example, bid rigging cases were reported as aggravated fraud cases, and this led academic commentators to conclude erroneously that there were no successful criminal prosecutions of bid rigging in the past, despite the fact that such activity was indeed a criminal offence.

The **Chair** then asked Barbara Rosenberg to discuss how administrative and criminal authorities co-ordinate in cartel cases in Brazil.

Barbara Rosenberg observed that in "bifurcated systems" co-ordination between authorities is a major challenge both for enforcers and for defendants. The lack of proper co-operation between authorities could affect enforcement against cartels: prospective leniency applicants may refrain from co-operating with one authority in the absence of sufficient safeguards limiting a different authority's use of the information being disclosed. This is true not only in jurisdictions with dual administrative and criminal enforcement, but also where other types of crimes such as corruption and fraud are investigated and prosecuted by bodies other than the competition authority. This is a serious challenge in Brazil, considering that administrative and criminal prosecution may occur in parallel.

Finally, she added that this is an area where jurisdictions with these challenges can learn from other jurisdictions where such issues have been worked out.

Australia asked if the experts could comment on the need for close co-operation between authorities in jurisdictions with dual enforcement systems and on the issue of the public prosecutions' lack of sufficient resources to prosecute cartels, especially considering the significant resources defendants in cartel cases often have.

Peter Whelan noted there are two due process issues that could arise from having simultaneous administrative and criminal enforcement. The first issue concerns the use in criminal proceedings of information gathered in an administrative setting, which raises concerns for the violation of rights against self-incrimination, for instance. The second issue relates to pre-trial publicity of the administrative proceedings, which could have an impact on the criminal trial.

Regarding the first issue, he stated that there needs to be a mechanism to avoid cross-contamination of evidence, such as "Chinese walls". Legislation which sets out what type of evidence collected in administrative proceedings may not be used in criminal cases may also be beneficial. As for the issue of pre-trial publicity, he suggested that a short waiting time between proceedings may perhaps help to ensure that the publicity's effects fade away. In any case, it would be difficult to argue, at least under European human rights law, that such pre-trial publicity violates human rights and should therefore invalidate criminal proceedings.

The **Chair** then invited Barbara Rosenberg and The Honourable James Donato to share their final comments.

Barbara Rosenberg pointed out that one should not disregard the potential misalignment of interests between companies and individuals, especially in countries like Brazil where companies are only subject to administrative enforcement, while individuals may face both administrative and criminal proceedings. When designing their enforcement regimes, authorities should be aware of the fact that many leniency applications are submitted as a result of due diligence efforts related to merger transactions, or of some other type of internal investigation. In some instances, companies may still have an interest in applying for leniency, even when criminal immunity is not available for individuals. This point is particularly important from the defendants' point of view.

The Honourable James Donato stated that he is encouraged by the international consensus on the seriousness of these crimes and the devotion of resources to prosecuting

them. He concluded by noting that the technology sector seems to have been overlooked and called authorities to turn their attention to this sector.

The **Chair** noted that the technology sector indeed poses certain challenges, especially since there may be technologies that could facilitate collusion to a degree that an anticompetitive agreement may not even be needed. There has been an ongoing discussion in the antitrust community, which will be continued in the future with a focus on ensuring authorities have the right tools to address these issues.

The **Chair** thanked the experts, the delegates and the Secretariat, and concluded the meeting.