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Summary of discussion of the roundtable on Competition Compliance Programmes

Annex to the Summary Record of the 133rd Meeting of Working Party 3 held virtually on 8 June 2021

8 June 2021

This document is the summary of discussion of the Roundtable on Competition Compliance Programmes held during the 133rd meeting of Working Party 3.

More documents related to this discussion can be found at https://www.oecd.org/daf/competition/competition-compliance-programmes.htm

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Summary of the Discussion on Competition Compliance Programmes

On 8 June 2021, Working Party No. 3 held a discussion on competition compliance programmes chaired by Professor Frédéric Jenny.

The Chair introduced the topic and noted that 10 years had passed since it was last discussed, and that the discussion will focus on developments that have occurred since then, and on the effectiveness of compliance programmes and of competition authorities' relevant policies. He presented the expert speakers: **Florence Thépot**, lecturer in competition and EU law, University of Glasgow School of Law; **Susan Ning,** senior partner, King & Wood Mallesons; and **Daniel Sokol**, professor of law, University of Florida. The Chair asked the Secretariat to briefly present its background paper.

The Secretariat explained the paper is focused on the essence and effectiveness of compliance programmes and on the potential influence of compliance in other policy areas on compliance with competition law. Developments that occurred in the last decade are also in focus: policies that reward compliance programmes, as well as leniency and immunity programmes, remain very important, but the use of compliance programmes as an enforcement remedy by some agencies represents an interesting development. In addition, several agencies have undertaken assessments of compliance programmes outside the enforcement context.

Regarding effectiveness, it is impossible to draw any conclusions based on the data available. The decrease in the number of cartel cases and leniency applications may indicate increased effectiveness of such programmes but can equally well be explained by other reasons. . A number of competition authorities consider elements like self-reporting, management involvement and co-operation, internal incentives, third-party compliance responsibilities, and artificial intelligence monitoring as essential elements for credible programmes . Gender balance could also play an important role in the future in this respect. Finally, the paper considers the connection between competition compliance and other policies such as anti-corruption in public procurement – an area competition authorities may consider focusing on in the future.

The Chair then asked the expert speakers to briefly deliver their main message.

Florence Thépot noted, first, that for compliance to enhance enforcement it must be properly defined and understood, and that programmes should comprise measures aimed at impacting the corporate culture at all levels within the organisation. Second, self-prevention and sanctions should complement each other: while companies are better placed to detect and prevent violations, they must be encouraged to do so by competition authorities. Third, competition authorities should encourage compliance by crediting internal compliance measures. In this respect, the concerns associated with rewarding failed programmes or encouraging "cosmetic" compliance may be mitigated through the investigation of the credibility of programmes, by laying the burden of proof on companies, and by precluding any credit under certain circumstances (e.g., top executive involvement or recidivism). Finally, competition authorities may require companies benefiting from immunity to implement compliance programmes.

The Chair then gave the floor to Susan Ning.

Susan Ning explained that in China, compliance has been implemented from the top, and has been greatly influenced by OECD practice guides. Over the past five years, data on

individuals' and companies' non-compliance with environmental, taxation, labour and education regulations is being gradually centralised in the framework of the "Social Credit System", and offenders are required to enhance their compliance levels in order to benefit from loans, funds, allocation of land, etc. These moves have fostered a culture of compliance not only with the law, but also with corporate ethics and internal rules.

The Chair noted that the OECD is also very sensitive to the links between various types of compliance, and then turned to Daniel Sokol.

Daniel Sokol stated that compared to 10 years ago, compliance has become much more important in policy areas other than competition, and that developments in those areas have driven change and innovation in competition compliance. The first main point he made was that compliance is likely to become much more important in competition, and will have to reconcile possible frictions with compliance messages from other fields of law; second, drawing on experience from other fields it is now possible to effectively measure competition compliance; third, the discussion on compliance has moved forward from merely setting up rules to understanding the importance of behaviours that shape compliance; forth, new technologies, AI in particular, create many opportunities for enhancing compliance measures; fifth, the assertions that compliance has a negative impact on leniency are simply incorrect; sixth, engagement with the business community is key for designing effective compliance programmes; finally, interestingly, the leading authorities in this context – Canada, Italy, Taiwan, Chile and the US – are geographically dispersed.

The Chair explained that the first part of the discussion will focus on the motivation for changes in compliance policies, the second on the crucial elements of compliance programmes and compliance obligations required by authorities, and the third on innovation and creative uses of compliance programmes.

The Chair noted that many countries moved towards rewarding compliance programmes (e.g., through reduction of fines). Among these are Italy, which sought to improve its competition culture, Romania, whose policy represents a major shift from its previous stance, and the US, where the existence of compliance programmes is now considered already at the charging stage in criminal cartel cases. A few countries have moved in the opposite direction, either because of legal constraints (e.g., Korea) or because they found their policies to be ineffective.

Canada began considering pre-existing compliance programmes (i.e., programmes established before the violation occurred) as a mitigating factor in 2018 in view of incentivising the implementation of such programmes. The Chair asked what Canada's assessment was based on and whether the policy change was fully effective.

Canada explained the compliance programme credit is given in the framework of the leniency programme. The policy change is a concrete recognition of the Competition Bureau's long-held view of the value of compliance programmes as a means of sharing responsibility for compliance, for proactively preventing breaches and for reducing the cost burden both on the public and private sectors. As detailed in the Bureau's bulletin on corporate compliance programmes, credit may be given only to credible and effective programmes that were in place at the time the offence occured. It is still too early to tell if the new policy has been effective, but there is anecdotal evidence that various companies investigated by the Bureau have made changes to their internal protocols and controls and have made efforts to align them with the Bureau's guidelines.

The Chair turned to Germany, where, despite the Bundeskartellamt's vocal opposition in the past, under recent amendments to the law, the existence of a compliance programme may be considered a mitigating factor. The Chair wondered whether the new rules truly

represent a policy shift, or whether the legal requirements are so demanding as to allow for fine reductions only in very few cases.

Germany replied the policy shift is a result of the legislator's change of perspective. The Bundeskartellamt has been reluctant to adopt a policy that rewards ineffective pre-existing compliance programmes. The Bundeskartellamt does, however, have a long-standing practice of rewarding programmes set up *ex post*, which are directed to the future. The law requires the Bundeskartellamt to account for effective compliance programmes, but this requirement is somewhat ironic considering that a truly effective programme would have prevented the infringement altogether. Effectiveness is therefore considered in a broader sense, which accounts for the programme's general effects and its contribution to the discovery and reporting of the infringement. The legislator ended a long debate in Germany, which also took place in courts, and it seems it was driven by the desire to incentivise companies to set up and support compliance programmes. It is too soon to report about Germany's experience with the new rules, but the Bundeskartellamt intends to follow the issue closely.

The Chair noted that other authorities find it challenging to assess the effectiveness of compliance programmes as well. He turned to France, which in 2012 introduced a fining policy that credits firms for implementing compliance programmes *ex post* (i.e., after the infringement was discovered), and then revoked this policy in 2017 after finding it disincentivises firms from implementing programmes *ex ante*. The Chair wondered about France's current view of the policy changes and asked whether France believed the effectiveness of such policies depends on the maturity of the local competition culture.

France explained that its 2012 policy was designed to incentivise firms to adopt compliance programmes. However, by 2017, when such programmes became mainstream, especially among large firms, the fine reduction policy was no longer justified.

As for the question of maturity, a professional working group dedicated to compliance was set up in 2020 in response to requests from the private sector. This working group's aim is to formulate a new policy regarding compliance programmes while accounting for the challenges businesses face in implementing them. A new policy document is currently being finalised and will be released for public consultation in the near future. Finally, France is developing tools and resources to assist firms and provide them with guidance on the implementation of compliance programmes.

The Chair asked Chile whether its compliance guidance programme established in 2012 has been effective and about the prospects of firms being rewarded for having implemented compliance programmes, given a recent judgment by the Supreme Court that rejected its policy of crediting firms who had a pre-existing programme.

Chile replied that its approach toward compliance has been re-affirmed in 2019; at the same time, rewards given to companies that had pre-existing programmes were limited. Experience shows the agency's guidance has had a significant contribution to the development of internal compliance programmes. The Supreme Court's decision was formalistic in nature and was grounded on the lack of a legal basis for the agency's rewarding policy in the current legislation.

The Chair noted that Hungary's contribution mentioned that its compliance policy was successful because none of the companies that were rewarded had been found to commit repeat offences, and wondered if recidivism was an otherwise frequent phenomenon in Hungary. He also questioned Hungary's decision to reduce the fines imposed in the Phillips-Siemens bid-rigging case, given the size and the multinational dimension of these firms' operations and the nature of the violation of competition law.

Hungary replied that its reward policy established in 2012 and its guidelines published in 2017 have been warmly welcomed by market players and legal professionals, and that this policy led to a reduction of over 1 million Euros in fines imposed in 10 cases since 2017. There has been no recidivism among rewarded companies, but the same is true for other players the agency dealt with. As for the Phillips-Siemens case, Hungary believes that the considerable investments these firms made in their internal compliance measures merit credit and saw no basis to distinguish this from other cases where firms were rewarded.

Turning to the European Commission, **the Chair** remarked that the EU has been consistently sceptical about a policy rewarding firms for having established compliance programmes. Did the Commission believe that, given the different levels of maturity of the competition culture in different countries, some countries would nevertheless benefit from a reward policy?

The European Commission stressed the importance of compliance programmes and explained that the European Commission's policy is shaped by the particularities of the enforcement environment at EU level, namely the European Commission's exclusive reliance on fines to achieve deterrence, its long enforcement history, the size of firms under its jurisdiction and the fact these firms have in-house legal departments and the necessary resources to invest in comprehensive compliance programmes. The Commission believes that firms are responsible for complying with competition law and are best placed to prevent infringements, and that compliance efforts bring firms their own rewards. Accordingly, firms that establish compliance programmes need not be additionally rewarded by the Commission. The Commission's policy therefore focuses on supporting compliance efforts by raising awareness and offering guidance through publications and dialogue with stakeholders, etc.

On the Chair's follow-on question, if the Commission believes the policy shifts towards rewarding compliance programmes that have taken place in several EU countries are misguided, the **European Commission** replied that such policies should be assessed in consideration of the enforcement environment. National authorities may have the resources to assess the adequacy of compliance programmes, and they often deal with small and medium firms, which should perhaps be incentivised to adopt such programmes. The Commission intends to closely follow developments in this regard.

The Chair then moved to the second part of the discussion, the essential elements of compliance programmes. Beyond the classical elements (e.g., risk assessment, monitoring, training, etc.), there is an evolving set of elements such as a requirement to report violations in a timely fashion and a requirement that senior management is not involved in the infringement. The Chair asked the US to discuss the requirements concerning timely reporting as well as the changes in its policy, which now allow for the consideration of pre-existing compliance programmes at the charging stage, and not only for the purpose of sentencing.

The United States stressed the importance of compliance programmes for cartel enforcement. Beyond crime prevention, such programmes can be beneficial for companies undergoing investigation and prosecution for their involvement in cartels. Such programmes can lead to early detection and timely self-reporting that may result in leniency applications, but even if a firm loses the race to leniency, compliance programmes can help that firm co-operate with the investigation and resolve the case more quickly. Prompt self-reporting is a requirement for a compliance programme to be credited at the charging stage. The new policy allows companies to benefit from "deferred prosecution agreements", that delay prosecution for a few years, and the charges may be ultimately dismissed if the company fulfils its obligations under the agreement and co-operates with the Government. Note, however, that the company is still subject to significant monetary penalties and that

its culpable executives are subject to prosecution. Additionally, a robust compliance programme may be a relevant factor in sentencing. The rules that determine the "culpability score" under the sentencing guidelines provide strong incentives for companies to promptly self-report misconduct and co-operate with the Government, and companies that do so in early stages of the investigation can benefit from additional fine reductions. Self-reporting is therefore key for any favourable consideration of a compliance programme. The US believes this incentive structure encourages firms to adopt compliance programmes and enhances its cartel enforcement. Responding to the Chair's question, **the United States** explained there have been very few cases of pre-existing compliance programmes receiving credit at the sentencing stage (perhaps 10 in the past 30-40 years), none of them antitrust cases. In the past five years there has been a move towards crediting forward-looking compliance programmes under the statute that rewards remedial efforts undertaken by companies.

The Chair noted that under its 2020 guidelines, Spain offers fine reductions for pre-existing compliance programmes. He asked Spain why it considered it important to provide this incentive in its fining policy, and why it considers self-reporting, collaboration, and lack of management involvement to be among the essential elements of compliance programmes.

Spain's approach to compliance is holistic and comprises every effort to increase awareness of competition law, consequences of infringements, etc. The introduction of rules concerning disbarment from public tenders required the consideration of compliance programmes because companies that implement remedial measures may be exempt from disbarment. The relevant guidelines published in 2020 were greatly inspired by Florence Thépot's work and include the typical qualifications. Top management's involvement with compliance efforts is required to foster a competition-oriented corporate culture and is a prerequisite for favourable consideration of compliance programmes. Spain's analysis focuses on management's reactions to the detection of an infringement, and on determining whether the decisions made by the company truly reflect a compliance culture. Very recently, Spain took a favourable view of compliance efforts made by one consultancy firm involved in a cartel. Said firm acknowledged the infringement and its illegal nature, disciplined the wrongdoers (including dismissals), and co-operated with the investigation. The firm benefited from a reduced fine and, more importantly, was exempted from disbarment measures.

Turning to Russia, **the Chair** noted that Russia now allows firms to submit their compliance programmes for review, and that 32 have done so thus far. The Chair asked Russia how it assesses compliance programmes and why it opted not to include self-reporting as a requirement.

Russia replied that the legislation in force does not require firms to introduce internal compliance systems, but that firms that meet basic requirements may benefit from reduced fines. Firms may submit their programmes for review, and the requirements concerning risk assessment, control over the programme and employee training are verified. Firms may be recommended to appoint a person to oversee the implementation of the programme, or to improve inadequate risk-assessments. By filing their compliance programmes, companies may benefit from being classified in a low risk of infringement category under the Russian Federation's risk classification system. Finally, firms' compliance efforts may merit a reduction of fines, as was the case in a recent decision concerning Apple.

The Chair asked for BIAC's reactions to the discussion thus far.

BIAC acknowledged the progress made in the past 10 years but believes much more should be done. BIAC welcomes any guidance on compliance programmes, considering the

divergence between jurisdictions' approaches in this context. Technology is likely to play an increasingly important role in compliance and will require significant investment, but this investment is risky and may fail to yield results. Such significant investments will therefore be made only if authorities reward them, and authorities should work with businesses to ascertain what technologies are adequate for these purposes. Another important issue is awareness, which is not always optimal, especially among small and medium-sized enterprise. Authorities should provide clear guidance on legal and practical requirements through publications, engagement with business etc. Finally, in-house counsel bears the brunt of implementing compliance measures, and targeted efforts should be made to enhance its standing, especially in jurisdiction where it does not enjoy legal privilege. BIAC extends an invitation to work together with the OECD to promote compliance.

The Chair asked the expert speakers for their comments.

Florence Thépot noted that a better understanding of compliance and its complexity allows for a better assessment thereof and that authorities are more aware of this and of the incentives at play and are more open to face the challenges. She agrees that compliance officers should be supported, and that compliance is moving fast in other areas, and noted that authorities should consider how this movement affects firms' incentives to invest in competition compliance resources. Another interesting question concerns the residual risk of firms who engage in illegal conduct despite having an effective compliance programme in place: to what extent are authorities open to accept the existence of such a risk and to forgive such companies? In her view the argument for combining the compliance aspect with leniency is compelling because compliance enhances the effectivity of leniency programmes. Importantly, firms should not be discouraged from conducting internal investigations by fear they might increase their liability risks.

Daniel Sokol explained that companies have numerous compliance obligations, and that compliance officers and executives must optimise the allocation of their limited resources. Competition authorities must do a better job of explaining why competition compliance matters and how companies are rewarded for investing in it. He also noted that companies may be deterred by deferred prosecution agreements because these typically include the appointment of an external monitor who, while having the power to second guess every business decision, often lacks any business acumen. If executives and boards become more aware of these kinds of measures, they are likely to implement compliance programmes which are clearly less intrusive.

Susan Ning stressed the importance of personal liability for motivating senior executives to implement compliance measures, and the effectiveness of internal rewards. Such measures where successfully implemented in Chinese state-owned enterprises in the framework of the Key Performance Indicators programme.

The Chair turned to the next part of the discussion concerning the evaluation of the effectiveness of compliance programmes. He asked Italy how burdensome the review process is and how it distinguishes between effective and ineffective programmes. He noted that Italy's perspective on its efforts to promote compliance is interesting considering that small and medium-sized firms do not seem to be fully aware of competition issues.

Italy explained it first adopted an enforcement policy that credits compliance programmes back in 2014, before this approach became mainstream. The experience accumulated since then led to updated guidelines that offer additional information on how compliance programmes are assessed. The guidelines stress the importance of several elements, including involvement of senior management in the implementation of the programme and in the development of a corporate competition-oriented culture.

Assessing compliance programmes is challenging. However, it is often the case that several programmes are analysed in parallel in the framework of one investigation, and the dedicated team's understanding of the sector in which these programmes are applied facilitates the analysis. Additionally, the experience gained over time in a multitude of cases has helped identify several common features of effective compliance programmes.

While the increase in the numbers of compliance programmes adopted can be considered a measure of success, it is difficult to assess the effects of the policy on the local competition culture. Some data, however, indicate a move in a positive direction: first, over time, the ratio of compliance programmes deemed ineffective is decreasing – an effect that may be attributed to the publishing of revised guidelines in 2018; second, there appears to be an increase in leniency applications since the adoption of a policy that credits compliance programmes; third, the recognition of the remedial value of compliance programmes in the context of public procurement regulation has been effective in raising awareness of the Authority's guidelines.

The Chair then asked Korea to explain how its compliance rating system works, why it believes it is successful considering the decrease in the number of programmes evaluated over time, and what elements are required for compliance programmes to be considered effective.

Korea replied that initially, its policy favouring compliance programmes provided incentives such as fine reductions. Later, Korea introduced the ranking system in order to prevent abuse of its policy and to encourage the implementation of effective programmes. Under this system, compliance programmes that have been in place for over a year may be evaluated and ranked based, among other things, on the involvement of senior management with the programme, the appointment of a compliance officer and the level of employee training. Firms that receive high rankings (A or higher) may benefit from an exemption from *ex officio* investigations, from reduced fines, etc. However, companies' rankings may be lowered if they become subject to enforcement action. Restrictions preventing companies that were found to have violated competition law from submitting their programmes for review were removed in response to the decrease in the number of programmes submitted for evaluation.

While this policy played a significant role in raising awareness and promoting a competition-oriented corporate culture, the lack of a clear legal basis has raised significant issues that the KFTC has attempted to address. The success of this policy can be attributed to firms' voluntary participation and to the provision of incentives beyond fine reductions.

The Chair gave the floor to Colombia.

Colombia shared that last year it published non-binding best practices guidelines for compliance with Colombian competition law and policy, which may be adopted on a voluntary basis by any market player. Multiple stakeholders contributed to the formulation of these guidelines, which are based on three main elements: management's commitment to compliance, periodic assessment and evaluation, and risk-based analysis. Companies from different sectors of the economy are taking steps towards accrediting their programmes. Colombia hopes this policy will foster a competition-oriented culture across the country.

The Chair moved to the next part of the discussion concerning competition authorities' requirements that firms implement compliance programmes. For example, in Brazil and Croatia, compliance programmes can serve as remedies in certain cases, while in Hong Kong; China, leniency applicants must undertake to maintain, introduce, or enhance their programmes. The Chair asked Brazil to share its experience with a case that was resolved

with compliance measures, and he also asked Brazil to discuss the amount of resources it allocates to the monitoring of compliance obligations.

Brazil believes that policies that promote corporate compliance measures promise to increase awareness and contribute to competition law enforcement. Compliance measures were prescribed as remedies in nine merger cases between 2014 and 2019. Examples of such remedies include the implementation of measures designed to limit the sharing of sensitive information and to assure employee training. Compliance with these measures is ensured through periodical reports or by follow-up reviews, which are often conducted with the assistance of external counsel.

Compliance measures may also be prescribed in cartel cases. For example, the restructuring of Cascol was required following its involvement in the Brasilia fuel market cartel, and the restructured entity was in-turn required to implement various compliance measures such as the adoption of a code of ethics, the establishment of a monitoring committee, etc. In the Lafarge bid-rigging case, the establishment of a well-developed and long-term compliance programme, which includes requirements to submit annual reports reviewed by external professionals, justified fine reductions.

The Chair asked Hong Kong; China to explain why it requires leniency applicants to undertake to implement compliance programmes and share its view of this policy's effectiveness.

Hong Kong; China revised its leniency policy last year with an aim of encouraging applications by providing incentives for companies to self-report and at the same time introduced the requirement that applicants implement an adequate compliance programme. This requirement is in line with the policy of encouraging the adoption of compliance programmes, which includes penalty reductions and an advocacy campaign which is particularly focused on training local legal professionals. A multi-pronged approach that includes such policies seems to be appropriate for a new jurisdiction, which adopted competition law only recently.

Some guidance regarding the requirements compliance programmes must fulfil in order to be credited has been provided. Among other things, the parties must demonstrate a clear and unambiguous commitment to compliance, and make the necessary investments given the size of the business. Regarding assessment, Hong Kong; China has reached out to other authorities and to businesses and professional advisors in order to learn from their experience, and it also hopes that its staff gains experience in distinguishing between genuine programmes and "paper" programmes. It is still too early to comment on this policy's success, but it is clear that much is being learned from its implementation.

The Chair asked Croatia why it rewards firms for establishing compliance programmes in non-cartel cases while it refuses to do so when it comes to cartels.

Croatia explained that it is not appropriate to provide additional rewards to companies that engage in a hard-core restriction of competition, especially since they may be eligible for fine reductions through the leniency programme or the recently introduced settlement policy. Croatia has prescribed compliance measures in many cases. For example, in the Coca-Cola case, the company offered to adopt a compliance programme which included employee training; similar provisions were prescribed in other cases. In some cases, the companies are required to provide proof of the implementation of the programme (e.g., their employee training programme, names of employees that attended, etc.). Croatia believes compliance programmes have proven to be very effective.

The Chair questioned whether it was appropriate to accept Coca-Cola's commitment in that case, considering Coca-Cola appears to have engaged in similar misconduct in other places in the world.

Croatia agreed that Coca-Cola should have had a compliance programme in place, but that the commitment to implement it was but one of many other, more important commitments it undertook.

The Chair noted that some authorities credit firms for advocating compliance programmes. Hungary promotes third-party compliance, in particular when dealing with vertical offenses; Chinese Taipei invited representatives of companies convicted of cartel offenses to speak with to companies; and in Romania, firms may be eligible for a 10% fine reduction for promoting compliance programmes with their trading partners. The Chair gave the floor to Chinese Taipei.

Chinese Taipei noted that it has become increasingly active in promoting a competition-oriented culture following the international LCD cartel case, has hosted several conferences, seminars, and workshops in order to encourage businesses to set up their own compliance programmes, and has published guidelines that include programme templates that businesses can adopt. Testimonials by convicted offenders, in particular those about serving time in jail, personal experiences dealing with the local competition culture and the use of new technologies to ensure compliance, appear to draw much attention, increase awareness of competition law, promote a competition-oriented culture, and provide an opportunity for businesses to learn about compliance measures. Chinese Taipei is still developing its policy, and for example is considering whether its fining policy should consider the implementation of a compliance programme as a mitigating factor.

The Chair asked Daniel Sokol, who has studied Chinese Taipei's compliance policy, to comment.

Daniel Sokol noted that other jurisdictions can learn from Chinese Taipei's model, which is based on the collection of data – the more data one has, the better one is able to determine which controls and compliance structures actually work.

The Chair concluded this part of the discussion by noting that adopting compliance programmes can be especially beneficial for companies in some of the jurisdictions where involvement in bid-rigging schemes may lead to disbarment from public tenders. In Latvia, Romania, Spain, and Germany, for example, adopting a compliance programme may shorten the disbarment period. He then asked Daniel Sokol to discuss the potential impact of AI on compliance.

Daniel Sokol replied that the idea of using "screens" for detecting misconduct is not new, but with data becoming richer and with the improvement of data analytics it is now possible to pick up on suspicious trends in real time. These methods are very expensive for competition authorities to implement, but authorities can nevertheless focus their resources on testing certain types of data. Authorities can also benefit from other enforcement agencies' experience with AI and from engaging with companies that have compliance programmes in place, some of which are eager to share information about the measures they implement.

The Chair asked the US to share its views on the use of new technologies in this context.

The United States is committed to implementing new technologies to detect and deter cartels as technology develops, data becomes richer, and AI plays a greater role in pricing and other aspects of competition. In 2019, the Department of Justice's Antitrust Division spearheaded the launch of an interagency task force dedicated to safeguarding the public procurement process from antitrust and related crimes. The Division and its partners use

data analytics to detect infringements and to gather evidence for prosecution. Additionally, companies' use of data analytics may be relevant when their compliance programmes come under review. For example, the Division expects companies that benefit from the use of data analytics in their business activities to use them to ensure compliance as well.

The Chair noted that there have been several discussions about the use of AI for enforcement purposes within the OECD. He then asked the expert speakers for their concluding remarks.

Florence Thépot was fascinated by competition authorities' innovative approach toward compliance. She believes that much progress has been made on the evaluation front, which is at the heart of the debate. Ideally, it would be possible to develop tools that would help compliance officers convince boards to invest in compliance as well as assist competition authorities with their assessments of compliance programmes. She also found the discussion about the use of compliance commitments very interesting because until recently, competition authorities were reluctant to accept such commitments.

The Chair gave Romania the floor.

Romania noted that the legislation concerning public procurement allows companies involved in bid-rigging schemes or other misconduct to be exempted from disbarment if they prove they have taken rehabilitative measures. Exemptions are granted by the contracting authorities, and the Romanian Competition Council acts as a consultant in this respect and analyses the credibility of the applicant company's compliance programmes based on the Council's guidelines.

The Chair gave the floor to Susan Ning and then to Daniel Sokol.

Susan Ning stressed the importance of promoting a compliance culture in China, with the aim to go beyond a top-down approach and motivate companies to develop a "conscience" that is encouraged, *inter alia*, through an award system. Such a culture could be promoted for example through a pilot programme under which companies are invited to comply in exchange for an exemption from prosecution that has been recently established by the Supreme People's Procuratorate.

Daniel Sokol agrees with the United States' position that companies should think about how they use data analytics to ensure their own compliance. Information about how companies collect data and how they use it may be relevant for compliance purposes as well. He was encouraged to see competition authorities are less reluctant to focus on internal mechanisms that promote compliance and are willing to shift from traditional firm-level regulation. Finally, more focus should be put on promoting compliance by communicating the moral aspect of compliance and the development of reputational penalties.

The Chair concluded the discussion by noting the evolution that had occurred over the past 10 years since this issue was previously discussed. While ten years ago compliance programmes were a novelty to be discovered, today they are the subject of serious study and analysis, and there is clearly a shift from agnosticism to full support by competition authorities and to a better understanding of how compliance and leniency policies complement each other. The shift from passivity to activity in this context is manifest in several competition authorities' creative use of compliance programmes to resolve cases, e.g., Brazil's use of compliance programmes as a merger remedy. Finally, new technologies will clearly impact authorities' enforcement activity, as well as the development of corporate compliance programmes.

He thanked the expert speakers and the delegates for participating in the discussion.