Organisation de Coopération et de Développement Économiques

1. This submission supplements the U.S. paper that reviews bank mergers and antitrust enforcement and advocacy in the financial markets, and discusses selected additional questions raised in the call for papers.

2. History is full of examples in which past competition policy responses to financial collapse included justifying anticompetitive arrangements, *e.g.*, "soft cartelization" and price-fixing. However, such arrangements, based on "economic emergency" rationales, generally do not redound to the benefit of the economy and, to the contrary, have had the effect of stifling competition and undermining economic dynamism to the detriment of consumers. Competition agencies have a unique role to play in helping to prevent such outcomes in the current crisis. Through the vigilant promotion of competition principles, competition agencies can help stave off these challenges and even turn such tests into opportunities for advocacy and needed reform.

1. Principles: Financial Sector Conditions and Competition Policy

3. The financial sector consists of businesses primarily engaged in transactions that involve the creation, liquidation, or change in ownership of financial assets (stocks, bonds, and derivatives). These

buying a car). However, the combination of these factors in the financial sector makes them unique to this area.

7. The difficulty in assessing risk and the dependence of asset prices on closely held information makes trust especially important in financial markets.[2] With the possible exception of credence goods like health care, buyers and sellers in other markets for real goods and services do not face quite so much difficulty in evaluating the fundamental quality of the goods and services they are buying. Financial markets have mechanisms to manage these risks, of course, but formal risk management is ultimately a cost. Trust reduces this expense in many ways, not only as a pure substitute for risk management but also by reducing the need to be aware of the possibility of certain events. Unfortunately, the importance of trust and leverage mean that financial markets are subject to sharp adjustments when trust erodes.

8. These special properties of financial markets do not reduce the role that competition plays in this sector. Competition provides many of the same benefits in financial markets as it does in other markets. Within the financial sector, it encourages businesses to minimize costs and to innovate. Within the overall economy, competition in the financial sector plays its part in ensuring that resources are allocated efficiently across sectors, over time, and across risks (more formally, “states of nature”). A monopolized or poorly performing formal financial sector will have both static and dynamic effects including the misallocation: (i) of resources between the financial and non-financial sectors; (ii) between capital and labor within the real economy; and (iii) of income between savings and consumption, as well as slower than optimal growth.

9. It is natural that sentiment toward financial market innovation is negative in the current environment. However, it is important to keep this in perspective. Financial market innovation has increased the availability of capital to a wide range of markets in the real economy. Without these innovations, the real economy would have grown more slowly.[3]

10. Financial products, like many other products, become better understood through experience. Competition supports this learning process by providing numerous mechanisms for limiting losses and unwinding positions, and encouraging learning and the dissemination of information that ultimately lead to the more efficient allocation of risk and resources. In most circumstances, this process works very well.

11. However, the current crisis reveals some limits to these mechanisms. For example, the market

market suggest that certain combinations of size, growth and lack of transparency require further investigation by regulatory authorities. These problems also suggest a more general principle that competition authorities and regulators need to pay attention to whether information asymmetries are present in fast growing markets, and must cooperate to identify markets where competition policy alone cannot address certain market imperfections.

2. Crisis: Role of Competition Policy in Financial Sector Rescue and Restructuring

12. Setting aside competition law during times of crisis has proven unwise. Indeed, doing so is likely contrary to the public interest. The experience of the United States in the Great Depression, in particular the use of rationalization cartels pursuant to the National Industrial Recovery Act, showed that such an approach is more likely to cause further harm to the economy than to help recovery. Competition is central to well-functioning markets. Our experience and that of others indicates that relaxing existing principles of competition law, through such approaches as greater solicitude towards mergers in the financial industry, is unlikely to help solve an economic crisis, whether in the short- or longer-term.

13. Procedural rules regarding mergers may be altered when necessary to ensure that competition law does not create exclusively procedural obstacles to economic recovery. However, this has not proved necessary in the U.S. system to date. Under U.S. law, the Department of Justice and the Federal Trade Commission must be notified of mergers that meet certain thresholds.[4] After notification, the merging parties must wait up to 30 days before completing their merger, more if the agency reviewing it has concerns about the competitive effects of the merger.[5] Because such rules may prevent rapid mergers necessary to keep a troubled firm operating, flexibil13.1(d(Ut.2(l13.2(ry)0.4(hto k) perat)8.2(i)-.2(rm)18.2(i)-2.7(ng(ers

19. Federal loan guarantees of the type offered to Chrysler in 1980 may have the effect of crowding