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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES

-- Session III -- Call for country contributions

This document is a call for country contributions for Session III of the Global Forum on Competition to be held on 29-30 November 2018. GFC participants are invited to submit their contributions by 29 October 2018 at the latest.

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TO ALL GLOBAL FORUM PARTICIPANTS**RE: Session on “Regional Competition Agreements: Benefits and Challenges”****17th Global Forum on Competition (29 and 30 November 2018)**

Dear GFC participant,

In November 2018, the OECD Global Forum on Competition will hold a session on Regional Competition Agreements: Benefits and Challenges. I am writing to you in order to provide you with some information on the theme and organisation of the session, and to invite you to submit a contribution, if possible with relevant case examples.

1. The session

Over the past decades, with the increasing globalisation and the proliferation of competition laws across the world, regional co-operation has become an important tool for competition authorities to strengthen their enforcement and advocacy activities and to improve the design of competition laws and institutions. It has allowed many jurisdictions to strengthen common interests in the region while at the same time promoting national interests. Regional co-operation can promote convergence in competition laws and instruments in a region and ensure consistency in its application, help ensure effective and efficient enforcement against anti-competitive practices and mergers with anti-competitive effects, reduce enforcement gaps, as well as support a more efficient deployment of scarce resources by minimising duplicative efforts between member jurisdictions. While the benefits to regional co-operation may be significant, there are numerous obstacles preventing jurisdictions from reaping the full benefits of regional co-operation.

This session will explore the potential benefits, obstacles and challenges of Regional Competition Agreements (RCAs). More specifically we will focus on RCAs between jurisdictions that are located in the same geographical region. Such regional agreements are particularly relevant as economies are usually more integrated with other countries in the same region and may have similar levels of development, and even similar legal cultures, creating conditions conducive to co-operation. Annex II provides a non-exhaustive list of RCAs that have been identified. This session builds on prior work by the OECD on international co-operation agreements and MOUs (see <http://www.oecd.org/competition/inventory-competition-agreements.htm> and <http://www.oecd.org/daf/competition/inventory-competition-agency-mous.htm>).

During the session, we will examine different types of existing RCAs; the rationale for developing or joining a RCA; and in what way these RCA(s) have affected competition law enforcement in member jurisdictions in the region (both positively and negatively). In doing so, we aim to identify the main obstacles and challenges that RCAs may create and consider possible solutions to enhance their effectiveness.

The session will be supported by an inventory of RCAs that will be developed by the Secretariat over the coming months and shared before the session. This inventory will list current RCAs that exist among jurisdictions that are located in the same geographical region, while identifying their main characteristics.

The roundtable discussion will be greatly strengthened by written contributions. Below we provide some background on the topic in order to assist you with the preparation of your contribution. It briefly describes why the topic has gained importance over the past decades and what potential benefits, obstacles and challenges are observed in the literature. The topics and issues mentioned below and in Annex I for examination during the session are non-exhaustive. Participants are encouraged to raise any other relevant points in their submissions or during the discussions regarding the benefits and obstacles of RCAs.

2. Background

Over the past two decades, the need for effective regional co-operation between competition authorities has grown rapidly. Two main reasons for this can be identified. The first is the rapidly increasing cross-border economic activity, which has led to a growing number of cross-border competition cases. These international cases involve multiple jurisdictions, often located in a geographic region, which has led to reflections on what elements competition law regimes in a geographical region should converge on, including institutional aspects, as well as ways to ensure consistency of application and reduce enforcement gaps.

The second reason is the increasing global reach of competition law and policy in the last 25 years. This can be illustrated by the increase of more than 600% in the number of jurisdictions with competition law between 1990 and 2015, from fewer than 20 to about 125. This implies that many of these authorities are just a few years old.

There are several challenges that result from the increasingly interconnected nature of today's world economy, the increased number of jurisdictions enforcing competition law and the increasing activity that is conducted or expected from young or new competition authorities. On the one hand, the level of complexity in competition law enforcement increases as the cases of competition authorities have more and more an international or regional dimension. On the other hand, companies that are active in more than one country are confronted with different designs and application of competition laws per jurisdiction, (potentially) leading to inconsistent outcomes.

Hence, regional co-operation and co-ordination in the field of competition is critical, both on competition law and policy as well as actual competition law enforcement. There are different ways through which countries, and competition authorities in particular, can co-operate when it comes to competition. At a regional level, international co-operation in competition law enforcement is regulated through bilateral and multilateral agreements. These regional competition agreements can be examined under three categories: stand-alone competition agreements, mutual legal assistance treaties (MLATs) and regional trade agreements (RTAs). In the literature, all three types of agreements – irrespective of the geographical location of the participating members – can be referred to as Regional Competition Agreements (RCAs). The majority of these RCAs (namely MLATs and RTAs) are not specific to competition law, but involve other issues as well, mostly trade. In some RCAs, competition law issues play a central role while in others competition law serves only as a supplement or a scaffolding to other goals.

Overall, RCAs hold great potential for overcoming some of the aforementioned problems by providing a platform to, for instance, enable regional convergence or spur the adoption of competition laws in the region, facilitate regional information exchanges for the enforcement of cross-border competition cases, promote consistent and high quality enforcement, analysis and decisions, build capacity within younger authorities and achieve economies of scale.

In practice, RCAs take different shapes or forms, try to achieve different objectives and show a greatly varying extent of regional co-operation and convergence. While some regional agreements only require the member states to adopt national competition legislation or focus on building capacity, creating a competition culture or sharing information, others may impose regional competition legislation and require member states to transpose these regional laws into their national legal systems. There is some evidence that suggests that the deeper the level of regional economic integration parties aim to achieve, the more detailed the competition provisions that are included in the respective agreement.

As mentioned, the focus of this session will be RCAs amongst jurisdictions that are located in the same geographical region (see Annex II for a non-exhaustive list).

Notwithstanding the great potential that RCAs hold, there are numerous obstacles that can prevent a RCA from being successful. Obstacles that RCAs can face include: faulty institutional designs (e.g. designs that do not encourage co-operation), lack of sufficient (high quality) resources, lack of mutual understanding, trust and interaction between authorities in the region, different levels of economic development between member states, differing goals of competition policy, different political traditions and legal systems, and differences in competition culture.

When looking specifically at regional enforcement of competition cases (including transnational mergers, international cartel cases, and cross-border abuse of dominance cases), several potential challenges exist. For merger cases for instance, jurisdictions can disagree about their assessment as a result of *inter alia* the application of different rules of substantive analysis, differing conditions of competition or different interpretation and/or evidence being collected per jurisdiction. This can lead to incompatible outcomes and/or inconsistent remedies. Another possible challenge relates to referrals between authorities in the region or to/from the supranational (regional) authority, if existing. In cartel cases, co-operation can be hindered by for instance the disability to share confidential information between jurisdictions in the region (due to *inter alia* information protection in domestic law, the lack of an international definition of confidential information and/or the absence of waivers of confidentiality) or limited admissibility of evidence (in case of different legal frameworks). Moreover, limitations in implementing leniency programmes at cross-border or regional level and a lack of co-ordination – resulting in the risk that evidence collected in one jurisdiction via a leniency programme guaranteeing immunity is then used by another jurisdiction’s authority – can lead to jurisdictional challenges.

2.1. Case studies

We strongly encourage you to provide case studies in your contributions which are particularly illustrative of the benefits, obstacles and challenges of RCAs, as well as success stories in tackling these challenges or lessons learned. In Annex I, we provide a list of indicative topics and questions that you may want to address when preparing your case study.

The OECD webpage on the Regional Competition Agreements (oe.cd/bcrca) will be the primary vehicle for conveying documentation and related links on this subject. Unless explicitly requested not to do so, we will reproduce all written contributions on the site.

I would like to remind you that the Secretariat will compile short summaries of the written contributions to be distributed before the meeting. I invite you to submit such a short summary (no more than one page) together with your contribution. Alternatively the Secretariat will produce a summary, but given the time constraints you might not be in a position to check it before distribution on O.N.E.

In order to ensure an effective preparation of the roundtable discussion, I would be grateful if you could inform the Secretariat **by Monday 24 September 2018** at the latest on whether you intend to submit a written contribution.

Written submissions are due **by Monday 29 October 2018** and failure to meet this deadline may result in your contribution not being distributed to delegates via O.N.E. in a timely fashion in advance of the meeting.

All communications regarding the documentation for this roundtable should be sent to Ms Angélique Servin (Email: Angelique.SERVIN@oecd.org). Please address all substantive queries relating to this discussion to Mr Wouter Meester (Email: Wouter.MEESTER@oecd.org) and Ms Lynn Robertson (Email: Lynn.ROBERTSON@oecd.org).

ANNEX I - QUESTIONS FOR CONSIDERATION

This Annex provides a list of questions for consideration in preparing your submission. A submission does not need to cover every listed question. Based on your experience, you may wish to address other issues that are not listed here. It would be highly beneficial if you were to discuss relevant cases where appropriate to illustrate your answers. Please prepare a submission as an integrated essay rather than a list of answers to questions.

Please note that we focus on RCAs between jurisdictions that are located in the same geographical region. Such regional agreements are particularly relevant as economies are usually more integrated with other countries in the same region and may have similar levels of development, and even similar legal cultures, creating conditions conducive to co-operation. Annex II provides a non-exhaustive list of RCAs that have been identified.

Considerations and preconditions to enter into a RCA

Countries can have different considerations to enter into a RCA. It seems logical that RCAs should only be established when the benefits outweigh the costs for every participating member and all are better off than without the agreement.

Moreover, besides considerations, there can be even preconditions on which the participation of a potential member in a RCA is dependent (“deal breakers” in absence of which participation to the RCA would be abandoned).

1. What have been your key considerations to enter into the RCA? What were your objectives? What were your expectations, and have they materialised?
2. Before entering into the RCA, did your jurisdiction define any preconditions to enter?
3. Has your jurisdiction undergone changes to the competition laws or revised the legal framework (criminal vs. civil/administrative enforcement) to comply with, or accommodate for, the RCA?
4. Has your competition authority undergone any legal or structural reforms to comply with, or accommodate for, the RCA?

Benefits for your jurisdiction of entering into the RCA

There are numerous (potential) benefits for jurisdictions of participating in a RCA. Examples include facilitating information exchanges that enable more effective enforcement, sharing of analysis and insights to enhance the consistency and quality of analyses and decisions, enable capacity building, improve relations between countries and governments, achieve a deeper economic integration, reduce costs by pooling certain activities and reduce compliance costs for businesses operating in the region.

1. What have been the benefits for your jurisdiction and/or competition agency as a result of the RCA? Has there been a convergence in competition laws and practices? Has the RCA significantly enabled receiving/providing support from/to other competition authorities?

2. To what extent has the RCA been used as a tool against cross-border anti-competitive practices and transactions and has it significantly contributed to increasing the level of enforcement and improving its quality?
3. Have you undertaken joint investigations with other jurisdictions participating in the RCA? If so, what was the nature of the co-operation (exchange of information, joint dawn raids, etc.)?
4. Regarding the application of remedies in cross-border merger cases, do you take into account remedies in other jurisdictions that are participant in the RCA? If so, how has this affected your own merger assessment? Do you actively discuss the potential need and scope of a remedy with other jurisdictions to ensure that remedies imposed by different jurisdictions are not inconsistent?
5. Are you taking into consideration sanctions that are imposed in other jurisdictions? If so, how has this affected your sanctioning?
6. Has there been a convergence of leniency programmes in the region between the different jurisdictions that are participating in the RCA?

Obstacles to and challenges of a successful RCA

As mentioned above, obstacles for participating jurisdictions to (fully) take advantage of the RCA can be plentiful, including faulty institutional designs (e.g. designs that do not encourage co-operation), lack of sufficient (high quality) resources, lack of mutual understanding, trust and interaction between authorities, different levels of economic development between member states, differing goals of competition policy, different political traditions and legal systems, and differences in competition culture.

1. Are there any obstacles that (have) prevent(ed) your jurisdiction from reaping the full benefits of the RCA or more benefit from the RCA? If so, please elaborate.
2. What solution(s), if any, do you see to address these obstacles? What are the possible costs of implementing this/these solution(s)?

ANNEX II - DRAFT LIST OF RCAs BETWEEN PARTICIPANTS IN SAME GEOGRAPHIC REGION

The following table provides a draft, non-exhaustive list of Regional Competition Agreements formed by member states that are based in the same geographical region.

Agreement	Short Description
AFRICA	
CEMAC	Economic and Monetary Community of Central African States
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECOWAS	Economic Union of West African States
SACU	Southern African Customs Union
SADC	Southern African Development Community
WAEMU	West African Economic and Monetary Union
AMERICAS	
CAN	Andean Community
CARICOM	Caribbean Community Including the CARICOM Single Market Economy
MERCOSUR	Southern Common Market
NAFTA	North American Free Trade Agreement
SICA	Central American Integration System
ASIA-PACIFIC	
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
TPP	Trans-Pacific Partnership
AUSTRALASIA	
CER	Australia and New Zealand Closer Economic Relations
EUROPE	
EFTA	European Free Trade Association
EU	European Union
Nordic Alliance	Finland, Iceland, Norway and Sweden (close collaboration between Nordic competition authorities)
EASTERN EUROPE AND CENTRAL ASIA	
CIS	Commonwealth of Independent States
EEC	Eurasian Economic Union

ANNEX III - RECOMMENDED BIBLIOGRAPHY

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