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

Global Forum on Competition

COMPETITION UNDER FIRE

-- Summary of Discussion --

5 December 2019

This document prepared by the OECD Secretariat is a detailed summary of the discussion held during Session I of the 18th meeting of the Global Forum on Competition on 5-6 December 2019.

More documents related to this discussion can be found at: oe.cd/cunf.

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Summary of Discussion

By the Secretariat

1. On 5 December 2019, the Global Forum on Competition held a discussion on Competition under fire chaired by Professor Frédéric Jenny.
2. **The Chair** introduced the panellists: Tembinkosi Bonakele, Commissioner, Competition Commission of South Africa; Elie Cohen, Economist and Research Director at France's National Scientific Research Centre (CNRS) and Professor at SciencesPo; William E. Kovacic, Global Competition Professor of Law and Policy and Director of the Competition Law Center, George Washington University; Joshua D. Wright, Professor of Law, Antonin Scalia Law School, George Mason University (GMU) and Executive Director of the Global Antitrust Institute, Antonin Scalia Law School, GMU; Will Hayter, Senior Director Policy, Advocacy and International, Competition and Markets Authority of the United Kingdom (CMA). In addition, two pre-recorded interventions were featured: one by Jean Tirole, Honorary Chairman of the Jean-Jacques Laffont-Toulouse School of Economics Foundation and Chairman of the Institute for Advanced Study in Toulouse (IAST), and Nobel Laureate in Economics¹; and another by the Rt. Hon. Andrew Tyrie, Chair, CMA, which, for legal reasons, was not webcast.
3. In his introduction, the Chair noted that competition policy and competition authorities are facing criticism in many countries. While competition economists argue that competition allows for an efficient reallocation of resources and promotes consumer welfare, there is a wave of critics arguing that competition does not guarantee the promised benefits will be delivered in economies struggling with chronic unemployment and where production factors, such as labour and capital, are not as mobile as hypothesized. These arguments are being supported in the political arena by those who consider themselves victims of competition, which arguably results in unemployment and loss of economic opportunities. A second line of criticism is centred on the notion that competition policy is focused on static efficiency, rather than on dynamic industrial policies that could foster economic growth, innovation and competition in the long-term. A third type of criticism is directed at competition authorities and economists' apparent disregard for distributional effects and for the fact that international competition takes place in an uneven playing field, where some firms can benefit from governmental support while others cannot. Yet another line of criticism is directed against competition authorities' enforcement activities, and especially for their lax attitude towards mergers, which is arguably driven by a formalistic and narrow interpretation of their mandates which, in turn, has led for calls for political bodies to be given the power to overrule competition law enforcers. Finally, in some countries competition policy appears to be irrelevant to the achievement of desired societal goals, because, for example, it often fails to contribute to the reduction of poverty and may increase inequality; accordingly, some have argued that public interest considerations should play a role in competition law enforcement.
4. In the first part of the discussion, Will Hayter will link these lines of criticisms with the crisis of capitalism. Tembi Bonakele will focus on the introduction of public interest considerations to competition enforcement policy in developing countries. William Kovacic will discuss the social tension caused by competition in certain sectors,

¹ <https://www.youtube.com/watch?v=9Rymb1TUpEE>

and Joshua Wright will focus on questions related to consumer welfare standards, and in particular, whether and how these should be changed. The second part of the discussion will begin by a pre-recorded introduction by Jean Tirole and will focus on competition authorities' reaction to the challenges. Following there will be an open discussion, and, finally, Lord Tyrie's pre-recorded general presentation will conclude the discussion.

5. **Will Hayter** noted the fact that competition was “under fire” is not disputed, and that he intends to focus on the fragility of public confidence in the institutions designed to ensure the function of markets in the wider context of the “crisis of capitalism”. The notion that competition and independent competition authorities can deliver the best outcomes for consumers has secured the place of competition policy after the collapse of communism. However, now the assumptions underlying this notion are being increasingly questioned, and there are signs that competition policy may face a crisis similar to that, which affected financial regulators, who lost public trust and were overhauled subsequent to the financial crisis.

6. One indication is that competition is not perceived as being successful at delivering desired outcomes, and there is increased pressure to introduce policy measures such as state aid, price caps etc. This perception is supported by evidence of increasing markups and concentration levels, which indicate competition authorities could do better to protect the public. Naturally, technological changes associated with the advent of digital markets creates a sense of unease, and while most concerns relate to online harm and cyber risks, they are nevertheless linked to competition issues. Like financial regulators before the financial crisis, competition regulators do important work which is often obscure. For example, a survey conducted by the CMA revealed that most people do not understand the meaning the word “market” takes in the world of competition policy; in addition, the public sometimes fails to appreciate the importance of the cases brought by competition authorities because they deal with relatively obscure markets. There are however steps that can be taken to improve the situation which will be discussed later.

7. **The Chair** then asked Tembinkosi Bonakele to share his view on the incorporation of societal considerations in the implementation of competition law in developing countries such as South Africa.

8. **Tembinkosi Bonakele** noted that while he will discuss the example of South Africa, he believes similar experiences are shared by other developing countries. Public policy considerations, such as effects on employment by small and medium enterprises, have been part of South African competition policy for the past 20 years, and indeed, competition has been “under fire” in South Africa for at least that period of time. The renewed interest in this topic appears to be fuelled by discontent with globalisation, the benefits of which are not equitably shared. There is a rise in inequality levels and of extremism both on the right and left, and a sense that weaker countries are being pushed further into the periphery. It would therefore be probably more accurate to say that Globalisation is “under fire”. Competition, however, is not a neutral phenomenon in this context. Experience has shown that competition is distorted, and that the notion of an equal playing field is a misnomer. In South Africa, competition law was introduced as part of the country's transition from apartheid, which obviously distorted competition by barring certain people from participating in markets. Competition policy gained support because it was perceived as a means to enable outsiders to enter markets. With its introduction the law included public policy considerations to accommodate the disadvantaged position certain persons and businesses were in under apartheid. The South African competition law and authority serve as a means for empowering weaker members of society and appear to form part of the movement transforming the country, rather than being part of the establishment like in other jurisdictions.

9. **The Chair** gave the floor to Elie Cohen.

10. **Elie Cohen** was inspired by the debate concerning the Alstom-Siemens merger to title his presentation “Crisis of the European Competition Regulation”. This heated debate, which centred on the virtues of competition policy and its links to trade and industrial policy was fuelled especially by Director General Vestager’s endeavour to preserve a European competition policy. In this case, instead of being considered a tool, competition policy was considered a goal in and of itself - an approach that led to the merger’s rejection. For the first time both French and German ministries of the economy criticized the decision and argued the European Commission’s (EC) decision was wrong both economically and politically, and that an overhaul of the system was required. There are essentially two camps in this debate. One comprises of economists who boast that Europe’s competition policy not only favours consumers’ interests, but also supports dynamic innovation and investment and fosters economic growth in a rate higher than that of the United States, which is plagued with concentrated markets characterised by high entry barriers, especially in the technology sector. The other group comprises of those who recognize that European competition policy offers opportunities, but that all the technology giants are based in the United States and that Europe has contributed nothing to technological and industrial renewal.

11. This divide inspired the subtitle of the presentation: “The Alstom-Siemens Transaction – Europe has clean hands but has no hands at all”. This case is symbolic in that the EC’s decision was opposed by an alliance of interventionist and non-interventionist institutions (the French and Germans ministries of the economy, respectively). Moreover, in this context, the notion that European competition policy aims to promote the integration of the European market was also questioned, because the decision essentially favoured domestic considerations over the creation of a strong European player which would be able to compete more efficiently against Chinese firms in international railway industry markets.

12. The EC’s decision, which centred on the current state of competition in European markets, downplayed the competitive threat posed by Chinese firms whose entry was deemed unlikely in the near future. But the EC was obviously short-sighted: a Chinese firm entered the European market merely weeks after the decision was taken. Further, the EC’s refusal to consider “systemic competition” by Chinese firms is very problematic considering the asymmetry between the proposed merged entity, which would have been much smaller than the Chinese players in terms of production capacity and considering that while the European market is slowing down, China is investing heavily in rail infrastructure. Moreover, the fact that Chinese firms can operate on returns that are much lower than those required by European firms, creates a fundamental imbalance.

13. The EC admits that some of its critics are correct in that European players suffer from unfair competition but argues that this is a matter of trade policy which is unrelated to competition policy. This approach, which focuses on one aspect of the problem and disregards another, is very problematic. If it is taken seriously, this would mean that decisions concerning competition policy, trade policy and industrial policy, should be made separately, but such an approach undermines the community system. In a world where the balance of power, rather than economic rationale, is increasingly influencing trade, there may be a need for better integration between different policies and for a restructuring of the system so that ultimate decision-making powers in such cases no longer reside exclusively with competition authorities.

14. **The Chair** asked William Kovacic to discuss the interface between competition policy and social policy.

15. **William Kovacic** believes that competition is not only “under fire” but also “incendiary”. The public is ambivalent about competition: as consumers, citizens desire more competition, but as employees or residents of communities that depend on employers, they do not support this disruptive and destructive force. Schumpeter’s “Capitalism, Socialism and Democracy” discusses the “gale of creative destruction”, described as a bombardment that can devastate the foundations of incumbent firms.

16. One example of a case where competition worked magnificently for consumer but had powerful social spill-overs that are a source of discontent is the development of standard containers by Malcolm McLane – a truck driver who owned two trucks and eventually revolutionised trade. For consumers he is a saint, but his idea led to the loss of certain jobs and the creation of others. Another example is Detroit’s auto industry which provided wonderful employment opportunities, but was ultimately destroyed by competition, which benefits consumers who now enjoy multiple choices. Competition did the same thing to the steel industry in Pittsburgh.

17. Arguments that in the long-run people are better off are not convincing to people who lost their jobs, and while in prosperous times the tensions between citizens as consumers and citizens as employees are subdued, in times of crisis they are brought to the forefront. Competition authorities argue that the process of disruption is ultimately beneficial, but whether citizens are indeed in favour of more competition is questionable.

18. **Joshua Wright** focused on the current debate in the United States, which while touching on themes that are relevant around the world, is held in a domestic political context. One of the main questions is how antitrust institutions are performing and, importantly, how is their performance measured.

19. The argument that the antitrust system is failing is gaining popularity, and increasingly, there are calls for a more aggressive antitrust policy that would no longer be based on consumer welfare standards. This critique has two distinguishable parts, the first is that antitrust institutions are failing on their own terms to promote competition and consumer welfare, and that accordingly, standards should be changed and include public interest consideration, and that presumptions should be introduced to facilitate enforcement. The second line of critique revolves around the idea that competition policy should endeavour to achieve goals which are broader than consumer welfare. Some politicians have even argued in favour of presumptions that transactions over a certain value are unlawful, for the replacement of the consumer welfare standard with public interest standards or for a ban on vertical integration with digital platforms and the undoing of certain such mergers. The response from competition agencies and competition experts was that the consumer welfare standard has proved effective.

20. The argument that antitrust institutions have failed to reduce concentration is to a great extent based on papers that analyse broad-level industrial classification data which is nowhere near as granular as the data used for the purpose of market definition. These papers, that also show that markups are increasing, are reminiscent of broad cross-industry studies conducted in the 1950s, which demonstrated a similar phenomenon. The debate on how to interpret these results, and in particular, whether they are a result of increased prices or decreased costs, continues to this day. One hypothesis is that there is a general increase in market power, but there are alternative theories as well. Recent papers suggest that the increased level of concentration is driven by an increase in the number of local markets served by top firms; while the national concentration level appears to increase, competition at the domestic level is fiercer - a fact that may drive markups higher, and this phenomenon raises interesting questions for competition agencies. The data may also suggest an increase in productivity in the United States, and it is quite difficult to associate both this and increased markups with greater market power. Most arguments from outside the antitrust

institutions have not gained traction from the community of industrial organisation economists or members of the antitrust bar, probably due to the lack of supporting evidence.

21. The main argument against the consumer welfare standard is that it led to lax enforcement policies, and that it is mostly based on evidence of changing concentration levels. But from an economic standpoint, the consumer welfare standard concerns productivity, output, prices, quality, and other dimensions of competition. The data shows that firms are shifting the way in which they compete. While there is room to consider and adjust antitrust policy, the consumer welfare standard ensures the right and relevant set of questions is consistently asked.

22. **The Chair** asked for participants' comments and questions.

23. **India** asked Tembinkosi Bonakele how South Africa's competition law accounts for historic distortion of competition and societal tensions.

24. **TUAC** reacted to Joshua Wright's presentation by noting that there are two methods to measure industry concentration. The one practiced by the OECD is to measure increases in markups; the other, practiced by the IMF, is to measure the power of firms to extract extraordinary profits or economic rents. Both methods reach the same conclusion – firms are becoming increasingly powerful. Moreover, firms' rents are not shared with workers. TUAC asked for Joshua Wright's view on the IMF's methodology.

25. **Korea** noted that its own competition law sets multiple goals including dispersion of economic power, protection of small and medium enterprises and assurance of free competition and asked which of these often-conflicting goals should be prioritised.

26. **Romania** noted that sentiments towards competition and competition authorities in the eastern parts of Europe are not getting worse because they were never very positive to begin with. The increasingly challenging climate competition authorities operate in is likely a result of globalisation, and not of failures on their part. Competition authorities were established as independent regulators in order to be protected from the influence of politicians and public opinion, and they are naturally conservative and more resistant to change. The fact that, by and large, the great crisis of 2008-2010 did not bring significant change to the regulatory paradigm is encouraging. Change may be required, but it must be based on evidence, and not on a political agenda.

27. **Allan Fels** reacted to TUAC's intervention by noting that generally, competition expands the market and leads to more jobs. The best example is the telecommunication industry, where the number of jobs gained as a result of increased competition far outweighs those lost. Further, lower prices mean consumers have more money to spend for in other markets, thereby creating more jobs. The important questions are, first, whether people who lose their jobs due to competition can find new positions and whether policies designed to assist them with this adjustment are required; and second, whether competition law should pay more attention to the "losers" in job markets, who are often more vocal than "winners".

28. Regarding wages, there is evidence that the workers' share in labour markets is diminishing, and this may be a result of the weakening of unions' bargaining power and, arguably, concentrated industries' stronger bargaining power. This raises the question whether competition authorities should devote more attention to anticompetitive practices in labour markets, in particular on the employers' side.

29. **The Chair** noted that the Competition Committee and the Global Forum on Competition discussed some of the issues raised by Allan Fels, including competition in labour markets and the influence of competition on employment, where the evidence is less conclusive than suggested. He then gave the floor to Australia.

30. **Australia** challenged William Kovacic's suggestion that workers do not want competition. Workers may be concerned about lack of competition in labour markets, which may lead to the creation of monopsony power on the demand side. Additionally, small business owners and self-employed individuals are interested in competition that enables entry into new markets and expansion of their business.

31. **The Chair** asked Tembinkosi Bonakele to respond to India's question, William Kovacic to react to the comments concerning labour markets and Joshua Wright to comment on the IMF's statistics.

32. **Tembinkosi Bonakele** noted that Korea gave a partial answer to India's question, since the goals of a particular competition regime are tied to its own history. As noted, the context in South Africa is of a transition from apartheid to democracy, but every competition regime has its own philosophy, view of competition and society, "political moment" etc. In South Africa, the goals beyond consumer welfare are stated in clear terms in the Competition Act and may therefore be taken into account and enforced transparently by independent institutions.

33. **William Kovacic** noted that the transition of employees affected by competition is an important consideration, and that the fact that employees in other sectors fared well seldom helps displaced employees and their communities. The loss of well-paying and benefiting jobs is major challenge - employment rates may rise, but this does not help affected communities as it used to. Competition authorities should draw on cases where, overall, the number of those who gained from competition dwarfs the numbers of those who lost but should also consider social policies that facilitate transition.

34. Interestingly, some monopolists in the United States, (e.g., in the auto industry) shared their rents and provided their employees with great benefits. Many of those employees were undereducated, and the loss of their jobs led to reduced social mobility. The challenge is to convince that over time, competition leads to the expansion of employment and to design adequate transitional arrangements. In his successful presidential campaign, Donald Trump was able to convince affected workers in Pennsylvania, Ohio, Michigan, Indiana and Wisconsin that they are ignored in the great economic process.

35. **The Chair** wondered whether losses caused by competition are resented much more than gains from competition are appreciated.

36. **William Kovacic** suggested that this may be the case because those who prevail in the new economy are often those who have a higher level of skills, better education, live in better areas and generally enjoy the benefits of enabling conditions that improve their prospects of success, whereas there is a large part of the population which acts merely as a spectator, and is not a participant.

37. **Joshua Wright** explained there was a debate on the measurement of markups, and on whether they are rising. There appears to be a consensus that markups in product markets are rising but also that product markets are becoming more productive. This is somewhat puzzling from an antitrust perspective since one would expect to see lower productivity and reduced output. Research conducted at a market level indicates that "superstar firms" are pushing back against market power. The data showing that the share of labour is decreasing may justify antitrust intervention in labour markets. The combination of higher markups, higher productivity, and a decreasing share of labour may have additional policy implications.

38. **The Chair** moved to the second part of the discussion which focused on competition authorities' response to criticism. Following Jean Tirole's pre-recorded presentation the Chair gave the floor to Will Hayter.

39. **Will Hayter** stressed that legislators may revoke competition authorities' independence and even dismantle them, and that neither should be taken for granted. Competition authorities must secure and entrench their legitimacy, at least by taking action where possible and communicating their actions; by requesting additional tools such as broader investigative and enforcement powers, even at the price of admitting shortcomings or legal frailties; and by communicating publicly to others, especially politicians, that they have the responsibility to take action.

40. Consumers feel well served by competition when it is focused on innovation, quality and price, but feel poorly served when pricing and data hosting practices exploit their biases and frailties. Accordingly, the CMA acted to improve standards that were harming the most vulnerable consumers in the care home sector, to secure significant changes to secondary ticketing websites, to crack down on pharmaceutical price gouging and to investigate acquisitions by established digital players.

41. As for pushing for additional tools to better address the problems consumers face, in February, the CMA submitted far reaching proposals to create a stronger, swifter and more flexible framework for competition and consumer law, which would ensure consumer welfare is at the forefront and that enforcement action is taken swiftly while safeguarding affected parties' procedural rights. While some have argued against these changes, the CMA believes that minor tweaks are inadequate, and that a major reform is required because the status quo often serves those with vested interests. Competition authorities must serve millions of members of the public who are often dispersed, disengaged and little heard, rather than the well-resourced and well-connected who are able to vocally object to reform.

42. **The Chair** then asked Tembinkosi Bonakele to explain how competition authorities should fulfil the goals set out in the competition law.

43. **Tembinkosi Bonakele** stressed the importance of competition authorities' independence, credibility and transparency. Credibility is especially important where a competition authority rejects calls to intervene, because for stakeholders to accept the authority's decisions, they must believe the problem would have been addressed if it were possible.

44. South African competition law accounts for players' relative strength, just as the rules of rugby can be adapted in cases of "uncontested scrums". Walmart's entry to the South African market through a merger with a local retailer provides a good example. In that case, there was a concern that local suppliers of the target would be replaced in favour of foreign suppliers. The playing field was levelled by the creation of a fund designed to enable local suppliers to compete with Walmart's global suppliers, and Walmart has subsequently established similar funds in other developing countries. In some cases, competition authorities are required to create markets in order to foster entry and for ensure entrants are sustained.

45. Credibility depends on the authority's communication of evidence-based policy choices, which includes the recognition of policy trade-offs. For example, in some cases the South Africa Competition Authority opted not to oppose the imposition of tariffs, despite the premium local buyers would be forced to pay, because it was clear that this was the only way to keep the affected industry, and competition, alive. In such cases, the authority recognises its own responsibility to create a level playing field.

46. **Elie Cohen** noted that Jean Tirole eloquently explained why competition authorities must be independent, why they must be served by independent experts and why their objectives must be well defined, and why their sole focus on competition policy is theoretically and practically justified. While Tirole is critical of industrial policy, he acknowledges that there are cases where it was successful; nevertheless, Tirole believes a strictly independent competition policy is justified. While Tirole's presentation is illuminating, it is also frustrating because it fails to address a number of important issues, the first one being whether a reform of the European regulation of mergers is required, considering that certain mergers are prohibited despite their overall positive effects, whereas others are permitted despite having detrimental ones. Another important question in this respect is whether certain markets should be characterised as global rather than local considering, barriers to entry, levels of capital intensity and market structures.

47. A second important issue concerns the decision process within the European system. Of the cases brought before the EC by the Director General of Competition (DG Comp), 99% are adopted, with the Commission upholding the principals of DG Comp's autonomy and independence and of European integration, which, as suggested above, is designed to dismantle dominant positions and opposes the mere idea of European industrial champions. The question in this context is whether the current system should remain in place, or whether one that is open to consider other policies should be instituted. For example, dimensions of trade policy such as state aid, tariffs etc. are often discounted in the context of competition policy. The question is whether competition authorities should have the power to reach their ultimate decision without taking such dimensions into account, or whether trade policy should be systematically considered as well.

48. Another issue concerns the rejection of industrial policy, which is often criticized for its political bias, because regulators are often captured by sectorial interests, etc. But incorporating industrial policy does not necessarily mean subjecting the EC's decisions to review by member states on a political basis. Moreover, such a ban on sectorial policy on the European level may lead to the loss of industries that are based on the European economic model, such as the auto industry. The electrical vehicle battery industry is a case in point. In the face of an emerging Chinese monopoly, a Franco-German alliance of firms is attempting to establish a European battery industry. The firms involved have also argued that such alliances are required in other related industries. The committees of experts put in place to select R&D projects have been very successful. Similar committees can be put in place for the purpose of selecting industrial projects and thus allow the rational integration of competition and industrial policy.

49. Finally, Tirole did not address the "weaponization of trade", and the increasing distance between traditional trade and those that increasingly govern a world where trade is often affected by global adversity. The challenges Europe faces in understating economic and trade policies and in assuming its position on the trade map are significantly greater than those that the United States or China face.

50. **William Kovicic** first stressed the importance of recognising the tensions that arise when competition effects dramatic changes and processes of displacement, and that competition authorities are actively supporting such changes, which may shake incumbent firms and sectors to their core. He also stressed the importance of properly communicating the social benefits of increased competition. This may involve compiling an "antitrust biography" of individual sectors that could demonstrate the positive spill-overs of competition, or the design of counterfactuals that would predict developments absent the disruption caused by competition or by interventions designed to promote it.

51. At the same time, the concerns of those dispossessed by competition must be addressed. Merely arguing that they will do better in the long run is insufficient. One possibility is to make social investments that increase flexibility, e.g., in education, training, infrastructure and in social insurance schemes that support transition. Such intervention should place the economy in a position of allowing those forced to adjust to do so successfully, with minimal disruption, and the gains generated by positive developments could be used for this purpose. One interesting idea is to teach young school children that the economy they will grow up into will be characterised by disruption and will place a premium on flexibility and adjustability.

52. Experiments are very valuable. The United States Defense Advanced Research Projects Agency (DARPA) often conducts successful experiments. Unlike DARPA, competition authorities do not hold significant power and resources and are required to act transparently; however, they are still able to learn from their own failures while focusing on communicating their successes.

53. Finally, regarding the question posed by Korea, prioritisation is a major problem for an agency required to advance multiple policy goals. One challenge in this respect is that it is difficult to evaluate and rank some of these goals. The best option would be to as transparent as possible about priorities and be responsive to the public and the legislature's criticism.

54. **Joshua Wright** gave a few specific recommendations for competition authorities facing criticism and attacks against competition and globalisation. First, he stressed the importance of communicating the authority's work, in particular in exposing the rationale for authorities' decisions, including its consideration of internal dissenting opinions.

55. Another recommendation is for competition authorities to become active players in competition policy research and engage in the study of the problems under discussion, for example of issues involving competition in labour markets, vertical integration and digital markets, because much of the debate around these problems is based on little evidence. Incidentally, retrospectives, which are very popular, may be informative. However, some of the methodologies employed fail to account for the competition authority's own predictions of its interventions' outcomes. Unless many such studies are performed, these methods cannot be used to systematically evaluate competition authorities' performance. Naturally, studies evaluating competition authorities' predictions against actual outcomes are less popular among authorities' staff, but they can be very beneficial.

56. Finally, it is important for competition authorities to engage with their critics. Competition is debated and criticised not only inside the antitrust community but also in different political and academic circles, and competition authorities should strive to participate in such discussions.

57. **The Chair** asked William Kovacic how to maintain competition authorities' independence together with a strict separation between competition and other policies. He requested Will Hayter and Joshua Wright for their recommendations on dealing with cases where consumers are either unaware of the focus on the consumer welfare standard or fail to comprehend its meaning. The Chair also asked the entire panel how the adaptive regulation mentioned by Jean Tirole would work. He then gave the floor to Greece.

58. **Greece** noted that the goal of competition law is the protection of the competitive process, and that consumer welfare is a standard (not a goal in and of itself), that helps frame competition enforcement. But as noted by William Kovacic, workers and consumers may have conflicting preferences, which are exhibited especially in times of crisis, when the lack of surplus results in an inability to compensate "losers". The question is whether a consumer interest standard should be adopted, while maintaining a focus on the competitive process. Such an approach could ensure the promotion of efficiency and consumer welfare,

but also of systemic resilience, which could protect the public from structural inequalities and significant losses from shocks and crises. Industrial organisation can obviously inform such a policy, but other sources of wisdom, e.g., work done by other OECD departments or other methodologies such as agent-based modelling or sophisticated simulation techniques, may be relevant.

59. **William Kovacic** noted that while Jean Tirole stressed the importance of independence, he also noted that competition authorities are not completely independent. Tirole would have probably said that there are collateral values beyond independence, one of them being accountability. After all, governments will be inclined to fund and empower institutions only if they can be held accountable. Interventions' effectiveness is judged in the context in which policy choices are made. The larger context is not foreign to competition authorities, which often communicate with other groups, sector regulators, public procurement authorities etc; moreover, competition authorities in over 65 countries have powers beyond the enforcement of competition law. Indeed, competition authorities' legitimacy depends on their taking part in the discussion of the larger context, for example discussions of policy that do not entail a surrender of their autonomous power of decision.

60. **The Chair** agreed that discussions with other policymakers is necessary, but it may require a deliberate effort on the part of competition authorities to engage with them. He then gave the floor to Will Hayter to discuss strategies to convince consumers that competition authorities' actions serve them.

61. **Will Hayter** believes competition authorities must be honest with themselves about the challenges they face, while remaining close to their roots – evidence-based decisions and a conservative approach. However, it is difficult to sustain traditional positions in a world where “losers” are more vocal and bad news sells better, especially on social media. The key is to adhere to core values while maintaining a correct balance. Competition authorities must be forthcoming about what they are able but also unable to do. As suggested by Jean Tirole, an authority entrusted with a broad set of policies will face considerable practical challenges of balancing competitive effects with effects on employees and communities. However, some competition authorities have consumer protection powers as well, and that can strengthen the impression that they are on the side of consumers. The CMA has recently proposed it be granted fining powers in this context. Other authorities may be able to learn from the CMA's letter detailing its proposals, but after all, the answer to the question posed is complex and depends on the particularities of each jurisdiction.

62. **Joshua Wright** agreed with Will Hayter. He stressed the importance of competition authorities' communication of their actions. While enforcement decisions are made public, competition authorities' advocacy work is often obscure, and members of the public are unaware of this work. For example, the United States Federal Trade Commission regularly advocates for the removal of restrictions in different occupational licences, but this is hardly known even though around 60-70% of the workforce is subject to licensing regimes. This type of work should be part of the portfolio of agency work presented to the public.

63. **The Chair** noted that he is often surprised that the advocacy function of competition authorities is often limited to particular laws that restrict competition in particular sectors, and rarely addresses systemic issues such as the ones under discussion, e.g., facilitating labour mobility or other policies that would make competition more tolerable. The Chair then gave the floor to TUAC.

64. **TUAC** has long been unsuccessfully arguing for the incorporation of employment considerations into competition analysis. While there is sympathy to the problem, there is a sense that other departments and laws are better fit to deal with it. Nevertheless, it makes perfect sense to ensure policy coherence and in particular, that competition policy does not undermine other policies designed to ensure societies are fairer and more inclusive. The share of labour in the distribution of income is declining over time, and low-income households are especially affected. The rising inequality gap is not only just an economic and social problem but is also associated with the rise of protectionism and other political problems. There is also a steady increase in concentration, and this too harms the economy as it encourages rent seeking that adversely affects innovation, productivity and taxes, and above all, employment. This phenomenon should be considered in the context of the loss of employees bargaining rights. The focus on consumer welfare fails to capture the problems. For example, the focus on market definition in a specific context overlooks the manner in which global value chains operate. Investigation of corporate group structures and their powers of decision is likely to reveal the phenomenon of labour market monopsonies. As for remedies, social welfare must become a clear policy objective, and unfair labour practices should become competition offences, both on domestic and global levels. Finally, competition policy is far too focused on market opening. Competition and industrial policies should work together towards the objective of healthier competition, a restriction of corporate power and most importantly, more and better jobs.

65. **The Chair** then introduced Lord Andrew Tyrie's pre-recorded intervention.

66. **The Rt. Honourable Lord Andrew Tyrie** explained that he was a former politician, and an outsider in the competition community. He noted the competition was under fire, with leaders and the public increasingly calling for interventionist and protectionist policies. Many members of the public feel competition policy does not serve them, and there is evidence of rising concentration, excess rents and higher prices that supports this notion. Digital markets have brought enormous benefits, but consumers sense of vulnerability is increasing. Accordingly, expectations from competition authorities will increase in the future. The response depends on the starting point, which for Lord Tyrie, is that free enterprise is the most effective means of improving economic well-being which underlies the statutory responsibilities of competition authorities. More work must be done to show that the framework of free markets and competition are the correct ones. Competition laws must adapt to the digital age, and competition authorities must be vocal about the powers necessary to address new challenges. Commissioner Vestager and the CMA are working in this direction. There are, however, certain problems that competition authorities cannot solve, even if some people think they can, and competition authorities must be forthcoming about their limitations and about politicians' responsibilities to address those problems. Finally, competition authorities should take part in the debate concerning the level of competition in their respective economies and societies as well as in the global community, and in particular assess whether competition is getting stronger or weaker over time.

67. **The Chair** concluded the discussion by noting there appeared to be agreement that competition authorities must be able to reach decisions based on elements of law and economics, without being interfered. There is also agreement that competition authorities must be transparent and engage with those who suffer from competition or fail to understand what they do, and, at least implicitly, that not enough has been done in this respect. They must also be forthcoming about their limitations.

68. As for the need to make competition more tolerable, effective and understandable, some members of the panel stressed the importance of highlighting authorities' advocacy efforts, while Tembinkosi Bonakele suggested that flexible enforcement policies could render competition more tolerable for certain communities. Elie Cohen's stressed the point that competition policy must somehow be coordinated with other policies, but the question is how to do so while maintaining competition authorities' independence. In this context William Kovacic suggested that competition authorities are open to engage with other communities, but while the Chair has reservations about the willingness to do so, he agrees that it should be done, and that competition authorities should engage on issues that go beyond narrow interpretations of their mandate. Finally, regarding Lord Tyrie's call to adapt competition law to the digital age, he noted work in this direction is being done in the OECD as well as in various jurisdictions. The Chair then thanked the member of the panel and concluded the discussion.