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

**Global Forum on Competition**

**USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES**

- Executive Summary -

**10 December 2020**

This executive summary by the OECD Secretariat contains the key findings from the discussion held during Session IV of the 19th meeting of the Global Forum on Competition on 7 – 10 December 2020.

More documents related to this discussion can be found at [oe.cd/mstei](https://oe.cd/mstei).

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## *Executive Summary*

*By the Secretariat\**

On 10 December 2020, the OECD held a roundtable to discuss the use of market studies to tackle emerging competition issues as part of the Global Forum on Competition. Considering the background note prepared by the OECD Secretariat, the written contributions, as well as the discussion by delegates and the expert panellists, the following key points emerged:

1. *The most common objectives for market studies in relation to emerging competition issues are the need to understand new or emerging markets, to prevent potential breaches in competition law, and to maintain regulation up to date as markets evolve.*

A market study can provide the opportunity for an authority to clarify that certain behaviour may be found to infringe competition law, even if no specific instances of this behaviour have been identified during the study. Market studies help businesses understand their markets and can enhance compliance. Market studies also allow business to engage proactively with agencies and regulators in a relatively non-adversarial context

They also provide in depth knowledge of how a market works allowing the competition authority to intervene more effectively in the future when an enforcement case does arise.

2. *Market studies have the advantages that can be forward-looking, cover a broader set of issues, and promote increase competition than can be done in enforcement.*

Competition enforcement tends to focus on the actual or potential harm caused by historical or on-going anticompetitive practices. Market studies contribute by providing the flexibility to be forward looking. This tool serves to identify and diagnose emerging competition issues by exploring the different drivers and identifying possible solutions.

Some competition authorities discussed their forward-looking approach used by analysing scenarios where risks could arise in the future. These enabled the authorities to put in place frameworks that not only address the adverse consequences found but that could also reduce the likelihood of new issues arising in the future.

Market studies analyse whether there are competition problems in a sector instead of analysing the conduct of individual firms in that market. Therefore, these studies are holistic in nature and can cover a broader set of issues than can be done in competition enforcement. In particular, they are well suited to carry out holistic analysis of markets where problems might be market wide and there are interlinked factors creating competition concerns (e.g. supply side issues, consumer protection issues, data and privacy issues, etc.).

Most competition enforcement mainly focus on preventing competition from worsening, for example through mergers, collusion or abuse of dominance. Market studies play a more pro-active role in promoting increased competition.

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\* This executive summary does not necessarily represent the consensus view of the Global Forum participants. It does however identify key points from the discussion at the Roundtable, including the views of the expert panellists and the participants' oral and written contributions.

3. *Market studies are not without limitations and recommended changes to legislation or regulation can take time to implement.*

In the majority of jurisdictions, competition authorities' recommendations are not legally binding. In a small number of jurisdictions (UK, Mexico, and Romania), competition authorities have the legal power to impose certain remedies, such as issuing orders to market participants with regards to their conduct, orders to regulators, or requiring divestures, as long as these remedies are shown to be effective and proportionate. This is done through the market investigation tool. Market investigations are treated both by the competition authority and affected companies as essentially an enforcement process. They can lead to extensive litigation and are more costly than market studies.

There were different views about the benefits of market investigations. Some argued they are potentially more beneficial than market studies because they enable the competition authority to implement remedies and could be a powerful tool in dealing with rapidly changing in markets such as digital markets, where recommendations need to be implemented in a timely manner.

Others argued that the power to impose remedies in the absence of a violation of law was akin to ex ante regulation and market engineering. The power to impose remedies was questioned on the basis that the experience in others jurisdictions demonstrated that it was possible to modify business behaviour through advocacy and persuasion.

4. *Market studies can be a powerful preventive tool to identify, diagnose, and clarify options to address emerging competition issues by exploring the different drivers and clarifying the options available to tackle them from a competition policy, enforcement, regulatory, or other policy perspective.*

Competition authorities generally use both enforcement and advocacy tools. These are often complementary and mutually reinforcing. However, in the case of emerging competition issues, the competition authority is unlikely to have had enforcement cases yet or to have a detailed knowledge of the market or sector in question. Hence, in this case the use of market studies may typically precede other enforcement actions and so act as a beneficial ex-ante tool. As a result, market studies can initiate solutions by:

- Building technical expertise about new or fast-moving markets, or take account of recent development in markets in general to identify risks to competition that could arise in the future.
- Reducing uncertainties about how the authority will apply competition principles for new or fast changing business models and markets, or where there have been recent changes.
- Developing thinking about solutions and proposals for future regulation or legislation in order to facilitate advocacy that minimises adverse effects on competition.

5. *Co-operation between competition authorities and government agencies during the market study process is necessary to tackle emerging competition issues effectively.*

In a number of jurisdictions, market studies are used both for competition and for consumer policy, as these two areas often fall within the remit of the same agency. Market studies enable to consider the synergies between these two policy areas. For jurisdictions with separate consumer protection and competition authorities, market studies can be a good tool to enable such integration as they can accommodate a wider perspective than a competition authority would be allowed to take in a competition enforcement investigation.

Moreover, as the focus of market studies is on the analysis of competitive constraints, they are better able than competition law to consider the wider context. This includes the interplay between competition and other policy areas beyond consumer policy, such as privacy, environmental and wider sustainability policies. As such, market studies can clarify what options there are to address issues found from a competition policy, competition enforcement, regulatory, or other policy perspective.

Three benefits of collaboration with other agencies were discussed during the roundtable. First, it enables agencies with different remits to work out a coordinated response. Secondly, coordinated positions enable industry players to understand the agencies' thinking on emerging issues at a whole-government level. Thirdly, collaboration gives faster and better access to knowledge and data residing in other parts of government, and to market players within the relevant sector.

Potentially the main challenge of collaboration that emerged during the discussion was to come to an agreement on the causes of competition issues and on recommendations to deal with them.

6. *There is a need for international co-operation to harness the benefits of expanded competition when emerging competition issues arise in transnational markets.*

An overarching strategic consideration discussed is the need for an international agenda to harness the benefits of expanded competition when emerging competition issues arise in markets that are transnational. This requires a closer cross-border co-operation between competition authorities and governments in sharing best practice and developing a common approach to common issues. For example, the cross-border nature of many digital platforms and more widely the global scope of modern technology means that the competition challenges faced by one competition authority are not unique. Although the correct approach to preserving competition in individual markets will be for national authorities to decide, there is a clear benefit in working together to develop a shared international approach. This provides an opportunity to align different regulatory environment to promote a global approach in which business have clarity and certainty on the rules within which they are expected to operate.