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

Cancels & replaces the same document of 6 August 2021

Global Forum on Competition

ECONOMIC ANALYSIS AND EVIDENCE IN ABUSE CASES

- Session II - Calls for country contributions

6-8 December 2021
via Zoom

This document is a call for country contributions for Session II of the Global Forum on Competition to be held virtually from 6 to 8 December 2021 (VIA Zoom). GFC participants are invited to submit their contributions by 29 October 2021 at the latest.

JT03480064

TO ALL GLOBAL FORUM PARTICIPANTS

RE: Roundtable on “Economic analysis and evidence in abuse cases”

20th Global Forum on Competition (6 to 8 December 2021)

Dear GFC Participant,

In December, the [Global Forum on Competition](#) will hold a discussion on “[Economic analysis and evidence in abuse cases](#).” We are writing to provide you with some information on the topic and organisation of the session, and to invite you to submit a written contribution.

The concept of an abuse of dominance (or monopolisation) is based on the idea that certain firms, by virtue of their substantial market power, are in a unique position to engage in anticompetitive behaviour. Market power, the ability to unilaterally and profitably raise prices or reduce quality beyond the level that would prevail under competition, is not in itself a cause for competition concern – especially if it is temporary and contestable. However, if that power is used to engage in some types of conduct, it may harm competition and consumers.

The Chair has selected this topic based on the high level of interest expressed in the participant evaluations of last year’s Forum. As you may recall, last year’s discussion (on digital markets) was the first time that abuse of dominance (or monopolisation) cases were covered at the Forum. This year’s session will seek to build on the discussion, with a focus on practical insights that can be applied by competition authorities undertaking economic analysis for abuse cases in any sector.

Economic analysis generally plays a central role in abuse of dominance cases, due in part to the nature of the conduct being investigated. Abuse of dominance theories of harm centre around conduct that may be harmless or even procompetitive in some situations, but which can have a significant anticompetitive effect in others. Thus, a case-by-case analysis can be crucial for abuse of dominance theories of harm.

There is a role for economic analysis throughout an abuse of dominance case. First, economic thinking underpins the theories of harm applied in these cases. In particular, theoretical and empirical economics have helped determine the specific types of conduct by dominant firms that may have anticompetitive effects, as well as the situations in which these effects will emerge.

Second, economic analysis is needed to assess a firm’s market power. As discussed in last year’s roundtable, an economic approach to assessing dominance extends beyond simply calculating a firm’s market shares. Rather, economic analysis is needed to uncover the existence of barriers to entry and limited substitutability, which both contribute to the market power needed for abuses to harm competition.

Third, analysing whether the conduct in question results in harm to competition (or consumers, depending on the jurisdiction) will also require economic analysis. Specifically, economic analysis can help reveal the impacts of the conduct in terms of prices, output, and even quality. For example, econometric techniques can isolate the effects of the conduct by controlling for other factors in a market affecting price and output. In addition, some cases may require an in-depth analysis of the cost structures of a firm and its competitors, requiring economic expertise to interpret accounting data.

Fourth, economic analysis can play an important role in assessing the adequacy of any sanctions or remedies that seek to address the conduct. It will be most relevant in assessing whether the measure in question will serve to restore or maintain competitive conditions in a market.

Fifth, and finally, ex-post assessments of past abuse of dominance or monopolisation cases (or the effects of conduct regarding which no case was pursued) can be valuable. These assessments require economic techniques to assess the impact of a given authority decision, which can generate useful insights for future cases.

Applying economic expertise to abuse cases involves a range of practical challenges, most significant among them are limitations to available data and resources. Competition authorities must therefore make decisions about the types of evidence gathering to invest in for a given case, and the priority that different cases should be given.

This roundtable discussion will seek to provide practical insights with respect to the use of economic analysis and evidence gathering in abuse cases, namely:

- What theories of harm may apply, and what is the economic basis for these theories?
- What analytical techniques can be used to assess these theories, and what types of evidence are needed to use them?
- How should authorities proceed in gathering evidence in abuse cases, and what strategies can authorities use when quantitative evidence is limited?
- What other practical issues should authorities consider when undertaking analysis abuse cases, for instance with respect to having the right expertise?

The Secretariat will prepare a background note that explores these issues. The OECD webpage on “Economic analysis and evidence in abuse cases” ([oe.cd/analysis](https://www.oecd.org/analysis)) will be the primary vehicle for conveying documentation and related links on this subject (see the GFC website: [oe.cd/gfc](https://www.oecd.org/gfc) and our main roundtables page at www.oecd.org/competition/roundtable). Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the site.

We 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 one, but given the time constraints you might not be in a position to check it before distribution on O.N.E.

We refer you to the suggested reference materials at the end of this letter and to the list of questions included in the Annex. The list in the Annex is not exhaustive and you are encouraged to raise and address other issues in your submission and during the discussion.

We would encourage you to submit a written contribution that describes your experience or views on pursuing abuse of dominance cases. Should you wish to provide a contribution, please inform the Secretariat by **24 September 2021**. Written replies to this call for contributions are due by **29 October 2021** to enable the Secretariat to prepare the summary of the responses in advance of the session. Please note that not meeting this deadline may result in your contribution not being distributed to delegates in a timely fashion in advance of the meeting.

In order to provide delegates with further opportunities to share their experiences and exchange with one another, this year's Global Forum will also include **breakout sessions** for small group discussion. As with last year's Forum, two time slots will be offered to accommodate as many delegations' time zones as possible: 9:00-11:00 CET and 16:00-18:00 CET. Each time slot will feature three groups focusing on different topics. Please indicate your preferred time slot and topic when registering on Zoom according to the instructions that will be sent by the Secretariat shortly. The three breakout topics are:

- Techniques and evidence for assessing market power
- Techniques and evidence for assessing exclusive dealing and bundling
- Techniques and evidence for assessing predatory pricing and margin squeeze

All communications regarding documentation and logistics for this roundtable should be sent to Angélique Servin (angelique.servin@oecd.org). All substantive queries regarding this session should be sent to James Mancini (james.mancini@oecd.org).

Annex I. Suggested questions for consideration in written contributions

1. What types of abuse of dominance or monopolisation theories of harm does your authority consider?
2. How does your authority assess market power in the context of abuse of dominance, or monopolisation, cases? Do you apply any economic principles or tools to this assessment?
3. What is the role of economists when collecting evidence for abuse of dominance or monopolisation cases? What types of evidence do you find particularly helpful in these cases?
4. Does your authority have any strategies for dealing with data limitations in abuse/monopolisation cases? For instance, does your agency acquire third-party data, use surveys, or adapt its techniques to work around data limitations?
5. What types of analytical techniques does your agency employ when assessing effects in abuse of dominance or monopolisation cases, and how resource-intensive are they? How do you select the approach in each case?
6. What role, if any, do economists and economic insights play in selecting sanctions and undertaking remedy negotiations with the defendants in abuse of dominance/monopolisation cases?
7. How does your authority manage its economics staff with respect to abuse of dominance/monopolisation cases? How are these cases prioritised with respect to other types of cases?
8. Has your authority undertaken any ex-post assessments of its abuse of dominance/monopolisation cases (or the cases it opted not to take)? If so, what were the results?

Suggested Bibliography

- OECD Global Forum on Competition Roundtable (2020), “Abuse of dominance in digital markets”, <https://www.oecd.org/competition/globalforum/abuse-of-dominance-in-digital-markets.htm>
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- OECD (2017), “Rethinking the use of traditional antitrust enforcement tools in multi-sided markets”, <https://www.oecd.org/daf/competition/rethinking-antitrust-enforcement-tools-in-multi-sided-markets.htm>
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- OECD Competition Policy Roundtables (2006), “Remedies and Sanctions in Abuse of Dominance Cases”, <https://www.oecd.org/daf/competition/abuse/38623413.pdf>
- A complete listing of OECD resources on abuse of dominance can be found at: <https://www.oecd.org/daf/competition/abuse-of-dominance-competition-roundtables.htm>.
- College of Europe Global Competition Law Centre (2005), “GCLC Research Papers on Article 82 EC”, <https://www.coleurope.eu/content/gclc/documents/GCLC%20Research%20Papers%20on%20Article%2082%20EC.pdf>
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- Hovenkamp, H. (2021), “The Looming Crisis in Antitrust Economics”, *Faculty Scholarship at Penn Law*, 2151, https://scholarship.law.upenn.edu/faculty_scholarship/2151.
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