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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Global Forum on Competition

INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS

- Executive Summary -

2 December 2022

This executive summary by the OECD Secretariat contains the key findings from the discussion held during Session III of the 21st meeting of the Global Forum on Competition on 1 – 2 December 2022.

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

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Executive Summary

By the Secretariat¹

On 2 December 2022, the OECD held a roundtable to discuss the interactions between competition authorities and sector regulators 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. *In most jurisdictions, competition authorities co-operate frequently with sector regulators and use a variety of tools for doing so, often consulting each other informally.*

As competition authorities and sector regulators pursue their respective mandates in regulated sectors, their activities may overlap, and therefore there is a risk that they take inconsistent decisions or otherwise create uncertainty for market participants. In this regard, competition authorities and sector regulators co-operate often in order to ensure consistency between their actions, as well as to reduce duplication and share resources, ultimately enabling them to better achieve their objectives.

Co-operation tools are usually envisaged in legislation and in formal agreements. In many jurisdictions the legal basis for co-operation is provided in a law, either the competition law or the legislation dealing with regulated sectors. In addition, competition authorities and sector regulators often sign agreements such as Memoranda of Understanding (MoU), to specify in more detail how authorities should interact, for instance clarifying their respective mandates when the legislation is not clear. Even if MoUs do not ensure that co-operation will occur in practice, they provide a more formal framework for interaction and indicate a willingness to engage in co-operation.

There is a variety of methods that authorities can use to co-operate. The main co-operation tools are notification, consultation, information sharing, working groups and staff exchanges.

First, legislation and MoUs usually state the obligation of mutual notification, through which competition authorities and sector regulators must notify each other when they become aware of potential violations of sector regulation or competition law, respectively. This intends to avoid that harmful behaviour escapes enforcement because the authority who detect it did not have the mandate to investigate and sanction.

Second, competition authorities may usually consult the relevant sector regulator when dealing with cases in a regulated sector, to take advantage of the regulator's expertise and to ensure consistency between the activities of both authorities.

Third, the exchange of data between competition authorities and sector regulators is also a common mechanism through which competition authorities can have access to information already collected by a sector regulator. This may not only accelerate competition enforcement, but also reduce the burden of information requests on market players.

Fourth, many jurisdictions establish fora or working groups to improve communication and enhance discussions between competition authorities and sector regulators to reach a shared

¹ This executive summary does not necessarily represent the consensus view of the Global Forum participants. It does however identify key points that emerged from the Roundtable discussion, including the views of the expert panellists and the participants' oral and written contributions.

understanding and approach. Moreover, in some jurisdictions, authorities exchange staff, with the aim of sharing expertise and transferring knowledge.

Additionally, according to a number of delegations, informal co-operation (i.e., when it is not supported by a written instrument) appears to be frequent in enforcement cases. This can involve activities such as keeping the other part informed of the progress of cases of mutual interest, ad-hoc meetings to discuss substantive or procedural issues, and exchanges of public information.

2. *While there are commonalities across different jurisdictions, there are also a number of features that are specific to certain jurisdictions, such as the involvement of a regulator in competition enforcement cases.*

Co-operation tools and their usefulness are linked to institutional design. In the most frequent institutional set-up, where the competition authority is a stand-alone body responsible for competition enforcement and advocacy in all sectors, co-operation is especially important. Alternative settings, such as multi-function bodies combining competition and regulatory authorities or concurrency regimes (in which both the competition authority and the sector regulators have competition powers), try to facilitate effective co-operation through institutional solutions. In these cases, co-operation tools may differ from those commonly used by the stand-alone competition authorities.

Different kinds of co-operation may arise even between jurisdictions with the same institutional set-up. Further, different approaches can be used in different sectors within the same jurisdiction. For instance, although many jurisdictions allow competition authorities to consult sector regulators, this can be an option or a requirement, depending on the jurisdiction and sometimes the sector within a jurisdiction. In addition, when consultations are envisaged, opinions may be binding or non-binding. Moreover, some features are specific to certain jurisdictions, such as the regulator's power to challenge merger decisions by competition authorities or the involvement of a regulator in competition enforcement cases.

3. *Co-operation in merger control follows more structured procedures than co-operation on antitrust cases.*

Co-operation in merger cases tends to be regulated in the legal framework and can be classified into two main models: parallel reviews by both the competition authority and the sector regulator or full responsibility for merger control assigned to the competition authority, which however requests an opinion from the regulator on the transaction.

Co-operation on antitrust cases is usually not expressly described in the legal framework, falling under the general provisions on co-operation. This is likely to make co-operation more complex, as the same conduct may be scrutinised both under competition law and sector regulation.

4. *Competition authorities and sector regulators still face several challenges to increase co-operation on enforcement cases.*

A number of reasons can undermine increased co-operation between competition authorities and sector regulators. When the roles and mandates of the authorities are not clearly established in the legislation, co-operation can be difficult.

Moreover, although consultations are valuable and should be encouraged, they should not delay or otherwise disrupt the process to reach a decision. However, setting deadlines may make co-operation more burdensome and ultimately affect the incentives and usefulness of co-operation.

The exchange of confidential information may also be challenging in some jurisdictions. For example, the existence of MoUs establishing the proceedings for the exchange of information does not always ensure that co-operation will occur in practice.

Furthermore, even if informal co-operation seems to be common and can pave the way for more formal co-operation, it has many limitations, as it does not allow for the sharing of confidential data and is often dependent on personal relationships.

5. *There is limited information available to the parties in a case or to the general public as to the extent of co-operation between authorities.*

There is no extensive research on the effectiveness of co-operation between competition authorities and sector regulators. In fact, public information on the legal basis for co-operation and on how competition authorities and sector regulators interact in practice on enforcement cases is not always available.

Thus, more transparency, including to the parties in the cases, on how co-operation takes place would be valuable to increase the parties' trust in the process and to strengthen the relationship between competition authorities and sector regulators. Evaluations of co-operation could further contribute to identify what has been working and what should be improved in the interactions between authorities. This could also allow sharing lessons learned from one sector with the others.

Ultimately, more work on co-operation between competition authorities and sector regulators could allow drawing more definite conclusions and inform better the design and implementation of co-operation mechanisms.