

Unclassified

English - Or. English

11 August 2022

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

Global Forum on Competition

SUBSIDIES, COMPETITION AND TRADE

Session II– Call for country contributions

1-2 December 2022

This document is a call for country contributions for Session II of the Global Forum on Competition to be held on 1-2 December 2022. GFC participants are invited to submit their contributions by 28 October 2022 at the latest.

JT03501109

TO ALL GLOBAL FORUM PARTICIPANTS

RE: Roundtable on “Subsidies, competition and trade”

21st Global Forum on Competition (1-2 December 2022)

Dear GFC Participant,

On 1st December 2022, the Global Forum on Competition (GFC) will hold a discussion on “Subsidies, Competition and Trade”. 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 discussion will build on a number of earlier sessions held by the GFC and the OECD Competition Committee. These include the GFC sessions on “[Trade, development and competition](#)” and “[The Promotion of Competitive Neutrality by Competition Authorities](#)” in 2021 and “[Competition provisions in trade agreements](#)” in 2019, as well as the Roundtable on “[The role of competition policy in promoting economic recovery](#)” in 2020.

The number of subsidy measures implemented worldwide has in recent years been steadily increasing¹. This may be a result of several factors, including recent developments that have required, and will continue to require, government intervention, such as the COVID-19 recovery, climate change, fragile and disrupted global value chains and the digital transformation.

It is well documented that many subsidies influence competition and trade. Firstly, they frequently distort the level playing field by changing market signals, resulting in inefficiencies, prices distortions and altered incentives. Secondly, as subsidy practices often lack transparency, disagreements over subsidies are a major source of tension in trade relationships. Such disagreements may continue to lead to growing economic nationalism, government intervention and/or protectionism.

Given the above, one would expect subsidies to be subject to the intense scrutiny of governments worldwide. This is however not the case, with a few notable exceptions such as the State Aid and the Foreign Subsidies control regimes in the European Union. At supranational and national levels, there exists a large heterogeneity among systems of control of subsidies, while multilateral subsidy disciplines have been criticised for their ineffectiveness.

The role of subsidies in distorting trade and in un-levelling the playing field in antitrust markets has been well analysed over the years. However, less attention has been given to the role that subsidies may have in antitrust analysis and how competition authorities integrate (or not) the fact that a market player involved in a competition investigation benefits from domestic or foreign subsidies that grants it a competitive advantage over its competitors. While this question seems to be less relevant in cartel enforcement, recent policy discussion has focussed on the role of subsidies in monopolisation/abuse of dominance cases as well as in merger control. It is still an open question whether

¹ For the purposes of the call for contributions, we refer to "subsidies" loosely as a transfer from the government (directly and indirectly) to an entity that is "unrequited," i.e., without an equivalent contribution in return. Examples include direct government expenditures, tax incentives (such as tax credits or reduced tax rates), equity infusions, soft loans, government provision of goods and services and procurement on favourable terms, and price supports. (IMF, OECD, WB and WTO, 2022_[1]).

competition authorities should have any role in assessing the impact of subsidies when applying competition law or whether the issues should be left to international law.

Against this background, the session will explore the role that competition authorities can play in the interplay between subsidies, competition and trade. More specifically, the Roundtable will investigate the extent to which, and how, subsidies should be part of the competition analysis of competition authorities. Questions include:

- To what extent are subsidies currently incorporated by competition authorities in competition analysis?
- Should subsidies be incorporated (more or differently) into the competition analysis, and if so, why and how?
- What theories of harm may apply to subsidies, 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?
- Is there (or should there be) a difference in how domestic subsidies and foreign subsidies should be assessed when dealing with a competition enforcement case?

The Secretariat will prepare a background note that explores these issues. The OECD webpage on “Subsidies, Competition and Trade” will be the primary vehicle for conveying documentation and related links on this subject (see the GFC website: [oe.cd/gfc](http://www.oecd.org/gfc) and our main roundtables page at <http://www.oecd.org/daf/competition/roundtables.htm>). 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 subsidies, competition and trade in your jurisdiction. Should you wish to provide a contribution, please inform the Secretariat by **23 September 2022**. Written replies to this call for contributions are due by **28 October 2022** 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.

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 Wouter Meester (wouter.meester@oecd.org) or Lynn Robertson (lynn.robertson@oecd.org).

Annex A. Suggested questions for consideration in written contributions

This Annex provides a list of questions for consideration in preparing a written contribution. A contribution does not need to cover every listed question, and you may wish to address issues not listed here. If possible, please prepare your contribution as an integrated essay rather than a list of answers to questions.

You are encouraged to refer to practical examples. Please provide examples of enforcement cases and advocacy activities to illustrate your answers.

Legal regimes to control subsidies

1. In your jurisdiction, is there a legal framework for assessing the impact on competition of government subsidies? If so, does the competition authority have the mandate to enforce this legal framework? Please elaborate.

Inclusion of subsidies in competition enforcement analysis

1. In your jurisdiction, are subsidies currently included in the analysis when assessing competition enforcement cases (e.g. merger control, unilateral conduct)?
2. If yes:
 - How are they included in the assessment? What does the applied assessment framework look like and what theory of harm is used?
 - Do they affect the assessment? For instance, in a unilateral case, has the presence of a subsidy had an impact on the applied definition of dominance? Or in the case of a merger control case, has the presence of subsidies had an impact on the substantive test?
 - Do you have examples of competition enforcement cases in which subsidies were included in the analysis, or you have contemplated to?
 - What analytical techniques and types of evidence have you used?
3. Is there (or should there be) a difference in how domestic subsidies and foreign subsidies should be assessed when dealing with a competition enforcement case, and why?
4. Do you think subsidies should be (increasingly or differently) part of the analysis when assessing competition enforcement cases, and if so, how?
5. Has your competition authority been exposed to non-competition (or trade) considerations with regards to subsidies (e.g. disruption to domestic production and job dislocations and the possible loss of “strategic” industries), which (could) have affected the assessment or outcome of a competition enforcement case? Please elaborate and/or provide examples where relevant and possible.

Subsidies and advocacy

1. Have subsidies been the focus of (one of) your advocacy initiatives, e.g. market studies? If so, please elaborate.

2. Does your competition agency advise the government on the use or design of subsidies, either on the government's request or on its own initiative? Has it advised on their impact? Please elaborate and provide examples where relevant and possible.

Suggested bibliography

- Aghion, P. et al. (2015), “Industrial Policy and Competition”, *American Economic Journal: Macroeconomics*, Vol. 7/4, pp. 1-32. [14]
- Centre for Economic Policy Research (2021), *Subsidies and Market Access: Towards an Inventory of Corporate Subsidies by China, the European Union and the United States*. [15]
- Draper, P. et al. (2021), *Domestic distortions through industrial subsidies: Reframing the G20’s potential perspective*, https://www.g20-insights.org/policy_briefs/domestic-distortions-through-industrial-subsidies-reframing-the-g20s-potential-perspective/. [12]
- European Commission (2021), *Commission Staff Working Document; Impact Assessment Accompanying the Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market*. [6]
- European Commission (2020), *White paper on levelling the playing field as regards foreign subsidies*. [10]
- Franco-German manifesto (2019), “A Franco-German Manifesto for a European industrial policy fit for the 21st Century”, https://www.bmwk.de/Redaktion/DE/Downloads/F/franco-german-manifesto-for-a-european-industrial-policy.pdf?__blob=publicationFile&v=2. [11]
- Gao, H. (2020), “WTO Reform: A China Round?”, *Proceedings of the ASIL Annual Meeting* 114, pp. 23-32, <https://doi.org/10.1017/amp.2021.4>. [13]
- IMF, OECD, WB and WTO (2022), *Subsidies, Trade and International Cooperation*, https://www.oecd-ilibrary.org/trade/subsidies-trade-and-international-cooperation_a4f01ddb-en. [2]
- Kociubiński, J. (2022), “The Proposed Regulation on Foreign Subsidies Distorting the Internal Market; The Way Forward or Dead End?”, *European Competition and Regulatory Law Review*, Vol. Volume 6/1, pp. 56 - 68. [5]
- OECD (2020), “The role of competition policy in promoting economic recovery”, <http://www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economic-recovery-2020.pdf>. [7]
- OECD (2018), *Competition Law and State Owned Enterprises*, [https://one.oecd.org/document/DAF/COMP/GF\(2018\)10/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)10/en/pdf). [3]
- OECD (2010), *Competition, State Aids and Subsidies*. [4]
- Rodrigues, N. (ed.) (2021), *Filling the regulatory gap to address foreign subsidies: the EC’s search for a level playing field within the internal market*, Springer. [8]
- Sire, T. (2022), “The uneven playing field: How to deal with foreign subsidies when assessing mergers?”, *Concurrences N° 1-2022*, Vol. February 2022, Art. N° 105183, pp. pp. 54-62. [1]
- WEF (2022), “Industrial Policy and International Competition: Trade and Investment Perspectives”, *White Paper*. [9]