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

Global Forum on Competition

EX-POST ASSESSMENT OF MERGER REMEDIES

Session IV - Call for country contributions

7-8 December 2023

This document is a call for country contributions for Session IV of the Global Forum on Competition to be held on 7-8 December 2023. GFC participants are invited to submit their contributions by **27 October 2023** at the latest.

JT03523076

TO ALL GLOBAL FORUM PARTICIPANTS

Re: Roundtable on “Ex-Post Assessment of Merger Remedies” 22nd Global Forum on Competition (7-8 December 2023)

Dear GFC Participant,

On 8 December 2023, the [Global Forum on Competition \(GFC\)](#) will hold a Roundtable on “Ex-post assessment of Merger Remedies”. This letter provides some background information on the topic and is an invitation for written submissions to this Roundtable from those agencies that have relevant experience in this area.

Merger control is an important part of any competition regime, and effective merger remedies are needed to ensure its efficacy. Remedies are a distinct process within merger control and represent a number of specific challenges that warrant careful consideration, including how remedies are designed as well as how they are implemented. Ex-post assessments of merger remedies allow competition authorities to look retrospectively at previous merger remedy decisions to review whether the remedy proceeded as expected or if things could have gone better. This enables competition authorities to refine and improve their practices and be confident in their decision making going forward.

This specific topic has not been directly discussed at the Competition Committee or the GFC before, but the themes of ex-post assessment and merger remedies have been the subject of several past discussions. For example, the Competition Committee has held roundtables discussing [Impact Evaluation of Merger Decisions](#) (2011) and [Remedies in Merger Cases](#) (2011). In addition, between 2012 to 2016, the [Evaluation of Competition Interventions](#) was a strategic priority of the Competition Committee, with a [Reference Guide on Ex-post Evaluation of Competition Agencies’ Enforcement Decisions](#) published in 2016. Relevant discussions also took place earlier this year during the Working Party 2 Roundtable on [Assessing and Communicating the Benefits of Competition Interventions](#). There have also been many related discussions into merger review more generally.

This Roundtable will consider several aspects of ex-post assessments of merger remedies, including reviews that consider the implementation of the remedy as well as those that consider its design. It will also discuss the need for them in competition authorities’ toolkits, and how best to implement them effectively according to the resources available. More specifically, the OECD Global Forum on Competition will discuss:

- What experiences have jurisdictions had with ex-post assessment of merger remedies? What are the different scopes and types of review available?
- What are the benefits of conducting ex-post assessments of merger remedies? How can these be maximised, and lessons incorporated into future practices?
- Are there any challenges in these reviews? How can these be overcome? What are their resource requirements?
- What are the best practices for conducting ex-post assessments of merger remedies? How should cases for review be selected?
- How do these reviews relate to ongoing remedies? What actions can authorities take if they find remedies are not working well?

We would like to invite participants to submit contributions on how they address these questions, and what their experience is in relation to the ex-post assessment of merger remedies more broadly. The quality and usefulness of this roundtable will be greatly strengthened by written contributions. In order to assist you with the preparation of your contribution, the session will be supported by a background paper.

We refer you to this background paper, which will be circulated on O.N.E in the coming months, to the suggested preliminary bibliography included at the end of this letter, and to the more detailed 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 submissions and during the discussion.

The OECD webpage for this Roundtable will be the primary vehicle for conveying documentation and related links on this subject (see the GFC website: oe.cd/gfc). It will become available on the main roundtables page at www.oecd.org/competition/roundtables. Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the site.

In order to ensure an effective preparation of the roundtable discussion, I would be grateful if you could let the Secretariat know by **Friday 29 September 2023** at the latest if you are planning to make a written contribution on the topic. Written submissions are due by **Friday 27 October 2023** accompanied by a short summary of the content (no more than one page) and failure to meet this deadline may result in your contribution not being distributed to delegates via O.N.E. in a timely fashion in advance of the meeting.

All communications regarding the documentation for this roundtable should be sent to Angélique Servin (angelique.servin@oecd.org). Please address all substantive queries relating to this discussion to Mr Richard May (richard.may@oecd.org).

Annex - Suggested questions for consideration in the written contributions

Roundtable on *Ex-post Assessment of Merger Remedies*

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. You are encouraged to refer to relevant cases or advocacy initiatives where appropriate to illustrate your answers. Please prepare your contribution as an integrated essay rather than a list of answers to questions. You may wish to include an annex with short case references.

Ex-post assessments of merger remedies

- What experience do you have in conducting ex-post assessments of merger remedies? What forms did the assessments take (e.g. in-house/outsourced, qualitative/quantitative etc)?
- Have you conducted any internal reviews assessing how your merger remedy process is working? Or on how you design remedies?
- Are you aware of any other organisations or academics conducting ex-post assessments of your previous merger remedy decisions?

Benefits and challenges of the assessments

- What lessons have you drawn from ex-post assessments of merger remedies? Have you used findings from ex-post assessments of merger remedies in other jurisdictions to improve your practices?
- What do you consider to be the main benefits of ex-post assessments? Can you provide examples of ex-post assessments improving your merger remedies practices?
- What are the main challenges or risks in conducting these reviews? Have you found ways to mitigate these challenges?
- If you have not yet undertaken any reviews, or not as many as you would have liked, what are the reasons for this?

Conducting ex-post assessments

- How and when do you decide which merger remedies to assess ex-post?
- What process do you follow when conducting ex-post assessments of merger remedies? Did you conduct the reviews in-house or outsource them?
- If you conducted the review in-house, what were the requirements in terms of staffing and timing? Did you use a separate team for the review? If you outsource, how do you ensure success?
- What practices are important in ensuring a successful ex-post assessment of merger remedies? Have you learnt anything from previous reviews that you would do differently in the future?
- What are the similarities or differences between ex-post assessments of merger remedies and other forms of ex-post assessment?
- What do you do once the assessment is finished? How do you communicate the results, if at all? How do you disseminate and incorporate the findings internally?

Interaction with other ex-post elements of remedies

- What interactions are there between the functioning of the merger remedy and an ex-post assessment, for example between monitoring of remedies?
- Have you experienced reviewing a remedy that was not as effective as you imagined?

Preliminary bibliography

- Competition Bureau Canada (2011) Mergers Remedies Study, Bulletin, <https://ised-isde.canada.ca/site/competition-bureau-canada/sites/default/files/attachments/2022/cb-merger-remedy-study-summary-e.pdf>
- Competition and Markets Authority, Understanding Past Merger Remedies, 2015-2019, <https://www.gov.uk/government/publications/understanding-past-merger-remedies>
- DG COMP (2005) Merger Remedies Study, https://ec.europa.eu/competition/mergers/legislation/remedies_study.pdf
- Houska, T (2014) Ex-post merger analysis: A case study of a P&G/Gillette merger, <https://www.ceeol.com/search/chapter-detail?id=841783>
- Federal Trade Commission (2017) The FTC's Merger Remedies 2006-2012, A Report of the Bureau of Competition and Economics, https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf
- Federal Trade Commission (1999) A Study of The Commission's Divestiture Process, <https://www.ftc.gov/sites/default/files/attachments/merger-review/divestiture.pdf>
- Fletcher, A. (2016) The Role of Demand-Side Remedies in Driving Effective Competition, A Review for Which?, Centre for Competition Policy, https://www.regulation.org.uk/library/2016-CCP-Demand_Side_Remedies.pdf
- Gorecki, P (2021) A Change in Direction for Merger Control in Ireland: An Ex Ante/Ex Post Case Study Evaluation, https://mpr.a.uni-muenchen.de/108743/1/MPRA_paper_108743.pdf
- Ilyzkovitz, F. and Dierx, A. (2015) Ex-post economic evaluation of competition policy enforcement: A review of the literature, DG Competition, https://ec.europa.eu/competition/publications/reports/expost_evaluation_competition_policy_en.pdf
- Kovacic, W (2006) Using Ex Post Evaluations to Improve the Performance of Competition Policy Authorities, https://scholarship.law.gwu.edu/faculty_publications/624/
- Kwoka, J. (2014) Mergers, Merger Control, and Remedies: A Retrospective Analysis of U.S. Policy, <https://direct.mit.edu/books/book/3084/Mergers-Merger-Control-and-RemediesA-Retrospective>
- Lear (2006) Ex-Post Review of Merger Control Decisions, A study for the European Commission prepared by Lear, https://www.learlab.com/wp-content/uploads/2016/03/lear_ex_post_1170672540.pdf
- Motta, M., Polo, M. and Vasconcelos, H. (2007) Merger remedies in the European Union: An overview, <https://journals.sagepub.com/doi/pdf/10.1177/0003603X0705200310>
- Ormosi, P. et al (2015) A review of merger decisions in the EU: What can we learn from ex-post evaluations?, European Commission, <https://ec.europa.eu/competition/publications/reports/kd0115715enn.pdf>
- OECD (2011) Impact Evaluation of Merger Decisions, <https://www.oecd.org/daf/competition/Impactevaluationofmergerdecisions2011.pdf>
- OECD (2011) Remedies in Merger Cases, <https://www.oecd.org/daf/competition/RemediesinMergerCases2011.pdf>
- OECD (2016) Reference Guide on Ex-post Evaluation of Competition Agencies' Enforcement Decisions, <https://www.oecd.org/daf/competition/reference-guide-on-ex-post-evaluation-of-enforcement-decisions.htm>
- OECD (2022) Disentangling Consummated Mergers, <https://www.oecd.org/daf/competition/disentangling-consummated-mergers-experiences-and-challenges.htm>