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

Cancels & replaces the same document of 5 August 2024

Global Forum on Competition

CROSS-BORDER MERGERS

Session II – Call for country contributions

2-3 December 2024

This document is a call for country contributions for Session II of the Global Forum on Competition to be held on 2-3 December 2024. GFC participants are invited to submit their contributions by 31 October 2024 at the latest.

JT03548131

TO ALL GLOBAL FORUM PARTICIPANTS

Call for Contributions - Roundtable on Cross-border Mergers

23rd Global Forum on Competition, 2-3 December 2024

Dear GFC Participant,

This year, the [Global Forum on Competition](#) (GFC) will hold a roundtable discussion on Cross-border Mergers on 2 December 2024. This letter provides some background on the topic and is an invitation for written submissions to this Roundtable from those agencies that have relevant experience in this area.

Over the past years, at the OECD, there have been previous opportunities to discuss issues associated with cross-border mergers. This includes roundtables on [cross-border merger control: challenges for developing and emerging economies \(2011\)](#); [remedies in cross-border merger cases \(2013\)](#); and [extraterritorial reach of competition remedies \(2017\)](#).

Cross-border mergers can be defined as those transactions that involve companies established in more than one jurisdiction. They can also include situations where, regardless of the origin or location of the merging firms, the transaction affects markets in more than one jurisdiction (OECD, 2011^[1]).

Globalisation, free international trade and investment have caused an increasing number of cross-border mergers that are subject to multi-jurisdictional merger review. Additionally, increasing digitisation and the global reach of multinational digital platforms and technology firms have created a significant volume of new cross-border merger activity (OECD, 2023^[2]).

While national competition authorities apply their merger control rules to protect competition within domestic markets, due to the extra-territorial nature of cross-border mergers, these transactions raise specific challenges. For example, the multiple reviews allow for the possibility of competition authorities following different approaches and making different decisions based on their domestic objectives, the characteristics of their markets, the limitations of implementing procedures and the need to protect local consumers. These approaches can occasionally diverge in some cases. Thus, the review of cross-border mergers often require a high degree of co-ordination and co-operation between reviewing authorities.

The session will be organised in two parts. The first one will be a plenary, which will discuss how competition authorities evaluate cross-border mergers, including the challenges they face. This session will also touch upon one of the main concerns that the competition community has when talking about cross-border mergers, which is the possibility of authorities reaching different outcomes, which may conflict with one another. This will include a discussion of the drivers and implications of divergent outcomes, and situations that are not necessarily conflicting.

The second part of the session will consist of two breakout sessions. These sessions will go more into detail on successes and failures in dealing with cross-border mergers, as well as on the relevance of co-operation in each phase of the review, particularly in the design of remedies. Therefore, a review of relevant experience from a wide range of jurisdictions will be essential for the discussion.

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The quality and utility of this session will be greatly strengthened by written contributions. In order to assist you with the preparation of your contribution, the Annex includes a suggested bibliography and a number of questions on which you may wish to focus. 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. We also strongly encourage you to discuss and comment on your relevant enforcement experience in this area.

The Roundtable will also be supported by the Secretariat background paper on this topic, which will be circulated on O.N.E. in the coming months.

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/gfc24). 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, we would be grateful if you could let the Secretariat know by **27 September 2024** at the latest if you are planning to make a written contribution on the topic. Written submissions are due by **31 October 2024** 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 Ms Nasli Aouka (Nasli.AOUKA@oecd.org). Please address all substantive queries relating to this discussion to Ms Aura Garcia Pabon (Aura.GARCIAPABON@oecd.org) and Mr Connor Hogg (Connor.HOGG@oecd.org).

Annex - Suggested questions for consideration in the written contributions

Roundtable on *Cross-border Mergers*

23rd Global Forum on Competition

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 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.

A. Notification and procedure of cross-border mergers

- Do you ask the merging parties to list other jurisdictions where the transaction has been or must be notified when submitting their notification?
- Do you incentivise merging parties to notify their transaction in other jurisdictions as soon as you find out that there is a duty to do so?
- Do you engage with other jurisdictions when you find out that the same transaction was notified in multiple jurisdictions [i.e. do you co-operate in the very early stages of the merging review]? How do you decide with which competition authorities to engage if the transaction is notified in several jurisdictions?
- Is your timeline for a review of a merger impacted by the fact that the transaction was notified in other jurisdictions? If so, how? [e.g. can you stop the clock while waiting for another jurisdiction's decision or while engaging in conversations with other competition authorities on the transaction?]
- What is your opinion on the timing of notification of cross-border mergers? Should they be notified simultaneously to the different competition authorities?

B. Assessment of cross-border mergers

- When defining the relevant market for the analysis of a merger, do you consider the possibility to define supra national markets? If so, would you take into account the impact of a transaction in other jurisdictions or would you restrict the analysis to the impact in the national markets?
- What additional processes does your competition authority take when assessing a merger that has cross-border characteristics?
- Have you had experience co-operating with other competition authorities in the assessment of cross-border mergers? If so, has this co-operation involved the granting of waivers for sharing confidential information? Please describe the role of confidentiality waivers and the challenges you have faced using / not using them.
- Do you consider that there is room for more co-operation with other competition authorities in the assessment of cross-border mergers? What are the factors that have impeded such a co-operation?

C. Remedies

- Have you had cases in which you have consider the **impact** of the remedies proposed in your jurisdictions in markets in other jurisdictions?
- Have you had experience co-operating with other competition authorities in the **design** of remedies? have you had cases in which remedy packages were designed to impact more than one jurisdiction?

- Have you had cases in which you have issued conditional authorisation on a merger subject to compliance to remedies imposed in another jurisdiction?
- Have you had experience co-operating with other competition authorities for the **implementation** of remedies?
- Have you had experience co-operating with other competition authorities for the **monitoring** of remedies?
- Have you had experience appointing common monitoring trustees in cross-border mergers?

D. Challenges

- Have you faced any challenges when evaluating cross-border mergers that were related to the timing of the notification in the different jurisdictions where the transaction had to be notified?
- Do you believe that you have been able to co-operate sufficiently with other competition authorities in the review of cross-border mergers? If not, what do you think is missing? Please describe whether you have a legal basis for co-operating with other authorities or if this is done in an informal way.
- Have you faced challenges when designing, implementing or monitoring remedies in cross border transactions?
- Do you believe that the relative size of your economy is an advantage/disadvantage when reviewing cross border mergers? If so, how? [e.g. do you think that the bargaining power of the authority and the merging parties is affected by the size of the jurisdiction?]
- Have you had cases in which you have reached an outcome that may be seen as opposing to other outcomes reached by competition authorities regarding the same transaction? Would this play a role in your final decision?
- What tools or reforms do you think would be helpful to improve international co-operation in cross-border mergers?

Suggested bibliography

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