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

**SUBSIDIES, COMPETITION AND TRADE – Summary of contributions**

**- Session II -**

1-2 December 2022

These contributions are submitted under Session II of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/sctr](https://oe.cd/sctr).

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## *Summaries of contributions*

This document contains summaries of the various written contributions received for the discussion on Subsidies, Competition and Trade (Global Forum on Competition to be held on 1-2 December 2022, Session II).

## *Bangladesh*

Increased use of competition-distorting subsidies destabilizes the value of investment flows, tariff binding and other market access obligations that weaken public support for open trade. Even though a universal subsidy is costly to the government, it is theoretically preferable to a policy which targets only state-owned firms.

However, some subsidies may ultimately prove well-founded, fulfilling worthy public objectives that improve citizens' welfare or addressing market failures, while others may be a costly and wasteful use of public money. Subsidies to mitigate environmental pollution and to confront climate change have positive impact on the economy and don't have any impact on anti-competition. Subsidies to research and development (R&D) into superior farming techniques have improved welfare worldwide. There is need for increased support to improvement of superior techniques for renewable energy.

It is observed that subsidies in the service sectors like Education, Health care, Social Safety Net Program etc. Moreover, subsidies on green economy, the Research and Development Sector (R&D), Renewable Energy Sector help to mitigate environmental pollution and promote green revolution. In most developing countries, the most useful subsidies are in the provision of health and educational services.

When market failures exist, it is the right of governments to use subsidies to facilitate those that are ill-advantaged. Current international disciplines on subsidies are based on trade distortion which is not the most relevant criteria for evaluating the role of subsidies to increase welfare.

Countries must get together and agree on a superior subsidy policy than we currently have.

## *BIAC*

*Business at OECD* (BIAC) appreciates the opportunity to submit comments to the roundtable on subsidies, competition, and trade at the 2022 Global Forum on Competition.

The interaction between subsidies and competition law has been discussed at several OECD sessions, and BIAC previously has submitted comments on the topic.<sup>1</sup> The current session looks at whether granted subsidies should be considered as relevant factors by competition authorities when conducting their investigations (such as merger review or abuse of dominance).

Recently, the role of competition authorities in reviewing potentially distortive subsidies when granted by foreign governments, has attracted more attention. In particular, the EU is enacting a broad foreign subsidy scrutiny regime, and the U.S. is considering legislation addressing the impact of foreign subsidies in merger review proceedings.

BIAC submits that it is useful for the OECD to examine current perspectives of competition authorities on some of the key issues that anticompetitive subsidies raise. However, given the sometimes-competing roles of trade, taxation, industrial development and competition, we are not convinced that competition authorities, in their daily work, should have the unilateral ability to determine whether subsidies received by companies under investigation should form a basis for enforcement action. Rather, given the difficulties of scope, assessment and remedy design, anticompetitive impact of state subsidies should be addressed primarily at a legislative level where the appropriate trade-offs between competing priorities should take place.

As highlighted below, there are substantial practical difficulties in factoring in subsidies as part of anticompetitive assessment or a review of subsidies in themselves.

Determining whether a subsidy has been provided, and the potential anticompetitive effects of a subsidy, can also be a challenging task, particularly where different countries provide different economic benefits to business. For example, should a tax benefit—in a country with high corporate taxes—be seen as an anticompetitive subsidy by another country that has lower corporate taxes? Should low energy costs in a country with state-owned energy production be seen as a subsidy by a country with privatized energy that has higher costs? Should local tax relief used to induce a company to locate its business headquarters in a particular city be considered anticompetitive where the property costs are much higher than in other countries? In these cases, even some large “subsidies” may not have a direct impact on the competitive dynamics of a market or distort competition as compared to the package of costs and benefits faced by other businesses in other places. Thus, using subsidies in isolation as a basis to weaponize competition enforcement, without regard to other factors, may risk distorting markets as much as the underlying subsidies themselves. In addition, reviewing foreign governments’ industrial policy decision risks pitting competition authorities against sovereign governments.

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<sup>1</sup> OECD, Competition, State Aids and Subsidies—Note by BIAC, DAF/COMP/GF(2010)5, at 223-228 (May 19, 2011), <https://www.oecd.org/daf/competition/48070736.pdf>.

## *Dominican Republic*

This article examines state aid and the procedure used by the National Commission for the Defense of Competition (PRO-COMPETENCIA) to analyze its impact on competition. Classical economic theory considers that this type of state intervention creates economic inefficiency in the absence of market failures. However, state aid in a market is not always negative. The state could have other objectives besides economic efficiency. After the 2008 financial crisis, subsidies have increased in countries and sectors, outpacing measures such as tariffs and other non-tariff measures.

The Dominican Republic's regulatory framework does not establish criteria that identify whether State aid can create restrictions on competition. The Dominican Constitution provides exceptions for special cases such as State monopolies; investments in areas of little economic development or activities of national interest. PRO-COMPETENCIA has the function of advocacy during the process of discussing laws or regulations, avoiding the adoption of norms contrary to free competition. The institution carried out a diagnosis of the measure that provisionally taxes with zero rate the customs tariff on a set of basic foods of the Dominican population.

Likewise, PRO-COMPETENCIA developed an analytical framework for the evaluation of state aid in the case of the Border Development Law. This has allowed us to have practices and methods to evaluate other incentives. There is no general methodology. Each case will have its particularities, which represents a challenge for any competition authority. State aid is most needed in times of crisis. Therefore, it is essential to adopt policies that prioritize the general welfare, minimizing market distortions.

## *European Union*

This contribution sets out the European Union's approach to control harmful effects of subsidies on the EU internal market. It describes the existing policy and focuses then on the latest addition to the legislative toolbox, namely the new Foreign Subsidies Regulation.

The EU policy in this area is laid down mainly in the **EU State aid rules**. The origin of the EU State aid policy goes back to the founding years of the Union in the 1950s. Over the decades, the EU has refined its State aid policy for example through a sophisticated set of guidelines and block-exemption rules. The purpose has been to identify and avoid harmful support measures while allowing governments to continue to use State aid to facilitate the development of certain economic activities.

The effect of subsidies has also played a role in the **EU antitrust and merger policy**. Even though the EU State aid policy constitutes a separate legal instrument to address harmful effects of subsidies, there have been instances where subsidies were considered relevant for the specific competition assessment under these instruments.

In recent years, there has been an increasing perception that the control of EU State aid needed to be complemented by a control of subsidies granted by non-EU governments that have an impact on the EU internal market. Increasing trade and investment flows have brought with them an **increased risk of negative spillover effects** through subsidies granted outside the EU. The Commission therefore carried out a legal and economic analysis to identify the possible **regulatory gap** that is captured neither by existing competition, nor by trade instruments. Notably, subsidy control under the WTO rules is essentially limited to trade in goods and does not cover services or investment.

After a proposal from the Commission, the EU legislators agreed on a **new Regulation** on foreign subsidies distorting the EU internal market. The Regulation lays down rules and procedures for investigating foreign subsidies that favour companies in a way that negatively affects competition in the EU internal market and for addressing such distortions. There is a particular focus on large concentrations and large public procurement procedures for which notifications are required, but the Commission can, on its own initiative, launch investigations in any other economic activity for which a distortive foreign subsidy was granted. The new Regulation will start to apply as of mid-2023.

## *Kazakhstan*

The most important task is to increase the measures of state support for private entrepreneurs on competitive principles. Now there is a personalization of state support - mainly large businesses are supported.

It should be noted that the provision of any state support is a distortion of competition in the market. The existing system of non-transparent determination of the conditions for the admission of entrepreneurs to state support exacerbates the impact of the assistance on competition, that can have a serious impact on the market.

A number of state business support programs in the Republic of Kazakhstan provide for exclusive conditions for renovation of fixed assets to large companies in the quasi-public sector, thereby creating discriminatory conditions that contribute to increased market monopolization and non-competitive position of other market participants.

Subsidies, as a type of state support measure, occupy a significant share of the total volume of measures provided and are an integral element in some markets. That is why subsidies, as a rule, are applied in important markets for the state and without reciprocal obligations for business.

In February 2022, in the legislation of the Republic of Kazakhstan, the clarifying and control competence of the antitrust authority of the Republic of Kazakhstan appeared to monitor the activities of individuals providing state support measures for compliance with competition legislation and to coordinate with the antitrust authority of new measures of state support.

The Agency's new competence of coordinating new measures of state support, taking into account the basic criteria for assessing the state of competition, is timely and necessary that aimed at minimizing the risks of negative manifestations after introducing of new state support measures.