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

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Latin American and Caribbean Competition Forum

Session II: Interim Measures – Call for contributions

9-10 October 2024

This document is circulated in preparation of the discussion under Session II of the Latin American and Caribbean Competition Forum (LACCF) that will take place during 9-10 October 2024 in Santo Domingo, Dominican Republic.

Delegates are invited to submit their written contributions to the Secretariat by **31 July 2024, Wednesday**.

In case you need additional information related to this session, please contact:
Ms. Nasli Aouka (Nasli.Aouka@oecd.org); and
Mr. Paulo Burnier da Silveira (Paulo.Burnier@oecd.org).

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Session II: Interim Measures

– Call for Contributions –

1. This year's Latin American and Caribbean Competition Forum (LACCF) will feature a session on "Interim Measures". This document provides some background information on the topic and invites delegates to make a written submission to the discussions.
2. The topic was recently discussed at the OECD during the Roundtable on "[Interim Measures in Antitrust Investigations](#)" in 2022 (Working Party n° 3 on Co-operation and Enforcement). As seen in that occasion, interim measures are protective and corrective tools that may be adopted by competition authorities while investigating potential infringements of competition laws, most commonly in abuse of dominance cases. Their primary objectives are to (i) prevent anticompetitive harm that may occur before a decision on the merits and (ii) contribute to the effectiveness of competition enforcement (OECD, 2022).
3. While it is true that most jurisdictions require similar conditions for the deployment of these measures (i.e. the probability of infringement and the urgency to prevent serious and irreparable harm), a certain diversity exists regarding the interpretation of these conditions, as well as other legal standards and procedural requirements. These elements include whether competition authorities have the direct power to impose interim measures or need to seek approval by judicial courts, whether measures can be imposed *ex officio* or upon request, and the types of measures available (i.e. negative injunctions or positive injunctions).
4. Building upon these discussions, this LACCF session will explore the application of interim measures in Latin American and the Caribbean (LAC) countries. Interim measures are indeed available in many LAC jurisdictions and have been recently enforced by LAC competition authorities in abuse of dominance cases. Recent examples include a range of economic sectors such as instant messaging services in Argentina¹, digital platform services in Brazil² and financial services in both Chile³ and Colombia⁴. In Costa Rica, a "Guideline of Interim Measures Procedure" is being considered to enhance the legal certainty and predictability in its use.⁵ The experiences from the region can also help to better understand when the use of interim measures can be most effective, for instance in fast-changing digital markets.
5. In addition, this LACCF session will enable to expand the previous OECD discussions on interim measures to a larger non-OECD membership including around 25 jurisdictions from LAC, and to discuss possible particularities of the region. These may include a strategic use of interim measures to design and negotiate remedies in abuse of dominance cases, as well as the interrelated risks of the so-called "type-1" and "type-2" errors, and the interplay between the topic and the broader initiatives related to an *ex ante* regulation of digital markets.
6. As in past years, the quality and utility of this session will be greatly strengthened by written contributions, which should be sent to the OECD Secretariat by **Wednesday 31**

¹ Interim measure imposed against WhatsApp by CNDC in 2021 and confirmed by the Argentine Chamber of Federal Civil and Commercial Appeals in 2023.

² Interim measures imposed against iFood and Gympass by CADE in 2021 and 2022, respectively.

³ Interim measures imposed against Mastercard and Visa by TDLC in 2022.

⁴ Interim measure imposed against Mastercard and Visa by SIC in 2022.

⁵ Contribution from Costa Rica to OECD Roundtable on Interim Measures in Antitrust Investigations (2022). Available at DAF/COMP/WP3/WD(2022)4.

July 2024. In order to assist you with the preparation of your contribution, the Annex includes a number of questions on which you may wish to focus and a suggested bibliography. 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.

7. The session will be supported by a short note prepared by the OECD Secretariat, focused on LAC jurisdictions and complementary to the OECD background note on “Interim Measures in Antitrust Investigations” (2022) which compiles the main issues related to the topic. The LACCF webpage will be the primary vehicle for conveying documentation and related links on this subject. It will become available on its main page at www.oecd.org/competition/latinamerica. Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the LACCF website.

8. All communications regarding the documentation for this session should be sent to Ms. Nasli Aouka (Nasli.Aouka@oecd.org). Please address any substantive queries relating to this discussion to Mr. Paulo Burnier da Silveira (Paulo.Burnier@oecd.org).

Annex A.

Suggested questions for written contributions to Session II on Interim Measures

This Annex provides a list of questions for consideration in preparing your 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 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.

A. Legal and institutional framework

- What is the legal framework in your jurisdiction for the use of interim measures in competition cases (e.g. generic legal framework applied to law enforcement in general; or specific legal framework for competition law enforcement)?
- Can your competition authority impose interim measures, or is it necessary to request them through judicial courts? Can interim measures be imposed *ex officio* or only upon request of third parties? Do they have a maximum duration?
- In case your competition authority can impose interim measures and has both investigative and adjudicative powers, which body is in charge of imposing interim measures?

B. Enforcement experience

- Please list any cases related to interim measures in abuse of dominance investigations in your jurisdiction (including interim measures imposed, but also interim measures requested and denied by your competition authority; and/or overturned by judicial courts).
- Do you have full discretion as for the type of interim measures to be imposed (e.g. positive injunctions and cease-and-desist orders)? What are the most common types of interim measures imposed in your jurisdiction?
- How does your authority balance the need for quick intervention (e.g. within the context of digital markets) with the protection of due process? What are the key safeguards in place to ensure the rights of defense?
- What is the role of judicial courts regarding interim measures in your jurisdiction? Are judicial courts open or reluctant in granting/confirming interim measures?
- Does your authority have experience in co-operating with other competition authorities in the context of interim measures?

C. Key policy considerations

- What are the main considerations (and related costs for your authority) when assessing whether to impose interim measures? What is the impact of proceedings for interim measures on the main investigations?
- What kind of cases are best suited for interim measures? In which markets can interim measures be most effective?
- Should interim measures be considered an effective complement or substitute for *ex ante* regulation, in particular in digital markets?
- What is the interplay between interim measures and other enforcement tools such as commitments?

Suggested bibliography

- Athayde, A., C. S. Zarzur, and J. Ferreira (2022), *Interim Measures in the Recent Experience of Brazil's Antitrust Enforcement*, SSRN, <https://ssrn.com/abstract=4237603>.
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- Cordeiro, A. et al. (2021), *Brazil: Interim Measures as an Enforcement Policy in Digital Markets*, <https://globalcompetitionreview.com/guide/digital-markets-guide/first-edition/article/brazil-interim-measures-enforcement-policy-in-digital-markets>.
- Gutiérrez, J.D., Abarca, M. (2024). “Challenges to Competition and Innovation in Digital Markets: Insights from Latin American Cases”. In K. Tyagi, A.K. Sanders & C. Cauffman (Ed.). *Digital Platforms, Competition Law, and Regulation: Comparative Perspectives* (pp. 159–176). Oxford: Hart Publishing. Retrieved April 29, 2024, from <http://dx.doi.org/10.5040/9781509969418.ch-009>.
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