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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Executive Summary of the Roundtable on Competition issues in labour markets

Annex to the Summary Record of the 131st Meeting of the Competition Committee held in 5-7 June 2019

5 June 2019

This Executive Summary by the OECD Secretariat contains the key findings from the roundtable on Competition issues in labour markets held during the 131st meeting of the Competition Committee on 5-7 June 2019.

More documentation related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-concerns-in-labour-markets.htm>

Please contact Mr Antonio Capobianco if you have any questions about this document
[E-mail: Antonio.CAPOBIANCO@oecd.org]

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Executive Summary of the Roundtable on Competition issues in labour markets

By the Secretariat*

On 5 June 2019, the OECD Competition Committee held a [meeting](#) to discuss competition issues arising in labour markets. Considering the [background note](#) prepared by the OECD Secretariat, the written contributions, as well as the discussion by delegates and the expert panellists, the following key points emerged:

1. Monopsony power is analogous to monopoly power in that it creates economic inefficiency and a reduction in the firm’s output. While monopoly leads to higher prices or lower quality, monopsony in labour markets typically leads to lower wages or worse working conditions for workers and, when associated with market power in the product market, also higher prices for consumers.

Monopsony power is a situation where a firm has market power that allows it to restrict the quantity of labour that it purchases in order to reduce wages or lower the working conditions of its workers below competitive levels. Cost reductions arising from efficiencies or from increased bargaining power in negotiations with an upstream monopolist can increase output and reduce final prices for consumers. In contrast, reducing labour (or other input) costs by restricting demand reduces output, and so it does not usually reduce prices for final consumers. This is because, in order to exercise monopsony power and lower the input price (in the case of labour markets, the cost of wages), the employer-monopsonist needs to reduce its demand and buy less labour. The withholding of demand upstream reduces the employer-monopsonist’s output and, unless rivals in the product market expand their output in response to the monopsonist cutting its own production, also increase the price of the product. Even when the product market is competitive and rivals do increase output, however, monopsony power can harm workers.

2. Recent studies conducted in some OECD countries suggest that there may be high level of concentrations in certain labour markets and, where these are present, wages are typically lower.

Several analyses run in the US, the UK, France and Portugal suggest that there may be high levels of concentration on the employer side in certain labour markets. Further, research studies conducted in the US suggest that mergers leading to increased levels of concentration may lead to a reduction in the level of wages or in wage growth for certain categories of workers that are affected by the merger.

3. Employers may infringe competition law in a number of ways.

Competition law enforcement has an important role to play in addressing the anticompetitive creation or maintenance of monopsony power. Competition authorities have the tools to assess and remedy the effects of restrictive agreements or practices, unilateral conduct and mergers on labour purchasing markets. First, competition law can address wage-fixing, no-poaching and no-hiring agreements and other collusive practices

* This executive summary was prepared by Cristina Volpin (cristina.volpin@oecd.org). It does not necessarily represent the consensus view of the Competition Committee. It identifies key points from the discussion at the Roundtable on Competition Issues in Labour Markets, including the views of the expert panellists, the delegates’ oral and written contributions and the background note prepared by the OECD Secretariat.

between employers to avoid competing for workers. In some OECD countries, guidelines have been published to clarify that this kind of cartel-like behaviour is unlikely to generate efficiencies. Competition enforcement can also tackle the imposition of non-compete clauses on the workers that are not justified by a pro-competitive purpose, although action may be taken also by other regulatory agencies and the legislator. Second, certain abuses of employer's monopsony power could also be captured by competition law, such as predatory hiring to prevent market entry. Finally, further anticompetitive concentration of labour purchasing markets can be prevented via merger control.

4. In addition to anticompetitive conduct or transactions, a number of other factors may contribute to creating and facilitating the exercise of monopsony power held by employers in some labour markets. Some of these can be addressed by competition authorities' advocacy powers.

In addition to agreements, unilateral conduct and mergers that monopsonize labour purchasing markets, other factors may also create or increase the market power of employers. For instance, labour markets are often characterised by so-called labour market frictions, i.e. factors such as search costs, job differentiation, mobility constraints, and regulatory barriers to labour mobility that may reduce the outside options available to workers in a specific market. Competition authorities can use their advocacy powers to promote measures to address other factors that create market power in labour purchasing markets. As they do in product markets, they can conduct market studies that identify features that prevent, restrict or distort competition in labour purchasing markets. They can also advocate to government on effective remedies to the monopsony market power that is created by labour market frictions and other features of the market.

For instance, calls have been made to extend employee's rights to certain categories of platform workers facing monopsony power, including the ability to collective bargain with the platform. Since the granting of generalised exemptions from competition law may entail risk of abuses, competition authorities may play an important role in helping government identify situations where an exemption may not be harmful to competition and collective bargaining could be used as a remedy. Allowing specific categories of self-employed workers to bargain collectively may be a suitable solution to address monopsony power in some cases.

5. Competition enforcement in labour markets has been limited so far since competition authorities face some challenges.

While competition law provides a framework for the analysis of labour markets and the fight against the anticompetitive exercise of labour market power, competition enforcement in labour markets has been very limited in OECD countries and around the world. Enforcement has mostly focused, so far, on restrictive agreements whose effects do not require to be shown, such as wage-fixing and no-poaching agreements. This may be due to the fact that there are some theoretical and practical challenges to the application of competition law in these markets.

Amongst the most important theoretical challenges is a narrow interpretation of the consumer welfare standard as requiring evidence of a negative impact of the employer-monopsonist's conduct on final consumers. While this negative effect can often exist, this interpretation imposes an additional burden on agencies which make it difficult for them to bring a case, and which may therefore have resulted in underenforcement in labour purchasing markets. In addition, this interpretation does not allow capturing cases where consumers may not be harmed, but workers are. As noted by commentators, a merger that creates or strengthens monopsony market power and harms workers will need to be challenged, regardless of whether it also harms final consumers.

As regards the practical challenges, one of the most significant is the adaptation of the analytical tools that are currently built for the analysis of product markets. For instance, the hypothetical monopolist test for market definition needs to be adapted to consider whether it is profitable for a hypothetical monopsonist to impose a small but significant and non-transitory decrease in wages.

This is an area of competition law enforcement that has been so far largely overlooked. A trend towards a more systematic analysis of labour markets by competition authorities is emerging in several jurisdictions. The learnings and the analytical tools developed in the enforcement of competition law in input markets can certainly prove helpful, with due adaptations, to guide a fuller scrutiny of labour markets in the future.