

Unclassified

English - Or. English

24 May 2023

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

**Summary of Discussion of the Roundtable on the Role of Competition Policy in
Promoting Economic Recovery**

**Annex to the Summary Record of the 134th Meeting of Competition Committee held on 1-3
December 2020**

2 December 2020

This document prepared by the OECD Secretariat is a detailed summary of the Roundtable on the Role of Competition Policy in Promoting Economic Recovery held during the 134th meeting of the Competition Committee on 1-3 December 2020.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/role-of-competition-policy-in-promoting-economic-recovery.htm>

Please contact Mr. Antonio Capobianco [Antonio.Capobianco@oecd.org] if you have any questions regarding this document.

JT03519559

Summary of Discussion of the Roundtable on the Role of Competition Policy in Promoting Economic Recovery

The **Chair of the Competition Committee Frédéric Jenny** introduced the topic of the OECD Competition Committee Roundtable Discussion: competition policy and the economic recovery. The Chair cited that the COVID-19 pandemic led to massive economic shocks resulting in a 20 to 30 percent reduction of GDP at the world level. The economic impacts of lockdowns effected firms globally, particularly within sectors such as tourism, transportation, retail, food services and logistics. The Chair noted that even though this roundtable focuses on recovery, the pandemic continues unfolding. However, both the emergency and recovery phases would require multi-dimensional policy responses to fiscal, monetary, trade and industrial policies.

The Chair then explained the roundtable would focus upon three questions: (1) What changes need to be undertaken for competition authorities to be credible and effective in their advocacy during economic recovery? (2) Should enforcement priorities and interpretation of competition law be adjusted for the particular economic environment and if so, how should it be adjusted? (3) How to change, adjust or enforce advocacy in the time of recovery?

Next, the Chair introduced the expert panellists:

- **Chiara Criscuolo**, Head of Division Productivity Innovation and Entrepreneurship Division, Science Technology and Innovation Directorate, OECD;
- **Bill Kovacic**, Global Competition Professor of Law and Policy, Professor of Law, Director, Competition Law Center, George Washington University; and
- **Philip Lowe**, partner at Oxera.

Before calling on the experts, the Chair gave the floor to the OECD Secretariat.

The Secretariat explained that given the level of government interventions that can distort competition in markets, the recovery phase would require an increased focus on advocacy. According to the Secretariat, current changes can have long-term lingering effects on competition so advocacy must be taken into account in a wider policy agenda for recovery. The Secretariat highlighted that most competition authorities have advocacy powers, meaning the possibility of advising governments and providing opinions. In the context of the pandemic, whenever governments decided to subsidise a firm, this could lead to competition distortions that have a long-term legacy. It could force those firms who are perhaps more efficient to downsize or even exit. Therefore, competition authorities may be called upon or decide to provide advice to help minimise those distortions. The Secretariat pointed out that the background paper offers a number of economic principles that can provide pointers on how to analyse a particular state measure to ensure it minimized negative impacts on how markets function. The Secretariat emphasised that if governments decide to shape markets, competition agencies can help them ensure they do so whilst at the same time guaranteeing the benefits of competition.

Next on enforcement actions, the Secretariat explained why prioritisation becomes fundamental in order to support the economy. Here competition authorities may have to redirect enforcement towards strategic markets and industries at the heart of the recovery process or prioritise those sectors that have huge spillover effects. The Secretariat emphasised that if there are calls for crisis cartels they should be met with extreme caution

by competition authorities and be considered only in very extreme circumstances, where in the absence of the agreement the competitive structure of the market would deteriorate more than with the agreement. The Secretariat also noted that in terms of abusive dominance, competition authorities need to be alert to exclusionary abuses and be prepared to move fast where appropriate, perhaps with interim measures to avoid irreparable harm. In terms of merger control, The Secretariat pointed to the need to continue to strictly apply it and the failing firm defense, even more so in circumstances for those markets that are expected to bounce back and where there are no expected structural changes that the pandemic may have accelerated. This is because firms often have the possibility to restructure, downsize and become competitive again, and they should be given that opportunity. The Secretariat concluded that competition and competition authorities can play a key role in the recovery of economies.

The Chair thanked The Secretariat, then gave the floor to **Chiara Criscuolo** to present OECD work on exit strategies and their design in the context of the crisis and recovery.

Dr Criscuolo thanked the Chair then described terms of concentration and entry and exit rates before the COVID-19 pandemic. OECD and European Commission studies confirmed there had been a steady decline in entry and job reallocation rates since 2000, while exit rates remained rather constant. The effect had been an increase in manufacturing market services within the USA and Europe.

In contrast, **Dr Criscuolo** explained that since the pandemic began, there had been strong restrictions in most countries and the stricter the lockdown measures, the starker the decline in total production, which created declining entry rates in Spain, Italy, Portugal and France, and now with the second lockdown, in Canada and the UK. Governments have used different measures such as liquidity guarantee, immediate fiscal impulse and federal measures for taxes and social security duties. Dr Criscuolo pointed out that a combination of these different policies from debt moratoria to tax relief, but in particular wage relief, brought a strong decline in the potential exits due to liquidity shortfalls from support measures.

Next, Dr Criscuolo said governments will have to exit these support measures and that exit should be gradual and take into account the many uncertainties. How will this gradual exit be shaped is the most important question because governments will see firms exit and firms in bankruptcy but it is important to take into account that there are other societal and structural challenges to encourage during the recovery period, like digital transformation or the green recovery..

The Chair thanked Dr Criscuolo then gave the floor to Prof. **Bill Kovacic** to discuss how to make advocacy successful in a time of recovery when public officials remain under strong pressure to come up with quick fixes to massive economic problems.

Prof. Kovacic began by outlining three elements for an effective program: (1) Drawing on a base of knowledge and data; (2) the importance of engagement with elected officials and the connection between the competition authority and the larger political world; and (3) thinking about recommendations that might garner attention in order to be effective.

Accordingly, Prof. Kovacic first discussed that for any advocacy to be effective in this environment, it has to draw on convincing knowledge and data information. Therefore, it is important to provide data context, showing a convincing base of experience to derive policy propositions. As an example, he noted that before the crisis, the UK Competition and Markets Authority (CMA) created a data team to build an internal capacity to collect, examine and evaluate data almost in real time. This enabled the CMA to convince the larger world that it was focused on current developments and provided policymakers with a set of useful, tangible information about the current market conditions. Over time, Prof.

Kovacic suggest that agencies should have a similar capacity to examine, evaluate and digest data then use that as a basis for making policy recommendations as part of regular operations, but especially for crises.

Second, Prof. Kovacic explained that engagement is key in facing this crisis and agencies should have an intuition about which industries and sectors are most vulnerable to structural change. Drawing upon historical awareness, the agency should give specific observations about what is taking place presently and be in a position to offer a prognosis about where the competition policy hot spots will be in the future. He also discussed the appropriate relationship of the competition authority to the political process. In this, the agency must draw upon all of its existing relationships with elected officials and decision-makers then continue those conversations so as to be understood as a constructive policy advisor.

Third, Prof. Kovacic explained that based on that data and experience recommendations can be vital, in particular if the agency sets priorities about where it can do the most good in moments of crisis, such as, for example, in public procurement. Here the agency can have very good recommendations, by sharing the value of competition, and how procurement can shape the way individual sectors unfold.

Prof. Kovacic concluded that recommendations are important and should be focused on improving the competition system and building a better framework for the future and not stuck in the past, and as markets as they were.

The Chair thanked Prof. Kovacic for his suggestions to increase the effectiveness of advocacy. Next, the Chair gave the floor to **Philip Lowe**.

Mr Lowe thanked the Chair then shared that he would concentrate on the lessons learned from the 2008 to 2009 financial crisis for any authority, regardless of whether they have powers of state aid control or powers of recommendation or advice to governments and other policymakers.

First, Mr Lowe explained that regardless of the legal instruments at one's disposal, reactions must be swift to the demands of a crisis, with direct lines of communication between an on-going investigation and the person, or the body, empowered to take a decision. Mr Lowe emphasised wide advocacy to elected officials and the financial community as a priority. He also highlighted that advocacy can be done with other departments or agencies who are in principle in charge of dealing with the crisis. In 2009, he recalled that the European Union's Economic and Finance Committee were extremely skeptical about the need to consider competition. In the financial sector, he explained it was not just a question of legal legitimacy, but the advocacy to demonstrate to people who regard themselves as the arch-experts in the sector that competition knows the sector well and is not coming at it from a general point of view but with due consideration for the real market characteristics. Next, Mr Lowe noted engagement with immediate colleagues, finance ministers then countries and regulators to persuade them of the advantage of taking into account competition when drawing up the subsidies and state support measure so that they consider the longer term path towards economic recovery. This could restore financial stability, but also ensure the viability of institutions inside the banking system beyond the short-term.

Finally, Mr Lowe discussed preparing, consulting and publishing guidelines on how to deal with individual cases by producing regular reports and updating the guidelines where necessary. Overall, he suggested drawing lessons of the individual decisions for future legislation and that drawing a map of how the new normal could be achieved through judicious application of state aid and competition rules.

Mr Lowe concluded that incorporating the implications of mergers for the long-term new normal is an important part of the assessment of the merger, meaning viability, competitiveness of business and the protection of consumer interests for effectively functioning markets.

The Chair thanked Mr Lowe for drawing on these important lessons learned from the Global Financial Crisis. The Chair then gave the floor to **Australia** to discuss the main challenges that their competition authority face in the recovery phase.

Australia began by noting that their main objective through the pandemic had been to protect economic structure and boost competition. Therefore, a range of competitors were authorised to work together in very specific situations, with clear descriptions of what they could and could not do, with strong reporting obligations to the ACCC and limited in time. This brought many benefits and credit to the ACCC in terms of being part of the recovery effort without damaging long-term competition. The ACCC also pushed back publicly and made clear that struggling or failing firms could not merge with their closest competitors in ways that might be anti-competitive. Australia also noted there given that borders were closed with impact on supply chains, there had been pressure by firms trying to take advantage of the situation to increase their dominance and their market power. Australia's response was to do those authorizations in a targeted way, which opened up a dialogue with the government and gave competition a voice. After providing advice to the Prime Minister and Treasurer's office, a recovery task force collected data on imports, industry consolidation and bankruptcies. Australia said they also continued to find also other ways that did not damage competition such as consumer powers.

The Chair thanked Australia then invited the **USA** – both the FTC and the DOJ – to take the floor regarding enforcement.

The US delegation thanked the Chair and explained that in mid-March US antitrust agencies issued a statement committed to providing expeditious guidance on antitrust concerns in response to the pandemic. The agencies also needed to address conduct that normally might attract scrutiny to provide additional certainty to firms contemplating collaborations that could aid recovery without harming competition. The US outlined how the DOJ and FTC issued another statement in April warning authorities to closely monitor improper coordination that could disadvantage workers. The US also pointed out that early in the pandemic some in Washington called for a moratorium on mergers but the agencies argued that would be counterproductive during an economic downturn. For example, with mandated closures and reduced demand, some businesses might need to turn to M&A as an alternative to bankruptcy or permanent closure as a way of keeping assets in the market. To maintain effective enforcement, they suspended the early termination mechanism for several days, moved to telework, then moved filing systems online to ensure adequate examination of mergers. Toward the end of last year, failing firm claims arrived; the US said that these defenses are asserted more frequently during an economic downturn. Due to flexibility that is built into antitrust laws, the analysis remained the same as in the early 2000s. Therefore, they considered whether the acquisition would harm competition and if the acquisition was the only way to keep the firm's assets in the market. If the deal failed to satisfy the stringent conditions of the failing firm framework, the financial condition of the parties would potentially factor into the competitive effect analysis, another example of the flexibility of antitrust laws during the downturn.

The US shared it had been one of the most active enforcement years on the merger front at the FTC, which is how they sought to preserve competition. The US FTC also highlighted heavily reliance on competition advocacy and said this advocacy program builds on the FTC's enforcement efforts, and stem from the recognition that action can distort market forces but so too can government action. The US also pointed out they recognise that there

are other goals like public health safety and security that government entities may want to achieve and they provided input on legislative and regulatory proposals so policymakers could weigh the desirability of a given proposal in light of all the benefits and harms.

Finally, the US emphasised that the FTC historically has devoted a great deal of attention to competition advocacy in the healthcare sector because it constitutes an important role in the USA economy, but also has impact on citizens. Many of the restraints on competition, whose benefits the FTC had previously questioned, actually became focal points during the pandemic and the related downturn. Therefore, the US explained that to ensure a sufficient supply of medical personnel, hospital beds and associated equipment to care for patients during the pandemic, a number of federal and state authorities waived or suspended these restrictions on competition and created a reduction in the regulatory burden that the US antitrust agencies had long championed. The US said that similar to Australia, they too have engaged in aggressive consumer protection enforcement for small business administration, imposters and coronavirus frauds and scams related to fraudulent cures and treatments. Overall, the US said its goal is to both preserve competition where it exists and to foster it where they do not yet see it.

The Chair thanked the US delegation and affirmed the importance of the antitrust law having the flexibility built into it rather than flexibly using the antitrust law. The Chair then gave the floor to **Germany** to further discuss enforcement.

Germany began by posing the question: do we apply competition law more flexibly or is competition law in itself flexible enough to adjust itself to these exceptional situations? As competition agencies, Germany explained they offered considerable guidance to companies when it came to cooperation and coordination.

Germany then explained that during the crisis, response was often urgent and swift, and that Germany's approach was not about a lenient application of competition law, but about taking into account the full set of circumstances during a crisis. Overall, in one instance the German association of the automotive industry asked for some relief in terms of cooperation regarding how to restart the supply chain once the crisis was getting better, not only in Germany but worldwide. Germany noted they had the experience that sometimes downturns for individual sub-suppliers can cause great economic harm, because it can delay the restart of the production process and harm other suppliers and manufacturers. Therefore, Germany offered advice because it was necessary for cooperation to exist to restart production across the value chain, but such cooperation had to be done within certain limits and with safeguards in place. One safeguard was that suppliers remain free to restart production and were not obliged to restart. Another safeguard was about the exchange of relevant information among companies during that period. Suppliers were also not obliged to adhere to specific supply volume requirements and Germany ensured that process would be limited in time for the duration of the crisis.

Germany explained that overall they probably would not have responded the same way without the crisis, but in that particular cooperation with the automotive association, agreements were quite hard and could have led to severe restrictions of competition. From Germany's perspective, these were restrictions of competition that were deemed necessary by the specific circumstances of such a crisis situation. Overall, Germany concluded this was not about a lenient application of competition law; it was application of competition law adjusted to the economic situation. However, Germany emphasised there always need to be safeguards to ensure cooperation schemes are appropriate, proportionate, non-discriminatory and most importantly, limited in time to the duration of the crisis.

The Chair thanked Germany and highlighted how important keeping the same standards, whilst being able to adjust the analysis to the economic environment. Before giving the

floor to **Spain**, the Chair highlighted that the Spanish delegation's written contribution noted that it was challenging to enforce competition rules in the recovery phase. Therefore, the Chair said Spain would cover details about how the Comisión Nacional de los Mercados y la Competencia (CNMC) exercised discretion and defined their responsibility on state support. Finally, the Chair pointed out that the CNMC was also working on guidelines to policy makers to accelerate the economic recovery, with a focus on state support, public procurement and good regulations.

Spain thanked the Chair then shared that in Spain, there was a very early lockdown so they quickly opened a COVID-19 mailbox to centralise all complaints related to the pandemic. It received over 700 complaints which led to several investigations related to sectors such as health financial services. During the peak of the first wave of the pandemic, Spain explained how the CNMC informally advised several Spanish companies, but also the Spanish government on some of the emergency measures adopted such as price caps on masks and hydrogels. Spain explained there was a clear message to the authorities that public health and competition were not necessarily conflicting goals, but that in extreme circumstances, with scarcity and increased demand, they had to adapt and then establish, for example, that price cap. Spain said they also stressed the undesired effects if this measure was not well designed and not limited in duration until supply started to adapt to the circumstances. Spain noted they also offered collaboration and guidance to the private sector such as different companies in health insurance, medical devices or health products and also in financial sectors.

Next, Spain discussed how the CNMC's priorities were realigned with new conditions and social necessities along with new plans for advocacy. Spain said their commitment was to provide guidelines to policymakers with a specific focus on state aid, public procurement and good regulation along with closely following anti-competitive conduct in sensitive markets. The new plan underlined the importance of advocacy during the next few years since high competition levels and good regulation would be key. Spain explained the CNMC's advocacy department is therefore working on guidelines to policy makers and on several market studies on sectors particularly affected by the pandemic, such as the wholesale pharmaceutical market, to provide guidelines to help these sectors adapt to the new circumstances and encourage a robust recovery. Spain explained a new study analysed the relationship between competition and the labor market since unemployment problems have been one of the country's biggest economic problems and the pandemic will increase it.

Spain concluded that the CNMC's advice to policymakers is in their advocacy role, and this exists to encourage and improve pro-competitive reforms to prevent anti-competitive measures as well as to preserve competitive neutrality.

The Chair thanked Spain for reaffirming how delivering guidance with speed is of the essence. He also thanked Spain for raising the fact that advocacy can have two dimensions. One of them is reactive, to try to prevent the encroachment by regulation, whereas the other is proactive, to try to promote change. The Chair then gave the floor to **Mexico** and asked about the 12 proposals from the competition authority (COFECE) and why they are particularly important for the recovery.

Mexico thanked the Chair then explained that last October COFECE issued a document with 12 very concrete measures to promote competition in several markets that were very relevant for the economic recovery due either to their cross-cutting impact or because they related to generalised consumption goods with a direct effect in the spending of Mexican families. These markets were generic medicines, transportation and logistics in specific railways and ports, and also issues related to the banking sector and access to more credit as well as other recommendations related to public procurement, energy sector and other

markets. Mexico detailed the general logic behind the elaboration of this document was that recovery can be attained more effectively under the principle of build-back-better. This means that if Mexico can redesign as part of the recovery package certain market regulations in order to permit greater possible number of participants in the market, then the benefits of the recovery will reach a greater number of consumers and businesses when the growing cycle begins. Overall, Mexico said this generates long-term sustainable economic growth.

Mexico also explained the recovery document was a compendium of previous recommendations from diverse, non-binding opinions and market studies that had previously been published in 2017, 2018, 2019 and early 2020. It was well received because the proposals were concrete, were made together in one single product and were released in a relevant context when there was discussion by many actors in Mexico regarding the need of the government to support companies and markets. In the private sector, Mexico said it helped reconfigure views of COFECE as an authority concerned with creating a level playing field and protecting the dynamics of the economy, not just an authority who imposes fines on companies.

Mexico concluded with two examples of measures that were adopted. First, the industrial property authority and the health authority linked their systems to increase access and transparency of patent drug exploration information then they presented this action at a conference. Second, in terms of public procurement, the Anti-Corruption Commission of the Deputy of Chambers approved a legislative draft which addressed two important recommendations; a temporary department to participate in procurement procedures for those suppliers who had been sanctioned by collusion in accordance to the competition law and presentation of a written statement in which bidders refrain from subcontracting or transferring the rights of their contracts to competitors who participate in the same tender, but as unsuccessful participants. Mexico said that both examples would potentially be within the new competition procurement act.

The Chair thanked Mexico then highlighted that there is more of a sense of urgency and relevance for reforms of regulatory environment when the economy does not go well. He also pointed out there was a lesson on the kind of advocacy to increase understanding that competition law is not only a repressive instrument, but is also an instrument that allows people to participate in markets. The Chair then invited the **Philippines** to discuss the Philippine Competition Commission's (PCC) advocacy efforts in ensuring a pro-competitive government response to the pandemic-induced economic crisis.

The Philippines thanked the Chair for this opportunity to share how the PCC has proactively advocated for pro-competitive stimulus measures. However, they shared the reservations they had on the proposed temporary suspension of merger review in one of the stimulus bills in the Philippine Congress that passed a stimulus act which limits the PCC's merger review functions. The act considerably raised the threshold for compulsory merger notification for two years and suspended the *motu proprio* review of non-profitable mergers for one year. Although the law was passed with urgency, the Philippines explained it was deemed essential for the funding requirements of the economic stimulus and outbreak control measures, but that unfortunately no opportunity for the PCC to express its concerns on the provision, given the advanced stage of the legislative deliberations. This provision was less than ideal, but the PCC acknowledged the need to provide temporary regulatory relief for businesses and recognised provisions that bring back PCC *motu proprio* review after a year could discourage deals that are patently anti-competitive.

The Philippines emphasized how the PCC encouraged entities to voluntarily notify the Commission to avoid the taxing possibility of unwinding the transaction after. By voluntary notification, the Commission would be able to review and clear the transaction prior to

consummation dispensing uncertainties and possible anti-competitive effects the transaction might have. Moving forward, the Philippines said PCC is monitoring mergers in priority markets and can conduct *motu proprio* reviews once the suspension is lifted after one year. Through continuous capacity building efforts, the PCC is prepared to act under necessary remedial measures to these mergers if anti-competitive. Congress had also strengthened enforcement measures to protect consumers from cartels, monopolies or other anti-competitive conduct, restraining the trade of essential goods and services.

The Philippines explained that fewer merger notifications are expected, but the PCC have heightened enforcement efforts in investigating and prosecuting cartels and abusive practices that unscrupulously take advantage of the crisis. To complement legislative measures to the pandemic, they worked with the executive branch of government for the immediate adoption of the national competition policy. This steered all policies and administrative regulations by national government agencies, state-owned enterprises and local governments toward the promotion of fair market competition. The Philippines concluded that for five years, the PCC had consistently sought to promote competition policy as part of the country's socio-economic development agenda. The crisis presented many opportunities for mainstreaming competition principles in the whole of government.

The Chair thanked the Philippines then before giving the floor to **Italy** posed some questions about their response to the pandemic. The Chair explained that Italian competition authorities invited parliament to reassess the proportionality of all measures that the parliament was examining, and which despite the laudable aim of safeguarding public health and protecting the weakest sectors of the economy in the immediate future could have jeopardised recovery and growth in the long run. The Chair then asked Italy to expand on the result of that measure and if the idea of applying a law proportionately applies to the competition authority.

Italy thanked the Chair then explained that their advocacy intervention like other competition agencies recognised that some emergency measures might be needed, but they intended to balance the short and long-term effects of these measures and to assess whether they were really necessary. Italy said they were partially successful in the area of merger control. Although they did not think that suspending merger control was a good idea, the government introduced some exceptions for merger review, for firms in distress and public services, allowing the authority to assess the merger and authorise it with behavioral remedies. For this provision, Italy was successful in that this measure was limited until the end of 2020. As for enforcement, Italy said they were used to doing some sort of proportionality assessment in many instances of competition law enforcement such as when accessing remedies in mergers and applying fines. Overall, however, the competition authority did not think to enforce competition any less. Finally, having flexibility and speed meant adopting guidelines to assess horizontal agreements that were linked to the disruption in supply chains and also quickly offer assessment to some of those agreements like the extension of terms for the reimbursement of consumer loans. Finally, Italy concluded that in an emergency situation, time is a dimension of the proportionality test, but it is important that the time frame is relevant and does not become a temporality that extends well beyond the necessity.

The Chair thanked Italy then before he gave the floor to the **European Union**, he asked when reviewing state aid, to what extent did the EU consider that there is a role for the Commission to ensure a faster recovery, and a more resilient economy, to the use of conditionalities?

The European Union thanked the Chair then explained that competition law accommodates virtually an infinity of different policies. On the one hand, the EU said they showed more flexibility in order to allow cooperation but they had more stringent enforcement with

mergers. The EU said there is rarely any reason to relax the criteria of failing firm defense, but they see why this criteria may be matched more often in current market situations.

As for state aid rules, the EU explained the goal was to preserve a level playing field for fair competition. Because of being a single market, not a single jurisdiction, the European Commission needed to have control on state subsidies and show flexibility. The EU then addressed the Chair's question and pointed out that it is much easier to control the entry into force of state aid or state subsidies than to stop them after. One week after the WHO declared Europe the epicenter of the pandemic, the EU instilled a temporary framework of state aid policy to accommodate the complex situation.

As for how to accommodate recovery, the EU submitted emergency liquidity aid at the peak of the crisis to any type of conditionality to accompany other policies, because the issue was to maintain the productivity potential so that as soon as the emergency health situation is over, the economy could recover as quickly as possible. The EU said the issue of conditionality becomes relevant in recovery because it is important to ensure a consistency between the short-term objective, which is to maximise the speed of the recovery, and long-term objectives. For Europe, the EU explained this is to manage the twin transition of moving toward better use of digital and becoming carbon neutral by 2050. However, the EU emphasised building a more resilient economy is the all-time valid goal of any public policy.

The EU concluded that when capital is fungible, the goal is to strengthen the capital base, then to develop policies. But it is not their role to try to second guess of firms' choices in the way they want to develop their models and businesses. The EU did face difficulty on how to actually implement this conditionality to ensure that recovery efforts did not run counter to the longer term objectives.

The Chair thanked the EU then gave the floor to **BIAC** after asking how competition law can adjust to the circumstances being faced in recovery and what needs to be adjusted in the way competition authorities have been enforcing competition law.

BIAC thanked the Chair then pointed out that governments are manifestly slow moving and seldom able to react to market changes and cycles as effectively or efficiently as the private sector. However, governments have less liquidity constraints and a better position to take long-term views in assisting the pandemic recovery. From business at the OECD's perspective, BIAC explained business and government symbiosis should be supported by government indirectly in ensuring a focus on stimulating economic output and encourage as much investment as possible rather than over regulating the private sector, thereby imposing greater barriers to investment and growth. Secondly, BIAC said competition agencies should be even more focused on maintaining competitive markets to stimulate economic growth during this time of significant economic upheaval. Overall, BIAC affirmed that business at the OECD supports the position of the OECD competition policy papers in its response to the COVID-19 pandemic, published in April, and that a number of socio-economic objectives such as employment would be better advanced where agencies stimulate economic output, rather than pursue short-term industrial policy goals. BIAC explained the socio-economic objectives, which include fairness, privacy, employment or support for local business, are not a function of a lack of competition.

As far as BIAC is concerned, it is vital that regulators favour the promotion and stimulation of economic recovery over short-term protectionist measures. BIAC explained it is equally important that regulatory agencies not shift government's responsibility in relation to industrial policy obligation onto the private sector. While the COVID-19 pandemic presents unique challenges, authorities may be required, or at the very least tempted, to adopt more flexible and compromised approaches to dealing with the various significant

economic challenges, whether it be market failures or industrial policy objectives. These measures must not come at the expense of transparency and certainty. BIAC said measures must be evaluated against the rule of law to ensure procedural and substantive fairness.

BIAC confirmed its support to competition agencies playing a more practical role, together with governments to ensure that regulatory measures pursued in other spheres are consistent or at least do not undermine standard competition policy. Critical to this is ensuring that the voice of business is adequately represented on involving economic anticompetitive effects during this time.

BIAC concluded that enforcement could be flexibly adjusted to address the current and long-lasting economic malaise brought by the crisis. In merger control, BIAC said two key elements could stimulate economic growth: enhancing certainty in the emerging control regime and supporting innovation and dynamism. BIAC explained competition agencies should take into account the longer term for the outcomes. However, general standard merger review considerations and standards must remain.

The Chair thanked BIAC then summarised the contributions from **Brazil** and **Russia** due to time constraints.

The Chair explained that the contribution from Brazil shows that at times a public policy response to a pandemic can have the unintended consequence of promoting competition. In Brazil, the public cash transfer program which was designed to alleviate the effect of the lockdown actually increased competition on personal bank accounts, which facilitated the introduction of FinTech into the banking sector. Concerning the contribution from Russia, the Chair highlighted that the pandemic has accelerated the fourth industrial revolution, which forced economies without exception to global changes, and those changes are likely to increase competition but also benefit from technological progress.

The Chair then gave the floor to the **US** delegation.

The US raised two core questions going ahead. (1) What was discovered during this experience that we did not have, what were the weaknesses in the framework and what do we need to improve for the future? (2) What was done differently that we want to keep when times return to a more stable and effective equilibrium? Overall, the US said this is an opportunity to experiment around what to take on and make a part of the permanent program for the future. The US concluded competition agencies have big competition data; private firms mine and use that data all the time in their own domain. How can agencies do a better job of applying that and in making current policy decisions?

The Chair then gave the floor to **Australia**.

Australia emphasised the previous comments and raised the distinction about exploiting the flexibility of competition law rather than any lenient application. In the area of state support, in this crisis, Australia explained the conditions for viability without aid are completely different, and require many more policy-linked strategies as to what kind of state support and the conditionality attached to it.

The **Chair** thanked Australia and all participants then summarised the round table. First, advocacy for competition authorities should be a strategy that involves a continuous effort to build data, be flexible and react speedily to circumstances, and to have a network of people, policy makers or influencers with whom to dialogue. Second, although the communication of competition authorities was very focused on being strict enforcers for a long time, perhaps there is a value in showing to the public not only that a consumer benefits from competition, but that the competition instrument is actually something that can help people develop their businesses and enter markets. Overall, competition is not only a repressive mechanism, but an enabling one. Third, the Chair addressed the

enforcement side, a combination between keeping the standards and integrating the economic context in which the analysis takes place. The Chair concluded that whether to call it proportionality, realism or taking into consideration the economic environment, it is important to apply the same standards even if this will not necessarily lead exactly to the same result because the changed economic environment.