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Executive Summary 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

3 December 2020

This Executive Summary by the OECD Secretariat contains the key findings from the discussion 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

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Executive Summary of the roundtable on the Role of Competition Policy in Promoting Economic Recovery

By the Secretariat*

On 2 December 2020, the OECD Competition Committee held a meeting to discuss the role of competition policy in promoting economic recovery. 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. Experience from prior crises shows that weakening or suspending competition law and policy slows and delays economic recovery. Competition and well-functioning markets are not a luxury good and should be an integral part of the policies set to deal with a crisis and the recovery process. Governments should consider the impact on markets of state interventions and measures, including regulations introduced in a time of emergency or crisis.

There is ample evidence that the suspension of antitrust rules during a crisis holds back economic recovery. Following the US Great Depression, industrial and trade associations were allowed to establish industry-wide minimum wage rates and other working conditions. Industries that abided by such codes would then be exempt from cartel prohibitions. This led to widespread collusion. Industries took advantage of these exemptions to cartelise formerly competitive markets, increasing prices and reducing output. This may have unnecessarily prolonged the depression by a number of years. Examples from other crises provide similar robust evidence of the importance of competition policy in times of crisis.

Government interventions may fail to account for unintended consequences on markets. A good decision-making process requires that all costs are fully taken into account, including those that relate to the loss of the benefits that derive from competition. The beneficial effects of competition and well-functioning markets have long been demonstrated at both the macro and micro-economic levels. They optimise the use of resources, drive economic growth, boost productivity and lead to better prices, greater choice, higher quality of goods and services and more innovation. Competition can also help foster resilience of markets by offering alternative value chains and business models and help ensure more stable distribution of essential goods.

Competition law and policy is flexible enough to take into account all the relevant "facts on the ground" including the short-run market failures that may result from a pandemic that leads to government measures to limit contact, such as lock-downs. Competition agencies have a range of enforcement and advocacy powers that can play relevant roles in helping governments deal with the different phases of the crisis.

2. Competition policy is an essential tool for economic recovery. Competition authorities should use advocacy to help shape the government response to the crisis in a way that promotes competition and a strong and robust recovery. Governments have much to gain from being receptive to such advice and include competition

* This executive summary does not necessarily represent the consensus view of the Competition Committee. It does however identify key points from the hearing on Competition Economics of Digital Ecosystems, including the views of the expert panellist, the delegates' oral and written contributions.

authorities whenever possible and appropriate in their decision making processes. State intervention can distort markets, and the use of competition principles to design and deploy state support can lead to better outcomes for society. Competition can be a cornerstone of industrial policy. Reforms should be pro-competitive, or developed with the least negative impact of competition, to foster sustainable economic growth.

Governments adopted unprecedented measures to contain the effects of the recession in the emergency phase of the Covid-19 pandemic and to stimulate the economic recovery. These ranged from fiscal policies, monetary policies, trade policies to industrial policies, and included tax relief, wage subsidies, grants, preferential loans, loan guarantees and State equity. Some such measures have the potential to affect market functioning. Government interventions taken in the midst of an emergency and of high degrees of complexity and uncertainty may not automatically consider or be well equipped to take into account such, often unintended, consequences on markets. State measures have the potential to disrupt dynamic entry and exit, un-level the playing field, and also soften competition with long-term consequences. The creation or strengthening of market power directly or indirectly via such measures may in turn minimise the impact of fiscal and monetary policies.

Competition authorities' skill-sets and knowledge of how markets work – particularly in markets where they have experience from previous enforcement actions or market studies, means that whenever possible and resources allow, competition authorities should be involved in the design or re-design of such measures, identifying potential competition distortions that would result and then advising on how such impacts may be minimised.

Competition authorities should advise governments to consider the following principles when providing state support: (i) identify the objective of the aid (i.e., which market failure is the aid designed to address); (ii) ensure that the aid is well targeted, is the most appropriate instrument to achieve the objective, and is proportionate; and then (iii) balance the positive impact of the aid against the expected competition distortions. Where such distortions are expected, competition authorities should also encourage governments to provide support subject to conditions that mitigate those competition distortions, such as: (i) claw-back mechanisms to ensure the return of support later identified as disproportionate; (ii) remedies to mitigate competition distortions; (iii) clear exit strategies, such as sunset clauses, to prevent dependency and obtain value for taxpayers. State support should also exclude zombie firms (i.e., firms that are can continue to operate and service debt, but are unable to pay off their debt), as economic recovery can be much slower when zombie firms are maintained operational.

Competition principles should inform the design of industrial policy measures to "build back better" for the economic recovery. To the extent possible, state support should respect competitive neutrality and not focus on specific firms. Competitive dynamics, spurred by domestic and international rivalry, incentivise firms to develop better products and services and more efficient production processes and to constantly innovate. Lowering trade, regulatory and other barriers to entry at the earliest opportunity may be one way to counteract direct state support and ensure competitive markets.

Crises may strengthen the case for pro-competitive reforms. Many regulations are introduced during times of economic disruption to deal with short term issues, but have a long-term legacy. These long-term impacts strengthen the case for ensuring that regulations are pro-competitive or developed with the least negative impact on competition. It is also an opportunity to review regulations to make markets work better to contribute to the recovery.

3. Competition authorities can use enforcement powers to mitigate the worst effects of the crisis. They can focus on key industries for the recovery and use interim

measures to intervene rapidly. However, enforcement activity should not lose sight of long-term effects on competition. Competition authorities should be sceptical of arguments to relax competition enforcement, and only do so when a proposal meets specific strict criteria.

Competition authorities can redirect enforcement resources towards strategic markets and industries considered important for their economy's recovery process. These can include several sectors that have been important to the response to the crisis (such as pharmaceutical or e-commerce) and some markets that generate positive spill-over on social welfare (such as labour markets).

Competition authorities should consider the use of interim measures in cartel and abuse of dominance cases to intervene rapidly during a crisis, while not undermining the effectiveness of a final decision, which can be time-consuming, complex and costly to reach.

Competition authorities should only accept crisis cartels when the agreement meets a number of very strict conditions: (i) the pro-competitive effects outweigh the negative effects; (ii) the agreement is indispensable to achieve the benefits; and (iii) there are not any less anticompetitive alternatives available.

Merger control should have a focus on long-term dynamic effects. While economic crises are temporary, mergers result in irreversible changes to market structure and competition. Likewise, authorities should only accept failing firm arguments when, absent the merger, the failing firm and its assets would exit the market, and no less anti-competitive alternative transactions or reorganisations are feasible.