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

Summary of Discussion of the Roundtable on Purchasing Power and Buyers' Cartels

Annex to the Summary Record of the 138th meeting of the Competition Committee

22 June 2022

This document prepared by the OECD Secretariat is a detailed summary of the Roundtable on Purchasing Power and Buyers' Cartels, held by the Competition Committee on 22 June 2022.

More documents related to this discussion can be found at
www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm

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Summary of Discussion of the Roundtable on Purchasing Power and Buyers' Cartels

1. Introduction by the Chair

On 22 June 2022, the OECD Competition Committee held a roundtable on purchasing power and buyers' cartels chaired by Professor Frédéric Jenny.

The Chair introduced the topic and explained that the roundtable aimed to explore the definition of buying power and its determinants. He stressed that this is a popular topic, as demonstrated by the large number of contributions, and that this popularity was likely due to labour and digital markets raising questions on buying power.

The Chair then presented some of the key issues that would be addressed in the discussion: the definition and determinants of buying power, the theories of harm that apply when dealing with issue of buying power, the difference between hard bargaining and abuse, the legal mechanisms available for dealing with abuse, coordinated effects, the characterisation of buyers' cartels and joint purchase agreements.

The Chair introduced the three expert speakers who took part in the discussion:

- **Peter Carstensen**, Professor at the University of Wisconsin;
- **Kazuhiko Fuchikawa**, Associate Professor at Osaka Metropolitan University;
- **Nancy Rose**, Professor at the Massachusetts Institute of Technology.

The Chair thanked delegations for the great number of contributions received. He also explained that the roundtable would be structured in four parts:

- A discussion on what constitutes buyer power;
- A discussion on the welfare effects of purchasing power and how purchasing power interacts with the potential goals of competition;
- A discussion on the extent to which abuse of dominance provisions are sufficient as a legal instrument and the availability of other legal instruments to deal with purchasing power;
- A discussion on the issues of coordinated behaviour, buyers' cartels and purchasing agreements.

2. Buyer power

The Chair invited the Secretariat to present a brief overview of the Secretariat's background note.

The Secretariat explained that the background note is divided into three parts:

- The first part starts with a discussion on welfare standards to explore the link between competition policy and purchasing power. This section argues that unlike competition between suppliers in which direct recipients are often consumers, in competition between purchasers there needs to be a consideration of the relevant welfare standard. Then, the distinction between monopsony power and bargaining power is discussed. In this regard, monopsony power arises when many small

suppliers who act as price takers face a larger purchaser, with this purchaser facing an upward sloping supply curve which incentivises it to reduce its demand to lower prices. Under most welfare standards, the effect of this power is harmful. On the contrary, bargaining power refers to two sides each with market power, which can lead to lower prices in the benefit of consumers, although it could also lead to losses in dynamic competition.

- The second part of the paper analyses coordinated exercising of purchasing power, focusing on buyers' cartels and the legal treatment that they receive. In this regard, not all jurisdictions treat buyer and seller cartels in the same way, and the paper finds a potential underenforcement of buyers' cartels. This section also discusses joint purchasing agreements and their potential benefits, as well as their risks.
- In its final part, the background note addresses the unilateral exercising of purchasing power, which takes place when purchasing power resides in a single actor. This phenomenon is treated differently across jurisdictions, with some using abuse of dominance provisions and others turning to different concepts such as superior bargaining position or economic dependency. The Secretariat stressed that some regimes also focus on specific sectors, notably the retail sector, and impose conditions and restrictions on entities operating in them (such as how large retailers interact with their suppliers).

The Chair initiated the discussion by inviting Chile to share its contribution, which dealt with the determinants of buyer power. In particular, the Chair invited the Chilean delegation to share its experience with barriers to exit for suppliers as a source of buyer power, and asked on the hold-up implications of these barriers.

Chile defined buying power as the ability to determine or influence the price of a given group by one or a few of its buyers, which is also referred to as monopsony power. This form of power increases in the context of higher barriers to exit, for instance due to previous investments or contractual penalties on suppliers, which cause a loss of mobility for suppliers and renders them captive to existing customers. Dairy markets are prone to these issues, as demonstrated in the case presented by the Chilean delegation: milk processing companies held strong buying power, which allowed them to impose bonuses and penalties on producers to reduce their mobility. These bonuses and penalties acted as loyalty rebates, which led to a rise in the overall cost of raw milk and were thus considered anti-competitive.

The Chair asked Finland to take the floor and elaborate on its submission's remarks regarding buying power in the groceries sector. There is a ban on abuse of buying power in this sector across jurisdictions, probably due to large retailers acting as gatekeepers. For this reason, the Chair asked Finland to explain the particularities of the groceries sector in terms of buying power.

Finland shared that it has dealt with several buying power cases, and that one of its main cartel decisions related to purchasing power. A legal provision specifies that a market share higher than 30% in the groceries sector automatically indicates dominance. This examination of dominance based exclusively on market share is exceptional and does not apply in other sectors. The delegate explained that it is due to the fact that two main retailers dominate the market, meaning that all producers need to go through them to access the Finnish groceries market. However, the Finnish competition authority is sceptical of this exceptional treatment granted to the groceries sector.

3. The Welfare Effects of Purchasing Power

The Chair opened the second part of the discussion, which aimed at exploring the potential welfare harms of purchasing power. He invited Nancy Rose to share her views on the topic.

Professor Rose framed her intervention within the distinction between the two broad types of interactions between buyers and sellers: monopsony power and bargaining power (or bargaining leverage). Classical monopsony refers to markets with a posted or uniform price, in which buyers perceive an increasing cost of inputs as they increase their purchases. In this situation, the purchaser perceives a higher marginal cost for the input than the price it is paying for that input. The purchaser then exerts its market power by reducing its purchases to lower its input price. The lower price achieved by the powerful buyer does not pass the input price decrease down the value chain to consumers, as the buyer is faced with a higher marginal cost, so also likely reduces its output. This creates a downstream harm to consumers.

On the other hand, bargaining power becomes more complicated for authorities to scrutinise. In this case, both seller and buyer have market power and come together to negotiate a price on an individual basis. Economic theories of bargaining often assume that negotiations between buyers and sellers are efficient; that is, price divides only surplus, but quantities are unchanged from the efficient level. Professor Rose argued that in the real world it is hard to expect this efficiency. This is because even if price bargaining did not distort quantity choice in the short run, the “surplus” divided may include returns to investments, and a reduction in sellers’ return to their product will reduce their incentives to improve product quality and to innovate. For this reason, bargaining power can appear efficient in the short run, but in the long run it will reduce competition among buyers and create anti-competitive harm.

In the second part of her intervention, Professor Rose stressed the need to focus on theories of harm in upstream markets, because short run transfers could be distorted, and the standard of final consumer harm is typically not imposed on intermediate seller firms. She also argued that the notion of a consumer welfare standard as limited to only final consumers has been overstretched, leading to a general framework in which anticompetitive harms upstream are accepted and only downstream harms are addressed.

In the last part of her intervention, the expert explained that most regimes do not typically balance harms in one market with benefits in a different one. She concluded that authorities’ focus should be in individual markets, and when faced with anticompetitive practices of buyers, should assess how those practices harm competition upstream.

The Chair highlighted two of Professor Rose’s arguments: first, that analyses should focus on upstream markets, rather than comparing effects on upstream and downstream markets; and second, that bargaining power could be detrimental for product quality and innovation even if it is efficient in the short run. He then turned to Peter Carstensen to present his views on the analyses that should be adopted when it comes to buyer power.

Professor Carstensen argued that the notions of consumer and producer welfare are not neoclassical theories, but rather floating concepts which are not very helpful. These notions have focused competition policy on particular ends, rather than framing competition as a means to achieve the underlying goal of efficient, equitable and dynamic economic activity. In this context, the Professor pointed out to a general recognition that adverse conduct on the buyers’ end is necessarily a source of antitrust policy concern.

Professor Carstensen also agreed with Professor Rose that focusing on downstream anti-competitive harms makes no sense. He stressed that authorities focus should be on incremental decision making.

The **Chair** then invited Professor Fuchikawa to take the floor.

Professor Fuchikawa adhered to the conclusions of the other experts. He explained that reducing purchase volumes below the competitive (through the exercise of monopsony power) level causes deadweight losses. These losses will increase when buyers' market power upstream leads to the strengthening of sellers' market power downstream. He also argued that limiting buyers' market power to monopsony power would treat monopsony as a mirror image of serious monopoly power.

The Professor explained that while it is clear that monopsony power is inefficient and causes deadweight losses, bargaining power can lead to both competitive and uncompetitive effects. In this regard, major regulations have considered bargaining power as a pro-competitive factor, while an EU case from 2000 in the groceries sector deemed it to be anticompetitive since it allowed large scale retailers to sell at lower prices than competitors because of discounts obtained through their buyer power. The Professor used this case to demonstrate the potential spiral effects of bargaining power, which increases the risk of market dominance. He concluded that the evaluation of bargaining power requires a careful discussion.

The Chair then asked the Brazilian delegation to discuss the distinction between monopsony power and bargaining power that was presented in its submission.

Brazil agreed with Professor Rose that the focus should be on competition in the upstream market, rather than downstream. The delegate then explained that in Brazil the abuse of purchasing power is addressed as an abuse of economic power. The abuse of purchase power is considered illegal under Brazilian legislation if it distorts free competition or if it arbitrarily increases profit. In this regard, the regulation aims to prevent excess economic power, not only by sellers but also by buyers. The Brazilian delegate described monopsony power as a situation in which an actor downstream does not take the prices offered by upstream suppliers, but rather imposes its market power on those suppliers to lower the price. On the other hand, bargaining power was described as an imposition of buyer power that does not occur unilaterally, but as result of a relationship between vertically integrated players. The delegate argued that this bargaining power is usually considered as procompetitive and assessment is based on the rule of reason approach. On the contrary, monopsony power is approached as illicit, since it leads to an allocative inefficiency of goods, reduces welfare, and creates deadweight losses. The Brazilian delegate concluded that less competition among buyers can increase their power and facilitate collusion in the sellers' market downstream.

The Chair highlighted Brazil's distinction between monopsony power and bargaining power, with monopsony power being a *per se* violation while bargaining power is assessed based on the rule of reason. The Chair raised the issue that talking about bargaining power rather than monopsony power poses the question as to how one assesses if there will be negative effects. He then turned to Australia to express its views on these issues, which were included in the country contribution. The Chair asked the Australian delegation on the difference between hard bargaining and harmful conduct, and the potential implications of both.

Australia argued that there are no simple solutions, but the approach requires carefully examining long-term effects on upstream markets. The delegate mentioned the case of Australian perishable agricultural goods markets. He explained that in these markets, the bargaining power of buyers can be so great that strong actors can dictate prices and terms with no constraints from competition. Whether they do so in a monopsonist or oligopolist manner should be irrelevant. As long as buyers are able to dictate terms and prices, there is a harm to competition that could create long term effects for the sustainability of the market.

To tackle this, Australian authorities have imposed obligations on dairy purchasers, such as the mandatory disclosure of contracts with farmers.

The Chair then turned to Professor Rose for her views on the likelihood of negative effects from buying power and the methodologies to assess them.

Professor Rose expressed her preference for competition authorities not trying to quantify the long-term dynamic effects of buying power, since it is an impossible task. She stressed that the goal is to protect competition and that includes addressing upstream harms. In the case of cartels and mergers, those upstream harms can be easily addressed through the powers and tools of competition authorities. However, unilateral conduct is more challenging, especially in the United States, where there the regulation does not include any abuse of dominance provisions. She concluded that in any case, the reduction of upstream returns poses a risk for long term investments in the market.

The Chair then asked Professor Rose whether she disagreed with Australia’s lack of objections to unilateral hard bargaining while having objections to actions that go beyond hard bargaining.

Professor Rose answered that, from her United States perspective, firms with a position of hard bargaining would likely not, and likely should not, be sanctioned if they have not acquired that position through anti-competitive means. Only when those firms step over a line, for example by restricting options of upstream sellers, should they be sanctioned.

The Chair then asked Australia to clarify under which circumstances it understands that conditions have been actually imposed on the seller, rather than just being part of a standard contractual relationship.

Australia explained that the particular circumstances need to be assessed, and that imposition occurs when the seller has no alternative to the price and conditions dictated by the buyer.

The Chair argued that based on Australia’s response there would be an abuse of buying power in all cases with only one buyer present.

Australia answered that alternative options are always available, such as stopping production or shifting it to a different market. The delegate once again highlighted that the circumstances of the market and its prospects of sustainability need to be considered.

The Chair asked Professor Carstensen to take the floor.

Professor Carstensen underlined the special problems faced by agricultural producers in perishable goods markets, which are marked by “take it or leave it” dynamics that create strong buying power. Production typically requires a very large investment and it is hard to switch to producing different products. A century ago, the United States already acknowledged these problems and introduced special regulations for pork and beef, although they have until recently been largely underenforced. Dairy falls outside of this domain but also likely has serious long-term problems. The Professor noted that in the United States, vegetables and fruit products are an exception, with producers able to count on several potential buyers.

4. The Legal Treatment of Buyer Power

The **Chair** opened the third part of the discussion and invited Professor Fuchikawa to share his views on whether buyers’ power can be addressed through abuse of dominance provisions.

Professor Fuchikawa explained that both the EU's abuse of dominance provisions and US monopolisation provision aim to cover the unilateral exercise of purchasing power. Abuse of dominance refers to exclusionary and exploitative abuses. He argued that abuses of superior bargaining power occur based on negotiation imbalances and disparities, rather than the consumer welfare standard. Legal standards concerning bargaining power vary across countries and remain unclear. Professor Fuchikawa stressed the importance of analysing whether bargaining and purchasing powers have a negative impact on competition, and he pointed to Japan's and South Korea's restrictions on the abuse of bargaining power. He then explained the two countries' guidelines on the abuse of bargaining power.

Professor Fuchikawa then answered the question of how to control the overregulation of abuse of superior bargaining power, which is likely to happen since superior bargaining position can easily become an overstretched notion. The first approach to avoid this overregulation is to identify particular industries to be regulated, such as perishable agricultural goods. The second involves carefully assessing the superior bargaining position. And the third is based on limiting civil litigation. He then presented examples of how Japan is following each of these approaches.

Professor Fuchikawa noted that regional and local markets are particularly prone to abuses of superior bargaining position. He then concluded that abuse of superior bargaining position can become a catch-all concept and should thus be applied restrictively.

The Chair asked Italy to present some of the issues contained in its contribution that illustrated Professor Fuchikawa's points on some of the difficulties in applying abuse of dominance provisions.

Italy focused its intervention on its experience with abusive buyer practices. This experience shows that having more than one tool can be very helpful. In this regard, beyond traditional abuse of dominance provisions, Italy has tackled abusive buying power through provisions on the abuse of economic dependency. These provisions grant the competition authority power to intervene in bilateral relationships where there is an imbalance of power which is harming competitive dynamics. A second instrument used by the Italian authority is the abuse of economic dominance, which does not rely solely on market shares to determine the position of dominance. Italy referred to a presumption by which digital platforms fall within this abuse of economic dominance. These two notions of abuse of economic dependency and abuse of economic dominance have been helpful in tackling purchasing power, as complementary tools to the sometimes insufficient abuse of dominant provision. The delegate concluded that private enforcement could complement public enforcement in the challenging of purchasing power.

The Chair invited Hungary to share the additional obligations that are imposed on purchaser in some sectors in Hungary to act against purchasing power.

Hungary presented the two types of regulations concerning significant bargaining power, one from the Competition Act and the other from the Act of trade. The delegate explained that retailers are in a position to shape pricing structure on both sides of the market, affecting consumers and suppliers. For this reason, suppliers and retailers are in an asymmetrical situation which the Hungarian competition authority tries to compensate through the prohibition of certain kinds of conduct by retailers. Hungary argued that investigations of abuses of bargaining power require a different angle than those of abuses of dominant position.

The Chair turned to South Korea, as a case similar to that of Hungary, in which several regulations could be applied to purchasing power in specific sectors. The Chair asked the

Korean delegation why the country has a general regulation on bargaining power and a specific one for the retail sector.

South Korea explained that usually unfair business conduct based on a superior bargaining position is not regulated by competition law unless market power is proven. However, the delegate stressed that the harm caused by large businesses exploiting their superior bargaining power over suppliers can be easily seen without proving their market power. Furthermore, the reason for a specific regulation for the retail sector is due to the high concentration of market power of three firms there, which allows them to have a strong impact on both upstream and downstream competition.

5. Coordinated Behaviors, Buyers Cartels, and Purchasing Agreements

The Chair opened the last part of the discussion focusing on coordinated behavior between purchasers, including buyers' cartels and joint purchasing agreements. He invited Professor Carstensen to share his views on the topic.

Professor Carstensen defined buyers' cartels as two or more buyers agreeing on the prices, counterparties or other dimensions of the buying process in such a way that their competitive freedom is constrained by that agreement. He stressed that there is no need for all buyers in a market to participate in the cartel in order for it to have anti-competitive effects, it is enough for participants to be able to exercise extraordinary power over suppliers, even if a significant number of buyers remain unaffected.

Joint purchasing differs in the sense that it is based on two or more buyers pooling their purchasing of a specific input by partially integrating their purchasing activities with the aim of lowering transaction costs. This joint purchasing could entail negative implications which limit participants' freedom of choice regarding the inputs they are buying. For this reason, joint purchasing could look like a buyers' cartel, and although their differences are clear in theory, in practice it becomes difficult to distinguish the two.

Professor Carstensen argued that in his view, buyer cartels are inherently anticompetitive and unlawful, despite the argument that they could have a positive impact by countervailing power. In this regard, he recognised that in cases of persistent market failures, buyers' cartels can increase efficiency in the absence of other viable alternatives. However, in this case Professor Carstensen advocated for a careful oversight of the cartel.

He then explained the potentially negative effects of joint purchasing, which consist of anticompetitive effects both upstream and downstream. In the United States joint purchasing agreements are considered legal if they encompass less than 35% of the market, which Professor Carstensen considered to be a wrong approach. He stressed that joint purchasing agreements are present everywhere, and he explained that detecting buyer cartels can be hard because of the potential for a large number of participants and for tacit kinds of alliances. He stressed the role of exchanges of competitively sensitive information among buyers that engage in tacit collusion to restrict their buying behavior and exploit the input market. These exchanges should always be considered anticompetitive and will be essential to prove the existence of the cartel (since proving the restrictive agreement *per se* will be much harder).

Professor Carstensen concluded that buying groups should always be examined critically and the entire world should recognise the relevance of buyer power and its impact on collusion.

The Chair then turned to Professor Rose, asking whether she agreed with Professor Carstensen's arguments.

Professor Rose flagged that joint purchasing agreements could restrict competition at levels that might not be automatically identified as problematic. She stressed that these agreements should be scrutinised with the same level of intensity as coordination between sellers, and that efficiency arguments should not be automatically accepted without looking for further justification of the joint agreement. She also pointed out to a potential retrospective analysis of joint purchase agreements and agreed with Professor Carstensen that the US 35% safe harbor is problematic.

She explained that the question should be whether joint purchase agreements are helping small firms compete more effectively against larger rivals, or whether they are bringing together firms that are already large to enable them to exercise more market power. Lastly, she agreed that buyers' cartels should be immediately sanctioned.

The Chair highlighted the difficult consideration between those practices that should be *per se* illegal (such as buyers' cartels) and those that should be examined under a rule of reason (such as joint purchase agreements). He invited the European Union delegation to share its views on this matter.

The **European Union** presented its ongoing revision of its horizontal agreement guidance, which aims to increase legal certainty in the assessment of joint purchasing. In this regard, the main distinguishing factor between buyers' cartels and joint purchasing agreements is whether buyers are presenting themselves collectively towards a supplier or seller (which would constitute a joint purchasing agreement), or whether they are each presenting themselves as interacting individually with the seller, but in reality they are (secretly) coordinating their behavior (which would constitute a cartel). Transparency can be an element for this distinction: joint purchasing agreements should not be secret vis-s-vis the seller and the conditions and scope of the agreement should be put in writing from the start.

The delegate then presented a series of cases in which the distinction between joint purchasing agreements and buyers' cartels has been applied, and argued that joint purchasing agreements can also be a tool to disguise downstream seller cartels.

The Chair asked BIAC to expand on its calls for predictability in the rules regarding joint purchase agreements and buyers' cartels.

BIAC stressed that joint purchase agreements can have benefits, in the form of lower prices and a better variety of products. These agreements are a fairly common business practices, and the delegate argued that it is difficult to equate the joint determination of buying prices with an illegal activity. On the contrary, BIAC welcomed safe harbors based on market shares that presume the legality of joint purchase agreements. Lastly, BIAC agreed with the European Commission's choice of secrecy and transparency as differentiating factors between joint purchase agreements and buyers' cartels and praised its efforts to achieve clarity.

The Chair then called on France to expand on its contribution's claim that joint purchase agreements can have positive effects.

France agreed with Professor Rose's claim that authorities cannot rely on the presumption that joint purchasing will lead to efficiency gains, since these agreements can certainly have anti-competitive effects. Therefore, the assessment is a question of balance. French regulations foresee a threshold mechanism which rules for the compulsory reporting of joint purchase agreements between retailers above a level of turnover. Through this mechanism, the competition authority is able to examine the agreement, achieving transparency, and can impose remedies and interim measures to tackle any identified harms. This surveillance mechanism has already been applied in several joint purchase agreements, in which the competition authority has ordered the exclusion of specific

agricultural products from the agreements. Overall, French authorities are closely monitoring the adoption of joint purchase agreements.

The French representative from the country's Ministry of Economy presented the transparency provisions which oblige all partners in commercial transactions to follow a negotiation timetable and include all counterparties in their contracts. In case of an unfair contractual imbalance, the Ministry can intervene and reverse practices that restrict competition. These actions do not require a previous finding of a dominant position on the side of the buyer. Lastly, the French delegate noted that joint action between the Ministry and the competition authority is ensured through coordination mechanisms.

The Chair asked France on the consequences of these ex-ante controls on joint purchase agreements and whether the competition authority has been able to face them.

France answered that the ex-ante control regime has been quite manageable, since the authority has so far received only three notifications, all relating to joint purchase agreements in the large-scale retail sector involving agricultural products.

The Chair gave the floor to the Swiss delegation to express its views on the potential for positive results from joint purchasing agreements.

Switzerland emphasised that joint purchasing agreements can bring desirable competitive outcomes, and that its competition authority has a positive attitude towards them. However, these agreements are still individually analysed in case they create harm. The Swiss delegate argued that agreements that significantly restrict competition could still be justified under reasons of economic efficiency, such as the creation of countervailing buying power that leads to lower prices and better quality of products. The Swiss authority has detected a trend by which agreements are not formed to buy products jointly, but to instead negotiate discounts for members. These cases could lead to an abuse that creates monopsony power vis-à-vis small suppliers. The delegate explained that, so far, the Swiss authority has not decided how to legally approach these coordinated actions. In this regard, they could be addressed as horizontal quantity agreements that are harmful by object, and on the other hand they could be harmful based on their effects. The authority is currently conducting an international review and studying the European Commission's approach to frame its handling of anticompetitive joint purchase agreements.

The Chair moved on to ask Colombia on the case included in its submission, in which two chocolate companies were condemned for anticompetitive parallel behavior in their purchase of cocoa beans.

Colombia explained that the case involved two companies with a 98% market share. Through an econometric study, the Colombian authority was able to prove a parallel behavior in the pricing of cocoa bean purchases. However, the mere presence of a parallel conduct was not enough to determine the existence of a restrictive business practice, as a conscious parallelism needed to be found. This parallelism was proven through a second econometric analysis, which showed divergence between the purchase prices of the two companies (contained in memorandums sent to suppliers) and international prices. This served as indirect evidence to prove the anticompetitive conscious parallel behavior.

As a conclusion to the fourth part of the discussion, **the Chair** introduced the topic of abuses of buying power in labor markets. He invited Lithuania to take the floor.

Lithuania presented a recent case involving a price fixing cartel by the country's basketball clubs and league for the purchase of players' services. The competition authority conducted an investigation to rule that the agreement between clubs and the league not to pay salaries to players restricted competition by object, since it had an impact on the composition and competitiveness of clubs for the upcoming season. However, a first instance court

overturned the decision, arguing that the agreement did not restrict competition by its object, and instead the authority should have carried out an effects analysis.

The Chair then asked the United States to present its views on the potential differences in the applicability of tools to assess product or services markets in buying rather than selling markets, particularly given their application to labour markets.

The **United States** delegate from the Department of Justice argued that measuring purchasing power, and when this power can suppress the price of an input below competitive levels, can be extremely difficult because of data limitations. The delegate also stressed that buyers can exercise their power through non-price adjustments, such as demanding warranties, transportation arrangements, return policies, or other forms of policies that are more favorable to them than what would prevail in a competitive market. Furthermore, it is important to keep in mind that purchasing power can take different forms in different types of markets. Namely, in the labour context, when employers hold purchasing power over labour inputs, they are able to suppress wages, impose working conditions or non-compete exclusivity clauses or misclassify workers to their detriment.

The **United States** delegate from the Federal Trade Commission explained that the reduction in the amount of income returning to labour and stagnating wages have created concerns over the market power of employers. For this reason, merger review now considers whether the transaction could have a detrimental effect on labour markets, by allowing the merging parties to exert their market power to reduce wages or make working conditions less favorable. Another context in which the Commission is worried about the impact of market power on labour is no-poach agreements between firms to not hire one another's employees. These agreements are *per se* violations which do not require market power assessments. Furthermore, the Commission is also concerned about agreements between employees and employers that restrict the employees' ability to accept employment with a competing firm upon leaving their current job. A majority of employees in the United States are subject to these agreements. In this context, no individual employer has market power when entering these agreements, but if all employers in parallel require employees to accept them, they are having a detrimental impact on employees (even in the absence of collusion). The FTC delegate concluded that it is not necessary to find that an individual employer has market power to conclude that these sorts of agreements are detrimental to workers and potentially unfair from a competitive standpoint.

6. Conclusion

The Chair asked the experts for their final comments.

Professor Carstensen praised current global interest in facing buyer power.

Professor Rose highlighted the need to protect competition both upstream and downstream.

Professor Fuchikawa argued that a combination of ex ante and ex post approaches could be beneficial in the control of bargaining power.

The Chair noted that there seems to not be much of a problem agreeing on monopsony power and buyers' cartels, as there is consensus on how they should be treated. He then noted Professor Rose's point that competitive effects upstream should be as carefully assessed as those downstream. He pointed that there was also fair agreement on what leads to purchasing power, with a lack of alternatives being a key factor, as well as the potential harm from its potential abuse, including the effects on market dynamics upstream such as lower levels of innovation. This might suggest a longer period of analysis than usual.

As a summary of the discussion, the Chair explained that concerns on the abuse of purchasing power relate to a need to protect competitive processes and the ability of players to participate in them. In this regard, there was a general agreement that traditional provisions on the abuse of dominant position are not ideal tools to tackle buying power, and that other forms of regulations (either ex-ante or ex-post) are more helpful. In terms of joint purchase agreements, the general consensus was that they are not per se illegal but could carry risks to competition and should therefore be closely examined.

The Chair thanked delegates and the three experts for their participation.