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Conglomerate effects of mergers – Note by TUAC

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This document reproduces a written contribution from TUAC submitted for Item 1 of the 133rd OECD Competition Committee meeting on 10-16 June 2020.
More documents related to this discussion can be found at
http://www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm

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TUAC

1. On 10-12 June 2020, the OECD Competition Committee will hold a session on the conglomerate effects of mergers. Conglomerate mergers bring together firms that operate in different industries. Less frequent than mergers between firms operating on the same product markets, conglomerate mergers are now attracting more attention in the context of digital business models. Online platforms in particular tend to be significant conglomerates, with holdings operating over a wide range of sectors (retail, consumer goods, tourism etc.). These super star firms are also known for their aggressive mergers and acquisitions strategies towards smaller sized businesses.

2. The purpose of this TUAC contribution is to bring the attention of the Competition Committee to the harmful effects of conglomerate mergers on employment, and to call for new methodologies to address excessive economic power.

1. Why conglomerate effects should matter to competition authorities

3. An OECD background note describes how conglomerate effects of mergers have so far been overlooked by competition authorities to the profit of operations which have a more apparent impact on consumer welfare. However, conglomerate mergers are often carried out with a view to consolidate market power. In a context of increasing industry concentration, their harmful effects should no longer be under-estimated.

4. The increased concentration of industries is now a lasting trend both for manufacturing and non financial services. The OECD has documented such concentration in Europe as well as in North America[1]. Too much industry concentration harms the economy. It weakens investment and deters innovation. Most importantly, it contributes to deepening inequalities. Excessive corporate power contributes to unbalanced labour relations, resulting in labour market monopsonies. Where the labour market is dominated by a few firms, employers are able to lower wages and degrade working conditions without losing their workforce. This results in wage stagnation, degrading working conditions and lower levels of employment.

5. The current competition methodologies to define markets make it difficult to assess economic power, and therefore the harmful impact of conglomerate mergers.

6. First, competition law as it currently stands with its exclusive focus on consumer welfare does not sufficiently take into account social welfare and how excessive corporate power fuels increasing inequalities. As a result, competition fails to fulfil its goals of achieving economic efficiency and protecting the vulnerable.

7. Second, competition policies have not caught up with the development of global value chains. Defining relevant market along product lines was relatively straightforward fifty years ago, before the rise of global value chains. Groups of companies were traditionally composed of units relatively autonomous in their operations. Globalisation and the digitalisation of the economy have changed the picture. Today, multinational enterprises fragment production throughout the value chain. Business practices have

[1] Bajgar, M., et al. (2019), "Industry Concentration in Europe and North America", *OECD Productivity Working Papers*, No. 18, OECD Publishing, Paris

changed and corporate group structures are more complex than ever[2]. A too rigid methodology for defining the relevant market, focussing on products as opposed to ownership of capital and rent-seeking behaviours, fails to measure the scale of corporate power.

8. For many jurisdictions, a change in focus and methodology is therefore required in order to properly capture the harmful effects of conglomerate mergers.

2. The need for caution

9. In its final section the OECD background paper timidly recognises the harms that digital business characteristics could cause to competition. For TUAC, this is an understatement. The note suggests that a key indicator would be market power (or a lack of effective competition) in at least one of the markets affected by the merger, whilst the other markets exhibit significant entry barriers, economies of scale, or network effects. TUAC strongly encourages competition authorities to explore such approach.

10. But to be meaningful, the test to assess economic power should no longer be limited to product lines. Company groups in general, and online platforms in particular, are rarely about a single activity. Whilst the range of products and services in the output market can be very large, the global operational and labour strategy piloted by the controlling firm remains the same across the entire corporation.

11. It is essential to approach a group of companies as a single entity, and not as an aggregation of distinct legal units. Competition authorities must therefore adopt a more flexible approach to market definition, seeking inspiration from economic studies which measure industry concentration through mark-ups, i.e. a firm's ability to charge prices exceeding marginal cost of production, or by the ability to obtain extraordinary profits – the so-called "economic rents".[3]

12. If strong economic power can be identified in at least one of the merging firms, the OECD note lists a number of indicators which may point to risks of anti competitive behaviours. In this list is missing the potential impact of the merger on employment. The Competition Committee has held several roundtables on competition and labour markets, during which the harmful effects of unbalanced labour relations on our economies has been underlined. Cases of labour market monopsonies abound, especially in the online platforms industry.

13. TUAC urges competition authorities to look out for employees' interests in the case of conglomerate mergers. A first step is to assess to which extent workers have been informed and consulted in the decision leading to the merger. The competition authorities should then condition their approval to appropriate negotiations with workers' representatives. For this, the recognition of trade unions in all the entities involved is an essential prerequisite.

[2] OECD (2019), "Micro-Evidence on Corporate Relationships in Global Value Chains: The Role of Trade, FDI and Strategic Partnerships", *OECD Trade Policy Papers*, No. 227, OECD Publishing, Paris,

[3] International Monetary Fund (April 2019), " The Rise of Corporate Market Power and Its Macroeconomic Effects " in "World Economic Outlook"

14. The law should also protect employees post-mergers. Certain jurisdictions guarantee the respect of pre-existing collective agreements and prohibit dismissals of employees for reasons linked to the transfer to a new employer[4].

15. And just like a merger can be refused in case of too large economic power, it should also be possible to stop mergers in case of too large buying power when a labour market monopsony which cannot be addressed by structural and behavioural remedies is arising around the corner.

[4] See TUPE UK and ToU EU