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

**The Concept of Potential Competition – Note by Belgium**

10 June 2021

This document reproduces a written contribution from Belgium submitted for Item 2 of the 135<sup>th</sup> OECD Competition Committee meeting on 9-11 June 2021.

More documents related to this discussion can be found at  
<https://www.oecd.org/daf/competition/the-concept-of-potential-competition.htm>

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## *Belgium*

1. As a preliminary comment we have to mention that we almost exclusively dealt with potential competition in merger control cases.

### **1. Barriers to entry**

#### **1.1. How do you define barriers to entry?**

2. We do not define them, but use the concept and examine whether rules, facts or other circumstances do constitute a barrier to entry in a given case, such as the necessary investments to enter a market, the availability of infrastructure, the need to obtain planning permits etc.

#### **1.2. How do you measure barriers to entry?**

3. We have no guidelines or case law on the measuring of barriers to entry. We give a qualitative assessment.

### **2. Potential competition**

#### **2.1. When is a competitor considered to be source of potential rather than existing competition?**

4. When the potential competitor does not yet exercise significant competitive pressure on the relevant market.

#### **2.2. Does potential competition receive the same protection as existing competition?**

5. Potential competition has been considered in the BCA's practice in order to decide whether it alleviated competition concerns rather than receiving protection.

6. It may indirectly receive protection by e.g. restricting the growth of a dominant player or acting against a transaction that is found to have a negative impact on innovation. The latter was considered in the Kinopolis saga on the lifting of remedies imposed in a 1997 merger control decision<sup>1</sup>, but the successive decisions of the Court and the authority do not always draw a clear distinction between weak and potential competitors.

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<sup>1</sup> The decision and later decisions on requests to lift remedies was concerned with a merger between cinema groups. The most recent decision is the decision of the BCA of 11 February 2020. Earlier decisions of the competition authority were partially annulled by the Court of appeal judging that the lifting went too far or not far enough. 1

**2.3. In which types of market do you find potential competitors to play an important role?**

**2.4. Is this changing?**

7. E-commerce has generated more market entries on many BtoC markets.

**2.5. How do you assess the likelihood of entry by potential competitors?**

8. Mostly by looking at recent developments or barriers to entry.

**2.6. How do you assess the timing of entry by potential competitors?**

9. In the abovementioned Kinopolis case the BCA impose in its most recent decision a transitional period of 18 months in order to enable competitors to prepare for enhanced competition by the dominant undertaking after the lifting of restrictions on its organic growth. The duration was decided on the basis of information received from the parties concerning the time necessary for the construction of additional capacity.

**2.7. What timeframe do you use to make this assessment? How far off is too far?**

10. Please see sub 2.6.

**2.8. How do you assess the strength of entry by potential competitors? When is small scale entry considered de minimis?**

11. We have no guidelines or case law on this issue.

**2.9. Is potential competition protected by antitrust and merger control in your jurisdiction?**

12. Please see sub 2.2.

**2.10. What standards are applied to assessing potential competition?**

13. We have no guidelines or case law on this issue.

**2.11. Do these differ if a potential competitor is the aggressor towards an incumbent or vice-versa?**

14. This is unlikely to have an impact on the standard of assessment.

**2.12. When is a distinction drawn between existing competition to innovate, and potential competition?**

15. We are unlikely to emphasize the distinction and are less likely to look at potential competition when there is sufficient existing competition to innovate.

### 3. Exclusion of potential competitors –

#### 3.1. Have you assessed any cases of alleged exclusion of (or by) a potential competitor?

16. Please see sub 2.2.

#### 3.2. Which theories of harm have you examined in relation to the alleged exclusion of (or by) a potential competitor?

17. We have looked at potential competition in order to assess an alleged or potential restriction of existing competition. The relevant theory of harm was therefore concerned with a restriction of existing competition.

#### 3.3. In relation to the above, please briefly explain the case and the analysis that you undertook.

18. N/A

### 4. Agreements between potential competitors

#### 4.1. Have you assessed any anticompetitive agreements involving potential competitors?

19. We have no guidelines or case law on this issue.

### 5. Acquisitions of potential competitors

#### 5.1. Have you investigated any acquisitions of potential competitors by acquirers benefiting from state support?

20. We have no guidelines or case law on this issue.

### 6. Potential competitors as third parties in merger control

21. The Competition College saw no intervention of potential competitors as third party in merger control cases, except and with the qualification mentioned in respect of the Kinopolis cases referred to sub 2.2.