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Competition and Inflation – Note by BIAC

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This document reproduces a written contribution from BIAC submitted for Item 12 of the 139th OECD Competition Committee meeting on 29-30 November 2022.

More documents related to this discussion can be found at
www.oecd.org/competition/competition-and-inflation.htm

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BIAC

1. Introduction

1. *Business at OECD* (BIAC) is grateful for the opportunity to contribute to the Competition Committee’s roundtable on competition and inflation.
2. While we believe it is important to recognise that competition law has an important role to play in mitigating the negative effects of inflation, it is not necessarily, in and of itself, a tool for addressing inflationary price increases, which are often triggered by factors other than market power.
3. BIAC fully supports the OECD’s analysis of the role of competition law in relation to inflation. Careful consideration of that relationship will help governments and competition authorities to retain a clear view of the possibilities but also the limitations, of competition law when it comes to tackling high prices.
4. This paper considers, in section II, the inflationary context and its relationship with competition law enforcement. Section III acknowledges the role that competition policy and enforcement can have, and Section IV sets out recommended enforcement priorities, with Section V offering concluding remarks.
5. BIAC commends the following objectives and enforcement areas as deserving of careful consideration by competition authorities: efforts and recommendations to lowering barriers to entry/expansion; extra vigilance for unjustified price increases or price “stickiness;” advocacy efforts to avoid the unintended consequences from price controls; guidance/authorisation relating to particular conduct (e.g. competitor collaboration) in the light of economic realities; and continued commitment to strong and impartial merger control rules.

2. The Inflationary Context and Its Relationship with Competition Law Enforcement

6. BIAC notes that, as regards the current worldwide increase in inflation, the following factors are more commonly cited¹ as key drivers of high prices (more so than factors which competition law can readily address):
 - Demand increases following the reopening of the economy following pandemic lockdown measures;
 - Supply shortages and bottlenecks of commodities and intermediate goods (including from recent lockdowns in China); and
 - The war in Ukraine and the economic sanctions against Russia which has led to economic uncertainty and key supply and demand disruptions.
7. There are compelling arguments as to why the current inflationary episode is unconnected with levels of competition law enforcement or perceived levels of increased industrial concentration:

¹ See, e.g., Eur. Central Bank, Economic Bulletin Issue 4 (2022), <https://www.ecb.europa.eu/pub/economic-bulletin/html/eb202204.en.html>.

- While certain commentators have pointed to a moderate increase in concentration in the EU over the last 20 years,² it does not seem likely that that such a long-term trend would suddenly, after two decades, trigger a fierce burst of inflation.
- Statistical data suggests no correlation between periods of high inflation and concentration levels.³
- The rate of inflation appears to vary dramatically from country to country and to a degree that is unlikely to correlate to levels of concentration.⁴ It seems for example that the inflation rate in the Netherlands in March 2022 was more than twice that of France. Intuitively, concentration levels in these two countries within the EU are unlikely to differ so dramatically.
- Inflation rates observed in different sectors are not consistent with the concentration level in those sectors.⁵ Instead, sectors displaying the highest rates of inflation are connected with the more intensive consumption of energy, a market characterised by inelastic demand and recent supply disruption. Spiking energy costs are therefore a more likely cause of inflation than simple concentration levels.⁶

3. Role of Competition Policy

8. While competition policy and enforcement will not be a “silver bullet” to combat inflation, BIAC strongly believes that it should be part of the solution to help address the rising cost of living.

9. That is because competitive markets are more agile, prompt, and effective at responding to economic disruptions and at promoting economic growth and innovation in the long run. Competition ensures that resources are allocated to the most highly valued use, with firms adapting faster to new market conditions. As the International Competition Network (ICN) Steering Group recently noted in its Statement, competitive markets promote “resiliency, diverse supply chains, contestability, participation, growth, innovation, and recovery.”⁷ Competition also boosts economic growth and wages, which may help consumers to recover purchasing power lost due to inflation.

² Gabor Koltay, Szabolcs Lorincz & Tommaso M. Valletti, Concentration and Competition: Evidence from Europe and Implications for Policy (Dec. 23, 2021), <https://ssrn.com/abstract=3992591>.

³ See e.g., F. Deufelhard & Pierre Régibeau, Competition Policy and Inflation 7-8 (June 13, 2022), https://www.samkeppni.is/media/almennar-myndir/Pierre_Inflation-Market-Power-and-competition-policy-Reykjavik-June-13-2022.pdf (the graphs which show periods of high inflation without concentration and vice versa).

⁴ See id at 9.

⁵ See id at 13-14.

⁶ See Inflation in the Euro Area, Eurostat (Oct. 19, 2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Inflation_in_the_euro_area (showing data for September 2012 – 2022).

⁷ Int’l Competition Network, ICN Steering Group Statement: The Role of Competition & Competition Policy in Times of Economic Crisis 1 (Oct. 26, 2022), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2022/10/SG_Statement-Role-of-Competition-in-Times-of-Economic-Crisis-2022.pdf [hereinafter ICN Statement].

10. Competition enforcement also helps to deter business conduct that would otherwise exacerbate the effects of inflation.

4. Enforcement Recommendations

11. Recognising that competition policy is a key element in resilience and recovery, we consider below a number of objectives and possible areas of focus for competition authorities during inflationary periods.

4.1. Lowering Barriers to Entry/Expansion

12. BIAC believes that by removing unnecessary barriers to entry/expansion, competition authorities can help markets adjust in a more rapid and efficient way to shocks at the supply or demand level. This means that markets are rendered less vulnerable to severe price changes due to crises. Opening up competition in “sheltered” sectors can reduce barriers to entry and translate into lower prices, giving back purchasing power to customer and consumers.

13. A sound appreciation of markets is a prerequisite for any intervention aimed at keeping markets open and agile. In this regard, BIAC acknowledges the efforts of the Portuguese authority who has issued several recommendations to promote competition across many sectors of the economy aimed at removing unnecessary barriers to entry and expansion and lowering search and switching costs.⁸

14. BIAC recommends that competition authorities continue to think carefully about the need for, and nature of, any market interventions. Engagement with business (for example through short questionnaires or ideally roundtable discussions) is, in our view, critical to ensure that the economic realities are appreciated. This enables competition authorities to obtain a holistic view of the market and to remedy distortions or anticompetitive features in a non-adversarial way, which is bound to be more nimble and swifter. To the extent that more formal market studies or investigations are seen as necessary, BIAC recommends that these are very targeted and focussed on entry/expansion. Detailed market studies may not be the most effective option where there is an urgent need to protect vulnerable consumers.

4.2. Price-Related Issues – Increased Vigilance

15. BIAC readily acknowledges that inflation may hide or masquerade high prices that are also partly the result of the behaviour of market participants, and these situations merit vigilance and, where they clearly exist, enforcement action.

16. For example, a general backdrop of steadily increasing prices might make it easier for firms to coordinate on price increases or engage in other cartel behaviour. Inflation could also facilitate collusion by making anti-competitive price increases harder to detect and by providing potential excuses for competitor communications/coordination (shortages, supply bottlenecks). During periods of economic turbulence, there also tend to be more frequent and detailed price announcements by competitors, which could

⁸ Autoridade da Concorrência, Competition and Purchasing Power in Times of Inflation § IV (Aug. 2022), <https://www.concorrencia.pt/sites/default/files/Competition%20and%20purchasing%20power%20in%20times%20of%20inflation.pdf>.

potentially result in anti-competitive price signalling. Shocks at the supply and/or demand side of markets could lead to “crisis cartel” scenarios where an industry believes that a coordinated response is merited, e.g., to address overcapacity, etc.

17. In any event, BIAC believes that competition authorities should monitor sharp and/or unexpected increases in prices in important sectors such as food, construction, etc. Similarly, competition authorities should in our view be alert to complaints from business and consumers that prices have been sustained at high levels despite lowering input costs. This price “stickiness” can have a negative effect in the B2B context as well as for end consumers.

4.3. Advocacy Efforts in Relation to Proposed Price Controls

18. BIAC notes that governments may be very tempted to implement price controls when inflation arises but generally cautions against these solutions because of the inevitable detrimental impact price regulation will have on competition:

- A price cap may act as a focal point for collusion if set too high in relation to the costs of production of the firms and the price level which would prevail in a competitive situation.
- If the cap is too low, it may not allow firms to recoup their costs and may encourage the exit of firms, particularly smaller ones. It may also weaken incentives for competitors to enter and expand in the market.
- Price controls also distort price signals in the market and may unintentionally lead to supply shortages and value chain disruption, e.g., where price controls are applied to inputs used unevenly by rivals.

19. BIAC believes that competition authorities can and should play a critical advocacy role by assessing the risks of proposed price controls in terms of impact on competition and by assessing alternative policies that may achieve the same objective.

20. In addition to price regulation, governments may engage in price “encouragement” or consensus building, where they invite, encourage, or pressurise a sector to address pricing issues collectively. Working with the private sector can be a sensible and practical way to address market failure. However, government outreach can sometimes take place without prior consideration of the impact on competition law. Competition authorities can helpfully take steps to ensure that any government outreach to the private sector is conducted with full appreciation of applicable competition laws so that businesses are not put at risk of offending competition laws as they seek to comply with well-intentioned government requests.

4.4. Guidance/Exclusions/Exemptions Which Tailors the Application of Competition Law to Market Realities

21. BIAC believes that competition authorities play an important role by responding quickly and pragmatically in crisis situations, considering efficiency grounds for temporary and narrow agreements. In more extreme situations (such as the Covid-19 pandemic) this led to a number of temporary exemptions and exclusions from the normal application of competition law. But competition authorities can also provide guidance on specific initiatives and make it clear that they are prepared to do this. For example, the German Federal Cartel Office recently authorised the collaboration between four German sugar

manufacturers to provide each other with free production capacity if energy management measures imposed by the government lead to a reduced or suspended gas supply.⁹

4.5. Preventing the Accumulation of Market Power

22. By applying merger control rules, competition authorities also play a key role in preventing anticompetitive market structures from arising through acquisitions, etc. Clearly, mergers that would lead to price increases would make the effects of inflation worse.

23. Competition authorities will need to be alert to initiatives which might seek to protect firms from normal competitive forces, e.g., by relaxing merger control. We concur with the ICN's recent statement which encourages competition authorities to be alert to such initiatives and to advise governments, for example, on the impacts of measures like this which would allow firms to enjoy entrenched market power at a cost to the wider economy.

24. As was the case during the Covid-19 pandemic, competition authorities will need to "stay the course" and be alert to claims of failing firm defence. Deteriorating market conditions may well mean that typically exacting criteria for the defence are more frequently satisfied, but competition authorities should not make the criteria easier to achieve.

5. Conclusion

25. As the ICN Steering Group recently observed, "[f]air and open competition, effective competition policy, and active competition law enforcement are critical components of any response to the economic effects of the crises we face today."¹⁰

26. And yet while competition enforcement can mitigate the effects of high inflationary periods, governments and competition authorities must not inadvertently "stretch" the role of competition law by over-estimating its ability to tackle the causes of inflation. Nor should they underestimate the importance of competition policy in achieving growth over the longer term by relaxing aspects of it.

27. Consequently, BIAC considers that competition authorities should not deviate materially from their current path, which is to enforce the rules to keep prices low for consumers via a downward pressure on profit margins and costs, and to avoid mergers that would make the effects of inflation worse.

28. However, we consider that, in times of high inflation, the following objectives and enforcement areas deserve careful consideration by competition authorities:

- Efforts and recommendations to lowering barriers to entry/expansion;
- Extra vigilance for unjustified price increases or price "stickiness;"

⁹ Press Release, Bundeskartellamt, Mitigating the effects of possible gas shortages – Bundeskartellamt allows one-time temporary cooperation project between sugar producers (Sept. 6, 2022), https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/06_09_2022_Zucker.html?nn=3591568.

¹⁰ ICN Statement, *supra* note 7, at 1.

- Advocacy efforts to avoid the unintended consequences from price controls;
- Guidance/authorisation relating to particular conduct (e.g., competitor collaboration) in the light of economic realities; and
- Continued commitment to strong and impartial merger control rules.