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Competition in Capital Markets – Note by BIAC

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BIAC

1. Introduction

1. *Business at OECD* (BIAC) welcomes the opportunity to provide its views to the OECD Competition Committee on the relationship between capital markets, access to finance and competition. Access to finance is an important condition for firms to enter markets, expand and invest as well as commercialise new products and compete. As the OECD call for contributions acknowledges, this is particularly relevant for innovative firms, whose value may lie in intangible, uncertain or future-oriented assets — including software, data, patents, research pipelines and specialised employees — rather than assets that can support ordinary bank lending.

2. The availability of capital is shaped by a broad and interdependent financing ecosystem. Bank lending, venture capital, private equity, institutional investment and mergers and acquisitions (M&A) can each play a role. Their relative importance varies according to a firm's size, maturity, business model, sector and risk profile. These sources of finance may be substitutes in some circumstances as well as complements in others. Policies affecting one channel can therefore have effects elsewhere in the financing ecosystem and, ultimately, on competition in downstream markets.

3. This paper builds on BIAC's previous work. BIAC's 2019 contribution on digital disruption in financial markets highlighted the role of new entrants, technology-enabled business models and regulatory design in shaping innovation and competition.[1] BIAC's 2025 contribution on prudential regulation and competition in banking similarly recognised that legitimate regulatory objectives should be pursued in a way that takes account of their effects on entry and competitive conditions.[2] The present submission brings these strands together, with a broader focus on the financing ecosystem and the interaction between competition enforcement and financial regulation.

4. BIAC's central message is that competition policy and financial regulation should work together to preserve a diverse and competitive ecosystem of financing options for firms at different stages of development. Policymakers should consider the effects of financial regulation and competition enforcement on entry, expansion, innovation, investment and exit, and in particular their cumulative effects. Interventions should be evidence-based and proportionate, and should avoid unnecessarily foreclosing viable sources of capital or routes to scale, including M&A. This does not mean that acquisitions should be exempt from merger review or that regulatory objectives should be subordinated to capital formation. Rather, it means that authorities should assess the full range of relevant effects and distinguish harmful conduct or transactions from legitimate financing and growth pathways.

[1] OECD, Digital Disruption in Financial Markets — Note by BIAC, DAF/COMP/WD(2019)69 (May 31, 2019), https://one.oecd.org/document/DAF/COMP/WD(2019)69/en/pdf [hereinafter BIAC Note on Digital Disruption].

[2] OECD, Balancing Prudential Regulation and Competition Considerations in Banking — Note by BIAC, DAF/COMP/WD(2025)52 (Nov. 14, 2025), https://one.oecd.org/document/DAF/COMP/WD(2025)52/en/pdf [hereinafter BIAC Note on Prudential Regulation].

2. The Financing Ecosystem and the Role of Investors

5. Firms rarely rely on a single source of finance throughout their development. A start-up may initially be funded by founders or seed funds; it may later obtain venture capital, bank debt or strategic investment; and, as it grows, it may seek private equity, institutional capital, public listing or its acquisition. The availability of each option depends in part on the others. For example, venture capital investors may rely on the prospect of a later financing round, a public offering or a sale to realise returns and recycle capital into new investments.

6. Access to external investors is therefore an important component of a broader financing ecosystem, rather than a self-contained source of funding. Research by Lerner and Nanda notes that sovereign wealth funds, hedge funds and mutual funds also invest in firms backed by venture capital and private equity.[3] This illustrates that capital can flow through multiple intermediaries and investor types, and that the ability of one class of investor to support a company may depend on the participation of others. Changes in the availability or cost of one form of capital may consequently affect the incentives and capacity of other investors.

7. Different sources of finance also address different needs. Debt may be suitable for firms with predictable cash flows or assets that can support borrowing. Equity can be more appropriate where returns are uncertain, assets are intangible, or the firm needs to invest before generating revenue. Venture capital and other forms of risk capital may provide not only funding but also expertise, networks and support for commercialisation. Public markets can provide access to a broad investor base and liquidity, while strategic investors may offer complementary assets or technical capabilities. No single channel can be expected to meet the financing needs of every firm.

8. Exit pathways are an important part of this system. A venture-backed start-up may fail, be acquired or pursue an initial public offering (IPO), among other outcomes. Failure is a common outcome for start-ups; acquisition is an important route for companies that do not continue independently. For venture-backed start-ups, IPOs are relatively rare. The availability of a credible exit pathway can influence the expected return and risk of an investment, and therefore the willingness of investors to provide capital in the first place. This is particularly relevant where a company has reached a stage at which it needs additional capital or other capabilities to continue growing.

9. M&A can accordingly form part of the financing and commercialisation pathway for innovative firms. An acquisition may allow a start-up to access complementary assets, achieve scale, bring a product to market more rapidly or continue developing technology within a larger organisation. It may also provide an exit for founders and investors, allowing capital and expertise to be redeployed. These potential benefits do not arise in every transaction, and acquisitions that eliminate actual or potential competition may raise legitimate concerns. The relevant point is that the competitive assessment should distinguish between transactions that harm competition and those that provide a viable route to growth or exit.

10. Merger enforcement can affect investment incentives through more than its direct effect on the parties to a transaction. If investors perceive that a significant exit route has become less available or less predictable, they may adjust the amount, timing or terms of their investment. The effect may be particularly important in sectors where IPOs are not

[3] Josh Lerner & Ramana Nanda, *Venture Capital's Role in Financing Innovation: What We Know and How Much We Still Need to Learn*, 34 J. ECON. PERSPS. 237, 244 (2020).

realistic alternatives for many firms. A reduction in expected exit opportunities may reduce the expected return on venture investment and, in turn, the supply of capital to start-ups.

11. The relationship between risk capital and other sources of finance may be one of substitution or complementarity. Where venture capital substitutes for other forms of capital, restrictions that reduce venture funding may reduce the range of financing options available to firms and weaken competition between providers of capital. Where venture capital complements other financing, limiting its availability may also reduce demand for other forms of finance. In either case, the effect may extend beyond the financing market: firms that cannot raise capital may be less able to enter, expand, invest in R&D, commercialise products, potentially affecting competition in downstream markets.

12. These considerations support a balanced, evidence-based approach to merger enforcement. Authorities should continue to address acquisitions that are likely to harm competition, including, where appropriate, acquisitions of nascent or potential competitors. At the same time, they should consider the transaction-specific evidence, the role of the target in the market, the realistic alternatives available to it, and any substantiated efficiencies or other benefits. A general presumption that acquisitions of innovative or venture-backed firms are either harmful or beneficial would not reflect the diversity of firms, markets and transactions.[4]

13. OECD work has recognised the need to assess acquisitions in light of their effects on innovation and the particular challenges raised by start-ups and nascent competition.[5] BIAC encourages the OECD to continue developing evidence on how acquisitions affect start-up innovation, including the circumstances in which they support scaling and commercialisation as well as those in which they may suppress future competition.[6] This evidence can help authorities distinguish between different transaction types and avoid treating the availability of M&A exits as either an objective in itself or an irrelevant consideration.

3. Relationship between Competition Policy and Financial Markets Regulation

14. Financial regulation and competition policy pursue distinct but often complementary objectives. Financial regulation may address financial stability, investor and consumer protection, information asymmetries, market integrity and systemic risk. Competition policy seeks to protect the competitive process, facilitating entry, expansion, innovation, choice and efficient resource allocation. A sound financial system and competitive markets can reinforce one another: competition can encourage innovation and

[4] BIAC Note on Digital Disruption, *supra* note 1, ¶¶ 45, 53 (emphasizing that acquisitions of innovative fintech targets must be evaluated based on transaction-specific evidence and scaling efficiencies); BIAC Note on Prudential Regulation, *supra* note 2, ¶¶ 6–7, 12, 23, (advocating for a tailored, evidence-based review of bank mergers and counterfactuals while rejecting blanket or rigid approaches).

[5] OECD, Start-ups, Killer Acquisitions and Merger Control – Background Note by the Secretariat, ¶¶ 12, 47, 49, 74, DAF/COMP(2020)5 (May 12, 2020), https://one.oecd.org/document/DAF/COMP(2020)5/en/pdf.

[6] OECD, Start-ups, Killer Acquisitions and Merger Control – Note by BIAC, ¶¶ 2, 33–34, 38, 52, DAF/COMP/WD(2020)29 (June 4, 2020), https://one.oecd.org/document/DAF/COMP/WD(2020)29/en/pdf (encouraging empirical analysis of nascent competitor acquisitions, highlighting how acquiring platforms enable start-ups to scale and commercialize products that might otherwise stall) [hereinafter BIAC Note on Start-ups].

efficiency, while appropriate regulation can support confidence and the conditions for market participation.

15. The policy question is therefore not regulation versus competition. It is how legitimate regulatory objectives can be achieved in a manner that avoids unnecessary restrictions on competition and innovation. Regulatory requirements inevitably shape competitive conditions. They affect who can supply capital, which firms can access particular financing channels, the cost of financing, and the incentives of financial intermediaries to develop new products and business models.

16. Regulation may affect competition in financial markets through entry requirements, capital and liquidity rules, reporting obligations, governance requirements and restrictions on particular types of investment. These measures may be justified by the risks they address. However, their design and implementation can also create barriers to entry or expansion, particularly where fixed compliance costs are significant or requirements are not calibrated to the nature and scale of the activity.

17. The impact of compliance costs can be particularly pronounced for smaller firms and new entrants. A regulatory obligation that is manageable for a large, established institution may represent a substantial fixed cost for a smaller provider. Such costs can reduce the resources available for product development, technology, hiring or expansion, and may discourage entry. Where regulation applies differently to providers offering similar services or taking similar risks, it may also affect the relative competitive position of those providers. Conversely, differences in regulatory treatment may be justified where they reflect genuine differences in risk, function or the protections required.

18. BIAC's 2019 paper on digital disruption in financial markets observed that poorly designed or overly prescriptive regulation can become an entry barrier for new services and may hamper innovation.[7] It also highlighted the potential value of regulatory sandboxes, which allow firms to test innovative products and business models in a controlled environment, with appropriate safeguards.[8] These observations remain relevant to capital markets: regulatory frameworks need to be sufficiently predictable to support investment, but also sufficiently adaptable to accommodate new financing models and market developments.

19. BIAC's 2025 paper on prudential regulation and competition in banking similarly recognised the importance of tailoring requirements to the size, complexity and risk profile of regulated entities.[9] A proportionate approach can reduce unnecessary burdens on smaller or less complex firms without compromising legitimate regulatory objectives.[10] The same underlying principle is relevant to the wider financing ecosystem, while recognising that the appropriate calibration will depend on the particular activity and risks involved.

20. Regulatory rules can also influence the availability of capital to firms outside the regulated financial sector. For example, restrictions or costs affecting the ability of banks, pension funds or other institutional investors to invest in venture capital funds may influence the supply of risk capital. Lerner and Nanda discuss how rules, such as the U.S. Volcker Rule and ERISA requirements, have limited the ability of some banks and pension funds to invest in venture capital funds.[11] The precise effects depend on the applicable rules

[7] BIAC Note on Digital Disruption, *supra* note 1, ¶ 29.

[8] *Id*. ¶¶ 33-34.

[9] BIAC Note on Prudential Regulation, *supra* note 2, ¶¶ 12-13, 23.

[10] *Id*. ¶ 12.

[11] Lerner & Nanda, *supra* note 3, at 239. *See also* Jun Chen & Michael Ewens, *Venture Capital and Startup Agglomeration*, 80 J. FIN. 2153 (2025); 12 U.S.C. § 1851; Prohibitions and Restrictions on

and market circumstances, but the example illustrates how financial regulation may have consequences for the financing of innovative businesses.

21. Securities and disclosure requirements are another example. Requirements designed to support transparency and investor protection can contribute to the integrity and attractiveness of capital markets. However, the costs of compliance may be relatively more significant for smaller issuers, including companies seeking to access public markets at an early stage of development. If the costs or complexity of listing become disproportionate to the size and resources of an issuer, some firms may delay or forgo an IPO.[12] This may narrow the set of available financing and exit options, even where public listing could otherwise support further growth.

22. As we know, access to capital is itself an important input. Rules that reduce the availability of, or increase the cost of, financing may affect whether firms can enter markets, fund R&D, commercialise products, expand and build infrastructure. These effects may be particularly significant in markets characterised by rapid technological change, substantial upfront investment or a need to reach scale.

23. A proportionate and risk-based approach can help address these concerns. Where a regulatory objective can be achieved through different means, policymakers should consider whether reasonably available alternatives would impose fewer unnecessary restrictions on competition and innovation. This does not require regulators to select the least burdensome option irrespective of effectiveness. Rather, it supports a disciplined assessment of whether the costs and competitive effects of a measure are justified by its expected benefits and whether the measure is appropriately tailored to the risks identified.

4. Cumulative Effects and Regulatory Coherence

24. Firms and investors are often subject to multiple layers of regulation. These requirements may be adopted by different authorities, at different times and for different purposes. Each measure may be reasonable when considered in isolation, yet their combined effect may materially influence the cost, availability and structure of financing.

25. Cumulative effects can arise in several ways. Overlapping reporting or compliance obligations may increase fixed costs. Different definitions, thresholds or timelines may create uncertainty and require firms to maintain parallel processes. Regulatory restrictions may interact with competition enforcement, for example where the prospect of review or remedy affects the commercial feasibility of a transaction that would otherwise provide a route to scale or exit. These effects may be difficult to identify if each authority considers only the immediate impact of its own intervention.

26. Regulatory uncertainty can itself affect investment decisions. Capital providers must assess not only commercial and technological risk, but also the policy framework within which an investment will be made and realised. Uncertainty about future requirements, or about how overlapping rules will be applied, may increase the return investors require, delay investment or cause capital to be directed elsewhere. The effects

Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 85 Fed. Reg. 46,422 (July 31, 2020) (excluding qualifying venture capital funds from the "covered fund" definition, effective Oct. 1, 2020).

[12] Business at OECD (BIAC), Unlocking Greater Private Investment in Innovation: Business Recommendations to the OECD Committee on Scientific and Technological Policy 7-8 (Oct. 2025), https://www.businessatoecd.org/hubfs/Unlocking%20Greater%20Private%20Investment%20in%20Innovation.pdf [hereinafter BIAC Vision Paper].

may be more pronounced for long-term projects, where investment decisions are difficult to reverse and returns may depend on regulatory conditions over many years.[13]

27. BIAC therefore encourages policymakers to consider the cumulative effects of relevant rules as part of regulatory impact assessments.[14] Such assessments should consider not only the direct costs to regulated entities, but also potential effects on the availability and diversity of financing, entry and expansion by firms in downstream markets, innovation, and exit pathways.[15] It should take account of differences between firms, including size, maturity, business model and risk profile.[16]

28. Institutional coordination can support this assessment. Competition authorities and financial market regulators have different mandates and expertise, but their work may intersect in ways that affect the same firms, transactions and markets. Consultation and information-sharing, subject to appropriate confidentiality safeguards and each authority's statutory responsibilities, can help identify potential conflicts, avoid duplication and improve the understanding of market developments.[17] The OECD Competition Assessment Toolkit and related regulatory impact assessment practices may provide useful frameworks for identifying rules that unnecessarily restrict competition.[18]

29. Coordination should not dilute the independence of competition authorities or financial regulators, nor should it imply that one objective always takes precedence over another. Rather, it can help ensure that decisions are informed by the relevant perspectives and that authorities understand the potential interaction of their interventions. Periodic

[13] *See id.* at 4–6 & Recommendation 1.

[14] OECD, Ex-Ante Regulation and Competition in Digital Markets – Note by BIAC, ¶¶ 23-24, DAF/COMP/WD(2021)79 (Nov. 24, 2021), https://one.oecd.org/document/DAF/COMP/WD(2021)79/en/pdf (encouraging rigorous regulatory impact assessments that consider cumulative regulatory effects and risk baselines).

[15] BIAC Note on Start-ups, *supra* note 6, ¶¶ 37-38 (emphasizing that regulatory and merger scrutiny must consider financing horizons, venture capital investment incentives, and start-up exit pathways).

[16] BIAC Note on Prudential Regulation, *supra* note 2, ¶¶ 12-13 (advocating for a tailored, risk-adjusted regulatory approach that accounts for differences in firm size, business model, maturity, and risk profile rather than applying rigid, blanket rules).

[17] OECD, Interactions Between Competition Authorities and Sector Regulators – Contribution from Business at OECD (BIAC), ¶¶ 6–9, 11–15, DAF/COMP/GF/WD(2022)64 (Nov. 18, 2022), https://one.oecd.org/document/DAF/COMP/GF/WD(2022)64/en/pdf (emphasizing that while competition authorities and sector regulators have distinct statutory objectives, structured coordination, MoUs, and information-sharing avoid duplication and conflicting rulings while respecting confidentiality safeguards) [hereinafter BIAC Note on Sector Regulators]; OECD, Competition and Financial Markets, at 298-299, DAF/COMP(2009)11/ADD1 (Feb. 17, 2009), https://one.oecd.org/document/DAF/COMP(2009)11/ADD1/en/pdf (advocating for early dialogue and information exchange between competition authorities and financial regulators to avoid duplicative oversight and resolve conflicting decisions, provided sensitive confidential information is strictly protected); OECD, Co-operative Antitrust in Remedy Design – Note by BIAC, ¶¶ 9–10, 15, 28, DAF/COMP/WP3/WD(2025)73 (June 2025), https://one.oecd.org/document/DAF/COMP/WP3/WD(2025)37/en/pdf (noting that sector regulators possess deep technical expertise that improves market understanding, while cautioning that inter-agency collaboration must be governed by formal frameworks and confidentiality protections).

[18] *The OECD Competition Assessment Toolkit*, OECD, https://www.oecd.org/en/topics/sub-issues/competitive-and-fair-markets/competition-assessment.html#competition; *see also* OECD, Recommendation of the Council on Competition Assessment, OECD/LEGAL/0455 (Dec. 11, 2019), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0455.

review is also important.[19] Financial markets evolve, new intermediaries emerge and technology changes the way capital is raised and deployed. Rules that were appropriate in one market environment may need to be reconsidered as circumstances change.

5. Conclusions and Recommendations

30. A diverse and competitive financing ecosystem is important to firms at different stages of development and to the competitive process in downstream markets. Venture capital, institutional investment, bank lending, private equity, public markets, strategic investment and M&A can serve different but interconnected functions. Competition enforcement and financial regulation can each affect the availability, cost and diversity of these options.

31. BIAC encourages the OECD and policymakers to consider the following recommendations:

a. **Preserve multiple financing pathways.** Policy should facilitate competition between bank lending, venture capital, private equity, institutional investment, strategic investment and public markets, while recognising the role that M&A can play in scaling and exit. No single financing model is suitable for all firms.

b. **Assess the competitive effects of financial regulation.** Major new rules should be evaluated for their potential effects on entry, expansion, capital availability, innovation and competition, including effects on firms that are not themselves regulated financial institutions.

c. **Consider cumulative effects.** Regulatory impact assessments should examine the combined effect of overlapping financial, securities, corporate governance and competition rules, rather than evaluating each intervention only in isolation.

d. **Apply proportionality and risk-based regulation.** Requirements should be tailored to demonstrated risks and the nature, scale and complexity of the activity. Where reasonably available, policymakers should consider approaches that achieve legitimate objectives while minimising unnecessary restrictions on competition and innovation.

e. **Recognise dynamic effects.** Competition and financial policymakers should consider how interventions may affect incentives to finance start-ups, invest in innovation, scale, commercialise products and exit over time, alongside their immediate effects.

f. **Institutionalise coordination and periodic review.** Competition authorities and financial regulators should consult, where appropriate, on issues affecting capital formation and market structure, and periodically reassess existing rules as markets and technologies evolve.

32. These recommendations are intended to support — not replace — the careful assessment of individual regulatory measures and transactions. The relevant effects will depend on the facts and circumstances of each market. By taking a holistic, evidence-based

[19] BIAC Note on Sector Regulators, *supra* note 17, ¶¶ 6, 10, 23–24, 27, DAF/COMP/GF/WD(2022)64 (Nov. 18, 2022), https://one.oecd.org/document/DAF/COMP/GF/WD(2022)64/en/pdf (emphasizing that inter-agency coordination must preserve statutory independence without subordinating mandates, while ensuring decisions are informed by intersecting perspectives and undergo periodic review).

and proportionate approach, policymakers can pursue financial stability, investor protection and market integrity while also preserving the conditions for entry, investment, innovation and effective competition.