

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

Cancels & replaces the same document of 30 May 2018

Working Party No. 2 on Competition and Regulation

Options for Updating Competition Assessment Toolkit in Light of Digitalisation

Note by the Secretariat

4 June 2018

This document is submitted as background material for item 5 of the 65th meeting of Working Party No 2, to be held on 4 June 2018.

This note outlines alternatives for how the Competition Assessment Toolkit can be updated in light of digitalisation. Recognising the importance of digitalisation for competition, the update will build on work that started in Working Party 2 in 2017 and will take into account feedback received from many jurisdictions. Feedback on this note will guide the work on revising the Competition Assessment Toolkit.

Please contact Mr Sean Ennis if you have questions about this document
[Sean.ENNIS@oecd.org]

JT03432693

1. Introduction

1. In light of the rapid pace of digitalisation, the Competition Assessment Toolkit is being updated to ensure its relevance and value. The process is now well under way. A survey¹ and an analytical report based on the survey², focusing on sector-specific topics, have been completed. An OECD workshop on competition, regulation and digitalisation was held on January 31, 2018. A synthesis note³ has been prepared integrating the survey findings, analytical report, October 25-26 2017 G20 meeting on digitalisation and the OECD workshop. The synthesis note identifies key points of focus in reviewing regulations, identifying, in general, the types of regulatory restrictions that are most prevalent. The Working Party is now arriving at the stage of revising the Competition Assessment Toolkit building on prior findings and in light of feedback received from delegations.

2. This update could take various forms, and could include one or more of the following:

- Adding
 1. examples of digitalisation-inspired review of regulations throughout the existing materials and
 2. new concepts related to platforms;
- Creating a digitalisation-focused guide setting out possible approaches to digital questions raised by competition assessments; and
- Preparing a short, standalone set of principles that could guide governments in selecting areas for priority review and efficiently performing such reviews both by a process that includes feedback from “non-traditional” businesses and identification of the types of regulation that are particularly likely to prevent beneficial developments.

3. These options will be discussed at the forthcoming meeting of Working Party No. 2. In conjunction with this discussion, delegates will be asked to consider how to implement the Action Plan that calls for review of the Competition Assessment Recommendation.⁴

¹ Survey on Regulations Affecting the Digital Economy which was distributed on 27 July 2017 to the members and participants in the OECD Competition Committee, the competition authorities of G20 countries, and representatives of the business community, through the Business and Industry Advisory Committee to the OECD (BIAC). Thirty countries, the EU, BIAC and enterprises through BIAC submitted their contributions to the survey. An analytical report was released building on this survey, DAF/COMP/WP2/WD(2017)2/REV1.

² The workshop on Regulation and Competition in the Light of Digitalisation was held on 31 January 2018 with 159 registered delegates.

³ Available as: DAF/COMP/WP2(2018)3.

⁴ The Action Plan states: “the Recommendation of the Council on Competition Policy and Exempted or Regulated Sectors [C(79)55/FINAL] and the Recommendation of the Council on Competition Assessment [C(2009)130] could be updated and replaced by a new consolidated Recommendation on Competition Policy and Competition Assessment. A first discussion of the consolidated Recommendation would be held in the Committee in 2018, and possible work on the

4. This note includes:
 - Examples that could be dispersed through the existing Competition Assessment toolkit or in a separate digital regulation guide;
 - An outline of a potential digitalisation-focused guide; and
 - Possible principles derived from the recent synthesis note.⁵
5. After selecting the options for moving forward, and with expeditious progress, the revised Competition Assessment Toolkit is expected to be available in the course of 2019, ready to help governments to address many of the regulatory challenges to competition that are posed by rapid digitalisation for goods, services and business models. The revised Toolkit could also reflect select competitive neutrality provisions. A revised Council recommendation on competition assessment, in accord with the Action Plan, could then be available in the course of 2019-2020.

2. Examples

6. The first option for an addition to the toolkit consists of examples showing how digital consideration arise and are addressed in the process and substantive review of regulations for their competitive impacts. Illustrations of possible examples are included in the annexes to this note. These additions could take the form of :
 1. Short boxes (See Annex A)
 2. Extended descriptions (or case studies) (See Annex B for one sample digital case study)
7. The Competition Assessment Toolkit currently features both short examples in boxes primarily in volumes 2 and 3, and, at the end of volume 2 (Guidance), several case studies.
8. The boxes tend to be short and pithy, intended to illustrate a specific point in the text.
9. The case studies, in contrast, are extended examples of one relatively well developed regulatory situation that show particular options for reform and how they are evaluated. These have often been abstracted from genuine cases.
10. The Secretariat, with input from delegations, could prepare more examples of either type, in addition to revising the text of the Toolkit to ensure that digital concerns, such as platform markets, are covered in the materials.

3. New guide on competition assessment focused on digitalisation

11. The second option for digital-related refinements to the Toolkit is to prepare a guide specifically focused on competition assessment that takes into account specific

consolidate Recommendation could be undertaken by the Working Party No. 2 on Competition and Regulation (WP2) in 2018-2019 with a view of its possible adoption by the Council in 2020.”

5 These are derived from DAF/COMP/WP2(2018)3.

features of digital questions. Such a specific guide might be appropriate, given the importance of and need for focus on the regulation impacting digital developments in the economy. If the Working Party wishes to prepare a guide on competition assessment that is specifically focused on digital questions, one possible outline is presented below for comment and discussion.

3.1. Outline of Guide on Competition Assessment Focused on Digitalisation

1. Introduction.
 - 1.1 How does digitalisation create regulatory challenges with a competition focus?
 - 1.2 Why is competition assessment focused on digitalisation valuable?
2. Approaches for digitalisation
 - 2.1 Prioritise sectors/regulations for review
 - 2.2 Re-examine original motive/need for regulation
 - 2.3 How to apply the competition assessment method specifically with digitalisation in mind
 - 2.3.1 Ways that traditional regulation may unduly constrain digitalisation by potential new entrants or incumbent non-digitalised enterprises; and
 - 2.3.2 Ways that new regulation may unduly constrain digitalisation.
3. Processes for ensuring regulation does not unduly restrict competition
 - 3.1 Consultation with all stakeholders, particularly those who may be potential entrants
 - 3.2 Making regulations adaptable
 - 3.2.1 Use standards as opposed to legislation; and
 - 3.2.2 Use regulatory sandboxes.

4. Principles

12. The third option for how to update the Competition Assessment Toolkit in light of digitalisation is to develop specific principles or guidance focused on the particular needs of competition assessment for digital-related developments. Such principles could be adapted from those outlined in the synthesis note (DAF/COMP/WP2(2018)3). Ten possible principles could be those that follow. This list could be trimmed or extended in light of delegate comments. For each principle selected, explanatory text could be developed following any guidance and suggestions from delegations.

4.1. Ensure sufficiently broad range of regulations is reviewed.

13. Ensure that the breadth of regulations reviewed for impacts of digitalisation on competition is sufficient to address a variety of restrictions that may be present in different regulations, including non-sectoral (or “horizontal”) regulations.

4.2. Prioritise those sectors with most potential impact of restrictions on beneficial digitalisation.

14. Prioritise key sectors for review in light of digitalisation and ensure that there is a process for updating regulations to reflect technological change. One example of this could arise from blockchain solutions.

4.3. Consult key stakeholders, including potential *new* enterprises about impact of regulations on competition.

15. Ensure that competition assessment of regulations appropriately considers views of stakeholders, including potential future stakeholders.

4.4. Re-examine the rationale for regulation.

16. The process for review can begin by asking whether market failures that are at the origin of regulation have themselves changed due to digital possibilities, prior to considering competitive implications of existing regulatory regimes.
 - Is there a market failure and, if so, has it changed? [The original rationale may have disappeared or changed due to the new options that are used by consumers.]
 - Are the set of possible regulatory responses to the market failure the same, or have the response options been altered by digitalisation?
 - Do existing regulations in response to the current market failures unduly restrict competition? [start with applying Competition Assessment Checklist]
 - Are new products and services unduly excluded by the regulatory structure or given undue advantages or disadvantages?
 - What options exist for ensuring new products, services and business models are not unduly excluded nor given undue advantages?

4.5. Apply competition assessment method.

17. Apply the OECD's competition assessment checklist to regulations under review.⁶ The competition assessment checklist is built around four main questions. Does the regulations:
 - Limit the number or range of suppliers;
 - Limit the actions that suppliers can take as they compete with each other;
 - Reduce the incentives of suppliers to compete; and/or
 - Limit the choices and information available to consumers.

⁶ According to the Norwegian presentation at the 2018 Workshop, the Norwegian competition authority's approach used in the report on sharing economy was based on the competitive neutrality principle and the competition assessment checklist. In the report, it is stated that "regulation should promote competition" ("i.e. by providing a level playing field (legal entities/private individuals and traditional/technology-driven industries)" and "technology neutrality") and "should not hamper competition" by limiting the number or range of suppliers, limiting the ability of suppliers to compete, reducing the incentive of suppliers to compete and limiting the choices and information available to customers.

4.6. Ensure regulations are competitively neutral.

18. Ensure that regulations are competitively neutral between digital and non-digital products, while ensuring appropriate consumer protections. There still may be reason to have different regulations for digital and non-digital products, due to different risks associated with each.

4.7. Pay special care to physical presence, minimum scale and inspection rules that can hold back competition.

19. Particular focus is needed for rules that require physical storefronts and physical inspection of merchandise prior to purchase, as these inherently limit digital sales.

4.8. Ensure cross-border restrictions are assessed for restrictions on competition.

20. Restrictions on cross-border competition, impacting delivery of goods for example, may need to be assessed.

4.9. Prefer evaluative standards that can adapt to new competitive conditions compared to more fixed legislation.

21. When rules are changed, due to restrictions of competition, it is better if they can be replaced by standards that can evolve quickly, according to which the law is given content *ex post*, rather than new more fixed rules that create new interest groups opposed to more efficient provision of goods and services.

4.10. Create “regulatory sandboxes” that create more open environment to new entry and competition.

22. Be open to creating low burden regulatory regimes for small and new entrants, or regulatory “sandboxes”.⁷

5. Conclusion

23. This note presents a number of options on how to proceed with changes to the Competition Assessment Toolkit and the associated recommendations. Delegate suggestions and refinements are encouraged, including potentially other options.

Questions for discussion include:

- *Are there other options for updating the Competition Assessment Toolkit that the Working Party should consider?*

⁷ See presentation of David Stallibras in 2018 Workshop “Digital platforms: challenges for competition advocacy”. <https://www.slideshare.net/OECD-DAF/regulation-and-competition-in-light-of-digitalisation-david-stallibrass-january-2018-oecd-workshop> and presentation of Miguel de la Mano in 2018 Workshop, “The fintech challenge: an economic perspective” <https://www.slideshare.net/OECD-DAF/regulation-and-competition-in-light-of-digitalisation-miguel-de-la-mano-january-2018-oecd-workshop>.

- *What are the pros and cons of each option?*
- *Which options would you most like to see implemented, in light of resource constraints?*
- *How can the Working Party proceed with a potential consolidation of the Recommendation of the Council on Competition Policy and Exempted or Regulated Sectors [C(79)55/FINAL] and the Recommendation of the Council on Competition Assessment [C(2009)130]?*

24. After its discussion, the Working Party may wish to consider procedures for progressing between meetings in order to create any updates to the Toolkit and the associated recommendations.

Annex A. Boxes containing examples

Box 1. Limits on the Quantity of Supply

25. In some cases quantity of service supplied via digital platforms is restricted. This type of regulation is especially common in case of peer-to-peer rentals. For instance, in Paris and Bordeaux property owners are obliged to register their properties with the locality and respect a 120-day cap on short-term renting.⁸ In San Francisco an entire accommodation can be rented short-term up to 90 days in a year.⁹ In Japan, home-sharing business operators are not allowed to rent out their rooms for more than 180 days per year.

26. An alternative way of imposing limits on the quantity of supply was introduced by the Italian Region of Lazio in 2015. The Region of Lazio obliged the accommodation providers other than hotels to cease service for 100 days per year. This regulation was annulled by the administrative court upon challenge by the Italian Competition Authority.

27. Ability to supply can be restricted indirectly by other type of regulations too. For example, according to the Decree 79/2004 (art. 17.3) in Madrid, a holiday rental cannot be rented for less than five days. However the average tourist stay in the city is approximately two days. That means peer-to-peer rentals are unavailable or much more expensive for a great portion of tourist stays.

28. Limitations on the supply are seen in other sectors as well. In Mexico, the Mobility Law of the State of Guanajuato controls the number of vehicles that can provide ride-sharing services. In Italy, legislation limiting home restaurant activity to maximum of 500 meals and €5 000 turnover per year was waiting for Senate approval as of January 2018.

Box 2. Favouring a Business Model or a Group of Competitors

29. Regulations can favour a business model or a group of competitors against others. One way of providing an advantage to certain market players is defining a strict way of supplying a service or a good.

30. For instance, in some jurisdictions such as Norway, prices are determined by a taximeter based on pre-set parameters. GPS-based measurement and registration used by the ride-sharing and ride-sourcing services is not accepted.

31. In Italy, liberalization of the long-haul bus transport services in 2014 enabled flexible fares, with a separation between the authorization holder and the service provider enabling different business models. However in 2016, a decree stated that the transportation service must be provided by the authorization holder. This new regulation was not compatible with the business models of the new firms which started to serve after 2014 liberalization.

⁸ <https://www.thelocal.fr/20170703/paris-set-to-introduce-new-law-to-crack-down-on-long-term-airbnb-rentals>

⁹ <https://shorttermrentals.sfgov.org/about>

32. The Canadian Competition Bureau¹⁰ pointed out that when consumers are purchasing financial investment products, a 'meaningful discussion' is required between the seller and purchaser which favours brick-and-mortar branch networks or local providers. Acquiring the necessary information required by securities law and having a 'meaningful discussion' can be difficult in an online setting, the growth and competitive influence of robo-advisors are inhibited.

33. In Greece, according to Law 393/1976 art. 4 (5), online travel agents are only allowed to provide some of the services provided by brick and mortar travel agents. This restriction was lifted in 2014. In France, online pharmacies are allowed to sell only *médication officinale* which does not include all the non-prescription medicine.

34. In some other cases services provided by digital means are given special treatment compared to traditional services. A legislation, in Italian Senate for approval as of January 2018, required home restaurant service to be delivered and paid (in advance) only via online platforms.

Box 4. Raising Costs of Production for Some Suppliers Relative to Others

35. In the OECD's Competition Checklist, question B.4 focuses on discrimination of one group of suppliers against others. Raising costs of production or service provision for some suppliers relative to others has a high potential to distort competition. This type of regulations can either favour or disadvantage digital powered services.

36. In West Bengal, taxis which are registered with an online intermediary must have a CCTV camera whereas this is not the case for other taxis. In Yucatan, Mexico ride-sourcing drivers are required to be the owner of the vehicles they drive. Moreover, the vehicle must worth 200 thousand MXN and be under 7 years old. Yet the vehicles and drivers of traditional taxi service are not subject to these requirements. In France, providers of ride-sourcing service are required to present financial guarantees, which is not a requirement for taxis.

37. In contrast, digital service providers may have cost advantage against traditional services. While satellite and cable pay TV services are tend to be subject to taxes and licence fees, over-the-top (OTT) TV services are usually not covered by these sort of requirements.

Box 5. Physical Presence and Minimum Scale Requirements

38. In Greece, online plant protection product traders used to be subject to the same regulations as their brick-and-mortar counter parts so they were required to have physical presence. In Catalonia, online taxi platforms are required to have a physical presence or a telephone system for customer service by Decree No. 314/2016. Additionally online taxi platforms are required to have a minimum number of taxi licences.

39. These physical presence and minimum scale requirements may hinder benefits of digitalization such as lower operational costs and easier entrance to the markets.

¹⁰ http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04322.html#section3_6

Box 6. Prohibition

40. In some cases digital services are prohibited explicitly or deemed illegal through enforcement of existing regulations on these services.

41. In Canada, some cities such as Vancouver have enacted regulations and taken legal action explicitly to prevent the operation of ride-sourcing services. Recognizing that ride-sourcing platforms operate outside of existing regulations, Ottawa, Montreal and Toronto have treated ride-sourcing vehicles as unlicensed “bandit” taxis, and have taken law enforcement action against them. Ride-sourcing services are treated as bandit taxi activity in Turkey, as well. In case of illegal service provision not only the driver but also the passenger is fined according to Law No. 2918. The largest ride-sourcing service provider in Sweden ceased some part of its operations after drivers were deemed guilty of unlawful taxi traffic according to Law 2012/211.

42. In Japan, ride-sourcing services are generally prohibited. Some Italian courts banned the new forms of digital services, on the basis of existing taxi regulation as well as “unfair competition” provisions in 2015 and more recently in 2017.

43. In Brazil, telemedicine is only allowed when doctors are present at both ends of the communication. In 2016, Resolution No. 1643/2002 of Federal Medical Council prohibited medical consultations between doctors and patients at distance. According to Law No. 6197 art. 24, medicines cannot be sold online or in any other electronic environment in Turkey.

Box 7. Lack of Regulation or Uncertainty

44. As well as regulations, lack of them or uncertainty about them can be an impediment in front of digital activities. At times, this situation may affect small and medium size enterprises (SMEs) negatively in particular.

45. The Canadian Competition Bureau stated in its report on financial services sector that existing regulations are designed for incumbent and traditional payment service providers; therefore new type of service providers are not subject to specific requirements regarding operational, financial and market-conduct risks. “This regulatory uncertainty adds to the costs and risks faced by “non-bank” firms attempting to enter this sector, particularly smaller firms with limited resources.”¹¹ In Greece, an unclear framework (Law 2251/1994) about consumer protection led to regulatory and compliance costs, arguably more significant for new entrants and SMEs such as e-retailers, and prompted a revision of the entire legislation.

46. In Sweden, consumer law does not apply to transactions between consumers, which means that a large number of transactions within the sharing economy are outside the scope of specific consumer law protection. The lack of proportionate consumer law protections may in some circumstances reduce take-up of services due to potential lack of consumer confidence in transactions.

¹¹ http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04322.html#section3_6

Box 8. Establishing License, Permit or Authorisation Process as a Requirement of Operation

47. The Competition Checklist's question A.2 suggests establishing license, permit or authorisation processes as a requirement of operation can limit the number or range of suppliers, thus suggesting such regulation may restrict competition. License, permit or authorisation is often required for digital or digitally-enabled services.

48. For instance in Norway, Finland and Sweden ride-sourcing services can only be provided under taxi licences. In India Motor Vehicles (Amendment) Bill of 2016 requires 'a digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation' to get a license.

49. In Japan, home-sharing contracts must be registered with the Tourism Agency of Japan according to the Home-Sharing Business Act No. 65 of 2017, art. 46. Peer-to-peer rentals are required to have a permit in France. In the Canary Islands and Galicia in Spain holiday homes must be registered as well.

Annex B. Sample Competition Assessment Case Study Tourist Short-term Rentals over Digital Platforms

50. This case study provides a sample competition assessment for a change in short-term rentals regulations. First, the current situation and potential actions are described. After these introductory materials, a sample competition assessment is provided.

51. This sample assessment is relatively brief. Longer or shorter assessments could also be appropriate.

Background

52. Paradisio is a touristic city. In Paradisio, tourist accommodation options include hotels, apartment hotels, guesthouses and camping establishments. In addition, apartments and summer houses have been rented for short periods of time by tourists from their owners or local real estate agents. However, recently the number of tourist short-term rentals surged due to development of online platforms which facilitate peer-to-peer rentals. Currently such rentals are estimated to constitute 20% of the total tourist accommodation capacity of the city. Last year 10% of the tourists visiting Paradisio stayed in short-term rentals. This year, the number of nights in short-term rentals doubled in comparison to last year. A short-term rental operator hosts a guest for 40 days per year on average.

53. A drastic increase in short-term rentals caused some complaints. Hotel operators complain about unfair competition due to higher regulatory burden on them and a call for regulation of short-term rentals. Residents are concerned about their safety and maintenance of common spaces. Also, it is argued that using houses and apartments for short-term rentals causes a shortage for long-term rentals and consequently increase in rents.

New Tourist Short-Term Rental Regulation

54. The City Council of Paradisio has recently adopted a new regulation regarding tourist short-term rentals. Owners of short-term rental properties are obliged to register and get a registration number. The City Council's approval is necessary to complete the registration process. The registration number, which can be obtained only after the completion of registration, must be indicated in every announcement and advertisement for the short-term rental.

55. According to the urban plan, the city is divided into three types of zones: tourist zone, residential zone and mixed zone. The regulation states that accommodations in tourist and mixed zones cannot be registered as short-term rental.

56. An accommodation can be used as a tourist short-term rental only if the owners of other apartments in the same compound give their explicit consent for such use. Explicit consent of community of owners is not required for long-term rentals.

57. Short-term rental are defined as a commercialised furnished accommodation rented to third parties in its entirety. Therefore renting some parts of an accommodation (such as one room) is not possible.

58. Short-term rentals are required to have distinctive plaques at the entrance which signify that the property is dedicated to short-term tourist use.

59. All the advertisements and announcements about the short-term rentals must be accurate, clear and made in good faith. Guests must be informed about check in and check-out times, admission of animals, prices, payment method and other terms and conditions of the service.

60. The regulation sets some minimum equipment requirements for short-term rentals. For instance in the bedroom, there must be a lighting fixture next to each bed, a single (minimum size 0.9x1.9m) or double bed (minimum size 1.35m x 1.90m), an effective system for keeping out light, colour hangers that are non-deformable and all the same shape and, one set of beddings (sheets, pillows, mattress protector, blanket and bedspread) per week. Also it is stated in the regulation that the design and dimensions of the accommodation shall facilitate rest, laundry washing and drying, cleaning, maintenance, living and storage and include access to telecommunications services.

61. Short-term rentals must be ready for immediate use of the guest in terms of cleanliness and maintenance.

62. Short-term rentals are required to have a notice in English and the local language which indicates a telephone number which can be called about incidents related to the short-term rental from 8 a.m. to 8 p.m. as well as other emergency numbers.

63. Operators of short-term rentals must inform the police about the guest's identity and other relevant information.

Objectives of Regulation

64. The objectives of the regulation are:

- To ensure sustainable development of the tourism sector by avoiding unfair competition among the different types of tourist accommodation providers and protecting the reputation of the city as a premium tourist destination,
- To protect rights of residents to affordable housing and peaceful living.

Regulatory Options

65. There are five alternatives considered in this review:

- **Option 1 – Keeping the above mentioned regulation** (*status quo*)
- **Option 2 – Elimination of the new regulation:** In this case short-term rentals would be unregulated at large. Some horizontal regulations such as consumer protection or housing regulations would apply to such activity. Since online platforms play a crucial role in short-term rentals they would supervise the activity as well, through their terms and conditions and rating systems.
- **Option 3 – Relaxation of regulation:** A specific regulatory framework for short-term rentals would be kept, however it would be less prescriptive compared to the current regulation. The regulation could have two tiers composed of short-term rentals rented out less than 60 days a year (Group 1) and those rented 60 days or more (Group 2). The registration process would be a simplified process for both groups of short-rentals. Equipment requirements would be trimmed down to a level that ensures provision of the essential requirements for a tourist

accommodation. The explicit consent requirement and geographical restriction on short-term rentals would be removed. However a fee or a tax would be imposed on Group 2 rentals to compensate for their externalities to their neighbours through funding safety measures and maintenance services of the compounds or buildings. The definition of short-term rental would be changed in order to allow renting rooms or some part of an accommodation. To distinguish short-term rentals from guesthouses, residence of the host at the same accommodation would be a precondition renting out rooms or part of an accommodation.

- **Option 4 – Further regulation:** While geographical restriction on short-term rentals would be removed, market entry would be controlled by other regulatory means. A strict authorisation process would be introduced. Each municipality would decide the short-term rental capacity (for example, with a cap on the number of nights or lodgings) that can be absorbed by their local area depending on their urban plans and other policy objectives. Quotas would apply accordingly. Short-term rentals would be subject to further quality requirements such as 24h telephone assistance, high speed broadband internet and cable TV services, availability of a parking space and accessibility.
- **Option 5 – Reducing regulation on hotels and other tourist accommodations:** Online booking services and digital platforms enable guests to access wide variety of information easily. These digital services provide not only detailed information and numerous photos of accommodation but also reviews of previous guests. Thus digitalisation decreases the information asymmetry between the supplier and consumer that has justified much of the prior regulatory framework. In order to adjust the regulatory framework to changing market conditions, outdated regulations would be abolished. For instance, minimum equipment requirements can be reviewed or requirements on the booking process can be adapted to e-commerce. This policy option can be combined with any of the policy options above.

Sample Competition Assessment

The Affected Market

66. The market directly affected by the regulation is the tourist accommodation services market in Paradisio. Narrower markets can be defined according to the type of accommodation or price-service package offered by the service providers such as luxurious and budget. Regulations on short-term rentals have an impact on the real estate market too, as explained in the Section 1.

67. Tourist accommodation services market are highly competitive in general. Almost all the accommodation providers are located in the tourist zone which is by the sea side and includes most of the tourist attractions. There are a number of sale channels available to service providers. All the tourist accommodation providers have a webpage of their own. Most of them are also listed on third party booking websites. Hotels, apartment hotels and some guesthouses are also receiving reservations via tour operators or travel agencies. 90% of short-term rentals are booked through digital platforms. These platforms facilitate payments and claims, offer a channel for direct communication between the host and the guest and have a rating mechanism which shows the satisfaction level of both sides.

68. Short-term rentals offer a more home-like experience for lower prices in comparison to 5 or 4 star hotels. They may lack some services such as reception, daily cleaning or valet parking. Short-term rentals have not been standardised until recently and are still less standardised than hotels. In that sense, there is a greater information asymmetry between the host and the guest in case of short-term rentals. However, online platforms provide detailed information, photos and reviews about the short-term rentals that can address much of the asymmetry.

Competition Assessment

Option 1- Keeping the regulation (status quo)

69. The current regulatory framework has several potentially anti-competitive clauses. Firstly, it creates a barrier to entry for small and micro-enterprises by delaying the entry and increasing related financial costs. The declaration requirement coupled with ex-ante registration system is a *de facto* authorisation system. The requirement to gain explicit consent of neighbours makes entry even more difficult.

70. Secondly, not granting authorisation to short-term rentals in the tourist and mixed zones practically prohibits them. As mentioned above, almost all the tourist accommodations are in the tourist zone. Therefore such regulation protects incumbents from competition of short-term rentals. What is more, pushing short-term rentals to residential zones may not be completely in line with the policy objectives regarding long-term accommodation.

71. Thirdly, quality requirements that include minimum equipment standards risk preventing product differentiation. For instance some guests may prefer paying less for a more basic accommodation service. Under restricted competition, tourists may face lower availability and higher prices.

Option 2 - Elimination of new regulation

72. This policy option is anticipated to eliminate the potential anticompetitive effects mentioned above. Short-term rental supply would continue to increase and offer lower prices, more availability and greater variety to the tourist. It is anticipated that the market would be more competitive than Option 1. The competitive environment may contribute increasing service quality. However it is not possible to predict to what extent the outcome of this option will be in line with the City Council's vision of the city as a premium destination.

73. Under Option 2, consumers would be less protected. Nonetheless, other mechanisms such as horizontal regulations, quality standards of online platforms and rating systems would address the consumer protection and information asymmetry issues to some extent.

74. Other issues such as affordable housing and security are left unaddressed. Moreover the regulatory disparity between short-term rentals and other accommodation services may distort the level playing field.

Option 3 - Relaxation of regulation

75. Option 3 is a middle way between Option 1 and Option 2. While it has minimal effect on competition it addresses policy objectives. A two-tier system would facilitate proportional regulation. Simplified registration process and lower minimum equipment

requirements are expected to lead to lower entry barriers. More relaxed regulation would give the market the flexibility to satisfy the demand in terms of quantity and quality.

Option 4 - Further regulation

76. Option 4 provides the public administration with better control on tourism and housing sectors. However this approach does not necessarily create desirable outcomes. To be successful, the regulation would need to be updated frequently to meet the ever-changing expectations of tourists and developments in the industry. Also municipalities would need to determine the optimum tourist capacity correctly. Allocation of this capacity to potential short-term rental operators would be another crucial issue. Beside its regulatory burden, Option 4 has a serious likelihood of restricting competition. In this option, entry barriers would not be established by geographical restrictions but quotas. It is not easy to say which constitutes a greater impediment to competition. However it is clear that quota regimes entail a high potential for anti-competitive impact. High standards for service also constitute a barrier to entry and curtail service differentiation.

77. Furthermore, low levels of competition may work against policy objectives. Weak competition in the market may result in deterioration in service quality.

Option 5 - Reducing regulation on hotels and other tourist accommodations

78. This policy option can be combined with any other policy options mentioned above. Adjusting regulation governing other tourist accommodation to new market conditions through eliminating unnecessary requirements would facilitate competition. Lower operational and entry costs would increase supply. Tourist accommodation providers could concentrate on meeting consumer expectations and service differentiation instead of meeting outdated regulations. Such relaxation would also address concerns about unfair competition between short-term rentals and other accommodation providers.

Conclusions

79. Option 1 and Option 4 have the greatest potential to restrict competition. Both options impede market entry and service differentiation. Option 2 presents a pro-competitive regulatory framework. In Option 2, short-term rental supply is expected to increase and facilitate competition among service providers. However this option does not address all regulatory objectives and the issue of a level playing field in the market. Option 3 promotes competition while attaining policy objectives. Therefore, to the extent the policy objectives are desirable, Option 3 is likely to be the best option for short-term rental regulation from competitive perspective. Option 4 will likely decrease competition by increasing entry barriers. Option 5 also facilitates competition and addresses unfair competition concerns. It adjusts regulations to the growth of the digital economy. Therefore it is also a good option, especially when it is coupled with Option 3 (or Option 2).