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

**Working Party No. 3 on Co-operation and Enforcement**

**Executive Summary of the Roundtable on Methodologies for Conducting Market Studies**

**Annex to the Summary Record of the 125th meeting of Working Party No 3 on Co-operation and Enforcement held on 20 June 2017**

**20 June 2017**

This Executive Summary by the OECD Secretariat contains the key findings from the Roundtable on Methodologies for Conducting Market Studies held under item 2 of the 125th Meeting the OECD Working Party No. 3 on Co-operation and Enforcement on 20 June 2017. The Roundtable identified common techniques and good practices in selecting and applying market study methodologies, including information gathering methods, econometric modelling, financial analysis and qualitative assessments.

More documentation related to this discussion can be found at

[www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm](http://www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm)

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## *Executive Summary*

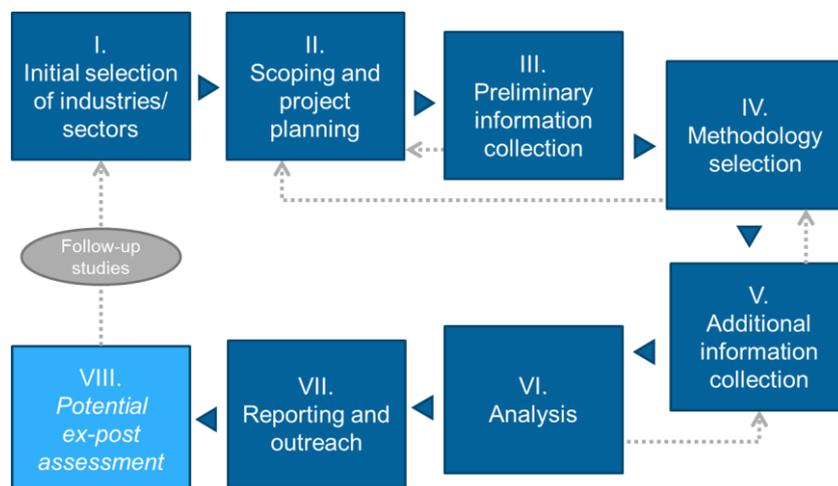
By the Secretariat\*

Working Party No. 3 of the OECD Competition Committee held a Roundtable on the subject of *Methodologies for conducting market studies* on 20 June 2017. Based on the background paper prepared by the OECD Secretariat, written submissions from delegates, and the contributions by expert panellists and delegates to the discussion, the following key points emerged:

1. **Hypotheses regarding competition problems in a sector can guide market study planning, as well as the selection of data collection and analytical methodologies. These hypotheses can be based on competition authority theories, market participant complaints, or stakeholder perceptions. A flexible approach will allow market study teams to refine their hypotheses, and explore new issues as they emerge.**

The project plan for a market study can be structured around testing hypotheses that match preliminary indications of competition problems (such as frequent enforcement actions or consumer complaints) with their underlying causes (including firm conduct, regulatory barriers to entry and consumer behaviour). Similarly, studies meant to address public concerns and potential misconceptions can be structured around assessing each potential concern.

An iterative process will help ensure a market study team is responsive to its initial findings. For instance, preliminary information collection may cause a team to revise a study's scope, hypotheses or project plan. Similarly, analysis may identify additional areas for a market study to explore, triggering additional information collection. This process is illustrated below.



\* This executive summary does not necessarily represent the consensus view of the Working Party No 3. It does, however, identify key points from the discussion at the roundtable on Methodologies for Conducting Market Studies, including the views of a panel of experts, the delegates' oral and written contributions, and the background note prepared by the OECD Secretariat.

2. **Background research is important for study scoping and planning, identifying stakeholders, and developing a preliminary understanding of industry structure, among other reasons. As part of this process, market study teams can gather descriptive statistics and quantitative indicators that may point to competition problems in the market (such as entry/exit rates or data regarding changes in industry concentration).**

The need for background research at the early stages of market studies was emphasised by several delegates. Initial information gathering can include relevant enforcement cases, consumer complaints, media commentary, academic research, competition authority analysis (including past market studies and market studies by authorities in other jurisdictions), sector regulator reports and other desktop research.

3. **Early discussions with stakeholders are essential for market study teams to identify potential hypotheses, become acquainted with the functioning of the market, and promote stakeholder involvement in later stages of the study. Findings from stakeholder consultations can be supplemented by, and validated with, surveys, information requests, and data.**

Market study teams may prioritise **early engagement** with certain stakeholders depending on the sectors being examined, as well as the issues the study is intended to address. For example, sector regulators can be a particularly valuable source of knowledge in heavily regulated markets. When a study seeks to respond to the concerns of a certain group of market players (e.g. firms at a certain stage of the distribution chain, or consumers), these concerns are often identified with meetings at the outset of a study.

Competition authorities in many jurisdictions seek to ensure consultations are as accessible as possible by using a variety of different techniques (e.g. telephone interviews, social media communications, in-person discussions, open hearings).

As a study progresses into more in-depth information collection, **follow-up stakeholder consultations** can help refine information requests (thereby increasing the likelihood they will result in a satisfactory response), validate preliminary conclusions, and establish remedies. Some authorities have also reported that including a variety of stakeholders in a single workshop (e.g. including both firms and consumers) can be effective in enabling differing propositions about a market to be tested.

**Survey questions** should be extensively tested for ease of use, and to ensure the terminology is consistent with industry norms as well as the level of knowledge of the survey audience. While competition authorities may already use surveys for merger work, they should be aware of potential biases in survey design— particularly for questions that depart from the type used for merger control (e.g. questions regarding experiences with regulation in a market), as described in the Secretariat's Background Paper. Mystery shopping may also be helpful in capturing information from the perspective of a consumer.

**Information requests** should be designed with an understanding of how firms collect data, and the precise definitions used, to ensure comparability and ease of compilation. At the same time, market study teams should consider the burden an information request places on a market participant and whether any alternative sources of information exist.

Jurisdictions that have the power to issue mandatory information requests in the context of market studies reported that it is a helpful tool, particularly when confidential information is required to conduct analysis and no publicly available alternatives exist.

The precise information collection strategy used in a market study will depend on the market(s) being examined. For example, a consumer retail market study may rely more on third-party data providers given the granular data these providers may have available, whereas studies in some concentrated markets without ample third party data may need to focus on co-operation with industry associations and formal information requests.

**4. Price and profitability analyses can be useful in detecting competition problems in a market. However, careful consideration should be given to the selection of benchmarks, and findings may need to be supplemented with other types of analysis.**

Price analysis may be used by market study teams to provide an initial indication of competition problems and anticompetitive behaviour. The evolution of prices can be analysed using both preliminary (simple graphical analysis) and systematic (econometric modelling) methods to begin to test hypotheses. Price comparisons can also be helpful, although careful attention should be paid to the benchmark price selected to ensure comparability. Several delegations reported the use of price-concentration analysis to determine the effect on prices of the evolution of market structure.

Profitability and cost pass-through analyses can be a helpful tool to address consumer concerns by investigating potential tacit collusion or co-ordination (when conducted at the industry level), barriers to entry or exclusionary conduct (when conducted at the firm level) and fairness concerns associated with cross-subsidisation among consumers (when conducted at the product level). Market studies are a good opportunity to undertake this type of analysis, and thus to better understand pricing as well as profitability in a sector, when it is not clear whether a formal investigation is warranted. However, several caveats apply. First, profitability is not in itself proof of a competition problem, and should be placed in the context of industry risk (for example by comparing the return on capital in other similar jurisdictions, product markets or firms, as appropriate). Second, additional evidence, for example of price signalling, could be necessary before reaching conclusions on collusion on the basis of profitability analysis. Third, profitability in service and digital industries can be difficult to benchmark based on standard return measures because of the relative importance of intangible assets in these industries, and the difficulty of valuing those assets.

**5. Supply-side competition problems in a market that can be analysed in market studies include barriers to entry, issues with supply chain relationships and a lack of clarity regarding the permissibility of certain types of firm conduct. Factors that would facilitate, or indicators that point to, potential co-ordination can also be reviewed.**

Barriers to entry and expansion that can be investigated in market studies include absolute barriers (e.g. patents, economies of scale, sites for quarries), strategic barriers (e.g. increasing endogenous sunk costs, engaging in patent litigation) or regulatory barriers.

Potential competition problems arising from the conduct of firms that are already in the market can also be analysed during market studies. Studies can, for instance, investigate: (i) the characteristics of the sector and whether they are potentially conducive to co-ordination; and (ii) market outcomes, such as market share stability over time or price parallelism. Other studies, particularly those focusing on the food sector, have investigated the relationships between retailers and manufacturers, and the implications of differing bargaining power between upstream and downstream firms.

Market studies have also been used by competition authorities to clarify the analysis that would be applied to certain types of firm practices in a given sector.

**6. When there is a potential for demand-side problems such as consumer biases, optimism or a hesitancy to switch, market studies should aim to understand the consumer decision-making process, and identify characteristics that reduce the competitive discipline placed on firms.**

Market study teams should carefully consider whether competition problems in a market may be at least partially attributable to demand-side factors, such as a low willingness among consumers to switch (when such switching would be beneficial). These behavioural biases can suppress the incentive of firms to compete, and appear to occur most frequently with respect to complex products or services aimed at mass markets, such as consumer electricity or financial services.

Some delegates reported that the development of recommendations or remedies in response to these demand-side challenges can be particularly challenging. For example, some authorities indicated that the effectiveness of measures requiring the disclosure of information to consumers has been limited in some cases. New techniques for addressing competition problems stemming from consumer behaviour may therefore be needed.

**7. Market studies are a good opportunity for competition authorities to determine whether competition problems in a market are associated with regulatory measures that restrict or distort competition.**

The OECD Competition Assessment Toolkit can help identify and assess sector regulation for these types of problems. To improve their advocacy effectiveness, market studies can make specific proposals for regulatory reform, include estimates of consumer savings, and explicitly address potential misconceptions.