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Summary of discussion of the Roundtable on the Optimal Design, Organisation and Powers of Competition Authorities

Annex to the Summary Record of the 138th Meeting of Working Party 3

4 December 2023

This document prepared by the OECD Secretariat is a detailed summary of discussion of the roundtable on the Optimal Design, Organisation and Powers of Competition Authorities, held by Working Party 3 on 4 December 2023.

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On 4 December 2023, the Working Party Nr 3 (WP3) held a roundtable discussion on the optimal design, organisation and powers of competition authorities. The roundtable was chaired by Jonathan Kanter.

Before starting the session, the **Chair** explained that this particular session was closed to non-agency participants, BIAC and others. He asked such participants to excuse themselves from the room, if present.

By way of introduction, the Chair explained that the US is facing challenges due to the digitization of the economy and the emergence of artificial intelligence. Specifically, he is of the view that to understand competitive dynamics, it is crucial to understand how markets function at the appropriate expert level. Antitrust agencies in the US have expanded their expertise, hiring data scientists, behavioural scientists, technologists, agriculture experts, and healthcare experts. He pointed out that the skills needed to deliver on their mandate are changing, and agencies need to adapt to these changes. Moreover, structural changes are also a concern, as the agency needs to ensure and effective structure for the agency to organize its internal expertise. The Chair asked delegates to consider the changes both from a structural perspective as well as an analytical perspective, and to then consider the tools and powers of competition authorities.

Canada kicked off the discussion by sharing its experience on the Digital Enforcement and Intelligence Branch which hired data engineers, data scientists, intelligence specialists and behavioural economists to integrate into the enforcement work and advocacy work of the agency. The process was challenging due to the need to integrate new talents into competition enforcement and promotion teams, which traditionally rely on lawyers and economists. Canada explained that the digital intelligence branch has six primary functions: data and analytics, technology and tool insights, innovation solutions, and remedies. The Central Intelligence Unit is broadening the Bureau's approach to intelligence to be more proactive in digital markets and identify other economic issues that may not lend themselves as well to a reactive model. The Remedies Unit supports enforcement teams with the design, implementation, and monitoring of remedies. The Behavioural Insights Unit helps enforcement and promotion teams consider how consumers and businesses act in the real world (for example, incorporating consideration of relevant cognitive biases). The Bureau aims to grow the new branch, but there are challenges of finding the right talent and integrating new skills have been significant.

The Chair thanked Canada and asked to expand on the difference between complaint driven investigations and proactive investigations and how Canada is thinking about this structure and why. Canada explained that the Bureau started its intelligence unit a few years ago to investigate mergers and abuses. The unit worked with international colleagues to scan public transaction activity and identify transactions that may impact Canada. This led the agency to be more aware of potential inaccuracies in pre-notification rules and generated ideas for policymakers regarding merger notification. Intelligence gathering, particularly in other jurisdictions, and monitoring investor calls, which help firms with market power gather intelligence, helped the agency enforcement in areas with the greatest potential impact on the economy and consumers.

The **Chair** also noted the need for incorporating behavioural scientists within competition authorities and the need for code review and inspection in cases of algorithmic collusion. He called on Sweden and the EU to discuss the need for detailed understanding of data-driven services and the importance of hiring people capable of understanding algorithmic codes.

Sweden discussed the need to expand beyond traditional roles within an authority to address digitization challenges. Sweden recruited an IT forensic expert in 2018 and data scientists in 2021. Nowadays, the competition authority has integrated data scientists into their chief economist unit, while IT staff, including IT forensics, are in a separate unit. That said, Sweden also underlined the importance of all staff and resources, not just the recruitment of data scientists, in terms of increasing the overall capability to understand new complex markets, business models, and technologies. In closing, Sweden suggested that training and understanding complex ideas such as theories of harm and market power in the context of digital platform markets, or the legal requisites related to anti-competitive agreements in the context of algorithmic price setting are also crucial for success in the face of digital transformation.

The **Chair** thanked Sweden and commented on the importance of supplementing existing lawyer / economist roles, focusing on training, and diversifying existing expertise. He asked Sweden to speak about the strategies for diversifying resources.

Sweden explained that the focus on digitalisation has been a significant area of focus for competition lawyers and economists within its competition authority. Knowledge gained through competition enforcement, sector inquiries, and co-operation with data protection and consumer agencies has been instrumental in understanding these markets. The Nordic region has also seen valuable work in digital markets. This incremental improvement in understanding has lifted the level of understanding across the organisation.

Next, the Chair gave the floor to the **European Commission** whose remarks focused on building internal capabilities to keep up with the evolutions in technology. In their view, agencies need to adapt to technological evolutions by integrating new types of profiles, such as computer scientists, intelligence analysts and AI, next to lawyers and economists. This requires a multifaceted approach, given the scarcity of resources, with collaboration being crucial. Additionally, the importance of IT infrastructure and software solutions was emphasised, as well as the need for investment in IT security. The European Commission touched upon the challenges of integrating different profiles into the competition realm noting, however, how a team with a mix of different profiles can help understand what is needed for a competition investigation. Hence, integrating case teams with new skills and fostering an iterative process is essential for developing effective internal capabilities. The EC delegation presented the organisational structure of DG Competition to illustrate these changes. DG Competition now has a Chief Technology Office, led by the Chief Technology Officer, which is a horizontal unit that provides support to all existing teams such as forensics, intelligence, and data science for the entire Directorate General. The unit, which pre-existed within the Cartel Directorate, aims to develop support roles for other areas like the DMA team, the team dealing with the new foreign subsidies' regulation, and to support detection capabilities more generally. In closing, the speaker noted that the European Commission is working closely with similar units within the European Competition Network (ECN) and supports the initiative to create a technology group within the ICN.

The **Chair** thanked the European Commission and noted the importance of expertise in IT support, not just in providing IT infrastructure and support but also in determining the questions to ask in an investigation. The **Chair** asked about the distinction between IT

infrastructure and support and whether it is overlooked, noting its importance in terms of understanding and prioritising cases with the greatest impact.

The **European Commission** answered that the IT support unit is a crucial part of the organisation but the boundaries between the unit and other departments are becoming blurred. The focus is on mapping different purposes and priorities, working closely with the IT support unit on infrastructure and investigative aspects. As technology evolves, the distinction between developing AI tools for an entire organisation and specific cases becomes more blurred, making it even more essential to maintain close collaboration.

The **Chair** then asked WP3 if competition authorities are seeing the value of AI experts and if these benefits are limited to investigations of technology companies or whether these new tools are beneficial across the entire range of competition investigations. The **European Commission** explained that it aims to develop AI tools and rely on AI technologies to monitor all digital and non-digital markets for the benefit of enforcement overall.

The **Chair** noted a similar approach in the US. He then gave the floor to Greece to share their perspective and experience.

Greece explained that the main challenge is attracting talents to low-paying public jobs. To address this, the government launched public recruitment processes to private sector candidates, filling some positions. To build in additional flexibility, the competition authority created contractual roles including one for a chief data scientist. Five experts were recruited in 2020 and they are working on projects such as developing codes, building databases, and using neural networks for document assessments. Greece noted, however, that the challenge was to make the data science team accessible to case handlers to expand the impact the team can have. Another HR approach was to develop ad hoc contract-based projects, hiring external expertise in sectors like waste management, healthcare, and press distribution without having to go through the traditional public recruitment process. Another novel approach was to host "hackathons" to attract talents and collaborate with software engineers on specific projects.

Greece also explained how their forensic unit and market mapping unit prepare reports on the state of competition every two years for Parliament. The databases used by these units, which collects daily information for over 61,300 products, will also be used to assess price parallelism and guide enforcement activity, capitalising over the long-term on the internally developed knowledge and data collected as part of its ongoing parliamentary obligations. Despite creative advancements, Greece also spoke about the disagreements between data scientists and economists regarding causal arguments and that such conversations highlight the need for collaboration and understanding between different perspectives within competition authorities. Lastly, Greece also emphasised the importance of investing in sustainability and competition, including a sustainability sandbox and recruiting sustainability advocates. Such knowledge can help assess arguments presented by parties in mergers and investigations. The adoption of new European guidelines on horizontal co-operation agreements also highlights the need for privacy experts and Greece believes that such expertise can also be used in monitoring traditional sectors like food markets and banking.

The **Chair** thanked Greece for their presentation and asked whether the neural networks are developed in house or via third party services. **Greece** explained that the technology assisted review and neural networks are in-house, developed by the HCC team. The chief data scientist and his team are on a two-year contract, renewable for two more years, consisting of around 10 people. In addition, the competition authority has around 90 people and 15 IT professionals, including software engineers, help develop the infrastructure.

Greece added that the data science team initially struggled to understand how to assess competition due to their lack of experience in competition law enforcement. To improve their understanding, they developed continuous interaction with case handlers and gained trust from staff. Overall, the goal is to automate data collection in cases, saving time and effort spent on manual tasks. This approach is more cost-effective and efficient than collaborating with external providers, which can be more complicated and expensive.

The **Chair** turned to Germany for its remarks.

Germany has been exploring the best structure for its agency since 2013-15. The competition authority started by setting up a think-tank on digital issues in the decision-making division to ensure they were well-informed before taking any case. This division later took on the Facebook case which explored the relationship between privacy and competition law.

Next, Germany explained that the German competition authority has a unique organisational structure, more like a court than an agency, with decisions taken in small decision divisions. In order to build on such specific knowledge, the authority has a hybrid structure, with data scientists working in the IT department, general policy unit, economist unit, and digital unit. These units also provide advice to the case teams. For big cases, such as Meta or Google data cases, data scientists and behavioural experts are included in the case teams to ensure they can address specific issues, such as choice screens, avoid dark patterns, and avoid manipulation of users.

Germany also described a new approach to horizon scanning in agriculture cases which is aimed at ensuring theoretical and data-work is done by case teams. It emphasised the importance of ensuring that everyone within the agency, including those dealing with agricultural markets, understands the importance of digital work. For Germany, this hybrid approach allows for a clear separation between data scientists, case teams, lawyers, economists, and data scientists. That said, Germany also stressed the important of developing a common language and understanding among all stakeholders, including lawyers and economists, to better communicate with data scientists.

The **Chair** noted that while it was initially challenging to communicate effectively amongst lawyers, economists and data scientists in the legal field, the integration of these diverse groups is now more seamless. In response, **Germany** underlined the importance for data scientists and data people to be involved throughout the investigation, from the fact-finding to the decision-making procedures, to ensure that the market analysis is done correctly.

The **Chair** thanked Germany and gave the floor to the United States.

The **US** delegation focused its remarks on some of the practical challenges of bringing in expertise from various fields, such as AI, antitrust, and other legal disciplines. The US noted that some of the recruited experts lack detailed knowledge of antitrust law and procedures. In terms of possible solutions, the US proposed a hybrid model, where a group of experts from different parts of the organisation collaborates to develop internal expertise on a set issue. This approach has been successful in intellectual property, where a few experts share knowledge and collaborate on important cases. This approach has also been successful also on the labour front. Recently, a group of labour economists was brought in to build up their capabilities to handle labour market cases and better understand labour markets. This group met biweekly, sharing expertise and learning about case procedures. The US noted that the aim of the group is to spot issues early and to brainstorm on future issues. The group has been successful in identifying and addressing labour issues in cases and has also participated in amicus briefs in court filings in private cases involving labour issues.

The **Chair** then gave the floor to Spain.

Spain started by explaining that the Spanish competition authority has horizontal groups, or task forces, with people from different sectors and specialties working together to address different topics of interest. Given Spain's stringent deadlines for cases, the competition authority takes cases against big companies like Apple and Amazon simultaneously. The competition authority's staff includes lawyers, economists, mining engineers, telecom engineers, agricultural engineers, aeronautical engineers, and pharmaceutical specialists. This unique feature allows for a more efficient and collaborative approach to investigations.

Spain also explained that in 2018, the authority established an economic intelligence unit dealing with quantitative techniques and forensic IT. The unit includes statisticians, mathematicians, data protection specialists, an economist, and a lawyer. This hybrid unit is equipped with expertise in data science and competition matters, making it easier to work with a diverse range of experts. For example, the Spanish competition authority is developing machine learning and AI tools, including the Brava tool, to detect bid rigging cases in Spain. The unit is a focal point for ex officio detection and serves as a channel for whistleblowers and public tender bodies. They also work with teams for data analysis, such as in a pharma case involving excessive pricing. The team has grown from five to 11, and 70% of cases are ex officio triggered. Moreover, Spain is investing in such expert profiles when recruiting and incorporating a variety of profiles within their teams to ensure their expertise is sought from the inception of the case. This approach allows for more efficient investigation and better outcomes.

The **Chair** asked Spain how long it has been deploying engineers and industry experts, noting that Spain may have more experience in diversified recruitment than most competition authorities. **Spain** explained that such internal expertise has existed for about 15-20 years and added that civil servants, such as engineers, often have a significant impact on legal matters. In this way, a unit dealing with mergers and antitrust in telecoms often has a team of telecom engineers who have a deep understanding of the market. This experience helps them blend into the team and improve their understanding. For Spain, trusting and investing in these individuals is crucial and believes that such experts should be placed within the investigating teams and given the opportunity to learn on the job. This approach allows the engineers to understand the specific issues and help the team in obtaining the necessary information. Overall, incorporating these skilled individuals into the team can help overcome challenges and improve legal outcomes.

The **Chair** then invited **New Zealand** to share their perspective.

According to **New Zealand**, the competition authority recognises the importance of competition and legal expertise in specialist areas for managing cases in increasingly digitised markets. The competition authority has collaborated with partner agencies overseas to enhance their expertise in digital merger analysis, digital theories of harm, evidence handling, and criminal cartel cases. Such collaboration has made possible the leveraging of vast expertise of competition authorities globally and facilitated the domestic authority to develop its own expertise. New Zealand's competition authority has also collaborated with domestic authorities to share knowledge and address challenges in the digital economy. For instance, they conducted a market study into the grocery industry, relying on a university's s research on consumer behaviour in shopping. In describing this need for collaboration with both domestic and international agencies, New Zealand emphasised the importance of having a legal basis for such collaboration and to seek the required legislative changes when necessary. The Commerce Act in New Zealand was recently amended to clarify the law for sharing information and assisting domestic agencies. This was done to ensure a sound legal basis for relying on information in

proceedings or litigation. In closing, New Zealand reiterated that collaborating with other agencies helps upskill staff, amalgamating economic and competition knowledge with digital skills.

The **Chair** asked whether particular types of subject areas or agencies were more important and whether collaboration also included access to data gathered by partner agencies such as regulatory bodies or other organisations. **New Zealand** replied mentioning their use of the Serious Fraud Office and their successful collaboration with the statistics department to access data for economic analysis, highlighting the usefulness of these agencies in conducting digital investigations and supporting investigations without attempting to obtain it themselves.

The **Chair** highlighted the importance of deploying data from government agencies to detect bid rigging and other types of collusion. The Chair then moved on and gave the floor to **Chile**.

The speaker from **Chile**, an economist judge at their competition tribunal, highlighted the challenges faced by the Tribunal due to the vast diversity of cases, and the influence that social media can have in disseminating political issues, sometimes in a negative manner. This puts pressure on legislators and competition authorities, requiring clear communication and expertise from other agencies and institutions to ensure technical consensus applies. As an example, Chile explained that the Tribunal often applies sanctions in collusion cases, but the public finds these fines insufficient and communicate their views via social media. Because political pressures often lead to changes in the law, social media and other forms of influence are a crucial consideration when creating new agencies or changing existing ones.

Next, the **Chair** gave the floor to **Australia**.

Australia explained that the competition authority has a strategic analytical unit focused on data analysis, with staff recruited from the Australian Bureau of Statistics, cyber standards bodies, and directly from universities. The team is open-minded and knowledgeable about competition law. A key recruitment strategy is to allow employees to work remotely from their place of residence. The competition authority focuses on engaging these teams in digital matters. For example, the competition authority won an enforcement case in a consumer protection matter involving a digital travel company and in a banking inquiry where engagement of both digital teams was critical to the success of these cases. Specifically, in the digital travel company case, the team analysed the company's algorithmic functionality, revealing that it worked opposite to the intended representation. The banking inquiry involved a thorough analysis of demand and supply sides using behavioural economists and data analytical units. The study identified consumer preferences and biases across multiple banks, revealing strategic pricing informed by the understanding of the banks of their own customers' preferences. This allowed for sophisticated price discrimination based on detailed data analysis.

Australia then spoke about how to integrate such approaches more systematically within the organisation. Their approach is similar to the one adopted in the US, with communities of interest and partnering. An enforcement case team is expected to work with specialist units; for example, those with telco infrastructure regulatory responsibilities. Australia also has a range of upstream gas and electricity retailing experts who are engaged in investigations, as required. When documents come to decision-making committees, all specialist teams, including sector and data experts, are present. This ensures that information is not siloed and that the team's views are heard. Australia explained that this approach is still a work in progress but the ultimate goal is to achieve effective integration.

The **Chair** thanked Australia for its intervention and asked them to expand upon how they have managed to institutionalise some of their practices. **Australia** explained how the competition authority has developed an investigation plan template that encourages participation from various departments. The enforcement committee receives reports from the Chief Economist and the data team, as well as from other relevant teams. They also rely upon monthly intelligence reports from the data analytical team who integrate with the info centre and provide broader data on consumer sectors. The competition authority has a matrix of committees, with commissioners from various areas, ensuring a hybrid and multi-skilled approach. This approach ensures that no one area has a sole responsibility, ensuring a comprehensive investigation plan.

The **Chair** followed up with a question on whether some of these experts also have a role in court proceedings. In response, **Australia** spoke about the Trivago case which in their view was a success thanks to the behavioural economist and data analytical team's involvement. However, Google Double click resulted in a loss due to the inability to persuade the judge, causing some rethinking on this approach.

The **Chair** thanked Australia and invited **France** to take the floor.

France began by setting out how the Ministry of Finance and the French competition authority are working to enhance internal skills and develop them effectively. In the early days, the organisation developed its own tools for forensics by contacting police departments in France and analysing data using CD-ROMs. Now the competition authority uses networks to share data on mobile phones and has data analysts working with them. France also referred to their focus on sustainable development and their work with the Ministry of Environmental Affairs to identify barriers to entry into markets. The competition authority also has an anti-economic fraud unit that engages with other ministries to map relevant companies and shareholders. Moreover, they have also established a special digital affairs unit to bring together specialists across various ministries.

The competition authority has worked to improve internal expertise in relevant markets, as these markets are complex and dynamic. Specifically, since 2020 the competition authority has had a digital economy unit, consisting of five staff members, which is part of its education service. The unit aims to adopt a horizontal working method offering support in antitrust affairs, merger cases, and sector-based inquiries. It also develops tools for public bids and studies various sectors, including emerging ones like cloud computing. The competition authority considers synergies with other organisations, public organisations, or external regulators, such as the PEReN (the digital platform regulator) and the CNIL (the privacy regulator), which can be useful in litigation. In line with the authority's efforts to strengthen its legal expertise, the competition authority has also focussed its efforts on strengthening its expertise in sustainable development, by recruiting a legal expert.

The **Chair** thanked France and invited **Mexico** to speak next.

Mexico's intelligence unit was created over ten years ago and initially focused on forensic analysis. It later expanded to provide inputs for ex officio investigations and support in data and economic analysis. Mexico explained that the unit has been successful and contributed to approx. 60% of investigations but faced challenges in the early days in terms of understanding the legal thresholds for triggering investigations. Mexico also emphasised that cooperation with other regulatory agencies is crucial, noting the example of procurement cases. In 2020, a separate digital markets unit was created, which is now facing some of the same challenges faced by the intelligence unit in its early days. The unit depends on the Board of Commissioners and is intended to provide technical support to all

areas across COFECE. While some cases have been successful, challenges remain in determining its role and if it should solely focus on digital markets projects.

The **Chair** asked Mexico to elaborate on some of the lessons learned by the intelligence unit on its decade long journey. **Mexico** believes that grounding the experts in competition law is crucial as is fostering constant communication among investigators. Mexico also suggested that clear objectives should be established to prevent these types of units from asking for or being tasked with unrelated tasks.

The **Chair** emphasised the importance of effective communication in fostering understanding and co-operation, particularly in the context of global competition policy and invited **Korea** to take the floor.

Korea's presentation described the largest restructuring of the competition authority since its creation. Specifically, Korea's Fair Trade Commission (KFTC) underwent a significant organisational reform in April 2021 to improve its law enforcement. The most significant change was separating policy making and investigative divisions, creating a Secretary General to oversee investigations. Korea explained that in their view this separation improved accountability and expertise. The KFTC also strengthened the separation of deliberation, restricting personnel movement between divisions. Measures were introduced to ensure equal opportunities for examinees and examiners to report to Commissioners before deliberation. The KFTC has also established specialised divisions, such as international M&A and technology appropriation investigation divisions, to address the increasing importance of international co-operation and technical aspects of law enforcement. It has also used external resources, such as the competition impact assessment centre under the Korea Fair Trade Mediation Agency, to analyse new regulations. Moreover, collaboration with universities and research institutes, as well as staff exchanges, has been effective in capacity building. The KFTC is internalising external capabilities through these channels, aiming to better set the KFTC up for better law enforcement.

The **Chair** thanked Korea and asked how they are ensuring learning and communication between the separate policy and investigations areas. **Korea** explained that they are addressing this concern through staff-level meetings between investigative and policy divisions, aiming at strengthening the interaction and at improving internal communication.

Next the **Chair** gave the floor to the European Commission who had raised its flag.

The **European Commission** highlighted the importance of having a mix of concentrated and scattered data scientists in a team and agreed that it is beneficial to have people who can work on complex tasks across various areas. Referring to the US model, the European Commission also discussed the idea of creating a network to improve communication among data scientists, noting a lack of interaction among them. The Commission emphasised the importance of frequent and institutionalised information exchanges, as part of the training efforts, and suggested a network for better collaboration.

The **Chair** thanked the European Commission for their intervention and invited **Singapore** to take the floor.

Singapore explained that in July 2023, the competition authority (CCCS) restructured its data analytics and digital market units into a permanently staffed data and digital division, known as the D2 division. This division, consisting of eight officers, deals with both data analytics and digital market matters. Singapore noted that the competition authority maintains a matrix structure, involving both functional experts and cross-divisional case teams. The new division has been smooth in integration and has a mix of new and existing expertise. For instance, the new division has investigated source codes of digital platforms

on dark pattern cases and built a machine learning model to detect fake reviews. The agency has also established a system for data sharing between different agencies with the requesting agency being responsible for ensuring the data request is minimal while the contributing agencies should ensure the legal base for sharing data and being ultimately responsible for data protection of the shared data.

The **Chair** thanked Singapore and turned to a final intervention from the **United Kingdom**.

The **UK** began its intervention with some general remarks on the presentations by other delegations. Emphasising the importance of being connected both internally and with other domestic agencies, the UK highlighted the value of a multidisciplinary team, including lawyers, economists, behavioural specialists, and forensic scientists, in supporting information sharing and delivering organisational objectives. The UK also stressed the benefits of having competition and consumer protection in the same organisation, allowing for a cross-functional approach and identifying the correct tools. The UK also supported the need for learning from others and partnering with external entities, such as universities and sector regulators. By learning about specific markets and sharing experiences with them, competition authorities can gain valuable knowledge and improve their overall operations.

Turning to its own internal design, the UK's exit from the European Union has led to the creation of an office for internal markets and a subsidy advice unit. Other elements include setting up task forces in response to COVID and a sustainability task force to address those issues. These efforts are aimed at improving the design of the regime and advocating for the best functions for competition authorities. The UK said that by advocating for new powers and tools, competition authorities can ensure that they receive the necessary support to deliver their mandate effectively.

Noting UK’s mention of their interaction with other sector regulators, the **Chair** asked if there are specific types of regulators, they find more constructive or useful. In response, the **UK** mentioned their relationship with economic regulators and their ability to work with them effectively. The competition authority has also managed to work with other government partners through advocacy efforts. Lastly, the UK highlighted the benefits of the UK competition network, which has helped build personal relationships across the organisation.

The Chair then gave the floor to **Chile** for a final intervention.

Chile described the FNE's intelligence unit, created in 2020, which consists of three professionals: two data scientists and one lawyer. The unit's main focus is cartel investigations, triggering ex officio investigations and investigating bid rigging. It has also partnered with other agencies, such as the compliance division and market studies division, to investigate interlocking directorates and cross ownership. The unit hopes to increase its size and data scientists based on increased budgets from Congress.

In closing, the **Chair** thanked the participants and closed the meeting.