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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Working Party No. 3 on Co-operation and Enforcement

Summary of Discussion of the Roundtable on Efficiencies in Merger Control

Annex to the Summary Record of the 141st Meeting of the Working Party 3 on Co-operation and Enforcement

17 June 2025

This document prepared by the OECD Secretariat is a detailed summary of the Roundtable on Efficiencies in Merger Control, held by the Working Party 3 on Co-operation and Enforcement on 17 June 2025. It presents a factual summary of the views expressed by speakers and delegations that intervened during the discussion.

More documents related to this discussion can be found at:
https://www.oecd.org/en/publications/efficiencies-in-merger-control_f4ce548f-en.html

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Summary of Discussion of the Roundtable on Efficiencies in Merger Control

1. On 17 June 2025, the OECD Working Party No. 3 on Co-operation and Enforcement held a roundtable to discuss how competition authorities assess efficiencies in the analysis of mergers chaired by Ms Abigail Slater, Assistant Attorney General for the Antitrust Division of the United States.

2. The **Chair** opened the session by emphasising efficiencies in merger control as a central topic for antitrust and competition enforcement agencies. The Chair outlined the session's structure, noting that the discussion would begin with an overview from the Secretariat, followed by presentations and commentaries from distinguished academics, and interventions from various delegations.

3. The Chair gave the floor to the **Secretariat**. The Secretariat provided a briefing on the background note, which revisited how competition authorities approach efficiencies in merger analysis. The paper highlighted a growing advocacy for expanding merger analysis beyond competition, with efficiency analysis increasingly recognised as a key component. The Secretariat explained that the paper focused primarily on horizontal mergers but acknowledged that many findings were applicable to other types. The review covered current practices, recent developments, and challenges, including the types of efficiencies considered, the timing of their assessment, relevant criteria, and evidentiary standards. Notably, the paper found strong convergence across OECD jurisdictions regarding the assessment of efficiencies, with reductions in variable costs more likely to be considered than fixed costs. Efficiencies must be merger-specific and verifiable, though the standard for verifiability varies by jurisdiction. The burden of proof typically lies with the merging parties, and authorities often consider efficiencies in the design of remedies, even if all criteria are not met. The Secretariat also identified areas lacking consensus, such as the consideration of out-of-market efficiencies and broader economic benefits. The rarity of efficiencies as a successful defence was attributed to the small sample of mergers where such claims are relevant, and the high standards of proof required. The paper concluded with questions about whether authorities should adjust their review standards or expand the definition of efficiency to include broader economic or public interest policies.

4. Following the Secretariat's overview, the Chair introduced two distinguished academics: **Professor John Kwoka** of Northeastern University and **Professor Nancy Rose** of the Massachusetts Institute of Technology (MIT). Professor Kwoka was invited to provide a backward-looking analysis of how efficiencies have been addressed in merger control.

5. **Professor Kwoka** began by noting the widespread agreement among jurisdictions that efficiencies should play a role in merger evaluation. He emphasised that efficiencies are not limited to cost savings but also include improvements in product quality, variety, and innovation. He outlined the criteria for considering efficiencies: they must be merger-specific, verifiable, and benefits should be passed on to consumers. Timeliness, likelihood, and sufficiency to offset competitive harms are also essential considerations.

6. Despite this consensus, Professor Kwoka identified a paradox: while efficiencies are universally acknowledged as important in principle, they rarely play a decisive role in practice. He attributed this to both theoretical and empirical challenges. Drawing on Williamson's model, Kwoka explained that the original theory suggested efficiencies could offset market power costs, but Williamson himself acknowledged significant

qualifications, including difficulties in inference, enforcement, and timing of benefits. These qualifications, Kwoka argued, are often overlooked in policy discussions.

7. Turning to empirical evidence, Professor Kwoka referenced meta-analyses and studies, which cast doubt on the magnitude and frequency of efficiencies. He noted that average cost savings across mergers net to zero, with substantial variation in outcomes. Some mergers yield significant benefits, while others result in net cost increases or coordination difficulties. Professor Kwoka stressed the challenge for agencies: identifying the small fraction of mergers with genuine efficiency benefits without incurring excessive administrative costs. He suggested standardising efficiency submissions and conducting more merger retrospectives to identify characteristics of beneficial cases. In conclusion, he argued that while meritorious efficiency claims are infrequent, agencies must develop effective screening and evaluation methods.

8. **Professor Nancy Rose** provided commentary on Professor Kwoka's presentation and shared insights from her own research. She stressed the importance of anchoring conclusions in robust academic studies, particularly retrospectives that assess post-merger outcomes rather than ex ante predictions. Professor Rose's database of over 300 studies revealed that most mergers are cleared without investigation, and there is little evidence of significant net efficiencies in mergers that raise competitive concerns. Sectoral studies, such as those on consumer product goods and hospitals, showed that mergers in the enforcement zone tend to result in price increases rather than decreases. Dynamic effects, such as innovation, remain difficult to measure, and attributing changes to mergers is challenging. Professor Rose highlighted the limitations of unilateral analysis, citing the Miller-Coors Beer joint venture, where efficiencies were realised but prices increased due to enhanced coordination. She cautioned that coordinated effects may undermine the case for clearing anti-competitive mergers based on efficiencies and called for greater scepticism in such cases.

9. Following the academic presentations, the Chair invited interventions from delegations on the topic of out-of-market efficiencies, beginning with **Chinese Taipei** which explained that it weighs potential anti-competitive effects against overall economic benefits, with economic efficiency as a key factor. Efficiencies must be merger-specific, benefit consumers, and be realisable in the short term. The agency only evaluates efficiencies if substantial anti-competitive concerns exist, and the parties propose efficiency justifications. Challenges include distinguishing economic benefits from public interest and requiring specialised knowledge for industry-specific efficiency assessments, often relying on third-party expert opinions. The burden of proof rests with the merging parties.

10. Then, **Germany** described three ways efficiencies are considered in their jurisdiction: within the same market, in third markets via a balancing clause, and in broader ministerial authorisations. Efficiencies must be demonstrated by concrete, verifiable facts and be merger specific. Examples included a hospital merger where efficiency claims were rejected, and cases in media and energy sectors where out-of-market efficiencies were balanced against competition harms, sometimes leading to approval with remedies.

11. In **Chile**, the law allows out-of-market efficiencies under specific circumstances, requiring them to be merger-specific and intrinsically linked to markets with competition concerns. The Chilean Competition Tribunal has established guidelines for assessing such efficiencies, emphasising a case-by-case approach. Chile provided examples from the food production and automotive sectors, noting that some efficiency claims were dismissed due to insufficient evidence or lack of benefit to domestic consumers.

12. **Israel** took the floor and commented that the competition authority takes a cautious approach, generally not recognising out-of-market efficiencies due to practical and policy concerns, focusing on protecting consumers from competitive injury within the same market. The authority's guidelines require efficiencies to be proven, substantial, merger-specific, and sufficient to overcome competitive injury, primarily benefiting consumers.

13. The Chair then asked some jurisdictions to talk about their considerations on public interests in analysing efficiencies in mergers.

14. **New Zealand** described its dual approval routes: clearance, which does not consider out-of-market efficiencies, and authorisation, which weighs public benefits against detriments using a modified total welfare test. A notable case involved media companies, where the loss of plurality outweighed claimed efficiencies, and the authorisation was declined.

15. **South Africa** explained that merger assessment involves both competition and public interest. Efficiencies are considered only if anti-competitive effects are likely, with the burden on parties to demonstrate merger-specific benefits. Public interest is assessed separately, and while the law allows approval of anti-competitive mergers on public interest grounds, this has not occurred in practice due to challenges in proving merger specificity and balancing commitments.

16. **Japan** presented a recent case where the competition authority recognised efficiency improvements in carbon dioxide emissions resulting from a merger, following the Green guidelines. The authority verified the merger-specific nature of the efficiency, its achievability, and its impact on consumer welfare, approving the transaction with remedies.

17. **Austria** explained that courts may approve mergers based on statutory justifications, such as improving competitive conditions or delivering significant economic advantages, but the high standard of proof makes such approvals rare. Companies must convincingly demonstrate when benefits will materialise, how they will be passed on to consumers, and why they could not be achieved through less anti-competitive means.

18. **France** discussed the Ardian/SPMR decision, highlighting the complexities of weighing efficiencies in the face of a merger to monopoly. France emphasised the importance of rigorous analysis and the challenges of balancing efficiency claims with competition concerns.

19. The Chair concluded the first part of the roundtable underscoring the complexity of assessing efficiencies in merger control, the diversity of approaches across jurisdictions, and the ongoing challenges in balancing competition, efficiency, and public interest considerations.

20. After the coffee break, the session shifted to forward-looking analysis. **Professor Rose** took the floor and reiterated her cautious stance on efficiencies, arguing that merger reviews should be conservative given the permanent structural changes involved. She argued that current policy is largely appropriate, noting that most horizontal mergers are not challenged because they are presumed to deliver some efficiency benefits. However, she highlighted that when mergers do reach the enforcement stage, they are typically highly concentrating and threaten competition, with parties often failing to provide convincing evidence of efficiencies sufficient to offset harm. Drawing on her experience at the US Department of Justice, Professor Rose explained that efficiency claims can be persuasive at the investigation stage, sometimes preventing a merger from being challenged, though such cases rarely become public. She identified two valuable sources of evidence for assessing efficiencies: prior mergers in the same sector, which can help gauge the

credibility of efficiency claims, and pre-deal analysis conducted by merging parties, which can illuminate the mechanisms for efficiencies and facilitate empirical verification. She cautioned against relying on post-deal analyses, which are prone to exaggeration and distortion due to asymmetric information.

21. Professor Rose expressed scepticism about the increasing focus on dynamic efficiencies and non-price effects, warning that such arguments could be used to justify problematic mergers. She argued that standards of proof for dynamic efficiencies should be high, especially in sectors with limited competition, and noted that further reductions in competition are rarely associated with greater innovation or other benefits. She concluded by suggesting that competition agencies are not well-suited to conduct economy-wide analyses or balance disparate social goals, advocating for transparency when competition is subordinated to other objectives.

22. **Professor Kwoka** responded with three comments. First, he noted that efficiency claims are relevant only in a small fraction of mergers but are uniquely important due to their precedential impact. Second, he proposed a two-stage process to filter out unlikely efficiency claims early, relying on ordinary course of business documents rather than ex post consultant reports. Only large, uniquely important efficiency claims should receive full agency review. Third, he suggested a sliding scale for the standard of proof, with higher standards in concentrated industries. Professor Kwoka acknowledged that any process will make mistakes but argued that the goal is to minimise errors compared to current practices.

23. After the intervention by the experts, the Chair turned to delegations and invited them to share lessons learnt for the future and updates to their approaches.

24. **Canada** described the historical context of the efficiency defence in Canadian merger control, noting that it was introduced in 1986 as a full defence for anti-competitive mergers. This provision allowed mergers that harmed consumers and competition if the claimed efficiencies outweighed the harm, leading to significant consolidation and complex, expensive analyses. The defence was often used in domestic markets and proved difficult to implement, especially in the digital economy. After decades of advocacy, the efficiency defence was repealed in December 2023, though efficiencies may still be considered as relevant factors. Canada is now updating its merger enforcement guidelines to reflect this change and other significant amendments. The delegation emphasised that effective merger control is essential for protecting consumers and maintaining a competitive marketplace.

25. The **United Kingdom (UK)** outlined its conventional approach to merger efficiencies, highlighting the ability to consider both in-market efficiencies and relevant customer benefits, including those arising in other markets. The UK discussed the recent Vodafone-Three merger, where substantial efficiency claims related to network investment and 5G rollout were scrutinised. While genuine benefits were identified, concerns remained about the merging parties' incentives to deliver on their plans post-merger. The UK explained that it worked closely with the telecoms regulator to design remedies that locked in efficiency benefits, including investment commitments and spectrum divestment. The authority is now reviewing its approach to remedies, with a focus on ensuring that efficiency benefits are deliverable and can be secured through appropriate remedies.

26. The **European Union** took the floor and explained that it is revising its merger guidelines to reflect evolving case law, new business models, and geopolitical challenges, including in the topic of efficiencies. While the substantive test and general approach to efficiencies will remain unchanged, the review aims to address issues such as dynamic theories of harm, innovation, and investment cycles. The Commission emphasised the need for effectual assessment, with benefits to consumers, merger specificity, and verifiability

as key criteria. An economic study has been commissioned to summarise relevant literature on innovation and efficiencies in the merger context and the review will be informed by stakeholder consultation.

27. **Korea** described that it updated its merger review guidelines in May 2024 to address the digital economy's unique characteristics. The revised criteria include efficiencies and require that they are merger-specific, generated in the same market, and outweigh anti-competitive effects, with the burden of proof on the merging parties. The guidelines now consider network effects, data integration, and the promotion of the domestic startup ecosystem as part of efficiency gains. The delegate explained that the KFTC conducts ex post analyses to refine criteria for assessing efficiencies and intends to continue updating its approach in response to economic developments.

28. The **United States** reaffirmed its commitment to rigorous merger review, noting that efficiency claims must be merger-specific, verifiable, and passed through to consumers. It cautioned against lowering standards or broadening the definition of efficiencies, warning that this could compromise competition and allow efficiencies to become a euphemism for broader social goals. The delegation argued that competition enforcers are ill-suited to balance broad social and economic trade-offs, which are inherently political decisions.

29. **Saudi Arabia** employs a structured methodology for assessing efficiency claims, grounded in legal and regulatory frameworks. Efficiencies must be supported by concrete evidence and are categorised as active, allocative, or dynamic. The General Authority for Competition balances anticipated efficiencies against likely anti-competitive effects and promotes transparency through published case studies and third-party evaluations.

30. Finally, **Business at OECD (BIAC)** advocated for greater integration of efficiency analysis into merger review, especially dynamic efficiencies. The representative recommended earlier and more structured engagement between authorities and parties, arguing that reasonable predictability, not certainty, should be the standard for assessing dynamic efficiencies. BIAC suggested that efficiency analysis should be part of remedy design and cited examples from manufacturing, logistics, and digital services where efficiency arguments were successfully integrated into conditional approvals. The organisation called for the OECD to play a role in gathering comparative insights and publishing good practices, particularly in fast-moving markets where innovation and scale are critical.

31. In closing, the **Chair** thanked the experts and participants for contributing to the discussion and summarised key takeaways. She noted the widespread recognition of efficiencies in principle, the challenges of proving and weighing efficiencies in practice, and the divergence in approaches to out-of-market and public interest efficiencies. The discussion highlighted the evolving standards and guidelines across jurisdictions, with many agencies revising their approaches in response to new economic realities and stakeholder feedback. The session also highlighted the need for rigorous, evidence-based analysis of efficiency claims, the importance of merger specificity and verifiability, and the challenges of balancing efficiency benefits against competitive harms. The session underscored the value of retrospective studies, sectoral analysis, and pre-deal evidence in assessing efficiencies. Delegations emphasised the importance of transparency, structured methodologies, and ongoing refinement of guidelines to ensure that efficiency claims are appropriately considered in merger control.