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

**Optimal Design, Organisation and Powers of Competition Authorities – Summaries of contributions**

4 December 2023

This document reproduces summaries of contributions submitted for Item 2 of the 138th meeting of Working Party 3 on 4 December 2023.

More documents related to this discussion can be found at  
[www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm](http://www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm).

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## *BIAC*

*Business at OECD* (BIAC) appreciates the opportunity to submit observations to this roundtable. From the perspective of business, a well-functioning agency is one that has both the competence and capacity to apply the law transparently and objectively, providing both certainty and predictability to economic actors.

Given that the roundtable focuses on the internal functioning of authorities, BIAC will provide a perspective from business, who act as subjects or “users” of the competition system, as the choices taken on internal function affects the effectiveness of the system.

In the context of the roundtable, BIAC offers the following observations:

- Competitive neutrality principles should be championed by authorities through increased internal government advocacy efforts. Agencies should consider including competitive neutrality assessments in annual reports and flag breaches competitive neutrality norms.
- Any change in competition law or policy should be based on cognizable concerns, proportionate rulemaking, clear and transparent enforcement prioritization, and legal certainty.
- Domestic and international frameworks for procedural cooperation and coordination should be developed particularly where merger control and foreign investment reviews occur.
- Authorities should clearly set out their prioritization principles and develop internal checks and balances to weed out inappropriate factors in decision-making.
- Authorities should provide meaningful guidance to business where new powers have been granted or implemented to ensure common understanding and clarify the authority’s interpretation of the law.
- Authorities should draw on existing government resources, notably to better understand what policy choices the legislature has taken in a given field.
- Authorities should ensure that new tools align with due process and procedural fairness requirements.
- Authorities should ensure that new forensic investigative tools minimize the cost and burden on companies, notably for companies that are not the targets of an investigation.

## *Canada*

In 2020, the Competition Bureau (the “Bureau”) launched a four-year Strategic Vision with the ambitious goal of being “a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition for Canada”. The Bureau set many priorities that had a major impact in reshaping the organization. Some of these include:

1. Advancing proactive intelligence-gathering efforts. This increases our ability to detect problematic conduct, especially in digital markets,
2. Being a world leader in using new tools and technologies like data analytics to help enforcement and advocacy work,
3. Recruiting from diverse educational and professional backgrounds to ensure that our teams benefit from wide-reaching expertise and varying perspectives, and
4. Supporting continuous learning and development of our people while encouraging a culture of well-being.

In our submission we set out of the enabling and structural changes the Bureau has made since 2020 to achieve these priorities, and indicate the challenges and next steps.

## *Chile*

This document explores an aspect of the internal design of competition institutions in Chile, considering historical context and contemporary challenges. It emphasizes the importance of tailoring competition authorities to a nation's unique circumstances, accounting for economic structure, political landscape, and market consolidation. Chile's competition history, dating back to the mid-1950s, reflects its institutional evolution, with a distinctive separation of investigative and prosecutorial functions handled by the Fiscalía Nacional Económica (FNE) and judicial decision-making by the Tribunal de Defensa de la Libre Competencia (TDLC).

Despite successful enforcement of competition policies, the document examines challenges in autonomy, technical expertise, and resource allocation within the current design. It concludes by emphasizing the ongoing relevance of addressing independence, expertise, and resource challenges to maintain the effectiveness of competition laws and institutions, particularly considering emerging challenges from the digital economy and increased litigation. The need for continuous evaluation and potential refinements in the competition system is highlighted to adapt to evolving economic landscapes.

## *European Union*

The rapid pace of technological development requires competition enforcers to rethink and redesign their enforcement capabilities. This contribution outlines the steps undertaken by DG Competition to embrace **augmented investigations** methodologies to enhance its enforcement activities, both in terms of detection and ability to prosecute competition infringements.

## *France*

La France place la double transition numérique et environnementale au fondement de la stratégie industrielle nationale, afin de parvenir à un nouveau modèle économique plus durable, plus compétitif et plus résilient.

Afin de relever ces défis, les autorités françaises en charge de la concurrence, représentées par l'Autorité de la concurrence (« l'Autorité ») et la Direction générale de la concurrence, de la consommation et de la répression des fraudes (« DGCCRF »), ont, d'une part, renforcé leur expertise interne et, d'autre part, renouvelé leurs outils, procédures et pouvoirs d'enquête.

Afin de renforcer son expertise numérique, l'Autorité de la concurrence a créé le Service de l'Économie Numérique (« SEN ») en 2020, qui participe à des enquêtes sectorielles dans les marchés numériques, soutient les services d'instruction dans leurs travaux et développe des outils numériques d'investigation. Par ailleurs, l'Autorité tire parti de sa compétence consultative afin d'explorer des marchés émergents, par exemple récemment celui de l'informatique en nuage (« cloud computing »). Elle collabore également étroitement avec d'autres régulateurs sectoriels et services de l'État impliqués sur les sujets numériques, tels que la Commission nationale de l'informatique et des libertés (« CNIL ») et le Pôle d'Expertise de la Régulation Numérique (« PEReN »). En parallèle, la DGCCRF a su adapter sa structure organisationnelle dès 2000, avec la création d'un Centre de surveillance du commerce électronique (« CSCE ») composé de cyber-enquêteurs chargés de contrôler le secteur du e-commerce et lutter contre les pratiques commerciales trompeuses. La DGCCRF a également adapté ses méthodes d'investigation, par exemple en ayant recours à la Cellule de Renseignements Anti-Fraude Économiques (« CRAFE ») pour optimiser l'utilisation des données lors de ses enquêtes. De manière plus générale, la DGCCRF effectue des contrôles réguliers aussi bien à l'égard des relations commerciales entre les plateformes d'intermédiation en ligne et les entreprises utilisatrices proposant leurs biens sur ces plateformes, que des pratiques des acteurs de l'économie numérique à l'égard des consommateurs. Le programme national d'enquêtes (« PNE ») de la DGCCRF a été adapté pour tenir compte de ces nouveaux enjeux numériques.

## *Greece*

The broadening of competition action through the development of the sustainable development agenda, the use of new computational techniques in competition law enforcement, and the business reality of ecosystems will have important implications on the theory and practice of competition law, to a certain extent similar to those generated by the turn to a more economic approach and the systematic use of economics in competition law a couple of decades ago, with different domains of expertise and toolkits being added to the competition law toolbox. The emergence of computational competition law and economics is linked to different factors, such as the prevalence of the digital economy, which enables the harvesting of immense volumes of data about all dimensions of economic activity and consumer behaviour, the development of data analytics and algorithms that enable competition authorities to monitor real time market activity, the creation of screening tools that assist competition authorities in making more accurate predictions, and finally the development of a deeper understanding of economic activity as part of a larger complex economy, in which the linear dynamics of neoclassical price theory may not always prove adequate.

We are at the beginning of a new antitrust revolution that will bring similar reforms to the institutional design of competition authorities than those undertaken with regard to the use of economic analysis, including an adaptation of evidence rules and procedure to this new reality. The note highlights the changes that have taken place at the HCC in recent years in order to adjust to these new realities.

## *Kazakhstan*

In the digital age, effective competition policy relies on antimonopoly authorities adapting to a rapidly evolving environment. Kazakhstan's Antimonopoly Authority underwent significant institutional changes in 2020, now reporting directly to the President. With jurisdiction across 20 regions, it aims to enhance economic efficiency, prevent competition violations, and regulate economic concentration. Over 30 years, Kazakhstan's competition law evolved, aligning with OECD standards post a pivotal 2015 review. Ongoing modernization involves legislative changes, a trustee institution for M&A approvals, and a draft law for non-revocation of actions, collegial decision-making, and demonopolization tools.

The Agency is digitally transforming with initiatives like a Digital Transformation Roadmap, Information and Analytical System (IAS), and Analytical Competition Map. Challenges, including market dominance in digital markets, emphasize the need for financial autonomy and skilled experts. An analytical research center has been established, offering free economic concentration reviews. Plans include automating processes, adjusting concentration thresholds, and adopting big data analytics, AI, and ML for modern market analysis. Efforts to reduce administrative burden involve accessing state databases and unifying government agencies for effective market control.

## *Korea*

In April 2023, the Korea Fair Trade Commission (hereinafter the “KFTC”) undertook reorganization to redesign its organizational structure. First, the KFTC separated policy and investigation functions dispersed in the Secretariat to enhance accountability and expertise and newly created the Secretariat for Investigation, in addition to the Secretariat, so that the Secretary-General is responsible for policy-making and the Secretary-General for Investigation is responsible for investigation. In addition, the KFTC further strengthened the separation of investigation and deliberation divisions to enhance the independence of the KFTC’s decisions. Along with the organizational reform, the KFTC revised case handling procedures and standards and laid out plans to improve its law enforcement system to strengthen case handling capabilities by enhancing internal capabilities.

In addition, the KFTC is making various organizational efforts to respond to the recent changes in market conditions. The KFTC created the International M&A Division in December 2022 to respond to an increase in the number of global merger cases and established the Technology Appropriation Investigation Division, which consists of experts from various fields as technical analysis has become more important in handling related cases in subcontracting. Moreover, the KFTC created the Technology Examination Advisory Committee, which is composed of external experts, to complement expertise in the current organization. Furthermore, the KFTC signed an MOU with a university and research institute to make use of external resources, including policy development and technology consultations in the fields of science & technology and information & communications. With the growing demands for new and reformed regulations and given their complexity due to the establishment of new technology-based markets and the transition to the low-carbon economy, the KFTC established the Competition Impact Assessment Center in January 2022 under the Korea Fair Trade Mediation Agency, an affiliated organization of the KFTC. The center is responsible for carrying out competition assessments on major regulations.

The KFTC is facing dual challenges of enhancing predictability, efficiency, and expertise in case handling to meet heightened public expectations and swiftly respond to changing market conditions. The KFTC expects to enhance the reliability and credibility of law enforcement through reorganization and other complementary efforts.

## *Latvia*

In order for the competition authorities to be able to effectively fulfil their assigned duties - to protect free and fair competition in all markets - they must develop and improve the regulatory framework, which often does not keep up with rapid market changes, for example, related to the development of the digital market, develop skills and competences of their employees, technical capacity in digitalization era. This should include short term steps, but it is very important to set up also strategic approach for future. It is especially challenging for the small competition authorities such as the Competition Council of Latvia (CC).

Latest amendments to the Competition Law were made in 2022 aimed at strengthening the CC, providing the necessary guarantees of independence, resources and enforcement powers for the investigation and prevention of effective competition law violations. Necessary resources for effective competition enforcement are also advanced digital investigative tools, expert skills, trainings for staff to work with e-evidence, etc.

In the last three-year period the funding allocated to the institution from the national budget has grown and were used to create additional jobs, for example, IT Project manager position, as well as to strengthen the capacity of IT investigation of the Authority, etc. That provided good starting point for authority to building up capacity and skills also regarding challenges in digital markets and digitalization of the CC. Next year the CC plans to recruit additional IT forensic expert (in 2023 the CC employs one IT forensic expert and one IT project manager.) Also, the CC intends to create a data analyst/scientist position, who will work with big data and artificial intelligence.

In 2023, IT forensic laboratory were developed – all necessary IT equipment, as well as necessary programs and licences for case handlers/investigators to process and analyse the e-evidence were purchased. Also, staff training on the use of the IT laboratory and processing of e-evidence were carried out.

In addition, the CC invests resources to implement and develop the automatic cartel screening tool taking advantage of artificial intelligence to detect infringements. Also, the CC is the flagship/implementer of digital e-case in Latvia. The institution has created a concept, technical specifications for the implementation of the e-case and has also prepared methodological material for employees on how to design and structure the digital file. However, there is currently no funding available for the physical creation and construction of the system.

The CC has been strategically paying attention to the challenges of digitalization for years as much as the resources - time, finances, and human resources - have allowed. The latest Operational Strategies of the CC for 2023-2029 contribute to strengthening both the institution itself to become more digital and modern, using digital tools to detect violations, and to strengthen the competences of employees, including ensuring diverse and mutually beneficial cooperation at the national and international level, strengthening knowledge of digital markets and acquiring skills in evaluating digital evidence. The institution has implemented individual development plans for each employee to improve the weaknesses of each expert and strengthen talents.

## *Mexico*

### **Federal Economic Competition Commission (COFECE or the Commission)**

The Federal Economic Competition Commission (Cofece) firstly, in 2020, created the General Directorate of Digital Markets to enhance the investigative tools and processes. Secondly, it adopted an organisational model consisting of four components, which are aligned with strategic actions derived from Cofece's Institutional Strategic Planning Model.

The economic, social, and technological landscape presents various challenges for competition authorities. These challenges include the implementation of digital tools for market analysis and taking a global perspective into account. To achieve optimal results, it is necessary to adapt the design, organization, and enforcement capabilities of competition authorities.

### **Federal Telecommunications Institute (IFT)**

In this contribution, the IFT presents its resources and investigative tools and processes that have facilitated the enforcement of competition law in the digital age within the telecommunications and broadcasting (T&B) sectors.

Regarding its resources, the IFT presents:

- The Guide to determine a relevant market in the T&B sector, to offer guidance to economic agents, interested parties and the public, on the IFT criteria in the analysis of competition.
- The Guidelines for Traffic Management and Network Administration to be followed by concessionaires and authorized providers of Internet access service, to ensure equal and free access for end users, provide legal clarity to the industry to guarantee net neutrality while fostering innovation, competition, investments in networks and reducing the digital divide.

Regarding its tools and process to avoid anticompetitive behavior, complying with its regulatory framework, the IFT presents:

- Guidelines for Processing Investigations, Procedures, and Proceedings by the Investigative Authority of the IFT through Electronic Means, which establish relevant provisions governing the conducting of investigations, procedures and proceedings by the IFT's Investigative Authority through an Electronic System.

## *New Zealand*

Two key challenges recently faced by the NZCC have been:

1. An increase in the scope of its roles and responsibilities. New legislation has increased the range of its functions, powers and duties, particularly since 2018, including a new market studies function and new sectoral regulation regimes being assigned to it.
2. Addressing changing markets and technologies. In particular, maintaining an up-to-date understanding of competition in digital markets and the latest enforcement best practices in these markets.

This paper outlines these challenges. It also explains how the NZCC has addressed these challenges, including by utilising intra-organisation knowledge amongst its different teams, seeking to ensure that its enforcement powers are adequate, and keeping its agency expertise and understanding of digital markets up to date.

### **Challenges of increasing functions at scale**

New functions have required the NZCC to establish new regimes and new regulatory teams from scratch, and it has become adept at establishing new regulatory regimes, largely through encouraging a symbiotic relationship amongst its teams. An example of this has been drawing on the findings of its market studies for the benefit of new sectoral regulation teams.

### **Challenge of understanding changing markets and technologies**

As the NZCC continues to grow into a larger multi-functional regulator, significant change is being implemented within the organisation to help it equip for the future. It has found that to adequately address competition issues in digital markets, three factors are essential:

1. A legislative enforcement framework that is adequate and suitable for competition enforcement in digital markets. The paper provides examples of where the NZCC has pushed for legislative change over previous years where this has not been the case.
2. Flexibility on how to engage new skillsets.
3. Collaboration with other international and domestic agencies and organisations to develop agency knowledge. Collaboration with other organisations enables the NZCC to learn from and share best practice with others. Such collaboration also ensures its investigatory staff are well trained in evidence handling, engagement with parties, and are able to identify where specialist expertise may be required.

## *Norway*

Digitalisation contributes to extensive technological development and innovation. In many markets, access to information and control over algorithms is essential to be competitive. The potential for increased competition is significant. At the same time, digitalisation can result in market dominance and increased risk of illegal price collusion. However, there are also substantial opportunities for more effective enforcement, for example in data acquisition and a data-driven development of tools supporting enforcement.

The development and the implications for enforcement are clearly reflected in expectations expressed by the Ministry of Trade, Industry and Fisheries in the annual letter of assignment to the Norwegian Competition Authority (NCA hereafter).

This contribution from Norway discusses how digitalisation and the increasing use of data present challenges for effective enforcement, and how the NCA endeavours to turn these challenges into opportunities to promote competition and more effective enforcement.

The examples presented underscore that we are moving toward a new digital reality of how competition authorities will work and enforce in the future. To fully exploit the opportunities, the organisation and powers of the competition authority must be reassessed to ensure that they meet the requirements for enforcing competition in the digital era.

The contribution first outlines responsibilities and the existing structure of the NCA, before providing examples of new opportunities. In the second part, the contribution discusses how the NCA might address future challenges, to be prepared and equipped for effective enforcement in the coming years. The last part addresses whether existing powers and tools are sufficient for effective enforcement in the foreseeable future.

## *Sweden*

This paper begins by outlining the structures and mechanisms that the Swedish Competition Authority (SCA) has established to be able to identify and respond to emerging challenges. It then describes a number of contemporary challenges that have been addressed by the authority in its operational planning in the form of strategic focus areas.

The contribution continues by focusing on the question of digitalisation, which has proven to be of significant and ongoing importance for the internal organisation and operations of the SCA.

Within the area of digitalisation, the contribution first looks at the question of resources, discussing the recruitment of IT forensic experts and data scientists and how these are integrated into the authority. The question of how knowledge-sharing and continuous learning are ensured is also addressed, for example through training and cooperation, but also through experience from cases and sector inquiries.

The contribution then turns to the question of investigative tools and processes, providing examples of digital tools that have been developed, as well as challenges encountered by the SCA.

Finally, the contribution looks at the question of enforcement powers, exploring new competition tools, interim measures and merger control.

## *Unites States*

In recent years, the Federal Trade Commission (“FTC”) and the Antitrust Division of the U.S. Department of Justice (“Division”) (collectively, the “Agencies”) have faced many challenges in their competition enforcement missions. Some of the most significant include increased digitalization, systemic dominance in markets, ongoing industry consolidation, and anticompetitive behavior in labor markets. This paper discusses three strategies that the Agencies have used to modernize themselves and address these challenges: adding technology expertise and focusing resources; considering the intersection of competition and consumer protection, particularly privacy; and implementing a “whole of government” approach to promote competition in the economy.

The strategies that the Agencies have taken to respond to contemporary competition enforcement challenges build upon the shared strong foundation that both Agencies have developed over a century of experience. Despite some differences in how the Agencies organize these professionals, both Agencies have historically used an interdisciplinary approach to staffing their case teams, with attorneys, economists, financial analysts, and other personnel collaborating on cases.

With ongoing digitalization and growing use of data in the economy by virtually all businesses, to best tackle these new challenges, modern competition authorities should add technology expertise. In recent years, the Agencies have built on their traditions of expertise and using an interdisciplinary approach by adding technology expertise to the mix. The Agencies have accomplished this by hiring significant numbers of technologists and building up their enforcement offices to reflect these economic trends.

Modern competition authorities should consider the intersection between competition, consumer protection, and privacy issues. Technological advances, particularly widespread data collection and the rise of the surveillance economy, raise both competition and consumer privacy issues. For instance, when a dominant firm controls access to key data, it may act to exclude rivals and impede emerging competitive threats to prolong its monopoly power. With that power, the dominant firm can then degrade consumers’ privacy, a dimension of quality competition, without consequence.

Modern competition authorities should implement a “whole of government” approach to promote competition in consultation with sector regulators. Under this strategy, different government agencies within a jurisdiction coordinate their efforts—whether law enforcement actions, regulations, project management, or the procurement of goods and services—to ensure that policy solutions at all relevant agencies work together to promote competition in the economy. Through increased collaboration and coordination, competition authorities and other government agencies can share their respective expertise, increase their reach, and conserve resources, increasing the likelihood that their actions will spur more competition in the economy.