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

Global Forum on Competition

FIGHTING CORRUPTION AND PROMOTING COMPETITION

-- Session I --

Call for country contributions

This document is a call for country contributions for Session I of the Global Forum on Competition to be held on 27-28 February 2014. GFC participants are invited to submit their contributions by 6 January 2014 at the latest.

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TO ALL GLOBAL FORUM PARTICIPANTS

RE: Fighting Corruption and Promoting Competition

Global Forum on Competition (27 and 28 February 2014)

Dear GFC participant,

The OECD Global Forum on Competition which takes place on 27-28 February 2014 will hold a Roundtable on Fighting Corruption and Promoting Competition on the first day of the meeting, Thursday 27 February 2014. The Secretariat would like to invite you to make a written contribution to this session. Please submit your contribution by **Monday 6 January 2014** at the latest.

It is widely accepted that both corrupt and anti-competitive conduct are efficiency-reducing actions against citizens and as such each correlates with economic performance. This is but one of the important interfaces at which corrupt and anti-competitive conduct meet.

Given this, it is surprising how little the interaction between corruption and competition has been considered. Always limited by data difficulties and compelled to rely on proxy measures – with respect to both competition and corruption – a handful of economists have attempted to formally model the interaction between competition and corruption, with most finding an inverse relationship between the two variables, with causality posited to run from low levels of competition to high levels of corruption. On the other hand, little work has been done on the impact of corruption on competition, despite eminently reasonable grounds for positing that high levels of corruption represent a clear threat to competition.

The key concept that economists draw on to explain the correlation between low levels of competition and high levels of corruption is that of economic rent, defined as that portion of income paid to a factor of production in excess of that which is needed to keep it in its current use. Low levels of competition generate rent, or what competition economists would term supra-competitive profit levels, and rent attracts rent-seekers, those who seize the opportunity to appropriate this rent for themselves.

Early writing on rent seeking focused its attention on the role of public regulation in creating rents, and identified the public servants who devise and administer these regulations as the rent seekers. A given regulation may have perfectly laudable objectives – for example, the health clearance certificate to operate a restaurant, or the authority of the environmental authorities to operate a smelter – but it generates rent because it restricts market access to potential competitors. More importantly, it provides opportunities for those responsible for granting or denying the access to extract rent from a would-be entrant. Given that there is rent in all but perfectly competitive markets, a corrupt official may play a relatively passive gate-keeping role, simply content to extract a ‘fee’ from new entrants.

However, the astute but corrupt official will recognise that the size of the rents will increase if he substantially restricts market entry, indeed if he can play a role in causing exit from the market. The incumbent who wants entry to ‘his’ market restricted is likely to be a lucrative target of the rent seeker who is able and willing to play an active role in limiting market entry or forcing exit. And the far-sighted but corrupt official will go even further and create regulatory hurdles that have little purpose other than that of rent generation and extraction. In these instances the causal link is from corruption to low levels of competition.

Rent and rents-seeking have thus become swear words, synonyms for corruption. However, while this pejorative status is frequently well-deserved, the role of rents in economic development and growth is, in reality, significantly more complex.

Hence competition law and policy practitioners recognise that it is the promise of rent that incentivises a firm to collude with its competitors or to take action designed to exclude rivals or would-be rivals from its market. Indeed the role of competition law could be characterised as one specifically devised to ensure that rents are *not* secured by means of anti-competitive mergers or collusion, and that the rents are *not* maintained by exclusionary conduct. But, on the other hand, competition protagonists equally recognise that it is precisely the promise of monopoly rent that spurs innovation, be that in the form of a new blockbuster product, an improved work process, a new approach to marketing or a superior logistics chain.

But firms are not islands and rents are not only, or even predominantly, derived from the pro- or anti-competitive conduct of firms acting on their own. Indeed the mere mention of innovation as an important pro-competitive source of rent immediately raises the question of patent rights, the state's contribution to the pro-competitive rents of the innovator. Patent protection precisely permits the innovator to recoup his rent-seeking costs – in this instance more positively cast as R&D – and rewards him for the risks inherent in the development of new products.

Moreover, from an economic growth perspective, protagonists of industrial policy argue that by giving firms the prospect of earning rent, investment can be 'guided' in directions that in turn generate positive rents for the society. For example by subsidising investment in an auto plant, the investor will derive a share of rent, but so would the wider economy in the shape of the industrial skills and experience that are then available for diffusion throughout the economy which will serve to attract, without necessitating the same level of subsidisation, further investment in productive activities. In short, the early literature on rent seeking, focused as it was on 'bad' rents, failed to give sufficient recognition to the existence of 'good' rents. The generation and appropriation of both 'good' and 'bad' rents will entail rent-seeking costs, but where 'good' rents are generated, the net benefit to society will be positive. The rapid growth and industrial development of the Asian tiger economies were offered as the best case in support of administrative 'guidance' of market outcomes. The point then is not to reject all rent: it is to ensure that the rents do actually generate social benefits and that the rent-seeking costs are limited.

The experience of those represented at this roundtable has the potential to contribute substantially to a much under-studied field. Participating jurisdictions are therefore invited to consider the questions below, taking account of the issues that are outlined, and bearing in mind that both the issues and the questions are intended to be illustrative rather than exhaustive. You should feel free to discuss other pertinent topics that are not mentioned here. Moreover some of the questions may overlap or may not apply to you; hence we do not expect you to answer all the questions listed below. Wherever possible, please demonstrate the points you raise by referring to specific cases.

Please advise the Secretariat by 13 December 2013 if you will be making a written contribution. As noted above, **written contributions are due by 6 January 2014**. This deadline applies to both members and non-members. It is important to meet the deadline in order to allow the Secretariat enough time to best organise the session. Contributions received after this deadline may not be taken into account in the preparation of the roundtable discussion. In addition, late contributions may not be uploaded to the website www.oecd.org/competition/globalforum in advance of the meeting.

All communications regarding documentation for this roundtable should be sent to Ms Erica Agostinho (Email: erica.agostinho@oecd.org). All substantive queries relating to this roundtable should be sent to Mrs. Ania Thiemann (ania.thiemann@oecd.org).

Suggested questions and points for consideration

- How, if at all, can competition law enforcers and anti-corruption law enforcers complement each other's efforts to promote competition and combat corruption?
- In particular are competition authorities, especially those in developing countries, well advised to focus their efforts on combating pervasive competition-dampening corruption than on traditional concerns of competition law enforcement?
- Where a national procurement system has been thoroughly corrupted, should scarce resources be devoted to investigating and prosecuting anti-competitive horizontal bid rigging arrangements, or should they be devoted to confronting corrupt vertical relations between buyer and seller?
- Similarly, where a powerful domestic energy provider is a major source of corruption and patronage, should the answer lie in pro-competitive interventions that undercut its dominance and reduce its monopoly rents, rather than in confronting powerful corrupt individuals and syndicates head-on?
- Is there conduct that is traditionally the preserve of competition law enforcement that could and should attract the attention of anti-corruption law enforcers?
- Competition and corruption 'cultures' vary between countries, with a substantial normative component in country-specific views on 'healthy' or 'fair' competition and on what acts constitute corruption. Under these circumstances is the extra-territorial application of national statutes appropriate?
- How do competition authorities themselves guard against the corruption of their own decision-making processes? In particular does the 'revolving door' phenomenon that characterises the practice of competition law everywhere not lead to the 'capture' of the agencies?

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