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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Belgium --

17-18 December 2014

This document reproduces a written contribution from Belgium submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.

More documents related to this discussion can be found at www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm

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English - Or. English

**RESPONSES BY BELGIUM TO THE QUESTIONNAIRE CIRCULATED
IN PREPARATION OF THE DECEMBER 2014 DISCUSSION**

1. *Has your agency undergone a recent change that resulted in it acquiring (or divesting) other policy functions such as consumer protection, sectoral regulation, or public procurement control? (This also includes agencies that have historically held such functions but have made significant changes to the way in which those functions are integrated within the institution)*

1. Yes. The new Belgian Competition Agency (BCA) has the power to impose interim relief measures for a duration of no more than six months in case the Price Observatory of the SPF Economie (ministry of economic affairs), acting under the supervision of the scientific committee of the Institute of National Accounts, finds that measures may be justified in respect of pricing developments or market failure.

1.1 What was the motivation/rationale for the change? What factors were considered? What options were explored?

2. The introduction of the relevant provisions was part of the political deal to accept a strengthening of the competition agency.

1.2 How was the change implemented? What were the timelines? Was it purely structural, or were substantive changes made to the relevant laws as well? What was the role of your agency in the process? Did you experience any internal or external resistance to the change? If so, how was that managed?

3. The change was implemented by the insertion of Book V in the new Code of Economic Law.

4. The political timeline was the time available to the Government between its entry into office in December 2011 and the end of the legislature in May 2014. The Government adopted the proposals in first reading in July 2012, and both chambers of Parliament have adopted the relevant texts on 21 March 2013 to become the Act of 3 April 2013.

5. There was extensive external resistance from industry and the Bar. The Government implemented the agreement reached between the coalition partners.

1.3 How has the change worked out in your experience? What has worked well and what has not? Are there specific examples of successful outcomes (e.g., cases or policy initiatives) that would have been difficult to achieve prior to the change? What has been the biggest challenge?

6. The new provisions have not yet been invoked.

2. *Independence from government*

2.1 *Has your agency undergone a recent change that resulted in it becoming more (or perhaps less) independent of government?*

7. The Belgian Competition Authority (BCA) was re-established on the 6 September 2013 as an autonomous authority with its own legal personality:

- The BCA is managed by a board of 4 members appointed by the Government with a mandate of 6 years: the president, the competition prosecutor general (*auditeur général*), the chief economist and the general counsel.
- Formal cases are opened by the prosecutor general after hearing the chief economist.
- Investigations are managed by the prosecutor general who appoints one member of the investigation service in charge of the daily management of the case and one as ‘peer reviewer’. These three officers can together decide as *auditorat* (i) to bring the case before the Competition College, or (ii) to settle the case, or (iii) to drop the case.
- Competition Colleges consist of the president and two assessors designated in alphabetic order from a list of twenty, selected and appointed in accordance with the same procedure as the board members. They hear and decide the cases brought for them by the *auditorat* (or the parties who wish to appeal a decision of the *auditorat* to drop a complaint.
- The president is *i.a.* in charge of the EU and international cooperation, the advocacy policy and the informal competition policy.

8. I wish to reiterate, however, what was said in earlier surveys of the OECD and the IMF. As Director General in the previous authority in which I was member of the Board of the ministry of economic affairs, I never experienced the slightest restriction of the independence of the agency. This of course also held true for the Competition Council that was an administrative tribunal whereby the authority only act in formal infringement cases as the prosecutor.

2.2 *What was the motivation/rationale for the change? What were the shortcomings (actual or perceived) of the previous system? What factors were considered? What options were explored?*

9. The reform was initiated (i) at the request of the Directorate General in the previous structure for a number of amendments of mainly procedural provisions in respect of infringement cases in the 2006 Competition Act, and (ii) because of the wish of the Minister for a more ambitious institutional reform. The main aim was to accelerate, if not investigations, at least the decision-making process in infringement cases. It was also necessary to respond to the Vebic judgement of the Court of Justice and a judgement of the Constitutional Court concerning appeal procedures after dawn raids.

10. The Minister looked at the proposal of the Director general at a wide range of options going from a mild procedural reform to the option for a more far-reaching institutional reform maintaining a structural link with the SPF Economie (ministry of economic affairs), or even a prosecutorial model.

2.3 *How was the change implemented? What were the timelines? Were legislative changes required? Did you experience any internal or external resistance to the change? If so, how was that managed?*

11. The change was implemented by the insertion of a new competition act as Book IV in the new Code of Economic Law.

12. The political timeline was the time available to the Government between its entry into office in December 2011 and the end of the legislature in May 2014. The Government adopted the proposals in first reading in July 2012, and both chambers of Parliament have adopted the relevant texts on 21 March 2013 to become the Acts of 3 April 2013.

13. The only significant change to the substantive law provisions was the introduction of the possibility to impose administrative fines on natural persons.

14. The Directorate General of the previous authority was in charge of the drafting of the texts and the Director General was closely associated with the discussions among the members of the coalition and was heard by the parliamentary committees.

15. The main internal resistance came from the former *Auditorat* (which was part of the Competition Council) who felt, not without justification, that their position was downgraded in the new structure because the decision making body in the Council had not always taken decisions within time periods deemed reasonable by stakeholders. Their opposition was ignored by the Minister.

16. The main external resistance came from the Bar who were afraid that the Competition College in the new authority (the decision making body in formal cases) would lack independence from the *Auditorat* in charge of investigations and prosecution. They also feared that the introduction of strict procedural time limits would jeopardize the rights of the defendants. Their fears, shared by coalition partners, led *i.a.* to the option for an independent authority, and the provision for a two-step statement of objections procedures.

2.4 *How has the change worked out in your experience? What has worked well and what has not? Are there specific examples of successful outcomes (e.g., cases or policy initiatives) that would have been difficult to achieve prior to the change? What has been the biggest challenge?*

17. It is still early days. The *Auditorat* had to ready pendant cases for procedures before the College. This has lead predictably to a wave of appeal procedures concerning past dawn raids.

18. We have, however, been able to bring a major abuse case (draft decision submitted to the College of 860 pages) to a final decision within the strict time limits of the new rules (hearing two months plus small extension after submission of draft, and decision one month after hearing)(there is no appeal). We also dealt according to schedule with non-simplified merger cases, an interim relief case, an appeal against a decision of the *Auditorat* to reject a complaint, a confidentiality conflict and leniency applications. There were dawn raids in new cases.

19. The biggest challenge is concerned with recruitments. A new authority is an unknown entity and every instance involved in staff and budgetary matters needs convincing that they are allowed to grant what is asked regardless of the support of parliament (dotation) and minister.

20. The second challenge that makes that cases will remain in the pipeline till sometime in 2015, results from the appeal procedures with regard to previous dawn raids.