

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

PROACTIVE STRATEGY VIS-À-VIS NON MEMBERS

Competition Delegates will find enclosed FOR INFORMATION a letter from the Chair of the Committee to the Secretary General together with the Committee's proactive strategy as agreed at its June 2005 session.

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

DIRECTION DES AFFAIRES FINANCIERES ET DES ENTREPRISES
DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

Comité de la Concurrence
Competition Committee

Le Président
Chairman

14 June 2005

Dear Secretary General Johnston,

In your letter on 9 September 2004, you requested the Competition Committee to develop, further to the 2004 Council Resolution (C(2004)132/FINAL), a proactive strategy which defines the role and participation of non members' in the Committee's work.

I am glad to report that the Competition Committee has now agreed on its strategy which is laid out in the attached document. It focuses on criteria for the identification of potential observers in the Committee, which was the most challenging part of its strategy. The programme of other activities with non members, which was endorsed by the Committee is reported separately in DAF/COMP(2005)2/REV1.

The Committee's strategy, based on the Guidelines adopted by the Council, includes several commitments by each economy invited to participate as an observer: to associate themselves to certain Council Recommendations, to undergo a peer review exercise, to make written contributions to Committee roundtables, to actively participate in the Committee's outreach events and to disseminate the Committee's recommendations and best practices to other authorities. It is suggested that every invitation be for a period of two years at the conclusion of which it will automatically expire. During that two year period, no new invitation will be extended to ensure that all invitations start and run at the same time, ensuring full transparency. At the expiration of the two year period, the Committee will start from a clean slate to make its recommendations for future invitations. In this context, a review of the results achieved by non members invited during the expired period will be important. There will be no presumption of renewal; it will be earned by performance

At its October session, the Committee will in light of its strategy identify a list of non members that it will recommend to the Council for an invitation as observers.

I look forward to meeting you on 8 September when I will present the Committee's recent achievements to the Council.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Frédéric Jenny', with a stylized flourish at the end.

Frédéric Jenny
Chairman
Competition Committee

PROACTIVE STRATEGY VIS-À-VIS NON MEMBERS

1. The Committee discussed its proactive strategy towards non-members in February and June 2005, pursuant to the requirements and guidelines which appear in Annex I and II of the 2004 Council Resolution¹. This note reflects the agreement reached by the Competition Committee on the criteria for the identification of potential observers in the Committee; the programme of other activities with non-members is set forth in the note on outreach activities DAF/COMP(2005)2/REV1.

1. Towards increased participation of non-Members in meetings of the Competition Committee

2. Major benefits would flow if more countries were to enforce modern competition law as promoted by OECD competition work. As stated by Neelie Kroes, Member of the European Commission in charge of Competition Policy²,

Competition policy is a key driver for delivering an attractive environment for growth and jobs, not just in Europe, but also in every region of the world. (...) International competition is no zero sum game. The benefits of competitiveness, growth and lasting social and environmental development are mutually reinforcing. A properly managed environment for business growth, in global and regional trade markets, as well as at national level, that is the challenge all competition authorities face. And that is why opportunities to share thoughts and experience (...) are so valuable to all of us.

3. As suggested by the broad participation in the Global Competition Forum³, there is widespread interest among non members in OECD competition work. The question before the Committee now is how to identify from that large pool those which should be more closely associated as observers in the Committee. (While OECD competition outreach activities are appreciated by the participants, requests for observer status still come in.)⁴.

4. Today the Competition Committee includes six observers⁵: Argentina, Brazil, Israel, Lithuania, the Russian Federation and Chinese Taipei. Malaysia has recently applied and the OECD Council invited the Competition Committee to provide its recommendation in light of its outreach strategy -- C(2005)44. In addition, Latvia, Estonia, and Slovenia applied but consensus was not found. Romania has also expressed

¹ However, as in the past, expressions of interest from non-members to participate in Committees may also be addressed by them to the Secretary-General or arise during informal discussions with Committee Secretariats.

² Mrs. Kroes's speech at the GFC on 17 February 2005

³ See in DAF/COMP(2005)22 a report on the 2005 GFC

⁴ See in DAF/COMP(2005)2/REV1 a description of OECD competition outreach activities.

⁵ Their invitation expires at the end of 2005 and their possible renewal will be considered by the Council against the Committee's proactive strategy under discussion.

interest informally. Also, in February some delegates argued that the size of some countries' market and their weight in the global economy were so important that they can not be left out, even if their competition regime is not yet set up or up to speed. Brazil, China, India, Indonesia, Russia and South Africa were mentioned in this context.

2. Elements for consideration under the Competition Committee's Strategy

5. A pro-active strategy for the participation of non-members in the work of the Competition Committee will consider the following elements based on the Guidelines adopted by the Council (see these Guidelines in Annex 1) to identify the non-members to be invited and the appropriate form of participation. While each delegation will select its candidates based on its own weighing of the element(s), any recommendation for working with a non-member from the Committee to Council will be based on the over-arching consideration of mutual benefit, especially from the learning that can occur from Members and non-members working together, as judged across all of the elements listed below:

a) Whether non-member participation would facilitate appreciably the achievement of the mandate and the programme of work of the Competition Committee, in particular

- active involvement in OECD competition outreach activities;
- a commitment to associate themselves to recent OECD Council Recommendations on competition⁶;
- a commitment to share OECD experience with other non-members;
- belief by the Committee that the involvement and commitments would be effective in achieving the mandate and programme of work, measured initially by the number and geographical distribution of members nominating non members for consideration. The Committee decision on a recommendation to the Council will remain consensus based.

b) Whether and in what ways association of non-members with the Competition Committee's work would be of benefit to the Organisation including in fulfilling its mandate of contributing to the sustainable development of non-members, in particular

- a demonstrated willingness—including political commitment—and capacity to strengthen national competition law and policy;

⁶ This could include the four Recommendations adopted in the last ten years: the 1995 Cooperation Recommendation; the 1998 Hard Core Cartel Recommendation; the 2001 Recommendation on Structural separation in regulated sectors; the 2005 Merger Review Recommendation. The procedure for adoption of recommendations by non-members will be reviewed and simplified later this year.

- c) *Whether economic growth and/or the welfare of members, considered on a national, regional or global basis⁷, within the substantive area covered by the Competition Committee are influenced to a significant degree by the policy orientations of non-members, in particular*
- the size of the economy -- a level of economic activity and/or trade that contributes, or is likely to contribute, in a significant way to the global economy;
 - one way to make sure that the welfare of members is met could be in the nomination process of a non member, the number and geographical distribution of delegates supporting that nomination.
- d) *In relation to the substantive area covered by the mandate of the Competition Committee, the degree to which non-members' institutional and policy know-how contributes significantly to OECD peer learning/influencing and rule-making processes, in particular*
- existence of national experience that might be of interest to OECD member countries;
 - a commitment to share that experience, e.g., through the preparation of written contributions to roundtable discussions and
 - a commitment to undergo a peer review exercise.
- e) *The appropriate number of non-member participants, focusing both on the non-members and the time period of the invitations in light of the requirements of the mandate of the subsidiary body concerned, its programme of work and its methods of work, and*
- f) *The consequences that non-members' participation might have on the working methods, programme of work and Secretariat resources devoted to the subsidiary body concerned. In particular,*
- The Competition Committee should consider the appropriate number and geographic distribution of non-member participants.
- g) *In the case of full participants, the non-member has been found to be willing and able to commit to the relevant OECD acquis, as appropriate*
- "Full participation" (committee membership) may now be granted for a limited duration where it would provide greater mutual benefit than observership (e.g. within the framework of negotiating an OECD instrument, or for specific Committee activities).⁸ But, given that the Competition Committee does not generate binding instruments, the question of full participation does not arise.

⁷ The impact of a non-member's policies on an individual OECD Member state, or indeed on a region should not be of itself sufficient justification for that non-member's participation in an OECD body. National or regional impact should be merely one element in the analysis which Committees go through in drawing up a strategy.

⁸ [C(2004)132/FINAL Annex II, paragraph 6]

h) A consideration of the full range of vehicles to engage non-members in the work of the Organisation, as well as the limits and forms of the participation of non-members which appear desirable and most useful, to maximise the benefits and reduce any disadvantages

- For all invitations originating from the Competition Committee, first consideration should be given to whether continued participation in other OECD outreach activities would be of greater mutual benefit than observership in the Committee; recommendations for observership should also consider whether participation in specific activities would be more appropriate for a limited duration.
- Consideration should also be given to whether the potential observer has been an active participant in past outreach events.
- Non-members who are not observers or full participants may be invited, on an ad hoc basis, to participate in a meeting or part of a meeting. This was the case at the February 2005 session of the Committee with China, India, Indonesia and South Africa, which were invited to participate to the discussion on the OECD Initiative on Investment. Thus, the Competition Committee should consider inviting non-members to participate in specific activities where their interests and expertise would be particularly beneficial.

6. The points above suggest that the Committee's Strategy include several commitments by each economy invited to participate as an observer: to associate themselves to certain Council Recommendations, to undergo a peer review exercise, to make written contributions to Committee roundtables, to actively participate in the Committee's outreach events and to disseminate the Committee's recommendations and best practices to other authorities. It is suggested that every invitation be for a period of two years at the conclusion of which it will automatically expire. During that two year period, no new invitation will be extended to ensure that all invitations start and run at the same time, ensuring full transparency. At the expiration of the two year period, the Committee will start from a clean slate to make its recommendations for future invitations. In this context, a review of the results achieved by non members invited during the expired period will be important. There will be no presumption of renewal; it will be earned by performance. The final list of observers, , will of course be decided by consensus, and it is worth noting that while there is no figure limiting the number of observers to be invited, the Competition Committee retains the right to set a cap.

7. The Elements of the Strategy described above should assist the Competition Committee in identifying the adequate mix and number of non members to be invited as observers in the Competition Committee, and help mitigate the potential related costs on the programme of work implementation and on the conduct of discussions. The Strategy should be reviewed regularly in light of changes to the Committee mandate or programme of work orientations, as would be assessed on a yearly basis, under the invitation renewal procedure, the general performance of the invited non-members (see the template for evaluation of observers in CCN(2004)12/FINAL).

8. In addition, a guide will be developed to provide current and potential observers countries with a set of useful information on rights and obligations of observers. It will also provide background information for observer countries to plan their activities during the observership period. This guide will include a description of procedures within the Competition Committee for considering whether observership is appropriate.