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Please allow me to comment on the listed issues related to comparability without following this separation. The reason being that I think that all of the listed issues are to some extent linked, they cannot be looked upon individually and they do not fully cover the underlying issue of comparability.

Comparability is a reflection of the arm's-length principle. In its purest form, the principle merely requires transfer prices to be set under conditions that would reasonably be agreed upon between independent parties acting in a commercially rational manner. It does not strictly require the identification or even the actual existence of a comparable transaction between third parties.

But comparability is suggesting that the pricing of a transaction between independent parties can and should be used to justify the pricing of a similar transaction between dependent parties. When this is considered to be the starting point for looking at transfer pricing, in practice various issues arise, of which I would like to emphasize two:

- publicly available data is not detailed to a transactional level

nor is

- publicly available data is not revealing the circumstances that led to a certain pricing decision which is reflected in the margin

Taking comparability as a starting point leads to situation whereby in tax audits the debate is focusing on testing margins and the outcome of external comparables, without considering what the basis for comparison was and what is stated in Section 1.5 of the OECD Guidelines.

Therefore it is important to put less focus on external comparability as such, as this only leads to testing results, without understanding what is decisive in the pricing and what therefore generates the results.

It is important to put comparable data in its proper context and understand what is being compared. Therefore more focus is required on:

- Industry analysis (e.g. what is the business, how is it comprised, what are its developments, what are the key success factors, who are the competitors)

- Company analysis (e.g. how is the company subject to a transfer pricing analysis performing in the market place, SWOT, performance measurement, future)

These analyses from a macro perspective should be followed by an analysis from a micro perspective of the business operations of the company in question. Typically a functional analysis is being used for this mapping exercise.

A traditional functional analysis maps the functionality of a party that is part of a transaction. It is focused on the legal entity involved, its functions, risks and assets whereby the absolute contribution is relevant. It does not consider the fact that functions can be easily moved between legal entities and in itself do not create value. The approach ignores the connectivity within multinational enterprises.

This may appear to be a paradox, as the arm's length principle is focused on neutralizing this connectivity in a way that the pricing of transactions between related parties can be compared with the pricing of transactions between unrelated parties. But to do so, a detailed understanding of the transaction between related parties is needed. Therefore connectivity which create value cannot be denied as is being done with a traditional functional analysis.

To be able to understand the business operations, the analysis should focus on the processes, reflecting the connectivity between the functions, within the operations that generate the value, and the various responsibility centers. This type of analysis allows a combination of the industry and company analyses with the specifics of the company, while providing an understanding why certain pricing decisions are being taken and certain margins are being generated.

It also provides an overview of a legal entity's relative contribution to a certain process that generates value for the enterprise. In other words it maps the entire value chain of an enterprise, the connectivity between the various parties, and the relative contribution and responsibility of each. The part of process that is driven by an entity cannot be easily moved between entities.

The industry, company and business operation analysis provides the framework for a method analysis to answer the question which method fits with the fact pattern and complies with the arm's length principle.

It also provides the framework for a comparable analysis as it reveals the circumstances that lead to a certain decision. As the comparable data typically do not reveal these circumstances, the comparable analysis should not only focus on finding comparable transactional data for independent companies, but also consider other comparisons amongst others dependent companies (competitors) and integrated results. The outcome of this comparable analysis should be put in context of the framework of the industry, company and business operation analysis.

If the pricing of a transaction between related parties reflects the relative contribution and responsibility profile of each entity and can be supported by comparable date, this should be considered as sufficient to conclude that pricing has been done in accordance with the arm's length principle.