About the OECD Global Forum on Competition

Established in 2001, the OECD Global Forum on Competition brings together each year high-level officials from more than 100 competition authorities and international organisations worldwide, from both OECD and non-OECD economies. Joining with representatives of international organisations and invited experts, participants debate and discuss key topics on the global competition agenda. With a broad focus on development, the Forum promotes a wider dialogue that encompasses the linkages between competition policy and other cornerstones of economic development.

The programme includes OECD-style roundtable discussions, presentations from notable experts as well as peer reviews. Discussion topics benefit from the input of the Competition Committee whose work is at the forefront of debate on competition policy and enforcement. The Committee promotes the regular exchange of views, analysis and best practices on key competition policy issues and is supported by the Competition Division within the OECD Directorate for Financial and Enterprise Affairs.

www.oecd.org/competition/globalforum
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The 19th OECD Global Forum on Competition was held virtually for the first time due to the COVID-19 pandemic. From 7-10 December 2020, delegates connected to discuss four topics: “Competition Policy: Time for a reset?”, “Abuse of dominance in digital markets”, “Economic analysis in merger investigations” and the “Use of market studies to tackle emerging competition issues”.

Access the detailed programme.

1 839 participants connecting live at the opening session

114 delegations

19 international organisations

73 written contributions

24 invited speakers

95 competition authorities

Opening session

The Secretary-General of the OECD, Angel Gurría, opened the Global Forum by describing the damage of the COVID-19 pandemic in lives and wellbeing. He also noted the deep economic impacts, highlighting OECD research that shows a decline in business dynamism post-COVID, particularly in terms of lower firm creation. The Secretary-General emphasised that competition policy will be a key part of the economic recovery.

The Secretary-General described a range of challenges and debates in the competition policy community, including anticompetitive conduct in digital markets, policies that undermine a level playing field, and the need to consider new tools to promote competition. Despite potential disagreements in some areas, he noted the broad consensus among Global Forum delegates regarding the importance of competition for growth, productivity and economic wellbeing.

The Chair of the Global Forum, Frédéric Jenny, highlighted several fundamental questions for competition policy. First, he described concerns about the alleged lack of effectiveness of competition law to prevent increasing concentration. Second, he observed the potential post-COVID push to relocate firms or productions units, which amplifies calls for a more active industrial policy.
Third, he described the pressure on competition policymakers to include public policy goals such as sustainability or equality in their work. Fourth, he raised the question of how we can have a fair competition in a world of international trade characterized by widely different systems across trading nations. Fifth, he highlighted the debate about whether competition law enforcement to deal with the digital economy.

To introduce the keynote speaker, Margrethe Vestager, Executive Vice-President for A Europe Fit for the Digital Age and Commissioner for Competition of the European Commission, the Chair noted the various initiatives of the European Commission that seek to address these fundamental challenges for competition policy. In particular, he highlighted the Commission’s consideration of incorporating sustainability considerations in competition policy, its proposals to address the distortionary impact of foreign subsidies, and its proposal for a new competition tool.

Executive Vice-President Vestager delivered a keynote address that first highlighted the recent competition law enforcement work of the European Commission. She emphasised that the goals of competition policy do not need a “reset”, and in fact are as relevant as ever, whether in terms of promoting a green transition, benefitting from digitalisation, or recovering from the pandemic. However, the Executive Vice-President did suggest that competition policy tools need a “reboot”, outlining current initiatives at the European Commission to determine how competition policy can better promote environmental objectives, to regulate the conduct of digital firms, and to revise guidance on enforcement issues including market definition and horizontal as well as vertical agreements.
Panel discussion

Following the keynote address, there was an expert panel discussion on the same theme (Competition policy: time for a reset?). A distinguished line-up of speakers explored a range of fundamental questions about the future of competition policy. The expert panelists were William Kovacic, Global Competition Professor of Law and Policy; Professor of Law; Director, Competition Law Center, George Washington University; Diana Moss, President, American Antitrust Institute; Damien Neven, Professor Economics, Graduate Institute of International and Development Studies, Geneva and Senior Academic Advisor, Compass Lexecon; Hiroshi Ohashi, Dean, the Graduate School of Public Policy, Professor of Economics, University of Tokyo; Thando Vilakazi, Executive Director of the Centre for Competition, Regulation and Economic Development (CCRED), University of Johannesburg; Christine Wilson, Commissioner, US Federal Trade Commission.

The panel dealt with seven key questions. First, the panel discussed whether increasing mark-ups and concentration suggest competition is declining. A key message that emerged from this discussion is that further research is needed to understand the exact competition implications of these macroeconomic trends, given numerous potential explanations, including for example digitalisation and demographic changes.

Second, the panel explored the role of competition policy in setting the design of industrial policy, given the interest in the latter in the wake of the COVID-19 pandemic. Several experts emphasised the importance for active collaboration between competition and industrial policymakers, given that anticompetitive industrial policies could in fact have counterproductive effects.

Third, the panel considered if competition policy should be adjusted in light of concerns about globalisation, and the lack of a level international playing field. Some panellists cautioned against the adoption of retaliatory measures that would further distort markets, and called for greater efforts to reach agreements through the World Trade Organisation to address distortions.

Fourth, the panel sought to identify lessons learned from the implementation of public interest goals in competition enforcement in some jurisdictions. It was noted that these goals have been perceived as essential in some jurisdictions due to the historical and political context. However, several panellists emphasised the importance of transparency when implementing these objectives.

Fifth, the panel deliberated on the role of economics-based interpretations of competition law. While some panellists expressed the view that economic interpretations were fundamental to the certainty and legitimacy of competition law, others noted that these interpretations may depart from original legislative intent, or that they may neglect other important considerations for competition law.

Sixth, the panel reflected on the consumer welfare standard, and whether changes were needed. Several panellists opined that the standard was sufficiently flexible to respond to a wide range of competition concerns, but that there may be changes needed in the exact implementation of that standard (for example when weighing competition harm and efficiencies against each other, and establishing the right time frame for analysis).

Finally, the panel emphasised the importance of better understanding competitive dynamics in digital markets. Some panellists suggested that existing competition law frameworks are sufficient to address competition issues in these markets. Others pointed to the need for additional regulations, although concerns were expressed about how such regulation could be administered in a procompetitive manner.
The invited experts for this roundtable discussion were: Cristina Caffarra, Vice President and Head of the European Competition Practice at Charles River Associates; Amelia Fletcher Obe, Professor of Competition Policy, Centre for Competition Policy and Norwich Business School, University of East Anglia and Non-Executive Director of the UK Competition and Markets Authority; Pablo Ibáñez Colomo, Professor of Law, London School of Economics; and Lina Khan, Associate Professor of Law, Columbia Law School.

The session began with some experts opining that competition authorities should act before harms from misconduct can become further entrenched, given the risk of digital markets “tipping” into monopoly. They described several specific cases of abuses, or alleged abuses, as well as their effects on competition in the market. However, opposing views were also expressed, emphasising caution in departing from traditional theories and casting judgments on firms’ product design decisions, given the potential for competition law enforcement overreach.

Next, the roundtable featured presentations from several delegates about recent cases in digital markets, including theories of harm related to foreclosure, self-preferencing, discrimination and exploitative abuses. Other delegations shared their experiences in grappling with challenges related to questions of product design, gatekeeper roles, business justifications for conduct, and the adaptation of analytical tools to digital markets.

Finally, the discussion closed with a discussion regarding the design of remedies in digital abuse of dominance cases – a key challenge and source of controversy regarding competition authority decisions. The panel discussed the importance of demand-side factors, particularly consumer behavioural biases, in enabling potential abuses and in determining the success of failure of remedies. Several experts emphasised the need to better incorporate consumer behaviour into remedy design given questions about the effectiveness of some remedies imposed in digital abuse of dominance cases. Another panellist emphasised the need to ensure remedies are proportional to the magnitude of alleged harm in a case. Some delegates shared their experience with imposing specific remedies, including adjustments to algorithm design, whereas others described a strategy of broader, principles-based remedies that place the burden on the target of the investigation (although this may risk ineffective outcomes according to some panellists).

The panel and several delegates also explored the role of ex ante regulation in addressing issues that could not easily be fit within an abuse of dominance framework, and in addressing potential abuses of dominance that would require a burdensome, sector regulation-type remedy. Questions were raised about the effectiveness of ex ante regulation and the impact on business certainty. The new regulatory regimes, and the measures taken to address potential abuses in digital markets, were described by some delegations.
An expert panel discussion featured insights from several senior competition authority economist: **Herbert Fung**, Senior Director (Business and Economics), Competition and Consumer Commission, Singapore; **Guilherme Mendes Resende**, Chief Economist, CADE, Brazil; **Pierre Régibeau**, Chief Competition Economist, European Commission; **Oren Rigbi**, Chief Economist, Israel Competition Authority; and **Jill Walker**, Member of the Australian Competition Tribunal and former Commissioner at the Australian Competition and Consumer Commission (ACCC) and the New Zealand Commerce Commission (NZCC).

The discussion began with a presentation of the background paper for the session, which emphasised the importance of economic analysis throughout a merger review (i.e. from document review to the negotiation of remedies), the need to avoid excessive reliance on a single type of quantitative evidence, and the value of economists in reviewing qualitative evidence.

Next, the panel covered economic techniques for merger review. First, the discussion explored the need to use the right economic benchmarks, and to apply certain economic concepts carefully. For example, a broader understanding of a case and the underlying evidence is needed to place the single monopoly profit into context in a vertical merger. Second, the panel discussed the challenges associated with understanding the relationship between products, and highlighted cases in which the distinction between substitutes and complements may be blurred. Third, a delegate described techniques used in the ex-post assessment of mergers, and the importance of such an exercise.

Next, a case study was presented with demonstrated the application of economic techniques to define a geographic market and calculate diversion ratios, highlighting the need for careful understanding of context before applying quantitative evidence.

Finally, the panel discussed the role of economists on merger review teams. This discussion emphasised the value of economists in assessing mergers. In addition, the panel noted that for most authorities, economist resources are not unlimited, and they must therefore be used in an economical and strategic way.

Day 3 of the Forum also featured breakout sessions on 3 topics in 2 time slots. The breakout session topics were surveys and other data-gathering techniques, quantitative analysis, and the role of economists in merger review teams.

**Session materials**
- **VIDEO**: Key takeaways from the break-out sessions’ chairs
- **Background paper**
- **Executive summary with key findings**
- **Detailed summary of the discussion**
- **Summary of contributions**
- **Blog post** on Economising economic analysis for mergers in smaller markets
- **Blog post** on Economics in merger control

All session materials available at: oe.cd/eami
Use of Market Studies to Tackle Competition Issues

The invited experts for this roundtable discussion were: Andrea Coscelli, Chief Executive at the Competition and Market Authority in the UK; Alejandra Palacios, Chairwoman at COFECE in Mexico; Hardin Rashisusu, Deputy Commissioner at the Competition Commission of South Africa; Ana Sofia Rodrigues, Chief Economist at the Portuguese Competition Authority; Sangeeta Verma, Member of the Competition Commission of India; and Luis Gomes, representative of Business at the OECD.

The session began with a discussion of the advantages and limitations of market studies to tackle emerging competition issues. Some experts described the benefits as being a flexible and holistic tool to identify and diagnose emerging competition issues to recommend or impose effective remedies. Opposing views were also expressed on the need for competition authorities to impose remedies.

The session continued with presentations from several delegations describing the different objectives of market studies in relation to emerging competition issues. The most common objectives that arose from the discussion were the need to understand new or emerging markets, as a tool to prevent breaches in competition law; and as a tool to lead to regulatory changes as markets evolve.

Next, the roundtable focused on the role of cooperation between government agencies and competition authorities to tackle emerging issues. Several delegations shared their experience and highlighting the value of market studies to enable competition authorities to be part of the process of policy and regulatory development.

Finally, the roundtable featured presentations from several experts and delegation on the key challenges of using market studies in emerging and dynamic markets such as digital. The issue of access to data in digital markets emerged as a key challenge for many authorities. However, it was also discussed that market studies enable authorities to engage in a dialog with this new business community.

Finally, the discussion closed with the following key points:

- The increasing importance of the market study tool to understanding dynamic environments and new competition issues.
- Market studies can be used to engage in a dialog with new business communities, promote the development of government regulation with competition principles in mind, and compliment other advocacy and enforcement tools.
- Market studies allow competition agencies to link with government agencies early on and be a part of the process for policy/regulatory development instead of being on the side-lines.

Session materials

- OECD background note
- Executive summary with key findings
- Summary of the discussion
- Blog posts: How the UK and Mexico use market studies to tackle emerging competition issues.

All session materials available at: oe.cd/mstei