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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: EU's adherence to OECD Council Recommendations in the area of
Competition Policy – OECD Recommendation of 23 March 2005 on
Merger Review

Delegations will find attached a note from the Commission on the above-mentioned subject with a view to the meeting of the Working Party on Competition on 17 February 2025.

The OECD gathers 38 countries as Members, 22 of which are EU Member States¹. The European Union has a Participant status, which allows it to engage, participate and contribute to the work of the OECD on an equal footing with OECD Members, except for voting rights.

The OECD has developed over the years a comprehensive set of standards in the area of Competition Policy, reflected in a number of Recommendations adopted by the OECD Council.

EU Member States that are OECD Members have already expressed their political support for the OECD Recommendations at the OECD Ministerial Council meetings where the Recommendations have been discussed. Furthermore, when an EU Member State has become an OECD Member after the date of adoption of an OECD Recommendation, its political support has been expressed in the process of its accession to the OECD.

As the European Union is not a member of the OECD, it is not automatically committed to the provisions of a Recommendation adopted by the OECD Council. However, non-Members may adhere to OECD Recommendations. Adherence to an OECD Recommendation represents a political commitment by the Adherent to the principles and policy recommendations set out in the legal instrument. It does not constitute a certification of the implementation of the provisions of the Recommendation.

To date, the European Union has adhered to two OECD Recommendations in the area of Competition Policy, namely the Recommendation on Fighting Bid Rigging in Public Procurement of 17 December 2012, as amended on 8 June 2023 [[OECD/LEGAL/0396](#)], and the Recommendation on Intellectual Property Rights and Competition of 8 June 2023 [[OECD/LEGAL/0495](#)]. There are other OECD Recommendations in the area of Competition Policy that are in force and for which the Commission did not seek adherence by the EU at the time of their adoption by the OECD Council. The Commission has now screened those Recommendations and considers that the European Union should also adhere, inter alia, to the Recommendation of the Council on Merger Review of 23 March 2005 [[OECD/LEGAL/0333](#)].

This Recommendation was adopted by the OECD Council on 23 March 2005 on a proposal from the OECD Competition Committee, which gathers delegates of OECD Members including

¹ Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Bulgaria, Croatia and Romania are currently candidates for accession to the OECD.

representatives of the respective competition authorities. It recognises that effective merger review is an important component of a competition regime as it can help to prevent consumer harm from anticompetitive transactions which likely would reduce competition among rival firms and/or foreclose competitors. The Recommendation seeks to contribute to greater convergence of merger review procedures, including cooperation among competition authorities, towards internationally recognized best practices. It thus seeks to help to make merger review procedures more effective, while at the same time helping competition authorities and merging parties to avoid unnecessary costs in multinational transactions.

In particular, the Recommendation outlines principles for effective, efficient, and transparent procedures. Merger reviews should provide competition authorities with sufficient information to assess competitive effects while avoiding unnecessary burdens on merging parties and third parties. Jurisdiction should only apply to mergers with a clear connection to the reviewing country, using objective criteria for notification and reasonable information requirements. Procedures should allow expedited reviews for non-problematic mergers and offer flexibility in notification timing.

Decisions must be made within reasonable timeframes, with transparent rules and publicly available explanations for challenges or conditions imposed on mergers. Procedural fairness ensures merging parties can access and respond to concerns and seek timely judicial review of adverse decisions. Legitimate third parties should have opportunities to express views, foreign firms must receive equal treatment, and confidentiality of business information must be safeguarded. For cross-border mergers, Adherents should coordinate and cooperate to address concerns while avoiding conflicts with other jurisdictions. The Recommendation also emphasizes the importance of facilitating cooperation through agreements and encouraging merging parties to align notifications and voluntarily waive confidentiality rights. Furthermore, competition authorities should have sufficient resources and powers to conduct effective reviews and collaborate internationally, ensuring efficient enforcement in both domestic and cross-border cases.

The European Union, represented by the Commission (and by the rotating presidency prior to the entry into force of the Lisbon Treaty), has actively participated in the drafting of this Recommendation in close coordination with the EU Member States that were members of the OECD at the time they were adopted. The Recommendation, which does not create rights or obligations under international or domestic law, is highly relevant for the EU competition policy. Adherence to this Recommendation strengthens the EU's position to continue influencing the

development of global competition standards in merger control, promoting convergence toward best practices, and facilitates cooperation with other jurisdictions.

Moreover, in practice, the European Union already observes the key principles and guidance outlined in this Recommendation. The alignment between EU competition policy and the OECD recommendation on merger review stems from a shared commitment to ensuring a process that is transparent, efficient, effective, ensures procedural fairness and avoids unnecessary burden on merging parties. The EU is fully committed to international cooperation with other authorities to align the outcome of the merger review to the extent possible.

Effective, efficient, and timely review: One of the core OECD recommendations is that merger reviews should be effective, efficient, and timely. The EU merger review process mirrors this by setting clear procedural timelines. For example, the European Commission is required to conduct an initial review of a merger within 25 working days, extendable to 35 working days if remedies are needed (Phase I) and, if necessary, a more detailed investigation (Phase II) within 90 working days, extendable to 105 working days. This structured timeline ensures that companies face minimal uncertainty in terms of timing, aligning well with the OECD's emphasis on timely review.

Moreover, the information requirements are clearly established in the notification forms annexed to the Implementing Regulation.

Transparency and procedural fairness: The OECD Recommendation stresses the importance of transparency in merger laws and practices. The EU addresses this by publishing detailed Guidelines on Review Procedures and Merger Assessment which explain the criteria that the Commission will take into consideration in its assessment, enabling businesses and third parties to understand the legal standards and potential outcomes of merger reviews. The Commission also publishes all its decisions which include a detailed assessment explaining the outcome of the review, reflecting the OECD's call for transparency. Additionally, the EU provides procedural fairness by allowing merging parties ample opportunities to discuss and address any competitive concerns and seek redress through the EU courts if they disagree with the Commission's decisions.

Reduced burden for merging parties: the EU has repeatedly taken action aimed at streamlining procedures to avoid unnecessary costs for businesses. In April 2023, the Commission adopted a package of legal texts on merger procedures, the 2023 Merger Simplification Package, which consists of (i) a revised Implementing Regulation with the notification forms for normal and simplified cases in Annexes, (ii) the Notice on Simplified Treatment that establishes which cases

can be treated under the simplified procedure and (iii) the Communication on the transmission of documents to the Commission. The package aims to simplify and expand the scope of the Commission's review process of simplified cases. It also seeks to reduce the amount of information required for notifying transactions in all cases and to optimise the transmission of documents.

International cooperation and coordination: Given the global nature of many mergers, the OECD recommends coordination among competition authorities, and the EU actively participates in such coordination efforts. The Commission engages regularly with other competition authorities worldwide to coordinate on the outcome when appropriate. The Commission cooperates with agencies in the US, Canada, Australia, the UK and other jurisdictions to ensure consistent outcomes to the extent possible.

Overall, the EU's competition policy reflects a strong alignment with the OECD recommendation, focusing on efficient and transparent merger reviews that maintain procedural fairness, enable international cooperation, and avoid unnecessary burden.

Against this background, the Commission intends to declare the adherence of the European Union to this Recommendation. To that end, the Commission seeks the prior Council endorsement of that declaration of adherence.

Recommendation of the Council on Merger Review

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Council's Recommendation concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade [C(95)130/FINAL], which recommended that, when permitted by their laws and interests, Member countries should co-ordinate competition investigations of mutual concern and should comply with each other's requests to share information;

HAVING REGARD to the suggestions in the study of transnational mergers and merger procedures prepared for the Committee on Competition Law and Policy [Merger Cases in the Real World, A Study of Merger Control Cases (OECD 1994)] and to the Committee's work related to merger review procedures, including the Report on Notification of Transnational Mergers [DAFFE/CLP(99)2/FINAL];

RECOGNISING that the continued growth in internationalisation of business activities, and the increasing number of jurisdictions which have adopted merger laws, correspondingly increase the number of mergers that are subject to review under merger laws in more than one jurisdiction;

RECOGNISING that reviews of transnational mergers can impose substantial cost on competition authorities and merging parties, and that it is important to address these costs without limiting the effectiveness of national merger laws;

RECOGNISING that co-operation and co-ordination among competition authorities with respect to mergers of common concern can enhance the efficiency and effectiveness of the review process, help achieve consistent, or at least non-conflicting, outcomes, and reduce transaction costs;

RECOGNISING the benefits that can result from the ability of competition authorities to share confidential information with foreign competition authorities with respect to mergers of common concern, and considering that most competition authorities may not be authorised by law or international agreement to share confidential information with foreign competition authorities in merger review proceedings, and therefore may do so only if the parties voluntarily waive their confidentiality rights;

RECOGNISING that confidential information must be protected against improper disclosure or use if competition authorities share such information;

RECOGNISING the important work by other entities in the area of merger notification and procedures, in particular that of the International Competition Network;

RECOGNISING that Member countries are sovereign with respect to the application of their own laws to mergers;

I.RECOMMENDS as follows to Governments of Member countries:

A. Notification and Review Procedures

1. Merger review should be effective, efficient, and timely.

1. Member countries should ensure that the review process enables competition authorities to obtain sufficient information to assess the competitive effects of a merger.

2. Member countries should, without limiting the effectiveness of merger review, seek to ensure that their merger laws avoid imposing unnecessary costs and burdens on merging parties and third parties. In this respect, Member countries should in particular:

1. Assert jurisdiction only over those mergers that have an appropriate nexus with their jurisdiction;

2. Use clear and objective criteria to determine whether and when a merger must be notified or, in countries without mandatory notification requirements, whether and when a merger will qualify for review;

3. Set reasonable information requirements consistent with effective merger review;

4. Provide procedures that seek to ensure that mergers that do not raise material competitive concerns are subject to expedited review and clearance; and
 5. Provide, without compromising effective and timely review, merging parties with a reasonable degree of flexibility in determining when they can notify a proposed merger.
3. The review of mergers should be conducted, and decisions should be made, within a reasonable and determinable time frame.
2. Member countries should ensure that the rules, policies, practices and procedures involved in the merger review process are transparent and publicly available, including by publishing reasoned explanations for decisions to challenge, block or formally condition the clearance of a merger.
3. Merger laws should ensure procedural fairness for merging parties, including the opportunity for merging parties to obtain sufficient and timely information about material competitive concerns raised by a merger, a meaningful opportunity to respond to such concerns, and the right to seek review by a separate adjudicative body of final adverse enforcement decisions on the legality of a merger. Such review of adverse enforcement decisions should be completed within reasonable time periods.
4. Merging parties should be given the opportunity to consult with competition authorities at key stages of the investigation with respect to any significant legal or practical issues that may arise during the course of the investigation.
5. Third parties with a legitimate interest in the merger under review, as recognised under the reviewing country's merger laws, should have an opportunity to express their views during the merger review process.
6. Merger laws should treat foreign firms no less favourably than domestic firms in like circumstances.
7. The merger review process should provide for the protection of business secrets and other information treated as confidential under the laws of the reviewing jurisdiction that competition authorities obtain from any source and at any stage of the review process.

B. Co-ordination and Co-operation

1. Member countries should, without compromising effective enforcement of domestic laws, seek to co-operate and to co-ordinate their reviews of transnational mergers in appropriate cases. When applying their merger laws, they should aim at the resolution of domestic competitive concerns arising from the particular merger under review and should endeavour to avoid inconsistencies with remedies sought in other reviewing jurisdictions.

2. Member countries are encouraged to facilitate effective co-operation and co-ordination of merger reviews, and to consider actions, including national legislation as well as bilateral and multilateral agreements or other instruments, by which they can eliminate or reduce impediments to co-operation and co-ordination.

3. Member countries should encourage merging parties to facilitate co-ordination among competition authorities, in particular with respect to the timing of notifications and provision of voluntary waivers of confidentiality rights, without drawing any negative inferences from a party's decision not to do so.

4. Member countries should establish safeguards concerning the treatment of confidential information obtained from another competition authority.

C. Resources and Powers of Competition Authorities

Member countries should ensure that competition authorities have sufficient powers to conduct efficient and effective merger review, and to effectively co-operate and co-ordinate with other competition authorities in the review of transnational mergers. They should be cognisant that competition authorities need sufficient resources to fulfil these tasks.

D. Periodic Review

Member countries should review their merger laws and practices on a regular basis to seek improvement and convergence towards recognised best practices.

E. Definitions

For purposes of this Recommendation:

“Competition authority” means a government authority or agency charged in general with the review of mergers under the merger laws of a Member country. "Competition authority" does not include a government authority that is responsible for the review of mergers only in a specific industry sector.

“Merger” means a merger, acquisition, joint venture, or any other form of business amalgamation, combination or transaction that falls within the scope and definitions of the competition laws of a Member country governing business concentrations or combinations.

“Merger laws” means the competition laws of a Member country applied by competition authorities in the review of mergers, and the procedural rules governing such reviews.

“Transnational merger” means a merger that is subject to review under the merger laws of more than one jurisdiction.

II. INSTRUCTS the Competition Committee:

1. To explore further means to enhance the effectiveness of merger review, reduce the costs of reviewing transnational mergers, and strengthen co-ordination and co-operation among agencies, including by co-ordinating with other international organisations addressing these issues;
2. To periodically review the experiences under this Recommendation of Member countries and of non-member economies that have associated themselves with this Recommendation; and
3. To report to the Council as appropriate on any further action needed to improve merger laws, to achieve greater convergence towards recognised best practices, and to strengthen co-operation and co-ordination in the review of transnational mergers.

III. INVITES non-member economies to associate themselves with this Recommendation and to implement it.