Recommendation of the Council on Merger Review

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Background Information

The Recommendation on Merger Review (hereafter the "Recommendation") was adopted by the OECD Council on 23 March 2005 on the proposal of the Competition Committee. The Recommendation was revised by the OECD Council meeting at Ministerial level on 3 June 2025 with a view to reflect the latest developments and internationally recognised best practices in merger review and analysis.

The revised Recommendation recognises that merger control is a key component of competition regimes as it prevents harm from anti-competitive transactions that might reduce competition. It aims to contribute to greater convergence of merger review procedures and analysis towards internationally recognised best practices.

OECD's work on merger review since the adoption of the Recommendation in 2005

Since the adoption of the Recommendation in 2005, the Competition Committee has debated on issues related to merger control more than 25 times, on topics such as:

- Powers and procedure (such as Disentangling Consummated Mergers – Experiences and Challenges, Gun jumping and suspensory effects of merger notifications, Jurisdictional nexus in merger control regimes, The Relationship between FDI Screening and Merger Control Reviews and Investigations of Consummated and Non-notifiable Mergers);
- Relevant definitions for merger control (including Definition of Transaction for the Purpose of Merger Control Review);
- The importance of economic analysis (namely, Economic analysis in merger investigations, Non-price effects of mergers, and Market concentration);
- Aspects related to market definition and characteristics (such as Merger control in dynamic markets and Geographic market definition across national borders);
- The effects of mergers (in roundtables on Theories of Harm for Digital Mergers, Competition and Innovation - The Role of Innovation in Enforcement Cases, Conglomerate effects of mergers, Start-ups, killer acquisitions and merger control, Vertical mergers in the technology, media and telecom sector and Public interest considerations in merger control); and
- Remedies (discussions on Ex-post assessment of merger remedies, Consumer-facing remedies, Extraterritorial reach of competition remedies, Agency decision-making in merger cases: Prohibition and conditional clearances and Remedies in Cross-border Merger Cases).

Through these discussions and the work conducted by the Competition Committee on mergers, the Committee identified key developments on procedural and substantive matters that have caused merger regimes to converge more. Thus, the update of the Recommendation was considered necessary to ensure its continued relevance for competition policy and enforcement.

Process for revising the Recommendation

Working Party No. 3 on co-operation and enforcement started discussing the need to update the Recommendation in 2023. The update process was guided by a group of interested delegates, together with the Secretariat, and involved multiple discussions and drafts, both within this group and the Working Party. A draft was also shared with other relevant OECD policy communities for comments before being transmitted by the Competition Committee to the OECD Council for adoption.

The Secretariat also organised a Stakeholders' webinar to present the building blocks of the draft revised Recommendation and increase its visibility and relevance. Invited stakeholders included representatives of Business at OECD (BIAC), the International Bar Association (IBA), and academics with extensive expertise in this area.

Scope of the 2025 revision

The 2005 version of the Recommendation covered four main areas: i) the notification and review procedures, including aspects of procedural fairness; ii) the co-ordination and co-operation with respect to transnational mergers; iii) the resources and powers of competition authorities; and iv) the periodic review of merger laws and practices. While most of those principles remain relevant, the 2005 version of the Recommendation focused on procedure and left aside merger analysis.

Additionally, the OECD Council had adopted in 2014 the Recommendation Concerning International Co-operation on Competition Investigations and Proceedings [OECD/LEGAL/0408] and in 2021 the Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement [OECD/LEGAL/0465], which overlapped with some of the areas covered in the 2005 version of the Recommendation. Therefore, the revision built up on the principles that remained relevant, removed some to avoid duplication, and included principles focused on merger analysis in the Recommendation.

Accordingly, the Recommendation as revised sets out key principles for merger review to be effective, efficient and timely, with clear notification and review procedures and effective and transparent assessments. It recognises the importance for competition authorities to have sufficient flexibility in the analysis of mergers to address changing market realities and business models, including, for example, those presented by the digitalisation of the economy.

The main elements of its revision are:

- The strengthening of principles related to merger review framework, notification and review procedures.
- The inclusion of principles to guarantee reliance on a clearly defined framework to ensure that merger assessment is effective and transparent.
- The focus on the provision of clear guidance for the design, assessment and adoption of merger remedies, as well as on co-operation between reviewing jurisdictions on remedy design and implementation in transnational mergers.
- The encouragement to perform ex-post assessment of merger decisions and remedies.

Next steps

The Competition Committee will support the implementation of the Recommendation by serving as a forum to exchange information and experiences with respect to its implementation. The OECD Secretariat will continue to develop relevant analytical work, roundtables, hearings, workshops and conferences in support of Adherents' and Committee's work to implement the Recommendation. The Competition Committee will report to Council on the implementation, dissemination and continued relevance of the Recommendation in 2030.

For further information please consult: www.oecd.org/competition.
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Implementation

2013 Report to Council

A report on the dissemination, implementation, and continued relevance was presented to Council in 2013. It identified that the 2005 version of the Recommendation reflected accurately areas of convergence between Adherents and that it continued to be important and relevant. At that moment, the Competition Committee did not identify any special need to revise the 2005 version of the Recommendation but agreed to continue to work on merger-related topics that could, in a later stage, result in the identification of best practices to support new or updated policy recommendations.

Some areas for possible further discussion identified in the 2013 Report were the type of transactions that constitute a merger for the purpose of merger control and co-ordination in the definition and implementation of remedies in cross-border cases. The published version of this report is available at this link.
The next reporting to Council is scheduled to take place in 2030.

THE COUNCIL,

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

HAVING REGARD to the standards developed by the OECD in the area of competition law and policy, and particularly on international co-operation in competition investigations and proceedings, transparency and procedural fairness in competition law enforcement, and competitive neutrality;

CONSIDERING that merger control is a key component of competition regimes as it prevents harm from anti-competitive transactions that might reduce competition;

CONSIDERING the importance of well-reasoned decision-making, and efficient procedures to ensure effective and transparent merger control, as well as the value of competitive neutrality and international enforcement co-operation in fostering efficient merger review, and supporting consistent outcomes;

RECOGNISING the importance for competition authorities to have sufficient flexibility to address changing market realities and business models, including, for example, those presented by the digitalisation of the economy;

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

RECOGNISING that Members and non-Members adhering to this Recommendation (hereafter the "Adherents") have different legal and institutional frameworks through which they will implement this Recommendation.

On the proposal of the Competition Committee:

Merger review framework

I. RECOMMENDS that Adherents have a clear legal framework for merger review to be effective, efficient, and timely. To that effect, Adherents should:

1. Provide the powers and resources necessary for the effective enforcement of merger laws.

2. Ensure appropriate powers are in place to obtain sufficient information to assess the implications of a merger, while at the same time setting reasonable information requirements and avoiding imposing unnecessary costs and burdens on merging parties and third parties.

3. Conduct merger reviews and take decisions within a reasonable and determinable time frame, considering the characteristics of the merger under review and the timely submission of necessary information by merging parties.

4. Use a clear framework for analysis based on legal and economic principles that take into account:

   a) the particularities of the transaction and market dynamics; and

   b) developments in economic analysis, as well as best practices.

5. Conduct a merger review in a manner that is neutral to the seat of the merging parties.

Merger notification and review procedures

II. RECOMMENDS that Adherents provide clear principles applicable to merger notifications and review procedures. To that effect, Adherents should:

1. Have a clear definition of reviewable mergers, including guidance on the definition of control, where relevant, and the calculation of notification thresholds and jurisdictional tests.

2. Use clear and understandable criteria to determine whether and when a merger must be notified or, in absence of mandatory notification requirements, whether and when a merger will qualify for review.

3. Adopt a standstill obligation in ex-ante, mandatory regimes.

4. Consider reviewing periodically the merger notification thresholds in mandatory merger regimes and the criteria on whether and when a merger qualifies for review in voluntary ones.

5. Consider having appropriate tools to review mergers that do not meet notification thresholds but could result in harm to competition.

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

7. Consider procedures to ensure that mergers that are unlikely to raise competition concerns can be subject to expedited review, subject to the competition authority's discretion to undertake a more detailed review if appropriate.

8. Provide for the possibility of pre-notification discussions when appropriate.

Merger Analysis

III. RECOMMENDS that Adherents ensure that merger assessment is effective and transparent. To that effect, Adherents should:

1. Rely on a clearly defined substantive framework to assess the implications of a merger, including by reviewing whether a merger may, inter alia, lead to:

   a) unilateral effects, as it creates or strengthens market power for the merging firms, and/or substantially reduces competition. A merger may significantly harm competition by eliminating or reducing competitive pressure from a current or potential competitor. A merger may also harm competition in cases where one of the merging firms already has a position with substantial market power and the merger may lead to the entrenchment or extension of that position. Unilateral effects may result from a merger between rivals or potential rivals ("horizontal" mergers) or from a merger between firms that are not rivals or potential rivals ("non-horizontal" mergers);

   b) co-ordinated effects, as it increases the likelihood of anti-competitive co-ordination between some or all market players, or makes existing co-ordination more stable or effective, explicitly or tacitly. For example, a merger may reduce the number of market participants; increase the similarities between firms or make leader-follower co-ordination more likely; eliminate or change the incentives of a maverick (or firm with a disruptive presence); increase transparency; create structural or commercial links between competitors such as minority shareholdings, cross-board memberships or commercial agreements; reduce incentives to

innovate or invest in capacity expansion; or increase multi-market contacts. Like unilateral effects, co-ordinated effects may result from either “horizontal” or “non-horizontal” mergers;

c) other effects, typically caused by “non-horizontal” mergers, as it increases the risk of foreclosure in any of the markets impacted by the merger, notably if the merged firm can harm competition by (i) limiting or degrading access to a product, service or route to market that its rivals may use to compete, (ii) limiting rivals’ access to a customer base, (iii) accessing and using its rivals’ competitively sensitive information, or (iv) otherwise leveraging its market position from one market to another, related market.

2. Take into account, inter alia and according to the applicable legal framework, whether the merger (i) is part of a series of multiple mergers or a trend toward industry consolidation, (ii) involves multi-sided platforms or competition between ecosystems, (iii) has effects on innovation (including reducing incentives to innovate) or dynamic competition, (iv) increases buyer power or co-ordination among buyers for goods and services resulting in harm to competition, and/or (v) involves the acquisition of minority or partial control, or common ownership.

3. Consider market definition as one useful step in the assessment of a merger, although this step may not be necessary in every jurisdiction.

4. Rely on appropriate methodologies to assess a merger, depending on its particularities, which may include the market structure and how it would change as a result of the merger, the calculation of market shares and market concentration, the assessment of the impact of mergers on the capabilities or incentives of the merging parties or competitors, and the prediction of harm (such as price increases or worsening of non-price factors) that would follow a lessening of competition caused by the merger.

5. Continually seek to expand and adapt methodologies to better fit market realities.

6. Assess the implications of a merger across key strategic variables of competition such as prices, quality, capacity, output, innovation, dynamic competition, product variety, and data, depending on the particularities of the merger.

7. Use appropriate and available evidence to assess the implications of a merger such as third-party views and internal documents of the merging parties created in the ordinary course of business.

8. Take into account actual and potential competition when analysing a merger, including the closeness of competition between merging firms when both are active in the same market, as well as potential competition, when one of the firms is a potential competitor in the market of the other.

9. Consider whether there are any constraints, including the existence of alternative suppliers or likely, timely, and sufficient entry or expansion of competitors, on the ability of merging parties to exercise market power, co-ordinate their behaviour or foreclose rivals after the implementation of the merger.

10. Acknowledge that the review of mergers involves a certain degree of uncertainty, which varies according to the characteristics of each transaction, and that uncertainty does not by itself reduce the likelihood that a merger could give rise to competition concerns.

11. Evaluate substantiated claims by the merging parties, as follows:

a) For procompetitive efficiencies claims, consider whether they are merger-specific, likely, timely, verifiable, and offset the harm to competition.

b) For claims that one merging party is likely to fail and its assets will cease playing a competitive role in the market without the merger, require, inter alia, evidence that the business was likely to have exited and the existence of less anti-competitive alternative buyers or other options for reorganisation are not viable, and that the exit of the firm's assets would cause more harm to competition than the merger.

Remedies

IV. **RECOMMENDS** that Adherents provide clear guidance for the design, assessment, and adoption of remedies. To this effect, Adherents should:

1. Accept remedies that resolve entirely the competition concerns resulting from the merger and are capable of being implemented and monitored effectively.

2. Explain the type(s) of remedies accepted as well as any preferred remedies, as set out in the legal framework; the policy objectives and procedures used to evaluate remedies; and the mechanisms for monitoring and compliance with remedies.

3. Prioritise structural remedies over behavioural ones and, for structural remedies, prioritise the divestiture of standalone businesses.

4. Adopt or seek a prohibition decision if there is no remedy available that would fully resolve the identified competition concerns.

5. Co-operate with other reviewing jurisdictions on remedy design and implementation in transnational mergers, so as to bolster their effectiveness while avoiding inconsistencies.

6. Ensure that remedies are effective in light of market dynamics and applicable sectoral regulation.

Ex-post assessment

V. **RECOMMENDS** that Adherents consider performing ex-post assessment of merger decisions and merger remedies.

VI. **INVITES** the Secretary-General and Adherents to disseminate this Recommendation.

VII. **INVITES** non-Adherents to take account of, and adhere to, this Recommendation.

VIII. **INSTRUCTS** the Competition Committee to:

a) serve as a forum to exchange information and experiences with respect to the implementation of this Recommendation, in particular to promote best practices for merger review;

b) consider developing a toolkit to support Adherents' implementation of this Recommendation; and

c) report to Council on the implementation, dissemination and continued relevance of this Recommendation no later than five years following its revision and at least every ten years thereafter.

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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- **Decisions** are adopted by Council and are legally binding on all Members except those which abstain at the time of adoption. They set out specific rights and obligations and may contain monitoring mechanisms.

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- **Substantive Outcome Documents** are adopted by the individual listed Adherents rather than by an OECD body, as the outcome of a ministerial, high-level or other meeting within the framework of the Organisation. They usually set general principles or long-term goals and have a solemn character.

- **International Agreements** are negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.

- **Arrangement, Understanding and Others**: several other types of substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.