



The Role for Competition Policy in the Economic Recovery

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Overview

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- Insights from Previous Economic Crises

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- A framework to assess competitive neutrality distortions in the context of economic recovery

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- Methodology and framework of analysis for role of SOEs



THE OECD BACKGROUND NOTE

<https://www.oecd.org/daf/competition/role-of-competition-policy-in-promoting-economic-recovery.htm>

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Some Insights from previous crises

- A. Suspension of antitrust laws holds back recovery**
 - Tales from the Great Depression
- B. Lax merger control in times of crisis does not improve resilience**
 - Lloyd's and HBOS merger – financial stability vs market power (duopoly in certain markets)
- C. State support should exclude zombie firms, and include exit incentives and strategies**
 - TARP and GM
- D. Crises may strengthen the case for pro-competitive structural reforms**
 - Greece following the Global Financial Crisis



Competition policy is a key element in the response for the recovery

- **Ensure governments respect the principle of competitive neutrality** when it comes to the deployment of state support
- **Competition authorities must be part of a whole-of-government response to the COVID crisis** and can help promote structural and regulatory pro-competitive reforms
- Governments must **empower and resource authorities** so that they maintain effective levels of enforcement



2021 OECD Recommendation on Competitive Neutrality

A principle according to which all enterprises are provided a level playing field with respect to a state's ownership, regulation or activity in the market





What is competitive neutrality?

- All enterprises should face the same set of rules
 - Enforcement and regulations
- No action by the state should bring about a competitive advantage to any market participant => ***It's not just about subsidies!***
- The law and its enforcement should not discriminate between State-Owned Enterprises (SOEs) and private competitors, or between different types of private enterprises => ***It's not just about SOEs!***



Competition advocacy for recovery

- **Competition authorities' advocacy role**
 - Government interventions may fail to account for unintended consequences on markets
 - Selective state intervention can un-level the playing field and soften competition
 - State support can disrupt dynamics of market entry and exit
 - Competition considerations should be taken into account in the policy making decision making process



A Framework of analysis



Competition advocacy for recovery

- **Competition principles for an economic analysis of state support**
 - Competition authorities may use these to help governments define which firms can be eligible and how that support can be used
 - **Balancing test**
 - Objective of the aid
 - Most appropriate, well targeted, and proportional
 - Balancing of the positive impact and expected competition distortions



Competition advocacy for recovery

- **Claw-back Mechanisms**
- **Remedies for mitigating competition distortions**
 - Compensatory measures directly linked to the expected distortion
 - Structural or behavioral remedies
- **Design of exit strategies from state support**
 - Sunset clauses
 - Necessity, clarity, and withdrawal as conditions for state support are no longer in place
- **Competition should be a cornerstone of industrial policy**



Pro-competitive reforms – an opportunity

- Structural and regulatory pro-competitive policy reforms to support recovery and growth
- 2009 OECD Recommendation on Competition Assessment
 - Competition Assessment Toolkit
- Examples from past crises and current crisis
 - Greece, Mexico, Spain



Methodology and framework of analysis



ASEAN Project: Process

Pre-qualifying questions on SOE / GLM to determine scope of the study

Screening of legislation and meetings with stakeholders to identify legal provisions and practices potentially affecting the level playing field

In-depth analysis, considering rationale and potential impact, and international comparison

Recommendations on pro-competitive reforms identifying alternatives to achieve the same socio-economic objectives with less restrictive means



Factors to consider

- Are the distortions of competition and trade limited so that the overall balance is positive?
- When assessing this question, we take into account a number of factors, including :
 - a) Access to aid (Selection process of beneficiaries)
 - b) Aid characteristics (amount of aid, duration, repetition)
 - c) Market power of beneficiaries
 - d) Market characteristics (structure, capacity utilisation)



A checklist for assessing SOEs' impact on competition

A. Distorted structure of governance and the market

1. Is the SOE governed and managed as an arm of the government?
2. Does the SOE operate free of a commercial rate of return objective in its economic activities?

B. Distorted access to the market

1. Does the SOE benefit from favourable regulatory treatment?
2. Does the SOE benefit from privileged access to public procurement markets?

C. Distorted incentives and behaviour in the market

1. Does the SOE price its economic activities at levels not reflective of costs?
2. Does the SOE benefit from favourable tax treatment?
3. Does the SOE benefit from favourable access to debt or receive public subsidies?



Key potential distortions of competition by SOEs

Monopolies and advantages as incumbents

- Governments may entrust SOEs with exclusive or monopoly rights over certain activities; these may foreclose access to competitors, as well as artificially enhance SOEs' competitiveness in other markets open to competition

Other preferential treatment under sectoral regulation

- SOEs may not be subject to the same regulatory regimes as private firms (e.g. exemptions from licensing or reporting requirements)

Lack of separation between regulatory and commercial functions

- SOEs may be entrusted with both commercial and regulatory functions, or the same government entity may act as sectoral regulator and as owner of the SOE

Exemptions from generally applicable corporate rules

- Different legal forms of SOEs could lead to apply corporate rules, exempting, for instance, SOEs from bankruptcy, insolvency procedures or hostile takeovers

Outright subsidies

- SOEs may receive direct state subsidies – not equally accessible to all – or may benefit from other forms of state assistance to sustain their commercial operations, including favourable tax regimes or exemptions

Concessionary financing

- SOEs may enjoy credit provided directly by governments or through state-controlled financial institutions at below-market interest rates; this distortion is also linked to explicit or implicit state guarantees



Conclusions

- Competition law and policy is **not a political luxury good** but can play an important role in the economic recovery
- Governments may fail to account for unintended consequences on the market - competition advocacy can help for better policy decision
- Competition authorities should **participate in assessing the costs to competition** of any state support measure
- Competition authorities can support economic recovery by **redirecting enforcement resources towards markets and industries that are important to recovery**



Thank you