Guide for helping competition authorities assess the expected impact of their activities

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Many competition authorities[1] perform and often publish assessments of the overall 'impact' of their decisions: these assessments quantify in a simple and concise manner the benefits *expected* to result from the decisions on mergers and antitrust infringements they took over the period under examination.

This kind of assessment is very different from the *ex-post* evaluation of one or more specific decisions, which some agencies also undertake. An *ex-post* evaluation involves the assessment, a few years after a decision has been made, of the *actual* effects of that individual decision. Since competition decisions require some time to produce their effects, this implies that ex-post evaluations can identify and assess the *actual* effects they generate. Impact assessments, instead, refer to all the decisions taken by the authority over a period of time, or a subset of them (e.g. all cartel decisions) and are performed soon after these decisions are made, hence they can only estimate their *likely* effects on the basis of assumptions.

Competition authorities that perform and publish impact assessments do so for differing reasons, but most would cite the advantages of having a few simple measures of the value of their work to present to the public and to the Government. Usually these assessments are included in annual reports.

This Guide suggests an approach that authorities could refer to, when carrying out an impact assessment of their activities.

1. Scope of the assessment

For impact assessment to be comprehensive, it should:

i. Include as a minimum the impact of all decisions relating to blocked mergers, mergers approved with remedies and cartels.

When possible the impact assessment should also include abuses of dominance/monopolisation (though the latter are difficult to assess and some agencies may wish not to cover them). The impact of other decisions, such as vertical agreements, and of other activities, such as market/sectoral studies, may also be added.

[1] Note that not all competition authorities in OECD jurisdictions perform such assessments.

ii. **Cover all the decisions listed above taken over the course of the previous year.** [2]

Decisions that are appealed can be included in the year in which they have been taken, or may be included once they have become final (either because the final degree of appeal has been reached or because they have not been further appealed). Each agency should decide the approach it prefers, ensure that this approach is consistent over time and it does not lead to any double counting of benefits.

iii. **Account for the benefits accrued to consumers.**

Consumers can be intermediate consumers or final consumers depending on the market(s) affected by the decision.

2. Suggested general principles

This Guide proposes the following general principles for calculating and reporting the benefits that accrue from agencies' decisions:

i. **Whenever possible use case-specific information.**

Using the information that led to the decision enables a more accurate assessment; however when this information is not available simple default assumptions can be used. Section 3.2 of this Guide suggests a set of default assumptions, based on the paper prepared by Prof. Stephen Davies for the OECD,[3] which could be employed when case-specific information is not available.

ii. **Assume that no intervention will have a negative impact.**

No agency would intervene to block a merger or stop a business practice if it considered that its decision would not generate any benefits for consumers. Hence, it can be assumed that all the authority's decisions will have a positive impact.

iii. **Estimate static consumer benefits and when possible also include dynamic ones.**[4]

As a minimum the static benefits of each intervention should be assessed. There exist well-accepted methodologies to quantify these benefits, so calculating them is simple. The same cannot be said for dynamic benefits. However, when the dynamic

2 This guide often refers to one year as the period over which the impact assessment should be carried out, because many agencies perform, or aim to perform, this exercise yearly. However, the assessment could also be less frequent (e.g. every two years), in which case any reference to a year should be interpreted as referring to the period of time over which the assessment is performed.

3 Assessment of the Impact of Competition Authorities' Activities, Note by Prof. Stephen Davies available at: http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2%282013%291&docLanguage=En. See also the Annex to this Guide.

4 Static effects are the effects of an intervention on prices, while dynamic effects are the effects on innovation, quality and productivity.

effects of a decision are important and there are clear ways to determine their likely magnitude with some certainty, these effects should be included.

iv. Calculate and publish the impact assessment regularly.

The likely impact of the activities of an agency should be assessed regularly, and the results should be published on the agency's website to promote accountability and transparency.

v. Present the results both as an annual figure and as an annual moving average over three years.

The assessment of the impact of the activities of an agency should be calculated as an annual figure. However, this figure should be presented alongside a moving average over a three-year period to reduce the variability in estimates resulting from cases in particularly large or small markets that can happen in a single year.[5]

vi. Present the results by type of decisions, when possible.

To ensure greater transparency, the results of the assessment should be presented separately for the different types of decisions, (e.g. the estimated impact of cartel decisions should be separated from that of merger decisions and from that of abuse of dominance/monopolisation cases). However, this may not be possible for confidentiality reasons, in which case a single overall figure will have to be produced.

vii. Give 'point' estimates within a range of plausible values.[6]

In addition to calculating an estimate of the impact of each type of intervention, it is useful to perform a sensitivity analysis[7] using a more conservative set of figures and a less conservative one. This range of values should be presented alongside the point estimate.

5 Clearly if the assessment is performed less frequently there may be no need to present a moving average alongside the single overall figure.

6 The Annex to this note shows that there are agencies that use ranges when they calculate the impact of their activities.

7 Sensitivity analysis is used when there is uncertainty regarding the value of one or more variables used in a calculation of an outcome. Sensitivity analysis shows how the results would change if the value of those variables was different. One simple way to perform such an analysis is to determine the range of values within which each of the uncertain variables are likely to fall and perform the calculation using the highest and lowest values to assess how the final outcome would vary. These figures should then be presented alongside any point estimate to show how the outcome could change in different states of the world.

3 Methodology

To make it practicable, regular assessments of impact should be based upon a simple and easily-applicable methodology, which should be relatively undemanding in terms of cost and time. To this end this Guide suggests the following methodology:

- Calculate a simple estimate of the consumer benefits resulting from the decisions, which always considers their static effects and, where the information available allows it, also includes their dynamic effects.
- Use case specific data, but if this is not available employ the default assumptions suggested in this Guide (see section 3.2 below).

3.1 A simple estimate of the consumer benefits

In order to assess the static consumer benefits resulting from each decision, the approach herein suggested is to estimate:

- the size of the affected turnover;
- the price increase removed or avoided; and
- the expected duration of the price effect.

The total benefit is the product of these three figures.

3.2 Default Assumptions

When specific information is available that allows calculation of the three figures listed above, this information should be used, because it ensures greater precision in the assessment of the likely benefits.[8] However, when such information is not available, or it cannot be used for confidentiality or other legal reasons, this Guide suggests using the following assumptions:

- for the size of the affected turnover:
  - ✓ in cartel and abuse of dominance cases, the ex-ante turnover of the companies under investigation in the affected market(s);
  - ✓ in merger cases, the ex-ante turnover of all the firms in the affected market(s).
- for the expected price effect:
  - ✓ in cartel cases, an overcharge of 10%;
  - ✓ in abuse of dominance cases, a price increase of 5%;
  - ✓ in merger cases, a price increase of 3%.

8 This information may have been collected as part of the original investigation.

- For the likely duration of the price increase absent the competition agency's intervention:
  - ✓ in cartel cases, a 3-year duration;
  - ✓ in abuse of dominance cases, a 3-year duration;
  - ✓ in merger cases, 2-year duration.

These default assumptions are based on, but not equal to, the existing practices of the OECD competition authorities most active in performing impact assessments. Hence, the specific values used by these agencies can be higher or lower than the assumptions herein suggested.[9] These assumptions are meant for use *only when more specific information is not available*.[10]

4. Explanation of the estimates

Impact assessments are inevitably simple and partial estimates of the likely benefits of the decisions of a competition authority. This Guide therefore suggests that the authority, when publishing its impact assessment, includes a clear explanation of the methodology used and of its limitations. In particular the advice is that the authority explains that:

- The numbers are *ex-ante* estimates, relating to likely future effects that have yet to be observed, or of averted effects that can only be estimated as they will never be observed.
- The figures are reasonably conservative.
- The estimates do not usually ascribe any values to no-action decisions, yet such decisions are valuable to society.
- The benefits are mostly estimated as 'static' effects due to lower prices. However, greater competition produces its main benefits through increases in innovation and productivity that are more difficult to estimate and hence are usually excluded, or included only partially. Nonetheless, these dynamic effects are very important.
- The estimates do not take account of the 'deterrent effect' of the authority's decisions because this is very difficult to quantify. Nevertheless, this effect is extremely important, as it gives firms the incentive not to breach competition law in the future.

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9 A summary of these practices is included in the Annex to this Guide. For more details please refer to the paper prepared by Prof. Stephen Davies for the OECD (see note 3 above).

10 For example, when a merger happens in a market where barriers to entry are high a longer duration of the price effect could be assumed. Similarly, when a merger takes place in a market with differentiated products, it can be more appropriate to assume that the price of the closest substitutes is affected to a far greater extent than that of imperfect substitutes, which may nevertheless be included within the relevant market.

ANNEX 1

This Annex is derived from the note prepared for the OECD Competition Committee by Prof. Stephen Davies, though some values in the table have changed following comments from the relevant agency. It contains a summary description of the practices followed by the agencies most active in performing regular impact assessments, when case specific information is not available or cannot be used.

Table 1. Assumptions used in cartel cases

	EU – DG Comp	USFTC	USDOJ	OFT [11]	NMA [12]
Affected consumers	Affected market	N/A	Volume of commerce	Turnover affected goods	Turnover affected goods
Price effect	10-15%	N/A	10%	10-15%	10%
Duration (years)	1/3/6 depending on the stability of the cartel	N/A	1 or number of months for shorter lived	6	1

Table 2. Assumptions used in merger cases

	EU	USFTC	USDOJ	OFT	NMA
Affected consumers	Size of relevant market	Volume of commerce	Volume of commerce	Turnover of affected goods	Size of relevant market
Price effect	3-5%	1%	simulated, if not 1%	simulated, if not, average of simulated [1]	1% [1] [2]
Duration (years)[1]	2 or more depending on heights of barriers to entry	2	1	2	1

[1] Plus a deadweight loss estimate; [2] Plus an assumed 1% due to enhanced efficiency

Table 3. Assumptions used in abuse of dominance/monopolisation cases

	EU	USFTC	USDOJ	OFT	NMA
Affected sales	N/A	Volume of commerce	Volume of commerce	Turnover affected goods	Turnover affected goods of the abusing company
Price effect	N/A	1%[1]	1%	10%	10%
Duration (years)[1]	N/A	2	1	6	1

[1] Plus a deadweight loss estimate

Source: Assessment of the Impact of Competition Authorities' Activities, Note by Prof. Stephen Davies.

11 The Office of Fair Trading (OFT) still existed when this table was prepared. The OFT has since merged with the UK Competition Commission to form the UK Competition and Markets Authority.

12 The Dutch competition authority Nederlandse Mededingingsautoriteit (NMa) still existed when this table was prepared. It subsequently merged with the Dutch post and telecommunications authority (Onafhankelijke Post en Telecommunicatie Autoriteit) to form the Authority for Consumers & Markets.

www.oecd.org/daf/competition/

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