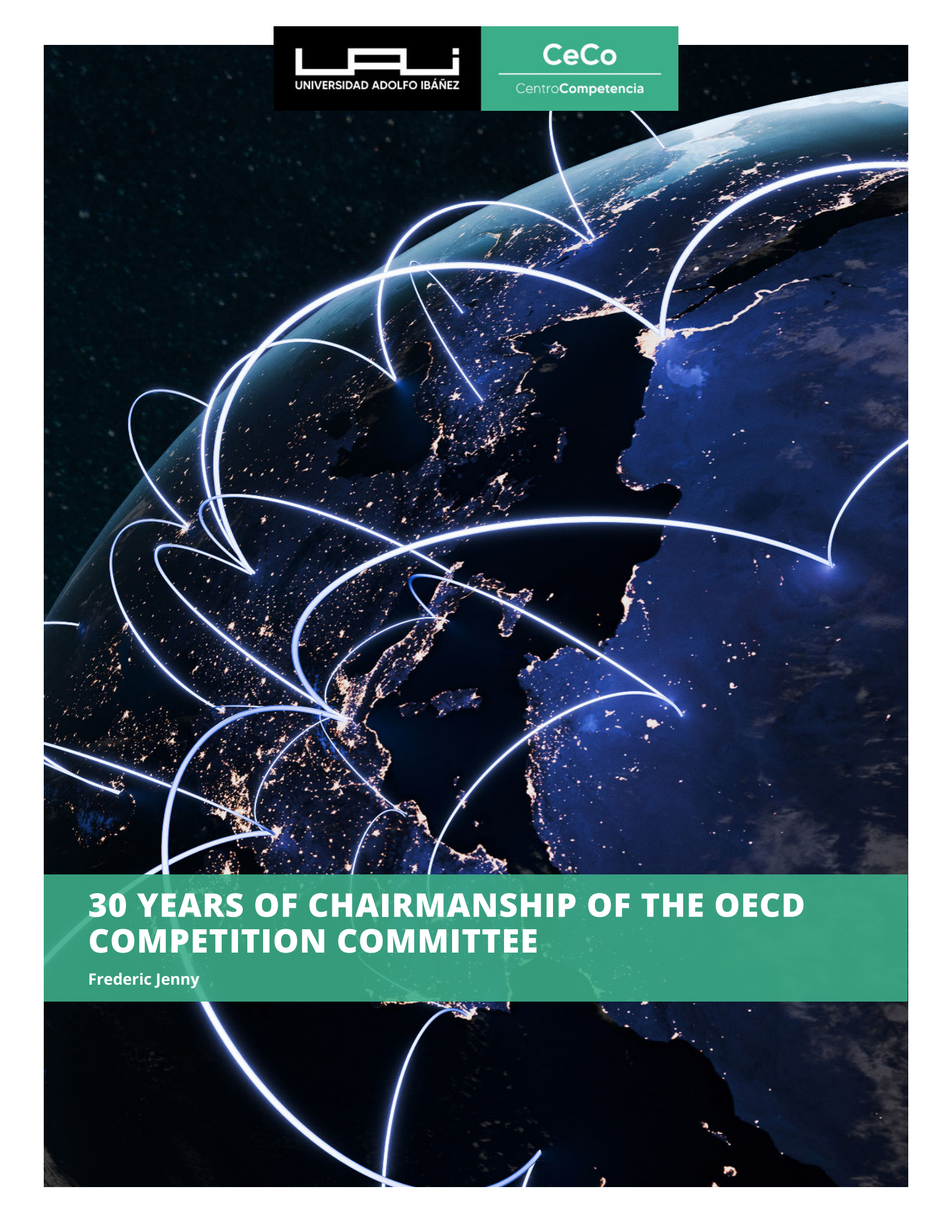




30 YEARS OF CHAIRMANSHIP OF THE OECD COMPETITION COMMITTEE

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When an international institution has no binding power, its influence depends entirely on the quality of ideas, the credibility of analysis, and the ability to build consensus among sovereign states.

Summary: During the thirty years that I chaired the OECD Competition Committee, it evolved from a modest intergovernmental group into a leading global authority on competition policy. In the course of those years, the committee moved away from consensus reports to more open roundtables where delegates exchanged ideas, explored differences in their legal systems and confronted economic perspectives. It also shifted its focus from strict agreements to slowly building a common understanding among those willing to listen, question, and learn. In recent years this evolution helped committee members discuss complex issues such as market deregulation, high-tech innovation, and the growth of the digital economy. By actively communicating and engaging in exchanges with non-OECD members, and in particular with developing countries, the committee was exposed to different perspectives and promoted global convergence based on shared understanding rather than on negotiated documents. The activity and the success of the OECD Competition Committee show that, in an institution without binding power, influence depends on the quality of ideas, the credibility of analysis, and the ability to reach agreement among independent nations. In the end, the paper argues that conserving intellectual integrity and resisting bureaucratic habits are necessary ingredients for the work of the OECD Competition Committee to stay relevant and influential in rapidly changing socio-economic conditions.

The OECD: From Marshall Plan Club to Global Policy Laboratory

The Organisation for Economic Co-operation and Development is a plurilateral organisation created in 1961 as the successor to the Organisation for European Economic Cooperation, which managed Marshall Plan aid.

At the time of creation its membership was composed of 20 Western industrial economies primarily located in the North Atlantic. It included the US and Canada on the American continent and 18 European countries including Belgium, France, Germany, Italy, Netherlands, etc. Transatlantic dialogue was therefore a major component.

The continuing goal of the OECD is to promote economic growth, productivity, and employment; to support sound public policies (competition, taxation, education, environment, etc.); to foster international coordination and policy convergence; and to provide a platform for evidence-based policy advice.

Over the years, the membership of the OECD has increased (from 20 to 38 countries), and the profile of its members has become increasingly diversified.

Developed Asian economies joined starting in the 1960s, with Japan (1964), Australia (1971), and New Zealand (1973), and later Korea in 1996. Former members of the Soviet bloc joined after the fall of the Berlin Wall in the 1990s, such as the Czech Republic (1995), Hungary and Poland (1996). Diversification of membership in the 2010s occurred with the accession of Chile, Estonia, Israel, and Slovenia (2010), Latvia (2016), and Lithuania (2018). The membership expanded to Latin America early with the accession of Mexico (1994), and then with the admission of three countries: Chile (2010), Colombia (2020), and Costa Rica (2021). Several countries are in the accession process at the time of writing this article, including Brazil, Argentina, Romania, Bulgaria, and Croatia.

The OECD relies on soft power tools to define and promote good economic governance among its members and beyond. It gathers economic data and makes comparisons between countries (including through peer reviews), publishes reports on crucial economic issues, uses its expertise to advise governments on economic reforms, makes recommendations, and promotes convergence and economic cooperation between its members.

The reasons for the uninterrupted flow of candidate countries to become OECD members are diverse but all are linked to the wide recognition of the quality of the OECD's economic expertise. Because each candidate country has to implement specific OECD recommendations as a condition for admission, and because the conformity of candidate country domestic policies to those recommendations is assessed in a series of peer reviews, belonging to the OECD confers a certification of good economic governance on member countries. This reassures foreign investors, financial markets, and multinational companies. Furthermore, the OECD peer review process is important to countries which want to promote changes in their domestic policy or regulatory framework because it legitimizes some of the envisioned changes. Finally, membership in the OECD allows a country to influence the future recommendations of the OECD and to participate in defining future good governance principles.

While in the early years of its existence the focus of the OECD was mostly on the contribution of a liberalized economy to economic growth and concerned convergence and cooperation between highly industrialized countries (through trade liberalization and macroeconomic coordination), this focus changed in the 1990s to economic globalization and structural reform (with an emphasis on market liberalization, privatization and regulatory reform). Then, starting around 2010, came a new emphasis on inequality and broad-growth,

climate change and green transition, the digital economy and taxation of multinationals, governance and anti-corruption. Those successive changes in orientation reflected a shift in collective preferences as well as the previously described change in the membership of the OECD and the desire of the OECD to remain relevant to the evolving economic and social reality of its members.

From 70% to 50%: The Challenge of the Shifting Center of the World Economy

The question of whether and how the organisation's membership should evolve has given rise to heated internal debates.

First, there was (and still is) a debate between those who think that a plurilateral organisation with a limited membership and constrained by the fact that it has only soft power instruments has to compete for intellectual leadership with multilateral international organisations (such as the World Bank with 189 members, the IMF with 190 members, UNCTAD with 185 members, etc.) some of which have powerful tools at their disposal and therefore the OECD could only resist such pressure if it has a broad-based membership and reflects a wide consensus on economic governance and those who think that the intellectual leadership of the OECD can only survive if the excellence of its thinking and of the practices of its members is such that they are an example for the rest of the world.

It must also be noted that when the OECD was created in 1961, the economy of its 20 founding members accounted for roughly 70% to 75% of the world GDP. Today, the GDP of these 20 countries represents merely 45 to 50% of the world GDP. This evolution suggests that the world has moved from a situation where the founding members of the OECD were at the center of the world economy to a situation where overall economic growth is increasingly driven outside the original OECD members. This decline is considered to be due to the faster economic growth of some large developing economies such as China, India, and Brazil than the growth of the more developed OECD members. Some suggest that it is thus necessary for the OECD to open up its membership and broaden its intellectual perspective for the organisation to remain economically relevant. Thanks to its successive waves of enlargement, the OECD's current 38 members represent about 60% of the world GDP, but this is still substantially below the GDP share of its 20 initial members. Others believe that OECD membership should be restricted to a select group of member countries with an orthodox economic policy grounded in economic analysis and good governance principles.

The debate on membership has also pitted the US against Europe after the European Union underwent a process of enlargement, which increased the number of EU member countries from 15 to 25 in 2004 (with three subsequent additional EU member countries: Romania and Bulgaria in 2007 and Croatia in 2013). Accession to the EU and OECD accession, although separate, were seen by the European Union as complementary markers of reform credibility and market-economy transformation for Central and Eastern European countries seeking EU membership. Indeed, there is clearly a complementarity between the conditions that have to be met to become an EU member and those required to become an OECD member. According to the Copenhagen criteria for becoming an EU member ([\[1\]](#)), the country must demonstrate stable democratic institutions, a functioning market economy, and an ability to adopt EU law (the "*acquis communautaire*"). With respect to OECD membership, the candidate country must satisfy the organisation's criteria with respect to market economy institutions, competition policy, corporate governance, investment openness, regulatory quality, and anti-corruption frameworks.

This complementarity between the two processes gave an incentive for countries considering accession to the EU to simultaneously consider the possibility of acceding to the OECD, and indeed one sees the quasi-simultaneity of the two processes for the countries joining the EU in 2004 or after. For example, Poland, Hungary and the Czech Republic became EU members in 2004 and had become OECD members in 1996 and 1995 (for the Czech Republic); Slovenia and Estonia, Latvia and Lithuania became EU members in 2004 and OECD members in 2010 for Slovenia and Estonia, in 2016 for Latvia and in 2018 for Lithuania.

This has led the US to be concerned about the risk that the OECD would become intellectually dominated by European member states. Because the OECD is a consensus organisation, the admission of a new member requires unanimous agreement of all existing member countries, which means that every member has de facto veto power. To alleviate US fears, a practice has developed to balance the admission of EU members with the admission of non-European, US-supported candidates. For example, in 2010 four countries became members: two EU countries which had been admitted to the EU in 2004 (Slovenia and Estonia) and two non-EU members, Israel and Chile. Between 2016 and 2020, two other relatively new EU members were admitted: Latvia (2016) and Lithuania (2018), and two non-EU members (Colombia in 2020 and Costa Rica in 2021).

Who Leads the OECD? A Contest of Mandates and Minds

The question of who “owns” the OECD (to be taken figuratively as who feels entitled to define the goals and the agenda of the institution and its committees and to oversee its output) is complex and occasionally contentious. From that standpoint, the OECD is no different from other similar international organisations. Several stakeholders feel that they should have a major influence on the organisation.

The Secretary-General’s function is described in Article 10 of the Convention on the Organisation for Economic Co-operation and Development (the OECD Convention), signed in Paris on December 14, 1960: “A Secretary-General responsible to the Council shall be appointed by the Council for a term of five years. He shall be assisted by one or more Deputy Secretaries-General or Assistant Secretaries-General appointed by the Council on the recommendation of the Secretary-General. The Secretary-General shall serve as Chairman of the Council meeting at sessions of Permanent Representatives. He shall assist the Council in all appropriate ways and may submit proposals to the Council or to any other body of the Organisation.”

The Secretary-General thus has a triple function. First, he is the chief administrative officer of the organisation, heading the international Secretariat (composed of economists, analysts, and support staff) based in Paris. Second, his role is to facilitate the Council’s [\[2\]](#) meetings, execute its mandates, and provide objective technical data, analysis, and research. Finally, the role of the Secretary-General is also to assist the member states by providing neutral platforms for policy dialogue and to submit non-binding proposals or reports.

Depending on which function the Secretary-General chooses to focus, his role within the organisation differs. For example, Donald Johnston, who was Secretary-General during 1996–2006, focused heavily on reforming the organisation’s internal management, expanding outreach to non-members (like China, Russia, and India), and anchoring the OECD’s image as a foremost statistical and analytical data provider. Angel Gurría, who was Secretary-General from 2006 to 2021, positioned himself as a global statesman, aggressively expanding the OECD’s footprint into global governance. Under Angel Gurría, the role of the Secretary-General became much more politically proactive and outward-facing. Thanks to his determination to see the OECD play an important role in providing sound economic analysis at the highest possible levels, the OECD regularly supplied data, research, and policy roadmaps that fed directly into G7 and G20 summits, giving middle-to-large powers a mechanism to shape global consensus. This activism did not always sit well with the OECD

Council members, and there were numerous clashes between Secretary-General Gurría and the Council, which had developed its own view of the world. Finally, the current Secretary-General was selected for his political ability to forge consensus and to ensure that the work of the institution reflects the wishes of the Council members.

Whatever their style and their interests, the successive Secretaries-General of the OECD have felt that it was incumbent on them to lead the institution.

The Council is the OECD's decision-making body. It is composed of one representative from each Member country, as well as of the European Union. The Secretary-General chairs the Council, which provides the strategic direction of the Organisation and its work, sets the priorities, approves the annual budget, adopts legal acts (such as OECD Recommendations, Decisions, and international standards), and signs formal agreements. Finally, it oversees the more than 300 specialised committees, working groups, and expert bodies that handle specific issues. An annual Ministerial Council Meeting, chaired by one or more Members, brings governments together to discuss the world's major policy challenges and set the OECD's priorities for the year ahead. As representatives of the member states of the OECD, the Council members naturally think of themselves as the leaders of the institution.

The Secretariat: The Engine Room of Expertise — Data, Law, and Policy Crafting

The Secretariat comprises more than 3,500 employees, including a core group of more than 700 specialized professionals—economists, lawyers, data scientists, political analysts, and environmental experts—who directly drive research and policy drafting. The economists form the backbone of the organisation and dominate directorates like the Economics Department (which produces the flagship Economic Outlook), the Centre for Tax Policy and Administration, and the Directorate for Financial and Enterprise Affairs (which oversees the competition division). They model macroeconomic data, forecast growth, and analyze structural reforms. Lawyers and legal experts draft international legal instruments, OECD Decisions and Recommendations, and binding or semi-binding multilateral frameworks (such as anti-bribery conventions, international tax treaties, and digital governance standards). They also advise on institutional governance, administrative law, and compliance.

The Secretariat does not make political decisions or set binding policies on its own. Its role is to conduct research and provide evidence-based analysis. It collects vast amounts of international data, tracks economic trends, monitors social changes, and publishes rigorous, objective cross-country comparative studies. The members of the secretariat design policy toolkits, guidelines, and model rules which governments then negotiate and adopt. They also manage the OECD's "peer review" mechanism, where member states transparently examine and critique each other's national economic, environmental, educational or competition policies. Finally, secretariat members also act as secretaries of the Committees, suggesting their agendas and writing background reports. The members of the secretariat are keenly aware that the institution's reputation and influence rest on the quality of their work, and that the institution could not function without them. In that sense, they feel that they are the most important asset of the OECD and that their analysis or diagnosis is a necessary element for any policy recommendation by the OECD.

Committees: Where Consensus Is Forged

The OECD also includes more than 300 technical or policy committees covering every sector of public policy—from economics and education to tax, environmental protection, digital governance, investment, trade, competition, etc.

An OECD committee is a gathering of delegates from OECD Member countries on a specific topic to discuss issues of mutual interest and to initiate policy recommendations that may be sent to the OECD Council for approval.

The OECD uses soft instruments to pursue its goals, such as recommendations, peer reviews, and the publication of reports.

These committees are composed of government experts from each member state and are where actual policy coordination, data sharing, and standard-setting take place. The committee members usually meet several times a year either among themselves or with invited experts or with members of another OECD Committee to explore topics of mutual interest.

Each committee is generally assisted by a permanent staff composed of members of the OECD Secretariat who participate in the discussion of the agenda of the meetings, prepare the meetings, invite the experts, produce background notes on the topics which are on the agenda, gather the written contributions of the members, summarize the contributions and the discussions during the Committee meeting.

It is in the committees that the technical negotiation and drafting of multilateral frameworks, policy guidelines, and legal instruments (such as OECD Recommendations and Decisions) takes place. The results of these negotiations are then sent to the Council for political adoption.

The level of representation of the national committee members varies considerably from one committee to the next. However, when a technical committee (such as the Competition Committee) gathers high-level governmental experts, it is difficult for committee members to avoid the feeling that they have the expertise, the qualification, and the seniority to know better than anyone else what should be or should not be done on the particular policy topic of which they are in charge ([3]).

This multi-layered structure of the organisation lends itself to possible tensions between the various groups involved over what the diagnosis of a specific problem, the agenda of the committee, or the recommendations should be.

Besides the well-known tension between Secretary-General Gurría and the Council of ambassadors (which led to the choice of a successor presumed to be more likely to follow the member's consensus than to try to shape it), tensions between the secretariat assigned to a committee and the committee members are not unknown. In the late 1990s, in particular, there were tensions between the secretariat of the OECD Competition Committee and some members over a report from the secretariat on pricing abuses of dominant firms to which several delegates objected. This tension led the members of the Committee to consider it useful to choose a Committee chair who could be geographically close enough to the seat of the OECD to keep an eye on what the secretariat serving the Competition Committee was doing in real time.

At the Frontier of Markets: The OECD Competition Committee

The ancestor of the OECD Competition Committee was created on December 5, 1961, as the Committee of Experts on Restrictive Business Practices to carry on the work that had been ongoing within the OEEC (the OECD's predecessor) since 1953.

Although the scope of this Committee was technical (and did not include competition policy) and limited to “restrictive practices” (i.e., practices such as cartels and abuses of dominance), in particular anticompetitive practices which led to a cross-border distortion of international trade whether they emanated from multinational firms or from domestic firms, such as export or import cartels, the Committee’s work could not ignore the importance of merger control and the fact that some restrictions to competition could also come from sectoral regulation.

The work of the Committee nonetheless developed in three directions which would have a lasting impact on the OECD work program on competition.

First, in 1977 the Committee of Experts on Restrictive Business Practices adopted a report on the restrictive business practices of multinational enterprises [\[4\]](#) which eventually became the basis for an OECD recommendation adopted in July 1978 [\[5\]](#). This recommendation laid the basis for the adoption of a competition law by the OECD Member countries. It was recommended that OECD Member countries consider the adoption of measures to prohibit abuses of firms holding a dominant position (predatory behavior toward competitors, unreasonable refusal to deal, anti-competitive abuse of industrial property rights, discrimination and “anti-competitive acquisitions”) and cartels or other restrictive agreements “which without justification adversely affect or eliminate competition”. It also appealed to the OECD members to cooperate by recommending the adoption in national legislation of provisions allowing the exchange of information, taking into account international comity principles, for cases of transnational anticompetitive practices. This established the basis for the OECD’s lasting interest in cooperation on competition matters.

Second, the following year, in 1978, the Committee adopted a report on competition policy in regulated sectors with special reference to energy, transport and banking [\[6\]](#). This report also led to the adoption of a recommendation by the Council [\[7\]](#) that Member States undertake, with the participation of competition authorities, reviews of regulatory regimes and of exemptions from restrictive business practices laws to ensure a better consistency of the existing regulatory schemes with the competition policy principles and with the restrictive business practices laws. This prefigured the later focus of the OECD work in the 1990s and early 2000s on deregulation, regulatory reform and the relationship between competition and regulation.

Third, in 1982, the OECD Council requested the Committee of Experts on Restrictive Business Practices to examine, in consultation with the Trade Committee, possible longer-term approaches to developing an improved international framework for dealing with problems arising at the frontier of competition and trade policies. The Committee of Experts on Restrictive Business Practices wrote a Report on Competition Policy and International Trade [\[8\]](#) which was partly the basis on which the OECD Council adopted the OECD Recommendation on Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies [\[9\]](#) which focused in particular on the competitive dangers associated with export cartels and offered a methodology to assess trade policy measures with respect to their impact on competition.

This appeal to explore the interface between trade and competition meant that early on the OECD recognized the existence of a nexus between international trade and competition at a time when trade liberalization measures were being negotiated (an issue later taken up by the WTO). More generally, it recognized that competition law enforcement and policy could not be a stand-alone policy.

The committee was renamed the Committee on Competition Law and Policy in 1987 and renamed again, as the Competition Committee, in 2001. This renaming of the Committee indicated a shift toward the analysis of competition law instruments and of the extent to which the implementation of competition law provisions reflected the standards of good economic analysis.

Thirty Years at the Helm: Guarding Intellectual Integrity in a Soft-Law Institution

I first attended the OECD Committee as a French delegate in 1985, after being appointed the year before as Rapporteur General of the then Commission de la concurrence ([\[10\]](#)). The Commission de la concurrence was the Competition Authority of France, but at the time only had advisory powers. The Minister in charge of the economy was then the final decision-maker on both mergers and antitrust matters.

In 1986, a new French competition authority, the Conseil de la concurrence, was created to replace the Commission de la concurrence. The Conseil de la concurrence had decision-making power with respect to antitrust (but until 2008, the Minister in charge of the economy remained the decision-maker with respect to merger control, and the Conseil de la concurrence had, in this respect, only an advisory role). I was appointed Rapporteur Général of the Conseil de la concurrence and remained a delegate to the OECD Competition Law and Policy Committee.

At the time, few OECD member countries had a Competition Authority, and even fewer had an independent one. Germany was the only truly independent authority in Europe, and France created an independent authority (at least for antitrust matters) in 1986. This meant that the delegates who sat on the Committee were overwhelmingly civil servants working for the economics ministry in charge of competition. To that extent, the OECD competition committee was very similar to other OECD committees such as the Trade Committee, the Investment Committee, or the Consumer Committee, etc., in which the delegates were and still are overwhelmingly staff members of the national ministries. The fact that the delegates in these technical committees are ministries' staff members facilitates the consistency between what is discussed and suggested in the Committees and what is on the agenda of ministers and the Council.

In the area of competition, however, there has been a massive change over time in the architecture of competition law enforcement systems with the emergence of competition authorities, which are, in a majority of countries, now independent of the executive branch of government. This evolution has had a consequence on the composition of the committee in charge of competition at the OECD.

To a large extent, the change in the architecture of the competition law systems which took place in the 1990s and early 2000s is the consequence of the trade negotiations of that period which took place outside of the OECD at the bilateral and multilateral levels and which led to a considerable reduction in the number and scope of governmental barriers to trade. Indeed, the negotiating countries were willing to lower their trade barriers in exchange for equivalent concessions from their trade partners to get access to the domestic markets of these countries but were concerned that business firms in these countries could replace the eliminated governmental barriers by anticompetitive practices such as import cartels or local abuse of

market power by dominant firms to protect their domestic markets. To avoid such a possibility, in the late 1980s and early 1990s trade negotiators started including in their trade agreements provisions to the effect that the trade partners would commit to adopt a competition law and create an independent competition authority as a condition of the trade deal. They were keen to ensure that they would have a place to complain if their exporters did not have access to the domestic markets of their trade partners, and they were keen to ensure that their case would be heard by institutions independent of the governments which had committed to open their markets to international competition.

As a result of this movement, the composition of the Committee changed, and over time the representatives of independent national competition authorities came to dominate the OECD Competition Committee^[11].

This modification was more than a formal change in the membership of the Committee. As independent bodies, often quasi-judicial institutions, competition authorities see themselves as the ardent (and often the sole) defenders of competition principles.

They are tempted to focus, more than a representative of the executive branch of government might, on the technical aspect of competition law enforcement and on ensuring that other government policy makers (whether trade negotiators or industrial policy makers or environmentalists or public procurement officials, or consumer protection officials, or sectoral regulators, etc.) integrate competition principles and the efficiency goal in their policies. While competition authorities are willing to engage in a one-sided dialogue with economic policy makers, they are less inclined to explore how competition law enforcement and policy could be made more consistent with and supportive of the goals of these other policies than representatives of the executive branch of government would be.

Over time, this specificity of the OECD Competition Committee has led to questioning its role in an organisation devoted to promoting cooperation between economic policymakers both within each member state and across member countries.

The competition committee has pushed back against this perception (as will be shown later on) by studying the interaction between competition law and policy and a large number of other economic policies. Still, such dialogues may have been perceived as one-sided.

The bureau of the OECD Competition Committee

The bureau of a committee is responsible for “ensuring that the draft Agenda is properly focused; assisting the Chair in the preparation of the conduct of the meetings; ensuring the continuity of the work between plenary sessions, in accordance with the working methods defined by the body”^[12] and “Each substantive subsidiary body decides, in the light of experience and taking into account the need for efficiency, how many bureau members it wishes to designate”.

Most OECD Committees have small bureaus.

Over time, the size of the bureaus of OECD Committees has tended to increase as the number of OECD members grew with the admission of new members.

However, the bureau of the Competition Committee grew to be the largest bureau of any Committee in the OECD. The bureau of the Competition Committee grew to 20 delegates, representing a sizeable proportion

of the Committee's membership. This did not happen at once, but the size of the bureau increased over time as the reputation of the OECD Competition Committee grew and as an increasing number of countries expressed the desire to participate in the work of the bureau.

Allowing the size of the bureau to increase was a personal choice of the Chairman, who thought that no country should be discouraged from participating in the Committee's bureau.

As mentioned previously, it is up to each Committee to decide the number of bureau members it wants to have. However, the Secretariat is wary of large bureaus and exerts not-so-subtle pressure on Committees to stick to a small number of bureau members ([13]) ([14]).

There are at least two reasons why the OECD Secretariat prefers committees to have small bureaus.

First, the smaller the Committees' bureaus, the more influential the permanent Secretariat, which plays an important role in organizing the process through which the Chair of a committee is selected ([15]) and can suggest agenda topics to the bureau and also refuse to deal with some topics (for example by arguing that it does not have the means to take up the particular issues with which it does not want to deal ([16])).

Second, the larger the bureau of a Committee, the higher the risk that the Committee's agenda will reflect a diversity of points of view among its members. Because the OECD was set up to promote an agenda which was to a large extent an economically liberal agenda of trade and investment liberalization, regulatory reform, promotion of competition principles, etc., and to ensure the consistency of its influence and of its message, it was thought that small bureaus, dominated by the representatives of the large jurisdictions, were easier to monitor.

However, in the 1990s and the first two decades of the 2000s, the number of countries with an active competition law increased considerably ([17]). The goals of competition laws diversified both in countries that had a long tradition of competition law or antitrust enforcement (such as the United States with the emergence of the Neo-Brandeisian movement) and in countries new to competition law enforcement (such as Europe where the issue of the effectiveness of competition law was extensively discussed). Thus, there was a need for a more diversified agenda and a broader consensus on the setting of the agenda. This called for a more diversified bureau of the Competition Committee than had been the case in the past.

Steering Consensus in a Divided World: Thirty Years at the Helm

The Manual for the Guidance of Chairs of Subsidiary Bodies of the OECD states that the Chairperson of a Committee is responsible for:

- convening the meeting of their body,
- determining, where necessary after consultations, the order in which reports or proposals concerning a question will be considered;
- giving the floor to delegates and, at their discretion, to observers, and ensuring that they respect the speaking time allocated to them;
- summarising the conclusions reached by the subsidiary body;

- paying due regard, in carrying out their duties, to the view of the bureau, all Members and the opinion of the Secretary-General;
- dialoguing once during each biennium with the Council, on the committee priorities, methods of work, and the implementation of the Program of Work and Budget (PWB).

As a delegate to the committee, chaired by Kurt Stockmann, vice-president of the Bundeskartellamt, I had never thought about becoming the chairman of the committee. However, when in 1994 discussion started about his successor, the US delegation approached me to enquire whether I could conceivably be interested. There were, I believe, three reasons for the US to approach me.

The first one is that the US welcomed the newly found interest of several European countries in competition (after a long period from the 1960s to the end of the 1980s characterized by state intervention in market mechanisms in many European countries, active use of industrial policy, and a protective reaction against what was perceived to be the extraterritoriality of US antitrust enforcement). The US wanted to promote the US understanding of the goals and reasoning of US antitrust policy and also to advance cooperation between the US and Europe in this field without appearing to dominate the Committee. It therefore was looking for a non-US chair who could promote mutual comprehension and cooperation and the fact that I had received a Harvard PhD in economics in 1975, before becoming a staff member of the cabinet of the French deputy minister for competition and consumer protection (in charge of steering a bill through the French parliament establishing merger control) and later became a French competition law official was perhaps perceived to qualify me as a possible bridge between the new and the old continent.

The second reason is that there was at the time a perceptible tension between the secretariat and the committee's members over the preparation of the Committee's reports. Non-US committee members felt that US conceptions of antitrust dominated the logic of these reports and did not sufficiently reflect the European approach to competition (for example, that the integration of the European market is a goal of competition law and that the treatment of dominant firms differs markedly from the efficiency-focused US approach). The Committee members felt it useful to entrust the chairmanship of the Committee to a European who could keep an eye on what the secretariat was doing. The fact that I was a European and lived in Paris not far from the OECD was, from that standpoint, in my favor.

The most important reason was largely anecdotal. At the time, a long-standing UK delegate from the Office of Fair Trading was the preferred choice of several European delegates. To increase his chances of becoming the next chair of the Committee, he gave a dinner for many delegates to promote his candidacy. Unfortunately, his behavior during the dinner did not play well with a number of the invited delegates.

According to the OECD ([18]), "As part of their functions, the Chair and Bureau members ensure the good functioning of the committee so that it can fulfill its mandate in accordance with OECD rules and established practice. They can also serve as a sounding board and share the views of all committee members transparently and neutrally on issues of interest, with a view to helping the Secretariat improve the quality and efficiency of the discussions during the meetings".

The task of the Chair of an OECD committee has three dimensions, which I believe are particularly important. The first one is to lead a discussion about the goals that delegates want the Committee to achieve. The second is to propose the most effective working process for the Committee to achieve its goals, and the third one is to inspire choices for the most appropriate topics for discussion.

With respect to the strategic orientation of the Committee, the objective was to establish the Committee as a center of excellence and to make it known both for the quality of its dialogue with other complementary policymakers and for the breadth and the depth of its perspective on competition issues.

Achieving these goals required convincing the delegates to go beyond their comfort zone, i.e., what they saw as their past achievements (decisions which had been upheld on appeal, advocacy which had been successful), and to encourage them to reflect on the strong and the weak points of their practices (in other words, to think about why they had decided those cases the way they had), to consider the challenges they faced (such as the weak points of economic theory which did not help them to clearly delineate what was anticompetitive from what could be procompetitive practices), and to envisage the ways to overcome these challenges (including how to allocate their scarce resources). It was also essential to convince them of the usefulness of confronting their perspective with the perspectives of other policymakers, often policymakers with whom they had never exchanged views in their home jurisdiction, to identify areas of possible complementarities and understand areas of possible divergences.

The working process of the Competition Committee was a second area of concern. As the (summary of activities of the Committee of Experts on Restrictive Business Practices indicates), the way the Committee initially worked was essentially by producing reports. This implied that a great deal of the delegates' time was spent negotiating the formulation of ideas. This was a very slow and cumbersome process that required abundant recourse to methods of "constructive ambiguity" to patch up differences in proposed wordings that were not always substantially meaningful. The slowness of the process meant that few reports were issued and that the discussions in the Committee were often more formalistic than substantive. I found this method archaic and ineffective.

Upon becoming the chair of the Committee, I encouraged a reform of the Committee's working methods, which meant that the Committee would replace the drafting of lengthy Committee reports with roundtables on substantive or procedural topics. In addition, the Secretariat would publish, under its responsibility, a background note outlining the main competition issues which would help focus the Committee's discussion on the most relevant ones. Because the Secretariat's background note framed the discussion to a large extent, it was particularly useful to have well-informed and perceptive background notes. The excellent quality of the staff of the competition division, made up of extraordinarily diligent economists and lawyers, is a considerable asset for providing the Committee members with tremendously useful background notes to the roundtables ([19]).

Delegations were encouraged to contribute in writing, ahead of the Committee meeting, on the topics to be discussed ([20]). All national contributions would be published, as well as a summary of all contributions, so that any reader could see for themselves the possible points of convergence or divergence between national competition authorities. The Secretariat would summarize the oral debate, and this summary would be published under the Secretariat's responsibility, to avoid more lengthy negotiation of a report. Of course it would be up to each reader of those documents to come to his or her own conclusions as to the relevant issue.

This policy changed the dynamics of the Committee. It enabled the Committee to hold several roundtables on different topics during one session rather than spending several sessions finalizing the text of a committee report on a single topic.

The amount of information that came out of the Committee after adopting this change was greatly increased because a large number of delegations submitted national contributions detailing the state of the debate in their country on each topic selected for a roundtable as well as the relevant jurisprudence, and these documents were published by the Committee under the responsibility of their authors. This meant that on each topic chosen for a roundtable there was no longer an OECD report which was the result of a consensus negotiated by the Committee members. However, it did mean that competition officials (belonging or not to the OECD), lawyers, economists, and members of the judiciary could easily find, in one place, all the jurisprudence relevant to a particular topic together with the state of the debate as discussed in each of the contributing countries and a description of the discussion which followed in the Committee.

A second dimension of the modified working methods of the Committee concerns the input of outside experts, whether they are academics, judges, economic consultants, representatives of other international organisations, business or labor union representatives, representatives of consumer organisations, policy makers in fields other than competition (for example regulators of specific sectors).

One characteristic of the dynamics of negotiating a consensus report by committee members is that the input of outside experts during the negotiation is necessarily limited, since those experts are not present. But as has already been mentioned, competition law enforcement and competition policy often interact with other complementary (or sometimes contradictory) policies and a realistic assessment of how competition works in a particular sector or what the main competition issues are requires access to information that various categories of technical experts may have (such as economists to determine whether a theory of harm is consistent with the teachings of economic analysis applied to the specific market considered, law professors to understand the fine points of jurisprudence, business representatives to understand the business model of firms in a particular activity, consumer representatives to explore the possible behavioural biases of consumers on certain markets and therefore the relative effectiveness of possible remedies, as well as policy makers to understand the rationale and possibly the negative impact on competition of regulatory constraints etc. ...).

The roundtable format allows the possibility to hear such experts on the relevant dimensions of the competition issue being discussed in each roundtable, and thus, with the appropriate safeguards and the monitoring of the Secretariat, experts routinely participated, produced written contributions and considerably enriched the discussion in the Committee ([21]).

The relationship of the Competition Committee with BIAC during the thirty years of my chairmanship also deserves a mention. The Business and Industry Advisory Committee (BIAC) is an independent international business association with a formal consultative role vis-à-vis OECD bodies formally recognized by the OECD since 1962. It is the official business advisory body to the OECD. It is composed of a combination of lawyers (some of whom were antitrust officials before they went into private practice) and business representatives. As such, the BIAC delegation has followed and actively participated in discussions at the OECD (not as a member but as an organisation with special status) ([22]). Thanks to the tradition created by Jim Rill, who was Assistant Attorney General of the United States from 1989 to 1992 and later chair of BIAC (OECD) and a great believer both in international cooperation and in fruitful exchanges between the business community and the competition community, BIAC has brought deep insights to competition discussions at the OECD which have helped increase the relevance of competition authorities in their enforcement activity.

The last dimension of my view of the role of the chairman of the committee was to make suggestions to the bureau about the potential best possible ways to organize the Committee's sessions.

There are several sub-objectives to keep in mind.

First, it has seemed important to deal with topics that are high on the minds of delegates or are of systemic importance so that the delegates feel that the discussions are informative and/or relevant to the issues they confront. Because the roundtables imply a fairly intense involvement of the Secretariat staff (writing a good background note to be circulated in advance of the roundtable, contacting the most relevant experts to ask them if they are available to intervene, and summarizing the delegates' written contributions), the bureau has to settle on the chosen roundtable topics, in most cases, a year in advance. Thus, in order for the chair and the Secretariat to propose the agenda of the upcoming sessions to the bureau, they have to assess what will be the important issues a year in advance, which requires a certain amount of foresight on their part. Naturally, they can be helped in that task by the delegates, who know what cases or issues are "in the pipeline" and can estimate when they will be able to talk about those cases or issues (barring unexpected procedural circumstances).

Second, the agenda of the Competition Committee had to be balanced. Balancing means that there should be a combination of enforcement topics (both procedural and substantive) which would be of direct interest to the delegates coming from competition authorities as well as more conceptual issues which would relate either to competition law enforcement, to complementary policies or which would deal with fundamental substantive, procedural or philosophical questions about the goals, the scope or the effectiveness of the instruments of competition law.

Understandably, competition authorities are always ready to comment on issues they have dealt with in their recent enforcement practice. However, a roundtable on past cases can rapidly become excessively boring if it leads to a repetitive series of descriptions of cases in various jurisdictions, or if it seems to repeat information from previous roundtables on similar topics. Even in the case of a roundtable focused on an enforcement issue (whether it is barriers to entry or merger remedies), it would be preferable, over and beyond the description of the activities of the competition authorities in the field, to have a perspective on the underlying concepts, the alternative views, the significance of the particular enforcement action, etc. This is why the background note, which included a developed analytical component on each issue, was crucial to set the discussion on the right course. This is also why legal and economic experts introduced many topics.

Third, as mentioned, each national delegation was invited to provide a written contribution ahead of the discussion. Still, there was always a risk that, during the committee session, they would limit themselves to the prepared text of their contribution, which could considerably limited the depth of the discussion.

To avoid this risk, the format suggested for the roundtables deliberately borrowed from the academic tradition while maintaining some of the diplomatic features which are essential for an international organisation. It was also designed to maximize the impact of the work of the OECD Competition Committee.

The analytical part of each roundtable discussion rested largely on the background note, which outlined the main analytical issues related to the topic at hand, the experts' contribution, which often discussed the wisdom of different approaches to each issue, and the scenario set by the chair, which used the written contributions of the delegates to illustrate the similarities and differences between the various competition authorities.

Each oral intervention of a delegation was preceded by a short introduction by the chair highlighting what was singular or remarkable in its written contribution, how it related to other written or past oral contributions and/or to the background note, and this was followed by a specific question on one or several issues raised by the written contribution.

Finally, at the end of the session, the experts would intervene to explain their reactions to the contributions from the delegates, and the chair would briefly summarize the lessons learned.

The diplomatic features of the discussion meant, however, that the debate was not run like an academic conference. First, all delegations which had provided a written contribution were (barring exceptional circumstances) given the floor to express their views on the issue or their experience, and an attempt was also made to give the floor to non-OECD members to the fullest possible extent, given the time constraints. Second, while delegations were frequently reminded that a time limit for their oral interventions had been set, as a sign of respect for the OECD Member State they represented, they would not, as a general rule, be interrupted if they went beyond the time limit. Appeals to voluntary compliance rather than brutal interruptions were the rule. Third, because some of the delegates who were going to be called upon were keen to know in advance the questions they would be asked so that they would not be caught off guard in this intergovernmental forum where they represented their authority but also their country ([23]), a simplified version of the scenario of the discussion which had been prepared by the chair and which contained, in very general terms, the questions they would be asked was distributed ahead of time to the intervening delegations. However, to inject as much life as possible into the proceedings, experts were incentivized to react (both positively and critically) to what delegates were saying, and the Chair made liberal use of unscripted follow-up questions which quite often forced the delegates to clarify or give more detailed answers than they had initially planned.

Combining the analytical style of roundtables and a diplomatic perspective on the discussion was appreciated by the delegates to the Competition Committee, as suggested by the fact that the delegates were eager to contribute both orally and in writing to the roundtables. Indeed, the number of written contributions provided by the delegates increased over time and frequently surpassed ten contributions per roundtable. This combination of approaches meant that while the delegates were kept on their toes because they felt that they were not entirely protected against the possibility of finding themselves in a challenging situation in the debate, they appreciated the depth of the analysis and the dynamics of the discussions.

This way of proceeding adopted by the Competition Committee was also very different from the way proceedings were organized in a number (perhaps most) other OECD Committees. Whenever the Competition Committee held a joint session with another OECD Committee, and the representatives of the Competition Committee enquired about how many contributions from the Members the other committee expected to receive, they were met with puzzled expressions because the delegates to the other committee were not in the habit of preparing written contributions. Similarly, there was often some resistance to the idea that outside experts could be allowed to discuss their ideas freely or that specific questions would be asked of the delegates.

One of the benefits of this approach was the very wide scope, as well as the quality, of the documentation produced for each roundtable. This was particularly important during the period under study because competition law and policy was an emerging field in many countries which thus did not have much experience and needed to learn from the experience and the analysis of other competition authorities, and also because the field of competition law and policy was in flux in many countries and needed to adapt to emerging technological challenges.

Besides the background note, which analyzed in detail the economic and legal dimensions of the issue, the notes prepared by the intervening experts allowed the readers to gauge the intellectual debate surrounding the topic discussed, since each written contribution typically gave detailed explanations about the reasoning of each competition authority on the issue, the cases it had dealt with, the reaction of the appellate bodies and, whenever relevant, the policy perspective followed by its country. The summary of the discussion prepared by the Committee's secretariat allowed the readers to get a sense of the discussions at the OECD. The Committee's policy was to make all this documentation available as soon as possible, under the responsibility of the authors. This documentation, which could be found on the Competition Committee web page, became an invaluable reference for lawyers, economists, staff of competition authorities, judges, academic researchers, and policy makers all over the world (in OECD countries as well as in countries outside of OECD ([24])). It contributed not only to the recognition of the OECD as the powerhouse of competition law and policy throughout the world but also to the soft convergence of competition law throughout the world.

However, this broad communication policy eventually clashed with the OECD secretariat's view of what the Organisation's overall communication policy should be. The 2024 evaluation report of the Committee noted: "The Competition Committee's unique approach to communications based on, inter alia, the use of a flexible policy to the distribution of a significant share of the content it generates has greatly contributed to driving its effectiveness. However, the approach it has adopted to communicate its work is not risk-free. This is illustrated by the competition committee's flexible approach to product dissemination, which has allowed for high levels of dissemination and reduced time to publication of key products. Yet this approach has also limited the dissemination of its products on the OECD's main corporate platform (i.e. i-Library), effectively creating a subspace for dissemination within the OECD's web architecture and environment and limiting the OECD's capacity to monitor the level of access to these documents." In other words, the OECD was not interested in the dissemination of the contributions of experts or delegations even if it recognized that the distribution of such content "has greatly contributed to the effectiveness" of the Committee. It was only interested in the limited dissemination on the OECD website of what could be labeled an OECD work product such as a background note (written by the secretariat) or a recommendation (adopted by the Council).

As a result, shortly after the adoption by the Council of the evaluation report of the Competition Committee, the OECD Secretariat, without even consulting or informing the Committee members, eliminated the site of the Competition Committee, which was its main conduit of communication and which it had built over the years. It also eliminated from the OECD site all the country and expert contributions of the delegates and it dispatched the remaining documents on the OECD site according to the policy category to which they referred.

The implicit idea of the OECD Secretariat would thus appear to be that the value of the OECD resides in its work products (such as recommendations addressed to policymakers) rather than in its ability to facilitate a confrontation of ideas aligning the practices and the understanding of quasi-judicial bodies that apply domestic laws.

This may be considered a misguided view in a field where laws are written in very general terms, leaving substantial discretion to administrative authorities and courts in interpreting what the laws mean.

It is also an ill-advised view in a field in which independent authorities and courts, through their decisions, play an important economic role. Deregulation, trade liberalization, and the increasing importance of competition law (all promoted by the OECD) have diminished the importance of executive-branch regulation of markets and increased the role of judicial or quasi-judicial organisations in the functioning of these markets. But the OECD, which promotes good economic governance, has not expressed interest in improving judges'

or quasi-judicial independent institutions' economic understanding, despite the fact that their decisions have considerable economic impact, which means that their keen understanding of the economic logic that underlies the cases they deal with is crucial for good economic governance.

Furthermore, the interpretation of a competition law depends heavily on the legal, social, and economic background of the country where it is implemented. The ability of a competition authority to compare itself with a relatively similar country on any competition issue is more important than considering abstract pronouncements that may or may not be relevant to the situation of the country considered. This is why the publication of the OECD country contributions by delegates is important, allowing countries with similar backgrounds to find relevant references.

Ignoring the economic role of judicial and quasi-judicial bodies may be seen as a blind spot for the OECD, which may at least partly explain the lack of appreciation by the evaluators of the Competition Committee of the necessity of an extended and flexible communication of the work of the Committee in the best practices roundtables.

From Static Rules to Dynamic Markets: The Evolution of Antitrust Harmonization

The Committee's early years were largely devoted to disseminating the static analytical framework that was at the heart of North American competition analysis in the mid-1990s and to promoting "good practices" across the world on some sensitive issues.

The topics of roundtable discussions were heavily devoted to comparing competition law enforcement approaches. As examples, the Competition committee examined "Abuse of Dominance and Monopolisation (1996), The Essential Facilities Concept (1996), Efficiency Claims in Mergers and Other Horizontal Agreements (1996), an issue revisited in 2013 during the roundtable on The Role of Efficiency Claims in Antitrust Proceedings, the failing firm defence (1996) revisited in October 2009, the exemption of small and medium size firms from cartel bans (1997), resale price maintenance for cultural goods (1998) followed by a roundtable in 2008 on the general problem of resale price maintenance, Buying Power of Multiproduct Retailers (1998), an issue revisited (but also enlarged) in 2008 with a roundtable on Monopsony and Buyer Power, oligopoly (1999), an issue revisited in 2006 with the roundtable on Facilitating Practices in Oligopolies and in 2015 with the roundtable on Competition Enforcement in Oligopolistic Markets, Competition Issues in Joint Ventures (2000), Portfolio Effects in Conglomerate Mergers (2002), Substantive Criteria Used for the Assessment of Mergers (2002), Loyalty and Fidelity Discounts and Rebates (2002) (an issue revisited in 2008 and in 2016 with a roundtable on Fidelity Rebates), Merger Remedies (2003) followed by a roundtable on Remedies in Merger Cases in 2011, all topics related to the general issues of enforcement and where substantial differences of interpretation existed between jurisdictions.

Those discussions were important because there were significant differences of appreciation between competition authorities on the scope and the definition of what constituted an abuse of dominance (with a more formalistic approach in a number of European countries), on the scope of essential facilities (in particular on the question of whether the definition of essential facilities could be extended to include intellectual property rights), on the extent to which and the conditions under which efficiency claims could be considered in merger control (they were largely ignored in a number of jurisdictions), on whether competition at the

retail level of cultural goods was detrimental to the production of cultural goods, whether the dominance test used in merger control in Europe was equivalent to the substantial lessening of competition test used in other jurisdictions or whether it led to an enforcement gap, whether the analysis of loyalty and fidelity discounts should be formalistic or based on economic analysis, etc. The “more economic” approach

Later on in the life of the Committee (in the early 2000s) when there was more consensus on both sides of the Atlantic about the desirability of a “more economic approach” to competition (with a shift by the European Commission with the adoption of the Vertical Agreements Block Exemption Regulation and Guidelines in 1999, followed by the appointment of a Chief Economist of DG Comp in 2003 and the adoption of the “2009 Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertaking”), the attention of the Competition Committee shifted toward the exploration of the effectiveness of competition law enforcement tools.

This focus continued throughout the period under review, and the OECD Competition Committee became one of the major fora for the elaboration and diffusion of best practices in Competition law enforcement.

In the period under review, the Competition Committee held roundtables on Sanctions Against Individuals in Cartel Cases (2003), Communication by Competition Authorities (2003), a theme which the Committee revisited in 2023 when it held a roundtable on Communication by Competition Authorities: Objectives and Tools, the Evaluation of the Actions and Resources of Competition Authorities (2005), Prosecuting Cartels Without Direct Evidence of Agreement (2006), Competition in Bidding Markets (2006), Remedies and Sanctions in Abuse of Dominance Cases (2006), followed by a roundtable on Remedies and Commitments in Abuse Cases (2022), Evidentiary Issues in Proving Dominance (2006), Plea Bargaining/Settlement of Cartel Cases (2006), an issue revisited in 2008 with the roundtable on Experience with Direct Settlements in Cartel Cases, Private Remedies (2006), Market Studies (2008) revisited in the context of the Global Forum on Competition in 2016 in a roundtable on The Role of Market Studies as a Tool to Promote Competition, again in 2021 in a roundtable about Using Market Studies to Tackle Emerging Competition and once more in a roundtable on Market studies and other market analysis tools for competition authorities (2025), Promoting Compliance with Competition Law (2011), the Quantification of Harm to Competition by National Courts and Competition Agencies (2012), Criteria for Setting Fines for Competition Law Infringements (2013), Ex officio Cartel Investigation (2013), Leniency for Subsequent Applicants (2013), The Use of Markers in Leniency Programs (2014), Sanctions in Antitrust Cases (2016), Commitment Decisions in Antitrust Cases (2016), Designing and Testing Effective Consumer facing Remedies (2018), Criminalization of Cartels and Bid Rigging Conspiracies with A Focus on Custodial Sentences (2020), Competition Compliance Programs (2021), Economic Analysis and Evidence in Abuse Cases (2021), Methodologies to Measure Market Competition (2021), Interim Measures in Antitrust Investigations (2022), followed by a roundtable on Interim measures in abuse of dominance investigations in the context of the Latin America and the Caribbean (2024), Director Disqualification and Bidder Exclusion in Competition Enforcement (2022), Disentangling Consummated Mergers: Experiences and Challenges (2022), Serial Acquisitions and Industry Rollups (2023), The Future of Effective Leniency Programs: Advancing Detection and Deterrence of Cartels (2023), The standard and burden of proof in competition law cases (2024), The use of structural presumptions in antitrust (2024) and Detecting cartels for ex officio investigations (2024).

Merger control

Finally, at the beginning of the 21st century, three theoretical and empirical developments in economic analysis rose to prominence and challenged the traditional assumptions of economic rationality on which competition analysis, and, in particular, merger control, rests. First, several behavioral economists won a Nobel prize in economics, among them Daniel Kahneman in 2002, Robert Shiller in 2013, and Richard Thaler in 2017 suggesting that economic decisions were not always rational but could be affected by biases. Second, developments in empirical behavioral finance documented how CEOs' psychological biases lead to systematic corporate misallocations. Third, two meta-studies published respectively in 2004 ([25]) and 2016 ([26]) confirmed previous analysis that most mergers lead to shareholder value destruction, which raises questions about whether managers may have had goals other than profit maximization in deciding those mergers and/or that they cannot always deliver the synergies which justify their mergers. Whatever the answer to these questions may be, traditional merger analysis by competition authorities, which assumes that the merging firms attempt to maximize their profits and that they will benefit from the synergies associated with their merger, seems to need refinement.

In the period under review, the OECD Competition Committee held several roundtables on merger control: one on Competition and Corporate Governance (2010), one on Economic Evidence in Mergers (2011), one on the Impact Evaluation of Merger Decisions (2011), one on Economic Analysis in Merger Investigations (2021), one on "Integrating Consumer Behaviour Insights in Competition Enforcement" (2022) and one on the Ex post Assessment of Merger Remedies (2023).

Regulatory reform

In 1995, the OECD Ministers requested that the organisation examine the significance, direction, and means of reform in regulatory regimes in Member countries. Under the leadership of Johanna Shelton, who served as Deputy Secretary-general of the OECD from 1995 to 1999, the OECD published a report in 1997 ([27]). This report pointed out and documented "The real risk, (...), particularly in a time of profound and rapid change in economic and social conditions, that regulations can become an obstacle to achieving the very economic and social well-being for which they are intended. Regulations which impede innovation or create unnecessary barriers to trade, investment, and economic efficiency; duplication between regulatory authorities and different layers of government, and even among governments of different countries; the influence of vested interests seeking protection from competition; and regulations that are outdated or poorly designed to achieve their intended policy goals are all part of the problem". The report recommended regulatory reform: "to improve the efficiency of national economies and their ability to adapt to change and to remain competitive. Reform that sharpens competitive pressures provides powerful incentives for firms to become more efficient, innovative and competitive". The link between regulatory reform and competition was thus clearly established, and the Competition Committee devoted numerous roundtables to exploring the interface between regulation and competition in several sectors and the scope for pro-competitive regulatory reform in a large number of regulated sectors.

For example, it held roundtables (many of them under the able leadership of Alberto Heimler, who was the chair of a working party of the OECD Competition Committee devoted to regulation and competition) on Competition in Telecommunications (1995), a topic which was revisited seven years later, in 2002, competition policy and film distribution (1995), competition policy in the electricity sector (1996), a topic which was revisited in 2002, competition issues related to sports (1996), competition policy and intellectual property rights (1997), competition policy and international airport services (1997), competition and related

regulation issues in the insurance industry (1998), enhancing the role of competition in the regulation of banks (1998), later followed by a roundtable on Competition and Regulation in Retail Banking (2006), Structure, Regulation and Competition Policy in Railways (1998), Competition and Regulation in Broadcasting in the Light of Convergence (1998), Competition Policy and Procurement Markets (1998) followed by a roundtable on The Role of Competition Authorities in Promoting Competition in Public Procurements held in 2007, Relations between Regulators and Competition Authorities (1998), Promoting Competition in Postal Services (1999), Competition in Local Services: Solid Waste Management (1999), Competition in Professional Services (1999), Promoting Competition in the Natural Gas Industry (2000), Competition in the Pharmaceutical Industry (2000), Competition Issues in Road Transport (2001), Competition and regulation in professions and occupations (2024).

The theme of competition and regulation, which was first treated in the late 1990s, continued as the Competition Committee maintained its Working Party 2 devoted to regulation and competition to this day.

Innovation and the hi-tech sector

A third important trend in the work of the Competition Committee is its continuous interest in innovation and the hi-tech sector. As early as 1997, the Competition Committee held a roundtable on the Application of Competition Policy to High Tech Markets. Subsequently, it held a roundtable on Merger Review in Emerging High Innovation Markets in 2002, a roundtable on Competition, Patents and Innovation in 2006, a roundtable on Dynamic Efficiencies in Merger Analysis in 2007, a roundtable on Electricity: Renewables and Smart Grids in 2011, a roundtable on Disruptive Innovation and Competition Policy Enforcement in 2015, and another one on Disruptive Innovation in the Financial Sector in 2015. That same year (2015), the Competition Committee held a roundtable on Disruptive Innovations and their Effect on Competition and one on Competition and Innovation in Land Transport. In 2016, it held a roundtable on Protecting and Promoting Competition in Response to Disruptive Innovations in Legal Services, and a roundtable on Disruptive innovation in Latin America and the Caribbean: Competition enforcement challenges and advocacy opportunities in the context of the OECD Latin American Forum. Subsequently it held a roundtable on Radical Innovation in the Electricity Sector (2018), one on Merger Control in Dynamic Markets (2020), and on The Role of Innovation in Competition Enforcement (2023), and on Competition and Innovation: A Theoretical Perspective (2023).

The first full-fledged OECD Competition Committee event devoted to the digital sector was a roundtable on Two-Sided Markets held in 2009. This roundtable was particularly timely, as 2009 was the year during which multi-sided markets became the primary engine of the digital economy. Mark Zuckerberg had unveiled the Facebook platform in 2007, telling developers, “Until now, social networks have been closed platforms. Today, we’re going to end that,” and by 2009, Facebook had successfully transitioned into a full-fledged “social operating system” where the interaction between users, developers, and advertisers was the standard for the entire internet. Soon after Facebook opened, the Apple App Store was launched in mid-2008.

In the following years, the Competition Committee held two hearings (in October 2011 and February 2012) devoted to the digital economy. These hearings were followed by a large set of roundtables held between 2013 and 2024 on various aspects of competition issues in the digital sector: a roundtable on Vertical Restraints for Online Sales in 2013, on “Big Data: Bringing Competition Policy to the Digital Era” in 2016, a roundtable on Algorithms and Collusion: Competition Policy in the Digital Age in 2017, a roundtable on Personalised Pricing in the Digital Era in 2018, a roundtable on Blockchain Technology and Competition Policy in 2018, on the Implications of E commerce for Competition Policy (2018), Quality Considerations in the Zero price Economy (2018), Practical approaches to assessing digital platform markets for competition

law enforcement (2019), Startups, Killer Acquisitions and Merger Control (2020), Consumer Data Rights and Competition (2020), Abuse of Dominance in Digital Markets (2020), Competition Economics of Digital Ecosystems (2020), Data Portability, Interoperability and Competition (2021), The Evolving Concept of Market Power in the Digital Economy (2022), Algorithmic Competition (2023), Theories of Harm for Digital Mergers (2023), The intersection between competition and data privacy (2024).

Around 2020 many jurisdictions felt the need to consider some form of ex ante regulation to supplement existing ex-post competition law enforcement ([28]). Noting that the lack of co-ordination across jurisdictions has resulted in significant divergences in the way that regulations were used to seek to solve problems which competition law cannot easily address, the OECD Competition Committee discussed the merits and objectives of ex ante regulation, as well as some of the most salient regulatory proposals and amendments to existing laws, which were available to the public to compare and contrast them during a roundtable on Ex Ante Regulation and Competition in Digital Markets (2021).

At the beginning of the 2020s, the OECD Competition Committee also examined in detail how the expansion of the digital sector could disrupt the business models of industries using it, as well as the business models of downstream industries. For example, it held a roundtable on Digital Disruption in Banking and its Impact on Competition (2020), followed by another roundtable on “Competition, Fintechs and Open Banking: An overview of recent developments in Latin America and the Caribbean”, (2024), one on Competition Issues in News Media and Digital Platforms (2021) as well as one on Competition in Digital Advertising Markets (2021) one on Competition in Mobile Payment Services (2025) and one on Remedies in Digital Markets in Latin America and the Caribbean in the context of the LACCF (2025).

Finally, during that same period, the Competition Committee also innovated by investigating how digital techniques could help competition authorities in their enforcement activity, with roundtables on Digital Evidence Gathering in Cartel Investigations (2020) and Data Screening Tools for Competition Investigations (2022). Somewhat later, Thibault Schrepel, the founder of the “Computational Antitrust” project hosted by the Stanford University’s Codex Center, which explores how computational tools ([29]) have the ability to foster the automation of antitrust procedures and contribute to the improvement of antitrust analysis and which monitors the use of such tools by competition authorities throughout the world, was invited to make several presentations to the delegates and the OECD staff.

With respect to artificial intelligence, 2020 was the year when the foundation for the massive generative AI boom was laid. In 2020, Google DeepMind proved that artificial intelligence could solve a major scientific challenge, and OpenAI introduced the GPT-3 language model, which was the first to generate truly human-like text at scale. Between 2020 and 2023, these tools were primarily “co-pilots” requiring human oversight. Around 2024, AI became firmly embedded across core business functions, and the technology advanced to the next level of autonomy. OpenAI unveiled GPT-4o in May 2024, and Anthropic released the first model in the Claude 3.5 family in June 2024, pushing performance benchmarks while making models faster and lowering their inference costs ([30]). The development of AI agents capable of autonomous decision-making and complex task execution began to accelerate, moving beyond simple scripts to genuine self-management. Keenly aware of the ultra-rapid development of Artificial Intelligence and concerned about the consequences such developments could have on competition in the digital sector and in sectors using digital tools, the Competition Committee held three roundtables on the subject in 2025: one on competition in artificial intelligence infrastructure, one on competition in the provision of cloud computing services, and one on Artificial Intelligence and competitive dynamics in downstream markets.

Broadening the perspective

While the OECD Competition Committee devoted a great deal of time to ensuring the transition toward a more economic approach, exchanging national experiences and developing good practices to make competition enforcement economically relevant, legally predictable and effective, adapting competition law enforcement to the challenges raised by the development of the digital sector and of artificial intelligence, the Committee was also aware of the changes which took place between 2000 and 2025 in society at large: the realization that even competitive markets could behave irrationally and crash (as demonstrated by the US real estate and mortgage markets in 2008), that the trade liberalization of the 1990s which was justified by the search for economic efficiency could have costs in terms of lack of resilience when exogenous shocks affected trade partners (as demonstrated both by the 2008 financial crisis and by the 2020 Covid pandemic), that national or international market competition does not guarantee the strategic independence of countries in a world of rapid technological development, that the most efficient use of resources could be unsustainable in cases of governmental and/or market failures (as suggested by the successive reports of the Intergovernmental Panel on Climate Change), that competition is a win-win game only if labor is mobile (which it may not be geographically or professionally and which requires the implementation of complementary policies) and that competition may foster inequality (unless there are redistributive policies at work).

The shift in the collective mood in several countries called for adjustments to competition policy and competition law enforcement as the appetite for trade liberalization diminished, as innovation was gradually perceived as a more important dimension of competition than price, as it was considered that the economies should be reoriented toward the use of cleaner technologies, as it was felt that economic inequality could undermine democracies and as competition between nation states replaced the cooperative mood which had prevailed from the 1960s to the 1990s.

Rather than a single-minded pursuit of narrowly defined economic efficiency, there was a perception that competition law enforcement and policy needed to be recast to take into consideration the fact that consumers' utility function was fast becoming a function of more variables than assumed by the microeconomic framework that traditionally had underlain competition law enforcement and policy. This implied, at the very least, a reconsideration of the time frame of competition analysis in competition law enforcement and a more comprehensive dialogue between complementary policies such as competition policy and competition law enforcement, trade policy, industrial policy, innovation policy, environmental policy, etc.

As part of an organisation focused on all aspects of economic policy, the OECD Competition Committee was particularly well placed to explore useful adjustments to competition law and policy that would preserve the integrity of competition law principles while allowing competition to remain relevant given the rapidly evolving context. The Committee sought to do that, in particular in the context of the Global Forum on Competition, which was established in 2001 to foster dialogue between OECD members and non-members.

One can distinguish three themes.

First, the Competition Committee regularly addressed competition law enforcement and the environment over the years. Initially, the roundtables were focused on the competitive impacts of waste regulations. Thus, the Competition Committee held a roundtable on competition and self-regulation in the recycling of waste management (1995) and on competition in local services of solid waste management (2000). It revisited the issue in 2013 when it held a new roundtable on Waste Management Services.

As time went by, the Competition Committee's focus on environmental issues widened. In 2006 it held a roundtable on environmental regulation and competition and in 2011, the year before the second Rio conference (Rio+20) recognized the "green economy" as a vital tool for achieving sustainable development and emphasized that environmental protection could not be considered in isolation and had to be an integral part of the development process. The OECD Competition Committee held, in 2010, three roundtables of relevance to these themes: the first one on horizontal agreements in the environmental context; the second one on Pro-active Policies for Green Growth and the Market Economy, and the last one on Emission Permits and Competition.

By 2020, competition authorities were fully aware of the necessity to ensure compatibility between environmental protection and competition law enforcement, and the OECD Competition Committee held two further roundtables on this topic in 2021, respectively on Environmental Considerations in Competition Enforcement and on Sustainability and Competition. These roundtables were followed in 2023 by a roundtable on Competition in the Circular Economy.

Second, as previously mentioned, the need for policy coordination between competition policy and law enforcement, and other economic policies that could impact the intensity of competition, but were promoting goals other than efficiency, became more central to the public debate.

At the request of the European Union, during the inaugural session of the World Trade Organisation, held in Singapore in 1996, four new topics were tentatively introduced into the WTO's work program, one of which was the issue of trade and competition. That same year, the OECD established a Joint Group on Trade and Competition composed of members of the OECD Trade Committee and the OECD Competition Committee: "to help deepen understanding of the complex issues arising at the interface of these two policy domains against a globalizing backdrop and explore how best to ensure that both sets of policies are mutually supportive in promoting greater economic efficiency".

However, beyond the goodwill to make trade and competition policies more complementary, there was a great deal of anxiety among competition authority officials about the WTO initiative. It was feared that the trade negotiators in the WTO would take over the international dimension of competition policy under the pretext that it was a necessary complement to trade liberalization measures and that, in the process, they would degrade the purity of competition law enforcement by injecting a mercantilist approach to competition law enforcement. The creation of a joint group on Trade and Competition at OECD, just like the creation of the International Competition Network (ICN) by 14 competition authorities in October 2001 following the suggestion, in 2000, of the International Competition Policy Advisory Committee of the United States (ICPAC) created in the US in 1997, were as much defensive moves designed to preserve the role of competition authorities and the integrity of competition law enforcement as they saw it, as they were genuine attempts to harmonize the two sets of policies [31].

Nevertheless, once created, the OECD Joint Group on Trade and Competition Policy first advanced work on vertical restraints, initially focused on automobiles and auto parts in 1997 and 1998.

In 1999, the OECD Secretariat published a report "Trade and Competition Policies for Tomorrow" which summarizes the joint group's early work on Trade and Competition Policy. It explores the complementarities between trade policy and competition policy, as well as their differences, and analyzes the trade and competition implications of vertical restraints, which call for a cautious case-by-case analysis.

In October 2000, the Secretariat prepared a scoping paper on Possible Future Work for the Joint Group on Trade and Competition addressing the "development dimension" of the trade and competition debate. That

paper identified, in the form of broad questions, several substantive elements of the trade, competition and development interface worthy of further analytical attention. It presented five main options: enhanced voluntary convergence of competition policies; enhanced bilateral co-operation between competition authorities; regional agreements containing competition policy provisions; plurilateral competition policy agreements; and multilateral competition policy agreements.

In the Doha Declaration (November 2001), the Ministers directed the WTO Working Group on the Interaction between Trade and Competition Policy (WGTC) to focus on specific areas leading up to the Fifth Ministerial Session. The suggested topics included:

- Technical Assistance and Capacity-Building: A strong emphasis was placed on the need to assist developing and least-developed countries in building the capacity required to engage with these issues effectively.
- Core Principles: The Working Group was tasked with clarifying core principles in the enforcement of competition law, specifically including transparency, non-discrimination, and procedural fairness.
- Hard-Core Cartels: The agenda included addressing provisions related to the identification and handling of hard-core cartels. Modalities for Voluntary Cooperation: The group was asked to explore modalities that would facilitate voluntary multilateral cooperation between member countries.

The Declaration explicitly required that the needs and interests of developing and least-developed country participants be taken into account throughout this process, including the provision of appropriate flexibility.

In response to the Doha Declaration, the OECD Joint Group on Trade and Competition focused on: i) the core principles of non-discrimination, transparency and procedural fairness; ii) effective action against hard core cartels; iii) special and differential treatment/flexibility and progressivity; iv) voluntary co-operation in competition law; v) peer review and other possible compliance mechanisms; and capacity building and progressive reinforcement of competition institutions. The work of the Joint Group on Trade and Competition was discussed at the OECD Joint Global Forum on Trade and Competition in May 2003.

In September 2003, at the WTO Cancun Ministerial Conference, trade ministers were unable to reach an agreement on the future course of the Doha Development Agenda. It was agreed that the work on the “Singapore issues” (investment, competition policy, government procurement, and trade facilitation) should be suspended. The OECD joint work on Trade and Competition was interrupted.

Independently of the fluctuations of trade negotiations in the WTO, the issue of the complementarity of trade policy and competition policy in the context of economic development remained an issue of interest for the OECD. This issue was revisited in 2021 in a roundtable held at the OECD Global Forum on Competition devoted to “Trade, Development and Competition”. The following year, in 2022, again in the context of the OECD Global Forum, a roundtable was held on the related theme of “Subsidies, Competition and Trade”.

Aside from the work on the interface between trade and competition policy, which, as indicated, was very much linked to the WTO negotiations, the Competition Committee also actively investigated complementarities or differences between competition law enforcement and competition policy and a variety of other policies. In 2008, it held a roundtable on Energy Security and Competition Policy and another on “National Security” considerations in competition enforcement in 2026.

In 2009, it held a roundtable on Competition Policy, Industrial Policy and National Champions (followed by a roundtable on “Industrial Policy and the Promotion of Domestic Industry”, held in 2018 in the context of the OECD Latin American and Caribbean forum, and by a third roundtable on Pro-competitive industrial policy, held in May 2024).

In 2015, the OECD Competition Committee held a roundtable on Competition Policy and Competitive Neutrality, followed by a roundtable on “The Promotion of Competitive Neutrality by Competition Authorities” held in 2021, in the context of the OECD Global Forum on Competition.

The OECD Competition Committee also explored the links between competition policy and macro-economic policies:

In October 2021, it held a roundtable on “The Role of Competition Policy in Promoting Economic Recovery,” and in 2022, it held a roundtable on “Competition and Inflation”.

Also in 2022, the Competition Committee held a roundtable on The Relationship between FDI Screening and Merger Control Reviews, in a joint session of the OECD Competition Committee and the OECD Investment Committee.

Scope and Goal of Competition Law and Policy

Beyond the issue of the compatibility between competition law enforcement and policy with various other dimensions of economic policy, the second decade of the 21st century was a period of intense questioning about what the scope and the goals of competition law and policy should be. These questions arose from the fact that, as seen earlier, new concerns or objectives besides achieving efficiency made their way into collective aspirations, and from the fact that, in some areas, competition law and policy, as it was practiced, did not seem to meet collective expectations adequately.

The second decade of the 21st century was the decade when Tim Wu rose to prominence as a critic of the consumer welfare approach to competition, thanks to his books arguing that the traditional approach to competition failed to prevent economic concentration in communication technologies (*The Master Switch: The Rise and Fall of Information Empires*, 2010) and was likely to fail on the internet (*The Attention Merchants: The Epic Scramble to Get Inside Our Heads*, 2016), and that this failure of traditional antitrust to prevent excessive corporate concentration was not just an economic issue but also a political one as it was a threat to the free exchange of ideas, considered essential for democracy.

In 2009, Barry Lynn started the Open Markets Program at the New America Foundation, which alerted the public to the impact of corporate concentration on public welfare and democracy. The Open Markets Institute and other think tanks began arguing that market concentration led to “political capture”, where dominant corporations used their wealth and gatekeeping power to influence, or even subvert, democratic governance.

Lina Khan’s celebrated article on “Amazon’s Antitrust Paradox,” published in 2017, argued that the prevailing “consumer welfare” standard ignored the broader societal and democratic costs of massive, vertically integrated firms. It linked economic dominance to the erosion of competitive markets and, by extension, political autonomy.

On the academic front, economic research documented the rise of economic concentration and profit margins in the United States, crystallized in the 2017 paper by De Loecker and Eeckhout ([32]) and the decline in the labor share of income in both developed and developing countries ([33]). That same year, David Autor, David Dorn, Lawrence Katz, Christina Patterson, and John Van Reenen argued ([34]) that the US economy was becoming increasingly dominated by a small number of “superstar” firms which were highly productive, grew to control massive market shares, and consequently captured a larger portion of industry revenue, which contributed to the aggregate decline in the labor share. In 2018, in a new paper ([35]), Jan De Loecker and Jan Eeckhout argued that markups have risen most in North America and Europe, and least in emerging economies in Latin America and Asia, and that the increase in markups brought about a distributional change with more of the surplus going to the owners of the firms and less to the workers. That same year Federico J. Díez, Daniel Leigh, and Suchanan Tambunlertchai published an IMF Working Paper ([35]) in which they estimated that in advanced economies markups had increased by an average of 39 percent since 1980, that the increase was broad-based across industries and countries, and driven by the highest markup firms in each economic sector and that higher markups were correlated initially with increasing and then with decreasing investment and innovation rates.

Those results raised many questions about the effectiveness of competition law enforcement based on the consumer welfare paradigm.

The OECD Competition Committee played a crucial role by discussing these issues rather than sweeping them under the carpet, and they were often discussed in the larger context of the OECD Global Forum on Competition (where OECD members and non-members meet) or of the OECD Latin American and Caribbean Forum on competition.

In several roundtables, the Committee examined whether competition law and policy had been too narrowly focused on price competition and whether other dimensions of competition should figure more prominently in competition analysis.

In 2013, the OECD Competition Committee examined “The Role and Measurement of Quality in Competition Analysis,” and it raised even wider questions when it held a roundtable on Public Interest Considerations in Merger Control in 2016 and a roundtable on Considering Non-Price Effects in Merger Control in 2018.

In a series of roundtables held partly in the context of the OECD Global Forum on Competition, the Competition Committee examined the issue of the contribution of competition law enforcement policy to various public interest goals such as poverty reduction (with three roundtables, one devoted to whether Competition in Markets for Essential Goods and Services Reduce Poverty held in the 2012 OECD Latin America and Caribbean Competition Forum, one, the following year (2013), on Competition and Poverty Reduction in the Competition Committee and one, in the context of the 2013 Latin American and Caribbean Competition Forum on Competition and Poverty: The role of Competition Authorities); the promotion of employment (with a roundtable during the 2015 Global Forum on Competition on Does Competition Kill or Create Jobs), as well as on the fight against corruption (with a roundtable held in 2014 in the context of the OECD Global Forum On Fighting Corruption and Promoting Competition); the protection of human rights with a roundtable on Promoting Competition, Protecting Human Rights held in 2016 in the context of the Global Forum on Competition; the formalization of the economy (with a roundtable in 2018 in the context of the OECD Latin American and Caribbean Forum on The Informal Economy in Latin America and the Caribbean: Implications for Competition Policy); the contribution of competition to the democratic process (with two roundtables:

one on Competition and Democracy in 2017 during the Global Forum on Competition and another on The interaction between competition and democracy in 2024); competition and fairness (with a roundtable on How can competition contribute to fairer societies in November 2018 during the OECD Global Forum on competition) and Competition Policy and Gender during the 2018 Global Forum on Competition.

The Competition Committee ended this sequence of intense questioning of the goal(s) and the scope of competition laws with two roundtables, held in the context of the OECD Global Forum on Competition, to examine the growing disillusion with competition law enforcement and how to respond to it (a roundtable on Competition under Fire in 2019 and one on Competition Policy: Time for a Reset in 2021).

The OECD recommendations on competition law and policy

Among other benefits, the best practices roundtables allow the Committee, the Chair, and the Secretariat to assess the extent of consensus on the importance of some issues related to competition law enforcement or competition policy, and whether these issues might give rise to an OECD recommendation.

One of the legal instruments through which the OECD intervenes is the issuance of recommendations, which are first discussed at the Committee level and then adopted by the Council. These recommendations, which are adopted by consensus, are not legally binding. Still, OECD Members are expected to “do their utmost” to implement them, and the governments of the member states typically consider them to be authoritative standards of good policy.

Such recommendations have an impact on candidate countries since candidates have to commit to adopting the OECD recommendations in order to become members of the organisation.

With respect to the members of the organisation at the time of the adoption of a recommendation, although there is no formal mechanism to ensure the implementation of the recommendation, there are various monitoring mechanisms that can occur, through the country peer reviews of Competition Law and Policy undertaken by the Competition Committee, or through the subsequent roundtable discussions organized on the same theme, which applies a certain pressure on member states to implement the recommendation.

The process leading to the adoption of a recommendation is much more streamlined than the negotiation of a report. In general, recommendations are short (which ensures relatively speedy negotiation, unlike the adoption of a substantive report), general (which means that they do not usually prescribe a particular way to deal with the concern that is the object of the recommendation), and on topics on which there is likely consensus.

The analysis of the list of OECD recommendations on competition is interesting both for what it contains and for what is missing.

For example, there are recommendations on substantive enforcement issues (such as the 2025 Recommendation of the Council on Merger Review, which revised and updated an older recommendation on the same topic adopted in 2005), the 2019 Recommendation of the Council concerning Effective Action against Hard Core Cartels, the 2014 Recommendation of the Council Concerning International Co-operation on Competition Investigations and Proceedings, the 2012 Recommendation of the Council on Fighting

Bid Rigging in Public Procurement) as well as on procedural issues (such as the 2021 Recommendation of the Council on Transparency and Procedural Fairness in Competition Law Enforcement). However, the Competition Committee has made no recommendation on abuse of dominance or abuse of monopoly power, or on the treatment of vertical restrictions.

Several recommendations deal with the interaction between competition policy and other policies (such as the 2023 Recommendation of the Council on Intellectual Property Rights and Competition which revises, consolidates and replaces two earlier Recommendations adopted respectively in 1978 and in 1989), the 2021 Recommendation of the Council on Competitive Neutrality, the 2001 Recommendation of the Council concerning Structural Separation in Regulated Industries; or the 1986 Recommendation of the Council for Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies). However, there is no recommendation on the interface between competition policy and industrial policy, lately a topic of great importance in many countries.

Even more striking is the fact that whereas there are 21 OECD recommendations on the digital sector, none was suggested by the Competition Committee even though competition issues in this sector are some of the most pressing issues competition authorities are confronted with nowadays and even though the Competition Committee has devoted 20 roundtables since 2020 ([37]) to various aspects of competition in the digital sector.

The possible reasons for this limited initiation of (soft) legal instruments by the OECD Competition Committee are multiple.

One reason could be the evolution (mentioned above) in the membership of the Competition Committee over time. Independent agencies (which have come to dominate the membership of the Competition Committee) in charge of law enforcement under the control of appellate courts, may feel ill at ease when it comes to the discussion of possible OECD recommendations for fear of adverse reactions from committee members who are representatives of the executive branch of their government who may legitimately argue that they are more competent than representatives of authorities independent of the executive to work on proposals which would then receive the approval of all the governments of the OECD members states.

Another reason is that a large number of issues in competition law and policy are assessed differently across jurisdictions with different legal systems and economic histories. This is certainly the case with respect to the definition of exploitative abuses of market power. Indeed, there are major differences between EU competition law and the antitrust laws in the US with respect to whether the fact that a firm with market power charges a high price can be regarded as a violation of competition law or whether it should be considered the legitimate reward of a firm which has gotten its market power through business acumen, efficiency or innovation.

A third reason could be that the world of competition has faced several fundamental challenges over the last 25 years and that competition authorities have been focused on discussing how to adapt to those changes rather than on disseminating the lessons they have learned before the appearance of these new challenges. First, the apparent irrational behavior (exuberance) of some competitive markets has suggested that regulation could be a useful complement to competition law enforcement at least in some sectors. Second, a shift in socio-economic preferences in many countries has meant that the consideration of economic efficiency has had to contend with competing collective goals such as sustainability, resilience, strategic independence, equality, etc. This has led to a need to redefine the respective roles of competition policy and other economic policies such as industrial policy, innovation policy, etc. Third, technological developments

in the digital sector have been accompanied by new forms of competition (competition between multi-sided platforms rather than one-sided pipeline firms, competition through innovation rather than competition on prices, competition between differentiated baskets of services rather than between suppliers of similar products etc.) which have led to a need to rethink and to adapt competition law to ensure that it remains relevant in this new environment.

However, the Competition Secretariat is well aware that in the OECD culture the perceived importance of a Committee is often associated with the number of draft recommendations it has initiated. This exerts subtle but real pressure on the Competition Committee to overcome its somewhat cautious approach toward such soft instruments.

Outreach and International cooperation

One of the important initiatives of the OECD Competition Committee, together with the OECD Competition Secretariat, was the launch in February 2001 of the OECD Global Forum on Competition as an annual event. The OECD Global Forum on Competition was created to engage in a dialogue with non-member countries to explore the extent to which the rapid globalization of markets had created new competition overlaps between national competition law enforcement activities (particularly the rise of cross-border cartels and mergers) and whether non-binding convergence, which had become the hallmark of the Competition Committee, could be usefully extended to a wider set of countries.

The Global Forum on Competition stands out as a major success. It routinely gathers more than one hundred delegations. It has driven global convergence in competition law, diffused best practices, strengthened enforcement networks, and supported institutional reforms in dozens of countries.

This Forum is based on the idea that, on the one hand, the non-member countries could benefit directly from the thinking of the competition authorities of the OECD and, on the other hand, the OECD Member countries would benefit from being exposed to the somewhat different perspectives and challenges faced by non-OECD member countries and, in particular, developing countries. The agenda of the OECD Global Forum on Competition has therefore always been carefully balanced, with half of the topics suggested for discussion in roundtables being proposed by non-members. The selection of the interveners or experts is also carefully monitored to allow a large representation of non-members. Finally, the OECD Global Forum also holds peer reviews for non-members.

In parallel, the Committee also created, together with the Inter-American Development Bank, the Latin American and Caribbean Competition Forum in 2003, which is also an annual event.

Latin America was a priority region for the OECD Competition Committee because many countries had recently adopted competition laws or were strengthening competition authorities after market reforms made during the 1980s–1990s, and the Inter-American Development Bank viewed competition policy institutions as important elements of market-oriented reforms, investment promotion, and productivity growth.

In addition, Latin American countries, which shared similar legal systems, a common history, an equivalent level of economic development, and geographic proximity, were eager to have a forum where they could exchange ideas and their experience in competition law enforcement and policy.

Conclusion

For thirty years from 1994 to 2024, I chaired the OECD Competition Committee. This is an exceptionally long period by any standards. Still, the extended period of my chairmanship is even more extraordinary given the (soft) rules of the OECD governing the chairmanship of Committees. Indeed, one of these rules states: "5. No Chair of a Committee, sub-Committee or sub-group should normally remain in office for more than three consecutive years". I am infinitely grateful to the members of the OECD Committee for having consistently shown their confidence in my leadership.

During those years, thanks to the incredible dedication of the staff of the competition division and the delegates to the OECD Competition Committee, this Committee went from a confidential gathering of government officials painstakingly trying to find consensus on the treatment of some of the most common competition law violations to an internationally known and respected institution, composed of mostly independent competition authorities, which has become the most authoritative source of analysis on the goals, scope, methodologies, achievements and challenges of competition law and policy in dynamic economies and on the interface between competition law enforcement and other economic policies which affect or interfere with the functioning of market mechanisms.

The road we followed was full of passionate exchanges, which moved the OECD competition community from the original goal of convergence of laws and policies to a more measured approach based on the understanding of the legitimate differences between competition law systems across countries due to differences of legal systems, history, level of economic development, and economic policy and on the exploration of what united us and what we could learn from the experience of one another. This process of soft convergence has been highly successful, and there are now more commonalities between competition law systems across the world than there were in the past.

The competition community still faces challenges such as the need to move from a static view to a more dynamic view of competition mechanisms, a better understanding of the relationship between competition and innovation, and a reconsideration of the basis for international cooperation in a world in which large global firms dominate some important global markets. To meet these challenges, the Committee will remain ideally placed if it maintains its intellectual ambitions and avoids excessive bureaucratization of its processes.

BIBLIOGRAPHY AND NOTES

- [1] The Copenhagen criteria are the conditions, defined in 1993, that any country must satisfy to join the European Union.
- [2] The Council is made up of the ambassadors of the member countries.
- [3] Needless to say, and as the rest of this article will show, some outside observers may feel that the Chairman of the Competition Committee “owns the OECD Competition Committee” thanks to the influence this position can exercise on the agenda and its delivery.
- [4] Report of the Committee of Experts on Restrictive Business Practices of 10 February 1977 on the restrictive business practices of multinational enterprises [RBP(77)1-MNE].
- [5] Recommendation of the Council concerning Action against Restrictive Business Practices Affecting International Trade Including those Involving Multinational Enterprises, adopted on 20/07/1978.
- [6] Report of the Committee of Experts on Restrictive Business Practices of 30 October 1978 [RBP(78)3] on competition policy in regulated sectors with special reference to energy, transport and banking.
- [7] Recommendation of the Council on Competition Policy and Exempted or Regulated Sectors adopted 25/09/1979.
- [8] Report of the Committee of Experts on Restrictive Business Practices on Competition Policy and International Trade: Their Interaction, derestricted by Council Decision of 7 June 1984.
- [9] OECD, Recommendation of the Council for Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies, OECD/LEGAL/0228.
- [10] The position of Rapporteur General combined, at the time, two functions: the Executive Directorship of the competition authority and the Directorship of Investigations.
- [11] The transition from government representatives to competition authority representatives in the OECD Competition Committee did not always go smoothly because, in most countries, government officials retain the power to determine the scope and direction of competition policy, and they are responsible for its implementation. Therefore, ministry officials considered themselves the legitimate representatives of their country on the competition committee of an intergovernmental organisation. However, as the idea, inherited from the trade negotiations, progressed that to be credible and effective competition authorities should be independent both from the business community and from government, the legitimacy of competition authorities to discuss competition matters increased. In an interim period, certain countries sent both the representative of their national competition authorities and the government official responsible for competition policy to the committee, which sometimes led to bizarre situations when both representatives competed to get hold of the microphone to answer a question or when one of them completed the remarks of their colleague by subtly undermining their logic. In other cases, there was a de facto market sharing between the competition authority and the ministry responsible for competition, with the understanding that if the Ministry insisted on coming to the OECD Committee meeting, the head of the authority would not appear and vice versa. Over time, the conflictual nature of the relationships between national competition authorities and ministry officials gave way to a more conciliatory spirit.

[12] Manual For The Guidance Of Chairs Of Subsidiary Bodies Of The Organisation, OECD.

[13] A good example of this is given by the 2018 Secretary General's "Note on the Designation and functioning of the Bureau". This note states in its paragraph 10: "10. Neither the Rules of Procedure nor the Manual stipulates how many members a bureau of an OECD body shall have. Instead "Each substantive subsidiary body decides, in the light of experience and taking into account the need for efficiency, how many bureau members it wishes to designate" (pursuant to sub-section b) on Composition, p. 29 of the Manual)". However, this statement is immediately followed by a graph detailing the number of bureau members per Committee, which shows that the median size of a bureau is around 6 or 7 members and that with a bureau of 12 members, the Competition Committee was the Committee with the largest number of members (followed by two Committees which had 11 members in their bureau). Eventually, the number of bureau members in the Competition Committee grew to nearly 20.

[14] As an example of the reticence of the OECD Secretariat toward large bureaus, the In-Depth Evaluation of the Competition Committee (August 27, 2024), written by the Secretariat and endorsed by the Council, stated the following: "(...) the In-Depth Evaluation identified some highly unique functioning practices. While in some cases these practices have contributed to the achievement of a strong policy impact, in other cases these may generate risks for the Committee. In terms of its governance, while the yearly designation of a very large bureau has improved the geographical and gender diversity within the bureau and speaks highly of delegates' interest to contribute to the steering of COMP's work, this may also be detrimental to the bureau's ability to provide swift advice and create a more intimate setting for high-level strategic discussions. A large bureau may also be limiting the levels of participation of the broader delegate community in key processes, such as the Program of Work and Budget (PWB) development process". However, in the history of the Bureau of the Competition Committee reaching back nearly 30 years, there is no known example of cases in which the Bureau was unable to provide swift advice, nor was any uncovered by the In-Depth Evaluation, which suggests that the alleged risk is more imaginary than realistic. Furthermore, the idea that high-level strategic discussions require an "intimate setting" flies in the face of the fact that the Bureau of the Competition Committee is composed for the most part of heads of competition agencies and, (as is, in fact, is recognised by the evaluators) has successfully developed a strategy which has led it to acquire a high level of prominence in the field of competition law and policy.

[15] According to the Note by the Secretary-General on the Designation and functioning of the Bureau dated 17-18 September 2018, under the heading Designation of the Bureau, it is stated: "it is the Secretariat that organizes the call for nominations and proceeds with the designation".

[16] A good example of this is the categorical refusal by the Secretariat to provide a background note on "Competition in informal markets" for the 2025 Global Forum on Competition on the pretext that it did not have the resources to deal with this topic (whereas it never argued that it did not have the resources to provide a background note for the other topics chosen).

[17] Of the current members of the OECD, the following are countries which adopted a modern competition law in the early 1990s or later: Czech Republic (1991), Hungary (1990), Ireland (1991), Iceland (1993), Italy (1990), Mexico (1992), Poland (1990), Slovakia (1994) and Turkey (1994).

[18] See Note by the Secretary-General, Designation and functioning of the Bureau, OECD, 17-18 September 2018.

[19] The Chairman of the Committee supervised the elaboration of these background notes in regular meetings with the staff to ensure that all the crucial issues that the members of the committee needed to discuss were adequately covered.

[20] This encouragement came from the fact that I would give priority in the debate to the countries which had sent a written contribution.

[21] The handling of outside experts who may have a hidden agenda requires a certain discipline and is not without risks. Still, experience shows that through a combination of disclosure, supervision, and careful choices these risks are minimal and that the contribution of experts to clarifying complex issues can be invaluable. During my thirty years as chair of the OECD Committee and having participated in more than 200 roundtables with at least 300 experts, I can recall only three instances of experts who overstepped the bounds of objectivity.

[22] About five years ago, a controversy about BIAC's participation in the work of the Committee erupted. The then Assistant Attorney General of the United States, Jonathan Kanter, expressed the view that the business community was, by listening to the OECD Competition committee debates, "spying on competition authorities" and decided that BIAC representatives should be excluded from attending the sessions of the working party he was chairing so that competition authorities could speak among themselves "more freely". There is no question that the BIAC representatives better understand competition authorities by listening to and participating in the debates of the OECD Committee. The interesting question is whether this is a good or a bad thing for competition law enforcement and competition policy.

One should recall that in many cases the victims of anticompetitive practices are business firms. This means that the views of the business community with respect to competition are more diverse than assumed by those who think that the business community is systematically hostile to competition law. This is exemplified by the fact that the BIAC contributions to the OECD debate are very frequently the result of a delicate balancing between different (or even opposite) visions of the same issue. In many countries, civil enforcement of competition laws is well established or growing, and allowing business representatives to participate in the debates at the OECD is a way to enlighten potential competition violators, as well as a way to convince possible victims of anticompetitive practices to use competition law against the violators.

Furthermore, the effect of potential violators being better informed about competition and the activities of competition authorities can go in two opposite directions: either it incentivizes potential violators to protect themselves preventively against competition authorities or, on the contrary, it incentivizes them to modify their behavior so as not to run afoul of the law. There is very little evidence about the net effect on business behavior.

In addition, competition authorities may themselves learn from the business community perspective (as well as from consumer organisations) and better adjust their action to meet some of the concerns expressed (whether they concern legal predictability, economic effects, or the relevance of theories of harm). At a time when questions are raised about the development of new theories of harm to adapt competition law enforcement to the reality of competition in the digital sector and whether efficiencies are adequately taken into consideration by competition authorities in high-tech industries, it is useful to hear what the representatives of the business community have to say about these issues.

Finally, if one hypothesizes that the business community is overall hostile to competition law, refusing to dialogue with the business community representative can only embolden the business community to lobby policy makers to limit the independence, the means of intervention or the resources of competition authorities.

[23] The anxiety of some delegates to the OECD Competition Committee about a particular aspect of their contribution on which they might be asked a question often came from the fact that they were not always knowledgeable about a fine technical point raised by the practice or raised by the written contribution of their delegation (for example, because they had not been part of the investigating team or of the adjudication and/or were not part of the drafting team of the contribution). Other delegations (mostly agencies with more resources) would bring to each roundtable a specialist on the question debated in addition to the team in charge of international relations.

[24] The impact of the Committee beyond the membership of the OECD was duly noted in the evaluation of the Committee, which stated: "(The Committee) has developed very strong and productive collaborations with non-Members, other regional and international networks and fora working on competition, as well as with the European Union (EU). These partnerships have contributed to the achievement of (the Committee's) ambitions and have allowed it to reach audiences well beyond OECD policymakers".

[25] King, DR, Dalton, DR, Daily, CM, & Covin, JG. 2004. Meta-analyses of Post-acquisition Performance: Indications of Unidentified Moderators. *Strategic Management Journal*, 25(2):187-200.

[26] Meckl, R., & Röhrle, F. (2016). Do M&A deals create or destroy value? A meta-analysis. *European Journal of Business and Economics*, 11(2), 1-9.

[27] OECD (1997), *The OECD Report on Regulatory Reform: Synthesis*, Paris.

[28] See for example : Australia: Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021; Royal assent: 2 March 2021; Enacted: 25 February 2021 (with amendments from the Senate); Germany: Act against Restraints of Competition (Competition Act – GWB), 10th amendment, enacted 18 January 2021 (in particular new Section 19(a)); European Commission: Proposal for a Regulation Of The European Parliament And Of The Council on Contestable And Fair Markets In The Digital Sector (Digital Markets Act, DMA), submitted on 15 December 2020; France: Draft law, approved by Senate aimed at ensuring consumer choice in the digital space and returned to the National Assembly on 20 February 2020; Italy: Proposal of competitive reforms within the framework of the annual law for the market and competition of 2021, Japan: Act on Improving Transparency and Fairness of Specific Digital Platforms (Reiwa 2nd Year Law No. 38; 2020; enforcement date 1 February 2021); United Kingdom: Advice from the UK Digital Markets Task force on a "New pro-competition regime for digital markets", UK Competition and Markets Authority (CMA); as well as the CMA's Digital Markets Strategy, version "February 2021 refresh"; United States: 5 Bills introduced in the House of Representatives by several individuals on 11 June 2021 and subsequently referred to the Committee on the Judiciary: O H.R. 3816 ("American Choice and Innovation Online Act"); O H.R. 3825 ("Ending Platform Monopolies Act"); O H.R. 3826 ("Platform Competition and Opportunity Act of 2021"; O H.R. 3843 ("Merger Filing Fee Modernization Act of 2021"; and O H.R. 3849 ("Augmenting Compatibility and Competition by Enabling Service Switching Act of 2021", or the "ACCESS Act of 2021").

[29] i.e., digital systems or processes that take competition authorities' data input, apply an algorithm to process that input, and generate an output based on that computation, which contributes to the enforcement activity of the competition authority.

[30] See An AI Timeline 2020 – 2026, Sales Ape, June 9, 2026.

[31] The goal of the ICN at the time of its creation was referred to in a speech to the International Bar Association by William Kolasky, Deputy Assistant Attorney General of the Antitrust Division (September 2002). He stated: *“The concept behind ICN was to form a global network of competition authorities focused exclusively on competition -- all antitrust all the time as my boss Charles James put it. The goal was twofold. First, to provide support for new competition agencies both in enforcing their laws and in building a strong competition culture in their countries. Second, to promote greater convergence among these authorities around sound competition principles by working together, and with stakeholders in the private sector, to develop best practice recommendations for antitrust enforcement and competition advocacy that could then be implemented voluntarily by the member agencies”*. The objective was to ensure that new competition agencies (in less developed countries) would adopt the principles of competition law applied by competition authorities having a longer tradition of antitrust and competition law enforcement and that competition law enforcement at the international level would not be tainted by other policy goals (such as developmental goals, industrial policy, trade mercantilism or equity considerations).

[32] Jan De Loecker, Jan Eeckhout, The Rise Of Market Power And The Macroeconomic Implications, Working Paper 23687, National Bureau Of Economic Research, August 2017.

[33] Mai Chi Dao, Mitali Das, Zsoka Koczan, Weicheng Lian: “Why is Labor Receiving a Smaller Share of Global Income? Theory and Empirical Evidence” IMF Working Paper, July 2017.

[34] David Autor, David Dorn, Lawrence F. Katz, Christina Patterson, John Van Reenen, The Fall Of The Labor Share And The Rise Of Superstar Firms”, NBER Working Paper, May 2017.

[35] Jan De Loecker & Jan Eeckhout , Global Market Power, June 2018, NBER Working Paper 24768.

[36] Federico J. Díez, Daniel Leigh, and Suchanan Tambunlertchai, “Global Market Power and its Macroeconomic Implications”, IMF Working Paper, 2018.

[37] Roundtables since 2020:

- 1) Competition and consumer policy in digital markets, 2026.
- 2) Competition in artificial intelligence infrastructure, 2025.
- 3) Artificial intelligence and competitive dynamics in downstream markets, 2025.
- 4) Remedies in digital markets in Latin America and the Caribbean, 2025.
- 5) Competition in mobile payment services, 2025.
- 6) Competition in the provision of cloud computing services, 2025.
- 7) Competition, Fintechs and Open Banking: An overview of recent developments in Latin America and the Caribbean, 2024.
- 8) The intersection between competition and data privacy, 2025.



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