



INTERGOVERNMENTAL GROUP OF EXPERTS ON **COMPETITION LAW AND POLICY**





ROUND TABLE ON "THE CHALLENGES IN THE DESIGN OF A MERGER CONTROL REGIME FOR YOUNG AND SMALL COMPETITION AUTHORITIES"



SIXTEENTH SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON **COMPETITION LAW AND POLICY**



UNITED NATIONS
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CHARACTERISTICS OF YOUNG AND SMALL ECONOMIES

- From an economic perspective, many of these economies have been heavily subject to Government intervention and are in a transitional phase of liberalization, privatization or deregulation
- From an institutional point of view, the agencies have important constraints in terms of human and financial resources
- Politically, the lack of stability affects the ability of Governments to commit to long-term changes
- Finally, the lack of competition culture interferes with asserting the benefits of competition



BASIC ELEMENTS IN THE DESIGN OF MERGER CONTROL REGIMES

- Definition of a merger: what kind of operations
- Merger control regime: notification ex-ante, ex-post or voluntary
- Notification thresholds: size of merger operations

PRINCIPLES TO BE FOLLOWED IN THE DESIGN OF THE PROCEDURE AND SUBSTANTIVE ANALYSIS

- Clarity: deadlines for notification and review periods
- Transparency: to promote accountability, predictability and consistency, access to the file by third parties
- Respect for the rights of defence: protection of confidential information and access to the file by third parties
- Substantive analysis: the dominance test and the substantial lessening of competition (“SLC”)



INSTITUTIONAL RESOURCES AND POWERS

- Merger review is fact-intensive
- Competition agencies should be provided with appropriate mechanisms to get relevant information from the parties
- Independence and objective merger control
- Institutional endowments should play a role in determining the scope of the application of rules
- Spill-over effects on other areas of enforcement (antitrust rules)
- It is convenient to make an in-depth cost/benefit analysis of the fees' effects
- The young and small authorities should periodically review their merger control provisions

QUESTIONS

- What are the main challenges for your authority in the current regime?
- Does the current regime respond to your expectations to deal with merger operations that are notified?
- Is it an efficient system? What legal modifications would you propose to improve it?
- What is the perception of the society and the business community regarding the merger regime?





MANY THANKS!

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