

*Nedan följer en sammanfattning av det viktigaste från vårt möte med **Oliver Guersent**, Director General for Competition, EU-kommissionen den 12 december 2022. Sammanfattningen är skriven av **François Brunet**, Ordförande i ICC Global Competition Commission och **Caroline Inthavisay**, Global Policy Lead – Competition, ICC.*

## KEY TAKEAWAYS FROM ICC/DG COMPETITION MEETING

### General comments

1. **Good level of participation** (see attached [list of participants](#));
2. **Good interaction with Olivier Guersent** who in the end agreed to stay for 2 hours, while he was supposed to stay only for an 1.5 hour. He provided straightforward feedback on numerous topics and seemed to be keen to work with the ICC Global Competition Commission on most of our workstreams;
3. **Areas of improvement for future meetings with regulators:**
  1. As some attendees noted, there were too many topics on the agenda. Suggestions were made as to be more selective with the issues for discussion next year, and more generally when organizing similar meetings with antitrust regulators (e.g. CADE or US FTC).
  2. Having more concise slides could have been more effective;
  3. Some attendees suggested that an actual rehearsal should have been organized a week beforehand, to help us be (i) more focused on the points that we would like to stress and (ii) better at time-keeping.

### Sustainability

1. DG Guersent heard the points raised by Simon Holmes on safe harbours for sustainability cooperation's and made some remarks about (i) the relevance of the subject, (ii) how dear this topic was to his heart, and (iii) the section dedicated to sustainability in the new EU horizontal cooperation guidelines. He showed interest in the COP27 antitrust paper produced by the Task Force and had gone through the real-life examples of cooperation's among competitors for sustainability purposes that died for fear of competition laws. He suggested that ICC present its COP27 antitrust paper to [European Competition Network \(ECN\) members](#) next year.

**Next steps:** The Task Force will regroup on 11 January to identify the advocacy actions for the COP27 paper and discuss how the list of practical examples can be improved during the next 12 months.

## Merger Control

1. DG Guersent was happy to see that a large number of our draft recommendations aligned with the EU system. He was more critical of draft recommendations 7, 8, 9, 10, and 11 as reflected below:

### **Draft Recommendation 7:**

*Simplified notification forms should be available at least for transactions where:*

- I. *the parties' activities do not overlap and / or are not vertically related;*
- II. *the parties market share is below a de minimis 25% threshold that allow the parties to presume that the transaction is unlikely to restrict competition.*

DG Guersent supported this recommendation so long as there was maximum discretion to get out of simplified procedure.

### **Draft Recommendation 8:**

*The countries with filing fee systems, should:*

- I. *consider the possibility of abolishing such a filing fee system (unless the fee is minimal, i.e. less than USD 6,000), or*
- II. *at least ensure that the filing fee be strictly proportionate to (a) the actual administrative costs supported by the regulator and/or (b) the actual likely economic impact of the transaction on the territory of the country concerned.*

DG Guersent does not view filing fees as a problem and notes that this should not be seen as an issue. With that said, he stated that if proportionality was an issue, filing fees could be proportional to legal fees.

### **Draft Recommendation 9:**

*Antitrust agencies should publish guidelines available both in their respective language(s) and in English on the following issues: definition of a reportable merger; (ii) notification thresholds; (iii) statutory deadlines; (iv) information requests; (v) substantive assessment criteria; (vi) remedies; and (vii) gun jumping.*

DG Guersent supported this recommendation.

### **Draft Recommendation 10:**

*The parties should have the possibility to apply for a waiver to close the transaction before the outcome of the merger control process under pressing circumstances (economic turmoil, financial crisis, financial jeopardy) and to carve out the business(es) that is (are) under review for merger*

*control process in order to speed up the implementation of the transaction. This is particularly needed in jurisdictions where the review period is long, unpredictable, or difficult to predict.*

Although he supported the idea of waiver, he stressed that its conditions should be very narrowly defined, and it should be exceptional. On the other hand, he stated that he did not support carve-out arrangements. On this note, he referred to the Boeing/McDonnell Douglas transaction ([Commission Decision of 97/816, 1997 O.J. \(L 336\) 16-47, Case No IV/M.877](#)), where only the EU commission took issue with the transaction and the carve-out would have spoiled the entire transaction.

#### **Draft Recommendation 11:**

*Sanctions for gun jumping should be limited to a fine amounting to a share of the target's revenues in the jurisdiction concerned.*

DG Guersent did not support this recommendation stressing that the sanctions for gun jumping should be high and they should take away all incentives of potential for gun jumping. In other words, he does not support limiting the sanctions on that front.

#### **Next steps:**

1. Gönenç Gürkaynak and Annie Herdman to lead the revision of our draft recommendations taking into account the part of the criticism expressed by Guersent, and circulate such revised draft recommendations for comment to the entire task force;
2. Circulate the Australian, French and Turkish chapters, which have been recently amended, and encourage all the country teams to revise their own chapters accordingly;
3. Recruit two new Task Force co-chairs to expand our resources, ideally a US expert and an EU expert (enthusiastic ICC members from other countries are also welcome);
4. Organize a Merger Task Force call around 15 January 2023.

#### **Foreign State Aid**

1. DG Guersent listened carefully but did not offer much comment. However, he stated that DG COMP would be happy to participate to our future webinars on the subject. Christoph Schoser, Head of the Foreign Subsidies Regulation (FSR) Unit at DG COMP, agreed to have a separate virtual meeting with the ICC Task Force on State Aid to discuss in detail our ideas and suggestions. This meeting could take place in January.

**Next steps:** We intend to go ahead with those two initiatives at the beginning of 2023. Our first webinar will focus on Brazil.

#### **Digital Economy**

1. After presenting our survey project DG Guersent shared his insights regarding our questions related to the DMA enforcement, the new Chief Technology Officer, the Article 102

enforcement, and possible amendments to the draft horizontal guidelines. For further details on the newly appointed staff, please see the attached bulletin.

**Next steps:** DG COMP's insights will be discussed within the Task Force leadership this week together with potential actions the Task Force can take to our project forward.

### Antitrust Compliance

1. In relation to (i) the harmonization of criteria for credible robust competition compliance programmes, and (ii) the acknowledgment of compliance programmes in agencies' decisions – full article or commitment decisions, DG Guersent noted that antitrust compliance was an area where he could not foresee any change in DG COMP's position at this time.

**Next steps:** We will advocate with other agencies as antitrust compliance remains important to companies. As a result, the 2013 ICC Antitrust Compliance Toolkit will be updated next year, with the aim to address AI-related issues.

### Non-target RFIs

1. Non-target RFIs bring unnecessary burden on companies and provide a lower quality of information in response to RFIs and to inefficiencies. We need to make the process more efficient, less burdensome, and more effective for regulation. DG Guersent shared ICC's views on the issue of Non-target RFIs. To ICC's request to enable further engagement with DG COMP when we have advanced our draft recommendations, DG Guersent responded that he would be happy for his DG COMP colleagues to liaise with ICC.

**Next steps:** The draft recommendations will be circulated early next year taking into account the recent practical examples contributed by members of the Task Force. An advocacy strategy will be further discussed once the content of the paper has been finalized.

### ICC conference in Tokyo on July 21, 2023

1. DG Guersent noted that he would attend the ICC conference in Tokyo 2023 and deliver a speech if his busy schedule allowed him to do so. Should he not be able to participate, he would send a senior DG COMP official to speak in his stead. Thus, we can consider that DG COMP is supporting the project (together with the French Competition Authority and the Japan Fair Trade Commission).

**Next steps:** ICC will try to secure the support of the US FTC. Dina Kallay has offered to assist on this front, and we hope that her exchange with the FTC will yield a positive outcome.

