

## OECD examines competition through a "gender lens"

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The Organisation of Economic Co-operation and Development is launching seven projects examining the impact of gender on antitrust analysis, including research into whether collusion levels differ between men and women.

The organisation selected the research projects on Friday as part of its gender-inclusive competition policy initiative, which explores if a more effective competition policy could help address gender inequality and if a “gender lens” could allow enforcers to identify additional relevant market features and consumer behaviour.

After launching the initiative in July with support from Canada’s Competition Bureau, the OECD received 61 project proposals from experts in 28 different

countries. Of those, 13 submissions came from competition agencies and 16 from private practice, while the remainder came from academia.

The seven selected [projects](#) look at the procedure and analysis that competition authorities use when investigating mergers and anticompetitive conduct, as well as those committing the infringements. They will examine past cases and practice from Europe, the US and South Africa.

Economic consultancy Oxera will examine if gender impacts the results of consumer surveys, while the Analysis Group will explore if a “gender lens” affects market definition analysis in merger reviews and antitrust investigations.

Bill Kovacic, a non-executive director of the UK’s Competition and Markets Authority and the former chair of the US Federal Trade Commission, will review the FTC’s budgeting, resource allocation, and project selection decisions since the late 1960s.

He will then suggest how the US agency can take gender into account as it also tries to respond to “pressing modern concerns” such as income inequality, racial discrimination and small business development.

Three projects look at the relationship between gender and collusion. OECD competition expert Carolina Abate and Alexis Brunelle, a case handler at France’s Competition Authority, will examine the relationship between board diversity and collusion in cartel cases, with an emphasis on past French practice.

University of Barcelona economics professor Joan-Ramon Borrell, University of Malaga associate professor José Manuel Ordóñez-de-Haro and two PhD candidates will undertake a similar exercise, focusing on past Spanish and EU cartel cases.

Justus Haucap, the director of Düsseldorf Institute for Competition, will work alongside scientific associate Christina Heldman and Holger Rau, an

associate economics professor at the University of Goettingen, to similarly explore whether gender influences the propensity to collude or whistleblow.

The final project is run by Mpumelelo Tshabalala, a senior case manager at the Competition Tribunal of South Africa, alongside Institute for Economic Justice economist Sonia Phalatse and Betty Mkhathshwa. It considers extending public interest considerations to include gender inequality, drawing on South Africa's experience in assessing effects on "historically disadvantaged persons".

The projects must be completed by May 2021.

### **"Critical" for antitrust**

Chris Pike, the OECD competition expert overseeing the initiative, said the organisation called for original research to help understand "what competition agencies might do, or not do, differently if they want to build a more gender-inclusive competition policy".

Speaking on a personal level, Pike said he hopes the research will allow the OECD to provide guidance "that allows those competition agencies that want to build a more gender-inclusive competition policy to do so".

The guidance could include recommendations such as prioritising market studies and advocacy on markets that are important for women, or designing whistleblower programmes to improve cartel enforcement, he said.

It could also include considering gender when defining product markets and assessing the substitutability of products, and when designing consumer-facing remedies, Pike added.

Oxera senior consultant Nicole Rosenboom in Amsterdam, who is leading the consultancy's project on market definition, said she hopes the research can inform the toolkit for national authorities.

Traditionally, consumer surveys on market definition report their results in the aggregate instead of by gender, which might miss key differences between men and women, she said.

Oxera will therefore rerun survey analysis done in the past, this time accounting for the “data gap”, to see if the outcomes are the same for different genders, she said.

Rosenboom said the “next step” for the antitrust community is to gain insights into whether gender affects competition policy. It can use those findings to consider whether any changes are needed to ensure a more gender-inclusive framework, she said.

Analysis Group vice president Jee-Yeon Lehmann in Boston said her consultancy is focusing on market definition because of the “critical role” it plays in antitrust enforcement and merger reviews.

“Understanding how gender considerations might affect the standard analysis of market definition can provide useful insights into market power and competitive effects of conducts at-issue on different consumer groups, including women,” she said.

[Lisa Phelan](#), the co-chair of Morrison & Foerster’s global antitrust practice, said the OECD’s initiative is critical. It will help the antitrust community understand the degree to which existing gender inequality in society has restricted competition analysis by limiting who is in “the room where it happens”, how markets are defined and where competition policy resources are placed, she said.

The initiative will also likely shed light on the degree to which an existing lack of gender inclusiveness in competition analysis may have contributed to the creation or maintenance of gender inequality in society, Phelan said.

Antitrust analysis is largely a “data-driven exercise”, so the hard data created as a result of the OECD’s projects could be very influential in gender-related

discussions that may have previously been dismissed as too intangible or without evidence, she added.

Phelan suggested that the project focused on consumer surveys might reveal some gender-specific relevant markets that have previously been ignored, while the projects on collusion will provide important information for companies seeking to deter the chance of a cartel problem – and also perhaps for cartel enforcers imposing a corporate monitor to “clean up” an offending company.