



European Commission



Study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed

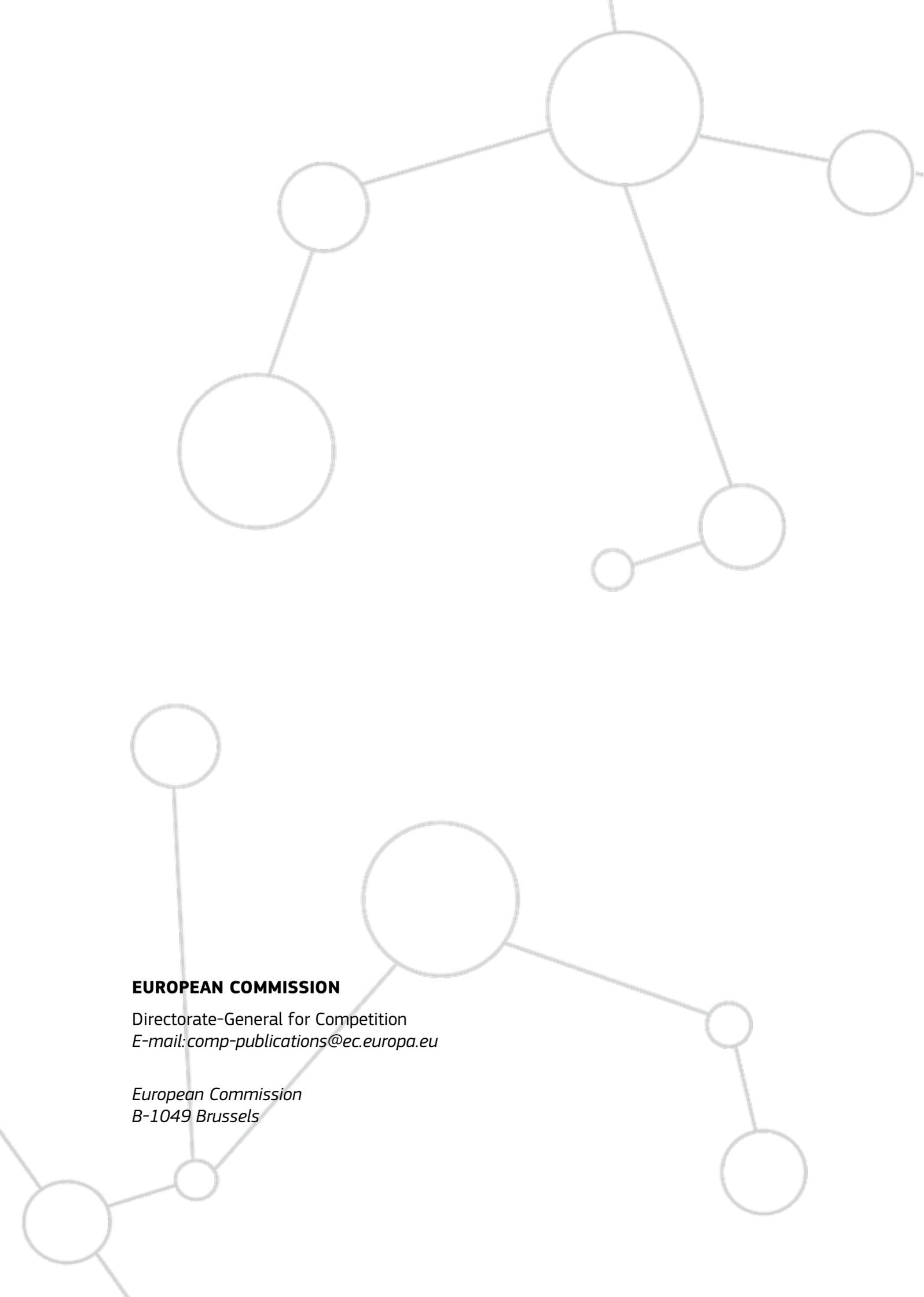
Prepared by



Annex 7

Expert Workshop Report

Competition

An abstract network diagram consisting of several circles of varying sizes connected by thin lines. The circles are arranged in a non-linear, interconnected pattern across the page. The largest circle is at the top center, with several smaller circles branching out from it. Other circles are scattered throughout the page, some connected to each other and some to the larger central nodes.

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**Study to support the impact assessment of a
possible EU initiative to the application of
competition rules to
collective bargaining by self-employed
(COMP/2020/008)**

Annex 7 – Expert Workshop Report

13 October 2021

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This report was prepared by a team of experts led by Ecorys between January and September 2021. The Ecorys team comprised Andrea Broughton, Manuel Goncalves Gil, Martin Van der Ende, Sergio Goffredo, Lucija Kilic, Letizia Vicentini, Laura Heidecke and Maire Williams, supported by Andrea Naldini, Carlo Miccadei and Anna Mori from Ismeri Europa, and a team of high-level experts (Nigel Meager, Roberto Pedersini, Frans Pennings, Tony Kerr, Massimo Pallini and Francesco Rossi dal Pozzo). The team is grateful for the support of members of the DG COMP European Competition Network and Private enforcement unit (COMP. A.4). Our thanks also go to Giorgio Monti, Victoria Daskalova, Claudia Schubert, Michael Doherty and Marc Cowling for their expert validation comments.

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1 Background and logistics

This expert workshop brought together labour law, competition law and economist experts in order to discuss the preliminary results of the study to support the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed. It was an opportunity for the researchers and the colleagues from DG COMP to hear feedback on the progress of the study, as set out in the draft interim report, and to gather views on the methodology to be used for the impact assessment part of the study.

Due to ongoing COVID-19 restrictions, the workshop was held online, on Microsoft Teams, on 11 June 2021 from 9.00 to 13.00 CET. The agenda is set out below.

Time	Activity	Lead
From 8:45	Log-in of participants	
9:00	Introduction: purpose and context of the workshop	DG COMP
9:05	Brief introductions of the participants	All
9:15	Presentation of the study: Mapping results of the study: <ul style="list-style-type: none"> • literature review • interviews with EU experts and social partners • survey of self-employed • country mapping • work on the clustering 	Andrea Naldini, Andrea Broughton Manuel to moderate
9:45	First round of discussion, focusing specifically on: <ul style="list-style-type: none"> • Literature Review • Interviews • Surveys • Clustering proposal 	All participants Manuel to moderate
10:25	Break	
10.40	Presentation of the baseline scenario, impact assessment of the alternative policy options and comparison of the alternative policy options	Martin van der Ende and other members of the research team Andrea to moderate
11:10	Second round of discussion, focusing specifically on: <ul style="list-style-type: none"> • Baseline scenario • Impact assessment of the alternative policy options • Comparison of the alternative policy options 	Andrea to moderate

12:50	Conclusions: next steps	DG COMP and Ecorys
13h00	Thanks and end of workshop	

1.1 Attendees

The workshop was attended by a total of six external experts, in addition to representatives from the European Commission, and the Ecorys consortium that is undertaking the study. The box below gives details of the attendees.

European Commission

Anna Vernet, Head of Unit, (COMP A4)
 Konstantina Strouvali, Deputy Head of Unit, (COMP A.4)
 Aristeidis Demiroglou (COMP A.4)
 Jean-Francois Guillaudeau, (COMP A.4)
 Maximilian Heydeck (COMP A.4)
 Tatiana Lopez Garrido (COMP A.4)
 Thomas Buettner (COMP CET)
 Ida Krusaa (EMPL B.1)
 Elleonora Soares (GROW C.3)
 Eugenia Laurenza (GROW G.3)
 Katrin Saaremael-Stoilov (GROW D.1)
 Andreea-Diana Barbu (SG D.1)
 Giovanna Mazzeo Ortolani (JRC)
 Angeliki Moraiti (EMPL B.1)
 Tinne Heremans (GROW E.1)
 Tobias Muellensiefen (EMPL B.1)
 Gero Meessen (SJ. E)
 Hanna Zinner (S.G. D.1)

Experts

Prof. Giorgio Monti – Competition Law Expert, Tilburg University, Netherlands
 Dr Victoria Daskalova – Competition Law Expert, University of Twente, Netherlands
 Prof. Claudia Schubert – Labour Law, University of Hamburg, Germany
 Michael Doherty – Labour Law Expert, Maynooth University, Ireland
 Marc Cowling – Economist, University of Derby, UK
 Nigel Meager – Economist, Freelance Expert

ECORYS consortium

Andrea Broughton, Project Director,
 Manuel Gil, Deputy Project Manager
 Martin van der Ende, Core Researcher
 Andrea Naldini, Core Researcher
 Letizia Vicentini, technical support

2 First round of discussion

After DG COMP and Ecorys had welcomed all to the meeting and a round of introductions was completed, Andrea Naldini and Andrea Broughton presented the mapping results of the study. The slides for both round of discussion are contained in Annex I. The study team then took questions from the audience concerning the following:

- literature review;
- interviews with EU experts and social partners;
- survey of self-employed;
- country mapping; and
- work on the clustering.

The first round of discussions mainly focused on the literature review, interviews, surveys, and clustering proposal. The main points were as follows:

- **Inclusion of the views of competition authorities at national level.** Experts were assured that the national mapping stage had included interviews with experts at national level and that DG COMP is also holding discussions with national competition authorities.
- **Survey methodology.** Experts queried the methodology for the survey of self-employed, including the selection criteria for the participants and how the questions were phrased and phrased doubt about how representative the sample was. More details on the survey completed by the external company “Dynata” will be provided to DG COMP, including the selection methodology and the list of questions that were asked to the respondents, which were phrased in a way that was understandable to people who had no technical knowledge of collective bargaining, employment law or competition law.
- **Problem definition for the study.** Experts queried the problem definition in terms of having a policy problem, either a problem in the market, in society or a legal problem, rather than a task for the study to complete. In particular, one expert talking about addressing vulnerability. It was explained by DG COMP that there is limited competence in this area, which is why there is a focus on legal aspects related to competition law, rather than general employment policy, which strays into DG EMPL territory.
- **Clustering.** A discussion was held on the clustering. There was broad agreement on clusters 1 and 2. One expert queried clusters 3, 4 and 5 in that there is overlap between these clusters. There was also discussion of the placing of IE and NL in one cluster and whether it might be better to separate them, particularly in light of the fact that the NL solution is a soft law document and an attempt to interpret EU law, which is different to the special case of IE. The challenge is that each country is unique and the countries do need to be split in certain ways. Ecorys explained that the approach that was taken was to focus on the legal solutions that were in place regardless of whether they were used or not. For example, the main thinking behind cluster 5 is the fact that that is a competition law solution rather than a labour law solution. DG COMP added that this is a difficult balancing exercise to see whether everything is in order from a legal perspective but also based on what happens in practice. The thinking behind grouping IE and NL together was that in practice, the national competition authorities do not intervene. The discussion on the clustering also touched on the issue of what the countries that allow collective bargaining aim for, and how and why these countries detect the vulnerable groups that are covered by collective agreements in these countries, such as journalists and creative arts workers. It was noted that one of the categories where there are collective agreements covering self-employed is journalists, and one of the reasons for this is to ensure that they are not under the control of editors, in order to maintain freedom of press. DG COMP also noted that they have tried to avoid using the word vulnerable, because it is not possible to define what a vulnerable self-employed person is. Accordingly, the vulnerability of people was initially considered as a criterion to determine the scope of the policy initiative, but it was dropped because it is problematic to determine who would be vulnerable. Instead, the bargaining position is the crucial issue. A weak bargaining position may in turn lead to vulnerability, but the bargaining position is a criterion is that can be applied more effectively. It was

agreed overall that the crucial issue with vulnerability is the lack of bargaining power and that the experts were fine with that approach. Claudia Schubert said that she would send information about the German experience with regard to this issue. This information is appended to this report in Annex II.

- **Focus of the study.** One of the experts queried why the focus of the study was on defining self-employed rather than looking at the definition of employees and then categorising those that fall outside of this definition. The discussion centred on the fact that self-employed are the focus of the study and that there is no agreed definition of self-employment. The debate also touched on the issue of flexibility in self-employment and the potential impact of Covid in terms of increasing flexibility also for employees, thereby reducing incentives for self-employed. Although this was slightly out of the scope of the study, it was recognised that Covid will indeed have a significant impact on the way in which work is carried out in the future, with much more working at home, possibly in a hybrid working arrangement, with time split much more between the office and home, for those who can work in this way.
- **Balancing the interests of workers and consumers.** A question was asked about how it is possible to make a judgement as to what is in the interest of consumers. The debate here revolved around the assumption that the impact on the self-employed is the improvement of pay and also other working conditions. If pay improves for the self-employed then it may also impact on prices for consumers, although this will be analysed much more closely in the impact assessment. Overall, in order to estimate consumer welfare it's necessary to have an idea of the shape of the demand curve for the output of self-employed.

3 Second round of discussion

After a short break, Martin van der Ende presented the work of the study team on the following:

- the baseline scenario;
- the impact assessment of the alternative policy options; and
- the comparison of the alternative policy options.

The main points of this discussion were as follows:

- **Baseline scenario.** There was a discussion about the inclusion of agricultural workers from self-employment studies as the downward trend relating to the number of self-employed in that sector, is compensated by an upward trend in other types of self-employment. The economist experts noted that these are normally excluded. There was also discussion about platform workers, in that these workers in general make up a small part of the total of self-employed, even though there is a lot of attention and focus on these workers at present. As a consequence, there is room for the total number of platform workers to grow while the total number of self-employed falls.
- **Overview of theoretical direct effects.** Discussion here revolved around whether it was possible to collectively bargain a contract that fixed pay rates, possibly also introducing a ceiling for pay. This is clearly the case for an hourly (or daily/weekly) paid worker but maybe not so clearly the case for workers paid differently. There was also discussion about the potential effect on wages of employees in similar/related jobs, either via collective bargaining to restore differentials, or through market effects, i.e. seeing self-employed “colleagues” earning more leads employees to push for more pay. It was noted that trade unions have a difficult choice in terms of whether to bargain for employees only or self-employed as well. One economist expert noted that if highly productive workers charge higher rates and lower productivity workers adjust their rates down, then thought needs to be given to what might happen if collective bargaining raises the pay floor. This might indeed lead to less low productivity self-employment and higher demands for employed workers, or it may incentivise low productivity workers to become more productive and engaged. It could also be argued that if a person is low-paid they need to work harder for a decent income, and a higher pay floor reduces that incentive. It was noted overall that it was difficult to know how much to assume that pay would increase following collective bargaining (although Martin has since the workshop made some calculations and assumptions). Further, it was noted that non-pay issues are very important, as some people are happy to trade off some employee perks for more flexibility. Therefore, one collective agreement cannot cater for the preferences of all self-employed and it could be argued that highly productive people do not need a collective agreement at all, they just charge high pay rates and can justify that.
- **Likely significant impacts.** A discussion was held on the range of likely impacts of the options to enable collective bargaining to be extended to self-employed.
 - One element of the discussion focused on **working conditions** and how to define them, and whether this should cover all terms of employment that are negotiated collectively.
 - One expert said that one of the big debates in Ireland is the **cost to the state**. It was noted by other experts that for a self-employed worker who is not covered for risks associated with a lack of demand for their services or risk of disability, these costs will have to be picked up by the State, which does increase the costs to the state. One element that should be included, therefore, is whether a Member State has a social security system covering self-employed. Overall, any effects on the State are passed on to tax payers, so if collective bargaining reduces the cost to the State, this is a benefit to consumers as tax payers.
 - One of the economists suggested making an estimate of the **potential impact on aggregate employment** of the extension of collective bargaining to self-employed, assuming that it leads to increased pay at the bottom end, which may be analogous to the potential impact on aggregate employment of introducing or increasing a minimum wage.
 - It was noted that collective bargaining could also have a **positive effect on platforms**, which may want to offer higher pay to ensure a more stable workforce but currently fear to do so due to the chilling effect of EU competition law.

- **Extension of collective agreements.** A debate was also held about the extension of collective agreements across a sector and whether or not solo-self-employed could be covered against their will by such agreements. It was noted that the situation differs with Member States, with some countries not practising the extension of agreements across a sector. Prof. Daskalova explained that in the Netherlands, for example, the government decides on this and the self-employed affected are covered whether or not they want to be - there have been some cases of this. DG COMP representatives noted that they are not aware of any country that has a system for extensions of agreements between solo self-employed, and so the question would arise if in the future Member States allow this.
- **Experiences of non-EU countries.** Experts discussed the fact that there are proposals to introduce sectoral collective bargaining in New Zealand¹. For the purposes of this study, what is interesting is that the expert group in New Zealand proposed including 'contractors' (i.e. self-employed), but the NZ government has decided NOT to act on this for now. There is also some impact analysis in the government proposal which might be interesting to look at for the study². Further, the ACCC in Australia has just adopted a class exemption allowing self-employed and small businesses to collectively bargain.
- **Changes in pay rates.** Experts felt that it was difficult to draw many general conclusions from the small number of existing new collective agreements for self-employed as, almost by definition, they are not likely to be typical of the impacts of any future agreements which might come in after any policy change. It is therefore risky to make quantitative conclusions on a few examples of agreements. DG COMP wondered whether there studies on average impact of collective agreements in terms of pay increases for employees, which would confirm what the study has found from these few existing collective agreements for self-employed. There was then a debate about whether it was possible to hypothesise that a collective labour agreement for self-employed workers would not go beyond a collective labour agreement for workers simply because the market would not bear it. The study economist noted that the argument would be that self-employed are willing to trade off some pay compared to employees against increased more flexibility. This might mean that lower increases could be expected, compared to employees. It may be possible to formulate three hypotheses: 1) pay rate is lower 2) pay rate is same 3) pay rate is higher. A question was raised whether companies will not hire self-employed who offer to work for less than collectively agreed. Martin explained his view that a collective agreement is a commitment of the company or companies not to pay less than agreed.
- **Method for impact on prices.** Experts debated the proposed method for calculating the impact on prices. One approach might be to assume that, or model what happens if, collective bargaining reduces or eliminates the difference between pay for self-employed and employee wages in "similar" work, or the difference between their effective self-employed hourly earnings and the minimum wage for employees where that exists. DG COMP noted, however, that that difference is in itself rather difficult to quantify and that these two approaches would be complementary rather than one superior being to the other. The debate then focused on the percentage of a cost increase that is passed on to consumers and that view that this also depends on price elasticity: even companies with a high profit may pass on costs. Martin explained that low-profit companies have to pass on costs because otherwise they would operate at a loss. High-profit companies already charge the profit maximising price and an even higher price would be more than offset by a lower demand. A final comment from the experts was that it was not necessarily about low profit vs high profit necessarily: if there is inelastic demand, this translates into power, and individuals might also pass this on, even in a high-profit industry.

Next steps

DG COMP and Ecorys concluded the meeting and thanked the participants for taking part. Participants were invited to send the study team any extra comments within one working week.

¹ <https://onlabor.org/sectoral-bargaining-is-coming-to-new-zealand/>

² <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-legislation-reviews/fair-pay-agreements>

4 Annex I: Additional comments from the experts after the workshop

This section contains additional comments received after the workshop from Professor Claudia Schubert and Professor Giorgio Monti.



Schubert_Questions
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