



Recommendation of the Council
concerning Action against
Restrictive Business Practices
Affecting International Trade
Including those Involving
Multinational Enterprises

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Background Information

The Recommendation concerning Action against Restrictive Business Practices Affecting International Trade Including those Involving Multinational Enterprises was adopted by the OECD Council on 20 July 1978 on proposal of the Committee of Experts on Restrictive Business Practices (now called Competition Committee). The Recommendation aimed to alleviate restrictive business practices affecting international trade, including those involving multinational enterprises, by simultaneous efforts in the fields of national legislation on restrictive business practices and of international co-operation, particularly within the OECD framework. The Recommendation proposed a new measure or supplementing existing measures on restrictive business practices so as to prohibit or control effectively restrictive business practices. The Recommendation was abrogated on 12 July 2017 as it was found to be obsolete.

THE COUNCIL¹,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises adopted by the Governments of OECD Member countries on 21 June 1976;

HAVING REGARD to the 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];

CONSIDERING that restrictive business practices may have harmful effects on international trade whether they emanate from purely national or from multinational enterprises;

CONSIDERING that the restrictive business practices of multinational enterprises do not differ in form from those operated by purely national enterprises but that they may have a more significant impact on trade and competition due to the fact that multinational enterprises generally tend to wield greater market power, that they play a relatively greater role in the process of national and international concentration and that the restrictive business practices they engage in have more often an international character;

RECOGNISING that, in the present state of international law and of the laws on restrictive business practices of Member countries, control of practices affecting international trade, including those involving multinational enterprises, raises many difficulties, especially in assembling necessary information held outside the jurisdiction of the country applying its law, in serving process and in enforcing decisions in relation to enterprises located abroad;

RECOGNISING that the solution to these difficulties cannot at present be found in an international convention establishing control of restrictive business practices affecting international trade owing mainly to the still differing attitudes adopted by countries towards restrictive business practices and in particular to their varying national legislations in this field;

CONSIDERING, however, that the difficulties in controlling restrictive business practices affecting international trade, including those involving multinational enterprises, may be alleviated by simultaneous efforts in the fields of national legislation on restrictive business practices and of international co-operation, particularly within the OECD framework, it being understood that such co-operation should not in any way be construed to affect the legal positions of Member countries, in particular with regard to such questions of sovereignty and extra-territorial application of laws concerning restrictive business practices as may arise;

I. RECOMMENDS the Governments of Member countries to consider the following action:

1. To adopt new or supplement existing measures on restrictive business practices so as to prohibit or control effectively such practices, particularly:

a) Actions adversely affecting competition in the relevant market by abusing a dominant position of market power by means of, for example,

- Anti-competitive acquisitions;
- Predatory behaviour toward competitors;
- Unreasonable refusal to deal;
- Anti-competitive abuse of industrial property rights;
- Discriminatory (i.e. unreasonably differentiated) pricing and using such pricing transactions between affiliated enterprises as a means of affecting adversely competition outside these enterprises;

b) Cartels or other restrictive agreements which without justification adversely affect or eliminate competition;

2. To develop, consistent with established rules of international law and taking international comity into account, appropriate national rules to facilitate investigation and discovery by their respective competition authorities of relevant information within the control of an enterprise under investigation, where such information is located outside their respective national territories and when its provision is not contrary to the law or established policies of the country where the information is located;

3. To allow, subject to appropriate safeguards, including those relating to confidentiality, the disclosure of information to the competent authorities of Member countries by the other parties concerned, whether accomplished unilaterally or in the context of bilateral or multilateral understandings, unless such co-operation or disclosure would be contrary to significant national interests;

4. To facilitate, through conclusion of or adherence to bilateral or multilateral agreements or understandings, mutual administrative or judicial aid in the field of restrictive business practices;

5. Whilst vigorously enforcing their legislation on restrictive business practices, to make use as far as possible of the OECD procedures on co-operation between Member countries in the field of restrictive business practices affecting international trade so as to facilitate consultation and resolution of problems.

II. INSTRUCTS the Committee of Experts on Restrictive Business Practices to keep under review this Recommendation and to report to the Council when appropriate.

¹ Turkey abstained.

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