



# Recommendation of the Council on Competition Policy and Exempted or Regulated Sectors

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## Background Information

The Recommendation on Competition Policy and Exempted or Regulated Sectors was adopted by the OECD Council on 25 September 1979 on the proposal of the Committee of Experts on Restrictive Business Practices (now called Competition Committee).

The Recommendation urges Member countries to undertake periodic reviews of regulations and related exemptions from competition law in order to assess, with the participation of competition authorities, a) whether the initial reasons or circumstances which gave rise to regulations, or to particular aspects thereof, remain valid under contemporary conditions; b) the extent to which those regulatory regimes or particular aspects thereof have achieved their objectives, and the true social, economic and administrative costs, as compared to benefits, of achieving those objectives by means of regulation; and c) whether the same objectives could in fact be achieved under contemporary conditions by the operation of competition subject to control under restrictive business practices laws, or by forms of government intervention which restrict competition to a lesser degree. The role of competition authorities in such review is fundamental and Governments are invited to provide adequate means of consultation and co-ordination of action between regulatory authorities and competition authorities so as to enable the latter to have a positive impact on the formulation and implementation of regulatory schemes and policies regarding issues.

The Recommendation was abrogated by the Council on 11 December 2019 and replaced by the Recommendation on Competition Assessment [OECD/LEGAL/0455].

**THE COUNCIL,**

**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 Report of the Committee of Experts on Restrictive Business Practices of 30 October 1978 [RBP(78)3] on competition policy in regulated sectors with special reference to energy, transport and banking;

**NOTING** that economic sectors which are regulated by the public authorities and which are totally or partially exempted from restrictive business practices laws account for a significant proportion of national output in Member countries and that various Member countries have begun to re-examine the particular need for certain regulations or exemptions and, where feasible, to place greater reliance on competition and the enforcement of restrictive business practices laws;

**CONSIDERING** that the precise policy mix between regulation and competition depends on social and political as well as economic considerations but that regulation should displace competition or restrictive business practices laws only to the extent necessary to achieve public policy objectives not obtainable through competition alone in the circumstances;

**I. RECOMMENDS** to the Governments of Member countries:

1. To undertake, with the participation of competition authorities, reviews of regulatory regimes and of exemptions from restrictive business practices laws to consider:

- a) Whether the initial reasons or circumstances which gave rise to regulations, or to particular aspects thereof, remain valid under contemporary conditions;
- b) The extent to which those regulatory regimes or particular aspects thereof have achieved their objectives, and the true social, economic and administrative costs, as compared to benefits, of achieving those objectives by means of regulation;
- c) Whether the same objectives could in fact be achieved under contemporary conditions by the operation of competition subject to control under restrictive business practices laws, or by forms of government intervention which restrict competition to a lesser degree;

2. In undertaking the reviews mentioned in paragraph 1 above, to take into account the experience of other countries in which specific policies regarding regulated sectors have been achieved with a reduction in the extent of regulation or with a more extensive application of competition policies and competition laws;

3. Where the reviews mentioned in paragraph 1 indicate that regulation remains desirable to achieve public policies or where public enterprises are involved, to consider whether increased competition and increased application of restrictive business practices laws, consistent with the objectives of regulatory policy, would be useful in alleviating the adverse effects which may result from extensive regulation. More specifically, they should:

- a) Reconcile, as far as possible, existing regulatory schemes with their competition policy and restrictive business practices laws;
- b) Ensure that express or implied exemptions from restrictive business practices statutes are no broader than necessary to achieve the public interest objectives of the regulatory schemes;
- c) Exempt from the operation of competition laws only those restrictive activities of enterprises in regulated industries which are required or expressly approved by the competent authorities as desirable or necessary to achieve the purposes of the regulatory scheme;

4. To grant competition authorities appropriate powers to challenge abusive practices, including unfair discriminations and refusals to deal, by monopolies or cartels approved by the competent authorities particularly where such behaviour is beyond the purposes for which the regulatory scheme was enacted;

5. To make efforts to detect non-filed or unapproved agreements which, although lawful if notified to or approved by the competent authorities, have not been so notified and approved; and to treat such agreements under appropriate restrictive business practices standards;

6. To provide adequate means of consultation and co-ordination of action between regulatory authorities and competition authorities so as to enable the latter to have a positive impact on the formulation and implementation of regulatory schemes and policies regarding issues;

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

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