



Recommendation of the Council on Competition Assessment

**OECD Legal
Instruments**

This document is published under the responsibility of the Secretary-General of the OECD. It reproduces an OECD Legal Instrument and may contain additional material. The opinions expressed and arguments employed in the additional material do not necessarily reflect the official views of OECD Member countries.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

For access to the official and up-to-date texts of OECD Legal Instruments, as well as other related information, please consult the Compendium of OECD Legal Instruments at <http://legalinstruments.oecd.org>.

Please cite this document as:

OECD, *Recommendation of the Council on Competition Assessment*, OECD/LEGAL/0376

Series: OECD Legal Instruments

© OECD 2018

This document is provided free of charge. It may be reproduced and distributed free of charge without requiring any further permissions, as long as it is not altered in any way. It may not be sold.

This document is available in the two OECD official languages (English and French). It may be translated into other languages, as long as the translation is labelled "unofficial translation" and includes the following disclaimer: *"This translation has been prepared by [NAME OF TRANSLATION AUTHOR] for informational purpose only and its accuracy cannot be guaranteed by the OECD. The only official versions are the English and French texts available on the OECD website <http://legalinstruments.oecd.org>"*

Date(s)

Adopted on 22/10/2009

Background Information

The Recommendation on Competition Assessment was adopted by the OECD Council on 22 October 2009 on the proposal of the Competition Committee. The Recommendation calls for governments to identify existing or proposed public policies that unduly restrict competition and to revise them by adopting more pro-competitive alternatives. It also proposes governments to establish institutional mechanisms for undertaking such reviews. A number of approaches to competition assessment are possible and the OECD has developed a Competition Assessment Toolkit which is one of them.

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 agreement reached at the 1997 Meeting of the Council at Ministerial level that restrictions on competition are often costly and ineffective in promoting public interests and should be avoided [C/MIN(97)10];

HAVING REGARD to the OECD Guiding Principles on Regulatory Quality and Performance [C(2005)52], which call for governments to review proposals for new regulations, as well as existing regulations, with reference to competition;

RECOGNISING that competition promotes efficiency, helping to ensure that goods and services offered to consumers more closely match consumer preferences, producing benefits such as lower prices, improved quality, increased innovation and higher productivity;

RECOGNISING that higher productivity is essential to economic growth and increased employment;

RECOGNISING that public policies serve a variety of commercial, social, health, safety, security environmental and other objectives;

RECOGNISING that, at times, public policies unduly restrict competition;

RECOGNISING that such undue restrictions can occur unintentionally even when the public policies in question are not focused on economic regulation and not intended to affect competition in any way;

RECOGNISING that public policies that unduly restrict competition often may be reformed in a way that promotes market competition while achieving the public policy objectives;

RECOGNISING that regulation and reform of regulated industries usually require detailed competition assessment of likely effects;

RECOGNISING that, other things being equal, public policies with lesser harm to competition should be preferred over those with greater harm to competition, provided they achieve the identified public policy objectives;

NOTING that a number of countries already perform competition assessment; and

NOTING that the OECD and a number of OECD Member countries have developed competition assessment toolkits;

I. RECOMMENDS as follows to governments of Member countries:

A. *Identification of Existing or Proposed Public Policies that Unduly Restrict Competition*

1. Governments should introduce an appropriate process to identify existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for performing competition assessment, including the preparation of screening devices.

2. In performing competition assessment, governments should give particular attention to policies that limit:

- i) The number or range of market participants;
- ii) The actions that market participants can take;
- iii) The incentives of market participants to behave in a competitive manner;

- iv) The choices and information available to consumers.
3. Public policies should be subject to competition assessment even when they pursue the objective of promoting competitive outcomes and especially when they:
- i) Set up or revise a regulatory body or regime (e.g., the assessment could make sure that, among other things, the regulator is appropriately separated from the regulated industry);
 - ii) Introduce a price or entry regulation scheme (e.g., the assessment could make sure that there are no reasonable, less anticompetitive ways to intervene);
 - iii) Restructure incumbent monopolies (e.g., the assessment could make sure that the restructuring measures actually achieve their pro-competitive objectives);
 - iv) Introduce competition-for-the-market processes (e.g., the assessment could make sure that the bidding process provides incentives to operate efficiently to the benefit of consumers).

B. *Revision of Public Policies that Unduly Restrict Competition*

1. Governments should introduce an appropriate process for revision of existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for evaluating suitable alternatives.
2. Governments should adopt the more pro-competitive alternative consistent with the public interest objectives pursued and taking into account the benefits and costs of implementation.

C. *Institutional Setting*

1. Competition assessment should be incorporated in the review of public policies in the most efficient and effective manner consistent with institutional and resource constraints.
2. Competition bodies or officials with expertise in competition should be associated with the process of competition assessment.
3. Competition assessment of proposed public policies should be integrated in the policy making process at an early stage.

D. *Definitions*

For the purposes of this Recommendation:

“Public policies” means regulations, rules or legislation;

“Unduly restricts competition” means that restrictions on competition needed for achieving public interest objectives are greater than is necessary, when taking into account feasible alternatives and their cost;

“Market participants” means businesses, individuals or government enterprises engaged in supplying or purchasing goods or services;

“Competition bodies” means public institutions, including a national competition authority, charged with advocating, promoting and enhancing market competition and not limited in these roles to a specific sector;

“Competition-for-the-market processes” refers to the bidding processes organised by government for allocating the right to supply a given market or for using a scarce government resource for a distinct period of time;

“Competition assessment” means a review of the competitive effects of public policies including consideration of alternative and less anti-competitive policies. The principles of competition assessment are relevant to all levels of government.

II. INVITES non-member economies to associate themselves with this Recommendation and to implement it.

III. INSTRUCTS the Competition Committee:

To serve as a forum for sharing experience under this Recommendation for Member countries and non-member economies that have associated themselves with this Recommendation;

To promote this Recommendation with other relevant Committees and Bodies of the OECD;

To report to Council in three years on experience with this Recommendation.

Adherents*

OECD Members

Australia
Austria
Belgium
Canada
Chile
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Israel
Italy
Japan
Korea
Latvia
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Portugal
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

Non-Members

Brazil
Romania

* Additional information and statements are available in the Compendium of OECD Legal Instruments:
<http://legalinstruments.oecd.org>

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.