



Recommendation of the Council on Competition Assessment

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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 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 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.

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