



# Recommendation of the Council on Competition Assessment



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## Background Information

The Recommendation on Competition Assessment (hereafter the “Recommendation”) was adopted by the OECD Council on 11 December 2019 on the proposal of the Competition Committee. It revises, consolidates and replaces the 1979 Recommendation on Competition Policy and Exempted or Regulated Sectors [[OECD/LEGAL/0181](#)] and the 2009 Recommendation on Competition Assessment [[OECD/LEGAL/0376](#)]. The Recommendation calls for Adherents to identify existing or proposed public policies that unduly restrict competition and to revise them by adopting more pro-competitive alternatives. It also recommends that Adherents establish institutional mechanisms for undertaking such reviews.

### ***OECD’s standards on Competition Assessment: the 1979 and 2009 Recommendations***

Increased competition contributes to higher economic productivity and growth, and to reducing inequality. In many jurisdictions, however, laws, regulations or other government-imposed barriers unduly restrain market activities. One important step to eliminate these restraints is “competition assessment”, that is, the evaluation of policies to find those unnecessarily restricting competition in order to develop alternative policies that achieve the same objectives, with lesser harm to competition. In 1979, the OECD Council adopted the Recommendation on Competition Policy and Exempted or Regulated Sectors that urged Adherents to periodically examine the particular need for certain regulations and related exemptions from competition law, and, whether feasible, place greater reliance on competition and the enforcement of restrictive business practices laws.

Thirty years later, the 2009 Recommendation on Competition Assessment went further and called for Adherents to establish institutional mechanisms for undertaking such reviews. With a view to supporting its implementation, the Competition Committee developed the [OECD Competition Assessment Toolkit](#) which helps Adherents to eliminate barriers to competition through a method that identifies unnecessary restraints on market activities and develop alternative, less restrictive measures that still achieve government policy objectives. In 2014, the OECD carried out a review of the Adherents’ implementation of the 2009 Recommendation, which showed that the Recommendation and its toolkit have been very successful in promoting competition assessment processes.

### ***Rationale for developing the 2019 Recommendation***

As part of the OECD-wide standard-setting review launched by the OECD Secretary-General in 2016 to strengthen and review all OECD instruments, the Competition Committee agreed to consolidate the 1979 and 2009 Recommendations into a single instrument. In particular, the Competition Committee considered that the 2009 Recommendation was more complete and up-to-date than the 1979 Recommendation, and noted that, while it did not focus on exemptions for sectors from competition law, the methodologies it proposed were still relevant for examining the impact of such exemptions.

### ***Supporting implementation through the Competition Assessment Toolkit***

The implementation of the Recommendation will be supported by the [Competition Assessment Toolkit](#), which sets forth options and good practices on eliminating barriers to competition based on Adherent’s experiences. In addition, the OECD will continue to develop relevant analytical work, through roundtables, hearings, workshops and conferences.



### *Relevance to COVID-19 Response and Recovery*

In the current COVID-19 crisis, countries may need to ensure that sufficient liquidity remains available to businesses and to prevent the twin shocks to demand and supply from leading to the exit of efficient firms, thus preserving the continuity of economic activity during and after the COVID-19 crisis. This may take the form of grants, subsidies, bank guarantees, and other state support. Nonetheless, there is a danger that, if not carefully designed, state support may create competition distortions and un-level the playing field between companies that receive aid and competitors that do not. In that context, the Recommendation can help governments identify existing or proposed public policies that unduly restrict competition and to revise them by adopting more pro-competitive alternatives.

For more information, see :

- [OECD competition policy responses to COVID-19](#)

*For further information, please consult:*

<https://www.oecd.org/daf/competition/oecdrecommendationoncompetitionassessment.htm>.

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**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 Recommendations of the Council on Competition Policy and Exempted or Regulated Sectors [[OECD/LEGAL/0181](#)] and on Competition Assessment [[OECD/LEGAL/0376](#)], which this Recommendation replaces;

**HAVING REGARD** to the Recommendation of the Council on Regulatory Policy and Governance [C(2012)37], 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. **AGREES** that for the purposes of this Recommendation, the following definitions are used:

- “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.
- “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. RECOMMENDS** as follows to Members and non-Members having adhered to the Recommendation (hereafter the “Adherents”):

***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. Governments should ensure that exceptions from competition law are no broader than necessary to achieve their public interest objectives and that these exceptions are interpreted narrowly. Exceptions should only apply to those business activities that are required to achieve the stated policy objective. This principle also implies that any new exception should be defined for a limited period of time, typically by including a sunset date, so that no exception would persist when it is no longer necessary to achieve the identified policy objective.
4. 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);
  - v) Provide an exception from competition law for any specified objective (e.g., the assessment could make sure that any exception is absolutely necessary to achieve the stated policy objectives).

***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.

**III. INVITES** the Secretary-General and Adherents to disseminate this Recommendation, in particular within the competition community and other relevant policy communities.

**IV. INVITES** non-Adherents to take due account of, and adhere to, this Recommendation.

**V. INSTRUCTS** the Competition Committee to:

- a) serve as a forum for sharing experience under this Recommendation;
- b) report to Council no later than five years following its adoption and at least every ten years thereafter.

## 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, Colombia, Costa Rica, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, 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 480 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, and are not legally binding. 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.