



COMPETITION IN EMERGING MARKETS

Case studies of reform and convergence to OECD best practices

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Competition law and convergence

Almost 150 competition authorities, including regional authorities, with a competition law. 38 are OECD members countries – all must have an enforced competition law

Almost 30 years ago the OECD Competition Committee recognised the need for convergence: for jurisdictions to share common standards and practices. The principle of convergence underpins the work of the OECD Competition Committee and its engagement through projects with non-OECD jurisdictions.





Recommendations for reform are based on OECD Standards

- 2021 Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement
- 2021 Recommendation on Competitive Neutrality
- 2019 Recommendation on Competition Assessment
- 2019 Recommendation concerning Effective Action against Hard Core Cartels
- 2014 Recommendation concerning International Co-operation on Competition Investigations and Proceedings
- 2012 Recommendation on Fighting Bid Rigging in Public Procurement
- 2005 Guiding principles for Regulatory Quality and Performance
- 2005 Best practices on Information Exchange
- 2005 Recommendation on Merger Review
- 2001 Recommendation concerning Structural Separation in Regulated Industries (revised in 2016)
- 1989 Recommendation on the Application of Competition Laws and Policy to Patent and Know-How Licensing Agreements
- 1986 Recommendation on Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies
- 1978 Recommendation on Action against Restrictive Business Practices relating to the Use of Trademarks and Trademark Licenses



Some challenges for emerging markets

We often see common challenges shared by emerging economies although not unique to these jurisdictions:

- Lack of an understanding of competition among stakeholders and society
- Lack of financial resources for effective enforcement and advocacy – public, policymakers, judges
- Competition authority may lack independence in enforcement efforts
- Small economies – strong family ties to government, firms are interlinked
- High barriers to product entry
- Heavy state presence in the markets which can distort competition, may be exempt from competition law
- Industrial policies/economic reform may not integrate competition
- Confusion between consumer policy and competition policy



OECD supports reform for international standards

A few examples of the types of projects we undertake that can lead to reform to meet international standards and best practice:

➤ **Peer Reviews of Competition Law and Policy**

EAEU (ongoing), Tunisia (ongoing), Brazil, Denmark, Ecuador, El Salvador, Kazakhstan, Mexico, Peru, Ukraine, Viet Nam...(Many!)

➤ **Assessments of Competition Frameworks**

SEE, Algeria (to be launched), Uzbekistan (to be launched),

➤ **Competition Assessment projects (CAT)**

Brazil (ongoing), Tunisia (ongoing), ASEAN, Greece, Iceland, Mexico, Romania, Portugal (ongoing)

➤ **Fighting bid-rigging in public procurement projects**

Argentina, Brazil, Colombia, Mexico, Peru, Ukraine

➤ **Competition enforcement projects**

Chile

➤ **Market studies**

Ukraine (ongoing)



OECD Competition Law and Policy Peer Reviews

Thorough examination of a country's competition law, regulatory environment, enforcement practice – assessed against international best practices/OECD recommendations

- Assessment of strengths and weaknesses
 - Results in recommendations for change to the competition authority and the government
- ⇒ Compelling arguments for reform: A peer review can provide a country's competition authority with the necessary support and authority for much needed changes

Previous peer reviews can be found here:

www.oecd.org/daf/competition/countryreviewsofcompetitionpolicyframeworks.htm



Peer review case study: Peru 2018

- Regarding the OECD's recommendation to simplify decision-making processes, in June 2019 Indecopi presented a bill that would establish a simplified administrative proceeding for antimonopoly cases.
- Peru has approved a merger control law
- Indecopi has published market studies: reports included a medical oxygen market study
- Indecopi has published guidelines on leniency programs and guidelines on fighting bid-rigging in public procurement
- As a follow-up, undertook a project to improve the public procurement framework used by Peru's Social Security body (Seguro Social de Salud del Peru, EsSalud).





Peer review case study: Ecuador 2020



Recommendations implemented:

- 1) Executive Decree to modify Articles in the competition law:
 - ✓ to better define the conducts and exemptions.
 - ✓ established a two stage merger review system
 - ✓ clarified the responsibilities of the authority and its Board
- 2) Development and application of a new methodology for the calculation of fines which can be found at:
- 3) Development and application of a new Compliance Guidelines and guidelines on the investigation of abuse of market power
- 4) Development and application of a new methodology for identifying bureaucratic barriers

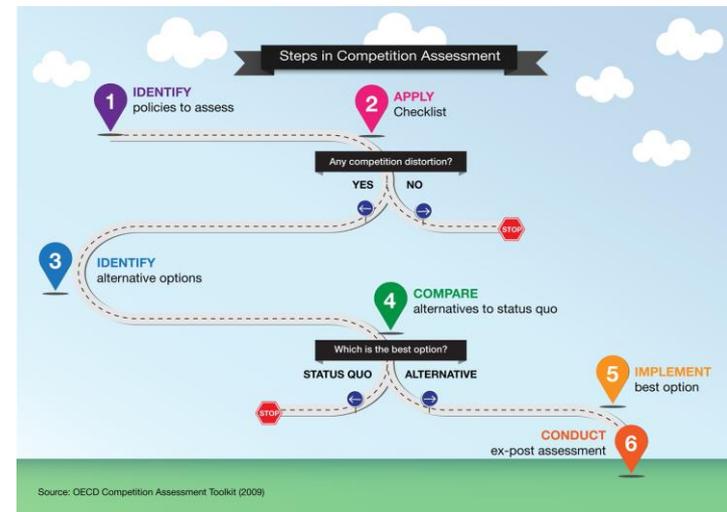
Under development:

- Project on fighting bid rigging in public procurement with the National Public Procurement Service, Legal Secretariat of the Presidency, and the OECD.
- Finishing two more guidelines on the investigation of anticompetitive agreements and unfair competition.
- Advocacy efforts with Ministry of Finance to seek for funds to increase budget.
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OECD Competition Assessment Toolkit

- OECD developed the OECD Competition Assessment Toolkit
- Competition assessment of laws and regulations
 - Identify regulatory restraints to competition – existing, and draft laws/regulations
 - Develop alternative, less restrictive policies that still achieve government objectives
- CAT – can be used by all policymakers

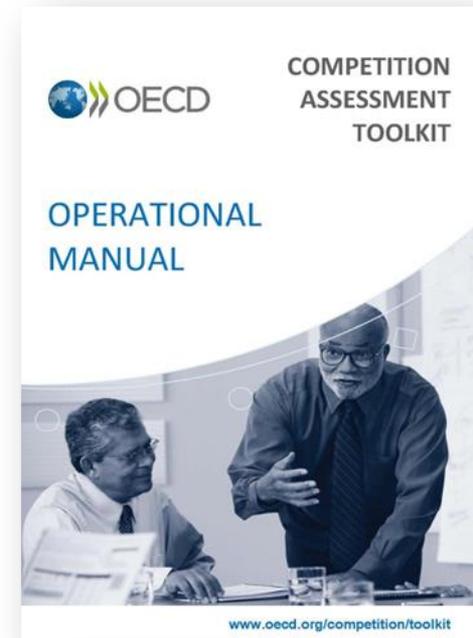




OECD Competition Assessment Toolkit

Composed of three volumes:

- **The “Principles” volume**
 - Principles, describing benefits of competition and the checklist
- **The “Guidance” volume**
 - Detailed technical guidance on key issues to consider in competition assessment
- **The “Manual” volume**
 - Step-by-step guide for performing competition assessment



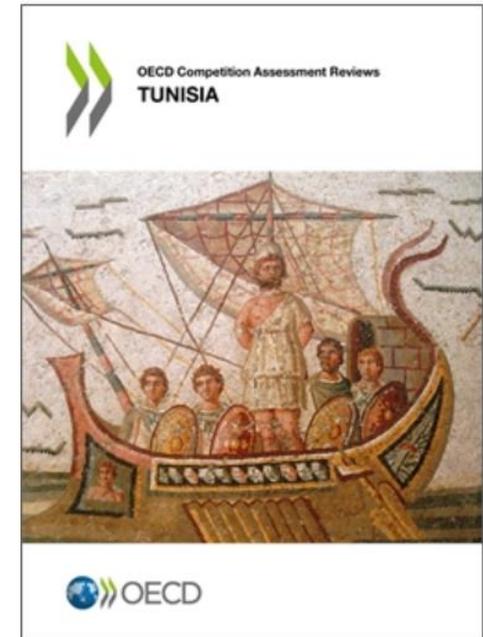


Competition Assessment case study: Tunisia 2019

Tunisia most recently removed the requirement for authorisations to establish hypermarkets, replaced by a “cahier de charges” with ex-post control

Other reforms have been implemented regarding

- ✓ agricultural cooperatives
- ✓ port concessions
- ✓ international trade companies
- ✓ Carte de commerçant





Competition Assessment case study: Iceland, 2020

Tourism sector

- In early June 2021 a new law on Restaurants and Accommodation abolishing the mandatory standards and legal requirements for hotels and other tourist accommodation as recommended by the OECD. It also lowers the licensing fees and removes some of the duplicate licences in the tourism sector.

Professions

- An Interministerial working group has been created to work on reform of professions.
- Draft law will be prepared that proposes to abolish 17 regulated professions, such as hat makers.
- In a second phase, more professions will be abolished. Many of the current educational requirements that the OECD identified will be loosened or removed, such as the obligatory apprenticeship with a Master Tradesman. Instead, certified vocational training during the formal education (at university or a technical school) will suffice for qualification.
- The Law on Industry which is the one that currently lists all regulated professions will be amended and a new law will be proposed which will as said abolish most regulated professions, leaving those in place that have an obvious public interest objective.
- The working group is also working with the Ministry of Education to revise the requirements to qualify as a professional.



Competition Assessment case study: Iceland

ISAVIA

- Based on the OECD report, the Ministry of Finance has acknowledged many failures in the running of ISAVIA. Discussions are underway to assess the management model of ISAVIA and Keflavik airport.

Planning and building

- The recommendations on the planning and building regulations are ongoing. Recommendations have been implemented or are being implemented, such as an electronic platform to submit all planning documents (rather than physical/analogue).





A few more results

- Brazil: new public procurement law adopted April 2021
- Costa Rica: amended the competition law 2019 (independence, exemptions..)
- Waiting for results from ASEAN, Ukraine...



Last words on the use of OECD work and standards...

- Egypt: new merger control law; guidelines on the application of competition provisions in public procurement law.
Recommendation on bid-rigging contributed to the advocacy plan to raise the awareness of public entities about bid rigging.
- Georgia: new rules on behavioural and structural remedies in mergers; new procedural rules with regards to investigation procedure; on procedural fairness new by-law requires full judicial review of the agency's decisions is guaranteed, including the power of the court to change the amount of the fine imposed by the agency; amendments regarding dawn raids
- Malaysia: improve their processes to identify potential bid rigging; and methodology for market studies
- Indonesia: revision of leniency and sanctions



For more information

www.oecd.org/daf/competition

Competition

> Bribery in international business

> **Competition**

> Abuse of dominance and monopolisation

> Cartels and anti-competitive agreements

> Competition enforcement practices

> Liberalisation and competition intervention in regulated sectors

> Mergers

> Pro-competitive Policy Reforms

> Corporate governance and corporate finance

> Financial markets, insurance and pensions

> International investment

Find

- » [Best practice roundtables](#)
- » [Competition assessment toolkit](#)
- » [Guidelines for fighting bid rigging](#)
- » [Country reviews](#)
- » [Recommendations](#)

[Latest Documents](#)

What's new

- » [Recommendation on Transparency & Procedural Fairness in Competition Enforcement](#)
06/10: The OECD adopts the Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement
» [Read more](#)
- » [OECD Market Study of the Electricity Sector in Ukraine](#)
- » [Fostering Competition in ASEAN](#)

Well-designed competition law, effective enforcement and competition-based economic reform promote growth and employment while making economies more flexible and innovative. The OECD actively encourages governments to tackle anti-competitive practices and fosters market-oriented reform throughout the world.

KEY TOPICS

- [TRANSPARENCY AND PROCEDURAL FAIRNESS](#)
- [COMPETITIVE NEUTRALITY](#)
- [INTERNATIONAL CO-OPERATION](#)
- [DIGITAL ECONOMY & INNOVATION](#)
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- [FIGHTING BID RIGGING IN PUBLIC PROCUREMENT](#)
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RECENT WORK

FOSTERING COMPETITION IN A SEAN
09/09/2021 - OECD launches two regional reports on A SEAN's logistics sector during the 53rd ASEAN Economic Ministers Meeting.

[Access the reports and their highlights](#)

2021 GLOBAL FORUM ON COMPETITION
6-8 December 2021: This year the Global Forum on Competition will celebrate its 20th anniversary. The virtual meeting will allow competition officials from all over the world to discuss:

- Trade and development,
- Economic analysis and evidence in abuse cases and
- the promotion of competitive neutrality by competition authorities.

COMPETITION TRENDS 2021

Discover the 2021 edition of our flagship with data on agencies' resources, cartel detection, sanctions, abuse of dominance and merger reviews.

- » [Download Vol. I - Global competition enforcement update](#)
- » [Download Vol. II - Global merger control](#)
- » [View the statistical highlights](#)
- » [Watch a video presentation](#)

2021 VIRTUAL OECD COMPETITION OPEN DAY
On 24 February, the 3rd virtual edition of the Open day focused on Competitive effects of killer acquisitions, Sustainability and competition, Competition and the



Thank you

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