



Organisation for Economic Co-operation and Development

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COUNCIL

Council

**DRAFT RESOLUTION OF THE COUNCIL RENEWING THE MANDATE OF
THE COMPETITION COMMITTEE**

(Note by the Secretary-General)

JT03451995

1. This document sets out a proposal to renew the mandate of Competition Committee as approved by the Committee on 2 July 2019 by written procedure, as well as the results of the Committee's review of the continuing relevance of its substructure and of the relevance and impact of the legal instruments under its responsibility [[DAF/COMP\(2019\)12](#)].
2. The Competition Committee was established in 1961 as the "Committee of Experts on Restrictive Business Practices" [C(61)47(Final)]. In 1987, its name was changed into "Committee on Competition Law and Policy" as well as its terms of reference [C(87)138/FINAL]. In 2001, the Council renamed it the "Competition Committee", as the former denomination made the Committee work sound narrow and technical [[C\(2001\)261](#)].
3. Following the introduction in 2004 of sunset clauses for committees with open-ended mandates [[C/M\(2004\)5/PROV](#), Item 75], the mandate of the Competition Committee was renewed in 2008 [[C\(2008\)134](#)] and was extended in 2013 for a one year period to the end of 2014 [[C\(2013\)85](#)] to allow the mandate review process to be informed by the 2014 In Depth Evaluation (IDE) of the Committee.
4. Given the continued relevance of its mandate in light of the conclusions and recommendations of the 2014 IDE [[C\(2014\)89](#)], the Council, in December 2014, renewed the mandate of the Competition Committee for a period of five years, until 31 December 2019, with a few revisions [[C\(2014\)146](#) and [C/M\(2014\)13](#), Item 211].

Review of the Mandate

5. The Competition Committee aims to protect and promote competition as an organising principle of modern economies, based on the knowledge that, provided accompanying policies are in place, market competition boosts growth and employment and makes economies more flexible and innovative. The focus areas of the Committee's work include: effective competition law enforcement; pro-competitive economic reform; policy convergence; and improving awareness of the benefits of competition for businesses and consumers.
6. The Committee held an initial discussion regarding the renewal of its mandate at its meeting on 7 June 2019 [[DAF/COMP\(2019\)12](#)]. Delegates concluded that the mandate continues to be a relevant framework that accurately reflects recent outputs as well as the work planned in the current programme of work and budget, and agreed to continue the process for decision by written procedure. Since no comments nor objections were received by the deadline of 2 July, the mandate was considered as approved without substantive changes on that date.
7. Accordingly, it is proposed that the Council renew the mandate of the Committee with updated references in the preamble, as set out in the draft Resolution in the Annex, for a period of five years, until 31 December 2024. The draft Resolution would supersede all previous provisions concerning the mandate of the Committee. The Committee would return to the Council to propose a revision to its mandate should there be any major developments, including the forthcoming results of the In-depth Evaluation, expected in 2021, that warrant such a revision.

Review of the Continued Relevance of the Substructure

8. In accordance with Rule 21 c) of the OECD Rules of Procedure, the Competition Committee undertook a review of the continuing relevance of its substructure. The Competition Committee includes two sub-committees within its substructure:

- **Working Party 2 (WP2) on Competition and Regulation** whose mission is “Enhancing the effectiveness of procompetitive economic reform, including by reviewing competition issues in jurisdictions and particular sectors and identifying options for addressing these issues and developing best practices” [[DAF/COMP/M\(2008\)3](#)].
- **Working Party 3 (WP3) Co-operation and Enforcement** whose mission is “Enhancing the effectiveness of competition law enforcement, through measures that include the development of best practices and the promotion of cooperation among competition authorities of member countries” [[DAF/COMP/M\(2008\)3](#)].

Working Party 2 (WP2) on Competition and Regulation

9. Created in 1986, the WP2 takes the lead for the Competition Committee on the interaction between regulation and competition. The expertise developed over the years by the WP2 is reflected in the OECD’s Recommendation on Competition Assessment and the flagship Competition Assessment Toolkit, used by countries around the world as a model for the assessment of competition barriers in regulation. WP2 has recently updated the Toolkit in order to help address the types of anti-competitive restrictions that are arising in the digital economy. It has also developed its expertise beyond traditional regulated industries by examining the role of competition in public services, and providing guidance on protecting competition when designing public procurement of these services (when splitting contracts into lots and managing the risks of very low tenders). More recently the WP2 has been examining competitive neutrality to determine the scope for a potential instrument.

10. WP2 is currently leading work to revise and update both the 2009 Recommendation on Competition Assessment [[OECD/LEGAL/0376](#)] as well as the OECD Competition Assessment Toolkit in light of the rapid evolution of the digital economy and its significant impact on competition enforcement.

11. Furthermore, the Committee’s work under the long-term theme of competitive neutrality is also carried out by WP2. In June 2019, WP2 discussed tools for addressing competitive neutrality and continued to advance the development of principles on competitive neutrality to help guide competition authorities and other government officials [[DAF/COMP/WP2/WD\(2019\)13](#)].

12. Other topics addressed by WP2 recently include:

- Publicly funded healthcare markets;
- Taxi, ride-sourcing and ride-sharing services;
- 10 years on from the financial Crisis;
- Co-operation between Competition Agencies and Regulators in the Financial Sector; and
- Publicly funded markets, with a focus on education.

Working Party 3 (WP3) Co-operation and Enforcement

13. Created in 1971, the WP3 has supported the Competition Committee in the creation of some of the Committee's most important instruments, such as the Guidelines (2009) and Recommendation (2012) of the Council on Fighting Bid Rigging in Public Procurement as well as the Recommendation of the Council on Merger Review (2012). Most recently, the WP3 has taken the lead in the revision of two Recommendations: the Recommendation of the Council Concerning International Co-operation on Competition Investigations and Proceedings (adopted 2014) and the Recommendation of the Council concerning Effective Action against Hard Core Cartels which was adopted by the Council on 2 July 2019. WP3 is also the forum where numerous roundtables on these topics take place, indicatively roundtables on enforcement against anticompetitive practices (the challenges and co-ordination of leniency programmes; and the treatment of legally privileged information in competition cases in 2018), merger review (agency decision-making in merger case; and jurisdictional nexus in merger control regimes in 2016) and co-operation between competition authorities in cases with cross-border elements (the extraterritorial reach of competition remedies in 2017). WP3 is also the discussion forum for the OECD's in-country work on fighting bid rigging in public procurement, such as the competition review of Argentina's public works sector, discussed at WP3 in June 2019.

14. WP3 is leading the work to support the dissemination and implementation of the 2019 OECD Recommendation concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0452](#)].

15. WP3 is responsible for the work carried out under the Committee's long-term theme on Transparency and Procedural Fairness. As a result of this work, WP3 discussed a potential new OECD Recommendation on Transparency and Procedural Fairness at its meeting in June 2019 and agree to continue to develop this instrument [[DAF/COMP/WP3/M\(2019\)1](#)]. The June 2019 meeting also included a roundtable on the standard of review by courts in competition cases. In the context of the same long-term theme, WP3 will host a roundtable on access to the case file and protection of confidential information in December 2019, and will discuss a new version of the draft instrument in transparency and procedural fairness.

Continued relevance of both Working Parties

16. The Competition Committee agreed that no changes were required to the current substructure nor to the mandates of the two Working Parties. The good interaction of work of the Committee and its two Working Parties suggests that this structure continues to promote complementarities and trade-offs through inter-related outputs that remain very relevant to the future work of the Committee. This is evidenced in the current Programme of Work and Budget where the planned outputs will assist policymakers in implementing well-designed competition policy, a key element for fostering economic growth.

17. As per the mandate of the Committee, co-operation with other committees will be crucial to ensure full relevance of the Competition Committee.

Review of the Relevance and Impact of the Legal Instruments

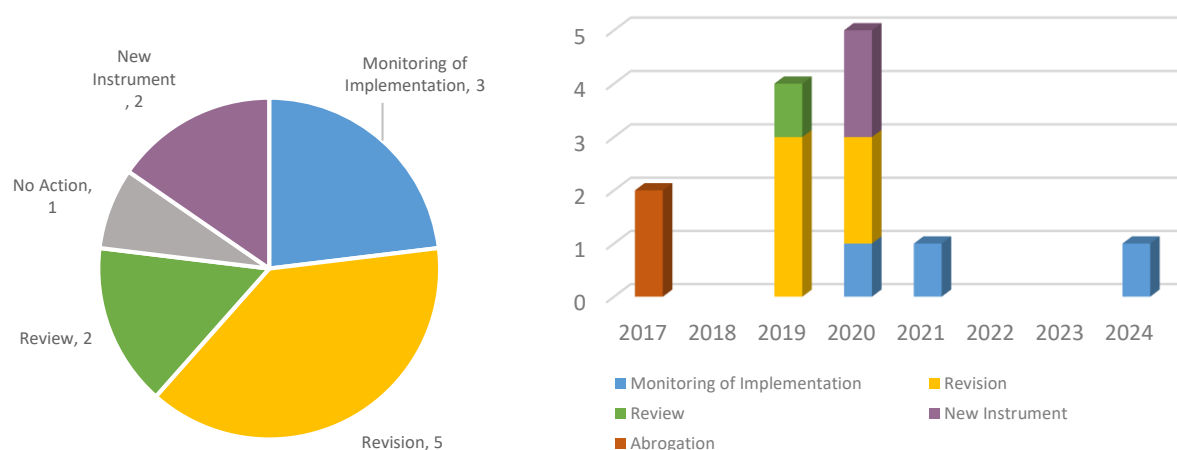
18. As part of the OECD-wide Standard-Setting Review [[C/MIN\(2018\)11](#)], committees are required to briefly discuss the relevance and impact of the instruments under their responsibility, and to identify possible follow-up actions to be undertaken, such

as a revision or review of implementation in the context of their five years' mandate renewal (similar to the review of the continuing relevance of their substructure(s)). In case follow-up actions are decided by committees, a sequenced timeline could be set up for the follow-up actions to minimise the resources required.

19. There are currently 10 OECD legal instruments under the responsibility of the Competition Committee with the oldest dating from 1978 (Recommendation concerning Action against Restrictive Business Practices relating to the Use of Trademarks and Trademark Licences [[OECD/LEGAL/0162](#)]) and the most recent having been adopted in 2019 (Recommendation concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0452](#)]).¹ These Recommendations focus on both competition enforcement topics (such as merger control and hard-core cartel), and competition advocacy topics (such as competition assessment).

20. The Competition Committee approved its Standard-Setting Action Plan on 3 March 2017 [[DAF/COMP\(2017\)1/FINAL](#)] and a further follow-up discussion was held at its meeting in June 2017. For a summary of the Action Plan and an overview of the Committee's standard-setting activity, see Figure 1.

Figure 1. Competition Committee's standard-setting activity



21. Since the approval of the Standard-Setting Action Plan, the Committee proposed two Committee instruments for **abrogation** bringing to eight the total number of Committee instruments that have been abrogated.²

¹ For the full list of legal instruments under the responsibility of the Competition Committee (10 Recommendations currently in force and eight Recommendations abrogated), please consult the [online Compendium of OECD Legal Instruments](#).

² The Council abrogated the Recommendation concerning Action against Inflation in the Field of Competition Policy [[OECD/LEGAL/0097](#)] and the Recommendation concerning Action against Restrictive Business Practices Affecting International Trade Including those Involving Multinational Enterprises [[OECD/LEGAL/0164](#)] in July 2017 [[C\(2017\)80](#)].

22. Five Recommendations were proposed for **revision** (including through consolidation) and are currently at different stages in the process.

- the *Recommendation concerning Action against Restrictive Business Practices relating to the Use of Trademarks and Trademark Licences* [[OECD/LEGAL/0162](#)] and the *Recommendation concerning the Application of Competition Laws and Policy to Patent and Know-How Licensing Agreements* [[OECD/LEGAL/0248](#)] could be updated and consolidated in a new Recommendation on Competition Law and Intellectual Property.³
- the *Recommendation on Competition Assessment* [[OECD/LEGAL/0376](#)] is currently being revised to incorporate relevant elements of the *Recommendation on Competition Policy and Exempted or Regulated Sectors* [[OECD/LEGAL/0181](#)].⁴
- the Council adopted the *Recommendation concerning Effective Action against Hard Core Cartels* [[OECD/LEGAL/0452](#)] which updated and replaced the 1998 Recommendation [[OECD/LEGAL/0294](#)] on 2 July 2019.

23. Three Recommendations contain provisions by which the Committee is instructed to **monitor their implementation** and report thereon to Council. The reporting should be completed in:

- **2020:** the *Recommendation Concerning International Co-operation on Competition Investigations and Proceedings* [[OECD/LEGAL/0408](#)]⁵;
- **2021:** the *Recommendation Concerning Structural Separation in Regulated Industries* [[OECD/LEGAL/0310](#)]⁶;
- **2024:** the newly adopted *Recommendation concerning Effective Action against Hard Core Cartels* [[OECD/LEGAL/0452](#)].

24. In addition, the Action Plan provided for **reviews** of:

- the *Recommendation on Fighting Bid Rigging in Public Procurement* [[OECD/LEGAL/0396](#)]: the Recommendation was monitored in 2016 [[C\(2016\)10](#)] and is still relevant today. No further action is needed at this stage.
- the *Recommendation for Co-operation between Member Countries in Areas of Potential Conflict between Competition and Trade Policies* [[OECD/LEGAL/0228](#)]: the review has not yet started. No action was required in the Action Plan regarding the implementation the *Recommendation on Merger*

³ A scoping note on competition and IP rights [[DAF/COMP/WD\(2018\)4](#)] was discussed at the 6-8 June 2018 meeting of the Competition Committee [[DAF/COMP/M\(2018\)1](#)]. A Roundtable discussion on the theme was held at the June 2019 meeting [[DAF/COMP\(2019\)3](#)].

⁴ Initial discussions took place at the June 2018 WP2 meeting [[DAF/COMP/WP2/M\(2018\)1](#)] on the basis of a Secretariat background note [[DAF/COMP/WP2\(2018\)2](#)]. A proposal to include relevant elements from the 1979 Recommendation in the 2009 Recommendation was discussed at the WP2 meeting in June 2019 WP2 [[DAF/COMP/WP2/A\(2019\)1](#)] and work is now ongoing.

⁵ A discussion was held at the June 2019 WP3 meeting based on a scoping note on developments in Members and OECD's work on international co-operation since the adoption the Recommendation. A survey will be conducted later in 2019 on the implementation of the Recommendation by Adherents [[DAF/COMP/WP3\(2019\)3](#)].

⁶ The monitoring will start with a survey of Adherents and benefit from Roundtable discussions.

Review [[OECD/LEGAL/0333](#)]. A report on the implementation of the Recommendation [[C\(2013\)72](#) and CORR1] was presented to Council in 2013. The report concluded to the continued relevance of the Recommendation and indicated that no revision was needed at this stage. This assessment is still relevant today.

25. One of the key outputs of the Standard-Setting Review is to identify areas where the OECD could develop **new legal instruments** on emerging and cutting-edge issues. The Action Plan also included two proposals for new Recommendations:

- on *market studies*: at its December 2015 meeting, the Committee decided to work on a Market Studies Guide for Competition Authorities ([DAF/COMP/M\(2017\)2](#)), which was subsequently released in September 2018. No further work is planned in this area for now.
- on *international co-operation*: the Committee will wait for the review of implementation of the 2014 *Recommendation Concerning International Co-operation on Competition Investigations and Proceedings* [[OECD/LEGAL/0408](#)] before doing further work on a new instrument to address outstanding needs for cooperation that were not covered by the 2014 Recommendation. These may include forms of enhanced co-operation (e.g. investigative assistance, joint investigations, lead agency models, one-stop-shop systems, deference, etc.) to be developed in bilateral or multilateral co-operation frameworks.

26. Since the adoption of the Action Plan, the Committee has discussed additional proposals for new instruments on *transparency and procedural fairness* and on *competitive neutrality* (see above the current work done at WP2 and WP3 level). The discussions in WP3 on the transparency and procedural fairness are at the most advanced stage with possible adoption by the Council in 2020.

Proposed Action

27. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted document [C\(2019\)117](#);
- b) adopted the draft Resolution of the Council renewing the mandate of the Competition Committee, as set out in the Annex to document [C\(2019\)117](#), which will enter into force on 1 January 2020.

ANNEX

DRAFT RESOLUTION OF THE COUNCIL RENEWING THE MANDATE OF THE COMPETITION COMMITTEE

THE COUNCIL,

HAVING REGARD to the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Rules of Procedure of the Organisation;

HAVING REGARD to the Revised Resolution of the Council on Partnerships in OECD Bodies [[C\(2012\)100/REV1/FINAL](#)];

HAVING REGARD to the establishment of the “Committee on Competition Law and Policy” in 1961 [C(61)47(Final) and C/M(61)8(Final), Item 58], renamed “Competition Committee” in 2001 [[C\(2001\)261](#) and C/M(2001)23, Item 402], whose mandate was revised in 2008 [[C\(2008\)134](#) & CORR1 and C/M(2008)17, Item 219]; extended in 2013 [[C\(2013\)85](#) and [C/M\(2013\)16](#), Item 150] and last renewed in 2014 [[C\(2014\)146](#) and [C/M\(2014\)13](#), Item 211].;

HAVING REGARD to the recommendations of the In-depth Evaluation of the Competition Committee [[C\(2014\)89](#) and [C/M\(2014\)9](#), Item 131];

HAVING REGARD to the proposed renewal of the mandate of the Competition Committee [[C\(2019\)117](#)];

DECIDES:

A. The Competition Committee is renewed as follows:

I. Objectives

1. The main objective of the Competition Committee is to protect and promote competition as an organising principle of modern economies, based on the knowledge that vigorous market competition boosts growth and employment and makes economies more flexible and innovative.
2. The intermediary objectives of the Committee are to:
 - a) enhance the effectiveness of competition law enforcement, through measures that include the development of best practices and the promotion of co-operation among competition authorities of Member countries;
 - b) enhance the effectiveness of pro-competitive economic reform, including by reviewing competition issues in jurisdictions and particular sectors, and identifying options for addressing these issues and developing best practices;
 - c) help governments promote domestic procompetitive reforms and overcome their transition costs, by proposing effective strategies and methods;
 - d) ensure that competition perspectives are more widely taken into account in the work of the OECD, by strengthening synergies between competition policy and other framework policies in the work of the OECD, including in contributing to horizontal initiatives, notably by examining and commenting upon particular

competition law and policy issues taking into account the interaction between competition and other government policies;

- e) support sound domestic competition policies and fostering policy convergence internationally to avoid inefficiencies and potential conflicts resulting from different competition standards;
- f) encourage the implementation of competition best practices and principles, by promoting policy dialogue and co-operation with non-Members and providing related capacity building;
- g) promote understanding of the benefits of competition for business and consumers.

II. Co-ordination arrangements

3. In carrying out its work, the Committee shall:

- a) co-operate with other OECD committees on competition-related matters and seek to ensure that the Organisation as a whole promotes sound competition policy.
- b) keep itself informed of the competition related activities carried out in other international organisations, notably the International Competition Network. It will promote and develop, as practicable, partnerships with these organisations and seek to ensure effective complementarities while avoiding undue duplication with other international organisations where appropriate. The Committee shall provide a forum for consultations to enable delegates to exchange views on issues raised in these bodies.
- c) consider the views and input of BIAC and other major stakeholders in the competition field, including consumer representatives.
- d) encourage participation by non-OECD economies in the Committee's work and their implementation of the Committee's Recommendations and best practices.

B. The mandate of the Competition Committee shall remain in force until 31 December 2024.