

**For Official Use****English - Or. English**

24 November 2025

**COUNCIL****Council****REPORT ON THE IMPLEMENTATION OF THE OECD  
RECOMMENDATION CONCERNING EFFECTIVE ACTION AGAINST  
HARD CORE CARTELS****(Note by the Secretary-General)****JT03577403**

1. This document presents, in its Annex, a Report by the Competition Committee, through its Working Party No. 3 on Co-operation and Enforcement (WP3), on the implementation of the OECD Recommendation concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0452](#)] (hereafter, the “Recommendation”), including on the implementation of its substantive provisions, its dissemination and its continued relevance (hereafter, the “Report”). The Report also includes conclusions on whether the Recommendation requires revision or whether further actions to support its dissemination and implementation are necessary.
2. Following discussions at the WP3, the Competition Committee approved, by written procedure on 12 September 2025, the Report set out in the Annex and its transmission to Council to be noted and declassified [[DAF/COMP\(2025\)9/REV1](#)]. Following approval, minor adjustments were made to the Report, at the request of some Adherents, to the description of their domestic situation. The Competition Committee was informed of these adjustments [[DAF/COMP\(2025\)9/FINAL](#)].
3. Once noted and declassified by Council, the Report will be included in the [online Compendium of OECD legal instruments](#).

## 1. Background

4. The Recommendation was adopted by the Council on 2 July 2019 on the proposal of the Competition Committee [[C/M\(2019\)12](#), Item 117]. The Recommendation updated and replaced the 1998 OECD Recommendation Concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0294](#)].
5. The Recommendation aims to guide domestic reforms to make hard core cartels illegal by recommending that Members and non-Members having adhered to it (hereafter, the “Adherents”)<sup>1</sup>:
  1. Implement an effective cartel detection system through:
    - Effective leniency programmes.
    - Pro-active cartel detection tools, such as analysis of public procurement data.
    - Third-party (non-leniency) whistleblowing.
  2. Ensure competition authorities have effective powers to:
    - Conduct unannounced inspections (“dawn raids”) at business and private premises.
    - Access electronic information.
    - Request and obtain evidence, including from government entities.
    - Obtain oral testimony from witnesses.
    - Impose sanctions for non-compliance with mandatory requests and obstruction of investigations.

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<sup>1</sup> In addition to the 38 OECD Members, Brazil and Romania are Adherents to the Recommendation.

3. Enable co-operation between competition authorities and other public entities like public procurement bodies, public prosecutors and anti-corruption agencies, including by facilitating the exchange of information and evidence.
4. Enable and incentivise early case resolution tools such as plea negotiation and settlements.
5. Provide for effective sanctions that have an adequate deterrent effect on firms and individuals.
6. Offer a right of action before courts to obtain redress or claim compensation for harm caused by a hard core cartel (private enforcement).
7. Support advocacy efforts of competition authorities vis-à-vis public and private stakeholders.
8. Restrict the exemptions from the coverage of laws against hard core cartels to those indispensable to achieve a specific, overriding policy objective.

6. The Recommendation instructs the Competition Committee “to monitor the implementation of the Recommendation and report to Council no later than five years following its adoption and at least every ten years thereafter”. The Report, set out in Annex, provides an overview of the state of implementation and impact of the substantive provisions of the Recommendation among Adherents at an aggregate level, as well as conclusions regarding its continued relevance.

## 2. Methodology and process

7. In order to collect information on the implementation, dissemination and continued relevance of the Recommendation, a survey questionnaire (the “2024 Survey”) was developed by the Secretariat and circulated to the Adherents to the Recommendation as well as the European Union and Croatia on 23 January 2024.

8. Responses were collected between January and July 2024. 37 Adherents<sup>2</sup> and the European Union<sup>3</sup> provided responses to the 2024 Survey (together referred to as “Respondents”). Croatia, although not an Adherent to the Recommendation yet, also provided responses to the 2024 Survey as an accession candidate country. For the purpose of this Report, the responses provided by Croatia are not considered on the state of the Recommendation’s implementation, but some references to their responses are included, as examples.

9. The preliminary results of the 2024 Survey were presented by the Secretariat to the Competition Committee on 11 June 2024 [[DAF/COMP/WP3/A\(2024\)1/REV3](#), Item 5].

10. A **first draft** of the Report was circulated to WP3 in advance of its meeting on 17 June 2025 [[DAF/COMP/WP3/WD\(2025\)1](#)]. Delegates of WP3 were invited to provide

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<sup>2</sup> Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic (hereafter, “Czechia”), Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, United Kingdom, United States, Brazil and Romania.

<sup>3</sup> The European Union became an Adherent to the Recommendation on 19 June 2025 [[C/M\(2025\)10](#), Item 154]. Considering this Report was developed based on data collected prior to its adherence, the European Union is presented therein as a non-Adherent.

comments in writing in advance of the discussion, or orally during the discussion on 17 June.

11. Following this discussion, a revised **second draft** was circulated to the Competition Committee. The Competition Committee approved by written procedure on 12 September 2025 the Report and its transmission to Council to be noted and declassified [[DAF/COMP\(2025\)9/REV1](#)]. Following approval, minor adjustments were made to the Report, at the request of some Adherents, to the description of their domestic situation. The Competition Committee was informed of these adjustments [[DAF/COMP\(2025\)9/FINAL](#)]. Once declassified, the Report will be included on the webpage of the Recommendation on the [online Compendium of OECD legal instruments](#).

### 3. Summary

12. The information gathered by the Secretariat and the 2024 Survey responses suggest that Respondents have made significant and continued efforts to implement the Recommendation, including continued efforts in raising awareness about the detrimental effect of hard core cartels on consumers and market participants. This Report further concludes that there is no need to revise the Recommendation at present.

#### 3.1. Implementation

13. In the five years since the 2019 revision to the Recommendation, the implementation progress can be characterised by consolidation rather than widespread reform. This reflects the fact that only five years have elapsed since the adoption of the Recommendation, which is significantly shorter than the two decades before the current revision. Additionally, it suggests that the content of the current Recommendation continues to represent best practices that many Adherents are still striving to achieve, unlike the 1998 version of the Recommendation, which after 20 years did not mention any of the major advancements and widespread adoption of new policy and legal instruments in cartel enforcement.

14. All Respondents have now adopted a hard core cartel definition in line with the one in the Recommendation, with two of them doing so in the last five years. Moreover, all Respondents have now established leniency programmes for cartelists. The adoption of pro-active cartel detection tools has seen considerable interest, although resourcing challenges persist. While powers to conduct dawn raids are widely implemented, the practical challenges when capturing extensive digital evidence remains a key focus of implementation efforts. Respondents in general are of the opinion that they are generally aligned with the Recommendation's contents, noting its principles are reflected in their enforcement decisions, advocacy, and law reforms.

15. In terms of enforcement, almost all Respondents can issue sanctions for non-compliance and obstruction, yet less than half have actively issued such penalties in the past five years. Efforts to improve domestic co-operation against hard core cartels are ongoing, but data access and siloed processes continue to be obstacles. Early case resolution tools are commonly available, regularly used and effective. The private right of action is still non-existent as a tool in almost all Respondents, with some notable exceptions. Advocacy plays a crucial role, but there is significant variation in activity levels among Respondents (with around half doing no advocacy activities in a given year). Finally, exemptions from cartel laws are minimal, with the few authorities that still use them further reducing their usage in the last five years.

### 3.2. Dissemination

16. Since 2019, the Competition Committee, Adherents, and the OECD Secretariat have actively supported the dissemination of the Recommendation. The Committee has held numerous roundtables on hard core cartel enforcement, covering topics like access to the case file, hub-and-spoke arrangements, cartel criminalisation, buyer's cartels, data screening tools, director disqualification, algorithmic collusion, and using economic evidence in cartel cases. The Recommendation's best practices are integral to capacity building at the OECD's Regional Centres for Competition. The Recommendation also sets standards for cartel enforcement during peer reviews, thus supporting its dissemination.

17. Dissemination of the Recommendation has continued alongside other cartel enforcement best practices dissemination activities of other international organisations. This includes the UNCTAD Informal working group on cross-border cartels,<sup>4</sup> and the International Competition Network Cartel Working Group's Cartel Enforcement Manual.<sup>5</sup>

18. However, specific dissemination by Adherents across and at all levels of government has been limited, indicating there may be need to reach more audiences within Adherents, especially concerning domestic co-operation related to hard core cartels.

19. While there have been efforts to disseminate the Recommendation to both Adherents and non-Adherents, additional efforts could be made to further disseminate the Recommendation to non-Adherents, including by leveraging the activities of the three Regional Competition Centres and other means.

### 3.3. Continued relevance

20. A large majority of Respondents indicated that there is no current need to revise the Recommendation. Survey responses show a general consensus that there is no gap between new best practices and the current content of the Recommendation, even among the small number of Respondents who suggested possible revisions to the Recommendation. The aggregated Survey responses suggest that the Recommendation remains up-to-date and relevant. As such, this Report finds that the Recommendation does not require any revision in the short to medium term.

21. Accordingly, the Competition Committee will continue to support Adherents in disseminating and implementing the Recommendation and it is proposed to report back to the Council on the implementation, dissemination and continued relevance of the Recommendation in 10 years, as set out in Recommendation. An earlier report could be prepared if developments in the field warrant it.

22. As to the Council's instruction for the Competition Committee to consider developing an implementation toolkit (provision V.a.), the results of the Survey indicate no immediate need for a specific implementation toolkit for the Recommendation as a whole. However, the Competition Committee could consider organising future sessions or developing guidance materials on specific topics where Respondents offered suggestions, such as the use of algorithms and data analysis in cartel enforcement.

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<sup>4</sup> UN Trade and Development, "Informal working group on cross-border cartels", <https://unctad.org/Topic/Competition-and-Consumer-Protection/working-group-on-cross-border-cartels>.

<sup>5</sup> International Competition Network, "Cartel Working Group", <https://www.internationalcompetitionnetwork.org/working-groups/cartel/>.

#### 4. Proposed action

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

THE COUNCIL

- a) noted document [C\(2025\)154](#), in particular the Report set out in its Annex, and agreed to its declassification;
- b) encouraged Adherents to the Recommendation to:
  - i) continue disseminating and implementing the Recommendation, including by considering additional activities and initiatives to disseminate the Recommendation to relevant domestic stakeholders;
  - ii) address the challenges identified in the Summary and conclusions section of the Report;
- c) invited the Competition Committee, through the Working Party No. 3 on Co-operation and Enforcement, to:
  - i) continue supporting the implementation of the Recommendation, notably by supporting Adherents in addressing the challenges identified in the Summary and conclusions section of the Report, in particular the challenges identified in relation to their hard core cartel enforcement practices, such as the use of proactive detection tools, electronic evidence gathering processes, and effectively utilising civil and criminal enforcement frameworks;
  - ii) continue promoting the dissemination of the Recommendation, with a view to encouraging non-Adherents to align with and request adherence to the Recommendation, to improve best practices globally;
  - iii) report back to Council on the implementation, dissemination and continued relevance of the Recommendation in 10 years or earlier, if developments in the field warrant it.

**Annex. Report on the implementation  
of the OECD Recommendation concerning Effective Action against Hard  
Core Cartels  
[\[OECD/LEGAL/0452\]](#)**

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## 1. Background

### 1.1. Origin and scope of the Recommendation

1. Hard core cartels are anticompetitive agreements or practices between competitors that aim to fix and raise prices, restrict supply and divide or share markets, thereby causing substantial economic harm. Hard core cartels are the most egregious violations of competition law. The fight against hard core cartels has been a long-term priority of competition law enforcement in OECD Members and Partners.

2. In 2019, the OECD Council adopted the OECD Recommendation concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0452](#)] (hereafter, the “Recommendation”), on the proposal of the Competition Committee [[C/M\(2019\)12](#), Item 117]. The Recommendation updated and replaced a previous OECD Recommendation on the same topic, the Recommendation Concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0294](#)] adopted by the Council in 1998 (hereafter, the “1998 Recommendation”).

3. The relevance of the 1998 Recommendation was undisputed by its Members and non-Members having adhered to it. It had served as the catalyst for action against hard core cartels globally and contributed to the convergence of reforms for effective law enforcement. The 1998 Recommendation was revised in 2019 to reflect and consolidate the significant developments in best practices relating to hard core cartel enforcement techniques, policies and laws across Adherents in the two decades since its adoption.

4. Most notably, the major developments in best practices reflected in the updated Recommendation, were namely:

- introduction and strengthening of leniency programmes offering the opportunity to cartel members to self-report their conduct and provide information and evidence on the cartel, in exchange for immunity or reduced penalties;
- substantial increases of fines against companies that engage in cartel conduct;
- introduction of sanctions against individuals;
- criminalisation of cartels in several jurisdictions;
- plea bargaining and settlement procedures that reduce fines for parties who co-operate with competition authorities in cartel proceedings and thus allow for faster resolution of cases;
- more private enforcement actions seeking compensation for harm caused by cartels;
- increasing international co-operation and co-ordination among competition authorities in cartel investigations. This has included simultaneous dawn raids in parallel investigations, co-ordination of enforcement activities and decisions, and co-ordination or consultation to avoid double jeopardy or double counting of fines. International co-operation was further strengthened by the adoption in 2014 of the OECD Recommendation Concerning International Co-operation on Competition Investigations and Proceedings [[OECD/LEGAL/0408](#)].

5. The following definitions were agreed to and adopted for the purposes of the Recommendation.

- **Hard core cartels** refers to anticompetitive agreements, concerted practices or arrangements by actual or potential competitors to agree on prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by, for example, allocating customers, suppliers, territories, or lines of commerce. They do not include: (a) agreements, concerted practices, or arrangements that are reasonably related to a legitimate efficiency-enhancing integration of economic activity; (b) agreements, concerted practices or arrangements that might otherwise qualify as hard core cartels, which are directly or indirectly exempted from the coverage of Adherents' competition laws or are mandated in accordance with Adherents' laws.
- **Leniency programmes** refers to mechanisms offering the opportunity to cartel members to self-report their conduct, provide information and evidence and cooperate with an investigation, in exchange for immunity from, or a reduction in, sanctions, and, in some jurisdictions, immunity from proceedings/prosecution.
- **Plea negotiation and settlements** refers to case resolution tools which enable competition authorities to establish substantive findings, and facilitate and shorten procedures in a cartel case, working with the investigated parties in exchange for a reduction in sanctions.

6. The Recommendation calls on OECD Members and non-Members having adhered to it (hereafter together, the "Adherents") to ensure that their laws halt and deter hard core cartels. This should occur by providing for effective sanctions, enforcement procedures and investigative tools; as well as for institutions with powers adequate to detect and punish cartels.

7. The Recommendation also calls on Adherents to utilise leniency programmes with clear rules and standards; using pro-active detection tools, such as screening techniques; adopting whistle-blower programmes; having effective powers to investigate hard core cartels, such as conducting unannounced inspections (dawn-raids), having access to electronic information, to request information, to obtain oral testimonies, and to impose sanctions for obstructing investigations. Additionally, Adherents should enable cooperation with other public entities; use early case resolutions tools; provide for effective sanctions; provide mechanisms for private enforcement; support advocacy efforts and restrict exemptions from the hard core cartel law rules to few and clear situations.

8. The Recommendation aims to guide domestic reforms and improve the effectiveness of cartel enforcement on the basis of these commonly agreed best practices. As of 2025, Adherents to the Recommendation are:

- the 38 OECD Member countries: Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic (hereafter, Czechia), Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, United Kingdom, United States;
- the two non-Member Associates of the Competition Committee: Brazil and Romania;

- the European Union.<sup>6</sup>

## 1.2. Developments in the field since the adoption of the Recommendation

9. Since the adoption of the Recommendation in 2019, a major development in the field of hard core cartel enforcement has been the impacts of the Covid-19 pandemic.

10. Firstly, this required Adherents' competition authorities to clarify their approach on business collaborations likely to arise in the context of a pandemic, and their treatment of cartels that may be formed. This included focus on:<sup>7</sup>

- Clarifications on necessary collaboration in response to the health emergency (e.g. joint medical research projects or joint production/distribution of food and essential goods).
- The risk of crisis cartels. Competitors may be tempted to enter into “crisis cartels” to increase prices to absorb the negative impact of the crisis on them. Competition authorities have sought to clarify that cartels remain illegal including in times of major crises.<sup>8</sup>

11. The rapid adoption of remote working following the start of the Covid-19 pandemic, as well as the longer-term trend of businesses using digital tools to communicate has required competition authorities to use more sophisticated software and hardware to capture potential evidence of a cartel. This includes developing or increasing their staff's capacity to access data stored on mobile devices and in cloud storage systems.<sup>9</sup>

12. Since the 2019 Recommendation, the OECD Council has also adopted two additional Recommendations that have content relevant to cartel enforcement. Their dissemination alongside the 2019 Recommendation is outlined in more detail in section 3.1 of this Report.

13. The first is the 2021 OECD Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement [[OECD/LEGAL/0465](#)], which aims to set out the common standard for transparent and fair competition law enforcement procedures. It supports the impartial and reasonable treatment of investigated parties and the exercise of

<sup>6</sup> The European Union became an Adherent to the Recommendation on 19 June 2025 [[C/M\(2025\)10](#), Item 154]. Considering this Report was developed based on data collected prior to its adherence, the European Union is present herein as a non-Adherent.

<sup>7</sup> See Communication from the Commission Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak 2020/C 116 I/02, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0408\(04\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0408(04)); OECD (2020), “OECD competition policy responses to COVID-19”, *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, <https://doi.org/10.1787/5c47af5a-en>; OECD (2021), “The Role of Competition Policy in Promoting Economic Recovery”, *OECD Roundtables on Competition Policy Papers*, No. 264, OECD Publishing, Paris, <https://doi.org/10.1787/0f9ccd5b-en>.

<sup>8</sup> Competition and Markets Authority (2020), “CMA coronavirus (COVID-19) response”, [www.gov.uk/government/collections/cma-covid-19-response](http://www.gov.uk/government/collections/cma-covid-19-response); European Commission, “Antitrust rules and coronavirus”, [https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/coronavirus\\_en](https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/coronavirus_en).

<sup>9</sup> OECD (2022), “Data Screening Tools for Competition Investigations”, *OECD Roundtables on Competition Policy Papers*, No. 284, OECD Publishing, Paris, <https://doi.org/10.1787/4c5bbb9d-en>.

their rights of defence. It also aims to strengthen the accuracy and effectiveness of enforcement decisions. These are all matters which are of utmost importance in hard core cartel cases, as these are cases where the most significant sanctions may be imposed.

14. The second is the 2023 amended version of the OECD Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)]. The Bid Rigging Recommendation recognises the importance of cartel related advocacy targeted at procurement officials and procurement authorities. Procurers are often best placed to detect signs of hard core cartels in procurement processes, and they have good knowledge of the relevant industry sectors. In addition, they can design procurement tenders in a way that makes it harder for suppliers to create a bid rigging cartel.

15. The Covid-19 pandemic and increased digitalisation is also relevant for the implementation of the 2015 OECD Recommendation on Public Procurement [[OECD/LEGAL/0411](#)].

16. Public procurement officials and the OECD Working Party of the Leading Practitioners on Public Procurement have observed that the pandemic required procurement officials to balance the need to be agile and respond to urgent challenges, against the need to promote public safety and well-being, ensure accountability, prevent cartel behaviour, and more broadly foster competition in procurement markets.<sup>10</sup>

17. The last five years have been a period of significant progress in deploying e-procurement systems. In a 2023 Policy Paper, the OECD observed that:

*While public procurement organisations are digitalising an increasing proportion of their operations through the implementation and expansion of e-procurement systems, efforts to fully leverage data from these systems and other sources is often less advanced. With the increased collection and availability of data, countries and contracting authorities are better equipped to conduct insightful evaluations of public procurement risk, yet the systemic use of this data remains a challenge.<sup>11</sup>*

### 1.3. Purpose of the Report and methodology

18. The Recommendation instructs the Competition Committee to “*monitor the implementation of the Recommendation and report to Council no later than five years following its adoption and at least every ten years thereafter*”.

19. This Report provides an overview of the state of implementation and impact of the substantive provisions of the Recommendation among Adherents at an aggregate level, as well as conclusions regarding its continued relevance.

20. In order to collect information on the implementation, dissemination and continued relevance of the Recommendation, a survey questionnaire was developed by the Secretariat and circulated to the Adherents to the Recommendation as well as the European Union on

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<sup>10</sup> See for example OECD (2020), “Public procurement and infrastructure governance: Initial policy responses to the coronavirus (Covid-19) crisis”, *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, <https://doi.org/10.1787/c0ab0a96-en>; OECD (2020), “Public integrity for an effective COVID-19 response and recovery”, *OECD Policy Responses to Coronavirus (COVID-19)*, OECD Publishing, Paris, <https://doi.org/10.1787/a5c35d8c-en>.

<sup>11</sup> OECD (2023), “Managing risks in the public procurement of goods, services and infrastructure”, *OECD Public Governance Policy Papers*, No. 33, OECD Publishing, Paris, <https://doi.org/10.1787/45667d2f-en>.

23 January 2024 (the “2024 Survey”). A copy of the 2024 Survey questionnaire form is included as Appendix to this Report.

21. Responses were collected between January and July 2024.

- The following 37 Adherents provided responses to the 2024 Survey: Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, United Kingdom, United States, Brazil and Romania. While not an Adherent at the time, the European Union also provided responses to the 2024 Survey which have been included in the Report, in light of the European Union’s competence in this area (together referred to as “Respondents”).
- Both Costa Rica and Mexico provided responses to the 2024 Survey from their competition authority as well as their telecommunications regulators that have competition powers in their regulated sectors. For the purposes of clarity and to avoid double counting an Adherent, in most statistical calculations only the responses from competition authorities are used. Nonetheless, the Report does cite case studies and feedback on the Recommendation provided by these telecommunications regulators.
- Croatia also provided responses to the questionnaire as an accession candidate country. For the purposes of this Report, the responses provided by Croatia are not considered to assess the overall state of the Recommendation’s implementation (as Croatia is not an Adherent of the Recommendation), though some case studies they provided are referred to as being deemed valuable for knowledge-sharing purposes.

22. The questions on the implementation and dissemination of the Recommendation contained a mix of questions requiring a ‘yes’ or ‘no’ response or an exact figure, followed by additional prompts that allowed Respondents to provide further qualitative information.

23. Finally, additional information was gathered from related OECD activities, such as the OECD Roundtables on Competition Policy Papers, and country contributions submitted by the Adherents as part of sessions at the Competition Committee and its working parties.

24. For the purposes of this Report, all figures, statistics or case studies mentioned are cited from the 2024 Survey material unless otherwise specified.

25. Additionally, as the Survey was conducted in early 2024, any reference in this Report to the “five-year Survey period” or “the past five years” should be understood to cover the years 2019-2023, as this was the five-year period the Survey questions asked about.

## 2. Implementation

26. This section presents an analysis of the responses received to the 2024 Survey, covering the implementation by Adherents of the substantive provision of the Recommendation (provision II). The Recommendation contains eight sub-provisions, each outlining specific actions Adherents should undertake: (1) effective cartel detection systems, (2) effective powers, (3) domestic co-operation of competition authorities, (4)

early case resolution, (5) effective sanctions, (6) private claims and redress mechanisms, (7) advocacy activities, (8) limiting exemptions.

27. The following sub-sections of the Report have been structured following the structure of the Recommendation, i.e.: the general prohibition on hard core cartels set out in provision II, followed by its eight sub-provisions that provide more specific recommendations to Adherents.

## 2.1. General prohibition on hard core cartels

28. Provision II of the Recommendation begins with a general call for Adherents to prohibit all hard core cartels.

*II. RECOMMENDS that Adherents make hard core cartels illegal regardless of the existence of proof of actual adverse effects on markets, and design their anti-cartel laws, policies and enforcement practices with a view to ensuring that they halt and deter hard core cartels and provide effective compensation for cartel victims, in accordance with their legal frameworks, institutional set up and procedural safeguards. [...]*

29. The recommendation for hard core cartels to be prohibited on a per se/by object basis (i.e. without the need to show actual anticompetitive effects) in the Recommendation reflects challenges faced by some OECD Members' competition authorities in the 2000s and 2010s, where some Adherents' enforcement authorities were required by law to show the anticompetitive effects of a hard core cartel.<sup>12</sup>

30. All 38 Respondents to the 2024 Survey confirmed that hard core cartels are now illegal in their jurisdiction, regardless of the existence of proof of actual adverse effects on markets. For 36 Respondents, this was the case prior to the adoption of the Recommendation in 2019. Only **Ireland** and **Costa Rica** had reformed their competition law within the last five years to prohibit hard core cartels in all circumstances.

31. No Respondent specifically noted their enforcement authorities have been forced to prove the effects of a hard core cartel to establish infringement. Nonetheless, as described in Box 2.1 below, six of the 38 Respondents did note they have faced definitional challenges in relation to hard core cartel enforcement cases.

### Box 2.1. Challenges concerning the definitions of hard core cartels

**Australia** reported that their competition law (particularly in relation to the criminal prohibition on hard core cartels) has been the subject of criticism by both the judiciary and academic experts on the basis that the legislative provisions are overly complex. This creates difficulties for stakeholders to understand and apply the law.

**Canada** explained that their Competition Act does not deem agreements between purchasers (i.e. buy-side agreements) to constitute a cartel for the purposes of the criminal prohibition, unlike supply-side cartels which are covered. The only exception is a 2022 amendment to the legislation that added a new criminal offence covering wage-fixing and no-poaching agreements between employers. The Canadian Competition Bureau has engaged in advocacy activity to argue there should be parity and so that all

<sup>12</sup> See OECD (2019), *Review of the 1998 OECD Recommendation concerning Effective Action against Hard Core Cartels*, OECD Publishing, Paris, <https://doi.org/10.1787/58c38ceb-en>.

hard core cartels may be subject to the criminal prohibition. A similar specialised criminal offence covers cartel conspiracies in the professional sports industry, with the Canadian Competition Bureau choosing not to take action under the law as it is currently drafted due in part to the ambiguous terms in the provision.

**Ireland** explained that historically, the lack of reference to bid rigging in their competition legislation had led to difficulties in court cases. This is because the law required the authority to establish that bid rigging amounted to price fixing or market sharing and was a hard core cartel for the purposes of the law. This was remedied in 2022 when the law was amended to expressly prohibit bid rigging and make it clearer that such concerted behaviour during a tender process is unlawful as it distorts competition.

**Mexico** highlighted a case where their competition authority (COFECE) defined “non-compete agreement” as part of a sale of assets between two parties as a hard core cartel. COFECE’s analysis was that the non-compete agreement amounted to a hard core cartel as the terms far exceeded what is permissible under the COFECE guidelines regarding duration and scope, and was not necessary as part of the asset divestiture. Mexico also highlighted a recent court case which established a broad definition of a hard core cartel for the purposes of public tenders. The case involved two firms owned by the same parent company making bids under the same procurement process, with the court finding these firms may be treated as separate economic entities in a procurement context as they are they are simulating competition and impacting public finances.

The **Slovenian** competition authority noted that while their legislation contains a by object prohibition of hard core cartels, in practice they believe they face overly burdensome evidentiary standards to prove cartel conduct. The competition authority claims these evidentiary burdens are not in alignment with the EU *acquis* on competition law.

**Sweden** highlighted that “one challenge within the context of investigations of suspected anticompetitive agreements – such as in hub-and-spoke contexts – has been proving to the requisite legal standard that indications of co-ordinated behaviour among competitors amount to an agreement or concerted practice”.

Source: 2024 Survey

### *2.1.1. Conclusions and steps forward*

32. All Respondents are now of the view they are aligned with this aspect of the Recommendation.

33. No Respondent expressed concerns relating to the Recommendation’s call for hard core cartels to be prohibited by object/per se. No Respondent suggested the need for revisions to this provision.

34. In the long term, one Respondent (**Brazil**) noted that there may be scope to consider whether autonomous algorithms that facilitate collusion could fall within the definition of a hard core cartel. To date, and based on the evidence from the 2023 Competition Committee roundtable on “**Algorithmic Competition**”,<sup>13</sup> the risk of algorithms

<sup>13</sup> OECD (2023), “Algorithmic Competition”, *OECD Roundtables on Competition Policy Papers*, No. 296, OECD Publishing, Paris, <https://doi.org/10.1787/cb3b2075-en>; see also Executive Summary of the Roundtable on Algorithmic Competition, [DAF/COMP/M\(2023\)1/ANN4/FINAL](https://www.oecd.org/competition/algorithmic-competition/).

autonomously engaging in cartel behaviour has not been investigated by any competition authority, and is unlikely to require a revision of the Recommendation in the short-to-medium term.

## 2.2. Effective cartel detection systems (provision II.1.)

35. The first sub-provision of the Recommendation calls on Adherents to *implement an effective cartel detection system*, providing three specific substantive areas to focus on to achieve such objective, as analysed below.

### 2.2.1. Effective leniency programmes

36. Leniency is the first substantive area covered in provision II.1. of the Recommendation, and by far the most detailed topic of the Recommendation. It states:

*1. Implement an effective cartel detection system by:*

*a. Introducing effective leniency programmes which:*

*i. Set incentives for self-reporting by providing total immunity to the first applicant that reports its cartel conduct and fully co-operates with the competition authority and sanction reductions for subsequent applicants;*

*ii. Provide clarity on the rules and procedures governing leniency programmes and the related benefits;*

*iii. Facilitate reporting by using a marker system to encourage early reporting and provide certainty to applicants;*

*iv. Establish clear standards for the type and quality of information that qualifies for leniency;*

*v. Ensure continued co-operation between the leniency applicant and the competition authority throughout the investigation by taking into account factors such as the value of information submitted and the timing of the submission in determining the level of sanction reductions;*

*vi. Provide protection or reduction from sanctions for qualifying officers and employees of corporate leniency applicants;*

*vii. Exclude the availability of immunity for cartel coercers;*

*viii. Provide appropriate confidentiality protection to leniency applicants; and*

*ix. Seek to reduce unnecessary burdens for parties seeking leniency.*

37. The Survey asked Respondents to answer a series of questions related to each aspect of leniency programmes covered in the Recommendation.

#### *Recommendation II.1.a. – Introduce a leniency programme*

38. As of 2024, all Adherents have a leniency programme in place. Two Adherents implemented a programme in the last five years, and some others have made some changes to strengthen the programmes that were already in place (detailed in Box 2.3 below).

#### *Recommendation II.1.a.i. – Incentivise reporting and require co-operation through immunity*

39. All of the Adherents' leniency programmes grant total immunity to the first applicant that reports the conduct, provided they comply and co-operate with the

competition authority. 19 Respondents noted that an immunity application had been rejected or the offer had been withdrawn by the competition authority in the last five years. These were for a range of reasons, but included in particular:

- Applications did not meet the standard in terms of providing sufficient evidence, or where the competition authority had sufficient evidence already and did not need to rely on a leniency applicant.
- Applicants were rejected on the basis that they were simultaneously applying for leniency (and thus admitting wrongdoing) whilst at the same time contesting whether they were party to the cartel.
- The application was unnecessary on the basis that the investigation did not continue.
- The application was not valid on the basis that the immunity applicant was a cartel coercer.

40. Some leniency withdrawals and refusals are outlined in greater detail in Box 2.2 below.

### Box 2.2. Selected leniency applications withdrawals and refusals in the last five years

In **Colombia**, the competition authority partially revoked benefits granted to a participant in their immunity programme due to inconsistencies in their statements about anti-competitive conduct. The whistleblower partially failed to comply with the programme, leading to the revocation of benefits for one investigated practice while being granted immunity from liability in other aspects of the case.

The **Lithuanian** Competition Authority launched dawn raids after receiving reports from municipal governments about suspected bid rigging in public procurement contracts for the purchase of food products for educational institutions and social services providers. The Authority established that four firms had rigged 101 public tenders, with conduct including allocating tenders, submitting fictitious bids and helping each other prepare tender documents. Three firms submitted leniency applications, with the fourth admitting wrongdoing at the end of the investigation. All cartelists received settlement discounts, though no firm was granted full immunity. Directors of the firms that applied for leniency avoided personal liability. One firm appealed the quantum of the fine issued, which was rejected on appeal on the basis that the firm had not proved they were merely a passive participant of minimal impact to the cartel.

In 2021, **Poland's** competition authority (UOKiK) issued two decisions sanctioning cartel agreements concluded by truck dealers and imposing fines amounting to EUR 26 million. UOKiK first found that five companies divided the market among themselves from 2011 to 2018. Some dealers even exchanged information about bids submitted in public procurement tenders. Two of the companies applied for leniency and benefited from a 50% fine reduction but did not qualify for a full fine exemption as the UOKiK already had sufficient evidence of wrongdoing. Additionally, the investigations found eight managers were actively involved in the implementation of the agreements. These individuals were fined a total of EUR 370 000. The second decision focused on bid rigging conducted by three truck dealers.

A company in **Sweden** applied for leniency after being compelled to provide information during an investigation initiated by a tip-off. The Swedish Competition Authority (SCA) denied full immunity as the company did not provide information

voluntarily, and sufficient evidence was already available. However, the requested fines were halved due to the company's assistance in the investigation. Both the first instance and appeal courts upheld the SCA's decision, confirming the company's involvement in an anticompetitive agreement and the denial of full immunity

Source: 2024 Survey; [https://archiwum.uokik.gov.pl/aktualnosci.php?news\\_id=18186](https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=18186); Case Nr. eI4-2763-816/2022, <https://kt.gov.lt/lt/dokumentai/teismo-sprendimas/id.447>; <https://www.teismai.lt/lt/naujienos/teismu-pranesimai-spaudai/teismas-nesumazino-bendrovei-soteja-skirtos-baudos/10306>.

41. In many of these withdrawal or rejection of leniency cases, the applicant may have benefited from a reduced sanction to reflect their co-operation or admission of wrongdoing, even if they were not granted full immunity.

42. The vast majority of Respondents also offer sanction reductions for subsequent leniency applicants. Only four (**Brazil, Costa Rica, Israel** and the **United States**) reported that subsequent reductions are unavailable through their leniency programme itself. These jurisdictions use other tools to encourage co-operation, such as the **United States** which instead recommends to courts to apply lower penalties on subsequent co-operating parties as part of the sentencing process.<sup>14</sup>

*Recommendation II.1.a.ii. – Provide clarity on rules and procedures*

43. All Respondents to the survey noted that they had adopted guidelines to provide more transparency and predictability on the operation of their leniency programme. These are available on the websites of the Respondent competition authorities.

*Recommendation II.1.a.iii. – Use a marker system*

44. 35 of 38 Respondents have implemented a marker system.<sup>15</sup> These are typically facilitated via an email and/or telephone hotline, with domestic legislation or regulations that govern what information is required of parties applying for a marker. The most recent is **Ireland**, which implemented this aspect of the Recommendation in a 2022 law reform.

*Recommendation II.1.a.iv. – Establish standards for the type and quality of information*

45. Although all Respondents noted they had adopted general leniency programme guidelines, five Respondents noted they had not internally set specific standards for the type and quality of information that qualifies for leniency.

*Recommendation II.1.a.v. – Ensure continued co-operation*

46. 34 of the 38 Respondents confirmed there were processes in place to ensure continued co-operation between the leniency applicant and the competition authority

<sup>14</sup> This is discussed in greater detail in OECD (2013), “Leniency for Subsequent Applicants: Key findings, summary and notes”, *OECD Roundtables on Competition Policy Papers*, No. 134, OECD Publishing, Paris, <https://doi.org/10.1787/753b2664-en>.

<sup>15</sup> This was discussed by the Competition Committee in 2014. See OECD (2014), “The Use of Markers in Leniency Programmes”, *OECD Roundtables on Competition Policy Papers*, No. 166, OECD Publishing, Paris, <https://doi.org/10.1787/b5b83b97-en>.

throughout the investigation. These were present in the relevant legislation, regulations or guidelines.

*Recommendation II.1.a.vi. – Provide protection and reductions for qualifying individuals*

47. One area of Recommendation II.1.a on leniency programmes that has less consistent implementation is in relation to providing personal immunities to qualifying officers or employees of corporate leniency applicants. 10 Respondents reported that these protections do not exist in their jurisdiction. This figure is likely in part a reflection of the fact that some jurisdictions do not typically seek penalties against people rather than legal entities in their competition enforcement practices generally.

48. Data from the Survey suggests that it is very rare for authorities to grant individual persons leniency but not the firm they work for. Only four Respondents reported having had a case like this occurring in the last five years. Further, no Respondents were of the view this was an area that required additional attention from the OECD Competition Committee.

*Recommendation II.1.a.vii. – Exclude cartel coercers from leniency programmes*

49. Laws, regulations or guidelines exist in 32 of the 38 Respondents to exclude cartel coercers from immunity. The six jurisdictions where these exclusion does not apply did not indicate any current intention to implement reforms to their leniency programme to align with the Recommendation.

*Recommendation II.1.a.viii. – Provide appropriate confidentiality protections*

50. Providing robust confidentiality protections to leniency applications is an aspect of the Recommendation that almost all Respondents have adopted, with 35 of 38 having such protections in place. While protections vary across jurisdictions, generally they protect the identity of leniency applicant and the content of their application to the extent possible under domestic law. This typically includes preventing the material from being made available to third parties not involved in the case, and preventing the leniency application material being made available after the end of the case.

51. There is variety between jurisdictions as to what extent the competition authority can be compelled to share the leniency application with other relevant stakeholders. The two major challenges in this area relate to:

- Leniency policies that are not aligned with possible parallel criminal procedures, which may compel the competition authority to share the material with the prosecutor or courts. This may be of particular concern where there are no corresponding opportunities for fine reductions in the criminal prosecution and the fines for individual offenders.
- Private damages regimes that expose leniency applicants to being held liable for their conduct, where private parties are able to gain access to the leniency materials in the competition authority's case relating to the same conduct.

*Recommendation II.1.a.ix. – Reducing unnecessary burdens*

52. Respondents were also asked about any notable changes in laws, policies or practices that aim to reduce unnecessary burdens for parties seeking leniency, the final

aspect of the leniency portion of the Recommendation. Box 2.3 outlines a number of noteworthy developments reported by Respondents.

### Box 2.3. Recent legislative and policy developments relating to leniency programmes

The **Brazilian** Competition Authority, CADE, updated its leniency programme to provide greater clarity and transparency, streamlined procedures by refining electronic submissions and simplifying forms, and increased co-operation with other authorities, enabling applicants to benefit from multiple jurisdictions' leniency framework. In addition, CADE has strengthened protections for applicants, clarifying the required evidence and boosting confidentiality measures. Further improvements are expected under Ordinance CADE 280/2023, which established a Working Group to conduct research and propose refinements to the Leniency Program.

**Colombia** introduced a new legislation in 2022, offering an additional benefit to whistleblowers who are not in the first position of precedence. To qualify, such whistleblowers must inform the authority of a separate anti-competitive conduct before finalising the Collaboration Benefits Agreement for the ongoing investigation. This change encourages cooperation from subsequent whistleblowers, expanding the incentive framework and potentially reducing barriers for those seeking leniency.

The **European Commission**, via DG COMP, has introduced three key measures. First, the launch of eLeniency, an online tool that streamlines the submission of statement and documents and provides a secure means of communication during proceedings. Second, it published a comprehensive FAQs document in October 2022, offering clarity on leniency policies and practices for potential applicants. Lastly, it established dedicated leniency officers to guide parties through the application process and offer support on any leniency-related issues.

**Germany** now allows leniency application filings in German, English or in another language of the European Union, to be agreed between the German Competition Authority and the applicant.

In 2021, **Korea** revised the guidelines for its leniency program, addressing cases where the first applicant loses immunity due to its own fault (e.g., continued participation in the cartel). Under the new rules, if the second applicant contributed to detecting the cartel and is not at fault, they can still be granted immunity despite the first applicant's failure.

**Türkiye** introduced a new regulation that recognises "cartel facilitators," which are entities that help establish or maintain a cartel without being direct participants. Such facilitators can now access the leniency program if they cooperate actively with the competition authority. Aligning with EU standards, the new rules also require leniency applicants to provide "value-adding evidence" that substantially strengthens the competition authority's case against the cartel.

Source: 2024 Survey

### *Leniency trends in competition enforcement cases*

53. Over the past decade, there has been significant concern in the Competition Committee of a long-term decline in the amount of leniency applications. In 2023, the Competition Committee convened two separate sessions on the topic.

- **“The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels”**<sup>16</sup> – the roundtable noted that while there has been an increasing number of jurisdictions that have a leniency programme in recent years, there is a decrease in the number of leniency applications over the same period. A number of reasons are likely causing this, including: policies making settlement a more attractive option to cartelists; more cross-border cartel enforcement without co-ordinated leniency programmes; the existence of private enforcement regimes; and the risk of criminal immunity not being available to leniency applicants. The session underscored the importance of striking the right balance between maintaining the efficiency of leniency programs and encouraging the use of alternative detection methods.
- **“Alternatives to Leniency Programmes”**<sup>17</sup> – building on the roundtable on the *Future of Effective Leniency Programmes*, this session instead explored other approaches competition authorities are taking to identify and prosecute cartels. Delegates discussed proactive tools such as the use of industry studies and awareness activities; reactive measures such as whistleblower programmes and registers of consumer complaints; and the role of technological tools such as cartel screening and data analysis. The session recognised that ultimately effective cartel enforcement requires consistency between leniency programmes and other enforcement tools to avoid diminishing the effectiveness of cartel enforcement.

54. However, there is promising data to suggest that leniency programmes are again being more frequently used. The two most recent editions of the OECD’s Competition Trends reports have noted an uptick in leniency applications (covering the years up to 2022 and 2023 respectively).<sup>18</sup> As noted in Figure 2.1 below, whilst OECD Member jurisdictions are not receiving the same number of applications as they were back in 2015, there is a marked improvement.

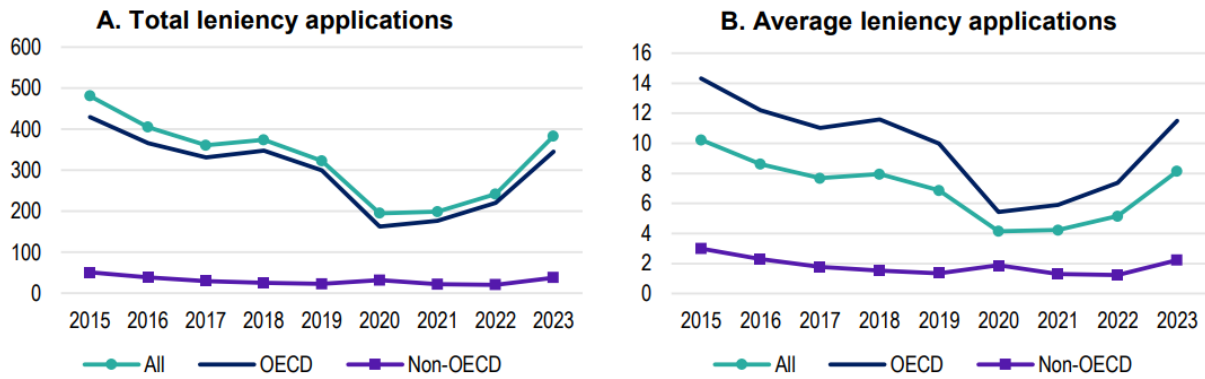
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<sup>16</sup> OECD (2023), Executive Summary of the roundtable on the Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels, [DAF/COMP/WP3/M\(2023\)1/ANN2/FINAL](https://doi.org/10.1787/8c4bd00b-en)

<sup>17</sup> OECD (2023), Alternatives to Leniency Programmes, <https://web-archiver.oecd.org/2023-12-18/663797-alternatives-to-leniency-programmes.htm>.

<sup>18</sup> OECD (2025), *OECD Competition Trends 2025*, OECD Publishing, Paris, <https://doi.org/10.1787/8c4bd00b-en>; OECD (2024), *OECD Competition Trends 2024*, OECD Publishing, Paris, <https://doi.org/10.1787/e69018f9-en>.

**Figure 2.1. Number of leniency applications, 2015-23**



Note: Data based on the 47 jurisdictions in the OECD CompStats database that provided data for leniency applications for nine years. This figure does not present information from the United States competition agencies.

Source: OECD CompStats database; OECD (2025), *OECD Competition Trends 2025*, OECD Publishing, Paris, <https://doi.org/10.1787/8c4bd00b-en>.

55. Box 2.4 surveys a number of enforcement actions that Respondents provided when asked about notable cases involving their leniency programme.

### Box 2.4. Noteworthy cases involving a leniency programme

**Brazil's** CADE notably fined five companies and six individuals in 2021 for participating in a cartel in public tenders to supply pipes for a total amount of BRL 192.2 million (USD 33 million) following a leniency agreement with a company and its employees.

In **Colombia**, an individual whistleblower, employed by a company taking part in anticompetitive practices, applied for the leniency program but failed to comply with it. The Superintendence of Industry and Commerce (SIC) hence revoked the benefits to the whistleblower but maintained their liability relief in certain aspects of the case.

The **French** Competition Authority (FCA) submitted multiple examples of leniency applications, showing the system is widely known and is actively used by undertakings. In 2019, a company participating in an applesauce cartel benefited from a full fine exemption for cooperating with the Authority under the leniency procedure. The fine for this case was EUR 58 million.

In **Italy**, a company avoided a EUR 70 million fine by applying to the leniency programme. Subsequent leniency applicants benefited from a 40-50% fine reduction.

The **Korea** Fair Trade Commission (KFTC) rejected an applicant that applied for leniency as part of an investigation into a poultry meat cartel. The leniency applicant denied its involvement in some of the anticompetitive agreements identified by the KFTC, claiming the evidence gathered by the KFTC was inauthentic. Subsequently, the KFTC denied the applicant's request to be granted leniency.

When **Spain** transposed the EU Public Contracts Directive in 2017, Spain made it mandatory that firms found to have previously breached competition law be excluded from participation in public tenders for a set period of time. This differs from other European countries where the exclusion of firms remains a discretionary ground for the competition authorities or the courts. The Spanish Competition Authority (*CNMC*) used this provision for the first time in 2019, banning multiple undertakings from participating in public procurement tenders, with the notable exception of companies that benefited from the leniency mechanism.

Source: 2024 Survey; Case S/DC/0598/2016, [https://www.cnmc.es/sites/default/files/2380080\\_1.pdf](https://www.cnmc.es/sites/default/files/2380080_1.pdf); Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

### *Conclusions and steps forward*

56. No Respondents expressed concerns relating to what is currently in the leniency aspect of the Recommendation.

57. Only one Respondent (**Brazil**) suggested an avenue of future Competition Committee work that may necessitate revision to the Recommendation. This is in relation to the role that international co-operation can play in facilitating leniency in multiple jurisdictions when investigating a cross-border cartel.

58. This low level of interest in changes to the provision suggests no current need to consider revision of the Recommendation, on this specific aspect.

59. **Spain** did note they would like to see guidance or other Competition Committee activity relating to whether a continued decline in leniency programmes may necessitate

competition authorities becoming more reliant on pro-active detection tools. In 2023, the Global Forum on Competition hosted a roundtable on “**Alternatives to Leniency Programmes**”.<sup>19</sup> The Competition Committee may consider whether there is interest among its delegates to revisit the topic in the future or to prepare an additional publication on this topic, to further support the implementation of the Recommendation.

### 2.2.2. Pro-active detection tools

60. The second area covered in provision II.1 sets out that Adherents should be

*b. Using pro-active cartel detection tools such as analysis of public procurement data, to trigger and support cartel investigations.*

61. 28 of 38 of Respondent jurisdictions reported using pro-active cartel detection tools to trigger and support investigations. Many of the Respondents indicated long-standing use, with several having implemented these tools for over five years.

62. For the Respondents not using pro-active detection tools, this is attributed mainly due to lack of resources (i.e. to access and use relevant data sources, software for data analysis, and staff with sufficient skills). Several of the Respondents are seeking to co-operate with OECD Members or EU Member States for assistance in developing their proactive detection capacity.

63. **France** noted that their inability to conduct pro-active cartel detection is based on legislative barriers that prevent them from accessing public procurement data that is not publicly available, without initial suspicions. Similarly, **Germany** explained existing legislative barriers prevent their authority from accessing public procurement data that is not publicly available without initial suspicions, causing an inability to conduct proactive cartel detection in bid rigging cases based on an automated software tool. Currently, the Bundeskartellamt uses several established methods of proactive co-operation in cartel detection. This includes the exchange of leads with the police, state prosecutors and whistle blowing agencies; as well as maintaining their own electronic and analogue whistle blowing system.

64. Among Respondents using pro-active tools, the most common was conducting analysis of public procurement data and similar algorithmic screening mechanisms. Some jurisdictions are exploring the use of new custom tools for cartel detection and data analysis, using machine learning and Artificial Intelligence (AI). For example,

- In **Australia**, the ACCC developed an algorithmic cartel screening toolkit and acquired another from a competition authority abroad.
- **Brazil** (CADE) reported the use of advanced data analysis techniques to identify bid-rigging schemes in public procurement.
- **Denmark** developed a machine-learning tool called “Bid Viewer”, capable of analysing large datasets to identify collusion in public tenders.
- **Japan** (JFTC) adopted a policy to use market survey analysis for case identification.

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<sup>19</sup> OECD (2023), Alternatives to Leniency Programmes, <https://web-archiv.oe.cd.org/2023-12-18/663797-alternatives-to-leniency-programmes.htm>; See also OECD (2023), “The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels”, *OECD Roundtables on Competition Policy Papers*, No. 299, OECD Publishing, Paris, <https://doi.org/10.1787/9bc9dd57-en>.

- **South Korea** (KFTC) has expanded the development and usage of its Bid-Rigging Indicator Analysis System (BRIAS).

65. Additionally, some Respondents reported to having also invested in specialised teams, by creating an Intelligence Unit or training staff in relevant skills.

66. Respondents noted that their pro-active detection tools had led to enforcement action, particularly in sectors such as public procurement, pharmaceuticals, and construction. Some of these responses are highlighted in Box 2.5 below.

### Box 2.5. Enforcement action involving pro-active detection tools

In 2021, **Brazil** reported using a hybrid combination of detection in a case where proceedings were opened based on human-gathered information. From there, business intelligence and screening tools were used to identify patterns of collusion by analysing more than 4 500 bids.

Collusion in public tenders is usually identified through whistleblowers, anonymous tips and informal reports. The **Danish** Competition and Consumer Authority developed an automated tool to supplement these sources of information. The screening tool, named *Bid Viewer* uses AI, machine learning and neural networks to detect suspicious collusion patterns in large public procurement datasets. In 2022, Denmark reported that while *Bid Viewer* has correctly flagged suspicious behaviour in previously published datasets with known cartels, no cartels had yet been identified using this tool.

In the last five years, **Korea** reported they had imposed fines in five different cases where their *Bid-rigging Indicator Analysis System (BRIAS)* was used.

**Mexico** noted that they had conducted major investigations in sectors like pharmaceuticals and labour markets using detection tools.

In **Romania**, the Romanian Competition Council (RCC) can be consulted by public bodies in the case of suspicious bids. Based on the information gathered during these consultations, the RCC has opened an increasing number of cases.

Source: 2024 Survey; OECD (2022), Data Screening Tools for Competition Investigations – Note by Denmark, [DAF/COMP/WP3/WD\(2022\)29](#).

67. Some of the challenges that the Respondents have faced while using pro-active detection tools are related to the confidentiality of the information and data access. Having reliable information in an accessible way to process and analyse is a common challenge across jurisdictions. For example, **Mexico** has faced issues due to limited open tendering processes in public procurement and **Italy** (AGCM) has also struggled with creating reliable public procurement datasets for screening tool. Some jurisdictions expressed ongoing efforts to address these limitations through legislative amendments and increased inter-agency co-operation.

### *Conclusions and steps forward*

68. There is an increased reliance on data-driven tools for detecting cartel behaviour, with notable progress in several key jurisdictions, and in the last five years these tools have been refined to enhance their effectiveness in detecting hard core cartels.

69. No Respondents expressed concerns relating to what is currently in the pro-active detection tools aspect of the Recommendation.

Only one Respondent (**France**) suggested an avenue of future Competition Committee work that may necessitate revision to the Recommendation. **France** suggested the Recommendation should call on Adherents to ensure that public procurement data is accessible to competition authorities and available in a standardised format. Such language currently exists in the *OECD Recommendation on Fighting Bid Rigging in Public Procurement* [[OECD/LEGAL/0396](#)], which includes in its provision II.10. a recommendation for Adherents to:

*10. Keep reliable and comprehensive procurement databases, which:*

- a) are consistent across contracting authorities;*
- b) cover all procurement process stages to support pro-competitive tender design as well as appropriate law enforcement;*
- c) include data about bids (both successful and unsuccessful) and contracts (including amendments and subcontracts) and key variables (such as firm identifiers) that facilitate evaluating whether bid rigging might have occurred;*
- d) are accessible to public procurement officials and relevant law enforcement authorities, including competition authorities.*

70. This low level of interest in changes to this aspect of the Recommendation suggests no current need to consider revision of this part of provision II.1.

71. While there was insufficient demand among Respondents to suggest there is a need for an implementation toolkit for the Recommendation, pro-active detection tools was an area where there was higher demand for more activities and guidance on this topic. In their response, **Greece** suggested an implementation toolkit could include guidance on the use of data analytics and AI to identify patterns of collusion, including bid-rigging, in data sets. This was echoed in the responses of **Estonia, Ireland** and the **Slovak Republic**.

72. This suggests the Competition Committee may benefit from considering whether there is a need for additional sessions of the Competition Committee or other work outputs on this topic, having last been specifically discussed in the 2022 WP3 roundtable on “**Data Screening Tools for Competition Investigations**”.<sup>20</sup>

### **2.2.3. Whistle-blower mechanisms**

73. The third area covered in provision II.1 sets out that Adherents should be

- b. Facilitating the reporting of information on cartels by whistle-blowers who are not leniency applicants, providing appropriate safeguards protecting the anonymity of the informants.*

74. 33 out of 38 Respondents reported having whistle-blower mechanisms for parties who are not leniency applicants. Anonymity for whistle-blowers that request it is guaranteed across all Respondents who have a programme in place.

75. Whistle-blower programmes are often facilitated via the use of a specific whistle-blower tool provided by an external third party (for example this is the case in **Australia, Denmark, the European Union, and Greece**). Others (such as **Iceland, Ireland, Italy, and the Slovak Republic**) report that they use dedicated electronic mailboxes and hotlines

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<sup>20</sup> OECD (2022), Executive Summary of the Roundtable on Data Screening Tools for Competition Investigations, [DAF/COMP/WP3/M\(2022\)2/ANN2/FINAL](#); OECD (2022), “Data Screening Tools for Competition Investigations”, *OECD Roundtables on Competition Policy Papers*, No. 284, OECD Publishing, Paris, <https://doi.org/10.1787/4c5bbb9d-en>.

for anonymous submissions, with strict protections in place to limit the number of staff within the competition authority that can access the data.

76. Several Respondents reported recent attempts to enhance the law and practice relating to their whistle-blowing programme, some of which are outlined in Box 2.6 below.

### Box 2.6. Recent developments in policy and laws relating to whistle-blowing programmes

The **European Union** introduced the 2019 Whistle-blowing Directive which contains a range of provisions that aim to encourage those who acquire information about breaches of EU law through their work to report wrongdoing, including competition law violations. Among other obligations, the Directive requires EU Member States to ensure that:

- whistleblowers have at their disposal effective channels to report breaches of European Union rules confidentially, both internally (within an organisation) and externally (to a competent authority),
- whistleblowers' reports are properly investigated and acted upon by the organisations and competent authorities,
- whistleblowers are protected from retaliation.

The European Commission prepared a report in July 2024 on the progress to date on the implementation of the Directive, which noted that:

*“While the Commission recognises the efforts made by Member States so far, it regrets the overall very late transposition of the Directive [and] the lack of adoption of the provisions necessary to ensure the complete and precise transposition of this Directive is particularly serious, given its importance for safeguarding the public interest.”*

**Poland** (who have had a cartel whistle-blower programme in place since 2017) noted that the implementation of the EU Directive is expected to take more time due to the challenge of implementing the new communication channels imposed by the Directive alongside their pre-existing system.

Outside of the European Union, **Canada** enacted legislation that created additional protections for whistleblowers in 2024.

Source: 2024 Survey; Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law; Report from the Commission to the European Parliament and the Council on the implementation and application of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law COM(2024) 269 final.

77. Significant investigations triggered by whistle-blowers include,

- **Brazil**, which investigated port piloting services, urban planning fees, and agricultural mergers based on anonymous complaints.
- **Romania** sanctioned nine companies in the agricultural equipment sector after receiving whistle-blower tips.
- **Spain** detected cartels in radiopharmaceuticals and real-estate sectors using whistle-blower disclosures.

- **Italy** reported that it had opened three cartel proceedings in early 2024 thanks to information received through more than 100 reports since November 2023.

78. Many of the Respondents noted they would like to improve their implementation of their whistle-blower programme. This was primarily focused on encouraging greater usage and getting more high-quality information, as well as improving the technical infrastructure (for those Respondents that currently use an email inbox or phone line).

79. Some Respondents such as **Korea** and the **United Kingdom** also offer monetary rewards to whistle-blowers. In 2022, **Korea** paid out USD 2 million across 10 cartel whistle-blowers. In 2023, the **United Kingdom** increased the maximum financial reward from GBP 100 000 to GBP 250 000. In their response, **France** expressed regret that its whistle-blower programme does not allow for a financial reward, similar to what the United Kingdom can offer, which France believes reduces the incentive to report.

### *Conclusions and steps forward*

80. These findings reflect a trend toward strengthening whistle-blower protections, enhancing legal frameworks, and relying more heavily on confidential tips to detect cartels. However, there are some challenges faced by jurisdictions, such as confidentiality concerns and limited public disclosure due to the sensitivity of cases.

81. No Respondents expressed concerns relating to the whistle-blower programme part of the Recommendation and no Respondents suggested the need for revisions to this part of provision II.1.

82. **Greece** and **Spain** both suggested that whistle-blowing could be the subject of future activities or guidelines prepared by the Competition Committee, though gave no specific areas of focus. Accordingly, while these could be used to help guide prioritisation for future activities of the Competition Committee, they do not suggest a need for specific action relating to the implementation of the Recommendation.

## **2.3. Effective Powers (provision II.2.)**

83. The second sub-provision (provision II.2.) of the Recommendation sets out that Adherents should:

*2. ensure that competition authorities have effective powers to investigate hard core cartels*

84. The sub-provision covers five powers that are of specific relevance to hard core cartel enforcement. The status of implementation of these five powers across Adherents is reviewed in the following sub-sections.

### **2.3.1. Dawn raids**

85. Sub-provision II.2.a recommends that competition authorities have the power to

*a. Conduct unannounced inspections (“dawn raids”) at business and private premises, and access and obtain all documents and information necessary to prove cartel conduct*

86. All Respondents have had the power to conduct unannounced inspections (or “dawn raids”) for over five years. When asked to highlight prominent cases involving dawn raids, the most common response from Respondents was that dawn raids are generally used and were vital in all of their hard core cartel investigations. Moreover, Respondents noted

they have been increasingly seeking to undertake simultaneous dawn raids across jurisdictions to better co-ordinate cross-border cartel investigations.

87. In the past five years, several jurisdictions reported significant changes in their legal frameworks, policies, and enforcement practices related to unannounced inspections. These changes focused on expanding legal mandates; modernising procedural rules; and for European Union Member States, transposing European Directives into national law. Respondents also noted that changes in business operations and working from home policies had required some of authorities to change their practices or laws relating to dawn raids.

88. Box 2.7 below surveys some of the changes made by Respondents in relation to dawn raids in the last five years.

### Box 2.7. Law and policy reforms to dawn raid powers

**Brazil** submitted that guidelines and procedures for conducting dawn raids have been updated to provide investigated parties clear information about their rights and obligations during a dawn raid.

With the rise of teleworking, **Canada** is doing more preliminary investigation work to determine if key individuals are working from home in order to obtain a search warrant for home offices.

**Denmark's** Competition Act was amended in 2021 and now allows the competition authority to conduct dawn raids in private homes.

The **Italian** Competition Act was amended to transpose the ECN+ Directive and now allows dawn raids to be conducted in non-business premises (e.g. homes) if there are reasonable grounds to suspects that documents related to the company may be relevant to prove an infringement.

**Poland, Spain** and **Sweden** also reported having made changes as part of implementing the ECN+ Directive provisions.

**Costa Rica's** telecommunications regulator (SUTEL) gained the power to conduct dawn raids in 2019.

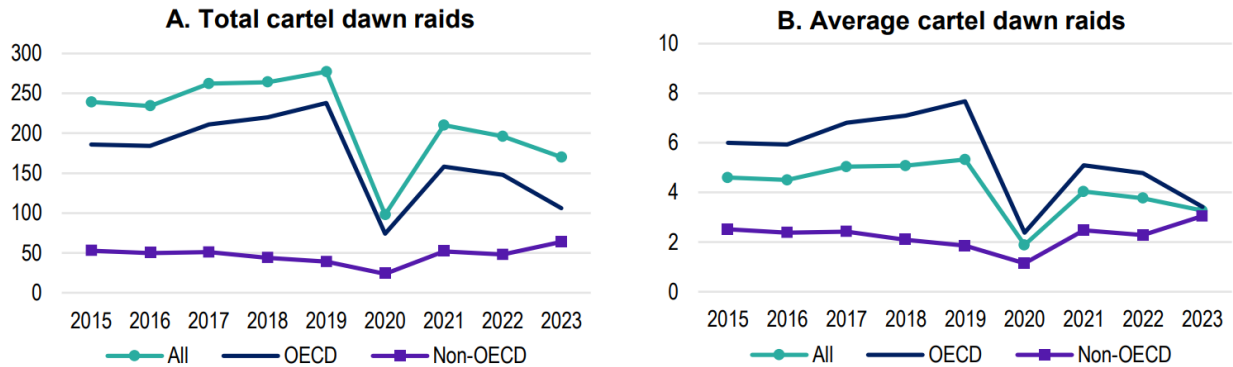
**Korea** reported that they had strengthened the rights of investigated parties. The inspection notification now includes details such as the date, duration and scope of the inspection. Further protection has been granted to legal and compliance departments within investigated firms, prohibiting dawn raids against them – except in relation to suspected direct involvement in destroying evidence.

In 2019, **Mexico's** COFECE established rules to handle legally privileged information gathered during dawn raids, preventing the Cartel Unit from accessing such information until it was reviewed by an independent committee. If deemed privileged, the information will be excluded from the investigation. Due to the pandemic and remote work, 2021 updates to the rules now allow search warrants to include requests for data on employees' home computers, allowing the forensic unit to copy this information remotely.

Source: 2024 Survey; Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

89. Across OECD Members (who represent 38 of the 40 Adherents to the Recommendation), there was a significant drop in dawn raids due to the start of the Covid-19 pandemic. The number of dawn raids has increased in recent years, but not to pre-2020 levels (see Figure 2.2 below).

**Figure 2.2. Number of cartel cases in which a dawn raid was carried out, 2015-23**



Note: Data based on the 52 jurisdictions in the OECD CompStats database that provided data for cartel dawn raids for nine years. This figure does not present information from the United States competition authorities. Source: OECD CompStats database; OECD (2025), *OECD Competition Trends 2025*, OECD Publishing, Paris, <https://doi.org/10.1787/8c4bd00b-en>.

**2.3.2. Access to Electronic Material**

90. Sub-provision II.2.b addresses the competition authorities’ powers to

*b. Access electronic information that could help establish a cartel violation including electronic material that is stored remotely (e.g. on ‘the cloud’) and have access to appropriate investigative techniques, such as communications interception and surveillance authorisations. For this purpose, competition authorities should have trained specialised staff and adequate hardware and software equipment*

91. 37 of 38 Respondent jurisdictions confirmed having the capacity to access electronic materials stored remotely (i.e. cloud storage), with one (**Slovenia**) noting they lacked sufficient institutional capacity. Some of the Respondents made policy changes to enhance their powers related to accessing electronic materials: **Greece, Romania, and Türkiye** who amended laws in recent years to explicitly cover all types of electronic devices and storage media during inspections.

92. Respondents were asked to confirm which specific aspects of this sub-provision they believed they had implemented. Table 2.1 below collates these results.

**Table 2.1. Evidence gathering powers and capacities across competition authorities**

Evidence gathering powers in provision II.2.b.

	Yes	No, due to lack of basis in law	No, due to lack of organisational capacity
The ability to access electronic material that is stored remotely (e.g. on 'the cloud')	97%	0%	3%
The ability to intercept communications (e.g. "phone taps")	37%	61%	3%
The ability to conduct surveillance (i.e. monitoring, observing or listening to persons, their movements, conversations or other activities and communications)	37%	63%	0%

Evidence gathering resourcing noted in provision II.2.b.

	Yes	No
Do you have staff trained and specialising in electronic evidence gathering	89%	11%
Do you have hardware and software for electronic evidence gathering	89%	11%

Note: For the purposes of clarity and to compare, only the responses from competition authorities are collated in this data (as two jurisdictions also gave responses from their telecommunications regulator with competition powers).

Source: 2024 Survey

93. The 2024 Survey data shows that electronic information gathering powers are now available to all Respondents' competition authorities. The Recommendation's call for competition authorities to have more enhanced and pro-active surveillance powers is an area of low implementation by Adherents. Indeed, only one-third of Respondents have any legal powers to conduct surveillance as part of their cartel investigations.

94. These results also show there is widespread adoption of having trained staff and specialised tools for electronic information gathering. However, many Respondents noted that in practice, they are experiencing significant challenges related to their electronic information gathering abilities. Box 2.8 surveys a number of those described in the Survey.

### Box 2.8. Challenges experienced by Adherents in relation to electronic information gathering

**Australia** reports having difficulties gathering data in the time available during search warrants. This is due to the volume of electronic data that now must be captured, but also the fact it may be held across various different entities or IT providers.

Similarly, **Canada's** Competition Bureau has experienced challenges obtaining evidence from third party electronic services providers (i.e. cloud storage and e-mail providers) located outside Canada. To address technical challenges, the Bureau believes their working relationship with these service providers must be improved. The Bureau also noted there are challenges in hiring experienced digital forensic personnel (which is highly sought after in many organisations), as well as the cost of training investigators.

**Colombia** highlighted the reluctance of firms to provide information without a court order due to a lack of knowledge about the competition authority's powers.

**Denmark** reported issues accessing data stored or linked with Microsoft 365 (the cloud-hosted version of Microsoft Office, including Outlook). Companies have denied the

authority administrative rights to their Microsoft environment. The authority also frequently encounters ‘write-blocked’ USB ports where they cannot send data from a computer being searched to a storage device being used by the authority.

**Estonia, France, Germany and Poland** all mentioned the challenge of accessing data stored in the cloud. France added that some cloud service providers apply ‘contractual delays’ to provide the requested data.

Similarly, the **United States** has experienced difficulties in quickly downloading but also storing and analysing large volumes of electronic datasets.

**Israel** noted it was difficult to access data stored in a cloud located outside its territory.

**Latvia** only has a single electronic evidence gathering and processing specialist in their authority, but co-operates with the economic police if needed. The authority also reported particular difficulties accessing Apple computers.

**Poland and Romania** both reported difficulties in recruiting IT-related employees due to the pay gap between the private and public sectors.

In **Romania**, the competition authority cannot seize computers and need to copy the stored data. This means the authority must rely on the investigated undertaking to co-operate when data is stored remotely on the cloud.

**Slovenia** noted they lack the necessary funding for hardware, licenses, training, and staff (the NCA currently has only one employee with relevant qualifications).

Source: Survey 2024; Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

95. Respondents were also keen to highlight recent successes using electronic evidence gathering techniques. For example,

- **Chile** noted that with the help of the United States Federal Bureau of Investigation (FBI), they had successfully accessed data on an encrypted flash drive.
- In **Estonia**, evidence was collected in a major cartel case in the agriculture sector by tapping phones.
- **Italy** noted that they have been able to gather evidence for cases via communications platforms such as Skype and WhatsApp.
- After the Covid-19 pandemic, **Mexico** developed a remote electronic evidence-gathering process to reduce forensic staff’s reliance on on-site tools.

96. Box 2.9 highlights a case from the **United States**, one of the jurisdictions that has the most experience conducting remote surveillance in cartel enforcement.

### Box 2.9. Court-authorised wiretapping in a United States bid rigging cartel

Two individuals co-ordinated their bids in the market for fuel truck services for the US Forest Service’s wildfire fighters. The defendants used phone calls and text messages to agree on bids.

The case was investigated by the US Department of Justice’s Procurement Collusion Strike Force, in collaboration with the FBI. Court authorised wiretaps were used to gather evidence, revealing clear evidence of collusion between the two individuals who aimed to “squeeze,” “drown,” “punch” or “low ball” competing vendors.

One of the defendants pleaded guilty to conspiring to monopolise, rig bids and allocate territories in violation of Sections 1 and 2 of the Sherman Antitrust Act.

In a press release, then Assistant Attorney General Jonathan Kanter noted that the Department of Justice “will deploy every appropriate law enforcement tool – including court-authorized wiretaps – to prosecute blatant monopolistic conduct that harms the public”.

Source: United States Department of Justice (2024), Press Release - Executive Pleads Guilty to Conspiring to Monopolize, Rig Bids and Allocate Territories for Wildfire Services, <https://www.justice.gov/archives/opa/pr/executive-pleads-guilty-conspiring-monopolize-rig-bids-and-allocate-territories-wildfire>.

### 2.3.3. Compulsory Information Gathering

97. Sub-provision II.2.c, competition authorities should have the power to:

*c. Request and obtain information from investigated and third parties, including other government entities*

98. This again is an aspect of competition enforcement where Adherents have almost uniformly implemented the Recommendation and have been aligned for many years. 37 of 38 Respondents confirmed they have the power to request and obtain information from investigated parties, and 36 of 38 can request information from relevant third parties. Respondents broadly affirmed the importance of their compulsory information gathering powers and reported that they are used in virtually all cartel investigations in their jurisdiction.

99. Several Respondents reported changes aimed at strengthening evidence-gathering powers in the last five years. This included **Canada** who expanded its Competition Act in 2022 to compel data from foreign affiliates. **Greece** amended its laws to include broader evidence types, including deleted emails and witness statements. **France** integrated evidence-gathering measures under its digital market specific competition laws.

### 2.3.4. Oral Testimony Powers

100. Sub-provision II.2.d. asserts that competition authorities should have the power to:

*d. Obtain oral testimony from individual witnesses;*

101. 37 of 38 jurisdictions reported having the power to compel oral testimony from individual witnesses. This too was an area where strengthening these powers was highlighted by Respondents as a key legislative or policy development in the previous five years.

102. For example, **Germany** expanded its legal framework for testimony collection through administrative procedures, and **Denmark** amended its competition law in 2021 to formalise interview procedures during investigations.

### 2.3.5. *Sanctions for Non-compliance and Obstruction of Investigations*

103. Finally, the sub-provision II.2.e. covers competition authorities' powers to:

*e. Impose sanctions for non-compliance with mandatory requests and obstruction of investigations*

104. This is another aspect of the Recommendation that has a very high level of implementation, with 35 of 38 Respondents confirming they have the power to impose sanctions for non-compliance with mandatory requests and obstruction of investigations.

105. Particularly in Europe, this has been an area of significant reform in recent years. Box 2.9 outlines changes in a number of European Union Member States that were mentioned in the 2024 Survey.

#### **Box 2.10. Changes in laws and policies relating to non-compliance with information gathering requests**

Many **European Union** Member States implemented the ECN+ Directive in the past five years and introduced fines for companies obstructing an investigation (e.g. refusal to provide information or providing incorrect, incomplete or misleading information).

**Denmark's** competition legislation was amended in 2021 to allow sanctions for obstruction of an inspection following the approach in the ECN+ Directive

In 2021, **France** created a criminal penalty for natural persons obstructing an investigation.

**Italy** amended its Competition Act to allow the authority to impose fines up to 1% of total worldwide revenue for various infractions, such as hindering inspections, providing misleading information, or not appearing at hearings. Additionally, periodic penalty payments not exceeding 5% of the average worldwide daily turnover recorded in the preceding business year can be imposed for each day of delays to comply with a cease and desist order, with an interim measures decision or with commitments' decision.

**Poland** also amended its legislation and increased the maximum fine amount for obstruction to 3% of the undertaking's turnover.

Source: 2024 Survey; Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

106. While almost all Respondents' competition authorities have powers to sanction non-compliance or obstruction, there is significant variation in terms of practice and frequency of use. In hard core cartel cases over the last five years,

- For obstructing dawn raids: 23 of 38 Respondents reported issuing no sanctions.
- For non-compliance with a mandatory request for information: 23 of 38 Respondents reported issuing no sanctions.

- For non-compliance with a mandatory request to attend an interview or give oral testimony: 33 of 38 Respondents reported issuing no sanctions.

107. In that same period, a small number of Respondents reported that they had consistently imposed sanctions for obstruction of investigations. For instance, **Türkiye** reported 71 obstruction sanctions and **Mexico** issued 12 sanctions related to dawn raid obstruction. **Colombia, Czechia, Korea and Poland** also reported at least five sanctions for obstruction of dawn raids.

108. For non-compliance of information requests, **Mexico** imposed 70 sanctions for failure to comply with mandatory information requests. **Chile, Colombia, Slovak Republic and Slovenia** also reported at least five sanctions related to incomplete or false information submissions.

109. **Mexico** imposed sanctions for non-compliance with oral testimony requests in 65 instances. **Colombia** and **Czechia** also reported at least five sanctions related to testimony refusals. In contrast, **Sweden** noted they had opened three procedures for alleged obstruction, but all were closed without finding infringements.

110. **Greece** highlighted a major case involving large fines being issued against a firm and an individual that obstructed a dawn raid (see Box 2.11 below).

### Box 2.11. Greece imposed EUR 1 million Dawn Raid Obstruction Fine

In 2020, the Hellenic Competition Commission launched unannounced inspections at six different premises of a facilities management company. Employees of the company initially obstructed the inspection by preventing access to certain areas to the Commission's personnel, delaying the inspection for approximately three hours.

The owner of the company entered the room where the Commission's investigators, company representatives and the company's lawyers were conducting a cross-examination of the seized documents. The shareholder verbally objected to the inspection before taking a hard drive, the documents collected and internal documents of the competition authority containing confidential information. The firm and its owner further concealed probative evidence when they later provided the material to the authority.

Based on the seriousness of the conduct and the impact on the investigation, the company was fined EUR 200 000, and the owner was held personally liable with a fine of EUR 1 million.

Source: Hellenic Competition Commission (2023), <https://www.epant.gr/apofaseis-gnomotiseis/item/2683-apofasi-745-2021.html>.

### *Conclusions and steps forward*

111. No Respondents expressed concerns relating to the Recommendation's content on early case resolution tools. There were no Respondents that suggested a need for revisions to this aspect of the Recommendation.

112. While Respondents did not identify a need for an implementation toolkit for the Recommendation as a whole, provision II.2.b. on accessing electronic materials was an area where there was higher demand for more activities and guidance on this topic.

113. **Greece, Estonia, and Ireland** all expressed an interest on material relating to digital tools used in investigations, with **Greece** singling out more material on the necessary hardware, software and staff skills necessary to conduct effective enforcement involving digital evidence.

114. This suggests the Competition Committee may benefit from considering whether there is a need for addition sessions of the Competition Committee or other work outputs on this topic, having last been specifically discussed in the 2022 WP3 roundtable on “**Data Screening Tools for Competition Investigations**”.<sup>21</sup>

#### 2.4. Domestic co-operation hard core cartels enforcement (provision II.3.)

115. The next sub-provision (provision II.3.) of the Recommendation sets out that Adherents should:

*3. Enable co-operation of their competition authorities with other public entities, such as public procurement bodies, public prosecutors and anti-corruption agencies, including by facilitating the exchange of information and evidence among different public authorities, while ensuring adequate safeguards to protect against inappropriate disclosure.*

116. This is another aspect of competition enforcement where Adherents view themselves to be generally aligned with the Recommendation and have been for many years. 36 of 38 Respondents confirmed they have the powers to exchange information and evidence with other domestic government entities. No Respondents stated that their information exchange protocols raised concerns about the inappropriate disclosure of information or evidence that they receive or provide.

117. In relation to hard core cartel cases,

- 30 Respondents (79%) had co-operated with public procurement bodies,
- 31 Respondents (82%) had co-operated with public prosecutors,
- 23 Respondents (61%) had co-operated with anti-corruption authorities.

118. The 2024 Survey also asked Respondents to highlight developments within the last five years relating to their domestic co-operation frameworks. Major developments include:

- **Canada’s** Competition Bureau reported to have entered into several domestic co-operation agreements including the Public Prosecution Service of Canada, the British Columbia Financial Services Authority, and the Canadian Digital Regulators Forum.
- **Germany** transposed the ECN+ Directive,<sup>22</sup> and created new sections within its competition legislation relating to collaboration with other

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<sup>21</sup> OECD (2022), Executive Summary of the Roundtable on Data Screening Tools for Competition Investigations, [DAF/COMP/WP3/M\(2022\)2/ANN2/FINAL](#); OECD (2022), “Data Screening Tools for Competition Investigations”, *OECD Roundtables on Competition Policy Papers*, No. 284, OECD Publishing, Paris, <https://doi.org/10.1787/4c5bbb9d-en>.

<sup>22</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

authorities (both national and international), as well as the enforcement of decisions from other Member States of the European Competition Network.

- In **Greece**, the Hellenic Competition Commission signed MoUs with the Hellenic Data Protection Authority (2022), the Hellenic Capital Market Commission (2022), the Regulatory Authority for Ports (2021), the Regulatory Authority for Energy, Waste and Water (2020) and the Hellenic Public Procurement Authority (2019).
- In 2023, **Korea** estimates that the KFTC collected data from 30 000 public procurement contracts across 16 different public organisations. Following legislative amendments to now include more public organisations (including local public enterprises), the KFTC expects it will have collected data across 60 000 procurement contracts in 2024.
- **Latvia** noted that a recent court decision had confirmed the competition authority's powers to rely on surveillance evidence gathered by other government agencies as part of competition enforcement activities.
- In 2022, **New Zealand** amended its competition legislation to explicitly grant the competition authority powers to share information and documents with other government agencies. Prior to this change in the law, the authority relied on common law principles. The new legislative provisions require the competition authority to exercise appropriate safeguards to maintain confidentiality or protect personal information when sharing evidence. This can include the authority imposing rules on how any shared information is stored, accessed and used.

119. Box 2.12 contrasts two Respondents' experiences in enforcement cases involving domestic co-operation, highlighting that implementation challenges remain for Adherents.

### Box 2.12. Noteworthy cartel cases involving domestic co-operation

In 2021, **Brazil** approved four settlement agreements regarding a cartel in the market for animal waste and carcasses. Eight companies and 12 individuals accepted their involvement and agreed to stop the practices. They also agreed to pay over BRL 18.7 million (USD 3.2 million) to the Brazilian state fund for damage compensation. The settlement agreements were negotiated with the help of the Public Prosecutor's Office of Rio Grande do Sul, which started the investigation six years before. The Brazilian competition authority agreed not to file charges as part of a non-prosecution agreement with the cartelists and the public prosecutor.

In **Lithuania**, the Supreme Court ruled in 2021 that the NCA Prosecutor's Office decision allowing the Special Investigation Services to transfer certain information obtained during an ongoing investigation to the Competition Council was unlawful. As a result, and due to the lack of sufficient evidence, the Competition Council terminated the investigation. Amendments to legislation were made afterwards to allow broader categories of information to be transferred from the Special Investigation Service to the Competition Council.

Source: 2024 Survey; CADE Administrative Proceeding 08700.004404/2016-62; CADE Administrative Proceeding 08700.004095/2020-15.

#### 2.4.1. Conclusions and steps forward

120. Only one Respondent (**Greece**) suggested there could be scope to revise the Recommendation to instead call on Adherents to “*improve ways of co-operation*” and focus more on collaboration in investigations, rather than the current text’s call to “*enable co-operation*” and focus on information sharing.

121. No Respondents expressed concerns relating to the Recommendation’s coverage of domestic co-operation with other public entities.

122. This low level of interest in changes to this aspect of the Recommendation suggests no current need to consider revision of this sub-provision.

123. No Respondents expressed an interest in implementation material or a toolkit on facilitating domestic co-operation.

### 2.5. Early case resolution tools (provision II.4.)

124. The fourth area covered by the Recommendation (under provision II.4.) sets out that Adherents should:

*4. Enable and incentivise early case resolution tools such as plea negotiation and settlements, which often require an admission of guilt and/or the admission of facts and/or a waiver of the right to appeal.*

125. The survey responses indicate that most of the Adherents have implemented early case resolution tools, such as plea negotiations and settlements. These tools are available to 33 of the 38 Respondents. Of the five jurisdictions that do not have early case resolution tools, **Spain** noted that there has been some interest in reform in the last five years, but to date no changes have been made.

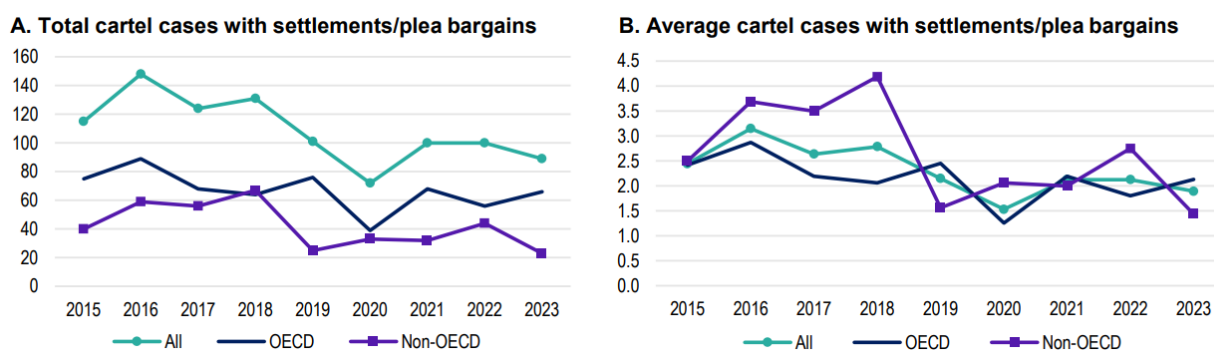
126. Overall, there is consensus on the benefits of settlement procedures, such as saving resources and helping to resolve cases more quickly. Respondents have also expressed the importance of predictability and transparency in the use of these procedures.

127. The main divergence between the Adherents is in relation to what is required of a party entering into a plea negotiation and/or settlement. From the 2024 Survey, it was reported that:

- 24 of 38 Respondents (63%) require an admission of facts,
- 25 of 38 Respondents (66%) require an admission of guilt, but
- Only 14 of 38 (37%) require the party to waive their right of appeal.

128. As shown in Figure 2.3 below, data collected for the OECD Competition Trends report shows that across OECD Members (who are 38 of the 40 Adherents to the Recommendation) the number of settlements and plea bargains in the last five years has been fairly stable. The only outlier is 2020 (likely as a result of the Covid-19 pandemic).

**Figure 2.3. Number of cartel cases in which settlements or plea bargain procedures for settling infringement cases were used, 2015-23**



Note: Data based on the 47 jurisdictions in the OECD CompStats database that provided data for cartel cases in which settlements or plea bargain procedures for settling infringement cases were used for nine years.

Source: OECD CompStats database; OECD (2025), *OECD Competition Trends 2025*, OECD Publishing, Paris, <https://doi.org/10.1787/8c4bd00b-en>.

129. The OECD Competition Trends data also show that the percentage of cartel cases involving early case resolution tools was fairly erratic, varying significantly from year to year. This is shown in Figure 2.4 below.

**Figure 2.4. Share of total cartel cases in which settlements or plea bargain procedures for settling infringement cases were used, 2015-23**



Note: Data based on the OECD Member jurisdictions in the OECD CompStats database that provided data for cartel decisions and for cartel cases in which settlements or plea bargain procedures for settling infringement cases were used for nine years.

Source: OECD CompStats database; adapted from data used to produce OECD (2025), *OECD Competition Trends 2025*, OECD Publishing, Paris, <https://doi.org/10.1787/8c4bd00b-en>.

130. Respondents to the 2024 Survey were also asked to highlight noteworthy cases in their jurisdictions that involved early case resolution tools. These included the following:

- **Australia** reported that the *Bingo Industries* case demonstrated the effectiveness of early resolution tools in addressing serious cartel offenses. Guilty pleas from the company and its executives resulted in significant fines and custodial sentences with minimal delays, ensuring swift accountability.
- In **Canada**, a company was fined CAD 50 million in 2023 after pleading guilty to four counts of price-fixing in the wholesale bread market. This was the highest price-fixing fine imposed by a Canadian court to date.<sup>23</sup>
- In another **Canadian** case, eight engineering firms entered into settlements with the public prosecutor and were ordered to pay over CAD 12.7 million for engaging in bid rigging relating to municipal contracts. Some firms benefitted from an additional discount based on the fact they had already reimbursed the government for the overpayments made as part of the rigged bid pricing.<sup>24</sup>
- In **Romania**, a cartel in the market for motor vehicle servicing included sanctions brought against repairers, car dealers, an insurance broker and several insurance companies. 64 out of 66 sanctioned entities in a price-

<sup>23</sup> 2024 Survey; <https://www.canada.ca/en/competition-bureau/news/2023/06/canada-bread-sentenced-to-50-million-fine-after-pleading-guilty-to-fixing-wholesale-bread-prices.html>.

<sup>24</sup> 2024 Survey; <https://www.canada.ca/en/competition-bureau/news/2023/10/teknika-hba-inc-to-pay-200000-in-settlement-over-bid-rigging-on-municipal-contracts-in-quebec.html>

fixing cartel case admitted their infringement through a settlement procedure and benefitted from fine reductions of up to 30%.

### *Conclusions and steps forward*

131. No Respondents expressed concerns relating to the Recommendation's content on early case resolution tools. There were no Respondents that suggested a need for revisions to this part of the Recommendation.

132. Additionally, no Respondents suggested early case resolution as a topic for an implementation toolkit or for other future work of the Competition Committee.

## **2.6. Effective sanctions (provision II.5.)**

133. The following sub-provision II.5. of the Recommendation sets out that Adherents should:

*5. Provide for effective sanctions of a kind and at a level adequate to deter firms and individuals from participating in hard core cartels and incentivise cartel members to defect from the cartel and co-operate with the competition agency. To this effect, Adherents should introduce a combination of sanctions (civil, administrative and/ or criminal, monetary and non-monetary) for an adequate deterrent effect in their jurisdiction. Adherents should consider introducing sanctions against individuals having participated in cartels.*

134. The survey sought to ascertain the different available sanctions against hard core cartelists (both firms and individuals), their suitability to deter cartels, and recent cases and policy developments of note.

135. The Recommendation calls on authorities to consider having a range of sanction types, beyond the typical power to impose civil monetary sanctions on firms that engage in cartel conduct that exists in all Respondents' jurisdictions (either by administrative procedure or through a court). Table 2.2 below collates the data on which other sanctioning powers against companies mentioned in the Recommendation are available to Respondents' competition authorities.

**Table 2.2. Sanctions available against companies or undertakings**

Can the following sanctions be applied against undertakings engaging in cartel conduct in your jurisdiction?	Yes	No
Against firms: criminal monetary sanctions	42%	58%
Against firms: civil non-monetary sanctions (e.g. barring from procurement)	58%	42%
Against firms: criminal non-monetary sanctions (e.g. barring from procurement)	37%	63%

Note: For the purposes of clarity and to compare jurisdictions, only the responses from competition authorities are collated in this data (as two jurisdictions also gave responses from their telecommunications regulator with competition powers).

Source: 2024 Survey

136. The responses gathered from the 2024 Survey also suggest there has been a general trend in the last five years to increase the maximum available level of sanctions across Adherents. Now, almost all Respondents reported having company turnover available as one of the possible bases for calculating the fine. Only two Respondents still have their fines set as a fixed amount.

137. Policy and legislative changes in the last five years relating to hard core cartel sanctions that were highlighted by Respondents include:

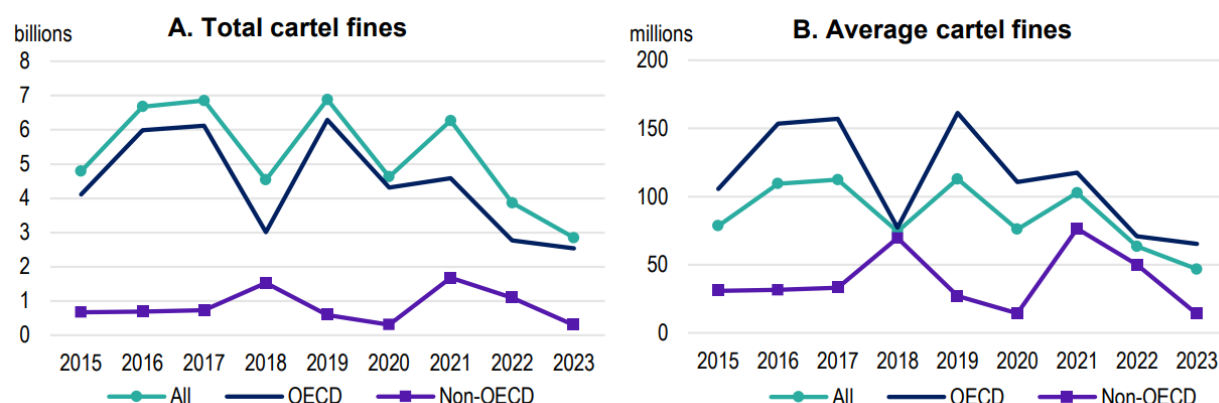
- In 2022, **Australia** increased the maximum civil penalties to whichever is the largest of: (i) AUD 50 million (it was previously AUD 10 million), (ii) three times the value of the "reasonably attributable" benefit obtained from the conduct, if the court can determine this, or (iii) if a court cannot determine the benefit, 30 per cent of adjusted turnover during the breach period. The maximum penalty for an individual also increased from AUD 500 000 to AUD 2.5 million.
- **Canada** removed the CAD 25 million limit on fines for criminal price-fixing agreements. Fine amounts are now at the discretion of the court.
- As part of their transposition of the ECN+ Directive,<sup>25</sup> **Denmark** switched from criminal to civil regime against undertakings for cartel conduct. Sanctions are now imposed by a civil court.
- In **France**, due to the transposition of the ECN+ Directive, the fine cap for professional organisations increased from EUR 3 million to 10% of the worldwide turnover of the organisation or of the total turnover of its active members in the market affected by the anticompetitive practices.
- The **French** competition authority also updated its procedural notice used to determine the fine amount in 2021. The **United Kingdom** also revised its guidance on penalties in 2021.
- **Hungary** increased the maximum fine amount from 10% to 13% of the company's net turnover (or the group's turnover) in the previous financial year.
- **Ireland** raised the upper limit for fines in criminal hardcore cartel cases in 2022 to up to EUR 50 million or 20% of an undertaking's turnover in the previous financial year.
- In **Italy**, the transposition of the ECN+ Directive allowed the national competition authority to require structural remedies and increased the maximum fine amount which can be imposed on trade associations (switching from the total contributions received by the trade association to the combined turnover of its members).
- **Korea** updated its national law in 2020 to double the maximum fine for all the violations of the Monopoly Regulation and Fair Trade Act. The upper limit of fines for cartels increased from 10% to 20% of the relevant turnover.

138. Data gathered by the OECD Secretariat for the annual Competition Trends report show that over the past five years there has been a decline in the total amount and average size of fines for cartels among OECD Members (who represent 38 of the 40 Adherents to the Recommendation). These are displayed in Figure 2.5 below.

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<sup>25</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

**Figure 2.5. Fines imposed in cartel cases in 2015 EUR, 2015-23**

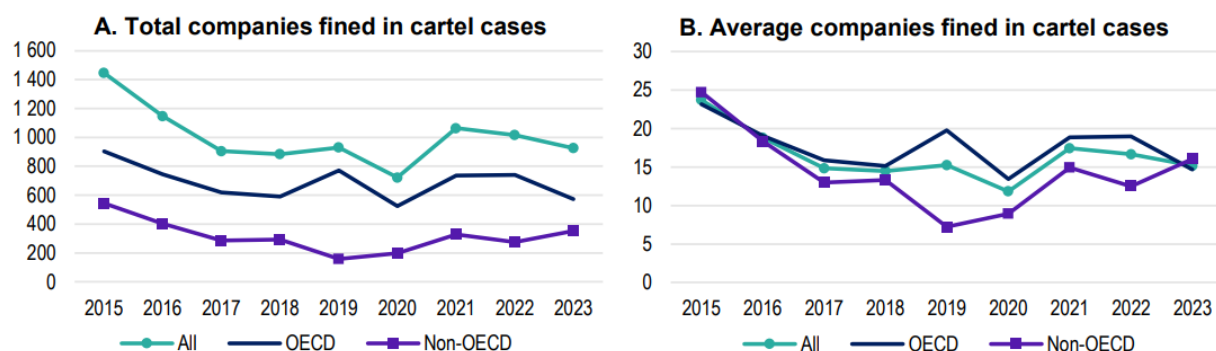


Note: Data based on the 61 jurisdictions in the OECD CompStats database that provided data for cartel fines for nine years. Nominal fines imposed are in 2015 euros (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate distortions due to currency fluctuations.

Source: OECD CompStats database

139. Despite the decline in the quantum of fines during the five-year period since 2019, the OECD Competition Trends figures suggest that the average number of firms fined in cartel cases (both in total and on average per cartel case) has remained more stable in the last five years. This is shown in Figure 2.6 below.

**Figure 2.6. Companies fined in cartel cases, 2015-23**



Note: Data based on the 61 jurisdictions in the OECD CompStats database that provided data for companies fined in cartels for nine years.

Source: OECD CompStats database

140. At the time of the 2024 Survey in early 2024, 26 of 38 Respondents (68%) noted that they were able to impose sanctions on individuals that have participated in cartel conduct. Both **Czechia** and **Korea** reported there has been some consideration of whether to add these powers to their domestic laws in the last five years, but no concrete proposals to date.

141. Table 2.3 below demonstrates that there are still significant variations among Adherents as to what sanctions may be imposed on individuals involved in a hard core cartel.

**Table 2.3. Sanctions available against individuals involved in cartel conduct**

Can the following sanctions be applied against individuals in your jurisdiction?	Yes	No
Fines	63%	37%
Imprisonment	45%	55%
Non-monetary sanctions (e.g. barring from managing a company)	32%	68%

Note: For the purposes of clarity and to compare jurisdictions, only the responses from competition authorities are collated in this data (as two jurisdictions also gave responses from their telecommunications regulator with competition powers).

Source: 2024 Survey

142. One of the most notable law reforms mentioned by Respondents in the past five years occurred in **New Zealand**, which made cartel conduct a criminal offence. New Zealand's experience is detailed in Box 2.13 below.

### Box 2.13. New Zealand criminalises cartel conduct

In April 2021, cartel conduct became a criminal offence, with companies engaging in cartel conduct now subject to criminal fines and individuals liable for up to seven years imprisonment.

The New Zealand Competition Commission (NZCC) worked with the public prosecutor, private practitioners and international counterpart agencies to ensure the leniency programme would cover immunity from both civil and criminal proceedings.

In preparation for the change to criminalisation, the NZCC also ran advocacy campaigns to make businesses and consumers more aware of what cartel conduct is. It ran a media campaign to assist businesses and consumers in identifying, avoiding and reporting cartel conduct, and to understand the consequences of cartel conduct. It also undertook training internally and updated internal processes to ensure that its staff were ready to undertake criminal cartel investigations.

In 2024, a court imposed community detention and community service on a company director, and imposed an NZD 500 000 fine on his construction company, in the first criminal cartel prosecution in New Zealand. The case involved the company director and firm pleading guilty to rigging bids for government road and bridge infrastructure projects. A second company and its director are due to face trial in October 2025 in relation to the same cartel conduct.

Source: [DAF/COMP/AR\(2024\)27](https://comcom.govt.nz/news-and-media/media-releases/2024/cheating-the-system-sentencing-in-countrys-first-criminal-cartel-case);

<https://comcom.govt.nz/news-and-media/media-releases/2024/cheating-the-system-sentencing-in-countrys-first-criminal-cartel-case>.

143. A number of other Respondents provided examples of recent notable enforcement cases against individuals involved in a cartel. These included the following:

- **Australia** referred to the 2022 case of its public prosecutor against a pharmaceutical ingredients manufacturer. Both the firm and its former export manager pleaded guilty to cartel conduct. In addition to the fine of nearly AUD 2 million against the firm, the manager was sentenced to 32 months imprisonment, an AUD 50 000 fine and disqualified from

managing a corporation for five years.<sup>26</sup> Another 2022 case in Australia involved co-operation between the competition authority, federal police and national criminal intelligence organisation. The joint investigation identified a cartel involving three currency exchange companies fixing rates for money transfers with Viet Nam. One company director received immunity for supplying evidence, while others were sentenced to up to two and a half years in prison but released under recognisance orders. One company was fined AUD 1 million.<sup>27</sup>

- Between 2019 and 2022, an investigation in **Canada** resulted in guilty pleas from five former executives of engineering firms for bid-rigging on municipal infrastructure contracts. The individuals received conditional prison sentences totalling five years and 11 months and court-ordered community service totalling 260 hours. One individual received a CAD 25 000 fine.<sup>28</sup>
- **Israel** mentioned four cartels in the last five years that resulted in sanctions against individuals. These covered cartels in relation to tree pruning (three people imprisoned), computer servers (two people imprisoned), elevator maintenance services (one person imprisoned), and Holocaust Memorial tour travel agencies (four people imprisoned).
- Following dawn raids conducted in late 2019 and 2020, the **Japan** Fair Trade Commission (JFTC) referred a criminal complaint to the Public Prosecutor-General against three companies and seven individuals for bid rigging in the procurement of pharmaceutical products for public hospitals. In 2021, the Tokyo District Court found the three companies and the seven individuals guilty and fined each company JPY 250 million. Two individuals received a two-year term prison sentence, while the five other former employees from the companies were given 18-month prison terms. Following the criminal judgement, the JFTC opened an administrative case against the three companies, and issued a cease-and-desist order and an administrative fine (“surcharge order”) amounting JPY 400 million.<sup>29</sup>
- **Mexico** outlined a number of cases involving penalties against individuals. This included cartels in the pharmaceutical sector (individual fines and director/management disqualifications), liquid petroleum gas distribution (individual fines and disqualifications), passenger transport services (individual fines), and corn tortilla businesses (individual fines and disqualifications).
- In **Poland**, the competition authority issued penalties on individual managers of several fitness chains for engaging in a market allocation cartel. Based on the evidence, the competition authority concluded that the

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<sup>26</sup> 2024 Survey; Commonwealth Director of Public Prosecutions v Christopher Joyce & Alkaloids of Australia Pty Ltd [2022] FCA 1424.

<sup>27</sup> Commonwealth Director of Public Prosecutions v Vina Money Transfer Pty Ltd [2022] FCA 665.

<sup>28</sup> 2024 Survey; <https://www.canada.ca/en/competition-bureau/news/2022/10/25000-sentence-for-fifth-engineering-executive-to-plead-guilty-in-gatineau-bid-rigging-case.html>.

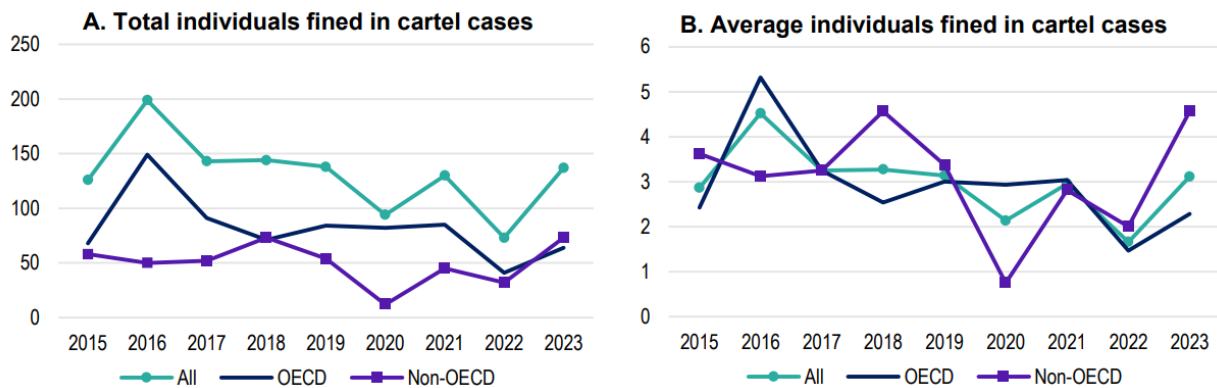
<sup>29</sup> 2024 Survey; <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220330.html>, <https://globalcompetitionreview.com/market-review/market-review-cartels/2024/article/japan-leniency-system-continues-drive-enforcement-jftc-shifts-focus>.

managers had conspired to hold the illegal discussions and made decisions on market allocation, meaning individual fines were necessary to adequately address the conduct.

- The **United Kingdom** noted that it routinely ordered director disqualifications in all cartel cases, noting that (as of 2024) there had been 28 directors disqualified for competition law breaches. The competition authority highlighted a 2021 case in the concrete draining market, where the authority accepted undertakings from two directors of a firm to be banned from directing a UK company for 11 and 12 years – the longest period of disqualification to date.<sup>30</sup>
- The **United States** highlighted the case of a California Department of Transportation contract manager who was sentenced for their involvement in a bid-rigging and bribery scheme involving improvement and repair contracts. The contract manager was sentenced to 49 months' imprisonment and ordered to pay approximately USD 985 000 in restitution. This followed fines and prison sentences of 45 months and 78 months imposed on two contractors involved in the bid rigging and bribery.<sup>31</sup>

144. The OECD Competition Trends report has also collated data on individuals subject to fines. It suggests that there has been a decline in such cases among OECD Members (who represent 38 of the 40 Adherents to the Recommendation) in the two most recent years where data is available. This is shown in Figure 2.7 below.

**Figure 2.7. Cartel cases in which fines on individuals were imposed by the competition authority or by a court (excluding appeals), 2015-23**



Note: Data based on the 44 jurisdictions in the OECD CompStats database that provided data on cartel cases in which fines on individuals were imposed for nine years.  
Source: OECD CompStats database.

### *Conclusions and steps forward*

145. No Respondents expressed concerns relating to the combination of sanctions mentioned referred to in the Recommendation.

<sup>30</sup> <https://www.gov.uk/cma-cases/supply-of-precast-concrete-drainage-products-director-disqualification>

<sup>31</sup> <https://www.justice.gov/opa/pr/former-public-official-and-california-contractor-sentenced-bid-rigging-and-bribery>

146. Only one Respondent (**Brazil**) suggested there could be scope to revise the Recommendation, to instead call for sanctions to be “effective, *proportionate* and serve a deterrent”. Currently, the Recommendation text only mentions effectiveness and deterrence.

147. This low level of interest in changes to the effective sanctions aspect of the Recommendation suggests no current need to consider revision of this part of the Recommendation.

148. **Spain** did note they would like to see guidance or other Competition Committee activity relating to the interaction between criminal and civil enforcement regimes. In 2020, WP3 hosted a roundtable on “**Criminalisation of cartels and bid rigging conspiracies**”.<sup>32</sup> Five years later and after a number of Adherents have introduced criminal enforcement regimes and brought major criminal cases in their jurisdictions, the Competition Committee may consider whether there is interest among its delegates to revisit the topic.

## 2.7. Private claims and redress mechanisms (provision II.6.)

149. The Recommendation’s sub-provision II.6. covers private enforcement of competition law as it relates to hard core cartels. It states that Adherents should:

*6. Provide a mechanism that gives anyone who has suffered harm caused by a hard core cartel the right to obtain redress or claim compensation for that harm from the persons or entities that caused it, carefully balancing the interaction of public and private enforcement, in particular to protect leniency programmes. To this effect, Adherents should aim to:*

*a. Establish rules that enable parties to access the evidence necessary to bring a claim for compensation;*

*b. Protect leniency statements, as well as settlement submissions, from disclosure to ensure the right balance between public enforcement by competition authorities and private enforcement by victims of cartels;*

*c. Allow private enforcement actions that do not follow on infringement decisions by competition authorities, so as to allow enforcement in cases where there is no prior decision;*

*d. Introduce collective redress mechanisms, which allow groups of similarly situated claimants to request compensation collectively;*

*e. Grant adequate probative value to final infringement decisions by competition authorities, in private enforcement actions concerning the same hard core cartel;*

*f. Suspend private enforcement limitation periods for the duration of the investigation by the competition authority.*

150. By 2024, all Adherents had a private right of action under their legal framework. Nonetheless, there was still some variation in what specific aspects of the Recommendation

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<sup>32</sup> OECD (2020), Executive Summary of the roundtable on Criminalisation of cartels and bid rigging conspiracies, [DAF/COMP/WP3/M\(2020\)1/ANN2/FINAL](#); OECD (2020), “Criminalisation of Cartels and Bid Rigging Conspiracies: A Focus on Custodial Sentences”, *OECD Roundtables on Competition Policy Papers*, No. 246, OECD Publishing, Paris, <https://doi.org/10.1787/d3c75fb3-en>.

relating to private enforcement has been adopted across the Respondents who gave responses in relation to private enforcement.<sup>33</sup>

151. On the Recommendation's aspects covering procedural rights in private actions:

- 94% of Respondents' have laws that allow parties to bring a stand-alone private enforcement action (i.e. an action that does not require an initial finding of infringement by a competition authority).
- 72% of Respondents permit parties to use collective redress mechanisms (also known as "class actions").
- 64% of Respondents suspend any time limits on private claims for the duration of their competition authority's investigation.

152. There is higher adherence among Respondents regarding the Recommendation's provisions on evidentiary requirements in private actions, with:

- 94% of Respondents having rules that enable parties to access the evidence necessary to bring a claim for compensation.
- 94% of Respondents protecting leniency statements, as well as settlement submissions, from disclosure.
- 89% of Respondents' laws ensuring that final infringement decisions by the domestic competition authority has probative value in private enforcement actions concerning the same hard core cartel.

153. Very few Respondents reported any substantial changes to their private enforcement framework in the past five years.

- **Brazil** noted they had introduced a law that granted successful private litigants the right to double damages to act as a greater deterrent from cartel conduct. This is balanced against an exemption from double damages for those that have successfully been granted leniency or settled with CADE, to ensure that cartelists continue to engage with CADE.
- **Korea** introduced an additional requirement for cartelists to submit information in private proceedings to assist with the calculation of damages claims, whilst ensuring that leniency and settlement documents are still exempt from disclosure.
- **Lithuania** extended protections granted to leniency documents to all forms of settlements with the competition authority.
- In 2019, law reform in **Costa Rica** expanded the private right of action to cartel conduct within the competition remit of its telecommunications regulator.

154. However, despite the wide availability of a private right of action, there is still insufficient usage globally. The 2024 Survey asked Respondents to provide figures of private actions brought in their jurisdiction over the past five years. All Respondents reported no answer. This was variously attributed to the fact there were no cases in their jurisdiction, that these numbers are not tracked by the competition authority, or that it is

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<sup>33</sup> Of the 38 Adherents that responded to the Survey, only 36 Respondents gave answers to these questions. For the purposes of clarity and to compare, only the responses from competition authorities are collated in this data (as two jurisdictions also gave responses from their telecommunications regulator with competition powers).

not possible to track these numbers (as the authority does not have the capacity to monitor all court filings).

155. This suggests that despite many Respondents implementing most aspects of the Recommendation relating to a private enforcement, in practice, private enforcement remains in its infancy for almost all Adherents.

156. There are various factors driving the low levels of private enforcement, which have been discussed in past sessions of the OECD Competition Committee.<sup>34</sup> The primary reasons that have been identified in previous OECD work are:

- The lack of awareness of the possibilities of private enforcement.
- The high-level of proof required of claimants, including in proving damages suffered.
- The high costs associated to bringing an action.

### *Conclusions and steps forward*

157. No Respondents expressed concerns relating to the Recommendation’s content on private claims. There were no Respondents that suggested a need for revisions to this aspect Recommendation in the short-to-medium term.

158. One Respondent (**Spain**) suggested there may be scope in the longer term to assess whether private rights of action are having a sufficient impact on reducing the number of leniency applicants to justify changes to the Recommendation aspects covering private claims.

159. However, as discussed in the 2023 WP3 roundtable “**The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels**”,<sup>35</sup> there is no persuasive evidence of a causal link between declining leniency and the availability of a private right of action. Whilst the topic of private claims harming incentives to apply for leniency should remain one of interest for the Competition Committee, it appears that there is no specific need to consider revising this aspect of the Recommendation.

## **2.8. Advocacy activities (provision II.7.)**

160. The seventh area covered by sub-provision II.7. of the Recommendation provides that Adherents should:

*7. Support the advocacy efforts of competition authorities vis-à-vis private and public stakeholders, regarding the effective prevention, detection and correction of hard core cartels and regulations that prevent collusive conduct.*

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<sup>34</sup> See OECD (2015), “Relationship Between Public and Private Antitrust Enforcement”, *OECD Roundtables on Competition Policy Papers*, No. 174, OECD Publishing, Paris, <https://doi.org/10.1787/8c535258-en>; OECD (2008), “Private Remedies: Key findings, summary and notes”, *OECD Roundtables on Competition Policy Papers*, No. 73, OECD Publishing, Paris, <https://doi.org/10.1787/1e706e03-en>.

<sup>35</sup> OECD (2023), Executive Summary of the roundtable on the Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels, [DAF/COMP/WP3/M\(2023\)1/ANN2/FINAL](https://doi.org/10.1787/9bc9dd57-en); OECD (2023), “The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels”, *OECD Roundtables on Competition Policy Papers*, No. 299, OECD Publishing, Paris, <https://doi.org/10.1787/9bc9dd57-en>.

161. Material on competition advocacy related to hard core cartels was newly included in the current Recommendation, having not been included in the 1998 Recommendation. It reflects the consensus within the Competition Committee that the relationship between competition advocacy and enforcement activities is mutually beneficial.

162. Competition advocacy is understood to refer to “activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.”<sup>36</sup>

163. Advocacy programmes relating to hard core cartels occur through an array of activities. These include seminars, public speeches, media releases, multimedia campaigns, workshops, use of online media, guides and trainings for public procurement officials, publications for universities, government officials, private sector associations and businesses, and educational programmes.<sup>37</sup>

164. By the time the Recommendation was updated in 2019, a key focus of the Competition Committee discussions on cartel related advocacy was vis-à-vis procurement officials and procurement authorities. Procurers are often best placed to detect signs of unlawful bidding arrangements, and they have good knowledge of the respective industry sectors. In addition, they can design procurement tenders in a way that makes it harder for suppliers to collude. The *OECD Recommendation on Fighting Bid Rigging in Public Procurement* [[OECD/LEGAL/0396](#)] also contains an express recommendation that competition agencies should raise awareness of public procurement officials and provide training.

165. When asked in the 2024 Survey to provide figures on their advocacy activities relating to hard core cartels, the results show high levels of variance between Respondents. Across the five-year period:

- Between one-third and two-thirds of authorities organised no relevant events or publications in each given year.
- Average figures are not a helpful indicator of activity as there are just seven Respondents who organised more than ten activities in a given year.

166. Table 2.4 below uses median figures to show the significant disparity between Respondents’ hard core cartel advocacy activities.

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<sup>36</sup> ICN (2002), *Advocacy and Competition Policy*, [https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG\\_AdvocacyReport2002.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_AdvocacyReport2002.pdf).

<sup>37</sup> OECD (2019), *Review of the 1998 OECD Recommendation concerning Effective Action against Hard Core Cartels*, OECD Publishing, Paris, <https://doi.org/10.1787/58c38ceb-en>, p 96.

**Table 2.4. Survey results on advocacy**

	2019	2020	2021	2022	2023
Median number of events for public sector stakeholders across all Respondents	1	0.5	1	2	2
Median number of events for private sector stakeholders across all Respondents	1	1	0.5	1.5	1
Median number of publications across all Respondents	0	0	0	0	1
Percentage of jurisdictions with 0 events for public sector stakeholders	39%	53%	50%	37%	34%
Percentage of jurisdictions with 0 events for private sector stakeholders	45%	45%	53%	42%	39%
Percentage of jurisdictions with 0 publications	66%	68%	53%	61%	50%
Median number of events for public sector stakeholders among competition authorities that held at least 1 event	3	3.5	4	5	4
Median number of events for private sector stakeholders among competition authorities that held at least 1 event	3	2	3	4	3
Median number of publications among competition authorities that had at least 1 publication	1	2	2	3	3

Source: 2024 Survey.

167. Nonetheless, the responses from the 2024 Survey allowed Respondents to showcase a range of events and training activities related to hard core cartels, particularly focused on bid rigging, including the following:

- **Brazil** highlighted their National Anti-Cartel week that was started in 2020. This series of events includes lectures and seminars to raise awareness of the law, educate stakeholders and share best practices. Since 2019, CADE has also offered an online course on the prevention and detection of cartels in public procurement through the national training school for public servants.
- **Mexico** also has made a course available to contractors and public sector workers on competition law principles. Their authority has also run a series of workshops in collaboration with the professional association for corporate lawyers to enable them to promote competition law in the organisations they advise.
- Similarly, **Costa Rica** has offered a session on cartel practices through their Judicial School Symposium. Meanwhile, **Germany** noted their regular lectures and training exchanges with police authorities and public prosecutors.
- In 2024, the **European Commission** and **United States** Department of Justice issued a joint message on cartels and informants which discussed their joint efforts to detect, prosecute and prevent cartels that transcend borders.
- **Italy** highlighted their annual contest where four categories of stakeholders (university students, journalists, consumer associations, business associations) can be celebrated for their initiatives in promoting competition principles.
- **Latvia** explained they dedicate significant resources each year on big rigging cartels, focusing their trainings on procurement market participants and relevant contracting authorities. On top of events and seminars, the Latvian authority has launched a podcast series as well as competitions for students.

- The **United Kingdom** estimates that 80 000 public sector officials have been able to access their advocacy work on procurement and bid rigging cartels. This includes access to the CMA’s bid rigging e-learning module as well as broader public service training materials for staff in the development, housing and communities department which includes a CMA specific bid rigging section.

168. Respondents also noted the launch of major publications relating to hard core cartel advocacy in the previous five years. These included the following:

- **Australia** launching their “Cartels: deterrence & detection - a guide for government procurement professionals” in 2019.
- **Brazil**’s Guide to Combating Bid-Rigging in Public Tenders (2019), Guide to Evidentiary Recommendations for Leniency Agreements (2021), Guide and pamphlets for contracting agents with warning signs of bid-rigging and how to report them to CADE (2022).
- The **European Commission** launched an FAQ document on leniency (2022).
- **France**’s 2020 guide for SMEs on cartels alongside a new dedicated webpage, as well as 2021 handbook for professional associations on compliance with the competition law on cartels.
- **Germany** launched new guidelines for leniency programme and fine setting in 2021.
- **Greece** and **Iceland** both launched new video series on cartel conduct and competition law compliance.
- **Hungary** highlighted its recent 2023 guidelines on public procurement cartels.
- **Ireland** released guidance on the treatment of cartelists under their leniency programme in 2022.
- **Japan** published a guide on competition law compliance programmes with an emphasis on cartels and bid-rigging in 2023.
- **Latvia** has released settlement guidelines (2019), a self-assessment tool for businesses to test their knowledge of cartel prohibitions (2020), a self-assessment tool for public procurers covering bid rigging (2022), and recommendations for businesses on what forms of co-operation is illegal in the context of supply shortages due to Russia’s war of aggression against Ukraine.
- Similarly, **Sweden**, published a report on “*competition in times of crisis*” which discussed co-operation between companies in the context of major supply shortages caused by international crises.
- **Mexico** noted they publish short reports and infographics on cartel cases that inform relevant stakeholders of how firms breached their legal obligations. The Mexican competition authority also published recommendations on complying the competition law for use by businesses in their compliance programmes.

- **Poland** referred to guidance for businesses on their authority’s powers to conduct searches, as well as their fining methodology in competition cases.

169. Perhaps the most unique example of an advocacy publication mentioned in the 2024 Survey was from **Slovenia**, which is detailed in Box 2.14 below.

#### Box 2.14. Slovenia’s “Warriors for Competition” comic

The Slovenian Competition Authority published a 10-page comic covering the various aspects of competition law, depicting producers of a traditional Slovenian dessert agreeing among themselves on prices, mergers, and abusing their dominant position on the market. The comic showcases four different outcomes, with one highlighting the benefits of the Competition Authority’s leniency programme.

The comic allowed the Slovenian authority to reach a wider audience to help spread knowledge of basic competition principles, as well as the role of the Authority to investigate illegal conduct. The authority reported that the project had been well received and it is still used at awareness events.

Source: Assessing and Communicating the Benefits of Competition Interventions – Note by Slovenia [DAF/COMP/WP2/WD(2023)12], [http://www.varstvo-konkurence.si/fileadmin/varstvo-konkurence.si/pageuploads/Strip-bojevniki\\_za\\_konkurencu1.pdf](http://www.varstvo-konkurence.si/fileadmin/varstvo-konkurence.si/pageuploads/Strip-bojevniki_za_konkurencu1.pdf)

#### *Conclusions and steps forward*

170. No Respondents expressed concerns relating to the Recommendation’s content on advocacy. There were no Respondents that suggested a need for revisions to the Recommendation on this specific aspect.

171. Instead, some Respondents (**Greece, Estonia, Ireland, the Slovak Republic and Spain**) did identify issues related to hard core cartels that would be useful topics for future sessions of the Competition Committee or be the subject of guidelines and other publications. This includes preparing training templates that could be used for relevant stakeholders (e.g. competition authority staff, judges and legal practitioners); material on hub and spoke cartels; another discussion on the relationship between civil and criminal enforcement; and guidance on the use of data analytics and AI to detect collusion.

172. Accordingly, while these could be used to help guide future activities of the Competition Committee, they do not suggest a need for specific action relating to the revision of the Recommendation.

### 2.9. Limiting exemptions (provision II.8.)

173. The final sub-provision of the Recommendation (sub-provision II.8.) provides that Adherents should:

*8. Restrict exemptions, if any, from the coverage of Adherents’ laws against hard core cartels to those indispensable to achieve their overriding policy objectives. To this effect, Adherents should make their exemptions transparent and periodically assess their exemptions to determine whether they are necessary and limited to achieving their objective.*

174. 22 Respondents do not provide exemptions from their coverage of laws against hard core cartels under any circumstances. Although in theory the other 16 Respondents

may have the power to provide an exemption, in practice, almost all jurisdictions have provided no exemptions in the past five years.

175. Table 2.5 below collates the reported figures supplied by Respondents, showing how few jurisdictions still provide exemptions from hard core cartel laws. This suggests widespread implementation of the principle underpinning this aspect of the Recommendation.

**Table 2.5. Exemptions from hard core cartel laws in the five-year Survey period**

Country	2019	2020	2021	2022	2023	5-year total
Australia	17	50	44	33	19	163
Japan	17	13	17	9	10	66
Total across 13 other Respondents that permit exemptions	0	0	0	0	0	0

Note: The United States does not disclose figures of exemptions granted, though they note that exemptions are “extremely rare”.

Source: 2024 Survey

176. The second aspect of sub-provision II.8. calls on Adherents to periodically review efficacy of exemptions. Respondents were asked to detail any exemptions granted more than five years ago that are still in force or that have been repealed in the last five years. Only four Respondents confirmed the existence of any long-standing exemptions:

- **Australia** reported that only one exemption was currently in effect that had been granted over five years ago.
- **Germany** noted their legislation created specific exemptions for SMEs, agricultural sector activities including sustainability agreements, and water management contracts.
- **Japan** reported long-term exemptions were still present in areas covering forms of insurance (e.g. nuclear and earthquake), insurance rating organisations (automobile and earthquakes), public transportation systems (buses and ferries), and air freight alliances. In the last five years Japan abolished exemptions for one insurance cartel, all coastal shipping cartels involving Japanese firms, and 25 taxi cartels.
- **Poland** reported that they maintain a 2011 exemption in relation to rafting activities for tourists in one river, on the basis that it facilitates a single ticketing system, increasing convenience for consumers and improving regional tourism.

177. No Respondents expressed specific plans to make policy changes or legal reforms relating to their legal system regarding exemptions.

178. Further, no Respondents mentioned activities in the last five years where they had been granted exemptions for export cartels – agreements or arrangement between firms to charge a specified export price and/or to divide export markets.<sup>38</sup> Indeed, as noted above, Japan abolished exemptions for a number of export cartels relating to shipping.

<sup>38</sup> OECD (2019), *Review of the 1998 OECD Recommendation concerning Effective Action against Hard Core Cartels*, OECD Publishing, Paris, <https://doi.org/10.1787/58c38ceb-en>, ch 4.

179. This was also the case in relation to crisis cartels – a cartel formed during a sectoral, national, or global economic downturn involving declining demand and excess capacity that national competition law allows or a government permits during such downturns.<sup>39</sup> Despite the economic uncertainty globally as part of the Covid-19 pandemic, it appears there is still a consensus among OECD Members that crisis cartels do not have sufficient merits to justify deriving from the general presumption that hard core cartels should not be exempted.

### *Conclusions and steps forward*

180. No Respondents expressed concerns relating to the Recommendation’s coverage of exemptions. There were no Respondents that suggested a need for revisions to this aspect of the Recommendation.

## 3. Dissemination

181. Provision III of the Recommendation “invites the Secretary-General and Adherents to disseminate the Recommendation”. The Competition Committee, Adherents individually and the OECD Secretariat have undertaken various activities to support its dissemination.

### 3.1. OECD Competition Committee activities

182. The Competition Committee serves as a forum for exchanges of views on matters related to the Recommendation. It hosted several roundtables and hearings relating to hard core cartels over the past five years, including the following:

- **“Access to the Case File and Protection of Confidential Information”** (WP3/2019)<sup>40</sup> – the roundtable examined the differing approaches to how information from a competition law investigation is made available to investigated parties and the public at different stages of a case. The protection of leniency was a major focus of discussion, with delegates sharing how they weigh the competing public interest of keeping the leniency information secret and the interest of fairness to the defendant. The discussion also explored to what extent similar protections should be applied to settlement materials in cartel cases.
- **“Hub-and-spoke Arrangements”** (Competition Committee/2019)<sup>41</sup> – the roundtable explored how hub-and-spoke arrangements differ from traditional horizontal cartels in the lack of direct communication between

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<sup>39</sup> OECD (2011), “Crisis Cartels : Key findings, summary and notes”, *OECD Roundtables on Competition Policy Papers*, No. 119, OECD Publishing, Paris, <https://doi.org/10.1787/39a0d2e8-en>.

<sup>40</sup> OECD (2019), Executive Summary of the roundtable on access to the case file and protection of confidential information, [DAF/COMP/WP3/M\(2019\)2/ANN2/FINAL](https://doi.org/10.1787/91c55a68-en); OECD (2019), “Access to the Case File and Protection of Confidential Information”, *OECD Roundtables on Competition Policy Papers*, No. 236, OECD Publishing, Paris, <https://doi.org/10.1787/91c55a68-en>.

<sup>41</sup> OECD (2019), Executive Summary of the roundtable on Hub-and-Spoke arrangements, [DAF/COMP/M\(2019\)2/ANN4/FINAL](https://doi.org/10.1787/393ab686-en); OECD (2019), “Hub-and-Spoke Arrangements”, *OECD Roundtables on Competition Policy Papers*, No. 237, OECD Publishing, Paris, <https://doi.org/10.1787/393ab686-en>.

the horizontal competitors, but can still result in a hard-core price-fixing cartel. The session had a major focus on the evidentiary challenges of proving the difference between tough bargaining practices that can involve legitimate references to a competitor's offer, and cartel behaviour coordinating the behaviour of horizontal competitors. Generally, there were low levels of cartel enforcement relating to hub-and-spoke arrangements, with more enforcement activity in many jurisdictions relying on Resale Price Maintenance prohibitions in their domestic competition laws instead.

- **“Criminalisation of cartels and bid rigging conspiracies”** (WP3/2020)<sup>42</sup> – the roundtable surveyed the trend towards the introduction of criminal sanctions across delegates. The session covered a range of issues relevant to the criminalisation of cartel conduct, including what theory of punishment justified criminal sanctions (deterrence or retribution); what behaviour should be criminalised (all hard core cartels or only bid rigging); the challenges of proving cases to a criminal standard; and the interaction of leniency programmes with criminal sanctions.
- **“Purchasing Power and Buyers’ Cartels”** (Competition Committee/2022)<sup>43</sup> – the roundtable found that there has been an increasing number of enforcement decisions relating to buyers’ cartels in the recent years. However, the Roundtable identified that there were substantial variations in the level of enforcement across jurisdictions, and in the prominence of buyers’ cartels in the priorities of competition authorities. The session showed that many authorities that have either little to no enforcement action against buyers’ cartels and, even for the most active authorities, the enforcement record is substantially smaller than for sellers’ cartels.
- **“Data Screening Tools for Competition Investigations”** (WP3/2022)<sup>44</sup> – the roundtable examined the increasing interest among delegates of conducting cartel screens, potentially due to increasing availability of digital procurement data, new methods in the academic literature, and a decline in the number of leniency applications which may indicate the need for more proactive cartel detection. Despite progress in data collection, the session revealed that access to reliable data continues to be one of the main roadblocks to more frequent cartel screening. The session also explored the increasing role for *technologists* within competition authorities to help build and use data tools to identify cartel conduct.

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<sup>42</sup> OECD (2020), Executive Summary of the roundtable on Criminalisation of cartels and bid rigging conspiracies, [DAF/COMP/WP3/M\(2020\)1/ANN2/FINAL](#); OECD (2020), “Criminalisation of Cartels and Bid Rigging Conspiracies: A Focus on Custodial Sentences”, *OECD Roundtables on Competition Policy Papers*, No. 246, OECD Publishing, Paris, <https://doi.org/10.1787/d3c75fb3-en>.

<sup>43</sup> OECD (2022), Executive Summary of the roundtable on Purchasing Power and Buyers’ Cartels, [DAF/COMP/M\(2022\)2/ANN2/FINAL](#); OECD (2022), “Purchasing Power and Buyers’ Cartels”, *OECD Roundtables on Competition Policy Papers*, No. 280, OECD Publishing, Paris, <https://doi.org/10.1787/3fab0781-en>.

<sup>44</sup> OECD (2022), Executive Summary of the Roundtable on Data Screening Tools for Competition Investigations, [DAF/COMP/WP3/M\(2022\)2/ANN2/FINAL](#); OECD (2022), “Data Screening Tools for Competition Investigations”, *OECD Roundtables on Competition Policy Papers*, No. 284, OECD Publishing, Paris, <https://doi.org/10.1787/4c5bbb9d-en>.

- **“Director Disqualification and Bidder Exclusion”** (Competition Committee/2022)<sup>45</sup> – the roundtable revealed that while the existence and application of debarment measures vary significantly across different jurisdictions, there was consensus that these measures, when sensibly applied, have significant deterrent power in cartel cases. Delegates discussed the importance of debarments and exclusions in combination with other sanctions, whilst also ensuring such penalties do not stifle the successes of leniency programmes. A particular challenge relating to bid rigging cartels was the need to balance exclusions that may protect public finances and enhancing trust in public administration, against the unfavourable effect on competition of removing a firm from the market.
- **“Algorithmic Competition”** (Competition Committee/2023)<sup>46</sup> – the roundtable in part explored the concern that pricing algorithms can facilitate cartel conduct and increased prices. Algorithms may aid collusion in three primary ways: (1) Automated pricing systems can fix prices by detecting and responding to price deviations such as resale price maintenance; (2) Hub-and-spoke cartels arising when multiple firms use the same third-party pricing software, facilitating information exchange; (3) Self-learning autonomous algorithms can decide to collude without explicit coordination or information sharing. Despite these concerns, the session revealed that the magnitude of the threat from algorithmic cartel collusion by autonomous self-learning algorithms is still disputed in the academic literature and there are few known cases.
- **“Use of Economic Evidence in Cartel Cases”** (Global Forum on Competition/2023)<sup>47</sup> – the session found that competition authorities use economic evidence across many stages of the cartel enforcement process including: cartel detection and screening (including making the case for starting a formal investigation); providing supporting evidence for cases at the edges of cartel conduct (where there is no direct evidence of collusion); addressing any possible efficiency arguments; calculating cartel penalties; and demonstrating the impact of cartel intervention. The discussion highlighted the importance of clearly stating the objectives of economic evidence and presenting it in a way which is easy to understand. Many delegates shared the challenges of using often complex economic evidence in cartel cases where decision makers are typically legal experts without training in economics.

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<sup>45</sup> OECD (2022), Executive Summary of the Roundtable on Director Disqualification and Bidder Exclusion, [DAF/COMP/M\(2022\)3/ANN2/FINAL](#); OECD (2022), “Director Disqualification and Bidder Exclusion in Competition Enforcement”, *OECD Roundtables on Competition Policy Papers*, No. 291, OECD Publishing, Paris, <https://doi.org/10.1787/fe39ea1a-en>.

<sup>46</sup> Executive Summary of the Roundtable on Algorithmic Competition, [DAF/COMP/M\(2023\)1/ANN4/FINAL](#); OECD (2023), “Algorithmic Competition”, *OECD Roundtables on Competition Policy Papers*, No. 296, OECD Publishing, Paris, <https://doi.org/10.1787/cb3b2075-en>.

<sup>47</sup> OECD (2023), Use of Economic Evidence in Cartel Cases, <https://web-archive.oecd.org/2023-12-18/656399-use-of-economic-evidence-in-cartel-cases.htm>

- **“The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels”** (WP3/2023)<sup>48</sup> – the roundtable noted that while there has been an increasing number of jurisdictions have a leniency programme in recent years, there is a decrease in the number of leniency applications over the same period. A number of reasons are likely causing this, including policies making settlement a more attractive option to cartelists; more cross-border cartel enforcement without co-ordinated leniency programmes; the existence of private enforcement regimes; and the risk of criminal immunity not being available to leniency applicants. The session underscored the importance of striking the right balance between maintaining the efficiency of leniency programs and encouraging the use of alternative detection methods.
- **“Alternatives to Leniency Programmes”** (Global Forum on Competition/2023)<sup>49</sup> – building on the roundtable on the *Future of Effective Leniency Programmes*, this session instead explored other approaches competition authorities are taking to identify and prosecute cartels. Delegates discussed proactive tools such as the use of industry studies and awareness activities; reactive measures such as whistleblower programmes and registers of consumer complaints; and the role of technological tools such as cartel screening and data analysis. The session recognised that ultimately effective cartel enforcement requires consistency between leniency programmes and other enforcement tools to avoid diminishing the effectiveness of cartel enforcement.

183. The Competition Committee has also worked to ensure the Recommendation is cross-referenced in the most recent relevant OECD Recommendations related to competition enforcement matters.

184. This includes the *Recommendation on Transparency and Procedural Fairness in Competition Law Enforcement* [[OECD/LEGAL/0465](#)], which establishes common standards for transparent and fair competition law enforcement. It aims to support the impartial and reasonable treatment of investigated parties and the exercise of their rights of defence. It also aims to strengthen the accuracy and effectiveness of enforcement decisions. These are all matters which are of utmost importance in cartel cases, as these are the most serious competition law cases where the most significant sanctions are imposed on parties, including terms of imprisonment.

185. In 2023, the OECD Council revised the *OECD Recommendation on Fighting Bid Rigging in Public Procurement* [[OECD/LEGAL/0396](#)] (hereafter, the “Bid Rigging Recommendation”), to take into account developments in competition law enforcement over the decade since it was first adopted in 2012 and incorporate global best practices. This revised Bid Rigging Recommendation now includes a number of aspects directly related to content in the Recommendation such as:

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<sup>48</sup> OECD (2023), Executive Summary of the roundtable on the Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels, [DAF/COMP/WP3/M\(2023\)1/ANN2/FINAL](#); OECD (2023), “The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels”, *OECD Roundtables on Competition Policy Papers*, No. 299, OECD Publishing, Paris, <https://doi.org/10.1787/9bc9dd57-en>.

<sup>49</sup> OECD (2023), Alternatives to Leniency Programmes, <https://web-archiver.oecd.org/2023-12-18/663797-alternatives-to-leniency-programmes.htm>.

- Encouraging the development of reliable and comprehensive procurement databases, and the use of digital screens to detect bid-rigging cartels.
- Addressing concerns around the debarment of leniency applicants, and damages claims against them.
- Supporting the co-operation among competition and public procurement authorities, audit and anti-corruption bodies, and criminal prosecutors.

186. As part of the dissemination strategy for the Bid Rigging Recommendation, a new version of the OECD Guidelines for Fighting Bid Rigging in Public Procurement is being developed.<sup>50</sup> These guidelines will share best practices that will also be applicable to the fight against hard core cartels.

187. The Competition Committee also disseminates its best practices and Recommendations through collaboration with the UNCTAD Informal working group on cross-border cartels,<sup>51</sup> and the International Competition Network Cartel Working Group's Cartel Enforcement Manual.<sup>52</sup>

### 3.2. Peer Reviews

188. The assessment of a jurisdiction's competition law and policy as it relates to the Recommendation and its enforcement practices related to hard core cartels are a regular feature of the Competition Committee's country reviews of competition policy frameworks.

189. In the past five years, the following peer reviews have assessed jurisdictions' enforcement related to hard core cartels:

- The Role of Guidelines in Fostering Competition Policy in Tunisia,<sup>53</sup>
- OECD Peer Reviews of Competition Law and Policy: Tunisia,<sup>54</sup>
- OECD Peer Reviews of Competition Law and Policy: Dominican Republic,<sup>55</sup>

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<sup>50</sup> OECD (2009), *Guidelines for Fighting Bid Rigging in Public Procurement*, OECD Publishing, Paris, <https://doi.org/10.1787/8cfeafbb-en>.

<sup>51</sup> UN Trade and Development, "Informal working group on cross-border cartels", <https://unctad.org/Topic/Competition-and-Consumer-Protection/working-group-on-cross-border-cartels>.

<sup>52</sup> International Competition Network, "Cartel Working Group", <https://www.internationalcompetitionnetwork.org/working-groups/cartel/>.

<sup>53</sup> OECD (2024), *The Role of Guidelines in Fostering Competition Policy in Tunisia*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/82f72c0e-en>.

<sup>54</sup> OECD (2022), *OECD Peer Reviews of Competition Law and Policy: Tunisia*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/6f9488ef-en>.

<sup>55</sup> OECD/IDB (2024), *Peer Reviews of Competition Law and Policy: Dominican Republic*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/18f04007-en>.

- An Introduction to Competition Law and Policy in Uzbekistan,<sup>56</sup>
- OECD-IDB Peer Reviews of Competition Law and Policy: Ecuador,<sup>57</sup>
- OECD Peer Reviews of Competition Law and Policy: Eurasian Economic Union,<sup>58</sup>
- Fighting bid rigging in public procurement in the energy sector in Ukraine,<sup>59</sup>
- Fighting Bid Rigging in Brazil,<sup>60</sup>
- Fighting Bid Rigging in the Health Sector in Peru,<sup>61</sup>
- OECD-IDB Peer Reviews of Competition Law and Policy: El Salvador,<sup>62</sup>
- Costa Rica: Assessment of Competition Law and Policy (originally conducted as an accession review),<sup>63</sup>
- OECD Peer Reviews of Competition Law and Policy: Mexico,<sup>64</sup>
- Lithuania: Assessment of Competition Law and Policy (originally conducted as an accession review),<sup>65</sup>

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<sup>56</sup> OECD (2022), *An Introduction to Competition Law and Policy in Uzbekistan*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/62898b50-en>.

<sup>57</sup> OECD/IDB (2021), *OECD-IDB Peer Reviews of Competition Law and Policy: Ecuador 2021*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/a8c94373-en>.

<sup>58</sup> OECD (2021), *Peer Reviews of Competition Law and Policy: Eurasian Economic Union*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1bcf2117-en>.

<sup>59</sup> OECD (2021), *Fighting bid rigging in public procurement in the energy sector in Ukraine: A Review of public procurement at Ukrenergo*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1879daee-en>.

<sup>60</sup> OECD (2021), *Fighting Bid Rigging in Brazil: A Review of Federal Public Procurement*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/ea7e1690-en>.

<sup>61</sup> OECD (2021), *Fighting Bid Rigging in the Health Sector in Peru: A Review of Public Procurement at EsSalud*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/13f7e8f4-en>.

<sup>62</sup> OECD/IDB (2020), *OECD-IDB Peer Reviews of Competition Law and Policy: El Salvador 2020*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/f715903a-en>.

<sup>63</sup> OECD (2020), *Costa Rica: Assessment of Competition Law and Policy 2020*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/5e78afb3-en>.

<sup>64</sup> OECD (2020), *OECD Peer Reviews of Competition Law and Policy: Mexico 2020*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/62051539-en>.

<sup>65</sup> OECD (2019), *Lithuania: Assessment of Competition Law and Policy 2019*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/d29f682a-en>.

- Fighting bid rigging in the procurement of public works in Argentina,<sup>66</sup>
- OECD Peer Reviews of Competition Law and Policy: Brazil 2019.<sup>67</sup>

### 3.3. The OECD Regional Centres for Competition and non-Adherent dissemination

190. In co-operation with Korea, Hungary and Peru, the OECD maintains three Regional Centres for Competition (RCCs).<sup>68</sup> The RCCs provide capacity building assistance and policy advice through workshops, seminars and training programmes on competition law and policy for officials in competition enforcement agencies and other parts of government, sector regulators, judges and others. The RCCs are led by senior staff of the OECD Secretariat in Paris, and they regularly disseminate OECD Recommendations and the best practices therein. The beneficiaries of the RCCs are enforcers from more than 60 jurisdictions, which are not Members of the OECD, and the work undertaken is a way to achieve harmonisation in implementation of the law and to foster working level contacts, and informal as well as formal co-operation in areas such as cartel enforcement. Recent events and seminars related to cartel enforcement have included:

- At the Hungary RCC (2021): “Virtual Seminar – Tackling bid rigging in public procurement”
- At the Korea RCC (2023): “Workshop on Cartels and Bid Rigging”
- At the Peru RCC (2024): “Workshop on enforcement tools and techniques to fight cartels”
- Annually at all RCCs: “Introductory Seminar for Young Staff – Competition law principles and procedures”

191. Additionally, a review of the last five years of responses from delegates of the Competition Committee to the questionnaire on usage of the Competition Committee’s work products shows that dissemination efforts have enabled a number of non-Adherents to use and align with the Recommendation. This includes:

- El Salvador (2022-2023) reporting they have used the Recommendation as part of developing their internal processes for cartel enforcement,<sup>69</sup>

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<sup>66</sup> OECD (2019), *Fighting bid rigging in the procurement of public works in Argentina*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/fb97ef26-en>.

<sup>67</sup> OECD/IDB (2019), *OECD Peer Reviews of Competition Law and Policy: Brazil 2019*, Competition Law and Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/8657b785-en>.

<sup>68</sup> See OECD, Regional Centre for Competition in Asia-Pacific, <https://www.oecd.org/en/networks/regional-centre-for-competition-in-asia-pacific.html>; OECD, Regional Centre for Competition in Eastern Europe and Central Asia, <https://www.oecd.org/en/networks/regional-centre-for-competition-in-eastern-europe-and-central-asia.html>; OECD, Regional Centre for Competition in Latin America and the Caribbean, <https://www.oecd.org/en/networks/regional-centre-for-competition-in-latin-america-and-the-caribbean.html>.

<sup>69</sup> OECD (2024), Use of the Competition Committee’s Work Product 2023, [DAF/COMP/WD\(2024\)3](https://www.oecd.org/DAF/COMP/WD(2024)3); OECD (2023), Use of the Competition Committee’s Work Product 2022, [DAF/COMP/WD\(2023\)3](https://www.oecd.org/DAF/COMP/WD(2023)3).

- Peru (2021) noting the Recommendation was referenced in their competition authority’s study in the medical oxygen supply market,<sup>70</sup>
- Kenya (2021) using the Recommendation to prepare internal training at the authority,<sup>71</sup>
- Viet Nam (2019) using the Recommendation as part of internal training at the authority,<sup>72</sup>
- Moldova (2019) using the Recommendation as part of developing internal guidance documents.<sup>73</sup>

### 3.4. Dissemination and Usage by Adherents

192. While Adherents may work in many ways to promote the spirit, principles and specific content of the Recommendation, there is no systematic means of tracking any such activities. Respondents to the 2024 Survey were asked how the Recommendation has been disseminated and used as part of their enforcement work, their advocacy activities, and their law reform efforts.

193. Regarding dissemination and usage in the context of enforcement, roughly half of the (17) Respondents noted there had been no usage of the Recommendation. Of those that did report usage, all except one Respondent noted that this was in the sense that their cartel enforcement processes reflect the spirit and principles of the Recommendation, rather than direct reference to the Recommendation. Only **Iceland** noted that the Recommendation has been specifically cited in enforcement decisions of their competition authority and has been used in their preparation of bilateral co-operation agreements with other jurisdictions.

194. This was similarly the case in relation to dissemination and usage of the Recommendation in relation to hard core cartel advocacy activities. Again, roughly half of the (17) Respondents noted no usage at all, with most of the remaining Respondents saying the Recommendation was generally in line with the approach they take to cartel advocacy. Only **Japan, Türkiye** and the **United States** gave examples of where the Recommendation had specifically been cited in their cartel advocacy activities.

195. The Recommendation appears to have been disseminated and used more in relation to policy and legislative reform efforts amongst Adherents. While a majority of Respondents again noted that there had been no specific usage of the Recommendation in their jurisdiction; **Australia, Canada, Costa Rica, Iceland, Korea, Latvia, Lithuania, New Zealand** and the **United States** all noted that the Recommendation had been referred to as a source in policy or law reform efforts.

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<sup>70</sup> OECD (2022), Use of the Competition Committee’s Work Product 2021, [DAF/COMP/WD\(2022\)3](#).

<sup>71</sup> OECD (2022), Use of the Competition Committee’s Work Product 2021, [DAF/COMP/WD\(2022\)3](#).

<sup>72</sup> OECD (2020), Use of the Competition Committee’s Work Product 2019, [DAF/COMP/WD\(2020\)54](#).

<sup>73</sup> OECD (2020), Use of the Competition Committee’s Work Product 2019, [DAF/COMP/WD\(2020\)54](#).

## 4. Summary and conclusions

### 4.1. Implementation

196. In the period of time between the 1998 Recommendation through to its revision in 2019 to adopt the current Recommendation, there had been a significant amount of activity across Adherents to enhance their practices, processes and laws governing hard core cartel enforcement. Many of the major developments over this 20-year period became recognised as best practices and formed the content of the Recommendation as revised in 2019. This included:

- the introduction and strengthening of leniency programmes offering the opportunity to cartel members to self-report their conduct, and provide information and evidence on the cartel, in exchange for immunity or reduced penalties;
- proactive investigation tools and stronger effective investigation powers of competition authorities, including inspections and access to information;
- increases of fines against companies that engage in cartel conduct;
- introduction of sanctions against individuals;
- criminalisation of cartels in several jurisdictions;
- plea negotiations and settlements that reduce fines for parties in cartel proceedings who co-operate with competition authorities and allow for faster resolution of cases;
- more private enforcement actions seeking to compensate victims of cartels for the harm that they suffered;
- more non-enforcement advocacy initiatives by competition authorities to prevent cartels, increase public awareness of the benefits of competition and promote pro-competitive reforms.

197. In the five-year period since the 2019 revision of the Recommendation, the implementation process can be accurately described as a period of consolidation among Adherents rather than a period of widespread reform. This reflects the fact that only five years have elapsed since the adoption of the Recommendation (rather than the two decade period between the two versions of the Recommendation), meaning there has been far less time for developments to take place. It also suggests that the content of the current Recommendation still reflects the best practices that many Adherents are continuing to aspire to implement. This is in contrast to the 1998 version of the Recommendation which after 20 years was found to no longer reflect the developments and widespread adoption of new policy and legal instruments in cartel enforcement, justifying the 2019 revision of the Recommendation.

198. The information gathered by the Secretariat, and the collected 2024 Survey responses suggest that Respondents, both domestically and in the context of international co-operation efforts at the OECD and other relevant international fora, have made continued efforts to implement the Recommendation. Regarding the implementation of each substantive aspect of the Recommendation, it can be concluded:

- All Respondents have now adopted the definition of hard core cartel in the Recommendation, with two jurisdictions doing this in the last five years.

- All Respondents have a leniency programme for cartellists, with two introducing a programme in the last five years and a number of others making adjustments to strengthen their programme in alignment with the Recommendation.
- Pro-active cartel detection tools are among the areas where there has been the most interest among Adherents to implement new techniques, technologies and tools into their enforcement practices as the Recommendation calls for. Nonetheless, resourcing challenges have created challenges for some Adherents as they seek to implement this aspect of the Recommendation.
- Whistle-blowing programmes are now available in the vast majority of Respondents' jurisdictions. The past five years have been a time of reform in this area, particularly for European Union Member States in response to a new European Union Directive.
- While all Respondents have implemented powers to conduct dawn raids, many are facing challenges in practice given the need to capture large amounts of digital evidence (including data stored in the cloud).
- The power to issue penalties for non-compliance and obstruction of cartel investigations are now available to almost all Respondents. However, in practice, this is still an area where less than half of Respondents actively issued penalties in the last five years.
- Many Respondents have taken concrete steps to improve their domestic co-operation framework and practice in relation to hard core cartels (namely bid rigging). Nonetheless, siloed enforcement processes and challenges to access relevant data sources remain a key challenge to full implementation of the Recommendation in many jurisdictions.
- Almost all Respondents have early case resolution tools available to them, and they remain a popular tool to ensure effective enforcement of competition laws.
- Whilst a private right of action is available in the laws of all Respondents, this remains an area of law that is still in its infancy in almost all jurisdictions. There have been very few changes to implementation across Respondents in recent years, as well as some scrutiny as to whether the threat of private claims is undermining leniency programmes.
- Advocacy is widely recognised as a vital part of the fight against cartels. There are significant disparities among Respondents in terms of how active they are in terms of advocacy events and publications. Whilst some Respondents reported many advocacy activities each year, roughly half of Respondents are inactive each year.
- Exemptions from cartel laws are widely recognised by Respondents as being a tool that should be rarely if ever used. More than half of Respondents do not allow for exemptions at all, and in the very few authorities that still use them there have been concrete efforts to reduce their usage.

## 4.2. Dissemination

199. The Competition Committee, Adherents individually, and the OECD Secretariat have undertaken a range of activities to support the dissemination of the Recommendation since its adoption in 2019. Over the past five years, the Competition Committee has hosted many roundtables and hearings on topics relating to hard core cartel enforcement. This includes sessions on access to case files, hub-and-spoke arrangements, criminalisation of cartels, purchasing power and buyers' cartels, data screening tools, director disqualification and tender exclusion, algorithmic collusion, and the use of economic evidence in cartel cases. Dissemination of the Recommendation's best practices relating to cartel enforcement is also a key aspect of the capacity building activities across the OECD's three Regional Centres for Competition.

200. This Report has also highlighted the importance of the Recommendation in setting the standard relating to cartel enforcement best practices when conducting peer reviews and accession processes.

201. However, the 2024 Survey suggests there has been limited specific dissemination of the Recommendation by Adherents. There is scope to target additional audiences who may benefit from engaging with the Recommendation, particularly in relation to domestic co-operation relating to hard core cartels.

202. While there have been efforts to disseminate the Recommendation to both Adherents and non-Adherents, additional efforts could be made to further disseminate the Recommendation to non-Adherents, including by leveraging the activities of the three Regional Competition Centres and other means

## 4.3. Continued relevance

203. The 2024 Survey asked Respondents whether they believed the Recommendation needed to be revised or updated. For Respondents that answered yes, there was an additional question asking what should be revised or updated.

204. Regarding the possible need to revise the Recommendation, 28 of 38 Respondents stated they did not believe there was a need for revision. Of the 10 Respondents who stated the Recommendation should be revised, only five gave reasons. Three Respondents identified potential specific changes to the Recommendation, namely:

- **Brazil** suggested there could be scope to revise the Recommendation to instead call for sanctions to be “effective, *proportionate* and serve a deterrent”. Currently, the Recommendation text only mentions effectiveness and deterrence.
- **France** suggested the Recommendation should call on Adherents to ensure that public procurement data is accessible to competition authorities and available in a standardised format.
- **Greece** suggested there could be scope to revise the Recommendation to instead call on Adherents to “*improve ways of co-operation*” and focus more on collaboration in investigations, rather than the current text's call to “*enable co-operation*” and focus on information sharing.

205. There was no consistent view on what the perceived gap is between best practices and what is currently in the Recommendation. The aggregated Survey responses suggest that the Recommendation remains effective, up-to-date and relevant. The Recommendation does not, therefore, require any revision in the short-to-medium term.

206. Nonetheless, the Competition Committee may benefit from considering whether there is a need for additional sessions of the Competition Committee or other work outputs on these three topics raised by the Respondents.

207. In this regard, in provision V.a. of the Recommendation, the OECD Council instructs the Competition Committee to “*consider developing an implementation toolkit to support Adherents’ implementation of the Recommendation*”. Respondents were also asked whether they believed that an implementation toolkit was necessary at present.

208. The results indicated that:

- 14 Respondents said there was no need for an implementation toolkit.
- 7 Respondents said there should be an implementation toolkit but did not give a reason.
- 10 Respondents said there should be an implementation toolkit but gave a generic answer that they thought material containing best practices, examples and case studies would be of interest.
- 7 Respondents said there should be an implementation toolkit and identified specific areas of hard core cartel enforcement where guidance materials would be beneficial.

209. The aggregated 2024 Survey data suggests there was not a strong interest from Respondents for the Competition Committee to prepare an implementation toolkit specifically for the Recommendation. Instead, Respondents appeared more interested in specific areas that could be the basis of future Competition Committee roundtable topics or broader OECD publications. These included the following:

- In their response, **Greece** suggested there should be guidance materials on the use of data analytics and AI to identify patterns of collusion, including bid-rigging, in data sets. This was echoed in the responses of **Estonia**, **Ireland** and the **Slovak Republic**.
- **Spain** recommended guidance on facilitating co-operation with and protecting those disclosing information to competition authorities. They also recommended material on the relationship between civil and criminal enforcement mechanisms.
- **Italy’s** response suggested guidance on finding evidence in the various different types of cartels, namely buyers’ cartels and hub and spoke cartels.
- **Brazil** provided a comprehensive list of recommended outputs they believe would be helpful. These included:
  - Guidance based on international best practices on hard core cartels,
  - Model law provisions that align with the principles of the Recommendation,
  - Training materials that could be shared to relevant stakeholders (e.g. competition authority staff, judges and legal practitioners),
  - Case studies of successful and unsuccessful enforcement actions against hardcore cartels,
  - Resources for facilitating international co-operation among competition authorities, such as guidelines on information exchange,

- Frameworks for monitoring and evaluating the effectiveness of enforcement programmes, including indicators to measure progress.

#### 4.4. Next steps

210. In light of the above, Adherents are encouraged to explore additional opportunities to implement all aspects of the Recommendation and to disseminate the Recommendation to relevant domestic stakeholders.

211. The Competition Committee should continue to prioritise topics relating to hard core cartel enforcement as part of its Committee meeting sessions and other outputs. Specific topics that the Competition Committee should consider revisiting in the future include the use of algorithms and data analysis in cartel enforcement, and the interaction of criminal and civil enforcement regimes.

212. Through the Regional Centres of Competition Centres and other means, efforts should continue to promote the dissemination of the Recommendation, with a view to encouraging non-Adherents to align with and request adherence to the Recommendation to improve best practices globally.

213. Finally, taking into account the slow-paced evolution over the past five years, the Competition Committee should report back to Council on the implementation, dissemination and continued relevance of the Recommendation in 10 years (or earlier if developments in the field warrant it).

## Appendix. Questionnaire reviewing implementation of the Recommendation of the Council concerning Effective Action against Hard Core Cartels

### Background

On 2 July 2019, the OECD Council adopted the Recommendation concerning Effective Action against Hard Core Cartels [[OECD/LEGAL/0452](#)] (the “Recommendation”), on the proposal of the Competition Committee.

In clause V.b, the Recommendation instructs the Competition Committee to “*monitor the implementation of the Recommendation and report to Council no later than five years following its adoption and at least every ten years thereafter*”. Therefore, the first report to Council on implementation, dissemination, and continued relevance of the Recommendation (the “implementation Report” or “Report”) is due in 2024.

This questionnaire seeks information for the purposes of preparing the implementation Report. The Report will provide an overview of the state of implementation and impact of the substantive provisions of the Recommendation among Adherents at an aggregate level. It will not include a general analysis on policy developments or track Adherent-by-Adherent progress. It will rather showcase best practices and efforts that Adherents have made to align their domestic frameworks with the Recommendation. Based on the assessment on the continued relevance of the Recommendation, the Competition Committee will decide whether further work is needed to improve the implementation and dissemination of the Recommendation, with an indication of the specific actions envisaged, and whether the Recommendation should be revised, and why.

Please submit your responses by **25 March 2024**. If you are unable to reply to all questions because of confidentiality constraints or lack of information, please provide as much information as possible. To the extent information has been provided in your annual reports, contributions to OECD competition policy roundtables or OECD Competition Trends, it can be incorporated in your response by reference.

Any questions can be addressed to Mr Connor HOGG ([connor.hogg@oecd.org](mailto:connor.hogg@oecd.org)) and Ms Nora Patricia Monzalvo ([nora.monzalvo@oecd.org](mailto:nora.monzalvo@oecd.org)).

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### Definitions

- For the purposes of this survey, the *last five years* refers to **2019 to 2023**, i.e., the five calendar years during which the Recommendation has been in force.
- Clause I of the Recommendation provides the following definitions:
  - **Hard core cartels** refer to anticompetitive agreements, concerted practices or arrangements by actual or potential competitors to agree on prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by, for example, allocating customers, suppliers, territories, or lines of commerce. They do not include: (a) agreements, concerted practices, or arrangements that are reasonably related to a legitimate efficiency-enhancing integration of economic activity; (b) agreements, concerted practices or arrangements that might otherwise qualify as hard core cartels, which are directly or

indirectly exempted from the coverage of Adherents' competition laws or are mandated in accordance with Adherents' laws.

- **Leniency programmes** refer to mechanisms offering the opportunity to cartel members to self-report their conduct, provide information and evidence and co-operate with an investigation, in exchange for immunity from, or a reduction in, sanctions, and, in some jurisdictions, immunity from proceedings/prosecution.
- **Plea negotiation and settlements** refer to case resolution tools which enable competition authorities to establish substantive findings, and facilitate and shorten procedures in a cartel case, working with the investigated parties in exchange for a reduction in sanctions.

## Questions

### Identification

Please specify your jurisdiction:	
Please provide the name of your authority:	
Please provide the name of the contact person if the OECD has queries in relation to your answers:	
Please provide the email address of the contact person if the OECD has queries in relation to your answers:	

## 1. GENERAL PROHIBITION AGAINST CARTEL CONDUCT

[See Recommendation, clause II: “*RECOMMENDS that Adherents make hard core cartels illegal regardless of the existence of proof of actual adverse effects on markets*”]

<b>Q1</b> In your jurisdiction are hard core cartels illegal regardless of the existence of proof of actual adverse effects on markets?	[Yes]	[No]
a. IF Q1= NO		
Were there recent or current reform efforts to change this?	[Yes]	[No]
Please outline these reform efforts	[free text]	
b. IF Q1 = YES		
If so, has this been the case:	[For >5 years]	[For ≤5 years]
Please provide the text of your law provisions that define hard core	[free text]	

cartels and other horizontal anticompetitive agreements	
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## c. IF Q1 = YES

Please provide the number of cases decided related to hard core cartel conduct in the last five years	
<b>Year</b>	<b>Number of hard core cartel cases</b>
2019	[number]
2020	[number]
2021	[number]
2022	[number]
2023	[number]
Comments	[free text]
Have there been any difficulties from applying this definition of hard core cartels in your enforcement activities in the last 5 years, especially in tackling new types of cartels and other horizontal anticompetitive agreements?	[Yes] [No]
If yes, please specify	[free text]

## 2. LENIENCY PROGRAMMES

[See Recommendation, clause II.1.a: “Introducing effective leniency programmes which:

*i. Set incentives for self-reporting by providing total immunity to the first applicant that reports its cartel conduct and fully co-operates with the competition authority and sanction reductions for subsequent applicants;*

*ii. Provide clarity on the rules and procedures governing leniency programmes and the related benefits;*

*iii. Facilitate reporting by using a marker system to encourage early reporting and provide certainty to applicants;*

*iv. Establish clear standards for the type and quality of information that qualifies for leniency;*

*v. Ensure continued co-operation between the leniency applicant and the competition authority throughout the investigation by taking into account factors such as the value of information submitted and the timing of the submission in determining the level of sanction reductions;*

*vi. Provide protection or reduction from sanctions for qualifying officers and employees of corporate leniency applicants;*

*vii. Exclude the availability of immunity for cartel coercers;*

*viii. Provide appropriate confidentiality protection to leniency applicants; and*

*ix. Seek to reduce unnecessary burdens for parties seeking leniency.]*

<b>Q2</b> Do you have an active leniency programme in your jurisdiction?	[Yes]	[No]
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a. IF Q2 = NO

Were there recent or current reform efforts to improve the leniency programme?	[Yes]	[No]
Please outline these reform efforts	[free text]	

b. IF Q2 = YES Please reply the following questions:

Total immunity to the first applicant that reports its cartel conduct	[Active for >5 years]	[Active for ≤5 years]	[Not present]
What are the conditions for total immunity?	[free text]		
<ul style="list-style-type: none"> <li>In how many cases was total immunity granted over the last 5 years? <i>If there are two or more decisions related to the same cartel, please count them as one case.</i></li> </ul>	[number]		
<ul style="list-style-type: none"> <li>In the last five years have there been cases where an immunity application was rejected or an immunity offer rescinded?</li> </ul>	[yes / no]		
<ul style="list-style-type: none"> <li>Please provide number of rejections/ rescindments and details of any notable cases.</li> </ul>	[free text]		
Are sanction reductions available for subsequent (not the first-in) leniency applicants?	[Active for >5 years]	[Active for ≤5 years]	[Not present]
<ul style="list-style-type: none"> <li>What are the conditions for sanction reductions?</li> </ul>	[free text]		
Year	Number of enforcement cases where sanctions reductions granted		
2019			
2020			

	2021			
	2022			
	2023			
Rules and procedures governing leniency programmes and the related benefits are clear and publicly available	[Active for >5 years]	[Active for ≤5 years]	[Not present]	
<ul style="list-style-type: none"> <li>Please provide details or link to the relevant internet page on your website</li> </ul>	[free text]			
Is there a marker system in place?	[Active for >5 years]	[Active for ≤5 years]	[Not present]	
<ul style="list-style-type: none"> <li>Please provide details of your marker system</li> </ul>	[free text]			
	Year	Number of enforcement cases where the marker system was used		
	2019			
	2020			
	2021			
	2022			
	2023			
There are standards for the type and quality of information that qualifies for leniency	[Active for >5 years]	[Active for ≤5 years]	[Not present]	
<ul style="list-style-type: none"> <li>Please provide details or link to the relevant internet page on your website</li> </ul>	[free text]			
There are processes in place to ensure continued co-operation between the leniency applicant and the competition authority throughout the investigation.	[Active for >5 years]	[Active for ≤5 years]	[Not present]	
<ul style="list-style-type: none"> <li>Please provide details</li> </ul>	[free text]			
Qualifying officers and employees of corporate leniency applicants are	[Active for >5 years]	[Active for ≤5 years]	[Not present]	

provided protection or reduction from sanctions			
<ul style="list-style-type: none"> <li>Please provide details</li> </ul>	[free text]		
In the last five years have there been cases where an officer or employee has been granted protection, but not the firm/ undertaking?	[yes / no]		
Please provide number of cases, and details of any notable cases.	[free text]		
Cartel coercers are excluded from immunity	[Active for >5 years]	[Active for ≤5 years]	[Not present]
<ul style="list-style-type: none"> <li>Please provide details</li> </ul>	[free text]		
Leniency applicants are given confidentiality protections	[Active for >5 years]	[Active for ≤5 years]	[Not present]
<ul style="list-style-type: none"> <li>Please provide details</li> </ul>	[free text]		
In the last five years, please detail any notable changes in laws, policies or practices that aim to reduce unnecessary burdens for parties seeking leniency	[free text]		
In the last five years, please highlight any cases or enforcement activities that were noteworthy in relation to leniency. Include cases in which the first applicant was not granted leniency benefits because they did not meet the criteria.	[free text]		
<p>To the extent possible, please report figures on hard core cartel cases that involved a leniency application</p> <p><i>Please consider the decisions that involved a leniency application even if it was unsuccessful / a finding of no infringement. If there are two or more decisions related to the same cartel, please count them as one decision</i></p>			
<b>Year</b>	<b>Number of hard core cartel cases that involved a leniency application</b>	<b>Percentage of hard core cartel cases involving a leniency application</b>	
2019			
2020			

2021		
2022		
2023		

### 3. PRO-ACTIVE CARTEL DETECTION TOOLS

[See Recommendation, clause II.1.b: “Using pro-active cartel detection tools such as analysis of public procurement data, to trigger and support cartel investigations.”]

<b>Q3</b> Do you use pro-active cartel detection tools to trigger and support cartel investigations	[Yes]	[No]
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a. IF Q3 = NO

Why are you not using pro-active proactive detection tools?	[Lack of organisational resources/capacity] [Lack of staff with sufficient skills or training] [Lack of legal basis for pro-active detection tools] [Other]		
<ul style="list-style-type: none"> <li>Make a comment on your choice here:</li> </ul>	[free text]		
Were there recent or current reform efforts to change this?	[Yes]		[No]
Please outline these reform efforts	[free text]		

b. IF Q3 = YES

Have you used pro-active cartel detection tools such as analysis of public procurement data to trigger or support cartel investigations.?	[For >5 years]	[For ≤5 years]	[Not used]
Year <i>If there are two or more decisions related to the same cartel, please count them as one case</i>	Number of cases opened based on a pro-active cartel detection tool		
2019			
2020			
2021			
2022			

2023	
Have there been any notable changes in laws, policies or practices related to proactive detection methods in the last five years?	[free text]
In the last five years, please highlight any noteworthy cases or enforcement activities involving pro-active cartel detection tools	[free text]

#### 4. WHISTLE-BLOWING

[See Recommendation, clause II.1.c: “Facilitating the reporting of information on cartels by whistle-blowers who are not leniency applicants, providing appropriate safeguards protecting the anonymity of the informants”.]

<b>Q4</b> Are there whistle-blower mechanisms for parties who are not leniency applicants?	[Yes]	[No]
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a. IF Q4 = NO

Were there recent or current reform efforts to change this?	[Yes]	[No]
Please outline these reform efforts	[free text]	

b. IF Q4 = YES

How long have you had a whistleblowing programme?	[For >5 years]	[For ≤5 years]
Is the anonymity of whistle-blowers ensured?	[Yes]	[No]
Please describe the relevant safeguards	[free text]	
Have there been any notable changes in laws, policies or practices related to whistle-blowing in the last five years?	[free text]	
In the last five years, please highlight any noteworthy cases involving whistle-blowing	[free text]	

Year	Number of hard core cartel investigations based on a whistle-blower disclosure	Number of hard core cartel infringement decisions based on a whistle-blower disclosure
2019		
2020		
2021		
2022		

2023

*This can include investigations at either a preliminary and formal investigation stage.*

## 5. DAWN RAIDS

[See Recommendation, clause II.2.a: “*Conduct unannounced inspections (“dawn raids”) at business and private premises, and access and obtain all documents and information necessary to prove cartel conduct*”].

<b>Q5</b> Do you have the power to conduct unannounced inspections (“dawn raids”) at business and private premises	[Yes]	[No]
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### a. IF Q5 = NO

Were there any recent or current reform efforts to change this?	[Yes]	[No]
Please outline these reform efforts	[free text]	

### b. IF Q5 = YES

How long have you had a power to conduct unannounced inspections?	[For >5 years]	[For ≤5 years]
Do your powers enable access and obtain all documents and information necessary to prove cartel conduct?	[Yes]	[No]
Have there been any notable changes in laws, policies or practices related to unannounced inspections in the last 5 years?	[free text]	
In the last five years, please highlight any noteworthy cases where dawn raids played a significant role	[free text]	

## 6. ELECTRONIC EVIDENCE GATHERING

[See Recommendation, clause II.2.b: “*Access electronic information that could help establish a cartel violation including electronic material that is stored remotely (e.g. on ‘the cloud’)* and have access to appropriate investigative techniques, such as communications interception and surveillance authorisations. For this purpose, competition authorities should have trained specialised staff and adequate hardware and software equipment”].

**Q6** Please confirm which of the below apply in your jurisdiction, either directly or via a court order:

Accessing electronic material that is stored remotely (e.g. on 'the cloud')	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
The ability to intercept communications (e.g. "phone taps")	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
The ability to conduct surveillance	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
Staff trained and specialising in electronic evidence gathering	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
Adequate hardware and software for electronic evidence gathering	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
Have there been any notable changes in laws, policies or practices related to electronic evidence gathering in the last 5 years?				[free text]
In the last five years, please highlight any noteworthy cases involving electronic evidence gathering				[free text]
In the last five years have you experienced challenges that have limited your ability to gather electronic information (e.g. insufficient technical equipment or trained staff)? To the extent possible, please provide details.				[free text]

## 7. ADDITIONAL INVESTIGATIVE POWERS

[See Recommendation, clause II.2.c and d: “c. Request and obtain information from investigated and third parties, including other government entities; d. Obtain oral testimony from individual witnesses”.]

**Q7** Please confirm which of the below apply in your jurisdiction:

The power to request and obtain information from investigated parties	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
The power to request and obtain information from independent third parties, including other government entities	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]

The power to obtain oral testimony from individual witnesses	[For >5 years]	[For ≤5 years]	[No organisational capacity]	[No basis in law]
Have there been any notable changes in laws, policies or practices related to evidence gathering in the last 5 years?				[free text]
In the last five years, please highlight any noteworthy cases involving compulsory requests for information or oral testimony				[free text]

**8. NON-COMPLIANCE OR OBSTRUCTION SANCTIONS**

[See Recommendation, clause II.2.e: “*Impose sanctions for non-compliance with mandatory requests and obstruction of investigations*”.]

<b>Q8</b> Do you have the power to impose sanctions for non-compliance with mandatory requests and obstruction of investigations?	[Yes for >5 years]	[Yes for ≤5 years]	[no]
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a. IF Q8 = NO

Were there recent or current reform efforts to change this?	[Yes]	[No]
Please outline these reform efforts	[free text]	

b. IF Q8 = YES

Have there been any notable changes in laws, policies or practices related to evidence gathering in the last 5 years?	[free text]
In the last five years, how many sanctions have you issued for obstruction of dawn raids?	[number]
In the last five years, how many sanctions have you issued for non-compliance with a mandatory request for information in hard core cartel investigations?	[number]
In the last five years, how many sanctions have you issued for non-compliance with a mandatory request to attend an interview or give oral testimony in hard core cartel investigations?	[number]
• Comments	[number]
In the last five years, please highlight any cases that involved sanctions for non-compliance or obstruction	[free text]

## 9. INTRA-GOVERNMENTAL CO-OPERATION

[See Recommendation, clause II.3: “Enable co-operation of their competition authorities with other public entities, such as public procurement bodies, public prosecutors and anti-corruption agencies, including by facilitating the exchange of information and evidence among different public authorities, while ensuring adequate safeguards to protect against inappropriate disclosure.”]

<b>Q9</b> Do you have the power to exchange information and evidence with other government entities?	[Yes for >5 years]	[Yes for ≤5 years]	[no]
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a. IF Q9 = NO

Were there recent or current reform efforts to change this?	[Yes]	[No]
Please outline these reform efforts	[free text]	

b. IF Q9= YES

In hard core cartel enforcement cases, have you co-operated with?

Public procurement bodies	[yes]	[no]	[not applicable]
Public prosecutors	[yes]	[no]	[not applicable]
Anti-corruption agencies	[yes]	[no]	[not applicable]
What are the safeguards to protect against inappropriate disclosure of information or evidence that you receive or provide?	[free text]		
Have there been any notable changes in laws, policies or practices related to intra-governmental co-operation in the last 5 years?	[free text]		
In the last five years, please highlight any noteworthy cases involving intra-governmental co-operation	[free text]		

## 10. EARLY CASE RESOLUTION TOOLS

[See Recommendation, clause II.4: “Enable and incentivise early case resolution tools such as plea negotiation and settlements, which often require an admission of guilt and/or the admission of facts and/or a waiver of the right to appeal.”]

<b>Q10</b> Do you use early case resolution tools such as plea negotiation and settlements?	[Yes for >5 years]	[Yes for ≤5 years]	[no]
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a. IF Q10 = NO

Were there any recent or current reform efforts to change this?	[Yes]	[No]
Please outline these reform efforts	[free text]	

b. IF Q10 = YES

Do your plea negotiation and/or settlements require: <i>Multiple selections possible</i>	[admission of guilt]	[the admission of facts]	[a waiver of the right to appeal]
Have there been any notable changes in laws, policies or practices related to early case resolution tools in the last 5 years?			[free text]
In the last five years, please highlight any noteworthy cases involving early resolution			[free text]

**11. EFFECTIVE SANCTIONS**

[See Recommendation, clause II.5: “Provide for effective sanctions of a kind and at a level adequate to deter firms and individuals from participating in hard core cartels and incentivise cartel members to defect from the cartel and co-operate with the competition agency. To this effect, Adherents should introduce a combination of sanctions (civil, administrative and/ or criminal, monetary and non-monetary) for an adequate deterrent effect in their jurisdiction. Adherents should consider introducing sanctions against individuals having participated in cartels.”]

**Q13**

a. Which sanctions can be applied **against undertakings** engaging in cartel conduct in your jurisdiction? *Multiple choice*

Monetary (civil / administrative)	Monetary (criminal)	Non-monetary (civil / administrative)	Non-monetary (criminal)
Have there been any notable changes in laws, policies or practices related to sanctions in the last 5 years?			[free text]
What are the maximum penalties available against undertakings in your jurisdiction? <i>Please provide answers for both monetary and (if applicable) non-monetary</i>			[free text]

Please provide the legislative provision that sets the maximum penalties in your jurisdiction:	[free text]
In the last five years, please highlight any noteworthy cases with sanctions against undertakings	[free text]

- b. Can you impose sanctions **against individuals/natural persons** that have participated in cartels?

[Yes for >5 years]	[Yes for ≤5 years]	[No]
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- c. IF Q13(b) = YES

Which sanctions can be imposed on individuals? *Multiple choice*

[Monetary (i.e. fines)]	[Imprisonment]	[Other non-monetary (e.g. barred from managing or directing a business)]
Have there been any notable changes in laws, policies or practices related to individual sanctions in the last five years?		[free text]
What are the maximum penalties available against individuals in your jurisdiction?		[free text]
In the last five years, please highlight any noteworthy cases involving sanctions on individuals		[free text]

- d. IF Q13(b) = NO

If not, are there currently reform efforts to change this	[Yes]	[No]
Please outline these reform efforts	[free text]	

## 12. PRIVATE RIGHT OF ACTION

[See Recommendation, clause II.6: *“Provide a mechanism that gives anyone who has suffered harm caused by a hard core cartel the right to obtain redress or claim compensation for that harm from the persons or entities that caused it, carefully balancing the interaction of public and private enforcement, in particular to protect leniency programmes. To this effect, Adherents should aim to:*

- a. *Establish rules that enable parties to access the evidence necessary to bring a claim for compensation;*
- b. *Protect leniency statements, as well as settlement submissions, from disclosure to ensure the right balance between public enforcement by competition authorities and private enforcement by victims of cartels;*

- c. Allow private enforcement actions that do not follow on infringement decisions by competition authorities, so as to allow enforcement in cases where there is no prior decision;
- d. Introduce collective redress mechanisms, which allow groups of similarly situated claimants to request compensation collectively;
- e. Grant adequate probative value to final infringement decisions by competition authorities, in private enforcement actions concerning the same hard core cartel;
- f. Suspend private enforcement limitation periods for the duration of the investigation by the competition authority.”]

<b>Q12</b> Does the law in your jurisdiction provide a private right of action? <i>That is, a mechanism that gives anyone who has suffered harm caused by a hard core cartel the right to obtain redress or claim compensation for that harm from the persons or entities that caused it</i>	[yes]	[no]
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a. IF Q12 = NO

If not, are there currently reform efforts to change this	[Yes]	[No]
Please outline these reform efforts	[free text]	

b. IF Q12 = YES

Does the law in relation to private rights of action contain the following components:

Rules that enable parties to access the evidence necessary to bring a claim for compensation	[Yes for >5 years]	[Yes for ≤5 years]	[No]
Protection of leniency statements, as well as settlement submissions, from disclosure	[Yes for >5 years]	[Yes for ≤5 years]	[No]
Stand-alone private enforcement actions	[Yes for >5 years]	[Yes for ≤5 years]	[No]
Collective redress mechanisms, which allow groups of similarly situated claimants to request compensation collectively	[Yes for >5 years]	[Yes for ≤5 years]	[No]
Are private enforcement limitation periods suspended for the duration of the investigation by the competition authority?	[Yes for >5 years]	[Yes for ≤5 years]	[No]
Do the final infringement decisions by competition authorities have probative value in private enforcement actions concerning the same hard core cartel	[Yes for >5 years]	[Yes for ≤5 years]	[No]

Please outline the relevant legislative or regulatory provisions related to private rights of action:	[free text]
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c. IF Q12 = YES

In the past 5 years how many private rights of action were there?

Year	Number of private actions
2019	
2020	
2021	
2022	
2023	

Have there been any notable changes in laws, policies or practices related to private rights of action in the last five years?	[free text]
Please highlight noteworthy private enforcement cases	[free text]

### 13. ADVOCACY

[See Recommendation, clause II.6: *Support the advocacy efforts of competition authorities vis-à-vis private and public stakeholders, regarding the effective prevention, detection and correction of hard core cartels and regulations that prevent collusive conduct.*”]

In the past 5 years how many advocacy activities (e.g. publications, media campaigns, events) have you held regarding the prevention, detection and correction of hard core cartels?

**Q13**

Year	Number of activities organised for public sector stakeholders (e.g. trainings for contracting authorities)	Number of activities organised for private sector stakeholders (e.g. media campaigns, trainings for business associations)	Number of guidelines, fact sheets, or other publications
2019			
2020			
2021			
2022			
2023			

Comments	[free text]
Please highlight important advocacy activities in relation to hard core cartels in the last five years	[free text]
Please highlight any guidelines or publications in relation to hard core cartels in the last five years	[free text]

#### 14. EXEMPTIONS

[See Recommendation, clause II.8: “Restrict exemptions, if any, from the coverage of Adherents’ laws against hard core cartels to those indispensable to achieve their overriding policy objectives. To this effect, Adherents should make their exemptions transparent and periodically assess their exemptions to determine whether they are necessary and limited to achieving their objective.”]

<b>Q14</b> Do you provide exemptions from the coverage of laws against hard core cartels? <i>Exemptions can be based on an explicit provision in the competition law itself or in another regulation, immunising specific categories of conduct or types of agreements between firms from the application of competition law. Exemption may vary, ranging from broad exemptions from competition law to narrow exemptions focused on particular situations and types of conduct.</i>	[yes]	[no]
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a. IF Q14 = YES

How many exemptions have you granted in the past 5 years

Year	Number of exemptions
2019	
2020	
2021	
2022	
2023	

Please detail any exemptions granted more than five years ago that are still in force or that have been repealed in the last five years	[free text]
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#### 15. USE OF OECD MATERIALS

##### Q15

Please outline any use in your jurisdiction of the Recommendation of the Council concerning Effective Action against Hard Core Cartels:

Hard core cartels enforcement work	[free text]
Hard core cartels advocacy activities	[free text]
Hard core cartels related policy or law reform activities	[free text]
Do you have any suggestions for topics in relation to hard core cartels you would like to see as future OECD Competition Committee topics?	[free text]

## 16. IMPLEMENTATION REVIEW

<b>Q16</b> Do you believe the OECD Competition Committee should develop an implementation toolkit to support Adherents' implementation of the Recommendation?	[yes]	[no]
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a. IF Q16 = YES

What material would be most useful to include in an implementation toolkit?	[free text]
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b. IF Q16 = NO

Why?	[free text]
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c.

Do you believe the Recommendation requires revisions or updates?	[yes]	[no]
What should be revised or updated?	[free text]	

**Thank you for your submission. We look forward to sharing the results of the Questionnaire at an upcoming Competition Committee meeting**