

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****REGIONAL COMPETITION AGREEMENTS****- Executive Summary -**

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This executive summary by the OECD Secretariat contains the key findings from the discussion held under Session III at the 17th Global Forum on Competition on 29-30 November 2018.

More documents related to this discussion can be found at: oe.cd/rca.

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Executive Summary

*By the Secretariat**

Considering the discussion at the roundtable held during the Global Forum on Competition on 29 November 2019, the Secretariat background paper, the panellists' presentations and the delegates' submissions, several points are noted:

- (1) *Across the world, 11 regional competition agreements (i.e. between three or more jurisdictions that are located in the same geographic region) address a need for regional co-operation on competition.*

The increasing number of jurisdictions that have adopted and are enforcing actively a competition law and policy at national level has created a need for effective regional co-operation on competition. Over the years, this has resulted in an increasing number of Regional Competition Agreements (RCAs).

The GFC session focused mainly on the 11 RCAs in the world between three or more jurisdictions that are located in the same geographic region, have adopted regional competition provisions, and established a regional competition authority: five RCAs in Sub-Saharan Africa (the Central African Economic and Monetary Community (CEMAC), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Union of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU)); three RCAs in Latin America and the Caribbean (the Andean Community (CAN), the Caribbean Community (CARICOM) and the Southern Common Market (MERCOSUR)); two RCAs in Europe (the European Union (EU) and the European Free Trade Association (EFTA)) and one RCA in Eurasia (the Eurasian Economic Union (EAEU)).

These RCAs provide a platform for co-ordination, collaboration, regional convergence of laws and skills-development, amongst others. They also generate scale economies in enforcement, as many competition law cases have an international or regional dimension. This can be particularly important for developing and emerging economies.

- (2) *Using the differences between the allocation of powers between National and Regional Competition Authorities, four approaches can be identified.*

A number of factors can influence the development of a regional competition law and policy, including, but not limited to, the level of economic development of the Member States, the (absence of) national competition regimes and the (desired) extent and type of regional integration. Local circumstances such as historical legacy and legal systems of the member countries can also play a significant role.

By using the differences between the allocation of powers between National Competition Authorities (NCAs) and Regional Competition Authorities (RCAuts), four "regional models" can be identified:

* This executive summary does not necessarily represent the consensus view of the Global Forum on Competition. It encapsulates key points from the discussion at the roundtable, the delegates' written submissions, the panellists' presentations and the Secretariat's background paper.

1. “Regional referee” model – the RCAut has exclusive original jurisdiction on regional cases and coordinates investigations undertaken at national level.
2. “Two-tier” model – there are two independently operating levels: for regional cases the RCAut has exclusive original jurisdiction and conducts the investigation and decides on the case, while for national cases the NCA has exclusive original jurisdiction and conducts the investigation and decides on the case.
3. “Joint enforcement” model – Both national and regional authorities apply regional competition provisions in their respective competition cases (national and regional cases).
4. “One-tier” model” – The RCAut investigates and takes decisions on national and regional competition cases, while the NCAs play a merely supportive role.

Employing these regional models, we can group the RCAs as follows:

Table 1. Grouping of the RCAs, based on the division of powers between national and RCAuts

Regional competition model	RCAs
“Regional referee” model	CAN, MERCOSUR
“Two-tier” model	CARICOM, CEMAC, EAC, EAEU, ECOWAS
“Joint enforcement” model	COMESA, EFTA, EU
“One-tier regional state” model”	WAEMU

Source: OECD analysis

The EU (and the EFTA¹) is widely regarded as a model of best practice when it comes to regional competition law enforcement. COMESA is also regarded as rather successful, especially when it comes to regional merger enforcement. For most of the other RCAs regional enforcement is still nascent or not as effective as desired.

(3) *RCAs provide significant potential for participating jurisdictions, although regional-wide political and economic support is crucial for regional competition agreements to be effective.*

It is commonly accepted that RCAs bear significant potential benefits for participating jurisdictions, especially for smaller and developing countries. Amongst other things, RCAs can address enforcement resource constraints, strengthen competition culture, reduce enforcement capability constraints (such as collecting cross-border evidence, helping create a credible threat for smaller economies and enabling cumulative sanctions) and keep national governments in check regarding for instance state-imposed barriers.

RCAs in different regions show that the success of a regional competition law regime is inherently dependent on the success of the relevant broader economic integration agreement. A regional integration agreement is needed to give legal effect to a regional competition law regime. Moreover, for a regional competition law regime to become operative, there must be harmonisation of laws across the regional block, institutional reforms, constant co-operation between the members states, skills training and significant funding.

¹ The EFTA regional competition framework is strictly based on and interrelated with the EU system.

The success of the European Competition Network demonstrates that strong political commitment results in, amongst other things, a strong collaboration between the authorities and the convergence of competition laws in the member countries, which in turn results in an effective regional competition enforcer. Up to now, 85% of the decisions applying Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) has been adopted by the national competition authorities.

In contrast, in other regions, there is a lack of political will to enter into regional competition enforcement agreements on a stand-alone basis. As a result, many of the other existing RCAs with an established regional competition authority have shown limited enforcement activity, i.e. a small number of cases or none at all.

For instance, limited political support and direction in Latin America has led to tensions on two levels: (i) tensions between those authorities responsible for trade (often leading the regional integration process) and those authorities responsible for competition, and (ii) tensions between the national and the regional authorities. In Sub-Saharan Africa, although on paper there seems to be political will to enforce competition at regional level, in practice national jurisdictions have been reticent to yield certain powers to regional competition authorities.

(4) *Notwithstanding the potential that Regional Competition Agreements have, there are serious obstacles that prevent these benefits from materialising.*

Many countries and regions have encountered obstacles that prevent them from maximising the benefits from these agreements. Reasons for the subsequent lack of enforcement are plentiful, and although they are often region-specific, there are some general themes that can be identified: profound differences between the participating Member States, scarce resources for the RCAuts, geographically overlapping RCAs and outdated regional competition frameworks.

The profound differences can relate to for instance differences in economic development, legal systems and historical legacy and linguistic diversity. This has several risks, including competition provisions that are developed in a way that favours (or at a minimum does not disfavour) the “economic leader” and legal systems that are difficult to reconcile.

Another challenge is the scarce human and material resources often made available to a RCAut, sometimes related to a weak competition culture in certain regions. In both Sub-Saharan Africa and Latin America and the Caribbean, this scarcity of resources affects the effectiveness of RCAuts in enforcing their competition laws.

The multitude of RCAs in Sub-Saharan Africa has created several challenges, including conflicting obligations of countries that are members of multiple and overlapping regional agreements, conflicting powers between national and regional authorities as well as potentially conflicting decisions by regional and national authorities.

Lastly, regional competition frameworks can become dated as time goes by, especially when there are no enforcement cases or a very limited number of them.

(5) *Developing a regional competition regime takes time, and regional competition approaches can (and sometimes should) change to follow developments within the region.*

Regardless of the system that a region decides to implement, it is important that regional integration and centralisation of competition enforcement does not become an end in itself. Instead, it is important to leave room for diversity and sufficient policy autonomy.

Moreover, as can be illustrated through the case of the EU, developing a regional competition regime takes time. After the introduction of Council Regulation 17/1962², it took forty years before the EU implemented Regulation 1/2003 that replaced the old centralised regime, with a new decentralised one, thus realising the so called '*parallel application model*'. This allows NCAs applying both EU and national competition rules in parallel to anti-competitive conducts affecting trade between Member States and provided for an allocation of cases (and a one-stop-shop system) which seeks to guarantee that only well-placed authorities investigate cases.

In terms of the earlier mentioned regional models, the EU went thus from a “two-tier” model to a “joint-enforcement” model. This shows that, regional competition approaches can (and sometimes should) change to follow developments within the region.

² EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31962R0017:EN:HTML>).