

Unclassified

English - Or. English

9 June 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Competition and Corruption in Public Procurement – Note by the European Union

26 June 2026

This document reproduces a written contribution from the European Union submitted for Item 10 of the 149th OECD Competition Committee meeting on 24-26 June 2026.

Ori SCHWARTZ
Email : Ori.Schwartz@oecd.org

JT03589004

European Union

Fostering investigative cooperation with non-competition enforcers to support cartel *ex-officio* detection

1. Introduction

1. Strong cartel enforcement requires both robust *ex officio* investigations and effective leniency programmes, as the combination of proactive enforcement and insider cooperation strengthens the ability of Authorities to detect, deter and sanction anti-competitive conduct.

2. *Ex-officio* cartel enforcement comprises investigative activities initiated independently by the European Commission (hereinafter also EC) outside the framework of leniency applications or formal complaints. Their purpose is to detect and prosecute anticompetitive conduct without relying solely on voluntary disclosure or third-party complaints.

3. *Ex-officio* enforcement plays a central role in strengthening deterrence. By increasing the perceived likelihood that anticompetitive conduct may be detected independently by competition authorities, companies are discouraged from engaging in anticompetitive behaviour. In the area of collusion, strong *ex-officio* capabilities reinforce the effectiveness of leniency programmes as companies are more likely to self-report when they face a credible risk of detection through alternative channels.

4. In practice, the EC can trigger *ex-officio* investigations on the basis of various sources, including market monitoring, open-source intelligence, data screening tools (including tender data), whistleblowers and cooperation with other competition authorities and institutions. National non-competition enforcers (such as economic and financial police, prosecutors and investigative judges, auditors, procurement and anti-fraud authorities) can also represent an invaluable source of leads. National non-competition enforcers can indeed come across, during their daily investigative work, information suggesting potential infringements of competition law.

5. This means that ensuring sufficient awareness about competition infringements and establishing effective means to exchange information are both necessary ingredients for strengthening investigative cooperation with these enforcers and thereby enhancing *ex-officio* detection capabilities.

6. Over the last few years, the EC has invested into these two areas (awareness raising and guidance) across Europe to widen its *ex-officio* reach. This was done by developing targeted initiatives including training activities, study visits and practical guidance.

7. This contribution describes the EC activities carried out in the last years in this area.

2. Detection challenges and the importance of new approaches

8. Cartels typically operate in secrecy and therefore, competition authorities need to multiply sources of detection to uncover collusive agreements.

9. At the same time, collusive practices are evolving. Companies increasingly deploy sophisticated methods, including digital tools and AI algorithms, which can facilitate coordination without leaving the traditional indicia of an agreement or concerted practice.

10. Traditionally, detection has relied heavily on reactive detection methods, particularly leniency programmes.

11. However, reliance on reactive methods alone is no longer sufficient. Leniency programmes should go hand-in-hand with strong *ex-officio* capabilities and investments as the incentive to come forward to a competition authority increases if the probability to be detected independently by the authority is high.

12. The EC has increasingly focused on diversifying cartel detection tools and strengthening proactive enforcement strategies. In particular, *ex-officio* capabilities have been reinforced including screening techniques, market monitoring, and enhanced cooperation frameworks, while also investing in digital capabilities and AI-related skills to support data-driven and technologically advanced enforcement¹.

13. Among these proactive approaches², investigative cooperation with national non-competition enforcers plays an increasingly important role. By leveraging leads and evidence collected by these enforcers during their own investigative activities (non-competition related), competition authorities can expand their detection capabilities and reduce reliance on a single source of information.

14. These tools complement leniency programmes by increasing the overall threat of detection.³

15. In recent years, the proportion of leniency and *ex-officio* cartel cases by the EC has been roughly half.⁴

3. The unique role of national non-competition enforcers

16. National non-competition enforcers, in particular those dealing with economic and financial investigations, in the course of their enforcement activities, often exercise extensive investigative powers that grant access to company records and internal documents, which may contain valuable indications of cartel conduct or other anticompetitive practices. In areas such as public procurement, enforcement experience indicates that bid rigging may also coexist with corruption and fraud.

17. This places them in a unique position to identify suspicious ongoing conduct, often at an earlier stage than competition authorities themselves.

18. However, operational proximity alone does not guarantee effective detection as it also depends on the ability of these enforcers to recognize such conduct as anticompetitive behaviour. Without this underlying capability and without awareness of the importance of

¹ OECD (2023). “*Optimal Design, Organisation and Powers of Competition Authorities – Note by the European Union*”. Accessible [here](#).

² Also including outreach and training activities targeting Contracting Authorities to increase their ability to identify and signal possible red flags of bid-rigging to competition Authorities.

³ OECD (2024). “*Detecting cartels for ex officio investigations*”. Accessible [here](#).

⁴ Concurrences (2025). “*Compendium of International Cartels- Despina Pachnou (OECD) and Maria Jaspers (European Commission)*”. Accessible [here](#).

reporting such conduct to the competent competition authority, valuable signals may remain unrecognised or unreported.

19. Ultimately, the unique value of non-competition enforcers lies not only in their access to information, but in their potential, when properly informed, in boosting *ex-officio* cartel detection.

20. To address this, since 2018, the EC Directorate-General for Competition (hereinafter also DG COMP), has increasingly focused on strengthening investigative cooperation with non-competition enforcers by providing targeted training and guidance to enhance their role in the detection and prosecution of anticompetitive infringements.⁵

4. The Exotic Fruit case

21. A landmark example illustrating the value of investigative cooperation between the European Commission and the national non-competition enforcers is the Exotic Fruit Case⁶.

22. Paragraphs 81 and 96 of the 2011 Commission decision, highlight the contribution of the non-competition enforcers and the evidentiary value of such contribution:

“On 26 July 2007, the Commission received copies of inspection documents from the Italian authorities which originated from inspections in the home and office of an employee of Pacific Fruit Italy in the framework of national investigations. The documents were provided to the Commission by the Guardia di Finanza who in advance had obtained the permission of the Procuratore della Repubblica of Rome to use the data and notes for administrative purposes. Moreover, the Procuratore della Repubblica of Rome declared that the communication of those documents by the Commission to the parties was not prejudicial to the national investigation in Italy, which did not concern an infringement of competition law”.

“The main evidence of the cartel arrangement consists of the following:

documents obtained during inspections by the Italian Guardia di Finanza in the framework of a national investigation which were subsequently submitted to the Commission with due authorisation from the Procuratore della Repubblica of Rome; [...].”

23. As indicated above, the information transmitted to the EC was obtained by a national non-competition enforcer in an investigative context not related to the enforcement

⁵ OECD (2023). “*Recommendation of the Council on Fighting Bid Rigging in Public Procurement*”. Accessible [here](#).

⁶ European Commission (2011). “*Commission Decision of 12.10.2011 (COMP/39482 – Exotic Fruit (Bananas))*”. Accessible [here](#).

General Court (2015) “*FSL Holdings and Others v European Commission, Judgment of the General Court (Second Chamber) of 16 June 2015*”. Accessible [here](#).

Court of Justice of the European Union (2017). “*FSL Holdings and Others v European Commission, Judgement of the Court (First Chamber)*”. Accessible [here](#).

of competition rules. The initiative undertaken by the Guardia di Finanza⁷ contributed directly to cartel enforcement at the EU level.

24. The EC's reliance on information transmitted by the non-competition enforcer was challenged by the defendants on the basis that documents obtained in the context of a national non-competition investigation should not be admissible in EU competition proceedings, and that their use, particularly considering the manner in which they were obtained and transmitted, could undermine the procedural safeguards and the rights of defence.

25. However, the European Court of Justice clarified that the use of such information as evidence must be assessed in light of national law governing its collection and transmission. It confirmed that the European Commission could rely on documents and information transmitted by national non-competition authorities, provided that the information had been lawfully obtained and that its transmission complied with the applicable national law. This is particularly significant as it sets a precedent for evidentiary use of information originating from national non-competition enforcers, thereby ensuring that highly relevant admissible sources of evidence can be used in the context of competition enforcement.

26. Importantly, the Court also clarified the scope of Article 12 of Regulation 1/2003. It emphasised that Article 12 is designed to facilitate and simplify information exchange within the European Competition Network (ECN), namely between National Competition Authorities that are part of the ECN. However, it cannot be interpreted as preventing the Commission from receiving and using information transmitted by other national authorities acting under different legal mandates. The Court explicitly rejected such a restrictive interpretation, noting that it would unduly hinder the Commission's ability to ensure the effective enforcement of EU competition law.

27. Overall, this judgement is significant for three reasons.

28. First, it clearly indicates that the legal basis for the transmission of the information must be found in the national procedural law of the enforcement authority collecting and reporting leads to the EC.

29. Second, it states that information lawfully obtained from national enforcers in the context of non-competition related investigations can be used by the European Commission as evidence, thereby expanding the evidentiary base of competition enforcement.

30. Third, it recognises the existence of a complementary information channel beyond the cooperation framework among competition authorities of the Member States established under Article 12 of Regulation 1/2003⁸, thereby broadening the Commission's enforcement information network.

31. In this sense, the Exotic Fruit Case not only validates an evidentiary practice but also supports the development of a broader enforcement framework based on lawful cooperation between competition enforcers and national non-competition enforcers.

⁷ The Guardia di Finanza is a military police force reporting directly to the Minister of Economy and Finance in Italy, with general economic and financial crime-fighting competences. More on the Guardia di Finanza [here](#).

⁸ Official Journal of the European Union (2003). "Article 12" (Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty). Accessible [here](#).

5. DG COMP initiatives to enhance investigative cooperation with the national non-competition enforcers

32. In light of its potential to detect *ex-officio* cases, since 2018 DG COMP has been investing in initiatives aimed at increasing the competition awareness of non-competition enforcers to improve their ability to identify and report potential anticompetitive behaviour. Raising awareness is indeed a necessary prerequisite to ensure that national non-competition enforcers are mindful of the key contribution they can provide by reporting such conduct to the EC in a lawful manner.

33. It is important to underline that these initiatives do not aim to transform the national non-competition enforcers into competition specialists but as already explained, the primary objective is to ensure that they can identify red flags, preserve relevant information and channel potentially valuable leads to DG COMP and the relevant National Competition Authorities (hereinafter also NCAs).

34. In particular, the EC organised – during the period 2018 – 2021 – several training activities across Member States. The training sessions covered key aspects of EU competition law, with a focus on cartels and abuse of dominant position, as outlined in Articles 101⁹ and 102¹⁰ of the Treaty on the Functioning of the European Union (TFEU). Following this introduction, several cases and relevant case law were presented and analysed, illustrating different forms of anti-competitive conduct and the evidentiary approaches used in competition law investigations. Participants learned how to identify potential infringements, assess the relevance of different types of evidence, and understand how documentary and behavioural evidence can support the enforcement of EU competition rules.

35. In this context a mock exercise was organised to enable participants to apply their knowledge in practice. Attendees were provided with fictional emails, internal company documents, meeting notes and other simulated corporate communications reproducing real-case scenarios they could encounter during their non-competition related investigations. They were asked to analyse these materials and assess whether their content could constitute relevant evidence for the detection and prosecution of potential cartels activities such as price-fixing, market allocation or practices that exploit or exclude competitors by entities with a dominant market position.

36. Through these exercises, participants learned how to identify potentially incriminating conduct, evaluate the probative value of documentary evidence, and distinguish between legitimate commercial conduct and behaviour that could raise concerns under EU competition law.

37. In total, during this period, more than 350 officials from non-competition authorities, such as prosecutor and judicial offices, economic and financial police, received ad hoc competition trainings from DG COMP experts.

38. Starting from 2022 until 2025 the awareness initiatives were supported by grants under the EU Single Market Programme (SMP Competition).

39. An initial phase was directed at individual national non-competition enforcers. During this phase, approximately 222 participants from two Member States — including

⁹ Official Journal of the European Union (2016). “*Article 101 (ex Article 81 TEC)*” (consolidated version of the Treaty on the Functioning of the European Union). Accessible [here](#).

¹⁰ Official Journal of the European Union (2016) “*Article 102 (ex Article 82 TEC)*” (consolidated version of the Treaty on the Functioning of the European Union). Accessible [here](#).

police officers, prosecutors, and investigative judges dealing with economic and financial matters at both operational and management level – took part in training activities described above, as well as in dedicated study visits. The latter consisted of visits to DG COMP designed to provide participants with practical exposure to EU competition enforcement, including DG COMP’s investigative role, its evidentiary needs and operational approach to detection.

40. Building on the lessons learned during the first phase, DG COMP adopted a broader and more strategic approach in the second phase by shifting its focus from targeting individual national non-competition enforcers to leveraging the outreach capabilities of the European Judiciary Training Network (hereinafter also EJTN)¹¹, thereby enhancing coordination, dissemination and the overall impact of the initiative across Member States jurisdictions.¹² By leveraging the EJTN’s established institutional network, DG COMP significantly strengthened the long-term capacity of the initiative and increased its potential to embed competition knowledge more sustainably across national enforcement frameworks.¹³

41. During this second phase, training activities and study visits to DG COMP, were offered to prosecutors, investigative judges and law enforcement officials dealing with economic and financial investigations. In total 206 participants from 24 Member States benefitted from trainings delivered by DG COMP experts. Participants were encouraged to share knowledge within their respective institutions and authorities, thereby amplifying the effects of the training. This cumulative outreach has contributed to fostering a broader dialogue on opportunities for cooperation between national non-competition enforcers, DG COMP and NCAs.

42. A key feature of this programme was the drafting of practical guidelines¹⁴ to ensure broader dissemination beyond the enforcers directly participating in the training initiatives. As such, the Guidelines constitute the most significant long-term contribution as they do not merely support one-off awareness raising initiatives but instead establish a practical foundation for future capacity-building, institutional continuity, and the progressive strengthening of investigative cooperation between the EC, the NCAs and the national non-competition enforcers.

43. The long-term value of these guidelines, developed by EJTN experts in cooperation with EC officials, lies in their design which aims at transforming project-based knowledge into a practical operational tool for non-competition enforcers across the European Union.

44. Their structure combines two complementary objectives: first, making EU competition law understandable and operational for authorities with no specialised competition background; and second, providing practical guidance on the national legal frameworks governing cooperation and information exchange. This second objective aims

¹¹ The EJTN is an international non-profit association. It brings together judicial training institutions from all EU Member States to pursue an aim of general European interest: developing and implementing training and exchange activities for members of the European judiciary. More on the EJTN [here](#).

¹² EJTN (2024). “*EU training programme enhances the awareness of non-competition national enforcers in competition matters*”. Accessible [here](#).

¹³ EJTN (2025). “*Strengthening EU Competition Law Enforcement: EJTN concludes landmark project with DG COMP*”. Accessible [here](#).

¹⁴ “*Practical Guidelines on Enforcement of EU Competition Law for Investigative Judges, Prosecutors and Police Officers Involved in the Investigation of Financial and Economic Crimes*”.

at making it easy for a non-competition enforcer to quickly find relevant information about the national legal provisions governing the transfer of evidence to a National Competition Authority or the Commission.

45. To achieve this, the Guidelines comprises two interlinked sections. On the one hand, they provide simple, practical, and easy-to-read explanations of core EU competition law concepts, supported by concrete examples of suspicious conduct, types of evidence, and investigative “red flags”. The objective is to equip readers to recognise, in the course of their ordinary duties, situations that may reveal anti-competitive conduct.

46. On the other hand, in light of the Exotic Fruit Case, which highlighted the decisive role played by national procedural and legal frameworks in governing cooperation and exchanges of information, the Guidelines do not adopt a one-size-fits-all approach. Instead, they include country-by-country guidance covering the legal framework applicable in each of the 27 Member States, thereby transforming abstract cooperation principles into practical and operational tools.

47. The Guidelines will also serve as a long-term reference document for EJTN members capable of supporting institutional continuity, future training initiatives, and progressively stronger investigative cooperation between the EC, NCAs, and national non-competition enforcers throughout the European Union

48. Overall, by engaging a wide range of non-competition enforcers, these initiatives strengthened awareness of EU competition law and promoted closer cooperation between competition and non-competition authorities across the European Union.

6. Conclusion

49. The evolution of cartel enforcement requires that effective detection can no longer rely predominantly on reactive methods alone. While leniency remains essential, to supplement that, increasing market complexity require a broader and more diversified approach.

50. To this end, national non-competition enforcers can play a very important role in enhancing *ex-officio* investigations. Their proximity to market activity allows them to identify relevant information that, if transmitted to competition authorities, can strongly support the detection and prosecution of competition infringements.

51. By embedding competition awareness across a wider range of enforcers, competition authorities can markedly enhance *ex-officio* detection and move toward a more modern, diversified and effective cartel enforcement system.

52. The Exotic Fruit Case confirms that such investigative cooperation is not only operationally beneficial but also legally viable.

53. For this reason, the EC has undertaken systematic initiatives in recent years to increase the competition awareness of these enforcers, with the aim of strengthening their capability to identify competition issue and ultimately promote their transmission.

54. Practical guidelines, structured information-sharing procedures, legal clarity on evidentiary transmission, confidentiality safeguards and operational contact points are essential to strengthen coordination and improve the quality of transmitted information.

55. Investigative cooperation with non-competition enforcers represents a strategic priority and should not be viewed merely as an educational initiative, but rather as the basis for a structural investment in enforcement.

56. The real impact of these initiatives is expected to become apparent in the coming years, with a greater prevalence of transmissions of indicia to competition authorities, including both DG COMP and the NCAs.

57. Looking forward, the promotion of guidelines and ad hoc cooperation framework agreements could serve as a lasting resource for continued capacity-building and as a foundation for the future training initiatives.