

Executive summary

The OECD Recommendation on Competitive Neutrality [[OECD/LEGAL/0462](#)], hereafter the “Recommendation”, defines competitive neutrality as “a principle according to which all Enterprises are provided a level playing field with respect to a state’s (including central, regional, federal, provincial, county, or municipal levels of the state) ownership, regulation or activity in the market”. It recommends that government intervention, for instance through regulation or state support, not distort competition in markets, i.e. that it not tilt the playing field in favour of certain market participants.

Competitive neutrality allows firms to compete on the merits regardless of factors such as ownership, nationality or legal form, so that competition is not unduly prevented, restricted or distorted. In turn, this makes it possible for consumers and the economy to reap the benefits of competition. Competition delivers greater consumer welfare by promoting lower prices, greater choice and higher quality of goods and services. Competition also increases productivity and economic growth, multiplying business opportunities and employment.

The Competitive Neutrality Toolkit was developed to support the implementation of the competitive neutrality principles set out in the Recommendation. It provides a set of good practice approaches based on examples drawn from international experience on competitive neutrality measures. It covers the legal framework, including competition law and enforcement, the regulatory environment and public procurement; and measures that may enhance a competitor’s performance, such as state support and compensation for public service obligations. To assist public officials in identifying policies that potentially distort competition, in each of these areas a set of questions (Competitive Neutrality Checklist) complements the good practice approaches and the related examples.

The Toolkit also suggests a framework of analysis for identifying and assessing regulations and policies that may distort competitive neutrality and for developing alternatives to avoid or reduce such distortions. This methodology comprises five steps:

1. Screening the policy intervention using the Competitive Neutrality Checklist.
2. Identification of the objective and benefits of the policy intervention.
3. Analysis of the impact of the policy intervention on competition.
4. Identification of alternative policy options.
5. Balance of benefits and competition distortions and selection of the least distortive option.

Selected good practices from each of the areas covered by the Toolkit are reported below.

The regulatory environment should be competitively neutral and should be enforced with equal rigour, appropriate deadlines and equivalent transparency with regard to all current or potential market participants. Indeed, all market players, both current and potential, should receive uniform treatment not only in terms of the legal framework but also its enforcement. This includes **a competitively neutral competition legal framework**, so that competition rules are applied to all competitors in the same manner.

Exempting certain players from regulations may be necessary to achieve policy objectives that could not be accomplished through other means. **Any exceptions from regulations should be transparent, should be justified by clear policy objectives and should be narrowly applied.** When exceptions are adopted in a transparent way and are publicly known, this can allow for open discussion on the merits of the exception, and for objections and alternative proposals to be put forward and considered. Moreover,

good practices highlight that exceptions adopted in order to achieve a specific public objective do not go beyond what is strictly necessary to achieve that objective, so that distortions to competition are limited to the extent possible.

Public-procurement rules should treat all potential bidders in a similar way, without discrimination and irrespective of ownership, legal form, nationality and origin of goods. Government procurement processes should follow open, fair, non-discriminatory and transparent conditions, so that all potential suppliers can take part in public tenders, and all bidders (including SOEs, incumbents, domestic companies or firms providing goods that are produced largely domestically) are treated in an equitable manner.

State support measures should identify and disclose the specific public policy objective to address and the extent to which the measures are likely to address it. Authorities are expected to spell out how state support contributes to achieving the policy objective and to what extent it addresses it.

State support measures, such as loans, guarantees and capital injections/investments, should be assessed to identify if they are granted in line with market principles. Jurisdictions are expected to evaluate if an enterprise receives a benefit, i.e. better conditions than those available in a market transaction. If this is the case, the next step would be to analyse if this is a selective benefit and to examine the distortions of competition the measure creates.

Any public service obligation placed upon an enterprise should be identified in a transparent and specific manner. A clear definition of the services within the scope of the public service obligation helps potential providers assess the business case and, if applicable, submit a bid to supply the services. In turn, meaningful bids contribute to selecting the best placed public service provider and to keeping the necessary compensation to a minimum.

Decisions regarding the compensation for public service obligations are also a crucial aspect to consider in order to maintain a level playing field. **When a public service obligation is placed upon an enterprise, measures should be taken to avoid both over-compensation and under-compensation, in order not to unduly advantage or harm a competitor.**



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