1 Introduction

This chapter provides an introduction to the Competitive Neutrality Toolkit, including its structure and main objectives. It also highlights the importance of competitive neutrality and clarifies how the toolkit relates to the Competition Assessment Toolkit and how both documents can be used in a complementary way.

The OECD Recommendation on Competitive Neutrality [OECD/LEGAL/0462], hereafter the Recommendation, which was adopted by the OECD Council meeting at Ministerial Level in May 2021, 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.” The Recommendation establishes a set of principles to ensure that the actions of OECD Members and non-Members having adhered to it (hereafter the “Adherents”) are competitively neutral and that all enterprises face a level playing field, irrespective of factors such as the enterprises’ ownership, location or legal form, so that competition is not unduly prevented, restricted or distorted.

The Competitive Neutrality Toolkit (hereafter the “Toolkit”) supports Adherents in their implementation of the competitive neutrality principles set out in the Recommendation. While recognising that this is the primary objective of the Toolkit, the document could potentially be useful also to non-Adherents that are interested in following competitive neutrality principles and benefit from the good practices collected in the Toolkit. Acknowledging this potential audience, the Toolkit often refers generically to jurisdictions and not necessarily to Adherents.

The Toolkit deals with the five main areas of the Recommendation: (1) competition law and enforcement; (2) regulatory environment; (3) public procurement; (4) state support; and (5) public service obligations. The Toolkit highlights a range of ways the Recommendation can be implemented, through good practice approaches based on examples drawn from international experience.

- The good practice approaches included in this Toolkit aim at clarifying how the Recommendation can be implemented and are deliberately broad, so that their objective can be achieved in various ways to account for each jurisdiction’s specificities. In line with the Recommendation, which recognises that “achieving public policy objectives will in certain circumstances require exceptions to competitive neutrality”, the good practice approaches are not prescriptive and aim at highlighting good practices, while flagging potentially problematic policies, rather than reaching firm conclusions.
- Each good practice approach is complemented by a series of examples from Adherents and other jurisdictions beyond them. The examples listed may concern one or more elements addressed in the good practice approach. They are indicative and do not attempt to provide an exhaustive list of all the practices across jurisdictions.
- To assist public officials to identify policies that potentially distort competition, in each of the five areas a set of questions complement the good practice approaches and the related examples. When a regulation or another policy is not in line with at least one of the questions or good practice approaches, it has the potential to distort competition and should be analysed in detail. Chapter 8 sets out the main steps of the analysis.

The Competitive Neutrality Toolkit is complementary to the Competition Assessment Toolkit. The former provides good practice approaches and related examples on competitive neutrality measures, covering the different areas of the Recommendation. The latter provides the overall framework of analysis (i.e. the methodology), including the identification of the policy maker’s objective in the in-depth assessment of regulations or state support measures. The framework of analysis included in this Toolkit is consistent with the overall methodology set out in the Competition Assessment Toolkit.

The combined tools support competition authorities and other public officials in identifying policies and actions that distort competition and suggest alternatives that minimise such distortions. This assessment can be conducted by competition authorities or by other bodies, such as government departments that are responsible for developing new regulations or central units in charge of regulatory impact assessment. Moreover, the Toolkit can support the analysis of both new regulations and policies as they are being developed and of existing ones.

The Recommendation and the Toolkit are relevant for the state's ownership, regulation or activity at all levels of the state, "including central, regional, federal, provincial, county, or municipal levels".

Finally, the Recommendation rests on the premise that "competition promotes efficiency, helping to ensure that goods or services offered to consumers more closely match consumer preferences, producing benefits such as lower prices, greater choice, improved quality, increased innovation, and higher productivity". These benefits can be delivered through the promotion of competitive neutrality (see Box 1.1).

Box 1.1. Why is Competitive Neutrality important?

Ensuring competitive neutrality means that firms compete on the merits regardless of factors such as ownership, nationality or legal form. Therefore, competitive neutrality promotes competition by eliminating or reducing undue competitive advantages that some players may enjoy over their competitors, such as support granted by the state or regulations that favour incumbents.

Indeed, competition delivers many benefits at both micro and macro-economic levels. At the micro-economic level, competition delivers greater consumer welfare, by promoting lower prices, greater choice and higher quality of goods and services (OECD, 2019[1]). At the macro-economic level, competition between firms increases productivity and economic growth, multiplying business opportunities and employment. In fact, competition improves allocative efficiency by allowing more efficient firms to enter and gain market share at the expense of less efficient firms, which may exit the market and be replaced by higher productivity firms (CMA, 2015[2]). The effects of stronger competition can spill over to adjacent markets, for instance by improving productivity and employment in downstream sectors (OECD, 2014[3]).

In addition, competitive markets increase innovation. When the market is contestable (that is barriers to entry are low) and the innovation is appropriable (i.e. successful innovators can capture the benefits from innovation, at least temporarily) firms have an incentive to innovate (OECD, 2023[4]). Competition also drives technology adoption, as well as organisational and managerial improvements (Andrews, Criscuolo and Gal, 2016[5]).

Preserving a level playing field between competitors can bring tangible benefits to consumers and to citizens more broadly. Examples include:

- More new entrants and higher employment levels, when regulations do not shield incumbents from the requirements that new entrants must comply with, as described in Chapter 4;
- Value for money in public procurement, for example when local authorities do not favour their enterprises and award tenders to the most suitable bidders, in line with the good practice approaches and examples in Chapter 5;
- Better use of limited financial resources, such as when public authorities grant state support at the same terms as a market operator does, as discussed in Chapter 6.

Source: OECD (2019[1]), Competition Assessment Toolkit: Volume 1. Principles, https://www.oecd.org/competition/assessment-toolkit.htm; CMA (2015[2]) Productivity and competition: A summary of the evidence, https://www.gov.uk/government/publications/productivity-and-competition-a-summary-of-the-evidence; OECD (2014[3]), Factsheet on how competition affects macroeconomic outcomes, https://www.oecd.org/daf/competition/factsheet-macroeconomics-competition.htm; OECD (2023[4]), Competition and Innovation: A Theoretical Perspective, OECD Competition Policy Roundtable Background Note, https://www.oecd.org/daf/competition/competition-and-innovation-a-theoretical-perspective-2023.pdf; Andrews, Criscuolo and Gal (2016[5]), "The Best versus the Rest: The Global Productivity Slowdown, Divergence across Firms and the Role of Public Policy", *OECD Productivity Working Papers*, No. 5, OECD Publishing, Paris, https://doi.org/10.1787/63629cc9-en .

The rest of the document is structured as follows. Chapter 2 provides an overview of ways in which the state intervenes in markets and how the Recommendation addresses them. Chapters 3 to 7 are devoted to the five main policy areas covered by the Recommendation. Each chapter consists of a set of questions to guide the analysis, good practice approaches and related examples. Chapter 8 provides a framework to analyse policies that, based on the questions and the good practice approaches, can potentially distort competition.

References

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