



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 7

Report on International Enforcement Co-operation an OECD perspective

Purpose: Information
Submitted by: OECD



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Jakarta, Indonesia
3-4 February 2013**



BETTER POLICIES FOR BETTER LIVES

International Enforcement Co-operation An OECD perspective

*APEC CPLG Meeting
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Overview

- Reasons for international co-operation
- Traditional approaches to international co-operation
- The role of the OECD
- Legal basis for international co-operation
- Key issues and problems with international co-operation
- Future challenges for international co-operation
- The OECD project on international enforcement co-operation



Why international co-operation?

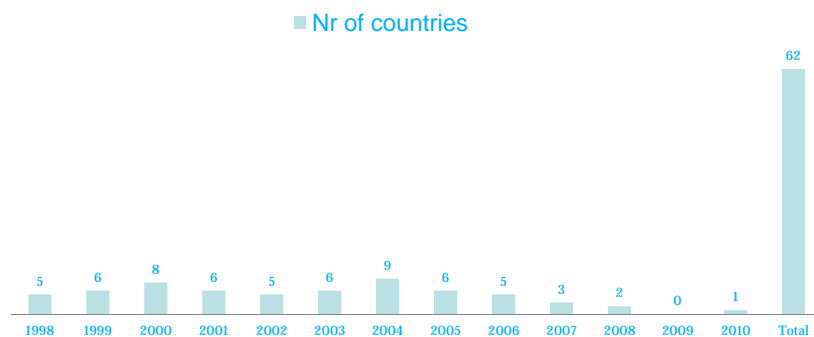
- The number of jurisdictions with competition law has increased significantly
- Globalization of the economy
- Internationalization of antitrust infringements
- Risks of divergent decisions
- Need to access information and evidence in other countries
- Driver for international co-operation:
 - Multi jurisdictional merger filings
 - Proliferation of leniency programs



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Uptake of competition law and policy

More than 62 new competition laws since 1998



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OECD and ICN memberships

- On 25 October 2001, 14 agencies launched the ICN
- The ICN has grown from 16 members in 2002 to 104 (from 92 jurisdictions) in 2009
- In April 2012 the ICN had 123 member agencies

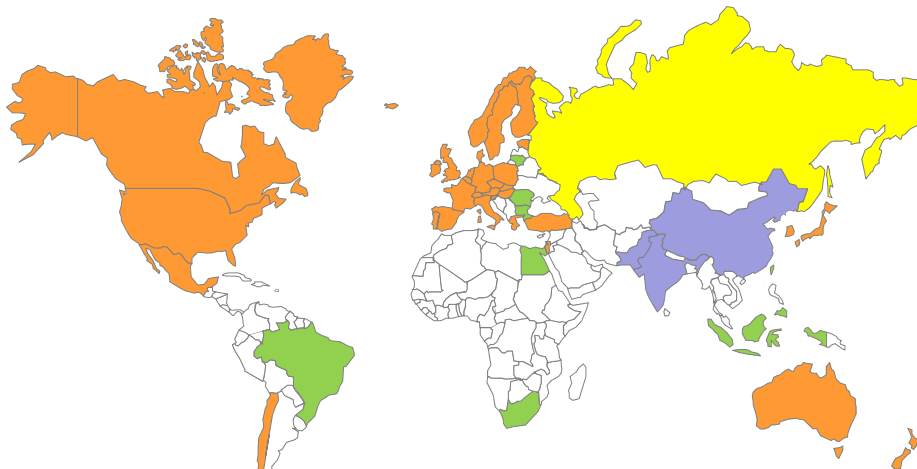


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- 20 countries originally signed the OECD Convention on 14 December 1960
 - Since then 14 countries have become members
 - Today the Competition Committee has 34 members and 15 observers



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The OECD Competition Committee today



OECD member countries
 Accession countries
 Regular Observers
 Ad hoc observers



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The economy is increasingly global

- In 1995, co-operation between the US, EU and Japan would cover about 75% of world GDP - and about 95% of the GDP of countries with competition law
- In 2010, the same trilateral co-operation covers only 60% of world GDP
- By 2030, on reasonable projections, those three economies will account for only 35% of world GDP
- To reach ¾ of world GDP – which could be achieved with just trilateral co-operation in 1995 - by 2030 you will probably need at least the top nine economies
- Not a general trend though: for the top 500 multinational in Nord America on average, about 70% of their sales are made in their home region



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Traditional approaches to international co-operation

- **Convergence**
 - Policy movement among jurisdictions towards common or shared legal and economic standards
- **Co-operation**
 - Communication, consultation, and information sharing among agencies to ensure consistent approaches to parallel cases
- **Comity**
 - Negative comity
 - Positive comity



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The two worlds of international co-operation

International enforcement co-operation

- Mergers
- Behavioural cases



Exchange on policy developments and capacity building

- OECD, ICN, UNCTAD, ASEAN, APEC, etc.
- Outreach and capacity building



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The role of the OECD

- Harmonization and convergence:
 - Roundtables and policy discussions
 - Recommendations, reports and best practices
 - Outreach and capacity building (domestic and international)
- Informal co-operation through “soft” law



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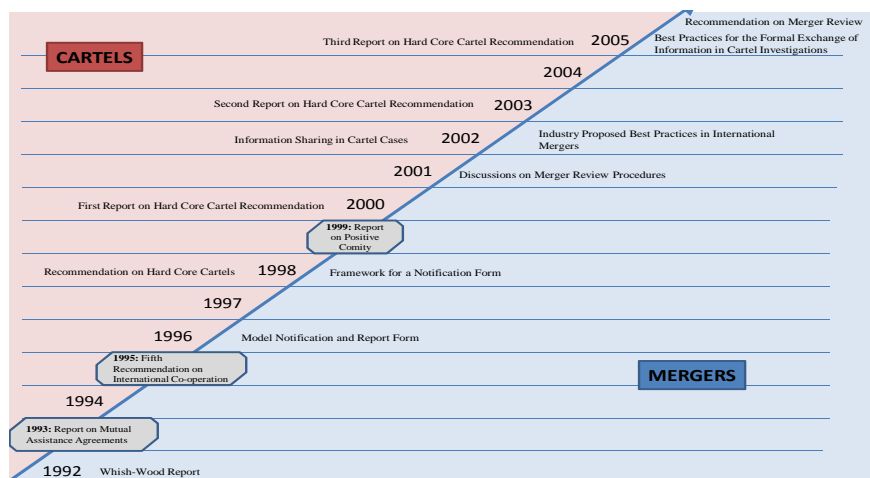


Recommendations and best practices

2012	Recommendation on Fighting Bid Rigging in Public Procurement
2011	Recommendation concerning Structural Separation in Regulated Industries
2009	Recommendation on Competition Assessment
2005	Guiding principles for Regulatory Quality and Performance
2005	Best practices on Information Exchange
2005	Recommendation concerning Merger Review
2001	Recommendation concerning Structural Separation in Regulated Industries
1998	Recommendation concerning Effective Action against Hard Core Cartels
1995	Recommendation concerning Co-operation between Member Countries on Anticompetitive Practices affecting International Trade
1979	Recommendation on Competition Policy and Exempted or Regulated Sectors

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Stock-take on international co-operation (1990 - today)



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Recommendations on international co-operation

YEAR	DOCUMENT
1967	First Recommendation on International Co-operation
1973	Second Recommendation on International Co-operation
1979	Third Recommendation on International Co-operation
1986	Fourth Recommendation on International Co-operation
1995	Fifth Recommendation on International Co-operation
1998	Recommendation on Hard Core Cartels
2005	Recommendation on Merger Review
2005	Best Practices for the Formal Exchange of Information in Cartel Investigations



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1995 Recommendation on international co-operation

- The **advance notification** of planned competition law enforcement actions to foreign competition authority when important interests of that country may be affected by the planned enforcement activity.
- The **co-ordination of parallel investigations** where 'appropriate and practicable'.
- The **assistance in obtaining information**, providing factual and analytical material from its files and employing on behalf of the requesting country the authority to compel the production of information, subject to national confidentiality laws.
- **Consultations** aimed at developing or applying mutually satisfactory and beneficial measures for dealing with anticompetitive practices that affect international trade.
- Consideration should be given to important interests of foreign parties to the agreement when applying competition law domestically (**negative comity**) and vice versa, foreign parties should consider appropriate measures if important domestic interests are concerned (**positive comity**).



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2005 Best Practices for the exchange of information in cartel cases

- International treaties should **protect confidentiality** of exchanged information
- Information exchange should be supported, but requested jurisdiction has **no obligation to share information** and has ability to apply conditions
- **Safeguards** should apply in the requesting jurisdiction when it is using the exchanged information
- Information exchanges should provide safeguards for the **rights of the parties** under the laws of member countries (e.g., legal privilege and privilege against self-incrimination)
- Best Practices advise against giving **prior notice to source of information**, unless required by domestic law or international agreement, as it can disrupt and delay investigations of cartels



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Legal basis for international co-operation

- **Formal** cooperation on cases
 - Co-operation based on provisions in national law
 - Co-operation based on non-competition specific agreements and instruments: mutual legal assistance agreements (MLAT), competition related provisions in bilateral free trade agreements (FTAs), rogatory letters
 - Co-operation based on competition-specific agreements
 - Co-operation based on waivers
 - Co-operation based on amnesty/leniency programs
- Significant degree of **informal** co-operation



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Key issues and problems with international co-operation

- Legal restrictions and absence of legal basis
- Constraints related to exchange of confidential information
- Limitations on admissibility and use of the information exchanged
- Complexity and duration of co-operation procedures
- Procedural differences and different enforcement powers
- Limits with waivers
- Practical limitations (lack of resource, language, etc.)



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Future challenges for international co-operation

- Increase the number of countries involved in international enforcement co-operation
- Improve legal basis for formal/information co-operation
- Reduce limits to exchange of confidential information
- Facilitate the exchange of public and agency information
- Convergence of rights of defendant
- Move from bilateral to multilateral co-operation?
- Envisage new means of enhanced co-operation?



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The OECD project on international co-operation

Started in 2012, the OECD international co-operation projects aims at:

- studying and sharing experience and insights on international co-operation among competition agencies
- exploring of the policy rationale for international co-operation
- reviewing the relative merits of various forms of co-operation and lessons to be learnt from co-operation efforts in other policy fields
- identifying constraints on greater co-operation
- analysing experience over the past years with OECD instruments

with a view to improving international co-operation and developing legal and practical solutions for agencies



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The OECD project on international co-operation

Feb 2012	GFC RT Improving International Co-operation in Cartel Investigations
Feb 2012	Work-plan and strategy
Jun 2012	Stock-take of OECD work on international co-operation
Jul 2012	Launch of OECD/ICN survey on international enforcement co-operation
Oct 2012	Discussion on limitations and constraints
Feb 2013	OECD Report on OECD/ICN survey on international enforcement co-operation; and Discussion on future directions for the project



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Thanks for your attention!

Please visit:

<http://www.oecd.org/daf/competition>

<http://www.oecd.org/daf/competition/internationalco-operationandcompetition.htm>



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