



EFFECTIVE ENFORCEMENT AGAINST CARTELS

Istanbul Competition Forum
26 November 2019

Antonio Gomes
Deputy Director
Directorate for Financial and Enterprise Affairs



Digitalisation and Globalisation as key challenges of cartel enforcement

- The **fight against cartels** is a very important part of the OECD work as it is also – and should be – very high on the agenda of all competition authorities.
- Competition agencies should **intervene robustly against cartels** and cartels should be **severely sanctioned**.
- **Digitalisation and Globalisation as some of the key challenges** to hard core cartel enforcement



Digitalisation and Globalisation as key challenges of cartel enforcement

- **Digitalisation and globalisation** both have the **potential to affect enforcement**. They **require smart responses** from enforcers.
- **Digitalisation** brings new challenges such as algorithms and collusion.
 - The OECD Competition Committee has discussed many of the challenges posed by digitalisation, and will continue to do so.
- **Globalisation** has also created challenges concerning hard core cartels.
 - **Cartels do not stop at national borders. However, our national enforcement powers do.**
 - Successful prosecution of international cartels often depends on the **ability of competition agencies to co-operate** in their investigation.
 - **2014 OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings.**



Digitalisation and Globalisation as key challenges of cartel enforcement

- **Cartel enforcement** has been **very successful** in recent years.
- **OECD competition agencies** have fined approximately **1,270 cartels**, and imposed **finances totalling EUR 17.3 billion** (average fine per cartel EUR 14 million) over the **past four years**.
- **Competition agencies need to ensure they are able to tackle new challenges.**
- **2019 OECD Hard Core Cartel Recommendation**
 - provides guidance in tackling challenges both old and new
 - reflecting 20 years of developments in cartel enforcement.
- **Hard core cartels should be illegal, regardless of their effects.**



Addressing the challenges 2019 OECD Hard Core Cartel Recommendation

- **Leniency as the most notable development in cartel enforcement in the last 20 years.** In 2000, fewer than **10 jurisdictions** with leniency regimes. Currently, leniency available in **90 jurisdictions** – including all OECD jurisdictions.
- **Effectiveness of individual leniency programmes** depends on
 - correct **design and implementation**; and
 - **interaction with criminal liability, settlements and early termination procedures, and private damages actions.**
- Leniency programmes **still** face a **number of challenges**
- The **2019 Recommendation** outlines detailed **requirements for effective leniency programmes**



Addressing the challenges 2019 OECD Hard Core Cartel Recommendation

- Jurisdictions should **not rely solely on leniency - pro-active enforcement tools**, such as
 - **cartel screening** and
 - **facilitating anonymous reporting.**
- Importance of **investigative powers.**
 - **Dawn raids**, which should extend to both business and private premises.
 - **Access to all information**, including all electronic information, even when stored remotely.
- Ensure **staff is adequately trained** and has access to the necessary **hardware and software** (particularly important to deal with digital age cartels).
- **Co-operation with other law enforcement bodies** (e.g. public procurement agencies, public prosecutors, or anti-corruption agencies).
- **Need for effective and deterrent sanctions** against companies and individuals.
 - Cartels keep arising and **repeat offenders** abound. In 14 % of all international cartels, the offenders were fined for more than one cartel.



THANK YOU

Antonio Gomes
antonio.gomes@oecd.org