



OECD Competition Trends 2020



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Preface

Strong competition undoubtedly contributes to a country's productivity and economic growth. The primary objective of a competition policy is to enhance consumer welfare by promoting competition and controlling practices that could restrict it. More competitive markets stimulate innovation and generally lead to lower prices for consumers, increased product variety and quality, more entry and enhanced investment. Overall, greater competition is expected to deliver higher levels of welfare and economic growth.

Over the past 50 years, we have witnessed a remarkable dissemination of competition law enforcement around the world. In 1970, only 12 jurisdictions had a competition law, with only seven of them having a functioning competition authority. Today, more than 125 jurisdictions have a competition law regime, and the large majority has an active competition enforcement authority. The proliferation of competition laws and competition enforcers around the globe has led to a vast amount of activity in terms of investigations, decisions, advocacy initiatives and events.

This first edition of OECD Competition Trends reflects the role and mission of the OECD as one of the world's largest and most trusted sources of comparable statistics across-countries, data and policy analysis. This was prepared by the OECD Competition Division with the aim of providing easily accessible and up-to-date information about global competition trends, which can then be used by competition agencies and their governments to compare their own national frameworks and activities with global averages and trends. This publication feeds into the OECD Competition Division's larger objective of contributing to the advancement of competition law and policies, and represents an additional way of providing support to the Competition Committee and promoting its reform agenda around the globe.

Evidence-based policymaking is a core mission of the OECD. Being able to monitor trends and investigate evolving patterns in competition policy could make a substantial contribution to the field. With the appropriate data available, competition agencies will be able to assess the effectiveness of their work programmes and their tools, to justify budgets, identify and monitor improvements, use existing evidence to change enforcement strategies, make efficient prioritisation choices, and save resources. Moreover, agencies could also use this tool to enhance their transparency and accountability policies.

I congratulate the efforts of the individual competition authorities who generously provided the information on which much of this publication is based. Providing and analysing this data going forward, will support the design, implementation and enforcement of better competition policies for better lives around the world.



Angel Gurría
OECD Secretary-General

Foreword

This first edition of OECD Competition Trends presents unique insights into global competition trends based on analysis of data from more than 50 OECD and non-OECD jurisdictions. By providing multi-year data on a large number of economic and legal indicators, this publication supports informed policymaking and contributes to improving competition law and policy around the world.

The OECD Competition Committee, which includes representatives of the world's major competition authorities, is the premier source of policy analysis and advice to governments on how best to harness market forces in the interests of greater global economic efficiency and prosperity. For almost 60 years the OECD and its Competition Committee have taken a leading role in shaping the framework for international co-operation among competition agencies. Recommendations, best practices and policy roundtables have served not only as models and inspiration for national initiatives, but also as tools for sharing global best practices on competition law and policy. Competition officials from developed and emerging economies have been offered a unique platform from which to monitor developments in competition policy and enforcement, and to discuss new solutions to increase its effectiveness. This work benefits from the support of the Secretariat, in particular the OECD Competition Division, and from the organisation's whole-of-government approach, taking advantage of expertise in other OECD committees and experience in international co-operation.

As the role and scope of competition law and policy continue to evolve, so competition authorities' tools must constantly develop and can learn from others. It is important for policy makers and competition enforcers to stay up to date of the different ways in which competition law and policy is applied throughout the world. This publication should help them to do so.



Frédéric Jenny
Chairman, OECD Competition Committee

Acknowledgements

This report has been prepared by the OECD Competition Division to provide easily accessible and up-to-date information about global competition trends, which can then be used by competition agencies and governments to compare their own frameworks and activities with general averages and trends. It contributes to the division's larger objective of contributing to the advancement of competition law and policy, representing a new way of providing support to the OECD Competition Committee and promoting its reform agenda around the globe.

This first edition of the *OECD Competition Trends* is the result of co-operation between the OECD Competition Division and the individual competition authorities in participating jurisdictions that generously provided the information on which much of this publication is based. A large part of the international cartel data was originally collected by Professor John Connor and was acquired by the OECD in 2017.

The publication was prepared under the supervision of Antonio Capobianco, Acting Head of Division; by Wouter Meester, Competition Expert; and Carolina Abate, Competition Policy Analyst, all of the OECD Competition Division. Antonio Gomes, Acting Deputy Director of the Directorate for Financial and Enterprise Affairs, Ruben Maximiano, Senior Competition Expert, Pedro de Caro Sousa, Competition Expert, and Sabine Zigelski, Senior Competition Expert, all provided comments and suggestions on earlier drafts of this publication.

The report was edited for publication by Tom Ridgway and prepared for publication by Erica Agostinho, Communications Assistant, OECD Competition Division.

Data sources

OECD Competition Trends compiles information obtained from different sources, including:

- The OECD CompStats Database which compiles responses to the OECD Competition Basic Statistics Questionnaire covering 55 jurisdictions and 34 variables from 2015 onwards.
- The OECD International Cartels (ICStats) Database builds upon international cartel data collected by Professor John Connor since 1985. It was acquired by the OECD in 2017 and can be accessed at <http://bit.ly/OECD-ICStats>. The current version includes approximately 20 variables for 1 300 international cartels from over 50 jurisdictions. A first selection of cartels going back to 2012 was released publicly in September 2019 and more are scheduled for release.
- The 2017 Hard Core Cartel Survey carried out in support of the 2019 *OECD Recommendation concerning Effective Action against Hard Core Cartels*.
- Other publicly available information.

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Executive summary

The past 50 years has seen a remarkable growth in competition law enforcement around the world. In 1970, only 12 jurisdictions had a competition law, and only seven had a functioning competition authority. Today, more than 125 jurisdictions have a competition law regime, and the large majority has an active competition enforcement authority. The proliferation over time of competition laws and competition enforcers around the globe has led to a vast amount of activity in terms of investigations, decisions, advocacy initiatives and events.

OECD Competition Trends includes 58 figures covering a broad range of topics related to competition law regimes and competition enforcement activity. It is divided into three parts: 1) general statistics and trends, analysing different regimes and their resources; 2) enforcement trends, focusing on trends in cartel and abuse of dominance cases and merger reviews; and 3) an “in-focus” section analysing a different topic each edition in more detail. The in-focus topic for 2020 is cartel sanctions.

Overall trends

The effectiveness of competition law largely depends on competition authorities’ available human and financial resources.

In 2018, competition authorities in the CompStats database had an average budget of EUR 20 million and employed an average of 153 staff working on competition. These numbers are, however, somewhat skewed by a number of larger authorities. The median value of all budgets and competition staff numbers are respectively EUR 9 million and 84 staff.

Between 2015 and 2018, the average budget of all competition authorities increased approximately 2% in nominal terms but, after adjustment for inflation, average budgets actually decreased by approximately 5%. The average budget of competition authorities in OECD countries is larger than that of non-OECD jurisdictions. This is inverted, however, when the size of the economy is considered using GDP: non-OECD jurisdictions actually spend 25% more on competition authorities as a percentage of GDP.

While budgets decreased in real terms, the average number of competition staff increased over 8.5% between 2015 and 2018. Growth of staff numbers in non-OECD jurisdictions was particularly strong, growing by 23% between 2015 and 2018.

The average fine-to-budget ratio of competition authorities is 6 to 1, meaning that on average the imposed fines for cartel and abuse of dominance infringements exceed an authority’s budget six times. Although competition agencies should not have the objective of “earning back” their budgets, and most of the effects of competition authorities’ actions cannot be directly quantified, it is useful for governments to be aware of the public value of competition authorities’ activities, namely that they are a “good business case”.

Enforcement trends

Cartels

Competition authorities worldwide dedicate a substantial part of their resources to detection, investigation and prosecution of collusive practices. Cartels and anticompetitive agreements are a common type of illegal conduct, which can cause significant economic harm.

The average number of decisions for a competition authority on all anticompetitive horizontal agreements (not only on cartel conduct) has been stable over the past four years, with an average of nine decisions per agency in both OECD and non-OECD jurisdictions.

The data in ICStats on international cartels for the period 1989-2018 identify specific characteristics of such cartels and of agencies' investigations. This publication uses the ICStats definition of an international cartel, namely those cartels where at least two of the participating cartel members are headquartered in different jurisdictions, regardless of the geographic coverage of the cartel activities.

Each year between 2000 and 2015, competition authorities worldwide discovered an average of 50 international cartels, with investigations lasting on average 3 years. The majority of these cartels were operating in the manufacturing sector (57%), in particular in chemicals and machinery manufacturing, and involved 5 or fewer participants (54%); around 25% of international cartels had more than 9 participants.

In 10% of cases, the activities of these cartels were supported by a third party, such as a trade or business association, that organised, enforced or facilitated the cartel agreement. This percentage was higher in Europe (11%) than in North America (6%).

The occurrence of bid-rigging cartels also varied across regions. Bid-rigging cartels made up 26.5% of international cartels in North America, 36.6% in Europe and 50% in Latin America and the Caribbean.

The vast majority (79%) of international cartels were sanctioned within one single jurisdiction. The majority (68%) of global cartels – international cartels with a geographic range across more than one continent – were sanctioned by multiple jurisdictions.

Overall, the duration of international cartel agreements has been decreasing over time. This trend became more meaningful after 2001, with the average duration rapidly dropping from seven years in 2000 to fewer than five from 2003 onwards. This decrease in average duration also coincides with an increase in the number of cartels discovered in the period 1999-2011, which might indicate increased efforts in antitrust enforcement.

Abuse of dominance

Abuse of dominance cases are less numerous than cartel cases and merger cases. CompStats shows that well over half of the competition authorities adopted fewer than five decisions during the period 2015-2018. In 2018, for example, just three jurisdictions were responsible for half of the total of 182 abuse of dominance decisions adopted.

CompStats also shows that commitments procedures are widely used, with over 70% of competition authorities using them at least once in the four-year period. Although commitments procedures are widely used, one-third of agencies has only used it once, one-third has used it between two and four times during this period, while the remaining one-third had had five or more commitments procedures. In absolute numbers, the use of commitment procedures or other types of negotiated or consensual procedure for abuse of dominance cases decreased in 2018 to 39, compared to 49 in 2015.

Mergers

Effective merger review is an important component of any competition regime. It can help prevent consumer harm from anticompetitive transactions that reduce competition among rival firms and foreclose competitors.

Overall, merger-control activity has increased between 2015 and 2018. The number of merger decisions and notifications both increased by approximately 14% in these four reported years, reaching over 8 700 notifications and over 8 400 decisions in 2018 (decisions include cases in which the waiting period had expired).

This large number of annual merger decisions is largely driven by a few specific agencies that issue hundreds of decisions each year. More than one-third of competition authorities had fewer than 40 merger decisions in 2018, while the seven authorities that adopted the most merger decisions represented approximately 70% of all decisions.

Over 95% of mergers were cleared without an in-depth investigation in this period. In 2018, only 23 of the over 8 400 decisions were prohibitions, or just over 0.25%. Over this same period, an average of 15 prohibition decisions were adopted each year.

Remedies are relatively frequently used. In the four-year period, initial (“phase one”) investigation remedies were used in 238 cases by 23 jurisdictions, while in-depth (“phase two”) investigation remedies were used in 320 cases by 39 jurisdictions. Three jurisdictions represent over 50% of the total phase-one remedies, while 21 jurisdictions did not clear a single phase one with remedies. Five jurisdictions are responsible for almost 50% of the total phase-two remedies, while seven jurisdictions have not used this tool. The use of remedies – both in phase-one and phase-two cases – has increased over time in relative terms (the number of remedies compared with the total number of decisions) and this is especially true in phase two.

Spotlight on cartel sanctions

With the fight against cartels a priority for competition authorities worldwide, many are attempting to increase detection through a variety of investigative powers and detection tools. Detection alone, however, is not sufficient to break up cartels effectively. Sanctions – both on individuals and companies – also play a fundamental role in preventing antitrust violations by enhancing deterrence.

In the four-year period 2015-2018, approximately half of the jurisdictions in CompStats had at least one case in which a fine was imposed on an individual, while seven jurisdictions imposed at least one prison sentence. While imprisonment of individuals participating in a cartel agreement is not yet a widespread practice, data in CompStats from 55 jurisdictions shows an increasing trend for this type of sanction. The number of cartel cases where a prison sentence was imposed, often together with other sanctions, has been increasing over time, up from seven cases in 2015 to 49 in 2018.

Notwithstanding recent developments in the use and availability of sanctions against individuals, corporate fines are still the most widely used form of sanction for cartel conduct. CompStats shows an overall increase in the level of fines over the past two decades with the average cartel fine, for both each company and each cartel, increasing from 2015-2017 before dropping in 2018. Differences also exist between jurisdictions, with corporate fines on average almost three times higher in OECD countries than in non-OECD jurisdictions. This difference jumped to almost seven times higher during the period 2015-2017.

When looking at international cartels, the average amount of sanctions imposed in each cartel decision decreased by 34% globally in the period 2013-2018 compared to 2006-2011.

Finally, the average sanction imposed can vary depending on the specific type of infringement. For example, the average sanction for bid-rigging violations was 22% higher than for other international hard core cartels over the period 1989-2018.

1 General Trends

In recent decades, competition law and policy has spread rapidly across the globe and competition law regimes now exist in over 125 jurisdictions.¹ However, while adopting a competition law is a necessary step for ensuring effective competition in the market, it is not sufficient. Competition laws need to be enforced by efficient and effective enforcement bodies that can investigate, prosecute and prevent, or limit anticompetitive behaviours.

Competition law regimes differ across jurisdictions in their rules, tools and processes, as well as in the role they assign to the competition authority, its funding and staffing. This section looks at certain characteristics of the jurisdictions included in the CompStats database, such as the different legal regimes and institutional approaches to competition enforcement, including the resources and responsibilities assigned to enforcement authorities.

Of the 55 jurisdictions included in the database, 49 jurisdictions provided data for all 4 years (2015-2018); the analysis will focus mainly on those to improve comparability over time. The majority of the analysis is aggregated, using different categories, clusters and groups. The geographic regions used for analysing CompStats data are:

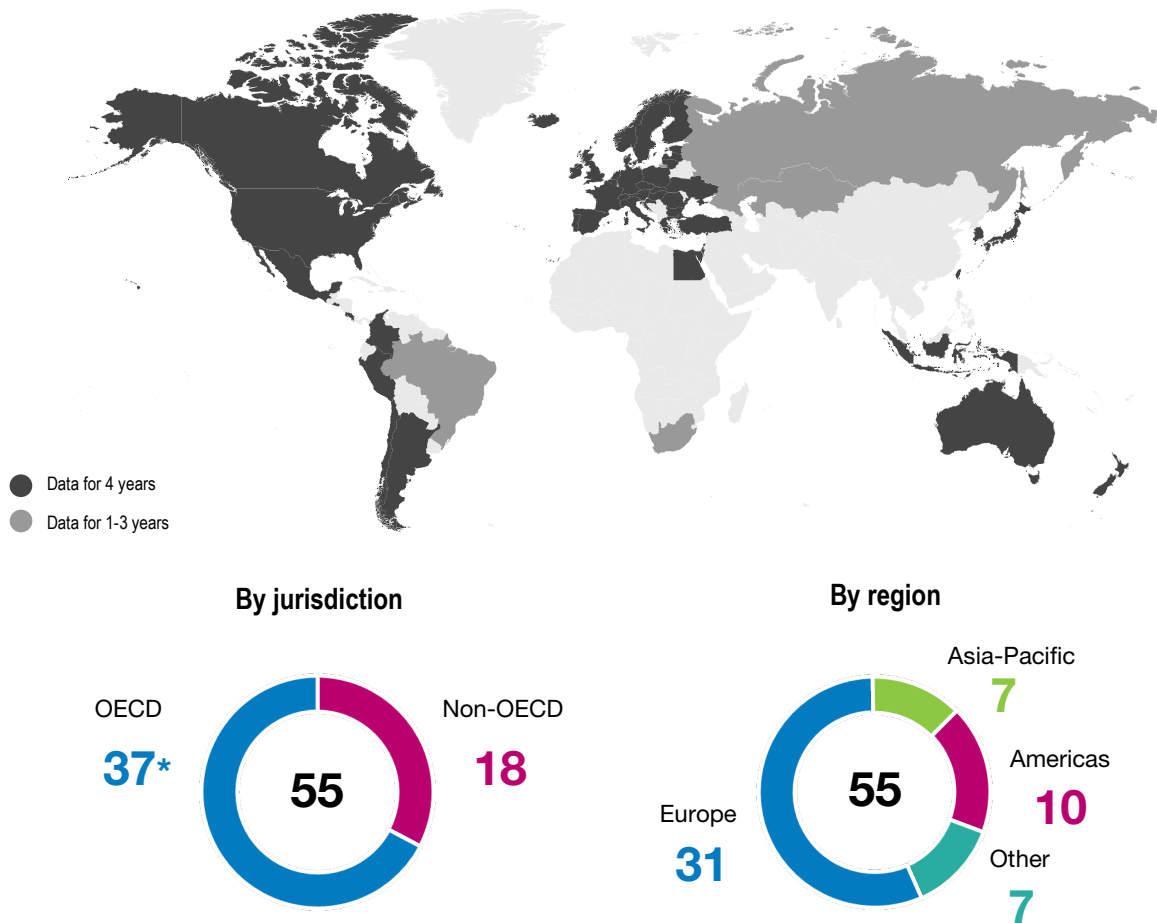
- Americas: Argentina, Canada, Chile, Colombia, Costa Rica, El Salvador, Mexico, Peru, United States
- Asia-Pacific: Australia, Brazil, Chinese Taipei, India, Indonesia, Japan, Korea, New Zealand
- Europe: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Romania, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom
- Other: Egypt, Israel, Kazakhstan, Russian Federation, South Africa, Turkey, Ukraine

Jurisdictions included in CompStats

The jurisdictions included in CompStats cover approximately 50% of the world's population and 55% of the world's GDP.

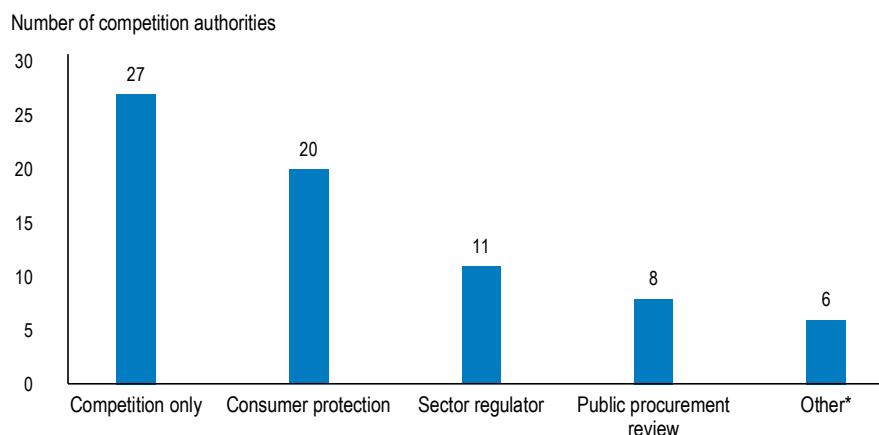
¹ See also Kovacic, W.E. and M. Mariniello (2016).

Figure 1.1. Coverage of the CompStats database



* Includes the 36 OECD countries and the European Union.
 Source: OECD CompStats Database which covers 55 jurisdictions.

The competition authorities included in the CompStats database differ substantially in many ways, including the authorities' main functions and responsibilities. While all authorities are in charge of competition, many have other responsibilities as part of their mandates.

Figure 1.2. Responsibilities of the competition authorities

* This may include subjects such as intellectual property, protection of SMEs, and personal-data protection.

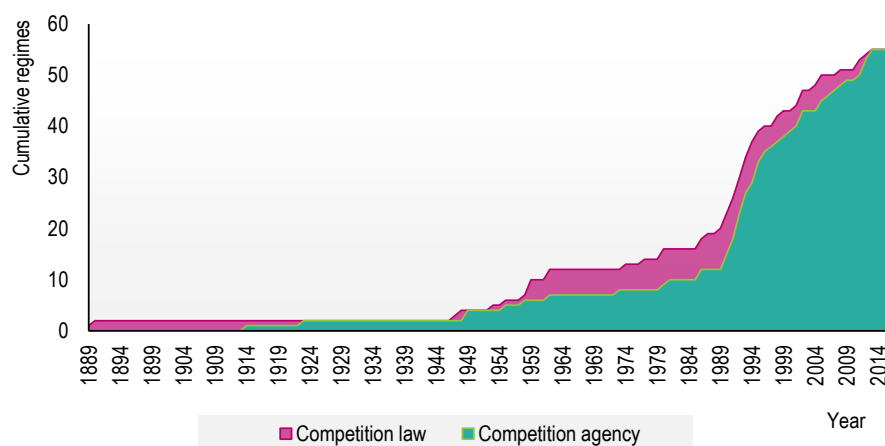
Source: OECD calculations based on the 55 jurisdictions in the CompStats database and publicly available information.

Competition law regimes

Evolution of competition law regimes

The average age of the 55 competition agencies included in the CompStats database is approaching 29 years. Although a number of jurisdictions have had a competition law regime for over 60 years, around 60% of the jurisdictions included in the CompStats database adopted a competition law only in the past 30 years and over 20% in the past 20 years. As a competition authority is not always established in the same year as the adoption of its foundational law, the percentage of competition authorities established in the past 30 years is even larger (around 75%) and 30% in the last 20 years.

The years between 1990 and 2000 saw the largest wave of new competition law regimes of those jurisdictions included in the CompStats database, with 23 jurisdictions adopting their first competition law and 27 establishing their competition authority during this period (see also Figure 1.3).

Figure 1.3. Evolution of competition law regimes, 1889-2014

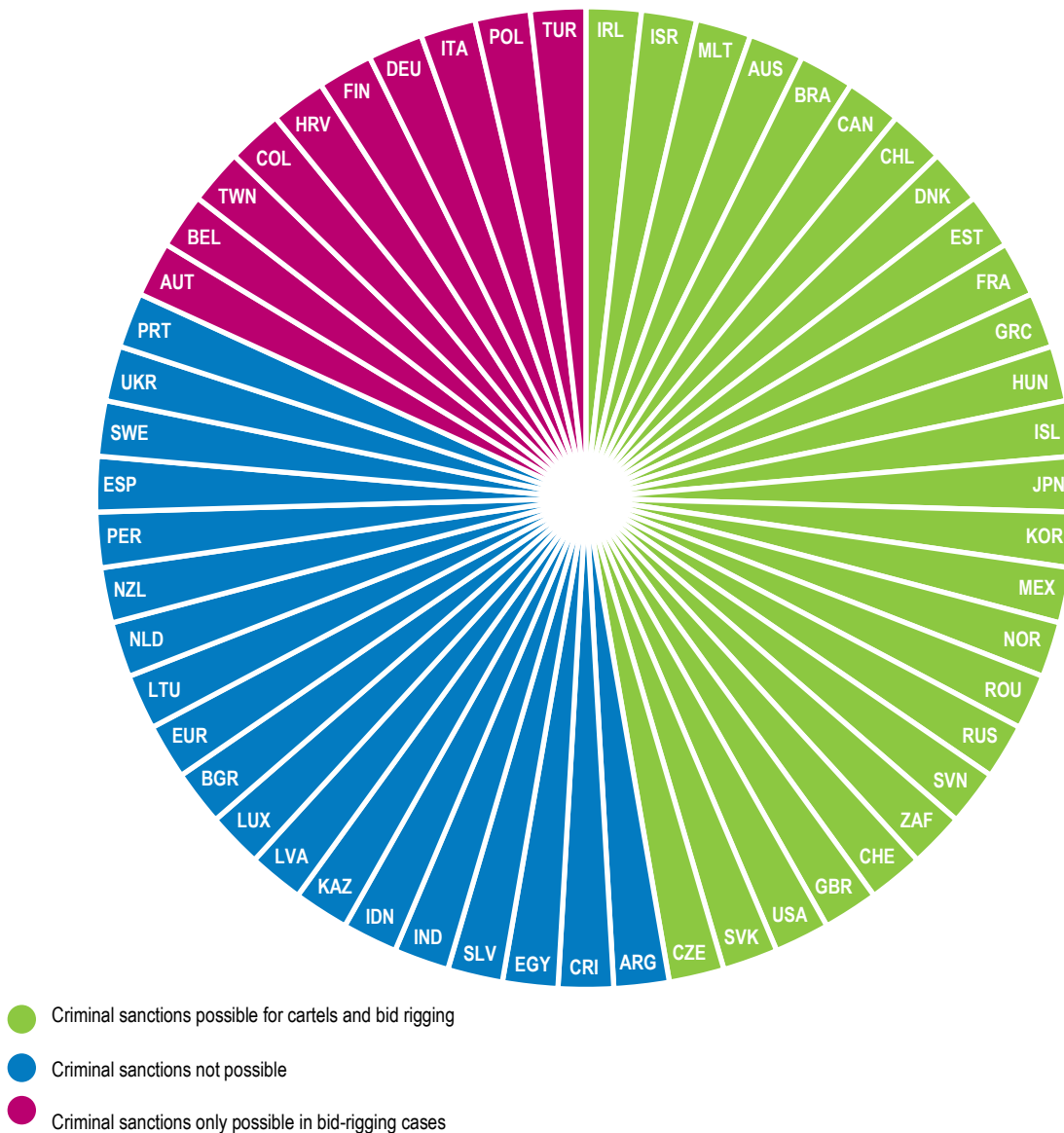
Source: OECD calculations based on the 55 jurisdictions in the CompStats database and publicly available information.

Criminal enforcement

The jurisdictions included in the CompStats database have different legal regimes for enforcement, which may or may not give the power to impose criminal sanctions on individuals.

Figure 1.4 provides an overview of the jurisdictions included in CompStats that allow for criminal sanctions against individuals. In approximately one-third of the jurisdictions (19), criminal sanctions are unavailable, while approximately one-fifth can only impose criminal sanctions when the offense concerns bid rigging (10). In almost half of the jurisdictions (26), imposing criminal sanctions on individuals is possible.

Figure 1.4. Possibility of imposing criminal sanctions on individuals



Source: OECD analysis based on the CompStats database and publicly available information.

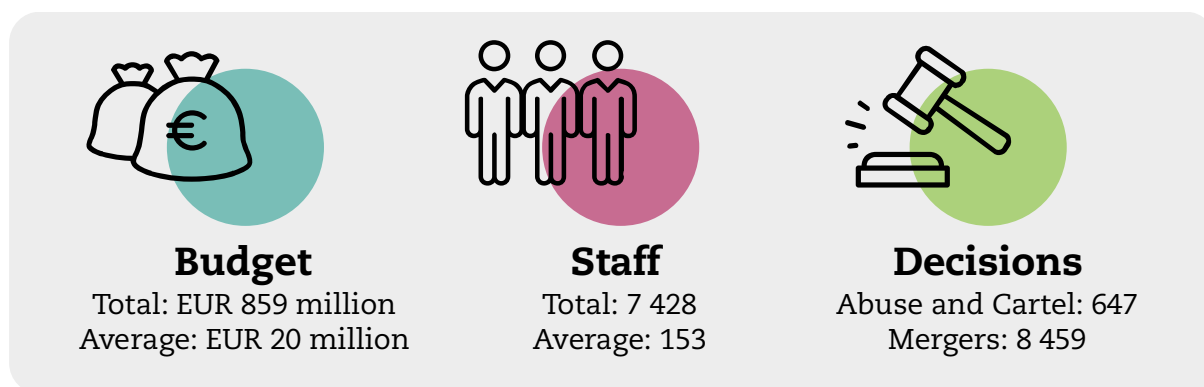
Resources

The effectiveness of competition law is largely determined by the ability of the state to enforce it. This, in turn, depends to a large extent on whether competition authorities are equipped with sufficient and adequate resources.²

The effectiveness of the competition authorities included in the CompStats database is also dependent on their available resources.

In 2018, the competition authorities included in the CompStats database employed over 7 400 staff working on competition, an average of 153 in each competition authority.³ The average budget of a competition authority in 2018 was approximately EUR 20 million.⁴

Figure 1.5. Selected data of CompStats competition agencies, 2018



Note: Data based on the 55 jurisdictions in the CompStats database, except for the budget data which includes only the 43 authorities that provided budget data for four years for solely competition activities.

Source: OECD CompStats Database.

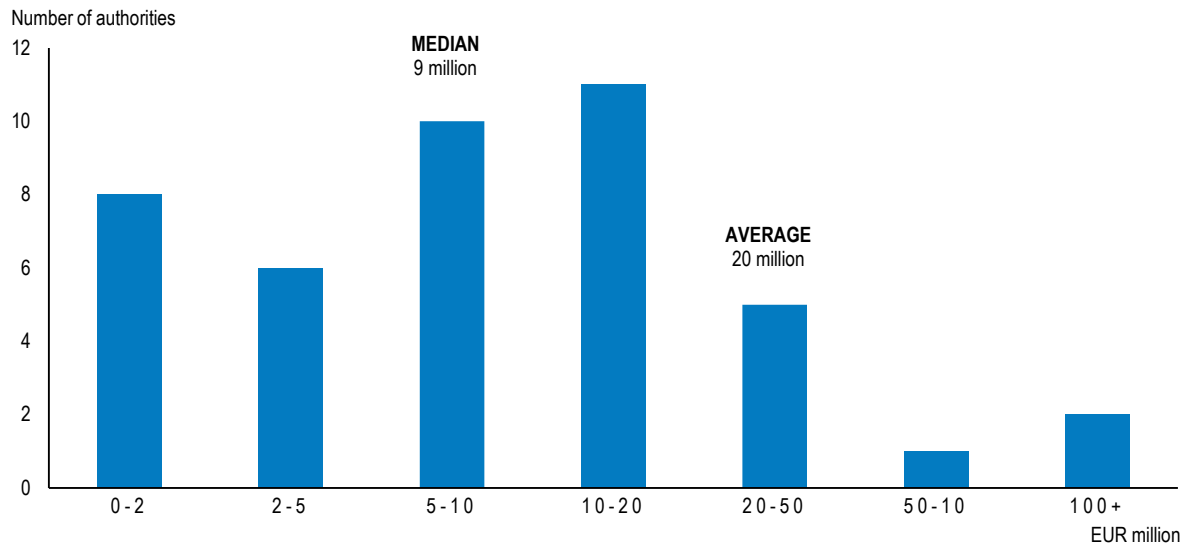
Budget

Although the average budget of a competition authority in the CompStats database was EUR 20 million, this was somewhat skewed by a number of larger authorities, as seen in Figure 1.6. The median value of all budgets is EUR 9 million.

² For instance, the recent EU ECN+ Directive to make national competition authorities more effective enforcers states that: “In order to ensure a truly common competition enforcement area in the Union [...] there is a need to put in place fundamental guarantees of independence, adequate financial, human, technical and technological resources.” See Directive (EU) 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, Recital 8. See also Recital 24 and Article 5.

³ For 2018, 48 authorities provided data on the number of employees working on competition.

⁴ For 2018, 42 authorities provided data on the budget dedicated to solely competition activities.

Figure 1.6. Distribution of the competition agencies' budgets

Note: Based upon the 43 authorities in the CompStats database that provided budget data for four years for solely competition activities.
Source: OECD CompStats Database.

2%

Average budget
increase between
2015-2018

The average budget of competition authorities increased by approximately 2% for the period 2015 and 2018. When exchange-rate effects are eliminated, however, budgets increased only by approximately 1%.⁵ After adjusting for inflation over the same period (approximately 6.7% for OECD countries⁶), the overall budget available to competition authorities actually decreased by approximately 5%.

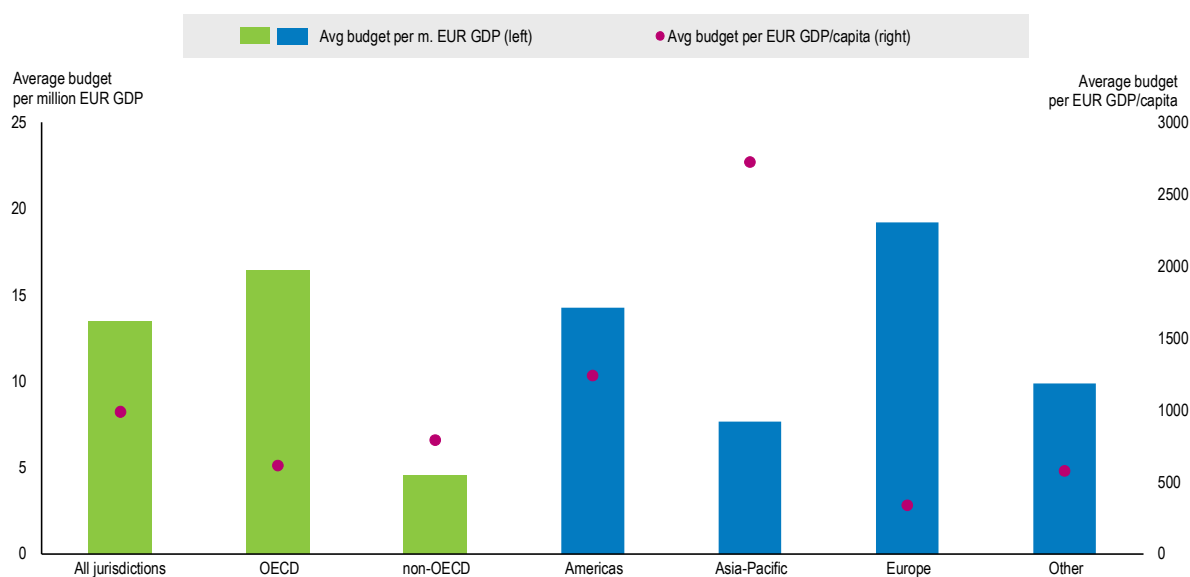
When accounting for the size of the economy, the average budget of a competition agency in 2018 was EUR 13.5 for every million euros of GDP in 2018. This average has actually decreased by almost 7% since 2015 (from EUR 14.4 for every million euros GDP), which indicates that on average GDP is increasing more rapidly than the budgets for competition authorities in these jurisdictions.

Budgets of competition authorities in OECD countries are on average approximately 3.5 times higher than in non-OECD jurisdictions, both in absolute terms (3.8 times) and as a percentage of GDP (3.6 times). When comparing budgets as a percentage of GDP per capita, however, non-OECD jurisdictions actually spent more on competition authorities than OECD countries by a factor of 0.8. There are also regional differences. While budgets of competition authorities in Asia-Pacific are smaller compared to those in the Americas or Europe, their relative budgets – as percentage of GDP – are more than twice as large as those in the Americas and more than six times those in Europe.

⁵ To allow for aggregation and analysis, budgets for all jurisdictions have been re-calculated into euros, using the relevant exchange rates of the last day of the relevant year. As budgets in countries are established in local currencies, changes in exchange rates can have a significant effect on budget amounts in euros.

⁶ Data obtained from the OECD Statistical Database <https://stats.oecd.org/>.

Figure 1.7. Average budget by jurisdiction and by region, 2018



Notes: Based upon the 43 authorities that provided budgetary data for four years for solely competition activities adjusted for the size of the economy (GDP and GDP/capita).

Source: OECD CompStats Database.

Finally, the comparison of competition authorities' budgets with fines imposed can offer interesting insights. While competition agencies should not have the objective of "earning back" their budgets, and most of the effects of competition authorities' actions cannot be directly quantified, it is useful for governments to be aware of the public value of competition authorities' activities, namely that they are a "good business case". When public resources are scarce, their allocation often highly competitive, and operational budgets for competition authorities often substantial (as investigation procedures are costly), competition authorities are often at risk of being underfunded. Governments might be more prone to allocate resources to competition authorities if they provide a return not only in terms of enforcement and deterrence, but also monetary gain and compensation from fines, which are normally enter the public purse.

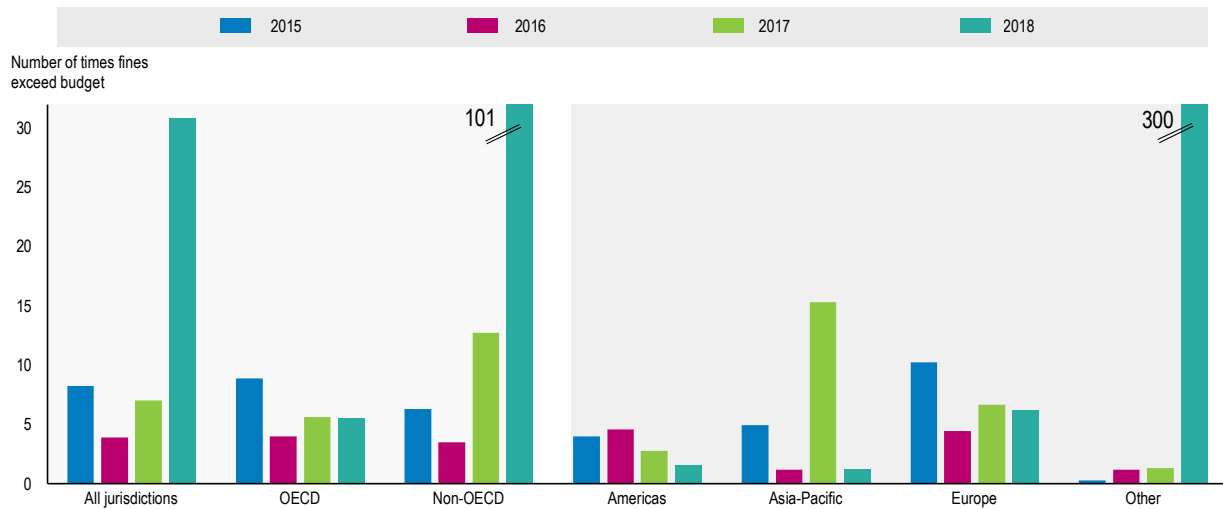
6 to 1

Average fine-to-budget ratio in cartel and abuse cases

Figure 1.8 shows the fine-to-budget ratio, which is the number of times that fines imposed on cartels exceed a competition authority's budget. On average, between 2015 and 2018, imposed fines for cartel and abuse of dominance infringements were 6 times higher than the average budget of all agencies.⁷

⁷ This average excludes the fine-to-budget ratio of approximately 900 in 2018 for one non-OECD jurisdiction.

Figure 1.8. Fine-to-budget ratio in cartel and abuse cases by jurisdiction and by region, 2015-2018



Note: Based upon the 42 authorities that provided budgetary data for four years for solely competition activities (excluding one jurisdiction with a fine-to-budget ratio of close to 900 in 2018).

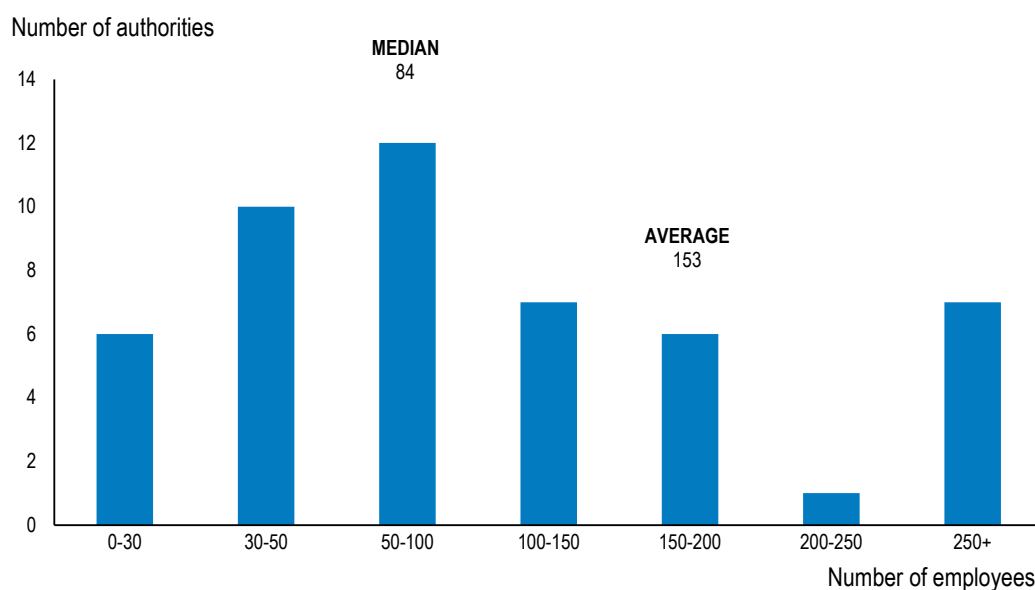
Source: OECD CompStats Database.

For OECD countries, the fine-to-budget ratio decreased from 9 to 1 in 2015 to 4 to 1 in 2016, but in 2017 and 2018 fines were 6 times bigger than budgets. In non-OECD jurisdictions, figures show a sharp increase in 2017 and a sharp peak in 2018 when fines imposed on cartels were 100 times more than budgets. This was the result of high fines imposed in 2018 in a jurisdiction with a small budget. Differences between regions exist, with Europe showing on average the highest fine-to-budget ratio.

Staff

Similarly to competition authorities' average budgets, the average number of staff per competition authority is significantly affected by a few large authorities. The median value of staff of a competition agency is 84 people. The differences between the number of staff in competition authorities are displayed in Figure 1.9.

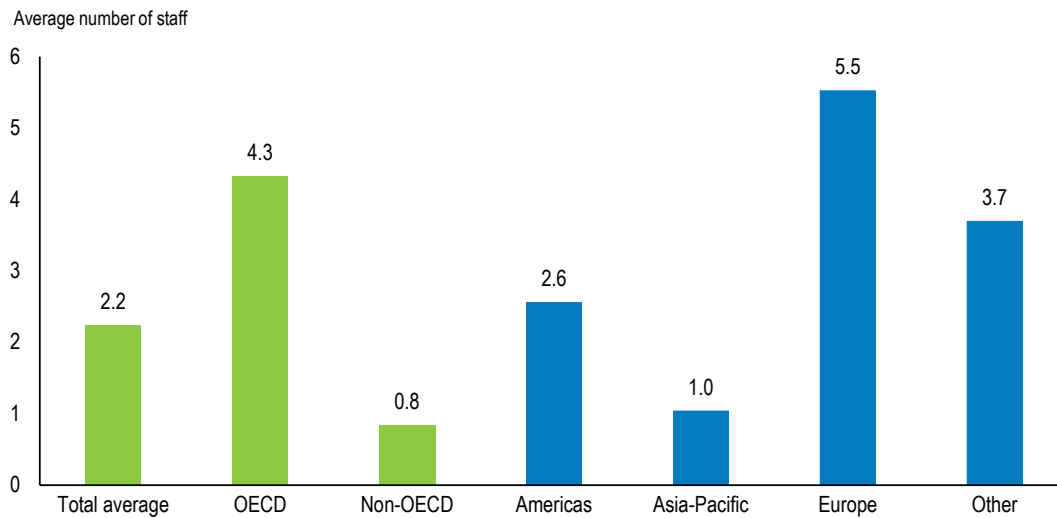
Figure 1.9. Staff numbers in competition agencies, 2018



Note: Based on the 49 jurisdictions that provided data for all four years
 Source: OECD CompStats Database.

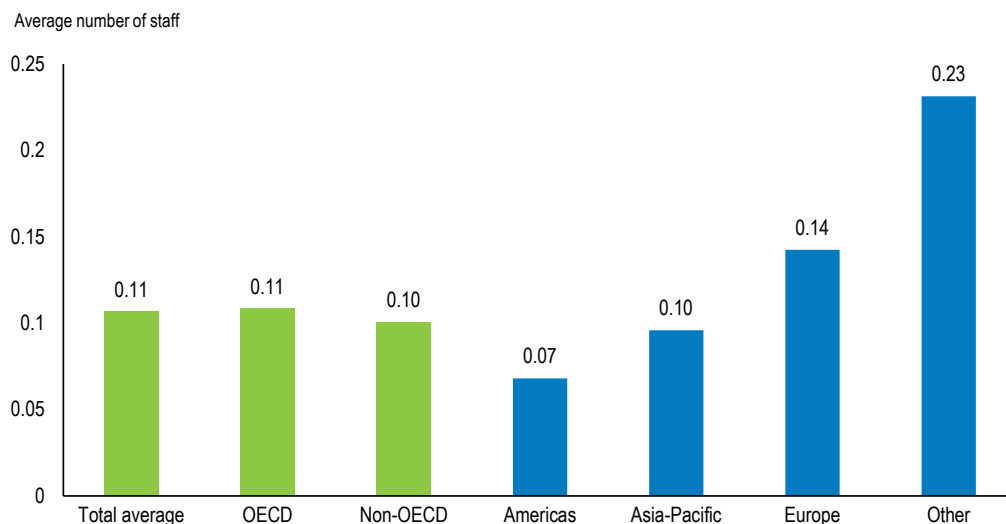
The average number of competition staff increased over 8.5% between 2015 and 2018. While the growth in average budgets of competition authorities in OECD countries (2.1% increase) and non-OECD jurisdictions (2.6% increase) was comparable, the increase between 2015 and 2018 in number of staff displayed a starker difference: an almost 6% increase in OECD countries and almost 23% increase in non-OECD jurisdictions.

The average competition authority employs 2.2 persons working on competition per 1 million inhabitants. This average is substantially higher in OECD countries than in non-OECD jurisdictions: 4.3 persons per 1 million inhabitants against 0.8 persons per 1 million inhabitants. The differences between regions are significant (see Figure 1.10), but in all regions the numbers have been stable over time. Europe has the highest number of staff per 1 million inhabitants (5.5), while Asia-Pacific has the lowest (1).

Figure 1.10. Competition staff per 1 million inhabitants by jurisdiction and by region, 2018

Note: Based on the 49 jurisdictions that provided data for all four years.
Source: OECD CompStats Database.

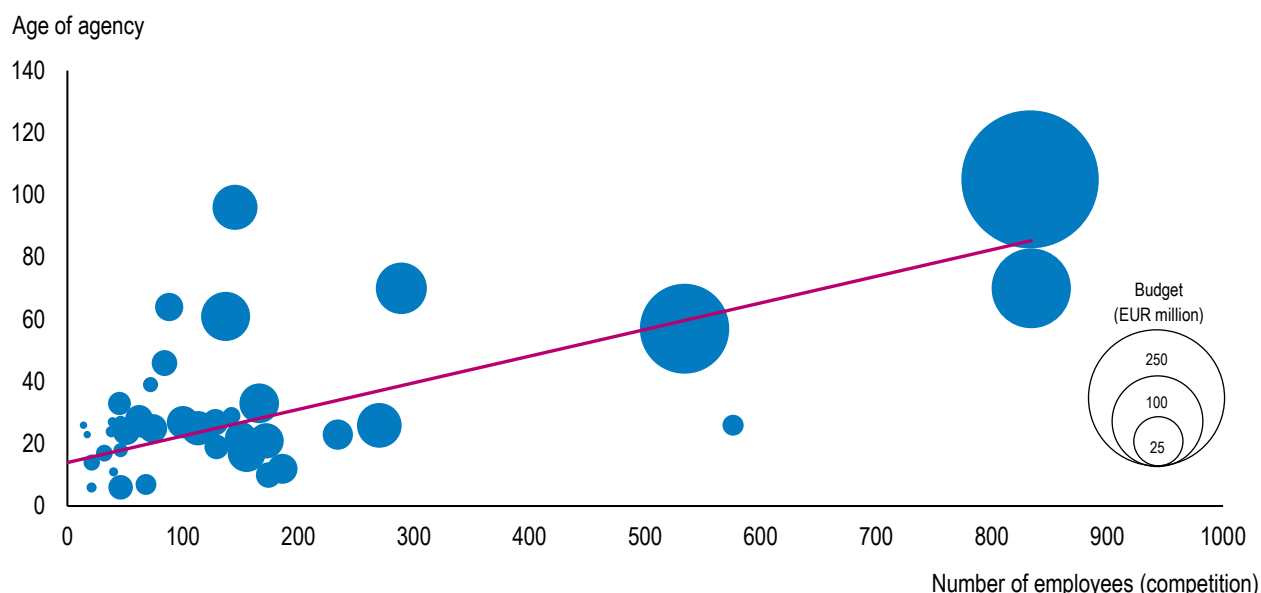
When comparing the number of staff working on competition against GDP, the differences between OECD and non-OECD are less pronounced. The global average has competition authorities employing approximately 1 person per EUR 100 million of GDP, with significant differences by geographical region: Europe employs on average twice as many people per EUR 1 billion of GDP as the Americas, while Asia-Pacific sits between the two. Jurisdictions that do not fit the three geographic regions have a significant higher number of people employed when compared to GDP.

Figure 1.11. Competition staff per EUR 1 billion of GDP by jurisdiction and by region, 2018

Note: Based on the 49 jurisdictions that provided data for all four years.
Source: OECD CompStats Database.

Over the next few years, it is possible that the average number of staff (and so budgets) will increase as many of the more recently founded agencies mature. In general, data show that the older the competition agency, the more staff are employed to work on competition and the larger the budget.

Figure 1.12. Comparison of the number of employees, age of authority and budget, 2018



Note: Based on the 43 authorities that provided competition-related budget data for all four years.
Source: OECD CompStats Database.

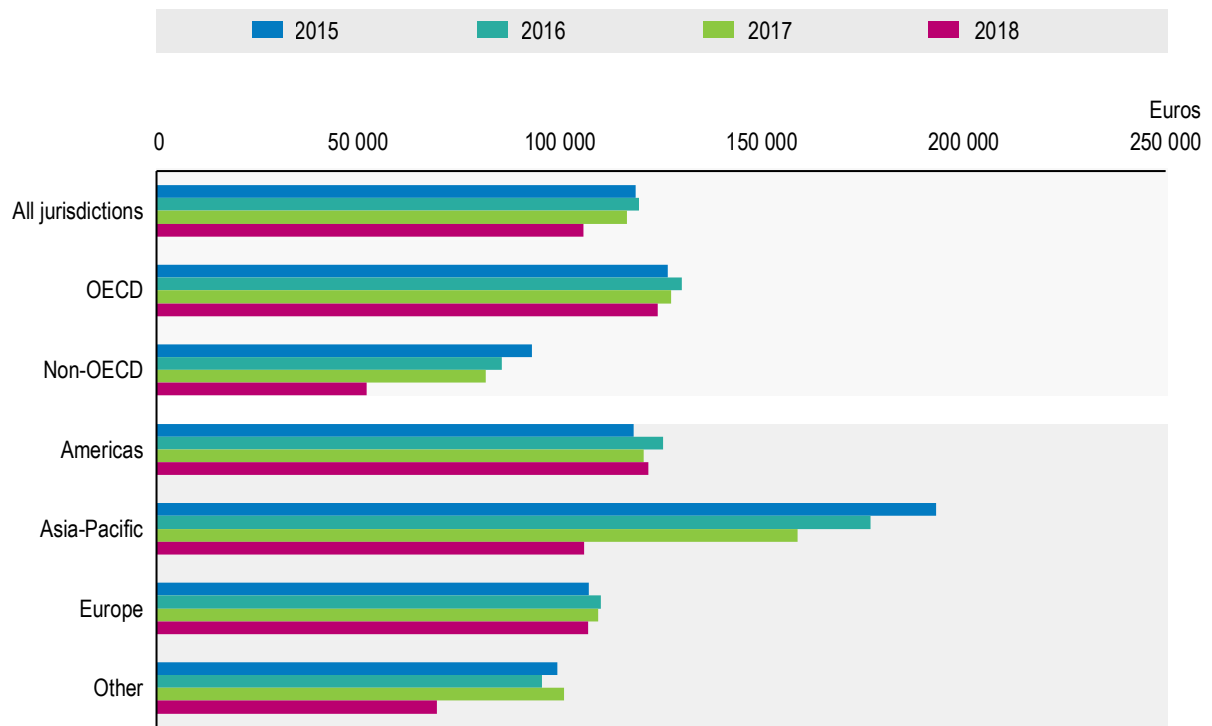
Budget versus staff

Finally, comparing staff and budget levels between competition authorities provides interesting insights.

Figure 1.13 shows that budget per competition staff member in 2018 is on average higher in OECD countries (EUR 124 000) than in non-OECD jurisdictions (EUR 52 000). In addition, budget per staff member in non-OECD jurisdictions decreased substantially in 2018. This can be explained by the previously-identified trend by which staff numbers in non-OECD jurisdictions have been increasing faster than competition authorities' budgets.

Prior to 2018, the Asia-Pacific region made on average a significantly larger budget available per staff member, but this was largely driven by two authorities, one of which has significantly decreased its competition budget since 2018 and the other has significantly increased its competition staff count without significantly increasing budget.

Figure 1.13. Average budget per competition staff member by jurisdiction and by region, 2015-2018



Note: Based on the 43 authorities that provided competition-related budget data for all four years.
Source: OECD CompStats Database.

2 Enforcement Trends

To better understand the status of and developments within competition law and policy at a global level, it is instrumental to look at competition enforcement trends over a number of years. The sample of jurisdictions covered by CompStats over four years, together with the ICStats data, reveal a variety of trends and developments related to the enforcement of competition law and policy around the globe. This section discusses some of these trends and developments, using the three key areas in competition law: cartels and other anti-competitive agreements, abuse of dominance or unilateral conduct and merger control.

Cartels and other anticompetitive agreements

Introduction

Enforcement

Worldwide, competition authorities dedicate a substantial part of their resources to detection, investigation and prosecution of collusive practices. Cartels and anticompetitive agreements are a common type of illegal conduct, which can cause significant economic harm (OECD, 2002). However, as collusive agreements are typically established in secret they are hard to detect and prosecute. According to Connor (2010): “cartel studies generally conclude that only about 10% to 30% of all conspiracies are discovered and punished.”

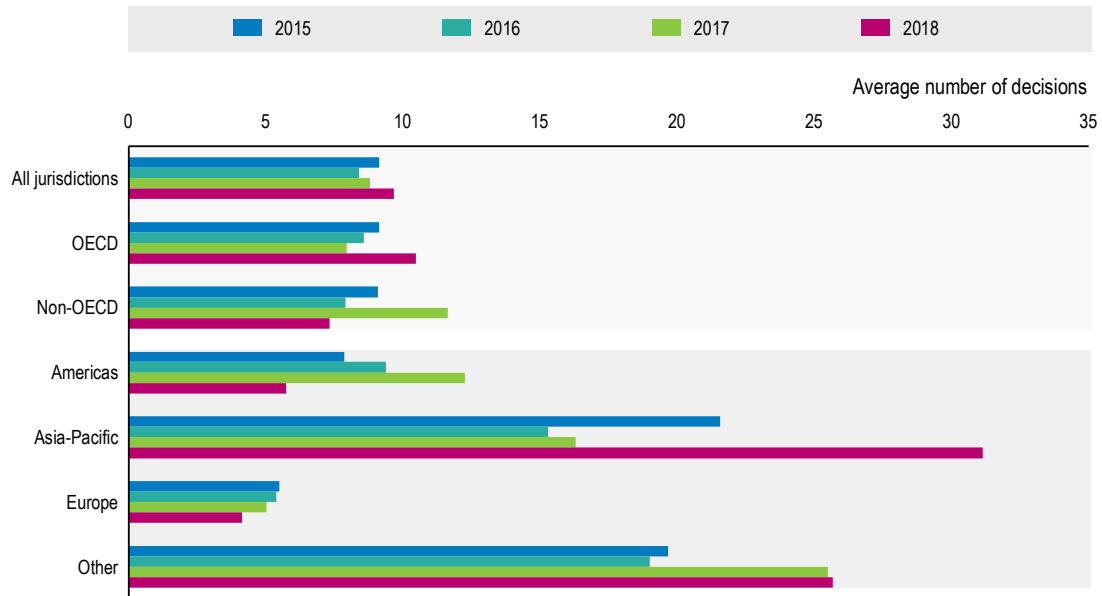
The average number of cartel decisions for each competition authority over the past four years has been stable overall for all sampled jurisdictions,⁸ even if this global trend has been accompanied by regional differences.

465

Total number of
cartel decisions in
2018

⁸ Cartel agreements and all other anti-competitive horizontal agreements (following the CompStats questionnaire).

Figure 2.1. Average number of cartel decisions per agency by jurisdiction and by region, 2015-2018



Note: Based on the 49 jurisdictions that provided data for all four years.

Source: OECD CompStats Database.

In the Asia-Pacific region, cartel decisions almost doubled in 2018 compared to 2016 and 2017, reaching an average of more than 30 each year. This high number in Asia-Pacific is driven by one jurisdiction, which has instigated action against a large number of cartels and anticompetitive horizontal agreements, particularly in 2018. Without this outlier, the annual average of cartel decisions would be around 10. In the Americas, from an average of around 10 in the period 2015-2017, the number of decisions dropped to 6 in 2018, reaching the same level as Europe. The average number of cartel decisions in Europe has been stable at around an average five decisions a year during the period 2015-2017, with a small drop in 2018 (four decisions).⁹ The jurisdictions that do not fit the three geographic regions (grouped under “Other”) show a large and increasing number of cartel decisions each year.

Although the number of decisions can be determined by a variety of factors and cyclical elements, the overall stable trend at OECD level – with a slight increase in 2018 – signals the presence of a constant enforcement effort from competition agencies in the fight against cartels.

Hard core cartels

Among collusive practices, hard core cartels such as price fixing and market-sharing agreements are considered the most egregious violations of competition law as they pose serious threats to both

⁹ This includes the whole European continent, and not exclusively the EU.

economies and consumers.¹⁰ Hard core cartels include also bid-rigging conspiracies, which occur when bidders agree among themselves to eliminate competition in the tendering process.¹¹

Detection, investigation and prosecution of such cartels is a priority policy objective for the OECD, as well as an enforcement priority for competition authorities both in OECD countries and beyond. Data on competition agencies' activities can help assess different aspects of cartel activity and global antitrust enforcement throughout the years.

Box 1. OECD Recommendation concerning Effective Action against Hard Core Cartels

On 2 July 2019, the Council adopted the Recommendation concerning Effective Action against Hard Core Cartels as proposed by the Competition Committee. It replaces the 1998 Recommendation and reflects the most salient developments in cartel enforcement of the past 20 years, including amnesty and leniency programmes, proactive investigative tools and powers, settlements, effective fines, and private enforcement actions.

The 2019 Recommendation resulted from a survey conducted by the OECD Competition Committee in 2017 on developments and trends in the fight against hard core cartels, with a focus on the implementation and relevance of the 1998 Recommendation and new developments since its adoption. While the survey's results, compiled and analysed in the report *Review of the 1998 OECD Recommendation concerning Effective Action against Hard Core Cartels*, showed that the fight against hard core cartels had been an enforcement priority for OECD members and participants, it also highlighted the need for an update to the 1998 Recommendation.

Sources: OECD (1998), OECD (2019a) and OECD (2019b).

Anti-cartel enforcement tools

Competition authorities around the world are equipped with a wide variety of powers that allow them to detect and prosecute hard core cartels, according to each one's specific legal system. In particular, the past 20 years has seen substantial developments in enforcement aimed at better tackling cartel activity using different instruments. Two examples of this are the introduction of leniency programmes and the use of dawn raids.

Leniency programmes

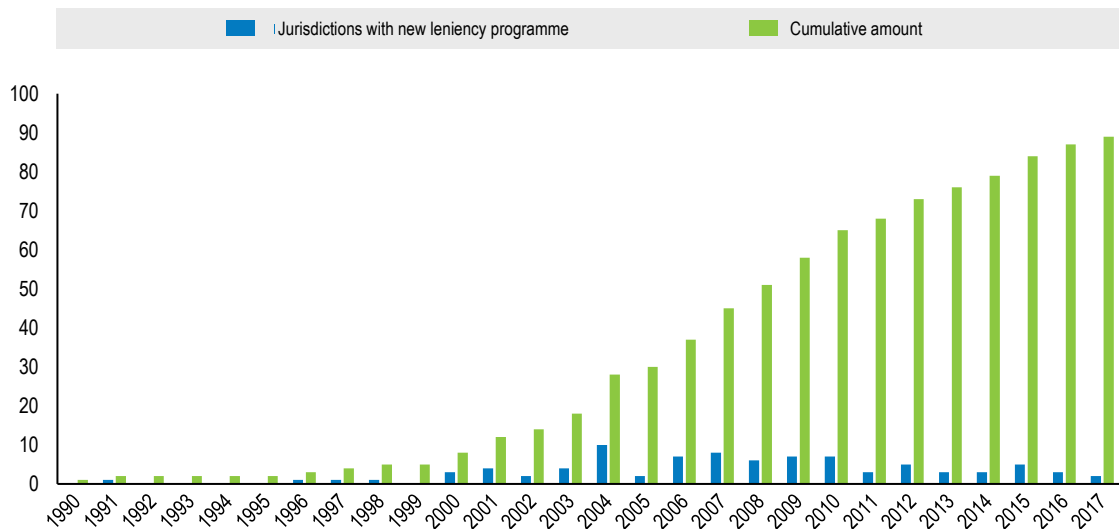
The introduction of leniency programmes in numerous jurisdictions had a major impact on detection and prosecution of illegal agreements, as it has allowed competition authorities to complement their ex officio efforts with a powerful reactive detection tool. Formally, leniency programmes refer to "mechanisms offering the opportunity to cartel members to self-report their conduct, provide information and evidence and co-operate with an investigation, in exchange for immunity from, or a reduction in, sanctions, and, in some jurisdictions, immunity from proceedings/prosecution" (OECD, 2019).

¹⁰ *OECD Recommendation concerning Effective Action against Hard Core Cartels*, [OECD/LEGAL/0294](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0294), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0294>.

¹¹ Bid rigging in public procurement presents specificities that merit separate attention, as it can have a big impact on public expenditure with significant harm to public services.

As shown in Figure 2.2, since 2000, the adoption of leniency programmes has grown rapidly. While fewer than 10 agencies had a leniency programme in place in 2000, more than 60 did a decade later. The rapid growth in adoption and use of leniency continued in the following decade, reaching 89 jurisdictions by 2017.

Figure 2.2. Leniency programmes by year of introduction, 1990-2017

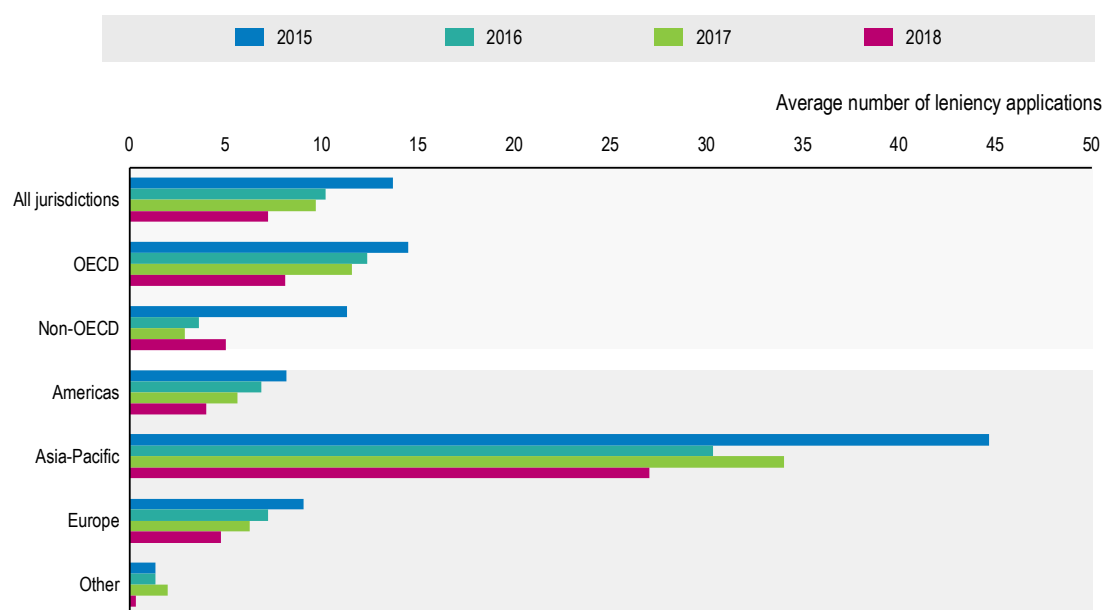


Note: Calculations are based on the 89 leniency programmes in place in 2017.
Source: OECD (2019).

As cartels are typically arranged in secret, evidence of illegal agreements and direct communications between cartel members can be hard to uncover. Leniency programmes are intended to provide an additional instrument to detect and prosecute cartels, but not to replace proactive detection tools widely used by competition agencies. According to the *Review of the 1998 OECD Recommendation concerning Effective Action against Hard Core Cartels*, all OECD members have a leniency programme in place and consider it an extremely effective tool for detecting and punishing cartels (OECD, 2019).

The average number of leniency applications to each competition authority has been decreasing over the past 4 years, going from an average of 14 in 2015 to 7 in 2018. Trends between OECD and non-OECD jurisdictions differ in terms of magnitude, while still decreasing in both samples. Looking specifically at the OECD countries, the number has decreased slowly but steadily over the years, while in non-OECD jurisdictions the average number has dropped from 11 in 2015 to around 5. Between 2015 and 2018, both groups recorded substantial decreases, around 56% in non-OECD jurisdictions and around 44% in OECD countries.

Figure 2.3. Average number of leniency applications by jurisdiction and by region, 2015-2018



Note: Based on the 49 jurisdictions that provided data for all four years.

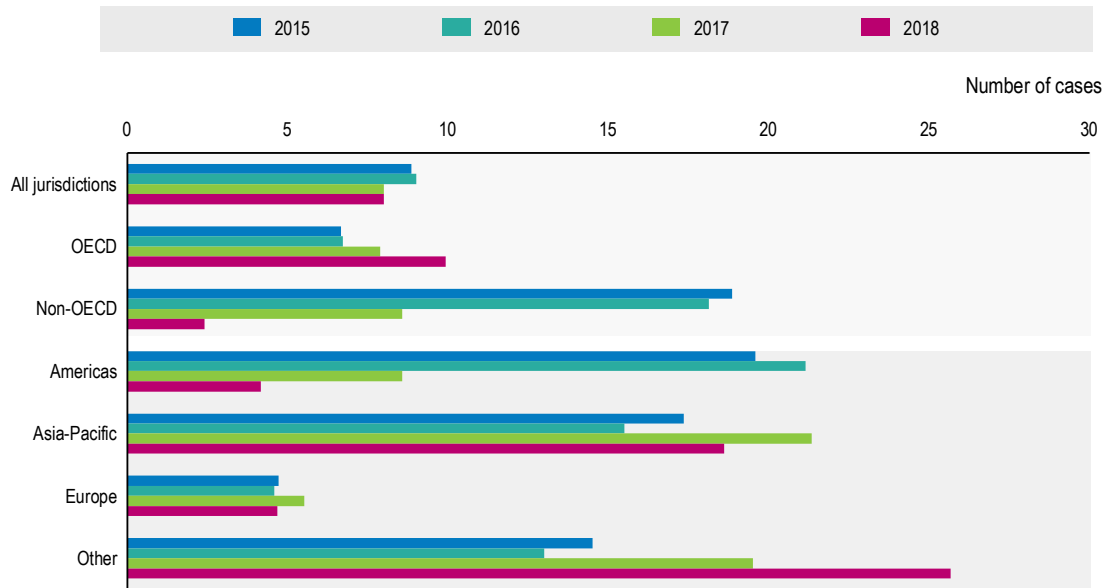
Source: OECD CompStats Database.

Considering regional trends, the number of leniency applications in Asia-Pacific is on average higher than the average for the full sample, with between 27 and 45 applications a year for each agency over the 2015-2018 period. In particular, in this region the number of applications dropped significantly between 2015 and 2016 (32%), and then remained stable over the past three years. In the Americas and Europe, the trend shows a decrease in the number of leniency applications. The average number of leniency applications in the two regions is lower than the OECD average and reached its lowest level in 2018 with an average of four leniency applications for each agency.

Dawn raids

A full set of powers is fundamental for effective cartel enforcement and competition authorities commonly use a combination of different information collection powers. Among these, the power to conduct dawn raids is considered particularly useful (OECD, 2019). According to the OECD, with the exception of leniency, dawn raids are the most effective tool to obtain both direct evidence and supporting circumstantial evidence.

Figure 2.4. Average number of cartel cases in which dawn raids were used by jurisdiction and by region, 2015-2018



Note: Based on the 44 jurisdictions that provided data on dawn raids for cartel cases for all four years (excluding jurisdictions that did not split dawn raids into a type of investigation, i.e. cartels or abuse of dominance).

Source: OECD CompStats Database.

In the overall sample, the average number of cases in which dawn raids were used was stable for the years 2015-2018. Trends differ between OECD and non-OECD jurisdictions, however. In OECD countries, the number increased by almost 50% from 2015 to 2018, while decreasing by almost 90% in non-OECD jurisdictions, reaching an average of 10 for OECD members and 2.4 for non-OECD jurisdictions in 2018.

The number of cases using dawn raids in Asia-Pacific was on average higher than the full-sample average, over the same period. While in Asia-Pacific in 2018, the number of cases using dawn raids increased slightly compared to 2015, it dropped significantly in the Americas from 21 in 2016 to 4 in 2018. In Europe, the number was steady throughout the years reviewed.

Dawn raids in abuse of dominance cases will be discussed in the next chapter, but overall on average between 85-90% of the dawn raids in a jurisdiction are being conducted in cartel cases.

International hard core cartels

Cartel agreements are considered to be international when at least two of the companies taking part in the infringement are headquartered in different jurisdictions, regardless of the geographic coverage of the cartel activities.

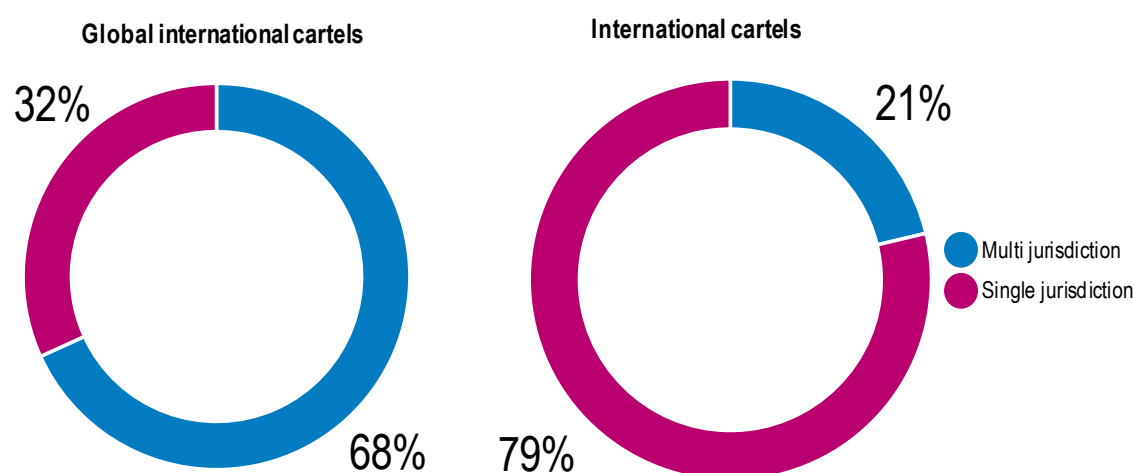
The data on international cartels collected throughout the period 1989-2018 allows specific characteristics of these cartels to be identified. These include their composition, duration, and the regions and industries in which they were active. Detailed information on sanctions imposed by different jurisdictions provides an additional opportunity to analyse enforcement levels.

Cartel investigations

Cartel investigations are usually long processes carried out by one competition authority, alone or in cooperation with others, or by multiple competition authorities, if the cartel affects different jurisdictions. When addressing trends and figures on international hard core cartels, this publication uses the ICStats definition of an international cartel, namely those cartels where at least two of the participating cartel members are headquartered in different jurisdictions, regardless of the geographic coverage of the cartel activities.

The vast majority (79%) of international cartels were sanctioned in a single jurisdiction. However, this percentage falls to 32% when international cartels have a global geographical coverage.¹² Indeed, as shown in Figure 2.5, 68% of international cartels with global geographical coverage were sanctioned by multiple jurisdictions.¹³

Figure 2.5. Multi-jurisdictional international cartel cases and geographical coverage, 1989-2018



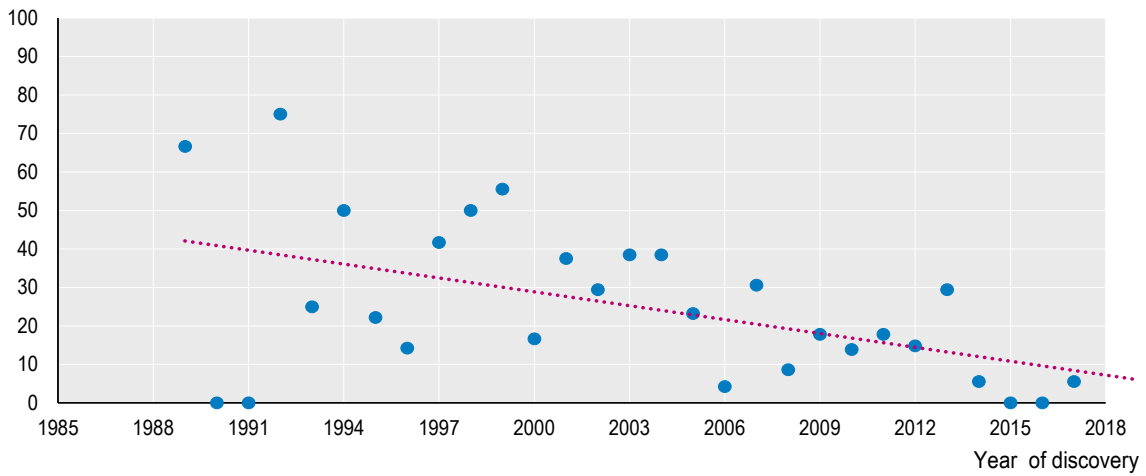
Note: In ICStats the term global is used to indicate international cartels with a geographic extension covering more than one continent.
Source: OECD ICStats Database.

As seen in Figure 2.6, the percentage of international cartels investigated by multiple jurisdictions has decreased over the past 20 years. On average, in the past decade less than 20% of all international cartels were investigated and sanctioned by multiple jurisdictions.

¹² In ICStats, the term global is used to indicate international cartels with a geographic extension covering more than one continent.

¹³ Involving two or more competition authorities. Cases investigated by the European Commission are considered as multi-jurisdictional.

Figure 2.6. Percentage of multi-jurisdictional cases, 1985-2018



Source: OECD ICStats Database.

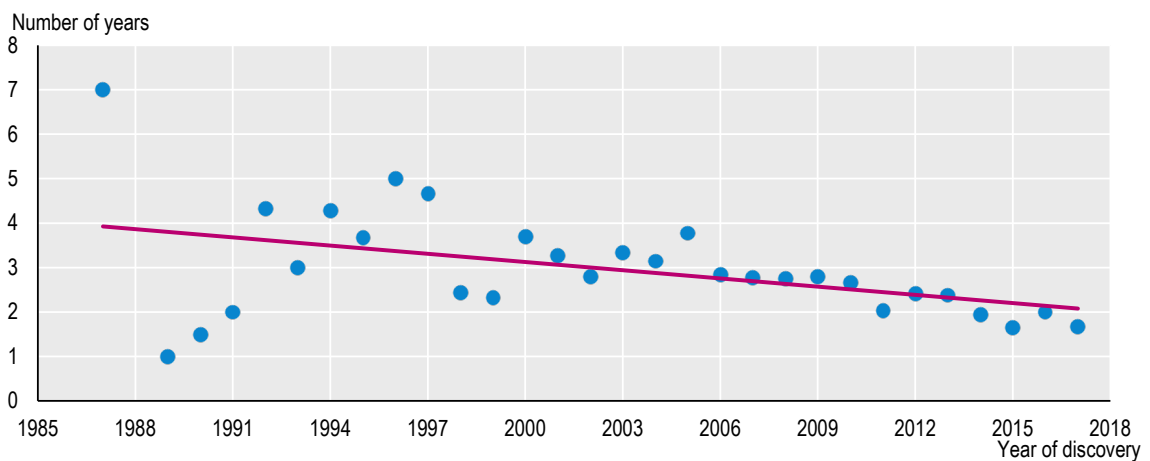
International cartel investigations can be lengthy processes, even when carried out in only one jurisdiction. Nevertheless, on average, their duration has been slowly decreasing over the past 30 years. From an average duration of more than three years in the 1990s, cartel investigations were on average around two years in the period 2010-2016, as seen in Figure 2.7.

2.8

years

Average duration of an international cartel investigation

Figure 2.7. Average duration of an international cartel investigation, 1985-2018

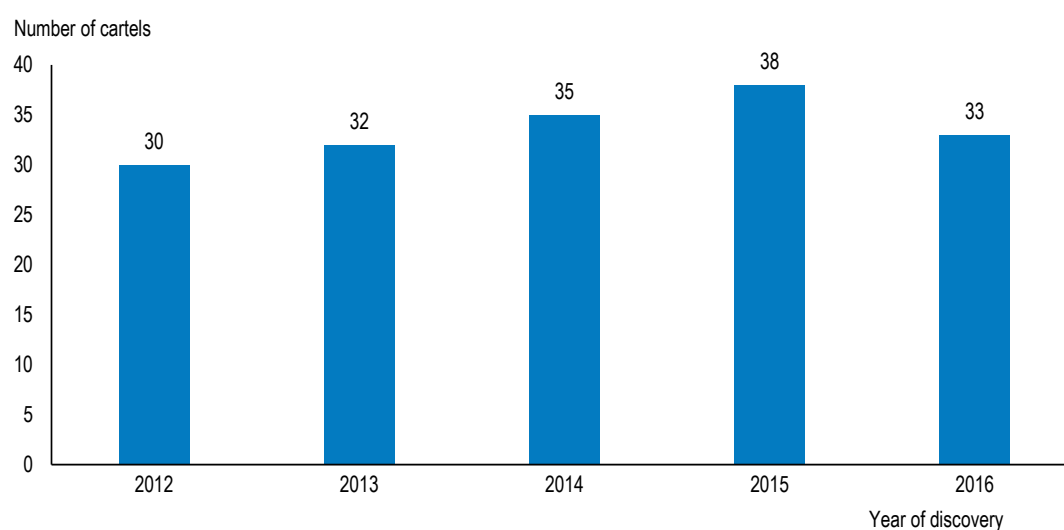


Source: OECD ICStats Database.

Although this trend can be linked to a number of factors, specific developments in antitrust enforcement could help explain the shortening of the average duration of investigations. In particular, over the past 20 years better tools and investigative powers have increasingly become available to competition authorities, including dawn raids and leniency programmes discussed above. These facilitate the evidence-gathering process, as well as increasing opportunities for international enforcement co-operation between agencies.

In addition to investigation duration, the developments in competition law enforcement that emerged over the surveyed years have also had an impact on the number of cartels discovered each year, as well as the competition authorities involved.

Figure 2.8. Number of international cartels discovered and sanctioned, 2012-2016



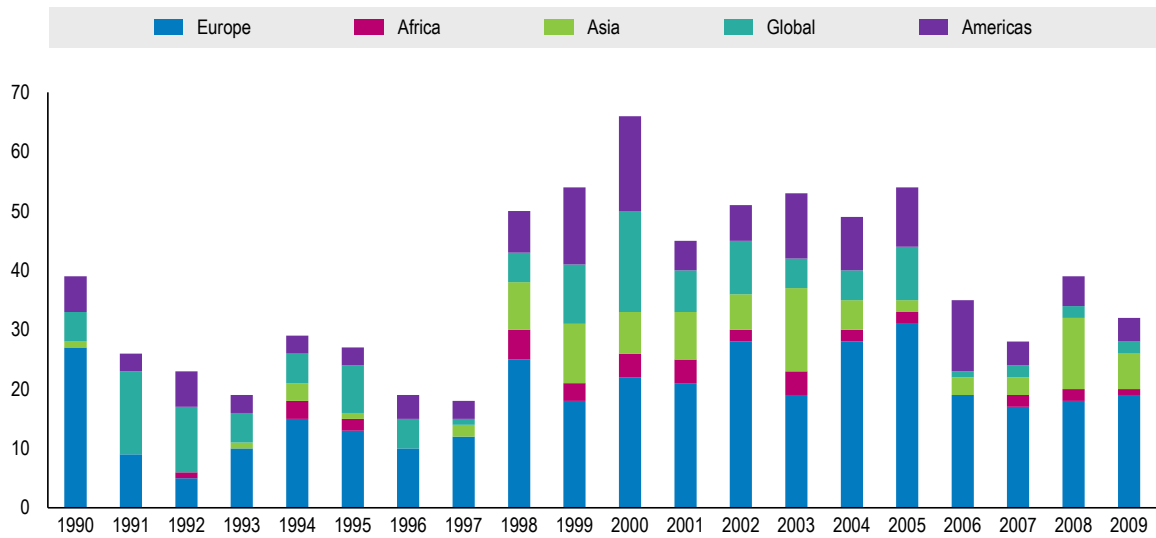
Note: Cartels discovered after 2016 are not included as cartels are included in the ICStats database only after an investigation has been officially concluded and the competition authority has published a final decision. Since the average length of a cartel investigation is approximately three years, decisions of cartels discovered after 2016 will result in decisions after 2019/20.

International cartels discovered and later sanctioned increased in number from 2012 onwards, before slightly decreasing in 2016. Cartels discovered after 2016 are not included in Figure 2.8, because international cartels are only included in the database after an investigation had been officially concluded and the competition authority had published a final decision. Since several investigations in cases discovered after 2016 will still be ongoing, the numbers would not necessarily reflect reality.

Geographical differences exist in international cartel agreements, as shown in Figure 2.9. However, it is important to underline that these numbers are highly affected by detection rates: a higher numbers of cartels might simply reflect the fact that more have been discovered and not necessarily that cartel activity has been increasing. In addition, it is not always possible to determine a start year for all cartels.

After initially increasing in the late 1990s, the number of cartel infringements initiated in Europe and in the Americas stabilised over the following decade, with small fluctuations, and then started decreasing progressively.

Figure 2.9. Number of international cartel agreements initiated by region, 1990-2009



Source: OECD ICStats Database.

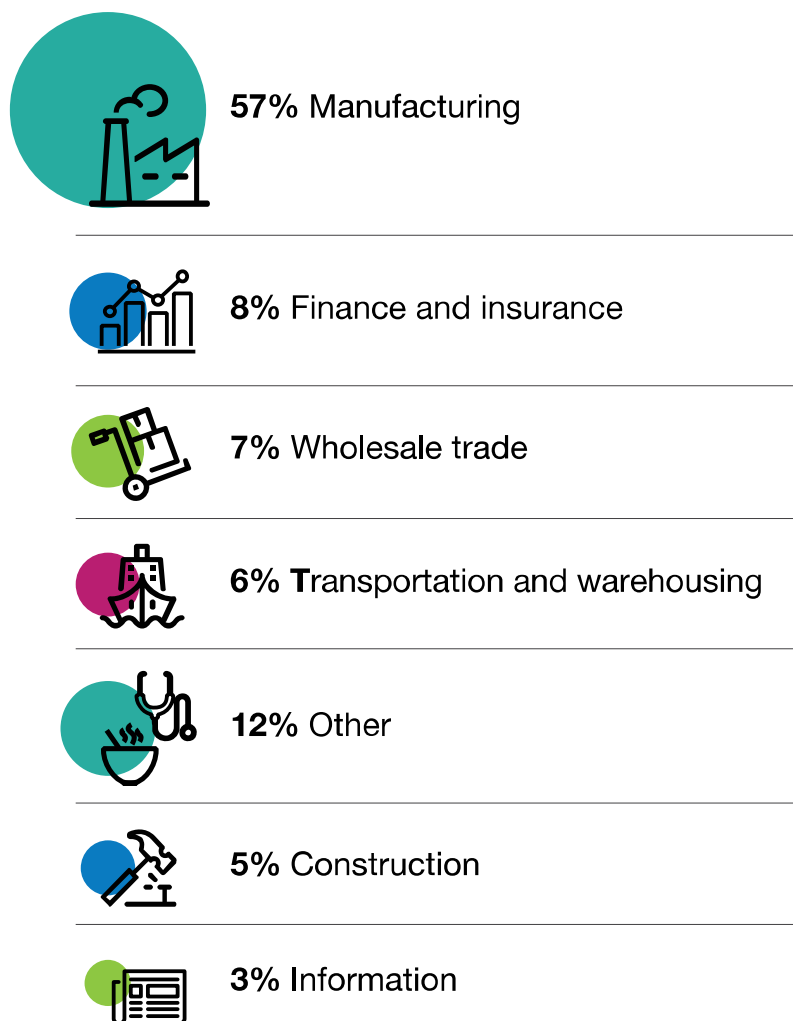
From the mid-1990s, the figure shows an increase in the number of cartels that were started in Asia and Africa,¹⁴ which becomes more substantial with the beginning of the new century. A similar pattern is true for global cartels (international cartels with a geographic extension across more than one continent), a considerable number of which were started in the early 1990s until 2006.

Although the decline in the number of detected global cartels from 2006 onwards is clearly visible in the graph, it is again important to underline how, based on ICStats data, global cartels last on average nine years before detection and might not therefore be fully included in the database if they began after 2007.¹⁵ The data also reflects the fact that certain regions have a more established tradition of antitrust enforcement than others; this impacts both detection rates and levels of effective deterrence.

¹⁴ Which could be mainly related to absence of prior enforcement.

¹⁵ This also includes the duration of the investigation.

Figure 2.10. International cartels by industry, percentage



Source: OECD ICStats Database.

Finally, substantial theoretical literature on the factors facilitating or hindering collusion – such as market concentration, frequent interactions among rivals, transparency, and high barriers to entry – indicates that certain industries are more prone to collusion.¹⁶

ICStats data provide a picture of those industries in which the majority of cartels seem to occur. For instance, 57% of international cartels took place in the manufacturing sector, which includes “establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products”.¹⁷ In particular, 14% of all cartels were found in the chemical

¹⁶ See also OECD (2015).

¹⁷ NAICS code – Manufacturing (31-33), United States Department of Labor, Bureau of Labor Statistics.

manufacturing sector¹⁸; 9.5% in machinery manufacturing¹⁹; and 6% in non-metallic mineral product manufacturing²⁰, while food manufacturing²¹ and fabricated metal product manufacturing²² each accounted for around 5%.

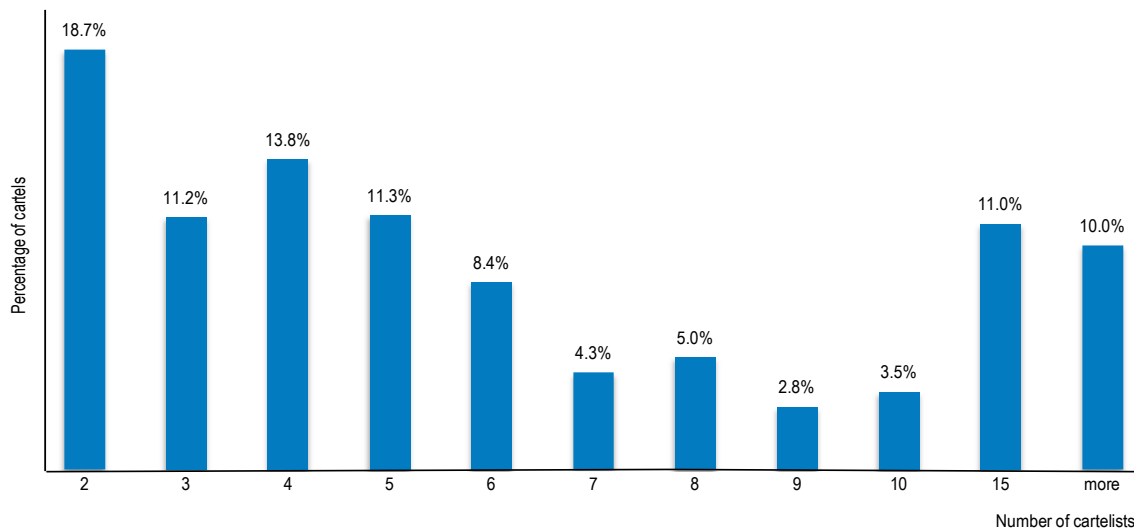
In addition to manufacturing, other industries that accounted for a significant percentage of international cartels were wholesale trade and transportation and warehousing (7% each); finance and insurance (9%); and the construction sector (5%).

Cartel participants and third-party support

Among other factors, the success of complex illegal agreements such as hard core cartels is closely linked to the number of participants and their incentives to engage in cartel activity, as well as to the availability of trade or business associations or other organisations that can facilitate and support the agreement. Figure 2.11 looks at the distribution in terms of number of cartelists and shows that the majority of cartels detected in the period 1989–2018 had either very few or very many participants. For instance, more than 18% of international cartels in the sample had two participants, while around 25% have more than nine participants. Overall, more than half of all cartels had five or fewer participants (54%).

8
Average number of
cartel participants

Figure 2.11. Distribution of international cartel participants, 1989-2018



Note: The category “15” includes cartels composed of 11, 12, 13, 14 or 15 cartelists, while “more” includes cartels with 16 or more cartelists.
Source: OECD ICStats Database.

¹⁸ NAICS code 325.

¹⁹ NAICS code 333.

²⁰ NAICS code 327.

²¹ NAICS code 311.

²² NAICS code 332.

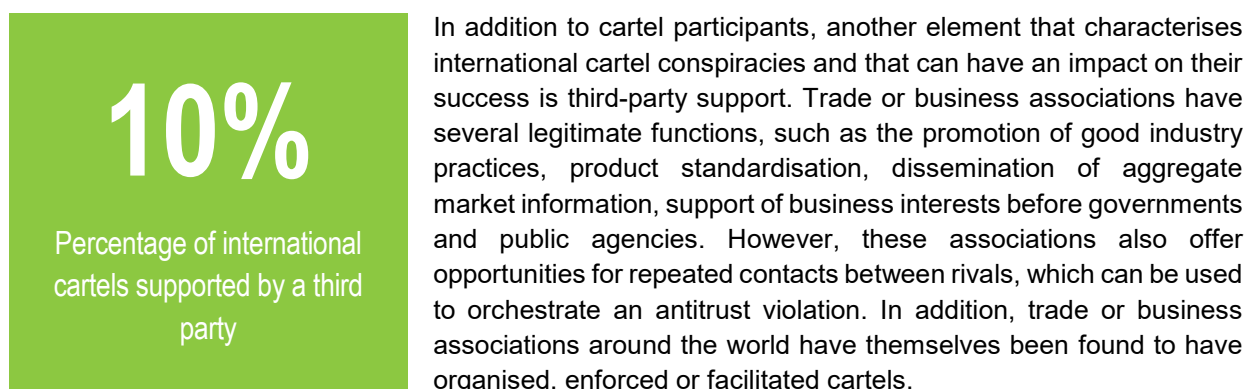
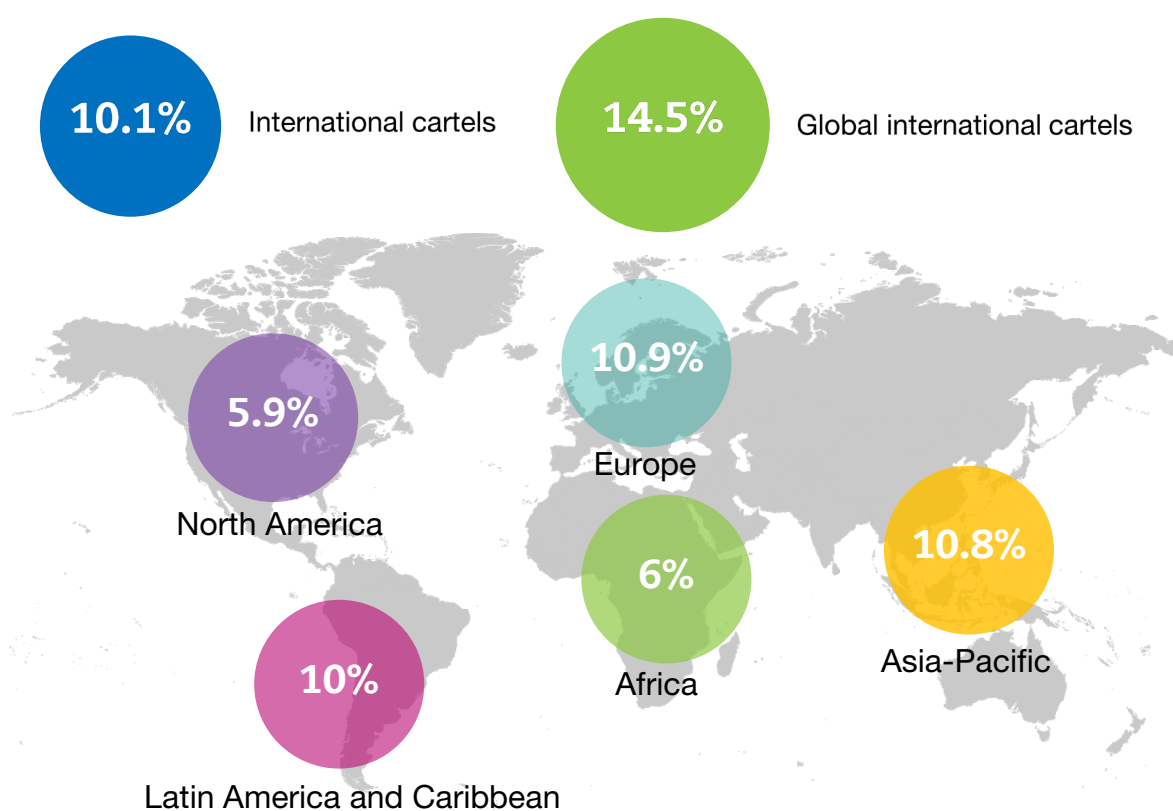


Figure 2.12. Percentage of international cartels with third-party support by region



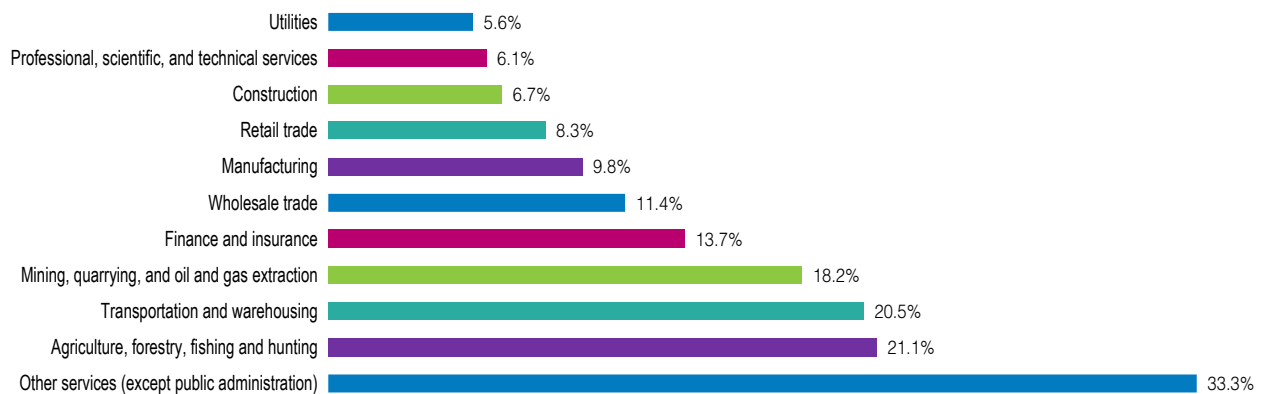
Note: Global cartels are cartels with a geographic extension across more than one continent.
Source: OECD ICStats Database.

Globally, between 1989 and 2018, 10.1% of international cartels were supported by a third party, with infringements in Asia-Pacific, Europe, and Latin America and Caribbean roughly in line with this percentage. The percentage of global cartels with third-party support was four percentage points above that average. The fact that global cartels are infringements with a geographic extension across more than one continent might explain why a higher percentage (14.5%) of these cartels needed external support to

survive. Lastly, in North America and Africa the percentage of cartels that used support from a third party was 6%, four percentage points lower than the average for international cartels.

Third-party support seems to be more prevalent for cartels in some sectors than others. For example, with 33% of cartels relying on support from a trade or business association, the service industry is more than 20 percentage points above the 10% level identified for all international cartels.²³ The figure is 21% in agriculture, forestry, fishing and hunting; 21% in the transportation and warehousing industry; and 18% in mining, quarrying and oil and gas extraction. Lower percentages, although still around or above the reference percentage of 10%, can be found in finance and insurance (14%) and manufacturing (10%).

Figure 2.13. Percentage of international cartels with third-party support by industry



Source: OECD ICStats Database, using NAICS classification codes.

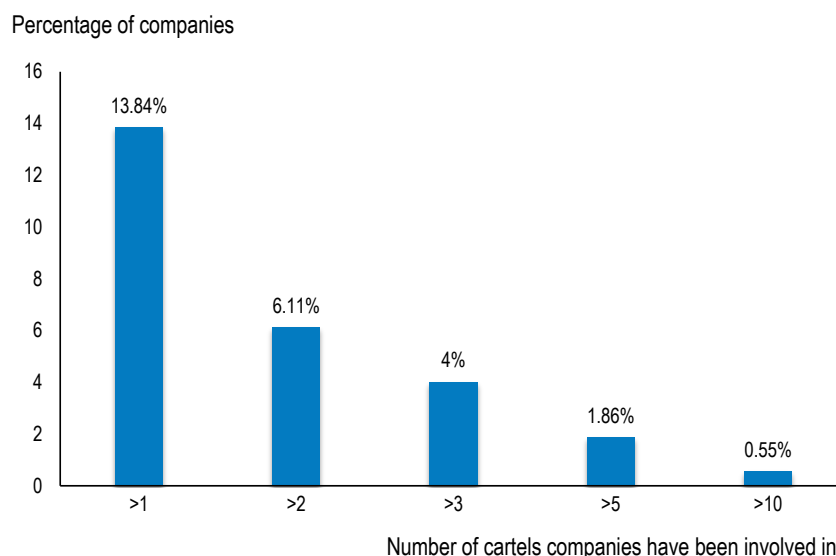
Companies that participate in a cartel conspiracy might engage in such activity repeatedly over the years, in different markets and across jurisdictions. As seen in Figure 2.14, 14% of parent companies in ICStats were directly or indirectly (through subsidiaries) involved in more than one cartel. The percentage of parent companies involved in more than two cartels was 6% and more than three was 4%. Lastly, less than 1% of all parent companies included in the database were involved in more than 10 cartels over the full period.

Recidivism can have multiple causes, but its existence necessarily raises questions about the deterrent effect of competition law. Recidivism is therefore an important factor for competition authorities to consider when assessing the effects of their antitrust enforcement. Industries with high levels of recidivism might also require closer monitoring or ad hoc solutions to enhance deterrence and facilitate detection.²⁴

²³ NAICS code 81.

²⁴ See also OECD (2015).

Figure 2.14. Serial collusion in international cartels, 1989-2018



Source: OECD ICStats Database.

Cartel duration

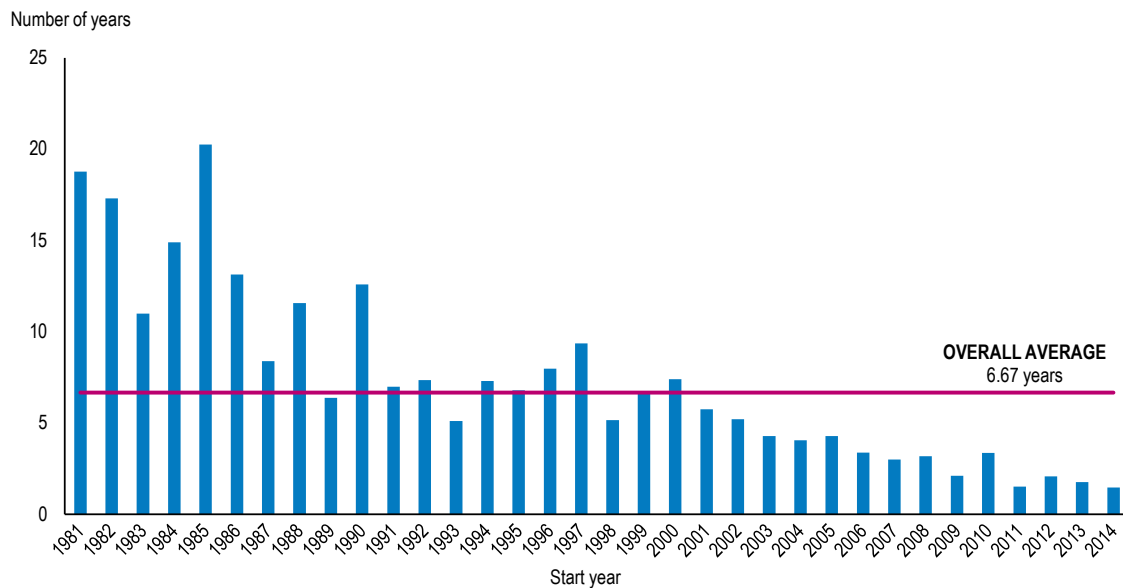
Cartel duration is closely linked to the number and characteristics of the cartel participants; it can reflect the stability and profitability of the cartel, as well as the level of antitrust enforcement. International cartels are often precarious agreements, and a number of factors can determine their duration and their success.

Cartel agreements can end due to antitrust enforcement, which can include both detection by a competition authority, followed by the opening of an ex officio investigation, or an application for leniency by cartel members. This first cause of “cartel death” (M. Levenstein & V. Suslow, 2011) is affected by the level of active enforcement, as well as the existence and effectiveness of leniency programmes. Cartels can also collapse naturally due to macroeconomic fluctuations, retaliation in response to deviation from the agreement, cartels’ organisational features, or new market entries.

6.7
years

Average length of
an international
cartel

Figure 2.15. Average duration of international hard core cartels, 1981-2013



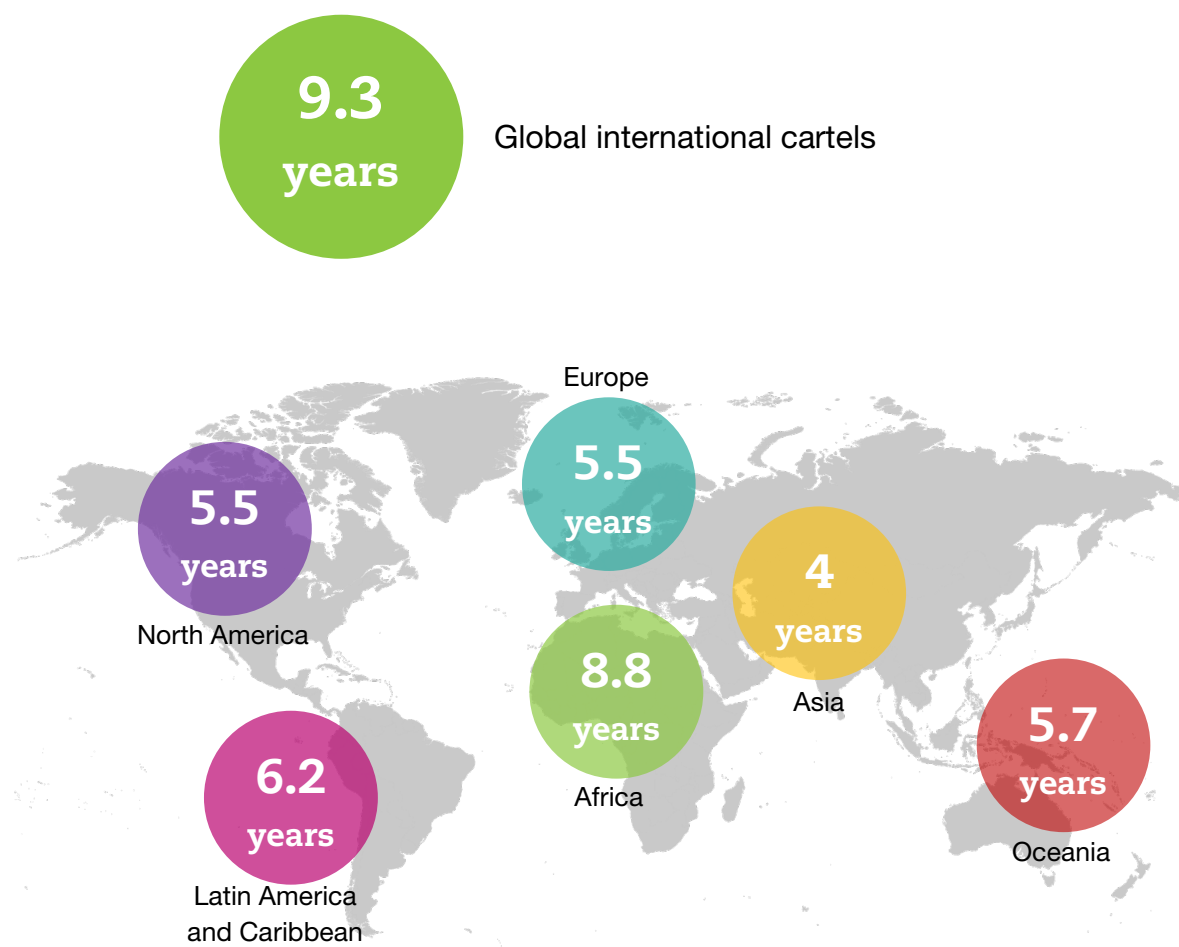
Source: OECD ICStats Database.

As seen in Figure 2.15, the average duration of international cartels decreased between 1981 and 2013. From 1991 in particular, new cartels began to last less time on average, compared to the previous decade. This decrease became even more meaningful from 2001, with the average duration rapidly dropping from seven years in 2000 to fewer than five from 2003. Although values for later years could be an underestimation of reality, as longer-lasting cartels would not have had the time to be discovered and sanctioned by competition authority (and would thus not be included in the sample), the steady downward trend since 2001 is still indicative of a change affecting average cartel duration.

Among the different factors, better enforcement and enhanced enforcement powers might be responsible for the downward trend in cartel duration, especially since the early 2000s. On this point, in their analysis Levenstein and Suslow (2011) found that “the probability of cartel death from any cause increased significantly after 1995, when competition authorities expanded enforcement efforts toward international cartels”.²⁵ In addition, this decrease in average duration coincides with an increase in the number of cartels discovered in the period 1999-2011, which can also indicate an increased effort in antitrust enforcement.

²⁵ M. Levenstein & V. Suslow (2011), “Breaking Up is Hard to Do: Determinants of Cartel Duration”, *Journal of Law and Economics*, 54:2, pp. 445-492, <http://dx.doi.org/10.1086/657660>.

Figure 2.16. Average duration of international cartels in years, by region, 1989-2018

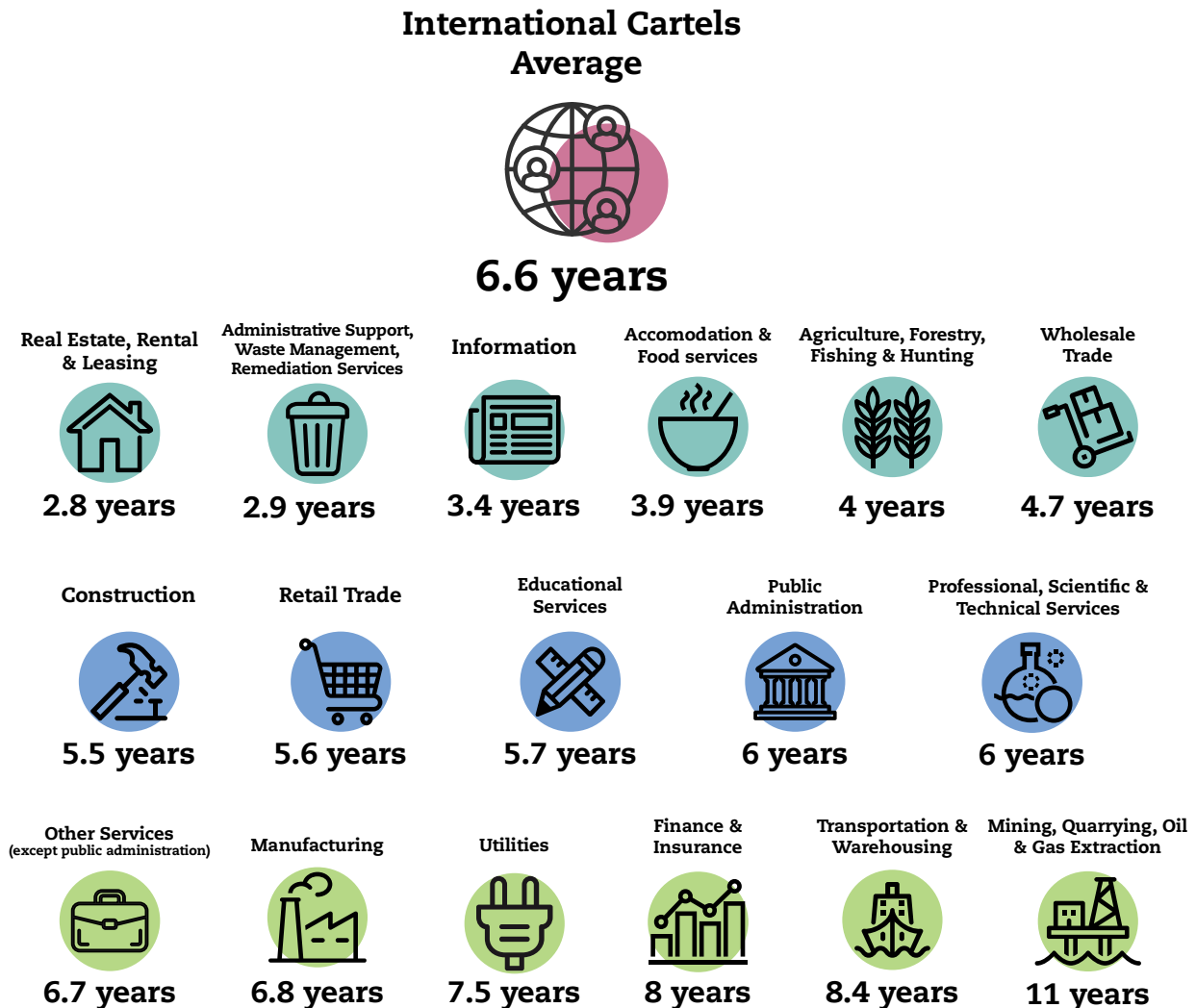


Source: OECD ICStats Database.

Average duration varied for international cartel agreements that were implemented and maintained with the support of a third party, for example, a trade association, and those that did not rely on third-party support. Cartels with third-party support have an average duration of around 10 years, which drops to 6 years for unsupported agreements. This is in line with Levenstein and Suslow (2011), who conclude in their analysis that “cartels that rely on trade associations are less likely to die a natural death”.

Differences in average duration can be seen also at the regional level. For instance, cartels taking place in Africa or with global geographical coverage have a longer than average duration, of around nine years. For global cartels, this could be linked to their stronger reliance on third-party support, or less effective enforcement on a global scale. Finally, international cartels in Oceania, North America and Europe have a similar duration, which is around one year less than average. In line with above, more established experience with competition law enforcement in these regions, and more effective enforcement powers, can at least partially explain the difference in average duration.

Figure 2.17. Average duration of international cartels in years by industry, 1989-2018



Source: OECD ICStats Database.

Cartels exist in a wide array of industries and markets, with certain industries having specific characteristics that can favour stable cartel activity and so lead to longer-lasting cartels. In particular, cartels are more likely to last in those industries where information is better and cartelists can more easily distinguish between cheating and demand fluctuations (M. Levenstein & V. Suslow, 2011).

Figure 2.17 shows the average cartel duration in different industries globally,²⁶ which goes on average from 11 years in the mining, quarrying and oil and gas extraction industry to around 7 in manufacturing and fewer than 3 in real estate. As previously mentioned, duration is based upon information reported by official sources and may not always reflect the infringement's true duration. It can be difficult to identify the precise start date of an infringement, and many decisions cover a series of separate infringements with possibly different durations. In these cases, ICStats takes the longest duration as representative of the overall cartel.

²⁶ Industry groupings based upon NAICS two-digit codes.

Bid-rigging cartels

As noted in above, bid-rigging cartels are an important category of hard core cartels as they can have a serious impact on public spending if targeted at public procurement procedures. For example, in 2015, public procurement represented 29.1% of general government expenditure in OECD countries,²⁷ or EUR 6.4 trillion.

The fight against bid rigging in public procurement has increased in importance over the years. To consolidate best practices on methods of reducing the risk of collusion in public procurement, the OECD has developed *Guidelines for Fighting Bid Rigging in Public Procurement* (OECD, 2009) and a *Recommendation on Fighting Bid Rigging in Public Procurement* (OECD, 2012) (see Box 2. Fighting bid rigging in public procurement).

The importance of the fight against bid rigging is reflected also in the choice of sanctions. As seen in Figure 1.4, in almost one-third of the 55 jurisdictions in CompStats, criminal sanctions on individuals are unavailable. Although the remainder allow for criminal prosecution of hard core cartels, a number of these jurisdictions allow for criminal sanctions exclusively for bid-rigging infringements. Information related to sanctions is addressed in more detail in Chapter 3.

Box 2. Fighting bid rigging in public procurement

In 2012 the OECD Council adopted a *Recommendation on Fighting Bid Rigging in Public Procurement*. It calls for countries to assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

This *Recommendation* follows the publication of the *Guidelines for Fighting Bid Rigging in Public Procurement*, developed by the OECD Competition Committee in 2009 and later included in the 2012 *Recommendation*, which aim to help governments improve public procurement by fighting bid rigging. They are conceived to reduce the risks of bid rigging through the careful design of public tenders and to detect bid-rigging conspiracies during the procurement process. The *Guidelines* include two checklists: a Checklist for Detecting Bid Rigging in Public Procurement and a Checklist for Designing the Public Procurement Process to Reduce the Risks of Bid Rigging.

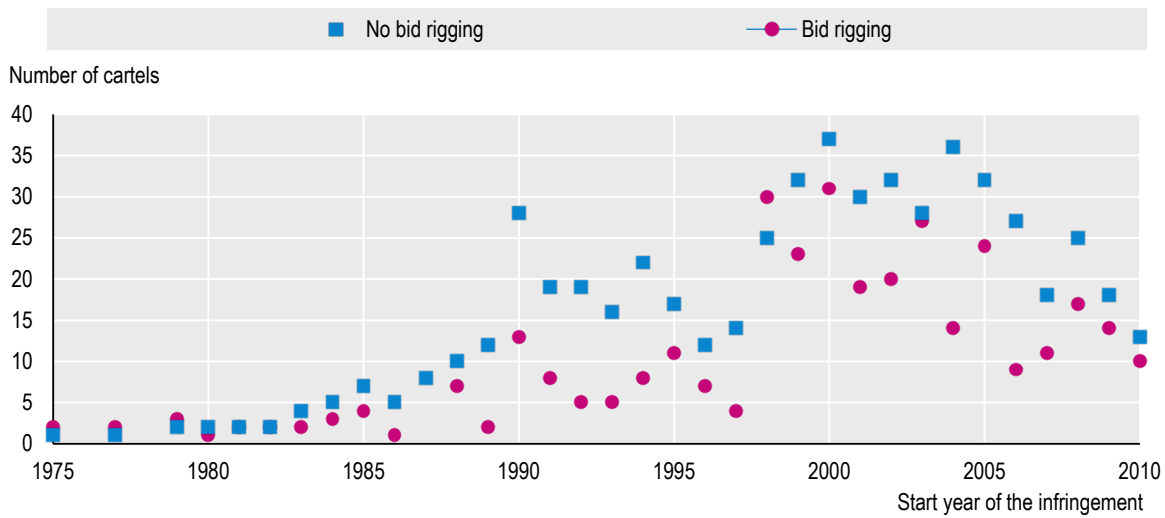
In addition to the Recommendation, the OECD has enhanced its efforts to fight bid rigging in public procurement by reviewing national and sector-specific public procurement regimes to guide and support countries in combatting collusive practices. As part of these reviews or independently, the OECD has been developing wide-ranging capacity-building programmes on fighting bid rigging in procurement, including workshops and training manuals, for public procurement, budget and internal control officials.

Sources: OECD (2009) and OECD (2012).

The evolution of international bid-rigging cartels from their commencement follows those of other international cartels, albeit in smaller numbers. The number of new bid-rigging cartels increased from the 1980s and peaked in 2000. These numbers represent only a sample of all cartels started in each year, as the numbers are affected by the rate of detection of such infringements and it is not possible to determine a start year for each cartel.

²⁷ OECD National Accounts Statistics.

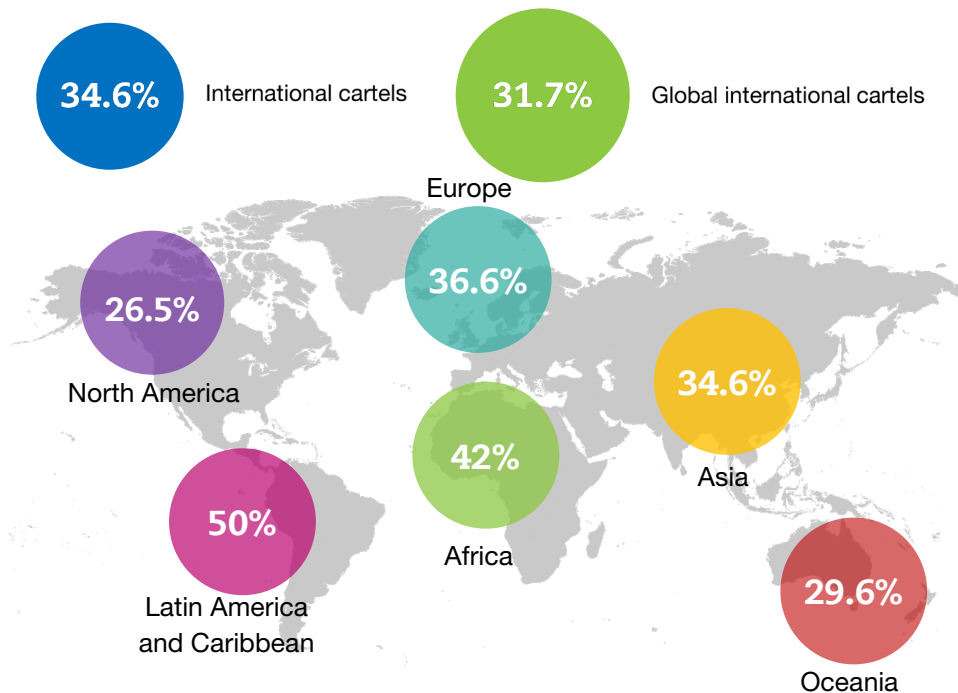
Figure 2.18. Evolution of international cartels over time, 1975-2010



Note: International cartels begun after 2009 are not included as their average duration and that of investigations means the figures are likely to under-represent the real number.
 Source: OECD ICStats Database.

The incidence of bid-rigging cartels as a percentage of all international cartels varies considerably across regions. On average, 34.6% of discovered hard core cartels are bid-rigging infringements, in Latin America and the Caribbean they represent 50%, in Africa 42%, and in Europe 36.6%. Conversely, in North America and Oceania, the percentage of bid-rigging cartels is between eight and five percentage points lower than the average. No bid-rigging cartels were reported in the Middle East.

Figure 2.19. Percentage of bid rigging cartels by region, 1989-2018



Source: OECD ICStats Database.

As the majority of bid-rigging cartels are implemented in the context of public procurement, these percentages can depend on factors such as the total value of public procurement procedures in a given jurisdiction, the rules in place to regulate such procedures, the design of tenders, and screening for bid-rigging cartels.

Abuse of dominance and unilateral conduct

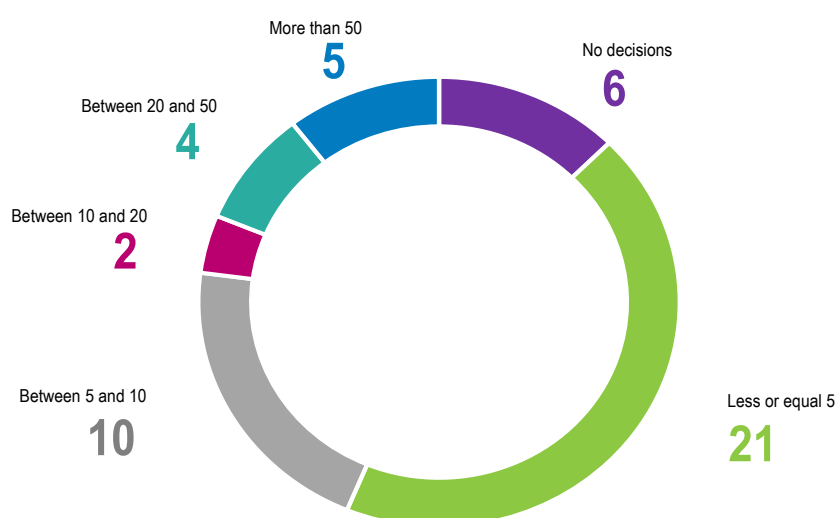
In most jurisdictions, abuse of dominance cases are less numerous than cartel cases and merger cases, possibly for the simple reason that they can be extremely complex to build. Possibly abusive business conduct may often also enhance market efficiency and benefit consumers. A thorough, economic analysis of the anticompetitive effects of alleged abusive conduct is often required, even when a firm clearly enjoys a dominant position.

The types of business practices considered abusive vary across jurisdictions. Even within a jurisdiction, the assessment of the legality of such conduct typically requires a case-by-case analysis to determine the conduct's effects.

Abuse of dominance activity

Well over half of competition authorities included in CompStats have adopted fewer than five decisions during the period 2015-2018.

Figure 2.20. Distribution of abuse of dominance decisions, 2015-2018



Note: Based on the 48 jurisdictions that provided abuse of dominance data for all four years.
Source: OECD CompStats Database.

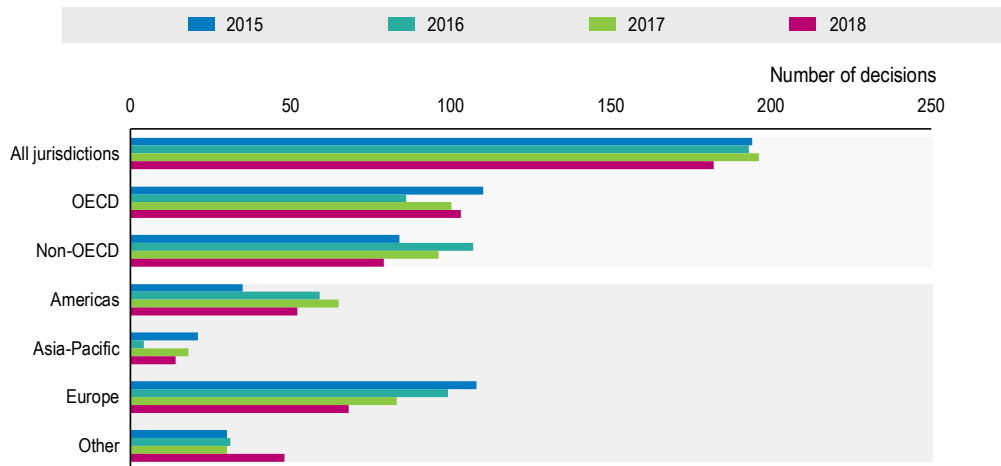
The jurisdictions included in the CompStats database took nearly 200 abuse decisions each year (or approximately four decisions per competition authority per year on average).²⁸ The total number of abuse of dominance decisions of the jurisdictions in the CompStats database in the four-year period was 765. In

²⁸ Based upon abuse of dominance decisions by those 46 jurisdictions that provided data for all four years.

2018, when a total of 182 abuse decisions were adopted, three jurisdictions were responsible for half of the decisions and over half of the jurisdictions had fewer than five cases.

Figure 2.21 shows the number of abuse of dominance cases in different regions. The highest number of decisions was in European jurisdictions (even if it declined from 2015 to 2018), while virtually none were made in Asia-Pacific jurisdictions. Cases in the Americas increased from 2015-2017, but dipped in 2018. This is mainly caused by a single jurisdiction responsible for the large majority of these cases.

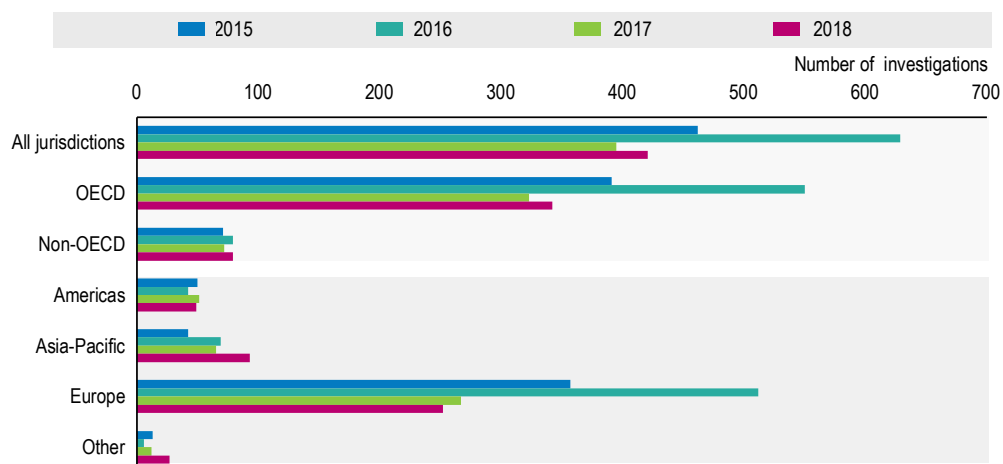
Figure 2.21. Number of concluded abuse cases by jurisdiction and by region, 2015-2018



Note: Based on the 48 jurisdictions that provided abuse of dominance data for all four years.
Source: OECD CompStats Database.

Figure 2.22 provides an overview of the absolute number of abuse of dominance investigations by region for the period 2015-2018. Europe launched the largest number of investigations, although numbers dropped after a spike in 2016.

Figure 2.22. Number of abuse of dominance investigations by jurisdiction and by region, 2015-2018



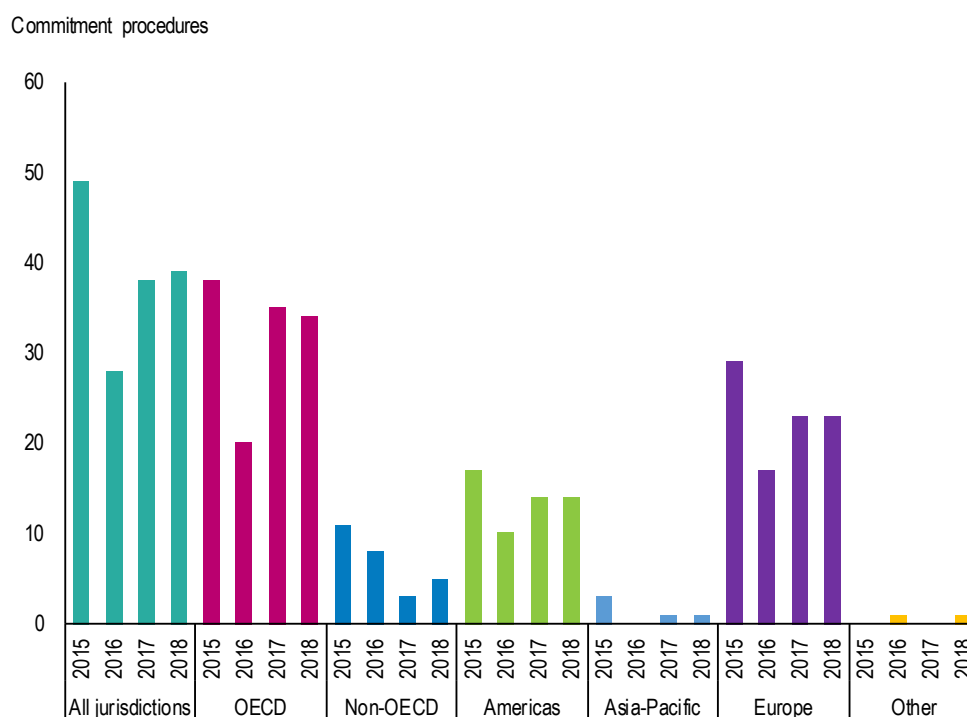
Note: Based on the 48 jurisdictions that provided abuse of dominance data for all four years.
Source: OECD CompStats Database.

As most investigations do not result in a decision within the same year – if they result in a decision at all – comparing the number of decisions and investigations on an annual basis is not particularly enlightening. A wider time period can provide an indication of the number of investigations that led to infringement decisions. In the period 2015-2018, a total number of 1 907 investigations were undertaken by 48 jurisdictions, with 765 decisions adopted and another 154 cases ended following commitment procedures.

Commitments in abuse of dominance cases

An alternative to an abuse of dominance infringement decision by a competition authority is the possibility for competition authorities to close the case formally following binding commitments voluntarily proposed by parties suspected of an infringement. Commitments procedures are widely used among the competition authorities included in the CompStats database: over 70% used this tool at least once in the four-year period. Even though this tool is used by the large majority of the jurisdictions, however, the data show that the tool is not used extensively. One-third of the jurisdictions that had at least one commitment procedure in the four-year period only used it once, while another one-third used it two to four times. The remaining one-third has had five or more commitment procedures. In absolute numbers, the use of commitment procedures or other types of negotiated or consensual procedures for abuse of dominance cases decreased between 2015 and 2018. This can be seen in Figure 2.23.

Figure 2.23. Number of commitment procedures by jurisdiction and by region, 2015-2018

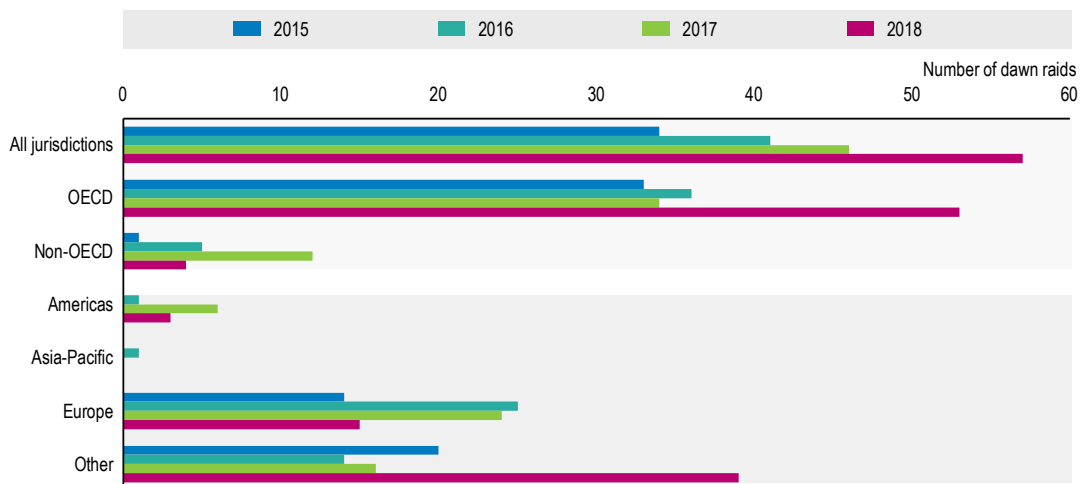


Note: Based on the 48 jurisdictions that provided abuse of dominance data for all four years.
Source: OECD CompStats Database.

Dawn raids in abuse of dominance cases

For the period 2015-2018, the number of dawn raids in abuse of dominance cases in the Americas increased substantially and remained relatively stable in Europe. Competition authorities in Asia-Pacific conduct few dawn raids.

Figure 2.24. Number of dawn raids in abuse of dominance cases, 2015-2018



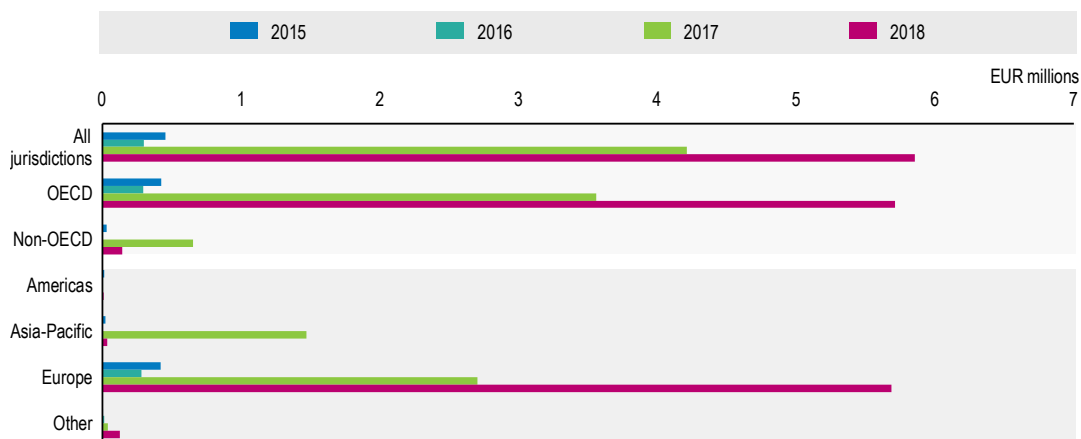
Note: Data on dawn raids for abuse of dominance cases from 44 jurisdictions for the whole period 2015-2018 (excluding those jurisdictions that did not split the dawn raids into a type of investigation, i.e. cartels or abuse of dominance).

Source: OECD CompStats Database.

Fines imposed for abuse of dominance infringements

In recent years, Europe has seen a number of cases in which substantial fines were imposed on companies accused of abusing their dominant position. Figure 2.25 and Figure 2.26 show not only that Europe fined the largest number of companies, but that the fines imposed were also on average the highest compared to other regions.

Figure 2.25. Fines in abuse of dominance cases by jurisdiction and by region, 2015-2018 (EUR billion)

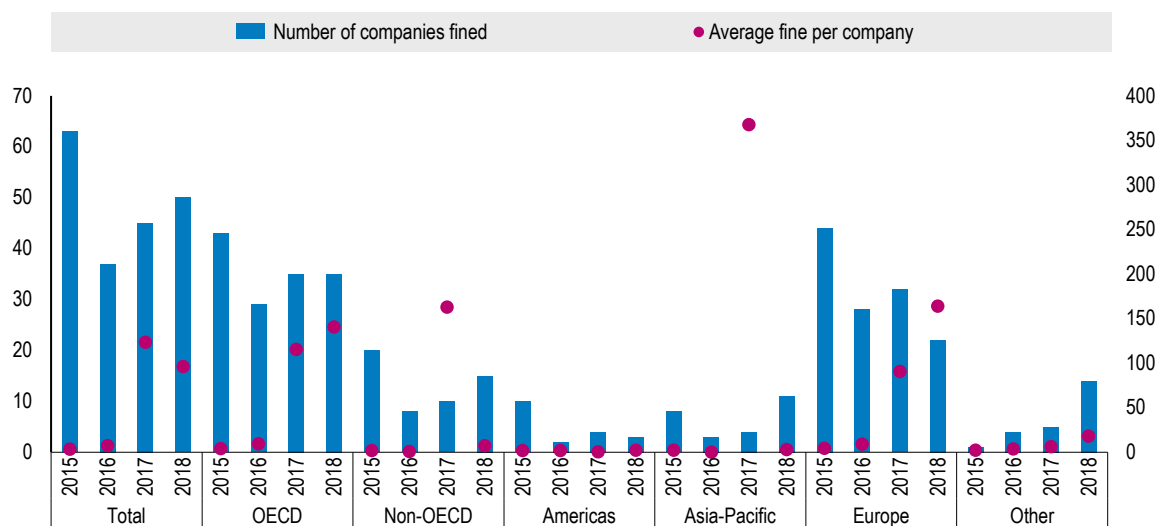


Note: Based on the 48 jurisdictions that provided abuse of dominance data for all four years.

Source: OECD CompStats Database.

The spike in abuse of dominance fines in Europe can be largely contributed to the fine imposed on Google by the European Commission for its abuse of dominance regarding Android devices.

Figure 2.26. Number of companies fined for abuse of dominance infringements and average fines by jurisdiction and by region (EUR million)



Note: Based on the 48 jurisdictions that provided abuse of dominance data for all four years.

Source: OECD CompStats Database.

Mergers and acquisitions

Effective merger review is an important component of any competition regime.²⁹ It can help prevent consumer harm from anticompetitive transactions that reduce competition among rival firms and foreclose competitors. Almost all competition law regimes provide for merger control, although the exact implementation can differ substantially between jurisdictions.

The majority of jurisdictions require mandatory pre-merger notification for transactions that meet certain thresholds, while other jurisdictions employ a voluntary merger notification or post-merger notification and assessment.

²⁹ In OECD (1996), a merger is defined as “a merger, acquisition, joint venture, or any other form of business amalgamation, combination or transaction that falls within the scope and definitions of the competition laws of a Member country governing business concentrations or combinations”.

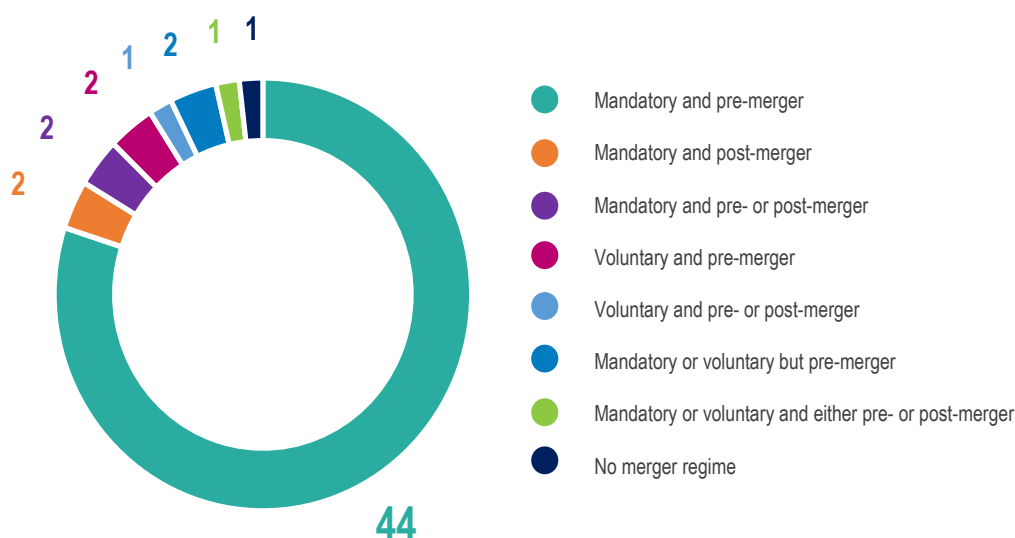
Box 3. OECD Recommendation on Merger Review

On 23 March 2005, the OECD Council adopted a *Recommendation of the OECD Council on Merger Review* (OECD, 2005), which built on extensive prior work conducted by the OECD Competition Committee. The Recommendation contributes to greater convergence of merger-review procedures and covers four main areas: 1) notification and review procedures; 2) the co-ordination and co-operation with respect to transnational mergers; 3) the resources and powers of competition authorities; and 4) the periodic review of merger laws and practices. The Recommendation instructs the OECD Competition Committee to review periodically the experiences of OECD members, as well as non-members and to report to the OECD Council as appropriate on any further action needed to improve merger laws, to achieve greater convergence towards recognised best practices, and to strengthen co-operation and co-ordination in the review of transnational mergers.

In 2013, the OECD published a *Report on Country Experiences with the 2005 OECD Recommendation on Merger Review* (OECD, 2013) that reviews the key developments in the four main areas covered by the Recommendation as well as certain areas that fall outside its scope. The Report found that significant convergence had occurred in all the areas covered by the Recommendation and most OECD merger control regimes appeared to be in line with the Recommendation. The Report confirmed that the Recommendation remained important and relevant, and that it complemented work on merger policy being done at international level by other organisations and networks, such as the International Competition Network (ICN).

Figure 2.27 and Figure 2.28 provide an overview of the different choices made by the 55 CompStats jurisdictions when designing their merger-control regimes. Most have opted for a mandatory pre-merger notification system, although other regimes are used, including voluntary notification (3 jurisdictions) and a combination of mandatory or voluntary notifications (3 jurisdictions).

Figure 2.27. Overview of mandatory and voluntary merger notification regimes in CompStats jurisdictions



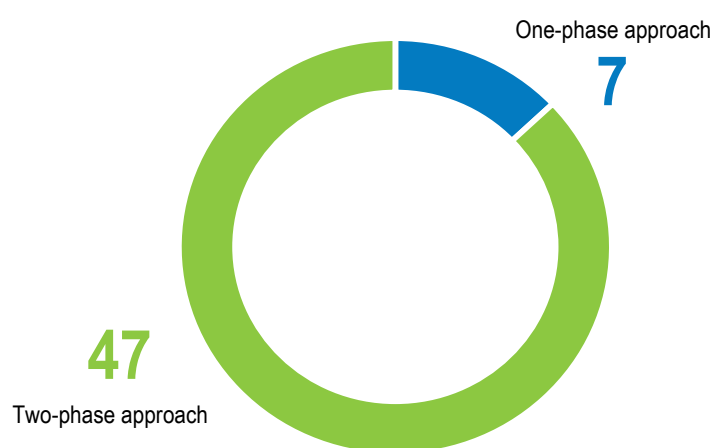
Note: Data based upon all 55 jurisdictions included in OECD CompStats Database.

Source: OECD CompStats Database and OECD analysis based on publicly available information.

Jurisdictions can choose to have a one-phase or a two-phase approach to merger investigations. In the case of a two-phase approach, mergers that do not raise competition concerns are cleared in what is usually a relatively short first phase. A merger will be further investigated in phase two when the phase-one investigation indicates possible competition concerns. This in-depth investigation often requires a longer time period.

Most jurisdictions have opted for a two-phase approach, and some jurisdictions lack the ability to do a more in-depth investigations of problematic mergers.

Figure 2.28. CompStats jurisdictions with one-phase or two-phase approaches

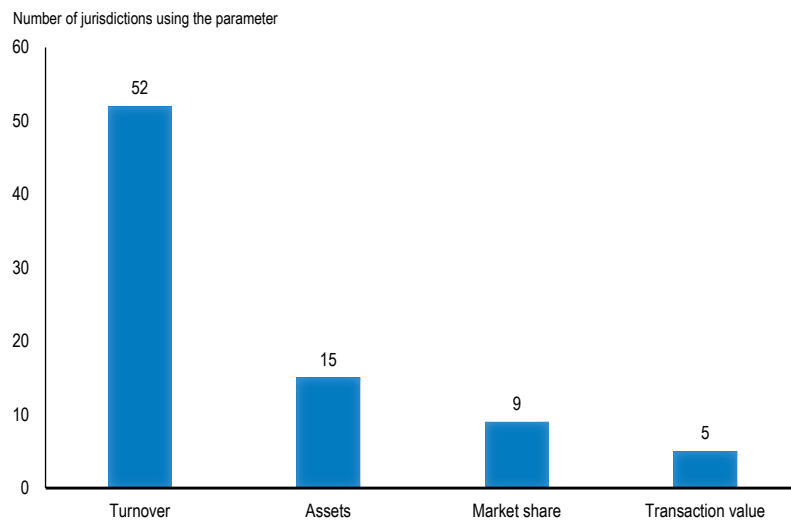


Note: Based on data from the 55 jurisdictions in OECD CompStats Database.

Source: OECD CompStats Database and OECD analysis based on publicly available information.

Whether a given transaction needs to be notified depends on: 1) the definition of a notifiable transaction, and 2) whether certain notification thresholds are met (OECD, 2013, p. 12). Notification thresholds seek to eliminate transactions that will most probably have no material impact in a given jurisdiction from the notification obligation. The *Recommendation of the OECD Council on Merger Review* states that clear and objective criteria should be used as notification thresholds (OECD, 2005, p. 2). In the majority of jurisdictions, turnover is used as one determining factor for a notifiable merger, for example. The total value of the assets involved in a merger is another factor used in some jurisdictions.

Figure 2.29 provides an overview of the criteria that jurisdictions have selected to determine whether a transaction meets the notification thresholds. Several jurisdictions use a combination of parameters, as a result of which the total number of jurisdictions exceeds the figure's sample.

Figure 2.29. Selected criteria for establishing merger notification thresholds

Note: Data from on all 55 jurisdictions included in OECD CompStats Database.

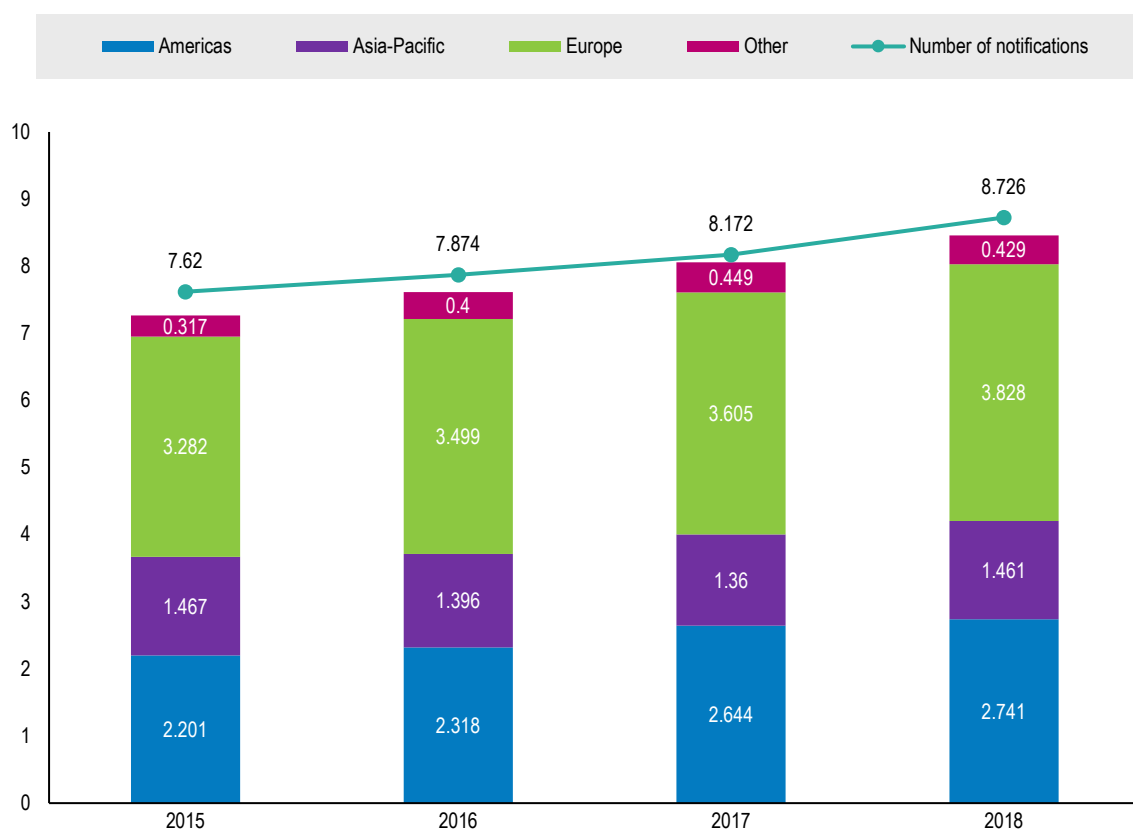
Source: OECD CompStats Database and OECD analysis based on publicly available information

Merger activity

Overall, merger-control activity increased between 2015 and 2018, as seen in Figure 2.30. The number of merger notifications increased by 14.5% and decisions (which includes the cases in which the waiting period had expired) by 14.1% in the 2015-2018 period, or a rise in 2018 of 3.4% for notifications (over 8 700) and a 3.9% increase for decisions (over 8 400).³⁰ Differences by region exist: the number of merger decisions in the Americas and Europe increased, but slightly decreased in Asia-Pacific (but recovered in 2018).

³⁰ This number includes the merger decisions of 46 jurisdictions in these three regions, which review mergers ex ante and also provided data for all years.

Figure 2.30. Number of merger decisions and notifications in selected regions, 2015-2018 (per 1000)



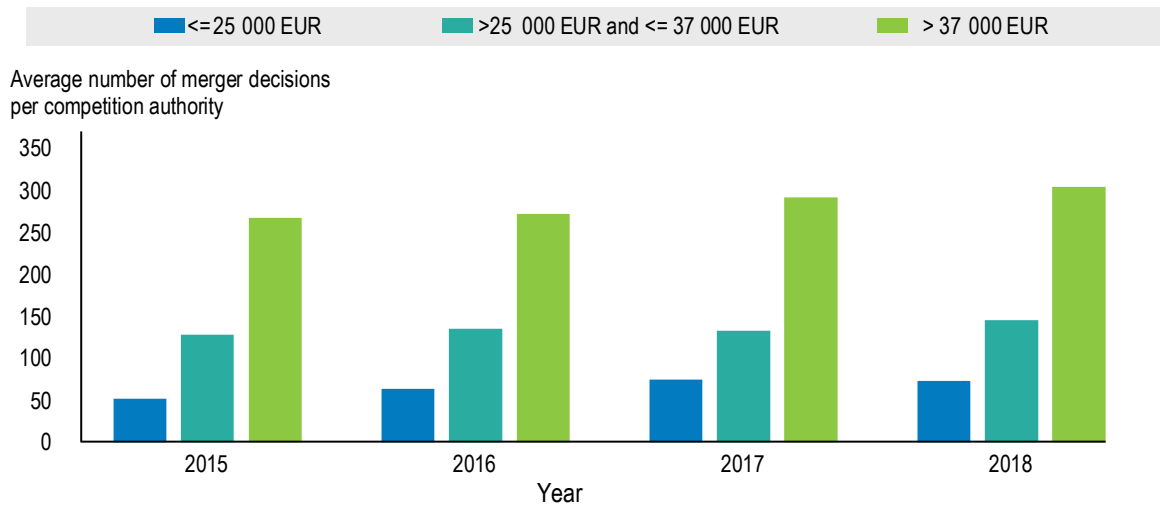
Note: Based on the 46 jurisdictions that provided merger-control data for all four years. Decisions include cases in which the waiting period had expired. Source: OECD CompStats Database.

This large annual number of merger decisions (including cases in which the waiting period had expired) is largely driven by a small number of authorities that issue hundreds of decisions each year. More than one-third of competition authorities had fewer than 40 merger decisions in 2018 and more than half have fewer than 60. The seven authorities in 2018 with more than 300 merger decisions each represent approximately 66% of all merger decisions.

Several elements are important for the annual number of merger decisions, one of which is the size of the economy. This is confirmed by Figure 2.31, which depicts the average number of merger decisions taken by competition authorities in different GDP-per-capita groups.³¹

³¹ The three groups each contain approximately the same number of authorities.

Figure 2.31. Average number of merger decisions per competition authority by GDP-per-capita group, 2015-2018



Note: Based on the 46 jurisdictions that provided merger-control data for all four years.

Decisions include cases in which the waiting period had expired.

Group 1 (GDP per capita below EUR 25 000) includes 17 authorities, group 2 (GDP per capita between EUR 25 000 and EUR 37 000) includes 16 authorities and group 3 (GDP per capita exceeding EUR 37 000) includes 17 authorities.

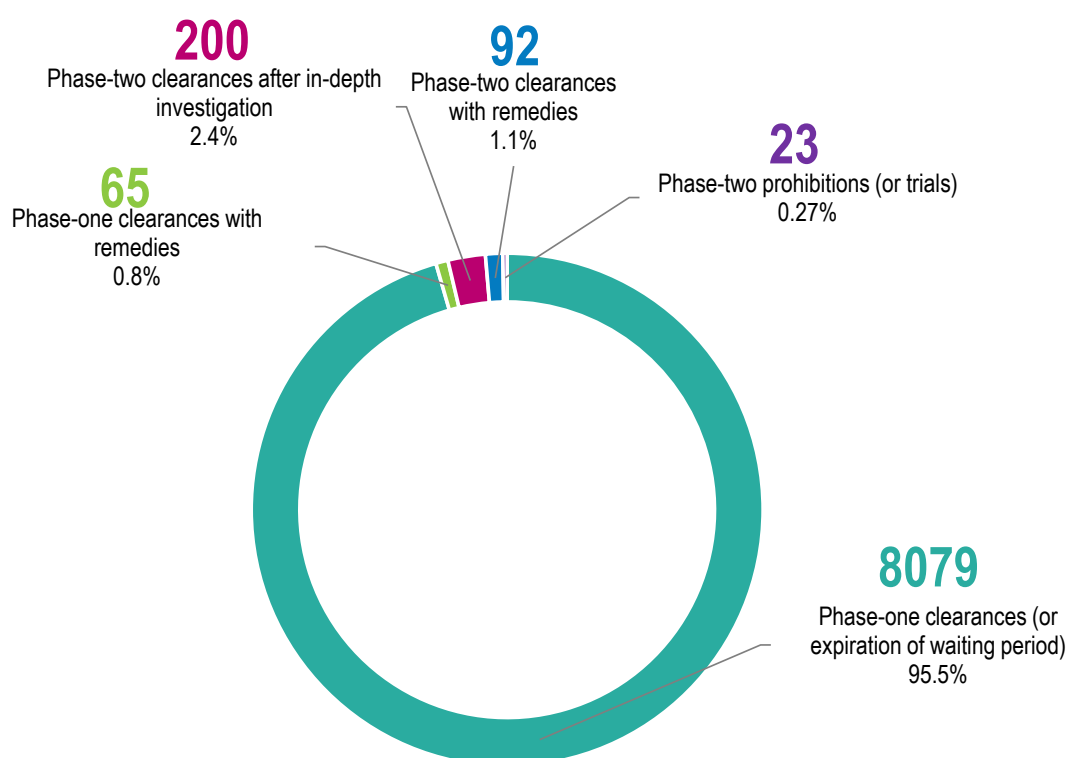
The decisions include the cases in which the waiting period has expired.

Source: OECD CompStats Database.

Merger assessment

The majority of mergers have no negative impact on competition, which is reflected in the percentage of mergers that were cleared without remedy in 2018 in CompStats jurisdictions (see Figure 2.32). In 2018, over 95% of mergers were cleared without an in-depth investigation, and only 23 of the over 8 400 merger decisions were prohibited (just over 0.25%).

Figure 2.32. Overview of types of merger decisions, 2018

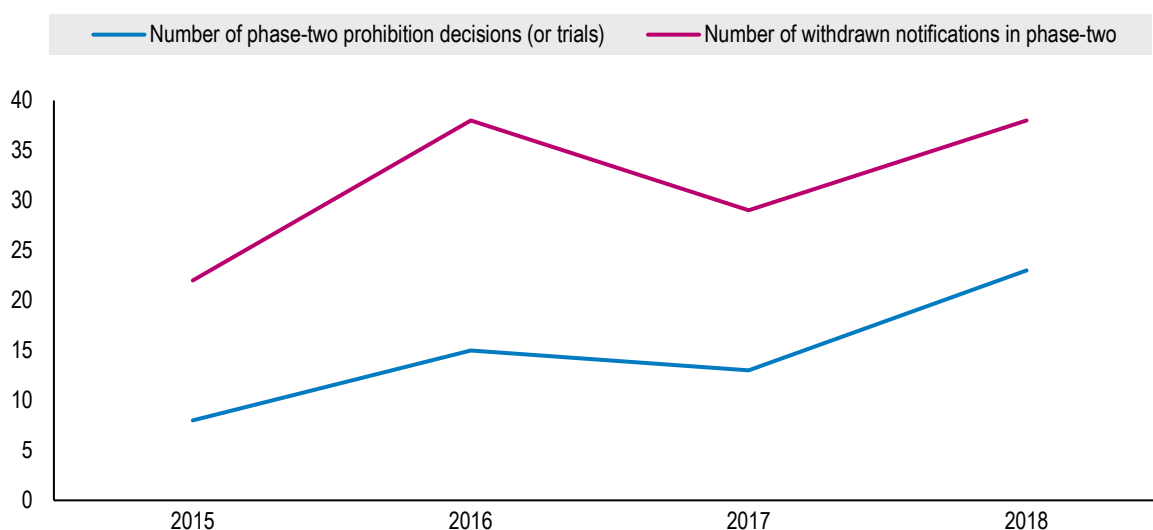


Note: Based on the 46 jurisdictions that provided merger-control data for all four years.
Source: OECD CompStats Database.

Over the four-year period, only in 59 cases a competition authority took a prohibition decision out of a total of 31 400 merger decisions (including cases in which the waiting period had expired), less than 0.2% of all merger decisions.³² Some of these 59 decisions could even pertain to the same merger case, prohibited in multiple jurisdictions. In fact, over 40% of jurisdictions did not prohibit a single merger over the four-year period. Another 27% of jurisdictions only prohibited one merger, while only six authorities imposed three or more prohibitions during 2015-2018.

It is relevant also to consider the number of withdrawn notifications, as merging parties may anticipate a prohibition decision by withdrawing the notification. While the number of prohibition decisions and withdrawn notifications remains low, it seems to have increased over the 2015-2018 period.

³² Adopted by 46 jurisdictions in the period 2015-2018.

Figure 2.33. Number of prohibition decisions and withdrawn mergers notifications, 2015-2018

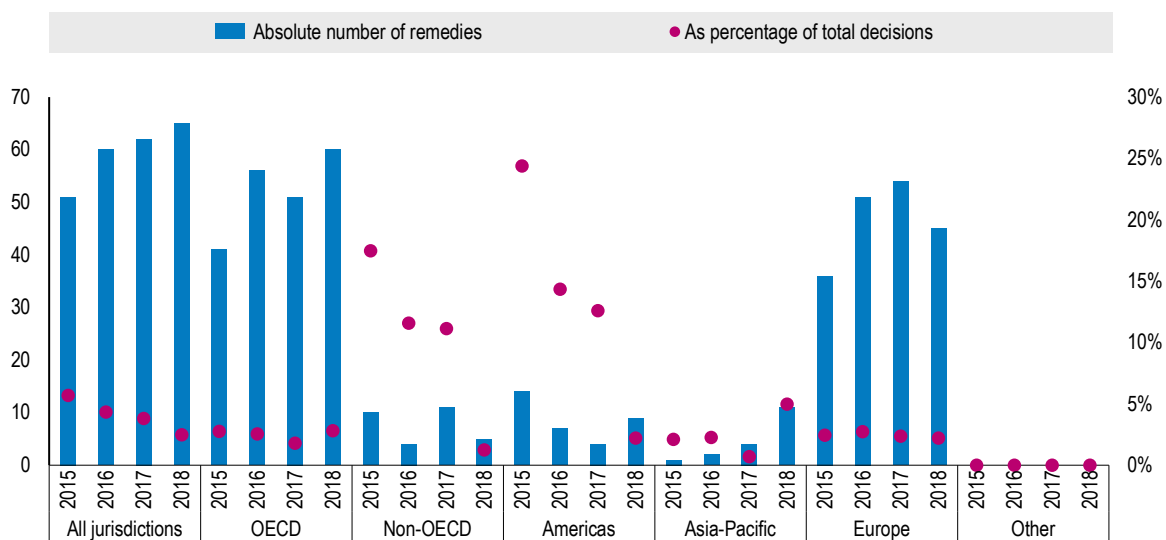
Note: Based on the 46 jurisdictions that provided merger-control data for all four years. The figures overestimate the number of prohibition decisions and withdrawals as they include prohibition decisions and withdrawals of the same transaction by more than one agency
Source: OECD CompStats Database.

Figure 2.34 and Figure 2.35 focus more specifically on the use of remedies, in both phases of clearance. In the 2015-2018 period, phase-one remedies were used in 238 cases, phase-two remedies in 320 cases (in the 46 jurisdictions that provided merger review data for the period). This was roughly equal to approximately one phase-one remedy and one phase-two remedy per year per competition authority; they were, however, differently distributed across jurisdictions. Three jurisdictions represented over 50% of the total phase-one remedies, while 21 jurisdictions did not clear a merger in phase one with remedies. Five jurisdictions were responsible for almost 50% of the total phase-two remedies, while seven jurisdictions did not use this tool.

The total number of merger cases cleared with remedies increased in 2015-2018: by 27% for phase-one clearances and by 12% for phase-two clearances. If the use of remedies – in both phases – increased over time, in relative terms (comparing the number of remedies with the total number of decisions), this was especially true in phase two.

In absolute numbers, remedies were more numerous in OECD countries, and especially European jurisdictions, mostly because more decisions were reached. In relative terms, using the number of clearances with remedies as percentage of the total number of decisions, phase-one remedies were used relatively often in the Americas, although their use rapidly declined during the period.

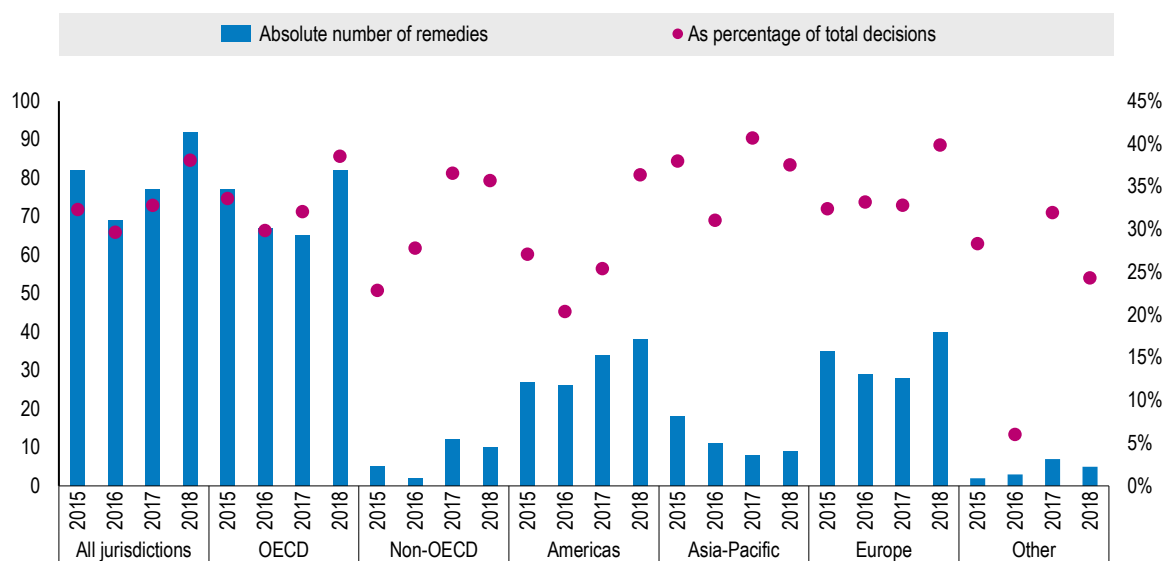
Figure 2.34. Use of phase-one remedies, 2015-2018



Note: Based on the 46 jurisdictions that provided merger-control data for all four years.

Source: OECD CompStats Database.

Figure 2.35. Use of phase-two remedies, 2015-2018



Note: Based on the 46 jurisdictions that provided merger-control data for all four years.

Source: OECD CompStats Database.

3 Spotlight on Cartel Sanctions

Introduction

With the fight against cartels a priority for competition authorities worldwide, many are attempting to increase detection through a variety of investigative powers and detection tools. Identifying optimal sanctions for competition law regimes remains challenging, however. Detection alone is not sufficient to break up cartels effectively – sanctions also play a fundamental role in preventing antitrust violations.

Imposing fines, for example, can contribute in three ways to the prevention of antitrust violations: through deterrence effects; through moral effects; and by raising the cost of setting up and running cartels (Wils, W.P.J., 2006). Yet for deterrence to work, the expected sanction, such as a fine, discounted for the probability of detection and punishment, needs to be greater than the expected illegal gain from the infringement. In cases where monetary penalties are found to be insufficient, other kinds of sanctions – both on individuals and companies – are often used to enhance deterrence.

Since only a small percentage of cartels are actually detected, a central objective of antitrust enforcement in the vast majority of jurisdictions is achieving optimal deterrence of illegal agreements. In order to enhance the effectiveness of antitrust enforcement, for example, many jurisdictions have introduced criminal sanctions for cartel conduct, with sanctions directed at both individuals and firms. This acknowledges the fact that since corporate fines are rarely sufficiently high, sanctions against individuals can be a more effective deterrent. OECD research notes that properly implemented individual sanctions “can mean the difference between viewing cartels on a cost/benefit basis as a reasonable risk-taking exercise and serious deterrence that prevents unlawful cartel arrangements” (OECD, 2003). Jones and Harrison (2014) have written that “the risk of personal sanctions (especially jail time) could also encourage individuals to resist corporate pressure to enter into unlawful activity.

Criminal sanctions

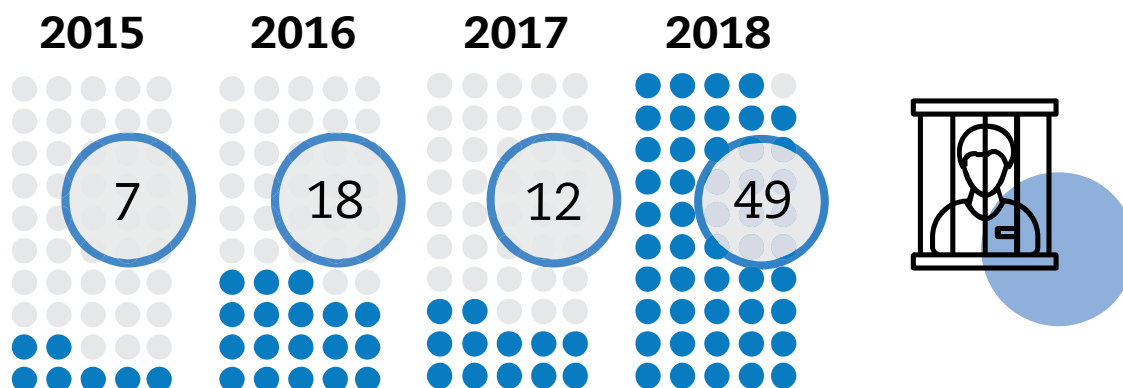
As seen in Figure 1.4, imposing criminal sanctions on individuals is possible in 26 out of the 55 CompStats jurisdictions; in another 10 jurisdictions they can be imposed only for a bid-rigging infringement. In the period of 2015-2018, 27 jurisdictions have imposed a fine on an individual in at least one case³³, while 7 jurisdictions have imposed at least one prison sentence.

While imprisonment of individuals participating in a cartel agreement is not yet a widespread practice, the data collected from 55 jurisdictions in CompStats highlighted a growing trend for this type of sanction over

³³ In at least 11 out of these 27 jurisdictions these fines were administrative rather than criminal, as the possibility for criminal sanctions in these jurisdiction were unavailable.

the last four years: the number of cartel cases for which a prison sentence was imposed, often together with other sanctions, increased from 7 cases in 2015 to 49 in 2018.

Figure 3.1. Number of cartel cases for which prison sentences were imposed, 2015-2018



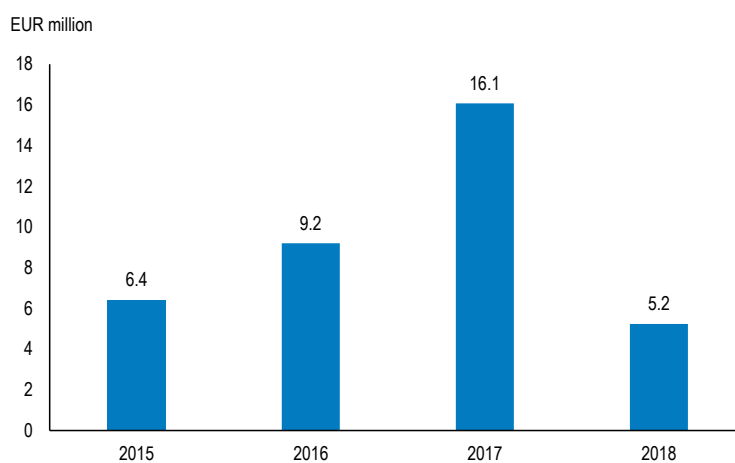
Source: OECD CompStats Database.

Corporate fines

Notwithstanding recent developments in terms of use and the availability of sanctions against individuals, corporate fines are still the most widely used form of sanction for cartel conduct. Indeed, there has been an overall increase in the level of fines over the past two decades. This has been accompanied by a number of jurisdictions reviewing their sanction regimes with the aim of increasing penalties for cartel conduct. (See OECD, 2019)

A sample of the 49 jurisdictions in CompStats that provided data for all four years shows that the average cartel fine for a company increased from EUR 6.4 million in 2015 to EUR 16.1 million in 2017. This average then decreased substantially in 2018, dropping to below 2015 levels.

Figure 3.2. Average monetary fine per company, 2015-2018 (EUR million)

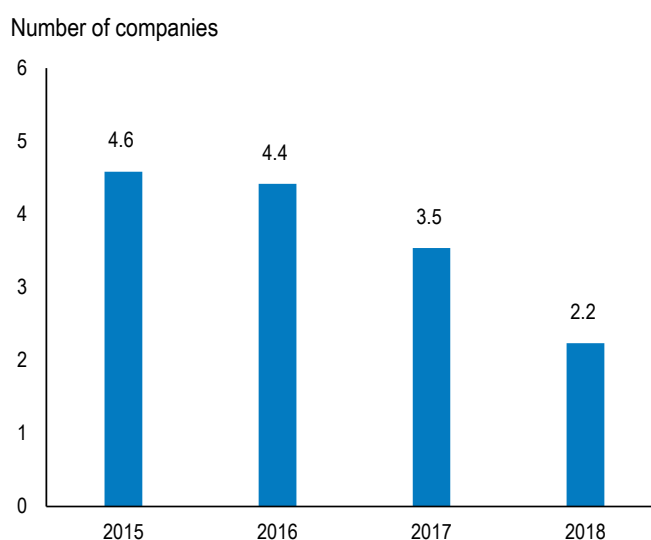


Note. Based on data provided by 49 jurisdictions.

Source: OECD CompStats Database.

Figure 3.3 shows that the number of companies fined in each cartel decision has been consistently decreasing, going from an average of 4.6 in 2015 to 2.2 in 2018. While the number of companies that received a fine decreased, the fines they received, at least from 2015 to 2017, increased on average.

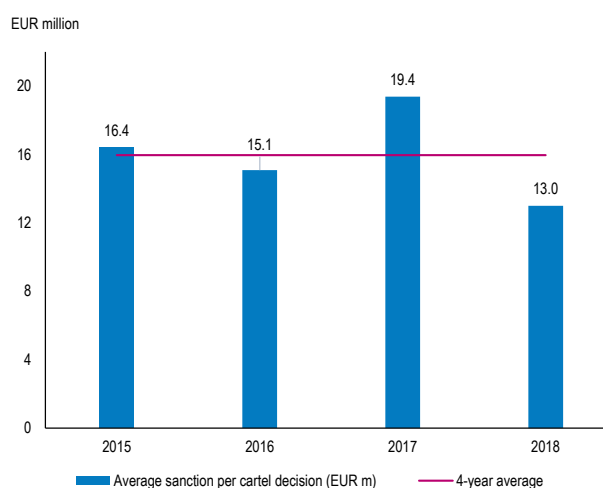
Figure 3.3. Average number of companies fined per cartel decision, 2015-2018



Source: OECD CompStats Database.

Figure 3.4 shows the average fine imposed per cartel decision. The average fine, both per company and per cartel decision, peaked in 2017. However, taken over the four-year period, the average fine per cartel decision is far more stable and the drop in 2018 less steep (-32%).

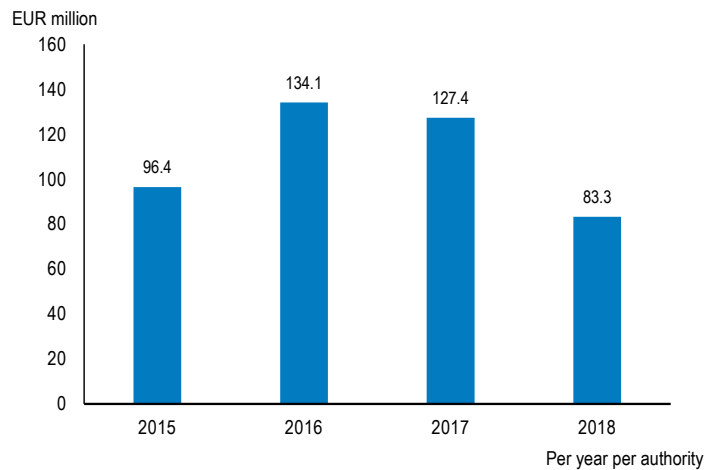
Figure 3.4. Average fine per cartel decision, 2015-2018 (EUR million)



Source: OECD CompStats Database.

The drop in 2018 can be seen also in Figure 3.5, which reports the average total amount of fines imposed by competition authorities. Again, 2018 saw a large decrease (35%) compared to the previous year, and a 30% decrease compared to the 2015-2017 average. Despite this drop, the figures show that overall antitrust enforcers around the world have regularly imposed significant fines on cartels.

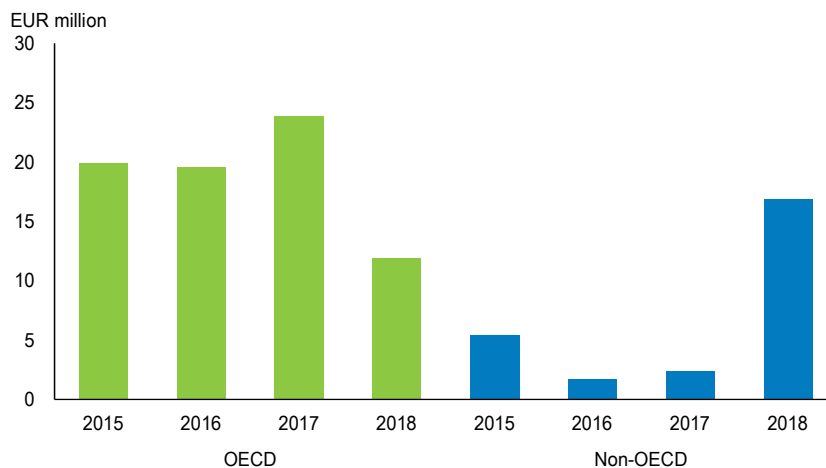
Figure 3.5. Total average fines imposed by competition authorities, 2015-2018 (EUR million)



Source: OECD CompStats Database.

OECD countries saw a decline in fines for in 2018, but non-OECD jurisdictions showed an opposite trend. After an initial decrease from EUR 5.4 million in 2015 to EUR 1.7 million in 2016, the average sanction per cartel decision in non-OECD jurisdictions increased in 2017 and peaked in 2018 due to a high cartel fine in one non-OECD jurisdictions. Over the four-year period, corporate fines were on average almost three times higher in OECD countries than in non-OECD jurisdictions; the difference was almost seven times during the period 2015-2017.

Figure 3.6. Average fine per cartel decision by jurisdiction, 2015-2018 (EUR million)

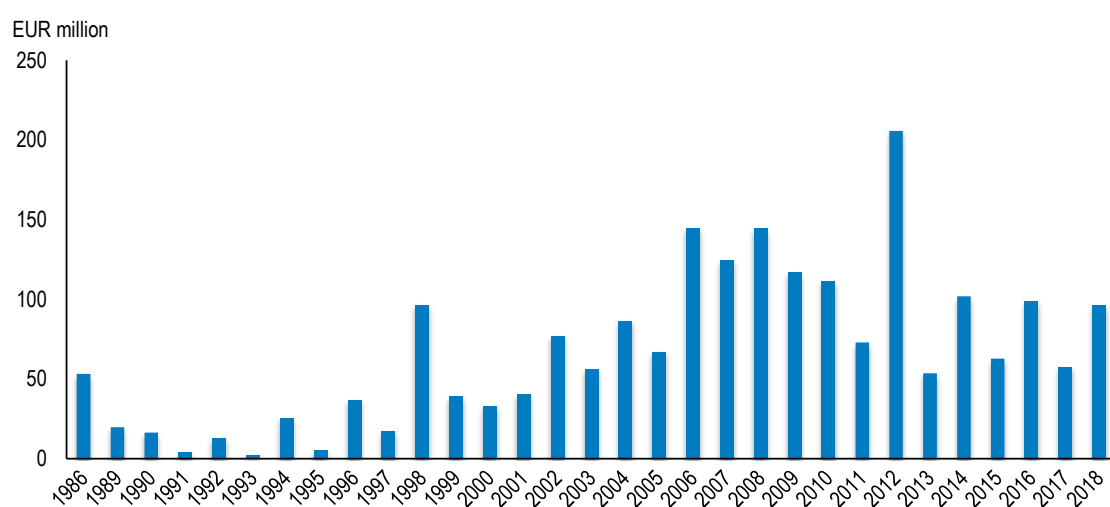


Source: OECD CompStats Database.

It is important to underline that the limited four-year time span in CompStats does not allow for a more complete long-term picture of the status of cartel enforcement and the use of monetary penalties. The information contained in ICStats does allow for a longer-term trends to be analysed, even if only for international hard core cartels.³⁴

Figure 3.7 shows the average fines imposed in a given year for each international hard core cartel. This amount increased steadily, with minor variations, until the first decade of the 2000s. After peaking in 2012, mainly driven by, among others, the LIBOR case (see Box 6), the trend becomes more irregular; over the period 2013-2018, annual fluctuations take fines from around EUR 50-60 million to around EUR 100 million. This period was characterised by a few cases for which competition authorities imposed substantial fines, and Boxes 5, 6 and 7 illustrate some of the most relevant ones.

Figure 3.7. Average international cartel fine imposed per cartel decision, 1986-2018 (EUR million)



Note: Original fines in the OECD ICStats Database are reported in USD. For the purpose of this graph, they have been converted in EUR using the exchange rate at the 31/10/2019.

Source: OECD ICStats Database.

Globally, the average international cartel fine imposed per cartel decision over the period 2013-2018 was EUR 78.5 million, 34% lower than the EUR 119.2 million for the period 2006-2011.

These figures reveal that average sanctions imposed on international hard core cartels are much higher than those imposed on domestic cartels, at least for the period 2015-2018 for which it is possible to conduct a comparison. (It is important to underline that the samples of jurisdictions included in the two databases, CompStats and ICStats, are not entirely overlapping). However, when focusing on the level of fines, instead of the exact monetary value, the difference over the period 2015-2018 is relatively substantial, around EUR 60 million per cartel sanction.³⁵

³⁴ For international hard core cartels, fine amounts are from ICStats, in which the data are recorded in US dollars rather than euros. Where needed, for the purposes of comparison and consistency, these amounts have been converted to euros using the USD exchange rate at 31/10/2019.

³⁵ Average of EUR 14 million for the CompStats cartels, over the period 2015-2018, and EUR 79 million for international hard core cartels, converted using exchange rate at 31/10/2019.

Box 4. The EU “truck cartel”

In July 2016, the European Commission imposed a record fine of EUR 2 926 499 000 on four truck manufacturers – Volvo/Renault, Daimler, Iveco, and DAF – for running a cartel from 1997 to 2011. MAN was also involved but not fined as it obtained a 100% reduction under the Leniency Notice for revealing the existence of the cartel to the Commission. Volvo/Renault, Daimler and Iveco also benefitted from reductions of their fines, amounting to 40%, 30% and 10% respectively, after co-operating with the investigation.

For 14 years, the companies maintained a cartel agreement that involved co-ordinating prices at “gross list” level for medium and heavy trucks in the European Economic Area (EEA). The collusive agreement also concerned the:

- timing for the introduction of emission technologies for medium and heavy trucks, to comply with European Union emissions standards
- passing on to customers the costs of emissions technologies required to comply with the European emissions standards.

In September 2017, the European Commission imposed an additional fine of EUR 880 523 000 on Scania, which unlike the other companies had decided not to settle. This brought the total fines for EU truck manufacturers’ cartels to EUR 3.8 billion.

Sources: https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2582;
https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3502.

Box 5. The LIBOR investigation

The rigging scandal around the London Interbank Offered Rate (LIBOR) broke in 2012, leading to parallel investigations into the manipulation of the rate, as well as other benchmark interest rates, during many years and across multiple jurisdictions. As Huizing (2015) has noted: “the global investigation, prosecution, and punishment of the manipulation of interest rate benchmarks by some of the world’s largest banks has created an unprecedented challenge for the international enforcement community. At least 27 authorities from 12 different jurisdictions are involved in the matter.”¹

In 2012, competition authorities began to sanction worldwide collusion between a number of banks, carried out in order to manipulate key benchmark interest rates before and during the 2008 financial crisis. In particular, the United States Department of Justice (DOJ) entered into significant settlements with banks involved in LIBOR rigging.

In June 2012, Barclays entered into a USD 160 million settlement with the US DOJ after manipulating benchmark interest rates between 2005 and 2009; this was followed by additional penalties by US and UK regulators, for a total of more than USD 450 million.

In December 2012, UBS agreed to plead guilty to LIBOR rigging and was fined USD 500 million by the US DOJ. In addition to the DOJ’s criminal penalties, UBS was also charged by financial authorities in the UK, US and Switzerland. UBS’s total fines amounted to more than USD 1.5 billion.

These settlements constituted only some of the initial steps of a much broader investigation, which involved sanctions from competition and financial authorities, on companies and individuals, as well as private actions. By the end of 2012, 88 actions had been filed against 20 banks, including 68 lawsuits and 20 regulatory investigations.²

¹ P.J.F. Huizing (2015). ² M.R. Koblenz, K.M. Labbate, and C.C. Turner (2013).

Sources: www.justice.gov/opa/pr/barclays-bank-plc-admits-misconduct-related-submissions-london-interbank-offered-rate-and;
www.justice.gov/opa/pr/rbs-securities-japan-limited-agrees-plead-guilty-connection-long-running-manipulation-libor;
www.justice.gov/opa/pr/ubs-securities-japan-co-ltd-plead-guilty-felony-wire-fraud-long-running-manipulation-libor.

Box 6. Maritime car carriers

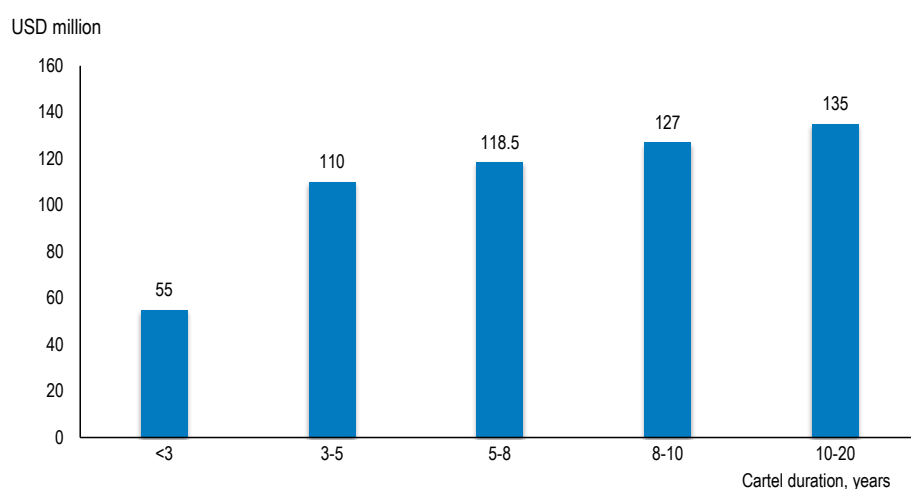
In February 2018, the European Commission fined four maritime car carriers EUR 395 million for a price-fixing cartel, called the “ro-ro cartel”. From October 2006 to September 2012, Chilean maritime carrier CSAV, Japanese carriers MOL, “K” Line and NYK, and Norwegian-Swedish carrier WWL-EUKOR participated in a cartel for the intercontinental maritime transport of vehicles. The EC began the investigation following leniency application from MOL, which subsequently received full immunity for revealing the cartel’s existence.

The global cartel affected various routes between Europe and other continents, and during the investigation the EC cooperated with several competition authorities around the world. In addition to the case brought by the EC, other investigations were carried out by competition authorities in the United States, Japan, Korea, China, Chile, South Africa, Australia, Brazil, and Mexico.

Sources: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0906\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0906(01)&from=EN) ;
https://ec.europa.eu/commission/presscorner/detail/en/IP_18_962 .

Figure 3.8 shows the average cartel sanctions imposed on international hard core cartels according to their duration. As expected, average fines increase with a cartels’ duration. For instance, cartels lasting less than 3 years were fined on average USD 55 million, while cartels lasting 3 to 5 years were fined the double.

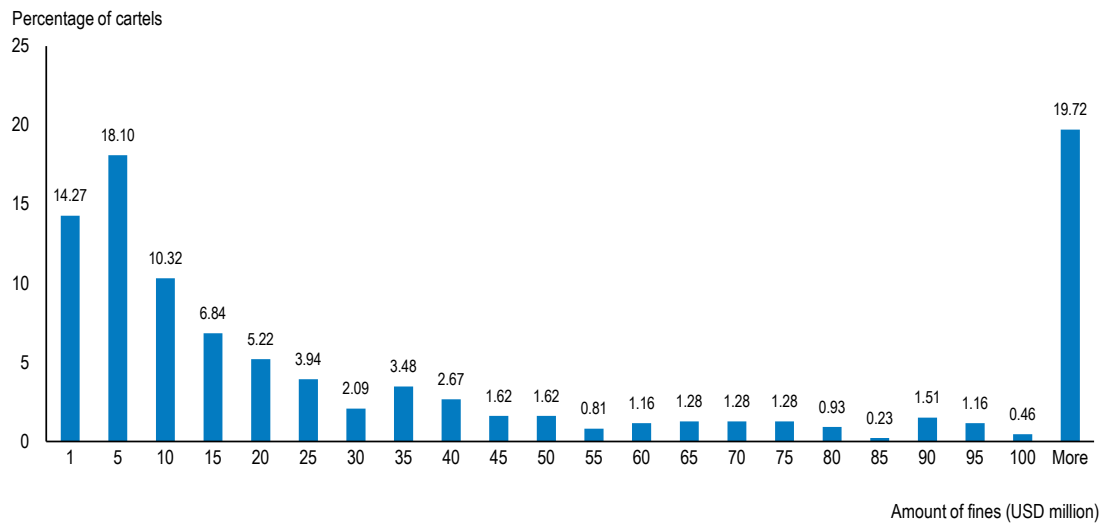
Figure 3.8. Average international cartel fine by cartel duration (USD million)



Note: The lower bound of each range is included in the category. Average fines are in USD, as originally reported in the OECD ICStats Database. Source: OECD ICStats Database.

Another element that can help give a more precise idea of how corporate fines are used in international hard core cartels is their distribution. Over the period 1989-2018, around 50% of international hard core cartels were fined less than USD 15 million, while a fine higher than USD 100 million was imposed on around 20% of the cartels. Overall, one third of all fines imposed on international cartels have been lower than USD 5 million.

Figure 3.9. Distribution of international cartel fines, 1989-2018 (USD million)



Note: Average fines are in USD, as originally reported in the OECD ICStats Database.
Source: OECD ICStats Database.

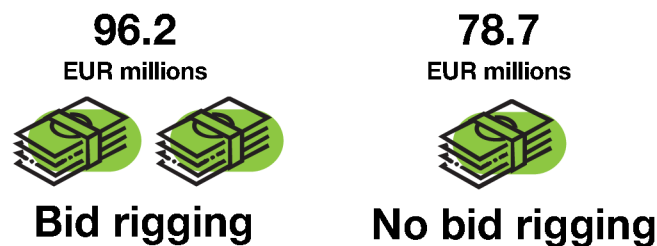
Bid rigging

The average sanction imposed can vary also depending on the specific type of infringement. In particular, considering the sample of international hard core cartels, the average sanction over the period 1989-2018 was EUR 96.2 million for bid-rigging violations, but EUR 78.7 million for non-bid rigging international cartels. This difference can also reflect the fact that jurisdictions can impose different sanctions on bid-rigging conspiracies, including criminal penalties in otherwise administrative or civil systems.

22%

Fines for bid rigging are on average 22% higher than for other international hard core cartels.

Figure 3.10. Average fine imposed for international cartels (EUR million)



Note: Original fines in the OECD ICStats Database are reported in USD. For the purpose of this figure, they have been converted in EUR using the exchange rate at the 31/10/2019.
Source: OECD ICStats Database.

Annex A. Sources of data

1. CompStats database

Under the guidance of the Bureau of the Competition Committee, the OECD Secretariat has promoted a new initiative to develop a database with general statistics about competition agencies, including data on enforcement and information on advocacy initiatives.

Some statistics related to competition authorities' activities are already publicly available. However, this information is often dispersed, lacks consistency across time and jurisdictions, and is currently not used systematically to identify overall trends from which to draw policy lessons. This OECD initiative is intended to fill this gap.

The Secretariat has collected data on an annual basis from: 1) competition authorities in OECD countries; 2) authorities in non-OECD jurisdictions that are Participants or Associates in the OECD Competition Committee; and 3) agencies in jurisdictions that are neither OECD members nor a participant or associate in the OECD Competition Committee but have expressed interest to join the database.

The currency of the data in CompStats is euros.

Jurisdictions

Currently, the CompStats database covers data from competition agencies in 55 jurisdictions, of which 37 jurisdictions are OECD members (including the European Commission³⁶); 15 jurisdictions are participants in the OECD Competition Committee; 2 jurisdictions are associate to the OECD Competition Committee; and 1 jurisdiction is neither an OECD member nor an associate or participant in the OECD Competition Committee.

Period

The database currently covers the period 2015-2018. In the future, the OECD intends to collect data on an annual basis.

The following areas are currently covered in OECD Compstats.

1. General information

- Budget
- Number of staff
- Number of competition staff

2. Cartels and other anticompetitive agreements

³⁶ The Commission of the European Union (EU) takes part in the work of the OECD, in accordance with the [Supplementary Protocol](#) to the [Convention](#) on the Organisation for Economic Co-operation and Development.

- Number of decisions
- Number of decisions on vertical agreements
- Number of cases with settlements or plea bargain
- Number of cases with negotiated/consensual procedure for settling cases
- Number of leniency applications
- Number of ex officio investigations launched
- Number of cases that used a dawn raid
- Total amount of fines imposed
- Number of companies fined
- Number of cases with fines on individual
- Number of cases with imprisonment of individual

3. Abuse of dominance/unilateral conduct

- Number of decisions
- Number of cases with negotiated/consensual procedure for settling cases
- Number of investigations launched
- Number of cases that used a dawn raid
- Total amount of fines imposed
- Number of companies fined

4. Mergers and acquisitions

- Number of notifications
- Number of Phase One (or single phase) clearances
- Number of Phase One (or single phase) clearances with remedies
- Number of Phase Two clearances (after an in-depth investigation)
- Number of Phase Two clearances with remedies
- Number of Phase Two prohibitions (or trials)
- Number of withdrawn notifications by merging parties in Phase Two

5. Advocacy

- Number of market studies
- Number of formal advocacy opinions issued to governments, regulators, legislators
- Number of advocacy events organised

6. Additional data

- GDP
- Population
- Year of implementation of competition law
- Year of establishment of competition agency

2. OECD International Cartels (ICStats) Database

The OECD International Cartels Database, or ICStats, builds on the world-leading database of private international hard core cartels developed by Professor John Connor and acquired by the OECD in 2017. The entries in the database are regularly updated by the OECD Secretariat and a first selection of 200 cartels going back to 2012 was publicly launched in September 2019 (see <http://bit.ly/OECD-ICStats>). The full database today contains approximately 1 300 references related to international hard core cartels since 1983 from approximately 50 jurisdictions. The ICStats definition of international cartels refers to those cartels where at least two of the participating cartel members are headquartered in different jurisdictions, regardless of the geographic coverage of the cartel activities. The cartels included are those in which competition authorities have issued decisions, including fines, against cartels, and/or in which private damages have been collected. This database provides an exceptionally valuable source of information about such cartels, including information on global penalties, geographic extension, industries, dates, jurisdictions, and cartel participants.

For the analysis of this publication, which focuses on enforcement of competition authorities, the data on private enforcement in ICStats is excluded.

The currency of the data in ICStats is USD.

3. Hard Core Cartel (HCC) Recommendation survey

The questionnaire that was conducted in 2016 requested information to aid the preparation of the Competition Committee's report to the OECD Council on the implementation of the Recommendation concerning Effective Action against Hard Core Cartels, and developments concerning the fight against hard core cartels. The report was discussed by Working Party No. 3 on 20 June 2017 and an updated version of the report was presented on 4-5 December 2017.

The final report, *Review of the Recommendation of the Council concerning Effective Action against Hard Core Cartels*, (C(98)35/FINAL), was published on 5 June 2018.

Annex B. OECD CompStats - Questionnaire and Methodology

Content

Jurisdictions

The OECD Database on General Competition Statistics (OECD CompStats) currently covers data from competition agencies in 55 jurisdictions, of which 37 are OECD countries (36 OECD countries and the European Union), 14 are participants in the OECD Competition Committee, and 1 jurisdiction is an associate to the OECD Competition Committee.

Period

The database currently covers the period 2015-2018. In the future, the OECD intends to send out an annual request to provide the new data for OECD CompStats, together with the request for submission of the country's annual report to the OECD Competition Committee.

In 2020, the database will be upgraded by including the data for 2019, as well as expanding the number of jurisdictions.

The OECD Secretariat developed the database by aggregating the responses received from the questionnaire sent to OECD Committee members, Participants and Associates in June 2018 (for 2015-2017 data) and January 2019 (for 2019 data).

The following areas are covered in CompStats:

- 1) General information
- 2) Cartels and other anticompetitive agreements
- 3) Abuse of dominance/unilateral conduct
- 4) Mergers and acquisitions
- 5) Advocacy

Methodology

The OECD Secretariat received questions and feedback from respondents as part of their responses to the questionnaire it sent out in June 2018, and which covered the years 2015-2017. These issues have been taken into account as much as possible. The following section lists the questions in the survey and some clarifications of some of the methodological choices that have been made in order to assure consistency, completeness, comparability and accuracy.

1. General information: explanations of questionnaire demands

1.1. *Budget for competition law and policy in euros (exchange rate at 31 December). (NB: If possible, exclude budget for consumer protection.)*

Explanation

Scope

Competition authorities can differ significantly in terms of their mandates and scope. For some jurisdictions, a competition authority's mandate extends beyond competition policy to consumer protection, public procurement or other functions. This can have an impact on the authority's allocated budget. To ensure consistency and comparability, the OECD only takes into account the budget figures of those competition authorities reporting their exclusive budget for competition law and policy activities (excluding, for instance, consumer protection).

Currency fluctuations

Budget figures received from the competition authorities are converted in euros to allow for comparison and aggregation. However, currency fluctuations can affect the euro amount of competition authorities' budgets, even though the actual budget may have not changed. The Secretariat is aware of this and has made specific adjustments in analyses where needed.

Fiscal years

Certain jurisdictions have fiscal years that are not calendar years. In order to avoid complex adjustment calculations to align fiscal and calendar years, the OECD Secretariat utilises the data provided by competition authorities for their fiscal year, regardless of its alignment with the calendar year. If jurisdictions are consistent in their annual reporting and refer to the period in their statistics, no adjustments are needed.

1.2. *Total number of staff in the agency set at 31 December of each reporting year.*

1.3. *Total number of staff working on competition as of 31 December (please do not count administrative staff or staff involved in other functions of the agency, such as consumer protection, public procurement, sector regulation).*

Explanation

The Secretariat considers the number of people working at the agency, regardless of whether they work full time or part time. It is therefore not necessary to adjust the number of staff according to the full-time equivalent.

2. Cartels and other anticompetitive agreements

2.1. *Total number of final decisions taken by the competition authority (or judgement by a relevant court, if "competition authority" is not applicable because the competition authority does not take decisions in your jurisdiction). (NB: for the purposes of this questionnaire, a case/decision concerning the same cartel is considered to be one, even if there are different decisions for each cartel participant. A decision is the official determination by a competition authority.)*

2.2. *Number of decisions with a vertical element, taken by the competition authority. (NB: for the purposes of this questionnaire, a case/decision concerning the same cartel is considered to be one, even if there are different decisions for each cartel participant.)*

2.3 (1). *Number of cases in which settlements or plea bargain were used.*

2.3 (2). *Number of cases in which commitment procedures or other types of negotiated/consensual procedure for settling cases were used.*

2.4. *Total leniency applications received by the competition authority.*

2.5. *Number of ex officio investigations launched (number of separate cases, not the number of companies involved), not including investigations following a leniency application received by the competition authority.*

2.6. *Number of cases in which a dawn raid was carried out (number of separate cases, not the number of companies involved or dawn raids carried out).*

Explanation

Some jurisdictions report one single number for conducted dawn raids, irrespective of whether this pertains to a dawn raid for an anticompetitive agreement or an abuse of dominance case, while others separate between the two types and report on these. To allow for consistency and comparison, the Secretariat has excluded the numbers of the jurisdictions that do not provide the split when analysing dawn raids by case type, while including the total number of dawn raids for both categories of anti-competitive conduct when no distinction between case types is made.

2.7. *Total amount of monetary fines (criminal and civil) imposed by the competition authority or by a court (excluding appeals), in euros (exchange rate at 31 December).*

2.8. *Total amount of monetary fines (criminal and civil) collected by the competition authority or the appropriate legal entity, in euros (exchange rate at 31 December).*

Explanation

In many jurisdictions, competition authorities are not responsible for collecting imposed monetary fines. Consequently, the amount of the fines collected is not known or available for many competition authorities and therefore, going forward, the Secretariat will disregard this variable and stop collecting these amounts.

2.9. *Number of companies fined by the competition authority or by a court.*

2.10. *Number of cases in which fines on individuals were imposed by the competition authority or by a court, excluding appeals. (For the purposes of this questionnaire, a case/decision concerning the same cartel is considered to be one, even if there are different decisions for each cartel participant.)*

Explanation

With fines on individuals, this question refers to the powers of some competition authorities to impose criminal sanctions on a company's employees as individuals.

2.11. *Number of cases in which imprisonment was imposed by the competition authority or by a court, excluding appeals. (For the purposes of this questionnaire, a case/decision concerning the same cartel is considered to be one, even if there are different decisions for each cartel participant.)*

1. Abuse of dominance/unilateral conduct

3.1. *Number of decisions taken by the competition authority (or judgement by a relevant court, if "competition authority" is not applicable because the competition authority does not take decisions in*

your jurisdiction). (NB: for the purposes of this questionnaire, multiple cases/decisions concerning the same infringement is considered to be one. A decision is the official determination by a competition authority.)

3.2. Number of cases in which settlements, plea bargain, commitment procedures or other types of negotiated/consensual procedures for settling infringement cases were used.

3.3. Number of investigations launched (number of separate cases, not the number of companies involved or dawn raids carried out).

3.4. Number of cases in which a dawn raid was carried out, if applicable (number of separate cases, not the number of companies involved).

Explanation

Some jurisdictions report one single number for conducted dawn raids, irrespective of whether this pertains to a dawn raid for an anticompetitive agreement or an abuse of dominance case, while others separate between the two types and report on these. To allow for consistency and comparison, the Secretariat has excluded the numbers of the jurisdictions that do not provide the split when analysing dawn raids by case type, while including the total number of dawn raids for both categories of anti-competitive conduct when no distinction between case types is made.

3.5. Total amount of fines (criminal and civil) imposed by the competition authority or by a court, in euros (exchange rate at 31 December).

3.6. Total amount of fines (criminal and civil) collected by the competition authority or the appropriate legal entity, in euros (exchange rate at 31 December).

Explanation

In many jurisdictions, competition authorities are not responsible for collecting imposed monetary fines. Consequently, the amount of the fines collected is not known or available for many competition authorities and therefore, going forward, the Secretariat will disregard this variable.

3.7. Number of companies fined by the competition authority or by a court.

2. Mergers and acquisitions

4.1. Total number of notifications

4.2. Number of Phase One (or single phase, subject to the system in place) clearances or expiration of waiting period.

Explanation

In certain jurisdictions, the number of Phase One/Two clearances or expiration of a waiting period (after an in-depth investigation) also includes the number of clearances with remedies. In these cases, the OECD Secretariat has adjusted the numbers, as the number of clearances with remedies is requested separately at questions 4.3/4.5.

4.3. Number of Phase One (or single phase, subject to the system in place) clearances with remedies.

4.4. Number of Phase Two clearances or expiration of waiting period after an in-depth investigation.

4.5. Number of Phase Two clearances with Remedies.

4.6. Number of Phase Two prohibitions (or trials).

4.7. Number of withdrawn notifications by the merging parties in Phase Two.

3. Advocacy

“Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.” (ICN definition)

5.1. Number of market studies concluded.

5.2. Number of formal (to government or courts) advocacy opinions issued (including testimonials and amicus curiae).

5.3. Number of advocacy events organised (workshops, trainings, campaigns, events for consumers, companies, ministries).

Additional variables collected by the OECD Secretariat

In order to enrich the database and allow for better and in-depth analysis, the Secretariat has added the following variables to the database: GDP data (output approach, current prices, current exchange rates); population data; year of implementation of the (first) competition law; and year of establishment of the competition authority.

Conclusion

The Secretariat has received valuable comments, questions and input from a number of competition agencies, as part of their response to the OECD questionnaire. These inputs allowed the OECD Secretariat to clarify further the numbers and continue ensuring that all responses are consistent and possible inaccuracies are corrected. However, when analysing the data, possible differences (such as differences between jurisdictions, changes in measurement, and different definitions) have been addressed on a case-by-case basis.

It is important to underline that given the large number of jurisdictions included in the database and the different frameworks for competition law and policy in place, differences remain as a result of different interpretations of questions, the use of exchange rates, the potential impossibility of disclosing certain information, as well as other local specificities. While the OECD Secretariat aims to develop an accurate, complete and consistent database, with minimum data gaps, the success of OECD CompStats depends heavily on the quality of the data provided by competition authorities.

Annex C. Participating competition authorities in CompStats

Jurisdiction	Competition authority	Abbreviation
Argentina	Comisión Nacional de Defensa de la Competencia National Commission for the Defence of Competition	CNDC
Australia	Australian Competition and Consumer Commission	ACCC
Austria	Bundeswettbewerbsbehörde Austrian Federal Competition Authority (AFCA)	BWB
Belgium	Belgische Mededingingsautoriteit / Autorité belge de la Concurrence Belgium Competition Authority	BMA
Brazil	Conselho Administrativo de Defesa Econômica Administrative Council for Economic Defence	CADE
Bulgaria	Commission on Protection of Competition	CPC
Canada	Competition Bureau	
Chile	Fiscalía Nacional Económica National Economic Prosecutor	FNE
Colombia	Superintendencia de Industria y Comercio Superintendency of Industry and Commerce	SIC
Costa Rica	Comisión para Promover la Competencia Commission for the Promotion of Competition	COPROCOM
Croatia	Agencija za zaštitu tržišnog natjecanja Croatian Competition Agency	AZTN
Czech Republic	Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition	ÚOHS
Denmark	Konkurrence- og forbrugerstyrelsen Danish Competition and Consumer Authority	DCCA
Egypt	المصرية المنافسة هيئة Egyptian Competition Authority	ECA
El Salvador	Superintendencia de competencia Superintendency of Competition	SC
Estonia	Konkurentsiamet Competition Authority	

Jurisdiction	Competition authority	Abbreviation
European Commission	European Commission Directorate-General for Competition	DG COMP
Finland	Kilpailu- ja kuluttajavirasto Finnish Competition and Consumer Authority	KKV
France	Autorité de la concurrence Competition Authority	
Germany	Bundeskartellamt Federal Cartel Office	BKA
Greece	Ελληνική Επιτροπή Ανταγωνισμού Hellenic Competition Commission	HCC
Hungary	Gazdasági Versenyhivatal Office of Economic Competition	GVH
Iceland	Samkeppniseftirlitið Icelandic Competition Authority	ICA
India	Competition Commission of India	CCI
Indonesia	Komisi Pengawas Persaingan Usaha Indonesia Competition Commission	ICC
Ireland	Competition and Consumer Protection Commission	CCPC
Israel	Israel Competition Authority	
Italy	Autorità Garante della Concorrenza e del Mercato Italian Competition Authority	AGCM
Japan	公正取引委員会 Japan Fair Trade Commission	JFTC
Kazakhstan	Табиғи монополияларды реттеу комитеті Committee on Regulation of Natural Monopolies and Protection of Competition	
Korea	공정거래위원회 Korea Fair Trade Commission	KFTC
Latvia	Konkurences padome Competition Council of the Republic of Latvia	
Lithuania	Konkurencijos taryba Competition Council of the Republic of Lithuania	KT
Luxembourg	Conseil de la Concurrence Grand-Duché de Luxembourg Competition Council	
Malta	Malta Competition and Consumer Affairs Authority	MCCAA
Mexico	Comisión Federal de Competencia Económica Federal Economic Competition Commission	COFECE
Netherlands	Autoriteit Consument en Markt Authority for Consumers and Markets	ACM

Jurisdiction	Competition authority	Abbreviation
New Zealand	Commerce Commission	COMCOM
Norway	Konkurransetilsynet Norwegian Competition Authority	
Peru	Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual National Institute for the Defence of Free Competition and the Protection of Intellectual Property	INDECOPI
Poland	Urząd Ochrony Konkurencji i Konsumentów Office of Competition and Consumer Protection	UOKiK
Portugal	Autoridade da Concorrência Portuguese Competition Authority	AdC
Romania	Consiliul Concurenței Romanian Competition Council	
Russian Federation	Федеральная Антимонопольная Служба Federal Antimonopoly Service	FAS
Slovak Republic	Protimonopolný úrad Slovenskej Republiky Antimonopoly Office of the Slovak Republic	
Slovenia	Javna agencija Republike Slovenije za varstvo konkurence Public Agency of the Republic of Slovenia for the Protection of Competition	
South Africa	Competition Commission of South Africa	CompCom SA
Spain	Comisión Nacional de los Mercados y la Competencia National Commission on Markets and Competition	CNMC
Sweden	Konkurrensverket Swedish Competition Commission	
Switzerland	Schweizerische Eidgenossenschaft / Confédération suisse/Confederazione Svizzera/Confederaziun svizra Federal Competition Commission	COMCO
Chinese Taipei	公平交易委員會 Taipei Fair Trade Commission	TFTC
Turkey	Rekabet Kurumu Turkish Competition Authority	TCA
Ukraine	Антимонопольний комітет України Antimonopoly Committee	
United Kingdom	Competition and Markets Authority	CMA
United States	Department of Justice Antitrust Division / Federal Trade Commission Bureau of Competition	DOJ / FTC

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