



OECD Competition Trends 2021



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Graphic design of Volume I by Poeli Bojorquez.

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VOLUME I

**GLOBAL
COMPETITION
ENFORCEMENT
UPDATE
2015 - 2019**



Foreword

Starting in 2018, the OECD, under the guidance of the Bureau of the Competition Committee, has launched an initiative to develop a database of general statistics relating to competition agencies, including data on enforcement and information on advocacy initiatives. The database currently covers the period 2015-2019 and will be collected on an annual basis in the future.

OECD Competition Trends presents unique insights into global competition trends based on analysis of data from more than 50 OECD and non-OECD jurisdictions. First launched in 2020, this second edition is presented in two volumes. Volume I provides an update on the competition enforcement trends between 2015 and 2019 for the competition authorities of the 56 jurisdictions in the OECD CompStats database.

This is complemented by “Volume II: Global Merger Control” which provides an overview of trends in global merger control. It describes a selection of the different choices made by jurisdictions when designing legal regimes, global merger control activity, and trends in merger control enforcement.

This publication supports informed policymaking and contributes to improving competition law and policy around the world by providing multi-year data on a large number of economic and legal indicators. 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. The resulting recommendations, best practices and policy roundtables serve both as models and inspiration for national initiatives and as tools for sharing global best practices on competition law and policy. Competition officials from developed and emerging economies are offered a unique platform from which to monitor developments in competition policy and enforcement, and to discuss new solutions for increasing effectiveness.

This work benefits from the support of the OECD Secretariat, in particular the 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, the tools of competition authorities must constantly develop and incorporate lessons learned from others. This publication contributes to helping policy makers and competition enforcers to stay up to date with the different ways in which competition law and policy is applied throughout the world.

Data in OECD Competition Trends 2021 is mainly presented on an aggregate level, combining the

data of a certain number of individual jurisdictions. The aggregate-level data includes an analysis (i) for all participating jurisdictions (“All jurisdictions”), (ii) comparing OECD and non-OECD jurisdictions, and (iii) per geographical region (Americas, Asia-Pacific, Europe and Other (i.e. countries that do not qualify for the first three regions, but for whom not enough countries in their region participate to remain anonymous)).

The publication was prepared under the supervision of Antonio Capobianco, Acting Head of Division; by Wouter Meester, project leader; Carlotta Moiso; Menna Mahmoud; Niyati Asthana; and Pedro Caro de Sousa; all of the OECD Competition Division. Cristina Volpin, Federica Maiorano, Isolde Lueckenhausen, James Mancini, Paulo Burnier, Ruben Maximiano and Sabine Zigeliski, all of the OECD Competition Division, provided comments and suggestions on earlier drafts.

We want to thank the individual competition authorities in the participating jurisdictions who generously provided the information on which much of this publication is based.

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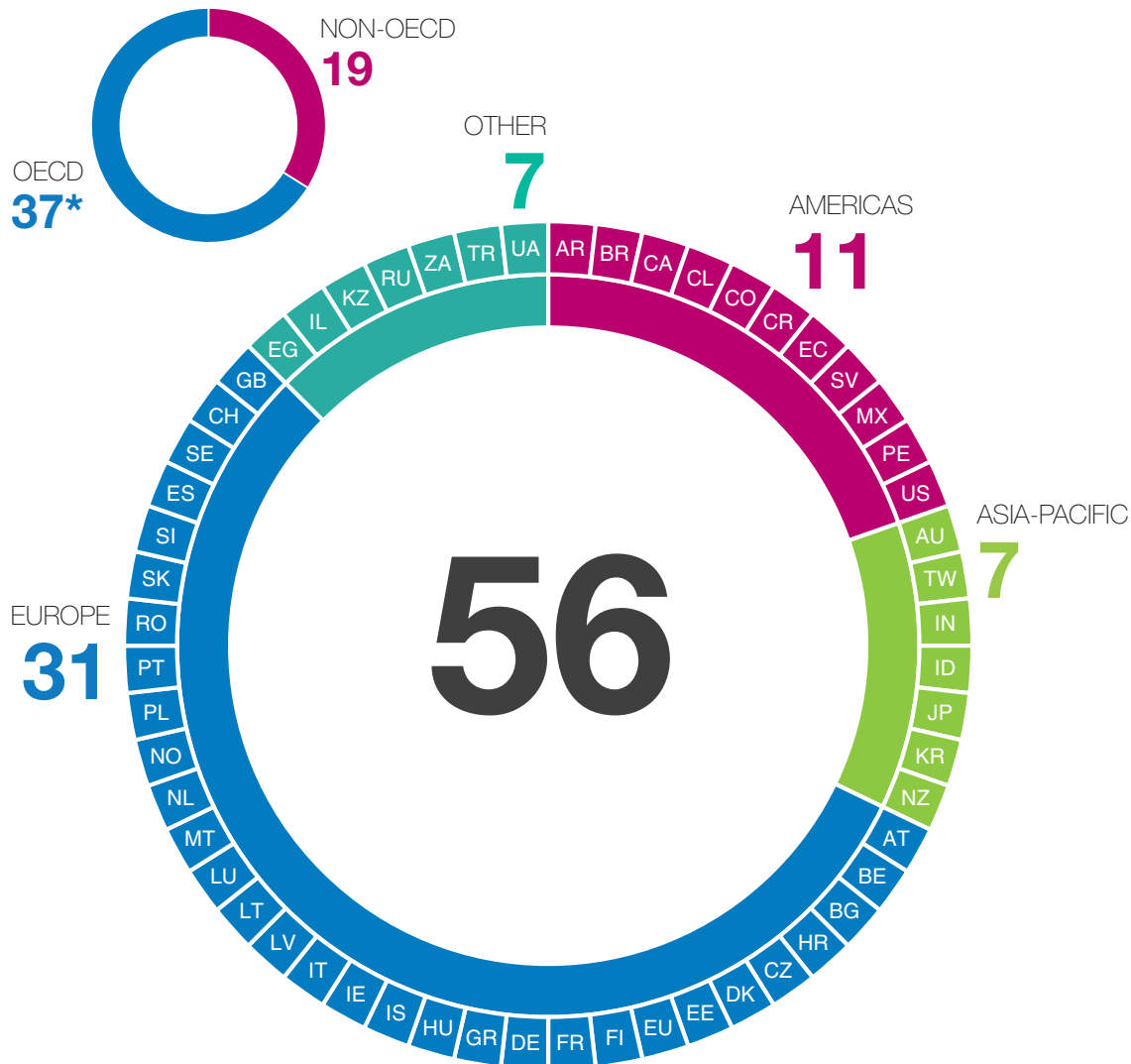
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1. Key figures

Figure 1 Coverage of the OECD CompStats Database, 2019



* Includes the 36 OECD countries and the European Union. Colombia, although having become a member in 2020, has been treated as a non-member, as the data pertained to the years before Colombia's accession.

Figure 2 Key facts about the OECD CompStats Database

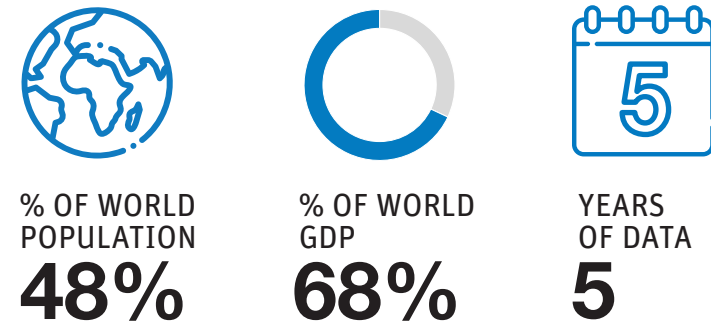
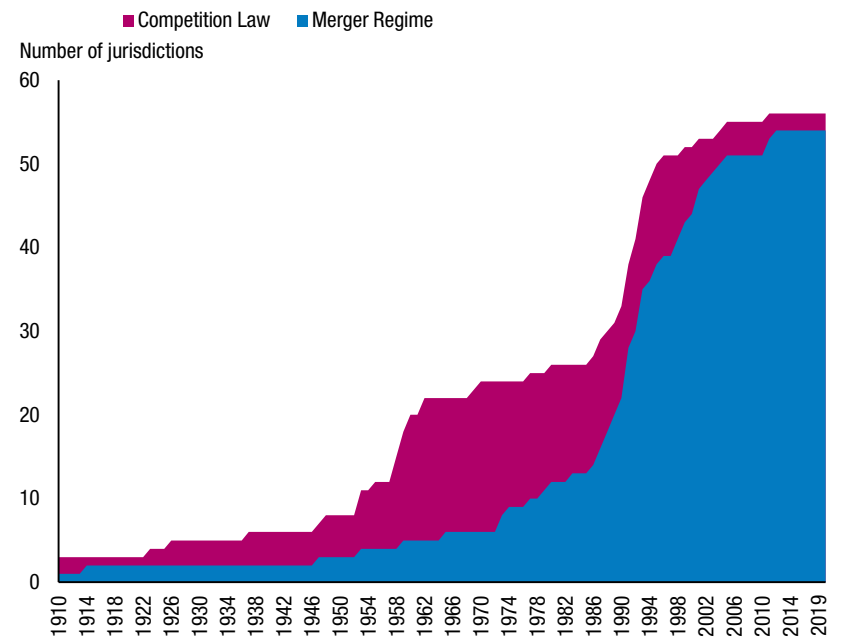


Figure 3 Evolution of competition law and merger regimes, 1910-2019

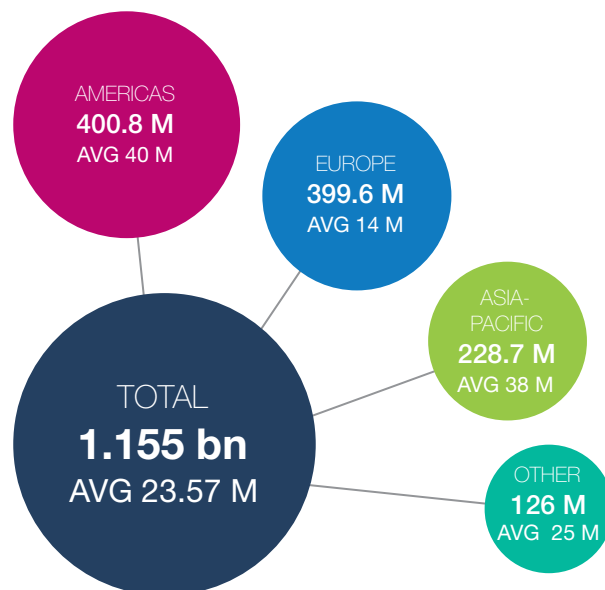


Note: Data based on the 56 jurisdictions in the CompStats database. Source: OECD CompStats Database.

Figure 4 General overview of competition resources and enforcement activity, 2019

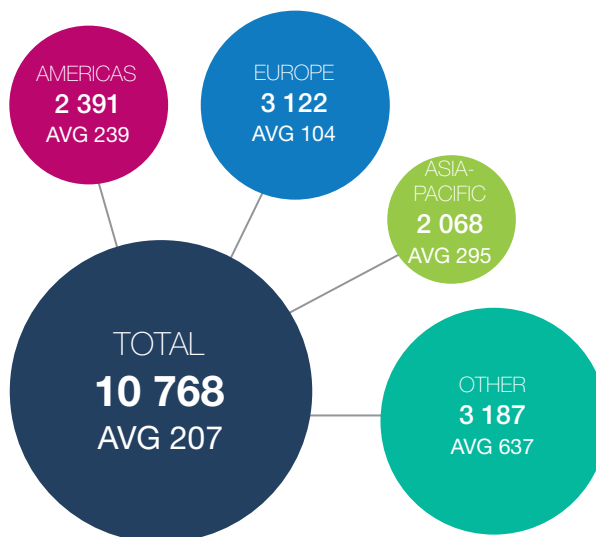
COMPETITION BUDGET (EUR)

Total **1.155 Billion**
 Average **23.57 Million**
 Median **10.19 Million**



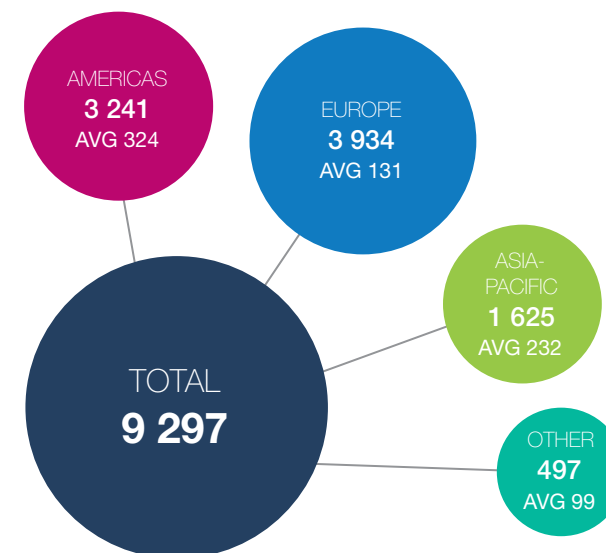
COMPETITION STAFF

Total **10 768**
 Average **207**
 Median **100**



TOTAL DECISIONS

Abuse of dominance **212**
 Cartel decisions **449**
 Mergers **8 636**



Note: Data based on the 52 jurisdictions in the CompStats database for which complete data has been received. Budget data includes 49 jurisdictions that provided budget data for solely competition activities for all five years. OECD vs non-OECD logos show the average annual growth rate from 2015 to 2019. Budget number is in 2019 EUR. Source: OECD CompStats Database.

2. Resources

2.1 Competition budgets

Figure 5 Total budget, 2015-2019

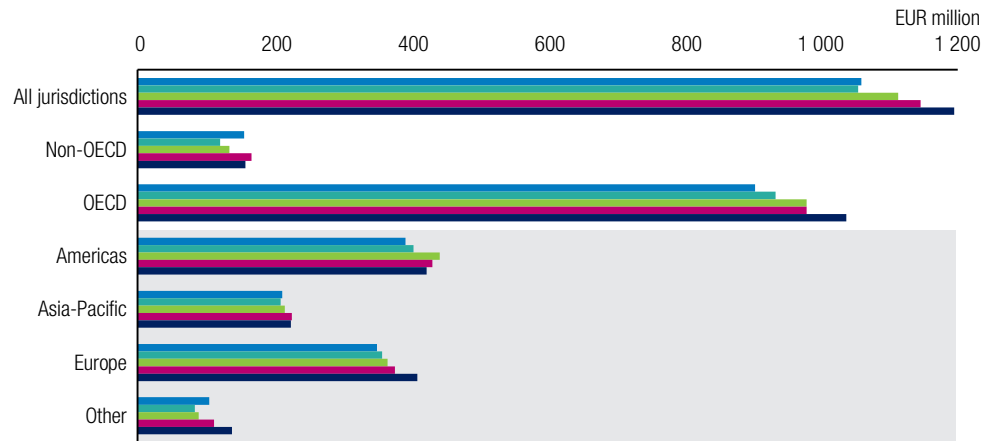


Figure 6 Average budget per agency, 2015-2019

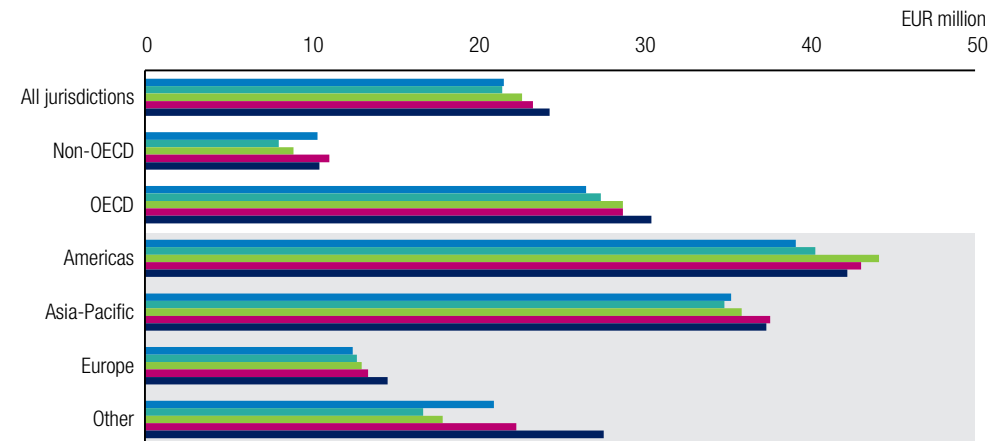


Figure 7 Average competition budget per EUR 1 million GDP, 2015-2019

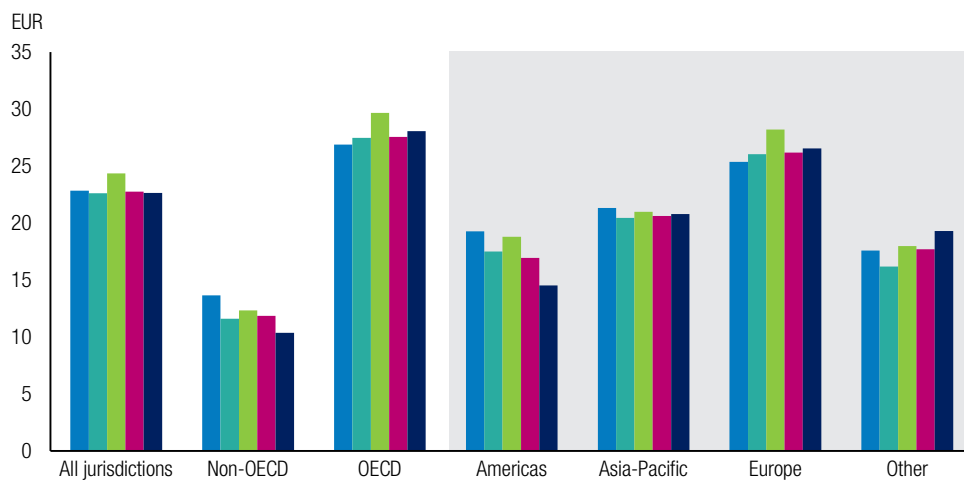
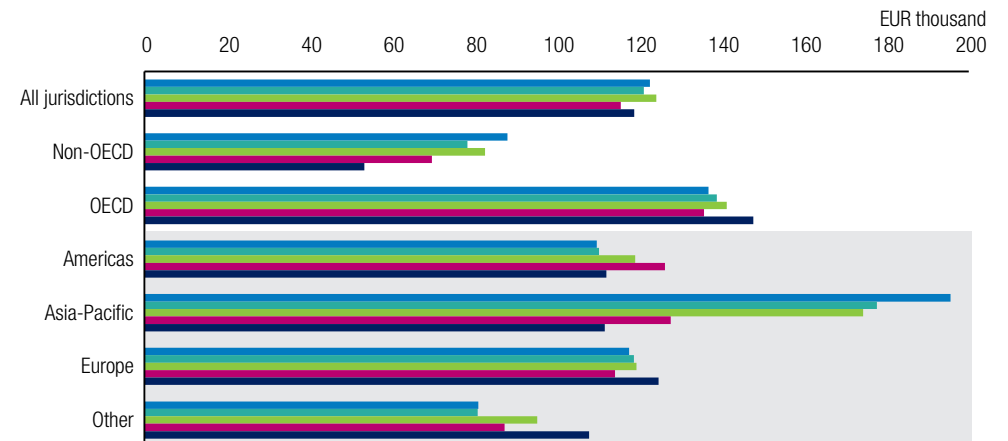


Figure 8 Average budget per competition staff member per agency, 2015-2019



Note (for all graphs): Data based on the 49 jurisdictions in the CompStats database that provided budget data for solely competition activities for all five years. Budget figures are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate currency fluctuations distorting budget changes. Competition staff are staff working only on competition (excluding administrative staff or staff involved in other functions of the authority, such as consumer protection, public procurement, sector regulation).
Source: OECD CompStats Database.

2.2 Competition staff

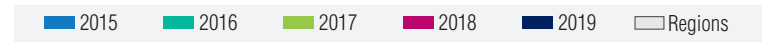
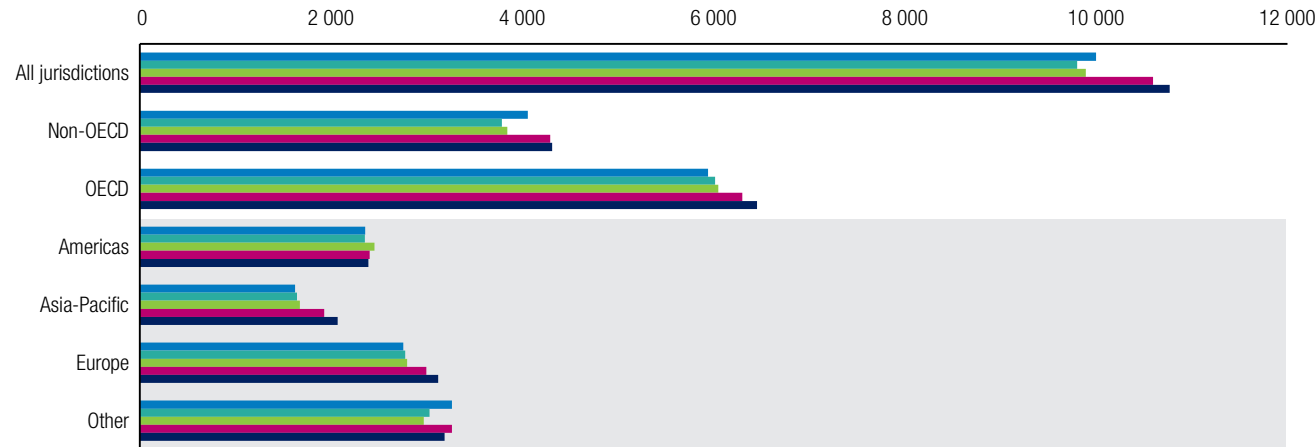


Figure 9 Total number of competition staff, 2015-2019



8%
increase
in competition staff
between 2015-2019

Figure 10 Average number of competition staff per agency, 2015-2019

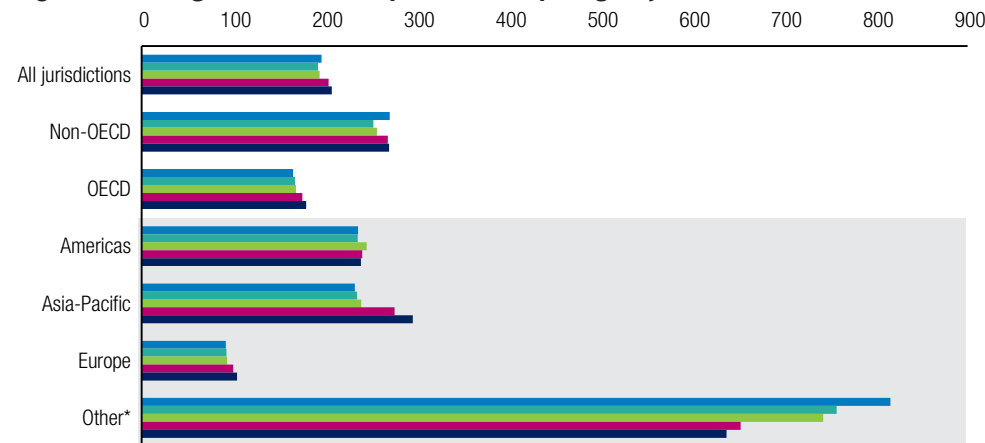
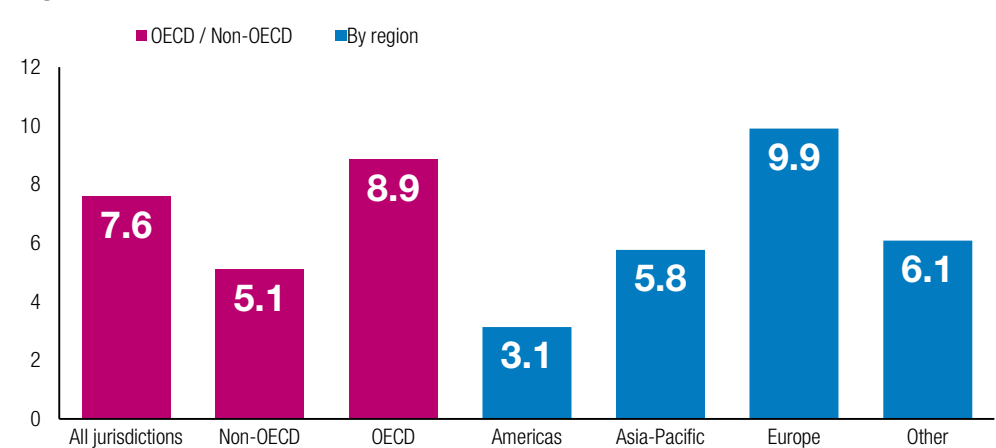


Figure 11 Competition staff per 1 million inhabitants, 2019



* Two jurisdictions in the group "Other" are responsible for the high values because of regional offices.

Note (for all graphs): Data based on the 52 jurisdictions in the CompStats database that provided data for five years. Total number of staff working only on competition (excluding administrative staff or staff involved in other functions of the authority, such as consumer protection, public procurement, and sector regulation).

Source: OECD CompStats Database.

3. Competition enforcement activities

3.1 Enforcement and detection activities

Figure 12 Change in enforcement activity by jurisdiction, 2015-2019

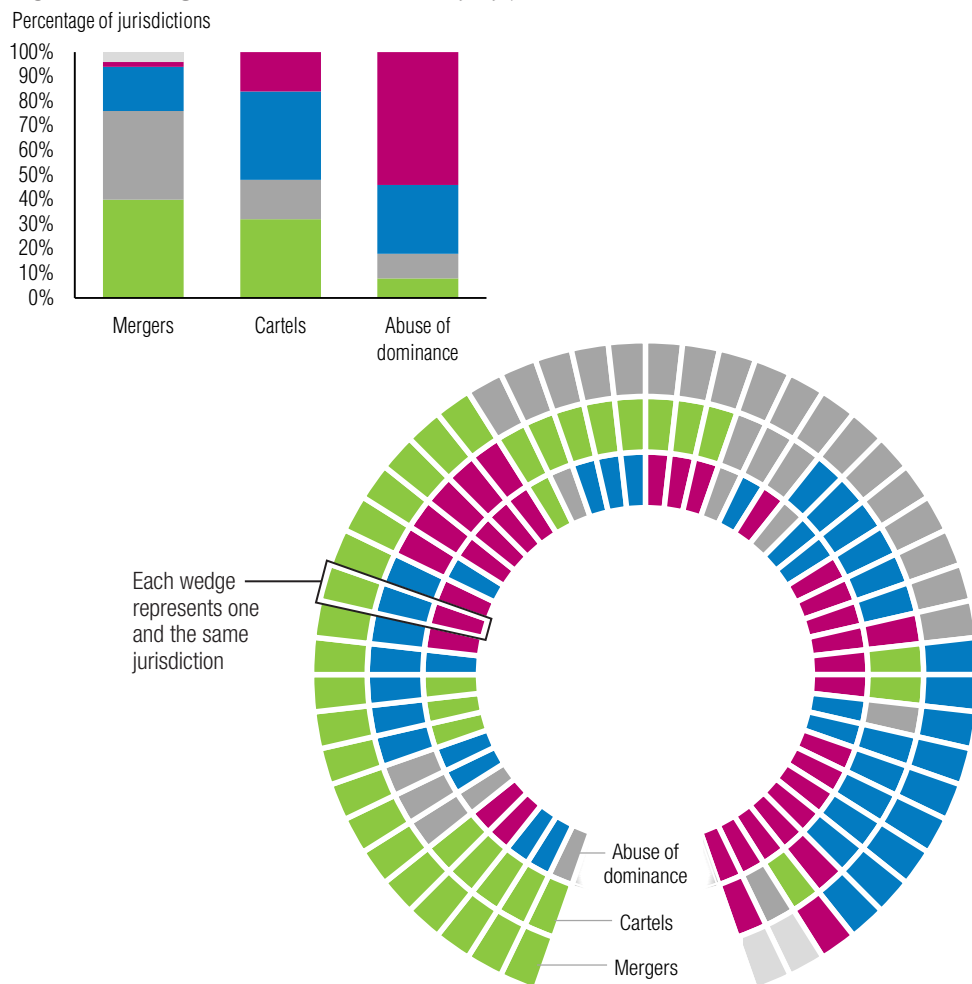
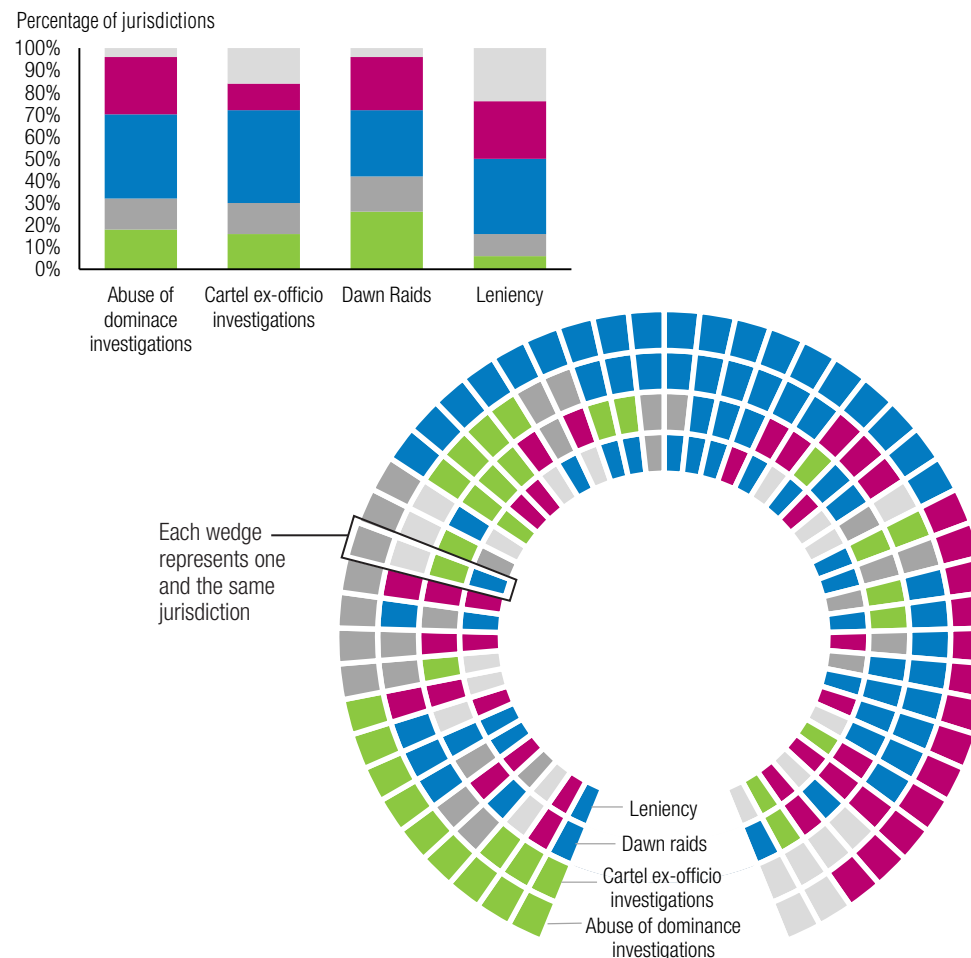


Figure 13 Change in detection activity and ex-officio investigations by jurisdiction, 2015-2019



Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Each 'wedge of three/four rectangles represents the development of the respective indicators in one of the jurisdictions. The development was calculated by using the average annual growth rate (AAGR) by jurisdiction. ("increase" indicates an AAGR-increase of 5% or more, "stable" indicates an AAGR-change between -5% and 5%, "decrease" indicates a AAGR-decrease of 5% or more, "low activity" indicates insufficient activity to calculate a meaningful change, and "No data/N.A." indicates that no data is available or that this indicator is not applicable for the particular jurisdiction.).

Source: OECD CompStats Database

Figure 14 Total number of dawn raids, 2015-2019

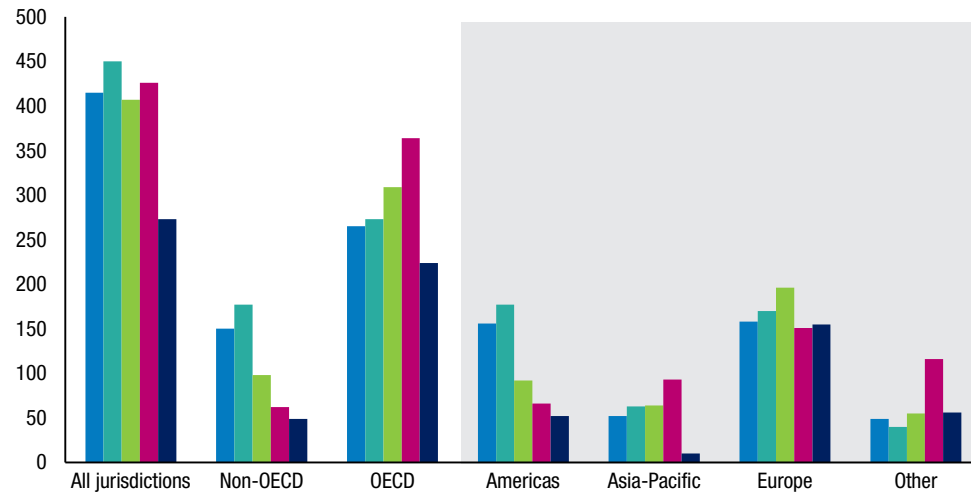


Figure 15 Average number of dawn raids per agency, 2015-2019

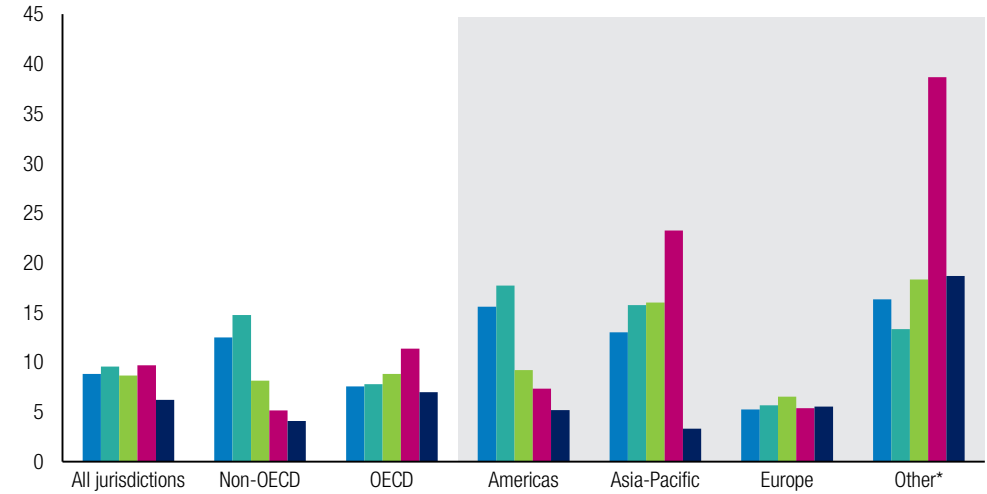


Figure 16 Total number of market studies, 2015-2019

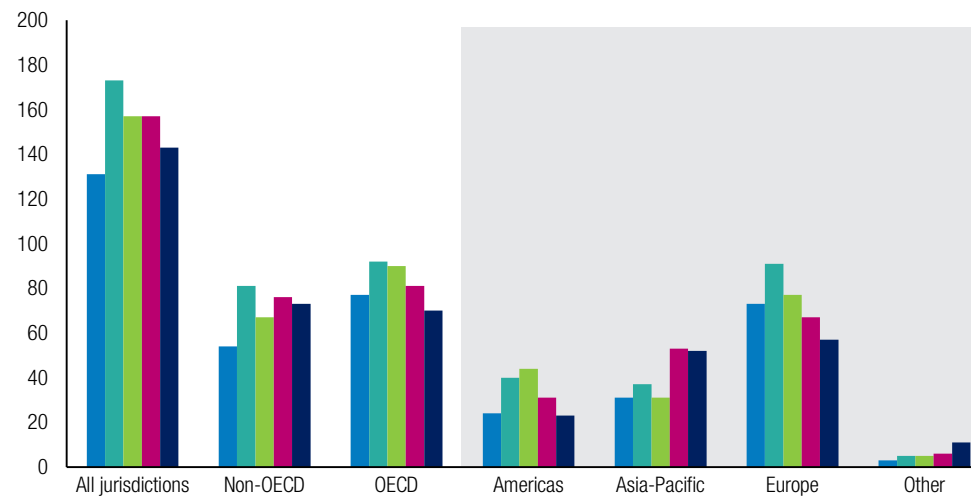
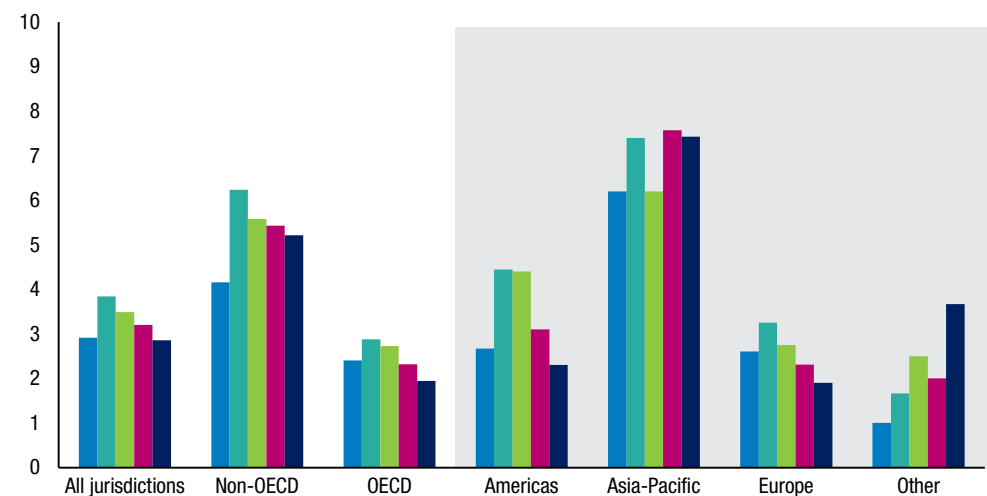


Figure 17 Average number of market studies per agency, 2015-2019



* Two jurisdictions in the group "Other" and one jurisdiction in the Asia-Pacific region are responsible for the high values in 2018.
 Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years.
 Source: OECD CompStats Database.

3. Competition enforcement activities (continued)

3.2 Cartels

Decisions

Figure 18 Total number of cartel decisions, 2015-2019

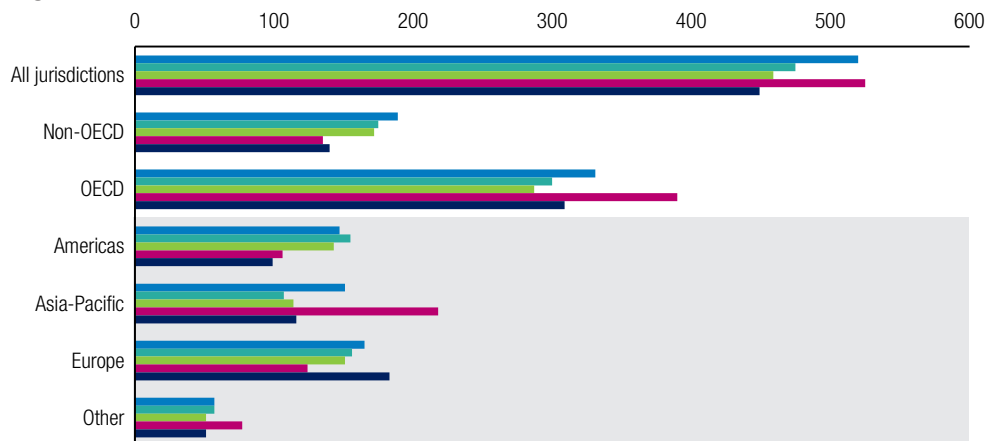
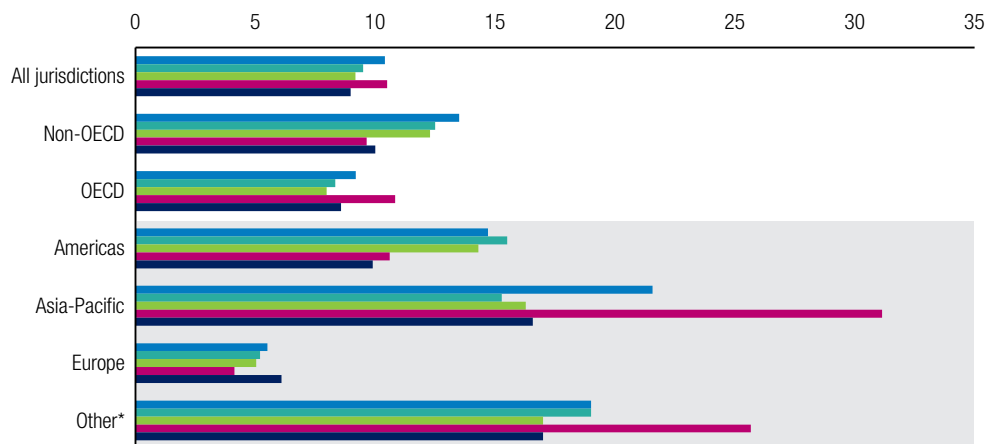


Figure 19 Average number of cartel decisions per agency, 2015-2019



* In 2018, one jurisdiction is mainly responsible for the spike in the number of cartel decisions in Asia-Pacific in 2018.
 Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years.
 Source: OECD CompStats Database.

Leniency

Figure 20 Total number of leniency applications, 2015-2019

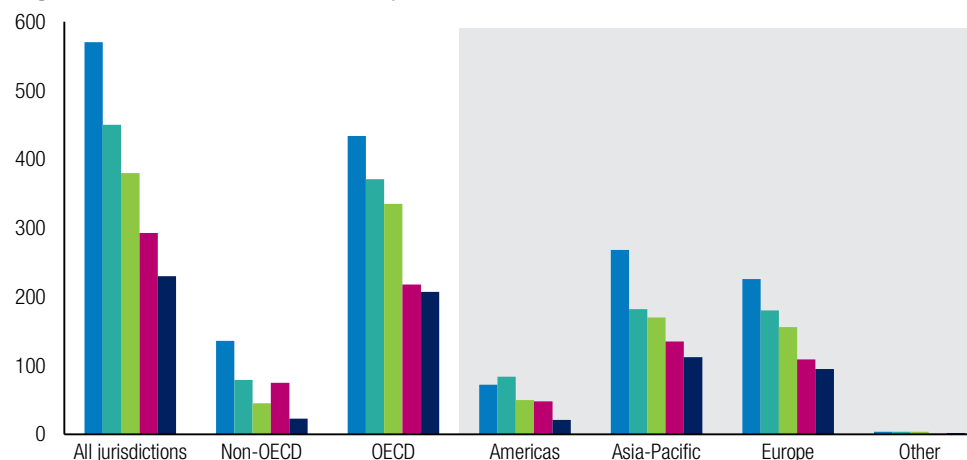
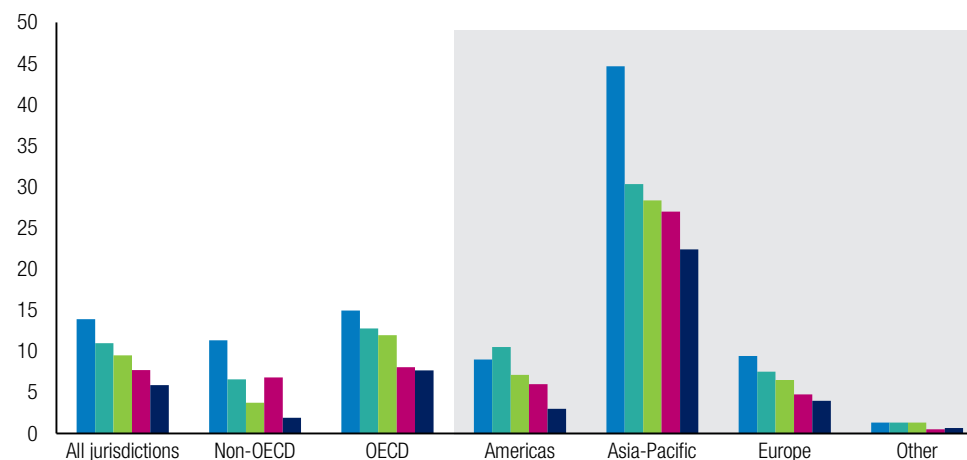
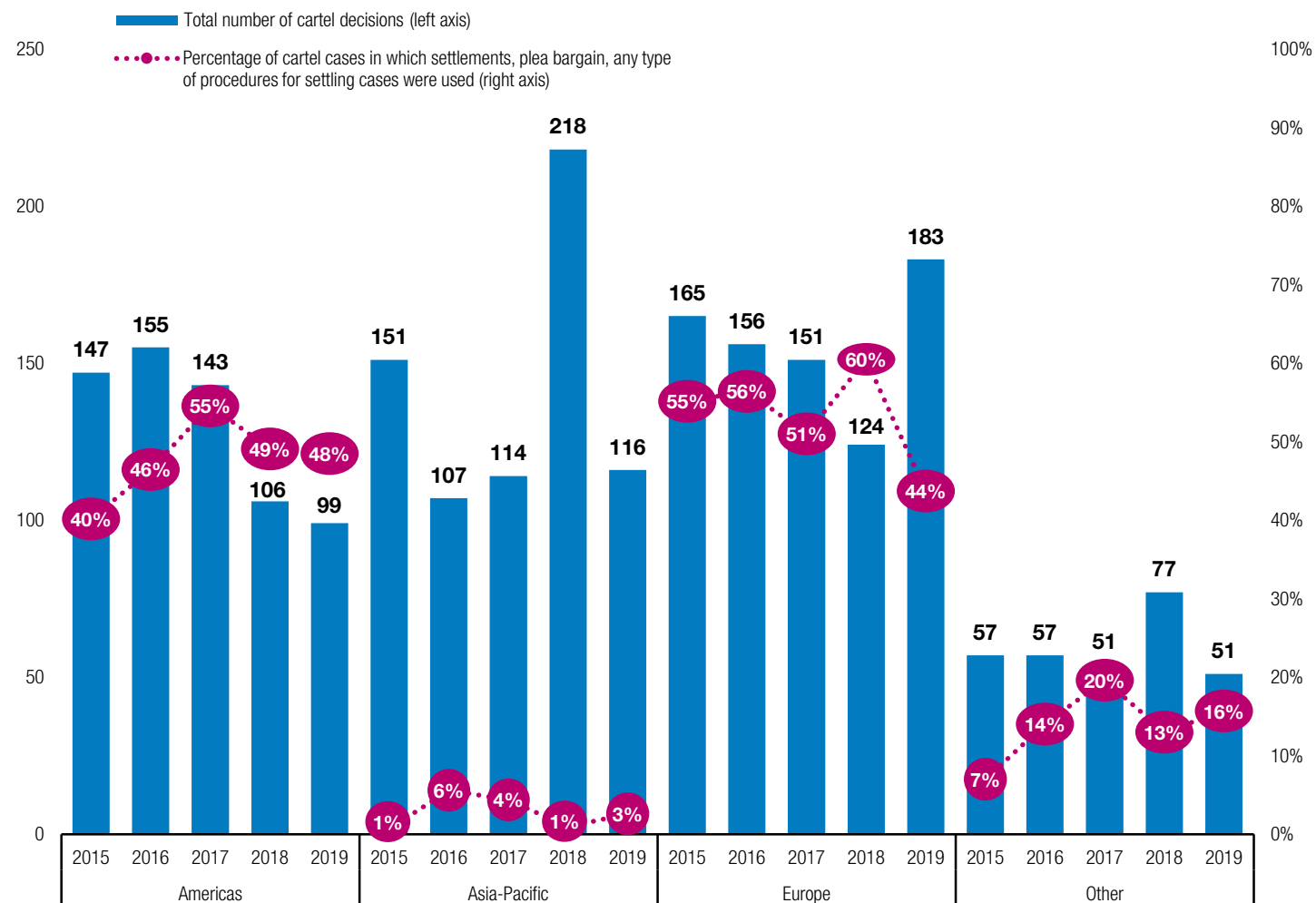


Figure 21 Average number of leniency applications per agency, 2015-2019



Settlements

Figure 22 **Total of cartel decisions and the percentage of cases with settlements, 2015-2019**



Note: Data based on the 50 jurisdictions in the CompStats database that provided data for five years.
 Source: OECD CompStats Database.

3. Competition enforcement activities (continued)

3.3 Abuse of dominance

Decisions

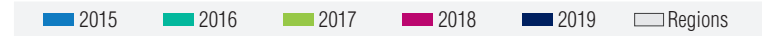


Figure 23 **Total number of abuse of dominance decisions, 2015-2019**

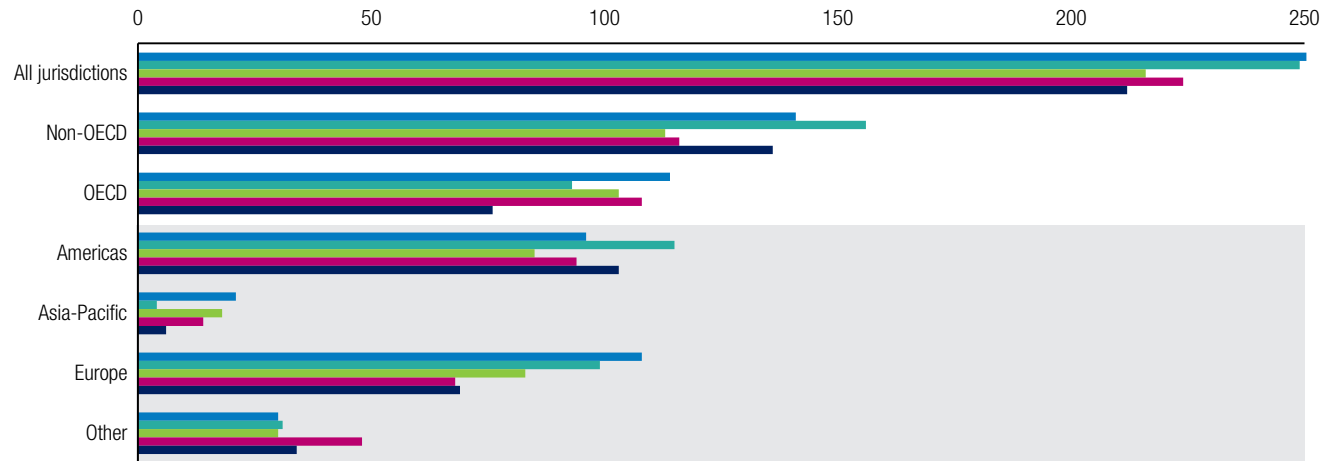
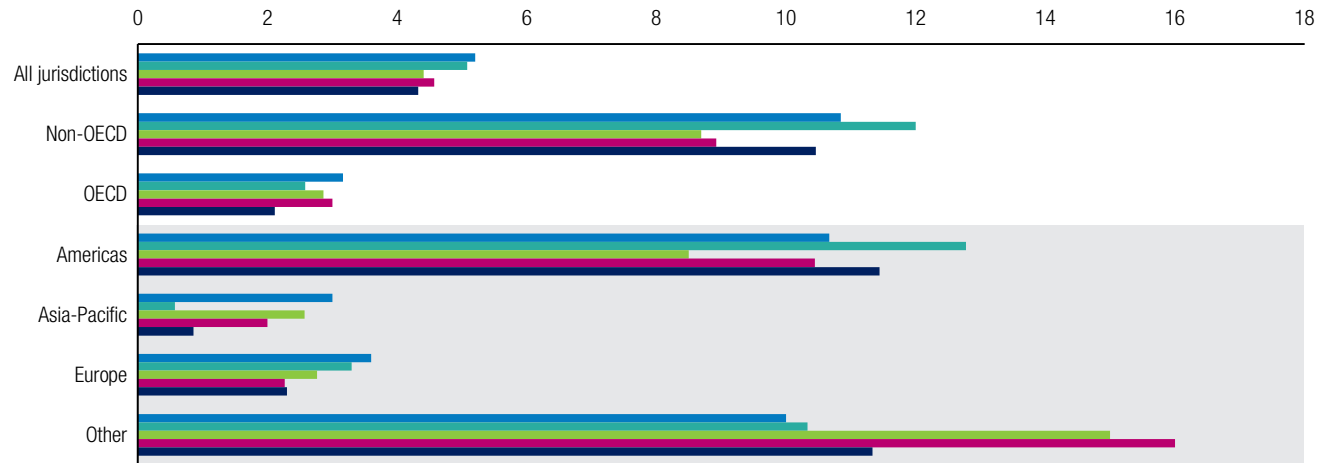
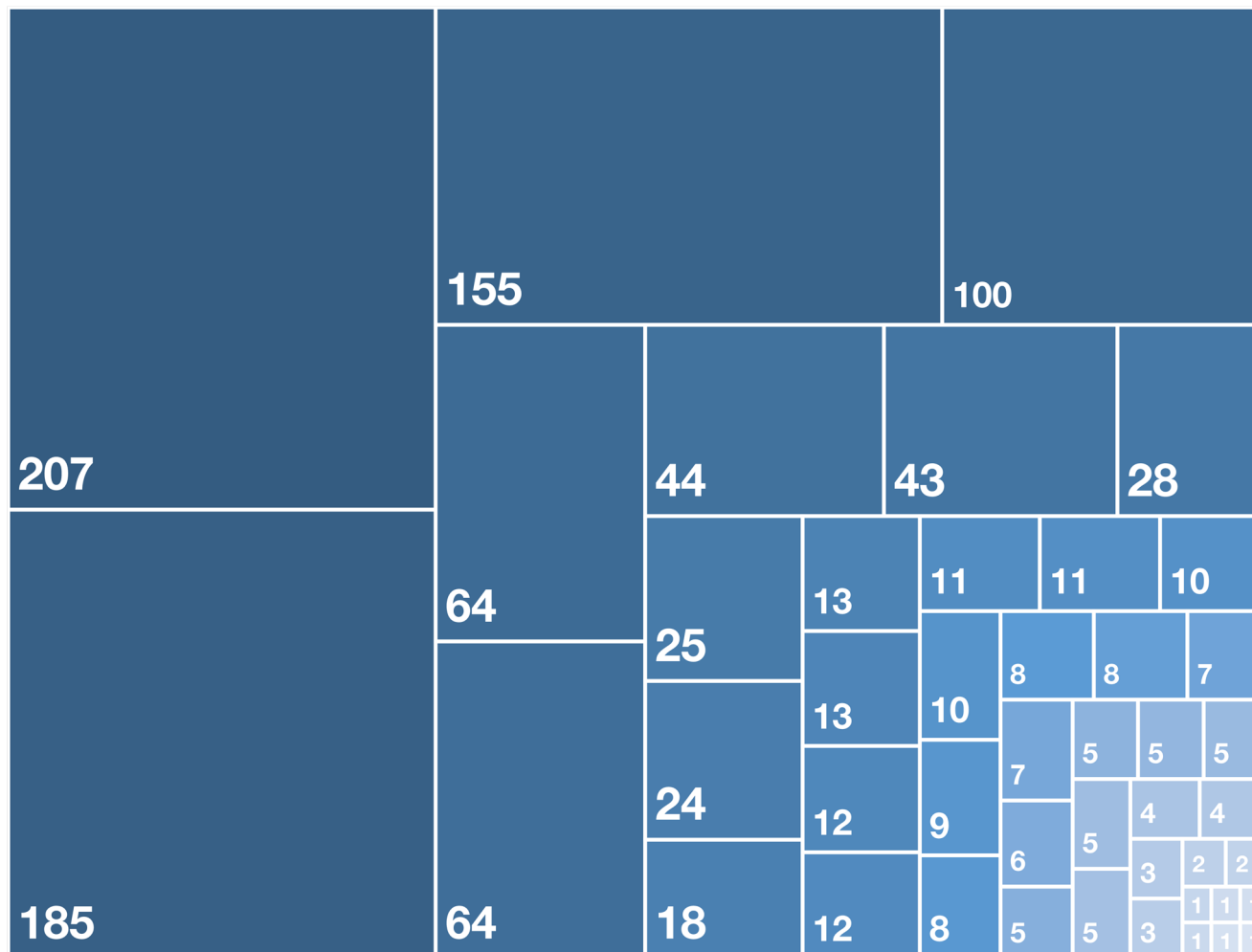


Figure 24 **Average number of abuse of dominance decisions per agency, 2015-2019**



Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years.
Source: OECD CompStats Database.

Figure 25 Total number of abuse of dominance decisions by jurisdiction, 2015-2019



67%
share of top
5 jurisdictions
in total abuse of
dominance cases

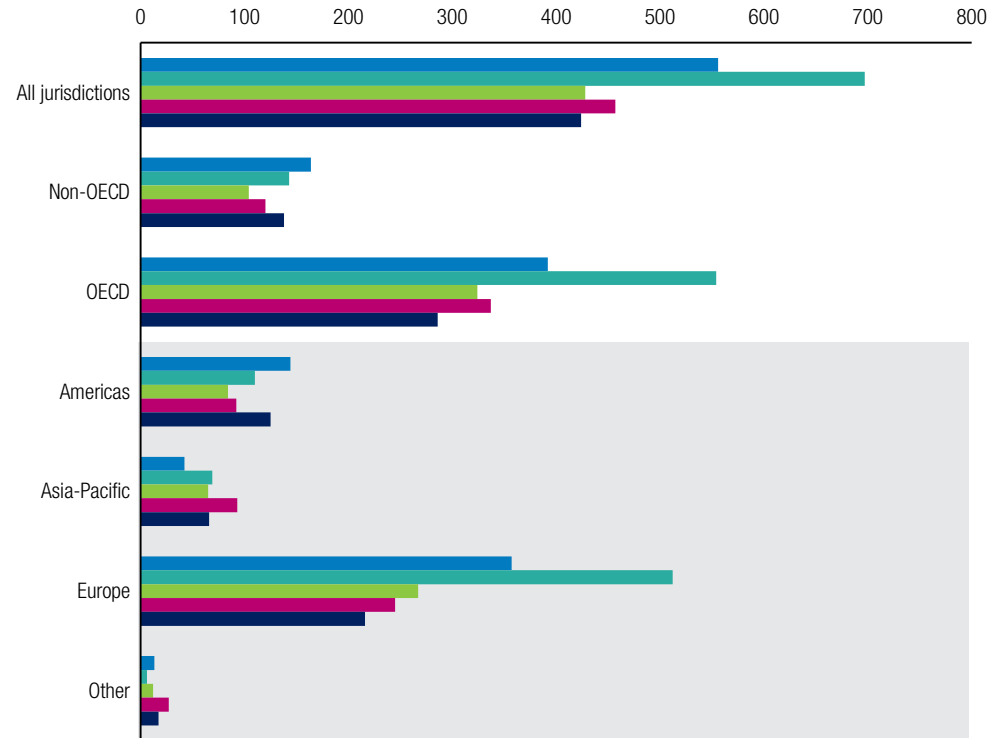
Note: Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Each number represents one jurisdiction.
Source: OECD CompStats Database.

3. Competition enforcement activities (continued)

3.3 Abuse of dominance

Investigations

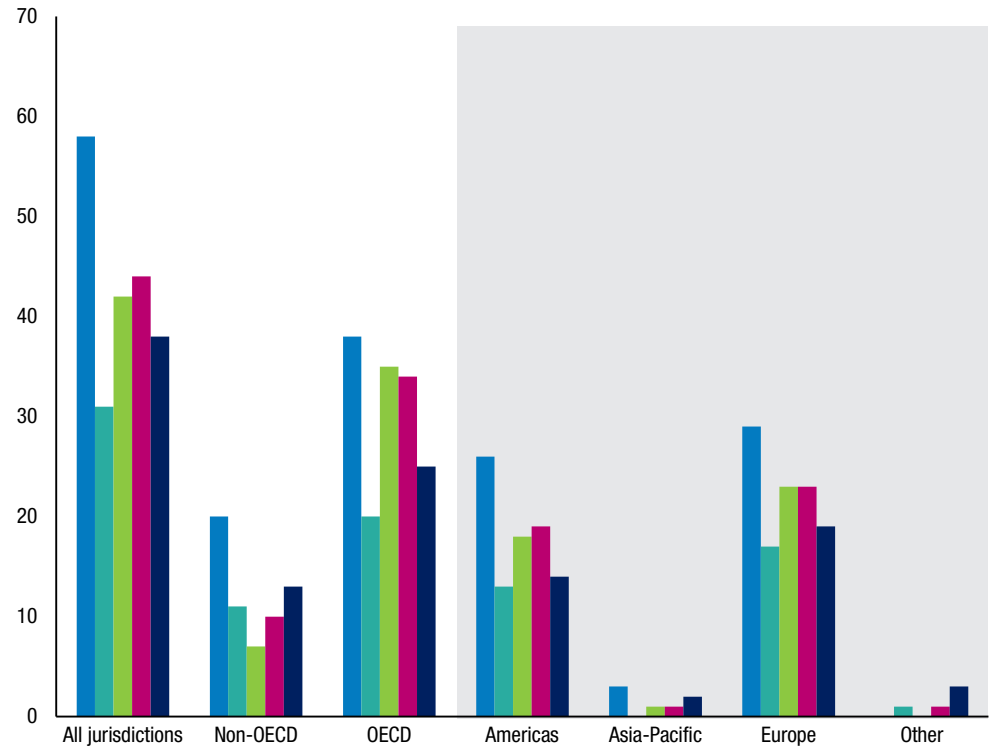
Figure 26 Total number of investigations launched for alleged abuse of dominant position, 2015-2019



Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years.
Source: OECD CompStats Database.

Commitment procedures

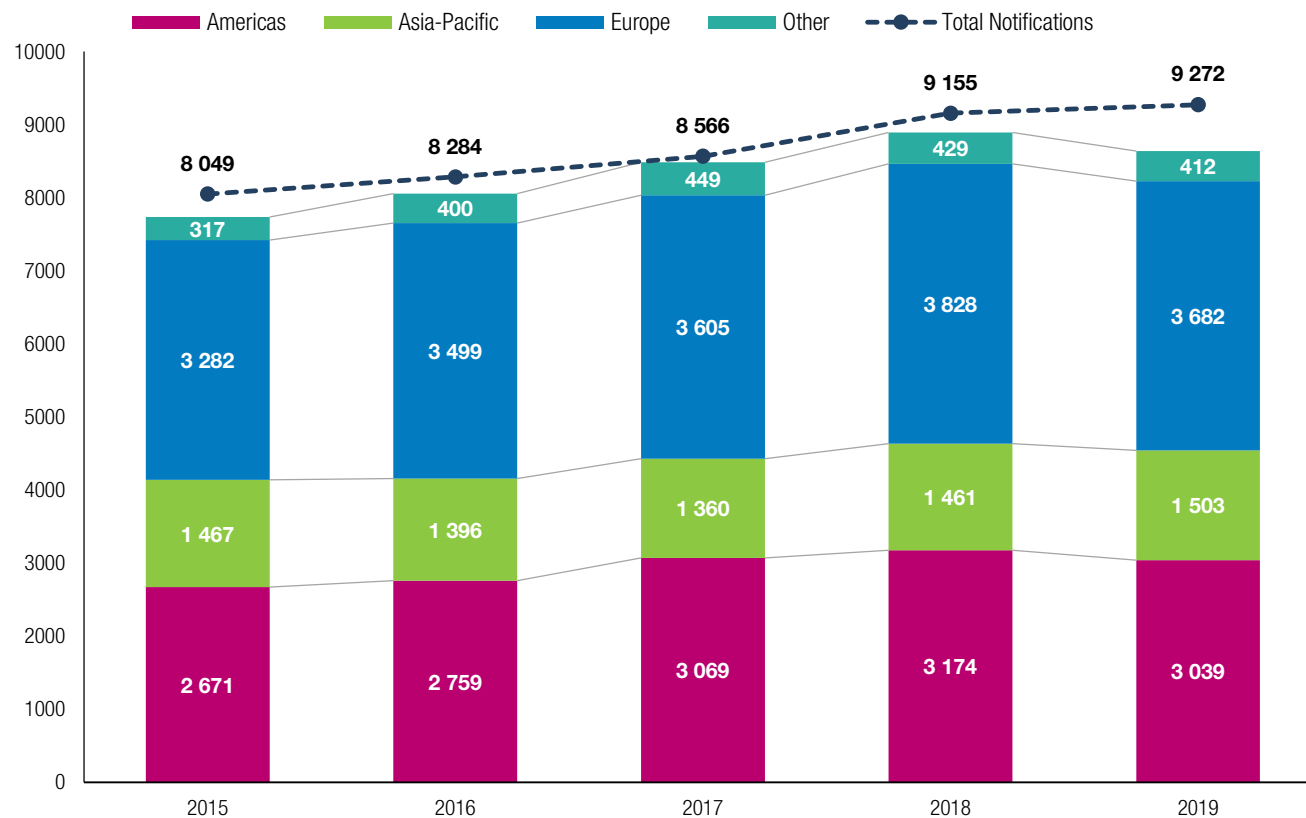
Figure 27 Total number of commitment procedures, negotiated or consensual procedures used in abuse of dominance cases, 2015-2019



3.4 Mergers

Merger decisions and notifications

Figure 28 **Number of merger decisions and notifications, 2015-2019**



15%

increase

in merger notifications
between 2015-2019

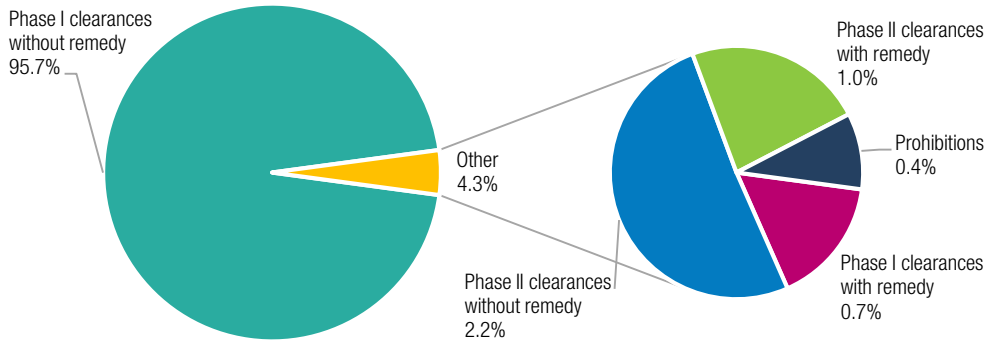
Note: Data based on the 48 jurisdictions in the CompStats Database that have a merger regime and for which data is available for all years and is comparable. Decisions include cases in which the waiting period had expired.
Source: OECD CompStats Database.

3. Competition enforcement activities (continued)

3.4 Mergers

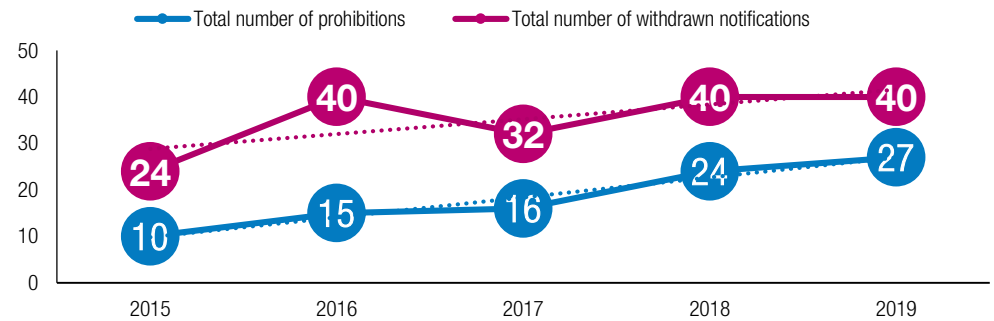
Merger clearances

Figure 29 Types of merger decisions, 2019



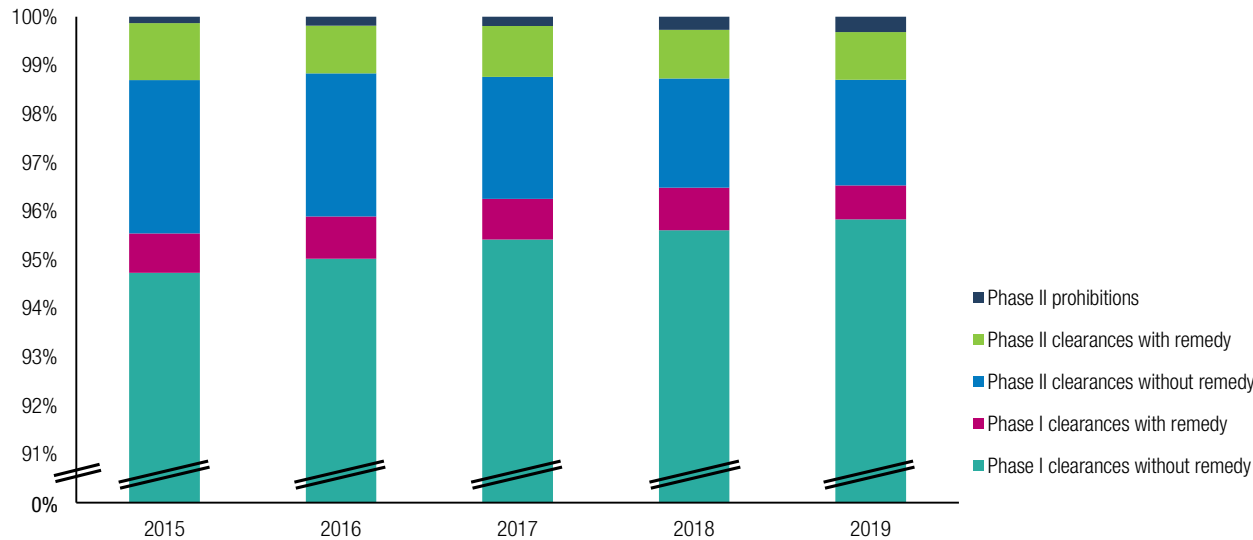
Prohibitions and withdrawals

Figure 31 Number of prohibition decisions and withdrawn merger notifications, 2015-2019



Note: The figures slightly overestimate the number of blocked or withdrawn transactions as they include prohibitions decisions and withdrawals of the same transaction by different agencies.

Figure 30 Types of merger decisions, 2015-2019



95%
share of mergers
cleared without remedy
in Phase I

Note (for all graphs): Data based on the 48 jurisdictions in the CompStats Database that have a merger regime and for which data is available for all years and is comparable. Phase I clearances without remedy, Phase I clearances with remedy, and Phase II prohibitions include Single Phase decisions. Phase I and Phase II clearances include cases of expiration of waiting period. Source: OECD CompStats Database.



Figure 32 Number of prohibition decisions, 2015-2019

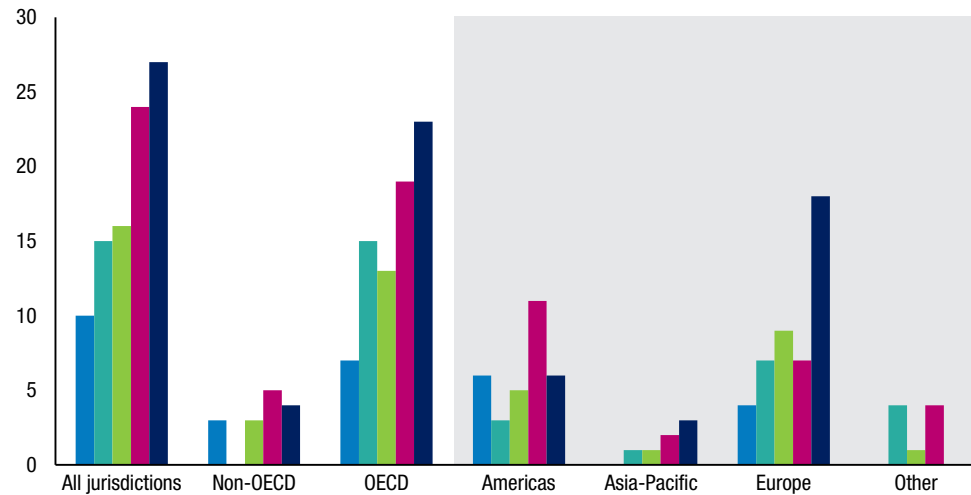
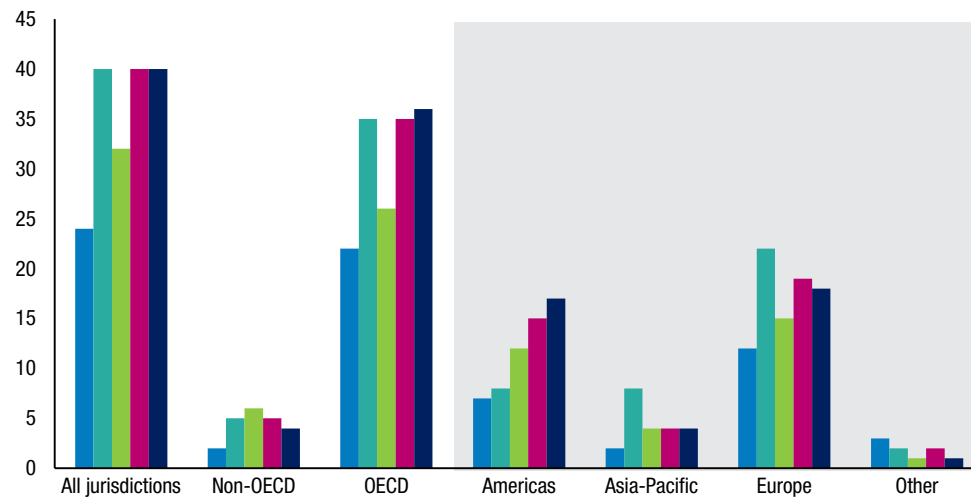


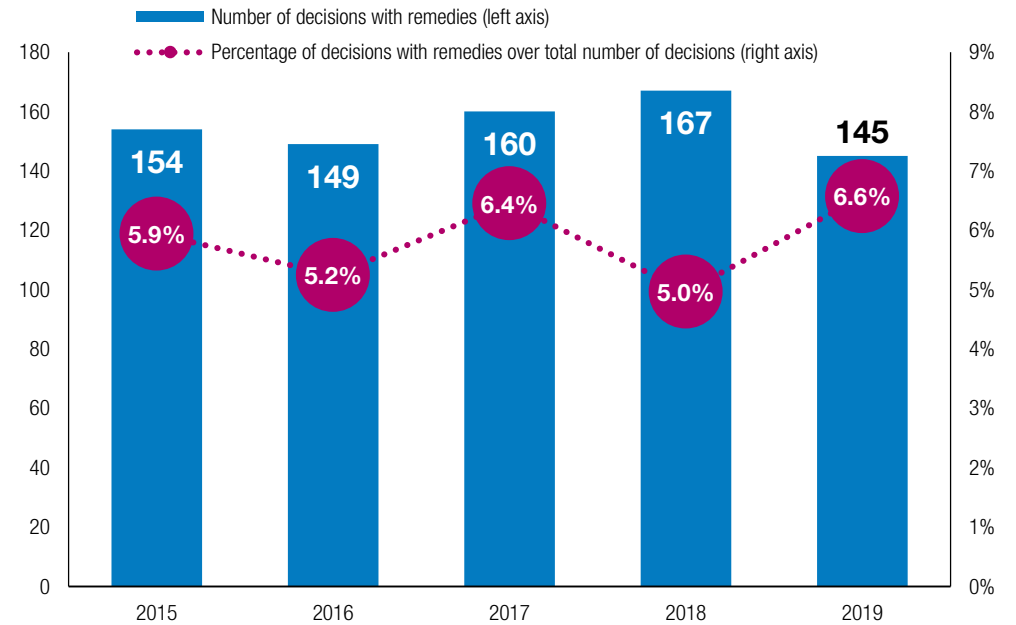
Figure 33 Number of withdrawn notifications, 2015-2019



Note (for all graphs): Data based on the 48 jurisdictions in the CompStats Database that have a merger regime and for which data is available for all years and is comparable.
Source: OECD CompStats Database.

Remedies

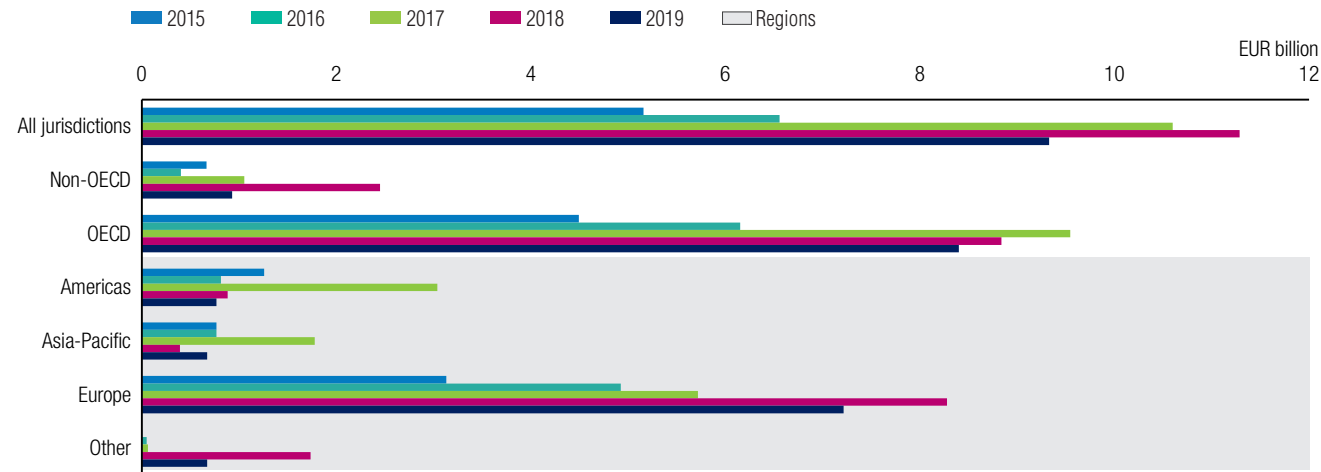
Figure 34 Total decisions with remedies and percentage of remedy decisions over total number of decisions



4. Fines

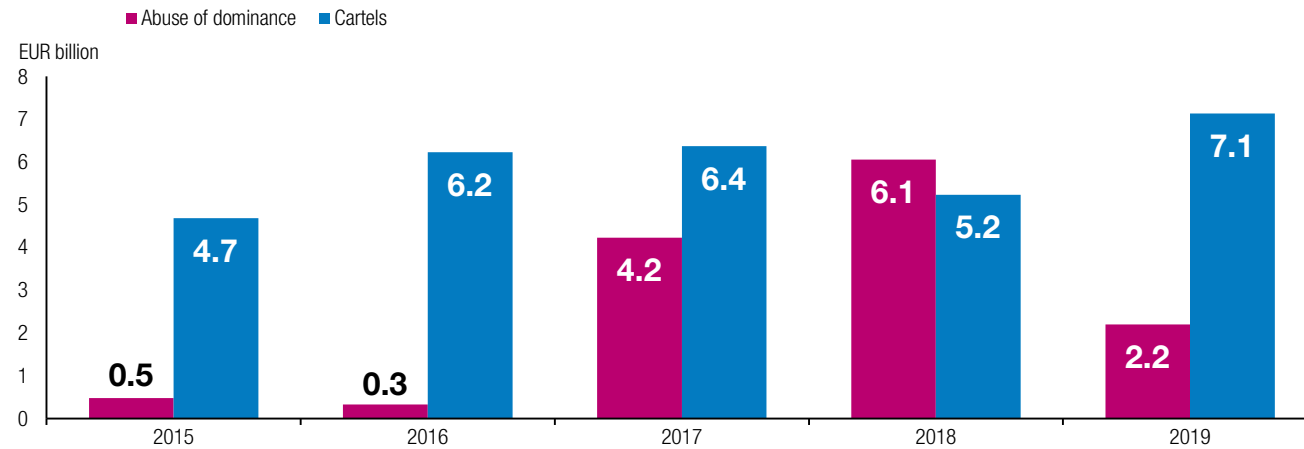
4.1 Total fines

Figure 35 Total of fines imposed (abuse of dominance and cartel cases), 2015-2019



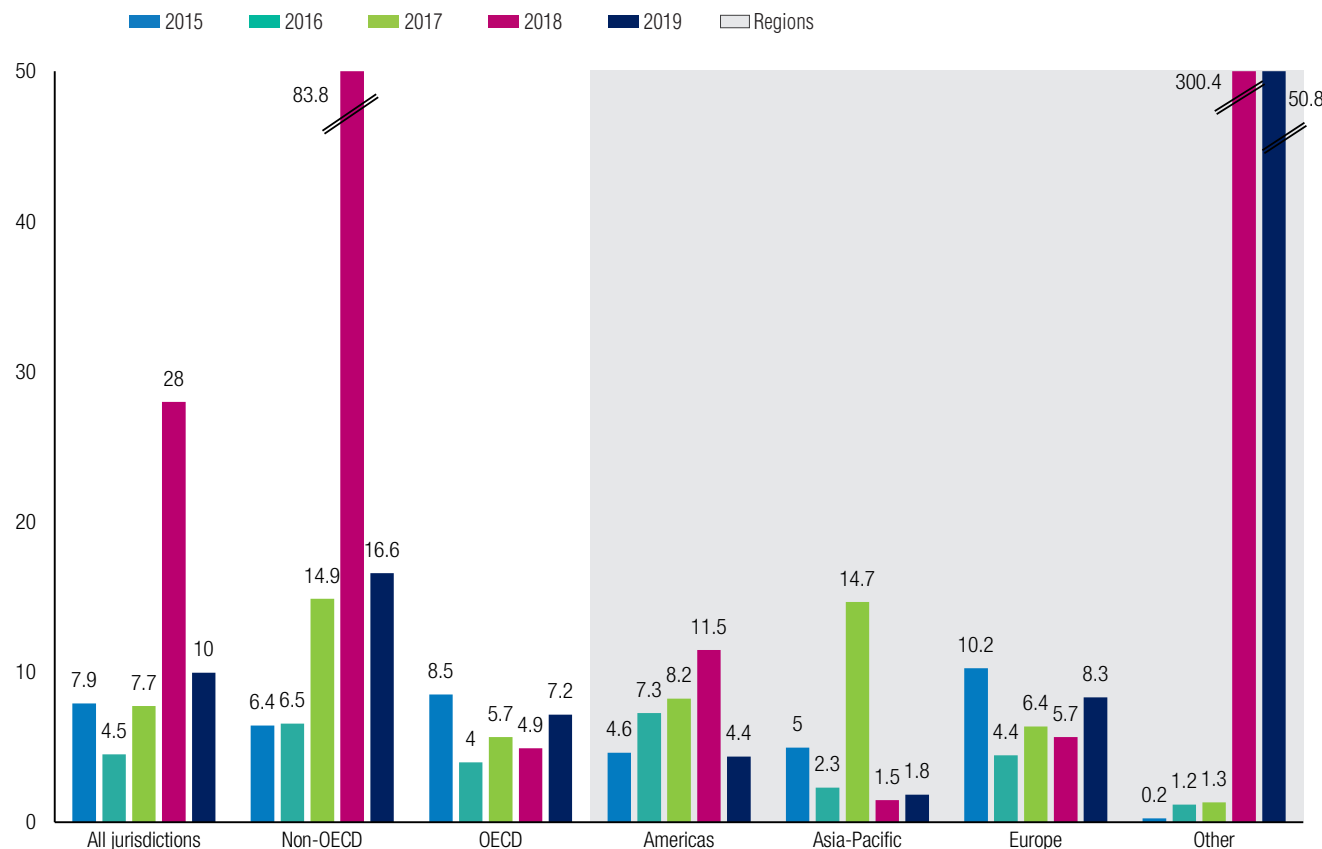
9.3 bn
total fines
imposed in 2019

Figure 36 Total of fines imposed by type of infringement, by year, 2015-2019



Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Fines are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate currency fluctuations distorting fines changes.
Source: OECD CompStats Database.

Figure 37 Fines-to-budget ratio (abuse of dominance and cartel cases), 2015-2019



10
average number
of times
 that fines exceeded
 agencies' budgets
 in 2019

Note: Data based on the 47 jurisdictions in the CompStats database that provided budget for solely competition activities and fines data for five years. Budget and fines figures are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates (on 31 December 2015) to eliminate currency fluctuations distorting budget and fines changes. One jurisdiction in the "Other" group was responsible for the spike of fines in 2018 and 2019.
 Source : OECD CompStats Database.

4. Fines (continued)

4.2 Fines imposed for cartel cases

Figure 38 Total of cartel fines imposed, 2015-2019

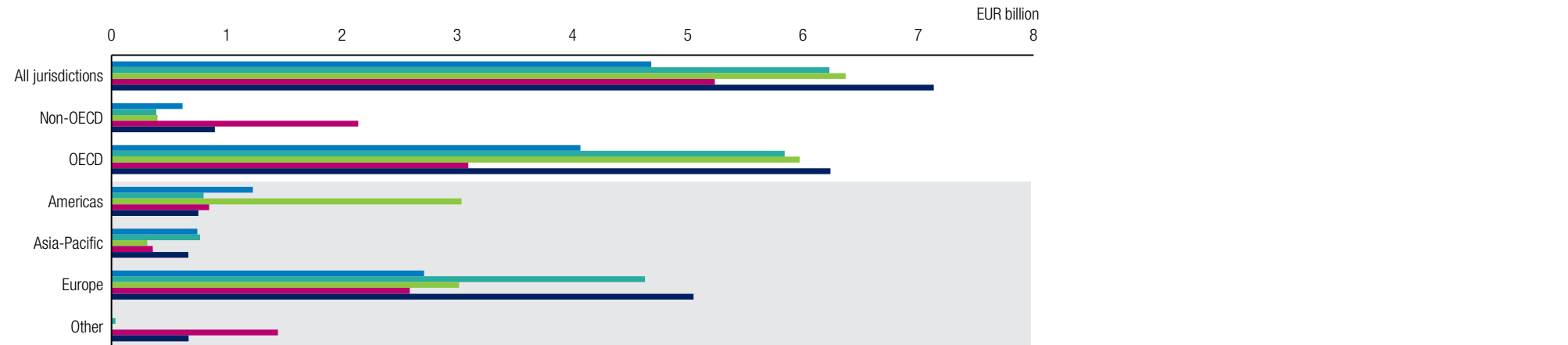
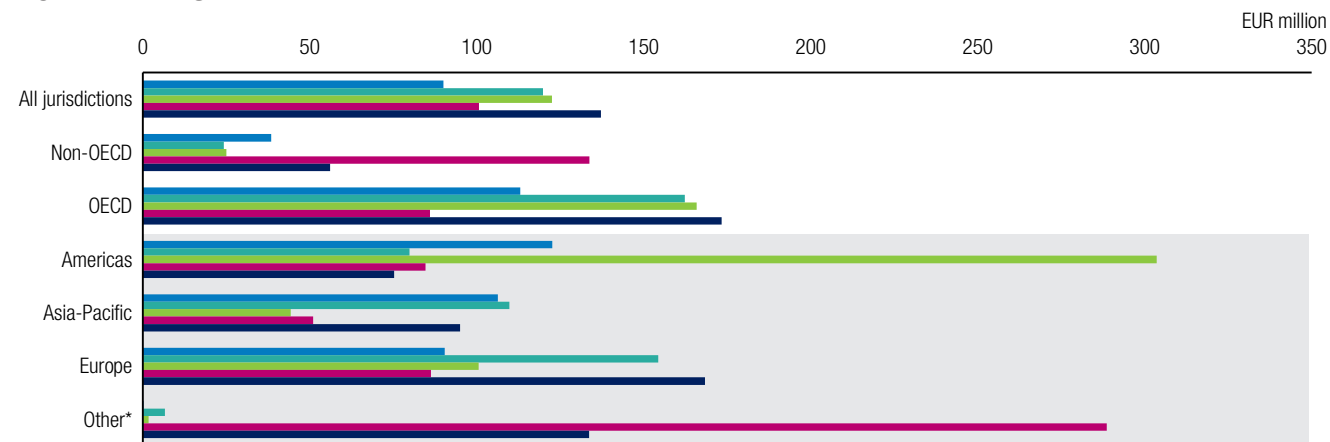
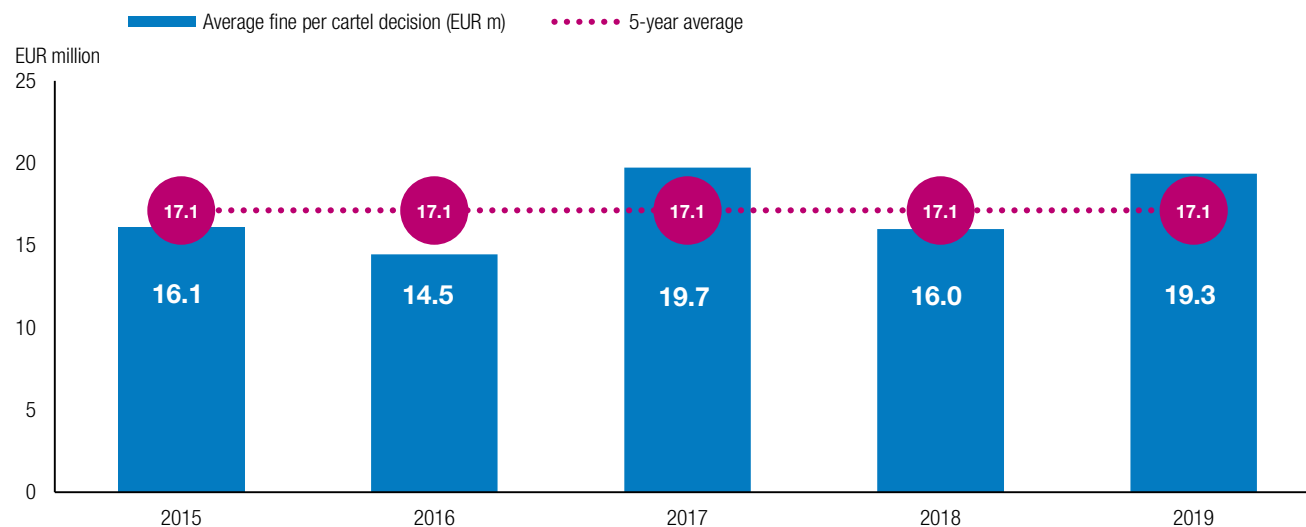


Figure 39 Average cartel fines imposed, 2015-2019



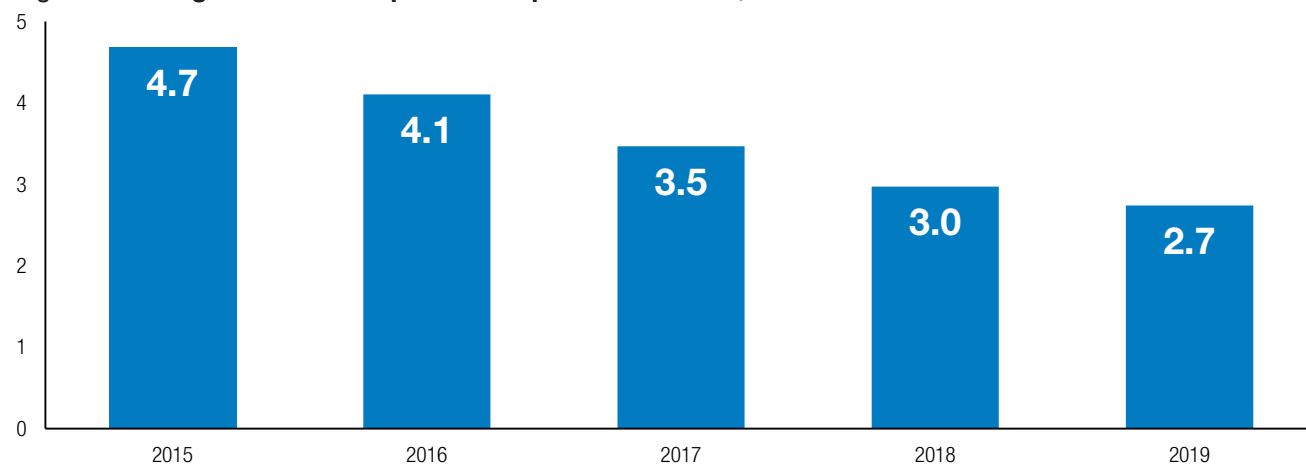
* In 2017, Two jurisdiction in Americas were responsible for the spike of cartel fines. One jurisdiction in the "Other" group was responsible for the spike in 2018.
 Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Fines are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate currency fluctuations distorting fines changes.
 Source : OECD CompStats Database.

Figure 40 Average cartel fines imposed per cartel decision, 2015-2019



€19.3
Million average
cartel fine
 in 2019

Figure 41 Average number of companies fined per cartel decision, 2015-2019



Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Fines are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate currency fluctuations distorting fines changes.

Source: OECD CompStats Database.

4. Fines (continued)

4.3 Fines imposed for abuse of dominance cases

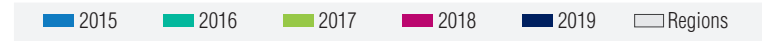
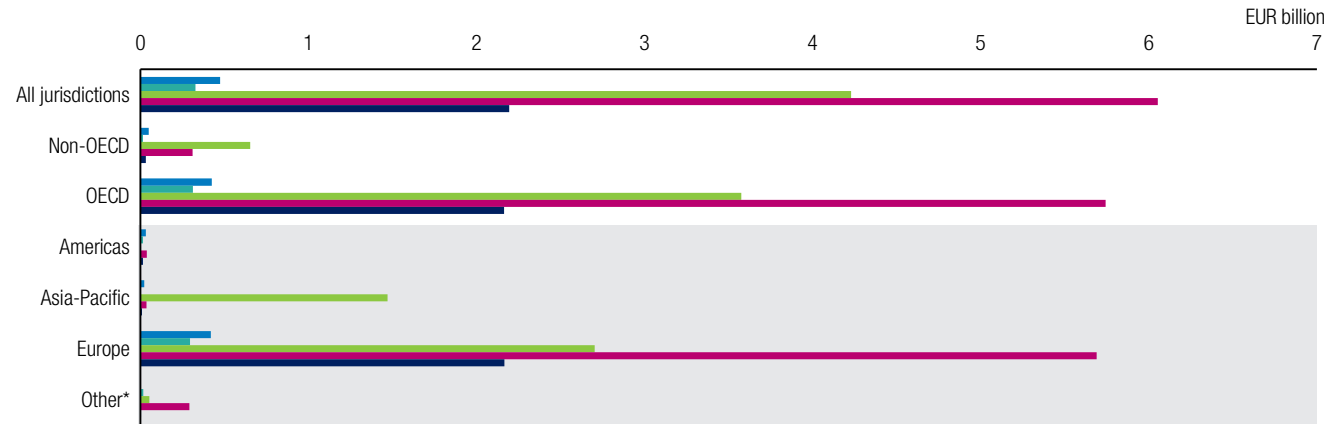
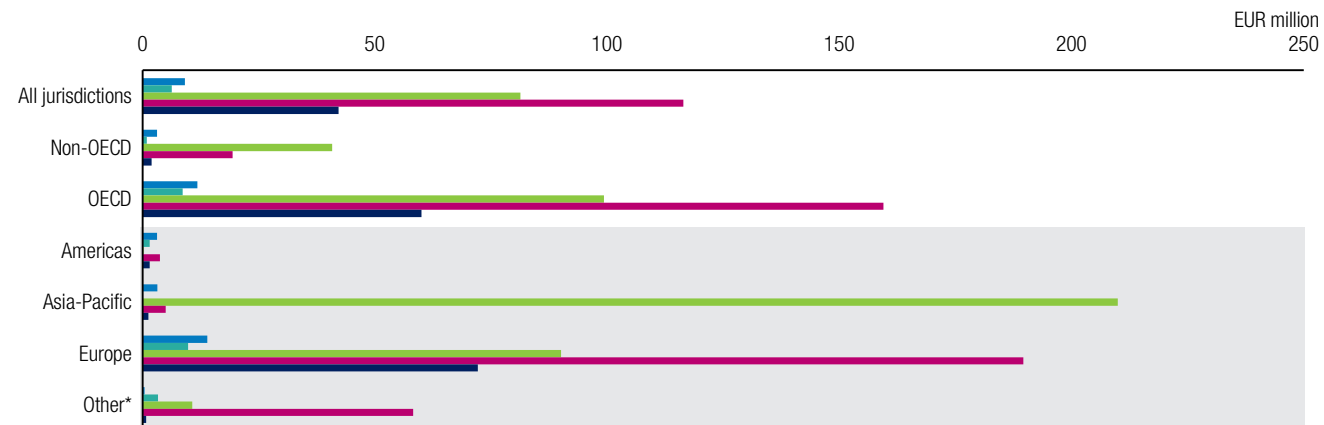


Figure 42 Total of abuse of dominance fines imposed, 2015-2019



* One jurisdiction in Europe was responsible for the spike of abuse of dominance fines in 2018.

Figure 43 Average abuse of dominance fines imposed, 2015-2019

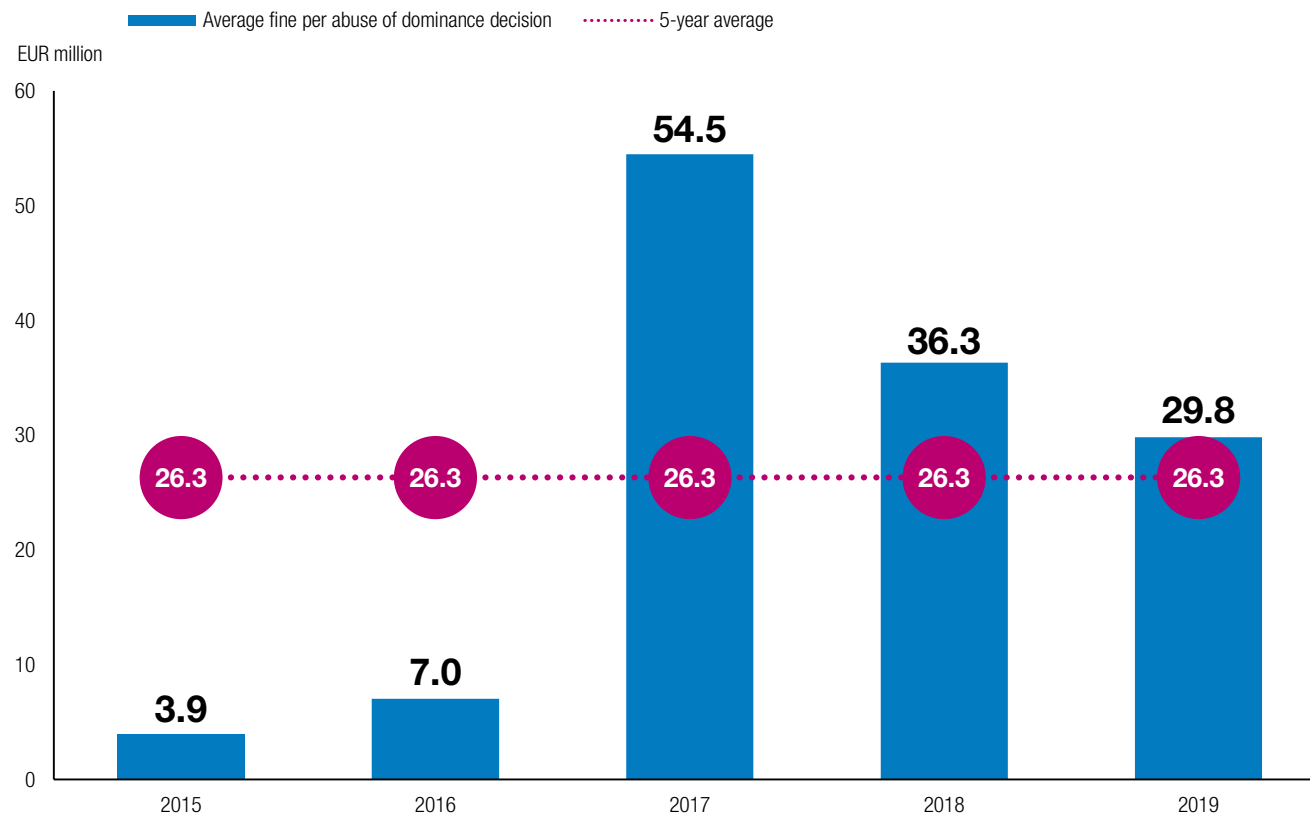


* One jurisdiction in Europe and one jurisdiction in Asia-Pacific were responsible for the spike of abuse of dominance fines in 2018.

Note (for all graphs): Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Fines figures are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates) (on 31 December 2015) to eliminate currency fluctuations distorting fines changes.

Source: OECD CompStats Database.

Figure 44 Average fines imposed per abuse of dominance decision, 2015-2019



€29.8
Million
average abuse
of dominance fine
 in 2019

Note: Data based on the 50 jurisdictions in the CompStats database that provided data for five years. Fines figures are in 2015 EUR (non-euro currencies are converted using 2015 official exchange rates) (on 31 December 2015) to eliminate currency fluctuations distorting fines changes.

Source: OECD CompStats Database.

Annex A. Source of data: CompStats

Starting in 2018, the OECD, under the guidance of the Bureau of the Competition Committee, has launched an initiative to develop a database of general statistics relating to 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 initiative fills this gap.

The OECD collects data annually 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 countries nor a participant or associate in the OECD Competition Committee but have expressed interest in joining the database.

The currency of the data in CompStats is Euros.

Jurisdictions

Currently, the CompStats database covers data from competition agencies in 56 jurisdictions, of which 37 jurisdictions are OECD countries (including the European Commission); 15 jurisdictions are participants in the OECD Competition Committee; 2 jurisdictions are associates to the OECD Competition Committee; and 1 jurisdiction is neither an OECD country nor an associate or participant in the OECD Competition Committee. Colombia, although having become a member in 2020, has been treated as a non-member, as the data in this report pertains to the years before Colombia's accession.

Americas

Argentina, Brazil, Canada*, Chile*, Colombia¹, Costa Rica, Ecuador, El Salvador, Mexico*, Peru, United States*

Asia-Pacific

Australia*, Chinese Taipei, India, Indonesia, Japan*, Korea*, New Zealand*

Europe

Austria*, Belgium*, Bulgaria, Croatia, Czech Republic*, Denmark*, Estonia*, European Union², Finland*, France*, Germany*, Greece*, Hungary*, Iceland*, Ireland*, Italy*, Latvia*, Lithuania*, Luxembourg*, Malta, Netherlands*, Norway*, Poland*, Portugal*, Romania, Slovak Republic*, Slovenia*, Spain*, Sweden*, Switzerland*, United Kingdom*

Other

Egypt, Israel*, Kazakhstan, Russian Federation, South Africa, Turkey*, Ukraine.

* Jurisdictions with an asterisk (*) have been considered an OECD-member for the data analysis.

Period

The database currently covers the period 2015-2019.

¹ Colombia, although having become a member in 2020, has been treated a non-member, as the date pertained to the years before Colombia's accession.

² 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.

Data

The following areas are currently covered in OECD CompStats database.

1. General information

- Budget
- Number of staff
- Number of competition staff

2. Cartels and other anticompetitive agreements

- 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 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:

- Gross domestic product (GDP, current prices, purchasing power parity) data was extracted from the World Bank development indicators database. GDP data was extracted from the International Monetary Fund (GDP, current prices, purchasing power parity).
- Population data was extracted from the United Nations World Population Prospects 2019
- Year of enactment of first competition law
- Year of establishment of competition authority
- Year of adoption of merger control

Annex B. Competition Authorities in the CompStats Database

JURISDICTION	COMPETITION AUTHORITY
Argentina	Comisión Nacional de Defensa de la Competencia National Commission for the Defence of Competition
Australia	Australian Competition and Consumer Commission
Austria	Bundewettbewerbsbehörde Austrian Federal Competition Authority (AFCA)
Belgium	Belgische Mededingingsautoriteit / Autorité belge de la Concurrence Belgian Competition Authority
Brazil	Conselho Administrativo de Defesa Econômica Administrative Council for Economic Defence
Bulgaria	Commission on Protection of Competition
Canada	The Competition Bureau
Chile	Fiscalía Nacional Económica / National Economic Prosecutor The Tribunal de Defensa de la Libre Competencia / The Chilean Competition Tribunal
Colombia	Superintendencia de Industria y Comercio Superintendency of Industry and Commerce
Costa Rica	Comisión para Promover la Competencia / Commission for the Promotion of Competition Superintendencia de Telecomunicaciones / Superintendency of Telecommunications
Croatia	Agencija za zaštitu tržišnog natjecanja Croatian Competition Agency
Czech Republic	Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition
Denmark	Konkurrence- og Forbrugerstyrelsen Danish Competition and Consumer Authority
Ecuador	Superintendencia de Control del Poder de Mercado Superintendency for Control of Market Power

JURISDICTION	COMPETITION AUTHORITY
Egypt	ةيرالكثحإل تاسرامملا عنمو ةسفانملا ةيامح زاهج Egyptian Competition Authority
El Salvador	Superintendencia de competencia Superintendency of Competition
Estonia	Konkurentsiamet Estonian Competition Authority
European Commission	European Commission Directorate-General for Competition
Finland	Kilpailu- ja kuluttajavirasto Finnish Competition and Consumer Authority
France	Autorité de la concurrence French Competition Authority
Germany	Bundeskartellamt Federal Cartel Office
Greece	Ελληνική Επιτροπή Ανταγωνισμού Hellenic Competition Commission
Hungary	Gazdasági Versenyhivatal Office of Economic Competition
Iceland	Samkeppniseftirlitið Icelandic Competition Authority
India	Competition Commission of India
Indonesia	Komisi Pengawas Persaingan Usaha Indonesia Competition Commission
Ireland	Competition and Consumer Protection Commission
Israel	Israel Competition Authority
Italy	Autorità Garante della Concorrenza e del Mercato Italian Competition Authority
Japan	公正取引委員会 Japan Fair Trade Commission

JURISDICTION	COMPETITION AUTHORITY
Kazachstan	Табиғи монополияларды реттеу комитеті Committee on Regulation of Natural Monopolies and Protection of Competition
Korea	공정거래위원회 Korea Fair Trade Commission
Latvia	Konkurences padome Competition Council of the Republic of Latvia
Lithuania	Konkurencijos taryba Competition Council of the Republic of Lithuania
Luxembourg	Conseil de la Concurrence Grand-Duché de Luxembourg Competition Council
Malta	Malta Competition and Consumer Affairs Authority
Mexico	Comisión Federal de Competencia Económica / Federal Economic Competition Commission Instituto Federal de Telecomunicaciones / Federal Telecommunications Institute
Netherlands	Autoriteit Consument en Markt Authority for Consumers and Markets
New Zealand	Commerce Commission
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
Poland	Urząd Ochrony Konkurencji i Konsumentów Office of Competition and Consumer Protection
Portugal	Autoridade da Concorrência Portuguese Competition Authority

JURISDICTION	COMPETITION AUTHORITY
Romania	Consiliul Concurenței Romanian Competition Council
Russian Federation	Федеральная Антимонопольная Служба Federal Antimonopoly Service
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
Spain	Comisión Nacional de los Mercados y la Competencia National Commission on Markets and Competition
Sweden	Konkurrensverket Swedish Competition Commission
Switzerland	Schweizerische Eidgenossenschaft / Confédération suisse / Confederazione Svizzera / Confederaziun svizra Federal Competition Commission
Chinese Taipei	公平交易委員會 Taipei Fair Trade Commission
Turkey	Rekabet Kurumu Turkish Competition Authority
Ukraine	Антимонопольний комітет України Antimonopoly Committee
United Kingdom	Competition and Markets Authority
United States	Department of Justice Antitrust Division / Federal Trade Commission Bureau of Competition

Annex C. Methodology

This annex includes the methodological approach to ensure consistency, completeness, transparency, comparability and accuracy.

The “Global competition enforcement update” covers data of 52 jurisdictions that provided complete quality data for all five years (four jurisdictions provided incomplete information and were excluded).

For some jurisdictions, a competition authority’s mandate extends beyond competition activities 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 budget exclusively for competition law and policy activities for the five years (excluding, for instance, consumer protection). 49 jurisdictions in the CompStats database provided budget data for solely competition activities for all five years.

Financial figures (budgets and fines) of competition authorities are converted in euros to allow for comparison and aggregation. For charts of financial figures over time, the official exchange rates from 2015 were used (published on 31 December 2015), to avoid fluctuations over time because of currency appreciations or devaluations. For charts that show solely data from 2019, the official exchange rates from 2019 were used (published on 31 December 2019).

For the sunburst charts (Figure 12 and Figure 13), Each ‘wedge’ of two/three/four rectangles represents the development in one jurisdiction. The development of the respective indicators of the was calculated by using the average annual growth rate (AAGR) by jurisdiction (“increase” indicates an AAGR-increase of 5% or more, “stable” indicates an AAGR-change between -5% and 5%, “decrease” indicates a AAGR-decrease of 5% or more, “low activity” indicates insufficient activity to calculate a meaningful change, and “No data/N.A.” indicates that no data is available or that this indicator is not applicable for the particular jurisdiction.).



VOLUME 2

GLOBAL MERGER CONTROL



Foreword

Starting in 2018, the OECD, under the guidance of the Bureau of the Competition Committee, has launched an initiative to develop a database of general statistics relating to competition agencies, including data on enforcement and information on advocacy initiatives. The database currently covers the period 2015-2019 and will be collected on an annual basis in the future.

OECD Competition Trends presents unique insights into global competition trends based on analysis of data from more than 50 OECD and non-OECD jurisdictions. First launched in 2020, this second edition is presented in two volumes. Volume II provides an overview of trends in global merger control. It describes a selection of the different choices made by jurisdictions when designing legal regimes, global merger control activity, and trends in merger control enforcement. This is complemented by Volume I which provides an update on the competition enforcement trends between 2015-19 for the competition authorities of the 56 jurisdictions in the OECD CompStats database.

This publication supports informed policymaking and contributes to improving competition law and policy around the world by providing multi-year data on a large number of economic and legal indicators. 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. The resulting recommendations, best practices and policy roundtables serve both as models and inspiration for national initiatives and as tools for sharing global best practices on competition law and policy. Competition officials from developed and emerging economies are offered a unique platform from which to monitor developments in competition policy and enforcement, and to discuss new solutions for increasing effectiveness.

Data in *OECD Competition Trends 2021* is mainly presented on an aggregate level, combining the data of a certain number of individual jurisdictions. The aggregate-level data includes an analysis (i) for all participating jurisdictions ("All jurisdictions"), (ii) comparing OECD and non-OECD jurisdictions, and (iii) per geographical region (Americas, Asia-Pacific, Europe and Other (i.e. countries that do not qualify for the first three regions, but for whom not enough countries in their region participate to remain anonymous)).

This work benefits from the support of the OECD Secretariat, in particular the 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, the tools of competition authorities must constantly develop and incorporate lessons learned from others. This publication contributes to helping policy makers and competition enforcers to stay up to date with the different ways in which competition law and policy is applied throughout the world.

The publication was prepared under the supervision of Antonio Capobianco, Acting Head of Division; by Wouter Meester, project leader; Carlotta Moiso; Menna Mahmoud; Niyati Asthana; and Pedro Caro de Sousa; all of the OECD Competition Division. Cristina Volpin, Federica Maiorano, Isolde Lueckenhausen,

James Mancini, Paulo Burnier, Ruben Maximiano and Sabine Zigeliski, all of the OECD Competition Division, provided comments and suggestions on earlier drafts. The report was edited for publication by Tom Ridgway and prepared for publication by Edward Smiley and Erica Agostinho.

We want to thank the individual competition authorities in the participating jurisdictions who generously provided the information on which much of this publication is based.

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Executive summary

Effective merger review is a key component of almost all competition regimes. As of 2019, 135 jurisdictions around the world have merger laws or regulations in place. However, implementation can differ substantially across jurisdictions. The vast majority of the jurisdictions in the OECD CompStats database adopt a mandatory pre-merger notification system and in most of them the adopted notification thresholds pertain to turnover. A two-phase merger assessment process is the most common approach, with only a limited number of regimes using a one-phase approach.

The total number of merger notifications received by the jurisdictions in the OECD CompStats database increased in 2019, compared to 2018, continuing a trend seen in previous years. The total number of decisions taken by the authorities, however, slightly decreased for the first time after continuous growth since 2015.

The vast majority of mergers, approximately 95%, assessed between 2015 and 2019 were deemed not to have anti-competitive effects and were cleared without a remedy after the first phase of investigation. The total number of blocked transactions grew by 12.5% in 2019, while the number of withdrawn notifications remained stable.

While the absolute number of merger cases cleared with remedies slightly decreased in 2019, after steady growth since 2016, the average proportion of remedy decisions actually increased by almost two percentage points compared to 2018.

Merger control and enforcement have recently been the subject of lively debates and policy developments, mostly related to the criticism that merger control has not been particularly effective in limiting increased market concentration and market power. Notification thresholds for instance have been at the centre of recent policy debates as some argue that potentially harmful transactions below notification thresholds have escaped merger review.

The debate around vertical and conglomerate theories of harm has also been lively due to renewed interest in the potential anti-competitive effect of these mergers. Moreover, dynamic competition and protecting potential competition are increasingly in focus as the dynamism that characterises important emerging markets makes it more difficult for competition authorities to predict how markets will evolve when assessing mergers.

Experts are debating the practical challenges authorities face when assessing the non-price effect of mergers and the possible effects of mergers on suppliers and labour markets. The latter discussion can be traced to yet another recent topic of interest: calls for the inclusion of various dimensions of public interest into competition assessments.

1 Introduction

1.1. Importance of merger control

Effective merger review is a key component of almost all competition regimes intended to prevent consumer harm resulting from transactions that significantly reduce competition. While most mergers do not cause harm to competition and will often generate efficiencies, certain may create competition problems that require competition authority intervention. Competition authorities can address this problem through the imposition of a remedy (structural or behavioural), or the prohibition of the transaction.

In recent decades, the number of merger control regimes has increased significantly. As of 2019, almost all jurisdictions in the world have some form of merger control regime, assessing mergers' competitive impact in their relevant markets.

1.2. Report structure

This first part of the report aims to provide an overview of the merger control regimes in OECD CompStats jurisdictions. The report's second part focuses on the main characteristics of the regimes in force in OECD CompStats jurisdictions. The third part explores the merger control activity in OECD CompStats jurisdictions and identifies overall trends in merger control enforcement, as well as regional trends. The fourth and final part of the report is dedicated to a discussion of the most recent policy trends in merger control.

2 Merger regimes around the world

As of 2019, 135 jurisdictions around the world have merger laws or regulations in place that mandate competition authorities to examine certain types of transactions.¹ In some countries, even though a full and comprehensive regime is not in place, sector-specific laws regulate competition aspects of mergers in certain sectors of the economy.

Fifty-four jurisdictions have yet to adopt a merger regime. However, seven of these jurisdictions are in the process of developing one and a further 22 are covered by supranational merger regimes through a regional competition agreement (OECD, 2018_[1]).²

Three jurisdictions have already developed and adopted a regime, but do not have yet an operational competition authority.

Of the 56 jurisdictions included in the OECD CompStats database, only two have no regulatory framework for merger control in place.³

2.1. Introduction of merger regimes in selected regions

The introduction of merger regimes has differed across different regions. This section briefly explores the introduction of competition law and merger regimes in the regions where the OECD has established regional centres. The OECD operates three regional centres that support local jurisdictions in the development and implementation of competition law and policy.

2.1.1. Competition Programme OECD/Korea Policy Centre (KPC), Seoul, Korea

Established in 2004 as a joint venture between the Korean government and the OECD, the Korea Policy Centre (KPC) works with jurisdictions in the Asia-Pacific region. Currently, 26 jurisdictions in the region frequently participate in KPC activities,⁴ of which only two are still to introduce competition legislation.

Asia-Pacific includes a large number of recently established competition regimes and authorities. While ten jurisdictions have enforced competition laws for more than three decades, ten jurisdictions in Asia-Pacific enforced their first competition law in the past two decades. Five jurisdictions introduced their law after 2010.

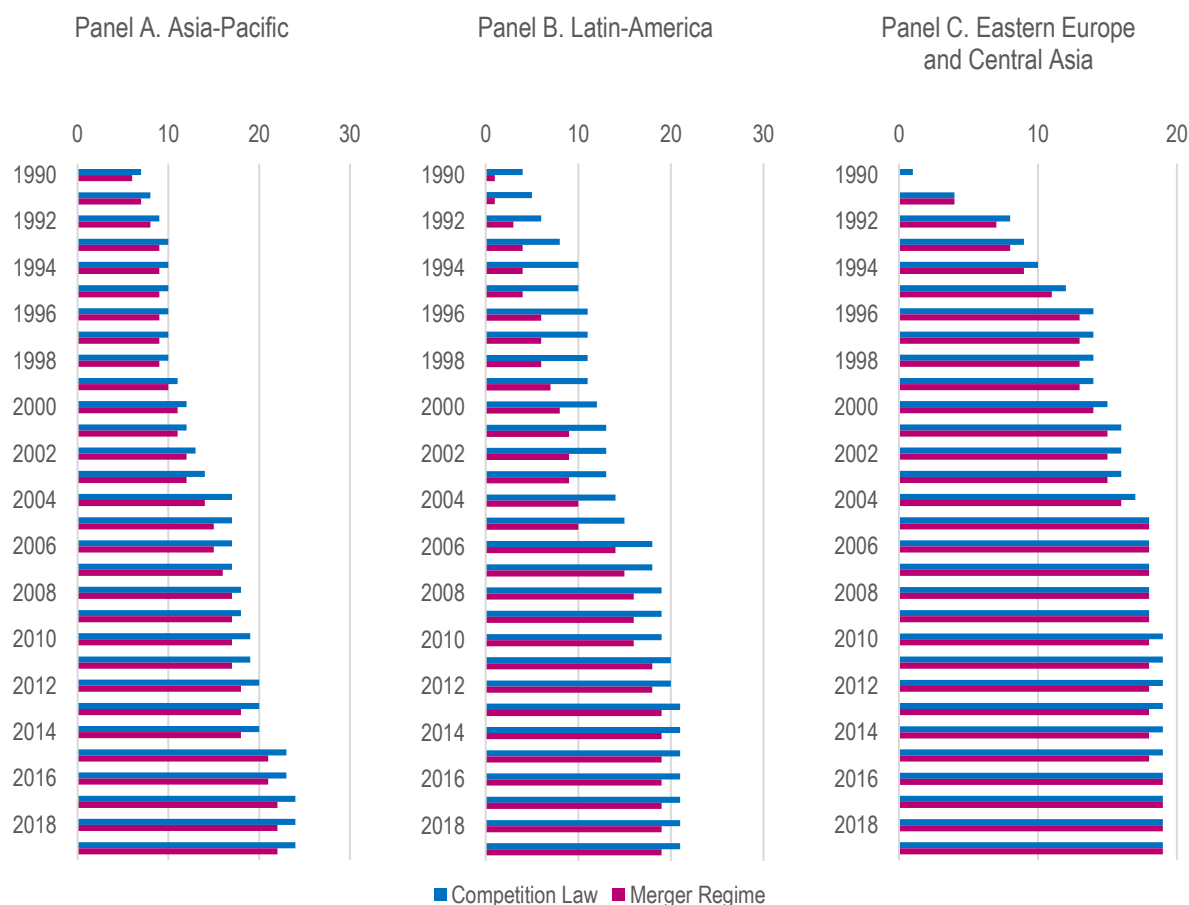
Of the 24 jurisdictions with a competition law in this region, 23 have successfully implemented a merger control regime and one uses sectoral assessment.

2.1.2. OECD Regional Centre for Competition in Latin America (RCC), Lima, Peru

The OECD Regional Centre in Latin America (RCC) is a joint venture between the Peruvian Competition Authority (INDECOPI) and the OECD. The RCC was established in 2019 and provides competition support to 23 jurisdictions and two regional communities.⁵ Out of all RCC jurisdictions, only one is yet to introduce competition legislation.

The Latin America region consists of many relatively recently established authorities. In many jurisdictions merger control regimes were not put in place until sometime after a competition law was introduced; as a result, half of the jurisdictions have only adopted a merger regime in the past 15 years (Burnier da Silveira, 2020^[2]).

Figure 2.1. Development of competition law and merger regimes in selected regions



Panel a) Data for the 23 jurisdictions with a competition law that frequently participate in KPC activities.

Panel b) Data from the 22 jurisdictions with a competition law that frequently participate in RCC activities.

Panel c) Data from the 19 jurisdictions that frequently participate in OECD-GVH activities.

2.1.3. OECD-GVH Regional Centre for Competition, Budapest, Hungary

The OECD-GVH Centre was established in 2005 to provide capacity-building assistance and policy advice for 19 jurisdictions in Eastern and Southeast Europe and Central Asia.⁶

Despite all jurisdictions in OECD-GVH having a competition legislation, merger control mechanisms and functioning competition authorities, competition enforcement often remains limited. Many of these agencies are small, both in terms of budget and staff numbers; this leads to an often- low number of enforcement cases.⁷

2.2. Characteristics of merger control regimes in CompStats

While almost all competition law regimes provide for merger control, implementation can differ considerably between jurisdictions.

2.2.1. Mandatory and voluntary merger notification regimes

Some important features of merger control regimes that can differ across jurisdictions are whether an authority undertakes ex ante or ex post assessments and whether the notification of an intended or consumed transaction is mandatory or voluntary. Only a limited number of jurisdictions (eight) employs a voluntary merger notification or post-merger notification and assessment regime. The large majority of merger control regimes requires mandatory pre-merger notification for transactions that meet certain thresholds defined using criteria, such as turnover, asset, market share, or transaction value.

Whether a given transaction needs to be notified to the reviewing authority depends on: 1) the definition of a notifiable transaction, and 2) whether certain notification thresholds are met (OECD, 2013, p. 13_[3]). Notification thresholds seek to prevent the notification of transactions that most probably have no material impact in a given jurisdiction. According to the *Recommendation of the OECD Council on Merger Review* (the *Recommendation*), clear and objective criteria should be used as notification thresholds (OECD, 2005, p. 2_[4]). The *Recommendation* also states that adherents should assert jurisdiction only over those mergers that have an appropriate nexus with their jurisdiction, and review only those mergers that could raise competition concerns in their territory.⁸

Box 2.1. OECD Recommendation on Merger Review

The Recommendation of the OECD Council on Merger Review was adopted on 23 March 2005 (OECD, 2005_[4]). Building on extensive prior work conducted by the OECD Competition Committee, the Recommendation contributes to greater convergence of merger-review procedures. It covers four main areas: 1) notification and review procedures; 2) co-ordination and co-operation for transnational mergers; 3) competition authorities' resources and powers; 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 and non-members, and to report to the OECD Council as appropriate on any further action needed to improve merger laws, achieve greater convergence towards recognised best practices, and strengthen co-operation and co-ordination in the review of transnational mergers.

In 2013, the OECD published *Report on Country Experiences with the 2005 OECD Recommendation on Merger Review* (OECD, 2013_[5]) which reviews 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 it. 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](#)).

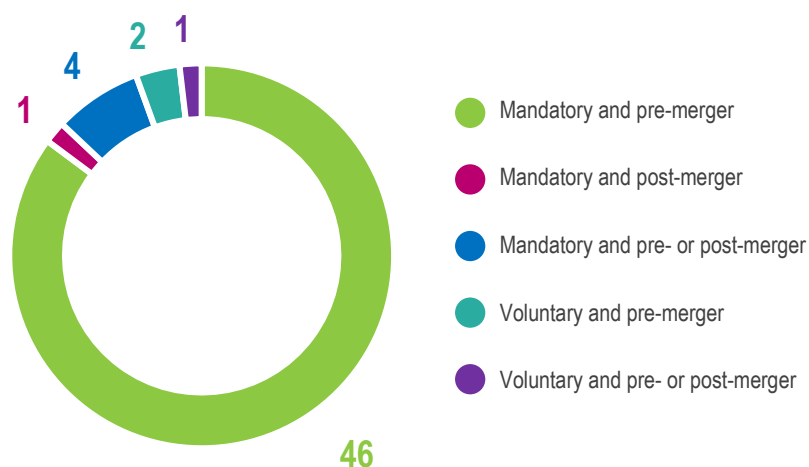
Source: OECD (2020), *OECD Competition Trends 2020*, www.oecd.org/competition/oecd-competition-trends.htm

Figures Figure 2.2 2.3 and 2.4 provide an overview of the 54 CompStats jurisdictions' decisions⁹ when designing their merger control regimes, from their notification procedures to the criteria selected to determine whether a transaction meets the notification thresholds.

The vast majority of these 54 regimes adopts a mandatory pre-merger notification system (46 jurisdictions). Three regimes have adopted a voluntary regime, while the remaining five jurisdictions have adopted a

mandatory “post-merger” or “pre- or post-merger” regime. “Pre- or post-merger” refers to the fact that they can voluntarily notify the authority before the transaction is consummated, but are obliged to notify within a certain period after it (see Figure 2.2).¹⁰ In numerous regimes, parties uncertain of their position have the possibility of voluntarily notifying the reviewing authority of a transaction even if it does not meet the threshold.

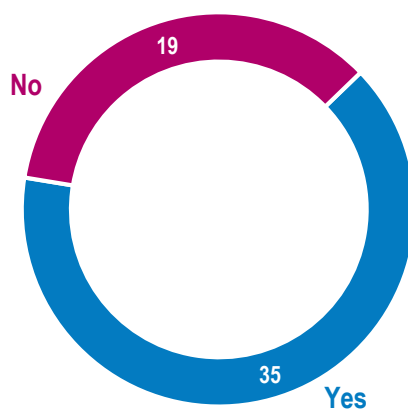
Figure 2.2. Overview of mandatory and voluntary merger-notification regimes in CompStats jurisdictions



Note: Based on data from the 54 jurisdictions in OECD CompStats database with a merger control regime in place.
Source: OECD CompStats database and OECD analysis based on publicly available information.

A substantial number of competition authorities around the world charge a fee for merger filings: of the 56 jurisdictions in the CompStats database, 34 now charge one. The practice has become more common since 2005 when the International Competition Network (ICN) published the results of a review of filing fees: 6 of the 54 introduced this requirement in the past 15 years (International Competition Network, 2005^[6]).

Figure 2.3. Filing-fee requirements, 2020

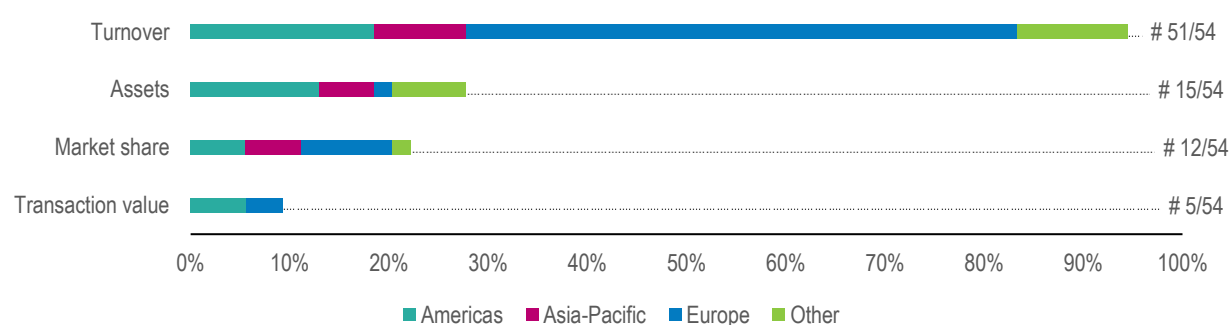


Note: Based on data from the 54 jurisdictions in OECD CompStats database with a merger control regime in place.
Source: OECD analysis based on publicly available information.

Focusing on a reduced sample of CompStats jurisdictions with a similar fee regime,¹¹ it is interesting to note significant variations in the total amount collected for merger filings across jurisdictions. On average in these 12 jurisdictions, filing fees represent approximately 17% of an authority's budget. However, this varies significantly between jurisdictions, with filing fees making up less than 1% of the budget for some and representing almost the entire budget for others.¹²

In the large majority of jurisdictions (51 of 54 in the CompStats database), turnover is used as (one of) the determining factor(s) for a notifiable merger.¹³ Other types of thresholds include the total value of the assets involved in a merger (15), market share (12) and transaction value (5). Several jurisdictions (24) use a combination of these criteria (Figure 2.4).

Figure 2.4. Selected criteria for establishing merger-notification thresholds



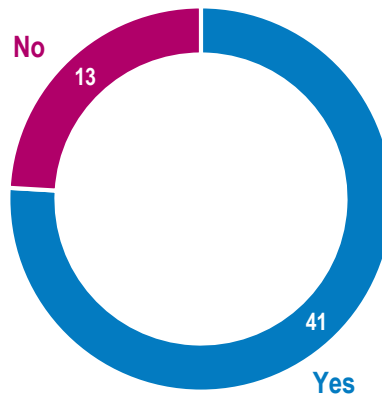
Note: Based on data from the 54 jurisdictions in OECD CompStats database with a merger control regime in place.

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

Recent developments in merger control, most notably the debate on 'killer acquisitions' and subsequent suggestions to change merger thresholds, may be increasing the diversity of the types of merger notification thresholds that will be used in the near future (see section 4.2).

Simplified merger regimes

In the attempt to reduce the legal costs and burden on both the merging parties and the reviewing authorities, many jurisdictions employ simplified merger regimes for cases that meet specific criteria. Simplified regimes may involve a simplified notification and/or a simplified assessment process by reviewing authorities. In some jurisdictions the streamlined process can only be undertaken if the parties specifically apply for it when submitting the notification, but it is generally automatically implemented when the criteria are met and/or a simplified notification is filed.

Figure 2.5. Use of simplified merger regime, 2020

Note: Based on data from the 54 jurisdictions in OECD CompStats database with a merger control regime in place.

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

About 75% of the jurisdictions in OECD Compstats have some form of simplified merger regime in place.

The most common benchmark criteria used to determine if a concentration is unlikely to create a competition problem relate to the absence of horizontal overlaps or vertical relationships between the merging parties, combined market shares and the Herfindahl-Hirschman Index (HHI). The simplified procedure is usually also available to undertakings acquiring exclusive control over joint ventures in which they exercised joint control previously.

Gun jumping

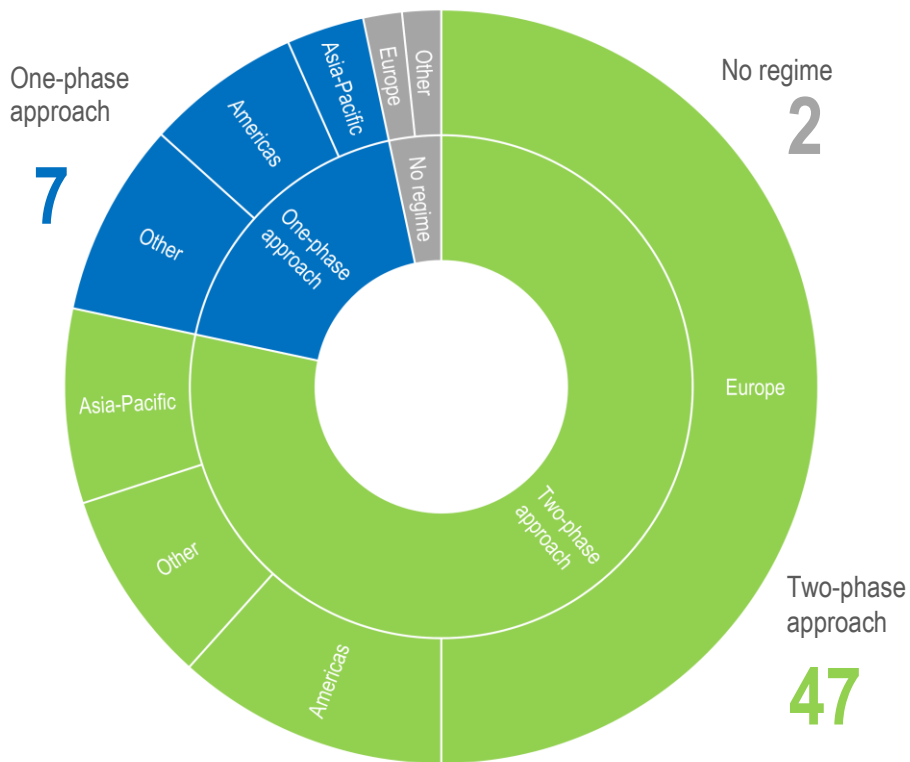
As noted previously, the majority of jurisdictions have adopted a pre-merger notification system. As a result, when a merger meets the relevant notification thresholds, it is frozen and barred from taking place until it has received clearance; this is known as a standstill obligation. Gun jumping occurs when the parties proceed to implement all or parts of a transaction before a competition authority has issued a decision. “Procedural gun jumping” is when merging parties fail to file a notification, while “substantive gun jumping” sees merging parties exchange information and co-ordinate prior to a deal being closed. Gun jumping has long been part of competition agencies’ enforcement agendas, and currently seems to be subject to higher fines (OECD, 2018^[7]).

All jurisdictions in the OECD CompStats database with a pre-merger notification regime have adopted stringent gun-jumping rules.¹⁴

2.2.2. One-phase or two-phase approaches

The majority of the 56 OECD CompStats jurisdictions adopts a two-phase approach (see Figure 2.6), according to which mergers that do not raise competition concerns are cleared in what is usually a relatively short first phase, with a more in-depth investigation carried out during a longer second phase, if deemed necessary. Only a limited number of regimes uses a one-phase approach.

Figure 2.6. CompStats jurisdictions with one-phase or two-phase approaches



Source: Data from the 56 jurisdictions in the OECD CompStats database and OECD analysis based on publicly available information.

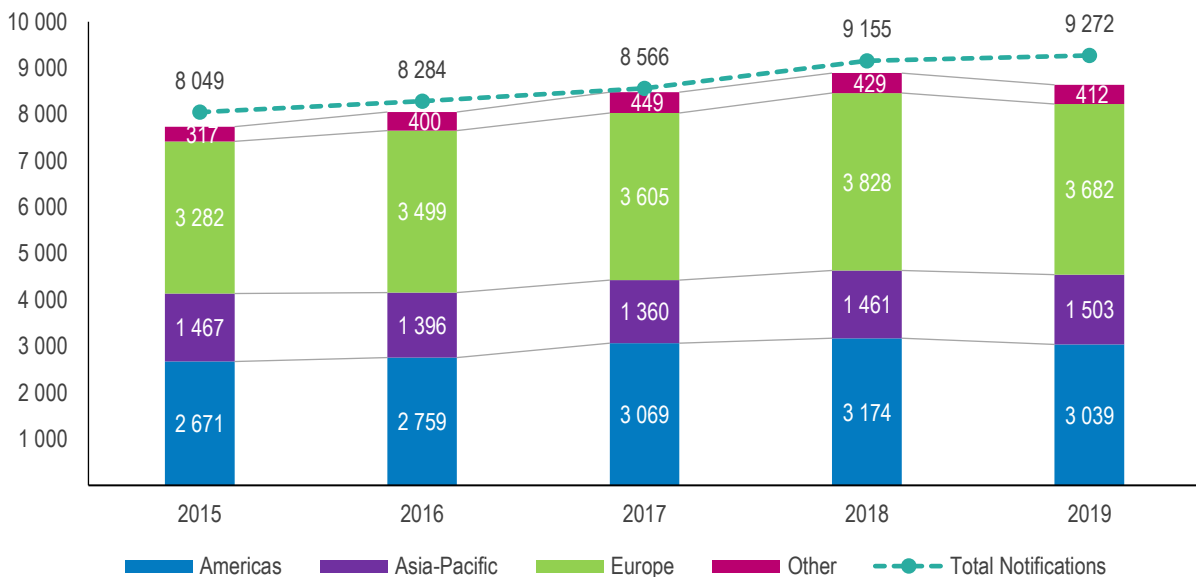
3 Global merger control activity

3.1. Total number of notifications and merger decisions

Jurisdictions in the OECD CompStats database received more merger notifications in 2019 than in 2018, even if the number increased more slowly than in previous years: 3% in 2019 against 7% in 2018.

The total number of decisions¹⁵ slightly decreased in almost all regions, with the exception of Asia-Pacific (see Figure 3.1). The distribution of decisions across global regions remained mostly stable over the whole period considered.

Figure 3.1. Merger decisions and notifications in selected regions, 2015-2019



Notes: Data from the 48 jurisdictions in the OECD CompStats database with a merger regime. Decisions include cases in which the waiting period had expired.

Source: OECD CompStats database.

The increased activity by competition authorities matched an increased international enforcement co-operation between competition authorities, which continued to rise (see Box 3.1) (OECD, 2020_[8]).

Box 3.1. International enforcement co-operation on merger cases

Results from the *OECD/ICN Report on International Co-operation in Competition Enforcement*

Improving enforcement co-operation between competition authorities has been a long-term priority for both the OECD and ICN. Their joint report, *OECD/ICN Report on International Co-operation in Competition Enforcement*, outlines key aspects of the current state of international enforcement co-operation between competition authorities. It investigates the drivers of international enforcement co-operation and undertakes a high-level review of key OECD and ICN initiatives to support international enforcement co-operation. It analyses the results of a survey conducted by OECD and ICN members in 2019, and compares it to the 2012 survey results.

The report's key finding is that international enforcement co-operation is increasing. This trend has been observable in all enforcement areas, and appears particularly true for co-operation on merger matters. In fact, merger co-operation involves a significantly higher number of inter-authority contacts than co-operation around cartels or unilateral conduct. This is related to the cross-border nature of certain mergers and to the fact that in most jurisdictions a merger requires the involved parties to notify the authorities of their own jurisdictions, as opposed to other enforcement areas in which cases depend on possible infringements and authorities' ability to detect them.

The most frequent types of co-operation in merger cases are the sharing of:

- information regarding investigation status
- substantive theories of harm
- public information
- business information, and obtaining appropriate waivers.

Respondents noted that merger enforcement co-operation is useful as it results in a valuable exchange of ideas on how to approach mergers, improves understanding of other jurisdictions' procedural phases, assists with co-ordinating the timing of any review, and helps authorities clarify and define analytical criteria or technical points. Some respondents noted that these discussions are particularly useful at the pre-notification stage.

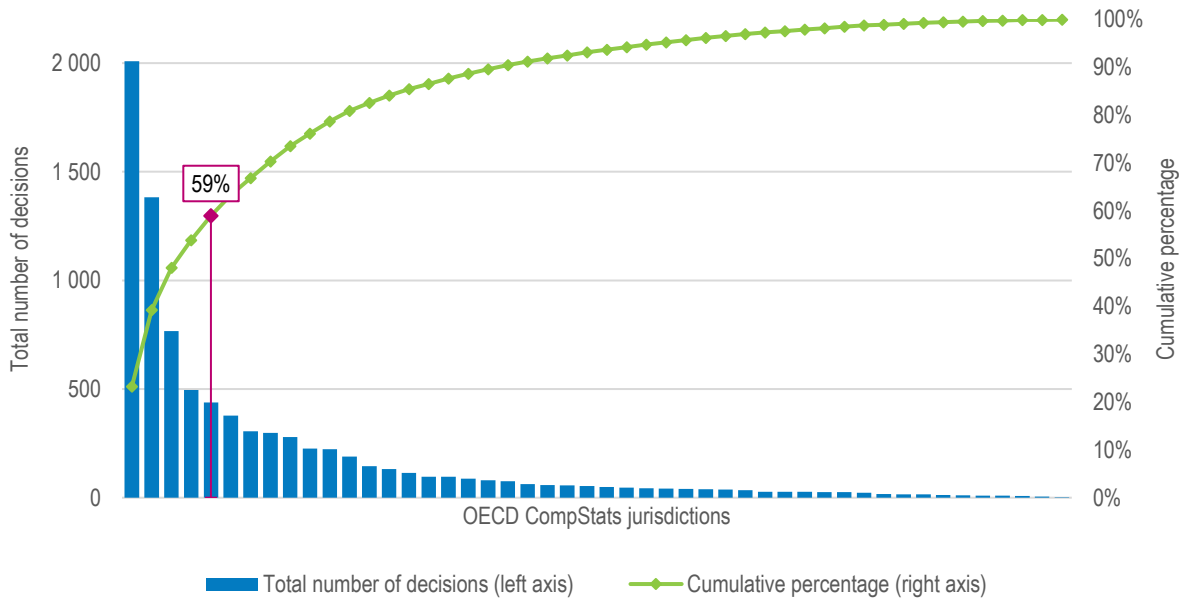
Other highlighted benefits included consistent remedies and improved enforcement. It was noted that where authorities agree on the definition and the application of remedies, they are more likely to be properly enforced.

Source: OECD/ICN (2021), *OECD/ICN Report on International Co-operation in Competition Enforcement*, <http://www.oecd.org/competition/oecd-icn-report-on-international-cooperation-in-competition-enforcement-2021.htm>.

In 2019, a small number of authorities drove a large number of decisions, as was the case in 2018. In fact, the top-5 jurisdictions for decisions issued were responsible for almost 60% of all decisions. The high concentration of the decisions can be clearly seen in Figure 3.2.

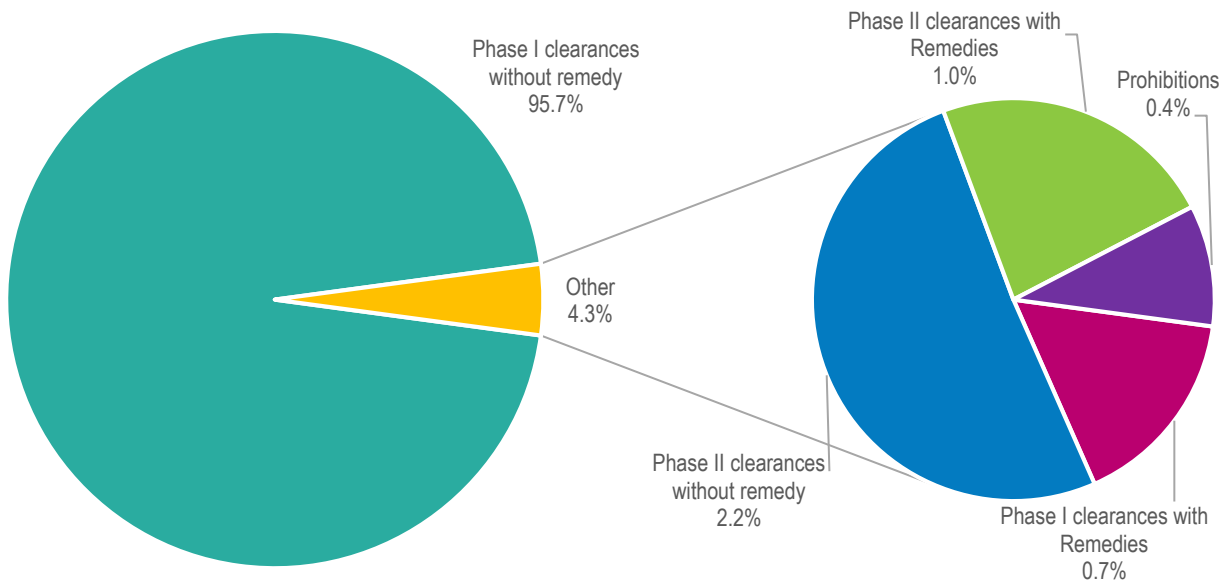
The vast majority of mergers assessed in 2019 by jurisdictions included in the OECD CompStats database were deemed not to have anticompetitive effects, as shown in the high percentage of transactions cleared without a remedy (Figure 3.3). In these jurisdictions in 2019, almost 96% of all merger decisions were cleared without an in-depth investigation, and only 0.4% (or 27) of the over 8 500 merger decisions resulted in a prohibition.

Figure 3.2. Distribution of merger decisions, by jurisdiction, 2019



Note: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years.
Source: OECD CompStats database.

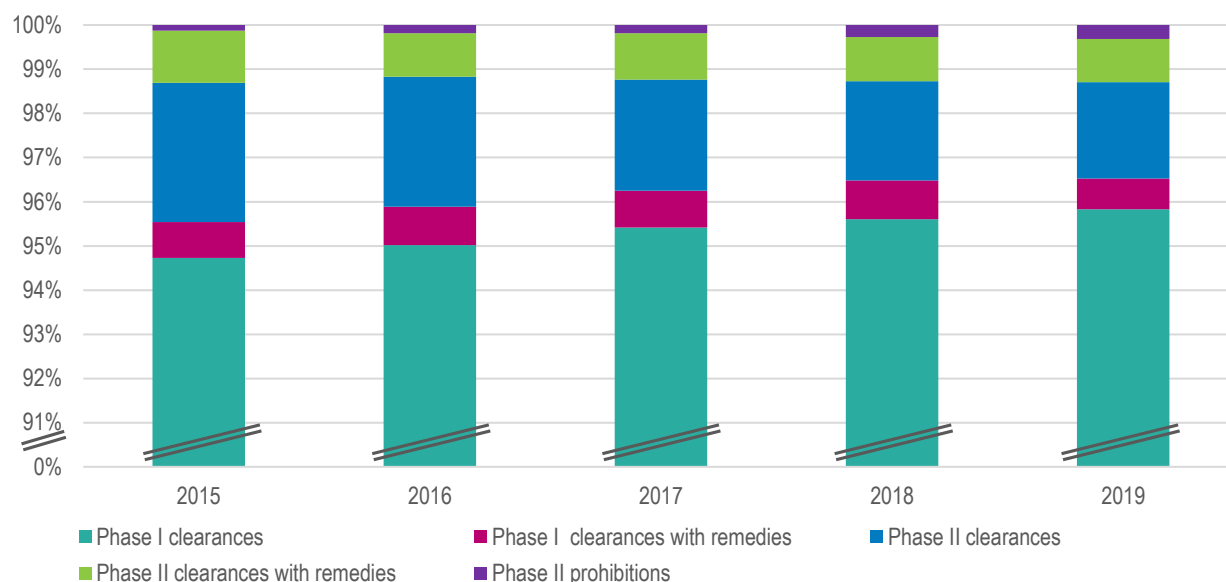
Figure 3.3. Overview of types of merger decisions, 2019



Note: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years. Phase I clearances, Phase I clearances with remedies, and Phase II prohibitions include single-phase decisions. Phase I and Phase II clearances include cases of expiration of waiting period.
Source: OECD CompStats database.

Although the total number of decisions slightly decreased in 2019 after a steady increase since 2015, the proportion of the different types of decisions has remained generally stable; with Phase II clearances slowly decreasing in favour of Phase I clearances (see Figure 3.4).

Figure 3.4. Types of merger decisions, 2015-2019



Note: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years. Phase I clearances, Phase I clearances with remedies, and Phase II prohibitions include Single Phase decisions. Phase I and Phase II clearances include cases of expiration of waiting period.

Given the large majority of mergers cleared in phase I without a remedy, the vertical axis starts at 90% to increase visibility of the different categories.

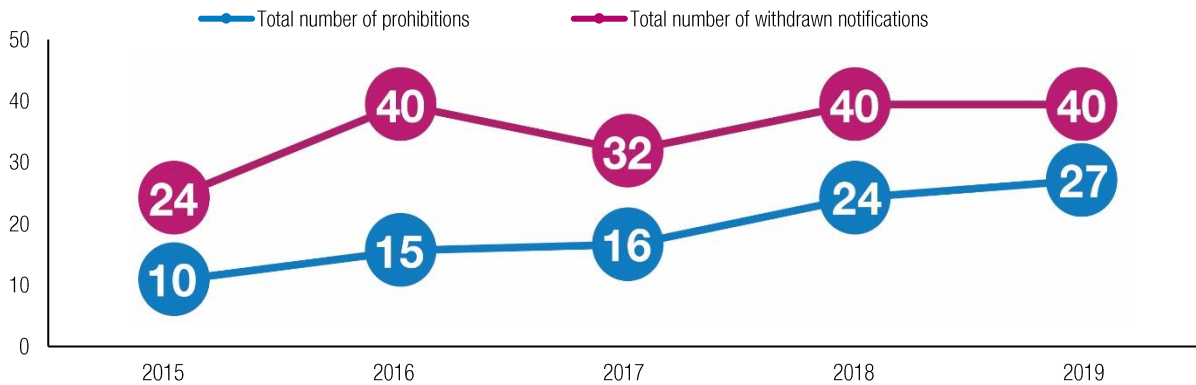
Source: OECD CompStats database.

3.2. Trends in merger control enforcement

3.2.1. Blocked and withdrawn transactions

The total number of blocked transactions in jurisdictions in the CompStat database grew by 12.5% in 2019; the number of withdrawn notifications remained stable. However, when considering the general trend of the five-year period 2015-2019, both have shown a tendency to increase (see Figure 3.5).

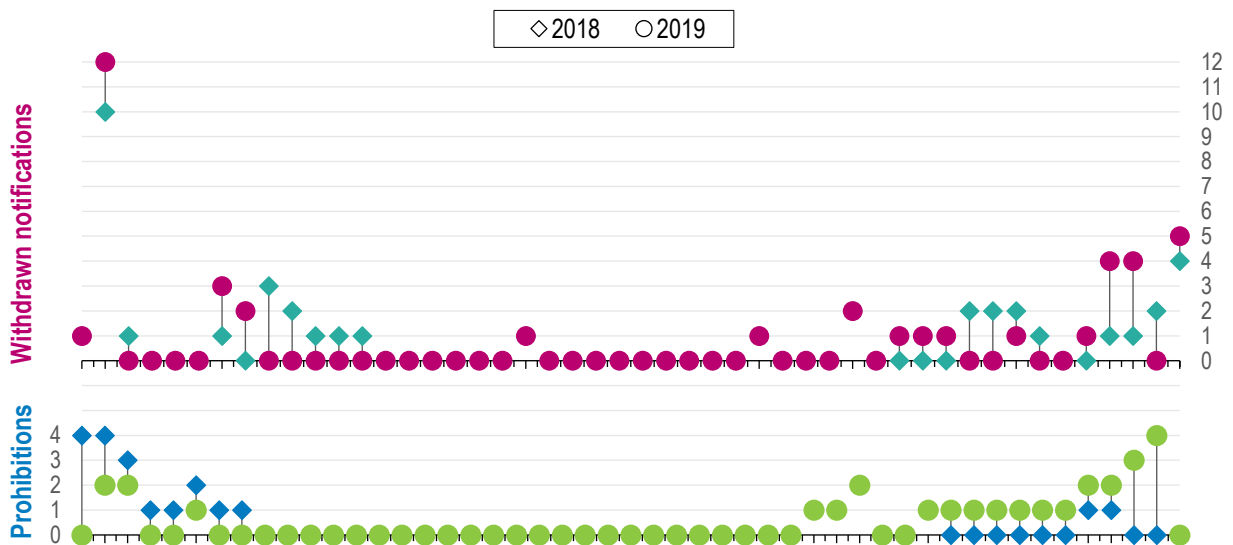
Figure 3.5. Prohibition decisions and withdrawn notifications, 2015-2019



Notes: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years. The figures slightly overestimate the number of blocked or withdrawn transactions as they include prohibitions decisions and withdrawals of the same transaction by different agencies.
 Source: OECD CompStats database.

While the trend of blocked and withdrawn transactions shows a clear increase in the period 2015-2019, much of this increase can be explained with the activities of a relatively small number of jurisdictions.

Figure 3.6. Prohibitions and withdrawn notifications, by jurisdiction, 2018 vs. 2019

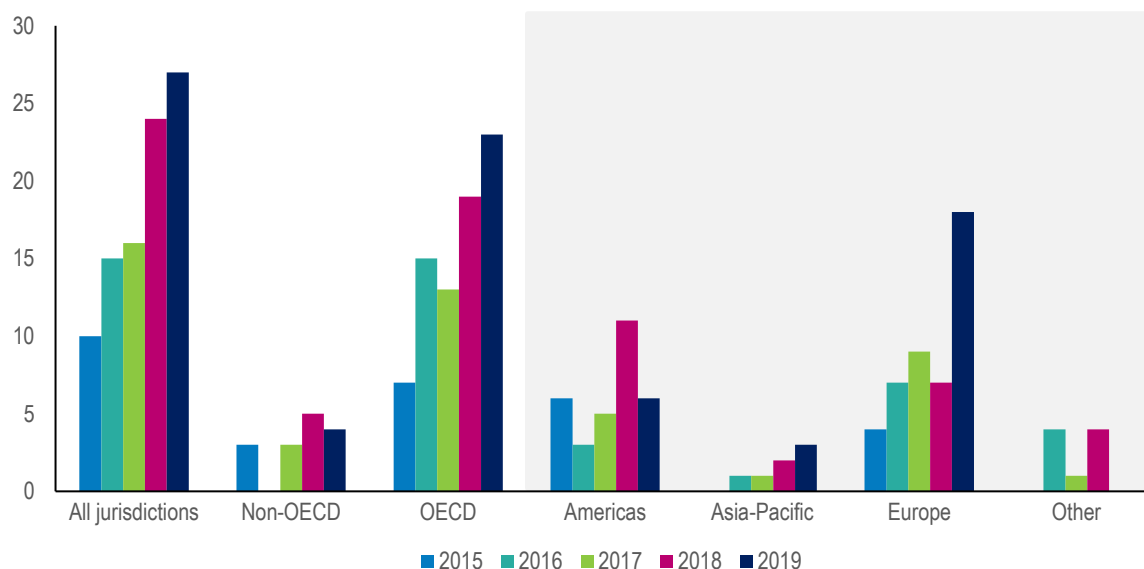


Note: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years. The figures slightly overestimate the number of blocked or withdrawn transactions as they include prohibitions decisions and withdrawals of the same transaction by different agencies.
 Source: OECD CompStats database.

The large majority of the jurisdictions maintained the same number of prohibition decisions (30 jurisdictions) and withdrawn notifications (27 jurisdictions) in 2019 (Figure 3.6). Only ten jurisdictions increased their number of blocked or withdrawn mergers.

Decisions and actions vary across the different regions (Figure 3.7 and Figure 3.8). Blocked mergers declined in all regions except Europe, where their number rose from 7 in 2018 to 18 in 2019. Withdrawn notifications have been steadily increasing since 2015 in the Americas, a trend that continued in 2019.

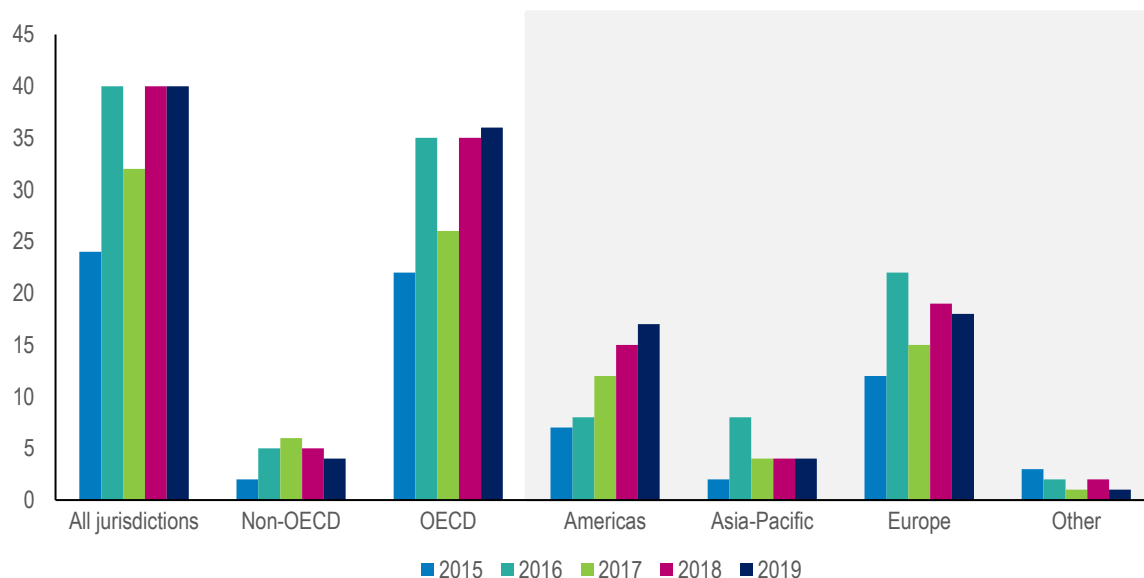
Figure 3.7. Number of prohibition decisions, by region, 2015-2019



Note: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years.

Source: OECD CompStats database.

Figure 3.8. Number of withdrawn notifications, by region, 2015-2019



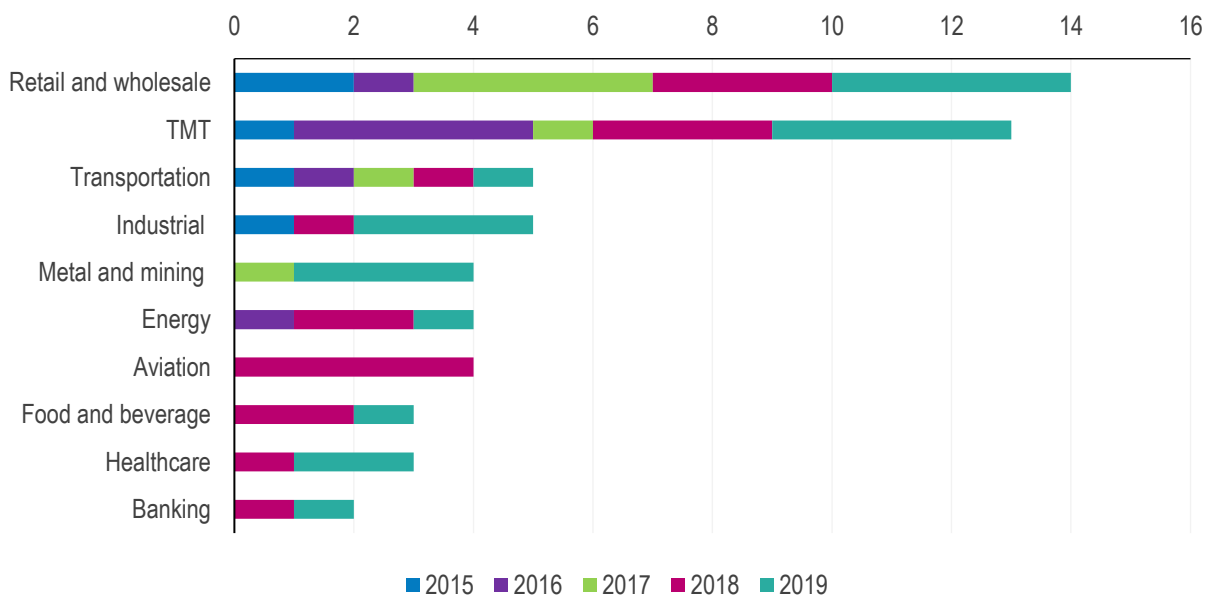
Note: Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years.

Source: OECD CompStats database.

Figure 3.9 provides an overview of sectors particularly affected by the increased scrutiny of competition authorities and which have seen the highest number of prohibited mergers.

A more in-depth analysis of a subset of 80 decisions that blocked mergers over the period 2015-2019 reveals that 16% (13) were in the technology, media, and telecom (TMT) sector (2 of which were vertical mergers).¹⁶ Fourteen – the highest number – were in retail and wholesale and were in 11 instances intended vertical mergers. Finally, 9 of the 80 decisions blocking mergers involved conglomerate mergers. Vertical and conglomerate mergers are increasingly attracting greater scrutiny from competition authorities (see section 4.3.2 on policy trends).

Figure 3.9. Top-ten sectors with highest number of blocked mergers, 2015-2019



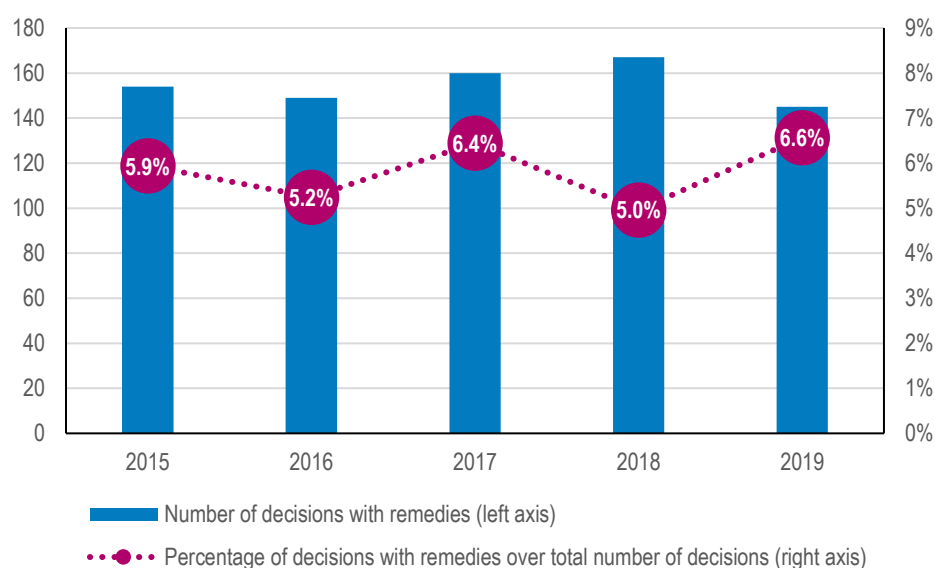
Source: OECD analysis based on publicly available information.

3.2.2. Use of remedies

Remedies are a key aspect of merger review as they enable jurisdictions to address specific competition problems, while maintaining the benefits that the mergers can potentially bring to consumers (OECD, 2018_[9]).¹⁷

Long term, the use of remedies has fluctuated over time, but has generally been increasing in certain jurisdictions. In 2019, the total number of merger cases cleared with remedies slightly decreased, after a steady growth since 2016, yet the average proportion of remedy decisions for each jurisdiction actually increased by more than 1.6 percentage points with respect to 2018 (Figure 3.10).

Figure 3.10. Absolute number of decisions with remedy and percentage of total merger decisions with remedy, 2015-2019



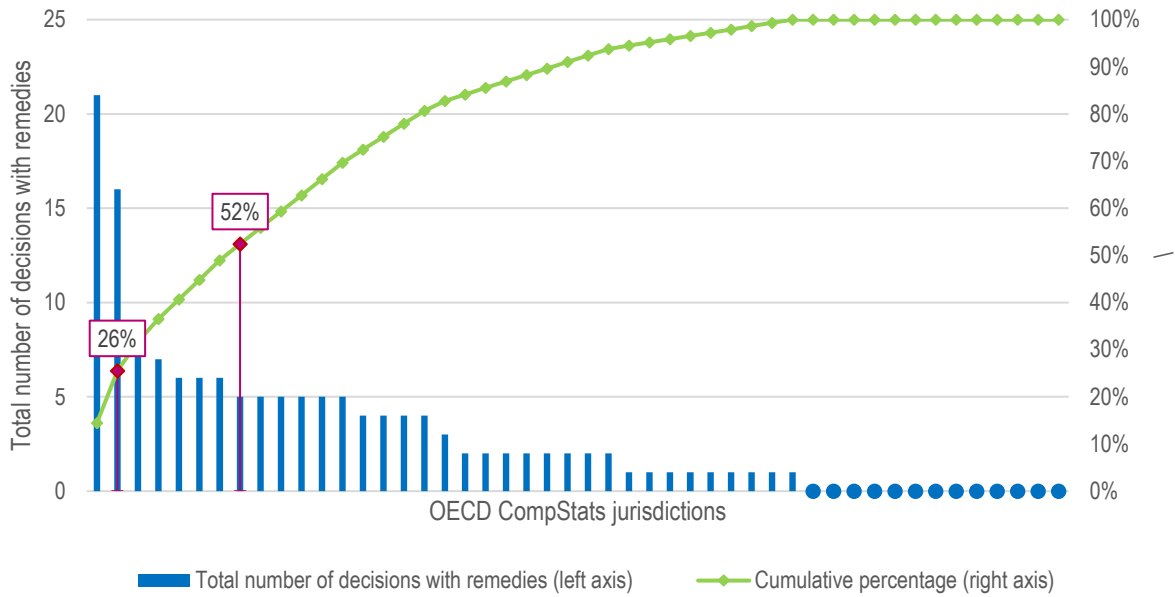
Note: Percentages of decisions with remedies are calculated by averaging the percentages of decisions with remedies for each jurisdiction. Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years.

Source: OECD CompStats database.

As with blocked transactions, a small number of jurisdictions are responsible for a large share of the remedy decisions and this is clearly reflected in Figure 3.11. Two jurisdictions are responsible for 26% of the decisions with remedies, and seven for 52%,¹⁸ while over half issued either no remedy decisions or only one or two.

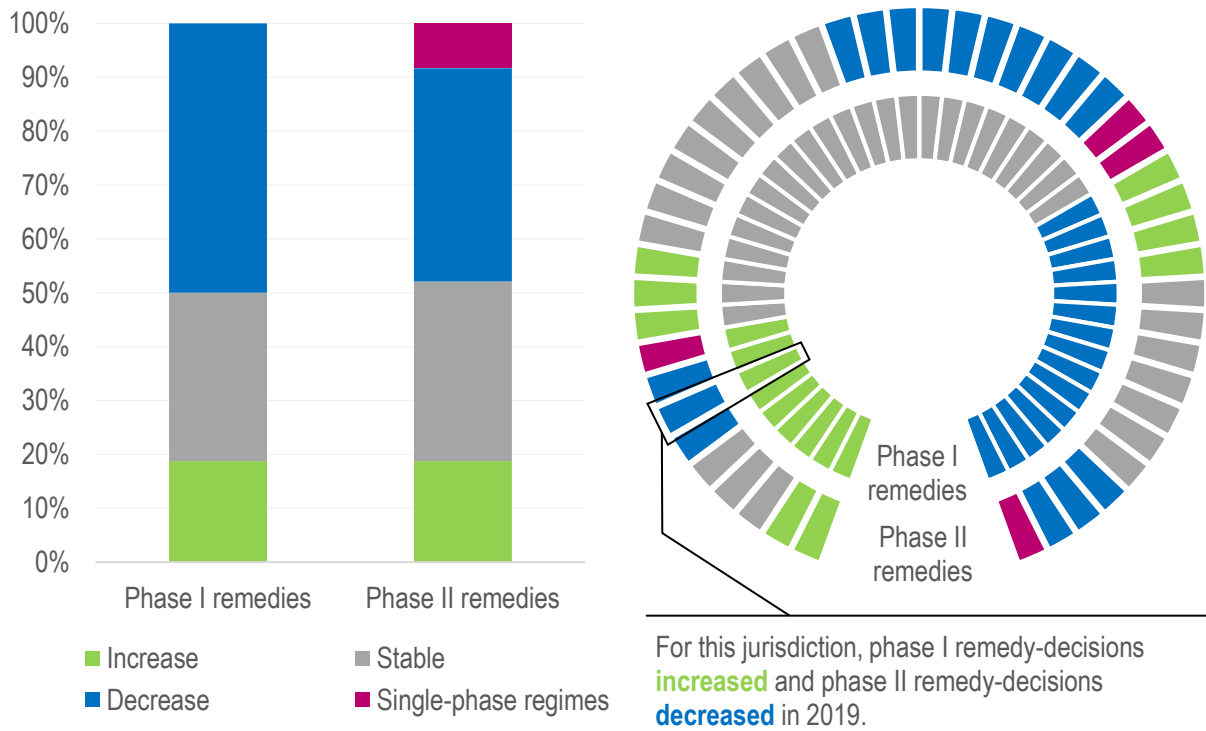
Figure 3.12 provides an overview of the change in the number of remedy decisions between 2018 and 2019. It shows that in most jurisdictions the number of decisions with remedies remained unchanged. The number of Phase I decisions with remedies taken decreased in 15 jurisdictions and in 13 for Phase II. Finally, only nine jurisdictions increased their number of decisions with remedies for both Phase I and Phase II decisions.

Figure 3.11. Reliance of competition authorities on remedies, 2019



Notes: In 2019, 13 authorities issued no decisions with remedies, while one authority issued 21. Data from the 48 jurisdictions with a merger regime included in the OECD CompStats database for which comparable data are available for all years.
 Source: OECD CompStats database.

Figure 3.12. Change in use of remedy decisions, by jurisdiction, 2018 vs. 2019



Note: Data from all 56 jurisdictions in the OECD CompStats database.
 Source: OECD CompStats database.

4 Policy trends in merger control

Merger control and enforcement have recently been the subject of lively debate and policy developments. These trends merit attention and are particularly interesting when coupled with the evolution of merger control practices around the world.

4.1. Are mergers more likely to be problematic than previously thought?

Underlying the majority of policy developments and debates in this area is the criticism that competition law – and merger control, in particular – has not been particularly effective in limiting increased market concentration and market power. While it has been claimed that authorities' enforcement efforts have recently become more stringent, the data in this report do not support this conclusion, at least as a generalised trend across the world. Instead, and as noted in Section 3.2.1, the number of prohibited or withdrawn mergers remains a small proportion of the total, and broadly in line with previous years.

In 2018, the OECD Competition Committee held a hearing on increased market concentration, which had been observed in a number of countries (OECD, 2018^[10]). This rise had led to questions about whether competition was becoming less intense, and whether a policy response was required. Increased industry concentration does not necessarily equate with increased concentration in relevant product markets or increased market power. Other indicators of market power are easier to calculate and often more meaningful than industry concentration; these include estimates of price mark-ups, profitability measures, output, and rates of market entry and exit. Recent changes in these indicators have been broadly aligned with increased industry concentration, suggesting that market power has increased in many countries.

While the role played by mergers in these developments is not evident, ex-post assessments of the effects of approved mergers have suggested that competition authorities were sometimes too cautious in challenging potentially problematic mergers, overly generous to merging parties about the prospects of future entry, and ultimately allowed mergers that in some cases led to price rises. It has been suggested that a proportionate policy response would be to increase the rigour of merger control and antitrust enforcement (OECD, 2018^[11]).

This approach is reflected in debates in many jurisdictions around the world about the implications of increased market concentration for merger control. For example, it has been argued that current screens for market concentration are too lenient, leading to approval of too many mergers with likely anticompetitive effects (Nocke, 2020^[12]). Also, as mergers in concentrated markets are more likely to prove anticompetitive, they should be subject to stricter scrutiny (Valletti, 2019^[13]).

At the root of many policy debates and developments in this area of competition enforcement is a perception that merger control has become too lenient and that this has led to problematic levels of increased market concentration and market power.

A number of these debates and how the OECD has helped to shape them are reviewed in this section.

4.2. Notification thresholds – how to effectively review potentially anticompetitive mergers

While today there is growing concern with the supposed leniency of merger control, only a few years ago, the focus was in ensuring that merger control did not impose excessive burdens on companies and competition agencies alike. As recently as 2016, the OECD wrote a paper on ensuring that notification thresholds had an appropriate local nexus, and were clear and objective, easy to use and to comply with.¹⁹

Since then, two complementary trends have emerged. First, simplified regimes for notified mergers have been increasingly adopted to minimise burdens on companies and competition authorities in cases when mergers caught by notification thresholds are unlikely to pose competitive risks (Figure 2.5).

Second, concern has been increasing about the effects of transactions that escape merger review, but may still pose competition issues. This has been particularly felt in the context of killer acquisitions in the pharmaceutical and tech sector (see Section 4.3.2). Some jurisdictions, such as Germany and Austria, have amended their thresholds to catch potentially problematic transactions and adopted methods such as value-based thresholds. Other methods have also been studied, such as granting residual jurisdiction to competition agencies to review mergers falling below notification thresholds, the adoption of ex post merger control mechanisms, and proposals to impose a duty on certain dominant firms (Autorité de la Concurrence, 2020_[14]).²⁰

4.3. Substantive developments

The growing concern with merger control's perceived leniency and failure to reflect economic developments has led to significant work devoted to better understanding the competitive effects of corporate transactions, contestability and market evolution.

Economic analysis is increasingly recognised as central to effective merger review. Unique in competition law as it is largely a forward-looking exercise concerned with prevention of expected competitive harm, merger review presents unique challenges to economic and legal analysis. This includes the marshalling of relevant evidence to predict likely future effects.

Economic analysis, which provides the framework underpinning competition analysis and the likely effects of mergers, is being increasingly adopted and replacing more formalistic approaches. This move has been recognised by the OECD, which in December 2020 devoted a Global Forum on Competition session to the use of economic analysis in merger investigations.²¹

At the same time, a number of core concepts of merger control analysis have come under increased scrutiny as a result of market developments. For example, debates about the usefulness of market definition have resurfaced. It has been argued that market definition, with its focus on how a merger might detrimentally affect welfare and competition, can confuse and obscure the nature of merger analysis in the context of multisided markets, digital platforms or digital ecosystems. (OECD, 2020_[15]) Reflecting the challenges that recent market developments pose to economic analysis for merger control, debates about the appropriateness of adopting presumptions of harm or relaxing evidentiary standards in certain contexts – such as when overlapping innovation markets are at stake (Kokkoris, 2020_[16])²² or a digital incumbent acquires another firm (McCreary, M.A. and Lemley A., 2019_[17]) (Peitz, M. and Motta M., 2020_[18]) (US Congressional Research Service, 2019_[19])²³ – have also emerged.

4.3.1. A renaissance for vertical and conglomerate theories of harm

Another development in merger analysis relates to the greater attention being devoted to vertical and conglomerate mergers, and related theories of harm, including work undertaken by the OECD during 2020.²⁴

Vertical and conglomerate mergers are generally accepted to be much less likely to prove anticompetitive than horizontal mergers. This operating assumption has long seen vertical and conglomerate mergers as unlikely to pose competition issues, and so led to merger control authorities treating them more leniently. Intervention was presumed to be necessary only in limited circumstances.

Renewed interest in the potential anticompetitive effect of these mergers has been triggered by recent developments, however.

For vertical mergers, a number of high-profile cases in the technology, media and telecoms (TMT) sector have been reviewed by different competition authorities, and subjected to merger remedies. The OECD dedicated a session in its Competition Committee to vertical mergers in TMT and their potential to harm competition in June 2019 (OECD, 2019_[20]).

Conglomerate mergers have also taken on a new prominence in the digital era, as acquisitions have become a key part of the largest technology companies' product development, expansion and recruitment strategies.²⁵ New theories suggest that digital markets may be especially prone to harm from these practices, which is leading to the development of a significant number of conglomerate theories of harm. As with vertical mergers, the OECD held a roundtable on "Conglomerate Effects of Mergers" in June 2020, which reviewed the scenarios in which conglomerate theories of harm may be deployed (OECD, 2020_[21]). In December 2020, the OECD organised another roundtable, looking at digital companies' business models of large ecosystems of complementary products and services built around a core service, and the implications of such practices for competition law and policy (OECD, 2020_[22]).

There have also been calls to use merger control for conglomerate practices for broader public-interest reasons, which are not necessarily connected to a merger's anticompetitive effects. The extent to which merger control can or should be relied upon to address such concerns is yet to be determined (OECD, 2020_[21]).

4.3.2. Increased focus on dynamic competition and protecting potential competition

Merger control decisions require effects-based analysis of a merger's likely future effects. Market dynamics in rapidly evolving sectors, such as technology and digital sectors, can therefore pose a challenge to competition authorities' related merger control efforts.

Technology and digital markets are often characterised by high entry and exit rates, as well as innovations that continuously disrupt existing business models and create entirely new markets. This dynamism makes it more difficult for competition authorities to predict how markets will evolve when assessing mergers. This is further aggravated by many of the currently available merger tools tending to focus on static measures of competition.

This situation – coupled with concerns about whether competition law in general, and merger control in particular, can address entrenched market power and reduced market entry – has triggered discussions about how to protect dynamic competition and potential competition.

The OECD has followed this debate closely and organised a series of roundtables on the subject. A 2019 roundtable on merger control in dynamic markets, for example, looked at how assessing the dynamic effects of mergers could potentially increase merger control's economic relevance, by enabling authorities to preserve long-term competition and innovation (OECD, 2020_[24]). However, an over-focus on dynamic effects creates risks for enforcement errors, and challenges for agencies in meeting requisite evidentiary burdens and standards.

These difficulties can be better understood by looking at two key issues: killer acquisitions and the protection of potential competition.

Killer acquisitions are a type of a wider theory of harm, concerning the ‘loss of potential competition through acquisition of a nascent firm’. The challenges posed by killer acquisitions to merger control were discussed by the OECD Competition Committee in June 2020. Despite playing a vital role in competitive markets, the relevance of start-up or nascent firms to merger control has traditionally been limited to providing evidence that a relevant market was likely to become increasingly competitive. Recent empirical work has shown, however, that in some cases the acquisition of a nascent firm has triggered the loss of not only a competitive constraint, but also a product. Such cases have been labelled “killer acquisitions”.²⁶ In addition, there are “reverse killer acquisitions” in which a company’s innovation is foregone because of the acquisition of a business that it could have built organically instead, leading to a reduction in overall levels of innovation. Killer acquisitions are most common in areas where firms are acquiring start-ups, particularly in pharmaceuticals, chemicals and technology (OECD, 2020^[25]).

The risk of a loss of potential competition harming consumers is well established, and research, ex post assessment and case-law continue to identify new examples of such cases involving nascent firms. (OECD, 2020^[25]).

Debates about dynamic markets and killer acquisitions are often seen as being ultimately concerned with the loss of future competition. “Potential competition” theories focus on how parties engaged in complementary activities would have expanded and competed in absence of the merger, and how this merger could remove the potential for future competition and dampen overall innovation.

Concerns about potential competition particularly arise when technology platforms purchase or build stakes in younger, innovative companies that specialise in areas in which the larger company is not involved, but into which it wishes to expand. Concerns about potential competition also abound in other economic sectors, as demonstrated by the literature on killer acquisitions in the pharmaceutical sector (Caffarra, C., G. Crawford and T. Valletti, 2020^[26]).

Potential competition also poses another challenge to merger control in dynamic markets. Taking it into account requires an in-depth counterfactual analysis, yet given the uncertain nature of potential competition, authorities and courts cannot know with any degree of certainty whether it will lead to competing products or services.

Given existing merger control frameworks and evidentiary standards, some suggest that a shift in merger policy may be required to avoid under-enforcement. Proposed reforms include:

- the explicit adoption of an “expected harm test” to remove any systematic bias against challenging mergers
- changes to evaluation processes
- the clarification and placing of greater weight on the value of potential competition
- tinkering with rules on the burden of proof in certain circumstances, such as acquisitions of nascent companies by dominant incumbents. (OECD, 2020^[25]) (Peitz, M. and Motta M., 2020^[27]) (Pike C. and P. Caro de Sousa, 2020^[28]) (Hemphill and T. Wu, 2020^[29])

Other researchers have warned against such changes, however.²⁷

4.3.3. Greater interest in non-price concerns

Non-price competition encompasses a wide range of product characteristics and business decisions that can be as determinative of consumer welfare as price; these include innovation, quality, and consumer preferences regarding privacy. However, the number of merger cases in which non-price effects play a central role are limited, as are structured analytical tools to assess such non-price effects.

Over the past few years, however, greater attention has been increasingly devoted to non-price factors, and the OECD organised a roundtable entitled “Considering non-price effects in merger control” in 2018 (OECD, 2018^[30]).

Innovation

Nowhere is this trend more apparent than in the ongoing academic debate about mergers that impact innovation. Issues being investigated include the likely effects of horizontal mergers on innovation; the nature of cognisable harms to innovation; the suitability of different analytical approaches to assess the impact of mergers on innovation; and the nature and period of innovation and R&D initiatives with which merger control should be concerned (OECD, 2018^[30]).

This increased interest in innovation is a natural outgrowth of both the increasing economic importance of technology-based, intellectual-property-intensive economic sectors, and concomitant market developments, which have led to the proliferation of zero-price markets and triggered increased merger enforcement. Also, the debate on innovation in merger control is usually framed in terms of particular concerns about increased market power and reduced market entry.

This concern with protecting dynamic and potential competition has led to specific work and concerns.

Data protection and privacy

The rapid growth of online platforms and the advent of big-data technology have elicited wide-ranging concerns about consumer privacy. These concerns have made their way into the competition-policy sphere, and led to calls for competition authorities to take privacy into account when examining mergers.

It remains far from straightforward to incorporate privacy as a dimension of competition, however. On the one hand, consumer data’s growing importance in the business model of digital firms could mean that data protection becomes a more widely recognised dimension of quality in future merger decisions. On the other, a certain scepticism has arisen about incorporating privacy into merger control based upon the view that it risks injecting subjectivity and unrelated policy objectives into competition analysis (OECD, 2018^[30]).

Data protection has nevertheless been considered a dimension of quality in a limited number of recent merger decisions. In certain markets, data protection is seen as a current differentiator among firms, and so considered a dimension of quality in standard analytical frameworks. Further, a current lack of differentiation among firms in terms of data protection does not necessarily mean that privacy is not a valued dimension of quality for consumers; indeed, it may instead suggest a lack of competition in the market. That being said, until now, competition authorities have expressed caution about injecting data-protection criteria into merger assessments, and have instead rooted their analysis in actual consumer preferences, and on the use of data as a tool to exclude competitors and entrench market power (OECD, 2018^[31]).²⁸

Sustainable development

Sustainability has been on the competition agenda for a number of years. While competition law is not a solution to sustainability issues, there is increasing awareness that it can play a role, as was discussed at an OECD hearing in December 2020 (OECD, 2020^[32]). This roundtable showed how sustainability can be framed within the scope of competition law, including merger control. In particular, sustainability can clearly fit within competition frameworks as a parameter relevant to the evaluation of quality or innovation.

Examples of merger decisions that touch on sustainability matters, if only indirectly, can be found. These include decisions that protected competition in sectors crucial for energy transition²⁹ or safeguarded sustainable innovations.³⁰ At the same time, no merger decisions seem to have been made up to this point

in which sustainable development was expressly acknowledged as a relevant criterion to the competitive evaluation.

This is perhaps unsurprising, since the competition community is only now beginning to explore the issues raised by competition law and sustainability concerns. Such issues include how far sustainability concerns can fit within competitive theories of harm; how far the dynamic nature of sustainability can be pushed, in particular by taking into account sustainability benefits in the future or in other markets; and how sustainability-related efficiencies can be taken into account in competition assessments in general.³¹ Such considerations can be relevant for mergers, particularly when evaluating efficiencies.

On the other hand, dimensions of sustainability such as the protection of the environment can be invoked as public-policy exceptions when deciding whether to approve or prohibit a merger in a number of countries, including Australia, Germany, Korea, New Zealand or Spain. A good example comes from Germany, where in 2019 the Federal Minister of Economy and Energy overruled an earlier prohibition decision by the competition authority by invoking the proposed merger's innovative potential in renewable energy technology. The minister noted how “know-how and potential for innovation for the energy turnaround and sustainability” were in the public interest, as they would be crucial for the reduction in CO₂ emissions and environmental protection.³²

4.4. Monitoring the effects of mergers on suppliers and labour markets

A natural counterpoint to increased concentration and rising mark-ups is the fall in labour's share of income. Coupled with research providing evidence of high levels of concentration in labour-input markets in certain jurisdictions, this has attracted attention to the effect of mergers on labour markets (Abel, W., S. Tenreyro and G. Thwaites, 2019^[33]) (Azar J., I. Marinescu, M. Steinbaum and B. Taska, 2018^[34]) (Azar J., I. Marinescu and M. I. Steinbaum, 2017^[35]). The typical concern here is the effects of transactions involving employers that already have buyer power over labour (understood as an input), which allows them to reduce salaries (or non-salary benefits) below those that would emerge in a truly competitive market.

No competition authority appears to have conducted in-depth analysis of monopsony power in labour markets as part of its merger control activity. Despite this, there seems to be increasing agreement that authorities should do more to address monopsony power concerns on the demand side of the labour market. The issue was discussed at an OECD roundtable, “Competition Issues in Labour Markets”, in February 2020.³³

As in any monopsony situation, it is erroneous to think that reducing salaries through the exercise of monopsony power will necessarily benefit downstream consumers. While buyers with market power will benefit from lower prices, it does not follow that final product prices will be lower: if this translates into lower downstream supply or into supply coming from less efficient sources, prices are instead likely to rise. Furthermore, those who lose out are also consumers in other markets and their lost income translates into lower demand, resulting in an overall loss of allocative efficiency (OECD, 2020^[36]). In summary, depending on the market power of the monopolist in downstream markets, reductions in the cost of inputs (such as salaries) can either lead to benefits, detriment or no change for final consumers.³⁴

In cases where monopsony has a detrimental impact on final customers, competitive harm can be established. More controversial is potential action when a merger that creates a monopsony either has no effect on final consumers or is actually beneficial. The question arises because the consumer-welfare standard, in its literal interpretation as a consumer surplus, could be seen as an obstacle to the application of competition law to monopsony employer power in cases where the transaction's effects are minimal at the product-market level. Some have argued that in such scenarios of harm to upstream markets, merger control authorities can still intervene. Others would prefer restricting enforcement to situations where harm is also felt – as will usually be the case – in downstream markets.³⁵

To date, merger enforcement on labour markets has generally been limited to non-existent.³⁶ Moreover, merger enforcement in this area faces significant challenges, including how to define markets, how to identify market power, and how to distinguish between the acquisition of illegitimate monopsony power and cost-reducing efficiencies (Marinescu, I. and H. Hovenkamp, 219^[37]) (Hovenkamp, 2019^[38]). Some of these challenges are common to the application of competition law to supply markets and monopsony in general.

4.5. Interaction with public-interest considerations

Discussions about the protection of workers under merger control can be traced to yet another recent topic of interest: calls for the inclusion of various dimensions of public interest into competition assessments. This trend is not limited to merger control, but can also be easily observed in it.

While it is commonly accepted that the traditional goals of competition are the protection of consumer welfare and an effective competitive process, many jurisdictions also promote public-interest objectives that go beyond economic outcomes. These public-interest considerations are often contained in competition or other laws to ensure that concerns beyond the traditional goals of competition law are accommodated in merger analysis. In OECD countries, these clauses are usually interpreted narrowly and carefully adopted, even if crises, such as the COVID-19 pandemic, can lead to an increased reliance on them.

In order to ensure the objective neutrality and technical character of competition authority decisions, the power to apply public-policy exceptions is often in the hands of government bodies other than the competition agency. Examples of this can be found in countries such as Germany, France, the United Kingdom and United States. In some cases, however, the competition authority has this power itself, as in South Africa (OECD, 2016^[39]).

Notable examples of relying on such public-interest considerations for the protection of employment in merger control are South Africa, where the Competition Commission and the Competition Tribunal must take employment into account when considering the effects of a merger;³⁷ Germany, where the Minister of Economy allowed a merger that had been prohibited by the competition authority on the grounds of safeguarding jobs and the protection of workers' rights;³⁸ and France, where the Minister of Economy removed divestment conditions imposed upon a merger because they were incompatible with the objective of creating and preserving stable employment.³⁹

At the same time, a number of public-interest considerations can be framed within traditional competition prisms. Concerns about protecting labour from increasing market power, as discussed above, provide a good example. Other examples concern privacy or data protection and promoting sustainability.

Annex A. OECD Merger Roundtables

Table A A.1. List of OECD Best Practice Policy Roundtables on merger issues, 1995-2020

Year	Title roundtable	Link
1995	Failing Firm Defence	www.oecd.org/daf/competition/mergers/1920253.pdf
1995	Competition Policy and Efficiency Claims in Horizontal Agreements	www.oecd.org/daf/competition/mergers/2379526.pdf
1999	Airline Mergers and Alliances	www.oecd.org/daf/competition/mergers/2379233.pdf
2000	Mergers in Financial Services	www.oecd.org/daf/competition/mergers/1920060.pdf
2001	Portfolio Effects in Conglomerate Mergers	www.oecd.org/daf/competition/mergers/1818237.pdf
2002	Merger Review in Emerging High Innovation Markets	www.oecd.org/daf/competition/mergers/2492253.pdf
2002	Substantive Criteria used for Merger Assessment	www.oecd.org/daf/competition/mergers/2500227.pdf
2003	Media Mergers	www.oecd.org/daf/competition/mergers/17372985.pdf
2003	Merger Remedies	www.oecd.org/daf/competition/mergers/34305995.pdf
2007	Private Remedies	www.oecd.org/daf/competition/mergers/34305995.pdf
2007	Dynamic Efficiencies in Merger Analysis	www.oecd.org/daf/competition/mergers/40623561.pdf
2007	Managing Complex Mergers	www.oecd.org/daf/competition/mergers/41651401.pdf
2007	Vertical Mergers	www.oecd.org/daf/competition/mergers/39891031.pdf
2009	The Failing Firm Defence	www.oecd.org/daf/competition/mergers/45810821.pdf
2009	Standard for Merger Review	www.oecd.org/daf/competition/mergers/45247537.pdf
2011	Cross-Border Merger Control: Challenges for Developing and Emerging Economies	www.oecd.org/daf/competition/mergers/50114086.pdf
2011	Economic Evidence in Merger Analysis	www.oecd.org/daf/competition/EconomicEvidenceInMergerAnalysis2011.pdf
2011	Impact Evaluation of Merger Decisions	www.oecd.org/daf/competition/Impactevaluationofmergerdecisions2011.pdf
2011	Remedies in Merger Cases	www.oecd.org/daf/competition/RemediesinMergerCases2011.pdf
2012	Market Definition	www.oecd.org/daf/competition/Marketdefinition2012.pdf
2013	Remedies in Cross-Border Merger Cases	www.oecd.org/daf/competition/Remedies_Merger_Cases_2013.pdf
2013	Definition of Transaction for the Purpose of Merger Control Review	www.oecd.org/daf/competition/Merger-control-review-2013.pdf
2014	Enhanced Enforcement Co-operation	www.oecd.org/daf/competition/enhanced-enforcement-cooperation.htm
2016	Public Interest Considerations in Merger Control	www.oecd.org/daf/competition/public-interest-considerations-in-merger-control.htm
2016	Agency Decision-Making in Merger Cases: Prohibition and Conditional Clearances	www.oecd.org/daf/competition/agency-decision-making-in-merger-cases.htm
2016	Jurisdictional Nexus in Merger Control Regimes	www.oecd.org/daf/competition/jurisdictional-nexus-in-merger-control-regimes.htm
2016	Geographic Market Definition Across National Borders	www.oecd.org/daf/competition/geographic-market-definition.htm
2017	Common Ownership by Institutional Investors and Its Impact on Competition	www.oecd.org/daf/competition/common-ownership-and-its-impact-on-competition.htm
2018	Consumer-Facing Remedies	www.oecd.org/daf/competition/consumer-facing-remedies.htm

Year	Title roundtable	Link
2018	Gun Jumping and Suspensory Effects of Merger Notifications	www.oecd.org/daf/competition/gun-jumping-and-suspensory-effects-of-merger-notifications.htm
2018	Market Concentration	www.oecd.org/daf/competition/market-concentration.htm
2018	Non-Price Effects of Mergers	www.oecd.org/daf/competition/non-price-effects-of-mergers.htm
2019	Vertical Mergers in the Technology, Media and Telecom Sector	www.oecd.org/daf/competition/vertical-mergers-in-the-technology-media-and-telecom-sector.htm
2020	Merger Control in Dynamic Markets	www.oecd.org/daf/competition/merger-control-in-dynamic-markets-2020.pdf
2020	Conglomerate Effects of Mergers	www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm
2020	Start-Ups, Killer Acquisitions and Merger Control	www.oecd.org/daf/competition/start-ups-killer-acquisitions-and-merger-control-2020.pdf
2020	Economic Analysis in Merger Investigations	www.oecd.org/daf/competition/economic-analysis-in-merger-investigations.htm
2020	Competition Economics of Digital Ecosystems	www.oecd.org/daf/competition/competition-economics-of-digital-ecosystems.htm

Annex B. Explanatory notes for the graphs

- For the purpose of the report, merger decisions include both formal decisions and other outcomes, such as the expiration of the waiting period or no-objection letters.
- As cross-border transactions may be notified to different agencies, merger decisions in different jurisdictions may pertain to the same transaction. As a result, the data on merger decisions does not necessarily reflect the number of mergers.
- Statistics presented in the chapter, unless specified, refer to the 48 jurisdictions included in the OECD CompStats database with a merger regime and for which comparable data is available for all years.
- When percentages are reported, these are calculated first for each jurisdiction, and then averaged across jurisdictions.
- For the purpose of this report, merger prohibitions include trials.

Annex C. Competition Authorities in the CompStats Database

Jurisdiction	Competition authority
Argentina	Comisión Nacional de Defensa de la Competencia National Commission for the Defence of Competition
Australia	Australian Competition and Consumer Commission
Austria	Bundesz Wettbewerbsbehörde Austrian Federal Competition Authority (AFCA)
Belgium	Belgische Mededingingsautoriteit / Autorité belge de la Concurrence Belgian Competition Authority
Brazil	Conselho Administrativo de Defesa Econômica Administrative Council for Economic Defence
Bulgaria	Commission on Protection of Competition
Canada	The Competition Bureau
Chile	Fiscalía Nacional Económica/ National Economic Prosecutor The Tribunal de Defensa de la Libre. Competencia/ The Chilean Competition Tribunal
Colombia	Superintendencia de Industria y Comercio Superintendency of Industry and Commerce
Costa Rica	Comisión para Promover la Competencia/Commission for the Promotion of Competition Superintendencia de Telecomunicaciones / Superintendency of Telecommunications
Croatia	Agencija za zaštitu tržišnog natjecanja Croatian Competition Agency
Czech Republic	Úřad pro ochranu hospodářské soutěže Office for the Protection of Competition
Denmark	Konkurrence- og Forbrugerstyrelsen Danish Competition and Consumer Authority
Ecuador	Superintendencia de Control del Poder de Mercado Superintendency for Control of Market Power
Egypt	جهاز حماية المنافسة ومنع الممارسات الاحتكارية Egyptian Competition Authority
El Salvador	Superintendencia de competencia Superintendency of Competition

Jurisdiction	Competition authority
Estonia	Konkurentsiamet Estonian Competition Authority
European Commission	European Commission Directorate-General for Competition
Finland	Kilpailu- ja kuluttajavirasto Finnish Competition and Consumer Authority
France	Autorité de la concurrence French Competition Authority
Germany	Bundeskartellamt Federal Cartel Office
Greece	Ελληνική Επιτροπή Ανταγωνισμού Hellenic Competition Commission
Hungary	Gazdasági Versenyhivatal Office of Economic Competition
Iceland	Samkeppniseftirlitið Icelandic Competition Authority
India	Competition Commission of India
Indonesia	Komisi Pengawas Persaingan Usaha Indonesia Competition Commission
Ireland	Competition and Consumer Protection Commission
Israel	Israel Competition Authority
Italy	Autorità Garante della Concorrenza e del Mercato Italian Competition Authority
Japan	公正取引委員会 Japan Fair Trade Commission
Kazakhstan	Табиғи монополияларды реттеу комитеті Committee on Regulation of Natural Monopolies and Protection of Competition
Korea	공정거래위원회 Korea Fair Trade Commission
Latvia	Konkurences padome Competition Council of the Republic of Latvia
Lithuania	Konkurencijos taryba Competition Council of the Republic of Lithuania
Luxembourg	Conseil de la Concurrence Grand-Duché de Luxembourg Competition Council
Malta	Malta Competition and Consumer Affairs Authority
Mexico	Comisión Federal de Competencia Económica / Federal Economic Competition Commission Instituto Federal de Telecomunicaciones / Federal Telecommunications Institute

Jurisdiction	Competition authority
Netherlands	Autoriteit Consument en Markt Authority for Consumers and Markets
New Zealand	Commerce Commission
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
Poland	Urząd Ochrony Konkurencji i Konsumentów Office of Competition and Consumer Protection
Portugal	Autoridade da Concorrência Portuguese Competition Authority
Romania	Consiliul Concurenței Romanian Competition Council
Russian Federation	Федеральная Антимонопольная Служба Federal Antimonopoly Service
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
Spain	Comisión Nacional de los Mercados y la Competencia National Commission on Markets and Competition
Sweden	Konkurrensverket Swedish Competition Commission
Switzerland	Schweizerische Eidgenossenschaft / Confédération suisse/Confederazione Svizzera/Confederaziun svizra Federal Competition Commission
Chinese Taipei	公平交易委員會 Taipei Fair Trade Commission
Turkey	Rekabet Kurumu Turkish Competition Authority
Ukraine	Антимонопольний комітет України Antimonopoly Committee
United Kingdom	Competition and Markets Authority
United States	Department of Justice Antitrust Division / Federal Trade Commission Bureau of Competition

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Notes

¹ The analysis excludes territories.

² For a more detailed description of the benefits and challenges of Regional Competition Agreements, see OECD (2018), “Regional Competition Agreements – Inventory of Provisions in Regional Competition Agreements – Annex to the Background note by the Secretariat”, DAF/COMP/GF(2018)12, [https://one.oecd.org/document/DAF/COMP/GF\(2018\)12/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)12/en/pdf) and OECD (2018), “Regional Competition Agreements: Benefits and Challenges – Background note by the Secretariat”, DAF/COMP/GF(2018)5, [https://one.oecd.org/document/DAF/COMP/GF\(2018\)5/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)5/en/pdf).

³ The two jurisdictions with no regulatory framework for merger control are Luxembourg and Egypt. The Egyptian Competition Authority (ECA) does not, in principle, investigate the transactions, but has put in place a mandatory post-closing notification regime. A comprehensive merger control regime is currently under development.

⁴ The jurisdictions are: Australia; Bangladesh; Bhutan; Brunei Darussalam; Cambodia; Fiji; Hong Kong (China), China (People’s Republic of China); India; Indonesia; Japan; Lao People’s Democratic Republic; Malaysia; Mongolia; Myanmar; Nepal; New Zealand; Pakistan; Papua New Guinea; People’s Republic of China; Philippines; Singapore; Korea; Sri Lanka; Chinese Taipei; Thailand; and Viet Nam.

⁵ The jurisdictions and communities are: Argentina; Barbados; Bolivia; Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; El Salvador; Guatemala; Guyana; Honduras; Jamaica; Mexico; Nicaragua; Panama; Paraguay; Peru; Trinidad and Tobago; Uruguay; Venezuela; Andean Community; and the Caribbean Community (CARICOM).

⁶ The jurisdictions are: Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Georgia; Hungary; Kazakhstan; Kosovo; Kyrgyzstan; Moldova; Montenegro; Republic of North Macedonia; Romania; Russian Federation, Serbia; and Ukraine.

⁷ For more details on the work on competition of the OECD in South East Europe, see for instance OECD (2018), *Competitiveness in South East Europe: A Policy Outlook 2018, Competitiveness and Private Sector Development*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264298576-en>, and OECD et al. (2019), *SME Policy Index: Western Balkans and Turkey 2019: Assessing the Implementation of the Small Business Act for Europe*, SME Policy Index, OECD Publishing, Paris, <https://doi.org/10.1787/g2g9fa9a-en>.

⁸ For a review of the local nexus criteria of a number of OECD and non-OECD jurisdictions, see, OECD (2016), “Local Nexus and Jurisdictional Thresholds in Merger Control – Background Paper by the Secretariat”, DAF/COMP/WP3(2016)4/REV1, [https://one.oecd.org/document/DAF/COMP/WP3\(2016\)4/REV1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2016)4/REV1/en/pdf).

⁹ For the purpose of the report, decisions include both formal decisions and other outcomes, such as the expiration of the waiting period or no-objection letters.

¹⁰ The three with a voluntary regime are Australia, New Zealand, and the United Kingdom.

¹¹ The reduced sample includes the 12 jurisdictions that impose a one-time flat fee only upon filing, regardless of the phase of the investigation.

¹² Importantly, fee-collection systems also vary across jurisdictions. In some, they are collected by the authority itself and feed directly into the authority's budget, while in others, they are collected by other public authorities.

¹³ Note that 27 jurisdictions use turnover as the sole threshold, meaning they are not notified of acquisitions of firms with low or zero turnover, even if potential competition implications arise. See Section 4.3.2.

¹⁴ There remains a difference in practice, however, over whether the sanctionable offence is the failure of parties to *notify* a transaction (whether or not it actually takes place) or the fact that it *takes place* before or without clearance.

¹⁵ For the purpose of the report, decisions include both formal decisions and other outcomes, such as the expiration of the waiting period or no-objection letters.

¹⁶ For a more detailed discussion on vertical mergers in the TMT sector, see, OECD (2019), "Vertical Mergers in the Technology, Media and Telecom Sector – Background Note by the Secretariat", DAF/COMP(2019)5, [https://one.oecd.org/document/DAF/COMP\(2019\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2019)5/en/pdf).

¹⁷ For a more detailed discussion on remedies, see, OECD (2016), *Remedies in Cross-Border Merger Cases*, DAF/COMP(2013)28, www.oecd.org/daf/competition/Remedies_Merger_Cases_2013.pdf; OECD (2017), "Roundtable on the Extraterritorial Reach of Competition Remedies – Issue Paper by the Secretariat", DAF/COMP/WP3(2017)4, [https://one.oecd.org/document/DAF/COMP/WP3\(2017\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2017)4/en/pdf); and OECD (2018), "Designing and Testing Effective Consumer-facing Remedies – Background Note by the Secretariat", DAF/COMP/WP3(2018)2, [https://one.oecd.org/document/DAF/COMP/WP3\(2018\)2/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2018)2/en/pdf).

¹⁸ It is unclear to what extent authorities rely on remedies imposed for the same merger by other authorities; this can influence the number of decisions with remedies.

¹⁹ See, www.oecd.org/daf/competition/jurisdictional-nexus-in-merger-control-regimes.htm. In effect, it is technically against both ICN and OECD recommendations to rely on non-objective criteria such as market shares.

²⁰ See, for example, HM Treasury (2019), *Unlocking digital competition: Report of the Digital Competition Expert Panel*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf; and Autorité de la Concurrence (2020), "Contribution de l'Autorité de la concurrence au débat sur la politique de concurrence et les enjeux numériques", www.autoritedelaconcurrence.fr/sites/default/files/2020-02/2020.02.28_contribution_adlc_enjeux_num.pdf.

²¹ See, www.oecd.org/competition/globalforum/economic-analysis-in-merger-investigations.htm.

²² See, Federico, G., F.S. Morton and C. Shapiro (2019), "Antitrust and Innovation: Welcoming and Protecting Disruption", National Bureau of Economic Research, Working Paper 26005, www.dx.doi.org/10.3386/w26005; Kokkoris, I. and T. Valletti (2020), "Innovation Considerations in Horizontal Merger Control" *Journal of Competition Law & Economics* 16:2, www.dx.doi.org/10.1093/joclec/nhaa008, pp. 220-261.

²³ Suggestions to the effect that such transactions should be presumed anticompetitive, and digital incumbents should provide evidence of countervailing efficiencies, have been made; see, M.A. Lemley and A. McCreary (2019), “Exit Strategy”, *Stanford Law and Economics Olin Working Paper #542*, <https://ssrn.com/abstract=3506919>; M. Motta and M. Peitz (2020), “Big Tech Mergers”, CEPR Discussion Paper No. DP14353, <https://ssrn.com/abstract=3526079>; and US Congressional Research Service (2019), *Antitrust and “Big Tech”*, <https://crsreports.congress.gov/product/pdf/R/R45910>.

²⁴ See, “Vertical mergers in the technology, media and telecom sector”, www.oecd.org/daf/competition/vertical-mergers-in-the-technology-media-and-telecom-sector.htm; Conglomerate effects of mergers, www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm.

²⁵ See, for example, Gautier, A. and J. Lamesch (2020), “Mergers in the Digital Economy” *CESifo Working Paper No 8056*, <https://ssrn.com/abstract=3529012>.

²⁶ See, for example, C. Cunningham, F. Ederer and S. Ma (2020), “Killer Acquisitions”, *Journal of Political Economy*, www.dx.doi.org/10.2139/ssrn.3241707.

²⁷ See, Lécuyer, T. (2020), “Digital Conglomerates and Killer Acquisitions: A Discussion of the Competitive Effects of Start-up Acquisitions by Digital Platforms”, *Concurrences*, No 1-2020, Art. No. 92964, www.concurrences.com/en/review/issues/no-1-2020/law-economics/digital-conglomerates-and-killer-acquisitions-a-discussion-of-the-competitive-92964-en, pp. 42-50; R. Nazzini and G. Carovano (2020), “Addressing the ‘Kill Zone’ of Antitrust Enforcement Without Killing Legal Certainty” *Competition Law and Policy Debate*, 6:2.

²⁸ Good examples of competition authorities’ reactions can be found in the ongoing review of Google’s acquisition of Fitbit; see, for example, Centre for Economic Policy and Research (30 September 2020), “New CEPR Policy Insight – Google/Fitbit will monetise health data and harm consumers”, <https://cepr.org/content/new-cepr-policy-insight-googlefitbit-will-monetise-health-data-and-harm-consumers> (accessed 8 January 2020); and the Australian Competition and Consumer Commission (18 June 2020), “Statement of Issues: Google LLC – proposed acquisition of Fitbit Inc”, www.accc.gov.au/system/files/public-registers/documents/Google%20Fitbit%20-%20Statement%20of%20Issues%20-%2018%20June%202020.pdf.

²⁹ US FTC (2015), *Panasonic Corporation and Sanyo Electric Co. Ltd*, 091 0050/C-4274. In 2009, the Federal Trade Commission required the divestment of certain Sanyo assets – notably battery-production facilities – before Panasonic was able to buy the company; the sale was made and the deal finalised in 2015.

³⁰ See criticisms of the *Bayer/Monsanto* merger.

³¹ See, for example, discussions within agencies, such as Hellenic Competition Commission (2020), “Draft Staff Discussion Paper on Sustainability Issues and Competition Law”, www.epant.gr/en/enimerosi/competition-law-sustainability/item/download/1896_9b05dc293adbae88a7bb6cce37d1ea60.html; and Dutch ACM (2020), “Draft guidelines ‘Sustainability Agreements’”, www.acm.nl/en/publications/draft-guidelines-sustainability-agreements.

³² Federal Minister of Economy and Energy (2019), *Miba/Zollern*, I B 2 – 20302/14–02. The decision came with certain binding commitments such as operating the joint venture for at least five years and investing at least EUR 50 million in Germany over the same period. See, Linklaters (2019), “German Federal Minister of Economics and Energy overrides the prohibition of a slide-bearing business joint venture for environmental policy reasons”, www.linklaters.com/en/insights/publications/2019/august/german-federal-minister-overrides-the-prohibition-of-a-slide-bearing-business-joint-venture (accessed 18 January 2020).

³³ See, the roundtable's background paper, OECD (2020), *Competition in Labour Markets*, www.oecd.org/daf/competition/competition-in-labour-markets-2020.pdf, pp. 10-11.

³⁴ "An important negative implication of monopsony is that, absent real efficiencies such as economies of scale or scope, it can be expected to result in inefficient losses in production and employment. If the monopsonist cannot wage discriminate, the quantity (or quality) reduction in the downstream product market might be offset by the reduced cost of wages. If the monopsonist has market power in the downstream market, the reduced quantity of output may increase the price for consumers. If, however, the monopsonist faces a competitive downstream market, the price for consumers will not change, and the only impact of merger to monopsony would be the reduction in wages." OECD (2020), *Competition in Labour Markets*, p. 15.

³⁵ For a discussion, see, OECD (2020) *Competition in Labour Markets*, pp. 15-19.

³⁶ The OECD has noted that it is unaware of any merger review into labour markets in the EU or the US; see, OECD (2020), *Competition in Labour Markets*, p. 33.

³⁷ See, for example, the Wal-Mart's 2010 merger with Massmart; Competition Tribunal of South Africa (2011), *Wal-Mart Stores Inc. and Massmart Holdings Limited*, Case No: 73/LM/Dec10), www.saflii.mobi/za/cases/ZACT/2011/42.pdf.

³⁸ For example, the merger of supermarket chains Edeka and Kaiser's Tengelmann, which was initially blocked in 2015 by the competition authority (FCO), but cleared in 2016 by the minister, a decision then appealed by a rival supermarket. The merger was finally approved after divestments in December 2016. See, www.vbb.com/insights/competition/merger-control/edekakaisers-tengelmann-german-merger-review-saga-comes-to-an-end.

³⁹ See, for example, Financière Cofigeo's 2018 purchase of certain assets of the Agripole Group; www.autoritedelaconurrence.fr/en/communiqués-de-presse/14-june-2018-acquisition-william-saurin.

oe.cd/comp-trends

