



Organisation for Economic Co-operation and Development

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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

Publicly funded education markets –

1. Introduction

1. Providing educational services to students is a business endeavor that operates much like any other. Education providers and consumers respond to incentives that

6. Many higher education transactions reflect traditional economic arrangements that are familiar to antitrust enforcers: there is a fee (e.g., tuition, room and board, activity fees) exchanged for a service (e.g., education, housing, meals). Some aspects of a transaction might at fi

institutions materially restrains competition on dimensions of price, output, or educational quality, it is likely commercial in nature and covered by the Sherman Act.

10. Vj qug"pco gf "fko gpukqpu"ctg"ict"dtqcf gt "vj cp"vj gk"icdgnu"ko r n(0"öRtleögö"lpenwf gu" more than just the tuition sticker price; it extends at least to scholarships, discounts, room and board, and other fees levied by a university. öQwr wö"ku"dtqcf gt "vj cp"lww"vj g"vqcn" number of students admitted; it could also include the number of students admitted at any particular point in the application process, the application process itself, admissions standards, the admission of transfer students, or efforts to recruit applicants or transfer uwf gpvuOHpcmf .vj g"pqvqp"qh'ös wcnk(ö'gpeqo r cuugu'c'tcpi g'qh'ci tggo gpvu.lwej 'cu'vj qug" that restrict majors or courses offered, the qualifications of professors hired, the number of professors hired, or the perceived or actual difficulty of curricula.

2.2. Standard of review in educational markets

11. Under the Sherman Act, an agreement in restraint of trade is judged by its reasonableness unless the effect of the agreement is so well understood that it falls into a special category of *per se* offenses, such as price fixing, market allocations, and output restrictions.

12. After the *Brown University* case, some have incorrectly argued that there are no *per se* illegal agreements among educational institutions, because those institutions necessarily have educational quality as a goal.¹⁰ The court in *Brown University*, however, specifically pqvf " vj cv" gf wecvkpcn" kpuvkwqpu" ctg" pqv" öko o wpg" htqo " *per se* treatmepvö" hqt" öeqo o gtekm("o qvxcvgf "eqpf wevö¹¹

13. The U.S. enforcement agencies consider whether an agreement among educational institutions deserves *per se* treatment much like they would in any other market.

Section 1 of the Sherman Act.²⁸