

OECD-GVH RCC Newsletter

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Foreword

Dear Readers,

Are your authorities involved in the competition assessment of laws and regulations? Regularly or from time to time? Or is this part of your broader advocacy work?

This newsletter introduces many different ways of doing competition assessment. The most systematic and thorough way is probably the analysis of whole industry sectors, as it was undertaken by the OECD together with the Hellenic Competition Commission (HCC) on the basis of the OECD Competition Assessment Toolkit. Two articles describe the Toolkit and its application in Greece more closely and Hungary describes its way of including competition assessment within the broader advocacy framework.

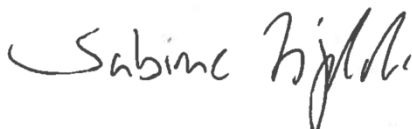
As part of our advocacy activity we will also often have to explain why a sound competition law framework and a strict enforcement by a strong authority are worth their money. The OECD has some help to offer here, a factsheet showing positive links between competition and productivity, growth and innovation and a guide for competition authorities to help them assess the impact of their activity. Both are explained in more detail in two articles.

It is often said that the best advocacy is competition law enforcement itself. Moldova shows us a case where they have conducted a very successful and efficient abuse proceeding. On this account please feel strongly encouraged to send us cases to be published in this newsletter and to share your national experiences with your peers.

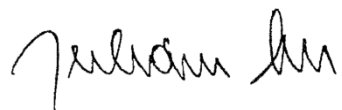
Lastly, we have a lot to celebrate this year. The OECD-GVH Regional Centre for Competition in Budapest celebrates its 10th anniversary and at this occasion a brochure was published. More importantly, the Hungarian Competition Authority GVH celebrates its 25th anniversary as does the FAS Russia. Igor Artemiev, head of FAS Russia, contributes an article on this occasion.

You will also find summaries of the OECD Competition Committee meetings in June 2015 with links to all the documents you might find interesting. Use them to benefit from the work and experiences of peer competition authorities and from the work products of the OECD.

We are happy to receive your comments and contributions! Please contact Sabine Zigelski (OECD – sabine.zigelski@oecd.org) and Andrea Dalmay (RCC - dalmay.andrea@gvh.hu).



Sabine Zigelski
OECD



Miklós Juhász
President of the GVH

József Sárai*: Meeting of the heads of the beneficiary authorities of the RCC celebrating the 10th anniversary of the establishment of the Centre

In the framework of the usual Heads' Meeting, the representatives of the beneficiary competition authorities from 18 Central-, East-, Southeast-European and Central-Asian countries met in Budapest and celebrated the 10th anniversary of the establishment of the OECD-GVH Regional Centre for Competition in Budapest (RCC).

The event was opened by Mr. Miklós Juhász, President of the Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority). “The RCC is a fundamental institution for disseminating best practices in the field of competition policy and it is a steadfast reference point for authorities across the region” – Mr. President Juhász said. Looking at the statistics, Mr. Juhász underlined that in the past ten years the RCC has conducted a total of almost 90 events, with over 2500 participants, and has invited more than 500 speakers. All the RCC seminars and workshops are regularly evaluated by the participants. So far, around 90% of the participants have rated the overall quality of the RCC events to be high or very high. Mr. Juhász emphasised that the trainings are made available for free for the competition authority experts of the 18 beneficiary countries, and since 2009, 80% of the costs of the judge seminars are co-financed by the European Union.

The Centre has become an institution that, by facilitating the work of the beneficiary institutions, focuses on the interests of the consumers – John Davies, Head of Competition Division at OECD emphasised. Mr. Davies deemed it important that even in the period of the financial and economic

crisis the GVH continued its technical assistance fostering the activity of the RCC. The development of sound competition law regimes and institutions results in social benefits, contributes to the improvement of consumer welfare and a competition policy keeping the consumers' interest in its focus which impacts positively both economic and political culture – Mr. Davies confirmed.

High quality competition enforcement has been supported also by the development of the social capital which has been built during the professional programmes over the last ten years and was obtained by the experts and heads of the beneficiary competition authorities – said Dr. Andrea Belényi, the first leader of the OECD-GVH RCC. It is an important value of the RCC's operation that it provides the transfer of practical knowledge, by involving professionals who would be unavailable for the competition authorities of the target countries in any other way. The operation of the past years can be deemed successful both for the founders and the participants.

Mr. Jin Wook Chung, Director General of the Competition Programme of the OECD KOREA Policy Centre congratulated the OECD-GVH RCC on its 10th anniversary of establishment as well as on its contribution to the development of competition law and policy in the South-East, East and Central European region. He emphasised the important roles of the Regional Centres in Budapest and in Seoul, the only regional centres for competition around the globe and especially spoke very highly of the RCC carrying out a wide range of programmes and activities for competition officials and judges. It is expected that the RCC will move forward to the mature stage based on the sound foundation laid in the last ten years. “Putting all our efforts together, we will

* Head of the International Section at the Hungarian Competition Authority

witness an increasing number of countries with a market economy based on competition laws and policies which will ultimately promote economic growth and consumer welfare in the next ten years.” Mr. Chung said.

After the speeches, Ms. Sabine Zigelski, senior competition expert of the OECD Competition Division, Mr. Michael König and Mr. Joao Azavedo, both experts of DG Competition of the European Commission and ex professional leaders of the RCC and Mr. Andreas Reindl, Senior Research Fellow of the Competition and Regulation Institute

at the Leuphana University (Lüneburg) shared their lessons and opinion on the last ten years of activities, regional role, work and achievements of the RCC.

The second half of the event was devoted to the discussion by the heads and representatives of the beneficiary competition authorities about problems and questions they have faced recently in their operation in order to map the actual training needs of the authorities for 2016.

RCC Activities in 2015

19 – 21 February

Seminar on European Competition Law for National Judges

In this advanced level seminar on competition economics for judges, relevant economic concepts and methods used in competition cases were introduced. Case studies and hypothetical exercises were used to illustrate the economic concepts and to practice their application and evaluation.



17 – 19 March

Remedies and Commitments in Competition Cases

Often a proportionate solution to many competition problems is not a prohibition decision but a decision imposing remedies or commitments in order to resolve the competition issues and to allow for an otherwise economically efficient behaviour to proceed. In this seminar we discussed merger remedies as well as commitments in abuse of dominance cases and for horizontal or vertical infringements. Experts from OECD member countries shared their experience and learnings and illustrated them with case studies. Further topics were model texts for commitments, the use of trustees and the monitoring of commitments and remedies. The participants also shared their case experience in a number of presentations.



16 – 17 April

GVH Staff Training

Day 1 – Recent Developments and Case Law in the EU

Experts from private practice, the EU Court and from competition authorities provided an overview of the latest developments in EU competition law. This covered in particular Art. 101 TFEU and recent case law on object and effect infringements, various forms of information exchanges, vertical competition restraints, minority acquisitions in merger control and competition procedures and due process.

Day 2 – Special Trainings for Different Staff Groups

The different groups of GVH staff - the merger section, the antitrust section, the consumer protection section, the Chief Economist Group and the Competition Council of the GVH – received targeted trainings on a wide range of topics such as simple economic tools, handling of files, merger control procedures, vertical and horizontal restraints and consumer health claims.



20 May

Meeting of the Heads of Agencies & 10th Anniversary of the OECD-GVH RCC

This high level meeting of the heads of the beneficiaries' agencies, the OECD-Korea Policy Centre and OECD representatives was held on the occasion of the 10th anniversary of the RCC. While celebrating the 10 years of existence of the RCC an emphasis was placed on discussing the current and future needs of the beneficiaries and on developing future RCC programmes that reflect the priorities and practical as well as theoretical training needs of Eastern and South-Eastern European Agencies.



2-4 June

RCC – FAS Russia Joint Seminar in Veliky Novgorod, the Russian Federation– The OECD Competition Assessment Toolkit

As part of their advocacy activities or as part of their legal mandate, many competition authorities are involved in reviewing new and existing laws, rules and regulations with the aim of pointing out where barriers to competition might arise or be reinforced and of showing alternative ways of reaching the same policy goal with less competition restrictive means. The OECD Competition Assessment Toolkit provides valuable guidance for enforcers. We introduced the toolkit and showed where and how it has successfully been used, highlighting in particular the experiences of the Greek and Romanian authorities. Experts from the OECD and OECD member countries and representatives from FAS Russia presented and shared their experiences. Practical exercises complemented the sessions and provided an opportunity for the toolkit principles to be practiced and applied.



22 – 24 September

Outside Seminar in Georgia – Evidence in Cartel Cases

The successful initiation and completion of cartel investigations is dependent on the availability and the quality of the evidence that is to be used in cartel cases. We will have a closer look at direct and indirect evidence to be used in cartel cases and at ways of obtaining it. Topics that will be discussed are leniency systems, screening instruments, dawn raids and interviews. This seminar will provide insights into the best practices of experienced OECD countries with the use of these instruments (preparation, execution and assessment) and there will be opportunities to apply the learnings in hypothetical case exercises.

20 – 22 October

Update in Competition Economics

In this seminar we will present economic methods that can be helpful for competition authorities in the assessment of mergers and of allegedly anticompetitive conduct. The seminar will cover concepts such as the SSNIP-test, diversion ratios and UPP indices in merger cases. In abuse of dominance cases finding the correct counterfactual and carrying out an “as efficient competitor” test will often be required. With the help of experienced practitioners from OECD countries we will try to make these economic methods accessible to the participants. We will talk about data, time, and resource requirements, minimum and best practice standards for economic evidence and about the participants’ experiences in this field. The “translation” of economic results for lawyers and judges will be an important topic as well. Practical exercises and examples will enable the participants to apply the theory and to develop a better understanding.

19 – 21 November

Seminar in European Competition Law for National Judges

Advanced level seminar on recent developments in EU competition law. The most important developments in the area of Art. 101/102 TFEU will be introduced and discussed with a special focus on how these cases affect private claims before national judges in terms of the scope of legal rules, arguments parties are likely to develop, and economic and other evidence that would be required to support claims.

8 – 10 December

Competition Topics in Telecommunication and Electronic Communication Markets

This sector focused event will provide the participants with an opportunity to gain greater insights into the sector of telecommunication and electronic communication and to exchange their experiences. Topics that will be discussed are the role of competition in the sector and the interplay between competition and regulation. We will discuss market definition and antitrust topics pertinent to the sector, such as bundling and margin squeeze. In addition, mergers between Mobile Network Operators (MNOs) and the role played by Mobile Virtual Network Operators (MVNOs) will be covered. Specialists from OECD competition authorities will present on these topics and discuss case studies from the participating countries.

OECD Competition Committee Meetings, 15 - 19 June 2015

Roundtable on Competition Issues in Liner Shipping¹

A competitive liner shipping sector is vital for global transport. This industry has had a very atypical history in terms of the application of competition law. Since the industry's inception in the late 19th century, liner shipping conferences, whereby liner shipping companies fix prices and other conditions on a given route, have been a common practice and for a long time these agreements were exempted from antitrust laws. However, in the past few decades, the sector has experienced important structural changes and several jurisdictions have undergone regulatory reforms. These have led to a re-organisation of the sector towards greater reliance on consortia and other alliances between carriers, i.e., forms of cooperation at the operational level which do not involve fixing freight rates. Delegates discussed these important developments in the application of competition law to liner shipping. A background note from the Secretariat along with contributions from the participants supported the discussion.

Hearing on Auctions and Tenders²

In December 2014, there was a discussion about how to design auctions and tenders to achieve efficient outcomes and provide winners with the appropriate incentives to deliver quality and to invest. This time the discussion explored in depth some other challenges posed by auctions and tenders, especially how to deal with the so-called "abnormally low offers", and how and when

¹ <http://www.oecd.org/daf/competition/competition-issues-in-liner-shipping.htm>

² <http://www.oecd.org/daf/competition/tenders-and-auctions.htm>

to partition contracts into lots. Governments have become increasingly concerned that contracts and concessions are awarded to abnormally low bids with an ensuing increase in the risks of ex-post renegotiation, cost-overruns and contract defaults. This Hearing addressed these concerns and the different approaches that have been used to address them (e.g. average bid methods), as well as their impact on the efficiency of the outcomes. The discussion also addressed the division of contracts into lots, which can play an important role in promoting competition and ensuring participation by smaller bidders, and examined the trade-offs involved in terms of efficiency and competition.

Roundtable on Public and Private Antitrust Enforcement in Competition³

There is broad agreement that private enforcement can substantially improve the functioning of a competition regime and that individuals and firms who suffer injury from anti-competitive conduct, should be entitled to reasonable compensation. At the same time, it is important to strike the right balance between public and private enforcement. Antitrust policy and antitrust law enforcement, including private enforcement, should be viewed as an integrated policy system in which numerous factors contribute to the complementary goals of deterrence and compensation. Obtaining the right balance between these tools and goals is key to ensuring that private enforcement does not adversely affect the effectiveness of public enforcement, and encourages greater compliance with antitrust rules, while avoiding litigation that is wasteful and could discourage

³ <http://www.oecd.org/daf/competition/antitrust-enforcement-in-competition.htm>

socially beneficial conduct. The discussion focused on the current state of private enforcement in OECD member countries and other selected jurisdictions, reviewed initiatives to promote more private enforcement and the tools available for this purpose and discussed the practical relationship between public and private antitrust enforcement. A background note from the Secretariat along with contributions from the participants supported the discussion.

Hearing on Disruptive Innovation⁴

New technologies or business models can profoundly affect the functioning of existing industries. The most visible examples are internet-based "sharing services" that are disrupting conventional taxi and hotel markets, but there are many others in diverse areas such as finance, retail electricity and automobiles. These disruptive innovations can deliver important benefits to competition and consumers, in terms of new and better services, and can stimulate innovation and price competition from established providers. However, they can also give rise to legitimate public policy concerns (e.g. safety, privacy) and create demands for regulation. Established providers will often lobby for existing regulations to be applied to new providers to lessen their competitive advantage, sometimes claiming rightly or wrongly that this advantage arises from an 'unfair' exclusion from regulatory rules.

But how far should regulation go, what role should competition policy play in these debates, and how might competition authorities participate? Experts and participants discussed current challenges arising from disruptive innovations and possible areas for future work by looking at

⁴ <http://www.oecd.org/daf/competition/disruptive-innovations-and-competition.htm>

the economic characteristics of industries where such innovations have appeared, the various responses of incumbents and regulators, and the possible ways in which competition authorities could intervene, with a focus on competition advocacy. The discussion was supported by an issues paper by the Secretariat and notes by participating experts and delegations.

Hearing on Oligopoly Markets⁵

Oligopoly markets are markets dominated by a small number of suppliers. They can be found in all countries and across a broad range of sectors. Some oligopoly markets are competitive, while others are significantly less so, or can at least appear that way. Competition authorities are often called upon to investigate concerns of co-ordinated actions or lack of vigorous competition. However, detecting the root cause of sub-competitive performance in oligopolies can be challenging, and the manner in which it occurs (e.g. whether through an explicit agreement among the firms to restrain competition, or something else) may greatly affect the analysis and available tools/remedies under competition law. This can potentially lead to enforcement gaps whereby welfare-reducing conduct is not addressed. But how significant a problem is this in practice, and is there anything we can do about it? OECD experts and delegates discussed the approaches that competition authorities can take to address issues in oligopoly markets and the relative strengths and weaknesses of various enforcement and non-enforcement tools, including those related to: cartels, abuse of (collective/joint) dominance, merger control, market investigations and competition advocacy. An issues paper by the Secretariat

⁵ <http://www.oecd.org/daf/competition/oligopoly-markets.htm>

and notes by participating experts set up the background of this debate.

Other Events

Workshop on ex-post evaluation of enforcement decisions by competition authorities⁶

The OECD held a workshop in Paris in April 2015 to provide capacity building to competition officials that have already been or will be involved in the ex-post evaluation of enforcement decisions. During the workshop, the ex-post evaluations of three enforcement decisions were presented in detail by their authors and then discussed with the support of two invitees: Prof. Tomaso Duso (DIW Berlin and DICE) and Dr. Peter Ormosi (UEA, Norwich). The workshop provided participants with an opportunity to:

- learn how an ex-post evaluation is carried out in practice

- discuss the difficulties that can be encountered when such an exercise is undertaken
- examine the strengths and weaknesses of the various possible methodological approaches
- ask questions and propose ideas
- understand what lessons can be learnt from these experiences

Ideas and comments that have emerged from the discussion will be used to enrich the OECD Reference Guide on the Ex-Post Evaluation of Competition Authorities' Enforcement Decisions (forthcoming).

⁶<http://www.oecd.org/daf/competition/workshop-expost-evaluation-competition-enforcement-decisions.htm>

25 Years Like Just a Single Day!



Igor Artemiev
Head
Federal
Antimonopoly
Service of the Russian
Federation

25 years ago a truly a significant event took place in Russian economic policy - that year had become the starting point of the anti-monopoly regulation in Russia. At the end of the 80's – beginning of 90's the implementation of new economic reforms in the Russian Federation has necessitated a completely new legal framework. It was then that the first steps of development of competition within a market economy were taken.

The setting up in 1990 of the first competition authority - the State Committee of the Russian Federation for Anti-Monopoly Policy and Support of New Economic Structures - clearly demonstrated the transition of the economy to a qualitatively new level of development, when promotion of competition for the benefit of the consumer became a primary obligatory aim.

In the last few decades we have been studying the wealth of experience foreign countries accumulated in the course of decades. And despite the short period of existence of competition law in Russia, it has already gone through several stages of development.

The first step is considered to be the adoption in 1991 of the RSFSR Law "On competition and restriction of monopolistic activity on product markets." The Act set the main provisions of anti-monopoly policy, aimed at the prevention of the abuses of dominant positions on

product markets and the prohibition of unfair competition. It was this first Competition Act that laid down the basic powers of the State Committee for many years to come.

The next step was the development of the constitutional norms of competition law: Article 8 of the Constitution of the Russian Federation is the guarantor of the common economic space, free movement of goods, services and financial resources, support for competition, freedom of economic activity, while article 34 of the Constitution prohibits economic activity aimed at monopolization and unfair competition.

The adoption in 1995 of the Federal Law "On Advertising" can rightly be considered the third stage of development of the Russian anti-monopoly legislation. It introduced comprehensive regulations of relations arising in the process of the production, placement and distribution of advertising in our country. After a decade of actual application of this law a number of its provisions had become out of step with economic realities and the dynamics of advertising activity in Russia. A new version of the Law on Advertising was introduced in 2006, which is proving effective under the present circumstances.

The Federal Law "On Protection of Competition in the Financial Services Market," became the logical addition to the Russian competition legislation at the turn of the new millennium. The new Law determined the specific features of antimonopoly control in the financial markets, which previously was carried out fragmentary on the basis of separate sectoral regulatory acts, aimed at, among other things, the legal regulation of banking and insurance.

Also worth mentioning is the Law on natural monopolies, which was introduced during difficult economic and political conditions. Developers of the bill had to face the most powerful lobbying on the part of businesses that constituted such natural monopolies.

By 2000 the legal and regulatory framework, determining the scope of authority of the antitrust bodies, took shape.

The first task of the Federal Antimonopoly Service, set up in 2004, was the streamlining of the antimonopoly legislation. The result of this activity was the Federal Law "On Protection of Competition". Its adoption became the next, fourth stage in the development of competition law in Russia. Since its entry into force three sets of amendments have been made, and currently another significant set of amendments is being prepared for introduction, that being aimed at liberalising the antimonopoly legislation.

We would like to use this opportunity to express out special thanks to the representatives of the Organisation for Economic Co-operation and Development (OECD), who over these many years have and still are providing competition authorities with invaluable and multifaceted support in the development and implementation of the competition legislation.

We are actively developing our co-operation with foreign competition authorities. Our long-standing friendship with the OECD-GVH Regional Centre for Competition in Budapest,

Hungary (RCC), is a major example of such co-operation. Even in 1992 at the dawn of Russian antitrust regulation, representatives of our national competition authority participated in an OECD Workshop in Budapest on the protection of consumers' rights. And for more than two decades of joint activities we have gained invaluable experience in the implementation of competition policy.

FAS Russia employees publish their academic articles in the RCC Newsletter, which allows them to get expert opinions of their peers from other competition authorities.

Our fruitful co-operation has also led to the tradition of joint workshops in the Russian Federation. In 2013 and 2014 such workshops took place at the FAS Russia Training Center in Kazan. In June 2015, a seminar on "The OECD Competition Assessment Toolkit" was being held in Veliky Novgorod. We are confident that the seminar will make its mark.

In 2013, the OECD Competition Committee found Russian competition policy to be in compliance with the OECD's high standards. This was only made possible thanks to the close co-operation of competition authorities.

In conclusion I would like to once more thank all the representatives from the OECD, who in the course of these 25 years took part in the development of the Russian Federation's anti-monopoly legislation. Your invaluable contribution became part of the basis for the system of protection and development of competition in our country.

Competition Assessment – An Introduction to the OECD Toolkit*



Federica Maiorano
Senior Competition Expert
at the OECD Competition
Division
federica.maiorano@oecd.org

The benefits of competition for consumers and for the overall economy have been widely documented. A large number of studies confirm that more competitive industries experience faster productivity growth leading, in turn, to economy-wide growth.⁷ More intense competition affects firms' incentives and productivity through various channels. Competition creates incentives for firms to innovate and move towards the technological frontier, while encouraging resources to be reallocated towards more productive activities. Within a firm, competition provides incentives to improve how inputs are transformed into outputs. More efficient firms enter the market and grow, displacing less efficient firms.

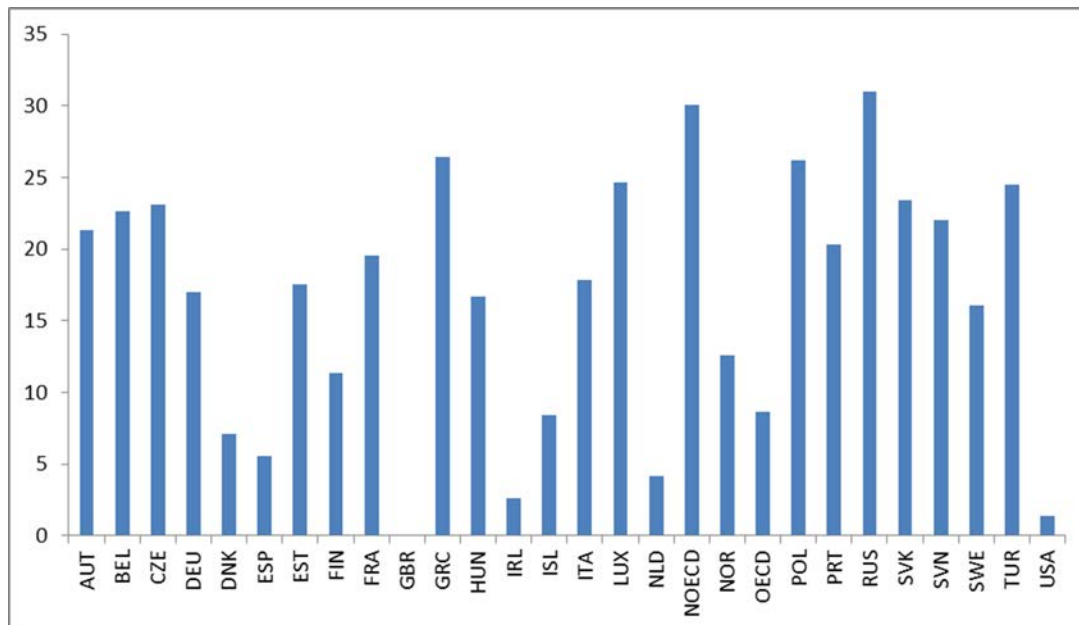
Competition is also affected by the regulations imposed by national governments or other bodies (e.g. laws, ministerial decisions and decrees). Regulations preventing market forces from performing the functions outlined above can restrict competition and therefore affect growth negatively.⁸ This is when a competition assessment of regulations is needed.

OECD estimates show the potential long-term benefits of removing regulatory barriers to competition. In the chart below, the size of each bar shows the effect on GDP of product market reform. The potential is particularly substantial for non-OECD countries (about 30%), but also for some European countries where the effect on GDP would be about 20%.

*The opinions expressed and arguments employed herein are those of the author and do not necessarily reflect the official views of the governments of OECD member countries.
⁷ The OECD Factsheet on Competition and Growth provides a compendium of empirical evidence on the wider economic effects of competition and competition policy, available at <http://www.oecd.org/daf/competition/factsheet-macroeconomics-competition.htm>.

⁸ The OECD has developed indicators of product market regulation. These enable the measurement of how restrictive regulation is in a given country. The indicators are used for cross-country comparisons and to track reform progress over time, as well as to measure their link with economic performance. The indicators and some of the reports on product market regulation are available at <http://www.oecd.org/economy/growth/indicators-of-productmarketregulationhomepage.htm>. See also <http://www.oecd.org/eco/growth/reducing-regulatory-barriers-to-competition-2014.pdf>.

Long-term effects of product market reform (Difference in the level of GDP in 2060, per cent)



Note: Product market reforms move each country's regulations gradually towards best practice.
Source: OECD Economic Outlook 93 long-term database.

What is competition assessment?

The OECD Recommendation on Competition Assessment, approved in 2009 by the OECD Council,⁹ calls for governments to “introduce an appropriate process to identify existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for performing competition assessment.” The OECD Secretariat has developed an analytical framework to support governments in the implementation of the Recommendation. This framework, called the Competition Assessment Toolkit, was first published by the

⁹ OECD (2009), Recommendation on Competition Assessment, available at <http://www.oecd.org/daf/competition/oecdrecommendationoncompetitionassessment.htm> and OECD (2014), Experiences with competition assessment: Report on the implementation of the 2009 Recommendation, available at <http://www.oecd.org/daf/competition/Comp-Assessment-ImplementationReport2014.pdf>.

OECD in 2007 and an updated version is due to be released in 2015, together with an operational manual. The Competition Assessment Toolkit is designed (i) to identify whether laws and regulations can restrict competition and (ii) to help develop alternative policies which are less restrictive, while achieving the same policy objectives.¹⁰

Competition assessment can be performed at different stages of policy formulation. Ideally, it could become embedded in the process of developing new legislation and policies. There are also benefits when the assessment process takes place *ex post*, on existing legislation, whether it is on specific policies or on the legislation applicable to an entire sector. When performed *ex post*, there is also the added value of observing the market

¹⁰ OECD (2010), Competition Assessment Toolkit, Volumes 1 (Principles) and 2 (Guidance), available at <http://www.oecd.org/daf/competition/assessment-toolkit.htm>.

Competition Checklist

Further competition assessment should be conducted if the proposal has any of the following 4 effects:

(A) Limits the number or range of suppliers

This is likely to be the case if the proposal:

1. Grants exclusive rights for a supplier to provide goods or services
2. Establishes a licence, permit or authorisation process as a requirement of operation
3. Limits the ability of some types of suppliers to provide a good or service
4. Significantly raises cost of entry or exit by a supplier
5. Creates a geographical barrier to the ability of companies to supply goods services or labour, or invest capital

(B) Limits the ability of suppliers to compete

This is likely to be the case if the proposal:

6. Limits sellers' ability to set the prices for goods or services
7. Limits freedom of suppliers to advertise or market their goods or services
8. Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
9. Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

(C) Reduces the incentive of suppliers to compete

This may be the case if the proposal:

10. Creates a self-regulatory or co-regulatory regime
11. Requires or encourages information on supplier outputs, prices, sales or costs to be published
12. Exempts the activity of a particular industry or group of suppliers from the operation of general competition law

(D) Limits the choices and information available to customers

This may be the case if the proposal:

13. Limits the ability of consumers to decide from whom they purchase
14. Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
15. Fundamentally changes information required by buyers to shop effectively

outcomes that have resulted from the implementation of a given policy. The toolkit has been designed so that it can also be usefully applied by government officials with no prior knowledge of competition policy. In the latter case, training sessions and hands-on experience alongside competition professionals are important to make the competition assessment process more effective.

What are the regulations addressed by the OECD Toolkit?

The OECD Competition Assessment Toolkit is organised around a list of questions (the so-called Competition Checklist). The questions provide a clear and structured framework to

help identify laws and regulations that *potentially* restrict competition.¹¹ The Checklist addresses four main types of regulations, i.e. regulations that: (i) limit the number or range of suppliers; (ii) limit the ability of suppliers to compete; (iii) reduce the incentive of suppliers to compete; or (iv) limit the choices and information available to customers.

¹¹ For simplicity, the remainder of this note will refer to the generic term of "regulation" or "policy". However, the framework can be applied to any type of primary and secondary legislation, such as laws, decrees and decisions.

Examples of regulations limiting the number or range of suppliers

Country	Concern	Process
Romania	Ordinance proposed by the Ministry of Health would restrict the ownership of pharmacies to pharmacists, and restrict the number of pharmacies that can open in urban areas.	The competition authority identified the problems through a process of Competition Assessment. Following intervention, the two restrictive elements of the policy were removed.
Estonia	In 2005 a new restriction was enacted restricting the ability to open new pharmacies in urban areas. It was hoped this would encourage new pharmacy openings in rural areas. It did not. Further, the urban market was highly concentrated, and vertically integrated. The inability of new pharmacies to enter the urban market curtailed competition in both pharmacies, and the distribution of drugs.	The competition authority identified and analysed the issue through a process of Competition Advocacy. However, despite a relatively strong evidence base against it, the restriction is still in place.
Ukraine	The Ministry of health proposed that all pharmacies must stock 50% of drugs licenced for prescription and have access to a 500m ² warehouse. This is unduly onerous and prevents small or innovative pharmacies from entering the market.	The competition authority identified the problem through a process of Competition Advocacy.

Source: OECD (2014)

These broad headings are spelled out through sets of more specific questions.¹² The first group of questions addresses, for instance, regulations granting exclusive rights to firms. Historically many of these regulations were confined to public utilities sectors, such as electricity and railways. Similar restrictions exist in other markets too. For instance, local governments often restrict entry into the taxi services market by setting the number of licences, sometimes in combination with price controls on taxi fares.¹³ Restrictions on the

retail channels that can sell certain products, such as the requirement to sell vitamins only in pharmacies, also fall within the first category identified by the Checklist.

In the second group of questions, the Checklist identifies regulations that limit firms' ability to compete, e.g. through their pricing decisions or the freedom to advertise and market products. For instance, many professions restrict comparative or any advertising in some countries (e.g. medical

¹² The full checklist is reproduced on page 8 of Volume 1 (Principles) and at the beginning of Volume 2 (Guidance).

¹³ For an *ex-post* assessment of taxi regulations, see a paper by D. Purcell and Paul Gorecki dealing with the regulations in Ireland. The paper is

available at [http://olisweb.oecd.org/vgn-ext-templating/DAF-COMP-WP2\(2014\)6-ENG.pdf?docId=JT03352269&date=1392131838913&documentId=616708&organisationId=1&fileName=JT03352269.pdf](http://olisweb.oecd.org/vgn-ext-templating/DAF-COMP-WP2(2014)6-ENG.pdf?docId=JT03352269&date=1392131838913&documentId=616708&organisationId=1&fileName=JT03352269.pdf).

services, pharmacies and auditing services).¹⁴ Price regulation, such as price caps, notifications or approvals, and requirements to keep prices stable for a given period, limit firms' flexibility to set prices in line with market conditions. Grandfather clauses are other examples of regulations that limit the ability to compete: when a regulatory framework changes and becomes more restrictive, existing firms are often granted transitional periods to adapt to the new regulations. However, there are instances where existing firms do not have to comply with the new stricter regulations at all or are treated in a more favourable way than newcomers. This differential treatment places at a disadvantage the firms that have entered the market at a later stage.

The third group of questions addresses, for instance, mechanisms that facilitate the sharing of information among competitors and that allow them to co-operate in specific activities. Allowing co-operation in some areas, such as research and development, has the potential to bring substantial benefits to society.¹⁵ This is also the case for self-regulation. For instance, a standard setting organisation provides a forum for the industry to define standards.¹⁶ However, these mechanisms can have the unintended effect of reducing firms' incentives to compete and

¹⁴ A recent development concerns the lifting of the ban on advertising online medical services in the UK. For instance, see <http://www.bmj.com/content/348/bmj.g4039>.

¹⁵ For instance, in the EU a Commission Regulation provides a block exemption from some rules on horizontal agreements.

¹⁶ The OECD Competition Committee discussed potential anti-competitive behaviour in standard setting in 2010 and more recently in December 2014. The full documentation of these sessions is available at <http://www.oecd.org/daf/competition/competition-intellectual-property-standard-setting.htm> and <http://www.oecd.org/daf/competition/47381304.pdf>.

creating an environment conducive to co-ordination among firms.¹⁷

In the fourth group of questions, the Checklist includes some demand-side factors.¹⁸ These are restrictions that limit consumer choices or reduce consumer mobility by creating switching costs. While in some cases switching costs are monetary (e.g. a fee charged to close a current account), there are also important non-monetary factors (e.g. arranging for standing orders and direct debits to be moved from one account to another). If consumers possess insufficient, confusing or misleading information about products, they may find it difficult to properly evaluate them. In these cases, the market is unlikely to deliver the best outcomes for consumers and therefore a review of the existing regulations becomes necessary.

How does the evaluation process work in practice?

The Checklist helps identify regulations that have the *potential* to harm competition. An in-depth analysis is necessary to assess whether this is indeed the case. Competition assessment does not aim at the removal of all regulations. It is a careful review of existing or draft policies to ask whether they unduly restrict competition.

¹⁷ In early 2014, the French competition authority launched a study on standardisation and certification activities in France, and on their implications for competition. The preliminary results for consultation were published in April 2015 and are available at http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=591&id_article=2292.

¹⁸ The OECD Consumer Policy Committee has developed a companion methodology, the Consumer Policy Toolkit, published in 2010, which focuses on consumer problems. The document is available at <http://www.oecd.org/sti/consumer/consumer-policy-toolkit-9789264079663-en.htm>.

One of the first steps to understanding a regulation is to investigate its policy objective. Sometimes this is not an easy task. However, it is important for various reasons. Even if the analysis finds that the regulation leads to a restriction of competition, this harm may be justified in light of the public policy objective. In addition, when the regulation is indeed found to be restrictive, understanding its objective is essential in order to develop suitable alternatives.

The in-depth analysis of the harm to competition can be conducted qualitatively and / or quantitatively. For instance, it involves drawing on the economic and legal literature, identifying relevant case law, researching into the regulations applied in comparable countries. When suitable data are available, quantitative analysis can also be performed.¹⁹ In a large project carried out by the OECD in co-operation with the Hellenic Competition Commission (see article by the HCC in this newsletter), economic benefits from implementing recommended changes were estimated at around EUR 5.2 billion.²⁰

When a regulation is found to harm competition, the next step of the competition assessment process is to develop alternative policy options and to identify the benefits of each of the alternatives with respect to the *status quo*. Other countries' experiences can be a fruitful source for identifying alternative ways of achieving a given policy objective.

¹⁹ The forthcoming Volume 3 of the Competition Assessment Toolkit (Operational manual) will provide average price impacts of pro-competitive regulatory reforms. For each question of the checklist, the operational manual will provide the corresponding estimate of the expected price impact. These figures will be based on a survey of *ex-post* studies of changes in government policies.

²⁰ See OECD (2014) OECD Competition Assessment Reviews: Greece. OECD: Paris. The report is available at <http://www.oecd.org/daf/competition/Greece-Competition-Assessment-2013.pdf>

Following the identification and comparisons of the options, a recommendation is made to change the regulation.

What next?

The OECD report on the implementation of the 2009 Recommendation has documented that a number of countries already engage in the competition assessment of regulations.²¹ The assessment is conducted by competition authorities in the context of their advocacy activities. The OECD is currently working on a large project, in co-operation with the Romanian Competition Council as part of its efforts to contribute to better policies.²² In addition, it is associated to the increasing prevalence of Regulatory Impact Assessments (RIA) of proposed legislation and other government action.

Competition assessment is a crucial step towards better regulation. The assessment can be combined with an ongoing process of (i) raising awareness and training of government officials and (ii) sharing experiences with other countries. Training government officials could work as a proactive measure to limit restrictive regulation in the future. They would become aware that proposed new legislation could have negative effects on competition and that there is value in exploring less restrictive ways of achieving the same policy objective.

In addition, sharing experiences with other countries can help improve both the

²¹ In addition, see the frameworks for assessment used in some OECD countries, available at <http://www.oecd.org/daf/competition/reducingregulatoryrestrictionsoncompetition/competitionassessmentdocumentsandlinks.htm>

²² The OECD Competition Division has also been closely co-operating with the Mexican authorities for a number of years. Some of the reports produced in Mexico are available at <http://www.oecd.org/competition/assessment-toolkit.htm>.

competition assessment methodology and the practical implementation of the assessment. Countries could create a shared body of knowledge about regulations in different OECD countries and they could draw on this information when conducting competition assessment.²³ This information could be used when identifying and assessing alternative policy options, and ultimately to support recommendations for change.

The Competition Assessment Toolkit is currently being revised and a volume 3 will be added. The new volume 3 will be an operational manual and will contain very practical guidance on identifying sectors, screening and identifying competition problems and alternatives and the qualitative and quantitative evaluation of the existing options. It will be introduced in the next newsletter.

For further information about the Competition Assessment Toolkit, or if you are interested in conducting a competition assessment project with the support of the OECD, please contact Federica Maiorano (Federica.maiorano@oecd.org), Sean Ennis (sean.ennis@oecd.org) or Ania Thiemann (ania.thiemann@oecd.org)

²³ The Report on the implementation of the 2009 Recommendation already includes some examples provided by the countries responding to the survey. The report is available at <http://www.oecd.org/daf/competition/Comp-Assessment-ImplementationReport2014.pdf>.

Competition Assessment of Laws and Regulations in Greece



Team of authors of the HCC

Fotis Papadopoulos (fpapadopoulos@epant.gr),
 Anna Gatziou (agatziou@epant.gr),
 Nikolas Lionis (nlionis@epant.gr),
 Charis Bouga (chbouga@epant.gr),
 John Stefatos (lstefatos@epant.gr) and
 Evi Karkani (ekarkani@epant.gr)

The first OECD Competition Assessment of Laws and Regulations in Greece project was successfully completed by December 2013. During the course of 10 months, a core project team comprising competition experts from both the OECD and the Greek competition authority, the Hellenic Competition Commission (HCC)²⁴, with the assistance of delegated staff from the respective line ministries involved, undertook an assessment of the costs and benefits of regulations restricting competition in four designated sectors of the Greek economy, namely retail trade, food processing, building materials and tourism. These sectors represented 21% of GDP by output in 2011, and had a combined turnover of EUR 44.26 billion, representing 1,103,500 jobs or 24.8% of total employment in Greece in 2011.

The assessment of the laws and regulations in the above mentioned sectors was carried out in four stages: In stage 1 (mapping of sectors), the project team identified and collected all sector-relevant laws and regulations and provided an economic overview of the sectors. As a prior condition, the scope of the

²⁴ Specifically, the HCC seconded 5 competition experts, 3 economists and 2 lawyers, who constituted part of the core project team and worked on a full time basis for 10 months.

four sectors was defined. Whenever possible, a definition consistent with the NACE²⁵ classification was followed, except for tourism where no such classification exists. During this stage a total of 1,053 different pieces of legislation were identified. In stage 2 (screening of the legislation and selection of provisions for further analysis), the project team screened the legislation to identify potentially restrictive provisions. In addition, it compiled economic papers and reports, considered as relevant for the four sectors. The legislation collected was analysed using the framework provided by the OECD's Competition Assessment Toolkit (the Toolkit). In the third stage (in-depth assessment of the harm to competition) the provisions carried forward were investigated in order to assess their harm to competition. In parallel, the project team researched the policy objectives of the selected legislation and conducted interviews with industry associations, individual companies and market players which provided important information on the actual implementation and effects of the provisions. All provisions were analysed qualitatively and, whenever feasible and appropriate, quantitatively. Finally, in stage 4 (formulation of recommendations) the project team relied on international experience, whenever available, and developed recommendations for those provisions which were found to restrict competition.

Overall, the work led to the identification of 555 regulatory restrictions in the original 1,053 legal texts selected for assessment. In

²⁵ NACE (Nomenclature of Economic Activities) is the European statistical classification of economic activities, see a list here [http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Statistical_classification_of_economic_activities_in_the_European_Community_\(NACE\)](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Statistical_classification_of_economic_activities_in_the_European_Community_(NACE))

total, the report made 329 specific recommendations to mitigate harm to competition. In addition, 40 provisions were found to constitute an administrative burden on businesses. Moreover, if the particular restrictions that were identified during the project were to be lifted, the OECD calculated an expected positive effect for the Greek economy of around EUR 5.2 billion. This amount stems from the nine broad issues that the project team was able to quantify and that represent 66 out of the 329 recommendations in total; in other words, the full effect on the Greek economy is likely to be even larger. The amount is the total of the estimated resulting positive effects on consumer surplus, increased expenditure and higher turnover, respectively, in the sectors analysed as a result of removing current regulatory barriers to competition. It can be argued that the cumulative, long-term impact on the Greek economy of lifting all of the restrictions identified as harmful together with the rationalisation of the body of legislation in these sectors will positively affect the ability of businesses to compete in the longer term. Even by just removing obsolete or redundant legislation, investors face a more transparent and less uncertain business environment.

The key recommendations include the following issues:

- Repeal obsolete and outdated legislation for the four sectors analysed, especially from the *Code of Foodstuffs and Beverages*.
- Abolish all barriers to entry that have been identified. These include the strict licensing requirements in the asphalt sector; minimum requirements for storage, or minimum capital requirements in the building materials sector; numerous barriers to investment in tourism activities, such as geographical restrictions or minimum quality requirements; limits

on tourist coach activities; restrictions on offices of travel agents; limits to the trade of blended olive oils; and so on.

- Abolish any requirement to seek price approval or to submit prices to the authorities or to trade and industry associations for all tourist activities.
- Remove all third-party levies and fees. These include the tax on advertising and the levies on flour and on cement.
- Fully liberalise Sunday trading, including for stores above 250m², shopping malls and outlets.
- The five-day restriction on the shelf life of milk should be lifted. The product's use-by date should be determined by the producers, according to their pasteurisation methods and the relevant EU regulation. Milk cartons should be clearly stamped with the date of production and the valid-to date.
- Prices of over-the-counter medicines (OTCs) and dietary supplements such as vitamins should be liberalised. This should be done in conjunction with a full liberalisation of the distribution channels.
- Retailers should be able to decide freely on shop promotions and discounts, including on the determination of periods of seasonal sales.
- The regulation of cruises should be relaxed by lifting the round-trip restriction on cruises leaving a Greek port, so as to allow passengers to embark the cruise at one port and disembark at another port.

The vast majority of these recommendations were adopted by the Greek government. Specifically, some 72% of the project proposals were straightforwardly adopted by

the government,²⁶ another 8% led to regulatory change but without implementing the exact proposed recommendations (e.g. milk and medicines) and another 5% of the project proposals initiated governmental procedures for future adoption.

In the second half of 2014, HCC staff members worked together with the OECD team in order to carry out a second competition assessment project to identify regulations that may hinder market efficiency in four manufacturing sub-sectors of the Greek economy. These sub-sectors were: a) manufacture of coke and refined petroleum products; b) manufacture of textiles, wearing apparel, leather and related products; c) manufacture of beverages and d) manufacture of machinery and equipment. The second OECD Competition Assessment of Laws and Regulations in Greece project lasted from September 2014 to December 2014 and included the following three stages. In stage 1, a list of all the relevant legislation for the four sub-sectors was collected by the core team with the support of government experts from the competent line ministries. The list consisted of 482 pieces of legislation, such as laws, ministerial decisions and circulars. The mapping exercise also included the collection of key descriptive economic statistics. In stage 2, the legislation was screened to identify potential competition barriers using the OECD Competition Assessment Toolkit. A preliminary indication of potential regulations for change or abolition, based on the checklist scan, was provided. In stage 3, the provisions that were identified as potentially harmful, based on the Toolkit, were further analysed, following an analysis of harm to competition and taking into account EU legislation and relevant provisions in comparable countries, notably EU Member States. Throughout the

²⁶ www.imf.org/external/pubs/ft/scr/2014/cr14151.pdf

project, interviews were conducted with industry stakeholders to better understand the market and the legislation in place. As a result of the abovementioned work a report was drafted with 88 recommendations on specific legal provisions. Oral presentations to the European Commission's Task Force for Greece (TFGR) and the High-level Committee of senior government officials were held at the end of each of the three abovementioned stages.

During both projects the project team, i.e. OECD and HCC staff members, provided assistance in building up the competition assessment capabilities of the Greek administration experts and officials appointed by the Greek government, by organising relevant workshops covering an introduction to competition policy and substantive training on the OECD Competition Assessment Toolkit.

For the HCC team, much was derived from their full-time participation in the two competition assessment projects. First and foremost, the HCC staff members had the opportunity to gain a greater understanding of the policy-making process, in which they were actively involved in a period crucial for the Greek economy. In this context, the HCC team was given the opportunity to extensively apply theoretical knowledge to real economic problems in five key economy sectors and gain a better understanding of the interaction between the legislation under scrutiny and the markets involved. Such experience is valuable to the HCC in its role under Greek legislation as an advisory body to the government on regulatory barriers to competition (advocacy role). Furthermore, in both projects, close co-operation with the OECD team provided the HCC staff members with an insight into the methodology and experience of an international organisation. On a technical level, the HCC team worked productively and efficiently, under the guidance of the OECD

management team, on strict deadlines in a flexible environment, free from legal formalities usually inherent in administrative procedures, in a fruitful interaction with officials of the European Commission, as well as state officials and employees and industry stakeholders. In a nutshell, the HCC was pleased to contribute to the effort to change

Greek regulatory practice in terms of enhancing competition and effective market functioning and to help re-enforce the competition culture in Greece, while further advocating for a coherent regulatory impact assessment (RIA) system at the level of the central administration

Overview of the Hungarian Competition Advocacy Regime*



József Sárai
Head of the International
Section
at the Hungarian Competition
Authority
sarai.jozsef@gvh.hu

There are views which claim that the best advocacy regime is one in which competition law is severely and consistently applied in concrete cases, with the outcome of such law enforcement action being then communicated to the public in an appropriate and transparent manner. While this approach may be generally accepted, it relates rather to the advocacy addressing the general public, i.e. rather to the element of competition advocacy that aims to raise competition awareness and increase competition culture. The present article deals with the aspect of competition advocacy that is aimed at influencing legislation in order to “produce” pro-competitive Acts, rules and regulations. With this in mind, this short article seeks to provide an overview of the advocacy system of the Gazdasági Versenyhivatal (GVH – Hungarian

Competition Authority), by describing on the one hand the basic rules regulating this activity, and on the other hand the practice and a few of the major lessons that have been learnt along the way.

1. General framework for advocacy

The main and the most basic function of the GVH is the enforcement of the Hungarian Competition Act (HCA). That being said, competition advocacy plays an almost equally essential role in the GVH’s activity portfolio.

In theory, there are three basic target areas of competition advocacy in Hungary.

1. The first target area is the legislative process itself, i.e. commenting on draft bills and regulations through the application of the following traditional advocacy tools:

- a) Via the authorisation granted by the HCA and by the Act on Legislation, the GVH comments on draft pieces of legislation. As stipulated in Paragraph (3) of Article 33 of the HCA, “The Hungarian Competition Authority shall deliver its opinion on regulatory concepts and draft legislation, except on municipal decrees, which relate to its scope

*The views and opinions expressed in this article may not in any circumstances be regarded as stating an official position of the Hungarian Competition Authority.

of duties and competencies, furthermore, which restrict competition (in particular through the performance of some activity, the determination of the conditions of market entry or the granting of exclusive rights), or which affect the conditions of competition including actions against conducts infringing the freedom of competition, or which contain provisions concerning prices or the terms of sale. The municipal clerk may solicit the opinion of the Hungarian Competition Authority on draft municipal decrees.” Article 19(1) of the Act on Legislation provides: “If an Act vests any state, municipality or other organ with the right to deliver its opinion on draft legislation which relates to its legal status or scope of duties, the body which submits the draft legislation is obliged to guarantee the practising of this right.”

This is the manner in which the traditional, reactive type advocacy activity takes place.

- b) In addition to the above-mentioned reactive type advocacy opportunities, as time passed, the GVH elaborated some proactive advocacy tools as well. From the late 1990s in its annual reports prepared for the Parliament, most frequently in the form of recommendations, the GVH from time-to-time drew MPs’ attention to certain existing anomalies and requested that the Parliament take appropriate action.
2. The second target area of the GVH’s advocacy actions may be considered to be, at least in theory, those rules

which have already entered into force. If the GVH finds that any provision of any Act, Government Decree or Ministerial Decree is contrary to the relevant constitutional provision, the GVH may in theory request that the ombudsman initiate a constitutional complaint at the Constitutional Court in relation to the provision in question. This right of the GVH does not originate from the HCA, but from the Fundamental Law of Hungary, which, in Article M Paragraph (2) declares that *“Hungary shall ensure the conditions of fair economic competition, act against the abuse of a dominant economic position and protect the rights of consumers”*.

3. The third tool is the ability of the GVH to take action against anticompetitive measures of state organs. According to Article 85 of the HCA, if the GVH finds that any decision of an authority violates the freedom of competition, it may request that the authority amends or withdraws the decision in question. If the authority fails to comply with the GVH’s request, the GVH may turn to the court. In theory these provisions of the HCA allow the GVH to take action against anticompetitive type measures of state organs and municipalities – supplementing the tools available to the GVH in the field of advocacy.

2. Advocacy in the practice of the GVH

In general, building on the experience of the 25 years which have elapsed since the GVH began its activity in 1991, in practice the first target area has resulted in competition advocacy actions and the other two either have not been applied or have only been applied in exceptional situations.

Concerning the reactive type commenting on draft pieces of legislation, the GVH has received submissions in varying numbers, between around 100 and 600 per year. In the first half of the 2000s there was an increasing tendency (in 2004: 600, in 2005: 500 submissions) and since then the number of draft laws received by the GVH has decreased to 202 (in 2011), 115 (in 2012), and 106 (in 2013). Irrespective of the number of submissions it has always been the case, to varying degrees, that the legislators have failed to notify the GVH of essential draft laws containing provisions affecting the conditions of competition. Recently a new practice has appeared: instead of the government or ministries, MPs may now submit amendments to certain laws. While this is of course a constitutional right of the MPs, it means that these draft amendments are not included in the general inter-agency coordination mechanism, thereby also avoiding the GVH's commenting opportunity. That is why the GVH tries to follow up, on a daily basis, on any developments from the homepage of the Government (concerning Government Decrees and Ministerial Regulations) and the Parliament concerning draft bills and downloads these drafts in order to comment on them. This enables the GVH to look at these drafts even if they are not sent to the authority through the regular channels.

In addition to the above-mentioned attempt at ensuring that the GVH is able to scrutinise all draft legislation, the GVH follows up on the biannual legislative plans of the government as this allows the authority to plan its advocacy works and efforts, and importantly, prevents important laws from escaping the attention of the GVH.

On its website the GVH does not explicitly publish its advocacy related professional opinions sent as comments on draft pieces of legislation. However, since 2011 brief

summaries of the content of the GVH's opinion are incorporated into the annual reports prepared for the Parliament. Since the annual reports are published on the GVH's website, these summaries are available for the wider public as well.

The proactive advocacy endeavours have evolved over time. At the beginning, in the early 1990s, no such practice existed at the GVH. However, since the late 1990s it has become the general practice that the GVH draws the Parliament's attention to certain existing anomalies and requests it to take appropriate action. A non-exhaustive list of examples is as follows:

- obligation of the large-scale retail chains to prepare self-regulations ('Ethic Codes') to limit their abuses towards small suppliers (2002),
- the call for the deregulation of professional services (2004),
- reconciliation of the leniency policy and exclusion from public procurement of undertakings condemned due to cartel activity (2004),
- reregulation of the electric energy sector (2005),
- limitation of the possibility of financial institutions to one-sidedly amend the contractual conditions of their clients (2007),
- regulation of mortgage loans, allowing customers to switch banks by also making the portability of state subsidies possible (2008),
- regulation of the activities of consumer groups (2009, 2011, 2012),
- reconciliation of leniency policy and criminal sanctions on cartels (2010),

- obligatory exclusion of undertakings, found responsible for bid-rigging, from subsequent tendering (2013).

These recommendations are always based on the experience gained by the GVH through its enforcement activity. In some cases the recommendations are based on sector inquiries undertaken by the GVH. Sector inquiries have been completed by the GVH concerning mobile telephony services (2002), electric energy sector (2005), mortgage loans (2006), switching of banks (2009), media sector (2009), and building society market (2010).

In some cases these recommendations resulted in legislative actions – amendments of the laws or regulation of the issues along the recommendations made by the GVH. From this point of view the blocking of the ability of banks to unilaterally amend contracts may be mentioned as a very positive example, as the regulation of financial services was amended along the GVH's recommendations in 2009. Other positive examples might also be mentioned, such as those concerning consumer groups and the reconciliation of the leniency policy and criminal sanctions relating to cartels.

As regards the second “target area”, namely the initiation of anti-constitutional action via the ombudsman against anticompetitive rules and regulations, in practice this has remained an “atomic bomb” and has never been applied.

Article 85 of the HCA has been applied very rarely. In those rare cases in which it has been applied the GVH has taken steps mainly against the decisions of municipalities (e.g. when a municipality denied a driver a taxi licence because he lived in another settlement, or when a municipality tried to give an entrepreneur an exclusive right to provide an expert opinion relating to the

building of houses). As a result of the actions of the GVH, in the examples mentioned the municipalities always remedied the situations by amending their decisions.

3. Conclusions

From the outset, the GVH has always put a lot of effort into its competition advocacy, even though at the very beginning (in the first few years) the framework for this pillar of the GVH's activities still had to be elaborated (personnel, intra-agency cooperation, shaping of the practice, etc.).

Since the OECD published its *‘Competition Assessment Toolkit’* in 2007, the GVH has always based its assessment on the aspects delineated in this document and in its revisions.

The comments made by the GVH on draft legislation do not place the legislators under any obligation to accept them. Consequently, it has to be accepted that even if the competition authority carries out its competitive assessment of the draft rules and pieces of legislation to the best of its ability, this is not the sole determining factor as to what legislation will ultimately be adopted by the decision-makers. This approach is supported also by a judgment of the Constitutional Court (case no. 21/1994 (IV.16)), where the Court stated that: “... under changing economic circumstances governments may choose their economic policy on their own, by liberalising the management or making it even more severe until these measures do not make the market economy dysfunctional ... different economic policies may define different levels of ideal market liberalisation and the concepts of the government may not be replaced by those of the Constitutional Court ...”. Even in such a situation, if the same legislative goal may have been reached in a less restrictive manner, the

GVH has of course always tried to influence the decision-makers to choose that option.

Greek regulatory practice in terms of enhancing competition and effective market functioning and to help re-enforce the

competition culture in Greece, while further advocating for a coherent regulatory impact assessment (RIA) system at the level of the central administration

Approaches to Demonstrating that a Competition Agency is Good Value for Money



Cristiana Vitale
Senior Competition Expert
at the OECD, Paris
cristiana.vitale@oecd.org

Competition agencies are constantly engaged in protecting and fostering competition within their jurisdictions. Through their enforcement activities they identify, stop, and, when appropriate, impose sanctions or remedies on anticompetitive conducts and mergers, and they try to deter further instances of these behaviours. In their advocacy role, instead, they identify and remove, or try to remove, other obstacles that may impede the effective functioning of the competitive process, such as asymmetries of information between firms and consumers and regulatory barriers to entry. But why do governments provide competition agencies with resources to undertake these activities?

All those familiar with competition policy know that the reason is that competition benefits consumers, by providing them with better products and greater choice at lower prices, and the economy as a whole, by leading to increased productivity, greater innovation and higher economic growth.

Indeed, as a recent [Factsheet on how competition policy affects macro-economic](#)

[outcomes](#) published by the OECD in 2014²⁸ shows, there is solid evidence in support of all these positive links. For example, a variety of empirical studies show that industries where there is greater competition experience faster productivity growth, because competition allows more efficient firms to enter and gain market share at the expense of less efficient firms and it provides existing firms with incentives to cut costs and make better use of their resources. A number of studies also indicate that competitive industries are more innovative than monopolies²⁹, while some studies provide evidence of a positive link between competition and employment³⁰.

However, this empirical evidence is usually only known by experts in the field, while politicians are often not very familiar with it, and even less so the media, industry players and the public at large. In addition, this evidence can justify why competition agencies are necessary and why they should undertake enforcement and advocacy activities, but it does not quantify the benefits that these activities actually bring for taxpayers in a specific jurisdiction. So, as public bodies are

²⁸ <http://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf>

²⁹ The relationship between competition and innovation is not a monotonic one, and we suggest readers to refer to the OECD Factsheet for a more detailed discussion.

³⁰ All these studies are listed and discussed in the OECD Factsheet (see note above).

increasingly required, or encouraged, to be more transparent and accountable about their use of public resources and to explain what benefits they generate for taxpayers, competition agencies are also asked to quantify the impact that their competition-enhancing activities have on the economy.³¹

This is not an easy endeavour. As discussed above, competition has a variety of effects, which are not all easy to quantify and often hard to ascribe to one or a set of specific enforcement interventions. Accordingly, how can agencies quantify in a clear and simple way the benefits of their activities in order to explain and justify their role in the economy?

One option is to determine the effects that a specific decision has on the affected market. This type of assessment, usually referred to as an ex-post evaluation, exploits information on how a market has evolved following a specific decision of a competition agency to determine its causal effect on the key variables that drive social welfare. Such assessments provide estimates of the impact of decisions, though limited to the variables that can be quantified (generally prices), and as such provide valid proof of the value that competition agencies bring to consumers and to society. But these exercises are rather long, data-hungry and time consuming, and therefore can only be applied to a very limited number of decisions. Consequently, they can be used as examples but cannot provide an overall assessment of the benefits that competition agencies produce each year for consumers and society at large.

Another option is to not assess the actual effects, but to limit oneself to the expected impact and include all the main activities of

³¹ For example in the UK the government has set a target for its competition agency, the Competition and Market Authority, which is required to generate L 10 of consumer benefits for each L1 it spends.

the competition agency. To this end the OECD has recently published a [Guide for helping competition authorities assess the expected impact of their activities](#)³². This Guide suggests a simple methodology to assess the most easily quantifiable effects of enforcement decisions, i.e. the savings that accrue to consumers as a result of lower prices. Other effects, such as those on quality, innovation and productivity, are not excluded from the assessment, but no quantitative approach for assessing them is provided in the Guide, as no single reliable one currently exists.³³

The simple methodology proposed consists of calculating the savings consumers³⁴ are likely to obtain from each enforcement decision³⁵ reached in the course of the past year by multiplying:

1. the price increase avoided or removed³⁶;
2. the expected length of this price effect; and

³² This Guide is available in English, French and Spanish at: <http://www.oecd.org/competition/guide-impact-assessment-competition-activities.htm>

³³ The UK competition agency has sometimes included dynamic effects in its assessment, when these were a major expected outcome of the decision, and this has been achieved by approximating quality improvements with price reductions.

³⁴ A major assumption behind this approach is that all decisions will have a positive impact on consumers, as no agency would intervene if its action was not likely to generate any benefits.

³⁵ The Guide does not suggest a specific methodology for assessing the impact of advocacy activities, but does not discourage agencies from doing so, provided this can be done in a reliable manner. To the best of the author's knowledge only the UK competition agency has so far has assessed these benefits and it has limited its effort to market studies.

³⁶ Antitrust decisions, such as those on cartels or abuses of dominance, lead to price reductions, while merger decisions, which are usually made ex-ante, avoid price increases.

3. the size of the turnover directly affected³⁷.

The Guide encourages agencies to derive these figures, whenever possible, from case specific information to try to be as close to the actual benefits as possible. When this information is not available or cannot be used, the Guide suggests a set of simple default assumptions on the three elements listed above. These assumptions are based upon, but not equal to, the existing practices of the OECD competition agencies most active in performing impact assessments, and vary depending on the type of decision³⁸.

This quantitative methodology is easy to apply, requires limited resources and information, but inevitably involves a number of simplifications; this implies that the assessments represent a very conservative and partial estimate of the benefits competition agencies can produce. However, it seems more reliable and responsible to choose a path that provides a lower-bound estimate and avoids being overconfident about the contribution competition agencies can make to social welfare.³⁹

The Guide does not just provide a quantitative methodology, but it also gives suggestions on how to present the estimated benefits to ensure transparency and clarity. In particular, it encourages agencies to clearly explain that the calculated benefits are estimates of likely

³⁷ Hence this approach does not account for any pass-on effect that may benefit consumers in related markets, e.g. markets that use as a major input the good or service that benefits from the price reduction.

³⁸ A summary of these practices can be found in the Annex to this Guide.

³⁹ Nevertheless, such an approach still leads to the estimation of figures that are of considerable magnitude when compared to the budget of the agencies. Examples of the methodologies used to achieve these figures can be found in the annual reports of the Dutch, the Italian, the Hungarian, the UK and US competition agencies.

future effects, which have yet to be observed, or of averted effects, which will never be observed. It also suggests indicating that the figures are reasonably conservative for a number of reasons: i) they only, or mostly, estimate benefits due to lower prices enjoyed by consumers in the markets directly affected by the decisions, ii) they do not include the non-trivial long-term effects on productivity and innovation, and iii) they exclude the benefits that agencies produce by deterring anticompetitive behaviours and mergers.

On a more practical side, the Guide suggests presenting the results both as an annual figure and an annual moving average over three years, to reduce the variability that may be caused by cases in particularly large or small markets that can happen in a single year. It also urges agencies to give 'point' estimates of the benefits, but, when possible, to accompany these with a sensitivity analysis based on a more conservative set of figures and a less conservative one.

This Guide can be a very useful tool for all those agencies that have to, or want to, generate a simple, reliable and easy to explain figure, or set of figures, that shows their most immediate contribution to social welfare. This figure will very likely underestimate the benefits that society can derive from more competitive markets, but it still represents a very useful contribution to explaining the role of competition agencies in the economy.

The next edition of the newsletter will feature the more specific work of the OECD on ex-post evaluation of enforcement decisions by competition authorities.⁴⁰

⁴⁰ More information on the work on ex-post evaluation can be found here:

<http://www.oecd.org/daf/competition/workshop-expost-evaluation-competition-enforcement-decisions.htm>

If you are interested in more in-depth trainings on advocacy, evaluation and quantification within the framework of the

RCC seminars, please contact Sabine Zigelski – sabine.zigelski@oecd.org.

Promoting Pro-Competitive Reforms that Foster Growth and Reduce Inequality



Viorica Cărare
President
of the Competition Council of
the Republic of Moldova
office@competition.md

Background:

Between May and December 2012, the Moldova Competition Council examined a case of infringement of competition law on the market of "services for rail freight" by S.E. "Railways of Moldova" (Î.S. "Calea Ferată din Moldova"). This has led to the non-discriminatory treatment of all consumers with the purpose of increasing economic efficiency.

S.E. "Railways of Moldova" applied discriminatory measures against some of its customers that placed them in an unfavourable situation compared to other undertakings from October 2011 to June 2012, by imposing the international tariff on some of them. While undertakings using rail freight services within the territorial boundaries of the Republic of Moldova had to pay the lower

local rate, undertakings that had the Giurgiulesti International Free Port (hereinafter GIFP) as one of their points of departure or arrival and their other point on the territory of the Republic of Moldova had to pay the higher international rate.

Success story

This case was initiated following a notification by the Ministry of Economy, which had identified a competition issue in the non-transparent application of SE "Railways of Moldova"'s pricing policy for the supplied services - a company with a dominant market position

Thus, given that the activity type of S.E. "Railways of Moldova" is the provision of rail passenger services, cargo, and baggage transport services, the relevant product market was defined as the provision of rail freight services. According to Art. 5 paragraph. (3) of the Railway Code No 30-XV from 17.07.2003, S.E. "Railways of Moldova" operates throughout the country, including the territory of the GIFP. For this reason, the relevant geographic market was identified as national, determined by the geographical

International tariff	Local tariff	The average international tariff
20,14-20,34euro/ton, excluding VAT	11,77euro/ton, excluding VAT	20,21 euro/ton, excluding VAT

Table nr. 1

Tariffs applied by S.E. "Railways of Moldova"

coverage of the infrastructure of S.E. "Railways of Moldova".

S.E. "Railways of Moldova", being the only undertaking to provide rail freight services in Moldova, was established as an undertaking with a dominant position in that market, holding a market share of 100%.

The relevance of the examined case stems from the fact that the different tariffs for rail freight services have a strong impact on the markets in which S.E. "Railways of Moldova"'s customers compete, because transport costs determine the final costs of goods and their prices and have an influence on the competitive environment and the competitive capacity of the customers of S.E. "Railways of Moldova".

The implemented tariff discriminated against undertakings which used as one of their points of departure / arrival GIFP, with their other point being on the territory of the Republic of Moldova, by applying an international average price of 20.21 euro / ton, excluding VAT. Other customers which had as their points of departure / arrival any other place on the territory of the Republic of Moldova were charged a considerably lower local fee of 11.77 € / ton, excluding VAT.

In terms of procedure the anti-competitive practice, as well as its effects were analysed on the basis of the following evidence: information given by the parties, verbal explanations, the official order on tariffs, objections of undertakings, invoices, orders of payments, as well as the current legislation governing the legal regime of the free economic zone, railway services, the methodology of establishing international and local fees and other financial documents.

An instrument used to investigate the case which proved to be particularly helpful and which led to the removal of the abuse one month after the initiation of the investigation,

was the organisation of working sessions attended by the representatives of S.E. "Railways of Moldova", the Ministry of Economy and the Ministry of Transport and Road Infrastructure.

Regarding the effects of the identified anticompetitive practice on final consumers, we can state the following:

- a) increased transport costs for nine undertakings that used rail freight service from / to GIFP to / from another point of Moldova, which had direct influence on their costs and ultimately the prices of the transported goods, thus diminishing the competitiveness of these customers;
- b) termination of the mining products supply contract with a local undertaking by another undertaking. Thus, the unfounded increase in fees created difficulties for domestic producers and led to a reduction of their internal and external competitiveness.

The impact of the discriminatory conduct was calculated in accordance with the OECD Guide on Competition Impact Assessment.⁴¹

In order to determine the impact on consumer welfare, in the tables below, the tariffs applied by S.E. "Railways of Moldova" during the implementation of the anti-competitive practices (October 2011 - June 2012) and the losses incurred by the customers are stated.

⁴¹<http://www.oecd.org/daf/competition/evaluationofcompetitioninterventions.htm>

Affected undertakings	Estimated loss (2011)	Estimated loss (2012)	Total loss
“Floarea Soarelui” SA	70.903,85	0	70.903,78
“Elevator Kelley Grains” SA	14.783,77	0	14.783,77
Danube Logistics ICS SRL	2.154,32	47.163,56	49.317,88
Trans Oil FFA LTD	0	8.379,4	8.379,4
Lafarge Ciment (Moldova) SA	0	221.794,84	221.794,84
Maib- Leasing SA	0	4.844,3945	4.844,39
Total	87.841,94	282.182,19	370.024,13

Table nr. 2

Estimated losses by customers in €

Thus, the direct customer harm for 2011 amounted to 87,841.94 EUR and for the year 2012 to 282,182.19 EUR.

As for the public resource efficiency indicator, it should be mentioned that for the examination of this case, resources amounting to approximately 1,000 EUR were used (out of which 2/3 was spent on salaries and 1/3 on administrative expenses). Thus, comparing the value of harm to customers that was avoided as a result of the abuse being stopped, to the amount of resources used for the given case, an efficiency ratio of 370 EUR (stopped harm) to 1 EUR (used resources) was achieved.

In addition, S.E. "Railways of Moldova" had to pay a fine of 85,217 EUR, which represented app. 10% of the income derived from the infringement of the competition law (991,682.58 EUR).

At the same time, it is worth mentioning that for competition advocacy purposes, the case was extensively promoted through the website of the Competition Council and the

local media (11 media appearances (TV and print media))

Another noteworthy effect as a result of the efficient co-operation in this case between the Competition Council and the Ministry of Transport and Roads Infrastructure, was that first steps were taken, through adopting the Transport and Logistics Strategy for the years 2013-2022, which aims at: *providing quality services for rail passengers at an acceptable cost to society and providing support for the internal and international trade operations at medium distance freight transportation, towards implementing pro-competition reforms on market liberalisation through:*

- ✓ the creation of the normative and legislative framework for restructuring S.E. “Railways of Moldova” and the gradual liberalisation of services;
- ✓ the separation, within S.E. “Railways of Moldova”, of three commercial units (passenger transportation, freight transportation and rail infrastructure).

Thus, in conclusion, the measures taken by the Competition Council have been an impetus for further action by the Ministry of Transport and Road Infrastructure, which will ultimately contribute to enhancing economic efficiency through the liberalisation and de-monopolisation of the market on which S.E. “Railways of Moldova” operates.

CONTACT INFORMATION

OECD-GVH Regional Centre for Competition in Hungary (Budapest)

Gazdasági Versenyhivatal (GVH)

Alkotmány u. 5.

H-1054 Budapest

Hungary

Sabine Zigelski, Senior Competition Expert, OECD

sabine.zigelski@oecd.org

Andrea Dalmay, Senior Consultant, GVH

dalmay.andrea@gvh.hu