

OECD-GVH RCC Newsletter

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Foreword

Dear Readers,

In this edition of the Newsletter we try to raise your interest for a wider range of topics. It quite impressively shows many of the areas competition authorities are covering these days.

What I would recommend as priority reading, however, is our new seminar programme for 2016. The RCC team is looking forward to many interesting events next year. A new arrival on our agenda is a training session that is dedicated to young authority staff in March. This directly reflects one of the suggestions that were made during our meeting with the heads of authorities. Other seminars will be more advanced, like the seminar on information exchange or the sector related event on competition rules and the financial sector. Please make sure that you save the date for the events that are of interest to you. Invitations will be sent out in due course to each of the beneficiary authorities.

One of our continued themes in the newsletter is to provide you with suggestions on how to explain why competition authorities play an important role and also how to evaluate your authorities' work. Two articles by the OECD should provide you with inspiration. Another big topic that may be of interest for the RCC beneficiaries is international co-operation. Finland provides us with information on the model of the Nordic Competition Authorities and Bulgaria introduces the regional initiative "Sofia Competition Forum", of which many of you are members.

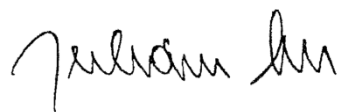
Our other articles cover a broad range of topics: Moldova reports on the introduction of the state aid register. Hungary had an amendment of its competition law and introduced special rules for the fining of small and medium sized companies. Russia has also seen legislative change. FAS Russia was given the authority to perform tariff regulating functions, while at the same time actively pursuing an approach for opening as many markets as possible to competition. Hungary describes its experience with a parallel network of contracts in the beer sector, a phenomenon that might be encountered in many other countries as well.

You will also find summaries of the OECD Competition Committee meetings and the Global Forum on Competition in October 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

RCC events between July – December 2015

22 – 24 September

Outside Seminar in Georgia – Evidence in Cartel Cases

The availability and quality of evidence to be used in cartel cases is decisive for the successful initiation and completion of a cartel investigation. In this seminar we had a closer look at how direct and indirect evidence to be used in cartel cases and at ways of obtaining it. Topics that were discussed were leniency systems, screening instruments, dawn raids and interviews. The seminar provided insights into best practices of experienced OECD countries with the use of these instruments (preparation, execution and assessment) and provided opportunities to apply the learnings in hypothetical case exercises.



20 – 22 October

Update in Competition Economics

In this seminar we presented economic methods that can be helpful for competition authorities in the assessment of mergers and of allegedly anticompetitive conduct. The seminar covered concepts like 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 made these economic methods accessible to the participants and also talked 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 was an important topic as well. Practical exercises and examples enabled the participants to apply the theory and to develop a better understanding.



19 – 21 November

Seminar in European Competition Law for National Judges

The advanced level seminar covered recent developments in EU competition law. The most important developments in the area of Arts. 101/102 TFEU were 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 gave the participants an opportunity to gain greater insights into the sector of telecommunication and electronic communication and to exchange their experiences. Topics that were discussed were the role of competition in the sector and the interplay between competition and regulation. We also discussed market definition and antitrust topics pertinent to the sector like bundling and margin squeeze. In addition mergers between Mobile Network Operators (MNOs) and the role played by Mobile Virtual Network Operators (MVNOs) were covered. Specialists from OECD competition authorities presented on these topics and discussed case studies from the participating countries.



OECD Competition Committee Meetings, 26 – 28 October 2015

Hearing on Disruptive Innovation in the Financial Sector¹

In this Hearing, Working Party No. 2 discussed innovation in the financial sector, a sector that has experienced many innovations in recent years. The hearing assessed the impact of selected major innovations on consumers, discussed how existing regulation should be changed in order to allow the introduction of new business models and technologies, and examined how different jurisdictions have addressed these topics in recent years. The discussion focused on peer-to-peer lending; crowd-funding equity; digital currencies; payment mechanisms (e.g. mobile phone, wallets) including payment from one individual to another (thus including peer-to-peer currency exchange).

Roundtable on Cartels involving Intermediate Goods²

The Roundtable in Working Party No. 3 discussed “Cartels Involving Intermediate Goods”, that is involving goods used as inputs in the production of manufactured goods for final consumers. These can be found in all countries and across a broad range of sectors. The Roundtable explored certain differences between cartels involving intermediate goods and cartels involving final consumer goods. The discussion focused in particular on the legal and jurisdictional requirements for possible enforcement action in different countries, the factors to consider in deciding whether to bring an enforcement action, and

¹ <http://www.oecd.org/daf/competition/competition-and-disruptive-innovation-financial-markets.htm>

² <http://www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm>

how any subsequent sanctions would be determined, including whether to consider sanctions imposed by other jurisdictions in determining the appropriate sanction.

Hearing on Across Platform Parity Agreements³

The Competition Committee held a Hearing on Across Platform Parity Agreements (APPAs). These are agreements entered into by suppliers and retailers that specify a relative relationship between prices of competing products, or between prices charged by competing retailers. These agreements are a special type of price agreements. These price agreements include a wide variety of contractual clauses whereby a seller’s price is related/tied to another price – including the price set by other sellers for the same or similar competing product(s); or the prices offered by a seller to different buyers in respect of the same product. APPAs are characterised by two elements: (i) a vertical element, because they involve firms at different levels in the value chain, and (ii) a horizontal element, because they link prices of competing goods and/or of competing retailers. The Hearing discussed a number of issues, including how to i) identify the key competition concerns that these agreements can raise, as well as the benefits these agreements may bring to consumers; (ii) understand to what extent these concerns actually materialise, and these benefits effectively accrue to consumers; as well as to (iii) ascertain how these anti- and pro-competitive effects can vary depending on the specificities of the agreements.

³ <http://www.oecd.org/daf/competition/competition-on-cross-platform-parity.htm>

OECD Global Forum on Competition, 29 – 30 October 2015

Does Competition Kill or Create Jobs? A discussion on the links and drivers between competition and employment⁴

In this Session of the Global Forum on Competition pro-competitive policies that may support the creation of jobs were discussed, as well as whether competition may destroy jobs. In many economies, emerging as well as developed, it is often the case that opening economic sectors hitherto protected from competition is perceived as threatening existing jobs. In times of economic downturn, a typical policy response may be retrenchment and the erection of regulatory or political barriers to competition in an effort to preserve jobs. This may be the case in merger reviews, where employment-preservation remedies may be imposed by the competition regulator. However, in the long term such barriers may prevent the creation of new jobs. This Roundtable explored the nature of this relationship.

Peer review of Kazakhstan's Competition Law and Policy⁵

The GFC organised a peer review of the status of competition law and policy in Kazakhstan and discussed recommendations on how to improve the competition enforcement practice as well as the structure and effectiveness of the competition institutions in the country.

⁴<http://www.oecd.org/competition/globalforum/links-drivers-competition-employment.htm>

⁵<http://www.oecd.org/daf/competition/countryreviewofcompetitionpolicyframeworks.htm>, to be published shortly

Roundtable Discussion on Disruptive Innovations and Competition Law Enforcement⁶

The term 'disruptive innovation' is taken from the business literature referring to situations in which a new competitor creates radical change within an existing industry by launching a new product or service, often with some distinctly novel features or an entirely different business model. This session considered questions that disruptive innovations raise for competition law enforcement, for instance when considering mergers between disruptive innovators and incumbents, or exclusionary conduct by incumbents against innovators. The focus was mainly on issues that competition law enforcers face when engaged in merger control and also explored issues related to exclusionary conduct.

Serial offenders: Why some industries seem prone to endemic collusion⁷

This was a full-day roundtable session that examined some sectors where endemic collusion is found and the extent to which recidivism varies across sectors. The sectors discussed by participants included: chemicals; construction services, including public tenders; cement and concrete; and food products. Economic theory has developed well-established guidelines on the factors that are considered conducive to collusion and could therefore help explain endemic

⁶<http://www.oecd.org/competition/globalforum/disruptive-innovations-competition-law-enforcement.htm>

⁷<http://www.oecd.org/competition/globalforum/competition-industries-endemic-collusion.htm>

collusion. These factors include market concentration, high entry barriers, a high ratio of fixed costs to variable costs, market transparency and frequent interaction among competitors that facilitates information sharing.

Repeated collusion by the same companies could also have other explanations, such as the interplay between firm-specific factors and sector-specific factors. For instance there could be effects that build upon each other: once cartels do form (perhaps because of sectoral characteristics), collusion becomes more accepted in the sector, so that cartels become more likely to form again, even after antitrust action.

New OECD Work Product – Toolkit Vol. 3⁸

The OECD Competition Assessment Toolkit has been introduced in previous Newsletters.

Toolkit Volume 1, the Competition Assessment Principles, gives examples of the benefits of competition, provides an introduction to the Competition Checklist and details ways how governments can assess the competitive effects of their policies. It is of a rather general nature and explains the need for competition assessment to policy makers and non-competition experts. It can provide competition authorities advocating their efforts in competition assessment with explanatory materials and a narrative. This volume is supplemented by a companion volume 2, Competition Assessment Guidance, which provides detailed technical guidance on key issues to consider when performing competition assessment, as well as providing several sample competition assessments. It will help regulators to incorporate

competition assessment and in spotting potential barriers to competition when drafting or revising laws. Both volumes will be released in an updated version later this year. They are both available in Russian and in many other languages.

The new Toolkit Volume 3, the Operational Manual for Competition Assessment, contains very practical guidance and a step-by-step guide for performing competition assessment. For step 1, guidance on how to select sectors for examination, map legislation and identify key policies is given. Step 2 describes the screening process in more detail. In step 3 the identified policies in need of closer examination have to be fully understood, including the market conditions and the regulatory environment and changes of the market conditions over time. Different options for developing alternative options, like international comparisons or better use of economic incentives are described. This will enable step 4, selecting the best option. Here various qualitative and quantitative methods are introduced, including tables with value estimates for mean price impacts for moving towards a more pro-competitive regulation. This leads to step 5, the recommendation. The options have to be ranked and recommendations have to be presented to policy makers and in the end an implementation process should follow. An evaluation of the policy change will help to further improve the selection and decision making process, step 6. All along, volume 3 provides numerous examples for the practical implementation process. In short, volume 3 summarises all the learning on processes of the already conducted OECD projects and of many other projects and can thus be extremely helpful for anyone conducting similar analyses.

It is currently only available in English, more translations are to follow.

⁸ All three volumes can be found here: <http://www.oecd.org/daf/competition/assessment-toolkit.htm>

RCC Programme 2016

8 – 11 March

Introductory Level Seminar - Basic Concepts and Procedures in Competition Law for Young Authority Staff

This beginner level seminar will give young authority staff the chance to get more familiar with basic competition law concepts. We will highlight cartels, mergers and abuse of dominance and will address basic legal and economic theories as well as procedural requirements and the relevant case law. The international component of competition law enforcement will also be presented. The participants will have a chance to apply and deepen their knowledge in practical exercises and to become more familiar with new areas of competition law. Experienced practitioners from OECD countries will share their knowledge and engage in a lively exchange with the participants.

14 – 15 April

GVH Staff Training

Day 1 - Review 2015 and Selected Competition Problems

After a review of the developments in EU competition law in 2015 we will have a closer look at selected competition law topics. Experienced practitioners from competition authorities and from private practice will discuss the topics with the GVH staff.

Day 2 – Trainings for Special Groups of Staff

In separate sessions we will provide dedicated trainings and lectures for the merger section, the antitrust section, the legal section, the consumer protection section and the Competition Council of the GVH.

18 – 20 May

Advanced Level Seminar – Information Exchange: Efficiency Enhancing or Cartel in Disguise?

This seminar will highlight different forms of information exchange: Formal and informal exchanges, direct and indirect exchanges and the unilateral disclosure of information and signalling. Information exchanges can be observed in horizontal and vertical relationships and in different organisational settings. We will investigate which forms of information exchange warrant closer scrutiny by competition authorities. Experts from OECD member countries will present cases and engage in hypothetical exercises with the participants. The recent EU case law will be presented and discussed.

7 – 9 June

RCC – FAS Seminar in Russia – Fighting Bid Rigging and Corruption

Public procurement accounts on average for 13 % of GDP in OECD countries. It is particularly vulnerable to fraud and corruption. Fighting and preventing bidder's cartels and corruption can generate huge welfare gains to societies. This seminar will introduce OECD instruments such as the Guidelines for Fighting Bid-rigging in Public Procurement and the Recommendation on Public Procurement. Competition authorities are well placed to play an important role in fighting bid rigging and corruption – by making extensive advocacy efforts and taking vigorous enforcement action, in co-operation with other relevant state actors. Together with international experts in this domain and with experts from FAS Russia we will exchange experiences and

foster a better understanding of mechanisms and symptoms of bid rigging and corruption and the instruments for fighting them.

27 – 29 September

Outside Seminar in Serbia – Competition Advocacy

Competition advocacy is a topic that can be addressed from many different angles and can address many different stakeholders. We will discuss and exchange experiences about advocacy to governments and policy makers, the legal community, small and large undertakings and to a wider public. This will include work with the media, competition assessment of laws and regulations, evaluation and promotion of a competition authority's activities, and ideas on how to establish and promote a competition culture. A part of this programme will more closely investigate the use of market studies and sector enquiries. Experts from OECD countries will present their experience and we will seek a broad exchange among all participating jurisdictions. This seminar will address senior authority staff, council members and/or press and media relations officers.

6 – 8 December

Sector Event: Competition Rules and the Financial Sector

This seminar will cover competition topics related to the financial sector – banking and insurance. We will discuss merger control, cartels and abuse of dominance as well as the interplay with sector related regulation. Experienced practitioners and specialists from OECD countries will present on the various topics and engage and discuss with the participants.

Nordic Competition Authorities and co-operation



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Nordic Competition Authorities (NCAs) have for years engaged in close co-operation. Participating countries and regions include Sweden, Finland, Denmark, Norway, the Faroe Islands, Greenland and Iceland. There are good reasons for co-operation. Many undertakings consider the Nordic countries as a single market, which is understandable, since the market conditions which exist across the Nordics are similar.



The NCAs have an enhanced network of co-operation. It is informal with the purpose of exchanging experiences with legislation, including discussion of cases and issues of mutual interest. Collaborating and learning from each other's experiences are important to prepare and equip the NCAs with the right

policy tools and powers to be as effective as possible.

The Director-Generals of the NCAs meet annually and there is also a separate annual meeting, which gathers civil servants from the NCAs. Moreover, there are permanent working groups for lawyers and economists and sector specific *ad hoc* working groups. Annual meetings and working groups have contributed to establishing informal and personal contacts between the employees of the competition authorities. In addition, Sweden, Denmark, Norway and Iceland have a formal co-operation agreement regarding the exchange of confidential information in connection, for example, with cartel investigations and mergers.

In 2000 the Nordic agencies established a model for co-operation between their cartel units, where the participating agencies co-operate on cases through designated contact persons in the respective cartel units. The cartel units meet once a year and also exchange information on an *ad hoc* basis.

Today the majority of international co-operation takes place through the ICN, OECD and ECN. However, in situations where two or more NCAs investigate the same merger, bilateral co-operation is needed. Recently there was bilateral co-operation in the merger of Elixia / SATS fitness center. Both Finland and Norway set conditions for the merger. In particular, the economists of the NCAs were in close co-operation. Moreover, in Uponor / KWH plastic pipe merger the competition authorities of Finland and Sweden had investigation co-operation.

The NCAs have published joint reports. In 2011, at a meeting between the NCAs the

Director-Generals decided to form a working group with the aim to publish a report on how effective competition policy and effective competition authorities can contribute to address future challenges to economic growth and welfare in the Nordic countries. As a result, the Competition Policy towards 2020 report⁹ was published in 2013. The report identified a number of key areas which are central in this context. Its birth is a good example of the flexible co-operation that exists between the NCAs.

In addition, the NCAs have published joint reports on Green Growth, Financial Crises, Pharmacy and Medicines, Electricity, Food Markets, Telecompetition and Airlines. These reports are the results of *ad hoc* working groups that were founded to analyse certain sectors in the Nordic countries (reports can be found here: <http://www.kkv.fi/ratkaisut-ja-julkaisut/julkaisut/arkisto/pohjoismaiset-yhteisraportit-2002-2010/>). The next report deals with waste and was published in November 2015.

In conclusion, the NCAs have greatly benefited from regional co-operation. The cooperation of NCAs provides tools to tackle cross-border competition restraints. Moreover, it is a fruitful forum where the NCAs can discuss options on how to face new challenges in the increasingly complex world.

⁹ http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/pm-yhteisraportit/nordic-report_a-vision-for-competition.pdf

The Sofia Competition Forum – a response to the need for closer co-operation between competition authorities in the Balkan region



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There are several historical, social, economic and cultural reasons that make the Balkan region vital for Europe. The Balkans are located in South-Eastern Europe and for this reason have been called the “crossroads” or the “bridge” between Europe and Asia. Located between the Black, Adriatic and Mediterranean Sea, in the new geopolitical reality the Balkans undoubtedly represent one of the most important regions in Europe.

Nowadays the Balkans are at the forefront of the agenda of the European Union. As the countries embark on their road to EU-membership, they have now realised that they have responsibilities towards each other and that they have many challenges in common, some of a cross-border nature.

During recent decades most of the Balkan countries have gone through a very intensive process of transition from planned to market economies. In this process they have been required to significantly reform their legislation and state administrations in order to adapt them to the new economic realities. The adoption of competition legislation and the establishment of independent competition authorities, able to effectively enforce the competition rules, have been

some of the most challenging issues that the Balkan countries have faced in recent years.

In these difficult times the Balkan competition authorities rely very much on the friendly co-operation and solidarity of their international partners. The European Union is expected to be the common future of all the countries from the Balkan region requiring them to apply the EU competition rules and principles. In this context the EU member states from the Balkan region play a significant role in providing their valuable experience to their neighbours.

Bulgaria is an EU member state located in the very heart of the Balkan region. Its capital Sofia represents the geographical centre of the Balkan Peninsula and has always been a historical crossroads for the most significant events in the region. The country joined the European Union in 2007 but the Bulgarian competition authority had been established 16 years earlier – in 1991. In its history the Bulgarian CPC has played a significant role in contributing to the well-functioning of the markets by effectively applying competition rules in compliance with the best European and international standards.

Since its establishment, the Bulgarian competition authority has always maintained very close relations with its neighbouring competition authorities by signing and implementing bilateral co-operation agreements with all of them. As a result of these agreements lots of joint activities have been conducted over the years, such as seminars, trainings, meetings, joint statements, etc. But at the same time an increasingly stronger resolve has emerged among the Balkan competition authorities for

further development of the regional ties with a view to increasing mutual trust, fostering practical co-operation and ultimately achieving long-lasting results in designing and enforcing an effective competition policy. This particular resolve to address issues of common relevance in a co-operative manner has been reflected by the joint initiative of the Bulgarian CPC and United Nations Conference of Trade and Development (UNCTAD) and has been named the “Sofia Competition Forum”.

The Sofia Competition Forum (SCF) was born out of the successful partnership between UNCTAD and the Bulgarian CPC based on the Memorandum of Understanding signed on 11 July 2012 in Geneva. Both institutions have joined their efforts in the establishment of an active informal platform for technical assistance, exchange of experience and consultations in the field of competition policy and enforcement in the Balkan region. The competition authorities of the Balkan region, namely Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Montenegro, the Former Yugoslav Republic of Macedonia and the Republic of Serbia – have been recognised as the main target group of the SCF, but the initiative is also open to other countries which would like to join the forum and share its objectives. Such was the case of Georgia which joined the SCF in 2014.

In fact, the SCF has been integrated into the UNCTAD outreach strategy that promotes regional dialogue and co-operation. Established in 1964, UNCTAD supports the development-friendly integration of developing countries into the world economy. The organisation provides competition authorities from economies in transition with a development-focused intergovernmental forum for addressing practical competition law and policy issues. UNCTAD is also actively engaged in technical co-operation with countries seeking capacity-building and

technical assistance in formulating and effectively enforcing their competition law. Therefore, having the UN as a founding partner within the SCF significantly enhances the credibility of the Forum and contributes to the design of development policies based on the needs and capacities of the individual member countries.

The SCF launch conference took place on 12 November 2012 in Sofia and welcomed participants from the beneficiary competition agencies, as well as representatives of EU and non-EU competition authorities, DG Competition, UNCTAD, OECD and many others. At the end of the conference, the competition authorities from the Balkan region signed a joint declaration – the Sofia Statement – expressing their willingness and resolve to continue their co-operation in the framework of this initiative with a view to realising its mission.

The mission of the SCF is to further facilitate the collaboration between Balkan competition authorities by means of conducting interactive seminars and workshops, publication of information and comparative studies, establishing joint working groups as well as maintaining an internet-based platform for distant consultations and webinars. Building on existing international fora, such as UNCTAD, ICN, OECD, and the SEEC (South-East European Cooperation Process), the SCF aims to establish a regional competition network of experts who will focus their dialogue on issues related to: improving the competition legislation; institutional design of competition authorities; efficient enforcement of competition law and policy; negotiation process for EU membership. The Forum is designed to serve not only as a traditional educational centre, where more advanced experts simply share their knowledge and experience with their younger counterparts, but to be more like a collaborative platform

whose members are able to work together on common projects. The friendly dialogue and the joint work products of the competition authorities participating in the SCF will contribute to the successful development of regional ties, which will ultimately facilitate the efficient competition enforcement to the benefit of all countries in the Balkan region.

The SCF meetings are convened twice a year and so far there have been six events organised within the SCF. The seventh meeting of the SCF was held on 12 November 2015 when the SCF marked 3 years since its establishment. The topics to be discussed in these meetings are very carefully chosen on the basis of preliminarily expressed preferences of the beneficiary authorities reflecting their priorities and the most important challenges in their practices. In the form of both expert presentations in a plenary session and interactive discussions in breakout sessions the participants in the SCF seminars have the possibility to share views, gain knowledge from more advanced experts, learn from each other's experiences and solve hypothetical competition cases.

In addition to the traditional seminars, however, the members of the SCF work on joint projects which facilitate an understanding of each other's legal systems and therefore enhance convergence and active co-operation among the agencies. The special project "Comparative overview of Balkan competition regimes", which was initiated at the third meeting of the SCF, provided an exhaustive comparative analysis of the legal and institutional frameworks of the competition jurisdictions in the Balkan region and served as a basis for well-informed discussions on topics of common concern. This project was highly successful and was followed by a second initiative which aimed to compare the legal frameworks and enforcement practices especially in the field of

on-the-spot inspections. The report on "Comparative overview of Balkan competition jurisdictions in the field of inspections on the spot" was jointly developed by all SCF beneficiaries and was endorsed by them at the sixth meeting of the Forum. These work products are published on the SCF web-site (<http://scf.cpc.bg/>), disseminated in the form of booklets, and are accessible to the general public together with all other written materials adopted under the auspices of the SCF, such as expert presentations, notices and guidelines in the field of competition policy.

Following its objectives specified in the Sofia statement, the SCF constantly tries to modernise itself and to introduce new forms of cooperation in compliance with the latest developments in the UNCTAD global strategy for international cooperation. Therefore, in addition to the meetings for competition agencies, during the fifth meeting the SCF held a joint workshop for competition and consumer authorities from the Balkan region where issues such as the interface between competition and consumer policies were discussed, as well as the Revision of the UN Guidelines for Consumer Protection. Besides, during the fourth meeting of the SCF a preliminary report on the Voluntary Peer Review of Albanian competition law and policy was presented by the Bulgarian CPC prior to being finally adopted at the UNCTAD conference in July 2015. Moreover, in the seventh meeting of the SCF in November 2015 the first edition of the SCF Annual Newsletter was presented as a new initiative of the Forum. This Newsletter is designed to contain up-to-date information on the latest developments and reforms of competition policy in the Balkan countries in order to represent a reliable source of actual data regarding all the changes that the authorities experience and the challenges they face.

All the activities and work products of the SCF so far have revealed a great need for such a regional co-operation mechanism between Balkan competition authorities. For the relatively short period of time of its existence, the SCF has become a really effective and useful platform for interaction between competition experts providing significant value to all SCF beneficiaries given their capacity building needs and the challenges they face in the process of implementation of

competition policy in the Balkan region. Due to its unique nature, the SCF's future existence and further advancement is very much dependent on the willingness and abilities of its beneficiaries to continue collaborating with each other and improving and converging their competition legislation and enforcement practices in accordance with the values and objectives outlined in the Sofia Statement.

The essential role of competition authorities in the economic recovery*



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The financial crisis presented governments around the globe with new and urgent challenges, requiring rapid policy responses and levels of state intervention in the economy that had been thought to belong to the past. Although in the depths of the financial crisis the competition law system was challenged in many countries, it emerged remarkably unscathed. Competition authorities held the line on applying a consistent approach to mergers while demonstrating some flexibility in requests for fine reductions. Some banking mergers were allowed that would otherwise have been judged anti-competitive, but not many. Allowing such mergers on non-competition grounds is controversial, but was undertaken as a well-articulated response to the specific conditions of the crisis, without substantially modifying the applicable competition law regime. Unprecedented state intervention and aid schemes were adopted, but competition authorities have in many cases played an active role in their development, monitoring, evaluation and wind-down. Considering that failure could have meant the suspension of competition laws, the take-over of merger approval by governments or the establishment of permanent precedents from crisis decisions, the resilience of competition authorities is notable to say the least.

Recovery

Nonetheless, the case for competition and for competition law had to be made more

vigorously in the wake of the financial crisis, especially in Europe. We at OECD have supported this exercise by conducting a review of the academic and other literature relating to competition's macro-economic effects as well as conducting research ourselves.

The evidence that competitive markets contribute to growth is strong. Micro-level evidence using rich data sets from several countries demonstrates that firms and industries subjected to competitive pressures perform better than those that are not¹⁰. Since productivity growth in industry is in the long run essentially equivalent to GDP growth, this micro-level data seems solidly to show that competition improves long-run growth rates (and there is some macro-level empirical evidence that seems to confirm this too¹¹).

The role of competition in **expansion out of recession** has also been of great relevance for policy-makers during and after the crisis. There is a difference between long-run growth engendered by productivity improvements (which largely increases supply) and economic expansion out of recession. The latter may be more related to demand and employment. It is quite possible for policies to have long-run growth benefits but short-run costs. Could competition law enforcement be such a policy? If so, there

* Based on a paper submitted to the Hungarian Competition Authority.

¹⁰ OECD *Factsheet on how competition policy affects macro-economic outcomes*.
<http://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf>

¹¹ See, for instance, Gutmann, J., & Voigt, S. (2014). *Lending a Hand to the Invisible Hand? Assessing the Effects of Newly Enacted Competition Laws*.
<http://ssrn.com/abstract=2392780>

might be a case for suspending or ameliorating it in an economic downturn.

The experience of the 1930s at the very least suggests that softening competition policy – and in particular tolerating cartels – is unlikely to promote recovery. This is hardly surprising. Cartels or monopolies raise prices by restricting output. For a given firm, the ability to maintain prices and profits in this way even in a recession might appear to provide it with the means to maintain employment. However, this is a very narrow perspective, because such profits come at the expense of consumers and impose losses relating to inefficiency on the economy as a whole.

Few countries actively enforced competition laws as early as the 1930s, but one of the few that did – the United States – took a policy decision to roll back its antitrust enforcement in the depths of the depression. The National Industrial Recovery Act (NIRA) of 1933 legalised cartels in participating sectors, as part of a deal in which price-fixing was exchanged for agreements to maintain wages and employment. Industries agreed price and wage codes, enforceable by law (most famously, dry cleaner Jacob Maged was imprisoned for charging 35 cents, rather than the industry standard 40 cents, to press a suit).

The GDP effect seems to have been a reduction in output of the order of 10%, although the relative contribution of product price-fixing and union wage bargaining cannot be distinguished.

One controversial but influential study found that this measure delayed recovery from the depression by seven years.¹² This remarkably

¹² Cole, H.L. & Ohanian, L.E. (2004). New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis. *Journal of Political Economic*, 112, 779-816.

large effect was widely quoted by competition authorities during the financial crisis, although anyone doing so needs to be aware that some very prominent macroeconomists were highly critical of the study¹³. The same authors also examined the effects of other countries' policies¹⁴, some of which - such as fascist Italy - sought actively to promote cartels. They estimate output in the mid-1930s was 15-25% lower as a result. Further, the authors conclude that a large part of the differences in duration and severity of the depression between Western countries was due to changes in competition (or anti-competition!) policies.

At a time when economic policy is often seen to be disconnected from ordinary people's concerns, competition authorities can tell a better story about the effects of their work and why they do it. In Europe at least, this remains a pressing concern for competition authorities.

A more competitive economy?

Competition law enforcement is only part of the mission, for most competition authorities. Most competition authorities have some role in the assessment and challenge of other government policies that might have anti-competitive effects.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=562405

¹³ In particular Krugman in the NY Times in 2011 described the Cole and Ohanian's analysis as exhibiting "incredibly bad faith". However, this criticism relates more to Cole and Ohanian's claim that demand expansion did little for the recovery (Krugman was writing at the time of a large US stimulus package), rather than the finding relevant to competition policy: that the NIRA worsened the depression.

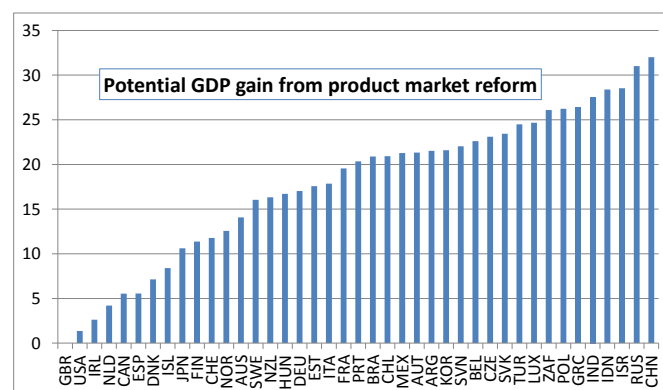
¹⁴ Cole, H. L., and L. E. Ohanian (2013). The Impact of Cartelization, Money, and Productivity Shocks on the International Great Depression. National Bureau of Economic Research. Working Paper, No. w18823. <http://www.nber.org/papers/w18823>

The reforms to financial regulation following the financial crisis illustrate some of the tensions between competition as an objective and wider policy considerations. Securities regulations intended to protect the stability of the financial system may in fact narrow the capacity for competitors to innovate or differentiate their offerings, putting a damper on competition. Measures undertaken to capitalize financial institutions under stress during the financial crisis also lead to significant increases in market concentration. In addition, financial institutions that received government support, or simply the classification as a systemically important institution and therefore the implicit guarantee of the government, enjoy a competitive advantage with practical implications (including lower interest rates) over other institutions. However, the policy issues financial sector regulators face may not necessarily be solved by competition either. Credit rating agencies, for example, form a natural oligopoly and issues related to their quality and veracity, with attendant implications for the stability of the financial system, cannot be resolved (and indeed may be worsened) by promoting competition.¹⁵

Reforming anti-competitive regulations can be an important component of structural reforms to increase growth. Analysis by the OECD using its Product Market Regulation Index from 2011 suggests that product market reform has very significant potential to raise GDP in most economies: by as much as 30% in some large emerging economies.

¹⁵ For further discussion, see OECD (2011), Policy Roundtables: Crisis Cartels, Competition Committee.
<http://www.oecd.org/competition/cartels/48948847.pdf>

Figure 1: Potential GDP gains by 2060 from product market reform (per cent)



Source: OECD Product Market Regulation Database.

<https://stats.oecd.org/index.aspx?DataSetCode=PMR#>

Greece provides the most telling example. No country has suffered more from the crisis. Furthermore, Greece has been among the most heavily-regulated economies in the OECD membership.¹⁶ These facts are surely related: the uncompetitive structure of the Greek economy is part of the reason for its economic crisis. The Hellenic Competition Commission (HCC) has received strengthened powers and has contributed to the reform of anti-competitive regulations. Much of this work has been carried out by the HCC alone, but we at OECD are proud to have been able to work with the HCC and the Government of Greece to assist in this area.

It is difficult to assess the likely effect of liberalising any specific sector on growth. However, the immediate benefits to consumers can be substantial, as the Government of Greece discovered when it asked the OECD to identify, and propose alternatives to, unnecessary regulatory restrictions on competition in four sectors

¹⁶ On the OECD's Product Market Regulation Index (a scale of 0 to 6 from least to most restrictive), Greece had an indicator of 1.74 in 2013 compared to the OECD average of 1.47.

(retail, food processing, tourism and building materials) in 2013.

Figure 2: Summary of OECD Recommendations from the competition assessment review of four sectors in Greece, 2013

Issue	Annual Benefit	Number of provisions affected	Value, €m
“Fresh” milk	€33m (consumer benefit/year)	2	33
Levy on flour	€8m-11m (value of levy/year)	1	8
Sunday trading	€2.5bn (annual expenditure), plus 30,000 new jobs	3	2 500
Sales and discounts	€740m (annual turnover)	9	740
Over the Counter pharmaceuticals	€102m (consumer benefit/year)	23	102
Marinas	€2.3m (annual turnover)	10	2
Cruise business	€65m (annual turnover)	4	65
Advertising	€1.8b (consumer benefit/year)	14	1 800
<i>Everything else</i>	???	263	???

Source: *OECD Competition Assessment Reviews: Greece*. <http://dx.doi.org/10.1787/9789264206090-en>

In response, the Government of Greece passed legislation implementing the great majority of OECD Recommendations, and has subsequently adopted (or committed to adopting) the remainder. Of course, liberalising markets does not always have an immediate positive effect on employment and output. Often, liberalisation can result in job losses in specific firms, and even overall in specific sectors, before the long run gains from increased economic efficiency appear. Competition advocates have not always been very effective in tackling this in the public policy debate and it remains a crucial gap in the empirical literature.

Building public support for competition institutions

In addition, increased budgetary pressures have forced competition authorities to ‘raise their game’ somewhat (or at least to better explain their work), a change that is likely to

be permanent, which can only be a good thing.

In many countries, competition authorities were protected to some extent from the general squeeze on public expenditure that the financial crisis engendered. As shown below, the total number of competition-focused staff at the competition authorities of 29 countries for which data exists remained relatively constant throughout the financial crisis, growing slightly between 2006 and 2014. Although there have been reductions at some agencies (competition authorities in Ireland¹⁷, Estonia¹⁸ and Denmark¹⁹ have all

¹⁷ See, for instance, Gorecki, P. Policy Paper: Competition Policy in Ireland’s Recession. The Economic and Social Review, 43, 4, Winter 2012, 597-629.
http://www.esr.ie/vol%2043_4/x2%20Gorecki%20PP.pdf

experienced budget cuts during or after the financial crisis), this undoubtedly reflects the success of competition experts in arguing for – and demonstrating – the importance of competition policy, both generally and specifically in recovery from the crisis. For instance, the Norwegian Competition Authority's budget was increased in 2009 to “intensify the fight against cartels”, which enhanced investigating capacity, market surveillance and information campaigns.²⁰

The leadership of many – perhaps all - competition authorities across the OECD countries therefore experienced considerable pressure to demonstrate value for money, as a result of the crisis and the budgetary restraint in the years that followed. All will have responded to this pressure in part by cutting unnecessary costs, in ways that varied from jurisdiction to jurisdiction. Several competition authorities underwent mergers with other authorities during this period, partly as a result of pressures for increased efficiency²¹. Authorities also responded on the output side of the value for money equation: by seeking to report and measure better the value of their work, to help them focus resources where they can do the most good.

¹⁸ Teffer, P. (2014, October 13). EU worried by budget cuts on energy watchdogs. EU Observer. <https://euobserver.com/news/126035>

¹⁹ OECD, Value for Money in Government: Denmark 2011

<http://dx.doi.org/10.1787/9789264130746-en>

²⁰ OECD Policy Roundtables: Crisis Cartels, Competition Committee.

<http://www.oecd.org/competition/cartels/48948847.pdf>, pp. 176-177.

²¹ OECD Annex to the Summary Record of the 122nd Meeting of the Competition Committee held on 17-18 December 2014.

[http://www.oecd.org/officialdocuments/publicdisplaysdocumentpdf/?cote=DAF/COMP/M\(2014\)3/ANN4/FINAL&docLanguage=en](http://www.oecd.org/officialdocuments/publicdisplaysdocumentpdf/?cote=DAF/COMP/M(2014)3/ANN4/FINAL&docLanguage=en) discusses some of these recent institutional redesigns.

Figure 3: Competition-Focused Staff at Selected Global Competition Authorities²²

Country	Total Number of Competition-Focused Staff		
	2006	2011	2014
Brazil*	399	257	149
European Commission	593	764	757
France*	511	154	177
Greece	46	45	71
Ireland	28	39	20
Netherlands*	295	214	181
South Africa	80	163	131
US (DOJ)	769	774	641
US (FTC)	367	354	538
UK*	419	318	246
Total (30 Countries)	6,461	6,405	6,570

* Authority which has undergone an institutional redesign or merger during the relevant period

Several competition authorities publish annual assessments of the overall ‘impact’ of their decisions²³. Inevitably, such estimates must be made on the basis of some rather broad-brush assumptions. For mergers, some simple modelling of the effects of blocked or remedied mergers could yield percentage price increases that the decision has saved consumers, applied across the turnover in the

²² Based on data from the Global Competition Review’s Rating Enforcement Analysis for 2007, 2012 and 2015, Table 2, accessible at: <http://globalcompetitionreview.com/rating-enforcement>.

²³ See the survey carried out by Professor Stephen Davies on behalf of OECD (2013a) [http://www.oecd.org/officialdocuments/publicdisplaysdocumentpdf/?cote=DAF/COMP/WP2\(2013\)1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaysdocumentpdf/?cote=DAF/COMP/WP2(2013)1&docLanguage=En)

affected markets. Such measures are obviously very crude, involving strong simplifying assumptions, none of which hold absolutely. Furthermore, the measures take no account of deterrence of anti-competitive activity, which is arguably the most important outcome of competition law enforcement.

The OECD's Competition Committee has agreed a Guide to assist competition authorities to conduct such assessments²⁴. It sets out key principles and a standardised methodology, including default numerical assumptions to be used when no case-specific data are available. There is no requirement on competition authorities to estimate impact at all, and those that choose to do so can choose to use other assumptions. However, we felt it might be useful particularly for authorities that want to start estimating impact to have an external reference standard to use.

Of course, quantifying benefits is not the only way in which competition authorities have had to do better, in the harsher post-crisis world. Like securities regulators, in the wake of the financial crisis competition authorities continue to grapple with the burden their supervision and enforcement activities place on market participants, as well as the need to maintain an atmosphere of credible deterrence. Unlike securities regulators, progress on furthering the effective **international coordination** of competition authorities has been slow, and this is something the OECD is working to address.²⁵

Conclusion

Competition authorities emerged from the financial crisis with their legal and policy frameworks intact, largely as a result of the sparing use of merger approval powers at the political level, the refusal to relax the application of competition principles in competition authority reviews and the protection of competition legislation from the introduction of standards of review unrelated to competition (such as systemic stability provisions). Authorities face no fewer challenges in the aftermath of the crisis, including advising governments on winding down crisis measures, the articulation of the benefits of competition as well as competition authority activity, international coordination and stakeholder management. These challenges must be tackled in order for countries to continue to unlock the economic benefits of competition, and to prepare competition authorities for any future crises that may test them as strenuously as the last one.

²⁴ <http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>

²⁵ See, for instance, Davies, J. (2014). Contribution on: International cooperation in competition law enforcement and development. UNCTAD, Ad Hoc Expert Meeting. http://unctad.org/meetings/en/Contribution/CCPB_AdHoc2014_Cont_OECDJD2_en.pdf

Experience is the teacher of all things

Improving enforcement decisions through ex-post evaluation



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*I shall the effect of this good lesson keep,
As watchman to my heart.*

*William Shakespeare, Hamlet (1600-02), Act I,
scene 3, line 45.*

“Experience is the teacher of all things”, Julius Caesar once said ²⁶. In the realm of competition enforcement, ex-post evaluation can be a powerful tool for grasping the teacher’s lessons.

An **ex-post evaluation** is an examination of a Competition Authority’s decision ²⁷ that satisfies 3 criteria: (i) it is performed to determine what has been the impact of the decision on the affected market, relative to alternative scenario(s); (ii) it is performed sometime after the decision; and (iii) it is based on the use of ex-post data. Ex-post data consist of the information that was not available to Competition Authorities at the moment when they took the decision, for example whether entry would occur or how prices would evolve.

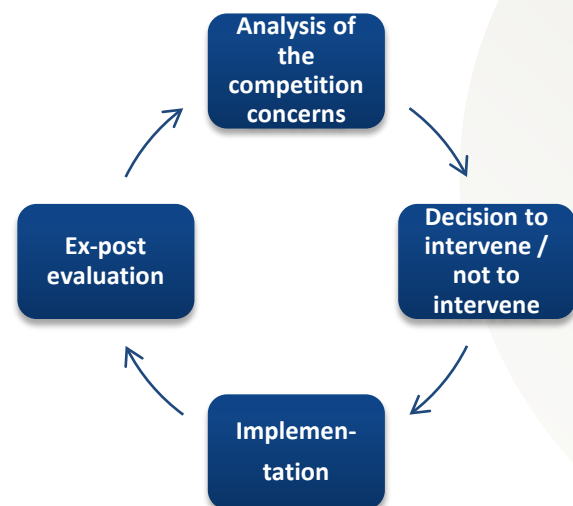
The number of ex-post evaluation studies has grown considerably in the last decade: more

²⁶ Julius Caesar, *Commentarii de Bello Civili* (Commentaries on the Civil War), 2.8

²⁷ Ex-post evaluations can be performed for antitrust decisions (mergers, agreements, abuses), for market studies or for other types of interventions. Anyway, this article focuses only on ex-post evaluations of antitrust decisions.

authorities are undertaking them or are planning to do so, and academics are getting more and more involved in this area of work. But why is this the case? What **benefits** can a Competition Authority obtain from ex-post evaluations?

First, many Competition Authorities perform ex-post evaluations to improve **decision making** to better design future interventions. To reach this objective, ex-post evaluations should be incorporated in the decision-making process, as shown in Figure 1.



Learning from past experiences is necessary because enforcement decisions are taken in conditions of uncertainty. This calls for their evaluation to determine which forecasts, assumptions and hypotheses proved to be true and which did not. Ex-post evaluations can therefore try to determine if the decision was the appropriate one and why, but could also have a narrower scope and focus on some specific elements of the decision. They can for example just test key assumptions and expectations, or the effectiveness of remedies. They can aim at improving analytical tools and economic theories. Often,

they are used to better understand competition in specific sectors.

The benefits from ex-post evaluation are maximized when the studies are performed **regularly**. Indeed, a few studies can provide valuable information, but only regular evaluations can identify patterns over time or recurrences in specific sectors.

A second but equally important goal is **advocacy**. Measuring the impact of their activities on markets and consumers allows Competition Authorities (CAs) to justify their work and budget to stakeholders and governments. This holds as well for policy areas other than competition enforcement: this is why in OECD countries more and more institutions across different policy fields are starting to perform ex-post evaluation.

The **hospital merger retrospective**²⁸ performed by the US FTC constitutes a powerful example of how ex-post evaluations can simultaneously serve advocacy purposes, improve analytical tools and clarify how competition works in a specific sector. In the late 1990s, the US DoJ and FTC lost seven consecutive hospital merger cases in court. That is why, at the beginning of the 2000s, the FTC decided to conduct retrospective analyses of four consummated hospital mergers. The findings provided important methodological insights:

- the method used at the time to establish market definition – the so-called Elzinga-Hogarty method – resulted in geographical markets that were too large
- not-for-profit hospitals actually exercise market power instead of

acting in the community interest, as was previously believed

- the bargaining process between hospitals and insurers needs to be appropriately modelled and taken into account

Thanks to these lessons, the FTC was able to reverse the trend and successfully challenge the Evanston/Northwestern/Highland Park merger in court. The FTC prospective merger program in the hospital sector is now very active: six mergers have been blocked or abandoned since 2008.

In practice, the ex-post evaluation process consists of **nine steps**:

1. Selecting the decision to assess
2. Choosing the evaluation team
3. Identifying the counterfactual, that is, the hypothetical scenario assuming that a different decision had been taken – for example, merger clearance could be the counterfactual of a blocked merger
4. Selecting the methodology to use
5. Determining the variables to study (price, quality, variety)
6. Collecting the necessary data and information
7. Performing the analysis
8. Verifying the robustness of the results
9. Drawing conclusions and derive lessons

Each of these steps requires careful **consideration** to assure that the assessment reaches robust conclusions. For example, should the evaluation team consist of internal staff or external consultants? Should the ex-post evaluation only consider the effect of the decision on prices or also on other factors such as quality and variety of the product mix?

²⁸ The studies are published in a special volume of the *International Journal of the Economics of Business* (Volume 18, Issue 1, 2011) <http://www.tandfonline.com/toc/cijb20/18/1>

What type of data is needed and where can the information be found?

It is precisely in order to answer these questions and to provide guidance to Competition Authorities on the correct design and performance of ex-post evaluations that the **OECD** has decided to publish a *Reference Guide on the Ex-Post Evaluation of Competition Agencies' Enforcement Decisions* (forthcoming). The **Guide** contains an in-depth overview of all the issues linked to ex-post assessments and contains numerous examples and references. It constitutes an excellent resource both for CAs who are planning to start performing ex-post evaluations and for those who already do it but want to improve the quality of their assessment.

If what we have seen above is true and ex-post evaluations are truly useful, then why are many agencies still not performing them? An often cited reason is the fear that **excessive resources** are required, in terms of time, money and staff. This is not necessarily true. Of course, ex-post evaluation is not a trivial exercise. Yet, valuable results can also be obtained from simplified approaches, for example using qualitative methodologies.

An excellent example is the study carried out by the New Zealand Commerce Commission, *Targeted Ex Post Evaluations in a Data Poor World*²⁹. The study was aimed at testing the validity of **specific expectations** on anticipated market developments. Therefore, it targeted mergers that were cleared because the competition concerns were expected to be resolved by factors such as low barriers to entry, divestitures or buyers' countervailing power. Gathering data was neither too

complex nor expensive, because the assessment was based on publicly available information and on interviews with market participants. The Commission then tested whether the hypotheses that had led to the merger clearances had proven correct. Results showed, for example, the importance of taking into account exchange rates when predicting import competition and the role of sunk costs in entry decisions. The New Zealand approach thus proves that informative ex-post evaluations can be undertaken despite constraints in terms of time, data availability and resources.

Another recurrent concern among Competition Agencies is: What if the ex-post evaluation reaches negative conclusions and points out **mistakes**? Should the study be published or not? Will the agency's reputation be damaged? Could it lead to a lawsuit?

Some **reassuring considerations** are due. First, an unexpected evolution of the market does not necessarily imply that the authority made a mistake. Unpredictable circumstances may have occurred, or incorrect information could have been provided. Even when the assessment points out a mistake in the analysis, the experience of the most active CAs (the UK CMA, the Dutch NMA, the US FTC and DoJ) is encouraging: making the assessment public did not cause them reputational damages or subsequent lawsuits.

Yet, risks cannot be completely ruled out: each agency must weigh **pros and cons**. Publishing every ex-post evaluation contributes to the transparency and accountability of the authority. At the same time, this could cause a bias in the choice of the decisions to assess: authorities may have an incentive to only evaluate cases that are likely to reach positive conclusions. One approach may be to decide on the publication of results on a case-by-case basis.

²⁹ Csorgo, L. & Chitale, H. (2015). *Targeted Ex Post Evaluations in a Data Poor World*. New Zealand Commerce Commission.
<http://www.comcom.govt.nz/the-commission/media-centre/speeches/targeted-ex-post-evaluations-in-a-data-poor-world/>

In **conclusion**, Competition Authorities willing to improve their efficacy and to advocate the value of their work should consider ex-post evaluations as a valuable tool for this purpose. Great benefits come from such an exercise, and constraints in terms of time, data availability and resources can be overcome through the use of simplified approaches. The OECD *Reference Guide on the Ex-Post Evaluation of Competition Agencies' Enforcement Decisions* constitutes a helpful resource for competition agencies. The in-

depth overview and the numerous examples included in the Guide will provide authorities with guidance through the design and implementation of ex-post assessments, in order to help them make the most out of their past experience.

Find out more about the OECD's work on the evaluation of competition interventions at <http://www.oecd.org/daf/competition/evaluationofcompetitioninterventions.htm>

New instrument introduced into the Hungarian Competition Act: the warning*



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An amendment enacted in June 2015 to the Hungarian Competition Act introduced a fairly specific new rule on the fining opportunities of the Gazdasági Versenyhivatal towards competition law violations of SMEs.

According to one of the provisions of a new Act amending the fining policy of the Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority), the Competition Council – the decision-making body of the GVH – may issue a warning to SMEs instead of imposing a fine on them for their violations of the Hungarian Competition Act³⁰ (HCA), provided that it is the first infringement that has been committed by the SME in question.

The amendment also lists the particular situations which are exceptions, and in which the warning opportunity cannot be applied. These cases are as follows:

- where the SME has violated the competition law of the European Union and the GVH has proceeded in the case under EU law;

- if the SME has participated in a price fixing, market sharing cartel or in concerted practice affecting public procurement;
- the violation has been committed against a clearly identifiable group of persons who are particularly vulnerable because of their age or gullibility, or their mental or physical infirmity.

The basic aim of the introduction of this new tool is two-folded, on the one hand it is hoped that by fine-tuning the applicable procedural rules this will foster the efficient and effective competition law enforcement of the GVH, and on the other hand that it will stimulate SMEs to compliance. This latter endeavour is based on the recognition that state actions against businesses may be manifested also in education and under certain conditions it might be appropriate to use warnings instead on punishment at least in the case of a first violation – except for more serious violations.

The amendment was initiated by the GVH, since in its Annual Report prepared for the Parliament about its activities for the year 2014, the GVH made a legislative recommendation for the Parliament to contemplate the introduction of the possibility of foregoing or at least diminishing the fine for the first violation of SMEs. The reason of this initiation was that the GVH noticed that SMEs accounted for more than 70% of the defendants in competition proceedings. The GVH commissioned a survey in 2012 to map the level of competition culture at different types of undertakings. The survey run by TNS Hoffman showed that 26% of the SMEs had never even heard of competition law, 20% believed that market sharing agreements and

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³⁰Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices

bid rigging do not qualify as violations, 30% had never heard about the Act on 'Unfair Commercial Practices', while 30% thought that the UCP Act related to cultural events, etc. To remedy the situation, in December 2012 the GVH initiated a widely communicated civil company compliance programme and campaign explaining the scope of the competition rules especially as regards the prohibition of price fixing, bid rigging and market partitioning. This campaign was initiated to increase the level of competition awareness in the business community, more specifically the awareness of SMEs in Hungary. The GVH launched a website – www.megfeleles.hu – where information and professional materials are constantly being uploaded. To further increase the SMEs' awareness also in this form, the GVH made the legislative recommendation for the Parliament in its Annual Report concerning the warning opportunity, which in the end resulted in the enactment of the modification in June 2015.

In addition to these, the new amendment of the HCA is in harmony with the provision of Act XXXI of 2004 on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises which stipulates that “[t]he bodies carrying out the regulatory inspection of small and medium-sized enterprises shall forego the sanction for imposing a fine for the first offence - with the exception of tax and customs proceedings and the proceedings for the supervision of adult education institutions - and shall issue a warning instead ...”. In the field of competition law until this present amendment of the HCA this general provision has not been applicable.

As in one of his speeches recently³¹ Mr. András Tóth, Vice-President of the GVH and

Chairman of the Competition Council said, the “warning” as an instrument is an intermediate type of decision between commitment decisions and condemnations. According to him, the relationships of these three types of decisions may be characterised as follows:

GVH's decision	finding violation	imposition of fine
Commitment decision	No	No
Warning	Yes	No
Condemnation	Yes	Yes

Since the entry into force of the amendment no decision has been made on the basis of this warning opportunity. Nevertheless, the GVH expects a higher level of compliance with the competition rules by the SMEs active on the Hungarian markets.

³¹ Opening speech on the Seminar on “Topical Issues of European and Hungarian Competition Law”, organised jointly by the European

Competition Law Team of Baker & McKenzie and the Association of Corporate Counsel Europe

Foreclosure effects of a parallel network of contracts The case of the Hungarian beer market in the HoReCa sector



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The Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) investigated the contracting behaviour of four beer companies (Heineken, Borsodi, Dreher and Pécsi) with the so called HoReCa commercial units in Hungary from the year 2007. The investigation started in 2011, lasted four years and ended with commitments.

The main channels through which beers are usually sold to customers are on-trade and off-trade. "On-trade" refers to business with hotels, bars and restaurants (HoReCa), while "off-trade" refers to sales to food retailers such as supermarkets, etc. The investigation focused on the on-trade "exclusive beer supply agreements" (HoReCa-agreements) which tied all or a proportion of the beer purchased by a HoReCa unit to a single beer brewing company. By these agreements HoReCa undertakings obtained supplies of beer products from only one supplier in return for certain economic and financial benefits.

There is a safe harbor created by the Block Exemption Regulation³² which - according to the Vertical Guidelines³³ - states in paragraph (23) that for most vertical restraints, competition concerns can only arise if there is insufficient competition at one or more levels

³² Commission Regulation (EU) No 330/2010 of 20 April 2010

³³ Guidelines on Vertical Restraints, (2010/C 130/01)

of trade, that is, if there is some degree of market power at the level of the supplier or the buyer or at both levels. Provided that they do not contain hardcore restrictions of competition, which are restrictions of competition by object, the Block Exemption Regulation creates a presumption of legality for vertical agreements depending on the market shares of the supplier and the buyer: the supplier's and the buyer's market shares must each be 30% or less.

The HoReCa agreements of Heineken, Borsodi and Dreher were neither hardcore nor excluded because of restrictions as they are specified in Chapter III./4. and 5. of the Vertical Guidelines. The market shares of Heineken, Borsodi and Dreher on the relevant market of beers sold to HoReCa units in Hungary were close but under the 30% threshold in the years of 2007-2013, for each brewery, respectively. The market share of Pécsi was even less but the duration of some of its HoReCa agreements exceeded the 5-year limit specified in Chapter III.5. of the Vertical Guidelines; consequently, these contracts were excluded from block exemption.³⁴ This means that the HoReCa agreements of Heineken, Borsodi and Dreher may have benefitted from the safe harbor created by the Block Exemption Regulation and may have been individually exempted.

According to paragraph (75) of the Vertical Guidelines the conditions of Article 101(3) may in particular not be fulfilled when access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical agreements practiced by competing suppliers

³⁴ See paragraph (66) of the Vertical Guidelines

or buyers. Parallel networks of vertical agreements are to be regarded as similar if they contain restraints producing similar effects on the market.³⁵

According to paragraph (78), which states “As referred to in recital 14 of the Block Exemption Regulation, the competition authority of a Member State may withdraw the benefit of the Block Exemption Regulation in respect of vertical agreements whose anti-competitive effects are felt in the territory of the Member State concerned or a part thereof, which has all the characteristics of a distinct geographic market.” The presumption of legality conferred by the Block Exemption Regulation may be withdrawn where a vertical agreement, considered either in isolation or in conjunction with similar agreements enforced by competing suppliers or buyers, comes within the scope of Article 101(1) and does not fulfil all the conditions of Article 101(3)³⁶.

HoReCa agreements in the Hungarian beer market have similar effects in particular because

- three of the four breweries control appr. the same size of the market (25-30 % each);
- their agreements with HoReCa units similarly (through similar contracts and conditions) tie a part or the whole of beer supply to a single brewery; the amounts of the tied supply are also similar (13-16 % each);
- tying the beer supply to one brewery can be considered as single branding although it applies not on one brand but all the brands produced by a single brewery; it contributes to impairing the competition among brands since 80% of all brands are the

products of one or more of the four breweries; even though new brands appear frequently they cannot gain significant market share, so the ranking order of the top 20 or 30 have not changed for years;

- exclusivity contracts mostly apply to draft beer;
- unit prices of the same beer tend to be significantly higher in the HoReCa segment than in the off-trade segment of the beer market;
- most of the HoReCa contracts contain some sort of financial support or discounts for the HoReCa unit in exchange for the exclusivity;
- the average length of the contracting time period is 3-4 years

All four of the alleged infringing companies (together with a fifth supplier, Carlsberg) apply similar types of HoReCa contracts in order to secure their market shares on the on-trade market. These contracts all have the similar effect on competition of preventing new companies from gaining access to a sufficient number of HoReCa units, which is necessary for entry onto the Hungarian HoReCa market. The national market foreclosure effects are measured by a series of competition indicators, such as the existence of networks of similar agreements between all of the national beer producers and suppliers, the number of outlets tied by these agreements, the duration of the commitments entered into, the quantities of beer related to these agreements, the total market shares attached to all four (or five) companies, and the share of the tied beer consumption which is closed from the competition by these agreements.

Referring to paragraphs (135) and (141) of the Vertical Guidelines Competition Council

³⁵ Vertical Guidelines paragraph (75)

³⁶ Vertical Guidelines paragraph (74)

emphasized four necessary conditions for establishing that a parallel network of similar contracts has a cumulative anti-competitive foreclosure effect in the market, these four conditions are as follows::

- the total tied market share is higher than 40%;
- the market share of the five largest suppliers is higher than 50%,
- a potential entrant can penetrate the market profitably,
- there is no relevant countervailing power in the market.

The four alleged infringing breweries tied a total of 43-45% in volume and 44-50% in value in the Hungarian HoReCa market in the years of 2007-2013. The market share of the five largest suppliers (the four together with Carlsberg) was much higher than 50%, 82-95% in volume and 73-85 % in value. Carlsberg only successfully entered the market in 2004 and has gained and kept a small but steady market share since. In the off-trade segment of the beer market large warehouses and department stores can apply significant pressure on the beer suppliers but in the HoReCa segment most of the units are small companies and there is no buyer with significant market power.

Therefore, according to the Statement of Objections of the Competition Council, it can be established that a parallel network of similar contracts of the four breweries has a cumulative anti-competitive foreclosure effect in the Hungarian HoReCa beer market and the benefit of the Block Exemption Regulation in respect of these vertical agreements may be withdrawn.

Responsibility for an anti-competitive cumulative effect can only be attributed to those undertakings which make an appreciable contribution to it. Agreements

entered into by undertakings whose contribution to the cumulative effect is insignificant do not fall under the prohibition provided for in Article 101(1) and are therefore not subject to the withdrawal mechanism³⁷. The contribution of Pécsi to the cumulative effect was not appreciable since it only tied around 1 percent of the market.

Having received the Statement of Objections, three breweries (Dreher, Borsodi and Heineken) submitted voluntarily joint commitments in which each of them has offered to decrease the amount of beer sold through exclusive contracts by at least 10% of the annual amount of beer that was sold through exclusive contracts in the previous year for the years 2016 and 2017. As a result of the fact that if these commitments are realised the total tied market share will decrease to well under 40 percent, and this will mean that one of the necessary conditions for establishing a cumulative foreclosure effect in the market will no longer exist, the Competition Council of GVH accepted the joint commitments and closed the case.

³⁷ Vertical Guidelines paragraph (76)

FAS Russia authorised to regulate tariffs



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In July 2015, the Federal Antimonopoly Service of Russia (FAS Russia) was authorised to perform tariff regulating functions formerly falling under the competence of the abolished Russian Federal Tariff Service.

For years FAS Russia has given high priority to issues related to the improvement of the price-setting policy and the deregulation of markets in transition from the natural monopoly environment to the competitive one. These issues were discussed at joint seminars attended by high-caliber experts and co-sponsored by the OECD-GVH Regional Centre of Competition in Budapest (Hungary) and the Training and Methodology Centre of FAS Russia in Kazan, the Russian Federation, which also serves as the main training centre for the CIS countries on matters of the antimonopoly policy. In particular, the topics discussed in the past at such seminars included the development of competition in the electricity market and competition issues related to the market of airport services. These seminars aroused much interest among their participants and were highly praised by them. In addition, FAS Russia dedicated a separate international seminar to discuss conditions for effective competition and price formation in the telecommunications market, which was attended by representatives of many competition authorities from other countries.

In addition to discussing these highly important issues, FAS Russia has achieved substantial success in deregulating markets

and changing the price formation policy. We have developed the terms of nondiscriminatory access to the services of Russian natural monopolies, in particular: to oil, gas, oil products and electricity transportation services; to the rail road infrastructure; to land phone lines; and to airport services. FAS Russia regularly authored proposals to improve the tariffs policy, and to amend the laws and regulations on natural monopolies. For example, we have made proposals to rebalance electricity transmission tariffs based on our analysis of prices and tariffs in comparable product markets. A similar approach is used by the Netherlands Competition Authority.

FAS Russia has made a number of decisions to improve the flexibility of the regulation of airport service tariffs. The most important one was the decision to deregulate tariffs in the areas where there is room to develop competition. In the Russian Federation the airports of the Moscow hub represent such markets. At the same time, in each Russian airport there is quite a wide range of different types of airport services provided by several operators. For example, in more than 40 of the largest Russian airports jet fuel services are provided by 2 or more fuel station operators.

FAS Russia has taken quite a few important measures to improve the tariffs policy in the Russian telecommunications sector. On FAS Russia's initiative, the Russian Government decided to deregulate tariffs on land phone services. FAS conducted an experiment in the representative sample of residential areas throughout Russia to support its position. Its results showed that Russia has all the necessary conditions for the prices on land

phone services to form in competition with the mobile phone services.

The experience of Russia, and of many other countries, has shown that the development of competition makes new requirements to tariff regulators. They should be flexible and their work should be based on the analysis of the product market, which is extremely important to overcome problems of economic development and to carry out structural reforms. These very factors were used as the basis for the decision to merge the antimonopoly agency and the tariffs regulator, which the Russian President made in July 2015.

Before the two regulators were merged FAS Russia was actively involved in the work of the Russian Federal Tariffs Service (FTS). The representatives of FAS Russia would sit on the federal FTS' board and on the boards of its territorial units. The transfer of FTS' functions to FAS is yet further proof that the Russian antimonopoly service has all the requisite qualifications and the administrative weight

within the system of Russian government. FAS' specific achievements in increasing the effectiveness of the tariffs regulation and deregulation were also taken into account. The merger of the two agencies will help to enhance the entire functional and organisational structure and remove the overlapping functions. As a result, the merger of the antimonopoly and tariff regulators will generate federal budget savings.

FAS' experience in combining the antimonopoly and tariff regulating functions under one roof is not unique. For quite a long time the antimonopoly agencies in Australia, the Netherlands, New Zealand, Spain and some other countries have been effective in performing both the antimonopoly and the tariff regulation functions at the same time. FAS Russia will benefit from the best practices of its colleagues from other countries and, have no doubt, will contribute its own to this collection.

State Aid Register of the Republic of Moldova



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As the world economy is constantly changing, the integration of banking and financial markets has reached the point where one country's economy may affect the economies of other countries as well. Particularly in times of financial crisis it is essential to use state resources in a rational and efficient way to ensure that a state economy will be less influenced by external factors.

In order to monitor the correct implementation of all the state aid in the Republic of Moldova, the Competition Council, with the support of the World Bank, has implemented the Electronic Informational Register of Recording and Monitoring State Aid - SIRASM.

SIRASM contributes to a more efficient use of state resources by:

- Improving the efficiency of the allocation of public funds
- Ensuring transparency in the use of public money;
- Improving the implementation of competition law;
- Promoting competition culture;
- Improving the competitive environment.

SIRASM will help to establish a system of state aid monitoring and – the main task - to implement a monitoring mechanism to assess the impact of state aid on competition. It

provides information resources on state aid for public authorities - state aid providers and beneficiaries - and online notification and reporting of state aid.

Efficient use of public money

This objective will be achieved on three levels: 1. country level; 2. district level; 3. level of state aid providers, because it enables all involved to:

- a. Save time and financial resources when including information in the state aid inventory.
- b. Save financial resources for postal dispatches and telephone conversations.

Transparency of state resources

By adopting the National Development Strategy "Moldova 2020" approved by the Law no.166 from 11.07.2012, the Moldovan Parliament acknowledges competition as a vital factor to boost the national economy, to improve the business environment, to launch new businesses and to assure their development. The Republic of Moldova has the aim to develop and implement a national programme on competition and state aid by adopting the best European practices to prevent, suppress and limit anticompetitive activities of undertakings and public authorities.

SIRASM will also generate statistical data about state aid, which will be placed on the Competition Council's web page.

This information will describe all state aid granted in Moldova according to the following criteria: total amount; objectives of the aid; forms of aid; regions of the country where aid is distributed.

Efficient implementation of competition law

In addition, SIRASM will provide the option to identify dependent undertakings with common ownership so that groups of companies can be detected. This tool will allow the competition experts to properly enforce the Competition Law in different areas:

- Abuse of dominant position – to determine the exact market share held by the company and cumulative shares of the group of companies it belongs to and to conclude if the market shares exceed the threshold of 50%, presuming a dominant position.
- Merger - information regarding state aid received from the group of enterprises will better allow the assessment of its real power on the market, which is an important factor in evaluating a merger, in order to determine if the examined operation raises significant impediments to effective competition on a market.
- Anticompetitive agreements - similar behaviour of the undertakings on a market may be caused by links between competitors, and the detection of these links may be evidence of the existence of an anticompetitive agreement on the market.

Enforcement of electronic notification and reporting procedure requirements of the European community

Moldova is looking forward to EU integration, which involves adapting the country's economy to EU requirements. SIRASM provides an automatic procedure of notification and reporting of state aid according to European Community requirements.

Promoting competition culture

The introduction of SIRASM has also helped to more widely promote state aid and competition law to state aid providers at

central and local level via advocacy activities that included:

- Organising SIRASM training session for State aid providers - central public authorities.³⁸
- International Conference "New opportunities through the implementation of competition policy, state aid";³⁹
- Promotion via mass media.

With three meetings at the beginning of 2014 with aid providers in the Central, Northern and Southern regions of the country, the rate of promotion of competition culture regarding the aspect of state aid law has increased to 100% of all state aid providers at central public level and to about 62% for local public authorities.



The Competition Council has also provided support to the Competition Authority from Ukraine with the aim to promote SIRASM and to share the results.

SIRASM was presented during several official and working meetings to representatives of the government of Ukraine with the aim to elaborate a legal framework for state aid in Ukraine. Our colleagues expressed their desire to implement the same project in their country and the Competition Council of the

³⁸ [http://competition.md/news/28-de-
autorita%C8%9Bi-publice-centrale-instruite-in-
vederea-aplicarii-sirasm-ului.html?cultureKey=en](http://competition.md/news/28-de-autorita%C8%9Bi-publice-centrale-instruite-in-vederea-aplicarii-sirasm-ului.html?cultureKey=en)

³⁹ [http://competition.md/news/comunicatul-
privind-conferinta-internationala-noi-
oportunitati.html](http://competition.md/news/comunicatul-privind-conferinta-internationala-noi-opunitati.html)

Republic of Moldova has guaranteed its support in implementation and elaboration of the project.

Conclusions

The appropriate use of public funds is crucial in ensuring economic stability and growth for the future, and the implementation of SIRASM in the Republic of Moldova will contribute to a well-targeted and transparent use of state resources without distorting competition, and will generate economic growth for the entire country.



In this context, the Competition Council has been selected among the winners of the 2014 Competition Advocacy Contest, under the thematic category of “Promoting co-operation with relevant public bodies to balance competition goals with other public interests”.⁴⁰ The contest was organised by the World Bank Group with the aim to raise awareness of the key role of competition agencies in promoting competition and to showcase their successful advocacy stories.

⁴⁰<http://www.worldbank.org/en/events/2014/11/26/2014-competition-advocacy-contest>

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