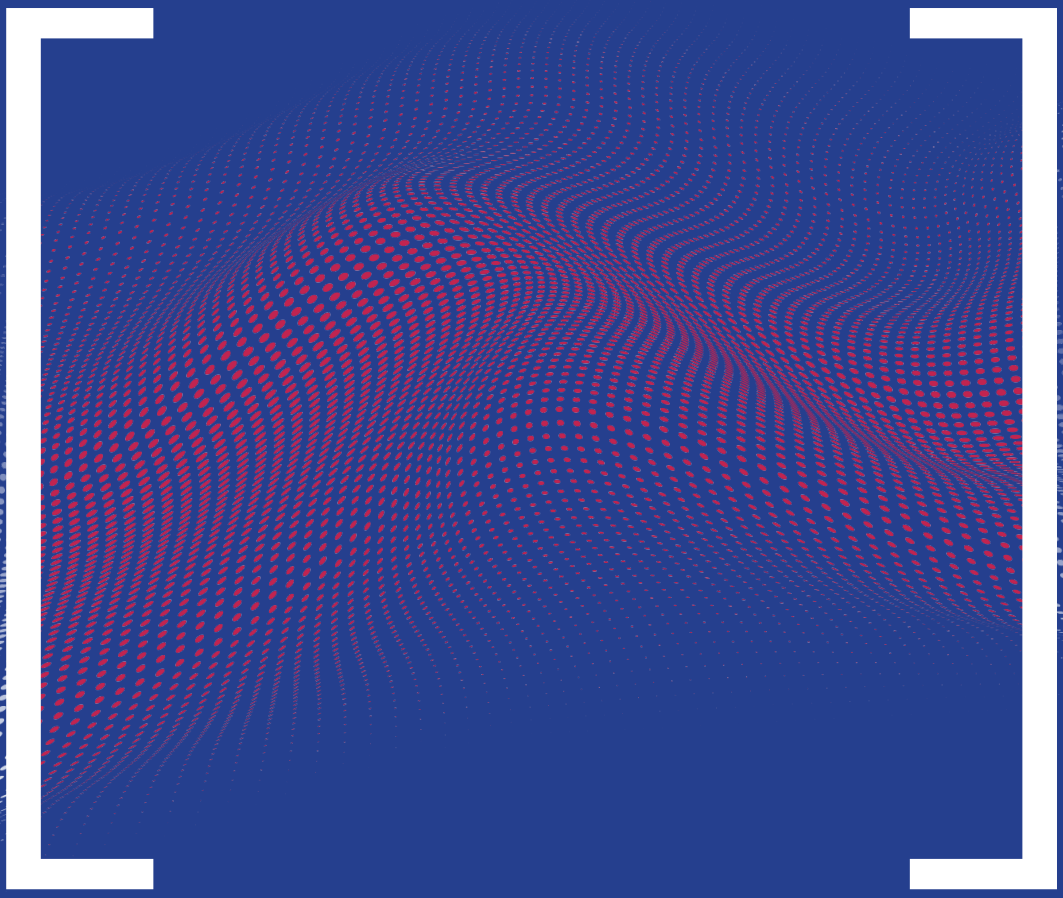
COMPETITION POLICY IN EASTERN EUROPE AND CENTRAL ASIA

Advocacy of competition



OECD-GVH Regional Centre
for Competition in Budapest (Hungary)
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OECD RCC OECD-GVH HUNGARIAN COMPETITION AUTHORITY

Inside a competition authority: **REPUBLIC OF AZERBAIJAN**

Contents

Foreword

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I am proud to present a New Number of our RCC Newsletter that I hope will be of interest for you.

The main topic of this edition is Advocacy of Competition. As you may remember, the RCC held one of the Seminars of the former semester on the Topic in Baku, Azerbaijan, with the invaluable cooperation of the Azerbaijani competition authority. I would like to start thanking them for their hospitality and professionalism and to our speakers for their time and effort that made us reflect and grow in our thinking.

As you will see, many agencies of the Region have sent articles on this topic that I find a must read for all of us, including a new approach coming from Turkey. We specially thank that President Lekvinadze and President Kapural devoted their time to our Newsletter. One of the articles comes from a new friend of our RCC, Uzbekistan, that we were able to include in our seminars, broadening our approach and enriching our RCC.

Also, a relevant number of experts from outside the Region were kind enough to share with us ideas and approaches on different key issues on advocacy. The professors Fernando Cachafeiro, Carlos Andres Uribe and Juan Manuel Ordoñez, and the professionals Susana Grau, Juan Espinosa and Gabriel Ibarra. I hope that their insightful ideas and developments are useful for your daily work.

In this number we have decided to include some new sections:

One of them with a little reference to our RCC seminars with nice pictures of the good times that we spent together learning from each other and sharing knowledge and experience. We also include a reference to the main contents developed in the workshops so those that were not able to attend can check if they are interested in asking about something in particular.

The second with a report on Competition Conferences that took place in our Region during the past Semester. We start the section with two amazing and very successful conferences that took place in Georgia and Albania. We thank our friends of those agencies to have shared with us relevant content that we could include in this Newsletter.

We have also included a reference to relevant changes on the Heads of the agencies (with special reference to Bosnia Herzegovina and Ukraine).

The other one with a reference to the Competition Seminars and Conferences that will take place in the semester to come in our Region. We started with the one that will be held in Almaty in April.

You will see that we include in this number the Program of activities for 2024 that was approved by the Bureau last month of December. We have designed an engaging set of activities that I hope will gather us in different venues discussing new and classic competition topics.

For the first time, the new staff seminar, thanks to the hospitality of the University of Deusto and the Basque Competition Authority, will take place in Bilbao, Spain, where I hope we will be able to create a strong program and contribute to the creation of a stronger network of enforcers in our Region.

We also continue with the good tradition of showing in this number a portrait of one of our agencies. This time Azerbaijan was so generous to share with us the relevant job they do in a crucial moment for the agency because of some key changes in their competition legislation. You will find a very interesting interview with their President, Mr. Mammad. A. Abbasbeyli and an overview of their work, challenges, and successes.

I would like this Newsletter to be a useful and interesting tool for us to share information and keep contact.

Therefore, I already invite you to think of new ideas we can develop together and to send us articles for the second number of the year. Considering the topics that we included in our program we have decided that the next number will be devoted to **Regulation and Competition** where I guess we all have ideas, cases and concerns that we can share.

Programme 2024

A. Seminars on competition law			
5-8 February	New Staff Seminar	**Introduction to competition Law**	Participants
Bilbao		This seminar is intended to cover the most relevant topics of Competition law and economics and to create the conditions for new staff to meet and create a community of enforcers of the partnership authorities. We will deal with the most relevant features of Anticompetitive agreements, abuse of dominance, mergers, advocacy, and economic and procedural issues. The seminar will imply a doctrinal introduction to the topics and workshops with a practical approach.	New staff of the beneficiary agencies
4 days			
26 March	Meeting of the Heads	**Judicial Review of enforcement decisions**	Participants
Budapest		Once a year the Heads of agencies of the RCC members meet and discuss topics of common interest. This year, the meeting will focus on mergers and the development of initiatives that could strength the co-operation with courts in order to increase the efficiency of the agencies and their impact in society.	Heads of the agencies
1 day			
April	Outside Seminar	**Regulation and competition**	Participants
Budapest/ Moldova		The relation between competition and regulation has always created tensions and opportunities. The existence in certain markets of network effects, market failures or imperious reasons of general interest make regulation crucial in certain cases. Energy, telecommunications, pharma, postal services, or transport are clear examples of this. Nevertheless, the influence of lobbies and regulated industries in those sectors can affect regulation in a direction that is not coherent with competition law principles and general interest protection. The seminar will deal with the principles that govern the relation between competition and regulation and the different possibilities to address the problems that the agencies usually face.	Staff of the agencies that deal with antitrust, mergers or advocacy in regulated markets
2,5 days			
May	Ordinary seminar	**Detecting Bid rigging**	Participants
Budapest		Bid rigging is one of the worst infringements of competition law, as it implies a cartel related with public procurement. This has quantitative and qualitative implications, as it affects a relevant percentage of the GDP of the countries and affects relevant services for the citizens. Those practices are most of the times hidden and very difficult to detect for the agencies. When detected, they are not easy to proof. Therefore, the seminar will focus on the different concepts and practices that fall under the concept of bid rigging, the tools for detection and the different means for creating strong cases. Experts from OECD countries will present case studies, and participants will practice their skills in hypothetical exercises.	Staff of the agencies that deal with cartel or bid rigging cases
2,5 days			
10-12 September	Joint Seminar	**Effective antitrust investigations**	Participants
Montenegro		Competition agencies struggle sometimes looking for evidence of relevant antitrust infringements. The development of different tools such as informant channels of leniency programs can be a good help for them. Once indicia are found, the collection of evidence is also key. Dawn raids, the use of open data and other IT tools are also a relevant element in the work of the agencies. Also, the use of indirect evidence implies some relevant legal and economic issues that require deep attention when creating a file. This seminar will focus on all those topics.	Staff of the enforcement units in charge of carry out investigations
2,5 days			

September	Competition Lab for Judges	**Stepping up with substantive and procedural standards under competition law (subject to EU funding confirmation)**	Participants
Budapest		Bid rigging cases. Collecting direct evidence and dawn raids, indirect evidence and economic analysis, unique and continuous infringement, prescription of the infringement, consequences for the living contracts	Judges from the EU or beneficiary countries (subject to EU/ other funding confirmation)
2 days			
October	GVH Staff Training	**Network markets and competition**	Participants
Budapest		The event will deal with tools to deal with network markets and how to approach them from the perspective of competition and consumer protection. Breakout sessions: In separate sessions, we will provide dedicated trainings and lectures for the merger section, the antitrust section, the economics section, the consumer protection section, and the Competition Council of the GVH.	Staff of the GVH
2 days			
November	Competition Lab for Judges	**Stepping up with substantive and procedural standards under competition law (subject to EU funding confirmation)**	Participants
Budapest		Between competition and regulation. Key developments in network and regulated industries. Offline and online vertical restrictions and rebates and Refusals to deal.	Judges from the EU or beneficiary countries (subject to EU/ other funding confirmation)
2 days			

B. Training video project - "Key Competition Topics explained in few minutes"

Three additional videos

Two special videos for Judges

C. RCC review "Competition Policy in Eastern Europe and Central Asia"

Two issues of the review (January and July), both in English and in Russian

D. RCC Annual Report

Edition on the RCC Activity 2023, both in English and in Russian

ARTICLES ON ADVOCACY OF COMPETITION

Navigating Challenges: Mastering the Art of Competition Advocacy

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In today's rapidly changing world of global economies, competition authorities find their role to be more extensive than merely enforcing regulations, striving to fulfil a more comprehensive and wide-ranging mandate. In addition to the necessary investigations and legal measures, there is a quiet, yet impactful set of tools of prevention, which we call advocacy. The soft power of advocacy emerges as a more gentle and diplomatic way to promote and sustain free and fair economic competition, offering essential support that exceeds the traditional methods of law enforcement.

Essentially, competition advocacy is about making sure that markets are open and competitive by promoting conditions and practices that encourage a level playing field for businesses and seeking to eliminate unfair advantages or disadvantages that may distort competition. The idea is to create conditions for all businesses, regardless of their size or market presence, to have an equal chance to succeed based on their merits and efficiency. It is a tool that unleashes an environment where fairness prevails, opportunities for innovation are increased, better products and services are available, and ultimately, well-being for all participants is improved.

In this respect, competition authorities are actively working to shape public opinion and government policies in support of robust and open markets. To achieve this goal, various tools are employed, ranging from the promotion of a competition-friendly legal framework to educational campaigns. Advocacy toolkit is a comprehensive set of resources, strategies, and guidelines designed to assist policymakers, regulatory authorities, and other public bodies in promoting competition within their jurisdictions.

Freedom of economic activity is the fundamental principle of the market economy. According to the Competition Protection Commission of the Republic of Armenia, the construction of a competitive environment in the conditions of the market economy is one of the main ways in which the state is able to increase the welfare of the society. In this field, the state should pursue both the creation of the necessary environment for the existence of free economic competition, and the prevention of actions that harm the economy. Taking into account the above and keeping in mind that the provision of the necessary environment for fair competition and the development of honest entrepreneurship culture is also based on preventive actions, the Commission considers it necessary to first of all take measures to prevent possible offenses in the field of economic competition.

Committed to upholding these principles, the Commission adopted a collaborative approach in its mission to create an environment, where businesses can prosper in an atmosphere of open and unrestricted competition, and consumers are empowered with the ability to make informed choices, access a variety of options, and enjoy the benefits of fair pricing and quality products and services. In pursuit of these goals, the Commission acknowledges the competition advocacy as a key instrument, actively involving itself with stakeholders to guarantee that its advocacy efforts are comprehensive, effective, and reflective of the dynamic nature of the marketplace it oversees.

Armenia's markets display a rich enough diversity, spanning across multiple industries and businesses. To ensure the vibrancy of these markets, the Commission employs a proactive strategy, placing emphasis on collaboration with policymakers, businesses, and consumers alike.

Collaboration with these key players is crucial for implementing effective policies and practices. Engaging with policymakers enables the Commission to actively contribute to the development of regulatory frameworks. By providing insights and expertise, the authority can assist in crafting regulations that strike a balance between fostering competition and ensuring fair business practices. Collaboration with economic entities allows understanding business dynamics, address concerns, and provide guidance on compliance with competition legislation. Involving the consumers in the process makes sure that their interests are considered and protected.

In this endeavour, international cooperation also plays a significant role. Different countries have unique perspectives and experiences in dealing with competition issues. Collaborating internationally helps coordinate efforts, share information about approaches, successes, and challenges strengthening a collective commitment to effective competition advocacy.

Collaborating with European colleagues and being in dialogue with international leading experts led up to the crea-

tion and dissemination of guideline of antitrust compliance. This guideline is an advocacy tool that serves as a valuable resource for businesses seeking clarity on compliance with competition laws, by providing insights into legal requirements and offering practical advice and clear directives to prevent breaches of law by business entities. The Commission's initiative not only empowers businesses with the knowledge necessary for adherence to competition laws but also contributes to the overarching goal of fostering a culture of fair competition, marking a significant step toward global transparency and accountability. Consequently, enterprises can align their practices with international standards, ensuring not only legal compliance but also ethical business conduct.

Another important stride in advocacy activities taken by the Commission in the light of international cooperation was advocating legislative changes within the realm of discounts and sales promotions.

In response to the uncertainties existing in the aforementioned area, and indications of widespread misconduct by economic entities, the Commission implemented proactive measures to regulate actions related to discounts and sales promotions. This activity was inspired by international best practices especially the one implemented in Poland. The legislative amendments introduced new settings for sales promotions, and had a specific purpose: to establish necessary, predictable, and clear grounds for discounts and sales campaigns. The goal was to contribute to fair trade, improve the competition environment, and enhance consumer rights protection. To achieve this objective, the amendments detailed the concepts and types of sales campaigns, the notion of discounts, terms of application, time limitations, requirements for measures beyond price changes, and regulations for informing the public about sales campaigns, including publication timelines and termination procedures. Legal consequences for campaigns contradicting the law were also specified.

Following the legislative changes, the Commission, took extensive measures to increase public awareness about the modified regulations, their positive impact and legal implications as well. Public awareness activities included press conferences, interviews, TV reports, dissemination of press releases, and initiating public discussions, concurrently providing a platform for stakeholders to express their concerns and offer suggestions. This multilateral communication strategy aimed to ensure that the awareness-raising process complemented with the extensive feedback collection from stakeholders and the wider public, included but not limited state officials, economic entities, non-governmental organizations, and journalists.

In the result of this advocacy program, we observed a significant improvement in the conduct of economic entities. Notably, non-manipulative discounts, in line with the law, became more prevalent, indicating a positive shift in adherence to regulations. The awareness campaigns not only clarified the requirements for businesses but also fostered a dialogue that allowed for the effective resolution of challenges arising during the law enforcement phase. This positive change indicates the efficiency of advocacy in the specified field and has an impact on improving business environment and consumers experience. The increase of willingness of economic entities to comply was evidenced by a number of applications on expedited proceedings [1].

The positive result of these measures underscores the importance of proactive regulatory approaches and robust advocacy in shaping a business environment that promotes fair competition. The Commission continues to play a crucial role in ensuring that legislative frameworks align with international standards, contributing to a marketplace where businesses operate ethically, consumers are protected, and fair competition gain ascendancy.

However, striking a delicate balance between enforcing regulations to prevent anti-competitive behaviour and fostering an environment that encourages progress is a perpetual challenge. Overregulation can stifle growth, while inadequate oversight may lead to market distortions. Keeping the balance and succeeding in competition advocacy are intricately tied to public understanding, trust, and support, for gaining which we need to make efforts to build awareness about the benefits of competitive markets and the role of competition authorities.

The advantages of competition advocacy are far-reaching and profound. It empowers consumers and fosters investment attractiveness. As we navigate the intricacies of the modern economic landscape, let us actively support the cause of competition advocacy, recognising it as a necessary tool that helps to create economies worldwide. It is the driving force that guides us toward a future where innovation flourishes, consumers are empowered, and economies thrive in the spirit of fair and open competition.

1 Article 88. Expedited proceedings on the offence in the field of economic competition. RA Law on protection of economic competition.

The Competition Code: and what it means for Azerbaijan

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Introduction

When a nation chooses free market as its economic policy, it is crucial to facilitate the best possible procedures to ensure that its market functions properly. There are various essential ingredients for safeguarding proper functioning of the free market mechanisms. Fair competition is one of those key elements. Therefore, almost all countries, including the Republic of Azerbaijan, have adopted distinct competition laws ever since the choice for market economy was made.

Currently, the competition legislation of Azerbaijan consists of three Laws: Antimonopoly Standards, Natural Monopolies, and Unfair Competition. Existing competition legislation of Azerbaijan was adopted shortly after the country gained its independence. Unfortunately, the laws have not been significantly modernized since then. In reality, competition legislation has never matched the country's level of development and has created a need for an overhaul.

In 2020, The Antimonopoly and Consumer Market Control State Service under the Ministry of Economy (the State Service) initiated discussions to transform the outdated legislation. Prolonged deliberations resulted in the drafting of the Competition Code. The Code aimed at codification of all three Laws into one individual legal policy that would enhance competition regulations by bringing them into the line with internationally accepted principles. The overall aim of the Competition Code is to expand the legal mechanisms necessary to prevent market distortion caused by anti-competitive practices, and to preserve and promote market competition.

The Competition Code was adopted by the Milli Majlis, the parliament of the Republic of Azerbaijan, on December 8 of 2023, through a new ruling. According to the law, the Code will come into force on 1st July 2024. Until that time, the above-mentioned three Laws remain legally binding. In the remaining months before the new enforcement comes into effect, the State Service will draft subordinate legislation, engage in competition advocacy, and prepare the necessary infrastructure including digital tools.

This article discusses fundamental elements of the Competition Code, it outlines its importance to the national economy, and shows a comparative analysis between the Laws and the Code.

Relevant market

For the first time in the history of domestic competition regulation of Azerbaijan, the Code brings the concept of "relevant market" into the national legislation. Defining the relevant market sets an important precedent for applying competition rules in respect of restrictive practices, abuses of a dominant position, as well as the scope of merger control. Due to the absence of this particular Code in the current legislation, the application of competition regulations has been significantly restricted. When the Code becomes enforceable, the definition of the market will be based on the internationally recognized principles. The Code specifies that the relevant market combines the product market and the geographic market. An accurate definition of the relevant market is essential for competition regulations, since a false determination of the market might lead to critical miscalculations and impairing the entire economy.

Once the Code comes into force, the rules and principles of market definition will be formulated based on the relevant OECD doctrines.

Exclusion regime and exemptions

The internationally accepted principle suggests that competition regulation should apply to all sectors of the economy as well as undertakings indiscriminately. However, the model of the exclusion regime might be justified from the economic policy perspective based on the purpose of reducing macroeconomic risks, facilitating innovation, and attracting investment. Based on those principles, the lawmakers have made sure that the Competition Code introduces an "exclusion re-

gime" concept into the legislation of Azerbaijan. Accordingly, the Code states that some sectors of the economy as well as some of the markets might be excluded from the application of competition regulations, or their applications might be restricted based on distinct criteria. The list of excluded industries and markets will be identified as and when required by the government's economic policy.

It is credible to believe that anticompetitive agreements, even if they breach competition regulations, can improve production and sales, along with encouraging the technological and economic development, may further benefit consumers. Therefore, the Code encompasses important terms exempting some anticompetitive agreements, if they enhance efficiency, but do not infringe competition in the market.

Dominant position

The notion of a "dominant position" is readdressed in the Competition Code. Unlike the existing legislation, which defines dominant position based on only one criterion of market share size (35% or more market share), the Code sets forth a structured approach. As a baseline, the Code states that if an undertaking possesses 50% or more market share, it holds absolute dominant position in the market. This implies that no other evidence is required to further prove the dominant position.

However, the dominant position of undertakings that possess the market share between 35% and 50% is assessed on additional factors. These fundamental elements include market share of undertakings and their competitors, financial capabilities of undertakings, as well market entry barriers for new competitors.

Economic theory teaches that market power can be enjoyed by one or more firms. The Code endorsing this study deems the notion of "joint dominant position" of undertakings. In cases when the behaviours of two or more undertakings are coordinated in the relevant market, the Code validates their joint dominant position. It does not only stipulate market share requirement for such undertakings, but also separate criteria, such as evidence of coordinated behaviour.

Phenomenon, whereby increased numbers of people or participants improve the value of a product or service, coined as "network effect," is essential. The digital era has revealed the significance of undertakings with "network effect". Therefore, considering the modern trends, the Code stipulates separate requirements to determine dominant position of undertakings with "network effect".

Clearly, it would be rational to speculate that sophisticated approach to the definition of dominant position shall lead to adequate legal mechanisms aimed at preserving and promoting market competition on a more precise level.

Leniency

The leniency program is one of the legal novelties that features in the Competition Code., It provides an opportunity for undertakings to avoid sanctions, even if they breach the competition laws. According to the Code, in cases when an undertaking reports violation of competition regulations and collaborates with competition authority voluntarily, it is either provided with full immunity or its sanction is minimized depending on the circumstances. Considering that leniency programs help to destabilize collusion in the market, it is reasonable to assume that the Code will form significant means to combat anticompetitive behaviours and suggest an alternative to the undertakings that engage in illegal competition activities.

Merger control

Merger control provisions are incorporated into the Competition Code and merger remedies are recommended in the legislation. The Code provides enhanced criteria to identify which transactions appear on the merger control radars. It distinguishes between "application regime" and "notification regime" for concentrations. Undertakings are mandated to submit an application to the competition authority for review procedure whenever transactions exceed the set threshold. Unlike the previous legislation (in which the review period is determined as unextendible for 15 days), the Code stipulates that merger application can be responded to within 90 days.

The Code sets advanced grounds for review procedure to evaluate the effect of the merger on the market. It states that the transactions within a "corporate group" are not considered as a concentration, however, it mandates them to notify the competition authority.

As merger remedies have recently become the most widely used form of by the competition authorities worldwide, the concept of "remedies" is also brought into the legislation by the Code. It allows the competition authority to negotiate with the merging parties and permit the transactions to proceed with modifications that restore or preserve the competition in relevant market instead of blocking the concentration straight away. The incoming merger regulations establish strong tool to stringent protocols that evaluate the effects of concentration to the market and preserve market competition from the risks that may potentially arise from them.

Natural monopolies, SOEs and state aid

Following independence, Azerbaijan launched the special Privatisation Program. However, some critical infrastructure assets have remained in the hands of the state. Some of the state-owned enterprises (SOE) received a "natural monopoly" status. This implies that due to technological features, as well as public policy considerations, some industries have inten-

tionally been excluded from competition.

The Competition Code contains a special chapter dedicated to regulation of natural monopolies. It aims to prevent: (i) discrimination against undertakings, (ii) interference in their activities and (iii) an unauthorized increase in the prices of goods and services provided by natural monopoly entities. In order to achieve these goals, the Code equips the competition authority with extensive control to deal with violations. According to the Code, a natural monopoly shall obtain prior consent from Azerbaijani competition authority for (i) all transactions with fixed assets, (ii) allocation of investments to non-core businesses and (iii) entering into new businesses.

Since subsidies and other forms of state aid directly affect market competition, lawmakers have ensured that the competition authority is equipped with the means to assess their impact. More specifically, the Competition Code stipulates that the advisory opinion of the competition authority should be obtained before state authorities, municipalities or regulatory bodies grant subsidies or any other forms of state aid.

Investigation procedures and sanctions

Unlike the currently applicable legislation, the Competition Code determines multi-layered inquiry and investigation procedures. Competition authority has the power to carry out monitoring, market studies and assessments. Moreover, it may launch an investigation if it deems that competition regulations have been breached. In existing legislation, investigation procedures are regulated by the Decision of Cabinet of Ministers, a subordinate legal act. Since the procedural provisions for investigations are part of the Code, they are automatically upgraded by law.

The Code introduces interim measures to national legislation. It states that the competition authority can issue a temporary injunction order that requires a party to perform or refrain from executing a specific action to preserve competition until the final decision is made. This stringent protocol will allow Azerbaijani competition authority to protect the fair competition more efficiently.

Once the probe is launched, by the "Competition Commission", a collegial body involving several officers from the competition authority, take over. The Commission examines a case through conducting oral hearings and assessing evidence. If the Commission finds an undertaking in breach of the law, it has the power to fine the offenders.

The monetary sanctions in the Competition Code have been accommodated accordingly, and fines have been introduced as deterrents. The Code addresses monetary sanctions defining expanded criteria for imposing and calculating the amounts of the fines. It states that the amount of the sanctions shall be calculated based on the previous year's annual turnover of an undertaking.

As it holds the transparency policy in high regard, the Code contains sophisticated provisions to ensure that all actions taken and investigation procedures are available to the public and readily accessible. It mandates the competition authority to formalise, take minutes, and publish all the taken measures. Additionally, the Code stipulates that all decisions of the Commission are required to be published on their official website. It is reasonable to believe that incoming regulations, including proportionate monetary sanction fines will lead to fairer and more impartial investigations and also serve as deterrents.

Conclusion

Having sound legislation is a key to having a more competitive market and strong economy. For a long time, one of the prevailing economic theories claimed that competitive markets did not need any government intervention to function perfectly. However, empirical data suggest that that was not the case. When market fails, competition regulations intervene to preserve competition. If the competition regulations do not address the issues adequately, preserving and promoting market competition shall not be feasible.

Crucially, a pragmatic legal framework provides competition authority with the powerful legal mechanisms to take measures, it is the first step in building a competitive market and a strong economy. Considering all of the above, and since the Competition Code further enhances competition legislation, this ultimately represents a significant milestone for the future economic development of Azerbaijan.

Competition advocacy-expert opininos as strong advocacy tool

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Croatian Competition Agency

Introduction

Successful competition advocacy can only be achieved with the use of different tools including expert opinions, market studies, communication strategies, publications of all decisions and other relevant documents, press releases, newsletters, statements to the media, education, trainings for different stakeholders, active participation in national and international conferences with the aim to exchange best practices etc. Although every competition advocacy tool has its value, expert opinions proved to be very important and strong tool which helps aligning national legislation with competition law. At the same time, it helps to build stronger competition culture.

Expert opinions-legal basis and purpose

The Croatian Competition Agency (further: CCA) issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with this Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns. The central administration authorities or other state authorities may be requested to communicate to the CCA draft proposals for laws and other legislation for the purpose of assessment and issuing expert opinions on their compliance with Competition Act, if it finds that they may raise competition concerns. The CCA can issue expert opinions assessing the compliance of the existing laws and other legal acts with Competition Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and comments relating to the development of the comparative practice and case law in the area of competition law and policy to the authorities.[1] The expert opinions of the CCA are not obligatory but in most of the cases they are respected which can be seen from final texts of the laws or from amended texts from existing laws. In some cases, the expert opinions had advisory role but still contributed to the liberalization of certain markets.[2] Furthermore, in Croatia Law on Regular Impact Assessment (RIA Law) is in force since 2011, the law contains special form on the conformity of draft laws with competition law.[3] In the process of adoption of first RIA Law (the second one was adopted in 2017), in relation to competition law, OECD Competition Assessment Toolkit was also consulted.[4]

Examples of recent expert opinions from the CCA

1. The opinion of the CCA on the entry fees to register in the registry of the Bar Association (18 February 2022)[5]

The analysis of the chamber system in Croatia regularly conducted by the CCA, included Bar Association and comparative analysis with other EU and neighbouring countries showed that the entry fees for the first entry into the registry of bar association was excessive (5.000 euros). The CCA concluded that such fee represents financial barrier to entry considering that the membership to the Bar Association is mandatory and that such huge differences should not be between paralegals and persons applying for the first time for Bar Association Registry. Any condition that is disproportionate, overburdensome or restrictive is obvious barrier to enter and participate on the market and provide this service. This opinion had strong response in professional public, the Bar trying to overturn or diminish the opinion claiming the lawyers are not undertakings from one side and positive reactions to the opinion from lawyers.

2. Opinion of the CCA on the Draft Law on Tax Consultancy (27 April 2023)[6]

In the assessment of the Draft Proposal Law on Tax Consultancy, the CCA established that one provision was prob-

1 Article 25, Croatian Competition Act, Official Gazette No. 41/21, 80/13, 79/09; https://www.aztn.hr/ea/wp-content/uploads//2023/02/COMPETITION-ACT-2021-consolidated-241122-ENG.pdf
2 Good example is liberalization of taxi services in the city of Zagreb and other cities in Croatia, the CCA issued two expert opinions preceded the actual liberalization. https://www.aztn.hr/en/cca-opinion-on-the-decision-of-the-city-of-zagreb-on-the-provision-of-taxi-services/; https://www.aztn.hr/en/decision-of-the-town-of-split-on-the-provision-of-taxi-services-hampers-competition/
3 Official Gazette No. 90,/11, 44/17 and the Regulation on RIA Official Gazette
4 Available at: https://www.oecd.org/competition/assessment-toolkit.htm
5 Available (in Croatian language) at: https://www.aztn.hr/ea/wp-content/uploads//2022/09/034-082021-01032.pdf
6 Available (in Croatian language) at: https://www.aztn.hr/ea/wp-content/uploads//2023/05/porezni-savjetnici-misljenje.pdf

lematic from competition law perspective. The said provision stated "until the Chamber determines the level of the fees for services of tax consultations." Hence, the CCA suggested that this provision should be s deleted because it is contrary to competition law. It explained that from the point of view of competition law, the members of the Chamber, tax advisers are considered as undertakings and competitors on horizontal level. Therefore, the Chambers should not determine the prices of services provided by its members because those members as undertakings are constantly competing on the relevant market among other things also by prices of their services. The same Law also determines that the tax consultant performs tax consultancy service independently for adequate fee. The level of the fee for tax consultancy services tax consultants and companies for tax consulting shall be negotiated according to the market conditions. These provisions unlike the first one described are in line with competition rules.

3. Opinion on the Statute and Ethical Codex of the Veterinary chamber (15 February 2022)[7]

Similarly, as in the case of Bar Association, during the analysis of different professional chambers, the CCA encountered provisions contrary to competition rules in two internal documents of the Veterinary chamber and proposed their deletion. First provision was in the Statute of the Chamber providing: **"…and minimum prices of veterinary services according to nomenclature"**. The second problematic provision from competition law point of view was found in the Ethical Codex stating: **"Charing lower prices from the ones determined is not allowed"** and the part of provision which reads as follows: **"Charing higher prices from the ones determined by the price list can be only applied in the cases when the job performed is of higher qualitative level and if the party previously gave its consent"**.

In its opinion, the CCA warned that determination of prices on horizontal level between undertakings regardless of the type of prices is considered as hard-core restriction of competition, especially if the prices are determined by the association of undertakings. Such agreements are limiting competition and they have negative effects on the market both on final customers of the services and on the new potential entrants on the market providing same services because the latter ones are not able to offer lower prices to attract new customers. Said prices also do not guarantee certain quality of services.

Conclusion

The presented expert opinions issued by the CCA showed how they can be used in practice as strong competition advocacy tool. Expert opinions can address problematic provisions of different types of documents such as laws, draft laws or internal documents of associations and contribute that those legal documents are aligned with competition rules. At the same time, they can serve as preventive tool of correcting potential prohibited behaviour before the need for taking enforcement action. Finally, the expert opinions promote competition culture, give credibility of the work of national competition authority, point to certain problems on the markets and complement the enforcement role of the competition authorities. In order to completely follow the impact of expert opinions it is useful to have comprehensive system of monitoring to which extent the proposals of the competition authority are accepted and respected.

7 Opinion available at: https://www.aztn.hr/ea/wp-content/uploads//2022/09/Croatian-Veterinary-Chamber.pdf

Georgia continues to implement competition and consumer policy reforms in full accordance with European integration

Irakli Lekvinadze
Chairman,
Georgian National Competition Agency

The Georgian National Competition Agency was established in 2014 after Georgia had signed the European Association Agreement (AA), which included a component of the Comprehensive Free Trade Area Agreement.

In 2020, the Parliament of Georgia approved amendments to the Law of Georgia on Competition, which demonstrates the country's efforts to align its legislation with European standards. From 2021, the Law of Georgia on the Introduction of Anti-Dumping Measures in Trade came into force, which aims to protect the local industry from dumping imports. In 2022, the Law on the Protection of Consumer Rights came into force and the responsibility of its implementation was assigned to the Georgian National Competition Agency. The National Competition Agency's mandate is expanding in line with Georgia's integration into Europe. As per the latest legislative changes, the Agency will be rebranded as "Georgian Competition and Consumer Agency" from 2024.

Since 2014, in attempts to improve the state of competition, 94 recommendations have been issued. Both local and national government bodies benefit from these steps. During the same time period, 47 case studies were completed, 12 markets successfully monitored, and 29 concentrations of undertakings were approved.

Of the 13 court disputes, 12 were resolved in favour of the Agency, while one was sent for referral. Currently, 19 court cases are still ongoing.

Our primary goal is to make medicines more affordable for the public by increasing the competitiveness and transparency of the pharmaceutical market. We have been closely monitoring this market for the past three years and, based on the world's best practices, we issued 13 recommendations in 2021. Most of these recommendations issued by the National Competition Agency have already been implemented in 2023. These included the introduction of electronic and generic prescriptions, quality standards, reference prices, and more. Additionally, imported medicine from Turkey has already lowered the cost to the consumer by 50-70%. While these steps are still incomplete, the eventual goal is to have fairly priced, affordable medicine available for all.

In 2023, five different companies who produce medicines for cancer were investigated; the findings of which to be completed by the end of the year with the results to follow and for all to see.

The Agency investigated the prices of fuel in 2023, and as a result, five companies operating in Georgia were fined a total of 4 million GEL. (1.5 million USD).

The Georgian National Competition Agency is currently investigating the prices of online cinema tickets. In response, the courts have ruled on an exclusive condition that limits one of its undertakings until it is complete. As a result, the public can now purchase cinema tickets from multiple venders.

In 2023, the Agency carried out six individual investigations, all of which were deemed inadmissible. Meanwhile, a total of eight concentrations were approved.

In 2023, the Georgian National Competition Agency completed its first case on dumping. Home markets withdrew their appeals and admitted that rapid improvements had been made with regards to pressing issues, and competition becoming a reality. The case concerned the alleged dumping price of cigarettes imported from Armenia, with the dumping margin estimated to be 40%.

Also in 2023, the Agency monitored and assessed insurance companies and banking. These investigations led to six mandatory recommendations being enforced. The liquid and natural gas market (CNG/LPG), as well as the hazelnut and cranberry market continue to be monitored.

The results obtained on behalf of consumer rights protection in Georgia, the National Competition Agency brought the new laws into effect beginning 1st November 2022.

Within twelve months, the Agency had received 509 app-

lications. 63% of the applications received refer to online purchases, while the remaining 37% refer to over-the-counter purchases.

Consumers are required to:

- repair the defective product/item
- return them
- request a refund
- prohibit anything misleading

Most of the cases concluded in favour of the consumer, with the signing of the conditional commitment agreement. This means the traders have an obligation to change its internal policy and restore the rights of those consumers who allegedly suffered damages due to the trader's past policies. Due to non-fulfilment of the obligation imposed by the Agency, twenty individual offenders were fined. The Agency developed guidelines throughout the enforcement procedure, among them: price reference standardisation, consumer information standardisation, service delivery in state language, and SMS advertisements.

Our Agency cooperates fully with international organizations. We are proud to be an active member of the International Competition Network ICN, and in 2023 we became a partner of the International Consumer Protection and Enforcement Network (ICPEN). Furthermore, we work closely with representatives of UNCTAD, OECD, USAID. Our Agency is also involved in the EU-funded TWINNING project, alongside our partner countries Austria and Lithuania. Since 2014, we have signed memorandums of cooperation with 24 countries and continue to learn and share best practices from around the world.

To enhance collaboration between countries and authorities, Georgia hosted the second international conference on competition and consumer protection in 2023 and was organized by five regulatory authorities in an annual format. This year, the event was attended by more than 300 delegates, as well as delegations from 20 countries and representatives of competition and consumer agencies from 10 different countries. Nine parallel sessions were held, and the conference was deemed very successful at both local and international level. We believe that this platform is highly effective for sharing international experiences, knowledge, and reinforcing competition and consumer protection policies.

Special aspects of competition regulation in governmental support of entrepreneurship in the Republic of Kazakhstan

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To incite economic growth, the state provides all sorts of assistance to business entities. Support is offered to certain priority sectors of the economy as well as some areas of entrepreneurial activity (for example, women's entrepreneurship) and (or) separate business groups – small, medium and large businesses.

The forms of support also vary and may include tax exemptions, preferences, customs duties exemptions, loan interest rate subsidies, soft loans, land or property grants, building infrastructure at the expense of the state, and so on.

Regardless of the types of recipients and forms of support, these activities have a direct or indirect impact on competition in commodity markets. At the same time, in the absence of legislative regulation, state support agents may demonstrate certain favoritism associated with corrupt violations of public officials.

In this regard, in 2021, the legislation of the Republic of Kazakhstan (Entrepreneurship Code) was amended to expand the powers of the competition authority adding the functions of approving new state support measures, monitoring the activities of agents providing state support for compliance with the competition law.

The law prohibits state support agents to limit equal access of entrepreneurs to state support. In particular, they cannot:

- limit access to state support measures for new market players;
- impose additional obligations on business entities, not related to the terms of government support;
- collect fees and other charges not stipulated by the legislation of the Republic of Kazakhstan;
- coordinate activities of recipients of government support, if this will or may lead to the prevention, restriction or elimination of competition.

In addition, any draft regulations providing for the introduction of new measures of government support are subject to mandatory approval by the competition authority.

When coordinating the instruments and other acts, the competition authority shall take into account:

- the level of commodity market concentration;
- presence of economic, technological, administrative commodity market entry barriers;
- market share of small and medium-sized enterprises;
- the dynamics of the emergence of new market players;
- commodity market balance, meeting the domestic demand;
- the level of state involvement in entrepreneurship in the relevant commodity market;
- achievement of goals, target indicators, objectives and indicators of competition development in the commodity market approved by the documents of the state planning system;
- other documented circumstances that determine the priority of state support measures for private entrepreneurship, taking into account the state of competition in the commodity market.

The availability of new instruments of competition regulation made it possible to use limited state resources more efficiently, ensuring transparent access of entrepreneurs to state support measures, levelling the effects of state involvement on commodity markets.

Note: at the year-end of 2022, the total amount of funds allocated to support entrepreneurship in the Republic of Kazakhstan was more than $3 billion.

Thus, by monitoring the performance of the National Management Holding (the largest development institution with the total share of consolidated assets of 12% of GDP), the competition authority of the Republic of Kazakhstan identified numerous violations of the competition law.

In particular, the internal regulations of one of the

state support operators contained provisions that created unjustified competitive advantages for borrowers who had previously gained access to financial instruments. This category of borrowers was not required to undergo bank due diligence procedures to obtain additional funding.

At the same time, within the framework of the State Industrial and Innovative Development Program for 2015-2019, despite the existence of approved, parity funding schemes (50% – budget loan, 50% – other sources), some projects were funded entirely from the budget, while others in unequal proportions, or 100 percent - by dear money attracted from other sources. These actions affected the final interest rate of borrowers, creating unequal conditions of support access for final recipients.

In addition, state support agents favored certain entities by processing their applications for government support in prioritized and expedited manner. For example, instead of the approved 70 calendar days, some projects were approved within 3-4 days from the moment of receipt, while for other projects the terms of consideration were violated and exceeded more than 300 days.

Another export operator created unequal conditions when establishing counter obligations for recipients of government support.

Based on the screening results, the National Management Holding was obliged to eliminate the identified violations.

Having agreed with the competition authority arguments, the development institute revised the current projects and internal regulations of the agents, which resulted in discarding the norms promoting the creation of unjustified competitive advantages for certain business entities.

In closing, interventions made by the CCA have comprehensively identified and addressed problems with competition. These interventions are to prevent any further adverse effects which may arise from anti-competitive mergers.

Competition advocacy: Montenegro

Enis Huremović
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Agency for Protection of
Competition of Montenegro

The best possible implementation of competition policies is vitally important for national economic growth and improving the productivity of market actors, as well as the quality of their products, which eventually result in a more satisfied consumer. However, given that competition is a rather complex field, which so far has not been properly communicated with the broader public, means that the people know very little about it.

In addition, the level of awareness of competition in relation to the market and the economy as a whole needs to be better communicated to ensure that all relevant procedures are carried out and lawfully. Several recent cases suggest that market actors sometimes lack the information needed to operate accordingly in the market race, which invariably leads to legal and financial issues.

Furthermore, it should be noted that bringing the current state of competition in Montenegro up to contemporary European standards is also salient to Montenegro's European Union accession negotiations. Becoming a full-fledged member state of the Union remains the country's key foreign policy priority and, among other things, also features in our national constitution.

With all this in mind, the Montenegro Agency for Protection of Competition has recently stepped up its efforts to advocate competition in order to improve its current overall state on a national level in Montenegro.

Over the last year, these first steps have noticeably grabbed the attention of the media. And by keeping in line with the newly adopted Communication Strategy, transparency has positively spiked public interest. The Agency's top management team members, along with other representatives have established a mutual understanding with our most trusted local media outlets and have recently begun informal talks with journalists from the media. In attempts to keep the public well informed, open discussions have been held and additional information shared.

Additionally, the Agency has started posting relevant information about its operations on its recently opened official social media accounts. This represents another step towards better communication of competition-related data and expand its reach to wider audiences.

In cooperation with our numerous international and local partners, the Agency has also organised several educational events on competition policies for all relevant parties:

- Since the Agency does not have the legal competence to autonomously implement the sanctioning of policies, the involvement of the judiciary branch of power facilitated. Thus, judges and prosecutors also need to be properly informed when it comes to competition issues and must have a solid understanding of the intricacies of this particular area of expertise. Hence, the first in a planned series of training sessions on competition issues for the benefit of judges and prosecutors was organized in early November 2023, jointly run by the Agency and the National Judicial Training Center.
- With the assistance of foreign expertise, a number of training sessions on the specifics of competition have been organized over the past few months, selecting the most suitable employees from the Agency, as well as the Ministry of Economic Development and the Ministry of Finance.
- Lectures have been held at the University of Montenegro, where many of the country's future competition talent are nearing graduation. Starting next March, several students from the Faculty of Economics and the Faculty of Law in Podgorica are expected to become interns at our competition protection agency, with a view to full-time employment at the Agency.

It is also worth noting that the governmental Working Group for Chapter 8 (Competition) – a part of the national EU accession negotiating structure – was reconstituted earlier this year. The Working Group, headed by the President of the Council of the Agency for Protection of Competition, holds regular sessions where its members, i.e., representatives of competent state authorities, discuss topics affecting the negotiating process, further promoting inter-sectoral cooperation on these issues.

We remain aware that a lot of work still needs to be done on competition advocacy until it reaches a genuinely satisfactory level. Nonetheless, we also believe that this brief overview does demonstrate our willingness and sincere devotion to improving the general situation.

The way in which the open market operates necessitates

an intensified international cooperation as well. A developing economy like ours, can hardly succeed in forging a stable and fully functional system without the assistance of its foreign partners. We are therefore grateful for the high-quality cooperation that we have established with the Regional Centre for Competition (RCC), which provides us with valuable opportunities to exchange knowledge and experiences with other nations and their institutions on all relevant issues – including competition advocacy.

In hopes that this cooperation will continue to grow in the forthcoming years, I cordially salute you!

Competition advocacy in the legislative procedure to ensure competitive market in the Republic of Serbia[1]

Gordana Lukić
Commission for Protection of Competition of the Republic of Serbia

Jezdimir Potpara
Commission for Protection of Competition of the Republic of Serbia

Serbian Competition Authority advocacy activities

The Commission for Protection of Competition (hereinafter: CPC or Commission) is an independent and autonomous organisation, which performs public competencies in accordance with the Law on Protection of Competition (hereinafter: Law).[2] The CPC applies competition rules, pertaining to antitrust and concentrations, in all sectors of the economy, and to all undertakings whose acts and/or practices affect or could affect competition on the territory of the Republic of Serbia. Beside these core competencies of the CPC to decide on the rights and obligations of undertakings and impose administrative measures upon them in proceedings for establishing competition infringements and assessing concentrations, the CPC has other significant competencies which enable it to fulfil its mandate in full force.

Thus, the Commission undertakes activities to raise awareness on the necessity of protection of competition (Article 21, par 1, item 11) among the business community, the authorities competent for drafting regulations, sector regulators, academia, and the public in general. The Commission undertakes different advocacy activities to raise awareness about the importance and content of competition rules, as well as to disseminate knowledge in this field, such as: issuing opinions on draft regulations as well as on current regulations that have an impact on market competition; issuing opinions on the application of competition rules; issuing reports on sector inquires/market studies containing proposals/recommendations for possible measures which could improve the competition in the market, and if the CPC identifies regulatory problem, it may propose new law and/or regulations or amendments to the existing one, as a solution for improving competition conditions and process[3]; organizing and participation in conferences, round tables, seminars/webinars etc; publishing all relevant data and decisions on the CPC´s website; issuing press releases and announcements in electronic and print media etc.

Advocacy in the legislative procedure

The CPC is well-equipped to issue opinions on drafts and on existing laws and regulations which affect competition on the Serbian market (Article 21, par. 1, item 7).[4] Since those opinions are non-binding for the competent authorities they are addressed to, in practice, level of their "success" and the willingness of the authority in question to take the opinion into account, depends on the pre-existing level of cooperation of the CPC with the authority they are addressed to and their understanding of the matter and competition rules in general.

The CPC advocates for more pro-competitive laws and regulations using different advocacy tools, such as: protocols on cooperation with sector regulators which represents both parties' mutual interest in furthering legally mandated cooperation; organising and participating in seminars and round tables for the Serbian civil servants engaged in drafting laws and regulations in order to increase capacities of public insti-

1 The views expressed herein are those of the authors and not the institution.

2 Law on Protection of Competition ("Official Gazette of the RS", 51/09, 95/13), http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/07/Law-on-Protection-of-Competition2.pdf.

3 The latest examples are sectoral analyses of the state of competition on the market of digital platforms for mediation in the sale and delivery of mainly restaurant takeaway food and other products, as well as well as one of the state of competition on the market of other postal services. See: https://kzk.gov.rs/en/category/sektorske-analize

4 The CPC can issue opinions on draft/existing general legal acts of the territorial autonomy authority and local self-government bodies, but this article doesn't deal with that issue. Furthermore, the CPC can issue another type of opinion: opinion on the application of competition rules when there is a need to clarify the application of certain competition rules but this article doesn't deal with that issue either.

tutions regarding competition rules; issuing opinions on the application of competition rules in certain sector of the economy, usually on the request of competent authority, etc. It is important to mention that the Commission and the Republic Secretariat for Public Policies[5] developed the Competition assessment checklist, on the basis of the OECD Recommendation on Competition Assessment and Best practises, designed as a tool to help determine whether a certain proposal/draft law or regulation can distort competition in the market. If, by adhering to the checklist, such impact on competition is established, the proposal/draft law or regulation should be submitted to the Commission for their opinion. The checklist represents an annex to the Public Policy and Regulatory Impact Assessment Handbook starting from January 2021.

As a conclusion, it can be said that the CPC undertakes many activities especially to raise the ability of the institutions which are official proposers of laws and regulations to identify, in a timely manner, all laws and regulations which should be submitted to the CPC for ~~an~~ opinion. There is no need to emphasise that these activities include raising the level of knowledge about (at least) the basic rules and principles of competition protection, as well as making the CPC more visible and recognisable as an institution to which it´s necessary to submit a request for an opinion.

In the CPC's experience, its opinions are usually taken into account somewhat, but this practice could be improved, which requires additional advocacy efforts of the CPC aimed at drafting and the adoption of procompetitive or, at least, competition neutral laws and regulations.

Opinion on Draft Law on Electronic Communications

A good example of the advocacy activities of the CPC when it comes to legislative changes are explained in short.

The Commission issued its opinion on the Draft Law on Electronic Communications, on the request by ministry competent for the area of Telecommunications.[6] The Commission strove to present its remarks and proposals concisely, to justify its position by indicating the rule with which it is necessary to comply, i.e., why the change / intervention is necessary, as well as to indicate how the provision should look.

The following opinion is one of a number of opinions that were levelled:

The draft provision which regulates the criteria for determining operators with significant market power, was conceived as follows:

„*Common significant market power is shared by two or more economic entities, which may be mutually legally and economically independent, but which, from an economic point of view, have a common interest, that is,* ***which have adopted a common policy of coordinated anti-competitive behaviour on the market****. The existence of an agreement between economic entities or other legal, structural or economic ties is not necessary for the determination of joint significant market power, but it can be based on other forms of connection, i.e. on* ***tacit coordinated joint action*** *and depends on the economic assessment, and especially on the assessment of the market structure*."

The Commission indicates that joint significant market power can be viewed in the context of the institution of collective dominance known in the competition law and which is similarly defined. The content of the draft provision is not acceptable from the aspect of competition protection rules. Namely, as the existence of a dominant position is not contrary to the Law, neither is the existence of collective dominance. If two or more market participants possess a collective dominant position, this does not necessarily mean that it exists because the market participants have adopted a policy of concerted anti-competitive behaviour and tacit concerted action, specifically for the reason that such actions may constitute competition infringement under the conditions prescribed by the Law. Therefore, the wording used to define common market power automatically indicates the possible existence of actions and/or acts contrary to the Law on Protection of Competition, for which reason they are not adequate for the Draft Law in question.

Therefore, the Commission proposed adequate provision:

"*Common significant market power may be observed with two or more economic entities* ***that are legally independent but connected by economic relations, have a common business interest, that is, act jointly or act as a single participant on a relevant market****.* ***Common significant market power, in addition to specified or implicit agreements, concerted practices or other legal, structural, or economic relations, may be based on other types of association and depends on economic assessment, especially the assessment of relevant market structure****."*

It was also proposed to add a paragraph specifying that the abovementioned shall be applied accordingly when significant market power can also be determined on a closely related market, if the connections between these markets are such that the power from one market can be transferred to a closely related market in a way that strengthens the market power of the economic entity.

Additional reason for proposed amendment was the ob-

5 Republic Secretariat for Public Policies is a distinct organisation under the Law on Ministries, which performs professional tasks related to the creation and management of public policies, implementation of regulatory reform and analysis of the effects of public policy documents and regulations prepared by ministries and distinct organizations.

6 See Opinion to the Draft Law on Electronic Communications (2023), https://kzk.gov.rs/kzk/wp-content/uploads/2023/05/Misljenje-na-Nacrt-zakona-o-elektronskim-komunikacijama-od-03.02.2023.-eng.pdf.

ligation of the sector regulator[7] to cooperate with the Commission in connection with conducting market analysis[8] which implies necessity to apply the same principles in that process. Namely, the Draft law stipulates that: "In the process of market analysis, the Regulator cooperates with the authority responsible for the protection of competition **and prior to conducting public consultations**".

At the proposal of the Commission, this provision was also amended[9] to state that it is necessary for cooperation to take place before public consultation. This amendment was the result of previous extensive cooperation practice between the CPC and the sector regulator.

Pertaining to the draft provision that regulates joint investments in very high-capacity networks, the Commission proposed an amendment indicating that such joint investment may be subject to evaluation in accordance with the competition protection rules. This may include the obligation to notify the concentration, as well as compliance with the provisions of the Law which regulate the restrictive agreements and their exemption from prohibition. Although the obligation to comply with the Law on competition protection is implied, it is always useful to point out this obligation in the sectoral law as well.

The Draft was amended in accordance with the given opinion, but some other proposals of the Commission were not accepted.

Concluding remarks

In carrying out its mandate of protecting competition on the Serbian market, CPC has at its disposal many investigative powers and a wide range of tools. Cooperation with state authorities, territorial autonomy and local self-government bodies and with sectoral regulators, is necessary for successful advocacy in connection with legislative procedure, especially to reduce role of state and remove barriers for businesses as much as possible, as well as to ensure competitive market and implementation of the competition protection rules.

7 RATEL The Regulatory Agency for Electronic Communications and Postal Services was established by the Law on Electronic Communications in 2010, which defines the agency as „an autonomous regulatory organisation with the status of a legal entity, which exercises public competencies with the aim of effective implementation of the policy for electronic communications,...".

8 In recent years, the Commission issued: Opinion on the Draft Report on the Analysis of the Wholesale Market of Central Access Provided at a Fixed Location for Mass Market Products (2022); The Draft report on the analysis of the wholesale market for local access to network elements provided at a fixed location (2022); the Draft Report on the Analysis of the Wholesale Market for Call Termination on the Public Telephone Network Provided at a Fixed Location, and the Draft Report on the Analysis of the Wholesale Market for Call Termination on the Mobile Network (2021) https://kzk.gov.rs/en/

9 The draft provision before amendment: „In the process of market analysis, the Regulator cooperates with the authority responsible for the protection of competition".

The Labor Market Case in Turkey

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Recent studies indicate that while the market shares and profitability of undertakings have increased, employees have not benefited from this upturn. Different views have emerged from around the world as to whether the market power of employers has made any difference to employees' salaries one way or the other, while working conditions remain below competitive levels. Competition violations in the labour market, which are scrutinized by many competition authorities, are also on the Turkish Competition Authority agenda. Accordingly, the Competition Board investigated 48 undertakings following allegations that they had entered into no-poaching agreements in the labour market. As a result, decisions had to be made.

The investigation was based on evidence from a separate case about online food order-delivery services. Evidently, undertakings were in collusion with each other to limit the possibilities of their own personnel. The gentleman's agreement between them meant that they would not poach or transfer each other's staff, and that they would share so-called blacklists or anything off-limits with each other. The process of the initial investigation expanded to 48 different undertakings after more and more evidence came to light.

The 48 undertakings involved in the investigation operate in various sectors such as e-commerce, telecommunications, software development, apparel/textiles, food and beverages, and logistics. However, since the subject of the investigation is the manipulation of the labour market, the investigations compare/analyse rivalries in the labour market and make decisions accordingly. In light of these investigations, reports suggest the need to focus on the workers in general, as well as individual employees, all of whom are supposed to be protected by the anti-competitive agreement.

The investigation initiated in 2021 was concluded in 2023 and the final decision imposed administrative fines on 16 undertakings on the grounds that they had violated Article 4 of the Law No. 4054 on the Protection of Competition by concluding no-poaching agreements between employers, while no violation was found for other undertakings. Prior to the final decisions, note that 11 of the undertakings ended with settlements.

The final decision of the investigation was solely based on no-poaching agreements.

In this regard, firstly, legislation other than competition law restricting employee mobility in Turkish law is duly inspected. In particular, the non-compete clauses included in the agreements between the employer and the employee are examined, their conditions are noted and their differences from the no-poaching agreements are addressed. By doing this, anything opaque between employer and employee ends up transparent.

Subsequently, the literature on no-poaching agreements has been examined, too. The effects that may arise in both the labour market and the downstream market by restricting the mobility of employees are vital to undertakings. Competition recognises that the cost of labour constitutes significant overheads for businesses, but this does not supersede employees' rights.

At the same time, the perspective on no-poaching agreements in the decisions made by other competition authorities versus how it is practiced in Turkey are also discussed.

In the light of the explanations provided in line with the literature and enforcement, state that no-poaching agreements require the undertakings to refrain from competing for workers because of the adverse effects. It also implies that salaries can drop, that the incentive to invest in people lessens, thus by definition, no-poaching agreements violate the objective of Competition.

Similarly, considering that these agreements involve the sharing of workers' input, they may reduce the amount of potential job opportunities for employees, and indirectly affect their salaries. It is said that these agreements do not differ from customer and market sharing agreements. Customer/market sharing falls within the definition of a cartel, and that there is no difference between cartels in the output market and cartels in the input market. This is because cartels in general like to monopolise power, while Competition Law seeks to counter such monopolies.

Therefore, depending on the severity of the infringements, no-poaching agreements constitute a cartel. In particular those that are in symmetry with anti-competitive behaviour and agreements who share markets, customers, products, and workers. All these factors contribute to the definition of a cartel.

The decision has also taken into consideration the different forms of no-poaching agreements and have observed that they may appear in various forms. Apparently, there are

agreements that either agree or disagree on which potential candidates or employees should or should not be hired regardless of their employment history or whether they are or are not in employment.

Similarly, agreements may exist that stipulate that neither party shall hire each other's former employees for a certain period of time, or agreements that do not include such a time limit, or that include certain groups of employees, or that may cover all employees of the undertakings. Once more, the practice of manipulating hiring in these circumstances is tantamount to violating the no-poaching agreement.

Another important piece of evidence gathered during the investigation is reveals that 27 of the undertakings were found to have violated Law No. 4054 but were not involved in a single agreement. According to the documents, each of the undertakings had agreed not to hire each other's employees through bilateral agreements.

Another issue that they factored into the decision was whether the assessment of no-poaching agreements would differ where there are legitimate vertical relationships between undertakings in the hiring market. Indeed, it was observed that some of the undertakings subject to the investigation had had various vertical relationships in their main fields of operation. At this point, the doctrine of ancillary restraint is considered. In this framework, the practices of the Turkish Competition Board and other competition authorities are discussed. Taking into account the definition[1] and conditions [2] of ancillary restraint under Turkish competition law, the conditions required for the acceptance of no-poaching agreements as ancillary restraints are set out in specific to these agreements. The first condition is that the agreement restricting the transfer of employees between undertakings must be in written form. Where a written agreement not to solicit employees is identified, the main agreement to which this agreement relates and which is within the scope of a legitimate collaboration, business transaction etc. should be identified. It is possible for the undertakings to include the no-poaching clause in the main agreement or to enter into a separate agreement regarding the employees. However, in the latter case, the legitimate relationship between the contracting parties should be clearly set out.

Another condition of the ancillary restraint in terms of no-poaching agreements is important for the assessment of the "necessity". Accordingly, the non-solicitation clause should not be settled to cover all employees of the undertakings and should include employees to the extent necessary for the main agreement. In other words, the employees whose mobility is restricted must be reasonably identifiable. Additionally, the no-poaching agreement should be examined in terms of its duration and this duration should not exceed the duration of the main agreement, taking into account the circumstances of the case.

Finally, with respect to ancillary restraints, the decision states that undertakings should consider whether the main agreement is enforceable in the absence of the restriction.

The decision is a pioneer in Turkish competition law enforcement as its subject matter consists solely of no-poaching agreements in the labour market. As well, there are other decisions [3] of the Competition Board regarding the labour market. It should also be noted that the Authority is currently conducting labour market investigations against undertakings operating in sectors such as software development, education, construction, and pharmaceuticals.

1 It is defined as restraints that are not the substance of an agreement but are necessary for the achievement of the objectives sought to be achieved by the agreement and are directly related to these objectives.
2 "direct relation" and "necessity"
3 e.g. Board Decision dated 24.02.2022 and numbered 22-10/152-62.

Snapshot of progress on competition policy reforms in the Republic of Uzbekistan from 2019-2023

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Reforms introduced

A number of crucial **institutional reforms** have been introduced to further modernise and enhance Uzbekistan's economic and competition policies:

1. After a comparative study of international best practices, Uzbekistan has since implemented a "Yellow Pages Rule" to decrease the extent of the s**tate's presence in the economy**. Under the Rule, it is prohibited to establish a state-owned enterprise (SOE) if at least 5 private-sector entities are already established and operating within the relevant industry. Uzbekistan reached this benchmark after a robust monitoring of its markets found that the presence of 5 entities signalled sufficient non-concentration,[1]
2. The **competition authority** has been made directly accountable to the President and Senate to ensure independent decision making and avoid potential conflicts of interest,[2]
3. State enterprises and public bodies must now comply with **competition compliance tools** to ensure an early prevention of competition law violations. These tools include a set of good governance principles (e.g., ethics codes, corporate governance rules, oversight mechanisms), whose adoption is mandatory for state-owned entities (SOEs) and public authorities and voluntary for all other private entities. In addition to these good governance reforms set out in the competition compliance tools, each company required to implement them must designate an internal officer to report to the Uzbekistan government annually, in order to increase transparency and accountability. Coupled with increased fines for non-compliance, these tools have proven to be an effective and robust preventative mechanism to prevent anti-competitive behaviour before it happens,[3]
4. SOEs may no longer participate in public procurement procedures, to eliminate conflicts of interest in public procurement and to enhance transparency. Beneficiary disclosure obligations have also been set,
5. *Ex-ante* Regulatory Impact Assessments (RIA) and Competition Impact Assessments have been made mandatory for all draft legal acts before their establishment in order to significantly reduce the regulatory burden on businesses,[4]
6. Uzbekistan has committed to revising and cancelling state aid provisions that have the potential to distort competition, in order to ensure a level playing field for companies. For instance, Uzbekistan is gradually eliminating individual privileges and tax benefits, preferences, and exclusive rights. Uzbekistan has already eliminated **tax and customs benefits** across 24 sectors, **individual benefits** across 4 sectors, and **exclusive rights** across 13 sectors (e.g., supply of liquefied gas to the general public and social facilities, medical examination of drivers and driver candidates, services for compulsory state insurance of tax officials, etc.).[5]
7. 114 different types of licenses and permits that businesses to apply for have been withdrawn. And for 33 of which, notification procedures have been drawn up.
8. The President of the Republic of Uzbekistan has approved the Competition Development Strategy for 2020-2024. A key objective of the Strategy is to **foster economic development and innovation, to increase the inflow of investments, to create jobs, and to increase the welfare of consumers by ensuring a "level playing field" for all market players.**[6] As part of the Strategy Uzbekistan will, among other actions, create a system of "smart" antitrust regulations based on internationally accepted good regulatory prac-

1 Article 24 of the new Law "On competition" № LRU 850 of July 3, 2023 https://lex.uz/uz/docs/-6518381
2 Article 7 of the new Law "On competition" № LRU 850 of July 3, 2023. https://lex.uz/uz/docs/-6518381
3 Article 9 of the new Law "On competition" № LRU 850 of July 3, 2023 https://lex.uz/uz/docs/-6518381
4 Article 8 of the new Law "On competition" № LRU 850 of July 3, 2023 https://lex.uz/uz/docs/-6518381
5 Decree of the President of the Republic of Uzbekistan № DP-101 of April 8, 2022 https://lex.uz/docs/6359076 and Article 8 of the new Law "On competition" № LRU 850 of July 3, 2023 https://lex.uz/uz/docs/-6518381
6 Decree of the President of the Republic of Uzbekistan № DP-6019 of July 06, 2020 https://lex.uz/docs/5693554

tices that streamline the regulatory process, decrease the administrative burden on regulated entities, leverage the many potential efficiencies in the digitalisation of the regulatory process, and implement the latest behavioural economics tools in regulatory design. Additionally, Uzbekistan will transition to a preventive-based system of competition protection; develop effective tools to regulate digital markets; implement new market analysis tools; and decrease the level of state price regulation.

9. **A new Law on Competition** was adopted in July 2023 and entered into force in October 2023. It implements new policy tools to prevent anticompetitive behaviour and actions, including the abuse of dominant positions and cartel agreements and the effective control over state aid and state presence in the economy. In addition to the introduction of more robust penalties to dissuade anticompetitive behaviour, this law leverages many of the "smart" regulatory principles mentioned in the preceding paragraph, such as provisions that ease the regulatory burden on small- and medium-sized enterprises (SMEs). The Law also sets out a framework for the regulation of digital markets, the first of its kind in the region.[7]
10. Uzbekistan has committed to further facilitating **fair market competition and creating an enabling environment** for the private sector, in order to ensure **"a level playing field"** and **reduce the extent of the state's** presence in the economy. To that end, Uzbekistan has committed to abolishing **17 types** of state monopolies by 2030 in a number of sectors, including e**nergy, oil and gas, water management, road construction, railways, and airport services**. The supply of these services will be transferred to the private sector, and in doing so, the number of SOEs will be **reduced six-fold**.[8]
11. Uzbekistan has commenced its transformation of the public administration of its infrastructure sectors. By 2025, Uzbekistan will **establish have established independent economic regulators** across a number of sectors, including **energy, railways, civil aviation and airport services, telecoms, road construction and water management**. The first regulator, in the energy sector, has already been established this year.[9]
12. Uzbekistan has committed to ensuring the compliance of its State Trading Enterprises' (STEs) activities with WTO rules. As part of its ongoing work to ensure the WTO compliance of its STE activities, a high-level Council will comprehensively review the exclusive rights granted to STEs and develop measures to align the operations of STEs with the WTO rules.
13. Since 2019, **18 types** of previously regulated prices have been liberalised. Among others, prices for socially significant goods such as wheat, bread, cotton and cotton oil, fertilizers, ethylene, fuel, and have been liberalised.[10] Starting October 1, 2023, Uzbekistan began eliminating the subsidisation of a number of regulated prices, including natural gas and electricity production, transmission, distribution, retail tariffs and thermal energy production tariffs, electricity, and tariffs in railway transport.

Results to date

Competition has markedly improved across 17 previously highly concentrated industries, and control by state control monopolies has been eliminated. These results to date include, inter alia:

1. SOEs' domination **in the cotton, wheat, and cement production industries** has been stopped. Since 2019, Uzbekistan has espoused competition more and more in the civil aviation sector thanks to the implementation of an "Open sky" regime (i.e., the fifth freedom of the air) for 9 of the largest destinations in Uzbekistan. Uzbekistan has also significantly reduced the monopolistic position of its SOE, Uzbekistan Airways, in international flights;
2. Uzbekistan has completed an unbundling in the energy, civil aviation and airport services sectors. It has commenced its unbundling in the railways sector, which will gradually be privatised;
3. The number of SOEs has dropped **by 30%** (from 3,000 SOEs to 2,100);
4. Entry barriers to the private sector have been abolished across **13 sectors**, where previously exclusive rights were granted to certain undertakings; and
5. The number of SMEs has increased **by 25%**.

7 new Law "On competition" № LRU 850 of July 3, 2023 https://lex.uz/uz/docs/-6518381
8 Decree of the President of the Republic of Uzbekistan № DP-101 of April 8, 2022 https://lex.uz/docs/6359076
9 Goal 56 of annex 1 of Decree of the President of the Republic of Uzbekistan № DP-158 of May 16, 2023 https://lex.uz/docs/-6467143
10 Decree of the President of the Republic of Uzbekistan № DP-329 of October 10,2023 https://lex.uz/docs/6631604 and Resolution of the Cabinet of Ministers № RCM-475 of September 15, 2023 https://lex.uz/docs/-6609144

The Spanish Competition Authority goes to court to challenge the «Amazon tax» of the City Council of Barcelona

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It is a general principle of Competition Law that the prohibitions of collusive conduct and abuse of dominant position only apply to undertakings, meaning any person or entity exercising an economic activity in the market. Consequently, restrictions of competition caused by public and how they are carried out fall outside the scope of Competition Law, even though such authorities often impede the smooth running of the market. The reason for this is clear: public authorities have the right to intervene in the economy to carry out their public policies, even if this may affect the day-to-day operations of competition.

However, the authorities' power to intervene in the economy, although legitimate, cannot be absolute, which is why, under the umbrella of what is known as «better regulation», public regulations are required to respect, among others, the principles of necessity and proportionality. For one, the principle of necessity requires the existence of an «overriding reason relating to the public interest» to be protected by competition-distorting public action. Then again, the principle of proportionality implies that there are no other alternatives to lessen interventions on market-distortions.

In Spain, the competition authority has several mechanisms at its disposal to try to ensure that public intervention in the economy is in line with the principles of better regulation. Most of these mechanisms are of a preventive nature and aim to anticipate the existence of bad regulation. This is the case with the power to conduct «market studies» or «sectoral reports» that identify existing competition problems in a market and offer guidelines for problem-solving. Similarly, the competition authority writes «reports on draft regulations» which sets out the consequences for legislative initiatives around competition in the market, in particular those whose outcomes that digress from the issue and had not been foreseen by the authority.

But the Spanish competition authority can take a step further and try to repair the excesses of a public regulation that has already been approved. Indeed, the competition authority is legitimised to require the courts to put an end to restrictions to competition generated by existing public regulations. This power known as «regulation challenge», is limited to public regulations of lower rank than the law and extends to administrative acts. When the rule restricting competition has the status of a law, the only way forward is to file an appeal of unconstitutionality to the Constitutional Court.

Over the last decade, the competition authority has challenged the courts as such. The most notable examples are related to public transport and tourist accommodation.

Continuing this policy of ensuring better regulation, in July 2023 the Spanish competition authority went to court to challenge a tax that had been imposed by the Barcelona City Council on the delivery of goods that had been purchased online. The municipal tax was found to be disproportionate thus violating competition.

According to the city council, the tax levied was two-fold: first, it was intended to reduce traffic congestion and pollution generated by vehicles delivering goods purchased online; second, the local tax was also intended to promote local commerce, which unlike online commerce is said to be better for the community in terms of jobs and reducing other traffic-related issues.

With regards to the second objective/reason, the tax comes with provisions: (i) it does not apply to home deliveries of goods purchased from local shops; (ii) it does not apply to online sales delivered directly by the trader, without recourse to a «postal operator» (i.e. postal service providers); and (iii) the tax also excludes online sales delivered by small postal operators (annual turnover of less than €1 million in the city of Barcelona). As drafted, the municipal tax seems to apply only to the delivery services of sales by large online sellers, widely known as «Amazon tax».

The Spanish competition authority deems that the city tax creates a distortion of competition as it is applied unequally depending on the circumstances of the purchase and delivery service. Of particular concern is the exemption of smaller-sized delivery services. The competition authority considers that «this exemption distorts competition and is not justified

as there is no evidence that operators with a lower turnover use the public domain less than operators with a higher turnover».

Although the information available to the public about the challenge is limited, the reasoning of provided by the competition authority is irreproachable. From an urban planning and environmental protection point of view, it does not seem necessary or proportionate to separate one source of delivery from another on the basis of, for example, the size of the delivery business, nor its turnover: all the delivery vehicles occupy in principle the same amount of space and pollute equally the same.

The doubt may arise, however, in relation to the second objective of the tax, the promotion of local commerce, because if it's considered in the public interest, it could justify the need for the regulation, especially if it is for the greater good.

The decision to challenge the city tax has not been without controversy insofar as some have criticised the competition authority for siding with the large online sellers at a time when competition authorities around the world are trying to introduce measures to curb the excessive market power that digital platforms such as Amazon have acquired in the digital economy. However, the Spanish competition authority's decision to challenge the local tax should not be seen as a protective measure for large online platforms, but rather as an effort to ensure efficient regulation of markets that prevents the introduction of unnecessary or disproportionate measures. In this regard, it should be recalled that on the same dates on which the challenge was filed, the Spanish authority fined Apple and Amazon 194 million euros for restricting competition on Amazon's website in Spain.

We will have to wait for the court's decision to see whether the municipal tax complies with the requirements of the better regulation. However, a ruling by the Audiencia Nacional in July 2023 has introduced a new element into this controversy. In an unrelated dispute, the court has ruled that Amazon does not have the status of a postal operator because it only performs preparatory activities but does not provide the postal service itself. This decision has implications for Barcelona's local tax insofar as delivery services provided by those who do not have the status of postal operator are excluded. The municipal regulation was intended for direct deliveries by small businesses, but this exception now includes Amazon as it does not have the status of postal operator. It remains to be seen what impact this decision will have on the Internet sales giant, as although it excludes it from paying the tax directly, it will have to pay it indirectly to the extent that it contracts the delivery of goods to postal operators subject to the municipal tax.

Market studies in nascent competition authorities: a case for utility, efficacy, and impact

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Market studies have always featured heavily in the competition advocacy toolkit landscape ever since that very concept was invented. These kinds of reports, aimed at assessing why a market may not be functioning properly, are inherent to any such effort; even more so, in ever-changing economic contexts and paradigms. No wonder why many national competition authorities, hereinafter NCA, have favoured this way forward.

It stands to reason however that market studies are difficult, time-consuming, sustained and costly exercises but meanwhile aspire to facilitate a sophisticated economic analysis. The question then presents itself, in the best interests of advocacy: do market studies stand the cost-benefit analysis test, in particular in the context of emerging NCA, where resources may be scarce?

This short contribution will address the issue by outlining first the positives, secondly by identifying some ways to alleviate particular challenges and hurdles and lastly, touching upon how to improve their impact. This issue is often overlooked – and is indeed a crucial one borne from personal experience from an NCA's Advocacy Department, Government and now consultancy. Spoiler: persuading, positioning, and communicating count as much as sound, shiny economic analysis.

Why bother?

Market studies are, above all, an in-depth, non-subjective look at the competitive dynamics and functioning of a given market. They are useful in several distinct ways: namely, they reach places that enforcement and other advocacy instruments do not. They are integral in scope, normally sector-wide. They assess competitive interactions holistically in a given market: potential market failures, existing applicable regulation, horizontal and vertical market structure, potential competition in form of innovative disruptions, entry barriers, convergence trends, public intervention instruments, seller vs buyers power, reaching where NCA action otherwise cannot.

So granted, market studies are useful. But, so useful as to merit a place in the agenda and practice of a young or consolidating NCA? Amidst the ebbs and flows of budgetary fights and opportunity cost that these agencies typically live in, three reasons stand out:

- ***Market studies are poised to impact economic policy.*** Market reports normally conclude with non-binding recommendations to regulators, policy makers or firms themselves. Thus, the potential of studies to contribute to sound, balanced economic outcomes and so position the NCA in that context must not be underestimated, in particular as many of these NCA studies are being developed in parallel to major structural reforms – liberalisation, adaptation of regulation, even privatisation – being carried out in the country. NCA, whilst retaining an independent character, can prove a sound ally towards the pursuit of better policy and so reinforce legitimacy and proactiveness. Studies contribute to raising NCA profile towards outside decision-makers and interlocutors, whether public or private.
- Market studies can contribute to organisation power-up. Market studies can be seen as an investment in resources within the NCA. They build synergies between departments within the house and foster knowledge acquisition by staff as regards to analytical and sectoral skills, which will be useful further down the road as regards to antitrust and advocacy oversight. They can also direct NCA further proactive exercise of antitrust powers, whether in the form of market investigations as such or under the remaining anti-competitive conduct figures.
- ***Market studies exhibit a distinct prospective element.*** Studies come in particularly handy when addressing novel issues in novel – or disrupted – markets. This theme has been commonplace throughout NCA dealing with the new competition issues that have stemmed from digital markets of services and infrastructures, as explained in OECD's Using Market Studies to Tackle Emerging Competition Issues, where examples of studies analysing structural, demand-side or stale regulation issues in different

digital markets such as online platform streaming, big data or market studies are provided. Spain´s CNMC is a fine example, having completed a report on digital advertising in 2021 or, very recently – November 2023 – announced to initiate a report on the competitive conditions in the cloud computing services market, aligning with UK´s OFCOM recent referral to CMA.

A challenge to live up to

The above is not to deny that market studies are no walk in the park they require strong analytical skills – economic in particular – quality data, longer timelines, and resource-consuming work dynamics. How can a young NCA deal with all of that as successfully as possible? Here come a few pointers.

- Visualise bottlenecks and manage accordingly. Whilst substantive issues might be new – and this may not necessarily be the case in light of sibling NCA shared acquis –, both roadmaps and methodologies are clear by now. OECD offer guidelines, well-grounded on common experience and practice, on how to handle all the successive phases (up to nine are devised). Ultimately, it does help to point out the stress points where the exercise can get out of hand and how to deal with them. An evident example is assessing your information processing and data capabilities. How one approaches the information requests to stakeholders should depend on that. There is no point is in overloading stakeholders and eventually yourself with information which does not only have a clear purpose but is not realistic to manage, either.
- ***Focus on what you control.*** Many things can get complicated along the course of a market study; however, NCA can still retain control over many of them. This can be done firstly by making sensible decisions. Well thought-out prioritisation is crucial. Exercise discretion by limiting number of studies: there are only so many chances so choose your objectives wisely. Apply qualitative insight to cost-benefit as well: what topic is best bang-for-the-buck in terms of impact? Where is the regulatory-governmental cycle? One properly executed study on the right topic is more impactful than ten sloppy, un-synched exercises. It also helps to anticipate the decision, so that stakeholders will prepare in advance to better provide you with information.
- ***Use economic analysis wisely.*** Economic analysis is the cornerstone to any market study. Whilst sophistication and depth are commonly desired, they are yet again subject to the NCA capabilities, whether in terms of budget or in-house skill. In addition, some kinds of analysis can be particularly tricky, or dependant on quality of data, such as profitability analysis as regards to welfare surpluses or cross-subsidisation exercises, not uncommon in studies looking to liberalised public or concessional services. Once again, gauge your capabilities and act accordingly. Build from the wealth of methodological resources at hand and prioritise sound insight from available data over excessively complex exercises.

The advocacy of advocacy

Uncomfortable, yet true: decisionmakers do not always concur with NCA recommendations from market studies. How can NCA, then, improve impact of their studies? This issue goes beyond study pertinence and quality. Publishing a report and influencing decisions are quite different things.

In this day and age, NCA face contextual difficulties to get their point across. Attention from governmental and legislative bodies is competingly demanded and sought for. There are political and public interest angles that sometimes counterbalance claims stemming from NCA. However, there is also room to improve general understanding of sound economic policy between key actors and informed public opinion. So once again, it pays to have a clear action plan. Some hints:

- ***Give publication a high profile***. A market study should respond to a given strategic priority within NCA. Publication then should correspond to that importance. Devote resources to present the study. Media engagement, high rank involvement and a clear presentation of the conclusions will bring the study alive, transforming analysis into actionable messages.
- ***Engage in directly addressing decisionmakers***. Publication however is not enough. The policy and decision-making ecosystem are varied and rich. It is convenient to entice the interest of those like-minded departments within government, legislative commissions or even the broader political landscape. Persuading and influencing normally go hand in hand with being present in and part of the debate. NCA exhibit a high degree of legitimacy, which can be harnessed to be present where it matters.
- ***Disseminate, amplify, liaise***. Legitimacy and credibility are not complete without outreach. There is a role to be played by third parties in terms of spreading the word. Aligned stakeholders – normally those interested in competition working better in the markets dealt with by the study – can amplify the study´s theses and recommendations. They can pick up where the NCA left it. Likewise, discussions can and should be promoted in expert fora. Academic institutions and independent think-tanks are also eager to be involved.

In sum

There is no reason for young NCA to not know and love market studies; nor is there a binary conundrum, in yes/no terms. The issue is rather one of carefully appraising capabilities, harnessing the knowledge available in terms of roadmaps and methodologies and matching the quality of analysis with additional communicative efforts. Provided all such conditions are met, market studies will prove a valuable competition advocacy asset – both for established and consolidated NCA.

Two peculiarities of competition advocacy in Italy: the Annual Law on Competition and the monitoring of advocacy efforts

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The advocacy powers of the Italian Competition Authority

Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through relationship with other governmental agencies and increasing public awareness of competition benefits (ICN — Advocacy and Competition Policy, 2002).

The Italian Competition Authority (hereinafter ~~also~~ the AGCM) can rely on a wide range of advocacy powers, which allow it to cooperate with Italian policy makers with a view to contributing to a more competitive and dynamic playing field in the country. Such powers include:

- Non-binding opinions for Parliament, for the government or local administrations, vis-à-vis legislative or for administrative acts or draft legislative and administrative acts that distort competition or the functioning of the market and are not justified by public goals of general interest (pursuant to Art. 21 and Art. 22 of the Italian Competition Code, Law no. 287/90). The AGCM, which can act ex-officio or upon request, may indicate critical competition issues and suggest measures to address them;
- Legal challenges before the Administrative Tribunal of administrative acts adopted by central and local administrations that breach competition rules (pursuant to art. 21-bis of Law no. 287/90, introduced in 2011). Such administrative acts include invitation to bid and public bidding, ministerial decrees, decree by public managers or denial of authorisation and concession;
- Market studies, whenever a market or a sector presents characteristics that suggest the existence of competition restrictions (pursuant to Art. 12 of Law No. 287/90). The Authority may launch such general fact-finding investigations ex officio and issue reports, possibly addressed to the Government and Parliament if the obstacles found are of a legislative or regulatory nature;
- The Annual law on competition (provided by Art. 47 of Law no. 99/2009). In particular, the Government shall submit an annual bill on competition to Parliament that takes into account any recommendations submitted by the Authority. Therefore, since 2010, the AGCM has annually submitted to the Government a report including all its advocacy proposals. Furthermore, under the National Recovery and Resilience Plan (NRRP), Italy has had to implement pro-competitive reforms by adopting the annual law on competition in 2021, 2022 and 2023.

In 2022, the AGCM issued ~~62~~ opinions on 62 different cases: in 40 of them, the Authority highlighted restrictions of competition arising from existing or draft legislation, urging for amendments (pursuant to Art. 21 and Art. 22 of Law no. 287/90). The AGCM also addressed administrative acts by local authorities on 22 other occasions, while highlighting its power to challenge them before the Administrative Tribunal if the local administrations failed to comply with AGCM's recommendations (pursuant to Art. 21-bis of Law no. 287/90). These opinions mainly related to tender procedures, regulations concerning authorising the system to carry out business activities and markets undergoing a liberalisation process.

This article focuses on the AGCM's peculiar power to propose a set of reforms for the Government, in view of the adoption of the Annual laws on competition, as well as on the systematic monitoring and assessment of the effectiveness of advocacy efforts, which the AGCM has worked on continuously since 2013.

The Annual law on competition

The Annual law on competition represents a unique opportunity for a periodic consideration of possible legislative or administrative measures suitable to remove regulatory obstacles, open markets, promote the development of competition and innovation and ensure consumer protection.

Every year, the Italian Competition Authority, in compliance with the provisions of Article 47, paragraph 2, of Law No. 99 of 23 July 2009, sends a comprehensive report to the Government, for the purpose of preparing the draft of the annual law for competition.

The approval of this law has gained further relevance with

the National Plan for Recovery and Resilience Plan (PNRR), which has set the compliance with the annual approval of the Annual law on competition as an important step its implementation. In fact, the PNRR considers the protection and promotion of competition as an essential factor to foster the efficiency and economic growth of the system and to ensure post-pandemic recovery, as well as greater social justice.

The latest report by the Italian Competition Authority was submitted in June 2023. The proposed interventions related to a large number of economic sectors: from motorways to pharmaceutical products, from the postal service to electronic communication, from waste collection to self-handling in port operations. The ensuing approval of the 2023 Annual Law on competition is now underway.

In March 2022, the Authority issued another advocacy report containing suggestions for the Annual law for competition for 2022. The report focused on the liberalisation of the electricity and gas markets. In particular, the Authority advocated for a set of measures for different stages of the electricity supply chain (transmission, distribution, retail), which could foster a decrease in wholesale and retail electricity prices. The first measure proposed is a simplification in the administrative procedures for the authorisation to build a new electricity grid, in order to increase the network capacity and mitigate the risk of congestion at transmission nodes, thus limiting market access from more efficient power generation plants. In addition, in order to facilitate the development of innovative, efficient and competitive energy markets, the Authority encouraged the deployment of second-generation smart electricity meters. Finally, the Authority advocated for the definitive exit from the regulated tariff regime of domestic customers and, at the same time, the identification of a regulated regime for so-called "vulnerable" electricity customers. In identifying the suppliers for this new category of customers to be protected, the Authority pointed out the need to define ways that do not distort competition. The related Annual law for competition is in its final steps.

Law no. 118/2022, adopted in August 2022, contains the 2021 Annual law on competition, which follows a comprehensive advocacy report that was submitted by the AGCM in March 2021. Many of the proposals included in the report have since been implemented, introducing pro-competitive reforms in the concession regimes, in local public services and transport, in energy and environmental sustainability, in health protection and in the development of digital infrastructure.

The monitoring of advocacy interventions

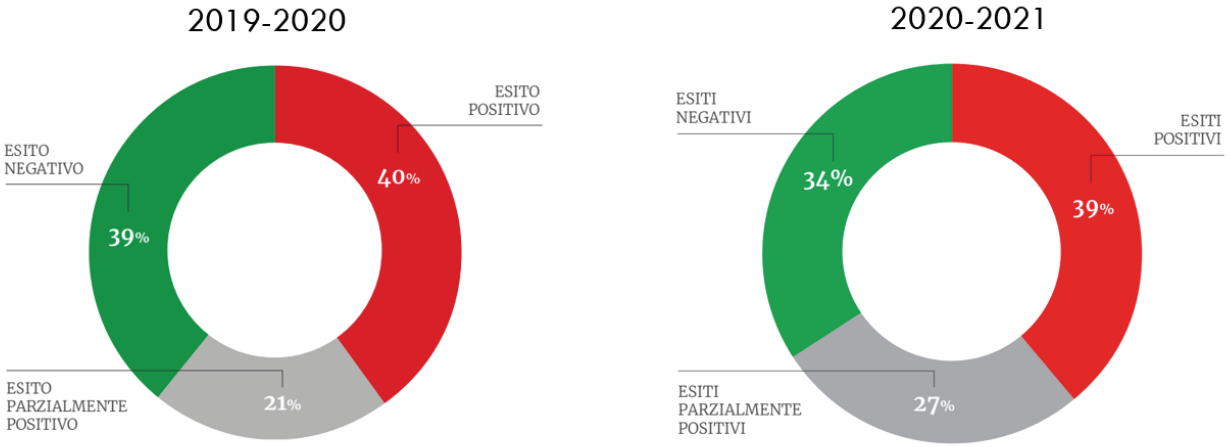
The periodic monitoring of the outcomes of advocacy interventions concerns data relating to the last two years. The study analyses the overall results first, and then the detailed breakdown by applying advocacy tools. The investigation focuses on the compliance rate, understood as the recipients' compliance with the indications contained in the Authority's interventions.

The latest report, published in December 2022, showcases the AGCM's advocacy activity in 2020 and 2021, for a total of 180 decisions (101 in 2021 and 79 in 2020) adopted pursuant to Articles 21, 22 and 21-bis of Law No. 287/90, or pursuant to other sectoral regulations. The comparison between 2020 and 2021 shows a significant increase in the number of advocacy interventions, from 79 to 101, substantially due to the significant increase in cases under Article 21-bis.

Of the 180 total interventions, 236 competitive concerns were highlighted. The most frequently encountered competition concerns related to "tenders and contracts" and "awards without tender" (61% of restrictions); "restrictions on doing business" (31%). It should be noted that the awards without tenders alone account for about 38% of the total, due to the large number of cases involving extensions of maritime state concessions in 2021.

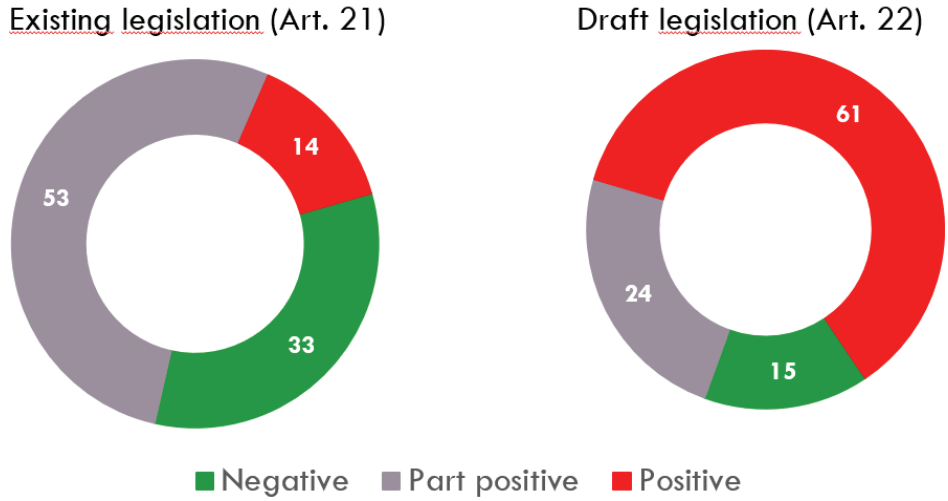
The data show an increase in the overall success rate of advocacy interventions, from 61% in the 2019-2020 biennium (40% totally positive and 21% partially positive) to 66% in the 2020-2021 biennium (39% totally positive and 27% partially positive).

OVERALL OUTCOME OF ADVOCACY INITIATIVES (2020-2021)



Interestingly, advisory recommendations on draft regulations (under Art. 22 of Law no. 287/90) tend to be more effective than opinions addressing existing legislation (under Art. 21 of the same Law).

OPINIONS



It is worth noting that there was a decrease in the number of Article 21 opinions addressed to the legislators or central administrations (from 42 in 2020 to 27 in 2021): this outcome is probably attributable to the fact that in 2021 the Authority decided to highlight numerous competition issues in different sectors in a centralised manner, through its report for the Annual competition law.

Conclusions

In addition to the advocacy powers usually held by competition authorities, the AGCM has the opportunity to periodically address to the Government an overarching set of measures to promote the pro-competitive evolution of the regulatory framework. Every year, the Authority submits to the Government and Parliament a number of suggestions that derive from its daily observation of the markets, in order to encourage the elimination of those restrictions that are not indispensable for the protection of important general interests.

The ultimate objective is to encourage the rationalisation of the existing regulatory framework by introducing a simpler, clearer, and more transparent regulation, which can guarantee greater competition among operators, both in the phase of market access and in the conduct of business, with benefits in terms of better allocation of resources, consequent economic growth, as well as an increase in the welfare of the community.

At the same time, since 2013 the Italian Competition Authority has engaged in the monitoring activity of its advocacy interventions. This allows the AGCM to learn from experience and gradually improve its effectiveness. The latest analysis showed indeed an increase in the overall compliance rate: 66% of the opinions issued in 2020 and 2021 were successful, insofar as they spurred amendments intended to remove the relevant competition concerns.

Boosting antitrust damage claims by Catalan public administrations

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The following article is based on a study published by the Catalan Competition Authority (ACCO)[1] in February 2023, regarding antitrust damage claims by public administrations[2].

Lack of public claims for antitrust damages in Catalonia (and Spain)

In recent years, damage claims for competition infringements have seen genuine growth in the European Union. Actions for damages are becoming more and more frequent and widespread across Member States of the EU. A major factor behind this trend is the European Directive 2014/104/EU, which has harmonised EU Member States to govern and rule against certain antitrust damages (such as limitation period, disclosure of evidence or standard of proof, to mention a few).

Focusing on Spain (as an EU Member State), two cases led to a boom of claims from private individuals and companies. First, the so-called European truck cartel, fined by the European Commission in 2017[3], after thousands of truck purchasers had filed claims for being overcharged by the cartel[4]. Second, the cartel of carmakers, sanctioned by the Spanish National Markets and Competition Commission (CNMC) in 2015[5], was also sued by thousands of private vehicle owners who had purchased between 2006 and 2013.

However, in this scenario with a flourishing, private antitrust damages market and new applicable rules in the EU to facilitate such claims, it is noteworthy that public administrations in Catalonia, as is in the rest of Spain, are lagging behind. Almost no administrative body is claiming any damages for competition infringements, despite being harmed by such conducts and being legally entitled to claim.

The cost of such inaction by public administrations is alarming. According to OECD data, bid rigging could raise the cost of public procurement by 20% or more.[6] In this regard, the CNMC has estimated that the lack of competition in public procurement in Spain results in approximately €48 billion[7] of overcharging per annum. The harm to public budget is obvious, but we must also realise that claims for damages play an important dissuasive role in preventing antitrust infringements. If public administrations do not claim against such antitrust damages, this deterrent effect is lost, wasting a powerful tool. In addition, damage claims foster public confidence in the administration, which strives to recover the public resources illegitimately acquired by the offending companies.

Furthermore, it may be argued that public antitrust claims are not only advisable, but also legally mandatory. In Spain, as is likely to be the case in most countries, public spending is subject to the criteria of efficiency and the economy. Overpricing (or the decrease of quality and variety of supply) due to collusion in public procurement necessarily leads to an inefficient allocation of public resources. Consequently, administrations are obliged to undo this inefficiency and recover the costs illegally gained. Therefore, public administrations not only have the right to claim damages, but also have obligation.

ACCO's report and recommendations

Aware of the lack of public antitrust claims, the ACCO published a report in February 2023 with the goal to reverse this trend and to warn of the inexcusable need for public ad-

1 The Catalan Competition Authority (ACCO) is the public body that ensures the promotion and defense of competition in Catalonia, Spain.
2 https://acco.gencat.cat/web/.content/80_acco/documents/arxius/actuacions/20230208_es_22_2019_reclamacio_danys_eng.pdf
3 The European Commission imposed fines amounting to €3.8 billion to main European truck makers (MAN, Volvo/Renault, Daimler, Iveco, DAF and Scania), for colluding for 14 years on truck pricing and on passing on the costs of compliance with new emission rules. Case AT.39824 (Trucks): https://competition-cases.ec.europa.eu/cases/AT.39824
4 By October 2023, Spanish courts of appeal had issued more than 2,600 judgements regarding damage claims regarding the European truck cartel: https://almacendederecho.org/cartel-damages-claims-in-spain-lots-of-stuff-beyond-trucks-including-a-torpedo
5 The CNMC imposed fines up to €171 million to 21 carmakers and 2 consulting firms for exchanging confidential and sensitive business information (case S/0482/13). https://www.cnmc.es/expedientes/s048213
6 https://www.oecd.org/competition/cartels/fightingbidriggininpublicprocurement.html
7 https://www.cnmc.es/2017-01-18-la-cnmc-intensifica-su-esfuerzo-en-la-persecucion-de-las-irregularidades-en-los

ministrations to take an active role in this regard. The document also offered a set of tools in order to facilitate and encourage such claims: from alternative forms of financing to specific measures and guidelines to be applied by Catalan administrations (although useful for public bodies elsewhere).

All of ACCO's recommendations can be read in the aforementioned study (please see footnote no. 2), although we would like to briefly present those that we consider should be implemented first, as they are fundamental and relatively easy to adopt.

a. Definition and assignment of functions within the public administration

A key measure to be implemented is the systematisation and formalisation of the procedure by which the administrations identify, assess, execute, and supervise possible damage claims. This requires the definition and assignment of the relevant functions in this process, such as: promotion of competition culture, detection of cases with potential damage to administrations, legal and economic advice, coordination of bodies and agents involved in the claim, execution of judicial or out-of-court actions and supervision of all functions above.

A structured procedure and well-defined roles allow for a more methodical, rigorous, efficient, and effective performance of the administration.

b. Infringement decisions of the competition authorities to facilitate claims

Bearing in mind that, or at least in the EU, most of antitrust claims for damages are follow-on actions (i.e., claims following an infringement decision by a competition authority), it is clear that such decisions play a very relevant role in the outcome of damage claims. For this reason, it is advisable that the decisions of competition authorities facilitate the redress of any damage caused by infringers. In this regard, two main recommendations can be made.

First, decisions should include helpful data and information related to the sanctioned infringement and possible injured damaged parties (always in accordance with the applicable confidentiality regulations). The goal is to provide possible claimants with better information that could help their legal action.

Second, if competition authorities find that a sanctioned conduct has affected a public administration, they should notify the corresponding infringement decision to such body. This communication should also urge the affected administration to seek damages and should provide data as appropriate (again, within the limits of the applicable confidentiality rules).

c. Public procurement contractual provisions

Public procurement agreements should include clauses that facilitate the claim for damages in the event that the contractor infringes competition law. In this regard, contracts should foresee the consequences of any anti-competitive conduct by the contractor: breach of contract and termination, administration's right to claim damages, and/or a penalty clause, either for a pre-determined or determinable amount.

Such clauses could help the deterrence effect of actions for damages, warning of them beforehand. Likewise, they can also facilitate claims and reduce litigation, for example, if contracts already provide for a certain penalty and, therefore, there is no need to make an economic valuation of the damage actually caused (technically complex and usually disputed in court).

Government of Catalonia's measures to boost claims

Following ACCO's report on claims for antitrust damages by public administrations, the Government of Catalonia has started implementing some of the recommendations mentioned above, in order to be more proactive in this regard.

- In this light, in March 2023, the Directorate-General of Public Procurement updated the guidelines on contract drafting,[8] introducing the following provisions:
- Compliance with competition law is an essential contractual obligation. Its breach is a cause for termination and may give rise to penalties and claims for damages.
- Contracting bodies shall inform ACCO of any sign or evidence of bid rigging and immediately keep to the relevant contracting procedure.
- Companies sanctioned for anti-competitive practices are banned from contracting with the public administration.[9]

More recently, on December 12, 2023, the Government of Catalonia adopted an agreement to formalise the procedure by which it will respond if any of its bodies is damaged by anti-competitive practices[10]. Very briefly and simplifying, such procedure goes as follows:

1. The ACCO detects an infringement likely to have harmed any agency or body of the Government of Catalonia, according to infringement decisions by the ACCO itself or other national or international competition authorities or courts.
2. The ACCO gathers relevant information and issues a preliminary report.
3. An ad-hoc committee assesses whether the Government of Catalonia (or any of its agencies) could claim antitrust damages against the infringement.

8 https://contractacio.gencat.cat/ca/difusio/publicacions/butlleti-jcca/cercador-butlletins-jcca/#/detail?id=26295
9 The last two provisions reiterate what is already set forth in Law 9/2017 on public sector contracts.
10 https://acco.gencat.cat/web/.content/80_acco/documents/arxius/actuacions/ACUERDO-GOV2612023_cast.pdf

4. A body of the Catalan Government, with specific powers for this purpose, commissions an economic expert report to calculate the damages and carries out an out-of-court claim, if deemed appropriate.
5. The legal department of the Catalan Government carries out the judicial claim for damages (if deemed viable).
6. The ad-hoc committee monitors the procedure above.

We encourage all public administrations to adopt and implement similar structured procedures with well-defined protocols to systematise antitrust damage claims and to recover public resources lost due to competition infringements.

Do not hesitate to contact us should you have any questions regarding ACCO's report or measures adopted by the Government of Catalonia.

Competition Advocacy in Colombia: A tool for countering corruption and improving State efficiency

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It is not enough for the authorities just simply impose fines on those who infringe competition laws, rather, they must make every effort to promote a culture of competition to meet competition law stipulations.

By fulfilling this, they can make the most of competition advocacy.

Major strides need to be taken to ensure that the regulations issued by state agencies do not create unjustified barriers to market access[1]. In this sense, the functions of the competition authorities should include prevention, oversight, and inter-institutional coordination measures.

This is particularly important in Latin American where corruption levels are elevated and threaten both economic development and citizen welfare.

In Colombia, competition advocacy was presented through Article 7 of Law 1340 / 2009, which empowered the Superintendence of Industry and Commerce (hereinafter "SIC"), which is the local authority responsible for overseeing free competition, to give forth its opinion on the regulations issued by administrative authorities that may harm or have a negative impact on free competition. That given, any entity responsible for regulatory operation are obliged to notify SIC about regulatory projects that may limit competition.

The effectiveness of this procedure could be improved by creating measures that reinforce coordination among the State entities that perform such regulatory functions.

Another aspect that should be considered is the possibility of including the authority's mode of reviewing and issuing legal opinions on public procurement processes, especially with respect to the preparation of tendered documents, an area where most corruption acts take place, while keeping within the scope of competition advocacy.

This article aims to draw attention to competition advocacy as a means of facilitating inter-administrative coordination among state entities to ensure that competition policy becomes a legitimate state policy and a way to fight corruption in public procurement processes in developing countries such as Colombia.

Motions to improve the effectiveness of competition advocacy in Colombia

Pursuant to Article 7 of Law 1340 / 2009, the competition advocacy function assigned by law to the SIC is limited to the authority's pronouncement on regulatory projects that may hinder free competition, though such pronouncements are not binding for the regulatory authorities.

This authority does not include the pronouncement and review of bidding terms, nor the coordination and promotion of the regulatory agendas of these entities, therefore, OECD's proposal to broaden the scope of the competition advocacy powers to include inter-institutional coordination, public education on the importance of competition rules and involvement in the public procurement process is emphasized[2].

The incorporation of public procurement processes in the scope of competition advocacy

Competition advocacy could be used to improve the efficiency of the State, especially in public procurement processes, and is a recommendation that has been previously made by the OECD for developing countries.

According to this organization, competition authorities should actively advocate for procurement procedures to avoid collusion and corruption; this can be achieved through reforms to the structure of procurement procedures or through the participation of the competition authority therein[3].

Colombia has one of the highest levels of corruption according to the 2022 Corruption Perceptions Index, issued by Transparency International, and, in fact, it scored 38 out of a

1 Richard Wish & David Bailey. Competition Law. p. 25. Oxford University Press. (2012).
2 OECD. Latin American Competition Forum. Strategies for Competition Advocacy: Background Paper by the OECD Secretariat. p. 11 – 30. (2010).
3 Competition Advocacy: Challenges for Developing Countries. John Clark. OECD. P. 5 (2005)

possible 100 points on this index.[4]

All Latin American countries face this problem to a greater or lesser extent[5]. In addition, according to OECD, our States qualify as inefficient in their procurement processes[6].

This reality requires that competition advocacy be proposed as a useful measure to mitigate problems and, specifically, that the authority be assigned the function of reviewing the bidding documents for procurement processes that exceed a certain amount to ensure that the bidding documents comply with the criteria of impartiality and objectivity, in addition to preventing their preparation based on measures for one or more bidders.

In addition to the significant efforts that have been made in Colombia to eliminate collusion in bidding processes[7], this alternative would allow the authority to conduct preventive measures to ensure free competition from the precontractual stage.

In this sense, competition advocacy can be useful to improve the perception of the public and the community about public procurement processes and the reduction of corruption[8].

Cooperation between different public entities

Another essential tool to make competition advocacy more effective is the cooperation between different public entities and the competition authority.

This can be achieved through the establishment of working groups made up of representatives of the competition authority and officials of the entities with regulatory functions, with a view to assessing the potential consequences for competition implementation or for amending a regulation[9].

This strategy should be implemented sensibly so it does not hinder the responsibilities of the regulatory agencies.

The importance of inter-institutional coordination lies in preventing the actions of authorities from neutralizing or affecting the policies and ensuring that they do not contradict.

To summarize, inter-institutional coordination allows regulators to converge towards common objectives.

Similarly, UNCTAD affirms that entities should not only issue their own public policies, but that they must also be clear and consistent with the objectives pursued by the policies of other entities[10].

Promoting a culture of competition

Another essential factor in achieving competition policy objectives, especially in developing countries, is to plan a course that best promotes competition culture there, and to make the objectives clear, measurable, and long-lasting.

According to OECD and the World Bank, one of the greatest challenges that competition authorities face, especially in these countries, is to create awareness in society about the importance of competition policy. They argue that it is essential to make the public aware of the negative effects of collusion and to emphasise the need to promote transparency in decision making in government entities[11].

They point out that the majority of infringements in these countries arise from a lack of awareness of competition rules and because most consumers do not understand the harmful nature of anti-competitive behaviour[12].

Hence, the authorities need to espouse the education of competition, launch campaigns that showcase its importance to society, and the consequences for non-compliance.

While SIC has already begun a programme that educates officials, authorities, and the public on this subject area, it is still falls short of its major aims. On the contrary, much more effort is needed to instil belief and normalise the culture of competition.

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Calling on Public Entities to Claim Cartel Damages: Challenges and Obstacles

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Public Entities as Victims of Cartels

Cartels are deemed illegal, and upon discovery, their members face sanctions under competition laws in most jurisdictions. However, these sanctions often fall short of accounting for the damage caused by their illicit conduct, and they do not inherently seek to compensate the victims who have directly or indirectly borne the impact of their adverse effects.

The private enforcement of competition law is precisely what can facilitate compensation for the harm done to direct or indirect victims of cartels through damage actions before competent courts. In recent years, the entry into force and implementation of the European Union (EU) Damages Directive have marked significant strides in providing a robust legal framework to foster damage actions within the EU and its member states.

Public administrations and bodies often emerge as the primary victims in many of the cartels sanctioned in the European Union. Public procurement, serving as the main avenue of business transactions between the public and private sectors,[1] has proven to be particularly vulnerable to collusion. The harm to the public sector basically, but not only, materialises in the form of overpriced goods and services it needs to operate, resulting in unacceptable financial burdens incurred due to anticompetitive effects. However, it is not widely noted that the public sector has systematically pursued claims for damages caused by cartels, raising concerns as any losses or malfunctions in this sector inevitably affect the overall well-being of society.

Detecting and Sanctioning Bid-rigging in Public Procurement

Specific concerns arise with bid rigging, not only due to the size and scope of damages this practice causes, but also because it undermines and erodes trust in public procurement systems and their outcomes as a means of promoting competition in the relevant markets. This concern is evident in the particular attention given by international organizations to provide recommendations and guidelines for fighting bid-rigging in public procurement (OECD, 2009, 2023; European Commission, 2021).

The outcomes of public enforcement of competition law serve as the foundation upon which damage claims are built. The bid-rigging cartels sanctioned by the European Commission (EC) accounted for 8.8% (14 out of 158 cartels) during the period 1962-2020 and amounted to 0.87% of the total fines in nominal terms imposed by the EC.[2] To these cartels, we must add those that have been uncovered and fined in greater numbers by national competition authorities.

Competition authorities face more and more difficulties in detecting bid rigging in public tenders for various reasons. First, these cartels are less likely to be uncovered by a leniency application, thus limiting program effectiveness in these cases (Jiménez et al., 2023). Second, these cartels use increasingly sophisticated and diverse tools and methods to conceal their illegal practices. And third, and probably most importantly, the detection of these cartels requires close cooperation be-

1 According to Bosio et al. (2022), the global spending on public procurement in 2019 amounted to 12 percent of the world's GDP.
2 Figures from the 2020 database update used in Ordóñez-de-Haro et al. (2018).

tween the bidding administration and competition authorities, as well as the need for sufficient training of public officials to aid in their identification. These requirements clash with the lack of adequate incentives for both the bidding public entity and its officials. The money saved from detecting these cartels does not initially benefit the public entity, and officials responsible for the bidding process do not receive career-related benefits for reporting such activities (Heimler, 2012).

Therefore, bidding public entities must realize that they bear partial responsibility for detecting bid-rigging and providing compelling evidence to assist competition authorities and courts in substantiating and determining a competition infringement. This, in turn, increases the likelihood of success in potential damage actions.

Reasons for Urging Public Entities to Claim Cartel Damages

Many reasons justify the need for public entities to pursue damages claims against cartels, with the following to highlight:

- **Redressing the harm:** This reason is self-evident and needs little elaboration. Collusion in public procurement processes directly impacts the State and, consequently, taxpayers who contribute to the State budget. The private enforcement of competition law can also be seen as a means of restorative justice that seeks to recover taxpayers' money (Giosa, 2018).
- **Increasing or restoring public resources:** The attainment of fund restoration through a damages action removes the financial constraints that would have been illegally imposed by the cartel's effects on public budget, allowing for a more unrestricted allocation of resources with the potential to be invested in other purposes or result in a tax reduction.
- **Deterring anticompetitive practices:** The greater the likelihood that companies perceive of facing damage claims as a result of engaging in anticompetitive practices affecting the public sector, the more unlikely they will find it profitable. Thus, the public sector's damage claims would contribute to raising the cost of cartel formation and, therefore, to deter such practices, benefiting society as a whole.
- **Long-term benefits:** Effective cartel deterrence will lead to more competitive public tenders resulting in higher quality and lower prices for goods and/or services provided, thus reducing public spending, and enhancing overall social welfare.

Challenges and Obstacles in Public Entities' Claims for Cartel Damages

Public entities confront various challenges and obstacles when pursuing damage claims against cartelists

- **Preparing a damages claim**: Public entities must provide the courts with strong evidence linking the infringement to claimed damages and ensure reliable quantification. This prompts consideration of the need for additional guidance from competition authorities or the creation of a specialised public consultancy. The public sector, unlike other cartel victims, would be well-positioned for damage quantification, holding estimates of costs over awarded contract values and essential documents for calculating bid-rigging-induced overpricing (Maci, 2012).
- **Create appropriate incentives:** The incentives for public entities to pursue damages from cartels should be more closely aligned, through their representatives and/or officials, with those generated within private companies and individuals. This task is complex and surely requires addressing a principal-agent problem.
- **Risk Taking:** Pursuing damages from cartelists does not guarantee court recognition of the actual or even the existence of damage, especially with a weak or non-existent causal link between the cartel infringement and the claimed damage. Furthermore, the tendering public entity could be considered the sole entity capable of exercising claimant rights. This precludes the option of sharing risks with other claimants or mitigating its own risks after learning the outcomes of other damages claims against the same cartel.
- **Procedural costs:** Public entities may choose not to claim or even withdraw after initiating proceedings due to concerns over lower success odds or excessive costs. Limited budgets often underlie such decisions, making it impossible to bear potential procedural expenses. In cases where success is more likely, providing public financial support for these entities to pursue claims would be beneficial.

Concluding remarks

Cartels in public procurement result in huge losses for the public sector. The public and private enforcement of competition law are complementary approaches in fighting these cartels. Public law enforcement should involve solid decisions with sanctions consistent with the seriousness of the infringement, collaborating with the bidding public entity. This provides a robust foundation for this body to bring damage actions against cartel members. Private enforcement should aim to compensate the damage suffered by public entities as victims of cartels, restoring funds to their budgets while reinforcing the punitive and deterrent effects of fines on cartels.The overall effects of this competition policy benefit society by disrupting and penalising existing cartels and deterring their formation. We can, therefore, conclude that fostering damage claims by public entities requires not only weighing up the pros and cons but also a committed and coordinated effort among all stakeholders involved in defending market competition to overcome the obstacles they face.

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The importance and distinction of committing collusion in public bidding within Columbian Jurisdiction

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Collusion is an agreement between two or more businesses who seek to restrict competition, increase prices, decrease the quality of the goods or services offered as they tender contracts to the state.[2] Their objective is to win bids at the expense of others who have been unlawfully excluded from the bidding.

The absence of competition among bidders in a bidding process or public tender stunts the growth of a nation and has negative financial impact on the consumer – the general public. Precisely, Michael Porter's The Competitive Advantage of Nations, concludes that the deciding factor for the improved productivity of a state and for positive economic growth is fair competition.[3]

According to the statistics, 12% of the GDP in OECD countries is earmarked for public procurement. For this to work successfully, the bidding process must be carried out fairly and squarely, and most importantly, with the public's best interest in mind.

In fact, the authorities have established that anti-competitive agreements in public tenders are one of the most serious violations of the regime so much so that OECD officially categorises them as *"Hard Core Cartels."*[4]. In turn, the European Union says that such conduct should result in sanctions regardless of what is included in these anti-competitive agreements.[5] [6]

Additionally, the Superintendence of Industry and Commerce (hereinafter: SIC), the Colombian competition authority has stated that collusion generates several negative effects on the economy of a State such as: (i) limitation to competitors and violation of the principle of equal opportunities; (ii) monetary and transaction costs to the State due to the presence of unsuitable bidders; (iii) asymmetries of information, reduction of quality or overpriced goods and services in the market; and (iv) affectation of the social welfare of the community in general due to the irrecoverable loss of efficiency.[7] [8]

As a result, and in mutual tandem with other South American countries, such as Chile and Peru, who have already adopted criminal regulations, Columbia unites with them and espouses the 2011 Anti-Corruption Statute. Criminal Code[9] [10] on conduct described in numeral 10 of Article 47 of Decree 2153 of 1992, features in the Statute.

It outlines that such anti-competitive agreements amount

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8 "*Both the collective interest of free competition and the interest related to the protection of the public patrimony are violated to the extent that the possibilities of efficient allocation of resources by the respective state entity are diminished.*" (Superintendence of Industry and Commerce, Resolution No. 1055 of 2009) (Unofficial translation).

9 Congress of the Republic. Law 1474 of 2011, Article 27. "*Whoever in a process of public bidding, public auction, abbreviated selection or contest agrees with another in order to unlawfully alter the contractual procedure, shall be liable to imprisonment for six (6) to twelve (12) years and a fine of two hundred (200) to one thousand (1,000) legal monthly minimum wages in force and disqualification to contract with state entities for eight (8) years.* (...)" (Unofficial translation).

10 Congress of the Republic. Law 1474 of 2011, Article 27. "*Whoever in a process of public bidding, public auction, abbreviated selection or contest agrees with another in order to unlawfully alter the contractual procedure, shall be liable to imprisonment for six (6) to twelve (12) years and a fine of two hundred (200) to one thousand (1,000) legal monthly minimum wages in force and disqualification to contract with state entities for eight (8) years.* (...)" (Unofficial translation).

to collusion which may directly or indirectly impact the distribution of tenders, of proposals, and the awarding of contracts.

As these offences have been judged to be unlawful conduct contrary to free trading and competition, criminal jurisprudence[11] has established that the distinctive elements of the crime are constituted as: (i) The concertation between two or more competitors who seek to unlawfully alter the contractual procedure with the State, by way of offering favours in order to win contracts and thus exclude other worthy/potential bidders; (ii) the overriding term is concert, not alter; (iii) by virtue of the second element, the conduct may only be deemed a crime if the legal persons involved in the agreement are represented by different natural persons, as opposed to the administrative sanction .This means that sanctions will be enforced on the natural person directly involved and on those representing them.

In particular with reference to element #3, the "COLOMBIA FERRECLECTRICAS, et. al."[12], the criminal judge identified that the businesses involved in the agreement, despite being represented by different natural persons and being "independent companies on paper," still constituted a single company headed by a single person. For this reason, the Office has concluded that the offence cannot be judged as a crime as it does not fit the description of the governing verb of "to concert This is because the person running the businesses would have to have "agreed with himself to alter the development of the contracting processes".

Notwithstanding, there is evidence in the file that reveals the distribution of bribes in order to avoid competing in a public reverse auction process and therefore deeming the defendants guilty by law.

A similar case happened with the "CORPORCHIVOR"[13] process, when seven companies involved in the different bids with the State appeared to be from seven different businesses and all with different legal representatives. It transpired that all of them were controlled and coordinated by one individual natural person who tried concealing the fact.

Despite the above, the typification of the crime creates a series of problems in how they are best applied and then logged in the Penal Code. This, plus a lack of competence from within the administrative authorities has led to ineffective investigations and offences going unsanctioned.

According to reputed legal professionals in Colombia, the Penal Code does not adopt or create any new legal rights related to free trading and competition. On the contrary, the addition to the Criminal Code seeks to protect "public administration". Therefore, the competence to protect the legal right of free trade essentially controls the administration through the administrative authority (SIC) and not of via the Prosecutor's Office nor the criminal judges. It means that criminal decisions in matters of free competition contravene the mandates of the written law and prior law and the legal reserve[14]. Precisely, competence was granted to the administrative authority from the issuance of Law 155 of 1959 and with a subsequent addition regarding restrictive agreements by means of Decree 2153 of 1992.

Regarding the non-creation of a legal right to "*free trading and competition*" in the Criminal Code, various forms of misconduct can be considered equal to the crime of swindling so affording a new crime a new name is irrelevant and may be ineffective[15]. In truth, the courts have hardly ever issued decisions for restrictive agreements and competition violation. Meanwhile, more than eight corruption cases have been sanctioned by the administration, including the 2018 Odebrecht case.

That said, Article 27 of the Anti-Corruption Statute states that censures and penalties may also have additional benefits.

However, article 14 of Law 1340 of 2009 proposed exemptions for any anticompetitive agreement participant who turns whistleblower and assists the competition authority with their investigations.

Notwithstanding, sanctions may well serve as deterrents to collaborators in collusions due to whistleblowing. Violators might be exempt from administrative sanctions, but not from the courts of law.

Therefore, is it worthwhile empowering the courts with such disciplinary power, and to what extent could it help in reducing competitive agreement issues.

First of all, the penalties imposed on offenders do serve as deterrents to others who may also be considering taking advantage of the system and the general public. There would be no point in decentralising the judicial system to accommodate various types of competition infringements because all such offences are included in Article 27 of the Anti-Corruption Statute.[16]

11 Thirty-third Criminal Court of the Circuit with Knowledge Function of Bogotá D.C. June 5, 2020. Rad. No. 11001600000201900523.
12 Ibídem.
13 Fifty-sixth Criminal Court of the Circuit with Knowledge Function of Bogotá D.C. June 8, 2021. Rad. No. 11001600092201300116.
14 Humar, F. (2021). ¿Qué ha determinado la jurisprudencia sobre el delito de acuerdos restrictivos de la competencia? Legis Ámbito Jurídico.
15 Archila Peñalosa, E. J. (2012). ¿Era necesaria la criminalización de los acuerdos colusorios? Contexto, 3.
16 "(…) collusion contravenes the rules of state contracting, to obtain an illicit benefit by simulating a situation of free competition. then, there already existed a criminal offense that par excellence reproaches "the theater, the scene, the ruse, the chimera, the fantasy, the imagination, the artifice, the deception engendered by the artifice of the agent", to the detriment of a third party -the contracting party-, in competition with the 'conspiracy to commit a crime' that characterizes an agreement of this nature. Therefore, the solution to the problem did not lie in creating a new criminal offense."

Secondly, as proposed by the OECD[17], simply not enough for the Columbian competition authority to solely protect free competition, so it is necessary to create an authority whose powers are exclusively invested in the enforcement of competition law.

In effect, SIC's investigative capacity should be strengthened and when the administrative process is initiated, the corresponding corrective sanctions should be imposed so that those involved in the agreement can demonstrate to the authority that their actions are aimed at correcting the sanctioned practice and that they seek to avoid reoccurrence of the conduct. As Camilo Ossa points out, SIC economic sanctions are already elevated, even when compared to jurisdictions such as Chile or Peru, so it is essential that the authority be precise in monitoring the conduct of those sanctioned to prevent them from defrauding the public patrimony.[18]

(Unofficial translation) Archila Peñalosa, E. J. (2012). ¿Era necesaria la criminalización de los acuerdos colusorios? Contexto, 3.

17 OECD. (2014) Combatiendo la Colusión en los Procesos de Contratación Pública en Colombia. Informe del Secretariado sobre el Marco Jurídico y las Prácticas de Contratación Pública en Colombia. https://www.oecd.org/daf/competition/2014_Fighting%20Bid%20Rigging%20Colombia_SPA.pdf

18 Ossa, C. (2014). Tratamiento de la colusión en la contratación pública: una visión del caso colombiano. Revista de Derecho, No. 42. P, 233-263. http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0121-86972014000200010&lng=en&nrm=iso>. ISSN 0121-8697.

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NEWS FROM THE REGION

Newly appointed President of the Competition Council of Bosnia and Herzegovina

Adisa Begić
President
Competition Council of Bosnia and Herzegovina

In July 2023, the Competition Council of Bosnia and Herzegovina welcomed in a new president, Ms Adisa Begić, whose task is to lead this institution for the following twelve months. The Competiton Council consists of six members who are appointed for a term of six years, while the Chairman of the Institution is chosen from among them annually and for a period of one year. First among equals.

This is not the first time for Ms Begić to manage the Competition Council, since she served as a member of the Competition Council in the last convocation of the Council in the period from October 2016 to October 2022, at which time she was the president of the Council for the latter half of 2018 and the first half of 2019. In October 2022, she was appointed for the second time as a member of the Council in a new six-year term, thus once again this year she was afforded the opportunity to preside over the Competition Council.

A graduate lawyer by profession, after passing the bar exam, and a tireless worker by definition, Ms Begić worked in the real sector as a director in the largest media company in Bosnia and Herzegovina. Motivated by gaining new knowledge and experience, she moved on to the position of federal inspector at the Federal Ministry of Justice. The sequence of events opened up an opportunity for her to transfer to the Competition Council to become a Council member, and was delighted to accept this new challenge.

"Being president of the CC is not only a job for me, but also an honour and a pleasure. I am especially happy when I see how much effort and commitment all employees in the Competition Council, both management and professional service, each in their own domain, put in, even in extremely difficult political and economic circumstances. We have built ourselves into a successful authority for the protection of competition that makes very complex decisions, based on extensive legal and economic analyses.

Looking back on the past period from the perspective of building and developing an institution that enforces regulations, but also develops a culture of market competition in Bosnia and Herzegovina, I can say that it was not easy, nor does it get easier over time. The Competition Council is at the stage where we are working on the preparation of an initiative for the relevant Ministry to pass a new law on competition. We all know that this process encompasses difficult and extensive work which we cannot carry out alone, taking into account the challenges that have arisen by obtaining the status of a candidate country for membership in EU. In this view, we always owe great gratitude to our colleagues from the OECD - RCC who, since the establishment of the Competition Council, have largely helped the capacity building of CC. We are aware that the construction of an appropriate legal and institutional framework for the implementation of competition law at the state level is the first step, which we have mastered to a good extent and on which we continue to work continuously. Enforcing the competition law requires a lot of dedication and perseverance since our goal is to create a culture of market competition among business community, but also to raise awareness of the advantages that market competition brings to consumers.

Even today, after almost 20 years of work of the CC and all my years spent at CC and the decisive and proactive promotion of the culture of market competition in Bosnia and Herzegovina, it seems that the stone that we laboriously push towards the top often rolls downhill. Our work is not understood enough as we still lack sufficient human and financial resources. But as with everything in life, one needs to stay persistent and hopeful."

Newly appointed Chair of the Antimonopoly Committee of Ukraine

Pavlo Kyrylenko
Chair
Antimonopoly Committee of Ukraine

On 6 September 2023, Pavlo Kyrylenko was appointed Chair of the Antimonopoly Committee of Ukraine by a vote of 250 Members of the Parliament of Ukraine.

Prior to that (from July 2019 to September 2023), he chaired the Donetsk Regional State Administration – the regional military-civilian administration (which became known as the Donetsk Regional Military Administration in February 2022).

During the first years of Pavlo Kyrylenko's work in Donetsk Region (from July 2019 to February 2022), a new regional development strategy was developed. Active work was carried out to develop civilian infrastructure, including the construction and repair of roads, water pipes, hospitals, schools, kindergartens, stadiums and sports facilities – an indicator that has put the region in a confident leading position among all regions of Ukraine.

In addition to his management experience, Pavlo Kyrylenko has extensive experience in law enforcement. He has a rank of Colonel of Justice. He has held various positions in the Prosecutor's Office at different times.

He has two degrees: in 2008, he graduated from the Yaroslav Mudryi National Law University with a degree in Law; in 2022, he graduated from Lviv Polytechnic National University with a degree in Public Administration and Management.

He was awarded the Certificate of Honour of the Cabinet of Ministers of Ukraine and Bohdan Khmelnytsky Medal of III-rd Class.

As Chair of the AMCU, Pavlo Kyrylenko sets his priorities as follows:

- ensuring unconditional compliance with competition law by all market participants;
- transposing European legislation, best practices of US law and OECD principles into the Ukrainian legal framework. Most of these norms have already been taken into account both in the adoption of the new law 3295-IX (which regulates the protection of economic competition and the activities of the AMCU) as well as in the amendments to other legislative acts developed by the AMCU;
- strengthening the institutional capacity of the AMCU;
- openness and transparency of the AMCU's work in cooperation with Ukrainian NGOs, civil society and international institutions.

"The main task I have set for the AMCU team is to create transparent conditions for doing business and developing competition. According to the rules clearly defined by law, without exceptions. After all, transparent, clear and binding rules of the game contribute to economic growth. And a strong economy is the key to the development and strengthening of the Ukrainian state", stressed Pavlo Kyrylenko.

CONFERENCES IN THE PAST SEMESTER

Competition Advocacy Outside Seminar in Azerbaijan

A very insightful seminar on Advocacy was conducted in Baku, with the essential cooperation of the Azerbaijani competition authority.

Advocacy is a very powerful tool of competition agencies. It deals with all the activities outside enforcement that help agencies promote their work in society and include competition principles and their benefit in the work of public entities, administration, and legislators. This seminar focused on the key elements of advocacy. It developed in deep the main tools agencies use to promote their work and help administration and public powers to include competition on their thinking and decision making. The seminar covered the main problems and challenges or Competitive neutrality, with a reference to the application of competition rules to SOEs and administrations participating in the market. One of the Key topics was the deep explanations of the Principles Better Regulation and their application to specific problems coming from examples in different jurisdictions that were explained both by the speakers and the attendees of the conference.

Attendees coming from 14 different countries enriched the discussion and made it a learning experience also for the speakers.

The use of Market studies as a way to identify, show and try to stop barriers to competition in certain markets was developed from different aspects including economic and legal. One specific and very practical development on toolkits to identify competition barriers in legislation was also discussed on the seminar with many insides from the different participants.

New tools of advocacy, such as those used in digital markets, accelerated market inquiries or other post crisis tools used by the agencies and the relation between enforcement and advocacy tools were also explained by our remarkable group of experts coming from Hungary, Italy, Lithuania, Poland, Spain and The Netherlands.

The evaluation given by the attendants was very positive underlying the quality of the breakout sessions.

Jafar Babayev
Deputy Head of the State Service for Antimonopoly and Consumer Market Control of Azerbaijan

María Pilar Canedo
Coordinator of OECD-GVH training activities

Renato Ferrandi
Director of International and EU Affairs, Italian Competition Authority

Medeina Augustinavičienė
Council Member, Competition Council of Lithuania

Daniel Mankowski
Head of Legal Department, Office of Competition and Consumer Protection of Poland

Bart Noe
Senior Strategy Advisor, Dutch Authority for Consumers and Markets

Anna Fekete
Case Handler, Hungarian Competition Authority

Juan Espinosa
Founding Partner, Silverback Advocacy

Competition and innovation
GVH Staff Training

Once a year, the RCC organises an internal training for the GVH staff in Budapest. This year, the topic that was selected was innovation and competition.

Two speakers from the European Commission, Pierre Bichet and Zsolt Vértessy, explained the last developments of DMA and some mergers related to innovation. Mariya Serafimova, from the ECJ gave an overview of case law and Miguel de la Mano (RBB Economics) and Antonio Butta (Italian competition agency) dealt with the economic approach.

Consumer protection is also very affected by innovative practices that were discussed by Katarzyna Araczewska (from Wokik Poland) and Ryan White and Abigal Crisswell from the CMA.

Abbi Crisswell

Economist
Competition and Markets Authority

Antonio Buttá

Chief Economist
Italian Competition Authority

Katarzyna Araczewska

Deputy Head of Section
UOKiK

Mariya Serafimova

Lawyer
European Court of Justice

Miguel de la Mano

Partner
RBB Economics

Pierre Bichet

Case Handler
European Commission

María Pilar Canedo

Coordinator of OECD-GVH
training activities

Ryan White

Associate Economist
Competition and Markets Authority

Zsolt Vértessy

Case Handler
European Commission

Digital and regulated markets and competition
Competition Lab for Judges

A very challenging seminar for EU judges was held in Budapest in December 2023 with the financial support of the European Commission.

A25 Judges of Bulgaria, Croatia, Czech Republic, Greece, Hungary, Italy, Malta, Poland, and Romania attended a very lively workshop on abuse of dominance with special reference to digital and regulated markets.

The session aimed at familiarizing participants with economic terms and concepts fundamental for assessing market power and abusive practices in general as well as in digital markets. Presentations focused on key economic notions relating to the notions of market power and dominance and theories of harm in abuse of dominance cases.

Renato Ferrandi (Italian competition Authority), Griet Jans (Belgian competition agency), Alfredos Theodoarkopoulos, (ECJ), Deni Mantzari (academic from UCL) and Hugh Mullan (OFcom) shared very interesting views on the different topics with the Judges and Magistrates. The level of discussion with them made it possible to deep in the analysis of legal problems that agencies face in every case (rights of defence, burden of prove, analysis of direct and indirect evidence…).

The overall satisfaction of the participants was assessed with a 4.83/5.

Lefkothea Nteka

Partner
Lambadarios Law Firm

Renato Ferrandi

Director of International and EU Affairs,
Italian Competition Authority

María Pilar Canedo

Coordinator of OECD-GVH
training activities

Despoina Mantzari

Associate Professor in Competition
Law and Policy, UCL Laws

Alfredos Theodorakopoulos

Referendaire
Court of Justice of the European Union

Griet Jans

Chief Economist
Belgian Competition Authority

Hugh Mullan

Director
Ofcom

Detection and investigation tools for competition agencies

Creating solid and strong cases is a common preoccupation of any competition agency, as our credibility depends very much on how efficient we are stopping harmful behaviours to our society and economy. For achieving this main goal, our main tool are our enforcement activities, decisions, and sanctions.

For understanding problems and opportunities, we had the change to count on a relevant team of speakers, experts coming from Austria, Germany, Portugal, Slovenia, Spain, and Turkey.

Andrej Matvoz

Director of the Slovenian Competition Protection Agency

Margarida Matos Rosa

Former President of the Portuguese Competition Authority

María Pilar Canedo

Coordinator of OECD-GVH training activities

Botond Horváth

Head of Cartel Section, Hungarian Competition authority

Ali Ozan

Deputy Head of the IT Department, Turkish Competition Authority

Çiğdem Kır Şahiner

Competition Expert, Turkish Competition Authority

Lukas Cavada

Executive Coordinator for International Cooperation, Austrian Federal Competition Authority

Jutta Wimmer

Special Unit for Combating Cartels, Bundeskartellamt

The seminar dealt with the legal, economic, and technical issues of whistle-blowers protection and channels, leniency and its alternatives and ex officio investigation tools.

Dawn raids were analysed in deep with a step-by-step approach and tips and tricks. E-discovery tools were a central part of the analysis and also legal issues around them including search warrants and procedural fines were developed. The construction of strong cases that can be upheld in court was the key element of the very lively discussions that included also a reference to indirect evidence and its use on competition procedures. Representatives of Albania, Armenia, Azerbaijan, Bosnia Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, North Macedonia, Romania, Serbia, and Uzbekistan attended the seminar. Two Hypothetical cases on leniency and conducting dawn raids were on the centre of the work of the team.

The evaluation of this workshop was particularly remarkable, as the overall usefulness of the event and the quality of the break-out sessions were assessed by the participants with 4.9/5 and the overall usefulness of the topics addressed for your work with a 4.8.

Meeting with the Heads of Agencies in Paris

On the 8th of December, the heads of the Competition agencies of beneficiary countries that were attending the Global Forum of Competition at the OECD, hold a very fruitful meeting with GVH and OECD directors of the RCC.

We invited our former Director Renato Ferrandi, always welcome in our activities, and the head of the Slovenian competition Agency, Andrej Matvoz.

We discussed the agenda of 2024 and the main topics to be discussed during next year.

We also agreed on the topics that will be included on the program for Heads of Agencies on the 26th of March 2024. We agreed that Judicial Review and Merger control are topics of common interest, and we will devote the seminar to them.

We also discussed about other initiatives that we could begin developing within the RCC and we decided to begin working on:

- cooperation with the Academia in different countries
- cooperation for a closer relation with the judiciary in the beneficiary countries

Competition Committee

December 2023 Competition Committee

- Working Party 2 (4.12) held a roundtable on Competition and Professional Sports. The roundtable covered issues related to regulation and competition enforcement in the sports industry. Delegates discussed whether rules and practices in place ensure a level playing field among participants and are in line with competition law principles. WP2 also discussed and approved the Competitive Neutrality Toolkit. This approved version will now be shared with the Trade Committee and the Corporate Governance Committee for consultation.
- Working Party 3 (4.12) where the main focus was on a roundtable on The Optimal Design, Organisation and Powers of Competition Authorities. This roundtable discussion focused on what a modern competition authority should look like and how competition enforcers could or should adjust to meet the challenges of the future. For this, the optimal 'internal organisation' of competition authorities was discussed, focusing on the required skills, tools, and powers to best tackle contemporary challenges. The discussion showed that recent economic and societal developments – including, but not limited to, the rapid technological developments – urge competition authorities to adjust and expand their expertise, for instance by obtaining skills of data scientists, technologists, and behavioural scientists. WP3 also discussed a potential revision of 2005 merger recommendation, and the secretariat was asked to produce a scoping note for the next meeting.
- The Competition Committee (5-6.12) had its first meet on Roundtable on Innovation in competition enforcement. They discussed the competition authorities' innovation in enforcement cases. It focused on the different ways innovation may be inhibited. This included the review of scenarios where competition authorities have assessed innovation within traditional theories of harm, innovation-specific ones or as part of the evaluation of efficiencies and justification. The second part of the roundtable discussed how competition authorities define and measure innovation, the type of evidence to look at, and the challenges they find in the process.
- The Committee also held a roundtable on Serial acquisitions, focused on the strategy or pattern of a particular firm undertaking a series of sequential acquisitions of smaller firms in the same or adjacent markets over time, then consolidating them into a large, potentially dominant company. The expert speakers and country contributions considered whether competition concerns could arise at two stages, firstly at the notification stage, with individual transactions falling below notification thresholds, and secondly at the substantive assessment stage, if individual transactions considered in isolation do not have an appreciable impact on competition. Overall, it appears that there are multiple ways for jurisdictions to avail when seeking to address serial acquisitions more effectively.
- An additional roundtable debated Out of market efficiencies in Competition Enforcement. The roundtable discussed the rationale for either including or excluding these efficiencies in the assessment of mergers or anticompetitive agreements. In the first debate, external experts and delegations discussed some analytical questions, such as the role of market definition and the relation between welfare standards and the approach towards out of market efficiencies. In the second, the focus was on sustainability agreements and environmental benefits. This is an area where out of market efficiencies are the subject of intense debate, since the benefits of such agreements typically accrue to the wider population and may not fully compensate the consumers that are affected by the agreement.
- The Committee also had an initial discussion on the 2025-2026 PWB.
- Finally, the Committee held the accession review of Croatia. The Competition Committee conducted the review of Croatia's competition law and policy. The Secretariat presented their findings, and the Croatian delegation, led by the president of the Croatian competition authority, spoke on their achievements and challenges. The presidents of the Canadian, Dutch, and Polish competition authorities led the Committee's examination, and several other OECD Members as well as the European Commission participated in the discussion. The Competition Committee deliberated and concluded that the Chair will send a letter to Croatia recommending follow-up actions before the Committee can finalise its review.

Background

The CC includes mostly heads of competition authorities. WP2 deals with issues of regulation and policy. WP3 deals with issues of enforcement and international cooperation.

The GFC is open to competition authorities from all across the globe.

Global Competition Forum

- The Global Forum on Competition (7-8.12) (GFC) opened with addresses by the Secretary General, Chief Economist and DAF Director. Both the Secretary General and the Chief Economist addressed the emerging role of industrial policy as a tool for policymakers to address growth. The following panel provided a horizon scanning, analysing the implications of competition developments in Latin America/Caribbean, Africa, Asia, and China. The session considered the impact of social, political, and economic factors on the competition frameworks.
- The global forum also discussed the Use of economic evidence in cartel cases. Delegates separated into two breakout sessions to discuss the increasingly important role of economic evidence in cartel cases. The first breakout allowed competition authorities to share their experiences of using economics evidence to prove the existence of cartels, such as using pricing data to identify illegal practices. The second breakout included a panel of experts who shared their advice on how to persuasively present complex economic evidence to judges and other decision makers.
- Another roundtable on the GFC agenda was the Alternatives to Leniency Programmes. Given the decline in leniency applications and recognising that not all authorities have robust leniency programs, delegates discussed alternative detection tools. The discussion covered both reactive and proactive tools, exploring their advantages and disadvantages. Emphasis was placed on the necessity of a combined approach to detection tools, working in tandem with robust enforcement and the strategic use of sanctions. The consensus underscored that a successful leniency program requires a mix of detection tools supported by robust enforcement and strategic sanctions.
- The final session, a roundtable on Ex-post Assessment of Merger Remedies, focused on the ways these studies allow competition authorities to learn from experience and improve their practices. Delegates discussed the many benefits of ex-post assessments of merger remedies, as they not only help identify best practices, but can also increase the credibility of an authority's work and allow them to demonstrate what does, or does not, work. Delegates mutually agreed that many of the lessons from these assessments are valuable to others and more could be done to ensure the learnings are shared with the wider competition community.
- The GFC included multiple side events. A meeting of the Asia-Pacific Heads of Authority discussed sustainability and competition. The meeting of MENA countries discussed state participation in markets and the upcoming Arab Competition Forum 21-22 May 2024 in Tunisia. The meeting of the Latin America and Caribbean Competition Forum delegates discussed plans for the next LACCF to be held in the Dominican Republic in October 2024. Finally, the traditional GFC cocktail co-hosted and sponsored with Austria, Canada and Mexico celebrated the OECD Gender Inclusive Competition Toolkit in the presence of the Ambassadors of Mexico and Canada.

II International Conference on "Competition and Consumer Protection" in Georgia

From November 16th to 18th, 2023, the II International Conference on "Competition and Consumer Protection" was held in Tbilisi. The conference was organized by the following five regulatory authorities in Georgia: the Georgian National Competition Agency, the National Bank of Georgia, the National Energy and Water Supply Regulatory Commission of Georgia, the Communications Commission, and the State Insurance Supervision Service of Georgia. These authorities work together to ensure the effective enforcement of competition and consumer rights policies in Georgia.

The main objective of the annual conference is to consolidate competition policy in Georgia based on, both local and international practices, to assess any outcomes and challenges, and to upgrade the protection of consumer rights.

The conference was ushered in by the Deputy Prime Minister of Georgia and Minister of Economy and Sustainable Development, Levan Davitashvili. He evaluated the reforms that have been implemented in recent years in Georgia's integration process with Europe, reforms which have played a significant role in Georgia gaining candidate status for EU membership.

The conference got underway with a summary of what the regulatory bodies had accomplished in 2023. The conversation touched on the priority issues needed to prop up competition and consumer policy. Also summarised were the outcomes of the recommendations afforded to the pharmaceutical market, fuel, food, banking and insurance, energy and communications, online sales, and finally their implementations.

William Kovacic, a professor at George Washington University Law School in the field of global competition law and policy, and director of the Center for Competition Law, delivered a special report at the event. Nine thematic sessions were held within the conference, including two international panels from UNCTAD and OECD, headed by Teresa Moreira, the Head of Competition and Consumer Policies at UNCTAD, and Ori Schwartz, the Head of the OECD Competition Division.

Over two days, more than 300 delegates from 20 countries, including the first person of the authorities working in the competition and consumer sector of 10 different countries, participated in the conference. The event was attended by heads of the government and parliament of Georgia, local and international experts, representatives of public and regulatory bodies, academia, and the business sector.

At the conference, participants discussed various topics related to competition applying a framework based on international and local practices. These topics included restrictive agreements, methods of detection and prevention, trade policy, indirect mechanisms supporting competition, trends and main challenges in the field of protecting consumer rights, and effective possibilities of concentration control, etc.

The Georgian National Competition Agency signed a memorandum with the counterpart authorities of Austria and Serbia to strengthen mutual cooperation.

The conference concluded on the third day in Kakheti, eastern region of Georgia, which is known for its wine production and tourist attractions.

International Conference: Charting the Future: Albania's 20-year journey on Competition Protection and EU Integration

"20th anniversary of the law "On competition protection" in Albania: independency and the role of the authority in the regulatory reform, enforcement, advocacy, and challenges toward EU Integration"

The Albanian Competition Authority convened at a conference on November 23-24, 2023, to celebrate the 20th anniversary of the law on competition protection in Albania. The International Conference, which had also been sanctioned by the SANECA Project of GIZ and UNDP Albania, discussed independency, the role of the authority in regulatory reforms, enforcement, advocacy, and the challenges with EU Integration.

The purpose of the conference was to celebrate the 20th anniversary of Albanian Competition Law and to share their experiences with an international network of competition authorities. Albanian Competition Law enforcement has faced many challenges during its 20 years of operation, such as a lack of competition culture by businesses, untrained national judges on competition law and the progress of the Albanian economy through these years. The conference brought together representatives from the regulatory bodies, the government, academia, and representatives from foreign and national chambers of commerce, as well as participants from various business sectors.

The opening session was led by the Chairman of the Competition Authority, Mr. Denar Biba; the Chairman of the Committee on Economy and Finance, Mr. Eduard Shalsi; the Governor of the Bank of Albania, Mr. Gent Sejko; the UNDP Representative in Albania, Mr. Francisco Roquette; and the Deputy Ambassador of Germany to Albania, Mr. Thilo Schroeder.

The first panel had been tasked with "Setting the course: EU integration perspective as the compass for Albania's competition protection" Here, speakers from Albania and North Macedonia discussed their experiences and challenges with regards to EU integration. A representative from the Austrian Competition Authority (already a member of the EU) also had input.

A second panel was assembled from the regulatory institutions such as Telecommunication, Public Procurement Commission, Albanian School of Magistrates, and international organizations such as UNCTAD and EBRD to assess the independency of the authority and its role in regulatory reform.

A third panel assessed the enforcement of competition law: antitrust, and mergers & acquisitions. Records of enforcements and associated case law were carried out by the Swiss Competition Commission, the Kosova Competition Commission and the Albanian Competition Authorities. A representative from one of the lawmakers evaluated the M&A and its collaboration with the competition authority.

On day two, November 24, the Chairman of the Competition Authority, Mr. Denar Biba, and the Chairman of the Competition Protection Commission of Armenia signed the Memorandum of Understanding. The memorandum aims to establish new channels of communication and strengthen cooperation between the two countries in the field of competition policy.

The agenda continued with discussions among a fourth panel on ways to consolidate Competition Advocacy with Private Sector Engagement. Here, speakers exchanged experiences and perspectives related to approaches to competition advocacy.

To conclude the conference, Mr Denar Biba thanked both UNDP and GIZ for organising the event before emphasising the importance of collaboration with international counterparts. He also expressed gratitude to all participants and guests from the region and Europe for their contribution to this conference, successfully concluding the 20th anniversary of the Competition Protection Law.

CONFERENCES IN THE UPCOMING SEMESTER

1. Establishment ceremony of the Competition Council of Turkic States

The Competition Council of Turkic States was established on 23 January 2024 in Istanbul at the initiative of the Turkish Competition Authority and under the auspices of the Organisation of Turkic States. The new organisation brings together the competition authorities of the Turkic States, including Azerbaijan, Kazakhstan, Kyrgyzstan, Turkey and Uzbekistan, and is aimed at promoting the exchange of information and knowledge in the areas of investigative, regulatory, enforcement and methodological expertise, creating favourable conditions for the development of regional cooperation and enhancing advocacy in the member and observer countries.

The Hungarian Competition Authority also joined the Competition Council of Turkic States as an observer, similarly to Hungary's status in the OTS. It is worth mentioning that the GVH has already established professional relations with some members of the Council as the competition authorities of Azerbaijan, Kazakhstan and Kyrgyzstan are all beneficiaries of the OECD-GVH Regional Centre for Competition in Budapest.

2. 22nd ICN International Conference on Competition

The 22nd ICN International Conference on Competition will take place on 28 February-1 March 2024 in Berlin.[1] The event will be preceded by a workshop for younger competition authorities, which Ori Schwartz, Head of the OECD Competition Division, will also attend as a speaker.[2]

The conference and workshop are in-person and by invitation only. All ICN member authorities have received an invitation to their head or chief executive.

Recordings of the International Conference on Competition will be available on the conference website (www.ikk2024.de) after the conference.

3. Central Asian Competition Forum 2024

Dear esteemed colleagues,

The Competition authority of the Republic of Kazakhstan (the KCA) is glad to invite you to the "CENTRAL ASIAN COMPETITION FORUM 2024" on 25-26 April, 2024 held in Almaty, Kazakhstan.

Event details:

- Date: April 25-26, 2024
- Time: Day 1: 09:00 AM - 6:30 PM,
- Day 2: 10:00 AM - 12:00 AM
- Venue: InterContinental Almaty, Almaty city, Kazakhstan
- Theme: Current trends in the field of competition law and policy
- Participation: 150-200 delegates representing over 15 countries
- Translation: English simultaneous interpretation.
- Format: hybrid (preferably in-person)

Kazakhstan is a young country with a dynamically developing economy in the middle of Central Asia, which plays a key role

1 https://www.internationale-kartellkonferenz.de/IKK/EN/Service/Grusswort/grusswort_node.html
2 https://www.internationale-kartellkonferenz.de/IKK/EN/Workshop/workshop_node.html

as a bridge between Asian and European regions.

The KCA, as a relatively new jurisdiction, is actively establishing relations with other national competition authorities, international organisations and communities, including experts from business and civil society.

The Forum represents a unique opportunity for experts, practitioners, and policymakers to exchange ideas, experiences, and best practices, with the ultimate goal of promoting fair competition and economic development.

We are pleased to anticipate the participation and contributions of representatives from foreign governmental bodies, esteemed international organizations such as the OECD, UNCTAD, and ICN, antitrust professionals, and key figures from the business and investment communities.

If you would like to participate as a speaker or listener, please let us know.

For any questions please do not hesitate to contact the International cooperation division of the KCA by emails: a.baimakanova@azrk.gov.kz, apdc.international@gmail.com.

Please confirm your attendance by the end of this year, and if you have any suggestions (topics) to include in the draft Agenda, please feel free to send us.

Best regards,
The International Cooperation Division,
Competition Authority of the Republic of Kazakhstan

4. Trento Summer School on Advanced EU Competition Law & Economics

The Trento Summer School is a training programme, which will take place on 16-22 June 2024, to deepen the participants' understanding of EU competition law and economics. It is addressed to in-house counsels, lawyers, economists, officials of competition authorities, national judges, academics, and journalists.[3]

3 For more information: www.complawschool.eu

INSIDE A COMPETITION AUTHORITY: REPUBLIC OF AZERBAIJAN

Agency Questionnaire

I. RELEVANT COMPETITION LEGISLATION IN THE COUNTRY

On December 8, 2023, the new Competition Code was adopted and is set to take effect from July 1st, 2024. This Code encompasses provisions on responsibilities and entitlements of market entities, anti-competitive agreements, abuse of dominant position and relatively substantial market influence, unfair competition practices, concentration, and state regulation over natural monopolies. The new Code is developed based on international regulations and precedent-setting case law.

II. AGENCY'S COMPETENCES

- Antitrust (agreements and abuses of dominance)
- Mergers and acquisitions
- State control over advertising legislation
- State control over natural monopolies
- Advocacy to other public bodies
- Market studies
- State aid
- State control over public procurement
- Consumer rights protection
- State control over quality infrastructure (standardization, technical regulation, metrology, accreditation)

III. THE INSTITUTION

1. Structure of the Agency

A. Organization of functions

The State Service under the Ministry of Economy operates with a hierarchical decision-making structure, which also includes four subordinated institutions: Azerbaijan Standardization Institute, Azerbaijan Metrology Institute, Azerbaijan Accreditation Center, and "Consumer Goods Expertise Center" LLC. The Head of the State Service is responsible for making final decisions on all matters within the agency's competency. Deputy Heads escalate substantive matters to the Head of the State Service based on the field of activity.

B. Relevant people

A. The Chairperson

Name: Mr. Mammad Abbasbeyli

Background: In 1992-1997, graduated from Azerbaijan Khazar University with a degree in International Relations and Baku State University with a law degree.

Graduated from Purdue University in 1999 with a degree in US foreign policy history and from George Washington University in 2000 with a master's degree in law.

Has been a full member of the New York Bar since 2000.

By the Order of the President of the Republic of Azerbaijan dated December 23, 2021, was appointed Head of the State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy of the Republic of Azerbaijan.

Start of the mandate: 23.12.21 - present

B. The members of the Board

Name: Mr. Jafar Babayev

Start of the mandate: 16.12.2022, Deputy Head

Background: Received a bachelor's (2002) and master's (2004) degrees in international law from Baku State University. Was awarded the Chevening scholarship and obtained a master's degree (2005-2006) in international economic law at the University of Warwick in England. Received an MBA diploma from IE Business School in Spain in 2016.

Started his career as a lawyer in 2002 and continued as a legal adviser at the Islamic Corporation for Private Sector Development, a part of the Islamic Development Bank Group. During 2010-2015, served as an adviser on corporate regulation and supervision, deputy general manager, and deputy general manager in several private companies. From 2021 to 2022, he worked as a chief consultant at the State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy.

Name: Mr. Elnur Baghirov

Start of the mandate: 16.12.2022, Deputy Head

Background: From 1991 to 1996, studied Construction Economics and Management at Azerbaijan University of Architecture and Construction.

Started his career in 1995 and held various positions in the fields of finance and marketing until 2000. In 2001-2002, worked as a media manager for Azerbaijan, Georgia, and Turkmenistan in "The Coca-Cola" Company. From 2003-2021, served as a marketing manager and the head of the representative office of "Imperial Tobacco" in Azerbaijan. Worked as the head of the Consumer Market Control Department at the State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy from 2021 to 2022.

Name: Mr. Ilgar Hasanov

Start of the mandate: 16.12.2022, Deputy Head

Background: In 2000, obtained a Bachelor's degree in Economics and Management from Western University. Later in 2011, completed a Master's degree in Business Organization and Management from Azerbaijan State University of Economics. In 2020, received an MBA diploma from the Schulich School of Business at York University, Canada. In 2013, completed the Professional Development Program offered by Stanford University, USA.

Started his career as an engineer at the "AzEuroTel" joint venture in 1999 and then worked as an economist and head of department at the same enterprise until 2005. From 2005 to 2016, held the position of director in various enterprises. Between 2020-2022, served as the deputy general director of the Azerbaijan Institute of Standardization under the State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy and also as the head of the Department of Standardization, Technical Regulation and Certification at the State Service for Antimonopoly and Consumer Market Control.

C. Key persons in the direction of the agency (apart from the previous if they exist)

Name: Mr. Tural İsmayilov, Head of Administration

Start of the mandate: 30.10.23

Background: Mr. Ismayilov holds a Bachelor's degree in law, received in 2001, and a Master's degree in law, received in 2003 from Azerbaijan University. He has worked in the State Tax Service under the Ministry of Economy of the Republic of Azerbaijan (previously known as the Ministry of Taxes) from 2006 to 2021. During this time, he held various positions ranging from state tax inspector to head of the legal department. From 2021 until October 2023, he was the Chief Advisor at the State Service.

Name: Mr. Orkhan Mammadov, Deputy Head of Administration

Start of the mandate: 26.07.23

Background: Mr. Mammadov holds bachelor's and master's degrees in law, banking, corporate finance, and political science from universities such as University of Munich, Azerbaijan State University of Economics, and University of Bucharest. In 2018, completed the Professional Development Program offered by FDIC Corporate University of Washington, USA. He began his career in 2011 and worked as an Assistant to the Chief Executive Officer at the State Oil Company of the Republic of Azerbaijan (SOCAR). He also served as the Head of the Finance Department at the Azerbaijan Deposit Insurance Fund and as an Advisor to the President of the Azerbaijan Banks Association. From December 2021 until July 2023, he was the Head of the International Relations and Protocol Division at the State Service.

C. Staff of the authority

There are 3 departments in the State Service in the direction of competition with a total of 40 employees: State antimonopoly control, Unfair competition and advertisement legislation control, and State control over natural monopolies.

Field of work	Number of case handlers/ managers/ administrative staff	Academic background/ Training
Antitrust	14/4/1	Bachelor's, Master's, and PhD degrees in law, economics, finance, and business administration from local and international universities.
Unfair Competition	11/3/1	
Advertisement Control	6/3/1	
State control over the natural monopolies	12/3/1	
TOTAL	40	

2. Governance

A. System of appointment and detachment for the Chairperson and other key roles

The Head of the State Service is appointed by the President of the Republic of Azerbaijan.

The law does not specify the duration of the Head of the State Service's mandate.

B. Budgetary and structural issues

All final decisions are made by the Head of the State Service.

C. Relation with other institutions

The State Service's cooperation with regulators ranges from the drafting and discussion of legal initiatives to public policy matters.

D. Accountability

The State Service operates under the Ministry of Economy and reports to the Ministry.

3. Decision making

A. Internal procedure on competition cases

The commission composed of employees of the State Service is the sole decision-making organ. Adopted decisions can be either in the form of instructions or financial sanctions.

B. Control of the decisions taken

Decisions made by the Commission can be challenged in court. If someone is affected by a resolution, they have 30 working days from the date of receiving the written resolution to apply to the court. Azerbaijan's judiciary system includes different types of courts, including administrative courts, which handle appeals of resolutions.

IV. REFERENCE TO THE ACTIVITY

1. Enforcement over the last 24 months

A. Cartels

A. Leniency applications

Current legislation does not contain provisions on leniency. Therefore, the State Service hasn't received any application. Leniency provisions are provided in the recently adopted Competition Code.

B. Dawn raids

The current legislation contains provisions that limit dawn raid activities. Therefore, the State Service has not conducted any dawn raids.

C. Main cases

The investigation against telecommunication Company A based on the application submitted by Company B is a cartel case carried out over the last 24 months. Additional information is provided in section V (Judicial review).

D. Fines

The State Service has not conducted any cartel cases, and as a result, no financial penalties have been issued for such cases.

B. Non-cartel agreements

A. Dawn raids

The current legislation contains provisions that limit dawn raid activities. Therefore, the State Service has not conducted any dawn raids.

B. Main cases

Cases have been opened against the main participants in the ***buckwheat products market*** to investigate the reasons for the price increases. These cases were related to violations of antitrust legislation. After investigation to ensure non-discrimination, the company was instructed to stop violating the provisions of legislation and to pay around 420.000 USD obtained from illegal activities from 01.01.2021 to 31.07.2022 within 30 days. However, the commission found no evidence of antimonopoly violations by other business entities cases were opened against, and cases were terminated.

C. Fines

Aprox. 420,306.29 USD

D. Number of cases

Infringement decisions	**1**
- With fines	-
- Without fines	-
Non-infringement decisions	
Other (specify)	-
TOTAL	**1**

C. Abuse of dominance

A. Dawn raids

The current legislation contains provisions that limit dawn raid activities. Therefore, the State Service has not conducted any dawn raids.

B. Main cases

We can highlight the wholesale and retail salt market case

relating to antitrust regulations. In 2022, the State Service concluded a case against two integrated companies holding a dominant position in the salt market. We found that the companies have been engaged in anti-competitive behavior by forming a closed wholesale market and manipulating prices.

An investigation was initiated in response to a complaint from leather manufacturers who claimed that the salt prices were too high and they were unable to buy directly from the factory. The investigation revealed that there was only one salt manufacturer in the country, which had a 72% share of the wholesale market. This company was selling all of its salt products to a distributor that was owned by the same holding company. The two companies created a closed sales network where the salt manufacturer refused to sell directly to consumers and always referred them to its distributor, who then sold the products at a higher price. Since salt is considered an essential product, major retailers were forced to purchase it from this distributor, who sold the products at significantly higher prices to some retailers and lower prices to others. Retail competitors who paid lower prices were owned by the same holding company. The investigation found that both the salt manufacturer and distributor had engaged in price manipulation and discrimination between retailers. The companies were fined a total of around 706,000 USD and instructed to terminate any unreasonable price increases during the wholesale sale of salt products and refer to regulations while determining prices.

C. Fines

The total fine from the abuse of dominance cases has amounted for around 1.17 million USD.

D. Number of cases

Infringement decisions	**2**
- With fines	**2**
- Without fines	-
Commitment decisions	-
Non-infringement decisions	**1**
Other (specify)	**1**
TOTAL	**4**

D. Merger Review

A. Number of cases

Blocked merger filings	**2**
Mergers resolved with remedies	-
Mergers abandoned by the parties	**2**
Unconditionally cleared mergers	14
Other (specify)	-
TOTAL CHALLENGED MERGERS	**16**

B. Main cases

Several cases were observed regarding the purchase of shares from the authorized capital of an internet service provider (ISP). Most of the M&As were carried out within the same economic group. One of the transactions involved the purchase of shares from Company A, with a small market share in the ISP industry. Purchasing Company B is focused on telecommunications rather than ISP services. However, has a "backbone" internet provider within its affiliated group.

Investigation showed that Company B operates in all segments of the Internet telecommunications sector but has a low market share in all segments. Therefore, it was agreed to carry out the above-mentioned merger, anticipating that the addition of a new ISP to its composition would not pose any competitive risks. All settlement transactions that took place within the last 24 months were approved by the State Service.

E. Other cases (unfair competition and advertisement legislation control)

A. Dawn raids

In the last 24 months, no dawn raids have been carried out.

B. Main cases

- The State Service conducted an advertisement monitoring in the ***banking sector*** and found a bank that advertised a "0% commission rate only during specific period, FOR EVERYONE". However, upon investigation, it was found that the bank did not apply the 0% commission rate to all loan applicants as advertised. The bank was also found to have another advertisement claiming, "Interest rates lowered, loan to everyone with an interest rate X". It was discovered that X was the minimum interest rate and did not apply to all applicants. As a result of these unfair practices,

a monetary penalty of around 16,600 USD was imposed on the bank.

- An application was submitted to the State Service regarding anticompetitive practices in the mobility (taxi) market. As a result, the State Service initiated an investigation, and it was found that a taxi aggregator company had engaged in unfair practices by manipulating the business decisions of its competitors. The company was held responsible for its actions and fined approx. 66,000 USD.
- The investigation was conducted on the condition of compliance with the requirements of the antimonopoly legislation regarding the provision of services in the ***railway sector***, as well as the validity of the tariff-concession system. An investigation was launched against the railway company on the lease of wagons, railway transportation, and the application of tariffs and discounts. During the review of the case, a violation of competition principles was determined. The company's subsidiaries have been instructed to suspend forwarding activities and the execution of orders related to cargo transportation. Per instructions, the leasing of wagons at competitive prices for a short period should be made transparent and accessible, without any discrimination between business subjects on the types of transported cargo, concessions, and tariffs. Moreover, tariff concessions should be applied to transported loads, not entities, and the company should approve the list of loads to which the concession is applied, with specific dates for its implementation.

C. Fines

In 2022, the State Service imposed monetary sanctions totaling around 2.6 million USD due to infringement decisions. Additionally, a fine of around 32,000 USD was imposed for non-compliance with the State Service's request to submit documents.

From January to October 2023, the State Service imposed monetary sanctions around 117,110 USD. Furthermore, a fine of around 41,000 USD was imposed for non-compliance with the request to submit documents. There are also ongoing cases where monetary sanctions of around 18,650 USD have been imposed, but the cases have not yet been closed.

D. Number of cases

In some cases, there are more than one decision. Therefore, the number of cases and the number of decisions may differ.

V. THE NUMBERS PROVIDED BELOW INDICATE THE CASES OPENED FROM JANUARY 2022 UNTIL OCTOBER 2023

	2022	2023 (Jan-Oct)
Infringement decisions	-	
- With fines	**14**	**19**
- Without fines	**12**	**18**
Commitment decision	-	-
Non-infringement decisions	-	-
Other (specify)	**6**	**2**
TOTAL	**31**	**35**

A. Other cases (State control over the natural monopolies)

The State Service investigated the increase of service tariffs at telecommunications companies to ensure compliance with antimonopoly legislation. Private internet providers also filed complaints against these companies, stating that the rise in tariffs negatively impacted their business operations.

It was discovered that this companies manipulated prices to gain an unfair advantage in the market. These companies set tariffs for services that were identical to the services regulated by the State's Tariff Council, violating the requirements of several legislative acts.

As a result, the companies were instructed to adjust their service tariffs to comply with the Laws of the Republic of Azerbaijan "On Telecommunications" and "On Regulated Prices", as well as the decisions of the Tariff Council. Financial penalties were also imposed.

1. Advocacy of competition over the last 24 months

A. Initiatives related to public bodies

During 2023, the State Service played a pivotal role in promoting a competitive economic landscape through a series of impactful initiatives. Two academic conferences were conducted by the State Service. A joint seminar on competition advocacy, co-hosted with the Regional Competition Center (RCC) in Baku, also underlines the commitment to advocacy, international cooperation, and the development of human capital.

The State Service also organized training sessions for busi-

nesses, especially anticipating the adoption and implementation of the new Competition Code for business associations.

As part of its ongoing efforts to foster better communication with the private sector, the State Service has partnered with other state organizations to host events. These events provide businesses with a platform to engage in discussions about competition-related topics in different fields.

The Department of State Antimonopoly Control has taken a proactive step by meeting with cargo businesses to address the challenges in the sector. This initiative aimed to increase awareness of the problems related to observed violations and non-compliance and to identify potential solutions to ensure a fair and competitive market for all players.

The Department of State Control over Natural Monopolies initiated three-party meetings involving natural monopoly subjects and contractors, which is a significant move towards promoting transparency and cooperative efforts. These initiatives demonstrate the State Service's commitment to fostering dialogue, cooperation, and regulatory alignment, which will undoubtedly lead to a more transparent and collaborative business environment in the future.

B. Market Studies

- A recent study investigated the sales of pharmaceutical products in the wholesale and retail markets. The study revealed that several legal and competitive obstacles hindered the growth of the industry. To overcome these barriers, several recommendations were made, including expediting the registration process for new medications, permitting the sale of medicines below a certain price threshold, and making revisions to relevant legislation. These recommendations were presented to the relevant government agencies, and based on the findings of the study, changes were implemented in the legislation.
- The State Service conducted a study on the competition situation in the agricultural sector. The analysis revealed that there are no market entry barriers, horizontal and vertical agreements, or any abuse of market power. In the absence of commodity exchanges and with numerous regional wholesale points in the country, the prices formed in Baku "fruit market X" serve as an indicative price function for all traders dealing in fruit and vegetable products. As a result, the movement of products between regions is restricted, which affects pricing and causes significant price disparities between Baku and other regions. After conducting an analysis, it was recommended to monitor the markets with high levels of concentration. A special draft law on trade activities has been proposed to promote institutionalization in the agricultural sector and prevent unfair trade practices. To further encourage contract-based production, the development of "cashback" programs and technical support mechanisms are recommended. It is also suggested that a wholesale point be established in each economic region.
- The Antimonopoly Control Department has been actively conducting market research using simulation methods that utilize artificial intelligence. Moreover, various markets, such as those for cattle meat, internet services, financial services, baby food, and hazelnuts, were analysed.

C. Initiatives related to General Public

The State Service conducts annual meetings with the media to provide updates on conducted work throughout the year, discuss important cases, and share information about competition legislation. Memorandums of Understanding (MoUs) are also signed with leading universities in the country to offer internship opportunities and promote competition as a discipline. Throughout the year, State Service has been organizing open sessions and lectures in universities it has signed MoUs with. Additionally, State Service employees participate in various interviews on TV, radio, and other mass media resources. Informative videos on social media about topics such as "How to apply for laying a gas line to private houses" or "Electricity supply for private houses" are published.

The following articles have been written to be published on the official website of the State Service with an awareness-raising aim:

- The role of natural monopolies in a socially oriented national economy;
- Procedures for changing or returning tickets purchased from natural monopoly subjects in the field of air transport;
- Guidelines for connecting private houses to the energy supply network;
- Information about fixed telephone (wired) services provided by natural monopoly subjects;
- Regulations concerning illegal connections in gas supply;
- Should the state intervene in price-setting;
- The importance of competition and activity in the field of antitrust;
- Why horizontal mergers matter from a competition aspect;
- The problem of determining the relevant commodity and geographical market in competition analysis;
- Price discrimination in competition economics: theoretical basis and application criteria;
- Binding element doctrine and competition economics;
- Resale price maintenance;
- Imperatives and Future Prospects of the Competition Code;

- Requirements of the legislation regarding the termination of the supply of utility services.

D. Other capacities

Digitalization has become essential for modernizing processes and ensuring accountability. Therefore, the State Service is currently working on the development of the "Competition Portal". This innovative platform will offer a range of services and a comprehensive database for all stakeholders. This platform will complement the already functioning state procurement platform- etender.gov.az. Overall, we believe it is a positive step towards creating a more efficient and transparent system for all involved parties and can be utilized as an advocacy tool as well.

VI. JUDICIAL REVIEW OVER THE LAST 24 MONTHS

1. Outcome of the judicial review by the Supreme Courts

Entirely favourable judgements (decision entirely upheld)	-
Favourable judgements but for the fines	-
Partially favourable judgements	-
Negative judgements (decisions overturned)	1
TOTAL	**1**

2. Outcome of the judicial review by the first instance Courts

Entirely favourable judgements (decision entirely upheld)	**2**
Favourable judgements but for the fines	**1**
Partially favourable judgements	-
Negative judgements (decisions overturned)	2
TOTAL	**3**

3. Main judgements

Company A submitted an application to the State Service regarding violations conducted by telecommunication companies B and C. The application stated that Company B gained an unfair advantage in the competition for the provision of services for sending short messages by offering a price lower than both the market price and other participants.

Company C is a mobile communication service provider with a dominant position in the Republic of Azerbaijan. It was found that Company C discriminated in the closure of contracts with the same conditions. As a result, Company A lost the competition with Company B for the provision of services for sending short messages. Company B gained an advantage over its competitor because Company C provided it with a lower price for the service fee for sending short messages to Company C subscribers.

VII. COMUNICATION STRATEGY

The communication strategy of the State Service in the field of competition encompasses activities such as informing the subjects of natural monopolies about the responsibilities for anti-competitive actions affecting customers and competition, raising awareness of citizens about state control over the activities of natural monopoly entities, particularly in the utility sector, informing stakeholders including regulators about the new Competition Code, increasing efficiency in M&A settlements by raising awareness on cases requiring confirmation of the antimonopoly authority and necessary procedures, raising awareness among stakeholders on unfair competition, cartels, and abuse of dominance, as well as raising awareness among stakeholders in the advertising sector and consumers on delusive advertisement practices.

The Glossary of Competition Terms was recently published on December 18th. This resource will help stakeholders better understand the information provided.

Additionally, interviews on radio and television, and training for stakeholders are conducted.

Biography – Mammad Abbasbeyli

Mr. Mammad Abbasbeyli commenced his academic journey by completing a bachelor's degree in International Relations and Law.

Mr. Abbasbeyli then enhanced his educational portfolio further by obtaining a degree in U.S. Foreign Policy History from Purdue University followed by a master's degree in Law from George Washington University.

His career got underway at the law firm "Salans, Hertzfeld & Heilbronn" in New York, and he contributed significantly to the firm's Baku office. Over the subsequent years, he held pivotal roles as a lawyer, was head of the legal department, and became general manager at prominent foreign industrial and investment corporations. Has been a full member of the New York Bar since 2000.

In 2019-2020, worked as an adviser to the Minister of Economy. Mr Abbasbeyli was appointed Deputy Head of the State Service for Antimonopoly and Consumer Market Control in July 2020 and subsequently promoted to Head of the State Service by the President of the Republic of Azerbaijan in December 2021.

He is a member of the Supervisory Board of the "Baku Metro" Closed Joint-Stock Company.

Interview with the Chairperson

How would you describe the mission of your agency and the impact it has had on your economy?

The extensive mandate of the State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy covers competition, public procurement, quality infrastructures, consumer rights protection and consumer market control matters.

The State Service plays a key role in preserving and promoting competition, encouraging innovation, efficiency, and healthy market dynamics in Azerbaijan. We are dedicated to fostering sustainable economic growth resulting from foreign and domestic investments, the promotion of non-oil exports diversification, strong and competitive local business, and support for small and medium entrepreneurship. With the guidance of the Azerbaijan mandate, the State Service seeks to promote growth in trade by developing quality infrastructure, monitoring and regulating the quality of goods and services in the market, as well as ensuring consumer trust and protection from substandard products.

Legislation forms the foundation of the authority's operations, providing necessary legal frameworks to govern and regulate diverse facets of its mandate. The continuous refinement and improvement of the legislative instruments ensures that the State Service remains agile in addressing emerging challenges and evolving market dynamics. Thus, one of our key roles is to ensure that the fundamental legal basis matches the demands of society and the economy.

What is the level of competition awareness in your country? How much importance do policymakers place on competition? Is competition compliance a significant concern for businesses?

Obviously, the extent of the competition regulation is directly linked to the level of economic development of any nation, and Azerbaijan is not an exception. Our country's competition awareness level has always been pegged to the relevant economic progress. Azerbaijan has benefited from impressive economic gains in recent years. Therefore, the level of competition awareness has significantly increased. Now, policymakers are more actively addressing competition issues. Moreover, businesses see competition compliance as a salient concern, understanding its impact on market positioning and sustainable growth.

As a result of such increased awareness, we have managed to initiate new legislative norms in collaboration with other governmental authorities and business associations. As an ex-

ample, Milli Majlis, the parliament of Azerbaijan adopted the new Law on "Public Procurement" in June 2023. Furthermore, the new Competition Code, the legal act that not only codifies all existing competition regulations but also upgrades them to align with internationally accepted best practices, is expected to come into effect mid-2024.

Also, it's worthwhile noting that the State Service takes necessary measures to reinforce competition awareness through advocacy, regular awareness-raising events, training, and informative sessions. These sessions provide not only businesses but also lawyers, judges, and governmental officials with the skillset for navigating their decision-making processes. To ensure widespread understanding, the State Service reaches out to beyond the capital city, holding awareness and training sessions throughout the regions of Azerbaijan. This proactive approach underscores the commitment to advocate competition compliance, aligning businesses with regulatory frameworks and fostering a competitive economic environment.

Do you think that the situation has significantly changed since your agency began operating and or publishing reports or imposing sanctions?

We believe that our commitment to transparent communication has significantly contributed to positive changes, such as increased trust among stakeholders and awareness of responsible business conduct in the market landscape. Moreover, from our perspective, such transparency can be considered as a means of competition awareness.

Our conclusion is also supported by ~~the~~ statistical data. For example, we observed a sizeable 56.6% increase in applications (complaints, proposals, submissions, queries, etc.) related to the activities of natural monopolies in 2023. It definitely reveals an active engagement from the market participants and consumer activism, who realise their rights. Similarly, concerns regarding deceptive advertising have seen a substantial surge, with 72 applications received this year compared to 43 in the previous year. Consequently, our unfair competition practices team have launched more investigations this year.

From the antitrust perspective, the workload has also increased. This year, we have observed a material increase in concentration applications.

Moreover, as more and more businesses comprehend the significance of competition in the market, more businesses have started to comply with competition regulations. Therefore, an increased number of voluntary compliance cases have been evident this year. Alongside businesses, associations and media have also addressed an increased number of queries to the State Service in the current year.

Last but not least, the State Service's practice of media reporting and open publication of information on imposed sanctions also contributes to compliance with competition legislation. We observe that sanctions are not only considered as financial losses by businesses but also damage to their reputation. Therefore, voluntary collaborations are often observed during investigations. Finally, the upcoming Competition imposes additional transparency requirements on the State Service that will further contribute to competition compliance.

What are the main challenges that your authority is facing? What are your priorities for the near future?

Even though there are positive trends and success stories that we may celebrate, it is worthwhile noting existence of substantial challenges we continue facing. Quite naturally, the State Service considers these challenges as opportunities rather than obstacles.

The utmost challenge that we face is the level of institutional expertise and professionalism. The professional skillset of our personnel plays a key role in achieving success, so we provide them with continuous education and professional development programs to further their growth and ensure their readiness for professional challenges. For this purpose, we collaborate with education institutions, international organisations and foreign competition authorities. Also, we use our internal resources to foster their continuous education. For example, our advanced staff members hold regular sessions for juniors and newcomers. We consider the training organized by OECD-GVH RCC as an effective means to elevate the professional capacity of our personnel/workforce.

The level of competition advocacy may be listed as another challenge, as improving the recognition of the State Service is crucial for building trust and ensuring effective enforcement. There is a need to proactively engage with businesses, policymakers, and the public to promote a deeper understanding of the benefits of fair competition.

During 2023, the State Service was pivotal in promoting a competitive economic landscape through impactful initiatives. The State Service conducted two academic conferences on the topic of the free competitive environment. A joint seminar on competition advocacy co-hosted with the Regional Competition Center (RCC) in Baku underlines our commitment to advocacy, international cooperation, and human capital development.

Digitalisation is pivotal in streamlining processes and ensuring efficient regulation. Data compilation and analysis pose challenges, requiring investments in advanced data management systems to derive meaningful insights. To proudly face this challenge, the State Service took a strategic decision to invest in the "Competition Portal" that is a digital platform collecting information from different sources in the single user interface, reducing bureaucratic obstacles, as well as encouraging stakeholders to be accountable and make informed decisions. It will enable us to receive and analyse the most relevant information, as well as to offer the public our services in the most convenient way. The Portal's launch will be a significant milestone in our endeavours, embodying our

commitment to innovation, transparency and accessibility in competition regulation. This platform will be second digital portal the State Service utilises in addition to the state procurement portal (etender.gov.az) that is currently operational.

To summarize, our short-term and mid-term plans include professional development of staff, outreach to all stakeholders for competition advocacy purposes and digitalisation of the entire operation of the State Service. We are committed to those goals through strategic investments and planning.

What are the points of strength and of weakness of your authority?

The complex mandate of the State Service is both our strength and weakness. Managing multiple responsibilities requiring different sets of skills can pose challenges and require careful coordination to address the diverse aspects of our mission. Despite this challenge, our commitment to effective planning and resource allocation remains a key strategy in mitigating any potential obstacles associated with the multi-faceted nature of our mandate.

At the same time, one of the key strengths of our authority is the history of the State Service, the history of competition regulations in Azerbaijan that started in 1993 shortly after we gained independence. The data and expertise accumulated during these years has helped us deal with competition regulation.

A good reputation is an important asset that provides competitive edge for any organization. Domestically, the agency and its reputation has made gains with businesses and the public from very early on. Positive reputation of the State Service is one of our strengths, as it facilitates social approval of our decisions and encourages businesses to compliance.

Additionally, our special focus and in-depth understanding of the local market are unique strengths that enable us to tailor interventions and regulations with precision. Careful identification of competition obstacles in the market allows us to take more accurate measures to ensure fair competition.

As a limited budget often forms an obstacle to the smooth running of any agency, it can also be considered a main area of concern for the State Service. As the competition awareness rises, our workload increases proportionately, thus requiring additional resources.

Lastly, a relatively small market capacity also has its own complexities, as achieving compliance of global companies to our regulations at times becomes an issue. In the last few years, we have observed competition violations by global big-tech companies. Unfortunately, establishing communications and forcing them into collaboration has not proven fruitful.

If you could make one major change to the national competition law tomorrow, what would you choose?

That's the question our team and I have been seriously contemplating since joining the State Service. As a result of prolonged observations and analysis, we came to the conclusion that the outdated legislation and normative legal acts were the main contributor to slower pace in achieving fair market competition. It became obvious that the domestic legislation needed to be harmonized and adapted to the country's economic development level and its economic policy strategy. Accordingly, the new draft law codifying all existing regulations into a single piece of law and meeting contemporary requirements of international competition law came into existence. After several years of deliberations and discussions, on 8 December 2023 Parliament finally adopted the Competition Code.

The Competition Code expands the range of legal means available to the competition authority to preserve and promote market competition. It announces new concepts in legislation, such as market definition, exclusion regime, and exemptions. The Code addresses the concept of dominant position by defining advanced criteria. As the concept of leniency had never existed in previous legislation, the Code introduces a leniency program, providing an opportunity for the undertakings to side-step sanctions even if they may breach the competition regulations.

Merger control provisions are advanced in the Competition Code, and merger remedies also feature in the legislation. State control over natural monopolies is improved also. Moreover, the Code sets sophisticated grounds to launch an investigation and establish higher standards of due process.

We believe that the Competition Code will be a significant step towards forming a competitive market and a strong economy in Azerbaijan. However, the adoption of the Competition Code is not sufficient in itself to address competition issues, but rather requires implementation of newly adopted laws and advocating competition based on new regulations. Thus, the contribution of international organizations such as the OECD is crucial.

Over the last two years, what decisions has the authority made that you are particularly proud of? And are there any cases that might have been dealt with better?

The State Service has successfully made several during this time period, and not just in one area of business. The Internet infrastructure case about the operation of natural monopolies is an important case to show as an example. In this particular case, the State Service resolved those two natural monopolies offering telecommunication service (including last-mile internet service) were in breach of the Law on "Natural Monopolies" after an unauthorised increase in the price of internet-service.

We can mention the wholesale and retail salt market case and antitrust regulations. In 2022, the State Service concluded

a case against two integrated companies who held a dominant position in the salt market. We found out that the companies had been engaged in anticompetitive behaviour through forming a closed wholesale market and manipulating prices.

Another interesting decision was made after unfair competition in the advertisement sector, where one of the local banks was found accountable for misleading and deceptive advertisement content. Additionally, a local branch of an international food delivery company was considered by us to be liable for dictating anticompetitive provisions in business agreements with local restaurants. Finally, the State Service found a local alcoholic beverage manufacturer breaching the unfair advertising legislation through infringement of trademarks against the international brand owner.

Do you feel valued by the administration, the public, and businesses alike?

The primary objective of state bodies in Azerbaijan is to facilitate the country's comprehensive development through application and enforcement of a regulatory framework. We extend unequivocal support to other agencies across all processes and observe a culture of assistance in formulating new legislation and developing our budget requirements.

The purpose of the State Service's activities is fundamentally aligned with fostering a competitive economy by providing support to entrepreneurs. We recognise the pivotal role that businesses play in driving economic growth, innovation, and job creation. As such, our activities are designed to facilitate and enhance the operations of entrepreneurs. The positive collaboration with the business community is evident in the shared goal of promoting a robust and competitive economic landscape. A key aspect of the reciprocal support between the State Service and the business community is the commitment of entrepreneurs to comply with legislative requirements. This collaborative adherence to regulations ensures a fair and level playing field for businesses, fostering trust and integrity within the business community. Entrepreneurs actively participate in consultations, feedback sessions, and other initiatives organised by the State Service. This active involvement not only enriches the decision-making processes, but also ensures that the perspectives of the business community are considered in the formulation of new policies and regulations.

We believe that citizens need to actively participate in society by understanding their rights and obligations as outlined in the legislation, and we, therefore, prioritise active advocacy and awareness among the public. A well-informed public is better placed to contribute meaningfully to society, creating an environment of responsibility and legal compliance.

Do you find that international and regional cooperation is helpful? Is it working well?

Recognising the global nature of governance and economic dynamics, we have prioritised collaboration beyond the national borders to enhance its capabilities and effectiveness. The State Service has actively pursued collaborative initiatives in various fields, including competition, protection of consumer rights, public procurement, and regulation of quality infrastructure. We collaborate with various regional and global organisations to apply for and participate in several projects. Our cordial relations with experienced competition authorities enable us to learn from their best practices and implement them in our practice. Our presence on the global stage has been further enhanced through active participation and representation at international events. Additionally, we have formed partnerships with key international organisations, including ICN, OECD, and UNCTAD.

What do you personally think of the OECD-GVH Regional Centre for Competition? Do you any have suggestions for improvement?

The RCC is an important organisation that values fostering collaboration and knowledge exchange among its beneficiaries. As a member of one of the beneficiary groups, we are pleased to emphasise the significant and positive effects of RCC's capacity-building activities. These efforts have helped our agency grow and develop in numerous ways, and we are grateful for the knowledge and skills that our team have gained through RCC's initiatives.

The recent joint seminar on Competition Advocacy, held in Baku from 19th to 21st September, is a prime example of the RCC's commitment to promoting collaboration and knowledge-sharing. Our partnership with the RCC seamlessly aligns with various OECD initiatives aimed at fostering economic development. This collaboration facilitates our understanding of global best practices and contributes to the growth of bilateral cooperation as a professional competition platform.

While acknowledging the positive aspects, we suggest involving international stakeholders to observe and conduct peer reviews by member agencies during the review of legislative acts and agency activities. This additional layer of involvement can bring invaluable insights from diverse perspectives, enhancing the quality and effectiveness of the review process.

The State Service is excited to strengthen and expand its collaborative partnership with the OECD in the field of competition. Specifically, we aim to conduct joint reviews of competition-related legislative documents, including secondary legislative documents related to the Competition Code. We look forward to cooperating with the OECD in organising training programs for judges and legal professionals to enhance their knowledge and skills in competition law.

We believe that this collaboration will contribute significantly to the development of a competitive market environment, fostering innovation, economic growth, and consumer welfare.

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